

**WSR 06-20-093**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed October 3, 2006, 9:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-15-121.

Title of Rule and Other Identifying Information: Funeral directors and embalmers, amending WAC 308-47-010, 308-47-020, 308-47-030, 308-47-070, 308-48-010, 308-48-030, 308-48-031, 308-48-040, 308-48-080, 308-48-150, 308-48-160, 308-48-180, 308-48-200, 308-48-210, 308-48-350, 308-48-510, 308-48-520, 308-48-530, 308-48-550, 308-48-590, 308-48-780, 308-48-800, 308-49-168 and 308-49-170; and repeals WAC 308-48-110 and 308-49-120.

Hearing Location(s): Holiday Inn - Select, One South Grady Way, Renton, WA 98055, on November 28, 2006, at 10:00 a.m.

Date of Intended Adoption: December 19, 2006.

Submit Written Comments to: Dennis McPhee, P.O. Box 9012, Olympia, WA 98507, e-mail dmcphoe@dol.wa.gov, fax (360) 664-1495, by November 10, 2006.

Assistance for Persons with Disabilities: Contact Joe Vincent Jr. by November 10, 2006, TTY (360) 586-2788 or (360) 664-1555.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments bring existing rules into uniformity with SSB 5752 and update existing rules for clarity. The proposal repeals two rules, WAC 308-48-110 and 308-49-120, which are outdated.

Reasons Supporting Proposal: These amendments are needed to bring rules into uniformity with SSB 5752 and to clarify existing rules.

Statutory Authority for Adoption: RCW 18.39.175, chapter 34.05 RCW.

Statute Being Implemented: Chapter 18.39 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: This rule proposal has no fiscal impact. The amendments are needed to bring rules into uniformity with SSB 5752.

Name of Proponent: Department of licensing, board of funeral directors and embalmers, governmental.

Name of Agency Personnel Responsible for Drafting: Dennis McPhee, 405 Black Lake Boulevard, Olympia, WA 98507, (360) 664-1555; Implementation and Enforcement: Joe Vincent Jr., 405 Black Lake Boulevard, Olympia, WA 98507, (360) 664-1555.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No additional costs are imposed on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Proposal has no economic impact.

September 29, 2006

Joe Vincent Jr.

Administrator

**Reviser's note:** This proposal, WSR 06-20-093, was withdrawn by the department of licensing on October 10, 2006, under WSR 06-21-036. The agency refiled this proposal on October 17, 2006, under WSR 06-21-110.

**WSR 06-21-004**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed October 5, 2006, 1:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-08-073.

Title of Rule and Other Identifying Information: WAC 415-108-805 What is the PERS Plan 1 minimum allowance? and 415-112-555 What is the TRS Plan 1 minimum allowance.

Hearing Location(s): Department of Retirement Systems, 6835 Capitol Boulevard, Conference Room 115, Tumwater, WA, on November 22, 2006, at 2:30 p.m.

Date of Intended Adoption: November 23, 2006.

Submit Written Comments to: Jeff Wickman, Strategic Initiatives Manager, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail jeffw@drs.wa.gov or fax (360) 753-3166, by 5:00 p.m. on November 22, 2006.

Assistance for Persons with Disabilities: Contact Tresha Coleman by November 14, 2006, TDD (360) 664-7291, TTY (360) 586-5450, phone (360) 664-7288.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 41.32.4851 and 41.40.1984 provide a minimum allowance to qualifying retirees of the teachers' retirement system (TRS) and the public employees' retirement system (PERS). SB 6453 changed these RCWs so that the minimum allowance now increases by 3% on July 1 of each year, and eligibility is extended to PERS and TRS Plan 1 retirees with twenty or more years of TRS service credit who have been retired at least twenty-five years. The department is proposing amendments that reflect these changes.

Statutory Authority for Adoption: RCW 41.50.050(5).

Statute Being Implemented: RCW 41.32.4851 and 41.40.1984.

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

Name of Proponent: Department of retirement systems, governmental.

Name of Agency Personnel Responsible for Drafting: Jeff Wickman, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7303; Implementation and Enforcement: Dave Nelsen, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7303.

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

A cost-benefit analysis is not required under RCW 34.05.328. The department of retirement systems is not one of the named departments in RCW 34.05.328.

October 4, 2006  
 Leslie Saeger  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-20-004, filed 9/23/04, effective 10/24/04)

**WAC 415-108-805 What is the PERS Plan 1 (~~"adjusted~~) minimum (~~(benefit)"~~) allowance?** ((RCW 41.40.1984 entitles certain PERS Plan 1 retirees and beneficiaries to a minimum benefit of one thousand dollars, adjusted by the same actuarial reduction factors as were used to calculate their benefit at the time of retirement; or for beneficiaries, at the time benefit payments commenced.

**(1) Do I qualify for the adjusted minimum benefit?**

(a) Except as provided in (b) of this subsection:

(i) You qualify if you are a PERS Plan 1 retiree and you:

(A) Have at least twenty-five years of PERS service credit;

(B) Have been retired at least twenty years; and

(C) Have a current retirement benefit, including adjustments, that is less than the amount of the adjusted minimum benefit.

(ii) You qualify if you are a PERS Plan 1 member's beneficiary, as defined in RCW 41.40.010 (14)(a), and:

(A) The member had at least twenty-five years of PERS service credit;

(B) The member and/or beneficiary have been receiving benefits for at least twenty years; and

(C) Your current retirement benefit, including adjustments, is less than the amount of the adjusted minimum benefit.

(b) You do not qualify if you are a retiree or beneficiary who receives a duty disability retirement allowance under RCW 41.40.220(1) or a statewide cities employee's retirement duty disability retirement allowance under RCW 41.44.170 (3) or (5).

**(2) How is the amount of the adjusted minimum benefit calculated?** The benefit calculation starts with one thousand dollars and is adjusted by the same factors that were used to calculate the benefit at the time of retirement.

**(3) What factors are used to calculate the amount of the adjusted minimum benefit?** The factors used to calculate the minimum benefit are:

(a) Annuity withdrawal;

(b) Early retirement;

(c) Automatic cost of living (COLA) increases chosen at retirement;

(d) Joint survivor option chosen at retirement;

(e) Extra contributions made by the member;

(f) Survivor percentage. See Example 2 in this subsection.

**Example 1:** At the time of retirement, Bill withdrew his contributions and chose a joint and 50% survivor option, with Betty as his beneficiary. The one thousand dollar minimum benefit will be

adjusted by the same factors that were used to calculate Bill's original benefit, as follows:

Minimum benefit per RCW 41.32.4851	\$1000.00
Reduction for contribution withdrawal	-\$140.00
Adjustment for the joint survivor option	-\$129.00
Bill's adjusted minimum benefit	\$731.00

**Example 2:** Betty is Bill's beneficiary. After Bill's death, Betty receives 50% of the amount of his benefit. For Betty, the \$1,000 minimum benefit will be adjusted by the same factors that were used to calculate Bill's original benefit, and also by the survivor percentage (50%) chosen at the time of Bill's retirement:

Minimum benefit per RCW 41.32.4851	\$1000.00
Reduction for contribution withdrawal	-\$140.00
Adjustment for the joint survivor option	-\$129.00
Retiree's adjusted minimum benefit as calculated in Example 1	\$731.00
Survivor percentage (which, in this case, is 50% because of the survivor option selected at the time of retirement)	-\$365.50
Betty's adjusted minimum benefit	\$365.50

See WAC 415-02-300 through 415-02-380 for the tables, schedules, and factors the department uses to calculate benefits.

**(4) If the adjusted minimum benefit is less than my current benefit, will my benefit be reduced?** No, the department will compare the amount of the adjusted minimum benefit to your current benefit. You will always receive the higher of the two benefits.

**(5) If I qualify for the adjusted minimum benefit, when will I begin to receive the higher benefit?**

(a) If you meet the requirements as of July 1, 2004, you will begin receiving the adjusted minimum benefit, in lieu of your regular benefit, at the end of July 2004.

(b) If you qualify after July 1, 2004, you will automatically begin receiving the adjusted minimum benefit, in lieu of your regular benefit, at the end of the month in which you qualify.

**(6) Will I continue to get cost of living increases (COLAs) if I receive the adjusted minimum benefit?** No. Under the provisions of RCW 41.40.1984, the adjusted minimum benefit will not be adjusted for COLAs.

**(7) How long will I continue to receive the adjusted minimum benefit?** You will receive the adjusted minimum benefit until your original retirement benefit, plus on-going adjustments, exceeds the adjusted minimum benefit. At that time you will automatically start receiving the higher benefit.

**Example:** Joe retired with a survivor option, requiring an actuarial reduction of his monthly benefit (87% of full allowance). He received a 3% COLA each year. In 2004, Joe's retirement benefit was \$806.25. The following table shows how his benefit is compared to the adjusted minimum benefit from 2004 through 2008.

	<b>Regular Benefit (including COLAs)</b>	<b>Adjusted Minimum Benefit (Fixed - No COLAs added)</b>	<b>Actual Amount Joe Received</b>
2004	\$806.25 (benefit + COLAs)	\$870 (\$1,000 x .87)	\$870
2005	\$830.44 (\$806.25 + COLA)	\$870 (\$1,000 x .87)	\$870
2006	\$855.35 (\$830.44 + COLA)	\$870 (\$1,000 x .87)	\$870
2007	\$881.01 (\$855.35 + COLA)	No longer applicable	\$881.01
2008	\$907.44 (\$881.01 + COLA)	No longer applicable	\$907.44

This example assumes a three percent annual COLA.) RCW 41.40.1984 entitles certain PERS Plan 1 retirees and beneficiaries to a minimum monthly allowance. Subsection (3) of this section provides the amount of the minimum allowance and explains how it may be adjusted.

**(1) Do I qualify for the minimum allowance?** Except as provided in subsection (2) of this section:

(a) You qualify if your current monthly allowance, excluding any amount you receive for an additional (optional) annuity based on extra contributions, is less than the minimum allowance calculated under subsection (3) of this section, and:

- (i) You have twenty-five or more years of PERS Plan 1 service credit and have been retired at least twenty years; or
- (ii) You have twenty or more years of PERS Plan 1 service credit and have been retired at least twenty-five years.

(b) You qualify if you are a PERS Plan 1 member's survivor beneficiary under WAC 415-108-326 and your current monthly allowance is less than the minimum allowance calculated under subsection (3) of this section, provided:

- (i) The member had twenty-five or more years of PERS Plan 1 service credit and retired at least twenty years ago; or
- (ii) The member had twenty or more years of PERS Plan 1 service credit and retired at least twenty-five years ago.

**(2) Do I qualify if I receive a duty disability allowance?** You do not qualify to receive the minimum allowance provided by this rule if you are a:

- (a) Retiree currently receiving a duty disability retirement allowance under RCW 41.40.220(1);

(b) Retiree currently receiving a statewide city employees' retirement system duty disability retirement allowance under RCW 41.44.170(3); or

(c) Beneficiary currently receiving an allowance under RCW 41.44.170(5).

**(3) How much is the minimum allowance in RCW 41.40.1984, and how is it adjusted?**

(a) **Minimum allowance.** The minimum allowance prior to July 1, 2006, was \$1000. On July 1, 2006, and each July 1 thereafter, the minimum allowance increases by three percent, rounded to the nearest cent.

(b) **Adjustment.** The minimum allowance in (a) of this subsection will be adjusted each July by the same factors that were otherwise used in the calculation of your monthly allowance, including, but not limited to:

- (i) Early retirement;
- (ii) Automatic cost-of-living (COLA) increases chosen at retirement;
- (iii) Benefit option chosen at retirement (see WAC 415-108-326);
- (iv) Survivor percentage. See Example 2 in this subsection.

**Example 1:** Bob retired in August 1986 with twenty-five years of service credit. Bob chose benefit option three, so that his wife, Betty, would receive a monthly allowance equal to 50% of his allowance after his death. In August 2006, Bob became eligible for the minimum allowance, calculated as follows:

Minimum allowance in August 2006 =		\$1,030.00
<b>Minimum allowance, actuarially reduced for benefit option three</b>	\$1,030 x 0.87 (benefit option factor based on the difference in age between Bob and Betty) =	<b>\$896.10</b>

**Example 2:** When Bob died in August 2009, Betty's allowance was calculated using the minimum allowance in effect on the date of Bob's death. The minimum allowance was adjusted by the same factors used to calculate Bob's allowance at retirement and also by the survivor percentage (50%) chosen when Bob retired.

Minimum allowance in August 2009	(includes a 3% per year increase)	\$1,125.51
Actuarially reduced for benefit option three =	\$1,125.51 x 0.87 =	\$979.19
<b>Betty's adjusted minimum allowance</b>	(50% of the allowance Bob was receiving)	<b>\$489.60</b>

The tables, schedules, and factors the department currently uses to calculate benefits are located in WAC 415-02-300 through 415-02-380. However, factors have changed over time, and your minimum allowance will be adjusted using the same factors that were used to calculate your current monthly allowance.

**(4) If the minimum allowance is less than my current monthly allowance, will my monthly allowance be reduced?** The department will compare the amount of the minimum allowance calculated under subsection (3) of this

section with your current monthly allowance. You will always receive the higher of the two benefits.

**(5) If I qualify for the minimum allowance, when will I begin to receive it?**

(a) If your eligibility is based on meeting the requirements of subsection (1)(a)(i) or (b)(i) of this section, and:

- (i) You were eligible on July 1, 2004, you began receiving the minimum allowance in effect at that time, in lieu of your regular monthly allowance, in July 2004.

(ii) You become eligible after July 1, 2004, you will begin receiving the minimum allowance, in lieu of your regular monthly allowance, the month in which you qualify.

(b) If your eligibility is based on meeting the requirements of subsection (1)(a)(ii) or (b)(ii) of this section, and:

(i) You were eligible on July 1, 2006, you began receiving the minimum allowance in effect at that time, in lieu of your regular monthly allowance, in July 2006.

(ii) You become eligible after July 1, 2006, you will begin receiving the minimum allowance, in lieu of your regular monthly allowance, the month in which you qualify.

Example:

	<b>Regular Allowance (including COLAs and other eligible adjustments)</b>	<b>Adjusted Minimum Allowance</b>	<b>Actual Amount Paid</b>
<u>July 1, 2006</u>	\$882.38 (allowance + COLAs)	<b>\$896.10</b> (\$1,030 x .87)	\$896.10
<u>July 1, 2007</u>	\$914.63 (\$882.38 + COLA)	<b>\$922.98</b> (\$1,060.90 x .87)	\$922.98
<u>July 1, 2008</u>	\$946.88 (\$914.63 + COLA)	<b>\$950.67</b> (\$1,092.73 x .87)	\$950.67
<u>July 1, 2009</u>	\$979.13 (\$946.88 + COLA)	<b>\$979.19</b> (\$1,125.51 x .87)	\$979.19
<u>July 1, 2010</u>	<b>\$1,011.38</b> (\$979.13 + COLA)	\$1,008.57 (\$1,159.28 x .87)	\$1,011.38 (reverts to regular allowance including COLAs)

**AMENDATORY SECTION** (Amending WSR 04-20-004, filed 9/23/04, effective 10/24/04)

**WAC 415-112-555 What is the TRS Plan 1 ("adjusted") minimum ("benefit") allowance?** ((RCW 41.32.4851 entitles certain TRS Plan 1 retirees and beneficiaries to a minimum benefit of one thousand dollars, adjusted by the same actuarial reduction factors as were used to calculate their benefit at the time of retirement; or for beneficiaries, at the time benefit payments commenced.

**(1) Do I qualify for the adjusted minimum benefit?**

(a) Except as provided in (b) of this subsection:

(i) You qualify if you are a TRS Plan 1 retiree and you:

(A) Have at least twenty-five years of TRS service credit;

(B) Have been retired at least twenty years; and

(C) Have a current retirement benefit, including adjustments, that is less than the amount of the adjusted minimum benefit.

(ii) You qualify if you are a TRS Plan 1 member's beneficiary, as defined in RCW 41.32.010 (5)(a), and:

(A) The member had at least twenty-five years of TRS service credit;

(B) The member and/or beneficiary have been receiving benefits for at least twenty years; and

(C) Your current retirement benefit, including adjustments, is less than the amount of the adjusted minimum benefit.

(b) You do not qualify if you are receiving a temporary disability benefit under RCW 41.32.540.

**(2) How is the amount of the adjusted minimum benefit calculated?** The benefit calculation starts with one thousand dollars and is adjusted by the same factors that were used to calculate the benefit at the time of retirement.

**(6) Will I receive cost-of-living adjustments (COLAs)?** You will not receive the uniform COLA (based on your years of service credit) while you are receiving the minimum allowance.

**(7) How long will I continue to receive the minimum allowance?** You will receive the minimum allowance calculated under subsection (3) of this section, for your lifetime or until your regular retirement allowance, plus COLAs and other eligible adjustments, exceeds the minimum allowance. At that time you will automatically start receiving the higher allowance.

**(3) What factors are used to calculate the amount of the adjusted minimum benefit?** The factors used to calculate the minimum benefit are:

(a) Annuity withdrawal;

(b) Early retirement;

(c) Automatic cost of living (COLA) increases chosen at retirement;

(d) Joint survivor option chosen at retirement;

(e) Extra contributions made by the member;

(f) Survivor percentage. See Example 2 in this subsection.

Example 1: At the time of retirement, Bill withdrew his contributions and chose a joint and 50% survivor option, with Betty as his beneficiary. The \$1,000 minimum benefit will be adjusted by the same factors that were used to calculate Bill's original benefit, as follows:

((Minimum benefit per RCW 41.32.4851	\$1000.00
Reduction for contribution withdrawal	-\$140.00
Adjustment for the joint survivor option	-\$129.00
Bill's adjusted minimum benefit	(\$731.00))

Example 2: Betty is Bill's beneficiary. After Bill's death, Betty receives 50% of the amount of his benefit. For Betty, the \$1,000 minimum benefit will be adjusted by the same factors that were used to calculate Bill's original benefit, and also by the survivor percentage (50%) chosen at the time of Bill's retirement:

Minimum benefit per RCW 41.32.4851	\$1000.00
Reduction for contribution withdrawal	-\$140.00
Adjustment for the joint survivor option	-\$129.00

Retiree's adjusted minimum benefit as calculated in Example 1	\$731.00
Survivor percentage (which, in this case, is 50% because of the survivor option selected at the time of retirement)	-\$365.50
Betty's adjusted minimum benefit	\$365.50

See WAC 415-02-300 through 415-02-380 for the tables, schedules, and factors the department uses to calculate benefits.

(4) If the adjusted minimum benefit is less than my current benefit, will my benefit be reduced? No, the department will compare the amount of the adjusted minimum benefit to your current benefit. You will always receive the higher of the two benefits.

(5) If I qualify for the adjusted minimum benefit, when will I begin to receive the higher benefit?

(a) If you meet the requirements as of July 1, 2004, you will begin receiving the adjusted minimum benefit, in lieu of your regular benefit, at the end of July 2004.

	<b>Regular Benefit (including COLAs)</b>	<b>Adjusted Minimum Benefit (Fixed—No COLAs added)</b>	<b>Actual Amount Joe Received</b>
2004	\$806.25 (benefit + COLAs)	\$870 (\$1,000 x .87)	\$870
2005	\$830.44 (\$806.25 + COLA)	\$870 (\$1,000 x .87)	\$870
2006	\$855.35 (\$830.44 + COLA)	\$870 (\$1,000 x .87)	\$870
2007	\$881.01 (\$855.35 + COLA)	No longer applicable	\$881.01
2008	\$907.44 (\$881.01 + COLA)	No longer applicable	\$907.44

This example assumes a three percent annual COLA.) RCW 41.32.4851 entitles certain TRS Plan 1 retirees and beneficiaries to a minimum monthly allowance. Subsection (3) of this section provides the amount of the minimum allowance and explains how it may be adjusted.

**(1) Do I qualify for the minimum allowance?** Except as provided in subsection (2) of this section:

(a) You qualify if your current monthly allowance, excluding any amount you receive for an additional (optional) annuity based on extra contributions, is less than the minimum allowance calculated under subsection (3) of this section, and:

(i) You have twenty-five or more years of TRS Plan 1 service credit and have been retired at least twenty years; or

(ii) You have twenty or more years of TRS Plan 1 service credit and have been retired at least twenty-five years.

(b) You qualify if you are a TRS Plan 1 member's survivor beneficiary under WAC 415-112-504 and your current monthly allowance is less than the minimum allowance calculated under subsection (3) of this section, provided:

(i) The member had twenty-five or more years of TRS Plan 1 service credit and retired at least twenty years ago; or

(ii) The member had twenty or more years of TRS Plan 1 service credit and retired at least twenty-five years ago.

**(2) Do I qualify if I am receiving a temporary disability benefit?** You do not qualify to receive the minimum allowance provided by this rule if you are currently receiving a temporary disability benefit under RCW 41.32.540.

(b) If you qualify after July 1, 2004, you will automatically begin receiving the adjusted minimum benefit, in lieu of your regular benefit, at the end of the month in which you qualify.

(6) Will I continue to get cost of living increases (COLAs) if I receive the adjusted minimum benefit? No. Under the provisions of RCW 41.32.4851, the adjusted minimum benefit will not be adjusted for COLAs.

(7) How long will I continue to receive the adjusted minimum benefit? You will receive the adjusted minimum benefit until your original retirement benefit, plus on-going adjustments, exceeds the adjusted minimum benefit. At that time you will automatically start receiving the higher benefit.

**Example:** Joe retired with a survivor option, requiring an actuarial reduction of his monthly benefit (87% of full allowance). He received a 3% COLA each year. In 2004, Joe's retirement benefit was \$806.25. The following table shows how his benefit is compared to the adjusted minimum benefit from 2004 through 2008.

**(3) How much is the minimum allowance in RCW 41.32.4851, and how is it adjusted?**

(a) **Minimum allowance.** The minimum allowance prior to July 1, 2006, was \$1000. On July 1, 2006, and each July 1 thereafter, the minimum allowance increases by three percent, rounded to the nearest cent.

(b) **Adjustment.** The minimum allowance in (a) of this subsection will be adjusted each July by the same factors that were otherwise used in the calculation of your monthly allowance, including, but not limited to:

(i) Annuity withdrawal;

(ii) Early retirement;

(iii) Automatic cost-of-living (COLA) increases chosen at retirement;

(iv) Joint survivor option chosen at retirement;

(v) Survivor percentage. See Example 2 in this subsection.

**Example 1:** Bob retired in August 1986 with twenty-five years of service credit. Bob chose benefit option three, so that his wife, Betty, would receive a monthly allowance equal to 50% of his allowance after his death. In August 2006, Bob became eligible for the minimum allowance, calculated as follows:

Minimum allowance in August 2006 =		\$1,030.00
<b>Minimum allowance, actuarially reduced for benefit option three</b>	$\$1,030 \times 0.87$ (benefit option factor based on the difference in age between Bob and Betty) =	<b>\$896.10</b>

**Example 2:** When Bob died in August 2009, Betty's allowance was calculated using the minimum allowance in effect on the date of Bob's death. The minimum allowance was adjusted by the same factors used to calculate Bob's allowance at retirement and also by the survivor percentage (50%) chosen when Bob retired.

Minimum allowance in August 2009	(includes a 3% per year increase)	\$1,125.51
Actuarially reduced for benefit option three =	$\$1,125.51 \times 0.87 =$	\$979.19
<b>Betty's adjusted minimum allowance</b>	(50% of the allowance Bob was receiving)	<b>\$489.60</b>

The tables, schedules, and factors the department currently uses to calculate benefits are located in WAC 415-02-300 through 415-02-380. However, factors have changed over time, and your minimum allowance will be adjusted using the same factors that were used to calculate your current monthly allowance.

**(4) If the minimum allowance is less than my current monthly allowance, will my monthly allowance be reduced?** The department will compare the amount of the minimum allowance calculated under subsection (3) of this section with your current monthly allowance. You will always receive the higher of the two benefits.

**(5) If I qualify for the minimum allowance, when will I begin to receive it?**

(a) If your eligibility is based on meeting the requirements of subsection (1)(a)(i) or (b)(i) of this section, and:

(i) You were eligible on July 1, 2004, you began receiving the minimum allowance in effect at that time, in lieu of your regular monthly allowance, in July 2004.

(ii) You become eligible after July 1, 2004, you will begin receiving the minimum allowance, in lieu of your regular monthly allowance, the month in which you qualify.

Example:

	<b>Regular Allowance (including COLAs and other eligible adjustments)</b>	<b>Adjusted Minimum Allowance</b>	<b>Actual Amount Paid</b>
July 1, 2006	\$882.38 (allowance + COLAs)	<b>\$896.10</b> ( $\$1,030 \times .87$ )	\$896.10
July 1, 2007	\$914.63 ( $\$882.38 + \text{COLA}$ )	<b>\$922.98</b> ( $\$1,060.90 \times .87$ )	\$922.98
July 1, 2008	\$946.88 ( $\$914.63 + \text{COLA}$ )	<b>\$950.67</b> ( $\$1,092.73 \times .87$ )	\$950.67
July 1, 2009	\$979.13 ( $\$946.88 + \text{COLA}$ )	<b>\$979.19</b> ( $\$1,125.51 \times .87$ )	\$979.19
July 1, 2010	<b>\$1,011.38</b> ( $\$979.13 + \text{COLA}$ )	\$1,008.57 ( $\$1,159.28 \times .87$ )	\$1,011.38 (reverts to regular allowance including COLAs)

(b) If your eligibility is based on meeting the requirements of subsection (1)(a)(ii) or (b)(ii) of this section, and:

(i) You were eligible on July 1, 2006, you began receiving the minimum allowance in effect at that time, in lieu of your regular monthly allowance, in July 2006.

(ii) You become eligible after July 1, 2006, you will begin receiving the minimum allowance, in lieu of your regular monthly allowance, the month in which you qualify.

**(6) Will I receive cost-of-living adjustments (COLAs)?** You will not receive the uniform COLA (based on your years of service credit) while you are receiving the minimum allowance.

**(7) How long will I continue to receive the minimum allowance?** You will receive the minimum allowance calculated under subsection (3) of this section for your lifetime or until your regular retirement allowance, plus COLAs and other eligible adjustments, exceeds your minimum allowance. At that time you will automatically start receiving the higher benefit.

**WSR 06-21-017**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**  
 [Filed October 6, 2006, 11:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-17-036.

Title of Rule and Other Identifying Information: Chapter 392-141 WAC, Transportation—State allocation for operations.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Brouillet Conference Room, 600 South Washington Street, Olympia, WA 98504, on December 6, 2006, at 3:30 p.m.

Date of Intended Adoption: December 11, 2006.

Submit Written Comments to: Allan J. Jones, Director, P.O. Box 47200, Olympia, WA 98504, e-mail [ajjones@ospi.wednet.edu](mailto:ajjones@ospi.wednet.edu), fax (360) 586-6124, by December 4, 2006.

Assistance for Persons with Disabilities: Contact Penny Coker by December 4, 2006, TTY (360) 664-3631 or (360) 725-6142.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To bring OSPI rules into alignment with RCW 28A.160.160 (eliminating a one hundred forty-four day program requirement for basic shuttle routes) and to allow the full-time period provided under statute for the school district annual ridership report.

The revisions will allow school districts to report basic shuttle routes for funding allowed under statute during the 2006-07 school year. This action is in direct response to recommendation 4 of the joint legislative audit and review committee report on pupil transportation funding study.

Statutory Authority for Adoption: RCW 28A.150.290.

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

Name of Proponent: [OSPI], governmental.

Name of Agency Personnel Responsible for Drafting: Charlie Schreck, OSPI, (360) 725-6136; Implementation: Marcia Riggers, OSPI, (360) 725-5175; and Enforcement: Allan J. Jones, OSPI, (360) 725-6120.

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

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

October 6, 2006  
Dr. Terry Bergeson  
Superintendent

AMENDATORY SECTION (Amending Order 98-08, filed 8/7/98, effective 9/7/98)

**WAC 392-141-160 District reporting and record-keeping requirements.** Annual or supplementary reports shall be submitted by each school district to the superintendent of public instruction prior to the ~~((third Monday))~~ last business day in October. This report shall reflect to the extent practical the planned pupil transportation program for the entire school year and which is in operation during ridership count week. Reports shall be submitted with a cover letter signed by the chief school district administrator attesting to the completeness of the requirements below and the accuracy of the data contained therein. The superintendent of public instruction shall have the authority to make modifications or adjustments in accordance with the intent of RCW 28A.160.150, 28A.160.160, and 28A.160.170. Each district shall submit the data required on a timely basis as a condition to the continuing receipt of student transportation allocations. These reports shall be maintained for a period of three school years or until audited and include the following but are not limited to:

(1) School bus route logs completed in ink by bus drivers for five consecutive days. These logs shall include state school bus numbers, each bus stop, the number of students boarding the bus at each stop, and destination schools, transfer points, learning centers, or agencies; and

(2) The number of kindergarten through fifth grade students enrolled during ridership count week and living one radius mile or less from their destination school; and

(3) Other operational data and descriptions, as required by the superintendent of public instruction to determine operation allocation requirements for each district; and

(4) An annual school bus mileage report including the beginning and ending year odometer reading, the total miles for each bus for the school year, an estimate of to and from school mileage for the upcoming school year, and miles for extended day routes, field trips, extracurricular, and other contractual uses of school buses; and

(5) Copies of any and all correspondence, publications, news articles, or campaign materials which encourage ridership during count week of the report that is beyond the normal activity experienced during the school year. School districts shall not utilize incentive programs that provide tangible gifts to reward increases in ridership counts.

School districts shall maintain at least a weekly one-day route log containing the school bus driver's name, state bus number, route number, route type, day of the week, beginning and ending odometer readings, destinations, destination times and student counts. These route logs shall be maintained in the school district files for a period of three years or until audited.

AMENDATORY SECTION (Amending Order 92-03, filed 3/23/92, effective 4/23/92)

**WAC 392-141-180 Limitations on the allocation for transportation between schools and learning centers.** Funding for transportation between schools and learning centers shall be subject to the ~~((following conditions:~~

~~((1) The))~~ instruction at the learning center site ~~((shall be scheduled for at least one hundred forty-four school days within an annual term and meet))~~ meeting the requirements established in any of the following statutes:

~~((a))~~ (1) Chapter 28A.230 RCW;

~~((b))~~ (2) Chapter 28A.155 RCW;

~~((c))~~ (3) RCW 28A.165.010 through 28A.165.080;

~~((d))~~ (4) RCW 28A.150.200; and

~~((e))~~ (5) RCW 28A.180.010 through 28A.180.080(;

~~((2) The transportation between schools and learning centers shall be scheduled for at least one hundred forty-four school days within an annual term; and~~

~~((3) The limitations imposed by this section shall not apply to midday transportation or transportation of special education, gifted, or bilingual students between schools and agencies less frequently than four days a week)).~~

AMENDATORY SECTION (Amending Order 96-09, filed 7/25/96, effective 8/25/96)

**WAC 392-141-185 Operation allocation computation.** The computation of the transportation operation allocation shall be as follows:

(1) All basic and transit tripper students defined in WAC 392-141-115 who are transported to school shall be measured by radius mile intervals between the bus route stop and the destination sites in accordance with WAC 392-141-170(3)

and multiplied by two to yield the round trip totals in each distance interval;

(2) All midday students defined in WAC 392-141-115 and basic shuttle students transported shall be measured by radius mile intervals between the bus route stop and the destination school in accordance with WAC 392-141-170(3)(c). Basic shuttle transportation whose schedule is less than five days a week shall have the weighted units multiplied by the appropriate percent shown in the table below:

<u>No. of days per week</u>	<u>Percent factor</u>
<u>1</u>	<u>20%</u>
<u>2</u>	<u>40%</u>
<u>3</u>	<u>60%</u>
<u>4</u>	<u>100%</u>

(3) The total students in subsections (1) and (2) of this section in each distance interval, multiplied by the applicable distance weighting factor contained in WAC 392-141-170(3) shall equal the weighted student units in each distance interval. Midday transportation students whose schedule is one day per week shall have the weighted student units multiplied by twenty percent;

(4) The district's minimum load factor, if applicable, is calculated pursuant to WAC 392-141-170(5). This factor is multiplied by the total weighted student units generated by basic and tripper students. This total is the additional weighted units attributable to the district's small average bus load;

(5) The sum of the cumulative weighted student units calculated in subsections (3) and (4) of this section, if applicable, equals the total basic transportation weighted units;

(6) The basic allocation is the total basic transportation weighted units calculated in subsection (5) of this section multiplied by the standard student mile allocation rate;

(7) All special students defined in RCW 28A.155.020 transported on special transportation bus routes to school or agencies for related services shall be measured by radius mile intervals between their bus route stops and destinations sites in accordance with WAC 392-141-170(3) and multiplied by two to yield the round trip total in each distance interval;

(8) All special shuttle students transported between schools or agencies less frequently than five days a week shall be measured by radius mile intervals between the bus route stop and destination sites in accordance with WAC 392-141-170(3);

(9) The total students in subsections (7) and (8) of this section in each distance interval multiplied by the applicable distance weighting factor contained in WAC 392-141-170(3) shall equal the weighted student units in each distance interval. Special shuttle transportation whose schedule is less than five days a week shall have the weighted units multiplied by the appropriate percent shown in the table below:

<u>No. of days per week</u>	<u>Percent factor</u>
1	20%
2	40%
3	60%
4	100%

(10) The district's special transportation load factor, if applicable, is calculated pursuant to WAC 392-141-170. The factor is multiplied by the total weighted student units generated by special students (not special shuttle students);

(11) The weighted student units calculated in subsections (9) and (10) of this section, if applicable, equals the total special transportation weighted units;

(12) The special allocation is the total special transportation weighted units calculated in subsection (11) of this section, multiplied by the standard student mile allocation rate;

(13) The one radius mile allocation for basic trippers and midday kindergarten students shall be calculated by the number of kindergarten through fifth grade students enrolled during the five consecutive day count week and living one radius mile or less from their enrollment school less kindergarten through fifth grade special education students living and transported within one mile, multiplied by the allocation rate, and further multiplied by a factor established by the Biennial Appropriations Act;

(14) The district car allocation is computed for each vehicle and then totaled to equal the district car allocation. The computation is based on one hundred eighty days and fifty mile increments multiplied by the appropriate district car operation and depreciation rates published by the superintendent of public instruction. All vehicles traveling over two hundred fifty miles receive only the depreciation rate for miles in excess of two hundred fifty for the one hundred eighty day period;

(15) The district's annual allocation for transportation operation is the total of the calculations made in subsections (6), (12), (13) and (14) of this section;

(16) The allocation for kindergarten through fifth grade students living one radius mile or less from their school of enrollment may be used for transporting students, funding crossing guards or local and the state matching funds for capital projects. Projects managed by the federal government are ineligible;

(17) When a district submits a revised report pursuant to WAC 392-141-165, to the extent funds are available, the district's operation allocation shall be recalculated. Any increase in operations allocations shall be prorated for the remainder of the annual school term or until termination of activities before the end of the scheduled school term. The date that the district documents first meeting the ten percent increase in eligible students transported shall be used to prorate any increase in annual transportation operation allocations.



**WSR 06-21-018**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**  
 [Filed October 6, 2006, 11:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-13-087.

Title of Rule and Other Identifying Information: Chapter 392-145 WAC, Transportation—Operation rules.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Brouillet Conference Room, 600 South Washington Street, Olympia, WA 98504, on December 6, 2006, at 3:30 p.m.

Date of Intended Adoption: December 11, 2006.

Submit Written Comments to: Allan J. Jones, Director, P.O. Box 47200, Olympia, WA 98504, e-mail [ajjones@ospi.wednet.edu](mailto:ajjones@ospi.wednet.edu), fax (360) 586-6124, by December 4, 2006.

Assistance for Persons with Disabilities: Contact Penny Coker by December 4, 2006, TTY (360) 664-3631 or (360) 725-6142.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revisions have been made to chapter 392-145 WAC updating out-of-date language, adding new requirements and definitions and rearranging sections that would assist an individual in finding information more efficiently.

Statutory Authority for Adoption: RCW 46.61.380.

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

Name of Proponent: [OSPI], governmental.

Name of Agency Personnel Responsible for Drafting: Charlie Schreck, OSPI, (360) 725-6136; Implementation: Marcia Riggers, OSPI, (360) 725-5175; and Enforcement: Allan J. Jones, OSPI, (360) 725-6120.

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

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

October 6, 2006  
 Dr. Terry Bergeson  
 Superintendent

AMENDATORY SECTION (Amending Order 83-10, filed 10/10/83)

**WAC 392-145-001 Authority and purpose.** The authority for this chapter is RCW 46.61.380 which authorizes the superintendent of public instruction to adopt and enforce regulations to cover the operation of all school buses transporting common school students. The purpose of this chapter is to establish the manner of operating all school buses owned and operated by any school district and all school buses which are privately owned and operated under contract or otherwise with any school district in the state for the transportation of students. This chapter does not apply to the operation of buses by common carrier in the urban transportation of students (e.g., the transportation of students via a municipal transit system).

AMENDATORY SECTION (Amending Order 84-40, filed 10/2/84)

**WAC 392-145-005 ((Purpose and)) Definition of a "school bus."** ~~((The purpose of this chapter is to establish the manner of operating all school buses owned and operated by any school district and all school buses which are privately owned and operated under contract or otherwise with any school district in the state for the transportation of students. The provisions of this chapter shall be incorporated by express reference into all school district contracts for the transportation of students in privately owned and operated school buses. Every school district, its officers and employees, and every person employed under contract or otherwise by a school district shall be subject to the applicable provisions of this chapter.~~

~~This chapter does not apply to the operation of buses by common carriers in the urban transportation of students (e.g., the transportation of students via a municipal transit system.))~~ The definition of "school bus" as the term is used in this chapter shall be as now or hereafter set forth in WAC 392-143-010.

NEW SECTION

**WAC 392-145-011 School district requirements.** All school districts shall comply with the following requirements:

(1) The provisions of this chapter shall be incorporated by express reference into all school district contracts for the transportation of students in privately owned and operated school buses. Every school district, its officers and employees, and every person employed under contract or otherwise by a school district shall be subject to the provisions of this chapter.

(2) School district boards of directors shall adopt written policies or rules for passengers riding school buses not inconsistent with applicable state law and rules. A copy of these policies or rules shall be provided to each student who is scheduled to ride the school bus.

(3) Every school bus driver shall be provided a copy of and shall be thoroughly familiar with all state and local rules and regulations pertaining to the operation of a school bus.

(4) School bus drivers shall be provided a copy of and training in school district rules and regulations pertaining to bullying, harassment, and for reporting sexual misconduct allegations.

(5) On highways divided into separate roadways as provided in RCW 46.61.150 and highways with three or more marked traffic lanes, school districts shall design bus routes that serve each side of the highway so that students do not have to cross the highway, unless there is a traffic control signal as defined in RCW 46.04.600 or an adult crossing guard within three hundred feet of the bus stop to assist students while crossing such multiple-lane highways.

(6) No school bus stop shall be located on a curve or a hill where visibility is not at least five hundred feet. If it is impossible to secure a distance of at least five hundred feet of visibility for a school bus stop, the school authorities, the state patrol, and the traffic engineering department of the

jurisdiction responsible for the roadway shall be advised and the stop shall be changed or proper signs installed.

#### NEW SECTION

**WAC 392-145-016 Rules for students riding school buses.** The policies or rules for students riding school buses shall include, but are not necessarily limited to, the following:

- (1) Identification of the individual who has authority over the passengers;
- (2) Student riding privileges;
- (3) Loading and unloading procedures, including that if students must cross the roadway, they shall only cross in front and never behind the school bus;
- (4) Seat assignment;
- (5) Student conduct, including acceptable practices with respect to talking, moving around the school bus, use of windows, behavior at highway rail grade crossings, and other behavior;
- (6) Unacceptable hazards that may cause injury to others, e.g., firearms, breakable containers, etc.;
- (7) School bus cleanliness; and
- (8) Emergency exit procedures.

#### NEW SECTION

**WAC 392-145-021 General operating requirements.** The following operating procedures are required to assure maximum passenger safety:

(1) No school bus shall be operated unless each passenger aboard has been provided with a safe seat of sufficient size to accommodate each passenger within the seat compartment. There shall be no auxiliary seating accommodations such as temporary or folding jump seats in any school bus. Students shall remain seated while the school bus is in motion.

(2) Passengers in school buses equipped with seat belts shall be required to wear them properly adjusted whenever the school bus is in motion.

(3) Heavy, sharp, bulky, and/or other articles which may be hazardous in the event of an accident or an emergency stop shall not be transported unsecured in the passenger area of any school bus. Specific attention is directed to items such as skis, ski poles, vaulting poles, large musical instruments, riser platforms, etc. In no case will items be secured in such a manner as to impede access to any exit. Items which shall not be transported within the passenger area of a school bus include all forms of animal life (except service animals), firearms, weapons, breakable containers, flammables, and all other articles which could adversely affect the safety of the school bus and passengers.

Teachers and all other school district staff members shall be annually notified that students shall not be requested to transport prohibited items between home and school on a school bus.

(4) When a teacher, coach, or other certificated staff member is assigned to accompany students on a school bus, such person shall be responsible for the behavior of the students in his or her charge and shall ensure that passengers comply with state rules, and district policies and procedures

for student transportation. However, the school bus driver shall have final authority and responsibility.

#### NEW SECTION

**WAC 392-145-031 General school bus driver requirements.** The following are school bus driver requirements:

(1) School bus drivers shall wear a properly adjusted seat belt whenever the school bus is in motion.

(2) School bus drivers shall immediately report any suspected malfunction or needed repair of the school bus in their charge.

(3) A school bus driver shall only allow individuals authorized under the provisions of chapter 392-144 WAC to operate the school bus with passengers on board. No person except the driver shall be allowed to sit in the driver's seat.

(4) Except in accordance with district policy no school bus driver shall leave the driver's seat without first securing the school bus by setting the parking brake, placing the transmission in the manufacturer's recommended position, shutting off the engine, and removing the key from the ignition switch. The keys shall be kept in the driver's or other authorized school official's possession.

(5) All school bus drivers shall meet the qualifications established in chapter 392-144 WAC prior to transporting students.

#### NEW SECTION

**WAC 392-145-041 Pretrip and posttrip requirements.** The following are requirements to assure safety and security of the school bus during operation:

(1) Motor fuel shall not be put into the tank while the engine is running or while passengers are on the school bus. School bus drivers, prior to commencement of any trip, shall assure that the school bus has sufficient fuel to prevent the school bus from running out of fuel.

(2) School bus drivers, prior to commencement of any trip, shall assure that the mirrors, windshield and rear window(s) of the school bus are clean.

(3) Prior to commencement of and during any trip, with passengers aboard, every school bus driver shall ensure there are no articles in the following areas that could impede normal movement, visibility, or emergency egress: The service entrance step well; the entire main aisle from front to rear; the aisles or passage ways to any emergency door; the entire shelf area between the rearmost passenger seats and the rear emergency window (if so equipped).

(4) Tools and other miscellaneous articles shall be carried in appropriate compartments. They shall not be carried loose upon the floor or dashboard area of the school bus.

(5) School bus drivers shall be certain that all brakes, lights, stop signs, warning signal lamps, and other safety devices are working properly before starting on any trip and shall assure that the school bus is equipped with a fully stocked first-aid kit, three reflective triangles, a body fluid clean-up kit and a fire extinguisher certified to be in good working order.

(6) School bus drivers shall check the latch, safety lock, and warning system for all emergency exits prior to each trip

and no school bus shall be operated with passengers aboard unless all the emergency exits are functioning properly.

(7) At the end of each trip or route segment, the school bus driver shall thoroughly check the school bus to insure that no students are left on the school bus. Additionally, the school bus driver shall take reasonable action to insure that any articles left behind by students are safe, secure, and dealt with according to district policy.

#### NEW SECTION

**WAC 392-145-050 Driving requirements.** In addition to the following school bus operating requirements, school bus drivers shall observe all driving regulations set forth in the laws of the state of Washington relating to the operation of motor vehicles (chapter 46.61 RCW, Rules of the road).

(1) School bus drivers shall not manually change gears while proceeding downhill. Necessary gear changes shall be made before starting down a hill.

(2) No school bus driver shall disengage the clutch or place the transmission into neutral and allow the school bus to coast.

(3) Backing a school bus is prohibited unless an adult flagman assists or an emergency exists. Any deviation from this regulation shall require prior approval by an authorized school district administrator. In all cases, the school bus driver will minimize the extent of such backing. In the event of an emergency, backing of a school bus shall be permitted only when there is no danger to pedestrians or passengers.

(4) School bus drivers shall yield the right of way to emergency vehicles.

(5) The speed of a school bus shall not be allowed to exceed the legal truck speed or any other applicable posted speed limit.

(6) When it is necessary to overtake and pass a slow moving vehicle, school bus drivers shall take reasonable action to assure that no third vehicle is drawing near. There shall be a visual road clearance of at least eight hundred feet on the road surface.

(7) All school buses shall slow down to ten miles an hour or less before making a ninety degree right or left turn.

(8) All school buses shall be operated with the headlights on when carrying passengers or traveling on a public roadway.

(9) All school buses shall be operated with the doors closed when carrying passengers or traveling on a public roadway.

#### NEW SECTION

**WAC 392-145-060 Loading and unloading procedures.** The following procedures are required to assure maximum student safety:

(1) A school bus driver shall not order or allow a student to depart the school bus other than at his or her regular stop unless permission is first obtained in accordance with district policy.

(2) School bus drivers shall pick up only the students and persons designated by an authorized school district administrator.

(3) School bus drivers shall have the primary responsibility for the safety of passengers while they are boarding the school bus, while they are on the school bus, and while they are disembarking the school bus and crossing the roadway. If passengers must cross the road, the driver shall make every reasonable effort to insure that they cross safely and that they pass in front of the school bus and never behind the school bus. The driver shall likewise insure that passengers boarding or disembarking from the school bus are within his/her view at all times.

(4) Prior to stopping the school bus on the roadway for the purpose of loading or unloading passengers, school bus drivers shall activate the alternating flashing amber lamps by means of a master sequencing switch. The driver shall activate the alternating flashing amber lamps:

(a) No less than one hundred feet and no more than three hundred feet from the school bus stop where the posted speed limit is thirty-five miles per hour or less; and

(b) No less than three hundred feet and no more than five hundred feet from the school bus stop where the posted speed limit is more than thirty-five miles per hour.

(5) No school bus shall pull over to the left-hand side of the road to load or unload passengers.

(6) The stop sign and alternately flashing red lamps shall be activated whenever a school bus is stopped on any portion of a traveled roadway to load or unload school children. Simultaneously flashing amber hazard lamps shall be activated whenever a school bus is stopped off the roadway to load or unload school children.

(7) Whenever school children have to cross the roadway, the school bus shall stop on the roadway and display the stop sign and alternately flashing red lamps. A school bus driver shall not allow school children to cross any roadway having three or more marked traffic lanes or any highway divided into separate roadways as provided in RCW 46.61.150.

(8) The stop sign and alternately flashing red lamps on a school bus shall not be used while the school bus is moving or to indicate that the school bus is going to stop.

(9) While loading and unloading passengers on a traveled portion of the roadway, the school bus driver shall activate the alternating flashing red lights by means of a sequencing switch prior to opening the passenger load door.

(10) The school bus driver shall set the parking brake and place the transmission in neutral or park prior to loading or unloading passengers. When it is possible, the school bus driver shall maintain light pressure on the service brake to activate the brake lamps when loading or unloading passengers.

(11) The school bus driver shall assure that all students are seated or secure prior to releasing the brake.

(12) In any case in which a school bus passes a stopped school bus which is loading and unloading students off the traveled portion of the roadway, the passing school bus shall reduce speed and proceed with caution.

#### NEW SECTION

**WAC 392-145-070 Rail grade crossings.** The following requirements apply to drivers of school buses during rail grade crossings:

(1) All school buses shall stop at all rail grade crossings except:

(a) Where traffic is controlled by a police officer or duly authorized flagman;

(b) Where an official traffic control device gives notice that the general stopping requirements do not apply;

(c) Where local regulations or school district policy expressly prohibit stopping.

(2) In order to lessen the potential for collisions, school bus drivers shall use simultaneously flashing amber hazard lamps within two hundred feet prior to stopping for a rail grade crossing.

(3) The school bus driver shall open the door and driver window to listen for approaching trains.

(4) Drivers shall take reasonable action to insure that passengers are quiet and shall turn off all noise making devices such as fans and radios while listening for approaching trains.

(5) Drivers shall not proceed until the door is closed, visibility is clear, and the school bus can safely proceed across and completely clear the rail grade.

(6) Drivers shall not change gears of a school bus equipped with a manual transmission while the school bus is crossing a rail grade.

NEW SECTION

**WAC 392-145-080 Emergency exit drills and procedures.** The following requirements are designed to provide maximum passenger safety in emergency situations:

(1) All school districts shall prepare written policies or rules which establish procedures for school bus safety and emergency exit drills.

(2) One actual emergency evacuation drill shall be held within the first six weeks of school each semester. The first actual exit drill shall be followed by at least one verbal review of the emergency exit drill prior to the second actual exit drill. For schools on a trimester system, an actual emergency evacuation drill shall be held within the first six weeks of school of each trimester and no verbal review is required.

(3) Only those passengers whose participation in an exit drill poses substantial difficulty to themselves or to other passengers shall be excused and/or excluded from exit drill participation. Passengers who are excluded from such participation shall receive oral instruction in school bus safety and exit drills at least three times during the school year.

(4) Required exit drills shall be held upon school premises.

(5) The school bus driver shall:

(a) Assure that emergency exit drills make allowance for individual differences;

(b) Provide instructions on the location and use of emergency equipment;

(c) Provide instruction to helpers that they should offer a helping hand palm up and avoid grasping a student's hand or arm; and

(d) Time the exit drill to assure that procedures provide for an orderly and expedient exiting from the vehicle.

(6) At the start of each field trip or extracurricular trip, the school bus driver shall review with all passengers, the

location and use of the emergency exits and emergency equipment, and any district emergency procedures.

(7) No school bus driver, except in accordance with emergency procedures adopted by the district, shall leave the immediate vicinity of his/her school bus while there are passengers aboard. In the event of a school bus breakdown, assistance shall be sought in accordance with school district policy.

(8) The emergency evacuation of a school bus shall only be conducted when staying on the school bus is more hazardous than exiting the school bus.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-145-010	Seating and seatbelt requirements.
WAC 392-145-020	Rules for school bus drivers.
WAC 392-145-015	General operating regulations.
WAC 392-145-025	Additional rules for school bus drivers.
WAC 392-145-030	Additional rules for school bus drivers.
WAC 392-145-035	Rules for students riding school buses.
WAC 392-145-040	Emergency exit procedures.
WAC 392-145-045	Emergency drills.

**WSR 06-21-029**

**PROPOSED RULES**

**WASHINGTON STATE PATROL**

[Filed October 9, 2006, 2:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-17-125.

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

Hearing Location(s): General Administration Building, Commercial Vehicle Division Conference Room, 211 11th Avenue S.W., Olympia, WA 98504, on Tuesday, November 21, 2006, at 10:00 a.m.

Date of Intended Adoption: November 21, 2006.

Submit Written Comments to: Ms. Christine Fox, Equipment and Standards Review Unit, P.O. Box 42614, Olympia, WA 98504-2614, e-mail Christine.Fox@wsp.wa.gov, fax (360) 586-8233, by November 20, 2006.

Assistance for Persons with Disabilities: Contact Ms. Christine Fox by November 20, 2006, (360) 753-3697.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To update and clarify specific sections in chapter 204-91A WAC. The

anticipated effect of the amendments are clarification of the procedures for screening employees of companies who tow on a rotational basis for Washington State Patrol (WSP); streamline the disqualifiers of individuals wanting to tow for WSP; company personnel requirements; truck identification/markings; addition of informal settlement language; cleaning up spills/debris from collision sites; updating some equipment standards; and some language clean up.

Statutory Authority for Adoption: RCW 46.37.005 and 46.55.115.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Ms. Christine Fox, General Administration Building, P.O. Box 42614, Olympia, WA 98504-2614, (360) 753-3697.

No small business economic impact statement has been prepared under chapter 19.85 RCW. WAC 204-91A-070(3) outlines the requirements towing businesses must follow to be issued a letter of appointment/contract to tow for the WSP on a rotational basis. If businesses do not comply with these requirements, they are at risk of having their appointment/contract to tow for WSP suspended or revoked.

A cost-benefit analysis is not required under RCW 34.05.328. The cost to comply with the proposed amendment would be minimal. Those companies who are not complying may have to purchase additional lettering or other means of ensuring the required information is on both sides of the tow truck.

October 9, 2006

John R. Batiste  
Chief

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

**WAC 204-91A-040 Inspections.** Upon the request of a registered tow operator or applicant, the patrol shall conduct an inspection of the applicant's place of business, facilities, and equipment to determine if the applicant meets the requirements of chapter 46.55 RCW, or Titles 308 and/or 204 WAC. Verification must be shown to the inspector that the applicant complies with all applicable local laws and regulations as prescribed for the geographical area where the towing business will be established. If local zoning regulations are applicable, a copy of the certification of approval from the local zoning commission will be furnished to the inspector. This certification may be included in the department's application form for license. The certification will become a part of the permanent record maintained on each approved towing firm by the section.

(1) Reinspections will be conducted at least once a year. Unscheduled inspections may be conducted without notice at the operator's place of business by an inspector to determine the fitness of tow trucks, facilities, and business records.

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

(a) In the event of a safety-related defect which would render the tow truck a safety hazard upon the public highway,

a red "out-of-service" sticker shall be affixed immediately by the inspector.

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

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

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

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

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

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

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

(c) An operator may not request a waiver for a new employee; the new employee must contact the inspector in writing to request a waiver.

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

**WAC 204-91A-060 Application for letter of appointment.** (1) An application for a letter of appointment to be

placed on the rotational tow list, will not be considered or approved unless the owner/operator of the towing company can demonstrate that he/she has been a registered tow truck operator for a minimum of two years prior to the date of application with at least one approved "A" or "B" class tow truck, additional trucks are optional; or has worked as an employee of a tow company on the state patrol's rotational tow list and gained experience within the towing industry including, but not limited to, the operation of vehicles, complying with the state and federal standards and regulations, and processing of paperwork for auditing and other purposes; or will keep in place the existing management team/employees for a minimum of one year upon purchasing the business. The owner/operator shall submit a letter with the application outlining their experience within the towing industry and outline which requirement listed above fits their situation. If the owner/operator doesn't have the two years experience and is granted a waiver, it will be a probationary waiver for a period of one year.

Note: An exception may be made if an operator desires a letter of appointment for class "C" tows only. In such situations, only a class "C" truck is required.

Upon request, the section shall advise the applicant of the contents of the department's regulations and of the standards established for the issuance of a letter of appointment.

(2) An application for a letter of appointment to provide towing service for the patrol shall be filed by the applicant with the local state patrol district office on a form prescribed by the patrol. The state patrol may refuse to approve or may revoke a letter of appointment/contract if the applicant, partner, or any employee who operates a tow truck or assists in vehicle auctions has ~~((within the last ten years has misrepresented or concealed a fact in obtaining a letter of appointment, violated any state or federal statute or rule regulating the tow industry, or been convicted of any class "A" felony, or in the last ten years been convicted or found guilty of any lesser felony or misdemeanor involving assault, sexual abuse, theft, burglary, stealing, embezzlement, fraud, driving under the influence of alcohol and/or drug(s), or any violent or sexual act toward a man, woman, or minor child,))~~ been found guilty of or convicted of any felony regardless of type or class, or within the last three years been convicted or found guilty of driving under the influence of alcohol and/or drug(s), or within the last five years have been found guilty of driving under the influence of alcohol and/or drugs two or more times as defined in the criminal code as they existed at the time of the violation, as they now exist or may later be amended in the state of Washington. In the case of a partnership, each partner shall apply on the form prescribed. In the case of a corporation, the patrol may require that each of the present and any subsequent officers, managers, and stockholders holding ten percent or more of the total issued and outstanding stock of the applicant corporation complete an application form. A signed "letter of contractual agreement" listing the maximum tow rates to be charged for services resulting from state patrol originated calls will be attached to the application.

(3) Only one application per year to tow on the Washington state patrol rotational tow list will be accepted and considered for an applicant who has had their previous applica-

tion denied or had their letter/contract of appointment revoked. The year shall run from the date of application denial or the date of the letter of appointment's revocation.

(4) The district commander or designee shall complete tow zone portion of the form. He/she will enter "approved" or "disapproved" and will sign the form next to the zone designation. The application and "letter of contractual agreement" will be forwarded to the section.

(5) The application form will be assigned a docket number, by the section, which shall be its permanent identification number for all matters relating to appointments, granted or denied, and any other correspondence with the section thereafter.

(6) The filing of an application for a letter of appointment does not in itself authorize the operator to provide towing services pursuant to this chapter until a letter of appointment has been issued by the section. However, nothing herein shall prohibit the patrol from calling the towing business upon the specific request of a person responsible for a vehicle or his agent.

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

**WAC 204-91A-070 Issuance of a letter of appointment.** (1) No towing operator shall be called to perform a towing service at the request of the patrol unless such operator has a letter of appointment as described in this chapter. No such letter of appointment will be issued unless all qualifications set out in this chapter have either been met by the applicant, or a waiver of those qualifications not met has been granted by the section.

(2) The section commander shall have the authority to issue letters of appointment upon request after receiving certification from the inspector, an application for a letter of appointment endorsed by the district commander, and notice from the department that the requestor has been licensed as a registered tow truck operator.

If the section shall find the requestor does not or will not meet all requirements and is not qualified for a waiver of the requirements, then such request shall be denied. The section shall notify the requestor of its decision in writing, stating the reasons. If the request is approved, the section commander will issue the letter of appointment and forward it to the tow operator. The tow company will be admitted to the patrol's call list for the appropriate tow zone on the effective date of the letter.

If the district commander recommends denial of a request for a letter of appointment, the section commander shall notify the applicant and provide an opportunity for applicant to have a hearing as provided in chapter 34.05 RCW.

(3) A letter of appointment will be valid for one business, in a single tow zone, assigned by the district commander. Requests for additional letters of appointment in the same or another zone must be based on a complete and separate place of business capable of independent operation within the appropriate zone.

(a) Each business must be operated independently. One company cannot be dependent upon another for any required operation.

(b) If an individual, partnership, corporation, or other business entity owns more than one business, each business must have a different identifiable name, address, and telephone number, which are answered at the business location during normal business hours. There may, however, be a central dispatch center for multiple companies. At a minimum, the different identifiable name, city of address (even if included in the name of the company), registered tow truck operator license number, and truck number as assigned by the department, must be located on both sides of the truck. All required information must be plainly seen and able to be read at all times. All other required markings must also be located where they can be plainly seen and able to be read at all times and be of the size outlined in WAC 308-61-115(1). Companies must comply by December 31, 2007.

Note: A different identifiable name may include the parent company name but must also have an additional name to identify and separate that company. Example: Joe's Towing and Joe's Towing South. Joe's Towing I and Joe's Towing II ((will not be adequate for this purpose)).

~~(c) There must be ((separate personnel for each company. Employees of that company must adequately staff each business office during normal business office hours to answer all incoming phone calls and to release impounded vehicles))~~ adequate staffing for each company with personnel present to answer all incoming calls and who are able to release impounded vehicles during normal business hours 8:00 a.m. to 5:00 p.m. Monday through Friday excluding state recognized holidays. Each business ((must)) shall be staffed by a sufficient number of drivers for twenty-four hour day operation. ((Employees and drivers cannot work for more than one company at a time during a designated shift—must work the entire shift from beginning to end for only one company and there must be a separate time card for each business for an individual working for more than one company.))

(d) There must be adequate equipment for each company to operate independently. Tow trucks must only be used for the company for which they are registered and within the zone approved/assigned for use in, unless specifically requested by law enforcement. All trucks must be clearly marked with the company's identity as outlined in (b) of this subsection.

(e) Separate businesses in the same tow zone may be housed in one building; however, there must be a solid wall from floor to ceiling physically separating each business. Each business must have its own outside entrance, or when the building has one main entrance, the offices must have doors clearly marking and separating each business (not acceptable to walk in the main door and be hit with a counter or one office for the multiple tow companies housed in the building), with a sign at the front door and a sign plainly visible from the street indicating the company's name, phone number, and office hours. Companies currently not meeting these standards will have twelve months from July 1, 2004, to comply.

(f) Each business must maintain their own set of required records and books as outlined in RCW 46.55.150 including,

but not limited to, a master log, vehicle transaction file, and billing invoices at its place of business. If there is a corporate accountant/bookkeeper for more than one company, all records and/or files for each company, other than those records, which are required to be maintained at the business location, must be maintained separately.

(g) Impound/storage areas must meet the requirements of WAC 308-61-026(2) at all times, including proper segregation.

All registered tow truck operators providing service to WSP must be in compliance with these requirements. Failure to comply will result in the cancellation of your letter of appointment to tow on the patrol's rotational tow list.

(4) A tow operator (or a district commander) may petition the section in writing for a waiver of one or more requirements. The section may grant a waiver if it finds that:

(a) The towing service available to the patrol without the waiver is inadequate to meet the needs of the public;

(b) The request is otherwise reasonable; and

(c) The request has the district commander's approval.

In the event a qualified tow operator meeting all requirements and qualifications receives a letter of appointment in the same zone as a tow operator that had earlier been granted a waiver, the tow operator with a waiver will have the letter of appointment rescinded by the section and after notification will not be called for patrol-initiated tows.

(5) Every letter of appointment shall be issued in the name of the applicant and the holder thereof shall not allow any other person or business to use the letter of appointment.

(6) The letter of appointment will only be valid for the place of business named on the application and will not apply to any other place of business.

(7) A letter of appointment shall be valid until suspended, superseded, or revoked by the section.

(8) The holder of each letter of appointment must maintain at least one tow truck meeting the minimum class "A," "B," or "C" standards as listed in WAC 204-91A-170.

(9) All storage areas, primary and secondary, for each place of business must be in the tow zone assigned to that place of business.

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

**WAC 204-91A-080 Suspension or revocation of letter of appointment.** (1) Upon receiving evidence that any appointee has failed to comply or no longer complies with any requirement or provision of law or this chapter, the section may deny, suspend, or revoke the letter of appointment. The appointee shall be given notice of the action and an opportunity to be heard as prescribed in chapter 34.05 RCW, prior to denial, suspension, or revocation of the letter of appointment.

(a) Upon receiving notice of the action, the appointee may request a hearing on the denial, suspension or revocation of the letter of appointment. Such request must be made in writing within twenty days from the date of the notice. An adjudicative proceeding will be commenced within ninety days of the receipt of a hearing request. Failure to request a hearing, or failure to appear at a requested hearing, a prehear-

ing conference, or any other stage of an adjudicative proceeding, shall constitute default and may result in the entry of a final order under RCW 34.05.440.

(b) Upon receiving a hearing request, the section may, at the request of the appointee, or on its own initiative, schedule an informal settlement conference which shall be without prejudice to the rights of the parties. The informal settlement conference will be held in the district where the company resides at a mutually agreed upon time and may result in a settlement agreement. If no agreement is reached, a hearing will be scheduled as outlined in chapter 34.05 RCW.

(c) The holder of a letter of appointment may voluntarily relinquish the letter. The section and the district commander will be advised in writing of this voluntary relinquishment. After receiving written notice, the district commander will cause the inspector to physically obtain the original letter of appointment and forward it to the section.

(2) The section may summarily suspend a letter of appointment without prior notification if it finds that there is danger to the public health, safety, or welfare which requires immediate action. In every summary suspension of a letter of appointment, the section shall enter an order, signed by the chief, which is in compliance with the provisions of RCW 34.05.479. Administrative proceedings consistent with chapter 34.05 RCW for revocation or other action shall be promptly instituted and determined. The section shall give notice as is practicable to the appointee.

(3) A tow company may be immediately removed from the state patrol's rotational tow list for the following - revocation or cancellation of their registered tow truck operator license by the department or cancellation of the tow company's insurance certificate or bond.

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

**WAC 204-91A-140 Fees.** (1) All towing fees shall be based on a flat, hourly rate only and shall apply without regard for the hour of day, day of the week or whether the service was performed on a Saturday, Sunday, or holiday. The hourly rate for each class of truck shall be the only charge for services performed for initial tows and secondary tows performed during business hours. Charges for secondary tows performed during nonbusiness hours, on weekends or holidays, if different from the hourly rate, shall be negotiated and agreed upon with the vehicle owner/agent before the tow is made.

(2) The chief of the state patrol shall, prior to October 15 of each year, establish maximum hourly towing rates for each class of tow truck and maximum daily storage rates that tow operators may charge for services performed as a result of state patrol calls. The maximum rates shall be determined after consulting with members of the towing industry, review of current private towing rates, and such other economic factors as the chief may deem appropriate.

When signed by the chief (or his/her designee) and the tow operator, a contractual agreement to charge no more than the maximum rates shall become part of the operator's letter of appointment. The tow operator may, however, adopt a rate

schedule charging less than the maximum rates established by the chief.

The hourly rate shall:

(a) Be the only basis used to compute total charges for towing services.

(b) Apply when the call is made by the state patrol, (~~for whatever reason,~~) including, but not limited to (~~accidents, incidents, disableds,~~), collisions and impound requests.

(c) Include all ancillary activities such as, but not limited to, removal of glass and debris from the roadway and any other area referred to as the "scene or incident," necessary winching, dolly service, drive line removal, installing chains on the tow truck, installation of portable lights, vehicle hookup for towing or transporting, tire replacement (on vehicle to be towed) and standby time. Tow companies must advise the department of transportation and/or the local road department of all fluid spills before leaving the scene that they will not clean up. Tow companies must document and file information in the vehicle transaction file.

(d) Be considered to include one person per truck. When responding with a class "C" or a S-1 rotator truck to major collisions and incidents, a second person is allowed at the hourly labor rate per contract for an extra RTO employee. Any charges for additional labor and/or ancillary vehicles (trailers, pickups, etc.), for removing debris, cargo, etc., must have prior authorization from the legal or registered owner/agent, or a member of the patrol at the scene.

(e) Be computed from the actual time the truck departs in response to a call until the truck returns to its normal area/zone, responds to another call, or the tow yard. The hourly rate shall be applied to the resulting net time and, after the first hour, shall be rounded to the nearest fifteen minutes. The operator may charge the hourly rate for the first hour or any portion thereof. After the first hour, no more than one-quarter of the hourly rate may be charged for each fifteen minutes of tow or service work performed.

(3) The basic storage fee: (Vehicles shall be measured bumper to bumper; trailers shall be measured tongue to bumper.)

(a) Shall be calculated on a twenty-four-hour basis clock and shall be charged to the nearest half day from the time the vehicle arrived at the secure storage area. Vehicles stored over twelve hours on any given day within the twenty-four-hour clock shall constitute a full day's storage. Vehicles stored for less than twelve hours on any give day, shall be charged for twelve hours of storage; and

(b) Shall be the same for all three and four-wheel vehicles (~~less than~~) twenty feet or less in length; and

(c) (~~For~~) Vehicles or combinations exceeding twenty feet, the storage fee shall be computed by multiplying each twenty feet of vehicle length, or any portion thereof, by the basic storage fee;

(d) (~~For~~) Two-wheel motorcycles shall be one-half the basic storage fee for three and four-wheel vehicles.

(4) After hours release fee. If an operator or employee is already present, for other reasons, at the storage facility after business hours when a customer arrives, the vehicle and/or property shall be released as if it were during business hours. No "after hours fee" may be assessed. If the operator or employee is called to the place of business specifically for the



purpose of releasing the vehicle and/or property, an "after hours fee," equivalent to one-half of the maximum Class "A" hourly rate, may be assessed.

(5) Any tow operator who charges the general public (i.e., private citizens) rates lower than those identified in the contractual agreement for services listed below shall charge the same lower rate for similar services performed as a result of state patrol originated calls.

- (a) Roadside mechanical service, including fuel transfer, tire and belt changes, etc.;
- (b) Disabled vehicle tow/transportation;
- (c) Storage;
- (d) After hours release fees.

Any such price requirement shall not be imposed for unoccupied vehicle situations in which the owner/operator has had no prior contact with either the state patrol or the tow operator.

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

**WAC 204-91A-170 Minimum tow truck equipment standards.** All tow/recovery trucks used by a registered tow operator for public or private impounds or in response to patrol requests shall meet the minimum standards as listed in this section.

Note: Equipment standards will be effective one year from the date of adoption.

**(1) Minimum standards:**

(a) All equipment used in conjunction with the tow truck winching system shall have a working load limit at least twenty-five percent more than the working load limit of the wire rope or equivalent material being used. All equipment shall comply with the Washington safety and health administration (WSHA) regulation if applicable.

Note: Industry standards set the working load limit of wire rope or equivalent material at 1/5 of its nominal or breaking strength.

(b) Each wire rope or equivalent material shall be capable of being fully extended from and fully wound onto its drum. Each wire rope or equivalent material shall meet the industry standards for specified type of use with equipment.

Note: OSHA (1410.179 (h)(2)(iii)) requires **no less** than two wraps of rope remain on drum when rope is "fully extended." This is to ensure the full load **never** bears on the rope to drum connection.

(c) All wire rope or equivalent material meeting industry standards for specified type of use with equipment shall be 6 X 19 or 6 X 37 classification graded "extra improved plow steel" (XIP).

Notes: Documentation from the supplier must be kept on file showing the type of wire rope installed and the date of installation for each truck.

6 X 19 wire rope classification includes wire ropes with six strands having wire combinations from fifteen through twenty-six wires per strand but not more than twelve outer wires in each strand.

6 X 37 wire rope classification includes wire ropes with six strands having wire combinations from twenty-seven through forty-nine wires per strand but not more than eighteen outer wires in each strand.

(d) All wire rope shall be in good working order. The following industry standards for **out-of-service** criteria shall apply:

(i) No more than six randomly distributed broken wires in one rope lay, or more than three broken wires in one strand in one rope lay.

(ii) Excessive abrasion causing the loss of more than one-third the original diameter of an outside individual wire.

(iii) Evidence of rope deterioration from corrosion.

(iv) Kinking, crushing, or other damage that results in detrimental distortion of the rope structure.

(v) Any evidence of heat damage.

(vi) Any marked reduction in diameter either along the entire main length or in one section.

(vii) Unlaying or opening up of a tucked splice.

(viii) Core protrusion along the entire length.

(ix) End attachments that are cracked, deformed, worn, or loosened.

Note: Hooks must be replaced if the throat opening has increased beyond manufacturer recommendations, the load bearing point has been worn by ten percent, or the hook is twisted by more than ten degrees.

(x) Any indication of strand or wire slippage in end attachments.

(xi) More than one broken wire in the vicinity of fittings.

(e) Wire rope end connections shall be swaged or, if clamped, shall have a minimum of three forged clamps spaced a minimum of six rope diameters apart and attached with the base or saddle of the clamp against the longer or "live" end of the cable. The "U" bolt will be placed over the short or "dead" end of the rope and will be of the proper size for the cable being clamped.

Note: Wire rope clamps must be installed and torqued per manufacturer specifications.

(f) All wire rope related equipment, sheaves, etc., must conform to the diameter of the wire rope being used or to the original tow truck equipment manufacturer specifications.

(g) All winching equipment, booms, snatch blocks, etc., shall have permanently affixed durable factory identification, stating working load limit (WLL). If this identification has been removed or is no longer readable, it is criteria for placing the item out-of-service. Equipment may be reinspected by a recognized recertification company. If the equipment is acceptable, it may be reidentified with a working load limit (WLL) and a recertification company identifier.

(h) All block and tackle equipment used in the winching system which shows signs of permanent deformation, significant wear or damage is criteria for placing the item out-of-service.

(i) All "J" hook chain assemblies must be grade "7" chain or better.

(j) Safety chains must only be used for the securing of vehicles to the truck. Must be minimum grade "4" chain or meet the original manufacturer's recommendations.

(k) Comply with legal lighting, equipment, and license requirements.

(l) Portable tail, stop, and turn signal lights for vehicles being towed.

(m) Have department of licensing registration and truck numbers painted or permanently affixed to both sides of the

truck. Have firm's name, city of address, and phone number permanently affixed to both sides of the vehicle. Letters must be a minimum of three inches high with one-half inch strokes.

(n) Have a revolving/intermittent red light with three hundred sixty degrees visibility. May also be equipped with flashing amber and/or white lights which may be used in conjunction with the red lamps. Must also be equipped with a warning light visible from the driver seat which is energized when the red revolving light or flashing amber lights are activated.

(o) Have a broom, minimum twelve inches wide, handle four feet long.

(p) Have a scoop type shovel, minimum seven inches wide, overall length minimum three feet long and a minimum of a three-gallon (~~bucket for debris~~) hard/solid sided receptacle (trash bags of any type will not meet this requirement) able to contain debris typically found at collision scenes without breaking.

(q) Be maintained in a reasonably clean condition.

(r) Have two tempered steel pinch bars or equivalent devices, one tapered and one flattened; one at least three feet long and one at least four feet long, with a minimum diameter of three-quarters of an inch.

(s) Have a two-way radio or mobile telephone system capable of communicating with a base station. A citizen band radio does not suffice. A mobile telephone system is acceptable if:

(i) The equipment is of a recognized and established manufacture and is properly installed.

(ii) The equipment is in proper working order and functions correctly throughout the assigned tow areas.

(iii) The equipment does not utilize a siren to signal incoming calls.

(iv) The equipment is used in a correct and lawful manner.

(t) Have one 20 BC rated or two 10 BC rated fire extinguishers.

(u) Axle weight must comply with the requirements of RCW 46.37.351.

(2) **Class "A" tow trucks:** Trucks that are capable of towing and recovery of passenger cars, pickup trucks, small trailers, or equivalent vehicles. Class "A" tow trucks shall meet the requirements of subsection (1)(a) through (u) of this section and in addition shall have:

(a) A ten thousand minimum manufacturer's gross vehicle weight rating.

(b) Dual tires on the rear axle.

(c) A minimum of one hundred feet of three-eighths inch continuous length XIP wire rope on each drum, measured from the point of attachment at the drum to the hook.

(d) A minimum six-ton boom rating with single or dual booms. Dual winches to control a minimum of two service drums.

(e) A minimum of two snatch blocks.

(f) A tow sling or other comparable device made of material and used in such manner so as to protect vehicles being towed or recovered.

(g) A portable dolly or its equivalent for hauling vehicles that are not otherwise towable.

(h) If equipped with a wheel lift system, it must have a fully extended working load rating of at least three thousand pounds and a seven thousand pound tow rated capacity.

(i) A minimum of one ten-foot or two five-foot recovery chains used in the winching system and must be minimum grade "7" chain with matching fittings.

(3) **Class "B" tow trucks:** Trucks that are capable of towing and/or recovery of medium size trucks, trailers, motor homes, or equivalent vehicles. Class "B" tow trucks shall meet the requirements of subsection (1)(a) through (u) of this section and in addition shall have:

(a) Seventeen thousand pounds minimum manufacturer's gross vehicle rating.

(b) Minimum ten-ton boom rating, single or dual booms, with two independent winches and drums.

(c) A minimum of one hundred feet of seven-sixteenths inch continuous length XIP wire rope on each drum, measured from points of attachment at the drum to the hook.

(d) Minimum of four standard release tools (caging stud assemblies).

(e) A minimum of two snatch blocks.

(f) A tow sling or other comparable device made of material and used in such manner so as to protect vehicles being towed or recovered.

(g) A portable dolly or its equivalent for hauling vehicles that are not otherwise towable when the class B tow truck is being used for class A tows.

(h) If equipped with a wheel lift system, it must have a fully extended working load limit of at least six thousand pounds and a twenty thousand pound tow rated capacity when operating as a class B truck. May be equipped with a three thousand pound fully extended working load wheel lift system with a seven thousand pound tow rated capacity if operating as a class A truck.

(i) A minimum of one ten-foot or two five-foot recovery chains used in the winching system and must be grade "8" chain with matching fittings.

(4) Class B\*\* trucks are rated at 30,000 GVWR (or more) with air brakes. Class B\*\* trucks shall meet the requirements of subsection (1)(a) through (u) of this section and in addition shall have a minimum of one hundred fifty feet of seven-sixteenths inch continuous length XIP wire rope on each drum, measured from points of attachment at the drum to the hook.

Class B\*\* trucks shall also meet the requirements of subsection (3)(b), (d), (e), (f), (g), (h), and (i) of this section.

(5) **Class "C" tow trucks and class "C" rotator trucks:** Are trucks that are capable of towing and/or recovery of large trucks, trailers, buses, motor homes, or similar vehicles. Class "C" trucks shall meet the requirements of subsection (1)(a) through (u) of this section and in addition shall have:

(a) A forty thousand pound manufacturer's gross vehicle weight rating or equivalent.

(b) Tandem rear axle truck chassis (both drive axles).

(c) A minimum of twenty-five-ton boom rating with single or dual booms. Dual winches to control a minimum of two service drums.

(d) A minimum of one hundred fifty feet of nine-sixteenths inch continuous length XIP wire rope on each drum

measured from the point of attachment at the drum to the hook.

(e) Air brakes and a system capable of supplying air to towed vehicles.

(f) A minimum of four standard release tools (caging stud assemblies).

(g) If equipped with a wheel lift system, it must have a fully extended working load limit of at least twelve thousand pounds.

(h) A minimum of one ten-foot or two five-foot recovery chains used in the winching system and must be grade "8" chain with matching fittings.

(i) A tow sling or other comparable device used in such a manner as to protect the vehicle being towed or recovered.

(j) A minimum of two snatch blocks.

(6) **Class "D" tow trucks:** Trucks that are equipped for and primarily used as "wheel lift" trucks.

Class "D" trucks shall meet the requirements of subsection (1)(a) through (u) of this section and in addition shall have:

(a) A wheel lift assemble with a fully extended manufacturer's working load limit of three thousand pounds and a seven thousand pound tow rated capacity.

(b) One winch and drum with one hundred feet of three-eighths inch XIP wire rope meeting class "A" requirements.

(c) One snatch block.

(d) A minimum of one five-foot recovery chain for use in the winching system and must be a minimum of grade "7" chain with matching fittings.

(7) **Class "E" tow trucks:** Trucks that are primarily designed and intended to transport other vehicles by loading the vehicle entirely onto the truck. These vehicles may be a flatbed, slide back, tilt bed, or rail design truck. Class "E" trucks shall meet the requirements of subsection (1)(a) through (u) of this section and in addition shall have:

(a) Four securing devices with a minimum working load limit of three thousand nine hundred pounds. The devices may be chain (minimum grade "(4) 7"), wire rope, nylon strap, or steel strap. The tie downs shall be attached to the axle or frame member of the transported vehicle both front and rear. All ends shall be secured to the truck bed or rail in a manner that will prevent movement of the transported vehicle. Factory style "T" hook tie-downs may also be used (front and rear).

(b) One snatch block.

(c) Dual tires on the rear axle.

(d) If used in a towing mode (as opposed to carrying), a sling, tow bar, and/or wheel lift assembly can be used and must have a manufacturers' rating appropriate to the vehicle being towed.

(e) Additional minimum requirements include:

- |   |                  |
|---|------------------|
| (i) Gross vehicle weight rating   | 14,500           |
| (ii) Purchased tonnage  | 14,500           |
| (iii) Winch rating  | 4 ton            |
| (iv) XIP wire rope  | 50 feet 3/8 inch |
| (v) One five-foot chain use in the winching system and must be a minimum of grade "7" chain with matching fittings. |                  |
| (vi) Car carrier (bed)  | 17 feet          |

Note: Bed may be shorter in a collapsed mode, but must be capable of telescoping to a minimum of seventeen feet.

(8) **Class "S" tow/recovery trucks:** Tow/recovery trucks that cannot meet the requirements of class "A," "B," "C," "D," or "E" and are not eligible for appropriate waiver as outlined in WAC 204-91A-070(4), may be approved as class "S" (special).

To have a truck designated as class "S" the tow operator must submit a request for approval through the district commander to the section. The written request shall indicate why the truck is needed, what it will be used for, its size, purchased tonnage (if appropriate), capability, and the equipment carried or used with the truck. Gross vehicle weight rating of the class "S" truck will determine the appropriate equipment required.

If the district commander approves the request, the request will be forwarded with recommendations for equipment and/or operation instructions or limitations to the patrol for review and final approval. If approval is granted, the equipment shall be inspected as outlined in WAC 204-91A-040 with reports forwarded in the normal manner.

Note: If the provisions of this section require a change in classification for a previously approved tow truck, such change may be made upon the next annual reinspection. In any case, all tow trucks shall be correctly classified within one year of adoption of these rules.

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

**WAC 204-91A-180 Vehicle towing/operator qualifications, restrictions, and requirements.** In addition to the requirements contained in WAC 204-91A-170, tow truck operators appointed pursuant to this chapter shall conform to all laws and administrative rules pertaining to the tow industry and shall observe the following practices and procedures:

(1) When called by the patrol, the tow truck operator will dispatch a tow truck, from within the assigned zone, within five minutes during normal business hours. Tow trucks must be registered to and belong to the particular tow business that is called and assigned to that tow zone only. If the officer at the scene deems it necessary, additional assistance may be authorized from a registered tow truck operator outside of the tow zone.

(2) Tow trucks dispatched at the request of the patrol after normal business hours will be on the move within the assigned zone within fifteen minutes after receiving the call.

(3) The tow truck that is dispatched will arrive at the stated location within a reasonable time considering distance, traffic, and weather conditions.

(4) If for any reason a tow operator is unable to dispatch a tow truck within the stated time or if the dispatched truck will be delayed for any reason, the operator shall so advise the patrol stating the reason and estimated time of arrival. In the event the tow truck fails to arrive at the scene within a reasonable time, the patrol will contact another tow operator to respond to the scene and will cancel the original tow.

(5) A tow operator on rotation who is unable to dispatch or arrive within the times stated in subsections (1), (2), (3), and (4) of this section will forfeit his turn and be placed at the bottom of the rotation list as if he had responded.

(6) Consistent refusal or failure of the appointee to respond to calls from the patrol for towing services and/or to provide the requested services may result in the suspension or revocation of the tow operator's letter of appointment.

(7) The tow operator shall advise the appropriate patrol office when the tow company is temporarily unavailable to respond to rotational calls with a class "A," "B," or "C" tow truck. Unavailability may occur due to conditions such as, but not limited to, other tow truck commitments, tow truck disabled and/or under repair, unforeseen driver shortage due to illness, etc. The period of unavailability may last less than an hour or much longer. The tow operator will give the reason for unavailability and approximately when the company will be available to respond to calls.

The tow company will be removed from the rotational list and will not be called until the operator advises the patrol that the company is once again able to respond to calls with an "A," "B," or "C" class truck. In all such cases, the tow company will resume its normal position on the rotational list without regard to any missed calls or its position prior to being unavailable.

(8) The tow operator will advise the patrol whenever a private call is received for a tow with circumstances that indicate that the tow is for a vehicle which has been involved in ~~((an accident))~~ a collision, incident, or equipment breakdown on the public roadway. The tow operator also will advise the patrol of all private calls to motor vehicle ~~((accidents))~~ collisions on private property resulting in bodily injury or death.

(9) The tow operator will notify the patrol before moving any vehicle involved in ~~((an accident))~~ a collision on a public highway under the jurisdiction of the patrol as defined in the motor vehicle code, Title 46 RCW, or where it appears that the driver of the vehicle to be moved is under the influence of intoxicants or drugs, or is otherwise incapacitated.

Other than a service patrol established and funded by the department of transportation, a tow operator shall not solicit tow or roadside services by patrolling the public roadways searching for disabled vehicles or vehicles involved in a traffic ~~((accident))~~ collision.

(10) When the patrol is in charge of ~~((an accident))~~ a collision scene or other such incident, a tow operator shall not respond to such scene unless his services have been specifically requested by the patrol, the driver/owner, or his agent.

(11) The tow operator shall be available, or will ensure that specific employees are available, twenty-four hours a day for the purpose of receiving calls or arranging for the release of vehicles. Business hours will be posted conspicuously at the operator's place of business so they can be seen during business hours and nonbusiness hours. A copy will also be sent to the section and patrol district commander of the district in which the tow operator does business. Changes of business hours will be sent to the department, the section, and the patrol district commander ten days before their effective date.

~~((The tow operator will notify the appropriate patrol office of the release of stored vehicles within five working days after the release of such vehicle. Notification to the patrol will be made in such a manner as prescribed by the section commander.~~

~~((13))~~ (13) The operator shall post a current copy of tow and storage rates, on a form approved by the department and the patrol, in the following locations:

(a) At the entrance to the place of business, in a conspicuous location, plainly visible and readable by members of the public, whether the business is open or closed. If, in order to meet this requirement, the rate sheets must be placed in a location, exposed to the elements, they shall be protected so as to remain legible.

(b) Inside the business location, where business is commonly transacted. The rate sheets shall be posted in such manner as to be clearly and plainly visible and readable at all times by customers of the business.

(c) A copy of the current rates will be sent to the department, the section, and the patrol district commander of the district in which the tow operator has applied for a letter of appointment. Notice of any change(s) in service rates will be forwarded to the department, the section, and the district commander of the area ten days before the effective date of the changes. Charges made for towing services arising from calls initiated by the patrol shall be consistent with current posted towing rates and shall be based only upon services listed on the prescribed form.

(d) In the event that an operator has only a class "B" truck and utilizes it for class "A" and "B" type tows, the operator shall file a rate sheet that specifies the rates charged for the different types of tows.

Whenever any operator utilizes a larger truck than the towed vehicle warrants, the operator shall charge fees based on the size of the towed vehicle not the size of the truck used.

Example: A class "C" truck is used, at the operator's discretion, to tow a class "B" size vehicle. The fees charged shall be those for a class "B" truck NOT a class "C."

~~((14))~~ (13) Charges made for towing services arising from calls initiated by the patrol shall not exceed the maximum rates established by the chief.

~~((15))~~ (14) Unless other arrangements are made with commissioned patrol personnel at the scene, all impounded vehicles shall be taken to the tow operators nearest approved storage location.

~~((16))~~ (15) The tow operator will maintain, for three years, records on towed and released vehicles which were towed at the request of the patrol. This record will include, but not be limited to:

(a) An itemized receipt of all charges for the services provided.

(b) An inventory sheet or copy thereof made out by the trooper at the scene of the tow and signed by the operator.

(c) All other records required by the department.

Such records will be available for inspection by the patrol during normal business hours at the operator's place of business.

~~((17))~~ (16) The tow operator will sign an inventory sheet made out by the patrol officer at the scene.

~~((18))~~ (17) Tow operators will obtain and maintain current registration as a licensed tow truck operator pursuant to RCW 46.55.020.

~~((19))~~ (18) Tow operators shall perform towing tasks competently. The standard of competence shall be that qual-

ity of work which is accepted as efficient and effective within the towing industry.

~~((20))~~ (19) No tow operator, employee, or agent shall misappropriate, wrongfully convert to his/her own use, or abuse property belonging to another and entrusted to his/her care or storage.

~~((21))~~ (20) Tow truck operators will use emergency lights to warn other motorists only when at the scene of ~~((accidents))~~ collisions, disabled vehicles, and/or recoveries. Such lighting shall not be used when traveling to or from the scene.

Tow truck operators whose duties are performed in areas and under circumstances where they are exposed to the danger of moving vehicles shall wear work vests of highly visible materials, or equivalent distinguishing apparel as outlined in department of labor and industries, WAC 296-155-200(5).

~~((22))~~ (21) Tow truck operators shall be responsible for cleaning ~~((accident))~~ collision/incident scenes of all vehicle glass ~~((and))~~, debris and vehicle fluids.

~~((23))~~ (22) Specific operating restrictions and/or requirements, by truck class, are as follows:

(a) The standard air brake release tools (caging stud assemblies) required to be carried in the class "B" and "C" trucks shall be used, whenever necessary, to preserve potential evidence involving brake equipment or adjustment settings. When an operator is attempting to move a vehicle equipped with locked spring parking brakes that cannot be released by external air supply, the caging assemblies shall be used to release the brake tension. Under no circumstances shall the towed vehicle's brake assemblies or adjustments be moved or disturbed in any way that will prevent later determination of the ~~((preaccident))~~ precollision or incident settings.

(b) Class "B" trucks in excess of twenty-three thousand pounds gross vehicle weight rating need not carry dollies when towing or recovering heavy vehicles.

(c) Class "D," "E," and "S" trucks shall not be used to respond to initial calls unless specifically authorized by patrol personnel at the scene or by local written policy approved by the district commander.

(d) Class "E" trucks shall:

(i) Have, when used for multiple vehicle towing/recovery (one on bed, one in tow) from the same location, all invoice charges evenly divided between the vehicles so transported;

(ii) Not be operated in excess of either gross vehicle weight rating or purchased tonnage weight limits;

(iii) Be required to carry its portable lights only when used in a towing mode.

~~((24))~~ (23) Whenever a "special event or overflow" storage lot is approved by the department, the patrol and appropriate city/county jurisdictions, the operator shall maintain personnel at the lot twenty-four hours per day for security and vehicle and/or personal property release. If necessary, reimbursement for such labor shall be part of the contract for the "special event" if appropriate or by amended storage rates with a waiver of the ten-day rate change notice requirement approved by the department and the patrol.

At the conclusion of a "special event or overflow" situation, all vehicles not reclaimed by the owner shall be towed to

the operator's regular storage facility and processed in the normal fashion. No additional fee shall be charged for towing the vehicle from the overflow lot to the regular facility.

~~((25))~~ (24) All work performed by the operator and/or employee shall be in the most professional and expeditious manner. All invoices and other required forms shall be completed accurately and promptly.

~~((26))~~ (25) Tow operators shall, when required by the patrol or the department, cause to be displayed on each approved truck, decals indicating truck class, patrol district, and/or assigned tow zone.

## WSR 06-21-033

### PROPOSED RULES

### DEPARTMENT OF LICENSING

[Filed October 10, 2006, 10:47 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Private security guards, chapter 18.170 RCW, WAC 308-18-150 Fees.

Hearing Location(s): Department of Licensing, Business and Professions Division, Conference Room 2209, Building 2, 405 Black Lake Boulevard, Olympia, WA 98507, on December 7, 2006, at 10:00 a.m.

Date of Intended Adoption: December 12, 2006.

Submit Written Comments to: Mary Haglund, P.O. Box 9649, Olympia, WA 98502, e-mail Security@dol.wa.gov, fax (360) 570-7888, by December 6, 2006.

Assistance for Persons with Disabilities: Contact administrative staff by December 1, 2006, TTY (360) 664-8885 or (360) 664-6611.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the rule adoption is to adjust fees after completing our implementation and compliance with the Anti Terrorism and Prevention Act. The renewing licensees will no longer have to pay for additional background checks to be in compliance.

Statutory Authority for Adoption: Chapter 18.170 RCW.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Mary Haglund, Olympia, Washington, (360) 664-6624; and Enforcement: Pat Brown, Olympia, Washington, (360) 664-6624.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Department of licensing is exempt from this requirement.

A cost-benefit analysis is not required under RCW 34.05.328. Department of licensing is exempt from this requirement.

September 1, 2006  
 Ralph Osgood  
 Assistant Director

AMENDATORY SECTION (Amending WSR 05-24-121, filed 12/7/05, effective 1/9/06)

**WAC 308-18-150 Private security guard company, private security guard, and armed private security guard fees.** Licenses issued to private security guard companies and private security guards expire one year from the date of issuance and must be renewed each year. The fees are as follows:

Title of Fee	Fee
Private security guard company/principal:	
Application/includes first examination	\$ <del>((300.00))</del> <u>350.00</u>
Reexamination	25.00
License renewal	300.00
Late renewal with penalty	400.00
Change of principal/includes first examination	100.00
Principal armed endorsement	10.00
Private security guard:	
Original license	<del>((82.00))</del> <u>85.00</u>
Armed endorsement	10.00
Transfer fee	<del>((20.00))</del> <u>25.00</u>
<u>Licenses with inactive licenses are not required to pay late renewal penalty fees.</u>	
<del>((Unarmed)) License renewal ((with current WSP*))</del>	<del>((70.00))</del> <u>55.00</u>
<del>((Unarmed license renewal without current WSP*))</del>	<del>100.00))</del>
Note: <del>((A current WSP means that a background check was completed by the security guard licensing unit within the last twelve months. You will be billed according to this status.))</del> <u>License renewals without a Federal Bureau of Investigation background check will be required to pay additional background check fees.</u>	
<del>((Unarmed)) License late renewal with penalty. Late fee is not due if submitting a renewal with a transfer or rehire application.</del>	<del>((120.00))</del> <u>70.00</u>
<del>((Armed license renewal</del>	<del>40.00</del>
<del>Armed license late renewal with penalty</del>	<del>45.00))</del>
Certified trainer endorsement examination/reexamination	25.00
Certified trainer endorsement renewal	15.00
Duplicate license	10.00

**WSR 06-21-035**

**PROPOSED RULES**

**SUPERINTENDENT OF PUBLIC INSTRUCTION**

[Filed October 10, 2006, 11:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-16-055.

Title of Rule and Other Identifying Information: Chapter 392-162 WAC, Special service program—Learning assistance program.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Old Capitol Building, 600 Washington Street S.E., Olympia, WA 98504-7200, on November 22, 2006, at 9:00 a.m. - 10:00 a.m.

Date of Intended Adoption: November 23, 2006.

Submit Written Comments to: Gayle Pauley, Office of Superintendent of Public Instruction, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, e-mail gpauley@ospi.wednet.edu, fax (360) 586-3305, by October 30, 2006.

Assistance for Persons with Disabilities: Contact Dodie Richter by November 21, 2006, TTY (360) 664-3631 or (360) 725-6194.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes made to chapter 392-162 WAC address statute chapter 28A.165 RCW. Specific actions required of districts that accept learning assistance program (LAP) funds is clarified. Each section clarifies the procedures that districts must follow to gain LAP funds through OSPI's LAP application process.

Reasons Supporting Proposal: Changes to state law require an update of the WAC under ESB 5877 of 2004, HB 1066 of 2005, and ESSB 6386 of 2006.

Statutory Authority for Adoption: RCW 28A.300.070.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The statutory language has been included in the administrative code to reflect specific changes that occurred in the 2005 and 2006 legislative session. The agency is responsible for making these corrections and additions in the WAC based upon HB 1066 and SB 6386. It is recommended that the WAC changes be approved.

Name of Proponent: Gayle Pauley, Director Title I/LAP and Title V, governmental.

Name of Agency Personnel Responsible for Drafting: Gayle Pauley, OSPI, Old Capitol Building, 600 Washington Street S.E., Olympia, WA 98504-7200, (360) 725-6100; Implementation: Bob Harmon, OSPI, Old Capitol Building, 600 Washington Street S.E., Olympia, WA 98504-7200, (360) 725-6170; and Enforcement: Terry Bergeson, OSPI, Old Capitol Building, 600 Washington Street S.E., Olympia, WA 98504-7200, (360) 725-6004.

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

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

September 15, 2006  
Dr. Terry Bergeson  
Superintendent of  
Public Instruction

AMENDATORY SECTION (Amending Order 87-14, filed 10/22/87)

**WAC 392-162-005 Authority.** The authority for this chapter is ~~((chapter 478, Laws of 1987))~~ RCW 28A.164.075 which authorizes the superintendent of public instruction to ~~((promulgate))~~ adopt rules and regulations for the ~~((implementation))~~ administration of a program designed to provide learning assistance to public school students in grades kindergarten through ~~((nine))~~ eleven (grade twelve beginning with the 2007-08 school year) who are deficient in basic skills achievement.

AMENDATORY SECTION (Amending Order 87-14, filed 10/22/87)

**WAC 392-162-010 Purpose.** The purpose of this chapter is to set forth policies and procedures for the administration of and to ensure district compliance with state requirements for a program designed to provide learning assistance to public school students in grades kindergarten through ~~((nine))~~ eleven (grade twelve beginning with the 2007-08 school year) who are deficient in basic skills achievement.

The learning assistance program requirements in this chapter are designed to:

(1) Provide the means by which a school district becomes eligible for learning assistance program funds and the distribution of those funds;

(2) Promote the use of assessment data when developing programs to assist underachieving students; and

(3) Guide school districts in providing the most effective and efficient practices when implementing programs to assist underachieving students.

AMENDATORY SECTION (Amending Order 87-14, filed 10/22/87)

**WAC 392-162-015 Definition—Basic skills.** As used in this chapter, the term "basic skills" means reading, writing, and mathematics, ~~((language arts, and))~~ as well as readiness ~~((activities))~~ associated with ~~((such))~~ these skills.

AMENDATORY SECTION (Amending Order 87-14, filed 10/22/87)

**WAC 392-162-020 Definition—Learning assistance program.** As used in this chapter, the term "learning assistance program" means a statewide program designed to enhance educational opportunities for public school students in grades kindergarten through ~~((nine))~~ eleven (grade twelve beginning with the 2007-08 school year) who ~~((are deficient in basic skills achievement))~~ do not meet state standards or are at risk of not meeting state standards.

"Approved program" means a program submitted to and approved by the office of the superintendent of public instruction and conducted pursuant to the plan that addresses the required elements as provided for in this chapter.

AMENDATORY SECTION (Amending Order 87-14, filed 10/22/87)

**WAC 392-162-025 Definition—~~((Objective measures))~~ Assessments.** As used in this chapter, the term "~~((objective measures))~~ assessments" means ~~((using a written or oral testing instrument that can be applied uniformly and consistently to determine in a comparable manner the educational achievement level of children))~~ one or more of the several basic skills assessments administered as part of the state's student assessment system, and assessments in the basic skills areas administered by local school districts.

AMENDATORY SECTION (Amending Order 87-14, filed 10/22/87)

**WAC 392-162-032 Definition—Participating students.** As used in this chapter, the term "participating student~~((s))~~" means ~~((eligible students in grades kindergarten through nine as determined by the district needs assessment and placement testing, and selected in accordance with this chapter to receive services in the learning assistance program))~~ a student in kindergarten through grade eleven (grade twelve beginning with the 2007-08 school year) who scores below standard for his or her grade level on the statewide assessments and who is identified in the approved plan to receive services.

Beginning with the 2007-08 school year, "participating student" means a student in kindergarten through grade twelve who scores below standard for his or her grade level on the statewide assessments and who is identified in the approved plan to receive services.

NEW SECTION

**WAC 392-162-033 Definition—Underachieving students.** As used in this chapter, the term "underachieving students" means students with the greatest academic deficits in basic skills as identified by the statewide assessments.

NEW SECTION

**WAC 392-162-034 Definition—Accelerated learning plans.** Accelerated learning plans are to be developed and implemented for participating students. Accelerated learning plans may be developed as part of an existing student achievement plan process such as student plans for achieving state high school graduation standards, individual student academic plans, or the achievement plans for groups of students. Accelerated learning plans shall include:

- (1) Achievement goals for students;
- (2) Roles for the student(s), parents, or guardians and teachers in the plan;
- (3) Communication procedures regarding student(s) accomplishment; and
- (4) Plan review and adjustment processes.

AMENDATORY SECTION (Amending Order 87-14, filed 10/22/87)

**WAC 392-162-045 Definition—Approved program.** As used in this chapter, the term "approved program" means a program meeting the ~~((requirements))~~ required elements of this chapter and conducted pursuant to the program plan submitted by a district and approved by the superintendent of public instruction in accordance with WAC 392-162-075.

NEW SECTION

**WAC 392-162-054 Definition—District eligibility and distribution of funds.** Each school district with an approved program is eligible for state funds provided for the learning assistance program. The funds shall be appropriated for the learning assistance program in accordance with the Biennial Appropriations Act. The distribution formula is for school district allocation purposes only. The distribution formula shall be based on one or more family income factors measuring economic need. In addition, increases in a school district's allocation above the 2004-05 school year level shall be directed to grades nine through ten.

AMENDATORY SECTION (Amending Order 95-08, filed 9/12/95, effective 10/13/95)

**WAC 392-162-057 Definition—Advisory committee.** As used in this chapter, the term "advisory committee" means a consultant group with membership including, but not limited to, representatives of the following groups: Parents~~((—))~~, including parents of students served by program~~((—))~~, teachers, principals, administrators, and school directors. This group ~~((can))~~ may also be defined as the ~~((site-based planning))~~ school improvement team~~((:))~~ provided~~((, That))~~ an existing ~~((advisory committee that))~~ school improvement team meets the requirements of this section ~~((may serve as the learning assistance program advisory committee)).~~

AMENDATORY SECTION (Amending Order 87-14, filed 10/22/87)

**WAC 392-162-060 District application.** Each district that seeks an allocation from the state for a learning assistance program shall submit ~~((a biennial))~~ an annual application, including the district program plan outlined in WAC 392-162-070, and an annual expenditure plan for approval on electronic forms provided by the superintendent of public instruction~~((: Provided, That if district program plan elements described in WAC 392-162-070 are changed for the second year of the biennium, an updated program plan shall be submitted to the superintendent of public instruction for approval on forms provided)).~~

AMENDATORY SECTION (Amending Order 95-08, filed 9/12/95, effective 10/13/95)

**WAC 392-162-062 Program plan revision.** A district may make periodic change(s) to the planning document during the school year if such change(s) are made with the "advisory committee" and are submitted to and approved by the

superintendent of public instruction ~~((on forms provided for that purpose))~~ through the electronic application and revision process.

AMENDATORY SECTION (Amending Order 87-14, filed 10/22/87)

**WAC 392-162-065 School board approval.** The district's ~~((biennial))~~ annual application which specifies the learning assistance program plan shall be approved by formal action of the district's board of directors.

NEW SECTION

**WAC 392-162-068 Program plan.** By July 1st of each year, a participating school district shall submit the district's plan for using learning assistance funds to the office of the superintendent of public instruction for approval. Applications must be approved before funds are expended.

A school district must identify the program activities to be implemented from RCW 28A.165.035 and implement all of the elements in subsections (1) through (8) of this section. The school district plan shall include the following:

(1) District and school-level data on reading, writing, and mathematics achievement as reported pursuant to chapter 28A.655 RCW and relevant federal law;

(2) Processes used for identifying the underachieving students to be served by the program, including the identification of school or program sites providing program activities;

(3) Accelerated learning plans are to be developed and implemented for participating students. Accelerated learning plans may be developed as part of an existing student achievement plan process such as student plans for achieving state high school graduation standards, individual student academic plans, or the achievement plans for groups of students;

(4) How state level and classroom assessments are used to inform instruction;

(5) How focused and intentional instructional strategies have been identified and implemented;

(6) How highly qualified instructional staff are developed and supported in the program and in participating schools;

(7) How other federal, state, district, and school resources are coordinated with school improvement plans and the district's strategic plan to support underachieving students; and

(8) How a program evaluation will be conducted to determine direction for the following school year.

NEW SECTION

**WAC 392-162-072 Program plan—Approved activities.** Through the identification of best practices, which maximize the opportunities for student success, services and activities which support the learning assistance program include:

(1) Extended learning time through extended day, week or year activities;



(2) Professional development for certificated and classified staff that focuses on the needs of diverse student populations, specific literacy and mathematics content and instructional strategies, and the use of student work to guide effective instruction;

(3) Consultant teacher to assist in implementing effective instructional practices by teachers serving participating students;

(4) Tutoring support for participating students; and

(5) Outreach activities and support for parents of participating students.

AMENDATORY SECTION (Amending Order 95-08, filed 9/12/95, effective 10/13/95)

**WAC 392-162-075 Program approval.** A participating school district shall annually submit a program plan to the office of the superintendent of public instruction for approval. The program plan must address all of the elements in RCW 28A.165.025 and identify the program activities to be implemented from RCW 28A.165.035.

School districts achieving state reading and mathematics goals as prescribed in chapter 28A.655 RCW shall have their program approved once the program plan and activities submittal is completed.

School districts not achieving state reading and mathematics goals as prescribed in chapter 28A.655 RCW and that are not in a state or federal program of school improvement shall be subject to program approval once the plan components are reviewed by the office of the superintendent of public instruction for the purpose of receiving technical assistance in the final development of the plan.

School districts with one or more schools in a state or federal program of school improvement shall have their plans and activities reviewed and approved in conjunction with the state or federal program school improvement program requirements.

The superintendent of public instruction shall review and approve each district's ~~((planning document))~~ program. A district's learning assistance program shall not be implemented prior to ~~((planning document))~~ approval.

AMENDATORY SECTION (Amending Order 95-08, filed 9/12/95, effective 10/13/95)

**WAC 392-162-080 Program requirement—Selection of students.** Students selected to participate in the learning assistance program shall be limited to those who:

(1) Are enrolled in grades kindergarten through ~~((nine))~~ eleven (grade twelve beginning with the 2007-08 school year);

(2) Are performing below the state standard for his or her grade level; ~~((provided, that all students in school-wide project schools will be eligible for services based on academic need;))~~

(3) Have been ~~((selected using multiple measures))~~ identified in the approved district plan to receive services; and

(4) Have been determined to have the greatest risk of not meeting the state's challenging content and performance standards.

AMENDATORY SECTION (Amending Order 87-14, filed 10/22/87)

**WAC 392-162-100 Program coordination.** School districts may coordinate federal, state, and local programs in order to serve the maximum number of students who are below grade level in basic skills. Students receiving assistance in another special needs program may also be served in the learning assistance program if they meet student eligibility and selection requirements ~~((under this chapter))~~ as identified in WAC 392-162-032 and 392-162-080.

AMENDATORY SECTION (Amending Order 95-09, filed 9/12/95, effective 10/13/95)

**WAC 392-162-105 Program requirement—Program evaluation.** ~~((The Title I))~~ Evaluation ((requirements)) procedures as outlined in WAC 392-162-075 shall be used annually by districts to evaluate the educational achievement of students receiving recommended services in the learning assistance program. Evaluation results shall be collected annually by the superintendent of public instruction. Such evaluation for school districts in district improvement, or with one or more schools in school improvement status, shall review and evaluate program success in alignment with state and federal program school improvement program requirements.

AMENDATORY SECTION (Amending Order 95-08, filed 9/12/95, effective 10/13/95)

**WAC 392-162-110 Program requirement—End of year report.** Districts shall submit to the superintendent of public instruction at the close of the state fiscal year an end of the year report on electronic forms provided by the superintendent of public instruction.

NEW SECTION

**WAC 392-162-112 Carry over of funds.** Districts may carry over from one year to the next up to ten percent of the LAP funds—state or education legacy trust funds allocated under this program; however, carry over funds shall be expended for the learning assistance program.

AMENDATORY SECTION (Amending Order 87-14, filed 10/22/87)

**WAC 392-162-115 Monitoring of districts.** In order to insure that school districts are meeting the requirements of this chapter, the superintendent of public instruction shall monitor district programs no less than once every ~~((three))~~ four years by using ~~((sampling procedures))~~ the state program review process. Individual student records shall be maintained at the school district.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 392-162-030 Definition—Eligible students.
- WAC 392-162-035 Definition—Additional/supplemental services.
- WAC 392-162-040 Definition—Placement testing.
- WAC 392-162-043 Definition—School-wide project.
- WAC 392-162-047 Definition—Basic skills test.
- WAC 392-162-049 Definition—Needs assessment.
- WAC 392-162-050 Definition—Accounting manual.
- WAC 392-162-052 Definition—Indirect expenditures.
- WAC 392-162-053 Definition—Direct expenditures.
- WAC 392-162-067 Program requirement—Needs assessment.
- WAC 392-162-085 Program requirement—Consultation with the "advisory committee."
- WAC 392-162-090 Program requirement—Notification of parents.
- WAC 392-162-095 Program requirement—Allowable expenditures.

**WSR 06-21-036**

**WITHDRAWAL OF PROPOSED RULES  
DEPARTMENT OF LICENSING**

[Filed October 10, 2006, 1:22 p.m.]

On behalf of the funeral directors and embalmers board the department of licensing (DOL) filed a CR-102 (proposed rule making) on October 3, 2006. DOL requests that WSR 06-20-093 be withdrawn with the intention of refiling the CR-102 with an OTS formatted document.

Please contact Joe Vincent, Jr., if you have any additional questions or comments regarding this request.

Joe Vincent, Jr.  
Administrator

**WSR 06-21-040  
PROPOSED RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Filed October 11, 2006, 3:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-13-065.

Title of Rule and Other Identifying Information: WAC 232-12-828 Hunting of game birds and animals by persons with a disability.

Hearing Location(s): Room 172, Natural Resources Building, 1111 Washington Street S.E., Olympia, WA, on January 12-13, 2007, at 8:30 a.m.

Date of Intended Adoption: February 2-3, 2007.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail barkemwb@dfw.wa.gov, fax (360) 902-2155, by January 10, 2007.

Assistance for Persons with Disabilities: Contact Nancy Burkhart by December 29, 2006, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Purpose of the rule is to provide disabled hunters flexibility in hunting near the roadway, as safety considerations allow.

Reasons Supporting Proposal: Disabled hunters are not as mobile as most hunters and some extra consideration is provided for that reason.

Statutory Authority for Adoption: RCW 77.12.047.

Statute Being Implemented: RCW 77.12.047.

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

Name of Proponent: Department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Morris Barker, 1111 Washington Street S.E., Olympia, (360) 902-2826; Implementation: Dave Brittell, 1111 Washington Street S.E., Olympia, (360) 902-2504; and Enforcement: Bruce Bjork, 1111 Washington Street S.E., Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule proposal is for recreational hunting.

A cost-benefit analysis is not required under RCW 34.05.328. These are not hydraulic rules.

October 11, 2006  
Morris W. Barker  
Rules Coordinator

AMENDATORY SECTION (Amending Order 04-98, filed 5/12/04, effective 6/12/04)

**WAC 232-12-828 Hunting of game birds and animals by persons with a disability.** (1) Definitions:

(a) "Hunter with a disability" means a person with a permanent disability who possesses a disabled hunter permit issued by the department. A hunter with a disability must have all required licenses, tags, permits, and stamps before hunting.

(b) "Disabled hunter permit" means a permit, card, or endorsement to a license issued by the department to any person with a permanent disability who applies to the department and presents such evidence as the director may require showing that the applicant is a person with a qualifying disability. Upon approval of the application, the department will issue a vehicle identification placard. A designated hunter companion card will be issued with a hunting license.

(c) "Designated hunter companion" means a person who assists a hunter with a disability in the stalking, shooting, tracking, retrieving, or tagging of game birds and game animals.

(d) "Designated hunter companion card" means an identification card issued by the department to the hunter with a disability.

(e) "Blind or visually impaired" means a central visual acuity that does not exceed 20/200 in the better eye with corrective lenses, or the widest diameter of the visual field does not exceed twenty degrees.

(f) "Accompany" means the hunter with a disability and the designated hunter companion are in the physical presence of each other, not to exceed 1/4 mile separation. While stalking or shooting an animal, the hunter with a disability and the designated hunter companion must have a form of reliable and direct communication.

(g) "Special use permit" means a permit issued by the department to a person with a specific permanent disability as a reasonable accommodation. The special use permit allows for a specific act or acts to include, but not be limited to, use of adaptive mechanical, electrical, or specialty equipment or devices that aid the person in hunting.

(h) "Person with a disability" means:

(i) A person who has a permanent disability and is not ambulatory over natural terrain without a lower extremity prosthesis or must permanently use a medically prescribed assistive device for mobility, including, but not limited to, a wheelchair, crutch, cane, walker, or oxygen bottle; or

(ii) A person who has a permanent disability and is physically incapable of holding and safely operating a firearm or other legal hunting device.

This definition includes, but is not limited to, persons with a permanent upper or lower extremity impairment who have lost the use of one or both upper or lower extremities, or who have a severe limitation in the use of one or both upper or lower extremities, or who have a diagnosed permanent disease or disorder which substantially impairs or severely interferes with mobility or the use of one or both upper or lower extremities for holding and safely operating a firearm or other legal hunting device; or

(iii) A person who is blind or visually impaired.

"Visually impaired" means central visual acuity that does not exceed 20/200 in the better eye with corrective lenses, or the widest diameter of the visual field is no greater than twenty degrees.

(2) The designated hunter companion must accompany the hunter with a disability when stalking or shooting game on behalf of the hunter with a disability. The hunter with a disability or the designated hunter companion must immediately cut, notch, or date any required tag. The tag must be

affixed to the carcass of the game bird or animal as soon as is reasonably possible after killing the game.

(3) The designated hunter companion does not need to accompany the hunter with a disability while tracking an animal wounded by either hunter, or while tagging or retrieving a downed animal on behalf of the hunter with a disability.

(4) It is unlawful for a designated hunter companion to assist a hunter with a disability unless the designated hunter companion has the designated hunter companion identification card on his or her person.

(5) It is unlawful for a hunter with a disability to shoot from a motor vehicle, nonhighway vehicle or snowmobile unless the vehicle is stopped, the motor is turned off and the vehicle is ~~((not on or beside))~~ removed from the maintained portion of a public highway or, if it is impracticable to completely remove the vehicle from the highway, the vehicle is as far off the highway as is possible, given the hunting site and safety considerations. Notwithstanding the provisions of this subsection, it is always unlawful to shoot from the paved portion of any public highway. A disabled hunter vehicle identification placard must be displayed.

(6) It is unlawful for any person to possess a loaded firearm in a moving vehicle or to shoot a firearm, crossbow, or bow and arrow ~~((from;))~~ across(=) or along the maintained portion of a public highway and unlawful to shoot from the maintained portion of a public highway except if the person is a hunter with a disability and the vehicle is in compliance with subsection (5) of this section.

(7) Game birds or game animals killed, tagged or retrieved by a designated hunter companion on behalf of a hunter with a disability do not count against the designated hunter companion's bag or possession limit.

(8) A designated hunter companion shooting game for or may be shooting game for a hunter with a disability must have a valid hunting license issued by Washington or another state.

## WSR 06-21-050

### PROPOSED RULES

### UTILITIES AND TRANSPORTATION COMMISSION

[Docket UT-060676—Filed October 13, 2006, 12:12 p.m.]

Supplemental Notice to WSR 06-16-033.

Preproposal statement of inquiry was filed as WSR 06-10-089.

Title of Rule and Other Identifying Information: Elimination of price lists in chapter 480-80 WAC, Utilities general—Tariff; chapter 480-120 WAC, Telephone companies; and chapter 480-121 WAC, Registration, competitive classification and price lists of telecommunications companies.

Chapter 347, Laws of 2006, enacted in the 2006 legislative session, eliminates the requirement that telecommunications companies file price lists for services the commission has found to be competitive in nature. This proposal would amend and adopt rules reflecting that change and recognizing the law's requirement that companies use written contracts or customer service agreements.

Hearing Location(s): Commission Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, on December 13, 2006, at 1:30 p.m.

Date of Intended Adoption: December 13, 2006.

Submit Written Comments to: Carole J. Washburn, Washington State Utilities and Transportation Commission, e-mail records@wutc.wa.gov, fax (360) 586-1150, by November 14, 2006. Please include "Docket UT-060676" in your comments.

Assistance for Persons with Disabilities: Contact Mary De Young by December 11, 2006, TTY (360) 586-1150 or (360) 664-1133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SSB 6473, chapter 347, Laws of 2006, eliminates price list requirements for telecommunications services effective June 8, 2006. This proposal would delete references in commission rules to price lists and filing requirements.

The statutory change allows the commission to amend and adopt rules that will require companies to communicate with customers directly using a written contract or customer service agreement instead of using price lists. The supplemental CR-102 amends the proposal so that rather than specifying the posting of rates, terms and conditions, carriers may simply post unspecified information about current services on the internet. Various conforming edits to references to internet posting elsewhere in the CR-102 language are made in the supplemental CR-102.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 80.01.040.

Statute Being Implemented: SSB 6473, chapter 347, Laws of 2006.

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

Name of Proponent: Washington state utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Tom Wilson, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, (360) 664-1282; Implementation and Enforcement: Carole J. Washburn, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, (360) 664-1174.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will not result in or impose an increase in costs. Because there will not be any increase in costs resulting from the proposed rule changes, a small business economic impact statement is not required under RCW 19.85.030(1).

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are not significant legislative rules of the sort referenced in RCW 34.05.328(5).

October 13, 2006  
Carole J. Washburn  
Executive Secretary

## Chapter 480-80 WAC

### UTILITIES GENERAL—TARIFFS(~~(, PRICE LISTS,)~~) AND CONTRACTS

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

**WAC 480-80-010 Application of rules.** (1) The rules in this chapter apply to any public service company that is subject to the jurisdiction of the commission as to rates and services under the provisions of Title 80 RCW.

(2) The tariffs(~~(, price lists,)~~) and contracts filed by public service companies must conform with these rules. If the commission accepts a tariff(~~(, price list,)~~) or contract 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 480-80-015 (Exemptions from rules in chapter 480-80 WAC). Tariffs(~~(, price lists,)~~) or contracts that conflict with these rules without approval are superseded by these rules.

(3) Any affected person may ask the commission to review the interpretation of these rules by a public service company or customer by posing an informal complaint under WAC 480-07-910 (Informal complaints), or by filing a formal complaint under WAC 480-07-370 (Pleadings—General).

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

(5) Any tariff(~~(, price list,)~~) or contract on file and in effect or pending on the effective date of these rules is not required to be refiled to comply with these rules.

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

**WAC 480-80-015 Exemptions from rules in chapter 480-80 WAC.** (1) The commission may grant an exemption from the provisions of any rule in this chapter, if consistent with the public interest, the purposes underlying regulation, and applicable statutes.

(2) To request a rule exemption, a person must file with the commission a written request identifying the rule for which an exemption is sought, giving a full explanation of the reason for requesting the exemption.

(3) The commission will assign the request a docket number, if it does not arise in an existing docket, and will schedule the request for consideration at one of its regularly scheduled open meetings or, if appropriate under chapter 34.05 RCW, in an adjudication. The commission will notify the person requesting the exemption, and other affected persons, of the date of the hearing or open meeting when the commission will consider the request.

(4) In determining whether to grant the request, the commission may consider whether application of the rule would impose undue hardship on the petitioner, of a degree or a kind different from hardship imposed on other similarly situated persons, and whether the effect of applying the rule would be contrary to the purposes of the rule.

(5) The commission will enter an order granting or denying the request or setting it for hearing, pursuant to chapter 480-07 WAC.

~~((6) Competitive telecommunications companies previously granted exemptions from chapter 480-80 WAC Utilities general Tariffs, price lists, and contracts, are not exempt from Part I and Part III of this chapter. Exemptions from the provisions of chapter 480-80 WAC include only the provisions in effect at the time the exemption was granted. This subsection confirms that there is no change in exemptions previously granted to telecommunications companies that have been classified as competitive as a result of:~~

~~(a) Moving rules between chapters 480-80 and 480-120 WAC; and~~

~~(b) Renumbering sections within chapters 480-80 and 480-120 WAC.)~~

AMENDATORY SECTION (Amending Docket No. U-991301, General Order No. R-498, filed 5/14/02, effective 6/17/02)

**WAC 480-80-030 Definitions.** The definitions in this section apply throughout the chapter unless the context clearly requires otherwise:

**"Advice number"** means a number assigned by the applicant to a tariff filing or contract filing for internal tracking purposes.

**"Banded rate"** means a rate that has a minimum and maximum rate.

**"Commission"** means the Washington utilities and transportation commission.

**"Competitive telecommunications company"** means a telecommunications company that has been classified as competitive by the commission pursuant to RCW 80.36.310.

**"Fax"** means the transmittal of electronic signals over telephone lines for conversion into written text.

~~**("Price list"** means a telecommunications company's standard offer to the general public or to other telecommunications companies of one or more intrastate telecommunications services that the commission has determined to be subject to effective competition.)~~

**"Public service company"** means every gas company, electric company, telecommunications company, water company, or irrigation plant that is subject to the jurisdiction of the commission as to rates and service.

**"RCW"** means the Revised Code of Washington.

**"Tariff"** is a document that sets forth terms and conditions of regulated service, including rates, charges, tolls, rentals, rules, and equipment and facilities, and the manner in which rates and charges are assessed for regulated services provided to customers, and rules and conditions associated with offering service.

**"Unified Business Identifier (UBI) number"** means the standard nine-digit sequential number issued by Washington state and used by all state agencies to uniquely identify a business entity. The department of licensing, department of revenue, and secretary of state's office are authorized to issue UBI numbers.

**"Utility"** means every public service company that has not been classified as competitive by the commission.

**"WAC"** means the Washington Administrative Code.

AMENDATORY SECTION (Amending Docket No. U-991301, General Order No. R-498, filed 5/14/02, effective 6/17/02)

**WAC 480-80-031 Delivery of tariff(~~(, price list,)~~) and contract filings.** (1) The commission records center will accept a tariff(~~(, price list,)~~) or contract filing delivered in person, by mail, fax, or (~~((when procedures are in place))~~) electronic means. The commission records center will stamp a filing received on Saturdays, Sundays, and state holidays, or after 5:00 p.m., Pacific time, as received on the next business day.

(2) In person or by mail.

(a) In order to be deemed received on a given day, the commission records center must receive an original and two copies of the filing(s) and a transmittal letter by 5:00 p.m., Pacific time.

(b) A filing delivered by mail must be free from all charges for postage. The commission records center will return any postage-due filing to the sender.

(3) Fax filing.

(a) The commission records center must receive an original and two copies of the filing the following business day.

(b) The commission will use the date and time the fax filing is received and printed at the commission records center as the official file date.

(c) The commission records center must receive a faxed filing in its entirety by 5:00 p.m., Pacific time, Monday through Friday, except on state holidays, to be considered received on that business day.

(4) Electronic filing.

(a) An electronic filing must conform to commission procedures for electronic filing.

(b) After accepting an electronic filing, the commission records center will return an electronic mail message noting the receipt date.

~~**((III. PRICE LISTS AND CONTRACTS: COMPETITIVE COMPANIES AND SERVICES))**~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 480-80-201	Use of price lists.
WAC 480-80-202	Interpretation and application of price lists.
WAC 480-80-203	Transmittal letter.
WAC 480-80-204	Price lists format and content.
WAC 480-80-205	Effective date of price list filings.
WAC 480-80-206	Price list availability to customers.

WAC 480-80-241	Filing contracts for services classified as competitive.
WAC 480-80-242	Using contracts for services classified as competitive.

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

**WAC 480-120-011 Application of rules.** (1) The rules in this chapter apply to any company that is subject to the jurisdiction of the commission as to rates and services under the provisions of RCW 80.01.040 and chapters 80.04 and 80.36 RCW.

(2) ~~((The)) Tariffs ((and price lists))~~ filed by companies must conform to these rules. If the commission accepts a tariff ~~((or price list))~~ that conflicts with these rules, the acceptance ~~((does))~~ is not ~~((constitute))~~ a waiver of these rules unless the commission specifically approves the variation consistent with WAC 480-120-015 (Exemptions from rules in chapter 480-120 WAC). Tariffs ~~((or price lists))~~ that conflict with these rules without approval are superseded by these rules.

(3) Any affected person may ask the commission to review the interpretation of these rules by a company or customer by posing an informal complaint under WAC 480-07-910 (Informal complaints), or by filing a formal complaint under WAC 480-07-370 (Pleading—General).

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

AMENDATORY SECTION (Amending Docket No. UT 040015, General Order No. R-516, filed 1/10/05, effective 2/10/05)

**WAC 480-120-021 Definitions.** The definitions in this section apply throughout the chapter except where there is an alternative definition in a specific section, or where the context clearly requires otherwise.

**"Access charge"** means a rate charged by a local exchange company to an interexchange company for the origination, transport, or termination of a call to or from a customer of the local exchange company. Such origination, transport, and termination may be accomplished either through switched access service or through special or dedicated access service.

**"Access line"** means a circuit providing exchange service between a customer's standard network interface and a serving switching center.

**"Affiliate"** means an entity that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another entity.

**"Ancillary services"** means all local service features excluding basic service.

**"Applicant"** means any person applying to a telecommunications company for new service or reconnection of discontinued service.

**"Average busy hour"** means a time-consistent hour of the day during which a switch or trunk carries the most traf-

fic. This definition is applied on an individual switch and an individual trunk basis.

**"Basic service"** means service that includes the following:

- Single-party service;
- Voice grade access to the public switched network;
- Support for local use;
- Dual tone multifrequency signaling (touch-tone);
- Access to emergency services (E911);
- Access to operator services;
- Access to interexchange services;
- Access to directory assistance; and
- Toll limitation services.

**"Business"** means a for profit or not-for-profit organization, including, but not limited to, corporations, partnerships, sole proprietorships, limited liability companies, government agencies, and other entities or associations.

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

**"Business office"** means an office or service center provided and maintained by a company.

**"Business service"** means service other than residential service.

**"Busy season"** means an annual, recurring, and reasonably predictable three-month period of the year when a switch or trunk carries the most traffic. This definition is applied on an individual switch and an individual trunk basis.

**"Call aggregator"** means any corporation, company, partnership, or person, who, in the ordinary course of its operations, makes telephones available to the public or to users of its premises for telephone calls using a provider of operator services, including, but not limited to, hotels, motels, hospitals, campuses, and pay phones (see also pay phone service providers).

**"Category of service"** means local, data services such as digital subscriber line service, interexchange, or CMRS. Information about a customer's intraLATA and interLATA primary interexchange carrier freeze status is part of the local category.

**"Central office"** means a company facility that houses the switching and trunking equipment serving a defined area.

**"Centrex"** means a telecommunications service providing a customer with direct inward dialing to telephone extensions and direct outward dialing from them.

**"Class A company"** means a local exchange company with two percent or more of the access lines within the state of Washington. The method of determining whether a company is a Class A company is specified in WAC 480-120-034 (Classification of local exchange companies as Class A or Class B).

**"Class B company"** means a local exchange company with less than two percent of the access lines within the state of Washington. The method of determining whether a company is a Class B company is specified in WAC 480-120-034 (Classification of local exchange companies as Class A or Class B).

**"Commercial mobile radio service (CMRS)"** means any mobile (wireless) telecommunications service that is provided for profit that makes interconnected service available

to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public.

**"Commission (agency)"** in a context meaning a state agency, means the Washington utilities and transportation commission.

**"Company"** means any telecommunications company as defined in RCW 80.04.010.

**"Competitively classified company"** means a company that is classified as competitive by the commission pursuant to RCW 80.36.320.

**"Customer"** means a person to whom the company is currently providing service.

**"Customer premises equipment (CPE)"** is equipment located on the customer side of the SNI (other than a company) and used to originate, route, or terminate telecommunications.

**"Discontinue; discontinuation; discontinued"** means the termination or any restriction of service to a customer.

**"Drop facilities"** means company-supplied wire and equipment placed between a premises and the company distribution plant at the applicant's property line.

**"Due date"** means the date an action is required to be completed by rule or, when permitted, the date chosen by a company and provided to a customer as the date to complete an action.

**"Emergency response facility"** means fire stations, hospitals, police stations, and state and municipal government emergency operations centers.

**"Exchange"** means a geographic area established by a company for telecommunications service within that area.

**"Extended area service (EAS)"** means telephone service extending beyond a customer's exchange, for which the customer may pay an additional flat-rate amount per month.

**"Facility or facilities"** means lines, conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property and routes used, operated, owned or controlled by a telecommunications company to facilitate the provision of telecommunications service.

**"Force majeure"** means natural disasters, including fire, flood, earthquake, windstorm, avalanche, mudslide, and other similar events; acts of war or civil unrest when an emergency has been declared by appropriate governmental officials; acts of civil or military authority; embargoes; epidemics; terrorist acts; riots; insurrections; explosions; and nuclear accidents.

**"Interexchange"** means telephone calls, traffic, facilities or other items that originate in one exchange and terminate in another.

**"Interexchange company"** means a company, or division thereof, that provides long distance (toll) service.

**"Interoffice facilities"** means facilities connecting two or more telephone switching centers.

**"InterLATA"** is a term used to describe services, revenues, functions, etc., that relate to telecommunications originating in one LATA and terminating outside of the originating LATA.

**"IntraLATA"** is a term used to describe services, revenues, functions, etc., that relate to telecommunications that originate and terminate within the same LATA.

**"Local access and transport area (LATA)"** means a local access transport area as defined by the commission in conformance with applicable federal law.

**"Local calling area"** means one or more rate centers within which a customer can place calls without incurring long-distance (toll) charges.

**"Local exchange company (LEC)"** means a company providing local exchange telecommunications service.

**"Major outages"** means a service failure lasting for thirty or more minutes that causes the disruption of local exchange or toll services to more than one thousand customers; total loss of service to a public safety answering point or emergency response agency; intercompany trunks or toll trunks not meeting service requirements for four hours or more and affecting service; or an intermodal link blockage (no dial tone) in excess of five percent for more than one hour in any switch or remote switch.

**"Missed commitment"** means orders for exchange access lines for which the company does not provide service by the due date.

**"Order date"** means the date when an applicant requests service unless a company identifies specific actions a customer must first take in order to be in compliance with tariffs(~~(-price lists)~~) or commission rules. Except as provided in WAC 480-120-061 (Refusing service) and 480-120-104 (Information to consumers), when specific actions are required of the applicant, the order date becomes the date the actions are completed by the applicant if the company has not already installed or activated service.

When an applicant requests service that requires customer-ordered special equipment, for purposes of calculating compliance with the one hundred eighty-day requirement of WAC 480-120-112 (Company performance for orders for nonbasic service) the order date is the application date unless the applicant fails to provide the support structure or perform other requirements of the tariff (~~(or price list)~~). In the event the applicant fails to provide the support structure or perform the other requirements of the tariff (~~(or price list)~~), a new order date is established as the date when the applicant does provide the support structure or perform the other requirements of the tariff (~~(or price list)~~).

**"Pay phone"** or **"pay telephone"** means any telephone made available to the public on a fee-per-call basis independent of any other commercial transaction. A pay phone or pay telephone includes telephones that are coin-operated or are activated by calling collect or using a calling card.

**"Pay phone services"** means provision of pay phone equipment to the public for placement of local exchange, interexchange, or operator service calls.

**"Pay phone service provider (PSP)"** means any corporation, company, partnership, or person who owns or operates and makes pay phones available to the public.

**"Payment agency"** means a physical location established by a local exchange company, either on its own premises or through a subcontractor, for the purpose of receiving cash and urgent payments from customers.

**"Person"** means an individual, or an organization such as a firm, partnership, corporation, municipal corporation, agency, association or other entity.

**"Prior obligation"** means an amount owed to a local exchange company or an interexchange company for regulated services at the time the company physically toll-restricts, interrupts, or discontinues service for nonpayment.

**"Proprietary"** means owned by a particular person.

**"Provision"** means supplying telecommunications service to a customer.

**"Public access line (PAL)"** means an access line equipped with features to detect coins, permit the use of calling cards, and such other features as may be used to provision a pay phone.

**"Public safety answering point (PSAP)"** means an answering location for enhanced 911 (E911) calls originating in a given area. PSAPs are designated as primary or secondary. Primary PSAPs receive E911 calls directly from the public; secondary PSAPs receive E911 calls only on a transfer or relay basis from the primary PSAP. Secondary PSAPs generally serve as centralized answering locations for a particular type of emergency call.

**"Residential service"** means basic service to a household.

**"Restricted basic service"** means either the ability to receive incoming calls, make outgoing calls, or both through voice grade access to the public switched network, including E911 access, but not including other services that are a part of basic service.

**"Results of operations"** means a fiscal year financial statement concerning regulated operations that include revenues, expenses, taxes, net operating income, and rate base. The rate of return is also included as part of the results of operations. The rate of return is the percentage of net operating income to the rate base.

**"Service interruption"** means a loss of or impairment of service that is not due to, and is not, a major outage.

**"Service provider"** means any business that offers a product or service to a customer, the charge for which appears on the customer's telephone bill.

**"Special circuit"** means an access line specially conditioned to give it characteristics suitable for handling special or unique services.

**"Standard network interface (SNI)"** means the protector that generally marks the point of interconnection between company communications facilities and customer's terminal equipment, protective apparatus, or wiring at a customer's premises. The network interface or demarcation point is located on the customer's side of the company's protector, or the equivalent thereof in cases where a protector is not employed.

**"Station"** means a telephone instrument installed for a customer to use for toll and exchange service.

**"Subscriber list information (SLI)"** means any information:

(a) Identifying the listed names of subscribers of a company and those subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned when service is established), or any combination of listed names, numbers, addresses, or classifications; and

(b) That the company or an affiliate has published, caused to be published, or accepted for publication in any directory format.

**"Support structure"** means the trench, pole, or conduit used to provide a path for placement of drop facilities.

**"Telecommunications service"** means the offering of telecommunications for a fee directly to the public, or to such classes of users to be effectively available directly to the public, regardless of the facilities used.

**"Telemarketing"** means contacting a person by telephone in an attempt to sell one or more products or services.

**"Toll restriction" or "toll restricted"** means a service that prevents the use of a local access line to initiate a long distance call using a presubscribed interexchange company.

**"Traffic"** means telecommunications activity on a telecommunications network, normally used in connection with measurements of capacity of various parts of the network.

**"Trouble report"** means a report of service affecting network problems reported by customers, and does not include problems on the customer's side of the SNI.

**"Trunk"** means, in a telecommunications network, a path connecting two switching systems used to establish end-to-end connection. In some circumstances, both of its terminations may be in the same switching system.

AMENDATORY SECTION (Amending Docket No. UT-990146, General Order No. R-480, filed 7/11/01, effective 8/11/01)

**WAC 480-120-026 Tariffs (~~and price lists~~).** Companies must file tariffs (~~and price lists~~) in accordance with chapter 480-80 WAC, Utilities general—Tariffs(~~price lists~~) and contracts.

AMENDATORY SECTION (Amending Docket No. UT-990146, General Order No. R-480, filed 7/11/01, effective 8/11/01)

**WAC 480-120-028 Registration.** Companies must file registration applications as required by RCW 80.36.350 and in accordance with chapter 480-121 WAC, Registration, competitive classification (~~and price lists~~) of telecommunications companies.

AMENDATORY SECTION (Amending Docket No. UT-990146, General Order No. R-507, filed 12/12/02, effective 7/1/03)

**WAC 480-120-061 Refusing service.** (1) A company may refuse to connect with, or provide service to, an applicant under the following conditions:

(a) When service will adversely affect the service to existing customers.

(b) When the installation is considered hazardous.

(c) When the applicant has not complied with commission rules, company tariff (~~or price list~~), or rates, terms and conditions pursuant to competitive classification, and state, county, or municipal codes concerning the provision of telecommunications service such as building and electrical codes.



(d) When the company is unable to substantiate the identity of the individual requesting service.

(i) Companies must allow the applicant to substantiate identity with one piece of identification chosen from a list, provided by the company, of at least four sources of identification. The list must include a current driver's license or other picture identification.

(ii) Company business offices and payment agencies, required under WAC 480-120-132 and 480-120-162, must provide a means for applicants to provide identification at no charge to the applicant.

(e) When the applicant has previously received service from the company by providing false information, including false statements of credit references or employment, false statement of premises address, or use of an alias or false name with intent to deceive, until the applicant corrects the false information to the satisfaction of the company.

(f) When the applicant owes an overdue, unpaid prior obligation to the company for the same class of service, until the obligation is paid or satisfactory arrangements are made.

(g) When the applicant requests service at an address where a former customer is known to reside with an overdue, unpaid prior obligation to the same company for the same class of service at that address and the company determines, based on objective evidence, that the applicant has cooperated with the prior customer with the intent to avoid payment. However, a company may not deny service if a former customer with an overdue, unpaid prior obligation has permanently vacated the address.

(h) When all necessary rights of way, easements, and permits have not been secured. The company is responsible for securing all necessary public rights of way, easements, and permits, including rights of way on every highway as defined in RCW 36.75.010(11) or created under RCW 36.75.070 or 36.75.080. The applicant is responsible for securing all necessary rights of way or easements on private property, including private roads or driveways as defined in RCW 36.75.010(10). A private road or driveway is one that has been ascertained by the company not to be public.

(2) A company may not withhold or refuse to release a telephone number to a customer who is transferring service to another telecommunications company within the same rate center where local number portability has been implemented.

(3) A telecommunications company must deny service to a nonregistered telecommunications company that intends to use the service requested to provide telecommunications for hire, sale, or resale to the general public within the state of Washington. Any telecommunications company requesting service from another telecommunications company must state in writing whether the service is intended to be used for intrastate telecommunications for hire, sale, or resale to the general public. If the service is intended for hire, sale, or resale on an intrastate basis, the company must certify in writing, in the same manner as required by RCW 9A.72.085, that it is properly registered with the commission to provide the service.

AMENDATORY SECTION (Amending Docket No. UT-990146, General Order No. R-507, filed 12/12/02, effective 7/1/03)

**WAC 480-120-102 Service offered.** (1) Classes of service. The classes of service are business and residential. Each local exchange company (LEC) must file with the commission, as part of its tariff (~~or price list~~), a description of the classes and types of service available to customers in each class. LECs must record for each access line whether local exchange service is residential or business class.

(2) Types of service. LECs must offer, at a minimum, flat-rate local exchange service. In addition, companies may offer service alternatives, such as measured service.

(3) Grade of service. Local exchange service offered by companies must be only one-party service.

AMENDATORY SECTION (Amending Docket No. UT-990146, General Order No. R-507, filed 12/12/02, effective 7/1/03)

**WAC 480-120-103 Application for service.** (1) When contacted by an applicant, or when a company contacts a person, a company must:

(a) Accept and process applications when an applicant for service for a particular location has met all tariff (~~or price list~~) requirements and applicable commission rules;

(b) Establish the due date as the date requested by the applicant but is not required to establish a due date that is fewer than seven business days after the order date. If the company establishes a due date other than the date requested by the applicant, it must inform the applicant of the specific date when service will be provided or state that an estimated due date will be provided within seven business days as required by subsection (2) of this section; and

(c) Maintain a record in writing, or in electronic format, of each application for service, including requests for a change of service.

(2) If the company does not provide the applicant with a due date for installation or activation at the time of application as required in subsection (1)(b) of this section, the company must state the reason for the delay. Within seven business days of the date of the application, the company must provide the applicant with an estimated due date for installation or activation. The standards imposed by WAC 480-120-105 and 480-120-112 are not altered by this subsection.

(3) When the company informs the customer that installation of new service orders requires on-premises access by the company, the company must offer the customer an opportunity for an installation appointment that falls within a four-hour period.

(4) When the application for service requires a service extension as defined in WAC 480-120-071, the requirement of subsection (1)(b) of this section does not apply and, for the purpose of determining when an extension must be completed, the order date is the application date or six weeks prior to the date the customer makes the required initial payment, whichever is later.

When a service extension is required, the company must inform the customer within six weeks of a request for service that it will construct the extension and also request payment

from the customer according to WAC 480-120-071, or inform the customer in writing that it will request an exemption from the commission pursuant to WAC 480-120-071(7).

In the event a company informs the customer it will request an exemption, the company must submit the request to the commission within four weeks of informing the customer of its decision. A copy of the exemption request must be mailed to the customer not later than the date the request is filed.

**AMENDATORY SECTION** (Amending Docket No. UT-990146, General Order No. R-507, filed 12/12/02, effective 7/1/03)

**WAC 480-120-104 Information to consumers.** (1)

Except for services provided under written contract pursuant to ~~((WAC 480-80-241 (Filing contracts for services classified as competitive);))~~ competitive classification, each company must provide an applicant for initial service with a confirming notice or welcome letter, either in writing or with permission of the customer, electronically. The confirming notice or welcome letter must be provided to the applicant or customer no later than fifteen days after installation of service and must provide, at a minimum:

(a) Contact information for the appropriate business office, including a toll-free telephone number, a TTY number, mailing address, repair number, electronic address if applicable, and business office hours, that the customer can contact if they have questions;

(b) Confirmation of the services being provided to the customer by the company, and the rate for each service. If the service is provided under a banded rate schedule, the current rate, including the minimum and maximum at which the customer's rate may be shifted; and

(c) If the application is for local exchange service, the LEC must either provide information required in WAC 480-120-251 (6)(a) through (f) or must inform the customer that additional information pertaining to local exchange service may be found in the consumer information guide of the local telephone directory as required in WAC 480-120-251.

(2) Except for services provided under written contract pursuant to ~~((WAC 480-80-241 (Filing contracts for services classified as competitive);))~~ competitive classification, each company must provide each customer a confirming notice, either in writing or, with permission of the customer, electronically, within fifteen days of initiating a material change in service which results in the addition of a service, a change from one rate schedule to another, or a change in terms or conditions of an existing service. The confirming notice must provide at a minimum, the following information in clear and conspicuous language:

(a) Contact information for the appropriate business office, including a toll-free telephone number, a TTY number, and business office hours, that customers can contact if they have questions; and

(b) The changes in the service(s), including, if applicable, the rate for each service.

(3) When a LEC is acting as an executing carrier under WAC 480-120-147, it must make the following information available upon request:

(a) The name of the intraLATA and interLATA interexchange company to which the customer's account is currently subscribed; and

(b) A minimum of six months' account history, when available, including the date of the changes and the name of the interexchange company.

(4) When an applicant or customer contacts the LEC to select or change an interexchange company, the LEC must notify the carrier of the customer's selection or recommend that the customer contact the chosen interexchange company to confirm that an account has been or is being established by the interexchange carrier for the applicant.

**AMENDATORY SECTION** (Amending Docket No. UT 040015, General Order No. R-516, filed 1/10/05, effective 2/10/05)

**WAC 480-120-122 Establishing credit—Residential services.** This section applies only to the provision of residential services.

(1) For a local exchange company (LEC) that offers basic service as part of any bundled package of services, the requirements of this subsection apply only to its lowest-priced, flat-rated residential basic service offering. The LEC may require an applicant or customer of residential basic service to pay a local service deposit only if:

(a) The applicant or customer has received two or more delinquency notices for basic service during the last twelve month period with that company or another company;

(b) The applicant or customer has had basic service discontinued by any telecommunications company;

(c) The applicant or customer has an unpaid, overdue basic service balance owing to any telecommunications company;

(d) The applicant's or customer's service is being restored following a discontinuation for nonpayment or acquiring service through deceptive means under WAC 480-120-172(1); or

(e) The applicant or customer has been disconnected for taking service under deceptive means as described in WAC 480-120-172(1).

(2) A LEC may, if provided for in its tariff or ~~((price list))~~ rates, terms and conditions of services provided pursuant to competitive classification, require an applicant or customer of ancillary services to demonstrate satisfactory credit by reasonable means, pay a deposit, or make advanced payments consistent with subsections (4) and (5) of this section.

The company must inform applicants that local service cannot be withheld pending payment of a deposit or advanced payments for ancillary services.

(3) An interexchange company may, if provided for in its tariff or ~~((price list))~~ rates, terms and conditions of services provided pursuant to competitive classification, require an applicant or customer of interexchange services to demonstrate satisfactory credit by reasonable means or pay a deposit consistent with subsections (4) and (5) of this section.

The company must inform applicants that local service cannot be withheld pending payment of a deposit for interexchange services.

(4) When a company requests a deposit from an applicant or customer, the amount of the deposit may not exceed two months' customary use for an applicant or customer with previous verifiable service of the same class, or two months' estimated use for an applicant or customer without previous verifiable service. Customary use is calculated using charges for the previous three months' service.

(5) When an applicant or customer is required to pay a basic service deposit or an interexchange deposit, but is unable to pay the entire amount in advance of connection or continuation of service, the company must offer the applicant or customer the following options:

(a) Pay no more than fifty percent of the requested deposit amount before installation or continuation of service, with the remaining amount payable in equal amounts over the following two months; or

(b) Where technology permits, the applicant or customer must have the option of accepting toll-restricted basic service in lieu of payment of the deposit. A company must not charge for toll restriction when it is used as an alternative to a deposit.

A company must remove toll restriction unless the customer requests to retain it when the customer makes full payment of the requested interexchange company deposit or pays fifty percent of the requested deposit and enters into payment arrangements as provided for in (a) of this subsection.

(6) A company may require an applicant or customer to pay a deposit or make advanced payments equal to two months' charges for ancillary service before providing or continuing ancillary services.

(7) A company may require an applicant or customer to pay a deposit if it finds that service was provided initially without a deposit based on incorrect information and the customer otherwise would have been required to pay a deposit.

(a) When a company requests a new deposit or a larger deposit amount after service has been established, the company must provide a written notice to the customer listing the reason(s) for the request, the date the deposit must be paid, and the actions the company may take if the deposit is not paid.

(b) Except for circumstances described in subsection (8) of this section, the deposit or additional deposit amount may not be due and payable before 5:00 p.m. of the sixth business day after notice of the deposit requirement is mailed or 5:00 p.m. of the second business day following delivery, if the notice is delivered in person to the customer.

(8)(a) A company authorized by the commission to collect deposits or advanced payments may require a customer to pay unbilled toll charges or pay a new or additional deposit amount when the customer's toll charges exceed thirty dollars, or exceed customary use over the previous six months by twenty dollars or by twenty percent, whichever is greater. A company may toll-restrict a customer's services if the customer is unable to pay the toll or deposit amount.

(b) When a customer has exceeded the toll levels in (a) of this subsection, the company may require payment before the close of the next business day following delivery of either written or oral notice to the customer indicating that failure to pay one of the following may result in toll restriction of the

customer's service. The company must give the customer the option to pay one of the following:

(i) All outstanding toll charges specified in the notice; or

(ii) All toll charges accrued to the time of payment providing the customer was notified the customer would be liable for all unbilled toll charges that accrued between the time of the notice and time of the payment; or

(iii) Payment of a new or additional deposit in light of the customer's actual use based upon two months' customary use.

(c) When an applicant does not have a customary utilization amount from a previous service, the company may request that the applicant estimate the greatest monthly toll amount the applicant expects to use. If the company asks for an estimate, it must explain that if the customer's toll charges exceed the amounts in (a) of this subsection, the company may toll restrict or require a deposit as permitted in this subsection.

**AMENDATORY SECTION** (Amending Docket No. UT 040015, General Order No. R-516, filed 1/10/05, effective 2/10/05)

**WAC 480-120-161 Form of bills. (1) Bill frequency.**

Companies must offer customers, at a minimum, the opportunity to receive billings on a monthly interval, unless subsection (11) of this section applies.

(2) **Length of time for payment of a bill.** Bill due dates must reflect a date which at a minimum allows a customer fifteen days from the date of mailing for payment.

(a) Upon showing of good cause, a customer may request and the company must allow the customer to pay by a date that is not the normally designated payment date on their bill. Good cause may include, but not be limited to, adjustment of the billing cycle to parallel receipt of income.

(i) A company may not assess late payment fees for the period between the regularly scheduled due date and the customer-chosen due date so long as the customer makes payment in full by the customer-chosen due date.

(ii) A company may refuse to establish a preferred payment date that would extend the payment date beyond the next normally scheduled payment or due date.

(b) If a company is delayed in billing a customer, the company must offer arrangements upon customer request or upon indication that a payment arrangement is necessary, that are equal to the length of time the bill is delayed beyond the regularly scheduled billing interval (e.g., if the bill includes two months delayed charges, the customer must be allowed to pay the charges over two months).

Companies may not charge a customer late payment fees on the delayed charges during the extended payment period.

(3) **Form of bill.** With the consent of the customer, a company may provide regular billings in electronic form if the bill meets all the requirements of this rule. The company must maintain a record of the customer's request, and the customer may change from electronic to printed billing upon request.

(4) **Bill organization.** Telephone bills must be clearly organized, and must comply with the following requirements:

(a) Bills may only include charges for services that have been requested by the customer or other individuals authorized to request such services on behalf of the customer, and that have been provided by the company;

(b) The name of the service provider associated with each charge must be clearly and conspicuously identified on the telephone bill;

(c) Where charges for two or more companies appear on the same telephone bill, the charges must be separated by service provider;

(d) The telephone bill must clearly and conspicuously identify any change in service provider, including identification of charges from any new service provider; and

(e) The telephone bill must include the internet address (uniform resource locator) of the web site containing the service provider's tariff or ~~((price list, if the service provider is a telecommunications company required to publish its tariff or price list))~~ information about competitively classified services on a web site pursuant to WAC ((480-80-206(2) (Price list availability to customers) or WAC 480-120-193 (Posting of tariffs for public inspection and review))) 480-120-193 (Posting of tariffs for public inspection and review) or WAC 480-120-266 (Information about telecommunications services provided pursuant to competitive classification). This requirement may be satisfied by including the address of a web site other than that of the telecommunications company itself, if the web site provides access to the tariff or ~~((price list))~~ information about competitively classified services that applies to the service being billed.

For purposes of this subsection, "new service provider" means a service provider that did not bill the customer for service during the service provider's last billing cycle. This definition includes only providers that have continuing relationships with the customer that will result in periodic charges on the customer's bill, unless the service is subsequently canceled.

For purposes of this subsection, "clearly and conspicuously" means notice that would be apparent to a reasonable customer.

**(5) Descriptions of billed charges.**

(a) The bill must include a brief, clear, nonmisleading, plain language description of each service for which a charge is included. The bill must be sufficiently clear in presentation and specific enough in content so that the customer can determine that the billed charges accurately reflect the service actually requested and received, including individual toll calls and services charged on a per-occurrence basis.

(b) The bill must identify and set out separately, as a component of the charges for the specific service, any access or other charges imposed by order of or at the direction of the Federal Communications Commission (FCC).

(c) The bill must clearly delineate the amount or the percentage rate and basis of any tax assessed by a local jurisdiction.

**(6) Charges for which service can be discontinued.** Where a bill contains charges for basic service, in addition to other charges, the bill must distinguish between charges for which nonpayment will result in loss of basic service. The bill must include telephone numbers by which customers may inquire or dispute any charges on the bill. A company

may list a toll-free number for a billing agent, clearinghouse, or other third party, provided such party possesses sufficient information to answer questions concerning the customer's account and is fully authorized to resolve the customer's complaints on the company's behalf. Where the customer does not receive a paper copy of the telephone bill, but instead accesses that bill only by e-mail or internet, the company may comply with this requirement by providing on the bill an e-mail or web site address. Each company must make a business address available upon request from a customer.

**(7) Itemized statement.** A company must provide an itemized statement of all charges when requested by a customer, including, but not limited to:

(a) Rates for individual services;

(b) Calculations of time or distance charges for calls, and calculations of any credit or other account adjustment; and

(c) When itemizing the charges of information providers, the name, address, telephone number, and toll-free number, if any, of the providers.

**(8) Methods of payment.**

(a) Companies must, at a minimum, allow the following methods of payment: Cash, certified funds (e.g., cashier check or money order), and personal checks.

(b) Upon written notice to a customer, companies may refuse to accept personal checks when that customer has tendered two or more nonsufficient-funds checks within the last twelve months.

**(9) Billing companies.** A company may bill regulated telecommunications charges only for companies properly registered to provide service within the state of Washington or for billing agents. The company must, in its contractual relationship with the billing agent, require the billing agent to certify that it will submit charges only on behalf of properly registered companies; and that it will, upon request of the company, provide a current list of all companies for which it bills, including the name and telephone number of each company. The company must provide a copy of this list to the commission for its review upon request.

**(10) Crediting customer payments.** Unless otherwise specified by the customer, payments that are less than the total bill balance must be credited first to basic service, with any remainder credited to any other charges on the bill.

For purposes of this subsection, basic service includes associated fees and surcharges such as FCC access charges. Basic service does not include ancillary services such as caller identification and custom calling features.

**(11) Exemptions from this rule.** Prepaid calling card services (PPCS) are exempt from subsections (1) through (10) of this section.

AMENDATORY SECTION (Amending Docket No. UT-990146, General Order No. R-507, filed 12/12/02, effective 7/1/03)

**WAC 480-120-171 Discontinuing service—Customer requested.** (1) This section applies to residential, business, and resale services discontinued at the customer's request. The customer must notify the company of the date the customer wishes to discontinue service. If the customer moves from the service address and fails to request discontinuation

of service, the customer must pay for service taken at the service address until the company can confirm that the customer has vacated the premises or a new party has taken responsibility for the service.

(2) A company must stop a customer's monthly recurring or minimum charges effective on the requested discontinuation date. The customer may be held responsible for use charges incurred after the requested discontinuation date when the company can prove that the calls were made or authorized by the customer of record. This section does not preclude a company from collecting minimum service commitment penalties when a customer disconnects service prior to fulfilling the tariff(~~(-price list,)~~) or contract commitment.

(3) The company must discontinue service as follows:

(a) For services that do not require a field visit, the company must discontinue service not later than one business day from the date requested by the customer; and

(b) For services that require a premises visit to complete the request, the company must disconnect service no later than two business days from the date requested by the customer.

(4) When a customer directs the local exchange company (LEC) to discontinue service, the LEC must either notify the customer's presubscribed interLATA and intraLATA toll carriers of the discontinuation or inform the customer that it is the customer's obligation to contact those carriers directly.

**AMENDATORY SECTION** (Amending Docket No. UT 040015, General Order No. R-516, filed 1/10/05, effective 2/10/05)

**WAC 480-120-172 Discontinuing service—Company initiated.** (1) A company may discontinue service without notice or without further notice when after conducting a thorough investigation, it finds the customer has used deceptive means to initiate or continue service including, but not limited to:

(a) Tampering with the company's property;

(b) Using service through an illegal connection; or

(c) Unlawfully using service or using service for unlawful purposes.

(2)(a) A company may discontinue service without notice or without further notice when after conducting a thorough investigation, it determines the customer has:

(i) Vacated the premises without informing the company;

(ii) Paid a delinquent balance in response to a delinquency notice as described in subsection (7) of this section with a check or electronic payment that is subsequently dishonored by the bank or other financial institution; or

(iii) Failed to keep payment arrangements agreed upon in response to a delinquency notice as described in subsection (7) of this section.

(b) The company must restore service once the customer has corrected the reason for discontinuance as described in subsection (2)(a) of this section.

(c) The company may require a deposit from a customer that it has disconnected due to the reasons described in subsection (2)(a) of this section.

(3) A company may discontinue service after providing proper notice, or may issue a discontinuation notice, if, and only if:

(a) The company determines the customer has violated a rule, statute, service agreement, filed tariff, or (~~(price list)~~) rates, terms and conditions of competitively classified services;

(b) The company determines the customer has used customer-owned equipment that adversely affects the company's service to its other customers;

(c) The company determines the customer has not paid regulated charges or has not paid a deposit as provided in the tariff or (~~(price list)~~) rates, terms and conditions of competitively classified services of the company or another company with which it has a billing and collection agreement, except for nonpayment of charges incurred from information delivery services as provided for in WAC 480-120-254 (Telephone solicitation) or disputed third party-billed charges;

(d) The company is unable to substantiate the identity of the individual requesting service:

(i) Companies must allow the applicant to substantiate identity with one piece of identification chosen from a list, provided by the company, of at least four sources of identification. The list must include a current driver's license or other picture identification;

(ii) Company business offices and payment agencies, required under WAC 480-120-132 (Business offices) and 480-120-162 (Cash and urgent payments), must provide a means for applicants to provide identification at no charge to the applicant;

(e) The company determines the customer has received service from the company by providing false information, including false statements of credit references or employment, false statement of premises address, use of an alias or false name with intent to deceive, or rotation of service among roommates or persons living together for the purpose of avoiding the debts of one or more persons; or

(f) The company determines the customer is receiving service at an address where a former customer is known to reside with an overdue, unpaid prior obligation to the same company for the same class of service at that address and there is evidence that the applicant lived at the address while the overdue, unpaid prior obligation was incurred and helped incur the obligations. However, a company may not deny service if a former customer with an overdue, unpaid prior obligation has permanently vacated the address.

(4) Except as provided in subsections (1), (2), and (3) of this section, a company may discontinue:

(a) Basic service only for nonpayment of basic service charges;

(b) Ancillary services only for nonpayment of ancillary charges or if the company properly discontinues basic service;

(c) Interexchange access only for nonpayment of interexchange charges or if the company properly discontinues basic service:

(i) At its discretion, the company may permit access to toll-free numbers while a customer's interexchange access service is discontinued or restricted;

(ii) The company may not charge fees for toll restriction when it has discontinued or restricted the customer's interexchange access service under this section;

(d) A company must not shift a rate plan as a discontinuation method.

(5) When a company discontinues service to a customer, it must also discontinue billing for service as of the date of the discontinuation.

**(6) Medical emergencies.**

(a) When a local exchange company (LEC) has cause to discontinue residential basic service or has discontinued service, it must postpone total service discontinuation or reinstate toll-restricted basic service that permits both making and receiving calls and access to E911 for a grace period of five business days after receiving either oral or written notice of the existence of a medical emergency, as described in (b) of this subsection. The LEC must reinstate service during the same day if the customer contacts the LEC prior to the close of the business day and requests a same-day reconnection. Otherwise, the LEC must restore service by 12:00 p.m. the next business day. When service is reinstated, the LEC cannot require payment of a reconnection charge or deposit before reinstating service but may bill the charges at a later date.

(b) The LEC may require that the customer submit written certification from a qualified medical professional, within five business days, stating that the discontinuation of basic service or restricted basic service would endanger the physical health of a resident of the household. "Qualified medical professional" means a licensed physician, nurse practitioner, or physician's assistant authorized to diagnose and treat the medical condition without supervision of a physician. Nothing in this subsection precludes a company from accepting other forms of certification, but the maximum the company can require is written certification. If the company requires written certification, it may require only:

(i) The address of the residence;

(ii) An explanation of how discontinuation of basic service or restricted basic service would endanger the physical health of the resident;

(iii) A statement of how long the condition is expected to last; and

(iv) The title, signature, and telephone number of the person certifying the condition.

(c) The medical certification is valid only for the length of time the medical professional certifies the resident's health would be endangered, but no longer than ninety days unless renewed.

(d) A medical emergency does not excuse a customer from paying delinquent and ongoing charges. The company may require that, within the five-day grace period, the customer pay a minimum of twenty-five percent of the delinquent basic service balance or ten dollars, whichever is greater, and enter into an agreement to pay the remaining delinquent basic service balance within ninety days, and agree to pay subsequent bills when due.

Nothing in this subsection precludes the company from agreeing to an alternate payment plan, but the company must not require the customer to pay more than this section pre-

scribes and must send a notice to the customer confirming the payment arrangements within two business days.

(e) The company may discontinue basic service or restrict basic service without further notice if, within the five-day grace period, the customer fails to provide an acceptable medical certificate or pay the amount required under (d) of this subsection. The company may discontinue basic service or restrict basic service, without further notice, if the customer fails to abide by the terms of the payment agreement.

(f) The company must ensure that the records of medical emergencies are used or disclosed only for the purposes provided for in this section.

**(7) Discontinuation notice requirements.** The company must provide the customer notice before discontinuing service in accordance with (a) through (c) of this subsection, except as provided in subsection (1) of this section, and except as provided in WAC 480-120-122(8).

(a) Each company must provide a written discontinuation notice to the customer either by first class mail, personal delivery to the customer's service address, or electronically delivered when the company has the technical capability and the customer consents to this delivery method. A company must provide delivered notice by handing the notice to a person of apparent competence in the residence; to a person employed at the place of business of the customer if it is a business account; or attached to the primary door of the residential unit or business office where service is provided if no person is available to receive notice. The discontinuation notice must include, at a minimum:

(i) A discontinuation date that is not less than eight business days after the date the notice is mailed, transmitted electronically, or personally delivered;

(ii) The amount(s) owing for the service(s) that is subject to discontinuation or restriction;

(iii) A statement that clearly indicates the amount a customer must pay to maintain basic service or restricted basic service, regardless of the full amount owed by the customer;

(iv) Instructions on how to correct the problem to avoid the discontinuation;

(v) Information about any discontinuation or restoration charges that may be assessed;

(vi) Information about how a customer can avoid discontinuation under the medical emergency rules described in subsection (6) of this section; and

(vii) The company's name, address, toll-free number, and TTY number where the customer may contact the company to discuss the pending discontinuation of service.

(b) If the company discovers that the information provided on the notice failed to meet the requirements of (a) of this subsection, or if the company discovers it provided incorrect information on the notice, the company must restore service and issue a second notice with accurate information as described in this section.

(c) If the company has not discontinued service within ten business days of the first day the discontinuation may be implemented, the discontinuation notice is void, unless the customer and the company have entered into a mutually acceptable payment agreement with payment dates that exceed the ten-day period. Upon a void notice, the company

must provide a new discontinuation notice to the customer if the company intends to discontinue service at a later date.

(8) In addition to the notice required in subsection (7) of this section, a company must attempt to make personal contact with a customer prior to discontinuing service. Any of the following methods will satisfy the personal contact requirement:

(a) **Delivered notice.** A company must provide delivered notice handing the notice to a person of apparent competence in the residence; to a person employed at the place of business of the customer if it is a business account; or attached to the primary door of the residential unit or business office where service is provided if no person is available to receive notice. The notice must state a scheduled discontinuation date that is not earlier than 5:00 p.m. of the next business day after the date of delivery;

(b) **Electronically issued notice.** If the company has the technical capability to provide electronic notice and the customer has agreed to receive notice in electronic form, the notice sent by the company must state a scheduled discontinuation date that is not earlier than 5:00 p.m. of the second business day after the date of delivery;

(c) **Mailed notice.** The notice mailed by the company may not include a scheduled discontinuation date that is earlier than 5:00 p.m. of the third business day after the date of mailing. The date of mailing is not the first day of the notice period; or

(d) **Telephone notice.** The company must attempt at least two times to contact the customer during regular business hours. If the company is unable to reach the customer on the first attempt, the company must attempt to contact the customer using any business or message number provided by the customer as a contact number. The company must keep a log or record of the calls for a minimum of ninety calendar days showing the telephone number called, the time of the call, and details of the results of each attempted call. The disconnection must not take place before 5:00 p.m. of the next business day after the phone calls or attempts.

(e) A company need not attempt personal contact as provided for in (a) through (d) of this subsection when the company has had cause, in any two previous billing periods during a consecutive twelve-month period, to attempt such contact and the company has notified the customer in writing that such contact will not be attempted in the future before effecting a discontinuation of services.

(9) Except in case of danger to life or property, companies may not discontinue service on days that it is not fully staffed to discuss discontinuation and reestablish service to the customer on the same or the following day.

(10) When the company has reasonable grounds to believe that service is to other than the party of record, the company must make reasonable efforts to inform the occupants at the service address of the impending discontinuation. Upon request of one or more service users, the company must allow a minimum period of five business days to permit the service user to arrange for continued service.

The company is not required to allow the additional five days when a thorough investigation indicates there is deceptive activity at the service address.

(11) LECs must provide notice of pending local service discontinuation to the secretary, Washington state department of social and health services, and to the customer, where it provides service to a facility with resident patients including, but not limited to, hospitals, medical clinics, or nursing homes. Upon request from the secretary or a designee, the company must allow a delay in discontinuation of no less than five business days from the date of notice so that the department may take whatever steps are necessary in its view to protect the interests of patients living within the facilities.

(12) **Remedy and appeals.** The company must not discontinue or restrict service while a customer is pursuing any remedy or appeal provided for by these rules, if the customer pays any amounts not in dispute when due and the customer corrects any conditions posing a danger to health, safety, or property. The company must inform the customer of these provisions when the customer is referred to a company's supervisor or the commission.

During a dispute a company may, upon authorization from commission staff, discontinue service when a customer's toll charges substantially exceed the amount of any deposit or customary use and it appears the customer may incur excessive, uncollectible toll charges while an appeal is being pursued. A customer whose service is subject to discontinuation may maintain service pending resolution of any dispute upon payment of outstanding toll charges subject to refund if the dispute is resolved in the customer's favor.

(13) **Payment at a payment agency.** Payment of any past-due amounts to a designated payment agency of the company constitutes payment to the company when the customer informs the company of the payment and the company verifies the payment.

AMENDATORY SECTION (Amending Docket No. UT-990146, General Order No. R-507, filed 12/12/02, effective 7/1/03)

**WAC 480-120-255 Information delivery services.** (1) For purposes of this section:

"Information-delivery services" means telephone recorded messages, interactive programs, or other information services that are provided for a charge to a caller through an exclusive telephone number prefix.

"Information provider" means the persons or corporations that provide the information, prerecorded message, or interactive program for the information-delivery service.

"Interactive program" means a program that allows a caller, once connected to the information provider's announcement machine, to access additional information by using the caller's telephone.

(2) Local exchange companies (LECs) offering access to information-delivery services must provide each residential customer the opportunity to block access to all information delivery services offered by that company. Companies must fulfill an initial request for blocking free of charge. Companies may charge a ~~((tariffed or price-listed fee))~~ rate set forth in the tariff or in the rates, terms and conditions of competitively classified services for subsequent blocking requests (i.e., if a customer has unblocked his or her access).

(3) The LEC must inform residential customers of the blocking service through a single-topic bill insert and publication of a notice in a conspicuous location in the consumer information pages of the local white pages telephone directory. The LEC must include in the notice and bill insert the residential customers' rights under the law, the definition of "information delivery services" as defined in subsection (1) of this section, and a statement that these services often are called "900" numbers. The LEC must include notice that customers have the right under Washington law to request free blocking of access to information-delivery services on their residential telephone lines, that blocking will prevent access to information-delivery services from their residential telephone line, that customers may request free blocking of access to information-delivery services on their residential telephone lines by calling the LEC at a specified telephone number, that the Washington utilities and transportation commission is authorized under RCW 80.36.500 to enforce this law, and that customers may contact the commission for further information. The LEC must include the commission's address, toll-free telephone number, and web site:

Washington Utilities and Transportation Commission  
Consumer Affairs Section  
1300 South Evergreen Park Drive, SW  
P.O. Box 47250  
Olympia, WA 98504-7250  
1-800-562-6150  
www.wutc.wa.gov

(4) Any company that provides billing, customer service, or collection services for an information provider must require, as a part of its contract for that service, that the information provider include in any advertising or promotion a prominent statement of the cost to the customer of the information service.

AMENDATORY SECTION (Amending Docket No. UT-990146, General Order No. R-507, filed 12/12/02, effective 7/1/03)

**WAC 480-120-263 Pay phone service providers (PSPs).** (1) A local exchange company (LEC) within the state of Washington must allow pay phone service providers (PSPs) to connect pay phones to its network, and a LEC must file a tariff (~~or price list~~) with the commission to include the rates and conditions applicable to providing service to pay phones via its network. For services provided to pay phones pursuant to competitive classification, information about such services must be made available in accordance with WAC 480-120-266 (Information about telecommunications services provided pursuant to competitive classification).

**(2) Registration and application of rules.**

(a) PSPs operating a pay phone within the state of Washington must register by:

(i) Submitting a master business application to the master license service, department of licensing; and

(ii) Obtaining a unified business identifier (UBI) number. A PSP that already has a UBI number need not reapply.

(b) Except where pay phone services or PSPs are specifically referenced, the rules of general applicability to public

service companies or telecommunications companies do not apply to pay phone services. This does not exempt PSPs from rules applicable to complaints and disputes (WAC 480-120-165), or remedies or sanctions for violations of rules applicable to PSP operations.

(3) **Access.** At no charge to the calling party, pay phones must provide access to:

(a) Dial tone;

(b) Emergency services by dialing 911 without the use of a coin or entering charge codes;

(c) Operator;

(d) Telecommunications relay service calls for the hearing-impaired;

(e) All available toll-free services; and

(f) All available interexchange companies, including the LEC.

(4) **Disclosure.** PSPs must post clearly and legibly, in an unobstructed location on or near the front of the pay phone:

(a) The rate for local calls, including any restrictions on the length of calls in thirty point or larger type print or a different and contrasting color;

(b) Notice that directory assistance charges may apply, and to ask the operator for rates;

(c) Notice that the pay phone does not make change, if applicable;

(d) The emergency number (E911);

(e) The name, address, phone number, and unified business identifier (UBI) number of the owner or operator;

(f) A toll-free number to obtain assistance if the pay phone malfunctions, and procedures for obtaining a refund;

(g) The name, address, and toll-free number of all pre-subscribed operator service providers (OSPs), as registered with the commission. This information must be updated within thirty days of a change in the OSP. Refer to WAC 480-120-262 for OSP definition and rules;

(h) Notice to callers that they can access other long distance companies;

(i) The phone number of the pay phone, including area code. When the pay phone is in an area that has had an area code change, the area code change must be reflected on the pay phone within thirty days of the area code conversion; and

(j) In contrasting colors, the commission compliance number for customer complaints, to include the following information:

"If you have a complaint about service from this pay phone and are unable to resolve it by calling the repair or refund number or operator, please call the commission at 1-888-333-WUTC (9882)."

(5) **Operation and functionality.** A PSP must order a separate public access line (PAL) for each pay phone installed. The commission may waive this requirement if a company demonstrates that technology accomplishes the same result as a one-to-one ratio by means other than through a PAL, that the service provided to customers is fully equivalent, and that all emergency calling requirements are met. This PAL must pass the appropriate screening codes to the connecting company to indicate that the call is originating from a pay phone. In addition:



(a) The pay phone, if coin operated, must return coins to the caller in the case of an incomplete call and must be capable of receiving nickels, dimes, and quarters.

(b) Pay phone keypads must include both numbers and letters.

(c) Where enhanced 911 is operational, the address displayed to the public safety answering point (PSAP) must be that of the phone instrument if different from the public access line demarcation point and the phone number must be that of the pay phone. To comply with this subsection, PSPs must provide an emergency response location (ERL) to the LEC supplying the PAL within two working days of establishing the location, or changed location, of the phone instrument. The ERL must provide sufficient information to aid emergency personnel in the rapid location of the phone instrument, e.g., building floor number, compass quadrant (e.g., northeast corner), and room number.

(d) Extension telephones may be connected to a PAL only for the purpose of monitoring emergency use. The pay phone must be clearly labeled to indicate that "911 calls are monitored locally." An extension phone must be activated only when 911 is dialed from the pay phone, and must be equipped with a "push to talk" switch or other mechanism to prevent inadvertent interruption of the caller's conversation with the PSAP.

(e) Cordless and tabletop pay phones may be connected to the telephone network only when the bill is presented to the user before leaving the premise where the bill was incurred, unless the customer requests that the call be alternatively billed.

(f) Pay phones may not restrict the number of digits or letters that can be dialed.

(g) Pay phones may provide credit-only service, or coin and credit service.

(h) Pay phones must provide two-way service, and no charge may be imposed by the PSP for incoming calls. Exceptions to two-way service are allowed under the following circumstances:

(i) Service provided to hospitals and libraries where a telephone ring might cause undue disturbance;

(ii) Service provided within a building on the premises of a private business establishment, at the discretion of the business owner. For purposes of this section, premises where people have access to public transportation such as airports, bus and train stations are not considered private business establishments; and

(iii) Service at locations where local governing jurisdictions or law enforcement find that incoming calls may be related to criminal or illicit activities and have provided proper notice under subsection (6) of this section. Each pay phone restricted to one-way service must be clearly marked on or near the front of the pay phone with information detailed in subsection (6) of this section.

(6) **Restrictions.** A PSP may only limit the operational capabilities of a pay phone when a local governing jurisdiction or other governmental agency submits a notice to the commission using prescribed forms a minimum of ten days prior to the restriction. Restrictions may include, but are not limited to, blocking incoming calls, limiting touch-tone capabilities, and coin restriction during certain hours. The notice

must be signed by an agent of the local governing jurisdiction in which the pay phone is located who has authority to submit the request, and must state the jurisdiction's reasons for the restriction. A copy of the notice must also be served on the PSP no later than ten days prior to the restriction.

The requestor must post a notice prominently visible at the pay phone(s) ten days prior to the proposed restriction. The notice must explain what is proposed and how to file an objection with the governing agency.

Once the restriction is in place, the PSP must post on or near each restricted pay phone, in legible and prominent type, a description of each limitation in effect, the times when the restrictions will be in effect, and the name and toll-free number of the governmental agency recommending the restriction.

(7) **Telephone directories.** The provider of the PAL must furnish without charge one current telephone directory each year for each PAL. The PSP must ensure that a current directory is available at every pay phone.

(8) **Malfunctions and rule violations.** The PSP must correct, within five days, malfunctions of the pay phone or rule violations reported to the repair or refund number or the commission.

AMENDATORY SECTION (Amending Docket No. A-030832, General Order No. R-509, filed 10/29/03, effective 11/29/03)

**WAC 480-120-264 Prepaid calling services.** (1) For the purposes of this section, prepaid calling services (PPCS) means any transaction in which a customer pays for service prior to use and applies only to those services where the number of available minutes decreases as the customer uses the service. Prepaid calling services do not include flat-rated basic local service that is billed in advance of use.

(a) PPCS may require the use of an access number or authorization code.

(b) This section excludes credit cards and cash equivalent cards. Services provided at pay telephones using these cards are regulated under the provisions of WAC 480-120-263 (Pay phone service providers (PSPs)).

(2) PPCS providers must provide customers a without-charge telephone number staffed by personnel capable of:

(a) Responding to technical problems or questions related to their service twenty-four hours a day, seven days a week;

(b) Responding to general account-related questions during regular business hours; and

(c) Providing the commission's toll-free number and address to dissatisfied customers as required by WAC 480-120-165 (Customer complaints).

(3) Billing requirements for PPCS.

(a) A PPCS provider may charge only for the actual time a circuit is open for conversation. The ~~((price list or))~~ tariff and presale document must define billing increments. The provider must not round up the length of conversation time for less than a full billing increment beyond that full increment.

(i) If a PPCS provider uses an increment based on a time measurement, the increment must not exceed one minute.

(ii) If a PPCS provider bills usage in "unit" measurements, it must clearly define units using both equivalent dollar amounts and time measurement. Unit billing increments cannot exceed the equivalent one minute rate.

(b) At the customer's request, a PPCS provider may add additional time to an existing account in exchange for an additional payment at a rate not to exceed those on file on tariff with the commission or at rates, terms and conditions pursuant to competitive classification. The PPCS provider must inform the customer of the new rates at the time of the recharge request.

(4) PPCS providers must maintain the following call-data for a minimum of twenty-four months:

(a) Dialing and signaling information that identifies the inbound access number called or the access identifier;

(b) The number of the originating phone when the information is passed to the PPCS provider;

(c) The date and time the call was originated;

(d) The duration or termination time of the call;

(e) The called number; and

(f) The personal identification number (PIN), or account number.

(5) Disclosure requirements - Prepaid calling services.

(a) A PPCS provider must disclose, prior to the sale, the following information:

(i) The PPCS provider's name as registered with the commission;

(ii) The "doing business as" name as registered with the commission, if applicable;

(iii) The maximum charge per billing increment. A PPCS provider charging varying rates for intrastate and interstate calls must ~~((provide)) disclose all applicable rates~~~~(-The rates disclosed must be no more than those in its price list or tariff on file with the commission at the time of purchase))~~;

(iv) Charges for all services, including any applicable surcharges, fees, or taxes, and the method of application;

(v) Expiration date, if applicable. If a card expires after a set period of time from activation, the PPCS provider must specify the expiration date on the card. If an expiration date is not disclosed on the card it will be considered unexpired indefinitely; and

(vi) Recharge policy, if applicable. If a PPCS provider does not disclose the expiration date at the time service is recharged, the service will be considered unexpired indefinitely.

(b) A PPCS provider must disclose, at the time of purchase, the following information:

(i) The without-charge telephone number(s) a customer may use to resolve technical problems, service-related questions, and general account-related questions; and

(ii) Authorization code, if required, to access the service or, if applicable, the without-charge telephone number used to establish access capability.

(c) If the PPCS provider is not the entity that packages the services for sale to the public, it must require the company that does so, through a written agreement, to comply with the disclosure requirements of this section.

(6) Time of use disclosure requirements. The PPCS provider must:

(a) Announce at the beginning of each call the time remaining on the prepaid account or prepaid calling card; and

(b) Announce the time remaining at least one minute before the prepaid account balance is depleted.

(7) When a PPCS provider has failed to provide service at rates disclosed prior to the sale or quoted at the time an account is recharged, or the PPCS provider has failed to meet performance standards, it must provide refunds for any unused service or provide equivalent service credit when requested by a customer. Refunds or credits must equal the value remaining on the prepaid calling account. The customer may choose either the refund or equivalent service credit option.

(8) Performance standards for prepaid calling services. Each PPCS provider must ensure that:

(a) Customers can complete a minimum of ninety-eight percent of all call attempts to the called party's number. The PPCS provider will consider any busy signals or unanswered calls as completed calls.

(b) Customers can complete a minimum of ninety-eight percent of all call attempts to the PPCS provider. The PPCS provider will not consider any busy signals or unanswered calls as completed calls.

#### NEW SECTION

**WAC 480-120-266 Information about telecommunications services provided pursuant to competitive classification.** (1) Rates, terms and conditions for telecommunications services offered pursuant to competitive classification must conform to all applicable laws, rules, and orders.

(a) The commission does not review or approve rates, terms and conditions of services offered pursuant to competitive classification.

(b) The commission will, when appropriate, investigate or complain against a rate, term or condition provided pursuant to competitive classification.

(c) If the commission determines that a rate, term or condition for service offered pursuant to competitive classification is ambiguous, there is a rebuttable presumption that the ambiguity should be construed in the favor of the customer.

(2) A telecommunications company offering intrastate telecommunications services pursuant to competitive classification shall make available to any member of the public, information concerning its intrastate telecommunications services in an easily accessible manner on an internet web site. Such information shall be made available in an easy to understand format and shall be timely updated. Following an inquiry or complaint from the public concerning rates, terms and conditions for such services, a carrier shall specify the manner in which the public may obtain the information.

(3) The rates, charges, and prices of services classified as competitive under RCW 80.36.330 must cover the cost of providing the service. Costs must be determined using a long-run incremental cost analysis, including as part of the incremental cost, the price charged by the offering company to other telecommunications companies for any essential function used to provide the service, or any other commission-approved cost method.

AMENDATORY SECTION (Amending Docket No. A-021178 and TO-030288, General Order No. R-518, filed 2/28/05, effective 3/31/05)

**WAC 480-120-352 Washington Exchange Carrier Association (WECA).** (1) The Washington Exchange Carrier Association (WECA) may:

- (a) File petitions with the commission;
- (b) Publish and file tariffs with the commission; and
- (c) Represent before the commission those members that so authorize. WECA's rules of procedure are on file with the commission under Docket No. UT-920373, and may be obtained by contacting the commission's records center.

(2) Subject to all the procedural requirements and protections associated with company filings before the commission, WECA must submit to the commission:

- (a) All initial WECA tariffs; and
  - (b) All changes to the tariffs.
- (3) A member of WECA may file directly with the commission:
- (a) Tariffs(~~(-price lists,-)~~) and contracts;
  - (b) Revenue requirement computations;
  - (c) Revenue objectives;
  - (d) Universal service support cost calculations;
  - (e) Total service long run incremental cost studies;
  - (f) Competitive classification petition;
  - (g) Other reports; or
  - (h) Any other item it or the commission deems necessary.

(4) The commission has the authority to supervise the activities of WECA. However, such supervision will not compromise the independent evaluation by the commission of any filing or proposal that must be submitted to the commission for approval.

(5) To the extent that WECA is involved in the collection and redistribution of funds under commission orders authorizing certain revenue sharing arrangements under common tariff, it must maintain, provide, and report to the commission annual financial reports, by July 1 of each year, relating to the arrangements. Annual financial reports must include:

- (a) Actual fund collections and distributions to each member company;
- (b) The basis upon which the collection and distribution is made;
- (c) Board membership;
- (d) Special committee membership; and
- (e) The status and description of any open WECA docket proceedings.

(6) Each local exchange company in the state of Washington has the option of using WECA as its filing agent, tariff bureau, or both. Companies using WECA collectively may file intrastate rates, tariffs, or service proposals.

(7) Nothing in this section will be construed as amending or modifying WECA's current methods of administration. WECA's access charge pooling administration plan is on file with the commission and may be obtained by contacting the commission's records center and requesting the "Ninth Supplemental Order in Docket No. UT-971140 with Attachment" dated June 28, 2000.

AMENDATORY SECTION (Amending Docket No. UT-990146, General Order No. R-507, filed 12/12/02, effective 7/1/03)

**WAC 480-120-436 Responsibility for drop facilities and support structure.** (1) **Initial provision of service to a premise with no existing drop facilities.** Companies are responsible for designating the route of the drop facility and the type of support structure.

(a) Provision of drop facilities. The company is responsible for all work and materials associated with drop facilities.

(b) Provision of support structure. The company may require the applicant to provide a support structure that meets company standards. Once the company provides service, the company is responsible for maintenance and repair of the existing drop facilities and support structure as provided for in WAC 480-120-437.

(c) Nothing in this rule prohibits the company from offering the applicant an alternative to pay the company a tariffed (~~(or price listed)~~) rate or rate pursuant to competitive classification for provision of the support structure.

(2) **Requests for initial service or additional service at a premise where all existing pairs within a drop facility are not in use.** A company is responsible for all work and materials associated with the drop facilities and if applicable the support structure so long as the total number of lines requested by the customer does not exceed the original capacity of the drop facility.

Any work or materials associated with repair of abandoned or defective pairs is considered maintenance and repair under WAC 480-120-437.

(3) **Requests for additional service to premises where all existing pairs within a drop facility are not in use or where the total number of lines requested by a customer exceeds the original capacity of the existing drop facility.**

(a) The company is responsible for all costs, including the costs of work and materials, associated with placement of additional drop facilities.

(b) The company may require the applicant to provide a support structure for placement of the new drop facility.

(c) A company must use an existing support structure for placement of the new drop facility when:

(i) The support structure it is large enough to support placement of the new facility; and

(ii) It follows a path which remains suitable to the company; and

(iii) The customer makes the support structure accessible to the company (e.g., uncovers the entry to the conduit and removes any items that would impede the use of the conduit, such as tree roots).

AMENDATORY SECTION (Amending Docket No. UT 040015, General Order No. R-516, filed 1/10/05, effective 2/10/05)

**WAC 480-120-450 Enhanced 9-1-1 (E911) obligations of local exchange companies.** "Private branch exchange (PBX)" means customer premises equipment installed on the customer's premises that functions as a switch, permitting the customer to receive incoming calls, to dial any other telephone on the premises, to access a tie trunk

leading to another PBX or to access an outside trunk to the public switched telephone network.

"Data base management system (DBMS)" means a data base used by local exchange companies (LECs) to provide automatic location information (ALI) to public safety answering points (PSAPs).

"Emergency location identification number (ELIN)" means a telephone number that is used to route the call to a PSAP and is used to retrieve the automatic location information (ALI) for a PSAP.

"Emergency response location (ERL)" means a location to which a 911 emergency response team may be dispatched.

(1) Local exchange companies (LECs) must provide enhanced 9-1-1 (E911) services including:

(a) For single line service, the ability for customers to dial 911 with the call and caller's ELIN transmitted to the E911 selective router serving the location associated with the ERL for that line;

(b) For multiline customers, the ability for customers to dial 911 with common signal protocols available which permit the call and caller's ELIN to be transmitted to the E911 selective router serving the location associated with the ERL for that line;

(c) For pay phones served by pay phone access lines (PALs) the ability for customers to dial 911 with the call and the ELIN transmitted to the E911 selective router serving the location of the ERL for that line. The ELIN must be that of the pay phone.

(2)(a) LECs that provide or make available E911 data base management, whether directly or through contract, must provide to all PBX owners or their agents (including LECs) a simple, internet-based method to maintain customer records in the E911 data base, and the LEC may provide an option of a secure dial up access method for the PBX owner or agent to maintain customer records in the E911 data base. The method must use a generally accepted national format for customer record information.

(b) LECs that provide or make available E911 data base management, whether directly or through contract, must provide or make available to all other LECs a simple, internet-based method to maintain customer records in the E911 data base for their non-PBX customers, and the LEC may provide an option of a secure dial up access or direct data link method for LECs to maintain customer records in the E911 data base. The LEC may offer methods for maintaining station location information that are not internet-based in addition to the required internet-based method.

(c) LECs that provide pay phone access lines must maintain customer record information, including ELIN and ERL information, for those access lines using a method required by (b) of this subsection. The LEC must forward the records to the data base manager within one business day of a record's posting to the company records system.

(d) For single line services, PBX main station lines, and pay phone lines, LECs must transmit updated location information records to the data base management system (DBMS) within one business day of those records being posted to the company record system.

The LEC must correct records that do not post to the DBMS because of address errors within two working days. If

modifications are necessary to the audit tables of the master street address guide, the LEC must resubmit the record within one business day of notification that the master street address guide has been updated.

(e) The LEC or its agent administering the data base must resolve E911 data base errors and inquiries, including selective routing errors, reported by county E911 data base coordinators or PSAPs within five working days of receipt.

(3) LECs choosing to provide E911 services including selective routing, data base management and transmission of the call to a PSAP must file with the commission tariffs and supporting cost studies (~~or price lists, whichever applies;~~) that specify the charges and terms for E911 services. For E911 services provided pursuant to competitive classification, information concerning E911 services including selective routing, data base management and transmission of the call to a PSAP must be maintained on the carrier's web site in compliance with WAC 480-120-266.

(4)(a) The LEC must permit PBX customers who choose to maintain their own E911 data base or contract that maintenance to a third party, if the customer maintains the data in a generally accepted national format for customer record information.

(b) PBX customers who choose to not use LEC data base management may transmit, or have a third-party transmit, customer record information to their LEC's national data service gateway at no additional charge.

**AMENDATORY SECTION** (Amending Docket No. UT 040015, General Order No. R-516, filed 1/10/05, effective 2/10/05)

**WAC 480-120-540 Terminating access charges.**

(1)(a) Except for any universal service rate allowed pursuant to subsection (1)(b) of this section, the rates charged by a local exchange company for terminating access service offered by tariff must not exceed the lowest rate charged by the local exchange company for the comparable local interconnection service (in each exchange), such as end office switching or tandem switching. If a local exchange company does not provide local interconnection service (or does so under a bill and keep arrangement), the rates charged for terminating access must not exceed the cost of the terminating access service being provided.

(b) If a local exchange company is authorized by the commission to recover any costs for support of universal access to basic telecommunications service through access charges, it shall recover such costs as an additional, explicit universal service rate element applied to terminating access service.

(2) The rates charged by a local exchange company for terminating access services (~~offered by price list~~) that are classified as competitive pursuant to RCW 80.36.320 or 80.36.330 must not exceed the rates charged by the incumbent local exchange company for terminating access service in the comparable geographic area. For purposes of this subsection, the rates charged by the incumbent local exchange company include any universal service rate charged pursuant to subsection (1)(b) of this section.

(3) The cost of the terminating access must be determined based on the total service long-run incremental cost of terminating access service plus a reasonable contribution to common or overhead costs. Local loop costs are considered "shared" or "joint" costs and must not be included in the cost of terminating access. However, nothing in this rule prohibits recovery of local loop costs through originating access charges (including switched, special, and dedicated as defined in subsection (4)(a) of this section).

(4) Definitions.

(a) "Access charge" means a rate charged by a local exchange company to an interexchange company for the origination, transport, or termination of a call to or from a customer of the local exchange company. Such origination, transport, and termination may be accomplished either through switched access service or through special or dedicated access service.

(b) "Terminating access service" includes transport only to the extent that the transport service is bundled to the end office or tandem switching service. Dedicated transport unbundled from switching services is not subject to subsection (1) of this section.

(c) "Bill and keep" (also known as "mutual traffic exchange" or "payment in kind") is a compensation mechanism where traffic is exchanged among companies on a reciprocal basis. Each company terminates the traffic originating from other companies in exchange for the right to terminate its traffic on that company's network.

(5) The requirement of subsection (1) of this section that any terminating rate be based on cost must not apply to any local exchange company that is a small business, or to any local exchange company that is competitively classified, if it concurs in the terminating rate of any local exchange company that has filed a terminating rate that complies with the requirements of subsection (1) of this section. For the purposes of this subsection, "small business" has the same meaning as it does in RCW 19.85.020.

(6) Any local exchange company that is required to lower its terminating access rates to comply with this rule may file tariffs or ~~((price lists (as appropriate)))~~ to increase or restructure its originating access charges. The commission will approve the revision as long as it is consistent with this rule, in the public interest and the net effect is not an increase in revenues.

**AMENDATORY SECTION** (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

**WAC 480-120-560 Collocation.** (1) Definitions.

"CLEC" means a competing local exchange carrier that orders collocation from an ILEC.

"Collocation" means the ability of a CLEC to place equipment, including microwave equipment, within or upon an ILEC's premises.

"Deliver" or "delivery date" means the point when the ILEC turns the collocation space and related facilities over to the CLEC and the space and facilities are ready for service. Deliver or delivery includes, but is not necessarily limited to, providing the CLEC with access to the collocation space for collocation other than virtual collocation, as well as provid-

ing power, telephone service, and other services and facilities ordered by the CLEC for provisioning by the delivery date.

"ILEC" means an incumbent local exchange carrier that is required to provide collocation.

"ILEC premises" means an ILEC wire center, central office, or any other location owned and/or controlled by the ILEC at which interconnection with the ILEC's network or access to ILEC unbundled network elements is technically feasible.

"Points of interface (POI)" means the demarcation between the networks of an ILEC and a CLEC. The POI is the point where the exchange of traffic takes place.

(2) ILEC response to CLEC order for collocation. Within ten calendar days of receipt of an order for collocation, an ILEC must notify the CLEC whether sufficient space exists in the ILEC premises to accommodate the CLEC's collocation requirements. As part of that notification, the ILEC must also notify the CLEC of any circumstance that may delay delivery of the ordered collocation space and related facilities.

(3) Provisioning collocation. If the ILEC notifies a CLEC that sufficient space exists to accommodate the CLEC's order for collocation, the following procedures apply:

(a) Within twenty-five calendar days of receipt of the order, the ILEC must provide the CLEC with a written quote detailing the nonrecurring and recurring charges applicable to provisioning the ordered collocation. After providing the written quote and upon reasonable notice of a request by the CLEC, the ILEC must permit the CLEC at least one accompanied site visit to the designated collocation space without charge to the CLEC, to enable the CLEC to verify and inspect the space the ILEC offers for collocation. The CLEC's acceptance of the written quote and payment of one-half of the nonrecurring charges specified in the quote must be within seven calendar days and does not preclude the CLEC from later disputing the accuracy or reasonableness of those charges.

(b) If the ordered collocation space was included in a periodic forecast submitted by the CLEC to the ILEC at least three months in advance of the order, the ILEC must complete construction of, and deliver, the ordered collocation space and related facilities within forty-five calendar days after the CLEC's acceptance of the written quote and payment of one-half of the nonrecurring charges specified in the quote.

(c) If the ordered collocation space was not included in a periodic forecast submitted by the CLEC to the ILEC at least three months in advance of the order, the commission declines to apply the forty-five calendar day interval in (3)(b) and the national standards adopted by the FCC shall apply.

(d) Following any initial notification as required in section (2) above, the ILEC must notify the CLEC of any change in circumstances as soon as the ILEC is aware of those circumstances and must take all reasonable steps to avoid or minimize any delays caused by those circumstances, including but not limited to joint provisioning of collocation elements by the ILEC and CLEC, or sole construction by the CLEC, through a mutually acceptable third party contractor.

(e) If the ILEC fails to deliver the collocation space by the required delivery date, the ILEC must credit the CLEC in an amount equal to one-tenth of the total nonrecurring charge for the ordered collocation for each week beyond the required delivery date. Recurring charges will not begin to accrue for any element until the ILEC delivers that element to the CLEC. To the extent that a CLEC self-provisions any collocation element, the ILEC may not impose any charges for provisioning that element.

(f) The ILEC must provide periodic notices to the CLEC during construction of the CLEC's collocation space, including scheduled completion and delivery dates. At least thirty calendar days prior to the scheduled delivery date, the ILEC must provide the CLEC with sufficient information to enable the ILEC and the CLEC to establish firm Common Language Location Identifier (CLLI) codes and any other codes necessary to order interconnection and cross-connection circuits for the equipment the CLEC intends to collocate, and the ILEC must accept and process CLEC orders for such circuits. The ILEC must provision points of interface (POIs) and other circuits concurrent with delivery of the collocation space and related facilities, unless the CLEC agrees to a later date.

(g) The ILEC must conduct an inspection with the CLEC of the collocation space at least five business days prior to completion of construction of the collocation space. The ILEC must correct any deviations to the CLEC's original or jointly amended requirements after the inspection, at the ILEC's sole expense.

(h) Upon order of the CLEC and concurrent with delivery of the collocation space and related facilities, the ILEC must provide basic telephone service to the collocation space under the rates, terms, and conditions of the ILEC's current tariff (~~(or price list)~~) offering for the service ordered. The ILEC must also provide CLEC employees, contractors, and representatives with reasonable access to basic facilities, such as restroom facilities and parking, while at the ILEC premises.

(4) Denial of order for collocation. If the ILEC notifies a CLEC that insufficient space exists to accommodate the CLEC's order for collocation, the following procedures apply:

(a) As part of its notification of lack of space, the ILEC must notify the CLEC if any space is available for collocation and, if so, how much space is available. The ILEC must also verify that the ILEC cannot reclaim space for collocation by consolidating or removing inactive or underutilized equipment.

(b) The ILEC must permit the CLEC to tour the ILEC premises within fourteen calendar days of the CLEC's written request.

(c) If the CLEC notifies the ILEC that it contests the denial of an order for collocation, the ILEC must, within twenty-five calendar days of the notification, file a petition asking the commission to determine that the space requested by the CLEC is not available. Upon request and execution of an appropriate confidentiality agreement, the ILEC must also provide a copy of the petition to the CLEC. The ILEC must prepare the petition at its sole expense, and the petition must include the following information:

(i) Central Office CLLI, where applicable;

(ii) Ordering CLEC, including the amount of space sought by the CLEC;

(iii) Written inventory of active, inactive, and underutilized equipment, including the signatures of ILEC personnel certifying the accuracy of the information provided;

(iv) Color-coded floor plans that identify office space work areas, provide spatial dimensions to calculate the square footage for each area, and locate inactive and underutilized equipment;

(v) Narrative of the central office floor space use;

(vi) Total amount of space occupied by interconnecting collocators for the sole purpose of interconnection;

(vii) Total amount of space occupied by third parties for purposes other than interconnection, and a narrative of the space use;

(viii) The number of central office employees employed and job titles;

(ix) Description of central office renovation/expansion plans and time frames for completion;

(x) Description of conversion of administrative, maintenance, equipment, and storage space plans and time frames for completion; and

(xi) Description of any internal policies for conversion of administrative, maintenance, equipment, and storage space in central offices.

(d) The commission will decide any petition filed under subsection (4)(c) through an expedited proceeding conducted in accordance with the relevant procedural requirements and time lines established in WAC 480-07-650. The ILEC bears the burden to prove to the commission that the ordered collocation is not practical for technical reasons or because of space limitations. The ILEC may be relieved of its obligation to provide collocation at a particular ILEC premises only to the extent expressly provided by commission order.

(e) Each ILEC must maintain a list of all of its central offices in Washington in which insufficient space exists to accommodate one or more types of collocation. The list must specify which types of collocation are unavailable in each office and whether the commission has approved the ILEC's denial of collocation in that office. The ILEC must post this list on its publicly accessible web site and provide a copy of the list to any CLEC upon request. The ILEC must update this list within ten business days of (i) denying a CLEC's order for collocation; (ii) the service date of any order from the commission approving or disapproving such a denial; (iii) providing notice to CLECs previously denied collocation that space has become available in a central office; or (iv) obtaining knowledge through any other means that space for one or more types of collocation is no longer available or has become available in a particular central office.

(f) Each ILEC must maintain for each central office a waiting list of all unfilled orders for collocation space and the date of each order. After an ILEC has announced that one or more types of collocation space are not available in an office, any CLEC may submit a letter of intent to order collocation space in lieu of a collocation order, and this letter of intent must be included on the waiting list. If space for collocation becomes available in any central office, the ILEC must inform all CLECs, that ordered collocation or submitted a letter of intent to order collocation, of the availability of that

space and must provide each such CLEC with fifteen calendar days to renew its original collocation order. The ILEC must provision collocation to these CLECs on a first-come, first-served basis according to the dates on which each ordered collocation or submitted a letter of intent to collocate in that central office.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 480-120-196	Customer notice requirements—Competitively classified telecommunications companies or services.
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#### **Chapter 480-121 WAC**

#### **REGISTRATION(~~(S)~~) AND COMPETITIVE CLASSIFICATION (~~(AND PRICE LISTS)~~) OF TELECOMMUNICATIONS COMPANIES**

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

**WAC 480-121-011 Application of rules.** (1) The rules in this chapter apply to any telecommunications company that is subject to the jurisdiction of the commission as to rates and services under the provisions of RCW 80.01.040 and chapters 80.04 and 80.36 RCW.

(2) ~~((Price list provisions filed by telecommunications companies must conform with these rules. If the commission accepts a price list 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 480-121-015. Price lists that conflict with these rules without approval are superseded by these rules.~~

(3)) Any affected person may ask the commission to review the interpretation of these rules by a telecommunications company or customer by posing an informal complaint under WAC 480-07-910 (Informal complaints) or by filing a formal complaint under WAC 480-07-370 (Pleadings—General).

~~((4))~~ (3) No deviation from these rules is permitted without written authorization by the commission. Violations will be subject to penalties as provided by law.

AMENDATORY SECTION (Amending General Order No. R-499, Docket No. UT-991922, filed 5/14/02, effective 6/17/02)

**WAC 480-121-018 Delivery of a filing.** (1) The commission will accept (~~(an)~~) application(~~(s)~~) for registration as a telecommunications company and petition for competitive classification(~~(, and initial price list)~~) filings delivered in person, by mail, fax, or (when procedures are in place) electronic means. The commission will stamp a filing received on Saturdays, Sundays, and state holidays, or after 5:00 p.m., Pacific time, as received on the next business day.

(2) In person or by mail.

(a) In order to be deemed received on a given day, the commission records center must receive an original and two copies of the filing by 5:00 p.m., Pacific time.

(b) A filing delivered by mail must be free from all charges for postage. The commission records center will return any postage-due filing to the sender.

(3) Fax filing.

(a) The commission must receive an original and two copies of the filing the following business day.

(b) The commission will use the date and time the fax filing is received and printed at the records center as the official file date.

(c) The commission records center must receive a faxed filing in its entirety by 5:00 p.m., Pacific time, Monday through Friday, except on state holidays, to be considered received on that business day.

(4) Electronic filing.

(a) An electronic filing must conform to commission procedures for electronic filing.

(b) After accepting an electronic filing, the commission will return an electronic mail message noting the receipt date.

AMENDATORY SECTION (Amending General Order No. R-499, Docket No. UT-991922, filed 5/14/02, effective 6/17/02)

**WAC 480-121-020 Requirements for applications for registration(~~(S)~~) and petitions for competitive classification(~~(, and initial price lists)~~).** (1) Applications for registration and petitions for competitive classification must be in the form prescribed by the commission.

(2) Applications for registration:

(a) Must be filed with a petition for competitive classification (~~(and an initial price list)~~) unless applicant will not be subject to effective competition;

(b) Must comply with the rules set forth in chapters 480-80 and 480-120 WAC;

(c) Must be filed at the office of the commission in Olympia, Washington; and

(d) Will be assigned a docket number. All documents subsequently filed in the matter must bear that docket number.

(3) The commission may require, with or without hearing, that an applicant for registration clearly show:

(a) Adequate financial resources to provide the proposed service;

(b) Adequate technical competence to provide the proposed service; and

(c) Compliance with all applicable federal, state, and local telecommunications technical and business regulations.

(4) The commission may request that an applicant provide information regarding the applicant's regulatory performance in other states where it operates.

WSR 06-21-056
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed October 16, 2006, 10:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-17-130.

Title of Rule and Other Identifying Information: WAC 388-418-0011 What is a mid-certification review, and do I have to complete one in order to keep receiving benefits?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Good Year Tire. A map or directions are available at http://www1.dshs.wa.gov/msa/rpau/docket.html or by calling (360) 664-6097), on November 21, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than November 22, 2006.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., November 21, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by November 17, 2006, TTY (360) 664-6178 or phone (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To update requirements for a mid-certification review to be considered complete for temporary assistance for needy families (TANF) and state family assistance (SFA).

Reasons Supporting Proposal: The changes are necessary to meet work verification requirements under federal Public Law 109-171 and TANF interim final rules issued on June 29, 2006.

Statutory Authority for Adoption: RCW 74.04.505, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Statute Being Implemented: RCW 74.04.505, 74.04.-055, 74.04.057, 74.04.510, 74.08.090.

Rule is necessary because of federal law, Public Law 109-171, and TANF interim final rule published in the Federal Register - Volume 71, No. 125 on June 29, 2006.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Camp, 1009 College S.E., Lacey, WA 98504, (360) 725-4616.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendments only affect DSHS clients by establishing eligibility rules to facilitate the department meeting federal reporting requirements of hours of participation. The rule impacts who must complete a mid-certification review and what is required for the department to consider the review as complete for purposes of determining ongoing eligibility.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to...rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents." These rules establish requirements for completing a mid-certification eligibility review in a manner that facilitates the department meeting federal requirements to verify actual hours of participation for households in the temporary assistance for needy families (TANF) program.

October 9, 2006

Andy Fernando, Manager

Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 06-13-043, filed 6/15/06, effective 7/17/06)

WAC 388-418-0011 What is a mid-certification review, and do I have to complete one in order to keep receiving benefits? (1) A mid-certification review (MCR) is a form we send you to ask about your current circumstances. We use the answers you give us to decide if you are still eligible for benefits and to calculate your monthly benefits.

(2) If you receive cash assistance, family-related medical, or Basic Food benefits, you must complete a mid-certification review unless you meet one of the exceptions below:

(a) You do not have to complete a mid-certification review for cash assistance if you:

(i) Only receive Refugee Cash Assistance as described under WAC 388-400-0030; or

(ii) Have a review period of six months or less.

(b) You do not have to complete a mid-certification review for Basic food if:

(i) Your assistance unit has a certification period of six months or less; or

(ii) All adults in your assistance unit are elderly or disabled and have no earned income.

(3) When we send the review form:

Table with 2 columns: 'If you must complete a MCR...' and 'We send your review form...'. Row 1: (a) For one program such as Basic Food or Family Medical. Row 2: (b) For two or more programs, and all program have a 12-month certification or review period.



If you must complete a MCR...	We send your review form...
(c) For Basic Food and another program when either program has a certification or review period between six and twelve months.	In the fifth month of your Basic Food certification period when you receive Basic Food and another program. You must complete your review by the 10th day of month six of your Basic Food certification.

(4) If you must complete a mid-certification review, we send you the review form with questions about your current circumstances. You can choose to complete the review in on of the following ways:

(a) **Complete the form and return it to us.** For us to count your mid-certification review complete, you must take all of the steps below:

- (i) Compete the review form, telling us about changes in your circumstances we ask about;
- (ii) Sign and date the form;
- (iii) Give us proof of any changes you report. If you report a change that will increase your benefits without giving proof of this change, we will not increase your benefits;
- (iv) If you receive family medical benefits, give us proof of your income even if it has not changed; and
- (v) Mail or turn in the completed form and any required proof to us by the due date on the review.

(b) **Complete the mid-certification review over the phone.** For us to count your mid-certification review as complete, you must take all of the steps below:

- (i) Contact us at the phone number on the review form, telling us about changes in your circumstances we ask about;
- (ii) Give us proof of any changes you report. We may be able to verify some information over the phone. If you report a change that will increase your benefits without giving proof of this change, we will not increase your benefits;
- (iii) If you receive family medical benefits, give us proof of your income even if it has not changed; ~~((and))~~
- (iv) If you receive Temporary Assistance for Needy Families and you are working or self employed, you must give us proof of your income and the hours you work even if it has not changed; and
- (v) Mail or turn in any required proof to us by the due date on the review.

(c) **Complete the application process for another program.** If we approve an application for another program in the month you must complete your mid-certification review, we use the application to complete your review when the same person is head of household for the application and the mid-certification review.

(5) If your benefits change because of what we learned in your mid-certification review, the change takes effect the next month even if this does not give you ten days notice before we change your benefits.

(6) If you do not complete your required mid-certification review, we stop your benefits at the end of the month the review was due.

(7) **Late reviews.** If you complete the mid-certification review after the last day of the month the review was due, we process the review as described below based on when we receive the review:

(a) **Mid-certification reviews you complete by the last day of the month after the month the review was due:** We determine your eligibility for ongoing benefits. If you are eligible, we reinstate your benefits based on the information in the review.

(b) **Mid-certification reviews you complete after the last day of the month after the month the review was due:** We treat this review as a request to send you an application. For us to determine if you are eligible for benefits, you must complete the application process as described in chapter 388-406 WAC.

**Reviser's note:** The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 06-21-061**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed October 16, 2006, 1:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-17-104.

Title of Rule and Other Identifying Information: The board of registration for landscape architects is proposing changes to the following rules: WAC 308-13-020 Qualifications and application for licensure, 308-13-024 Application for examination, 308-13-032 Licensing examination, 308-13-100 Reinstatement of delinquent, suspended, or revoked licenses, and 308-13-150 Landscape architect fees and charges.

The board is proposing adding the following rules: WAC 308-13-180 Board member rules of conduct—Activities incompatible with public duties—Financial interests in transactions, 308-13-170 Retired status certificate of registration, 308-13-250 Brief adjudicative proceedings, and 308-13-260 Records required for the brief adjudicative proceeding.

The board is proposing the repeal of the following rules: WAC 308-13-210 Application of brief adjudicative proceedings, 308-13-220 Preliminary record in brief adjudicative proceedings, and 308-13-230 Conduct of brief adjudicative proceedings.

Hearing Location(s): Washington State University, Johnson Hall Room 151, Pullman, Washington, on December 1, 2006, at 10:00 a.m.

Date of Intended Adoption: December 19, 2006.

Submit Written Comments to: Lorin Doyle, Program Manager, 405 Black Lake Boulevard S.W., Olympia, WA 98501-9045, e-mail ldoyle@dol.wa.gov, fax (360) 664-1465, by November 17, 2006.

Assistance for Persons with Disabilities: Contact Elizabeth Stancil by November 9, 2006, TTY (360) 664-8885 or (360) 664-6597.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To add clarity to rule language and to reflect a current course of the profession.

Reasons Supporting Proposal: To add clarity to rule language and to reflect a current course of the profession.

Statutory Authority for Adoption: RCW 18.96.060 Board—Rules—Quorum—Hearings.

Statute Being Implemented: RCW 18.96.060 Board—Rules—Quorum—Hearings.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Brett W. Lorentson, 405 Black Lake Boulevard S.W., Olympia, WA 98501-9045, (360) 664-1576; Implementation: Lorin Doyle, 405 Black Lake Boulevard S.W., Olympia, WA 98501-9045, (360) 664-1387; and Enforcement: Joe Vincent, Jr., 405 Black Lake Boulevard S.W., Olympia, WA 98501-9045, (360) 664-1386.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not disproportionately affect small business.

A cost-benefit analysis is not required under RCW 34.05.328. The department of licensing is not one of the named agencies that must comply with this statute.

October 16, 2006

Joe Vincent, Jr.

Administrator

AMENDATORY SECTION (Amending WSR 02-07-047, filed 3/14/02, effective 4/14/02)

**WAC 308-13-020 Qualifications and application for licensure. In addition to having passed the licensing examination required under WAC 308-13-032,** applicants for licensure shall provide the following as minimum evidence of qualification for licensure:

(1) Three references from landscape architects having personal knowledge of the applicant's practical experience as described in subsection (2) of this section;

(2) A summary of the applicant's practical training; and

(3) Documentation verifying a minimum of seven years of any combination of academic and practical training experience approved by the board. The board shall use the following criteria when evaluating experience:

~~((1))~~ (a) ACADEMIC TRAINING

~~((a))~~ (i) With a passing grade, 32 semester credit hours or 45 quarter credit hours is considered to be one year. Any fraction, one-half year or greater, will be counted one-half year, and less than one-half year will not be counted.

~~((b))~~ (ii) A degree in landscape architecture or credits from an accredited college will be weighted at one hundred percent with a four year maximum credit for academic training.

~~((c))~~ (iii) Credits in landscape architecture from a college not accredited may be weighted up to seventy-five percent with a three year maximum credit for academic training.

~~((d))~~ (iv) Credits in architecture or civil engineering will be weighted at fifty percent with a two year maximum credit for academic training.

~~((2))~~ (b) PRACTICAL TRAINING

~~((a))~~ (i) Practical training (~~(experience, work in landscape architecture and related work experience.)~~) necessary to qualify for licensure will be measured in months.

~~((b))~~ (ii) No training prior to graduation from high school will be accepted.

~~((e))~~ ~~Full-time practical work experience~~ (iii) Credit for practical training will be based on a verifiable demonstration of competency and progressive responsibility in the analysis, synthesis, and evaluation of landscape architecture concepts and data and demonstrating their experience in a position of making independent judgments and decisions. The amount of credit is determined by the following:

(A) Full-time credit must be at least thirty-five hours per week for a minimum of ten consecutive weeks; ~~(and)~~

(B) Part-time (~~(practical work experience))~~ credit must be at least twenty hours per week for six or more consecutive months;

(C) Project and self-employment credit will be given credit based on verification by at least two licensed landscape architects who have reviewed and provided written acknowledgement of the applicant's work.

AMENDATORY SECTION (Amending WSR 02-07-047, filed 3/14/02, effective 4/14/02)

**WAC 308-13-024 Application for examination. (1)**

Once an applicant has completed the academic requirement per WAC 308-13-005(6) or practical training approved in lieu of academic training per WAC 308-13-020, the applicant may apply to take the examination. The application to sit for the examination must be on a form prescribed by the board and must include ~~(, at a minimum:~~

~~(a) Three references from landscape architects having personal knowledge of the applicant's landscape architectural experience;~~

~~(b) Transcript of academic experience showing courses taken and degree received with registrar's seal/stamp/signature. Photocopies of transcripts are not acceptable;~~

~~(c) A summary of the applicant's work experience; and~~

~~(d) Required fees.);~~

(a) The applicable fee as outlined in WAC 308-13-150; and

(b) An official sealed transcript showing courses taken and degree received from the applicant's attended college or university. Photocopies of transcripts are not acceptable; and

(c) An application based on practical training as outlined in WAC 308-13-020(2).

Applications for admission to an examination, if scheduled, must be submitted or postmarked not later than the following dates. If the cut-off date falls on a Saturday or Sunday, the postmark deadline will be the following Monday.

Examination Months	Cut-off Dates
June	April 1
December	October 1

~~(2) (Examinees may retake any sections offered that have not been passed. Applications for examination or reexamination must be accompanied by the application fee for examination or reexamination and the appropriate examination fee as established by the director and published in chapter 308-13 WAC, landscape architect fees. For reexamination applicants, examination fees are listed by separate section.~~

~~(3)) Examination admission letters will be mailed to eligible applicants approximately six weeks prior to the examination along with detailed information as to times, place, and scheduled examination sections.~~

~~((4)) (3) Application fees for examination and reexamination are administrative charges and will not be refunded. (The examination fees (cost of each test) may be refunded if notice of cancellation is received by the department prior to ordering of examinations from the national testing service.~~

~~(5) Following successful completion of the registration examination, candidates will satisfactorily complete the review of laws related to the practice of landscape architecture as determined by the board.)~~

AMENDATORY SECTION (Amending WSR 93-16-009, filed 7/22/93, effective 8/22/93)

**WAC 308-13-032 Licensing examination.** The form of the examination required of applicants shall consist of a written and graphic examination. Subject to the provisions of RCW 18.96.090, the board adopts the landscape architectural registration examination and grading procedure prepared by the council of landscape architectural registration boards (CLARB) as the state examination for registration.

~~((The examination is administered according to the published national schedule.~~

~~To pass the examination, an applicant must achieve a passing score of seventy five percent on each of the sections of the examination.)~~ (1) There are five sections of the examination offered according to CLARB's examination schedule.

(a) Sections A, B, and D of the examination are administered by CLARB. Fees for these sections shall be paid to and collected by CLARB.

(b) Sections C and E of the examinations are administered by the department of licensing. Fees for these sections will be first collected by the board, and then forwarded to CLARB.

(c) The current charges for each examination can be obtained by contacting CLARB or by contacting the board office.

(2) Applicants are notified of their ((grades)) scores by mail. No ((grades)) scores are given by telephone. Reexamination information shall be provided to candidates along with scores if the candidate has not passed all sections.

(3) An applicant must successfully complete the entire examination within a five-year period. The five-year period shall begin with the ((month an applicant begins the examination process. Passing scores for any section of the examination may be carried forward for a period of five years from the date the applicant passed that section of the examination. Applicants shall retake any section of the examination which was passed more than five years previously, along with any section of the examination not yet passed)) passing of one or

more examination sections. Applicants may retake any section not passed. Applicants may not transfer passing section scores beyond the five-year period.

(4) Following successful completion of the licensing examination, candidates will satisfactorily complete the review of laws related to the practice of landscape architecture as determined by the board.

AMENDATORY SECTION (Amending WSR 02-07-047, filed 3/14/02, effective 4/14/02)

**WAC 308-13-100 Reinstatement of delinquent, suspended, or revoked licenses.** (1)~~((a))~~ Reinstatement of a license, delinquent less than five years, requires a letter to the board administrator requesting reinstatement, payment(s) of ((all delinquent renewal fees plus the current penalty fee)) the fee from the previous renewal cycle, the current renewal fee, and late penalty.

~~((b))~~ (2) Reinstatement of a license, delinquent five or more years, requires:

(a) A letter of application to the board requesting reinstatement, payment(s) of ((all delinquent renewal fees plus the current penalty fee,)) the fee from the previous renewal cycle, the current renewal fee and late penalty;

(b) A resume of landscape architectural activities and projects since the date of expiration(,);

(c) A detailed explanation of the circumstances surrounding the failure to maintain current licensure; and

(d) A satisfactory completion of the review of laws related to the practice of landscape architecture as determined by the board.

Additional requirements may be established by the board.

~~((2) Requests for reinstatement of a suspended or revoked license shall be submitted in a letter of application to the board and shall include a resume of professional activities and projects since suspension or revocation, a satisfactory completion of the review of laws related to the practice of landscape architecture as determined by the board and such other documents and materials as directed by the board.)~~

AMENDATORY SECTION (Amending WSR 05-17-004, filed 8/3/05, effective 9/3/05)

**WAC 308-13-150 Landscape architect fees and charges.** The following fees will be collected ~~((from the candidates))~~:

Title of Fee	Fee
Application fee	\$50.00
Reexamination administration fee	50.00
Renewal (2 years)	200.00
Late renewal penalty	100.00
Duplicate license	25.00
Initial registration (2 years)	200.00
Reciprocity application fee	200.00
Replacement wall certificate	20.00

~~((The following charges assessed by the Council of Landscape Architectural Registration Boards (CLARB), collected from candidates for the costs of the examinations shall be paid to CLARB.~~

<del>Examination and Sections</del>	<del>Charges</del>
<del>Entire examination</del>	<del>\$470.00</del>
<del>Section C:</del>	
<del>Planning and site design</del>	<del>245.00</del>
<del>Section E:</del>	
<del>Grading, drainage and storm water management</del>	<del>245.00</del>

~~The following sections of the examination will only be administered by CLARB:~~

- ~~Section A:~~  
~~Legal and administrative aspects of practice~~
- ~~Section B:~~  
~~Analytical aspects of practice~~
- ~~Section D:~~  
~~Structural considerations and materials and methods of construction))~~

NEW SECTION

**WAC 308-13-170 Retired status certificate of registration.** Any individual who has been issued a certificate of registration, in accordance with chapter 18.96 RCW, as a landscape architect having reached at least the age of sixty-five and having discontinued active practice may be eligible to obtain a "retired certificate of registration." If granted, further certificate of registration renewal fees are waived. For the purpose of this provision, "active practice" is as defined in RCW 18.96.030.

(1) Applications. Those persons wishing to obtain the status of a retired registration shall complete an application on a form as provided by the board. If deemed eligible by the board, the retired status would become effective on the first scheduled renewal date of the certificate of registration that occurs on or after the applicant reaches the age of sixty-five. It shall not be necessary that an expired certificate of registration be renewed to be eligible for this status. The board will not provide refund of renewal fees if the application for "retired" status is made and granted before the date of expiration of the certificate of registration.

(2) Privileges. In addition to the waiver of the renewal fee, a retired registrant is permitted to:

- (a) Retain the board-issued wall certificate of registration;
- (b) Use the title landscape architect, provided that it is supplemented by the term "retired," or the abbreviation "ret";
- (c) Work as a landscape architect in a volunteer capacity, provided that the retired registrant does not create landscape architectural plans, and does not use his/her seal, except as provided for in (d) of this subsection;
- (d) Provide experience verifications and references for persons seeking registration under chapter 18.96 RCW. If using his/her professional seal, the retired registrant may

place the word "retired" in the space designated for the date of expiration;

(e) Serve as a volunteer in an instructional capacity on landscape architectural topics;

(f) Provide services as a technical expert before a court, or in preparation for pending litigation, on matters directly related to landscape architectural work performed by the registrant before he/she was granted a retired registration;

(g) Serve in a function that supports the principles of registration and promotes the profession of landscape architecture, such as members of commissions, boards or committees;

(h) Serve in a landscape architectural capacity as a "good samaritan," as set forth in RCW 38.52.195 and 38.52.1951, provided said work is otherwise performed in accordance with chapter 18.96 RCW.

(3) Restrictions. A retired registrant is not permitted to:

(a) Perform any landscape architectural activity, as provided for in RCW 18.96.030, unless said activity is under the direct supervision of a Washington state licensed landscape architect who has a valid/active registration in the records of the board;

(b) Apply his/her professional stamp, as provided for in RCW 18.96.150, to any plan, specification, or report, except as provided for in subsection (2)(d) of this section.

(4) Certificate of registration reinstatement. A retired registrant, upon written request to the board and payment of the current renewal fee, may resume active landscape architectural practice. At that time, the retired registrant shall be removed from retired status and placed on valid/active status in the records of the board. All rights and responsibilities of a valid/active registration will be in effect. At the date of expiration of the reinstated certificate of registration, the registrant may elect to either continue active registration or may again apply for retired registration in accordance with the provisions of this chapter.

(5) Exemptions. Under no circumstances shall a registrant be eligible for a retired registration if his/her certificate of registration has been revoked, surrendered, or in any way permanently terminated by the board under chapter 18.96 RCW. Registrants who are suspended from practice and/or who are subject to terms of a board order at the time they reach age sixty-five shall not be eligible for a retired registration until such time that the board has removed the restricting conditions.

(6) Penalties for noncompliance. Any violations of this section shall be considered unprofessional conduct as defined in RCW 18.235.130 and are subject to penalties as provided for in RCW 18.235.110.

NEW SECTION

**WAC 308-13-180 Board member rules of conduct—Activities incompatible with public duties—Financial interests in transactions.** (1) When a member of the board either owns a beneficial interest in or is an officer, agent, employee, or member of an entity, or individual which is engaged in a transaction involving the board, the member shall:

(a) Recuse him or herself from the board discussion regarding the specific transaction;

(b) Recuse him or herself from the board vote on the specific transaction; and

(c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific transaction.

(2) The prohibition against discussion and voting set forth in subsection (1)(a) and (c) of this section shall not prohibit the member of the board from using his or her general expertise to educate and provide general information on the subject area to the other members.

(3)(a) "Transaction involving the board" means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that the member in question believes, or has reason to believe:

(i) Is, or will be, the subject of board action; or

(ii) Is one to which the board is or will be a party; or

(iii) Is one in which the board has a direct and substantial proprietary interest.

(b) "Transaction involving the board" does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by a member; or a claim, case, lawsuit, or similar matter if the member did not participate in the underlying transaction involving the board that is the basis for the claim, case, or lawsuit. Rule making is not a "transaction involving the board."

(4) "Board action" means any action on the part of the board, including, but not limited to:

(a) A decision, determination, finding, ruling, or order; and

(b) A grant, payment, award, license, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

(5) The following are examples of possible scenarios related to board member rules of conduct. Activities incompatible with public duties; financial interests in transactions.

(a) **EXAMPLE 1:**

The board of registration for landscape architects disciplines licensed landscape architects in Washington. The board is conducting an investigation involving the services provided by a licensed landscape architect. One of the members of the board is currently serving a subcontractor to that landscape architect on a large project. The board member must recuse himself from any board investigation, discussion, deliberation and vote with respect to disciplinary actions arising from licensed landscape architect services.

(b) **EXAMPLE 2:**

The board of registration for landscape architects makes licensing decisions on applications for licensure. An applicant for licensure owns a school construction business which employs licensed landscape architects, including one of the board members. The board member must recuse himself from any board investigation, discussion, deliberation

and vote with respect to his employer's application for licensure.

(c) **EXAMPLE 3:**

The board of registration for landscape architects makes licensing decisions on applications from registered landscape architects in another state or territory of the United States, the District of Columbia, or another country. The board can grant licensure if that individual's qualifications and experience are equivalent to the qualifications and experience required of a person registered under Washington law. An out-of-state applicant is employed as a landscape architect by a multinational corporation that is planning to build its world headquarters in Washington and has hired a board member's firm as the landscape architect for the project. The board member must recuse himself from any board investigation, discussion, deliberation and vote with respect to the sufficiency of the out-of-state landscape architect's qualifications and experience.

(6) Recusal disclosure. If recusal occurs pursuant to subsection (1) of this section, the member of the board shall disclose to the public the reasons for his or her recusal from any board action whenever recusal occurs. The board staff shall record each recusal and the basis for the recusal.

#### NEW SECTION

**WAC 308-13-250 Brief adjudicative proceedings. (1)**

The board will conduct brief adjudicative proceedings as provided for in RCW 34.05.482 through 34.05.494 of the Administrative Procedure Act. Brief adjudicative proceedings may be used whenever a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleges violations of chapters 18.96 and 18.235 RCW, administrative rules in Title 308 WAC or any statutes or rules that specifically govern the defined practices of landscape architects. Brief adjudicative proceedings may also be used in place of formal adjudicative hearings whenever the board issues a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleging that an applicant or licensee's conduct, act(s), or condition(s) constitute unlicensed practice or unprofessional conduct as that term is defined under chapter 18.235 RCW, the Uniform Regulation of Business and Professions Act.

(2) Brief adjudicative proceedings may be used to determine the following issues, including, but not limited to:

(a) Whether an applicant has satisfied terms for reinstatement of a license after a period of license restriction, suspension, or revocation;

(b) Whether an applicant is eligible to sit for a professional licensing examination;

(c) Whether a sanction proposed by the board is appropriate based on the stipulated facts;

(d) Whether an applicant meets minimum requirements for an initial or renewal application;

(e) Whether an applicant has failed the professional licensing examination;

- (f) Whether an applicant or licensee failed to cooperate in an investigation by the board;
  - (g) Whether an applicant or licensee was convicted of a crime that disqualifies the applicant or licensee from holding the specific license sought or held;
  - (h) Whether an applicant or licensee has defaulted on educational loans;
  - (i) Whether an applicant or licensee has violated the terms of a final order issued by the board or the board's designee;
  - (j) Whether a person has engaged in false, deceptive, or misleading advertising; or
  - (k) Whether a person has engaged in unlicensed practice.
- (3) In addition to the situations enumerated in subsection (2) of this section, the board may conduct brief adjudicative proceedings instead of formal adjudicative hearings whenever the parties have stipulated to the facts and the only issues presented are issues of law, or whenever issues of fact exist but witness testimony is unnecessary to prove or disprove the relevant facts.

**NEW SECTION**

**WAC 308-13-260 Records required for the brief adjudicative proceeding.** The records for the brief adjudicative proceeding shall include:

- (1) Renewal or reinstatement of a license:
  - (a) All correspondence between the applicant and the board about the renewal or reinstatement;
  - (b) Copies of renewal notice(s) sent by the department of licensing to the licensee;
  - (c) All documents received by the board from or on behalf of the licensee relating to information, payments or explanations that have been provided to the board.
- (2) Applicants for certification/licensing:
  - (a) Original complete application with all attachments as submitted by applicant;
  - (b) Copies of all supplementary information related to application review by staff or board member;
  - (c) All documents relied upon in reaching the determination of ineligibility;
  - (d) All correspondence between the applicant and the board about the application or the appeal.
- (3) Default of student loan payments:
  - (a) Copies of notices to the board showing the name and other identification information of the individual claimed to be in default on student loan payments;
  - (b) Copies of identification information corresponding to the person who is certified/licensed by the board that relate to the identity of the individual in default;
  - (c) All documents received by the board from or on behalf of the licensee relating to rebutting such identification;
  - (d) Certification and report by the lending agency that the identified person is in default or nonpayment on a federally or state-guaranteed student loan or service-conditional scholarship; or
  - (e) A written release, if any, issued by the lending agency stating that the identified person is making payment on the loan in accordance with a repayment agreement approved by the lending agency.

- (4) Determination of compliance with previously issued board order:
  - (a) The previously issued final order or agreement;
  - (b) All reports or other documents submitted by, or at the direction of, the license holder, in full or partial fulfillment of the terms of the final order or agreement;
  - (c) All correspondence between the license holder and the program regarding compliance with the final order or agreement; and
  - (d) All documents relied upon by the program showing that the license holder has failed to comply with the previously issued final order or agreement.

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

WAC 308-13-210	Application of brief adjudicative proceedings.
WAC 308-13-220	Preliminary record in brief adjudicative proceedings.
WAC 308-13-230	Conduct of brief adjudicative proceedings.

**WSR 06-21-072**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
 (By the Code Reviser's Office)  
 [Filed October 17, 2006, 8:32 a.m.]

WAC 296-17-698, proposed by the department of labor and industries in WSR 06-08-086 appearing in issue 06-08 of the State Register, which was distributed on April 19, 2006, is withdrawn by the code reviser's office under RCW 34.05.335 (3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
 Washington State Register

**WSR 06-21-076**  
**PROPOSED RULES**  
**BOARD OF**  
**PILOTAGE COMMISSIONERS**  
 [Filed October 17, 2006, 8:35 a.m.]

Original Notice.  
 Exempt from preproposal statement of inquiry under RCW 34.05.310(4).  
 Title of Rule and Other Identifying Information: WAC 363-116-300 Pilotage rates for the Puget Sound pilotage district.  
 Hearing Location(s): 2901 Third Avenue, 4th Floor, Rainier Conference Room, Seattle, WA 98121, on December 14, 2006, at 9:30 a.m.

Date of Intended Adoption: December 14, 2006.

Submit Written Comments to: Captain Harry Dudley, Chairman, 2901 Third Avenue, Suite 500, Seattle, WA 98121, e-mail [larsonp@wsdot.wa.gov](mailto:larsonp@wsdot.wa.gov), fax (206) 515-3906, by December 7, 2006.

Assistance for Persons with Disabilities: Contact Judy Bell by December 11, 2006, (206) 515-3647.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to amend the Puget Sound pilotage district tariff regarding the training surcharge.

The proposed rule reflects the deletion of the initial training surcharge of \$10.00 per vessel assignment that was used to establish a fund for payment of pilot trainee stipends.

The proposed rule also reflects a decrease in the amount of the additional training surcharge added to each vessel assignment from \$10.00 to \$5.00.

Reasons Supporting Proposal: The amount of training surcharge was based on a traffic level of six hundred vessel assignments per month. The fund balance has exceeded the amount necessary to pay trainee stipends due to the actual vessel traffic being higher than projected.

In order to reduce the balance in the fund, the initial surcharge has been eliminated and the additional surcharge has been reduced.

Statutory Authority for Adoption: RCW 88.16.035.

Statute Being Implemented: Chapter 88.16 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The board may adopt a rule that varies from the

**CLASSIFICATION**

Ship length overall (LOA)

Charges:

Per LOA rate schedule in this section.

Boarding fee:

Per each boarding/deboarding at the Port Angeles pilot station.

Harbor shift - Live ship (Seattle Port)

Harbor shift - Live ship (other than Seattle Port)

Harbor shift - Dead ship

Towing charge - Dead ship:

LOA of tug + LOA of tow + beam of tow

Any tow exceeding seven hours, two pilots are mandatory. Harbor shifts shall constitute and be limited to those services in moving vessels from dock to dock, from anchorage to dock, from dock to anchorage, or from anchorage to anchorage in the same port after all other applicable tariff charges for pilotage services have been recognized as payable.

Compass Adjustment	\$310.00
Radio Direction Finder Calibration	\$310.00
Launching Vessels	\$466.00
Trial Trips, 6 hours or less (minimum \$876.00)	\$146.00 per hour
Trial Trips, over 6 hours (two pilots)	\$291.00 per hour
Shilshole Bay – Salmon Bay	\$182.00
Salmon Bay – Lake Union	\$141.00
Lake Union – Lake Washington (plus LOA zone from Webster Point)	\$182.00

proposed rule upon consideration of presentations and written comments from the public and any other interested parties.

Name of Proponent: Board of pilotage commissioners, governmental.

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule being considered will decrease the amount charged to vessels calling in Puget Sound.

The application of the proposed decrease is clear in the description of the proposal and its anticipated effects as well as the proposed tariff below.

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

October 16, 2006

Peggy Larson  
Administrator

AMENDATORY SECTION (Amending WSR 06-12-009, filed 5/26/06, effective 7/1/06)

**WAC 363-116-300 Pilotage rates for the Puget Sound pilotage district.** Effective 0001 hours (~~July 1, 2006~~) January 15, 2007, through 2400 hours June 30, 2007.

**RATE**

Cancellation Charge

LOA Zone I

Cancellation Charge – Port Angeles:

LOA Zone II

(When a pilot is ordered and vessel proceeds to a port outside the Puget Sound pilotage district without stopping for a pilot or when a pilot order is canceled less than twelve hours prior to the original ETA.)

**Waterway and Bridge Charges:**

*Ships up to 90' beam:*

A charge of \$229.00 shall be in addition to bridge fees for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle, south of Eleventh Street in any of the Tacoma waterways, in Port Gamble, or in the Snohomish River. Any vessel movements required to transit through bridges shall have an additional charge of \$109.00 per bridge.

*Ships 90' beam and/or over:*

A charge of \$311.00 shall be in addition to bridge fees for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle and south of Eleventh Street in any of the Tacoma waterways. Any vessel movements required to transit through bridges shall have an additional charge of \$217.00 per bridge.

(The above charges shall not apply to transit of vessels from Shilshole Bay to the limits of Lake Washington.)

*Two or three pilots required:*

In a case where two or three pilots are employed for a single vessel waterway or bridge transit, the second and/or third pilot charge shall include the bridge and waterway charge in addition to the harbor shift rate.

**Docking Delay After Anchoring:**

Applicable harbor shift rate to apply, plus \$236.00 per hour standby. No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is \$236.00 for every hour or fraction thereof.

**Sailing Delay:**

No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is \$236.00 for every hour or fraction thereof. The assessment of the standby fee shall not exceed a period of twelve hours in any twenty-four-hour period.

**Slowdown:**

When a vessel chooses not to maintain its normal speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater, from the predicted arrival time had the vessel maintained its normal speed capabilities, a charge of \$236.00 per hour, and each fraction thereof, will be assessed for the resultant difference in arrival time.

**Delayed Arrival – Port Angeles:**

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the vessel does not arrive within two hours of its ETA, or its ETA is amended less than six hours prior to the original ETA, a charge of \$236.00 for each hour delay, or fraction thereof, shall be assessed in addition to all other appropriate charges.

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the ETA is delayed to six hours or more beyond the original ETA, a cancellation charge shall be assessed, in addition to all other appropriate charges, if the ETA was not amended at least twelve hours prior to the original ETA.

**Tonnage Charges:**

*0 to 20,000 gross tons:*

Additional charge to LOA zone mileage of \$0.0073 a gross ton for all gross tonnage up to 20,000 gross tons.

*20,000 to 50,000 gross tons:*

Additional charge to LOA zone mileage of \$0.0751 a gross ton for all gross tonnage in excess of 20,000 gross tons up to 50,000 gross tons.

*50,000 gross tons and up:*

In excess of 50,000 gross tons, the charge shall be \$0.0900 per gross ton.

For vessels where a certificate of international gross tonnage is required, the appropriate international gross tonnage shall apply.

**Transportation to Vessels on Puget Sound:**

March Point or Anacortes	\$157.00
Bangor	153.00
Bellingham	181.00
Bremerton	135.00
Cherry Point	209.00
Dupont	97.00
Edmonds	35.00
Everett	59.00
Ferndale	199.00
Manchester	131.00
Mukilteo	53.00
Olympia	125.00
Point Wells	35.00
Port Gamble	185.00
Port Townsend (Indian Island)	223.00
Seattle	15.00
Tacoma	71.00

(a) Intraharbor transportation for the Port Angeles port area: Transportation between Port Angeles pilot station and Port Angeles harbor docks - \$15.00.

(b) Interport shifts: Transportation paid to and from both points.

(c) Intraharbor shifts: Transportation to be paid both ways. If intraharbor shift is canceled on or before scheduled reporting time, transportation paid one way only.



(d) Cancellation: Transportation both ways unless notice of cancellation is received prior to scheduled reporting time in which case transportation need only be paid one way.

(e) Any new facilities or other seldom used terminals, not covered above, shall be based on mileage x \$2.00 per mile.

**Delinquent Payment Charge:**

1 1/2% per month after 45 days from first billing.

**Nonuse of Pilots:**

Ships taking and discharging pilots without using their services through all Puget Sound and adjacent inland waters shall pay full pilotage fees on the LOA zone mileage basis from Port Angeles to destination, from place of departure to Port Angeles, or for entire distance between two ports on Puget Sound and adjacent inland waters.

**Training Surcharge:**

Effective ~~((October 1, 2005))~~ January 15, 2007, a surcharge of ~~(((\$10.00 shall be added to each vessel assignment for establishing a fund for payment of pilot trainee stipends. Thereafter, an additional \$10.00))~~ \$5.00 for each pilot trainee then receiving a stipend pursuant to the training program provided in WAC 363-116-078 shall be added to each vessel assignment. ~~((The need for the initial \$10.00 surcharge will be reviewed at each regular tariff hearing, or at such other times as may be determined by the board, where need is determined by considering the funds then available for trainee stipends and the number of trainees projected to be in the training program receiving a stipend during the tariff year.))~~

**LOA Rate Schedule:**

The following rate schedule is based upon distances furnished by National Oceanic and Atmospheric Administration, computed to the nearest half-mile and includes retirement fund contributions.

LOA	ZONE I Intra Harbor	ZONE II 0-30 Miles	ZONE III 31-50 Miles	ZONE IV 51-75 Miles	ZONE V 76-100 Miles	ZONE VI 101 Miles & Over
Up to 449	227	351	600	894	1,204	1,562
450 - 459	236	358	604	908	1,224	1,570
460 - 469	238	362	613	923	1,240	1,577
470 - 479	247	372	621	941	1,244	1,580
480 - 489	253	379	624	959	1,251	1,587
490 - 499	257	384	632	976	1,267	1,595
500 - 509	270	391	642	988	1,276	1,605
510 - 519	272	398	649	1,002	1,290	1,610
520 - 529	275	412	657	1,007	1,301	1,624
530 - 539	284	417	666	1,018	1,322	1,642
540 - 549	289	423	681	1,029	1,343	1,657
550 - 559	294	438	686	1,044	1,353	1,673
560 - 569	305	455	699	1,053	1,366	1,689
570 - 579	311	459	702	1,058	1,380	1,700
580 - 589	324	466	718	1,066	1,389	1,717
590 - 599	340	476	723	1,071	1,409	1,737
600 - 609	351	490	732	1,075	1,426	1,746
610 - 619	371	495	746	1,080	1,440	1,761
620 - 629	386	502	751	1,092	1,456	1,782
630 - 639	404	510	760	1,095	1,469	1,797
640 - 649	419	522	769	1,097	1,481	1,810
650 - 659	449	531	782	1,107	1,499	1,829
660 - 669	458	537	789	1,112	1,515	1,844
670 - 679	474	551	797	1,132	1,533	1,854
680 - 689	481	560	808	1,142	1,546	1,872
690 - 699	495	569	820	1,162	1,562	1,911
700 - 719	517	588	835	1,177	1,592	1,933
720 - 739	548	604	856	1,193	1,624	1,965
740 - 759	569	632	872	1,204	1,657	2,000

LOA	ZONE	ZONE	ZONE	ZONE	ZONE	ZONE
	I Intra Harbor	II 0-30 Miles	III 31-50 Miles	IV 51-75 Miles	V 76-100 Miles	VI 101 Miles & Over
760 - 779	591	653	894	1,224	1,689	2,027
780 - 799	621	682	908	1,240	1,717	2,062
800 - 819	646	702	926	1,247	1,746	2,093
820 - 839	666	727	947	1,267	1,782	2,118
840 - 859	694	756	965	1,281	1,809	2,154
860 - 879	720	782	983	1,314	1,844	2,185
880 - 899	746	805	1,002	1,345	1,872	2,217
900 - 919	768	831	1,019	1,379	1,911	2,248
920 - 939	791	856	1,044	1,409	1,931	2,278
940 - 959	820	878	1,059	1,440	1,965	2,306
960 - 979	839	904	1,078	1,469	2,000	2,341
980 - 999	867	926	1,096	1,499	2,027	2,370
1000 - 1019	919	986	1,145	1,579	2,122	2,473
1020 - 1039	944	1,014	1,180	1,624	2,186	2,546
1040 - 1059	972	1,039	1,215	1,673	2,249	2,621
1060 - 1079	1,002	1,076	1,250	1,724	2,319	2,699
1080 - 1099	1,032	1,107	1,288	1,773	2,387	2,780
1100 - 1119	1,061	1,140	1,327	1,828	2,458	2,864
1120 - 1139	1,094	1,176	1,368	1,881	2,532	2,949
1140 - 1159	1,126	1,209	1,407	1,938	2,609	3,038
1160 - 1179	1,159	1,244	1,450	1,996	2,686	3,129
1180 - 1199	1,195	1,282	1,492	2,056	2,768	3,223
1200 - 1219	1,231	1,321	1,536	2,118	2,850	3,318
1220 - 1239	1,267	1,360	1,582	2,181	2,934	3,417
1240 - 1259	1,304	1,400	1,629	2,246	3,023	3,519
1260 - 1279	1,343	1,441	1,678	2,313	3,114	3,625
1280 - 1299	1,383	1,486	1,729	2,383	3,205	3,734
1300 - 1319	1,425	1,528	1,779	2,453	3,302	3,845
1320 - 1339	1,468	1,574	1,834	2,527	3,400	3,961
1340 - 1359	1,510	1,622	1,889	2,602	3,502	4,080
1360 - 1379	1,556	1,669	1,944	2,681	3,606	4,200
1380 - 1399	1,602	1,719	2,004	2,760	3,714	4,328
1400 - 1419	1,650	1,771	2,061	2,842	3,825	4,457
1420 - 1439	1,699	1,824	2,124	2,928	3,941	4,590
1440 - 1459	1,751	1,879	2,189	3,014	4,059	4,727
1460 - 1479	1,800	1,934	2,252	3,105	4,180	4,868
1480 - 1499	1,855	1,991	2,320	3,197	4,304	5,013
1500 & Over	1,911	2,052	2,389	3,295	4,432	5,163

**WSR 06-21-077****PROPOSED RULES****UNIVERSITY OF WASHINGTON**

[Filed October 17, 2006, 8:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-10-016.

Title of Rule and Other Identifying Information: Chapter 478-136 WAC, Use of University of Washington facilities.

Hearing Location(s): University of Washington, Bothell Campus, Room 005, UW2 Building, 18115 Campus Way N.E., Bothell, WA 98011, on November 29, 2006, at 12:00 noon; at the University of Washington, Seattle Campus, Room 309, Husky Union Building (HUB), Box 352230, Seattle, WA 98195, on December 1, 2006, at 12:00 noon; and at the University of Washington, Tacoma Campus, Carwein Auditorium, 1st Floor, Keystone Building, 1900 Commerce Street, Tacoma, WA 98402, on December 5, 2006, at 12:00 noon.

Date of Intended Adoption: January 18, 2007.

Submit Written Comments to: Rebecca Goodwin Deardorff, Director of Rules Coordination, University of Washington, Box 355509, Seattle, WA 98195, e-mail rules@u.washington.edu, fax (206) 221-6917, by December 5, 2006.

Assistance for Persons with Disabilities: Contact UW Disability Services Office by November 17, 2006, TTY (206) 543-6452 or (206) 543-6450.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend the University of Washington's smoking policy and related rules in chapter 478-136 WAC consistent with the provisions of I-901 (chapter 70.160 RCW).

Reasons Supporting Proposal: These permanent rules are proposed to protect students, faculty, staff, and visitors from exposure to second-hand smoke in their university-associated environments and to protect life and property against fire hazards.

Statutory Authority for Adoption: RCW 28B.20.130 and chapter 70.160 RCW.

Statute Being Implemented: Chapter 70.160 RCW.

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

Name of Proponent: University of Washington, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Karen VanDusen, UW Director of Environmental Health and Safety, 229 Hall Health Center, Box 354400, Seattle, WA 98195, (206) 616-4146; and Enforcement: Vicky Stormo, UW Chief of Police, 1117 N.E. Boat Street, Box 355200, Seattle, WA 98195, (206) 543-0521.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendments to chapter 478-136 WAC do not impose a disproportionate impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed amendments to chapter 478-136 WAC are not considered to be a significant legislative rule by the University of Washington.

October 16, 2006

Rebecca Goodwin Deardorff  
UW Director of Rules Coordination

AMENDATORY SECTION (Amending WSR 02-06-020, filed 2/25/02, effective 3/28/02)

**WAC 478-136-012 Definitions.** (1) "Facilities" includes all structures, grounds, parking lots, waterfront, and airspace owned or operated by the University of Washington.

Specific rules also apply to parking lots, bicycle and skateboard use (chapter 478-116 WAC), boat moorage facilities (chapter 478-138 WAC and *University Handbook*, Volume 4, Part VII, Chapter 3, Section 2), residence halls (chapter 478-156 WAC), airspace use (*University Handbook*, Volume 4, Part VII, Chapter 3, Section 5), nonuniversity speakers on campus (*University Handbook*, Volume 4, Part VII, Chapter 3, Section 4), (~~smoking~~ (*University Handbook*, Volume 4, Part VII, Chapter 6,)) and use of facilities by the Associated Students University of Washington (ASUW), Graduate and Professional Student Senate (GPSS), and other affected organizations (*University Handbook*, Volume 3, Part III, Chapter 5).

(2) "Use of facilities" includes, but is not limited to: The holding of events, the posting and removal of signs, all forms of advertising, commercial activities, and charitable solicitation.

(3) "Approved event" means a use of university facilities which has received preliminary approval from an academic or administrative unit and which has received final approval from the committee on the use of university facilities.

AMENDATORY SECTION (Amending WSR 06-13-021, filed 6/13/06, effective 7/14/06)

**WAC 478-136-030 Limitations on use.** (1) Freedom of expression is a highly valued and indispensable quality of university life. However, university facilities may not be used in ways which obstruct or disrupt university operations, the freedom of movement, or any other lawful activities. Additionally, use of university facilities may be subject to reasonable time, place and manner restrictions.

(2) University facilities may be used for events and forums regarding ballot propositions and/or candidates who have filed for public office so long as the event has received preliminary approval by an administrative or academic unit and final approval by the committee on the use of university facilities. There are, however, certain limitations on the use of university facilities for these political activities.

(a) First priority for the use of campus facilities shall be given to regularly scheduled university activities.

(b) University facilities may be used for political purposes such as events and forums regarding ballot propositions and/or candidates who have filed for public office only when the full rental cost of the facility is paid. However, use of state funds for payment of facility rental costs is prohibited.

(c) Forums or debates may be scheduled at full facility rental rates if all parties to a ballot proposition election or all candidates who have filed for office for a given position, regardless of party affiliation, are given equal access to the use of facilities within a reasonable time.

(d) No person shall solicit contributions on university property for political uses, except in instances where this limitation conflicts with applicable federal law regarding interference with the mails.

(e) Public areas outside university buildings may be used for political purposes such as events and forums regarding ballot propositions and/or candidates who have filed for public office, excluding solicitation of funds, provided the other

normal business of the university is not disrupted and entrances to and exits from buildings are not blocked.

(f) University facilities or services may not be used to establish or maintain offices or headquarters for political candidates or partisan political causes.

(3) University facilities may not be used for private or commercial purposes such as sales, advertising, or promotional activities unless such activities serve an educational purpose, as determined by the committee on the use of university facilities.

(4) Nothing in these rules is intended to alter or affect the regular advertising, promotional, or underwriting activities carried on, by, or in the regular university media or publications. Policies concerning advertising, promotional or underwriting activities included in these media or publications are under the jurisdiction of and must be approved by their respective management or, where applicable, advisory committees, in accordance with applicable state and federal laws.

(5) In accordance with WAC 478-136-010, the university will make its facilities available only for purposes related to the educational mission of the university, as determined by the committee on the use of university facilities, including but not limited to instruction, research, public assembly, and student activities. When permission is granted to use university facilities for approved instructional or related purposes, as a condition of approval, the user of university facilities agrees to include in all materials nonendorsement statements in the form approved by the committee on the use of university facilities. "Materials" includes all communications, advertisement, and any other printed, electronic, or broadcast/telecast information related to the user's activities offered in university facilities. The committee will determine the content, size of print and placement of the nonendorsement language. The university will not make its facilities available for instructional or related purposes that compete with courses or programs offered by the university.

(6) Solicitation, or distribution of handbills, pamphlets and similar materials by anyone, whether a member of the university community or of the general public, is not permitted in those areas of campus to which access by the public is restricted or where such solicitation or distribution would significantly impinge upon the primary business being conducted.

(7) Solicitation and distribution of materials in university residence halls are governed by residence hall policies. No solicitation of a commercial nature is permitted in university residence halls. Commercial advertising may be allowed, and is restricted to certain designated areas of each residence hall, when it is related to the university's mission and approved by the department of housing and food services.

(8) Electronic amplification on the grounds of the campus is prohibited with the following exceptions:

(a) The lawn area immediately west of the Husky Union Building will be available for open-air speaking events using directional and volume-controlled speech amplification equipment provided by the university. Use of the Husky Union Building lawn site will be available to registered or official student organizations and faculty or staff groups on a first-come, first-served basis. The amplification system will be issued upon presentation of a currently valid student, fac-

ulty or staff identification card at the Husky Union Building Reservation Office.

(b) The committee on the use of university facilities may grant permission, under special circumstances, for the use of other amplification equipment on the lawn site west of the Husky Union Building or in other outdoor locations. Permission should be requested through:

University of Washington  
Secretary to the Committee on the  
Use of University Facilities  
239M Gerberding Hall  
Box 351241  
Seattle, WA 98195-1241

(or phone: 206-543-9233), sufficiently in advance of the program to allow timely consideration.

(9)(a) No person may use university facilities to camp, except if permission to do so has been granted in accordance with the provisions of chapters 478-116 and 478-136 WAC or except as provided in (b) of this subsection. "Camp" means to remain overnight, to erect a tent or other shelter, or to use sleeping equipment, a vehicle, or a trailer camper, for the purpose of or in such ways as will permit remaining overnight. Violators are subject to arrest and criminal prosecution under applicable state, county and city laws.

(b) This provision does not prohibit use of the university residence facilities in accordance with chapter 478-156 WAC or the use of facilities where the employee remains overnight to fulfill the responsibilities of his or her position or where a student remains overnight to fulfill the requirements of his or her course of study.

(10) Within the limits of applicable laws, the University of Washington is committed to establishing and maintaining safe conditions for persons attending football games in Husky Stadium or other athletic events or concerts in campus facilities. Accordingly, the rules enumerated below will apply to all such events and be strictly enforced.

(a) The possession or consumption of alcoholic beverages or illegal drugs is prohibited, except for alcohol allowed under a permit or license obtained under subsection (13) of this section. In addition to having the beverages or drugs confiscated, violators may be subject to university disciplinary action and/or legal proceedings, and removal from the events.

(b) Air horns, glass bottles, cans, picnic baskets, bota bags, ice chests, and thermoses (in excess of two-quart capacity) are prohibited. Individuals possessing such will not be admitted to, or will be removed from, Husky Stadium or other athletic or concert facilities until the items have been stored temporarily at locations provided for that purpose or disposed of in some other manner.

(c) Except for designated outdoor smoking sites, as provided in WAC 478-136-035, smoking is prohibited in ((the seating areas of)) all portions of all athletic stadia, including, but not limited to, the seating areas, public concourses, and enclosed and covered spaces. ((Smoking is permitted on pedestrian concourses.))

(d) All persons entering events in Husky Stadium or other athletic venues or events in other campus auditoria or facilities shall be subject to having all containers, bags, back-

packs, coolers, or similar items visually inspected. Security personnel shall first ask permission to visually inspect the item and advise the person that he/she may refuse. Persons who refuse to allow inspection shall be allowed to return the item to a vehicle or otherwise dispose of it, after which admission shall be allowed. Persons who refuse the visual inspection and refuse to dispose of the item shall be denied entry.

(11) Only public service announcements and acknowledgment of sponsors will be allowed on scoreboards at athletic venues.

(a) For purposes of this section, a public service announcement is defined as an announcement which promotes the activities or services of federal, state or local governments, including the University of Washington, or non-profit organizations, or generally contributes to the community's welfare and interests.

(b) In acknowledgment of their sponsorship of the scoreboards or sponsorship of events and programs, sponsors may propose public service announcements for display on the scoreboard during athletic events. The public service announcement may be accompanied by a sponsor's name or logo, but in keeping with university policy may not directly promote the products or services of the company. The text and graphics of public service announcements must be submitted at least three days in advance to the department of intercollegiate athletics for approval by the university.

(c) In addition to these public service announcements, sponsors also may be acknowledged by the display of corporate logos, trademarks, or other approved messages upon panels located on the scoreboard.

~~(12) ((The University of Washington is committed to maintaining a safe and healthful work and educational environment for all faculty, staff, students, and visitors. Accordingly, the University of Washington establishes the following smoking policy to protect nonsmokers from exposure to smoke in their university-associated environments and to protect life and property against fire hazards:~~

~~(a) Except as provided in subsections (10)(c) and (12)(b) of this section, smoking is prohibited in all university vehicles, inside all buildings owned or occupied by the university and/or used by the university's faculty, staff or students and at any outside areas or locations that may directly or indirectly affect the air supply of buildings or carry smoke into buildings.~~

~~(b) Smoking may be permitted in student rooms in university residence halls and apartments in university student housing in accordance with smoking regulations established for those facilities by the vice president for student affairs.~~

~~(c) The director of environmental health and safety may designate specific outdoor locations as no smoking areas.~~

~~(d) Any student, staff, or faculty member who violates the university smoking policy may be subject to disciplinary action. In addition, violations of the university smoking policy may be subject to enforcement by the University of Washington police department.~~

~~(13))~~ Alcoholic beverages may be possessed, sold, served, and consumed at university facilities only if the procedures set forth in this section are followed.

(a) The appropriate permits/licenses for possession, sale, service, and consumption of alcohol must be obtained from the Washington state liquor control board.

(b) Permits/licenses must be displayed during the event and all other guidelines and restrictions established by the Washington state liquor control board must be followed.

(c) Alcoholic beverages may be possessed, sold, served, and consumed at the faculty center, as so designated by the university board of regents to the Washington state liquor control board, pursuant to a spirits, beer, and wine private club license issued by the Washington state liquor control board.

(d) Alcoholic beverages may be possessed, sold, served, and consumed at university facilities leased to a commercial tenant under a lease that includes authorization for the tenant to apply and hold a license issued by the Washington state liquor control board.

(e) Except as provided in (c) and (d) of this subsection, alcoholic beverages may be possessed, sold, served, and consumed at university facilities only under permits/licenses issued by the Washington state liquor control board and only as follows:

(i) Events at which alcohol is to be sold must be approved by the committee on the use of university facilities and an application to the committee must be accompanied by a request for written authorization under (f) of this subsection or proof that the seller holds an appropriate license; and

(ii) Events at athletic venues at which alcohol is to be possessed, sold, served, or consumed must not be within the spectator viewing areas and must have restricted attendance, and a university unit, or an individual or organization applying for a permit/license must have obtained approval under (f) of this subsection; and

(iii) A university unit, or an individual or organization applying for a permit/license must have obtained approval under (f) of this subsection; and

(iv) Sale, service, and consumption of alcohol is to be confined to specified room(s) or area(s) specified on the license or permit. Unopened containers may not be sold or served. No alcohol is permitted to be taken off-premises.

(f) Written authorization to apply for a special occasion license to sell alcoholic beverages or a banquet permit to serve and consume alcoholic beverages at university facilities must be obtained from the committee on the use of university facilities prior to applying for a special occasion license or banquet permit from the Washington state liquor control board. Authorization should be requested through the University of Washington, secretary to the committee on the use of university facilities, sufficiently in advance of the program to allow timely consideration. (Note: Some license applications must be filed with the Washington state liquor control board at least thirty days or more before the event.) Written authorization to apply for such a permit/license shall accompany the application filed with the Washington state liquor control board.

(g) Consumption, possession, dispensation, or sale of alcohol is prohibited except for persons of legal age.

NEW SECTION

**WAC 478-136-035 No smoking policy for university facilities.** (1) The University of Washington is committed to maintaining a safe and healthful work and educational environment for all faculty, staff, students, and visitors. Accordingly, the University of Washington establishes the following no smoking policy, consistent with chapter 70.160 RCW (I-901), to protect individuals from exposure to second-hand smoke in their university-associated environments and to protect life and property against fire hazards.

(a) Except as provided in subsection (1)(b) and (c) of this section, smoking of all kinds is prohibited in all university facilities, including, but not limited to, vehicles, inside all buildings owned, occupied, or managed by the university and/or used by the university's faculty, staff, students, or visitors, and at any outside areas or locations, including, but not limited to, bus shelters, benches, and walkways.

(b) Smoking, while not permitted in on-campus residence halls, may be permitted in a limited portion of designated university student housing in accordance with smoking regulations established for those facilities by the vice-provost for student life.

(c) Smoking may be permitted in specific designated outdoor locations approved by the director of environmental health and safety as smoking areas in accordance with chapter 70.160 RCW and published on the environmental health and safety web site. Signage also identifies the designated locations.

(2) Violations of the university smoking policy are subject to enforcement by the University of Washington police department or other jurisdictional law enforcement agencies with regulatory responsibility. In addition, any student, staff, or faculty member who violates the university no smoking policy may be subject to disciplinary action.

**WSR 06-21-092**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed October 17, 2006, 10:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-13-084.

Title of Rule and Other Identifying Information: WAC 296-20-03014 Which drugs have specific limitations?, "Injectables."

Hearing Location(s): Department of Labor and Industries, Room S117, 7273 Linderson Way S.W., Tumwater, WA 98501, on November 27, 2006, at 1:30 p.m.

Date of Intended Adoption: December 29, 2006.

Submit Written Comments to: Jami Lifka, Office of the Medical Director, P.O. Box 44321, Olympia, WA 98504-4321, e-mail lifk235@lni.wa.gov, fax (360) 902-6315, by November 27, 2006.

Assistance for Persons with Disabilities: Contact Office of Information and Assistance by November 15, 2006, TTY (360) 902-5797 or (360) 902-4941.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Under the proposed rule it would be clear under what conditions the department will pay for intrathecal pumps. A worker with cancer or a spinal cord injury may be eligible for an intrathecal pump. Also hospitalized patients and those within forty-eight hours post surgery would be eligible. For safety reasons, under the proposed WAC, payment for permanent placement of the intrathecal infusion pumps would not be allowed for the treatment of chronic, noncancer pain resulting from non-catastrophic injuries.

Reasons Supporting Proposal: While the pumps may temporarily be modestly effective, there are serious safety concerns. A systematic review done by the University of Washington revealed many serious adverse events including: A potential for life-threatening overdose, potentially life-threatening infection, granulomatous mass formation at the catheter tip endangering neural structures in the spinal canal, impotence, disabling edema, and disabling pruritis (itching). In addition to these serious problems, the pumps' components often break, migrate, or malfunction, thus requiring additional procedures.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030.

Statute Being Implemented: RCW 51.04.020, 51.04.030.

Rule is necessary because of state court decision, *Roller v. Department of Labor and Industries*, 128 Wash. App. 922, 117 P.3d 385 (2005).

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

Name of Agency Personnel Responsible for Drafting: Jamie Lifka, 7273 Linderson Way S.E., Tumwater, WA, (360) 902-4941; Implementation: Gary Franklin, MD, MPH, Office of the Medical Director, (360) 902-5020; and Enforcement: Bob Malooly, Assistant Director of Insurance Services, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule relates only to internal governmental operations that are not subject to violation by a nongovernment party, and per RCW 34.05.310 (4)(b) is exempt from the small business economic impact statement requirement.

A cost-benefit analysis is not required under RCW 34.05.328. This rule relates only to internal governmental operations that are not subject to violation by a nongovernment party, and per RCW 34.05.328 (5)(b)(ii) is exempt from the cost-benefit analysis requirement.

October 17, 2006

Gary Weeks  
Director

AMENDATORY SECTION (Amending WSR 00-01-040, filed 12/7/99, effective 1/20/00)

**WAC 296-20-03014 Which drugs have specific limitations? (1) Injectables. An injectable is a sterile pharmacologic or biologic preparation intended for injecting, infusing or otherwise introducing into the subcutaneous tissue, muscular tissue, a vein, an artery, an organ, spinal intrathecal**

space, or other body cavities or spaces. Prescriptions for injectable opioids or other analgesics, sedatives, antihistamines, tranquilizers, psychotropics, vitamins, minerals, food supplements, and hormones are not covered.

Exceptions: The department or self-insurer covers injectable medications under the following circumstances.

(a) Indicated injectable drugs for the following:

- Inpatients; or
- During emergency treatment of a life-threatening condition/injury; or
- During outpatient treatment of severe soft tissue injuries, burns or fractures when needed for dressing or cast changes; or
- During the perioperative period and the postoperative period, not to exceed forty-eight hours from the time of discharge.

(b) Prescriptions of injectable insulin, heparin, anti-migraine medications, or impotency treatment, when proper and necessary.

(c) Intrathecal infusion pumps and injectable medications prescribed for administration via the intrathecal pump are covered only under the following circumstances (see Table 1):

Table 1:

Coverage exceptions for injectable medication for administration via the intrathecal infusion pump

	Covered	Covered with preauthorization	Noncovered
<u>Injectable medication prescribed for administration via the intrathecal infusion pump for the treatment of pain</u>			
• When cancer or other end-stage disease is an accepted condition		X	
• As part of an inpatient hospitalization	X		
• During the perioperative and postoperative period, not to exceed forty-eight hours from the time of discharge	X		
• In noncancer chronic pain condition or injury			X
<u>Injectable medication prescribed for administration via the intrathecal infusion pump for the treatment of spasticity</u>			
• When spinal cord injury is an accepted condition		X	

(2) **Noninjectable scheduled drugs administered by other than the oral route.** Nonoral routes of administration of scheduled drugs that result in systemic availability of the drug equivalent to injectable routes will also not be covered.

(3) **Sedative-hypnotics.** During the chronic stage of an industrial injury or occupational disease, payment for scheduled sedatives and hypnotics will not be authorized.

(4) **Benzodiazepines.** Payment for prescriptions for benzodiazepines are limited to the following types of patients:

- Hospitalized patients;

- Claimants with an accepted psychiatric disorder for which benzodiazepines are indicated;
- Claimants with an unrelated psychiatric disorder that is retarding recovery but which the department or self-insurer has temporarily authorized treatment (see WAC 296-20-055) and for which benzodiazepines are indicated; and
- Other outpatients for not more than thirty days for the life of the claim.

(5) **Cancer.** When cancer or any other end-stage disease is an accepted condition, the department or self-insurer may authorize payment for any indicated scheduled drug and by any indicated route of administration.

(6) **Spinal cord injuries.** When a spinal cord injury is an accepted condition, the department or self-insurer may authorize payment for anti-spasticity medications by any indicated route of administration (e.g., some benzodiazepines, Baclofen). Prior authorization is required.

Note: See the department formulary for specific limitations and prior authorization requirements of other drugs.

**WSR 06-21-093**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
 [Filed October 17, 2006, 10:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-14-092.

Title of Rule and Other Identifying Information: WAC 296-127-01392 Stage rigging mechanics (nonstructural), 296-127-01393 Street sweepers (nonconstruction), and 296-127-01394 Tinting and coating installer.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Room S119, Tumwater, WA, on November 27, 2006, at 1:30 p.m.

Date of Intended Adoption: December 5, 2006.

Submit Written Comments to: Sally Elliott, P.O. Box 44400, Olympia, WA 98504-4400, e-mail [yous235@lni.wa.gov](mailto:yous235@lni.wa.gov), fax (360) 902-5292, by November 27, 2006.

Assistance for Persons with Disabilities: Contact Sally Elliott by November 15, 2006, at [yous235@lni.wa.gov](mailto:yous235@lni.wa.gov) or (360) 902-6411.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Prevailing wage rates on public work projects are determined and enforced according to the trade, occupation, or "classification" of work actually performed. The purpose of this rule making is to write scope of work descriptions for job classifications that have wage rates but no written scope of work descriptions. This rule making will include scope of work descriptions for street sweepers, solar controls for windows, and stage rigging mechanics.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: Chapter 39.12 RCW and RCW 43.22.270.

Statute Being Implemented: Chapter 39.12 RCW and RCW 43.22.270.

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

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

Name of Agency Personnel Responsible for Drafting: Dave Soma, Tumwater, Washington, (360) 902-5330; Implementation and Enforcement: Patrick Woods, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is specifically exempt from the small business economic impact statement requirement because the proposed rule will not impose more than minor costs on businesses (see RCW 19.85.030 (1)(a)).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Trista Zugel, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-5860, fax (360) 902-5292, e-mail zugy235@lni.wa.gov.

October 17, 2006

Gary Weeks

Director

#### NEW SECTION

**WAC 296-127-01392 Stage rigging mechanics (non-structural).** For the purpose of the Washington state public works law, chapter 39.12 RCW, stage rigging mechanics perform nonpermanent mechanical and operational stage rigging work for theatrical performances and productions (regardless of the size of the production), and is work requiring the use of manual hydraulic systems, pneumatic systems, motor systems, electro-mechanic and stage rigging systems and methods for controlling and linking these.

The work includes, but is not limited to:

- Assembling, working with, or disassembling cables, pulleys, tackle, winches, automated scenery, or other gear associated with the lifting or supporting of objects above the floor.
- Installing, maintaining and dismantling the physical means of support for the overhead equipment related to the stage production. Set motor power and truss attachment gear.
- Maintaining suspended stage equipment.

Work performed under this scope does not include: Any work processes as described above which are necessary as part of a public works construction project for new construction, improvement, alteration or repair to maintain structural integrity to an existing system or theatrical facility.

#### NEW SECTION

**WAC 296-127-01393 Street sweepers (nonconstruction).** For the purpose of the Washington state public works law, chapter 39.12 RCW, street sweepers perform cleaning or sweeping work under a public works maintenance contract that requires the use of power brooms (sweepers), power vacuums, power blowers, or power washers. This work includes, but is not limited to:

- The cleaning or sweeping of streets, roads, fire lanes, parking lots, school grounds (campus streets), game courts and similar paved surfaces and other nonroadway surfaces or

locations on or adjacent to schools, office complexes, parks, and similar publicly owned or maintained facilities or locations.

- Driving a street sweeping vehicle to clean streets, parking lots, and other similar surfaces of debris. Incidental hand sweeping or backpack air blowing may be required in tight areas where the sweeper brooms cannot reach. Fills vehicle water tanks and operates the controls to activate rotary brushes and water spray nozzles to facilitate debris collection, cleaning, and in order to control dust. Disposes of waste material. Performs minor vehicle maintenance of the sweeper by cleaning it, checking fluids and tire pressure.

The cleaning work covered by this scope is limited to a maintenance contract for the cleaning of streets or similar exterior surfaces.

Work performed under this scope does not include: Sweeping work necessary and in conjunction with a public works construction project to maintain and keep streets or similar surfaces clear of debris or the clean-up of streets or similar surfaces necessary during and after a public works construction project and prior to acceptance. Operation of street sweeping equipment during and after a public works construction project would fall under the classification of Operating engineers (equipment operators), WAC 296-127-01354, and operation of hand held or backpack air blowers or hand sweeping would fall under the classification of Laborers, WAC 296-127-01344.

Classifications:

Equipment operators (riding-type)

Power brooms

Power vacuums

Power blowers

Power washers

#### NEW SECTION

#### **WAC 296-127-01394 Tinting and coating installer.**

For the purpose of the Washington state public works law, chapter 39.12 RCW, tint and coating installers apply film, tints, and coatings to transparent surfaces. The work includes, but is not limited to:

- The application of any film, tints, and coatings to the interior or exterior of existing windows, glazed doors, partitions, shop fronts, etc. This includes special dyes, UV absorbers and metal coatings. This work also includes tints and coatings applied to reduce heat gain and glare, and low-emittance coatings to improve both heating and cooling performance.

**WSR 06-21-094**

**PROPOSED RULES**

**DEPARTMENT OF**

**LABOR AND INDUSTRIES**

[Filed October 17, 2006, 10:36 a.m.]

Supplemental Notice to WSR 06-18-077.

Preproposal statement of inquiry was filed as WSR 06-06-067.



Title of Rule and Other Identifying Information: Chapter 296-46B WAC, Electrical safety standards, administration, and installation.

Date of Intended Adoption: November 21, 2006.

Submit Written Comments to: Sally Elliott, Department of Labor and Industries, P.O. Box 44400, Olympia, WA 98504-4400, e-mail [yous235@lni.wa.gov](mailto:yous235@lni.wa.gov), fax (360) 902-5292, by November 1, 2006.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is extending the comment period to November 1, 2006, to allow additional interested parties to comment on the proposed rule.

October 17, 2006

Gary Weeks

**WSR 06-21-095**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed October 17, 2006, 10:38 a.m.]

Supplemental Notice to WSR 06-18-079.

Preproposal statement of inquiry was filed as WSR 06-09-068.

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

Date of Intended Adoption: November 21, 2006.

Submit Written Comments to: Sally Elliott, Department of Labor and Industries, P.O. Box 44400, Olympia, WA 98504-4400, e-mail [yous235@lni.wa.gov](mailto:yous235@lni.wa.gov), fax (360) 902-5292, by November 1, 2006.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is extending the comment period to November 1, 2006, to allow additional interested parties to comment on the proposed rule.

October 17, 2006

Gary Weeks

**WSR 06-21-104**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
(Board of Hearing and Speech)

[Filed October 17, 2006, 12:52 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-11-092.

Title of Rule and Other Identifying Information: New sections WAC 246-828-620 Definitions—Sexual misconduct and 246-828-625 Sexual misconduct, board of hearing and speech.

Hearing Location(s): Department of Health, Point Plaza East Building, Room 152/153, 310 Israel Road S.W., Tumwater, WA 98501, on December 1, 2006, at 9:15 a.m.

Date of Intended Adoption: December 1, 2006.

Submit Written Comments to: Leann Yount, P.O. Box 47869, Olympia, WA 98504-7869, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4918, by November 17, 2006.

Assistance for Persons with Disabilities: Contact Leann Yount by November 17, 2006, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal responds to the governor issued Executive Order 06-03, that was issued on May 4, 2006, promoting public safety by defining sexual misconduct by health care providers regulated by boards, commissions, and the secretary.

The board of hearing and speech (board) did not have any sexual misconduct rules in place when the executive order was issued. In order to comply with the executive order, the board promptly initiated sexual misconduct rule making. This proposal was drafted using the department of health, secretary profession model rules and then tailored to describe unprofessional conduct by those license holders under the board's jurisdiction.

Reasons Supporting Proposal: Sexual misconduct is unprofessional conduct. This proposal will define specific acts and conduct that constitute unprofessional conduct. This proposal will help health care providers understand what behavior must be avoided and the consequences for engaging in the behavior. In addition, this proposal will help consumers understand what they should expect from their health care providers.

Statutory Authority for Adoption: RCW 18.35.161 and 18.130.050.

Statute Being Implemented: RCW 18.35.161 and 18.35.162.

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

Name of Proponent: Department of health, board of hearing and speech, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Leann Yount, 310 Israel Road S.W., Tumwater, WA 98501, (360) 236-4856.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The board of hearing and speech has reviewed the proposal and has not conducted a small business economic impact statement because the proposal does not impose more than minor costs on businesses within the industry, as per RCW 19.85.030.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Leann Yount, P.O. Box 47869, Olympia, WA 98504-7869, phone (360) 236-4856, fax (360) 236-4918, e-mail [leann.yount@doh.wa.gov](mailto:leann.yount@doh.wa.gov).

October 16, 2006

Leann Yount

Program Manager

NEW SECTION

**WAC 246-828-620 Definitions—Sexual misconduct.** The following definitions are applicable to the sexual misconduct rule, WAC 246-828-625:

(1) "Health care information" means any information, whether oral or recorded in any form or medium that identifies or can readily be associated with the identity of, and relates to the health care of, a patient or client.

(2) "Health care provider" means an individual applying for a credential or credentialed in a profession listed in chapter 18.35 RCW: Hearing instrument fitter/dispensers, audiologists, and speech-language pathologists.

(3) "Key party" means immediate family members and others who would be reasonably expected to play a significant role in the health care decisions of the patient or client and includes, but is not limited to, the spouse, domestic partner, sibling, parent, child, guardian and person authorized to make health care decisions of the patient or client.

(4) "Legitimate health care purpose" means activities for examination, diagnosis, treatment, and personal care of patients or clients, including palliative care, as consistent with community standards of practice for the profession. The activity must be within the scope of practice of the health care provider.

(5) "Patient" or "client" means an individual who receives health care from a health care provider.

## SEXUAL MISCONDUCT

### NEW SECTION

**WAC 246-828-625 Sexual misconduct.** (1) A health care provider shall not engage, or attempt to engage, in sexual misconduct with a current patient, client, or with a key party of a current client or patient, inside or outside the health care setting. Sexual misconduct shall constitute grounds for disciplinary action. Sexual misconduct includes but is not limited to:

- (a) Sexual intercourse;
- (b) Touching the breasts, genitals, anus or any sexualized body part except as consistent with accepted community standards of practice for examination, diagnosis and treatment and within the health care practitioner's scope of practice;
- (c) Rubbing against a patient or client or key party for sexual gratification;
- (d) Kissing;
- (e) Hugging, touching, fondling or caressing of a romantic or sexual nature;
- (f) Not allowing a patient or client privacy to dress or undress except as may be necessary in emergencies or custodial situations;
- (g) Not providing the patient or client a gown or draping except as may be necessary in emergencies;
- (h) Dressing or undressing in the presence of the patient, client or key party;
- (i) Removing patient or client's clothing or gown or draping without consent, emergent medical necessity or being in a custodial setting;
- (j) Encouraging masturbation or other sex act in the presence of the health care provider;
- (k) Masturbation or other sex act by the health care provider in the presence of the patient, client or key party;

(l) Dating or beginning a sexual or romantic relationship before the professional relationship ends;

(m) Discussing the sexual history, preferences or fantasies of the health care provider;

(n) Any behavior, gestures, or expressions that may reasonably be interpreted as seductive or sexual;

(o) Making statements regarding the patient, client or key party's body, appearance, sexual history, or sexual orientation other than for legitimate health care purposes;

(p) Sexually demeaning behavior including any verbal or physical contact which may reasonably be interpreted as demeaning, humiliating, embarrassing, threatening or harming a patient, client or key party;

(q) Photographing or filming the body or any body part or pose' of a patient, client, or key party, other than for legitimate health care purposes; and

(r) Showing a patient, client or key party sexually explicit photographs, other than for legitimate health care purposes.

(2) A health care provider shall not:

(a) Offer to provide health care services in exchange for sexual favors;

(b) Use health care information to contact the patient, client or key party for the purpose of engaging in sexual misconduct;

(c) Use health care information or access to health care information to meet or attempt to meet the health care provider's sexual needs.

(3) After a health care provider has terminated providing services to the client or patient, a health care provider shall not engage, or attempt to engage, in dating or beginning a sexual or romantic relationship with a former client or patient or key party of a former client or patient if:

(a) There is a significant likelihood that the former patient, client or key party will seek or require additional services from the health care provider; or

(b) There is an imbalance of power, influence, opportunity and/or special knowledge held or acquired by the health care provider related to the professional relationship.

(4) When evaluating whether a health care provider is prohibited from engaging, or attempting to engage, in sexual misconduct, the board of hearing and speech will consider factors, including but not limited to:

(a) Documentation of a formal termination and the circumstances of termination of the provider-patient relationship;

(b) Transfer of care to another health care provider;

(c) Duration of the provider-patient relationship;

(d) Amount of time that has passed since the last health care services to the patient or client;

(e) Communication between the health care provider and the patient or client between the last health care services rendered and commencement of the personal relationship;

(f) Extent to which the patient's or the client's personal or private information was shared with the health care provider;

(g) Nature of the patient or client's health condition during and since the professional relationship;

(h) The patient or client's emotional dependence and vulnerability;

(i) Normal revisit cycle for the profession and service; and

(j) Patient, client or key party initiation or consent does not excuse or negate the health care provider's responsibility.

(5) These rules do not prohibit:

(a) Providing health care services in case of emergency where the services cannot or will not be provided by another health care provider;

(b) Contact that is necessary for a legitimate health care purpose and that meets the standard of care appropriate to that profession; or

(c) Providing health care services for a legitimate health care purpose to a person who is in a preexisting established personal relationship with the health care provider where there is no evidence of, or potential for, exploiting the patient or client.

### WSR 06-21-105

#### PROPOSED RULES

#### DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed October 17, 2006, 12:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-13-013.

Title of Rule and Other Identifying Information: Establishes new WAC 246-817-450 Definitions and 246-817-460 Sexual misconduct rules for dentists. The proposed rules establish clear and consistent definitions of sexual misconduct by dentists regulated under chapter 18.32 RCW.

Hearing Location(s): Department of Health, Point Plaza East Building, Room 152, 310 Israel Road S.E., Tumwater, WA 98501, on December 7, 2006, at 6:30 p.m.

Date of Intended Adoption: December 7, 2006.

Submit Written Comments to: Lisa Anderson, Program Manager, Department of Health, Dental Quality Assurance Commission, P.O. Box 47867, Olympia, WA 98504-7867, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 664-9077, by November 20, 2006.

Assistance for Persons with Disabilities: Contact Lisa Anderson, Program Manager, by November 15, 2006, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules will establish clear definitions for sexual misconduct by dentists. In its efforts to ensure public safety, the commission is proposing rules to help dentists avoid sexual misconduct and to educate consumers about what they should expect from health care providers.

Reasons Supporting Proposal: The governor issued Executive Order 06-03, Investigation of Health Professional Sexual Misconduct, which requires a comprehensive definition of sexual misconduct. Currently, dentistry does not have definitions or rules for sexual misconduct. The proposed rules will establish a clear and consistent definition of sexual misconduct for the dental profession and establish expecta-

tions for conduct by dentists. The governor has requested that rules be adopted by December 31, 2006.

Statutory Authority for Adoption: RCW 18.32.0365, 18.130.050 (1) and (12).

Statute Being Implemented: RCW 18.130.180.

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

Name of Proponent: Department of health, dental quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Lisa Anderson, Department of Health, P.O. Box 47867, Olympia, WA 98504-7867, (360) 236-4863.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department of health has reviewed the proposal and determined that no small business economic impact statement is required because the proposed rules do not impose more than minor costs to any businesses within the industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Lisa Anderson, Department of Health Dental Program, P.O. Box 47867, Olympia, WA 98504-7867, phone (360) 236-4863, fax (360) 664-9077, e-mail [Lisa.Anderson@doh.wa.gov](mailto:Lisa.Anderson@doh.wa.gov).

October 16, 2006

Lisa Anderson

Program Manager

Dental Quality Assurance Commission

### SEXUAL MISCONDUCT RULES FOR DENTISTS

#### NEW SECTION

**WAC 246-817-450 Definitions.** (1) "Health care information" means any information, whether oral or recorded in any form or medium that identifies or can readily be associated with the identity of, and relates to the health care of, a patient or client.

(2) "Health care provider" means an individual applying for a credential or credentialed specifically as a dentist as defined in chapter 18.32 RCW.

(3) "Key party" means immediate family members and others who would be reasonably expected to play a significant role in the health care decisions of the patient or client and includes, but is not limited to, the spouse, domestic partner, sibling, parent, child, guardian and person authorized to make health care decisions of the patient or client.

(4) "Legitimate health care purpose" means activities for examination, diagnosis, treatment, and personal care of patients or clients, including palliative care, as consistent with community standards of practice for the profession. The activity must be within the scope of practice of the dentist.

(5) "Patient" or "client" means an individual who receives health care services from a dentist.

#### NEW SECTION

**WAC 246-817-460 Sexual misconduct.** (1) A dentist shall not engage, or attempt to engage, in sexual misconduct

with a current patient, client, or key party, inside or outside the health care setting. Sexual misconduct shall constitute grounds for disciplinary action. Sexual misconduct includes but is not limited to:

- (a) Sexual intercourse;
- (b) Touching the breasts, genitals, anus or any sexualized body part except as consistent with accepted community standards of practice for examination, diagnosis and treatment and within the dentist's scope of practice;
- (c) Rubbing against a patient or client or key party for sexual gratification;
- (d) Kissing;
- (e) Hugging, touching, fondling or caressing of a romantic or sexual nature;
- (f) Examination of or touching genitals without using gloves;
- (g) Not allowing a patient or client privacy to dress or undress except as may be necessary in emergencies or custodial situations;
- (h) Not providing the patient or client a gown or draping except as may be necessary in emergencies;
- (i) Dressing or undressing in the presence of the patient, client or key party;
- (j) Removing patient or client's clothing or gown or draping without consent, emergent medical necessity or being in a custodial setting;
- (k) Encouraging masturbation or other sex act in the presence of the dentist;
- (l) Masturbation or other sex act by the dentist in the presence of the patient, client or key party;
- (m) Suggesting or discussing the possibility of a dating, sexual or romantic relationship after the professional relationship ends;
- (n) Terminating a professional relationship for the purpose of dating or pursuing a romantic or sexual relationship;
- (o) Soliciting a date with a patient, client or key party;
- (p) Discussing the sexual history, preferences or fantasies of the dentist;
- (q) Any behavior, gestures, or expressions that may reasonably be interpreted as seductive or sexual;
- (r) Making statements regarding the patient, client or key party's body, appearance, sexual history, or sexual orientation other than for legitimate health care purposes;
- (s) Sexually demeaning behavior including any verbal or physical contact which may reasonably be interpreted as demeaning, humiliating, embarrassing, threatening or harming a patient, client or key party;
- (t) Photographing or filming the body or any body part or pose of a patient, client, or key party, other than for legitimate health care purposes; and
- (u) Showing a patient, client or key party sexually explicit photographs, other than for legitimate health care purposes.

(2) A dentist shall not:

- (a) Offer to provide health care services in exchange for sexual favors;
- (b) Use health care information to contact the patient, client or key party for the purpose of engaging in sexual misconduct;

(c) Use health care information or access to health care information to meet or attempt to meet the dentist's sexual needs.

(3) A dentist shall not engage, or attempt to engage, in the activities listed in subsection (1) of this section with a former patient, client or key party within two years after the dentist-patient/client relationship ends.

(4) After the two-year period of time described in subsection (3) of this section, a dentist shall not engage, or attempt to engage, in the activities listed in subsection (1) of this section if:

(a) There is a significant likelihood that the patient, client or key party will seek or require additional services from the dentist; or

(b) There is an imbalance of power, influence, opportunity and/or special knowledge of the professional relationship.

(5) When evaluating whether a dentist is prohibited from engaging, or attempting to engage, in sexual misconduct, the commission will consider factors, including but not limited to:

(a) Documentation of a formal termination and the circumstances of termination of the dentist-patient relationship;

(b) Transfer of care to another health care provider;

(c) Duration of the dentist-patient relationship;

(d) Amount of time that has passed since the last health care services to the patient or client;

(e) Communication between the dentist and the patient or client between the last health care services rendered and commencement of the personal relationship;

(f) Extent to which the patient's or client's personal or private information was shared with the dentist;

(g) Nature of the patient or client's health condition during and since the professional relationship;

(h) The patient or client's emotional dependence and vulnerability; and

(i) Normal revisit cycle for the profession and service.

(6) Patient, client or key party initiation or consent does not excuse or negate the dentist's responsibility.

(7) These rules do not prohibit:

(a) Providing health care services in case of emergency where the services cannot or will not be provided by another health care provider;

(b) Contact that is necessary for a legitimate health care purpose and that meets the standard of care appropriate to that profession; or

(c) Providing health care services for a legitimate health care purpose to a person who is in a preexisting, established personal relationship with the dentist where there is no evidence of, or potential for, exploiting the patient or client.

## WSR 06-21-106

### PROPOSED RULES

### DEPARTMENT OF HEALTH

(Board of Hearing and Speech)

[Filed October 17, 2006, 12:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-13-050.

Title of Rule and Other Identifying Information: WAC 246-828-510 Continuing education requirements for licensed hearing instrument fitter/dispensers, audiologists, and speech-language pathologists, 246-828-500 Citation and purpose, 246-828-530 Exceptions for continuing education, and 246-828-550 Programs approved by the board of hearing and speech.

Hearing Location(s): Department of Health, Point Plaza East, 310 Israel Road S.E., Tumwater, WA 98504, on December 1, 2006, at 9:15 a.m.

Date of Intended Adoption: December 1, 2006.

Submit Written Comments to: Leann Yount, P.O. Box 47869, Olympia, WA 98504-7869, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4918, by November 17, 2006.

Assistance for Persons with Disabilities: Contact Leann Yount by November 17, 2006, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2002, legislation passed as HB 2589, chapter 310, Laws of 2002, that changed audiologists and speech language pathologists from certified to licensed and also mandated CE requirements before renewing their license.

Prior to the passage of this legislation, the law required ten hours of continuing education for hearing instrument fitter/dispensers before renewing their license. There was not [were no] CE requirements for audiologists and speech-language pathologists because they were certified and not licensed at that time. This law requires hearing instrument fitter dispensers, speech-language pathologists, and audiologists to obtain thirty hours of CE in a three-year period prior to renewing their licenses. One CE hour must be on infection control and twenty CE hours must be through board of hearing and speech approved programs. The remaining ten CE hours may be obtained through internet, self study, etc.

Currently, there are four different CE WACs that only address hearing instrument fitter/dispensers. This proposal will combine those WACs into one, as WAC 246-828-510, and will pertain to hearing instrument fitter/dispensers, audiologists, and speech-language pathologists. In addition, this proposal will also repeal WAC 246-828-500, 246-828-530, and 246-828-550.

Reasons Supporting Proposal: This proposal assures rules are consistent with law. In addition, this proposal will also improve and increase the ability of hearing instrument fitter/dispensers, audiologists, and speech-language pathologists to deliver the highest possible quality professional care.

Statutory Authority for Adoption: RCW 18.35.161.

Statute Being Implemented: RCW 18.35.090.

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

Name of Proponent: Board of hearing and speech, governmental.

Name of Agency Personnel Responsible for Drafting: Karen Kelley, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4856; Implementation and Enforcement: Leann Yount, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4856.

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

Small Business Economic Impact Statement

**1. Briefly Describe the Proposed Rule:** In 2002 legislation passed as HB 2589, chapter 310, Laws of 2002, that changed audiologists and speech-language pathologists from certified to licensed and also mandated CE requirements before renewing their license.

Prior to the passage of this legislation, the law required ten hours of continuing education for hearing instrument fitter/dispensers before renewing their license. There was not [were no] CE requirements for audiologists and speech-language pathologists because they were certified and not licensed at that time. This law requires hearing instrument fitter dispensers, speech-language pathologists, and audiologists to obtain thirty hours of CE in a three year period prior to renewing their licenses. One CE hour must be on infection control and twenty CE hours must be through board of hearing and speech approved programs. The remaining ten CE hours may be obtained through internet, self study, etc.

Currently, there are four different CE WACs that only address hearing instrument fitter/dispensers. This proposal will combine those WACs into one, as WAC 246-828-510, and will pertain to hearing instrument fitter/dispensers, audiologists, and speech-language pathologists. In addition, this proposal will also repeal WAC 246-828-500, 246-828-530, and 246-828-550.

Overall, these proposed changes will improve and increase the ability of the hearing instrument fitter/dispenser, audiologist, and speech-language pathologist to deliver the highest possible quality of care.

**2. Is a Small Business Economic Impact Statement (SBEIS) Required for this Rule?** Yes, because portions of the proposed rule will impose more than minor costs on small businesses.

**3. Which Industries are Affected by this Rule?**

SIC	DESCRIPTION	TOTAL UNITS	TOTAL EMP	Avg. EMP < 50	Avg. EMP >= 50
3842	Surgical appliances and supplies	37	733	4.7	70.0
5999	Miscellaneous retail stores, nec	959	6,333	5.6	63.8
5047	Medical and hospital equipment	666	3,339	3.8	86.2
8049	Offices of health practitioners, ne	913	5,450	4.5	102.9

**4. What are the Costs of Complying with this Rule for Small Businesses (Those with fifty or Fewer Employees) and for the Largest 10% of Businesses Affected?:** Both the audiologists and speech-language pathologists want to have a mandatory CE requirement. There will be a cost for this requirement of approximately \$20.00 per hour. This would be a total of \$600.00 for 30 hours of CE to be submitted every three years. CE courses can be completed outside of work time. The maximum cost of compliance is \$600.00.

**5. Does the Rule Impose a Disproportionate Impact on Small Businesses?**

SIC Industry Code and Title	SIC Industry Description	Average # of Employees for Smallest Businesses	Average # of Employees for 10% of Largest Businesses	Maximum Costs of Rule Change	Average Cost Per Employees Small Businesses	Average Cost Per Employees Large Businesses
3842	Surgical appliances and supplies	4.7	70.0	\$600	\$128	\$9
5999	Miscellaneous retail stores, nec	5.6	63.8	\$600	\$107	\$9
5047	Medical and hospital equipment	3.8	86.2	\$600	\$158	\$7
8049	Offices of health practitioners	4.5	102.9	\$600	\$133	\$6

If we assume providers are the business owners and pay for the costs of the CE requirements then there is no disproportionate impact. However, if some providers are hired by larger businesses and the providers must pay for their own cost of CE requirements then there may be disproportionate impact as the table shows.

**6. If the Rule Imposes a Disproportionate Impact on Small Businesses, What Efforts were Taken to Reduce that Impact (or Why is it not "Legal and Feasible" to do so)?** There is little to no disproportionate impact on small businesses.

This proposal will update the current hearing instrument fitter/dispenser CE rules by combining language from the four current CE rules into one, allowing practitioners to complete thirty hours of CE over a three-year period rather than ten hours each year, reducing the amount of reporting that is required. The proposal will also require that audiologist and speech-language pathologists complete CE.

**7. How are Small Businesses Involved in the Development of this Rule?** Three rule-writing workshops were held and all interested parties were notified. Draft rules were also reviewed and discussed at several board of hearing and speech meetings. These meetings are open public meetings, and notices of the meetings are sent to interested parties. All comments received were considered when drafting the proposal.

A copy of the statement may be obtained by contacting Leann Yount, P.O. Box 47869, Olympia, WA 98504-7869, phone (360) 236-4856, fax (360) 236-4918, e-mail leann.yount@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Leann Yount, P.O. Box 47869, Olympia, WA 98504-7869, phone (360) 236-4856, fax (360) 236-4918, e-mail leann.yount@doh.wa.gov.

October 16, 2006  
 Leann Yount  
 Program Manager

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

**WAC 246-828-510 Continuing education.** ~~((+) Licensed hearing instrument fitter/dispensers must complete ten hours of continuing education as required in chapter 246-12 WAC, Part 7.~~

~~(2) A maximum of two hours may be in the area of practice management. Practice management includes, but is not limited to, marketing, computer recordkeeping, and personnel issues.))~~ The ultimate aim of continuing education is to ensure the highest quality professional care. The objectives are to improve and increase the ability of the hearing instrument fitter/dispenser, audiologist and speech-language pathologist to deliver the highest possible quality professional care and keep the professional abreast of current developments.

Continuing education consists of educational activities designed to review existing concepts and techniques and to convey information and knowledge about advances in hearing instrument fitting/dispensing, audiology and speech-language pathology fields as applied to the work setting.

(1) Continuing education requirement. Licensees must complete a minimum of thirty hours of continuing education every three years including:

(a) At least one hour on infection control.

(b) At least twenty hours of the total hours must be from board-approved programs. Board-approved programs shall include:

(i) Courses, seminars, workshops and postgraduate programs offered by accredited educational institutions. These educational activities shall be recorded on an official transcript or certificate stating the number of continuing education units completed.

(ii) Courses, seminars and workshops offering continuing clock or continuing educational units offered by profession-related organizations or industries. These units shall be accepted with proof of completion.

(c) The remaining hours must not exceed ten hours and may be obtained in the following areas:

(i) Attendance at a continuing education program having a featured speaker(s) or panel, which has been sponsored or endorsed by a profession-related organization or industry.

(ii) Participation as a speaker or panel member in a continuing education program which has been sponsored or endorsed by a profession-related organization or industry. A maximum of eight hours, including preparation time, may be applied to the total three-year requirement.

(iii) Completion of a written, video, internet, or audio continuing education program which has been sponsored or endorsed by a profession-related organization or industry. Only programs with tests that are independently graded shall be accepted.

(2) General information.

(a) The effective date of the continuing education requirement shall be three years after the licensee's 2007 renewal date.

(b) The board shall not grant credit for preparation time, except as provided in subsection (1)(c)(ii) of this section.

(3) The board may grant an exception for continuing education requirements under certain circumstances including, but not limited to, severe illness. The licensee must submit to the board for review, a written request for exception. The board will approve or deny the request.

(4) This section incorporates by reference the requirements of chapter 246-12 WAC, Part 7.

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

WAC 246-828-500	Citation and purpose.
WAC 246-828-530	Exceptions for continuing education.
WAC 246-828-550	Programs approved by the board of hearing and speech.

**WSR 06-21-107**

**PROPOSED RULES**

**DEPARTMENT OF HEALTH**

(Medical Quality Assurance Commission)

[Filed October 17, 2006, 12:58 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-919-615 Delegation of authority to initiate investigations (physicians) and 246-918-010 Delegation of authority to initiate investigations (physician assistants). This rule pertains to delegation of authority to department of health (DOH) staff and one clinical member of the commission to initiate investigations. These are new sections.

Hearing Location(s): Holiday Inn Select, One South Grady Way, Renton, WA 98055, on December 1, 2006, at 9:00 a.m.

Date of Intended Adoption: December 1, 2006.

Submit Written Comments to: Beverly A. Thomas, Program Manager, P.O. Box 47866, Olympia, WA 98504, web

site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4768, by November 17, 2006.

Assistance for Persons with Disabilities: Contact Beverly Thomas by November 17, 2006, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: A recent court of appeals decision *Client A. v. Yoshinaka*, 128 Wn. App. 833; 116 P.3d 1081 (2005) reinforced not only the authority, but the responsibility of disciplinary boards and commissions to direct investigation activities in disciplinary cases. The decision also stated that boards and commissions may choose to delegate the authority to staff, but the authority must delegate that responsibility in a rule. The medical quality assurance commission has decided to begin the rule process to delegate this activity to a case management team comprised of DOH staff and a clinical member of the commission.

Reasons Supporting Proposal: The commission had expressly delegated the authority to DOH staff to initiate investigations in a 2004 written policy. This delegation assisted in moving cases more quickly through the disciplinary process and eliminated a significant workload for the commission. However, the court of appeals decision that the disciplining authority must determine that a compliant merits investigation has had the negative effects of slowing cases down and increasing workload. The proposed rule will reinstate the ability for a case management team to make the initial investigation decision.

Statutory Authority for Adoption: RCW 18.71.017, 18.130.050 and 18.71A.020.

Statute Being Implemented: RCW 18.130.080.

Rule is necessary because of state court decision, *Client A. v. Yoshinaka*, 128 Wn. App. 833; 116 P.3d 1080 (2005).

Name of Proponent: Department of health, medical quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Beverly A. Thomas, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4788.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has determined that the proposed rule relates to internal governmental operations that are not subject to violation by nongovernmental party. Therefore, according to RCW 19.85.030, no small business economic impact statement needs to be prepared.

A cost-benefit analysis is not required under RCW 34.05.328. The department has determined that the proposed rule relates to internal governmental operations that are not subject to violation by a nongovernment party. Therefore, according to RCW 34.08.328, a preliminary cost-benefit analysis is not required.

October 10, 2006

Blake T. Maresh  
Executive Director

**NEW SECTION**

**WAC 246-918-010 Delegation of authority to initiate investigations.** The commission delegates to a case management team the authority to initiate an investigation when the

commission or the department receives information that a licensee may have engaged in unprofessional conduct or may be unable to practice with reasonable skill and safety by reason of a mental or physical condition. The case management team will consist of, at a minimum, a commission member licensed under chapter 18.71 or 18.71A RCW, the executive director or his or her designee, an investigator and a staff attorney.

#### NEW SECTION

**WAC 246-919-615 Delegation of authority to initiate investigations.** The commission delegates to a case management team the authority to initiate an investigation when the commission or the department receives information that a licensee may have engaged in unprofessional conduct or may be unable to practice with reasonable skill and safety by reason of a mental or physical condition. The case management team will consist of, at a minimum, a commission member licensed under chapter 18.71 or 18.71A RCW, the executive director or his or her designee, an investigator and a staff attorney.

**WSR 06-21-109**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed October 17, 2006, 1:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-13-054.

Title of Rule and Other Identifying Information: The board of registration for architects is proposing changes to the following rules: WAC 308-12-010 State board of registration for architects, 308-12-025 Application for examination, 308-12-050 Registration by reciprocity, 308-12-081 The seal, 308-12-115 Definitions, and 308-12-320 Renewal of license.

The board is proposing adding the following rules: WAC 308-12-111 Board member rules of conduct—Activities incompatible with public duties—Financial interests in transactions, 308-12-180 Brief adjudicative proceedings, and 308-12-190 Records required for the brief adjudicative proceeding.

The board is proposing the repeal of the following rules: WAC 308-12-210 Application of brief adjudicative proceedings, 308-12-220 Preliminary record in brief adjudicative proceedings, and 308-12-230 Conduct of brief adjudicative proceedings.

Hearing Location(s): Department of Licensing, Conference Room 2209, 2nd Floor, 405 Black Lake Boulevard S.W., Olympia, WA 98501-9045, on November 29, 2006, at 3:00 p.m.

Date of Intended Adoption: December 19, 2006.

Submit Written Comments to: Lorin Doyle, Program Manager, 405 Black Lake Boulevard S.W., Olympia, WA 98501-9045, e-mail ldoyle@dol.wa.gov, fax (360) 664-1465, by November 17, 2006.

Assistance for Persons with Disabilities: Contact Elizabeth Stancil by November 9, 2006, TTY (360) 664-8885 or (360) 664-6597.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To add clarity to rule language and reflect a current course of the profession.

Statutory Authority for Adoption: RCW 18.96.060 Board—Rules—Quorum—Hearings.

Statute Being Implemented: RCW 18.96.060 Board—Rules—Quorum—Hearings.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Brett W. Lorentson, 405 Black Lake Boulevard S.W., Olympia, WA 98501-9045, (360) 664-1576; Implementation: Lorin Doyle, 405 Black Lake Boulevard S.W., Olympia, WA 98501-9045, (360) 664-1387; and Enforcement: Joe Vincent, Jr., 405 Black Lake Boulevard S.W., Olympia, WA 98501-9045, (360) 664-1386.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not disproportionately affect small business.

A cost-benefit analysis is not required under RCW 34.05.328. The department of licensing is not one of the named agencies that must comply with this statute.

October 16, 2006

Joe Vincent, Jr.

Administrator

AMENDATORY SECTION (Amending WSR 02-11-082, filed 5/14/02, effective 6/14/02)

**WAC 308-12-010 State board ((of registration)) for architects.** (1) Meetings: The Washington state board ((of registration)) for architects, hereafter called the board, shall hold its regular public meeting annually ((in September)) during the second quarter of the calendar year. Additional public meetings may be held at such times and places as the board may deem necessary. Notice of all public meetings will be issued as required by the Open Public Meetings Act, chapter 42.30 RCW.

((Executive sessions may be held by the board in conjunction with all public meetings, and at such other times as the board shall deem necessary and for the primary purpose of preparing and grading examinations, approving applications, conducting written and oral examinations, examining reciprocity applications, and acting on applications for reinstatement of revoked licenses, and confidential matters between candidates or registrants and the board.))

(2) Rules of order. The latest edition of *Robert's Rules of Order* will govern the conduct of business at meetings and sessions of the board.

(3) Officers. At the regular annual public meeting the board will elect a chair, a vice-chair and a secretary for the ensuing year.

(4) Quorum. A quorum at any regular or additional meeting or session will consist of four members of the board.



(5) Rule changes. Prior to and during any adoption, amendments, or repeal of any rule, the board of registration will conduct its business in accordance with chapter 34.04 RCW the Administrative Procedure Act.

~~((6) Web site. The board will post current applicant and licensee names in addition to other licensing information on the web site.))~~

AMENDATORY SECTION (Amending WSR 98-20-061, filed 10/2/98, effective 11/2/98)

**WAC 308-12-025 Application for examination.** (1)

The application to begin the examination process must be submitted on forms approved by the board, accompanied by academic and/or practical experience verification to document eligibility under the provisions of RCW 18.08.350. As determined by the board and consistent with National Council of Architectural Registration Boards (NCARB) recommendations, applicants with an accredited professional architectural degree may take portions of the examination concurrently with practical work experience.

(2) The board has adopted the National Council of Architectural Registration Boards (NCARB) intern development training program (IDP training requirement) as the board approved structured intern training program. Completion of the training requirements of the intern development program must be validated by the NCARB in a council training record sent to the board office. Completion of the training requirements of the IDP is the equivalent of three years of practical work experience.

(3) Applications for the examination must be accompanied by the application fee for the examination as established by the director and published in chapter 308-12 WAC, architect fees. The application fee to begin the examination process will not be refunded.

AMENDATORY SECTION (Amending WSR 02-11-082, filed 5/14/02, effective 6/14/02)

**WAC 308-12-050 Registration by reciprocity.** Pursuant to RCW 18.08.400, the board will recommend to the director that the director grant a certificate of registration to a currently registered architect in any jurisdiction recognized by NCARB provided:

(1) That such applicant presents evidence that the applicant has satisfactorily completed an examination equivalent to the examination required of Washington state registrants.

(2) Documentation of NCARB certification may be accepted by the board as satisfactory evidence that the applicant's qualifications and experience are equivalent to the qualifications and experience required of a person registered under RCW 18.08.350. Reciprocity candidates who cannot meet the IDP training requirement must have a minimum of two years of experience as a licensed architect.

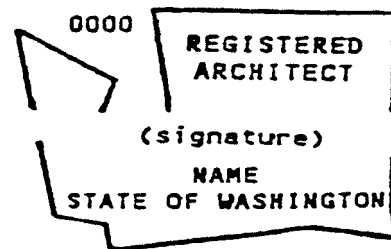
~~((2))~~ (3) That the applicant provides a typed summary ~~((analysis))~~ of chapter 18.08 RCW and chapter 308-12 WAC. The summary must ~~((include an analysis of each section of chapter 18.08 RCW and chapter 308-12 WAC in))~~ be of sufficient detail to demonstrate a thorough understanding of the law and rules ~~((as determined by the board)).~~

~~((3))~~ (4) That the board will require an oral interview of any candidate for registration by reciprocity, except that the oral interview may be set aside in cases where documentary or other evidence shows sufficient information for the board to reach judgment.

~~((4))~~ (5) That the architect's current state license is not delinquent or inactive. The current state license cannot be under suspension, disciplinary restrictions, or in process of disciplinary review. Reciprocity applicants are held to the same qualifications as initial applicants for registration.

AMENDATORY SECTION (Amending WSR 02-11-082, filed 5/14/02, effective 6/14/02)

**WAC 308-12-081 The seal.** Every architect licensed in the state of Washington shall have a seal of design authorized by the board, bearing the registrant's name, license number and the legend "Registered architect, state of Washington." ~~((The seal with the registrant's countersignature must appear on all documents filed for permits for construction with public authorities.))~~ A facsimile of the seal appears herewith.



The following must be signed and sealed:

(1) All technical submissions required for building permits or regulatory approvals that are filed with authorities having jurisdiction.

(2) Drawings prepared by the architect must be signed and sealed on each sheet.

(3) Specifications and other technical submissions need only be sealed on the cover, title page, and all pages of the table of contents.

No architect's stamp or countersignature will be affixed to any drawings not prepared by the architect or his or her regularly employed subordinates, or reviewed by the architect. An architect who signs or seals drawings or specifications that he or she has reviewed is responsible to the same extent as if prepared by that architect.

NEW SECTION

**WAC 308-12-111 Board member rules of conduct—Activities incompatible with public duties—Financial interests in transactions.** (1) When a member of the board either owns a beneficial interest in or is an officer, agent, employee, or member of an entity; or individual which is engaged in a transaction involving the board, the member shall:

(a) Recuse him or herself from the board discussion regarding the specific transaction;

(b) Recuse him or herself from the board vote on the specific transaction; and

(c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific transaction.

(2) The prohibition against discussion and voting set forth in subsection (1)(a) and (c) of this section shall not prohibit the member of the board from using his or her general expertise to educate and provide general information on the subject area to the other members.

(3)(a) "Transaction involving the board" means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that the member in question believes, or has reason to believe:

- (i) Is, or will be, the subject of board action; or
- (ii) Is one to which the board is or will be a party; or
- (iii) Is one in which the board has a direct and substantial proprietary interest.

(b) "Transaction involving the board" does not include the following:

Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by a member; or a claim, case, lawsuit, or similar matter if the member did not participate in the underlying transaction involving the board that is the basis for the claim, case, or lawsuit. Rule making is not a "transaction involving the board."

(4) "Board action" means any action on the part of the board, including, but not limited to:

- (a) A decision, determination, finding, ruling, or order; and
- (b) A grant, payment, award, license, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

(5) The following are examples of possible scenarios related to Board member rules of conduct—Activities incompatible with public duties—Financial interests in transactions.

(a) **EXAMPLE 1:**

The state board for architects disciplines licensed architects in Washington. The board is conducting an investigation involving the services provided by a licensed architect. One of the members of the board is currently serving a subcontractor to that architect on a large project. The board member must recuse himself from any board investigation, discussion, deliberation and vote with respect to disciplinary actions arising from licensed architect services.

(b) **EXAMPLE 2:**

The state board for architects makes licensing decisions on applications for licensure. An applicant for licensure owns a school construction business which employs licensed architects, including one of the board members. The board member must recuse himself from any board investigation, discussion, deliberation and vote with respect to his employer's application for licensure.

(c) **EXAMPLE 3:**

The state board for architects makes licensing decisions on applications from registered architects in another state or territory of the United States, the District of Columbia, or another country. The board can grant licensure if that individual's qualifications and experience are equivalent to the qualifications and experience required of a person registered under Washington law. An out-of-state applicant is employed as an architect by a multinational corporation that is planning to build its world headquarters in Washington and has hired a board member's firm as the architect for the project. The board member must recuse himself from any board investigation, discussion, deliberation and vote with respect to the sufficiency of the out-of-state architect's qualifications and experience.

(6) Recusal disclosure. If recusal occurs pursuant to this rule, the member of the board shall disclose to the public the reasons for his or her recusal from any board action whenever recusal occurs. The board staff shall record each recusal and the basis for the recusal.

AMENDATORY SECTION (Amending WSR 02-11-082, filed 5/14/02, effective 6/14/02)

**WAC 308-12-115 Definitions.** (1) Accredited architectural degree—A professional degree received from the current list of accredited schools of architecture as published by the National Architectural Accrediting Board.

(2) Practical architectural work experience—Practical work experience performing activities involved in the practice of architecture, as defined in RCW 18.08.320, under the direct supervision of an architect. The board may approve similar practical work experience for full or partial credit and will accept intern development program experience as defined in the IDP training guidelines.

(3) Intern development program (IDP)—A structured internship training program designed to provide a profession-wide, comprehensive program that contributes to the development of competent architects. IDP consists of training requirements that must be satisfied in order to complete the program. The National Council of Architectural Registration Boards (NCARB) maintains and validates the continuing, comprehensive record of internship training.

~~(4) ((Supervision—The word "supervision" in RCW 18.08.320 means the periodic observation of materials and work in progress or completed work to observe the general compliance with plans, specifications, and design and planning concepts, and does not include responsibility for the superintendence of construction processes, site conditions, operations equipment, personnel, maintenance of a safe place to work, or any safety in, on, or about the site of the work.~~

~~(5) Principal—The word "principal" as used herein shall mean an architect who is registered in this state and is the person in charge of the architectural practice, either alone or in concert with others who qualify as herein described, and:~~

~~(a) Who is a shareholder, if the practice is through a professional service corporation; or~~

~~(b) A partner if the practice is through a partnership; or~~

~~(c) The proprietor if the practice is through a proprietorship; or~~

~~(d) The designated architect of a stock corporation.~~

~~(6)) The title "intern architect" may be used while enrolled in the structured intern program recognized by the board, in WAC 308-12-025(2), and working under the direct supervision of a licensed architect.~~

(5) Direct supervision—The phrase, "under the direct supervision of an architect" as used in connection with architectural work experience for qualification and eligibility for the examination shall refer to any of the following conditions or situations.

(a) The supervising architect is an employer who is knowledgeable of the performance and competence of the applicant.

(b) The supervising architect works for the same employer as the applicant, and is either the direct superior of the applicant, or a co-worker knowledgeable and responsible for the efforts of the applicant.

~~((7) Design build—A means of providing design and construction services in which a single entity is responsible for both services.~~

~~(8)) (6) Review—A continuous process of examination, evaluation, and direction throughout the development of the documents, which includes the ability to control the final product.~~

~~((9)) (7) Construction-related experience—Work on a construction site in any of the construction-related trades, including, but not limited to, carpentry, laboring, electrical, plumbing, sheet metal and roofing. Work in the construction office, including, but not limited to, estimating or construction administration.~~

(8) "Technical submission" means designs, drawings, specifications, studies, and other technical documents prepared in the course of practicing architecture.

#### NEW SECTION

##### **WAC 308-12-180 Brief adjudicative proceedings.** (1)

The board will conduct brief adjudicative proceedings as provided for in RCW 34.05.482 through 34.05.494 of the Administrative Procedure Act. Brief adjudicative proceedings may be used whenever a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleges violations of chapters 18.08 and 18.235 RCW, administrative rules in Title 308 WAC or any statutes or rules that specifically govern the defined practices of architects. Brief adjudicative proceedings may also be used in place of formal adjudicative hearings whenever the board issues a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleging that an applicant or licensee's conduct, act(s), or condition(s) constitute unlicensed practice or unprofessional conduct as that term is defined under chapter 18.235 RCW, the Uniform Regulation of Business and Professions Act.

(2) Brief adjudicative proceedings may be used to determine the following issues, including, but not limited to:

(a) Whether an applicant has satisfied terms for reinstatement of a license after a period of license restriction, suspension, or revocation;

(b) Whether an applicant is eligible to sit for a professional licensing examination;

(c) Whether a sanction proposed by the board is appropriate based on the stipulated facts;

(d) Whether an applicant meets minimum requirements for an initial or renewal application;

(e) Whether an applicant has failed the professional licensing examination;

(f) Whether an applicant or licensee failed to cooperate in an investigation by the department;

(g) Whether an applicant or licensee was convicted of a crime that disqualifies the applicant or licensee from holding the specific license sought or held;

(h) Whether an applicant or licensee has defaulted on educational loans;

(i) Whether an applicant or licensee has violated the terms of a final order issued by the board or the board's designee;

(j) Whether a person has engaged in false, deceptive, or misleading advertising; or

(k) Whether a person has engaged in unlicensed practice.

(3) In addition to the situations enumerated in subsection (2) of this section, the board may conduct brief adjudicative proceedings instead of formal adjudicative hearings whenever the parties have stipulated to the facts and the only issues presented are issues of law, or whenever issues of fact exist but witness testimony is unnecessary to prove or disprove the relevant facts.

#### NEW SECTION

**WAC 308-12-190 Records required for the brief adjudicative proceeding.** The records for the brief adjudicative proceeding shall include:

(1) Renewal or reinstatement of a license:

(a) All correspondence between the applicant and the board about the renewal or reinstatement;

(b) Copies of renewal notice(s) sent by the department of licensing to the licensee;

(c) All documents received by the board from or on behalf of the licensee relating to information, payments or explanations that have been provided to the board.

(2) Applicants for certification/licensing:

(a) Original complete application with all attachments as submitted by applicant;

(b) Copies of all supplementary information related to application review by staff or board member;

(c) All documents relied upon in reaching the determination of ineligibility;

(d) All correspondence between the applicant and the board about the application or the appeal.

(3) Default of student loan payments:

(a) Copies of notices to the board showing the name and other identification information of the individual claimed to be in default on student loan payments;

(b) Copies of identification information corresponding to the person who is certified/licensed by the board that relate to the identity of the individual in default;

(c) All documents received by the board from or on behalf of the licensee relating to rebutting such identification;

(d) Certification and report by the lending agency that the identified person is in default or nonpayment on a federally or state-guaranteed student loan or service-conditional scholarship; or

(e) A written release, if any, issued by the lending agency stating that the identified person is making payment on the loan in accordance with a repayment agreement approved by the lending agency.

(4) Determination of compliance with previously issued board order:

(a) The previously issued final order or agreement;

(b) All reports or other documents submitted by, or at the direction of, the license holder, in full or partial fulfillment of the terms of the final order or agreement;

(c) All correspondence between the license holder and the program regarding compliance with the final order or agreement; and

(d) All documents relied upon by the program showing that the license holder has failed to comply with the previously issued final order or agreement.

AMENDATORY SECTION (Amending WSR 02-11-082, filed 5/14/02, effective 6/14/02)

**WAC 308-12-320 Renewal of licenses.** (1) The license renewal date for architects will be the architect's birth date. Licensees who fail to pay the license renewal fee within thirty days of license expiration date will be subject to the late payment penalty fee as set forth in RCW 18.08.430 and WAC 308-12-326. ~~((Architects whose renewal fees are delinquent will be listed with the state building officials.))~~

(2) The renewal period for architects is two years.

(3) Assessment of delinquent fees will be based on the number of years delinquent multiplied by one-half of the two-year renewal fee or the fee for one year.

(4) A registrant who fails to pay a renewal fee for a period of five years or more may be reinstated upon payment of all delinquent renewal fees and a penalty fee. Assessment of delinquent fees will be based on the number of years delinquent multiplied by one-half of the two-year renewal fee or the fee for one year. In addition to the payment of delinquent fees and a penalty fee the registrant shall submit the following:

(a) A summary of the current law and rules governing architects.

(b) A professional resume of architectural activities during the delinquent period, in sufficient detail to demonstrate to the board maintenance of minimum skills.

(c) A detailed explanation of the circumstances surrounding the reason the license was allowed to expire.

The board may require additional evidence as needed to verify minimum competency and qualifications. The registrant may be required to appear before the board or a representative member thereof where questions of competency remain.

(5) Registrants who withdraw from the practice of architecture, and exceed five years in an inactive status, shall request reinstatement in writing to the board and shall submit the following:

(a) A summary of the current law and rules governing architects.

(b) A professional resume of architectural activities during the delinquent period, in sufficient detail to demonstrate to the board maintenance of minimum skills.

(c) A detailed explanation of the circumstances surrounding the reason the license was in an inactive status for more than five years.

The board may require additional evidence as needed to verify minimum competency and qualifications. The registrant may be required to appear before the board or a representative member thereof where questions of competency remain.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-12-210	Application of brief adjudicative proceedings.
WAC 308-12-220	Preliminary record in brief adjudicative proceedings.
WAC 308-12-230	Conduct of brief adjudicative proceedings.

#### **WSR 06-21-110**

#### **PROPOSED RULES**

#### **DEPARTMENT OF LICENSING**

[Filed October 17, 2006, 1:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-15-121.

Title of Rule and Other Identifying Information: Funeral directors and embalmers: Amends WAC 308-47-010, 308-47-020, 308-47-030, 308-47-070, 308-48-010, 308-48-030, 308-48-031, 308-48-040, 308-48-080, 308-48-150, 308-48-160, 308-48-180, 308-48-200, 308-48-210, 308-48-350, 308-48-510, 308-48-520, 308-48-530, 308-48-550, 308-48-590, 308-48-780, 308-48-800, 308-49-168 and 308-49-170 and repeals WAC 308-48-110 and 308-49-120.

Hearing Location(s): Holiday Inn Select, One South Grady Way, Renton, WA 98055, on November 28, 2006, at 10:00 a.m.

Date of Intended Adoption: December 19, 2006.

Submit Written Comments to: Dennis McPhee, P.O. Box 9012, Olympia, WA 98507, e-mail dmcphoe@dol.wa.gov, fax (360) 664-1495, by November 10, 2006.

Assistance for Persons with Disabilities: Contact Joe Vincent, Jr. by November 10, 2006, TTY (360) 586-2788 or (360) 664-1555.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments bring existing rules into uniformity with SSB 5752 and update existing rules for clarity. The proposal repeals two rules, WAC 308-48-110 and 308-49-120, which are outdated.

Reasons Supporting Proposal: These amendments are needed to bring rules into uniformity with SSB 5752 and to clarify existing rules.

Statutory Authority for Adoption: RCW 18.39.175, chapter 34.05 RCW.

Statute Being Implemented: Chapter 18.39 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: This rule proposal has no fiscal impact. The amendments are needed to bring rules into uniformity with SSB 5752.

Name of Proponent: Department of licensing, board of funeral directors and embalmers, governmental.

Name of Agency Personnel Responsible for Drafting: Dennis McPhee, 405 Black Lake Boulevard, Olympia, WA 98507, (360) 664-1555; Implementation and Enforcement: Joe Vincent, Jr., 405 Black Lake Boulevard, Olympia, WA 98507, (360) 664-1555.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No additional costs are imposed on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Proposal has no economic impact.

October 17, 2006

Joe Vincent, Jr.

Administrator

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

**WAC 308-47-010 Definitions.** (1) "**Authorizing agent**" means the person(s) legally entitled to control the disposition of the human remains.

(2) (~~"Crematory" the building or area of a building that houses a cremation chamber, to be used for the cremation of human remains.~~)

(~~3~~) "**Crematory authority or endorsement**" the legal entity and their authorized representatives, licensed to perform cremations.

(~~4~~) (3) "**Cremation chamber**" means the enclosed space in a crematory in which the cremation process takes place.

(~~5~~) "~~Cremation" means the reduction of human remains to bone fragments, in a crematory, by means of incineration.~~

(~~6~~) "~~Cremated human remains" means the end products of cremation.~~

(~~7~~) (4) "**Pulverization**" is the reduction of identifiable bone fragments to unidentifiable dimensions by manual or mechanical means following cremation.

(~~8~~) (5) "**Processing**" is the removal of foreign objects from cremated human remains and may include pulverization.

(~~9~~) (6) "**Cremation container**" means the container in which the human remains must be enclosed before being placed in the cremation chamber for cremation. A cremation container must:

- Be composed of a combustible material. If the remains are delivered to a crematory in a noncombustible container,

the authorizing agent must be informed of the disposition of the container, if the container is not actually used in the cremation process. Any transfer of human remains to combustible containers at the crematory must be in accordance with chapter 18.39 RCW, Title 308 WAC, and applicable public health laws.

- Be rigid enough for placement into the cremation chamber.

- Assure protection to the health and safety of the crematory operators and others.

- Provide a proper covering for the human remains.

- Be resistant to leakage or spillage of body fluids.

(~~10~~) (7) "**Sealable container**" means any container in which cremated human remains can be placed and closed to prevent leakage or spillage of cremated human remains.

(~~11~~) (8) "**Holding facility**" means an area designated for the care, storage and holding of human remains prior to disposition. A holding facility must:

- Comply with any applicable public health laws.

- Preserve the dignity of the human remains.

- Recognize the personal integrity, health and safety of employees and others.

- Be secure from access by anyone other than authorized personnel.

(~~12~~) "~~Human remains" means the body of a deceased person.~~

(~~13~~) (9) "**Cadaver**" means (~~the body of a deceased person,~~) human remains or any part thereof, which (~~has~~) have been donated to science for medical research purposes.

(~~14~~) (10) "**Body parts**" means limbs and other portions of human anatomy that have been removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy or medical research.

(~~15~~) (11) "**Commingling**" means the mixing of cremated human remains of more than one deceased person.

(~~16~~) (12) "**Residue**" means the cremation products that may unavoidably remain in the cremation chamber after manual sweeping techniques are performed.

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

**WAC 308-47-020 Identification of human remains.** A crematory must not take custody of unidentified human remains. Before accepting human remains, the crematory must verify that identification is attached to the cremation container. Upon accepting human remains for cremation, the crematory must make a permanent record of the following:

- Name of deceased.

- Date of death.

- Place of death.

- Name and relationship of authorizing agent.

- Name of firm engaging crematory services.

- Description of the cremation container to be consumed with the human remains.

- An identification number assigned each human remains and inscribed on a metal disc or metal tag. The metal identification disc or tag must identify the crematory and accompany the human remains through each phase of the cremation, processing and packaging. The disc or tag identification

number must be recorded on all paperwork regarding a human remains (~~and in the crematory log~~).

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

**WAC 308-47-030 Holding human remains for cremation.** (1) A crematory must not accept and hold human remains for cremation unless the human remains are contained in a cremation container.

(2) A crematory must not accept human remains in a cremation container having evidence of body fluid leakage.

(3) Human remains that are not embalmed must be held only within a mechanically or commercially acceptable refrigerated facility of adequate capacity, with a maximum temperature of 48 degrees Fahrenheit, or ~~((in compliance with applicable public health regulations))~~ as determined by chapter 246-500 WAC.

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

**WAC 308-47-070 Disposition of cremated human remains.** (1) A crematory must keep a permanent record of all cremations performed and the disposition or release of the cremated human remains. The record must include the following information:

- Date of death.
- Date burial transit permit was issued.
- Date of delivery of human remains to the crematory.
- Date of cremation.
- Name of crematory operator performing the cremation.
- Name of person performing packaging, and date of packaging.
- Date of release ~~((or date of disposition))~~ and the name of the individual(s) to whom the cremated human remains were released; or
- Date of disposition of the cremated human remains.

(2) When cremated human remains have been in the possession of a crematory, funeral establishment or cemetery for a period of ~~((two years))~~ ninety days or more, the entity holding the cremated human remains may arrange for disposition in any legal manner, provided the entity:

- Attempts to contact the authorizing agent for disposition instructions by registered mail.
- Informs the authorizing agent(s) of the procedures that will be followed if disposition instructions are not received.
- Informs the authorizing agent(s) that disposition will take place if disposition instructions are not received within sixty days of initiation of the contact process.
- Informs the authorizing agent(s) that recovery of the cremated human remains, after the disposition, may or may not be possible.
- Maintains a permanent record of the location of the disposition.

(3) No entity making disposition of cremated human remains under subsection (2) of this section will be liable for the disposition or nonrecoverability of cremated human remains.

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

**WAC 308-48-010 Definitions.** For the purpose of these rules, the following term(s) will be construed as follows:

~~((1)) "Licensee" will mean any person or entity holding a license, registration, endorsement, or permit issued by the director.~~

~~((2))~~ "In its employ" as used in RCW 18.39.148 will include personnel who are employed on a part-time basis as well as personnel who are employed on a full-time basis.

AMENDATORY SECTION (Amending WSR 97-21-061, filed 10/14/97, effective 11/14/97)

**WAC 308-48-030 Care of human remains.** (1) Funeral establishments, funeral directors, embalmers, ~~((apprentices))~~ interns, employees or agents while providing for the care and handling of human remains shall:

(a) Comply with all applicable Washington state laws, rules and regulations related to health or the handling, transportation or disposition of human remains.

(b) Not perform any act which will tend to affect adversely the dignity, individual integrity or the respectful and reverential handling and burial or other customary disposition of human remains.

(c) Upon receipt of the human remains, obtain the identity of the human remains as established by the institution, agency, or individual releasing the remains(-

~~((d))~~ and place an identification bracelet or tag on the ankle or wrist of the remains. In the case of a remains that must be placed in a protective pouch due to the condition of the remains, an identification bracelet or tag should be placed inside the pouch and a second bracelet or tag attached to the exterior of the pouch.

~~((e))~~ (d) Follow the directions of the individual or individuals that has/have the right to control the disposition of the human remains.

~~((f))~~ (e) Record and maintain the following information:

- (i) Name of deceased;
- (ii) Date of death;
- (iii) Place of death;
- (iv) Name and relationship of person(s) having the right to control the disposition;
- (v) Date and time of receipt of remains;
- (vi) Date and time of refrigeration and/or embalming;
- (vii) Method, date and location of disposition.

~~((g))~~ (f) Not separate any organs, viscera or appendages of a human remains from any other portion of the remains for a separate or different disposition. The entire noncremated human remains that the funeral establishment has received and has possession of must be maintained and disposed of as one entity.

~~((h))~~ (g) Provide refrigerated holding of a human remains for which embalming has not been authorized. In addition to these regulations, the handling and refrigeration of human remains shall be governed by chapter 246-500 WAC.

(2) The care and preparation for burial or other disposition of all human remains shall be private. No one shall be

allowed in the embalming or preparation rooms while a human remains is being embalmed or during the course of an autopsy except the licensee, his authorized employees, and public officials in the discharge of their duties. This rule shall not apply to duly authorized medical personnel employed in a case ~~((, nor to members of the immediate family of the deceased))~~ or those authorized to be present by the decedent's next of kin.

(3) Every licensee shall provide a written itemization of any property, money, jewelry, possessions or other items of significant value found on a human remains in the licensee's care, custody or control to the decedent's next of kin or the proper authorities.

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

**WAC 308-48-031 Funeral establishment facility, equipment, and embalming and preparation room standards.** A funeral establishment or branch establishment shall:

(1) Have an exclusive area/office at an identified location for conducting the business which is accessible to the public.

(2) Provide private and secure area(s) for holding human remains which will include:

(a) A mechanically or commercially acceptable refrigerated holding area of adequate capacity for unembalmed remains with a maximum temperature of 48 degrees Fahrenheit or as determined by chapter 246-500 WAC;

(b) A sink with hot and cold running water;

(c) Covered receptacles for soiled linens, bandages, refuse and other waste materials which meet OSHA, WISHA, department of health and any other applicable regulations;

(d) Adequate chemicals for the disinfection of human remains and the equipment used in handling and caring for human remains;

(e) Chemical storage that meets OSHA, WISHA, department of health and any other applicable regulations.

(3) Provide rest rooms that are available for staff and the public.

(4) In the case where the holding of human remains is not provided at this facility, provide the identification of the facility upon request to the board and the individual or individuals that has/have the right to control the disposition of the human remains where this establishment or branch provides for the holding and/or preparation of the human remains entrusted to its care (this off-site facility must meet the requirements of subsection (2) of this section).

(5) Provide for the privacy of uncasketed human remains in vehicles used for transportation of the remains by screening, curtains, or adequately tinted windows.

(6) Provide that if embalming is performed at the establishment or branch, no embalming of a human remains shall be performed in a funeral establishment or branch establishment except in a room set aside exclusively for embalming of a human remains. Such room shall be maintained and kept in a clean sanitary condition, and every embalming and prepara-

tion room shall be constructed, equipped, and maintained as follows:

(a) The surfaces of the floor, walls, and ceiling shall be covered with tile or other hard, smooth, impervious washable material.

(b) The room shall be adequately lighted and adequately ventilated. The ventilation shall be provided by an exhaust fan ~~((or by an appropriate air conditioning unit))~~.

(c) The room shall be equipped and provided with hot and cold running water, a utility sink, and cabinets, closets or shelves for instruments and supplies.

(d) The room shall be equipped with adequate sewage and waste disposal and drainage facilities and systems and comply with OSHA/WISHA standards.

(e) The doors shall be tight closing and rigid and any windows of the room shall be so maintained as to obstruct any view into such room. The room's entry door(s) must be labeled "Private" or "Authorized Entry Only," and must be locked at all times.

(f) The embalming or preparation table shall be nonporous.

(g) The room shall be equipped with proper and convenient covered receptacles for refuse.

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

**WAC 308-48-040 Control of human remains. ((+))** No licensee will, directly or indirectly, assume control of any human remains without having first obtained authority from the person(s) ~~((; their responsible representatives, or persons lawfully entitled to such control~~.

~~((2))~~ A licensee in charge of human remains will be governed by the directions of those lawfully entitled to such control ~~((1))~~ having the right to control the disposition of the human remains under RCW 68.50.160, as to matters relating to the preparation, handling and final disposition of the human remains (including steps in preparation, autopsy, embalming, dressing, viewing, videotaping, photographing; funeral, burial and cremation merchandise, and disposition arrangements).

AMENDATORY SECTION (Amending Rule 8, filed 9/17/64)

**WAC 308-48-080 Improper use of license.** No ~~((license))~~ licensee shall lend, place, permit ~~((to be placed))~~ or authorize the placement of his/her license in any establishment ~~((of))~~ or place of business unless ~~((he be))~~ the licensee is an owner, part owner or bona fide employee of such place of business, nor shall ~~((he lend his license (or any copy thereof) for use by any establishment or place of business in which he has no such interest, nor shall he suffer any))~~ a funeral establishment or place of business to pretend or represent that it is legally qualified to perform funeral directing or embalming by any such improper use of his/her license.

AMENDATORY SECTION (Amending WSR 97-21-062, filed 10/14/97, effective 11/14/97)

**WAC 308-48-150 Course of training—((Apprentice)) Funeral director intern.** (1) For the purposes of RCW 18.39.035, the term "one year course of training" shall include assisting a licensed funeral director in coordinating all aspects of at least twenty-five arrangements for funeral, memorial and/or final disposition services for human remains.

(2) The term "one year" shall consist of at least eighteen hundred hours of employment and cannot be completed in a period of time less than one calendar year.

(3) Registered ((apprentice)) funeral director((s)) interns shall provide a quarterly report to the board on a form supplied by the board containing information relating to the arrangements, services, final dispositions, and other duties of a funeral director the ((apprentice)) intern has assisted with or performed during the required term of ((apprenticeship)) internship.

(4) Licensed sponsors shall provide a quarterly report to the board on a form supplied by the board showing the progress of the ((apprentice)) intern toward the skill level required to work independently.

(5) Registered apprentice funeral director((s)) interns may receive training from their sponsor and other licensed funeral directors as approved by the sponsor.

AMENDATORY SECTION (Amending WSR 97-21-062, filed 10/14/97, effective 11/14/97)

**WAC 308-48-160 Course of training—((Apprentice)) Embalmer((s)) interns.** (1) For the purposes of RCW 18.39.035, the term "two year course of training" shall include the embalming of at least fifty human remains under the supervision of a licensed embalmer.

(2) The term "two year" shall consist of at least thirty-six hundred hours of employment and cannot be completed in a period of time less than two calendar years.

(3) Registered ((apprentice)) embalmer((s)) interns shall provide a quarterly report to the board on a form supplied by the board containing information relating to the embalming the ((apprentice)) intern has assisted with or performed during the required term of ((apprenticeship)) internship.

(4) Licensed sponsors shall provide a quarterly report to the board on a form supplied by the board showing the progress of the ((apprentice)) intern toward the skill level required to work independently.

(5) Registered apprentice embalmer((s)) interns may receive training from their sponsor and other licensed embalmers as approved by the sponsor.

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

**WAC 308-48-180 Renewal of licenses, registrations, endorsements and permits.** (1) The annual license or registration renewal date for embalmers, funeral directors and ((apprentices)) interns is the licensee's birth date. Individuals making application and fulfilling requirements for initial

license and examination will be issued a license or registration, which will expire on their next birth date.

(2) ((Funeral establishments, branch establishments, pre-arrangement sales licenses, and crematories must renew their licenses)) All licensees, with the exception of academic intern, must renew annually.

(3) Before the expiration date of the license, the director will mail a notice of renewal. The licensee must return such notice along with current renewal fees prior to the expiration of the license. Failure to renew the license prior to the expiration date will require payment of the penalty fee.

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

**WAC 308-48-200 Report of ((apprenticeship)) internship registration, termination, transfer and credit.**

(1) The responsibility for notifying the director, department of licensing of ((apprenticeship)) internship registration and termination rests with the employing funeral establishment. In order to protect the status of the ((apprentice)) intern in cases where the employing licensee fails to initiate the required report of registration or termination, the affected ((apprentice)) intern should initiate and ensure submission of same. The notification shall be certified by signature of the sponsor.

(2) No credit for ((apprenticeship)) internship will be allowed for any period during which the ((apprentice)) intern is not registered pursuant to RCW 18.39.120. In the event an ((apprentice's)) intern's sponsor dies or is otherwise incapable of certifying ((apprenticeship)) internship credit, such credit may be given by certification by another licensed funeral director or embalmer who has knowledge of the work performed and the credit due or by documentation or reasonable proof of such credit as determined by the board.

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

**WAC 308-48-210 Establishment licensure.** (1) It is the intent of the board that the establishment licensure process serve to protect consumers by identifying to the department all locations subject to regulation. Any provider of any aspect of the care, shelter, transportation, embalming, other preparation and arrangements for the disposition of human remains must be licensed as a funeral establishment. Establishments must obtain a funeral establishment or branch license for each location.

(2) Branches of an establishment may operate under the general license of the establishment, pursuant to RCW 18.39.145 and 18.39.148 and the following terms and conditions:

(a) Branch(es) must operate under the same name as the establishment.

(b) Branch(es) must display a current branch license.

(c) Branch(es) must have a licensed funeral director ((and embalmer)) in its employ and available to provide any services requiring the professional skills of a licensee.

(d) The failure of a branch to meet the standards of an establishment may result in cancellation of the establishment license, pursuant to RCW 18.39.148.



AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

**WAC 308-48-350 AIDS prevention and information education requirements.** (1) Definitions.

(a) "Acquired immunodeficiency syndrome" or "AIDS" means the clinical syndrome of HIV-related illness as defined by the board of health by rule.

(b) "Office on AIDS" means that section within the department of social and health services or any successor department with jurisdiction over public health matters as defined in 70.24 RCW.

(2) Renewal of funeral director and/or embalmer licenses or (~~(apprenticeship)~~) internship registrations, and all persons making initial application for funeral director and/or embalmer licensure, or initial renewal of funeral director and/or embalmer (~~(apprenticeship)~~) internship registration must submit evidence to show compliance with the education requirements of subsection (3) of this section.

(3) AIDS education and training.

(a) Acceptable education and training. The board will accept education and training that is consistent with the model curriculum available from the office on AIDS. Such education and training must be a minimum of four (~~and one half~~) clock hours and must include, but is not limited to, the following: Prevention, transmission and treatment of AIDS.

(b) Implementation. The requirement for initial funeral director and/or embalmer licensure, the first renewal of a funeral director and/or embalmer (~~(apprenticeship)~~) internship registration, or reinstatement of any license or (~~(apprenticeship)~~) internship registration on lapsed, inactive, or disciplinary status will include evidence of completion of an education and training program, which meets the requirements of subsection (a).

(c) Documentation. The applicant must:

(i) Certify, on forms provided, that the minimum education and training has been completed;

(ii) Keep records for five years documenting attendance and description of the learning;

(iii) Be prepared to validate, through submission of these records, that attendance has taken place.

(4) Continuing education. The AIDS education requirement may be counted towards the fulfillment of the continuing education requirement.

AMENDATORY SECTION (Amending Order PL 504, filed 12/19/84)

**WAC 308-48-510 Continuing education requirements—Purpose.** Continuing education activities, approved by the board of funeral directors and embalmers, shall be required as a condition of renewal of funeral director and embalmer licenses and of (~~(apprentice)~~) funeral director intern and (~~(apprentice)~~) embalmer intern registration, in order to maintain and improve the quality of their services to the public.

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

**WAC 308-48-520 Effective date of continuing education requirement.** The effective date of the continuing education requirement will be two years after initial licensure as a funeral director and/or embalmer, or initial registration as (~~(an apprentice)~~) a funeral director intern and/or embalmer intern.

AMENDATORY SECTION (Amending Order PL 504, filed 12/19/84)

**WAC 308-48-530 Continuing education basic requirement—Amount.** (1) Every individual licensed as a funeral director and/or embalmer or registered as a funeral director intern and/or embalmer intern, shall be required to complete ten hours of approved continuing education every two years as a condition of renewal of such licenses or registrations.

(2) (~~Every individual registered as an apprentice funeral director and/or apprentice embalmer shall be required to complete ten hours of approved continuing education every two years as a condition of renewal of such registration.~~

(~~3~~) Continuing education credits in excess of the required hours earned in any renewal period may not be carried forward to a subsequent renewal period.

(~~4~~) (3) The department shall not renew a license or registration or issue a new license or registration to any person who has failed to submit evidence of completion of ten hours of approved continuing education for the prior two-year period.

AMENDATORY SECTION (Amending Order PM 697, filed 12/9/87)

**WAC 308-48-550 Continuing education reporting requirement.** (1) The licensee or registrant shall submit an affidavit certifying compliance with the continuing education requirement on the form provided by the board. The affidavit shall be submitted with license or registration renewal fee every two years.

(2) A material misstatement of information on the continuing education report shall be grounds for disciplinary action (~~(including nonrenewal, suspension or revocation of license or registration)~~).

AMENDATORY SECTION (Amending Order PM 697, filed 12/9/87)

**WAC 308-48-590 Qualification for board approval of continuing education activities.** (1) In order for a continuing education activity to qualify for board approval, the following qualifications must be met:

(a) The activity must contribute directly to the professional competency of the licensee or registrant;

(b) The activity must relate to the practice of mortuary science or, for a registrant, be a course required for initial licensure;

(c) The activity must be conducted by individuals who are considered by the board to be knowledgeable in the sub-

ject matter of the program by virtue of education, training, or experience.

(2) The board may approve as continuing education activities courses, lectures, seminars, correspondence or homestudy programs, or other instructional programs which meet the above qualifications and which the board determines would be beneficial in improving the knowledge or service capability of licensees and registered ~~((apprentices))~~ interns.

AMENDATORY SECTION (Amending Order PL 561, filed 10/17/85)

**WAC 308-48-780 Crematories—Inspections.** Crematories regulated under the authority of chapter 18.39 RCW are subject to inspection at least once each year by the inspector of funeral directors and embalmers to ensure compliance with Washington state laws and regulations related to health or the handling or ~~((disposal))~~ disposition of human remains.

AMENDATORY SECTION (Amending WSR 05-20-076, filed 10/4/05, effective 11/4/05)

**WAC 308-48-800 Funeral director/embalmer fees.** The following fees shall be charged by the professional licensing division of the department of licensing:

Title of Fee	Fee
Embalmer:	
State examination or reexamination	\$100.00
Renewal	70.00
Late renewal penalty	35.00
Duplicate	15.00
<del>((Certification</del>	<del>25.00))</del>
Embalmer intern:	
Intern application	75.00
Intern renewal	45.00
Duplicate	15.00
<del>((Certification</del>	<del>25.00))</del>
Funeral director:	
State examination or reexamination	100.00
Renewal	70.00
Late renewal penalty	35.00
Duplicate	15.00
<del>((Certification</del>	<del>25.00))</del>
Funeral director intern:	
Intern application	75.00
Intern renewal	45.00
Duplicate	15.00
<del>((Certification</del>	<del>25.00))</del>
Funeral establishment:	
Original application	300.00
Renewal	150.00
Branch registration	250.00

Title of Fee	Fee
Branch renewal	150.00
Preneed application	140.00
Preneed renewal:	
0-25 sales	25.00
26-99 sales	75.00
100 or more sales	125.00
Crematory endorsement registration	140.00
Crematory endorsement renewal <del>(((\$))3.20 per cremation performed</del> during previous calendar year.	
Academic intern	No fee
Certificate of removal registration:	
Application	30.00
Renewal	15.00

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-48-110            Revocation of license.

AMENDATORY SECTION (Amending WSR 90-17-148, filed 8/22/90, effective 9/22/90)

**WAC 308-49-168 Trust fund depository agreement requirements.** (1) Each prearrangement funeral trust shall enter into an agreement with one or more depositories in which the responsibilities of the depository are set forth. The agreement shall contain language which:

(a) Sets forth the terms and conditions under which deposits and withdrawals are made;

(b) States that instruments of deposit shall be an insured account in a ~~((qualified))~~ public depository or shall be invested in instruments issued or insured by an agency of the federal government, ~~((and states that the trust shall be held in a public depository,))~~ and sets forth the conditions for termination and transfer of the prearrangement trust fund depository agreement.

(2) Prearrangement trust fund depository agreements are an integral part of the prearrangement funeral service contract agreement and shall be approved by the board prior to use. Amendments to or changes in the agreement shall be filed with the board prior to incorporation. The board shall be advised prior to termination of any depository agreement.

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

**WAC 308-49-170 Annual statement requirements.** (1) Each funeral establishment must file with the board annually, ninety days after the end of its fiscal year, a statement of its financial condition, transactions and affairs for the preceding fiscal year.

(2) The statement shall include a balance sheet and a profit and loss statement for the preceding fiscal year and/or other such fiscal documents as the board may require.

(3) The funeral establishment shall list any changes in its officers, directors, managers or partners or any change in ownership greater than ten percent which have occurred in the preceding fiscal year.

(4) With respect to each prearrangement funeral service contract trust fund, the following information must be provided:

(a) The name of the depository and the account number;

(b) The number of outstanding contracts at the beginning of the fiscal year;

(c) The total amount paid in by the holders of such contracts pertinent to the trust fund;

(d) The total amount deposited in the trust account;

(e) The number of new contracts issued during the fiscal year;

(f) The amount paid in on such new contracts and the amount deposited in the trust fund for such contracts;

(g) The number of ~~((individuals withdrawing from the))~~ withdrawals from the trust due to contract(s,) cancellations and/or instances where the ((principal amount paid to them and the amount of interest, dividends, or accretions, separately stated, paid to them:

~~((h) The number of cases where prearrangement))~~ funeral merchandise and services covered by ~~((the))~~ prearrangement contracts have been furnished and delivered ((and the amount transferred out of the trust fund to the funeral establishment for such services and/or merchandise)). Withdrawals will include principal and earnings;

~~((i))~~ (h) The number of outstanding contracts as of the end of the fiscal year and the amount being held in trust for such contracts.

(5) The annual report form must include ~~((verification))~~ a year-end statement from the depository as to the amount of money held in funeral prearrangement trust as of the reporting date.

~~((6) The annual statement must be accompanied by a fee as determined by the director, payable to the state treasurer.))~~

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-49-120                      Effective date and scope.

**WSR 06-21-118**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed October 17, 2006, 4:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-12-091.

Title of Rule and Other Identifying Information: WAC 388-408-0040 How does living in an institution affect my eligibility for Basic Food?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on November 21, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than November 22, 2006.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA, e-mail [fernaax@dshs.wa.gov](mailto:fernaax@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m., on November 21, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by November 17, 2006, TTY (360) 664-6178 or phone (360) 664-6097 or by e-mail at [schilse@dshs.wa.gov](mailto:schilse@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing this amendment to update requirements for a resident of a drug or alcohol treatment facility to be eligible for food stamp benefits under the Washington Basic Food program.

Reasons Supporting Proposal: The changes are necessary to expand the definition of a qualified treatment facility eligible for Basic Food benefits consistent with new federal requirements under Administrative Notice 06-08 from the United States Department of Agriculture, Food and Nutrition Service.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Rule is necessary because of federal law, 7 U.S.C. 2012 and 7 C.F.R. 273.1.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Camp, 1009 College S.E., Lacey, WA 98504, (360) 725-4616.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendments only affect DSHS clients by establishing eligibility rules to facilitate the department meeting federal reporting requirements of hours of participation. The rule impacts which nonprofit drug or alcohol treatment centers are considered an eligible institution for Basic Food. Residents of an eligible institution may be eligible for Basic Food benefits.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to . . . rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents." These rules establish requirements for a nonprofit drug or alcohol treatment facility to be considered an eligible institu-

tion for Basic Food. Residents of an eligible institution may be eligible for benefits under the Washington Basic Food program.

October 13, 2006  
Andy Fernando, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 03-19-118, filed 9/16/03, effective 11/1/03)

**WAC 388-408-0040 How does living in an institution affect my eligibility for Basic Food?** (1) For Basic Food, an "institution" means a place where people live that provides residents more than half of three meals daily as a part of their normal services.

(2) Most residents of institutions are not eligible for Basic Food.

(3) If you live in one of the following institutions, you may be eligible for Basic Food even if the institution provides the majority of your meals:

(a) Federally subsidized housing for the elderly;

(b) Qualified drug and alcohol treatment centers when an employee of the treatment center is the authorized representative as described under WAC 388-460-0010;

(c) Qualified DDD group homes for persons with disabilities;

(d) A shelter for battered women and children when the resident left the home that included the abuser; or

(e) Nonprofit shelters for the homeless.

(4) A qualified DDD group home is a nonprofit residential facility that:

(a) Houses sixteen or fewer persons with disabilities as defined under WAC 388-400-0040(6); and

(b) Is certified by the division of developmental disabilities (DDD).

(5) A qualified drug and alcohol treatment center is a residential facility that is:

(a) ~~((A nonprofit residential facility; and~~

~~(b) Is certified by the division of alcohol and substance abuse (DASA)) Is authorized as a retailer by the U.S. Department of Agriculture, Food and Nutrition Service; or~~

~~(b) Is operated by a private nonprofit organization; and~~

~~(c) Is certified by the division of alcohol and substance abuse (DASA) as:~~

~~(i) Receiving funds under part B of title XIX of the Public Health Service Act;~~

~~(ii) Eligible to receive funds under part B of title XIX of the Public Health Service Act, but does not receive these funds; or~~

~~(iii) Operating to further the purposes of part B of the Public Health Service Act to provide treatment and rehabilitation of drug addicts or alcoholics.~~

(6) Elderly or disabled individuals and their spouses may use Basic Food benefits to buy meals from the following meal providers if FNS has approved them to accept Basic Food benefits:

(a) Communal dining facility; or

(b) Nonprofit meal delivery service.

(7) If you are homeless, you may use your Basic Food benefits to buy prepared meals from nonprofit organizations

the department has certified as meal providers for the homeless.

**WSR 06-21-119**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed October 17, 2006, 4:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-13-088.

Title of Rule and Other Identifying Information: WAC 388-444-0005 The food stamp employment and training (FS E&T) program—General requirements and 388-444-0015 When are clients not required to register for work or participate in FS E&T (exempt clients)?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on November 21, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than November 22, 2006.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA, e-mail [fernaax@dshs.wa.gov](mailto:fernaax@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m., November 21, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by November 17, 2006, TTY (360) 664-6178 or phone (360) 664-6097 or by e-mail at [schilse@dshs.wa.gov](mailto:schilse@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The amended rules update the requirements for the food stamp employment and training program and adopt WorkFirst participation requirements in place of E&T requirements for persons who must participate in WorkFirst. The changes also allow the department to use the food stamp allotment and the temporary assistance for needy families (TANF) grant to determine the maximum monthly hours a WorkFirst participant may be engaged in work experience or unpaid work under the Fair Labor Standards Act.

Reasons Supporting Proposal: The changes are necessary to support changes to the food stamp employment and training program for persons receiving TANF and participating in WorkFirst.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. 273.7, and 7 C.F.R. 273.25.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Camp, 1009 College S.E., Lacey, WA 98504, (360) 725-4616.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendments only affect DSHS clients by establishing participation requirements of the food stamp employment and training program for households that receive Basic Food and adopting WorkFirst participation requirements in place of E&T requirements for households who receive TANF and must participate in WorkFirst activities.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to...rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents." These rules establish participation requirements of the food stamp employment and training program for households that receive Basic Food and adopting WorkFirst participation requirements in place of E&T requirements for households who receive TANF and must participate in WorkFirst activities.

October 13, 2006

Andy Fernando, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

**WAC 388-444-0005 ((The)) Food stamp employment and training (FS E&T) program—General requirements.**

(1) To receive ~~((food assistance))~~ Basic Food some ~~((clients))~~ people must register for work and ~~((if required by the department, must))~~ participate in the food stamp employment and training (FS E&T) program.

(2) ~~((Clients who must register for work and may be required to participate in FS E&T are called nonexempt clients. All other members of the food assistance unit are called exempt clients))~~ We determine if you must register for work and participate in FS E&T under WAC 388-444-0010:

(a) If we require you to register for work and participate in FS E&T you are nonexempt from FS E&T.

(b) If you meet one of the conditions under WAC 388-444-0015, you are exempt from FS E&T. If you are exempt, you may choose to receive services through the FS E&T program.

(3) ~~((All nonexempt members of the food assistance unit are registered for work by the department, at the first food assistance application and once every twelve months thereafter. A person who enters an existing assistance unit will be registered for work and FS E&T, if not exempt))~~ If you are nonexempt from FS E&T requirements, we register you for work:

(a) When you apply for Basic Food benefits or are added to someone's assistance unit; and

(b) Every twelve months thereafter.

(4) ~~((Clients must comply with all FS E&T program requirements as provided in subsection (5) of this section.~~

~~Failure to comply without good cause will disqualify the client from receiving food assistance))~~ If you are nonexempt, you must meet all the FS E&T program requirements in subsections (5) through (7) of this section. If you fail to meet the requirements without good cause, we disqualify you from receiving Basic Food benefits:

(a) ~~((Good cause rules are provided in))~~ We define Good cause for not meeting FS E&T requirements under WAC 388-444-0050; and

(b) ~~((Disqualification rules are provided in))~~ We disqualify nonexempt persons who fail to meet E&T requirements as described under WAC 388-444-0055.

(5) ~~((Nonexempt clients are required to))~~ If you are non-exempt, you must:

(a) Report to ~~((DSHS))~~ us or ~~((the))~~ your FS E&T service provider and participate as required;

(b) Provide information regarding your employment status and availability for work ~~((as requested))~~ when we ask for it;

(c) Report to an employer when ~~((referred by DSHS))~~ we refer you; and

(d) Accept a bona fide offer of suitable employment. ~~((Unsuitable employment is defined in))~~ We define unsuitable employment under WAC 388-444-0060.

(6) ~~((A nonexempt client will participate))~~ If you are nonexempt, you must participate in one or more of the following FS E&T activities:

(a) Job search;

(b) ~~((General education development (GED) classes; or))~~

Paid or unpaid work;

(c) ~~((English as a second language (ESL) classes))~~ Training or work experience;

(d) General education development (GED) classes; or

(e) English as a second language (ESL) classes.

(7) ~~((A client is not required to participate in FS E&T activities more than one hundred twenty hours in a month. Hours of participation may include a combination of FS E&T activities as described in subsection (6) of this section and hours worked for pay, either cash or in-kind))~~ If you must participate in WorkFirst under WAC 388-310-0200, you have certain requirements for the Food Stamp Employment and Training Program:

(a) Your FS E&T requirement is to fully participate in the WorkFirst activities approved in your Individual Responsibility Plan (IRP) under WAC 388-310-0500; and

(b) If everyone who receives Basic Food with you receives TANF benefits and your IRP includes unpaid community service or work experience, we use your TANF grant and Basic Food allotment to determine the maximum hours of unpaid work we include in your plan.

(8) Your FS E&T activities including paid or unpaid work will not exceed one hundred twenty hours a month whether you are exempt or nonexempt.

AMENDATORY SECTION (Amending WSR 00-04-006, filed 1/20/00, effective 3/1/00)

**WAC 388-444-0015 ((When are clients)) Who is not required to register for work or participate in FS E&T ((exempt clients))?** ~~((You (as a client) are not required to~~

register for work or to participate in FS E&T if you meet any of the following conditions:

(1) Age sixteen or seventeen and not the head of household and:

(a) Attending school (such as high school or GED programs); or

(b) Enrolled at least half time (as defined by the institution) in a program under temporary assistance for needy families (TANF), a program under The Workforce Investment Act, (formerly the Job Training Partnership Act (JTPA)), a program under section 236 of the Trade Act of 1974, or other state or local employment and training programs.

(2) Determined to be physically or mentally unable to work;

(3) Responsible for the care of a dependent child under six years of age or of a person determined to be incapacitated;

(4) Applying for or receiving unemployment compensation (UC);

(5) Participating in an employment and training program under TANF;

(6) Employed or self-employed person working thirty hours or more per week, or receiving weekly earnings equal to the federal minimum wage multiplied by thirty;

(7) Students eighteen or older enrolled at least half time as defined by the institution in:

(a) Any accredited school;

(b) Training program; or

(c) An institution of higher education. Students enrolled in higher education must follow the student criteria as defined in chapter 388-482 WAC, Student status.

(8) Regularly participating in a drug addiction or alcoholic treatment and rehabilitation program)) Some people do not have to register for work or participate in the Food Stamp Employment and Training Program (FS E&T). These people are exempt from FS E&T.

(1) You are exempt from FS E&T requirements in chapter 388-444 WAC if you meet any of the following conditions:

(a) You are age sixteen or seventeen, not the head-of-household, and:

(i) Attend school such as high school or GED programs;  
or

(ii) Are enrolled at least half time (using the institutions definition) in an employment and training program under:

(A) The Workforce Investment Act (WIA);

(B) Section 236 of the Trade Act of 1974; or

(C) Another state or local employment and training program.

(b) You are a student age eighteen or older enrolled at least half time as defined by the institution in:

(i) Any accredited school;

(ii) A training program; or

(iii) An institution of higher education. If you are enrolled in higher education, you meet the requirements under WAC 388-482-0005 to be eligible for Basic Food benefits.

(c) you are an employed or self-employed person working thirty hours or more per week, or receiving weekly earnings equal to the federal minimum wage multiplied by thirty.

(d) You receive unemployment compensation (UC) benefits or have an application pending for UC benefits;

(e) You are responsible to care for:

(i) A dependent child under age six; or

(ii) Someone who is incapacitated.

(f) We determine that you are physically or mentally unable to work; or

(g) You regularly participate in a drug addiction or alcoholic treatment and rehabilitation program.

(2) If you are exempt, you may choose to receive services through the FS E&T program.

## WSR 06-21-120

### PROPOSED RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed October 17, 2006, 4:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-17-138.

Title of Rule and Other Identifying Information: WAC 388-827-0115 What are the programmatic eligibility requirements for DDD/SSP? and 388-827-0145 How much money will I receive?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097, on November 21, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than November 22, 2006.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail [fernaax@dshs.wa.gov](mailto:fernaax@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m., November 21, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by November 17, 2006, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at [schilse@dshs.wa.gov](mailto:schilse@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the amended sections is to expand the population eligible to receive the SSP to include certain individuals in residential settings; to clarify and increase the amount of SSP certain individuals who were previously on family support are eligible to receive; to expand the window for the receipt of supplemental security income to qualify for SSP; and to establish rules allowing one-time payments to certain individuals.

Reasons Supporting Proposal: In order to receive federal funding for Title XIX Medicaid, the state is required to expend a certain amount of SSP to meet a yearly maintenance of effort established by the federal Social Security Administration as specified in 20 C.F.R. 416.2099. By expanding the

population eligible to receive SSP, clarifying and increasing the amount of SSP to certain individuals, expanding the window for the receipt of supplemental security income to qualify for SSP, and allowing the authorization of one-time payments, the state will achieve this maintenance of effort.

Statutory Authority for Adoption: RCW 71A.12.030, 74.04.057.

Statute Being Implemented: Titles 71A, 74 RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Steve Brink, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail [brinksc@dshs.wa.gov](mailto:brinksc@dshs.wa.gov), (360) 725-3416, fax (360) 407-0955; Implementation: Meredith Kelly, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail [KellyMJ@dshs.wa.gov](mailto:KellyMJ@dshs.wa.gov), (360) 725-3524, fax (360) 407-0955; and Enforcement: Doug Washburn, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail [washbdc@dshs.wa.gov](mailto:washbdc@dshs.wa.gov), (360) 725-3452, fax (360) 407-0955.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The division of developmental disabilities has determined that these amendments do not affect small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are exempt from preparing a cost-benefit analysis pursuant to RCW 34.05.328 (5)(b)(vii). These rules relate only to client medical and financial eligibility.

October 16, 2006

Andy Fernando, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-10-039, filed 4/28/05, effective 5/29/05)

**WAC 388-827-0115 What are the programmatic eligibility requirements for DDD/SSP?** (1) You received one or more of the following services from DDD with state-only funding between March 1, 2001 and June 30, 2003 and continue to demonstrate a need for and meet the DDD program eligibility requirements for these services. Additionally, you must have been eligible for or received SSI prior to July 1, (~~2003~~) 2006; or you received Social Security Title II benefits as a disabled adult child prior to July 1, (~~2003~~) 2006 and would have been eligible for SSI if you did not receive these benefits.

(a) Certain voluntary placement program services, which include:

- (i) Foster care basic maintenance,
- (ii) Foster care specialized support,
- (iii) Agency specialized support,
- (iv) Staffed residential home,
- (v) Out-of-home respite care,
- (vi) Agency in-home specialized support,
- (vii) Group care basic maintenance,

- (viii) Group care specialized support,
- (ix) Transportation,
- (x) Agency attendant care,
- (xi) Child care,
- (xii) Professional services,
- (xiii) Nursing services,
- (xiv) Interpreter services,
- (b) Family support;
- (c) One or more of the following residential services:
  - (i) Adult family home,
  - (ii) Adult residential care facility,
  - (iii) Alternative living,
  - (iv) Group home,
  - (v) Supported living,
  - (vi) Agency attendant care,
  - (vii) Supported living or other residential service allowance,
  - (viii) Intensive individual supported living support (companion homes).

(2) For individuals with community protection issues as defined in WAC 388-820-020, the department will determine eligibility for SSP on a case-by-case basis.

(3) For new authorizations of family support opportunity:

(a) You were on the family support opportunity waiting list prior to January 1, 2003; and

(b) You are on the home and community based services (HCBS) waiver administered by DDD; and

(c) You continue to meet the eligibility requirements for the family support opportunity program contained in WAC 388-825-200 through 388-825-242; and

(d) You must have been eligible for or received SSI prior to July 1, 2003; or you received Social Security Title II benefits as a disabled adult child prior to July 1, 2003 and would have been eligible for SSI if you did not receive these benefits.

(4) For individuals on one of the HCBS waivers administered by DDD (Basic, Basic Plus, Core or community protection):

(a) You must have been eligible for or received SSI prior to April 1, 2004; and

(b) You were determined eligible for SSP prior to April 1, 2004.

(5) You received Medicaid personal care (MPC) between September 2003 and August 2004; and

(a) You are under age eighteen at the time of your initial comprehensive assessment and reporting evaluation (CARE) assessment;

(b) You received or were eligible to receive SSI at the time of your initial CARE assessment;

(c) You are not on a home and community based services waiver administered by DDD; and

(d) You live with your family, as defined in WAC 388-825-020.

(6) If you meet all of the requirements listed in (5) above, your SSP will continue.

(7) You received one or more of the following state-only funded residential services between July 1, 2003 and June 30, 2006 and continue to demonstrate a need for and meet the DDD program eligibility requirements for these services:

- (a) Adult residential care facility;
- (b) Alternative living;
- (c) Group home;
- (d) Supported living;
- (e) Agency attendant care;
- (f) Supported living or other residential allowance.

AMENDATORY SECTION (Amending WSR 05-10-039, filed 4/28/05, effective 5/29/05)

**WAC 388-827-0145 How much money will I receive?**

The purpose of the SSP is to increase the amount of income to meet your needs. The department will determine your payment amount based on your living arrangement and your assessed needs.

(1) For residential and voluntary placement program services, the amount of your SSP will be based on the amount of state-only dollars spent on certain services at the time the funding source was converted to SSP. If the type of your residential living arrangement changes, your need will be reassessed and your payment adjusted based on your new living arrangement and assessed need.

(2) For family support services, refer to WAC 388-825-200 through ~~((388-825-284))~~ 388-825-256.

(a) If you are on the home and community based services (HCBS) waiver administered by DDD:

(i) You will receive nine hundred dollars DDD/SSP money per year to use as you determine.

(ii) The remainder up to the maximum allowed may be authorized by DDD to purchase HCBS waiver services and will be paid directly to the provider.

(b) If you are not on the HCBS waiver administered by DDD, and you received state-only funding for the Traditional Family Support Program between March 1, 2001 and June 30, 2003 the amount of your SSP will be based on the yearly maximum allowed at the time the funding source was converted to SSP unless your need changes.

(i) Need is based on your Service Need Level and whether you receive Medicaid Personal Care as specified in WAC 388-825-254.

(ii) If your need changes, the amount of your SSP will be adjusted accordingly.

(c) If you are not on the HCBS waiver administered by DDD, and you received state-only funding for the Family Support Opportunity Program between March 1, 2001 and June 30, 2003 the amount of your SSP will be fifteen hundred dollars per year.

(d) The yearly amount of DDD/SSP money will be prorated into monthly amounts. You will receive one twelfth of the yearly amount each month.

(3) If you are eligible for SSP because you meet the criteria in WAC 388-827-0115(5), you will receive one hundred dollars per month.

~~((a) For individuals whose initial CARE assessment was completed prior to January 1, 2005, January 2005 is the first month for which payment is made.~~

~~(b) For individuals whose initial CARE assessment is completed after December 31, 2004, the first month for which payment is made is the month in which the results of the initial CARE assessment are effective.))~~

(4) DDD may authorize additional payments to certain individuals if the SSP budget has sufficient funds to allow this payment.

**WSR 06-21-121**

**PROPOSED RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed October 17, 2006, 4:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-11-084.

Title of Rule and Other Identifying Information: Revises and adopts the WACs cited below to grant administrative hearing rights to clients whose total monthly hours or residential rate is reduced as a result of a termination or reduction in an approved exception to rule.

Amending WAC 388-106-0140 What may change the maximum number of hours that I can receive for in-home personal care services?; and new WAC 388-106-0145 What may change the maximum payment rate that will be paid for residential personal care services provided to me? and 388-106-1315 Do I have a right to an administrative hearing if my total in-home personal care hours approved as an exception to rule are reduced or terminated or if my increased residential payment rate approved as an exception to rule is reduced or terminated?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097, on November 21, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than November 22, 2006.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail [fernaax@dshs.wa.gov](mailto:fernaax@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m., November 21, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by November 17, 2006, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at [schilse@dshs.wa.gov](mailto:schilse@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules are necessary to provide clients with administrative hearing rights when their total in-home personal care hours or residential payment rate is reduced as a result of a reduced or terminated exception-to-rule decision.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, chapters 74.39, and 74.39A RCW.

Statute Being Implemented: RCW 74.08.090, 74.09.520, chapters 74.39, and 74.39A RCW.



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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Sue McDonough, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2533.

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

A cost-benefit analysis is not required under RCW 34.05.328. WAC 388-106-1315 is a "procedural" rule under RCW 34.05.328 (5)(c) that "adopts, amends, or repeals... any procedure, practice, or requirement relating to any agency hearings."

WAC 388-106-0140 and 388-106-0145 are exempt, per RCW 34.05.328 (5)(b)(vii), since they relate to client medical or financial eligibility.

October 12, 2006

Andy Fernando, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

**WAC 388-106-0140 What ~~(will)~~ may change the maximum number of hours that I can receive for in-home personal care services? The maximum number of in-home personal care hours you can receive may change:**

(1) When you have a change in any of the criteria listed in WAC 388-106-0125 and/or 388-106-0130(~~the maximum hours you can receive will change~~); or

(2) Because you meet the criteria in WAC 388-440-0001, an exception to rule is approved by the department for in-home personal care hours in excess of the amount determined to be available to you by the CARE tool.

NEW SECTION

**WAC 388-106-0145 What may change the maximum payment rate that will be paid for residential personal care services provided to me? The maximum payment rate that will be paid for residential personal care services provided to you may change:**

(1) When you have a change in any of the criteria listed in WAC 388-106-0115 and/or WAC 388-106-0120; or

(2) Because you meet the criteria in WAC 388-440-0001, an exception to rule is approved by the department for a payment rate for your residential personal care services in excess of the rate determined to be applicable to you by the CARE tool.

NEW SECTION

**WAC 388-106-1315 Do I have a right to an administrative hearing if my total in-home personal care hours approved as an exception to rule are reduced or terminated or if my increased residential payment rate approved as an exception to rule is reduced or termi-**

**nated?** Notwithstanding WAC 388-440-0001(3), you have a right to an administrative hearing regarding the department's exception to rule decision if:

(1) You receive services in your own home, and:

(a) The total number of in-home personal care hours you are currently receiving includes in-home personal care hours approved as an exception to rule in addition to the number of in-home care hours determined to be available to you by CARE; and

(b) The total number of in-home personal care hours you are currently receiving is reduced because of a reduction or termination in the number of in-home personal care hours approved as an exception to rule.

(2) You receive services in a residential facility, and:

(a) You currently have an increased residential payment rate approved as an exception to rule; and

(b) Your increased residential payment rate that was approved as an exception to rule is reduced or terminated.

**WSR 06-21-122**

**PROPOSED RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed October 17, 2006, 4:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-10-019.

Title of Rule and Other Identifying Information: Amending WAC 388-513-1350 Defining the resource standard and determining resources eligibility for long-term care (LTC) services; and repealing WAC 388-513-1360 Determining excluded resources for long-term care (LTC) services.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on November 21, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than November 22, 2006.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail [fernaax@dshs.wa.gov](mailto:fernaax@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m., November 21, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by November 17, 2006, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at [schilse@dshs.wa.gov](mailto:schilse@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule increases the spousal resource maximum from \$41,000 to \$41,943 effective July 1, 2005, and increases the community spousal share maximum to \$99,540 effective January 1,

2006; clarifies that an individual retirement account (IRA) belonging to a community spouse is a countable resource when determining eligibility for long-term care (LTC) services; and amends rules due to federal law change in the 2005 Deficit Reduction Act regarding disqualification for long-term care assistance for individuals with home equity in excess of \$500,000, effective May 1, 2006.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, 74.09.575.

Statute Being Implemented: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, 74.09.575, section 1924 of the Social Security Act (42 U.S.C. 1396r-5); Deficit Reduction Act of 2005 (federal Public Law 109-171).

Rule is necessary because of federal law, Section 6014 of the federal Deficit Reduction Act of 2005 (P.L. 109-171).

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Lori Rolley, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2271.

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

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt under RCW 34.05.328 (5)(b)(vii), regarding DSHS rules relating only to client medical or financial eligibility.

October 17, 2006

Andy Fernando, Manager

Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-07-033, filed 3/9/05, effective 4/9/05)

**WAC 388-513-1350 Defining the ~~((maximum amount of resources allowed))~~ resource standard and determining resource ~~(s availability))~~ eligibility for long-term care (LTC) services.** This section describes how the department defines the resource standard and available or excluded resources when determining a client's eligibility for LTC services. The department uses the term "resource standard" to describe the maximum amount of resources a client can have and still be resource eligible for program benefits.

(1) The resource standard used to determine eligibility for LTC services equals:

(a) Two thousand dollars for:

(i) A single client; or

(ii) A legally married client with a community spouse, subject to the provisions described in subsections ~~((5))~~ (8) through ~~((8))~~ (11) of this section; or

(b) Three thousand dollars for a legally married couple, unless subsection ~~((2))~~ (3) of this section applies.

(2) ~~((If the department has already established eligibility for one spouse, then it applies the standard described in subsection (1)(a) to each spouse, unless doing so would make one of the spouses ineligible.~~

~~((3))~~ When both spouses apply for LTC services the department considers the resources of both spouses as avail-

able to each other through the month in which the spouses stopped living together.

(3) When both spouses are institutionalized, the department determines the eligibility for each spouse individually the month following the month of separation.

(4) If the department has already established eligibility and authorized services for one spouse, and the community spouse needs LTC services in the same month, (but after eligibility has been established and services authorized for the institutional spouse), then the department applies the standard described in subsection (1)(a) of this section to each spouse. If doing this would make one of the spouses ineligible, then the department applies (a)(b) of this section for a couple.

(5) When a single institutionalized individual marries, the department will redetermine eligibility applying the rules for a legally married couple.

(6) The department applies the following rules when determining available resources for LTC services:

(a) WAC 388-475-0300, Resource eligibility (~~(and limits))~~);

(b) WAC 388-475-0250, How to determine who owns a resource; and

(c) WAC 388-470-0060(6), Resources of an alien's sponsor(~~; and~~

~~(d) WAC 388-506-0620, SSI-related medical clients)).~~

~~((4))~~ (7) For LTC services the department determines a client's nonexcluded resources as follows:

(a) ~~((For an SSI-related client, the department reduces available resources by excluding resources described in WAC 388-475-0350 through 388-475-0550;~~

(b) ~~For an SSI-related client who has a community spouse, the department:~~

(i) ~~Excludes resources described in WAC 388-513-1360; and~~

(ii) ~~Adds together the available resources of both spouses according to subsection (5)(a) or (b) as appropriate;~~

(e) ~~For a client not described in subsection (4)(a) or (b), the department applies the resource rules of the program used to relate the client to medical eligibility.~~

~~(5) The department determines available resources of a legally married client, when both spouses are institutionalized, by following WAC 388-506-0620 (5) and (6).) The department determines available resources for SSI-related clients as described in WAC 388-475-0350 through WAC 388-475-0550 and resources excluded by federal law with the exception of:~~

~~(i) WAC 388-475-0550(16);~~

~~(ii) WAC 388-475-0350 (1)(b) Clients who have submitted an application for LTC services on or after May 1, 2006 and have an equity interest greater than five hundred thousand dollars in their primary residence are ineligible for LTC services. This exception does not apply if a spouse or blind, disabled or dependent child under age twenty-one is lawfully residing in the primary residence. Clients denied or terminated LTC services due to excess home equity may apply for an undue hardship waiver.~~

(b) For an SSI-related client one automobile per household is excluded regardless of value if it is used for transportation of the eligible individual/couple.

(i) For an SSI-related client with a community spouse, the value of one automobile is excluded regardless of its use or value.

(ii) Vehicles not meeting the definition of automobile is a vehicle that has been junked or a vehicle that is used only as a recreational vehicle.

(c) For a SSI-related client, the department adds together the available resources of both spouses according to subsections (2), (3), (4), (5), (6), (7) and (8)(a) or (b) as appropriate.

(d) For an SSI-related client, excess resources are reduced in an amount equal to medical expenses incurred by the client (for definition see WAC 388-519-0110(10)) that are not subject to third-party payment and for which the client is liable, including:

(i) Health insurance and Medicare premiums, deductions, and co-insurance charges;

(ii) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan with the exception of the deduction for medical and remedial care expenses that were incurred during a transfer of asset penalty established per WAC 388-513-1363, WAC 388-513-1364 or WAC 388-515-1365; and

(iii) The amount of excess resources is limited to the following amounts:

(A) For LTC services provided under the categorically needy (CN) program, the amount described in WAC 388-513-1315(3); or

(B) For LTC services provided under the medically needy (MN) program, the amount described in WAC 388-513-1395 (2)(a) or (b).

(e) For a client not related to SSI, the department applies the resource rules of the program used to relate the client to medical eligibility.

(8) For legally married clients when only one spouse meets institutional status, the following rules apply. If the client's current period of institutional status began:

(a) Before October 1, 1989, the department adds together one-half the total amount of nonexcluded resources held in the name of:

- (i) The institutionalized spouse; or
- (ii) Both spouses.

(b) On or after October 1, 1989, the department adds together the total amount of nonexcluded resources held in the name of:

- (i) Either spouse; or
- (ii) Both spouses.

((6)) (9) If subsection ((5)) (8)(b) of this section applies, the department determines the amount of resources that are allocated to the community spouse before determining nonexcluded resources used to establish eligibility for the institutionalized spouse, as follows:

(a) If the client's current period of institutional status began on or after October 1, 1989 and before August 1, 2003, the department allocates the maximum amount of resources ordinarily allowed by law. The maximum allocation amount is ((ninety-five)) ninety-nine thousand ((one)) five hundred forty dollars effective January 1, ((2005)) 2006 (this standard increases annually on January 1st based on the consumer price index); or

(b) If the client's current period of institutional status began on or after August 1, 2003, the department allocates the greater of:

(i) A spousal share equal to one-half of the couple's combined nonexcluded resources as of the beginning of the current period of institutional status, up to the amount described in subsection ((6)) (9)(a) of this section; or

(ii) The state spousal resource standard of ((forty thousand)) forty-one thousand, nine-hundred forty-three dollars effective July 1, 2005 (this standard increases every odd year on July 1st).

((7)) (10) The amount of the spousal share described in ((6)) (9)(b)(i) ((is)) can be determined ((sometime)) anytime between the date that the current period of institutional status began and the date that eligibility for LTC services is determined. The following rules apply to the determination of the spousal share:

(a) Prior to an application for LTC services, the couple's combined countable resources are evaluated from the date of the current period of institutional status at the request of either member of the couple. The determination of the spousal share is completed when necessary documentation and/or verification is provided; or

(b) The determination of the spousal share is completed as part of the application for LTC services if the client was institutionalized prior to the month of application, and declares the spousal share exceeds the state spousal resource standard. The client ((will be)) is required to provide verification of the couple's combined countable resources held at the beginning of the current period of institutional status.

((8)) (11) The amount of allocated resources described in subsection ((6)) (9) of this section can be increased, only if:

(a) A court transfers additional resources to the community spouse; or

(b) An administrative law judge establishes in a fair hearing described in chapter 388-02 WAC ((or by consent order)), that the amount is inadequate to provide a minimum monthly maintenance needs amount for the community spouse.

((9)) (12) The department considers resources of the community spouse unavailable to the institutionalized spouse the month after eligibility for LTC services is established, unless subsection ((10)) (13)(a), (b), or (c) of this section applies.

((10)) (13) A redetermination of the couple's resources as described in subsections ((4)(b) or (e)) (7) is required, if:

(a) The institutionalized spouse has a break of at least thirty consecutive days in a period of institutional status;

(b) The institutionalized spouse's nonexcluded resources exceed the standard described in subsection (1)(a), if subsection ((5)) (8)(b) applies; or

(c) The institutionalized spouse does not transfer the amount described in subsections ((6)) (9) or ((8)) (11) to the community spouse or to another person for the sole benefit of the community spouse as described in WAC 388-513-1365(4) by either:

(i) The first regularly scheduled eligibility review; or

(ii) The reasonable amount of additional time necessary to obtain a court order for the support of the community spouse.

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-513-1360	Determining excluded resources for long-term care (LTC) services.
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**WSR 06-21-126  
PROPOSED RULES  
OFFICE OF THE  
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2003-09—Filed October 18, 2006,  
9:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-01-178.

Title of Rule and Other Identifying Information: Chapter 284-02 WAC, Description of insurance commissioner's office.

Hearing Location(s): Insurance Commissioner's Office, Room TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on November 21, 2006, at 11:00 a.m.

Date of Intended Adoption: December 4, 2006.

Submit Written Comments to: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, e-mail KacyS@oic.wa.gov, fax (360) 725-7041, by November 20, 2006.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by February 24, 2006, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments update the description of the internal organization and operations of the office of the insurance commissioner.

Reasons Supporting Proposal: This chapter was last amended in 1996 and the agency has been through many changes since then. Chapter 34.05 RCW, the Administrative Procedure Act requires a description of the operations of the agency.

Statutory Authority for Adoption: RCW 48.02.060, 34.05.220.

Statute Being Implemented: RCW 34.05.220 (1)(b).

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

Name of Proponent: Mike Kreidler, Insurance Commissioner, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Melodie Bankers, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7039; and Enforcement: Pete Cutler, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7037.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules relate only to the internal operations of the insurance commissioner's office and are descriptive only. No small business economic impact statement is required because the rules will impose no costs on business in an industry. These rules are required by the Administrative Procedure Act at RCW 34.05.220 (1)(b).

A cost-benefit analysis is not required under RCW 34.05.328. These rules relate only to the internal operations of the insurance commissioner's office and are descriptive only and exempt from the requirements in RCW 34.05.328.

October 18, 2006

Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 96-3, filed 4/10/96, effective 5/11/96)

**WAC 284-02-010** (~~(Authority of)~~ **What are the responsibilities of the insurance commissioner(¶) and the office of the insurance commissioner (OIC) staff? The insurance commissioner is responsible for regulating the insurance industry and all persons or entities transacting insurance business in this state in the public interest. The position of insurance commissioner was established by the legislature as an independent, elective office in 1907. The insurance laws and the authority of the insurance commissioner are found in Title 48 RCW. The insurance commissioner's powers are set forth in chapter 48.02 RCW.**

(1) (~~The office generally. The position of insurance commissioner was established by the legislature as an independent, elective office in 1907. The insurance commissioner's powers are set forth in chapter 48.02 RCW.~~) **General powers and tasks.**

(a) To carry out the task of enforcing the insurance code the commissioner:

(i) May make rules and regulations governing activities under the insurance code ((consistent therewith)) (Title 48 RCW);

(ii) May conduct investigations to determine whether any person has violated any provision of the insurance code, including both informal and formal hearings;

(iii) May take action (including levying of fines and revocation of authority to transact business in this state) against an insurance company, fraternal benefit society, charitable gift annuity providers, health maintenance organization, ((¶) health care service contractor, motor vehicle service contract provider, service contract provider, self-funded multiple employer welfare arrangement, and ((¶) viatical settlement provider ((by revocation or suspension of its certificate of authority or certificate of registration; may fine insurance companies, fraternal benefit societies, health care service contractors, health maintenance organizations, and viatical settlement providers)); and

(iv) May issue, revoke, or suspend the licenses of insurance agents, brokers, solicitors, adjusters, ((¶) and insurance education providers, reinsurance intermediaries, viatical settlement brokers, or may fine any of them for violations of the insurance code. ((In addition,))

(b) All insurers and other companies regulated under the insurance code must meet financial, legal, and other requirements and must be licensed, registered, or certified by the OIC prior to the transaction of insurance in this state.

(c) The OIC is responsible for collecting a premium-based tax levied against insurers and other companies transacting insurance business in this state. The funds collected from health care companies are deposited into the state's health services account. All other taxes are deposited into the state's general fund.

(d) Any person engaged in the marketing or sale of insurance in Washington must hold a license issued by the OIC. The OIC oversees the prelicensing education, testing, licensing, continuing education, and renewal of agent, broker, and solicitor licenses.

(e) Public and independent adjusters must be licensed by the OIC. The OIC is responsible for the processing of licenses, background checks, affiliations, testing, renewals, terminations, and certificates for individuals and business entities, both resident and nonresident, who act as independent or public adjusters in Washington.

(f) The OIC assists persons who have complaints about companies, agents, or other licensees of the OIC. OIC investigators follow up on consumer complaints, look into circumstances of disputes between consumers and licensees, and respond to questions.

(g) The OIC publishes and distributes consumer guides and fact sheets to help inform consumers about their choices and rights when buying and using insurance.

(2) Orders. The commissioner may issue a cease and desist order ~~((pursuant to))~~ based on the general enforcement powers granted by RCW 48.02.080, or ~~((pursuant to that section, the commissioner))~~ may bring an action in court to enjoin violations of the insurance code.

~~((2) Duties and responsibilities imposed by Title 48 RCW.~~

~~(a) The insurance code is found at Title 48 of the Revised Code of Washington. It deals largely with the commissioner's regulation of insurance companies, insurance agents, brokers, solicitors, and adjusters.~~

~~Chapter 48.29 RCW regulates the activities of title insurers and their agents. Chapter 48.36A RCW regulates fraternal societies. Agents of fraternal benefit societies are subject to the licensing requirements of chapter 48.17 RCW. Fraternal benefit societies are subject to the provisions of chapter 48.30 RCW relating to unfair trade practices, and RCW 48.36A.360 sets forth the penalties for violation of the fraternal benefit society chapter.~~

~~Chapter 48.41 RCW, entitled "Health Insurance Coverage Access Act," provides a mechanism to assure the availability of comprehensive health insurance coverage to residents of Washington who are denied adequate health insurance coverage.~~

~~Chapter 48.44 RCW regulates health care service contractors and chapter 48.46 RCW regulates health maintenance organizations, as defined therein. The regulatory powers of the insurance commissioner over health care service contractors and health maintenance organizations are similar to those over commercial insurers.~~

~~Chapter 48.56 RCW, entitled "Insurance Premium Finance Company Act," regulates premium finance companies.~~

~~Chapter 48.102 RCW regulates viatical settlement providers and viatical settlement brokers as defined therein.~~

~~(b) The insurance code contains a number of substantive provisions which relate to the rights of policyholders in general and which are enforced for their benefit by the insurance commissioner. Those, for the most part, are contained in chapter 48.18 RCW, which is entitled "The insurance contract," and chapter 48.30 RCW, entitled "Unfair practices and frauds." Additional substantive provisions are contained in chapters of the insurance code dealing with specific lines of insurance. For example, certain standard provisions are required to be placed in an individual disability insurance contract (chapter 48.20 RCW). Similarly, substantive provisions appear in chapter 48.21 RCW, entitled "Group and blanket disability insurance," chapter 48.23 RCW, entitled "Life insurance and annuities," chapter 48.24 RCW, entitled "Group life and annuities," chapter 48.22 RCW, entitled "Casualty insurance," chapter 48.34 RCW, entitled "Credit life insurance and credit accident and health insurance," chapter 48.56 RCW, entitled "Insurance Premium Finance Company Act," chapter 48.66 RCW, entitled "Medicare Supplemental Health Insurance Act," chapter 48.84 RCW, entitled "Long-term Care Insurance Act," and chapter 48.102 RCW, entitled "Viatical settlements regulation.")~~

~~(3) ((Additional duties of the insurance commissioner.))~~  
**SHIBA.** The OIC offers assistance statewide to consumers regarding health care insurance and health care access through its statewide health insurance benefits advisors (SHIBA) "HelpLine" program. Volunteers are trained by OIC employees to provide counseling, education, and other assistance to residents of Washington. Information about SHIBA, including how to become a SHIBA volunteer, can be found on the OIC web site ([www.insurance.wa.gov](http://www.insurance.wa.gov)).

~~(4) Publication of tables for courts and appraisers.~~ The ~~((state))~~ insurance commissioner ~~((has been assigned the special duty of preparing annuity tables for calculation of the industrial insurance reserve fund (RCW 51.44.070). The commissioner must also publish for use of the state courts and appraisers,))~~ publishes tables showing the average expectancy of life~~((;))~~ and values of annuities and life and term estates for the use of the state courts and appraisers (RCW 48.02.160).

~~(5) Copies of public documents.~~ Files of completed investigations, complaints against insurers or other persons or entities authorized to transact the business of insurance by the OIC, and copies of completed rate or form filings are generally available for public inspection and copying during business hours (see chapter 284-03 WAC) at the OIC's office in Tumwater, subject to other applicable law. Access by the public to information and records of the insurance commissioner is governed by chapter 284-03 WAC and the Public Records Act (chapter 42.56 RCW). Information on how to request copies of public documents is available on the OIC web site ([www.insurance.wa.gov](http://www.insurance.wa.gov)).

~~(6) Web site.~~ The insurance commissioner maintains a web site at: [www.insurance.wa.gov](http://www.insurance.wa.gov). Current detailed information regarding insurance, persons and entities authorized

to transact insurance business in this state, consumer tips, links to Washington's insurance laws and rules, a list of publications available to the public, and other valuable information can be found on the web site.

**(7) Toll-free consumer hotline.** Members of the OIC staff respond to inquiries of consumers who telephone the agency's toll-free consumer hotline at 1-800-562-6900.

**(8) Location of offices.** The OIC's headquarters office is located in the insurance building on the state Capitol campus in Olympia. Branch offices are located in Tumwater, Seattle and Spokane. Addresses for the office locations can be found on the OIC web site ([www.insurance.wa.gov](http://www.insurance.wa.gov)) or by calling the commissioner's consumer hotline (1-800-562-6900).

**(9) Antifraud program.** Beginning in 2007, the OIC (in partnership with the Washington state patrol, county prosecutors, and the state attorney general's office) will investigate and assist in prosecuting fraudulent activities against insurance companies. Information about this program can be found on the OIC web site ([www.insurance.wa.gov](http://www.insurance.wa.gov)).

#### NEW SECTION

**WAC 284-02-023 How is the OIC organized?** The insurance commissioner is elected by popular vote every four years. The commissioner is assisted by a chief deputy insurance commissioner. The agency is divided into three line divisions, with four smaller divisions providing direct support. The line divisions are: Company supervision, consumer protection, and rates and forms. The support divisions are: Operations, legal affairs, public affairs, legislation, and policy. An up-to-date agency organizational chart can be requested from the OIC.

#### NEW SECTION

**WAC 284-02-025 How is the OIC funded?** The operations of the OIC are funded by a special assessment paid by all insurance companies based on the amount of insurance business they transact in Washington.

AMENDATORY SECTION (Amending Matter No. R 96-3, filed 4/10/96, effective 5/11/96)

**WAC 284-02-030 ~~((Obtaining))~~ How can service of process over foreign and alien insurers~~((s))~~ be made?** (1) Although domestic insurers are served with legal process personally, the insurance commissioner is the party on whom service of process ~~((should))~~ must be made on all foreign and alien insurers, whether authorized to transact business in this state or not. The exact procedures are set forth in the applicable statutes.

(a) Service of process against authorized foreign and alien insurers, other than surplus line insurers, must be made ~~((pursuant))~~ according to the requirements of RCW 48.05.-200 and 48.05.210. RCW 48.05.220 specifies the proper venue for such actions.

(b) Service of process against surplus line insurers can be made on the commissioner~~((pursuant to))~~ by following the procedures set forth in RCW 48.05.215 and 48.15.150. (A surplus lines insurer markets coverage which cannot be procured in the ordinary market from authorized insurers.)

(c) Service of process against other unauthorized insurers may be made on the commissioner~~((pursuant to))~~ based on the procedures set forth in RCW 48.05.215.

(d) The commissioner is not authorized to accept service of process on domestic or foreign health care service contractors or health maintenance organizations.

(2) Where service of process against a foreign or alien insurer is made through service upon the commissioner ~~((pursuant to))~~ according to the requirements of RCW 48.05.210 or 48.05.215, against a nonresident agent or broker ~~((pursuant to))~~ RCW 48.17.340, or against a viatical settlement provider or broker ~~((pursuant to))~~ chapter 48.102 RCW or chapter 284-97 WAC), ~~((such))~~ this service ((shall)) must be made by personal service at, or by registered mail sent to, the ((Olympia, Washington,)) Tumwater office of the insurance commissioner only, and ((shall)) must otherwise comply with the requirements of the applicable statute.

(3) Service upon ~~((a branch))~~ any location other than the Tumwater office of the ((commissioner)) OIC is not permissible and will not be accepted. ~~((Pursuant to))~~

(4) As authorized by RCW 1.12.060, whenever the use of "registered" mail is called for, "certified" mail with return receipt requested may be used.

AMENDATORY SECTION (Amending Matter No. R 96-3, filed 4/10/96, effective 5/11/96)

**WAC 284-02-040 Where can information about applying for a license as agent, adjuster, broker, or solicitor~~((s))~~ be found?** The requirements for licensing are generally found in chapter 48.17 RCW.

(1) Licensing requirements and instructions for obtaining a license as an insurance agent, adjuster, broker or solicitor, ~~((or))~~ as a viatical settlement broker, or for any other license required for the transaction of the business of insurance under Title 48 RCW may be obtained from the OIC's licensing section ~~((of the investigations and enforcement division)).~~

(2) The OIC web site includes forms and instructions for applicants at: [www.insurance.wa.gov](http://www.insurance.wa.gov).

AMENDATORY SECTION (Amending Matter No. R 96-3, filed 4/10/96, effective 5/11/96)

**WAC 284-02-050 Where can information and applications for admission as an authorized insurer, fraternal benefit society, health care service contractor, health maintenance organization, ~~((or))~~ viatical settlement provider~~((s))~~, and for other entities required to be authorized to transact the business of insurance be found?** (1) A ~~((check list))~~ checklist of documents required for an application for admission is available from the company supervision division. The statutory requirements are contained in chapter 48.05 RCW (all insurance companies); chapter 48.06 RCW (domestic companies); chapter 48.07 RCW (domestic stock companies); chapter 48.09 RCW (mutual companies); chapter 48.10 RCW (reciprocal companies); chapter 48.36A RCW (fraternal benefit societies); chapter 48.102 RCW (viatical settlement providers); chapter 48.44 RCW (health care service contractors), ~~((and))~~ chapter 48.46 RCW (health

maintenance organizations) and chapter 48.125 RCW (self-funded multiple employer welfare arrangements).

(2) Capital and surplus requirements for stock insurance companies are contained in RCW 48.05.340.

(3) The OIC web site includes forms and instructions for applicants at: [www.insurance.wa.gov](http://www.insurance.wa.gov).

AMENDATORY SECTION (Amending Matter No. R 96-3, filed 4/10/96, effective 5/11/96)

**WAC 284-02-060 Where can information regarding filing a complaint against a company, agent, broker, solicitor, ~~(or)~~ adjuster~~(s)~~, or other person or entity authorized by the OIC be found?** (1) A complaint or grievance against ~~((an insurance company, fraternal benefit society, viatical settlement provider, health care service contractor, health maintenance organization, agent, broker, solicitor, adjuster, or viatical settlement broker))~~ a person or entity authorized to transact the business of insurance under Title 48 RCW may be filed with the ~~((insurance commissioner))~~ OIC. The ~~((insurance commissioner))~~ complainant should ~~((be supplied with))~~ supply as many facts as possible to assist the OIC in the investigation of the complaint. ~~((This))~~ Complaints should include: The correct name of the insurance company or other entity issuing the policy or contract; the policy ~~((and/or))~~ number; the claim number; the name of the agent, broker, solicitor, adjuster, ~~((or))~~ viatical settlement broker, or any other person or entity offering to sell you insurance or to settle your claim; the date of loss or the date of the company's or other licensee's action; and a complete explanation of the loss or other problem.

(2) A form ~~((to))~~ that can be used ~~((in making))~~ to make a complaint may be requested from the OIC by telephone ~~((from one of the insurance commissioner's offices))~~ or can be found on the OIC web site ([www.insurance.wa.gov](http://www.insurance.wa.gov)). Use of ~~((such))~~ this form may be helpful in organizing the information, but its use is not required.

(3) If personal medical information is provided to the OIC, the OIC's medical release form must be signed and submitted by the appropriate person.

AMENDATORY SECTION (Amending Matter No. R 96-3, filed 4/10/96, effective 5/11/96)

**WAC 284-02-070 ~~((Hearings of the insurance commissioner))~~ How does the OIC conduct hearings? (1) Generally.**

(a) Hearings of the ~~((insurance commissioner's office))~~ OIC are conducted according to chapter 48.04 RCW and the Administrative Procedure Act (chapter 34.05 RCW). Two types of hearings are conducted: Rule-making hearings and adjudicative proceedings or contested case hearings ~~((, the latter including))~~. Contested case hearings include appeals from disciplinary actions taken by the commissioner.

(b) How to demand or request a hearing. Under RCW 48.04.010 the commissioner is required to hold a hearing upon demand by any person aggrieved by any act, threatened act, or failure of the commissioner to act, if ~~((such))~~ the failure is deemed an act under the insurance code ~~((, or by))~~ or the Administrative Procedure Act.

(i) Hearings can be demanded by an aggrieved person based on any report, promulgation, or order of the commissioner ~~((other than an order on a hearing of which such person was given actual notice or at which such person appeared as a party, or order pursuant to the order on such hearing))~~.

(ii) Requests for hearings must be ~~((made))~~ in writing and delivered to the ~~((commissioner at the commissioner's Olympia office))~~ Tumwater office of the OIC. The request must specify how the person making the demand has been aggrieved by the commissioner, and must specify the grounds to be relied upon as the basis for the relief sought.

~~((b))~~ Files of completed investigations, complaints against insurers, and rate or contract filings maintained by the commissioner are generally available for public inspection and copying during business hours (see chapter 284-03 WAC), subject to other applicable law.)

(c) Accommodation will be made for persons needing assistance, for example, where English is not their primary language, or for hearing impaired persons.

(2) Proceedings for contested cases or adjudicative ~~((proceedings))~~ hearings.

(a) Provisions specifically relating to disciplinary action taken against ~~((insurance agents, brokers, solicitors, adjusters, or viatical settlement brokers))~~ persons or entities authorized by the OIC to transact the business of insurance are contained in RCW 48.17.530, 48.17.540, 48.17.550, 48.17.560 ~~((and))~~, chapter 48.102 RCW, and other chapters related to specific licenses. Provisions applicable to other adjudicative proceedings are contained in chapter 48.04 RCW and the Administrative Procedure Act (chapter 34.05 RCW). The uniform rules of practice and procedure appear in Title 10 of the Washington Administrative Code. The grounds for disciplinary action against insurance agents, brokers, solicitors, and adjusters are contained in RCW 48.17.530; grounds for similar action against insurance companies are contained in RCW 48.05.140; grounds for actions against fraternal benefit societies are found at RCW 48.36A.300 (domestic) and RCW 48.36A.310 (foreign); grounds for actions against viatical settlement providers are found in chapter 48.102 RCW; grounds for actions against health care service contractors are contained in RCW 48.44.160; and grounds for action against health maintenance organizations are contained in RCW 48.46.130. ~~((These statutes provide that))~~ Grounds for actions against other persons or entities authorized by the OIC under Title 48 RCW are found in the chapters of Title 48 RCW applicable to those licenses.

(b) The insurance commissioner may suspend or revoke ~~((a licensee's))~~ any license, ~~((or the))~~ certificate of authority, or registration ~~((of an insurer, fraternal benefit society, viatical settlement provider, health care service contractor, or health maintenance organization))~~ issued by the OIC. In addition, the commissioner may generally levy fines against ~~((those licensees and))~~ any persons or organizations having been authorized by the OIC.

~~((b))~~ (c) Adjudicative proceedings or contested case hearings of the insurance commissioner are informal in nature, and compliance with the formal rules of pleading and evidence is not required.

(i) The insurance commissioner may delegate the authority to hear and determine the matter and enter the final order

~~((pursuant to))~~ under RCW 48.02.100 and 34.05.461 to a presiding officer; or may ~~((utilize))~~ use the services of an administrative law judge in accordance with chapter 34.12 RCW and the Administrative Procedure Act (chapter 34.05 RCW). The initial order of an administrative law judge will not become a final order without the commissioner's review (RCW 34.05.464).

(ii) The hearing will be recorded by any method chosen by the presiding officer. Except as required by law, the ~~((commissioner's office))~~ OIC is not required, at its expense, to prepare a transcript. Any party, at the party's expense, may cause a reporter approved by the ~~((commissioner))~~ presiding officer to prepare a transcript from the agency's record, or cause additional recordings to be made during the hearing if, in the opinion of the presiding officer, the making of the additional recording does not cause distraction or disruption. If appeal from the insurance commissioner's order is made to the superior court, the recording of the hearing will be transcribed~~((;))~~ and certified to the court.

(iii) The insurance commissioner or the presiding officer may allow any person affected by the hearing to be present during the giving of all testimony and will allow the aggrieved person a reasonable opportunity to inspect all documentary evidence, to examine witnesses, and to present evidence. Any person heard must make full disclosure of the facts pertinent to the inquiry.

~~((;))~~ (iv) Unless a person aggrieved by an order of the insurance commissioner demands a hearing ~~((thereon))~~ within ninety days after receiving notice of ~~((such))~~ that order, or in the case of ~~((licensees))~~ persons or entities authorized by the OIC to transact the business of insurance under Title 48 RCW, within ninety days after the ~~((commissioner has mailed the))~~ order was mailed to the ~~((licensee at the))~~ most recent address shown in the ~~((commissioner's))~~ OIC's licensing records, the right to ~~((such))~~ a hearing ~~((shall))~~ is conclusively ~~((be))~~ deemed to have been waived (RCW 48.04.010(3)).

~~((;))~~ (v) Prehearing or other conferences for ~~((the))~~ settlement or simplification of issues may be held at the discretion and direction of the presiding officer.

(3) **Rule-making hearings.** Rule-making hearings ~~((of the insurance commissioner))~~ are conducted ~~((pursuant to))~~ based on requirements found in the Administrative Procedure Act (chapter 34.05 RCW)~~((;))~~ and chapter 34.08 RCW (the State Register Act)~~((; and chapter 48.04 RCW))~~.

(a) Under applicable law all interested parties must be ~~((afforded))~~ provided an opportunity to express their views concerning a proposed ~~((regulation of the insurance commissioner's office))~~ rule, either orally or in writing. The ~~((commissioner))~~ OIC will accept comments on proposed rules by mail, electronic telefacsimile transmission, or electronic mail but will not accept comments by recorded telephonic communication or voice mail (RCW 34.05.325(3)).

(b) Notice of intention of the insurance commissioner to adopt a proposed rule ~~((or regulation))~~ or amend an existing rule is published in the state register and is sent to anyone who has requested notice in advance and to persons who the ~~((commissioner))~~ OIC determines would be particularly interested in the proceeding. ~~((The commissioner may require))~~ Persons requesting paper copies of all proposed

rule-making notices of inquiry and hearing notices may be required to pay the cost of mailing these notices ~~((pursuant to))~~ (RCW 34.05.320(3)).

(c) Copies of proposed new rules and amendments to existing rules as well as information related to how the public may file comments are available on the OIC web site (www.insurance.wa.gov).

AMENDATORY SECTION (Amending Matter No. R 96-3, filed 4/10/96, effective 5/11/96)

**WAC 284-02-080 What publications and information are available from the OIC?** The OIC makes information about insurance, persons and entities authorized by the OIC to transact the business of insurance under Title 48 RCW, policy forms and rates, interpretive statements, and official actions taken by the insurance commissioner available to the public. Below is a description of some of the information published by the OIC. Copies of these reports and publications, as well as consumer fact sheets and purchasing guides, are available on the OIC web site (www.insurance.wa.gov), at all OIC offices, and may be ordered by telephone (1-800-562-6900). Persons requesting paper copies may be required to pay the cost of producing and mailing the publication.

(1) **Insurance code.** The insurance commissioner publishes a paperbound copy of the insurance laws (Title 48 RCW)~~((; pursuant to authority of))~~ as required by RCW 48.02.180~~((; Copies of))~~, and the insurance administrative rules ~~((and regulations of the insurance commissioner))~~ (Title 284 WAC) ~~((are available in pamphlet form))~~. ~~((Each))~~ Copies of these pamphlets may be purchased from the commissioner's ((Olympia)) Tumwater office. In addition, Titles 48 RCW and 284 WAC are available in any law library, as well as in most general libraries.

(2) **List of authorized insurers.** Except as provided in chapter 48.15 RCW, an insurer not authorized to do business in Washington is forbidden by law to solicit business in ~~((this state))~~ Washington (RCW 48.15.020). The ~~((insurance commissioner publishes periodically))~~ OIC compiles a list of all insurance companies authorized to do business in this state. ~~((Such lists are))~~ A paper copy of the list is available ((on request)) from the ((insurance commissioner's office)) OIC, and it is available on the OIC web site (www.insurance.wa.gov). The commissioner may require persons requesting paper copies of the list of authorized and registered companies to pay the cost of producing and mailing this list.

(3) **Annual report.** The insurance commissioner publishes an annual report, as required by RCW 48.02.170~~((; a copy of which is available on request. The commissioner may require all persons requesting a copy to pay the cost of developing, printing, and mailing the annual report))~~. Generally, the annual report contains a list of all insurers authorized to transact insurance in this state, showing the insurer's name, location, and kinds of insurance transacted. It also tabulates abstracts of the annual statements of all authorized insurers, and contains a summary of the operations of the insurance commissioner's office. The report is available on the OIC web site (www.insurance.wa.gov). A paper copy of the report is available upon request. The commissioner may



require persons requesting a paper copy to pay the cost of developing, printing, and mailing the annual report.

(4) **Policy and contract forms and rates.** Rates of insurance companies and other ~~((licensees))~~ entities offering contracts in this state, and all policy forms required to be filed or approved by the insurance commissioner are on file in the commissioner's Tumwater office and are public records. Actuarial formulas, statistics, and assumptions submitted ~~((by an insurer, health care service contractor, or health maintenance organization))~~ in support of a rate or form filing are not available for public inspection (RCW 48.02.120(3)).

(5) **Examination reports, annual reports.** Reports of examination and annual reports of insurance companies, fraternal benefit societies, viatical settlement providers, health care service contractors, ~~((and))~~ health maintenance organizations, and other entities authorized to transact the business of insurance under Title 48 RCW are on file in the insurance commissioner's Tumwater office and are open for public inspection. Instructions for viewing or copying public records are available on the OIC web site (www.insurance.wa.gov).

(6) **Official actions of the insurance commissioner.** As required by the Administrative Procedure Act, actions taken by the ~~((insurance commissioner's office))~~ OIC relating to adoption of rules or the discipline of ~~((insurance companies, fraternal benefit societies, viatical settlement providers, health care service contractors, health maintenance organizations, insurance agents, brokers, solicitors, adjusters, and viatical settlement brokers))~~ persons or entities authorized by the OIC are on file in the commissioner's ((Olympia)) Tumwater office and are a matter of public record.

(7) **Deposits of insurers.** Records of deposits of insurers, required by chapter 48.16 RCW and other sections of the insurance code, are on file in the insurance commissioner's Tumwater office.

(8) **Articles of incorporation, bylaws of insurers.** All domestic insurers are required to file their articles of incorporation and bylaws, ~~((and))~~ plus any amendments ~~((thereto))~~ to them, with the ~~((insurance commissioner))~~ OIC. These are open for public inspection in the insurance commissioner's Tumwater office.

AMENDATORY SECTION (Amending Matter No. R 96-3, filed 4/10/96, effective 5/11/96)

**WAC 284-02-100 How can an interested person petition for adoption, amendment, or repeal of rules((s))?** (1) As authorized by the Administrative Procedure Act, any interested person may petition the insurance commissioner requesting the adoption, amendment, or repeal of any rule (RCW 34.05.330). The petition ~~((shall))~~ must be in writing, dated, and signed by the petitioner. In addition to the information ~~((set forth))~~ listed in RCW 34.05.330(3), each petition ~~((shall))~~ must include the following information:

(a) The name and address of the person requesting the action, and, if ~~((pertinent))~~ relevant, the background and identity of the petitioner and the interest of the petitioner in the subject matter of the rule;

(b) The full text of any proposed new or amendatory rule and the citation and caption of any existing rule to be amended or repealed;

(c) A narrative explaining the purpose and scope of any proposed new or amendatory rule including a statement generally describing the statutory authority relied upon by the petitioner, how the rule is to be implemented, ~~((and giving))~~ the reasons for the proposed action, accompanied by necessary or pertinent data in support ~~((thereof))~~ of the new rule or amendment; and

(d) Statements from other persons in support of the action petitioned are encouraged, if they help the OIC to understand why the new rule or amendment is needed.

(2)(a) Within sixty days after ~~((submission of a))~~ the petition to adopt, amend, or repeal any rule is submitted, the ~~((commissioner will))~~ OIC either:

(i) Will formally deny the petition in writing to the person requesting the action, stating the reasons ~~((therefore))~~ for the denial, and, if appropriate, will state ~~((the))~~ any alternative means by which the insurance commissioner will address concerns raised; or ~~((the commissioner))~~

(ii) Will initiate rule-making proceedings in accordance with the Administrative Procedure Act.

(b) If the insurance commissioner denies a petition to repeal or amend a rule, the petitioner may appeal the denial to the governor, within thirty days ~~((of))~~ after the denial ~~((according to the procedure set forth at))~~ (RCW 34.05.330 (2)).

(3) If the insurance commissioner determines it to be in the interest of the public, ~~((the commissioner may order))~~ a hearing may be held for the further consideration and discussion of the requested adoption, amendment, or repeal of any rule.

(4) For information concerning the subjects of rules being proposed, or to request paper copies of rules or copies of materials presented to the commissioner during the rule-making process, members of the public may contact the agency's rules coordinator. The name, address, and phone number of the rules coordinator are available on the OIC web site and are published at least annually in the *Washington State Register*. Complete information regarding all rules being proposed is available on the OIC web site (www.insurance.wa.gov).

~~((5) The office of financial management prescribes by rule a format for petitions for adoption, amendment, or repeal of rules. This form may be helpful to petitioners, but its use is not required. Petitions for adoption, amendment, or repeal of rules will be accepted whether or not the petition form adopted by the office of financial management is used.)~~

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 284-02-020	Organization and operations.
WAC 284-02-090	Public access to information and records.

**WSR 06-21-129**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed October 18, 2006, 10:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-12-127.

Title of Rule and Other Identifying Information: WAC 308-104-010 Vision test for driver's license and instruction permit issuance.

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA (check in at counter on first floor), on November 21, 2006, at 3:00 p.m.

Date of Intended Adoption: November 22, 2006.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98507-9030, e-mail cholloway@dol.wa.gov, fax (360) 586-8351, by November 20, 2006.

Assistance for Persons with Disabilities: Contact Clark J. Holloway by November 20, 2006, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amends WAC 308-104-010 to update policies and procedures relating to the requirement, scoring, and consequences of vision tests taken by applicants for driver's licenses and instruction permits. Policies and procedures are being updated to improve traffic safety based on the results of an internal study of the current rule and its effects.

Statutory Authority for Adoption: RCW 46.20.130, 46.01.110.

Statute Being Implemented: RCW 46.20.130, 46.20.-041.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Clark J. Holloway, Highways-Licenses Building, Olympia, Washington, (360) 902-3846; Implementation and Enforcement: Becky Loomis, Highways-Licenses Building, Olympia, Washington, (360) 902-3850.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

October 18, 2006

Becky Loomis  
Assistant Director

AMENDATORY SECTION (Amending WSR 04-20-012, filed 9/24/04)

**WAC 308-104-010 Vision test.** (1) A person applying for a driver's license or (~~renewal~~) instruction permit shall be required to take a vision test administered by the department.

(a) Any person (~~having less~~) with visual acuity worse than (a) 20/40 Snellen (vision acuity) with both eyes combined either corrected or uncorrected, or (having) with some apparent significant visual limitation, must have an eye examination by (an ophthalmologist or optometrist) a competent vision authority.

(b) If an applicant's vision cannot be corrected so (~~that~~) it will be (~~within the~~) 20/40 Snellen (~~range for visual acuity or other vision problems cannot be corrected, then~~) for visual acuity and if the applicant's vision is between 20/50 Snellen and 20/100 Snellen, or if an applicant's other vision problems cannot be corrected, he or she must submit to a (special examination in order to determine if a license shall be issued and whether limitations or restrictions should be imposed) re-examination.

(c) An applicant whose vision cannot be corrected to at least 20/100 Snellen range will be deemed to have failed the portion of the driver's license examination specified by RCW 46.20.130 (1)(a) pertaining to eyesight and ability to see, and will be deemed to have failed to demonstrate that he or she is qualified to drive.

(d) An applicant whose optometrist or ophthalmologist answers "no" to the question "In your professional opinion, can this individual see adequately to safely operate a vehicle at night," will be deemed to have failed to demonstrate that he or she is qualified to drive at night.

(2) The department may waive the requirement for a vision test for any person applying to renew his or her driver's license by mail or electronic commerce if the person certifies on the application that his or her vision acuity is no less than 20/40 (~~as measured on the~~) Snellen (~~test~~) for visual acuity, either corrected or uncorrected, and that there are no other vision problems.

(3) The department shall refer for re-examination any person who uses bioptic or telescopic lenses to meet licensing standards for the issuance of any driver's license or instruction permit.

**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.

**WSR 06-21-130**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed October 18, 2006, 11:27 a.m.]

Supplemental Notice to WSR 06-18-078.

Preproposal statement of inquiry was filed as WSR 06-13-083.

Title of Rule and Other Identifying Information: 2007 industrial insurance premium rates, chapter 296-17 WAC, General reporting rules, classifications, audit and record-keeping, rates and rating system for Washington workers' compensation insurance.

Hearing Location(s): Department of Labor and Industries, Tukwila Office, 12806 Gateway Drive, Seattle, WA

98168-1050, phone (206) 835-1000, on November 7, 2006, at 1 p.m.

Date of Intended Adoption: November 21, 2006.

Submit Written Comments to: Ronald Moore, Acting Program Manager, Employer Services, P.O. Box 44140, Olympia, WA 98504-4140, e-mail mooa235@lni.wa.gov, fax (360) 902-4729, by 5 p.m., November 7, 2006.

Assistance for Persons with Disabilities: Contact office of information and assistance by October 18, 2006, TTY (360) 902-5797.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to add an additional hearing to the schedule for the 2007 rates hearing. Please see proposal filed as WSR 06-18-078.

Statutory Authority for Adoption: RCW 51.16.035, 51.32.073, 51.08.010, and 51.04.020(1).

Statute Being Implemented: RCW 51.16.035, 51.32.-073, 51.08.010, and 51.04.020(1).

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

Name of Agency Personnel Responsible for Drafting: Bill Moomau, Tumwater, Washington, (360) 902-4774; Implementation: Ronald Moore, Tumwater, Washington, (360) 902-4748; and Enforcement: Robert Malooly, Tumwater, Washington, (360) 902-4209.

October 18, 2006

Judy Schurke  
Acting Director