

WSR 09-04-064
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed February 2, 2009, 4:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-17-096.

Title of Rule and Other Identifying Information: The department is amending chapter 388-823 WAC, Division of developmental disabilities intake and determination of developmental disabilities, amending WAC 388-823-0010, 388-823-0040, 388-823-0140, 388-823-0150, 388-823-0160, 388-823-0170, 388-823-0200, 388-823-0210, 388-823-0310, 388-823-0410, 388-823-0420, 388-823-0510, 388-823-0515, 388-823-0600, 388-823-0610, 388-823-0615, 388-823-0800, 388-823-0810, 388-823-0820, 388-823-0830, 388-823-0840 and 388-823-1010; and repealing WAC 388-823-0700 and 388-823-0710.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on March 24, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 25, 2009.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on March 24, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by March 10, 2009, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments combine the eligibility rules for "another neurological condition" with "other condition closely related to mental retardation or that requires treatment similar to that required for individuals with mental retardation." The phrase "adaptive functioning" has been replaced with "functional limitations" throughout the chapter. The adaptive behavior assessment system-second edition (ABAS-II) has been added as an acceptable assessment used to demonstrate certain developmental disabilities. Minor grammatical revisions have been incorporated.

Reasons Supporting Proposal: The department is defining the eligibility rules to conform to RCW 71A.10.020(3).

Statutory Authority for Adoption: RCW 71A.12.030, 71A.10.020(3).

Statute Being Implemented: Title 71A RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Debbie Roberts, 640 Woodland Square Loop S.E., Lacey,

WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail roberdx@dshs.wa.gov, (360) 725-3400, fax (360) 404-0955; Implementation: Linda Lunsford, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail LunsfLL@dshs.wa.gov, (360) 725-3440, fax (360) 404-0955; and Enforcement: Don Clintsman, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail clintdl@dshs.wa.gov, (360) 725-3421, fax (360) 404-0955.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The division of developmental disabilities has analyzed the rule amendments and has concluded that small businesses and small nonprofits are not significantly affected by these rules and that no jobs will be created or lost due to the implementation of these rules. Therefore, a small business economic impact statement is not required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Debbie Roberts, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, phone (360) 725-3400, fax (360) 404-0955, e-mail roberdx@dshs.wa.gov.

January 28, 2009

Stephanie E. Schiller

Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0010 Definitions. The following definitions apply to this chapter:

"ABAS-II" means adaptive behavior assessment system-second edition, which is a comprehensive, norm-referenced assessment of adaptive behavior and skills of individuals from birth through age eighty-nine.

"Client" means a person ((with)) who has a developmental disability as defined in ((chapter 388-823 WAC)) RCW 71A.10.020(3) who ((is currently eligible and active with the division of developmental disabilities)) also has been determined eligible to receive services by DDD under chapter 388-823 WAC.

"DAS" means differential ability scales, which is a cognitive abilities battery for children and adolescents at least age two years, six months but under age eighteen.

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

"Department" means the department of social and health services.

"Division" means the division of developmental disabilities.

"Eligible" means you have a developmental disability that meets all of the requirements in this chapter for a specific condition.

"Expiration date" means a specific date that your eligibility as a client of DDD and all services paid by DDD will stop.

"FSIQ" means the full scale intelligence quotient which is a broad measure of intelligence achieved through one of the standardized intelligence tests included in these rules. Any standard error of measurement value will not be taken into consideration when making a determination for DDD eligibility.

"Functional limitation" means a reduced ability or lack of ability to perform an action or activity in the manner or within the range considered to be normal as described in detail throughout this chapter.

"ICAP" means the inventory for client and agency planning. This is a standardized assessment of functional ability. The adaptive behavior section of the ICAP assesses daily living skills and the applicant awareness of when to perform these skills. The goal is to get a snapshot of his/her ability.

"IMR" means an institution for the mentally retarded, per chapter 388-835 WAC or chapter 388-837 WAC.

"K-ABC" means Kaufman assessment battery for children, which is a clinical instrument for assessing intellectual development. It is an individually administered test of intelligence and achievement for children at least age two years, six months but under age twelve years, six months. The K-ABC comprises four global scales, each yielding standard scores. A special nonverbal scale is provided for children at least age four years but under age twelve years, six months.

"Leiter-R" means Leiter international performance scale - revised, which is an untimed, individually administered test of nonverbal cognitive ability for individuals at least age two years but under age twenty-one years.

"Review" means DDD must redetermine that you still have a developmental disability according to the rules that are in place at the time of the review.

"RHC" means one of five residential habilitation centers operated by the division: Lakeland Village, Yakima Valley School, Fircrest, Rainier School, and Francis Haddon Morgan Center.

"SIB-R" means the scale of independent behavior-revised which is an adaptive behavior assessment derived from quality standardization and norming. It can be administered as a questionnaire or as a carefully structured interview, with special materials to aid the interview process.

"SOLA" means a state operated living alternative residential service for adults operated by the division.

"Stanford-Binet" is a battery of fifteen subtests measuring intelligence for individuals at least age two years but under age twenty-three years.

"Termination" means an action taken by DDD that stops your DDD eligibility and services paid by DDD.

"VABS" means Vineland adaptive behavior scales, which is an assessment to measure adaptive behavior in children from birth but under age eighteen years, nine months and in adults with low functioning in four separate domains: Communication, daily living skills, socialization, and motor skills.

"Wechsler" means the Wechsler intelligence scale, which is an individually administered 11-subtest measure of an individual's capacity for intelligent behavior. The Wechsler has both a verbal scale and a performance scale. The Wechsler is used with individuals at least age three years but under age seventy-four years. The verbal scale can be used

alone with individuals who have visual or motor impairments, and the performance scale can be used alone with individuals who cannot adequately understand or produce spoken language. There are three Wechsler intelligence scales, dependent upon the age of the individual:

- The Wechsler preschool and primary scale of intelligence - revised (WPPSI-R), for children at least age three years but under age seven years;
- The Wechsler intelligence scale for children - third edition, (WISC-III), for children at least age six years but under age sixteen years; and
- The Wechsler adult intelligence scale - revised (WAIS-R), for individuals at least age sixteen years but under age seventy-four years.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0040 What is a developmental disability? (1) A developmental disability is defined in RCW 71A.10.020(3) and must meet all of the following requirements. The developmental disability must currently:

(a) Be attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological or other condition found by DDD to be closely related to mental retardation or requiring treatment similar to that required for individuals with mental retardation;

(b) Originate prior to age eighteen;

(c) Be expected to continue indefinitely; and

(d) Result in substantial functional limitations (~~(to an individual's adaptive functioning)~~).

(2) In addition to the requirements listed in (1) above, you must meet the other requirements contained in this chapter.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0140 What if I do not have written evidence that my disability began before my eighteenth birthday? (1) If there is no documentation available to prove that your disability began prior to age eighteen, DDD may accept verbal information from your family or others who knew you prior to the age of eighteen about your early developmental history, educational history, illnesses, injuries or other information sufficient to validate the existence of an eligible condition prior to age eighteen.

(2) DDD will determine if the reported verbal information is adequate for documenting the existence of your condition prior to age eighteen.

(3) Additional evidence of your eligible condition and the resulting substantial functional limitations (~~(to adaptive functioning)~~) is still required.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0150 Which rules define a developmental disability if I am a child under the age of six years? If you are a child under the age of six years, assessment of developmental delays and other age appropriate criteria are

used to ~~((substantiate))~~ demonstrate an eligible condition and substantial functional limitations ~~((in adaptive functioning))~~ as defined in WAC 388-823-0800 through 388-823-0850.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0160 Which rules define a developmental disability if I am age six through nine? If you are a child age six but under age ten, you can meet the criteria for a developmental disability under either of the two following sets of rules:

- (1) Developmental delays per WAC 388-823-0800 through 388-823-0850; or
- (2) Developmental disabilities per WAC 388-823-0200 through ~~((388-823-0710))~~ 388-823-0615.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0170 Which rules define a developmental disability if I am age ten or older? If you are age ten or older, only the rules in WAC 388-823-0200 through ~~((388-823-0710))~~ 388-823-0615 apply when deciding if you have a developmental disability.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0200 What evidence do I need to ~~((substantiate))~~ demonstrate "mental retardation" as an eligible condition? Evidence that you have an eligible condition under "mental retardation" requires a diagnosis of mental retardation by a licensed psychologist, or a finding of mental retardation by a certified school psychologist or a diagnosis of Down syndrome by a licensed physician.

- (1) This diagnosis is based on documentation of a life-long condition originating before age eighteen.
- (2) The condition results in significantly below average intellectual and adaptive skills functioning that will not improve with treatment, instruction or skill acquisition.
- (3) A diagnosis or finding of mental retardation by the examining psychologist must include an evaluation of adaptive functioning that includes the use of a standardized adaptive behavior scale indicating adaptive functioning that is more than two standard deviations below the mean, in at least two of the following areas: Communication, self care, home living, social/interpersonal skills, use of community resources, self direction, functional academic skills, work, leisure, health, and safety.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0210 If I have mental retardation, how do I meet the definition of substantial functional limitations ~~((in adaptive functioning))~~? (1) If you meet the definition of mental retardation in WAC 388-823-0200, you must have substantial limitations in adaptive functioning of two standard deviations below the mean and a full-scale

intelligence quotient (FSIQ) of more than two standard deviations below the mean.

(2) The substantial limitation in adaptive functioning must reflect your current condition.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0310 If I have cerebral palsy, how do I meet the definition of substantial functional limitations ~~((to adaptive functioning))~~? If you have an eligible condition of cerebral palsy, substantial functional limitations ~~((of adaptive functioning))~~ is the need for direct physical assistance on a daily basis with two or more of the following activities as a result of your condition:

- (1) Toileting;
- (2) Bathing;
- (3) Eating;
- (4) Dressing;
- (5) Mobility; or
- (6) Communication.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0410 If I have epilepsy, how do I meet the definition of substantial functional limitations ~~((to adaptive functioning))~~? A substantial functional limitation ~~((to adaptive functioning))~~ under epilepsy is a functional assessment score of more than two standard deviations below the mean on a Vineland adaptive behavior scales (VABS), scale of independent behavior-revised (SIB-R), adaptive behavior assessment system-second edition (ABAS-II) or inventory for client and agency planning (ICAP) assessment instrument as described in WAC 388-823-0420.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0420 What evidence do I need to substantiate adaptive functioning limitations for the eligible conditions of epilepsy, autism ~~((and other conditions similar to))~~, or another neurological or other condition that is closely related to mental retardation or that requires treatment similar to that required for individuals with mental retardation? (1) Evidence of substantial limitations of adaptive functioning for the conditions of epilepsy, autism, ~~((and other conditions similar to))~~ or another neurological or other condition that is closely related to mental retardation or that requires treatment similar to that required for individuals with mental retardation requires a qualifying score completed in the past thirty-six months in a VABS ~~((of))~~, a SIB-R, an ABAS-II or ~~((a qualifying score completed in the past twenty-four months in))~~ an ICAP.

(a) Professionals who administer and score the VABS must have a background in individual assessment, human development and behavior, and tests and measurements, as well as an understanding of individuals with disabilities.

(b) Department staff or designee contracted with DDD must administer the ICAP.

(c) DDD will administer or arrange for the administration of the ICAP if VABS ~~((or)),~~ SIB-R or ABAS-II results are not submitted.

(d) Qualifying scores for each assessment are as follows:

ASSESSMENT	STANDARD DEVIATION	QUALIFYING SCORE
Vineland Adaptive Behavior Scales (VABS)	15	An adaptive behavior composite score of 69 or less
Scales of Independent Behavior-Revised (SIB-R)	15	A broad independence standard score of 69 or less for the adaptive behaviors
Inventory for Client and Agency Planning (ICAP)	15	Pursuant to WAC 388-823-0900, the broad independence domain score based on the applicant's birth date and the date the test is administered.
Adaptive Behavior Assessment System-Second Edition (ABAS-II)	15	General Adaptive Composite of 69 or less

(2) If DDD is unable to determine that your current adaptive functioning impairment is the result of your developmental disability because you have an unrelated injury or illness that is impairing your current adaptive functioning:

(a) DDD will not accept the results of a VABS ~~((or)),~~ SIB-R or ABAS-II administered after that event and will not administer the ICAP; and

(b) Your eligibility will have to be determined under a different condition that does not require evidence of adaptive functioning per a VABS, SIB-R, ABAS-II or ICAP.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0510 **If I have autism, how do I meet the definition of substantial functional limitations ~~((to adaptive functioning))~~?** A substantial functional limitation ~~((of adaptive functioning))~~ for the condition of autism is the presence of ~~((adaptive functioning impairment))~~ a substantial functional limitation as described in WAC 388-823-0515.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0515 **What evidence do I need to ~~((substantiate adaptive functioning))~~ demonstrate substantial functional limitations for the condition of autism?** Evidence of the substantial functional limitations ~~((of adaptive functioning))~~ for the condition of autism is both (1) and (2) below:

(1) Evidence of delay or abnormal functioning prior to age three years in at least one of the following areas:

- (a) Social interaction;
- (b) Language as used in social interaction;
- (c) Communication; or
- (d) Symbolic or imaginative play.

(2) Eligible scores in adaptive functioning per WAC 388-823-0420 (1)(d) and subject to all of WAC 388-823-0420.

ANOTHER NEUROLOGICAL OR OTHER CONDITION THAT IS CLOSELY RELATED TO MENTAL RETARDATION OR THAT REQUIRES TREATMENT SIMILAR TO THAT REQUIRED FOR INDIVIDUALS WITH MENTAL RETARDATION

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0600 **What evidence do I need to substantiate "another neurological or other condition ~~((as an eligible condition))~~ that is closely related to mental retardation or that requires treatment similar to that required for individuals with mental retardation"?** Evidence of ~~((an eligible condition under))~~ "another neurological or other condition that is closely related to mental retardation or that requires treatment similar to that required for individuals with mental retardation" ~~((requires a diagnosis by a licensed physician of an impairment of the central nervous system involving the brain and/or spinal cord that meets all of the following:))~~ must meet either (1) or (2) below:

(1) You have a diagnosis by a licensed physician of an impairment of the central nervous system involving the brain and/or spinal cord or a chromosomal disorder that meets all of the following:

- (a) Originated before age eighteen;
- (b) Is expected to continue indefinitely;
- (c) You have substantial functional limitations which are a result of your condition or disorder; and
- (d) The diagnosis is other than mental retardation, autism, cerebral palsy, or epilepsy.

(2) ~~((Results in both physical disability and intellectual impairment;~~

- ~~((3) Is expected to continue indefinitely; and~~
- ~~((4) Is not attributable to a mental illness or psychiatric disorder))~~ You are under the age of eighteen and are eligible for DSHS-paid in-home nursing through the medically intensive children's program defined in WAC 388-551-3000.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0610 **If I have "another neurological or other condition ~~((s))~~ that is closely related to mental retardation or that requires treatment similar to that required for individuals with mental retardation" how do I meet the definition of substantial functional limitations ~~((to adaptive functioning))~~?** (1) Substantial functional limitations ~~((to adaptive functioning))~~ for ~~((the condition of another neurological condition require both intellectual impairment and the need for direct physical assistance with activities of daily living per WAC 388-823-0615 (1) and (2) below))~~ "another neurological or other condition that is closely related to mental retardation or that requires treatment similar to that required for individuals with mental retardation" require impairments in both intellectual abilities and functional skills which are separate from any impairment due to a mental illness, or emotional, social or behavioral disorder.

(2) Criteria for impairment in both intellectual abilities and functional skills are described in WAC 388-823-0615 below.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0615 What evidence do I need to ~~((substantiate adaptive functioning)) demonstrate substantial functional limitations for "another neurological or other condition that is closely related to mental retardation or that requires treatment similar to that required for individuals with mental retardation"~~? ~~((Evidence of substantial limitations to intellectual functioning for another neurological condition is all of the following:))~~

(1) ~~((You must have an))~~ Substantial functional limitations for "another neurological or other condition that is closely related to mental retardation or that requires treatment similar to that required for individuals with mental retardation" require evidence of both intellectual impairment and deficits in functional skills as described in (a) and (b) below.

(a) Evidence of intellectual impairment requires documentation of either (i) and (ii) or (iii) below:

(i) A FSIQ score of 1.5 or more standard deviations below the mean on one of the following acceptable assessments in addition to the other criteria in this section. The acceptable assessments, the standard deviation and the qualifying scores are contained in the following table:

ASSESSMENT	STANDARD DEVIATION	QUALIFYING SCORE
Stanford-Binet 4th edition	16	76 or less
Stanford-Binet 5th edition	15	78 or less
Wechsler	15	78 or less
Differential Abilities Scale (DAS)	15	78 or less
Kaufman Assessment Battery for Children (K-ABC)	15	78 or less
Leiter-R ((for persons with significant hearing impairments or when English is not primary language))) <u>for persons with significant hearing impairments or when English is not primary language</u>	15	78 or less

(ii) Significant academic delays defined as delays of more than two standard deviations below the mean at the time of testing in both broad reading and broad mathematics; or

(iii) If records cannot be obtained to substantiate (i) and (ii) above, DDD may consider other evidence in order to validate your intellectual deficits. DDD will determine whether such evidence is reliable, and whether it is sufficient to demonstrate intellectual deficits as severe as the deficits that would be demonstrated by (i) and (ii) above.

(iv) IQ scores and evidence of academic delays obtained prior to age eighteen will be given precedence over testing results after age eighteen.

(b) Evidence of deficits in functional skills requires documentation described below:

(i) A score of more than two standard deviations below the mean on a VABS, ABAS-II, SIB-R or ICAP current within the past three years.

(ii) The qualifying scores for these tests are based on composite or broad independence scores as defined in WAC 388-823-0420 (1)(d).

(2) ~~((You must have evidence of need for direct physical assistance on a daily basis with two or more of the following activities: Toileting, bathing, eating, dressing, mobility, or communication as a result of your condition as defined in WAC 388-823-0320 and 388-823-0330.~~

(3) ~~The intellectual impairment and physical assistance needs must be the result of the central nervous system impairment and not due to another condition or diagnosis))~~ You do not need the additional evidence of your substantial functional limitations in (1)(a) and (b) above if your eligible condition is solely due to your eligibility and participation in the medically intensive children's program offered through DDD, defined in WAC 388-551-3000.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0800 Which eligible developmental disability conditions apply at what age? (1) Children under the age of six must meet the definition of having a developmental disability by meeting the requirements listed in WAC 388-823-0810 through 388-823-0850.

(2) Children at least age six but under the age of ten can meet the definition of developmental disability by:

(a) Meeting the requirements listed in WAC 388-823-0200 through ~~((388-823-0710))~~ 388-823-0615; or

(b) Meeting the requirements listed in WAC 388-823-0810 through 388-823-0850.

(3) Children age ten and older must meet the requirements in WAC 388-823-0200 through ~~((388-823-0710))~~ 388-823-0615.

(4) The following chart summarizes the applicable eligibility conditions by age.

Eligible Conditions	Age 0-5	Age 6-9	Age 10-17	Age 18 and older
Developmental Delays	X	X		
Down Syndrome	X	X		
Too severe to be assessed	X	X		
Medically Intensive Children's Program	X	X	X	
Mental Retardation (MR)		X	X	X
Cerebral Palsy		X	X	X
Epilepsy		X	X	X
Autism		X	X	X
Another Neurological or other condition		X	X	X
((Other condition similar to MR))		((X))	((X))	((X))

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0810 ~~If I am a child under age ten, what evidence do I need to meet the definition for ~~((an))~~ "another neurological or other condition~~((("similar to mental retardation"))~~) that is closely related to mental retardation or that requires treatment similar to that required for individuals with mental retardation"~~? If you are a child under age ten, evidence of one of the following substantiates that you have ~~((an eligible "other condition" similar to mental retardation))~~ "another neurological or other condition that is closely related to mental retardation or that requires treatment similar to that required for individuals with mental retardation":

- (1) Developmental delay measured by developmental assessment tools administered by qualified professionals as described in WAC 388-823-0850.
- (2) A diagnosis of Down syndrome by a licensed physician;
- (3) A determination of eligibility for the DSHS medically intensive children's program defined in WAC 388-551-3000;
- (4) A diagnosis by a licensed physician or licensed psychologist of a condition that is so severe the child is unable to demonstrate the minimal skills required to complete a developmental evaluation or assessment.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0820 If I am a child under age ten with an eligible condition under the medically intensive children's program, Down syndrome, or a diagnosed condition that is too severe for developmental testing, how do I meet the definition of substantial functional limitations ((to adaptive functioning))? You do not need additional evidence of substantial functional limitations if you are a child

under the age of ten with an eligible condition based on the medically intensive children's program, Down syndrome, or a diagnosed condition that is too severe for developmental testing.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0830 If I am a child under age ten with an eligible condition based on developmental delays, how do I meet the definition of substantial functional limitations ((to adaptive functioning))? (1) If you are a child under age ten with an eligible condition based on developmental delays, evidence of substantial ~~((handicap))~~ functional limitations requires developmental delays of at least 1.5 standard deviations or twenty-five percent or more of the chronological age in the following developmental areas:

- (a) Physical skills (fine or gross motor);
- (b) Self help/adaptive skills;
- (c) Expressive or receptive communication, including American sign language;
- (d) Social/emotional skills; and
- (e) Cognitive, academic, or problem solving skills.

(2) The number of areas in which you are required to have delays to meet the evidence is specific to your age.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0840 If I am a child under age ten, how many areas of developmental delays meet the definition of substantial functional limitations ((to adaptive functioning))? If you are a child under the age ten, eligible based on developmental delays, the number of delays required for substantial functional limitations ~~((to adaptive functioning))~~ is specific to your age.

(1) A child from birth but under age three must have a developmental delay in one or more developmental areas.

(2) A child age three but under age ten must have developmental delays in three or more developmental areas.

AGE	NUMBER of AREAS of DELAY
Birth but under age three	One or more
Age three but under age ten	Three or more

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-1010 When will DDD review my eligibility to determine if I continue to have a developmental disability? (1) Your eligibility can be reviewed at any time if your eligibility effective date is prior to July 2005 and you are age ten or older and were eligible under a condition of developmental delay or Down syndrome.

(2) Your eligibility will be reviewed at age seventeen with termination occurring no sooner than your eighteenth birthday if your most current eligibility determination was at sixteen or younger under mental retardation, cerebral palsy, epilepsy, autism, or another neurological condition(;) or other condition that is closely related to mental retardation or that requires treatment similar to that required for individuals with mental retardation.

(3) DDD will review your eligibility prior to the initial authorization of any paid service from DDD when you are not currently receiving paid services and:

(a) You are age eighteen or older and your most current eligibility determination is more than twenty-four months old; or

(b) You are age four but under age eighteen and your eligibility was established under the eligible conditions of developmental delay or Down syndrome and your eligibility effective date is prior to July 2005.

(4) DDD will review your eligibility if DDD discovers:

(a) The evidence used to make your most recent eligibility determination completed in 1992 or later appears to be insufficient, in error, or fraudulent; or

(b) New diagnostic information becomes available that does not support your current eligibility and you are under the age of eighteen.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-823-0700 How do I meet the definition for an "other condition" similar to mental retardation?

WAC 388-823-0710 What evidence do I need to meet the definition of substantial limitations for an "other condition" similar to mental retardation?

WSR 09-05-027

PROPOSED RULES

DEPARTMENT OF RETIREMENT SYSTEMS

[Filed February 10, 2009, 2:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-07-040.

Title of Rule and Other Identifying Information: WAC 415-501-494 How will the account be distributed if my beneficiary is a minor?

Hearing Location(s): Department of Retirement Systems (DRS), 6835 Capitol Boulevard, Conference Room 115, Tumwater, WA, on March 24, 2009, at 4:00 p.m.

Date of Intended Adoption: March 25, 2009.

Submit Written Comments to: Sarah White, Rules Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail rules@drs.wa.gov, fax (360) 753-3166, by 5:00 p.m. on March 24, 2009.

Assistance for Persons with Disabilities: Contact Sarah White, rules coordinator, by March 17, 2009, TDD (360) 664-7291, TTY (360) 586-5450, phone (360) 664-7291.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to update the department's rule concerning distribution of deferred compensation program (DCP) accounts to minors. Currently, a guardianship must be established prior to the distribution of a DCP account to a minor beneficiary, regardless of the value of the account. The department is proposing changes to allow distribution based on the value of the account. For accounts with a value of less than \$5,000, distribution will be made to a custodian on behalf of the minor in accordance with the Uniform Transfers to Minors Act. For accounts with a value of \$5,000 or greater, the department will require proof of guardianship.

Reasons Supporting Proposal: DRS is amending this rule to assist DCP participants and their beneficiaries, and to provide a distribution process that recognizes the costs associated with establishing a guardianship balanced with the value of the account to be distributed.

Statutory Authority for Adoption: RCW 41.50.050(5).

Statute Being Implemented: RCW 41.50.770 and 41.50.780.

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

Name of Proponent: Department of retirement systems, governmental.

Name of Agency Personnel Responsible for Drafting: Sarah White, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7291; Implementation and Enforcement: Michelle Hardesty, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7193.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules have no effect on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. DRS is not one of the named departments in RCW 34.05.328.

February 10, 2009
Sarah White
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-22-053, filed 10/29/04, effective 11/29/04)

WAC 415-501-494 How will the account be distributed if my beneficiary is a minor? ~~((1) The department will distribute deferred compensation funds on behalf of a minor beneficiary only upon proof that the minor has either a court-appointed guardian or a custodian designated in compliance with RCW 11.114.030.~~

~~(2) If the department does not receive the proof in subsection (1) of this section, or if the guardian or custodian is unable or unwilling to serve, the department will request a court of competent jurisdiction to establish a guardianship under chapters 11.88 and 11.92 RCW. The department will make this request no sooner than one hundred eighty days after notification of your death, regardless of the amount at issue.~~

~~(3) After a guardianship or custodianship has been established, either by prior designation or by court order, the department will transfer the deferred compensation funds to the named guardian or custodian.~~

~~(4) If you have more than one minor beneficiary, a separate custodianship must be established for each minor. Each minor's interest must be determined in accordance with the governing instrument and applicable law. Only one person may be the custodian for each minor.~~

~~(5) Disbursement of funds to the guardian or custodian on behalf of the minor discharges the department from further liability.~~

~~(6) The guardian or custodian may choose a deferred compensation distribution date and method on behalf of the minor, consistent with the requirements of this chapter.)~~ If you die before your entire account has been distributed and if one or more of your beneficiaries is a minor child, the department will distribute your deferred compensation funds to the minor according to the following:

(1) **UTMA custodian.** If your beneficiary is a minor at the time of your death, and if you have designated a custodian to receive funds on behalf of your minor beneficiary pursuant to RCW 11.114.030 of the Uniform Transfers to Minors Act (UTMA), the department will distribute your funds to the designated custodian regardless of the amount to be distributed. If you have more than one minor beneficiary, a separate custodianship must be established for each minor.

(2) **No UTMA custodian.** If, at the time of your death, your beneficiary is a minor and you did **not** designate a custodian to receive the funds on behalf of your minor beneficiary, then your funds will be distributed according to the following:

(a) If your beneficiary is an emancipated minor and your DCP account balance is less than five thousand dollars, the department will distribute the funds directly to the minor.

(b) If your beneficiary is an unemancipated minor and your DCP account balance is less than five thousand dollars, the department will distribute the funds to an adult member of the minor's family or to a court-appointed custodian who submits a claim on behalf of the minor beneficiary. If no adult family member or court-appointed custodian submits a claim within one hundred eighty days of your death, the department will directly petition the court for the appointment of a custodian under the UTMA. After a custodian is appointed, the department will distribute the funds to the custodian.

(c) If your beneficiary is a minor and your DCP account balance is five thousand dollars or greater, the department will distribute the funds only to a court-appointed guardian.

(i) Upon satisfactory proof of guardianship, the department will distribute the funds to the guardian of the minor.

(ii) If the department does not receive satisfactory proof of guardianship within one hundred eighty days of your death, the department will petition the court for the appointment of a guardian under chapters 11.88 and 11.92 RCW. After a guardian is appointed, the department will distribute the funds to the guardian pursuant to the terms of the guardianship order.

(3) Distribution consistent with this rule releases the department from further liability with regard to your DCP account.

(4) The person receiving the distribution pursuant to this rule must choose a distribution date and method on behalf of the minor, consistent with the requirements of this chapter.

(5) **Terms used.** For purposes of this rule, the following terms are defined as:

(a) An "adult" is any person who has attained the age of twenty-one years.

(b) A "member of the minor's family" means a parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt of the minor, whether in whole or half blood or by adoption.

WSR 09-05-030

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed February 11, 2009, 7:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-17-098.

Title of Rule and Other Identifying Information: The department is amending WAC 388-845-0060 Can my waiver enrollment be terminated?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on March 24, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 25, 2009.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on March 24, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by March 10, 2009, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This amendment defines the procedures for administering the home and community based services waiver by revising the reasons for termination from the community protection waiver.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.10.020(3).

Statute Being Implemented: Title 71A RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Debbie Roberts, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail roberdx@dshs.wa.gov, (360) 725-3400, fax (360) 404-0955; Implementation: Shirley Everard, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail LunsfLL@dshs.wa.gov, (360) 725-3444, fax (360) 404-0955; and Enforcement: Don Clintsman, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail clintdl@dshs.wa.gov, (360) 725-3421, fax (360) 404-0955.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the rules and determined that no new costs will be imposed on small businesses or nonprofit organizations.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are not considered significant rules as defined in RCW 34.05.328 (5)(c)(iii).

February 4, 2009
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0060 Can my waiver enrollment be terminated? DDD may terminate your waiver enrollment if DDD determines that:

(1) Your health and welfare needs cannot be met in your current waiver or for one of the following reasons:

(a) You no longer meet one or more of the requirements listed in WAC 388-845-0030;

(b) You do not have an identified need for a waiver service at the time of your annual plan of care or individual support plan;

(c) You do not use a waiver service at least once in every thirty consecutive days and your health and welfare do not require monthly monitoring;

(d) You are on the community protection waiver and:

(i) You choose not to be served by a certified residential community protection provider-intensive supported living services (CP-ISLS);

(ii) You engage in any behaviors identified in WAC 388-831-0240 (1) through (4); and

(iii) DDD determines that your health and safety needs or the health and safety needs of the community cannot be met in the community protection program.

(e) You choose to disenroll from the waiver;

(f) You reside out-of-state;

(g) You cannot be located or do not make yourself available for the annual waiver reassessment of eligibility;

(h) You refuse to participate with DDD in:

(i) Service planning;

(ii) Required quality assurance and program monitoring activities; or

(iii) Accepting services agreed to in your plan of care or individual support plan as necessary to meet your health and welfare needs.

(i) You are residing in a hospital, jail, prison, nursing facility, ICF/MR, or other institution and remain in residence at least one full calendar month, and are still in residence:

(i) At the end of the twelfth month following the effective date of your current plan of care or individual support plan, as described in WAC 388-845-3060; or

(ii) ~~((On March 31st,))~~ The end of the waiver fiscal year, whichever date occurs first.

(j) Your needs exceed the maximum funding level or scope of services under the Basic or Basic Plus waiver as specified in WAC 388-845-3080; or

(k) Your needs exceed what can be provided under ~~((the CORE or community protection waiver as specified in))~~ WAC 388-845-3085; or

(2) Services offered on a different waiver can meet your health and welfare needs and DDD enrolls you on a different waiver.

WSR 09-05-035

WITHDRAWAL OF PROPOSED RULES HORSE RACING COMMISSION

[Filed February 11, 2009, 10:03 a.m.]

The Washington horse racing commission (WHRC) would like to withdraw our proposed rule making (CR-102), WSR 09-02-063, filed on January 6, 2009. The agency has decided to table rule making on this topic for now.

Contact Robert J. Lopez if you have any questions.

R. J. Lopez
Executive Secretary

WSR 09-05-072
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed February 17, 2009, 7:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-23-087.

Title of Rule and Other Identifying Information: Chapter 296-45 WAC, Safety standards for electrical workers.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Tumwater, WA 98501-5414, on March 26, 2009, at 10:00 a.m.

Date of Intended Adoption: May 5, 2009.

Submit Written Comments to: Kimberly Johnson, P.O. Box 44620, Olympia, WA 98504-4620, e-mail rhok235@lni.wa.gov, fax (360) 902-5529, by April 10, 2009.

Assistance for Persons with Disabilities: Contact Beverly Clark by March 18, 2009, (360) 902-5516 or clah235@lni.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The electric utility safety advisory committee (EUSAC) has come to the department with concerns about the protection of nonqualified workers while in energized electric utility substations. EUSAC recommends that the department adopt language to help the industry ensure the safety of these workers.

The new language establishes a "safety watch," which entails direct supervision of a qualified person when a non-qualified employee approaches exposed energized electrical equipment in substations or switch yards.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

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

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

Name of Agency Personnel Responsible for Drafting: Tracy Spencer, Tumwater, Washington, (360) 902-5530; Implementation and Enforcement: Stephen M. Cant, Tumwater, Washington, (360) 902-5495.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rule amendments do not impose an economic burden on businesses. Utilities have other options when working around substations; this amendment merely outlines a requirement should the option of having nonqualified personnel perform said work.

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

February 17, 2009

Judy Schurke

Director

AMENDATORY SECTION (Amending WSR 05-17-038, filed 8/9/05, effective 10/1/05)

WAC 296-45-475 Substations. This section provides additional requirements for substations and for work performed in them.

(1) Access and working space. Sufficient access and working space shall be provided and maintained about electric equipment to permit ready and safe operation and maintenance of such equipment.

Note: Guidelines for the dimensions of access and working space about electric equipment in substations are contained in American National Standard-National Electrical Safety Code, ANSI C2-1997. Installations meeting the ANSI provisions comply with WAC 296-45-475(1). An installation that does not conform to this ANSI standard will, nonetheless, be considered as complying with WAC 296-45-475(1) if the employer can demonstrate that the installation provides ready and safe access based on the following evidence:

(a) That the installation conforms to the edition of ANSI C2 that was in effect at the time the installation was made;

(b) That the configuration of the installation enables employees to maintain the minimum approach distances required by WAC 296-45-325(5) while they are working on exposed, energized parts; and

(c) That the precautions taken when work is performed on the installation provide protection equivalent to the protection that would be provided by access and working space meeting ANSI C2-1997.

(d) Precaution must be taken to prevent accidental operation of relays or other protective devices due to jarring, vibration, or improper wiring.

(2) Draw-out-type circuit breakers. When draw-out-type circuit breakers are removed or inserted, the breaker shall be in the open position. The control circuit shall also be rendered inoperative, if the design of the equipment permits.

(3) Substation fences. Conductive fences around substations must be grounded. When a substation fence must be expanded or removed fence continuity must be maintained and bonding must be used to prevent electrical discontinuity. A temporary fence affording similar protection when the site is unattended, must be provided. Adequate interconnection with ground must be maintained between temporary fence and permanent fence.

(4) Guarding of rooms containing electric supply equipment.

(a) Rooms and spaces in which electric supply lines or equipment are installed shall meet the requirements of subsection (4)(b) through (e) of this section under the following conditions:

(i) If exposed live parts operating at 50 to 150 volts to ground are located within 8 feet of the ground or other working surface inside the room or space;

(ii) If live parts operating at 151 to 600 volts and located within 8 feet of the ground or other working surface inside the room or space are guarded only by location, as permitted under subsection (5)(a) of this section; or

(iii) If live parts operating at more than 600 volts are located within the room or space, unless:

(A) The live parts are enclosed within grounded, metal-enclosed equipment whose only openings are designed so that foreign objects inserted in these openings will be deflected from energized parts; or

(B) The live parts are installed at a height above ground and any other working surface that provides protection at the voltage to which they are energized corresponding to the protection provided by an 8-foot height at 50 volts.

(b) The rooms and spaces shall be so enclosed within fences, screens, partitions, or walls as to minimize the possibility that unqualified persons will enter.

(c) Signs warning unqualified persons to keep out shall be displayed at entrances to the rooms and spaces.

(d) Entrances to rooms and spaces that are not under the observation of an attendant shall be kept locked.

(e) Unqualified persons may not enter the rooms or spaces while the electric supply lines or equipment are energized.

(5) Guarding of energized parts.

(a) Guards shall be provided around all live parts operating at more than 150 volts to ground without an insulating covering, unless the location of the live parts gives sufficient horizontal or vertical or a combination of these clearances to minimize the possibility of accidental employee contact.

Note: Guidelines for the dimensions of clearance distances about electric equipment in substations are contained in American National Standard-National Electrical Safety Code, ANSI C2-1997. Installations meeting the ANSI provisions comply with subsection (5)(a) of this section. An installation that does not conform to this ANSI standard will, nonetheless, be considered as complying with subsection (5)(a) of this section if the employer can demonstrate that the installation provides sufficient clearance based on the following evidence:

(i) That the installation conforms to the edition of ANSI C2 that was in effect at the time the installation was made;

(ii) That each employee is isolated from energized parts at the point of closest approach; and

(iii) That the precautions taken when work is performed on the installation provide protection equivalent to the protection that would be provided by horizontal and vertical clearances meeting ANSI C2-1997.

(b) Except for fuse replacement and other necessary access by qualified persons, the guarding of energized parts within a compartment shall be maintained during operation and maintenance functions to prevent accidental contact with energized parts and to prevent tools or other equipment from being dropped on energized parts.

(c) When guards are removed from energized equipment, barriers shall be installed around the work area to prevent employees who are not working on the equipment, but who are in the area, from contacting the exposed live parts.

(6) Substation entry.

(a) Upon entering an attended substation, each employee other than those regularly working in the station shall report his or her presence to the employee in charge in order to receive information on special system conditions affecting employee safety.

(b) The job briefing required by WAC 296-45-135 shall cover such additional subjects as the location of energized equipment in or adjacent to the work area and the limits of any deenergized work area.

(c) Nonqualified persons may only approach exposed energized electrical equipment located in substations or switch yards up to the distances set forth in Tables 1 through 4 when under the direct supervision of a qualified person acting as a safety watch. The safety watch will make sure that the nonqualified person does not encroach or take conductive objects closer to exposed energized parts than set forth in Tables 1 through 4.

(i) Nonqualified persons must have hazard recognition training and attend a documented tailgate meeting prior to entering the substation.

(ii) The safety watch must be a qualified employee as defined by WAC 296-45-035.

(iii) The safety watch will have the responsibility and authority to monitor work on a continuous basis and/or stop work until the hazard is eliminated or protected.

(iv) The safety watch will maintain a direct line of sight and voice communications with all nonqualified persons under their direct supervision. If the safety watch cannot meet these requirements, additional safety watches must be assigned or work must be stopped. Each safety watch will monitor no more than four persons.

(v) The safety watch will perform no other duties while acting as a safety watch.

WSR 09-05-073

WITHDRAWAL OF PROPOSED RULES PROFESSIONAL EDUCATOR STANDARDS BOARD

(By the Code Reviser's Office)

[Filed February 17, 2009, 8:38 a.m.]

WAC 181-78A-151, 181-78A-270, 181-78A-505 and 181-78A-509, proposed by the professional educator standards board in WSR 08-16-108 appearing in issue 08-16 of the State Register, which was distributed on August 20, 2008, is withdrawn by the code reviser's office under RCW 34.05.-335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 09-05-074

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF LABOR AND INDUSTRIES

(By the Code Reviser's Office)

[Filed February 17, 2009, 8:38 a.m.]

WAC 296-17A-7500, proposed by the department of labor and industries in WSR 08-16-110 appearing in issue 08-16 of the State Register, which was distributed on August 20, 2008, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 09-05-076
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed February 17, 2009, 8:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-16-112.

Title of Rule and Other Identifying Information: Chapter 296-400A WAC, Plumber certification rules.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Room S117, Tumwater, WA, on March 25, 2009, at 2:00 p.m.

Date of Intended Adoption: May 5, 2009.

Submit Written Comments to: Sally Elliott, P.O. Box 44400, Olympia, WA 98504-4400, e-mail yous235@lni.wa.gov, fax (360) 902-5292, by March 25, 2009.

Assistance for Persons with Disabilities: Contact Sally Elliott by March 1, 2009, at yous235@lni.wa.gov or (360) 902-6411.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to review the plumber certification rules for housekeeping changes in order to further clarify the rules. The plumber certification rules are reviewed on a regular basis to ensure the rules are consistent with the national consensus standards, industry practice, and to clarify the rules.

The changes will include:

- Amending the rule to be consistent with the plumber law;
- Delete pump installer trainee requirements;
- Clarify the continuing educational units that will be accepted by the department; and
- General housekeeping changes.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 18.106.040, 18.106.140.

Statute Being Implemented: Chapter 18.106 RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Pete Schmidt, Tumwater, Washington, (360) 902-5571; Implementation and Enforcement: Patrick Woods, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is specifically exempt from the small business economic impact statement requirement because the proposed changes will clarify rule language without changing its effect (see RCW 34.05.328 (5)(b)(iv)).

A cost-benefit analysis is not required under RCW 34.05.328. This rule is specifically exempt from the cost-benefit analysis requirement because the proposed changes

will clarify rule language without changing its effect (see RCW 34.05.310 (4)(d)).

February 17, 2009

Judy Schurke

Director

AMENDATORY SECTION (Amending WSR 06-24-040, filed 11/30/06, effective 12/31/06)

WAC 296-400A-005 What definitions do I need to know to understand these rules? Unless a different meaning is clearly required by the context, the following terms and definitions are important:

"Advisory board" is the state advisory board of plumbers.

"Audit" means an assessment, evaluation, examination or investigation of, contractor's accounts, books and records for the purpose of verifying the contractor's compliance with RCW 18.106.320.

"Backflow assembly" or **"backflow prevention assembly"** or **"backflow preventer"** is a device as described in the *Uniform Plumbing Code* used to prevent the undesired reversal of flow of water or other substances through a cross-connection into the public water system or consumer's potable water system.

"Backflow assembly tester" is an individual certified by the department of health to perform tests to backflow assemblies.

"Continuing education" is approved plumbing and electrical courses for ((~~journeyman~~)) ~~journeymen~~, domestic pump specialty plumbers, and residential specialty plumbers, to meet the requirements to maintain their plumbing certification and for trainees or individuals to become certified plumbers in Washington.

"Continuing education course provider" is an entity approved by the department, in consultation with the state advisory board of plumbers, to provide continuing education training for ((~~journeyman~~)) ~~journeymen~~, domestic pump specialty plumbers, residential specialty plumbers, and trainees. All training course providers must comply with the requirements in WAC 296-400A-028.

"Continuity affidavit" is a form developed by the department that is used to verify whether medical gas pipe installation work (brazing process) has been performed biannually. This form is provided to the department annually by the person holding the medical gas piping installer endorsement and requires the signature of the employer of the medical gas piping installer or another qualified verifier as determined by the department. Continuity is a visual examination by the employer of the brazing that was performed.

"Contractor" means any person, corporate or otherwise, who engages in, or offers or advertises to engage in, any work covered by the provisions of chapter 18.106 RCW by way of trade or business, or any person, corporate or otherwise, who employs anyone, or offers or advertises to employ anyone, to engage in any work covered by the provisions of chapter 18.106 RCW and is registered as a contractor under chapter 18.27 RCW.

"Dispatcher" means the contractor's employee who authorized the work assignment of the person employed in violation of chapter 18.106 RCW.

"Department" is the department of labor and industries.

"Director" is the director of the department of labor and industries.

"Journeyman plumber" is anyone who has learned the commercial plumbing trade and has been issued a journeyman certificate of competency by the department. A journeyman plumber may work on plumbing projects including residential, commercial and industrial worksite locations.

"Medical gas piping installer" is anyone who has been issued a medical gas piping installer endorsement of competency by the department.

"Medical gas piping systems" are piping systems that convey or involve oxygen, nitrous oxide, high pressure nitrogen, medical compressed air, or medical vacuum systems.

"Plumbing" is that craft involved in installing, altering, repairing and renovating potable water systems, liquid waste systems and medical gas piping systems ~~((within))~~ in the footprint of a building. Potable water systems, liquid waste systems, and medical gas piping systems are defined by the current *Uniform Plumbing Code* (UPC) and amendments adopted by the state building code council. All piping, fixtures, pumps and plumbing appurtenances that are used for a reclaimed water system (are included in the definition of liquid waste systems). The installation of water softening or water treatment equipment into a water system is not considered plumbing.

"Records" include, but are not limited to, all bids, invoices, billing receipts, time cards and payroll records that show the work was performed, advertised, or bid.

"Specialty plumber" is anyone who has been issued a specialty plumbers certificate of competency by the department limited to:

(a) Installation, maintenance and repair of plumbing for single-family dwellings, duplexes and apartment buildings which do not exceed three stories; ~~((or))~~

(b) Maintenance and repair of backflow assemblies located within a residential or commercial building or structure. For the purposes of this subsection, "maintenance and repair" includes cleaning and replacing internal parts of an assembly, but does not include installing or replacing backflow assemblies.

(c) "Domestic pump specialty" means the installation, maintenance, and repair of a domestic water pumping system consisting of the pressurization, treatment, and filtration components of a domestic water system consisting of: One or more pumps; pressure, storage, and other tanks; filtration and treatment equipment; if appropriate, a pitless adapter; along with valves, transducers, and other plumbing components that:

(i) Are used to acquire, treat, store, or move water suitable for either drinking or other domestic purposes, including irrigation, to:

(A) A single-family dwelling, duplex, or other similar place of residence;

(B) A public water system, as defined in RCW 70.119.-020 and as limited under RCW 70.119.040; or

(C) A farm owned and operated by a person whose primary residence is located within thirty miles of any part of the farm;

(ii) Are located within the interior space, including but not limited to an attic, basement, crawl space, or garage, of a residential structure, which space is separated from the living area of the residence by a lockable entrance and fixed walls, ceiling, or floor;

(iii) If located within the interior space of a residential structure, are connected to a plumbing distribution system supplied and installed into the interior space by either:

(A) A person who, pursuant to RCW 18.106.070 or 18.106.090, possesses a valid temporary permit or certificate of competency as a journeyman plumber, specialty plumber, or trainee, as defined in this chapter; or

(B) A person exempt from the requirement to obtain a certified plumber to do such plumbing work under RCW 18.106.150.

For the purposes of the domestic pump specialty, residential structure includes any improvement to real property where that property is primarily used as a residence.

"Supervision" for the purpose of these rules means within sight or sound. Supervision requirements are met when the supervising plumber is on the premises and within sight or sound of the individual who is being trained.

"Training course provider" is an entity approved by the department, in consultation with the state advisory board of plumbers, to provide medical gas piping installer training. All training course providers must comply with the requirements in WAC 296-400A-026.

"Trainee plumber" is anyone who has been issued a trainee certificate and is learning or being trained in the plumbing trade with direct supervision of either a journeyman plumber or specialty plumber working in their specialty.

AMENDATORY SECTION (Amending WSR 06-24-040, filed 11/30/06, effective 12/31/06)

WAC 296-400A-010 Plumbing certificate types and scope of work. (1) **Journeyman plumber (PL01):** A journeyman plumber may work on all phases of plumbing projects including residential, commercial and industrial worksite locations. A plumber trainee must have a training certificate in order to perform plumbing work under the supervision of a certified journeyman plumber.

(2) **Residential specialty plumber (PL02):** Installation, maintenance and repair of all phases of plumbing for single-family dwellings, duplexes and apartment buildings which do not exceed three stories. A plumber trainee must have a training certificate in order to perform plumbing work as a residential specialty plumber under the supervision of a certified residential or journeyman plumber.

(3) **Backflow specialty plumber (PL30):** Maintenance and repair of backflow assemblies located within a residential or commercial building or structure. For the purposes of this subsection, "maintenance and repair" includes cleaning and replacing internal parts of an assembly, but does not include installing or replacing backflow assemblies. A plumber trainee must have a PT31 certificate in order to do work as a backflow specialty plumber under the supervision of a certi-

fied backflow specialty plumber, certified residential specialty plumber or certified journeyman plumber. PT31 trainee requires one hundred percent supervision.

(4) **Pump and irrigation specialty plumber (PL03):** Installation, maintenance and repair of equipment that is used to acquire, treat, store, or move water suitable for either drinking or other domestic purposes, including irrigation or to a domestic water pumping system consisting of the pressurization, treatment, and filtration components of a domestic water system consisting of: One or more pumps; pressure, storage, and other tanks; filtration and treatment equipment. For the purposes of this subsection, if located within the interior space of a residential structure as stated in RCW 18.106.010 (10)(c), only the equipment and piping defined by RCW 18.106.010 (10)(c) are included in this specialty and other parts of the system must be worked on by the appropriate certification.

(5) **Limited volume domestic pump specialty plumber (PL03A):** Installation, maintenance and repair of equipment that is used to acquire, treat, store, or move water suitable for either drinking or other domestic purposes on pumping systems not exceeding one hundred gallons per minute. A domestic water pumping system consisting of the pressurization, treatment, and filtration components of a domestic water system consisting of: One or more pumps; pressure, storage, and other tanks; filtration and treatment equipment. For the purposes of this subsection, if located within the interior space of a residential structure as stated in RCW 18.106.010 (10)(c), only the equipment and piping to stated equipment in this locked room can be worked on by this certification; other parts of the system must be worked on by the appropriate certification.

(6) **Plumber trainee (PT00(~~PT03, PT03A~~)) and PT31):** Is an individual learning the trade or craft of plumbing. Trainees are required to have and maintain a valid plumber's training certificate. Trainees will be accredited for those hours worked within the scope of their supervising plumber. Any plumber trainee may perform plumbing work within the scope of their supervising journeyman or specialty plumber. A trainee shall keep a record of the hours worked as a trainee as required by WAC 296-400A-120(3).

(7) **Certified journeyman electricians, certified residential specialty electricians, or electrical trainees (EL01 and EL02):** According to RCW 18.106.150 (2)(b), a current plumbing certificate of competency or apprentice permit is not required for: Certified journeyman electricians, certified residential specialty electricians, or electrical trainees working for an electrical contractor and performing exempt work under RCW 18.27.090(18). A plumber trainee must have a ET00 certificate in order to work with a journeyman electrician, residential specialty electrician, or electrical trainee.

The plumbing work must be directly and immediately appropriate to the like-in-kind replacement of a household fixture or its component(s) that requires limited power and waste/water connections.

An example would be replacing the heating element (a component) of an electric hot water heater. An electrician performing a like-in-kind replacement of an electric hot water tank could only disconnect and then reconnect the water supply lines to the tank and drain line from the temper-

ature and pressure relief valve. Gas hot water tanks are not part of the electrician's exemption.

AMENDATORY SECTION (Amending WSR 06-24-040, filed 11/30/06, effective 12/31/06)

WAC 296-400A-020 How do I obtain a certificate of competency? You can obtain a certificate of competency by completing the following requirements for:

(1) Journeyman and specialty plumber certificate (excluding backflow assembly maintenance and repair specialty certification):

(a) Submitting a competency examination application to the department;

(b) Paying the examination fee shown in WAC 296-400A-045(1);

(c) Submitting the required evidence of competency and experience to the department as required under WAC 296-400A-120 and 296-400A-121;

~~(d) ((Passing the competency examination;~~

~~(e)))~~ Providing documentation to the department with continuing education requirements;

(e) Passing the competency examination;

(f) In lieu of (a), (b) and (c) of this subsection and with the approval of the advisory board, the department may accept the successful passage of an examination administered by a nationally recognized testing entity; ~~((and))~~

(g) For domestic pump specialty plumbers, in lieu of (a), (b) and (c) of this subsection and with the approval of the advisory board, the department may accept a certification issued by professional trade association; and

(h) Paying the certification issuance fee within ninety days of notification of passing the written examination. Failure to pay within ninety days will require reexamination.

(2) Backflow assembly maintenance and repair specialty certificate:

(a) Submitting a competency examination application to the department;

(b) Paying the application and certificate fee shown in WAC 296-400A-045(~~((2)))~~ (1); ~~((and))~~

~~(c) Passing the competency examination; and~~

(d) Paying the certification issuance fee within ninety days of notification of passing the written examination. Failure to pay within ninety days will require reexamination.

AMENDATORY SECTION (Amending WSR 06-24-040, filed 11/30/06, effective 12/31/06)

WAC 296-400A-028 What are the requirements for continuing education and classroom training?

What are the general and continuing education course requirements for journeyman, residential specialty plumbers, domestic pump specialty plumbers, and plumber trainees?

(1) Journeyman, residential specialty plumber, domestic pump specialty plumber, and plumber trainee.

(a) To be eligible for renewal of a journeyman plumber or residential specialty plumber certificate, the individual must have completed at least sixteen hours of approved con-

tinuing education for each two years of the prior certification period. Individuals will be required in the prior two-year period to have completed at least eight hours of plumbing code and at least four hours of electrical code from the currently adopted Washington state plumbing and electrical codes. The remaining four hours may be plumbing or electrical trade related classes.

(b) Domestic pump specialty plumbers shall renew their domestic pump specialty certificate once every three years, on or before the individual's birthday. Individuals will be required to complete ~~((at least four))~~ twenty-four hours of approved continuing education ~~((in plumbing for each year prior to the certification period and at least four hours of approved continuing education in electrical))~~. The continuing education may comprise both electrical and plumbing education with a minimum of twelve of the required twenty-four hours of continuing education in plumbing for each ((year prior to the certification)) three-year renewal cycle.

(c) Plumber trainees must complete at least eight hours per year of classroom training from an approved continuing education course for each year of the prior certification period. Trainees will be required during a two-year period to complete at least eight hours of plumbing code and at least four hours of electrical code from the currently adopted Washington state plumbing and electrical codes. The remaining four hours may be plumbing or electrical trade related classes.

~~((Domestic pump specialty plumber trainee must have eight hours of plumbing continuing education and eight hours of electrical continuing education, which totals sixteen hours of continuing education for a two-year renewal.))~~

(d) Any portion of a year of a prior plumber certification period is equal to one year for the purposes of the required continuing education.

(2) An individual will not be given credit for the same approved continuing education course taken more than once in the two years prior to the renewal date. No credit will be granted for any course not approved by the department.

(3) Continuing education requirements do not apply to backflow specialty plumbers under chapter 18.106 RCW and this chapter.

~~((Note: Subsections (1), (2) and (3) of this section take effect July 1, 2005.))~~

Approval process - continuing education course.

(4) The advisory board of plumbers or plumbing board subcommittee will review each continuing education course. The advisory board of plumbers or plumbing board subcommittee will recommend approval or disapproval to the department. The department will either approve or disapprove the course.

(5) To be considered for approval, a continuing education course must consist of not less than two hours of instruction and must be open to monitoring by a representative of the department and/or the plumbing board at no charge. If the department determines that the continuing education course does not meet or exceed the minimum requirements for approval, the department may revoke the course approval or reduce the number of credited hours.

(6) Approved courses must be based on:

(a) Currently adopted edition of the *Uniform Plumbing Code* and currently adopted National Electrical Code;

(b) Chapters 18.106 or 19.28 RCW or chapters 296-400A or 296-46B WAC; or

(c) Materials and methods as they pertain to the industrial practices of plumbing or electrical construction, building management systems, plumbing or electrical maintenance, or workplace health and safety.

(7) Code-update courses must be based on the entire currently adopted *Uniform Plumbing Code* or currently adopted National Electrical Code.

(a) Correspondence and on-line courses in the plumbing code require thirty-five questions per hour of credit.

(b) Industry related electrical courses require twenty-five questions per hour of credit.

(c) Classroom training requires one hour of instruction for each hour of credit.

(d) Course outline must support the number of hours requested.

Application - for continuing education course approval.

(8) All applications for course approval must be on forms provided by the department. The plumbing board and the department will only consider the written information submitted with the application when considering approval of the continuing education training course.

(9) The department will provide continuing education application forms to sponsors upon request. The course sponsor must submit an original completed application for course approval and three copies (unless submitted electronically using department prescribed technology) to the department. The department must receive the complete course application from the sponsor in writing at least forty-five days before the first class requested for approval is offered.

(10) A complete application for course approval must include:

(a) The appropriate course application fee;

(b) Course title, number of classroom instruction hours, and whether the training is open to the public;

(c) Sponsor's name, address, contact's name and phone number;

(d) Course outline (general description of the training, including specific *Uniform Plumbing Code* or currently adopted National Electrical Code articles referenced);

(e) Lists of resources (texts, references, visual aids);

(f) Names and qualifications of instructors. Course instructors must show prior instructor qualification and experience similar to that required by the work force training and education coordinating board under chapter 28C.10 RCW;

(g) Any additional documentation to be considered; and

(h) A sample copy of the completion certificate issued to the course participants.

(11) The course sponsor seeking approval of a continuing education course will be notified of the subcommittee's decision within five days of the completed review of the application.

(12) If the application is not approved, the rejection notice will include an explanation of the reason(s) for rejection. If the course sponsor disagrees with the subcommittee's

decision, the course sponsor may request a reconsideration hearing by the full plumbing board. A request to appeal course rejection must be received by the department forty-five days before a regularly scheduled board meeting. The course sponsor must submit, to the department, any additional information to be considered during the hearing, in writing, at least thirty days before the board hearing. The course sponsor must provide at least twenty copies of any written information to be submitted to the board.

Offering - continuing education course.

(13) The course sponsor may offer an approved course for up to three years without additional approval. However, if the course is classified as code-update or code-related and a new edition of the *Uniform Plumbing Code* or *National Electrical Code* is adopted within the course approval period, the course approval will be considered automatically revoked and the course sponsor must submit a new application for review by the department and approval by the plumbing board subcommittee.

(14) A continuing education course attended or completed by an individual before final approval by the plumbing board subcommittee cannot be used to meet the plumbing certificate renewal requirements.

Documentation - Washington approved training course attendance/completion.

(15) The department is not responsible for providing verification of an individual's continuing education history with the course sponsor.

(16) The course sponsor must provide the department with an accurate and typed course attendance/completion roster for each course given.

(a) The attendance/completion roster must be provided within thirty days of course completion.

(b) In addition, the course sponsor must provide the attendance/completion roster in an electronic format provided by the department.

(c) The attendance/completion roster must show each participant's name, Washington certificate number, course number, location of course, date of completion, and instructor's name. The typed roster must contain the signature of the course sponsor's authorized representative.

(17) If the course sponsor fails to submit the required attendance/completion rosters within thirty days of the course completion, the department may revoke or suspend the course approval.

(18) Course sponsors must award a certificate to each participant completing the course from which the participant will be able to obtain:

- (a) Name of course sponsor;
- (b) Name of course;
- (c) Date of course;
- (d) Course approval number;
- (e) The number of continuing education units; and
- (f) The type of continuing education units.

(19) The department will only use a copy of the sponsor's attendance/completion roster as final evidence that the participant completed the training course.

(20) The department will keep submitted rosters of the continuing education courses on file only for audit purposes. The department is not responsible for the original of any completion certificate issued.

Documentation - out-of-state training course attendance/completion.

(21) To apply continuing education units earned out-of-state from course sponsors who do not have state of Washington approved courses, one of the following conditions must be met:

(a) The individual must request that the course sponsor submit a complete continuing education course application and requirements as described in this section for in-state courses.

Application for course approval will not be considered more than three years after the date of the course.

(b) The department must have entered into a reciprocal agreement with the state providing course approval.

The participant must provide a copy of an accurate and completed award or certificate from the course sponsor identifying the course location, date of completion, participant's name, and Washington certificate number. The department will only accept a copy of the sponsor's certificate or form as evidence that the participant attended and completed the course.

AMENDATORY SECTION (Amending WSR 06-24-040, filed 11/30/06, effective 12/31/06)

WAC 296-400A-031 How do I qualify for a temporary permit? To qualify for a temporary permit, you must:

(1) Have an active state-issued journeyman plumber, domestic pump specialty plumber, or a residential specialty plumber certificate;

(2) Give the department sufficient qualifying evidence for a journeyman plumber, domestic pump specialty plumber, or a residential specialty plumber certificate of competency;

(3) Never have taken the journeyman plumber, domestic pump specialty plumber, or a residential specialty plumber competency examination in Washington state; and

(4) Not be a trainee or an apprentice plumber.

AMENDATORY SECTION (Amending WSR 97-11-052, filed 5/20/97, effective 6/30/97)

WAC 296-400A-033 What is the duration of a temporary permit? A temporary permit is valid for ~~(ninety)~~ one hundred twenty days and is nonrenewable.

AMENDATORY SECTION (Amending WSR 08-12-042, filed 5/30/08, effective 6/30/08)

WAC 296-400A-045 What fees will I have to pay? The following are the department's plumbers fees:

(1) Fees related to journeyman and specialty plumber certification:

<u>Type of Fee</u>	<u>Period Covered by Fee</u>	<u>Dollar Amount of Fee</u>
Examination application	Per examination	\$133.00
Domestic pump specialty application fee*****	Per application	\$133.00
Reciprocity application*	Per application	\$133.00
Trainee certificate**	One year <u>or when hours are updated</u>	\$39.70
Temporary permit (not applicable for backflow assembly maintenance and repair specialty)	90 days	\$66.10
Journeyman or residential specialty certificate***	Two years (fee may be prorated based on months)	\$106.50
Domestic pump specialty plumber certificate***	Three years (fee may be prorated based on months)	\$159.80
Backflow assembly maintenance and repair specialty certificate	Two years (fee may be prorated based on months)	\$73.50
Medical gas endorsement application	Per application	\$49.00
Medical gas endorsement***	One year	\$36.60
Medical gas endorsement examination fee****		See note below.
Medical gas endorsement training course fee*****		See note below.
Domestic pump specialty examination fee****		See note below.
Reinstatement fee for residential and journeyman certificates		\$213.50
Reinstatement fee for backflow assembly maintenance and repair specialty certificates		\$122.90
Reinstatement fee for domestic pump		\$319.70
Replacement fee for all certificates		\$18.00
Refund processing fee		\$28.70
Unsupervised trainee endorsement		\$28.70
Inactive status fee		\$28.70
Honorary plumbing certification		\$106.50
Certified letter fee		\$28.70
Continuing education new course fee*****		\$173.00
Continuing education renewal course fee*****		\$86.40
Continuing education classes provided by the department		\$12 per continuing education training hour \$8 per continuing education training hour for correspondence and internet courses

* Reciprocity application is only allowed for applicants that are applying work experience toward certification that was obtained in state(s) with which the department has a reciprocity agreement. The reciprocity application is valid for one year.

** The trainee certificate shall expire one year from the date of issuance and must be renewed on or before the date of expiration. (~~The domestic pump specialty trainee certificate shall expire two years from the date of issuance and must be renewed on or before the date of expiration.~~) Updating a training certificate is optional and not required.

*** This fee applies to either the original issuance or a renewal of a certificate. If you have passed the plumbers certificate of competency examination or the medical gas piping installer endorsement examination and paid the certificate fee, you will be issued a plumber certificate of competency or a medical gas endorsement that will expire on your birth date.
The annual renewal of a Medical Gas Piping Installer Endorsement shall include a continuity affidavit verifying that brazing work has been performed biannually.

**** This fee is paid directly to a nationally recognized testing agency under contract with the department. It covers the cost of preparing and administering the written competency examination and the materials necessary to conduct the practical competency examination required for the medical gas piping system installers endorsement. **This fee is not paid to the department.**

***** This fee is paid directly to a training course provider approved by the department, in consultation with the state advisory board of plumbers. It covers the cost of providing training courses required for the medical gas piping system installer endorsement. **This fee is not paid to the department.**

***** This fee is for a three-year period or code cycle.

***** The domestic pump specialty application is valid for one year.

(2) If your birth year is:

- (a) In an even-numbered year, your certificate will expire on your birth date in the next even-numbered year.
- (b) In an odd-numbered year, your certificate will expire on your birth date in the next odd-numbered year.

AMENDATORY SECTION (Amending WSR 06-24-040, filed 11/30/06, effective 12/31/06)

WAC 296-400A-120 What do I need to know about plumber trainee certificates (excluding backflow assembly maintenance and repair specialty certification)? (1) Journeyman and specialty plumber trainee certification:

(a) Original trainee certificates. The department will issue an original trainee certificate when the trainee applicant submits a complete trainee certificate application including:

- (i) Date of birth, mailing address, Social Security number, and
- (ii) All appropriate fees as listed in WAC 296-400A-045.
- (iii) If an individual has previously held a plumbing trainee certificate, then that individual is not eligible for a subsequent original trainee certificate.

All applicants for a plumbing trainee certificate must be at least sixteen years of age and must follow requirements as defined in WAC 296-125-030.

(b) Renewal. The department issues separate trainee certificates once a year.

~~((b)) (c)~~ The plumbing trainee may not apply for renewal more than ninety days prior to the expiration date. ~~((Journeyman, residential specialty, and backflow specialty))~~ Plumber trainee certificates are valid for one year. ~~((Domestic pump specialty plumber trainee certificate is valid for two years.~~

~~((e)) (d)~~ All applicants for trainee certificate of renewal must:

- (i) Submit a complete renewal application;
- (ii) Pay all appropriate fees; and
- (iii) Provide accurate evidence on the renewal form that the individual has completed the continuing education requirements described in chapter 296-400A WAC.

~~((d)) (e)~~ If an individual files inaccurate or false evidence of continuing education information when renewing a plumbing trainee certificate, the individual's certificate may be suspended or revoked.

~~((e)) (f)~~ An individual who has not completed the required hours of continuing education cannot renew a trainee certificate.

~~((f)) (g)~~ Individuals will not be able to apply to test for journeyman plumber, domestic pump specialty plumber, or residential specialty plumber certificates until the continuing education requirements have been met.

~~((g)) (h)~~ If continuing education hours have not been met, trainee certificates will become expired and any experience obtained by the trainee in expired status will not be credited toward plumbing certificate application.

~~((h)) (i)~~ An individual may renew an expired certificate of competency by submitting a complete renewal application including obtaining and submitting the continuing education required for renewal. However, the certificate will remain in an expired status for the duration of the expired period.

~~((i)) (j)~~ An individual may not renew a revoked trainee certificate.

~~((j)) (k)~~ Apprentices registered in an approved program according to chapter 49.04 RCW who are obtaining classroom training consistent with the continuing education requirements under chapter 18.106 RCW and this chapter, as approved by the department, are deemed to have met the continuing education requirements necessary to renew a trainee certificate.

~~((k)) (l)~~ If you are a trainee applying for a journeyman certificate, you must complete a minimum of two of the required four years in commercial plumbing experience.

~~((l)) (m)~~ A certified residential specialty plumber or domestic pump specialty plumber working on a commercial job site may work as a journeyman trainee only if they have a current trainee certificate on their person while performing commercial plumbing work.

~~((m)) (n)~~ On a job site, the ratio of certified plumbers to noncertified plumbers must be:

(i) One residential specialty plumber or journeyman working on a residential plumbing job site may supervise no more than two trainees.

(ii) One journeyman plumber working on a commercial job site may supervise no more than one trainee or one residential specialty plumber who holds a current trainee certificate.

(iii) One appropriate domestic pump specialty plumber or one journeyman plumber working on a domestic pump system may supervise no more than two trainees.

~~((n)) (o)~~ A plumber trainee who has a current trainee certificate with the state of Washington and has successfully completed or is enrolled in an approved medical gas piping installer training course may work on medical gas piping systems. Work may only occur when there is direct supervision by an active Washington state certified journeyman plumber with an active medical gas piping installer endorsement issued by the department. Supervision must be one hundred percent of the working day on a one-to-one ratio.

~~((2) Trainee work hours. Journeyman, residential specialty, and backflow specialty)) (p)~~ Plumber trainee shall renew the certificate annually but not more than ninety days before the expiration date. ~~((Domestic pump specialty plumber trainee shall renew the certificate every two years but not more than ninety days before the expiration date.~~

~~(a) An annual fee shall be charged for the issuance or renewal of the certificate.~~

~~((b)) (q)~~ The trainee will not be issued a renewed or reinstated training certificate if the individual owes the department money as a result of an outstanding final judgment.

~~((e)) (r)~~ Trainee hours will not be credited if the trainee owes outstanding penalties for violations of this chapter.

~~((3)) (2)~~ At the time of renewal, the holder shall provide the department with an accurate list of the holder's employers in the plumbing construction industry for the previous annual period. The individual must submit a completed, signed, and notarized affidavit(s) of experience. The affidavit of experience must accurately attest to:

(a) The plumbing installation work performed for each employer the individual worked for in the plumbing trade during the previous period;

(b) The correct plumbing category the individual worked in; and

(c) The actual number of hours worked in each category, worked under the proper supervision of a Washington certified journeyman plumber, certified domestic pump specialty plumber, or residential specialty plumber.

~~((4))~~ (3) The trainee should ask each employer and/or apprenticeship-training director for an accurately completed, signed, and notarized affidavit of experience for the previous certification period. The employer(s) or apprenticeship training director(s) must provide the previous period's affidavit of experience to the individual within twenty days of the request.

~~((5))~~ (4) If hours for previous period are not submitted within the thirty days after renewing a plumbing training certificate, the individual may not receive credit for these previous period hours.

AMENDATORY SECTION (Amending WSR 04-12-046, filed 5/28/04, effective 6/30/04)

WAC 296-400A-122 What do I need to know about trainee experience and certification, and the backflow assembly maintenance and repair specialty examination requirements? (1) Journeyman and specialty plumber trainee certification:

(a) Original training certificates. The department will issue an original training certificate when the trainee applicant submits a complete training certificate application including:

(i) Date of birth, mailing address, Social Security number; and

(ii) All appropriate fees as listed in WAC 296-400A-045.

(iii) If an individual has previously held a plumbing training certificate, then that individual is not eligible for a subsequent original training certificate.

All applicants for a plumbing training certificate must be at least sixteen years of age and must follow requirements as defined in WAC 296-125-030.

(2) A trainee certificate must be obtained by an individual performing backflow assembly maintenance and repair work who is not a certified plumber. The individual must work under the direct supervision of a certified backflow assembly maintenance and repair specialty, journeyman plumber, or residential specialty plumber for a minimum of one hundred percent of each working day while the backflow assembly maintenance and repair work is being performed.

~~((2))~~ (3) Each applicant for a backflow assembly maintenance and repair specialty certificate must furnish written evidence that he or she has a valid backflow assembly tester certification administered and enforced by the department of health.

~~((3))~~ (4) **Any applicant** who fails an examination will be required to wait at least until the next scheduled examination date and location. Examinations are held the first Thursday of every month, unless that date falls on a holiday. In the event of a holiday, the examination will be held on the second Thursday of the month. Applications shall be submitted and received by the plumbing certification program office two weeks before the next scheduled examination date.

AMENDATORY SECTION (Amending WSR 04-12-046, filed 5/28/04, effective 6/30/04)

WAC 296-400A-130 What if I make a false statement or a material misrepresentation on an application, an employment report or a trainee certificate? ~~((1))~~ ~~All required applications and annual statements of employment hours are made under oath. Making false statements and/or material misrepresentations carry serious consequences. Any person who knowingly makes a false statement or material misrepresentation on an application, an affidavit of experience or a trainee certificate may have their certificate suspended, revoked, and/or be referred to the county prosecutor for criminal prosecution. In addition, the department may issue an infraction for a violation of this chapter.~~

~~(2) The annual statements of employment described in subsection (1) of this section do not apply to the backflow assembly maintenance and repair specialty certification.~~ (1) A person making a false statement or material misrepresentation on an application, statement of hours, or signed statement to the department may be referred to the county prosecutor for criminal prosecution. The department may also file a civil action under chapter 18.106 RCW and may revoke or suspend a certificate under chapter 18.106 RCW.

(2) The department may file a civil action under chapter 18.106 RCW and may revoke or suspend a certificate of competency under chapter 18.106 RCW for inaccurate or false reporting of continuing education hours.

(3) If the department determines that a course sponsor has issued an inaccurate or incomplete course application or attendance/completion roster, the department may suspend or revoke the course approval and deny future approval of a continuing education course(s) by the course sponsor.

(4) The department may file a civil action under chapter 18.106 RCW against both the trainee and the contractor, apprentice training director, or other entity verifying the training hours and may subtract the falsified hours of employment from a trainee's total hours if the department determines a false statement or material misrepresentation has been made in an affidavit of experience.

AMENDATORY SECTION (Amending WSR 04-12-046, filed 5/28/04, effective 6/30/04)

WAC 296-400A-155 Audit of trainee hours. (1) The department, under RCW 18.106.320, may audit the employment records of the plumbing contractor or employer who verified the plumbing trainee hours.

(2) Every contractor must keep a record of trainee employment so the department may obtain the necessary information to verify plumbing trainee work experience.

(a) The contractor must keep the records of jobs performed for a least five years.

(b) Upon request, these records must be made available to the department for inspection within seven business days.

(3) The contractor must maintain time cards or similar records to verify:

(a) The number of hours the trainee worked as a supervised trainee by category.

(b) The type of plumbing work the trainee performed (e.g., commercial or residential).

(4) Any information obtained from the trainee's contractor or employer during the audit under the provisions of RCW 18.106.320 is confidential and is not open to public inspection under chapter 42.17 RCW.

(5) The department's audit may include, but will not be limited to, the following:

(a) An audit to determine whether the trainee (~~was~~) and supervising plumber were employed by the same contractor or employer during the period for which the hours were submitted, the actual number of hours the trainee worked, and the category of plumbing work performed; and

(b) An audit covering a specific time period and examination of a contractor's or employer's books and records which may include their reporting of the trainee's payroll hours required for industrial insurance, employment security or prevailing wage purposes.

AMENDATORY SECTION (Amending WSR 04-12-046, filed 5/28/04, effective 6/30/04)

WAC 296-400A-300 What procedures does the department follow when issuing a notice of infraction? (1)

If an authorized representative of the department determines that an individual has violated plumber certification requirements, including medical gas piping installer endorsement requirements, the department must issue a notice of infraction describing the reasons for the infraction.

(2) For plumber certification violations, the department may issue a notice of infraction to (~~either~~):

(a) An individual who is plumbing without a current plumber certificate; (~~or~~) and

(b) The employer of the individual who is plumbing without a current plumber certificate; (~~or~~) and

(c) The employer's authorizing agent or foreman that made the work assignment to the individual who is plumbing without a current plumber certificate.

(3) For medical gas piping installer endorsement violations, the department may issue a notice of infraction to (~~either~~):

(a) An individual who is installing medical gas piping systems without a current plumber certificate and a current medical gas piping installer endorsement; (~~or~~) and

(b) The employer of the individual who is installing medical gas piping systems without a current plumber certificate and a current medical gas piping installer endorsement; (~~or~~) and

(c) The employer's authorizing agent or foreman that made the work assignment to the individual who is installing medical gas piping systems without a current plumber certificate and a current medical gas piping installer endorsement.

(4) The department may issue an infraction to a contractor advertising or performing work under this chapter or chapter 18.27 RCW who is not properly registered under chapter 18.27 RCW.

(5) An individual may appeal a notice of infraction by complying with the appropriate provisions of RCW 18.106.-220.

(6) If good cause is shown, an administrative law judge may waive, reduce or suspend any monetary penalties resulting from the infraction.

(7) Any monetary penalties collected under this chapter, must be deposited in the plumbing certificate fund.

WSR 09-05-079

PROPOSED RULES

PUGET SOUND

CLEAN AIR AGENCY

[Filed February 17, 2009, 12:38 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Amend Regulation I Section 2.02 (SEPA) Adoption by Reference and Section 2.06 (SEPA) Environmental Checklist.

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on March 26, 2009, at 9:15 a.m.

Date of Intended Adoption: March 26, 2009.

Submit Written Comments to: Lynn Sykes, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail lynns@pscleanair.org, fax (206) 343-7522, by March 25, 2009.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by March 19, 2009, TTY (800) 833-6388 or (800) 833-6385 (braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To add greenhouse gas emissions to the list of air emissions included in the environmental checklist.

Reasons Supporting Proposal: Climate change is a known environmental hazard, therefore it is important and beneficial to review the potential greenhouse gas emissions that could contribute to this hazard as part of our SEPA review.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

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

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

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

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

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

February 17, 2009

Dennis J. McLerran

Executive Director

AMENDATORY SECTION**REGULATION I SECTION 2.02 ADOPTION BY REFERENCE**

The Agency adopts the following sections of chapter 197-11 WAC by reference:

- 197-11-040 Definitions.
- 197-11-050 Lead agency.
- 197-11-055 Timing of the SEPA process.
- 197-11-060 Content of environmental review.
- 197-11-070 Limitations on actions during SEPA process.
- 197-11-080 Incomplete or unavailable information.
- 197-11-090 Supporting documents.
- 197-11-100 Information required of applicants.
- 197-11-250 SEPA/Model Toxics Control Act integration.
- 197-11-253 SEPA lead agency for MTCA actions.
- 197-11-256 Preliminary evaluation.
- 197-11-259 Determination of nonsignificance for MTCA remedial actions.
- 197-11-262 Determination of significance and EIS for MTCA remedial actions.
- 197-11-265 Early scoping for MTCA remedial actions.
- 197-11-268 MTCA interim actions.
- 197-11-300 Purpose of this part.
- 197-11-305 Categorical exemptions.
- 197-11-310 Threshold determination required.
- 197-11-315 Environmental checklist.
- 197-11-330 Threshold determination process.
- 197-11-335 Additional information.
- 197-11-340 Determination of nonsignificance (DNS).
- 197-11-350 Mitigated DNS.
- 197-11-360 Determination of significance (DS)/initiation of scoping.
- 197-11-390 Effect of threshold determination.
- 197-11-400 Purpose of EIS.
- 197-11-402 General requirements.
- 197-11-405 EIS types.
- 197-11-406 EIS timing.
- 197-11-408 Scoping.
- 197-11-410 Expanded scoping.
- 197-11-420 EIS preparation.
- 197-11-425 Style and size.
- 197-11-430 Format.
- 197-11-435 Cover letter or memo.
- 197-11-440 EIS contents.
- 197-11-442 Contents of EIS on nonproject proposals.
- 197-11-443 EIS contents when prior nonproject EIS.
- 197-11-444 Elements of the environment.
- 197-11-448 Relationship of EIS to other considerations.
- 197-11-450 Cost-benefit analysis.
- 197-11-455 Issuance of DEIS.
- 197-11-460 Issuance of FEIS.
- 197-11-500 Purpose of this part.
- 197-11-502 Inviting comment.
- 197-11-504 Availability and cost of environmental documents.
- 197-11-508 SEPA register.
- 197-11-510 Public notice.
- 197-11-535 Public hearings and meetings.
- 197-11-545 Effect of no comment.
- 197-11-550 Specificity of comments.
- 197-11-560 FEIS response to comments.
- 197-11-570 Consulted agency costs to assist lead agency.
- 197-11-600 When to use existing environmental documents.
- 197-11-610 Use of NEPA documents.
- 197-11-620 Supplemental environmental impact statement—Procedures.
- 197-11-625 Addenda—Procedures.
- 197-11-630 Adoption—Procedures.
- 197-11-635 Incorporation by reference—Procedures.
- 197-11-640 Combining documents.
- 197-11-650 Purpose of this part.
- 197-11-655 Implementation.
- 197-11-660 Substantive authority and mitigation.
- 197-11-680 Appeals.
- 197-11-700 Definitions.
- 197-11-702 Act.
- 197-11-704 Action.
- 197-11-706 Addendum.
- 197-11-708 Adoption.
- 197-11-710 Affected tribe.
- 197-11-712 Affecting.
- 197-11-714 Agency.
- 197-11-716 Applicant.
- 197-11-718 Built environment.
- 197-11-720 Categorical exemption.
- 197-11-722 Consolidated appeal.
- 197-11-724 Consulted agency.
- 197-11-726 Cost-benefit analysis.
- 197-11-728 County/city.
- 197-11-730 Decision maker.
- 197-11-732 Department.
- 197-11-734 Determination of nonsignificance (DNS).
- 197-11-736 Determination of significance (DS).
- 197-11-738 EIS.
- 197-11-740 Environment.
- ~~(197-11-742 Environmental checklist.)~~
- 197-11-744 Environmental document.
- 197-11-746 Environmental review.
- 197-11-750 Expanded scoping.
- 197-11-752 Impacts.
- 197-11-754 Incorporation by reference.
- 197-11-756 Lands covered by water.
- 197-11-758 Lead agency.
- 197-11-760 License.
- 197-11-762 Local agency.
- 197-11-764 Major action.
- 197-11-766 Mitigated DNS.
- 197-11-768 Mitigation.
- 197-11-770 Natural environment.
- 197-11-772 NEPA.
- 197-11-774 Nonproject.
- 197-11-776 Phased review.
- 197-11-778 Preparation.
- 197-11-780 Private project.
- 197-11-782 Probable.
- 197-11-784 Proposal.
- 197-11-786 Reasonable alternative.
- 197-11-788 Responsible official.
- 197-11-790 SEPA.

197-11-792 Scope.
 197-11-793 Scoping.
 197-11-794 Significant.
 197-11-796 State agency.
 197-11-797 Threshold determination.
 197-11-799 Underlying governmental action.
 197-11-800 Categorical exemptions.
 197-11-880 Emergencies.
 197-11-890 Petitioning DOE to change exemptions.
 197-11-900 Purpose of this part.
 197-11-902 Agency SEPA policies.
 197-11-916 Application to ongoing actions.
 197-11-920 Agencies with environmental expertise.
 197-11-922 Lead agency rules.
 197-11-924 Determining the lead agency.
 197-11-926 Lead agency for governmental proposals.
 197-11-928 Lead agency for public and private proposals.
 197-11-930 Lead agency for private projects with one agency with jurisdiction.
 197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
 197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.
 197-11-936 Lead agency for private projects requiring licenses from more than one state agency.
 197-11-938 Lead agencies for specific proposals.
 197-11-940 Transfer of lead agency status to a state agency.
 197-11-942 Agreements on lead agency status.
 197-11-944 Agreements on division of lead agency duties.
 197-11-946 DOE resolution of lead agency disputes.
 197-11-948 Assumption of lead agency status.
 197-11-960 Environmental checklist.
 197-11-965 Adoption notice.
 197-11-970 Determination of nonsignificance (DNS).
 197-11-980 Determination of significance and scoping notice (DS).
 197-11-985 Notice of assumption of lead agency status.
 197-11-990 Notice of action.

AMENDATORY SECTION

REGULATION I SECTION 2.06 ENVIRONMENTAL CHECKLIST

(a) A completed environmental checklist (or a copy) ~~(in the form provided in WAC 197-11-960,)~~ shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in this regulation; except, a checklist is not needed if the Agency and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The environmental checklist shall be in the form provided in WAC 197-11-960, except that Section B.2.a. Air of the checklist shall state: "What types of emissions to the air would result from the proposal (i.e., dust, automobile odors, industrial, wood smoke, greenhouse gases) during construction and when the project is completed? If any, generally describe and give approximate quantities, if known."

As used throughout this regulation, environmental checklist means the environmental checklist required by this section.

(b) The Agency shall use the environmental checklist to determine the lead agency and, if the Agency is the lead agency, for determining the responsible official and for making the threshold determination.

(c) ~~((b))~~ For private proposals, the Agency will require the applicant to complete the environmental checklist, providing assistance as necessary. For Agency proposals, the Agency shall complete the environmental checklist. The Agency may require that it, and not the private applicant, will complete all or part of the environmental checklist for a private proposal, if either of the following occurs:

(1) The Agency has technical information on a question or questions that is unavailable to the private applicant; or

(2) The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

WSR 09-05-080

PROPOSED RULES

PUGET SOUND

CLEAN AIR AGENCY

[Filed February 17, 2009, 12:40 p.m.]

Original Notice.

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

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

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on March 26, 2009, at 9:15 a.m.

Date of Intended Adoption: March 26, 2009.

Submit Written Comments to: Lynn Sykes, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail lynns@pscleanair.org, fax (206) 343-7522, by March 25, 2009.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by March 19, 2009, TTY (800) 833-6388 or (800) 833-6385 (braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To update the asbestos provisions for fire department training. This proposal will require that the asbestos survey and the agency notification be kept on-site during the training exercises rather than be submitted to the agency.

Reasons Supporting Proposal: This proposal will align the asbestos provisions for fire department training with the asbestos provisions in the agency's current asbestos regulation (Regulation III, Article 4).

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

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

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

Name of Agency Personnel Responsible for Drafting: Rick Hess, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4029; Implementation and Enforcement: Jim Nolan, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4053.

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

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

February 17, 2009
Dennis J. McLerran
Executive Director

AMENDATORY SECTION

REGULATION I: SECTION 8.08 FIRE DEPARTMENT TRAINING EXERCISES

(a) **Applicability.** This section applies to structural fires set by fire departments, fire marshals, vocational schools, or fire districts for training fire fighters under realistic conditions.

(b) **General Requirements.** Fire departments, fire marshals, vocational schools, or fire districts may conduct structural fire training provided all of the following requirements are met:

(1) The fire training shall not occur during any stage of an air pollution episode or period of impaired air quality;

(2) ~~((Before the training begins, the fire department, fire marshal, vocational school, or fire district conducting the training fire must have submitted to the Agency a copy of the asbestos survey for the structure, and a completed Agency Asbestos/Demolition Notification form indicating all asbestos has been removed from the structure prior to training;))~~
All asbestos shall be removed from the structure prior to demolition/training and copies of the asbestos AHERA survey and Agency notification shall be kept on-site during the demolition/training exercise.

(3) The fire department, fire marshal, vocational school, or fire district conducting the fire training must have a fire-training plan available to the Agency upon request, and the purpose of the structural fire must be to train fire fighters;

(4) Composition roofing, asphalt roofing shingles, asphalt siding materials, miscellaneous debris from inside the structure, carpet, linoleum, and floor tile must not be burned. These materials must be lawfully removed from the structure and disposed of in a lawful manner prior to the training exercise;

(5) Nuisance complaints or citizen inquiries relating to any training fire shall be resolved by the fire departments, fire marshals, vocational schools, or fire districts conducting the training fire; and

(6) The fire departments, fire marshals, vocational schools, or fire districts conducting the training fire shall obtain any permits, licenses, or other approvals required by any entity for such training fires. All permits, licenses, and approvals must be kept on-site and available for inspection.

WSR 09-05-081

PROPOSED RULES

PUGET SOUND

CLEAN AIR AGENCY

[Filed February 17, 2009, 12:41 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Amend Regulation III, Sections 4.01 (Asbestos Definitions) and 4.03 (Asbestos Notification Requirements).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on March 26, 2009, at 9:15 a.m.

Date of Intended Adoption: March 26, 2009.

Submit Written Comments to: Lynn Sykes, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail lynns@psc Clean Air Agency, fax (206) 343-7522, by March 25, 2009.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010 by March 19, 2009, TTY (800) 833-6388 or (800) 833-6385 (braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: (1) To exclude asphalt shingles from the definition of "suspect asbestos-containing material," and to add a separate definition for asphalt shingles.

(2) To delete the provision for submitting multiple asbestos projects on one notification if the structures are located in a contiguous area.

Reasons Supporting Proposal: (1) The separate definition will differentiate between built-up roofing (which can contain asbestos) and asphalt shingles (which historically do not).

(2) Receiving separate notifications will provide the agency more specific information and will not significantly impact users, due to notification efficiency improvements in the online program.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

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

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

Name of Agency Personnel Responsible for Drafting: Rick Hess, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4029; Implementation and Enforcement: Jim Nolan, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4053.

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

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

February 17, 2009
Dennis J. McLerran
Executive Director

AMENDATORY SECTION**REGULATION III SECTION 4.01 ASBESTOS DEFINITIONS**

(a) **AHERA BUILDING INSPECTOR** means a person who has successfully completed the training requirements for a building inspector established by EPA Asbestos Model Accreditation Plan; Interim Final Rule (40 CFR Part 763, Appendix C) and whose certification is current.

(b) **ASBESTOS** means the asbestiform varieties of actinolite, amosite (cummingtonite-grunerite), tremolite, chrysotile (serpentinite), crocidolite (riebeckite), or anthophyllite.

(c) **ASBESTOS-CONTAINING MATERIAL** means any material containing more than one percent (1%) asbestos as determined using the method specified in EPA regulations Appendix E, Subpart E, 40 CFR Part 763, Section I, Polarized Light Microscopy.

(d) **ASBESTOS-CONTAINING WASTE MATERIAL** means any waste that contains or is contaminated with friable asbestos-containing material. Asbestos-containing waste material includes asbestos waste from control equipment, materials used to enclose the work area during an asbestos project, asbestos-containing material collected for disposal, asbestos-contaminated waste, debris, containers, bags, protective clothing, or HEPA filters. Asbestos-containing waste material does not include samples of asbestos-containing material taken for testing or enforcement purposes.

(e) **ASBESTOS PROJECT** means any activity involving the abatement, renovation, demolition, removal, salvage, clean up, or disposal of friable, asbestos-containing material. It includes the removal and disposal of stored, friable, asbestos-containing material or asbestos-containing waste material. It does not include the application of duct tape, rewettable glass cloth, canvas, cement, paint, or other non-asbestos materials to seal or fill exposed areas where asbestos fibers may be released.

(f) **ASBESTOS SURVEY** means a written report describing an inspection using the procedures contained in EPA regulations (40 CFR 763.86), or an alternate method that has received prior written approval from the Control Officer, to determine whether materials or structures to be worked on, renovated, removed, or demolished (including materials on the outside of structures) contain asbestos.

(g) **ASPHALT SHINGLES** means asphalt roofing in shingle form, composed of glass felt or felts impregnated and coated on both sides with asphalt, and surfaced on the weather side with mineral granules. Some asphalt shingle styles are commonly referred to as three-tab shingles.

(h) ~~((g))~~ **COMPONENT** means any equipment, pipe, structural member, or other item covered or coated with, or manufactured from, asbestos-containing material.

(i) ~~((h))~~ **DEMOLITION** means wrecking, razing, leveling, dismantling, or burning of a structure, making the structure permanently uninhabitable or unusable.

(j) ~~((i))~~ **FRIABLE, ASBESTOS-CONTAINING MATERIAL** means asbestos-containing material that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure or by the forces expected to act upon the material in the course of demolition, renovation, or disposal. Such materials

include, but are not limited to, thermal system insulation, surfacing material, and cement asbestos products.

(k) ~~((j))~~ **LEAK-TIGHT CONTAINER** means a dust-tight and liquid-tight container, at least 6-mil thick, that encloses asbestos-containing waste material and prevents solids or liquids from escaping or spilling out. Such containers may include sealed plastic bags, metal or fiber drums, and sealed polyethylene plastic.

(l) ~~((k))~~ **NONFRIABLE, ASBESTOS-CONTAINING MATERIAL** means asbestos-containing material that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure or by the forces expected to act on the material in the course of demolition, renovation, or disposal.

(m) ~~((l))~~ **RENOVATION** means altering a facility or a component in any way, except demolition.

(n) ~~((m))~~ **SINGLE-FAMILY RESIDENCE** means any non-multiple unit building containing space for uses such as living, sleeping, preparation of food, and eating that is used by one family who owns the property as their domicile. This term includes houses, mobile homes, trailers, detached garages, houseboats, and houses with a "mother-in-law apartment" or "guest room". This term does not include rental property or multiple-family units, nor does this term include any mixed-use building, structure, or installation that contains a residential unit.

(o) ~~((n))~~ **SURFACING MATERIAL** means material that is sprayed-on, troweled-on, or otherwise applied to surfaces including, but not limited to, acoustical plaster on ceilings, paints, fireproofing materials on structural members, or other materials on surfaces for decorative purposes.

(p) ~~((o))~~ **SUSPECT ASBESTOS-CONTAINING MATERIAL** means material that has historically contained asbestos including, but not limited to, surfacing material, thermal system insulation, roofing material (excluding asphalt shingles), fire barriers, gaskets, flooring material, and cement siding.

(q) ~~((p))~~ **THERMAL SYSTEM INSULATION** means material applied to pipes, fittings, boilers, tanks, ducts, or other structural components to prevent heat loss or gain.

AMENDATORY SECTION**REGULATION III SECTION 4.03 ASBESTOS NOTIFICATION REQUIREMENTS****(a) General Requirements**

It shall be unlawful for any person to cause or allow any work on an asbestos project or demolition unless a complete notification, including the appropriate nonrefundable fee and any additional information requested by the Control Officer, has been submitted to the Agency in accordance with the waiting period and fee requirements in Section 4.03(d) of this regulation. Except for the annual notification requirements in Section ~~((4.03(a)(8)))~~ 4.03 (a)(7) of this regulation, the notification must be submitted on approved forms through the Agency website.

(1) The duration of an asbestos project shall be commensurate with the amount of work involved.

(2) Notification is not required for asbestos projects involving less than 10 linear feet of friable, asbestos-containing material on pipes and/or 48 square feet of friable, asbes-

tos-containing material on other components (per structure, building, or vessel, per calendar year).

(3) Notification is not required for removal and disposal of nonfriable, asbestos-containing material.

(4) Notification is required for all demolitions involving structures with a projected roof area greater than 120 square feet, even if no asbestos-containing material is present.

(5) All demolitions require a 10-day waiting period unless waived under Section 4.03(c)(1) of this regulation.

(6) A printout of the notification, all amendments to the notification, and the asbestos survey shall be available for inspection at all times at the asbestos project or demolition site.

~~((7) A notification for multiple asbestos projects or demolitions may be submitted on one form if the structures are located in a contiguous area.))~~

~~(7) ((8)) Annual Notification~~

A property owner may file one annual notification for asbestos projects to be conducted on one or more structures, vessels, or buildings during each calendar year if all of the following conditions are met:

(A) The annual notification shall be filed with the Agency before commencing work on any asbestos project included in an annual notification;

(B) The total amount of asbestos-containing material for all asbestos projects from each structure, vessel, or building in a calendar year under this section is less than 260 linear feet on pipes and/or less than 160 square feet on other components; and

(C) The property owner submits quarterly written reports to the Control Officer on Agency-approved forms within 15 days after the end of each calendar quarter.

(d) **Waiting Period and Fees**

(b) **Amendments**

(1) An amendment shall be submitted to the Control Officer in a notification through the Agency website for the following changes and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 4.03(d) of this regulation:

(A) Changes between asbestos and demolition project types;

(B) Increases in the job size category that increase the fee;

(C) Changes in the start date; or

(D) Changes in the completion date.

(2) Amendments may not be used to add or change project site addresses listed on a previously submitted notification.

(c) **Emergencies**

(1) The waiting period may be waived if an asbestos project or demolition must be conducted immediately because of any of the following:

(A) There was a sudden, unexpected event that resulted in a public health or safety hazard;

(B) The project must proceed immediately to protect equipment, ensure continuous vital utilities, or minimize property damage;

(C) Asbestos-containing materials were encountered that were not identified during the asbestos survey; or

(D) The project must proceed to avoid imposing an unreasonable burden.

(2) The waiting period and fees may be waived for disposal of abandoned, (without the knowledge or consent of the property owner) friable, asbestos-containing material by written approval of the Control Officer.

Project	Waiting Period	Asbestos Fee	Demolition Fee
Single-Family Residence:			
• Asbestos Project	prior written notification	\$30	
• Demolition (with or without asbestos project)	10 days	\$0	\$75
Other than Single-Family Residence:			
• less than 10 linear ft and/or • less than 48 square ft	10 days for demolition	\$0	\$75
• 10 - 259 linear ft and/or • 48 - 159 square ft	prior written notification for asbestos	\$75	
	10 days for demolition		\$75
• 260 - 999 linear ft and/or • 160 - 4,999 square ft	10 days	\$250	\$75
• 1,000+ linear ft and/or • 5,000+ square ft	10 days	\$750	\$100
Emergency - 4.03(c)*	prior written notification	applicable fees+ \$50	
Amendment - 4.03(b)	prior written notification	applicable fees+ \$25	
Annual Notice of Intent - ((4.03(a)(8))) 4.03(a)(7)	prior written notification	\$1,000	

*Single-family residences are exempt from the emergency fee.

WSR 09-05-082
PROPOSED RULES
WASHINGTON STATE PATROL

[Filed February 17, 2009, 1:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-01-122.

Title of Rule and Other Identifying Information: Standards for authorized emergency vehicle permits, chapter 204-36 WAC.

Hearing Location(s): General Administration Building, Room G-3, 210 11th Avenue S.W., Olympia, WA 98504, on March 24, 2009, at 1:00 p.m.

Date of Intended Adoption: March 25, 2009.

Submit Written Comments to: Melissa VanGorkom, P.O. Box 42600, Olympia, WA 98504-2600, e-mail melissa.vangorkom@wsp.wa.gov, fax (360) 596-4015, by March 24, 2009.

Assistance for Persons with Disabilities: Contact Melissa VanGorkom by March 24, 2009, (360) 596-4017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updating current language for clarification to include the addition of definitions. The language changes will also include new standards for background checks and restrictions on signs, shield markings, accessories and insignia used on uniforms, clothing or equipment which may imply that the operator is a law enforcement officer.

Reasons Supporting Proposal: In the best interest of public safety.

Statutory Authority for Adoption: RCW 46.37.194.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Melissa VanGorkom, General Administration Building, P.O. Box 42600, Olympia, WA 98504-2600, (360) 596-4017.

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

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

February 11, 2009

John R. Batiste

Chief

AMENDATORY SECTION (Amending Order 88-08-ESR, filed 7/18/88)

WAC 204-36-010 Promulgation. The state patrol hereby adopts the following regulations relating to the issuance of an authorized emergency vehicle permit, for those vehicles not already authorized under statute.

AMENDATORY SECTION (Amending Order 88-08-ESR, filed 7/18/88)

WAC 204-36-020 Definitions. (1) Geographic area means the city, county, state routes or interstate roads on which the vehicle will be operated under the authorized emergency vehicle permit if approved.

(2) Operator or driver. The term operator and the term driver, as used herein, means every person who is in actual physical control of an authorized emergency vehicle.

~~((2))~~ (3) Operation. The term operation, as used herein, is the driving or moving by any operator or driver upon a public highway of any vehicle that is equipped or has attached thereon any equipment, the installation of which requires an authorized emergency vehicle permit, whether or not the emergency equipment is activated.

~~((3))~~ (4) Patrol (~~shall~~) means the Washington state patrol.

(5) Primary jurisdiction means lead department who has jurisdiction on the roads that the applicant wishes to use the emergency lighting on.

(6) Political subdivision means the individual who has authority over the applicant if the applicant is the chief law enforcement officer or fire chief.

AMENDATORY SECTION (Amending WSR 02-07-055, filed 3/14/02, effective 4/14/02)

WAC 204-36-030 Permit requirements. (1) Any person, firm, corporation or municipal corporation desiring to have a vehicle registered as an authorized emergency vehicle pursuant to RCW 46.37.194 (~~shall~~) must apply for such classification to the state patrol on forms provided by the patrol.

(2) The applicant (~~shall~~) must furnish the following information to the patrol:

(a) A description of the specific geographic area in which the vehicle (~~shall~~) will be used as an authorized emergency vehicle.

(b) A description of the vehicle, to include, year, make, model, VIN, license number, and registered owner.

(c) A description of the specific purposes for which the vehicle (~~shall~~) will be used as an authorized emergency vehicle, funeral escorts, fire response, or other (describe in detail). This description must include each function for the vehicle, including, but not limited to, traffic control, incident response, roadside safety and security patrols.

(d) An explanation of the nature and scope of the duties, responsibilities and authority of the vehicle operator which necessitate the need for vehicle to have an authorized emergency vehicle permit. This description must include the authority under statute for the operator to perform the functions listed under the permit.

(e) A description of the emergency equipment to be used if the permit is granted.

(f) A listing of the names, addresses, birthdates, operator's license numbers and other identifying data as may be prescribed on the application form by the patrol, of all persons who will use the vehicle as an authorized emergency vehicle, and a completed applicant fingerprint card.

(g) Certification from each primary jurisdiction identified in (a) of this subsection that the vehicle is to be used as described. Such certification (~~shall~~) must be by:

(i) The chief law enforcement officer if the applicant is a law enforcement or security officer, or has funeral home, coroner, ambulance or other nonfire related duties.

(ii) The fire chief if the vehicle is to be used for ~~((fire-fighting))~~ fire fighting purposes.

(iii) If the person making the application is the chief law enforcement officer or the fire chief of the jurisdiction, certification must be made by the chief executive officer of the political subdivision of the jurisdiction.

The certification ~~((shall))~~ must state that a need exists in the jurisdiction for the vehicle to be used as described and that the certifier knows of no reason why the application should be denied.

(Note: ~~If the person making application is the chief law enforcement officer or the fire chief of the jurisdiction, certification must be made by the chief executive officer of the political subdivision of the jurisdiction.~~)

Upon satisfactory application the patrol may issue an emergency vehicle permit or permits which, when carried as required, are valid until expiration or cancellation as prescribed in WAC 204-36-070.

AMENDATORY SECTION (Amending WSR 02-07-055, filed 3/14/02, effective 4/14/02)

WAC 204-36-040 Permit limitations. (1) A vehicle ~~((registered))~~ authorized by the patrol ~~((shall))~~ must not be used as an authorized emergency vehicle except as follows:

(a) Only by the operators named in the original or amended application approved by the patrol. If the applicant wishes to add or remove operator(s) from the permit, such request must be made to the patrol in writing.

(b) Only with the equipment described in the original or amended application approved by the patrol.

(c) Only within the geographic area described in the original or amended application approved by the patrol.

(d) Only for the purposes set forth in the original or amended application approved by the patrol.

(e) If being used for escort services, may be used only for funeral escorts.

(2) If an authorized emergency vehicle is used for private purposes, or for purposes in an area or by an operator other than as set forth in the application, all emergency equipment which is exposed to public view ~~((shall))~~ must be removed or covered with an opaque hood, and ((shall)) must not be operated during such period of time.

(3) The issuance of an emergency vehicle permit does not relieve the driver from the duty to drive with regard for the safety of all persons, nor ~~((shall))~~ will such provisions protect the driver from the consequences of his disregard for the safety of others and does not grant police authority to the operators of said vehicle. Any inappropriate or misuse of authorized emergency vehicles may result in criminal or civil liability as well as cancellation of the emergency vehicle permit.

(4) An operator under an approved emergency vehicle permit will not be allowed to display any sign, shield, marking, accessory or insignia on their uniform, clothing, or equipment to imply that he or she is a law enforcement officer, unless all of the following apply:

(a) The sign, shield, marking, accessory or insignia on their uniform or equipment is issued by a public law enforcement agency; and

(b) The operator is employed by the public agency they are representing with the sign, shield marking, accessory or insignia on their uniform or equipment, and approved to operate the vehicle by that agency under the authorized emergency vehicle permit.

AMENDATORY SECTION (Amending WSR 90-07-034, filed 3/15/90, effective 4/15/90)

WAC 204-36-050 Equipment requirements. (1) Authorized emergency vehicles ~~((shall))~~ must be:

(a) Conventional passenger cars, vans, pickups, or similar vehicles((-The vehicles shall be));

(b) Conventionally painted((;); and

(c) Legally equipped ((and shall not display commercial signs, posters, or pictures. Equipment, not related to the emergency nature of the vehicle, shall not be carried or attached to the outside of the vehicle. Every authorized emergency vehicle shall be equipped)) in conformance with RCW 46.37.190(1) with at least one lamp capable of displaying a red light visible from at least five hundred feet in normal sunlight and a siren capable of giving an audible signal. Such equipment must not be installed prior to obtaining approval of the application and issuance of a temporary certificate of approval for the vehicle(s) by the patrol. To be considered approved equipment for use under the provisions of this section, all devices must meet the criteria established in RCW 46.37.320. In descending order of preference, these are:

~~((+))~~ (i) Conformance to current standards and specifications of the Society of Automotive Engineers, or((;); if none((;

~~((+))~~ (ii) Certified for compliance by any recognized organization or agency such as, but not limited to, the American National Standards Institute, the Society of Automotive Engineers, or the American Association of Motor Vehicle Administrators.

~~((+))~~ Such equipment shall not be installed prior to obtaining approval of the application by the patrol.

~~((+))~~ (2) Authorized emergency vehicles must not:

(a) Be equipped with the following:

(i) Blue lamps ((shall not be installed unless requested in the application and specifically approved and listed on the permit)).

(ii) Flashing or strobing headlamps.

(iii) Signal preemptive device.

(b) Display commercial signs, posters, or pictures.

(c) Carry or attach to the outside of the vehicle equipment, not related to the emergency nature of the vehicle.

(d) Display or use any name that includes the word "police" or "law enforcement" or other word which portrays the individual or business as a public law enforcement agency.

(3) Authorized emergency vehicles may, in addition to the required equipment, have an amber or white lamp on their vehicle as outlined under WAC 204-21-130, provided that such equipment is listed on the application and approved by the patrol.

AMENDATORY SECTION (Amending WSR 02-07-055, filed 3/14/02, effective 4/14/02)

WAC 204-36-060 Procedure. (1) If the patrol approves the application, ~~((it shall first issue))~~ the applicant will be issued a certificate of approval for the vehicle(s) which ((shall)) will be valid for thirty days, during which time the emergency equipment may be installed. After installation of the emergency equipment, the applicant ((shall)) must bring the vehicle to a district or detachment office of the Washington state patrol to be examined to determine if it is of an approved type. A Washington state patrol officer ((shall)) will certify the results of this examination on a form prescribed and provided by the patrol and the applicant ((shall)) must file the form with the State Patrol, E.S.R. Unit, General Administration Building, P.O. Box ((2614)) 42600, Olympia, WA 98504-((2614))2600. Upon receipt of such certification, the patrol ((shall)) will issue a vehicle permit, which ((shall expire)) must be carried in the vehicle at all times, and expires when the vehicle is:

(a) Removed from the permit; or

(b) The authorized emergency vehicle permit is terminated by the applicant or by the patrol; or

(c) An authorized emergency vehicle permit which will expire one year from the date of issuance thereof.

(2) The patrol may refuse to approve the application, certificate or permit or in the case of an application which lists multiple operators may refuse to approve any single operator if the applicant/operator:

(a) Has been convicted of a felony during the ten years preceding the date of the application provided the felony for which the applicant was convicted directly relates to the specific occupation, trade, vocation, or business for which the certificate or permit is sought;

(b) Has ever been convicted of any class A felony or any "sex offense" as defined in RCW 9.94A.030, regardless of the state of conviction;

(c) Has been convicted of DUI as defined in chapter 46.61 RCW, or convicted of a similar offense regardless of the state of conviction, within the last seven years;

(d) Has been convicted of reckless driving, or a hit and run, within the last seven years;

(e) Has been convicted of a gross misdemeanor within the last five years;

(f) Has been convicted of any misdemeanor within the last year; or

(g) Must register as a sex offender.

Crimes referenced in this section are as defined in the criminal code as they exist at the time of the violation, as they now exist or may later be amended in the state of Washington. Out-of-state convictions for offenses will be classified according to the comparable offense definitions and sentences provided by Washington law.

(3) Each approved authorized emergency vehicle permit will be good for a period of one year. A renewal application must be filed with the patrol on forms prescribed by the patrol as outlined in WAC 204-36-030.

(a) A request to add drivers to a permit may be made, in writing to the patrol, at any time. If there is a request for new drivers to be added to the permit, the drivers will not be allowed to operate the vehicles as outlined in the permit until

they have been approved to do so by the patrol. Any request to add or remove drivers from a permit must be made to the patrol in writing.

(b) A request to add vehicles to a permit may be made, in writing to the patrol, at any time. If there is a request for new vehicles to be added to the permit, a certificate of approval for the vehicles will be issued granting a thirty-day period within which the equipment must be installed and inspected by the patrol. Once the inspection paperwork is received by the patrol it will be reviewed, and if approved, the patrol will issue a vehicle permit which must be carried in the vehicle at all times.

(i) No additional equipment other than the equipment outlined on the permit is authorized for use under the permit.

(ii) If additional equipment other than that approved under the vehicle permit must be installed, a new certificate of equipment must be filled out for the vehicle and the patrol must inspect and approve such equipment issuing a new vehicle permit prior to its use under the authorized emergency vehicle permit.

~~((3))~~ (4) The certificate of approval and when issued, the permit, including all endorsements for change of conditions as provided in WAC 204-36-030, ~~((shall))~~ must be carried in the authorized emergency vehicle at all times, and ~~((shall))~~ must be displayed on request to any law enforcement officer.

AMENDATORY SECTION (Amending Order 88-08-ESR, filed 7/18/88)

WAC 204-36-070 Revocation or suspension. (1) Violation of any of these regulations ~~((shall))~~ will be grounds for suspension or revocation of the authorized emergency vehicle permit. Notice ~~((shall))~~ will be furnished to the applicant at least twenty days prior to the effective date of such suspension or revocation. The notice ~~((shall))~~ will describe the grounds for the order and ~~((shall))~~ will furnish the applicant an opportunity to be heard within the twenty-day period. The notice may provide for immediate suspension of the permit prior to any hearing, or the patrol may suspend the permit following the hearing but prior to final determination, if it is necessary to do so in the interests of the public health, safety or welfare.

(2) The chief law enforcement officer, or fire chief if the vehicle is to be used for ~~((firefighting))~~ fire fighting purposes, of each primary jurisdiction in which the vehicle is operated as an authorized emergency vehicle may revoke his certification of the vehicle by notifying the patrol in writing of such revocation and his reasons ~~((therefor))~~ therefore. Following notice to the applicant and an opportunity to be heard, the permit may be invalidated by the patrol.

(3) Mailing by certified mail of any notice or correspondence by the patrol to the last address of the applicant shown on his application ~~((shall))~~ will be sufficient service of notice as required by this chapter.

WSR 09-05-083
PROPOSED RULES
WASHINGTON STATE PATROL

[Filed February 17, 2009, 2:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-01-007.

Title of Rule and Other Identifying Information: Towing businesses, chapter 204-91A WAC.

Hearing Location(s): General Administration Building, Room G-3, 210 11th Avenue S.W., Olympia, WA 98504, on March 24, 2009, at 10:00 a.m.

Date of Intended Adoption: March 25, 2009.

Submit Written Comments to: Sergeant Mike Eggleston, 2715 Rudkin Road, Union Gap, WA 98903, e-mail mike.eggleston@wsp.wa.gov, fax (509) 249-6769, by March 24, 2009.

Assistance for Persons with Disabilities: Contact Melissa VanGorkom by March 24, 2009, (360) 596-4017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updating current language and ensuring that the Washington state tow standards are in line with national standards.

Statutory Authority for Adoption: RCW 46.37.005, 46.55.050, 46.55.115.

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

Name of Agency Personnel Responsible for Drafting: Melissa VanGorkom, General Administration Building, P.O. Box 42600, Olympia, WA 98504-2600, (360) 596-4017; Implementation and Enforcement: Sergeant Mike Eggleston, General Administration Building, P.O. Box 42600, Olympia, WA 98504-2600, (509) 249-6734.

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

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

February 11, 2009

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 02-07-056, filed 3/15/02, effective 4/15/02)

WAC 204-91A-010 Authority. This chapter is adopted pursuant to RCW 46.37.005, 46.55.050, and 46.55.115 ((which require rules, regulations and equipment standards for tow trucks be made and to provide for the removal from the highway of disabled, abandoned, or damaged motor vehicles, or the removal of vehicles when the driver is intoxicated or otherwise incompetent)).

AMENDATORY SECTION (Amending Order 89-04-ESR, filed 6/23/89)

WAC 204-91A-020 Purpose. This chapter is intended to implement the public policy expressed by the legislature and to carry out the statutory duties of the Washington state patrol.

All registered tow truck operators providing service as a result of being appointed by, or contracted to the Washington state patrol ((~~shall~~)) must conduct all operations in accordance with all applicable laws of the state of Washington and applicable rules of the Washington state patrol and the department of licensing.

AMENDATORY SECTION (Amending WSR 04-20-021, filed 9/28/04, effective 10/29/04)

WAC 204-91A-030 Definitions. The following definitions ((~~shall~~)) will apply throughout this chapter:

(1) ((~~"Patrol" means the Washington state patrol as defined in RCW 43.43.010.~~

(~~2~~)) "Chief" means the chief of the Washington state patrol ((~~or designee~~)).

((~~3~~)) (2) "Department" means the Washington state department of licensing.

(3) "Designee" means a person designated by the chief of the Washington state patrol.

(4) "Director" means the director of the department of licensing.

(5) ((~~"Tow truck permit" means the permit issued annually by the department that has the classification of service the tow truck may provide stamped upon it.~~

(6) "Registered tow truck operator" or "operator" means any person who engages in the impounding, transporting, or storage of unauthorized vehicles, or in the disposal of abandoned vehicles.

(7) "Tow truck" means a motor vehicle that is equipped for and used in the business of towing or otherwise transporting other vehicles with specific equipment approved by the state patrol.

(8) "Tow truck number" means the number issued by the department to tow trucks used by a registered tow truck operator in the state of Washington.

(9) ((~~"Tow truck service" means the towing, moving, transporting, or impounding of vehicles, together with personal effects and cargo, by a registered tow truck operator utilizing equipment approved by the patrol.~~

(10) "Highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

(11) "Place of business" means a building which the registered tow truck operator occupies, either continuously or at regular times, where tow business books and records are kept and tow business is transacted in each assigned tow zone.

(12) ((~~"Vehicle storage area" means the approved yard/buildings (primary and secondary) where stored vehicles are kept. The storage areas and fencing will comply with the requirements as established by the department and all local zoning rules and regulations. Both primary and secondary storage areas must be physically located within tow zone assigned to the operator.~~

(13) ((~~"Special event" means any event which causes an unusually large number of impounded vehicles and/or tow calls in a short period of time and is so declared by the district commander or designee.~~

(14) "Special event storage area" means an area used for temporarily storing vehicles impounded/towed from special events. Approval for such areas shall be obtained from the department, the patrol, and appropriate city and county jurisdictions.

(15) "District commander" means the commanding officer of an area established by the Washington state patrol.

(16) "Inspector" means a commissioned officer of the Washington state patrol who has been designated as a tow truck inspector by the patrol.

(17) "Tow zone" means that specific geographical area designated by the district commander for the removal of vehicles as defined in Title 46 RCW and this chapter.

(18) "Section" means the section designated by the chief of the Washington state patrol to coordinate the tow truck inspection program, maintain tow truck files, and issue letters of appointment.

(19) "Letter of appointment" means a letter issued by the section that authorizes a registered tow truck operator to tow and store vehicles on a rotational or contractual basis, in a specific area, for the Washington state patrol. The letter of appointment must have an attached valid contractual agreement listing the maximum rates that will be charged by the operator for services provided as a result of state patrol originated calls.

(20) "Initial tow" means services provided including, but not limited to, accidents, incidents, disableds, and impound requests, as a result of an original call, on a particular vehicle, that the tow operator receives from the patrol using a copy of a current rotational call list for the particular zone. Any vehicles of combination oversized/weight requiring a permit, may only be moved to the nearest safe location agreed upon by all parties involved, until such time a permit is acquired or until the load can be made legal by reducing.

(21) "Secondary tow" means towing services from an operator's storage facility or place of business, to another location designated by the owner/agent of a vehicle that was initially towed as a result of call from the patrol.

(22) "Letter of contractual agreement" means the document, attached to the letter of appointment, that specifies the maximum tow rates that may be charged for services provided as a result of state patrol originated calls.

(23) "Owner/operator" means owner is active in the general management of the towing business.)) "District commander" means the commanding officer or designee of an area established by the Washington state patrol.

(6) "Emergent move" means a law enforcement directed movement of any vehicle by a tow truck, utilizing any safe means, for the purposes of clearing the roadway in the interest of safety and/or for the reduction of congestion. Emergent movement of any oversized or overweight vehicle(s) or combination of vehicles requiring a permit must only be made to the nearest safe location, until such time as a permit is acquired or until the load can be made legal by reducing the nonfixed load. Emergent movement of a vehicle is limited to a distance of five miles, unless an exception is granted by a patrol supervisor based on special circumstances.

(7) "Highway" means the entire width between the boundary lines of every highway publicly maintained when

any part thereof is open to the use of the public for purposes of vehicular travel.

(8) "Initial tow" means services provided including, but not limited to, collisions, incidents, disableds, and impound requests, as a result of an original call, on a particular vehicle, that the tow operator receives from the patrol using a copy of a current rotational call list for the particular zone.

(9) "Inspector" means a commissioned officer of the Washington state patrol who has been designated as a tow truck inspector by the patrol.

(10) "Letter of appointment" means a letter issued by the Washington state patrol that authorizes a registered tow truck operator to tow and store vehicles for the patrol on a rotational or contractual basis in a specified area.

(11) "Letter of contractual agreement" means the document, attached to the letter of appointment, that specifies the maximum tow rates that may be charged for services provided as a result of state patrol originated calls.

(12) "Owner/operator" means an owner who is active in the general management of the towing business.

(13) "Patrol" means the Washington state patrol as defined in RCW 43.43.010.

(14) "Place of business" means a building located in an assigned tow zone that the registered tow truck operator occupies, either continuously or at regular times, where tow business books and records are kept and tow business is transacted.

(15) "Registered tow truck operator" or "operator" means a person who engages in the impounding, transporting, or storage of unauthorized vehicles, or in the disposal of abandoned vehicles.

(16) "Secondary tow" means towing services from an operator's storage facility or place of business to another location designated by the owner/agent of a vehicle, when the initial towing services were the result of a call from the patrol.

(17) "Section" means the section designated by the chief of the Washington state patrol to coordinate the tow truck inspection program, maintain tow truck files, and issue letters of appointment.

(18) "Special event" means any event that causes an unusually large number of impounded vehicles and/or tow calls in a short period of time and which is declared as such by the district commander or designee.

(19) "Special event storage area" means an area used for temporarily storing vehicles impounded/towed from special events. Approval for such areas must be obtained from the department, the patrol, and appropriate city and county jurisdictions.

(20) "State recognized holiday" means a legal holiday as outlined under RCW 1.16.050.

(21) "Tow truck" means a motor vehicle that is equipped for and used in the business of towing or otherwise transporting other vehicles with specific equipment approved by the patrol.

(22) "Tow truck number" means the number issued by the department to tow trucks used by a registered tow truck operator in the state of Washington.

(23) "Tow truck permit" means the permit issued annually by the department that has the classification of service that the tow truck may provide stamped upon it.

(24) "Tow truck service" means the towing, moving, transporting, or impounding of vehicles, together with personal effects and cargo, by a registered tow truck operator utilizing equipment approved by the patrol.

(25) "Tow zone" means that specific geographical area designated by the district commander for the removal of vehicles as defined in Title 46 RCW and this chapter.

(26) "Vehicle storage area" means the approved yard and buildings (primary and secondary) where stored vehicles are kept. The storage areas and fencing must comply with the requirements established by the department and all local zoning rules and regulations. Both primary and secondary storage areas must be physically located within the tow zone assigned to the operator.

NEW SECTION

WAC 204-91A-035 Registered tow truck application process. (1) A tow company must apply through the patrol to be a registered tow operator in Washington state.

Once an application is received, the patrol must conduct an initial inspection of the applicant's place of business, facilities, and equipment.

(2) At the time of initial inspection:

(a) The applicant must:

(i) Provide written verification that the business complies with all applicable local laws and regulations in the geographical area where the towing business will be established.

(ii) If local zoning regulations apply, provide a copy of the certification of approval from the local zoning commission. This certificate will become a part of the permanent record maintained on each approved towing firm approved by the patrol.

(b) The inspector will:

(i) Verify the identities and status of driving privileges for all persons who operate tow trucks, and notify the applicant of any person who does not meet the minimum licensing requirements.

(ii) Determine if the applicant meets the applicable requirements of chapter 46.55 RCW, or Titles 308 or 204 WAC.

(A) If applicant meets the requirements, the inspector will provide certification.

(B) If the applicant does not meet the requirements, the inspector must state the reasons for failure to qualify in a separate report which must be returned to the applicant along with the application and inspection form. If the applicant is initially not certified, the applicant may request an additional inspection once all deficiencies are corrected.

AMENDATORY SECTION (Amending WSR 07-02-025A, filed 12/22/06, effective 1/22/07)

WAC 204-91A-040 Inspections. ~~((Upon the request of a registered tow operator or applicant, the patrol shall conduct an inspection of the applicant's place of business, facilities, and equipment to determine if the applicant meets the requirements of chapter 46.55 RCW, or Titles 308 and/or 204~~

~~WAC. Verification must be shown to the inspector that the applicant complies with all applicable local laws and regulations as prescribed for the geographical area where the towing business will be established. If local zoning regulations are applicable, a copy of the certification of approval from the local zoning commission will be furnished to the inspector. This certification may be included in the department's application form for license. The certification will become a part of the permanent record maintained on each approved towing firm by the section.)) (1) ((Reinspections)) **When will an inspection be conducted?**~~

~~(a) After the initial inspection, inspections will be conducted at least once a year.~~

~~(b) Unscheduled inspections may be conducted without notice at the operator's place of business by an inspector to determine the fitness of tow trucks, facilities, and business records.~~

~~(2) ((If reinspection of a previously approved tow truck reveals equipment defects, one of the following procedures shall apply:~~

~~(a) In the event of a safety-related defect which would render the tow truck a safety hazard upon the public highway, a red "out-of-service" sticker shall be affixed immediately by the inspector.~~

~~(b) In the event of missing or defective equipment that does not constitute a safety hazard but is required, the inspector shall advise the operator of the defect. If after ten days the operator fails or refuses to repair the defect, the red out-of-service sticker shall be affixed.~~

~~(c) Upon confirming the satisfactory repair of the defect or defects that caused the tow truck to be taken out of service, the inspector shall remove the red sticker. In the event that the original inspector is not available to reinspect the equipment, another patrol officer appointed by the appropriate supervisor may do so. The reinspection shall be completed as soon as possible after the operator advises the patrol that the defect has been repaired. Whenever practicable this shall be done within three days and may require the operator to bring the truck to the inspector.~~

~~(d) Upon sale or other transfer of a tow truck from the business, the operator shall so advise the inspector who will request the issued cab card permit be forwarded to the inspector via U.S. mail or other arrangement agreed upon by the parties involved, within three days of any changes. The operator will remove any decals indicating truck class, district and/or zone. The inspector will notify the department and the section of any changes in vehicles.~~

~~(e) Upon the purchase or acquisition of any additional or replacement tow truck(s) to be used pursuant to this chapter, the operator shall immediately notify the patrol and request an inspection of the new unit. The new unit shall not be used for public or private impound calls until satisfactory inspection is completed and a cab card permit and/or decals for the vehicle has been issued by the department and/or patrol.~~

~~(3) On original inspection, and subsequent reinspection, the inspector shall confirm the identities and status of driving privilege of all persons that operate the tow trucks. The inspector shall notify the operator if any person does not meet the minimum license requirements.~~

(a) ~~In the event that an operator becomes aware that the driving privilege of an employee, or owner no longer meets the minimum requirements, the operator shall prohibit that person from operating any tow truck.~~

(b) ~~An operator shall, within three days of employing a new driver, advise the inspector in writing, on a form provided by the inspector, of the identity, including name, address and date of birth, of the new employee. The check performed by the inspector is not to be used as part of the operator's preemployment screening processes. The inspector shall notify the operator if the new employee does not meet the minimum license requirements in a timely manner.~~

(c) ~~An operator may not request a waiver for a new employee; the new employee must contact the inspector in writing to request a waiver.)~~ **What will the inspection consist of?** At the time of inspection:

(a) The operator must:

(i) Provide copies of business records by either:

(A) Permitting the patrol to make copies at their place of business.

(B) Permitting the patrol to remove business records for the purpose of reproduction provided that the patrol issues a receipt for any original records removed from the place of business.

(ii) Allow the inspectors to reinspect previously approved vehicles for equipment defects.

(iii) Provide current driver information to the inspector.

(b) The inspector must:

(i) Determine if the operator meets the applicable requirements of chapter 46.55 RCW, chapters 204-91A and 308-61 WAC.

(ii) Verify the identities and status of driving privilege of all persons that operate tow trucks, and notify the operator if any person does not meet the minimum license requirements.

(iii) Determine if there are equipment defects on the vehicle(s):

(A) The inspector will conduct equipment inspections per Commercial Vehicle Safety Alliance (CVSA) criteria as outlined in the Federal Motor Carrier Safety Regulations, chapters 204-91A WAC and 46.37 RCW.

(B) The inspector must document the inspection on the Uniform Driver/Vehicle Inspection report utilizing the appropriate Code of Federal Regulations, chapters 46.37 RCW and 204-91A WAC.

(C) If safety-related equipment violations exist which would render the tow truck unsafe for tow operation or constitute a safety hazard upon the public highway, the inspector will place the vehicle out-of-service and notify the operator the vehicle may not be operated until compliance has been met. The operator must repair the violation immediately and certify compliance in writing within fifteen days or remove the vehicle from tow operation.

(D) If violations of equipment or other required items exist, the inspector will notify the operator of the violation(s), and note the violations on the inspection report. The operator must correct the violations and certify compliance in writing within fifteen days.

(c) Whenever practical the patrol will complete a reinspection within three days or as soon as possible after the operator advises the patrol. The patrol may:

(i) Choose to reinspect the vehicle, if it is placed out-of-service.

(ii) Require the operator to bring the truck to the inspector.

(iii) Appoint another patrol officer to reinspect the vehicle(s), if the original inspector is not available. Such appointment must be made by the appropriate patrol supervisor.

AMENDATORY SECTION (Amending WSR 04-20-021, filed 9/28/04, effective 10/29/04)

WAC 204-91A-050 ((Certification-)) Adding or removing drivers or vehicles. ((After inspection of the towing business facilities and equipment, the inspector will certify one of the following:

(1) The towing operation of the applicant meets the requirements and qualification standards established by chapter 46.55 RCW, chapters 204-91A and 308-61 WAC, the department of licensing, master licensing services, and the patrol; or

(2) The towing operation of the applicant does not meet the requirements and qualification standards established by the Revised Code of Washington 46.55, Washington Administrative Codes 204-91A and 308-61, the department of licensing, master licensing services, and the patrol. The inspector shall state the reasons for failure to qualify in a separate report which shall be attached to the application/inspection form.

In the event the applicant fails to meet the established requirements for approval, the applicant may, after correcting all deficiencies, request a reinspection for certification.)) (1) Drivers:

(a) If an operator becomes aware that the driving privileges of any tow truck driver no longer meet the minimum licensing requirements, the operator must prohibit that person from operating any tow truck.

(b) If an operator employs a new driver:

(i) The operator must notify the inspector in writing within three days of employing the new driver using the form provided by the inspector.

(ii) The inspector will notify the operator, in a timely manner, if the new employee does not meet the minimum licensing requirements, or the requirements established by chapter 204-91A WAC.

(iii) The operator must not use the check performed by the inspector as part of the preemployment screening processes for a new employee. The new employee must contact the inspector in writing to request a waiver.

(2) Vehicles:

(a) If a tow truck is sold or transferred from the business, within three days, the operator must:

(i) Advise the inspector.

(ii) Send the issued cab card permit to the inspector via U.S. mail or another method agreed upon by the parties.

(iii) Remove any decals indicating truck class, company name, district, and tow zone. Once notification is made, the inspector will notify the department and the patrol.

(b) If a tow truck is purchased or acquired, the operator must immediately notify the patrol and request an inspection. The patrol must complete an inspection and issue either a cab

card permit, or decal or both before the new tow truck is used for impound calls.

(c) Tow trucks newly acquired or purchased must meet the current equipment criteria listed in chapter 204-91A WAC.

AMENDATORY SECTION (Amending WSR 07-02-025A, filed 12/22/06, effective 1/22/07)

WAC 204-91A-060 Application for letter of appointment. ~~((+))~~ An application (for a letter of appointment to be placed on the rotational tow list, will not be considered or approved unless the owner/operator of the towing company can demonstrate that he/)) must be approved and a letter of appointment issued by the patrol before an operator is authorized to provide towing services pursuant to this chapter. However, nothing herein prohibits the patrol from calling the towing business upon the specific request of a person responsible for a vehicle or his/her agent.

(1) Who must complete the application?

<u>Type of business</u>	<u>Who must complete the application</u>
<u>Tow company</u>	<u>Operator/owner</u>
<u>Partnership</u>	<u>Each partner</u>
<u>Corporation</u>	<u>The patrol may require each of the present and subsequent officers, managers, and stakeholders holding 10% or more of the total issued stock.</u>

(2) What is required on the application?

(a) In order to be issued a letter of appointment, the applicant(s) must:

(i) Fill out the application form provided by the patrol.

(ii) Demonstrate through a letter with the application that they have two years of experience within the towing industry, including which of the following requirement(s) apply:

(A) He or she has been a registered tow truck operator for a minimum of two years prior to the date of application with at least one approved "A" or "B" class tow truck, additional trucks are optional; or

(B) He or she has worked as an employee of a tow company on the state patrol's rotational tow list and gained experience within the towing industry including, but not limited to, the operation of vehicles, complying with the state and federal standards and regulations, and processing of paperwork for auditing and other purposes; or

(C) He or she will keep in place the existing management team/employees for a minimum of one year upon purchasing the business. ((The owner/operator shall submit a letter with the application outlining their experience within the towing industry and outline which requirement listed above fits their situation:))

(iii) Be granted a waiver, if the owner/operator ((doesn't) does not have the required two years experience ((and is granted a waiver, it will be a probationary waiver)). If the owner/operator is granted a waiver, they will remain on probation for a period of one year from the date of the waiver.

(Note:)) (iv) Attach to the application a signed "letter of contractual agreement" listing the maximum tow rates to be

charged for services resulting from state patrol originated calls.

(v) An exception may be made if an operator desires a letter of appointment for class "C" tows only. In such situations, only a class "C" truck is required.

(vi) Upon request, the ((section shall)) patrol will advise the applicant of the contents of the department's regulations and of the standards established for the issuance of a letter of appointment.

~~((2))~~ An application for a letter of appointment to provide towing service for the patrol shall be filed by the applicant with the local state patrol district office on a form prescribed by the patrol. The state patrol may refuse to approve or may revoke a letter of appointment/contract if the applicant, partner, corporate officer involved in day-to-day operations, or any employee who operates a tow truck or assists in vehicle auctions has been found guilty of or convicted of any felony or any crime involving moral turpitude regardless of type or class, or any individual who must register as or is a convicted sex offender, or within the last three years been convicted or found guilty of driving under the influence of alcohol and/or drug(s), or within the last five years have been found guilty of driving under the influence of alcohol and/or drugs two or more times as defined in the criminal code as they existed at the time of the violation, as they now exist or may later be amended in the state of Washington. In the case of a partnership, each partner shall apply on the form prescribed. In the case of a corporation, the patrol may require that each of the present and any subsequent officers, managers, and stockholders holding ten percent or more of the total issued and outstanding stock of the applicant corporation complete an application form. A signed "letter of contractual agreement" listing the maximum tow rates to be charged for services resulting from state patrol originated calls will be attached to the application.

~~(3))~~ (b) The district office must:

(i) Complete the tow zone portion of the application form. The district commander or designee will enter "approved" or "disapproved" next to the zone designation and sign the form; and

(ii) Forward the application and letter of contractual agreement to the section.

(c) The patrol will assign the application a docket number which will be its permanent identification number for all matters relating to appointments, granted or denied, and any other correspondence with the patrol thereafter.

(3) When will an application be denied?

(a) The patrol may refuse to issue or may revoke a letter of appointment or contract if the applicant, partner, corporate officer involved in daily operations, or any employee who operates a tow truck, assists in vehicle auctions, or is involved in daily operations:

(i) Has been convicted of any class A felony or any "sex offense" as defined in RCW 9.94A.030, regardless of the date of conviction;

(ii) Has been convicted of any class B felony within the last ten years;

(iii) Has been convicted of any class C felony within the last five years;

(iv) Has been convicted of DUI, as defined in chapter 46.61 RCW, two or more times within the last five years;

(v) Has been convicted of any gross misdemeanor within the last three years;

(vi) Has been convicted of any misdemeanor within the last year; or

(vii) Must register as a sex offender.

(b) The term "conviction" as used in this section will have the same meaning as used in RCW 9.94A.030.

(c) Crimes referenced in this section are as defined in the criminal code as they existed at the time of the violation, as they now exist or may later be amended in the state of Washington. Out-of-state convictions for offenses will be classified according to the comparable offense definitions and sentences provided by Washington law.

(4) If an application is denied, when can a new application be submitted? Only one application per year to tow on the Washington state patrol rotational tow list will be accepted and considered for an applicant who has had their previous application denied or had their letter~~(/)~~ or contract of appointment revoked. The year ~~((shall))~~ will run from the date of application denial or the date of the letter of appointment's revocation.

~~((4) The district commander or designee shall complete tow zone portion of the form. He/she will enter "approved" or "disapproved" and will sign the form next to the zone designation. The application and "letter of contractual agreement" will be forwarded to the section.~~

~~(5) The application form will be assigned a docket number, by the section, which shall be its permanent identification number for all matters relating to appointments, granted or denied, and any other correspondence with the section thereafter.~~

~~(6) The filing of an application for a letter of appointment does not in itself authorize the operator to provide towing services pursuant to this chapter until a letter of appointment has been issued by the section. However, nothing herein shall prohibit the patrol from calling the towing business upon the specific request of a person responsible for a vehicle or his agent.)~~

AMENDATORY SECTION (Amending WSR 07-02-025A, filed 12/22/06, effective 1/22/07)

WAC 204-91A-070 Issuance of a letter of appointment. (1) ~~((No towing operator shall be called to perform a towing service at the request of the patrol unless such operator has a letter of appointment as described in this chapter. No such))~~ The chief or designee will have the authority to issue a letter of appointment ((will be issued unless)) if all qualifications set out in this chapter have either been met by the applicant, or a waiver of those qualifications not met has been granted ((by the section.

(2) The section commander shall have the authority to issue letters of appointment upon request after receiving)). In order to issue a letter of appointment the section commander must receive:

(a) Certification from the inspector((-);

(b) An application for a letter of appointment endorsed by the district commander((-); and

(c) A notice from the department that the requestor has been licensed as a registered tow truck operator.

(2) The patrol will notify the requestor of its decision in writing.

(a) If all requirements are met, the request will be approved and the patrol will issue a letter of appointment, and the tow company will be admitted to the patrol's call list for the appropriate tow zone on the effective date of the letter.

~~(b) If ((the section shall find the requestor does not or will not meet)) all requirements are not met, and the requestor is not qualified for a waiver of the requirements, then such request ((shall)) will be denied. ((The section shall notify the requestor of its decision in writing, stating the reasons. If the request is approved, the section commander will issue the letter of appointment and forward it to the tow operator. The tow company will be admitted to the patrol's call list for the appropriate tow zone on the effective date of the letter.))~~

(c) If the district commander recommends denial of a request ((for a letter of appointment)), the ((section commander shall)) patrol will notify the applicant and provide an opportunity for the applicant to have a hearing as provided in chapter 34.05 RCW.

(3) A letter of appointment will be valid for one business, in a single tow zone, assigned by the district commander. Requests for additional letters of appointment in the same or another zone must be based on a complete and separate place of business capable of independent operation within the appropriate zone.

~~((a))~~ To receive a letter of appointment, each business must:

(a) Be operated independently. One company cannot be dependent upon another for any required operation.

(b) If an individual, partnership, corporation, or other business entity owns more than one business, each business must have a different identifiable name, address, and telephone number, which are answered at the business location during normal business hours. There may, however, be a central dispatch center for multiple companies. ((At a minimum, the)) This dispatch center must be capable of acknowledging each individual company when answering each call.

(c) Have on both sides of the truck a different identifiable name, city of address (even if included in the name of the company), registered tow truck operator license number, and truck number as assigned by the department((- must be located on both sides of the truck)). All required information must be plainly seen and able to be read at all times. All other required markings must also be located where they can be plainly seen and able to be read at all times and be of the size outlined in WAC 308-61-115(1). Companies must comply by December 31, 2007.

~~((Note:))~~

EXAMPLE: A different identifiable name may include the parent company name but must also have an additional name to identify and separate that company. Example: Joe's Towing and Joe's Towing South. Joe's Towing I and Joe's Towing II.

~~((e) There must be))~~ (d) Have adequate staffing for each company with personnel present to answer all incoming calls and who are able to release impounded vehicles during normal business hours 8:00 a.m. to 5:00 p.m. Monday through Friday ((excluding)) except for state recognized holidays.

Each business (~~((shall))~~) must be staffed by a sufficient number of drivers for twenty-four hour day operation.

~~((d) There must be))~~ (e) Have adequate equipment for each company to operate independently. Tow trucks must only be used for the company for which they are registered and within the zone approved/assigned for use in, unless specifically requested by law enforcement. All trucks must be clearly marked with the company's identity as outlined in (b) of this subsection.

~~((e) Separate businesses in the same tow zone may be housed in one building; however, there must be a solid wall from floor to ceiling physically separating each business. Each business must))~~

(f) Have its own outside entrance, or when the building has one main entrance, the offices must have doors clearly marking and separating each business (not acceptable to walk in the main door and be hit with a counter or one office for the multiple tow companies housed in the building), with a sign at the front door and a sign plainly visible from the street indicating the company's name, phone number, and office hours. ~~((Companies currently not meeting these standards will have twelve months from July 1, 2004, to comply.~~

~~((f) Each business must))~~ Separate businesses in the same tow zone may be housed in one building; however, there must be a solid wall from floor to ceiling physically separating each business.

(g) Maintain their own set of required records and books as outlined in RCW 46.55.150 including, but not limited to, a master log, vehicle transaction file, and billing invoices at its place of business. If there is a corporate accountant/bookkeeper for more than one company, all records and/or files for each company, other than those records, which are required to be maintained at the business location, must be maintained separately.

~~((g))~~ (h) Have impound/storage areas ((must meet)) meeting the requirements of WAC 308-61-026(2) at all times, including proper segregation. All storage areas, primary and secondary for each place of business must be in the tow zone assigned to that place of business.

(i) Maintain at least one truck meeting the minimum class "A," "B," or "C" standards as listed in WAC 204-91A-170.

~~((All registered tow truck operators providing service to WSP must be in compliance with these requirements. Failure to comply will result in the cancellation of your letter of appointment to tow on the patrol's rotational tow list.))~~

(4) A tow operator (or a district commander) may petition the section in writing for a waiver of one or more requirements. The section may grant a waiver if it finds that:

(a) The towing service available to the patrol without the waiver is inadequate to meet the needs of the public;

(b) The request is otherwise reasonable; and

(c) The request has the district commander's approval.

In the event a qualified tow operator meeting all requirements and qualifications receives a letter of appointment in the same zone as a tow operator that had earlier been granted a waiver, the tow operator with a waiver will have the letter of appointment rescinded by the section and after notification will not be called for patrol-initiated tows.

(5) Every letter of appointment (~~((shall))~~) will be issued in the name of the applicant and the holder thereof (~~((shall))~~) must not allow any other person or business to use the letter of appointment.

(6) The letter of appointment will only be valid for the place of business named on the application and will not apply to any other place of business.

(7) A letter of appointment (~~((shall))~~) will be valid until suspended, superseded, or revoked by the (~~((section))~~) patrol.

(8) ~~((The holder of each letter of appointment must maintain at least one tow truck meeting the minimum class "A," "B," or "C" standards as listed in WAC 204-91A-170.~~

~~((9))~~ All storage areas, primary and secondary, for each place of business must be in the tow zone assigned to that place of business.

AMENDATORY SECTION (Amending WSR 07-02-025A, filed 12/22/06, effective 1/22/07)

WAC 204-91A-080 Suspension or revocation of letter of appointment. The patrol may deny, suspend, or revoke a letter of appointment:

(1) Upon receiving evidence that any appointee has failed to comply or no longer complies with any requirement or provision of law or this chapter (~~((the section may deny, suspend, or revoke the letter of appointment))~~). The following process must be used:

(a) The patrol must give the appointee ((shall be given)) notice of the action and an opportunity to be heard as prescribed in chapter 34.05 RCW, prior to denial, suspension, or revocation of the letter of appointment.

~~((a))~~ (b) Upon receiving notice of the action, the appointee may ((request)), within twenty days from the date of the notice of action, request in writing to the section commander a hearing on the denial, suspension or revocation of the letter of appointment. ((Such request must be made in writing within twenty days from the date of the notice.)) An adjudicative proceeding will be commenced within ninety days of the receipt of a hearing request. Failure to request a hearing, or failure to appear at a requested hearing, a prehearing conference, or any other stage of an adjudicative proceeding, (~~((shall))~~) will constitute default and may result in the entry of a final order under RCW 34.05.440.

~~((b))~~ (c) Upon receiving a hearing request, the section may, at the request of the appointee, or on its own initiative, schedule an informal settlement conference which ((shall)) will be without prejudice to the rights of the parties. The informal settlement conference will be held in the district where the company resides at a mutually agreed upon time and may result in a settlement agreement. If no agreement is reached, a hearing will be scheduled as outlined in chapter 34.05 RCW.

~~((c))~~ The holder of a letter of appointment may voluntarily relinquish the letter. The section and the district commander will be advised in writing of this voluntary relinquishment. After receiving written notice, the district commander will cause the inspector to physically obtain the original letter of appointment and forward it to the section.)

(2) ~~((The section may summarily suspend a letter of appointment))~~ Without prior notification if it finds that there

is danger to the public health, safety, or welfare which requires immediate action. In every summary suspension of a letter of appointment, ~~((the section shall enter))~~ an order ~~(;)~~ signed by the chief or designee must be entered, ~~((which is))~~ in compliance with the provisions of RCW 34.05.479. Administrative proceedings consistent with chapter 34.05 RCW for revocation or other action shall be promptly instituted and determined. The ~~((section shall))~~ patrol must give notice as is practicable to the appointee.

~~(3) ((A tow company may be immediately removed from the state patrol's rotational tow list for the following - revocation or cancellation of their registered tow truck operator license by the department or cancellation of the tow company's insurance certificate or bond-))~~ Immediately if the department revokes or cancels the registered tow truck operator license or if the tow company's insurance certification bond is canceled.

(4) If the holder of a letter of appointment voluntarily relinquishes the letter, the inspector and the district commander will be advised in writing of this voluntary relinquishment. After receiving written notice, the district commander will instruct the inspector to obtain the original letter of appointment. If the owner/operator requests reissuance of a letter of appointment, the patrol may require a new application. Additionally, if applicable, all new equipment exempted under the previous letter of appointment must meet current requirements outlined in WAC and RCW.

(5) If violations of the terms and conditions of the letter of appointment that are subject to suspension for the first violation are categorized as major violations any subsequent or continuing major violation may be cause for termination unless the patrol imposes additional suspensions for longer periods, if deemed appropriate.

(a) When considering punitive action for a major violation of the letter of appointment, the district commander may take into consideration all major and minor violations that occurred within thirty-six months prior to the date of the current violation.

(b) Terms of disciplinary action - minor violations of the terms and conditions of the LOA may be cause for disciplinary action in the following manner:

(i) First violation within a twelve-month period - letter of written reprimand;

(ii) Second violation within a twelve-month period - thirty day suspension;

(iii) Third violation within a twelve-month period - sixty - ninety day suspension;

(iv) Fourth violation within a twelve-month period - termination of the letter or appointment.

AMENDATORY SECTION (Amending WSR 04-20-021, filed 9/28/04, effective 10/29/04)

WAC 204-91A-090 Hearing procedure. Hearings under this chapter ~~((shall))~~ will be pursuant to chapters 34.05 RCW, 446-08~~(;)~~ and 10-08 WAC, as supplemented by this section.

(1) The presiding officer ~~((shall))~~ will conduct the hearing and any prehearing conference(s).

(2) The burden of proof in any hearing ~~((before the chief shall))~~ will be on the applicant seeking a letter of appointment, or the person or agency seeking the suspension or revocation of a letter of appointment, or other action by the chief or designee. The chief or designee, after having heard and considered all pertinent evidence, or if the hearing is conducted by an administrative law judge, after having considered a record of a hearing conducted by an administrative law judge duly appointed pursuant to chapter 34.12 RCW, ~~((shall))~~ will make written findings of facts and conclusions based on evidence presented.

(3) Oral proceedings ~~((shall))~~ must be recorded ~~((on tape))~~ by a method chosen by the patrol and such ~~((tape shall))~~ recording will become part of the hearing record.

~~((4) This section is intended to supplement the procedures contained in the Administrative Procedure Act, chapter 34.05 RCW, the model rules of procedure, chapter 446-08 WAC, and chapter 10-08 WAC-;))~~

AMENDATORY SECTION (Amending WSR 94-18-083, filed 9/2/94, effective 10/3/94)

WAC 204-91A-110 Complaints. (1) All law enforcement or local licensing agencies that receive complaints involving registered tow truck operators ~~((shall))~~ must forward ~~((the))~~ complaints, along with ~~((supporting documents, including))~~ all results from the complaint investigations and other supporting documents, to the department.

~~((1) Those complaints investigated by the patrol will be reviewed by the section commander before forwarding to the department.))~~

(2) The patrol ~~((shall))~~ will investigate all complaints involving equipment deficiencies ~~((of equipment)).~~

(3) Complaints investigated by the patrol will be reviewed by the chief or designee before forwarding to the department.

(4) A complete copy of all complaints investigated by the patrol will be kept on file ~~((by the section)).~~

AMENDATORY SECTION (Amending WSR 04-20-021, filed 9/28/04, effective 10/29/04)

WAC 204-91A-120 Business office hours and records. (1) Business hours for purposes of inspection of records, place of business, and towing equipment must be 8 a.m. to 5 p.m., excluding weekends and state recognized holidays.

~~((+))~~ (2) The owner/operator must have personnel at the place of business during business hours to answer phone calls and to release vehicles and personal property. Persons from adjoining or neighboring businesses may not be used to meet this requirement. Phones may not be forwarded to an answering service during normal business hours.

(3) When an operator is not open for business and does not have personnel present at the place of business, the operator must post a clearly visible telephone number at the business location ~~((for the purpose of advising))~~ to advise the public how to make contact for the release of vehicles or personal property.

~~((The owner/operator will have personnel at the place of business during business hours to answer phone calls and to~~

release vehicles and/or personal property. Persons from adjoining businesses or neighboring businesses may not be used to meet this requirement. Phones may not be forwarded to an answering service during normal business hours, with the exception of the lunch hour. Lunch hours will be posted and will be consistent on a monthly basis.

~~(2))~~ (4) The owner/operator must maintain personnel who can be contacted twenty-four hours a day to release impounded vehicles within a ~~((thirty))~~ sixty-minute period of time. The personnel must be identifiable as representing the company.

~~((3))~~ (5) All billing invoices ~~((shall))~~ must be numbered and ~~((shall))~~ must contain the following information:

- (a) Date of service and tow truck operator's name.
- (b) Time of departure in response to the call.
- (c) Time service completed.
- (d) Class of tow truck.

(e) If the towing call is for a Washington state patrol request, another police agency, a private impound, or the result of a private citizen request.

- (f) All fees for service ~~((shall))~~ must be itemized.
- (g) The date and time the vehicle was released.

~~((Note:))~~ (6) Yard cards containing the ~~((above))~~ information in subsection (5) of this section may be used for internal control of vehicles by the operator until the vehicle is released, sold, or otherwise disposed of. Yard cards ~~((shall be))~~ are supplemental to, and ~~((shall))~~ do not replace the invoice required above.

(7) A copy of the invoice ~~((shall))~~ must be filed by invoice number at the business location and a copy of any voided invoice ~~((shall))~~ must be retained in this same file. Another copy of the invoice ~~((shall))~~ must be included with the transaction file items identified in RCW 46.55.150.

AMENDATORY SECTION (Amending WSR 04-20-021, filed 9/28/04, effective 10/29/04)

WAC 204-91A-130 Personal property handling procedures. All personal belongings and contents in the vehicle ~~((and))~~ that are not permanently attached ~~((, shall))~~ must be kept intact, and ~~((shall))~~ must be returned to the vehicle's owner or agent during normal business hours upon request and presentation of a driver's license or other sufficient identification. The tow operator must without charge ~~((;))~~ and upon demand, ~~((shall))~~ release personal property not being held for evidence purposes by the impounding agency, to the vehicle's owner or agent during normal business hours of 8:00 a.m. to 5:00 p.m. except for weekends and ~~((legal))~~ state recognized holidays. Release procedures ~~((will))~~ must also follow guidelines as set forth in chapter 308-61 WAC and chapter 46.55 RCW.

The vehicle ~~((and))~~ contents ~~((within))~~, less items listed in WAC and RCW, and personal property not picked up prior to the vehicle going to auction ~~((, stays))~~ must remain with the vehicle ~~((, Personal property will be sold with the vehicle at auction, unless arrangements with the legal/registered owner are made for pickup of items. The items))~~ and may not be kept by the operator or sold at auction to fulfill a lien against the vehicle.

(1) The items of personal property ~~((which))~~ that the state patrol will not accept in response to RCW 46.55.090 include but are not limited to the following:

- (a) Tire chains;
- (b) Spare tire ~~((/))~~ and wheels;
- (c) Used auto parts and ~~((/or))~~ accessories;
- (d) Seat covers;
- (e) Fuel containers;
- (f) Jacks ~~((;))~~ and lug wrenches;

(g) Radios, stereos, and other items attached to the vehicle by bolts, screws, or some other manner ~~((which))~~ that incorporates them to the vehicle ~~((shall))~~. These items must remain with the vehicle;

(h) Refuse, trash, garbage, open or empty alcohol containers and perishable items;

(i) ~~((Trash;~~

~~j) Garbage;~~

~~k) Open alcohol containers;~~

~~H))~~ Soiled or mildewed items, including clothing, shoes, blankets, and tarps ~~((, etc.))~~ having no actual value;

~~((m))~~ (j) Miscellaneous unofficial papers and other items having no actual value.

(2) Items ~~((which))~~ that must be turned over to the patrol within forty-eight hours and inventoried include, but are not limited to:

(a) Money;

(b) Wallets ~~((or))~~ and purses;

(c) Bank ~~((or))~~ and check books;

(d) Bank ~~((or))~~ and credit cards;

(e) Official identification cards, operator's license ~~((, or))~~ and passports;

(f) Jewelry ~~((items));~~

(g) Firearms and any type weapon;

(h) Contraband ~~((and/or))~~ including controlled substances;

(i) Stocks, bonds, money orders, bank certificates, travelers checks, postage stamps, and food stamps ~~((, etc.));~~

(j) Other items of obvious value.

(3) The tow operator ~~((shall))~~ must not remove or damage any vehicle parts permanently affixed to the vehicle, i.e., trunk locks or door locks. The tow operator must allow the registered owner or driver of a vehicle to remove specialized hand controls, provided that their removal does not damage the vehicle.

(4) If a vehicle is equipped with an ignition interlock system as outlined in RCW 46.20.720, the tow operator must contact the ignition interlock company through the phone number provided on the ignition interlock label within forty-eight hours to inform them that the vehicle has been impounded. The ignition interlock system must be removed by a qualified technician and released to the installing company, at no charge and upon proof of ownership, prior to the auction of the vehicle. The removal of the ignition interlock system must not render the vehicle inoperable.

(5) After the certified sale letter has been mailed, the tow operator may dispose of any perishable items or items that may rot, decay, or otherwise cause substantial odor within the interior of the vehicle.

AMENDATORY SECTION (Amending WSR 07-02-025A, filed 12/22/06, effective 1/22/07)

WAC 204-91A-140 Fees. (1) All towing fees ~~((shall))~~ must be based on a flat, hourly rate only and ~~((shall))~~ will apply without regard ~~((for))~~ to the hour of day, day of the week or whether the service was performed on a Saturday, Sunday, or state recognized holiday. The hourly rate for each class of truck ~~((shall))~~ must be the only charge for services performed for initial tows and secondary tows performed during business hours. Charges for secondary tows performed during nonbusiness hours, on weekends or state recognized holidays, if different from the hourly rate, ~~((shall))~~ must be negotiated and agreed upon with the vehicle owner/agent before the tow is made.

The tow inspector will investigate allegations of overcharging. Intentional overcharging or a pattern of overcharging will be cause for suspension. The suspension will remain in effect until the tow operator has presented to the patrol sufficient proof that the aggrieved customer(s) has been fully reimbursed.

(2) The chief ~~((of the state patrol shall))~~ or designee will, prior to October 15th of each year, establish maximum hourly towing rates for each class of tow truck and maximum daily storage rates that tow operators may charge for services performed as a result of state patrol calls. The maximum rates ~~((shall))~~ will be determined after ~~((consulting))~~ consultation with members of the towing industry, review of current private towing rates, and such other economic factors as the chief ~~((may))~~ deems appropriate.

When signed by the chief ~~((or his/her designee))~~ or designee and the tow operator, a contractual agreement to charge no more than the maximum rates ~~((shall))~~ will become part of the operator's letter of appointment. The tow operator may, however, adopt a rate schedule charging less than the maximum rates established by the chief.

The hourly rate ~~((shall))~~ must:

(a) Be the only basis used by the tow operator to compute total charges for towing services.

(b) Apply when ~~((the))~~ a call for a tow is made by the state patrol, including, but not limited to, collisions and impound requests.

(c) Include all ancillary activities ~~((such as))~~ including, but not limited to, removal of glass ~~((and))~~, debris, and vehicle fluids less than one gallon from the roadway and any other area referred to as the "scene or incident," necessary winching, dolly service, drive line removal, ~~((installing))~~ installation of chains on the tow truck, installation of portable lights, vehicle hookup for towing or transporting, tire replacement ~~((on vehicle to be towed))~~ and standby time. ~~((Tow companies))~~ Before leaving any collision or incident, the tow company must advise the department of transportation ~~((and/or))~~, the patrol or local road department of all fluid spills ~~((before leaving the scene that they will not clean up. Tow companies must document and file information in the vehicle transaction file))~~ greater than one gallon.

(d) ~~((Be considered to))~~ Include the labor of one person per truck. When responding with a class "C" or a S-1 rotator truck to a major collision~~((s and))~~ or incident~~((s))~~, a second person is allowed at the hourly labor rate per contract for an extra RTO employee. Any charges for additional labor

~~((and/or))~~ or ancillary vehicles ~~((trailers, pickups, etc.))~~, or both, or for removing debris, cargo, ~~((etc.))~~ or other items must have prior authorization from the legal or registered owner/agent, or a member of the patrol at the scene.

(e) Be computed from the actual time the truck departs in response to a call until the truck returns to its normal area/zone, responds to another call, or the tow yard. The hourly rate ~~((shall))~~ must be applied to the resulting net time and, after the first hour, ~~((shall))~~ must be rounded to the nearest fifteen minutes. The operator may charge the hourly rate for the first hour or any portion thereof. After the first hour, no more than one-quarter of the hourly rate may be charged for each fifteen minutes of tow or service work performed.

(f) Be evenly divided between vehicles transported when class "E" trucks are used for multiple towing/recovery (one on bed, one in tow) from the same location.

(3) The basic storage fee: ~~((Vehicles shall be measured bumper to bumper; trailers shall be measured tongue to bumper.))~~

(a) ~~((shall))~~ Must be calculated using bumper to bumper measurements for vehicles, and using tongue to bumper measurements for trailers; and

(b) Must be calculated on a twenty-four-hour basis ~~((clock))~~ and ~~((shall))~~ must be charged to the nearest half day from the time the vehicle ~~((arrived))~~ arrives at the secure storage area. Vehicles stored over twelve hours on any given day within the twenty-four-hour ~~((clock shall constitute))~~ period may be charged a full day's storage. Vehicles stored ~~((for))~~ less than twelve hours on any ~~((give))~~ given day, ~~((shall))~~ may only be charged for twelve hours of storage; and

~~((b) shall))~~ (c) Must be the same for all three and four-wheel vehicles twenty feet or less in length; and

~~((e))~~ (d) For vehicles or combinations exceeding twenty feet, the storage fee ~~((shall))~~ must be computed by multiplying each twenty feet of vehicle length, or any portion thereof, by the basic storage fee; and

~~((d) Two wheel))~~ (e) For motorcycles ~~((shall be one-half))~~, operators may charge the basic storage fee for ~~((three and four wheel))~~ vehicles.

(4) After hours release fee. ~~((If an operator or employee is already present, for other reasons, at the storage facility after business hours when a customer arrives, the vehicle and/or property shall be released as if it were during business hours. No "after hours fee" may be assessed.))~~ After hour fees must:

(a) Be based on a flat, hourly rate;

(b) Be applied to the resulting net time and, after the first hour, must be rounded to the nearest fifteen minutes;

(c) Be no more than one-half of the class "A" rate; and

(d) Apply on any weekday after 5 p.m. and before 8 a.m.; Saturday or Sunday; and state recognized holidays. If the operator or employee is called to the place of business specifically for the purpose of releasing the vehicle and/or property, an "after hours fee," ~~((equivalent to one-half of the maximum Class "A" hourly rate,))~~ may be assessed.

(5)(a) Any tow operator who charges the general public (i.e., private citizens) rates lower than those identified in the contractual agreement for the following services ~~((listed below shall))~~ must charge the same lower rate for similar ser-

VICES performed as a result of ~~((state))~~ patrol ~~((originated))~~ initiated calls~~((:))~~:

~~((a))~~ (i) Roadside mechanical service, including, but are not limited to, fuel transfer, tire and belt changes~~((,- etc.))~~;

~~((b))~~ (ii) Disabled vehicle tow/transportation;

~~((c))~~ (iii) Storage;

~~((d))~~ (iv) After hours release fees.

~~((Any such))~~ (b) The price requirement ~~((shall not be imposed for))~~ in subsection (a)(i) through (iii) of this section does not apply to unoccupied vehicle situations in which the owner/operator has had no prior contact with either the state patrol or the tow operator.

(6) Upon redemption of a vehicle, an additional charge may not be assessed for moving or relocating any stored vehicle from inside a tow operator's storage yard to the front of the business establishment.

AMENDATORY SECTION (Amending Order 89-04-ESR, filed 6/23/89)

WAC 204-91A-150 Towing procedure. Officers of the patrol ~~((shall))~~ will obtain towing services to remove damaged or disabled vehicles from the highway or to remove vehicles from the highway with the following limitations:

(1) If the vehicle does not constitute an obstruction to traffic and the owner/operator of the vehicle is present at the scene and appears competent to determine disposition of the vehicle, the owner/operator may, upon request, make his own arrangements for removal. This does not affect rotational positions.

(2) If the vehicle is to be removed from the scene, the owner/operator of the vehicle may make a specific request for a particular tow operator. The request will be honored by the officer of the patrol if the requested tow operator is reasonably available and the request is otherwise reasonable in view of the circumstances at the scene. This does not affect rotational positions.

(3) When the owner/operator of the vehicle makes no specific request, or when the owner/operator is incapacitated or is unavailable, the officer of the patrol ~~((shall))~~ will, when practicable, obtain towing services by notifying the radio communications center and requesting tow service at that location.

(4) The chief ~~((shall))~~ or designee will specify that tow services obtained by the patrol will be on a contractual, rotational, or other basis in specific geographical areas in the state.

(5) For the purposes of rotational or contractual tow requests, an approved tow truck ~~((shall))~~ must be used only in the tow zone designated by the district commander. The patrol may, when tow service is not reasonably available within a given zone, obtain service from an adjacent zone.

(6) The patrol may adopt rules that will allow approved towing firms to establish their own central dispatch centers to dispatch tow trucks at the request of the patrol in selected geographical areas of the state.

(a) These dispatch centers will be the responsibility of those member towing firms that utilize this type of service, and must dispatch the specific company requested.

(b) The patrol communications center will advise the towing dispatch center of the approximate location, ~~((zone number, class of tow truck(s), and))~~ number of tow trucks needed ~~((at the location)), number of occupants, make, model and color of the vehicle, if available, and the reason for the call.~~ The towing dispatch center will be responsible for dispatching the participating firm's tow trucks.

(c) Permanent records of all tow trucks dispatched at the request of the patrol will be maintained by the towing dispatch center for a period of three years.

(7) Tow operators responding to calls from the patrol must be capable of transporting one occupant. In those instances where the occupant is argumentative, disabled, or otherwise incapable of riding in a tow truck, the patrol will provide or obtain alternative transportation.

AMENDATORY SECTION (Amending WSR 94-18-083, filed 9/2/94, effective 10/3/94)

WAC 204-91A-160 Tow zones. Each district commander ~~((shall))~~ will outline geographical areas within ~~((his))~~ their district to be designated as tow zones. The geographical tow zones for each patrol district ~~((shall))~~ will be filed with the ~~((section))~~ patrol. The boundaries established pursuant to this action may be modified as circumstances warrant. Considerations may include, but are not limited to, such factors as the frequency and severity of ~~((accidents))~~ collisions and the frequency of DWI arrests in various areas throughout the district, the volume and pattern of traffic, the availability of tow services, and the accessibility of tow services to the areas of need within each district. Nothing herein ~~((shall))~~ will prevent the patrol from amending tow zones from time to time as required by changing traffic and ~~((accident))~~ collision patterns and other such factors affecting the adequacy of towing service available to the patrol.

AMENDATORY SECTION (Amending WSR 07-02-025A, filed 12/22/06, effective 1/22/07)

WAC 204-91A-170 Minimum tow truck equipment standards. All tow/recovery trucks used by a registered tow operator for public or private impounds or in response to patrol requests ~~((shall))~~ must meet the minimum standards as listed in this section.

~~((Note:))~~ Equipment standards will be effective one year from the date of adoption.

(1) Minimum standards:

(a) All equipment used in conjunction with the tow truck winching system ~~((shall have a working load limit at least twenty-five percent more than the working load limit of the wire rope or equivalent material being used))~~ must be used in such a way as not to exceed the equipment working load limit. All equipment ~~((shall))~~ must comply with the Washington safety and health administration (WSHA) regulation if applicable.

~~((Note:))~~ Industry standards set the working load limit of wire rope or equivalent material at ~~((1/5))~~ one-fifth of ~~((its))~~ the manufacturer's rated nominal or breaking strength.

(b) Each wire rope or equivalent material ~~((shall))~~ must be capable of being fully extended from and fully wound onto its drum. Each wire rope or equivalent material ~~((shall))~~ must

meet the industry standards for specified type of use with equipment.

((Note:)) OSHA (1410.179 (h)(2iia)) requires **no less** than two wraps of rope remain on drum when rope is "fully extended." This is to ensure the full load **never** bears on the rope to drum connection.

(c) ~~((All wire rope or equivalent material meeting industry standards for specified type of use with equipment shall be 6 X 19 or 6 X 37 classification graded "extra improved plow steel" (XIP).~~

Notes: Documentation from the supplier must be kept on file showing the type of wire rope installed and the date of installation for each truck:

~~6 X 37 wire rope classification includes wire ropes with six strands having wire combinations from twenty-seven through forty-nine wires per strand but not more than eighteen outer wires in each strand.~~

~~6 X 19 wire rope classification includes wire ropes with six strands having wire combinations from fifteen through twenty-six wires per strand but not more than twelve outer wires in each strand.)~~

The wire rope on each recovery class truck must be equivalent to a 6 x 19 or 6 x 37 "extra improved plowed steel" (XIP) independent wire rope center (IWRC), and must meet all industry standards for working load limit.

(i) The operator must retain a receipt of purchase from the manufacturer indicating the type and WLL of wire rope, and document the type and date the wire rope was installed on each vehicle.

(ii) Class "A," "D," and "E" trucks may utilize either IWRC or fiber core wire rope.

(d) All wire rope ~~((shall))~~ must be in good working order. The following industry standards for **out-of-service** criteria ~~((shall))~~ will apply:

(i) No more than six randomly distributed broken wires in one rope lay, or more than three broken wires in one strand in one rope lay.

(ii) Excessive abrasion causing the loss of more than one-third the original diameter of an outside individual wire.

(iii) Evidence of rope deterioration from corrosion.

(iv) Kinking, crushing, or other damage that results in detrimental distortion of the rope structure.

(v) Any evidence of heat damage.

(vi) Any marked reduction in diameter either along the entire main length or in one section.

(vii) Unlaying or opening up of a tucked splice.

(viii) Core protrusion along the entire length.

(ix) End attachments that are cracked, deformed, worn, or loosened.

((Note: Hooks must be replaced if the throat opening has increased beyond manufacturer recommendations, the load bearing point has been worn by ten percent, or the hook is twisted by more than ten degrees.))

(x) Any indication of strand or wire slippage in end attachments.

(xi) More than one broken wire in the vicinity of fittings.

(e) Wire rope end connections shall be swaged or, if clamped, ~~((shall))~~ must have a minimum of three forged clamps spaced a minimum of six rope diameters apart and attached with the base or saddle of the clamp against the longer or "live" end of the cable. The "U" bolt will be placed

over the short or "dead" end of the rope and will be of the proper size for the cable being clamped.

~~((Note:))~~ (i) Recovery or tow hooks must be installed, maintained, and used in the manner in which the manufacturer prescribes.

(ii) Recovery or tow hooks must be replaced if the throat opening has increased beyond the manufacturer recommendations, the load bearing point has been worn by ten percent, or the hook is twisted by more than ten degrees.

(iii) Wire rope clamps must be installed and torqued per manufacturer specifications.

(f) All wire rope related equipment, sheaves, etc., must conform to the diameter of the wire rope being used or to the original tow truck equipment manufacturer specifications.

(g) All winching equipment, booms, snatch blocks, etc., ~~((shall))~~ must have permanently affixed durable factory identification, stating the working load limit ~~((WLL))~~. If this identification has been removed or is no longer readable, it is criteria for placing the item out-of-service. Equipment may be reinspected by a recognized recertification company. If the equipment is acceptable, it may be reidentified with a working load limit ~~((WLL))~~ and a recertification company identifier. It will be deemed acceptable if the operator maintains a copy of the certification of winching equipment provided the serial number on the equipment corresponds with the certification provided by the manufacturer.

(h) Snatch block hooks that were manufactured with a retractable safety retention clip must have a functional clip installed.

~~((h))~~ (i) All block and tackle equipment used in the winching system which shows signs of permanent deformation, significant wear or damage is criteria for placing the item out-of-service.

~~((h))~~ (j) All "J" hook chain assemblies must be grade "7" chain or better.

~~((h))~~ (k) Safety chains must only be used for the securing of vehicles to the truck. Must be minimum grade ~~((4"))~~ "7" chain or meet the original manufacturer's recommendations. Safety chain hooks that were manufactured with retractable safety retention clips must have a functional clip installed.

~~((h))~~ (l) Comply with legal lighting, equipment, and license requirements.

~~((h))~~ (m) Portable tail, stop, and turn signal lights for vehicles being towed.

~~((h))~~ (n) Have department of licensing registration and truck numbers painted or permanently affixed to both sides of the truck. Have firm's name, city of address, and phone number permanently affixed to both sides of the vehicle. Letters must be a minimum of three inches high with one-half inch strokes.

~~((h))~~ (o) Have a revolving~~((+))~~, strobe, or intermittent red light with three hundred sixty degrees visibility. Trucks may also be equipped with flashing amber and/or white lights which may be used in conjunction with the red lamps. Additionally, trucks must also be equipped with a warning light visible from the driver seat which is energized when the red revolving light or flashing amber lights are activated.

~~((h))~~ (p) Have a broom, minimum twelve inches wide, with a handle at least four feet long.

~~((p))~~ (q) Have a scoop type shovel, minimum seven inches wide, overall length minimum three feet long and a minimum of a three-gallon hard~~(/)~~ or solid sided receptacle (trash bags of any type will not meet this requirement) able to contain debris typically found at collision scenes without breaking.

~~((q))~~ (r) Be maintained in a reasonably clean condition.

~~((r))~~ (s) Have ~~((two tempered steel pinch bars or equivalent devices, one tapered and one flattened; one at least three feet long and one))~~ at least one steel pinch bar four feet long, tapered on one end and flattened on the other with a minimum diameter of three-quarters of an inch.

~~((s))~~ (t) Have a two-way radio or mobile telephone system capable of communicating with a base station. A citizen band radio does not suffice. A mobile telephone system is acceptable ~~((#))~~ provided that it must:

(i) ~~((The equipment is of a recognized and established manufacture and is properly installed.~~

~~((ii))~~ ~~The equipment is)~~ Be in proper working order and function~~((s))~~ correctly throughout the assigned tow areas for all towing operations including on call drivers.

~~((iii))~~ ~~The equipment does not utilize a siren to signal incoming calls.~~

~~((iv))~~ ~~The equipment is)~~ (ii) Be used in a ~~((correct and))~~ lawful manner.

~~((t))~~ (u) Have one 20 BC rated or two 10 BC rated fire extinguishers accessible and secured on or in the tow truck.

~~((u))~~ (v) Axle weight must comply with the requirements of RCW 46.37.351.

(w) Carry two gallons of absorbent material designed to and capable of absorbing a one-gallon liquid spill from a motor vehicle. For the purposes of this chapter, vehicular liquids consist of motor oil, antifreeze, transmission fluid, and gear oil.

(2) **Class "A" tow trucks:** Trucks that are capable of towing and recovery of passenger cars, pickup trucks, small trailers, or equivalent vehicles. Class "A" tow trucks ~~((shall))~~ must meet the requirements of subsection (1)(a) through ~~((t))~~ (w) of this section and in addition ~~((shall))~~ must have:

(a) A ~~((ten))~~ fourteen thousand five hundred pound minimum manufacturer's gross vehicle weight rating (GVWR).

(b) Dual tires on the rear axle.

(c) A minimum of one hundred feet of three-eighths inch continuous length XIP wire rope on each drum, measured from the point of attachment at the drum to the hook.

(d) A minimum ~~((six))~~ eight-ton boom rating with a single ~~((or dual))~~ hydraulic boom~~((s))~~. Dual winches to control a minimum of two service drums. Class "A" tow trucks currently in-service with those operators holding a current letter of appointment issued by the patrol not meeting the criteria listed in this section will be allowed to remain on the rotation with that company.

(e) A minimum of two snatch blocks rated at 3.4 tons each.

(f) A tow sling or other comparable device made of material and used in such manner so as to protect vehicles being towed or recovered.

(g) A portable dolly or its equivalent for hauling vehicles ~~((that are))~~ not otherwise towable.

(h) If equipped with a wheel lift system, it must have a fully extended working load rating of at least three thousand pounds and a seven thousand pound tow rated capacity.

(i) A minimum of one ten-foot or two five-foot recovery chains used in the winching system and must be minimum grade "7" chain with matching fittings.

(3) **Class "B" tow trucks:** Trucks that are capable of towing and/or recovery of medium size trucks, trailers, motor homes, or equivalent vehicles. Class "B" tow trucks ~~((shall))~~ must meet the requirements of subsection (1)(a) through ~~((t))~~ (w) of this section and in addition ~~((shall))~~ must have:

(a) ~~((Seventeen))~~ Eighteen thousand pounds minimum manufacturer's gross vehicle weight rating (GVWR).

(b) Minimum ~~((ten-ton boom rating, single or dual booms,))~~ of one fourteen-ton single hydraulic boom with two independent winches and drums.

(c) A minimum of one hundred feet of seven-sixteenths inch continuous length XIP IWRC wire rope on each drum, measured from points of attachment at the drum to the hook.

(d) Minimum of four standard release tools (caging stud assemblies).

(e) A minimum of two snatch blocks rated at 4.5 tons each.

(f) A tow sling or other comparable device made of material and used in such manner so as to protect vehicles being towed or recovered.

(g) A portable dolly or its equivalent for hauling vehicles ~~((that are))~~ not otherwise towable when the class "B" tow truck is being used for class "A" tows.

(h) If equipped with a wheel lift system, it must have a fully extended working load limit of at least six thousand pounds and a twenty thousand pound tow rated capacity ~~((when operating as a class B truck. May be equipped with a three thousand pound fully extended working load wheel lift system with a seven thousand pound tow rated capacity if operating as a class A truck)).~~

(i) A minimum of one ten-foot or two five-foot one-half inch diameter recovery chains used in the winching system and must be grade "8" chain with matching fittings.

(4) **Class ~~((B**))~~ "B-2" trucks:** Are trucks rated at over 30,000 GVWR ~~((or more))~~ with air brakes. Class ~~((B**))~~ "B-2" trucks ~~((shall))~~ must:

(a) Meet the requirements of subsection (1)(a) through ~~((t))~~ (w) of this section ~~((and in addition shall)).~~

(b) Have a minimum of one hundred fifty feet of seven-sixteenths inch continuous length XIP IWRC wire rope on each drum, measured from points of attachment at the drum to the hook.

~~((Class B** trucks shall also))~~ (c) Meet the requirements of subsection (3)(b), (d), (e), (f), (g), (h), and (i) of this section. Class "B-2" tow trucks currently in-service with those operators holding a current letter of appointment issued by the patrol not meeting the criteria listed in this section will be allowed to remain on the rotation with that company.

(5) **Class "C" tow trucks and class "C" rotator trucks:** Are trucks that are capable of towing and/or recovery of large trucks, trailers, buses, motor homes, or similar vehicles. Class "C" trucks ~~((shall))~~ must meet the requirements of subsection (1)(a) through ~~((t))~~ (w) of this section and in addition ~~((shall))~~ must have:

(a) A ~~((forty))~~ forty-six thousand pound manufacturer's gross vehicle weight rating ~~((or equivalent))~~ (GVWR).

(b) Tandem rear axle truck chassis (both drive axles).

(c) A minimum of ~~((twenty-five-ton))~~ thirty-ton boom rating with ~~((single or dual booms))~~ a hydraulic boom. Dual winches to control a minimum of two service drums. Class "C" tow trucks currently in-service with those operators holding a current letter of appointment issued by the patrol not meeting the criteria listed in this section will be allowed to remain on the rotation with that company.

(d) A minimum of ~~((one))~~ two hundred ~~((fifty))~~ feet of ~~((nine-sixteenths))~~ five-eighths inch continuous length XIP IWRC wire rope on each drum measured from the point of attachment at the drum to the hook.

(e) Air brakes and a system capable of supplying air to towed vehicles.

(f) A minimum of four standard release tools (caging stud assemblies).

(g) If equipped with a wheel lift system, it must have a fully extended working load limit of at least twelve thousand pounds.

(h) A minimum of one ten-foot or two five-foot five-eighths inch recovery chains used in the winching system and must be grade "8" chain with matching fittings.

(i) A tow sling or other comparable device used in such a manner as to protect the vehicle being towed or recovered.

(j) A minimum of two snatch blocks rated at eight tons each.

(k) **Class "D" tow trucks:** Trucks that are equipped for and primarily used as "wheel lift" or nonrecovery trucks.

Class "D" trucks ~~((shall))~~ must meet the requirements of subsection (1)(a) through ~~((and))~~ (w) of this section and in addition ~~((shall))~~ must have:

(a) A wheel lift ~~((assemble))~~ assembly with a fully extended manufacturer's working load limit of three thousand pounds and a seven thousand pound tow rated capacity.

(b) One winch and drum with one hundred feet of three-eighths inch XIP wire rope meeting class "A" requirements.

(c) One snatch block rated at 3.5 tons.

(d) A minimum of one five-foot recovery chain for use in the winching system and must be a minimum of grade "7" chain with matching fittings.

(7) **Class "E" tow trucks:** Trucks that are primarily designed and intended to transport other vehicles by loading and carrying the transported vehicle entirely ~~((onto))~~ on the truck. These vehicles may be a flatbed, slide back, tilt bed, or rail design truck. Class "E" trucks, unless specifically factory equipped with a side recovery system, are not designed for vehicle recovery and therefore must not be used as a replacement for a class "A" truck unless specifically requested by the patrol. Class "E" trucks ~~((shall))~~ must meet the requirements of subsection (1)(a) through ~~((and))~~ (w) of this section ~~((and))~~.

(a) In addition ((shall)) must have:

~~((and))~~ (i) Four securing devices with a minimum working load limit of three thousand ((nine)) four hundred pounds. The devices ((may be)) must:

(A) Be grade "7" or stronger chain ((minimum grade "7")), wire rope, nylon strap, or steel strap.

~~((The))~~ (B) Have tie downs ((shall be)) attached to the axle, tires, or frame member of the transported vehicle both front and rear. ((All)) Factory style "T" hook tie downs may be used for front and rear securement.

(C) Ensure all tie down ends ((shall be)) are secured to the truck bed or rail in a manner that will prevent movement of the transported vehicle. ((Factory style "T" hook tie downs may also be used (front and rear):

~~((b))~~ (i) One snatch block rated at 3.5 tons.

~~((e))~~ (iii) Dual tires on the rear axle.

~~((d))~~ (b) Class "E" trucks may also be equipped with a sling, tow bar, and/or a wheel lift system.

(i) If equipped with a towing system, the system must have a manufacturers' rating appropriate to the vehicle being towed. If used in a towing mode (as opposed to carrying), a sling, tow bar, and/or wheel lift assembly can be used and must have a manufacturers' rating appropriate to the vehicle being towed.

~~((e))~~ (ii) Class "E" trucks are only required to carry portable lights when used in towing mode.

(c) If factory equipped with a side vehicle recovery system, such system must meet all the winch and wire rope minimum requirements listed for a class "A" truck.

(d) Additional minimum class "E" truck requirements include:

~~((i))~~ Gross vehicle weight rating 14,500

~~((ii))~~ Purchased tonnage 14,500

~~((iii))~~ Winch rating 4 ton

~~((iv))~~ XIP wire rope 50 feet 3/8 inch

~~((v))~~ One five-foot chain use in the winching system and must be a minimum of grade "7" chain with matching fittings.

~~((vi))~~ Car carrier (bed) 17 feet

Note: Bed may be shorter in a collapsed mode, but must be capable of telescoping to a minimum of seventeen feet.)

(i) Fourteen thousand five hundred pound gross vehicle weight rating (GVWR);

(ii) Current licensing and tonnage equal to the maximum combination GVWR;

(iii) Four ton winch rating;

(iv) Fifty feet three-eighths inch XIP fiber core or IWRC wire rope;

(v) One five-foot grade "7" chain with matching fittings for use in winching; and

(vi) Seventeen feet of usable bed capable of carrying vehicles.

(8) **Class "S" tow/recovery trucks:** Tow/recovery trucks that cannot meet the requirements of class "A," "B," "C," "D," or "E" and are not eligible for appropriate waiver as outlined in WAC 204-91A-070(4), may be approved as class "S" (special).

((To have a truck designated as class "S" the tow operator must submit a request for approval through the district commander to the section. The written request shall indicate)) (a) To be designated as a class "S" truck, the operator must submit a request for approval through the district commander to the section which must include:

- (i) Why the truck is needed(-);
- (ii) What ((#) the truck) will be used for((-its));
- (iii) The vehicle size(-);
- (iv) Purchased tonnage ((if appropriate,)) if required;
- (v) Capability(-); and
- (vi) The equipment carried or used with the truck.

(b) The gross vehicle weight rating of the class "S" truck will determine the appropriate equipment required.

If the district commander approves the request, the request will be forwarded with recommendations for equipment and/or operation instructions or limitations to the patrol for review and final approval. If approval is granted, the equipment ((shall)) must be inspected as outlined in WAC 204-91A-040 with reports forwarded in the normal manner.

(Note:) (c) If the provisions of this section require a change in classification for a previously approved tow truck, such change may be made upon the next annual reinspection. In any case, all tow trucks ((shall)) must be correctly classified within one year of adoption of these rules.

(9) Class "S-1 rotator" trucks: Are tow trucks that are capable of recovery, towing, or both of large trucks, trailers, buses, motor homes, or similar vehicles. Class "S-1 rotator" trucks must meet the requirements of subsection (1)(a) through (w) of this section and in addition must have:

(a) A fifty-two thousand pound manufacturer's GVWR.

(b) Tandem or triple rear axle truck chassis with at least two drive axles.

(c) A minimum of forty ton rotating boom rating with a single boom.

(d) A minimum of two hundred feet of five-eighths inch continuous length XIP IWRC wire rope on two drums measured from the point of attachment at the drum to the hook.

(e) Air brakes and a system capable of supplying air to towed vehicles.

(f) A minimum of four standard release tools (caging stud assemblies).

(g) Equipped with a wheel lift system and have a fully extended working load limit of at least twelve thousand pounds.

(h) A minimum of one ten-foot or two five-foot five-eighths inch recovery chains used in the winching system and must be a minimum grade "8" chain with matching fittings.

(i) A tow sling or other comparable device used in such a manner as to protect the vehicle being towed or recovered.

(j) A minimum of two snatch blocks rated at eight tons each.

AMENDATORY SECTION (Amending WSR 07-02-025A, filed 12/22/06, effective 1/22/07)

WAC 204-91A-180 Additional vehicle towing/operator qualifications, restrictions, and requirements. In addition to the requirements contained in WAC 204-91A-170, tow truck operators appointed pursuant to this chapter ((shall)) must conform to all laws and administrative rules pertaining to the tow industry and ((shall)) must observe the following practices and procedures:

(1) When called by the patrol during normal business hours, the tow truck operator ((with)) must dispatch a tow truck, from within the assigned zone((-)) within five minutes

((~~during normal business hours~~)) after receiving the call. Tow trucks must be registered to and belong to the particular tow business that is called and assigned only to that tow zone ((only)). If ((the)) an officer at the scene deems it necessary, the officer may authorize additional assistance ((~~may be authorized~~)) from a registered tow truck operator outside of the tow zone.

(2) ((~~Tow trucks dispatched at the request of~~)) When called by the patrol after normal business hours ((will be on the move)), the tow truck operator must dispatch a tow truck from within the assigned zone within fifteen minutes after receiving the call.

(3) The tow truck that is dispatched ((will)) must arrive at the stated location within a reasonable time considering distance, traffic, and weather conditions.

(4) If for any reason a tow operator is unable to dispatch a tow truck within the stated time or if the dispatched truck will be delayed for any reason, the operator ((shall so)) must advise the patrol stating the reason and estimated time of arrival. In the event the tow truck fails to arrive at the scene within a reasonable time, the patrol will contact another tow operator to respond to the scene and will cancel the original tow.

(5) A tow operator on rotation who is unable to dispatch or arrive within the times stated in subsections (1), (2), (3), and (4) of this section will forfeit ((his)) the operator's turn and be placed at the bottom of the rotation list as if ((he)) the operator had responded.

(6) Consistent refusal or failure of the appointee to respond to calls from the patrol for towing services ((and/) or to provide the requested services may result in the suspension or revocation of the tow operator's letter of appointment.

(7) The tow operator ((shall)) must advise the appropriate patrol office when the tow company is temporarily unavailable to respond to rotational calls with a class "A," "B," or "C" tow truck. Unavailability may occur due to conditions ((such as)) including, but not limited to, other tow truck commitments, tow truck disabled and/or under repair, unforeseen driver shortage due to illness((-ete)). The period of unavailability may last less than an hour or much longer. The tow operator will give the reason for unavailability and approximately when the company will be available to respond to calls.

The tow company will be removed from the rotational list and will not be called until the operator advises the patrol that the company is once again able to respond to calls with an "A," "B," or "C" class truck. In all such cases, the tow company will resume its normal position on the rotational list without regard to any missed calls or its position prior to being unavailable.

(8) The tow operator ((with)) must advise the patrol whenever a private call is received for a tow with circumstances that indicate that the tow is for a vehicle ((which)) that has been involved in a collision, incident, or equipment breakdown on the public roadway. The tow operator also ((with)) must advise the patrol of all private calls to motor vehicle collisions on private property resulting in bodily injury or death.

(9) The tow operator ((with)) must notify the patrol before moving any vehicle involved in a collision on a public

highway under the jurisdiction of the patrol as defined in the motor vehicle code, Title 46 RCW, or where it appears that the driver of the vehicle to be moved is under the influence of intoxicants or drugs, or is otherwise incapacitated.

~~((10))~~ (10) Other than a service patrol established and funded by the department of transportation, a tow operator ~~((shall))~~ must not solicit tow or roadside services by patrolling the public roadways searching for disabled vehicles or vehicles involved in a traffic collision.

~~((11))~~ (11) When the patrol is in charge of a collision scene or other such incident, a tow operator ~~((shall))~~ must not respond to such scene unless his services have been specifically requested by the patrol, the driver/owner, or his agent.

~~((12))~~ (12) The tow operator ~~((shall))~~ must be available, or will ensure that specific employees are available, twenty-four hours a day for the purpose of receiving calls or arranging for the release of vehicles. Business hours will be posted conspicuously at the operator's place of business so they can be seen during business hours and nonbusiness hours. A copy will also be sent to the section and patrol district commander of the district in which the tow operator does business. Changes of business hours will be sent to the department, the section, and the patrol district commander ten days before their effective date.

~~((13))~~ (13) The operator ~~((shall))~~ must post a current copy of tow and storage rates, on a form approved by the department and the patrol, in the following locations:

(a) At the entrance to the place of business, in a conspicuous location, plainly visible and ~~((readable by members of))~~ capable of being read by the public, whether the business is open or closed. If, in order to meet this requirement, the rate sheets must be placed in a location, exposed to the elements, they ~~((shall))~~ must be protected so as to remain legible.

(b) Inside the business location, where business is commonly transacted. The rate sheets ~~((shall))~~ must be posted in such manner as to be clearly and plainly visible and ~~((readable))~~ read at all times by customers of the business.

(c) A copy of the current rates will be sent to the department, the section, and the patrol district commander of the district in which the tow operator has applied for a letter of appointment. Notice of any change(s) in service rates will be forwarded to the department, the section, and the district commander of the area ten days before the effective date of the changes. Charges made for towing services arising from calls initiated by the patrol ~~((shall))~~ must be consistent with current posted towing rates and ~~((shall))~~ must be based only upon services listed on the prescribed form.

(d) In the event that an operator has only a class "B" truck and utilizes it for class "A" and "B" type tows, the operator ~~((shall))~~ must file a rate sheet that specifies the rates charged for the different types of tows.

~~(e)~~ (e) Whenever any operator utilizes a larger truck than the towed vehicle warrants, the operator ~~((shall))~~ must charge fees based on the size of the towed vehicle not the size of the truck used.

((Example: A class "C" truck is used, at the operator's discretion, to tow a class "B" size vehicle. The fees charged shall be those for a class "B" truck NOT a class "C".

~~((13))~~ (14) Charges made for towing services arising from calls initiated by the patrol ~~((shall))~~ must not exceed the maximum rates established by the chief.

~~((14))~~ (15) Unless other arrangements are made with commissioned patrol personnel at the scene, all impounded vehicles ~~((shall))~~ must be taken to the tow operators nearest approved storage location.

~~((15))~~ (16) The tow operator will maintain, for three years, records on towed and released vehicles which were towed at the request of the patrol. ~~((This))~~ Such records will be available for inspection by the patrol during normal business hours at the operator's place of business. Records will include, but not be limited to:

(a) An itemized receipt of all charges for the services provided.

(b) ~~((An))~~ A tow impound record inventory ~~((sheet))~~ or copy thereof made out by the trooper at the scene of the tow and signed by the operator.

(c) All other records required by the department.

~~((Such records will be available for inspection by the patrol during normal business hours at the operator's place of business.~~

~~((16))~~ (17) The tow operator will sign ~~((an))~~ the tow impound inventory ~~((sheet))~~ record made out by the patrol officer at the scene.

~~((17))~~ (18) Tow operators will obtain and maintain current registration as a licensed tow truck operator pursuant to RCW 46.55.020.

~~((18))~~ (19) Tow operators ~~((shall))~~ must perform towing tasks competently. The standard of competence ~~((shall))~~ will be that quality of work which is accepted as efficient and effective within the towing industry. The tow operator must ensure tow truck drivers responding to calls initiated by the patrol have completed a minimum of one four-hour tow truck driver training course every five years. The operator must keep a file documenting training.

~~((19))~~ (20) No tow operator, employee, or agent ~~((shall))~~ will misappropriate, wrongfully convert to his/her own use, or abuse property belonging to another and entrusted to his/her care or storage.

~~((20))~~ (21) Tow truck operators ~~((will))~~ must use emergency lights to warn other motorists only when at the scene of collisions, disabled vehicles, and/or recoveries. Such lighting ~~((shall))~~ must not be used when traveling to or from the scene.

~~((Tow truck operators whose duties are performed in areas and under circumstances where they are exposed to the danger of moving vehicles shall wear work vests of highly visible materials, or equivalent distinguishing apparel as outlined in department of labor and industries, WAC 296-155-200(5).~~

~~((21))~~ (22) Tow truck operators ~~((shall be responsible for cleaning))~~ are required to clean collision/incident scenes of all vehicle glass ~~((and))~~ debris, and vehicle liquid spills of one gallon or less.

~~((22))~~ (23) Specific operating restrictions and/or requirements, by truck class, are as follows:

(a) The standard air brake release tools (caging stud assemblies) required to be carried in the class "B," "B-2," and "C" trucks ~~((shall))~~ must be used, whenever necessary, to pre-

serve potential evidence involving brake equipment or adjustment settings. When an operator is attempting to move a vehicle equipped with locked spring parking brakes that cannot be released by external air supply, the caging assemblies (~~shall~~) must be used to release the brake tension. Under no circumstances (~~shall~~) will the towed vehicle's brake assemblies or adjustments be moved or disturbed in any way that will prevent later determination of the precollision or incident settings.

(b) Class "B" or "B-2" trucks in excess of twenty-three thousand pounds gross vehicle weight rating need not carry dollies when towing or recovering heavy vehicles.

~~((e) Class "D," "E," and "S" trucks shall not be used to respond to initial calls unless specifically authorized by patrol personnel at the scene or by local written policy approved by the district commander.~~

(d) Class "E" trucks shall:

(i) ~~Have, when used for multiple vehicle towing/recovery (one on bed, one in tow) from the same location, all invoice charges evenly divided between the vehicles so transported;~~

(ii) ~~Not be operated in excess of either gross vehicle weight rating or purchased tonnage weight limits;~~

(iii) ~~Be required to carry its portable lights only when used in a towing mode.~~

~~(23))~~ (24) Whenever a "special event or overflow" storage lot is approved by the department, the patrol and appropriate city/county jurisdictions, the following must apply:

(a) The operator (~~shall~~) must maintain personnel at the lot twenty-four hours per day for security and vehicle and/or personal property release. If necessary, reimbursement for such labor (~~shall~~) must be part of the contract for the "special event" if appropriate or by amended storage rates with a waiver of the ten-day rate change notice requirement approved by the department and the patrol.

(b) At the conclusion of a "special event or overflow" situation, all vehicles not reclaimed by the owner (~~shall~~) must be towed to the operator's regular storage facility and processed in the normal fashion. No additional fee (~~shall~~) must be charged for towing the vehicle from the overflow lot to the regular storage facility.

~~((24))~~ (25) All work performed by the operator and/or employee (~~shall~~) must be in the most professional and expeditious manner. ~~((All invoices and other required forms shall be completed accurately and promptly.~~

~~(25))~~ Tow operators and employees must refrain from any unprofessional actions while towing for or conducting towing business at the request of the patrol. The actions include, but are not limited to, any of the following:

(a) Lack of service, selective service, or refusal to provide service which the operator should be capable of performing;

(b) Exhibiting any signs of either alcohol, drug use, or both;

(c) Displaying any objects, logos, slogans, or graphic material within the view of the public that contains any form of pornography, profanity, or prejudice toward any person or group of persons.

(26) Tow operators (~~shall~~) must, when required by the patrol or the department, cause to be displayed on each

approved truck, decals indicating truck class, patrol district, and/or assigned tow zone.

(27) When responding to a patrol call, tow truck operators must wear clothing identifying the company and driver's name.

(28) Tow truck operators performing recovery, impounding, or towing must wear work vests of highly visible materials, or equivalent distinguishing apparel when outside of the towing vehicle as outlined in WAC 296-155-200(5) and Code of Federal Regulations, Title 23 Part 634.3.

(29) Tow truck operators must not display any sign, shield, marking, accessory, or insignia on uniforms or vehicles indicating the equipment or vehicle marking are similar to or belong to any public law enforcement agency. Tow truck operators must not engage in any advertisement indicating an official connection with the patrol or other law enforcement agency.

WSR 09-05-085

PROPOSED RULES

DEPARTMENT OF TRANSPORTATION

[Filed February 17, 2009, 2:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-23-039.

Title of Rule and Other Identifying Information: WAC 468-60-010 Trip reduction performance program.

Hearing Location(s): Washington State Department of Transportation, Commission Board Room 1D2, 310 Maple Park Avenue S.E., Olympia, WA 98504, on March 24, 2009, at 1:00 p.m.

Date of Intended Adoption: April 1, 2009.

Submit Written Comments to: Hiep Tran, P.O. Box 47387, Olympia, WA 98504-7387, e-mail tranh@wsdot.wa.gov, fax (360) 705-6862, by March 20, 2009.

Assistance for Persons with Disabilities: Contact Grant Heap by March 20, 2007 [2009], TTY (360) 705-7760.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updating this chapter of the WAC will clarify the intents and requirements of the trip reduction performance program.

Reasons Supporting Proposal: The revisions will clarify the program and enhance and streamline the program implementation elements.

Statutory Authority for Adoption: RCW 70.94.996.

Statute Being Implemented: RCW 70.94.996.

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

Name of Proponent: Washington state department of transportation, public transportation division, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Hiep Tran, WSDOT headquarters, (360) 705-7806.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The trip reduction performance program is a voluntary program therefore it does not have economic impact to small business.

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

February 17, 2009
Stephen T. Reinmuth
Chief of Staff

AMENDATORY SECTION (Amending WSR 08-06-079, filed 3/4/08, effective 4/4/08)

WAC 468-60-010 Trip reduction performance program. ~~((The Washington state department of transportation (WSDOT), together with the commute trip reduction (CTR) board, will administer the trip reduction performance program (TRPP). This program is designed to create cost effective trip reduction projects that reduce the number of commute vehicle trips and commute vehicle miles traveled (VMT). The 2003 legislature created this program to provide financial incentives or compensation to organizations that implement and administer cost effective projects that increase the capacity of the transportation system by reducing the number of vehicle trips and miles traveled for commute purposes. WSDOT awards funds for cost effective trip reduction projects, based on a price that the project charges WSDOT to reduce an annualized trip, and the projected number of annual commute vehicle trips and commute VMT reduced during the project period (the project goal). Up to half of the award amount is available through reimbursement for start up costs. WSDOT will determine the remaining award amount, as well as any bonus funds, based on the actual performance of the project in meeting or exceeding the goal. As necessary, WSDOT will revise these rules periodically to create a more efficient, cost effective, trip reduction program.))~~ The legislature established the trip reduction performance program (TRPP) in 2003 to create cost-effective projects that increase the capacity of the transportation system by providing financial incentives to commuters to reduce the number of vehicle commute trips and commute vehicle miles traveled (VMT). WSDOT awards TRPP funds to cost-effective trip reduction projects based on the projected cost per annualized vehicle commute trip and commute VMT reduced during the project period. WSDOT will provide new projects up to fifty percent of the award amount as start up funds on a reimbursable basis. WSDOT will determine the remaining award amount, as well as any bonus funds, based on the actual number of vehicle commute trips and commute VMT reduced.

(1) **What are trip reduction performance projects?** WSDOT awards funds on a competitive basis to organizations that create cost-effective projects designed to reduce vehicle commute ((vehicle)) trips and commute VMT ((based on the morning commute)). The organization will receive funds based on the price associated with each vehicle commute trip and commute VMT reduced and overall project performance. The TRPP is available to entrepreneurs, private employers, public agencies, nonprofit organizations, developers, and property managers who ((find new (to the area,)) implement sustainable ways to reduce the number of vehicle commute trips and ((vehicle miles traveled per person for commuting)) commute VMT, and who provide financial

incentives to their own or other employees for ridesharing, public transportation, nonmotorized transportation, telework, and alternative work schedules.

(2) **Definitions.** For purposes of ~~((this section))~~ the implementation of TRPP projects, the following definitions apply.

(a) A *financial incentive* is defined as a policy, procedure, capital investment or payment intended to provide ~~((employees))~~ commuters a financial gain if they use commute ((in ways)) options other than by driving alone. ~~((For example,))~~ The eligible incentives may include, but are not limited to: Providing a free or reduced cost of transit pass, ((reducing the)) free or reduced parking charge for rideshare vehicles((;)) and initiating parking charges for ((employee)) commuter vehicles((, reducing the cost of a transportation service such as a transit pass)) to discourage drive-alone commuting, paying the membership fee for a car sharing program, providing ((employees)) commuters with alternative work ((week)) schedules, providing a direct cash payment, reducing the insurance rate for ((employees)) commuters who reduce the use of their vehicle for commuting, or reducing the distance ((an employee)) a commuter travels to work by reassigning their work location to a worksite closer to their home.

(b) *Car sharing* means a membership program intended to offer an alternative to car ownership ~~((under which persons or entities that become))~~. An individual or organization member((s are)) is permitted to use vehicles from a fleet on an hourly basis.

(c) *Telework* means a program where ~~((an employee))~~ a commuter performs work functions that are normally performed at a traditional ~~((workplace))~~ worksite, but does so instead at the ~~((employee's))~~ commuter's home, or at a ~~((work))~~ telework center that is located closer to the ~~((employee's))~~ commuter's home than to the ~~((employee's workplace))~~ commuter's worksite, for at least one day a week ~~((with the effect of reducing))~~ in an effort to reduce the number of trips to the ((employee's workplace)) commuter's worksite.

(d) A *person-trip* is ~~((one))~~ a one-way commute trip made by one person to get to work. A trip avoided because the ~~((employee))~~ commuter teleworks, or because the ~~((employee))~~ commuter works ((a compressed work week)) an alternative work schedule, is also considered a person-trip.

(e) A *mode* is the means of transportation ~~((an employee))~~ a commuter took to work. Driving alone, carpooling, working an alternative work schedule, teleworking, bicycling, etc., are examples of modes.

(f) A *measurement* records the number of person-trips made by ~~((employees))~~ commuters commuting to work during a period such as a week or month, using each specific transportation mode. A measurement also records the distance each ~~((employee))~~ commuter commutes to work; the type of work schedule or ~~((compressed work week))~~ alternative work schedules that each ~~((employee))~~ commuter works; and the number of persons in the ~~((employee's))~~ commuter's carpool or vanpool if the ~~((employee))~~ commuter uses one of these modes. WSDOT may require that a measurement record additional information necessary to evaluate the project performance.

(g) *Mode share* is the percentage of person-trips made by a population of ~~((employees))~~ commuters commuting to work using specific modes of transportation. For example, if twenty-three percent of the person-trips made in commuting to a worksite are by carpool, the carpool mode share for that worksite is twenty-three percent.

(h) A *mode split* is the set of mode shares for a population of ~~((employees, such as those))~~ commuters commuting to a worksite. The sum of the mode shares for the population is one hundred percent. When calculating mode shares and mode split from measurement data, WSDOT makes adjustments as necessary for missing data, days reported by ~~((employees))~~ commuters as not worked, inconsistency between commute mode and vehicle occupancy data, and reported use of ~~((compressed))~~ alternative work ((weeks)) schedules. When making these adjustments, WSDOT follows CTR board guidelines when these are available, and makes reasonable adjustments otherwise.

(i) *Vehicle commute ((vehicle)) trip((s))* is the number of vehicle trips made to bring ~~((employees))~~ commuters to work at a worksite or specified collection of worksites on an average weekday morning, using the mode split from a measurement. WSDOT will provide information to applicants on calculating commute vehicle trips.

Calculation: WSDOT calculates a vehicle commute trip by dividing a person-trip by the number of persons in the vehicle. For passenger cars, trucks, vans, and motorcycles, WSDOT calculates the vehicle occupancy from measurement data using CTR board guidelines, or from equivalent data as agreed by WSDOT and the applicant. For buses, WSDOT assumes an average occupancy of twenty-five persons. If the CTR board issues guidelines for using bus occupancy, WSDOT will follow the board's guidelines in subsequent projects. A person-trip made by bicycling, walking, or other nonmotorized means of transportation; by riding a train; or avoided either because the ~~((employee))~~ commuter teleworks or because the ~~((employee))~~ commuter works ~~((a compressed))~~ an alternative work ((week)) schedule, is not considered as using a motor vehicle under this definition. If ~~((employees))~~ commuters at a worksite work at jobs that last less than a full year, WSDOT annualizes the ~~((commute))~~ vehicle commute trip((s)). For example, if the jobs at a worksite last for only nine months, then WSDOT will annualize the ~~((commute))~~ vehicle commute trip((s)) as three quarters of the ~~((commute))~~ vehicle commute trip((s)) that would be calculated if the ~~((employees))~~ commuters worked for a full year. WSDOT then will use the annualized values in determining project performance and payments.

(j) *Reduced ((commute)) vehicle commute trip((s))* is the reduction in the number of ~~((commute))~~ vehicle commute trips between a baseline measurement and a ~~((subsequent))~~ performance measurement. WSDOT will provide information to applicants on calculating reduced ~~((commute))~~ vehicle commute trips.

Calculation: WSDOT calculates reduced ~~((commute))~~ vehicle commute trips by subtracting the number of ~~((commute))~~ vehicle commute trips made by the ~~((employees))~~ commuters in the ~~((subsequent))~~ performance measurement, from the number of vehicle trips the same number of

~~((employees))~~ commuters would have made if they had commuted using the mode split from the baseline measurement.

(k) *Commute ((vehicle-miles-traveled)) VMT per person ((VMT))* is the average daily vehicle commute trips each ~~((employee))~~ commuter makes in a motorized vehicle, multiplied by the ~~((employee's))~~ commuter's one-way distance to work, summed for all ~~((employees))~~ commuters, and the sum then divided by the number of ~~((employees))~~ commuters.

(l) *Reduced commute VMT* is the reduction in the number of commute ~~((vehicle-miles-traveled))~~ VMT per person between a baseline measurement and a ~~((subsequent))~~ performance measurement. WSDOT calculates reduced commute VMT by subtracting the commute ~~((vehicle-miles-traveled))~~ VMT per person in the ~~((subsequent))~~ performance measurement, from the commute ~~((vehicle-miles-traveled))~~ VMT in the baseline measurement.

(m) A *project goal* is the total number of ~~((commute))~~ vehicle ~~((trips))~~ commute trips and commute VMT that a ~~((TRPP))~~ project proposes to reduce when it applies for TRPP funding.

(n) *An interim goal* is the number of commute vehicle trips that a TRPP project proposes to reduce for specified periods shorter than the project's entire duration. Payments for interim goals are subject to WSDOT approval.

~~((o))~~ *Performance* is defined as ~~((the reduction in the number of commute vehicle trips to work locations in the TRPP project, with credit given for reductions in the commute vehicle miles traveled by employees to those work locations. WSDOT will provide directions for calculating this credit as part of the materials used when applying for TRPP funds))~~ progress toward meeting the project goal to reduce vehicle commute trips and commute VMT.

~~((p))~~ *Agent* is an organization or individual who represents the private employer, public agency, nonprofit organization, developer, or property manager and is charged with managing the TRPP project or providing the ~~((employee))~~ commuter the financial incentive.

~~((q))~~ *The price per trip (or trip price)* is the amount that WSDOT agrees to pay for each annualized vehicle commute ~~((vehicle))~~ trip reduced by a TRPP project, up to the number of trips proposed in the project goal. ~~((WSDOT will set a maximum price per trip that it is willing to pay, that does not exceed the estimated annualized cost of providing new roadway capacity. WSDOT may vary the maximum cost by year. WSDOT will provide the maximum cost per trip as part of the documents for applying for TRPP funds.))~~

~~((r))~~ *A cost-effective ((application)) project* is one that defines a project that will reduce ~~((commute))~~ vehicle commute trips and commute ~~((vehicle-miles-traveled))~~ VMT at ~~((a price equal to or less than WSDOT's maximum price per trip.))~~

(s) A basic project is a project that lasts up to two years.

(t) A multi-year project is a project that lasts from three to five years.

~~((u))~~ less than the cost of providing new highway capacity and reduce traffic congestion in the project area.

~~((v))~~ *The award amount* for a project is ~~((equal to the price per trip multiplied by the project goal))~~ the amount WSDOT awards to a project. It will be based on the proposed cost per vehicle commute trip and commute VMT reduced, as well as

program funding levels and the project's scoring in the application process.

(s) *Project partnership* is a relationship between two or more organizations that is characterized by mutual cooperation, responsibility for the development and implementation of a project.

(3) **Who can apply?** TRPP funds are available on a statewide competitive basis for entrepreneurs, private employers, public agencies, nonprofit organizations, developers, and property managers or their agents who create cost-effective trip reduction projects. To be eligible for TRPP funds, the applicant must provide financial incentives to their own or other ~~((employees))~~ commuters for ridesharing, using public transportation, car sharing, nonmotorized commuting, telework, and/or ~~((compressed))~~ alternative work ~~((weeks. The statewide funds are available on a competitive basis for private employers, public agencies, nonprofit organizations, developers, and property managers or their agents who create cost-effective trip reduction projects))~~ schedules.

(4) **What kinds of projects will be funded?** To receive funds, ~~((the project must meet the program requirements and rank highly in the competitive review. The applicant determines the actual scope and design of the project. New and existing projects are eligible for selection. The primary focus of the review committee will be to select sustainable, cost-effective trip reduction projects, and if they are new or innovative, they will be given additional consideration.~~

(5) **How are the program funds appropriated?** The Revised Code of Washington, RCW 70.94.996 authorizes the legislature to appropriate funding for this program.

(6) **Are any of the TRPP funds set aside for specific use?** Any funds appropriated to TRPP beyond the initial program level of seven hundred fifty thousand dollars per year may be used for projects within growth and transportation efficiency centers (GTEC) and for performance of local jurisdictions:

(a) Up to eighty-five percent of any appropriated funds in excess of the initial program level will be available for GTEC projects.

(b) GTEC projects will be subject to the same competitive processes and rules as projects funded with initial program funds.

(c) Fifteen percent of any appropriated funds in excess of the initial program funds will be made available for CTR affected jurisdictions as local jurisdiction performance funds.

(d) Appropriated funds in excess of the initial program funds will be made available to proposals outside of GTECs if there are funds remaining after all proposals within GTECs that fit the program structure for viable, cost-effective, trip reduction projects have been funded.

(e) Any appropriated funds in excess of the initial program funds and any initial program funds that remain after start up funds, performance funds, and performance bonuses are paid will be used for local jurisdiction performance funds.

(f) WSDOT will determine the jurisdiction performance levels, and payments to the jurisdictions for performance will not exceed the maximum price per trip allowed by WSDOT.

(7) **How will the TRPP funds be distributed?** A minimum amount of the TRPP funds is to be available for each of three funding zones: Ten percent of available funds for Cen-

tral Puget Sound (CPS) (King, Pierce, Snohomish counties); ten percent of available funds for non-Central Puget Sound applications, and ten percent of available funds for statewide applications (applications with worksites in the CPS and outside the CPS). The remaining funds will be awarded based on the project's ranking and available funds. WSDOT is bound to this distribution only if there are applications that fit the program structure and are viable, cost-effective trip reduction projects. This applies to all current and future funds.

(8)) applicants must fully complete a TRPP proposal form provided by WSDOT and submit the form to WSDOT within the timeline set forth in the call for projects.

(5) **How much money will be awarded to individual projects?** WSDOT awards funds ~~((will be allocated))~~ based on the estimated ~~((commute))~~ vehicle commute trip ~~((s))~~ and ~~((miles traveled reduced for))~~ commute VMT that the project proposes to reduce. The applicant will provide an estimate of the anticipated performance ~~((their goal))~~ in reducing vehicle commute trips and commute VMT, and the price per trip that the ~~((project))~~ applicant will charge WSDOT for reducing a commute vehicle trip. Once the selection committee ranks the projects, WSDOT will award funds based on committee ranking until half of the program funds are awarded in each fiscal year or all cost effective projects are funded. A project for a single worksite may not receive more than one hundred thousand dollars per fiscal year.

~~((9))~~ (6) **How much money can be awarded to ((applications)) projects with multiple partners?** Each organization (agency or employer) on the ~~((application))~~ proposal may receive up to one hundred thousand dollars with the total amount not to exceed two hundred fifty thousand dollars per ~~((application))~~ project proposal, per fiscal year ~~((as identified in RCW 70.94.996)). ((If additional funds are appropriated by the legislature for this program,))~~ WSDOT may exceed this organization maximum award at their discretion if the legislature appropriates additional funds for this program.

~~((10))~~ (7) **Who can apply for a ((partner-ship))?** An agent ~~((who will))~~ or organization on behalf of agencies or employers provides the financial incentive to the ~~((employee))~~ commuter can submit a project partnership ~~((application))~~ proposal and be the prime recipient for the project. Project partnership proposals must include a description of each partner's roles, responsibilities and assurances for the project.

~~((11))~~ (8) **How does the applicant apply for the TRPP funds?** WSDOT will notify eligible applicants of the open period for ~~((applications))~~ proposals. WSDOT may open more than one ~~((application period))~~ call for TRPP proposals per year depending on ~~((whether all funds are awarded))~~ TRPP funding availability. To apply for TRPP funds, applicants ((apply by submitting a completed)) must complete a TRPP ((application)) proposal form during ((an open application)) the call for TRPP proposals period. The ((TRPP ((application)) proposal form is available upon request from WSDOT. WSDOT recommends that applicants within a CTR affected area notify the jurisdictional authority, e.g., regional transportation planning organization (RTPO), county, city, or transit agency, ((that they are submitting an application for TRPP funds)) so that they can coordinate the

project with local trip reduction strategies and plans. This provides an opportunity for project coordination and potential partnership.

(a) Applicants may submit more than one project (~~(application))~~ proposal for consideration; however, ~~((when))~~ the combined sum of all the project costs ((are combined, they)) cannot exceed what the applicant is eligible to receive.

(b) ~~((Applicants may submit an application that will cover one or two years (basic project) or apply for projects that cover three to five years (multi-year projects):~~

~~(e))~~ All projects must have a baseline measurement and a performance measurement. All applicants must describe how they will measure performance for their project. ~~((Every project must have a baseline measurement and a final measurement. Additional measurements are required for multi-year projects, and interim measurements are optional for all projects:))~~ Projects may be rated based on the effectiveness and efficiency of the proposed measurement method. WSDOT may require projects to conform to WSDOT-approved measurement tools and methods.

~~((d))~~ (c) All applicants must ((describe how and when they will implement their project.

(e) For basic projects, applicants must estimate the number of vehicle trips and VMT reduced for each fiscal year as well as the project total.

(f) In the case of multi-year projects, applicants must estimate the number of vehicle trips and VMT reduced for each year, as well as a project total.

~~(12))~~ fully and accurately complete a TRPP proposal form provided by WSDOT.

~~(9)~~ Can a ((basic)) project be renewed? ((A basic)) WSDOT may approve renewal for a project that performs well ((may be approved for a renewal)); however, the ((contractor)) applicant must ((reapply)) complete a TRPP proposal for the project. If the ((renewal is approved by the)) proposals review and selection committee((;)) approves the project, WSDOT may require the applicant ((may be required)) to conduct ((another)) a new baseline measurement for the project. Renewal ((applications)) proposals may include a proposed adjustment to the trip price and/or project goal. Adjustments to the trip price or goal are subject to ((approval by)) WSDOT. All ((basic)) projects are subject to termination if the project is not performing according to expectations or is not continuing to work towards the reduction of commute trips.

~~((13))~~ (10) How will the ((application)) proposal be reviewed? WSDOT staff will review all proposals and make recommendations to the selection committee comprised of members invited by the chair of the CTR board ((will select a committee)). The committee will be comprised of between six and nine members ((will review the applications and selection. The project selection committee will)), which include at least one member ((of)) from the CTR board, ((at least)) one member from Central Puget Sound ((and)), one member from the rest of the state, ((at least)) one employer representative, ((at least)) one transit ((member and at least)) agency representative, one city government representative((The committee will include at least)), one member from the CTR technical advisory group ((TAG), a member of WSDOT familiar with performance measurement)), and ((an

RTPO)) one regional transportation planning organization representative. To maintain the integrity of the proposals review and selection process, no project applicants may serve on the proposals review and selection committee. The ((award)) committee will review and select projects based on staff review and the criteria ((as defined in subsection (12) of this section.

~~(14) What are the review criteria?~~ The applications will be reviewed based on the following criteria:

(a) ~~Cost effectiveness:~~ Does the project have a high likelihood of achieving its benefits at a relatively low expenditure of TRPP funds? Are the projected benefits achievable at a cost less than providing the equivalent roadway capacity?

(b) ~~Sustainability:~~ If this project is funded, will its benefits continue after the funding element of the project has been completed? Do the project design and partnerships indicate a high probability for continuing the project after all TRPP funds are used? Can the reduction in trips be sustained over a "multi-year project" timeline?

(c) ~~Innovation:~~ Is the proposed project a new idea, or something that's been done before but is new to the area? Does the project propose unique ways to reduce trips?

(d) ~~Measurability:~~ The performance of the project must be measurable. If an applicant proposes to use their own measurement approach, a detailed measurement plan must be submitted as a part of the application and must be approved by WSDOT. The measurement approach must be as accurate an estimate of the trips reduced as would be generated if the applicant made use of the WSDOT-developed measurement tool. Deviations from the approved measurement plan will be subject to review and approval by WSDOT. WSDOT may reject an application or terminate the contract if the measurement deviation is not approved.

(e) ~~Project implementation:~~ What is the timeline for implementation of the project? When and how will the project be advertised to the target population? All projects must conduct a baseline measurement of all individual participants as they begin taking part in the project. If a project targets an entire worksite, the project must identify the worksite, and all employees must participate in the measurement, or the total number of employees at the worksite must be indicated in the baseline and performance measurements. The applicant must indicate the implementation timeline, proposed measurement methods (if other than WSDOT measurement tool) and measurement schedule in the application.

(f) ~~Project predictability:~~ Are the estimates of employee participation, trip reduction, and VMT reduction likely to be achieved based on the assessment of the review committee?

(g) ~~Redundancy:~~ Does the project propose to provide services that are already available to the employees?

(h) ~~Thoroughness:~~ Has the project been thoroughly researched and carefully thought out? Are adequate details presented in the application?

~~(15) How will the recipient receive the money?~~ Once the projects have been reviewed, prioritized and selected, the applicant will enter into a contract with the Washington state department of transportation for implementation of the project. This contract will establish the amount of money the award recipient can receive for the project, the timelines, per-

formance expectations, and the project's measurement plan. The recipient must submit a TRPP fund disbursement form provided by WSDOT in order to request funds. On this form the recipient will identify the funds requested and provide documentation of performance or expenditures for reimbursement of start-up costs. Applications for multi-year projects must demonstrate the organization's ability to accept payments for performance, as well as bonus funds, through the end of the project time frame. WSDOT will provide funds to the recipient through three approaches: Start-up, performance and performance bonus.

(a) **Start-up funds:** WSDOT will provide start-up funding on a dollar for dollar, cost-reimbursable basis, but will not exceed fifty percent of the total project award for the duration of the project. The recipient of basic project award may request start-up funds after the baseline measurement has begun. The recipient can request start-up funds throughout the project or until the final performance funds are paid. The recipient of a multi-year project award is eligible for start-up funds through a phased payment approach. To calculate the start-up fund disbursement for multi-year projects, multiply the total project amount by 0.5, then divide that number by the number of years in the project. This is the amount that will be available as start-up funds each year.

(b) **Performance funds:** The remaining award amount will be available to the recipient following performance measurement(s) for the project, based on the project's performance. All basic projects are required to measure at the end of the project and deliver the measurement data to WSDOT by June 1st. Projects that conduct interim measurements will be eligible to receive a prorated portion of the performance funding following each measurement, with the balance available after the final measurement. Projects that do not conduct interim measurements will receive their remaining performance funds after the final measurement. For multi-year projects, the recipient must measure the project's performance at the end of each biennium (and deliver the measurement data to WSDOT by June 1st) at a minimum, and at the end of the project. The amount of performance funds paid will be calculated from the project's price per trip and performance. Projects must reduce trips to be eligible for any performance funds. The project application must describe the measurement schedule for the project, and the contract for the project will include a measurement schedule.

(c) **Performance bonus funds:** WSDOT will provide performance bonus funds only at the end of the contract period. The recipient will receive the funds for additional performance above the award amount based on the same price per trip reduced, including credit for VMT reduced, as identified in their contract. The recipient will be eligible to receive additional bonus funds up to one hundred twenty percent of the contracted price per trip, or up to the maximum price per trip allowed (whichever is less), for every trip that exceeds the project goal. WSDOT will make performance bonus funds available only if funds are remaining in the TRPP account.

~~(d))~~ established by WSDOT and communicated in project application guidance. WSDOT will make the final decision on which projects to fund and at what level.

~~(11)~~ **Project implementation and penalties:** All ((award recipients)) contractors must implement their projects within three months (first quarter) after signing the contract in order to receive one hundred percent of the awarded funds. If the project is not implemented until the second quarter, only seventy-five percent of the awarded funds will be available; fifty percent if implementation does not occur until the third quarter; and twenty-five percent if implementation does not occur until the fourth quarter. A project is subject to termination if it has not been implemented by the fifth quarter. Project implementation or start of the project is defined as the completion of the project baseline measurement.

~~((+6))~~ **(12) What happens if a project does not perform?** All projects are subject to termination at WSDOT's discretion if the project is not performing or demonstrating progress toward achieving its goals.

~~(13)~~ **What is the ((measurement)) performance payment schedule?** Every project must have a baseline measurement, and the baseline measurement must begin before ((WSDOT will make payments to reimburse start-up costs. Interim measurements can be conducted monthly or quarterly, and must be completed in order to request interim payments. Submission of interim measurements to receive interim payments is subject to prior WSDOT approval. Every project)) the contractors can receive reimbursement for start-up costs. The contractor must submit a project final performance measurement ((at the end of the project)) by the date specified by WSDOT in order to receive ((final)) performance payment. ((WSDOT must receive the final performance measurements and request for funds by June 1st of the contract closure year.

~~(17)~~ **What are interim measurements and payments?** When applicable and when approved in advance by WSDOT, recipients may request monthly and/or quarterly payments for trip and VMT reductions. WSDOT will prorate payments based on the project timeline and the interim performance measurement. The sum of all performance payments will not exceed the total funds awarded to the project. Recipients will also be able to receive start-up funds that are phased throughout the life of the project (see subsection (15)(a) of this section for details on start-up fund disbursement).

~~(18)~~ **Can the price per trip be adjusted?** Multi-year projects and basic projects seeking a renewal may apply for an adjustment to the trip price and/or their goal at the end of each biennium. Adjustments to trip price and goal for the project will be subject to review and approval by WSDOT. Payments for multi-year projects are contingent upon the provision of legislative funding in future biennia.

~~(19)~~ **What happens if a project does not perform?** All projects are subject to termination if the project is not performing according to expectations or is not continuing to work towards the reduction of commute trips. Projects must reduce trips to be eligible for any performance funds.

~~(20))~~ **(14) How are projects that overlap treated?** No applicant may claim full reduction in ((employee commute vehicle trips)) commuter vehicle commute trip or commute VMT that are claimed as part of another project. WSDOT will make an initial screening of awarded projects to determine whether projects overlap. If WSDOT finds that projects

being considered for selection are likely to overlap, WSDOT will notify the applicants, and ~~((will provide them with the opportunity to adjust their trip prices and goals. If projects are selected that overlap, WSDOT will ask the applicants to propose a solution to the overlap. If a solution cannot be agreed upon by the applicants, WSDOT will adjust the payments for areas where it can determine overlap occurs, by dividing the amount per trip by the number of TRPP projects involved in the overlap. WSDOT will use the lower price per trip in the overlapped projects to calculate payment.~~

~~(21) **Performance documentation:** The applicant must, as part of the TRPP application, describe how the project will measure performance. WSDOT will make measurement instruments available to the project. The applicant may propose alternative ways to measure the project, but must provide a description of the alternative as part of the application. Use of any measurement instrument is subject to approval by WSDOT. WSDOT will incorporate language describing the project's measurement into the contract documents for the project. WSDOT will calculate the reduction in commute vehicle trips for the project, along with any credit for reduction in vehicle miles traveled. At its discretion, WSDOT may make software available to TRPP recipients to calculate the reductions directly.)~~ provide them with the opportunity to form partnerships to be considered as one project for funding, or adjust their projects to avoid overlap. WSDOT will require funded overlapping projects to use the WSDOT-approved measurement tool that helps to eliminate the potential of paying for overlap. WSDOT may reject proposals that insufficiently address overlap.

WSR 09-05-087

PROPOSED RULES

GAMBLING COMMISSION

[Filed February 17, 2009, 4:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-14-081.

Title of Rule and Other Identifying Information: Amending WAC 230-03-140 Full and regular membership requirements and 230-11-030 Restrictions on ticket sales.

Hearing Location(s): Red Lion Hotel, 2300 Evergreen Park Drive, Olympia, WA 98502, (360) 943-4000, on April 10, 2009, at 9:00 a.m.

Date of Intended Adoption: April 10, 2009.

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

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule change would allow persons under the age of eighteen to sell raffle tickets for an unlicensed charitable or nonprofit organization. The current WAC governing this, WAC 230-03-140, is confusing. "Is applying for" a license implies that a license is required for minors to sell raffle tickets. In the past, we have

required a raffle license if organizations had minors selling raffle tickets, even though RCW 9.46.0321 does not require a license if gross raffle revenue is \$5,000 or less. Small organizations such as cub scouts and little leagues typically have small raffles and profits are very low. Based on the amount of money (\$5,000 or under) and the low risk of the activity itself, staff recommends not requiring these organizations to have a raffle license. Charitable and nonprofit organizations that want to allow minors to sell raffle tickets must continue to meet the following requirements:

(a) Have the development of youth as a primary purpose; and

(b) Have at least three members or advisors who are at least eighteen who supervises the raffle; and

[(c)] Have an adult member or advisor designated as the raffle manager.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Name of Proponent: Washington state gambling commission, governmental.

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

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

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

February 17, 2009

Susan Arland

Rules Coordinator

AMENDATORY SECTION (Amending Order 457, filed 3/22/06, effective 1/1/08)

WAC 230-03-140 Full and regular membership requirements. (1) "Bona fide member" means the same thing as "bona fide active member." Bona fide members hold full and regular membership status.

(2) To have full and regular membership status in a Washington charitable or nonprofit organization, you must:

(a) Be at least eighteen years old, unless the organization:

(i) Has a primary purpose that is the development of youth; and

(ii) ~~((Is applying only for a))~~ The only activity the organization conducts is raffles or amusement games (license), whether licensed or unlicensed; and

(iii) Has at least three members or advisors who are at least eighteen years old and who supervise the operation of the gambling activity; and

(iv) Has an adult member or advisor designated as the manager for the gambling activity; and

(b) Take part in at least one of the following activities of the organization:

- (i) Attend at least one regular membership meeting per year; or
 - (ii) Vote for officers and/or board members; or
 - (iii) Help set policy by serving as a member of the board of directors or a similar policy setting position; or
 - (iv) Serve as a volunteer providing services or raising funds from nongambling sources; or
 - (v) Maintain a level of communication that demonstrates knowledge of the activities of the organization; and
- (c) Live within one hundred miles of the main administrative offices of your organization which are located in Washington, or attend seventy-five percent of the organization's board meetings.

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

WAC 230-11-030 Restrictions on ticket sales. (1) Only the following people, who are at least eighteen years old, may sell raffle tickets:

(a) Members of the organization (~~(or)~~), except as explained in subsection (2) of this section; and

(b) Volunteers under the supervision of a member (~~(may sell tickets; and)~~).

(2) Organizations may allow members under the age of eighteen to sell tickets when the organization has:

(a) Development of youth as a primary purpose; and

(b) At least three members or advisors who are at least eighteen years old and who supervise the operation of the raffle; and

(c) An adult member or advisor designated as the manager of the raffle.

(3) Organizations must sell tickets for a particular raffle for the same price unless offering an authorized discount plan; and

~~((3))~~ (4) Organizations must not:

(a) Sell raffle tickets via the internet; or

(b) Require anyone to purchase more than one raffle ticket; or

(c) Give away raffle tickets; or

(d) Give an opportunity to participate in a raffle drawing to a person who has not purchased a ticket.

WSR 09-05-088

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed February 18, 2009, 8:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-01-077.

Title of Rule and Other Identifying Information: New WAC 308-96A-570 Invalid or fraudulent DOT numbers—Cancellation of registrations.

Hearing Location(s): Department of Licensing, Conference Room 108, 1125 Washington Street S.E., Olympia, WA 98507, on March 24, 2009, at 11:00 a.m.

Date of Intended Adoption: April 21, 2009.

Submit Written Comments to: Dale R. Brown, P.O. Box 2957, Mailstop 48205, 1125 Washington Street S.E., Olympia, WA 98507-2957, e-mail dbrown@dol.wa.gov, fax (360) 902-7821 or 902-7822, by March 23, 2009.

Assistance for Persons with Disabilities: Contact Dale R. Brown by March 23, 2009, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule making is required to enhance the administration of the DOT number information required in RCW 46.16.615 and 46.32.100.

Reasons Supporting Proposal: Administer the laws passed by the legislature concerning department of transportation requirements.

Statutory Authority for Adoption: RCW 46.01.110.

Statute Being Implemented: RCW 46.16.615 and 46.32.100.

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

Name of Agency Personnel Responsible for Drafting: Dale Brown, 1125 Washington Street S.E., Olympia, WA, (360) 902-4020; Implementation and Enforcement: Toni Wilson, 1125 Washington Street S.E., Olympia, WA, (360) 902-3811.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose more than a minor cost on businesses in the industry.

A cost-benefit analysis is not required under RCW 34.05.328. The contents of the proposed rules are explicitly and specifically dictated by statute.

January 13, 2009

Mykel D. Gable

Assistant Director

Vehicle Services

NEW SECTION

WAC 308-96A-570 Invalid or fraudulent DOT numbers—Cancellation of registrations. The department will cancel any license registration issued to a motor carrier who provided invalid or fraudulent DOT number information to register a commercial motor vehicle as required in RCW 46.16.615.

WSR 09-05-091

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed February 18, 2009, 9:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-24-114.

Title of Rule and Other Identifying Information: The department proposes to amend WAC 16-461-010 Inspection certificate and/or permit required, by removing the mandatory certification and twenty-one day recertification of Red

Delicious and Delicious varieties and by making any amendments that are necessary to update the chapter and make it more usable.

Hearing Location(s): Tree Fruit Research Center, Conference Room (Large Conference Room) (park on Western), 1100 North Western Avenue, Wenatchee, WA 98801, on Thursday, April 2, 2009, at 1:00 p.m.; and at the WSDA Yakima Office, Conference Room 238 (Primary Conference Room), Suite 226, 21 North First Avenue, Yakima, WA 98902, on Friday, April 3, 2009, at 9:00 a.m.

Date of Intended Adoption: May 1, 2009.

Submit Written Comments to: Teresa Norman, Rules Coordinator, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2092. Comments are to be received by 5:00 p.m. on April 6, 2008 [2009].

Assistance for Persons with Disabilities: Contact Rachel Lopez by March 26, 2009, or as soon as possible, (360) 902-1976, TTY 800-833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend WAC 16-461-010 Inspection certificate and/or permit required, by removing the mandatory certification and twenty-one day recertification of Red Delicious and Delicious varieties in WAC 16-461-010 (1)(e)(ii) and by making any amendments that are necessary to update the chapter and make it more usable.

Reasons Supporting Proposal: Grade standards imposed by retail buyers and the desire to comply by the shipper would serve to ensure adherence to the grade standards. It is in the shipper's self-interest that the product arrives within the agreed standards, making the existing inspection requirement in the WAC section unnecessary.

Statutory Authority for Adoption: Chapter 15.17 RCW, Standards of grades and packs, specifically RCW 15.17.030 Enforcement—Director's duties—Rules and chapter 34.05 RCW, Administrative Procedure Act.

Statute Being Implemented: Chapter 15.17 RCW, Standards of grades and packs.

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

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jim Quigley, Program Manager, P.O. Box 42560, Olympia, WA 98504-2560, (360) 902-1833.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires an agency to prepare a small business economic impact statement (SBEIS) for proposed rules that impose a more than minor cost on the business in an industry. The proposed change would not impose "more than minor impact" upon the regulated industry.

RCW 19.85.040(1) requires that an agency determine whether the proposed rule will have a disproportionate impact on small businesses by comparing the cost of compliance for small business with the cost of compliance for the 10% of businesses that are the largest businesses required to

comply. The proposed change would not impose "more than minor impact" upon the regulated industry.

A cost-benefit analysis is not required under RCW 34.05.328. Washington state department of agriculture is not a named agency in RCW 34.05.328.

February 18, 2009

Dennis Hannapel

Assistant Director

AMENDATORY SECTION (Amending WSR 07-23-088, filed 11/20/07, effective 12/21/07)

WAC 16-461-010 Inspection certificate and/or permit required. (1) No person shall ship, transport, accept for shipment, or accept delivery of, any commercial lot of the following agricultural products without an inspection and the issuance of a certificate and/or a permit by the commodity inspection division of the department of agriculture allowing such shipment, movement or delivery:

(a) Apricots in closed or open containers for fresh market.

(b) Italian prunes in closed or open containers for fresh market.

(c) Peaches in closed or open containers for fresh market.

(d) Cherries in closed or open containers for fresh market. No permit will be issued on cherries infested with live cherry fruit fly larvae.

(e) Apples in closed or open containers for fresh market.

~~((f))~~ (f) Apples may be shipped or transported if accompanied by a certificate of compliance issued by the shipper or packer of apples having the approval of the director to issue the certificates of compliance.

~~((g))~~ ~~Apples of the Red Delicious and Delicious varieties must be certified as to quality and condition and must meet all the requirements of chapter 16-403 WAC, Standards for apples marketed within the state of Washington. Apples of the Red Delicious and Delicious varieties not allowed to enter channels of commerce within twenty-one days following the original date of inspection as indicated by a state lot stamp, will require recertification for meeting the minimum firmness requirement as stated in WAC 16-403-142.~~

~~((h))~~ (g) Pears in closed or open containers for fresh market. Pears may be shipped or transported if accompanied by a certificate of compliance issued by the shipper or packer of pears having the approval of the director to issue the certificates of compliance.

~~((i))~~ (h) Asparagus in closed or open containers for fresh market. Asparagus may be shipped or transported if accompanied by a certificate of compliance issued by the shipper or packer of the asparagus having the approval of the director to issue the certificates of compliance.

~~((j))~~ (i) Apples in containers or bulk, for processing.

(i) Apples for processing may be shipped or transported if accompanied by a certificate of compliance issued by the shipper of apples having the approval of the director to issue the certificates of compliance.

(ii) Apples for processing entering in-state commerce do not require a permit.

~~((k))~~ (j) Pears in containers or bulk, for processing.

(i) Pears for processing may be shipped or transported if accompanied by a certificate of compliance issued by the shipper of pears having the approval of the director to issue the certificates of compliance.

(ii) Pears for processing entering in-state commerce do not require a permit.

(2) Fruits and vegetables listed in WAC 16-461-010 are exempted from requirements for inspection and issuance of a certificate or permit:

(a) When the product is being transported from the premises where grown or produced to a horticultural facility other than wholesale or retail for the purpose of storing, grading, packing, packaging, labeling, or processing prior to entering commercial channels for resale.

(b) When sold or transported to a fruit/produce stand within the zone of production, not to exceed daily quantities of two thousand pounds net weight of a single commodity nor six thousand pounds net weight of any combination of commodities other than cherries, listed in subsection (1) of this section, when on a single conveyance. Exempt sales by the producer within a farmer's market shall not be restricted to the zone of production.

(c) When daily quantities do not exceed one hundred pounds net weight of dark or light sweet varieties of sweet cherries sold for home use and not for resale, and the containers are marked "not for resale" in letters at least one-half inch in height.

(3)(a) Any shipper or packer of apples, apricots, cherries, pears, peaches, prunes, or asparagus may petition the director for authority to issue certificates of compliance for each season. The director may issue certificate of compliance agreements, granting authority, on terms and conditions that the director deems appropriate. The authority shall be limited to the issuance of certificates of compliance for apples, apricots, cherries, pears, peaches, prunes, and asparagus under the applicant's direct control or being handled at the shipper's or packer's facilities.

(b) The certificate of compliance shall be issued at time of shipment by the shipper or packer authorized to do so.

(i) Apples, pears, cherries, and asparagus about to be shipped or transported must be in full compliance with the requirements of chapter 15.17 RCW, Standards of grades and packs, rules adopted under chapter 15.17 RCW, and administrative directives of the director.

(ii) Apricots, cherries, peaches, prunes, or pears about to be shipped or transported must be in full compliance with an existing federal marketing order requiring quality and condition certification and Washington state lot identification or federal-state lot identification.

(iii) Cherries of the dark sweet varieties must be certified as to quality, condition, and size and shall meet all of the requirements of chapter 16-414 WAC, Washington standards for cherries. Cherries of the Rainier variety or other varieties of "light colored sweet cherries" must meet only the requirements of WAC 16-414-005 "mature" and WAC 16-414-011(3) size requirement.

(c) The director's approval to issue certificates of compliance may be suspended, revoked, or denied for cause, subject to RCW 34.05.422(3). Cause shall be the shipper's or packer's failure to comply with the requirements of subsection (3)(b) of this section, or for the shipper's or packer's actions which impede the department's abilities to ascertain full compliance with requirements of chapter 15.17 RCW, Standards of grades and packs, or rules adopted under chapter 15.17 RCW, or for violation of the terms of the certificate of compliance agreement. The period of any suspension will be determined by the director and will be commensurate with the seriousness of the violation.

(d) Any shipper or packer whose authority to issue certificates of compliance has been suspended, revoked, or denied by the director will be subject to those provisions of chapter 15.17 RCW and the regulations requiring the issuance of a shipping permit by the director before apples, apricots, cherries, pears, peaches, prunes, and asparagus may be shipped or transported.

(e) Certificates of compliance must be on forms approved and issued by the director of agriculture.

(f) Any shipper or packer authorized to issue certificates of compliance shall deposit with the director of agriculture the regular base fee equivalent to that charged by the director for a shipping permit for each certificate of compliance issued by the authorized shipper or packer. The base fees shall be deposited with the director of agriculture in the same manner as fees for shipping permits.

WSR 09-05-095

PROPOSED RULES

WASHINGTON STATE UNIVERSITY

[Filed February 18, 2009, 9:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-23-091, 08-23-092, 08-24-111, and 09-01-189.

Title of Rule and Other Identifying Information: The university's parking rules for the WSU Pullman, WSU Spokane, WSU Tri-Cities, WSU Vancouver, and WSU College of Nursing campuses are being updated, amending WAC 504-14-560, 504-15-560, 504-19-460, 504-19-560, and 504-19-930; creating new chapter 504-13 WAC; and repealing chapter 504-18 WAC.

Hearing Location(s): WSU Pullman, Lighty Room 405, Pullman, WA, on March 25, 2009, at 4:00 p.m. The following locations will be included by videoconference WSU Spokane, Academic Center Room 401A, Spokane, Washington; WSU Tri-Cities, East Room 228, Richland, Washington; and WSU Vancouver, Administration Room 236, Vancouver, Washington.

Date of Intended Adoption: May 8, 2009.

Submit Written Comments to: Ralph T. Jenks, Director, Procedures, Records, and Forms and University Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, e-mail jenks@wsu.edu, fax (509) 335-3969, by March 25, 2009.

Assistance for Persons with Disabilities: Contact Deborah Bartlett by March 19, 2009, (509) 335-2005.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The university's rules regarding parking permits and traffic for the WSU Spokane, WSU Pullman, and WSU Vancouver campuses are being updated.

Rules are added to govern parking and traffic at the Washington State University Tri-Cities campus.

The university's rules for the WSU College of Nursing are being repealed because the college is relocating to the WSU Spokane campus.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Name of Proponent: Washington State University, public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Shaheen, Parking and Transportation Services, WSU Pullman, (509) 335-4911; Lori Selby, Finance and Administration, WSU Tri-Cities, (509) 372-7261; Dave Stephenson, Public Safety—Police, WSU Vancouver, (360) 546-9004; and Jon Schad, Facilities Operations, WSU Spokane, (509) 358-7991.

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

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

February 18, 2009

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

Chapter 504-13 WAC

CAMPUS PARKING AND TRAFFIC REGULATIONS FOR WASHINGTON STATE UNIVERSITY TRI-CITIES

PART I INTRODUCTION

NEW SECTION

WAC 504-13-010 Authorization. Pursuant to the authority granted by RCW 28B.30.125, 28B.30.150, 28B.10.560, and chapter 34.05 RCW, the board of regents of the university adopts this chapter to govern parking and traffic at Washington State University Tri-Cities, hereinafter referred to as WSUTC.

NEW SECTION

WAC 504-13-020 Purposes of regulations. (1) The purposes of these regulations are to:

- (a) Expedite university business and provide maximum safety, order, and access;
- (b) Regulate parking, with priority given to:
 - (i) Services of the university;
 - (ii) Persons who require the use of vehicles in connection with their on-campus work; and
 - (iii) Staff and students who require the use of private vehicles because of a disability or other approved reason.
- (c) Provide and maintain suitable campus parking and traffic facilities.

(2) The vice-chancellor or designee whose responsibilities include supervision of the parking department shall have the authority to designate particular locations as parking, temporary parking, restricted parking, or prohibited parking, as well as the authority to designate permanent and temporary areas as being closed to vehicular traffic.

NEW SECTION

WAC 504-13-030 Knowledge of parking regulations.

It is the responsibility of all individuals parking on the campus to read and fully understand these regulations. Lack of knowledge of these regulations is not acceptable as grounds for dismissal of parking tickets.

NEW SECTION

WAC 504-13-040 Applicable parking and traffic laws and regulations. The following laws and regulations apply upon lands owned and/or controlled by WSUTC:

- (1) The motor vehicle and other traffic laws of the state of Washington (Revised Code of Washington); and
- (2) This chapter.

NEW SECTION

WAC 504-13-050 Emergencies. The president of the university delegates to the WSUTC campus chancellor the authority to suspend, modify, or repeal any or all provisions in this chapter for an authorized WSU special event or in the event of an emergency, disaster, or other like contingency. Such action shall be limited in duration and scope to meet the institutional needs of WSUTC and/or address the dangers of the contingency.

NEW SECTION

WAC 504-13-080 Severability. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter or its application to other persons or circumstances is unaffected.

NEW SECTION

WAC 504-13-100 Definitions. The definitions in this section are applicable within the context of this chapter.

- (1) Campus. Describes all property owned, leased, and/or controlled by WSUTC which is or may hereafter be dedicated mainly to the educational, research, recreational, parking, or other activities of WSUTC.
- (2) Day. Unless otherwise specified, the term "day" refers to a calendar day.
- (3) Disability parking. See persons with disability.
- (4) Disability zone. A parking zone designated for exclusive use by persons with disability and identified with a sign bearing the associated international symbol.
- (5) Fire zone. An area needed for emergency access to buildings, fire hydrants, or fire equipment. Such areas include, but are not limited to, areas with adjacent curbs or rails painted red.
- (6) Holiday. See university holiday.

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

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

(b) Use of a modified parking permit or indicator;

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

(8) Impound. To take and hold a vehicle in legal custody, either by use of a wheel lock and/or towing.

(9) Indicator. A vinyl, plastic, or paper instrument displayed adjacent to a parking permit which defines the parking areas available to a permit holder.

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

(11) Moped. Any two-wheeled or three-wheeled motor vehicle with an engine displacement of 50cc or less.

(12) Motorcycle. Any two-wheeled or three-wheeled motor vehicle with an engine displacement greater than 50cc.

(13) Motor vehicle. All motor-driven conveyances except wheelchairs. Also referred to as "vehicle" in this chapter.

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

(15) Officer. Any parking official employed by the university who is designated by the parking administrator to issue parking tickets, to place or remove wheel locks, or to cause vehicles to be towed under this chapter.

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

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

(18) Parking administrator. The manager in charge of the parking department or designee.

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

(20) Parking department. The university department which is charged with the responsibility of managing, operating, planning, and maintaining parking facilities and enforcing the parking regulations for the WSUTC campus.

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

(22) Parking payment device. A machine that requires payment and vends a parking permit and/or a paid receipt.

Parking payment devices may be located in various places on campus. A parking payment device is not a parking meter.

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

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

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

(26) Pedestrian mall. A space that is designed primarily for pedestrian use, but with limited authorized use of motor vehicle and other motorized and nonmotorized conveyances.

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

(28) Service vehicle. A vehicle used to provide a service for WSUTC or a tenant or contractor of WSUTC (e.g., a university-owned vehicle or a privately owned vehicle with a valid service vehicle authorization displayed).

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

(30) Staff. For the purposes of these regulations, "staff" includes all nonstudent employees of the university, and the nonstudent employees of other entities located on or regularly doing business on campus. Teaching assistants, research assistants, and other students employed by the university or other entities located on or regularly doing business on campus are not "staff." They are considered as students for the purpose of these rules.

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

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

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

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

(35) University. Refers to Washington State University Tri-Cities.

(36) University holiday. A day regarded by the university as an official university holiday.

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

(38) Vacation. A period of time when classes or final exams are not in session. Except for holidays that fall within

this period, the business offices of WSUTC typically are open during this time.

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

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

(41) Wheel lock-eligible list. The current list of wheel lock-eligible vehicles as maintained by the parking department. A vehicle remains on the wheel lock-eligible list until all fines and fees related to parking tickets are paid in full or otherwise resolved to include the payment of fines and fees related to parking tickets not yet eligible for late fees.

(42) Wheel lock-eligible vehicle. Any vehicle on which three or more parking tickets more than thirty days old are unpaid and which parking tickets were issued during the time the vehicle was registered to or otherwise held by the owner. The vehicle remains wheel lock-eligible until all fines and fees related to parking tickets are paid in full or otherwise resolved to include the payment of fines and fees related to parking tickets not yet eligible for late fees.

(43) WSUTC. Refers to Washington State University Tri-Cities.

PART II ENFORCEMENT

NEW SECTION

WAC 504-13-200 Enforcement authority (i.e., parking and transportation coordinator). WSUTC public safety (e.g., security personnel and emergency response coordinator) and the parking department are charged with the impartial enforcement of these regulations. Personnel in these departments have authority to issue parking tickets, to impound vehicles, and to control access to areas.

NEW SECTION

WAC 504-13-210 Times of enforcement. Parking regulations are subject to enforcement at all times.

(1) Parking permit areas. All parking permit areas are limited to authorized permit holders during specific hours. These hours are posted in each parking area at the entrance to parking areas or along roadways where parking is marked.

(2) Restricted spaces. These spaces are restricted for their designated purpose at all times unless signed otherwise:

- (a) Disability zones;
- (b) Load/unload;
- (c) Service;
- (d) Reserved;
- (e) Reserved (bagged) parking meters; and
- (f) Areas which are specially signed or physically set apart by barricades, traffic cones, tape, or other devices.

(3) Parking metered spaces. Parking meters are in effect during the times posted on each meter. During these times the meter must be paid the posted amount. Additional time cannot be purchased beyond the meter's posted maximum time limit (e.g., a thirty-minute meter will allow a maximum of thirty minutes to be purchased at one time). A motor vehi-

cle which is parked at an expired meter is considered in violation initially, and after each period equal to the maximum time posted for the meter. In such case, a parking ticket may be issued for each violation. For example, a vehicle parked at a meter with a two-hour maximum time limit for six hours and five minutes of continuous unpaid parking at the same meter would be eligible for up to three parking tickets.

NEW SECTION

WAC 504-13-220 Signed and marked areas. (1) Parking on campus is permitted only in the marked and/or signed spaces in parking areas and on streets. All other areas outside these designated areas are "no parking zones." Each parking area has signs or markings to indicate the type of parking permit or parking payment required and the times they are required.

(2) Individual parking spaces are marked, and no vehicle may be parked so as to occupy any portion of more than one parking space. The fact that other vehicles were parked in a manner requiring a vehicle to occupy a portion of more than one space shall not constitute an excuse for a violation of this regulation.

(3) Standing (the stopping of a vehicle with the driver remaining in it) is permitted in marked parking spaces, except metered spaces and restricted spaces, even though the vehicle does not have a valid parking permit. Double parking while "standing" is not permitted.

(4) Should there be a conflict between these regulations, map designation, and on-site signs regarding parking instructions, the on-site sign takes precedence.

(5) Permit areas and restricted spaces are not always signed individually.

NEW SECTION

WAC 504-13-250 Motorcycles and mopeds. (1) The general traffic regulations applicable to motor vehicles apply to motorcycles and mopeds. Motorcycles or mopeds may not be driven on sidewalks or in pedestrian mall areas. Owners of motorcycles and mopeds are responsible for all violations issued.

(2) The university classifies mopeds and motorcycles by engine displacement (also referred to as engine size). This definition applies only to university property and does not replace or supersede the definitions established by the state of Washington for licensing purposes.

(3) Motorcycles and mopeds: Motorcycles and mopeds may park only in spaces which are marked by signs or the letter "M" painted on the parking surface. Motorcycles and mopeds must display a valid WSUTC motorcycle permit during posted times. During all other times, these spaces are restricted to use by motorcycles and mopeds only.

NEW SECTION

WAC 504-13-300 Financial responsibility for parking tickets. (1) Each registered parking permit holder shall be financially responsible for parking tickets on vehicles:

- (a) Registered with the parking department; and/or

(b) Displaying the registered parking permit holder's permit.

(2) Owners of vehicles are held ultimately financially responsible for parking tickets issued to their vehicles.

NEW SECTION

WAC 504-13-350 Use of areas for emergency, maintenance, events, construction, or special needs. WSUTC reserves the right to close any campus parking area at any time it is deemed necessary for maintenance, safety, events, construction, or to meet special needs. WSUTC public safety will provide notice to users when possible.

Public safety and maintenance personnel performing official duties may deviate from these regulations as required to conduct emergency procedures.

NEW SECTION

WAC 504-13-360 Liability. The university assumes no responsibility for the care and protection of any vehicle or its contents at any time the vehicle is on university property.

PART III PARKING PERMITS

NEW SECTION

WAC 504-13-410 Issuance, use, and term of parking permits. Parking permits are available at various campus locations upon application and payment of the appropriate fees. The applicant may receive a parking permit and/or indicator which specifies parking area(s) where the vehicle may be parked. Permits are valid up to and including the expiration date on the permit.

NEW SECTION

WAC 504-13-420 Withholding of fines and fees. All parking permit applications shall provide that the university may withhold unpaid fines and fees, when permitted by law, from any sums owed the permit holder and to treat the same as a debt.

NEW SECTION

WAC 504-13-440 Transfer of parking permit. The ownership of a parking permit is not transferable.

NEW SECTION

WAC 504-13-450 Replacement parking permits and indicators. (1) The permit holder has responsibility for removing parking permits prior to selling or trading a vehicle. The identifiable remnants of the original permit must be presented to the parking department to receive a free replacement. Persons failing to comply with this requirement shall pay the cost of a new permit.

(2) Lost/stolen permits. Permit holders are responsible for the security of their permits. The theft or loss of a parking permit should be reported to the parking department immediately upon discovery.

A lost or stolen permit may be replaced upon payment to the parking department of the cost of replacing the permit, according to a schedule adopted by the parking department. Lost or stolen permits must be returned to the parking department immediately if recovered.

(3) Windshield replacements. When a permit-bearing windshield is replaced, the permit replacement fee is waived if proof of windshield replacement is presented.

NEW SECTION

WAC 504-13-460 False information. No person shall obtain, attempt to obtain, or use in a manner contrary to these regulations, a modified parking permit or a permit issued upon false information. A violation of this section includes giving a false name, address, identification number, and/or other information known to be false. It also includes the use of a visitor, conference, and commercial permit by staff or students. Violation of this provision shall constitute the illegal use of a parking permit and is subject to the issuance of parking tickets.

NEW SECTION

WAC 504-13-470 Recall of parking permits. Parking permits are the property of WSUTC and may be recalled by the parking administrator when:

- (1) The purpose for which the permit was issued changes or no longer exists;
 - (2) A parking permit application is falsified;
 - (3) A counterfeit, modified, or lost/stolen permit is used;
- or
- (4) The parking permit fee is unpaid.

NEW SECTION

WAC 504-13-510 Parking permits—General. The parking department issues parking permits for designated areas of the campus. Any vehicle parked on the campus, other than a pay area or metered space, must clearly display a valid WSUTC parking permit in accordance with this chapter during the posted hours and in locations when and where permits are required. University staff and students may not use any other permit in lieu of a valid university parking permit.

NEW SECTION

WAC 504-13-520 Parking permits—Form and display. All parking permits must be displayed in the approved position on the vehicle with permit numbers and relevant dates visible. Vehicles with permits which are not displayed in accordance with the provisions of this section are subject to parking tickets for the violation of improperly displaying a permit.

- (1) Autos and trucks:
 - (a) Hanging permits, both annual and daily, must be displayed hanging from the rear-view mirror post.
 - (b) Permits mounted solely by suction cup and permit decals directly affixed to the windshield must be displayed on the front windshield at the lower left corner (driver's side).

Decals must be mounted completely by means of their own adhesive (not by tape).

(2) Motorcycles and mopeds: Motorcycle and moped permits must be mounted completely by means of their own adhesive and prominently displayed on the left rear side of the vehicle or on top of the rear tail light.

NEW SECTION

WAC 504-13-540 Zone parking permits—Availability and use. The management and assignment of parking zones is designed to provide a parking space to permit holders. However, uncontrolled access to parking areas and unexpected parking demand make it impossible to guarantee a parking space in the permit holder's assigned zone. Staff and students are generally assigned to specific parking areas referred to as zones. Parking zones are color-coded with respect to their price and numbered with respect to the specific parking zone assignment of each permit holder. Permit holders may park in their assigned zone as reflected by the combination of color and number on their permit and corresponding sign. Exception: Green permit holders may park in their numerically assigned green zone or in any red zone.

NEW SECTION

WAC 504-13-560 Other parking permits—Availability and use. (1) Visitor permits. Visitor permits may be used only by bona fide visitors as defined by this chapter. Use by any other person constitutes illegal use of a parking permit. Visitor permits are valid in any zone and parking spaces signed for visitors only. Visitor permits are not valid at meters or restricted spaces.

(2) Golden cougar permits. Golden cougar permits are special visitor permits that are issued to retired staff in recognition of their service without additional cost. They are issued on an annual basis and are valid in any zone. Staff who are employed by the university or other entities located on campus after formal retirement are not eligible to use a golden cougar permit in lieu of a regular paid zone permit.

(3) President's associates decals. President's associates decals are issued to eligible members of the Washington State University foundation. Use of these decals for parking shall be in accordance with a separate agreement between WSU and the WSU foundation. However, WSU faculty, staff, and students may not use a president's associates decal or any other parking benefit instrument in lieu of a paid zone permit.

(4) Conference permits. Conference permits are available to visitors who participate in conferences held on the WSUTC campus. They are available on a daily basis only. Conference permits are valid in any assigned zone.

(5) Motorcycle permits. Motorcycle permits are valid within boundaries of areas specifically posted and/or marked for motorcycle permits.

(6) Construction permits. A construction permit is issued to personnel who are working on a construction site on campus. Construction permits are assigned to a specific parking area.

(7) Carpool. Upon application, a bona fide carpool as defined by the campus policies and procedures is given prefer-

ence in the assignment of parking zones, and issued a permit that facilitates the carpool. Obtaining or using a carpool permit under false pretenses constitutes the illegal use of a permit.

(8) Commercial permits. Commercial permits are issued to vendors, suppliers, and service representatives of outside companies performing a service for the university. Commercial permits are valid in zones and areas indicated on the permit.

(9) Departmental permits. Departmental parking permits are available for use by department employees who need to use their personal vehicles for university business. Departmental permits are available in different forms and are valid at parking meters, service zones, green and red permit zones, and pay parking facilities. Departmental permits are not valid in reserved spaces. The use of departmental permits for anything other than official departmental business is prohibited by the State Ethics Act.

NEW SECTION

WAC 504-13-580 Special indicator decals and hangers. Special indicator decals or hangers may be issued to staff and student permit holders who have otherwise valid parking permits in the following cases:

(1) A "service indicator decal or hanger" is valid typically for a maximum of fifteen minutes in a marked service zone. A "mall service" indicator is valid typically for a maximum of fifteen-minute parking in the pedestrian mall. These are available to staff or students who must use a private vehicle for university business.

(2) Reserved parking indicator decals and hangers which are valid in parking spaces that are signed for the corresponding permit and indicator.

NEW SECTION

WAC 504-13-600 Parking permits for persons with disability. (1) The provisions of this chapter cover the purchase and display of parking permits and the payment of fees and fines associated with parking for persons with disability.

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

(3) The university uses the state persons with disability parking permit system to determine eligibility for a university persons with disability parking permit. Persons desiring to purchase a university persons with disability parking permit must present a valid state-issued persons with disability parking identification and permit.

(4) Unless otherwise authorized, parking in spaces designated for persons with disability requires a valid university persons with disability parking permit to park on campus. University parking permits for persons with disability are available at the green zone rate.

(5) Persons with a university persons with disability parking permit may park in a persons with disability parking space and any other, nonrestricted permit space within a parking permit zone.

(6) Persons with a university persons with disability parking permit may not park in restricted spaces with the exception of persons with disability parking spaces.

(7) Unless otherwise posted, any university parking permit to include a persons with disability parking permit is not valid in lieu of payment of regular posted fees in pay parking facilities.

(8) A state-issued persons with disability license plate, placard, or permit is valid in lieu of a university persons with disability parking permit in parking zones during times when a university permit is not required.

(9) The university intends to retain control of access to the pedestrian malls on campus. For that reason a university persons with disability parking permit is required in lieu of a state-issued persons with disability license plate, placard, or permit as authorization to use a pedestrian mall to access marked persons with disability parking spaces within the confines of a pedestrian mall.

NEW SECTION

WAC 504-13-650 Parking fees and fines. (1) Schedules for parking fees, parking administrative fees, late payment fees, parking fines and sanctions, parking meter rates, prorated and refund schedules, and the effective date thereof are submitted to the president or his/her designee and to the board of regents for approval by motion, provided however, that increases in fees and fines do not exceed limits established by the board of regents. Increases in fees and fines that do not exceed limits established by the board of regents are not submitted to the board of regents so long as the board of regents has delegated authority to the president or his designee to approve all such fees and fines. The schedules described above for all parking fees and fines are thereafter posted in the public area of the parking department office and posted on the parking department's web site.

(2) Payments. Parking fees and fines may be paid at the parking department by cash, check, approved payment card, or money order. A payroll deduction plan is available for eligible university employees and eligible graduate students.

(3) The annual fee for any shorter period relative to all permits shall be prorated according to the published schedule.

(4) The proper fee must be paid for all vehicles parked in parking meter spaces unless otherwise authorized.

(5) Staff members whose work schedules qualify them for nighttime differential pay may purchase a permit for one-half the regular fee. Verification is required.

(6) Refunds. Annual permits being relinquished may be returned to the parking department for a pro rata refund in accordance with university policy. Identifiable remnants of the permit must be returned. The balance of any fees and fines owed the parking department is deducted from any refund due. Refunds for temporary permits are not granted. Refunds for pretax payroll deductions cannot be granted pursuant to federal tax laws.

(7) The parking department makes a wide array of options available in advance to university departments for use by their visitors, guests, and employees for the purpose of conducting departmental business. However, when necessary, university departments that can establish in writing that

a parking ticket issued by the parking department was received as a result of parking any vehicle for the purpose of conducting official state business, or while conducting official business with the university or an entity located at the university are assessed a parking fee assessment (PFA) in lieu of the parking fine. Such requests for PFAs are signed by a department fiscal custodian. A PFA consists of the maximum daily parking fee plus an additional administrative fee for failing to purchase and provide the necessary parking permit or fee in advance or at the time of parking. University departments are encouraged to avoid additional administrative fees associated with PFAs by purchasing and storing prepaid parking permits and by making them available as the department deems necessary. Nothing in this rule allows a university employee to receive, or attempt to receive, any benefit associated with his or her personal expenses in violation of the State Ethics Act. All questionable employee conduct regarding the application of this section is reported to, and investigated by, the university internal auditor. This section applies only to parking tickets issued pursuant to this chapter.

NEW SECTION

WAC 504-13-750 Reciprocal parking agreements.

(1) Purpose. The university can enter into reciprocal parking agreements with other universities and Washington State University campuses for the purpose of enhancing the accessibility to various campuses for staff and students participating in various courses and programs.

(2) The university faculty, staff, and students assigned to, enrolled at, or who pay fees to the WSUTC campus or employees of other entities located on the WSUTC campus must display a valid university parking permit when parking at the university. Any attempt by the above personnel to use a parking permit from another university campus in lieu of a valid university WSUTC campus permit may result in a fine for illegal use of a parking permit.

PART IV

FINES, SANCTIONS, AND APPEALS

NEW SECTION

WAC 504-13-810 Violations, fines, and sanctions. (1)

Violations and fines. Parking violations are processed by the university. Fines must be paid at the parking department or at other authorized locations. Schedules for parking violations, fines, and sanctions are posted in the public area of the parking services office and on the parking department's web site.

(2) Reduction of fines.

(a) Fines for violations of overtime/nonpayment at meter and overtime in time zone paid within twenty-four hours of issuance are reduced by one-half. Eligible violations received on Friday or Saturday can be paid on the following Monday to satisfy the twenty-four-hour requirement. Mailed payment must be postmarked within twenty-four hours to receive the one-half reduction.

(b) Visitors. The first violation of notices for "no parking permit" and "no parking permit for this area" issued to a

visitor is considered a warning notice upon presentation to the parking department.

(c) If a permit holder of record neglects to display his or her permit and receives a notice of violation for "no parking permit," a reduced fine is assessed when possession of a valid parking permit for the location is verified by the parking department within twenty-four hours.

(d) Internal policies regarding disposition of parking tickets may be established on approval of the vice-chancellor or designee whose responsibilities include supervision of the parking department under the advisement of the university's internal auditor.

(3) Inoperable vehicles. It is the owner's responsibility to immediately contact the parking department in the event that the owner's vehicle becomes inoperable when the vehicle is present on campus.

(4) Payment of parking fines. All parking fines are due upon issuance of a parking ticket. Thirty days after date of issuance of a parking ticket, a late fee shall be added to all unpaid parking fines. For example, a parking ticket issued on May 1st would be assessed a late fee on May 31st. Failure to pay the fine and fee assessed for any violation results in referral to the university controller's office for collection. The controller (or designee) may, if other collection efforts fail, withhold the amount of the outstanding fines and fees from deposits or other funds held for any student in order to secure payment.

When collection efforts are unsuccessful, the controller (or designee) may notify the registrar to refrain from issuing student transcripts or to withhold permission to reenroll for a subsequent term until outstanding fines and fees are paid. The procedures discussed above are not exclusive, however, and failure by anyone to pay fines and fees may also lead to towing or use of the wheel lock device described in these regulations. Nor are the procedures discussed above a precondition to towing or use of the wheel lock.

(5) Failure to pay fines. Failure to pay a fine or comply with other penalties assessed pursuant to these regulations, and exhausting or failing to exercise appeals provided for in these regulations, may result in the inability to renew a vehicle license through the state pursuant to RCW 46.16.216.

NEW SECTION

WAC 504-13-860 Appeals procedure. The parking ticket represents a determination that a parking violation has been committed and the determination is final unless otherwise provided for or appealed as provided in this chapter.

(1) Purpose. The parking appeals process serves the following functions:

- (a) To hear parking ticket appeals;
- (b) To hear appeals of wheel lock eligibility determinations; and
- (c) To hear appeals of impoundments.

(2) Procedure. Any person who has received a parking ticket may appeal the alleged parking violation. Appeal of wheel lock eligibility determinations and impoundments are described in WAC 504-13-865 and 504-13-870.

(3) Written parking ticket appeals. The appeal must be in writing and received at the parking department within ten

calendar days of issuance of the parking ticket. Forms for this purpose are available from the parking department. The parking appeals committee makes an initial decision regarding the appeal within twenty calendar days during the academic year and thirty calendar days during the summer months after receipt of the appeal. The committee provides a brief statement of the reason for its decision to the appellant within ten calendar days of the decision.

(4) Review hearing of initial decision. If the appellant is dissatisfied with the initial decision, he or she may request a hearing before a hearing officer or the parking appeals committee. Such a request must be made within ten calendar days of the date of the initial parking appeals committee decision. If no such request is received, the initial decision shall be final. During the hearing the appellant and representatives of the parking department may present and cross-examine witnesses. The hearing officer or appeals committee shall render a decision in writing and provide the appellant with the decision within ten calendar days after the hearing.

(5) Appeal to district court. RCW 28B.10.560 provides that a person who is not satisfied with the final decision of the university may appeal to district court. The application for appeal to district court shall be in writing and must be filed at the parking department within ten calendar days after the date of the review hearing. The parking department forwards the documents relating to the appeal to the district court.

PART V IMPOUNDMENT OF VEHICLE

NEW SECTION

WAC 504-13-865 General. (1) Pursuant to the provisions of this chapter, an officer shall cause a vehicle to be wheel locked, or towed, or both, if:

- (a) The vehicle is on the wheel lock-eligible list; or
- (b) The vehicle displays a lost, stolen, or counterfeit parking permit.

(2) Any vehicle may be towed away at owner's/operator's expense if the vehicle:

- (a) Has been immobilized by wheel lock for more than twenty-four hours; or
- (b) Is illegally parked in a marked tow-away zone; or
- (c) Is a hazard or obstruction to vehicular or pedestrian traffic (including, but not limited to, vehicles parked at curbs or rails painted yellow or red or in crosswalks); or
- (d) Cannot be immobilized with a wheel lock device; or
- (e) Is illegally parked in a disability space.

(3) The process for towing of vehicles under any other circumstances to include those not described in this section will be in accordance with chapter 46.55 RCW.

(4) The driver and/or owner of a towed vehicle shall pay towing and storage expenses.

(5) Any vehicle immobilized by use of the wheel lock device in excess of twenty-four hours is assessed a storage fee for each calendar day or portion thereof, beyond the first twenty-four hours.

(6) The university assumes no responsibility in the event of damages resulting from towing, use of wheel lock devices,

storage, or attempts to move a vehicle with a wheel lock device installed.

(7) No vehicle impounded by towing or wheel lock devices shall be released until the following fines are paid in cash or with an approved payment card:

(a) All unpaid parking ticket fines and late fees against said vehicle and any other vehicle registered to the owner;

(b) A wheel lock fee; and

(c) All towing and storage fees.

(8) A person wishing to challenge the validity of any fines or fees imposed under this chapter may appeal such fines or fees as provided in WAC 504-13-860. However, in order to secure release of the vehicle, such person must pay the amount of such fines or fees as a bond which shall be refunded to the extent the appeal is successful.

(9) An accumulation of six unpaid violations during any twelve-month period, exclusive of overtime at parking meter violations, and overtime in time zone violations, subjects the violator to revocation or denial of parking privileges. Vehicles without permits which accumulate the above number of violations may be prohibited from parking on university property.

NEW SECTION

WAC 504-13-870 Wheel lock-eligible list. (1) The parking administrator shall be responsible for creating and maintaining the wheel lock-eligible list. See definition of "wheel lock-eligible vehicle."

(2) A wheel lock-eligible vehicle shall be placed on the wheel lock-eligible list after notice has been issued as provided in subsection (3) of this section and an appeal of the wheel lock eligibility determination, if requested, under subsection (4) of this section.

(3) At least ten days prior to placing a vehicle on the wheel lock-eligible list, the parking administrator shall mail a notice to the owner. The parking administrator mails the notice to the address stated on the most current registration records available to the university from a state, or any more current address of which the parking administrator or chief of police has actual written notice. The notice is sent by first class United States mail, postage prepaid. The notice shall set forth:

(a) The make and license plate number of the alleged wheel lock-eligible vehicle.

(b) A specified date on which the wheel lock-eligible vehicle is subject to placement on the wheel lock-eligible list.

(c) A list of the three or more alleged unpaid parking tickets, including the parking ticket number, date, time, place of the violation, and the nature of the violation. This list shall include all unpaid parking tickets issued to a particular vehicle to include the payment of fines and fees related to parking tickets not yet eligible for late fees.

(d) That the owner may avoid the placement of the vehicle on the wheel lock-eligible list by making payment in full of fines and late fees on all unpaid parking tickets to include the payment of fines and fees related to parking tickets not yet eligible for late fees by the specified date on which the vehicle is subject to placement on the wheel lock-eligible list.

(e) The name, mailing address (and street address if different), and telephone number of the parking department office that may be contacted to appeal the wheel lock eligibility determination. Such an appeal only considers whether an individual vehicle was properly placed on the wheel lock-eligible list and not the merits of an individual parking ticket, which may be addressed pursuant to a separate appeals process described in WAC 504-13-860.

(f) That the vehicle is subject to wheel lock, towing, or both once it is placed on the wheel lock-eligible list.

(g) That all late fees, wheel lock fees, towing, and storage fees shall be payable in full to obtain the release of a vehicle wheel locked or towed pursuant to this chapter in addition to payment of any and all unpaid parking tickets on this vehicle or other vehicles owned by the registered owner to include the payment of fines and fees related to parking tickets not yet eligible for late fees.

(4) If a request for an appeal of a wheel lock eligibility determination is received by the parking administrator before the specified date in the notice for placement of the vehicle on the wheel lock-eligible list, then the parking administrator shall afford the owner an opportunity to appeal the wheel lock eligibility determination prior to the placing of a vehicle on the wheel lock-eligible list. Although the parking administrator shall not have the authority to adjudicate the merits of any parking ticket, she or he shall, however, receive evidence and other input from the owner appealing the wheel lock eligibility determination that the notice given under subsection (3) of this section was erroneous or based on erroneous information.

(5) If an owner timely participates in the appeal as scheduled by the parking administrator, he or she shall furnish the owner written notice of his or her decision prior to placing the vehicle on the wheel lock-eligible list.

(6) After the specified date provided in the notice issued under subsection (3) of this section, the parking administrator shall review the records to ensure that the alleged unpaid parking tickets have not been paid or otherwise resolved, and that no information has been received indicating that the notice was erroneous.

(7) Once a vehicle has been placed on the wheel lock-eligible list, it shall not be removed from the list unless and until:

(a) The fines and fees on all unpaid parking tickets issued during the time it has been registered to or otherwise held by the owner are paid or otherwise resolved to include the payment of fines and fees related to parking tickets not yet eligible for late fees;

(b) The parking administrator receives reliable information that title to the vehicle has been transferred; or

(c) The parking administrator determines that the placement of the vehicle on the wheel lock-eligible list was erroneous.

(8) If a vehicle is not properly registered in any state or no registration information is available to the university and the vehicle is wheel lock eligible, then notice shall be provided by posting on the vehicle a conspicuous notice, which shall set forth:

(a) A description of the alleged wheel lock-eligible vehicle;

(b) A specified date on which the wheel lock-eligible vehicle is subject to placement on the wheel lock-eligible list;

(c) That the owner may avoid placement of the vehicle on the wheel lock-eligible list by making payment in full of fines and late fees on all unpaid parking tickets to include the payment of fines and fees related to parking tickets not yet eligible for late fees by the specified date certain on which the vehicle is subject to placement on the wheel lock-eligible list; and

(d) That the vehicle is subject to wheel lock, towing, or both once it is placed on the wheel lock-eligible list.

(9) An officer shall attempt to wheel lock any vehicle which appears on the wheel lock-eligible list when parked, lawfully or unlawfully, on campus.

(10) The university parking administrator or the chief of police shall ensure that officers are on duty to remove wheel locks from vehicles Monday through Friday between 8:00 a.m. and 5:00 p.m.

NEW SECTION

WAC 504-13-880 Fees, fines, and release of an impounded vehicle. The owner of an impounded vehicle may not secure the release of the stored vehicle until payment in full of fines and fees has been made on all unpaid parking tickets to include the payment of fines and fees related to parking tickets not yet eligible for late fees relating to the vehicle which were issued while the vehicle was owned by the person who owned the vehicle at the time it is wheel locked or towed hereunder, and the owner has paid in full the wheel lock fee, unpaid parking tickets, late fees, storage fees, and towing fees for any and all other vehicles owned by the registered owner.

NEW SECTION

WAC 504-13-885 Theft, damage, or removal of a wheel lock device. The following conduct of any person shall be reported to university police:

- (1) Causing physical damage to a wheel lock device;
- (2) Removing, or attempting to remove, a wheel lock device; or
- (3) Taking or stealing a wheel lock device.

PART VI TRAFFIC REGULATIONS

NEW SECTION

WAC 504-13-900 Speed limits. Driving on campus roads and streets is permitted at any time, unless otherwise posted or restricted by signs and/or by these regulations. The maximum speed limit unless otherwise posted is twenty-five miles per hour.

NEW SECTION

WAC 504-13-920 Closed and restricted areas. In certain designated areas on campus, such as the pedestrian mall in the campus core, driving is restricted to mall service vehicles.

NEW SECTION

WAC 504-13-930 Bicycles, skateboards, and roller blades/skates. (1) The riding and use of bicycles, skateboards, and roller blades/skates is prohibited from all building plazas, and interior building spaces.

(2) Bicycles, skateboards, and roller blades/skates may be ridden and used on sidewalks when a bike path is not provided. Operators must move at a safe speed and yield to pedestrians at all times.

(3) Bicycles, skateboards, and roller blades/skates may not be ridden on or over stairways, steps, ledges, benches, planting areas, or any other fixtures.

(4) Bicyclists must obey all traffic rules of the road when operating a bicycle in roadways.

(5) Bicycles may be secured only at bicycle racks and facilities designed for such purpose.

NEW SECTION

WAC 504-13-940 Pedestrians. (1) When traffic control signals are in place at intersections, pedestrians shall be subject to them.

(2) When traffic control signals are not in place or not in operation at pedestrian crossings, a vehicle must yield the right of way, by slowing down or stopping, when the pedestrian in the crossing is upon the same half of the roadway as the vehicle, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

(3) No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.

(4) Pedestrians who are between adjacent intersections at which traffic control signals are in operation must not cross at any place except in a marked crosswalk.

AMENDATORY SECTION (Amending WSR 08-08-048, filed 3/27/08, effective 7/1/08)

WAC 504-14-560 Other parking permits—Availability and use. (1) Visitor permits. Visitor permits may be used only by bona fide visitors as defined by this chapter. Use by any other person constitutes illegal use of a parking permit. Visitor permits are valid in any zone and parking spaces signed for visitor permits only. Visitor permits are not valid at meters or restricted spaces.

(2) Golden cougar permits. Golden cougar permits are special visitor permits that are issued to retired staff in recognition of their service without additional cost. They are issued on an annual basis and are valid in any zone. Staff who are employed by the university or by other entities located on campus after formal retirement are not eligible to use a golden cougar permit in lieu of a regular paid zone permit. Comparable permits from other campus institutions will be honored.

(3) President's associates decals. President's associates decals are issued to eligible members of the Washington State University foundation. ~~((They are valid in any zone.))~~ Use of these decals for parking shall be in accordance with a separate agreement between WSU and the WSU foundation. However, university faculty, staff, and students may not use

a president's associates decal or any other parking benefit instrument in lieu of a paid zone permit.

(4) Conference permits. Conference permits are available to visitors who participate in conferences held on the WSUS campus. They are available on a daily basis only. Conference permits may be assigned to a specific zone.

(5) Construction permits. A construction permit is issued to personnel who are working on a construction site on campus. Construction permits are available on an annual or daily basis and are assigned to a specific parking area.

(6) Carpool. Upon application, a bona fide carpool (~~((with four or more participants))~~) as defined by the campus policies and procedures is given preference in the assignment of parking zones, and issued a permit that facilitates the carpool. Obtaining or using a carpool permit under false pretenses constitutes the illegal use of a permit.

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

WAC 504-15-560 Other parking permits—Availability and use. (1) Visitor permits. Visitor permits are available on an annual or daily basis to visitors of the university. Visitor permits may be used only by bona fide visitors as defined by this chapter. Use by any other person constitutes illegal use of a parking permit. Annual visitor permits are valid in green, yellow, red and blue zones, and parking spaces signed for visitor permits only. Daily visitor permits may be assigned to specific zones on a space-available basis. If a parking zone is not specified on the permit, it is valid in the same parking areas as an annual visitor permit. Visitor permits are not valid in pay parking facilities, parking meters, or restricted spaces.

(2) Golden cougar permits. Golden cougar permits are special visitor permits that are issued to retired staff in recognition of their service without additional cost. They are issued on an annual basis and are valid in green, yellow, red, blue zones, and visitor-permit-only parking spaces. Staff who are employed by the university or by other entities located on campus after formal retirement are not eligible to use a golden cougar permit in lieu of a regular paid zone permit.

(3) President's associates decals. President's associates decals are issued to eligible members of the Washington State University foundation. (~~They are valid in green, yellow, red, blue zones, and visitor permit only parking spaces.~~) Use of these decals for parking shall be in accordance with a separate agreement between WSU and the WSU foundation. However, university faculty, staff, and students may not use a president's associates decal or any other parking benefit instrument in lieu of a paid zone permit.

(4) Conference permits. Conference permits are available to visitors who participate in conferences held on the university campus. They are available on a daily basis only. Conference permits may be assigned to specific zones on a space-available basis. If a parking zone is not specified on the permit, it is valid in green, yellow, red, blue zones, and visitor-permit-only parking spaces. Conference permits are not valid in orange zones, pay parking facilities, parking meters, or restricted spaces.

(5) Motorcycle permits. Motorcycle permits are valid within boundaries of areas specifically posted and/or marked for motorcycle permits. Motorcycle permits are available on an annual and daily basis.

(6) Moped permits. Moped permits are valid within boundaries of areas specifically posted and/or marked for moped permits. Moped permits are available on an annual and daily basis.

(7) Commercial permits. Commercial permits are issued to vendors, suppliers, and service representatives of outside companies performing a service for the university. Commercial permits are available on an annual or daily basis. Annual commercial permits are valid in service zones, parking meters, and green, yellow, red and blue zones, and visitor-permit-only parking spaces. Daily commercial permits may be assigned to specific zones on a space-available basis. Commercial permits are not valid in orange zones or pay parking facilities.

(8) Construction permits. A construction permit is issued to personnel who are working on a construction site on campus. Construction permits are available on an annual or daily basis and are assigned to a specific parking area.

(9) Housing permits. A housing permit is issued to eligible residents of university-owned housing. Housing permits are valid only in specific housing parking areas.

(10) Carpool. Upon application, a bona fide carpool (~~((with four or more participants))~~) as defined by the campus policies and procedures is given preference in the assignment of parking zones, and issued a permit that facilitates the carpool. Obtaining or using a carpool permit under false pretenses constitutes the illegal use of a permit.

(11) Departmental permits. Departmental parking permits are available for use by department employees who need to use their personal vehicles for university business. Departmental permits are available in different forms and are valid at parking meters; service zones; orange, green, yellow, red, blue, crimson, and gray permit zones; and pay parking facilities. Departmental permits are not valid in reserved spaces. The use of departmental permits for anything other than official departmental business is prohibited by the State Ethics Act.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 504-18-100	Purpose of regulations.
WAC 504-18-110	Authorization.
WAC 504-18-120	Definitions.
WAC 504-18-130	General.
WAC 504-18-140	Parking permits.
WAC 504-18-150	Parking permit fees.
WAC 504-18-160	Parking areas.
WAC 504-18-170	Administration and enforcement.

AMENDATORY SECTION (Amending WSR 08-08-049, filed 3/27/08, effective 7/1/08)

WAC 504-19-460 False information. No person shall obtain, attempt to obtain, or use in a manner contrary to these regulations, a modified ~~((or counterfeit))~~ parking permit or a permit issued upon false information. A violation of this section includes giving a false name, address, identification number, and/or other information known to be false. It also includes the use of a visitor, conference, and commercial permit by staff or students. Violation of this provision shall constitute the illegal use of a parking permit and is subject to the issuance of parking tickets.

AMENDATORY SECTION (Amending WSR 08-08-049, filed 3/27/08, effective 7/1/08)

WAC 504-19-560 Other parking permits—Availability and use. (1) Visitor permits. Visitor permits may be used only by bona fide visitors as defined by this chapter. Use by any other person constitutes illegal use of a parking permit. Visitor permits are valid in any zone and parking spaces signed for visitors only. Visitor permits are not valid at meters or restricted spaces.

(2) Golden cougar permits. Golden cougar permits are special visitor permits that are issued to retired staff in recognition of their service without additional cost. They are issued on an annual basis and are valid in any zone. Staff who are employed by the university or other entities located on campus after formal retirement are not eligible to use a golden cougar permit in lieu of a regular paid zone permit.

(3) President's associates decals. President's associates decals are issued to eligible members of the Washington State University foundation. ~~((They are valid in any zone.))~~ Use of these decals for parking shall be in accordance with a separate agreement between WSU and the WSU foundation. However, WSU faculty, staff, and students may not use a president's associates decal or any other parking benefit instrument in lieu of a paid zone permit.

(4) Conference permits. Conference permits are available to visitors who participate in conferences held on the WSUV campus. They are available on a daily basis only. Conference permits are valid in any assigned zone.

(5) Motorcycle permits. Motorcycle permits are valid within boundaries of areas specifically posted and/or marked for motorcycle permits.

(6) Construction permits. A construction permit is issued to personnel who are working on a construction site on campus. Construction permits are assigned to a specific parking area.

(7) Carpool. Upon application, a bona fide carpool ~~((with three or more participants))~~ as defined by the campus policies and procedures is given preference in the assignment of parking zones, and issued a permit that facilitates the carpool. Obtaining or using a carpool permit under false pretenses constitutes the illegal use of a permit.

(8) Commercial permits. Commercial permits are issued to vendors, suppliers, and service representatives of outside companies performing a service for the university. Commercial permits are valid in zones and areas indicated on the permit.

(9) Departmental permits. Departmental parking permits are available for use by department employees who need to use their personal vehicles for university business. Departmental permits are available in different forms and are valid at parking meters, service zones, orange, green, red, and gray permit zones, and pay parking facilities. Departmental permits are not valid in reserved spaces. The use of departmental permits for anything other than official departmental business is prohibited by the State Ethics Act.

AMENDATORY SECTION (Amending WSR 08-08-049, filed 3/27/08, effective 7/1/08)

WAC 504-19-930 Bicycles, skateboards, and roller blades/skates. (1) The riding and use of bicycles, skateboards, and roller blades/skates is prohibited from all building plazas, and interior building spaces.

(2) Bicycles, skateboards, and roller blades/skates may be ridden and used on sidewalks when a bike path is not provided. Operators must move at a safe speed and yield to pedestrians at all times.

(3) Bicycles, skateboards, and roller blades/skates may not be ridden on or over stairways, steps, ledges, benches, planting areas, or any other fixtures.

(4) Bicyclists must obey all traffic rules of the road when operating a bicycle in roadways.

(5) Bicycles may be secured only at bicycle racks and facilities designed for such purpose.

~~((6) Bicyclists desiring to enjoy the right of way provided to pedestrians in crosswalks must dismount and walk their bicycle in crosswalks. Failure to do so will result in a bicyclist being in violation of the traffic laws.))~~

WSR 09-05-096

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed February 18, 2009, 11:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-01-141.

Title of Rule and Other Identifying Information: Chapter 388-106 WAC, Long-term care services:

Amending WAC 388-106-0010 What definitions apply to this chapter?, to add definitions for agency managed personal care services, participant managed personal care services, and residential personal care services.

Adding new section WAC 388-106-0042 When am I eligible to receive participant managed personal care services from an individual provider?

Adding new section WAC 388-106-0043 When am I eligible to receive agency managed personal care services from a home care agency?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www.dshs>).

wa.gov/msa/rpau/docket.html or by calling (360) 664-6094, on March 24, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 25, 2009.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on March 24, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by March 10, 2009, 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:

- In-home personal care services are redefined to assure that clients receive personal care from the most cost-effective service that can meet their needs. Clients who are able to manage and self-direct their personal care as determined by the department's assessment will be eligible to receive services from an individual provider.
- Clients who are not able to manage and self-direct their personal care as determined by the department's assessment will be eligible to receive services either from an individual provider, if there is an alternative monitoring plan in place, or an agency provider.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.520.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bea Rector, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2527.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business economic impact statement is not required, as no new costs will be imposed on small businesses or nonprofits.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Tiffany Sevrak, Home and Community Services, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2538, fax (360) 407-7582, e-mail sevruta@dshs.wa.gov.

February 12, 2009
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

WAC 388-106-0010 What definitions apply to this chapter? "Ability to make self understood" means how you make yourself understood to those closest to you; express or communicate requests, needs, opinions, urgent

problems and social conversations, whether in speech, writing, sign language, symbols, or a combination of these including use of a communication board or keyboard:

(a) Understood: You express ideas clearly;

(b) Usually understood: You have difficulty finding the right words or finishing thoughts, resulting in delayed responses, or you require some prompting to make self understood;

(c) Sometimes understood: You have limited ability, but are able to express concrete requests regarding at least basic needs (e.g. food, drink, sleep, toilet);

(d) Rarely/never understood. At best, understanding is limited to caregiver's interpretation of client specific sounds or body language (e.g. indicated presence of pain or need to toilet.)

"Activities of daily living (ADL)" means the following:

(a) Bathing: How you take a full-body bath/shower, sponge bath, and transfer in/out of tub/shower.

(b) Bed mobility: How you move to and from a lying position, turn side to side, and position your body while in bed, in a recliner, or other type of furniture.

(c) Body care: How you perform with passive range of motion, applications of dressings and ointments or lotions to the body and pedicure to trim toenails and apply lotion to feet. In adult family homes, contracted assisted living, enhanced adult residential care, and enhanced adult residential care-specialized dementia care facilities, dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC. Body care excludes:

(i) Foot care if you are diabetic or have poor circulation; or

(ii) Changing bandages or dressings when sterile procedures are required.

(d) Dressing: How you put on, fasten, and take off all items of clothing, including donning/removing prosthesis.

(e) Eating: How you eat and drink, regardless of skill. Eating includes any method of receiving nutrition, e.g., by mouth, tube or through a vein.

(f) Locomotion in room and immediate living environment: How you move between locations in your room and immediate living environment. If you are in a wheelchair, locomotion includes how self-sufficient you are once in your wheelchair.

(g) Locomotion outside of immediate living environment including outdoors: How you move to and return from more distant areas. If you are living in a boarding home or nursing facility (NF), this includes areas set aside for dining, activities, etc. If you are living in your own home or in an adult family home, locomotion outside immediate living environment including outdoors, includes how you move to and return from a patio or porch, backyard, to the mailbox, to see the next-door neighbor, etc.

(h) Walk in room, hallway and rest of immediate living environment: How you walk between locations in your room and immediate living environment.

(i) Medication management: Describes the amount of assistance, if any, required to receive medications, over the counter preparations or herbal supplements.

(j) Toilet use: How you use the toilet room, commode, bedpan, or urinal, transfer on/off toilet, cleanse, change pad, manage ostomy or catheter, and adjust clothes.

(k) Transfer: How you move between surfaces, i.e., to/from bed, chair, wheelchair, standing position. Transfer does not include how you move to/from the bath, toilet, or vehicle.

(l) Personal hygiene: How you maintain personal hygiene, including combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands (including nail care), and perineum (menses care). Personal hygiene does not include hygiene in baths and showers.

"Aged person" means a person sixty-five years of age or older.

"Agency managed personal care services" per WAC 388-106-0043, means in-home personal care services and assistance with management of the direct care provider for participants who based upon criteria documented in a CARE assessment have that level of need and choose a contracted home care agency provider. The agency provides assistance with provider management tasks such as recruitment, firing, scheduling, and supervision of the care provider(s).

"Agency provider" means a licensed home care agency or a licensed home health agency having a contract to provide long-term care personal care services to you in your own home.

"Application" means a written request for medical assistance or long-term care services submitted to the department by the applicant, the applicant's authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The applicant must submit the request on a form prescribed by the department.

"Assessment details" means a summary of information that the department entered into the CARE assessment describing your needs.

"Assessment or reassessment" means an inventory and evaluation of abilities and needs based on an in-person interview in your own home or your place of residence, using CARE.

"Assistance available" means the amount of informal support available if the need is partially met. The department determines the amount of the assistance available using one of four categories:

- (a) Less than one-fourth of the time;
- (b) One-fourth to one-half of the time;
- (c) Over one-half of the time to three-fourths of the time;

or

- (d) Over three-fourths but not all of the time.

"Assistance with body care" means you need assistance with:

- (a) Application of ointment or lotions;
- (b) Trimming of toenails;
- (c) Dry bandage changes; or
- (d) Passive range of motion treatment.

"Assistance with medication management" means you need assistance managing your medications. You are scored as:

(a) Independent if you remember to take medications as prescribed and manage your medications without assistance.

(b) Assistance required if you need assistance from a nonlicensed provider to facilitate your self-administration of a prescribed, over the counter, or herbal medication, as defined in chapter 246-888 WAC. Assistance required includes reminding or coaching you, handing you the medication container, opening the container, using an enabler to assist you in getting the medication into your mouth, alteration of a medication for self-administration, and placing the medication in your hand. This does not include assistance with intravenous or injectable medications. You must be aware that you are taking medications.

(c) Self-directed medication assistance/administration if you are a person with a functional disability who is capable of and who chooses to self-direct your medication assistance/administration.

(d) Must be administered if you must have medications placed in your mouth or applied or instilled to your skin or mucus membrane. Administration must either be performed by a licensed professional or delegated by a registered nurse to a qualified caregiver (per chapter 246-840 WAC). Intravenous or injectable medications may never be delegated. Administration may also be performed by a family member or unpaid caregiver if facility licensing regulations allow.

"Authorization" means an official approval of a departmental action, for example, a determination of client eligibility for service or payment for a client's long-term care services.

"Blind person" means a person determined blind as described under WAC 388-511-1105 by the division of disability determination services of the medical assistance administration.

"Categorically needy" means the status of a person who is eligible for medical care under Title XIX of the Social Security Act. See WAC 388-475-0100 and chapter 388-513 WAC.

"Client" means an applicant for service or a person currently receiving services from the department.

"Current" means a behavior occurred within seven days of the CARE assessment date, including the day of the assessment. Behaviors that the department designates as current must include information about:

- (a) Whether the behavior is easily altered or not easily altered; and
- (b) The frequency of the behavior.

"Decision making" means your ability and actual performance in making everyday decisions about tasks or activities of daily living. The department determines whether you are:

(a) Independent: Decisions about your daily routine are consistent and organized; reflecting your lifestyle, choices, culture, and values.

(b) Modified independence/difficulty in new situations: You have an organized daily routine, are able to make decisions in familiar situations, but experience some difficulty in decision making when faced with new tasks or situations.

(c) Moderately impaired/poor decisions; unaware of consequences: Your decisions are poor and you require reminders, cues and supervision in planning, organizing and correcting daily routines. You attempt to make decisions, although poorly.

(d) Severely impaired/no or few decisions: Decision making is severely impaired; you never/rarely make decisions.

"Department" means the state department of social and health services, aging and disability services administration or its designee.

"Designee" means area agency on aging.

"Difficulty" means how difficult it is or would be for you to perform an instrumental activity of daily living (IADL). This is assessed as:

(a) No difficulty in performing the activity;

(b) Some difficulty in performing the activity (e.g., you need some help, are very slow, or fatigue easily); or

(c) Great difficulty in performing the activity (e.g., little or no involvement in the activity is possible).

"Disabling condition" means you have a medical condition which prevents you from self performance of personal care tasks without assistance.

"Estate recovery" means the department's process of recouping the cost of medicaid and long-term care benefit payments from the estate of the deceased client. See chapter 388-527 WAC.

"Home health agency" means a licensed:

(a) Agency or organization certified under medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence and reimbursed through the use of the client's medical identification card; or

(b) Home health agency, certified or not certified under medicare, contracted and authorized to provide:

(i) Private duty nursing; or

(ii) Skilled nursing services under an approved medicaid waiver program.

"Income" means income as defined under WAC 388-500-0005.

"Individual provider" means a person employed by you to provide personal care services in your own home. See WAC 388-71-0500 through 388-71-05909.

"Disability" is described under WAC 388-511-1105.

"Informal support" means a person or resource that is available to provide assistance without home and community program funding. The person or resource providing the informal support must be age 18 or older.

"Institution" means medical facilities, nursing facilities, and institutions for the mentally retarded. It does not include correctional institutions. See medical institutions in WAC 388-500-0005.

"Instrumental activities of daily living (IADL)" means routine activities performed around the home or in the community and includes the following:

(a) Meal preparation: How meals are prepared (e.g., planning meals, cooking, assembling ingredients, setting out food, utensils, and cleaning up after meals). NOTE: The department will not authorize this IADL to plan meals or clean up after meals. You must need assistance with actual meal preparation.

(b) Ordinary housework: How ordinary work around the house is performed (e.g., doing dishes, dusting, making bed, tidying up, laundry).

(c) Essential shopping: How shopping is completed to meet your health and nutritional needs (e.g., selecting items). Shopping is limited to brief, occasional trips in the local area to shop for food, medical necessities and household items required specifically for your health, maintenance or well-being. This includes shopping with or for you.

(d) Wood supply: How wood is supplied (e.g., splitting, stacking, or carrying wood) when you use wood as the sole source of fuel for heating and/or cooking.

(e) Travel to medical services: How you travel by vehicle to a physician's office or clinic in the local area to obtain medical diagnosis or treatment-includes driving vehicle yourself, traveling as a passenger in a car, bus, or taxi.

(f) Managing finances: How bills are paid, checkbook is balanced, household expenses are managed. The department cannot pay for any assistance with managing finances.

(g) Telephone use: How telephone calls are made or received (with assistive devices such as large numbers on telephone, amplification as needed).

"Long-term care services" means the services administered directly or through contract by the aging and disability services administration and identified in WAC 388-106-0015.

"Medicaid" is defined under WAC 388-500-0005.

"Medically necessary" is defined under WAC 388-500-0005.

"Medically needy (MN)" means the status of a person who is eligible for a federally matched medical program under Title XIX of the Social Security Act, who, but for income above the categorically needy level, would be eligible as categorically needy. Effective January 1, 1996, an AFDC-related adult is not eligible for MN.

"New Freedom consumer directed services (NFCDS)" means a mix of services and supports to meet needs identified in the participant's assessment and identified in a New Freedom spending plan, within the limits of the individual budget, that provide participants with flexibility to plan, select, and direct the purchase of goods and services to meet identified needs. Participants have a meaningful leadership role in:

(a) The design, delivery and evaluation of services and supports;

(b) Exercising control of decisions and resources, making their own decisions about health and well being;

(c) Determining how to meet their own needs;

(d) Determining how and by whom these needs should be met; and

(e) Monitoring the quality of services received.

"New Freedom consumer directed services (NFCDS) participant" means a participant who is an applicant for or currently receiving services under the NFCDS waiver.

"New Freedom spending plan (NFSP)" means the plan developed by the participant, within the limits of an individual budget, that details the participant's choices to purchase specific NFCDS and provides required federal medicaid documentation.

"Own home" means your present or intended place of residence:

(a) In a building that you rent and the rental is not contingent upon the purchase of personal care services as defined in this section;

(b) In a building that you own;

(c) In a relative's established residence; or

(d) In the home of another where rent is not charged and residence is not contingent upon the purchase of personal care services as defined in this section.

"Participant managed personal care services" per WAC 388-106-0042, means in-home personal care services for participants who based upon criteria in a CARE assessment are able to direct their personal care providers or who have an alternate plan for direction in place. Participants have employer authority including hiring, firing, scheduling and supervision of the care provider(s).

"Past" means the behavior occurred from eight days to five years of the assessment date. For behaviors indicated as past, the department determines whether the behavior is addressed with current interventions or whether no interventions are in place.

"Personal aide" is defined in RCW 74.39.007.

"Personal care services" means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) due to your functional limitations. Assistance is evaluated with the use of assistive devices. Personal care services are offered in three distinct service options:

(a) Participant managed personal care services;

(b) Agency managed personal care services; and

(c) Residential personal care services (see definitions).

"Physician" is defined under WAC 388-500-0005.

"Plan of care" means assessment details and service summary generated by CARE.

"Provider or provider of service" means an institution, agency, or person:

(a) Having a signed department contract to provide long-term care client services; and

(b) Qualified and eligible to receive department payment.

"Residential personal care services" means participants may choose to receive personal care services provided by a licensed and contracted adult family home or boarding home.

"Residential facility" means a licensed adult family home under department contract or licensed boarding home under department contract to provide assisted living, adult residential care or enhanced adult residential care.

"Self performance for ADLs" means what you actually did in the last seven days before the assessment, not what you might be capable of doing. Coding is based on the level of performance that occurred three or more times in the seven-day period and does not include support provided as defined in WAC 388-106-0010. Your self performance level is scored as:

(a) Independent if you received no help or oversight, or if you needed help or oversight only once or twice;

(b) Supervision if you received oversight (monitoring or standby), encouragement, or cueing three or more times;

(c) Limited assistance if you were highly involved in the activity and given physical help in guided maneuvering of limbs or other nonweight bearing assistance on three or more occasions. For bathing, limited assistance means physical help is limited to transfer only;

(d) Extensive assistance if you performed part of the activity, but on three or more occasions, you needed weight bearing support or you received full performance of the activity during part, but not all, of the activity. For bathing, extensive assistance means you needed physical help with part of the activity (other than transfer);

(e) Total dependence if you received full caregiver performance of the activity and all subtasks during the entire seven-day period from others. Total dependence means complete nonparticipation by you in all aspects of the ADL; or

(f) Activity did not occur if you or others did not perform an ADL over the last seven days before your assessment. The activity may not have occurred because:

(i) You were not able (e.g., walking, if paralyzed);

(ii) No provider was available to assist; or

(iii) You declined assistance with the task.

"Self performance for IADLs" means what you actually did in the last thirty days before the assessment, not what you might be capable of doing. Coding is based on the level of performance that occurred three or more times in the thirty-day period. Your self performance is scored as:

(a) Independent if you received no help, set-up help, or supervision;

(b) Set-up help/arrangements only if on some occasions you did your own set-up/arrangement and at other times you received help from another person;

(c) Limited assistance if on some occasions you did not need any assistance but at other times in the last thirty days you required some assistance;

(d) Extensive assistance if you were involved in performing the activity, but required cueing/supervision or partial assistance at all times;

(e) Total dependence if you needed the activity fully performed by others; or

(f) Activity did not occur if you or others did not perform the activity in the last thirty days before the assessment.

"Service summary" is CARE information which includes: Contacts (e.g. emergency contact), services the client is eligible for, number of hours or residential rates, personal care needs, the list of formal and informal providers and what tasks they will provide, a provider schedule, referral needs/information, and dates and agreement to the services.

"SSI-related" is defined under WAC 388-475-0050.

"Status" means the amount of informal support available. The department determines whether the ADL or IADL is:

(a) Met, which means the ADL or IADL will be fully provided by an informal support;

(b) Unmet, which means an informal support will not be available to provide assistance with the identified ADL or IADL;

(c) Partially met, which means an informal support will be available to provide some assistance, but not all, with the identified ADL or IADL; or

(d) Client declines, which means you do not want assistance with the task.

"Supplemental Security Income (SSI)" means the federal program as described under WAC 388-500-0005.

"Support provided" means the highest level of support provided (to you) by others in the last seven days before the assessment, even if that level of support occurred only once.

(a) No set-up or physical help provided by others;

(b) Set-up help only provided, which is the type of help characterized by providing you with articles, devices, or preparation necessary for greater self performance of the activity. (For example, set-up help includes but is not limited to giving or holding out an item or cutting food);

(c) One-person physical assist provided;

(d) Two- or more person physical assist provided; or

(e) Activity did not occur during entire seven-day period.

"You/your" means the client.

NEW SECTION

WAC 388-106-0042 When am I eligible to receive participant managed personal care services from an individual provider? You are eligible to receive participant managed personal care services when you:

(a) Are assessed using the CARE tool and have unmet needs for personal care;

(b) Are found financially and functionally eligible for services; and

(c) Are able to manage your plan of care or your assessment specifies how the management of your plan of care will be carried out to address your health and safety.

NEW SECTION

WAC 388-106-0043 When am I eligible to receive agency managed personal care services from a home care agency? You are eligible to receive agency managed personal care services when you meet the criteria outlined in WAC 388-106-0042 (1) and (2) and:

(1) You meet the following criteria based on your CARE assessment:

(a) You have a CPS score of two or more; or

(b) Decision making is coded as poor decisions/unaware of consequences or no few decisions; or

(c) You meet the criteria for the exceptional care E group outlined in WAC 388-106-0110; and

(d) You have chosen to have a contracted home care agency provide some or all of your personal care.

(2) You may also be eligible to use a contracted home care agency for your in-home plan of care for a maximum of sixty days when you are actively seeking but have been unable to obtain an individual provider.

WSR 09-05-097

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed February 18, 2009, 11:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-01-141.

Title of Rule and Other Identifying Information: The department is amending chapter 388-71 WAC, Home and community services and programs and chapter 388-106 WAC, Long-term care services.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on March 24, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 25, 2009.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on March 24, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by March 10, 2009, 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:

- In-home personal care services are redefined to assure that clients receive personal care from the most cost-effective service that can meet their needs. Clients who are able to manage and self-direct their personal care as determined by the department's assessment will be eligible to receive services from an individual provider.
- Clients who are not able to manage and self-direct their personal care as determined by the department's assessment will be eligible to receive services either from an individual provider, if there is an alternative monitoring plan in place, or an agency provider.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.-520.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bea Rector, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2527.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business economic impact statement is not required, as

no new costs will be imposed on small businesses or nonprofits.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Tiffany Sevruck, Home and Community Services, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2538, fax (360) 407-7582, e-mail sevruta@dshs.wa.gov.

February 12, 2009
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-71-0500 What is the purpose of WAC 388-71-0500 through ((~~388-71-05952~~) [~~388-71-05909~~]) 388-71-05909? A client/legal representative may choose an individual provider or a home care agency provider, as defined in WAC 388-106-0010, depending on whether the client is found to be eligible for participant managed personal care services, based on the criteria set forth in WAC 388-106-0042, or agency managed personal care services, based on the criteria set forth in WAC 388-106-0043. The intent of WAC 388-71-0500 through ((~~388-71-05952~~) [~~388-71-05909~~]) 388-71-05909 is to describe the:

- (1) Qualifications of an individual provider, as defined in WAC 388-106-0010;
- (2) Qualifications of a home care agency provider, as defined in WAC 388-106-0010 and chapter 246-336 WAC;
- (3) Conditions under which the department or the area agency on aging (AAA) will pay for the services of an individual provider or a home care agency provider;
- (4) Training requirements for an individual provider and home care agency provider.

AMENDATORY SECTION (Amending WSR 07-24-026, filed 11/28/07, effective 1/1/08)

WAC 388-71-0540 When will the department((~~AAA~~)) or ((~~managed care entity~~)) department's designee deny payment for services of an individual provider or home care agency provider? The department((~~AAA~~)) or ((~~managed care entity~~)) the department's designee will deny payment for the services of an individual provider or home care agency provider who:

- (1) Is the client's spouse, per 42 C.F.R. 441.360(g), except in the case of an individual provider for a chore services client. Note: For chore spousal providers, the department pays a rate not to exceed the amount of a one-person standard for a continuing general assistance grant, per WAC 388-478-0030;
- (2) Is the natural/step/adoptive parent of a minor client aged seventeen or younger receiving services under medicaid personal care;
- (3) Is a foster parent providing personal care to a child residing in their licensed foster home;
- (4) Has been convicted of a disqualifying crime, under RCW 43.43.830 and 43.43.842 or of a crime relating to drugs as defined in RCW 43.43.830;

(5) Has abused, neglected, abandoned, or exploited a minor or vulnerable adult, as defined in chapter 74.34 RCW;

(6) Has had a license, certification, or a contract for the care of children or vulnerable adults denied, suspended, revoked, or terminated for noncompliance with state and/or federal regulations;

(7) Does not successfully complete the training requirements within the time limits required in WAC 388-71-05665 through 388-71-05865;

(8) Is already meeting the client's needs on an informal basis, and the client's assessment or reassessment does not identify any unmet need; and/or

(9) Is terminated by the client (in the case of an individual provider) or by the home care agency (in the case of an agency provider).

In addition, the department, AAA, or managed care entity may deny payment to or terminate the contract of an individual provider as provided under WAC 388-71-0546, 388-71-0551, and 388-71-0556.

(10) The department or the department's designee will deny payment to a home care agency provider for services provided to a client who is found to be eligible for participant managed personal care services and not agency managed personal care services, based on the criteria set forth in WAC 388-106-0042 and 388-106-0043.

AMENDATORY SECTION (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

WAC 388-71-0546 When can the department((~~AAA~~)) or ((~~managed care entity~~)) the department's designee reject the client's choice of an individual provider? The department((~~AAA~~)) or ((~~managed care entity~~)) the department's designee may reject a client's request to have a family member or other person serve as his or her individual provider if the case manager has a reasonable, good faith belief that the person will be unable to appropriately meet the client's needs. Examples of circumstances indicating an inability to meet the client's needs could include, without limitation:

- (1) Evidence of alcohol or drug abuse;
- (2) A reported history of domestic violence, no-contact orders, or criminal conduct (whether or not the conduct is disqualifying under RCW 43.43.830 and 43.43.842);
- (3) A report from the client's health care provider or other knowledgeable person that the requested provider lacks the ability or willingness to provide adequate care;
- (4) Other employment or responsibilities that prevent or interfere with the provision of required services;
- (5) Excessive commuting distance that would make it impractical to provide services as they are needed and outlined in the client's service plan.

AMENDATORY SECTION (Amending WSR 08-05-026, filed 2/12/08, effective 3/14/08)

WAC 388-106-0020 Under the MPC, COPES, MNRW, MNIW, and chore programs, what services are not covered? The following types of services are not covered under MPC, COPES, MNRW, MNIW, and chore:

- (1) Child care.

- (2) Individual providers must not provide:
 - (a) Sterile procedures unless the provider is a family member or the client self directs the procedure;
 - (b) Administration of medications or other tasks requiring a licensed health professional unless these tasks are provided through nurse delegation, self-directed care, or the provider is a family member.
- (3) Agency providers, including family members who provide care while working as an agency provider, must not provide:
 - (a) Sterile procedures;
 - (b) Self-directed care;
 - (c) Administration of medications or other tasks requiring a licensed health care professional unless these tasks are provided through nurse delegation.
- (4) Services provided over the telephone.
- (5) Services to assist other household members not eligible for services.
- (6) Development of social, behavioral, recreational, communication, or other types of community living skills.
- (7) Nursing care.
- (8) Pet care.
- (9) Assistance with managing finances.
- (10) Respite.
- (11) Yard care.
- (12) Agency managed personal care services, unless you are determined based on a CARE assessment to be eligible for such services based on the criteria set forth in WAC 388-106-0043.

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

WAC 388-106-0055 What is the purpose of an assessment? The purpose of an assessment is to:

- (1) Determine eligibility for long-term care programs;
- (2) Identify your strengths, limitations, and preferences;
- (3) Evaluate your living situation and environment;
- (4) Evaluate your physical health, functional and cognitive abilities, including your ability to manage your plan of care based on the criteria set forth in WAC 388-106-0042 and 388-106-0043;

- (5) Determine availability of informal supports and other nondepartment paid resources;
- (6) Determine need for intervention;
- (7) Determine need for case management activities;
- (8) Determine your classification group that will set your payment rate for residential care or number of hours of in-home care;
- (9) Determine need for referrals; and
- (10) Develop a plan of care, as defined in WAC 388-106-0010.
- (11) In the case of New Freedom consumer directed services, the purpose of an assessment is to determine functional eligibility and for the participant to develop the New Freedom spending plan, as defined in WAC 388-106-0010.
- (12) Determine whether you are eligible for participant managed personal care services or agency managed personal care services based on the criteria set forth in WAC 388-106-0042 and 388-106-0043, if you are receiving, or may receive, services in your own home.

AMENDATORY SECTION (Amending WSR 08-23-011, filed 11/6/08, effective 12/7/08)

WAC 388-106-0130 How does the department determine the number of hours I may receive for in-home care? (1) The department assigns a base number of hours to each classification group as described in WAC 388-106-0125.

(2) The department will deduct from the base hours to account for informal supports, as defined in WAC 388-106-0010, or other paid services that meet some of an individual's need for personal care services, including adult day health, as follows:

- (a) The CARE tool determines the adjustment for informal supports by determining the amount of assistance available to meet your needs, assigns it a numeric percentage, and reduces the base hours assigned to the classification group by the numeric percentage. The department has assigned the following numeric values for the amount of assistance available for each ADL and IADL:

Meds	Self Performance	Status	Assistance Available	Value Percentage
Self administration of medications	Rules for all codes apply except independent is not counted	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
1/2 to 3/4 time	.5			
>3/4 time	.3			

Unscheduled ADLs	Self Performance	Status	Assistance Available	Value Percentage
Bed mobility, transfer, walk in room, eating, toilet use	Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
1/2 to 3/4 time	.5			
	>3/4 time	.3		
Scheduled ADLs	Self Performance	Status	Assistance Available	Value Percentage
Dressing, personal hygiene, bathing	Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.75
			1/4 to 1/2 time	.55
1/2 to 3/4 time	.35			
>3/4 time	.15			
IADLs	Self Performance	Status	Assistance Available	Value Percentage
Meal preparation, Ordinary housework, Essential shopping	Rules for all codes apply except independent is not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.3
			1/4 to 1/2 time	.2
1/2 to 3/4 time	.1			
>3/4 time	.05			
IADLs	Self Performance	Status	Assistance Available	Value Percentage
Travel to medical	Rules for all codes apply except independent is not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
1/2 to 3/4 time	.5			
>3/4 time	.3			
Key: > means greater than < means less than				

(b) To determine the amount of reduction for informal support, the value percentages are totaled and divided by the number of qualifying ADLs and IADLs needs. The result is value A. Value A is then subtracted from one. This is value B. Value B is divided by three. This is value C. Value A and Value C are summed. This is value D. Value D is multiplied by the "base hours" assigned to your classification group and the result is the number of in-home hours reduced for informal supports.

(3) Also, the department will adjust in-home base hours when:

(a) There is more than one client receiving ADSA-paid personal care services living in the same household, the status under subsection (2)(a) of this section must be met or partially met for the following IADLs:

- (i) Meal preparation;
- (ii) Housekeeping;
- (iii) Shopping; and
- (iv) Wood supply.

(b) You are under the age of eighteen, your assessment will be coded according to age guidelines codified in WAC 388-106-0213.

(4) In addition to any determination of unmet need in (2)(a) when you are not affected by (3) above, the department will score the status for meal preparation as unmet when you adhere to at least one of the following special diets:

- (a) ADA (diabetes);
- (b) Autism diet;
- (c) Calorie reduction;
- (d) Low sodium;
- (e) Mechanically altered;
- (f) Planned weight change program;
- (g) Renal diet; or

(h) Needs to receive nutrition through tube feeding or receives greater than twenty-five percent of calories through tube or parenteral feeding.

(5) In addition to any determination of unmet need in (2)(a) when you are not affected by (3) above, the department will score the status for housework as unmet when you are incontinent of bladder or bowel, documented as:

- (a) Incontinent all or most of the time;
- (b) Frequently incontinent; or
- (c) Occasionally incontinent.

(6) After deductions are made to your base hours, as described in subsections (2) and (3), the department may add on hours based on your living environment:

Condition	Status	Assistance Available	Add On Hours
Offsite laundry facilities, which means the client does not have facilities in own home and the caregiver is not available to perform any other personal or household tasks while laundry is done.	N/A	N/A	8
Client is >45 minutes from essential services (which means he/she lives more than 45 minutes one-way from a full-service market).	Unmet	N/A	5
	Met	N/A	0
	Partially met	<1/4 time	5
		between 1/4 to 1/2 time	4
		between 1/2 to 3/4 time	2
>3/4 time		2	
Wood supply used as sole source of heat.	Unmet	N/A	8
	Met	N/A	0
	Declines	N/A	0
	Partially met	<1/4 time	8
		between 1/4 to 1/2 time	6
		between 1/2 to 3/4 time	4
		>3/4 time	2

(7) In the case of New Freedom consumer directed services (NFCDS), the department determines hours as described in WAC 388-106-1445.

(8) The result of actions under subsections (2), (3), (4), (5) and (6) is the maximum number of hours that can be used to develop your plan of care. The department must take into account cost effectiveness, client health and safety, and program limits in determining how hours can be used to meet your identified needs. In the case of New Freedom consumer directed services (NFCDS), a New Freedom spending plan (NFSP) is developed in place of a plan of care.

(9) You and your case manager will work to determine what services you choose to receive if you are eligible. The hours may be used to authorize:

(a) Personal care services from a home care agency provider (~~and/or~~), if you are determined to be eligible to receive agency managed personal care services based on the criteria set forth in WAC 388-106-0043 or an individual provider, if you are determined to be eligible to receive participant managed personal care services based on the criteria set forth in WAC 388-106-0042.

(b) Home delivered meals (i.e. a half hour from the available hours for each meal authorized).

(c) Adult day care (i.e. a half hour from the available hours for each hour of day care authorized).

(d) A home health aide if you are eligible per WAC 388-106-0300 or 388-106-0500.

(e) A private duty nurse (PDN) if you are eligible per WAC 388-71-0910 and 388-71-0915 or WAC 388-551-3000 (i.e. one hour from the available hours for each hour of PDN authorized).

(f) The purchase of New Freedom consumer directed services (NFCDS).

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0600 What services may I receive under chore? You may receive personal care services per WAC 388-106-0010 in your own home and, as applicable, assistance with personal care tasks while you are out of the home accessing community resources or working.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-1300 What rights do I have as a client of the department? As a client of the department, you have a right to:

- (1) Be treated with dignity, respect and without discrimination;
- (2) Not be abused, neglected, financially exploited, abandoned;
- (3) Have your property treated with respect;
- (4) Not answer questions, turn down services, and not accept case management services you do not want to receive. However, it may not be possible for the department to offer some services if you do not give enough information;
- (5) Be told about all services you can receive and make choices about services you want or don't want;
- (6) Have information about you kept private within the limits of the laws and DSHS regulations;
- (7) Be told in writing of agency decisions and receive a copy of your care plan;
- (8) Make a complaint without fear of harm;
- (9) Not be forced to answer questions or do something you don't want to;
- (10) Talk with your social service worker's supervisor if you and your social service worker do not agree;
- (11) Request a fair hearing;
- (12) Have interpreter services provided to you free of charge if you cannot speak or understand English well;
- (13) Take part in and have your wishes included in planning your care;
- (14) Choose, fire, or change a qualified personal care service provider(s) that provides the type of services for which you are determined to be eligible pursuant to WAC 388-106-0042 or 388-106-0043 ((you want)); and
- (15) Receive results of the background check for any individual provider you choose.

AMENDATORY SECTION (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

WAC 388-106-1303 What responsibilities do I have as a client of the department? As a client of the department, you have a responsibility to:

- (1) Give us enough information to assess your needs;
- (2) Let the social services worker into your home so that your needs can be assessed;
- (3) Follow your care plan;
- (4) Not act in a way that puts anyone in danger;
- (5) Provide a safe work place;
- (6) Tell your social services worker if there is a change in:
 - (a) Your medical condition;
 - (b) The help you get from family or other agencies;
 - (c) Where you live; or
 - (d) Your financial situation.
- (7) Tell your social services worker if someone else makes medical or financial decision for you;
- (8) Choose a qualified personal care services provider(s) that provides the type of services for which you are deter-

mined to be eligible pursuant to WAC 388-106-0042 or 388-106-0043;

- (9) Keep provider background checks private;
- (10) Tell your social services worker if you are having problems with your provider; and
- (11) Choose your own health care. Tell your social services worker when you do not do what your doctor says.

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

WAC 388-106-1445 How is the amount of the individual budget determined? The department will calculate the individual budget amount after the NFCDS participant is assigned a classification resulting from completion of the comprehensive assessment reporting and evaluation tool, CARE. The calculation will be based on:

~~((b))~~ (1) The published hourly rate for individual provider personal care paid by the department multiplied by the number of hours generated by the assessment, multiplied by a factor of .95, plus an amount equal to the average per participant expenditures for nonpersonal care supports purchased in the COPES waiver. The average will be recalculated in July of each year.

~~((b))~~ (2) If the participant is found to be eligible for agency managed personal care services and selects a home care agency, an adjustment will be made for each hour of personal care identified in the NFSP for an amount equal to the difference between the published individual provider rate and home care agency rate.

WSR 09-05-098

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed February 18, 2009, 11:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-01-140.

Title of Rule and Other Identifying Information: Amending and repealing sections in chapter 388-71 WAC, Home and community services and programs and chapter 388-106 WAC, Long-term care services.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on April 7, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 8, 2009.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on April 7, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by March 24, 2009, 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: DSHS is repealing and removing references to adult day health in chapters 388-71 and 388-106 WAC. The department is preparing for the elimination of adult day health, which will no longer be offered as a medicaid service due to budget restrictions.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.520.

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 and Implementation: Anne Vanderbeek, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2558; and Enforcement: Chris Imhoff, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2272.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business economic impact statement is not required, as no new costs will be imposed on small businesses or nonprofits.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Anne Vanderbeek, Home and Community Services, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2558, fax (360) 407-7582, e-mail VandeA@dshs.wa.gov.

February 13, 2009
Stephanie E. Schiller
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 09-06 issue of the Register.

WSR 09-05-099
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed February 18, 2009, 11:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-01-136.

Title of Rule and Other Identifying Information: WAC 388-825-068 What medicaid state plan services can DDD authorize?

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 7, 2009, at 10:00 a.m.

wa.gov/msa/rpau/docket.html or by calling (360) 664-6094, on April 7, 2009, at 10:00 a.m.

Date of Intended Adoption: Not sooner than April 8, 2009.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on April 7, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by March 24, 2009, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proceeding with the rule-making process in preparation for elimination of adult day health, which will no longer be offered as a medicaid service due to budget restrictions. These rules are being amended to maintain consistency with the amendments being proposed in chapters 388-106 and 388-71 WAC.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.10.020(3).

Statute Being Implemented: Title 71A RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Debbie Roberts, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail roberdx@dshs.wa.gov, (360) 725-3400, fax (360) 404-0955; Implementation: Shannon Manion, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail maniosk@dshs.wa.gov, (360) 725-3454, fax (360) 404-0955; and Enforcement: Don Clintsman, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail clintndl@dshs.wa.gov, (360) 725-3421, fax (360) 404-0955.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rules and determined that no new costs will be imposed on small businesses or nonprofits.

A cost-benefit analysis is not required under RCW 34.05.328. The rule is not a "significant legislative rule" as described in RCW 34.05.328 (5)(c)(iii) and a cost-benefit analysis is not required.

February 13, 2009
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-11-072, filed 5/19/08, effective 6/19/08)

WAC 388-825-068 What medicaid state plan services can DDD authorize? DDD ((~~can~~)) may authorize the following medicaid state plan services:

(1) Medicaid personal care, per chapter 388-106 WAC;

- (2) Private duty nursing for adults age eighteen and older; per chapter 388-106 WAC;
- (3) Private duty nursing for children under the age of eighteen, per WAC 388-551-3000; and
- (4) ~~((Adult day health for adults, per WAC 388-106-0810 and 388-106-0815; and~~
- ~~(5))~~ ICF/MR services, per chapters 388-835 and 388-837 WAC.

((Medicaid State Plan Services))	
((Adult day health ICF/MR services Medically intensive home care program for children Private duty nursing for adults))	((Medicaid personal care • In-home • Adult family home • Adult residential care))

WSR 09-05-100
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
 [Filed February 18, 2009, 11:20 a.m.]

Original Notice.
 Preproposal statement of inquiry was filed as WSR 08-19-071.
 Title of Rule and Other Identifying Information: Chapter 296-200A WAC.
 Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Tumwater, WA, on March 25, 2009, at 1:00 p.m.
 Date of Intended Adoption: May 5, 2009.
 Submit Written Comments to: Sally Elliott, P.O. Box 44400, Olympia, WA 98504-4400, e-mail yous235@lni.wa.gov, fax (360) 902-5292, by March 25, 2009.
 Assistance for Persons with Disabilities: Contact Sally Elliott by March 1, 2009, at (360) 902-6411 or yous235@lni.wa.gov.
 Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is a result of 2SSB 6732, which was passed by the 2008 legislature. The contractor registration rules need to be updated to be consistent with the statute and with industry practice. The rules were also reviewed to ensure policies were incorporated. Additional housekeeping changes were made to the rules for clarity.
 Reasons Supporting Proposal: See Purpose above.
 Statutory Authority for Adoption: Chapter 18.27 RCW and chapter 120, Laws of 2008 (2SSB 6732).
 Statute Being Implemented: Chapter 18.27 RCW.
 Rule is not necessitated by federal law, federal or state court decision.
 Name of Proponent: Department of labor and industries, governmental.
 Name of Agency Personnel Responsible for Drafting: Peter Schmidt, Tumwater, Washington, (360) 902-5571; Implementation and Enforcement: Patrick Woods, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has considered whether these proposed rules are subject to the Regulatory Fairness Act and has determined they do not require a small business economic impact statement because the proposed rules are in response [to] the passage of 2SSB 6732 (see RCW 19.85.025 referencing exemptions listed under RCW 34.05.310 (4)(c)).

A cost-benefit analysis is not required under RCW 34.05.328. The department considered whether these proposed rules are subject to the Regulatory Fairness Act and has determined they do not require a cost-benefit analysis because the proposed rules are clarifying the rules are in response [to] the passage of 2SSB 6732 (see exemptions, RCW 34.05.328 (5)(b)(iii)).

February 18, 2009
 Judy Schurke
 Director

AMENDATORY SECTION (Amending WSR 08-16-091, filed 8/4/08, effective 9/4/08)

WAC 296-200A-015 What terms do I need to know to understand this chapter? For the purposes of this chapter, the following terms and definitions are important:

"Administrative law judge" is any person appointed by the chief administrative law judge (as defined in RCW 34.12.020(2)) to preside at a notice of infraction appeal hearing convened under chapter 18.27 RCW and this chapter.

"Appeal bond" is a certified check or money order in the amount prescribed under RCW 18.27.250 made payable to the Washington state department of labor and industries.

"Appeal hearing" is any proceeding in which an administrative law judge is empowered to determine legal rights, duties or privileges of specific parties on behalf of the director.

"Applicant" is any person, firm, corporation or other entity applying to become a registered contractor according to chapter 18.27 RCW and this chapter. Applicant includes all principal officer(s), members, partners of a partnership, firm, corporation, or other entity named on the application.

"Citation" means the same as "infraction."

"Compliance inspector" refers to the departmental staff responsible for investigating potential violations of chapter 18.27 RCW and this chapter.

"Consultant" means any person, individual, firm, agent or other entity who directs, controls or monitors construction activities for a property owner. A general contractor registration is required. A licensed professional acting in the capacity of their license is exempt from registration.

"Contractor compliance chief" refers to the person designated by the director to address all policy and technical issues related to chapter 18.27 RCW and this chapter.

"Department" refers to the department of labor and industries.

"Developer" means any person, firm, corporation or other entity that undertakes:

- The subdivision or development of land for residential purposes; or

- The construction or reconstruction of one or more residential units.

A general contractor registration is required.

"Director" refers to the director of the department of labor and industries or the director's designee acting in the place of the director.

"Final judgment" means any money that is owed to a claimant as a result of court action against or settlement with a contractor and/or contractor's bond or assigned savings account with the department or any money that is owed the department as a result of a contractor's unsuccessful appeal of an infraction. Final judgment also includes any penalties assessed against the contractor and owed the department as a result of an infraction or notice of correction that has not been appealed, final tax warrants or any delinquent fees or penalties due.

"Final tax warrant" is a document used by the department to establish the debt of a tax payer.

"Infraction" means a violation of chapter 18.27 RCW and this chapter as cited by the chief contractor compliance inspector or the department's construction compliance inspectors.

"Mobile/manufactured home dealer" is a vehicle dealer that deals in mobile homes, park trailers, or travel trailers, or more than one type of these vehicles and licensed as required under chapter 46.70 RCW.

"On-premise sign" means a sign at a permanent place of business or a sign placed at a job location while the registered contractor is working at the site. A sign left at a work site after a contractor has left is not an "on-premise" sign and must contain the registered contractor's registration number.

"Property management company" means any person, firm or other entity that in the pursuit of a property management business advertises, bids/offers, or performs construction, maintenance or repair services with their own employees on property not owned by the property management company. A general contractor registration is required.

"Renewal" or **"renewed"** means the renewal of a contractor's registration before it expires.

"Reinstatement" or **"reinstated"** means the reinstatement of a contractor's registration after the registration has expired, or has been suspended, or been revoked.

"((Pre)registration) Reregistration" or **"reregister"** means an update to a contractor's registration because of business structure change.

"Secured contractor" is a contractor who has complied with RCW 18.27.040 by assigning to the department a savings account held in a Washington state bank, or by filing with the department a surety bond.

"Security" is a savings account held in a Washington state bank and assigned to the department in lieu of a surety bond.

"Unregistered contractor" means a person, firm, corporation or other entity working as a contractor without being registered in compliance with chapter 18.27 RCW and this chapter.

"Unsatisfied final judgment" means a judgment that has not been satisfied either through payment, court approved settlement, discharge in bankruptcy, or assignment under RCW 19.72.070.

AMENDATORY SECTION (Amending WSR 08-16-091, filed 8/4/08, effective 9/4/08)

WAC 296-200A-016 What are the definitions of the specialty contractor classifications for the purpose of contractor registration only? (1) "Appliances, equipment"—

A contractor in this specialty installs or replaces appliances where minimal gas and water connection are required, such as a refrigerator with an icemaker, gas clothes dryer, gas cook top, gas oven or other similar appliances and only from the existing shut off at wall or floor to the appliance or an appliance that becomes a fixed part of a structure (use of flex for the connection is limited to six feet or less). *The installation or replacement of dishwashers, hot water tanks, and garbage disposals requires a plumber certification per chapter 18.106 RCW and/or an electrical license per chapter 19.28 RCW.*

(2) **"Asbestos and lead"**—A contractor in this specialty cleans, handles, repairs, removes, encapsulates, encloses, hauls and disposes of paper or hard block insulation on hot water piping, heating ducts, or as molded pipe fitting insulation and joint compounds on furnaces or floor tiles, sheet flooring, ceiling tiles and acoustical (stucco) finishes or as wall and attic insulation materials, or for shingles or siding material and cement pipes for interior or exterior asbestos or lead products. *All asbestos contractors shall adhere to state (DOSH) and/or federal (OSHA) standards regulating all forms of this hazardous material. Asbestos certification per chapter 296-65 WAC is required. Lead abatement certification for workers may be required per chapter 70.103 RCW.*

(3) **"Awnings, canopies, patio covers and exterior screens"**—A contractor in this specialty installs and repairs window awnings, door hoods, exterior screens, freestanding or attached canopies, and patio covers constructed of metal, fabric, fiberglass, and plastic.

(4) **"Boiler, steam fitting, process piping"**—A contractor in this specialty installs, services and repairs power boiler installations and hot water heating systems, including fire-tube and water-tube steel power boilers and hot water heating low pressure boilers, steam fitting and piping, fittings, valves, gauges, pumps, radiators, convectors, hydraulics, fuel oil tanks and fuel oil lines. Also includes chimney connections, flues, refractories, burners, thermal insulation, and accessories, fuel and nonpotable water lines from source of supply to boilers; process and specialty piping and related equipment, pneumatic and electrical control, sheet insulation and all other equipment, including solar heating equipment associated with these systems. *Work in this specialty may also require plumber certification per chapter 18.106 RCW and/or an electrical license per chapter 19.28 RCW.*

(5) **"Cabinets, millwork and finish carpentry"**—A contractor in this specialty installs cabinets, countertop frames, cases, sashes, doors (including hardware), trims, non-bearing partitions, closets and other items of finish carpentry by cutting, surfacing, joining, gluing, and framing wood and wood products. Also places, erects, fabricates and finishes such cabinets and millwork in structures, including the cutting, framing, installation and finishing of wood and wood products, such as prefabricated cabinets and millwork.

(6) **"Central vacuum systems"**—A contractor in this specialty installs, modifies, or repairs central vacuum systems, pneumatic tube dispatching systems or any other type

of pipeline which operates systems of reduced pressure for industrial and residential cleaning. *(This specialty does not include any medical or hazardous waste systems.)*

(7) "**Closets**"—A contractor in this specialty installs, repairs and maintains the lateral or horizontal shelving systems, racks, rails, or drawers involved in a closet or storage system.

(8) "**Commercial/industrial refrigeration**"—A contractor in this specialty installs, alters, and repairs refrigeration equipment and systems used for processing, storage, and display of food products and other perishable commodities for the control of air temperatures below fifty degrees Fahrenheit. This allows construction, fabrication, erection, installation, service, maintenance and repairs of devices, machinery and units, including refrigerators, refrigerated rooms, air-conditioning units and insulated spaces. Also includes installation of any related insulation, ducts, blowers, registers, controls over humidity and thermostatic controls for the control of air, liquid, and/or gas temperatures below fifty degrees Fahrenheit or ten degrees Celsius. *Work in this specialty may also require an electrical license per chapter 19.28 RCW.*

(9) "**Concrete**"—A contractor in this specialty completes all work in connection with the processing and placing of concrete composed of materials common to the concrete industry, including finishing, coloring, curing, repairing, testing, drilling, sawing, grinding, chipping, and grouting. Placing film barriers, sealing, and waterproofing are included. The construction, centering, and assembling of forms, molds, slip forms, and pans. *Reregistration is not required for companies who provide concrete pumping services or delivery of materials only.*

(10) "**Construction clean-up**"—A contractor in this specialty cleans up and/or removes from buildings, grounds or structures any debris resulting from any construction project including but not limited to: Concrete, plaster, dry-wall, any paint or adhesive products from windows, floors, ceramic tile and bathroom fixtures. *(Registration is not required for janitorial services, i.e., at final cleaning.)*

(11) "**Demolitions and salvage**"—A contractor in this specialty is involved in the wrecking of existing structures intended for disposal or salvage, by use of tools, equipment or explosives, and the raising, cribbing and underpinning of buildings and other structures so the alterations, repairs and temporary structures may be constructed under the retained and undisturbed portion of the building or other structures. Includes the erection of temporary ramps, barricades, and pedestrian walkways when required for demolition/wrecking and/or salvage projects. *(This specialty does not include the alterations, additions, repairs or rehabilitation of the permanently retained portions of such structures.)*

(12) "**Doors, gates and activating devices**"—A contractor in this specialty installs, modifies or repairs all types of residential, commercial or industrial doors including sliding door assemblies. This includes but is not limited to: Wood and screen doors, metal-clad doors, glass sliding/stationary doors and frames, automatic revolving doors, hospital cubical doors and related installations. *Work in this specialty may also require an electrical license per chapter 19.28 RCW.*

(13) "**Drain cleaning and snaking**"—A contractor in this specialty can perform camera examination, cleaning or snaking of building drainage and vent pipes and/or sewer pipe. Nothing in this specialty is intended to waive any plumbing certification requirements of chapter 18.106 RCW or any local enforcement agency code provisions or allow for the removal, installation or replacement of any damaged plumbing parts or fixtures.

(14) "**Drilling, blasting and soil sampling**"—A contractor in this specialty does core and post hole drilling, horizontal drilling (no piping) and drilling for placement of charges and performing blasting work and performs soil sampling. *(Does not include water well drilling.) Work with explosives requires licensing per chapter 70.74 RCW.*

(15) "**Drywall**"—A contractor in this specialty lays out and installs gypsum wall board and gypsum wall board assemblies including nonstructural metal framing members, and performs the taping, primer and texturing operations including the application of compounds that adhere to wall board to produce a continuous smooth or textured surface. Includes interior lath and plaster repair.

(16) "**Electrical**"—Please see chapter 19.28 RCW.

(17) "**Elevator**"—A contractor in this specialty installs, repairs, alters, relocates, demolishes and maintains elevators and other conveyances, including all associated equipment and equipment associated with the safe and efficient installation and operation of electrical, hydraulic and manual operated elevators. *Work in this specialty may also require elevator licensing per chapter 70.78 RCW and/or an electrical license per chapter 19.28 RCW.*

(18) "**Excavation, grading and land clearing**"—A contractor in this specialty digs, moves and alters materials forming the surface of the earth by digging, horizontal boring, trenching, grading, or compacting the material for a cut, fill, grade, or trench, with hand and power tools, machines and explosives. Included is the placement of shoring, the oiling of base materials, and incidental blasting and drilling. *(This specialty excludes excavating for water, gas, and oil wells.) Use of explosives requires licensing per chapter 70.74 RCW.*

(19) "**Fencing**"—A contractor in this specialty constructs, erects, alters, or repairs all types of fences, corrals, runs, railings, cribs, game court enclosures (excludes roof), guard rails and barriers, backstops, posts, flagpoles, and gates. This includes installing, cutting, shaping, fabricating and repair of metal and wood fencing, cattle guards and supplemental materials. *(This specialty excludes masonry walls.) Work in this specialty may also require an electrical license per chapter 19.28 RCW.*

(20) "**Fireproofing and coating**"—A contractor in this specialty applies by industry accepted practices independently qualified fireproofing and coating materials that are fire resistant.

(21) "**Fire protection**"—A contractor in this specialty lays out, fabricates, repairs and installs all types of fire protection systems, including all the equipment associated with these systems using water, steam, gas or chemicals. Systems may include the following areas of work and related equipment: Restaurant hood protection systems; fire pumps and drivers; pressure and storage tanks; all piping and valves;

sprinkler heads and nozzles; and application of materials for the prevention of corrosion or freezing. *Work in this specialty may also require an electrical license per chapter 19.28 RCW and/or fire-protection licensing.*

(22) "**Floor covering and counter tops**"—A contractor in this specialty installs, repairs or replaces floor covering materials and related accessories including preparation of the surface to be covered. Included are: Linoleum, carpets, carpet backings and pads, and materials manufactured of asphalt, wood, vinyl, laminates, rubber and material common to the industry installed for sanitary and decorative purposes for nonstructural bearing interior and exterior use. Excludes work outlined in subsection (56) of this section. *Work in this specialty may also require plumber certification per chapter 18.106 RCW and/or an electrical license per chapter 19.28 RCW.*

(23) "**Framing and rough carpentry**"—A contractor in this specialty performs any form work, framing or rough carpentry necessary to construct framed structures; installs or repairs individual components of framing systems and performs any rough carpentry or associated work, including but not limited to the construction or installation of: Subflooring, siding (flat work only), decks, exterior staircases, new exterior doors and railings, fascia, roof decking, truss members and rafters, and sheathing using carpenter hand tools and power tools.

(24) "**Glass and glazing**"—A contractor in this specialty selects, cuts, assembles, and/or installs, replaces and repairs all makes and kinds of glass, glass work, mirrored glass, and glass substitute materials for glazing; executes the installation and glazing of frames, panels, sashes, skylights and glass doors; and/or installs these items in any structure. Also includes the installation of steel and aluminum glass holding members, glass products, and related hardware, as well as standard methods of weatherproofing, caulking, glazing, sealants, and adhesives.

(25) "**Gutters and downspouts**"—A contractor in this specialty installs, repairs, and maintains gutters and exterior downspouts of metal, wood, and plastic and channel devices common to the industry, for the use of water run-off of the exterior of a building.

(26) "**Handyman**"—A contractor in this specialty must be an individual who does all work personally without employees or other specialty contractors. A handyman may perform more than one unrelated specialty trade or craft provided they do all work themselves. All work shall be limited to minor and casual work of existing residential maintenance and repair with a total dollar value of time and materials under two thousand dollars. Work requiring a building permit may not be done by this specialty. If the registered contractor is a corporation or limited liability company (LLC), one person must be identified as a handyman. *Work in this specialty may also require plumber certification per chapter 18.106 RCW and/or an electrical license per chapter 19.28 RCW.*

(27) "**House moving**"—A contractor in this specialty raises, lowers, cribs, underpins, and moves structures, including their foundations. *(This specialty does not include the alterations, additions, repairs or rehabilitation of such structures.)*

(28) "**Heating, ventilation, air-conditioning and refrigeration (HVAC/R)**"—A contractor in this specialty fabricates, installs, services, and maintains equipment for the purpose of heating and cooling of indoor air. Systems may include the following areas of work and related equipment using industry accepted materials: Duct work; air filtering devices; water treatment devices; pneumatic controls; control piping; thermal and acoustical insulation; vibration isolation materials and devices; liquid fuel (propane) piping and tanks; gas piping from service connection to equipment it serves; and stainless steel kitchen systems. Includes the testing and balancing of the air handling systems. Also includes systems that utilize solar energy. *Work in this specialty may also require electrical licensing per chapter 19.28 RCW and/or plumber certification per chapter 18.106 RCW.*

(29) "**Industrial equipment/machines**"—A contractor in this specialty installs all industrial machinery such as generators, compressors and processors which are bolted or otherwise attached so as to be permanently affixed to a structure. *Work in this specialty may also require an electrical license per chapter 19.28 RCW and/or plumber certification per chapter 18.106 RCW.*

(30) "**Institutional equipment, stationary furniture, lab tables, lockers**"—A contractor in this specialty installs, alters and repairs equipment and furniture that become a fixed part of the structure, such as stationary desks, lockers, chalkboards, shelving, storage, seats in an auditorium (including stationary bleachers) and equipment used in a stage or gymnasium. Work includes the installation, alteration and repair of institutional kitchen equipment and laboratory equipment, such as stationary counters and tables, shelving partitions, and such other equipment as is generally accepted for use as commercial building accessory.

(31) "**Insulation and acoustical**"—A contractor in this specialty installs, alters, and repairs insulation materials used for the nonmechanical control of heat, sound, and moisture for use in the construction of structures and equipment. Work includes installation methods and devices such as supports, fastening systems, adhesives, mastics, plastics, weather-stripping and material used for the preparation of insulation work and common to the industry. Also includes application and installation of materials to protect or finish insulated surfaces.

(32) "**Irrigation sprinkler systems**"—A contractor in this specialty installs, repairs, and maintains sprinkler systems to distribute water for the purpose of irrigation, dust and soil erosion control using equipment, materials, and fittings common to the industry. Connections to potable water lines, installation of backflow prevention devices for nonpotable water, installation of hose bibs and installation of service lines from source of supply are permitted only when they are an integral part of the sprinkler system and outside a building. *The use of pumps to draw or boost the pressure from any source of water that are used on a residential sprinkler system or for irrigation on a farm require plumber certification per chapter 18.106 RCW and/or an electrical license per chapter 19.28 RCW. (If both the electrical and plumbing trades are pursued this specialty is not allowed.)*

(33) "**Landscaping**"—A contractor in this specialty constructs, maintains, repairs, installs and develops landscape systems and facilities for public and private gardens

and other areas which are designed to aesthetically, architecturally, horticulturally, or functionally improve the ground within or surrounding a structure or tract or plot of land. Also prepares and grades plots; treats, conditions, prepares, and installs topsoil; performs hydroseed spraying; and plants all decorative vegetation. Landscaping includes installation of nonload bearing slabs, walkways and areas using concrete, brick, stone, or gravel; decorative wooden decks; garden walls, fences and screens up to six feet in height; and all other materials and equipment common to the industry. This specialty includes installation of residential lawn sprinklers (without pumps), ponds and water-features. *(Excluded from this specialty are cast in place or tilt up concrete, load bearing walls for structures, perimeter fencing along property lines or boundaries.) Work in this specialty may also require an electrical license per chapter 19.28 RCW and/or plumber certification per chapter 18.106 RCW. Registration is not required for companies who only deliver material and are not installing or placing the product.*

(34) **"Lathing and plastering"**—A contractor in this specialty coats surfaces with a mixture of sand, gypsum plaster, quick-lime or hydrated lime and water, or sand and cement and water, or a combination of such other materials that create a permanent surface coating, including coatings for the purpose of soundproofing and fireproofing. These coatings are applied with a plasterer's trowel or sprayed over any surface which offers a mechanical means for the support of such coating, and will adhere by suction. This contractor also installs lath (including metal studs) or any other material prepared or manufactured to provide a base or bond for such coating.

(35) **"Locks, security alarms and warning systems"**—A contractor in this specialty sets up, installs, maintains and repairs all doors and door assemblies, gates, locks and locking devices, panic and fire rated exit devices, manual and automatic operated gate and door closures and releases, jail and prison locking devices and permanently installed or built-in safes and vaults as well as early warning systems. *Work in this specialty may also require an electrical license per chapter 19.28 RCW.*

(36) **"Masonry"**—A contractor in this specialty installs concrete units and baked clay products; concrete, glass and clay block; natural and manufactured stone; terra cotta; and firebrick or other material for refractory work. Includes the fabrication and installation of masonry component units for structural load bearing and nonload bearing walls for structures and fences installed with or without mortar; ceramic veneer (not tile) and thin brick that resembles full brick for facing; paving; and clear waterproofing, cleaning and caulking incidental to masonry construction. This specialty also includes chimney cleaning and repair.

(37) **"Manufactured/mobile home set up"**—A contractor in this specialty installs, alters, repairs or prepares for moving any type of manufactured mobile home for the purpose of sitting the home which includes connections of the plumbing, gas, electrical and foundation system. *Installation of electrical wires and equipment that convey electrical power to the home or to an outlet in the home, and the ground cross-over, requires an electrical license per chapter 19.28 RCW. A certified installer per chapter 46.63B RCW must be*

employed. (Equipment does not include plug-in household appliances.)

(38) **"Metal fabrication/sheet metal"**—A contractor in this specialty fabricates, installs and repairs architectural and general products made of sheet metal including but not limited to exhaust hoods, counters, etc. This includes layout, cutting, fabrication, and installation of sheet metal products, assembly and installation of premanufactured sheet metal or other industry accepted products, and bracing and reinforcing materials. *(Does not include structural metal fabrication.)*

(39) **"Overhead/garage doors"**—A contractor in this specialty installs wood, wood panel, steel panel or steel roll-up doors and the rails and support systems common to the industries. The installation of power or hand operated opening/closing motors and devices is included. *Work in this specialty may also require an electrical license per chapter 19.28 RCW.*

(40) **"Painting and wall covering"**—A contractor in this specialty applies materials common to the painting and decorating industry for protective or decorative purposes. Includes the installation of surface coverings including paints, papers, textures, fabrics, pigments, oils, turpentine, japers, dryers, thinners, varnishes, shellacs, stains, fillers, waxes, adhesives, water, and any other vehicles, mediums, and materials which by evaporation may be mixed and applied to the surface of structures. Surface preparation, caulking, pressure washing, sandblasting, and cleaning preparatory to painting/wall covering are included. Registration is not required for commissioned artwork and commissioned mural painting.

(41) **"Paving/stripping/seal coating"**—A contractor in this specialty installs, excavates, grades, compacts, and repairs the application of asphalt/cement to streets, driveways, parking lots, boat ramps, and landing strips and taxiways for an airport. Also includes the filling of cracks and voids in existing surfaces, the application of sealants and the installation of precast bumpers, nonelectrical traffic signs/markers and striping on the surface.

(42) **"Plumbing"**—A contractor in this specialty installs, alters, repairs and renovates all potable water, building supply, and distribution pipes; all plumbing fixtures and traps; all drainage and vent pipes; and all building drains and building sewers, including their respective joints and connections, devices, receptors, and appurtenances within the property lines of the premises and shall include potable water piping, potable water treating or using equipment, medical gas and medical vacuum systems, liquid and fuel gas piping, and water heaters, hydronic heating systems and vents for same. Includes solar heating equipment attached to potable water systems. *Plumber certification is required for work within a building per chapter 18.106 RCW.*

(43) **"Pressure washing"**—A contractor in this specialty uses the force of pressurized water to clean and prepare surfaces for any protective, decorative and/or functional treatment ~~((#))~~ on a commercial and/or residential structure. This specialty may also provide dust control.

(44) **"Roofing"**—A contractor in this specialty installs and repairs materials common to the industry that form a water tight, weather resistant surface for roofs and decks, including all accessories, plywood, coping, flashing, valleys,

gravel stops, and roof insulation panels above the roof decks. The work is completed using the following materials: Asphaltum, pitch, tar, felt, glass fabric, urethane foam, metal roofing systems, flax, shakes, shingles, roof tile, slate or any other roofing, waterproofing, weatherproofing or membrane material(s) or a combination thereof. Also includes roofing related architectural sheet metal. *(This specialty does not allow for structural repair of trusses, beams or joists.)*

(45) "**Sandblasting**"—A contractor in this specialty uses the force of compressed air in conjunction with abrasive materials and prepares surfaces for any protective, decorative and/or functional treatment ((~~it~~) on a commercial or residential structure.

(46) "**Sanitation systems and/or side sewers**"—A contractor in this specialty fabricates and installs septic tanks, storm drains, and other sewage disposal and drain systems outside the building structures. This classification includes the laying of cast-iron, steel, concrete, vitreous and nonvitreous pipe and any other hardware associated with these systems, including any related excavating, grading, trenching, surfacing and backfilling.

(47) "**Scaffolding and safety railings**"—A contractor in this specialty erects metal or wood scaffolding including temporary sidewalk sheltered construction work barricades, safety railings, stages and bleachers.

(48) "**Service station equipment and maintenance**"—A contractor in this specialty installs auto hoisting equipment, hydraulic systems, grease racks, compressors, air hoses, fuel dispensing, cathodic and other service station equipment. *Work in this specialty may also require an electrical license per chapter 19.28 RCW.*

(49) "**Siding**"—A contractor in this specialty installs all types of exterior siding including but not limited to wood, wood products, vinyl, aluminum and metal siding to new or existing buildings.

(50) "**Signs**"—A contractor in this specialty fabricates and installs all types of signs, including but not limited to: Post or pole supported signs, signs attached to structures, painted wall signs and modifications to existing signs. *Work in this specialty may also require an electrical license per chapter 19.28 RCW.*

(51) "**Steel erectors**"—A contractor in this specialty fabricates and erects structural steel shapes and plates of any profile, perimeter or cross-section, which are or may be used as structural members for buildings and structures, including the rebar, riveting, welding, rigging and metal roofing and decking systems.

(52) "**Structural pest control**"—A contractor in this specialty constructs, repairs, and installs the ventilation screens, bird exclusion devices, and caulking of cracks and holes for exclusion of and repelling pests. Includes the replacement of bird blocking screens.

(53) "**Suspended ceilings and acoustical tile**"—A contractor in this specialty installs, modifies or repairs all types of suspended ceilings, including but not limited to lay-in-grid and other types of systems involving solid, perforated or translucent ceiling panels.

(54) "**Swimming pools, spas and hot tubs**"—A contractor in this specialty constructs, alters, and repairs permanent swimming pools and spas or hot tubs, including associ-

ated equipment. May also do repairs to damaged acrylic, fiberglass, porcelain and other like materials in standard bathtubs or showers. *Work in this specialty may also require an electrical license per chapter 19.28 RCW and/or plumber certification per chapter 18.106 RCW.*

(55) "**Tanks and tank removal**"—A contractor in this specialty installs and/or removes fuel storage, grain and other types of tanks which have been or are to be used for dispensing gasoline, diesel fuel, waste oil, kerosene, propane or other chemicals. This work involves the installation and/or removal of all incidental tank related piping. *Work in this specialty may also require an electrical license per chapter 19.28 RCW.*

(56) "**Tile, ceramic, mosaic and natural and manufactured stone**"—A contractor in this specialty prepares surfaces as necessary and installs glazed wall, ceramic, mosaic, quarry, faience, glass mosaic and stone tiles, thin tile that resembles full brick, natural or simulated stone slabs for bathtubs, showers and horizontal surfaces inside of buildings, or any tile units set in the traditional or innovative tile methods, excluding hollow or structural partition tile. *Work in this specialty may also require plumber certification per chapter 18.106 RCW and/or an electrical license per chapter 19.28 RCW.*

(57) "**Tree removal**"—A contractor in this specialty falls and/or removes trees, stumps and/or branches on residential or commercial property or near a residential or commercial structure, outbuilding or fence. *((Stump grinding does not require contractor registration.))*

(58) "**Utilities and telecommunications**"—A contractor in this specialty provides excavation, cabling, horizontal boring, grading, and backfilling necessary for construction of a utility or telecommunication system prior to the line of demarcation. Also performs fabrication and/or installs pipes and piping for the conveyance or transmission of steam, gases, chemicals, and other substances.

(59) "**Window coverings**"—A contractor in this specialty installs window treatment rods and other handling devices and covering products, including but not limited to the following: Material and fabric that make up louvers, shutters, and blinds; residential and commercial draperies; permanent screens; expanded metal window and door guards; and plastic film and/or other treatments applied for temperature control.

(60) "**Water conditioning equipment**"—A contractor in this specialty installs water conditioning equipment or water treatment equipment with the use of only such pipe and fittings as are necessary to connect the water conditioning or water treatment equipment in a water supply system and only within six feet of the water service supply. Drainlines must run to existing floor drain, standpipe or outside the structure. *Work in this specialty may also require plumber certification per chapter 18.106 RCW.*

(61) "**Welding and ornamental metal**"—A contractor in this specialty installs, alters, removes, or repairs all architectural, structural and decorative steel, aluminum or other materials in welding techniques by the use of processes common to the industry.

(62) "**Well drilling**"—A contractor in this specialty installs and repairs water wells and pumps by boring, drilling,

excavating, casing, cementing and cleaning to provide a supply of uncontaminated water. May also install water conditioning equipment and perform soil sampling. *(Excludes the installation of jet and submersible pumps; electrical pump controls and wiring from pump equipment to first readily accessible disconnect; and water line to storage or pressure tank.) Work in this specialty may also require plumber certification per chapter 18.106 RCW or an electrical license per chapter 19.28 RCW. (If both the electrical and plumbing trades are pursued this specialty is not allowed.)*

(63) "**Wood/pellet and gas stove**"—A contractor in this specialty installs wood, pellet, or gas stoves, zero clearance and fire place inserts. These systems may include the following areas of work and related equipment: Air-filtering devices; gas piping from service connection to equipment; chimney, flashing and flues; and outside combustion air ducts. *The installing of piping, ducting and equipment for transmitting the heated air or water produced by the devices may also require an electrical license per chapter 19.28 RCW and/or plumber certification per chapter 18.106 RCW.*

AMENDATORY SECTION (Amending WSR 08-16-091, filed 8/4/08, effective 9/4/08)

WAC 296-200A-025 How does a contractor register, renew, reregister or reinstate its registration? (1) A contractor may register/renew/reregister/reinstate if it:

(a) Complete~~((s))~~ an application for contractor registration, have it notarized, and submit~~((s))~~ it to the department as required by RCW 18.27.030;

(b) Satisfies one of the following:

(i) Obtains a continuous surety bond in the total amount specified in WAC 296-200A-030 and submits the original bond with bond number to the department (see RCW 18.27.-040); or

(ii) Assigns, to the department, a security deposit in the form of a savings account held in a Washington state bank on a department issued form (F625-000-008) in the amounts specified in WAC 296-200A-030;

(c) Obtains public liability and property damage insurance and submits the original insurance certificate with policy number to the department (see RCW 18.27.050); and

(d) Pays the issuance/renewal/reregistration/reinstatement fee shown in WAC 296-200A-900.

(2) A contractor may renew its registration if it submits, to the department, a completed contractor registration renewal notice and the material required in subsection (1)(b) and (c) of this section and pays the renewal fee shown in WAC 296-200A-900. No more than forty-five days before the contractor's registration expires, the department must send a renewal notice to the contractor's last recorded address with the contractor registration program. It is the responsibility of the contractor to notify the department within ten days and in writing of a change in address.

(3) The contractor must~~((=~~

~~((=))~~ submit all required documents to the department in a manner approved by the department as set forth in this subsection~~((s-3)(b), (c), (d), and (4) of this section;~~

~~((=))~~;

~~((a))~~ Include, on each document, the name exactly as it appears on the contractor registration application or renewal notice;

~~((=))~~ ~~((b))~~ Include, if renewing a registration, the contractor's registration number on each of the documents; ~~((and~~

~~((=))~~ ~~((c))~~ Include a copy of the certificate or document (when required) by the secretary of state for the contractor to do business in the state of Washington; and

~~((d))~~ Have and maintain an active and valid unified business identifier (certificate of registration) with the department of revenue.

(4) The department will not register, renew, or reinstate the registration of a contractor if:

(a) Any of the required documents are missing, false, or are incomplete;

(b) The documents do not have the ~~((proper))~~ legal name of the contractor as documented on official governmental issued photo identification;

(c) In the case of a renewal, the documents do not include the registration number or UBI number; or

(d) The applicant or person pursuant to RCW 18.27.030 has an unsatisfied final judgment based on work which is subject to chapter 18.27 RCW and this chapter.

(5) The contractor may request, in a letter filed with the application or renewal materials, that the registration period end on a particular day. However, the registration period cannot exceed two years.

AMENDATORY SECTION (Amending WSR 08-16-091, filed 8/4/08, effective 9/4/08)

WAC 296-200A-040 What can cause the suspension of a contractor's registration? (1) A contractor's registration will be suspended if the following impairments, cancellations, noncompliance, or errors occur:

(a) A surety bond or other security has an unsatisfied final judgment against it or becomes otherwise impaired.

(b) A surety bond is canceled.

(c) An insurance policy is expired, canceled, revoked or the insurer is withdrawn from the insurance policy.

(d) The contractor has an unsatisfied final judgment against it under chapter 18.27 RCW and this chapter.

(e) The department has notice that the contractor is a sole proprietor or an owner, principal, or officer of a registered contractor that has an unsatisfied final judgment against it for work within the scope of chapter 18.27 RCW and this chapter.

(f) The program has been notified that the contractor has outstanding debt owed to the department for work performed under this chapter, such as industrial insurance premiums owed for workers' hours or penalties for violation of chapter 18.27 RCW and this chapter.

(g) The department is notified that the contractor has been certified by the department of social and health services as a person who is not in compliance with a support order as provided in RCW 74.20A.320.

~~((=))~~ (h) The department finds that the contractor has provided false or misleading information or has otherwise been registered in error.

~~((H))~~ (i) The contractor fails to comply with a penalty payment plan agreement.

~~((H))~~ (j) The contractor has been certified by a lending agency and reported to the department for nonpayment or default on a federally or state-guaranteed educational loan or service conditional scholarship.

~~((H))~~ (k) The contractor does not maintain ~~((#))~~ an active and valid unified business identifier number ~~((if required by))~~ with the department of revenue.

(1) The contractor does not provide the department with updated information or forms as necessary to validate their information.

(2) The contractor's registration will be automatically suspended on the effective date of the impairment or cancellation. The department must mail a notice of the suspension to the contractor's last recorded address ~~((on the certificate of))~~ with the contractor registration program by certified mail **and** first class mail within two days after suspension.

(3) A contractor must not advertise, offer to do work, submit a bid, or perform any work as a contractor while its registration is suspended. To continue to operate as a contractor while its registration is suspended is a violation of chapter 18.27 RCW and subject to infractions.

(4) The department shall not deny an application or suspend a registration because of an unsatisfied final judgment if the applicant's or registrant's unsatisfied final judgment was determined by the director to be the result of the fraud or negligence of another party.

NEW SECTION

WAC 296-200A-041 When will the department deny an application for registration, renewal or reinstatement? The department shall deny an application for registration, renewal or reinstatement if:

(1) The applicant does not submit the required documents on the forms required by the department.

(2) If the documents are false or incomplete.

(3) The documents do not have the legal name of the contractor as documented on official governmental issued photo identification.

(4) The applicant does not have a valid unified business identifier number, if required by the department of revenue.

(5) The applicant has been previously performing work subject to this chapter as a sole proprietor, partnership, corporation, or other entity and the department has notice that the applicant has an unsatisfied final judgment against him or her in an action based on this chapter or the applicant owes the department money for penalties assessed or fees due under this chapter as a result of a final judgment.

(6) The applicant was an owner, principal, or officer of a partnership, corporation, or other entity that either has an unsatisfied final judgment against it in an action that was incurred for work performed subject to this chapter or owes the department money for penalties assessed or fees due under this chapter as a result of a final judgment.

(7) The applicant has not complied with a department of social and health services - support enforcement division support enforcement order.

AMENDATORY SECTION (Amending WSR 08-16-091, filed 8/4/08, effective 9/4/08)

WAC 296-200A-400 What monetary penalties will be assessed for an infraction issued for violations of RCW 18.27.040, 18.27.100, 18.27.110, 18.27.114 or 18.27.200?

(1) Each day that a violation occurs will be a separate offense.

(2) Once a violation of chapter 18.27 RCW or this chapter becomes a final judgment, any additional violation within three years becomes a "second" or "additional" offense subject to an increased penalty as set forth in the tables that follow.

(3) Second or additional offenses subject to increased penalties also include individuals or entities.

(4) A person, firm, corporation, or other entity who violates a provision of chapter 18.27 RCW and this chapter is liable for a civil penalty based upon the following schedule.

(a) Monetary penalties that may be assessed for a violation of RCW 18.27.040(10) are:

Monetary Penalties	Dollar Amount
First Final Violation	\$250.00*
Second Final Violation	\$500.00
Third Final Violation	\$750.00
Each Additional Final Violation	\$1,000.00

(b)(i) Monetary penalties that may be assessed for a violation of RCW 18.27.100 (1), (2), (3), and (4) are:

Monetary Penalties	Dollar Amount
First Final Violation	\$250.00*
Second Final Violation	\$750.00
Third Final Violation	\$2,250.00
Fourth Final Violation	\$5,000.00
Each Additional Final Violation	\$10,000.00

* Minimum penalty per violation. Once a violation of RCW 18.27.100 (1), (2), (3), and (4) becomes a final judgment, any additional violation is subject to an increased penalty as set forth in the table above.

(ii) Monetary penalties that may be assessed for a violation of RCW 18.27.100 (5) and (7) are:

Monetary Penalties	Dollar Amount
First Final Violation	\$2,000.00*
Second Final Violation	\$4,000.00
Third Final Violation	\$6,000.00
Each Additional Final Violation	\$(8,000.00) 10,000.00

* Minimum penalty per violation. Once a violation of RCW 18.27.100 (5) and (7) becomes a final judgment, any additional violation is subject to an increased penalty as set forth in the table above.

(iii) Monetary penalties that may be assessed for a violation of RCW 18.27.100(6) are:

Monetary Penalties	Dollar Amount
First Final Violation	\$1,000.00*
Second Final Violation	\$3,000.00

Monetary Penalties	Dollar Amount
Third Final Violation	\$6,000.00
Each Additional Final Violation	\$10,000.00

* Minimum penalty per violation. Once a violation of RCW 18.27.100(6) becomes a final judgment, any additional violation is subject to an increased penalty as set forth in the table above.

(c) Monetary penalties that may be assessed for a violation of RCW 18.27.110 are:

Monetary Penalties	Dollar Amount
First Final Violation	\$250.00*
Second Final Violation	\$750.00
Third Final Violation	\$2,250.00
Fourth Final Violation	\$7,500.00
Each Additional Final Violation	\$10,000.00

* Minimum penalty per violation. Once a violation of RCW 18.27.110 becomes a final judgment, any additional violation is subject to an increased penalty as set forth in the table above.

(d) Monetary penalties that may be assessed for a violation of RCW 18.27.114 are:

Monetary Penalties	Dollar Amount
First Final Violation	\$500.00*
Second Final Violation	\$1,000.00
Third Final Violation	\$2,000.00
Fourth Final Violation	\$4,000.00
Each Additional Final Violation	\$5,000.00

* Minimum penalty per violation. Once a violation of RCW 18.27.114 becomes a final judgment, any additional violation is subject to an increased penalty as set forth in the table above.

(e) Monetary penalties that may be assessed for a violation of RCW 18.27.200 (~~according to RCW 18.27.340 (1) and (3)~~) are:

(i)

RCW (~~18.27.340(1)~~) 18.27.200 (1)(a)

Monetary Penalties	Dollar Amount
First Final Violation	\$500.00*
Second Final Violation	\$3,000.00
Each Additional Final Violation	\$5,000.00

* Minimum penalty per violation. Once a violation of RCW 18.27.340(1) becomes a final judgment, any additional violation is subject to an increased penalty as set forth in the table above.

(ii)

RCW (~~18.27.340(3)~~) 18.27.200 (1)(b) through (e)

Monetary Penalties	Dollar Amount
First Final Violation	\$1,000.00*
Second Final Violation	\$3,000.00
Each Additional Final Violation	\$5,000.00

* Minimum penalty per violation. Once a violation of RCW 18.27.340(3) becomes a final judgment, any additional violation is subject to an increased penalty as set forth in the above table. However, if the unregistered contractor becomes registered

within ten days of receiving the notice of infraction and the notice is the contractor's first offense, the director may reduce the penalty. In no case can the director reduce the penalty below five hundred dollars.

(5) For violations of RCW 18.27.200, the director may waive a penalty collection from a contractor in exchange for a payment of restitution to a damaged consumer in an amount at least equal to the assessed penalty. Prior to the infraction becoming final, the contractor must provide to the department a notarized release from the damaged consumer stating that he or she paid the damaged consumer in an amount at least equal to the assessed penalty.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-200A-401	When will the department deny an application for registration, renewal or reinstatement?
WAC 296-200A-402	When will the department suspend an active contractor registration?

WSR 09-05-101

PROPOSED RULES

SENTENCING GUIDELINES COMMISSION

[Filed February 18, 2009, 11:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-01-163.

Title of Rule and Other Identifying Information: Repealing chapter 437-10 WAC, Bylaws, removing bylaws from the Washington Administrative Code.

Hearing Location(s): Holiday Inn, 17338 International Boulevard, SeaTac, WA 98188, (206) 428-2123, on April 10, 2009, at 9:00 a.m.

Date of Intended Adoption: April 10, 2009.

Submit Written Comments to: Jennifer Jones, Rules Coordinator, Sentencing Guidelines Commission, P.O. Box 40927, Olympia, WA 98504, e-mail JenniferJ@sgc.wa.gov, fax (360) 407-1043, by April 8, 2009.

Assistance for Persons with Disabilities: Contact Jennifer Jones, (360) 407-1043.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To repeal chapter 437-10 WAC, from the administrative code. The purpose is to make changes to the bylaws more expedient by removing them from the rule-making process. The sentencing guidelines commission (SGC) will continue to operate under bylaws, but by removing them from the administrative code, the body will be able to respond to changing circumstances immediately. For example, the current bylaws according to WAC 437-10-080 allow the commission to change the bylaws by a simple majority. However, this change may not

take effect for at least four months under the rule-making process. The anticipated effects are to allow the commission to respond more quickly to emerging issues. There are no anticipated effects for the public since the bylaws already allow changes to be made by the members' vote, notice of meetings are given on the SGC web site, and time for public comment is given at meetings. The bylaws will also be published on the SGC web site.

Reasons Supporting Proposal: To allow the agency to adapt to and respond more quickly to emerging issues. Bylaws are not required to be codified.

Statutory Authority for Adoption: RCW 9.94A.850, commission's rule-making authority under chapter 34.05 RCW.

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

Name of Proponent: SGC, governmental.

Name of Agency Personnel Responsible for Drafting: Shannon Hinchcliffe, 4565 7th Avenue S.E., Lacey, WA 98503, (360) 407-1050; Implementation and Enforcement: Jean Soliz-Conklin, Executive Director, 4565 7th Avenue S.E., Lacey, WA 98503, (360) 407-1056.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule relates only to internal governmental operations that are not subject to violation by a nongovernment party.

A cost-benefit analysis is not required under RCW 34.05.328. This rule relates only to internal governmental operations that are not subject to violation by a nongovernment party.

February 18, 2009
Jean Soliz-Conklin
Executive Director

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 437-10-010 Officers of the sentencing guidelines commission.
- WAC 437-10-020 Meetings of the sentencing guidelines commission.
- WAC 437-10-030 Absences of members from meetings.
- WAC 437-10-040 Quorum.
- WAC 437-10-050 Participation and discussion during sentencing guidelines commission meetings, rules of order, and forms of action.
- WAC 437-10-060 Voting procedures.
- WAC 437-10-070 Minutes.
- WAC 437-10-080 Change in bylaws.

WSR 09-05-102

PROPOSED RULES

SENTENCING GUIDELINES COMMISSION

[Filed February 18, 2009, 11:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-01-165.

Title of Rule and Other Identifying Information: Clarifying and simplifying the agency's public disclosure process, currently located within chapter 437-06 WAC. Updating WAC references to current law.

Hearing Location(s): Holiday Inn, 17338 International Boulevard, SeaTac, WA 98188, (206) 428-2123, on April 10, 2009, at 9:00 a.m.

Date of Intended Adoption: April 10, 2009.

Submit Written Comments to: Jennifer Jones, Rules Coordinator, Sentencing Guidelines Commission, P.O. Box 40927, Olympia, WA 98504, e-mail JenniferJ@sgc.wa.gov, fax (360) 407-1043, by April 8, 2009.

Assistance for Persons with Disabilities: Contact Jennifer Jones, (360) 407-1043.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to simplify the agency's public records rules and make them more reader-friendly. Changes include reorganizing the layout of the chapter and the rules within the chapter. The change is also intended to update references to the Public Records Act (instead of the Disclosure Act) and to refer to the current and correct title, chapter and sections within.

Reasons Supporting Proposal: The commission strives to make its rules easy to follow and to refer to current law. By reorganizing the rules and layout and striking language that is redundant it [is] easier to follow the public records request procedure. Without the change, the rules will contain a reference to an invalid law (Public Disclosure Act, RCW 42.17.250 through 42.17.340).

Statutory Authority for Adoption: RCW 9.94A.850, commission's rule-making authority under chapter 34.05 RCW.

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

Name of Proponent: Sentencing guidelines commission, governmental.

Name of Agency Personnel Responsible for Drafting: Shannon Hinchcliffe, 4565 7th Avenue S.E., Lacey, WA 98503, (360) 407-1050; Implementation and Enforcement: Jean Soliz-Conklin, Executive Director, 4565 7th Avenue S.E., Lacey, WA 98503, (360) 407-1056.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule relates only to internal governmental operations that are not subject to violation by a nongovernment party.

A cost-benefit analysis is not required under RCW 34.05.328. This rule relates only to internal governmental operations that are not subject to violation by a nongovernment party.

February 18, 2009
Jean Soliz-Conklin
Executive Director

AMENDATORY SECTION (Amending Order 84-01, filed 11/19/84)

WAC 437-06-010 Purpose. The purpose of this chapter shall be to ensure compliance by the Washington state sentencing guidelines commission with the provisions of the Public (~~Disclosure~~) Records Act, ((RCW 42.17.250 through 42.17.340)) chapter 42.56 RCW, in conjunction with the Criminal Records Privacy Act, chapter 10.97 RCW, as well as chapter 9.94A RCW.

AMENDATORY SECTION (Amending Order 84-01, filed 11/19/84)

WAC 437-06-020 ((Definitions.)) Times for inspection and copying records. ~~((1) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by the commission regardless of physical form or characteristics.~~

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

~~(3) "Commission" means the Washington state sentencing guidelines commission.~~

~~(4) "Disclosure" means inspection and/or copying.~~

~~(5) "Denial of disclosure" denotes any exempting from disclosure of any public record.) All public records are available for inspection and copying at the commission office during normal business hours (8:00 a.m. - 12:00 p.m. and 1:00 p.m. - 5:00 p.m.). However, if these activities would interfere with essential agency functions, the agency reserves the right to require advance notice and to limit the amount of time spent on inspection of documents.~~

AMENDATORY SECTION (Amending Order 84-01, filed 11/19/84)

WAC 437-06-030 Public records ((available)) officer. ~~((Requests for any identifiable public record may be initiated at the commission office during normal business hours (8:00 a.m. - 12 and 1:00 p.m. - 5:00 p.m.)) The commission shall ((at all times take the most timely possible action on requests for disclosure, and shall be required to respond in writing within ten working days of receipt of the request for disclosure. The commission's failure to respond shall entitle the person seeking disclosure to petition the public records officer pursuant to WAC 437-06-090.)) designate a public records officer, located in the commission office, who shall be responsible for implementing the commission's rules regarding disclosure of public records, coordinating staff in this regard, and generally ensuring compliance by the staff with public records disclosure requirements.~~

AMENDATORY SECTION (Amending Order 84-01, filed 11/19/84)

WAC 437-06-040 Request for public records ((officer)). ~~((The commission shall designate a public record officer, located in the commission office, who shall be responsible for implementing the commission's rules regarding disclosure of public records, coordinating staff in this regard, and generally ensuring compliance by the staff with public records disclosure requirements.)) According to chapter 42.56 RCW, members of the public may inspect, copy, or get copies of public records if they comply with the following procedures:~~

~~(1) Make a request in writing which includes:~~

~~(a) The name of the person requesting the record;~~

~~(b) The time of day and calendar date on which the request is made; and~~

~~(c) The name or description of the records requested.~~

~~(2) A request for disclosure shall be made during the customary business hours or by mail.~~

~~(3) This chapter shall not be construed as giving authority to any agency to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies shall not do so unless specifically authorized or directed by law.~~

~~(4) When a person's identity is relevant to an exemption, that person may be required to provide personal identification, including photographic identification and/or fingerprints.~~

AMENDATORY SECTION (Amending Order 84-01, filed 11/19/84)

WAC 437-06-050 ((Request for public records.)) Fees—Inspection and copying. ~~((1) The written request may include:~~

~~(a) The name of the person requesting the record;~~

~~(b) The time of day and calendar date on which the request is made; and~~

~~(c) The nature of the request.~~

~~(2) A request for disclosure shall be made during the customary business hours or by mail. Public records shall be made available for inspection and copying during office hours. However, if these activities would interfere with essential agency functions, the agency reserves the right to require advance notice and to limit the amount of time spent on inspection of documents.~~

~~(3) This chapter shall not be construed as giving authority to any agency to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies shall not do so unless specifically authorized or directed by law.~~

~~(4) If the public record contains material exempt from disclosure pursuant to law, including those laws cited in WAC 437-06-100, the commission must provide the person requesting disclosure with a written explanation for the non-disclosure, pursuant to WAC 437-06-080.~~

~~(5) Any person continuing to seek disclosure, after having received a written explanation for nondisclosure, pursuant to WAC 437-06-080, may request a review under the provisions of WAC 437-06-090.~~

(6) When a person's identity is relevant to an exemption, that person may be required to provide personal identification, including photographic identification and/or fingerprints.) (1) No fee shall be charged for the inspection of public records.

(2) The commission shall collect fees, plus postage, to reimburse itself for actual costs incident to providing copies of public records.

(a) Copies produced on copying and duplicating equipment are fifteen cents per page.

(b) Copies of other items such as magnetic tapes and records or other formats will be the cost of the services required to copy them.

(3) Nothing contained in this section shall preclude the commission from agreeing to exchange or provide copies of manuals or other public records with other state or federal agencies. One copy of the implementation manual will be issued to public agencies upon request.

(4) Prepayment of copying costs and postage shall be a prerequisite to copying and/or mailing of public records. However, the public records officer may waive the costs of copying or postage.

AMENDATORY SECTION (Amending Order 84-01, filed 11/19/84)

WAC 437-06-060 ((Fees—Inspection and copying.))
Protection of public records. ((1) No fee shall be charged for the inspection of public records.

(2) The commission shall collect fees, plus postage, to reimburse itself for actual costs incident to providing copies of public records.

(3) Nothing contained in this section shall preclude the commission from agreeing to exchange or provide copies of manuals or other public records with other state or federal agencies. One copy of the implementation manual will be issued to public agencies upon request.

(4) Prepayment of copying costs and postage shall be a prerequisite to copying and/or mailing of public records. However, the public records officer may waive the costs of copying or postage.) Public records shall be disclosed only in the presence of a public records officer or his or her designee, who shall withdraw the records if the person requesting disclosure acts in a manner which will damage or substantially disorganize the records or interfere excessively with other essential functions of the commission. This section shall not be construed to prevent the commission from accommodating a client by use of mail in the disclosure process.

AMENDATORY SECTION (Amending Order 84-01, filed 11/19/84)

WAC 437-06-070 ((Protection of public records.))
Disclosure procedure. ((Public records shall be disclosed only in the presence of a public records officer or his or her designee, who shall withdraw the records if the person requesting disclosure acts in a manner which will damage or substantially disorganize the records or interfere excessively with other essential functions of the commission. This section shall not be construed to prevent the commission from

accommodating a client by use of mails in the disclosure process.)) (1) The public records officer shall acknowledge receipt of request within five business days. 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 by telephone. The public records officer or designee may revise the estimate of when records will be available; or

(e) Deny the request.

(2) The public records officer shall review file materials prior to disclosure.

(3) If the file does not contain materials exempt from disclosure, the public records officer shall ensure full disclosure.

(4) If the file does contain materials exempt from disclosure, the public records officer shall deny disclosure of those exempt portions of the file and will provide a written statement explaining the reason for denial. The remaining nonexempt materials shall be fully disclosed pursuant to WAC 437-06-050.

(5) The statement of denial shall include:

(a) The specific exemption that authorizes the commission to withhold the record; and

(b) A brief explanation of how the exemption applies to the record the commission withheld.

(6) Any person continuing to seek disclosure, after having received a written explanation for nondisclosure, may request a review under the provisions of WAC 437-06-080.

AMENDATORY SECTION (Amending Order 84-01, filed 11/19/84)

WAC 437-06-080 Remedy for review of denial of disclosure ((procedure)). ((1) The public records officer shall review file materials prior to disclosure.

(2) If the file does not contain materials exempt from disclosure, the public records officer shall ensure full disclosure.

(3) If the file does contain materials exempt from disclosure, the public records officer shall deny disclosure of those exempt portions of the file, and shall, at the time of the denial, in writing, clearly specify the reasons for the denial of disclosure, including a statement of the specific exemptions or reasons authorizing the withholding of the record and a brief explanation of how the exemption applies. The remaining nonexempt materials shall be fully disclosed pursuant to WAC 437-06-050.) (1) If the person requesting disclosure disagrees with the decision of a public records officer denying disclosure of a public record, this person may within twenty days petition the commission's public records officer for review of the decision denying disclosure. The form used to deny disclosure of a public record shall clearly indicate this right of review.

(2) The public records officer shall review decisions denying disclosure in the most prompt fashion possible, and such review shall be deemed completed at the end of the second business day following receipt by the commission of the petition for review. This shall constitute final agency action for the purposes of judicial review, pursuant to RCW 42.56-520.

AMENDATORY SECTION (Amending Order 84-01, filed 11/19/84)

WAC 437-06-090 ((Remedy for review of denial of) Exemptions to public records disclosure. ~~((1) If the person requesting disclosure disagrees with the decision of a public records officer denying disclosure of a public record, this person may within twenty days petition the commission's public records officer for review of the decision denying disclosure. The form used to deny disclosure of a public record shall clearly indicate this right of review.~~

~~(2) The public records officer shall review decisions denying disclosure in the most prompt fashion possible, and such review shall be deemed completed at the end of the second business day following receipt by the commission of the petition for review. This shall constitute final agency action for the purposes of judicial review, pursuant to RCW 42.17.320.)) The commission reserves the right to determine if a public record requested in accordance with the procedures outlined herein is exempt or nondisclosable under RCW 42.56.040 through 42.56.550. Nondisclosable records include, but are not limited to:~~

~~(1) All exemptions as set forth in chapter 42.56 RCW.~~

~~(2) Records which are relevant to a controversy to which the commission is a party but which records would not be available to another party under the rules of a pretrial discovery for causes pending in the superior courts, including records involving attorney-client communications between the commission and the office of the attorney general privileged under RCW 5.60.060(2).~~

~~(3) Nonconviction data, as defined in RCW 10.97.030 (2), shall be disclosed to the subject of the record in person in the central office of the commission, but may not be copied except for the purpose of challenge or correction when the person who is the subject of the record asserts the belief in writing that the information regarding such person is inaccurate or incomplete (RCW 10.97.080). Persons who are incarcerated, or their attorneys, shall receive a copy of nonconviction data upon asserting the belief in writing that the information regarding such person is inaccurate or incomplete.~~

AMENDATORY SECTION (Amending Order 84-01, filed 11/19/84)

WAC 437-06-100 ((Exemptions to public records) Interagency disclosure. ~~((The commission reserves the right to determine if a public record requested in accordance with the procedures outlined herein is exempt or nondisclosable under RCW 42.17.250 through 42.17.340. Nondisclosable records include, but are not limited to:~~

~~(1) All exemptions as set forth in RCW 42.17.310(1).~~

~~(2) Records which are relevant to a controversy to which the commission is a party but which records would not be~~

~~available to another party under the rules of a pretrial discovery for causes pending in the superior courts, including records involving attorney-client communications between the commission and the office of the attorney general privileged under RCW 5.60.060(2).~~

~~(3) Nonconviction data, as defined in RCW 10.97.030 (2), shall be disclosed to the subject of the record in person in the central office of the commission, but may not be copied except for the purpose of challenge or correction when the person who is the subject of the record asserts the belief in writing that the information regarding such person is inaccurate or incomplete (RCW 10.97.080). Persons who are incarcerated, or their attorneys, shall receive a copy of nonconviction data upon asserting the belief in writing that the information regarding such person is inaccurate or incomplete.)) (1) Unless prohibited by law, information may be disclosed by the commission to outside agencies, including other state of Washington agencies, or other state agencies.~~

~~(2) Outside agencies receiving information pursuant to subsection (1) of this section shall be thereby subject to the same standards of disclosure as are required of the commission.~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 437-06-110	Qualifications on nondisclosure.
WAC 437-06-120	Interagency disclosure.

WSR 09-05-103

PROPOSED RULES

SENTENCING GUIDELINES COMMISSION

[Filed February 18, 2009, 11:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-01-164.

Title of Rule and Other Identifying Information: Community custody ranges, WAC 437-20-010, establishing a 9-18 month community custody range for an offense involving unlawful possession of a firearm under RCW 9.41.040, where the offender is a criminal street gang member or associate.

Hearing Location(s): Holiday Inn, 17338 International Boulevard, SeaTac, WA 98188, (206) 428-2123, on April 10, 2009, at 9:00 a.m.

Date of Intended Adoption: April 10, 2009.

Submit Written Comments to: Jennifer Jones, Rules Coordinator, Sentencing Guidelines Commission, P.O. Box 40927, Olympia, WA 98504, e-mail JenniferJ@sgc.wa.gov, fax (360) 407-1043, by April 8, 2009.

Assistance for Persons with Disabilities: Contact Jennifer Jones, (360) 407-1043.

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

proposal is to implement a community custody range for an offense involving the unlawful possession of a firearm under RCW 9.41.040, where the offender is a criminal street gang member or associate, pursuant to E2SHB 2712, as codified in RCW 9.94A.715. To date, no persons have been convicted of this offense, therefore the change will only affect offenders prospectively.

Reasons Supporting Proposal: The commission is required by statute to propose a community custody range for an offense involving the unlawful possession of a firearm under RCW 9.41.040, where the offender is a criminal street gang member or associate.

Statutory Authority for Adoption: RCW 9.94A.850, and the commission's rule-making authority under chapter 34.05 RCW.

Statute Being Implemented: RCW 9.94A.715.

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

Name of Proponent: Sentencing guidelines commission, governmental.

Name of Agency Personnel Responsible for Drafting: Shannon Hinchcliffe, 4565 7th Avenue S.E., Lacey, WA 98503, (360) 407-1050; Implementation and Enforcement: Jean Soliz-Conklin, Executive Director, 4565 7th Avenue S.E., Lacey, WA 98503, (360) 407-1056.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule relates only to internal governmental operations that are not subject to violation by a nongovernment party.

A cost-benefit analysis is not required under RCW 34.05.328. This rule relates only to internal governmental operations that are not subject to violation by a nongovernment party.

February 18, 2009
Jean Soliz-Conklin
Executive Director

AMENDATORY SECTION (Amending WSR 00-11-052, filed 5/12/00, effective 7/1/00)

WAC 437-20-010 Community custody ranges.

COMMUNITY CUSTODY RANGES

Offense Type	Community Custody Range
Sex Offenses (Not sentenced under RCW 9.94A.120(8))	36 to 48 months
Serious Violent Offenses	24 to 48 months
Violent Offenses	18 to 36 months
Crimes Against Persons (As defined in RCW 9.94A.440(2)); <u>or Unlawful Possession of a Firearm by a criminal street gang member or associate (Under RCW 9.94A.715)</u>	9 to 18 months
Offenses under chapter 69.50 or 69.52 RCW (Not sentenced under RCW 9.94A.120(6))	9 to 12 months

The ranges specified in this section are not intended to affect or limit the authority to impose exceptional community custody ranges, either above or below the standard community custody range as authorized by RCW 9.94A.120(2) and pursuant to guidelines specified in RCW 9.94A.390. The community custody range for offenders with multiple convictions must be based on the offense that dictates the longest term of community custody. The community custody range for offenders convicted of an offense that falls into more than one of the five categories of offense types listed in this section must be based on the offense type that dictates the longest term of community custody.