



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (June 2004)
(Implements RCW 34.05.310)
Do NOT use for expedited rule making

Agency: Department of Labor and Industries

Subject of possible rule making: WAC 296-127-018, Coverage and exemptions of workers involved in the production and delivery of gravel, concrete, asphalt, or similar materials.

Statutes authorizing the agency to adopt rules on this subject: Chapter 39.12 RCW and RCW 43.22.270

Reasons why rules on this subject may be needed and what they might accomplish: During the last decade the prevailing wage program has seen a number of court decisions identify the extent to which prevailing wages are to required to be paid for the work of incorporation and delivery of material on public projects. In particular, the recent Silverstreak case (2007), after 9 years of court action, clarified the delivery and incorporation of fill material via belly dump and end-dump trucks. In addition, a series of other published cases (Heller, Superior Asphalt 1 & 2) provided coverage for the oiling of machinery and the delivery and incorporation of asphalt respectively. In July 1999, one department policy pertaining to the delivery of wet concrete exempts certain this types of delivery and incorporation from prevailing wage coverage. As a result, the coverage of this type of work is treated differently from other delivery and incorporation work. This policy was developed in response to an unpublished court case (Holyrod 1999) and was put in place prior to the rulings of the court on Silverstreak, and Superior Asphalt.

It is the department's intention, through the rule process, to clarify the coverage of delivery services and make the coverage of work and payment of wages consistent with the direction from the courts, thereby ensuring that the intent of the statute of providing prevailed wages for workers is maintained and that business do not encounter unanticipated costs due to a lack of understanding on coverage requirements.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies:
No other state or federal agencies regulate this subject.

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe)

Parties interested in the formulation of these rules for proposal may contact the individual listed below. The public may also participate by commenting after amendments are proposed by providing written comments and/or testimony during the public hearing and comment process.

How interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication:

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DATE February 5, 2008
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<div style="border: 1px solid black; padding: 5px;"> <p style="text-align: center;">OFFICE OF THE CODE REVISER STATE OF WASHINGTON FILED</p> <p>DATE: February 05, 2008 TIME: 11:07 AM</p> <p>WSR 08-04-083</p> </div>