



# 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:** Chapter 296-128 WAC, Minimum wages

**Statutes authorizing the agency to adopt rules on this subject:** RCW 43.22.270 and 49.46.130

**Reasons why rules on this subject may be needed and what they might accomplish:** The rulemaking is in response to *Bostain v. Food Express, Inc.*, 159 Wn.2d 700, 153 P.3d 846 (2007).

In that case, the Court concluded that RCW 49.46.130(1) requires overtime compensation for hours worked over 40 per week for interstate driving, including hours spent working out of state. Current rules require overtime pay for truck drivers only for their hours worked within Washington. These rules are not consistent with the statute and need to be amended.

The Court's ruling directly affects two regulations with corresponding policies and enforcement practices. The Court's decision has invalidated portions of WAC 296-128-011 and WAC 296-128-012 where the rules define hours for purposes of overtime provisions as hours worked only within Washington state. Language will also be added that allows employers to submit their compensation systems to the department for review and approval.

**Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies:**  
None.

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

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

Interested parties and the public may also participate by providing written comments or giving oral 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:**

(List names, addresses, telephone, fax numbers, and e-mail of persons to contact; describe meetings, other exchanges of information, etc.)

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**DATE**  
May 6, 2008

**NAME (TYPE OR PRINT)**  
Judy Schurke

**SIGNATURE**

**TITLE**  
Director

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FILED

**DATE:** May 06, 2008

**TIME:** 10:01 AM

**WSR 08-10-074**