

WSR 06-13-006
PERMANENT RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[General Order No. R-533, Docket No. TC-020497—Filed June 8, 2006,
 1:31 p.m., effective July 9, 2006]

In the matter of repealing, amending, and adopting rules in chapters 480-30 and 480-40 WAC, relating to passenger transportation (bus) companies.

1 STATUTORY OR OTHER AUTHORITY: The Washington utilities and transportation commission takes this action under Notice No. WSR 06-05-113, filed with the code reviser on February 15, 2006. The commission brings this proceeding pursuant to RCW 80.01.040, 81.04.160, 81.12.050, 81.68.030, and 81.70.270.

2 STATEMENT OF COMPLIANCE: This proceeding complies with the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 DATE OF ADOPTION: The commission adopts this rule on the date that this order is entered.

4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE: RCW 34.05.325(6) requires the commission to prepare and provide to commenters a concise explanatory statement about an adopted rule. The statement must identify the commission's reasons for adopting the rule, a description of the difference between the version of the proposed rules published in the register and the rules as adopted (other than editing changes), a summary of the comments received regarding the proposed rule changes, and the commission's responses to the comments, reflecting the commission's consideration of them.

5 The commission often includes a discussion of those matters in its rule adoption order. In addition, most rule-making proceedings involve extensive work by commission staff that includes memoranda summarizing stakeholder comments, commission decisions, and staff recommendations in each of those areas.

6 In this docket, to avoid unnecessary duplication, the commission designates the discussion in this order as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda presented at the adoption hearing, accompanying the CR-102 notice, and at the open meeting where the commission considered whether to begin a rule making. Together, the documents provide a complete, concise explanation of the agency actions and its reasons for taking those actions.

7 REFERENCE TO AFFECTED RULES: This order repeals the following sections of the Washington Administrative Code:

480-30-010	Definitions.
480-30-020	Licenses, and rules and regulations.
480-30-030	Certificates—Auto transportation companies.
480-30-032	Notice of application; protests; contemporaneous applications.
480-30-040	Express.

480-30-045	Auto transportation company C.O.D. shipments tariff requirements—Bond required—Handling of shipments.
480-30-050	Tariff, naming rates and fares.
480-30-060	Schedule of time and route.
480-30-070	Liability and property damage insurance or surety bond.
480-30-080	Self insurance.
480-30-090	Equipment of motor vehicles.
480-30-095	Equipment—Safety.
480-30-097	Equipment—Inspection—Ordered for repairs.
480-30-100	Operation of motor vehicles.
480-30-105	Depot and terminal facilities.
480-30-110	Regulatory fees.
480-30-120	Uniform system of accounts and annual reports.
480-30-130	Rules and regulations—General application.
480-40-010	Definitions.
480-40-020	Licenses.
480-40-030	Certificates.
480-40-040	Liability and property damage insurance.
480-40-050	Self insurance.
480-40-060	Equipment of motor vehicles.
480-40-065	Equipment—Inspection—Ordered for repairs.
480-40-070	Operation of motor vehicles.
480-40-075	Equipment—Safety.
480-40-100	Out-of-service criteria.
480-40-110	Registered carriers.
480-40-120	Registration of interstate authority.
480-40-130	Regulatory fees—Receipt—Intrastate passenger charter carriers and excursion service carriers.
480-40-999	Adoption by reference.
8 This order amends the following section of the Washington Administrative Code:	
480-30-999	Adoption by reference.
9 This order adopts the following sections of the Washington Administrative Code:	
480-30-001	Purpose of chapter.
480-30-006	Application of rules.
480-30-011	Exempt operations.
480-30-016	Determination of authority.
480-30-021	Additional requirements.
480-30-026	Severability.
480-30-031	Procedural rules.
480-30-036	Definitions, general.

480-30-041	Change of address.	480-30-196	Insurance cancellation.
480-30-046	Exemptions from rules in chapter 480-30 WAC.	480-30-201	Self-insurance.
480-30-051	Mapping, auto transportation company.	480-30-206	Vehicle licensing.
480-30-056	Records retention, auto transportation company.	480-30-211	Commercial vehicle defined.
480-30-061	Express freight, property transportation.	480-30-213	Vehicles and drivers.
480-30-066	Accounting requirements, auto transportation company.	480-30-216	Operation of motor vehicles, general.
480-30-071	Reporting requirements.	480-30-221	Vehicle and driver safety requirements.
480-30-076	Regulatory fees.	480-30-226	Intrastate medical waivers.
480-30-081	Motor vehicle fund, auto transportation company.	480-30-231	Vehicle and driver identification.
480-30-086	Certificates, general.	480-30-236	Leasing vehicles.
480-30-091	Certificates, application fees.	480-30-241	Commission compliance policy.
480-30-096	Certificates, application filings, general.	480-30-246	Sanctions for operating without a valid certificate.
480-30-101	Certificates, federal grant of authority, auto transportation company.	480-30-251	Charter and excursion carriers not subject to provisions of Part 7.
480-30-106	Certificates, acquisition of control.	480-30-256	Tariffs and time schedules, federal preemption.
480-30-111	Certificates, starting service.	480-30-261	Tariffs and time schedules, definitions used in.
480-30-116	Certificates, application docket, protests, and intervention, auto transportation company.	480-30-266	Tariffs and time schedules, general.
480-30-121	Certificates, applications, charter and excursion carrier.	480-30-271	Tariffs and time schedules, must file before starting service.
480-30-126	Certificates, applications, auto transportation company.	480-30-276	Tariffs and time schedules, companies must comply with the provisions of filed tariffs and time schedules.
480-30-131	Certificates, overlapping applications, auto transportation company.	480-30-281	Tariffs and time schedules, content.
480-30-136	Certificates, application hearings, auto transportation company.	480-30-286	Tariffs and time schedules, posting.
480-30-141	Certificates, sale, lease, assignment, transfer or mortgage, auto transportation company.	480-30-291	Tariffs, rates, general.
480-30-146	Certificates, name change.	480-30-296	Tariffs and time schedules, rejection.
480-30-151	Certificates, refiling application prohibited, auto transportation company.	480-30-301	Tariffs and time schedules, one business-day notice to the commission.
480-30-156	Certificates, temporary, auto transportation company.	480-30-306	Tariffs and time schedules, seven calendar day notice to the commission.
480-30-161	Certificates, notice of purchase or condemnation, auto transportation.	480-30-311	Tariffs and time schedules, requiring thirty calendar day notice to the commission.
480-30-166	Certificates, service agreements, auto transportation company.	480-30-316	Tariffs and time schedules, customer notice requirements.
480-30-171	Certificates, suspending and canceling.	480-30-321	Tariffs and time schedules, notice verification and assistance.
480-30-181	Certificates, reinstatement.	480-30-326	Tariffs and time schedules, less than statutory notice handling.
480-30-186	Certificates, service interruptions or discontinued operations, auto transportation company.	480-30-331	Tariffs and time schedules, format and size requirements.
480-30-191	Bodily injury and property damage liability insurance.	480-30-336	Tariffs and time schedules, changes must be identified.
		480-30-341	Tariffs and time schedules, title pages.
		480-30-346	Tariffs and time schedules, page format.
		480-30-351	Tariffs and time schedules, maps with tariffs.
		480-30-356	Tariffs and time schedules, tariff rules.

- 480-30-361 Tariffs and time schedules, changes.
- 480-30-366 Tariffs and time schedules, supplements.
- 480-30-371 Tariffs and time schedules, supplements or new filings required.
- 480-30-376 Tariffs and time schedules, filings after name change or change in ownership.
- 480-30-381 Tariffs and time schedules, filing procedures.
- 480-30-386 Tariffs and time schedules, approval.
- 480-30-391 Tariffs and time schedules, ticket agent agreements must be filed and approved.
- 480-30-396 Tariffs and time schedules, free and reduced rates.
- 480-30-401 Tariffs and time schedules, substitute page filings.
- 480-30-406 Tariffs and time schedules, withdrawing a filing.
- 480-30-411 Tariffs and time schedules, suspension by the commission.
- 480-30-416 Tariffs, joint tariffs and through-ticketing arrangements.
- 480-30-421 Tariffs, general rate increase filings.
- 480-30-426 Tariffs, general rate increase filings, work papers.
- 480-30-431 Tariffs, general rate increase filings and fuel cost update.
- 480-30-436 Tariffs, special or promotional fare tariff filings.
- 480-30-441 Charter and excursion carriers not subject to provisions of Part 8.
- 480-30-446 Availability of information.
- 480-30-451 Refusal of service.
- 480-30-456 Fair use of customer information.
- 480-30-461 Service or rate complaints.
- 480-30-466 Credits or refunds as compensation in consumer complaints or problems.
- 480-30-471 Ticketing requirements.
- 480-30-476 Baggage liability and claims for loss or damage.
- 480-30-900 General requirements for interstate operations.
- 480-30-910 Registered carriers.
- 480-30-920 Registered exempt carriers.
- 480-30-930 Registration fee and receipts.
- 480-30-940 Insurance requirements for interstate operations.

10 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER: The commission filed a preproposal statement of inquiry (CR-101) on May 28, 2002, at WSR 02-12-020. The statement advised interested persons that the commission was considering entering a rule making to

review rules relating to passenger transportation companies in chapters 480-30 and 480-40 WAC for content and readability consistent with Executive Order 97-02.

11 ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL STATEMENT: The commission also informed persons of the inquiry into this matter by providing notice of the subject and the CR-101 to all persons on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and the commission's lists of all auto transportation companies, passenger charter carriers, persons interested in transportation issues, as well as to attorneys representing these companies.

12 Pursuant to the notice, the commission received comments from the following companies, organizations, and interested persons: David Estes, representing Pacific Northwest Distributing LLC; Brooks E. Harlow, representing Washington Airporter Operators Association and Evergreen Trails, Inc.; and Michael Civitelli, representing Port of Seattle (Seattle-Tacoma International Airport).

13 The commission staff prepared and distributed an issues paper to stakeholders with another opportunity to submit written comments prior to a stakeholder workshop on September 12, 2002. The commission held a second stakeholder workshop September 30, 2003, to discuss draft passenger transportation company rules and address stakeholder comments. The following companies and organizations participated in the stakeholder workshops: David Gudgel, Gray Line of Seattle; Tom Tanaka and Michael Civitelli, Port of Seattle; Brooks Harlow, Washington Airporter Operators Association; Dick and Helen Asche, Bremerton-Kitsap Airporter; James Fricke, Capitol Airporter; Jimmy Sherrell, Shuttle Express.

14 NOTICE OF PROPOSED RULE MAKING: The commission filed a notice of proposed rule making (CR-102) on February 15, 2006, at WSR 06-05-113. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 06-05-113 at 3:00 p.m., Wednesday, March 29, 2006, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice also provided interested persons the opportunity to submit written comments to the commission.

15 COMMENTERS (WRITTEN COMMENTS): The commission received written comments from Mr. Michael Lauer, representing Seatac Shuttle LLC, d/b/a Vashon Shuttle Service, and Mr. Jimmy Sherrell, representing Shuttle Express, Inc.

16 RULE-MAKING HEARING: The rule proposal was considered for adoption, pursuant to the notice in WSR 06-05-113 at a rule-making hearing scheduled on March 29, 2006, before Chairman Mark H. Sidran and Commissioner Patrick J. Oshie. Mr. John Rowley, representing Shuttle Express, Inc., made oral comments during the meeting. Mr. Rowley acknowledged the time and effort put into addressing the rule changes and asked that the commission consider some of the additional changes proposed in the stakeholder comments. He reaffirmed the written comments previously submitted by Shuttle Express, Inc., regarding the use of "sub-carriers."

17 SUGGESTIONS FOR CHANGE THAT ARE REJECTED/ACCEPTED: Filed comments suggested changes to over thirty

sections of the proposed rules. Each of those suggested changes and the commission's reason for rejecting or accept-

ing the suggested change are included in Appendix A shown below, and made a part of this order.

Appendix A
Docket No. TC-020497 Adopting Rules for Passenger Transportation Companies
Summary of Comments with Commission Response

WAC 480-30-036 Definitions.		
Stakeholder	Written Comment	Commission Response
Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle	"Cancellation" means: (a) An act by the commission to terminate a company's charter and excursion carrier certificate or a company's auto transportation certificate; or (b) An act by an auto transportation company to discontinue the application of a tariff, a tariff supplement, or a tariff item. (c) <u>An act by a customer to terminate a reservation either through affirmative action or passive action. ex. no-show</u> <i>This term is used in Passenger Rules and Tariffs regarding acts by passengers and should be included in this section for clarity. Please add this definition.</i>	Rejected. The proposed rule was not revised as suggested. "Cancellation" is not defined in the proposed rules because the term, as it is used in the chapter, retains its general meaning and no additional definition is needed. A company may use additional meaning by defining the term in its individual tariff or time schedule.
Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle	"Door-to-door service" means an auto transportation company service provided between a location identified by the passenger and a point specifically named by the company in its filed tariff and time schedule. <u>Door-to-door service is a separate and distinct service from scheduled airporter service.</u> <i>These two service types are mutually exclusive in the type of service that they provide and the customers that they serve. A distinction should be clearly articulated within this definition just as it has for premium and direct service.</i>	Rejected. The proposed rule was not revised as suggested. Door-to-door service is not limited to airporters. A company with authority to serve between named points may provide both door-to-door and scheduled service. Some companies combine the services.
Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle	"Contract carrier" means a person holding a certificate issued by the commission authorizing transportation of passengers under special and individual contracts or agreements. <i>What type of certificate is the Commission authorized to issue for special or individual contracts or agreements? Please advise.</i>	No revision was suggested. The commission issues certificates of public convenience and necessity to auto transportation companies that may have authority limited to contract service.
Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle	"Ticket agent agreements" means a signed agreement between an auto transportation company and a second party <u>other than a licensed travel agent</u> in which the second party agrees, for compensation, to sell tickets to passengers on behalf of the auto transportation company. See WAC 480-30-391. <i>Under the current wording, we will need specific, approved contracts with each travel agent around the county that we might do business with. It is industry standard to pay a commission on travel sales to travel agents and they are internal agreements that may be written or oral and are of no concern to the public or the Commission. They are a simple marketing expense understood in all other facets of the travel industry, of which we are an integral part.</i>	Rejected. The proposed rule was not revised as suggested. The definition accurately describes "Ticket Agent Agreements." Companies are not required to file every agreement. The form of the agreement, including the terms and amount of discount offered, must be filed and approved. RCW 81.28.080 allows free or reduced service to agents, but to avoid undue discrimination discounts must be available to any qualified agent under like circumstances.
WAC 480-30-071 Reporting requirements.		
Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle	(2) Charter and excursion carrier annual safety reports. An annual safety report is a summary of motor vehicle and safety operating information that each charter and excursion carrier is required to file with the commission. (a) Each year the commission provides an annual safety report form and instructions to each company at its address of record. Failure to receive the form does not relieve a company of its obligation to complete and file its annual safety report. A company that does not receive an annual safety report form must contact the commission to obtain a copy of the form. (b) A company must file a complete, accurate annual safety report showing all requested information by December 31 <u>February 1 of the year following the reporting year</u> . Information provided on the annual safety report must agree with source documents maintained at company offices. (c) The commission may grant an extension of time allowing the company to file its annual safety report after the December 31 <u>February 1</u> due date if the commission receives a request for extension before December 31 <u>February 1</u> . <i>Operators cannot provide data through December 31 if they are required to report as of that date. Please adjust the dates to one more realistic.</i>	Rejected. The proposed rule was not revised as suggested. The charter and excursion carrier safety report is an annual "to-date" summary that a company must file with its regulatory fee payment form. RCW 81.70.350 requires charter and excursion carriers to pay regulatory fees by December 31 of each year. Changing the safety report due date would require an additional filing.

<p>WAC 480-30-136 Certificates, application hearings, auto transportation company.</p>		
<p>Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle</p>	<p>(4) If an applicant requests a certificate or extension of certificate to operate in a territory already served by another certificate holder, the applicant must also show that the existing transportation company or companies will <u>does</u> not provide service in that territory to the satisfaction of the commission.</p> <p><i>The Commission has Always held that once an application is filed by an applicant to provide service in an area already authorized but not served by another company or not served to the satisfaction of the Commission, that company may not expand service into that area or enhance service in that area in an effort to comply with the terms of its authority after the fact. Any enhancements of this nature have been disregarded in the application process and hearings. To change the wording to <u>will</u> implies that an existing company can change its operation after the filing of an application by another party claiming that it will now begin providing satisfactory service to effectively block any new applicants. This is critical wording.</i></p> <p>(4) (d) Whether the population density warrants additional facilities or transportation. (e) The topography, character, and condition of the territory into which the proposed services are to be introduced, and the proposed territory's relation to the nearest territory through which transportation service is already provided. (f) Whether a grant of the requested authority and the resulting increased competition will benefit the public.</p> <p><i>(d) The Commission offers no parameters for determination of adequate population density which will then leave the door open to prolonged legal interpretation with subsequent additional financial burdens being placed upon the applicant If the Commission is going to make this a requirement, narrow its scope to preclude frivolous and expensive challenges. Second, the only reason to consider population density is to determine the economic impact on an existing carrier. As economic impact on an existing operator is not a consideration of the Commission, this section has no application and is irrelevant.</i></p> <p><i>(e) If a territory is unserved, regardless of topography or whether or not it is contiguous or near another territory is not and never has been a consideration of the commission in the application process. If a territory is unserved, then it must perform, be open to entry by an applicant.</i></p> <p><i>(f) Competition within an area is only permitted if the existing operator is not serving to the satisfaction of the Commission. Economic impact on an existing company by the entrance of a new company has been specifically excluded from the application process. Competition in an underserved or poorly served market place is always to the benefit of the consumer. If one company cannot survive because of the competition then that is proof that the existing company was not performing to the satisfaction of the consumer or Commission.</i></p>	<p>Rejected. The proposed rule was not revised as suggested. The word "will" in the proposed rule mirrors the language of RCW 81.68.040. When determining if an existing company "will" provide service to the satisfaction of the commission, the commission does not consider service improvements made by the existing company after a competing application of authority is filed. The commission considers factors presented by the parties, including "population density" and "economic impact," when determining whether to grant an application for authority to provide service in a territory already served by an existing certificate holder. The proposed rule identifies factors the commission "may" consider.</p>
<p>WAC 480-30-146 Certificates, name change.</p>		
<p>Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle</p>	<p>(1) A company must file a name change application under the provisions of WAC 480-30-096 to:</p> <p>(3) If a name change results from a change in ownership, including addition or deletion of a partner, the company must file an application to transfer the certificate according to the provisions of WAC 480-30-141.</p> <p><i>I want to be very clear here that a Partnership is a legal entity and if no name change is effected with the addition or deletion of a partner this section will not apply. This issue was resolved with the recent application of Feet Wet Partners, LLC, (Doc 050443) (Also see 480-80-133) Please Comment.</i></p>	<p>No revision was suggested. However, paragraph (3) of the proposed rule was revised to remove the phrase "addition or deletion of partners." The proposed rule addresses "name changes" that result from a change in ownership. If there is no "name change" then the proposed rule does not apply. If there is a change of ownership then the provisions of WAC 480-30-141 apply. The reference to adding or deleting partners was included to help clarify the requirement. Revising the proposed rule to remove the reference to adding or deleting partners to eliminate confusion does not affect the rule's purpose or intent.</p> <p>WAC 480-80-133 applies to utility companies under Title 80 not transportation companies under Title 81. Proposed rule WAC 480-30-376 requires a tariff adoption or new tariff when an auto transportation company changes its name or transfers its certificate.</p>

WAC 480-30-196 Insurance cancellation.		
<p>Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle</p>	<p>If a company's insurance filing is canceled, and a new filing that provides continuous coverage is not filed before the cancellation effective date, the commission may:</p> <p>(1) Dismiss a company's application for a certificate;</p> <p>(2)(1) Suspend or cancel a company's certificate under the provisions of WAC 480-30-171. <i>The Commission has never required that insurance filings be made while an application is pending or as part of the initial application filing. It has always been the established procedure to require a proper filing and coverage after the final order granting the application but prior to issuing the certificate. This section implies that coverage must be in place during the application process prior to the final order. This would place a real financial burden on applicants and cannot be the intention of the Commission. Please delete this section in order to bring it in line with actual practice and sound economics.</i></p>	<p>Accepted in part. Paragraph (1) of the proposed rule was revised to more accurately reflect the commission's current policy by stating that the commission may "(1) <u>Withhold issuance of a certificate or dismiss</u> Dismiss a company's application for a certificate." Proof of insurance is required before the commission will issue a "certificate." When the insurance filing is required depends on whether the application goes to hearing or not.</p> <p><u>Hearing:</u> When an application goes to hearing, the commission's order "granting" the authority and subsequent "issuing" of a certificate are two separate actions. In this case, the commission does not require insurance until after it has issued an order granting the application but insurance must be received before a certificate is issued.</p> <p><u>No Hearing:</u> When an application does not go to hearing, the commission issues a single order that both grants the authority and issues the certificate in a single action. Therefore, the company must file insurance prior to the commission issuing an order to grant the application.</p>
WAC 480-30-216 Operation of motor vehicles, general.		
<p>Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle</p>	<p>(7) Smoking on motor vehicles. (b) Each auto transportation company must post signs in its vehicles informing passengers that smoking is not permitted.</p> <p><i>Smoking has been banned for years by statute on regulated vehicles. The public clearly understands that smoking is not permitted in these public indoor situations. We are not currently required this posting and smoking is and has not been a problem. We cannot cite one example of a passenger attempting to smoke on one of our vehicles. Additionally, it is now state law, RCW, that smoking is banned in ALL public places. This new section addresses an issue that does not exist. This section imposes an additional administrative and economic burden on the operators to no purpose. If in the final analysis, we are required to actually post all of the notices required under this draft in our vehicles, we will find ourselves in the untenable position of not having enough surfaces on which to affect the postings. We will look like some cheap transit bus with all their advertising placards on every surface, hardly the "premium" service that we now provide. Please consider the need for and consequences of these new sections before proposing them.</i></p>	<p>Rejected. The proposed rule was not revised as suggested. Posting of no smoking signs is a requirement of current rule and is also a requirement of RCW 70.160.050.</p>
WAC 480-30-241 Commission compliance policy.		
<p>Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle</p>	<p>(1) The commission is authorized to administer and enforce laws and rules relating to passenger transportation companies. The commission may delegate authority to the commission staff to inspect equipment, drivers, records, files, accounts, books, and documents. The commission may also delegate to its staff authority to place vehicles and drivers out-of-service and to arrest without warrant, or issue citations to any person found violating this chapter in the presence of its staff as provided under RCW 81.04.460 <u>RCW 80.04.470</u>.</p> <p><i>RCW 81.04.460 is not the applicable statute. As stated in our comments under the CR-101, we are very uncomfortable with this section. First RCW 81.04.470 provides It shall be the duty of the commission to enforce the provisions of this title and all other acts of this state affecting public service companies, the enforcement of which is not specifically vested in some other officer or tribunal. We believe the WSP has full enforcement authority here and therefore no delegation is authorized. If this is not the case, then anyone delegated by the Commission must be designated in writing and meet the qualifications of a peace officer with arrest authority within the State of Washington, which are clearly defined within the body of RCW. Anyone who has been delegated and meets all of the qualification should be clearly identified by the Commission to the operators.</i></p> <p>It shall be the duty of the commission to enforce the provisions of this title and all other acts of this state affecting public service companies, the <u>enforcement of which is not specifically vested in some other officer or tribunal.</u></p>	<p>Rejected. The proposed rule was not revised as suggested. RCW 81.04.060 is the transportation statute. By RCW 81.04.060 the commission is directed to enforce the provisions of Title 81, and any other chapter that is not specifically vested in some other officer or tribunal. WSP and other law enforcement agencies may also hold some authority to enforce the provisions of Title 81 but that does not change the commission's authority.</p> <p>The commission issues a badge, Washington State uniform arrest citation book, commission identification card that states the employee holds arrest authority.</p>

	<p><i>Further, Proposed NEW SECTION -246 recognizes that "other law enforcement agency(s)" already have the same powers which this section seeks to confer.</i></p> <p>WAC 480-30-246 Sanctions for operating without a valid certificate. (1) Operating without a certificate. (a) If a representative of the commission or other law enforcement agency observes a company operating as a passenger transportation company without a certificate from the commission, that company is subject to a gross misdemeanor citation, for which the company must appear in court.</p>	
<p>WAC 480-30-291 Tariffs, rates fares, general; WAC 480-30-311 Tariffs and time schedules, requiring thirty calendar day notice to the commission; WAC 480-30-316 Tariffs and time schedules, customer notice requirements; and WAC 480-30-366 Tariffs and time schedules, supplements.</p>		
<p>Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle</p>	<p>"Rate" means an amount in a company's tariff approved by the commission or allowed to become effective by operation of law, for services provided by an auto transportation company. For example: Passenger fares, ticket prices, additional baggage charges.</p> <p><i>I'm not going to flog this issue to death here as a CR-101 has been issued for the reform of "rates." However, I do not understand the tenaciousness that the Commission exhibits here with regard to retaining the misapplied term "rates." I am encouraged that in some instances it has been replaced, at long last, with the appropriate term "fares". There still exists scattered throughout the code at random, however, "rates". Once again, we ARE NOT a utility with RATE payers, we are in the travel industry, and our customers pay us "fares". We must end this notion of airporters as a utility with all its negative ramifications.</i></p>	<p>Rejected. The proposed rule was not revised as suggested. Title 81 applies to transportation companies. Public service company is defined in RCW 81.04.010. The commission regulates the rates of transportation companies, including auto transportation companies, as public service companies, under Title 81 of the RCW. There are many references to "rates" in Title 81. "Rates" subject to commission regulation include more than just passenger fares.</p>
<p>WAC 480-30-316 Tariffs and time schedules, customer notice requirements.</p>		
<p>Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle</p>	<p>(2) Thirty-day notice to public. At least thirty days prior to the stated effective date, the company must post a notice in a conspicuous place for each affected route or routes. The published notice must remain posted until the commission takes action on the request. The notice must be posted: (a) In each vehicle; (b) At each passenger facility; and (c) On the internet, if the company maintains an internet web site accessible to the public through which it sells its transportation services, posts its rates, or time schedules.</p> <p><i>The posting will be in the vehicle(s) and at each passenger facility. Updating a WEB SITE with a notice, which would be in addition to the normal schedule and fare previews that we post, creates an economic burden imposed only on those operators who maintain a WEB SITE. This is discriminatory. WEB SITES already contain far more information than most consumers would like. They are in general cluttered. To add yet more information that is already available at the passenger facilities, in the vehicles and on the WUTC web site is over kill. Enough already.</i></p>	<p>Rejected. However, paragraph (2)(c) of the proposed rule was revised to clarify that a company must post its notice on the company's internet web site, if the company maintains an internet web site accessible to the public through which it sells its transportation services, posts its rates, or posts its time schedules. There is no issue of discrimination. A passenger facility is defined in WAC 480-30-036 as a location at which the company maintains an employee and sells tickets. If a company chooses to post its rates and schedule or sell its transportation services through an internet web site, then it is appropriate that the notice of changes in those rates and schedules also be available through that same web site.</p>
<p>WAC 480-30-321 Tariffs and time schedules, notice verification, and assistance.</p>		
<p>Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle</p>	<p>NEW SECTION WAC 480-30-321 Tariffs and time schedules, notice verification and assistance. (1) Within five days of making a filing requiring posting of a customer notice under WAC 480-30-316, but no sooner than the date the filing is submitted to the commission, a company must file a statement with the commission's records center that the required notice has been posted. The declaration must include: (a) Description of where the notice was posted; (b) Date the notice was posted; and (c) A copy of the customer notice. (2) A company may request assistance from the commission's consumer affairs section in preparing notice.</p> <p><i>WUTC or Department of Redundancy Department Department? Just how many times do we need to post and notify on the same issue? In section -316 we are required to post notice and the content of that notice is very clearly specified. Sections -241 and -246 mandate compliance with the Commission's rules and penalties for non-compliance to which all operators have subscribed by virtue of accepting their authority from the Commission. Now comes section -321 which requires us to provide documentation that we have done that to which we have already agreed. If we are required to notify the Commission every time we do something that we are required to do, we won't have time to operate our business. I doubt that the Senate and House Transportation Committees or</i></p>	<p>Rejected. The proposed rule was not revised as suggested. The fact that something is required doesn't mean the commission shouldn't require a company to verify it has complied. Including the notice information with a rate filing ensures the formal record is complete.</p>

	<i>the Governor for that matter would see any merit in this provision. It is just a "make work" provision. Who is to pay for all of this? Delete 480-30-321 in its entirety.</i>	
WAC 480-30-326 Tariffs and time schedules, less than statutory notice handling.		
Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle	<p>(4) Notice requirements. An auto transportation company requesting LSN handling of a filing must post notice in its offices, passenger facilities, and on all vehicles concurrent with submitting the filing to the commission. The company must file a copy of its public notice with the application for LSN-handling.</p> <p><i>The LSN process is most commonly use for fuel surcharges. These are produced as often as every two weeks. They are merely a request to shorten the statutory period for notice and are routinely granted on the consent agenda without public comment. The Commission seems to think we are some kind of rolling kiosk that exists only to be a public display of arcane documents. The public is not served in any fashion by this section. If in some very unusual circumstance a customer wanted to see a LSN, they are already available at numerous other locations and through the Commission. Not one in ten thousand customers even knows what an LSN is and for those very few customers who know what an LSN is, they will have the expertise and knowledge to obtain a copy through the normal historical sources. Please, if you are going to make changes, make them meaningful and not frivolous, redundant and detrimental to the traveling experience and company economics. We have waited four years for this re-write, don't waste this opportunity with this type of senseless language.</i></p>	Rejected. The proposed rule was not revised as suggested. The proposed rule reflects current requirements for LSN handling of filings. Customers may not know what LSN means, but they do know what a rate increase is. An LSN filing is a "rate increase" filing that is handled on a "Less than statutory notice" basis. LSN filings are not just limited to fuel surcharges.
WAC 480-30-356 Tariffs and time schedules, tariff rules.		
Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle	<p>(c) Transportation of animals. Rules must state that service animals, such as dogs traveling with sight or hearing impaired passengers, will be transported free of charge if they lie at the feet of their master and do not occupy passenger seats.</p> <p><i>We cannot be required to accommodate guide horses, guide pigs or guide llamas. We operate limited capacity vehicles with no provision for bizarre animals. We have physical space limitations. The general public is accustomed to guide dogs but cannot be expected to travel with other such animals. This requirement must be limited to dogs. There is no room for compromise here.</i></p>	Rejected. The proposed rule was not revised as suggested. The proposed rule requires companies to state in their tariffs that service animals travel at no charge. Service animals and accommodations that privately-owned businesses serving the public must offer to disabled persons and their service animals are established in federal law as part of the Americans with Disabilities Act (ADA). Concerns about service horses, pigs, llamas, etc. would be a matter of federal law best addressed through the US Department of Justice.
Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle	<p>(d) Refunds for unused and partially used tickets.</p> <p>(i) Rules must state, "Unused tickets will be redeemed at the purchase price. Unused portions of round-trip or commutation tickets will be redeemed by charging the regular fare or fares for the portion or portions used, and refunding the balance of the purchase price."</p> <p><i>This section still has not been addressed by the Commission and needs to be done so here. Section -266(1) removes WAC 480-149 from consideration or application to auto transportation companies, however, this bit of language is imported from it. It creates a false impression for the consumer. There are many instances where a ticket is not refundable, (see ex. in Sec (3)(d)(ii),(iii). This creates confusion for the consumer and wastes staff and company time in producing tariffs that have to deal with this language. At the very least this section must include language that clearly states to the consumer that under certain circumstances, fares are not refundable. We suggest the following language:</i></p> <p><u>"Unused tickets will be redeemed at the purchase price when qualified under the company's rules. In such cases unused portions of round-trip or commutation tickets will be redeemed by charging the regular fare or fares for the portion or portions used, and refunding the balance of the purchase price less any applicable administrative fees."</u></p> <p>or more simply;</p> <p>(d) Refunds for unused and partially used tickets.</p> <p>(i) Rules must state, "<u>Tickets that qualify for a refund</u> tickets will be redeemed at the purchase price. Unused portions of round-trip or commutation tickets will be redeemed by charging the regular fare or fares for the portion or portions used, and refunding the balance of the purchase price."</p> <p><i>If it is the Commission's intention that refunds will be issued under all circumstances, which is what this section states, make that very clear to the operators as this would be an absolutely unacceptable restriction on the industry. See RCW 81.28.080, it speaks for its self; nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified excepting upon order of the commission as hereinafter provided...</i></p>	Accepted in part. Paragraph (3) (d) (i) of the proposed rule was revised to acknowledge the allowed exceptions to a full ticket refund. The proposed rule allows a company to assess a fee if there is a cost associated with changing a reservation and provides exceptions for refund of tickets when a reservation has been made and the passenger fails to cancel the reservation, change the reservation, or appear at the designated pick-up point by the scheduled departure time.

	<i>The legislature clearly did not intend for transportation companies to be required to issue refunds on a broad basis.</i>	
Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle	<p>(d) Refunds for unused and partially used tickets.</p> <p>(iii) A customer who has made a door-to-door reservation but fails to appear at the designated pick-up point by the scheduled departure time is not eligible for a refund unless the failure was caused by an airline delay or cancellation.</p> <p>RCW 81.28.080 Published rates to be charged—Exceptions. No common carrier shall charge, demand, collect or receive a greater or less or different compensation for transportation of persons or property, or for any service in connection therewith, than the rates, fares and charges applicable to such transportation as specified in its schedules filed and in effect at the time; <u>nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified excepting upon order of the commission as hereinafter provided....</u></p> <p><i>The above speaks for its self. The legislature clearly did not intend for transportation companies to be required to issue refunds on a broad basis. As has already been acknowledged in sec (d)(ii) of -356, "Door-to-Door" and "By reservation only" are faced with the same reservation seating limitations and expenses. Neither of these types of operations send shuttles to passenger locations unless there is a reservation for that location. The "By reservation only" operators must be included along with the "Door to Door" operators in this section. To exclude them from reference here would imply that if a "By reservation only" passenger caused a shuttle to be dispatched to his location and he failed to show, we would still have to refund his fare. We will have incurred the full cost of the shuttle trip for a reserved seat that we would not otherwise be able to sell and have no recovery. This loss must then be passed on to our other customers, an unfair, inequitable and economically unviable situation. Remember, if we have but one reservation at SeaTac, we MUST still send a shuttle to Seatac to service that passenger. If that passenger is a no-show or cancels without reasonable notice we lose the entire cost of that trip. Even the carriers that are not "By reservation only" but who have reserved a seat for a passenger are being damaged here. Once they have sold that seat they cannot sell it to anyone else. You are already forcing us to pay for airline caused delays and cancellations over which we have no control and are not at fault, just how much does the Commission expect us bleed?</i></p>	<p>Accepted in part. The proposed rule was revised to provide an exception to the refund of tickets when a reservation has been made and the passenger fails to cancel the reservation, change the reservation, or appear at the designated pick-up point by the scheduled departure time.</p> <p>RCW 81.28.080 does not address refunds for "unused" tickets. It addresses refunds or rebates that result in free or reduced rates for service provided.</p>
Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle	<p>(h) Alternate means of transport that will be provided by the company if it is unable to provide transportation to a customer <u>at the time and place specified in a reservation that the company has accepted for that passenger.</u> for whom a reservation has been accepted.</p> <p><i>This is a follow-on to section (d) above. On one hand the Commission is saying that the customer has no obligation to the company even though the company has reserved a seat for that customer to the exclusion of others and a contractual relationship exists between the two parties but the company has an absolute obligation to the customer to have a seat available. The language of this section must make it absolutely clear that the company's obligation is for a specific reservation at a specific time and place. If the customer is not available and or does not present himself at the time and place called for in the reservation, the company shall have no further liability to that customer.</i></p>	<p>Accepted in part. The proposed rule is revised to clarify that the rules in the company's tariff must identify "whether" the company provides alternate transportation when it has accepted a reservation and then is unable to provide the service. The proposed rule does not require a company to provide alternative transportation; it does require the company to establish rules in its tariff on the subject.</p>
WAC 480-30-381 Tariffs and time schedules, filing procedures.		
Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle	<p><i>The Transmittal Letter via this section has essentially become a submission. It is a duplicate of the papers and documents that are required to be submitted The Transmittal Letter has been traditionally been an instrument to indicate, in a very brief format, the purpose of the attached documents, not a complete detailed explanation and line item justification for them. We would be happy to just submit a detailed Transmittal Letter and forego all of the attached documents in an effort to streamline the process. This new language just adds more work to the companies with no particular benefit to the Commission as each document attached must be reviewed, analyzed, and commented on by the Commission with or without this new expanded TL format. Who is to pay for this increased work load? We do have customers to serve, leave us a little time and man power to do so.</i></p>	<p>Rejected. The proposed rule was not revised. The commission requires all companies to identify themselves and the purpose of their correspondence. A transmittal letter is not a new requirement. The proposed rule clarifies the information to be contained in the transmittal letter. It is reasonable to expect a company that files for a rate increase to know how much of an increase it is requesting and how much revenue it expects the increase to generate. The transmittal letter does not duplicate the filing documents (work papers, new tariff pages, notice).</p>
Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle	<p>(c) Rate increase filings.</p> <p><i>Our concern with "rates" and "rate filings" is or should be well known to the Commission. All I will state here is that the current situation is unsatisfactory and a change is long over due. We will address this issue most vigorously under the new CR-101 concerning rates.</i></p>	<p>Rejected. The proposed rule was not revised.</p>

WAC 480-30-391 Tariffs and time schedules, ticket agent agreements must be filed and approved.		
Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle	<p>(3) Ticket Agent Agreements with licensed travel agents are exempt from the provisions of this section.</p> <p><i>See comments under: WAC 480-30-036 Definitions, general. Ticket Agent agreements, comment #4 of this document.</i></p>	Rejected. The proposed rule was not revised. RCW 81.28.080 allows companies to offer transportation services at free or reduced rates. "Agents" are included within that definition. A company is not required to file every travel agent commission sales agreement, but it must file and the commission must approve the "form" of any contract or agreement for an agent to sell, for a commission, tickets for an auto transportation company. The proposed rule clarifies the information required in those contracts or agreements.
WAC 480-30-396 Tariffs and time schedules, free and reduced rates.		
Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle	<p>(2) An auto transportation company wishing to provide service at free or reduced rates must first publish those free or reduced rates fares in its filed tariff unless those free or reduced fares are permitted by RCW 81.28.080.</p> <p>Published rates to be charged—Exceptions. RCW 81.28.080</p> <p>..... No common carrier shall, directly or indirectly, issue or give any free ticket, free pass or free or reduced transportation for passengers between points within this state, except its employees and their families, surgeons and physicians and their families, its officers, agents and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals, charitable and eleemosynary institutions and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute and homeless persons and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the national homes or state homes for disabled volunteer soldiers and of soldiers' and sailors' homes, including those about to enter and those returning home after discharge; to necessary caretakers of livestock, poultry, milk and fruit; to employees of sleeping car companies, express companies, and to linemen of telegraph and telephone companies; to railway mail service employees, post office inspectors, customs inspectors and immigration inspectors; to newsboys on trains; baggage agents, witnesses attending any legal investigation in which the common carrier is interested; to persons injured in accidents or wrecks and physicians and nurses attending such persons; to the National Guard of Washington when on official duty, and students going to and returning from state institutions of learning: PROVIDED, That this provision shall not be construed to prohibit the interchange of passes for the officers, attorneys, agents and employees and their families, of railroad companies, steamboat companies, express companies and sleeping car companies with other railroad companies, steamboat companies, express companies and sleeping car companies, nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation: AND PROVIDED, FURTHER, That this provision shall not be construed to prohibit the exchange of passes or franks for the officers, attorneys, agents, employees, and their families of such telegraph, telephone and cable lines, and the officers, attorneys, agents, employees, and their families of other telegraph, telephone or cable lines, or with railroad companies, express companies or sleeping car companies: PROVIDED, FURTHER, That the term "employee" as used in this section shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed or dying in the employment of a carrier, those entering or leaving its service and ex-employees traveling for the purpose of entering the service of any such common carrier; and the term "families" as used in this section shall include the families of those persons named in this proviso, also the families of persons killed and the surviving spouses prior to remarriage and minor children during minority, of persons who died while in the service of any such common carrier: AND PROVIDED, FURTHER, That nothing herein contained shall prevent the issuance of mileage, commutation tickets or excursion passenger tickets: AND PROVIDED, FURTHER, That nothing in this section shall be construed to prevent the issuance of free or reduced transportation by any street railroad company for mail carriers, or policemen or members of fire departments, city officers, and employees when engaged in the performance of their duties as such city employees.</p> <p><i>So do we now list all of these exclusions in our tariff? All of these persons are already permitted free or reduced passage by law. The inclusion of this required exemption in the wording of this section is the only acceptable construction short of just deleting the entire section.</i></p>	Rejected. The proposed rule was not revised. RCW 81.28.080 does not "entitle" any group to free or reduced service, it "allows" companies to offer transportation services at free or reduced rates. If a company chooses to offer reduced rate service to any class or group of persons identified in RCW 81.28.080 then the company must file it with the commission. The interpretation of this statute since 1939 is that rates must be filed. In a 1998 declaratory ruling (TG980532) the commission required that medical waste collection service provided to nonprofit hospitals at free or reduced rates must be provided subject to a "free or reduced" rate tariff approved by the commission.

WAC 480-30-406 Tariffs and time schedules, withdrawing a filing.		
Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle	<p>(1) When withdrawing a tariff or time schedule filing, an auto transportation company must submit a letter that includes the following:</p> <ul style="list-style-type: none"> (a) The name and address of the auto transportation company; (b) Docket number of the filing being withdrawn; (c) The name of the company's contact person; (d) An explanation of why the company is requesting the withdrawal; and (e) A statement certifying that the submitting person has authority to withdraw the filing on behalf of the auto transportation company. <p>(2) The commission may deny withdrawal of a filing when denial is in the public-interest.</p> <p><i>In light of WAC 480-80-131 (see below), sec (2) of -406 is discriminatory. The Commission has specifically permitted other regulated entities to withdraw filed tariffs without prejudice. There is a history of the Commission using filed, but not approved, tariffs as weapons against airporters. When a company files a proposed tariff, it uses the best information available to it at the time. Many variables are factored into a tariff filing and those variables may change over short time intervals. New information or interpretation may become known to the filing party which causes it to reevaluate the necessity or viability of the filing. The mere act of filing should not confer upon the Commission the right to force a company into a situation which they proposed but then find not acceptable for reasons that it alone determines subsequent to that filing but prior to approval. This language is unacceptable under any circumstances and must be removed.</i></p> <p>WAC 480-80-131 Withdrawing a tariff filing When withdrawing a filing, a utility must submit a letter that includes the following:</p> <ul style="list-style-type: none"> (1) The name and address of the utility; (2) Docket number; (3) Advice number, if applicable; (4) The name of the contact person for the withdrawal; (5) An explanation of why it is requesting the withdrawal; and (6) A statement certifying that the submitting person has authority to withdraw the filing on behalf of the utility. <p>[Statutory Authority: RCW 80.01.040 and 80.04.180. 02-11-081 (Docket No. U-991301, General Order No. R-498), § 480-80-131, filed 5/14/02, effective 6/17/02.]</p>	<p>Accepted. Paragraph (2) of the proposed rule was revised as suggested. There is no decision required on a withdrawal request filed prior to the commission taking action (e.g. suspension, complaint) on a filing. By removing paragraph (2) as suggested, the proposed rule focuses on the information that a company must include in its request to withdraw a filing and not on if, or when, the commission may deny the request. Revising the proposed rule does not affect the purpose of the rule or the ability of the commission to approve or deny a request.</p>
WAC 480-30-421 Tariffs, general rate increase filings.		
Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle	<p><i>All sections concerning "rates" will be examined in comments under CR-101 Doc #061277.</i></p>	<p>No revision was suggested. The proposed rule was not revised.</p>
WAC 480-30-426 Tariffs, general rate increase filings, work papers.		
Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle	<p>(1)(C) Ratemaking - ratemaking adjustments modify the records of the company to reflect proper ratemaking theory, such as removing expenses that were incurred by the company but are not generally allowed to be passed on to ratepayers, or converting from accelerated depreciation to straight line depreciation.</p> <p><i>The heart of the problem is with "proper rate making theory", a term which has no fixed definition to the Commission. We are forced to deal with a "moving target" anytime we deal with the rate issue. This issue will be vigorously examined in the new proposed CR-101 inquiry into rates.</i></p>	<p>No revision was suggested. The proposed rule was not revised.</p>
WAC 480-30-436 Tariffs, special or promotional fare tariff filings.		
Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle	<p>(1) The commission encourages auto transportation companies to explore innovative rates and rate structures including special or promotional fares intended to:</p> <p><i>The concept of promotional or special fares has been proposed, promoted and supported by airporters for quite sometime. The only problem that we have with this is the possible threat to the company by the filing of a promotional fare within a supplemental tariff. History has graphically shown us that the Commission will file complaint against a company for filing a proposed tariff. Until the code specifically permits the withdrawal of filings without the threat of complaint, this section is just so much verbiage and won't be used by anyone. See comment#</i></p>	<p>Rejected. The proposed rule was not revised. An essential part of the commission's statutory authority (which cannot be altered by rule adopted by the commission) is that the Commission is authorized to complain against a company's rates when it believes they are other than "fair, just, reasonable, and sufficient."</p>
WAC 480-30-446 Availability of information.		
Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle	<p>(1) Company information. A company that provides auto transportation company service must have a:</p> <p>(3) Responding to customer inquiries.</p> <ul style="list-style-type: none"> (a) A company must respond to all nonwritten messages within twenty-four hours excluding weekends and holidays, as defined in the company's tariff. (b) A company must acknowledge and respond to a customer's written inquiry within two weeks of receipt. 	<p>Rejected. The proposed rule was not revised. The proposed rules in WAC 480-30 apply to passenger transportation companies.</p>

	<i>This is an appropriate business policy. I feel strongly that the Commission should adopt the same rules for its self. If not, why not? As a public/state agency you should be held to at least private industry standards if not higher and we are, after all, your customers.</i>	
Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle	<p>(1) Company information. A company that provides auto transportation company service must have a:</p> <p>(4) Information that must be available. A company must make the following items available to customers for inspection upon request at no charge during the company's regular business hours:</p> <p>(a) The commission's passenger transportation company rules in chapter 480-30-WAC;</p> <p>(a)(b) The company's current tariff and time schedule;</p> <p>(b)(e) The company's current certificate; and</p> <p>(c)(d) Any current, proposed, or most recently canceled tariff page that relates to the customer's service.</p> <p><i>Items (4)(b)(c)(d) are all quite reasonable and should be available for inspection by customers. However, we are not a law library, if someone wants to research WAC and transportation law they have numerous facilities available to them, not the least of which is the WUTC. In order for us to obtain copies of the WAC we rely on the WUTC, local libraries and the legislature's web site. We would not object to being required to advise those customers who inquire where they may obtain a copy of 480-30 WAC.</i></p>	Rejected. The proposed rule was not revised. The commission provides copies of its rules to the companies at no charge. The proposed rule does not require the company to provide copies, interpretation, or guidance to any party; it only requires a company to allow a customer to view the rules on request.
WAC 480-30-456 Fair use of customer information.		
Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle	<i>We agree with this section whole heartedly. WSS is a strong advocate of customer privacy. We would like a clear explanation from the Commission however, as to why this consumer friendly provision is reversed for other regulated utilities. If this section is pro-consumer by virtue of precluding airporters from utilizing this information, it must therefore follow that placing the burden of confidentiality on the consumer through "opt-out" programs afforded other regulated industries must be anti-consumer. This bipolar logic escapes us, clarification is in order.</i>	Rejected. The proposed rule was not revised. "Fair use of customer information" as proposed in this chapter is consistent with the provisions adopted for other regulated transportation companies.
WAC 480-30-461 Service or rate complaints. (1) Company responsibility.		
Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle	<i>All well and good, but there is no facility what-so-ever for passenger transportation companies that have a complaint against the Commission or its staff for resolution or tracking. You take the pay, you must be accountable. The WAC has always been a one-way check valve; it's time to show that you stand behind your work product and your staff. If issues arise, we need a mechanism to address them. It is very appropriate at this time to include language that will formalize the process for passenger transportation companies.</i>	Rejected. The proposed rule was not revised. The legislature has delegated to the commission authority to "regulate, in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging in the transportation of persons or property within this state for compensation, and related activities; including, but not limited to...auto transportation companies." RCW 80.01.040(2). RCW 81.04.110 provides that the commission may hear complaints against public service companies, including auto transportation companies. The commission is not authorized to hear complaints against itself, nor would such an arrangement make sense. An analogy is that the commission is a judge, the staff are prosecutors and law enforcement officers, and the regulated companies are citizens. If a company believes that the commission staff's prosecution of a complaint, or its advocacy in a rate proceeding is not supported by the evidence or the law, the company is provided a hearing for the purposes of making that argument to the commission. If the company believes that the commission's decision, following that hearing, is not supported by the evidence or the law, then the company may petition the superior court for judicial review of the commission's final decision in accordance with the Administrative Procedure Act, ch. 34.05 RCW.

WAC 480-30-476 Baggage liability and claims for loss or damage.		
<p>Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle</p>	<p>(1) Baggage liability. An auto transportation company must include provisions in its filed tariff relating to its liability for loss or damage to baggage checked by the passenger.</p> <p><i>At the risk of being redundant I must restate all of our objections to this section as previously offered: There appear to be major problems with this section. By any measure the Commission is requiring auto transportation companies to conduct business in contradiction to RCW. By definition we would be "insurers" selling "insurance" which would require a "License" issued by the Insurance Commissioner. If companies were to comply with this section they would be in violation of RCW and subject to fines and imprisonment for committing a gross misdemeanor.</i></p> <p><i>If the Commission can put forth a reasonable and logical argument for this provision placing liability on the company then it is a good idea to define a limit on liability, but we cannot offer excess liability protection for a fee. As we have no realistic way of assessing true value of any particular piece of baggage short of inspecting and inventorying each and every piece, a liability limit of \$100 per passenger is more realistic. Airporters are generally a direct, premium service. The customer hands the baggage to the driver and it is immediately loaded on the vehicle. The reverse takes place at the termination of the route. We are not airlines with massive baggage handling systems and connecting flights with opportunities for lost or destroyed baggage. This really is not a problem with our industry. By our estimation we have transported over 100,000 pieces of baggage and have NEVER lost a single piece or had a claim for damage. This is another very minor and insignificant issue that the Commission is trying to over manage. We suggest limits of \$100 per customer (\$50 per child) and double those limits on connecting, joint or through routes. We cannot sell additional insurance to the customers.</i></p> <p><i>Additionally, we now have the issue of increasing "rates". If by some mechanism it were possible for us to sell insurance for increased liability, how would we account for the new income? Would it affect our "rates" and the rate hearing process? Will we have to file a new tariff with a general rate increase to comply with this section? How can we possibly anticipate what the effect on our pro forma would be as we have absolutely no data to rely on in an industry that we are completely unfamiliar with? How will the Commission handle losses incurred through the payment of claims or excess claims? Who determines the true value of a claim? Who pays for the increased staffing burden? Please let us get on with our jobs, we don't sell insurance, we don't deliver pizzas, nor do we teach people to ice skate, we provide transportation.</i></p> <p>(3) Claims. Auto transportation companies must make claim forms available to their passengers upon request at each of the company's offices, passenger facilities, and from the driver of each vehicle operated. The forms must be prepared in duplicate. The company will retain one copy. The second copy will be given to the passenger filing the claim.</p> <p><i>The commission has once again exhibited a propensity towards a paper work explosion. Forms at the office, forms at passenger facilities and forms on the vehicles, this is over-kill. If the commission were to study the current tariffs of the existing operators they would see that most passenger facilities are hotels, convenience stores, gas stations, transit bus facilities and other such similar venues sited to be the most convenient locations for our customers.</i></p> <p><i>These do not offer unlimited space for forms and copies of other documents which are readily available from the company at its business office, the Commission or on the WEB. We have administrative staff to handle customer service issues such as these; we do not need to further burden our drivers with more forms. They need to keep our shuttles on schedule in a safe and professional manner, let them do their job and let our office staff do theirs.</i></p> <p>(4) Loss or damage to carry-on items. The company shall not be held responsible for loss or damage to baggage carried on board the vehicle unless it can be shown that the company was in some way negligent. Each company shall have a written policy detailing the manner in which items, articles, or baggage left on board a company's vehicles will be handled and the way in which the company will make efforts to return the articles to their rightful owners <u>and listing any fees that may be charged for this service.</u></p> <p><i>Just like "change fees" to cover administrative costs, companies must be able to apply a handling fee for processing and or returning carry-on items left onboard the company's vehicles by customers..</i></p>	<p>Rejected. The proposed rule was not revised. RCW 81.29.050 requires the commission to set the liability of any common carrier for lost or damaged baggage. The proposed rule does not require companies to sell insurance or be insurers. It does establish a company's "minimum" liability for "checked baggage" and allows a customer to declare excess value, for a fee. The proposed rule affects only "checked" baggage and is modeled after federal rules for interstate passenger carriers. Declaring excess value is a common practice in the transportation industry. Ten of the 26 existing auto transportation companies currently have provisions for excess valuation in their tariffs.</p> <p>A passenger facility is defined in WAC 480-30-036 as a location at which the company maintains an employee and sells tickets. For most customers, the employee at the passenger facility and/or the bus driver is the only company representative the customer will see. It is appropriate that claim forms are available to customers from those persons.</p> <p>The proposed rule does not prohibit a company from publishing in its tariff a rate for specific services instead of embedding those costs in general rates.</p>

Summary		
<p>Seatac Shuttle, LLC, d/b/a Whidbey Seatac Shuttle</p>	<p>The current draft is an improvement over the previous draft. We are disappointed that the Commission did not address the main reason for the issuance of the CR-101 in the first place, rates. As we near the end point of this particular process of four years we strongly urge that the Commission accept the above comments in the spirit in which they are offered, as constructive changes and comments designed to clarify, simplify, streamline and make the whole process more efficient to the benefit of the consumer and the industry. We are not an essential industry; our customers have many options open to them outside of our services. We must be efficient, safe and well managed to provide a product that is attractive to the public. The WUTC should be our partner in that effort, we should be working toward that common goal, not in opposition. Let the new WAC 480-30 reflect that partnership. We, as your customers will do our part, meet us half way.</p>	<p>No revision was suggested.</p>
Sub-Carriers (New proposal)		
<p>Shuttle Express, Inc.</p>	<p>I would like to include the enclosed new sub-carrier proposal to be included in the upcoming proceedings to be adapted in to WAC 480-30. It is the position of Shuttle Express that this proposed WAC is consistent with and allowed under RCW 81.68.030.</p> <p>WAC 480-30-XXX Driver status The driver of a vehicle operated by an auto transportation company must be the certificate holder or under the complete supervision, direction and control of the operating carrier as:</p> <ul style="list-style-type: none"> • An employee of the certificate holder; or • An employee of a sub-carrier; or, • An independent owner-driver who holds sub-carrier charter carrier authority and is operating as a sub-carrier. <p>New definitions: SUB-CARRIER means a passenger charter carrier that provides transportation services for an auto transportation company under a charter sub-carrier agreement filed with and approved by the commission.</p> <p>PRIME CARRIER [CARRIER] means an auto transportation company that uses another carrier's (sub-carrier) vehicles and drivers to provide its authorized service under a sub-carrier agreement.</p> <p>SUB-CARRIER AGREEMENT means the written agreement under which an auto transportation company is authorized to use the transportation services of another carrier (sub-carrier) that provides both vehicles and drivers.</p> <p>WAC 480-30-xxxx Sub-carrier agreements</p> <ol style="list-style-type: none"> 1. An auto transportation company (prime carrier) may enter into a sub-carrier agreement with a passenger charter carrier (sub-carrier) to use the sub-carrier's vehicle and drivers to perform transportation services authorized under the prime carrier's certificate. 2. A sub-carrier agreement must be in writing, signed, and dated. A sub-carrier agreement must be submitted to the commission for approval prior to any service being provided. The prime carrier and the sub-carrier agreement must include, but is not limited to: <ol style="list-style-type: none"> (a) The prime-carrier name and the sub-carrier name. (b) The prime carrier auto transportation company certificate number. (c) The sub-carrier charter certificate number. (d) The effective date and expiration date of the agreement. (e) A complete description of the services to be performed. <p>WAC 480-30-xxx Sub-carrier agreements, operations</p> <ol style="list-style-type: none"> 1. Reporting requirements. A private carrier is responsible for the transportation services provided under its certificate, reporting gross revenue, calculating, and paying regulator fees based, including revenue generated from services provided under a sub-carrier agreement. 2. Certificate authority. Operations conducted under a sub-carrier agreement must be authorized in the prime-carrier certificate. <ol style="list-style-type: none"> (a) No service may be provided under a sub-carrier agreement if the prime carrier auto transportation company certificate is suspended or cancelled. (b) No service may be provided under a sub-carrier agreement if the sub-carrier passenger charter certificate is suspended or cancelled. 3. Tariffs and time schedules. Rates and charges collected and services performed under a sub-carrier agreement must be authorized in the prime-carrier tariff, and the time schedule. 	<p>Rejected. The proposed rules were not revised to include the suggested language. The sub-carrier proposal presented by Shuttle Express is draft language that staff prepared under the CR-101 for discussion and legal review. The proposal was based on a California Public Utility commission program. Legal staff advised that Chapter 81.68 RCW does not allow auto transportation companies to use sub carriers as proposed.</p>

	<p>(a) Sub-carriers must collect only those fares authorized in the prime carrier's tariff as filed with the commission, including any authorized reduced rates or promotional fares.</p> <p>(b) Sub-carriers must accept tickets, passes, and other prepaid fares presented by passengers.</p> <p>(c) Sub-carriers must operate within the terms of the prime carrier's time schedule.</p> <p>4. Sub-carrier vehicle identification. In addition to the vehicle marking requirements of WAC 480-30-xxx, any vehicle operated by a sub-carrier under an approved sub-carrier agreement must be identified as and independently owned and operated sub-carrier of the prime carrier.</p>	
Stakeholder	Oral Comments at Adoption Hearing	Commission Response
<p>John Rowley, C.O.O./General Manager, Shuttle Express, Inc.</p>	<p>In his oral comments at the hearing Mr. Rowley restated the company's request that the commission adopt a California method of allowing the use of "sub-carriers" to transport to transport passengers for a "prime carrier." Mr. Rowley expressed the opinion that under such an arrangement the accountability structure of the certificate holder and enforcement ability against the certificate holder remains intact. In his written copy of his oral comments Mr. Rowley asked the commission to consider introducing the company's proposal or slightly modified changes with the proposed rules or at minimum consider them at a later time.</p>	<p>Rejected. The sub-carrier proposal presented by Mr. Rowley is the same one addressed by the company in its written comments and rejected by the commission based on advice that the law under chapter 81.68 RCW does not allow the proposed arrangement.</p> <p>The commission opened a CR-101 in Docket No. TC-060177 to consider rate-making and ratemaking methodologies for auto transportation companies. The commission has asked for comments regarding regulation of the auto transportation industry under chapter 81.68 RCW, including entry. This company is encouraged to participate in Docket No. TC-060177 and to bring this issue forward for discussion in that proceeding.</p>

18 COMMISSION ACTION: After considering all of the information regarding this proposal, the commission finds and concludes that it should amend the rules in the CR-102 notice at WSR 06-05-113 with the changes described below.

19 CHANGES FROM PROPOSAL: The commission adopts the proposal with the following changes from the text noticed at WSR 06-05-113:

WAC 480-30-146 Certificates, name change. Subsection (3) is revised to eliminate any confusion about partnerships by removing the phrase "addition or deletion of partners."

WAC 480-30-196 Insurance cancellation. Subsection (1) is revised to more accurately reflect the commission's policy by stating that the commission may "withhold issuance of a certificate or dismiss a company's application for a certificate."

WAC 480-30-316 Tariffs and time schedules, customer notice requirements. Subsection (2)(c) is revised to clarify that when a company maintains an internet web site it must post customer notices on the "company's" internet web site rather than just on the internet.

WAC 480-30-356 Tariffs and time schedules, tariff rules. Subsection (3)(d)(i) is revised to acknowledge the exceptions in subsections (3)(d)(ii) and (iii). Subsection (3)(h) is revised to clarify that the rules in a company's tariff must identify "whether" the company provides alternative transportation when the company is unable to provide transportation "at the time and place specified in the reservation that the company has accepted for that passenger."

WAC 480-30-406 Tariffs and time schedules, withdrawing a filing. Subsection (2) which states, "The commission may deny withdrawal of a filing when denial is in the public interest" is removed. Revising the rule eliminates con-

fusion and does not affect the purpose of the rule or the ability of the commission to approve or deny a request.

20 STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE: After reviewing the entire record, the commission determines that WAC 480-30-010, 480-30-020, 480-30-030, 480-30-032, 480-30-040, 480-30-045, 480-30-050, 480-30-060, 480-30-070, 480-30-080, 480-30-090, 480-30-095, 480-30-097, 480-30-100, 480-30-105, 480-30-110, 480-30-120, 480-30-130, 480-40-010, 480-40-020, 480-40-030, 480-40-040, 480-40-050, 480-40-060, 480-40-065, 480-40-070, 480-40-075, 480-40-100, 480-40-110, 480-40-120, 480-40-130, and 480-40-999 should be repealed, WAC 480-30-999 should be amended, and WAC 480-30-001, 480-30-006, 480-30-011, 480-30-016, 480-30-021, 480-30-026, 480-30-031, 480-30-036, 480-30-041, 480-30-046, 480-30-051, 480-30-056, 480-30-061, 480-30-066, 480-30-071, 480-30-076, 480-30-081, 480-30-086, 480-30-091, 480-30-096, 480-30-101, 480-30-106, 480-30-111, 480-30-116, 480-30-121, 480-30-126, 480-30-131, 480-30-136, 480-30-141, 480-30-146, 480-30-151, 480-30-156, 480-30-161, 480-30-166, 480-30-171, 480-30-181, 480-30-186, 480-30-191, 480-30-196, 480-30-201, 480-30-206, 480-30-211, 480-30-213, 480-30-216, 480-30-221, 480-30-226, 480-30-231, 480-30-236, 480-30-241, 480-30-246, 480-30-251, 480-30-256, 480-30-261, 480-30-266, 480-30-271, 480-30-276, 480-30-281, 480-30-286, 480-30-291, 480-30-296, 480-30-301, 480-30-306, 480-30-311, 480-30-316, 480-30-321, 480-30-326, 480-30-331, 480-30-336, 480-30-341, 480-30-346, 480-30-351, 480-30-356, 480-30-361, 480-30-366, 480-30-371, 480-30-376, 480-30-381, 480-30-386, 480-30-391, 480-30-396, 480-30-401, 480-30-406, 480-30-411, 480-30-416, 480-30-421, 480-30-426, 480-30-431, 480-30-436, 480-30-441, 480-30-446, 480-30-451, 480-30-456, 480-30-461, 480-30-466, 480-30-471, 480-30-

476, 480-30-900, 480-30-910, 480-30-920, 480-30-930, and 480-30-940 should be adopted to read as set forth in Appendix B, as rules of the Washington utilities and transportation commission, effective on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 101, Amended 1, Repealed 32.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

ORDER

21 THE COMMISSION ORDERS:

22 (1) The commission repeals WAC 480-30-010, 480-30-020, 480-30-030, 480-30-032, 480-30-040, 480-30-045, 480-30-050, 480-30-060, 480-30-070, 480-30-080, 480-30-090, 480-30-095, 480-30-097, 480-30-100, 480-30-105, 480-30-110, 480-30-120, 480-30-130, 480-40-010, 480-40-020, 480-40-030, 480-40-040, 480-40-050, 480-40-060, 480-40-065, 480-40-070, 480-40-075, 480-40-100, 480-40-110, 480-40-120, 480-40-130, and 480-40-999.

23 (2) The commission amends and adopts WAC 480-30-001, 480-30-006, 480-30-011, 480-30-016, 480-30-021, 480-30-026, 480-30-031, 480-30-036, 480-30-041, 480-30-046, 480-30-051, 480-30-056, 480-30-061, 480-30-066, 480-30-071, 480-30-076, 480-30-081, 480-30-086, 480-30-091, 480-30-096, 480-30-101, 480-30-106, 480-30-111, 480-30-116, 480-30-121, 480-30-126, 480-30-131, 480-30-136, 480-30-141, 480-30-146, 480-30-151, 480-30-156, 480-30-161, 480-30-166, 480-30-171, 480-30-181, 480-30-186, 480-30-191, 480-30-196, 480-30-201, 480-30-206, 480-30-211, 480-30-213, 480-30-216, 480-30-221, 480-30-226, 480-30-231, 480-30-236, 480-30-241, 480-30-246, 480-30-251, 480-30-256, 480-30-261, 480-30-266, 480-30-271, 480-30-276, 480-30-281, 480-30-286, 480-30-291, 480-30-296, 480-30-301, 480-30-306, 480-30-311, 480-30-316, 480-30-321, 480-30-326, 480-30-331, 480-30-336, 480-30-341, 480-30-346, 480-30-351, 480-30-356, 480-30-361, 480-30-366, 480-30-371, 480-30-376, 480-30-381, 480-30-386, 480-30-391, 480-30-396, 480-30-401, 480-30-406, 480-30-411, 480-30-416, 480-30-421, 480-30-426, 480-30-431, 480-30-436, 480-30-441, 480-30-446, 480-30-451, 480-30-456, 480-30-461, 480-30-466, 480-30-471, 480-30-476, 480-30-900, 480-30-910, 480-30-920, 480-30-930, 480-30-940, and 480-30-999 to read as set forth in Appendix B, as rules of the Washington utilities and transportation commission, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

24 (3) This order and the rules set out below, after being recorded in the register of the Washington utilities and transportation commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, June 7, 2006.

Washington Utilities and Transportation Commission

Mark H. Sidran, Chairman

Patrick J. Oshie, Commissioner

Philip B. Jones, Commissioner

Chapter 480-30 WAC

~~((AUTO))~~ PASSENGER TRANSPORTATION COMPANIES

PART 1—GENERAL ADMINISTRATIVE RULES

NEW SECTION

WAC 480-30-001 Purpose of chapter. (1) The legislature has declared that companies operating as auto transportation companies or as charter and excursion carriers in the state of Washington are engaged in businesses that affect the public interest and should be regulated. The purpose of these rules is to administer and enforce chapters 81.68 and 81.70 RCW by establishing the following standards that apply to auto transportation companies and to charter and excursion carriers, to the extent allowed by the individual chapters of law:

- Public safety;
- Fair practices;
- Just, reasonable and sufficient rates;
- Nondiscriminatory application of rates;
- Adequate and dependable service;
- Consumer protection; and
- Compliance with statutes, rules and commission orders.

(2) This chapter replaces rules formerly contained in chapters 480-40 and 480-30 WAC.

(3) In addition to administering and enforcing chapters 81.68 and 81.70 RCW, the rules under this chapter are established to comply with federal law.

NEW SECTION

WAC 480-30-006 Application of rules. (1) The rules in this chapter apply to passenger transportation companies subject to the jurisdiction of the commission under chapter 81.04, 81.68, or 81.70 RCW. The rules apply to all passenger transportation companies, unless a part, rule, or reference within a rule states otherwise. These rules also include various requirements that apply to the companies' customers and to companies applying for certificates.

(2) The tariffs filed by auto transportation companies must conform to these rules. If the commission accepts a tariff or schedule that conflicts with these rules, the acceptance does not constitute a waiver of these rules unless the commission specifically approves the variation consistent with WAC 480-30-046. Tariffs that conflict with these rules and are not

specifically approved by the commission are superseded by these rules.

(3) Any affected person may ask the commission to review the interpretation of these rules by filing an informal complaint under WAC 480-07-910 or by filing a formal complaint under WAC 480-07-370.

(4) No deviation from these rules will be permitted without written authorization by the commission. Violation will be subject to penalties as provided by law.

NEW SECTION

WAC 480-30-011 Exempt operations. (1) The commission does not regulate the following passenger transportation operations under this chapter:

(a) Operations conducted wholly within the limits of an incorporated city or town.

(b) Auto transportation company operations from a point in a city or town in the state of Washington for a distance of not more than three road miles beyond the corporate limits of the city or town in which the trip began. The operations must not be part of a journey beyond the three-mile limit, either alone or in conjunction with another vehicle or vehicles.

(c) Commuter ride sharing or ride sharing for persons with special transportation needs under RCW 46.74.010, provided the ride-sharing operation does not compete with nor infringe upon comparable service that was actually provided by an auto transportation company under chapter 81.68 RCW before the ride-sharing operation started.

(d) Municipal corporations and other government entities.

(e) Public transit agencies.

(f) Persons operating vehicles under exclusive contract to a public transit agency.

(g) Persons owning, operating, controlling, or managing taxi cabs, hotel buses, or school buses, when operated as such.

(h) Passenger vehicles carrying passengers on a noncommercial basis, including but not limited to, nonprofit corporations.

(i) Private carriers who, in their own vehicles, transport passengers as an incidental adjunct to some other established private business owned or operated by them in good faith.

(j) Transporting transient air flight crew or in-transit airline passengers between an airport and temporary hotel accommodations under an arrangement between the airline carrier and the passenger transportation company.

(k) Substituting ground transportation for air transportation under an arrangement between the airline carrier and the passenger transportation company in emergency situations arising from the inability of the air carrier to perform air transportation due to adverse weather conditions, equipment failure, or other causes.

(l) Transporting passengers who have had or will have had a prior or subsequent movement by air under a through ticket or common arrangement with an airline or with a connecting out-of-state passenger transportation company.

(m) Any other carrier or company that does not come within the term:

(i) "Auto transportation company" as defined in RCW 81.68.010;

(ii) "Charter party carrier of passengers" as defined in RCW 81.70.020; or

(iii) "Excursion service carrier" as defined in RCW 81.70.020.

NEW SECTION

WAC 480-30-016 Determination of authority. (1) In some instances, a person desiring to transport passengers may be subject to regulation as an auto transportation company under the provisions of chapter 81.68 RCW, a charter and excursion carrier under the provisions of chapter 81.70 RCW, or both chapters, depending on the nature of the services offered and provided.

(2) When determining whether operations require an auto transportation or charter and excursion certificate the commission will consider factors including, but not limited to:

(a) What is the nature of the proposed transportation service?

(b) What is the origin and destination of the proposed transportation?

(c) Who will provide the service?

(d) Who will pay for the service?

(e) How will the rates be assessed? (Time of use, mileage or distance, passenger fares, flat fee, other.)

(f) How will the service be provided?

(g) Will the service be offered to the public?

(h) Will a passenger or group of passengers have exclusive use of the vehicle or will there be shared rides or mixed use?

(i) What type and size vehicle(s) will be used to provide the service?

(j) Who will own the vehicle(s)?

(k) Who will be responsible for the operation and control of the vehicle(s)?

(3) Any person may submit to the commission a detailed written description of a proposed service to transport passengers and request an informal staff determination of the authority required to provide the described service.

NEW SECTION

WAC 480-30-021 Additional requirements. (1) These rules do not relieve any passenger transportation company from any of its duties and obligations under the laws of the state of Washington.

(2) The commission retains the authority to impose additional or different requirements on any passenger transportation company in appropriate circumstances, consistent with the requirements of law.

NEW SECTION

WAC 480-30-026 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is still valid.

NEW SECTION

WAC 480-30-031 Procedural rules. The commission's procedural rules are contained in chapter 480-07 WAC. If a rule in this chapter conflicts with a rule in chapter 480-07 WAC, the rule in this chapter applies. Copies of chapter 480-07 WAC are available from the commission records center on request.

NEW SECTION

WAC 480-30-036 Definitions, general. (1) See WAC 480-30-261 for definition of terms used primarily in tariffs and time schedules and WAC 480-30-216 for definitions used in driver and vehicle safety rules.

(2) Unless the language or context indicates that a different meaning is intended, the following definitions apply:

"Agent" means a person authorized to transact business for, and in the name of, another.

"Airporter service" means an auto transportation service that starts or ends at a station served by another type of transportation such as, air or rail transportation. Airporter service is often a premium service that involves handling luggage. Although stops may be made along the way, they are usually limited to picking up or discharging passengers, luggage, and/or express freight bound to or from the airport or depot served.

"Alternate arrangements for passengers" means the travel arrangements made by an auto transportation company that has accepted a trip booking or reservation from a passenger and that is unable to provide the agreed transportation. The alternate arrangements may require travel by another carrier or mode of transportation at no additional cost to the passenger beyond what the passenger would have paid for the original transportation arrangement.

"Application docket" means a commission publication providing notice of all applications requesting auto transportation operating authority, with a description of the authority requested. The commission sends this publication to all persons currently holding auto transportation authority, to all persons with pending applications for auto transportation authority, to affected local jurisdictions or agencies, and to all other persons who asked to receive copies of the application docket.

"Area" means a defined geographical location. Examples include, but are not limited to:

- (a) A specified city or town;
- (b) A specified county, group of counties, or subdivision of the state, e.g., western Washington;
- (c) A zone, e.g., company designated territory; or
- (d) A route, e.g., area within four road miles of Interstate 5.

"Auto transportation company" means every person owning, controlling, operating, or managing any motor-propelled vehicle not usually operated on or over rails, used in the business of transporting persons over any public highway in this state between fixed termini or over a regular route, and not operating exclusively within the incorporated limits of any city or town.

"Between fixed termini or over a regular route" means the fixed points between which an auto transportation

company provides service or the route over which an auto transportation company ordinarily operates any motor-propelled vehicle, even though there may be variance whether the variance is periodic or irregular.

"Bus" means a motor vehicle designed, constructed, and/or used for the transportation of passengers.

"Business days" means days of the week excluding Saturdays, Sundays, and official state holidays.

"By-reservation-only service" means transportation of passengers by an auto transportation company, with routes operated only if passengers have made prior reservations.

"Certificate" means:

(a) The certificate of public convenience and necessity issued by the Washington utilities and transportation commission under the provisions of chapter 81.68 RCW to operate as an auto transportation company; or

(b) The certificate issued by the Washington utilities and transportation commission under chapter 81.70 RCW to operate as a charter and excursion carrier in the state of Washington.

"Certificated authority" means:

(a) The territory and services granted by the commission and described in an auto transportation company's certificate of public convenience and necessity; or

(b) Operations in the state of Washington for charter and excursion service carriers.

"Charter party carrier of passengers" or **"charter carrier"** means every person engaged in the transportation of a group of persons who, pursuant to a common purpose and under a single contract, have acquired the use of a motor bus to travel together as a group to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartering group after having left the place of origin.

"Claim" means a demand made on a company for payment resulting from a loss sustained through the company's negligence or for inadequate service provided by the company.

"Closed-door service" means a portion of a route or territory in which an auto transportation company is not allowed to pick up or deliver passengers. Closed-door service restrictions must be clearly stated in an auto transportation company's certificate.

"Common purpose" means that a group of persons is traveling together to achieve a common goal or objective. For example, a group of persons traveling together to attend a common function or to visit a common location. For the purposes of these rules it does not mean a group of persons who have no common goal other than transportation to, or from, the airport.

"Commission" means the Washington utilities and transportation commission.

"Common carrier" means any person who transports passengers by motor vehicle over the public highways for compensation.

"Company" means an entity authorized by the commission to transport passengers, for compensation, using a motor vehicle, over the public highways of the state.

"Complaint" means one of two types of actions by a person against a passenger transportation company that the commission regulates:

(a) **"Informal complaints"** are those complaints filed with the commission under the provisions of WAC 480-07-910. Informal complaints are normally investigated and resolved by commission staff.

(b) **"Formal complaints"** are those complaints filed with the commission under the provisions of WAC 480-07-370. In a formal complaint, the burden of proof resides with the complaining party who must prove its assertions in a formal commission proceeding.

"Connecting service" means an auto transportation company service over a route, or routes, that require passengers to transfer from one vehicle to another vehicle operated by either the same company or a different company before reaching the ending point.

"Contract carrier" means a person holding a certificate issued by the commission authorizing transportation of passengers under special and individual contracts or agreements.

"Customer" means a person who purchased transportation services from an auto transportation company.

"Direct route" means an auto transportation company service over a route that goes from the beginning point to the ending point with limited, if any, stops along the way, and traveling only to points located on the specific route without requiring a passenger to transfer from one vehicle to another.

"Discontinuance of service":

(a) **"Permanent discontinuance of service"** means that a company holding auto transportation authority issued by the commission is unable to continue to provide all, or part of, the service authorized by the company's certificate, filed tariff, or filed time schedule and requests commission permission to permanently discontinue all, or part of, its service and relinquish that certificate or portion of that certificate. See WAC 480-30-186.

(b) **"Temporary discontinuance of service"** means that a company holding auto transportation authority issued by the commission is unable to continue to provide all, or part of, the service authorized by the company's certificate, filed tariff, or filed time schedule and requests commission permission to discontinue all, or part of, its service for a specified, limited period of time.

"Door-to-door service" means an auto transportation company service provided between a location identified by the passenger and a point specifically named by the company in its filed tariff and time schedule.

"Excursion service carrier" or **"excursion carrier"** means every person engaged in the transportation of persons for compensation over any public highway in the state from points of origin within any city, town, or area, to any other location within the state of Washington and returning to that origin. The service will not pick up or drop off passengers after leaving and before returning to the area of origin. The excursions may or may not be regularly scheduled. Compensation for the transportation offered must be computed, charged, or assessed by the excursion service company on an individual fare basis.

"Express freight/package service" means transportation of freight and packages, other than packages or baggage

carried or checked by passengers, offered by a passenger transportation company.

"Express passenger service" means auto transportation company service provided between fixed points or stations with few, if any, stops along the route, and is designed to get passengers from origin to destination more quickly than normally scheduled passenger service.

"Federal Motor Carrier Safety Administration" means an agency of the United States Department of Transportation (USDOT) and successor agency to the former Interstate Commerce Commission.

"Filing" means any application, petition, tariff proposal, annual report, comment, complaint, pleading, or other document submitted to the commission.

"Fixed termini" means points of origin and destination that are set, static locations or defined geographic areas. Examples include a city or town, a building or an airport. In addition "fixed termini" can include service between an airport and unlimited points within a defined geographic area.

"Flag stops" means a point along an auto transportation company's normally traveled routes where the company stops only if it receives notification that a passenger wishes to board the vehicle at that point. An auto transportation company must list available flag stops in the company's tariffs and time schedules. Flag stops may only be named at points that provide waiting passengers safe access to the vehicle.

"Group" means:

(a) Two or more passengers traveling together;

(b) A class of passengers to whom special rates and/or rules apply. For example, active military personnel.

"Intermediate point" means a point located on a route between two other points that are specifically named in an auto transportation company's certificate or tariff.

"Intermediate service" means service to an intermediate point.

"Interruption in service" means a period of time during which an auto transportation company cannot provide service listed in its certificate, its filed tariff, or its filed time schedule. An interruption in service is normally short lived, lasting no more than a few hours or a few days.

"Leasing":

(a) **"Leasing authority"** means one auto transportation company allowing another person to operate all, or a portion, of the authority granted to the first company by the commission. A joint application to, and approval from, the commission is required to lease authority. See WAC 480-30-141.

(b) **"Leasing equipment"** means the act of a passenger transportation company to supplement its fleet by acquiring a vehicle(s) from a third party for a specified period of time under contract. See WAC 480-30-236.

"Motor vehicle" or "vehicle" means:

(a) As related to auto transportation companies: Every self-propelled vehicle used on the public highways, for the transportation of persons for compensation.

(b) As related to charter and excursion carriers: Every self-propelled vehicle with a manufacturer's seating capacity for eight or more passengers, including the driver, used on the public highways, for the transportation of persons for compensation.

"Named points" means cities, towns, or specific locations that are listed in an auto transportation company's certificate, tariff, or time schedule.

"Nonstop service" means transportation of passengers from point of origin to point of destination without stopping at any intermediate points.

"On-call service" means unscheduled auto transportation company service provided only to those passengers that have by prior arrangement requested service prior to boarding.

"Passenger facility" means a location at which an auto transportation company stations employees and at which passengers can purchase tickets or pay fares for transportation service.

"Passenger transportation company" means an auto transportation company or charter and excursion carrier.

"Person" means an individual, firm, corporation, association, partnership, lessee, receiver, trustee, consortium, joint venture, or commercial entity.

"Premium service" means a type of service provided by an auto transportation company that is outside normal service. Examples include express service, direct route service, and nonstop door-to-door service.

"Private carrier" means a person who transports passengers in the person's own vehicle purely as an incidental adjunct to some other established private business owned or operated by that person in good faith.

"Private motor vehicle" means a vehicle owned or operated by a private carrier.

"Public highway" means every street, road, or highway in this state.

"Public transit agency" means a municipal corporation or agency of state or local government formed under the laws of the state of Washington for the purpose of providing transportation services including, but not limited to, public transportation benefit areas, regional transit authorities, municipal transit authorities, city and county transit agencies.

"Residence" means the regular dwelling place of an individual or individuals.

"Route" means a highway or combination of highways over which an auto transportation company provides passenger service. There are two types of routes:

(a) **"Irregular route"** means travel between points named in an auto transportation company's certificate via any highway or combination of highways the company wishes to operate over. The certificate issued to the company does not list highways to be used, but the company defines routes in its tariffs and time schedules.

(b) **"Regular route"** means an auto transportation company providing passenger transportation over a route named in the certificate issued to the company by the commission.

"Scheduled service" means an auto transportation company providing passenger service at specified arrival and/or departure times at points on a route.

"Single contract" means an agreement between a charter carrier and a group of passengers to provide transportation services at a set price for the group or trip. Under a single contract, passengers are not charged individually.

"Small business" means any company that has fifty or fewer employees.

"Special or promotional fares" means temporary fares for specific services offered for no more than ninety days.

"State" means the state of Washington.

"Subcontracting - auto transportation company" means that an auto transportation company holding authority from the commission contracts with a second auto transportation company to provide service that the original company has agreed to provide, but finds it is unable to provide. See WAC 480-30-166.

"Subcontracting - charter and excursion carrier" means that a charter and excursion carrier holding authority from the commission contracts with a second charter and excursion carrier to provide service that the original carrier has agreed to provide, but finds it is unable to provide.

"Substitute vehicle" means a vehicle used to replace a disabled vehicle for less than thirty days.

"Suspension" means an act by the commission to temporarily revoke a company's certificated authority; or an act by the commission to withhold approval of an auto transportation company's tariff filing.

"Tariff" or **"tariff schedule"** means a document issued by an auto transportation company containing the services provided, the rates the company must assess its customers for those services, and the rules describing how the rates apply.

"Tariff service territory" means a company-defined geographic area of its certificated authority in which a specific tariff applies.

"Temporary certificate" means the certificate issued by the Washington utilities and transportation commission under RCW 81.68.046 to operate as an auto transportation company for up to one hundred eighty days or pending a decision on a parallel filed auto transportation company certificate application.

"Temporary certificate authority" means the territory and services granted by the commission and described in an auto transportation company's temporary certificate.

"Ticket agent agreements" means a signed agreement between an auto transportation company and a second party in which the second party agrees, for compensation, to sell tickets to passengers on behalf of the auto transportation company. See WAC 480-30-391.

"Time schedule" means a document filed as part of an auto transportation company's tariff, or as a separate document, that lists the routes operated by the company including the times and locations at which passengers may receive service and any rules specific to operating those routes.

NEW SECTION

WAC 480-30-041 Change of address. A company must notify the commission in writing of any change in physical business address, business mailing address, business telephone number, fax number, or e-mail address. This notice must be filed by letter, fax, or e-mail within fifteen days following the change.

NEW SECTION

WAC 480-30-046 Exemptions from rules in chapter 480-30 WAC. The commission may grant an exemption from the provisions of any rule in this chapter consistent with

the standards and according to the procedures set forth in WAC 480-07-110 (Exceptions from and modification to the rules in this chapter; special rules).

NEW SECTION

WAC 480-30-051 Mapping, auto transportation company. (1) **Software and scale compatibility.** The commission uses geographic information system (GIS) software to track regulated public utility and transportation company operating territories. Auto transportation company maps must meet minimum standards to ensure that those maps are compatible with the commission's GIS mapping system. When required by this chapter to file a map, an auto transportation company must file that map in one of the methods described in (a) and (b) of this subsection.

(a) **Electronic maps.** An auto transportation company may file an electronic map that is compatible with the commission's hardware and software. Before filing its map electronically, a company must contact the commission to determine whether its mapping software is compatible with that used by the commission.

(b) **Paper maps.** An auto transportation company may file a paper map or combination of paper maps using:

- (i) Official state highway maps or comparable highway maps;
- (ii) United States Geological Survey (USGS) maps at a scale of 1:250,000;
- (iii) United States Geological Survey (USGS) maps at a scale of 1:24,000, when necessary to clearly resolve any inconsistencies or to reflect local service territories.

(c) **Availability of maps.** USGS maps are available through the Washington state department of natural resources and various private vendors. The official state highway map is available from the Washington state department of transportation.

(2) **Map detail.** Any map submitted to the commission must:

- (a) Clearly show counties, cities, freeways, highways, roads, streets, county lines, and any other feature described in the application or certificate;
- (b) Be clearly labeled to identify the features described in the certificate;
- (c) Have a north arrow;
- (d) Have a map legend briefly describing the features on the map;
- (e) Have a scale bar showing the distance on the map equal to a defined number of feet, miles or other unit; and
- (f) Have a title box that includes the company's name as shown on the company's auto transportation certificate, the company's registered trade name, the identification number of the filing to which the map applies, and a contact name and phone number.

NEW SECTION

WAC 480-30-056 Records retention, auto transportation company. (1) **General provisions.** An auto transportation company must keep all business records and reports for at least three years following the date those documents are created unless otherwise specified in subsection (2) of this

section or unless a longer retention period is required by another governmental body.

(2) Retention schedule table. The following schedule shows periods that auto transportation companies must preserve various records.

Type of Record:	Retention Period:
1. Original certificate	Until cancellation.
2. Contracts and agreements: (a) Service contracts (management, accounting, financial or legal services) (b) Contracts with employees and employee groups	Until expiration or termination plus three years.
(c) General contracts, leases and agreements	Until termination plus one year.
3. Long-term debt records: Bond indentures, underwritings, mortgages, and other long-term credit agreements	Until redemption plus three years.
4. General and subsidiary ledgers and indexes	Until discontinuance of use plus three years.
5. General journals	Until discontinuance of use plus three years.
6. General cash books	Until discontinuance of use plus three years.

(3) **Customer service records.** An auto transportation company must maintain complete and accurate customer service records.

(a) Company service records include, but are not limited to:

- (i) Daily trip records, by route or by unit of equipment, that show:
 - (A) The schedules operated;
 - (B) The number of passengers carried on each schedule;
 - (C) The point each passenger boarded and disembarked from the vehicle;
 - (D) The fare charged each customer (for example full-fare, children's fare, round-trip fare, free or reduced fare);
 - (E) Any condition causing the vehicle to deviate from the company's filed time schedule by more than thirty minutes. For example, traffic backed up at an accident site, inclement weather, or equipment failure.
- (ii) Records of revenues received.
- (iii) Bills or invoices issued.
- (iv) Records of all reservations.
- (v) Records of all tickets issued.
- (vi) Records of all passenger service provided at free and/or reduced rates.

(b) Customer service records must be kept on file in the general office of the company for at least three years and are subject to commission inspection.

(c) Customer service records must be kept in chronological, numerical, or service route order.

NEW SECTION

WAC 480-30-061 Express freight, property transportation. (1) 49 U.S.C. § 14501 preempts state regulation of the routes, rates, and services of property carriers transporting general commodities, other than residential household goods. This preemption includes passenger transportation companies transporting property even if that property is being transported in the same vehicle as passengers.

(2) A passenger transportation company operating under the provisions of this chapter may transport property in the same motor vehicles that it uses to transport passengers without any additional authority or permits from this commission.

(3) When transporting property in a motor vehicle with passengers, the company must ensure that property may be safely and conveniently carried without causing discomfort to the passengers and that it is of an amount that does not disturb the convenience, speed and other essential qualities of the passenger service.

(4) If a passenger transportation company transports property in motor vehicles other than those used to transport passengers under this chapter, then the company must ensure that its operations comply with the motor freight carrier requirements, including permits, insurance, driver, and equipment safety provisions established for property carriers under chapters 81.80 RCW and 480-14 WAC.

**PART 2—ACCOUNTING REQUIREMENTS,
REPORTING REQUIREMENTS AND REGULATORY
FEES**

NEW SECTION

WAC 480-30-066 Accounting requirements, auto transportation company. (1) The commission publishes a uniform system of accounts (USOA) for auto transportation companies. The commission supplies copies of the USOA on request.

(a) The USOA defines accounting, financial, and other procedures the commission uses to determine if rates are fair, just, reasonable, and sufficient.

(b) The USOA contains accounting definitions, listings, and explanations of balance sheet and income statement accounts.

(2) The commission recommends companies maintain their financial and accounting records according to the USOA. Regardless of what accounting system a company uses, the company must maintain its books and records in a manner sufficient to complete the commission-issued annual report form, using figures that reconcile with the USOA.

NEW SECTION

WAC 480-30-071 Reporting requirements. (1) **Auto transportation company annual reports.** An annual report is an end-of-the-year summary of financial and operational activity that each regulated auto transportation company is required to file with the commission.

(a) Each year the commission provides an annual report form and instructions to each company at its address of record. Failure to receive the form does not relieve a com-

pany of its obligation to complete and file its annual report. A company that does not receive an annual report form must contact the commission to obtain a copy of the form.

(b) A company must file a complete, accurate annual report showing all requested information by May 1 of the succeeding year. Information provided on the annual report must agree with source documents maintained at company offices.

(c) The commission may grant an extension of time allowing the company to file its annual report after the May 1 due date if the commission receives a request for extension before May 1.

(d) The commission may issue penalty assessments or take action to suspend or cancel a certificate if a company fails to file its required annual report.

(e) A company selling, canceling, transferring, or in some other manner discontinuing operations must submit an annual report for that portion of the year in which the company operated.

(2) **Charter and excursion carrier annual safety reports.** An annual safety report is a summary of motor vehicle and safety operating information that each charter and excursion carrier is required to file with the commission.

(a) Each year the commission provides an annual safety report form and instructions to each company at its address of record. Failure to receive the form does not relieve a company of its obligation to complete and file its annual safety report. A company that does not receive an annual safety report form must contact the commission to obtain a copy of the form.

(b) A company must file a complete, accurate annual safety report showing all requested information by December 31 of each year. Information provided on the annual safety report must agree with source documents maintained at company offices.

(c) The commission may grant an extension of time allowing the company to file its annual safety report after the December 31 due date if the commission receives a request for extension before December 31.

(d) The commission may issue penalty assessments or take action to suspend or cancel a certificate if a company fails to file its required annual safety report.

(3) **Other reports.** The commission may require a company to file periodic or other special reports.

NEW SECTION

WAC 480-30-076 Regulatory fees. A regulatory fee is an annual assessment paid by each company to cover the costs of regulation.

(1) **Auto transportation company regulatory fees.** The maximum auto transportation company regulatory fee is set by statute at two-fifths of one percent of gross intrastate operating revenue.

(a) The maximum regulatory fee is assessed each year, unless the commission issues an order establishing the regulatory fee at an amount less than the statutory maximum.

(b) The minimum fee that an auto transportation company must pay is twenty dollars.

(c) The twenty dollar minimum regulatory fee is waived for any auto transportation company with less than five thousand dollars in gross intrastate operating revenue.

(d) Each auto transportation company must pay its regulatory fee by May 1 of each year.

(2) **Charter and excursion carrier regulatory fees.** The charter and excursion carrier regulatory fee is established by commission order.

(a) The minimum fee a charter and excursion carrier must pay is the amount established for a single vehicle.

(b) Each charter and excursion carrier must pay its regulatory fee on or before December 31 of each year to cover the ensuing year beginning February 1.

(3) **Extension of time to pay regulatory fees.** The commission cannot grant extensions for payment of regulatory fees.

(4) **Penalties for late fees.** If a company does not pay its regulatory fee by the due date established in this rule, the commission will assess an automatic late fee of two percent of the amount due, plus one percent interest for each month the fee remains unpaid.

(5) The commission may take action to suspend or cancel a certificate, if a company fails to pay its regulatory fee.

NEW SECTION

WAC 480-30-081 Motor vehicle fund, auto transportation company. (1) In addition to regulatory fees, each auto transportation company must pay mileage fees on each vehicle it operates with a seating capacity over six passengers. RCW 46.16.125 establishes the following mileage fees:

(a) Fifteen cents for each one hundred vehicle miles; or

(b) Twenty cents for each one hundred vehicle miles if the vehicle is propelled by steam, electricity, natural gas, diesel oil, butane, or propane.

(2) The commission transmits mileage fees collected under the provisions of RCW 46.16.125 to the state treasurer to be deposited in the motor vehicle fund.

(3) If a company fails to pay the mileage fees, the company is subject to a penalty of one hundred percent of the payment due.

Auto transportation company certificate application

Application for certificate to provide regular route or fixed termini service. Forms include:
Application for new certificate, to reinstate a previously canceled certificate, to transfer all or a portion of a certificate to a new owner or business structure, to lease all or a portion of a certificate. Note: Auto transportation company certificates include statewide charter and excursion carrier service. No additional application is required.

Auto transportation company certificate extension application

Application for extension of certificate authority to add new or additional regular route or fixed termini service to an existing auto transportation certificate.

PART 3—CERTIFICATES

NEW SECTION

WAC 480-30-086 Certificates, general. (1) **Certificate required.** A person must have a certificate from the commission before operating as a passenger transportation company in the state of Washington.

(2) **Company name.** The company name is the name of the certificate holder.

(a) A company electing to conduct operations under a trade name must first register the trade name with the commission.

(b) A company must conduct all operations under the company name, a registered trade name, or both. The term "operations" includes, but is not limited to advertising, ticketing, and identifying vehicles.

(c) A company may not operate under a company name or trade name that is similar to that of another company if use of the similar name misleads the public or results in unfair or destructive competitive practices.

(3) **Display.** A company must keep its original certificate on file at its principal place of business open to inspection by any customer, law enforcement officer, or authorized commission representative who asks to see it.

(4) **Replacement.** The commission will replace a lost or destroyed original certificate at no charge.

(5) **Description of certificated authority.** When a company's certificate authority includes boundaries such as cities, towns, streets, avenues, roads, highways, townships, ranges or other descriptions, the boundaries remain established as they existed at the time the commission granted the authority.

(6) **Operating within certificated authority.**

(a) A company must operate strictly within the authority described in its certificate.

(b) The commission may take administrative action against a company operating outside its certificated authority. Refer to WAC 480-30-241 for information regarding the commission's compliance policy.

NEW SECTION

WAC 480-30-091 Certificates, application fees. (1) The purpose of an application filing fee is to partially cover handling and processing expenses.

(2) The commission establishes the following fees for application filings:

\$200

\$150

Auto transportation company temporary certificate application	\$150
Application for new temporary authority or temporary authority to operate pending a commission decision on a parallel filed certificate application.	
Charter and excursion carrier certificate application	\$200
Application for single certificate to provide both charter and excursion carrier service statewide. Forms include: Application for new certificate, to reinstate a previously canceled certificate, to transfer an existing certificate to a new owner or business structure.	
Certificate name change application	\$35
Application to change a company's corporate name, change a trade name, add a new trade name, or change the surname of an individual owner or partner.	
Auto transportation company certificate mortgage application	\$35
Application for permission to mortgage or otherwise encumber an auto transportation company certificate.	

NEW SECTION

WAC 480-30-096 Certificates, application filings, general. (1) A company must submit its certificate application on forms provided by the commission.

(2) Applications must include all requested information, attachments, signed statements, and filing fees.

(a) The commission may reject or defer consideration of an application until the applicant provides all required information;

(b) The commission may reject or defer consideration of an application until the applicant pays any outstanding fees, fines, or penalties; or

(c) The commission may reject or dismiss an application if it includes false, misleading, or incomplete information.

(3) Applications for auto transportation certificate authority must include, but are not limited to:

(a) A complete description of the proposed service including the line, route, or service territory described in terms such as streets, avenues, roads, highways, townships, ranges, cities, towns, counties, or other geographic descriptions;

(b) A map of the proposed line, route, or service territory that meets the standards described in WAC 480-30-051;

(c) A statement of the applicant's assets and liabilities;

(d) A proposed tariff and time schedule;

(e) A statement of conditions that justify the proposed service;

(f) Ridership and revenue forecasts for the first twelve months of operation;

(g) A pro forma balance sheet and income statement for first twelve months of operation;

(h) A list of equipment to be used in providing the proposed service; and

(i) A statement of the applicant's prior experience and familiarity with the statutes and rules that govern the operations it proposes.

(4) The provisions of this rule do not apply to applications for auto transportation company certificate authority to provide intrastate service over an interstate regular route under a federal grant of authority. Refer to WAC 480-30-101.

NEW SECTION

WAC 480-30-101 Certificates, federal grant of authority, auto transportation company. (1) This rule governs applications for auto transportation company certificates for authority to provide intrastate regular route service under a federal grant of authority under the provisions of 49 U.S.C. § 13902.

(2) A company operating under a federal grant of authority must comply with state filing requirements no later than thirty days after the date the company first begins providing transportation entirely within the state.

(3) The commission will grant an auto transportation company application for certificate consistent with the federal grant of authority and limited to intrastate operations that are conducted together with regularly scheduled interstate operations on the same route.

(a) An application for a certificate filed under the provisions of this rule must be submitted on forms provided by the commission and accompanied by the required auto transportation company certificate application filing fee in WAC 480-30-091.

(b) A copy of the federal order granting authority and any other documents or correspondence relevant to the federal grant of authority must accompany the application.

(c) The application may be published on the commission's application docket for informational purposes only, but is not subject to protest by any party.

NEW SECTION

WAC 480-30-106 Certificates, acquisition of control. (1) **Notice required.** Any person acquiring control of a passenger transportation company through acquisition of the stock of that company must notify the commission in writing within thirty days of the acquisition.

(2) **Content of notice.** Notice may be accomplished by filing a letter with the commission. The letter must include at least the following information:

(a) The name, registered trade names, and certificate number of the acquired company.

(b) The date of acquisition.

(c) The names of the majority stockholders and the percent of stock each holds.

(d) The name, address, telephone number, fax number, and e-mail address of a contact person within the company to whom questions may be directed.

(e) The location (mailing address and physical address) where books and records of the acquired company will be retained.

NEW SECTION

WAC 480-30-111 Certificates, starting service. (1) Filing an application under WAC 480-30-096 does not authorize the applicant to start operations of the type requested or in the territory described in the application. The commission must grant the application and issue a certificate before a company may start the requested service.

(2) This rule does not apply to applications for auto transportation company certificates under a preemptive federal grant of authority to provide intrastate service over an interstate route.

NEW SECTION

WAC 480-30-116 Certificates, application docket, protests, and intervention, auto transportation company.

(1) **Application docket.** The commission publishes a notice of pending certificate applications in the application docket. The commission mails the application docket to each existing auto transportation company certificate holder, to each person with a pending auto transportation company certificate application, to affected local jurisdictions or agencies, and to any other interested person who has asked to receive copies of the application docket. It includes notice of auto transportation company certificate applications for:

- (a) New certificate authority.
- (b) Extension of existing certificate authority.
- (c) Transfer or lease of all or a portion of certificate authority.

(2) **Protests.** An existing auto transportation company certificate holder may file a protest to an application published in the application docket.

- (a) **Form of protests.** Protests must:
 - (i) Be filed within thirty days of the date the commission mailed the application docket.
 - (ii) Be filed according to the provisions of WAC 480-07-370.
 - (iii) Be served on the applicant and the applicant's attorney, if one is identified in the application docket.
 - (iv) Specify the reasons for the protest.
 - (v) Specify the protestant's interest in the proceeding.
 - (vi) Specify the approximate number of witnesses the protestant intends to present and an estimate of hearing time required for the protestant's presentation;
 - (vii) Include the name and address of each person on whose behalf the protest is filed including that person's certificate number, a copy of the certificate authority, and identification of the portion or portions of the protestant's certificate that is the basis for the protest.
 - (viii) Describe any restrictive amendment that could eliminate the protestant's interest in the application.

(b) **Failure to file protest on time.** A person who fails to file a protest within the thirty-day protest period may not in

any way participate further in the proceeding, unless that person can show that the commission did not provide proper notice of the pending application, or that good cause exists for the failure to make a timely protest.

(3) **Intervention.** Any person, other than the applicant and protestants to an application, who desires to appear and participate, and who does not desire to broaden the issues of the proceeding, may petition to be an intervener. Refer to WAC 480-07-355 for information on intervention.

(4) **Applications not subject to the docket and protest provisions of this rule.** This rule does not apply to:

- (a) Applications for charter and excursion carrier certificates;
- (b) Applications to reinstate a certificate canceled for cause under the provisions of WAC 480-30-181, when the application is filed within thirty days of the certificate cancellation date;
- (c) Applications for name change;
- (d) Applications to mortgage an auto transportation company certificate;
- (e) Applications for an auto transportation company certificate under a federal grant of authority to provide intrastate service over an interstate route; and
- (f) Applications for temporary certificate authority.

NEW SECTION

WAC 480-30-121 Certificates, applications, charter and excursion carrier. (1) A person applying for a certificate to provide charter and excursion carrier services must be fit, willing, and able to provide service and to comply with state law and the safety and insurance requirements of this chapter.

(2) The commission will issue to any qualified applicant a certificate to provide charter and excursion carrier services in Washington upon receipt of:

- (a) A complete application filing as required by WAC 480-30-096;
- (b) Proof of insurance as required by WAC 480-30-191; and
- (c) Proof of a passing Commercial Vehicle Safety Alliance (CVSA) safety inspection of each motor vehicle to be operated by the applicant under its certificate.

NEW SECTION

WAC 480-30-126 Certificates, applications, auto transportation company. (1) A person applying for a certificate to provide auto transportation company services must have the knowledge, experience, and resources to conduct the service it proposes in its application. The applicant must be fit, willing and able to comply with state law and the requirements of this chapter.

(2) The commission must determine that the public convenience and necessity requires the proposed service when considering an application for a new certificate or extension of an existing certificate.

(3) Auto transportation company certificate applications are subject to the application docket notice and protest provisions of WAC 480-30-116.

(4) The commission may set for hearing any auto transportation company certificate application.

(5) The commission must provide the opportunity for a hearing and determine that an existing auto transportation company is not providing service to the satisfaction of the commission before it may grant a new certificate or extension of an existing certificate to provide service in a territory already served by another auto transportation company, unless the existing auto transportation company or companies do not object to the application by filing a protest under the provisions of WAC 480-30-116.

NEW SECTION

WAC 480-30-131 Certificates, overlapping applications, auto transportation company. (1) The commission may consolidate applications for certificated auto transportation authority for joint consideration if:

(a) The authority requested in the applications overlaps in whole or in part; and

(b) The subsequent application was filed within thirty days of the date the initial application appears on the application docket.

(2) Applications for overlapping authority not filed within thirty days after the initial application appears on the application docket will be decided after the conclusion of proceedings resolving the initial application and any other application qualifying for joint consideration.

(3) When applications consolidated by the commission for joint consideration also contain requests for territory or services not overlapping that requested in the other application, and the nonoverlapping services or territory may be appropriately severed, the commission may decide the nonoverlapping portions of the application separately from the portions that do overlap.

NEW SECTION

WAC 480-30-136 Certificates, application hearings, auto transportation company. (1) Auto transportation company certificate application hearings are governed by the provisions of chapter 480-07 WAC.

(2) When an application has been protested, the commission will generally not consider written statements from witnesses that have not been available for cross examination at hearing.

(3) An applicant must be prepared to present information at hearing, through documents or the testimony of witnesses, including but not limited to, the following:

(a) A description of the service proposed and the cost of that service for the area to be served;

(b) An estimate of the cost of the facilities to be used in providing the proposed service;

(c) The condition of the applicant's equipment and the applicant's program for maintenance and repair;

(d) A statement of the assets available to the applicant that will be used to provide the proposed service;

(e) Prior experience, if any;

(f) Familiarity with the statutes and rules that govern the proposed operations;

(g) The public need for the proposed service.

(i) The commission will not accept as support an applicant's own statements that its proposed service is needed by the public.

(ii) The applicant must support its application with independent witnesses who actually require the service or are knowledgeable about the need for service in the territory in which the applicant seeks authority.

(4) If an applicant requests a certificate or extension of certificate to operate in a territory already served by another certificate holder, the applicant must also show that the existing transportation company or companies will not provide service in that territory to the satisfaction of the commission.

(5) When determining if the territory at issue is already served by another certificate holder the commission may, among other things consider:

(a) The authority of existing companies and whether or not they are serving to the full extent of that authority.

(b) The kinds, means, and methods of service provided.

(c) Whether the type of service provided reasonably serves the market.

(d) Whether the population density warrants additional facilities or transportation.

(e) The topography, character, and condition of the territory into which the proposed services are to be introduced, and the proposed territory's relation to the nearest territory through which transportation service is already provided.

(f) Whether a grant of the requested authority and the resulting increased competition will benefit the public.

NEW SECTION

WAC 480-30-141 Certificates, sale, lease, assignment, transfer or mortgage, auto transportation company. (1) The commission must approve any sale, assignment, lease, transfer, or mortgage of a company's certificate, or any portion of the operating authority described in a company's auto transportation company certificate.

(2) To obtain commission approval for sale, assignment, lease, transfer, or mortgage, the parties to the transaction must jointly file an auto transportation company certificate application with the commission under the provisions of WAC 480-30-096.

(3) The provisions of this rule do not apply to change in ownership resulting from an acquisition of control of a corporation through stock sale or purchase. Refer to WAC 480-30-106.

NEW SECTION

WAC 480-30-146 Certificates, name change. (1) A company must file a name change application under the provisions of WAC 480-30-096 to:

(a) Change its corporate name;

(b) Change its trade name;

(c) Add a trade name to a certificate; or

(d) Change the surname of an individual owner or partner to reflect a change resulting from marriage or other legal action.

(2) When filing a name change application, the applicant must include:

(a) Copies of any corporate minutes or other legal documents authorizing the name change; and

(b) Proof that the new name is properly registered with the department of licensing, office of the secretary of state, or other agencies, as may be required.

(3) If a name change results from a change in ownership the company must file an application to transfer the certificate according to the provisions of WAC 480-30-141.

NEW SECTION

WAC 480-30-151 Certificates, refiling application prohibited, auto transportation company. A person whose application for auto transportation company authority has been denied after hearing, dismissed for failure to appear at a hearing, or who has been found to be in default, may not refile the application for a period of six months from the date of the final order dismissing or denying the application.

NEW SECTION

WAC 480-30-156 Certificates, temporary, auto transportation company. (1) **Temporary certificates prohibited.** The commission is prohibited from granting a temporary certificate to operate in territory that is:

(a) Contained in an existing certificate, unless the existing certificate holder is not providing service or does not object to the temporary certificate.

(b) Contained in a pending certificate application unless the temporary certificate application filing is made by the applicant or the applicant does not object to the temporary certificate.

(2) **Requirements.** Temporary certificate applications must meet the general filing requirements of WAC 480-30-096.

(3) **Public interest.** The commission may grant a temporary certificate after determining that granting the requested authority is consistent with the public interest. In determining if the requested temporary authority is consistent with the public interest, the commission will consider factors including, but not limited to:

(a) The fitness of the applicant.

(b) The need for the requested service.

(c) Availability of existing service.

(d) Any other circumstances indicating that a grant of temporary authority is consistent with the public interest.

(4) **Support statements required.** Applicants for temporary certificates must include signed and sworn support statements from one or more potential customers identifying all pertinent facts relating to need for the proposed service.

(5) **Investigation of applications.** Commission staff will investigate the facts surrounding an application and need for the proposed service before making a recommendation that the commission grant or deny an application for temporary certificate. The staff investigation will include notice of the temporary certificate application to those companies identified in subsection (1) of this section, and allow twenty days for those companies to object to the temporary certificate application.

(6) **Special terms, conditions, and limitations.** The commission may impose special terms, conditions, and limitations

in connection with the grant of any temporary certificate.

(7) **Length of service allowed under temporary certificate.** The commission may grant a temporary certificate for up to one hundred eighty days. If a company files an auto transportation company certificate application and a temporary certificate application within thirty days of each other or files an auto transportation company certificate application within thirty days of the order granting the temporary certificate, then the temporary certificate will continue until the commission grants, denies, or dismisses the parallel certificate application, or until the temporary certificate is otherwise canceled, whichever happens first.

(8) **Docketing.** The commission will publish on its application docket:

(a) A list of temporary certificate applications that the commission considered and granted, including any terms and conditions attached to the grant of such authorities; and

(b) A list of temporary certificate applications the commission considered and denied.

(9) **Protests.** An existing auto transportation company or applicant for certificate may file a protest opposing the grant or denial of a temporary certificate.

(10) **Form of protests.** Protests must:

(a) Be filed with the commission in writing within ten days after the date the commission mails its notice;

(b) Contain a statement of the specific grounds on which the protest is made;

(c) Contain a statement of the protestant's interest in the proceeding;

(d) Be served on the applicant; and

(e) Be served on the applicant's representative, if one is stated in the notice.

(11) **Disposition of protests.** The commission may grant or deny a protest without hearing.

(12) **Brief adjudicative proceedings.** The commission may order a brief adjudicative proceeding on its own motion or at the request of a party.

(13) **Intervention.** Any person, other than the applicant and protestants to an application, who desires to appear and participate, and who does not desire to broaden the issues of the proceeding, may petition to be an intervener. Refer to chapter 480-07 WAC for information on intervention.

NEW SECTION

WAC 480-30-161 Certificates, notice of purchase or condemnation, auto transportation. (1) An auto transportation company must notify the commission in writing within thirty days of a public transit agency purchasing or condemning all or a portion of the company's certificated authority.

(2) Notice must include a cover letter identifying the company, the affected authority, and a copy of the document such as an ordinance, resolution, franchise, contract, or court order that results in the purchase or condemnation of the certificated authority.

NEW SECTION

WAC 480-30-166 Certificates, service agreements, auto transportation company. (1) An auto transportation

company may enter into an agreement to allow another certificated auto transportation company to operate in the first company's territory or over its route(s) when the first company:

(a) Holds exclusive authority in the territory or over the route(s) to be served; and

(b) Lacks suitable equipment to adequately serve its route(s) or customers, or is unable to provide service on a temporary basis due to situations such as, but not limited to, road closures or other temporary restrictions imposed by local jurisdictions.

(2) The commission must approve the agreement before any service is provided. To apply for commission approval, the companies must jointly file a copy of the written agreement at least fifteen days before the proposed effective date of the agreement. Companies may request the fifteen-day approval period be waived in the case of an emergency.

(3) The agreement filed with the commission must clearly state:

(a) The first company will charge customers for service provided by the second company at rates contained in the first company's filed tariff.

(b) The first company will pay the second company for providing service in compliance with terms stated in the agreement.

(c) The beginning and ending dates of the agreement.

(d) A provision for early termination of the agreement that includes at least five days' notice to the commission and to each party.

NEW SECTION

WAC 480-30-171 Certificates, suspending and canceling. (1) **Cause for suspension.** The commission may suspend a certificate for cause. Cause includes, but is not limited to:

(a) Failure to maintain evidence of required liability insurance coverage for all areas of a passenger transportation company's operations;

(b) Failure to file an annual report or pay required regulatory fees;

(c) Failure to comply with the rates and rules contained in an auto transportation company's filed tariff;

(d) Failure to comply with an auto transportation company's filed time schedule;

(e) Failure or refusal to comply with operating standards that protect the public health, safety, or welfare;

(f) Allowing others to operate under a provider's certificated authority without having first obtained commission approval;

(g) Operating in a manner that violates the rights of customers and/or constitutes an unfair or deceptive business practice; or

(h) Repeated failure or refusal to comply with laws and rules pertaining to operations of passenger transportation companies.

(2) **Cause for cancellation.** The commission may cancel a certificate for cause. Cause includes, but is not limited to:

(a) Operating without proper insurance;

(b) Failure to file an annual report or pay required fees;

(c) Failure to correct within the time specified in a suspension order all conditions listed in the suspension order that led to the certificate's suspension;

(d) Continued violations of laws and rules affecting the public health, safety, or welfare when the commission has reason to believe the passenger transportation company will not comply with those laws and rules following a specified period of suspension;

(e) Failure to supply requested information needed by the commission in the performance of its regulatory functions; or

(f) Submission of false, misleading or inaccurate information.

(3) **Notice of pending suspension and cancellation.** When the commission believes cause exists to suspend or cancel a certificate, it will issue a notice to the passenger transportation company of the commission's intention to suspend or cancel the authority.

(4) **Contest of suspension and cancellation.** A passenger transportation company may contest the pending suspension and/or cancellation of its certificate by requesting a hearing or brief adjudicative proceeding within ten days following the date of the notice.

NEW SECTION

WAC 480-30-181 Certificates, reinstatement. (1) The commission may reinstate a certificate canceled for cause under the provisions of WAC 480-30-171 if the company:

(a) Corrects all conditions leading to the cancellation; and

(b) Files an application to reinstate authority with the proper application fee within thirty days of the cancellation order service date.

(2) The commission may reinstate a certificate suspended under the provisions of WAC 480-30-171 if the company satisfies the terms of the suspension and all conditions leading to the suspension are corrected.

NEW SECTION

WAC 480-30-186 Certificates, service interruptions or discontinued operations, auto transportation company. (1) **Interruptions in service.**

(a) An auto transportation company must file a written report with the commission and must post appropriate public notice of any interruption in regular service that is likely to continue for more than twenty-four hours.

(i) The written report must contain a full description of the cause for the interruption.

(ii) The written report and notice to the public must state the anticipated duration of the interruption.

(iii) Notice to the commission may be made via regular mail, by fax, or by e-mail.

(b) If an auto transportation company fails to notify the commission of any interruption in service that lasts five or more consecutive days, the commission will consider that the company has forfeited its certificate rights and the commission may institute administrative action to cancel the company's certificate of public convenience and necessity.

Exception: The commission may allow resumption of operations after an interruption lasting five or more days if the auto transportation company can show that it was not responsible for the failure to provide service and that failure to notify the commission resulted from conditions outside the control of the company.

(2) **Discontinuance of service.** An auto transportation company must not temporarily or permanently discontinue operations authorized under its certificate without prior approval from the commission.

(a) A company requesting commission approval to discontinue operations must give at least thirty days' written notice to its customers, officials of cities and counties where affected passengers reside, and the commission.

(b) The auto transportation company must file a written request with the commission for approval to discontinue operations. The written request for commission approval must contain at least the following:

(i) The name, telephone number, mailing address, fax number (if any) and e-mail address (if any) of a contact person;

(ii) An explanation of the company's reasons for requesting approval to discontinue operations;

(iii) An explanation of consequences for the company if the commission does not approve the request to discontinue operations;

(iv) A statement of the number of passengers, by class of service provided, who will lose service if the commission approves the discontinuance of operations;

(v) An explanation of options available to the customers who will lose service; and

(vi) If the request is for approval to temporarily discontinue service, the written request must contain a statement

Motor vehicles that:

Have a passenger seating capacity of fifteen or less (including the driver)

Have a passenger seating capacity of sixteen or more (including the driver)

(3) **Insurance filings.** A company must file and maintain a Uniform Motor Carrier Bodily Injury Property Damage Certificate of Insurance (Form E) as a condition of being issued and maintaining a certificate to operate as a passenger transportation company.

(a) The Form E is a standard motor carrier insurance form recognized by the insurance industry and is normally filed with the commission by an insurance company rather than an insurance agent.

(b) The Form E must be issued in the company name exactly as it appears on the company's certificate or application for certificate.

(c) The Form E filing must remain in effect until canceled by a Notice of Cancellation (Form K). The Form K must be filed with the commission by the insurance company not less than thirty days before the cancellation effective date.

declaring the date by which the company will return to service.

(c) Upon receipt of a request to discontinue operations, the commission will assign a docket number to the filing and will act on the request under the commission's normal open meeting process.

(i) In considering the request for approval to discontinue operations, the commission may consider the information required in this section, in addition to other information it deems necessary on a case-by-case basis.

(ii) The commission may attach conditions to any grant of discontinuance of operations that it deems necessary to protect the rights and interests of the public.

PART 4—INSURANCE

NEW SECTION

WAC 480-30-191 Bodily injury and property damage liability insurance. (1) **Insurance coverage.** A company must have bodily injury and property damage liability insurance covering each motor vehicle it operates in the state of Washington.

(a) The insurance policy must be written by an insurance company authorized to write insurance in the state of Washington.

(b) The insurance policy must include the Uniform Motor Carrier Bodily Injury and Property Damage Liability Endorsement (Form F).

(c) If a company operates without the required insurance coverage, the commission may take immediate compliance action as described in WAC 480-30-171.

(2) **Insurance limits.** The minimum limits of required bodily injury and property damage liability insurance for motor vehicles operated by companies are:

Must have bodily injury and property damage insurance or surety bond with the following minimum limits:

\$1,500,000 combined single limit coverage

\$5,000,000 combined single limit coverage

(d) A company may file a Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond (Form G) instead of the Form E.

(4) **Insurance binders.** The commission will accept an insurance certificate or binder for up to sixty days.

(a) An insurance certificate or binder may be canceled by written notice filed with the commission at least ten days before the cancellation effective date.

(b) An insurance certificate or binder must be replaced by a Form E within sixty days of filing, or before the expiration date, whichever occurs first.

(c) Insurance certificates or binders must show:

(i) The commission as the named insurance certificate holder;

(ii) The company name, exactly as it appears on the company's certificate or application for a certificate, as the insured;

- (iii) The insurance company name;
- (iv) The insurance policy number;
- (v) The insurance policy effective and expiration dates;
- (vi) The insurance limits of coverage; and
- (vii) The agent's or other insurance representative's signature.

NEW SECTION

WAC 480-30-196 Insurance cancellation. If a company's insurance filing is canceled, and a new filing that provides continuous coverage is not filed before the cancellation effective date, the commission may:

- (1) Dismiss a company's certificate application or withhold issuance of a certificate;
- (2) Suspend or cancel a company's certificate under the provisions of WAC 480-30-171.

NEW SECTION

WAC 480-30-201 Self-insurance. (1) A company conducting interstate passenger transportation services that has qualified as a self-insurer under 49 U.S.C. § 13906 may be exempt from the bodily injury and property damage liability insurance filing provisions under these rules, provided the company files with the commission:

- (a) A certified copy of the order issued by the Federal Motor Carrier Safety Administration showing that the company has qualified as a self-insurer;
 - (b) A certified statement that the company is operating under that self-insuring authority; and
 - (c) A certified statement that the self-insuring authority granted by the Federal Motor Carrier Safety Administration is in full force and effect.
- (2) Upon the effective date of an order by the Federal Motor Carrier Safety Administration canceling a company's rights to act as a self-insurer, that company must file with the commission proper bodily injury and property damage liability insurance or surety bond as required by WAC 480-30-191.

PART 5—EQUIPMENT AND DRIVERSNEW SECTION

WAC 480-30-206 Vehicle licensing. A company must ensure that each vehicle it operates is in compliance with all appropriate state vehicle licensing laws, commission rules, and commission orders.

NEW SECTION

WAC 480-30-211 Commercial vehicle defined. Unless otherwise stated, for the purposes of the rules in Part 5—Equipment and Drivers, "commercial motor vehicle" means any motor vehicle used by an auto transportation company or charter and excursion carrier to provide passenger transportation services over the public highways of Washington state.

NEW SECTION

WAC 480-30-213 Vehicles and drivers. (1) The vehicles operated by a passenger transportation company must be owned by or leased to the certificate holder.

(2) The driver of a vehicle operated by a passenger transportation company must be the certificate holder or an employee of the certificate holder.

NEW SECTION

WAC 480-30-216 Operation of motor vehicles, general. (1) **Discrimination prohibited.** No company operating motor vehicles under the provisions of this chapter will operate a vehicle in intrastate commerce on which the seating of passengers is based on race, color, creed, or national origin.

(2) **Inspection of baggage and other materials passengers wish to be carried in or on a motor vehicle.** Auto transportation companies are responsible for the safety and comfort of all passengers transported. To ensure the safety and comfort of passengers and employees it may be necessary for companies to inspect baggage and other materials to be transported in or on motor vehicles.

(a) Companies must include in their filed tariffs, in information provided to passengers, and on their tickets, information that advises passengers that all baggage and other materials to be carried in or on a motor vehicle is subject to inspection by the company.

(b) The information required by (a) of this subsection must include a list of examples of materials that will not be accepted for transportation. Examples may include, but are not limited to, the following items:

- (i) Articles whose transportation as baggage are prohibited by law or regulation;
- (ii) Fragile or perishable articles;
- (iii) Articles whose dimensions exceed the size limitations in the company's filed tariff;
- (iv) Packages, bags, or parcels that are leaking;
- (v) Firearms;
- (vi) Articles that have foul and obnoxious odors; or
- (vii) Items that cause annoyance, discomfort, or harm to persons or property.

(3) Service requirement.

(a) An auto transportation company is a public service company with an obligation to provide service to the satisfaction of the commission to all customers within its certificated authority.

(b) Except to the extent allowed by WAC 480-30-451, no driver or operator of a motor vehicle used in the transportation of passengers by an auto transportation company shall refuse to carry any person presenting him or herself at a regular stopping place who tenders the appropriate fare. Exception: Companies limiting operations to passengers with prior reservations are not subject to this provision.

(4) **Passenger loading capacity.** No motor vehicle used in the transportation of passengers will carry more passengers than can be carried safely. In no case will a motor vehicle transport more than one hundred fifty percent of its rated seating capacity.

(5) **Standing passengers.** No passenger will be permitted to stand unless the vehicle is equipped with devices

designed and permanently installed to provide stability and safety for standing passengers. Even if the vehicle is properly equipped, no passenger will be permitted to stand for a distance exceeding thirty-five miles.

(6) **Reserve equipment.** All auto transportation companies must maintain sufficient reserve equipment to insure the reasonable operation of established routes and fixed time schedules.

(7) **Smoking on motor vehicles.**

(a) Smoking or carrying lit cigars, cigarettes, or other smoking materials is prohibited on vehicles operated by auto transportation companies.

(b) Each auto transportation company must post signs in its vehicles informing passengers that smoking is not permitted.

NEW SECTION

WAC 480-30-221 Vehicle and driver safety requirements. (1) Companies must comply with all state and local laws and rules governing licensing, vehicle safety, and driver safety. Companies must also comply with the parts of Title 49, Code of Federal Regulations (49 CFR), adopted by reference, that are shown in the following chart. Information about 49 CFR, including the version adopted by the commission and where to obtain copies is set out in WAC 480-30-999.

49 CFR Part:		Notes:
Part 40 -	Procedures For Transportation Workplace Drug and Alcohol Testing Programs	Entire Part 40 is adopted and applies to Washington intrastate operations.
Part 382 -	Controlled Substance and Alcohol Use and Testing	Entire Part 382, including definition of commercial motor vehicle, is adopted and applies to Washington intrastate operations.
Part 383 -	Commercial Driver's License Standards; Requirements and Penalties	Entire Part 383, including definition of commercial motor vehicle, is adopted and applies to Washington intrastate operations.
Part 390 -	Safety Regulations, General	Entire Part 390 is adopted and applies to Washington intrastate operations, with the following exceptions: (1) The terms "motor vehicle," "commercial motor vehicle," and "private vehicle" are not adopted. Instead, where those terms are used in Title 49 CFR, they have the meanings assigned to them in WAC 480-30-036 (Motor vehicle and private vehicle) and WAC 480-30-211 (Commercial motor vehicle). (2) Whenever the term "director" is used in Title 49 CFR, it means the commission.
Part 391 -	Qualification of Drivers	Entire Part 391 is adopted and applies to Washington intrastate operations, with the following exceptions: (1) Part 391.49 (alternative physical qualification standards for the loss or impairment of limbs) is not adopted for drivers who operate vehicles exclusively within Washington state. Instead refer to WAC 480-30-226 for intrastate medical waivers.
Part 392 -	Driving of Motor Vehicles	Entire Part 392 is adopted and applies to Washington intrastate operations.
Part 393 -	Parts and Accessories Necessary for Safe Operation	Entire Part 393 is adopted and applies to Washington intrastate operations.
Part 395 -	Hours of Service of Drivers	Entire Part 395 is adopted and applies to Washington intrastate operations.
Part 396 -	Inspection, Repair, and Maintenance	Entire Part 396 is adopted and applies to Washington intrastate operations.
Part 397 -	Transportation of Hazardous Materials, Driving and Parking Rules	Entire Part 397 is adopted and applies to Washington intrastate operations.

(2) Companies must:

(a) Maintain all motor vehicles in a safe and sanitary condition; and

(b) Ensure that vehicles are free of defects likely to result in an accident or breakdown.

(3) No company, its agents, officers, or employees, will allow any article, commodity, or substance to be loaded in or on any motor vehicle used by the company to transport passengers that is dangerous to the lives and safety of passengers.

(4) No company, its agents, officers, or employees will allow any article, commodity, or substance to be loaded in or on any motor vehicle used by the company to transport passengers that is prohibited by the hazardous materials rules in Title 49 CFR from being transported on passenger-carrying vehicles.

(5) All motor vehicles operated under the provisions of this chapter are at all times subject to inspection by the commission or its duly authorized representatives.

(6) The commission will place out-of-service any motor vehicle having safety defects identified in the *North American Uniform Out-Of-Service Criteria*. Information about the *North American Uniform Out-Of-Service Criteria* including the version adopted and where to obtain copies is set out in WAC 480-30-999. A company must not operate any vehicle placed out-of-service until proper repairs have been completed.

(7) The commission will place out-of-service any driver meeting criteria identified in the *North American Uniform Out-Of-Service Criteria*. A company must not allow a driver who has been placed out-of-service to operate a motor vehicle until the conditions causing the driver to be placed out-of-service have been corrected.

NEW SECTION

WAC 480-30-226 Intrastate medical waivers. (1) **Department of licensing intrastate medical waiver.** A passenger transportation company may employ a driver that is not physically qualified to drive a commercial motor vehicle under Title 49 CFR Part 391.41, if the driver:

(a) Only operates motor vehicles intrastate, wholly within the state of Washington; and

(b) Has obtained from the Washington state department of licensing an intrastate medical waiver to drive a commercial motor vehicle.

For the purposes of a department of licensing medical waiver, a commercial motor vehicle means a motor vehicle:

(i) With a gross vehicle weight rating over 26,000 lbs.;
(ii) Transporting sixteen or more passengers, including the driver; or

(iii) With a manufacturer's seating capacity of sixteen or more passengers, including the driver.

(2) **Doctor's statement of intrastate medical waiver.** A passenger transportation company may employ a driver that is not physically qualified to drive a commercial motor vehicle under Title 49 CFR Part 391.41, if the driver:

(a) Holds a valid Washington state driver's license;

(b) Has received a doctor's statement that:

(i) The driver's medical condition is not likely to interfere with the driver's ability to safely operate a commercial motor vehicle; and

(ii) The doctor's opinion is that the driver's condition is likely to remain stable for the two years that the medical certificate is valid.

(c) Operates commercial motor vehicles intrastate wholly within the state of Washington. For the purposes of a doctor's statement of intrastate medical waiver, a commercial motor vehicle means a motor vehicle:

(i) With a gross vehicle weight rating under 26,001 lbs.,

(ii) Transporting fifteen or fewer passengers, including the driver, or

(iii) With a manufacturer's seating capacity of fifteen or fewer passengers, including the driver.

(3) **Driver qualification files.** A passenger transportation company that employs a driver under an intrastate medical waiver must maintain in the driver's qualification file a copy of the doctor's statement of intrastate medical waiver.

NEW SECTION

WAC 480-30-231 Vehicle and driver identification.

(1) A company must ensure that all motor vehicles operated in the transportation of passengers are properly identified.

(a) Each motor vehicle must display the certificate holder's name (or registered trade name) and certificate number on each side of the vehicle. A company with both intrastate and interstate operations may display its U.S. Department of Transportation identification number in addition to, or in place of, its commission-issued certificate number.

(b) Each motor vehicle operated in regular route service with scheduled stops must display a suitable destination sign.

(c) Each motor vehicle operated in transportation of passengers must display on the vehicle a company identification or unit number.

(d) All identifications must be clearly legible, conspicuous, and of a size that is easily readable.

(e) All identifications, except those displayed on leased or substitute vehicles, must be permanent.

(2) An auto transportation company must ensure that all drivers operating motor vehicles in the transportation of passengers are properly identified. Identification may include, but is not limited to, an identification badge or a uniform with a name tag identifying the driver by name or number.

NEW SECTION

WAC 480-30-236 Leasing vehicles. (1) A passenger transportation company operating a leased vehicle must have a written lease agreement with the owner of the vehicle.

(2) It is the company's responsibility to ensure that:

(a) A copy of the lease is carried in each leased vehicle, unless the vehicle's registration names the certificate holder as registered owner or lessee.

(b) A copy of the lease is kept in the company's files during the effective period of the lease and for at least one year after the lease expires;

(c) A copy of the lease is provided to the owner of the leased vehicle;

(d) The company has complete possession, control, and use of the motor vehicle at all times during the period of the lease;

(e) The leased motor vehicle is properly insured as specified in WAC 480-30-191;

(f) The leased vehicle is properly identified as specified in WAC 480-30-231;

(g) The leased vehicle is operated in compliance with all safety laws and rules, including those regarding vehicle inspection, records, and maintenance; and

(h) The terms of the lease are followed.

(3) If a company leases a vehicle with a driver, the company must also ensure that:

(a) The driver of the leased motor vehicle is on the company's payroll during the lease period;

(b) The driver operates in compliance with all driver qualification, safety and hours of service laws and rules;

(c) The driver is subject to the company's alcohol and controlled substance policies; and

(d) The company maintains appropriate files and paperwork on the driver for a period of at least one year following the expiration of the lease.

(4) The company and the owner of the leased vehicle must specify in the lease who is responsible for all expenses relating to the leased motor vehicle. The lease must contain all information shown in the following sample lease form. If a company uses an alternate form, the company must ensure the alternate form contains all information requested on the sample. These requirements do not apply to substitute vehicles or vehicles leased without drivers from a person principally engaged in the business of leasing vehicles.

Sample lease form.

EQUIPMENT LEASE AGREEMENT					
<p>A copy of this lease must be carried in the leased vehicle unless the vehicle's registration names the certificate holder as registered owner or lessee. Copies must also be maintained in the files of both parties for the length of the lease plus one year following the expiration of the lease.</p>					
Name and address of company leasing vehicle (lessee):				Certificate number:	
Name and address of party from whom the vehicle is being leased (lessor):				Certificate number, if any:	
Vehicle make and year:		Vehicle Serial Number:		Vehicle License Number:	
The lease will become effective at _____ (time) on _____ (date), and will continue until _____ (date) unless canceled in writing prior to that date.					
Compensation that will be paid to owner of vehicle (lessor): \$ _____ per _____					
If lease also includes driver, compensation for driver: \$ _____ per _____					
Lessee/Lessor Expense Agreement					
Place an "x" or a checkmark next to each item indication whether the lessee or lessor is responsible for the listed expenses.					
Item	Lessee	Lessor	Item	Lessee	Lessor
Vehicle Licensing Fees			Equipment Rental Taxes		
Toll and Ferry Charges			Fuel and Oil		
Vehicle Loan Payments			Vehicle Maintenance		
Parts & Tires			Major Vehicle Repairs		
Insurance, Comprehensive			Minor Vehicle Repairs		
Insurance, Theft			Other (explain):		
Insurance, Fire			Other (explain):		
Under the terms of this lease, the lessee must:					
<ul style="list-style-type: none"> ▪ have complete possession, control and use of the vehicle at all times during the lease period ▪ be in complete control of all certificate operations ▪ provide bodily injury and property damage liability insurance 		<ul style="list-style-type: none"> ▪ ensure that the driver of the leased vehicle is an employee of the lessee ▪ ensure that the vehicle is properly identified ▪ comply with all safety regulations ▪ bill and collect proper tariff rates 			
The parties signing this lease certify that the information shown above is true and correct, that the provisions of the lease will be enforced by both parties, and that all operations conducted with the leased equipment will be conducted in compliance with applicable laws and rules.					
Lessee Signature/Title _____ date signed _____					
Lessor Signature/Title _____ date signed _____					

PART 6—COMPLIANCENEW SECTION**WAC 480-30-241 Commission compliance policy.** (1)

The commission is authorized to administer and enforce laws and rules relating to passenger transportation companies. The commission may delegate authority to the commission staff to inspect equipment, drivers, records, files, accounts, books, and documents. The commission may also delegate to its staff authority to place vehicles and drivers out-of-service and to arrest without warrant, or issue citations to any person found violating this chapter in the presence of its staff as provided under RCW 81.04.460.

(2) The commission encourages voluntary compliance with statutes, rules, and commission orders.

(3) The commission will enforce statutes, rules, and commission orders through:

(a) A program emphasizing education and technical assistance.

(b) A compliance program including:

(i) Investigation and resolution of complaints;

(ii) Safety compliance reviews of drivers and equipment;

(iii) Economic compliance audits including, but not limited to, rates and billing practices of auto transportation companies;

(iv) Coordinated roadside enforcement; and

(v) Cooperative agreements with other agencies to enable effective enforcement and appropriate use of resources.

(4) Where necessary to ensure compliance with statutes, rules, and commission orders, the commission may pursue:

(a) Administrative actions that the commission believes will best ensure future compliance by the violating company, including, but not limited to, warnings, sanctions, or penalty assessments under the provisions of chapter 81.04 RCW;

(b) Suspension or cancellation of a company's certificate:

(i) When the commission believes education and penalties have not been, or will not be, effective to secure compliance;

(ii) For willful violations of legal requirements; or

(iii) For serious actions including, but not limited to, misrepresentation;

(c) Enforcement action against violators based on information collected by commission staff; or

(d) Proceedings in district and superior court.

NEW SECTION**WAC 480-30-246 Sanctions for operating without a valid certificate.** (1) **Operating without a certificate.**

(a) If a representative of the commission or other law enforcement agency observes a company operating as a passenger transportation company without a certificate from the commission, that company is subject to a gross misdemeanor citation, for which the company must appear in court.

(b) If the commission receives information that a company is operating as a passenger transportation company without a certificate, and a commission representative or

other law enforcement agency has not observed those operations, the commission may:

(i) Issue a citation through the court; or

(ii) Contact the company and provide education and technical assistance concerning applicable regulations. This includes giving the company a copy of the applicable laws, rules, and certificate application forms.

(c) If the company continues to operate without a certificate after commission education and technical assistance is offered, the commission may begin an administrative proceeding to classify the company as a regulated company under RCW 81.04.510. If, as a result of that proceeding, the commission formally classifies the company as an auto transportation company or a charter and excursion carrier operating without the required certificate, the commission will issue a cease and desist order under RCW 81.04.510.

(d) If a company operates in violation of a commission order, the commission may impose penalties and/or take legal action in court.

(2) **Operating while certificate is suspended.** A company that operates after the commission suspends the company's certificate is subject to:

(a) Misdemeanor or gross misdemeanor citations, for which the company must appear in district court;

(b) Monetary penalty assessments or other commission administrative actions; or

(c) Commission proceedings to cancel the company's certificate.

(3) **Operating after certificate is canceled.** A company that continues to operate after the commission cancels the company's certificate is subject to:

(a) Misdemeanor or gross misdemeanor citations, for which the company must appear in district court; and

(b) Enforcement proceedings in superior court.

PART 7—TARIFFS, TIME SCHEDULES, RATES, AND RATE FILINGSNEW SECTION

WAC 480-30-251 Charter and excursion carriers not subject to provisions of Part 7. The rules in Part 7 of this chapter relating to tariffs, time schedules, rates, and rate filings apply only to auto transportation companies. Charter and excursion carriers are not subject to the provisions of this part.

NEW SECTION

WAC 480-30-256 Tariffs and time schedules, federal preemption. (1) The commission interprets the provisions of 49 U.S.C. § 14501 as preempting the requirements of state laws and regulations relating to intrastate fares for the transportation of passengers by an interstate motor carrier of passengers operating over a regular route authorized by the Federal Motor Carrier Safety Administration (FMCSA). Because of this federal preemption, the commission will no longer require the filing of rate tariffs or time schedules for the transportation of passengers in Washington intrastate commerce by interstate motor carriers of passengers, if that

transportation is provided over a regular route authorized by the FMCSA.

(2) Auto transportation companies operating in Washington intrastate commerce on routes not authorized by the FMCSA are subject to the tariff and time schedule rules contained in this chapter.

(3) Auto transportation companies operating over routes authorized by the FMCSA and over routes not authorized by the FMCSA must file tariffs and time schedules for those routes not authorized by the FMCSA.

NEW SECTION

WAC 480-30-261 Tariffs and time schedules, definitions used in. Definitions of general terms and terms specific to driver and equipment safety are contained in WAC 480-30-036 and 480-30-216, respectively. Unless the language or context indicates that a different meaning is intended, the following definitions apply:

"Charge" means a rate assessed by an auto transportation company for providing a service other than the transportation of a passenger(s). For example: The charge for carrying extra baggage on board the bus.

"Checked baggage" means passenger baggage that is accepted for transportation but is not carried in the passenger compartment of the vehicle.

"Fare" or "ticket price" means a rate assessed by an auto transportation company for the transportation of a passenger(s).

"Joint fare" means a rate charged by an auto transportation company for the transportation of a passenger(s) that applies from a point located on one auto transportation company's route to a point located on another auto transportation company's route, made by agreement or arrangement between the companies. A joint fare agreement is also known as a through-ticketing agreement.

"Local fare" means a rate charged by an auto transportation company for the transportation of a passenger(s) between stations within a single company's authority.

"Long and short haul clause" means a clause that prohibits an auto transportation company from charging more for a shorter than for a longer haul over the same route.

"Rate" means an amount in a company's tariff approved by the commission or allowed to become effective by operation of law, for services provided by an auto transportation company. For example: Passenger fares, ticket prices, additional baggage charges.

"Sales commission" means a fee paid to an agent for selling tickets on behalf of an auto transportation company.

"Seasonal fares and seasonal time schedules" means filing of tariffs or time schedules naming different fares, routes, or arrival and/or departure times for different periods of the year. For example: A company may offer more scheduled routes during certain periods than it does in others; or, a company may assess different fares in heavily traveled months than it does during off-peak months.

"Through fare" means a single rate applying from point of origin to point of destination that combines two or more rates in one auto transportation company's tariff or rates from two or more auto transportation companies.

NEW SECTION

WAC 480-30-266 Tariffs and time schedules, general. (1) **Tariffs and time schedules no longer subject to chapter 480-149 WAC.** As of the effective date of these rules, those auto transportation companies that are required to file Washington intrastate tariffs and time schedules are no longer subject to tariff and time schedule provisions of the commission's Tariff Circular No. 6 (chapter 480-149 WAC). Auto transportation companies are instead subject to, and must comply with, the tariff and time schedule requirements of this chapter.

(2) **Additional regulatory requirements.** Auto transportation companies are also subject to additional rules regarding tariff and time schedule filings contained in chapter 480-07 WAC, including, but not limited to:

(a) WAC 480-07-160 Confidential information; and

(b) WAC 480-07-145 Filing documents in adjudicative proceedings.

NEW SECTION

WAC 480-30-271 Tariffs and time schedules, must file before starting service. (1) **Tariffs.** No auto transportation company subject to tariff filing requirements of Part 7 of this chapter will provide service until it files a tariff with the commission and the commission approves that tariff or allows it to become effective by operation of law.

(2) **Time schedules.** No auto transportation company subject to time schedule filing requirements of Part 7 of this chapter will provide service until it files a time schedule with the commission and the commission approves that time schedule or allows it to become effective by operation of law.

NEW SECTION

WAC 480-30-276 Tariffs and time schedules, companies must comply with the provisions of filed tariffs and time schedules. (1) **Tariffs.** No auto transportation company may assess rates that are higher, lower, or different from those contained in the company's filed tariff. Further, no auto transportation company may accept a payment for service provided that is higher, lower, or different from the rates contained in the company's filed tariff.

(2) **Time schedules.** An auto transportation company must provide service along all routes, and to all points, listed on the company's filed time schedule. Further, an auto transportation company must make a good faith effort to operate in compliance with the times of arrival and/or departure shown on the company's filed time schedule.

NEW SECTION

WAC 480-30-281 Tariffs and time schedules, content. (1) **Tariffs.** The tariff filed with the commission by an auto transportation company must show all rates it will impose on its customers, together with rules that govern how those rates will be assessed. The tariff must contain, but is not limited to the following sections:

(a) A title page meeting the requirements of WAC 480-30-341;

(b) A rules section meeting the requirements of WAC 480-30-356;

(c) A fares section meeting the requirements of WAC 480-30-281; and

(d) A map meeting the requirements of WAC 480-30-351 and 480-30-051.

(2) **Time schedules.**

(a) The time schedule filed with the commission by an auto transportation company must be filed as a separate document or as a section of the company's tariff. The filed time schedule must provide sufficient information to allow prospective passengers to make informed decisions regarding their travel arrangements.

(b) The time schedule filed by an auto transportation company that provides scheduled service must contain, but is not limited to:

(i) The times of arrival at, and/or departure from, all termini.

(ii) The times of arrival at, and/or departure from, all intermediate points served.

(iii) The distance between all points shown in the schedule.

(iv) A list of all flag stops at which the company will provide service.

(v) A list of points the company is authorized to serve but is not serving, if any, and the reason.

(c) The time schedule filed by an auto transportation company that provides nonscheduled service must contain, but is not limited to:

(i) Days of the week that the company's service is available.

(ii) Hours of the day that the company's service is available.

Example: A carrier providing door-to-door airporter service by reservation only may state in its time schedule that it offers service between the hours of 6:00 a.m. and 12:00 midnight, seven days a week.

ple, "children, under two years of age" or "active military personnel with military identification."

(4) Fares applying during specific periods must be clearly labeled with definitions of those periods. For example: A company may charge one fare during peak service months, and charge a different fare during off-peak service months.

Illustration of rate page:

NEW SECTION

WAC 480-30-286 Tariffs and time schedules, posting. An auto transportation company must maintain a copy of its filed tariff and its filed time schedule in the company's offices and at each passenger facility. Each vehicle operated must carry a copy of the schedule and fares for each route served by that vehicle. The company must make these documents available to customers for inspection on request during the company's regular business hours.

NEW SECTION

WAC 480-30-291 Tariffs, rates, general. (1) Tariffs must provide adult fares, stated in dollars and cents, per passenger, together with the names of the stations or stopping places to or from which those fares apply, arranged in a simple and systematic manner.

(2) The tariff must clearly state whether fares apply "one way" or "round trip."

(3) Fares applying to specific groups of passengers must clearly define the criteria that define that group. For exam-

John Doe Transportation Co., Inc. C-9999, d/b/a John's Buses Tariff No. 2		2nd Revised Page 18 Cancels 1 st Revised Page 18		
Rate Schedule				
Fares named below are for adults (persons 12 years of age and over) stated in dollars and cents per person for one-way travel.				
	Between			
And	Spokane	Deer Park	Chewelah	Colville
Spokane	--	#\$3.50 @\$4.50	#\$8.50 @\$9.50	#\$10.50 @\$11.50
Deer Park	#\$3.50 @\$4.50	--	#\$5.00 @\$6.00	#\$7.00 @\$8.00
Chewelah	#\$8.50 @\$9.50	#\$5.00 @\$6.00	--	#\$3.50 @\$4.50
Colville	#\$10.50 @\$11.50	#\$7.00 @\$8.00	#\$3.50 @\$4.50	--
# Fares in effect April through December. @ Fares in effect January through March.				
Note 1: Refer to page ___ for children's fares, group fares, extra baggage charges, etc.				
Note 2: Round-trip fares will be 180 percent of the one-way fares.				
Issued by: John Jones, President				
Issue date: July 6, 2002 Effective Date: August 20, 2002				
(For official use only)				

NEW SECTION

WAC 480-30-296 Tariffs and time schedules, rejection. The commission will reject tariff or time schedule filings that:

- (1) Are not accompanied by the required transmittal letter;
- (2) Are not accompanied by all required documentation;
- (3) Do not contain all required information;
- (4) Do not comply with format rules;
- (5) Are not accompanied by required maps;
- (6) Reflect retroactive rate treatment;
- (7) Are not filed as provided in the notice requirements shown in WAC 480-30-301 through 480-30-316; or
- (8) Contain provisions that conflict with state statutes, commission rules, or an auto transportation company's certificated authority.

NEW SECTION

WAC 480-30-301 Tariffs and time schedules, one business-day notice to the commission. A company must provide at least one business-day notice to the commission for the following filings:

- (1) Initial tariff and time schedule filings that accompany applications for certificated authority;
- (2) Tariff and time schedule adoptions filed under the provisions of WAC 480-30-376; and
- (3) Tariff and time schedule filings whose only purpose is to add a new service option or a service level which has not been previously included in the company's tariff.

NEW SECTION

WAC 480-30-306 Tariffs and time schedules, seven calendar day notice to the commission. A company must provide at least seven calendar days' notice to the commis-

sion for filings whose only purpose is to implement decreases in rates.

NEW SECTION

WAC 480-30-311 Tariffs and time schedules, requiring thirty calendar day notice to the commission. A company must provide at least thirty calendar days' notice to the commission for any filing that will result in an increase in rates to customers.

NEW SECTION

WAC 480-30-316 Tariffs and time schedules, customer notice requirements. (1) **Notice.** Each auto transportation company must provide notice to its customers at least thirty days prior to the stated effective date for any proposed tariff change that would increase recurring or prepaid rates or restrict access to services (e.g., rate increase, route reduction, time schedule change).

(2) **Thirty-day notice to public.** At least thirty days prior to the stated effective date, the company must post a notice in a conspicuous place for each affected route or routes. The published notice must remain posted until the commission takes action on the request. The notice must be posted:

- (a) In each vehicle;
- (b) At each passenger facility; and
- (c) On the company's internet web site, if the company maintains an internet web site accessible to the public through which it sells its transportation services and posts its rates or time schedules.

(3) **Content of postings.** The published notice required by this rule must include:

- (a) The date the notice is issued;
- (b) The company's name, address, and telephone number;
- (c) A comparison of current and proposed rates by service, when applicable;
- (d) The requested effective date;
- (e) A description of how customers may contact the company if they have specific questions or need additional information about the proposal;
- (f) A description of how customers may contact the commission to comment or oppose the company's proposal.

(4) **Other customer notice.** The commission may require additional notice to customers other than described in this rule when the commission is holding a public hearing in a contested case, or when a company proposal may have a significant impact on customer rates or access to services or when the commission determines that additional customer education is needed.

NEW SECTION

WAC 480-30-321 Tariffs and time schedules, notice verification and assistance. (1) Within five days of making a filing requiring posting of a customer notice under WAC 480-30-316, but no sooner than the date the filing is submitted to the commission, a company must file a statement with

the commission's records center that the required notice has been posted. The declaration must include:

- (a) Description of where the notice was posted;
- (b) Date the notice was posted; and
- (c) A copy of the customer notice.

(2) A company may request assistance from the commission's consumer affairs section in preparing notice.

NEW SECTION

WAC 480-30-326 Tariffs and time schedules, less than statutory notice handling. (1) The commission may allow auto transportation company tariff or time schedule filings to become effective with less notice than is shown in WAC 480-30-306 and 480-30-311 when there is an emergency or when good cause is shown. This process is known as "less than statutory notice" (LSN) handling.

(2) **LSN application process.** An auto transportation company filing for LSN handling may use an LSN form supplied by the commission, or a letter containing at least the following information:

- (a) Company identification information:
 - (i) Name and registered trade name;
 - (ii) Certificate number;
 - (iii) Mailing address;
 - (iv) Telephone number, e-mail address, and fax number;

and

- (v) The name and telephone number of a person to contact regarding the filing;

- (b) Tariff or time schedule identification information:

- (i) The identifying number and title of the tariff or time schedule being amended;
- (ii) The identifying number and title of the tariff or time schedule item(s) being amended; and
- (iii) The identifying number of the tariff or time schedule page being amended;

(c) A concise description of the provisions being proposed;

(d) A statement of the reason(s) for requesting LSN handling; and

- (e) The effective date requested.

(3) **Dates on pages.** Granting LSN handling is at the discretion of the commission. All tariff or time schedule pages accompanying an application for LSN handling must display the effective date that would apply were the company not requesting LSN handling. If the commission grants the company's request for LSN handling, commission staff will enter the effective date authorized by the commission's order on the tariff or time schedule pages before returning copies to the company.

(4) **Notice requirements.** An auto transportation company requesting LSN handling of a filing must post notice in its offices, passenger facilities, and on all vehicles concurrent with submitting the filing to the commission. The company must file a copy of its public notice with the application for LSN handling.

NEW SECTION

WAC 480-30-331 Tariffs and time schedules, format and size requirements. (1) An auto transportation company must file tariffs and time schedules that:

- (a) Are filed in loose-leaf format;
- (b) Are typed or mechanically printed (not handwritten) using at least ten-point type; and
- (c) Are printed on eight and one-half inch by eleven-inch paper, with margins of at least one-half inch on each side.

(2) Auto transportation companies are encouraged to file their tariffs and time schedules electronically, according to established commission policies and procedures.

NEW SECTION

WAC 480-30-336 Tariffs and time schedules, changes must be identified. Each change in rates, times of arrival and/or departure, routes, schedules, or rules must be clearly identified in filed tariffs and time schedules by using one of the following methods:

(1) By printing the appropriate code symbol immediately to the left of the material being changed. Approved symbols are:

Code Symbol	Used to indicate:
(R) or ▼	Reductions in rates
(A) or ▲	Increases in rates
(C) or ◆	Changes resulting in neither increases nor decreases; also changes in arrival and/or departure times
(N)	New rates, routes, service points, services, or rules
***	Material previously shown has been deleted

(2) By printing a notice in distinctive type at the location defined in the following table:

If the changes affect:	The notation must state:	The notation must be printed:
All rates on a tariff page or on a tariff supplement page.	All rates on this page are _____ (Company would state in the blank the nature of the changes, using one of following terms: <ul style="list-style-type: none"> • Increases; • Decreases; or • Wording changes resulting in neither increases nor decreases.) 	In the top margin of the page.
All rates in a tariff.	All rates in this tariff are _____ (Company would state in the blank the nature of the changes, using one of following terms: <ul style="list-style-type: none"> • Increases; • Decreases; or • Wording changes resulting in neither increases nor decreases.) 	In the top margin of the title page.
All times of arrival and/or departure.	All times of arrival and/or departure on this page are changed.	In the upper corner of the page.

NEW SECTION

WAC 480-30-341 Tariffs and time schedules, title pages. (1) **Tariff.** The title page of every auto transportation tariff filed with the commission must show at least the following:

- (a) The certificate name of the auto transportation company, its certificate number, and all trade names filed with the commission to which the tariff applies.
- (b) An identifying tariff number.

(c) The number of any tariff being canceled by the tariff to which the title page applies (canceling a tariff also cancels all supplements applying to that tariff).

(d) The types of services covered by the tariff. For example: "rates for passenger service" or "rates and time schedule for passenger service."

(e) A clear description of the territory and routes to which the tariff applies;

(f) The date the tariff is issued and the date it becomes effective;

(g) The name, title, telephone number, fax number (if any), e-mail address (if any), and mailing address of the person who files the tariff; and

(h) A box that is at least three-fourths of one inch in height, spans from margin to margin, and is labeled "for official use only."

(2) **Time schedule.** If the time schedule is filed as a separate document, not part of the auto transportation company's

tariff, the title page of a time schedule must include the same information as is required in subsection (1)(a) through (h) of this section. If the time schedule is filed as a section or part of an auto transportation company's tariff, no separate title page is required.

Illustration of a sample tariff title page:

Original Title Page
<p>Tariff No. 2</p> <p>Cancel</p> <p>Tariff No. 1</p> <p>of</p> <p>John Doe Bus Company, Inc. d/b/a John's Buses</p> <p>Certificate No. 1999</p> <p>Naming rates for passenger service In the following described territory:</p> <p>Between Spokane and Olympia, with intermediate stops at Moses Lake, Ellensburg, North Bend, Seattle, and Tacoma and with flag stops at other points on Interstate 90 and Interstate 5</p> <p><u>Issued by:</u> John Jones, President 1234 East Easy Street Any City, Washington Phone: (555) 555-5555 Fax: (555) 555-5556</p>
For official use only

NEW SECTION

WAC 480-30-346 Tariffs and time schedules, page format. (1) **Tariff.** All pages in an auto transportation company's tariff, except the title page, must include the following:

- (a) A page header that includes:
 - (i) The identifying number of the tariff and canceled number, if any;
 - (ii) A page number and canceled number, if any;
 - (iii) A revision number and canceled number, if any;

- (iv) The name and certificate number of the company filing the tariff; and
- (v) Any applicable registered trade name.
- (b) A page footer that includes:
 - (i) The name of the person filing the tariff;
 - (ii) The date the page is issued;

- (iii) The date the page becomes effective; and
- (iv) A box that is at least three-fourths of an inch in height, spanning from margin to margin, that is labeled "for official use only."

Illustration of a sample tariff page:

John Doe Bus Company, Inc. C-9999, d/b/a John's Buses Tariff No. 2	2nd Revised Page 18 Cancels 1st Revised Page 18
Issued by: John Jones, President Issue date: _____ Effective Date: _____	
(For official use only)	

- (2) **Time schedule.** An auto transportation company's filed time schedule must:
- (a) Be numbered consecutively in the upper right-hand corner, beginning with number one, and must show the number of the time schedule canceled by it, if any. See sample time schedule.
 - (b) Show the company's identifying information, including but not limited to:

- (i) The company's official name, as shown on the company's certificate;
- (ii) The company's registered trade name(s), if any; and
- (iii) The company's certificate number.
- (c) Show all termini and points served.
- (d) Show the routes served, including the exact location of each regular stop, each flag stop, and any point to which service is provided.

(e) Show points the company is authorized to serve but is not serving, if any, and the reason.

(f) Show the time of arrival and/or departure from all termini and scheduled stops.

(g) Show the periods in which specific provisions of the time schedule apply. For example, if a company services some routes only on certain days of the week, in certain sea-

sons, or in certain months, that information must be clearly stated on the time schedule.

(h) At the bottom of the page, there must be a box that is at least three-fourths of an inch in height, spans from margin to margin and is labeled "for official use only."

Illustrations of sample time schedules:

Time Schedule No. 2 Cancels Time Schedule No. 1				
<p>TIME SCHEDULE NO. 2 Canceling Time Schedule No. 1 of Walter A. Keys, d/b/a Wenatchee-Cashmere Stage Line PASSENGER SERVICE – both scheduled and door-to-door Between Wenatchee, Washington and Cashmere, Washington With scheduled stops as shown below.</p> <p>Door-to-door service provided, by reservation only, to and from points within 10 miles of the stops named below.</p>				
Routes from Wenatchee To Cashmere	Daily, excluding Sunday -	@Sunday Only-	Daily, excluding Sunday	@Sunday Only -
Wenatchee – Bill’s Hotel, 4 th and Main	11:00a	11:30a	5:30p	6:00p
Wenatchee River Bridge – 7/11 Market	11:15a	11:45a	5:45p	6:15p
Olds Corner – Park and Ride Lot	11:30a	12:00p	6:00p	6:30p
Sunnyslope – 76 Station	12:00p	12:15p	6:15p	6:45p
Monitor – Post Office	12:15p	12:30p	6:30p	7:00p
Cashmere	12:30p	12:45p	6:45p	7:15p
Routes from Cashmere to Wenatchee	Daily, excluding Sunday	@Sunday Only	Daily, excluding Sunday	@Sunday Only
Cashmere	12:40p	12:50p	6:50p	7:20p
Monitor – Post Office	12:55p	1:10p	7:05p	7:35p
Sunnyslope – 76 Station	1:10p	1:25p	7:20p	7:50p
Olds Corner – Park and Ride Lot	1:25p	1:40p	7:35p	8:10p
Wenatchee River Bridge – 7/11 Market	1:40p	1:55p	7:50p	8:35p
Wenatchee – Bill’s Hotel, 4 th and Main	2:00p	2:10p	8:10p	8:50p
<p>@NOTE: All trips noted above are run during the months of April through November. During the months of December through March, none of the "Sunday Only" trips will be run.</p> <p>Issued by: Walter A. Keys, Owner and Manager, 123 So. Wenatchee Ave., Wenatchee, Washington</p> <p>Issued: June 8, 2005 Effective: July 6, 2005</p>				
"For Official Use Only"				

		Time Schedule No. 2 Cancels Time Schedule No. 1
<p>TIME SCHEDULE NO. 2 Canceling Time Schedule No. 1 of Walter A. Keys, d/b/a Wenatchee-Cashmere Stage Line PASSENGER SERVICE Wenatchee, Washington and Spokane International Airport With stops at: Rock Island, George, and Moses Lake</p>		
Routes from Wenatchee to Spokane:		
	During the months of March through October:	Vehicles leave Wenatchee every two hours between the hours of 5:00 a.m. and 9:00 p.m.
	During the months of November through February:	Vehicles leave Wenatchee every two hours between the hours of 8:00 a.m. and 6:00 p.m.
Routes from Spokane and Wenatchee:		
	During the months of March through October:	Vehicles leave Spokane every two hours between the hours of 9:00 a.m. and 9:00 p.m.
	During the months of November through February:	Vehicles leave Spokane every two hours between the hours of 10:00 a.m. and 6:00 p.m.
<p>Issued by: Walter A. Keys, Owner and Manager, 123 So. Wenatchee Ave., Wenatchee, Washington</p> <p>Issued: June 8, 2005 Effective: July 6, 2005</p>		
"For Official Use Only"		

Bill's Airporter Service, C-9999 Tariff No. 8		4 th Revised Page 16 Cancels 3 rd Revised Page 16	
Bill's Airporter Service Providing Passenger Service Between Points in Kittitas County and SeaTac Airport Door-to-Door Service By Reservation Only			
Door-to-door service is unscheduled. The actual time the vehicle will arrive to pick up passengers depends on the number of passengers making reservations, and the locations that those passengers request pickup. Bill's will develop actual routes to balance passenger convenience and company efficiency. Reservations must be made on at least 24 hours advance notice.		Service is available: June 1 through September 30 Monday through Saturday Between 6 am and 12 midnight Sunday service available Between 8 am and 9 pm October 1 through May 31 Monday through Sunday Between 8 am and 9 pm	
Note: The company is not responsible for delays caused by weather, accidents, or other circumstances beyond its control.			
Issued by: Bill Jones, President, Bills Airporter			
Issue Date: July 16, 2000		Effective Date: August 20, 2000	
(For Official Use Only)			

NEW SECTION

WAC 480-30-351 Tariffs and time schedules, maps with tariffs. An auto transportation company must file a map with its tariff that clearly identifies the company's entire certificated authority area. If an auto transportation company divides its authorized certificate area into service territories, areas, or zones the company must also file a map showing each of the tariff service territory divisions. The maps must meet the specifications in WAC 480-30-051.

NEW SECTION

WAC 480-30-356 Tariffs and time schedules, tariff rules. (1) Tariff rules must be stated in clear language and explicit terms, setting forth all standards and policies that will govern how the auto transportation company assesses rates to its customers.

(2) All provisions contained in an auto transportation company's tariff must be clearly labeled as to the type of service to which they apply. Example: Scheduled, door-to-door, by reservation only.

(3) Auto transportation company tariffs must contain rules addressing at least the following subjects:

(a) Children's fares. Rules must clearly indicate the ages for which children's fares apply.

(b) Baggage. Rules must state the amount of baggage that may be transported free of additional charge, baggage liability (see WAC 480-30-476), and overweight or excess baggage charges. Baggage rules must also state company policies regarding carry-on items such as skis and bicycles.

(c) Transportation of animals. Rules must state that service animals, such as dogs traveling with sight or hearing impaired passengers, will be transported free of charge if they lie at the feet of their master and do not occupy passenger seats.

(d) Refunds for unused and partially used tickets.

(i) Rules must state, "Subject to the exceptions of (d)(ii) and (iii) of this subsection unused tickets will be redeemed at the purchase price and unused portions of round-trip or commutation tickets will be redeemed by charging the regular fare or fares for the portion or portions used, and refunding the balance of the purchase price."

(ii) A company offering "door-to-door" service or "by reservation only" service may assess an administrative fee in those instances where a cost is incurred because the customer requested a change. If a company assesses an administrative fee, the tariff must include rules that clearly identify the fee and under what circumstances the fee will be assessed. Example of an administrative fee rule: A ten-dollar administrative fee will be assessed for customer requested changes made less than twenty-four hours in advance of the scheduled departure time. Administrative fees are deducted from ticket refunds.

(iii) A customer who has made a reservation but fails to cancel, reschedule, or appear at the designated pick-up point by the scheduled departure time is not eligible for a refund unless the failure was caused by an airline delay or cancellation.

(e) Long haul/short haul provisions. Rules must state that no customer will be required to pay more for transportation to an intermediate point along a route than is charged for a longer trip over that same route.

(f) Areas or zones to which rates apply. When fares to or from a named point include stops beyond the regular terminal, or where no regular terminal is maintained, the tariff must define the zone within which fares to and from a named point apply. For example: "Rates apply within five road miles of points named."

(g) Commuter fares, if offered by the company.

(h) Whether alternate means of transport will be provided by the company when it is unable to provide transportation at the time and place specified in the reservation that the company has accepted for that passenger.

(i) Holidays observed by the company.

NEW SECTION

WAC 480-30-361 Tariffs and time schedules, changes. Companies may change filed tariffs or time schedules by one of two methods:

(1) Issuing revised pages to the tariff or time schedule. A revised page must have the same page number as the page it cancels. For example: "1st revised page 1" cancels "Original page 1."

(2) Issuing a complete new tariff or time schedule. Each of the pages in a new tariff or time schedule must be identified as an original page. For example: "Original Title Page," "Original Page 1," "Original Page 2," and so on.

(3) Tariff and time schedule changes must be filed with the commission under the provisions of WAC 480-30-381.

NEW SECTION

WAC 480-30-366 Tariffs and time schedules, supplements. (1) Auto transportation companies may issue supplements

to filed tariffs or time schedules to reflect short-term situations.

(2) Auto transportation companies may not issue tariff supplements to make general rate increases.

(3) Supplements are subject to all applicable rules and procedures including transmittal letters, notice to customers and the commission, and proper format.

(4) Supplements to a tariff or time schedule must be numbered consecutively. If a newly filed supplement cancels a previous supplement(s), that information must be clearly shown on the new supplement. For example: "Supplement 6 cancels Supplements 4 and 5."

NEW SECTION

WAC 480-30-371 Tariffs and time schedules, supplements or new filings required. (1) **Discontinuance of service.** When the commission grants permission for an auto transportation company to discontinue service, the company must file supplements to cancel tariffs and time schedules on file with the commission. If permission is granted to discontinue service to only a portion of routes operated, the company must file supplements reflecting the discontinued routes or new tariffs and time schedules reflecting the routes that are not discontinued.

(2) **Lease or sale of authority.** An auto transportation company leasing or selling a portion of its certificated authority to another company must file supplements reflecting the transferred routes or new tariffs and time schedules reflecting the routes retained.

NEW SECTION

WAC 480-30-376 Tariffs and time schedules, filings after name change or change in ownership. (1) When an auto transportation company changes the name on its certificate, the company must file a tariff and time schedule in its new name or must adopt the existing filed tariff and time schedule.

(2) When an auto transportation company leases, transfers, or acquires a portion of the certificated authority of another company, it must file a new tariff and time schedule reflecting the same rates and routes as the prior company.

(3) When an auto transportation company obtains operating control of another company, it must file a new tariff and time schedule at the same rate levels and on the same time schedule as the prior company or adopt the existing filed tariff and time schedule of the prior company.

(4) An auto transportation company filing a tariff to comply with subsections (1), (2), and (3) of this section cannot raise rates in that filing. A separate rate increase filing must be made.

(5) To adopt existing filed tariffs or time schedules, the auto transportation company must file with the commission an adoption form.

(a) Adoption forms are available from the commission on request.

(b) Companies may use alternate forms as long as those forms are substantively equal to that shown in the example below.

Tariff No. _____
and/or
Time Schedule No. _____

(Name and registered trade name of new company)

Adopts all tariffs, Supplements to the tariff, and Time Schedules
filed with the Washington Utilities and Transportation Commission by:

(Insert here name of prior company)

before the date of its (new company) acquired possession of that (prior) company
or a portion of that (prior) company's authority.

Notice issued by:

Name _____

Title _____

Telephone _____

E-mail _____

Fax # _____

Date filed _____

NEW SECTION

WAC 480-30-381 Tariffs and time schedules, filing procedures. (1) **Method of filing.** An auto transportation company may submit tariff and time schedule filings to the commission in person, electronically, by mail, or by fax. If an auto transportation company files by fax, the company must mail a hard copy on the same day as the fax transmis-

sion. Companies are encouraged to file their tariffs and time schedules electronically, according to the commission's policies and procedures.

(2) **Transmittal letter.** An auto transportation company must file a transmittal letter with each tariff or time schedule filing submitted to the commission.

(a) The transmittal letter must include at least the following:

(i) The name, certificate number, and trade names of the company;

(ii) A description of each proposed change in the tariff or time schedule and a brief statement of the reason for each change;

(iii) If the filing requires customer notice under the provisions of WAC 480-30-316, the transmittal may also include the information required by WAC 480-30-321; and

(iv) A contact person's name, mailing address, telephone number, fax number (if any), and e-mail address (if any).

(b) Transmittal letters accompanying rate filings must also include the following:

(i) The percentage amount that rates will change if they become effective;

(ii) The amount revenue is expected to change if the proposed rates become effective.

(c) A company wanting confirmation that a hard copy tariff or time schedule filing was received must include two copies of the transmittal letter and a self-addressed, stamped envelope. The commission will stamp one copy of the letter and return it to the company as acknowledgement that the filing was received.

(3) **Revised pages.** Pages of the company's tariff affected by the tariff filing must include the appropriate reference marks indicating changes as provided in WAC 480-30-336.

(4) **Additional documents required.**

(a) **Filing due to governmental, or other entity, action.** If the filing results from action of another entity or governmental body, the company must file documentation of that action. For example: Notices of increased fees to use depots or stations.

(b) **Tariff or time schedule filed by an agent.** If the tariff or time schedule filing is made by a person other than an owner, partner, or corporate officer, the company must include with its filing a statement granting authority for that person to file on behalf of the company. The statement must be signed by an owner, partner, or corporate officer, and may be incorporated into the transmittal letter accompanying the filing.

(c) **Rate increase filings.** Rate increase filings must include work papers that support the requested increase. Work papers supporting a general rate increase as defined in WAC 480-30-421 must include the additional documentation described in WAC 480-30-426.

NEW SECTION

WAC 480-30-386 Tariffs and time schedules, approval. Receipt by the commission of a tariff or time schedule filing does not mean that the provisions of the filing are approved. Companies may not implement provisions contained in filings until the commission approves the filing or until the commission allows the filed provisions to become effective by operation of law.

NEW SECTION

WAC 480-30-391 Tariffs and time schedules, ticket agent agreements must be filed and approved. (1) An auto transportation company may enter into contracts or agree-

ments with a second party for the sale of tickets or fares on behalf of the company, provided the form of such contracts or agreements has been previously approved by the commission.

(2) The contract or agreement form submitted to the commission for approval must contain, but is not limited to, the following:

(a) The name and certificate number of the auto transportation company;

(b) Spaces in which to record identifying information about the person entering into the contract or agreement with the company. This information must include at least the person's:

(i) Name;

(ii) Business address;

(iii) Business telephone number;

(iv) Business fax number;

(v) Business e-mail address;

(c) Spaces in which will be recorded the date on which the contract or agreement becomes valid and the date on which the contract or agreement will expire;

(d) A clear description of the services that will be provided by the second party on behalf of the company;

(e) A statement of the percentage of revenue or the set dollar amount that the company will pay the second party for performing those services; and

(f) A statement as to how and when payment will be made to the company for tickets, less commission.

NEW SECTION

WAC 480-30-396 Tariffs and time schedules, free and reduced rates. (1) No auto transportation company will charge, demand, collect, or receive a greater, lesser, or different compensation for transportation of persons, than the rates that are contained in that company's effective tariff filed with the commission. Further, no auto transportation may extend to any person any privilege that is not uniformly extended to all persons under the same circumstances.

(2) An auto transportation company wishing to provide service at free or reduced rates must first publish those free or reduced rates in its filed tariff.

(3) If an auto transportation company chooses to provide service at free or reduced rates, the company must publish in its tariff:

(a) A detailed description of the customer class and criteria to qualify;

(b) The service provided;

(c) The expiration date, if any; and

(d) The applicable rate(s), amount of reduction (such as, twenty percent), or if free, "\$0.00" or "no charge."

(4) The auto transportation company must record the number of passengers transported under each free or reduced rate published in its tariff.

NEW SECTION

WAC 480-30-401 Tariffs and time schedules, substitute page filings. (1) An auto transportation company may file substitute tariff or time schedule pages within a pending tariff filing if:

(a) There is no material change to the terms and conditions of service contained in the pending tariff page. This restriction does not apply to changes made to address commission concerns with the filing;

(b) The change does not increase the rates or fares contained in the pending tariff page; or

(c) The change makes typographical corrections to the pending tariff page.

(2) The filing of substitute tariff pages must include a transmittal letter as set forth in WAC 480-30-381. The substitute filing must include the notation "Do Not Redocket."

(3) The commission may reject any substitute tariff or time schedule pages when rejection is in the public interest.

NEW SECTION

WAC 480-30-406 Tariffs and time schedules, withdrawing a filing. When withdrawing a tariff or time schedule filing, an auto transportation company must submit a letter that includes the following:

(1) The name and address of the auto transportation company;

(2) Docket number of the filing being withdrawn;

(3) The name of the company's contact person;

(4) An explanation of why the company is requesting the withdrawal; and

(5) A statement certifying that the submitting person has authority to withdraw the filing on behalf of the auto transportation company.

NEW SECTION

WAC 480-30-411 Tariffs and time schedules, suspension by the commission. (1) The commission may, on receiving a complaint or protest, or on its own motion, suspend tariff rates, tariff charges, tariff rules, or tariff time schedules as provided in RCW 81.04.130.

(2) The commission will not take action to suspend a tariff or time schedule, or any part of a tariff or time schedule, based on a complaint or protest unless the complaint or protest complies with the commission's rules of practice and procedure as set out in chapter 480-07 WAC.

NEW SECTION

WAC 480-30-416 Tariffs, joint tariffs and through-ticketing arrangements. (1) Auto transportation companies may file joint tariffs providing through-ticket arrangements. Such tariffs must list all companies participating in the tariff, must show all fares, rates and charges applicable between points on its line and all affected points on the line of the connecting carrier or carriers, and all rules that govern how those rates will be assessed to customers.

(2) Joint tariffs and amendments or supplements to joint tariffs must be issued and filed under the rules in Part 5 of this chapter.

(3) Companies must provide information to customers, at the time a ticket is purchased, or a reservation is made, as to the identities of all companies that will be providing transportation, the locations of any transfer points, and any policies that differ between the companies.

NEW SECTION

WAC 480-30-421 Tariffs, general rate increase filings. (1) A general rate increase filing is a tariff change that would:

(a) Increase the company's gross annual revenue from activities regulated by the commission by three percent or more.

(b) Restructure tariffs so that the gross revenue generated by any customer class would increase by three percent or more.

(2) The following tariff changes are not considered general rate increase filings even though the request may meet one or more criteria identified above:

(a) Filings for collection of per-customer pass-through surcharges and taxes imposed by the jurisdictional local government based on the current year customer count either as a specified dollar amount or percentage fee amount.

(b) Filings by existing auto transportation companies for the implementation of new transportation services.

(3) The commission may require that any filing to increase rates for any customer class, or to restructure rates, is subject to the additional requirements of WAC 480-30-426.

NEW SECTION

WAC 480-30-426 Tariffs, general rate increase filings, work papers. (1) General rate increase filings must include work papers supporting the proposed tariff changes based on a test year which is the most recent or appropriate consecutive twelve-month period for which financial data are available. Work papers must include, but are not limited to, the following:

(a) A detailed pro forma income statement by account including restating and pro forma adjustments, and all supporting calculations and documentation for each adjustment. See sample pro forma income statement below.

(i) Restating adjustments modify historic operating results to more properly reflect a "normal, representative" twelve-month test period and give recognition to those areas where the company's accounting methodology may differ from accepted regulatory practice. Restating adjustments fall into three categories:

(A) Reclassification - reclassification moves dollars from one account to another with no effect on the final net income.

(B) Accounting adjustments - accounting adjustments are necessary if the income statement does not properly apply basic accounting principles, such as an out-of-period expense posted in the test year, or to correct an error or oversight.

(C) Ratemaking - ratemaking adjustments modify the records of the company to reflect proper ratemaking theory, such as removing expenses that were incurred by the company but are not generally allowed to be passed on to ratepayers, or converting from accelerated depreciation to straight line depreciation.

(ii) Pro forma adjustments give effect to all known and measurable changes in revenues and expenses not offset by other factors that have or will soon occur as if they had been in effect for the full twelve months of the test year. Examples

include changes in tax rates, revenue impact of the tariff changes sought to be changed in the filing. Pro forma adjustments give effect to changes in expense or revenue levels, not the gallons of fuel used, passengers transported, or labor hours worked, etc.

(b) A total passenger count or representative sample of all tickets sold and fares charged during the test year, including all routes, zones, and types of service, and breakdowns between one-way and round trip fares, adults, children, commuters, etc. Revenues of the passenger count/tickets sold analysis must be reconciled to the revenues of the chosen test period. The passenger count/tickets sold analysis forms the basis of the revenue impact of the filing called for in WAC 480-30-381 (2)(b)(ii). See sample passenger count below.

(c) A current depreciation schedule separately listing all assets used by the company during the test period including the date the asset was placed into service, cost, salvage value,

service life, and straight-line depreciation expense and accumulated depreciation at the beginning and at the end of the test period.

(d) A balance sheet as of the last day of the test period chosen.

(e) If nonregulated operations represent more than ten percent of total company test period revenue, then the starting point of the pro forma income statement must be total company operations, supplemented with a detailed separation of all total company revenues and expenses between regulated and nonregulated operations.

(f) Backup information concerning every transaction between the regulated company and any affiliated or subsidiary entity describing the services or transactions that occurred, the costs assessed and the basis of the charge, and the relationship to the regulated company.

Sample - pro forma income statement

XYZ Bus Company								
ProForma Income Statement								
12 months ended December 31, 2004								
	Per Books	Restating Adjustments	Per Books Restated		ProForma Present	ProForma Present Level	May 1 ProForma Proposed	ProForma Proposed Level
	(a)	(b)	(c)		(d)	(e)	(f)	(f)
Revenues								
Passenger	530,000		530,000	A	22,159	552,159	G	583,911
Charter	51,410		51,410	A	2,149	53,559	G	56,639
Fuel Surcharge	6,292		6,292	C	(6,292)	-		-
Baggage, etc.	3,400		3,400	A	341	3,741		3,741
Total Revenues	591,102		591,102		18,357	609,459		644,292
Expenses								
Maintenance	56,377	1 (10,000)	46,377			46,377		46,377
Driver Payroll	153,687	2 5,000	158,687	B	7,300	165,986		165,986
Fuel	44,924	4 (4,351)	40,573	C	1,623	42,196		42,196
Insurance	36,944		36,944	F	1,105	38,049		38,049
Payroll Taxes	33,811	2 383	34,194	B		823		35,017
Employee Benefits	13,004		13,004	E	1,951	14,955		14,955
Taxes & Fees	44,877		44,877	A	349	45,226	G	45,829
Licenses	591		591			591	603	591
Depreciation	53,199	3 (5,000)	48,199			48,199		48,199
Advertising	12,000		12,000			12,000		12,000
Office & Admin Expense	9,000		9,000	B	270	9,270		9,270
Office & Admin Wages	106,398		106,398	B	3,192	109,590		109,590
Selling Expenses	9,112		9,112			9,112		9,112
Utilities	6,500		6,500			6,500		6,500
Rents	20,000		20,000	D	5,000	25,000		25,000
Total Expenses	600,424	(13,968)	586,456		21,612	608,068	603	608,672
Net Operating Income	(9,322)		4,646			1,391		35,620
Operating Ratio %	101.58%		99.21%			99.77%		94.47%

1. To capitalize extraordinary repair	A. To proforma revenue for June 1, 2004 rate increase
2. To adjust payroll to accrual	B. To proforma payroll to February 1, 2005 pay increase
3. To adjust to straight line depreciation	C. To proforma fuel to most recent 12 month average; remove fuel surcharge revenue
4. To remove \$.184 fuel tax	D. To adjust to current rent levels
	E. To increase health insurance to current premium per employee
	F. To adjust insurance to March 1, 2005 premium
	G. To proforma the May 1, 2005, proposed rate increase

Sample - passenger count

XYZ Bus Company Sample Passenger Count -Tickets Sold 12 months ended December 31, 2004							
	Passengers	Fares Before June 2004	Extension	Fares Effective June 2004 Increase %	Extension	Proposed New Fares \$2.00 one way	Extension
Route A - One Way							
Adults	2,000	25.00	50,000	27.50	55,000	29.50	59,000
Children	800	12.50	10,000	13.75	11,000	14.75	11,800
Commute	700	20.00	14,000	22.00	15,400	23.50	16,450
Subtotal			74,000	10%	81,400		87,250
Route A - Round Trip							
Adults	4,900	40.00	196,000	44.00	215,600	46.00	225,400
Children	1,000	20.00	20,000	22.00	22,000	23.00	23,000
Commute	2,000	32.00	64,000	35.25	70,500	36.90	73,800
Subtotal			280,000		308,100		322,200
Route B - One Way							
Adults	1,600	18.00	28,800	19.80	31,680	21.80	34,880
Children	439	9.00	3,951	9.90	4,346	10.90	4,785
Commute	100	14.50	1,450	15.95	1,595	17.50	1,750
Group	200	9.00	1,800	9.90	1,980	10.90	2,180
Subtotal			36,001		39,601		43,595
Route B - Round Trip							
Adults	3,200	28.80	92,160	31.70	101,440	33.70	107,840
Children	200	14.40	2,880	15.85	3,170	16.85	3,370
Commute	400	23.00	9,200	25.30	10,120	27.00	10,800
Group	560	14.40	8,064	15.85	8,876	16.85	9,436
Subtotal			112,304		123,606		131,446
Grand Total			502,305		552,707		584,491
Pro forma - Revenue Increase Percent					10.03%		5.75%

NEW SECTION

WAC 480-30-431 Tariffs, general rate increase filings and fuel cost update. An auto transportation company filing a rate change based on changes in general operating expenses must update the test period fuel costs using actual fuel costs for the most recent twelve-month period.

NEW SECTION

WAC 480-30-436 Tariffs, special or promotional fare tariff filings. (1) The commission encourages auto transportation companies to explore innovative rates and rate structures including special or promotional fares intended to:

- (a) Retain or increase the number of passengers using the company's services;
- (b) Provide the public with flexible transportation options; and
- (c) Make more efficient and effective use of the company's equipment and other resources.

(2) When an auto transportation company files a special or promotional fare, the filing must at a minimum include the following:

(a) A statement supporting the use of the proposed special or promotional fare; and

(b) Information detailing the potential effect on revenue of the proposed special or promotional fare, as well as the effect on revenue of the current fare.

PART 8—CONSUMER RULES

NEW SECTION

WAC 480-30-441 Charter and excursion carriers not subject to provisions of Part 8. The consumer rules apply only to auto transportation companies. Charter and excursion carriers are not subject to the provisions of Part 8 of this chapter.

NEW SECTION

WAC 480-30-446 Availability of information. (1) **Company information.** A company that provides auto transportation company service must have a:

- (a) Toll-free or local business telephone number for customers located within the company's authorized service area; and

(b) Mailing address.

(2) **Messaging.** A company must have voice mail, an answering machine, or answering service to receive calls when company personnel are unavailable.

(3) **Responding to customer inquiries.**

(a) A company must respond to all nonwritten messages within twenty-four hours excluding weekends and holidays, as defined in the company's tariff.

(b) A company must acknowledge and respond to a customer's written inquiry within two weeks of receipt.

(4) **Information that must be available.** A company must make the following items available to customers for inspection upon request at no charge during the company's regular business hours:

(a) The commission's passenger transportation company rules in chapter 480-30 WAC;

(b) The company's current tariff and time schedule;

(c) The company's current certificate; and

(d) Any current, proposed, or most recently canceled tariff page that relates to the customer's service.

NEW SECTION

WAC 480-30-451 Refusal of service. (1) A company may refuse service to a person when:

(a) In the company's judgment, providing the service would be hazardous, unsafe, or dangerous to persons or property;

(b) In the company's judgment, driveways or roads are improperly constructed or maintained, do not have adequate turn arounds, or have other unsafe conditions;

(c) The customer has an outstanding amount due to the company;

(d) The customer refuses to allow company personnel, drivers, agents, or representatives access to baggage or other materials prior to it being loaded in or on the vehicle;

(e) The customer appears to be under the influence of drugs or alcohol; or

(f) The customer attempts to bring onboard the vehicle materials that would be detrimental to the safety or comfort of other passengers.

(2) A company may refuse service to a person under other conditions that would be detrimental to the safety and comfort of passengers when those conditions are contained in the company's filed tariff and time schedule.

NEW SECTION

WAC 480-30-456 Fair use of customer information.

(1) Customer information includes the customer's name, address, and telephone number.

(2) Companies must use customer information only for:

(a) Providing and billing for services the customer requests;

(b) Marketing new services or options to its customers; or

(c) Providing information to its customers.

(3) Any sale or release of customer information without the written permission of the customer is prohibited. The only exceptions to this rule are:

(a) Release of information to the commission to investigate or resolve complaints filed with the commission by a customer;

(b) Sharing nonpayment information with agencies the company engages to act as the company's agent in pursuing collection of past due accounts.

(4) Companies are allowed to collect and release customer information in aggregate form if the aggregated information does not allow any specific customer to be identified.

NEW SECTION

WAC 480-30-461 Service or rate complaints. (1) Company responsibility.

(a) **Complaints from customer.** When a company receives a service or rate complaint from a customer it must:

(i) Acknowledge the complaint within twenty-four hours;

(ii) Investigate promptly;

(iii) Report the results of the investigation to the complainant;

(iv) Take corrective action, if warranted, as soon as appropriate under the circumstances;

(v) Inform the complainant that the decision may be appealed to a higher level representative of the company, if any;

(vi) Advise that if the complainant is still dissatisfied after speaking with the higher level representative, the commission is available to review the complaint; and

(vii) Provide the complainant with the commission's address and toll-free telephone number.

(b) **Complaint referred by commission.** When commission staff refers an informal complaint to the company, the company must:

(i) Investigate and report the results to commission staff within two business days (commission staff may grant an extension of time for responding to the complaint if requested and warranted);

(ii) Keep commission staff informed of progress toward the resolution on a weekly basis; and

(iii) Inform the commission staff of the final result.

(c) **Complaint record.** A company must keep a record of all complaints for at least three years. The record of complaints must be readily available for commission review. The record must contain:

(i) The complainant's name and address;

(ii) Date and nature of the complaint;

(iii) Action taken;

(iv) The final result; and

(v) All official documents regarding the complaint.

(2) **Complaints to commission.** Customers may file with the commission either:

(a) An informal complaint against the company under the provisions of WAC 480-07-910; or

(b) A formal complaint against the company under the provisions of WAC 480-07-370.

NEW SECTION

WAC 480-30-466 Credits or refunds as compensation in consumer complaints or problems. Companies may

offer customers a credit or refund as compensation for service quality problems, billing problems, or other problems experienced by the customer.

NEW SECTION

WAC 480-30-471 Ticketing requirements. (1) An auto transportation company must provide its customers with tickets, receipts, or other alternate informational documents that include, but are not limited to, the following information:

- (a) The name of the company;
- (b) The service, trip, or route on which the ticket applies;
- (c) The date or dates on which ticket is valid;
- (d) Information about the company's policy for refunds;
- (e) A list of items that are prohibited from being brought onboard the vehicle or being packed in checked baggage;
- (f) Notice that baggage may be inspected and the consequences of failing to allow access to baggage for such inspection;
- (g) Information related to baggage liability, the ability to declare higher value, and the charges for such declaration;
- (h) The company's toll-free or local business telephone number.

(2) An auto transportation company that maintains an internet web site accessible to the public using generally available browser software may offer tickets or receipts to its customers on request and satisfy the additional information requirements of this rule by:

- (a) Posting the required information to its internet web site;
- (b) Directing customers to its web site; and
- (c) Providing customers with a description of how to contact the company if they have specific questions or need additional information.

NEW SECTION

WAC 480-30-476 Baggage liability and claims for loss or damage. (1) **Baggage liability.** An auto transportation company must include provisions in its filed tariff relating to its liability for loss or damage to baggage checked by the passenger.

- (a) The minimum amount of liability must be:
 - (i) At least two hundred fifty dollars per adult fare; and
 - (ii) At least one hundred dollars per child's fare.
- (b) The company's tariff must also contain provisions allowing passengers to declare a value in excess of two hundred fifty dollars, by paying an additional charge, and must allow the passenger to recover the increased amount. The passenger's declared amount may not exceed the actual value of the baggage and its contents.
- (c) Company tariff provisions may limit the maximum value for which the company will be liable. This maximum value may not be less than one thousand dollars per bag or item checked.
- (d) Companies do not have to offer excess value coverage on articles of extraordinary value including, but not limited to:
 - (i) Negotiable instruments;
 - (ii) Papers;
 - (iii) Money;

- (iv) Manuscripts;
- (v) Irreplaceable publications;
- (vi) Documents;
- (vii) Jewelry and watches.

(2) **Delivery of checked baggage.** The company must make all checked baggage available to the passenger within a reasonable time of arrival at destination. If not, the company will deliver the baggage to the passenger's local address at the company's expense.

(3) **Claims.** Auto transportation companies must make claim forms available to their passengers upon request at each of the company's offices, passenger facilities, and from the driver of each vehicle operated. The forms must be prepared in duplicate. The company will retain one copy. The second copy will be given to the passenger filing the claim.

(a) Checked baggage that the company cannot locate within one hour of arrival at destination will be designated as lost. The company must notify the passenger at that time and furnish the passenger with a claim form.

(b) The company must give a claim form to any passenger declaring lost or damaged baggage.

(c) The company must resolve claims for baggage loss or damage within sixty days of receipt with a firm offer of settlement or with a written explanation of denial of the claim.

(4) **Loss or damage to carry-on items.** The company shall not be held responsible for loss or damage to baggage carried onboard the vehicle unless it can be shown that the company was in some way negligent. Each company shall have a written policy detailing the manner in which items, articles, or baggage left onboard a company's vehicles will be handled and the way in which the company will make efforts to return the articles to their rightful owners.

PART 9—INTERSTATE OPERATIONS

NEW SECTION

WAC 480-30-900 General requirements for interstate operations. (1) **General requirements:** No passenger transportation company may operate any motor vehicle or combination of motor vehicles over the public highways of this state in interstate commerce unless the company has:

- (a) Obtained the appropriate operating authority from the Federal Motor Carrier Safety Administration (FMCSA) if operating as a registered carrier;
- (b) Obtained valid insurance as required by FMCSA;
- (c) Registered:
 - (i) With a base state as required by 49 CFR Part 1023, if operating as a registered carrier; or
 - (ii) With the commission if operating as a registered exempt carrier; and
- (d) Paid the annual Washington state registration fee for each vehicle.

(2) **Applicable laws and rules:**

(a) When conducting interstate operations, registered and registered exempt carriers and the motor vehicles they operate must comply with the laws and rules that apply to interstate operations.

(b) When conducting Washington intrastate operations, registered and registered exempt carriers and the motor vehi-

cles they operate must comply with the laws and rules that apply to intrastate operations.

NEW SECTION

WAC 480-30-910 Registered carriers. (1) **Single state registration system.** Washington participates in the base state insurance registration program established in 49 U.S.C. § 11506 and 49 CFR Part 1023. To register as a registered carrier in interstate commerce within the state of Washington, you must register with a base state, pay the appropriate fee for any motor vehicles operated within Washington state, and show proof of insurance.

(2) **Passenger carriers based outside of Washington state.** Any passenger carrier whose base state, as defined in federal regulation, is a state other than the state of Washington, must register with that state and carry a legible receipt in each motor vehicle operated within the state of Washington showing base state registration, payment of the appropriate per vehicle fee, and proof of insurance.

(3) **Washington-based passenger carriers.** Any passenger carrier whose base state, as defined in federal regulation, is Washington state, must register for interstate operations as follows:

(a) Between August 1 and November 30 of each year, each Washington-based interstate passenger carrier must apply to the commission to register for the following year, on forms provided by the commission.

(b) The registering passenger carrier must state the number of motor vehicles to be operated in each participating state, provide other required information, such as proof of insurance, and submit the registration fee established by that state for each motor vehicle.

(c) Within thirty days after receiving the registration fee and application, the commission will provide to the carrier a receipt or receipts showing, at a minimum, the carrier's name and address, its USDOT permit number, and the names of the states for which it is registered.

(d) The passenger carrier must place a receipt or an authorized copy in each motor vehicle for which it has paid the required fee.

(e) Any Washington-based passenger carrier that begins interstate operations in a state for which it has not registered may register for that state at any time, stating the number of motor vehicles to be operated in each state and submitting the required information and registration fee for each motor vehicle. The commission will provide a new receipt, if the passenger carrier has not previously registered, or supplemental receipt, if it has registered, showing the states for which the motor carrier has registered.

NEW SECTION

WAC 480-30-920 Registered exempt carriers. (1) Any passenger carrier operating under the exemptions of the Federal Motor Carrier Act, with no authority issued by the USDOT or its successor agency, may not operate over the public highways of the state of Washington unless it registers with the commission between August 1 and November 30 of each year, or at any time after November 30 when it begins

interstate exempt operations, or when it will operate additional motor vehicles within the state.

(2) To register with the commission as a registered exempt carrier, a passenger transportation company must:

(a) Complete a registration application on a form provided by the commission;

(b) Identify the number of motor vehicles that the company will operate within the state;

(c) Pay the registration fee for each motor vehicle; and

(d) Provide proof of insurance.

NEW SECTION

WAC 480-30-930 Registration fee and receipts. (1) **Registration fee.** The annual registration fee for registered and registered exempt interstate passenger transportation companies operating vehicles over the public highways of Washington state is:

(a) \$10 For each motor vehicle operated by a passenger transportation company providing interstate charter or excursion service.

(b) \$0 For each motor vehicle operated by a passenger transportation company providing interstate regular route service.

(2) **Registration receipts.**

(a) A legible receipt showing registration with a base state or the commission as a registered or registered exempt carrier must be present in each motor vehicle and the receipt is subject to inspection at all times by law enforcement agents and commission representatives. No person or firm may use a registration receipt issued by the commission other than the registered or registered exempt carrier to whom it was issued.

(b) All receipts issued for a calendar year expire on December 31 of that year.

NEW SECTION

WAC 480-30-940 Insurance requirements for interstate operations. Registered and registered exempt carriers conducting interstate operations must provide evidence of insurance in the amount required by the USDOT or its successor agency written by a company authorized to write insurance in any state.

PART 10—ADOPTION BY REFERENCE

AMENDATORY SECTION (Amending WSR 05-21-022, filed 10/10/05, effective 11/10/05)

WAC 480-30-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **North American Standard Out-of-Service Criteria (OOSC)** is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, 2005.

(b) This publication is referenced in WAC ((~~480-30-097 (Equipment—Inspection—Ordered for repairs)~~ and WAC ~~480-30-100 (Operation of motor vehicles)~~)) 480-30-121 (Certificates, applications, charter and excursion) and WAC 480-30-221 (Vehicle and driver safety requirements).

(c) The North American Out-of-Service Criteria is a copyrighted document. Copies are available from CVSA in Washington, D.C.

(2) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, 2004.

(b) This publication is referenced in WAC ((~~480-30-095 (Equipment—Safety) and WAC 480-30-100 (Operation of motor vehicles)~~)) 480-30-221 (Vehicle and driver safety requirements) and WAC 480-30-226 (Intrastate medical waivers).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 480-30-010	Definitions.
WAC 480-30-020	Licenses, and rules and regulations.
WAC 480-30-030	Certificates—Auto transportation companies.
WAC 480-30-032	Notice of application; protests; contemporaneous applications.
WAC 480-30-040	Express.
WAC 480-30-045	Auto transportation company C.O.D. shipments tariff requirements—Bond required—Handling of shipments.
WAC 480-30-050	Tariff, naming rates and fares.
WAC 480-30-060	Schedule of time and route.
WAC 480-30-070	Liability and property damage insurance or surety bond.
WAC 480-30-080	Self insurance.
WAC 480-30-090	Equipment of motor vehicles.
WAC 480-30-095	Equipment—Safety.
WAC 480-30-097	Equipment—Inspection—Ordered for repairs.
WAC 480-30-100	Operation of motor vehicles.

WAC 480-30-105	Depot and terminal facilities.
WAC 480-30-110	Regulatory fees.
WAC 480-30-120	Uniform system of accounts and annual reports.
WAC 480-30-130	Rules and regulations—General application.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 480-40-010	Definitions.
WAC 480-40-020	Licenses.
WAC 480-40-030	Certificates.
WAC 480-40-040	Liability and property damage insurance.
WAC 480-40-050	Self insurance.
WAC 480-40-060	Equipment of motor vehicles.
WAC 480-40-065	Equipment—Inspection—Ordered for repairs.
WAC 480-40-070	Operation of motor vehicles.
WAC 480-40-075	Equipment—Safety.
WAC 480-40-100	Out-of-service criteria.
WAC 480-40-110	Registered carriers.
WAC 480-40-120	Registration of interstate authority.
WAC 480-40-130	Regulatory fees—Receipt—Intrastate passenger charter carriers and excursion service carriers.
WAC 480-40-999	Adoption by reference.

WSR 06-14-051 PERMANENT RULES UTILITIES AND TRANSPORTATION COMMISSION

[Docket No. UT-053021, General Order No. R-534—Filed June 28, 2006, 10:17 a.m., effective July 29, 2006]

In the matter of amending WAC 480-120-399 and adopting WAC 480-123-020 through 480-123-080, and 480-123-999, relating to designation and certification of eligible telecommunications carriers (ETCs).

I STATUTORY OR OTHER AUTHORITY: The Washington utilities and transportation commission takes action under Notice No. WSR 06-08-056, filed with the code reviser on March 31, 2006. The commission brings this proceeding pursuant to RCW 80.01.040, 80.04.160, 80.36.600, and 80.36.610.

2 STATEMENT OF COMPLIANCE: This proceeding complies with the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 DATE OF ADOPTION: The commission adopts this rule on the date this order is entered.

4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE: RCW 34.05.325(6) requires the commission to prepare and provide to commenters a concise explanatory statement about an adopted rule. The statement must identify the commission's reasons for adopting the rule, a description of the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), a summary of the comments received regarding the proposed rule changes, and the commission's responses to the comments reflecting the commission's consideration of them.

5 In this docket, to avoid unnecessary duplication, the commission designates the discussion in this order, including appendices, as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda preceding the filing of the CR-102 proposal and the adoption hearing. Together, the documents provide a complete by concise explanation of the agency actions and its reasons for taking those actions.

6 REFERENCE TO AFFECTED RULES: This rule amends or adopts the following sections of the Washington Administrative Code:

Amend	WAC 480-120-399	Access charge and universal service reporting.
Adopt	WAC 480-123-020	Definitions.
Adopt	WAC 480-123-030	Contents of petition for eligible telecommunications carriers.
Adopt	WAC 480-123-040	Approval of petitions for eligible telecommunications carriers.
Adopt	WAC 480-123-050	Revocation of eligible telecommunications carrier designation.
Adopt	WAC 480-123-060	Annual certification of eligible telecommunications carriers.
Adopt	WAC 480-123-070	Annual certifications and reports.
Adopt	WAC 480-123-080	Annual plan for universal service support expenditures.
Adopt	WAC 480-123-999	Adoption by reference.

7 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER: The commission filed a preproposal statement of inquiry (CR-101) on May 4, 2005, at WSR 05-10-100. The statement advised interested persons that the commission was considering entering a rule making to consider whether to adopt rules concerning commission designa-

tion of eligible telecommunications carriers (ETCs) pursuant to 47 U.S.C. § 214(e) and RCW 80.36.610, and annual certification concerning the use of federal universal support funds pursuant to 47 C.F.R. §§ 54.313 and .314 and WAC 480-120-311.¹

8 ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL STATEMENT: The commission also informed persons of the inquiry into this matter by providing notice of the subject and the CR-101 to all persons on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3). The commission gave notice to all local exchange companies, to the commission's list of persons interested in telecommunications and other agency rule makings, to the commission's list of telecommunication attorneys, and posted all information related to this inquiry on the commission's web site.

9 NOTICE OF PROPOSED RULE MAKING: The commission filed a notice of proposed rule making (CR-102) on March 31, 2006, at WSR 06-08-056. By notice published at WSR 06-08-056, the commission scheduled this matter for oral comment and adoption at 1:30 p.m., Thursday, May 18, 2006, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice provided interested persons an opportunity to submit written comments to the commission.

10 COMMENTERS (WRITTEN COMMENTS): The commission received written comments on the proposed rules from New Cingular Wireless PCS, LLC, Bellingham Cellular Partnership, Bremerton Cellular Telephone Company, Hood River Cellular Telephone Company, and Olympia Cellular Telephone Company (collectively Cingular), Public Counsel, Rural Cellular Corporation-United States Cellular Corporation (RCC-USCC), United Telephone Company of the Northwest (United), Washington Independent Telephone Association (WITA), and Verizon Northwest Inc. (Verizon). Summaries of written comments and commission responses are contained in Appendix A, shown below, and made part of, this order.

11 RULE-MAKING HEARING: The commission considered the proposed rules for adoption at a rule-making hearing on Thursday, May 18, 2006, before Chairman Mark H. Sidran, Commissioner Patrick J. Oshie, and Commissioner Philip B. Jones, as previously noticed at WSR 06-08-056. The commission received oral comments from Cingular, Public Counsel, RCC-USCC, and Verizon. The oral comments tracked very closely the written comments previously provided to the commission. The commission's responses are contained in Appendix A.

12 SUGGESTIONS FOR CHANGE REJECTED/ACCEPTED: Filed comments and oral comments suggested changes to the proposed rules. Each of those suggested changes and the commission's reason for rejecting or accepting the suggested changes are included in Appendix A.

13 COMMISSION ACTION: After considering all of the information regarding this proposal, the commission finds and concludes that it should amend and adopt the rules as proposed in the CR-102 at WSR 06-08-056 with the changes described below.

14 CHANGES FROM PROPOSAL: The commission adopts the proposal with the following changes from the text noticed at WSR 06-08-056:

WAC 480-123-020 Definitions. The definition of "Service outage" is revised by removing the last sentence in the proposed definition that is unnecessary because the standard for reporting is addressed in WAC 480-123-070(2). The change does not impact the reporting requirements in WAC 480-123-070(2).

In the definition of "Substantive," the word "specific" is removed as a modifier to "benefits" because some benefits will be general in nature. The change will improve the ability of the commission to evaluate all the benefits of the use of federal support so that the commission can reach conclusions for certification. Two other changes in the last sentence remove a redundancy from the definition.

WAC 480-123-030 Contents of petition for eligible telecommunications carriers. Subsection (1)(e) is revised to reflect more accurately federal and state law requirements for advertisement of all applicable telephone assistance programs.

Subsection (1)(f) - The revision is made so that subsection (1)(f) is consistent with subsection (1)(d).

WAC 480-123-050 Revocation of eligible telecommunications carrier designation. The revision corrects a citation to a federal statute by adding the subsection number.

WAC 480-123-060 Annual certification of eligible telecommunications carriers. Redundant phrases are removed from subsection (1).

WAC 480-123-070 Annual certifications and reports. Subsection (1)(a) is revised to include the title of a particular federal form used by telephone companies as an example of one method of complying with the obligation to provide substantive information.

Subsection (4) is revised to clarify an ambiguity concerning what information the commission wants to receive insofar as complaints are concerned.

Subsection (7) is modified to be consistent with WAC 480-123-030 (1)(e).

WAC 480-123-999 Adoption by reference. The revision corrects an internal reference to WAC 480-123-020.

15 STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE: After reviewing the entire record, the commission determines that WAC 480-120-399 should be amended and WAC 480-123-020, 480-123-030, 480-123-040, 480-123-050, 480-123-060, 480-123-070, 480-123-080, and 480-123-999 should be adopted to read as set forth in Appendix B, as rules of the Washington utilities and transportation commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

APPENDIX A

General Order R-534

Appendix A includes summaries of comments on the proposed rules and responses of the commission to those comments.

Comment 1: WAC 480-123-020

WITA - The definition of "service outage" in WAC 480-123-020 contains an exception for planned service interruptions of less than five minutes between the hours of 12:00 midnight and 5:00 a.m. This implies that a planned outage of more than five minutes must be reported as a "service outage." As a practical matter, it may take more than five minutes to do a network cut over.

Cingular - Proposed Rules defines "service outage" to exclude a planned outage with a duration of less than five minutes... Yet, the Proposed 070(2) requires an ETC to report "information on *every* local service outage thirty minutes or longer in duration experienced by the ETC"... the two sections appear to be inconsistent as no reporting is required for any outage lasting less than thirty minutes.

Response - Cingular identifies an inconsistency that makes the last sentence of this definition unnecessary. Deleting this sentence does not impact reporting requirements established in WAC 480-123-070(2), and addresses WITA's comment as well.

Comment 2: WAC 480-123-020

WITA - WITA suggests that the definition of "substantive" be amended to delete the word "specific." In many instances, only general benefits can be described.

Response - WITA is correct that some expenditures will have only general benefits, and the Commission has made the change WITA suggests. Overall, a significant purpose of these rules is to permit an evaluation by the Commission of the use of federal support so that that the Commission can reach conclusions for certification. That purpose remains even after the change in this definition. Benefits to customers must still be described as required under WAC 480-123-070 (1)(b) and 080(2). When benefits are general, nothing specific can be said; however, some expenditures result in specific benefits and both the expenditure and its benefit(s) should be described. For example, installation of a DSL-capable switch to replace a non-DSL capable switch provides a specific benefit, even if it is a benefit that may be enjoyed by rate payers generally. Replacement of copper cable with fiber optic cable in one part of the ETCs network is another example of a specific investment with specific benefits, even though the benefit is shared by many customers. Such an investment and benefit should be described.

The two additional changes to this definition are clarifications that do not alter the effect of the proposed rule.

Comment 3: WAC 480-123-030 (1)(e)

Public Counsel - Public Counsel is concerned that the reference to the "Lifeline" program only and no other telephone assistance programs, in subsection (e) of this draft rule, is unduly narrow. For example, there is no mention of the Link-Up program, Tribal programs (Tribal Lifeline and Tribal Link-Up), or the Washington Telephone Assistance Program (WTAP). In Washington, the federal Lifeline discount is offered through WTAP, and thus WTAP is essentially the Lifeline program in our state. All ETCs in the state, including wireless ETCs, must offer WTAP, pursuant to WAC 480-122-020. Public Counsel recommends that this subsection be clarified to refer to all assistance programs, including WTAP and federal assistance programs.

Response - ETCs are required to advertise the availability of all applicable federal telephone assistance discounts. 47 C.F.R. 54.400-417. While the proposed rule does not exclude any obligations of ETCs simply by stating only one example of the advertising obligations (Lifeline), the Commission has modified this rule to remove the possibility that it would be misread as limiting the obligation to only one program.

Comment 4: WAC 480-123-030 (1)(f)

WITA - Wireless petitioners are asked to provide a map of the proposed service areas with "shading to indicate where the carrier provides commercial mobile radio service signals." WITA comments that the standard contained in Subsection (1)(f) is vague. WITA suggests that the standard would be more definite if it read as follows: "shading to indicate where the carrier provides commercial mobile radio service signals sufficient to provide reliable voice services." As an alternative, WITA suggests that the rule could incorporate a signal strength criterion. For example, it is fairly well agreed within the wireless industry that a signal strength of -87 dBm will provide sufficient reliability for voice-grade service, although there will still be a number of dropped calls. A more reliable standard is -79 dBm. Thus the rule could read: "shading to indicate where the carrier provides commercial mobile radio service signals of at least -87 dBm (-79 dBm)."

Response - The modifications the Commission has made to the proposed rule are consistent with subsection (d) of this section that requires "a substantive plan of the investments to be made with initial federal support during the first two years in which support is received..." Without this change a petitioner could erroneously conclude that it should not place on the required map the locations of planned cell sites as part of the petition.

In response to WITA's suggestion the Commission's modification to the proposed rule requires electronic maps that show where wireless ETCs provide, and plan to provide, a signal. Proposed rule 480-123-080(3) requires wireless ETCs to up-date maps. The combination of the proposed rules will result in the UTC receiving maps that demonstrate changes in signal coverage sufficient to determine if a wireless ETC's network is expanding or contracting. We decline to require the more detailed information suggested by WITA. We have the authority to seek more detail if needed to evaluate the reports and certifications made under these rules.

Comment 5: WAC 480-120-030 (1)(g)

Cingular - The Commission applies rigid requirements to ETCs when the FCC specifically rejected this requirement in its recent decision...the prescriptive battery back-up requirements for cell sites and switch generators are unnecessary and unwarranted. Instead of adopting the requirements in the Proposed Rule, if the Commission believes that a rule is necessary in this area it should mirror the federal requirements. (Cingular made an essentially similar statement at the adoption hearing.)

Response - The substantive requirements were developed from comments made by wireless carriers in this rule-making proceeding. The requirements are minimal and reflect industry practices as described to the Commission during a rulemaking workshop.

At the adoption hearing, in response to a question, Cingular acknowledged that Cingular has not developed a company standard for the minimum number of hours of battery back up. We decline to make the change recommended by Cingular because we are concerned that on this topic a "reasonable" standard could result in no standard at all.

Comment 6: WAC 480-123-030 (1)(h)

Cingular - The Proposed Rules require wireless ETCs to demonstrate that they will comply with the CTIA Consumer Code for Wireless Service ("CTIA Code"). (480-123-030 (1)(h)) Proposed Rule 480-123-999(2) adopts the version of the CTIA Code in effect on September 9, 2003. The CTIA Code was intended to be a living document that can be revised and updated as necessary to address changing consumer issues and needs. To ensure that the Proposed Rules reflect the current version of the CTIA Code, it is recommended that subsection (2) of this proposed rule be deleted or the words "as may be amended" be added to this section.

Public Counsel - Petitioners should be required to provide service quality data as part of the petition. Carriers, including wireless carriers, gather data on the quality of their service and they should provide it with their petition.

Response - Washington's jurisprudence concerning non-delegation prevents the Commission from adopting a standard that can be changed by the action of a private organization. The Commission can change, through rulemaking, the version of the CTIA code to which ETCs must adhere. The Commission makes changes every year to rules that refer to international and organizational standards, such as ISO and IEEE standards. For the foregoing reasons, we decline to make the change requested by Cingular.

In response to Public Counsel, service quality is not an issue for designation; it is an issue for certification. Upon designation, ETCs must provide service consistent with the Commission's rules or the CTIA code.

Comment 7: WAC 480-123-040

WITA - There is no substance to describe what constitutes the public interest. In the FCC's "ETC Designation Order," the FCC described in detail what it meant by the public interest for ETC designation purposes...WITA suggests..."...and the designation is in the public interest as required by 47 U.S.C. §214 (e)(2)."

It is also important to keep in mind that the FCC found that a public interest test applies both for designation as an ETC in non-rural incumbent areas and in rural incumbent areas. However, the FCC determined that the application of the public interest test is more rigorous in rural incumbent service areas. It is not clear how draft WAC 480-123-040 treats this distinction.

Response - The Commission determines the public interest when a petition is before the Commission at an open meeting. The public interest often depends on facts and circumstances associated with each petition. Because the federal statute does not define the public interest, and because the Federal Communications Commission's (FCC) interpretation of the public interest is not binding on state commissions, we prefer to approach public interest determinations on a case-by-case basis. Accordingly, we decline to make any change to the rule.

Comment 8: WAC 480-123-050

United - Appreciates change from draft rule; but believes the rule should be more specific about what behavior could result in revocation, suspension, or modification.

WITA - ...the only standards that can be interpreted as a requirement in Section 214(e) are found in Subsection (e)(1). Thus, WITA suggests the language read as follows: "...if it determines that the ETC has failed to comply with the requirements of 47 U.S.C. §214 (e)(1)...."

The ...Commission may revoke, suspend or modify a designation based upon a determination that the ETC has failed to comply with "any other condition imposed by the Commission." There are significant due process problems inherent in such a vague standard. Is this reference meant to incorporate conditions imposed by the Commission in the order granting designation? Is it meant to refer to the standards contained in Sections .070 and .080? As written, the rule is subject to challenge as vague and unenforceable.

Response - The Commission accepts WITA's suggestion and adds "(1)" to the citation of the statute because it is only in subsection (1) that requirements are placed on ETCs.

We disagree that the standard is vague. The "any other condition imposed by the Commission" language encompasses the requirements of these rules and the designation order. The requirements of these rules are not vague, nor will conditions imposed by the designation order be vague. We decline to make additional changes to the section.

Comment 9: WAC 480-123-060(1)

WITA - It is WITA's understanding ...the Commission acknowledges that it has no role in the certification process for IAS and ICLS.

WITA also notes that there is at least facially a conflict between this section and proposed WAC 480-123-050 as to where the burden of proof lies. WAC 480-123-060(2) seems to place the burden of proof on the ETC. However, for purposes of modification or revocation of an ETC designation, the burden of proof seems to lie with the Commission under WAC 480-123-050. Perhaps the best way to reconcile these two sections is that under WAC 480-123-060(2), the ETC has the obligation to present the *prima facie* case, but the burden of proof for any action by the Commission under WAC 480-123-050 lies with the Commission.

Response - The Commission does not certify the use of IAS or ICLS to the FCC.

We decline to make changes to the rules related to this topic because burden of proof does not need to be addressed in these rules.

Comment 10: WAC 480-123-070

RCC & USCC - The Commission will be in a much better position to ensure that all ETCs will be held accountable for their use of funds by requiring all ETCs to report on all types of support... carefully crafted rules that strike an appropriate balance between the need for accountability versus creating undue and unnecessary burdens on ETCs.

Verizon - The admittedly unnecessary requirements for IAS-only carriers conflict with at least two of the directives of Executive Order 97-02. "Need. Is the rule necessary to comply with the statutes that authorize it?" EO 97-02, § I(1). On its face, a rule that is designed for an admittedly unneeded

certification cannot be "necessary to comply" with the federal USF program involved in this docket. Second, the rule conflicts with an additional directive, that of "coordination." Washington regulatory agencies are directed to "consult with and coordinate with other jurisdictions that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency." EO 97-02, § I(5). Here, any certification by the Washington Commission concerning IAS usage is inherently duplicative, because carriers must make appropriate certifications directly to the FCC and FCC regulations have no requirement for the state to make such a certification.

Moreover, the Commission lacks the fundamental authority to adopt rules for unnecessary certifications. This Commission has the authority to "take actions" as "permitted or contemplated for a state commission" under the federal Telecommunications Act. RCW 80.36.610(1). However, that statute is emphatic on the limitation placed on the Commission: The "Commission's authority to either establish a new state program or adopt new rules to preserve and advance universal service under Section 254 of the federal act is limited to actions expressly authorized by RCW 80.36.-600." *Id.* RCW 80.36.600 does not impliedly, much less "expressly," authorize this Commission to require reports to support a certification that is not necessary under federal law. While the Commission might find information it proposes to have reported interesting, Washington law is explicit: this Commission has only that authority granted to it by the legislature, and mere interest unaccompanied by regulatory duty does not supplement that authority. *WITA v. TRACER*, 75 Wn. App. 356, 880 P.2d 50 (1994).

WITA - WITA expresses its review of the rule as follows: the only certification requirements that must be submitted under penalty of perjury relate to proposed WAC 480-123-070 (5), (6) and (7), but not to the reports required in other subsections of the rule. If WITA is incorrect in its interpretation, WITA requests clarification as to specific other certification requirements.

Response - Verizon misquotes RCW 80.36.610(1) with an effect that is misleading. The statute refers to "section 254(f)," not to all of 47 U.S.C. § 254. The FCC order that resulted in these proposed rules does not reference in its body or its notes 254(f). The Commission is taking an action "contemplated" for a state commission and the statutory limitation cited by Verizon does not apply.

Non-rural incumbents, rural incumbents, and wireless carriers are all eligible to receive a substantial amount of federal support for which the FCC requires ETC rather than state commission certification. The majority of federal support does not require state certification, although state commissions are responsible for *designating* ETCs with regard to all types of universal service support. Consistent with the comments of RCC-USCC, we require reporting from all ETCs on all federal support so that we will have a complete understanding of the use of federal support in Washington. We consider it necessary to collect this information in order to fulfill our oversight role. In its Report and Order In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 05-06 (March 17, 2005), the FCC stated at paragraph 71 that it "urge[d] state commissions to

apply the reporting requirements to all ETCs, not just competitive ETCs. In addition, state commissions may require the submission of any other information that they believe is necessary to ensure that ETCs are operating in accordance with applicable state and federal requirements."

Executive Order (EO) 97-02 does not preclude adoption of the rule. Section I of EO 97-02 contains a list of criteria that were to be used to review rules in existence when the order was adopted. In addition to "need," the rule is also concerned with effectiveness and efficiency, clarity, intent and statutory authority, coordination, cost, and fairness. EO-97-02 does not prohibit adoption of a rule even if the rule is at odds with one or another factor. The FCC encouraged states to adopt rules in coordination with the FCC to promote the efficient and effective use of universal service funds. The proposed rule is consistent with the FCC's intent, with state law and complies with EO 97-02.

The proposed rule does not duplicate the FCC's certification requirement for IAS. The FCC's certification requirement does not require recipients of IAS to submit information about the effective use of federal support or the planned use of federal support. The FCC requires only that a recipient of IAS certify that the funds are used for the purposes intended under law. In contrast, the proposed rule requires information the Commission can use to determine how federal support is used to benefit customers in Washington.

RCW 80.36.600 does not limit our authority granted in 80.36.610(1). The legislature enacted 80.36.600 in 1998 in anticipation of receiving a proposed plan from the Commission for the collection and distribution of state universal service support with the purpose of "minimizing implicit sources of support and maximizing explicit sources of support that are specific, sufficient, competitively neutral, and technologically neutral to support basic telecommunications services for customers of telecommunications companies in high-cost locations." The adopted rules do not establish a state universal service fund and RCW 80.36.600 does not apply.

WITA is correct that certifications and reports are submitted differently.

Comment 11: WAC 48-123-070(1)

Verizon - The IAS that Verizon receives is simply interstate revenue...used by Verizon to cover its operational costs in Washington... That is all the company could report to the Commission, and the Commission is already aware of this fact; it does not need a new report.

WITA - The draft rule appears to require incumbent ETCs to provide a description of the investment and expenses from the immediately prior year

A substantial amount of work by a rural telephone company goes into preparation of what is known as the NECA-1 Report. For 2006, this report is due July 31, 2006. It will contain a report of investment made and expenses incurred in 2005. Rather than having to prepare two separate reports (one to NECA and one to the Commission), WITA proposes that the second paragraph of WAC 480-123-070 (1)(a) be amended to add the following language at the end of the paragraph: "Provided, however, submission of the ETC's NECA-1 Report shall be deemed to satisfy the requirement of this paragraph."

Response - IAS is not interstate revenue; it is explicit support from the high-cost fund of the federal universal service fund. Because it is universal service support, Verizon must spend \$17 million in IAS for the purposes stated in 47 U.S.C. 254 and certify to the FCC that it spends the funds only for the intended purposes.

Verizon's statement of benefits for customers may include maintenance of service quality and network capacity, and may not include plant investment. If, however, the funds should be spent in a different manner in the future, the required report will permit the Commission to know how the funds are spent, as anticipated by the FCC.

We have modified subsection (1)(a) of this section to acknowledge the NECA-1 report provides a substantive description of investment and expenses. We also note that subsection (1)(b) of this section requires a substantive description of benefits to consumers.

Comment 12: WAC 480-123-070(2)

Cingular - The reporting requirements in the Proposed Rules are now inconsistent with the requirements in both the FCC's *ETC Order* and the FCC's *Outage Reporting Order* as they do not set forth any threshold for the number of people affected and conceivably require a report on any degradation in service that lasts over thirty (30) minutes in duration even if it were to affect only one customer..... The Commission may obtain access to all carriers' outage reports filed with the FCC through the federal Department of Homeland Security

Response - This rule uses the list of factors found in ¶ 69 of the FCC's ETC order. Wireless carriers have stated elsewhere that with mobile customers one can never know how many customers are affected. For that reason, the proposed rule does not include a minimum threshold of customers affected before a report is required; thirty minutes is a threshold that will reduce the number of outages that must be reported. Cingular is correct that currently outage reports may be obtained from other agencies. However, the purpose of requiring an annual report is to permit easy year-to-year comparisons. Reporting by companies to the Commission ensures we receive the information in a preferred format without depending upon whether the information is available from the FCC or other agencies.

Comment 13: WAC 480-123-070(4)

Public Counsel - strongly supports subsection (4); however... limiting the scope of the inquiry only to complaints related to "local service" in an industry with many complex service options and varied descriptions of these options could too easily exclude complaints that are nevertheless related to local service or the Commission's service quality standards. For example, a customer may have DSL billing complaint, and...is passed around from person to person ...the complaint may be categorized as a DSL complaint, even though it is a dual complaint that also addresses customer service. We therefore recommend that all of the complaint information from the FCC and the Attorney General's office be provided to the Commission, and the Commission can then determine what data is relevant.

WITA - In WAC 480-123-070(4), WITA suggests that the word "known" be inserted in front of the word "com-

plaints" in the third line of the rule. This is offered for clarification purposes.

Response - Public Counsel's comment makes apparent that the addition of the clause "concerning local service related issues" to the language originally suggested during the CR-101 inquiry phase created an unintended ambiguity concerning what information the Commission wants to receive insofar as complaints are concerned. By deleting that clause, we remove the ambiguity and clarify that the report must reflect all complaints by the ETC's customers made to the FCC or the AG.

The clarification suggested by WITA is unnecessary; the proposed rule's requirements are clear in this respect and consist of all complaints made by customers to the FCC or the Attorney General.

Comment 14: WAC 480-123-070(5)

Verizon - This draft rule would require certification of substantial compliance with the service quality standards set forth in draft WAC 480-123-030... Verizon already reports monthly to the Commission under those rules, so there would be no point in having it re-submit an additional annual certification.

WITA - It is WITA's interpretation that the certification requirement under WAC 480-123-070(5) for wireline carriers relates to WAC 480-120-401, 402, 411, 412, 414, 438, 439, 440 and 450. Again, if WITA's interpretation is incorrect, then further discussion is warranted.

Response - Verizon confuses reporting with certification. The certification is a guarantee of compliance. The required certification is one sentence long. Verizon's monthly reporting will satisfy the certification requirement if each of twelve monthly reports is accompanied by a certification. In the alternative, Verizon may comply through one annual certification.

WITA provides a short list of service quality rules from WAC 480-120. The requirement in the proposed rule is to comply with the "applicable consumer protection and service quality standards" of Chapter 480-120 WAC, not only the list provided in the comments on the rule.

Comment 15: WAC 480-123-070(6)

Verizon - This draft rule would require Verizon to "certify" that it has the ability to function in emergencies ...As the Commission staff is well aware, Verizon switching facilities are equipped with extensive back-up generation and battery equipment...There is no need for an additional report.

WITA - The requirement is redundant since WAC 480-120-411 is included within the certification requirements of WAC 480-123-070(5) and...it is over-broad in that the only emergency standard in the rule is contained in WAC 480-120-411(3)...other subsections of WAC 480-120-411 do not directly relate to emergency performance...For clarification and because the phrase "continued adherence to" in proposed WAC 480-123-070(6) causes confusion and does not appear to add substance to the rule, WITA suggests the deletion of that language.

Response - Verizon again confuses reporting with certification. The certification works as a guarantee of on-going compliance with the existing rule.

The certification relates back to WAC 480-123-030 (1)(g) and its reference to WAC 480-120-411. WITA concludes WAC 480-120-411 is included as a service *quality* rule and that the certification under 070(5) (compliance with service quality standards), above, includes a certification that ETCs comply with 480-120-411. WAC 480-120-411 does not refer to quality of service; it concerns maintaining equipment and facilities in good order to provide service (presumably good quality service), and has a requirement for emergency power facilities. Because WAC 480-120-411 concerns the ability to provide service, not the quality of service or a lack of service altogether, the separate certification is neither overbroad nor redundant.

Comment 16: WAC 480-123-070(7)

Verizon - The Commission should not adopt any particular requirement for advertising relating to Lifeline and Link-Up programs at this time. The FCC has already initiated a public inquiry ...one item that will be considered by the FCC is whether avenues other than advertising are more effective ways of informing potential Lifeline and Link-Up customers about the availability of those programs...In the absence of any showing that the advertising or outreach is somehow a problem, this Commission should not impose a certification requirement that the FCC did not. The FCC made no suggestion that certification of advertising should be required, FCC Order 05-46, ¶ 69, and in doing so expressly weighed the benefits of reporting against the administrative burdens of reporting. *Id.*, ¶ 70.

Public Counsel - ...Carriers resoundingly indicated that they already take part in intensive outreach efforts, yet these efforts still only garner a fraction of the eligible participants.....This rulemaking process has begun an important conversation...about...the issues that complicate outreach to eligible consumers. We believe that this underserved population would benefit significantly if the Commission were to continue this conversation formally in the form of an advisory group...

WITA - WITA also offers two clarifications to the language in WAC 480-123-070(7). First, WITA suggests inserting the word "its" in front of "Lifeline service" in the third line of the proposed rule. Second, WITA suggests adding "within its ETC service area" at the very end of the rule. These two minor changes help the rule make a more definitive statement of the proposed requirements.

Response - The proposed rule is modified to be consistent with proposed rule 480-123-030 (1)(e) and WITA's recommended clarifications are accepted. That subsection incorporates the federal standard for ETCs with respect to advertising and the rule and standard are therefore consistent with the federal standard. The FCC order on ETC designation did not address this topic because the FCC did not need to duplicate its existing advertising standard. Incorporating the 030 (1)(e) standard in this certification requirement applies the standard for new ETCs to existing ETCs.

Comment 17: WAC 480-123-080(1)

Verizon - Just as the proposed report of how Verizon's IAS revenues were spent, discussed above, is unjustified, requiring Verizon to also submit a year's forecast of such expenditures would make no sense. The Commission

recently recognized this fact when it repealed its former rule requiring Verizon, Qwest, Century Tel and United Tel to file annual budgets. See General Order No. R-525 in Docket UT-051261 (12/7/05). As Commission Staff noted in that docket, the requirement to file budget reports may be obsolete "and the agency can fulfill its responsibility to ensure fair, just and reasonable rates without this reporting requirement." Staff Memo August 31, 2005.

WITA - A company does not know in July where additional plant may be needed...One exception where information can be provided is when the company is in the midst of a planned RUS financed project....Another practical issue to be considered is that for small rural telephone companies investment is often a cyclical process....If the company is not making any substantial investments in 2007, is it in violation of the Commission's standards for ETC certification? What useful information will be provided to the Commission under the draft rule for an evaluation of cyclical investment for a rural telephone company? ...WITA proposes that the filing of the NECA-1 form on an annual basis will provide a database for the Commission to track how a company is performing over time in terms of its investment and expenses.

Response - The issue here is not the same as the issue with annual budgets. Rate setting was the issue in the annual budget rulemaking, while these rules concern the use of federal support. The FCC has expressed concerns to states about the sustainability of the federal universal service fund and how support funds are used. This proposed rule is consistent with the FCC's recommendations to state commissions.

WITA states that many companies will not have information in July about planned expenditures for the following year. While ETCs may forecast on different schedules, each ETC will be in a position to state what it reasonably can about anticipated expenditures.

Comment 18: WAC 480-123-080(2)

WITA - There is no reason to require a "substantive description of how those investments and expenditures will benefit customers," when there is another clause in the sentence that requires submission of a "substantive" plan ...suggested revision:

WAC 480-123-080(2): The report must include a substantive plan and description of investments and expenditures to be made with the federal high cost fund support; provided, however, this reporting requirement shall be deemed satisfied for rural telephone companies by filing of the NECA-1 reports as set forth above.

Response - "Substantive" is defined in WAC 480-123-020. This subsection of the proposed rule requires a report on two topics and it requires that each topic be described substantively. While the NECA-1 report provides a record of past expenditures, it does not provide even a limited statement about planned investment and expenditure. We have acknowledged, immediately above, that some very small companies will have less to report than those with more planning capability.

Comment 19: WAC 480-123-080(3)

Cingular - Proposed Rule 480-123-080(3) requires ETCs to file maps in .shp format as defined in 480-123-020. While the Commission may very well want to require ETCs

to file maps, the Commission should not require that the maps be filed utilizing a certain type of software...the proposed rule unnecessarily locks the Commission and carriers into a particular technology that may or may not continue to be used in the future...the .shp mapping format requirement in the Proposed Rules should be deleted.

Response - The .shp is the file extension used by the dominant GIS software provider and most all other GIS software permits users to export files in .shp format. The Commission must be able to read the electronic maps and uses software that reads .shp maps. We decline to make the requested change.

¹ The CR-101 contained the reference to WAC 480-120-311 along with a complete description of the topic as indicated in this paragraph. WAC 480-120-311 was recodified as WAC 480-120-399 on March 31, 2005. Subsequent notices, requests for comments, and the CR-102 referred to WAC 480-120-399.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 8, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

ORDER

16 THE COMMISSION ORDERS:

17 (1) The commission amends and adopts WAC 480-120-399, 480-123-020, 480-123-030, 480-123-040, 480-123-050, 480-123-060, 480-123-070, 480-123-080, and 480-123-999 to read as set forth in Appendix B, as rules of the Washington utilities and transportation commission, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

18 (2) This order and the rules set out below, after being recorded in the register of the Washington utilities and transportation commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, June 27, 2006.

Washington State Utilities and Transportation Commission

Mark H. Sidran, Chairman

Patrick J. Oshie, Commissioner

AMENDATORY SECTION (Amending Docket No. A-021178 and TO-030288, General Order No. R-518, filed 2/28/05, effective 3/31/05)

WAC 480-120-399 Access charge and universal service reporting. (((+))) Intrastate mechanism reporting.

(((+))) (1) Until legislation creating a new universal service fund is adopted and effective and commission rules to

implement the legislation are adopted and effective, each Class A company in the state of Washington and the Washington Exchange Carrier Association, must provide annually:

~~((+))~~ (a) The actual demand units for the previous calendar year for each switched access tariff rate element (or category of switched access tariff rate elements, both originating and terminating) it has on file with the commission.

~~((+))~~ (b) Primary toll carriers (PTCs) must file, in addition to the information required in (a)~~((+))~~ of this subsection, the annual imputed demand units for the previous calendar year that the company would have had to purchase from itself if it had been an unaffiliated toll carrier using feature group D switched access service (including intraLATA and interLATA, both originating and terminating demand units). For purposes of this subsection, a PTC means a local exchange company offering interexchange service(s) to retail customers using feature group C switched access service for the origination or termination of any such service(s).

~~((+))~~ (2) The report containing the information required in ~~((a) of this)~~ subsection (1) of this section must be filed by July 1 of each year.

~~((+))~~ (3) Each company providing information required by this section must include complete work papers and sufficient data for the commission to review the accuracy of the report.

~~((2) Annual state certification requirements for interstate (federal) mechanism. Each eligible telecommunications carrier (ETC) in Washington receiving federal high cost universal service support funds must provide the following to the commission not later than August 31 of each year:~~

~~(a) A certification that, during the calendar year preceding the year in which certification is made, the ETC provided the supported services required by 47 U.S.C. § 214(e) and described in the commission order granting it ETC status;~~

~~(b) A certification that, during the calendar year preceding the year in which certification is made, the ETC advertised the availability of supported services and the charges for them as required by 47 U.S.C. § 214(e) and as described in the commission order granting it ETC status;~~

~~(c) A certification that funds received by it from the federal high cost universal service support fund will be used only for the provision, maintenance, and upgrading of the facilities and services for which the support is intended;~~

~~(d) The amount of all federal high cost universal service fund support received for the calendar year preceding the year in which the filing must be made (this includes, but is not limited to, high cost loop support or "HCL," local switching support or "LSS," long term support or "LTS," interstate access support or "IAS," and interstate common line support or "ICLS");~~

~~(e) The loop counts on which federal high cost universal service support was based for support received during the calendar year preceding the year in which the filing must be made;~~

~~(f) The certifications required in (a) through (e) of this subsection must be made in the same manner as required by RCW 9A.72.085.)~~

Chapter 480-123 WAC

~~((FEDERAL)) UNIVERSAL SERVICE ((CONTRACTS))~~

NEW SECTION

WAC 480-123-020 Definitions. As used in WAC 480-123-030 through 480-123-080:

"Applicant" means any person applying to an ETC for new service or reconnection of discontinued service.

"Eligible telecommunications carrier" and "ETC" mean a carrier designated by the commission as eligible to receive support from federal universal service mechanisms in exchange for providing services supported by federal universal service mechanisms.

"Facilities" means for the purpose of WAC 480-123-030 (1)(b) any physical components of the telecommunications network that are used in the transmission or routing of the services that are supported by federal universal service mechanisms.

".shp format" means the format used for creating and storing digital maps composed of shape files capable of being opened by the computer application ArcGIS™.

"Service outage" means a significant degradation in the ability of an end user to establish and maintain a channel of voice communications as a result of failure or degradation in the performance of a communications provider's network.

"Substantive" means sufficiently detailed and technically specific to permit the commission to evaluate whether federal universal service support has had, or will have, benefits for customers. For example, information about investments and expenses that will provide, increase, or maintain service quality, signal coverage, or network capacity, and information about the number of customers that benefit, and how they will benefit is sufficient to enable evaluation.

NEW SECTION

WAC 480-123-030 Contents of petition for eligible telecommunications carriers. (1) Petitions for designation as an ETC must contain:

(a) A description of the area or areas for which designation is sought;

(b) A statement that the carrier will offer the services supported by federal universal service support mechanisms throughout the area for which it seeks designation, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another ETC);

(c) A description of how it will provide each supported service;

(d) A substantive plan of the investments to be made with initial federal support during the first two years in which support is received and a substantive description of how those expenditures will benefit customers;

(e) A statement that the carrier will advertise the availability of services supported by federal universal service mechanisms, including advertisement of applicable telephone assistance programs, such as Lifeline, that is reason-

ably calculated to reach low-income consumers not receiving discounts;

(f) For wireless petitioners, a map in .shp format of proposed service areas (exchanges) with existing and planned locations of cell sites and shading to indicate where the carrier provides and plans to provide commercial mobile radio service signals;

(g) Information that demonstrates its ability to remain functional in emergency situations including a description of how it complies with WAC 480-120-411 or, for a wireless carrier, information that demonstrates it has at least four hours of back up battery power at each cell site, back up generators at each microwave hub, and at least five hours back up battery power and back up generators at each switch; and

(h) Information that demonstrates that it will comply with the applicable consumer protection and service quality standards of chapter 480-120 WAC or, for a wireless carrier, a commitment to comply with the Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service. Information regarding the version of the CTIA code adopted and where to obtain it is set forth in WAC 480-123-999.

(2) A company officer must submit the petition in the manner required by RCW 9A.72.085.

NEW SECTION

WAC 480-123-040 Approval of petitions for eligible telecommunications carriers. The commission will approve a petition for designation as an ETC if the petition meets the requirements of WAC 480-123-030, the designation will advance some or all of the purposes of universal service found in 47 U.S.C. § 254, and the designation is in the public interest.

NEW SECTION

WAC 480-123-050 Revocation of eligible telecommunications carrier designation. Subject to notice and an opportunity to be heard, the commission may decline to grant annual certification, and may revoke, suspend, or modify a designation granted previously if it determines that the ETC has failed to comply with the requirements of section 47 U.S.C. Sec. 214(e)(1) or any other conditions imposed by the commission.

NEW SECTION

WAC 480-123-060 Annual certification of eligible telecommunications carriers. (1) Each ETC seeking certification of the ETC's use of federal high-cost funds pursuant to 47 C.F.R. §§ 54.307, 54.313, or 54.314 must request certification by July 31 each year. The ETC must certify that it will use federal high-cost universal service fund support only for the provision, maintenance, and upgrading of the facilities and services for which the support is intended. The certification must be submitted by a company officer in the manner required by RCW 9A.72.085.

(2) The commission will certify an ETC's use of federal high-cost universal service fund support, pursuant to 47 C.F.R. §§ 54.307, 54.313, or 54.314 only if the ETC complies

with the requirements in WAC 480-123-070, and the ETC demonstrates that it will use federal high-cost funds only for the provision, maintenance, and upgrading of facilities and services for which the support is intended through the requirements of WAC 480-123-080.

NEW SECTION

WAC 480-123-070 Annual certifications and reports. Not later than July 31 of each year, every ETC that receives federal support from any category in the federal high-cost fund must certify or report as described in this section. The certifications and reports are for activity related to Washington state in the period January 1 through December 31 of the previous year. A company officer must submit the certifications in the manner required by RCW 9A.72.085.

(1) **Report on use of federal funds and benefits to customers.**

(a) For an ETC that receives support based only on factors other than the ETC's investment and expenses, the report must provide a substantive description of investments made and expenses paid with support from the federal high-cost fund.

For ETCs that receive any support based on the ETC's investment and expenses, the report must provide a substantive description of investment and expenses, such as the NECA-1 report, the ETC will report as the basis for support from the federal high-cost fund.

(b) Every ETC must provide a substantive description of the benefits to consumers that resulted from the investments and expenses reported pursuant to (a) of this subsection.

(2) **Local service outage report.** ETCs not subject to WAC 480-120-412 and 480-120-439(5) are required to report local service outages pursuant to this subsection. The report must include detailed information on every local service outage thirty minutes or longer in duration experienced by the ETC. The report must include:

- (a) The date and time of onset and duration of the outage;
- (b) A brief description of the outage and its resolution;
- (c) The particular services affected, including whether a public safety answering point (PSAP) was affected;
- (d) The geographic areas affected by the outage;
- (e) Steps taken to prevent a similar situation in the future; and

(f) The estimated number of customers affected.

(3) **Report on failure to provide service.** ETCs not subject to WAC 480-120-439 are required to report failures to provide service pursuant to this subsection. The report must include detailed information on the number of requests for service from applicants within its designated service areas that were unfulfilled for the reporting period. The ETC must also describe in detail how it attempted to provide service to those applicants.

(4) **Report on complaints per one thousand handsets or lines.** The report must provide separate totals for the number of complaints that the ETC's customers made to the Federal Communications Commission, or the consumer protection division of the office of the attorney general of Washington. The report must also generally describe the nature of the

complaints and outcome of the carrier's efforts to resolve the complaints.

(5) **Certification of compliance with applicable service quality standards.** Certify that it met substantially the applicable service quality standard found in WAC 480-123-030 (1)(h).

(6) **Certification of ability to function in emergency situations.** Certify that it had the ability to function in emergency situations based on continued adherence to the standards found in WAC 480-123-030 (1)(g).

(7) **Advertising certification, including advertisement on Indian reservations.** Certify it has publicized the availability of its applicable telephone assistance programs, such as Lifeline, in a manner reasonably designed to reach those likely to qualify for service, including residents of federally recognized Indian reservations within the ETC's designated service area. Such publicity should include advertisements likely to reach those who are not current customers of the ETC within its designated service area.

NEW SECTION

WAC 480-123-080 Annual plan for universal service support expenditures. (1) Not later than July 31 of each year, every ETC that receives federal support from any category in the federal high-cost fund must report on:

(a) The planned use of federal support related to Washington state that will be received during the period October 1 of the current year through the following September; or

(b) The planned investment and expenses related to Washington state which the ETC expects to use as the basis to request federal support from any category in the federal high-cost fund.

(2) The report must include a substantive plan of the investments and expenditures to be made with federal support and a substantive description of how those investments and expenditures will benefit customers.

(3) As part of the filing required by this section to be submitted in 2007, and at least once every three years thereafter, a wireless ETC must submit a map in .shp format that shows the general location where it provides commercial mobile radio service signals.

NEW SECTION

WAC 480-123-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) The Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service.

(2) The commission adopts the version in effect on September 9, 2003.

(3) This publication is referenced in WAC 480-123-020 (contents of petition for eligible telecommunications carriers).

(4) Copies of the CTIA Consumer Code for Wireless Service are available at http://www.ctia.org/wireless_consumers/consumer_code/.

WSR 06-15-010

PERMANENT RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed July 6, 2006, 11:45 a.m., effective August 6, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Chapter 180-20 WAC, School bus driver qualifications, transferred to chapter 392-144 WAC. Legislation passed during the 2006 legislative session (E2SHB 3098, section 906) transferred authority to adopt rules governing the training and qualification of school bus drivers from the Washington state board of education (SBE) to the office of superintendent of public instruction (OSPI).

This transfer of existing rules will result in no change to existing requirements.

Citation of Existing Rules Affected by this Order: Repealing WAC 180-20-011; and amending WAC 180-20-009, 180-20-021, 180-20-101, 180-20-102, 180-20-103, 180-20-111, 180-20-112, 180-20-120, 180-20-135, 180-20-140, and 180-20-145.

Statutory Authority for Adoption: RCW 28A.160.210.

Other Authority: E2SHB 3098, section 906.

Adopted under notice filed as WSR 06-10-038 on April 28, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 14, Amended 11, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 14, Amended 11, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 6, 2006.

July 6, 2006

Dr. Terry Bergeson
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 05-19-107, filed 9/20/05, effective 10/21/05)

WAC 180-20-009 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "School bus driver" means a person, who is employed by a school district including contracted drivers under WAC ((180-20-031)) 392-144-040 (1) and (2) and as part of that employment or contract, operates a school bus as defined in WAC 392-143-010, or other motor vehicles for the regularly scheduled transportation of students between home and school. School buses shall be operated by authorized school bus drivers when transporting students. An authorized school bus driver may also transport students on field trips and other school related activities.

(2) "A school bus driver's authorization" means an authorization issued by the superintendent of public instruction indicating that the person has met ((state board of education)) ~~the~~ requirements to operate a school bus or other motor vehicle for the purpose of transporting students to and from school routinely on scheduled routes and/or school activities. A school bus driver must be authorized prior to transporting students and such authorization shall continue in effect as long as the person continues to meet the requirements of this chapter. A school bus driver authorization is not valid if suspended, revoked or lapsed.

(3) "School bus driver instructor's authorization" means an authorization issued by the superintendent of public instruction to a person successfully completing the superintendent of public instruction approved school bus driver instructor course. This authorization qualifies a person to train and verify the training of school bus drivers. This authorization shall lapse unless the holder successfully completes an annual school bus driver instructor's in-service course.

(4) "School bus driver training course" means a course established by the superintendent of public instruction and taught by an authorized school bus driver instructor. This course shall be successfully completed by all applicants for a school bus driver's authorization.

(5) "School bus driver annual in-service training course" means an annual course taught by an authorized school bus driver instructor. The content and minimum time requirements of such course shall be annually determined by the superintendent of public instruction and shall be required to be completed no earlier than August 1st and no later than November 1st by all authorized school bus drivers.

(6) "School bus driver instructor's course" means a training program authorized by the superintendent of public instruction to qualify a person as a school bus driver instructor.

(7) "School bus driver instructor's annual in-service course" means an annual required course, the content of which shall be determined by the superintendent of public instruction. Successful completion of this course prevents the instructor's authorization from lapsing.

(8) "Serious behavioral problem" includes, but is not limited to, conduct which indicates unfitness to carry out the responsibilities related to the occupation or job performance of transporting children, such as: Dishonesty; immorality; or misuse of alcohol, a controlled substance, or a prescription drug; or furnishing alcohol or controlled substances to a minor or student. It does not include the orderly exercise during off-duty hours of any rights guaranteed under the law to citizens generally, except where such conduct indicates a safety risk for the transportation of students.

(9) "Medical examiner's certificate" means a written verification of passing a medical examination in accordance with the standards established in 49 CFR 391.41 through 391.49, of the Federal Motor Carrier Safety Regulations. School bus drivers must provide verification of passing a medical examination at a minimum of every twenty-four months. School bus drivers must continue to meet these medical requirements during the time between examinations. This requirement does not prevent a school district from requesting a more frequent examination.

AMENDATORY SECTION (Amending WSR 05-19-107, filed 9/20/05, effective 10/21/05)

WAC 180-20-021 Training and qualifications of school bus driver instructors—Administration. ~~((It shall be the responsibility of the superintendent of public instruction to administer the program of training and qualifications of school bus driver instructors consistent with the provisions of this chapter.))~~ The superintendent of public instruction shall determine the qualifications necessary for applicants for the school bus driver instructor course and qualifications necessary for continuation of the school bus driver instructor authorization. Each school bus driver instructor shall verify annually that they continue to meet said qualifications. Intentional falsification of school bus driver training records shall result in permanent revocation of the school bus driver instructor authorization. In the case of denial of authorization or disqualification, the superintendent of public instruction shall provide an appeal process consistent with the provisions of this chapter.

AMENDATORY SECTION (Amending WSR 05-19-107, filed 9/20/05, effective 10/21/05)

WAC 180-20-101 Initial requirements for school bus drivers. Every authorized school bus driver must meet the following initial requirements:

- (1) Be at least twenty-one years of age.
- (2) Have at least one year of experience as a driver of a truck or commercial vehicle requiring a special endorsement or, in the alternative, at least three years of experience as a driver of a passenger vehicle.
- (3) Submit to a criminal record check according to chapter 28A.400 RCW which shows that no offenses have been committed which would be grounds for denial of an authorization.
- (4) Satisfactorily complete a school bus driver training course ~~((and each year thereafter, satisfactorily complete a school bus driver in-service training course)).~~
- (5) Meet all applicable continuing school bus driver requirements in WAC ((180-20-102)) 392-144-102.

AMENDATORY SECTION (Amending WSR 05-19-107, filed 9/20/05, effective 10/21/05)

WAC 180-20-102 Continuing requirements for authorized school bus drivers. Every authorized school bus driver must continue to meet the following requirements:

(1) Have a valid driver's license or commercial driver's license, as required by law, issued by the state department of licensing.

(2) Satisfactorily complete the annual school bus driver in-service training course.

(3) Hold a current and valid first-aid card which certifies that the applicant has completed a course in first aid.

(4) Submit annually to the school district a disclosure of all crimes against children or other persons and all civil adjudications in a dependency action or in a domestic relation action and all disciplinary board final decisions of sexual abuse or exploitation or physical abuse as required by RCW 43.43.834(2) and disclosure of all convictions which may be grounds for denial, suspension, or revocation of authorization under WAC (~~(180-20-103)~~) 392-144-103.

(5) Every authorized school bus driver must continue to meet the following physical requirements:

(a) Is physically able to maneuver and control a school bus under all driving conditions; and

(b) Is physically able to use all controls and equipment found on state minimum specified school buses; and

(c) Is physically able to perform daily routine school bus vehicle safety inspections; and

(d) Has sufficient strength and agility to move about in a school bus as required to provide assistance to students in evacuating the bus. The driver must be able to move from a seated position in a sixty-five passenger school bus, or the largest school bus the driver will be operating, to the emergency door, open the emergency door, and exit the bus through the emergency door, all within twenty-five seconds; and

(e) Provide verification of holding a current and valid medical examiner's certificate.

AMENDATORY SECTION (Amending WSR 06-01-039, filed 12/15/05, effective 1/15/06)

WAC 180-20-103 Disqualifying conditions for authorized school bus drivers. A school bus driver's authorization will be denied or revoked as a result of the following conditions:

(1) Misrepresenting or concealing a material fact in obtaining a school bus driver's authorization or in reinstatement thereof in the previous five years.

(2) Having a driving license privilege suspended or revoked as a result of a moving violation as defined in WAC 308-104-160 within the preceding five years or have had their commercial driver's license disqualified, suspended, or revoked within the preceding five years; a certified copy of the disqualification, suspension, or revocation order issued by the department of licensing being conclusive evidence of the disqualification, suspension, or revocation.

(3) Incurring three or more speeding tickets of ten miles per hour or more over the speed limit within the last five years.

(4) Having intentionally and knowingly transported public school students within the state of Washington within the previous five years with a lapsed, suspended, surrendered, or revoked school bus driver's authorization in a position for which authorization is required under this chapter.

(5) Having intentionally and knowingly transported public school students within the state of Washington within the previous five years with a suspended or revoked driver's license or a suspended, disqualified or revoked commercial driver's license.

(6) Having refused to take a drug or alcohol test as required by the provisions of 49 CFR 382 within the preceding five years. Provided, That this requirement shall not apply to any refusal to take a drug or alcohol test prior to January 31, 2005.

(7) Having a serious behavioral problem which endangers the educational welfare or personal safety of students, teachers, school bus drivers, or other coworkers.

(8) Having been convicted of any misdemeanor, gross misdemeanor, or felony (including instances in which a plea of guilty or *nolo contendere* is the basis for the conviction) or being under a deferred prosecution under chapter 10.05 RCW where the conduct or alleged conduct is related to the occupation of a school bus driver, including, but not limited to, the following:

(a) The physical neglect of a child under chapter 9A.42 RCW;

(b) The physical injury or death of a child under chapter 9A.32 or 9A.36 RCW, excepting motor vehicle violations under chapter 46.61 RCW;

(c) The sexual exploitation of a child under chapter 9.68A RCW;

(d) Sexual offenses where a child is the victim under chapter 9A.44 RCW;

(e) The promotion of prostitution of a child under chapter 9A.88 RCW;

(f) The sale or purchase of a child under RCW 9A.64.030;

(g) Any crime involving the use, sale, possession, or transportation of any controlled substance or prescription drug within the last ten years;

(h) Any crime involving driving when a driver's license is suspended or revoked, hit and run driving, driving while intoxicated, being in physical control of motor vehicle while intoxicated, reckless driving, negligent driving of a serious nature, vehicular assault or vehicular homicide, within the last five years;

(i) Provided, That the general classes of felony crimes referenced within this subsection shall include equivalent federal crimes and crimes committed in other states;

(j) Provided further, That for the purpose of this subsection "child" means a minor as defined by the applicable state or federal law;

(k) Provided further, That for the purpose of this subsection "conviction" shall include a guilty plea.

(9) Having been convicted of any crime within the last ten years, including motor vehicle violations, which would materially and substantially impair the individual's worthiness and ability to serve as an authorized school bus driver. In determining whether a particular conviction would materially and substantially impair the individual's worthiness and ability to serve as an authorized school bus driver, the following and any other relevant considerations shall be weighed:

(a) Age and maturity at the time the criminal act was committed;

(b) The degree of culpability required for conviction of the crime and any mitigating factors, including motive for commission of the crime;

(c) The classification of the criminal act and the seriousness of the actual and potential harm to persons or property;

(d) Criminal history and the likelihood that criminal conduct will be repeated;

(e) The permissibility of service as an authorized school bus driver within the terms of any parole or probation;

(f) Proximity or remoteness in time of the criminal conviction;

(g) Any evidence offered which would support good moral character and personal fitness;

(h) If this subsection is applied to a person currently authorized as a school bus driver in a suspension or revocation action, the effect on the school bus driving profession, including any chilling effect, shall be weighed; and

(i) In order to establish good moral character and personal fitness despite the criminal conviction, the applicant or authorized school bus driver has the duty to provide available evidence relative to the above considerations. The superintendent of public instruction has the right to gather and present additional evidence which may corroborate or negate that provided by the applicant or authorized school bus driver.

AMENDATORY SECTION (Amending WSR 05-19-107, filed 9/20/05, effective 10/21/05)

WAC 180-20-111 Temporary authorizations—Requirements and issuing procedures. (1) A temporary school bus driver authorization may be issued by the superintendent of public instruction upon application by an authorized representative of the employing school district when the following has been provided:

(a) Verification of successful completion of the school bus driver training course.

(b) Verification that it has on file a copy of a current and valid medical examiner's certificate.

(c) Verification that it has on file a current five-year complete driver's abstract, including departmental actions, of the applicant's employment and nonemployment driving record issued by the department of licensing verifying compliance with all provisions of this chapter. The issue date of this abstract must be within sixty calendar days prior to the date the application is being submitted for temporary authorization.

(d) Verification that it has on file a disclosure statement in compliance with preemployment inquiry regulations in WAC 162-12-140, signed by the applicant, specifying all convictions which relate to fitness to perform the job of a school bus driver under WAC ((180-20-103)) 392-144-103 and all crimes against children or other persons, that meets the requirements of RCW 43.43.834(2).

(e) Verification that it has requested a criminal record check as required under chapter 28A.400 RCW and the date of such request.

(f) Verification that it has on file an applicant's disclosure of all serious behavioral problems which explains the nature of all such problems and/or conditions, a listing of the

names, addresses, and telephone numbers of all doctors, psychologists, psychiatrists, counselors, therapists, or other health care practitioners of any kind or hospitals, clinics, or other facilities who have examined and/or treated the applicant for such problems and/or conditions and dates of examinations, therapy, or treatment and the school district has determined that any reported serious behavioral problem does not endanger the education welfare or personal safety of students, teachers, bus drivers, or other colleagues.

(g) Verification that the applicant complies with all of the requirements for authorized school bus drivers set forth in this chapter except for a first-aid card and/or the results of a criminal record check.

(2) Upon approval of the temporary authorization, notice will be provided to the employing school district.

(3) The temporary authorization shall be valid for a period of sixty calendar days. The temporary authorization may be renewed by approval of the regional transportation coordinator when the results of the criminal background check have not been received.

AMENDATORY SECTION (Amending WSR 05-19-107, filed 9/20/05, effective 10/21/05)

WAC 180-20-112 School bus driver authorization—Requirements and issuing procedures. A school bus driver authorization may be issued by the superintendent of public instruction upon application by an authorized representative of the employing school district subject to compliance with the following provisions:

(1) The employing school district shall forward to the superintendent of public instruction the following verifications relating to the applicant:

(a) Verification of successful completion of the school bus driver training course taught by an authorized school bus driver instructor.

(b) Verification that it has on file a copy of a current and valid medical examiner's certificate.

(c) Verification that it has on file a current five-year complete driver's abstract, including departmental actions, of the applicant's employment and nonemployment driving record issued by the department of licensing verifying compliance with all provisions of this chapter. The issue date of this abstract must be within sixty calendar days prior to the date an application was submitted for temporary authorization. If no request for a temporary school bus authorization was submitted, the issue date must be within sixty calendar days prior to the date of application of the school bus driver authorization.

(d) Verification that the applicant has a current and valid first-aid card.

(e) Verification that it has on file a disclosure statement in compliance with preemployment inquiry regulations in WAC 162-12-140, signed by the applicant, specifying all convictions which relate to fitness to perform the job of a school bus driver under WAC ((180-20-103)) 392-144-103 and all crimes against children or other persons, that meets the requirements of RCW 43.43.834(2).

(f) Verification that it has on file the results of a criminal record check as required under chapter 28A.400 RCW and

that such results establish that the applicant has not committed any offense which constitutes grounds for denying, suspending, or revoking an authorization under this chapter and the date of such request.

(g) Verification that it has on file an applicant's disclosure of all serious behavioral problems which explains the nature of all such problems and/or conditions, a listing of the names, addresses, and telephone numbers of all doctors, psychologists, psychiatrists, counselors, therapists, or other health care practitioners of any kind or hospitals, clinics, or other facilities who have examined and/or treated the applicant for such problems and/or conditions and dates of examinations, therapy, or treatment and the school district has determined that any reported serious behavioral problem does not endanger the educational welfare or personal safety of students, teachers, school bus drivers, or other colleagues.

(h) Verification that the applicant complies with all of the requirements for authorized school bus drivers set forth in this chapter.

(2) Upon approval of an application, the superintendent of public instruction shall issue a notice of school bus driver authorization to the employing school district.

(3) Subsequent authorizations for an individual driver with new or additional employing school districts must be issued from the superintendent of public instruction to such districts prior to the operation of any motor vehicle for the transportation of children.

(4) The superintendent of public instruction will provide each school district with a list of their authorized school bus drivers and each authorized school bus driver's status.

AMENDATORY SECTION (Amending WSR 05-19-107, filed 9/20/05, effective 10/21/05)

WAC 180-20-120 Discipline—Grounds for denial, suspension, or revocation of authorization—Emergency suspension—Appeals—Adjudicative proceedings. (1) A request for an authorization may be denied or an authorization issued under this chapter may be suspended or revoked for failure to meet any of the minimum requirements set forth in WAC ((180-20-101 and 180-20-102)) 392-144-101 and 392-144-102 or for disqualifying conditions set forth in WAC ((180-20-103)) 392-144-103, established by a preponderance of the evidence.

(2) Conduct, which by a preponderance of the evidence, amounts to a serious behavioral problem which endangers the educational welfare or personal safety of students, teachers, school bus drivers, or other colleagues is grounds for denial, suspension, or revocation whether or not the conduct constitutes a crime. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to denial, suspension, or revocation action. Upon such conviction, however, the judgment and sentence is conclusive evidence at the ensuing hearing of the guilt of the authorized driver or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based.

(3)(a) Any person in treatment for alcohol or other drug misuse shall have his or her authorization suspended until treatment is satisfactorily completed and the completion is

confirmed by a state-approved alcohol or drug treatment program at which time the authorization will be reinstated.

(b) In all cases of deferred prosecution under chapter 10.05 RCW, the authorization shall be suspended until the court confirms successful completion of the court approved treatment program at which time the authorization will be reinstated.

(4) Emergency suspension. If the superintendent of public instruction finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, emergency suspension of an authorization may be ordered pending proceedings for revocation or other action. In such cases, the superintendent of public instruction shall expedite all due process actions as quickly as possible.

(5)(a) Appeals and adjudicative proceedings. Any person desiring to appeal a denial, suspension, or revocation of a school bus driver authorization may do so to the superintendent of public instruction or designee in accordance with the adjudicative proceedings in RCW 34.05.413 through 34.05.494, and the administrative practices and procedures of the superintendent of public instruction in chapter 392-101 WAC.

(b) The superintendent of public instruction may assign the adjudicative proceeding to the office of administrative hearings and may delegate final decision-making authority to the administrative law judge conducting the hearing.

(c) The superintendent of public instruction may appoint a person to review initial orders and to prepare and enter final agency orders in accordance with RCW 34.05.464.

(d) Any person who disagrees with the school district's determination of failure to meet any school bus driver authorization qualifications may request that the school district forward the pertinent records to the superintendent of public instruction. After review or investigation, the superintendent of public instruction shall grant, deny, suspend, or revoke the authorization.

AMENDATORY SECTION (Amending WSR 05-19-107, filed 9/20/05, effective 10/21/05)

WAC 180-20-135 School bus driver—Reporting. (1) Every person authorized under this chapter to operate a motor vehicle to transport children shall, within twenty calendar days, notify his or her employer in writing of the filing of any criminal charge involving conduct listed in WAC ((180-20-103)) 392-144-103. The authorized driver shall also notify his or her employer of any disqualifying traffic convictions, or license suspension or revocation orders issued by the department of licensing. In cases where the employer is providing transportation services through a contract with the school district, the contractor shall immediately notify the school district superintendent or designee.

(2) The notification in writing shall identify the name of the authorized driver, his or her authorization number, the court in which the action is commenced, and the case number assigned to the action.

(3) The failure of an authorized driver to comply with the provisions of this section is an act of unprofessional conduct

and constitutes grounds for authorization suspension or revocation by the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 05-19-107, filed 9/20/05, effective 10/21/05)

WAC 180-20-140 School district—Reporting. (1)

Every school district employing authorized school bus drivers to transport children or contracting with a private firm who provides such authorized drivers as a part of a contract shall, within twenty calendar days, notify the superintendent of public instruction in writing of knowledge it may have of the filing of any criminal charge involving the conduct listed in WAC ((180-20-103)) 392-144-103 against any authorized school bus driver.

(2) The notification in writing shall be by certified or registered mail and shall identify the name of the authorized school bus driver, his or her authorization number, the court in which the action is commenced, and the case number assigned to the action.

AMENDATORY SECTION (Amending WSR 05-19-107, filed 9/20/05, effective 10/21/05)

WAC 180-20-145 School district—Verification of drivers continuing compliance. (1) Every school district shall evaluate each authorized school bus driver for continuing compliance with the provisions of this chapter annually. The results of this evaluation of all drivers shall be forwarded to the superintendent of public instruction on SPI Form 1799, Verification Statement and Confirmation of Updated Records, no later than November 15th of each year.

(2) This report shall verify that each authorized school bus driver's medical examination certificate expiration date, first-aid expiration date, driver's license expiration date and most recent school bus driver in-service training date has been updated in compliance with OSPI procedures.

(3) This report shall verify that each authorized school bus driver has made an updated disclosure in writing and signed and sworn under penalty of perjury which updates the disclosure required in WAC ((180-20-102)) 392-144-102(4).

(4) This report shall verify that each authorized school bus driver's five-year driving record is in compliance with WAC ((180-20-103)) 392-144-103.

(5) This report shall verify that each authorized school bus driver remains in compliance with the physical requirements of WAC ((180-20-102)) 392-144-102(5).

(6) This report shall be a written verification that the evaluation has been conducted in accordance with the requirements of this chapter and that all drivers are in compliance, or if all drivers are not in compliance, a list of drivers who are out of compliance and the reason for noncompliance shall be provided.

NEW SECTION

The following sections of the Washington Administrative Code are decodified as follows:

Old WAC Number	New WAC Number
WAC 180-20-005	WAC 392-144-005

Old WAC Number	New WAC Number
WAC 180-20-007	WAC 392-144-010
WAC 180-20-009	WAC 392-144-020
WAC 180-20-021	WAC 392-144-030
WAC 180-20-031	WAC 392-144-040
WAC 180-20-101	WAC 392-144-101
WAC 180-20-102	WAC 392-144-102
WAC 180-20-103	WAC 392-144-103
WAC 180-20-111	WAC 392-144-110
WAC 180-20-112	WAC 392-144-120
WAC 180-20-120	WAC 392-144-130
WAC 180-20-135	WAC 392-144-140
WAC 180-20-140	WAC 392-144-150
WAC 180-20-145	WAC 392-144-160

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 180-20-011	Training and qualifications of school bus drivers—Administration.
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WSR 06-15-018

PERMANENT RULES

DEPARTMENT OF TRANSPORTATION

[Filed July 7, 2006, 10:37 a.m., effective August 7, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This proposal will amend existing rules to incorporate revised federal regulations concerning motorist information signs, as set forth in the 2003 Manual on Uniform Traffic Control Devices published by the Federal Highway Administration, and to conform with section 1, chapter 398, Laws of 2005 (RCW 47.36.360, state of Washington).

Citation of Existing Rules Affected by this Order: Amending WAC 468-70-020, 468-70-030, 468-70-040, 468-70-050, 468-70-060, and 468-70-070.

Statutory Authority for Adoption: RCW 47.36.030, 47.36.310, and 47.36.320.

Adopted under notice filed as WSR 06-11-145 on May 23, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 5, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 4, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 30, 2006.

John F. Conrad
Assistant Secretary
Engineering and Regional Operations

AMENDATORY SECTION (Amending WSR 04-16-056, filed 7/29/04, effective 8/29/04)

WAC 468-70-020 Definitions. When used in these regulations the term:

(1) "Conventional road" shall mean a noninterstate highway which is not an expressway or freeway.

(2) "Department" shall mean the Washington state department of transportation.

(3) "Expressway" shall mean a divided arterial highway for through traffic with partial control of access and grade separations at most major intersections.

(4) "Fee zone" means:

(a) Fee zone 1, freeways and expressways with average daily trips greater than eighty thousand;

(b) Fee zone 2, freeways and expressways with average daily trips less than eighty thousand;

(c) Fee zone 3, conventional highways.

(5) "Freeway" shall mean an expressway with full control of access, and grade separations over the entire length of the numbered highway route.

(6) "Motorist information signs" shall mean the same as specific service signs as set forth in the Manual on Uniform Traffic Control Devices adopted by the department as chapter 468-95 WAC.

(7) "Motorist service activity" shall mean a business furnishing gas, food, lodging, camping, recreation ~~((and))~~, tourist-oriented, and twenty-four-hour pharmacy services.

(8) "Owner" shall mean a person who owns or operates a motorist service activity and who has authority to enter into and be bound by agreements relevant to matters covered by these regulations.

(9) "Qualified tourist-oriented business" means any lawful cultural, historical, recreational, educational, or entertaining activity or a unique or unusual commercial or nonprofit activity, the major portion of whose income or visitors are derived during its normal business season from motorists not residing in the immediate area of the activity.

(10) "RV symbol" means a logo, for a business or destination that accommodates recreational vehicles, designed and attached to a business sign in accordance with WAC 468-70-060(4).

(11) "Supplemental directional panel" shall mean a motorist information sign panel located on, opposite, or at the terminus of an exit ramp bearing business sign for a qualified motorist service activity and directional information.

~~((11))~~ (12) "Tourist-oriented directional (TOD) sign" means a sign on a motorist information sign panel on the state highway system to provide directional information to a qualified tourist-oriented business, service, or activity.

~~((12))~~ (13) "Trade name" shall mean any brand name, trade mark, distinctive symbol or other similar device or thing used to identify a particular motorist service.

~~((13))~~ (14) "Urban area" shall mean an area including and adjacent to a municipality or other place of five thousand or more population as shown by the latest available federal census.

AMENDATORY SECTION (Amending Order 196, filed 12/22/99, effective 1/22/00)

WAC 468-70-030 Location of panels and signs. (1) A maximum of four motorist information sign panels (~~(one per each type of motorist service activity;))~~) may be provided on interchange approaches and in advance of intersections. Where a qualified type of motorist service activity is not present, a panel will not be erected. ~~((Generally, these panels should be located near the right of way line and readable from the main traveled way.))~~ Where installed, the panels will be erected as follows:

(a) For freeways and interchanges on expressways the panels shall be erected between the previous interchange and at least eight hundred feet in advance of the exit direction sign at the interchange from which the services are available. There shall be at least eight hundred feet spacing between the panels, and there will be one panel each for gas, food, lodging, camping/recreation, ~~((and))~~ TOD, and twenty-four-hour pharmacy except as provided in (c) of this subsection.

(b) For conventional roads the panels shall be erected between the previous intersection and at least three hundred feet in advance of the intersection from which the services are available, signing should not be provided to any service visible at least three hundred feet along the mainline prior to the intersection or driveway approach serving the business. There will be one panel each for gas, food, lodging, camping/recreation, ~~((and))~~ TOD, and twenty-four-hour pharmacy except as provided in (c) of this subsection.

(c) A combined panel may be installed where there is a limited number of qualifying motorist service activities, or insufficient space available to install the array of gas, food, lodging, camping/recreation, ~~((and))~~ TOD's, and twenty-four-hour pharmacy panels as set forth in WAC 468-70-040(2). Not more than ~~((two))~~ three types of motorist service activities may be combined on one mainline back panel (~~(; however, supplemental directional panels located along interchange ramps to direct motorists to the right or to the left may display more than two types of motorist service activities))~~). Each type of motorist service activity may be displayed once on a set of back panels along an interchange or intersection approach. The permissible number of business signs that may be displayed per type of motorist service activity shall be as set forth in WAC 468-70-060 (3)(a).

(2) Information for motorist information sign panels on the mainline of expressways/freeways will be repeated on the supplemental directional panels located along the interchange ramp, or at the ramp terminal, where the services are not visible from the ramp. Supplemental directional panels located along interchange ramps to direct motorist to the right or to the left may not display more than three types of motorist service activities. Supplemental directional panels ~~((may~~

~~be used~~) shall only ~~((to))~~ repeat messages installed on the mainline, and shall not contain supplemental messages.

(3) The spacing between motorist information sign panels, and between motorist information sign panels and other official traffic control signs shall be in accordance with the Manual on Uniform Traffic Control Devices. Where there is insufficient spacing for both other official traffic control signs and motorist information sign panels, the other official traffic control signs only shall be installed.

AMENDATORY SECTION (Amending Order 196, filed 12/22/99, effective 1/22/00)

WAC 468-70-040 Interchange and intersection selection for motorist information sign panels. (1) On an interstate or noninterstate highway the interchange or intersection must:

(a) For interchanges, consist of both an exit and entrance ramp. However, where there is no entrance ramp, the department may determine that another entrance ramp may qualify for motorist information sign panels, provided that it is conveniently located, to permit a motorist to proceed without the use of indirect or poor connecting roads.

(b) For intersections, provide a reasonable and convenient route, in the determination of the department, to permit a motorist to proceed without the use of indirect or poor connecting roads.

(2) Motorist information sign panels may be erected at locations outside the corporate limits of cities and towns and areas zoned for commercial and industrial uses, and at locations within the corporate limits of cities and towns and areas zoned for commercial and industrial uses, where there is sufficient distance between interchanges or intersections to erect the signs in accordance with WAC 468-70-030 (1)(a) and (b). Where there is insufficient space available to install an array of four of the gas, food, lodging, camping/recreation ~~((and))~~, TOD's, and twenty-four-hour pharmacy panels, the number of panels allowable are normally provided in that order of priority, or as combined panels in accordance with WAC 468-70-030 (1)(c), except that regional administrators may negotiate a revised priority at interchange/intersection locations with local officials. If there is no business interest in signing for any one activity at a location, and space allows, the next lower priority activity can be signed.

(3) Signing will be provided from the nearest interchange or intersection from the nearest freeway/expressway or conventional highway to the activity. Signing will not be provided from a freeway or expressway to another freeway or expressway.

AMENDATORY SECTION (Amending WSR 03-20-084, filed 9/30/03, effective 10/31/03)

WAC 468-70-050 Business eligibility. (1) To be eligible for placement of a business sign on a motorist information sign panel a motorist service activity must conform to the following standards:

(a) Gas activity:

(i) Provide vehicle services including fuel, oil, tire repair and water; and

(ii) Be in continuous operation at least sixteen hours a day, seven days a week; and

(iii) Provide restroom facilities, drinking water and a telephone access;

(iv) Motorist information sign panels may be installed and existing signing will not be removed when the motorist service activity is closed for a short period of time or when its hours of operation have been reduced as a result of a shortage of gasoline;

(v) Activities not meeting the tire repair requirement of (i) of this subsection but have gas, oil, and water may qualify for signing provided that the motorist information sign panel displays fewer than the full complement of business signs. A telephone must also be available at no cost for a person to use to acquire tire repair;

(vi) Business signs for card-lock gas activities may be installed, provided that the activities serve the general motoring public, without membership, and accept a variety of credit cards available to the general public. Card-lock gas activities must also meet the applicable requirements of (a)(i) through (v) of this subsection.

(b) Food activity:

(i) Be licensed or approved by the county health office; and

(ii) Food activities in fee zones 1 and 2 shall be in continuous operation to serve meals for a minimum of ~~((twelve))~~ ten hours a day ~~((to serve meals))~~ six days a week, and food activities in fee zone 3 shall be in continuous operation to serve meals for a minimum of eight hours a day six days a week; and

(iii) Have inside seating for a minimum of twenty patrons and parking facilities for a minimum of ten vehicles; and

(iv) Provide telephone and restroom facilities.

(c) Lodging activity:

(i) Be licensed or approved by the Washington department of health; and

(ii) Provide adequate sleeping and bathroom accommodations available without reservations for rental on a daily basis; and

(iii) Provide public telephone facilities.

(d) Camping activity (applicable only for activities available from interstate highways):

(i) Have a valid business license;

(ii) Consist of at least twenty camping spaces, at least fifty percent of which will accommodate tents, and have adequate parking, modern sanitary and drinking water facilities for such spaces; and

(iii) Have an attendant on duty to manage and maintain the facility twenty-four hours a day while in operation.

(e) Recreation activity (applicable only for activities available from noninterstate highways):

(i) Consist of activities and sports of interest to family groups and the public generally in which people participate for purposes of active physical exercise, collective amusement or enjoyment of nature; e.g., hiking, golfing, skiing, boating, swimming, picnicking, camping, fishing, tennis, horseback riding, ice skating and gun clubs; and

(ii) Be licensed or approved by the state or local agency regulating the particular type of business; and

(iii) When the recreational activity is a campground, it must meet the criteria specified in WAC 468-70-050 (1)(d)(i) thru (iii).

(f) Tourist-oriented business activity:

(i) A natural, recreational, historical, cultural, educational, or entertainment activity, or a unique or unusual commercial or nonprofit activity, the major portion of whose income or visitors are derived during its normal business seasons from motorists not residing in the immediate area of the activity.

(ii) Be listed as a historic district on the National Register of Historic Places, on the Washington Heritage Register, or as a National Historic Landmark with the state's office of archeology and historic preservation. Signs on private property that mark the entrance to the historic district and a letter of support by the jurisdictional local agency are required.

(iii) Be a commercial district as adopted by a city ordinance or resolution with a minimum of one million square feet of leasable commercial space located within one square mile. The commercial district must provide a unique commercial activity where the majority of the district's customers do not reside in the city where the commercial district is located. The commercial district shall be located within one mile of the nearest state highway. Only the name of the commercial district will be displayed on the business sign. Corporate logos may not be displayed.

(iv) Activities must be open to the motoring public without appointment, at least six hours a day, five days a week including Saturday and/or Sunday.

(g) Twenty-four-hour pharmacy:

(i) Be open twenty-four hours a day, seven days a week.

(ii) Have a state-licensed pharmacist present and on duty at all times.

(2) To be eligible for a RV symbol on its business sign, the business or destination shall have amenities, designed to accommodate recreational and other large vehicles, including:

(a) A hard-surfaced access to and from the business, that is free of potholes and is at least twelve feet wide with minimum turning radii of fifty feet.

(b) The roadway access and parking facilities must be free of utility wires, tree branches, or other obstructions up to fourteen feet above the surfacing.

(c) Facilities having short-term parking, such as restaurants and tourist attractions, must have a minimum of two parking spaces that are at least twelve feet wide and sixty-five feet long with a minimum turning radius of fifty feet for entering and exiting.

(d) Fueling islands must be located to allow for pull-through with a minimum entering and exiting turning radius of fifty feet.

(e) Canopied fueling islands must have a fourteen-foot minimum overhead clearance.

(f) Fueling facilities selling diesel are required to have pumps with noncommercial nozzles.

(g) For campgrounds, a minimum of two parking spaces at least eighteen feet wide and forty-five feet long are required.

(h) Business activities must also post directional signing on the premises as needed to indicate RV-friendly parking

spaces and other on-site RV-friendly services, so that the motorist is given additional guidance upon leaving the public highway and entering the property.

(3) Distances prescribed herein will be measured from the center of the interchange or intersection along the centerline of the most direct public road to the facility access.

~~((3))~~ (4) The maximum distance that gas, food, lodging, camping, recreational, or tourist-oriented activities can be located on either side of an interchange or intersection to qualify for a business sign shall be as follows:

(a) From an interstate highway, gas, food, and lodging activities shall be located within three miles in either direction. Camping or tourist-oriented activities shall be located within five miles in either direction;

(b) From a noninterstate highway, gas, food, lodging, recreation, or tourist-oriented activities shall be located within five miles in either direction.

(c) A twenty-four-hour pharmacy must be located within three miles of an interstate or noninterstate highway.

(d) Where there are fewer than the maximum number, as specified in WAC 468-70-060 (3)(a), of eligible services within the distance limits prescribed in ~~((subsection (3))~~(a) and (b) of this ~~((section))~~ subsection, the distance limits may be increased up to a maximum of fifteen miles to complete the balance of allowable signs.

(i) In reference to WAC 468-70-040(3), the department may erect and maintain signs on an alternate route that is longer than fifteen miles if it is safer and still provides reasonable and convenient travel to an eligible activity.

(ii) The department may erect and maintain signs on a route up to a maximum of twenty miles if an activity qualifies as eligible and is located within a distressed area under the criteria set forth in chapter 43.165 RCW.

~~((4))~~ (5) Within cities and towns having a population greater than twenty-two thousand five hundred, the department shall obtain concurrence from the municipality of locations for installing panels, and may request that the municipality install the panels.

~~((5))~~ (6) A gas, food, lodging, camping/recreational, ~~((or))~~ tourist-oriented, or twenty-four-hour pharmacy activity visible from the mainline at least three hundred feet prior to an intersection shall not qualify for a business sign on such highway. The activity's on-premise sign is considered part of that activity in determining the three hundred foot visibility.

~~((6))~~ (7) When a multiple business activity qualifies for business sign placement on more than one type of motorist information sign panel, placement will be made on that type of panel which, as determined by the department, best describes the main product or service. Additional business signs for a qualifying multiple business activity may only be placed on more than one type of motorist information sign panel where the applicable panels display fewer than a full complement of business signs. Where these additional business signs complete the full complement of business signs on a motorist information sign panel, the most recently installed of such additional business signs shall be substituted for in the event that a qualifying single business activity applies to receive business signs.

~~((7))~~ (8) Motorist information sign panels will not be erected and maintained by the department until adequate fol-

low-through signing, as specified by the department, is erected on local roads and/or streets. Written assurance that the follow-through signs will be maintained is required.

~~((8))~~ (9) Where operations are seasonal, business signs for each specific location shall be removed or covered during the appropriate period as determined by the department.

AMENDATORY SECTION (Amending Order 196, filed 12/22/99, effective 1/22/00)

WAC 468-70-060 Signing details. (1) Specifications. All motorist information sign panels, supplemental directional panels, and business signs shall be constructed in accordance with the Washington state standard specifications, standard plans and amendments thereto. All business signs and RV symbols shall be constructed of a single piece of 0.063 inch thick aluminum. All panels ~~((and))~~, business signs, and RV symbols shall be fully reflectorized to show the same shape and color both by day and night.

(2) Color of panels ~~((and))~~, signs, and RV symbols:

(a) The background color for gas, food, lodging, camping ~~((and))~~, TOD, and twenty-four-hour pharmacy motorist information sign panels and supplemental directional panels shall be blue. The background color for recreation motorist information sign panels and supplemental directional panels shall be brown. The border and lettering on all such signs shall be white.

(b) The background and message colors ~~((and letter color for))~~ of business signs ~~((manufactured by the department shall be standard highway sign sheeting and inks which are available in white (silver), blue, black, yellow, red, orange, green, and brown. A description of business signs which the department will manufacture is provided in WAC 468-70-070 (8)(b)))~~ shall be at the businesses' option, subject to the department's approval as prescribed by WAC 468-70-070(5).

(c) The background color of RV symbols shall be yellow, with the letters RV in black.

(3) Composition of motorist information sign panels:

(a) For interchanges, the maximum number of business signs which may be displayed on a motorist information sign panel are six for each gas, food, lodging, camping/recreation, ~~((and))~~ TOD's, and twenty-four-hour pharmacy panel. For intersections, each panel is limited to four business signs. For combined motorist information sign panels on the mainline, the minimum number of business signs which may be displayed is two for each type of motorist service activity. For supplemental directional panels located along interchange ramps, there is no minimum number of business signs which may be displayed for each type of motorist service activity.

(b) Sign panel fabrication layouts, and business sign sizes, are provided in the Appendices of the Motorist Information Signs Booklet published by the Washington state department of transportation.

(i) The panel size shall be sufficient to accommodate the various sizes of business signs and directional information.

(ii) For qualifying businesses located more than one mile from an intersection the business sign shall show the mileage to the business to the nearest mile. For interchanges the mileage will be shown on the supplemental directional panel busi-

ness signs installed along ~~((the))~~ an interchange ramp or at ~~((the))~~ a ramp terminal.

(4) RV symbol design and statutory mounting location:

(a) RV symbols installed on freeway/expressway size business signs shall be a round twelve-inch diameter plaque displaying eight-inch RV letters. RV symbols installed on conventional roadway size business signs shall be a round six-inch diameter plaque displaying four-inch RV letters.

(b) The RV symbol shall be displayed in the lower right corner of the gas, food, lodging, camping, or tourist activity business signs installed along the mainline of freeways/expressways and along conventional highways. The term lower right corner is exclusive of any panel displaying the mileage message referenced in subsection (3)(b)(ii) of this section. RV symbols shall not be installed on supplemental directional panel business signs installed along an interchange ramp or at a ramp terminal.

AMENDATORY SECTION (Amending WSR 04-16-056, filed 7/29/04, effective 8/29/04)

WAC 468-70-070 Permits and procedure. (1) No business signs will be installed on motorist information sign panels prior to issuance of a permit by the department. Permits will be issued by the department in accordance with this chapter.

(2) Permit applications will be accepted at the appropriate department of transportation regional office in care of the regional administrator. Applications transmitted by mail shall be effective from date of receipt rather than of mailing.

(3) One permit application will be for all the signing that the applicant will qualify for at a single interchange or intersection.

(4) Application forms, which may be obtained from the department, shall contain the following information:

(a) Name and address of the owner of the business to be advertised.

(b) The highway for which the applicant seeks signing.

(c) A description of the interchange or intersection for which the business sign is to be installed.

(d) A statement of the business location including exact travel distance from the interchange or intersection and precise roads used for access.

(e) An agreement to limit the height of any on-premise sign to no greater than fifteen feet higher than the roof of the main building, measured to the bottom of the sign for businesses located within one mile of an interchange or intersection. (Not applicable along interstate highways if the sign is not visible to the highway.)

Pursuant to RCW 47.36.310, for on-premise signs visible along rural interstate highways the department may waive the fifteen-foot height requirement, on a case-by-case basis, where granting the waiver will not preclude another business having an on-premise sign which complies with the fifteen-foot height requirement from receiving business signs.

(f) Such other information as may be required by the department.

(5) Each permit application will include a sketch, drawing or picture of the message to be placed on the business signs. Business signs may not display messages advertising

products or services incidental to the qualifying motorist service activity. The department shall have final approval of the design of the business sign and may modify such submissions to achieve uniformity, visibility, and legibility.

(6) Any party aggrieved by an application determination of the department shall be accorded hearing rights before the secretary of transportation or his designee pursuant to chapter 34.05 RCW.

(7) Once an application is approved, the department will request that the business ~~((to))~~ provide its business signs to the department for installation and pay the first year's annual motorist information sign panel fee. ~~((Business signs shall be built to the department's specifications prescribed by WAC 468-70-060.))~~ There is no additional fee for first-time business sign installations.

(8) ~~((Business sign replacement and motorist information sign panel maintenance fee:~~

~~(a) Maintenance replacement business signs shall be provided by the business, when requested by the department to replace weather worn business signs. A business at its own request may also provide replacement business signs for installation. In either case, the installation fee is one hundred fifteen dollars per sign.~~

~~(b) The annual fee charged to each business for motorist information sign panels is:~~

~~(i) Nine hundred ten dollars for signs located in fee zone 1;~~

~~(ii) Six hundred eighty-three dollars for signs located in fee zone 2;~~

~~(iii) Three hundred sixty-four dollars for signs located in fee zone 3.~~

~~(e)) The department will install RV symbols on business signs upon request, after confirming that the business meets the eligibility requirements prescribed by WAC 468-70-050(2). RV symbols may remain on business signs until no longer applicable, or until the symbols require replacement due to weather-wear.~~

~~(9) Fees:~~

~~(a) The annual fee charged to each business for motorist information sign panels is:~~

~~(i) Nine hundred ten dollars for signs located in fee zone 1;~~

~~(ii) Six hundred eighty-three dollars for signs located in fee zone 2; or~~

~~(iii) Three hundred sixty-four dollars for signs located in fee zone 3.~~

~~(b) The fee for business sign replacement is one hundred fifteen dollars per sign, prepaid.~~

~~(c) The fee for new or replacement department-installed RV symbols is seventy-five dollars per symbol, prepaid.~~

~~(d) The annual fee for motorist information sign panels shall be paid within thirty calendar days after the anniversary of the permit issue. Failure to pay the annual fee within thirty calendar days after the anniversary of the permit issue will cause the permit to expire and the business signs to be removed from the motorist information sign panels.~~

~~((9)) (10) Business signs may be replaced at the request of a business; or, the department may request the business signs to replace weather-worn signs.~~

~~(11) Loss of sign locations:~~

(a) If highway construction or maintenance activities temporarily close sections of highway where business signs are installed, the business shall have no claim against the department or its contractor for disruption of signing and/or access resulting from the closures.

(b) Where it's necessary to remove signs temporarily to accommodate highway construction or maintenance activities, the department may prorate the amount due to the department for the next billing cycle proportionate to the length of time the sign is removed.

(c) Where highway construction, maintenance activities, or natural causes permanently preclude reinstalling motorist information sign panels or business signs, the business shall be entitled to:

(i) If no signs remain, prorated reimbursement for the balance of the current billing cycle; or

(ii) If signs remain in one direction of travel, prorated credit of the amount due to the department for the next billing cycle.

(12) The department shall not be liable for loss or damage due to delays or interruptions of service because of inclement weather, fire, or other casualty loss, strikes, governmental laws, rules, or regulations, acts of God, or any other reason outside the department's control.

(13) In the event of change of ownership or operation, assignment of permits in good standing shall be effective only upon receipt of assignment by the department. The department will not reassign permits in the event of change of both ownership and operation.

~~((10)) (14) Revocation and expiration:~~

~~(a) After hearing before the secretary of transportation or his designee, as required by chapter 34.05 RCW (Administrative Procedure Act) and the rules and regulations of the department adopted pursuant thereto, any motorist information sign permit may be revoked by the secretary or the secretary's designee who has conducted the hearing for any of the following reasons:~~

~~(i) For the making of any false or misleading statements in the application for any permit, whether or not the same is material to or relied upon by the department in the issuance of such permit when such false or misleading statement or information shall remain uncorrected after the expiration of thirty days following written notification thereof.~~

~~(ii) For allowing or suffering any on-premise sign to remain that exceeds the height requirements set forth in this chapter.~~

~~(iii) For failure to provide the services and/or facilities required by WAC 468-70-050 and this section.~~

~~(b) If a motorist information sign permit is revoked or is allowed to expire, a new application may be accepted by the department and the motorist service activity must meet the requirements of any other applying motorist service activity.~~

WSR 06-15-021

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed July 7, 2006, 1:44 p.m., effective August 7, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 458-61A-207 explains the exemption from real estate excise tax for transfers of real property under confirmed chapter 11 or confirmed chapter 12 bankruptcy plans. The department amended the rule to make minor editing changes to clarify the existing language in the rule. These editing changes do not change the effect of the previous version of this rule.

Citation of Existing Rules Affected by this Order: Amending WAC 458-61A-207 Bankruptcy.

Adopted under notice filed as WSR 06-10-091 on May 3, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 7, 2006.

Janis P. Bianchi
Assistant Director
Interpretations and
Technical Advice Division

AMENDATORY SECTION (Amending WSR 05-23-093, filed 11/16/05, effective 12/17/05)

WAC 458-61A-207 Bankruptcy. (1) **Introduction.** The real estate excise tax does not apply to the conveyance of real property by a trustee in bankruptcy or debtor in possession made (~~under either a~~) after the plan is confirmed under a chapter 11 ((plan)) or ((a confirmed)) chapter 12 plan. Federal law preempts real estate excise tax on these transfers.

(2) **Documentation requirements.** A copy of the Order of Confirmation or an extract from the Confirmed Bankruptcy Plan, showing the date the bankruptcy plan was confirmed, the court case cause number, and the bankruptcy chapter number must be attached to the real estate excise affidavit provided to the department.

WSR 06-15-030
PERMANENT RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2006-03—Filed July 10, 2006, 8:56 a.m., effective August 10, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To expand the Washington essential property inspection and placement program (FAIR plan) to all counties within Washington state.

Citation of Existing Rules Affected by this Order: Amending WAC 284-19-020, 284-19-050, and 284-19-060.

Statutory Authority for Adoption: RCW 48.02.060.

Adopted under notice filed as WSR 06-11-177 on May 24, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: July 10, 2006.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 98-10, filed 6/16/98, effective 7/17/98)

WAC 284-19-020 Purposes of program. The purposes of the program are:

(1) To assure stability in the property insurance market of this state.

(2) To encourage maximum use, in obtaining essential property insurance, of the available, normal insurance market provided by authorized insurers.

(3) To make essential property insurance available where it cannot be obtained through the normal insurance market, subject to the conditions stated in this chapter.

(4) To encourage the improvement of the condition of properties located in ~~((the urban areas of))~~ the state of Washington and to further orderly community development.

(5) To establish a FAIR plan (fair access to insurance requirements), an industry placement facility and a joint reinsurance association for the equitable distribution and placement of risks among insurers in the manner and subject to the conditions stated in this chapter.

AMENDATORY SECTION (Amending Matter No. R 98-10, filed 6/16/98, effective 7/17/98)

WAC 284-19-050 Definitions. (1) "Insurer" means any insurance company or other organization licensed to write and engage in writing property insurance business, including the property insurance components of multiperil policies, on a direct basis, in this state.

(2) "Essential property insurance" means the coverage against direct loss to real and tangible personal property at a

fixed location that is provided in the standard fire policy and extended coverage endorsement, and shall include also the perils of vandalism and malicious mischief and such additional lines of property insurance as may be designated by the commissioner. Essential property insurance specifically includes insurance against direct loss to property which is being constructed or rehabilitated (builder's risk coverage). It does not include automobile insurance or insurance on farm or manufacturing risks.

(3) "Industry placement facility" (referred to as the facility) means the organization formed by insurers to assist applicants (~~in urban areas~~) in securing essential property insurance and to administer the FAIR plan and the joint reinsurance association.

(4) "Inspection bureau" means the Washington Surveying and Rating Bureau.

~~((5))~~ "Urban area" includes the following municipalities and counties and such additional counties, municipalities, and definitive political subdivisions as may be added by the commissioner:

Paseo	-	All
King County	-	All
Tacoma	-	All

~~((6))~~ (5) "Premiums written" means gross direct premiums (excluding that portion of premiums on risks ceded to the joint reinsurance association) charged during the second preceding calendar year with respect to property in this state on all policies of property insurance and property insurance components of all multiperil policies, as defined and computed by the facility, less return premiums, dividends paid or credited to policyholders, or the unused or unabsorbed portions of premium deposits.

~~((7))~~ (6) A "service insurer" means any company designated by the facility and approved by the commissioner to issue policies under this program.

~~((8))~~ (7) "Commissioner" means the commissioner of insurance of the state of Washington.

AMENDATORY SECTION (Amending Matter No. R 98-10, filed 6/16/98, effective 7/17/98)

WAC 284-19-060 FAIR plan—Inspections and reports. (1) Any person having an insurable interest in real or tangible personal property at a fixed location (~~in an urban area~~) is entitled to an inspection of the property by the inspection bureau at no cost, upon application to the facility. The inspection may be requested by the property owner, a representative of the property owner, the insurer, or the insurance producer and need not be in writing. Requests for inspections shall be transcribed on a form approved by the facility. A deposit premium is not required as a precondition to inspection.

(2) The owner of the building need not be present for a tenant to obtain an inspection, but the inspection bureau must be provided full access to the property for which insurance is sought.

(3) An inspection report shall be made for each property inspected. The report shall cover pertinent structural and occupancy features as well as the general condition of the

building and surrounding structures. A representative photograph of the property may be taken during the inspection.

(4) During the inspection, the inspector shall point out features of structure and occupancy to the applicant or a representative of the applicant, if present, and shall indicate those features which may result in condition charges if the risk is accepted. The inspector has no authority to advise whether the facility will provide the coverage.

(5) The report shall include a rate make-up statement, including any condition charges or surcharges imposed by inspection or under the program, or under any substandard rating plan approved by the commissioner. A copy of the inspection report shall be made available to the applicant or the applicant's agent upon request.

WSR 06-15-043

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed July 11, 2006, 8:26 a.m., effective August 11, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-401 WAC, Nursery inspection fees by increasing the nursery inspection fees and the permit fee for businesses exempted from a nursery dealer's license by the office of financial management fiscal growth factor for fiscal year 2007 (3.38%).

Citation of Existing Rules Affected by this Order: Amending WAC 16-401-027 and 16-401-041.

Statutory Authority for Adoption: Chapters 15.13, 15.14, and 34.05 RCW.

Adopted under notice filed as WSR 06-11-172 on May 24, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: July 11, 2006.

Robert W. Gore
for Valoria H. Loveland
Director

AMENDATORY SECTION (Amending WSR 05-12-110, filed 5/31/05, effective 7/1/05)

WAC 16-401-027 Schedule of fees and charges—Applicable rates and charges. The following rates apply for requested inspection services:

(1) Fee or Charge:	
Hourly rate—business hours	\$ ((31.95)) <u>33.00</u>
Hourly rate—nonbusiness hours	\$ ((40.80)) <u>42.15</u>
Certificate issued at time of inspection	No charge
Certificate issued more than twenty-four hours after the inspection	\$ ((15.20)) <u>15.70</u>
Additional certificates	\$ ((4.80)) <u>4.95</u>
Fumigation lot or container fee	\$ ((12.70)) <u>13.10</u>
Certificate of plant health for noncommercial movement	\$ ((6.25)) <u>6.45</u>
Compliance agreement	\$ ((31.95)) <u>33.00</u>
Inspection tags or stickers (lots of 250)	\$ ((6.25)) <u>6.45 per lot</u>
Inspection tags or stickers (minimum 10)	\$0.28 each

(2) Mileage at the established office of financial management rate (schedule A), per diem at actual cost, and travel time at the applicable hourly rate may be assessed for requested inspections that are not a part of a regular work schedule. Such charge may be prorated among applicants if more than one applicant is provided service during a workday or trip when mileage and/or per diem are applicable.

(3) Inspections for phytosanitary certification, including growing season field inspections, are provided at the applicable hourly rate provided in subsection (1) of this section except where an alternate certification inspection fee is provided in statute, in rule, or by a written agreement between the department and an industry entity, university, or public agency. When growing season field inspections for phytosanitary certification and regulatory inspections are performed simultaneously, the first two hours of inspection each calendar year for nurseries licensed under WAC 16-401-041 (1)(b) or (2)(a); and the first four hours of inspection per calendar year for nurseries licensed under WAC 16-401-041 (1)(c) or (2)(b), are without charge.

There is no additional charge for the first phytosanitary certificate issued at the time of the inspection.

(4) Inspection and certification of nonplant material or equipment for sanitation (freedom from soil or pests) by visual examination or through witnessing a prescribed treatment (steam cleaning, hydro-washing, etc.) is charged at the applicable hourly rate.

(5) Witnessing and certification of fumigation is charged at the applicable hourly rate, plus a per lot or container fee.

(6) The department may issue a certificate of plant health for noncommercial movement of plant materials between

states by unlicensed persons, up to a maximum of five plants, and provided that the plants are brought to a plant services office for inspection.

Note: When two or more types of inspection, provided in this section, are performed simultaneously, only one hourly rate applies. One certificate for one service is issued at no charge.

AMENDATORY SECTION (Amending WSR 05-12-110, filed 5/31/05, effective 7/1/05)

WAC 16-401-041 Nursery dealer license fees. Annual license fees as established below, must accompany the application for nursery dealer license:

(1) Retail nursery dealer license fee:

(a) Gross business sales of horticultural plants and turf less than two thousand five hundred dollars \$38.73

(b) Gross business sales of horticultural plants and turf between two thousand five hundred dollars and fifteen thousand dollars, the license fee is \$82.99

(c) Gross business sales of horticultural plants and turf of fifteen thousand dollars or more \$166.00

(2) Wholesale nursery dealer license fee:

(a) Gross business sales of horticultural plants and turf less than fifteen thousand dollars \$82.99

(b) Gross business sales of horticultural plants and turf of fifteen thousand dollars or more \$166.00

(3) As provided in RCW 15.13.285, a surcharge of twenty percent of the base rate, in addition to the fees established on all classes of licenses in subsections (1) and (2) of this section, is established.

(4) Permit fee for those types of sales and organizations exempted from licensing requirements by RCW 15.13.-270 \$~~((6.15))~~ 6.35

WSR 06-15-044

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed July 11, 2006, 8:27 a.m., effective August 11, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends WAC 16-470-912 and 16-470-917 by increasing the laboratory diagnostic hourly fees, nematode laboratory diagnostic fees, and post entry inspection fee within the office of financial management fiscal growth factor for fiscal year 2007 (3.38%). In addition, this rule-making order repeals the current fee schedule for virus, bacteria, and fungus laboratory diagnostic fees and replaces them with an hourly charge that reflects the costs associated with performing these tests as required by RCW 17.24.131.

Citation of Existing Rules Affected by this Order: Amending WAC 16-470-912 and 16-470-917.

Statutory Authority for Adoption: Chapters 17.24 and 34.05 RCW.

Adopted under notice filed as WSR 06-11-171 on May 24, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: July 11, 2006.

Robert W. Gore
for Valoria H. Loveland
Director

AMENDATORY SECTION (Amending WSR 05-12-111, filed 5/31/05, effective 7/1/05)

WAC 16-470-912 Schedule of fees and charges—Applicable fees and charges. (1) Hourly rate.

Hourly rate - business hours	\$ ((31.95)) <u>33.00</u>
Hourly rate - nonbusiness hours	\$ ((40.80)) <u>42.15</u>

(2) Laboratory diagnostic services, except as provided in subsection (3) or (4) of this section, are charged at the applicable hourly rate plus materials.

(3) ~~((Plant pathology))~~ Nematology laboratory diagnostic fees are as follows:

Identity Determination	1 sample	5 samples	10 samples	50 samples	100+ samples
((virus- (ELISA) bacteria fungus nematode	At cost	At cost	\$10.55 ea	\$5.20 ea	\$3.00 ea
((virus- (ELISA) bacteria fungus nematode	42.35 ea	40.90 ea	38.35 ea	37.10 ea	37.10 ea
((virus- (ELISA) bacteria fungus nematode	44.80 ea	38.35 ea	37.10 ea	35.75 ea	33.20 ea))
((virus- (ELISA) bacteria fungus nematode	((33.20))	((30.60))	((28.05))	((27.35))	((25.45))
((virus- (ELISA) bacteria fungus nematode	<u>34.30 ea</u>	<u>31.60 ea</u>	<u>28.95 ea</u>	<u>28.25 ea</u>	<u>26.30 ea</u>

Note: To receive volume rates, samples must be submitted as a unit and identification requests must be for one specific ~~((virus, bacterium, fungus, or))~~ nematode ~~((-Samples tested for multiple pathogens will be considered as multiple samples)), unless ((all pathogens)) more than one nematode can be detected in a single test without additional inputs.~~

(4) The department reserves the right to provide service by written agreement at a single, negotiated cost or at a negotiated rate for projects with at least one of the following characteristics:

- (a) Projects greater than one hundred samples;
- (b) Projects requiring materials not readily available; or
- (c) Projects requiring special handling or prolonged incubation periods.

The rate charged shall not be less than the cost to the department of performing the tests.

AMENDATORY SECTION (Amending WSR 05-12-111, filed 5/31/05, effective 7/1/05)

WAC 16-470-917 Schedule of fees and charges—Fees for post entry inspection services. (1) Post entry site inspection and/or permit review and approval. . . . ~~((64.05))~~

66.20

(2) Subsequent inspections of post entry plant materials are provided at the applicable hourly rate.

(3) Post entry inspection fees may be waived for state universities, United States Department of Agriculture researchers, and other public entities.

WSR 06-15-049

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed July 12, 2006, 8:54 a.m., effective September 1, 2006]

Effective Date of Rule: September 1, 2006.

Purpose: To amend WAC 388-450-0080 What is self-employment income?, to more clearly describe the criteria by which an individual's earned income is considered self-employment income for assistance programs. The amended text better describes when a person has an employer/employee relationship versus when that person is self-employed. The updated criteria clarifications are consistent with federal Internal Revenue Service and Social Security Administration descriptions, as well as state labor and industries statutes and division of child care and early learning statutes and policy.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0080.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Adopted under notice filed as WSR 06-11-101 on May 17, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 7, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 03-13-045, filed 6/11/03, effective 8/1/03)

WAC 388-450-0080 What is self-employment income? This section applies to ~~((TANF/SFA, GA, RCA))~~ cash assistance, Basic Food, and medical programs for children, pregnant women and families.

(1) Self-employment income is income you earn from ~~((operating))~~ running a business, performing a service, selling items you make, or re-selling items to make a profit.

(2) You are self-employed if you earn income without having an employer/employee relationship with the person who pays you. This includes, but is not limited to, when:

(a) You have primary control of the way you do your work; or

(b) You report your income using IRS Schedule C, Schedule C-EZ, Schedule K-1, or Schedule SE.

(3) You usually have an employer/employee relationship when:

(a) The person you provide services for has primary control of how you do your work; or

(b) You get an IRS form W-2 to report your income.

(4) Your self-employment does not have to be a licensed business for your business or activity to qualify as self-employment. Some examples of self-employment include:

(a) Child care that requires a license under chapter 74.15 RCW;

(b) Driving a taxi cab;

(c) Farming/fishing;

(d) Odd jobs such as mowing lawns, house painting, gutter cleaning, or car ~~((maintenance))~~ care;

(e) ~~((Operating))~~ Running a lodging for roomers and/or boarders. Roomer income includes money paid to you for shelter costs by someone not in your assistance unit who lives with you ~~((if you))~~ when:

(i) ~~((Own))~~ You own or are buying your residence; or

(ii) You rent all or a part of your residence and the total rent you charge all others in your home is more than your total rent.

(f) ~~((Operating))~~ Running an adult family home;

(g) Providing services such as a massage therapist or a professional escort;

(h) Retainer fees to reserve a bed for a foster child;

(i) Selling ~~((self-produced or supplied items))~~ items you make or items that are supplied to you;

(j) Selling or donating your own biological products such as ~~((blood, plasma, eggs, sperm, or hair; and))~~ providing blood or reproductive material for profit;

(k) Working as ~~((a subcontractor))~~ an independent contractor; and

(l) Running a business or trade either on your own or in a partnership.

~~((3))~~ (5) If you are an employee of a company or ~~((individual))~~ person who ~~((performs))~~ does the activities listed in subsection (2) above as a part of your job, we do not count the ~~((activity))~~ work you do as self-employment. ~~((If the person or company who pays you must report your income using IRS form W-2, you are an employee.~~

~~((4 Most))~~ (6) Self-employment income is ~~((considered))~~ counted as earned income as described in WAC 388-450-0030 except as described in subsection (7).

~~((5))~~ (7) For ~~((TANF/SFA))~~ cash assistance and Basic Food there are special rules about renting or leasing out property or real estate that you own.

(a) We count the income you get as unearned income unless you spend at least twenty hours per week managing the property.

(b) For TANF/SFA, we count the income as unearned income unless the use of the property is a part of your approved individual responsibility plan.

WSR 06-15-059

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed July 12, 2006, 2:41 p.m., effective August 12, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Rule making is a result of statute change from the Public Disclosure Act to the Public Records Act effective July 1, 2006.

Citation of Existing Rules Affected by this Order: Amending WAC 308-56A-090 and 308-93-089.

Statutory Authority for Adoption: RCW 46.01.110.

Adopted under notice filed as WSR 06-10-015 on April 24, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: July 7, 2006.

Liz Luce

Director

AMENDATORY SECTION (Amending WSR 05-18-002, filed 8/25/05, effective 9/25/05)

WAC 308-56A-090 Disclosure of individual vehicle owner information. (1) What vehicle record owner information is protected from disclosure? Vehicle information protected from disclosure is the same as under chapters ~~((42-17))~~ 42.56 and 46.12 RCW which includes:

(a) Name and address information;

(b) Social Security numbers;

(c) Medical or disability information; and

(d) Telephone numbers.

(2) Who may receive disclosure of individual vehicle owner names and addresses?

(a) Government agencies that require use of name and address information in their normal course of business;

(b) Any business entity that requires use of name and address information in their normal course of business in accordance with these rules;

(c) Vehicle manufacturers who require vehicle ownership information for recall of their product;

(d) Individuals that provide proof of personal identification:

(i) For vehicles currently registered in their name; or

(ii) For vehicles they can provide a bill of sale or acceptable documents indicating that they purchased the vehicle.

(e) Please see subsection (3) of this section for additional restrictions.

Business and government entities requesting disclosure of individual vehicle owner names and addresses must enter into a disclosure agreement with the department.

(3) When both a mailing and residence address are recorded on the vehicle record, which address will be disclosed? Where both a mailing address and residence address are recorded on the vehicle record and are different, only the mailing address will be disclosed. Both addresses will be disclosed in response to requests from courts, law enforcement agencies, or government entities with enforcement, investigative, or taxing authority and only for use in the normal course of conducting their business.

(4) What documentation does the department require to disclose vehicle owner name(s) and address(es)? The department requires:

(a) A signed and notarized vehicle/vessel record disclosure request application form provided by the department and completed by the applicant indicating the specific purpose for which the information will be used; and

(b) A disclosure agreement with the department as required by RCW 46.12.380.

(c) Acceptable business entity verification; or

(d) A contract with the department.

(5) What is acceptable business verification? For purposes of this section acceptable business verification includes:

(a) If the requester is a licensed Washington business, a copy of its current master business license;

(b) If the requester is a business that is not required to be licensed in this state, its federal employer identification number/federal tax number (or Uniform Business Identifier) on official letterhead with a notarized signature of the owner or an authorized representative;

(c) If an attorney, a copy of the current bar card; or

(d) If a private investigator, a copy of the current private investigator's license.

(6) Does a business need to supply a new form and copy of the business license each time vehicle information is requested? Yes, each time a request is made for vehicle information a new form and copy of the business license is needed, unless a contract exists between the business and the department.

(7) If a business entity has entered into a contract or agreement with the department, is a separate request for each inquiry required? No. If a business entity has entered

into a signed contract between the business and the department, a separate request for each inquiry is not required.

(8) Are businesses allowed individual owner information on vehicle records? Yes, if a business requires individual owner information to conduct its regular business and qualifies under RCW 46.12.380 and 18 U.S.C. 27.21 (commonly known as Driver Privacy Protection Act), it may receive individual vehicle owner information.

(9) Who may release the vehicle owner name and address information?

(a) The public disclosure unit of the vehicle services division of the department of licensing; or

(b) Agents and subagents, but only when disclosing information for purposes described in subsection (2)(d) of this section.

(10) When may the department disclose the individual name(s) and address(es) of vehicle owners? Notwithstanding the provisions of chapter ((42-17)) 42.56 RCW, the department may disclose names and addresses of vehicle owners when:

(a) The requesting party is a business entity that requests the information for use in their normal course of business;

(b) The request is in writing, signed by the person requesting disclosure, contains the full legal name and address of the requesting party and/or their business, and specifies the purpose for which the information will be used; and

(c) The requesting party enters into a disclosure agreement with the department in which the party:

(i) Agrees they will use the information only for the purpose stated in the request for the information; and

(ii) Will not use, or facilitate the use of the information for the purpose of making any unsolicited business contact with a person named in the disclosed information.

(11) What does the term "unsolicited business contact" mean? The term "unsolicited business contact" means a contact that is intended to result in or promote the sale of any goods or services to a person named in the disclosure information. The term does not apply to situations where the requesting party and such person have been involved in a business transaction prior to the date of the disclosure request and where the request is made in connection with the transaction.

(12) Is the department required to notify the vehicle owner when ownership information is disclosed? When the department grants a request from an attorney or private investigator for information under this section, the department will provide notice to the vehicle owner that the request has been granted. The notice will provide the name and address of the requesting party. Additionally, if a contract holder releases owner information to a private investigator or attorney, they must notify the vehicle owner that a request has been granted, and include the name and address of the requesting party.

(13) How long will the department retain the request for disclosure of vehicle owner information? The department will retain the request for disclosure for three years.

(14) Who is responsible for assuring that the information is used appropriately? Any person, business, entity or association that receives vehicle owner information under

this section is responsible for assuring that the information received is not used for a purpose contrary to the agreement between the person, business, entity or association and the department.

AMENDATORY SECTION (Amending WSR 01-16-105, filed 7/30/01, effective 8/30/01)

WAC 308-93-089 Lists of registered and legal owners of vessels—Furnished for certain purposes—Penalty for unauthorized use. (1) What vessel record information is protected?

Vessel information protected under chapters ~~((42.17))~~ 42.56 and 46.12 RCW and Executive Order 00-03 for vehicles includes:

- (a) Name and address information;
- (b) Social Security numbers;
- (c) Medical or disability information;
- (d) Telephone numbers; and
- (e) ~~((Uniform Business Identifier; and~~
- ~~(f))~~ Bank account information.

(2) Who may receive list disclosure of individual vessel owner names and addresses?

In addition to any other authority that it may have, the department of licensing may furnish lists of registered and legal owners of vessels only for the purposes specified in this section to:

(a) The manufactures of vessels, or their authorized agents, to be used to enable those manufactures to carry out the provisions of the Federal Boat Safety Act of 1971 (85 Stat. 213; 46 U.S.C. 1451 et seq.) and the Code of Federal Regulations adopted by the United States Coast Guard;

(b) Any governmental agency of the United States or Canada, or political subdivisions, to be used by them or their authorized commercial agents or contractors only in connection with the enforcement of the laws governing the operation of a vessel or vessel safety programs administered by that government agency. Only such parts of the list as are required for completion of the work required of the agent or contractor shall be provided to such agent or contractor;

(c) A person, organization or entity for the purposes of compiling statistical data relating to vessel demographics in this state. The department may provide only a specific part of the list that is required for completion of the work required of the person, organization or entity;

(d) An authorized agent or contractor of the department to be used only in connection with providing vessel excise tax, licensing and registration information to vessel dealers; or

(e) Any business regularly making loans to other persons to finance the purchase of vessels, to be used to assist the person requesting the list to determine ownership of specific vessel for the purpose of determining whether or not to provide such financing.

(3) What documentation is needed to receive lists of vessel owner names and addresses?

Each entity must submit the following to the department:

(a) A record disclosure request form provided by the department and completed by the applicant; and

(b) Verification of the applicant's identity as a business; and

(c) A formal agreement between the requester and the department.

(4) What is acceptable verification?

For purposes of this section acceptable business verification includes:

(a) If a licensed Washington business, a copy of its current unexpired master business license;

(b) If a business not required to be licensed in this state, its federal identification number/federal tax number (or Uniform Business Identifier) on its official letterhead with a notarized signature of the owner or an authorized representative;

(c) If an attorney, a copy of the current bar card;

(d) If a private investigator, a copy of the current private investigator's license; or

(e) If an out-of-state business not licensed in Washington:

(i) If the business is required to be licensed, a copy of its current business license issued by the governmental authority with jurisdiction over the license; or

(ii) If the business is not required to be licensed, its federal employer identification number/federal tax number on its official letterhead with a notarized signature of the owner or an authorized representative.

(5) If a business entity or governmental agency has entered into an agreement with the department, is a separate request for each inquiry required?

No. If a business or governmental agency has entered into an agreement with the department, a separate request for each inquiry is not required if the information will be used as originally stated.

(6) Who may release list of vessel owner name and address information?

The department of licensing, vehicle services division's public disclosure/records/contracts section, is authorized to release lists of names and addresses to qualified applicants.

(7) When may the department disclose lists of names and addresses of vessel owners?

Notwithstanding the provisions of chapter ~~((42.17))~~ 42.56 RCW, the department may disclose the names and addresses of vessel owners when:

(a) The requesting party is a business entity that requests the information for use in their normal course of business;

(b) The request is in writing, signed by the person requesting disclosure, contains the full legal name and address of the requesting party and/or their business, and specifies the purpose for which the information will be used; and

(c) The requesting party enters into a disclosure agreement with the department in which the party:

(i) Agrees they will use the information only for the purpose stated in the request for the information; and

(ii) Will not use, or facilitate the use of, the information for the purpose of making any unsolicited business contact with a person named in the disclosed information.

(8) What does the term "unsolicited business contact" mean?

The term "unsolicited business contact" means a contact that is intended to result in or promote the sale of any goods or services to a person named in the disclosure information. The term does not apply to situations where the requesting party and such person have been involved in a business transaction prior to the date of the disclosure request and where the request is made in connection with the transaction.

(9) Is the department required to notify the vessel owner when ownership information is disclosed?

No, except when the information is granted to an attorney or private investigator. The department will then provide the owner of the vessel with notification; the notice will also contain the name and address of the requesting party.

(10) How long will the department retain the request for lists of names and address disclosure?

The department will retain the requests for three years unless a contract for ongoing receipt of information is entered into.

(11) Who is responsible for assuring that the information is used appropriately?

Any person, business, entity or association that receives vessel owner information under this section shall be responsible for assuring that the information received is not used for a purpose contrary to the agreement between the person, business, entity or association and the department or state and federal laws and regulations.

WSR 06-15-060**PERMANENT RULES****DEPARTMENT OF LICENSING**

[Filed July 12, 2006, 2:43 p.m., effective August 12, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This proposal is to correct a mistake in the citing of an RCW. The effect of this change will be to correct the use of the wrong statute.

Citation of Existing Rules Affected by this Order: Amending WAC 308-56A-270.

Statutory Authority for Adoption: RCW 46.16.010.

Other Authority: RCW 9A.04.110.

Adopted under notice filed as WSR 06-10-014 on April 24, 2006 [2006].

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 7, 2006.

Liz Luce
Director

AMENDATORY SECTION (Amending WSR 03-08-055, filed 3/31/03, effective 5/1/03)

WAC 308-56A-270 Forms of signature. (1) **What forms of signature are acceptable to the department?** The department will accept:

(a) The signature of an individual in the same form as the name appears on the application or on the certificate of ownership.

(b) The signature containing initials corresponding to the first letter of the given name(s).

(c) The signature containing a given name(s) corresponding to the initials.

(d) Common nicknames such as Bob for Robert, Jim for James, Betty for Elizabeth, etc.

(e) The signature, any memorandum, signature stamp, mark or sign made with the intent to authenticate an application for certificate of ownership or registration of any person ((provided in RCW 9A.04.110(23))).

(2) **What form of signature is required for business owned vehicles?** Signatures for business owned vehicles must include:

(a) The name of the business or a commonly accepted abbreviation for the business;

(b) The signature of the person authorized to sign on behalf of the business as stated in subsection (1) of this section; and

(c) The title or position of that person.

WSR 06-15-064**PERMANENT RULES****DEPARTMENT OF PERSONNEL**

[Filed July 13, 2006, 10:08 a.m., effective August 14, 2006]

Effective Date of Rule: August 14, 2006.

Purpose: The purpose of this rule is to explain what causes an individual's name to be removed from a layoff list.

Citation of Existing Rules Affected by this Order: Amending WAC 357-46-135.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 06-12-096 on June 7, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 13, 2006.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 06-03-071, filed 1/12/06, effective 2/13/06)

WAC 357-46-135 What causes an individual's name to be removed from a layoff list? (1) An individual's name **must** be removed from an internal layoff list or statewide layoff list at the request of the individual or upon an employee's retirement, resignation, expiration of eligibility or dismissal from the employer.

(2) An individual's name **may** be removed from the internal and/or statewide layoff list for a class when:

(a) The individual is appointed to a permanent position in the class. The individual may also be removed from the internal and/or statewide layoff list for any classes with a lower salary range maximum in that class series/occupational category.

(b) The individual is appointed to a permanent position in a class with a higher salary range maximum in a different class series/occupational category.

(c) The individual has been certified from the layoff list and waives consideration for a position in the class three times.

(d) The employer determines good and sufficient reason exists.

WSR 06-15-065

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed July 13, 2006, 10:09 a.m., effective August 14, 2006]

Effective Date of Rule: August 14, 2006.

Purpose: The purpose of these rules is to explain what happens when an employee reverts.

Citation of Existing Rules Affected by this Order: Amending WAC 357-19-115 and 357-19-285.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 06-12-097 on June 7, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: July 13, 2006.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-12-077, filed 5/27/05, effective 7/1/05)

WAC 357-19-115 To which employer and position would an employee revert? A permanent employee who does not satisfactorily complete the trial service period or a Washington management service (WMS) review period or has failed to progress to the next step of an in-training plan in accordance with WAC 357-19-285, has reversion rights with the current employer at the time of reversion. An employee has the right to revert to a position, if available, in accordance with the following:

(1) For employees reverting from trial service following a promotion, transfer or elevation, the employer must revert the employee to a vacant position, or a position filled by a nonpermanent appointee as defined in WAC 357-01-210, for which the employee satisfies competencies and other position requirements and which is:

(c) Allocated to the class the employee last held permanent status in; or

(d) If no positions are available, allocated to a class which has the same or lower salary range maximum.

(2) For employees reverting from trial service following a voluntary demotion, the employer must revert the employee to a vacant position, or a position filled by a nonpermanent appointee as defined in WAC 357-01-210, for which the employee satisfies the competencies and other position requirements and which is allocated to a class which has the same or lower salary range maximum as the class from which the employee is reverting.

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

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

WAC 357-19-285 What happens to an employee who fails to progress satisfactorily through an in-training plan?

This table is used to determine what happens when an employee appointed to an in-training position fails to satisfactorily progress through the in-training plan.

Type of In-Training Position:		
Class Series/Occupational Category:	Individual position: The individual position is designated as an in-training position	
Employee Status:		
Employee in Probationary Period	⇒ The employee must be separated in accordance with WAC 357-46-185.	⇒ The employee must be separated in accordance with WAC 357-46-185.
Employee in Trial Service Period	<p><i>If the employee WAS PERMANENT before the in-training appointment:</i></p> <p>⇒ The employee has reversion rights in accordance with WAC 357-19-115 through 357-19-117 to the class the employee held permanent status in before the in-training appointment.</p> <p><i>If the employee was NOT PERMANENT before the in-training appointment:</i></p> <p>⇒ The employee must be dismissed under the provisions of WAC 357-40-010.</p>	<p>⇒ The employee has reversion rights in accordance with WAC 357-19-115 through 357-19-117 to the class in which the employee was most recently permanent.</p>
Employee achieved permanent status in job class of the current in-training step but is failing to progress to the next step	<p><i>If the employee WAS PERMANENT before the in-training appointment:</i></p> <p>⇒ The employee has reversion rights in accordance with WAC 357-19-115 through 357-19-117 to the class the employee held permanent status in before the in-training appointment.</p> <p><i>If the employee was NOT PERMANENT before the in-training appointment:</i></p> <p>⇒ The employee must be dismissed under the provisions of WAC 357-40-010.</p>	<p>⇒ The employee is removed from the in-training position and has reversion rights in accordance with WAC 357-19-115 through 357-19-117. <u>The employee has reversion rights</u> to a position, if available, in the class in which the employee currently holds permanent status.</p>

Citation of Existing Rules Affected by this Order: Amending WAC 357-19-400.

Statutory Authority for Adoption: Chapter 41.06 RCW. Adopted under notice filed as WSR 06-12-098 on June 7, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 13, 2006.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

WAC 357-19-400 Can the agency convert a general government nonpermanent appointment to a probationary or trial service appointment? (1) When an agency uses a competitive process to make a nonpermanent appointment to fill a position in the absence of a permanent employee or fill a position nonpermanently due to the impending or actual layoff of a permanent employee(s), the agency may change the status of the appointment to probationary or if the employee held permanent status prior to the nonpermanent appointment to trial service if:

(a) The permanent employee does not return to the position or the layoff action has been implemented; and

(b) The agency needs to fill the position permanently.

~~((2) The agency may change the appointment status to trial service only if the employee held permanent status prior to accepting a nonpermanent appointment.))~~

(2) At the discretion of the appointing authority, time spent in the nonpermanent appointment may count towards the probationary or trial service period for the permanent position.

WSR 06-15-066

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed July 13, 2006, 10:10 a.m., effective August 14, 2006]

Effective Date of Rule: August 14, 2006.

Purpose: The purpose of this rule is to explain when an agency can convert a nonpermanent appointment to a probationary or trial service appointment.

WSR 06-15-067

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed July 13, 2006, 10:11 a.m., effective August 14, 2006]

Effective Date of Rule: August 14, 2006.

Purpose: The purpose of this rule is to explain what right an employee has to return to the classified service from exempt service.

Citation of Existing Rules Affected by this Order:
Amending WAC 357-04-030.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 06-12-099 on June 7, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 13, 2006.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-01-203, filed 12/21/04, effective 7/1/05)

WAC 357-04-030 What right does an employee have to return to the classified service from exempt service? As required by RCW 41.06.070(3), any employee having permanent status in a classified position who accepts an appointment in an exempt position has the right to return to classified service in accordance with WAC 357-19-195, 357-19-200, and 357-19-205. As long as the employee was not terminated from the exempt position for gross misconduct or malfeasance, the employee has the right to return to the highest class of position in which he/she previously held permanent status or to a position of similar nature and salary.

WSR 06-15-068

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed July 13, 2006, 10:12 a.m., effective August 14, 2006]

Effective Date of Rule: August 14, 2006.

Purpose: The purpose of this rule is to explain what happens when it has been determined that a position no longer meets the definition of manager.

Citation of Existing Rules Affected by this Order:
Amending [new section] WAC 357-58-042.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 06-12-100 on June 7, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 13, 2006.

Eva N. Santos
Director

NEW SECTION

WAC 357-58-042 What happens when it has been determined that a position no longer meets the definition of manager found in WAC 357-58-035? When an agency has determined that the duties of a position no longer meet the definition of manager, found in WAC 357-58-035, and is no longer appropriate in WMS, then provisions of WAC 357-58 no longer apply. The WGS rules on reallocation (WAC 357-13) will apply. The employee will retain existing status.

WSR 06-15-069

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed July 13, 2006, 10:12 a.m., effective August 14, 2006]

Effective Date of Rule: August 14, 2006.

Purpose: The purpose of these rules is to explain when a probationary or trial service period may be served concurrently with a WMS review period and what happens when a WGS employee serving a probationary or trial service period is appointed to a WMS position in a different agency.

Citation of Existing Rules Affected by this Order:
Amending WAC 357-58-325 and 357-58-330.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 06-12-101 on June 7, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: July 13, 2006.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-12-070, filed 5/27/05, effective 7/1/05)

WAC 357-58-325 ~~((When may a probationary or trial service period be served concurrently with the WMS review period?))~~ **What happens when a WGS employee serving a probationary or trial service period is appointed to a WMS position within the same agency?** An employee who is appointed to a WMS position from a WGS position in the same agency while serving a probationary or trial service period in the same or similar occupational field may serve the trial service or probationary period concurrently with the review period. At the discretion of the employer, the employee may attain permanent status in the previous job classification once the original probationary or trial service period concludes.

~~((The new))~~ If the positions are in the same or similar occupational field, the employer may allow for some or all of the time served in the ((review)) probationary or trial service period ((for the prior position)) to count towards the review period. ((The employee will not attain permanent status in the original position in the former agency unless agreed to in writing by the employers in both agencies.))

AMENDATORY SECTION (Amending WSR 05-12-070, filed 5/27/05, effective 7/1/05)

WAC 357-58-330 **What happens when a ((general service)) WGS employee serving a probationary or trial service period is appointed to a WMS position in a different agency?** If agreed to in writing by the employers in both agencies, a WGS employee who is appointed to a WMS position in a different agency in the same or similar occupational field while serving in a probationary or trial service period may serve the probationary or trial service period concurrently with the WMS review period. ~~((The employee will attain permanent status in the original WGS position upon completion of the probationary or trial service period.))~~ The employee will not attain permanent status in the previous job classification unless agreed to in writing by the employers in both agencies.

If the positions are in the same or similar occupational field, the new employer may allow for some or all of the time served in the probationary or trial service period for the WGS position to count towards the review period.

WSR 06-15-070
PERMANENT RULES
DEPARTMENT OF PERSONNEL

[Filed July 13, 2006, 10:13 a.m., effective August 14, 2006]

Effective Date of Rule: August 14, 2006.

Purpose: The purpose of this rule is to explain when an employee can request the director to review the performance evaluation process or procedure.

Citation of Existing Rules Affected by this Order:
Amending WAC 357-37-080.

Statutory Authority for Adoption: Chapter 41.06 RCW.
Adopted under notice filed as WSR 06-12-102 on June 7, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 13, 2006.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-01-194, filed 12/21/04, effective 7/1/05)

WAC 357-37-080 **Can an employee request the director to review the performance evaluation process or procedure used for the employee's evaluation?** (1) As provided in WAC 357-49-010, and within thirty days of receipt of a completed and signed performance evaluation or the results of an employer review as provided in WAC 357-37-075, a((n)) WGS employee may request a director's review of alleged irregularities in the use of the approved performance evaluation form and/or procedures outlined in the civil service rules. The content of an evaluation is not subject to review.

(2) A WMS employee may request an internal agency review of alleged irregularities in the use of the approved performance evaluation form and/or procedures outlined in the civil service rules in accordance with the agency's WMS performance management procedures. The content of an evaluation is not subject to review.

WSR 06-15-071
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed July 13, 2006, 10:52 a.m., effective August 13, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: As a requirement for Plan 3 vesting, the current rules require Plan 3 members to attain twelve or more months of service credit after attaining age fifty-four. This adoption order implements SHB 2684 (chapter 33, Laws of 2006), by

lowering the age threshold for earning twelve months of service credit to age forty-four.

Citation of Existing Rules Affected by this Order: Repealing WAC 415-110-320; and amending WAC 415-112-502.

Statutory Authority for Adoption: RCW 41.50.050(5).

Other Authority: RCW 41.35.680 (WAC 415-110-320 and 415-110-605); RCW 41.32.875 (WAC 415-112-502).

Adopted under notice filed as WSR 06-12-079 on June 6, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 1, Repealed 1.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 1, Repealed 1.

Date Adopted: July 12, 2006.

Sandra J. Matheson
Director

NEW SECTION

WAC 415-110-605 Do I qualify for retirement from Plan 3? (1) You may retire from Plan 3:

(a) At age sixty-five with an unreduced defined benefit with the following amounts of service credit:

(i) Ten years of service credit;

(ii) Five years of service credit, including at least twelve service credit months after attaining age forty-four; or

(iii) Five years of Plan 2 service credit earned prior to September 1, 2000, before transferring to Plan 3 under RCW 41.35.510;

(b) At age fifty-five with a minimum of ten years of service credit; however, your defined benefit will be actuarially reduced to reflect the difference in the number of years between your age at retirement and age sixty-five; or

(c) At age fifty-five with a minimum of thirty years of service credit. Your defined benefit will be reduced by three percent per year for each year between your age at retirement and age sixty-five.

(2) Under RCW 41.35.010 (7)(c), you may use up to forty-five days of unused sick leave to meet service credit requirements.

(a) Forty-five days of unused sick leave is equal to two service credit months. Less than forty-five days is creditable as specified in RCW 41.35.010 (7)(c).

(b) Unused sick leave may not be used to meet age requirements.

(c) The sick leave used is forfeited, and may not be cashed out.

(d) The value of the sick leave will not be included in your AFC or used to determine the amount of your retirement benefit.

Example: On December 31, 2005, John is age sixty-five and has four years and ten months of service credit. John has forty-five days of sick leave. John may use the forty-five days of sick leave to qualify for retirement effective January 1, 2006.

(3) See RCW 41.35.680.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 415-110-320	Determining SERS Plan 3 defined benefit retirement eligibility.
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AMENDATORY SECTION (Amending WSR 05-12-108, filed 5/27/05, effective 6/27/05)

WAC 415-112-502 Do I qualify for retirement from Plan 3? You may retire from Plan 3:

(1) At age sixty-five with the following amounts of service credit to retire with an unreduced defined benefit:

(a) Ten years of service credit; or

(b) Five years of service credit, including at least twelve service credit months after attaining age (~~forty-four~~) forty-four; or

(c) Five years of TRS Plan 2 service credit earned prior to July 1, 1996, before transferring to Plan 3 under RCW 41.40.750.

(2) At age fifty-five with a minimum of ten years of service credit, however, your defined benefit will be actuarially reduced to reflect the difference in the number of years between your age at retirement and age sixty-five.

(3) At age fifty-five with a minimum of thirty years of service credit. Your defined benefit will be reduced by three percent per year to reflect the difference in the number of years between your age at retirement and age sixty-five.

See RCW 41.32.875.

WSR 06-15-081

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed July 14, 2006, 1:42 p.m., effective August 14, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amends rules of procedure for hearings relating to proposed driver's license suspensions, revocations, and denials resulting from arrests for driving while under the influence of liquor or any drug, creates a new section in chapter 308-100 WAC providing for the continuance of a hearing contesting a commercial driver's license disqualification when a witness who has been subpoenaed fails to appear.

Citation of Existing Rules Affected by this Order: Amending WAC 308-103-020, 308-103-030, 308-103-040,

308-103-050, 308-103-070, 308-103-080, 308-103-090, 308-103-100, 308-103-110, 308-103-120, 308-103-150, 308-103-170, 308-103-180, and 308-103-190.

Statutory Authority for Adoption: RCW 46.01.110, 46.20.308, 46.25.120.

Adopted under notice filed as WSR 06-02-037 on December 28, 2005.

Changes Other than Editing from Proposed to Adopted Version: WAC 308-103-040(7) is changed to make it clear that a petitioner who is applying for a waiver of the hearing fee because of indigence is to send the hearing request to the same address as a petitioner who is entitled to a waiver.

WAC 308-103-070(10) is changed to make it clear that action taken by a hearing officer to enforce a subpoena issued on the petitioner's behalf is considered to be at the request of the petitioner for purposes of WAC 308-103-070(6).

WAC 308-103-090(2) is changed to include the internet address where a department-approved subpoena form is available.

WAC 308-103-090(3) is changed to permit service of subpoena by certified mail if preapproved by the hearing officer, and to restore the provision that service of a subpoena on a law enforcement officer may be effected by serving the subpoena upon the officer's employer.

WAC 308-103-150 (9) and (10) are changed to make it clear that the petitioner has an opportunity to request a continuance if needed for cross-examination and rebuttal of evidence admitted by the hearing officer during the hearing.

WAC 308-103-190(9) is changed to restore the requirement that a final order be issued in instances where the hearing officer is denying a driver's petition for reconsideration.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 14, 2006.

Becky Loomis
Assistant Director

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02)

WAC 308-103-020 Definitions. As used in this chapter, unless the context requires otherwise, the term:

- (1) "Department" refers to the department of licensing;
- (2) "Hearing" means a formal hearing as authorized and conducted pursuant to RCW 46.20.308(8);

(3) "Hearing office" refers to the physical location from which a hearing officer conducts hearings under RCW 46.20.308. Where appropriate, the term "hearing office" also refers to the staff assigned to a hearing office;

(4) "Hearing officer" means a person who is appointed by the director of the department to conduct hearings under RCW 46.20.308;

(5) "Legal representative" means an attorney licensed and authorized to practice law in the state of Washington;

(6) "Petitioner" refers to a driver subject to the provisions of RCW 46.20.308 who has requested a hearing(;

~~(7) "Sworn report" means the document completed and filed with the department by the arresting officer in accordance with RCW 46.20.308 (6)(e), and which confers jurisdiction upon the department).~~

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02)

WAC 308-103-030 Computation of time. In computing any period of time prescribed or allowed by any applicable statute or rule, ~~((the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation. Nothing contained herein is intended to extend the statutory requirement that a hearing be held within sixty days of a petitioner's arrest))~~ RCW 1.12.040 shall apply, except in the service of subpoenas as provided in WAC 308-103-090.

AMENDATORY SECTION (Amending WSR 04-20-013, filed 9/24/04)

WAC 308-103-040 Requests for hearings. The request for a hearing shall be in compliance with the following requirements:

(1) The petitioner must ~~((file))~~ submit his or her formal request for hearing:

(a) Within thirty days of the date notice is given under RCW 46.20.308(6) if the petitioner submitted to a breath test;

(b) Within thirty days of the date notice is given under RCW 46.20.308(6) if the petitioner is alleged to have refused the breath or blood test; or

(c) Within thirty days of the date notice of the department's intention to suspend, revoke, or deny the petitioner's license, permit, or privilege to drive is given in the event notice is given by the department following a blood test;

(2) If a request for a hearing is mailed, it must be received by the department within seven days of the date the request was postmarked in order to be considered timely under this section. This provision may be waived if the request is received by the department within thirty days of the date of arrest, or within thirty days of the date notice is given in the event notice is given by the department following a blood test, or if the petitioner and the department agree to a waiver of the sixty-day hearing requirement;

(3) The request for a hearing shall be in writing. The petitioner may use the form provided by the department for this purpose or any other writing. The petitioner may request a hearing on-line if the petitioner meets the qualifications described on the web site at www.dol.wa.gov;

(4) The hearing request form provided by the department shall include a statement that if the parties or witness(es) are hearing or speech impaired and/or non-English speaking, a qualified interpreter will be appointed at no cost to the parties or witnesses. The form shall include a section where the petitioner may request an interpreter and where he or she may identify the language and/or nature of the interpretive services needed;

(5) The request for hearing shall include the following information with respect to the petitioner:

- (a) Full name;
- (b) Mailing address;
- (c) Daytime telephone number, including area code;
- (d) Date of birth; and
- (e) Driver's license number;

(6) If petitioner will have legal representation at the administrative hearing, the request shall also include the legal representative's name, mailing address, and daytime telephone number, including area code;

(7) The request for a hearing shall be submitted to the Department of Licensing, Driver Services Division, Hearings & Interviews, P.O. Box 9048, Olympia, Washington 98507-9048. If the petitioner is entitled to or applying for a waiver of the filing fee because of indigence, the request must be submitted to the Department of Licensing, Driver Services Division, Hearing & Interviews, P.O. Box 9031, Olympia, Washington 98507-9031;

(8) The written request for hearing shall be accompanied by ~~((a))~~ the applicable filing fee ~~((of one hundred dollars))~~, unless the petitioner is entitled to a waiver of the filing fee because of indigence, in which case a request and justification for the fee waiver shall accompany the hearing request;

(9) A petitioner who has been denied a court-appointed attorney on the underlying related criminal charge because he or she is deemed "not indigent" is not eligible for a fee waiver;

(10) Indigence may be established as follows:

(a) Written verification of court-appointed legal counsel on the associated underlying criminal charge;

(b) Written verification of current involuntary commitment to a public mental health facility;

(c) Verification of current receipt of general assistance, temporary assistance for needy families, refugee resettlement benefits, food stamps, supplemental security income, or Medicaid; or

(d) Submission and approval of the department's "Application for Waiver of Hearing Fee" form;

(11) Failure to timely submit a hearing request and/or failure to include the filing fee or application for waiver with the hearing request shall be deemed a waiver of the petitioner's right to a hearing; and

(12) If a request for hearing is denied, the department shall notify the petitioner and the petitioner's legal representative, if any, stating the reason(s) for denial.

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02)

WAC 308-103-050 Scheduling—Notice of hearing.

(1) Upon receipt of a timely request for a hearing, the department shall schedule a telephone hearing ~~((to be held within sixty days following arrest, or sixty days following the date notice of the department's intention to suspend, revoke, or deny the petitioner's license, permit, or privilege to drive is given in the event notice is given by the department following a blood test))~~.

(2) The petitioner or petitioner's legal representative may state a preferred range of hearing dates or unavailable dates. To the extent that such requests can be accommodated within the applicable time limits and hearing officer availability, the department will attempt to do so.

(3) The department shall ~~((provide ten days written notice to the petitioner or petitioner's legal representative of the scheduled date and time))~~ mail a hearing notice to the petitioner or petitioner's legal representative at least ten days prior to the date of the hearing.

(4) The department's scheduling notice and brochure will include the assigned hearing ~~((office's))~~ officer's name, ~~((address, and))~~ a phone number ~~((; a statement of the issues; the procedure for requesting subpoena(s); the policy on continuances;))~~ at which he or she may be contacted, and other information concerning the administrative hearing. The department's notice will also include a telephone number and a TDD number that any party or witness may call to request special accommodations.

(5) The petitioner or petitioner's legal representative may request that all or part of the hearing be conducted "in person." Such request ~~((should))~~ must be in writing stating the reasons therefore and directed to the assigned hearing ~~((office's))~~ officer immediately upon receipt of the scheduling notice. The hearing ~~((office's))~~ officer will have the sole discretion to grant or deny this request, and may require a waiver of the sixty-day hearing requirement as a condition to granting the request. ~~((Considerations will include whether the hearing officer can be available in the petitioner's county of arrest on the scheduled date of the hearing, the number and location of witnesses, and the basis of this request.))~~

(6) Each party shall ensure that his or her address and telephone number on file is correct and shall immediately notify the department and/or hearing officer of any change of address or telephone number that occurs during the course of the proceeding.

(7) The administrative hearing may be reassigned to a different hearing officer without notice to the parties ~~((because of scheduling conflicts, illness, injuries, unavailability, or emergencies))~~.

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02)

WAC 308-103-070 Continuances. (1) After a hearing has been scheduled, it may be continued, rescheduled, or adjourned only at the discretion of the hearing officer.

(2) Requests for a continuance, reschedule, or adjournment must be made in writing, to the assigned hearing officer, and shall include the basis for the request.

(3) Except in the case of an emergency, the hearing officer must receive the continuance request at least two business days before the scheduled hearing. Absent an emergency, requests made with less than two business days' notice may be summarily denied.

(4) The hearing officer may ~~((grant a continuance, adjournment))~~ continue, adjourn, or reschedule at any time, including on the date of the administrative hearing.

(5) Hearings that are continued, rescheduled, or adjourned may be reset to a date within sixty days of the driver's arrest, or within sixty days of the date notice of the department's intention to suspend, revoke, or deny the petitioner's license, permit, or privilege to drive is given in the event notice is given by the department following a blood test, unless a written waiver of the sixty-day hearing requirement of RCW 46.20.308 accompanies the written continuance request, or unless the petitioner is deemed to have "waived" the statutory time frame.

(6) A petitioner is deemed to have waived the statutory requirement that the hearing be held within sixty days if petitioner requests an action that cannot be accommodated within the sixty-day period.

(7) A party shall not consider a hearing continued, rescheduled, or adjourned until notified by the hearing officer ~~((that the request has been granted))~~.

(8) The hearing officer may require the party who requests a continuance, reschedule, or adjournment to submit documentary evidence that substantiates the reason for the request.

(9) A second request for a continuance, reschedule, or adjournment will only be granted in the event of an extreme emergency.

(10) Notwithstanding any provisions of this section to the contrary, a hearing officer may continue a hearing in the event a law enforcement officer who has been subpoenaed as a witness fails to appear. The hearing officer must continue a hearing in the event a law enforcement officer who has been subpoenaed as a witness fails to appear and the petitioner is a holder of a commercial driver's license or was operating a commercial motor vehicle at the time of the driver's arrest. A hearing continued under this subsection must be adjourned until such time as the subpoena may be enforced under RCW 7.21.060. Action taken by the hearing officer to enforce a subpoena issued on the petitioner's behalf is considered to be at the request of the petitioner for purposes of WAC 308-103-070(6).

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02)

WAC 308-103-080 Deferred prosecutions—Withdrawals. (1) In the event a petitioner elects to seek a deferred prosecution ~~((and is eligible for a stay of the administrative suspension))~~, the petitioner shall notify the assigned hearing officer and file a notice of Intent to Seek Deferred Prosecution on a form provided by the department, with the hearing officer or the department. ~~((Upon doing so, the hearing officer will make a determination whether any hearing scheduled in the matter should be canceled and the petitioner's temporary license, if eligible, should be extended as provided by~~

~~WAC 308-103-170. If, for any reason, the petitioner does not obtain an order of deferred prosecution from the court, the department will set a new hearing date only if the petitioner requests a hearing by contacting the original hearing officer no later than one hundred thirty days from the date of the arrest, and prior to the expiration of the temporary license. In the absence of such a timely request, the petitioner waives his or her right to a hearing and the department will issue the previously stayed order of suspension or revocation))~~ To be eligible for a stay, the petitioner must not have previously entered a deferred prosecution program, must have taken the breath or blood test, and must indicate that he or she intends to seek a deferred prosecution. If the petitioner is eligible, a stay of the administrative action shall be entered on the driver's record pursuant to RCW 46.20.308(10). If the petitioner is not eligible, he or she will be so notified by the department and the administrative action will continue.

(2) If a stay is entered under subsection (1) of this section, the hearing will proceed and the results will be sent to the petitioner. As provided by RCW 46.20.308(10), the stay of the action shall continue but any appeal of the Findings and Conclusion must be undertaken within thirty days of service of the results.

(3) If the petitioner elects to withdraw his or her request for a hearing, he or she ((shall)) must notify the department in writing of his or her intent to do so. Upon receiving such a request for a withdrawal, the department shall proceed with the administrative action against the petitioner's driving ((license)) privilege, unless a stay has been entered on the driver's record due to the filing of a notice of Intent to Seek a Deferred Prosecution.

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02)

WAC 308-103-090 Subpoenas. (1) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 46.20.308(8). All subpoenas shall direct the witness to appear by telephone unless otherwise agreed to by the hearing officer.

(2) Every subpoena shall be submitted on a form approved by the department, available on the Internet at www.dol.wa.gov, and must be signed and issued by a hearing officer ~~((and shall identify the party requesting the issuance of the subpoena and shall state the name of the agency and the title of the proceeding and shall command the person to whom it is directed to appear in person or telephonically and give testimony or produce designated books, documents, or things under his or her control))~~. An approved form may be obtained from the department.

(a) A subpoena to a person to provide testimony at a hearing shall specify the time and place set for hearing.

(b) A subpoena duces tecum requesting a person to produce designated books, documents, or things under his or her control shall specify a time and place for producing the books, documents, or things. That time and place may be the time and place set for hearing, or another reasonably convenient time and place in advance of the hearing.

(3) A subpoena ~~((may))~~ must be personally served by ((any)) a suitable person over eighteen years of age, by exhib-

iting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her abode. ~~((When service is made by any person other than an officer authorized to serve process,))~~ Proof of service shall be made by affidavit or declaration under penalty of perjury. Service by certified mail must be pre-approved by the hearing officer. Service of a subpoena on a law enforcement officer may be effected by serving the subpoena upon the officer's employer.

(4) The hearing officer may condition issuance of the subpoena upon advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(5) A subpoena must be properly served ten days prior to the date of the hearing, excluding weekends and holidays, in order to have full force and effect.

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02)

WAC 308-103-100 Evidence—Exhibits. (1) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of these rules.

(2) When only portions (~~((only))~~) of a document are to be relied upon, the offering party shall identify the pertinent excerpts and state the purpose for which such materials will be offered. Only the excerpts, in the form of copies, shall be received in the record. However, the whole of the original documents, except any portions containing confidential material protected by law, shall be made available for examination and for use by all parties.

(3) The refusal of a witness to answer any question which has been ruled to be proper shall, in the discretion of the hearing officer, be ground for striking all testimony previously given by such witness on related matter.

(4) Evidence is admissible if received prior to, or during, the hearing.

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02)

WAC 308-103-110 Video evidence(~~((—Video tapes))~~). ~~((1) If a video tape is submitted by a law enforcement officer, the officer shall submit two copies.~~

~~((2))~~ If the petitioner wishes to submit ~~((a))~~ video ~~((tapes))~~ evidence, the petitioner shall be responsible for the costs of preparing a copy to be admitted as evidence. Video ~~((tapes))~~ evidence shall be submitted sufficiently in advance of the hearing to allow the hearing officer the opportunity to review ~~((the tape))~~ it prior to the hearing. The hearing officer may require a time waiver from the petitioner in order to reschedule the hearing and satisfy this provision when needed.

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02)

WAC 308-103-120 Evidence. (1) The hearing officer shall rule on the admissibility and weight to be accorded to all evidence submitted at the hearing. Evidence, including hearsay evidence, is admissible if in the judgment of the hearing

officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely on in the conduct of their affairs. The hearing officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious. The admissibility of evidence shall be liberally construed to effect the intent and purpose of the hearings covered by these rules.

(2) Law enforcement officers or other persons with knowledge relevant to the hearing may appear and testify without notice. Such testimony shall not preclude the admissibility of any documents submitted.

(3) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(4) Official notice may be taken of (a) any judicially cognizable facts, (b) technical or scientific facts within the agency's specialized knowledge, and (c) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during the hearing of the material so noticed and the sources thereof and they shall be afforded an opportunity to contest the facts and materials so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02)

WAC 308-103-150 Conduct of hearings. Hearings are open to public observation. To the extent that a hearing is conducted by telephone or other electronic means, the availability of public observation is satisfied by giving members of the public an opportunity to hear or inspect the agency's record. The hearing officer's authority includes, but shall not be limited to, the authority to:

- (1) Determine the order of presentation of evidence;
- (2) Administer oaths and affirmations;
- (3) Issue subpoenas pursuant to RCW 46.20.308(8);
- (4) Rule on procedural matters, objections, and motions;
- (5) Rule on offers of proof and receive relevant evidence;
- (6) Order the exclusion of witnesses upon a showing of good cause;

(7) Afford the petitioner the opportunity to respond, present evidence, conduct cross-examination, and submit rebuttal evidence. The hearing officer may question witnesses to develop any facts deemed necessary to fairly and adequately decide the matter;

(8) Call additional witnesses and request and/or obtain additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by the petitioner;

(9) Examine and admit the official records of the department, subject to full opportunity, including the opportunity to request a continuance if needed, for cross-examination and rebuttal by the petitioner;

(10) Examine and admit public records, including but not limited to maps, policy and procedure manuals, breath testing equipment manuals and the Washington state patrol breath test section web site at any time before and during the hearing, subject to full opportunity, including the opportunity

to request a continuance if needed, for cross-examination and rebuttal by the petitioner;

~~((10))~~ (11) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;

~~((11))~~ (12) Permit or require oral argument or briefs and determine the time limits for submission thereof;

~~((12))~~ (13) Issue an order of default;

~~((13))~~ (14) Recess the hearing to a later time to accommodate scheduling conflicts. Hearings are ordinarily scheduled to be one hour in length;

~~((14))~~ (15) Take any other action necessary and authorized by any applicable statute or rule; and

~~((15))~~ (16) Waive any requirement of these rules unless petitioner shows that he or she would be prejudiced by such a waiver.

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02)

WAC 308-103-170 Temporary license. A temporary license issued by a law enforcement officer pursuant to RCW 46.20.308 may be extended when:

(1) A hearing is conducted and a decision on the outcome of the hearing is taken under advisement by the hearing officer; or

(2) A hearing is continued or rescheduled outside of the initial sixty-day effective period of the temporary license;~~;~~
~~or~~

~~(3) Petitioner is seeking a deferred prosecution and requests an extension of the temporary license.~~

~~Extensions may be made to a maximum of one hundred fifty days from the date of arrest. Nothing contained herein shall effect the validity of any other action taken against the petitioner's driving privilege by the department, or authorize a petitioner to drive if his or her driving privilege has been suspended or revoked for other reasons).~~

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02)

WAC 308-103-180 Final order. Every decision and order shall:

(1) Be correctly captioned as to the name of the department of licensing and name of the proceeding;

(2) Designate all parties and representatives participating in the proceeding;

(3) Contain a final order disposing of all contested issues ~~((and setting the effective date for the order));~~ and

(4) Contain a statement describing the right to appeal.

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02)

WAC 308-103-190 Reconsideration and appeals. (1) The petitioner's rights to appeal are provided in RCW 46.20.308(9), and nothing herein is intended to detract from that statute.

(2) Grounds for a petition for reconsideration are limited to evidence or legal argument which are material to the petitioner and ~~((that by the exercise of reasonable diligence the~~

~~petitioner or petitioner's legal representative did not and could)) were not ((have)) produced at the time of the hearing, or for other good and sufficient reason as determined by the hearing officer.~~

(3) The petition must state with particularity any new evidence or new legal argument that is proposed and why it ~~((was not available at the time of))~~ could not have been discovered using due diligence prior to the hearing. The petition must specify with particularity the portions of the initial order to which the petition applies.

(4) A petition for reconsideration of a final order shall be filed with the hearing officer who signed that final order, within ten days of the date ~~((that the hearing officer signed it))~~ the final order is mailed to the petitioner.

(5) The petition shall be ~~((disposed of))~~ reviewed by the hearing officer who entered the original final order, if reasonably available. The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further hearing.

(6) If the petition is granted in whole or in part, a new order shall be issued in the same form as the original order, and shall include the designation "amended" in its title. This amended order shall reference the petition for reconsideration in its preamble, which sets out what the hearing officer considered. Any amended order shall include the "Findings of Fact and Conclusions of Law" from the original final order with amendments.

(7) The relief granted pursuant to a petition for reconsideration is limited to review of the designated evidence and/or argument as identified in the petition. At the hearing officer's discretion, a supplemental hearing may be scheduled. Such a petition is not grounds for a new hearing, and the record already established shall remain undisturbed.

(8) A petition for reconsideration does not stay the department's action on the petitioner's driving privilege as ordered by the original final order. A petitioner seeking a stay must file a separate petition for that purpose. The hearing officer will grant a stay only if the hearing officer determines that it is likely that the petitioner will prevail and the action be reversed and that denying the stay will create irreparable harm to the petitioner. If the hearing officer grants such a petition for a stay, the hearing officer shall sign an order releasing the action and crediting any time already served, and subsequently sign an order sustaining or reversing the action, as determined by the amended final order. Disposition denying a stay is not subject to review.

(9) An amended final order shall ~~((issue))~~ be issued either denying reconsideration or, in the event reconsideration is granted, dissolving or modifying the original final order. The date of the amended final order begins the thirty-day period for the petitioner to appeal the amended final order, and there is no longer a right to appeal the original final order.

(10) The filing of a petition for reconsideration is not a prerequisite for filing an appeal. An order denying reconsideration is not subject to appeal.

NEW SECTION**WAC 308-100-400 Formal hearings—Continuances.**

(1) After a hearing has been scheduled pursuant to RCW 46.25.120(5), it may be continued, rescheduled, or adjourned only at the discretion of the hearing officer.

(2) A hearing officer must continue a hearing scheduled pursuant to RCW 46.25.120(5) in the event a law enforcement officer whose attendance is required fails to appear. A hearing continued under this subsection must be adjourned until such time as the officer may be compelled to attend by issuance of a subpoena under RCW 46.20.332. A subpoena issued to compel the attendance of an officer is subject to enforcement under RCW 7.21.060.

**WSR 06-15-090
PERMANENT RULES**

HORSE RACING COMMISSION

[Filed July 14, 2006, 4:33 p.m., effective August 14, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To adopt a new section WAC 260-08-597 Funding to assist the equine industry.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 06-11-140 on May 23, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 1, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 13, 2006.

R. J. Lopez
Deputy Secretary

NEW SECTION

WAC 260-08-597 Funding to assist the equine industry. (1) If the commission determines that there are additional funds in its operating account beyond what is needed to fund the continued operations of the commission, the commission may designate up to three hundred thousand dollars of those funds to be used to assist the equine industry. Funds used to assist the equine industry may only be used to help develop the equine industry, maintain or upgrade racing facilities, or assist equine health research. In deciding how to allocate the funds available, the commission will give first consideration

to uses that assist the Class C race meets and equine health research. The commission will establish a process for individuals or organizations to request funds.

(2) Available funds may be allocated to fund requests from individuals or organizations, or programs the commission determines support the purposes specified in subsection (1) of this section.

(3) The commission has discretion to determine the amount of funding available, identify the programs for which funding will be provided, the amount of funding for each program, and the procedures for distributing funds.

WSR 06-15-091**PERMANENT RULES****HORSE RACING COMMISSION**

[Filed July 14, 2006, 4:36 p.m., effective August 14, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To adopt a new section WAC 260-48-935 Choose (n) pools.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 06-11-139 on May 23, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 1, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 13, 2006.

R. J. Lopez
Deputy Secretary

NEW SECTION

WAC 260-48-935 Choose (n) pools. (1) The choose (n) is a form of parimutuel wagering, in which bettors attempt to select the winners of a specific number of races (n). The choose (n) pool must be held separately from all other pools and will in no way be part of a daily double, exacta, trifecta or any other wagering pool. The choose (n) is a pool wherein the bettor is required to select any (n) winning horses from that particular card and is not a parlay (a wager using the proceeds of a previous winning bet).

(2) The association must obtain written approval from the executive secretary concerning the format and scheduling of choose (n) contests, the races in which choose (n) wagering will be permitted, and the amount of any cap to be set on

the carryover. The choose (n) pool must close after each race but will reopen with respect to subsequent races that have not yet been run provided that there are at least as many races remaining as required to be selected on a winning choose (n) ticket. Once approved, any changes will require approval from the executive secretary.

(3) The number of races in a choose (n) pool is designated by the association, while the specific races wagered on are at the discretion of the bettor. The races need not be consecutive and the first race of a choose (n) ticket may begin at any time provided that there are an adequate number of races left on the program. The bettor may purchase a choose (n) ticket allowing the bettor to select any (n) races from the entire card, unless the association has designated a race not eligible for the choose (n) pool.

(4) The choose (n) pool will be apportioned under one of the following methods:

(a) Method one - Choose (n) no carryover: The choose (n) "net wagering pool" will be equally distributed to the holder or holders of choose (n) tickets which correctly select (n) first place winners from the eligible races comprising the choose (n). If no choose (n) ticket correctly selects (n) first place winners from choose (n) eligible races, the "net wagering pool" of a choose (n) with no carryover amount will be equally distributed to the ticket holder or holders selecting the greatest number of first place winners of the races comprising the choose (n). If there are no winning wagers, the pool is refunded.

(b) Method two - Choose (n) with carryover: The choose (n) "net wagering pool" and carryover, if any, will be distributed as a single price pool to holders of choose (n) tickets which have correctly selected the winner of (n) races of the races comprising the choose (n). However, if no choose (n) ticket correctly selects the first place winner in (n) races comprising the choose (n), twenty-five percent of the net wagering pool for that particular choose (n) will be equally distributed to the holder or holders of choose (n) tickets correctly selecting the greatest number of first place winners of the races comprising the choose (n) and the remaining seventy-five percent of the net wagering pool for that particular choose (n) will be added as the "carryover amount" portion of the wagering pool for designated subsequent choose (n) offerings by the association. In any choose (n) with a "carryover amount" feature, one hundred percent of the "net wagering pool" for the particular choose (n) plus any accumulated "carryover amount," will be equally distributed to the holder or holders of choose (n) tickets which correctly select the first place winners in (n) races comprising the choose (n).

(5) The association will determine the denominations of the choose (n) tickets. No less than two or more than six races will comprise any choose (n) ticket.

(6) The choose (n) tickets must be clearly and immediately distinguishable from other parimutuel tickets.

(7) Those horses constituting an entry or field, as defined by rule, will race in any choose (n) race as a single wagering interest for purposes of the choose (n) pool calculations. A scratch after wagering has begun of any part of the entry or field selection in a race will have no effect on the status of such entry or field as a wagering interest.

(8) At any time after wagering begins on the choose (n) contest, should a horse, entire betting entry or field be scratched or declared a nonstarter in any choose (n) race, no further tickets selecting such horses, entry or field will be issued, and wagers upon such horse, entry or field for purposes of the choose (n) will be deemed wagers upon the horse, entry or field on which the most money has been wagered in the win pool at the close of win betting for such race. In the event that two horses have the exact amount wagered on them, the horse, entry or field with the lowest program number will be designated.

(9) In the event of a dead heat for win between two or more horses in any of the choose (n) races, all such horses will be considered as the winning horse for the purpose of distributing the choose (n) pool.

(10) The choose (n) pool with a carryover will be calculated as follows:

(a) One hundred percent of the net amount in the choose (n) pool subject to distribution among winning ticket holders must be distributed among holders of choose (n) tickets which have correctly selected the winner of (n) races of the races comprising the choose (n).

(b) In the event there is no choose (n) ticket which correctly designates the winner of (n) races from the races that comprise the choose (n), twenty-five percent of that racing date's net amount available for distribution must be distributed among the holders of choose (n) tickets correctly designating the most winning selections of the races that comprise the choose (n), and the remaining seventy-five percent of said pool must be carried over and added to the pool on the next day that the wager is conducted.

(c) If, on the last day on which the choose (n) is conducted at a horse race meeting, no one selects the winning horse in (n) races, the total amount of the choose (n) pool which exists on that day must be paid to the bettor or bettors selecting the largest number of winning horses in those races. In no event will any part of the pool be carried over to the next year's race meeting, except for reasons beyond the control of the licensee and upon the approval of the executive secretary. If, for any reason, the choose (n) carryover must be held over to the corresponding choose (n) pool of a subsequent meet, the carryover will be deposited in an interest-bearing account approved by the executive secretary. The choose (n) carryover plus accrued interest will then be added to the net choose (n) pool of the following meet on a date and performance so designated by the executive secretary.

(11) When the distance of the race is changed or the condition of the turf course warrants a change of racing surface in any of the races open to choose (n) wagering, and such change has not been made known to the betting public prior to the close of wagering for the first choose (n) race, the stewards will declare the changed races a "no contest" for choose (n) wagering purposes and the pool will be distributed in accordance with subsection (10) of this section. Following the designation of a race as a "no contest," no tickets may be sold selecting a horse in such "no contest" race. Any race that has been canceled or declared a "no contest" may not be considered a contested race for choose (n) purposes.

(12) If, for any reason, one or more races are canceled or declared a "no contest," the choose (n) pool will be paid using the following formula:

(a) Choose two: Any live ticket regardless of its starting point that has not completed at least two contested legs will be refunded. After two or more races have run, one hundred percent of the daily pool plus any carryover will be distributed in accordance with subsection (10) of this section.

(b) Choose three: Any ticket regardless of its starting point that has not completed at least three contested legs will be refunded. After three or more races have run: One hundred percent of the daily pool plus any carryover must be distributed in accordance with subsection (10) of this section.

(c) Choose four: Any ticket regardless of its starting point that has not completed at least four contested legs must be refunded. After four or more races have run: One hundred percent of the daily pool plus any carryover must be distributed in accordance with subsection (10) of this section.

(d) Choose five: Any ticket regardless of its starting point that has not completed at least four contested legs must be refunded.

(i) In the event that only four choose five races are contested: One hundred percent of that day's net pool (not including any carryover), after refunds, will be paid to tickets with four wins and no losses.

(ii) In the event that at least five races have been contested for the choose five: Seventy-five percent of that day's net pool (after refunds) plus any carryover will be paid to tickets with five wins and twenty-five percent of the pool will be paid to tickets with four wins and no losses. In the event no ticket has five wins, seventy-five percent of the daily pool will be paid to tickets with four wins and a selection in the canceled race and twenty-five percent paid to tickets with three wins and a selection in two of the canceled races.

(e) Choose six: Any ticket regardless of its starting point that has not completed at least four contested legs must be refunded.

(i) In the event only four choose six races are contested: One hundred percent of the day's net pool (not including any carryover) after refunds, must be paid to tickets with four wins.

(ii) In the event that only five choose six races are contested: Seventy-five percent of the daily pool (after refunds) will be paid to tickets with five wins and twenty-five percent to tickets with four wins and no losses and a selection in the noncontested race.

(iii) In the event that at least six races have been contested for the choose six and two or more races have not been contested: Seventy-five percent of the daily pool plus any carryover must be paid to tickets with six wins, eighteen and three-quarter percent of the daily pool to tickets with five wins and a selection in a noncontested race, and six and one-quarter percent of the daily pool will be paid to tickets with four wins and selections in two of the noncontested races. If no ticket has six wins, fifty percent of the daily pool must be paid to tickets with five wins and a selection in a noncontested race, twenty-five percent of the daily pool to tickets with four wins and selections in two noncontested races, and twenty-five percent of the daily pool to tickets with five wins and one loss.

(iv) In the event that at least six races have been contested for the choose six and one race has not been contested: Seventy-five percent of the daily pool plus any carryover must be paid to tickets with six wins and twenty-five percent of the daily pool to tickets with five wins and a selection in the noncontested race. If no ticket has six wins, seventy-five percent of the daily pool must be paid to tickets with five wins and a selection in the noncontested race and twenty-five percent of the daily pool to tickets with five wins and one loss.

(v) In the event that there is no payable ticket in a category within any of these subsections, that portion of the daily pool will be divided equally between the other categories within that subsection. In the event that there is no payable ticket within a subsection, the entire daily pool will be carried over and added to the choose (n) pool on the next day that the choose (n) wagering is conducted.

(13) When there is a cancellation of the race card or a race is declared a no contest and there are any changes in the calculation of the choose (n) other than provided for in subsection (12) of this section, the change must be approved in writing by the executive secretary.

(14) If, for any reason, the race card is canceled, wagering on the choose (n) pool must close immediately and the choose (n) pool must be distributed in accordance with subsection (12) of this section.

(15) The choose (n) carryover may be capped at a designated level approved by the executive secretary so that if at the close of any performance, the amount in the choose (n) carryover equals or exceeds the designated cap, the choose (n) carryover will be frozen until it is won or distributed under other provisions of this rule. After the choose (n) carryover is frozen, one hundred percent of the net pool, part of which would ordinarily be added to the choose (n) carryover, must be equally distributed to the ticket holder or holders selecting the greatest number of first place winners of the races comprising the choose (n) for that performance.

(16) A written request for permission to distribute the choose (n) carryover on a specific performance may be submitted to the executive secretary. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.

(17) Should the choose (n) carryover be designated for distribution on a specified date and performance in which there are no wagers with (n) wins, the entire pool must be distributed as a single price pool to those whose selection finished first in the greatest number of choose (n) contests. The choose (n) carryover will be designated for distribution on a specified date and performance only under the following circumstances:

(a) Upon written approval from the executive secretary as provided in subsection (16) of this section.

(b) Upon written approval from the executive secretary when there is a change in the carryover cap, a change from one type of choose (n) wagering to another, or when the choose (n) is discontinued.

(c) On the closing performance of the meet or split meet.

(18) With the written approval of the executive secretary, the association may contribute to the choose (n) carry-over a sum of money up to the amount of any designated cap.

(19) All choose (n) rules and methods of calculations must be available and posted for the bettors by the association.

(20) It is a violation of these rules for any person to provide information to any individual regarding covered combinations or amounts wagered on specific combinations. This rule is not intended to prohibit necessary communication between totalisator and parimutuel department employees for processing of pool data. The association may be permitted to provide information regarding number of tickets sold and number of live tickets remaining to the wagering public.

(21) The association may suspend previously approved choose (n) wagering with the prior approval of the executive secretary. Any carryover will be held until the suspended choose (n) wagering is reinstated. An association may request approval of a choose (n) wager or separate wagering pool for specific performances.

(22) Should circumstances occur which are not addressed by these rules, the stewards will resolve them in accordance with general parimutuel practice. Decisions regarding distribution of the choose (n) pool made by the stewards will be final.

WSR 06-15-092

PERMANENT RULES

HORSE RACING COMMISSION

[Filed July 14, 2006, 4:39 p.m., effective August 14, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To amend WAC 260-80-140 Disturbing the peace.

Citation of Existing Rules Affected by this Order: Amending WAC 260-80-140 Disturbing the peace.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 06-12-064 on June 5, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 13, 2006.

R. J. Lopez
Deputy Secretary

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-80-140 Disturbing the peace. (~~No person shall in any manner, or at any time, disturb the peace or make himself obnoxious on the grounds of an association.~~) A person may not disturb the peace while on association grounds.

WSR 06-15-098

PERMANENT RULES

GAMBLING COMMISSION

[Order 459—Filed July 17, 2006, 11:03 a.m., effective August 17, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The rule change removes restrictions on manufacturers and distributors which currently prohibit them from selling gambling equipment and services to operators on credit. It also removes restrictions on an operator's use of checks and credit cards to purchase gambling equipment, products, and services.

Citation of Existing Rules Affected by this Order: Repealing WAC 230-12-340 and 230-12-350.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 06-10-012 on April 21, 2006, with a published date of May 17, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 2.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 2.

Date Adopted: July 14, 2006.

Susan Arland
Rules Coordinator

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 230-12-340

Sale of gambling equipment, devices, supplies, paraphernalia, and related services—Authorized transactions.

WAC 230-12-350

Use of checks and credit cards to purchase gambling equipment, products, and services—Restrictions.

WSR 06-15-099
PERMANENT RULES
GAMBLING COMMISSION

[Order 460—Filed July 17, 2006, 11:04 a.m., effective August 17, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Currently, cash, checks and electronic point-of-sale bank transfers (debit cards) are authorized as payment methods to participate in gambling activities. This amendment authorizes gift certificates and gift cards as authorized forms of payment to participate in gambling activities.

Citation of Existing Rules Affected by this Order: Amending WAC 230-12-050.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 06-07-115 on March 17, 2006, with a published date of April 25, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 14, 2006.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 425, filed 10/13/03, effective 1/1/04)

WAC 230-12-050 Extension of credit, loans, or gifts prohibited—Limited exception. No licensee, member or employee thereof shall extend credit, make a loan, or grant a gift to any person playing in an authorized gambling activity, or which enables a person to play in an authorized gambling activity.

Gifts prohibited—Exceptions.

(1) Gifts are items licensees give away to its customers and are not connected to gambling activities regulated by the commission. Licensees shall not offer gifts in conjunction with gambling activities, with the following exceptions:

(a) Promotions are allowed as authorized by WAC 230-12-045;

(b) Transportation services provided to and from gambling activities;

(c) Free or discounted food, drink or merchandise may be provided under the following conditions:

(i) The actual cost of any individual item may not exceed five hundred dollars;

(ii) The merchandise shall not be traded back to the licensee for cash or be used to further participate in an authorized gambling activity;

(d) For each individual gift with an actual cost over one hundred dollars, charitable and nonprofit organizations shall prepare and maintain a written record with the following information:

(i) How the recipients of the gifts were selected;

(ii) The number of gifts awarded; and

(iii) The total cost of each gift given.

Credit and loans prohibited—Exceptions.

(2) The consideration required to participate in the gambling activity shall be collected in full, by cash, check, ~~((or))~~ electronic point-of-sale bank transfer, gift certificate, or gift card, prior to participation, with the following exceptions:

Punch boards/pull-tabs.

(a) The consideration paid for the opportunity to play a punch board or pull-tab series may be collected immediately after the play is completed only when such consideration is ten dollars or less;

Charitable/nonprofit organization's billing system for members.

(b) When a bona fide charitable or bona fide nonprofit organization conducting any of the activities authorized by chapter 9.46 RCW or commission rules has a regular billing system for all of the activities of its members with such organization, such billing system may be utilized in connection with the playing of any of the activities authorized hereunder if:

(i) The playing of such activity is limited to regular members of such organization who have become regular members prior to the commencement of such activity and whose qualifications for membership were not dependent upon, or in any way related to, the playing of such activity; and

(ii) The director has given prior written consent to the use of such billing system in connection with the conduct of activities authorized under these rules.

Raffle tickets purchased with credit cards.

(c) Charitable or nonprofit organizations utilizing credit cards, issued by a state and/or federally regulated financial institution, for payment to participate in raffles.

WSR 06-15-103
PERMANENT RULES
OLYMPIC REGION
CLEAN AIR AGENCY

[Filed July 17, 2006, 11:51 a.m., effective August 17, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This action will reorganize Regulation 1. The organization will help the public and industry identify their regulatory responsibilities in complying with air quality laws and regulations. Only the numbering system has changed. There are no changes to the content.

Citation of Existing Rules Affected by this Order: Amending Olympic Region Clean Air Agency Regulation 1.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 06-11-114 on May 18, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 12, 2006.

Mark V. Goodin
Acting Director
for Richard A. Stedman
Executive Director

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WSR 06-15-105**PERMANENT RULES****DEPARTMENT OF AGRICULTURE**

[Filed July 17, 2006, 2:27 p.m., effective August 17, 2006]

Effective Date of Rule: Thirty-one days after filing.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The amendment to clarify inspection requirements in WAC 16-532-035 was approved in a referendum of affected hop producers pursuant to RCW 15.65.170.

Purpose: The Washington state hop commission petitioned the director to amend its marketing order. Inspection requirements for hops are clarified to ensure that a Washington state department of agriculture inspector, consistent with current industry practice, officially samples all baled hops.

Citation of Existing Rules Affected by this Order: Amending WAC 16-532-035.

Statutory Authority for Adoption: Chapters 15.65 and 34.05 RCW.

Adopted under notice filed as WSR 06-03-132 on January 18, 2006.

Changes Other than Editing from Proposed to Adopted Version: A referendum for the proposed increase in the hop annual assessment rate under WAC 16-532-040 was not approved by the affected hop producers and, therefore, is not being adopted.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 17, 2006.

Robert W. Gore
Deputy Director

AMENDATORY SECTION (Amending Order 5077, filed 8/23/95, effective 9/23/95)

WAC 16-532-035 Inspection required. (1) Before marketing or processing, all varieties of hops produced in the state of Washington ((shall)) must be inspected and certified by the Federal/State Hop Inspection Service for quality and condition of seed, leaf and stem ((prior to marketing or processing, pursuant)) according to the standards established by the Federal Grain Inspection Service of the United States Department of Agriculture.

(2) Any hops that are baled on a producer's farm must be officially sampled by a Washington state department of agriculture inspector.

WSR 06-15-110
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed July 18, 2006, 10:41 a.m., effective August 18, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule making will adopt WAC 296-20-03002 Treatment not authorized, to state that the Charite III disc is not a treatment option for injured workers and victims of crime. L&I reviewed the best scientific evidence on artificial discs and decided not to cover the Charite III disc. This decision was made because there is no substantial scientific evidence to support the disc as a treatment option. The device has not been proven to be safe and efficacious.

Citation of Existing Rules Affected by this Order: Amending WAC 296-20-03002.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030.

Adopted under notice filed as WSR 06-06-067 on February 28, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 18, 2006.

Gary Weeks
 Director

AMENDATORY SECTION (Amending Order 86-19, filed 2/28/86, effective 4/1/86)

WAC 296-20-03002 Treatment not authorized. The department or self-insurer will not allow nor pay for following treatment:

(1) **Use of diapulse, thermatic (standard model only), spectrowave and superpulse machines on workers entitled to benefits under the Industrial Insurance Act.**

(2) Iontophoresis; prolotherapy; acupuncture; injections of colchicine; injections of fibrosing or sclerosing agents; and injections of substances other than anesthetic or contrast into the subarachnoid space (intra-theal injections).

(3) Lumbar artificial disc replacement with Charite lumbar artificial disc.

(4) Treatment to improve or maintain general health (i.e., prescriptions and/or injection of vitamins or referrals to special programs such as health spas, swim programs, exercise programs, athletic-fitness clubs, diet programs, social counseling).

~~((4))~~ (5) Continued treatment beyond stabilization of the industrial condition(s), i.e., maintenance care, except where necessary to monitor prescription of medication necessary to maintain stabilization i.e., anti-convulsive, anti-spasmodic, etc.

~~((5))~~ (6) After consultation and advice to the department or self-insurer, any treatment measure deemed to be dangerous or inappropriate for the injured worker in question.

~~((6))~~ (7) Treatment measures of an unusual, controversial, obsolete, or experimental nature (see WAC 296-20-045). Under certain conditions, treatment in this category may be approved by the department or self-insurer. Approval must be obtained prior to treatment. Requests must contain a description of the treatment, reason for the request with benefits and results expected.

WSR 06-15-131
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed July 19, 2006, 10:12 a.m., effective August 19, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The proposed rule restructures the commercial shellfish operations fee schedule for paralytic shellfish poison (PSP) testing of commercially harvested geoduck. PSP fees are set for the purpose of recovering 100% of the cost of PSP testing performed at the state public health lab in Seattle. The restructure is revenue neutral, but will increase fees over the fiscal growth factor for some operators. The 2005 legislature authorized the department to increase fees beyond the fiscal growth factor in ESSB 6090 (section 221(1), chapter 518, Laws of 2005).

Citation of Existing Rules Affected by this Order: Amending WAC 246-282-990.

Statutory Authority for Adoption: RCW 43.70.250.

Adopted under notice filed as WSR 06-11-165 on May 24, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 17, 2006.

M. C. Selecky
 Secretary

AMENDATORY SECTION (Amending WSR 05-17-120, filed 8/17/05, effective 9/17/05)

WAC 246-282-990 Fees. (1) Annual shellfish operation license fees are:

Type of Operation	Annual Fee
Harvester	\$250(-)
Shellstock Shipper	
0 - 49 Acres	\$282(-)
50 or greater Acres	\$452(-)
Scallop Shellstock Shipper	\$282
Shucker-Packer	
Plants with floor space < 2000 sq. ft.	\$514(-)
Plants with floor space 2000 sq. ft. to 5000 sq. ft.	\$622(-)
Plants with floor space > 5000 sq. ft.	\$1,147(-)

(2) The fee for each export certificate is \$10.30.

(3) Annual PSP testing fees for companies harvesting species other than geoduck intertidally (between the extremes of high and low tide) are as follows:

Type of Operation	Number of Harvest Sites	Fee
Harvester	≤ 2	\$173
Harvester	3 or more	\$259
Shellstock Shipper	≤ 2	\$195
0 - 49 acres		
Shellstock Shipper	3 or more	\$292
0 - 49 acres		
Shellstock Shipper	N/A	\$468
50 or greater acres		
Shucker-Packer	≤ 2	\$354
(plants < 2000 ft ²)		
Shucker-Packer	3 or more	\$533
(plants < 2000 ft ²)		
Shucker-Packer	≤ 2	\$429
(plants 2000 - 5000 ft ²)		
Shucker-Packer	3 or more	\$644
(plants 2000 - 5000 ft ²)		
Shucker-Packer	N/A	\$1,189
(plants > 5000 ft ²)		

(a) The number of harvest sites will be the total number of harvest sites on the licensed company's harvest site certificate:

- (i) At the time of first licensure; or
- (ii) January 1 of each year for companies licensed as harvesters; or
- (iii) July 1 of each year for companies licensed as shellstock shippers and shucker packers.

(b) Two or more contiguous parcels with a total acreage of one acre or less is considered one harvest site.

(4) Annual PSP testing fees for companies harvesting geoduck are as follows:

Harvester	Fee
Department of natural resources (quota tracts harvested by DNR contract holders)	\$(13,216)) <u>10,132</u>
Jamestown S'Klallam Tribe	\$(3,377)) <u>4,193</u>
Lower Elwah Klallam Tribe	\$(5,139)) <u>5,241</u>
(Lummi Nation	\$(1,762)) <u>\$0</u>
Nisqually Indian Tribe	\$(11,306)) <u>3,494</u>
Port Gamble S'Klallam Tribe	\$(4,992)) <u>6,639</u>
Puyallup Tribe of Indians	\$(8,663)) <u>5,940</u>
Skokomish Indian Tribe	\$(5,286)) <u>524</u>
Squaxin Island Tribe	\$(8,663)) <u>5,416</u>
Suquamish Tribe	\$(294)) <u>11,880</u>
Swinomish Tribe	\$(1,615)) <u>873</u>
Tulalip Tribe	\$(1,175)) <u>2,620</u>
Discovery Bay Shellfish	\$(8,663)) <u>1,048</u>
(Seattle Shellfish	\$(1,615)) <u>\$734</u>
Taylor Shellfish Company, Inc. (Shelton)	\$(1,175)) <u>\$0</u>
Washington Shell Fish, Inc.	\$(1,175)) <u>\$0</u>

(5) PSP fees must be paid in full to department of health before a commercial shellfish license is issued or renewed.

(6) Refunds for PSP fees will be given only if the applicant withdraws a new or renewal license application prior to the effective date of the new or renewed license.

WSR 06-15-132

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed July 19, 2006, 10:13 a.m., effective August 19, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule will change the due dates for license and renewal fees for medical test sites in order to bring the funding cycle in line with the allotment cycle. The funding currently begins sixteen months after the beginning of the biennial funding cycle. The proposal establishes a requirement for the department of health to charge a prorated licensure and renewal fee for those licenses issued for less than two years.

Citation of Existing Rules Affected by this Order: Amending WAC 246-338-022, 246-338-024, and 246-338-990.

Statutory Authority for Adoption: RCW 70.42.090.

Adopted under notice filed as WSR 06-11-164 on March [May] 24, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: July 5, 2006.

M. C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 00-06-079, filed 3/1/00, effective 4/1/00)

WAC 246-338-022 Initial application for medical test site license. (1) Application procedure.

Applicants requesting a medical test site license must:

(a) Submit a completed application on forms furnished by the department, signed by the owner or authorized representative;

(b) File a separate application for each test site **except** under the following conditions:

(i) If the test site is not at a fixed location and moves from testing site to testing site, or uses a temporary testing location such as a health fair, the medical test site may apply for a single license for the home base location;

(ii) If the medical test site is a not-for-profit or state or local government and performs a combination of fifteen or less of either waived or moderate complexity test procedures at different locations, the owner may file an application for a single license;

(c) Furnish full and complete information to the department in writing:

(i) Name, address, phone number, and federal tax ID number of the medical test site;

(ii) Name of owner;

(iii) Number and types of tests performed, planned, or projected;

(iv) Name and qualifications including educational background, training, and experience of the director;

(v) Names and qualifications including educational background, training, and experience of technical personnel, if requested by the department;

(vi) Name of proficiency testing program or programs used by the medical test site and a copy of the enrollment confirmation form, if applicable;

(vii) Methodologies for tests performed, if requested by the department; and

(viii) Other information as requested by the department;

(d) Submit the designated fee in the time period indicated, upon receipt of a fee statement from the department;

(e) If applying for an accredited license, submit proof of accreditation by an approved accreditation organization. If application has been made to an accreditation organization, submit a copy of the application, followed by proof of accreditation within eleven months of issuance of the medical test site license.

(2) Issuing an initial license.

(a) An initial license will be issued for a medical test site when the applicant:

(i) Submits a completed application and any information requested by the department;

(ii) Pays the designated license fee; and

(iii) Meets the requirements of chapter 70.42 RCW and this chapter.

(b) License expiration dates will be based on a two-year licensure cycle, expiring on ~~((October 31st))~~ June 30th of ~~((even-numbered))~~ odd-numbered years. The license period for an initial license begins the day of the month that payment is received and expires on ~~((October 31st))~~ June 30th of ~~((the current or next even-numbered))~~ odd-numbered years.

(c) For licenses issued for a period of less than two years, the license fee will be prorated for the remainder of the two-year cycle under WAC 246-338-990.

(d) The department may issue a provisional license valid for a period of up to two years when a medical test site applies for licensure for the first time.

~~((d))~~ (e) The department will terminate a provisional license at the time a two-year license for the medical test site is issued.

~~((e))~~ (f) License fees are listed under WAC 246-338-990.

AMENDATORY SECTION (Amending WSR 00-06-079, filed 3/1/00, effective 4/1/00)

WAC 246-338-024 License renewal/reapplication process. (1) The department will issue a renewal license for a medical test site when the owner:

(a) At least thirty days prior to the expiration date of the current license, submits a completed renewal application form, available from the department, in compliance with WAC 246-338-022(1) and submits the designated fee; and

(b) Meets the requirements of chapter 70.42 RCW and this chapter.

(2) A license is issued for a period of two years. License expiration dates are based on a two-year cycle, expiring on ~~((October 31st))~~ June 30th of ~~((even-numbered))~~ odd-numbered years.

(3) For licenses issued for a period of less than two years, the license fee shall be prorated based on the two-year fees listed under WAC 246-338-990.

(4) The department may extend a license for a period not to exceed six months beyond the expiration date of the license.

~~((4))~~ (5) The department will require the owner of the medical test site to reapply for a license if proof of accreditation is not supplied to the department within eleven months of issuance of an accredited license.

~~((5))~~ (6) The owner or applicant of a medical test site must reapply for licensure within thirty days, if the acceptance of approval of the accreditation organization for the medical test site is denied or terminated.

~~((6))~~ (7) If at any time any of the changes listed in WAC 246-338-026 occur, the medical test site may require a different type of license than what the medical test site currently holds. If so, the owner must submit a reapplication form, within thirty days of the change, and pay applicable fees.

AMENDATORY SECTION (Amending WSR 02-12-105, filed 6/5/02, effective 7/6/02)

WAC 246-338-990 Fees. (1) The department will assess and collect biennial fees for medical test sites as follows:

(a) Charge fees, based on the requirements authorized under RCW 70.42.090 and this section;

(b) Assess additional fees when changes listed in WAC 246-338-026 occur that require a different type of license than what the medical test site currently holds; ~~(and)~~

(c) Charge prorated fees for the remainder of the two-year cycle when the owner or applicant applies for an initial license during a biennium as defined under WAC 246-338-022 (2)(c);

(d) Charge prorated fees for licenses issued for less than a two-year period under WAC 246-338-024(3); and

(e) Determine fees according to criteria described in Table 990-1.

Table 990-1 License Categories and Fees

Category of License	Number of Tests/Year	Biennial Fee
Category E	25,001-50,000 tests	\$3,382
Category F	50,001-75,000 tests	\$4,187
Category G	75,001-100,000 tests	\$4,991
Category H	100,001-500,000 tests	\$5,835
Category I	500,001-1,000,000 tests	\$10,369
Category J	> 1,000,000 tests	\$12,443
Accredited:		
Low Volume	1-2,000 tests	\$ 165
Category A	2,001-10,000 tests, 1-3 specialties	\$ 211
Category B	2,001-10,000 tests, 4 or more specialties	\$ 231
Category C	10,001-25,000 tests, 1-3 specialties	\$ 531
Category D	10,001-25,000 tests, 4 or more specialties	\$ 559
Category E	25,001-50,000 tests	\$ 787
Category F	50,001-75,000 tests	\$1,254
Category G	75,001-100,000 tests	\$1,722
Category H	100,001-500,000 tests	\$2,227
Category I	500,001-1,000,000 tests	\$6,428
Category J	> 1,000,000 tests	\$8,168
Follow-up survey for deficiencies		Direct staff time
Complaint investigation		Direct staff time

(2) The following programs are excluded from fee charges when performing only waived hematocrit or hemoglobin testing for nutritional evaluation and food distribution purposes:

- (a) Women, infant and children programs (WIC); and
- (b) Washington state migrant council.

Category of License	Number of Tests/Year	Biennial Fee
Certificate of Waiver	N/A	\$ 150
PPMP	N/A	\$ 200
Low Volume	1-2,000 tests	\$ 450
Category A	2,001-10,000 tests, 1-3 specialties	\$1,364
Category B	2,001-10,000 tests, 4 or more specialties	\$1,769
Category C	10,001-25,000 tests, 1-3 specialties	\$2,454
Category D	10,001-25,000 tests, 4 or more specialties	\$2,818

WSR 06-15-134
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed July 19, 2006, 10:56 a.m., effective August 19, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To add language to the rule that says pregnant women who are ineligible for Medicaid due to immigration status may receive prenatal medical care under the state children's health insurance program (SCHIP).

Citation of Existing Rules Affected by this Order: Amending WAC 388-542-0010.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.050.

Other Authority: Title XXI of the Social Security Act.

Adopted under notice filed as WSR 06-12-093 on June 6, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 14, 2006.

Andy Fernando, Manager
 Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-16-064, filed 7/30/04, effective 8/30/04)

WAC 388-542-0010 Purpose and scope of SCHIP. (1) The ~~((medical assistance administration (MAA)))~~ department administers the state children's health insurance program (SCHIP) to provide access to:

(a) Medical care for children whose family income exceeds the limit for Medicaid eligibility but is not greater than two hundred fifty percent of the federal poverty level (FPL)((-)); and

(b) Prenatal care and medical services for a pregnant woman;

(i) Who is ineligible for Medicaid due to immigration status; and

(ii) Whose family income is at or below one hundred eighty-five percent FPL.

(2) SCHIP is authorized by Title XXI of the Social Security Act and by RCW 74.09.450.

WSR 06-15-135
PERMANENT RULES
HOP COMMISSION

[Filed July 19, 2006, 11:18 a.m., effective August 19, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The Washington hop commission is proposing to remove the requirement to stencil all hop bales with "WASHINGTON" or "WASHINGTON GROWN." In-state processing results in few hop bales leaving the Yakima Valley so change will not impact crop marketing. It will allow greater reuse of burlap bale cloth and result in a time and cost savings.

Citation of Existing Rules Affected by this Order: Amending WAC 16-532-120.

Statutory Authority for Adoption: Chapters 15.65 and 34.05 RCW.

Adopted under notice filed as WSR 06-07-165 on March 22, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 17, 2006.

Ann E. George
 Administrator

AMENDATORY SECTION (Amending WSR 04-10-059, filed 4/30/04, effective 5/31/04)

WAC 16-532-120 Labeling. ~~((+))~~ Each lot of hops must be identified by the crop year produced, grower number and lot designation, and variety stenciled on each bale.

~~((+))~~ (1) A three-digit grower number will be assigned by the Washington hop commodity board (commission) prior to the annual harvest.

~~((+))~~ (2) The first marking will consist of the last digit of the crop year, the letter "G" and a hyphen, followed by the three-digit grower number and lot designation (example: 8G-000-01).

~~((+))~~ (3) The first marking shall be affixed on the head or top of the bale and shall be in characters approximately two inches high.

~~((+))~~ (4) The second marking will consist of the hop variety, utilizing a two-letter abbreviation. A list of approved two-letter abbreviations will be approved annually by the Washington state hop commodity board.

~~((e))~~ (5) The second marking shall be affixed immediately below the first marking on the head or top of the bale, and shall be in characters approximately two inches high.

~~((2))~~ In addition to any other brands, labels, stencils or other marks customarily used by hop handlers to identify their own trademarks, labels or firm names, all baled hops shall be branded, labeled, stenciled or marked with one distinctive identifying marking, defined or designated by the hop commodity board (commission), which shall identify the hops as having been grown in the state of Washington.

(a) This mark or identification shall be stenciled in letters at least one inch in height and shall read: "Washington," or "grown in Washington," as prescribed by the hop commodity board (commission).

(b) This mark or identification shall be affixed in a suitable position on the head or top of the bale, in the area generally used by the federal/state inspectors to stencil their own identification mark and in the same general area where the grower's "G" number and variety identification are applied.

(c) At no time shall the identification marking appear on the face or sides of the bales, as these areas are considered to be for the use of the dealer or handler for trademarks, shipping markings, bale numbers, firm insignias, etc.

(d) The approved identification marking shall be affixed by the federal/state inspector prior to the drawing of samples for federal/state inspection, and, no hops may be sampled for this purpose unless the markings have been affixed thereto in compliance with the regulations prescribed by the hop commodity board (commission).

(e) Handlers who offer hops for sale in foreign countries where only shipping markings are permitted on the bales or containers, may apply to the hop commodity board (commission) for permission to blot out or remove the identifying marking.)

WSR 06-15-136

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed July 19, 2006, 11:20 a.m., effective August 19, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule increases the isolation distances for rapeseed fields from fields of other rapeseed varieties and from fields of other crucifer species that can cross pollinate with rapeseed.

Citation of Existing Rules Affected by this Order: Amending WAC 16-302-480.

Statutory Authority for Adoption: RCW 15.49.310.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 06-11-146 on May 23, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 19, 2006.

Robert W. Gore
for Valoria Loveland
Director

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-480 Field standards for rapeseed certification. Field standards for the production of rapeseed are as follows:

(1) A portion of a rapeseed field may be certified if the area to be certified is clearly defined.

(2) A field producing foundation, registered or certified rapeseed, also known as Canola (*Brassica napus*), must be the minimum specified isolation distance from fields of any other variety ~~((or))~~ of *Brassica napus*, from fields of the same variety that do not meet the varietal purity requirements for certification, as ~~((given))~~ well as from fields of *Brassica rapa*, *Brassica oleracea*, and *Brassica juncea* as indicated in the following table:

Class	Fields of Cross Pollinated Varieties Including Hybrids	Fields of Self Pollinated Varieties
Foundation	((1,320 feet)) 1 mile	660 feet
Registered	((1,320 feet)) 1 mile	660 feet
Certified	((660 feet)) 1 mile	330 feet
Different class of same variety	165 feet	165 feet

These isolation distances are minimum and must be met in all cases. ~~((When isolating fields of different usage kinds, i.e., industrial type from edible type, it is recommended that distances of three miles for foundation and registered, and two miles for certified be used.))~~

(3) Volunteer plants may be cause for rejection or reclassification of a rapeseed field.

(4) Specific standards for rapeseed are:

Factor	Maximum permitted in each class		
	Foundation	Registered	Certified
Other varieties*	None found ¹	None found ¹	1.00%

* Other varieties are considered to include *Brassica rapa*, *Brassica oleracea*, *Brassica juncea*, off-type plants of *Brassica napus* and plants that can be differentiated from the variety being inspected.

¹ None found means none found during the normal inspection procedures. None found is not a guarantee to mean the field inspected is free of the factor.

(5) Inspection will be made by the certifying agency when the crop is in the early flowering stage.

WSR 06-15-137
PERMANENT RULES
DEPARTMENT OF AGRICULTURE

[Filed July 19, 2006, 11:22 a.m., effective August 19, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule expands one of the prohibited contaminants in sod quality seed from a single species, known as raitail fescue, to the entire *Vulpia* genus. This modification will prevent the certification of a sod quality seed lot that contains a contaminate that is detrimental in sod turf production.

Citation of Existing Rules Affected by this Order: Amending WAC 16-302-410.

Statutory Authority for Adoption: RCW 15.49.310.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 06-11-147 on May 23, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 19, 2006.

Robert W. Gore
 for Valoria Loveland
 Director

AMENDATORY SECTION (Amending WSR 03-18-072, filed 8/29/03, effective 9/29/03)

WAC 16-302-410 Standards for sod quality seed. (1) Except for ryegrass sod quality seed, seed standards for sod quality grass seed are as follows:

Variety	Minimum Purity	Minimum Germination	Maximum* Other Crop	Maximum** Weed
Kentucky Bluegrass	97%	80%	0.1%	.02%
Red Fescue	98%	90%	0.1%	.02%
Chewings Fescue	98%	90%	0.1%	.02%
Tall Fescue	98%	85%	0.1%	.02%

* Must be free of ryegrass, orchardgrass, timothy, *Agrostis* sp., black medic, *Poa trivialis*, brome, reed canarygrass, tall fescue, clover, and meadow foxtail. Maximum allowable Canada bluegrass .02%. When the base sample is one of these kinds, the species will not be considered a contaminant (i.e., tall fescue in tall fescue).

** Must be free of Big, Canby and Sandberg bluegrass, dock, chickweed, crabgrass, plantain, short-awn foxtail, annual bluegrass,

velvetgrass, (~~raitail fescue~~) *Vulpia* sp., and noxious weed seeds as listed under WAC 16-302-100 and 16-302-105.

(2) Seed standards for sod quality ryegrass seed are as follows:

Variety	Minimum Purity	Germination****	Other Crop*	Maximum Weed***
Ryegrass**	98%	90%	0.10%	.02%

* Must be free of black medic, orchardgrass, timothy, *Agrostis* sp., *Poa trivialis*, brome, reed canarygrass, tall fescue, clover and meadow foxtail. Maximum allowable Canada bluegrass 0.02%.

** Maximum fluorescence levels as determined by breeder or variety owner.

*** Must be free of Big, Canby and Sandberg bluegrass, (~~raitail fescue~~) dock, chickweed, crabgrass, plantain, annual bluegrass, velvetgrass, *Vulpia* sp., short-awn foxtail, and noxious weed seeds as listed under WAC 16-302-100 and 16-302-105. An additional 0.07% of weedy *Bromus* spp. will be allowed.

**** 85% minimum germination allowed on ryegrass varieties as designated by the breeder or variety owner. See list maintained by the seed program.

(3) A sod seed analysis certificate is the basis of determining if a lot meets sod quality standards. This certificate is issued by the certifying agency and represents a purity analysis, a twenty-five gram noxious all weed all crop exam and a germination test, except a 50-gram noxious all weed all crop exam is required for fescues and ryegrass.

(4) In addition to a seed certification tag, seed meeting sod quality certified seed standards will be tagged with a special "sod quality seed" tag.

WSR 06-15-138
PERMANENT RULES
DEPARTMENT OF AGRICULTURE

[Filed July 19, 2006, 11:24 a.m., effective August 19, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order clarifies language concerning the length of time between a previous crop of alfalfa and the establishment of a new seed field in relation to the dormancy rating that is assigned to each variety, thus making the requirement easier to comply with.

Citation of Existing Rules Affected by this Order: Amending WAC 16-302-225.

Statutory Authority for Adoption: RCW 15.49.310.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 06-06-149 [06-11-149] on May 23, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 19, 2006.

Robert W. Gore
for Valoria Loveland
Director

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-225 Land requirements for alfalfa seed certification. Land requirements for the production of alfalfa seed crop are as follows:

(1) Prior to stand establishment an alfalfa seed crop of the same kind must not have been grown or planted on the land for four years for the production of foundation or registered class or one year for the production of certified class; except two years ((are required for the production of certified class seed of varieties adapted to the northern and central regions following varieties adapted to the southern region)) must elapse between the destruction of dissimilar varieties, which are varieties that differ by more than four or more points on a dormancy rating scale as reported by the National Alfalfa Variety Review board.

(2) Reseeding of an alfalfa seed field due to failure or partial failure of the first seeding may be done by referring to the guidelines in WAC 16-302-045(5).

(3) Ditchbanks, roadways, etc. adjacent to a certified alfalfa seed field must be free of volunteer alfalfa and prohibited noxious weeds.

(4) Volunteer alfalfa plants in the alfalfa seed field may be cause for rejection or reclassification of a seed field.

(5) No manure or other contaminating materials may be applied during the establishment and production period of the alfalfa seed stand.

AMENDATORY SECTION (Amending WSR 04-08-044, filed 3/31/04, effective 5/1/04)

WAC 16-302-385 Grass seed standards for certification. The seed standards for grass shall be as follows:

Table with columns: CROP AND TYPE OF REPRODUCTION AS PER WAC 16-302-330, SEED STANDARDS (MINIMUM % GERM, MINIMUM % PURE, MAXIMUM % INERT, MAXIMUM % WEEDS, MAXIMUM % OTHER CROPS), and MAXIMUM SEEDS OF OTHER CROP GRASS SPECIES. Rows include BLUEGRASS (Big, Canby, Kentucky, Canada, Upland) and BROMEGRASS (Smooth & Meadow, Mountain & Sweet). DEERTONGUE is also listed.

WSR 06-15-139

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed July 19, 2006, 11:25 a.m., effective August 19, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order requires that all seed lots of blue fescue under the seed certification program be subjected to an "ammonia test" in order to determine if a lot is contaminated with another visually indistinguishable Festuca species. This will subject blue fescue to the same seed-testing standards of other fine-leaved fescues in relation to the seed certification standards.

Citation of Existing Rules Affected by this Order: Amending WAC 16-302-385.

Statutory Authority for Adoption: RCW 15.49.310.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 06-11-048 on May 23, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 19, 2006.

Robert W. Gore
for Valoria Loveland
Director

CROP AND TYPE OF REPRODUCTION AS PER WAC 16-302-330	MINIMUM % GERM (d)(n)		MINIMUM % PURE		MAXIMUM % INERT		MAXIMUM % WEEDS (b)		MAXIMUM % OTHER CROPS		MAXIMUM SEEDS OF OTHER CROP GRASS SPECIES		
	FNDT. REG.	CERT.	FNDT. REG.	CERT.	FNDT. REG.	CERT.	FNDT. REG.	CERT.	FNDT. (i) REG.	CERT. (a)	FNDT. SEEDS/ LB.	REG. SEEDS/ LB.	CERT. %
	FESCUE												
Tall & Meadow (C)	80	85	95	97	5	3	.03	.3 (c)	.1	.5	18 /lb.	91 /lb.	.25
Blue, Hard & Sheep (m) Turf Type (o) (C)	80	85	95	97	5	3	.03	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25
Reclamation/Range Type (C)	80	85	95	92	5	8	.03	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25
Chewings Red, Idaho and other Fescue (C)	80	90	95	97	5	3	.03	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25
ORCHARDGRASS (C)	80	85	85 for penlate & latar	90	15	10	.03	.3 (c)	.1	.5	27 /lb.	91/lb.	.25
RYEGRASS	85	90 (l)	96 (k)	97 (k)	4	3	.1	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25
Pennfine (C)	80	85	96 (k)	97 (k)	4	3	.1	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25
TIMOTHY	80	85	97	97	3	3	.1	.3	.1	.5	9 /lb.	45 /lb.	.25
WHEATGRASS (n)													
Beardless (C)	80	85	90	90	10	10	.1	.3 (c)	.1 (e)	.5 (e)	9 /lb.	45 /lb.	.25
Bluebunch (C)(C)	80	85	90	90	10	10	.1	.3 (c)	.1 (e)	.5 (e)	9 /lb.	45 /lb.	.25
Intermediate, Tall (C)	80	85	95	95	5	5	.1	.3 (c)	.1 (e)	.5 (e)	9 /lb.	45 /lb.	.25
Pubescent	80	85	95	95	5	5	.1	.3 (c)	.1 (e)	.5 (e)	9 /lb.	45 /lb.	.25
Western, R/S Streambank, (C)													
Thickspike (S)	80	85	90	90	10	10	.1	.3 (c)	.1 (e)	.5 (e)(p)	9 /lb.	45 /lb.	.25(p)
Slender (C)	80	85	90	95	10	5	.1	.3 (c)	.1 (e)	.5 (e)	9 /lb.	45 /lb.	.25
Crested & Siberian	80	85	90	95	10	5	.1	.3 (c)	.1 (e)	.5 (e)	9 /lb.	45 /lb.	.25
INDIAN													
RICEGRASS (S)	80 (j)	80 (j)	95	90	5	10	.3	.5	.5	1.0	9 /lb.	45 /lb.	.25
PUCCINELLIA (n)													
distans (C)	80	80	90	95	5	5	.3	.5	.5	1.0	45 /lb.	454 /lb.	.25
WILDRYE (n) (C)	80	80	90	90	10	10	.1	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25
BENTGRASS (C)	85	85	98	98	2	2	.3	.4 (f) (g)	.2	.6 (h)			
REDTOP (C)	80	80	92	92	8	8	.3	.5 (f)	.5	.2			
Ann.													
CANARYGRASS (C)	85	85	99	99	1	1	.1	.3	1/lb.	3/lb.			-
GREEN (n) (C)	80	80	80	80	20	20	.1	.3 (c)	.1	.5	-	-	
NEEDLEGRASS													
SWITCHGRASS (C)	60	60	90	90	10	10	.5	1.5	.1	.25			

The following (a) - (o) are notes to the above table.

- (a) Not to exceed .25% other grass species for blue tag seed.
- (b) Grass seed must not contain more than 45/lb. for registered seed 91/lb. for certified seed, singly or collectively, of objectionable weed seeds. (See (f) of this subsection for certified bentgrass and redtop exemption.) Grass seed shall be free of the seed of prohibited noxious weeds.
- (c) A tolerance of 0.5% may be allowed for samples containing weedy bromus spp provided the total of all other weed seeds does not exceed 0.3%.
- (d) A standard tetrazolium (two hundred seed) test may be used in lieu of germination test. NOTE: State and federal seed laws require seed be labeled on a germination test.
- (e) A tolerance of 0.8% may be allowed in registered and certified wheatgrass containing small grain seed provided the total of all other crop seed does not exceed 0.1% for registered class and 0.5% for certified class.
- (f) Certified seed must not contain over 907 seeds per pound, singly or collectively, of the following weeds: Plantago spp., Big Mouse-ear Chickweed, Yarrow, Spotted Cat's Ear, and Dandelion.
- (g) A maximum of .50% weed seed may be allowed in certified bentgrass containing silver hairgrass provided the total of all other weed seed does not exceed .40%.
- (h) 1.50% other fine bentgrasses and .50% redtop may be allowed in certified bentgrass containing a minimum of 98.00% total bentgrass.
- (i) A crop exam is required for all registered and foundation class grass seeds.
- (j) Or 70% by Tz test.
- (k) Maximum other ryegrass allowed as determined by fluorescence test: Foundation 0.1%, registered 1%, certified 2% for annual and 3% for perennial containing a minimum of 97% total ryegrass. Acceptable fluorescence levels for specific varieties available upon request.
- (l) 85% minimum germination allowed on ryegrass varieties as designated by the breeder or variety owner. See list maintained by the seed program.
- (m) An ammonia test is required on hard, blue and sheep fescue to determine presence of other Fescue sp. Other fine-leaved fescue found in the ammonia test will be included with other crop not other grass species.
- (n) Total viability as allowed in WAC 16-302-170 can be substituted for germination percentage.
- (o) Turf type fescues 97% pure seed. Range/reclamation types 92% pure seed. Varietal designation of turf or range/reclamation types are to be made by the breeder or variety owner. If no designation is made, the variety will be considered a turf type.
- (p) 10% slender wheatgrass is allowed in the certified class of Critana, provided that the total of all other grass spp. does not exceed .25% and total other crop, including all other grass spp. does not exceed .50%.