

WSR 08-09-110
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
[Filed April 21, 2008, 2:45 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-22-082 and 07-10-125.

Title of Rule and Other Identifying Information: The department is amending chapter 388-544 WAC, Vision 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://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on June 10, 2008, at 10:00 a.m.

Date of Intended Adoption: Not sooner than June 9, 2008.

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 schilse@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on June 10, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by June 3, 2008, TTY (360) 664-6178 or (360) 664-6097 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 reestablishing WAC 388-544-0575, addressing noncovered services, eyeglasses, and contact lenses. This section had previously been repealed due to a lack of sufficient notice to stakeholders when originally adopted. In addition, the department is relocating sections, updating cross references, adding the children's health program back in under eligibility, clarifying authorization requirements, including orthoptics and vision training therapy under covered services, requiring that all eyeglass lenses be placed into frames purchased by the department, and limiting frequency of incidental repairs to eyeglass frames, lowering the spherical requirement for high index lenses.

Reasons Supporting Proposal: The department is reestablishing the noncovered services, eyeglasses, and contact lenses section allowing for sufficient notice to stakeholders as required by the APA. The revision also provides a better organization, specified clarity, adds rule consistency, and updates cross references.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting: Wendy Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; Implementation and Enforcement: Marlene Black, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1577.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rule amendments and concludes that they do not impose a disproportionate cost impact on small businesses. As a result, the preparation of 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 Marlene Black, P.O. Box 45506, Health and Recovery Services Administration, Olympia, WA 98504-5506, phone (360) 725-1577, fax (360) 586-9727, e-mail blackml@dshs.wa.gov.

April 15, 2008

Stephanie E. Schiller

Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-24-036, filed 11/30/06, effective 1/1/07)

WAC 388-544-0010 Vision care—General. (1) The department covers the vision care services listed in this chapter, according to department rules and subject to the ((exceptions, restrictions, and)) limitations ((listed)) and requirements in this chapter. The department pays for vision care ((is covered)) when it is:

(a) Covered;

(b) Within the scope of the eligible client's medical care program; ((see WAC 388-501-0060 and 388-501-0065); and ((b)) (c) Medically necessary as defined in WAC 388-500-0005;

(d) Authorized, as required within this chapter, chapters 388-501 and 388-502 WAC, and the department's published billing instructions and numbered memoranda; and

(e) Billed according to this chapter, chapters 388-501 and 388-502 WAC, and the department's published billing instructions and numbered memoranda.

(2) The department ((evaluates a request for any service that is listed as noncovered in this chapter under the provisions of WAC 388-501-0160)) does not require prior authorization for covered vision care services that meet the clinical criteria set forth in this chapter.

(3) The department ((evaluates requests for covered services that are subject to limitations or other restrictions and approves such services beyond those limitations or restrictions under the provisions of WAC 388-501-0169)) requires prior authorization for covered vision care services when the clinical criteria set forth in this chapter are not met, including the criteria associated with the expedited prior authorization process. The department evaluates these requests on a case-by-case basis to determine whether they are medically necessary, according to the process found in WAC 388-501-0165.

((4) The department evaluates a request for a service that is in a covered category, but has been determined to be experimental or investigational under WAC 388-531-0550, under the provisions of WAC 388-501-0165.))

AMENDATORY SECTION (Amending WSR 05-13-038, filed 6/6/05, effective 7/7/05)

WAC 388-544-0050 Vision care—Definitions. The following definitions and those found in WAC 388-500-0005 apply to this chapter. Unless otherwise defined in this chapter, medical terms are used as commonly defined within the scope of professional medical practice in the state of Washington.

"Blindness" - A diagnosis of visual acuity for distance vision of twenty/two hundred or worse in the better eye with best correction or a limitation of the client's visual field (widest diameter) subtending an angle of less than twenty degrees from central.

"Conventional soft contact lenses" or "rigid gas permeable contact lenses" - FDA-approved contact lenses that do not have a scheduled replacement (discard and replace with new contacts) plan. The soft lenses usually last one year, and the rigid gas permeable lenses usually last two years. Although some of these lenses are designed for extended wear, ~~((MAA))~~ the department generally approves only those lenses that are designed to be worn as daily wear (remove at night).

"Disposable contact lenses" - FDA-approved contact lenses that have a planned replacement schedule (e.g., daily, every two weeks, monthly, quarterly). The contacts are then discarded and replaced with new ones as scheduled. Although many of these lenses are designed for extended wear, ~~((MAA))~~ the department generally approves only those lenses that are designed to be worn as daily wear (remove at night).

"Expedited prior authorization" - A form of authorization used by the provider to certify that the department-published clinical criteria for a specific vision care service(s) have been met.

"Extended wear soft contacts" - Contact lenses that are designed to be worn for longer periods than daily wear (remove at night) lenses. These can be conventional soft contact lenses or disposable contact lenses designed to be worn for several days and nights before removal.

"Hardware" - Eyeglass frames and lenses and contact lenses.

"Prior authorization" - A form of authorization used by the provider to obtain the department's written approval for a specific vision care service(s). The department's approval is based on medical necessity and must be received before the service(s) are provided to clients as a precondition for payment.

"Specialty contact lens design" - Custom contact lenses that have a more complex design than a standard spherical lens. These specialty contact lenses (e.g., lenticular, aspheric, or myodisc) are designed for the treatment of specific disease processes, such as keratoconus, or are required due to high refractive errors. This definition of specialty contact lens does not include lenses used for surgical implantation.

"Stable visual condition" - A client's eye condition has no acute disease or injury; or the client has reached a point after any acute disease or injury where the variation in need for refractive correction has diminished or steadied. The client's vision condition has stabilized to the extent that eye-

glasses or contact lenses are appropriate and that any prescription for refractive correction is likely to be sufficient for one year or more.

"Visual field exams or testing" - A process to determine defects in the field of vision and test the function of the retina, optic nerve and optic pathways. The process may include simple confrontation to increasingly complex studies with sophisticated equipment.

AMENDATORY SECTION (Amending WSR 05-13-038, filed 6/6/05, effective 7/7/05)

WAC 388-544-0100 Vision care—Eligible clients. (1) ~~((Clients who receive services under the following medical assistance programs are eligible for covered vision care))~~ Vision care services are available to clients who are eligible for services under the following medical assistance programs only:

- (a) Categorically needy program (CN or CNP);
- (b) Categorically needy program - state children's health insurance program (CNP-SCHIP);
- (c) Children's healthcare programs as defined in WAC 388-505-0210;
- (d) Limited casualty program - medically needy program (LCP-MNP);
- ~~((e))~~ (e) General assistance (GA-U/ADATSA) (within Washington state or designated border cities); and
- ~~((f))~~ (f) Emergency medical only programs when the services are directly related to an emergency medical condition only.

(2) Clients who are enrolled in ~~((an MAA-managed care plan))~~ a department-contracted managed care organization (MCO) are eligible under fee-for-service for covered vision care services that are not covered by their plan~~((;))~~ and subject to the provisions of this chapter ~~((388-544-WAC))~~ and other applicable WAC.

AMENDATORY SECTION (Amending WSR 05-13-038, filed 6/6/05, effective 7/7/05)

WAC 388-544-0150 Vision care—Provider requirements. (1) Enrolled/contracted eye care providers must:

- (a) Meet the requirements in chapter 388-502 WAC;
- (b) Provide only those services that are within the scope of the provider's license;
- (c) Obtain all hardware (including the tinting of eyeglass lenses) and contact lenses for ~~((MAA))~~ clients from ~~((MAA's contracted))~~ the department's designated supplier as published in the department's current vision care billing instructions; and
- (d) Return all unclaimed hardware and contact lenses to ~~((MAA's contracted))~~ the department's designated supplier using a postage-paid envelope furnished by the ~~((contractor))~~ supplier.

(2) The following providers are eligible to enroll/contract with ~~((MAA))~~ the department to provide and bill for vision care services furnished to eligible clients:

- (a) Ophthalmologists;
- (b) Optometrists;
- (c) Opticians; and
- (d) Ocularists.

AMENDATORY SECTION (Amending WSR 05-13-038, filed 6/6/05, effective 7/7/05)

WAC 388-544-0250 Vision care—Covered eye services (examinations ~~((and))~~, refractions, visual field testing, and vision therapy). (1) ~~((The medical assistance administration (MAA) covers eye examinations and refraction services for asymptomatic clients under the following conditions and limitations, unless the circumstances in subsections (2) or (3) of this section apply:~~

~~(a) For clients twenty-one years of age or older, once every twenty-four months;~~

~~(b) For clients twenty years of age or younger, once every twelve months; or~~

~~(c) For clients with developmental disabilities, regardless of age, once every twelve months.~~

~~(2) MAA covers eye examinations and refraction services as often as medically necessary when:~~

~~(a) The provider is diagnosing or treating the client for a medical condition that has symptoms of vision problems or disease; or~~

~~(b) The client is on medication that affects vision.~~

~~(3) MAA covers eye examinations/refractions outside the time limitations in subsection (1) of this section when the eye examination/refraction is necessary due to lost or broken eyeglasses/contacts. In this situation, MAA does not require authorization for children. To receive payment for an adult client, providers must:~~

~~(a) Follow the expedited prior authorization process; and~~

~~(b) Document the following in the client's file:~~

~~(i) The eyeglasses or contacts are lost or broken; and~~

~~(ii) The last examination was at least eighteen months ago.~~

~~(4) MAA covers visual field exams for the diagnosis and treatment of abnormal signs, symptoms, or injuries. To receive payment, providers must document all of the following in the client's record:~~

~~(a) The extent of the testing;~~

~~(b) Why the testing was reasonable and necessary for the client; and~~

~~(c) The medical basis for the frequency of testing.) The department covers, without prior authorization, eye examinations and refraction services with the following limitations:~~

~~(a) Once every twenty-four months for asymptomatic clients twenty-one years of age or older;~~

~~(b) Once every twelve months for asymptomatic clients twenty years of age or younger; or~~

~~(c) Once every twelve months, regardless of age, for asymptomatic clients of the division of developmental disabilities.~~

~~(2) The department covers additional examinations and refraction services outside the limitations described in subsection (1) of this section when:~~

~~(a) The provider is diagnosing or treating the client for a medical condition that has symptoms of vision problems or disease;~~

~~(b) The client is on medication that affects vision; or~~

~~(c) The service is necessary due to lost or broken eyeglasses/contacts. In this case:~~

~~(i) No type of authorization is required for clients twenty years of age or younger or for clients of the division of developmental disabilities, regardless of age.~~

~~(ii) Providers must follow the department's expedited prior authorization process to receive payment for clients twenty-one years of age or older. Providers must also document the following in the client's file:~~

~~(A) The eyeglasses or contacts are lost or broken; and~~

~~(B) The last examination was at least eighteen months ago.~~

~~(3) The department covers visual field exams for the diagnosis and treatment of abnormal signs, symptoms, or injuries. Providers must document all of the following in the client's record:~~

~~(a) The extent of the testing;~~

~~(b) Why the testing was reasonable and necessary for the client; and~~

~~(c) The medical basis for the frequency of testing.~~

~~(4) The department covers orthoptics and vision training therapy. Providers must obtain prior authorization from the department.~~

AMENDATORY SECTION (Amending WSR 05-13-038, filed 6/6/05, effective 7/7/05)

WAC 388-544-0300 Vision care—Covered eyeglasses (frames and/or lenses) and repair services. (1) ~~((The medical assistance administration (MAA) covers eyeglasses for asymptomatic clients:~~

~~(a) Under the following conditions and limitations:~~

~~(i) For clients twenty-one years of age or older, once every twenty-four months;~~

~~(ii) For clients twenty years of age or younger, once every twelve months; or~~

~~(iii) For clients with developmental disabilities, regardless of age, once every twelve months.~~

~~(b) When:~~

~~(i) The client has a stable visual condition;~~

~~(ii) The client's treatment is stabilized;~~

~~(iii) The prescription is less than eighteen months old; and~~

~~(iv) One of the following minimum correction needs in a least one eye is documented in the client's file:~~

~~(A) Sphere power equal to, or greater than, plus or minus 0.50 diopter;~~

~~(B) Astigmatism power equal to, or greater than, plus or minus 0.50 diopter; or~~

~~(C) Add power equal to, or greater than, 1.0 diopter for bifocals and trifocals.~~

~~(2) MAA covers eyeglasses and/or lenses for clients who are twenty years of age or younger with a diagnosis of accommodative esotropia or any strabismus correction. In this situation, the client is not subject to the requirements in subsection (1)(b) of this section.~~

~~(3) MAA covers selected frames called "durable" or "flexible" frames through MAA's contracted supplier when a client has a diagnosed medical condition that has contributed to two or more broken eyeglass frames in a twelve-month period. To receive payment, providers must follow the expedited prior authorization process.~~

~~(4) MAA covers the cost of coating contact eyeglass frames to make the frames nonallergenic if the client has a medically diagnosed and documented allergy to the materials in the available eyeglass frames.~~

~~(5) MAA pays for incidental repairs to a client's eyeglass frames when all of the following apply:~~

~~(a) The provider typically charges the general public for the repair or adjustment;~~

~~(b) The contractor's one year warranty period has expired; and~~

~~(c) The cost of the repair does not exceed MAA's cost for replacement frames.~~

~~(6) MAA covers replacement eyeglass frames and/or lenses that have been lost or broken. To receive payment, providers must follow the expedited prior authorization process for clients twenty-one years of age and older. MAA does not require authorization for clients who are twenty years of age and younger or for clients with developmental disabilities, regardless of age. (See WAC 388-544-0350 for additional coverage of lens replacement.)~~

~~(7) MAA covers one pair of back-up eyeglasses when contact lenses are medically necessary and the contact lenses are the client's primary visual correction aid as described in WAC 388-544-0400(1). MAA limits coverage for back-up eyeglasses as follows:~~

~~(a) For clients twenty-one years of age and older, once every six years;~~

~~(b) For clients twenty years of age or younger, once every two years; or~~

~~(c) For clients with developmental disabilities, regardless of age, once every two years)) The department covers eyeglasses, without prior authorization, as follows:~~

~~(a) When the following clinical criteria are met:~~

~~(i) The client has a stable visual condition;~~

~~(ii) The client's treatment is stabilized;~~

~~(iii) The prescription is less than eighteen months old;~~

~~and~~

~~(iv) One of the following minimum correction needs in at least one eye is documented in the client's file:~~

~~(A) Sphere power equal to, or greater than, plus or minus 0.50 diopter;~~

~~(B) Astigmatism power equal to, or greater than, plus or minus 0.50 diopter; or~~

~~(C) Add power equal to, or greater than, 1.0 diopter for bifocals and trifocals.~~

~~(b) With the following limitations:~~

~~(i) Once every twenty-four months for clients twenty-one years of age or older;~~

~~(ii) Once every twelve months for clients twenty years of age or younger; or~~

~~(iii) Once every twelve months, regardless of age, for clients of the division of developmental disabilities.~~

~~(2) The department covers eyeglasses (frames/lenses), without prior authorization, for clients who are twenty years of age or younger with a diagnosis of accommodative esotropia or any strabismus correction. In this case, the limitations of subsection (1) of this section do not apply.~~

~~(3) The department covers one pair of back-up eyeglasses for clients who wear contact lenses as their primary~~

~~visual correction aid (see WAC 388-544-0400(1)) with the following limitations:~~

~~(a) Once every six years for clients twenty years of age or older;~~

~~(b) Once every two years for clients twenty years of age or younger or regardless of age for clients of the division of developmental disabilities.~~

NEW SECTION

WAC 388-544-0325 Vision care—Covered eyeglass frames. (1) The department covers durable or flexible frames, without prior authorization, when the client has a diagnosed medical condition that has contributed to two or more broken eyeglass frames in a twelve-month period. To receive payment, the provider must:

(a) Follow the department's expedited prior authorization process; and

(b) Order the "durable" or "flexible" frames through the department's designated supplier.

(2) The department covers all of the following without prior authorization:

(a) Coating contact eyeglass frames to make the frames nonallergenic. Clients must have a medically diagnosed and documented allergy to the materials in the available eyeglass frames.

(b) Incidental repairs to a client's eyeglass frames. To receive payment, all of the following must be met:

(i) The provider typically charges the general public for the repair or adjustment;

(ii) The contractor's one year warranty period has expired;

(iii) The cost of the repair does not exceed the department's cost for replacement frames and a fitting fee; and

(iv) The frequency of the repair does not exceed two per client in a six-month period. This limit does not apply to clients twenty years of age or younger or to clients of the division of developmental disabilities, regardless of age.

(3) The department covers replacement eyeglass frames that have been lost or broken as follows:

(a) No type of authorization is required for clients twenty years of age or younger or for clients of the division of developmental disabilities, regardless of age.

(b) To receive payment for clients twenty-one years of age or older, excluding clients of the division of developmental disabilities, providers must follow the department's expedited prior authorization process.

AMENDATORY SECTION (Amending WSR 05-17-153, filed 8/22/05, effective 9/22/05)

WAC 388-544-0350 Vision care—Covered (~~plastic scratch-resistant~~) eyeglass lenses and services. (1) The (~~medical assistance administration (MAA))~~ department covers the following plastic scratch-resistant eyeglass lenses without prior authorization:

(a) Single vision lenses;

(b) Round or flat top D-style bifocals;

(c) Flat top trifocals; and

(d) Slab-off and prism lenses (including Fresnel lenses).

(2) ~~((MAA allows bifocal lenses to be replaced with single vision or trifocal lenses or trifocal lenses to be replaced with bifocal or single vision lenses when all of the following apply:~~

~~(a) A client has attempted to adjust to the bifocals or trifocals for at least sixty days;~~

~~(b) The client is unable to make the adjustment; and~~

~~(c) The bifocal or trifocal lenses being replaced are returned to the provider.~~

~~(3) MAA covers high index lenses for clients who require one of the following in at least one eye:~~

~~(a) A spherical refractive correction of plus or minus eight diopters or greater; or~~

~~(b) A cylinder correction of plus or minus three diopters or greater.~~

~~To receive payment, providers must follow the expedited prior authorization process.~~

~~(4) MAA covers the tinting of plastic lenses through MAA's contracted lens supplier. The client's medical need must be diagnosed and documented as one or more of the following chronic (expected to last longer than three months) eye conditions causing photophobia:~~

~~(a) Blindness;~~

~~(b) Chronic corneal keratitis;~~

~~(c) Chronic iritis, iridocyclitis;~~

~~(d) Diabetic retinopathy;~~

~~(e) Fixed pupil;~~

~~(f) Glare from cataracts;~~

~~(g) Macular degeneration;~~

~~(h) Migraine disorder;~~

~~(i) Ocular albinism;~~

~~(j) Optic atrophy and/or optic neuritis;~~

~~(k) Rare photo-induced epilepsy conditions; or~~

~~(l) Retinitis pigmentosa.~~

~~(5) MAA covers plastic photochromatic lenses when the client's medical need is diagnosed as relating to ocular albinism or retinitis pigmentosa.~~

~~(6) MAA covers polycarbonate lenses as follows:~~

~~(a) For clients who are blind in one eye and need protection for the other eye, regardless of whether a vision correction is required;~~

~~(b) Infants and toddlers with motor ataxia;~~

~~(c) For clients twenty years of age or younger who are diagnosed with strabismus or amblyopia; or~~

~~(d) For clients with developmental disabilities.~~

~~(7) MAA covers requests for lenses only when the client owns frames not purchased by MAA, when:~~

~~(a) The eyeglass frames are serviceable (MAA and MAA's contractor do not accept responsibility for these frames); and~~

~~(b) The size and style of the required lenses meet MAA's contract requirements.~~

~~(8) MAA covers replacement lenses as follows:~~

~~(a) Due to lost or broken lenses according to WAC 388-544-0300(6); and~~

~~(b) Due to refractive changes, without regard to time limits, when caused by one of the following:~~

~~(i) Eye surgery, the effects of prescribed medication, or one or more diseases affecting vision. In this case, all of the following must be documented in the client's file:~~

~~(A) The client has a stable visual condition;~~

~~(B) The client's treatment is stabilized;~~

~~(C) The lens correction must have a 1.0 or greater diopter change between the sphere or cylinder correction in at least one eye; and~~

~~(D) The previous and new refraction:~~

~~(i) Headaches, blurred vision, or difficulty with school or work. In this case, all of the following must be documented in the client's file:~~

~~(A) Copy of current prescription (less than eighteen months old);~~

~~(B) Date of last dispensing, if known;~~

~~(C) Absence of a medical condition that is known to cause temporary visual acuity changes (e.g., diabetes, pregnancy, etc.); and~~

~~(D) A refractive change of at least .75 diopter or greater between the sphere or cylinder correction in at least one eye.~~

~~(e) To receive payment for replacement lenses, providers must follow the expedited prior authorization process)) Eye-glass lenses, as described in subsection (1) of this section must be placed into a frame that is, or was, purchased by the department.~~

(3) The department covers, without prior authorization, the following lenses when the clinical criteria are met:

(a) High index lenses. Providers must follow the department's expedited prior authorization process. The client's medical need in at least one eye must be diagnosed and documented as:

(i) A spherical refractive correction of plus or minus six diopters or greater; or

(ii) A cylinder correction of plus or minus three diopters or greater.

(b) Plastic photochromatic lenses. The client's medical need must be diagnosed and documented as ocular albinism or retinitis pigmentosa.

(c) Polycarbonate lenses. The client's medical need must be diagnosed and documented as one of the following:

(i) Blind in one eye and needs protection for the other eye, regardless of whether a vision correction is required;

(ii) Infants and toddlers with motor ataxia;

(iii) Strabismus or amblyopia for clients twenty years of age or younger; or

(iv) For clients of the division of developmental disabilities.

(d) Bifocal lenses to be replaced with single vision or trifocal lenses, or trifocal lenses to be replaced with bifocal or single vision lenses when:

(i) The client has attempted to adjust to the bifocals or trifocals for at least sixty days; and

(ii) The client is unable to make the adjustment; and

(iii) The trifocal lenses being replaced are returned to the provider.

(4) The department covers, without prior authorization, the tinting of plastic lenses when the client's medical need is diagnosed and documented as one or more of the following chronic (expected to last longer than three months) eye conditions causing photophobia:

(a) Blindness;

(b) Chronic corneal keratitis;

(c) Chronic iritis, iridocyclitis;

- (d) Diabetic retinopathy;
- (e) Fixed pupil;
- (f) Glare from cataracts;
- (g) Macular degeneration;
- (h) Migraine disorder;
- (i) Ocular albinism;
- (j) Optic atrophy and/or optic neuritis;
- (k) Rare photo-induced epilepsy conditions; or
- (l) Retinitis pigmentosa.

(5) The department covers replacement lenses when the lenses are lost or broken as follows:

(a) No type of authorization is required for clients twenty years of age and younger or for clients of the division of developmental disabilities, regardless of age.

(b) Providers must follow the expedited prior authorization process to receive payment for clients twenty-one years of age or older.

(6) The department covers replacement lenses, without prior authorization, when the client meets one of the clinical criteria. To receive payment, providers must follow the expedited prior authorization process. The clinical criteria are:

(a) Eye surgery or the effects of prescribed medication or one or more diseases affecting vision:

(i) The client has a stable visual condition;

(ii) The client's treatment is stabilized;

(iii) The lens correction must have a 1.0 or greater diopter change between the sphere or cylinder correction in at least one eye; and

(iv) The previous and new refraction are documented in the client's record.

(b) Headaches, blurred vision, or visual difficulty in school or at work. In this case, all of the following must be documented in the client's file:

(i) Copy of current prescription (less than eighteen months old);

(ii) Date of last dispensing, if known;

(iii) Absence of a medical condition that is known to cause temporary visual acuity changes (e.g., diabetes, pregnancy, etc.); and

(iv) A refractive change of at least .75 diopter or greater between the sphere or cylinder correction in at least one eye.

AMENDATORY SECTION (Amending WSR 05-13-038, filed 6/6/05, effective 7/7/05)

WAC 388-544-0400 Vision care—Covered contact lenses and services. (1) ((The medical assistance administration (MAA) covers the following types of contact lenses as the client's primary refractive correction method when a client has a spherical correction of plus or minus 6.0 diopters or greater in at least one eye. In order to qualify for the spherical correction, the prescription may be from either the glasses or the contact lenses prescriptions and/or written in either "minus cyl" or "plus cyl" form. See subsection (2) of this section for exception to the plus or minus 6.0 diopter criteria.

(a) Conventional soft contact lenses or rigid gas permeable contact lenses that are prescribed for daily wear; or

(b) Disposable contact lenses that are prescribed for daily wear and have a monthly or quarterly planned replacement schedule, as follows:

(i) Twelve pairs of monthly replacement contact lenses;
or

(ii) Four pairs of three-month replacement contact lenses.

(2) For clients diagnosed with high anisometropia, MAA covers the contact lenses in subsection (1) of this section when the client's refractive error difference between the two eyes is plus or minus 3.0 diopters and eyeglasses cannot reasonably correct the refractive errors.

(3) A client who qualifies for contact lenses as the primary refractive correction method must choose one style of contact lenses from those listed in subsection (1) of this section for each twelve-month period of coverage.

(4) MAA covers soft toric contact lenses for clients with astigmatism requiring a cylinder correction of plus or minus 1.0 diopter in at least one eye and the client also meets the spherical correction listed in subsection (1) of this section.

(5) MAA covers specialty contact lens designs for clients who are diagnosed with one or more of the following:

(a) Aphakia;

(b) Keratoconus; or

(c) Corneal softening.

(6) MAA covers replacement contact lenses as follows:

(a) Once every twelve months for lost or damaged contact lenses; or

(b) As often as medically necessary when all of the following apply:

(i) One of the following caused the vision change:

(A) Eye surgery;

(B) The effect(s) of prescribed medication; or

(C) One or more diseases affecting vision.

(ii) The client has a stable visual condition;

(iii) The client's treatment is stabilized; and

(iv) The lens correction has a 1.0 or greater diopter change in at least one eye between the sphere or cylinder correction. The previous and new refraction must be documented in the client's record.

(e) To receive payment for adults, providers must follow the expedited prior authorization process. Prior authorization is not required for children or for clients with developmental disabilities.

(7) MAA covers therapeutic contact bandage lenses only when needed immediately after eye injury or eye surgery))

The department covers contact lenses, without prior authorization, as the client's primary refractive correction method when the client has a spherical correction of plus or minus 6.0 diopters or greater in at least one eye. See subsection (4) of this section for exceptions to the plus or minus 6.0 diopter criteria. The spherical correction may be from the prescription for the glasses or the contact lenses and may be written in either "minus cyl" or "plus cyl" form.

(2) The department covers the following contact lenses with limitations:

(a) Conventional soft contact lenses or rigid gas permeable contact lenses that are prescribed for daily wear; or

(b) Disposable contact lenses that are prescribed for daily wear and have a monthly or quarterly planned replacement schedule, as follows:

(i) Twelve pairs of monthly replacement contact lenses;
or

(ii) Four pairs of three-month replacement contact lenses.

(3) The department covers soft toric contact lenses, without prior authorization, for clients with astigmatism when the following clinical criteria are met:

(a) The client's cylinder correction is plus or minus 1.0 diopter in at least one eye; and

(b) The client meets the spherical correction listed in subsection (1) of this section.

(4) The department covers contact lenses, without prior authorization, when the following clinical criteria are met. In these cases, the limitations in subsection (1) of this section do not apply.

(a) For clients diagnosed with high anisometropia.

(i) The client's refractive error difference between the two eyes is at least plus or minus 3.0 diopters; and

(ii) Eyeglasses cannot reasonably correct the refractive errors.

(b) Specialty contact lens designs for clients who are diagnosed with one or more of the following:

(i) Aphakia;

(ii) Keratoconus; or

(iii) Corneal softening.

(c) Therapeutic contact bandage lenses only when needed immediately after eye injury or eye surgery.

(5) The department covers replacement contact lenses, limited to once every twelve months, when lost or damaged as follows:

(a) Authorization is not required for clients twenty years of age or younger or for clients of the division of developmental disabilities, regardless of age.

(b) Providers must follow the expedited prior authorization process to receive payment for clients twenty-one years of age or older.

(6) The department covers replacement contact lenses when all of the clinical criteria are met:

(a) The clinical criteria are:

(i) One of the following caused the vision change:

(A) Eye surgery;

(B) The effect(s) of prescribed medication; or

(C) One or more diseases affecting vision.

(ii) The client has a stable visual condition;

(iii) The client's treatment is stabilized; and

(iv) The lens correction has a 1.0 or greater diopter change in at least one eye between the sphere or cylinder correction. The previous and new refraction must be documented in the client's record.

(b) No type of authorization is required for clients twenty years of age and younger or for clients of the division of developmental disabilities, regardless of age.

(c) To receive payment for clients twenty-one years of age or older, providers must follow the expedited prior authorization process.

AMENDATORY SECTION (Amending WSR 05-13-038, filed 6/6/05, effective 7/7/05)

WAC 388-544-0500 Vision care—Covered ocular prosthetics. The ~~((medical assistance administration (MAA)))~~ department covers ~~((medically necessary))~~ ocular prosthetics when provided by any of the following:

(1) An ophthalmologist;

(2) An ocularist; or

(3) An optometrist who specializes in ~~((orthotics))~~ prosthetics.

AMENDATORY SECTION (Amending WSR 05-13-038, filed 6/6/05, effective 7/7/05)

WAC 388-544-0550 Vision care—Covered eye surgery. (1) The ~~((medical assistance administration (MAA)))~~ covers cataract surgery when:

(a) It is included in the scope of care for the client's medical program;

(b) It is medically necessary as defined in subsection (2) of this section; and

(c) The provider clearly documents the need in the client's record.

(2) MAA considers cataract surgery to be medically necessary when the client has:

(a) Correctable visual acuity in the affected eye at 20/50 or worse, as measured on the Snellen test chart; or

(b) One or more of the following conditions:

(i) Dislocated or subluxated lens;

(ii) Intraocular foreign body;

(iii) Ocular trauma;

(iv) Phacogenic glaucoma;

(v) Phacogenic uveitis;

(vi) Phacoanaphylactic endophthalmitis; or

(vii) Increased ocular pressure in a person who is blind and is experiencing ocular pain.

(3) MAA covers strabismus surgery as follows:

(a) For clients seventeen years of age and younger, when medically necessary. The provider must clearly document the need in the client's record.

(b) For clients eighteen years of age and older when:

(i) The client has double vision; and

(ii) The surgery is not performed for cosmetic reasons.

(c) To receive payment for clients eighteen years of age and older, providers must follow MAA's expedited prior authorization process listed in WAC 388-544-0450. MAA does not require authorization for clients seventeen years of age and younger.

(4) MAA covers blepharoplasty or blepharoptosis surgery for nonecosmetic reasons when:

(a) The excess upper eyelid skin impairs the vision by blocking the superior visual field; and

(b) The vision is blocked to within ten degrees of central fixation using a central visual field test)) department covers cataract surgery, without prior authorization, when the following clinical criteria are met:

(a) Correctable visual acuity in the affected eye at 20/50 or worse, as measured on the Snellen test chart; or

(b) One or more of the following conditions:

(i) Dislocated or subluxated lens;

- (ii) Intraocular foreign body;
- (iii) Ocular trauma;
- (iv) Phacogenic glaucoma;
- (v) Phacogenic uveitis;
- (vi) Phacoanaphylactic endophthalmitis; or
- (vii) Increased ocular pressure in a person who is blind and is experiencing ocular pain.

(2) The department covers strabismus surgery as follows:

(a) For clients seventeen years of age and younger. The provider must clearly document the need in the client's record. The department does not require authorization for clients seventeen years of age and younger; and

(b) For clients eighteen years of age and older, when the clinical criteria are met. To receive payment, providers must follow the expedited prior authorization process. The clinical criteria are:

- (i) The client has double vision; and
- (ii) The surgery is not being performed for cosmetic reasons.

(3) The department covers blepharoplasty or blepharoptosis surgery when all of the clinical criteria are met. To receive payment, providers must follow the department's expedited prior authorization process. The clinical criteria are:

(a) The client's excess upper eyelid skin is blocking the superior visual field; and

(b) The blocked vision is within ten degrees of central fixation using a central visual field test.

NEW SECTION

WAC 388-544-0560 Vision care—Authorization. (1) The department requires providers to obtain authorization for covered vision care services as required in this chapter, chapters 388-501 and 388-502 WAC, and in published department billing instructions and/or numbered memoranda or when the clinical criteria required in this chapter are not met.

(a) For prior authorization (PA), a provider must submit a written request to the department as specified in the department's published vision care billing instructions.

(b) For expedited prior authorization (EPA), a provider must meet the clinically appropriate EPA criteria outlined in the department's published vision care billing instructions. The appropriate EPA number must be used when the provider bills the department.

(c) Upon request, a provider must provide documentation to the department showing how the client's condition met the criteria for PA or EPA.

(2) Authorization requirements in this chapter are not a denial of service.

(3) When a service requires authorization, the provider must properly request authorization in accordance with the department's rules, billing instructions, and numbered memoranda.

(4) When authorization is not properly requested, the department rejects and returns the request to the provider for further action. The department does not consider the rejection of the request to be a denial of service.

(5) The department's authorization of service(s) does not necessarily guarantee payment.

(6) The department evaluates requests for authorization of covered vision care services that exceed limitations in this chapter on a case-by-case basis in accordance with WAC 388-501-0169.

(7) The department may recoup any payment made to a provider if the department later determines that the service was not properly authorized or did not meet the EPA criteria. Refer to WAC 388-502-0100 (1)(c).

NEW SECTION

WAC 388-544-0575 Vision care—Noncovered services, eyeglasses, and contact lenses. (1) The department does not cover the following:

- (a) Executive style eyeglass lenses;
- (b) Bifocal contact lenses;
- (c) Daily and two week disposable contact lenses;
- (d) Extended wear soft contact lenses, except when used as therapeutic contact bandage lenses or for aphakic clients;
- (e) Custom colored contact lenses;
- (f) Services for cosmetic purposes only;
- (g) Glass lenses;
- (h) Group vision screening for eyeglasses;
- (i) Nonglare or anti-reflective lenses;
- (j) Progressive lenses;
- (k) Refractive surgery of any type that changes the eye's refractive error. The intent of the refractive surgery procedure is to reduce or eliminate the need for eyeglass or contact lens corrections. This does not include intraocular lens implantation following cataract surgery.

(l) Sunglasses and accessories that function as sunglasses (e.g., "clip-ons");

(m) Upgrades at private expense to avoid the department's contract limitations (e.g., frames that are not available through the department's contract or noncontract frames or lenses for which the client or other person pays the difference between the department's payment and the total cost).

(2) An exception to rule (ETR), as described in WAC 388-501-0160, may be requested for a noncovered service.

AMENDATORY SECTION (Amending WSR 05-13-038, filed 6/6/05, effective 7/7/05)

WAC 388-544-0600 Vision care—Payment methodology. (1) ~~((In order))~~ To receive payment, vision care providers must bill the ~~((medical assistance administration (MAA)))~~ department according to the conditions of payment under WAC 388-502-0020 (1)(a) through (c) and WAC 388-502-0100 and ~~((MAA's))~~ the department's published billing instructions.

(2) ~~((MAA covers))~~ The department pays one hundred percent of the ~~((MAA))~~ department contract price for covered eyeglass frames, lenses, and contact lenses when these items are obtained through ~~((MAA's))~~ the department's approved ~~((contract(s)))~~ contractor.

(3) See WAC 388-531-1850 for professional fee payment methodology.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-544-0450 Vision care—Prior authorization.

WSR 08-10-006
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed April 24, 2008, 8:50 a.m.]

Continuance of WSR 08-07-098.

Preproposal statement of inquiry was filed as WSR 07-01-101.

Title of Rule and Other Identifying Information: WAC 296-62-095 Heat-related illness in the outdoor environment. The purpose of this continuance filing is to add an additional public hearing and additional time for persons needing any special assistance or accommodations. The additional hearing date, time, and location are as follows: Washington State Convention and Trade Center, Level 3 - South, Room 307-308, 800 Convention Place, Seattle, WA 98101-2350, on May 2, 2008, at 2:00 p.m.

Hearing Location(s): Comfort Inn - Tumwater, 1620 74th Avenue S.W., Tumwater, WA 98501, on April 28, 2008, at 1:00 p.m.; at the Quality Inn Baron Suites, 100 East Kellogg Road, Bellingham, WA 98226, on April 29, 2008, at 1:00 p.m.; at the Yakima Clarion Hotel and Conference Center, 1507 North First Street, Yakima, WA 98901, on April 30, 2008, at 9:00 a.m.; at the Red Lion Hotel Richland - Hanford House, 802 George Washington Way, Richland, WA 99352, on April 30, 2008, at 2:00 p.m.; at the Red Lion Hotel at the Park, West 303 North River Drive, Spokane, WA 99201, on May 1, 2008, at 1:00 p.m.; and at the Washington State Convention and Trade Center, Level 3 - South, Room 307-308, 800 Convention Place, Seattle, WA 98101-2350, on May 2, 2008, at 2:00 p.m.

Date of Intended Adoption: June 4, 2008.

Submit Written Comments to: Jamie Scibelli, P.O. Box 44620, Olympia, WA 98504-4620, e-mail scij235@lni.wa.gov, fax (360) 902-5619, by May 2, 2008. In addition to written comments, the department will accept comments submitted to fax (360) 902-5619. Comments submitted by fax must be ten pages or less.

Assistance for Persons with Disabilities: Contact Beverly Clark by April 28, 2008, (360) 902-5516 or clah235@lni.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: See WSR 08-07-098.

Reasons Supporting Proposal: See WSR 08-07-098.

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

Statute Being Implemented: Chapter 49.17 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: Tracy Spencer, Tumwater, Washington, (360) 902-5530; Implementation and Enforcement: Stephen M. Cant, Tumwater, Washington, (360) 902-5495.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

See WSR 08-07-098 for a copy of the small business economic impact statement.

A copy of the statement may be obtained by contacting Jamie Scibelli, P.O. Box 44620, Olympia, WA 98504-4620, phone (360) 902-4568, fax (360) 902-5619, e-mail scij235@lni.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jamie Scibelli, P.O. Box 44620, Olympia, WA 98504-4620, phone (360) 902-4568, fax (360) 902-5619, e-mail scij235@lni.wa.gov.

April 24, 2008

Judy Schurke
Director

WSR 08-10-008
PROPOSED RULES
BOARD OF
PILOTAGE COMMISSIONERS

[Filed April 24, 2008, 11:49 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 363-116-185 Pilotage rates for the Grays Harbor pilotage district.

Hearing Location(s): 2901 Third Avenue, 4th Floor, Rainier Conference Room, Seattle, WA 98121, on June 12, 2008, at 9:30 a.m.

Date of Intended Adoption: June 12, 2008.

Submit Written Comments to: Captain Harry Dudley, Chairman, 2901 Third Avenue, Suite 500, Seattle, WA 98121, e-mail larsonp@wsdot.wa.gov, fax (206) 515-3906, by June 5, 2008.

Assistance for Persons with Disabilities: Contact Judy Bell by June 9, 2008, (206) 515-3647.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to establish a 2008-2009 Grays Harbor pilotage district annual tariff.

The proposed rule reflects an effective overall increase to the tariff of 2.5% or \$163 per pilotage job, as specified in the following tariff categories:

Draft and Tonnage Fees: It is proposed that each charge in this category be increased by 1.8%.

Harbor Shifts: It is proposed that the harbor shift fee be increased by 1.8%.

Pension Charge: It is proposed that the charge per pilotage assignment, including cancellations, be increased \$23.00.

Travel Allowance: It is proposed that the transportation fee per assignment be increased \$45.00.

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

Statutory Authority for Adoption: RCW 88.16.035.

Statute Being Implemented: Chapter 88.16 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Current rates for the Grays Harbor pilotage district expire on July 31, 2008. New rates must be set accordingly.

All requirements necessary to amend the existing Grays Harbor pilotage district tariff as set forth in chapter 53.08 RCW have been met.

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

Name of Proponent: Port of Grays Harbor, public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Board of Pilotage Commissioners, 2901 Third Avenue, Seattle, WA 98121, (206) 515-3904.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule is being considered in the context of the required annual revision to the rates charged for pilotage services. The application of the proposed increases is clear in the description of the proposal and its anticipated effects as well as the attached proposed tariff.

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

April 23, 2008

Peggy Larson

Administrator

AMENDATORY SECTION (Amending WSR 07-14-014, filed 6/22/07, effective 8/1/07)

WAC 363-116-185 Pilotage rates for the Grays Harbor pilotage district. Effective 0001 hours August 1, (~~2007~~) 2008, through 2400 hours July 31, (~~2008~~) 2009.

CLASSIFICATION	RATE
((Fees)) <u>Charges</u> for piloting of vessels in the inland waters and tributaries of Grays Harbor shall consist of the following:	
Draft and Tonnage (((Fees))) <u>Charges:</u>	
Each vessel shall be charged according to its draft and tonnage for each vessel movement inbound to the Grays Harbor pilotage district, and for each movement outbound from the district.	
Draft	\$((95.48)) <u>97.20</u> per meter
	or
Tonnage	\$((29.10)) <u>29.62</u> per foot
Minimum Net Registered Tonnage	\$((0.274)) <u>0.279</u> per net registered ton
Extra Vessel (in case of tow)	\$((958.00)) <u>975.00</u>
	\$((536.00)) <u>546.00</u>
Provided that, due to unique circumstances in the Grays Harbor pilotage district, vessels that call, and load or discharge cargo, at Port of Grays Harbor Terminal No. 2 shall be charged \$((5,305.00)) <u>5,400.00</u> per movement for each vessel movement inbound to the district for vessels that go directly to Terminal No. 2, or that go to anchor and then go directly to Terminal No. 2, or because Terminal No. 2 is not available upon arrival that go to layberth at Terminal No. 4 (without loading or discharging cargo) and then go directly to Terminal No. 2, and for each vessel movement outbound from the district from Terminal No. 2, and that this charge shall be in lieu of only the draft and tonnage (((fees))) <u>charges</u> listed above.	
Boarding (((Fee))) <u>Charge:</u>	
Per each boarding/deboarding from a boat or helicopter	\$1,030.00
Harbor Shifts:	
For each shift from dock to dock, dock to anchorage, anchorage to dock, or anchorage to anchorage	\$((667.00)) <u>679.00</u>
Delays per hour	\$159.00
Cancellation charge (pilot only)	\$266.00
Cancellation charge (boat or helicopter only)	\$798.00
Pension Charge:	
Charge per pilotage assignment, including cancellations	\$((174.00)) <u>197.00</u>

CLASSIFICATION

RATE

Travel Allowance:

Transportation (~~(fee)~~ charge) per assignment \$((~~55.00~~) 100.00)

Pilot when traveling to an outlying port to join a vessel or returning through an outlying port from a vessel which has been piloted to sea shall be paid \$931.00 for each day or fraction thereof, and the travel expense incurred.

Bridge Transit:

Charge for each bridge transited \$292.00

Additional surcharge for each bridge transited for vessels in excess of 27.5 meters in beam \$809.00

Miscellaneous:

The balance of amounts due for pilotage rates not paid within 30 days of invoice will be assessed at 1 1/2% per month late charge.

**WSR 08-10-045
PROPOSED RULES
COUNTY ROAD
ADMINISTRATION BOARD**
[Filed May 1, 2008, 10:52 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Amending WAC 136-161-080 Limitations on allocations of RATA funds to counties.

Hearing Location(s): County Road Administration Board, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504-0913, on July 24, 2008, at 2:00 p.m.

Date of Intended Adoption: July 24, 2008.

Submit Written Comments to: Karen Pendleton, P.O. Box 40913, Olympia, WA 98504-0913, e-mail Karen@crab.wa.gov, fax (360) 586-0386, by July 18, 2008.

Assistance for Persons with Disabilities: Contact Karen Pendleton by July 18, 2008, TTY (800) 833-6382 or (360) 753-5989.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Providing flexibility to the NWR in submitting project requests for RATA.

Statutory Authority for Adoption: Chapter 36.79 RCW.

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

Name of Proponent: [County road administration board], governmental.

Name of Agency Personnel Responsible for Drafting: Randy Hart, 2404 Chandler Court S.W., Suite 240, (360) 753-5989; Implementation: Karen Pendleton, 2404 Chandler Court S.W., Suite 240, (360) 753-5989; and Enforcement: Jay Weber, 2404 Chandler Court S.W., Suite 240, (360) 753-5989.

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

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

April 30, 2008
Jay Weber
Executive Director

AMENDATORY SECTION (Amending WSR 07-17-020, filed 8/6/07, effective 9/6/07)

WAC 136-161-080 Limitations on allocations of RATA funds to counties. For any project program period, no county shall receive a RATA fund allocation greater than the following maximum project RATA contribution, or percentage of the forecasted regional apportionment amount:

(1) PSR: No maximum project RATA contribution; 40% limit on percentage of the forecasted regional apportionment amount;

(2) NWR: ~~No maximum project RATA contribution ((is five hundred thousand dollars, except that on one project for each county there is a maximum RATA contribution of one million dollars))~~; twenty percent limit on percentage of the forecasted regional apportionment amount;

(3) NER: No maximum project RATA contribution; twelve and one-half percent limit on percentage of the forecasted regional apportionment amount;

(4) SWR: No maximum project RATA contribution; fifteen percent limit on percentage of the forecasted regional apportionment amount;

(5) SER: No maximum project RATA contribution; percentage varies by county as follows:

- | | |
|------------------------|------------------|
| (a) Asotin County | ten percent |
| (b) Benton County | fourteen percent |
| (c) Columbia County | eleven percent |
| (d) Franklin County | thirteen percent |
| (e) Garfield County | ten percent |
| (f) Kittitas County | thirteen percent |
| (g) Klickitat County | fourteen percent |
| (h) Walla Walla County | fourteen percent |
| (i) Yakima County | twenty percent |

WSR 08-10-046
PROPOSED RULES
COUNTY ROAD
ADMINISTRATION BOARD

[Filed May 1, 2008, 10:52 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Amending WAC 136-130-040 Project prioritization in north-west region (NWR).

Hearing Location(s): County Road Administration Board, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504-0913, on July 24, 2008, at 2:00 p.m.

Date of Intended Adoption: July 24, 2008.

Submit Written Comments to: Karen Pendleton, P.O. Box 40913, Olympia, WA 98504-0913, e-mail Karen@crab.wa.gov, fax (360) 586-0386, by July 18, 2008.

Assistance for Persons with Disabilities: Contact Karen Pendleton by July 18, 2008, TTY (800) 833-6382 or (360) 753-5989.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Providing flexibility to the NWR in submitting project requests for RATA.

Statutory Authority for Adoption: Chapter 36.79 RCW.

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

Name of Proponent: [County road administration board], governmental.

Name of Agency Personnel Responsible for Drafting: Randy Hart, 2404 Chandler Court S.W., Suite 240, (360) 753-5989; Implementation: Karen Pendleton, 2404 Chandler Court S.W., Suite 240, (360) 753-5989; and Enforcement: Jay Weber, 2404 Chandler Court S.W., Suite 240, (360) 753-5989.

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

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

April 30, 2008

Jay Weber
Executive Director

AMENDATORY SECTION (Amending WSR 07-17-020, filed 8/6/07, effective 9/6/07)

WAC 136-130-040 Project prioritization in north-west region (NWR). Each county in the NWR may submit projects requesting RATA funds not to exceed ~~((five hundred thousand dollars per project, except that on one project for each county there is a maximum RATA contribution of one million dollars; and))~~ forty percent of the forecasted regional apportionment. No bridge replacement projects will be funded. Each project shall be rated in accordance with the NWR RAP reconstruction or 3R rating procedures. NWR RAP reconstruction rating points shall be assigned on the basis of forty points for structural condition, forty points for geometrics, ten points for traffic volume, ten points for traffic accidents, five points for any project on a major collector (07), and ten points for any project on a rural principal arterial

(02) or a rural minor arterial (06). Prioritization of NWR projects shall be on the basis of total NWR RAP rating points shown on the project worksheet and the prospectus form of the project application.

NWR RAP 3R rating points shall be assigned on the basis of thirty points for structural condition, twenty points for geometrics, ten points for traffic volume, ten points for traffic accidents, ten points for any project on a minor collector (08), and thirty points for 3R safety. Prioritization of NWR 3R projects shall be on the basis of total NWR 3R RAP rating points shown on the project worksheet and the prospectus form of the project application.

A total of twenty points representing local significance may be added to one project in each county's biennial submittal.

WSR 08-10-047
PROPOSED RULES
COUNTY ROAD
ADMINISTRATION BOARD

[Filed May 1, 2008, 10:53 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Amending WAC 136-170-040 Combining of CRAB/county contracts; and new sections WAC 136-170-050 Combining of RATA funded projects with non-RATA funded project and 136-170-060 Splitting or phasing of CRAB/county contracts.

Hearing Location(s): County Road Administration Board, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504-0913, on July 24, 2008, at 2:00 p.m.

Date of Intended Adoption: July 24, 2008.

Submit Written Comments to: Karen Pendleton, P.O. Box 40913, Olympia, WA 98504-0913, e-mail Karen@crab.wa.gov, fax (360) 586-0386, by July 18, 2008.

Assistance for Persons with Disabilities: Contact Karen Pendleton by July 18, 2008, TTY (800) 833-6382 or (360) 753-5989.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To better define and create new rules for combining of CRAB/county contracts.

Statutory Authority for Adoption: Chapter 36.79 RCW.

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

Name of Proponent: [County road administration board], governmental.

Name of Agency Personnel Responsible for Drafting: Randy Hart, 2404 Chandler Court S.W., Suite 240, (360) 753-5989; Implementation: Karen Pendleton, 2404 Chandler Court S.W., Suite 240, (360) 753-5989; and Enforcement: Jay Weber, 2404 Chandler Court S.W., Suite 240, (360) 753-5989.

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

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

April 30, 2008
Jay Weber
Executive Director

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-170-040 Combining of CRAB/county contracts. In those cases (~~where~~) when a county desires to combine two or more adjacent RATA funded projects into a single construction contract, the county, prior to advertising for the construction contract, or prior to commencing construction should any of the projects be scheduled for completion by day labor, (~~may~~) must make a formal written request to the county road administration board to combine the projects into a single project, assuring that the original prospectus work will be accomplished as originally proposed or as previously revised by the county road administration board, regardless of the applicable maximum project RATA contribution.

Upon receipt of a letter of request to combine, and consideration and approval by the director of the county road administration board, a revised CRAB/county contract will be prepared and sent to the county for its execution and (~~return~~) returned in the same manner as for the original contract(s). Projects shall be considered adjacent if they have a common terminus.

NEW SECTION

WAC 136-170-050 Combining of RATA funded project with non-RATA funded project. In those cases when a county desires to combine a RATA funded project with one or more non-RATA funded projects, the county, prior to advertising for the construction contract, or prior to commencing construction should any of the projects be scheduled for completion by day labor, shall notify the county road administration board in writing of its plans to combine the projects into a single construction project, assuring in writing that the work items assigned to the RATA funded section will remain distinct and separate through the bid documents and contract plans.

Upon verification that the request is submitted in a timely manner, that the combined project will meet the conditions of the CRAB/county contract and prospectus requirements, and that RATA funded items of work will be sufficiently separated from other work, the CRAB director will respond in writing, to grant the combination.

NEW SECTION

WAC 136-170-060 Splitting or phasing of CRAB/county contracts. (1) A county may split a single rural arterial trust account funded project into multiple adjacent phased construction projects only upon written request and approval by the county road administration board.

(2) The county must submit the request prior to advertising for the construction contract, or prior to commencing

construction should any of the projects be scheduled for completion by day labor.

(3) Upon receipt of the county's written request to split a RAP project, the CRAB director will consider and may approve the split.

(4) Upon such approval, a revised CRAB/county contract will be prepared, and sent to the county for its execution and returned in the same manner as for the original contract. The final contract must be fully executed prior to advertisement for contract construction, or if done by day labor, prior to commencing construction.

(5) Funding for split projects will be assigned based upon the breakdown of costs specified in the county's request letter.

(6) Failure of a county to execute an amended CRAB/county contract within forty-five days of receipt shall nullify any split requests and any other county road administration board actions associated with the split request.

(7) Construction on at least one of the split projects must commence by the lapsing date of the original project and all remaining portions must be complete within two years of the date of the split request. In the event the county fails to meet either of these timelines, repayment of expended RATA funds for all portions or phases of the projects will be required unless waived by the county road administration board in keeping with provisions of WAC 136-167-030.

(8) Split projects will be considered ineligible for any increases in RATA funding or revisions in scope.

WSR 08-10-052

PROPOSED RULES

DEPARTMENT OF TRANSPORTATION

[Filed May 2, 2008, 9:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-07-092 and 08-07-093.

Title of Rule and Other Identifying Information: WAC 468-38-071 Maximums and other criteria for special permits—Divisible, revision of the rule is to comply with a legislative revision to RCW 46.44.0915 creating a heavy haul industrial corridor on US 97 from the Canadian border to milepost 331.22 in Oroville, Washington. This industrial corridor will authorize vehicles additional weight that will reflect weight limits in Canada.

WAC 468-38-290 Farm implements, revision of the rule is to comply with a legislative revision to RCW 46.44.140 increasing the weight limit to farm implements eligible for an annual farm implement permit.

Hearing Location(s): Transportation Building, Commission Board Room, 1D2, 310 Maple Park Avenue S.E., Olympia, WA 98504, on June 10, 2008, at 9:00 a.m.

Date of Intended Adoption: June 10, 2008.

Submit Written Comments to: James L. Wright, P.O. Box 47367, Olympia, WA 98504-7367, e-mail wrightji@wsdot.wa.gov, fax (360) 704-6350, by June 2, 2008.

Assistance for Persons with Disabilities: Contact Grant Heap by June 10, 2008, TTY (360) 705-7760 or (360) 705-6808.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal amending WAC 468-38-071 describes the requirements for vehicles using the US 97 heavy haul industrial corridor established by the legislature. The new rule addresses weight limitations reflecting Canadian weight limits that are authorized for the heavy haul corridor.

The proposal amending WAC 468-38-071 increases the weight limit for farm implements that are eligible to request an annual farm implement permit. The new rule will adopt the legislative increase to the weight limit revised in RCW 46.44.140.

Reasons Supporting Proposal: The proposed rule changes will aid in the administration and enforcement of movements of oversize farm implements utilizing annual farm permits and vehicles using the heavy haul industrial corridor on US 97. The proposed rule changes also reflect the revisions to legislative revisions to statute.

Statutory Authority for Adoption: RCW 46.44.090 and 46.44.0915.

Statute Being Implemented: SSB 6273 and SSB 6857.

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

Name of Proponent: WSDOT traffic office, commercial vehicle services, governmental.

Name of Agency Personnel Responsible for Drafting: Jim Wright, 7345 Linderson WA [Way] S.W., Tumwater, WA, (360) 704-6345; Implementation: Anne Ford, 7345 Linderson WA [Way] S.W., Tumwater, WA, (360) 705-7341; and Enforcement: Captain Darrin Grondel, 210 11th Street, General Administration Building, Olympia, WA, (360) 753-0350.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The new rules adopt current state requirements of farm implements and vehicles using heavy haul corridors without material change as referenced in RCW 34.05.310 (4)(c).

A cost-benefit analysis is not required under RCW 34.05.328. There is no additional cost related to these proposals. The proposals identify the conditions for vehicles transporting loads when vehicles are issued permits pursuant to RCW 46.44.0915 and 46.44.290.

April 29, 2008
Stephen Reinmuth
Chief of Staff

AMENDATORY SECTION (Amending WSR 05-04-053, filed 1/28/05, effective 2/28/05)

WAC 468-38-071 Maximums and other criteria for special permits—Divisible. (1) **Can a vehicle, or vehicle combination, acquire a permit to exceed the dimensions for legal vehicles in regular operation when moving items of a divisible nature?** Yes. There are some very specific configurations that can receive extra length or extra height when carrying a divisible load.

(2) **What configurations can be issued a permit, and how are they measured?** The configurations and measurement criteria are:

(a) An overlength permit may be issued to a truck-tractor to pull a single trailer or semi-trailer, with a trailer length not to exceed fifty-six feet. The measurement for the single trailing unit will be from the front of the trailer (including draw bar when used), or load, to the rear of the trailer, or load, whichever provides the greater distance up to fifty-six feet. Rear overhang may not exceed fifteen feet.

(b) An overlength permit may be issued to a truck-tractor to pull a set of double trailers, composed of a semi-trailer and full trailer or second semi-trailer, with a combined trailer length not to exceed sixty-eight feet. The measurement for double trailers will be from the front of the first trailer, or load, to the end of the second trailer or load, whichever provides the greatest distance up to sixty-eight feet. Note: If the truck-tractor is carrying an allowable small freight compartment (dromedary box), the total combined length of the combination, combined trailer length notwithstanding, is limited to seventy-five feet.

(c) An overlength permit may be issued to a log truck pulling a pole-trailer, trailer combination, carrying two distinct and separate loads, as if it was a truck-tractor pulling a set of double trailers. Measurement for the log truck, pole-trailer, trailer combination will be from the front of the first bunk on the truck to the rear of the second trailer, or load, whichever provides the greatest distance up to sixty-eight feet.

(d) An overheight permit may be issued to a vehicle or vehicle combination, hauling empty apple bins, not to exceed fifteen feet high. Measurement is taken from a level roadbed. This permit may be used in conjunction with either of the overlength permits in (a) or (b) of this subsection. The permit may also provide an exemption from a front pilot/escort vehicle as required by WAC 468-38-100 (1)(h). The exemption does not limit the liability assumed by the permit applicant.

(e) An overheight permit may be issued to a vehicle or vehicle combination owned by a rancher and used to haul his own hay from his own fields to feed his own livestock, not to exceed fifteen feet high, measured from a level roadbed. This permit may be used in conjunction with either of the overlength permits in (a) or (b) of this subsection. The permit may also provide an exemption from a front pilot/escort vehicle as required by WAC 468-38-100 (1)(h). The exemption does not limit the liability assumed by the permit applicant.

(3) **Are there any measurement exclusive devices related to these permits?** Measurements should not include nonload-carrying devices designed for the safe and/or efficient operation of the vehicle, or vehicle combination components, for example: An external refrigeration unit, a resilient bumper, an aerodynamic shell, etc. Safety and efficiency appurtenances, such as, but not limited to, tarp rails and splash suppression devices, may not extend more than three inches beyond the width of a vehicle. The examples are not all inclusive.

(4) **Are overweight permits available for divisible loads?** Yes. There are specific criteria authorizing overweight permits to divisible loads.

(a) The secretary of transportation, or designee, may issue permits to department vehicles used for the emergent preservation of public safety and/or the infrastructure (i.e., snow removal, sanding highways during emergency winter

conditions, emergent debris removal or retainment, etc.). The permits will also be valid for the vehicles in transit to or from the emergent worksite. The special permits may allow:

((a)) (i) Weight on axles in excess of what is allowed in RCW 46.44.041;

((b)) (ii) Movement during hours of the day, or days of the week, that may be restricted in WAC 468-38-175;

((c)) (iii) Exemption from the sign requirements of WAC 468-38-155(7) if weather conditions render such signs ineffectual; and

((d)) (iv) Movement at night, that may be restricted by WAC 468-38-175(3), by vehicles with lights that meet the standards for emergency maintenance vehicles established by the commission on equipment.

(b) Additional weight allowances are authorized through special permit for a segment of US-97 from the Canadian border to milepost 331.22 designated as a heavy haul industrial corridor. The permits will authorize vehicles to haul divisible loads weighing up to the Canadian inter-provincial weight limits and must comply with the following requirements:

(i) Vehicles applying for the Canadian weight special permit must be licensed to their maximum legal weight limit in Washington state.

(ii) Displaying the US-97 heavy haul industrial corridor permit does not waive registration fees, fuel taxes, operating authority requirements, future legislative or regulatory changes. Except as provided in the provisions for the heavy

weight industrial corridor on US-97, all Washington state and federal laws must be complied with.

(ii) Routes of travel are strictly limited: Both directions of US-97 from the Canadian border at milepost 336.48 to milepost 331.22.

(iv) A Washington state axle spacing report is required for Canadian weight verification.

(v) The following descriptions indicate the maximum weight limits that will be permitted:

(A) Primary steering axle - 600 lbs. (272 kg) per inch (25.4 mm) of width of tire* with a maximum limit of 12,100 lbs.

(B) Other axles - 500 lbs. (227 kg) per inch of width of tire*.

(C) Single axles - 20,000 lbs. (9,100 kg) maximum.

(D) Tandem axles - 37,500 lbs. (17,000 kg) maximum.

*Width of tire is determined by tire side-wall nomenclature.

(E) Tridem axles.

<u>Axle Spread</u>	<u>Pounds</u>	<u>Kilograms</u>
<u>94" (2.4m) to < 118" (3.0m)</u>	<u>46,300</u>	<u>21,000</u>
<u>118" (3.0m) to < 141" (3.6m)</u>	<u>50,700</u>	<u>23,000</u>
<u>141" (3.6m) to < 146" (3.7m)</u>	<u>52,900</u>	<u>24,000</u>

Note: When computing allowable weights, the most conservative figure (whether weight per width of tire, axle weights, or gross weights) will govern.

(F) Maximum gross weight - pounds (kilograms).

<u>Number of Axles</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>
<u>Truck</u>	<u>36,000 (16,350)</u>	<u>53,000 (24,250)</u>					
<u>Truck and Full Trailer</u>			<u>74,000 (33,500)</u>	<u>91,000 (41,250)</u>	<u>106,500 (48,250)</u>	<u>118,000 (53,500)</u>	
<u>Truck and Pup</u>		<u>56,200 (25,450)</u>	<u>74,000 (33,550)</u>	<u>91,000 (41,250)</u>	<u>99,800 (45,250)</u>		
<u>Tractor and Semi</u>		<u>52,300 (23,700)</u>	<u>69,700 (31,600)</u>	<u>87,100 (39,500)</u>	<u>95,900 - 102,500*</u>		
<u>A-Train**</u>				<u>92,500 (41,900)</u>	<u>109,800 (49,800)</u>	<u>118,000 (53,500)</u>	<u>118,000 (53,500)</u>
<u>B-Train**</u>				<u>90,000 (40,700)</u>	<u>107,200 (48,600)</u>	<u>124,600 (56,500)</u>	<u>137,800 (62,500)</u>
<u>C-Train**</u>				<u>92,500 (41,900)</u>	<u>109,800 (49,800)</u>	<u>120,500 (54,600)</u>	<u>130,000 (58,500)</u>

*Semi tridem axle spacing and weight limits:

94" to < 118" (2.4m to < 3.0m) spread - 95,900 lbs. (43,500 kg).

118" to < 141" (3.0m to < 3.6m) spread - 100,310 lbs. (45,500 kg).

141" to < 146" (3.6m to < 3.7m) spread - 102,500 lbs. (46,500 kg).

**Double trailer vehicles definition for this section:

A-Train: Double trailers coupled by a single drawbar.

B-Train: Two semi-trailers coupled by a fifth wheel mounted to rear of first trailer.

C-Train: Double trailers coupled by double drawbars with self-steering dolly axle(s).

AMENDATORY SECTION (Amending WSR 06-07-025, filed 3/7/06, effective 4/7/06)

WAC 468-38-290 Farm implements. (1) **For purposes of issuing special permits and certain permit exemptions, what is considered a farm implement?** A farm implement includes any device that directly affects the production of agricultural products, including fertilizer and chemical applicator apparatus (complete with auxiliary equipment). For purposes of this section, the implement must be nondivisible, weigh less than ((forty-five)) sixty-five thousand pounds, and comply with the requirements of RCW 46.44.091. The implement must be less than twenty feet in width and not exceed fourteen feet high. If the implement is self-propelled, it must not exceed forty feet in length, or seventy feet overall length if being towed. The implement must move on pneumatic tires, or solid rubber tracks having protuberances that will not damage public highways. Implements exceeding any of these criteria must meet all appropriate requirements for special permits as referenced in other sections throughout this chapter.

(2) **What dimensional criteria must be met before a special permit is required to move extra-legal farm implements?** Self-propelled farm implements, including a farm tractor pulling no more than two implements, that exceeds sixteen feet in width, but less than twenty feet wide, are required to get a special permit for movement of farm implements on state highways. Note: A tow vehicle capable of carrying a load (i.e., a truck of any kind) may not tow more than one trailing implement.

(3) **Will the ability to acquire a special permit to move oversize farm implements be affected if the implement(s) is carried on another vehicle?** The ability to use a special permit for farm implements as defined in subsection (1) of this section will not be affected unless one of the following circumstances occurs:

(a) The authorized users of the permit outlined in subsection (5) of this section use a commercial for-hire service to move the implement(s); or

(b) The loaded farm implement creates a combined height that exceeds fourteen feet; or

(c) The loaded farm implement causes the hauling vehicle to exceed legal weight limits. The farm implement may weigh up to forty-five thousand pounds; however, the combined gross weight of implement and hauling unit may extend to the limits established in RCW 46.44.041 Maximum gross weights—Wheelbase and axle factors.

If any of the circumstances occur, the provisions of this subsection will not apply to the movement of the farm implement. The movement will be required to comply with the appropriate requirements for special permits as referenced in chapter 46.44 RCW and in other sections throughout this chapter.

(4) **How does the application process for a special permit for farm implements differ from the process outlined in WAC 468-38-050?** Due to the size of the implement and the potential for use in multiple jurisdictions, the written application must be submitted to the department's Olympia office for approval. Permits can be requested for a three-month period up to one year. Once approved, the special permit may be generated from the Olympia office by facsimile

or a letter of authorization will be sent allowing the applicant to acquire a permit at the nearest permit sales location. If the movement of the farm implement(s) is confined to a single department maintenance area, the applicant may make direct written application to that maintenance area office in lieu of the Olympia office.

(5) **Who is authorized to acquire this specific special permit?** The acquisition and use of a special permit to move farm implements is restricted to a farmer, or anyone engaged in the business of selling, repairing and/or maintaining farm implements.

(6) **Does the permit restrict the movement to a specific area?** The special permit to move farm implements is generally restricted to six contiguous counties or less. With proper justification the area can be expanded. The farm implement may only travel on highway structures that are designed to support the weight of the farm implement.

(7) **Are notifications of movement required?** Movements of vehicles in excess of sixteen feet wide must be communicated to all department maintenance areas affected at least eight hours in advance. Movements of implements that exceed the legal weight limit established in RCW 46.44.041 must contact all of the maintenance department areas affected at least eight hours in advance for weight restriction information. The communication is for the purpose of ensuring there will not be any planned activity or weight restrictions that would restrict the move. Locations of maintenance area offices and phone listings are provided with each letter authorizing the purchase of the special permit.

(8) **What safety precautions must be taken when moving extra-legal farm implements?** The movement of extra-legal farm implements must comply with the following safety requirements:

(a) **Oversize load signs:** If the farm implement exceeds ten feet wide, it must display an "OVERSIZE LOAD" sign(s) visible to both oncoming traffic and overtaking traffic. Signs must comply with the requirements of WAC 468-38-155(7). If the implement is both preceded and followed by pilot/escort vehicles, a sign is not required on the implement itself.

(b) **Curfew/commuter hours:** Movement of a farm implement in excess of ten feet wide must comply with any published curfew or commuter hour restrictions.

(c) **Red flags:** If the farm implement is moving during daylight hours, and exceeds ten feet wide, the vehicle configuration must display clean, bright red flags. The flags must measure at least twelve inches square and be able to wave freely. The flags are to be positioned at all four corners, or extremities, of the overwidth implement and at the extreme ends of all protrusions, projections or overhangs. If a transported implement overhangs the rear of transporting vehicle or vehicle combination by more than four feet, one flag is required at the extreme rear. If the width of the rear overhang/protrusion exceeds two feet, there must be two flags positioned at the rear to indicate the maximum width of the overhang/protrusion.

(d) **Warning lights and slow moving emblem:** Lamps and other lighting must be in compliance with RCW 46.37.-160. In addition to the lighting requirements, RCW 46.37.160 also requires the use of a "slow moving emblem" for moves traveling at twenty-five miles per hour or less.

(e) **Convoys:** Convoys, the simultaneous movement of two or more individually transported implements, are authorized when the following criteria are met:

(i) A minimum of five hundred feet is maintained between vehicles to allow the traveling public to pass safely;

(ii) If five or more vehicles are lined up behind any one of the implements, the operator must pull off the road at the nearest point wide enough to allow the vehicles to pass safely; and

(iii) The convoy is preceded and followed with properly equipped pilot/escort vehicles.

(9) Are there any unique requirements or exemptions regarding the use of pilot/escort vehicles with farm implements? Pilot/escort vehicles must comply with the requirements of WAC 468-38-100, except for the following specific exemptions related only to special permits for moving farm implements:

(a) A farmer, farm implement dealer, or agri-chemical dealer (including employees of each) is exempt from WAC 468-38-100(4) regarding operator certification, WAC 468-38-100 (8)(a) and (b) regarding escort vehicle physical description, WAC 468-38-100 (10)(f) regarding use of height measuring device, and WAC 468-38-100(11) regarding passengers, when moving a farm implement off the interstate and on the following interstate segments:

(i) I-90 between Exit 109 (Ellensburg) and Exit 270 (Four Lakes);

(ii) I-82 between Junction with I-90 (Ellensburg) and Exit 31 (Yakima);

(iii) I-82 between Exit 37 (Union Gap) and Washington/Oregon border;

(iv) I-182 between Junction with I-82 (West Richland) and Junction with SR-395; and

(v) I-5 between Exit 208 (Arlington) and Exit 250 (south of Bellingham).

(b) On two lane highways, one pilot/escort vehicle must precede and one must follow the implement(s) when the width exceeds twelve feet six inches. Implements up to twelve feet six inches wide are exempt from using pilot/escort vehicles.

(c) A flag person(s) may be used in lieu of a pilot/escort(s) for moves under five hundred yards. This allowance must be stated on any permit that may be required for the move.

(d) Posting a route may also be used in lieu of a pilot/escort vehicle(s) when the route is less than two miles. Signs must state, "OVERSIZE VEHICLE MOVING AHEAD" on a square at least three feet on each side (in diamond configuration), with black lettering on orange background. The signs must be placed at points before the oversize implement enters or leaves the highway, and at access points along the way. Signs must be removed immediately after the move has been completed.

WSR 08-10-059
PROPOSED RULES
DEPARTMENT OF
NATURAL RESOURCES
[Filed May 5, 2008, 11:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-19-146.

Title of Rule and Other Identifying Information: Public access and recreation on lands managed by the department of natural resources (DNR).

Hearing Location(s): Best Western Cotton Tree, Mount Vernon, on Tuesday, June 10, 2008, at 6:00 p.m.; at the Senior Community Center, Port Angeles, on Thursday, June 12, 2008, at 6:00 p.m.; Team 1 at the Timberland Library, Hoquiam, and Team 2 at the King County Library, Issaquah, on Tuesday, June 17, 2008, at 6:00 p.m.; Team 1 at the Red Lion, Vancouver, and Team 2 at the Central Washington University, Ellensburg, on Wednesday, June 18, 2008, at 6:00 p.m.; Team 1 at the Phoenix Inn Suites, Olympia, and Team 2 at the Sun Valley Restaurant, Omak, on Thursday, June 19, 2008, at 6:00 p.m.; and at the Hilton Garden Inn, Spokane, on Wednesday, June 25, 2008, at 6:00 p.m.

Date of Intended Adoption: September 2, 2008.

Submit Written Comments to: Mary Coacher, 1111 Washington Street S.E., P.O. Box 47014, Olympia, WA 98504-7014, e-mail mary.coacher@wadnr.gov, fax (360) 902-1600, by July 8, 2008.

Assistance for Persons with Disabilities: Contact Washington department of natural resources by June 6, 2008, TTY (360) 902-1156.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of chapter 332-52 WAC is to set standards for public use on lands managed by DNR. The primary objective of these rules is to promote public safety and protect DNR-managed lands, property and resources (pursuant [to] RCW 43.12.065 in accordance with chapter 34.05 RCW). These rules govern public behavior on:

- DNR-managed state lands, state forest lands, and state-owned aquatic lands;
- Natural area preserves as defined in chapter 79.70 RCW or natural resources conservation areas as defined in chapter 79.91 RCW;
- Lands leased from DNR by another public agency in place of the agency's own rules governing use of the leased lands when the agency requests the department rules apply; and
- Other city, county, state and federal lands under the department's management.

Reasons Supporting Proposal: An anticipated benefit includes the standardization of such program functions as statewide recreation permits and reservation systems. Consistency related to program functions allows the public to have a degree of certainty when traveling from region to region, across the state.

With the advent of new recreational equipment and other technological advances, new and varied recreational pursuits are occurring across the state on department-managed lands.

These new uses, combined with such traditional recreation experiences as horseback riding, hunting, fishing, and scenic driving, have created implementation obstacles that were not foreseen when the existing chapter 332-52 WAC was developed. The proposed language is designed to increase management efficiencies in order to overcome on-the-ground obstacles.

Improved recreation management should facilitate recreational use management, resulting in FTE savings.

Statutory Authority for Adoption: Chapter 43.30 RCW.

Statute Being Implemented: Chapter 43.12 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The existing rules written in 1970 are outdated. Over the last thirty-five years, there have been a number of technology changes related to recreation equipment, new challenges in land management and an increase in population - all of which affect how people access and recreate on DNR-managed lands. The purpose of chapter 332-52 WAC is to set standards for public use on lands managed by DNR. The primary objective of these rules is to promote public safety and protect DNR-managed lands, property and resources (pursuant [to] RCW 43.12.065 in accordance with chapter 34.05 RCW).

Name of Proponent: DNR, governmental.

Name of Agency Personnel Responsible for Drafting: Pene Speaks, 1111 Washington Street S.E., Olympia, (360) 902-1916; Implementation: Mark Mauren, 1111 Washington Street S.E., Olympia, (360) 902-1047; and Enforcement: Larry Raedel, 1111 Washington Street S.E., Olympia, (360) 902-1625.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The purpose of chapter 332-52 WAC is to set standards for public use on lands managed by DNR. The primary objective of these rules is to promote public safety and protect DNR-managed lands, property and resources (pursuant to RCW 43.12.065 and in accordance with chapter 34.05 RCW). These rules govern public behavior on:

- DNR-managed state lands, state forest lands, and state-owned aquatic lands;
- Natural area preserves as defined in chapter 79.70 RCW or natural resources conservation areas as defined in chapter 79.91 RCW;
- Lands leased from DNR by another public agency in place of the agency's own rules governing use of the leased lands when the agency requests the department rules apply; and
- Other city, county, state and federal lands under the department's management.

Recreation management decisions such as level of use, specific areas and/or activities of use are not within the scope of these rules. Such recreation management decisions are decided at the department's regional level through the region management planning process. Consequently these rules do not significantly impact the costs of compliance for small businesses pursuant to RCW 19.85.040.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Mary Coacher, 1111 Washington Street S.E., Olympia, WA 98504, phone (360) 902-1600, fax (360) 902-1789.

May 1, 2008

Bonnie Bunning
Executive Director of
Policy and Administration

DEFINITIONS AND APPLICABILITY

AMENDATORY SECTION (Amending Order 516, filed 8/27/87)

WAC 332-52-010 Definitions. ((The following definitions shall apply throughout this chapter:

(1) "~~Developed recreation sites~~" means all improved observation, swimming, boating, camping and picnic sites.

(2) "~~Camping equipment~~" includes tent or vehicle used to accommodate the camper, the vehicles used for transport, and the associated camping paraphernalia.

(3) "~~Department~~" means the department of natural resources.

(4) "~~Vehicle~~" means any motorized device capable of being moved upon a road and in, upon, or by which any persons or property is or may be transported or drawn upon a road. It shall include, but not be limited to automobiles, trucks, motorcycles, motor bikes, motor scooters and snowmobiles, whether or not they can legally be operated on the public highways.

(5) "~~Organized event~~" means any event involving more than fifty participants which is advertised in advance, sponsored by any recognized club(s), and conducted at a predetermined time and place.

~~(6))~~ When used in this chapter, the following terms are defined as follows:

"Applicant" means a person who applies for a permit, reservation, or other written authorization from the department.

"Authorized" means written approval given by the department.

"Business hours" means 8:00 a.m. until 4:30 p.m. Pacific Time, Monday through Friday, except holidays.

"Campfire" means any open flame from a natural fuel source as well as fuel made from materials such as manufactured fireplace logs.

"Campground" means a developed area consisting of more than one campsite used for the purposes of camping.

"Camping" means erecting a tent or shelter or arranging bedding, or both, or parking a vehicle for the purpose of remaining overnight on land.

"Camping party" means an individual or a group of two or more people, not to exceed eight, who are equipped and capable of camping activity.

"Commissioner" means the commissioner of public lands.

"Contact" means via telephone, e-mail, mail, in person, fax, or other electronic methods as allowed by the department unless otherwise noted.

"Corridor" means that portion of the Milwaukee Road Corridor under the jurisdiction of the department.

"Day-use" means use during the period of one-half hour before sunrise until one-half hour after sunset.

"Day-use areas and facilities" means any department-managed lands, trailhead, picnic area, viewpoint, and designated parking areas for vehicles, boat launch or other facility that is designated for day-use only.

"Department" or "DNR" means the Washington state department of natural resources.

"Department-managed lands" means lands of the state of Washington administered by the department including but not limited to state lands, state forest lands, state-owned aquatic lands, natural area preserves, natural resources conservation areas, and other city, county, state and federal lands under department management.

"Department-managed roads" means all roads designated as such and under DNR jurisdiction and all access roads across private lands through which the department has acquired the right of use. See WAC 332-36-010.

"Designated" means any facility, trail, or location that has been approved by the department for public use.

"Developed recreation facility" means any designated site or location built or improved for recreation on DNR-managed land such as a trailhead, vista, parking area, boat launch, picnic area, campground, or water trail site.

"Dispersed recreation" means recreation that occurs on DNR-managed lands outside of a developed recreation facility.

"Firearm" means a loaded or unloaded pistol, rifle, shotgun, or other weapon that is designed to, or may be readily converted to, expel a bullet or pellets by the ignition of a propellant.

"Livestock" means any animal used for agriculture, riding, pulling, or packing purposes.

"Motor vehicle or motorized vehicle" means any device that is moved or propelled by an internal combustion engine or electrically powered motor. It shall include, but not be limited to automobiles, trucks, motorcycles, all-terrain vehicles, motor bikes, motor-scooters, off-road vehicles and snowmobiles, whether or not they can be licensed to operate on public roads. The term does not include vessels or personal mobility assistive devices, such as wheelchairs.

"Nonmotorized vehicles" means any device that is moved or propelled by means other than an internal combustion engine or electrically powered motor, including but not limited to bicycles, roller blades, mountain boards, animal drawn carriages or conveyances, excluding vessels and personal mobility assistive devices, such as wheelchairs.

"Off-trail" or "off-road" means recreation that occurs on DNR-managed lands that is outside designated recreation facilities, trails, and roads.

"Off-road vehicle (ORV)" or "off-highway vehicle (OHV)" means any street or nonstreet licensed vehicle when used for recreational purposes on nonhighway roads, trails, or a variety of other natural terrain. Such vehicles include, but are not limited to, all-terrain vehicles, motorcycles, four-wheel drive vehicles, and dune buggies.

"Parking" means the standing of a vehicle, whether occupied or not, other than temporarily for the purpose of and

while actually engaged in loading or unloading property or passengers.

"Person" means all individuals, firms, partnerships, public or private corporations, limited liability companies, clubs, and all associations or combinations of persons when acting for themselves, by an agent, servant or employee.

"Pet" means a dog, cat, or any animal that has been domesticated, except livestock.

"Posted" means information displayed on any signs, information boards, kiosks, web sites, maps, or other medium that either allows or prohibits access or specific activities on DNR-managed lands.

"Public trust doctrine" means the legal principle as recognized by Washington courts under which navigable waters are subject.

"Recreation permit" means a nontransferable, revocable written document, which the department issues to allow a person to engage in activities specifically authorized at such times and in such locations as identified in the document, such as a land use license.

"Refuse or waste" means discarded material from any person, trailer, camper, automobile, other motorized vehicle, or vessel, including but not limited to bottles, broken glass, ashes, waste paper, cans, household or commercial garbage, or human bodily waste.

"Region" means a geographical administrative unit of the department of natural resources.

"Reservation" means setting aside department-managed recreation facilities or lands for a specific use at a defined location(s) for a specified time period.

"Snowmobile" means any self-propelled vehicle capable of traveling over snow or ice, which utilizes as its means of propulsion an endless belt tread, or cleats, or any combination of these or other similar means of contact with the surface upon which it is operated, and which may be steered wholly or in part by skis, sled type runners, belt tread, or similar means, including tracked OHVs and snowcats.

"Trail" means a route on department-managed land, other than a road, designated for a specific use by the department that is suitable for travel by motorized or nonmotorized means.

"Vessel" means every description of watercraft used or capable of being used as a means of transportation on the water, other than a seaplane. However, it does not include inner tubes, air mattresses, and small rafts or flotation devices or toys customarily used by swimmers.

AMENDATORY SECTION (Amending Order 516, filed 8/27/87)

WAC 332-52-020 Applicability and scope. ((The following public use rules are aimed at protecting recreational, economic and industrial activities on land and roads under the jurisdiction of the department. These rules are designed to allow Washington's trust lands to fulfill their historic roles of revenue production. The rules cover public use activities on developed recreation sites and all other lands under the jurisdiction of the department. They cover the public use of roads and trails under the jurisdiction of the department and the recreational use of fire. These public use rules are not applicable

to persons, or their assignees or representatives, engaged in industrial harvest, commercial leases or agriculture or grazing activities carried on under sale, lease or permit from the department on lands under its jurisdiction if such application is incompatible with state contracts or agreements. Nor shall these rules, except the provisions of WAC 332-52-060, apply on lands under the department's jurisdiction that are withdrawn or leased by a public agency having rules governing public use on the lands withdrawn or leased, provided that these rules may apply upon request of the applicable public agency. Public notices of these rules shall be posted by the department in such locations as will reasonably bring them to the attention of the public. The department will also set forth conditions with respect to any areas on which special restrictions are imposed and post in same manner. A copy of the rules shall be made available to the public in the office of the commissioner of public lands, Olympia, and in region offices.) (1) What is the purpose of these rules? The purpose of this chapter is to set standards for public use on lands managed by the department of natural resources (DNR). These rules promote public safety and protect department-managed lands, property, and resources.

(2) Do these rules apply to all DNR-managed lands? These rules apply to all lands of the state of Washington administered by the department of natural resources. These lands include but are not limited to:

(a) State lands, state forest lands, and state-owned aquatic lands.

(b) Natural area preserves as defined in chapter 79.70 RCW or natural resources conservation areas as defined in chapter 79.71 RCW.

(c) Lands leased from DNR by another public agency in place of the agency's own rules governing use of the leased lands when the agency requests the department rules apply.

(d) Other city, county, state and federal lands under DNR management.

(3) To whom do these rules apply?

(a) These rules apply to any person using department-managed lands described in WAC 332-52-010 with the exceptions noted below.

(b) These rules do not apply to any person engaged in commercial or other activities conducted under sale, lease, permit or other authority from the department if such rules are inconsistent with such contracts, leases, permits, agreements or other arrangements.

(c) These rules do not apply to any person using the waters above state-owned aquatic lands for navigation, fishing, and other uses incidental or corollary to the right of navigation under the Public Trust Doctrine, except to the extent that the rules control anchorage. The right of navigation is subject to rules and regulations administered by other public agencies including, but not limited to, the U.S. Coast Guard, counties, and cities.

(4) Who is responsible for knowing and following these rules? All persons who use department-managed land must know and follow the department's rules.

(5) What happens if one of these rules is held invalid? If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter

or the application of the provision to other persons or circumstances is not affected.

(6) What types of activities will the department allow on department-managed lands? The department may allow activities on department-managed lands that meet all of the following criteria:

(a) Consistent with this chapter and other state laws and regulations.

(b) Consistent with land management objectives.

(c) Consistent with trust obligations on applicable trust lands.

(d) Authorized or permitted by the department.

GENERAL RULES

NEW SECTION

WAC 332-52-100 Managing recreation and public use. (1) Can DNR limit recreational activities and public use on department-managed land?

(a) The department may limit any recreation activity or public use on department-managed lands to:

(i) Protect public safety, natural resources, or other property.

(ii) Execute its management and administrative obligations if any recreation activities or public use unreasonably interferes with the department's ability to carry out those obligations.

(b) All persons shall comply with any department-posted restrictions that limit recreational activities.

(2) Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 332-52-105 Capacity. (1) Can the department limit the number of individuals and/or motorized or nonmotorized vehicles at developed recreation facilities on department-managed land?

(a) The department may establish or limit the number of individuals and vehicles allowed in any given developed recreation facility on department-managed lands at any given time or period for the reasons set forth in WAC 332-52-100. The capacity of developed trailheads and campgrounds will be determined by the number of parking spaces and campsites designated for such purposes.

(b) Persons shall not enter any developed recreation facility or bring in or cause to be brought in any motorized or nonmotorized vehicle or persons, which would exceed the established capacity set by the department.

(2) Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 332-52-110 Destruction of property. (1) May property or resources be removed, defaced, damaged or destroyed on department-managed lands?

(a) A person shall not physically damage, remove, or destroy department-managed resources, or property to include but not be limited to locks, gates, traffic barriers,

earthen berms, notices, signs, markers, facilities, or equipment.

(b) A person shall not physically damage a trail or road, including boardwalks, bridges, water bars, or any other related improvements.

(2) Any violation of this section is a misdemeanor.

NEW SECTION

WAC 332-52-115 Removal of plants, soils, rocks, and other valuable materials. (1) Can soil, plants, rocks, or other valuable materials be removed on department-managed lands?

(a) A person shall not remove soil, rocks, plants, natural features, or valuable materials on department-managed lands without written authorization from the department unless otherwise permitted by law.

(b) Information about what written authorization is required for the removal of soil, rocks, plants, natural features, or valuable materials may be obtained by contacting a region office during business hours.

(2) Any violation of this section is a misdemeanor.

NEW SECTION

WAC 332-52-120 Sanitation. (1) How and where can refuse or waste be disposed on department-managed lands?

(a) Where toilet or sewage facilities are provided, no person shall dispose of human waste except in those facilities.

(b) Persons shall not deposit human waste within two hundred feet of any campsite, trail, or body of water. Human waste shall be disposed of by burying to a depth of at least six inches.

(c) Where the department has provided receptacles, persons shall deposit bottles, cans, waste paper, garbage and other appropriate refuse in designated receptacles. If no receptacle is provided, persons shall take such refuse with them for disposal off-site.

(d) Persons shall not use department-provided receptacles for the disposal of personal or commercial refuse, garbage, debris or waste not associated with recreational activities on DNR-managed lands.

(e) Persons shall not pollute, contaminate, leave, or burn refuse or waste of any kind on department-managed lands, including but not limited to any stream, river, lake, marine waters, or other body of water running in, through, or adjacent to department-managed lands, except as authorized by these rules.

(f) DNR may establish controlled discharge areas in order to prohibit discharge of waste from vessels in designated water recreation facilities as referred to in WAC 332-52-305(1). Refuse or waste from vessels does not include the discharge of grey water.

(2) Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 332-52-125 Posting. (1) Can the public post advertisements, signs, or posters on department-managed lands?

(a) Persons shall not erect bills, notices, posters, signs, markers, advertising devices or matter of any kind on department-managed lands without advance written authorization from the department.

(b) A person must contact the region office during business hours to obtain advance written authorization prior to posting advertisements, signs, or posters on department-managed land.

(2) Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 332-52-130 Peace and quiet. (1) What is unacceptable behavior on department-managed lands?

(a) Persons shall not engage in disorderly conduct on department-managed lands.

(b) For the purposes of this subsection, "disorderly conduct" means conduct that unreasonably disturbs the repose of other persons using department-managed lands; or is of a loud, threatening, insulting, boisterous, or abusive nature towards other persons, creating a risk of assault, fight, or riot; or by its indifference to or disregard for public safety, warrants alarm for the safety or well-being of others.

(2) When are quiet hours on department-managed land? Quiet hours are the hours after 10:00 p.m. and before 7:00 a.m. every day of the week.

(3) What is prohibited during quiet hours?

(a) Persons shall not:

(i) Unreasonably disturb any person during quiet hours.

(ii) Operate engine-driven electrical generators in designated campgrounds during quiet hours.

(b) A person accompanied by children or pets must ensure that children and pets maintain reasonable quiet during quiet hours.

(4) What types of noise or sounds are prohibited at any time on department-managed land? A person shall not engage in loud and boisterous conduct or the playing of radios, musical instruments, sound, or music systems, or the activation of sound producing electronic or mechanical devices such as generators, in such a manner, and at such times, so as to unreasonably disturb other persons. Any such sound that can be heard at a volume that unreasonably disturbs other recreational users is prohibited.

(5) Any violation of this section is an infraction under chapter 7.84 RCW except violation of subsection (1) of this section is a misdemeanor.

NEW SECTION

WAC 332-52-135 Campfires. (1) Where are campfires permitted?

(a) Within department-designated campgrounds or day-use facilities, persons may have campfires only in the department-provided campfire enclosures.

(b) To reduce the danger of a fire spreading, any campfire must meet all of the following conditions:

(i) The fire has a minimum ten-foot clearance; situated on bare soil free of combustible material;

(ii) The fire is less than three feet in diameter with flames no more than three feet high; and

(iii) The campfire is not prohibited in the particular location or at the time of ignition as determined by the department or other authority.

(2) Can the department impose additional restrictions for fires? The department may impose or post additional restrictions related to the use of fire on DNR-managed lands for the protection of people, public resources, and other property.

(3) Can natural vegetation from department-managed lands be gathered and used for a campfire?

(a) Unless otherwise posted, persons shall not gather standing or downed wood or vegetation for a campfire on department-managed lands.

(b) Persons shall not gather or use any live, dead, or downed wood or vegetation from streams or rivers.

(4) What are the responsibilities of the person constructing, igniting, maintaining or utilizing the campfire where campfires are permitted? The person responsible for the campfire shall ensure that:

(a) The campfire is attended at all times by a person capable of immediately taking effective suppression action should the fire escape;

(b) The fire is burning only during periods of calm to very light winds when wind will not scatter loose flammable materials, such as dry leaves and clippings;

(c) All of the requirements in subsection (1) of this section are met;

(d) A serviceable shovel and a minimum of five gallons of water that can be poured on the campfire are located within the immediate vicinity of the campfire. A bucket is acceptable if it is within the immediate vicinity of the campfire and the campfire is adjacent to an accessible source of water;

(e) The campfire is made from only natural untreated wood materials including manufactured fire logs; and

(f) The fire is completely extinguished before leaving it unattended.

(5) Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 332-52-140 Pets and service animals. (1) Where are pets allowed on department-managed lands?

(a) Pets are allowed on department-managed lands, except in the following areas:

(i) Designated cross country ski trails in which the track has been prepared, set, or groomed, or in any ski shelter if so posted during the ski season.

(ii) Areas that are closed to pets or animals for the protection of wildlife, sensitive natural systems, special cultural areas, or for other purposes.

(b) Persons may bring guide dogs and service animals helping persons with disabilities on all department-managed land.

(c) Persons shall not bring livestock, saddle, pack or draft animals into developed recreation facilities unless the facility has been built to accommodate such animals.

(2) Must pets be on a leash when on department-managed lands? In all developed recreation facilities and in other areas posted by the department, persons shall keep pets on

leashes no longer than eight feet or otherwise restrained from free movement and under physical control at all times.

(3) What are the requirements of the person responsible for the pet?

(a) The person responsible for the pet shall not allow the pet to:

(i) Dig or otherwise disturb or damage the natural or cultural features of department-managed lands.

(ii) Bite or unreasonably interfere with or annoy persons or animals.

(iii) Bark in a manner that disturbs the peace and tranquility of others.

(iv) Be left unattended.

(v) Disturb or harass wildlife.

(vi) Be in an area where pets are not allowed.

(b) The person responsible for the pet shall:

(i) Pick up the animal's feces in developed recreation facilities, along designated recreation trails, and where posted by the department.

(ii) Dispose of feces into a designated receptacle or take feces with them for disposal off-site.

(4) Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 332-52-145 Firearms and target shooting. (1)

What is recreational target shooting? Recreational target shooting is the use of a firearm or bow and arrow on targets and the sighting in of rifles or other firearms on department-managed lands. The department regulates and enforces target shooting on department-managed lands.

(a) The department may restrict target shooting for the reasons set forth in WAC 332-52-100.

(b) Persons shall not target shoot carelessly, recklessly, or without regard for the safety of any person, or in a manner that endangers, or is likely to endanger, any person, pet, wildlife or property.

(c) Persons shall not discharge tracer or incendiary ammunition or projectile devices on department-managed lands. For purposes of this subsection, "incendiary" means causing or designed to cause fires, such as certain substances or bombs. "Tracer ammunition" means a bullet, projectile, or shell that traces its own course in the air with a trail of smoke, chemical incandescence, or fire, so as to facilitate adjustment of the aim.

(2) Does recreational target shooting include hunting? No. This section does not apply to hunting activities, which are subject to the rules and regulations administered by the Washington state department of fish and wildlife.

(3) Where is target shooting permitted?

(a) Persons may target shoot in:

(i) Developed recreation facilities specifically designed for target shooting; or

(ii) Areas with a proper and safe backdrop or backstop. Persons shall not target shoot in any other location.

(b) Persons shall not shoot within, from, along, across, down, or in the direction of roads or trails.

(c) Persons shall not shoot on, at, across, along, down, from, or in the direction, or within five hundred feet, of:

(i) Recreational facilities that are not specifically designed for target shooting;

(ii) Residences;

(iii) Businesses;

(iv) Structures or equipment;

(v) Other areas as restricted;

(vi) Areas designated or posted as no shooting.

(4) What may be used as a target?

(a) Items that are commercially manufactured for the specific purpose of target shooting or similar targets privately manufactured by the person(s) engaging in target shooting that are consistent with this section.

(b) Unauthorized targets include but are not limited to:

(i) Natural features;

(ii) Vegetation;

(iii) Structures;

(iv) Gates;

(v) Vehicles;

(vi) Signs;

(vii) Other department improvements;

(viii) Appliances;

(ix) Furniture;

(x) Glass;

(xi) Privately owned or occupied structures;

(xii) Pets;

(xiii) Wildlife;

(xiv) Explosive items;

(xv) Garbage of any kind.

Persons shall not target shoot at unauthorized targets.

(5) When is target shooting permitted? Unless otherwise posted, persons shall not target shoot one-half hour after sunset to one-half hour before sunrise.

(6) Is possession of a loaded firearm in or on a motor vehicle permitted on department-managed lands? Persons shall not possess a loaded firearm in or on a motor vehicle, except as provided by state law.

(7) Who is responsible for disposing of spent items resulting from target shooting? Persons who target shoot shall dispose of spent items and remove all shell casings, targets, ammunition packaging, or target fragments resulting from their activity, with the exception of biodegradable clay targets. Failure to remove any such debris is prohibited.

(8) Any violation of this section is a misdemeanor except a violation of subsection (7) of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 332-52-150 Fireworks. May fireworks be used on department-managed lands? No. Except for legal firearms, persons shall not discharge or possess fireworks, model rockets, or other devices containing any explosive or flammable compounds on or into any department-managed lands. For purposes of this section, "fireworks" means any composition or device designed to produce a visible or audible effect by combustion, deflagration, or detonation, and which meets the definition of pyrotechnic articles or consumer fireworks or display fireworks.

Any violation of this section is a misdemeanor.

NEW SECTION

WAC 332-52-155 Anchorage. (1) What is the length of time that a vessel may be moored or anchored on state-owned aquatic lands? Persons shall not moor or anchor a vessel in the same area on state-owned aquatic lands for periods longer than thirty consecutive days or for more than a total of ninety days in any three hundred sixty-five day period. For purposes of WAC 332-52-155, "in the same area" means within a radius of five miles of any location where the vessel was previously moored or anchored.

(2) Are there places where the time limit does not apply? Subsection (1) of this section does not apply where the federal government, a county, a city, a state agency, including DNR, a port, or any other public entity with authority has posted, enacted, or adopted different anchorage or moorage restrictions. Additionally, persons may exceed this time limit if:

(a) Granted express consent by either DNR or the lessee of the state-owned aquatic lands where the vessel is moored or anchored; and

(b) Anchorage or moorage does not violate any other law or rule.

(3) Any violation of this section is an infraction under chapter 7.84 RCW.

RESERVATIONS AND PERMITS

NEW SECTION

WAC 332-52-200 Reservations. (1) Are reservations required for recreational activities on department-managed lands? Persons do not need reservations to use developed recreation facilities except where posted by the department.

(2) How do I make a reservation? Persons must contact the region office during business hours at least seventy-two hours prior to the use of the recreational facility.

(3) How will reservation requests be processed?

(a) The region will process reservation requests in the order of their arrival.

(b) The region will contact the requestor of the approval or denial of the reservation request prior to the desired reservation date.

(4) How do I cancel a reservation? Persons must notify the region in person, via phone, or e-mail during business hours at least twenty-four hours prior to the scheduled use of the facility to cancel the reservation.

(5) Can the department revoke a reservation? The department may revoke the rights of a reservation holder, and remove any or all persons from the site, at any time, if:

(a) The person is in violation of these rules or any other applicable state law.

(b) The person's behavior is detrimental to the health and safety of any person.

(c) The person's behavior unreasonably interferes with the recreational enjoyment of any other person.

(d) The department's management activities conflict with the purpose of the reservation.

(6) Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 332-52-205 Recreation permits. (1) Are recreation permits required for activities on department-managed lands? Persons are required to obtain recreation permits for events and as otherwise indicated in this chapter.

For the purposes of this subsection, "event" means any planned activity on department-managed lands conducted at an agreed upon time and place, such as events advertised to the general public or as a nonprofit club or group event, sponsored by any person.

(2) Am I allowed to charge a fee at an event or use department-managed lands for commercial purposes? It is unlawful to charge a fee or use department lands for any commercial purposes without a contract, lease, license, permit or other written authorization from the department.

For the purposes of this subsection, "commercial purposes" means any use or activity on DNR-managed lands where an entry or other type of fee is charged or the primary purpose is the sale or barter of a good or service, regardless of whether the use or activity is intended to produce a profit.

(3) How do I obtain a recreation permit? Persons must contact the region office during business hours prior to the proposed event use to request a recreation permit application. The completed recreation permit application must be submitted via fax, e-mail, mail, or in person to the region office during business hours sixty days prior to the proposed event.

(4) How are recreation permit applications processed? The region will process recreation permit applications in order of their arrival.

(5) Is the department required to issue a recreation permit?

(a) The region may approve or deny the application for a recreation permit for the reasons set forth in WAC 332-52-100.

(b) The region will notify the applicant if the permit application is denied.

(6) If the permit application is approved, when will the permit be issued? If approved, the region will issue the permit within thirty days of receipt of the permit application.

(7) How do I cancel a permit? Persons must notify the region office of the cancellation within seventy-two hours prior to the scheduled event.

(8) Can the department revoke a permit? The department may revoke a permit, and remove any or all persons from the site, if:

(a) The person is in violation of these rules or any other applicable state law.

(b) The person's behavior is detrimental to the health and safety of any person.

(c) The person's behavior unreasonably interferes with the recreational enjoyment of any other person.

(d) The department's management activities conflict with either the purpose or the conditions of the permit.

(9) Any violation of this section is an infraction under chapter 7.84 RCW.

CAMPGROUNDS, CAMPSITES, AND DAY-USE FACILITIESNEW SECTION

WAC 332-52-300 Campground and campsite use and occupancy. (1) Do these rules apply to all department-managed lands?

(a) These rules apply to all persons using department-managed lands for overnight use which includes:

(i) Campgrounds and individual campsites;

(ii) Group campgrounds and campsites (for the purposes of this subsection, "group campgrounds and campsites" means any designated areas with an established capacity for camping use by groups);

(iii) Water trail camping facilities and sites (for purposes of this subsection, "water trail camping sites or facilities" means specially designated camping facilities identified with signs that are near water ways); and

(iv) Developed, designated or dispersed campsites.

(b) The department may approve exceptions to these rules on a case-by-case basis.

(2) Are reservations required for campgrounds or campsites? Persons shall make reservations to use designated campgrounds and campsites only where posted. All campgrounds and campsites for which the department does not require reservations are on a first-come, first-served basis.

(3) What is the maximum total length of stay while camping on department-managed lands? The department may determine the maximum length of stay for camping.

(a) If the department has posted the maximum length of stay, persons shall not stay longer than the maximum length of stay posted and comply with the ten/thirty day-rule in (b) of this subsection.

(b) If the department has not posted the maximum length of stay, persons shall not stay longer than ten days in a thirty-day time period on any or all department-managed lands. The ten and thirty-day count begins on the date of the first night's camping and applies to the total overnight stays on all department-managed lands during that thirty-day time period.

(c) Persons shall vacate campsites by removing all personal property from the campsite no later than 1:00 p.m. on the day the time limit for occupancy expires.

(4) May a campsite be held for another party for current or future camping dates? Persons shall not hold or attempt to hold campsite(s) for another camping party.

(5) When may persons occupy a campsite? Persons may occupy a campsite when persons:

(a) Find the campsite unoccupied and not already posted as reserved; or

(b) Hold a reservation for the campsite for the period of occupation.

Persons shall not occupy a campsite under any other circumstances.

(6) How many people are permitted to stay in a campsite? The department may determine the number of occupants per campsite. A group exceeding the predetermined capacity of the campsite shall not use the site overnight.

(a) If the department posts the maximum number of occupants per campsite, the number of persons shall not exceed the maximum number per campsite per night as posted.

(b) If the department has not posted the maximum campsite capacity, a maximum of eight people are permitted to camp overnight.

(7) How many tents are allowed in each campsite? The department may determine the number of tents allowed in each campsite.

(a) If the department posts the maximum number of tents per campsite, the number of tents shall not exceed the maximum number posted.

(b) In developed campsites, the number of tents is limited to the number that will fit entirely on the tent pad.

(c) Persons shall not expand a tent pad, or clear or alter the vegetation in the vicinity around the tent pad.

(8) How many passenger vehicles are allowed at each campsite? The department may determine the number of passenger vehicles allowed at each campsite. Camping parties of one or more persons shall not occupy a campsite with more than two passenger or recreational vehicles unless otherwise posted.

(9) May personal property be left unattended overnight in a campground, campsite, or lands managed by the department?

(a) Persons must not leave personal property unattended overnight without permission from the department.

(b) The department will presume unattended personal property has been abandoned and may remove and dispose of the property as authorized in chapter 63.21 RCW or as otherwise determined by the department.

(10) May a person occupy a residence camp on department-managed lands?

(a) Persons shall not occupy a residence camp on department-managed lands without the written authorization of the department. A residence camp is an encampment, occupancy, or presence on department-managed lands that is the principal place of residence for the person or occupant.

(b) A residence camp on department-managed lands is declared to be a public nuisance and may be abated by the department without prior notice or process.

(11) May firearms be discharged in a campground? Persons shall not discharge a firearm in, adjacent to, from, or within five hundred feet of campgrounds.

(12) Are campfires permitted in campgrounds or campsites? Persons may have campfires in campgrounds and campsites as authorized in WAC 332-52-135.

(13) Are pets allowed in campgrounds? Persons may bring pets into campgrounds as authorized in WAC 332-52-140.

(14) Is camping permitted outside of developed recreation facilities? Persons shall not camp:

(a) In a manner that requires the removal or damage to vegetation.

(b) In a manner that removes or disturbs soil.

(c) Where camping is restricted to designated campsites only.

(d) Within five hundred feet of a developed recreation facility.

(e) In areas designated or posted day-use only.

(f) In other than preexisting campsites within two hundred feet from any body of water.

(15) How do I know when the campgrounds are open or closed? Information about seasonal or temporary closures may be obtained by contacting the region office, on-line and/or may be posted on-site. If the department has closed and locked the gates or posted the campground as closed, persons shall not use the campground.

(16) Can campsites be designated for specific recreational activity?

(a) The department may designate campgrounds or individual campsites for a specific recreational activity, e.g., horses, hike in only, four-wheel vehicle use, ORV use.

(b) Persons shall comply with the posted recreational use in campgrounds and individual campsites.

(17) Any violation of this section is an infraction under chapter 7.84 RCW except violations of subsections (3), (10), and (11) of this section are misdemeanors.

NEW SECTION

WAC 332-52-305 Water recreation facilities. (1)

What are water recreation facilities? Water recreation facilities include recreational floats, piers, mooring buoys, docks, pilings, linear moorage facilities, and other similar structures managed by the department for recreational use.

(2) Are reservations required for moorage at water recreation facilities?

(a) Moorage at water recreation facilities is on a first-come, first-served basis.

(b) Persons are not required to reserve moorage at water recreation facilities, unless otherwise posted. Any required reservations must be made in accordance with WAC 332-52-200.

(3) What is the maximum length of stay at a water recreation facility? The department may determine the maximum length of stay at each moorage facility.

(a) Unless posted otherwise, continuous moorage by the same vessel is limited to three consecutive nights, after which time the vessel must vacate the water recreation facility for twenty-four hours. The three-night count begins on the date of the first night's moorage.

(b) Persons must vacate water recreation facilities by removing their vessel and all personal property from the moorage facility no later than 1:00 p.m. on the day the time limit for occupancy expires.

(4) May a water recreation facility be held with a floating marker or other method for current or future moorage dates? A person shall not hold a water recreation facility with a floating marker such as a buoy or dinghy or by any other method other than occupying the facility with the vessel to be moored.

(5) May water recreation facilities be used by commercial recreation providers?

(a) Water recreation facilities may be used by commercial recreation providers only to:

(i) Unload and load passengers transported for recreation purposes.

(ii) Moor overnight as authorized by the department.

(b) Except as stated above, use of water recreation facilities by commercial recreation providers is prohibited.

(6) What size vessel may I moor at water recreation facilities? The maximum length of a vessel moored at a water recreation facility shall not exceed thirty-two feet unless otherwise posted.

(7) May I raft vessels at water recreation facilities? Rafting of vessels is prohibited unless otherwise posted.

(8) Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 332-52-310 Day-use areas and facilities. (1) Is overnight camping permitted on or in day-use areas and facilities? No. Persons shall not camp on or in day-use areas and facilities.

(2) What types of activities are permitted on or in day-use areas or facilities? The department determines which types of activities are permitted on or in day-use areas and facilities. Only designated activities are permitted on or in day-use areas and facilities. Information about day-use areas and facilities may be obtained by contacting the region office, on-line and/or may be posted on-site.

(3) Are campfires permitted on or in day-use areas and facilities? Persons may have campfires on or in day-use areas and facilities as authorized in WAC 332-52-135.

(4) Are pets allowed on or in day-use areas and facilities? Persons may bring pets onto or into day-use areas and facilities, as authorized in WAC 332-52-140.

(5) Are reservations required for day-use facilities? Persons do not need reservations to use developed day-use facilities except where posted.

(6) Are permits required to use day-use areas or facilities? Persons must obtain a permit as described in WAC 332-52-205 for events.

(7) How do I know when day-use areas or facilities are open or closed? Information about seasonal or temporary closures may be obtained by contacting the region office, on-line and/or may be posted on-site. If the department has closed and locked the gates or posted the day-use area or facility as closed, persons shall not use the day-use area or facility.

(8) Any violation of this section is an infraction under chapter 7.84 RCW.

ROADS AND TRAILS

NEW SECTION

WAC 332-52-400 Managing road and trail use. (1) Who manages road and trail use on department-managed lands? The department manages road and trail use on department-managed lands. The department, or lessee of state land in consultation with the department, may close all of, or portions of, a road or trail for the reasons set forth in WAC 332-52-100.

(2) What types of traffic control measures does the department use on a department-managed road or trail? The department may, at any time:

(a) Establish one-way traffic flow on any road or trail.

(b) Establish use hours and/or seasonal use on any road or trail.

(c) Restrict or prohibit use of a road or trail for the reasons set forth in WAC 332-52-100.

(d) Persons shall comply with the posted traffic control measures on roads and trails.

(3) How do I know where motorized vehicle use is permitted on roads and trails? Motorized vehicle use on roads or trails is controlled through a variety of methods to include signs, gates, berms, trenches, concrete barriers, rocks, stumps or other barriers. Motorized vehicular use on or beyond these signs or barriers is strictly prohibited unless otherwise posted.

(4) What types of recreation uses are permitted on designated trails or department-managed roads?

(a) The department may designate road and trail use by specific recreation activity, e.g., hiking, horseback riding, mountain biking, all-terrain vehicle use, off-road vehicle use, four-wheel vehicle use, and snowmobile.

(b) Persons shall comply with the posted designated recreational use on roads and trails.

(5) Where are motorized and nonmotorized vehicles permitted off-road or off-trail? Persons shall only operate motorized or nonmotorized vehicles off-trail or off-road on lands posted or otherwise designated by the department as open for the designated recreational use.

(6) How do vehicle operators enter or leave a developed recreation facility? Motorized or nonmotorized vehicles shall enter or leave a developed recreation facility only on posted roads or trails.

(7) Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 332-52-405 Unauthorized construction of trails and structures. May a person construct, modify, repair or maintain a new or existing recreation trail, structure, or other facility or improvement or cause such activities to occur on DNR-managed lands? A person shall not construct, modify, repair or maintain a new or existing recreation trail, structure, or other facility or improvement, or cause such activities to occur on DNR-managed lands, without advance written authorization from the department.

Any violation of this section is a misdemeanor.

NEW SECTION

WAC 332-52-410 Traffic rules. (1) What is the speed limit for a motorized or nonmotorized vehicle on department-managed roads? The speed limit for persons operating a motorized or nonmotorized vehicle is the basic speed rule on department-managed roads. The basic speed rule means no person shall drive a motorized or nonmotorized vehicle on a road at a speed greater than is reasonable and prudent under the conditions and having regard for the actual and potential hazards.

(2) What are the responsibilities of persons operating motorized or nonmotorized vehicles on department-managed roads and trails?

(a) Persons operating motorized or nonmotorized vehicles shall:

(i) Use due care and control speed to avoid colliding with any person, animal, motorized or nonmotorized vehicle or other conveyance on or entering the roadway;

(ii) Follow the basic speed rule; and

(iii) Turn on headlights when visibility is less than two hundred feet due to terrain, darkness, dust, smoke, fog or other weather or atmospheric conditions.

(b) Persons operating a motorized or nonmotorized vehicle shall not:

(i) Exceed the basic speed rule.

(ii) Obstruct or hinder the flow of traffic on any road.

(iii) Endanger persons or property or act in a reckless, careless, or negligent manner.

(3) While operating a motorized or nonmotorized vehicle, who has the right of way?

(a) Emergency vehicles. Persons operating a motorized or nonmotorized vehicle shall yield the right of way to all emergency vehicles.

(b) Other motorized or nonmotorized vehicles.

(i) Persons operating a motorized or nonmotorized vehicle approaching an intersection, not otherwise posted, must look out for and yield the right of way to any motorized or nonmotorized vehicle simultaneously approaching the intersection from the operator's right, regardless of which vehicle first reaches and enters the intersection.

(ii) Persons operating a motorized or nonmotorized vehicle intending to turn to the left must yield the right of way to any vehicle approaching from the opposite direction.

(c) Log hauling or gravel vehicles. Persons operating a motorized or nonmotorized vehicle, except emergency vehicle operators, must yield the right of way to log hauling, gravel, or other commercial vehicles conducting authorized department business.

(d) Pedestrians.

(i) Persons operating a motorized or nonmotorized vehicle shall yield the right of way to pedestrians.

(ii) Pedestrians must leave the road as soon as possible to allow the vehicle to pass.

(e) Animal-drawn vehicles and/or persons riding animals.

(i) Persons operating a motorized or nonmotorized vehicle shall yield the right of way to animal-drawn vehicles and to persons riding animals.

(ii) Persons operating a motorized or nonmotorized vehicle must make every reasonable effort to avoid frightening or startling such animals.

(iii) Persons in control of an animal or animal-drawn vehicle must remove the animal or animal-drawn vehicle from the road as soon as possible to allow the vehicle to pass.

(f) Livestock. Persons operating a motorized or nonmotorized vehicle who encounter a herd of livestock, where a person is in control of the herd, shall not move through the herd until directed to do so by the person in control of the herd.

(4) What traffic laws govern traffic on department-managed land? In addition to the traffic rules in this section and WAC 332-52-415, all applicable Washington traffic laws in Title 46 RCW apply on any department-managed road. Violations of those exceptions identified in RCW 46.63.020 are criminal offenses.

(5) Any violation of this section is a traffic infraction under chapter 46.63 RCW except a violation of subsection (2)(b)(iii) of this section is a misdemeanor.

NEW SECTION

WAC 332-52-415 Parking. (1) Where is a person prohibited from parking a vehicle on department-managed lands?

(a) Persons shall not park on department-managed lands if the vehicle:

(i) Blocks or impedes the passage of normal traffic or commercial activity.

(ii) Blocks, interferes with or obstructs a gate, road, trail, path or other access.

(iii) Is parked in a developed recreation facility unless the area is designed for such use.

(b) Persons shall not park on department-managed roads and lands where posted as no parking.

(c) Subsections (a) and (b) above do not apply to persons operating:

(i) Emergency vehicles;

(ii) Department vehicles;

(iii) Logging or other commercial vehicles (for industrial operations) or other commercial vehicles used in connection with activities performed pursuant to department contracts; and

(iv) As otherwise authorized by the department.

(2) How long may a person park or leave a vehicle on department-managed lands? Persons shall not park or leave a vehicle unattended for more than seventy-two hours on department-managed lands except persons operating vehicles listed in subsection (1)(c) of this section or when persons are in designated campgrounds or in trailheads with posted long-term parking.

(3) If a vehicle is found parked in violation of subsection (1) or (2) of this section, may the vehicle be towed? Yes. Any motorized vehicle found parked in violation of subsection (1) or (2) of this section may be impounded by the department at the owner's or operator's expense.

(4) If an infraction is issued under this section, who is responsible for the infraction? In any infraction involving a violation of this section, proof that the particular vehicle described in the notice of infraction was parking in violation of any such provision of this section, together with proof that the person named in the notice of infraction was at the time of the violation the registered owner of the vehicle, shall constitute a prima facie presumption to prove that the registered owner of the vehicle was the person who parked the vehicle at the point where, and for the time during which, the violation occurred.

(5) Any violation of this section is a traffic infraction under chapter 46.63 RCW.

NEW SECTION

WAC 332-52-420 Snowmobiles. (1) Where are snowmobiles permitted to travel on department-managed land?

(a) Persons may operate snowmobiles on department managed lands only when there is adequate snow cover to prevent resource damage.

(b) Persons operating snowmobiles may only travel over the snow:

- (i) On roads, cut banks, fill slopes, ditches, and trails.
- (ii) On designated roads that are part of a groomed snowmobile trail.
- (iii) Off of designated roads and trails unless the area is designated or posted closed to snowmobile use.

(c) Persons shall not operate snowmobiles on department-managed lands under any other conditions or in any other locations.

(2) Any violation of this section is an infraction under chapter 7.84 RCW.

MILWAUKEE ROAD CORRIDOR

NEW SECTION

WAC 332-52-500 Specific rules for Milwaukee Road Corridor only. (1) What is the purpose of these rules? The purpose of this section is to set site-specific standards for public use on the Milwaukee Road Corridor managed by the department. These rules promote public safety and protect department-managed lands, property, and resources. Unless otherwise inconsistent with the site-specific rules listed in this section, all other rules of chapter 332-52 WAC apply.

(2) What portions of the Milwaukee Road Corridor do these rules apply to? These rules apply to those portions of Milwaukee Road Corridor of the state of Washington administered by the department from the west bank of the Columbia River east to the westernmost crossing of Highway 21 and the corridor near the town of Lind, Washington.

(3) Are recreation permits required for activities on the corridor? Persons are required to obtain and possess recreation permits for all activities on the corridor.

(4) How do I obtain a recreation permit? Persons must contact the department's southeast region office in Ellensburg during business hours prior to the proposed activity to request a recreation permit application. The completed recreation permit application must be submitted via fax, e-mail, mail, or in person to the region office during business hours at least fifteen days prior to the proposed activity.

(5) How are recreation permit applications processed? The region will process recreation permit applications in order of their arrival.

(6) Is the department required to issue a recreation permit?

(a) The region may approve or deny the application for a recreation permit.

(b) The region will notify the applicant in writing if the permit application is approved or denied.

(7) If the permit application is approved, when will the permit be issued? If approved, the region will issue the permit within five days of receipt of the permit application.

(8) How do I cancel a permit? Persons must notify the region office of the cancellation within seventy-two hours prior to the activity.

(9) How long will the permit be valid? The permit will be valid for not more than one calendar year over the approved route identified in the recreation permit.

(10) Will there be a fee for the permit? A fee may be required based on the costs of processing the application including contacting adjacent landowners when required.

(11) When is the corridor open for use? The corridor is open for use year-round. The corridor may be temporarily closed to reduce fire danger or protect public safety.

(12) Can I have campfires on the corridor? No. Persons shall not ignite fires of any type on the corridor.

(13) When using the corridor, what are my responsibilities to adjacent property owners?

(a) Persons, or their animals, shall not enter onto adjoining property from the corridor without permission of the landowner.

(b) Persons shall leave gates in the condition in which they are found.

(14) Are firearms permitted on the corridor? Persons shall not possess shotguns or rifles on the corridor. Other firearms must be stowed and not loaded while on the corridor.

(15) Where is hunting or target shooting allowed on the corridor? Persons shall not hunt, discharge firearms, tracer or incendiary ammunition or projectile devices, target shoot, or discharge any device capable of killing any animal or person, or damaging or destroying public or private property within, from, along, across, down, or in the direction of the corridor managed by the department, except where portions of the corridor are leased by or covered by an agreement with another public agency which owns or controls adjoining property.

(16) Will adjacent landowners be notified of permits issued for use of the corridor adjacent to their property?

(a) If requested by adjacent landowners, the department will notify them of permits issued for use of the corridor adjacent to their property.

(b) For portions of the corridor where abutting landowners have not asked to be notified about permits and no gates have been built, the department may issue a day-use permit without the fifteen-day advance application requirement. The day-use must be confined to the portions of the corridor described in this subsection. Maps of these day-use areas are available at the southeast region office in Ellensburg.

(17) Any violation of this section is an infraction under chapter 7.84 RCW except a violation of subsection (15) of this section is a misdemeanor.

NOTICE AND SIGNS

NEW SECTION

WAC 332-52-600 Notice of rules. Where can I find the public access and recreation rules? The department will make public access and recreation rules available to the public through such means as:

- (1) Posted on-site on kiosks or signboards;
- (2) Published on the department's internet site;
- (3) Published in a site-specific or programmatic management plan;
- (4) In the office of the commissioner of public lands in Olympia; or
- (5) In any of the department's region offices.

Notices of permitted or prohibited activities will be posted in such locations as will reasonably bring them to the attention of the public.

NEW SECTION

WAC 332-52-605 Compliance with signs. What is the penalty for not complying with posted restrictions? Persons failing to abide by posted restrictions on department-managed lands are subject to the applicable penalty that governs the restricted activity.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 332-52-030	General rules.
WAC 332-52-040	Public behavior—Recreation sites.
WAC 332-52-050	Vehicles.
WAC 332-52-055	Capital forest—Organized events—Prohibited without prior written approval.
WAC 332-52-060	Use of fire.
WAC 332-52-065	Milwaukee Road Corridor—Recreational use.
WAC 332-52-066	Milwaukee Road Corridor—Permits.
WAC 332-52-067	Milwaukee Road Corridor—Restrictions on use.
WAC 332-52-068	Milwaukee Road Corridor—Protection of adjoining property.
WAC 332-52-069	Milwaukee Road Corridor—Penalties.
WAC 332-52-070	Penalties.
WAC 332-52-080	Enforcement.
WAC 332-52-090	Effective dates.

WSR 08-10-065
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed May 5, 2008, 2:57 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-06-087.

Title of Rule and Other Identifying Information: The department is amending WAC 388-406-0065 Can I still get benefits even after my application is denied?

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://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on June 10, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 11, 2008.

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 schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on June 10, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by June 3, 2008, 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 current rule describes the circumstances where we will reconsider a denied application for benefits without requiring a new application. The proposed amendment strikes a section related to households who become categorically eligible for Basic Food within sixty days of the date we deny the household's application for Basic Food. The department currently provides categorical eligibility status to households with income up to 130%. Because no households with income over this limit will receive cash assistance, the section being removed from the rule is no longer relevant.

Reasons Supporting Proposal: The proposed changes are editorial in nature and do not change current policy related to reconsideration of denied applications.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Camp, 712 Pear Street S.E., Olympia, WA 98503, (360) 725-4616.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses; it only removes an outdated reference to the impact of categorical eligibility on applications denied for DSHS clients for food assistance programs.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to...rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

April 24, 2008

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-10-034, filed 4/27/06, effective 6/1/06)

WAC 388-406-0065 Can I still get benefits even after my application is denied? (1) If we (the department) deny your application for benefits, we can redetermine your eligibility for benefits without a new application if:

(a) For cash or medical assistance, you give us the information we need within thirty days from the date we denied your application;

(b) You stop participating as required to reopen cash assistance under WAC 388-310-1600(12) due to one of the good reasons described in WAC 388-310-1600(3) or because you get an excused absence, as described in WAC 388-310-0500(5);

(c) For Basic Food(=

~~(i) You give us the information we need within sixty days of the date you applied for benefits; or~~

~~(ii) You become categorically eligible for Basic Food under WAC 388-414-0001 within sixty days of the date you applied for benefits),~~ you give us the information we need within sixty days of the date you applied for benefits.

(2) For medical assistance, if the thirty days to reconsider your application under subsection (1) of this section has ended you can still get benefits without a new application if:

(a) You request a fair hearing timely; and

(b) You give us the information needed to determine eligibility and you are eligible.

(3) If you are eligible for cash or Basic Food, we decide the date your benefits start according to WAC 388-406-0055. If you are eligible for medical assistance, we decide the date your benefits start according to chapter 388-416 WAC. For all programs the eligibility date is based on the date of your original application that was denied.

WSR 08-10-066

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

(Mental Health Division)

[Filed May 5, 2008, 2:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-17-142.

Title of Rule and Other Identifying Information: The department is creating new sections in chapter 388-865 WAC, WAC 388-865-0700 Clubhouse certification, 388-865-0705 Definitions, 388-865-0710 Required clubhouse components, 388-865-0715 Management and operational requirements, 388-865-0720 Certification process, and 388-865-0725 Employment-related services—Requirements.

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://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on June 10, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 11, 2008.

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 schilse@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on June 10, 2008.

Assistance for Persons with Disabilities: Contact [Jenishaj] Johnson, DSHS rules consultant, by June 3, 2008, 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 2007 legislature passed a provision (EHB 1217, chapter 414, Laws of 2007) requiring the department to certify "clubhouses" that meet minimum standards. Clubhouses are community-based programs that provide rehabilitative mental health services.

Reasons Supporting Proposal: Certification will provide assurance to people that clubhouses meet minimum standards for operating and providing services.

Statutory Authority for Adoption: RCW 71.24.025 and 71.24.035.

Statute Being Implemented: Chapter 414, Laws of 2007 (EHB 1217).

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: Kevin Sullivan, P.O. Box 45504, Olympia, WA 98504-5504, (360) 902-0836; Implementation: Tony Sparber, P.O. Box 45320, Olympia, WA 98504-5320, (360) 902-0885; and Enforcement: Pete Marburger, P.O. Box 45320, Olympia, WA 98504-5320, (360) 902-0837.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rules and concludes that they do not impose more than minor costs for affected small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Frank Jose, P.O. Box 45320, Olympia, WA 98504-5320, phone (360) 902-0873, fax (360) 902-7691, e-mail josef@dshs.wa.gov.

May 1, 2008

Stephanie E. Schiller
Rules Coordinator

NEW SECTION

WAC 388-865-0700 Clubhouse certification. The mental health division certifies clubhouses under the provision of RCW 71.24.035. International center for clubhouse development certification is not a substitute for certification by the state of Washington.

NEW SECTION

WAC 388-865-0705 Definitions. The following definitions apply to clubhouse certification rules:

"Certification" - Official acknowledgement from the mental health division that an organization meets all state

standards to operate as a clubhouse, and demonstrates that those standards have been implemented.

"Clubhouse" - A community-based, recovery-focused program designed to support individuals living with the effects of mental illness, through employment, shared contributions, and relationship building. A clubhouse operates under the fundamental principle that everyone has the potential to make productive contributions by focusing on the strengths, talents, and abilities of all members and fostering a sense of community and partnership.

"Recovery" - The process in which people are able to live, work, learn, and participate fully in their communities (RCW 71.24.025).

"Supported employment" - A full or part-time competitive job developed in partnership with the member, the clubhouse, and the employer.

"Transitional employment" - A time-limited, part-time community job managed by the clubhouse with absentee coverage provided. Absentee coverage means the clubhouse provides a temporary replacement for the clubhouse member who is currently employed in a transitional employment position.

"Work-ordered day" - A model used to organize clubhouse activities during the clubhouse's normal working hours. Members and staff are organized into one or more work units which provide meaningful and engaging work essential to running the clubhouse. Activities include unit meetings, planning, and organizing the work of the day. Members and staff work side-by-side as colleagues. Members participate as they feel ready and according to their individual interests. While intended to provide members with working experience, work in the clubhouse is not intended to be job-specific training, and members are neither paid for clubhouse work nor provided artificial rewards. Work-ordered day does not include medication clinics, day treatment, or other therapy programs.

NEW SECTION

WAC 388-865-0710 Required clubhouse components. Required clubhouse components include all of the following:

(1) Voluntary member participation. Clubhouse members choose the way they use the clubhouse and the staff with whom they work. There are no agreements, contracts, schedules, or rules intended to enforce participation of members. All member participation is voluntary. Clubhouse policy and procedures must describe how members will have the opportunity to participate, based on their preferences, in the clubhouse.

(2) The work-ordered day.

(3) Activities, including:

(a) Personal advocacy;

(b) Help with securing entitlements;

(c) Information on safe, appropriate, and affordable housing;

(d) Information related to accessing medical, psychological, pharmacological and substance abuse services in the community;

(e) Outreach to members during periods of absence from the clubhouse and maintaining contact during periods of inpatient treatment;

(f) In-house educational programs that use the teaching and tutoring skills of members;

(g) Connecting members with adult education opportunities in the community;

(h) An active employment program that assists members to gain and maintain employment, including transitional and supported employment services; and

(i) An array of social and recreational opportunities.

(4) Operating at least thirty hours per week on a schedule that accommodates the needs of the members.

NEW SECTION

WAC 388-865-0715 Management and operational requirements. The requirements for managing and operating a clubhouse include all of the following:

(1) Members, staff, and ultimately the clubhouse director, are responsible for the operation of the clubhouse. The director must ensure opportunities for members and staff to be included in all aspects of clubhouse operation, including setting the direction of the clubhouse.

(2) Location in an area, when possible, where there is access to local transportation and, when access to public transportation is limited, facilitate alternatives.

(3) A distinct identity, including its own name, mailing address, and phone number.

(4) A separate entrance and appropriate signage that make the clubhouse clearly distinct, when co-located with another community agency.

(5) An independent board of directors capable of fulfilling the responsibilities of a not-for-profit board of directors, when free-standing.

(6) An administrative structure with sufficient authority to protect the autonomy and integrity of the clubhouse, when under the auspice of another agency.

(7) Services are timely, appropriate, accessible, and sensitive to all members.

(8) Members are not discriminated against on the basis of any status or individual characteristic that is protected by federal, state, or local law.

(9) Written proof of a current fire/safety inspection:

(a) Conducted of all premises owned, leased or rented by the clubhouse; and

(b) Performed by all required external authorities (e.g., State Fire Marshall, liability insurance carrier).

(10) All applicable state, county, and city business licenses.

(11) All required and current general liability, board and officers liability, and vehicle insurance.

(12) An identifiable clubhouse budget that includes:

(a) Tracking all income and expenditures for the clubhouse by revenue source;

(b) Quarterly reconciliation of accounts; and

(c) Compliance with all generally accepted accounting principles.

(13) Track member participation and daily attendance.

(14) Assist member in developing, documenting, and maintaining the member's recovery goals and providing monthly documentation of progress toward reaching them.

(a) Both member and staff must sign all such plans and documentation; or

(b) If a member does not sign, staff must document the reason.

(15) A mechanism to identify and implement needed changes to the clubhouse operations, performance, and administration, and to document the involvement of members in all aspects of the operation of the clubhouse.

(16) Evaluate staff performance by:

(a) Ensuring that paid employees:

(i) Are qualified for the position they hold, including any licenses or certifications; and

(ii) Have the education, experience and/or skills to perform the job requirements.

(b) Maintaining documentation that paid clubhouse staff:

(i) Have a completed Washington state patrol background check on file; and

(ii) Receive regular supervision and an annual performance evaluation.

NEW SECTION

WAC 388-0865-0720 Certification process. The mental health division (MHD) grants certification based on compliance with the minimum standards set forth in this chapter.

(1) To be certified to provide clubhouse services, an organization must comply with the following:

(a) Meet all requirements for applicable city, county and state licenses and inspections.

(b) Complete and submit an application for certification to MHD.

(c) Successfully complete an on-site certification review by MHD to determine compliance with the minimum clubhouse standards, as set forth in this chapter.

(d) Initial applicants that can show that they have all organizational structures and written policies in place, but lack the performance history to demonstrate that they meet minimum standards, may be granted initial certification for up to one year. Successful completion of an on-site certification review is required prior to the expiration of initial certification.

(2) Upon certification, clubhouses will undergo periodic on-site certification reviews.

(a) The frequency of certification reviews is determined by the on-site review score as follows:

(i) A compliance score of ninety percent or above results in the next certification review occurring in three years;

(ii) A compliance score of eighty percent to eighty-nine percent results in the next certification review occurring in two years;

(iii) A compliance score of seventy percent to seventy-nine percent results in the next certification review occurring in one year; or

(iv) A compliance score below seventy percent results in a probationary certification.

(b) Any facet of an on-site review resulting in a compliance score below ninety percent requires a corrective action plan approved by MHD.

(3) Probationary certification may be issued by MHD if:

(a) A clubhouse fails to conform to applicable law, rules, regulations, or state minimum standards; or

(b) There is imminent risk to consumer health and safety;

(4) MHD may suspend or revoke a clubhouse's certification, or refuse to grant or renew a clubhouse's certification if a clubhouse fails to correct deficiencies as mutually agreed to in the corrective action plan with MHD.

(5) A clubhouse may appeal a certification decision by MHD.

(a) To appeal a decision, the clubhouse must submit a written application asking for an administrative hearing. An application must be submitted through a method that shows written proof of receipt to: Office of Administrative Hearings, P.O. Box 42489, Olympia, WA 98504-2489. An application must be received within twenty-eight calendar days of the date of the contested decision, and must include:

(i) The issue to be reviewed and the date the decision was made;

(ii) A specific statement of the issue and regulation involved;

(iii) The grounds for contesting the decision;

(iv) A copy of MHD's decision that is being contested; and

(v) The name, signature, and address of the clubhouse director.

(b) The hearing decision will be made according to the provisions of chapter 34.05 RCW and chapter 388-02 WAC.

Reviser's note: The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 388-0865-0720 is probably intended to be WAC 388-865-0720.

NEW SECTION

WAC 388-865-0725 Employment-related services—Requirements. The following employment support activities must be offered to clubhouse members:

(1) Collaboration on creating, revising, and meeting individualized job and career goals.

(2) Information about how employment will affect income and benefits.

(3) Information on other rehabilitation and employment services, including but not limited to:

(a) The division of vocational rehabilitation;

(b) The state employment services;

(c) The business community;

(d) Job placement services within the community; and

(e) Community mental health agency-sponsored supported employment services.

(4) Assistance in locating employment opportunities which are consistent with the member's skills, goals, and interests.

(5) Assistance in developing a resume, conducting a job search, and interviewing.

(6) Assistance in:

(a) Applying for school and financial aid; and

(b) Tutoring and completing course work.

(7) Information regarding protections against employment discrimination provided by federal, state, and local laws and regulations, and assistance with asserting these rights, including securing professional advocacy.

WSR 08-10-067
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
(Mental Health Division)
[Filed May 5, 2008, 3:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-21-078.

Title of Rule and Other Identifying Information: The department is creating new sections in chapter 388-865 WAC, WAC 388-865-0750 Crisis stabilization unit certification, 388-865-0755 Standards for administration, 388-865-0760 Admission and intake evaluation, 388-865-0765 Use of seclusion and restraint procedures, 388-865-0770 Assessment and stabilization services, 388-865-0775 Qualification requirements for staff, 388-865-0780 Posting rights, and 388-865-0785 Rights related to antipsychotic medications.

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://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on June 10, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 11, 2008.

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 schilse@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on June 10, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by June 3, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The 2007 legislature passed a provision (SSB 5533) requiring the department to certify crisis stabilization units that meet minimum standards.

Reasons Supporting Proposal: Crisis stabilization units will provide law enforcement an alternative to placing individuals, who are behaving erratically but not apparently dangerous to themselves or others, in a hospital or jail. Certification will provide assurance that crisis stabilization units are equipped to safely handle people that could require seclusion and restraint.

Statutory Authority for Adoption: RCW 71.05.020 and 71.24.035.

Statute Being Implemented: Chapter 375, Laws of 2007 (SSB 5533).

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: Kevin Sullivan, P.O. Box 45504, Olympia, WA 98504-5504, (360) 902-0836; Implementation: Tony O'Leary, P.O. Box 45320, Olympia, WA 98504-5320, (360) 902-0787; and Enforcement: Pete Marburger, P.O. Box 45320, Olympia, WA 98504-5320, (360) 902-0837.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rules and concludes that they do not impose more than minor costs for affected small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Tony O'Leary, P.O. Box 45320, Olympia, WA 98504-5320, phone (360) 902-0787, fax (360) 902-7691, e-mail o'leaap@dshs.wa.gov.

May 1, 2008
Stephanie E. Schiller
Rules Coordinator

NEW SECTION

WAC 388-865-0750 Crisis stabilization unit certification. (1) To obtain and maintain certification as a crisis stabilization unit (defined in RCW 71.05.020) under chapter 71.05 RCW, a facility must:

- (a) Be licensed by the department of health;
- (b) Ensure that the unit and its services are accessible to all persons, pursuant to federal, state, and local laws; and
- (c) Successfully complete a provisional and annual on-site review by the mental health division to determine facility compliance with the minimum standards of this section and chapter 71.05 RCW.

(2) If a crisis stabilization unit is part of a jail, the unit must be located in an area of the building that is physically separate from the general population. "Physically separate" means:

- (a) Out of sight and sound of the general population at all times;
- (b) Located in an area with no foot traffic between other areas of the building, except in the case of emergency evacuation; and
- (c) Has a secured entrance and exit between the unit and the rest of the facility.

NEW SECTION

WAC 388-865-0755 Standards for administration
The crisis stabilization unit must ensure that the following standards for administration are met:

- (1) A description of the program, including age of persons to be served, length of stay, and services to be provided.
- (2) An organizational structure that demonstrates clear lines of authority for administrative oversight and clinical supervision.
- (3) The professional person in charge of administration of the unit is a mental health professional.

(4) A management plan to monitor, collect data and develop improvements to meet the requirements of this chapter.

(5) A policy management structure that establishes:

(a) Procedures for maintaining and protecting personal medical/clinical records consistent with chapter 70.02 WAC, "Medical Records Health Care Information Access and Disclosure," and the Health Insurance Portability and Accountability Act (HIPAA);

(b) Procedures for managing human resources to ensure that persons receive individualized evaluation and crisis stabilization services by adequate numbers of staff who are qualified and competent to carry out their assigned responsibilities;

(c) Procedures for ensuring a secure environment appropriate to the legal status of the person(s), and necessary to protect the public safety. "Secure" means having:

(i) All doors and windows leading to the outside locked at all times;

(ii) Visual monitoring, either by line-of-sight or camera as appropriate to the individual;

(iii) Adequate space to segregate violent or potentially violent persons from others;

(iv) The means to contact law enforcement immediately in the event of an elopement from the facility; and

(v) Adequate numbers of staff present at all times that are trained in facility security measures.

(d) Procedures for admitting persons needing crisis stabilization services seven days a week, twenty-four hours a day;

(e) Procedures to ensure that for persons who have been brought to the unit involuntarily by police, the stay is limited to twelve hours unless the individual has signed voluntarily into treatment.

(f) Procedures to ensure that within twelve hours of the time of arrival to the crisis stabilization unit, individuals who have been detained by a designated mental health professional or designated crisis responder under chapter 71.05 or 70.96B RCW are transferred to a certified evaluation and treatment facility.

(g) Procedures to assure appropriate and safe transportation of persons who are not approved for admission or detained for transfer to an evaluation and treatment facility, and if not in police custody, to their respective residence or other appropriate place;

(h) Procedures to detain arrested persons who are not otherwise detained and transferred to an evaluation and treatment facility for a period of up to eight hours in order to enable law enforcement to return to the facility and take the person back into custody;

(i) Procedures to ensure access to emergency life-sustaining treatment, necessary medical treatment, and medication;

(j) Procedures to ensure the protection of personal and familial rights as described in WAC 388-865-0561 and chapter 71.05 RCW;

(k) Procedures to inventory and safeguard the personal property of the persons being detained;

(l) Procedures to ensure that a mental health professional (as defined in chapter 388-865 WAC) is on-site twenty-four hours a day, seven days a week;

(m) Procedures to ensure that a licensed physician is available for consultation to direct care staff and patients twenty-four hours a day, seven days a week;

(n) Procedures to provide warning to an identified individual and law enforcement when an individual has made a threat against an identified victim, in accordance with RCW 71.05.390(10);

(o) Procedures to ensure the rights of persons to make mental health advance directives; and

(p) Procedures to establish unit protocols for responding to the provisions of the advanced directives consistent with RCW 71.32.150.

NEW SECTION

WAC 388-865-0760 Admission and intake evaluation. (1) For persons who have been brought to the unit involuntarily by police:

(a) The clinical record must contain:

(i) A statement of the circumstances under which the person was brought to the unit;

(ii) The admission date and time; and

(iii) The date and time when the twelve hour involuntary detention period ends.

(b) The evaluation required in subsection (2)(c) of this section must be performed within three hours of arrival at the facility.

(2) The facility must document that each person has received timely evaluations to determine the nature of the disorder and the services necessary, including at a minimum:

(a) A health screening by an authorized healthcare provider as defined in WAC 246-337-005(22) to determine the healthcare needs of a person.

(b) An assessment for chemical dependency and/or a co-occurring mental health and substance abuse disorder, utilizing the Global Appraisal of Individual Needs - Short Screener (GAIN-SS) or its successor.

(c) An evaluation by a mental health professional to include at a minimum:

(i) Mental status examination;

(ii) Assessment of risk of harm to self, others, or property;

(iii) Determination of whether to refer to a designated mental health professional (DMHP) or designated crisis responder (DCR) to initiate civil commitment proceedings.

(d) Documentation that an evaluation by a DMHP/DCR was performed within the required time period, the results of the evaluation, and the disposition of the person.

(e) Review of the person's current crisis plan, if applicable and available.

(f) The admission diagnosis and what information the determination was based upon.

(3) If the mental health professional determines that the needs of a person would be better served by placement in a chemical dependency treatment facility then the person must be referred to an approved treatment program defined under chapter 70.96A RCW.

NEW SECTION

WAC 388-865-0765 Use of seclusion and restraint procedures within the crisis stabilization unit. (1) Persons have the right to be free from seclusion and restraint, including chemical restraint within the crisis stabilization unit.

(2) The use of restraints or seclusion must occur only when there is imminent danger to self or others and less restrictive measures have been determined to be ineffective to protect the person or others from harm. The reasons for the determination must be clearly documented in the clinical record.

(3) The crisis stabilization unit must develop policies and procedures to assure that restraint and seclusion are utilized only to the extent necessary to ensure the safety of patients and others, and in accordance with WAC 246-337-110, 246-322-180, 246-320-745(6), and 388-865-0545.

NEW SECTION

WAC 388-865-0770 Assessment and stabilization services—Documentation requirements. (1) For all persons admitted to the crisis stabilization unit, the clinical record must contain documentation of:

(a) Assessment and stabilization services provided by the appropriate staff;

(b) Coordination with the person's current treatment provider, if applicable;

(c) A plan for discharge, including a plan for follow up that includes:

(i) The name, address, and telephone number of the provider of follow-up services; and

(ii) The follow-up appointment date and time, if known.

(2) For persons admitted to the crisis stabilization unit on a voluntary basis, a crisis stabilization plan developed collaboratively with the person within twenty-four hours of admission that includes:

(a) Strategies and interventions to resolve the crisis in the least restrictive manner possible;

(b) Language that is understandable to the person and/or members of the person's support system; and

(c) Measurable goals for progress toward resolving the crisis and returning to an optimal level of functioning.

NEW SECTION

WAC 388-865-0775 Qualification requirements for staff. The provider is responsible to ensure that staff and clinical supervisors are qualified for the positions they hold at the crisis stabilization unit.

(1) The provider must document that all staff have:

(a) A current job description.

(b) A current Washington state department of health license or registration as may be required for his/her position.

(c) Washington State Patrol background checks for employees in contact with persons consistent with RCW 43.43.830.

(d) An annual performance evaluation.

(e) An individualized annual training plan, to include at minimum:

(i) The skills he or she needs for his/her job description and the population served;

(ii) Training regarding the least restrictive alternative options available in the community and how to access them;

(iii) Methods of person care;

(iv) Management of assaultive and self-destructive behaviors, including proper and safe use of seclusion and/or restraint procedures;

(v) Methods to ensure appropriate security of the facility; and

(vi) Requirements of chapters 71.05 and 71.34 RCW, this chapter, and protocols developed by the mental health division.

(vii) If contract staff is providing direct services, the facility must ensure compliance with the training requirements outlined in subsection (1)(i) through (vii) in this section.

(2) Clinical supervisors must meet the qualifications of mental health professionals as defined in WAC 388-865-0150.

NEW SECTION

WAC 388-865-0780 Posting of rights. The rights outlined in WAC 388-865-0561 must be prominently posted within the crisis stabilization unit and provided in writing to the person.

NEW SECTION

WAC 388-865-0785 Rights related to antipsychotic medications. All persons have a right to make an informed decision regarding the use of antipsychotic medication consistent with the provisions of RCW 71.05.215 and 71.05.217. The crisis stabilization unit must develop and maintain a written protocol for the involuntary administration of antipsychotic medications, including the following requirements:

(1) The clinical record must document:

(a) The physician's attempt to obtain informed consent for antipsychotic medication;

(b) The reasons why any antipsychotic medication is administered over the person's objection or lack of consent.

(2) The physician may administer antipsychotic medications over a person's objections or lack of consent only when:

(a) An emergency exists. An emergency exists if:

(i) The person presents an imminent likelihood of serious harm to self or others;

(ii) Medically acceptable alternatives to administration of antipsychotic medications are not available or are unlikely to be successful; and

(iii) In the opinion of the physician, the person's condition constitutes an emergency requiring that treatment be instituted before obtaining a concurring opinion by a second physician.

(b) There is a concurring opinion by a second physician for treatment up to thirty days.

WSR 08-10-068
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
[Filed May 5, 2008, 3:38 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-01-020.

Title of Rule and Other Identifying Information: The department is amending WAC 388-450-0085 Does the department count all of my self-employment income to determine if I am eligible for benefits?

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://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on June 10, 2008, at 10:00 a.m.

Date of Intended Adoption: Not sooner than June 11, 2008.

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 schilse@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on June 10, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by June 3, 2008, 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 amending this rule to remove barriers and increase accessibility to clients seeking children's and pregnancy medical assistance, per new state law RCW 74.09.470.

Reasons Supporting Proposal: To be in compliance with RCW.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.09.470, and 74.08.090.

Statute Being Implemented: RCW 74.09.470.

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

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

Name of Agency Personnel Responsible for Drafting: Wendy Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; Implementation and Enforcement: Colleen Clifford, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-2075.

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 organization[s].

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(vii) relating only to client medical or financial eligibility.

May 1, 2008

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-08-045, filed 3/30/06, effective 5/1/06)

WAC 388-450-0085 Does the department count all of my self-employment income to determine if I am eligible for benefits? This section applies to cash assistance, Basic Food, and medical programs for children, pregnant women, and families.

For cash, Basic Food, and family medical programs:

(1) We decide how much of your self-employment income to count by:

(a) Adding together your gross self-employment income and any profit you make from selling your business property or equipment;

(b) Subtracting your business expenses as described in subsection (2) below; and

(c) Dividing the remaining amount of self-employment income by the number of months over which the income will be averaged.

(2) We subtract one hundred dollars as a business expense even if your costs are less than this. If you want us to subtract your actual costs of more than one hundred dollars, you must list and give us proof of your expenses for us to count them. We never allow the following expenses:

(a) Federal, state, and local income taxes;

(b) Money set aside for retirement purposes;

(c) Personal work-related expenses (such as travel to and from work);

(d) Net losses from previous periods;

(e) Depreciation; or

(f) Any amount that is more than the payment you get from a boarder for lodging and meals.

(3) If you have worked at your business for less than a year, we figure your gross self-employment income by averaging:

(a) The income over the period of time the business has been in operation; and

(b) The monthly amount we estimate you will get for the coming year.

(4) For cash and medical assistance, if your self-employment expenses are more than your self-employment income, we do not use this "loss" to reduce income from other self-employment businesses or other sources of income to your assistance unit.

(5) For Basic Food, we use a "loss" from self-employment farming or fishing income to reduce other sources of income **only** if you meet the following three conditions:

(a) Someone in your assistance unit is a self-employed farmer or fisher;

(b) Your gross yearly income from farming or fishing is or is expected to be at least one thousand dollars; and

(c) Your allowable costs for farming or fishing are more than your income from farming or fishing.

For children's and pregnancy medical programs:

(6) If you have worked long enough at the business to file a federal tax return last year and it represents your current income, we figure your gross self-employment income by:

(a) Adding together your gross self-employment income from your return and any profit you make from selling your business property or equipment;

(b) Subtracting your allowable business expenses except as described in subsection (2) above; and

(c) Averaging the income over the period the income covers.

(7) If you have worked at your business for less than a year or if you did not file a federal tax return in the last year and, the business records represent your current income, we figure your gross self-employment income by:

(a) Adding together your gross self-employment income and any profit you make from selling your business property or equipment over the period of time the business has been in operation within the last year;

(b) Subtracting your allowable business expenses except as described in subsection (2) above; and

(c) Averaging the income we estimate you will get for the coming year.

WSR 08-10-069

WITHDRAWAL OF PROPOSED RULES PUBLIC EMPLOYMENT RELATIONS COMMISSION

(By the Code Reviser's Office)

[Filed May 6, 2008, 9:34 a.m.]

WAC 391-35-026, proposed by the public employment relations commission in WSR 07-21-067 appearing in issue 07-21 of the State Register, which was distributed on November 7, 2007, 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 08-10-070

WITHDRAWAL OF PROPOSED RULES GAMBLING COMMISSION

(By the Code Reviser's Office)

[Filed May 6, 2008, 9:35 a.m.]

WAC 230-05-030 and 230-14-045, proposed by the gambling commission in WSR 07-21-092 appearing in issue 07-21 of the State Register, which was distributed on November 7, 2007, 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 08-10-071

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF HEALTH

(By the Code Reviser's Office)

[Filed May 6, 2008, 9:35 a.m.]

WAC 246-976-990, proposed by the department of health in WSR 07-21-132 appearing in issue 07-21 of the State Register, which was distributed on November 7, 2007, 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 08-10-081

PROPOSED RULES DEPARTMENT OF FINANCIAL INSTITUTIONS

(Securities Division)

[Filed May 6, 2008, 12:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-07-055.

Title of Rule and Other Identifying Information: The securities division proposes to revise the requirements for investment advisers that have custody of client funds or securities set forth in WAC 460-24A-105 and to codify the requirements for investment advisers that have custody because they have the authority to deduct fees from client accounts, they manage a pooled investment vehicle or trust, or they act as trustee and investment adviser to a trust. In addition, the division proposes to adopt a set of related definitions and certain exceptions from the custody requirements.

Hearing Location(s): State of Washington, Department of Financial Institutions, 150 Israel Road S.W., Room 220, Tumwater, WA 98501, on June 12, 2008, at 1:00 p.m.

Date of Intended Adoption: June 13, 2008.

Submit Written Comments to: Faith L. Anderson, Department of Financial Institutions, Securities Division, P.O. Box 9033, Olympia, WA 98507-9033, e-mail fander-son@dfi.wa.gov, fax (360) 704-6480, by June 12, 2008.

Assistance for Persons with Disabilities: Contact Carolyn Hawkey, P.O. Box 9033, Olympia, WA 98507-9033, by June 5, 2008, TTY (360) 664-8126 or (360) 902-8774.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Pursuant to RCW 21.20.900, the securities division proposes to amend its rules relating to custody requirements for investment advisers to adopt the North American Securities Administrators Association (NASAA) model custody rule (Model Rule 102 (e)(1)-1) and to codify and clarify existing standards and interpretations of the law. The proposed rules, consistent with the NASAA model rule, recognize special treatment for an investment adviser that has custody due to the ability to deduct fees, the management of a pooled investment vehicle or their position as trustee of a trust they advise. The text of these amendments has been drafted with the goals of provid-

ing greater uniformity with the custody rules of the SEC and other states that have adopted the NASAA model custody rule and improving the readability of these rules through the use of plainer English.

Reasons Supporting Proposal: These rules should be adopted to provide greater clarity regarding the requirements for investment advisers that have custody of client funds or securities, greater uniformity with federal rules and the rules of other states, and to improve the readability of these rules through the use of plainer English.

Statutory Authority for Adoption: RCW 21.20.450, 21.20.900, 21.20.100, 21.20.050 - [21.20].060.

Statute Being Implemented: Chapter 21.20 RCW.

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

Name of Proponent: Department of financial institutions (DFI), securities division, governmental.

Name of Agency Personnel Responsible for Drafting: Faith L. Anderson, 150 Israel Road S.W., Olympia, WA 98501, (360) 725-7825; Implementation: Scott Jarvis, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8700; and Enforcement: Michael E. Stevenson, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8824.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Investments advisers who have custody are currently subject to the same or similar standards to those in the proposed rule. Therefore, the adoption of the division's proposals will not add any additional compliance burdens for investment advisers, but will provide greater clarity and consistency. If any costs are borne by businesses in connection with the proposed rules, these costs will be no more than minor. As such, the agency is not required to prepare a small business economic impact statement under RCW 19.85.030.

A cost-benefit analysis is not required under RCW 34.05.328. DFI is not one of the agencies listed in RCW 34.05.328.

May 5, 2008

Scott Jarvis

Director

NEW SECTION

WAC 460-24A-005 Definitions. For purposes of this chapter:

(1) **"Custody"** means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them or the ability to appropriate them.

(a) "Custody" includes:

(i) Possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in any case within three business days of receiving them;

(ii) Any arrangement (including a general power of attorney) under which an investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon an investment adviser's instruction to the custodian; and

(iii) Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled invest-

ment vehicle, or trustee of a trust) that gives an investment adviser or its supervised person legal ownership of or access to client funds or securities.

(b) Receipt of checks drawn by clients and made payable to unrelated third parties will not meet the definition of custody if forwarded to the third party within twenty-four hours of receipt and the adviser maintains a ledger or other listing of all securities or funds held or obtained inadvertently, including the following information:

(i) Issuer;

(ii) Type of security and series;

(iii) Date of issue;

(iv) For debt instruments, the denomination, interest rate, and maturity date;

(v) Certificate number, including alphabetical prefix or suffix;

(vi) Name in which registered;

(vii) Date given to the adviser;

(viii) Date sent to client or sender;

(ix) Form of delivery to client or sender, or copy of the form of delivery to client or sender; and

(x) Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

(2) **"Independent party"** means a person who:

(a) Is engaged by an investment adviser to act as a gatekeeper for the payment of fees, expenses, and capital withdrawals from the pooled investment;

(b) Does not control and is not controlled by and is not under common control with the investment adviser; and

(c) Does not have, and has not had within the past two years, a material business relationship with the investment adviser.

(3) **"Independent representative"** means a person who:

(a) Acts as an agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners or members, or other beneficial owners;

(b) Does not control, is not controlled by, and is not under common control with the investment adviser;

(c) Does not have, and has not had within the past two years, a material business relationship with the investment adviser.

(4) **"Qualified custodian"** means the following independent institutions or entities:

(a) A bank as defined in section 202 (a)(2) of the Advisers Act, 15 U.S.C. 80b-2 (a)(2), or a savings association as defined in section 3 (b)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1813 (b)(1), that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act, 12 U.S.C. 1811;

(b) A broker-dealer registered under section 15 (b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78o (b)(1), holding the client assets in customer accounts;

(c) A futures commission merchant registered under section 4f(a) of the Commodity Exchange Act, 7 U.S.C. 6f(a), holding the client assets in customer accounts, but only with

respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon;

(d) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets; and

(e) The transfer agent for an open-end company as defined in section 5 (a)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-5 (a)(1), only with respect to shares of the open-end company.

AMENDATORY SECTION (Amending WSR 01-16-125, filed 7/31/01, effective 10/24/01)

WAC 460-24A-105 Requirements for an investment adviser that has custody or possession of client funds or securities ~~((of clients)).~~ If you are an investment adviser registered or required to be registered, it shall constitute an "act, practice, or course of business" which operates or would operate as a fraud within the meaning of RCW 21.20.020 for ~~((any investment adviser who has))~~ you to have custody ~~((or possession))~~ ((of any) client funds or securities ~~((in which any client has any beneficial interest to do any act or take any action, directly or indirectly, with respect to any such funds or securities;))~~ unless:

(1) ~~((All such securities of each such client are segregated, marked to identify the particular client who has the beneficial interest therein, and held in safekeeping in some place reasonably free from risk of destruction or other loss; and~~

~~(2)(a) All such funds of such clients are deposited in one or more bank accounts which contain only clients' funds;~~

~~(b) Such account or accounts are maintained in the name of the investment adviser as agent or trustee for such clients; and~~

~~(c) The investment adviser))~~ **You notify the director.** You notify the director promptly on Form ADV that you have or may have custody;

(2) A qualified custodian maintains your clients' funds and securities.

(a) A qualified custodian maintains your clients' funds and securities:

(i) In a separate account for each client under that client's name; or

(ii) In accounts that contain only your clients' funds and securities, under your name as agent or trustee for the clients; and

(b) You maintain ~~((s))~~ a separate record for each such account which shows the name and address of the bank where such account is maintained, the dates and amounts of deposits in and withdrawals from such account, and the exact amount of each client's beneficial interest in such account; ~~((and))~~

(3) ((Such investment adviser, immediately after accepting custody or possession of such funds or securities from any client, notifies such)) **You notify clients of the identity of the qualified custodian.** If you open an account with a qualified custodian on your client's behalf, either under the client's name or under your name as agent, you notify the client in writing of the ~~((place))~~ qualified custodian's name,

address, and the manner in which ~~((such))~~ the funds ~~((and))~~ or securities ~~((will be))~~ are maintained, ~~((and thereafter, if and when there is any change in the place or manner in which such funds or securities are being maintained, gives each such client written notice thereof))~~ promptly when the account is opened and following any changes to this information; ~~((and))~~

~~((4) ((Such investment adviser sends to each client, not less frequently than once every three months, an itemized statement showing the funds and securities in the custody or possession of the investment adviser at the end of such period and all debits, credits and transactions in such client's account during such period; and~~

~~((5) All such))~~ **Either you or a qualified custodian sends account statements to your clients.** You or a qualified custodian sends your clients account statements subject to the following requirements:

(a) Requirements if qualified custodian sends account statements. If you do not send account statements to your clients, you have a reasonable basis for believing that the qualified custodian sends an account statement, at least quarterly, to each of your clients for which the qualified custodian maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period;

(b) Requirements if you send account statements. If the qualified custodian does not send account statements to your clients:

(i) You send quarterly account statements to each of your clients for whom you have custody of funds or securities, identifying the amount of funds and of each security of which you have custody at the end of the period and setting forth all transactions during that period;

(ii) An independent certified public accountant verifies all client funds and securities ~~((of clients are verified))~~ by actual examination at least once during each calendar year ~~((by an independent certified public accountant or public accountant))~~ at a time ~~((which shall be))~~ that is chosen by ~~((such))~~ the accountant without prior notice or announcement to ~~((the investment adviser. A certificate of such accountant stating that he has made an examination of such funds and securities, and describing the nature and extent of such examination shall be filed with the director promptly after each such examination))~~ you and that is irregular from year to year, and files a copy of the examination report and financial statements with the director within thirty days after the completion of the examination, stating that it has examined the funds and securities and describing the nature and extent of the examination; and

(iii) The independent certified public accountant, upon finding any material discrepancies during the course of the examination, notifies the director within one business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the director; and

(c) Account statements are sent to limited partners and members of limited liability companies that you advise. If you are a general partner of a limited partnership (or managing member of a limited liability company, or hold

a comparable position for another type of pooled investment vehicle), the account statements required under this subsection are sent to each limited partner (or member or other beneficial owner); and

(5) **A client may designate an independent representative to receive account statements.** A client may designate an independent representative to receive, on his or her behalf, notices and account statements as required under subsections (3) and (4) of this section.

NEW SECTION

WAC 460-24A-106 Additional custody requirements for an investment adviser that directly deducts fees from client accounts. (1) If you are an investment adviser who has custody as defined in WAC 460-24A-005 (1)(a)(ii) solely because you have the authority to directly deduct fees from client accounts, you must comply with the safekeeping requirements in WAC 460-24A-105 and the following additional safeguards:

(a) **You must have your client's written authorization.** You must have written authorization from your client to deduct advisory fees from the account held with the qualified custodian.

(b) **You must provide notice to the qualified custodian and an itemized invoice to your client.** Each time a fee is directly deducted from your client's account, you must concurrently:

(i) Send the qualified custodian notice of the amount of the fee to be deducted from your client's account; and

(ii) Send your client an invoice itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee.

(c) **You must notify the director that you will comply with these safekeeping requirements.** You must notify the director on Form ADV that you will comply with the safekeeping requirements set forth in this section.

(2) **Waiver of net worth and bonding requirements.** If you have custody solely as defined in WAC 460-24A-005 (1)(a)(ii) because you have the authority to have fees directly deducted from client accounts and you comply with the safekeeping requirements set forth in this section, you are not required to comply with the net worth and bonding requirements for an investment adviser that has custody set forth in WAC 460-24A-170.

NEW SECTION

WAC 460-24A-107 Custody requirements for an investment adviser that manages a pooled investment vehicle or trust. (1) If you are an investment adviser that has custody as defined in WAC 460-24A-005 (1)(a)(iii), you must either:

(a) **Comply with additional safekeeping requirements.** In addition to the safekeeping requirements set forth in WAC 460-24A-105, you must comply with the following safekeeping requirements:

(i) **You must engage an independent party to authorize withdrawals from the pooled account.** You must hire

an independent party to review all fees, expenses, and capital withdrawals from the pooled account;

(ii) **You must send detailed invoices or receipts to the independent party.** You must send all invoices or receipts to the independent party, detailing the amount of the fee, expenses, or capital withdrawal and the method of calculation such that the independent party can:

(A) Determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement); and

(B) Forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser; and

(iii) **You must notify the director that you will comply with these additional safekeeping requirements.** You must notify the director on Form ADV that you will comply with the safekeeping requirements in (a) of this subsection; or

(b) **You must provide audited financial statements of the pooled investment vehicle to all limited partners or members.** If you do not comply with the safekeeping requirements set forth in WAC 460-24A-105 and (a) of this subsection, you must comply with the following alternative safekeeping requirements:

(i) **The pooled investment vehicle must be subject to annual audits.** You must cause the account of the limited partnership (or limited liability company, or another type of pooled investment vehicle) for which you are a general partner (or managing member or other comparable position) to be subject to audit, at least annually, by an independent certified public accountant to be conducted in accordance with generally accepted auditing standards;

(ii) **You must distribute audited financial statements for the pooled investment vehicle to all beneficial owners.** You must distribute audited financial statements prepared in accordance with generally accepted accounting principles for the limited partnership (or limited liability company, or another type of pooled investment vehicle) for which you are a general partner (or managing member or other comparable position) to all limited partners (or members or other beneficial owners) within one hundred twenty days of the end of its fiscal year; and

(iii) **You must notify the director that you will distribute audited financial statements of the pooled investment vehicle to all beneficial owners.** You must notify the director on Form ADV that you will comply with the safekeeping requirements in (b)(i) and (ii) of this subsection.

(2) **If you comply with the additional safekeeping requirements, you are not required to comply with the net worth and bonding requirements.** If you have custody solely as defined in WAC 460-24A-105 (1)(a)(iii) and you comply with the safekeeping requirements in WAC 460-24A-105 and subsection (1)(a) of this section, you are not required to comply with the net worth and bonding requirements for an investment adviser that has custody set forth in WAC 460-24A-170.

(3) **If you distribute audited financial statements of the pooled investment vehicle to all beneficial owners, you are not required to comply with account statement delivery requirements.** You are not required to comply with WAC 460-24A-105 (4)(b)(ii) and (iii) with respect to the

account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to audit if you comply with subsection (1)(b) of this section.

NEW SECTION

WAC 460-24A-108 Custody requirements for an investment adviser that acts as trustee and investment adviser to a trust. If you are an investment adviser that acts as an investment adviser to a trust and the trust has retained you or one of your representatives, employees, directors, or owners as trustee, you must comply with the following requirements:

(1) **You must send invoices to the qualified custodian and a person connected to the trust at the same time.** You must send to the grantor of the trust, the attorney for the trust if it is a testamentary trust, the co-trustee (other than you or one of your representatives, employees, directors, or owners); or a defined beneficiary of the trust, at the same time that you send any invoice to the qualified custodian, an invoice showing the amount of the trustees' fee or investment management or advisory fee, the value of the assets on which the fees were based, and the specific manner in which the fees were calculated.

(2) **You must have an agreement with a qualified custodian that contains certain terms.** You must enter into a written agreement with a qualified custodian that complies with the following requirements:

(a) **The agreement must restrict payments to you or persons related to you.** The agreement must specify that the qualified custodian will neither deliver trust securities nor transmit any funds to you or one of your representatives, employees, directors, or owners, except that the qualified custodian may pay trustees' fees to the trustee and investment management or advisory fees to you, provided that:

(i) The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than you or one of your representatives, employees, directors, or owners), or a defined beneficiary of the trust has authorized the qualified custodian in writing to pay those fees;

(ii) The statements for those fees show the amount of the fees for the trustee and, in the case of statements for investment management or advisory fees, show the value of the trust assets on which the fee is based and the manner in which the fee was calculated; and

(iii) The qualified custodian agrees to send to the grantor of the trust, the attorneys for a testamentary trust, the co-trustee (other than you or one of your representatives, employees, directors, or owners); or a defined beneficiary of the trust, at least quarterly, a statement of all disbursements from the account of the trust, including the amount of investment management fees paid to you and the amount of trustees' fees paid to the trustee.

(b) **The agreement must restrict the transfer of funds or securities.** Except as otherwise set forth in subsection (1)(b)(i) of this section, the agreement must specify that the qualified custodian may transfer funds or securities, or both, of the trust only upon the direction of the trustee (who may be you or one of your representatives, employees, directors, or owners), who you have duly accepted as an authorized signa-

tory. The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than you or one of your representatives, employees, directors, or owners), or a defined beneficiary of the trust, must designate the authorized signatory for management of the trust. The agreement must further specify that the direction to transfer funds or securities, or both, can only be made to the following:

(i) To a trust company, bank trust department or brokerage firm independent from you for the account of the trust to which the assets relate;

(ii) To the named grantors or to the named beneficiaries of the trust;

(iii) To a third person independent from you in payment of the fees or charges of the third person including, but not limited to:

(A) Attorney's, accountant's, or qualified custodian's fees for the trust; and

(B) Taxes, interest, maintenance, or other expenses, if there is property other than securities or cash owned by the trust;

(iv) To third persons independent from you for any other purpose legitimately associated with the management of the trust; or

(v) To a broker-dealer in the normal course of portfolio purchases and sales, provided that the transfer is made on payment against delivery basis or payment against trust receipt.

(3) **You must notify the director that you will comply with these safekeeping requirements.** You must notify the director on Form ADV that you will comply with the safekeeping requirements set forth in this section.

(4) **You are not required to comply with the net worth and bonding requirements if you comply with these safekeeping requirements.** If you have custody solely as defined in WAC 460-24A-005 (1)(a)(iii) because you are the trustee of a trust and you comply with the safekeeping requirements in WAC 460-24A-105 and this section, you are not required to comply with the net worth and bonding requirements for an investment adviser that has custody set forth in WAC 460-24A-170.

NEW SECTION

WAC 460-24A-109 Exceptions from custody requirements. Exceptions from the custody requirements are available in the following circumstances:

(1)(a) **You are not required to comply with the custody requirements for certain privately offered securities.** You are not required to comply with WAC 460-24A-105 through 460-24A-108 with respect to securities that are:

(i) Acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(ii) Uncertificated, and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and

(iii) Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(b) Notwithstanding (a) of this subsection, the provisions of this subsection (1) are available with respect to securities held for the account of a limited partnership (or limited liabil-

ity company, or other type of pooled investment vehicle) only if you comply with the requirements in WAC 460-24A-107 (1)(b).

(2) **You are not required to comply with the custody requirements with respect to the account of a registered investment company.** You are not required to comply with WAC 460-24A-105 through 460-24A-108 with respect to the account of an investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 to 80a-64.

(3) **You are not required to comply with the custody requirements with respect to a trust for the benefit of your relative.** You are not required to comply with the safe-keeping requirements of WAC 460-24A-105 through 460-24A-108 or the net worth and bonding requirements for an investment adviser that has custody set forth in WAC 460-24A-170 if you have custody solely because you or one of your representatives, employees, directors, or owners is a trustee for a beneficial trust, if all of the following conditions are met for each trust:

(a) The beneficial owner of the trust is your parent, a grandparent, a spouse, a sibling, a child, or a grandchild. These relationships shall include "step" relationships.

(b) For each account under (a) of this subsection, you comply with the following:

(i) You provide a written statement to each beneficial owner of the account setting forth a description of the requirements of WAC 460-24A-105 through 460-24A-108 and WAC 460-24A-170 and the reasons why you will not be complying with those requirements;

(ii) You obtain from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement required under (b)(i) of this subsection; and

(iii) You maintain a copy of both documents described in (b)(i) and (ii) of this subsection until the account is closed or you are no longer trustee.

AMENDATORY SECTION (Amending WSR 01-16-125, filed 7/31/01, effective 10/24/01)

WAC 460-24A-170 Minimum financial requirements for investment advisers. (1) An investment adviser registered or required to be registered under RCW 21.20.040, who has custody of client funds or securities, shall maintain at all times a minimum net worth of \$35,000. An investment adviser registered or required to be registered under RCW 21.20.040, who has discretionary authority over client funds or securities, but does not have custody of client funds or securities, shall maintain at all times a minimum net worth of \$10,000.

(2) An investment adviser registered or required to be registered under RCW 21.20.040 who has custody or discretion of client funds or securities, but does not meet the minimum net worth requirements in subsection (1) of this section shall be bonded in the amount of the net worth deficiency rounded up to the nearest \$5,000. Any bond required by this section shall be in the form determined by the director, issued by a company qualified to do business in this state, and shall be subject to the claim of all clients of the investment adviser regardless of the client's state of residence.

(3) An investment adviser registered or required to be registered under RCW 21.20.040, who accepts prepayment of more than \$500 per client and six or more months in advance, shall maintain at all times a positive net worth.

(4) Unless otherwise exempted, as a condition of the right to transact business in this state, every investment adviser registered or required to be registered under RCW 21.20.040 shall, by the close of business on the next business day, notify the director if the investment adviser's net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file, by the close of business on the next business day, a report with the director of its financial condition, including the following:

(a) A trial balance of all ledger accounts;

(b) A statement of all client funds or securities which are not segregated;

(c) A computation of the aggregate amount of client ledger debit balances; and

(d) A statement as to the number of client accounts.

(5) For purposes of this section, the term "net worth" shall mean an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: Prepaid expenses (except as to items properly classified as assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature, home furnishings, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

~~(6) ((For purposes of this section, a person will be deemed to have custody if said person directly or indirectly holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them. An adviser shall not be deemed to have constructive custody of a client's cash or securities, if such possession is for the sole purpose of immediately forwarding such cash or securities to a third party at the request of the client.~~

~~(7))~~ The director may require that a current appraisal be submitted in order to establish the worth of any asset.

~~((8))~~ (7) Every investment adviser that has its principal place of business in a state other than this state shall maintain only such minimum net worth as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in that state and is in compliance with that state's minimum capital requirements.

WSR 08-10-082
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed May 6, 2008, 2:37 p.m.]

Continuance of WSR 08-07-098.

Preproposal statement of inquiry was filed as WSR 07-01-101.

Title of Rule and Other Identifying Information: WAC 296-62-095 Heat-related illness in the outdoor environment. The purpose of this continuance filing is to extend the comment period for this proposed rule making from May 2 to May 9, 2008.

Hearing Location(s): See WSR 08-07-098.

Date of Intended Adoption: June 4, 2008.

Submit Written Comments to: Jamie Scibelli, P.O. Box 44620, Olympia, WA 98504-4620, e-mail scij235@lni.wa.gov, fax (360) 902-5619, by May 9, 2008.

Assistance for Persons with Disabilities: Contact Beverly Clark by April 28, 2008, (360) 902-5516 or clah235@lni.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: See WSR 08-07-098.

Reasons Supporting Proposal: See WSR 08-07-098.

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

Statute Being Implemented: Chapter 49.17 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: Tracy Spencer, Tumwater, Washington, (360) 902-5530; Implementation and Enforcement: Stephen M. Cant, Tumwater, Washington, (360) 902-5495.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

See WSR 08-07-098.

A copy of the statement may be obtained by contacting Jamie Scibelli, P.O. Box 44620, Olympia, WA 98504-4620, phone (360) 902-4568, fax (360) 902-5619, e-mail scij235@lni.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jamie Scibelli, P.O. Box 44620, Olympia, WA 98504-4620, phone (360) 902-4568, fax (360) 902-5619, e-mail scij235@lni.wa.gov.

May 6, 2008

Judy Schurke

Director

Title of Rule and Other Identifying Information: WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Hearing Location(s): Capital Plaza Building, 4th Floor, Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA 98504, on June 11, 2008, at 1:30 p.m.

Date of Intended Adoption: June 27, 2008.

Submit Written Comments to: Mark Bohe, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, fax (360) 586-0127, by June 11, 2008.

Assistance for Persons with Disabilities: Contact Martha Thomas at (360) 725-7497, no later than ten days before the hearing date. Deaf and hard of hearing individuals may call 1-800-451-7985 (TTY users).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 84.33.091 requires the department to revise the stumpage value tables every six months. The department establishes stumpage value tables to apprise timber harvesters of the timber values used to calculate the timber excise tax. This valuation is for the second half of 2008 stumpage value adoption (WAC 458-40-660).

Copies of draft rules are available for viewing and printing on our web site at <http://dor.wa.gov/content/FindALawOrRule/RuleMaking/agenda.aspx>.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), and 84.33.096.

Statute Being Implemented: RCW 84.33.091.

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

Name of Proponent: Washington state department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6133; Implementation and Enforcement: Stuart Thronson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-3230.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Mark Bohe, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, fax (360) 586-0127, by June 11, 2008. The proposed rule is a significant legislative rule as defined by RCW 34.05.328.

May 6, 2008

Alan R. Lynn

Rules Coordinator

WSR 08-10-083
PROPOSED RULES
DEPARTMENT OF REVENUE

[Filed May 6, 2008, 2:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-06-091.

AMENDATORY SECTION (Amending WSR 08-02-064, filed 12/28/07, effective 1/1/08)

WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments. (1) **Introduction.** This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) **Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stump-

age harvested from ((January)) July 1 through ((June 30)) December 31, 2008:

**((TABLE 1—Proposed Stumpage Value Table
Stumpage Value Area 1
January 1 through June 30, 2008**

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$481	\$474	\$467	\$460	\$453
		2	413	406	399	392	385
		3	400	393	386	379	372
		4	350	343	336	329	322
Western-Redcedar ⁽²⁾	RC	1	736	729	722	715	708
Western-Hemlock ⁽²⁾	WH	1	300	293	286	279	272
		2	300	293	286	279	272
		3	295	288	281	274	267
		4	295	288	281	274	267
Red-Alder	RA	1	719	712	705	698	691
		2	647	640	633	626	619
Black-Cottonwood	BC	1	57	50	43	36	29
Other-Hardwood	OH	1	181	174	167	160	153
Douglas-Fir Poles & Piles	DFL	1	774	767	760	753	746
Western-Redcedar Poles	RCL	1	1384	1377	1370	1363	1356
Chipwood ⁽⁴⁾	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks ⁽⁵⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Alaska Cedar.
⁽³⁾ Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.
⁽⁴⁾ Stumpage value per ton.
⁽⁵⁾ Stumpage value per cord.
⁽⁶⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁷⁾ Stumpage value per lineal foot.

**TABLE 2—Proposed Stumpage Value Table
Stumpage Value Area 2
January 1 through June 30, 2008**

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$562	\$555	\$548	\$541	\$534
		2	428	421	414	407	400
		3	427	420	413	406	399
		4	398	391	384	377	370
Western-Redcedar ⁽²⁾	RC	1	736	729	722	715	708
Western-Hemlock ⁽²⁾	WH	1	346	339	332	325	318
		2	346	339	332	325	318
		3	312	305	298	291	284
		4	312	305	298	291	284
Red-Alder	RA	1	719	712	705	698	691
		2	647	640	633	626	619
Black-Cottonwood	BC	1	57	50	43	36	29
Other-Hardwood	OH	1	181	174	167	160	153
Douglas-Fir Poles & Piles	DFL	1	774	767	760	753	746
Western-Redcedar Poles	RCL	1	1384	1377	1370	1363	1356
Chipwood ⁽⁴⁾	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks ⁽⁵⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Alaska Cedar.
⁽³⁾ Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.
⁽⁴⁾ Stumpage value per ton.
⁽⁵⁾ Stumpage value per cord.
⁽⁶⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁷⁾ Stumpage value per lineal foot.

**TABLE 3—Proposed Stumpage Value Table
Stumpage Value Area 3**
January 1 through June 30, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance-Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$461	\$454	\$447	\$440	\$433
		2	444	437	430	423	416
		3	443	436	429	422	415
		4	371	364	357	350	343
Western-Redcedar ⁽³⁾	RC	1	736	729	722	715	708
Western Hemlock ⁽⁴⁾	WH	1	346	339	332	325	318
		2	346	339	332	325	318
		3	288	281	274	267	260
		4	274	267	260	253	246
Red Alder	RA	1	719	712	705	698	691
		2	647	640	633	626	619
Black Cottonwood	BC	1	57	50	43	36	29
Other Hardwood	OH	1	181	174	167	160	153
Douglas-Fir Poles & Piles	DFL	1	774	767	760	753	746
Western-Redcedar Poles	RCL	1	1384	1377	1370	1363	1356
Chipwood ⁽⁵⁾	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log-scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Western Larch.

⁽³⁾ Includes Alaska Cedar.

⁽⁴⁾ Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.

⁽⁵⁾ Stumpage value per ton.

⁽⁶⁾ Stumpage value per cord.

⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁸⁾ Stumpage value per lineal foot.

**TABLE 4—Proposed Stumpage Value Table
Stumpage Value Area 4**
January 1 through June 30, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance-Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$589	\$582	\$575	\$568	\$561
		2	462	455	448	441	434
		3	443	436	429	422	415
		4	327	320	313	306	299
Lodgepole Pine	LP	1	238	231	224	217	210
Ponderosa Pine	PP	1	285	278	271	264	257
		2	198	191	184	177	170
Western-Redcedar ⁽³⁾	RC	1	736	729	722	715	708
Western Hemlock ⁽⁴⁾	WH	1	338	331	324	317	310
		2	338	331	324	317	310
		3	338	331	324	317	310
		4	338	331	324	317	310
Red Alder	RA	1	719	712	705	698	691
		2	647	640	633	626	619
Black Cottonwood	BC	1	57	50	43	36	29
Other Hardwood	OH	1	181	174	167	160	153
Douglas-Fir Poles & Piles	DFL	1	774	767	760	753	746
Western-Redcedar Poles	RCL	1	1384	1377	1370	1363	1356
Chipwood ⁽⁵⁾	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log-scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Western Larch.

⁽³⁾ Includes Alaska Cedar.

⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.

⁽⁵⁾ Stumpage value per ton.

⁽⁶⁾ Stumpage value per cord.

⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁸⁾ Stumpage value per lineal foot.

**TABLE 5—Proposed Stumpage Value Table
Stumpage Value Area 5**
January 1 through June 30, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
			Douglas-Fir ⁽²⁾	DF	1	\$616	\$609
		2	444	437	430	423	416
		3	374	367	360	353	346
		4	371	364	357	350	343
Lodgepole Pine	LP	1	238	231	224	217	210
Ponderosa Pine	PP	1	285	278	271	264	257
		2	198	191	184	177	170
Western-Redcedar ⁽²⁾	RC	1	736	729	722	715	708
Western Hemlock ⁽⁴⁾	WH	1	290	283	276	269	262
		2	290	283	276	269	262
		3	290	283	276	269	262
		4	290	283	276	269	262
Red Alder	RA	1	719	712	705	698	691
		2	647	640	633	626	619
Black Cottonwood	BC	1	57	50	43	36	29
Other Hardwood	OH	1	181	174	167	160	153
Douglas-Fir Poles & Piles	DFL	1	774	767	760	753	746
Western-Redcedar Poles	RCL	1	1384	1377	1370	1363	1356
Chipwood ⁽⁵⁾	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Western Larch.

⁽³⁾ Includes Alaska Cedar.

⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.

⁽⁵⁾ Stumpage value per ton.

⁽⁶⁾ Stumpage value per cord.

⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁸⁾ Stumpage value per lineal foot.

**TABLE 6—Proposed Stumpage Value Table
Stumpage Value Area 6**
January 1 through June 30, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
			Douglas-Fir ⁽²⁾	DF	1	\$296	\$289
Lodgepole Pine	LP	1	238	231	224	217	210
Ponderosa Pine	PP	1	285	278	271	264	257
		2	198	191	184	177	170
Western-Redcedar ⁽²⁾	RC	1	596	589	582	575	568
True Firs and Spruce ⁽⁴⁾	WH	1	230	223	216	209	202
Western White Pine	WP	1	252	245	238	231	224
Hardwoods	OH	1	50	43	36	29	22
Western-Redcedar Poles	RCL	1	632	625	618	611	604
Small Logs ⁽⁵⁾	SML	1	32	31	30	29	28
Chipwood ⁽⁵⁾	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks ⁽⁶⁾	RCF	1	76	69	62	55	48
LP & Other Posts ⁽⁷⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁸⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	DFX	1	0.25	0.25	0.25	0.25	0.25

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Western Larch.

⁽³⁾ Includes Alaska Cedar.

⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.

⁽⁵⁾ Stumpage value per ton.

⁽⁶⁾ Stumpage value per cord.

⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁸⁾ Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.

⁽⁹⁾ Stumpage value per lineal foot.

**TABLE 7—Proposed Stumpage Value Table
Stumpage Value Area 7**
January 1 through June 30, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$296	\$289	\$282	\$275	\$268
Lodgepole Pine	LP	1	238	231	224	217	210
Ponderosa Pine	PP	1	285	278	271	264	257
		2	198	191	184	177	170
Western Redcedar ⁽³⁾	RC	1	596	589	582	575	568
True Firs and Spruce ⁽⁴⁾	WH	1	230	223	216	209	202
Western White Pine	WP	1	252	245	238	231	224
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles	RCL	1	632	625	618	611	604
Small Logs ⁽⁵⁾	SML	1	32	31	30	29	28
Chipwood ⁽⁵⁾	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks ⁽⁶⁾	RCF	1	76	69	62	55	48
LP & Other Posts ⁽⁷⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁸⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	DFX	1	0.25	0.25	0.25	0.25	0.25

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Western Larch.
⁽³⁾ Includes Alaska Cedar.
⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
⁽⁵⁾ Stumpage value per ton.
⁽⁶⁾ Stumpage value per cord.
⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁸⁾ Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
⁽⁹⁾ Stumpage value per lineal foot.

**TABLE 8—Proposed Stumpage Value Table
Stumpage Value Area 10**
January 1 through June 30, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$575	\$568	\$561	\$554	\$547
		2	448	441	434	427	420
		3	429	422	415	408	401
		4	313	306	299	292	285
Lodgepole Pine	LP	1	238	231	224	217	210
Ponderosa Pine	PP	1	285	278	271	264	257
		2	198	191	184	177	170
Western Redcedar ⁽³⁾	RC	1	722	715	708	701	694
Western Hemlock ⁽⁴⁾	WH	1	324	317	310	303	296
		2	324	317	310	303	296
		3	324	317	310	303	296
		4	324	317	310	303	296
Red Alder	RA	1	705	698	691	684	677
		2	633	626	619	612	605
Black Cottonwood	BC	1	43	36	29	22	15
Other Hardwood	OH	1	167	160	153	146	139
Douglas-Fir Poles & Piles	DFL	1	760	753	746	739	732
Western Redcedar Poles	RCL	1	1370	1363	1356	1349	1342
Chipwood ⁽⁵⁾	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Western Larch.
⁽³⁾ Includes Alaska Cedar.
⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
⁽⁵⁾ Stumpage value per ton.
⁽⁶⁾ Stumpage value per cord.
⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁸⁾ Stumpage value per lineal foot.
⁽⁹⁾ Stumpage value per lineal foot.

**TABLE 1—Proposed Stumpage Value Table
Stumpage Value Area 1**
July 1 through December 31, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$504	\$497	\$490	\$483	\$476
		2	330	323	316	309	302
		3	330	323	316	309	302
		4	316	309	302	295	288
Western Redcedar ⁽²⁾	RC	1	676	669	662	655	648
Western Hemlock ⁽³⁾	WH	1	265	258	251	244	237
		2	265	258	251	244	237
		3	265	258	251	244	237
		4	265	258	251	244	237
Red Alder	RA	1	706	699	692	685	678
		2	637	630	623	616	609
Black Cottonwood	BC	1	29	22	15	8	1
Other Hardwood	OH	1	174	167	160	153	146
Douglas-Fir Poles & Piles	DFL	1	698	691	684	677	670
Western Redcedar Poles	RCL	1	1353	1346	1339	1332	1325
Chipwood ⁽⁴⁾	CHW	1	8	7	6	5	4
RC Shake & Shingle Blocks ⁽⁵⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Alaska-Cedar.
⁽³⁾ Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.
⁽⁴⁾ Stumpage value per ton.
⁽⁵⁾ Stumpage value per cord.
⁽⁶⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁷⁾ Stumpage value per lineal foot.

**TABLE 2—Proposed Stumpage Value Table
Stumpage Value Area 2**
July 1 through December 31, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$568	\$561	\$554	\$547	\$540
		2	383	376	369	362	355
		3	374	367	360	353	346
		4	285	278	271	264	257
Western Redcedar ⁽²⁾	RC	1	676	669	662	655	648
Western Hemlock ⁽³⁾	WH	1	311	304	297	290	283
		2	311	304	297	290	283
		3	286	279	272	265	258
		4	286	279	272	265	258
Red Alder	RA	1	706	699	692	685	678
		2	637	630	623	616	609
Black Cottonwood	BC	1	29	22	15	8	1
Other Hardwood	OH	1	174	167	160	153	146
Douglas-Fir Poles & Piles	DFL	1	698	691	684	677	670
Western Redcedar Poles	RCL	1	1353	1346	1339	1332	1325
Chipwood ⁽⁴⁾	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks ⁽⁵⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Alaska-Cedar.
⁽³⁾ Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.
⁽⁴⁾ Stumpage value per ton.
⁽⁵⁾ Stumpage value per cord.
⁽⁶⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁷⁾ Stumpage value per lineal foot.

TABLE 3—Proposed Stumpage Value Table
Stumpage Value Area 3
 July 1 through December 31, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$528	\$521	\$514	\$507	\$500
		2	418	411	404	397	390
		3	418	411	404	397	390
		4	294	287	280	273	266
Western Redcedar ⁽³⁾	RC	1	676	669	662	655	648
Western Hemlock ⁽⁴⁾	WH	1	291	284	277	270	263
		2	291	284	277	270	263
		3	277	270	263	256	249
		4	277	270	263	256	249
Red Alder	RA	1	706	699	692	685	678
		2	637	630	623	616	609
Black Cottonwood	BC	1	29	22	15	8	1
Other Hardwood	OH	1	174	167	160	153	146
Douglas-Fir Poles & Piles	DFL	1	698	691	684	677	670
Western Redcedar Poles	RCL	1	1353	1346	1339	1332	1325
Chipwood ⁽⁵⁾	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Western Larch.
⁽³⁾ Includes Alaska-Cedar.
⁽⁴⁾ Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.
⁽⁵⁾ Stumpage value per ton.
⁽⁶⁾ Stumpage value per cord.
⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁸⁾ Stumpage value per lineal foot.

TABLE 4—Proposed Stumpage Value Table
Stumpage Value Area 4
 July 1 through December 31, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$450	\$443	\$436	\$429	\$422
		2	423	416	409	402	395
		3	423	416	409	402	395
		4	295	288	281	274	267
Lodgepole Pine	LP	1	172	165	158	151	144
Ponderosa Pine	PP	1	177	170	163	156	149
		2	121	114	107	100	93
Western Redcedar ⁽³⁾	RC	1	676	669	662	655	648
Western Hemlock ⁽⁴⁾	WH	1	299	292	285	278	271
		2	299	292	285	278	271
		3	299	292	285	278	271
		4	299	292	285	278	271
Red Alder	RA	1	706	699	692	685	678
		2	637	630	623	616	609
Black Cottonwood	BC	1	29	22	15	8	1
Other Hardwood	OH	1	174	167	160	153	146
Douglas-Fir Poles & Piles	DFL	1	698	691	684	677	670
Western Redcedar Poles	RCL	1	1353	1346	1339	1332	1325
Chipwood ⁽⁵⁾	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Western Larch.
⁽³⁾ Includes Alaska-Cedar.
⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
⁽⁵⁾ Stumpage value per ton.
⁽⁶⁾ Stumpage value per cord.
⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁸⁾ Stumpage value per lineal foot.

**TABLE 5—Proposed Stumpage Value Table
Stumpage Value Area 5**
July 1 through December 31, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$668	\$661	\$654	\$647	\$640
		2	384	377	370	363	356
		3	383	376	369	362	355
		4	294	287	280	273	266
Lodgepole Pine	LP	1	172	165	158	151	144
Ponderosa Pine	PP	1	177	170	163	156	149
		2	121	114	107	100	93
Western Redcedar ⁽³⁾	RC	1	676	669	662	655	648
Western Hemlock ⁽⁴⁾	WH	1	286	279	272	265	258
		2	286	279	272	265	258
		3	268	261	254	247	240
		4	268	261	254	247	240
Red Alder	RA	1	706	699	692	685	678
		2	637	630	623	616	609
Black Cottonwood	BC	1	29	22	15	8	1
Other Hardwood	OH	1	174	167	160	153	146
Douglas-Fir Poles & Piles	DFL	1	698	691	684	677	670
Western Redcedar Poles	RCL	1	1353	1346	1339	1332	1325
Chipwood ⁽⁵⁾	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Western Larch.
⁽³⁾ Includes Alaska-Cedar.
⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
⁽⁵⁾ Stumpage value per ton.
⁽⁶⁾ Stumpage value per cord.
⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁸⁾ Stumpage value per lineal foot.

**TABLE 6—Proposed Stumpage Value Table
Stumpage Value Area 6**
July 1 through December 31, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$224	\$217	\$210	\$203	\$196
Lodgepole Pine	LP	1	172	165	158	151	144
Ponderosa Pine	PP	1	177	170	163	156	149
		2	121	114	107	100	93
Western Redcedar ⁽³⁾	RC	1	664	657	650	643	636
True Firs and Spruce ⁽⁴⁾	WH	1	196	189	182	175	168
Western White Pine	WP	1	239	232	225	218	211
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles	RCL	1	664	657	650	643	636
Small Logs ⁽⁵⁾	SML	1	30	29	28	27	26
Chipwood ⁽⁵⁾	CHW	1	9	8	7	6	5
RC Shake & Shingle Blocks ⁽⁶⁾	RCF	1	76	69	62	55	48
LP & Other Posts ⁽⁷⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁸⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	DFX	1	0.25	0.25	0.25	0.25	0.25

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Western Larch.
⁽³⁾ Includes Alaska-Cedar.
⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
⁽⁵⁾ Stumpage value per ton.
⁽⁶⁾ Stumpage value per cord.
⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁸⁾ Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
⁽⁹⁾ Stumpage value per lineal foot.

TABLE 7—Proposed Stumpage Value Table
Stumpage Value Area 7
 July 1 through December 31, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$224	\$217	\$210	\$203	\$196
Lodgepole Pine	LP	1	172	165	158	151	144
Ponderosa Pine	PP	1	177	170	163	156	149
		2	121	114	107	100	93
Western Redcedar ⁽³⁾	RC	1	664	657	650	643	636
True Firs and Spruce ⁽⁴⁾	WH	1	196	189	182	175	168
Western White Pine	WP	1	239	232	225	218	211
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles	RCL	1	664	657	650	643	636
Small Logs ⁽⁵⁾	SML	1	30	29	28	27	26
Chipwood ⁽⁵⁾	CHW	1	9	8	7	6	5
RC Shake & Shingle Blocks ⁽⁶⁾	RCF	1	76	69	62	55	48
LP & Other Posts ⁽⁷⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁸⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	DFX	1	0.25	0.25	0.25	0.25	0.25

- ⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- ⁽²⁾ Includes Western Larch.
- ⁽³⁾ Includes Alaska-Cedar.
- ⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
- ⁽⁵⁾ Stumpage value per ton.
- ⁽⁶⁾ Stumpage value per cord.
- ⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
- ⁽⁸⁾ Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
- ⁽⁹⁾ Stumpage value per lineal foot.

TABLE 8—Proposed Stumpage Value Table
Stumpage Value Area 10
 July 1 through December 31, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$436	\$429	\$422	\$415	\$408
		2	409	402	395	388	381
		3	409	402	395	388	381
		4	281	274	267	260	253
Lodgepole Pine	LP	1	172	165	158	151	144
Ponderosa Pine	PP	1	177	170	163	156	149
		2	121	114	107	100	93
Western Redcedar ⁽³⁾	RC	1	662	655	648	641	634
Western Hemlock ⁽⁴⁾	WH	1	285	278	271	264	257
		2	285	278	271	264	257
		3	285	278	271	264	257
		4	285	278	271	264	257
Red Alder	RA	1	692	685	678	671	664
		2	623	616	609	602	595
Black Cottonwood	BC	1	15	8	1	1	1
Other Hardwood	OH	1	160	153	146	139	132
Douglas-Fir Poles & Piles	DFL	1	684	677	670	663	656
Western Redcedar Poles	RCL	1	1339	1332	1325	1318	1311
Chipwood ⁽⁵⁾	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

- ⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- ⁽²⁾ Includes Western Larch.
- ⁽³⁾ Includes Alaska-Cedar.
- ⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
- ⁽⁵⁾ Stumpage value per ton.
- ⁽⁶⁾ Stumpage value per cord.
- ⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
- ⁽⁸⁾ Stumpage value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

(a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.

(b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.

(c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50%) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.) over 2 acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber**—Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber**—Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from ((January)) July 1 through ((June 30)) December 31, 2008:

**TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, 5, and 10
((January)) July 1 through ((June 30)) December 31, 2008**

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of 30 thousand board feet or more per acre.	\$0.00

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	- \$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	- \$35.00
II. Logging conditions		
Class 1	Ground based logging a majority of the unit using tracked or wheeled vehicles or draft animals.	\$0.00
Class 2	Cable logging a majority of the unit using an overhead system of winch driven cables.	- \$((30.00)) <u>50.00</u>
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	- \$145.00
III. Remote island adjustment:		
	For timber harvested from a remote island	- \$50.00
IV. Thinning		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	-\$100.00

**TABLE 10—Harvest Adjustment Table
Stumpage Value Areas 6 and 7
((January)) July 1 through ((June 30)) December 31, 2008**

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00
Class 2	Harvest of 8 thousand board feet per acre and less.	- \$8.00
II. Logging conditions		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	- \$((20.00)) <u>50.00</u>
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	- \$((30.00)) <u>75.00</u>
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	- \$145.00
Note:	A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.	
III. Remote island adjustment:		
	For timber harvested from a remote island	- \$50.00

TABLE 11—Domestic Market Adjustment

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 1:	SVA's 1 through 6, and 10	\$0.00
Class 2:	SVA 7	\$0.00

Note: The adjustment will not be allowed on special forest products.

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

Date of Intended Adoption: June 25, 2008.

Submit Written Comments to: Dannie McQueen, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARule-sComments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m. on June 12, 2008.

Assistance for Persons with Disabilities: Contact WSDA receptionist by June 4, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department filed two emergency rules to address entry, health, and testing requirements for domestic cattle from outside the United States and cattle used for rodeo or timed events (WSR 08-07-059 and 07-19-068). This rule making proposes to adopt these emergency rules as a permanent rule. In addition, the department has proposed language regarding bovine trichomoniasis testing requirements and to clarify entry requirements for game birds.

Reasons Supporting Proposal: These rule amendments are necessary to prevent the spread of infectious and communicable diseases in Washington livestock.

Statutory Authority for Adoption: RCW 16.36.040 and chapter 34.05 RCW.

Statute Being Implemented: RCW 16.36.040.

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

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

Name of Agency Personnel Responsible for Drafting and Implementation: Paul Kohrs, DVM, Olympia, (360) 902-1835; and Enforcement: Leonard E. Eldridge, DVM, Olympia, (360) 902-1881.

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

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

May 6, 2008

Leonard E. Eldridge, DVM
State Veterinarian

WSR 08-10-086

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed May 6, 2008, 5:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-21-151.

Title of Rule and Other Identifying Information: Chapter 16-54 WAC, Animal importation.

Hearing Location(s): Natural Resources Building, 1111 Washington Street S.E., Second Floor, Conference Room 259, Olympia, WA 98504, on June 11, 2008, at 2:00 p.m.

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-010 Definitions. In addition to the definitions found in RCW 16.36.005, the following definitions apply to this chapter:

"Accredited free state" means a state that has been determined by United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) to have a zero prevalence of cattle and bison herds affected with bovine tuberculosis as listed in Title 9 CFR Part 77.79 (January 1, 2006).

"Approved veterinary laboratory" means a laboratory that has been approved by National Veterinary Services Laboratories.

"Certificate of veterinary inspection" means a legible veterinary health inspection certificate on an official form (electronic or paper) from the state of origin or from APHIS, USDA executed by a licensed and accredited veterinarian or a veterinarian approved by APHIS, USDA. The certificate of veterinary inspection is also known as an "official health certificate."

"Class free and Class A, B, and C states" means states that are classified for brucellosis by USDA, APHIS in Title 9 CFR Part 78.41 (January 1, 2006).

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

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

"Domestic bovine" means domesticated cattle, including bison.

"Domestic equine" means horses, donkeys, mules, ponies, and other animals in the *Equidae* family.

"Entry permit" means prior written permission issued by the director to admit or import animals or animal reproductive products into Washington state.

"Exotic animal" means species of animals that are not native to Washington state but exist elsewhere in the world in the wild state.

"Immediate slaughter" means livestock will be delivered to a federally inspected slaughter plant within three days of entry into Washington state.

"Mature vaccinate" means a female bovine over the age of twelve months that has been vaccinated, under directions issued by the state of origin, with a mature dose of brucellosis vaccine.

"Modified accredited state" means a state that has been determined by USDA, APHIS to have a prevalence of bovine tuberculosis of less than 0.1 percent of the total number of herds of cattle and bison as listed in Title 9 CFR Part 77.11 (January 1, 2006).

"Movement permit" means an entry permit that is valid for six months and permits the entry of domestic equine into Washington state.

"NPIP" means the National Poultry Improvement Plan.

"Official brucellosis test" means the official test defined by Title 9 CFR Part 78.1 (January 1, 2006).

"Official brucellosis vaccinate" means an official adult vaccinate or official calthood vaccinate as defined by Title 9 CFR Part 78.1 (January 1, 2006).

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

"Poultry" means chickens, turkeys, ratites, waterfowl, game birds, pigeons, doves, and other domestic fowl designated by statute. Poultry does not mean free ranging birds defined as wildlife in RCW 77.08.010(16).

"Restricted feedlot" means a feedlot holding a permit issued under chapter 16-30 WAC.

"Stage I, II, III, IV, or V pseudorabies state" means states as classified by the Pseudorabies Eradication State-Federal-Industry Program Standards (November 1, 2003).

"USDA, APHIS" means the United States Department of Agriculture Animal and Plant Health Inspection Service.

"Virgin bull" means a sexually active male bovine less than twelve months of age or a sexually intact male bovine between twelve and twenty-four months of age that is certified by the owner or the owner's designee as having had no breeding contact with female cattle.

"Wild animals" is defined in RCW 77.08.010(17).

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-030 Certificate of veterinary inspection, and entry permit requirements. (1) Certificate of veterinary inspection:

(a) A certificate of veterinary inspection must accompany all animals entering Washington state, except where specifically exempted in this chapter. Certificates of veterinary inspection expire thirty days from the date of issuance.

(b) The certificate of veterinary inspection must show that all livestock listed have been examined and found in compliance with vaccination, testing, and Washington animal identification requirements found in chapter 16-610 WAC.

(c) Any exemption to the requirement for a certificate of veterinary inspection may be suspended during an emergency disease condition declared by the director.

(2) **Entry permit:** An entry permit is required on:

(a) All domestic bovine (including Mexican cattle, Canadian cattle, and bison);

(b) Swine;

(c) Rams;

(d) Equine identified on a certificate similar to the Washington Equine Certificate of Veterinary Inspection and Movement Permit (form AGR-3027);

(e) Equine from states or countries where the diseases listed in WAC 16-54-071 have been diagnosed;

(f) Intact male equine that test positive to equine viral arteritis; and

(g) Equine reproductive products from donors that test positive to equine viral arteritis.

(3) Entry permits are granted at the discretion of the director and may be obtained from:

Washington State Department of Agriculture
Animal Services Division
1111 Washington Street S.E.
P.O. Box 42577
Olympia, Washington 98504-2577
360-902-1878.

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-032 Certificate of veterinary inspection—Required information. (1) A certificate of veterinary inspection must contain the following information:

- (a) An entry permit, when required, that includes the physical addresses of the premises of origin and destination;
- (b) Date of inspection;
- (c) Names and addresses of the consignor and consignee;
- (d) Shipment information, including:
 - (i) Origin of shipment;
 - (ii) Anticipated shipment date; and
 - (iii) Number of animals in the shipment;
- (e) Certification that the animals are free from clinical signs or known exposure to any infectious or communicable disease;
- (f) Test or vaccination status, when required;
- (g) Description of each animal by:
 - (i) Identifying species;
 - (ii) Breed;
 - (iii) Age;
 - (iv) Sex of the animal;
 - (v) Color; and
 - (vi) Tag, tattoo, microchip, USDA-approved RFID (radio frequency identification device) ear tag, or other official method of identification, including ownership brands.
- (2) All certificates of veterinary inspection must be reviewed by the animal health official of the state of origin and a copy must be immediately forwarded to:

Washington State Department of Agriculture
 Animal Services Division
 1111 Washington Street S.E.
 P.O. Box 42577
 Olympia, Washington 98504-2577.

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-071 Domestic equine and equine reproductive products—Importation requirements. Import health requirements.

- (1)(a) In addition to the other requirements of this chapter, all horses, donkeys, mules, and other domestic equine and equine reproductive products entering Washington state must be accompanied by a certificate of veterinary inspection.
- (b) Equine vaccinated against equine viral arteritis (EVA) must be accompanied by a vaccination certificate.
- (c) Reproductive products from donors that test positive for EVA must be accompanied by an application and entry permit.
- (d) Domestic equine from the western states of Oregon, Idaho, California, Nevada, Utah, Arizona, Montana, Wyoming, Colorado, and New Mexico may enter Washington state for shows, rides, or other events either with a certificate of veterinary inspection or with a document similar to the Equine Certificate of Veterinary Inspection and Movement Permit. Individual trips cannot exceed ninety days.
- (e) An itinerary of interstate travel must be filed with the department within fourteen days of the expiration of the movement permit.
- (2) All certificates and forms may be obtained from and sent to:

Washington State Department of Agriculture
 Animal Services Division
 1111 Washington Street S.E.
 P.O. Box 42577
 Olympia, Washington 98504-2577

Exemptions to import health requirements.

- (3) Horses traveling into Washington state with their Oregon or Idaho owners in private conveyance for round-trip visits of not more than four days duration for purposes other than breeding are exempt from the certificate of veterinary inspection.

Import test requirements.

Equine infectious anemia (EIA).

- (4) All domestic equine, except foals under six months of age accompanying their negative tested dams, must have a negative test for equine infectious anemia (EIA) within ~~((six))~~ twelve months before entering Washington state.

Exemptions to EIA test requirements.

- (5) Domestic equine moving to Washington from Oregon are excluded from EIA test requirements.

Equine viral arteritis (EVA).

- (6) Intact males over six months of age must test antibody negative for EVA within thirty days before entry into Washington state or have proof of vaccination.

- (7) Vaccinated equine that test antibody positive for EVA must be accompanied by a certificate of veterinary inspection that provides proof of:

- (a) A prevaccination negative antibody blood test;
- (b) Vaccination within ten days of the prevaccination blood test; and
- (c) Approved method of animal identification. Approved methods of identification are:

- (i) Photograph or clearly drawn picture of the animal (both sides and front);
- (ii) Brand (hot iron or freeze brand);
- (iii) Microchip; and/or
- (iv) Lip tattoo.

- (8) Intact males over six months of age and equine reproductive products from donors that test positive for EVA may enter Washington state only if accompanied by an entry permit and a statement on the certificate of veterinary inspection verifying that the consignee:

- (a) Has been advised of the positive antibody test results and the associated risks of EVA infection;
- (b) Agrees to follow the recommendations of the Office International des Epizooties of the World Organization of Animal Health regarding EVA and USDA recommendations found in the *Equine Viral Arteritis Uniform Methods and Rules*, effective April 19, 2004; and
- (c) Consents to the shipment.

- (9) Intact males that test antibody positive for EVA are required to have an entry permit and may be subject to quarantine.

- (10) Equine semen and embryos must originate from donors that have proof of vaccination or a negative antibody test for EVA during the current breeding season.

- (11) Equine semen and embryos from antibody positive donors must be used or implanted only in vaccinated or seropositive mares. These mares must be isolated for twenty-one days following insemination or implantation.

(12) Additional testing for EVA may be required during emergency disease conditions declared by the director.

Piroplasmiasis.

(13) Any equine that has ever tested positive for piroplasmiasis may not enter Washington state.

(14) Any equine that has originated from a country or state where piroplasmiasis is endemic must be negative to a C-ELISA test within thirty days before entry into Washington state, and must be quarantined upon arrival and retested within sixty to ninety days. Horses that test positive on the post-arrival C-ELISA test are not permitted to remain in the state and must be removed.

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-082 Domestic bovine animals—Importation requirements. Import health requirements.

(1) Domestic bovine entering Washington state must have a certificate of veterinary inspection and an entry permit issued by the office of the state veterinarian prior to entry. Entry permits are required on all feeder cattle entering restricted feedlots and are to be obtained by the brand inspector of the state of origin and recorded on the brand document.

(2) Before entering Washington state, Canadian cattle, including calves, must be identified on the right hip by a "CAN" brand (C open-A N).

Exemptions to import health requirements.

~~((2))~~ (3) A certificate of veterinary inspection is not required for domestic bovine that are:

- (a) Consigned to federally inspected slaughter plants for immediate slaughter; or
- (b) Consigned to state-federal approved livestock markets for sale for immediate slaughter only; or
- (c) Consigned to specifically approved livestock markets or restricted holding facilities where import requirements can be met; or
- (d) Consigned to a restricted feedlot.

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-083 Domestic and foreign bovine brucellosis requirements. (1) Female cattle, domestic and foreign, must have an official calfhood brucellosis vaccination and legible vaccination tattoo before entry into Washington state.

(a) Cattle vaccinated with strain 19 vaccine must be permanently identified with a tattoo in the right ear that must bear the USDA registered V shield preceded by a number indicating the quarter of the year in which they were vaccinated, followed by the last digit of the year of vaccination.

(b) Cattle vaccinated with RB-51 strain of vaccine must be permanently identified with a tattoo in the right ear that must bear the USDA registered V shield preceded by the letter R followed by the last digit of the year of vaccination.

(c) Brucellosis vaccinated cattle from foreign countries must present original vaccination certificates. On arrival, the cattle must be tattooed with the USDA V shield and the year indicated on the vaccination certificate.

(2) Mature vaccinated domestic bovine that are identified by a legible vaccination tattoo and USDA vaccination and USDA identification tags will be allowed entry into Washington state if the state of origin allows mature vaccination and is of the same brucellosis class or higher.

(3)(a) Test eligible dairy cattle from all states and all cattle from Class A states must be tested negative for bovine brucellosis within thirty days before entry.

(b) Beef cattle from selected brucellosis free states designated by the director may be required to have a negative test thirty days before entry.

(c) Test eligible bovine are bulls over six months of age, brucellosis vaccinated dairy females over twenty months of age, and brucellosis vaccinated beef breed females over twenty-four months of age.

(4) All animals must be identified by USDA approved official identification.

Exemptions to domestic bovine brucellosis test and vaccination requirements.

(5) Domestic bovine that are exempt from brucellosis testing and vaccination requirements are:

- (a) Those cattle from a class free state consigned to restricted feedlots;
- (b) Those consigned to federally inspected slaughter plants for immediate slaughter;
- (c) Heifer calves less than four months of age;
- (d) Slaughter only dairy breed cattle from Oregon, Idaho, and Montana that are consigned to a state-federal approved livestock market;
- (e) Bull calves less than six months of age;
- (f) Steers and spayed heifers;
- (g) Official brucellosis vaccinated dairy cattle less than twenty months of age;
- (h) Official brucellosis vaccinated beef cattle less than twenty-four months of age;
- (i) Cattle from a certified brucellosis free herd, as defined by Title 9 CFR Part 78.1; and
- (j) Test eligible beef breed cattle and dairy cattle that are consigned to a state or federally approved livestock market to meet entry testing requirements. Heifer calves between four and twelve months of age may be consigned to a state-federal approved sale yard where they will remain until meeting vaccination requirements.

(6) Cattle that have not met the department's brucellosis requirements may enter, with approval from the director, a restricted holding facility in Washington state until testing and vaccination requirements have been met. The restricted holding facility must be approved by the director and operated in accordance with a written agreement between the facility owner and the director. The restricted holding facility must be maintained and all inspections, testing, and vaccination done at the owner's expense.

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-085 Domestic bovine tuberculosis requirements. (1) All domestic bovine from a modified accredited advanced or lower state must have a negative TB test within sixty days before entry into Washington state.

Domestic bovine from a modified accredited or lower state shall be held separate and apart from native cattle for sixty days and retested negative at least sixty days after entry into Washington state.

(2) **Dairy cattle six months of age or older** must:

(a) Test negative for bovine tuberculosis within sixty days before entering Washington state; and

(b) Be identified with a USDA silver identification ear tag, or a USDA-approved RFID tag, or an orange brucellosis vaccination tag.

(3) **Dairy heifers and bull calves less than six months of age** must:

(a) Be issued a hold order or a quarantine order that requires the animals to be taken directly to a designated premises or facility;

(b) Be held separate and apart from all other domestic bovine until they test negative for bovine tuberculosis after six months of age; and

(c) Be identified with a USDA silver identification ear tag, or a USDA-approved RFID tag, or an orange brucellosis vaccination tag.

(4) **Cattle used for rodeo or timed events.**

(a) All cattle used for rodeo or timed events, except those imported directly from Mexico, must be accompanied by proof recorded on a certificate of veterinary inspection of a negative bovine tuberculosis test within twelve months before entry into Washington state.

(b) Calves under six months old that were born and have continuously resided in the state of Washington are excluded from this requirement.

(5) **Mexican cattle** - All cattle imported from Mexico that enter Washington, including those imported for rodeo or recreation purposes, must be sexually neutered and must bear official Mexican identification and brand before entry.

(a) All Mexican cattle must be accompanied by proof of two negative bovine tuberculosis tests conducted in the United States after entry from Mexico. The second negative test must be a minimum of sixty days after the first test and within thirty days before entry into Washington state.

(b) All Mexican cattle that remain in the state of Washington shall be tested annually for tuberculosis.

(c) If Mexican cattle entering Washington state are not accompanied by proof of two negative bovine tuberculosis tests prior to entry, they will be issued a hold order or a quarantine order that requires the animals to be taken directly to a designated premises or facility and kept separate and apart from Washington cattle until the completion of required tests.

(d) Sexually intact Mexican beef cattle may enter only with a prior entry permit and at the discretion of the director.

Exemptions to domestic bovine tuberculosis test requirements.

~~((5))~~ (6) **Dairy cattle** are exempt from bovine tuberculosis testing requirements if they:

(a) Originate from an accredited bovine tuberculosis-free herd, as defined by USDA, APHIS in Title 9 CFR Chapter 1 Part 77 (January 1, 2006), and if an accredited herd number and the date of the last bovine tuberculosis test are shown on the certificate of veterinary inspection;

(b) Are consigned to federally inspected slaughter plants for immediate slaughter; or

(c) Are consigned to slaughter through state and federally approved sale yards and remain in slaughter channels.

~~((6) Adult dairy cows from Oregon and Idaho)~~ (7)(a) Cattle that have not met the department's ~~((brucellosis and))~~ tuberculosis requirements may enter, with approval from the director, a ~~((WSDA approved brucellosis/tuberculosis))~~ restricted holding facility in Washington state until testing requirements have been met.

~~((7))~~ (b) The restricted holding facility must be approved by the director and operated in accordance with a written agreement between the facility owner and the director.

(c) The restricted holding facility must be maintained and all inspections and testing done at the owner's expense.

(8) **Dairy steers and spayed heifers** are exempt from bovine tuberculosis testing requirements before entry into Washington state if they are entering restricted feedlots to be fed for slaughter.

~~((8))~~ (9) **Mexican cattle** are exempt from the second bovine tuberculosis test and isolation requirements if their official Mexican identification remains intact and they are consigned to a federally inspected slaughter plant for immediate slaughter.

NEW SECTION

WAC 16-54-086 Bovine trichomoniasis requirements. (1) **Breeding bulls** may be imported into the state of Washington if they meet the following requirements:

(a) The bulls originate from a herd wherein all bulls have tested negative for bovine trichomoniasis since they were removed from female cattle; and

(b) The bulls have tested negative to a bovine trichomoniasis culture test within thirty days before import and have had no contact with female cattle from the time of the test to the time of import; or

(c) If the bulls originate from a herd where one or more bulls or cows have been found infected with bovine trichomoniasis **within the past twelve months**, the bulls must have three consecutive negative bovine trichomoniasis culture tests one week apart or one negative polymerase chain reaction (PCR) test. The samples for each test must be collected within thirty days before cattle are imported into Washington state, and an import permit must be obtained from the director and include a certifying statement that the bulls originated from an infected herd.

(2) Before arrival at their destination in Washington state, all imported bulls must be identified with official identification or an official trichomoniasis bangle tag.

(3) Bulls that enter Washington state without meeting the bovine trichomoniasis requirements of this section will be quarantined at the owner's expense until they have had three consecutive negative bovine trichomoniasis culture tests one week apart or one negative PCR test.

(4)(a) Any bull or cow that is positive to a trichomoniasis culture test, and any herd in which one or more bulls or cows are found infected with trichomoniasis is considered infected.

(b) In the case of bulls testing positive to trichomoniasis, the herd shall be quarantined pending an epidemiological

investigation to determine the source of the infection, and as long as infection persists in the herd.

(c) Infected bulls will be quarantined and will not be used for breeding. They must be slaughtered, sold for slaughter, or sent to a restricted feedlot to remain in slaughter channels.

(5) **Certification and proficiency testing and types of tests.** The state veterinarian will determine trichomoniasis training for veterinarians and laboratories, and the types of tests used to determine trichomoniasis infection.

(a) Only veterinarians registered with WSDA shall collect samples for official tests for trichomoniasis. Prior to being granted registered status, all veterinarians who will collect samples for trichomoniasis testing shall attend an educational seminar conducted by the animal services division on trichomoniasis and proper sample collection techniques.

(b) Registered veterinarians shall only utilize official laboratories recognized by the state veterinarian for culture of trichomoniasis samples.

(c) Registered veterinarians shall submit results of all trichomoniasis tests and all official identification on official trichomoniasis test and report forms to the animal services division within five business days of receiving test results from an official laboratory or identifying virgin bulls with official trichomoniasis bangle tags.

(d)(i) Polymerase chain reaction is accepted as an official test when completed by a qualified laboratory approved by the director and when the sample is received by the laboratory within forty-eight hours of collection.

(ii) Other tests for trichomoniasis may be approved as official tests by the state veterinarian after the tests have been proven effective by research, have been evaluated sufficiently to determine efficacy, and a protocol for use of the test has been established.

(iii) An official test is one in which the sample is received in the official laboratory in good condition within forty-eight hours of collection. Samples in transit for more than forty-eight hours will not be accepted for official testing and must be discarded. Samples that have been frozen or exposed to high temperatures must also be discarded.

Exemptions to bovine trichomoniasis test requirements.

(6) **Virgin bulls** are exempt from bovine trichomoniasis test requirements. If sold, virgin bulls must be accompanied by a certificate signed by the owner or the owner's designee that they have had no breeding contact with female cattle.

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-111 Swine—Importation and testing requirements. Import health requirements.

(1) All swine entering Washington state must be accompanied by an entry permit, a certificate of veterinary inspection, and official USDA approved identification.

(2) Feral swine are prohibited in Washington state.

Import test requirements.

~~((2))~~ (3) **Brucellosis.** All intact male and intact female swine more than six months of age must be tested negative for brucellosis within thirty days before entering Washington

state or must originate from a USDA validated brucellosis free herd or state (Swine Brucellosis Control/Eradication State-Federal-Industry Uniform Methods and Rules, April, 1998).

~~((3))~~ (4) **Pseudorabies.** No test is required from states recognized as Stage IV or Stage V by Pseudorabies Eradication State-Federal-Industry Program Standards, November 1, 2003.

~~((4))~~ (5) A negative pseudorabies test within thirty days before entry is required for swine from any state or area that loses Stage IV or Stage V status.

Exemptions to import test requirements.

~~((5))~~ (6) Swine shipped directly to a federally inspected slaughter plant for immediate slaughter are exempt from testing requirements.

Swine semen and embryos.

~~((6))~~ (7)(a) Swine semen and swine embryos entering Washington state for insemination of swine or implantation into swine shall be accompanied by a certificate of veterinary inspection issued by an accredited veterinarian stating that the donor swine are not known to be infected with or exposed to pseudorabies, were negative to an official pseudorabies serologic test within thirty days prior to the collection of the semen or embryos or were members of a qualified pseudorabies negative herd, and had not been exposed to pseudorabies within thirty days prior to the collection of the semen or embryos.

(b) Brucellosis testing is not required on donor swine from brucellosis validated free states.

(c) Pseudorabies testing is not required on donor swine from pseudorabies Stage IV or Stage V states.

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-145 Poultry and game birds, including ratites—Importation and testing requirements. Import health requirements.

(1) All poultry and game birds, including ratites, imported into Washington state must be accompanied by a certificate of veterinary inspection.

(a) USDA VS form 17-6 (Certificate for Poultry or Hatching Eggs for Export) will be accepted in lieu of the certificate of veterinary inspection.

(b) For hatching eggs and baby poultry, a USDA NPIP VS form 9-3 (Report of Sales of Hatching Eggs, Chicks, and Poults) may be used in lieu of the certificate of veterinary inspection.

(c) The certificate of veterinary inspection must include either the NPIP number or negative results of the required tests.

(2) Poultry or hatching eggs must originate from flocks or areas not under state or federal restriction.

(3) Each ratite entering Washington state must be permanently identified with USDA approved identification. The type of identification must be listed on the certificate of veterinary inspection.

Import test requirements.

(4) Poultry and game birds must:

WSR 08-10-088
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed May 6, 2008, 6:22 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Title 246 WAC, fees increases for secretary professions that the department of health regulates.

(a) Originate from an NPIP participant flock that has met classification requirements for pullorum-typhoid, *Salmonella* enteritidis, and avian influenza; or

(b) Test negative within thirty days before entering Washington for pullorum-typhoid, *S. enteritidis*, and avian influenza. Serum testing or NPIP member status is also required for the following species:

(i) Bobwhite quail (*Colinus virginianus*).

(ii) Coturnix quail (*Coturnix coturnix*).

(iii) Pure or hybrid Ring-necked pheasant (*Phasianus colchicus*).

(iv) Chukar (*Alectoris chukar*).

(v) Hungarian partridge (*Perdix perdix*).

(5) Hatching eggs must originate from an NPIP participant flock that has met classification requirements for the diseases listed in subsection (4)(a) of this section. If the parent breeder flock is not an NPIP participant, the parent birds must be tested for the above diseases within thirty days before entry.

(6) Turkeys and wild turkeys, their poults, and eggs must originate from a producer who is participating in the mycoplasmosis control phase of the NPIP or must have been tested serologically negative for *M. gallisepticum* and *M. synoviae* within thirty days of entry.

Exemptions to import health requirements.

(7) Doves, pigeons, and poultry destined for immediate slaughter are exempt from the certificate of veterinary inspection and testing requirements.

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-160 Birds other than poultry—Importation and testing requirements. Import health requirements.

(1) All birds other than poultry entering Washington state require a certificate of veterinary inspection that contains the following statement:

"To the best of my knowledge, the birds listed on this certificate are not infected with exotic Newcastle disease, psittacosis, or avian influenza and have been free from clinical signs of or known exposure to infectious or communicable disease during the past thirty days."

(2) All birds must be individually identified with a numbered leg band or in a manner appropriate to the species.

Exemptions to import health requirements.

(3) Family pet birds are exempt from the certificate of veterinary inspection if they:

(a) Are two or less in number; and

(b) Have not been purchased within thirty days of entry into Washington state; and

(c) Are traveling by private conveyance with their owners.

Profession	WAC 246-xxx-990
Acupuncture	802
Chemical dependency counselors	811
Dental hygiene	815
Denturist	812
Health care assistants	826
Marriage and family therapist	809
Massage therapist *	830
Mental health counselor *	809
Naturopathic physician *	836
Nursing assistant	841
Radiologic technologist, X-ray technologist	926
Recreational therapy	927
Registered counselor	810
Respiratory therapy	928
Sex offender treatment provider and affiliate	930
Social worker *	809

* = Includes UW fee for online access

Hearing Location(s): Department of Health, 310 Israel Road S.E., Rooms 152/153, Tumwater, WA 98501, on June 10, 2008, at 2:30 p.m.

Date of Intended Adoption: June 30, 2008.

Submit Written Comments to: Bonnie King, P.O. Box 47860, Olympia, WA 98504-7860, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4626, by June 10, 2008.

Assistance for Persons with Disabilities: Contact Meghan Young by June 2, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules increase fees for the listed health care professions by the amount the legislature approved during the 2008 session as required by Initiative 960. Fees were temporarily reduced for most professions in July 2005. The proposed rules raise the fees back to a level that will cover the costs to regulate each profession. The proposed fees are authorized by the health professions and facility fees addendum DOH 2008 in the conference operating budget as referred by ESHB 2687. The proposed rules also remove fees that no longer exist, add a fee up to \$25 for certain professions for access to University of Washington online library (E2SSB 5930, chapter 259, Laws

of 2007), and change the denturist renewal cycle from two years to one year.

Reasons Supporting Proposal: RCW 43.70.250 requires that the department collect fees to pay the costs to regulate health care providers. It also requires that each profession is self-supporting. The costs to regulate health care providers is about \$27 million each year. Increases in regulatory activities based on legislation, court cases, and disciplinary actions makes it necessary for the department to increase fees. Without the fee increases, [the] program will not be able to remain in operation. These fees are critical to ensure patient safety.

Statutory Authority for Adoption: RCW 43.70.250, 43.70.110.

Statute Being Implemented: RCW 43.70.110.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bonnie King, 310 Israel Road S.E., Tumwater, WA, (360) 236-4995.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement (SBEIS) was not prepared. Under RCW 19.85.025 and 34.05.310 (4)(f), an SBEIS is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

May 5, 2008
Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-802-990 Acupuncture fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
License application	\$50.00
License renewal	90.00
Inactive license renewal	50.00
Late renewal penalty	50.00

Title of Fee	Fee
Expired license reissuance	50.00
Expired inactive license reissuance	50.00
Duplicate license	15.00
Certification of license	25.00
Acupuncture training program application	500.00
<u>UW library access fee</u>	<u>9.00</u>

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-809-990 Licensed mental health counselors, marriage and family therapists, and social workers—Fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

Title	Fee
(2) The following nonrefundable fees will be charged for licensed marriage and family therapist:	
Application	\$((50.00)) <u>150.00</u>
Initial license	((25.00)) <u>75.00</u>
Renewal	((83.00)) <u>170.00</u>
Late renewal penalty	((50.00)) <u>85.00</u>
Expired license reissuance	((50.00)) <u>85.00</u>
Duplicate license	10.00
Certification of license	10.00
(3) The following nonrefundable fees will be charged for licensed mental health counselor:	
Application	((25.00)) <u>125.00</u>
Initial license	((25.00)) <u>125.00</u>
Renewal	((29.00)) <u>130.00</u>
Late renewal penalty	((29.00)) <u>65.00</u>
Expired license reissuance	((29.00)) <u>65.00</u>
Duplicate license	10.00

Title	Fee
Certification of license	10.00
<u>UW library access fee</u>	<u>25.00</u>
(4) The following nonrefundable fees will be charged for licensed advanced social worker and licensed independent clinical social worker:	
Application	((25.00)) <u>125.00</u>
Initial license	((25.00)) <u>125.00</u>
Renewal	((42.00)) <u>145.00</u>
Late renewal penalty	((42.00)) <u>72.50</u>
Expired license reissuance	((42.00)) <u>72.50</u>
Duplicate license	10.00
Certification of license	10.00
<u>UW library access fee</u>	<u>25.00</u>

AMENDATORY SECTION (Amending WSR 06-08-106, filed 4/5/06, effective 5/6/06)

WAC 246-810-990 Counselors fees and renewal cycle. (1) Under chapter 246-12 WAC, Part 2, a counselor must renew his or her registration every year on the practitioner's birthday. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

Title	Fee
(2) The following nonrefundable fees will be charged for registered counselor:	
Application and registration	\$ ((40.00)) <u>130.00</u>
Renewal	((37.00)) <u>130.00</u>
Late renewal penalty	((37.00)) <u>65.00</u>
Expired registration reissuance	((37.00)) <u>65.00</u>
Duplicate registration	15.00
Certification of registration	15.00
<u>Return from mandated suspension</u>	<u>245.00</u>

(3) The following nonrefundable fees will be charged for registered hypnotherapist:

Title	Fee
Application and registration	95.00
Renewal	130.00
Late renewal penalty	65.00
Expired registration reissuance	65.00
Duplicate registration	15.00
Certification of registration	15.00

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-811-990 How often do I need to renew and what are the costs for certification? (1) Certificates must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged for certified chemical dependency professional:

Title of Fee	Fee
Application	\$((100.00)) <u>200.00</u>
Initial certification	((125.00)) <u>225.00</u>
Renewal	((125.00)) <u>230.00</u>
Renewal retired active	((62.50)) <u>115.00</u>
Late renewal retired active	((50.00)) <u>57.50</u>
Late renewal penalty	((62.50)) <u>115.00</u>
Expired certification reissuance	((62.50)) <u>115.00</u>
Duplicate certification	10.00
Certification of certificate	10.00
(Wall certificate	40.00))

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-812-990 Denturist fees and renewal cycle. (1) Licenses must be renewed every ((~~other~~)) year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the

costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application	\$ (1,000.00) <u>1,450.00</u>
Examination	1,500.00
Reexamination, written	500.00
Reexamination, practical	500.00
License renewal	((2,750.00)) <u>1,600.00</u>
Late renewal penalty	300.00
Expired license reissuance	300.00
Inactive license renewal	((1,500.00)) <u>750.00</u>
Expired inactive license reissuance	300.00
Duplicate license	15.00
Certification of license	25.00
Multiple location licenses	50.00

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-815-990 Dental hygiene fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application examination and reexamination . .	\$100.00
Renewal	((40.00)) <u>50.00</u>
Late renewal penalty	((40.00)) <u>50.00</u>
Expired license reissuance	((40.00)) <u>50.00</u>
Credentialing application	100.00
Limited license application	100.00
Limited license renewal	((40.00)) <u>50.00</u>

Title of Fee	Fee
Limited license late renewal penalty	((40.00)) <u>50.00</u>
Expired limited license reissuance	((40.00)) <u>50.00</u>
Duplicate license	15.00
Certification of license	25.00
Education program evaluation	200.00

AMENDATORY SECTION (Amending WSR 07-20-100, filed 10/2/07, effective 11/2/07)

WAC 246-826-990 Health care assistant fees and renewal cycle. (1) Certificates must be renewed every two years as provided in WAC 246-826-050 and chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) If a health care assistant who holds a current active credential leaves employment with a facility or practitioner and returns to employment with a facility or practitioner that previously employed the health care assistant, and more than two years has passed since that health care assistant's employment with the previous facility or practitioner ended, the health care assistant must complete a new credential application and pay the application fee. However, that health care assistant is not required to pay the late renewal penalty and the expired credential reissuance fee.

(3) The following nonrefundable fees will be charged:

Title of Fee	Fee
((First)) Initial certification	((60.00)) <u>105.00</u>
Renewal	((60.00)) <u>105.00</u>
Expired credential reissuance	((50.00)) <u>52.50</u>
Recertification	((60.00)) <u>100.00</u>
Late renewal penalty	((50.00)) <u>52.50</u>
Duplicate	15.00

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-830-990 Massage fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those

established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Written examination and reexamination	\$65.00
Practical examination and reexamination	50.00
Initial license	((50.00)) <u>90.00</u>
Renewal	((25.00)) <u>65.00</u>
Late renewal penalty	((25.00)) <u>50.00</u>
Expired license reissuance	((25.00)) <u>50.00</u>
Certification of license	10.00
Duplicate license	10.00
<u>Intraoral massage endorsement</u>	<u>25.00</u>
<u>UW library access fee</u>	<u>25.00</u>

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-836-990 Naturopathic physician licensing fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged:

Title of Fee	Amount
Application initial/retake	\$(25.00)) <u>100.00</u>
State examination (initial/retake)	((25.00)) <u>100.00</u>
Initial license	((25.00)) <u>100.00</u>
License renewal	((200.00)) <u>325.00</u>
Late renewal penalty	((100.00)) <u>62.50</u>

Title of Fee	Amount
Expired license reissuance	((100.00)) <u>62.50</u>
Duplicate license	15.00
Certification of license	15.00
((Application for reciprocity	25.00))
<u>UW library access fee</u>	<u>25.00</u>

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-841-990 Nursing assistant—Fees and renewal cycle. (1) Certificates and registrations must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged for registrations:

Title of Fee	Fee
Application - registration	\$(15.00)) <u>30.00</u>
Renewal of registration	((25.00)) <u>40.00</u>
Duplicate registration	10.00
Registration late penalty	((25.00)) <u>40.00</u>
Expired registration reissuance	((25.00)) <u>40.00</u>

(3) The following nonrefundable fees will be charged for certifications:

Title of Fee	Fee
Application for certification	((15.00)) <u>30.00</u>
Certification renewal	((25.00)) <u>40.00</u>
Duplicate certification	10.00
Certification late penalty	((25.00)) <u>40.00</u>
Expired ((registration)) <u>certification</u> reissuance	((25.00)) <u>40.00</u>

AMENDATORY SECTION (Amending WSR 06-01-104, filed 12/21/05, effective 1/21/06)

WAC 246-926-990 ((Radiological technologists)) Certification and registration fees and renewal cycle. (1)

Certificates and registrations must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The practitioner must pay the following nonrefundable fees:

Title of Fee	Fee
Application - certification	\$(45.00) <u>150.00</u>
((Exam fee - certification	30.00))
Application - registration	((35.00)) <u>75.00</u>
Certification renewal	((45.00)) <u>160.00</u>
Registration renewal	((35.00)) <u>75.00</u>
Late renewal penalty - certification	((45.00)) <u>80.00</u>
Late renewal penalty - registration	((35.00)) <u>50.00</u>
Expired certificate reissuance	((45.00)) <u>80.00</u>
Expired registration reissuance	((35.00)) <u>50.00</u>
Certification of registration or certificate	15.00
Duplicate registration or certificate	15.00

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-927-990 ((How often do I need to renew and what are the costs for registration?)) Recreation therapy fees and renewal cycle. (1) Registrations must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged for registered recreational therapists:

Title of Fee	Fee
Application	\$(140.00) <u>205.00</u>
Renewal	((85.00)) <u>180.00</u>
Late renewal penalty	((50.00)) <u>90.00</u>
Expired registration reissuance	((50.00)) <u>90.00</u>
Duplicate registration	15.00
Certification of certificate	25.00

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-928-990 Respiratory care fees and renewal cycle. (1) Licenses must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application	\$(70.00) <u>150.00</u>
Temporary practice permit	((35.00)) <u>50.00</u>
Duplicate license	15.00
Verification of licensure	15.00
Renewal	((50.00)) <u>130.00</u>
Late renewal penalty	((50.00)) <u>65.00</u>
Expired license reissuance	((50.00)) <u>65.00</u>

AMENDATORY SECTION (Amending WSR 05-12-014, filed 5/20/05, effective 6/20/05)

WAC 246-930-990 Sex offender treatment provider fees and renewal cycle. (1) Certificates must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. ~~((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjust-~~

ment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.)) The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged for:

Title of Fee	Fee
Sex offender treatment provider:	
Application and examination	\$((500.00) <u>600.00</u>)
Reexamination	250.00
Initial certification	((100.00) <u>200.00</u>)
Renewal	((800.00) <u>1,000.00</u>)
Inactive status	300.00
Late renewal penalty	300.00
Expired certificate reissuance	300.00
Expired inactive certificate reissuance	150.00
Duplicate certificate	15.00
Verification of certification	15.00

(3) The following nonrefundable fees will be charged for affiliate treatment provider:

Title of Fee	Fee
Application and examination	((200.00) <u>400.00</u>)
Reexamination	((100.00) <u>250.00</u>)
Renewal	((300.00) <u>500.00</u>)
Inactive status	((200.00) <u>250.00</u>)
Late renewal penalty	((150.00) <u>250.00</u>)
Expired affiliate certificate reissuance	((150.00) <u>250.00</u>)
Expired inactive affiliate certificate reissuance	100.00
Duplicate certificate	15.00
((Extension fee)	850.00))

WSR 08-10-089
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed May 6, 2008, 6:29 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Title 246 WAC, board and commission regulated health professions - fee increases.

WAC	Title
246-808-990	Chiropractic fees and renewal cycle.
246-817-990	Dentist fees and renewal cycle.
246-828-990	Hearing instrument fitter/dispenser, audiologists and speech language pathologists.
246-843-990	Nursing home administrators fees and renewal cycle.
246-851-990	Optometry fees and renewal cycle.
246-840-990	Fees and renewal cycle (registered nurses, licensed practical nurses and advanced registered nurses).
246-847-990	Occupational therapy fees and renewal cycle.
246-853-990	Osteopathic fees and renewal cycle.
246-907-030	Pharmaceutical licensing periods and fees—Fees and renewal cycle.
246-915-990	Physical therapy fees and renewal cycle.
246-918-990	Physician assistants fees and renewal.
246-919-990	Physician and surgeon fees and renewal.
246-922-990	Podiatry fees and renewal cycle.
246-924-990	Psychology fees and renewal cycle.

Hearing Location(s): Department of Health, Town Center 2, Room 158, 111 Israel Road S.E., Tumwater, WA 98501, on June 10, 2008, at 2:30 p.m.

Date of Intended Adoption: June 30, 2008.

Submit Written Comments to: Bonnie King, P.O. Box 47860, Olympia, WA 98504-7860, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4626, by June 10, 2008.

Assistance for Persons with Disabilities: Contact Meghan Young by June 2, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules increase fees for the listed professions by the amount approved by the legislature (ESHB 2687, chapter 329, Laws of 2008), required by Initiative 960, during the 2008 session. Fees were temporarily reduced for many professions in July 2005. The proposed rules raise the fees back to a level that will cover the costs of regulating the professions. The proposed rules also remove fees that no longer exist and add a fee of up to \$25 to some professions for access to the University of Washington Library (ESSB 5930, chapter 259, Laws of 2007).

Reasons Supporting Proposal: RCW 43.70.250 requires the department to collect fees to pay the costs to regulate health care providers. It also requires each profession to be fully self-supporting. The cost to regulate health care providers is about \$27 million each year. Increases in regulatory activities based on legislation, court cases, and an increase in disciplinary actions has made it necessary for the department to request an increase in fees. Without an increase in fees, the programs will not be able to remain in operation. These fees are critical to ensuring the safety of patients.

Statutory Authority for Adoption: RCW 43.70.110, [43.70.]250 and ESHB 2687 (chapter 329, Laws of 2008).

Statute Being Implemented: RCW 43.70.110 and [43.70.]250.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bonnie King, 310 Israel Road S.E., Tumwater, WA, (360) 236-4995.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement (SBEIS) was not prepared. Under RCW 19.85.025 and 34.05.310 (4)(f), an SBEIS is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

May 5, 2008
Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-808-990 Chiropractic fees and renewal cycle. (1) Licenses and registrations must be renewed on the practitioner's birthday every year as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged for chiropractic license:

Title of Fee	Fee
Application/full examination or reexamination	\$((300.00)) <u>575.00</u>
Temporary permit application	150.00

Title of Fee	Fee
Temporary practice permit	50.00
Preceptorship	100.00
License renewal	((270.00)) <u>520.00</u>
Late renewal penalty	((135.00)) <u>260.00</u>
Expired license reissuance	((135.00)) <u>260.00</u>
Inactive license renewal	((150.00)) <u>200.00</u>
Expired inactive license reissuance	((75.00)) <u>100.00</u>
Duplicate license	15.00
Certification of license	25.00
<u>UW library access fee</u>	<u>25.00</u>

(3) The following nonrefundable fees will be charged for chiropractic X-ray technician registration:

Title of Fee	Fee
Application	((25.00)) <u>35.00</u>
Original registration	((25.00)) <u>35.00</u>
Renewal	((40.00)) <u>50.00</u>
Late renewal penalty	((40.00)) <u>50.00</u>
Expired registration reissuance	((40.00)) <u>50.00</u>
Duplicate registration	15.00
Certification of registration	25.00

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-817-990 Dentist fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2, except faculty and resident licenses. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) Faculty and resident licenses must be renewed every year on July 1 as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of

administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(3) The following nonrefundable fees will be charged:

Title of Fee	Fee
Original application by examination*	
Initial application	\$(325.00) <u>700.00</u>
Original application - Without examination	
Initial application	((350.00)) <u>700.00</u>
Initial license	((350.00)) <u>700.00</u>
Faculty license application	((325.00)) <u>560.00</u>
Resident license application	((60.00)) <u>115.00</u>
License renewal:	
Renewal	((205.00)) <u>605.00</u>
Surcharge - impaired dentist	25.00
Late renewal penalty	((402.50)) <u>300.00</u>
Expired license reissuance	((402.50)) <u>300.00</u>
Duplicate license	15.00
Certification of license	25.00
Anesthesia permit	
Initial application	((50.00)) <u>150.00</u>
Renewal - (three-year renewal cycle)	((50.00)) <u>150.00</u>
Late renewal penalty	((50.00)) <u>75.00</u>
Expired permit reissuance	50.00
On-site inspection fee	To be determined by future rule adoption.

* In addition to the initial application fee above, applicants for licensure via examination will be required to submit a separate application and examination fee directly to the dental testing agency accepted by the dental quality assurance commission.

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-828-990 Hearing instrument fitter/dis-penser, audiologist and speech language pathologists fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal

fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) Licensees must pay the following nonrefundable fees:

Title of Fee	Fee
License application	\$125.00
Initial license	100.00
Interim permit	100.00
Renewal	200.00
Inactive license	75.00
Late renewal penalty	100.00
Expired license reissuance	100.00
Expired inactive license reissuance	50.00
License verification	15.00
((Wall certificate	15.00))
Duplicate license	15.00

AMENDATORY SECTION (Amending WSR 05-20-107, filed 10/5/05, effective 11/5/05)

WAC 246-840-990 Fees and renewal cycle. (1) Applicants for a practical nurse (~~((or registered nurse))~~) license must pay the application fee and the nursing center surcharge fee when applying for a license. Licenses for practical nurse (~~((and registered nurse))~~) must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. Practical nurses (~~((and registered nurses))~~) must pay the renewal fee and the nursing center surcharge fee when renewing licenses. ~~((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))~~

(2) Applicants for a registered nurse license must pay the application fee, the RN UW library fee, and the nursing center surcharge fee when applying for a license. Licenses for registered nurse must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. Registered nurses must pay the renewal fee, the RN UW library fee, and the nursing center surcharge fee when renewing licenses.

(3) Licenses for advanced registered nurse must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. ~~((The secretary may require payment of renewal fees less than those established in~~

this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

~~(3))~~ (4) Registrations for nursing technicians must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The renewal must be accompanied by an attestation as described in ~~((chapter 258, Laws of 2003))~~ RCW 18.79.370. This attestation will include the nursing technician's anticipated graduation date. If the anticipated graduation date is within one year, the registration will expire thirty days after the anticipated graduation date. The expiration date may be extended to sixty days after graduation if the nursing technician can show good cause as defined in WAC 246-840-010(15).

(5) The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

~~((4))~~ (6) The following nonrefundable fees shall be charged by the health professions quality assurance division of the department of health. Persons who hold an RN and an LPN license shall be charged separate fees for each license. Persons who are licensed as an advanced registered nurse practitioner in more than one specialty will be charged a fee for each specialty:

RN/LPN fees:

Title of Fee	Fee
<u>RN application (initial or endorsement)</u>	\$65.00
<u>LPN application (initial or endorsement)</u>	<u>85.00</u>
<u>RN license renewal</u>	50.00
<u>LPN license renewal</u>	<u>65.00</u>
Late renewal penalty	50.00
Expired license reissuance	((50.00)) <u>70.00</u>
Inactive renewal	((20.00)) <u>40.00</u>
Expired inactive license reissuance	((20.00)) <u>40.00</u>
Inactive late renewal penalty	((10.00)) <u>30.00</u>
Duplicate license	20.00
Verification of licensure/education (written)	25.00
Nursing center surcharge	5.00
<u>RN UW library fee</u>	<u>20.00</u>

Advanced registered nurse fees:

Title of Fee	Fee
ARNP application with or without prescriptive authority (per ((specialty)) <u>specialty</u>)	\$(65.00) <u>85.00</u>
ARNP renewal with or without prescriptive authority (per ((specialty)) <u>specialty</u>)	((50.00)) <u>65.00</u>
ARNP late renewal penalty (per ((specialty)) <u>specialty</u>)	50.00
ARNP duplicate license (per ((specialty)) <u>specialty</u>)	20.00
ARNP written verification of license (per ((specialty)) <u>specialty</u>)	25.00

Nurse technologist fees:

Title of Fee	Fee
Application fee registration	\$130.00
Renewal of registration	90.00
Duplicate registration	15.00
Registration late renewal penalty	50.00

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-843-990 Nursing home administrator fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application - Original license	\$(200.00) <u>275.00</u>
Administrator-in-training	((100.00)) <u>150.00</u>
Application - Endorsement	((295.00)) <u>375.00</u>
Temporary permit	190.00
Renewal	((295.00)) <u>360.00</u>
Inactive license renewal	((110.00)) <u>180.00</u>
Late renewal penalty	((145.00)) <u>180.00</u>

Title of Fee	Fee
Expired license reissuance	147.50
Late renewal penalty - inactive	((55.00))
	<u>90.00</u>
Expired inactive license reissuance	55.00
Duplicate license	15.00
Certification of license	15.00

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-847-990 Occupational therapy fees and renewal cycle. (1) Licenses must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged for occupational therapist:

Title of Fee	Fee
Application and initial license fee	\$((+25.00))
	<u>160.00</u>
License renewal	((95.00))
	<u>130.00</u>
Limited permit fee	40.00
Late renewal fee	((50.00))
	<u>65.00</u>
Expired license reissuance	((50.00))
	<u>65.00</u>
Inactive license	((5.00))
	<u>10.00</u>
Expired inactive license reissuance	((5.00))
	<u>10.00</u>
Duplicate	15.00
Certification of license	25.00

(3) The following nonrefundable fees will be charged for occupational therapy assistant:

Title of Fee	Fee
Application and initial license fee	((+25.00))
	<u>160.00</u>
License renewal	((70.00))
	<u>110.00</u>
Late renewal fee	((50.00))
	<u>55.00</u>

Title of Fee	Fee
Expired license reissuance	((50.00))
	<u>55.00</u>
Inactive license	((5.00))
	<u>10.00</u>
Expired inactive license reissuance	((5.00))
	<u>10.00</u>
Limited permit fee	40.00
Duplicate	15.00
Certification of license	25.00

AMENDATORY SECTION (Amending WSR 06-24-048, filed 12/1/06, effective 1/1/07)

WAC 246-851-990 Optometry fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application	\$((+25.00))
	<u>175.00</u>
Out-of-state seminar	100.00
License renewal	((100.00))
	<u>150.00</u>
Late renewal penalty	((50.00))
	<u>75.00</u>
Expired license reissuance	((50.00))
	<u>75.00</u>
Inactive license renewal	((40.00))
	<u>75.00</u>
Duplicate license	15.00
Certification of license	25.00
<u>UW library fee</u>	<u>25.00</u>

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-853-990 Osteopathic fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2, except postgraduate training limited licenses. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering

the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) Postgraduate training limited licenses must be renewed every year to correspond to program dates. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(3) ~~The following nonrefundable fees will be charged for osteopath:~~

Title of Fee	Fee
Active renewal	\$475.00
Active late renewal penalty	237.50
Certification of license	50.00

(4)) The following nonrefundable fees will be charged for osteopathic physician:

Title of Fee	Fee
Endorsement application	((650.00)) \$800.00
Active license renewal	((475.00)) 750.00
Active late renewal penalty	((237.50)) 300.00
Active expired license reissuance	((237.50)) 300.00
Inactive license renewal	((350.00)) 500.00
Expired inactive license reissuance	((475.00)) 225.00
Inactive late renewal penalty	((475.00)) 250.00
Endorsement/state exam application	((750.00)) 900.00
Reexam	100.00
Certification of license	50.00
Limited license application	((300.00)) 350.00
Limited license renewal	((250.00)) 325.00
Temporary permit application	70.00
Duplicate certificate	20.00
Substance abuse monitoring surcharge	25.00
<u>UW library access fee</u>	<u>25.00</u>

(5) The following nonrefundable fees will be charged for osteopathic physician assistant:

Title of Fee	Fee
Application	((250.00)) 300.00
Renewal	((200.00)) 325.00
Late renewal penalty	((400.00)) 162.50
Expired license reissuance	100.00
Certification of license	30.00
Practice plan	70.00
Interim permit	((467.00)) 200.00
License after exam	((83.00)) 100.00
Duplicate certificate	20.00
Substance abuse monitoring surcharge	25.00
<u>UW library access fee</u>	<u>25.00</u>

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

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-907-030 Pharmaceutical licensing periods and fees—Fees and renewal cycle. (1) Pharmacist, pharmacy technician, and pharmacy intern licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) Pharmacy location, controlled substance registration (pharmacy), pharmacy technician utilization, and shopkeepers differential hours licenses will expire on June 1 of each year.

(3) All other licenses, including health care entity licenses, registrations, permits, or certifications will expire on October 1 of each year.

(4) The following nonrefundable fees will be charged for pharmacy location:

Title of fee	Fee
Original pharmacy fee	\$365.00
Original pharmacy technician utilization fee	65.00
Renewal pharmacy fee	((265.00))
	<u>400.00</u>

Title of fee	Fee
Renewal pharmacy technician utilization fee	75.00
Penalty pharmacy fee	((132.50))
	<u>200.00</u>

(5) The following nonrefundable fees will be charged for vendor:

Original fee	75.00
Renewal fee	75.00
Penalty fee	50.00

(6) The following nonrefundable fees will be charged for pharmacist:

Original license fee	130.00
Renewal fee, active and inactive license	((135.00))
	<u>170.00</u>
Renewal fee, retired license	20.00
Penalty fee	((67.50))
	<u>85.00</u>
Expired license reissuance (active and inactive)	((67.50))
	<u>85.00</u>
Reciprocity fee	330.00
Certification of license status to other states	20.00
Retired license	20.00
Temporary permit	65.00

(7) The following nonrefundable fees will be charged for shopkeeper:

Original fee	35.00
Renewal fee	35.00
Penalty fee	35.00
Shopkeeper - with differential hours:	
Original fee	35.00
Renewal fee	35.00
Penalty fee	35.00

(8) The following nonrefundable fees will be charged for drug manufacturer:

Original fee	590.00
Renewal fee	590.00
Penalty fee	295.00

(9) The following nonrefundable fees will be charged for drug wholesaler - full line:

Original fee	590.00
Renewal fee	590.00
Penalty fee	295.00

(10) The following nonrefundable fees will be charged for drug wholesaler - OTC only:

Original fee	330.00
Renewal fee	330.00
Penalty fee	165.00

(11) The following nonrefundable fees will be charged for drug wholesaler - export:

Original fee	590.00
Renewal fee	590.00
Penalty	295.00

(12) The following nonrefundable fees will be charged for drug wholesaler - export nonprofit humanitarian organization.

Original fee	25.00
Renewal fee	25.00
Penalty	25.00

(13) The following nonrefundable fees will be charged for pharmacy technician:

Original fee	50.00
Renewal fee	40.00
Penalty fee	40.00
Expired license reissuance	40.00

(14) The following nonrefundable fees will be charged for pharmacy intern:

Original registration fee	20.00
Renewal registration fee	20.00

(15) The following nonrefundable fees will be charged for Controlled Substances Act (CSA):

Registrations	
Dispensing registration fee (i.e. pharmacies and health care entities)	80.00
Dispensing renewal fee (i.e. pharmacies and health care entities)	65.00
Distributors registration fee (i.e. wholesalers)	115.00
Distributors renewal fee (i.e. wholesalers)	115.00
Manufacturers registration fee	115.00
Manufacturers renewal fee	115.00
Sodium pentobarbital for animal euthanization registration fee	40.00
Sodium pentobarbital for animal euthanization renewal fee	40.00
Other CSA registrations	40.00

(16) The following nonrefundable fees will be charged for legend drug sample - distributor:

Registration fees	
Original fee	365.00
Renewal fee	265.00
Penalty fee	132.50

(17) The following nonrefundable fees will be charged for poison manufacturer/seller - license fees:

Original fee	40.00
Renewal fee	40.00

(18) The following nonrefundable fees will be charged for facility inspection fee:

200.00

(19) The following nonrefundable fees will be charged for precursor control permit:

Original fee 65.00
Renewal fee 65.00

(20) The following nonrefundable fees will be charged for license reissue:

Reissue fee 15.00

(21) The following nonrefundable fees will be charged for health care entity:

Original fee 365.00
Renewal 265.00
Penalty 132.50

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-915-990 Physical therapy fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application	\$100.00
License renewal	((65.00)) <u>75.00</u>
Late renewal penalty	50.00
Inactive license renewal	35.00
Expired inactive license reissuance	50.00
Expired license reissuance	50.00
Duplicate license	15.00
Certification	25.00

AMENDATORY SECTION (Amending WSR 06-11-167, filed 5/24/06, effective 7/1/06)

WAC 246-918-990 Physician assistants fees and renewal cycle. (1) Licenses must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for

the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The applicant or licensee must pay the following nonrefundable fees:

Title of Fee	Fee
Physician assistants, certified physician assistants, physician assistant-surgical assistants, acupuncture physician assistants:	
Application*	\$50.00
Two-year renewal*	70.00
Expired license reissuance	((35.00)) <u>50.00</u>
Duplicate license	15.00
Impaired physician program surcharge	35.00
*(assessed at \$35.00 on each application and for each year of the renewal period as required in RCW 18.71.310(2))	
<u>UW library fee</u>	<u>25.00</u>

AMENDATORY SECTION (Amending WSR 06-11-167, filed 5/24/06, effective 7/1/06)

WAC 246-919-990 Physician and surgeon fees and renewal cycle. (1) Licenses must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2, except postgraduate training limited licenses and retired active physician licenses. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) Postgraduate training limited licenses must be renewed every year to correspond to program date. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(3) Retired active physician licenses shall be renewed every year. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required

payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(4) The applicants and licensees must pay the following nonrefundable fees:

Title of Fee	Fee
Physicians and surgeons: Chapter 18.71 RCW	
Application*	\$((300.00)) <u>425.00</u>
Retired active physician license renewal*	100.00
Retired active late renewal penalty	50.00
Two-year renewal*	((400.00)) <u>525.00</u>
Late renewal penalty	((100.00)) <u>262.50</u>
Expired license reissuance	((200.00)) <u>262.50</u>
Certification of license	50.00
Duplicate license	15.00
Temporary permit	50.00
Application fee for transitioning from a postgraduate training limited license*	100.00
Postgraduate limited license fees: RCW 18.71.095	
Limited license application*	((200.00)) <u>325.00</u>
Limited license renewal*	((200.00)) <u>325.00</u>
Limited duplicate license	15.00
Impaired physician program *(assessed at \$35.00 on each application and for each year of the renewal period as required in RCW 18.71.310(2))	35.00
<u>UW library fee</u>	<u>25.00</u>

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-922-990 Podiatry fees and renewal cycle.

(1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2, except for postgraduate training limited licenses. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) Postgraduate training limited licenses must be renewed every year to correspond to program dates. The secretary may require payment of renewal fees less than those

established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(3) The following nonrefundable fees will be charged:

Title of Fee	Fee
((Application (examination and reexamination)))	((\$825.00))
((Reciprocity)) <u>Application</u>	((825.00)) <u>975.00</u>
License renewal	((825.00)) <u>975.00</u>
Inactive license renewal	((135.00)) <u>175.00</u>
Inactive late renewal penalty	((67.50)) <u>100.00</u>
Active late renewal penalty	300.00
Active expired license reissuance	300.00
Expired inactive license reissuance	67.50
Duplicate license	30.00
Certification of license	50.00
Retired active status	((150.00)) <u>275.00</u>
Temporary practice permit	50.00
Limited license application	400.00
Limited license renewal	((480.00)) <u>475.00</u>
Substance abuse monitoring surcharge	25.00
<u>UW library access fee</u>	<u>25.00</u>

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-924-990 Psychology fees and renewal cycle.

(1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application	\$260.00

Title of Fee	Fee
Renewal	285.00
Renewal retired active	100.00
Late renewal penalty	142.50
Expired license reissuance	142.50
Duplicate license	25.00
((Oral examination	350.00))
Certification of license	25.00
Amendment of certificate of qualification	30.00
<u>UW library access fee</u>	<u>25.00</u>

**WSR 08-10-097
PROPOSED RULES
OFFICE OF
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2008-04—Filed May 7, 2008, 9:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-03-122.

Title of Rule and Other Identifying Information: Surplus line brokers, these rules increase Washington state's compliance with the standards for licensing and regulating insurance producers, including surplus line brokers. The amendments will clarify the requirements for resident and nonresident surplus line brokers. For example: Surplus line brokers must be licensed as an agent or broker with both property and casualty lines of authority and the state will provide reciprocity to nonresident surplus line brokers on the same basis as another state grants reciprocity to Washington resident surplus line brokers including waiver of testing requirements for a non-resident surplus line broker license applicant who possesses an equivalent license in the applicant's home state. In addition, several sections of rules will be edited for clarity and consistency. WAC 284-15-100 will be repealed to eliminate an old limited surplus line broker's license category.

Hearing Location(s): Insurance Commissioner's Office, Room TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on June 12, 2008, at 2:00.

Date of Intended Adoption: June 19, 2008.

Submit Written Comments to: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, e-mail Kacys@oic.wa.gov, fax (360) 586-3109, by June 10, 2008.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by June 10, 2008, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These proposed rules will simplify requirements for surplus line brokers and more closely align this state's requirements for holding a surplus line broker's license with national standards.

Reasons Supporting Proposal: National standards for uniformity and reciprocity in personal qualification, education, training and experience of licensed insurance agents were enacted as part of the Gramm-Leach-Bliley Act (Public

Law No. 106-102). These proposed rules are a result of that legislation.

Statutory Authority for Adoption: RCW 48.02.060, 48.15.040(4), 48.15.073(2), and 48.15.160(2).

Statute Being Implemented: RCW 48.15.070.

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

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

Name of Agency Personnel Responsible for Drafting: Melodie Bankers, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7039; Implementation: John Hamje, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7262; and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. After a review of RCW 19.85.025, it has been determined that a small business economic impact statement is not required for this rule making because these amendments: (1) Clarify current rules without changing their effect; (2) repeal a rule thereby eliminating an outdated license category; and (3) relate to process requirements and standards for applying for a surplus line broker's license.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7041, fax (360) 586-3535, e-mail kacys@oic.wa.gov.

May 7, 2008

Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending Order R 81-1, filed 1/21/81)

WAC 284-15-010 Brokers—Surplus line—Qualifications and examination. (1) Each applicant for ~~((initial)) a resident surplus line broker's license ((as a surplus line broker shall, prior to issuance of any such license,))~~ must take and pass ~~((to the satisfaction of the commissioner an))~~ the required examination ((given by the commissioner. It shall be a test of his or her)) and pay the required fee prior to acting as a surplus line broker. The examination will test an applicant's qualifications and competence in all areas of surplus line insurance. ~~((The examination shall be given in the same manner and under the same conditions as are prescribed for brokers in chapter 48.17 RCW, except that such surplus line examination will generally be given twice each year at times set by the commissioner.~~

~~((2) Minimum requirements to be met by an applicant before he or she will be permitted to take the examination are:~~

~~((a) An applicant must have been licensed as a casualty-property broker in accordance with RCW 48.17.150 for not less than five years preceding the date of the application, or have received the chartered property casualty underwriter (CPCU) designation with not less than five years' experience in the insurance industry preceding the date of the application, or have not less than ten years' experience as an insurance company employee, or an employee of an insurance~~

broker's office or other related insurance industry experience preceding the date of the application, or have other equivalent experience acceptable to the insurance commissioner.

(b) Such applicants shall complete application forms supplied by the commissioner.

(3) For the purpose of this regulation "applicant" and "surplus line broker" are defined to include any individual who is to be empowered and designated in the license as authorized to exercise the powers conferred thereby.

(4) The applicant, and each surplus line broker while so licensed, must be a resident of the state of Washington. Current information about testing procedures and examination dates is available on the commissioner's web site at: www.insurance.wa.gov.

(2) Before the commissioner can issue a surplus line broker's license, the applicant must be licensed in this state as an agent or broker with both property and casualty lines of authority. This requirement may be satisfied if the licenses are issued simultaneously.

(3) The commissioner deems that a nonresident person holding a surplus line broker's license, or the equivalent, in the applicant's home state is qualified, competent and trustworthy and, therefore, meets the minimum standards of this state for holding a surplus line broker's license. For that reason, the commissioner will waive the Washington surplus line broker's examination for a person who has and maintains a current resident surplus line broker's license, or the equivalent, in the applicant's home state.

AMENDATORY SECTION (Amending Order R 81-1, filed 1/21/81)

WAC 284-15-020 Surplus line broker—Solvent insurer required. (1) A surplus line broker (shall) must not knowingly place surplus line insurance with financially unsound insurers. Foreign and alien insurers must meet or exceed the minimum financial conditions required by RCW 48.15.090 and WAC 284-15-090.

(2) A surplus line broker (shall ascertain) must substantiate the financial condition of (the) an unauthorized insurer ((and maintain written evidence thereof)) before placing insurance ((therewith)) with the insurer. The broker must also maintain evidence of the financial condition of the insurer for at least five years.

(a) ((When the)) If a surplus line broker ((uses)) places insurance with an alien unauthorized insurer shown on the National Association of Insurance Commissioners (NAIC) Quarterly Listing of Alien Insurers dated within three months ((of the)) after placement of the risk, it ((shall)) will be ((deemed)) presumed that the insurer meets the financial requirements of RCW 48.15.090 and WAC 284-15-090 and that ((its)) the financial condition of the insurer is adequately documented.

(b) ((When the)) If a surplus line broker ((uses)) places insurance with an alien unauthorized insurer that is not shown on the NAIC Quarterly Listing of Alien Insurers, ((there must be documentation in the broker's files demonstrating)) the broker must maintain information for at least five years adequate to show that the requirements of subsec-

tion (1) of this section ((are)) have been met or exceeded. This documentation shall include at least the following:

(i) A copy of the unauthorized insurer's most recent available annual financial statement((-This shall include an), in English ((version)) with United States dollar equivalents; ((and))

(ii) Any other information obtained by the broker that verifies the financial condition of the alien ((company. (e)) unauthorized insurer; and

(iii) The ((surplus line broker must have at least the)) current NAIC annual statement or its equivalent on file for any ((foreign)) alien unauthorized insurer used.

AMENDATORY SECTION (Amending Matter No. R 2006-04, filed 6/6/06, effective 7/7/06)

WAC 284-15-040 Form for surplus line insurer to designate person to receive legal process. (1) RCW 48.15-150 permits service of legal process against an unauthorized insurer ((that is sued upon any cause of action arising in this state under any contract issued by it as a surplus line contract)) to be made upon the ((insuree)) commissioner. The commissioner will mail the documents of process to the insurer at its principal place of business last known to the commissioner, or to a person designated by the insurer for that purpose in the most recent document filed with the commissioner on a form prescribed by the commissioner. If ((such)) an unauthorized insurer elects to designate a person to receive ((such)) legal process from the commissioner, the designation ((shall be)) must be in writing and filed with the commissioner in substantially the form set forth ((in subsection (2) of this section)) on the commissioner's web site at: www.insurance.wa.gov.

DESIGNATION OF PERSON TO WHOM COMMISSIONER SHALL FORWARD LEGAL PROCESS.

To the Insurance Commissioner of the state of Washington:

Pursuant to RCW 48.15.150, the undersigned Insurer hereby designates:

Name

Address

as the person to whom the Insurance Commissioner shall forward legal process against the Insurer. This designation supersedes any similar designation heretofore made by this Insurer.

Executed at, this day of, 20....

(Insurer)

By

(Title)

(3)) (2) The ((("))person((")) designated by the insurer to receive legal process may be an individual, firm or corporation.

~~((4))~~ (3) The ~~((commissioner shall forward))~~ process documents will be forwarded by the commissioner to the person designated in the most recent ~~((document))~~ notice filed with ~~((him))~~ the commissioner.

~~((5 Pursuant to))~~ (4) As specified in RCW 48.15.150, each policy issued by an unauthorized insurer as a surplus line contract must ~~((contain a provision designating))~~ designate the commissioner as the person upon whom service of process may be made.

AMENDATORY SECTION (Amending Order R 89-2, filed 1/17/89)

WAC 284-15-050 Surplus line—Waiver of financial requirements. The commissioner may waive the financial requirements specified in RCW 48.15.090 and WAC 284-15-090 in circumstances where insurance cannot be otherwise procured on risks located in this state. Except as set forth in subsection ~~((6))~~ (5) of this section, at least the following information ~~((shall))~~ must be submitted when a surplus line broker ~~((makes a))~~ requests ~~((for))~~ the commissioner to waive the financial requirements:

(1) A detailed letter ~~((of explanation for))~~ explaining the need to waive the financial requirements;

(2) Documentation of the financial condition of the proposed insurer as reported in its annual statement as of the end of the preceding calendar year ~~((next preceding))~~;

(3) Summary information showing the number of years the company has been writing the specific ~~((class))~~ line of insurance;

(4) ~~((The reinsurance agreements backing up the class of coverage or the company;~~

~~((5))~~ A written acknowledgement signed by the proposed insured ~~((to the effect that))~~ confirming all of the following:

(a) The insured ~~((is))~~ has been informed that the coverage ~~((is to))~~ will be issued by an insurer (or insurers) ~~((which))~~ that is not an authorized insurer in the state of Washington~~((;))~~;

(b) The insured understands that financial requirements for surplus line insurers ~~((otherwise applicable have been))~~ must be waived by all parties concerned to enable this coverage to be obtained~~((;))~~; and

(c) The insured understands that there is no protection for the insured under the Washington Insurance Guaranty Association because the coverage will be issued by an unauthorized insurer;

~~((6))~~ (5) For ~~((jumbo))~~ accounts requiring a multiplicity of insurers, in lieu of the requirements in subsections (2) and (3) of this section, the commissioner may~~((, in lieu of the requirements in subsections (2), (3), and (4) of this section,))~~ accept certification from ~~((an experienced))~~ a surplus line~~((s))~~ broker that the broker has investigated the financial condition of the prospective insurers and is satisfied that they are capable of underwriting the ~~((attendant))~~ specified risks. Records and documents supporting the broker's certification must be maintained by the broker for the ~~((life))~~ term of the policies and as long thereafter as a claim may be litigated, but in no case less than five years after completion of the transaction.

AMENDATORY SECTION (Amending Order R 91-7, filed 11/13/91, effective 1/1/92)

WAC 284-15-080 Relationship between surplus line broker and insurance agent. When a surplus line broker accepts surplus line business from an ~~((insurance))~~ agent, as permitted by RCW 48.15.080, ~~((such agent does not thereby))~~ acceptance of the business does not mean that the agent has become the representative of the insured with respect to ~~((such))~~ that business. In ~~((accord therewith))~~ this circumstance:

(1) Return premiums or claim payments ~~((delivered by the surplus line broker to the insurance agent shall))~~ will not be deemed to have been paid to the insured or claimant until ~~((such))~~ the payments are actually received by the insured or claimant.

(2) Delivery of notices involving the insurance, such as cancellation or renewal notices, ~~((shall))~~ will not be deemed to have been made until actually received by the insured. ~~((Notice to the agent is not notice to the insured. However, the agent may act on behalf of the broker in giving proper notices to the insured.))~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 284-15-100 Surplus lines limited broker.

WSR 08-10-102

PROPOSED RULES

UTILITIES AND TRANSPORTATION

COMMISSION

[Filed May 7, 2008, 10:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-17-054.

Title of Rule and Other Identifying Information: Telecommunications service extension rule making, WAC 480-120-071 and 480-120-103.

This rule making would consider amending WAC 480-120-071 Extension of service, relating to requirements for extension of service to customers within a company's service territory and 480-120-103 Application of service, relating to requirements the applicant and the company must meet for a service application. This rule making has been assigned Docket UT-073014.

Hearing Location(s): Commission Hearing Room 206, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, on Thursday, June 26, 2008, at 1:30 p.m.

Date of Intended Adoption: June 26, 2008.

Submit Written Comments to: Carole J. Washburn, Executive Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, WA 98504, e-mail records@utc.wa.gov, fax (360) 586-1150, by Wednes-

day, June 6, 2008. Please include Docket UT-073014 in your communication.

Assistance for Persons with Disabilities: Contact Mary DeYoung by Monday, June 23, 2008, TTY (360) 586-8203 or (360) 664-1133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Under existing WAC 480-120-071, providers of tariffed local exchange service must build facilities to applicants for an initial fee of no more than twenty times the monthly service charge, plus twenty monthly charges no greater than the monthly service charge (e.g., \$500 total for a company with a \$12.50 service charge). A company may recover its unreimbursed costs through an additive to its charge to interexchange carriers for terminating long distance calls. The company may petition for a waiver on the grounds that the customer is not "reasonably entitled" to service. The proposed amendment would instead allow an applicant an extension of up to 1000 feet at no charge, but would require the applicant to bear the cost of extending plant beyond 1000 feet. Applicants could aggregate allowances and obtain reimbursement from newcomers. Companies could petition for relief from the 1000 foot allowance by showing exceptional cost. The terminating access charge method of cost recovery would be eliminated for future extensions. The amendments would apply to pending petitions for waiver of WAC 480-120-071.

Reasons Supporting Proposal: By requiring applicants to bear the cost of extending service beyond 1000 feet, or when extension costs are extraordinary, the amendments would reduce current level of subsidy for lengthy line extensions. The amendments provide the correct balance of obligations among customers, local exchange service providers, and interexchange carriers.

Affected WACS are: WAC 480-120-071 Extension of service, amend to revise rule; and WAC 480-120-103 Application of service, amend to revise request for extension of service requirements.

Statutory Authority for Adoption: RCW 80.01.040, 80.04.160, and 80.36.140.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Sharyn Bate, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1295; **Implementation and Enforcement:** Carole J. Washburn, Executive Secretary, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1174.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Industry comments indicate that the proposed revision to the rule will not result in or impose an increase in costs. Because there will not be any increase in costs resulting from the proposed rule changes, a small business economic impact statement is not required under RCW 19.85.030(1).

A cost-benefit analysis is not required under RCW 34.05.328. The commission is not an agency to which RCW

34.05.328 applies. The proposed rules are not significant legislative rules of the sort referenced in RCW 34.05.328(5).

May 7, 2008

Carole J. Washburn
Executive Secretary

AMENDATORY SECTION (Amending Order R-474, Docket No. UT-991737, filed 12/5/00, effective 1/15/01)

WAC 480-120-071 Extension of service. (1) **Definitions.** The following definitions apply to this section unless the context clearly indicates otherwise:

~~("Basic monthly service rate" means the rate for non-measured service for the lowest priced class of service ordered by the applicant.~~

~~"Binding site plan" has the same meaning as "binding site plan" in RCW 58.17.020.~~

~~"Constructed" means a residential building that has been approved for occupancy by the appropriate local government agency.~~

~~"Cost justification" means such cost and engineering information as the commission may request.~~

~~"Cost of service extension" means the direct and indirect costs of the material and labor to plan and construct the facilities including, but not limited to, drop wire, permitting fees, rights-of-way fees, and payments to subcontractors, and does not include the cost of reinforcement, network upgrade, or similar costs.~~

~~"Development" has the same meaning as "development" and "developed lands" in RCW 58.19.020.~~

~~"Distribution plant" means telephone equipment and facilities necessary to provide service to a premises, but does not include drop wire.~~

~~"Drop wire" means company supplied wire and pedestals to be placed between a premise and the company distribution plant at the applicant's property line. For drop wire installed after the effective date of this section, a drop wire must be sufficient in capacity to allow the provisioning of three individual basic exchange voice-grade access lines.~~

~~"Extension of service" means an extension of company distribution plant to a location that is outside any municipal boundary and where no distribution plant of the extending company exists at the time an extension is requested, that is constructed at the request of one or more applicants for service who pay a charge under this section, and that extends more than 1/10 mile. Extensions of service do not include customer trenches, conduits or other support structure for placement of company provided facilities from the customer property line to the premises to be served.~~

~~"Filed" means the approved plat, short plat, binding site plan or other similar approved instrument filed for record with a county auditor and authorizing development activity.~~

~~"Lot" has the same meaning as "lot" in RCW 58.17.020.~~

~~"Marina" has the same meaning as "marina" in RCW 88.12.010.~~

~~"Mobile home lot," "mobile home park," "mobile home park cooperative," and "mobile home park subdivision" have the same meanings as "mobile home lot," "mobile home park," "mobile home park cooperative," and "mobile home park subdivision" have in RCW 59.20.030.~~

"Neighboring exchange" means an exchange bordering on any other exchange.

"Premises" means any structure that is used as a residence, including farm houses, but does not include predominantly commercial or industrial structures.

"Radio communications service company" has the meaning contained in RCW 80.04.010.

"Residential buildings" has the same meaning as "residential buildings" in RCW 58.19.020.

"Short subdivision" has the same meaning as "short subdivision" in RCW 58.17.020.

"Subdivision" has the same meaning as "subdivision" in RCW 58.17.020.

"Temporary occupancy" means occupancy definitely known to be for less than one year but does not include intermittent or seasonal use when such intermittent or seasonal use will occur in more than a one-year period.

"Temporary service" means service definitely known to be for a short period of time, such as service provided for sales campaigns, athletic contests, conventions, fairs, circuses, and similar events.

(2) Extensions of service.

(a) Each company required to file tariffs under RCW 80.36.100 must have on file an extension of service tariff and must extend service consistent with its tariff and this section and provide drop wire for customer use. Service extensions must be completed within eighteen months after a request is made and the customer makes the initial payment, unless the commission extends the time on a showing of good cause.

(b) Extension of service is required to occupied premises unless the company demonstrates occupancy is temporary. In the case of new construction commenced after the effective date of this section, extension of service is required only if the applicant has permission to build from the applicable local government and the need for service is not temporary.

(c) Any company required to extend service under this section may do so by extending distribution plant or by making a service and financial agreement with a radio communications service company or other alternative provider to provide service. The services provided through a radio communications service company or other alternative provider must be reasonably comparable services at reasonably comparable prices compared to services provided through wireline distribution facilities in the area of the exchange where service has been requested. In addition, the services must include all elements of basic service defined in RCW 80.36.600. A company extending service through a service agreement with a radio communications service company or other alternative provider may file a tariff as permitted under subsection (4) of this section to recover the lesser of the actual direct cost to extend the service through the cooperative agreement or the direct cost of extending wireline distribution plant.

(3) Service extension charge to applicants.

(a) For service provided under subsection (2) of this section, companies must submit a tariff that sets the level of an initial fee and per-month fee for any applicant requesting an extension of service. The tariff may also impose such fees upon applicants for new service from a service extension that is less than five years old measured from the date of the initial service provided by the extension. The charge to applicants

for service extensions must include an initial payment to process the order. The maximum initial payment to process the order is an amount equal to twenty times the customer's basic monthly service rate exclusive of all fees, taxes or other charges.

A per-month payment beginning with the first monthly bill for service must be charged once the order is complete and service is provided. The maximum allowable per-month payment for a period of twenty months is an amount equal to the customer's basic monthly service rate, exclusive of all fees, taxes or other charges. Customers may pay the entire amount at any time, in lieu of monthly payments, and must pay the entire remaining amount at the time of disconnecting service if the disconnection occurs prior to full payment.

(b) Customers are responsible for providing or paying the cost of trenching, conduit, or other structures required for placement of company-provided drop wire from the customer's property line to the premises.

(4) Cost recovery for extensions of service.

(a) A company with a terminating access tariff under WAC 480-120-540 and a service extension tariff imposing fees or charges under subsection (3) of this section may file tariffs to include a service extension element on terminating access in an amount necessary to recover the cost of an extension of service. The tariff may not recover costs covered by applicant or customer payments for service extensions, federal universal service funds, or any similar funds or grants from other sources. The company must file the tariff to be effective only so long as necessary to recover the costs allowed under this section.

(b) Companies may recover costs by filing a tariff under (b)(i) or (ii) of this subsection. In the case of companies that serve fewer than two percent of the access lines in the state, placement of the tariff on the agenda of a commission open meeting constitutes notice of an opportunity to be heard on the need for any reporting requirements related to a tariff based on estimated costs.

(i) A company may file a proposed tariff to recover fifty percent of the estimated cost of an extension after it obtains all permits necessary for construction related to the extension of service. Extensions of service must be completed within twelve months of the effective date of a tariff that uses estimated costs. The tariff based on estimates is null and void at the end of that twelve-month period if the extension of service is not completed however, the commission, for good cause shown, may permit the tariff based on estimates to remain in effect after twelve months. If the commission does not permit the tariff based on estimates to continue, the company must within thirty days of the commission's decision or the end of the twelve-month period, whichever is later, file a replacement tariff to offset the amounts collected. After completion of an extension subject to a tariff based on estimated costs, the company may file a tariff to recover the cost of the extension less any amount already recovered or, in the event of an over-collection, must file a tariff to reduce terminating access sufficient to offset the amount over-collected through the initial tariff.

Class A companies that have in effect a service extension tariff based on estimated costs must report quarterly on collections, expenditures, and construction timetables and

progress, including a final report after completion of the extension and termination of the tariff. Companies that serve fewer than two percent of the access lines in the state and that have in effect a service extension tariff based on estimated costs must make the same report every six months if ordered by the commission.

(ii) A company may file a tariff to recover the cost of a service extension at any time within two years after completion of an extension and may accumulate the cost of multiple line extensions before filing a tariff.

(e) The commission will review the cost justification for the tariffs and approve the tariffs if they are consistent with this section. The commission will not conduct an earnings review of the company's operations for the purpose of reviewing the proposed tariffs.

(5) Extension of service to neighboring exchange facilities.

(a) A company that is willing to extend service to a neighboring exchange may recover under subsection (4) of this section the cost of an extension to a neighboring exchange if companies obligated to serve the neighboring exchange agree that the cost of a cross-boundary service extension would be less than the cost of extension within the applicants' exchange and agree to the cross boundary extension.

(b) In the case of a cross-boundary extension, an applicant will become a customer of the extending company. The customer's rates and local calling capabilities must be the same as other customers served out of the extending company's same central office.

(c) The newly constructed facilities will be the property of the extending company, but the exchange boundary will remain unchanged.

(d) The charge to the customer shall be determined in accordance with subsection (3) of this section.

(6) **Extensions to developments.** The cost of extensions to developments should be borne by those who gain economic advantage from development and not by ratepayers in general. This policy promotes the economic good of having telephone infrastructure placed at the same time as other infrastructure is constructed as a part of development. Accordingly, local exchange companies may not recover under subsection (4) of this section the costs of extensions to serve the following:

(a) Developments filed after the effective date of this rule for which a public offering statement is required under chapter 58.19 RCW;

(b) Divisions of land filed after the effective date of this rule that use binding site plans under RCW 58.17.035 to create five or more lots or units;

(c) Subdivisions filed after the effective date of this rule;

(d) Short subdivisions with five or more lots filed after the effective date of this rule;

(e) Developments filed prior to the effective date of this rule, in which all lots were under common ownership and control on the effective date of this rule, and in which no residential buildings were constructed after the division of land and prior to the effective date of this rule;

(f) Divisions of land using binding site plans under chapter 58.17 RCW with five or more lots or units filed prior to

the effective date of this rule, in which all lots, units or both were under common ownership and control on the effective date of this rule, and in which no residential buildings or commercial or industrial buildings were constructed after the division of land and prior to the effective date of this rule;

(g) Subdivisions filed prior to the effective date of this rule, in which all lots were under common ownership and control on the effective date of this rule, and in which no residential buildings were constructed after the division of land and prior to the effective date of this rule;

(h) Short subdivisions with five or more lots filed prior to the effective date of this rule, in which all lots were under common ownership and control on the effective date of this rule, and in which no residential buildings were constructed after the division of land and prior to the effective date of this rule;

(i) Mobile home parks, mobile home park cooperatives, and mobile home park subdivisions filed after the effective date of this rule;

(j) Mobile home parks, mobile home park cooperatives, and mobile home park subdivisions filed prior to the effective date of this rule, in which all lots were under common ownership and control on the effective date of this rule, and in which no residential buildings were placed or constructed after the division of land and prior to the effective date of this rule;

(k) Marinas;

(l) Camping resorts regulated under chapter 19.105 RCW;

(m) Condominiums regulated under chapters 64.32 and 64.34 RCW;

(n) Timeshares regulated under chapter 64.36 RCW.

(7) Waiver of obligation under this section.

(a) The commission retains the authority under RCW 80.36.090 to determine whether any applicant for service is not reasonably entitled to service and whether the local exchange company is not obligated to provide service to an applicant under subsection (2)(b) of this section. In determining the reasonable entitlement, the commission may consider those factors listed in (b)(ii)(A) through (G) of this subsection and such other information that it may consider necessary to a proper determination.

(b) Waiver of subsection (3)(a) of this section:

(i) A company may petition for a waiver of subsection (3)(a) of this section in order to charge an applicant the direct cost to extend service if it is unreasonable for the direct cost of the extension of service to be borne by rates permitted under subsection (4) of this section.

(ii) In determining whether cost recovery under subsection (4) of this section for an extension is unreasonable and granting a waiver is consistent with public interest, the commission will consider:

(A) The total direct cost of the extension;

(B) The number of customers to be served;

(C) The comparative price and capabilities of radio communication service or other alternatives available to customers;

(D) Technological difficulties and physical barriers presented by the requested extensions;

~~(E) The effect on the individuals and communities involved;~~

~~(F) The effect on the public switched network; and~~

~~(G) The effect on the company-))~~ "Applicant" means any person applying to a telecommunications company for new tariffed residential basic local exchange service. Applicant does not include developers requesting service for developments.

"Cost of service extension" means the direct and indirect costs of the material and labor to plan and construct the facilities including, but not limited to, permitting fees, rights of way fees, and payments to subcontractors, and does not include the cost of reinforcement, network upgrade, or similar costs.

"Developer" means any owner of a development who offers it for disposition, or an agent of such an owner.

"Development" means land which is divided or is proposed to be divided for the purpose of disposition into four or more lots, parcels, or units.

"Distribution plant" means telephone equipment and facilities necessary to provide new tariffed residential basic local exchange service to a premises, but does not include drop wire.

"Drop wire" means company-supplied wire and pedestals to be placed between a premises and the company distribution plant at the applicant's property line. For drop wire installed after January 15, 2001, a drop wire must be sufficient in capacity to allow the provisioning of three individual basic exchange voice-grade access lines.

"Extension of service" means an extension of company distribution plant for new tariffed residential basic local exchange service to a location where no distribution plant of the extending company exists at the time an extension of service is requested. An extension is constructed at the request of one or more applicants for service. Extensions of service do not include trenches, conduits, or other support structure for placement of company-provided facilities from the applicant's property line to the premises to be served. Extension of service, as defined in this rule, does not apply to extensions of service to developments or to extensions of service for temporary occupancy or temporary service.

"Extraordinary cost" means a substantial expense resulting from circumstances or conditions beyond the control of the company that are exceptional and unlikely to occur in the normal course of planning and constructing facilities contemplated by this rule.

"Order date" as defined in WAC 480-120-021 (Definitions) means the date when an applicant requests service unless a company identifies specific actions a customer must first complete in order to be in compliance with tariffs or commission rules. Except as provided in WAC 480-120-061 (Refusing service) and 480-120-104 (Information to consumers), when specific actions are required to be completed by the applicant, the order date becomes the date the company receives the completed application for extension of service.

"Premises" means any structure that is used as a residence, but does not include predominantly commercial or industrial structures.

"Tariffed" means offered under a tariff filed with the commission.

"Temporary occupancy" means occupancy definitely known to be for less than one year but does not include intermittent or seasonal use when the intermittent or seasonal use will occur in more than a one-year period.

"Temporary service" means service definitely known to be for a short period of time, such as service provided for construction huts, sales campaigns, athletic contests, conventions, fairs, circuses, and similar events.

(2) Tariffed residential basic local exchange service.

(a) Each company required to file tariffs under RCW 80.36.100, and each company required to do so under an alternative form of regulation, must have on file with the commission an extension of service tariff for residential basic local exchange service consistent with this rule. Each company must extend service consistent with its tariff and this section.

(b) Within seven business days of an applicant's initial request, each company to which (a) of this subsection applies must provide the applicant with an application for extension of service. The company must also provide the applicant a brief explanation of the extension of service rules, including the requirement that subsequent applicants must contribute to the cost of a previously built extension that is less than five years old.

(c) The company must process applications that require an extension of service in a timely manner, consistent with the following:

(i) When there will be no charge for an extension of service as a result of the allowances required under subsection (3) of this section, the company must construct the extension and provide new tariffed residential basic local exchange service within thirteen months of the order date unless the commission grants the company's request to charge the applicant for extraordinary extension of service costs.

(ii) For an extension of service that exceeds the allowances provided under subsection (3) of this section, within one hundred twenty days of the order date, the company must provide the applicant a bill for the estimated cost of construction of the extension of service under subsection (4)(a) of this section. The company must include with the bill a notice to the applicant of the right to be reimbursed for a portion of the cost by a subsequent applicant as provided under subsection (5) of this section.

(iii) When the company bills for the estimated construction charges, including extraordinary costs as allowed in this section, it must complete the extension of service and provide new tariffed residential basic local exchange service within twelve months after the applicant meets the payment terms established by the company (e.g., payment in full, partial payment on a schedule). If there are multiple applicants under subsection (4)(b) of this section, then all applicants must meet the payment terms established by the company.

(3) Allowances.

(a) A company's tariff must allow for an extension of service within its service territory up to one thousand feet at no charge to the applicant. The tariff may allow for an extension of service for distances over the allowance at no charge to the applicant.

(b) The applicant is responsible for the cost of that portion of the extension of service, if any, that exceeds the allow-

ance. When the applicant meets the company's payment terms under subsection (2)(c)(iii) of this section, the company must construct the extension of service. The company's tariff must permit multiple applicants to aggregate their allowances when an extension of service to two or more applicants would follow a single construction path.

(c) If the company determines that an extension of service up to one thousand feet will involve extraordinary costs, the company may petition for permission to charge the applicant(s) for those costs. The petition must be in the form required under WAC 480-07-370 (1)(b)(ii) and the company must file the petition within one hundred twenty days after the order date. The company must provide notice to the applicant of the petition.

(4) Determining costs and billing for extensions of service longer than allowances.

(a) The company must estimate the cost of the service extension that is attributable to distribution plant that must be extended beyond the applicable allowance established under subsection (3)(b) of this section.

(b) When two or more applicants request service and aggregate their allowances, and it is still necessary to construct an extension of service longer than the aggregated incremental allowances, the company must bill each applicant for an equal portion of the allowable charge (e.g., when two applicants aggregate allowances, the charge is divided by two; when five applicants aggregate allowances, the charge is divided by five). Multiple applicants may agree to divide the bill among themselves in amounts different from those billed as long as the billing company receives full payment.

(c) At the completion of the construction of the extension of service, the company must determine the difference between the estimated cost provided under subsection (2)(c)(ii) of this section and the actual cost of construction. The company must provide to the applicant detailed construction costs showing the difference. The company must refund any overpayment and may charge the applicant for reasonable additional costs up to ten percent of the estimate.

(d) The company must retain records pertaining to the construction charges paid for a period of at least six years from payment of the charges by the original applicant(s).

(5) Subsequent applicants to existing extensions of service for which construction charges were paid.

(a) If within five years of the order date for an extension of service a subsequent applicant seeks service from that previous extension of service and the original applicant(s) paid construction charges under subsection (4) of this section, then the company tariff must require the subsequent applicant to pay a proportionate share of the original extension of service charges before extending service. The tariff must provide that the amount paid by subsequent applicants will be refunded proportionately to the original applicant(s) who paid the extension charges.

(b) The company must provide notice to the last known address of the original applicant(s) of the amount of the refund due the applicant(s). Any refund not requested within sixty days of the date notice was sent will be returned to the subsequent applicant.

(6) Requirements for supporting structures and trenches.

(a) A company tariff may condition construction on completion of support structures, trenches, or both on the applicant's property.

(i) Applicants are responsible for installation of all supporting structures required for placement of company-provided drop wire from the applicant's property line to the applicant's premises. The company may offer to construct supporting structures and dig trenches and may charge for those services, but the tariff must not require that applicants use only company services to construct supporting structures and dig trenches. The offer must clearly state that the applicant may choose to employ a different company for construction services.

(ii) The company tariff may require that all supporting structures required for placement of company-provided drop wire from the applicant's property line to the premises are placed in accordance with company construction specifications. The tariff must require that, once in place and in use, all supporting structures and drop wire will be maintained by the company as long as the company provides service, and any support structure and trenches constructed at company expense are owned by the company.

(b) The tariff must provide that once supporting structures, trenches, or both, have been constructed, the company will provide drop wire to applicants at no charge.

(7) Temporary service. Each company required to file tariffs under RCW 80.36.100 (Tariff schedules to be filed and open to public—Exceptions), and each company regulated under an alternative form of regulation, must have on file with the commission an extension of service tariff for temporary service consistent with this rule. Each company must extend service consistent with its tariff and this section. A company tariff for extension of temporary service may not provide allowances (e.g., one thousand feet without charge) or discounts on the cost of construction.

(8) Application of rule. WAC 480-120-071 as amended applies to requests for service made on or before (the effective date) of this rule if the company has informed the applicant that it will request an exemption.

AMENDATORY SECTION (Amending Docket UT-060676, General Order R-540, filed 3/27/07, effective 4/27/07)

WAC 480-120-103 Application for service. (1) When contacted by an applicant, or when a company contacts a person, a company must:

(a) Accept and process applications when an applicant for service for a particular location has met all tariff requirements and applicable commission rules;

(b) Establish the due date as the date requested by the applicant but is not required to establish a due date that is fewer than seven business days after the order date. If the company establishes a due date other than the date requested by the applicant, it must inform the applicant of the specific date when service will be provided or state that an estimated due date will be provided within seven business days as required by subsection (2) of this section; and

(c) Maintain a record in writing, or in electronic format, of each application for service, including requests for a change of service.

(2) If the company does not provide the applicant with a due date for installation or activation at the time of application as required in subsection (1)(b) of this section, the company must state the reason for the delay. Within seven business days of the date of the application, the company must provide the applicant with an estimated due date for installation or activation. The standards imposed by WAC 480-120-105 (Company performance for installation or activation of access lines) and 480-120-112 (Company performance for orders for nonbasic services) are not altered by this subsection.

(3) When the company informs the customer that installation of new service orders requires on-premises access by the company, the company must offer the customer an opportunity for an installation appointment that falls within a four-hour period.

(4) When the application for service requires ((a)) an extension of service ((~~extension~~)) as defined in WAC 480-120-071 (Extension of service), the requirement of subsection (1)(b) of this section does not apply ((and, for the purpose of determining when an extension must be completed, the order date is the application date or six weeks prior to the date the customer makes the required initial payment, which ever is later.

~~When a service extension is required, the company must inform the customer within six weeks of a request for service that it will construct the extension and also request payment from the customer according to WAC 480-120-071, or inform the customer in writing that it will request an exemption from the commission pursuant to WAC 480-120-071(7).~~

~~In the event a company informs the customer it will request an exemption, the company must submit the request to the commission within four weeks of informing the customer of its decision. A copy of the exemption request must be mailed to the customer not later than the date the request is filed).~~

WSR 08-10-103
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
(Securities Division)

[Filed May 7, 2008, 10:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-01-128.

Title of Rule and Other Identifying Information: The rule making will create rules for administering the securities prosecution fund.

Hearing Location(s): Department of Financial Institutions, 150 Israel Road S.W., Tumwater, WA 98501, on June 11, 2008, at 10 a.m.

Date of Intended Adoption: June 11, 2008.

Submit Written Comments to: Jill M. Vallely, Securities Division, P.O. Box 9033, Olympia, WA 98507-9033, e-mail jvallely@dfi.wa.gov, fax (360) 704-7035, by June 10, 2008.

Assistance for Persons with Disabilities: Contact Jill Vallely, TTY (360) 664-8126 or (360) 902-8760.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The securities prosecution fund was created by RCW 43.320.115. Fines collected by the Washington securities division are placed in a fund known as the securities prosecution fund. Funds may be made available to reimburse expenses related to securities fraud investigations and prosecutions. The proposed rule making will codify the procedures to be followed by prosecuting attorneys who seek reimbursement funds.

Reasons Supporting Proposal: The rule making will provide notice and guidance to prosecuting attorneys who may be eligible for reimbursement from the securities prosecution fund. The rules will provide additional information on the application procedure to be followed. The rules will also outline the record-keeping and reporting requirements for prosecuting attorneys who receive reimbursement from the securities prosecution fund.

Statutory Authority for Adoption: RCW 21.20.450.

Statute Being Implemented: Chapter 21.20 RCW.

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

Name of Proponent: Department of financial institutions, securities division, governmental.

Name of Agency Personnel Responsible for Drafting: Jill M. Vallely, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760; Implementation: Scott Jarvis, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760; and Enforcement: Michael E. Stevenson, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposal does not impose additional costs on business.

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

May 6, 2008
Scott Jarvis
Director

Chapter 208-705 WAC

**PROCESSING APPLICATIONS FOR GRANTS FROM
THE SECURITIES PROSECUTION FUND**

NEW SECTION

WAC 208-705-010 Securities prosecution fund. (1) Pursuant to RCW 43.320.115, the department of financial institutions maintains a securities prosecution fund. Moneys from the securities prosecution fund may be available to assist the attorney general or prosecuting attorney with a criminal prosecution of violations arising under the Securities Act, the Franchise Investment Protection Act, the Business Opportunity Fraud Act, or the Commodities Transactions Act. The attorney general or prosecuting attorney may apply

to the director of the department of financial institutions for reimbursement of expenditures from the securities prosecution fund.

(2) Application and reimbursement process.

(a) An applicant shall complete an application form provided by the securities division of the department of financial institutions.

(b) If the director or his or her designee approves the reimbursement request, the applicant may be required to complete and submit additional forms and information during the reimbursement process.

(c) The attorney general or prosecuting attorney requesting reimbursement of expenditures related to a criminal investigation or prosecution must maintain books, records, documents, and other evidence that sufficiently and properly reflect those expenditures.

(d) At the closing of each case for which reimbursement has been approved, the attorney general or prosecuting attorney must submit a closing report to the department of financial institutions. The closing report shall summarize the outcome of the case, provide an accounting for reimbursed expenditures, and certify that all reimbursement funds have been used for the purpose requested. If a closing report is not filed, or if the closing report indicates that funds were not used for the purpose requested, the attorney general or prosecuting attorney is required to repay the funds received from the securities prosecution fund.

WSR 08-10-106
PROPOSED RULES
BOARD OF
PILOTAGE COMMISSIONERS

[Filed May 7, 2008, 11:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-14-113.

Title of Rule and Other Identifying Information: Eighteen rules are being considered for adoption. Two rules are being repealed. Amending WAC 363-116-010 Time and place of meeting, 363-116-070 Collection of fees, 363-116-0751 Qualifications for pilot applicants taking examinations on or after July 1, 2008, 363-116-076 Examination for pilot applicants, 363-116-077 Simulator evaluation for pilot applicants, 363-116-078 Training program, 363-116-082 Limitations on new pilots, 363-116-083 Written examination review and appeal procedures, 363-116-110 Details and requirements of annual license fee payment, physical examination report and reinstatement application, 363-116-120 Job description—Physical examination—Health requirements, 363-116-200 Duties of pilots, 363-116-205 Vessel certification, 363-116-315 Retirement disbursements, 363-116-35001 Exemption from provisions of WAC 197-10-800, 363-116-370 System of specified disciplinary or corrective actions, 363-116-405 Relieving pilots for cause and 363-116-420 Summary/temporary license suspension; new section WAC 363-116-084 Simulator evaluation review and appeal procedures; and repealing WAC 363-116-075 Qualifications

for pilot applicants taking examinations before July 1, 2008, and 363-116-150 Registration of operators.

Hearing Location(s): 2901 Third Avenue, 4th Floor, Rainier Conference Room, Seattle, WA 98121, on June 12, 2008, at 9:30 a.m.

Date of Intended Adoption: June 12, 2008.

Submit Written Comments to: Captain Harry Dudley, Chairman, 2901 Third Avenue, Suite 500, Seattle, WA 98121, e-mail larsonp@wsdot.wa.gov, fax (206) 515-3906, by June 5, 2008.

Assistance for Persons with Disabilities: Contact Judy Bell by June 9, 2008, (206) 515-3647.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed new rules being considered are intended to implement statutory modifications to chapter 88.16 RCW recently enacted by the 2008 legislature. New and amendatory language is necessary to align pilotage rules (chapter 363-116 WAC) with the Pilotage Act (chapter 88.16 RCW).

In addition, there are several proposed housekeeping modifications which are necessary to create more clear and concise interpretation.

Two rules are being repealed:

- WAC 363-116-075 Qualifications for pilot applicants taking examinations before July 1, 2008, because it will soon expire.
- WAC 363-116-150 Registration of operators, due to statutory modifications.

The following rules are being created and/or amended which also may contain housekeeping and/or statutory modifications:

- The provisions of WAC 363-116-0751 Qualifications for pilot applicants taking examinations on or after July 1, 2008, relates to the definition of "master" and the verification of sea time for purposes of being determined qualified to take the pilot examinations.
- The provisions of WAC 363-116-076 Examination for pilot applicants, relates to the written pilot examination including without limitation those provisions relating to the scoring of the written pilot examination and ranking of applicants.
- The provisions of WAC 363-116-077 Simulator evaluation for pilot applicants, relates to the pilot simulator evaluation including without limitation those provisions relating to qualification for, procedures to be followed in, payment of the cost of and scoring of the simulator evaluations portion of the qualification process.
- The provisions of WAC 363-116-078 Training program, relates to the pilot training program including without limitation those provisions relating to ranking applicants for entry into the training program, the timing of the physical examination relating to the training program, the contents of the training program, the methods of evaluating trainees, the makeup of the trainee evaluation committee.
- The provisions of WAC 363-116-082 Limitations on new pilots, relates to license upgrading requirements and procedures for new Grays Harbor pilots. This language is intended to further an emergency rule currently in effect.

- The provisions of WAC 363-116-083 Examination review and appeal procedures, relates to the written examination review and appeal procedures.
- The provisions of WAC 363-116-084 Simulator evaluation review and appeal procedures, relates specifically to the simulator evaluation review and appeal procedures.
- The provisions of WAC 363-116-315 Retirement disbursements, relating to disbursement of retirement funds according to pilot retirement plans. Consideration will be given to the repeal as well as the amendment of this rule.

Reasons Supporting Proposal: SSB 6602 was recently enacted during the 2008 legislative session which necessitates new and amendatory language in chapter 363-116 WAC.

Statutory Authority for Adoption: Chapter 88.16 RCW.
Statute Being Implemented: Chapter 88.16 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The board has given several opportunities for stakeholders to participate in and comment on the development of the proposed new rules. Further written and oral comments are welcome throughout the rule-making process. The board may adopt a rule that varies from the proposed rule upon consideration of presentations and written comments from the public and any other interested party.

Name of Proponent: Board of pilotage commissioners, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Board of Pilotage Commissioners, 2901 Third Avenue, Seattle, WA 98121, (206) 515-3904.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are being considered as a result of new statutory revisions requiring new regulatory provisions which are clearly described in the proposal shown below.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the adoption of these rules. The Washington state board of pilotage commissioners is not a listed agency in RCW 34.05.328 (5)(a)(i).

May 5, 2008
Peggy Larson
Administrator

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

WAC 363-116-010 Time and place of meeting. The regular monthly meeting of the board of pilotage commissioners shall be on the second Thursday of each month at ~~((9:00)) 9:30 a.m. ((at Pier 52, Seattle, Washington))~~ in the offices of the Washington state ferries, Seattle, Washington, unless another time and place has been designated by the chairperson at the last previous meeting. If the aforementioned day falls on a holiday, the meeting shall take place on the following Thursday at the same hour.

AMENDATORY SECTION (Amending WSR 07-17-128, filed 8/20/07, effective 9/20/07)

WAC 363-116-070 Collection of fees. All pilots shall pay an annual license fee of six thousand dollars or such amount as may be set by statute for every year in which they perform any pilotage services. If a licensed pilot does not perform pilotage services during a license year, his/her fee for that year shall be reduced to one thousand dollars upon application to the board. The board of pilotage commissioners shall receive all fees for licenses or for other purposes and make proper accounting of same and transmit all such funds to the pilotage account.

AMENDATORY SECTION (Amending WSR 05-18-021, filed 8/29/05, effective 10/1/05)

WAC 363-116-0751 Qualifications for pilot applicants taking examinations on or after July 1, 2008. (1) Sea service.

(a) In addition to meeting the preexamination requirements of RCW 88.16.090, pilot applicants must, before taking the examination provided in WAC 363-116-076, meet one of the following indicated service requirements as master, while holding a minimum license as master of steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC):

Vessel Type	Minimum Size	Waters	Minimum Time
Cargo or tank	5000 GRT or 10,000 GT (ITC)	Ocean or near coastal	1 year
Cargo or tank	700 GRT or 1400 GT (ITC)	Ocean or near coastal	2 years
Cargo or tank	1600 GRT or 3000 GT (ITC)	Inland	2 years
Passenger or ferry	1600 GRT or 3000 GT (ITC)	Ocean, near coastal or inland	2 years
Towing	150 GRT or 300 GT (ITC)	Ocean, near coastal or inland	2 years

(b) In calculating sea service under subsection (1) of this section, a year of service shall equal three hundred sixty days of service on the vessel in the required capacity. Pilot applicants combining the above types of sea service shall have a total of at least two years of the various service times, except that one day of service as master on cargo, tank, or passenger vessels of at least 5000 GRT or 10,000 GT (ITC) shall be credited as two days of service time for the purpose of calculating such combined service times.

(2) In lieu of the requirements of subsection (1) of this section, ~~((and))~~ a pilot applicant may substitute either:

(a) Three years of service as an active member of an organized professional pilot association or as a government employed pilot during which periods the pilot applicant was actively engaged in piloting while holding a minimum license as a master of steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC) upon oceans, near coastal waters or inland waters. For purposes of this section, piloting shall refer to piloting vessels in the capacity of the pilot in charge of navigation; or

(b) Two years of service as a commanding officer or master of U.S. flag government vessels of not less than 3000

displacement tons. The pilot applicant must hold at the time of application a minimum license as master of steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC) upon oceans, near coastal waters or inland waters.

(3) ~~((An applicant who does not meet the sea service requirements set forth in subsection (1) or (2) of this section but is otherwise qualified to take the examination, shall be eligible to take examinations given on or after July 1, 2008, if the applicant qualified for, took and passed the most recent examination given prior to July 1, 2008, pursuant to WAC 363-116-075 and any subsequent examinations given after July 1, 2008, pursuant to WAC 363-116-0751.~~

(4)) As used in this section these terms shall have the following meanings:

(a) Cargo or tank vessels shall refer to vessels primarily engaged in the transportation of cargo between points.

(b) Passenger vessels shall refer to vessels primarily engaged in the transportation of passengers between points. This shall include yachts only to the extent and for such times that such vessels are actively engaged in moving passengers between points.

(c) Ferry vessels shall refer to vessels primarily engaged in the transportation of vehicles and passengers between points.

(d) Towing vessels shall refer to vessels primarily engaged in commercial towing of vessels or in ship assist work.

(e) GRT shall refer to gross register tonnage (domestic).

(f) GT (ITC) shall refer to gross tonnage measured in accordance with the requirements of the *1969 International Convention on Tonnage Measurement of Ships*.

(g) Master shall refer to the person of master's rank on the vessel's station bill or muster list or other such document who, in the event of an emergency or the sounding of a general alarm, is required to be on the bridge and in charge. If there is no such designation, the term master shall refer to the person of master's rank and pay who is ultimately in charge of the navigation of the vessel; provided that if there are two people on a vessel with the rank of master and receiving master's pay, the master receiving the higher daily rate of pay shall be considered the master for purposes of this section, and further provided that if both masters receive the same rate of pay, the more senior of the two shall be considered the master for purposes of this section.

(h) Junior master shall refer to the person whose duties shall include:

(i) Responsibilities relative to the shipboard navigation, safety, operation, ship handling, and training similar to the sole master on one-master vessels;

(ii) Active participation in the safe passage of ships while under the authority of a pilot in Puget Sound; and

(iii) Holding a master's license of not less than the tonnage of the vessel, or a minimum 1600 GRT, whichever is greater.

(4) It will be the responsibility of the pilot applicant to provide adequate documentation to enable the board to set forth and verify sea service in the manner specified in the board's application form. In situations in which there were more than one master serving on a vessel, the pilot applicant shall produce the station bill or similar document and written

evidence verified by his/her former employer of the pilot applicant's higher pay or seniority during the submitted service time.

(5) The provisions of this section shall apply to examinations provided in WAC 363-116-076 given on or after July 1, 2008.

AMENDATORY SECTION (Amending WSR 05-18-021, filed 8/29/05, effective 10/1/05)

WAC 363-116-076 Examination for pilot applicants.

(1) Pilot applicants must pass a written examination given and graded by the board or the board's designated contracting entity. A perfect score on the written examination shall be 100 points. The board will set the minimum passing score for the written examination. Notice of the examination shall be published at least four months in advance by one paid advertisement in a major marine industry publication and written notice to any party who has requested notice of such examinations. The board may publish additional notices in such publications or in other media at such times as it deems appropriate. Applications will be accepted by the board immediately following the publication of the notice of the examination. The board may, in an emergency, call for an examination on less than four months notice.

(2) The examination may be taken by all pilot applicants who the board has determined have met the qualifications of WAC ~~((363-116-075 or))~~ 363-116-0751 and who:

(a) Have had an application on file with the board for at least one month prior to the examination. This requirement may be waived by the chairperson of the board upon the showing of good cause.

(b) Have tendered with the application a nonrefundable examination administration fee in such amount as may be set by the board from time to time. The board may, at its discretion, refund all or part of the examination administration fee for ~~((an))~~ a pilot applicant who is unable to sit for the examination or refund all or part of the portion of the examination administration fee that ~~((encompasses))~~ may encompass the simulator fee for ~~((an))~~ a pilot applicant who is unable to sit for the simulator evaluation.

(3) The written examination shall be in compliance with RCW 88.16.090 and may consist of questions covering, but not limited to, the following subjects:

(a) Rules of the Road then applicable to the pilotage district for which the pilot applicant is applying and accompanying information set forth in United States government publications on the subject;

(b) Meaning and understanding of the aids to navigation;

(c) Seamanship, including piloting and ship handling, docking and undocking problems, use of ship assist tugs and anchors;

(d) Vessel traffic system regulations;

(e) Engine and rudder order commands for United States and foreign merchant vessels and United States naval vessels;

(f) Operation and use of marine radar and automatic radar plotting aids (ARPA);

(g) Ability to calculate currents and tides;

(h) Federal laws affecting mariners and pilots including environmental laws;

(i) Use of vessel navigational equipment;
(j) Duties of a pilot;
(k) Relationship between pilot and master;
(l) Bridge resource management;
(m) United States government public health quarantine regulations;
(n) Marine VHF radio usage and phraseology, including bridge-to-bridge communications regulations;
(o) Federal navigation safety and security regulations;
(p) International distress signals; and
(q) Nonlocal chart knowledge, including chart symbols and abbreviations as set forth in the latest U.S. Department of Commerce, NOS (National Ocean Survey) Chart No. 1(~~;~~ and ~~(r) Chapters 88.16 RCW and 363-116 WAC~~)).

(4) ~~((In addition to the subjects listed in subsection (3) of this section, the following subjects as they pertain to the pilotage district for which the examination is being given may be included in examinations given before July 1, 2008:~~

~~(a) Knowledge of local tidal currents;~~
~~(b) Overhead cable areas and clearances;~~
~~(c) Submerged cable and pipeline areas;~~
~~(d) Channel, waterway and passage widths, depths and shoal areas and other information from the Army Corps of Engineers survey charts;~~
~~(e) Bridge transit knowledge — signals, channel width, regulations, and closed periods;~~
~~(f) Lock characteristics, rules and regulations;~~
~~(g) Ranges for determining compass error and measured miles;~~
~~(h) Channel ranges;~~
~~(i) Pier, wharf, or terminal locations and berth numbers; dock or pier headings, lengths, and minimum depths of water alongside;~~
~~(j) Prohibited areas, restricted areas, regulated navigation areas and explosive anchorages;~~
~~(k) Commonly used anchorage locations;~~
~~(l) Use of anchors and knowledge of ground tackle;~~
~~(m) State and federal tanker escort rules;~~
~~(n) State environmental law and regulations affecting mariners;~~
~~(o) Marine and port security regulations;~~
~~(p) Harbor safety plan and harbor regulations; and~~
~~(q) Local chart knowledge, including chart symbols and abbreviations as set forth in the latest U.S. Department of Commerce, NOS (National Ocean Survey) Chart No. 1.))~~

The board may require that the cost of the written examination will be at the expense of the pilot applicant.

AMENDATORY SECTION (Amending WSR 05-18-021, filed 8/29/05, effective 10/1/05)

WAC 363-116-077 Simulator evaluation for pilot applicants. (1) ~~Pilot applicants ((who take an examination before July 1, 2008, shall be eligible to take the simulator evaluation set forth in this section. Applicants))~~ who pass ~~((~~an~~) a written~~ examination on or after July 1, 2008, and whose scores are among the top twenty (or such other number as may be set by the board) of those taking the written examination (plus any pilot applicants who tie a qualifying score)

shall be eligible to take the simulator evaluation set forth in this section.

(2) The simulator evaluation shall take place at a marine simulator facility designated by the board and shall be recorded. In this evaluation pilot applicants shall be observed by available board members but shall be evaluated only by those board members who hold, or have held a minimum U.S. Coast Guard license as master of steam or motor vessels of not more than 1600 gross tons(~~(; provided that no currently licensed Washington state pilots shall be evaluators or be present during the evaluation)~~). The board shall also appoint a minimum of two additional evaluators who hold, or have held within ten years of the examination date, a state pilot license issued by another state or who have held a Washington state pilot license within the last ten years.

(3) All pilot applicants will be evaluated in writing based on some or all of the following factors:

(a) Fundamental piloting and ship handling ability;
(b) Ability to assimilate and prioritize all data necessary to safely maneuver the ship;
(c) Ability to respond appropriately in routine situations;
(d) Ability to respond appropriately in emergency or nonroutine situations;
(e) Ability to communicate well and project the proper bridge presence;
(f) Understanding of bridge resource management; and
(g) Understanding and command of the Rules of the Road then applicable to the pilotage district for which the pilot applicant is applying.

(4) ~~The board will determine the~~ scoring method on the simulator evaluation and the relative weight of this score to the whole examination ~~((will be determined by a board designated examination committee and provided to the applicants prior to the examination provided in WAC 363-116-076)).~~

(5) The board will set a minimum passing score.

(6) The board may require that the cost of the simulator evaluation ~~((fee))~~ will be at the expense of the pilot applicant.

AMENDATORY SECTION (Amending WSR 06-20-107, filed 10/4/06, effective 11/4/06)

WAC 363-116-078 Training program. After passing the written examination and simulator evaluation, pilot applicants pursuing a pilot license must enter and successfully complete a training program specified by the board.

(1) Notification. Pilot applicants on the list waiting to enter the training program shall provide the board with a current address to be used for notification for entry into the training program. Such address shall be a place at which mail is delivered. In addition, ~~((~~an~~) a~~ pilot applicant may provide the board with other means of contact such as a phone number, fax number, and/or an e-mail address. The mailing address will, however, be considered the primary means of notification by the board. It will be the responsibility of the pilot applicant to ensure that the board has a current mailing address at all times. If ~~((~~an~~) a~~ pilot applicant cannot personally receive mail at the address provided to the board for any period of time, another person may be designated in writing with a notarized copy to the board as having power of attorney specifically to act in the pilot applicant's behalf regarding

such notice. If notice sent to the address provided by the pilot applicant is returned after three attempts to deliver, that pilot applicant will be skipped and the next pilot applicant on the list will be contacted for entry into the training program. A person so skipped will remain next on the list. ~~((Ann))~~ A pilot applicant or his/her designated attorney in fact shall respond within fifteen calendar days of receipt of notification to accept, refuse, or request a delayed entry into the training program.

(2) Entry. At such time that the board chooses to start ~~((Ann))~~ a pilot applicant in the training program, notification shall be given to the first person on the list. Pilot applicants shall be eligible in the order of their total combined scores on the written examination and simulator evaluation or as otherwise may be determined by the board. ((Any)) A pilot applicant who refuses entry into the program will be removed from the waiting list with no further obligation by the board to offer a position in the training program to such pilot applicant. ((Ann)) A pilot applicant who is not able to start the training program ((within two months of the board's notice)) on the date the board sets for that pilot applicant's entry into the training program may, with written consent of the board, delay entry into the training program for up to two months. The board will then give notice to the next pilot applicant on the list to enter the training program. The pilot applicant who delays entry, shall remain eligible for the next position in the training program, provided that the next position becomes available within the earlier of:

(a) Four years from the pilot applicant's taking the written examination; or

(b) The date scheduled for the next pilotage examination. Pilot applicants not able to start in the training program within two months of the ((board's notice of eligibility)) date the board sets for that pilot applicant's entry into the training program and who do not obtain the board's written consent to delay entry into the training program shall no longer be eligible for the training program without retaking the examination provided in WAC 363-116-076 and the simulator evaluation provided in WAC 363-116-077.

(3) Training license. Prior to receiving a training license pilot applicants must pass a physical examination by a board-designated physician ~~((designated by the board))~~ and in accordance with the requirements of WAC 363-116-120 for initial pilot applicants. A form provided by the board must be completed by the physician and submitted to the board along with a cover letter indicating the physician's findings and recommendations as to the pilot applicant's fitness to pilot. The physical examination must be taken not more than ~~((forty-five))~~ ninety days before issuance of the training license. Holders of a training license will be required to pass a general physical examination annually within ~~((forty-five))~~ ninety days prior to the anniversary date of that license. Training license physical~~((s))~~ examinations will be at the expense of the pilot applicant. All training licenses shall be signed by the chairperson or his/her designee and shall have an expiration date ~~((and fee established by the board))~~. Training licenses shall be surrendered to the board upon completion or termination of the training program.

(4) Development. As soon as practical after receiving notification of eligibility for entry into the training program

as set forth in this section, the pilot applicant shall meet with the trainee evaluation committee for the purpose of devising a training program for that pilot applicant. The training program shall be tailored to the ability and experience of the individual pilot applicant and shall consist of observation trips, training trips in which the pilot applicant pilots the vessel under the supervision of licensed pilots, ship assist tug trips, and such other forms of learning and instruction that may be designated. The trainee evaluation committee shall recommend a training program for adoption by the board. After adoption by the board, it will be presented to the pilot applicant. If the pilot applicant agrees in writing to the training program, the board shall issue a training license to the pilot applicant, which license shall authorize the pilot applicant to take such actions as are contained in the training program. If the pilot applicant does not agree to the terms of the training program in writing within fifteen business days of it being received by the pilot applicant, that pilot applicant shall no longer be eligible for entry into the training program and the board may give notice to the next available pilot applicant that he/she is eligible for the training program.

(5) Initial evaluation.

(a) The trainee evaluation committee shall create an initial evaluation at the beginning of each pilot applicant's training program subject to approval by the board. The goal of the initial evaluation is to, as soon as practical after adequate observation trips, have the pilot trainee involved in hands-on piloting and ship handling under the supervision of licensed pilots and subject to the evaluation of training pilots. To this end the trainee evaluation committee shall devise an initial evaluation of a specified length not to exceed six months if the pilot trainee is on stipend and nine months if not on stipend. The initial evaluation shall:

(i) Afford the pilot trainee early and concentrated exposure to a commonly navigated waterway, channel or tributary within the pilotage district and the main ship channel routes between such area and the seaward boundary of the pilotage district;

(ii) Except for pilot trainees taking an examination prior to July 1, 2008, provide the pilot trainee the opportunity to study for and pass any local knowledge examinations provided by the board as to the conditions found in such waterway, channel or tributary;

(iii) Specify a number of training trips in which the pilot trainee pilots vessels under the supervision of licensed pilots; and

(iv) Specify a number of training trips in which the pilot trainee pilots vessels under the supervision of training pilots and the pilot members of the trainee evaluation committee.

(b) As a condition of completing the initial evaluation, the pilot trainee shall:

(i) Pass any required local knowledge examinations given by the board covering the routes described in (a)(i) of this subsection. This examination can be repeated as necessary, provided that it may not be taken more than once in any thirty day period and further provided that it must be successfully passed before the expiration date of the initial evaluation; and

(ii) Possess a first class pilotage endorsement without tonnage or other restrictions on his/her United States govern-

ment license to pilot in at least one route in the pilotage district in which the pilot applicant seeks a license.

(c) After completion of the initial evaluation, the trainee evaluation committee shall make a recommendation to the board and the board shall determine, whether the pilot trainee has demonstrated the potential for superior piloting and ship handling and has demonstrated the ability to assimilate and retain the local knowledge necessary to pilot. Unless the board finds that such superior potential exists, it shall terminate the pilot trainee's participation in the training program.

(6) Specification of trips. To the extent possible, the training program shall provide a wide variety of assignments, observation and training trips. The training program may contain deadlines for achieving full or partial completion of certain necessary actions. Where relevant, it may specify such factors as route, sequence of trips, weather conditions, day or night, stern or bow first, draft, size of ship and any other relevant factors. The board may designate specific trips or specific numbers of trips that shall be made with training pilots or with the pilot members of the trainee evaluation committee or with pilots of specified experience. In the Puget Sound pilotage district, pilot applicants taking an examination before July 1, 2008, shall ~~((have))~~ complete a minimum of one hundred thirty trips. After July 1, 2008, all Puget Sound pilotage district pilot applicants shall ~~((have))~~ complete a minimum of one hundred fifty trips. The board shall set from time to time the minimum number of trips for pilot applicants in the Grays Harbor pilotage district. The board will ensure that during the training program the pilot trainee will get significant review by training pilots and the pilot members of the trainee evaluation committee.

(7) Local knowledge. The training program shall provide opportunities for the education of pilot trainees and shall provide for testing of pilot trainees on the local knowledge necessary to become a pilot. This education program shall be developed by the trainee evaluation committee and recommended to the board for adoption and shall be tailored to the needs of the individual pilot trainee. It shall be the responsibility of the pilot trainee to obtain the local knowledge necessary to be licensed as a pilot in the district for which he/she is applying. Prior to the completion of the training program, the board, or its designee, ~~((shall))~~ may give ((#)) such local knowledge examination(s) as it deems appropriate to the pilot trainees who shall be required to pass such examination(s) before completing the training program. ((Pilot trainees taking an examination before July 1, 2008, shall not be required to take local examinations-)) The trainee evaluation committee may require a pilot trainee to sit for a local knowledge examination provided the trainee evaluation committee informs the pilot trainee in writing sixty days in advance of the scheduled date of the examination. Failure to sit for the examination on the date scheduled may constitute cause for removal from the training program. The trainee evaluation committee may also establish in writing such interim performance requirements as it deems necessary. These local examinations can be repeated as necessary, except that an examination for the same local area may not be taken more than once in any thirty day period and all required local know examinations must be successfully passed before the expiration date of the training program. The local knowledge

required of a pilot trainee and the local knowledge examination(s) may include the following subjects as they pertain to the pilotage district for which the pilot trainee seeks a license:

- (a) Area geography;
- (b) Waterway configurations including channel depths, widths and other characteristics;
- (c) Hydrology and hydraulics of large ships in shallow water and narrow channels;
- (d) Tides and currents;
- (e) Winds and weather;
- (f) Local aids to navigation;
- (g) Bottom composition;
- (h) Local docks, berths and other marine facilities including length, least depths and other characteristics;
- (i) Mooring line procedures;
- (j) Local traffic operations e.g., fishing, recreational, dredging, military and regattas;
- (k) Vessel traffic system;
- (l) Marine VHF usage and phraseology, including bridge-to-bridge communications regulations;
- (m) Air draft and keel clearances;
- (n) Submerged cable and pipeline areas;
- (o) Overhead cable areas and clearances;
- (p) Bridge transit knowledge - signals, channel width, regulations, and closed periods;
- (q) Lock characteristics, rules and regulations;
- (r) Commonly used anchorage areas;
- (s) Danger zone and restricted area regulations;
- (t) Regulated navigation areas;
- (u) Naval operation area regulations;
- (v) Maneuvering behavior for different vessel types;
- (w) Impact of propulsion and maneuvering machinery on vessel navigation;
- (x) Local ship assist and escort tug characteristics;
- (y) Tanker escort rules - state and federal;
- (z) Use of anchors and knowledge of ground tackle;
- (aa) Applicable federal and state marine and environmental safety law requirements;
- (bb) Marine security and safety zone concerns;
- (cc) Marine port security regulations;
- (dd) Harbor safety plan and harbor regulations; ~~((and))~~
- (ee) Chapters 88.16 RCW and 363-116 WAC, and other relevant state and federal regulations in effect on the date the examination notice is published pursuant to WAC 363-116-076; and

(ff) Courses in degrees true and distances in nautical miles and tenths of miles between points of land, navigational buoys and fixed geographical reference points, and the distance off points of land for such courses as determined by parallel indexing along pilotage routes.

(8) Length.

(a) In the Puget Sound pilotage district, for pilot applicants taking an examination before July 1, 2008, the minimum length of the training program shall be seven months. For pilot applicants who take an examination on or after July 1, 2008, the minimum length of the training program shall be eight months. The maximum length of the training program shall be thirty-six months if the pilot applicant elects to receive a stipend. The length of the training program shall be

established by the board based on the recommendation of the trainee evaluation committee.

(b) In the Grays Harbor pilotage district, the length of the training program shall be set by the board based on the recommendation of the trainee evaluation committee.

(9) Rest. It is the pilot trainee's responsibility to provide adequate rest time so that he/she is fully able to pilot on training trips. Pilot trainees shall not take pilot training trips in which they will be piloting the vessel without observing the rest rules for pilots in place by federal or state law or regulation. For purposes of calculating rest required before a training trip in which the pilot trainee will be piloting after an observation trip in which the pilot trainee did not pilot the vessel, such observation trip shall be treated as though it had been a normal ~~((pilotage))~~ pilot training assignment. Nothing herein shall be construed as requiring any particular amount of rest before any observation trip in which the pilot trainee will not be piloting.

(10) Stipend.

(a) At the initial meeting with the trainee evaluation committee the pilot applicant shall indicate whether he/she wishes to receive a stipend during the training program. In the Puget Sound pilotage district, as a condition of receiving such stipend, pilot applicants will agree to forego during the training program other full- or part-time employment which prevents them from devoting themselves on a full-time basis to the completion of the training program. With the consent of the board and the restructuring of the training program, pilot trainees may elect to change from a stipend to nonstipend status, and vice versa, during the training program. The stipend paid to pilot trainees shall be six thousand dollars per month (or such other amount as may be set by the board from time to time), shall be contingent upon the board's setting of a training surcharge ~~((fee))~~ in the tariffs levied pursuant to WAC 363-116-185 and 363-116-300 sufficient to cover the expense of the stipend and shall be paid from a pilot training account as directed by the board and pursuant thereto shall be paid to pilot trainees as set forth below:

~~(i) ((The stipend will be paid on a full calendar month basis except that prorations may be used for the first and last months in which the trainee is found unfit for duty and in which the trainee changes to a nonstipend status.~~

~~((ii))~~ Determinations as to stipend entitlement will be made on a full calendar month basis and documentation of trips will be submitted to the board by the fifth day of the following month. The stipend will be paid on an all or nothing basis for each month except that prorations shall be allowed at the rate of two hundred dollars per day (or such other amount as may be set by the board from time to time), under the following circumstances:

(A) For the first and last months of the training program (unless the training program starts on the first or ends on the last day of a month); or

(B) ~~((The))~~ For a pilot trainee who is deemed unfit for duty by ~~((the))~~ a board-designated physician during a training month; or

(C) ~~((A))~~ For a pilot trainee who requests a change from a nonstipend status to a stipend status, or from a stipend status to a nonstipend status as set forth in ~~(a)((+vi))~~ (vi) of this subsection.

~~((+iii))~~ (ii) A certain minimum number of trips are required each month for eligibility to receive the stipend. This minimum number shall be specified in the training program and shall be the total number of trips required in the training program divided by the number of months in the training program. Only trips required by the training program can be used to satisfy this minimum. Trips will be documented at the end of each month.

~~((+iv))~~ (iii) It is the pilot trainee's responsibility to make all hard-to-get trips before the end of the training program. If a training program is extended due to a failure to get all of these trips, the board may elect not to pay the stipend if the missing trips were available to the pilot trainee but not taken.

~~((+v))~~ (iv) The trainee evaluation committee with approval by the board may allocate, assign or specify training trips among multiple pilot trainees. Generally, the pilot trainee who finished the qualifying examination and simulator evaluation with the highest score has the right of first refusal of training trips provided that the trainee evaluation committee may, with approval by the board, allocate or assign training trips differently as follows:

(A) When it is necessary to accommodate any pilot trainee's initial evaluation program;

(B) When it is necessary to spread hard-to-get trips among pilot trainees so that as many as possible complete required trips on time. If a pilot trainee is deprived of a hard-to-get trip by the trainee evaluation committee, that trip will not be considered "available" under ~~(a)((+iii))~~ (ii) of this subsection. However, the pilot trainee will still be required to complete the minimum number of trips for the month in order to receive a stipend, and the minimum number of trips as required to complete his/her training program;

~~((+vi))~~ (v) If a pilot trainee elects to engage in any full- or part-time employment, the terms and conditions of such employment must be submitted to the trainee evaluation committee for prior determination by the board of whether such employment complies with the intent of this section prohibiting employment that "prevents (pilot trainees) from devoting themselves on a full-time basis to the completion of the training program."

~~((+vii))~~ (vi) If a pilot trainee requests to change to a nonstipend status as provided in this section such change shall be effective for a minimum nonstipend period of thirty days, provided that before any change takes effect the board and the pilot trainee must agree in writing on the terms of a revised training program.

(b) Any approved pilot association or other organization collecting the pilotage tariff levied by WAC 363-116-185 or 363-116-300 shall transfer the pilot training surcharge receipts to the board at least once a month or otherwise dispose of such funds as directed by the board. The board may set different training stipends for different pilotage districts. Receipts from the training surcharge shall not belong to the pilot providing the service to the ship that generated the ~~((fee))~~ surcharge or to the pilot association or other organization collecting the surcharge receipts, but shall be disposed of as directed by the board. Pilot associations or other organizations collecting surcharge receipts shall provide an accounting of such funds to the board on a quarterly basis or at such other intervals as may be requested by the board. Any audited

financial statements filed by pilot associations or other organizations collecting pilotage tariffs shall include an accounting of the collection and disposition of these surcharges ((fees)). The board shall direct the disposition of all funds in the account.

(11) Trainee evaluation committee. There is hereby created a trainee evaluation committee to which members shall be appointed by the board. The committee shall include at a minimum: Three active licensed Washington state pilots, who, to the extent possible, shall be from the district in which the pilot trainee seeks a license and at least one of whom shall be a member of the board; one representative of the marine industry from the relevant pilotage district (who may be a board member) who holds, or has held, the minimum U.S. Coast Guard license required by RCW 88.16.090; and one ~~((public representative))~~ other member of the board who is not a pilot. The committee may include such other persons as may be appointed by the board. The committee shall be chaired by a pilot member of the board and shall meet as necessary to complete the tasks accorded it. In the event that the trainee evaluation committee cannot reach consensus with regard to any issue it shall report both majority and minority opinions to the board.

(12) Training pilots. The board shall designate as training pilots those pilots with a minimum of seven years of piloting in the relevant district who are willing to undergo such training as the board may require and provide. The board may establish a lower experience level for the Grays Harbor pilotage district. Training pilots shall receive such training from the board to better enable them to give guidance and training to pilot trainees and to properly evaluate the performance of pilot trainees. The board shall keep a list of training pilots available for public inspection at all times. All pilot members of the trainee evaluation committee shall also be training pilots.

(13) Evaluation. When a pilot trainee pilots a vessel under the supervision of another pilot, the supervising pilot shall, to the extent possible, communicate with and give guidance to the pilot trainee in an effort to make the trip a valuable learning experience. After each such trip, the supervising pilot shall complete a form provided by the board evaluating the pilot trainee's performance. ~~((The board shall prepare different forms to be used by supervising pilots who are training pilots and those who are not.))~~ Evaluation forms prepared by licensed pilots who are not training pilots shall be used by the trainee evaluation committee and the board for assessing a pilot trainee's progress, providing guidance to the pilot trainee and for making alterations to the training program. All evaluation forms shall be delivered or mailed by the supervising pilot to the board. They shall not be given to the pilot trainee. The supervising pilot may show the contents of the form to the pilot trainee, but the pilot trainee has no right to see the form until it is filed with the board. The trainee evaluation committee shall review these evaluation forms from time to time and the chairperson of the trainee evaluation committee shall report the progress of all pilot trainees at each meeting of the board. If it deems it necessary, the trainee evaluation committee may recommend, and the board may make, changes from time to time in the training

program requirements applicable to a pilot trainee, including the length of the training program.

(14) Removal. A pilot trainee may be removed from the training program by the board if it finds any of the following:

(a) Failure to maintain the minimum federal license required by RCW 88.16.090;

(b) Conviction of an offense involving drugs or involving the personal consumption of alcohol;

(c) Failure to devote full time to training in the Puget Sound pilotage district if receiving a stipend;

(d) The pilot trainee is not physically fit to pilot;

(e) Failure to make satisfactory progress toward timely completion of the program or timely meeting of interim performance requirements in the training program;

(f) Inadequate performance on examinations or other actions required by the training program;

(g) Failure to demonstrate the superior skills required in the initial evaluation;

(h) Inadequate performance on training trips; or

(i) Violation of a training program requirement, law, regulation or directive of the board.

(15) Completion of the training program shall include the requirement that the pilot trainee:

(a) Successfully complete the requirements set forth in the training program;

(b) Possess a valid first class pilotage endorsement without tonnage or other restrictions on his/her United States government license to pilot in all of the waters of the pilotage district in which the pilot applicant seeks a license; and

(c) Successfully complete any local knowledge examination(s) required by the board and specified in the training program.

AMENDATORY SECTION (Amending WSR 07-17-148, filed 8/21/07, effective 9/21/07)

WAC 363-116-082 Limitations on new pilots. (1) The following limitations and pilot license upgrade requirements shall apply to a newly licensed pilot during his/her first five years of active service. For purposes of this section, the term "tank vessel" shall, in addition to tank ships, include any articulated or integrated tug and tank barge combinations, and any tonnage restrictions thereon shall be calculated by including the gross tonnage of the tug and tank barge combined. For purposes of this section, the term "petroleum products" shall include crude oil, refined products, liquefied natural gas, and ~~((liquefied))~~ liquefied petroleum gas. GT (ITC) as used in this section refers to gross tonnages measured in accordance with the requirements of the 1969 International Convention on Tonnage Measurement of Ships.

(2) Puget Sound pilotage district - license limitation periods. Except for trips being made for pilot license upgrades, licenses issued in the Puget Sound pilotage district shall have the following limitations:

License Year	Maximum Size of Tank Vessels Carrying Petroleum Products as Bulk Cargo	Maximum Size of Other Vessels
1	Piloting on vessels of any size prohibited	30,000 GT (ITC) or 660 feet except for passenger vessels which may only have a maximum size of 5000 GT (ITC)
2	30,000 GT (ITC)	38,000 GT (ITC)
3	38,000 GT (ITC)	48,000 GT (ITC)
4	45,000 GT (ITC)	60,000 GT (ITC)
5	55,000 GT (ITC)	75,000 GT (ITC)

(3) Puget Sound pilotage district - pilot license upgrade requirements. Progressive lifting of tonnage limitations requires a newly licensed pilot to satisfactorily pilot vessels on the trips specified in this section. The trainee evaluation committee shall recommend to the board a series of eight trips to be made by each pilot in the last one hundred twenty days of each year of the license limitation periods specified in subsection (2) of this section, except that pilots whose license anniversary date is less than one hundred twenty days after the effective date of this section shall only be required to make three such trips prior to the first license anniversary subsequent to the effective date of this section. As to these trips, the trainee evaluation committee shall specify the size and type of the vessel; origin and destination, whether the transit is to include a docking, waterway transit or other particular maneuvering requirement, whether any tank vessel trips are to be made while in ballast or loaded and whether the trip shall be taken with training pilots, trainee evaluation committee member pilots or pilots with a specified experience level. To the extent practical, the trips shall be on vessels of at least a size that falls between the upper limit in the expiring license limitation and the upper limit in the upcoming license limitation period. All of these trips shall be complete trips between one port and another port, or between the pilot station and a port. The supervising pilots shall complete and submit to the board an evaluation form provided by the board for each trip a new pilot performs.

(4) Grays Harbor pilotage district - license limitation periods. Pilots licensed in the Grays Harbor pilotage district shall not pilot vessels in violation of the restrictions set forth in the table below during the indicated license year.

License Year	Maximum Size of Tank Vessels Carrying Petroleum Products	Maximum Size of Other Vessels
1	Piloting on vessels of any size prohibited	25,000 GT (ITC) except that piloting on vessels of any size is prohibited through the Chehalis River

License Year	Maximum Size of Tank Vessels Carrying Petroleum Products	Maximum Size of Other Vessels
		Bridge unless vessel is in ballast and does not exceed 25,000 GT (ITC)
2	10,000 GT (ITC)	30,000 GT (ITC)
3	45,000 GT (ITC)	45,000 GT (ITC)
4	60,000 GT (ITC)	60,000 GT (ITC)
5	75,000 GT (ITC)	75,000 GT (ITC)

Notwithstanding subsection (7) of this section, upon determination that a bona fide safety concern may result from no pilot without license restrictions being available within a reasonable time to pilot a vessel requiring pilotage services, the chairperson or acting chairperson of the board, on a single trip basis, may authorize a newly licensed pilot holding a restricted license to provide pilotage services to the vessel, irrespective of the tonnage, service or location of the assigned berth of the vessel.

(5) Grays Harbor pilotage district - pilot license upgrade requirements.

(a) Prior to the expiration of the first license year, a new pilot must make five license upgrade trips. Three of these trips shall be through the Chehalis River bridge on loaded or partially loaded vessels. The other trips shall be on vessels in excess of 25,000 GT (ITC) and involve docking and passage to or from the sea buoy; and one of these trips shall involve turning the vessel in the waterway.

(b) Prior to the expiration of the second license year, a new pilot must make two license upgrade trips on tank vessels in excess of 10,000 GT (ITC) and one trip on a vessel in excess of 30,000 GT (ITC). Two of these trips shall involve docking and passage to or from the sea buoy; and one of these trips shall involve turning the vessel in the waterway. Upon satisfactory completion of the two upgrade trips upon tank vessels and completion of the second license year, the pilot will be authorized to pilot tank vessels in accordance with the limitations specified in subsection (4) of this section. Upon satisfactory completion of the one upgrade trip upon a vessel in excess of 30,000 GT (ITC) and completion of the second license year, the pilot will be authorized to pilot vessels in accordance with the limitations specified in subsection (4) of this section.

(c) Prior to the expiration of the third license year, a new pilot must make three license upgrade trips on vessels in excess of 45,000 GT (ITC) ~~((or on the nearest larger size vessels available))~~. Two of these trips shall involve docking and passage to or from the sea buoy; and one of these trips shall involve turning the vessel in the waterway.

(d) Prior to the expiration of the fourth license year, a new pilot must make two license upgrade trips on vessels in excess of 60,000 GT (ITC) ~~((or on the nearest larger size vessels available))~~.

(e) Prior to the expiration of the fifth license year, a new pilot must make two license upgrade trips on vessels in

excess of 75,000 GT (ITC) ~~((or on the nearest larger size vessels available))~~.

(f) ~~((Notwithstanding (c), (d), and/or (e) of this subsection not being accomplished due to unavailability of vessels, in the sixth license year a pilot will be issued a license without limitations.))~~ If vessels are not available in the Grays Harbor pilotage district to allow a pilot to comply with (a) through (e) of this subsection in a timely manner, the board may designate substitute trips in the Puget Sound pilotage district as allowed by law and in so doing may specify the size of the vessel and any other characteristics of the trips that the board deems appropriate. Such designation shall be considered a modification of the pilot's state license to authorize the specified trips in the Puget Sound pilotage district.

(6) The initial license shall contain the limitations contained above and list the date of commencement and expiration of such periods. If a newly licensed pilot is unable to pilot for forty-five days or more in any one of the five years, he/she shall notify the board and request a revised schedule of limitations.

(7) Except as provided in subsection (4) of this section, no pilot shall be dispatched to, or accept an assignment on, any vessel which exceeds the limitations of his/her license. On vessels in which there is more than one pilot assigned, the license limitations shall apply only to the pilot in charge.

(8) All limitations on a pilot's license shall be lifted at the beginning of the sixth year of piloting provided he/she has submitted to the board a statement attesting to the fact that he/she has completed all the required license upgrade trips and the vessel simulator courses.

AMENDATORY SECTION (Amending WSR 05-18-021, filed 8/29/05, effective 10/1/05)

WAC 363-116-083 Written examination review and appeal procedures. (1) Pilot applicants who take ~~((an))~~ a written examination as provided in this chapter shall provide the board with an address to be used for notification of ~~((the))~~ his/her written examination results. Such address shall be a place at which mail is delivered. In addition, ~~((an))~~ a pilot applicant may provide the board with other means of contact such as telephone numbers and/or e-mail addresses. It will be the responsibility of the pilot applicant to ensure that the board has a current mailing address at all times. The mailing address will be considered the primary means of notice by the board. If the pilot applicant cannot personally receive mail at the address provided to the board for any period of time, another person may be designated in writing and notarized to the board as having power of attorney specifically to act in the pilot applicant's behalf regarding such notice. Notice delivered to the address provided by the pilot applicant will be considered received by the pilot applicant for the purpose of "receipt of notification of the written examination results" as provided in subsection (2) of this section.

(2) ~~((Any))~~ A pilot applicant who takes ~~((an))~~ either a written examination ~~((as))~~ provided in ~~((this chapter))~~ WAC 363-116-076 or a written local knowledge examination provided in WAC 363-116-078 that cannot be retaken may request a review by the board of his/her written examination results. This request must be in writing and must be received

by the board within five business days of receipt of notification of the written examination results. The standard of review that the board will use in making its decision and in reviewing the written examination results challenged by a pilot applicant is that the board will not set aside ~~((its prior determination))~~ the challenged examination score unless the pilot applicant proves the challenged score was the result of fraud, coercion, arbitrariness or manifest unfairness ~~((by the board))~~. If it finds that reasonable cause exists to question ~~((an))~~ a written examination grade, the board may allow ~~((any))~~ a pilot applicant appealing his/her written examination results to enter the simulator evaluation. No pilot applicant approved by the board for entry into the simulator evaluation shall be disqualified by the successful written examination appeal of another pilot applicant. Pilot applicants are not entitled to a review of the results of a local knowledge written examination given pursuant to WAC 363-116-076 if the pilot applicant is eligible to retake the examination.

(3) The procedure for filing a request for review of the written examination is as follows:

(a) The pilot applicant must contact the board office for an appointment to appear personally to review his/her written examination~~((:))~~:

(b) The pilot applicant will be provided a review form to complete in the board ~~((office))~~ designated review location in defense of his/her written examination answers~~((:))~~:

(c) ~~((The applicant must state the specific reason or reasons why he/she feels the results of his/her examination should be changed.))~~ In defense of his/her written examination answers, the pilot applicant must cite on the form provided by the board the reference source, the chapter, the page number and quote directly from the source material to prove that his/her answer is correct:

(d) In defense of his/her written examination answers, the pilot applicant must cite on the form provided by the board, the reference source, the chapter, the page number and quote directly from the source material to prove that an answer in the written examination is incorrect;

(e) Only material from the written examination bibliography and list of sources for written examination questions will be considered in any review of written examination answers. Letters of reference, source material from subject matter "experts" not listed in the bibliography and requests for special consideration will not be read or considered by the board. If there are assertions regarding improprieties in the administration, proctoring, grading or scoring of the written examination, these assertions must be documented in writing with sufficient detail naming times, people, places, protested activities and witnesses to permit the board to conduct an investigation;

(f) The pilot applicant will be identified only by ~~((applicant))~~ number or letter for the purpose of this review~~((Letters of reference or requests for special consideration will not be read or considered by the board.~~

(e) The applicant may not bring in notes or texts for use while completing the informal review form.

~~((f))~~;

(g) The board will make available to the pilot applicant reviewing his/her written examination a copy of his/her original written examination and a complete set of the written

examination reference materials. The pilot applicant may use these materials to prepare his/her written examination review; and

(h) At the completion of the review session, the pilot applicant will submit all the review forms to the board and return the reference materials used to review his/her written examination. The pilot applicant will not be allowed to take any notes or materials from the ~~((office))~~ board designated review location upon leaving.

~~((g))~~ (4) The procedure for the board's review of the request for review of the written examination filed by the pilot applicant is as follows:

(a) The board will schedule a closed session meeting to review the written examination~~((s))~~ and forms completed by the pilot applicant for the purpose of ~~((informal))~~ the board's review~~((-~~

~~(h) The applicant will be notified in writing of the results.~~

~~(4) Any); and~~

(b) After completion of the closed session meeting the board will provide the pilot applicant with written notification of its decision regarding its review of the written examination scores challenged by the pilot applicant. The written notification will show any adjusted credits and scores for answers the board has changed following its review.

(5) A pilot applicant who is not satisfied with the result of the written examination review may request a formal hearing pursuant to RCW ~~((88-16-100))~~ 88.16.090 and governed by the provisions of chapter 34.05 RCW. Such hearing must be requested within thirty days of receipt of the result of the board's review of the written examination results.

NEW SECTION

WAC 363-116-084 Simulator evaluation review and appeal procedures. (1) Pilot applicants who take a simulator evaluation exercise as provided in this chapter shall provide the board with an address to be used for notification of his/her simulator evaluation results. Such address shall be a place at which mail is delivered. In addition, a pilot applicant may provide the board with other means of contact such as telephone numbers and/or e-mail addresses. It will be the responsibility of the pilot applicant to ensure that the board has a current mailing address at all times. The mailing address will be considered the primary means of notice by the board. If the pilot applicant cannot personally receive mail at the address provided to the board for any period of time, another person may be designated in writing and notarized to the board as having power of attorney specifically to act in the pilot applicant's behalf regarding such notice. Notice delivered to the address provided by the pilot applicant will be considered received by the pilot applicant for the purpose of "receipt of notification of the simulator evaluation results" as provided in subsection (2) of this section.

(2) A pilot applicant who takes a simulator evaluation exercise as provided in this chapter may request a review by the board of his/her simulator evaluation results. This request must be in writing and must be received by the board within five business days of receipt of notification of the simulator evaluation results. The standard of review that the board will

use in making its decision and in reviewing the simulator evaluation results challenged by a pilot applicant is that the board will not set aside the challenged evaluation score unless the pilot applicant proves the challenged score was the result of fraud, coercion, arbitrariness or manifest unfairness.

(3) The procedure for filing a request for review of the simulator evaluation exercise is as follows:

(a) The pilot applicant must contact the board office for an appointment to appear personally to review his/her simulator evaluation exercise;

(b) The pilot applicant will be provided a review form to complete in the board designated review location in defense of his/her simulator evaluation performance;

(c) In review of his/her simulator evaluation performance, the pilot applicant must demonstrate that his/her proposed evaluation of the simulator evaluation is correct;

(d) In review of his/her simulator evaluation performance, the pilot applicant must cite on the form provided by the board, the specific situation(s) presented in the simulator evaluation (i.e., crossing, passing, meeting situations, environmental changes like fog descending, navigational decisions and/or rules-of-the-road interpretations) and detail why the actions he/she took in that situation should receive more credit than that which was given, to demonstrate that his/her score on the simulator evaluation exercise provided by the board is incorrect;

(e) Only the recorded performance of the pilot applicant will be considered in any review of the simulator evaluation performance. Letters of reference, source material from subject matter "experts" not listed in the bibliography and requests for special consideration will not be read or considered by the board. If there are assertions regarding improprieties in the administration, proctoring, grading or scoring of the simulator evaluations, these assertions must be documented in writing with sufficient detail naming times, people, places, protested activities and witnesses to permit the board to conduct an investigation;

(f) The pilot applicant will be identified only by number or letter for the purpose of this review;

(g) The board will make available to the pilot applicant reviewing his/her simulator evaluation exercise a copy of his/her simulator evaluation exercise performance; and

(h) At the completion of the review session, the pilot applicant will submit all the review forms to the board and return all materials used to review his/her simulator evaluation. The pilot applicant will not be allowed to take any notes or materials from the board designated review location upon leaving.

(4) The procedure for the board's review of the request for review of the simulator evaluation exercise filed by the pilot applicant is as follows:

(a) The board will schedule a closed session meeting to review the simulator evaluation exercise and forms completed by the pilot applicant for the purpose of the board's review; and

(b) After completion of the closed session meeting the board will provide the pilot applicant with written notification of its decision regarding its review of the simulator evaluation exercise scores challenged by the pilot applicant. The written notification will show any adjusted credits and scores

for evaluation scores the board has changed following its review.

(5) A pilot applicant who is not satisfied with the result of the board's simulator evaluation review may request a formal hearing pursuant to RCW 88.16.090 and governed by the provisions of chapter 34.05 RCW. Such hearing must be requested within thirty days of receipt of the result of the board's review of the simulator evaluation exercise results.

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

WAC 363-116-110 Details and requirements of annual license fee payment, physical examination report and reinstatement application for licensed pilots. (1) Annual license fees and reports on annual physical examinations pursuant to RCW 88.16.090 shall be submitted to the board on or before the anniversary date of the license. Each pilot shall ensure that the board, at all time, possesses a copy of his/her currently valid United States government license with radar endorsement issued by the United States Coast Guard.

(2) A pilot, who retires under his/her medical disability retirement plan, may apply for reinstatement of his/her pilot's license within five years from the date of ~~((their))~~ his/her last pilotage assignment, provided ~~((they are))~~ the pilot is capable of passing a physical examination without any restrictions as to full pilotage duties. The board may, at its discretion, waive all or part of the pilotage examination. The board shall require the pilot to complete a familiarization/training program prescribed by the board after a full review of all relevant factors. The board may also prescribe license limitations such as those contained in WAC ~~((296-116-082))~~ 363-116-082.

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

WAC 363-116-120 Job description—Physical examination—Health requirements. (1) A Washington state licensed marine pilot, under the authority of the master, directs ships into and out of harbors, estuaries, straits, sounds, rivers, lakes, and bays using a specialized knowledge of local conditions including winds, weather, tides, and current: Orders officers and helmsman by giving course and speed changes and navigates ship to avoid conflicting marine traffic, congested fishing fleets, reefs, outlying shoals and other hazards to shipping; utilizes aids to navigation, such as lighthouses and buoys. Utilizes ship's bridge equipment, including radar, fathometer, speed log, gyro, magnetic compass, whistle or horn and other navigational equipment as needed. Required to use ship's radio equipment in contacting U.S. Coast Guard vessel traffic system and other ships while ship is in transit. Directs ship's officers, crewmen, and tug boat captains as necessary, when ships are transiting bridges, narrow waterways, anchoring, docking, and undocking. Must perform duties day or night in all weather conditions, including high winds, fog, mist, rainfall, falling snow and other adverse conditions, as encountered. In order to safely perform the foregoing duties, a Washington state licensed marine pilot shall:

(a) Be physically qualified to possess a U.S. Coast Guard master's license, as required by the state of Washington.

(b) Be capable of boarding a vessel from and leaving a vessel into a pilot boat via a Jacob's ladder and a gangway. A Jacob's ladder involves a vertical climb or descent of up to nine meters and requires both physical energy and mental judgment.

(c) Be capable of moving to a more desirable vantage point in a timely manner, so as to avoid a close quarters situation when the physical characteristics of the ship or cargo obstruct the pilot's field of vision.

(d) Be able to meet the necessary eyesight and hearing requirements to carry out marine pilotage duties.

(e) Have mental reflexes capable of allowing decisions to be made without delay. This is imperative in all aspects of ship handling.

(f) Be capable of withstanding mental stresses which may occur with a vessel in lowered visibility, in a close quarters situation or when docking or undocking.

(g) Be capable of working efficiently and effectively at any time of the day or night, including irregular and unscheduled hours, after sufficient rest.

(h) Possess mental maturity and show mental responsibility.

(2) In order to determine the physical fitness of persons to serve as licensed pilots under the provisions of the pilotage act, all licensed pilots and pilot applicants shall be required to pass a general physical examination annually within ~~((forty-five))~~ ninety days prior to the date their annual state pilot license fee is due. As used in this section pilot refers to licensed pilots, including pilots seeking to renew their state licenses, and pilot applicant refers to both pilot license applicants who have completed the board training program but do not yet have a pilot license and to training license applicants. The physical examination required of all pilots and initial pilot applicants shall demonstrate that he/she is fully able to carry out the duties of a pilot. The examination shall assure that one's abilities as a pilot will not be impaired by eyesight, hearing or other bodily function. As part of this examination pilots and pilot applicants shall have completed on a form provided by the board a detailed report of physical examination. Each pilot is required to report on the form any convictions of offenses involving drugs or the personal consumption of alcohol which occurred while on duty within the prior twelve months. Pilot applicants for a license must report on the form any and all convictions of offenses involving drugs or the personal consumption of alcohol which occurred within the twelve months prior to the date of their application. This form shall be prepared by the examining physician and shall be submitted to the board along with a letter stating his/her findings/recommendations as to the ability of the pilot or pilot applicant to safely perform the pilotage duties based on the job description for a Washington state licensed marine pilot and the standards set forth below. The examining physician should review these standards and review the job description in subsection (1) of this section before making findings/recommendations as to the medical fitness of the pilot applicant. A medical/occupational history form will be completed and signed by the initial pilot applicant for review of the physician prior to the initial examination. The board

may in its discretion check with the appropriate authorities for any convictions of offenses involving drugs or the personal consumption of alcohol in the prior twelve months. The detailed report of physical examination is a confidential record and will not be available for public inspection. Such examination shall be obtained at the expense of the licensed pilot or pilot applicant from a physician or physicians designated in advance by the board. The secretary of the board shall give each pilot or pilot applicant reasonable written notice of the date when any such physical examination becomes due and shall specify the name of the physicians then approved by the board to conduct such physical examination.

(3) Based upon the findings/recommendations of the examining physician and review by the board, the board will make the determination as to the pilot applicant's or pilot's fitness to perform the duties of a pilot. This determination will be made within ninety days after each annual physical examination.

(4) The purpose of the history and physical examination is to detect the presence of physical, mental, or organic defects of such character and extent as to affect an individual's ability to pilot a vessel safely. The examination will be made carefully and at least as complete as indicated by the form provided by the board. History of certain defects may be cause for rejection of the initial pilot applicant or indicate the need for making certain laboratory tests or a further and more stringent examination. Defects may be recorded which do not, because of their character or degree, indicate that certification of physical fitness should be denied. However, these defects should be discussed with the pilot applicant or pilot who should be advised to take the necessary steps to ensure correction, particularly of those which, if neglected, might lead to a condition likely to affect the ability to perform the duties of a pilot.

(5) The board has determined which physical conditions may be permanently disqualifying for initial pilot applicants as well as which conditions may be permanently disqualifying for renewal of a pilot license. Certain conditions are not necessarily disqualifying, for renewal of (~~licensure~~) a pilot license only, when, based on the knowledge and experience of the examining physician these conditions can be managed medically and without threat to the pilot's ability to perform the duties of a pilot. An individual may be disqualified when, in the opinion of the examining physician, there is reasonable probability that a condition can occur suddenly and without warning which would render the pilot applicant incapable of promptly responding, both mentally and physically to emergency situations. When certain conditions exist the medical examiner may recommend either:

- (a) A permanent disqualification; or
- (b) A temporary disqualification until which time the condition is either corrected or medically managed.

(6) Initial pilot applicants will be required to take a test indicating they are free of illegal substance abuse. Testing will be for the presence of cocaine, opiates, marijuana (THC), amphetamines and PCP (phencyclidine). Testing will be in accordance with the Department of Transportation (Coast Guard) guidelines outlined in the Federal Register 46 CFR 4, 5, and 16. Urine specimens are to be analyzed by a laboratory

that meets DHHS regulations set forth by the National Institute of Drug Abuse (NIDA).

Chain of custody forms and instructions for collection and transport to a NIDA approved laboratory can be obtained from:

Laboratory of Pathology
Nordstrom Medical Tower
P.O. Box 14950
Seattle, WA 98114-0950
(206) 386-2872

(7) The conditions in these standards are listed according to the International Classification of Diseases (ICD). Some categories may not apply to the standards set forth and therefore may be absent in some listings. However, all categories should be taken into consideration by the examining physician.

- (a) Infectious and parasitic diseases.
 - (b) Neoplasms.
 - (c) Endocrine, nutritional, metabolic, and immunity disorders.
 - (d) Diseases of the blood and blood forming organs.
 - (e) Mental disorders.
 - (f) Diseases of the nervous system and sense organs.
 - (g) Diseases of the respiratory system.
 - (h) Diseases of the digestive system.
 - (i) Diseases of the genitourinary system.
 - (j) Complications of pregnancy, childbirth, and the puerperium.
 - (k) Diseases of the skin and subcutaneous tissues.
 - (l) Diseases of the musculoskeletal system and connective tissues.
 - (m) Congenital anomalies.
 - (n) Certain conditions originating in the perinatal period.
 - (o) Symptoms, signs, and other ill defined conditions.
 - (p) Injury and poisonings.
- (8) The guidelines for recommended visual standards are based on the necessity of a pilot to be able to safely perform the duties of a pilot, including functioning under all emergency conditions aboard the vessel. Consideration must be given to the pilot's previously demonstrated ability to perform his (~~or~~) her pilotage duties.

(a) The visual acuity of (~~the~~) a pilot applicant shall be at least 20/200 in each eye uncorrected and correctable to at least 20/40 in each eye as determined by Snellen test or its equivalent unless the pilot applicant qualifies for a waiver from the Officer in Charge, Marine Inspection, or the Commandant, U.S. Coast Guard.

(b) The initial pilot applicant should have normal color vision per pseudo isochromatic plates, Ishihara or Keystone test. If the initial pilot applicant fails this test, the Farnsworth or Williams Lantern tests or their equivalent may be used to determine the initial pilot applicant's ability to distinguish primary colors.

(c) Loss of vision in one eye may not be disqualifying if one eye passes the test required for the better eye of the pilot applicant with binocular vision and the pilot applicant has had sufficient time to develop and demonstrate adequate judgment of distances.

(d) Pilot applicants who wear corrective lenses and meet the qualifications in (a) of this subsection are medically fit to carry out pilotage duties only while wearing their corrective lenses and if they have with them, while on duty, a spare pair of correcting lenses that provide at least the same visual acuity.

(9) Baseline audiograms shall be performed on all entry level pilot applicants. All licensed pilots will be tested annually, with the first audiogram considered baseline. Each ear will be tested separately using properly calibrated equipment which meets ANSI (American National Standards Institute) standards criteria for background noise in audiometric rooms. Testing should not be performed unless the pilot applicant has been free of work noise or intense noise for a period of at least fourteen hours prior to testing. Should the pilot applicant have a current condition which can cause a temporary hearing loss, such as a a cold, the pilot applicant should be rescheduled for testing in two weeks, or until such condition is resolved. Testing will be performed by a licensed audiologist, otolaryngologist, physician with sufficient training in conducting and interpreting audiograms, or a technician who is currently certified by the Council for Accreditation in Occupational Hearing Conservation (CAOHC).

(a) A baseline audiogram is required on all initial pilot applicants. The first audiogram performed on a currently licensed pilot shall be considered the baseline audiogram.

(b) Pilot applicants having hearing threshold levels that do not exceed 40 dB at frequencies of 500, 1000, 2000, 3000 Hz in either ear are considered to have normal hearing for communication purposes.

(c) Annual audiograms will be performed thereafter for the purposes of comparison to baseline. A significant threshold shift is defined as a change averaging more than 10 dB from baseline in the frequencies of 500, 1000, 2000, and 3000 Hz and requires further evaluation by a physician, otolaryngologist, or audiologist and preventive action taken on the part of the pilot.

(d) Mechanical acoustical devices (hearing aids) are not disqualifying but should not be worn in areas of high background noise levels in order to prevent further deterioration of his/her hearing.

(e) ~~(A)~~ A pilot applicant must minimally be able to hear an average conversational voice in a quiet room while standing with his/her back turned at a distance of eight feet.

(10) Below is a list of conditions which can be absolutely disqualifying for initial licensure as a maritime pilot. The list of causes for disqualification is not all inclusive or intended to be complete, but represents the types of conditions that would interfere with the safe performance of pilotage duties. This guide is not intended to replace the physician's professional judgment. Rather, it calls for the physician and the board to closely examine whether the pilot applicant can safely perform the tasks outlined in the job description of a Washington state licensed marine pilot. The examining physician should also be aware that a second opinion concerning the diagnosis may be sought in cases of unfavorable determinations. A condition should only be considered disqualifying while such condition persists. Following corrective medical action the pilot applicant should be encouraged to apply for reentry.

Conditions Which Can Be Absolutely Disqualifying For Initial Licensure

1. Infectious and parasitic diseases - Any communicable disease in its communicable or carrier stage.

2. Neoplasms - Malignant diseases of all kinds in any location.

3. Endocrine, nutritional, metabolic, and immunity disorders - Diabetes requiring insulin or hypoglycemic drugs; cirrhosis of the liver; alcohol abuse (unless abstinence for two years).

4. Diseases of the blood and blood forming organs - Hemophilia; acute or chronic significant anemias.

5. Mental disorders - Severe personality disorders; use of illegal drugs; dementia of Alzheimer's type, senility, psychosis.

6. Diseases of the nervous system and sense organs - Epilepsy or any convulsive disorder resulting in an altered state of consciousness, regardless of control; disturbance of balance; multiple sclerosis; Meniere's syndrome.

7. Diseases of the circulatory system - Multiple myocardial infarctions or cardiac class II or IV (NYHA); hypotension with syncopal episodes; varicose veins if associated with edema, skin ulceration or residual scars. Recurrent thromboembolic conditions.

8. Diseases of the respiratory system - Active pulmonary tuberculosis Class IV respiratory impairment; permanent tracheostomy.

9. Diseases of the genitourinary system - Chronic renal failure; permanent ureterostomy.

10. Complications of pregnancy, childbirth, and the puerperium - Pregnancy is not in itself disqualifying, if, in the opinion of the examining physician and the pilot applicant's obstetrician determine that the pilotage duties can be safely carried out without risk to the mother or fetus and without risk to the safety of the vessel, crew, and property.

11. Diseases of the skin and subcutaneous tissues - There are no absolute exclusions listed for diseases of the skin unless, in the opinion of the examining physician, a condition exists that would interfere with the performance of pilotage duties.

12. Diseases of the musculoskeletal system and connective tissues - Lupus erythematosus, disseminated; amputation of any portion of a limb, resection of a joint, artificial joint or absence of the toes which would preclude the ability to run, walk, balance oneself, grasp and climb ladder rungs; chronic low back pain that is disabling to the degree of interfering with job requirements.

13. Congenital anomalies - Any existing condition that, in the opinion of the examining physician, would interfere with the safe performance of pilotage duties.

14. Symptoms, signs, and other ill defined conditions - Serious degree of stuttering or speech impediment sufficient to interfere with communication; alcoholism; drug addiction, other than tobacco or caffeine.

15. Injury or poisonings - May be temporarily disqualifying until condition resolved without disabling sequelae.

(11) Below is a list of conditions which can be absolutely disqualifying for relicensure as a maritime pilot. The list of causes for disqualification is not all inclusive or intended to

be complete, but represent the types of conditions that would interfere with the safe performance of pilotage duties. This guide is not intended to replace the physician's professional judgment. Rather, it calls for the physician and the board to closely examine whether the pilot applicant can continue to safely perform the tasks outlined in the job description of a Washington state licensed marine pilot. The examining physician should also be aware that a second opinion concerning diagnosis may be sought in cases of unfavorable determinations.

Conditions Which Can Be Absolutely Disqualifying For Relicensure

1. Neoplasms - Malignancies with metastases.
2. Endocrine, nutritional, metabolic, and immunity disorders - Cirrhosis of the liver with hepatic failure.
3. Diseases of the blood and blood forming organs - Hemophilia; acute leukemia.
4. Mental disorders - Severe personality disorders; senility; dementia of Alzheimer's type psychosis.
5. Diseases of the nervous system and sense organs - Disturbance of balance, permanent and untreatable Meniere's syndrome.
6. Diseases of the circulatory system - Multiple myocardial infarctions or cardiac Class III or IV (NYHA); hypotension with syncopal episodes; varicose veins if associated with edema, skin ulceration or residual scars. Recurrent thromboembolic conditions.
7. Diseases of the respiratory system - Active pulmonary tuberculosis; Class IV respiratory impairment.
8. Diseases of the genitourinary system - Chronic renal failure; permanent ureterostomy.
9. Complications of pregnancy, childbirth, and puerperium - Pregnancy is not in itself disqualifying, if, in the opinion of the examining physician and the pilot applicant's obstetrician determine that the pilotage duties can be safely carried out without risk to the mother or fetus and without risk to the safety of the vessel, crew and property.
10. Diseases of the skin and subcutaneous tissues - There are no absolute exclusions for diseases of the skin unless, in the opinion of the examining physician, a condition exists that would interfere with the performance of pilotage duties.
11. Diseases of the musculoskeletal and connective system - Lupus erythematosus, disseminated; amputation of any portion of a limb, resection of a joint, artificial joint or absence of the toes which would preclude the ability to run, walk, balance oneself, grasp, and climb ladder rungs. Chronic low back pain that is disabling to the degree of interfering with job requirements.
12. Symptoms, signs, and other ill defined conditions - Serious degree of stuttering or speech impediment sufficient to interfere with communication; alcoholism; drug addiction, other than tobacco or caffeine. Current need to use methadone, antabuse, antidepressants, antianxiety drugs.
13. Injury or poisonings - May be temporarily disqualifying until condition resolved without disabling sequelae.

(12) Some conditions may develop during the course of employment that would be absolutely disqualifying for initial licensure. In evaluating the impact of such a condition on an

existing pilot, the examining physician and the board should take into consideration the pilot's past experience, effectiveness of performance and predictability of his/her performance. The board may waive certain duties of a pilot as outlined in the job description contained in subsection (1) of this section. The list of conditions requiring in-depth evaluation is not all inclusive or intended to be complete, but represent the types of conditions that might interfere with the safe performance of pilotage duties. The examining physician should also be aware that a second opinion concerning the diagnosis may be sought in cases of unfavorable determinations.

Conditions Requiring In-depth Evaluation

1. Neoplasms - Malignancies of any kind.
2. Endocrine, nutritional, metabolic, and immunity disorders - Diabetes requiring hypoglycemic drugs; cirrhosis of the liver.
3. Diseases of the blood and blood forming organs - Chronic leukemia.
4. Mental disorders - Anxiety reactions; depression.
5. Diseases of the nervous system and sense organs - Disturbance of balance; multiple sclerosis; epilepsy or any convulsive disorder resulting in an altered state of consciousness.
6. Diseases of the circulatory system - Uncontrolled hypertension; varicose veins; pacemaker, demand.
7. Diseases of the respiratory system - Respiratory impairment; permanent tracheostomy.
8. Diseases of the digestive system - Permanent colostomy; permanent ileostomy.
9. Complications of pregnancy, childbirth, and the puerperium - Pregnancy.
10. Diseases of the skin and subcutaneous tissues - Any skin disorders that, in the opinion of the examining physician, may interfere with the performance of pilotage duties.
11. Diseases of the musculoskeletal system and connective tissues - Lupus erythematosus, disseminated; artificial joints; chronic low back pain.
12. Injury or poisonings - May be temporarily disqualifying until condition resolved without disabling sequelae.

((43-)) (13) A pilot may be temporarily relieved of pilotage duties until such time as a disqualifying condition is resolved or medically managed and with frequent evaluation by the examining physician or specialist. In this case, the board, after consulting with the physician, will determine the frequency of medical examinations. A condition should only be considered disqualifying while such a condition persists. Following corrective medical action, the individual may be removed from temporary disqualification. Provided that, if a temporary disqualifying condition continues for longer than two years from the time the pilot is initially relieved of pilotage duties, the board, in its discretion and after a full review of all relevant factors, may make a determination that the condition is permanently disqualifying.

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

WAC 363-116-200 Duties of pilots. (1) In any case where a vessel in the charge of a state licensed pilot is

involved in an incident or near-miss occurrence, ~~((the))~~ said pilot shall make a report to the board in the following required manner:

(a) *Pilot's Report of Incident.* A state licensed pilot involved in an incident shall notify the board by telephoning or radioing the Marine Exchange of Puget Sound as soon as the situation is stabilized or within one hour of reaching shore. The pilot shall also complete the board required *Pilot's Report of Incident* form and file it with the board as soon as possible after the incident, but in no event more than ten days afterwards. An incident includes an actual or apparent collision, allision or grounding, as well as a navigational occurrence which results in actual or apparent personal injury or property damage or environmental damage.

(b) *Pilot's Report of Marine Safety Occurrence.* A state licensed pilot involved in a near-miss occurrence shall complete the board required *Pilot's Report of Marine Safety Occurrence* form and file it with the board as soon as possible after the near-miss occurrence, but in no event more than ten days afterwards. A near-miss occurrence is where a pilot successfully takes action of a nonroutine nature to avoid a collision with another vessel, structure or aid to navigation, to avoid a grounding of the vessel or to avoid causing damages to the environment. Information relating to near-miss occurrences provided by a pilot on this form shall not be used for imposing any sanctions or penalties against said pilot. A state licensed pilot may also use this form on a voluntary basis for reporting out of the ordinary occurrences or concerns for navigational safety encountered or observed during the course of piloting a vessel.

(c) Completion of these forms does not replace or relieve a pilot from any other reporting requirements under federal, state or local law. If circumstances permit, a pilot will notify the vessel master of his/her intent to file a report of incident or marine safety occurrence with the board. The board shall forward a copy of any form received to the respective shipper or its board representative. The board of pilotage commissioners may, with or without a complaint being made against a pilot, investigate the matter reported upon.

(2) Pilots will report to the ~~((pilot office and to the))~~ aids to navigation officer of the ~~((U.S.))~~ United States Coast Guard, all changes in lights, range lights, buoys, and any dangers to navigation that my come to their knowledge.

(3) Any pilot who shall fail, neglect or refuse to make a report to the board of pilotage commissioners as required by the pilotage laws of the state, or by these rules and regulations, for a period of ten days after the date when ~~((the))~~ said report is required to be made, shall be subject to having his/her license suspended at the discretion of the board, and if he/she fails to report for a period of thirty days the board may, at its discretion, revoke his/her license.

(4) Pilots when so notified in writing shall report in person to the board, at any meeting specified in such notice.

(5) Any pilot summoned to testify before the pilotage board shall appear in accordance with such summons and shall make answer, under oath, to any question put to him/her which deals with any matter connected with the pilot service, or of the pilotage waters over which he/she is licensed to act. ~~((He))~~ The pilot shall be entitled to have his/her attorney or advisor present during any such appearance and testimony.

(6) Any pilot who shall absent himself/herself from his/her pilotage duties or district for a period of sixty days without permission of the board of pilotage commissioners shall be liable to suspension or to the forfeiture of his/her license.

(7) A pilot on boarding a ship, if required by the master thereof, shall exhibit his/her license, or photo static copy thereof.

(8) When a pilot licensed under this act is employed on an enrolled ship, the same rules and regulations shall apply as pertain to registered ships.

(9) Any state licensed pilot assigned to pilot a vessel entering, leaving, or shifting berths under its own power in any of the waters subject to the provisions of chapter 88.16 RCW shall before assuming pilotage obligations for such vessel obtain assurance from the master that the vessel meets all requirements for safe navigation and maneuvering. In addition, the pilot shall obtain assurance that the ship's officers will maintain navigation procedures by all navigational aids available to insure that the vessel's position is known at all times. If the pilot in his/her professional judgment considers the vessel to be incapable of safe navigation and maneuvering due to performance limitations, he/she shall refuse to assume the obligations of pilotage for such vessel until such limitations have been corrected and shall promptly notify the pilot's control station and the chairman of the board of pilotage commissioners of such action.

(10) In providing pilotage services under chapter 88.16 RCW every pilot shall perform those duties in a professional manner and without negligence so as to not endanger life, limb or property, not violate or not fail to comply with state laws or regulations intended to promote marine safety or to protect navigable waters.

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

WAC 363-116-205 Vessel certification. (1) Upon boarding a vessel in the Puget Sound pilotage district or Grays Harbor pilotage district, a pilot shall request on the form provided in WAC 296-116-2051 that the master of the vessel certify that: (a) The engine room is properly staffed, able to maneuver, and all related equipment is in good order; (b) there are no defects listed against the ship by the United States Coast Guard which would prevent it from sailing; (c) the vessel is not leaking oil; (d) the vessel is experiencing no propulsion or maneuvering difficulties.

If the master is unable to certify that all of the above conditions are met, he/she shall be asked to certify that the United States Coast Guard captain of the port has been notified of said deficiencies and has authorized the vessel to proceed.

If the master is unable or unwilling to certify that either of the above are the case, the pilot shall not offer pilotage services to said vessel. Instead, the pilot shall disembark from the vessel as soon as practicable, immediately inform the captain of the port of the conditions and circumstances by the best possible means and forward a written report to the board of pilotage commissioners no later than twenty-four hours after disembarking from the vessel. Any Washington

licensed pilot who offers pilotage services to a vessel on which the master has failed to make a certification required by this section shall be subject to the penalties provided in RCW 88.16.100 and 88.16.150.

(2) Upon boarding vessels in either the Puget Sound pilotage district or the Grays Harbor pilotage district, the pilot shall also request to see the vessel's SOLAS certificate, and the Federal Maritime Commission certificate of financial responsibility.

The pilot shall also inspect the following of the ship's equipment and conditions and indicate their suitability:

VHF radio, channels 13, 14; radar; gyrocompass; rudder angle indicator; whistle; wheelhouse staffed by an officer and helmsman, one of whom speaks English; local, up-to-date charts; and wheelhouse to engine room communications.

(3) The form appearing in WAC 296-116-2051 shall be used by pilots and masters in complying with the above requirements.

(4) Forms completed by masters and pilots which indicate that the vessel is in compliance and nondeficient shall be forwarded to the offices of the board of pilotage commissioners where they will be retained for a period of at least six months. Forms indicating a vessel not in compliance or deficient and forms upon which either the master or the pilot have failed to make the required certification shall be forwarded to the board of pilotage commissioners and retained for a period of at least twelve months.

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

WAC 363-116-315 Retirement disbursements. Pilot associations having retirement plans, the expense of which is reimbursed through board established tariffs, ~~((shall))~~ **must** make such payments to retired pilots as are required by the benefits and enforcement provisions of those plans.

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

WAC 363-116-35001 Exemption from provisions of WAC 197-10-800. The board of pilotage commissioners of the state of Washington has reviewed its authorized activities and found substantially all of them to be exempt from the provisions of chapter 197-10 WAC, with the exception of authority supplied by the 1975 legislature to the ~~((commission))~~ **board** respecting additional tug shaft horsepower equivalencies which is a part of the "tug escort" 1975 amendments by chapter 125, Laws of 1975 1st ex. sess.

There is presently no intent to exercise this authority. Additionally, said act is currently under constitutional challenge. Thus, the ~~((commission))~~ **board** indicates its intent that if, and when, any authority should be exercised pursuant to this provision, it would do so consistent with the guidelines contained within chapter 197-10 WAC insofar as practicable. (The referenced chapter being the regulations developed by the council on environmental policy.)

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

WAC 363-116-370 System of specified disciplinary or corrective actions. When a pilot has received multiple disciplinary actions pursuant to RCW 88.16.100 (1) and/or (2) within any two-year period, the board shall evaluate the pilot and prepare and personally serve upon him/~~her~~ a notice advising of the board's intended action, the specific ground therefore, and the right to request a hearing pursuant to RCW 88.16.100(4) to challenge the board's action. Such intended action may include the temporary suspension of the pilot from duties until such pilot has satisfactorily completed subsection (1) or (2) of this section:

(1) An approved course-of-study which may include navigation training and testing; or

(2) Any remedial activity or treatment designated by the board to assure fitness and competence for full pilotage duties.

In ordering such disciplinary action, the board shall take into account both the causes of the previous disciplinary actions and the pilot's previous record.

Failure to enter into such corrective action within thirty days of the board's action may be cause for revocation of the pilot's license.

In the event of a temporary license suspension, license reinstatement and resumption of pilotage duties shall not be authorized until the board has reviewed completed activity and formally extended approval. Such approval shall not be unreasonably withheld by the board and shall be reviewed and acted upon within five days of the completion of the activity.

AMENDATORY SECTION (Amending WSR 03-09-096, filed 4/21/03, effective 5/22/03)

WAC 363-116-405 Relieving pilots for cause. A pilot serving on a vessel required by chapter 88.16 RCW to employ a state licensed pilot may be relieved from his ~~((or))~~/ her piloting duties by the ship's master only for cause as provided ~~((herein))~~ **in this section**. The master may relieve a pilot only if the pilot is manifestly incompetent or incapacitated or if the vessel is endangered or *in extremis* due to the pilot's error. If a pilot is relieved for cause under this section another pilot shall be requested and dispatched. In such event, the master shall immediately put the ship to anchor, to the extent it can be done safely, and await the substitute pilot. If anchoring is not possible or prudent, the master shall slow the vessel to the slowest prudent speed until another pilot can be put on board. To the extent possible and practical, after being relieved of his ~~((or))~~/ her duties, the pilot shall remain available to advise and assist the master. In the event a pilot is relieved as provided in this section in the Puget Sound pilotage district, the U.S. Coast Guard vessel traffic system shall be notified immediately. In the event a pilot is relieved as provided in this section in any pilotage district, the vessel and the pilot promptly shall provide notice to the board of the event and relevant circumstances.

AMENDATORY SECTION (Amending WSR 97-08-042, filed 3/28/97, effective 3/28/97)

WAC 363-116-420 Summary/temporary license suspension. Summary/temporary suspension of a pilot's license may be made by the chairperson or vice-chairperson of the board of pilotage commissioners when:

(1) A pilot has been involved in any vessel accident where there has been major property damage, loss of life, or loss of a vessel; or

(2) Where there is a reasonable cause to believe that a pilot has diminished capacity or is under the influence of drugs, alcohol, or other substances; and

(3) Such an accident or physical or mental impairment would significantly diminish that pilot's ability to carry out pilotage duties and that the public health, safety, and welfare requires such emergency action. Notification of this suspension shall be made directly to the pilot and the appropriate pilot's association.

Within seventy-two hours an emergency board meeting will be held to determine whether to continue such suspension. In the event the suspension is continued pending proceedings for revocation or other action, an order shall be immediately prepared and notice shall be personally served upon the pilot advising of the board's action.

These further proceedings shall be promptly instituted in the office of administrative hearings.

All final decisions of the administrative law judge shall be subject to review by the superior court of the state of Washington for Thurston County or by the superior court of the county in which the pilot maintains his/her residence or principal place of business, to which court any case with all the papers and proceedings therein shall be immediately certified by the administrative law judge if requested to do so by any party to the proceedings at any time within thirty days after the date of such final decision. No appeal may be taken after the expiration of thirty days after the date of final decision.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 363-116-075 Qualifications for pilot applicants taking examinations before July 1, 2008.

WAC 363-116-150 Registration of operators.

**WSR 08-10-112
PROPOSED RULES
POLLUTION LIABILITY
INSURANCE AGENCY**

[Filed May 7, 2008, 11:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-20-029.

Title of Rule and Other Identifying Information: Amending chapter 374-70 WAC, Heating oil pollution liability insurance program.

Hearing Location(s): Burien Public Library, Margrette Lemon Room, 14700 Sixth Avenue S.W., Burien, WA 98166, (206) 243-3490, on June 19, 2008, at 6:30 p.m. - 8 p.m.

Date of Intended Adoption: July 8, 2008.

Submit Written Comments to: Lynn Gooding, Director, Pollution Liability Insurance Agency, P.O. Box 40930, Olympia, WA 98504-0930, e-mail lgooding@plia.wa.gov, fax (360) 586-5997, by June 27, 2008.

Assistance for Persons with Disabilities: Contact Xyzlinda Marshall by June 16, 2008, (800) 822-3905 or (360) 586-5997. If you have a speech or hearing disability please call 7-1-1 for Washington relay services.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the changes is to clarify the tanks that are eligible for the insurance program as mandated by chapter 70.149 RCW (not "abandoned" or "decommissioned"). The changes will also establish clear timeframes for registering for the program and for filing insurance claims with the agency.

The rule changes will include:

- Clarifying the definition of "abandoned heating oil tank" and adding the definition for "decommissioned heating oil tank.
- Removing the definition of "active" tank. Tanks will still have to be in use in order to be eligible.
- Removing the \$1500 property damage restoration coverage.
- Adding language for the new reimbursement for tank upgrades.
- Removing the requirement of a dealer's signature or invoices/cancelled checks with registration form.
- Adding a time limit of one hundred eighty days for registering a tank after a property transaction to retain continuous coverage.
- Adding a time limit of thirty days for filing a claim after abandoning or decommissioning a tank.
- Removing the requirement for homeowners to *contact* their homeowners' insurance company when they file a claim with PLIA; however, they will still have to show that they don't have coverage with their insurance company.

Reasons Supporting Proposal: Changes are needed because of recent agency appeals and a change to chapter 70.149 RCW. These changes will clarify for our insured and potential insured the eligibility and coverage requirements.

Statutory Authority for Adoption: RCW 70.149.040.

Statute Being Implemented: Chapter 70.149 RCW.

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

Name of Proponent: Pollution liability insurance agency, governmental.

Name of Agency Personnel Responsible for Drafting: Andrea Moss, P.O. Box 40930, Olympia, WA 98504-0930, (360) 586-5997; Implementation: Andrea Moss and Ginny Ristine, P.O. Box 40930, Olympia, WA 98504-0930, (360)

586-5997; and Enforcement: Lynn Gooding, P.O. Box 40930, Olympia, WA 98504-0930, (360) 586-5997.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The pollution liability insurance agency has determined that the rule changes do not require a small business economic impact statement because the changes affect insurance coverage issues.

A cost-benefit analysis is not required under RCW 34.05.328. The rule changes are clarifying language established by statute.

May 6, 2008
Lynn Gooding
Director

AMENDATORY SECTION (Amending WSR 96-01-101, filed 12/19/95, effective 1/19/96)

WAC 374-70-010 Purpose and authority. (1) The purpose of this chapter is to address a solution to the threat posed to human health and the environment by accidental releases of heating oil from ~~((active))~~ heating oil tanks. It is in the best interest of all citizens for heating oil tanks to be operated safely, and for accidental releases or spills to be dealt with expeditiously in order to ensure that the environment, particularly ground water, is protected. It is also in the best interest of individual heating oil tank owners to protect them from the unexpected liability and potential financial hardship associated with an accidental release from a heating oil tank.

(2) The pollution liability insurance agency is directed by chapter 70.149 RCW to establish the heating oil pollution liability insurance program to assist owners and operators of ~~((active))~~ heating oil tanks.

AMENDATORY SECTION (Amending WSR 97-06-080, filed 3/3/97, effective 4/3/97)

WAC 374-70-020 Definitions. Unless the context requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) "Abandoned heating oil tank" means a heating oil tank ~~((system))~~ that has been ~~((abandoned or decommissioned and is no longer active and in use))~~ left unused and that is no longer connected to an oil-fired furnace used for space heating of human living or working space on the premises where the tank is located.

(2) "Accidental release" means a sudden or nonsudden release of heating oil from ~~((an active))~~ a heating oil tank that results in bodily injury, property damage, or a need for corrective action, neither expected nor intended by the owner or operator.

(3) ~~((("Active" heating oil tank means a heating oil tank that:~~

~~(a) Is in use at the time of registration for the heating oil pollution liability insurance program;~~

~~(b) Has been in continuous use for a period of eighteen months prior to registration; and~~

~~(c) Has been continuously in use between registration and submission of a notice of claim.~~

(4)) "Agency" means the Washington state pollution liability insurance agency established pursuant to chapter

70.148 RCW. For purposes of chapter 70.149 RCW, agency shall also mean staff or employees of the pollution liability insurance agency.

~~((5))~~ (4) "Bodily injury" means bodily injury, sickness, or disease sustained by a person, including death at any time, resulting from the injury, sickness, or disease.

~~((6))~~ (5) "Claim" means a demand made by a named insured, or the insured's representative, for payment of the benefits provided under the heating oil pollution liability insurance program.

~~((7))~~ (6)(a) "Corrective action" means those actions reasonably required to be undertaken by the insured to remove, treat, neutralize, contain, or clean up an accidental release in order to comply with a statute, ordinance, rule, regulation, directive, order, or similar legal requirement, in effect at the time of an accidental release, of the United States, the state of Washington, or a political subdivision of the United States or the state of Washington. "Corrective action" includes, where agreed to in writing, in advance by the insurer, action to remove, treat, neutralize, contain, or clean up an accidental release to avert, reduce, or eliminate the liability of the insured for corrective action, bodily injury, or property damage. "Corrective action" also includes actions reasonably necessary to monitor, assess, and evaluate an accidental release.

(b) "Corrective action" does not include:

(i) Removal, replacement or repair of heating oil tanks or other receptacles, except reimbursement of new tank replacement costs in accordance with RCW 70.149.120;

(ii) Replacement or repair of piping, connections, and valves of tanks or other receptacles; or

(iii) Costs directly associated with tank removal.

(7) "Decommissioned heating oil tank" means a heating oil tank that is no longer connected to an oil-fired furnace used for space heating of human living or working space on the premises where the tank is located and that has been taken out of operation in accordance with the International Fire Code and any pertinent local government requirements.

(8) "Director" means the director of the Washington state pollution liability insurance agency or the director's appointed representative.

(9) "Heating oil" means any petroleum product used for space heating in oil-fired furnaces, heaters, and boilers, including stove oil, diesel fuel, or kerosene. "Heating oil" does not include petroleum products used as fuels in motor vehicles, marine vessels, trains, buses, aircraft, or any off-highway equipment not used for space heating, or for industrial processing or the generation of electrical energy.

(10) "Heating oil tank" means ~~((an active))~~ a tank and its connecting pipes, whether above or below ground, or in a basement, with pipes connected to the tank for space heating of human living or working space on the premises where the tank is located. "Heating oil tank" does not include a decommissioned or abandoned heating oil tank, or a tank used solely for industrial process heating purposes or generation of electrical energy.

(11) "Heating oil tank service provider" is an independent contractor responsible for corrective action including sampling and testing, remedial actions, site restoration, and submittal of required reports to PLIA.

(12) "Insurer" means the commercial insurance company providing pollution liability insurance to registered owners of heating oil tanks under the heating oil pollution liability insurance program. PLIA is the reinsurer of the commercial insurance company and acts as the designated representative of the insurer for the heating oil pollution liability insurance program.

(13) "MTCA" means the Model Toxics Control Act (chapter 70.105D RCW).

(14) "Named insured" means the individual insureds who are heating oil tank owners registered for coverage under the heating oil pollution liability insurance program.

(15) "Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in an accidental release from ~~((an active))~~ a heating oil tank.

(16) "Owner" means the person, or his or her authorized representative, legally responsible for a heating oil tank, its contents, and the premises upon which the heating oil tank is located.

(17) "Owner or operator" means a person in control of, or having responsibility for, the daily operation of a heating oil tank.

(18) "Per occurrence, per site, per year" means one accidental release per site, per year.

(19) "Pollution liability insurance agency" (PLIA) means the Washington state pollution liability insurance agency established pursuant to chapter 70.148 RCW. For purposes of chapter 70.149 RCW, pollution liability insurance agency shall also mean staff or employees of the pollution liability insurance agency.

(20) "Pollution liability insurance agency trust account" means the pollution liability insurance agency trust account established under chapter 70.148 RCW and established in the custody of the state treasurer. Expenditures from the account are used for the purposes of chapter 70.148 RCW including the payment of costs of administering the pollution liability insurance program, and payment of reinsurance claims.

(21) "Property damage" means:

(a) Physical injury to, destruction of, or contamination of tangible property, including the loss of use of the property resulting from the injury, destruction, or contamination; or

(b) Loss of use of tangible property that has not been physically injured, destroyed, or contaminated but has been evacuated, withdrawn from use, or rendered inaccessible because of an accidental release.

~~((22))~~ ("Property damage restoration" means the restoration of property to a similar condition to that of the property prior to the accidental release. Restoration includes the replacement of sod, plants or concrete driveway or walkway, or the cleaning or replacement of carpet in the case of a basement tank.

~~((23))~~ "Release" means a spill, leak, emission, escape, or leaching into the environment.

~~((24))~~ (23) "Third-party claimant" means a person alleged to have suffered property damage requiring corrective action or bodily injury as a direct result of a leak or spill from the heating oil tank of a named insured.

~~((25))~~ (24) "Third-party liability" means the liability of a heating oil tank owner to another person due to property damage requiring corrective action or bodily injury that

results from a leak or spill from ~~((an active))~~ a heating oil tank.

AMENDATORY SECTION (Amending WSR 97-06-080, filed 3/3/97, effective 4/3/97)

WAC 374-70-030 Responsibility. (1) The director of the pollution liability insurance agency is directed by chapter 70.149 RCW to establish the heating oil pollution liability insurance program to assist owners and operators of ~~((active))~~ heating oil tanks. The agency implements and administers the pollution liability insurance program established by chapter 70.148 RCW and the heating oil pollution liability insurance program established by chapter 70.149 RCW.

(2) The location of the principal office and the mailing address of the agency is:

Pollution Liability Insurance Agency
State of Washington
1015 10th Avenue, S.E.
P.O. Box 40930
Olympia, WA 98504-0930

(3) The principal administrative and appointing officer of the agency is the director. The director may designate other employees of the agency to act in his or her behalf in the director's absence or with respect to those matters in which so doing would enhance the efficiency of the agency's operations.

(4) In administering the heating oil pollution liability insurance program, PLIA acts as the designated representative of the insurer providing pollution liability insurance to registered owners of heating oil tanks.

AMENDATORY SECTION (Amending WSR 96-01-101, filed 12/19/95, effective 1/19/96)

WAC 374-70-040 Insurance program. The director, as the heating oil pollution liability insurance program administrator, is responsible for obtaining pollution liability insurance coverage on behalf of the named insureds: All registered owners of ~~((active))~~ heating oil tanks as defined in this chapter. The pollution liability insurance policy will provide sixty thousand dollars coverage, including reinsurance, per occurrence and shall be in excess of other valid insurance and warranties. The policy will be reinsured through the pollution liability insurance agency trust account.

AMENDATORY SECTION (Amending WSR 96-01-101, filed 12/19/95, effective 1/19/96)

WAC 374-70-050 Eligibility. Owners and operators of ~~((active))~~ heating oil tanks in the state of Washington are eligible for coverage under the heating oil pollution liability insurance program.

(1) Participation in the heating oil pollution liability insurance program is optional for heating oil tank owners. If a heating oil tank owner wishes to participate in the heating oil pollution liability insurance program, the heating oil tank owner must register the ~~((active))~~ heating oil tank by submitting to PLIA a completed registration form to be provided by

PLIA. ~~((Heating oil tank owners choosing to participate in the heating oil pollution liability insurance program established by this chapter must comply with the following criteria:~~

~~(a) The owner must submit proof, by one or more of the following methods, that the heating oil tank is active at the time of registration with the agency (PLIA) and that the heating oil tank has remained active eighteen months prior to registration:~~

~~(i) The owner must submit to PLIA a statement from a heating oil supplier attesting to deliveries of heating oil to the heating oil tank for eighteen months prior to registration; and/or~~

~~(ii) The owner must submit to PLIA a copy of invoices, or canceled checks, for receipt of heating oil at the heating oil tank reflecting purchases or deliveries for eighteen months prior to registration;~~

~~(b)) (2) Abandoned or decommissioned heating oil tanks ((systems)) are not eligible for coverage under the heating oil pollution liability insurance program(;~~

~~(c) At the discretion of the director, the following circumstances dictate individual consideration for eligibility for coverage under the heating oil pollution liability insurance program:~~

~~(i) If a heating oil tank has been recently installed (new construction) or reactivated (conversion to oil heat); or~~

~~(ii) If a heating oil tank has not been active for eighteen months prior to registration due to unusual or extenuating circumstances;~~

~~(d)), except as described in WAC 374-70-080(4) and 374-70-090(4).~~

~~(3) Registration in the heating oil pollution liability insurance program must be in the name of the current owner of the property where the registered heating oil tank is located. In the event of a property transfer, ((heating oil pollution liability insurance coverage of a registered heating oil tank ceases. The new owner must submit a new registration form if the owner wishes to participate in the heating oil pollution liability insurance program. If the new owner does not submit a new registration form, the active heating oil tank will not be covered under the heating oil pollution liability insurance program; and~~

~~(e)) the new property owner must submit a new registration form within one hundred eighty calendar days of the property transfer in order to avoid a lapse in coverage from the prior registered owner. The date of the property transfer will be considered the first day of the one hundred eighty calendar days. If the new owner does not register within one hundred eighty calendar days, the registration will be considered a new registration and coverage will start on the date the registration was received. Property transfers include, but are not limited to, sales, gifting, and inheritances. If a claim for coverage under WAC 470-70-080 or 470-70-090 is submitted within one hundred eighty calendar days after the property is transferred, and before the new owner has submitted a new registration, the new owner will be deemed to be the named insured for the purposes of this chapter.~~

~~(4) PLIA reserves the right to perform an independent investigation to verify the eligibility of a heating oil tank. All investigative costs will be the responsibility of PLIA.~~

~~((2)) (5) Accidental releases occurring prior to heating oil tank registration are not eligible for coverage under the heating oil pollution liability insurance program.~~

~~((3)) (6) Owners and operators of ((active)) heating oil tanks, or sites containing ((active)) heating oil tanks where an accidental release has been identified or where the owner or operator knows of an accidental release prior to heating oil tank registration are eligible for coverage under the heating oil pollution liability insurance program ((subject to the following conditions:~~

~~(a) The owner or operator must have a plan for proceeding with corrective action; and~~

~~(b)); however, if the owner or operator files a claim with PLIA, the owner or operator has the burden of proving, to the satisfaction of the director, that the claim is not related to an accidental release occurring prior to the heating oil tank registration.~~

AMENDATORY SECTION (Amending WSR 97-06-080, filed 3/3/97, effective 4/3/97)

WAC 374-70-060 Coverage. (1) The effective date of coverage under the heating oil pollution liability insurance program is January 1, 1996. Thereafter, individual heating oil tank coverage shall become effective upon receipt, by PLIA, of the completed registration form. Corrective action for an accidental release occurring prior to the effective date of coverage will not be covered under the program.

(2) The heating oil pollution liability insurance program provides coverage for corrective action costs up to sixty thousand dollars per occurrence, per site, per year, exclusive of other valid insurance or warranties.

(3) Corrective action costs covered under the heating oil pollution liability insurance program include:

(a) Corrective action if the accidental release occurs after the registration of ~~((an active))~~ a heating oil tank;

(b) Actions necessary to determine the extent and severity of an accidental release;

(c) Costs, not to exceed sixty thousand dollars per occurrence, per site, per year;

(d) Costs in excess of other valid insurance or warranties;

~~(e) ((First-party property damage restoration, including landscaping, limited to one thousand five hundred dollars per occurrence, per site, per year;~~

~~(f) Third-party property damage restoration, including landscaping, limited to one thousand five hundred dollars for each third-party claimant per occurrence, per site, per year;~~

~~(g)) Excavation, treatment and/or removal and proper disposal of any soil or water contaminated by the accidental release and proper disposal of nonrepairable heating oil tank or tanks; ((and~~

~~(h)) (f) Required soil and water sampling and testing to determine if corrective action standards have been met; and~~

(g) Reimbursement of new tank replacement costs in accordance with RCW 70.149.120.

(4) Corrective action costs not covered under the heating oil pollution liability insurance program include:

(a) Corrective action if the accidental release occurred prior to the registration of ~~((an active))~~ a heating oil tank;

- (b) Costs covered by other valid insurance or warranties;
 - (c) Costs in excess of sixty thousand dollars per occurrence, per site, per year, exclusive of other valid insurance or warranties;
 - (d) Cleanup of contamination from other sources;
 - (e) Removal, repair or replacement of the heating oil tank, lines, or furnace, except reimbursement of new tank replacement costs in accordance with RCW 70.149.120;
 - (f) Emergency heat restoration procedures;
 - (g) Cleanup of a site beyond the MTCA cleanup levels;
 - (h) Corrective action associated with an abandoned or decommissioned heating oil tank or site; and
 - (i) ~~((First party property damage restoration, including landscaping, in excess of one thousand five hundred dollars per occurrence, per site, per year;~~
 - ~~(j) Third party property damage restoration, including landscaping, in excess of one thousand five hundred dollars for each third party claimant per occurrence, per site, per year; and~~
 - ~~(k))~~ Defense costs, including the costs of legal representation, expert fees, and related costs and expenses incurred in defending against claims or actions brought by or on behalf of:
 - (i) The United States, the state of Washington, or a political subdivision of the United States or state of Washington to require corrective action or to recover costs of corrective action; or
 - (ii) A third party for bodily injury or property damage caused by an accidental release.
- (5) If a claim exceeds sixty thousand dollars in total damages, coverage within the sixty thousand dollar policy limit shall be on a pro rata basis between the insured heating oil tank owner and third-party claimant(s).
- (6) A claim will be accepted for coverage only after an investigation has confirmed the existence of an accidental release which is eligible for coverage under these rules.

AMENDATORY SECTION (Amending WSR 97-06-080, filed 3/3/97, effective 4/3/97)

WAC 374-70-070 Parties involved with an accidental release and corrective action. Among the potential parties involved when an accidental release is suspected from a heating oil tank or line are the heating oil tank owner or operator, adjacent property owners, heating oil supplier, PLIA, third-party administrator, department of ecology, and heating oil tank service providers.

(1) Heating oil tank owner or operator. All liabilities caused by an accidental release originating from a heating oil tank are the sole responsibility of the heating oil tank owner. The pollution liability insurance agency and/or the state of Washington accepts no liability, nor portion of the liability, from the heating oil tank owner. The heating oil tank operator may submit forms to PLIA on behalf of the owner, however, no corrective action may be performed without the specific written consent of the heating oil tank owner. The heating oil tank owner or operator is responsible for notifying the heating oil supplier in the case of a suspected accidental release and investigating the source and extent of the suspected accidental release. The heating oil tank owner is responsible ~~((for~~

~~notification of homeowner's insurer and determination of whether)) to provide documentation to PLIA that coverage will not be provided by the owner's homeowners' insurer.~~ If corrective action is implemented, the heating oil tank owner is responsible for selecting a service provider approved by the insurer and approving the completed corrective action.

(2) Adjacent property owners. If an accidental release migrates off-site, or is suspected to have migrated, the adjacent property owner may be involved in the corrective action. In this situation, the heating oil tank owner or operator shall notify PLIA of the occurrence and provide the adjacent property owner's name, address and telephone number.

(3) Heating oil supplier. Some heating oil suppliers provide customer services which may be a resource to evaluate a suspected accidental release to the environment. If after investigating a heating system malfunction, a heating oil supplier determines that an accidental release may have occurred, the heating oil supplier should inform the owner or operator of the accidental release.

(4) PLIA acts as the designated representative of the insurer for purposes of the heating oil pollution liability insurance program. PLIA provides informal advice and assistance to heating oil tank owners and operators, registers heating oil tanks for insurance coverage, provides listings of service providers approved by the insurer, manages claims for the insurer and provides certification that a claim is closed.

(5) Third-party administrator. PLIA may appoint a third-party administrator to assist in monitoring, investigation and corrective action.

(6) Department of ecology. The department of ecology administers statewide laws and rules detailing MTCA cleanup standards for both soil and ground water. To be eligible for coverage under the heating oil pollution liability insurance program, corrective action must satisfy MTCA and pertinent local government requirements.

(7) Heating oil tank service provider. A heating oil tank service provider is an independent contractor who contracts with an owner or operator to perform corrective action, including submitting reports to PLIA on behalf of the owner or operator.

AMENDATORY SECTION (Amending WSR 97-06-080, filed 3/3/97, effective 4/3/97)

WAC 374-70-080 Claims. Coverage under the heating oil pollution liability insurance program shall be in excess of other valid insurance and warranties. Payment of a claim will be made only if the cleanup of contamination resulting from an accidental release is not covered by other valid insurance and warranties. Corrective action will be accomplished by the most cost-effective method available. To receive payment from the heating oil pollution liability insurance program for covered corrective action costs, the following actions are required:

(1) The claim must be for corrective action resulting from an accidental release from ~~((an active))~~ a heating oil tank which has been registered with PLIA prior to the accidental release;

(2) The claim must satisfy all requirements and restrictions established by chapter 70.149 RCW and this chapter.

Any failure to satisfy all requirements and restrictions may be a basis for denial of claim;

(3) The heating oil tank owner or operator must provide notice to PLIA that a potential claim exists ~~((within ten days of))~~ as soon as practicable after discovery that an accidental release may have occurred;

(4) The claim must be submitted to PLIA not more than thirty calendar days after the date a registered heating oil tank becomes abandoned or decommissioned. The heating oil tank owner or operator has the burden of proving, to the satisfaction of the director, that the tank has not been abandoned or decommissioned longer than thirty calendar days. The date that the tank is abandoned or decommissioned, whichever is earlier, will be considered the first of the thirty calendar days. PLIA may accept claims after thirty calendar days if the abandoned or decommissioned tank was registered with PLIA and was replaced with a new heating oil tank that continues to be registered with PLIA;

(5) Upon receipt of notice of a potential claim, PLIA will commence completion of the notice of claim, and will provide the heating oil tank owner or operator with a list of insurer approved heating oil tank service providers;

~~((5))~~ (6) The heating oil tank operator may submit reports and forms on behalf of the heating oil tank owner; however, no corrective action will be initiated or performed without the specific written consent of the heating oil tank owner;

~~((6))~~ (7) The heating oil tank owner is responsible for investigation to determine the source and extent of a suspected accidental release. The heating oil tank owner is also responsible for ~~((notification of the homeowner's insurer and determination of whether))~~ providing documentation to PLIA that coverage will not be provided by the owner's homeowners' insurer;

~~((7))~~ (8) If the claim is determined by PLIA to be valid, PLIA will so notify the heating oil tank owner or operator. The corrective action shall be performed by a heating oil tank service provider approved by the insurer;

~~((8))~~ (9) The heating oil tank service provider will notify PLIA of selection by the heating oil tank owner or operator. PLIA will then forward to the heating oil tank service provider the following forms:

(a) Scope of work proposal. This form will provide the heating oil tank owner or operator and PLIA a proposal of the extent and elements of corrective action, as well as a specific cost proposal;

(b) Change order. This form provides a proposal for change or deviation from the scope of work proposal;

(c) Project field report. This form provides a record of all corrective action and work elements, as well as a record of detailed costs. The project field report must include color photographs of the project at commencement, completion, and any significant steps in between, as well as appropriate project sketches and/or plans; and

(d) Claim report. This form will include a project closeout report, final cleanup report, and corrective action cost claim;

~~((9))~~ (10) The heating oil tank service provider will submit for approval to the heating oil tank owner or operator

and to PLIA a scope of work proposal for corrective action at the heating oil tank site;

~~((10))~~ (11) Upon receipt of approval by the heating oil tank owner or operator and PLIA of the scope of work proposal, the heating oil tank service provider may commence work to accomplish corrective action;

~~((11))~~ (12) All work performed by the heating oil tank service provider on behalf of the heating oil tank owner or operator and PLIA must be within the terms of the contract and the approved scope of work proposal and shall not exceed costs included in the scope of work proposal. Any change(s) or deviation(s) from the approved scope of work proposal must be accomplished through a change order request which must be approved in advance by the heating oil tank owner or operator and PLIA. Any work performed by the heating oil tank service provider that has not been approved, prior to performance, by the heating oil tank owner or operator and PLIA, or is beyond the terms of the scope of work proposal or change order(s), or is in excess of costs approved in the scope of work proposal or change order(s), will not be paid or reimbursed under the heating oil pollution liability insurance program. Such work or excess costs will be the responsibility of the heating oil tank owner and/or heating oil tank service provider;

~~((12))~~ (13) Corrective action activities and costs must be recorded by the heating oil tank service provider on the project field report form provided by PLIA;

~~((13))~~ (14) Upon completion of all corrective action, the heating oil tank owner or operator must sign the project closeout report indicating approval of and satisfaction with all work performed by the heating oil tank service provider;

~~((14))~~ (15) Upon completion of corrective action and approval by the heating oil tank owner or operator, the heating oil tank service provider must submit to PLIA a complete claim report;

~~((15))~~ (16) Upon completion of corrective action that appears to satisfy the requirements of all applicable state and local statutes, the director will certify that the claim has been closed;

~~((16))~~ (17) Approval of claims and payment of covered costs are contingent upon the availability of revenue. The director reserves the right to defer payment at any time that claim demands exceed the revenue available for the heating oil pollution liability insurance program. Payment will commence with sufficient revenue;

~~((17))~~ (18) PLIA will maintain all records associated with a claim for a period of ten years; and

~~((18))~~ (19) In the case of an emergency, the director may authorize deviation from this procedure to the extent necessary to adequately respond to the emergency.

AMENDATORY SECTION (Amending WSR 97-06-080, filed 3/3/97, effective 4/3/97)

WAC 374-70-090 Third-party claims. Coverage under the heating oil pollution liability insurance program shall be in excess of other valid insurance and warranties. Payment of a claim will be made only if the cleanup of contamination resulting from an accidental release is not covered by other valid insurance and warranties. Corrective action

will be accomplished by the most cost-effective method available. For a third party to receive payment from the heating oil pollution liability insurance program for covered corrective action costs, the following actions are required:

(1) The claim must be for corrective action resulting from a leak or spill from ~~((an active))~~ a heating oil tank which has been registered with PLIA prior to the leak or spill;

(2) The claim must satisfy all requirements and restrictions established for third-party claims by chapter 70.149 RCW and this chapter. Any failure to satisfy all requirements and restrictions may be a basis for denial of claim;

(3) The third-party claimant must provide notice to PLIA that a potential third-party claim may exist ~~((within fifteen days of))~~ as soon as practicable after discovery that damage may have occurred from a leak or spill from a named insured's ~~((active))~~ heating oil tank;

(4) The claim must be submitted to PLIA not more than thirty calendar days after the date a registered heating oil tank is abandoned or decommissioned. The heating oil tank owner or operator has the burden of proving, to the satisfaction of the director, that the tank has not been abandoned or decommissioned longer than thirty calendar days. The date that the tank is abandoned or decommissioned, whichever is earlier, will be considered the first day of the thirty calendar days. PLIA may accept claims after thirty calendar days if the abandoned or decommissioned tank was registered with PLIA and was replaced with a new heating oil tank that continues to be registered with PLIA;

(5) Upon receipt of notice of a potential claim, PLIA will commence completion of the notice of claim;

~~((5))~~ (6) If an accidental release from a named insured's heating oil tank has been confirmed, PLIA, as designated representative of the insurer will initiate an investigation to determine the extent and source of the contamination. Investigation will be performed by PLIA or a designated representative approved by the insurer. PLIA may also assist the named insured heating oil tank owner in determining if the insured's homeowner's insurance provides coverage for third-party damage. The third-party claimant shall cooperate fully with the investigator and provide any information or access necessary to complete the investigation;

~~((6))~~ (7) If the claim is determined by PLIA to be valid, the third-party claimant will be notified by PLIA to select a heating oil tank service provider, approved by the insurer, to perform corrective action;

~~((7))~~ (8) The heating oil tank service provider will notify PLIA of selection by the third-party claimant. PLIA will then forward to the heating oil tank service provider the following forms:

(a) Scope of work proposal. This form will provide the third-party claimant and PLIA a proposal of the extent and elements of corrective action, as well as a specific cost proposal;

(b) Change order. This form provides a proposal for change or deviation from the scope of work proposal;

(c) Project field report. This form provides a record of all corrective action and work elements, as well as a record of detailed costs. The project field report must include color photographs of the project at commencement, completion,

and any significant steps in between, as well as appropriate project sketches and/or plans; and

(d) Claim report. This form will include a project close-out report, final cleanup report, and corrective action cost claim;

~~((8))~~ (9) The heating oil tank service provider will submit for approval to the third-party claimant and to PLIA a scope of work proposal for corrective action;

~~((9))~~ (10) Upon receipt of approval by the third-party claimant and PLIA of the scope of work proposal, the heating oil tank service provider may commence work to accomplish corrective action;

~~((10))~~ (11) All work performed by the heating oil tank service provider on behalf of the third-party claimant and the insurer must be within the terms of the contract and the approved scope of work proposal and shall not exceed costs included in the scope of work proposal. Any change(s) or deviation(s) from the approved scope of work proposal must be accomplished through a change order request which must be approved in advance by the third-party claimant and PLIA. Any work performed by the heating oil tank service provider that has not been approved, prior to performance, by the third-party claimant and PLIA, or is beyond the terms of the scope of work proposal or change order(s), or is in excess of costs approved in the scope of work proposal or change order(s), will not be paid or reimbursed under the heating oil pollution liability insurance program. Such work or excess costs will be the responsibility of the third-party claimant and/or heating oil tank service provider;

~~((11))~~ (12) Corrective action activities and costs must be recorded by the heating oil tank service provider on the project field report form provided by PLIA;

~~((12))~~ (13) Upon completion of all corrective action, the third-party claimant must sign the project closeout report indicating approval of and satisfaction with all work performed by the heating oil tank service provider;

~~((13))~~ (14) Upon completion of corrective action and approval by the third-party claimant, the heating oil tank service provider must submit to PLIA a complete claim report. After review and approval of the claim report by PLIA, the heating oil tank service provider will receive payment;

~~((14))~~ (15) Upon completion of corrective action that appears to satisfy the requirements of all applicable state and local statutes, the director will certify that the claim has been closed;

~~((15))~~ (16) Approval of claims and payment of covered costs are contingent upon the availability of revenue. The director reserves the right to defer payment at any time that claim demands exceed the revenue available for the heating oil pollution liability insurance program. Payment will commence with sufficient revenue;

~~((16))~~ (17) PLIA will maintain all records associated with a claim for a period of ten years; and

~~((17))~~ (18) In the case of an emergency, the director may authorize deviation from this procedure to the extent necessary to adequately respond to the emergency.