

**WSR 09-01-001**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**

(Nursing Care Quality Assurance Commission)  
 [Filed December 3, 2008, 12:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-14-158.

Title of Rule and Other Identifying Information: WAC 246-840-910, 246-840-920, 246-840-930, 246-840-940, 246-840-950, 246-840-960 and 246-840-970, nursing delegation; and WAC 246-841-405 Nursing assistant delegation.

Hearing Location(s): Department of Health, Town Center, Room 163, 101 Israel Road S.E., Tumwater, WA 98501, on January 27, 2009, at 11:00 a.m.

Date of Intended Adoption: January 27, 2009.

Submit Written Comments to: Terry J. West, Deputy Executive Director, Department of Health, Nursing Commission, P.O. Box 47864, Olympia, WA 98504, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4738, by January 5, 2009.

Assistance for Persons with Disabilities: Contact Louise.lloyd@doh.wa.gov, (360) 236-4713, by January 5, 2009, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Nursing delegation rules already exist. Legislation was passed in 2008 (E2SHB 2668, chapter 146, Laws of 2008) that adds insulin injection as a health care task that can be delegated by a registered nurse (RN) to a nursing assistant. The proposed rule amendments allow for the delegation of insulin injections and establishes the training standards and the process that must be followed in order to delegate.

Reasons Supporting Proposal: RNs are currently performing insulin injections for patients and residents of community-based care settings and in-home care settings. The proposed rules will allow RNs to delegate the task of performing insulin injections to qualified nursing assistants. This will allow the RN to perform higher level health care tasks. This will allow more flexibility for the RN, the nursing assistant and the care facilities in which patients and residents reside. The proposed rules will allow people with disabilities to continue to reside in their own home or other home-like setting.

Statutory Authority for Adoption: RCW 18.79.110, 18.79.260, 18.88A.060, and 18.88A.210.

Statute Being Implemented: RCW 18.79.110, 18.79.260, 18.88A.060, and 18.88A.210.

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

Name of Proponent: Nursing care quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Terry J. West, P.O. Box 47864, Olympia, WA 98504, (360) 236-4712.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared. The proposed rule would not impose more than minor costs on businesses in an industry. A copy of the statement may be obtained by con-

tacting Terry J. West, P.O. Box 47864, Olympia, WA 98504, phone (360) 236-4712, fax (360) 236-4738, e-mail [terry.west@doh.wa.gov](mailto:terry.west@doh.wa.gov).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Terry J. West, P.O. Box 47864, Olympia, WA 98504, phone (360) 236-4712, fax (360) 236-4738, e-mail [terry.west@doh.wa.gov](mailto:terry.west@doh.wa.gov)].

December 2, 2008

Paula R. Meyer, MSN, RN  
 Executive Director

AMENDATORY SECTION (Amending WSR 04-14-065, filed 7/2/04, effective 7/2/04)

**WAC 246-840-910 Purpose.** ~~((The purpose of))~~ This ~~((delegation protocol is to ensure that nursing care services have))~~ rule defines a consistent standard of ~~((practice upon which the public and profession may rely and to safeguard the authority of))~~ nursing care with the delegation of nursing tasks to nursing assistants. The registered nurse delegator ~~((to))~~ makes independent professional decisions ~~((regarding))~~ of the delegation of a nursing task. A licensed registered nurse may delegate specific nursing care tasks to nursing assistants ~~((who meet))~~ meeting certain requirements and ~~((provide))~~ providing care to individuals in a community-based care setting ~~((as))~~ defined by RCW 18.79.260 (3)(e)(i) and to individuals in an in-home care setting ~~((as))~~ defined by RCW 18.79.260 (3)(e)(ii). Before delegating a task, the registered nurse delegator ~~((must))~~ determines that specific criteria ~~((described in the protocol))~~ are met and ~~((ensure that))~~ the patient is in a stable and predictable condition. Registered nurses delegating tasks are accountable to the Washington state nursing care quality assurance commission. The registered nurse delegator and nursing assistant are accountable for their own individual actions in the delegation process. No person may coerce a registered nurse into compromising patient safety by requiring the registered nurse to delegate ~~((if the registered nurse delegator determines it is inappropriate to do so))~~. Registered nurse delegators shall not delegate the following care tasks:

- (1) Administration of medications by injection (by intramuscular, intradermal, subcutaneous, intraosseous, intravenous, or otherwise) with the exception of insulin injections.
- (2) Sterile procedures.
- (3) Central line maintenance.
- (4) Acts that require nursing judgment.

AMENDATORY SECTION (Amending WSR 02-02-047, filed 12/27/01, effective 1/27/02)

**WAC 246-840-920 Definitions.** For the purposes of this chapter, the definitions in this section apply ~~((throughout the protocol))~~.

(1) "Authorized representative" means a person ~~((authorized))~~ allowed to provide ~~((informed))~~ written consent for health care on behalf of a patient who is not competent to consent. Such person shall be a member of one of the classes of persons as directed in RCW 7.70.065.

(2) "Coercion" means to force or compel another, by authority, to do something that he/she would not otherwise choose to do.

(3) "Complex task" means that a nursing task may become more complicated because of ~~((the interrelationship between the following criteria))~~:

- (a) The patient's condition;
- (b) The setting;
- (c) The nursing care task(s) and involved risks; and
- (d) The skill level required to perform the task.

The registered nurse delegator ~~((must identify))~~ identifies and facilitates additional training of the nursing assistant prior to delegation in these situations. The registered nurse delegator ~~((may))~~ decides if the task is not delegable. In no case, may administration of medications by injection with the exception of insulin injections, sterile procedures and central line maintenance be delegated.

(4) "Medication assistance" as defined in chapter 246-888 WAC does not require delegation by a licensed nurse.

(5) "Nursing assistant" means a nursing assistant-registered under chapter 18.88A RCW or a nursing assistant-certified under chapter 18.88A RCW, ~~((who provides))~~ providing support and care to individuals served by certified community residential programs for the developmentally disabled, to individuals residing in licensed adult family homes, to in-home care and to individuals residing in licensed boarding homes.

(6) "Outcome" means the end result or consequence of an action after following ~~((an established))~~ a plan of care.

(7) "Patient" means the individual ~~((recipient of))~~ receiving nursing ~~((actions))~~ care tasks. In the community residential settings, the patient may ~~((also))~~ be ~~((referred to as))~~ a client, consumer, or resident.

(8) "Personal care services" as defined in WAC ~~((388-15-202))~~ 388-106-0010 do not require delegation by a licensed nurse.

(9) "Procedure" means a series of steps ~~((by which))~~ with a desired result ~~((is obtained))~~; a particular course of action or way of doing something.

~~((10))~~ ~~((Protocol))~~ means ~~an explicit, detailed written plan specifying the procedures to be followed in providing care for a particular condition.~~

~~((11))~~ "Registered nurse delegation" means the registered nurse transfers the performance of selected nursing tasks to competent nursing assistants in selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the patient.

~~((12))~~ (11) "Supervision" means the ~~((provision of))~~ guidance and evaluation by a registered nurse delegator for the accomplishment of a nursing task or activity, ~~((as outlined in this protocol;))~~ including the initial direction of the task or activity; periodic inspection at least every ninety days of the actual act of accomplishing the task or activity; and the authority to require corrective action.

~~((13))~~ (12) "Immediate supervision" means the registered nurse delegator is on the premises ~~((and is))~~, within audible and visual range of the patient and the patient ~~((has been assessed))~~ assessment by the registered nurse delegator occurs prior to the delegation of duties to any care giver.

~~((14))~~ (13) "Direct supervision" means the registered nurse delegator ~~((is))~~ on the premises, ~~((is))~~ quickly and easily available and the patient ~~((has been assessed))~~ assessment by the registered nurse delegator occurs prior to the delegation of the duties to any care giver.

~~((15))~~ (14) "Indirect supervision" means the registered nurse delegator is not on the premises ~~((but has previously given))~~. The registered nurse delegator previously provided written instructions for the care and treatment of the patient ~~((and the patient has been assessed by the registered nurse delegator prior to the delegation of duties to any care giver. If oral clarification of the written instructions is required, it must be documented))~~. The registered nurse delegator documents in the patient record the instruction to the nursing assistant, observation of the delegated task, and confirmation of the nursing assistant understanding the directions.

~~((16))~~ (15) "Stable and predictable condition" means ~~((a situation in which))~~ the registered nurse delegator determines the patient's clinical and behavioral status is ~~((known through the registered nurse delegator's assessment to be))~~ nonfluctuating and consistent ~~((, including))~~. Stable and predictable may include a terminally ill patient whose deteriorating condition is ~~((predictable))~~ expected. Stable and predictable may include a patient with sliding scale insulin orders. The registered nurse delegator determines ~~((that))~~ the patient does not require ~~((their))~~ frequent nursing presence and evaluation.

**AMENDATORY SECTION** (Amending WSR 04-14-065, filed 7/2/04, effective 7/2/04)

**WAC 246-840-930 Criteria for delegation.** (1) Before delegating a nursing task, the registered nurse delegator ~~((must determine that it))~~ decides the task is appropriate to delegate based on the elements of the nursing process: ASSESS, PLAN, IMPLEMENT, EVALUATE~~((;))~~.

#### ASSESS

(2) ~~((Determine that))~~ The setting allows delegation because it is a community-based care setting as defined by RCW 18.79.260 (3)(e)(i) or an in-home care setting as defined by RCW 18.79.260 (3)(e)(ii).

(3) Assess the patient's nursing care needs and determine ~~((that))~~ the patient's condition is ~~((in a))~~ stable and predictable ~~((condition))~~. A patient may be stable and predictable with an order for sliding scale insulin or terminal condition.

(4) Determine ~~((that))~~ the task to be delegated is within the delegating nurse's area of responsibility.

(5) Determine ~~((that))~~ the task to be delegated can be properly and safely performed by the nursing assistant. The registered nurse delegator ~~((shall assess))~~ assesses the potential risk of harm for the individual patient. ~~((Potential harm may include, but is not limited to, infection, hemorrhage, hypoxemia, nerve damage, physical injury, or psychological distress.))~~

(6) Analyze the complexity of the nursing task and determine the required training or additional training needed by the nursing assistant to competently accomplish the task. ~~((The registered nurse delegator shall consider the psychomotor and cognitive skills required to perform the nursing~~

task. ~~More complex tasks may require additional training and supervision for the nursing assistant.~~) The registered nurse delegator ~~((must identify))~~ identifies and facilitates any additional training of the nursing assistant ~~((that is))~~ needed prior to delegation. The registered nurse delegator ~~((must))~~ ensures ~~((that))~~ the task to be delegated can be properly and safely performed by the nursing assistant.

(7) Assess the level of interaction required ~~((considering))~~. Consider language or cultural diversity ~~((that may affect))~~ affecting communication or the ability to accomplish the task ~~((to be delegated, as well as methods))~~ and to facilitate the interaction.

(8) Verify that the nursing assistant:

(a) Is currently registered or certified as a nursing assistant in Washington state ~~((and is in good standing))~~ without restriction;

(b) As required in WAC 246-841-405 (2)(a), nursing assistants registered ~~((must complete))~~ have completed both the basic caregiver training and core delegation training before performing any delegated task;

(c) Has a certificate of completion issued by the department of social and health services indicating completion of the required core nurse delegation training; ~~((and))~~

(d) Has a certificate of completion issued by the department of social and health services indicating completion of diabetes training when providing insulin injections to a diabetic client; and

(e) Is willing and able to perform the task in the absence of direct or immediate nurse supervision and accept responsibility for their actions.

(9) Assess the ability of the nursing assistant to competently perform the delegated nursing task in the absence of direct or immediate nurse ~~((supervision to ensure that the nursing task can be properly and safely performed by the nursing assistant))~~.

(10) If the registered nurse delegator determines delegation is appropriate, the nurse ~~((must))~~:

(a) ~~((Discuss))~~ Discusses the delegation process with the patient or authorized representative, including the level of training of the nursing assistant delivering care.

(b) Obtains ~~((patient))~~ written consent. The patient, or authorized representative, must give written, ~~((informed))~~ consent to the delegation process under chapter 7.70 RCW. Documented verbal consent of patient or authorized representative may be acceptable if written consent is obtained within thirty days; electronic consent is an acceptable format. ~~((e))~~ Written consent is only necessary at the initial use of the nurse delegation process for each patient and is not necessary for task additions or changes or if a different nurse or nursing assistant will be participating in the process.

#### PLAN

(11) Document in the patient's record the rationale for delegating or not delegating nursing tasks.

(12) Provide specific, written delegation instructions to the nursing assistant with a copy maintained in the patient's record that includes:

(a) The rationale for delegating the nursing task;

(b) ~~((That))~~ The delegated nursing task is specific to one patient and is not transferable to another patient;

(c) ~~((That))~~ The delegated nursing task is specific to one nursing assistant and is not transferable to another nursing assistant;

(d) The nature of the condition requiring treatment and purpose of the delegated nursing task;

(e) A clear description of the procedure or steps to follow to perform the task;

(f) The predictable outcomes of the nursing task and how to effectively deal with them;

(g) The risks of the treatment;

(h) The interactions of prescribed medications;

(i) How to observe and report side effects, complications, or unexpected outcomes and appropriate actions to deal with them, including specific parameters for notifying the registered nurse delegator, health care provider, or emergency services;

(j) The action to take in situations where medications and/or treatments and/or procedures are altered by health care provider orders, including:

(i) How to notify the registered nurse delegator of the change;

(ii) The process the registered nurse delegator ~~((will))~~ uses to obtain verification from the health care provider of the change in the medical order; and

(iii) The process to notify the nursing assistant of whether administration of the medication or performance of the procedure and/or treatment is delegated or not;

(k) How to document the task in the patient's record;

(l) Document ~~((what))~~ teaching ~~((was))~~ done and ~~((that))~~ a return demonstration, or other method for verification of competency ~~((was correctly done))~~; and

(m) ~~((A plan of nursing supervision describing how frequently the registered nurse will supervise the performance of the delegated task by the nursing assistant and reevaluate the delegated nursing task.))~~ Supervision shall occur at least every ninety days. With delegation of insulin injections, the supervision occurs at least weekly for the first four weeks, and may be more frequent.

(13) The administration of medications may be delegated at the discretion of the registered nurse delegator ~~((but never by))~~, including insulin injections. Any other injection ((by)) intramuscular, intradermal, subcutaneous, intraosseous, intravenous, or otherwise is prohibited. The registered nurse delegator ~~((must))~~ provides to the nursing assistant written ~~((parameters))~~ directions specific to an individual patient ~~((which includes guidelines for the nursing assistant to follow in the decision-making process to administer a medication and the procedure to follow for such administration))~~.

#### IMPLEMENT

(14) Delegation requires the registered nurse delegator teach the nursing assistant how to perform the task, including return demonstration or other method of verification of competency as determined by the registered nurse delegator.

(15) The registered nurse delegator is accountable and responsible for the delegated nursing task. The registered nurse delegator ~~((must))~~ monitors the performance of the task(s) to assure compliance ~~((to))~~ with established standards

of practice, policies and procedures and ~~((to ensure))~~ appropriate documentation of the task(s).

**EVALUATE**

(16) The registered nurse delegator ~~((must))~~ evaluates the patient's responses to the delegated nursing care and to any modification of the nursing components of the patient's plan of care.

(17) The registered nurse delegator ~~((must))~~ supervises and evaluates the performance of the nursing assistant, including direct observation or other method of verification of competency of the nursing assistant ~~((to perform the delegated nursing task))~~. The registered nurse delegator ~~((must also))~~ reevaluates the patient's condition, the care provided to the patient, the capability of the nursing assistant, the outcome of the task, and any problems.

(18) The registered nurse delegator ~~((must))~~ ensures safe and effective services are provided. Reevaluation and documentation ~~((must))~~ occurs at least every ninety days. Frequency of supervision is at the discretion of the registered nurse delegator and may be more often based upon nursing assessment.

(19) The registered nurse must supervise and evaluate the performance of the nursing assistant with delegated insulin injection authority at least weekly for the first four weeks. After the first four weeks the supervision shall occur at least every ninety days.

AMENDATORY SECTION (Amending WSR 04-14-065, filed 7/2/04, effective 7/2/04)

**WAC 246-840-940 Washington state nursing care quality assurance commission community-based and in-home care setting delegation decision tree.**

(1)	Does the patient reside in one of the following settings? A community-based care setting as defined by RCW 18.79.260 (3)(e)(i) or an in-home care setting as defined by RCW 18.79.260 (3)(e)(ii).	No ⇒	Do not delegate
Yes ↓			
(2)	Has the patient or authorized representative given consent to the delegation?	No ⇒	Obtain the written, informed consent
Yes ↓			
(3)	Is RN assessment of patient's nursing care needs completed?	No ⇒	Do assessment, then proceed with a consideration of delegation
Yes ↓			
(4)	Does the patient have a stable and predictable condition?	No ⇒	Do not delegate
Yes ↓			
(5)	Is the task within the registered nurse's scope of practice?	No ⇒	Do not delegate
Yes ↓			

(6)	Is the nursing assistant registered or certified and properly trained in the nurse delegation for nursing assistants? <u>Is the nursing assistant trained in diabetes care and insulin injections when delegating insulin?</u>	No ⇒	Do not delegate
Yes ↓			
(7)	Does the delegation exclude the administration of medications by injection <u>other than insulin</u> , sterile procedures or central line maintenance?	No ⇒	Do not delegate
Yes ↓			
(8)	Can the task be performed without requiring judgment based on nursing knowledge?	No ⇒	Do not delegate
Yes ↓			
(9)	Are the results of the task reasonably predictable?	No ⇒	Do not delegate
Yes ↓			
(10)	Can the task be safely performed according to exact, unchanging directions?	No ⇒	Do not delegate
Yes ↓			
(11)	Can the task be performed without a need for complex observations or critical decisions?	No ⇒	Do not delegate
Yes ↓			
(12)	Can the task be performed without repeated nursing assessments?	No ⇒	Do not delegate
Yes ↓			
(13)	Can the task be performed <del>((improperly without life-threatening consequences))</del> properly?	No ⇒	Do not delegate
Yes ↓			
(14)	Is appropriate supervision available? <u>With insulin injections, the supervision occurs at least weekly for the first four weeks.</u>	No ⇒	Do not delegate
Yes ↓			
(15)	There are no specific laws or rules prohibiting the delegation?	No ⇒	Do not delegate
Yes ↓			
(16)	Task is delegable		

AMENDATORY SECTION (Amending WSR 02-02-047, filed 12/27/01, effective 1/27/02)

**WAC 246-840-950 How to make changes to the delegated tasks.** (1) **Medication.** The registered nurse delegator ~~((will discuss))~~ discusses with the nursing assistant the process for continuing, rescinding, or adding medications to the

delegation list when the ~~((health care provider))~~ changes ~~((medication orders))~~ occur:

(a) The registered nurse delegator ~~((must verify))~~ verifies the change in medication or a new medication order with the health care provider;

(b) If ~~((a change is made in))~~ the medication dosage or type of medication changes or ~~((if a change is made in the type of medication))~~ for the same problem (i.e., one medication is deleted ~~((by the health care provider))~~ and another is substituted) and the patient remains in a stable and predictable condition, delegation ~~((may))~~ continues at the registered nurse delegator's discretion; and

(c) If a new medication is added, the registered nurse delegator ~~((must))~~ reviews the criteria and process for delegation prior to delegating the administration of the new medication to the nursing assistant. The registered nurse delegator maintains the authority to decide if the new medication can be delegated immediately, if a site visit is warranted prior to delegation, or if delegation is no longer appropriate. If delegation is ~~((to be))~~ rescinded, the registered nurse delegator ~~((must))~~ initiates and participates in developing an alternative plan to ~~((assure))~~ meet the needs of the patient ~~((are met))~~.

#### (2) Treatments and/or procedures.

(a) The registered nurse delegator ~~((must verify))~~ verifies the change in the medical order with the health care provider.

(b) The registered nurse delegator ~~((maintains the authority to))~~ decides if the new treatment or procedure can be delegated immediately, if a site visit is warranted prior to delegation, or if delegation is no longer appropriate. If rescinding delegation ~~((is to be rescinded))~~, the registered nurse delegator ~~((must))~~ initiates and participates in developing an alternative plan to ~~((assure))~~ meet the needs of the patient ~~((are met))~~.

#### Transferring delegation to another registered nurse.

(3) ~~((A registered nurse may assume delegating responsibilities from))~~ The registered nurse delegator ~~((for))~~ may transfer the delegation process ~~((, provided))~~ to another registered nurse. The registered nurse assuming responsibility ~~((knows))~~ assesses the patient ~~((through their assessment))~~, the skills of the nursing assistant, and the plan of care. ~~((This may include a reevaluation of the patient by the nurse assuming responsibility for delegation.))~~ The registered nurse ~~((assuming the responsibility for delegation from another registered nurse delegator))~~ is accountable and responsible for the delegated task. The registered nurse delegator must document the following in the patient's record~~((:))~~:

(a) The reason and justification for another registered nurse assuming responsibility for the delegation;

(b) The registered nurse assuming responsibility must agree, in writing, to perform the supervision; and

(c) ~~((That))~~ The nursing assistant and patient have been informed of this change.

AMENDATORY SECTION (Amending WSR 02-02-047, filed 12/27/01, effective 1/27/02)

**WAC 246-840-960 Rescinding delegation.** (1) The registered nurse delegator may rescind delegation of the nurs-

ing task based on the following circumstances which may include, but are not limited to:

(a) ~~((When))~~ The registered nurse delegator believes patient safety is being compromised;

(b) ~~((When))~~ The patient's condition is no longer stable and predictable ~~((as determined by the registered nurse delegator))~~;

(c) When the frequency of staff turnover makes delegation impractical to continue in the setting;

(d) ~~((When there is))~~ A change in the nursing assistant's willingness or competency to do the task;

(e) When the task is not being performed correctly; ~~((or))~~

(f) When the patient or authorized representative requests ~~((that))~~ rescinding the delegation ~~((be rescinded))~~;

(g) When the facility's license lapsed; or

(h) When caregivers are not currently registered, certified, or have restrictions to practice.

(2) In the event delegation is rescinded, the registered nurse delegator initiates and participates in developing an alternative plan to ~~((ensure the))~~ provide continuity ~~((for the provision))~~ of the task or assumes responsibility for performing the task.

(3) The registered nurse delegator ~~((must))~~ documents the reason for rescinding delegation of the task and the plan for ~~((ensuring continuity of))~~ continuing the task.

AMENDATORY SECTION (Amending WSR 02-02-047, filed 12/27/01, effective 1/27/02)

**WAC 246-840-970 Accountability, liability, and coercion.** (1) The registered nurse delegator and nursing assistant are accountable for their own individual actions in the delegation process. While the delegated task becomes the responsibility of the ~~((person to whom it is delegated but))~~ nursing assistant, the registered nurse delegator retains overall accountability for the nursing care of the patient ~~((, including nursing assessment, evaluation, and assuring documentation is completed))~~.

(2) Under RCW 18.79.260 (3)(d)(iv), delegating nurses acting within ~~((the protocols of))~~ their delegation authority shall be immune from liability for any action performed in the course of their delegation duties.

(3) Under RCW 18.88A.230(1), nursing assistants following written delegation instructions from registered nurse delegators for delegated tasks shall be immune from liability.

(4) Complaints regarding delegation of nursing tasks may be reported to the aging and adult services administration of the department of social and health services or via a toll-free telephone number.

(5) All complaints related to registered nurse ~~((delegation))~~ delegators shall be referred to the nursing care quality assurance commission.

(6) All complaints related to nursing assistants performing delegated tasks shall be referred to the secretary of health.

(7) Under RCW 18.79.260 (3)(c), no person may coerce the registered nurse delegator into compromising patient safety by requiring the nurse to delegate if the registered nurse delegator determines it is inappropriate to do so. Registered nurse delegators shall not be subject to any employer reprisal or disciplinary action by the Washington nursing care

quality assurance commission for refusing to delegate tasks or refusing to provide the required training for delegation if the nurse determines delegation may compromise patient safety.

~~((7))~~ (8) Under RCW 18.88A.230(2), nursing assistants shall not be subject to any employer reprisal or disciplinary action by the secretary for refusing to accept delegation of a nursing task based on patient safety issues.

**AMENDATORY SECTION** (Amending WSR 04-14-064, filed 7/2/04, effective 7/2/04)

**WAC 246-841-405 Nursing assistant delegation.** Provision for delegation of certain tasks.

(1) Nursing assistants ~~((may))~~ perform tasks ~~((when))~~ delegated by a registered nurse for patients in community-based care settings or in-home care settings~~((;))~~ each as defined in RCW 18.79.260 (3)(e).

(2) ~~((Any nursing assistant who receives authority to perform a delegated nursing task must.))~~ Before performing any delegated task:

(a) ~~((For))~~ Nursing assistants-registered~~((; provide to the delegating nurse))~~ must show the certificate of completion of both the basic caregiver training and core delegation training ~~((as established by))~~ from the department of social and health services to the registered nurse delegator.

(b) ~~((For))~~ Nursing assistants-certified~~((; provide to))~~ must show the ~~((delegating nurse the))~~ certificate of completion of the core delegation training ~~((as established by))~~ from the department of social and health services to the registered nurse delegator.

(c) ~~((For))~~ All nursing assistants~~((;))~~ must comply with all applicable requirements ~~((and protocol established by))~~ of the nursing care quality assurance commission in WAC 246-840-910 through 246-840-970.

(d) ~~((For))~~ All nursing assistants, registered and certified, who may be completing insulin injections must give a certificate of completion of diabetic training from the department of social and health services to the registered nurse delegator.

(e) All nursing assistants~~((;))~~ must meet any additional training requirements identified by the nursing care quality assurance commission. Any exceptions to ~~((any such))~~ additional training requirements must ~~((adhere to))~~ comply with RCW 18.79.260 (3)(e)(v).

(3) ~~((Any nursing assistant performing a))~~ Delegated nursing care tasks ~~((pursuant to))~~ described in this section~~((; shall perform the task))~~ are:

(a) Only for the specific patient ~~((who was the subject of the))~~ receiving delegation;

(b) Only with the patient's consent; and

(c) In compliance with all applicable requirements ~~((and protocols established by the nursing care quality assurance commission))~~ in WAC 246-840-910 through 246-840-970.

(4) A nursing assistant may consent or refuse to consent to perform a delegated nursing care task ~~((and shall be)).~~ The nursing assistant is responsible for their own actions with ~~((regard to))~~ the decision to consent or refuse to consent and the performance of the delegated nursing care task.

(5) Nursing assistants shall not accept delegation of, or perform, the following nursing care tasks:

(a) Administration of medication by injection, with the exception of insulin injections;

(b) Sterile procedures;

(c) Central line maintenance;

(d) Acts that require nursing judgment.

**WSR 09-01-002**

**PROPOSED RULES**

**OLYMPIC COLLEGE**

[Filed December 3, 2008, 1:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-19-091.

Title of Rule and Other Identifying Information: Revise bylaws of the Olympic College board of trustees (chapter 132C-104 WAC) and simultaneously repeal regular meetings of the board of trustees (WAC 132C-104-060).

Hearing Location(s): Olympic College Board Room (CSC 5), 1600 Chester Avenue, Bremerton, WA 98337, on January 27, 2009, at 3:00 p.m.

Date of Intended Adoption: January 27, 2009.

Submit Written Comments to: Thomas Oliver, Olympic College, 1600 Chester Avenue, Bremerton, WA 98337, e-mail to [toliver@olympic.edu](mailto:toliver@olympic.edu), fax (360) 475-7505, by January 21, 2009.

Assistance for Persons with Disabilities: Contact Karen Fusco by January 7, 2008, TTY (360) 475-7543 or (360) 457-7542 [475-7542].

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes are intended to update policy to provide clarity, eliminate redundancy, and bring the policies into alignment with current practice. None of these changes will substantially change the intent of the bylaws. WAC 132C-104-060 Regular meetings of the board of trustees, will be subsumed into the revised bylaws.

Reasons Supporting Proposal: Changes will make it easier to understand the rules governing the board of trustees of the college.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

Statute Being Implemented: Chapter 28B.50 RCW.

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

Name of Proponent: Barbara Martin, vice-president for administration, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Thomas Oliver, 1600 Chester Avenue, Bremerton, WA 98337, (360) 475-7502; and Enforcement: Board of Trustees, 1600 Chester Avenue, Bremerton, WA 98337, (360) 475-7102.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There will be no impact outside of the college.

A cost-benefit analysis is not required under RCW 34.05.328. There are no significant economic impacts.

December 3, 2008  
Thomas Oliver  
Rules Coordinator

### Chapter 132C-104 WAC

#### **BYLAWS AND STANDING ORDERS OF (~~(GOVERNING))~~ BOARD(~~(S))~~ OF TRUSTEES**

##### NEW SECTION

**WAC 132C-104-001 Preamble.** (1) Community College District No. 3 is established in Title 28B RCW as a public institution of higher education. The institution is governed by a five-member board of trustees appointed by the governor. The terms "Community College District No. 3," "district," "Olympic College," and "college" are used interchangeably throughout this title.

(2) The administrative office of Olympic College is located at 1600 Chester Avenue, Bremerton, Washington 98337-1699. (The office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays.)

##### NEW SECTION

**WAC 132C-104-002 Name, composition and powers of the board of trustees.** (1) **Name:** The name of the governing board of Washington Community College District No. 3, shall be "the board of trustees of Olympic Community College." The terms "the board of trustees of Olympic Community College," "the board of trustees," or "board" are used interchangeably throughout this title.

(2) **Composition and powers:** The composition and powers of the board of trustees are those set forth in chapter 28B.50 RCW.

(3) **Bylaws:** The board shall by resolution adopt such bylaws for its own governance and for the governance of the college as the board shall from time to time determine in accordance with RCW 28B.50.100 and other applicable law.

(4) **Amendments:** The bylaws adopted by the board may be amended or repealed at any meeting in whole or in part by the affirmative vote of a majority of the members of the board.

(5) **Policies and rules:** Rules and policies are promulgated by the board of trustees of Community College District No. 3 as general policies of Olympic College. Requests for adoption, repeal, or amendment of a college rule may be addressed to the rules coordinator for the college.

(6) **Exercise of powers:** The board and its committees shall act only at meetings called as provided by applicable law and the board bylaws. All matters coming before the board shall be determined by the majority vote of not less than three of its members present, the members present being not less than a quorum. The member of the board who is presiding at a meeting shall be entitled to make motions, second motions, vote, and otherwise participate in the meeting to the same extent as the other members of the board.

##### NEW SECTION

**WAC 132C-104-003 Regular meetings.** The board of trustees customarily holds a regular meeting once per month unless otherwise determined by the board. The time and location of these meetings may be found in the *Washington State Register* or by contacting the office of the president, Olympic College, 1600 Chester Avenue, Bremerton, Washington. The chairperson of the board may cancel any regular meeting. All such regular meetings will be conducted in conformance with the laws of the state of Washington governing such meetings.

##### NEW SECTION

**WAC 132C-104-004 Petition to board for promulgation, amendment, or repeal of rule.** (1) Persons having an interest in the promulgation, amendment, or repeal of a "rule" as defined in RCW 34.05.010(16) may submit a written petition therefore to the secretary of the board of trustees. Any petition so submitted shall include the following as required by the office of financial management under WAC 82-05-020:

- (a) The name of the agency responsible for administering the rule; and
- (b) The rationale for adoption of a new rule or amendment or repeal of an existing rule; and
- (c) In addition to any other concerns, the petitioner should address whether:
  - The rule is authorized;
  - The rule is needed;
  - The rule conflicts with or duplicates other federal, state, or local laws;
  - Alternatives to the rule exist that will serve the same purpose at less cost;
  - The rule applies differently to public and private entities;
  - The rule serves the purposes for which it was adopted;
  - The rule imposes unreasonable costs;
  - The rule is clearly and simply stated; and
  - The rule differs, without adequate justification, from a federal law which applies to the same activity or subject matter.

(2) The petition should contain sufficient information so that the agency and public can understand the proposal. Forms for submitting petitions for promulgation, amendment, or repeal of rules are available from the office of financial management. The petition shall be considered by the board not less than sixty days after the date the petition was submitted to the secretary, provided, that the board may consider the petition at any earlier regular or special meeting of the board. No later than sixty days after receipt of a petition, the college must either:

- (a) Initiate rule-making proceedings in accordance with chapter 34.05 RCW; or
- (b) Deny the petition in writing, stating its reasons for the denial and specifically addressing the concerns stated in the petition. Where appropriate, the college must indicate alternative means by which the college will address the concerns raised in the petition.

NEW SECTION

**WAC 132C-104-006 Standing orders of the board of trustees.** (1) **Delegation of authority:** The board of trustees delegates to the president general authority to manage the college pursuant to RCW 28B.50.140. In addition to such other specific authority as has been or may be delegated to the president, the board further delegates all express or implied authority to carry out the administration and operation of the district except as provided in subsection (2) and (3) of this section.

(2) **Reservation of powers:** Notwithstanding this broad delegation of authority to the president of Olympic College, the board of trustees reserves to itself jurisdiction and authority over the following matters:

(a) Hiring and retention of the president, assigning or reassigning the president's duties, and setting the president's salary and working conditions;

(b) Granting or denying tenure to faculty;

(c) Adoption, amendment, or revocation of rules under the Administrative Procedure Act;

(d) Reduction in force of faculty and dismissal of full-time faculty, including nonrenewal of tenure track faculty;

(e) Approval of employee collective bargaining agreements;

(f) Approval of college operating budget and capital budget requests to the state board for community and technical colleges;

(g) Naming of college buildings;

(h) Approval of tuition rates, operating fees and special fees when at the discretion of the college;

(i) Approval of request for employee indemnification and representation;

(j) Authorization to purchase real estate and every lease of real property for a term of three years or more when the college is required to make payment of fifty thousand dollars or more in a fiscal year under the terms of the lease; and

(k) Other matters as may from time to time be approved by the board.

(3) **Fiscal limitations on delegation:** Notwithstanding the board delegation of authority to the president of Olympic College, the board of trustees reserves to itself jurisdiction and authority over the following matters when the dollar value is in excess of the following limits:

(a) Approval of preliminary and final design of capital projects over five million dollars;

(b) Modifications to the operating budget in excess of three percent;

(c) Sale or conveyance of gifted property when the value is in excess of fifty thousand dollars;

(d) Acceptance of gifts when the value is in excess of twenty-five thousand dollars; and

(e) Other matters as may from time to time be approved by the board.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132C-104-060 Regular meetings of the board of trustees.

**WSR 09-01-017**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed December 5, 2008, 11:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-21-079.

Title of Rule and Other Identifying Information: WAC 392-300-070 Private school fingerprint process.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Old Capitol Building, 600 Washington Street, Olympia, WA 98504, on January 27, 2009, at 9:00.

Date of Intended Adoption: January 28, 2009.

Submit Written Comments to: Charles Schreck, P.O. Box 47200, Olympia, WA 98504-7200, e-mail Charles.Schreck@k12.wa.us, fax (360) 725-6130, by January 26, 2009.

Assistance for Persons with Disabilities: Contact Penny Coker by January 26, 2009, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule is to update rules to follow the new procedures that were recently modified.

Statutory Authority for Adoption: RCW 28A.400.303.

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

Name of Proponent: [OSPI], governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Charles Schreck, OSPI, (360) 725-6130; and Enforcement: Martin Mueller, OSPI, (360) 725-6130.

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.

December 5, 2008

Dr. Terry Bergeson  
 Superintendent of  
 Public Instruction

AMENDATORY SECTION (Amending WSR 00-21-077, filed 10/17/00, effective 11/17/00)

**WAC 392-300-070 Private school fingerprint process.** Fingerprinting of subject individuals employed by private schools.

(1) Definitions of private school terms.



(a) "Subject individual" means: Any person, certified or classified employed by a private school in a position having regularly scheduled, unsupervised access to children;

(b) "Regularly scheduled, unsupervised access to children" means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision;

(c) "Fee" means the total charges assessed to process fingerprint cards through the Washington state patrol and Federal Bureau of Investigation records check;

(d) "Information to be required" means all information requested by the office of the superintendent of public instruction (~~including the following:~~

~~(A) Completed fingerprint card to be mailed, with the fee, to the Washington state patrol;~~

~~(B) Completed information form to be mailed to the superintendent of public instruction);~~

(e) "Convictions of crimes" means, notwithstanding any other statutes or Washington administrative rule, conviction of a crime listed in WAC 180-86-013, or being under indictment for any of the crimes listed in WAC 180-86-013;

(f) "Private school" means a school that is approved with the Washington state board of education under chapter 180-90 WAC.

(2) The office of the superintendent of public instruction shall request criminal information from the Washington state patrol and the Federal Bureau of Investigation in the manner prescribed by law. A fee shall be charged for such services.

(3) Upon the private school's submission of the completed fingerprint cards and information form, the office of the superintendent of public instruction shall review the criminal records of subject individual.

(4) The office of the superintendent of public instruction shall not provide copies of criminal records to anyone except as provided by law. The private school will receive a copy of subject individual's record of arrest and prosecution (RAP) sheet from the Washington state patrol. The subject individual will be sent a copy of his or her personal criminal records.

(5) For the Federal Bureau of Investigation portion, the superintendent of public instruction or designee shall notify the private school if the subject individual has been convicted of a crime listed in WAC 180-86-013, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Washington under a different statutory name or number; if the subject individual falsified information on the application form; or if the subject individual has no conviction of crimes as listed in WAC 180-86-013.

(6) The office of the superintendent of public instruction shall assure the destruction of all fingerprint cards, facsimiles or other materials from which fingerprints can be reproduced used by Washington state patrol or Federal Bureau of Investigation.

(7) Only cards and forms approved by the office of the superintendent of public instruction will be accepted. The office of the superintendent of public instruction will hold fingerprint cards on file and notify the private school and subject individual when there is no fee, an incorrect fee, when necessary information is missing from the fingerprint cards, or the information form was not received.

(8) The office of the superintendent of public instruction will return to the private school any fingerprint cards that the Washington state patrol or Federal Bureau of Investigation rejects for poor quality prints. The private school will be responsible for having the subject individual submit additional prints as required.

(9) The superintendent's office shall maintain a record of all properly submitted fingerprint cards in the current records data base for a period of at least two years. The record shall include at least the following:

(a) Card sequence number;

(b) Name of private school submitting the cards;

(c) Date cards received at the Washington state patrol;

(d) Date letter regarding incomplete card was sent to the subject individual with a copy to the private school (only if applicable);

(e) Date Washington state patrol received fingerprint cards;

(f) Date private school was notified of Washington state patrol criminal history record or clearance;

(g) Date private school was notified of Federal Bureau of Investigation record or lack of record.

## WSR 09-01-020

### PROPOSED RULES

#### HORSE RACING COMMISSION

[Filed December 8, 2008, 8:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-21-029.

Title of Rule and Other Identifying Information: WAC 260-40-100 Performance records and new section WAC 260-40-155 The effects of wins on eligibility.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on February 12, 2009, at 9:30 a.m.

Date of Intended Adoption: February 12, 2009.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by February 9, 2009.

Assistance for Persons with Disabilities: Contact Patty Sorby by February 9, 2009, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Currently WAC 260-40-100 addresses both performance records (published races, showing date, distance, finishing position and time) and the effects of wins, specifically wins at Class C race meets, have on eligibility for future races. The purpose of the proposed amendments to WAC 260-40-100 is to focus this section solely on the requirements of owners and trainers regarding a horse's performance records. New section WAC 260-40-155 is being proposed to address the effect wins have on future eligibility, both Class C race meets in Washington and fair meets in Oregon, but also other recognized race meets in Washington.

Reasons Supporting Proposal: As part of the agency's regulatory reform effort, the purpose is to separate the issues

of performance records and wins and their effect on eligibility for future races, and to eliminate unclear language.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert M. Leichner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

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

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

December 8, 2008

R. J. Lopez

Deputy Secretary

AMENDATORY SECTION (Amending WSR 07-07-010, filed 3/8/07, effective 4/8/07)

~~**WAC 260-40-100 Performance records.** (1) ((The owner and/or trainer of any horse which has started at a track not reported in the daily racing form or equibase since its last start at a recognized track must furnish the racing secretary, prior to the entry of such horse in a race in this state, performance records of said horse's races during the past year or their last two starts, including published races, showing date, distance, finishing position and time. If such records are not provided, the horse will be ineligible to start.~~

~~(2) For thoroughbreds, a horse which wins a race at a Class C track within the state, with the exception of its maiden win, will not be penalized for such winnings in races run at any other race meet other than a Class C track. The maiden classification will be lost by winning a race at any track whose results are published in the daily racing form or equibase. A horse, which wins a race at a track with results not reported in the daily racing form or equibase, outside this state, will not be penalized for such winnings except at Class C tracks. All winnings in races conducted outside the state of Washington and under the authority of a recognized racing jurisdiction will count with regards to a horse's eligibility. For other breeds, all wins, including the maiden wins, will be counted in considering eligibility at all racing association meets in the state of Washington if the win is recognized by the Arabian Jockey Club, the American Quarter Horse Association, the Appaloosa Horse Club, or other breed registry recognized by the commission.~~

~~(3) Performance records for races which are not reported in the daily racing form and/or equibase will be published in the official program of the racing association or posted and announced.~~

~~(4) All wins will be considered in eligibility requirements of horses running at Class C racing association meets.)~~ The owner or trainer of any horse which has started at a recognized race meet not reported in the daily racing form or equibase since its last recorded start must provide the horse's performance records to the racing secretary prior to

entering or nominating the horse in a race in this state. These performance records must include the name of the track, date of the race, distance of the race, finish position, and running time of the race, and include all starts since competing at a recorded recognized race meet. If these records are not provided, the horse may not start in a race.

(2) Performance records for races not reported in the daily racing form or equibase will be published in the official program of the racing association and/or posted and announced to the public.

#### NEW SECTION

#### **WAC 260-40-155 The effect of wins on eligibility.** (1)

For thoroughbreds, all wins at a Class C race meet in the state or a fair meet in the state of Oregon will not be considered in determining any eligibility at a Class A or B race meet, with the only exception that any horse which has won a race at a recognized race meet may not compete in a maiden race.

(2) All wins at any recognized race meet will be considered in eligibility requirements of horses running at Class C race meets.

(3) For other breeds, all wins, including maiden wins, will count in eligibility at all race meets, if the win is recognized by the breed registry association listed in WAC 260-16-050(2).

#### **WSR 09-01-023**

#### **PROPOSED RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Filed December 8, 2008, 11:29 a.m.]

Continuance of WSR 08-20-138.

Preproposal statement of inquiry was filed as WSR 08-16-136.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on February 5, 6, and 7, 2009, at 8:30 a.m.

Date of Intended Adoption: February 5, 6, or 7, 2009.

Submit Written Comments to: Lori Preuss, Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Lori.preuss@dfw.wa.gov, fax (360) 902-2155.

Assistance for Persons with Disabilities: Contact Susan Yeager by January 25, 2009, TTY (360) 902-2207 or (360) 902-2267.

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: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Patricia Michael, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2628; Implementation: Jo Wadsworth, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2325; and Enforcement: Bruce Bjork, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules affect recreational fishers. There is no direct regulation of small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

December 8, 2008  
 Loreva M. Preuss  
 Rules Coordinator

**WSR 09-01-037**  
**PROPOSED RULES**  
**DEPARTMENT OF COMMUNITY,**  
**TRADE AND ECONOMIC DEVELOPMENT**  
 (Public Works Board)  
 [Filed December 9, 2008, 8:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-21-140.

Title of Rule and Other Identifying Information: Title 399 WAC.

Hearing Location(s): Public Works Board Administrative Office, Public Works Board Conference Room, 906 Columbia Street S.W., Olympia, WA 98504-8319, on January 27, 2009, at 11:30 a.m. - 12:00 p.m.

Date of Intended Adoption: January 27, 2009.

Submit Written Comments to: Cecilia Gardener, P.O. Box 48319, Olympia, WA 98504-8319, e-mail [cecilia.gardener@pwb.wa.gov](mailto:cecilia.gardener@pwb.wa.gov), fax (360) 664-3029, by January 20, 2008 [2009].

Assistance for Persons with Disabilities: Contact Heather Youckton by January 5, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Reasons why rules on this subject may be needed and what they might accomplish:

1. WAC 399-20-060 Office hours, agency participating in pilot program for a 4/10 workweek.
2. WAC 399-30-031, adding the water system acquisition and rehabilitation program.
3. WAC 399-30-040 (2)(c), including the preconstruction program, and eliminating specific point structure which will allow the board to not have to revise code frequently.
4. WAC 399-30-042 (3)(c), eliminate reference to specific planning application - PWTF has a combined application for all programs.
5. WAC 399-30-045, clarification of title - application evaluation procedure and board deliberations.
6. WAC 399-30-060(2), adjust loan term to maximum of thirty years.
7. WAC 399-30-060(8), clarification of language to allow for retroactive reimbursement for construction loan program.

Statutory Authority for Adoption: RCW 43.155.040(4).

Statute Being Implemented: Chapter 43.155 RCW.

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

Name of Proponent: Public works board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Cecilia Gardener, 906 Columbia Street S.W., Olympia, WA 98504-8319, (360) 725-3159.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There will be no impact on small businesses, all customers are local governments.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed changes to the WAC are administrative in nature, almost all of which change RCW and WAC references and clarify practices of the board.

December 9, 2008

Marie Sullivan, Director  
 Intergovernmental Relations

AMENDATORY SECTION (Amending WSR 98-24-010, filed 11/19/98, effective 12/20/98)

**WAC 399-20-060 Office hours.** Public records are available for inspection and copying (~~(during the department's normal office hours, which are)~~) from 8:00 a.m. to noon and from 1:00 p.m. to 5:00 p.m., Monday through (~~(Friday)~~) Thursday, excluding legal holidays, or closure due to natural disaster, inclement weather, or local emergency.

AMENDATORY SECTION (Amending WSR 07-05-029, filed 2/13/07, effective 3/16/07)

**WAC 399-30-031 Applications for drinking water state revolving funds and water system acquisition and rehabilitation program financial assistance.** The board, the department of health, and the department of community, trade, and economic development jointly administer the drinking water state revolving fund and the water system acquisition and rehabilitation program, and follow the process described in chapter 246-296 WAC.

AMENDATORY SECTION (Amending WSR 07-05-029, filed 2/13/07, effective 3/16/07)

**WAC 399-30-040 Application evaluation procedure and board deliberations—Construction and preconstruction loan programs.** (1) The board will consider and prioritize, or disapprove, all applications for financial assistance at regular or special meetings of the board. The applicant will be notified of meetings at which its application will be considered.

(2) Applications will be evaluated and prioritized in accordance with the following procedures:

(a) Staff will log in all applications as received.

(b) Staff will review all applications for compliance with the minimum qualification requirements of WAC 399-30-030(2). Jurisdictions whose applications do not meet the minimum qualification requirements will be notified in writing of the disqualification.

(c) Staff will perform an evaluation of all applications which meet the requirements of WAC 399-30-030(2). Applications will be scored according to (~~the number of points~~

awarded for responses provided in the statements of local management efforts and project need.

~~(i) Not less than sixty points, of a one hundred point total, will be assigned to responses to questions identified in the application as relating to local management effort.~~

~~(ii) The remaining forty points will be assigned to responses to questions identified in the application as relating to project need)) responses in the application developed and approved by the board.~~

(d) Staff will provide the board with evaluation and scoring of the applications. All application materials will be available to the board for their deliberations. The board will approve a ranked list of projects based on the information provided to them by the staff and the applications.

(e) The board may adjust the ranked list in consideration of the following factors:

- (i) Geographical balance;
- (ii) Economic distress;
- (iii) Type of projects;
- (iv) Type of jurisdiction;
- (v) Past management practices of the applicant, including, but not limited to, late loan payments, loan defaults, audit findings, or inability to complete projects within the time allowed by loan agreement;

(vi) Other criteria that the board considers advisable.

(f) Staff will verify critical information on each project as required by the board.

(g) In order to ensure fairness to all jurisdictions with applications pending before the board, the board will not accept oral or written testimony from any applicant while deliberating loan priorities, other than specific responses to information requests initiated by the board as provided in (h) of this subsection.

(h) The board may consult with officials of jurisdictions having projects submitted for funding on any issue it wishes to address.

(3) Applicants will be notified in writing of board decisions.

AMENDATORY SECTION (Amending WSR 07-05-029, filed 2/13/07, effective 3/16/07)

**WAC 399-30-042 Application evaluation procedure and board deliberations—Capital planning support.** (1) The board will consider and approve, or disapprove, all applications for capital planning support loans at regular or special meetings of the board. The applicant will be notified of meetings at which its application will be considered.

(2) Direct costs eligible for capital planning support are those costs directly attributable to: A systemic related plan, including capital facilities plans and capital improvement plans; comprehensive plans, environmental studies, including biological assessments or environmental assessments; or ~~((archeological))~~ archaeological and historic preservation activities.

(3) All applications will be evaluated in accordance with the following procedures:

- (a) Staff will log in all applications as received.
- (b) Staff will review all applications for compliance with the minimum qualification requirements of WAC 399-30-

030(2). Jurisdictions whose applications do not meet the minimum requirements will be notified in writing of the disqualification.

(c) Staff will perform an evaluation of applications which meet the requirements of WAC 399-30-030(2) to determine if the application is consistent with the policies contained in the ~~((capital planning support))~~ loan application.

(d) Those applications found to be consistent with board policies may be recommended to the board for funding. All application materials will be available to the board for its deliberations. The board will approve a list of projects based on the information provided to it by the staff and the applications.

(e) The board may then adjust the list in consideration of the following factors:

- (i) Geographical balance;
- (ii) Economic distress;
- (iii) Past management practices of the applicant, including, but not limited to, late loan payments, loan defaults, audit findings, or inability to complete projects within the time allowed by loan agreement;
- (iv) Other criteria that the board considers advisable.

(f) Staff will verify critical information on each project as required by the board.

(g) The board may consult on any issue it wishes to address, with officials of jurisdictions having projects submitted for funding.

(4) Applicants will be notified in writing of board decisions.

AMENDATORY SECTION (Amending WSR 98-24-010, filed 11/19/98, effective 12/20/98)

**WAC 399-30-045 Application evaluation procedure and board deliberations—Emergency loan program.** This section implements RCW 43.155.060 and 43.155.065. The board may make low-interest or interest free loans to local governments for emergency public works projects. The emergency loan program is to financially assist eligible communities experiencing the loss of critical public works services or facilities due to an emergency, and that can demonstrate a substantial fiscal need.

(1) Eligible local governments. Applicants must meet the conditions as identified under WAC 399-30-030(2).

(2) Eligible uses of funds. Financial assistance received shall be used for the purpose of restoring the services and/or repair of the public works facilities involved in the emergency. Assistance provided may be used to help fund all or part of an emergency public works project less any reimbursement from any of the following:

- (a) Federal disaster or emergency funds, including funds from the Federal Emergency Management Agency;
- (b) State disaster or emergency funds;
- (c) Insurance settlements; or
- (d) Litigation.

Assisted local governments must reimburse the department any moneys received from the sources listed above. The local government is obligated to make reimbursement for four years after formal project closeout. Local govern-

ments eligible to receive moneys must use their best efforts to seek reimbursement in a timely manner.

(3) Availability of funds. Funding will be made available on a first-come first-served basis. Only those funds specifically appropriated by the legislature from the public works assistance account shall be used to make emergency loans. That amount shall not exceed five percent of the total amount appropriated from this account in any biennium.

(4) Application process. Local governments must apply on the form provided by the board. Applications will be processed in the order received.

(5) Board deliberations—Emergency loan applications.

(a) The board will consider and approve or disapprove all eligible applications for emergency financial assistance at regular or special meetings of the board. The applicant will be notified of meetings at which its application will be considered.

(b) All applications will be accepted(~~(s)~~) and evaluated(~~(s)~~ and prioritized) in accordance with the following procedures:

(i) Applications will be accepted only when emergency funding is available.

(ii) Staff will review applications and verify that the applicant is eligible for assistance as set forth in RCW 43.155.070(1).

(iii) Staff will provide the board an evaluation of whether an emergency loan is needed based upon the information documented by the applicant and staff.

(iv) Site visits to the location of the emergency public works project will be carried out at the discretion of the board or staff.

(6) Loan terms. The board shall determine the term and interest rate(s) of emergency loans annually.

(7) Exceptions to public works trust fund policies and procedures. Except as provided in this chapter or specified in annual program guidelines, the emergency program shall follow all general administrative program policies as set for the public works trust fund.

AMENDATORY SECTION (Amending WSR 07-05-029, filed 2/13/07, effective 3/16/07)

**WAC 399-30-060 Loan and financing guarantee (~~(contracts)~~) loan agreements for the construction loan program.** (1) The board will only execute loan agreements or otherwise financially obligate funds from the public works assistance account after the legislature approves the list and accompanying appropriation, except for preconstruction, planning, and emergency loans.

(2) After the legislature has appropriated funds from the public works assistance account for a specific list of public works projects, the construction loan funds will be disbursed to the applicant local government through a (~~(contract)~~) loan agreement. The (~~(contract)~~) loan agreement will offer terms and conditions as the board determines are reasonable, based on the following standards:

(a) The local government's financial participation funds must be from locally generated funding or federal or state shared revenues that can be allocated at the discretion of the local government.

(b) The interest rates, local share requirements and loan limits will be determined annually by the board.

(c) Loans must not exceed (~~(twenty)~~) thirty years, or the useful life of the improvements, whichever is shorter.

(3) The local government and the department must execute a final (~~(contract)~~) loan agreement before any funds are disbursed.

(4) The local government must submit for approval a scope of work, including such things as a budget and performance measures consistent with the application for financial assistance to the department within ninety days after the department offers a loan or financing guarantee.

(5) The local government must execute any loan or financing guarantee (~~(contracts)~~) loan agreements offered within ninety days after the department offers the (~~(contract)~~) loan agreement.

(6) The local government must begin work on a public works project prior to October 1 of the year in which the loan or financing guarantee is offered.

(7) The local government must complete work on the public works project within the time specified in the loan agreement, unless a written request for extension is approved by the board.

(8) The board or department will not reimburse local governments for any funds spent on public works projects financed through the public works assistance account before a (~~(contract)~~) planning, emergency or preconstruction loan agreement has been formally executed. (~~(Funds spent before the contract is executed may be used toward local participation requirements if they are for eligible activities under WAC 399-30-030 and are consistent with the executed loan agreement.)~~) The board or department may reimburse local governments for those construction loan costs incurred after September 1st of the year in which a construction loan was recommended for financing by the board, providing that the project is approved by law, the costs are eligible for reimbursement at the time of loan agreement execution, and there are funds available in the public works assistance account. These reimbursable costs, incurred before loan agreement execution, must be spent on eligible activities as defined by WAC 399-30-030, comply with executive order 05-05, and be consistent with the loan agreement as later executed. Any costs incurred before the execution of a construction loan agreement will not be reimbursed unless a loan agreement is executed.

AMENDATORY SECTION (Amending WSR 98-24-010, filed 11/19/98, effective 12/20/98)

**WAC 399-30-065 Emergency loan and financing guarantee (~~(contracts)~~) loan agreements.** (1) After the legislature has appropriated funds from the public works assistance account for emergency loans, the loan funds will be disbursed to the applicant local government pursuant to a (~~(contract)~~) loan agreement. The (~~(contract)~~) loan agreement will offer terms and conditions the board determines are reasonable, based on the following standards:

(a) The local government's financial participation funds must be from locally generated revenues or federal or state

shared revenues that can be allocated at the discretion of the local government.

(b) Loans must not exceed twenty years, or the useful life of the improvements, whichever is shorter.

(2) The local government and the department must execute a final ~~((contract))~~ loan agreement before any funds are disbursed.

(3) The local government must complete a scope of work form for a loan or financing guarantee and return it to the department within ninety days after the department offers a loan or a financing guarantee ~~((contract))~~ loan agreement.

(4) The local government must execute any loan or financing guarantee ~~((contracts))~~ loan agreements offered within ninety days after the department offers the ~~((contract))~~ loan agreement.

(5) The local government must begin work on an emergency public works project within ninety days after the ~~((contract))~~ loan agreement is executed.

(6) The local government must complete work on an emergency public works project within twelve months after the ~~((contract))~~ loan agreement is executed, unless a written request for extension is approved by the board.

(7) The board or department will not reimburse local governments for any funds spent on emergency public works projects financed through the public works assistance account before a ~~((contract))~~ loan agreement has been formally executed. However, if the local government has formally declared an emergency, the board may approve reimbursement of eligible costs of correcting the emergency incurred after an emergency was declared.

Any unreimbursed eligible costs for the project may be used toward local participation requirements, if any.

(8) All public works projects must comply with the competitive bid requirement of RCW 43.155.060 to the extent feasible and practicable.

AMENDATORY SECTION (Amending WSR 07-05-029, filed 2/13/07, effective 3/16/07)

**WAC 399-50-010 Definitions.** (1) Unless another definition is given, words used in this chapter have the same meaning as in chapter 42.52 RCW, Ethics in public service.

(2) "Annual construction roster" means the prioritized list of projects recommended for funding, which is developed and submitted to the legislature before November 1 of each year under RCW 43.155.070(4).

(3) "Beneficial interest" means the right to enjoy profit, benefit, or advantage from a contract or loan agreement or other property and also has the meaning given to it in Washington case law. Ownership interest in a mutual fund or similar investment pooling fund in which the owner has no management powers does not constitute a beneficial interest in the entities in which the fund or pool invests.

(4) "Project" means public works project as defined in RCW 43.155.020(6).

AMENDATORY SECTION (Amending WSR 00-11-021, filed 5/9/00, effective 6/9/00)

**WAC 399-50-020 Interest in contracts or loan agreements, projects, or loans.** (1) When a member of the public

works board is beneficially interested, directly or indirectly, in a ~~((contract))~~ loan agreement, project, or loan that may be made by, through, or under the supervision of the board, in whole or in part, or when the member accepts, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in such ~~((contract))~~ loan agreement, project, or loan, the member shall:

(a) Recuse him or herself from board discussion regarding the specific ~~((contract))~~ loan agreement, project, or loan;

(b) Recuse him or herself from the board vote on the specific ~~((contract))~~ loan agreement, project, or loan; and

(c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific ~~((contract))~~ loan agreement, project, or loan.

(2) The prohibition against discussion 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) Under subsection (1) of this section, "any other person" has a beneficial interest in a ~~((contract))~~ loan agreement, project, or loan when the other person bids, applies for, or otherwise seeks to be awarded the ~~((contract))~~ loan agreement, project, or loan.

#### **Example 1**

*Board member Sam Jones is an engineering consultant. Jones performs consulting work on a regular basis for the Evergreen County public works department. The board is asked to approve an emergency public works loan for Evergreen County. Jones should recuse himself from voting on or discussing this action because he receives compensation from a "person" (Evergreen County) beneficially interested in the proposed loan.*

#### **Example 2**

*Board member Ima Kozy is the President and CEO of a firm that constructs roads and utilities. The board is asked to approve a list of loans for construction projects in various locations around the state. One of the projects is in the City of Destiny, where Ima's firm frequently responds to solicitation for bids. If Ima wants her firm to be able to bid on the Destiny project, she should recuse herself from voting on this list or discussing this action.*

*If Ima does vote to approve the list or participates in discussing it, she will be prohibited by RCW 42.52.030 from receiving a direct or indirect beneficial interest in the loan ~~((contract))~~ agreement to Destiny, or from accepting compensation from another person beneficially interested in the ~~((contract))~~ loan agreement. Thus, neither she nor her firm may bid on the project.*

AMENDATORY SECTION (Amending WSR 00-11-021, filed 5/9/00, effective 6/9/00)

**WAC 399-50-030 Interest in transactions.** (1) When a member of the public works board either owns a beneficial interest in or is an officer, agent, employee or member of an entity or individual engaged in a transaction involving the board, the member shall:

(a) Recuse him or herself from 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))~~ loan agreement, project or proposed project, loan, 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. ~~((Rulemaking))~~ 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))~~ loan agreement, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

### Example 3

*Board member Alice Lester is a director of the Starburst Sewer District. During presentation of the annual construction roster, the board is asked to consider adding projects to the roster based on various criteria developed by staff. The board's choice of criteria will determine which additional projects will be funded. A sewer improvement project for the Starburst Sewer District is among those that may be added to the roster, depending on which criteria are selected. Lester should disclose her affiliation with Starburst and recuse herself from discussing on or voting on the criteria for funding additional projects, because she is an officer of an entity interested in a transaction before the board, specifically determination of funding criteria that will affect Starburst Sewer District.*

### WSR 09-01-042

#### PROPOSED RULES

### PUBLIC DISCLOSURE COMMISSION

[Filed December 10, 2008, 9:11 a.m.]

Continuance of WSR 08-19-057.

Exempt from preproposal statement of inquiry under WSR 08-10-004.

Title of Rule and Other Identifying Information: Amendments to WAC 390-05-515 Member. This rule describes when a communication to a "member" as that term is used in chapter 42.17 RCW, the public disclosure commission (PDC) statutes, including RCW 42.17.020 and 42.17.-100, is an internal political communication and not a contribution.

Hearing Location(s): Commission Hearing Room, 711 Capitol Way, Room 206, Olympia, WA 98504, on January 22, 2009, at 9:30 a.m.

Date of Intended Adoption: January 22, 2009.

Submit Written Comments to: Doug Ellis, Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908, e-mail dellis@pdc.wa.gov, fax (360) 753-1112, by January 14, 2009.

Assistance for Persons with Disabilities: Contact Nicole Stauffer by phone (360) 586-0544.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The amendments to WAC 390-05-515 are needed to more specifically address (and exclude) entities that describe their customers as "members" but their relationship is more akin to that of seller-buyer and to provide an additional factor to determine membership.

Public hearing and possible adoption date is changed from December 4, 2008, to January 22, 2009.

Reasons Supporting Proposal: To provide guidance and clarification regarding the public disclosure law to entities with "members."

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 amended rules are designed to clarify the definition of "member" for purposes of public disclosure.

Name of Agency Personnel Responsible for Drafting and Implementation: Doug Ellis, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2735; and Enforcement: Phil Stutzman, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-8853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments has minimal impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The PDC is not an agency listed in subsection (5)(a)(i) of section 201. Further, the PDC does not voluntarily make section 201 applicable to the adoption of these rules pursuant to subsection (5)(a)(i) of section 201, and to date, JARRC has not made section 201 application to the adoption of these rules.

December 10, 2008

Vicki Rippie

Executive Director

**WSR 09-01-050**  
**PROPOSED RULES**  
**ENERGY FACILITY SITE**  
**EVALUATION COUNCIL**

[Filed December 10, 2008, 2:41 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-18-090.

Title of Rule and Other Identifying Information: Chapter 463-10 WAC, Definitions, add new definition. Chapter 463-43 WAC, Expedited processing, update to reflect statute changes. Chapter 463-58 WAC, Fees or charges for independent consultant study, regular and expedited application processing, determining compliance and potential site studies, clarify fee language, update to include required monetary charges for electrical transmission facilities, clarify responsibility for financial services, and correct citation. Chapter 463-60 WAC, Applications for site certification, add existing requirements for carbon dioxide plan submittal, meeting greenhouse gas performance standards, and meeting electrical transmission facilities rules. Chapter 463-62 WAC, Construction standards for energy facilities, correct citation.

Hearing Location(s): Energy Facility Site Evaluation Office, 3rd Floor, 905 Plum Street S.E., Olympia, WA 98504-3172, on February 10, 2009, at 2:30 p.m.

Date of Intended Adoption: February 10, 2009.

Submit Written Comments to: Allen Fiksdal, P.O. Box 43172, Olympia, WA 98504-3172, e-mail allenf@cted.wa.gov, fax (360) 956-2158, received by February 9, 2009.

Assistance for Persons with Disabilities: Contact Tammy Talburt by February 6, 2009, (360) 956-2121.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to correct and clarify rule language; correct citations, update, and add new sections within existing chapters of Title 463 WAC due to statute changes and previous adoption of rules. The effect of this proposal will be more clear and precise rules, rules that reflect current statutes and rules, and corrected citations.

Reasons Supporting Proposal: Although the energy facility site evaluation council (EFSEC) has adopted rules on carbon dioxide (chapter 463-80 WAC), greenhouse gasses (chapter 463-85 WAC), and adopted new rules for electrical transmission facilities (chapter 463-61 WAC), it has not integrated or updated some of its other rules relating to information to be supplied in applications for site certification as a result of the previous rule adoption. EFSEC's rule on expedited processing of applications for site certification rules need to be changed to reflect the 2006 changes to RCW 80.50.075 and changes to the criteria for granting requests for this process. Clarifying language in chapter 463-58 WAC is needed to reflect current terminology regarding costs and fees. Some WAC citations need to be corrected.

Statutory Authority for Adoption: RCW 80.50.040(1).

Statute Being Implemented: Chapter 80.50 RCW.

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

Name of Proponent: EFSEC, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Allen Fiksdal, 905 Plum Street, Olympia, WA 98504-3172, (360) 956-2152.

No small business economic impact statement has been prepared under chapter 19.85 RCW. EFSEC has determined that these rule changes are: (1) Citation corrections, (2) language clarification that does not substantive[ly] change the intent of the rule(s), and (3) minor modification or additions to existing rules as a result of statute changes and previous rule adoption. These changes will have no economic impact.

A cost-benefit analysis is not required under RCW 34.05.328. EFSEC is not listed as an agency required to prepare a cost-benefit analysis and this proposed rule does not meet the definition of a "significant legislative rule" under RCW 34.05.328.

December 10, 2008

Allen J. Fiksdal

Manager

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-10-010 Definitions.** Except where otherwise indicated in the following chapters, the following terms have the meaning shown:

(1) "Council" means the energy facility site evaluation council created pursuant to chapter 80.50 RCW and, where appropriate, to the staff of the council.

(2) "Applicant" means the person or entity making application for a certification or permit covered by this title.

(3) "Adjudicative proceeding" means a proceeding conducted pursuant to RCW 80.50.090(3) and the state Administrative Procedure Act.

(4) "Certificate holder" means a person or entity who is signatory to a site certification agreement, which has been signed by the governor, and who is bound by its terms.

(5) "Chair" means the person appointed by the governor pursuant to RCW 80.50.030.

(6) "Council manager" means the individual who handles day-to-day administration for the council, administers the decisions of the council, and directs the staff that supports the council.

(7) "Energy facility" includes electrical transmission facilities under RCW 80.50.020(8) and alternative energy resources under RCW 80.50.020(18).

(8) "Site certification agreement (SCA)" means the agreement between the state of Washington and the applicant that prescribes the conditions required for construction and operation of an energy facility.

((8)) (9) "Rule" as used herein, includes the terms "agency order," "directive" or "regulation" in accordance with RCW 34.05.010(16).

NEW SECTION

**WAC 463-43-025 Environmental checklist required.**

An applicant seeking expedited processing shall submit a completed SEPA environmental checklist with an application for site certification unless the council finds the proposal is categorically exempt.



AMENDATORY SECTION (Amending Order 78-2, filed 4/26/78)

**WAC 463-43-030 Eligible proposals.** An application may be expedited when the council finds ~~((that the following are not significant enough to warrant a full review of the application for certification under the provisions of chapter 80.50 RCW))~~:

(1) The environmental impact of the proposed energy facility ~~((;))~~ will be mitigated to a nonsignificant level under the State Environmental Policy Act; and

(2) The ~~((area potentially affected;~~

~~((3) The cost and magnitude of the proposed energy facility, and~~

~~((4) The degree to which the proposed energy facility represents a change in use of the proposed site))~~ project is found to be consistent and in compliance with city, county, or regional land use plans.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-43-040 Prior to making a determination of eligibility for expedited processing.** The council prior to making a determination of eligibility for expedited processing shall:

(1) Conduct a public informational meeting in the county of the proposed site within sixty days of receipt of an application to provide information to the public concerning the nature and purpose of the energy facility and the review process to be undertaken by the council and to provide an opportunity for the public to present its views;

(2) Determine at a public hearing within sixty days of receipt of an application if the proposed site is consistent and in compliance with city, county or regional land use plans and zoning ordinances;

(3) Review the application pursuant to WAC 463-43-030; in making its review the council may engage pursuant to RCW 80.50.071 (1)(a) an independent consultant to provide an assessment of the application and environmental checklist and to conduct any special study deemed necessary by the council; and

(4) If applicable, initiate processing of ((the applicant's)):

(a) A NPDES application ((; if required,)) in accordance with chapter 463-76 WAC;

(b) An air emissions or PSD permit application in accordance with 463-78 WAC;

(c) Other such authorizations or permits as may be required by law or rule and necessary for construction and operation of the project.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-43-050 Expedited processing determination.** Following the review of an application, environmental checklist, and land use hearing and within one hundred twenty days of receipt of an application or such later time as is mutually agreed by the applicant and the council, the council by order will grant expedited processing for an application when it has found that:

(1) The proposed site is consistent and in compliance with city, county or regional land use plans ~~((and)),~~ zoning ordinances; and

(2) The environmental impacts ~~((; area potentially affected, cost and magnitude, and degree of change in use caused by the proposed energy facility))~~ are not significant ~~((enough to warrant a full review of an application for certification under the provisions of chapter 80.50 RCW))~~ or may be mitigated to nonsignificant level under RCW 43.21C.031.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-43-060 Effect of expedited processing.** For an application granted expedited processing under WAC 463-43-050 the council shall not:

(1) Conduct any further review of an application by an independent consultant; however, at the direction of the council an independent consultant may prepare air or water discharge permits or other ancillary permits or studies that may be needed as part of a recommendation to the governor;

(2) Hold an adjudicative proceeding under chapter 34.05 RCW; and

(3) Continue an adjudicative proceeding that has commenced.

## Chapter 463-58 WAC

### ~~((FEES OR))~~ CHARGES FOR INDEPENDENT CONSULTANT STUDY, REGULAR AND EXPEDITED APPLICATION PROCESSING, ELECTRICAL TRANSMISSION PREAPPLICATIONS, DETERMINING COMPLIANCE AND POTENTIAL SITE STUDY

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-58-010 Purpose.** This chapter sets ~~((forth))~~ rules relating to ~~((fees or))~~ costs or charges for independent consultant studies, regular and expedited application processing, electrical transmission facility preapplication, determining compliance and potential site studies. The department of community, trade, and economic development will provide all fiscal services for the council. For the purposes of this chapter "department" shall mean the department of community, trade, and economic development.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-58-020 ((Fees)) Costs for the independent consultant studies.** Pursuant to RCW 80.50.071, a ~~((fee))~~ deposit of twenty-five thousand dollars for each proposed site shall accompany the application for an energy facility site certification. This ~~((fee))~~ charge shall be applied toward the total cost of the independent consultant study authorized by RCW 80.50.071. The determination of the total ~~((fees))~~ costs required for the study shall generally be as follows:

(1) The council may determine that the initial ~~((fee))~~ charge of twenty-five thousand dollars is insufficient to adequately fund the study. If so, the council shall so advise the applicant and shall furnish an estimate of the supplemental ~~((fees))~~ costs needed to complete the study and shall direct the applicant to increase the funds on deposit to cover the anticipated costs. In no event shall the study be allowed to continue if the applicant has not agreed to pay the cost thereof and has not deposited the agreed upon funds;

(2) Should the applicant file amendments or supplements to the application or should the council find that additional study of the application is required, additional cost estimates will be prepared by the consultant and provided to the council. Upon approval of the estimate by the council, the applicant shall be advised of the additional study costs;

(3) The council shall authorize the independent consultant to initiate evaluation of the application materials or subsequently filed amendatory or supplementary materials when the applicant has paid the required costs.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-58-030 ((Fees)) Costs for regular application processing.** Pursuant to RCW 80.50.071 each applicant for energy facility site certification shall at the time of application submission deposit twenty thousand dollars for costs related to processing of the application. Such processing costs shall consist of those determined by the council to be reasonable and necessary including:

(1) A hearing examiner(s) who may be retained by the council for the duration of the application processing period or for such portion of the processing period as the council may consider necessary;

(2) A court reporter(s) for the recording and preparation of transcripts of an adjudicative proceeding, council meetings or public sessions which the council shall consider necessary;

(3) Additional staff salaries for those persons employed on the council staff for the duration of the application processing period; and

(4) Such overhead and support costs including wages and employee benefits, goods and services, travel expenses within the state and miscellaneous expenses as arise directly from application processing;

(5) The council may determine that the initial ~~((fee))~~ charge of twenty thousand dollars is insufficient to fund the council costs. If so, the council shall so advise the applicant and shall request the applicant to increase the funds on deposit to cover the anticipated costs. In no event shall the processing of the application continue if the applicant has not agreed to pay the cost thereof and has not deposited the agreed upon funds.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-58-040 ((Fees)) Costs for expedited application processing.** Applicants filing applications for expedited processing under RCW 80.50.075 shall provide ~~((fees))~~ funding in accordance with WAC 463-58-020 and 463-58-030.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-58-050 ((Fees)) Costs for determining compliance.** Pursuant to RCW 80.50.071 (1)(c) each certificate holder shall pay such reasonable costs as are actually and necessarily incurred by the council for inspection and determination of compliance by the certificate holder with the terms and conditions of the certificate. The amount of funds required to be placed on deposit by the certificate holder shall be determined by the council and deposited by the applicant within thirty days of the governor's signing the site certification agreement.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-58-060 ((Fees)) Costs for potential site studies.** ~~((A fee of))~~ Ten thousand dollars shall accompany the study request and be a condition precedent to any action by the council. In the event that the council determines that the initial fee of ten thousand dollars is insufficient to adequately fund the potential site study, the council shall so advise the potential applicant and shall furnish an estimate of the supplemental ~~((fees))~~ funds needed to complete the study. In no event shall the study be allowed to continue if the potential applicant has not agreed to pay the cost ~~((thereof))~~.

NEW SECTION

**WAC 463-58-065 Costs for preapplication process for electrical transmission facilities.** Pursuant to RCW 80.50.340, ten thousand dollars shall accompany any preapplication request. If the council determines that the initial ten thousand dollars is insufficient to adequately fund the preapplication process, the council shall so advise the potential applicant and shall provide an estimate of the supplemental cost needed to complete the study. In no event shall the study be allowed to continue if the potential applicant has not agreed to pay the cost of the study. Any unexpended funds shall be returned to the preapplicant.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-58-070 Failure to provide necessary ((fees)) costs.** Failure to comply with WAC 463-58-020 through 463-58-060 shall result, in the case of an applicant, in suspension of all application processing activities or, in the case of a certificate holder, in the council's initiation of enforcement action pursuant to WAC ~~((463-54-070))~~ 463-70-070. The council will require any delinquent applicant or certificate holder to show cause why the council should not suspend application processing. Following deposit of all required ~~((fees))~~ funds the council shall in the case of application processing, consider reinstatement of application processing, or in the case of a certificate holder, reconsider enforcement action.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-58-080 Payment, reporting and auditing procedures.** (1) The department provides all financial services for the council and will provide each applicant or certificate holder a statement of expenditures actually made during the preceding calendar quarter; the statement will be in sufficient detail to explain expenditures made against the deposited funds. Within thirty days of the receipt of the ~~((council's))~~ department's statement the applicant or certificate holder will pay an amount necessary to restore the total amount on deposit to the level established pursuant to WAC 463-58-020 through 463-58-060.

(2) Any funds remaining unexpended shall be refunded to the certificate holder, or in the case of an applicant to the applicant or, at the applicant's option, credited against required deposits of a certificate holder.

(3) All payments shall be ~~((made by a cashier's check))~~ payable to the state treasurer ~~((and delivered to the council office))~~. The method of payment shall be prearranged with the department prior to submission. The ~~((council))~~ department will establish and maintain separate accounts for each application and certificate. All funds will be subject to state auditing procedures. The ~~((council))~~ department will provide copies of such audits to the affected applicants and certificate holders as they are completed by the state auditor.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-60-010 Purpose.** This chapter sets forth guidelines for preparation of applications for energy facility site certification pursuant to chapter 80.50 RCW. Applications for siting energy facilities must contain information regarding the standards required by chapter 463-62 WAC. Applications for fossil-fueled thermal and/or baseload electric generation facilities shall contain information required by chapters 463-80 and 463-85 WAC.

The application shall provide the council with information regarding the applicant, the proposed project design and features, the natural environment, and the built environment. This information shall be in such detail as determined by the council to enable the council to go forward with its application review.

The council encourages applicants to consult with appropriate agencies for guidance in gathering sufficient detailed information, and development of comprehensive mitigation plans, for inclusion in their application.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-60-035 General—~~((Fee))~~ Application review costs and funding.** The statutory ~~((fee))~~ initial charges shall accompany an application and shall be a condition precedent to any action by the council. The initial costs and any additional funds needed for the review of an application, including the method of payment, shall be ~~((by a cashier's check payable to the state treasurer))~~ in accordance with chapter 463-58 WAC.

AMENDATORY SECTION (Amending WSR04-23-003, filed 11/4/04, effective 11/11/04)

**WAC 463-60-117 General—Applications for expedited processing.** (1) Request for expedited processing. Requests for expedited processing shall be accompanied by a completed environmental checklist delineated in WAC 197-11-960. The request for expedited processing shall also address the reasons for which the following are not significant enough to warrant a full review of the application for certification under the provisions of chapter 80.50 RCW:

- (a) The environmental impact of the proposed energy facility;
- (b) The area potentially affected;
- (c) The cost and magnitude of the proposed energy facility; and
- (d) The degree to which the proposed energy facility represents a change in use of the proposed site.

(2) Contents. Applications for expediting processing submitted to the council in accordance with the requirements of chapter 463-43 WAC must address all sections of chapters 463-60 and 463-62 WAC.

(3) ~~((Fees))~~ Funds. The applicant shall submit those ~~((fees))~~ funds and costs for independent consultant review and application processing pursuant to RCW 80.50.071 (1)(a) and (b) and chapter 463-58 WAC with the understanding that any unexpended portions shall be returned to the applicant at the completion of application processing.

#### NEW SECTION

**WAC 463-60-160 Proposal—Electrical transmission facilities.** (1) Prior to submitting an application for site certification for an electric transmission facility under RCW 80.50.060(3) an applicant shall follow the procedure as set in chapter 463-61 WAC.

(2) An application for an electric transmission facility shall include the information required by this chapter unless the requirement may not be applicable to such a facility.

(3) An application for an electrical transmission facility shall include the results of any preapplication negotiations including any agreements between the applicant and cities, towns, or counties where the electrical transmission facility is proposed to be located.

#### NEW SECTION

**WAC 463-60-230 Proposal—Carbon dioxide mitigation.** For thermal electric energy facilities, the application shall include a carbon dioxide mitigation plan and information required by chapter 463-80 WAC.

#### NEW SECTION

**WAC 463-60-232 Proposal—Greenhouse gases emissions performance standards.** For baseload electric generating facilities, the application shall provide information required by, and describe how the requirements of chapter 463-85 WAC will be met.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-60-312 Natural environment—Air.** The application shall provide detailed descriptions of the affected environment, project impacts, and mitigation measures for the following:

(1) Air quality. The application shall identify all pertinent air pollution control standards. The application shall contain adequate data showing air quality and meteorological conditions at the site. Meteorological data shall include, at least, adequate information about wind direction patterns, air stability, wind velocity patterns, precipitation, humidity, and temperature. The applicant shall describe the means to be utilized to assure compliance with applicable local, state, and federal air quality and emission standards.

(2) Odor. The application shall describe for the area affected all odors caused by construction or operation of the facility, and shall describe how these are to be minimized or eliminated.

(3) Climate. The application shall describe the extent to which facility operations may cause visible plumes, fogging, misting, icing, or impairment of visibility, and changes in ambient levels caused by all emitted pollutants.

(4) Climate change. The application shall describe impacts caused by greenhouse gases emissions and the mitigation measures proposed.

(5) Dust. The application shall describe for any area affected all dust sources created by construction or operation of the facility, and shall describe how these are to be minimized or eliminated.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

**WAC 463-62-010 Purpose.** (1) The purpose of this chapter is to implement the policy and intent of RCW 80.50-010. This chapter sets forth performance standards and mitigation requirements specific to seismicity, noise limits, fish and wildlife, wetlands, water quality, and air quality, associated with site certification for construction and operation of energy facilities under the jurisdiction of the council. The council shall apply these rules to site certification agreements issued in connection with applications filed after the effective date of this chapter. Except for the provisions in chapter ((463-36)) 463-66 WAC, these regulations shall not apply to energy facilities for which site certification agreements have been issued before the effective date of this chapter.

(2) The provisions of this chapter shall apply to the construction and operation of energy facilities, pursuant to chapter 80.50 RCW.

(3) Compliance with the standards within this chapter shall satisfy, in their respective subject areas, the requirements for issuance of a site certificate for construction and operation of energy facilities specified in subsection (2) of this section provided, however, that the council may require additional mitigation in the event that documents prepared pursuant to 43.21 RCW (State Environmental Policy Act), demonstrate that the project poses a probable significant adverse impact that is not mitigated by the provisions of this chapter.

**WSR 09-01-067**

**PROPOSED RULES**

**GAMBLING COMMISSION**

[Filed December 12, 2008, 10:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-08-011.

Title of Rule and Other Identifying Information: WAC 230-15-135.

Hearing Location(s): Grand Mount [Mound], Great Wolf Lodge, 20500 Old Highway 99 S.W., Grand Mound, WA 98531, on February 13, 2009, at 9:30 a.m.

Date of Intended Adoption: February 13, 2009.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan2@wsgc.wa.gov, fax (360) 486-3625, by February 1, 2009.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by February 1, 2009, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission filed a petition for rule change submitted by the Recreational Gaming Association (RGA) requesting to increase the maximum amount of a single wager in nonhouse-banked card games from \$40 to \$500. This change will only apply to house-banked card game licensees who offer nonhouse-banked card games (i.e. poker) and meet the surveillance requirements specified in WAC 230-15-280.

Class E and Class F nonhouse-banked card game licensees will continue to be limited to a maximum single wager of forty dollars.

The RGA states that Tribal casinos are authorized to offer \$500 betting limits while house-banked card room licensees are limited to \$40. The strict regulations and controls required in security, surveillance and licensing of employees in these establishments are more than adequate to protect the public.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Name of Proponent: Recreational Gaming Association, private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025 because the change would not impose additional costs on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

December 12, 2009 [2008]

Susan Arland

Rules Coordinator

AMENDATORY SECTION (Amending Order 617, filed 10/22/07, effective 1/1/08)

**WAC 230-15-135 Wagering limits for nonhouse-banked card games.** Card room licensees must not exceed these wagering limits:

(1) **Poker** -

(a) There must be no more than five betting rounds in any one game; and

(b) There must be no more than four wagers in any betting round, for example, the initial wager plus three raises; and

(c) The maximum amount of a single wager must not exceed forty dollars, or five hundred dollars for house-banked card game licensees meeting the surveillance requirements specified in WAC 230-15-280;

(2) **Games based on achieving a specific number of points** - Each point must not exceed five cents in value;

(3) **Ante** - No more than the maximum wager allowed for the first betting round for any game, except for Panguingue (Pan). The ante may, by house rule:

(a) Be made by one or more players, but the total ante may not exceed the maximum wager allowed for the first betting round; and

(b) Be used as part of a player's wager;

(4) **Panguingue (Pan)** - The maximum value of a chip must not exceed ten dollars. An ante must not exceed one chip. We prohibit doubling of conditions. Players going out may collect no more than two additional chips for going out from each participating player.

**WSR 09-01-074**

**PROPOSED RULES**

**DEPARTMENT OF LICENSING**

(Vehicle Services Division)

(Prorate and Fuel Tax Administration)

[Filed December 15, 2008, 11:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-13-084.

Title of Rule and Other Identifying Information: Chapter 308-72 WAC, Motor vehicle fuel tax.

Hearing Location(s): Department of Licensing, Prorate and Fuel Tax, 2424 Bristol Court, Room 346, Olympia, WA 98507, on January 28, 2009, at 1:30 p.m.

Date of Intended Adoption: February 24, 2009.

Submit Written Comments to: Art Farley, P.O. Box 9036, Olympia, WA 98507-9036, e-mail DOLPRFTRuleComments@dol.wa.gov, fax (360) 664-8468, by January 28, 2009.

Assistance for Persons with Disabilities: Contact K. Par-tain by January 14, 2009, TTY (360) 664-8885, or (360) 664-1816.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes to this rule are in accordance with Executive Order 97-02 Regulatory Improvement and 05-03 on plain talk. The rule has been

changed so it is easier to understand as well as removed any redundancy or obsolete language.

Reasons Supporting Proposal: Executive Order 05-03, Executive Order 97-02.

Statutory Authority for Adoption: RCW 82.36.435.

Statute Being Implemented: Chapter 82.36, 82.38, or 82.48 RCW.

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

Name of Proponent: Department of licensing, vehicle services division, prorate and fuel tax administration, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Paul Johnson, FT Manager, 2424 Bristol Court, Olympia, (360) 664-1844.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Members of the impacted industries and department of licensing staff reviewed the proposed amendments and comments did not relate to an economic impact.

A cost-benefit analysis is not required under RCW 34.05.328. The impact is only to verbiage clean up and clarity there is no cost analysis needed as there is no impact financially.

December 9, 2008

Karla Laughlin

Administrator

Prorate and Fuel Tax

December 11, 2008

Mykel D. Gable

Assistant Director

Vehicle Services

AMENDATORY SECTION (Amending WSR 02-02-010, filed 12/20/01, effective 1/20/02)

**WAC 308-72-50901 Waiving of bond requirement.**

(1) **Can the department waive the requirement to maintain a fuel tax bond?** Yes((-)), if the department ((may waive the bonding requirement of a licensed distributor if, upon determination by the department, the licensed distributor)) determines that the licensed distributor has sufficient financial ((instruments to extinguish)) assets to cover any Washington state fuel tax liability, including penalties and interest((- incurred while acting as a licensed distributor)).

(2) **What is considered a financial ((instrument)) asset?** ((For purposes of this rule, a financial instrument is either:))

(a) A line of credit with a financial institution or supplier covering the cost of product and fuel tax liability ((incurred by the distributor)); or

(b) ((Lawful money of the)) United States dollars, ((or)) bonds, or other obligations of the United States, the state, or any county of the state, deposited with the state treasurer.

(3) **How can I qualify to have my bonding requirement waived?** ((You may qualify to have your bonding requirement waived upon:))

(a) By filing a notarized statement with the department stating that your line((s)) of credit with your financial institution((s)) and your fuel supplier((s)) is at a

sufficient amount to include product cost and state fuel taxes. You must ~~(indicate)~~ list the name of the financial institution~~((s))~~, the account number~~((s))~~ and dollar value of your line~~((s))~~ of credit, and the name~~((s))~~ of your fuel supplier~~((s))~~. You must authorize the department to access this information with your financial institution~~((s))~~ and supplier~~((s))~~ ~~(for verification purposes)~~; or

(b) Depositing in a financial institution an amount equal to the estimated monthly fuel tax payments and assigning this deposit to the department as security for performance under chapter 82.36 RCW; and

(c) Providing the department with satisfactory documentation~~(, satisfactory to the department,)~~ indicating that the supplier~~((s))~~ will not allow the licensed distributor to incur a liability, including fuel tax, in excess of the line~~((s))~~ of credit~~(, if applicable)~~.

(4) **What if the department denies my request for a waiver of the bond requirement?** You can appeal this decision as provided in chapters 82.36 RCW and 308-72 WAC.

(5) **What if I no longer maintain a line of credit or financial ~~(instrument)~~ asset?** You must provide a surety bond to the department in the amount required by chapter 82.36 RCW, with a coverage ~~(commencement date)~~ beginning on or before the date the line of credit or financial ~~(instrument was extinguished)~~ asset became insufficient.

AMENDATORY SECTION (Amending WSR 00-08-032, filed 3/28/00, effective 4/28/00)

**WAC 308-72-720 Dishonored checks.** (1) **What will happen if my check ~~(becomes)~~ is dishonored?** ~~(A dishonored check represents failure to pay motor vehicle fuel taxes, fees and/or penalties and interest when due, and)~~ The department will ~~(enforce such motor fuel licensing and taxing laws as are necessary)~~ take collection action to recover ~~(the unpaid taxes and fees when they become due and payable)~~ any amounts owing and require all subsequent payments to be made in guaranteed funds, such as cash, cashier's check, or money order.

(2) ~~(What form of payment does the department require for dishonored checks?~~ Any registrant who tenders a check that is subsequently dishonored by a financial institution upon which it was drawn, may be required to tender all subsequent payments in certified funds, i.e., cash, cashier's check, certified check, traveler's check, official check, or money order.

~~(3)) Are there any additional fees charged for a dishonored check ~~((DHC))~~?~~ Yes, a handling fee ~~(shall be assessed by the department for each check dishonored by the financial institution)~~ will be charged by the department for each dishonored check.

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

**WAC 308-72-800 Definitions.** (1) "Gasoline" means finished gasoline and gasoline blendstocks as defined in Code of Federal Regulations (CFR) 48.481~~((-)(e)(3))~~. Finished gasoline means all products (including gasohol) that are commonly or commercially known or sold as gasoline and

are suitable for use as motor fuel. The product must have an octane rating of 75 or more.

(2) "Export" means to obtain motor vehicle fuel in this state for sale or distribution outside this state. To be considered an "export" and qualify for exemption from the motor vehicle fuel tax, motor vehicle fuel obtained outside the bulk transfer terminal system must be physically off-loaded in the destination state, province, or foreign country. The exporter must be licensed or registered, if required, in that state, province, or country of destination.

(3) "Motor vehicle fuel" means any product ~~(commonly or commercially)~~ sold as gasoline ~~(as defined in CFR 48.481-1(e)(3))~~ and fuel ethanol. The blending of any product~~((s))~~ or chemical~~((s))~~ with gasoline or any other inflammable liquid and the resultant product is sold or used for the propulsion of motor vehicles ~~(shall)~~ will be considered a motor vehicle fuel subject to the provisions of chapter 82.36 RCW.

(4) ~~(("Motor vehicle fuel supplier" means a person who is licensed as a supplier under chapter 82.36 RCW, and must hold a federal certificate of registry issued under the Internal Revenue Code authorizing the person to enter into federal tax free transactions on motor vehicle fuel in the bulk transfer terminal system.~~

~~(5)) "Invoice" means any document, paper or electronic, evidencing the transfer of ownership of motor vehicle fuel.~~

(5) "Net gallons" a standard gallon unit of petroleum of 231 cubic inches at 60 degrees Fahrenheit (U.S. petroleum gallon).

(6) "Ethanol" means an anhydrous denatured aliphatic alcohol intended for gasoline blending.

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

**WAC 308-72-805 Payment due dates for motor vehicle fuel taxes not paid by electronic funds.** ~~((+))~~ **What if ~~(the)~~ my payment due date falls on a Saturday, Sunday or state legal holiday ~~(and payment is by electronic funds transfer)~~?** ~~(If you are paying your motor vehicle fuel tax by electronic funds transfer, you must transfer the funds by)~~ Payment is due on the next state business day ~~(immediately preceding the due date)~~. ~~((+))~~ For example, if the payment due date falls on Saturday, ~~(you must transfer the funds by Friday)~~ the payment must be postmarked by Monday. ~~(+)~~

~~(2) What if my payment is not made by electronic funds transfer?~~ If you are not paying your motor vehicle fuel tax by electronic funds transfer, then payment is due on the next state business day. ~~(For example, if the payment due date falls on Saturday, the payment must be postmarked by Monday.)~~

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

**WAC 308-72-810 Collateral requirements in lieu of surety bond~~((s))~~.** (1) **What other forms of collateral will the department accept in lieu of a surety bond?** The department will accept certificates of deposit ~~(of lawful money of the)~~ in United States dollars in any of the following forms:

(a) Automatically renewable certificate~~((f))s((g))~~ of deposit insured by the federal deposit insurance corporation, made in the name of the licensee or applicant for the license, payable to or assigned to the Washington state treasurer; or

(b) Certificate~~((f))s((g))~~ of deposit or share account issued by a savings and loan association insured by the federal savings and loan insurance corporation. Evidence of the insured account, in the form of either a certificate of deposit or passbook, must be filed with the department along with a properly executed assignment form whereby the fund on deposit is assigned to the Washington state treasurer; or

(c) Certificate~~((f))s((g))~~ of deposit or share account, issued by a credit union doing business in the state of Washington and insured by the Washington credit union share guaranty association. Evidence of the insured account, in the form of either a certificate of deposit or passbook, must be filed with the department along with a properly executed assignment form whereby the fund on deposit is assigned to the Washington state treasurer; or

(d) Cash deposits ~~((are acceptable))~~, however interest will not accrue.

(2) **Do I earn interest on my certificates of deposit?** Yes, ~~((the certificate and/or))~~ the assignment forms ~~((shall))~~ will contain the provision that interest earned will be payable to the depositor.

(3) **How is an assignment canceled?** Assignments may only be canceled upon written authorization of the department.

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

**WAC 308-72-815 Cancellation, suspension, or revocation of motor vehicle fuel license~~((f))s((g))~~.** ~~(((1) Under what circumstances will my license be canceled?~~ Pursuant to RCW 82.36.190, a license may be canceled by the department under the following circumstances:

(a) Upon written request of the licensee, the cancellation will become effective within sixty days from receipt of the written request.

(b) Upon investigation and sixty days' notice to the licensee if the department determines the licensee is no longer engaged in the sale or distribution of motor vehicle fuel for a period of six consecutive months prior to the cancellation.

(c) Upon failure to file a new surety bond or to make deposits (cash) in accordance with RCW 82.36.060, or when the surety bond issuer requests to be released or discharged.

(d) Upon failure to file new or additional surety bond or to deposit additional securities within thirty days after being requested to do so by the department.

(2) **How do I request to have my license canceled?** A written request for cancellation and any required tax returns up to the date of cancellation must be forwarded to the department with a remittance of any tax, penalty and interest due.

(3) **Under what circumstances may my license be suspended or revoked?** A license suspension or revocation is initiated by the department for cause as defined in RCW 82.36.190.

~~((4))~~ **What happens when my license is canceled, suspended, or revoked?** The department will notify all motor vehicle fuel ~~((suppliers, importers, exporters, blenders and distributors))~~ licensees of the change in license status.

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

**WAC 308-72-820 ~~((Tax exempt transactions:))~~ Sales to qualified foreign diplomatic and consular missions.** ~~(((1) When are export transactions))~~ Are cash sales to qualified foreign diplomatic and consular missions tax exempt? ~~(((Exemption of the motor vehicle fuel tax may be claimed under the following circumstances:~~

(a) Fuel owned by the exporter and delivered by the exporter to a customer at a point outside the state by means of equipment owned and operated or controlled by the licensee.

(b) By a licensee for transportation to a destination outside the state under a bill of lading or a shipping contract that definitely establishes that the licensee claiming the export actually and, in fact, retains title to, and control over, said fuel until actual delivery to its destination out of the state of Washington.

~~((2) When are sales to the United States armed forces and National Guard tax exempt?~~ A licensed supplier is authorized to remove motor vehicle fuel from the bulk transfer terminal system without the imposition of the tax when the motor vehicle fuel is delivered:

(a) To the United States armed forces or National Guard under a bill of lading for the express purpose of exportation from the state by the armed forces or National Guard.

(b) Into the fuel tanks of ships operated by the United States armed forces or National Guard and bearing armed forces or National Guard identification names or numbers.

(c) Into the storage facilities of the United States armed forces or National Guard maintained exclusively for the purpose of fueling ships.

~~((3) Are sales to qualified foreign diplomatic and consular missions tax exempt?~~ Tax exempt sales of motor vehicle fuel may be made to qualified foreign diplomatic, consular missions and their qualified personnel if the diplomatic, consular missions and qualified personnel maintain tax exempt credit card accounts. Motor vehicle fuel purchased by cash is not tax exempt.

~~((4) What is required for a licensee to issue a credit card to qualified foreign government personnel?~~ Application must be accompanied by Form DSP-99A, issued by the Office of Foreign Missions, United States Department of State, and approved by that office.) No, only credit card purchases are exempt.

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

**WAC 308-72-835 Tax exempt losses.** (1) **What is ~~((considered a tax exempt))~~ acceptable proof of loss for a credit or refund of fuel tax paid?** ~~(((Credit for or a refund of the motor vehicle fuel tax paid may be taken when the licensee or the common or contract carrier furnishes acceptable proof of the exact quantity of fuel lost if documents in sup-~~

port of the loss are submitted to the department for approval as provided in RCW 82.36.370.

~~(2) What is acceptable proof of loss? Acceptable proof of loss shall consist of:)~~

(a) A notarized affidavit by a person having actual knowledge of the circumstances of the loss, explaining the origin and destination of the shipment, the circumstances surrounding the quantity of fuel lost, fuel salvaged, disposition of the salvaged fuel, and procedure~~((f))s((f))~~ used in the determination of the quantity of fuel lost; or

(b) A signed statement by a federal, state, local or provincial official who has authority to investigate ~~((and/or deal with))~~ fuel losses; ~~((or witness to the loss;))~~ and

(c) A bill of lading or other shipping document~~((f))s((f))~~; and

(d) A statement by the licensee establishing ownership of the fuel at time of loss.

~~((3))~~ **(2) Are deductions for losses from bulk storage allowed?** Yes, motor vehicle fuel that has been proven lost or destroyed, prior to distribution from a licensee's bulk storage facility outside of the bulk transfer terminal system~~((is allowed as a deduction as provided in RCW 82.36.370))~~ may be considered a tax exempt loss.

~~((4))~~ **(3) How long ~~((shall))~~ do I retain my evidence substantiating my loss?** ~~((Documentary evidence substantiating losses shall be retained by the licensee for))~~ Five years from date of claim.

~~((5))~~ **(4) May I claim a deduction for ~~((unproved losses))~~ stolen fuel?** No~~((, unproved losses will be considered as distribution and subject to fuel tax.~~

~~(6) Am I liable for fuel taxes when one of my employees or agents causes a loss of fuel?~~ Yes, charges for losses made by employees or agents of the licensee who fail to satisfactorily account for fuel shall be invoiced inclusive of the fuel tax. Other losses shall be accounted for and supported by proof).

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

**WAC 308-72-840 Delinquent account notification process.** (1) ~~What ~~((steps must be taken when a licensed motor vehicle fuel distributor does not pay a licensed motor vehicle fuel supplier the motor vehicle fuel tax when due))~~ happens when a licensed distributor does not pay fuel taxes to the licensed supplier on time?~~

~~((a) When a licensed distributor does not pay a licensed supplier the motor vehicle fuel taxes that are due, the supplier must notify the department no later than twenty calendar days from the date the fuel tax was due to the supplier. If that twentieth day falls on a Saturday, Sunday, or legal holiday, the supplier must notify the department on the next business day.~~

~~((b) The supplier must complete the form that has been developed by the department for this purpose or timely provide written notification to the department. Receipt of written notification constitutes evidence that the distributor has failed to pay the motor vehicle fuel taxes owed.)~~ The supplier must notify the department in writing no later than twenty calendar days from the date the fuel tax was due. If the twentieth day

falls on a Saturday, Sunday, or legal holiday, the supplier must notify the department on the next business day.

~~(2) What ~~((action))~~ will the department ~~((take))~~ do when notified ~~((by the supplier))~~ of the distributor's failure to pay? ~~((The department will))~~ Suspend the distributor's license ~~((for nonpayment of motor vehicle fuel tax due the supplier))~~ and notify all suppliers ~~((of the suspension in the following ways:~~~~

~~((a) Posting notification of the suspension on the department's web site;~~

~~((b) Transmission of the notification via electronic mail or facsimile; and~~

~~((c) Mailing of the notification via U.S. mail).)~~

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

**WAC 308-72-850 Records. What motor vehicle fuel records must be kept?** Every person licensed or required to be licensed ~~((shall))~~ must maintain a complete monthly stock summary of the gallons of motor vehicle fuel reflecting inventories, receipts, sales, use, other distribution, and loss or gain. The stock summary ~~((shall))~~ must be supported by:

(1) Physical inventories of bulk storage plants taken at the close of each calendar month.

(2) Meter readings taken at the close of each calendar month for pumps through which fuel is dispensed.

(3) A record of fuel receipts ~~((together with))~~, invoices, bills of lading, transfer documents, yield reports and other documents relative to the acquisition of fuel.

(4) A record of fuel disbursements ~~((together with))~~, invoices, bills of lading and other documents relative to the disbursements of fuel.

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

**WAC 308-72-860 Investigatory power. What ~~((investigatory))~~ power~~((s))~~ does the department have for investigations?** For the purpose of any investigation or proceeding under this chapter ~~((and chapter 82.36 RCW)),~~ the director or any designated officer may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require ~~((the production of))~~ any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry to be produced for inspection and copying.

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

**WAC 308-72-865 Invoices issued by licensees.** (1) **When is an invoice issued?** Every licensee ~~((shall))~~ must issue an invoice at the time of sale. If an electronic invoice is issued, a paper copy of the invoice ~~((or other documentation containing))~~ is required ~~((information must be produced if required by the department or))~~ to support a refund claim.

(2) **What information ~~((must appear))~~ is required on ~~((each))~~ an invoice?** ~~((Each invoice must include the following information:))~~



- (a) The name and address of the seller;
- (b) The name, address, and motor vehicle fuel tax license number, if applicable, of the purchaser;
- (c) The date of delivery ((~~l~~), month, day, and year(~~l~~));
- (d) The location of the point of shipment. Alphanumeric codes are allowed if the definition(~~s of the alphanumeric codes~~) keys are provided to the department;
- (e) The physical address of the fuel delivery or exchange if different than the purchaser address, including the name of the state, Canadian Province, or foreign country. Alphanumeric codes are allowed if the definition(~~s of the alphanumeric codes~~) keys are provided to the department;
- (f) In the case of a delivery into a federally recognized Indian reservation or onto Indian country, the invoice must identify the state, U.S. possession, or Canadian Province in which the delivery took place:
- (~~g~~) (~~h~~) (~~i~~) (~~j~~) (~~k~~)
- (~~g~~) Name of carrier transporting fuel;
- (~~h~~) (~~i~~) Name of product sold;
- (~~h~~) (~~i~~) The number of U.S. gallons of product sold (~~(must indicate)~~) in net or gross gallons(~~l~~);
- (~~i~~) (~~j~~) The price per gallon and total amount charged; and
- (~~j~~) (~~k~~) A statement on the invoice indicating (~~whether~~) if the fuel has been sold without the Washington state fuel tax(~~l~~);

(~~k~~) In the case of a delivery onto a federally recognized Indian reservation or onto Indian country, the invoice must identify the state within the contiguous United States, Hawaii, Alaska, District of Columbia, U.S. possession, or Canadian Province in which the delivery took place.

(3) **What happens if a purchaser's invoice is lost or destroyed?** ((~~If an invoice is lost or destroyed~~)) The seller (~~shall~~) can issue a duplicate or copy containing all information (~~that appeared~~) on the original invoice, if requested by the purchaser. The copies (~~shall~~) must be plainly marked "copy" or "duplicate."

(4) **What happens if an incorrect invoice is issued to the purchaser?** The seller must issue a corrected invoice to the purchaser. The invoice must clearly indicate that it is a corrected invoice and reference the original invoice.

(~~5~~) **What documentation does a licensed supplier, importer or blender need in order to support taxable motor vehicle fuel consumed for their own use?** Fuel used in motor vehicles or for other taxable purposes by a licensed supplier, importer or blender shall be supported by records covering the total fuel used during the reporting period.

(~~6~~) **What documentation does a distributor need in order to claim a refund for nontaxable use of motor vehicle fuel?** If motor vehicle fuel is used for a purpose subject to tax refund, the distributor must have supporting invoices or records indicating the use of the motor vehicle fuel and the type(s) of equipment it is used in.)

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

**WAC 308-72-870 Minimum ((~~tax~~) payment(~~l~~) or refund. (1) What is the minimum ((~~tax~~) payment or refund for licensed accounts?** ((Each tax return that declares a tax liability of ten dollars or less need not make

remittance; conversely, a refund of)) Ten dollars or less will not be ((issued)) owed or refunded. ((A computation error on the tax return which results in an additional tax liability in the amount of ten dollars or less will be accepted without further collection action.))

(2) **What is the minimum refund for unlicensed refund claims?** Claims for less than twenty dollars will not be refunded.

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

**WAC 308-72-880 Filing of refund claims for nonlicensees. (1) How do I apply for a refund?** ((Any person claiming a refund of the motor vehicle fuel tax must make application to the department and be issued a refund permit number.)) Contact the department for a refund permit application and instructions.

(2) ((~~When can I file a refund claim?~~ A refund claim may be filed at any time not to exceed a thirteen-month time limit from the date)) **What time period can I file for a refund?** You must file within thirteen months of the fuel purchase date. ((If you claim a refund for fuel purchased in any month of a claimed period, you may not claim additional purchases for that month on another claim.)) The department will use the postmark date to determine the ((eligibility of the claim)) thirteen-month time frame. We will not accept multiple refund claims for the same month. For example, if you have made a claim for purchases in June you cannot claim additional purchases for June on another claim form.

(3) **What do I need to send ((~~in my invoices~~)) with ((~~the~~) my refund claim ((~~request~~))?** ((If your refund claim request is one hundred dollars or less, you do not have to send your)) You must send in your fuel purchase invoices ((with your refund claim unless required by the department. If your refund claim request is more than one hundred dollars, purchase invoices are required. If electronic invoices were issued to the claimant, paper copies of the invoices or other documentation containing required information must be submitted with the refund claim)), schedules, and other documents listed on the refund claim form. If electronic invoices were issued, you must provide paper copies.

(4) **How ((~~shall~~) do I account for my inventory ((~~on my refund claim form~~))?** Any fuel on hand ((~~l~~), by physical measurement(~~l~~), at the end of the claim period should be ((indicated on the claim as ending inventory and should be)) reported as ((a beginning inventory on the next refund claim form. Credit for the inventory will be allowed on the next claim if it is filed within thirteen months from the filing date of the claim that established the inventory. All invoices for the total fuel purchased must be submitted with each claim unless the amount of the claim is one hundred dollars or less)) ending inventory. This figure should be reported as the beginning inventory on your next claim form.

(5) ((~~As~~)) **What does a licensed distributor ((~~do I need to~~)) send ((~~in supporting summary schedules and invoices~~)) with ((~~my~~) their refund claim ((~~request~~))?** ((Yes.)) Summary schedules must be provided ((by the distributor. Invoices may be requested by the department)) and the department may request invoices.

(6) ~~((Who may))~~ The following can sign a refund claim form ~~((? The following persons may sign a refund claim form))~~:

- (a) Individuals - permit holder;
- (b) Partnership - any one of the partners;
- (c) Business firm or corporation - owner, corporate officer or other authorized agent.

(7) Can invoices ~~((be in))~~ have a different name than what is on the claim form? ~~No((, invoices made out in other names will not be accepted))~~.

(8) Can I request that my refund be assigned to another person? ~~Yes, if we receive a letter ((of assignment is attached, signed by the person to))~~ stating whom you would like the ((invoice was issued, designating the payee)) claim assigned to.

(9) How long will it take until I receive my refund? ~~((Properly completed refund claims will be processed and mailed))~~ Within thirty business days ((of date of receipt)) after we receive a properly completed claim.

(10) How long do I maintain my refund records? Keep them for five years after submitting your claim.

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

**WAC 308-72-890 Invoice requirements for refunds to nonlicensees.** (1) What ~~((are the))~~ is a valid invoice ~~((requirements))~~? ~~((The seller of motor vehicle fuel is required to issue to each purchaser))~~ A separate invoice((s)) must be issued for each fuel purchase ((of fuel)). ~~((However,))~~ A single invoice ((covering)) may list multiple deliveries of fuel purchases made during a ((period of time not to exceed one calendar month may constitute a separate invoice as required by this subsection: Provided, That each delivery is individually listed on the invoice or on an accompanying statement in accordance with the requirements of this subsection for single deliveries)) calendar month.

(2) ~~((What))~~ The following information must be included on the invoice ~~((? Each invoice must contain the following information))~~:

- (a) The name and address of the seller;
- (b) ~~((Kind of))~~ The type of fuel and number of gallons purchased;
- (c) Complete date of sale ((f))including month, day, and year((h));
- (d) Price per gallon; and
- (e) Total amount of sale.

(3) ~~((Will))~~ The department will not accept invoices with altered, corrected or erased information ~~((? Invoices that indicate alterations, corrections or erasures shall be voided and will not be accepted. Any person who alters any part of an invoice that will tend to give the claimant an illegal gain may have the entire claim invalidated and the director may suspend any further claims for refund for a period of one year. If an electronic invoice was issued, then a paper copy of the electronic invoice or other documentation containing required information must be submitted))~~.

(4) What happens if ~~((an invoice is lost or destroyed))~~ the seller issues an electronic invoice? ~~((If an invoice is lost or destroyed, the seller may issue a duplicate or copy contain-~~

~~ing the invoice number, date of sale, gallonage, price and amount, and any information that appeared on the first invoice. The copies shall be plainly marked "copy" or "duplicate.")~~ A paper copy must be submitted with your refund claim.

(5) What happens if I ~~((issued))~~ get an incorrect invoice ~~((to the purchaser))~~? The seller((s of fuel shall)) must issue a ~~((corrected))~~ new invoice ~~((to the purchaser))~~ marked "correction" and reference the original.

~~((The invoice must clearly indicate that it is a corrected invoice and reference the original invoice. Only one invoice shall be issued for any one delivery.))~~

(6) What happens if I lose or destroy my invoice? The seller may issue a copy. The copies must be plainly marked "copy" or "duplicate."

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

**WAC 308-72-895 Refund records.** ~~((4))~~ What records ~~((does the department require to be retained by each claimant))~~ do I need to keep to claim a refund of fuel taxes? ~~((Each claimant shall retain records that reflect all motor vehicle fuel receipts, the gallons of fuel used in each type of equipment (both refundable and nonrefundable), other uses, loss and gain, and inventory on hand. The records must indicate the date of receipt or disbursements and identify the equipment into which the fuel is delivered or the purpose for which the fuel is used.~~

~~Failure of the claimant to maintain the required records or to accede to a demand for examination of them constitutes a waiver of all rights to the refund. If the claimant maintains electronic invoices, paper copies of these invoices or other documentation containing required information must be produced, upon demand of the department.~~

(2) ~~What records must be maintained to support a refund claim for each of the following uses?~~

(a) ~~Use of fuel from bulk storage. Fuel purchased and delivered into bulk storage for taxable and nontaxable use must be accounted for by detail withdrawal records to show the manner in which used.~~

(b) ~~Use of fuel from other than bulk storage. Fuel purchased in small containers, ten gallons or less, for nonhighway use should be identified by the purchaser on the purchase invoice, i.e., boats, tractors, power saws, etc.)~~

- All fuel receipts;
- The gallons of fuel used in each piece of equipment, both refundable and nonrefundable;
- Fuel inventory in bulk storage;
- Detailed fuel records for all withdrawals from bulk storage;

• Fuel purchased in small containers (ten gallon or less) for nonhighway use must show the type of equipment being used; i.e., boats, tractors, power saws, etc.

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

**WAC 308-72-905 Power take-off (PTO) use.** (1) **What is ~~((power take-off))~~ PTO use?** It is fuel used in a motor vehicle engine to operate auxiliary equipment ~~((provided that))~~. The fuel ~~((used is))~~ must be supplied from the propulsion tank of the motor vehicle.

(2) **What is not considered auxiliary equipment?** Equipment ~~((that is considered an integral part of the operation of the vehicle,))~~ such as air conditioning, power steering, generator, etc., that is considered an integral part of the operation of the vehicle.

(3) **What formula does the department use in determining ~~((power take-off))~~ PTO usage ~~((for fuel and heating oil pumping))~~?**

~~((a) For gasoline used in pumping fuel oil or heating oil by means of a power take-off unit on a delivery truck at the rate of three-fourths of one gallon for each one thousand gallons of fuel or heating oil delivered. Fuel oil delivery truck operators must maintain records which show the total gallons of fuel oil or heating oil pumped by each vehicle for which refund is claimed together with supporting documentation.~~

~~((b) For gasoline used in operating a power take-off unit on any of the vehicles listed herein when direct measurement is not feasible.))~~ The tax exemption is calculated ~~((at the rate specified))~~ as a percentage of the total Washington taxable fuel ~~((used by the vehicles))~~:

Cement mixer	25%
Fire trucks (private)	25%
Mobile cranes	25%
Garbage trucks (with load compactor)	25%
Sewer cleaning truck/jet vactor	25%
Super suckers	25%
Line truck with digger/derrick or aerial lift	20%
Log truck with self loader	20%
Refrigeration trucks	20%
Sweeper trucks (must be motor vehicle)	20%
Boom truck/block boom	15%
Bulk feed truck	15%
Dump trailers	15%
Dump trucks	15%
Hot asphalt distribution truck	15%
Leaf truck	15%
Lime spreader	15%
Pneumatic tank truck	15%
Salt spreader on dump truck	15%
Seeder truck	15%
Semiwrecker	15%
Service truck with jack hammer/drill	15%
Snow plow	15%
Spray truck	15%
Tank transport	15%
Tank trucks	15%

Truck with PTO hydraulic winch	15%
Wrecker	15%
Car carrier with hydraulic winch	10%
Carpet cleaning van	10%
Others	7.5%

(4) **What if my fuel consumption is greater than the percentages indicated above?** If ~~((a claimant))~~ you can provide satisfactory documentation and records to show that the fuel consumed by the ~~((power take-off))~~ PTO is greater than the percentages indicated, the department may grant the higher percentage on a case-by-case basis.

(5) **What documents must accompany the refund claims?** All claims must be accompanied by valid purchase invoices to cover the total gallons of gasoline purchased, except that invoices for gasoline used in fuel oil delivery trucks or when measured by a metering device need only be equal to or greater than the gallons claimed as refundable. A support schedule for Washington ~~((power take-off))~~ PTO and power pumping credits ~~((shall))~~ must accompany each claim for refund.

(6) **What records do I need to keep?** All individual vehicle mileage and fuel records that reflect total mileage, total fuel, Washington taxable mileage, and Washington taxable fuel by vehicle.

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

**WAC 308-72-910 On-board computers or recording devices. Can I use on-board computers or recording devices to record mileage?** Yes, ~~((the use of on-board computers or recording devices for the production of mileage records required by the International Fuel Tax Agreement (IFTA) shall be governed by the requirements or procedures adopted by the International Fuel Tax Agreement (IFTA))~~ with prior approval by the department.

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

**WAC 308-72-915 Special rules and requirements for fuel tax refunds. ~~((1))~~ Can I claim a refund for motor vehicle fuel used in my recreational snowmobile?** No. Motor vehicle fuel tax refunds are prohibited by RCW 46.10.160(2).

~~((2))~~ **Can I claim a refund for motor vehicle fuel used in my unlicensed recreational off road vehicles, all terrain vehicles and snowmobiles?** No, any recreational use of off road vehicles, all terrain vehicles and snowmobiles, although considered a nonhighway use of fuel, shall not be claimed for refund of the motor vehicle fuel tax paid.

~~((3))~~ **Can I claim a refund for motor vehicle fuel used in my unlicensed off road vehicles, all terrain vehicles and snowmobiles?** Yes, only if the motor vehicle fuel is used for nonrecreational purposes such as farming, logging, and construction. Off-road vehicles, all terrain vehicles and snowmobiles are defined in RCW 46.09.020, 46.10.010 (3) and (2) ~~((respectively))~~.

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

**WAC 308-72-920 Use tax for refunds.** (1) ~~((Will)) Is use tax ((be)) deducted from my refund claim?~~ Yes, ~~((use tax may be deducted from your fuel tax refund amount as imposed by)) unless you are exempt from the use tax in chapter 82.12 RCW.~~

(2) **How is use tax computed?** ~~((The claimant may)) You can choose to:~~

- ~~Calculate the use tax amount using the actual use tax rate((f))s((g)) and actual cost per gallon;~~ or
- ~~Have the department ((will)) calculate the use tax amount using an average use tax rate and ((average)) price per gallon.~~

Either method chosen ~~((by the claimant)) must be used for each refund claim submitted during ((a) the calendar year, unless there has been a change in the department's estimated average fuel cost during that period. ((If computed by the department, the department will use an estimate of the statewide average fuel cost and an estimated use tax rate. The statewide average cost and use tax rate will be reviewed every six months and adjusted as necessary. If there is any dispute over the method of calculation, the taxpayer will be required to use actual cost of the fuel and use tax rate(s:))~~

AMENDATORY SECTION (Amending WSR 01-22-072, filed 11/1/01, effective 12/2/01)

**WAC 308-72-925 Mitigation of penalties and interest.** (1) ~~((Under)) What ((circumstances may a)) fee, penalty ((and)) or interest may be mitigated or reduced?~~ The department~~((, in its discretion,)) may mitigate((, extinguish and/or adjust)) fees, penalties ((and)) or interest ~~((arising from late or missing fuel tax returns, unpaid or underpaid taxes, lack of complete records to support reported fuel usage, or license revocation penalties, assessments, and/or lack of complete records)) from:~~~~

- Late or missing fuel tax returns;
- Unpaid or underpaid taxes;
- Incomplete records to support reported fuel usage; or
- Assessments.

(2) **How will the department ~~((determine whether fees, penalties and/or interest should be mitigated)) make the decision?~~** The department may review records, account history, or other information ~~((in arriving at its decision to mitigate)).~~

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-72-830	Tax exempt sales.
WAC 308-72-845	Refund for bad debt loss (other than a motor fuel supplier).
WAC 308-72-855	IFTA records.
WAC 308-72-885	Interest assessment on refund claims.

WAC 308-72-900

Refunds to dealer delivering fuel exclusively for marine use.

#### **WSR 09-01-075**

#### **PROPOSED RULES**

#### **DEPARTMENT OF LICENSING**

(Vehicle Services Division)

(Prorate and Fuel Tax Administration)

[Filed December 15, 2008, 11:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-16-038.

Title of Rule and Other Identifying Information: Chapter 308-78 WAC, Aircraft fuel.

Hearing Location(s): Department of Licensing, Prorate and Fuel Tax, 2424 Bristol Court, Room 346, Olympia, WA 98507, on January 28, 2009, at 1:30 p.m.

Date of Intended Adoption: February 24, 2009.

Submit Written Comments to: Art Farley, P.O. Box 9036, Olympia, WA 98507-9036, e-mail DOLPRFTRuleComments@dol.wa.gov, fax (360) 664-8468, by January 28, 2009.

Assistance for Persons with Disabilities: Contact K. Par-tain by January 14, 2009, TTY (360) 664-8885, or (360) 664-1816.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes to this rule are in accordance with Executive Order 97-02 Regulatory Improvement and 05-03 on plain talk. The rule has been changed so it is easier to understand as well as removed any redundancy or obsolete language.

Reasons Supporting Proposal: Executive Order 05-03, Executive Order 97-02.

Statutory Authority for Adoption: RCW 82.36.435.

Statute Being Implemented: Chapter 82.36, 82.38, or 82.48 RCW.

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

Name of Proponent: Department of licensing, vehicle services division, prorate and fuel tax administration, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Paul Johnson, FT Manager, 2424 Bristol Court, Olympia, (360) 664-1844.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Members of the impacted industries and department of licensing staff reviewed the proposed amendments and comments did not relate to an economic impact.

A cost-benefit analysis is not required under RCW 34.05.328. Members of the impacted industries and depart-

ment of licensing staff reviewed the proposed amendments and comments did not relate to an economic impact.

December 9, 2008

Karla Laughlin

Administrator

Prorate and Fuel Tax

December 11, 2009

Mykel D. Gable

Assistant Director

Vehicle Services

AMENDATORY SECTION (Amending WSR 04-06-001, filed 2/18/04, effective 3/20/04)

**WAC 308-78-010 Definitions.** (1) (~~"Aircraft fuel" includes any combustible gas or liquid, which is normally defined as motor vehicle fuel under chapter 82.36 RCW and chapter 308-72 WAC or a special fuel under chapter 82.38 RCW and chapter 308-78 WAC when used to propel an aircraft.~~)

(~~2~~) "User" means any person other than a distributor who is certified to acquire aircraft fuel without payment of the aircraft fuel tax at time of acquisition.

(~~3~~) "Local service commuter" means an air taxi operator who operates at least five round trips per week between two or more points; publishes flight schedules which specify the times, days of the week, and points between which it operates; and whose aircraft has a maximum capacity of sixty passengers or eighteen thousand pounds of useful load.

(~~4~~) (2) "Private, nonstate funded airfield" means an airport not eligible to receive state funding under chapter 47.68 RCW.

(~~5~~) "Department" means the department of licensing.

(~~6~~) (3) "Emergency medical air transport entities" means entities that own or lease, and operate aircraft used solely for air ambulance services.

AMENDATORY SECTION (Amending WSR 01-08-083, filed 4/4/01, effective 5/5/01)

**WAC 308-78-020 Bond requirements and collection.**

(1) **Are bonds required for aircraft fuel distributors?** Yes, every aircraft fuel distributor must be bonded as provided in chapter 82.36 RCW and(~~4~~) chapter 82.42 RCW.

(2) **Can the department collect on bonds for unpaid aircraft fuel taxes?** Yes, the department may execute bonds on file under the provisions of chapters 82.36 and 82.42 RCW for unpaid aircraft fuel taxes.

AMENDATORY SECTION (Amending WSR 01-08-083, filed 4/4/01, effective 5/5/01)

**WAC 308-78-030 Required reports.** (1) **What reports are required by the department for aircraft fuel tax and when are they due?** Every licensed distributor of aircraft fuel (~~shall~~) will submit signed tax returns and schedules to the department, on or before the 25th day of each month, or as required by the department. Forms (~~shall~~) will be furnished or approved by the department.

(2) **What if the payment due date falls on a Saturday, Sunday, or state legal holiday?** Payment is due by the state business day immediately preceding the due date. (~~(f)~~) For example, if the payment due date falls on Saturday, you must transfer the funds by Friday.(~~g~~)

(3) **Is a report due if I have no activity for the month?** Yes, a report (~~shall~~) must be filed with the department for each calendar month (~~even when no aircraft fuel was sold or used~~).

(4) **Can tax return information be made available to other government agencies?** Yes, the department routinely furnishes copies of schedules to government agencies or foreign jurisdictions.

AMENDATORY SECTION (Amending WSR 01-08-083, filed 4/4/01, effective 5/5/01)

**WAC 308-78-035 Minimum (~~tax~~) payment(~~s~~) or refund.** (1) **What is the minimum (~~tax~~) payment or refund for licensed accounts?** (~~Each tax return that declares a tax liability of ten dollars or less need not make remittance; conversely, a refund of ten dollars or less will not be allowed. A computation error on the tax return which results in an additional tax liability in the amount of ten dollars or less will be accepted without further collection action.~~) Ten dollars or less will not be owed or refunded.

(2) **What is the minimum refund for unlicensed refund claims?** Claims for less than twenty dollars will not be refunded.

AMENDATORY SECTION (Amending WSR 01-08-083, filed 4/4/01, effective 5/5/01)

**WAC 308-78-040 Tax exempt sales by licensed distributors. When may a licensed distributor sell aircraft fuel without collecting the aircraft fuel tax?** (~~A licensed distributor may sell aircraft fuel without collecting the aircraft fuel tax.~~) When delivery is made by the distributor to any of the following:

- (1) A destination outside the state;
- (2) United States or foreign government agencies;
- (3) Directly into the aircraft fuel tanks of equipment operated by air carriers, supplemental air carriers, and foreign flag carriers operating under (~~part 121 of~~) the Federal Aviation Regulations, and local service commuters;
- (4) Another licensed distributor;
- (5) To a purchaser who delivers the fuel for export under RCW 82.42.030 or 82.42.070; or
- (6) Into the bulk storage tank of a certified user.

AMENDATORY SECTION (Amending WSR 04-06-001, filed 2/18/04, effective 3/20/04)

**WAC 308-78-045 Tax exempt use and circumstances.** (1) **What are the conditions under which a refund of aircraft fuel tax can be claimed?** (~~Refund of the aircraft fuel tax paid may be claimed for the following uses or circumstances:~~)

(~~4~~) (a) Operation of aircraft by air carriers, supplemental air carriers, and foreign flag carriers, operating under

~~((part 121 of))~~ the Federal Aviation Administration Regulations, and local service commuters.

~~((2))~~ (b) Testing and experimental purposes in the manufacture or remanufacture of aircraft and for flight operations or experimental testing following manufacture, repair prior to delivery to a customer, or experimental testing of another aircraft.

~~((3))~~ (c) Aircraft crew training in Washington state for certified air carriers.

~~((4))~~ (d) When applying pesticides, herbicides, or other agricultural chemicals under conditions defined in RCW 82.42.020.

~~((5))~~ (e) Exportation of fuel from this state for use outside this state under the same conditions as provided for the refund of motor vehicle fuel in chapter 82.36 RCW and special fuel in chapter 82.38 RCW.

~~((6))~~ (f) Use of fuel in nonhighway equipment, other than aircraft, as provided for the refund of motor vehicle fuel in chapter 82.36 RCW and special fuel in chapter 82.38 RCW.

~~((7))~~ (g) Sales to the United States or foreign government agencies by a distributor who has paid the aircraft fuel tax. The distributor ~~((shall))~~ will file an exemption certificate provided by the department. This certificate ~~((shall))~~ will contain an assignment to the distributor of the purchaser's right to a refund.

~~((8))~~ (h) Users of aircraft fuel placed into helicopters or the wing tanks of aircraft that are used solely for air ambulance services are eligible for a refund of the aircraft fuel tax. ~~((For purposes of the tax exemption;))~~ Aircraft fuel ~~((placed into the wing tanks of aircraft or placed into helicopters and))~~ consumed during training activities directly related to providing air ambulance services is considered to be exempt from the aircraft fuel tax.

(2) What records must be kept when claiming an exemption of aircraft fuel tax? Each person must keep records of each flight or series of flights for which tax exempt use is claimed. Records will include:

- (a) Flight or block time of each flight or series of flights;
- (b) Type of aircraft;
- (c) Purpose of each flight or series of flights;
- (d) Dates; and
- (e) Gallons consumed for each flight or series of flights.

AMENDATORY SECTION (Amending WSR 01-08-083, filed 4/4/01, effective 5/5/01)

**WAC 308-78-046 Tax exempt losses.** (1) **What is ~~((considered a tax exempt))~~ acceptable proof of loss for a credit or refund of fuel tax paid?** ~~((You may claim an exemption if fuel is destroyed through fire, lightning, flood, wind storm, explosion, accident, or other casualty.~~

~~(2) **May I claim an exemption for losses due to leakage?** Yes, if the verified leakage is five hundred gallons or more.~~

~~(3) **May I claim an exemption for losses of aircraft fuel due to evaporation, shrinkage, or unknown causes?** No, aircraft fuel losses due to evaporation, shrinkage, or unknown causes are not permitted.~~

~~(4) **What is acceptable proof of loss?** Acceptable proof of loss will consist of the following:~~

~~(a) An affidavit by a person having direct knowledge of the circumstances of the loss, explaining the circumstances surrounding the loss, quantity of fuel lost, fuel salvaged, disposition of salvaged fuel, and procedures used in determining the quantity of fuel lost;~~

~~(b) A signed statement by a federal or jurisdictional official who has authority to investigate fuel losses, or a witness to the loss;~~

~~(c) A bill of lading or shipping document;~~

~~(d) A statement by the licensee establishing ownership of the fuel at the time of loss.~~

~~(5)) (a) A notarized affidavit by a person having actual knowledge of the circumstances of the loss, explaining the origin and destination of the shipment, the circumstances surrounding the quantity of fuel lost, fuel salvaged, disposition of the salvaged fuel, and procedures used in the determination of the quantity of fuel lost; or~~

~~(b) A signed statement by a federal, state, local or provincial official who has authority to investigate fuel loss; and~~

~~(c) A bill of lading or other shipping documents; and~~

~~(d) A statement by the licensee establishing ownership of the fuel at time of loss.~~

(2) **Are deductions for losses from bulk storage allowed?** Yes, aircraft fuel that has been proven lost or destroyed prior to distribution from a licensee's bulk storage facility outside of the bulk transfer terminal system may be considered a tax exempt loss.

(3) **How long ~~((must))~~ do I retain my evidence substantiating ~~((the))~~ my loss?** ~~((Documentary evidence substantiating losses shall be retained by the licensee for))~~ Five years from date of claim.

~~((6) **Am I liable for fuel taxes if one of my employees or agents causes a loss of fuel?** Yes, charges for losses made by employees or agents who fail to satisfactorily account for fuel shall be invoiced inclusive of the fuel tax. Other losses shall be substantiated by proof acceptable to the department.)) (4) **May I claim a deduction from stolen fuel?** No.~~

AMENDATORY SECTION (Amending WSR 01-08-083, filed 4/4/01, effective 5/5/01)

**WAC 308-78-070 Records.** (1) ~~((**What records must a distributor, certified user, or consumer of aircraft fuel maintain?** The following records must be maintained:~~

~~(a) Physical inventories of bulk storage facilities and mobile storage facilities taken at the close of each calendar month;~~

~~(b) A record of fuel receipts together with invoices, bills of lading, transfer documents, and other documents relative to the acquisition of fuel;~~

~~(c) A record of fuel disbursements supported by sales invoices and other documents relative to the disbursements of fuel;~~

~~(d) A withdrawal record covering their own total usage during the month. The withdrawal record shall contain the date of withdrawal, the location of the storage facility from~~

which the fuel was withdrawn, the type or grade of fuel, and the number of gallons withdrawn;

(e) Each person claiming an exemption from the aircraft fuel tax shall keep records of each flight or series of flights for which tax exempt use is claimed. Such records shall include:

- (i) Flight or block time of each flight or series of flights;
- (ii) Type of aircraft;
- (iii) Purpose of each flight or series of flights;
- (iv) Dates;

(v) Gallons consumed for each flight or series of flights.) **What aircraft fuel records must be kept?** Every person licensed or required to be licensed must maintain a complete monthly stock summary of the gallons of aircraft fuel reflecting inventories, receipts, sales, use, other distribution, and loss or gain. The stock summary must be supported by:

(a) Physical inventories of bulk storage plants taken at the close of each calendar month.

(b) Meter readings taken at the close of each calendar month for pumps through which fuel is dispensed.

(c) A record of fuel receipts, invoices, bills of lading, transfer documents, yield reports, and other documents relative to the acquisition of fuel.

(d) A record of fuel disbursements, invoices, bills of lading and other documents relative to the disbursement of fuel.

(2) **How long must I retain my records?** Records ~~((shall))~~ will be maintained and kept for a period of not less than five years in their original form. The department may make such examinations of the records, facilities, equipment, and aircraft of distributors, certified users and consumers of aircraft fuel as necessary in carrying out the provisions of this chapter.

AMENDATORY SECTION (Amending WSR 01-08-083, filed 4/4/01, effective 5/5/01)

**WAC 308-78-075 Invoices issued by licensees.** (1) **When is an invoice issued?** Every licensee ~~((shall))~~ must issue an invoice at the time of sale ~~((distribution or use))~~. If an electronic invoice is issued, a paper copy of the invoice ~~((must be produced if))~~ is required ~~((by the department or))~~ to support a refund claim.

(2) **What information ~~((must appear))~~ is required on ~~((each))~~ an invoice?** ~~((Each invoice must include the following information:))~~

(a) The name and address of the seller;

(b) The name, address, and aircraft fuel tax number, if applicable, of the purchaser for all deliveries other than those made directly into the aircraft fuel tanks of unlicensed exempt carriers;

(c) The date of delivery ~~(()),~~ month, day, and year~~(())~~;

(d) The location of the point of shipment. Alphanumeric codes are not allowed;

(e) The physical address of the fuel delivery~~((;))~~ or exchange if different than the purchaser address, including the name of the state, Canadian Province, or foreign country. Alphanumeric codes are not allowed;

(f) In the case of a delivery onto a federally recognized Indian reservation or into Indian country, the invoice must

identify the state, U.S. possession, or Canadian Province in which the delivery took place;

~~((g))~~ (g) Name of carrier transporting fuel;

~~((h))~~ (h) Name of product sold;

~~((i))~~ (i) The number of U.S. gallons of product sold in net or gross ~~((number of U.S.))~~ gallons ~~((of product sold))~~;

~~((j))~~ (j) The price per gallon and the total amount charged; and

~~((k))~~ (k) A statement on the invoice indicating ~~((whether))~~ if the fuel has been sold ~~((with or))~~ without the Washington state fuel tax~~((;))~~

(k) In the case of a delivery onto a federally recognized Indian reservation or onto Indian country, the invoice must identify the state within the contiguous United States, Hawaii, Alaska, District of Columbia, U.S. possession, or Canadian Province in which the delivery took place).

(3) **What happens if ~~((am))~~ a purchaser's invoice is lost or destroyed?** ~~((If an invoice is lost or destroyed,))~~ The seller ~~((shall))~~ can issue a duplicate or copy containing all information ~~((that appeared))~~ on the original invoice, if requested by the purchaser. The copies ~~((shall))~~ must be plainly marked "copy" or "duplicate."

(4) **What happens if an incorrect invoice is issued to the purchaser?** The seller must ~~((retrieve the incorrect invoice and))~~ issue a corrected invoice to the purchaser. The invoice must clearly indicate that it is a corrected invoice and reference the original invoice.

AMENDATORY SECTION (Amending WSR 01-08-083, filed 4/4/01, effective 5/5/01)

**WAC 308-78-080 Filing of refund~~((s))~~ claims for nonlicensees.** (1) ~~((What do I have to do to claim))~~ **How do I apply for a refund for aircraft fuel?** ~~((In order to claim a refund for aircraft fuel tax, you shall file a claim upon forms provided by the department in the same manner and under the same conditions as provided for refund of motor vehicle fuel in RCW 82.36.310.))~~ Contact the department for a refund permit application and instructions.

(2) ~~((Is there a time limit to claim an aircraft fuel tax refund?))~~ Yes, claims for refund may not be filed later than) **What time period can I file for a refund?** You must file within thirteen months ~~((from the date))~~ of the fuel purchase ~~((of such aircraft fuel under the same conditions as provided for motor vehicle fuel in RCW 82.36.330))~~ date. The department will use the postmark date to determine the thirteen-month time frame. We will not accept multiple refund claims for the same month. For example, if you have made a claim for purchases in June you cannot claim additional purchases for June on another claim form.

(3) ~~((Can the department verify the validity of refund claims?))~~ Yes, the department may examine the books and records of the claimant in order to establish the validity of any claim for refund under the same conditions as provided for motor vehicle fuel in RCW 82.36.340.) **What do I need to send with my refund claim?** You must send in your fuel purchase invoices, schedules, and other documents listed on the refund claim form. If electronic invoices were issued, you must provide paper copies.

(4) How do I account for my inventory? Any fuel on hand, by physical measurement, at the end of the claim period should be reported as ending inventory. This figure should be reported as the beginning inventory on your next claim form.

(5) What does a licensed distributor send with their refund claim? Summary schedules must be provided and the department may request invoices.

(6) The following can sign a refund claim form:

(a) Individuals - permit holder;

(b) Partnership - any one of the partners;

(c) Business firm or corporation - owner, corporate officer or other authorized agent.

(7) Can invoices have a different name than what is on the claim form? No.

(8) Can I request that my refund be assigned to another person? Yes, if we receive a letter stating whom you would like the claim assigned to.

(9) How long will it take until I receive my refund? Within thirty business days after we receive a properly completed claim.

AMENDATORY SECTION (Amending WSR 01-08-083, filed 4/4/01, effective 5/5/01)

**WAC 308-78-090 Mitigation of penalties and ~~(for)~~ interest.** (1) ~~((Under))~~ **What ~~((circumstances may))~~ fee, ~~((a))~~ penalty ~~((and))~~ or interest may be mitigated or reduced?** The department may mitigate ~~((extinguish and/or adjust))~~ fees, penalties, ~~((and))~~ or interest ~~((arising))~~ from:

- Late or missing fuel tax returns ~~((;))~~;
- Unpaid or underpaid taxes ~~((lack of complete))~~;
- Incomplete records ~~((license revocation penalties and))~~ to support reported fuel usage; or
- Assessments.

(2) **How will the department ~~((determine whether fees, penalties and/or interest will be mitigated))~~ make the decision?** The department ~~((will))~~ may review records, account history, or other information ~~((in arriving at its decision)).~~

~~((3))~~ **What happens if I do not pay my tax assessment on time?** You will be assessed additional penalties and/or interest).

AMENDATORY SECTION (Amending WSR 00-08-032, filed 3/28/00, effective 4/28/00)

**WAC 308-78-100 Dishonored checks.** (1) **What will happen if my check ~~((becomes))~~ is dishonored?** ~~((A dishonored check represents failure to pay aircraft fuel taxes, fees and/or penalties and interest when due, and))~~ The department will ~~((enforce such aircraft fuel licensing and taxing laws as are necessary to recover the unpaid taxes and fees when they become due and payable.~~

(2) **What form of payment does the department require for dishonored checks?** Any registrant who tenders a check that is subsequently dishonored by a financial institution upon which it was drawn, may be required to tender all subsequent payments in certified funds, i.e., cash, cashier's check, certified check, traveler's check, official) take collection action to recover any amounts owing and require all sub-

sequent payments to be made in guaranteed funds, such as cash, cashier's check, or money order.

~~((3))~~ (2) **Are there any additional fees charged for a dishonored check ~~((DHC))~~?** Yes, a handling fee ~~((shall))~~ will be ~~((assessed))~~ charged by the department for each dishonored check ~~((dishonored by the financial institution)).~~

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-78-050

Supporting documents for tax exempt transactions.

#### WSR 09-01-076

#### PROPOSED RULES

#### DEPARTMENT OF LICENSING

(Vehicle Services Division)

(Prorate Fuel Tax Administration)

[Filed December 15, 2008, 11:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-13-085.

Title of Rule and Other Identifying Information: Chapter 308-77 WAC, Special fuel tax.

Hearing Location(s): Department of Licensing, Prorate and Fuel Tax, 2424 Bristol Court, Room 346, Olympia, WA 98507, on January 28, 2009, at 1:30 p.m.

Date of Intended Adoption: February 24, 2009.

Submit Written Comments to: Art Farley, P.O. Box 9036, Olympia, WA 98507-9036, e-mail DOLPRFTRuleComments@dol.wa.gov, fax (360) 664-8468, by January 28, 2009.

Assistance for Persons with Disabilities: Contact K. Partain by January 14, 2009, TTY (360) 664-8885 or (360) 664-1816.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes to this rule are in accordance with Executive Order 97-02 Regulatory Improvement and the 05-03 on plain talk. The rule has been changed so it is easier to understand as well as removed any redundancy or obsolete language.

Reasons Supporting Proposal: Executive Order 05-03, Executive Order 97-02.

Statutory Authority for Adoption: RCW 82.36.435.

Statute Being Implemented: Chapter 82.36, 82.38, or 82.48 RCW.

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

Name of Proponent: Department of licensing, vehicle services division, prorate and fuel tax administration, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Paul Johnson, FT Manager, 2424 Bristol Court, Olympia, (360) 664-1844.

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



impacted industries and department of licensing staff reviewed the proposed amendments and comments did not relate to an economic impact.

A cost-benefit analysis is not required under RCW 34.05.328. Members of the impacted industries and department of licensing staff reviewed the proposed amendments and comments did not relate to an economic impact.

December 9, 2008

Karla Laughlin  
Administrator

Prorate and Fuel Tax

December 11, 2008

Mykel D. Gable

Assistant Director  
Vehicle Services

AMENDATORY SECTION (Amending WSR 01-22-073, filed 11/1/01, effective 12/2/01)

**WAC 308-77-005 Definitions.** (1) "Special fuel" as defined in RCW 82.38.020(23) includes diesel fuel, propane, natural gas, kerosene, biodiesel, and any other combustible liquid or gas by whatever name the liquid or gas may be known or sold for the generation of power to propel a motor vehicle on the highways except fuel that is subject to the tax imposed by chapter 82.36 RCW.

(2) "Biodiesel" a nonpetroleum-based diesel fuel consisting of short chain alkyl (methyl or ethyl) esters, made by transesterification of vegetable oil or animal fat (tallow), which can be used alone, or blended with conventional petrodiesel in unmodified diesel-engine vehicles.

(3) "Publicly owned fire fighting equipment" means equipment owned and used (~~(exclusively)~~) for fire fighting by any agency or political subdivision of the state of Washington and will include fire engines, aid cars, ambulances, and vehicles used to transport fire fighting personnel.

~~((3))~~ "Farmer" means any person engaged in the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (except forestry or forestry operations), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices performed on a farm as an incident to or in conjunction with such farming operations.

~~(4)~~ "Logging company" means any person engaged in the business of cutting timber.

(5) "Construction company" means any person, firm, partnership or corporation who or which is engaged in the business of a contractor.

(6) "Contractor" means any person in the pursuit of an independent business that undertakes to, or offers to undertake, or submits a bid to, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish, for another, any building, highway, road, railroad, excavation or other structure, project, development, improvement attached to real estate, including the installation of carpeting and/or floor covering, the erection of scaffolding, roofing and siding.

~~(7))~~ (4) "Export" means to obtain special fuel in this state for sale or distribution outside this state. To be considered an "export" and qualify for exemption from the special fuel tax, special fuel obtained outside the bulk transfer termi-

nal system must be physically off-loaded in the destination state, province, or foreign country (~~(and)~~). The exporter must be licensed or registered, if required, in the state, province, or country of destination.

~~((8))~~ "Special fuel supplier" means a person who is licensed as a supplier under chapter 82.38 RCW and must hold a federal certificate of registry issued under the Internal Revenue Code authorizing the person to enter into federal tax free transactions on special fuel in the bulk transfer terminal system.

~~(9))~~ (5) "Invoice" means any document, paper or electronic, evidencing the transfer of ownership of special fuel.

(6) "Net gallons" a standard gallon unit of petroleum of 231 cubic inches at 60 degrees Fahrenheit (U.S. petroleum gallon).

AMENDATORY SECTION (Amending WSR 01-22-073, filed 11/1/01, effective 12/2/01)

**WAC 308-77-015 Incidental use(~~(f)~~) or exemptions.**

(1) **When is (~~(fuel used during)~~) the incidental operation of a nonlicensed vehicle exempt the special fuel tax?** Fuel is exempt the special fuel tax if the vehicle is not licensed or required to be licensed under chapter 46.16 or 46.87 RCW and is operated between two pieces of private property for a distance not exceeding fifteen miles. The movement of the vehicle must be incidental to the primary use of the vehicle.

(2) **(~~(Are there any circumstances in which)~~) When is off highway fuel use (~~(is considered)~~) taxable?** If fuel is used in (~~(the operation of a motor vehicle in)~~) a continuous trip, which is partly on and partly off the highway, the tax applies to all the fuel used (~~(including the fuel used in the operation off the highway)~~) when the total distance traveled off the highway does not exceed one mile.

A continuous trip (~~(means a vehicular movement involving)~~) involves the use of a highway for the transportation of persons or property from one place to another; or, in (~~(the instance of)~~) a round trip, from the (~~(point of)~~) origin (~~(of the movement)~~) to the (~~(point of)~~) destination and return to the (~~(point of)~~) origin.

(3) **Are cash sales to qualified foreign (~~(diplomatic)~~) diplomats and consular missions tax exempt?** (~~(Tax exempt sales of special fuel may be made to qualified foreign diplomatic, consular missions, and their qualified personnel if the diplomatic, consular missions, and qualified personnel maintain tax exempt credit card accounts. Special fuel purchased by cash is not tax exempt.~~)

~~(4)~~ **What is required for a licensee to issue a credit card to qualified foreign government personnel?** Application must be accompanied by Form DSP-99A, issued by the Office of Foreign Missions, United States Department of State, and approved by that office.) No, only credit card purchases are exempt.

AMENDATORY SECTION (Amending WSR 01-22-073, filed 11/1/01, effective 12/2/01)

**WAC 308-77-025 (~~(Issuance of license.)~~) Special fuel permits. ((1) If I have separate businesses at different locations or more than one fleet of vehicles, can I obtain more than one license?** Yes. Fuel tax licensees who conduct

business at separate locations or operate more than one fleet of vehicles may request a license for each separate business location and/or fleet.

**(2)) When is a special fuel ((tax-trip)) permit required?** If you are not an International Fuel Tax Agreement (IFTA) licensee, you must purchase a special fuel ((tax)) permit ((must be purchased)) when entering this state if the commercial vehicle being operated has:

**((a)) (1)** Two axles and a gross vehicle weight or registered gross vehicle weight exceeding twenty-six thousand pounds; or

**((b)) (2)** Three or more axles regardless of weight; or

**((c)) (3)** Is a combination of vehicles, when the combined gross vehicle weight or registered gross vehicle weight exceeds twenty-six thousand pounds.

**AMENDATORY SECTION** (Amending WSR 01-22-073, filed 11/1/01, effective 12/2/01)

**WAC 308-77-035 Cancellation, suspension, or revocation of special fuel license((f))s((g)).** ~~(((1) Under what circumstances will my special fuel license be canceled? A license may be canceled by the department under the following circumstances:~~

~~(a) Upon written request of the licensee. The cancellation will become effective within sixty days from receipt of the written request.~~

~~(b) Upon investigation and sixty days' notice to the licensee if the department determines the licensee is no longer engaged in the sale or distribution of special fuel for a period of six consecutive months prior to the cancellation.~~

~~(c) Upon failure to file a new or additional surety bond or to make deposits in accordance with RCW 82.38.130, or when the surety bond issuer requests to be released or discharged.~~

~~(d) Upon failure to file a new or additional surety bond or to deposit additional securities within thirty days after being requested to do so by the department.~~

~~(2) How do I request to have my license canceled? A written request for cancellation and any required tax returns up to the date of cancellation must be forwarded to the department with a remittance of any tax, penalty and interest due.~~

~~(3) Under what circumstances may my license be suspended or revoked? A license suspension or revocation is initiated by the department for cause as defined in chapter 82.38 RCW.~~

~~(4)) What happens when my license is canceled, suspended, or revoked? The department will notify all special fuel ((suppliers, importers, exporters, blenders and distributors)) licensees, except for IFTA, of the change in license status.~~

**AMENDATORY SECTION** (Amending WSR 02-02-010, filed 12/20/01, effective 1/20/02)

**WAC 308-77-04401 Waiving of bond requirements.**

**(1) Can the department waive the requirement to maintain a fuel tax bond?** Yes((-)), if the department ((may waive the bonding requirement of a licensed distributor if, upon determination by the department,)) determines that the

licensed distributor has sufficient financial ((instruments)) assets to ((extinguish)) cover any Washington state fuel tax liability, including penalties and interest((- incurred while acting as a licensed distributor)).

**(2) What is considered a financial ((instrument)) asset?** ((For purposes of this rule, a financial instrument is either:))

(a) A line of credit with a financial institution or supplier covering the cost of product and fuel tax liability ((incurred by the distributor.)); or

(b) ((Lawful money of the)) United States dollars, ((or)) bonds, or other obligations of the United States, the state, or any county of the state, deposited with the state treasurer.

**(3) How can I qualify to have my bonding requirement waived?** ((You may qualify to have your bonding requirement waived upon:))

(a) By filing a notarized statement with the department stating that your line((f))s((g)) of credit with your financial institution((f))s((g)) and your fuel supplier((f))s((g)) is at a sufficient amount to include product cost and state fuel taxes. You must ((indicate)) list the name of the financial institution((f))s((g)), the account number((f))s((g)) and dollar value of your line((f))s((g)) of credit, and the name((f))s((g)) of your fuel supplier((f))s((g)). You must authorize the department to access this information with your financial institution((f))s((g)) and supplier((f))s((g)) for verification purposes); or

(b) Depositing in a financial institution an amount equal to the estimated monthly fuel tax payments and assigning this deposit to the department((-)) as security for performance under chapter 82.38 RCW; and

(c) Providing the department with ((documentation,)) satisfactory ((to the department,)) documentation indicating that the supplier((f))s((g)) will not allow the licensed distributor to incur a liability, including fuel tax, in excess of the line((f))s((g)) of credit((- if applicable)).

**(4) What if the department denies my request for a waiver of the bond requirement?** You can appeal this decision as provided in chapters 82.38 RCW and 308-77 WAC.

**(5) What if I no longer maintain a line of credit or financial ((instrument)) asset?** You must provide a surety bond to the department in the amount required by chapter 82.38 RCW, with a coverage ((commencement date)) beginning on or before the date the line of credit or financial ((instrument was extinguished)) asset became insufficient.

**AMENDATORY SECTION** (Amending WSR 01-22-073, filed 11/1/01, effective 12/2/01)

**WAC 308-77-075 Payment due dates for special fuel taxes not paid by electronic funds.** ~~(((+)) What if ((the)) my payment due date falls on a Saturday, Sunday, or state legal holiday ((and payment is by electronic funds transfer))?~~ ((If you are paying your special fuel tax by electronic funds transfer, you must transfer the funds by the state business day immediately preceding the due date. (-)) Payment is due on the next state business day. For example, if the payment due date falls on Saturday, ((you must transfer the funds by Friday.))

**(2) What if my payment is not made by electronic funds transfer?** If you are not paying your special fuel tax by electronic funds transfer, then payment is due on the next state business day. (For example, if the payment due date falls on Saturday, you must submit payment by Monday.) the payment must be postmarked by Monday.

**AMENDATORY SECTION** (Amending WSR 01-22-073, filed 11/1/01, effective 12/2/01)

**WAC 308-77-085 Minimum ((tax)) payment((s)) or refund. (1) What is the minimum ((tax)) payment or refund for licensed accounts?** ((Each tax return that declares a tax liability of ten dollars or less need not make remittance; conversely, a refund of ten dollars or less will not be issued. A computation error on the tax return which results in an additional tax liability in the amount of ten dollars or less will be accepted without further collection action.)) Ten dollars or less will not be owed or refunded.

**(2) What is the minimum refund for unlicensed refund claims?** Claims for less than twenty dollars will not be refunded.

**AMENDATORY SECTION** (Amending WSR 01-22-073, filed 11/1/01, effective 12/2/01)

**WAC 308-77-099 Invoices issued by licensees. (1) When is an invoice issued?** Every licensee ((shall)) must issue an invoice at the time of sale. If an electronic invoice is issued, a paper copy of the invoice ((or other documentation containing)) is required ((information must be produced if required by the department or)) to support a refund claim.

**(2) What information ((must appear on each)) is required on an invoice?** ((Each invoice must include the following information:))

- (a) The name and address of the seller;
  - (b) The name, address, and special fuel tax license number, if applicable, of the purchaser;
  - (c) The date of delivery ((s))month, day, and year((s));
  - (d) The location of the point of shipment. Alphanumeric codes are allowed if the definition((s of the alphanumeric codes)) keys are provided to the department;
  - (e) The physical address of the fuel delivery or exchange, if different than the purchaser address, including the name of the state, Canadian Province, or foreign country. Alphanumeric codes are allowed if the definition((s of the alphanumeric codes)) keys are provided to the department;
  - (f) In the case of a delivery ((onto)) into a federally recognized Indian reservation or onto Indian country, the invoice must identify the state ((within the contiguous United States, Hawaii, Alaska, District of Columbia)), U.S. possession, or Canadian Province in which the delivery took place;
  - (g) Name of carrier transporting fuel;
  - (h) Name of product sold;
  - (i) The number of U.S. gallons of product sold ((must indicate)) in net or gross gallons((s));
  - (j) The price per gallon and total amount charged; and
  - (k) A statement on the invoice indicating ((whether)) if the fuel has been sold without the Washington state fuel tax.
- (3) What happens if a purchaser's invoice is lost or destroyed?** ((If an invoice is lost or destroyed,)) The seller

((shall)) can issue a duplicate or copy containing all information ((that appeared)) on the original invoice, if requested by the purchaser. The copies ((shall)) must be plainly marked "copy" or "duplicate."

**(4) What happens if an incorrect invoice is issued to the purchaser?** The seller must issue a corrected invoice to the purchaser. The invoice must clearly indicate that it is a corrected invoice and reference the original invoice.

~~((5) What documentation does a licensed supplier, importer or blender need in order to support taxable special fuel consumed for their own use?~~ Fuel used in motor vehicles or for other taxable purposes by a licensed supplier, importer or blender shall be supported by records covering the total fuel used during the reporting period.

~~(6) What documentation does a distributor need in order to claim a refund for nontaxable use of special fuel?~~ If special fuel is used for a purpose subject to tax refund, the distributor must have supporting invoices or records indicating the use of the special fuel and the type(s) of equipment it is used in.))

**AMENDATORY SECTION** (Amending WSR 01-22-073, filed 11/1/01, effective 12/2/01)

**WAC 308-77-103 Mitigation of penalties and interest. (1) ((Under)) What ((circumstances may a)) fee, penalty ((and)) or interest may be mitigated or reduced?** The department((, in its discretion,)) may mitigate((, extinguish, and/or adjust)) fees, penalties, dyed special fuel penalties, ((and/or)) interest ((arising from late or missing fuel tax returns, unpaid or underpaid taxes, lack of complete records to support reported fuel usage, license revocation penalties, assessments, lack of complete records, and/or the unlawful use of dyed special fuel)) from:

- Late or missing fuel tax returns;
- Unpaid or underpaid taxes;
- Incomplete records to support reported fuel usage;
- License reinstatement fees;
- Assessments; or
- Unlawful use of dyed special fuel.

**(2) How will the department ((determine whether fees, penalties and/or interest should be mitigated)) make the decision?** The department may review records, account history, or other information ((in arriving at its decision to mitigate)).

**AMENDATORY SECTION** (Amending WSR 01-22-073, filed 11/1/01, effective 12/2/01)

**WAC 308-77-104 Filing of refund claims for nonlicensees. (1) How do I apply for a refund?** ((Any person claiming a refund of the special fuel tax must make application to the department and be issued a refund permit number.)) Contact the department for a refund permit application and instructions.

**(2) ((When)) What time period can I file for a refund claim?** ((A refund claim may be filed at any time not to exceed a thirteen-month time limit from the date of purchase. If you claim a refund for fuel purchased in any month of a claimed period, you may not claim additional purchases for that month on another claim. The department will use the

~~postmark date to determine the eligibility of the claim.)) You must file within thirteen months of the fuel purchase date. The department will use the postmark date to determine the thirteen-month time frame. We will not accept multiple refund claims for the same month. For example, if you have made a claim for purchases in June you cannot claim additional purchases for June on another claim form.~~

~~(3) **What do I need to send ((in my invoices)) with ((the) my refund claim ((request))?** ((If your refund claim request is one hundred dollars or less, you do not have to send your purchase invoices with your refund claim unless required by the department. If your refund claim request is more than one hundred dollars, purchase invoices are required. If electronic invoices were issued to the claimant, paper copies of the invoices or other documentation containing required information must be submitted with the refund claim.)) You must send in your fuel purchase invoices, schedules, and other documents listed on the refund claim form. If electronic invoices were issued, you must provide paper copies.~~

~~(4) **How ((shall) do I account for my inventory ((on my refund claim form))?** Any fuel on hand ((~~by~~) physical measurement(~~at~~)) at the end of the claim period, should be ((indicated on the claim)) reported as ending inventory ((and should be reported as a beginning inventory on the next refund claim form. Credit for the inventory will be allowed on the next claim if it is filed within thirteen months from the filing date of the claim that established the inventory. All invoices for the total fuel purchased must be submitted with each claim unless the amount of the claim is one hundred dollars or less)). This figure should be reported as the beginning inventory on your next claim form.~~

~~(5) **((As)) What does a licensed distributor ((do I need to)) send ((in supporting summary schedules and invoices with my)) with their refund claim ((request))?** ((Yes.)) Summary schedules must be provided ((by the distributor. Invoices may be requested by the)) and the department may request invoices.~~

~~(6) **((Who may)) The following can sign a refund claim form((?—The following persons may sign a refund claim form)):**~~

- ~~(a) Individuals - permit holder;~~
- ~~(b) Partnership - any one of the partners;~~
- ~~(c) Business firm or corporation - owner, corporate officer or other authorized agent.~~

~~(7) **Can invoices ((be in)) have a different name than what is on the claim form?** No((, invoices made out in other names will not be accepted)).~~

~~(8) **Can I request that my refund be assigned to another person?** Yes, if we receive a letter ((of assignment is attached, signed by the person to whom the invoice was issued, designating the payee)) stating whom you would like the claim assigned to.~~

~~(9) **How long will it take until I receive my refund?** ((Properly completed refund claims will be processed and mailed)) Within thirty business days ((of date of receipt)) after we receive a properly completed claim.~~

~~(10) **How long do I maintain my refund records?** Keep them for five years after submitting your claim.~~

AMENDATORY SECTION (Amending WSR 01-22-073, filed 11/1/01, effective 12/2/01)

**WAC 308-77-106 Use tax for refunds.** (1) **Is use tax deducted from my refund claim?** Yes, ~~((the use tax may be deducted from your fuel tax refund amount as imposed by)) unless you are exempt from the use tax in chapter 82.12 RCW.~~

(2) **How is use tax computed?** ~~((The claimant may)) You can choose to:~~

- ~~• Calculate the use tax amount using the actual use tax rate((~~the~~)s(~~the~~)) and actual cost per gallon; or~~
- ~~• Have the department ((will)) calculate the use tax amount using an average use tax rate and ((average)) price per gallon.~~

~~Either method chosen ((by the claimant)) must be used for each refund claim submitted during ((a)) the calendar year, unless there has been a change in the department's estimated average fuel cost during that period. ((If computed by the department, the department will use an estimate of the statewide average fuel cost and an estimated use tax rate. The statewide average cost and use tax rate will be reviewed every six months and adjusted as necessary. If there is any dispute over the method of calculation, the taxpayer will be required to use actual cost of the fuel and use tax rate(s)).~~

AMENDATORY SECTION (Amending WSR 01-22-073, filed 11/1/01, effective 12/2/01)

**WAC 308-77-109 Invoice requirements for refund to nonlicensees and IFTA licensees.** (1) **What ((are the) is a valid invoice ((requirements))?** ~~((The seller of special fuel is required to issue to each purchaser separate invoices for each purchase of fuel. However,)) A separate invoice must be issued for each fuel purchase. A single invoice ((covering)) may list multiple deliveries of fuel purchases made during a ((period of time not to exceed one)) calendar month ((may constitute a separate invoice as required by this subsection. Provided, That each delivery is individually listed on the invoice or on an accompanying statement in accordance with the requirements of this subsection for single deliveries)).~~

(2) **((What)) The following information must be included on the invoice((?—Each invoice must contain the following information)):**

- ~~(a) Name and address of the seller;~~
- ~~(b) ((Kind of)) The type of fuel and number of gallons purchased;~~
- ~~(c) Complete date of sale ((~~the~~)including month, day, and year(~~the~~));~~
- ~~(d) Price per gallon; and~~
- ~~(e) Total amount of sale.~~

(3) **((With)) The department will not accept invoices with altered, corrected, or erased information((?—Invoices which indicate alterations, corrections or erasures shall be voided and will not be accepted. Any person who alters any part of an invoice that will tend to give the claimant an illegal gain may have the entire claim invalidated and the director may suspend any further claims for refund for a period of one year. If an electronic invoice was issued, then a paper copy of the electronic invoice or other documentation containing required information must be submitted)).**

**(4) What happens if ~~((an invoice is lost or destroyed)) the seller issues an electronic invoice?~~ ((If an invoice is lost or destroyed, the seller may issue a duplicate or copy containing the invoice number, date of sale, gallonage, price and amount, and any information that appeared on the first invoice. The copies shall be plainly marked "copy" or "duplicate.") A paper copy must be submitted with your refund claim.**

**(5) What happens if I ~~((issued)) get an incorrect invoice ((to the purchaser))?~~ The seller ~~((s of fuel must issue a corrected invoice to the purchaser. The invoice must clearly indicate that it is a corrected invoice and reference the original invoice. Only one invoice shall be issued for any one delivery)) must issue a new invoice marked "correction" and reference the original.~~**

**(6) What happens if I lose or destroy my invoice?** The seller may issue a copy. The copies must be plainly marked "copy" or "duplicate."

AMENDATORY SECTION (Amending WSR 01-22-073, filed 11/1/01, effective 12/2/01)

**WAC 308-77-112 Power take-off (PTO) use.** (1) **What is ~~((power take-off)) PTO use?~~ It is fuel used in a motor vehicle engine to operate auxiliary equipment ~~((provided that))~~. The fuel ~~((used is)) must be supplied from the propulsion tank of the motor vehicle.~~**

(2) **What is not considered auxiliary equipment?** Equipment ~~((that is considered an integral part of the operation of the vehicle,)) such as air conditioning, power steering, generator, etc., that is considered an integral part of the operation of the vehicle.~~

(3) **What formula does the department use in determining ~~((power take-off)) PTO usage?~~ (For special fuel used in operating a power take-off unit on any of the vehicles listed herein when direct measurement is not feasible,)) The tax exemption is calculated ~~((at the rate specified)) as a percentage of the total Washington taxable fuel ~~((used by the vehicles)):~~~~**

Cement mixer	25%
Fire trucks (private)	25%
Mobile cranes	25%
Garbage trucks (with load compactor)	25%
Sewer cleaning truck/jet vactor	25%
Super suckers	25%
Line truck with digger/derrick or aerial lift	20%
Log truck with self loader	20%
Refrigeration trucks	20%
Sweeper trucks (must be motor vehicle)	20%
Boom truck/block boom	15%
Bulk feed truck	15%
Dump trailers	15%
Dump trucks	15%
Hot asphalt distribution truck	15%
Leaf truck	15%
Lime spreader	15%

Pneumatic tank truck	15%
Salt spreader on dump truck	15%
Seeder truck	15%
Semiwrecker	15%
Service truck with jack hammer/drill	15%
Snow plow	15%
Spray truck	15%
Tank transport	15%
Tank trucks	15%
Truck with PTO hydraulic winch	15%
Wrecker	15%
Car carrier with hydraulic winch	10%
Carpet cleaning van	10%
Others	7.5%

**(4) What if my fuel consumption is greater than the percentages indicated above?** If ~~((a claimant)) you can provide satisfactory documentation and records to show that the fuel consumed by the ~~((power take-off)) PTO is greater than the percentages indicated, the department may grant the higher percentage on a case-by-case basis.~~~~

**(5) What documents must accompany the refund claims?** All claims must be accompanied by valid purchase invoices to cover the total gallons of special fuel purchased, except that invoices for special fuel used in fuel oil delivery trucks or when measured by a metering device need only be equal to or greater than the gallons claimed as refundable. A support schedule for Washington ~~((power take-off)) PTO and power pumping credits ~~((shall)) must accompany each claim for refund.~~~~

AMENDATORY SECTION (Amending WSR 01-22-073, filed 11/1/01, effective 12/2/01)

**WAC 308-77-114 Unauthorized use of dyed diesel.**

(1) **Is there any dye concentration in diesel fuel ~~((for which)) that the department cannot assess penalties for unlawful use?~~ No. The department may assess on any ~~((dyed diesel fuel)) dye concentration found in licensed vehicles, vehicles required to be licensed, or in bulk storage tanks used to fuel licensed or required to be licensed vehicles.~~**

(2) **Who ~~((may the department assess)) can be assessed a penalty for unlawful use of dyed diesel?~~ (The department may assess:)**

- (a) The operator of the vehicle; ~~((and/or))~~
- (b) The registered owner ~~((s))~~ of the vehicle; ~~((and/or))~~
- (c) Any ~~((other)) person ~~((or entity)) responsible for the operation, maintenance, or fueling of the vehicle.~~~~

(3) **If dyed diesel is discovered in the fuel supply tank ~~((s)) of a vehicle ~~((s)), when must the fuel be removed ~~((from the involved vehicle(s))?~~ (The) Dyed diesel fuel must be removed from the vehicle ~~((s)) within twenty-four hours from the time of discovery. ~~((Additional violations on)) Detection of dyed diesel in the same vehicle ~~((s)) detected after the twenty-four-hour period will be considered as a separate violation ~~((s)).~~~~~~~~~~~~**

(4) ~~((May the department assess))~~ **Will I be assessed dyed diesel penalties on the fuel in bulk storage tank((s))((s))?** Yes, if ~~((the department determines that))~~ any dyed diesel fuel from the bulk storage tank((s))((s)) has been used for unlawful purposes ~~((in any vehicle(s). Fuel remaining in the bulk storage fuel tank(s) will be considered for on-highway use)).~~

(5) **How is the dyed diesel fuel in a bulk storage tank((s)) assessed?** ~~((Once dyed diesel fuel from bulk storage has been used for unlawful purposes, an))~~ The assessment ~~((will be))~~ is based on the capacity or estimated quantity of dyed diesel fuel in the bulk storage tank((s))((s)) without regard to how this fuel will be used.

(6) **What if I refuse the department or authorized representative ~~((is denied))~~ access to inspect the ~~((fuel in diesel))~~ vehicle((s))((s)) or bulk storage tank((s))((s))?** The penalty in RCW 82.38.170(13) will be ~~((applied to))~~ calculated on the capacity of the bulk storage tank((s))((s)) and ~~((or to))~~ the number of vehicles subject to the refusal. ~~((All licenses issued under this chapter may be subject to cancellation and/or revocation under RCW 82.38.120(9) and 82.38.130.))~~

AMENDATORY SECTION (Amending WSR 01-22-073, filed 11/1/01, effective 12/2/01)

**WAC 308-77-116 Records.** (1) **What special fuel records must be kept?** ~~((+))~~ Every person licensed or required to be licensed ~~((shall))~~ must maintain a complete monthly stock summary of the gallons of special fuel reflecting inventories, receipts, sales, use, other distribution, and loss or gain. The stock summary ~~((shall))~~ must be supported by:

(a) Physical inventories of bulk storage plants taken at the close of each calendar month.

(b) Meter readings taken at the close of each calendar month for pumps through which fuel is dispensed.

(c) A record of fuel receipts ~~((together with))~~, invoices, bills of lading, transfer documents, yield reports, and other documents relative to the acquisition of fuel.

(d) A record of fuel disbursements ~~((together with))~~, invoices, bills of lading and other documents relative to the disbursement of fuel.

(2) ~~((What records must a licensed dyed special fuel user keep?))~~ The recordkeeping requirements of this section also apply to dyed special fuel:

~~((a) Purchased and used by licensed dyed special fuel users; and~~

~~((b) Authorized for use on the highway.))~~ **If I am a licensed dyed fuel user or someone who is required to be licensed, do I keep the same records?** Yes.

AMENDATORY SECTION (Amending WSR 00-16-045, filed 7/26/00, effective 8/26/00)

**WAC 308-77-155 On board computers or recording devices. Can I use on board computers or recording devices to record mileage?** Yes, ~~((the use of on board computers or recording devices for the production of mileage records required by RCW 82.32.140 shall be governed by the requirements or procedures adopted by the International Fuel~~

~~Agreement (IFTA))~~ with prior approval by the department.

AMENDATORY SECTION (Amending WSR 00-16-045, filed 7/26/00, effective 8/26/00)

**WAC 308-77-240 Refund records ~~((for refund claims)).~~ ~~((+))~~ What records ~~((does the department require each claimant to retain?))~~ Each claimant must retain records that reflect ~~((do I need to keep to claim a refund of fuel taxes?))~~**

• All special fuel receipts((s));

• The gallons of fuel used in each ~~((type))~~ piece of equipment ~~((s)), both refundable and nonrefundable((s)), other uses, loss and gain, and inventory on hand. The records must indicate the date of receipt or disbursements and identify the equipment into which the fuel is delivered or the purpose for which the fuel is used.))~~

• Fuel inventory in bulk storage;

• Detailed fuel records for all withdrawals from bulk storage;

• Fuel purchased in small containers (ten gallons or less) for nonhighway use must show the type of equipment being used, i.e., boats, tractors, power saws, etc.

Each claimant must also keep on highway and off highway mileage records for each licensed vehicle.

~~((If the claimant maintains electronic invoices, paper copies of these invoices must be produced, upon request of the department. Failure of the claimant to maintain the required records or to comply with the department's request for examination of the records will waive all rights to a refund.~~

~~((2) What additional records must be maintained to support a refund claim for fuel withdrawn from bulk storage?))~~ Fuel purchased and delivered into bulk storage must have detailed withdrawal records that account for taxable and nontaxable use.))

AMENDATORY SECTION (Amending WSR 00-16-045, filed 7/26/00, effective 8/26/00)

**WAC 308-77-265 Tax exempt losses.** (1) ~~((What is considered a tax exempt loss?))~~ Special fuel lost or destroyed in this state while being transported in the equipment of a licensee or in the equipment of a common or contract carrier for a licensee will be considered as a taxable distribution. Credit for or a refund of the special fuel tax paid may be taken when the licensee or the common or contract carrier furnishes acceptable proof of the exact quantity of fuel lost provided the documents in support of the loss are submitted to the department for approval as provided in RCW 82.38.180.

(2)) **What is acceptable proof of loss for a credit or refund of fuel tax paid?** ~~((Acceptable proof of loss will consist of the following:))~~

(a) ~~((An affidavit))~~ A notarized affidavit by a person having ~~((direct))~~ actual knowledge of the circumstances of the loss((s)) explaining the origin and destination of the shipment, the circumstances surrounding the ~~((loss.))~~ quantity of fuel lost, fuel salvaged, disposition of the salvaged fuel, and

procedure~~((f))s((g))~~ used in the determination of the quantity of fuel lost; or

(b) A signed statement by a federal ~~((or jurisdictional)),~~ state, local or provincial official who has authority to investigate ~~((and/or deal with))~~ fuel ~~((losses or a witness to the))~~ loss; and

(c) A bill of lading or other shipping document~~((f))s((g))~~; and

(d) A statement by the licensee establishing ownership of the fuel at time of loss.

~~((3))~~ **(2) Are deductions for losses from bulk storage allowed?** Yes, special fuel that has been proven lost or destroyed, prior to distribution from a licensee's bulk storage ~~((plant, is allowed as a deduction))~~ facility outside of the bulk transfer terminal system may be considered a tax exempt loss.

~~((4))~~ **(3) How long ~~((shall))~~ do I retain my evidence substantiating my loss?** ~~((Documentary evidence substantiating losses shall be retained by the licensee for))~~ Five years from date of claim.

~~((5))~~ **(4) May I claim a deduction for ~~((unproven losses))~~ stolen fuel?** No~~((, unproven losses will be considered as a distribution and subject to the fuel tax.~~

~~((6))~~ **Am I liable for fuel taxes if one of my employees or agents cause a loss of fuel?** Yes, charges for losses made by employees or agents of the licensee who fail to satisfactorily account for fuel shall be invoiced inclusive of the fuel tax. Other losses shall be substantiated by proof acceptable to the department).

AMENDATORY SECTION (Amending WSR 00-16-045, filed 7/26/00, effective 8/26/00)

**WAC 308-77-280 Natural gas, propane~~((—))~~ decal as evidence of payment of annual license fees.** (1) **Do I pay fuel tax when I purchase natural gas or liquefied petroleum gas (propane) for my licensed vehicle?** No, once you have licensed your vehicle as being powered by natural gas or propane, you will pay an annual license fee in lieu of the fuel tax.

(2) **What proof is required to purchase natural gas or propane for my vehicle?** A decal will be issued that must be displayed on your vehicle that allows the purchase of natural gas or propane. This decal must be displayed in ~~((a conspicuous place))~~ plain view on the vehicle near the fuel supply tank.

(3) **What if my vehicle operates with both motor fuel gasoline and natural gas or propane?** You will pay fuel tax on the gasoline as well as purchasing a decal.

AMENDATORY SECTION (Amending WSR 00-08-032, filed 3/28/00, effective 4/28/00)

**WAC 308-77-290 Dishonored checks.** (1) **What will happen if my check ~~((becomes))~~ is dishonored?** ~~((A dishonored check represents failure to pay special fuel taxes, fees and/or penalties and interest when due, and the department will enforce such special fuel licensing and taxing laws as are necessary to recover the unpaid taxes and fees when they become due and payable.~~

~~((2))~~ **What form of payment does the department require for dishonored checks?** Any registrant who tenders a check that is subsequently dishonored by a financial institution upon which it was drawn, may be required to tender all subsequent payments in certified funds, i.e., cash, cashier's check, certified check, traveler's check, official check, or money order.

~~((3))~~ The department will take collection action to recover any amounts owing and require all subsequent payments to be made in guaranteed funds, such as cash, cashier's check, or money order.

**(2) Are there any additional fees charged for a dishonored check ~~((DHC))~~?** Yes, a handling fee ~~((shall be assessed))~~ will be charged by the department for each dishonored check ~~((dishonored by the financial institution)).~~

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-77-092	Refund for bad debt loss (other than a special fuel supplier).
WAC 308-77-093	Delinquent account notification process.
WAC 308-77-097	IFTA recordkeeping requirements.
WAC 308-77-101	Tax exempt sales.
WAC 308-77-107	Interest assessment on refund claims.
WAC 308-77-170	Metric measurement.

#### **WSR 09-01-089**

#### **PROPOSED RULES**

#### **SUPERINTENDENT OF PUBLIC INSTRUCTION**

[Filed December 16, 2008, 10:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-21-049.

Title of Rule and Other Identifying Information: WAC 392-140-973 Finance—Special allocations—Salary bonus for teachers and other certificated staff who hold current certification by the national board—Eligibility.

Hearing Location(s): Old Capitol Building, 600 South Washington Street, P.O. Box 47200, Olympia, WA 98504-7200, on January 30, 2009, at 9:00 a.m.

Date of Intended Adoption: February 2, 2009.

Submit Written Comments to: Legal Services, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, fax (360) 753-4201, by January 29, 2009.

Assistance for Persons with Disabilities: Contact Clarice Nnanubu by January 29, 2009, TTY (360) 664-3631 or (360) 725-6271.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This is a "house-keeping" amendment to rule revisions earlier in 2008 regarding the national board bonus. This amendment clarifies the eligibility criteria regarding which schools are deemed challenging, high poverty schools for the 2009-10 school year and thereafter, for purpose of the challenging, high poverty school bonus.

Statutory Authority for Adoption: RCW 28A.150.290 (1).

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

Name of Proponent: Office of superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Charlie Schreck, Office of Superintendent of Public Instruction, (360) 725-6136; Implementation: Ross Bunda, Office of Superintendent of Public Instruction, (360) 725-6308; and Enforcement: Jennifer Priddy, Office of Superintendent of Public Instruction, (360) 725-6292.

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

A cost-benefit analysis is not required under RCW 34.05.328. The superintendent of public instruction is not subject to RCW 34.05.328 per subsection (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

December 16, 2008  
Dr. Terry Bergeson  
Superintendent of  
Public Instruction

AMENDATORY SECTION (Amending WSR 08-17-013, filed 8/8/08, effective 9/8/08)

**WAC 392-140-973 Salary bonus for teachers and other certificated staff who hold current certification by the national board—Eligibility.** Candidates who are eligible for the bonus shall be limited to those meeting the following requirements:

(1) Hold current certification by the national board for professional teaching standards; and

(2) Who are:

(a) Teachers and other certificated staff employed full time or part time under written contract by Washington public school districts or educational service districts pursuant to RCW 28A.405.210; or

(b) Teachers and other certificated staff employed full time or part time by a contractor pursuant to WAC 392-121-188 and 392-121-206 (2)(a); or

(c) Teachers and other certificated staff employed full time or part time by the Washington school for the deaf or Washington school for the blind; or

(d) Beginning in the 2007-08 school year and thereafter, national board certified teachers who received the bonus as a teacher or other certificated instructional staff in Washington and become public school principals or vice-principals shall continue to receive the bonus for as long as they are princi-

pals or vice-principals and maintain the national board certification.

(3) In addition to bonuses provided by subsection (2) of this section, teachers and other certificated staff shall be eligible for additional bonuses if the employee is in an instructional assignment in challenging, high poverty schools, subject to the following conditions and limitations:

(a) For the 2007-08 school year, challenging, high poverty schools are schools where, for the prior year, the student headcount enrollment eligible for the federal free or reduced-price lunch program is at least 70 percent, as determined by any of the following sources:

(i) The October 2006 count by the child nutrition section of the office of superintendent of public instruction; or

(ii) The October 2006 count by the core student records system of the office of superintendent of public instruction.

(b) For the 2008-09 school year, challenging, high poverty schools are schools eligible by either:

(i) Subsection (3)(a) of this section; or

(ii) Schools where, for the prior year, the student headcount enrollment eligible for the federal free or reduced price lunch program was at least:

(A) 70 percent for elementary schools;

(B) 60 percent for middle schools; or

(C) 50 percent for high schools; as determined by any of the following sources:

(D) The October 2007 count by the child nutrition section of the office of superintendent of public instruction; or

(E) The October 2007 count by the core student records system of the office of superintendent of public instruction. For purposes of the national board challenging, high poverty schools bonus, a building shall be categorized based upon the highest grades served as follows:

(I) A building whose highest grade served is 6th grade or lower shall be considered an elementary school;

(II) A building whose highest grade served is either 7th, 8th, or 9th grade shall be considered a middle school; and

(III) A building whose highest grade served is either 10th, 11th, or 12th grade shall be considered a high school; provided, that, a building shall not be considered unless it serves greater than 20 students as of the October 2006 count, and greater than 30 students as of the October 2007 count, or is the largest building in the district serving its designated category.

(c) For the 2009-10 school year and thereafter, challenging, high poverty schools are schools eligible by either:

(i) Eligibility in the prior year; or

(ii) Schools where, for ~~((either of))~~ ~~((two))~~ prior year ~~((s))~~, the student headcount enrollment eligible for the federal free or reduced price lunch program was at least:

~~((+))~~ (A) 70 percent for elementary schools;

~~((+))~~ (B) 60 percent for middle schools; or

~~((+))~~ (C) 50 percent for high schools; as determined by the October count of the core student records system of the office of superintendent of public instruction.

(d) Teachers and other certificated staff that meet the qualifications for additional bonuses under this subsection who are assigned for less than one full school year or less than full time for the school year shall receive the additional



bonuses in a prorated manner, subject to the following conditions and limitations:

(i) The portion of the employee's assignment to challenging, high poverty schools shall be determined as of either October 1 of the current school year or the employee's employment contract date for the current school year.

(ii) If the employee's assignment to challenging, high poverty schools is less than 1.0 full-time equivalent, the proration shall use the methodology in WAC 392-121-212 and shall be rounded to three decimal places.

(e) Principals and vice-principals shall not be eligible for additional bonuses that are based on instructional assignments in challenging, high poverty schools.

**WSR 09-01-120**  
**PROPOSED RULES**  
**BOARD FOR VOLUNTEER**  
**FIREFIGHTERS AND RESERVE OFFICERS**

[Filed December 19, 2008, 1:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-06-068.

Title of Rule and Other Identifying Information: Chapter 491-03 WAC, Membership and participation requirements.

1. What duties within a municipality qualify me for participation/membership in the board for volunteer fire fighters' and reserve officers' relief and pension principal fund? Clarifies the definitions of "fire fighter," "emergency worker," and "reserve officer."

2. What level of activities do I have to participate in to be eligible for participation/membership in the volunteer fire fighters' and reserve officers' pension? Clarifies what level of activities are required to be an "active member."

Hearing Location(s): Thurston County FPD #7, 5046 Boston Harbor Road N.E., Olympia, WA 98506, on February 19, 2009, at 1:00 p.m.

Date of Intended Adoption: February 20, 2009.

Submit Written Comments to: Brigette K. Smith, P.O. Box 114, Olympia, WA 98507, e-mail [bridgettes@bvff.wa.gov](mailto:bridgettes@bvff.wa.gov), fax (360) 586-1987, by January 30, 2009.

Assistance for Persons with Disabilities: Contact Brigette K. Smith, by February 5, 2009, TTY (360) 753-7318 or (877) 753-7318.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal would not change any existing rules, but would clarify what is already required by the state supreme court case law. It would provide clear written guidance to fire, police, and emergency medical service district employees regarding who is allowed to participate in the Volunteer Firefighters' and Reserve Officers' Relief and Pension Act and to what level they have to participate to be considered "active" for pension purposes.

Reasons Supporting Proposal: In *Schrom v. Board for Volunteer Fire Fighters*, the state supreme court ruled that "a person asserting pension eligibility must, at minimum, 'fight

fires' in order to be a 'fire fighter'... (and) must, at minimum, possess some duties that include fighting fires if a fire were to ever occur." *City of Kennewick v. Bd. For Volunteer Firefighters* 85 Wn. App. 366, 933 P.2d 423 (1997) stated that "it is inconceivable that the legislature intended to create a fire fighters' pension fund for individuals who, apart from paying an annual fee, engaged in no activity related to fire fighting." In *Campbell v. Bd. For Volunteer Fire Fighters*, 111 Wn. App. 413, 45 P.3d216 (2002), the court stated that a fire-fighter could not receive credit for the years following his removal from fire response duties. Furthermore, in *Kennewick*, the court stated that the fire fighter was not eligible for pension participation because he "did not engage in sufficient activities related to fire fighting to be eligible for pension credit." Finally, the State Supreme Court stated that a member must participate in activities such as fire suppression, training to fight fires, and responding to fire alarms.

Statutory Authority for Adoption: RCW 41.24.290.

Statute Being Implemented: Chapter 491-03 WAC.

Rule is necessary because of state court decision, *Schrom v. Bd for Volunteer Fire Fighters* 153 Wn.19 (2004).

Name of Proponent: State board for volunteer firefighters and reserve officers, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Brigette K. Smith, 605 11th Avenue S.E., Suite #112, Olympia, WA 98501, (360) 753-7318; and Enforcement: State Board for Volunteer Firefighters and Reserve Officers, 605 11th Avenue S.E., Suite #112, Olympia, WA 98501, (360) 753-7318.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule will not affect small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The board's proposed WAC is not a significant rule of the specified governmental departments nor is it a rule that adopts by incorporation or reference federal or state statutes or rules from other state agencies. It is a rule that relates to only internal governmental operations that are not subject to violation by a nongovernmental party, thus negating the requirement.

December 19, 2008

Brigette K. Smith

Executive Secretary

**Chapter 491-03 WAC**

**MEMBERSHIP AND  
PARTICIPATION REQUIREMENTS**

NEW SECTION

**WAC 491-03-010 Purpose.** This chapter sets forth the qualifications necessary to be a participant/member in the volunteer fire fighters' and reserve officers' relief and pension principal fund.

NEW SECTION

**WAC 491-03-020 What duties within a municipality qualify me for participation/membership in the board for**

**volunteer fire fighters' and reserve officers' relief and pension principal fund?** If you are a member of a municipality as a volunteer fire fighter or reserve officer who does not qualify for PERS or LEOFF (for their volunteer duties only), and if:

**(1) Reserve officers:**

(a) You are a reserve officer only if you are certified by the Washington state criminal justice training commission under chapter 43.101 RCW, and a commissioned member of a municipality as a:

- (i) Reserve city police officer;
- (ii) Reserve town or deputy marshal;
- (iii) Reserve deputy sheriff.

(b) You are not a reserve officer if you volunteer in either:

- (i) A position that is clerical or secretarial in nature;
- (ii) You are not commissioned;
- (iii) A corrections officer position.

**(2) Fire fighter:**

(a) You are a fire fighter only if you have the legal authority and responsibility to direct or perform fire protection activities that are required for and directly concerned with preventing, controlling, and extinguishing fires, or your primary duty is to serve as an emergency worker (see subsection (3) of this section).

"Fire protection activities" may include incidental functions such as housekeeping, equipment maintenance, grounds maintenance, fire safety inspections, lecturing, performing community fire drills and inspecting homes, businesses, and schools for fire hazards. These activities qualify as fire protection activities only if the primary duty of your position is preventing, controlling, and extinguishing fires.

(b) You are not a fire fighter if you volunteer in:

- (i) A position that is clerical or secretarial in nature;
- (ii) A position where your primary duty is not preventing, controlling, and extinguishing fires;
- (iii) A position that pays a wage which qualifies you for participation in either PERS or LEOFF;
- (iv) A position that is only supervisory in nature and the primary duty is not preventing, controlling, and extinguishing fires.

**(3) Emergency worker:**

(a) You are an emergency worker only if you have the legal authority and responsibility to perform all aspects of medical assessment, treatment, and care for patients as outlined in state and county protocols for paramedics, emergency medical technicians, and first responders.

"Emergency activities" may include incidental functions such as housekeeping, equipment maintenance, grounds maintenance, home safety inspections, lecturing, and driving emergency vehicles. These activities qualify as emergency activities only if the primary duty of your position is to perform all aspects of medical assessment, treatment, and care for patients.

(b) You are not an emergency worker if you volunteer in:

- (i) A position that is clerical or secretarial in nature;
- (ii) A position where your primary duty is not to perform all aspects of medical assessment, treatment, and care for patients;

(iii) A position that pays a wage that qualifies you for participation in either PERS or LEOFF;

(iv) A position that is only supervisory in nature and the primary duty is not to perform all aspects of medical assessment, treatment, and care for patients.

NEW SECTION

**WAC 491-03-030 What level of activities do I have to participate in to be eligible for participation/membership in the volunteer fire fighters' and reserve officers' pension?** All departments are required to develop volunteer participation requirements that meet or exceed the participation requirements as set by the state board. If a department does not develop their own requirements, the board requirements will be in effect.

(1) The board requires that all volunteers:

(a) Attend a minimum of ten percent, or twenty hours, of all drills and/or training annually, whichever is less.

(b) Respond to a minimum of ten percent of all calls at the member's assigned station or twenty-four calls annually, whichever is less; or ninety-six hours of standby time annually.

For the purposes of this section, standby time means time that the volunteer is assigned to be near at hand and ready to respond to emergency call immediately. A volunteer who merely carries a cellular telephone, pager, or similar device is not considered to be in standby status.

(c) Meet the requirements to be a qualified member under WAC 491-03-010.

(d) Be certified as having met the standards by the local board chair and by the fire chief, police chief, or sheriff annually on the board for volunteer fire fighters and reserve officers provided forms.

(2) An exemption of up to twelve weeks in a twelve-month period may be granted for:

(a) A participant's serious health condition;

(b) A participant to care for a parent, spouse, or minor/dependent child who has a serious health condition;

(c) The birth of and to provide care to an employee's newborn, adopted, or foster child as provided in WAC 357-31-460.

For the purposes of this section, "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, and any period of incapacity or subsequent treatment or recovery in connection with such inpatient care; or that involves continuing treatment by or under the supervision of a health care provider or a provider of health care services and which includes any period of incapacity (i.e., inability to work, attend school, or perform other regular daily activities).

(3) An exemption of up to twenty-six weeks in a twelve-month period may be granted for: A participant who is the spouse, son, daughter, parent, or next of kin of a covered service member who is suffering from a serious health condition incurred in the line of duty. The leave described in this subsection shall only be available during a single twelve-month period.

For the purposes of this section, "covered service member" is a member of the armed forces, including the National Guard or reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on a temporary disability retired list for a serious health condition.

(4) An exemption of up to one year may be granted for injuries covered under chapter 41.24 RCW; or up to one year for reserve officers injured in the line of duty and covered under Title 51 RCW.

(5) Departments granting exemptions shall submit written documentation on the board for volunteer fire fighters and reserve officers provided forms for board review.

(6) Members joining service after January 1st, or separating from service before December 31st, will have their requirements prorated for the calendar year.

**WSR 09-01-121**  
**PROPOSED RULES**  
**UNIVERSITY OF WASHINGTON**

[Filed December 19, 2008, 1:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-01-001.

Title of Rule and Other Identifying Information: New chapter for animal control (chapter 478-128 WAC, Animal control at the University of Washington); repealing former animal control sections (from chapter 478-124 WAC, General conduct code for the University of Washington); and housekeeping amendments to the brief adjudications section (WAC 478-108-010 Matters subject to brief adjudication) for the University of Washington.

Hearing Location(s): Room 309 Husky Union Building (HUB), University of Washington, Seattle, WA 98195, on February 12, 2009, at 12:00 noon.

Date of Intended Adoption: March 19, 2009.

Submit Written Comments to: Rebecca Goodwin Deardorff, Director of Rules Coordination, Rules Coordination Office, Box 355509, University of Washington, Seattle, WA 98195, e-mail [rules@u.washington.edu](mailto:rules@u.washington.edu), fax (206) 221-6917, by February 12, 2009.

Assistance for Persons with Disabilities: Contact disability services office by January 28, 2009, TTY (206) 543-6452 or (206) 543-36450 [543-6450].

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed new chapter 478-128 WAC, Animal control at the University of Washington, removes the animal control rules from their current location as sections in chapter 478-124 WAC, General conduct code for the University of Washington, and creates a stand-alone chapter for this subject matter. The proposal also updates WAC 478-108-010 Matters subject to brief adjudication, by adding a subject previously missing, amending chapter references pertaining to the new animal control chapter, and removing a subsection that is no longer accurate.

The University of Washington's animal control rules have not been amended since 1973, prior to the university's

growth to a multiple-campus system, and contain references that are exclusive to the city of Seattle's animal enforcement codes. These proposed rules are revised to be relevant in all University of Washington locations; to update language concerning guide dogs and service animals based upon current legal definitions, and add service animals in training; and to include working animals under the control of university employees or other security and emergency personnel.

Reasons Supporting Proposal: A University of Washington animal control policy task force was formed to review and amend the university's WAC rules. This task force represented key personnel from all University of Washington campuses, medical centers, and various off-campus research locations and met on several occasions over the course of two years to amend and clarify the proposed new WAC rules.

Statutory Authority for Adoption: RCW 28B.20.130.

Statute Being Implemented: RCW 28B.20.130 for all sections; in addition, chapter 34.05 RCW for WAC 478-108-010.

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: Rebecca Goodwin Deardorff, Director for Rules Coordination, 22E Gerberding Hall, University of Washington, Seattle, WA, (206) 543-9219; Implementation: Eric Godfrey, Vice Provost for Student Life, 476 Schmitz Hall, University of Washington, Seattle, WA, (206) 543-0128; and Enforcement: Ray Wittmier, Interim Chief of Police, 1117 N.E. Boat Street, University of Washington, Seattle, WA, (206) 616-2114.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not impose a disproportionate impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are not considered significant legislative rules by the University of Washington.

December 19, 2008

Rebecca Goodwin Deardorff  
Director of Rules Coordination

AMENDATORY SECTION (Amending WSR 02-15-174, filed 7/24/02, effective 8/24/02)

**WAC 478-108-010 Matters subject to brief adjudication.** This rule is adopted in accordance with RCW 34.05.479 through 34.05.494, the provisions of which are hereby adopted. Brief adjudicative procedures shall be used in all matters related to:

(1) Appeals from residency classifications under RCW 28B.15.013 as established in chapter 478-160 WAC;

(2) Appeals from traffic ~~((and))~~, parking violations and skateboard impoundment as provided for in chapters 478-116, 478-117 and 478-118 WAC;

(3) Challenges to contents of educational records as provided for in chapter 478-140 WAC;

(4) Proceedings under the animal control policy as detailed in chapter ~~((478-124))~~ 478-128 WAC;

(5) Requests for reconsideration of admission decisions as provided for in chapter 478-160 WAC;

(6) Appeals of library charges as provided in chapter 478-168 WAC;

(7) Reviews of denials of public records requests as provided in chapter 478-276 WAC;

(8) Federal financial aid appeals as provided for by federal law; and

(9) Collection of outstanding debts owed by students or employees(~~;~~ and

~~(10) Appeals from areas exempt from the rules requirements of chapter 34.05 RCW including standards of admission, academic advancement, academic credit, graduation and the granting of degrees, employment relationships (except for all aspects of faculty and librarian employment relationships), and fiscal processes)).~~

### Chapter 478-128 WAC

## ANIMAL CONTROL AT THE UNIVERSITY OF WASHINGTON

### NEW SECTION

**WAC 478-128-010 Purpose.** It is the policy of the University of Washington to secure and maintain a level of animal control that protects human health and safety, prevents animals from hindering university employees, students, and members of the public on university property, prevents property damage, and to the greatest degree practicable, prevents cruelty to animals. It is the purpose of these rules to fulfill the objectives of the above policy.

### NEW SECTION

**WAC 478-128-020 Definitions.** "Animal" means any living creature except human beings, fish, any research animal maintained in university facilities, or natural wildlife inhabiting university property. This definition includes, among other things, pets.

"Imminent danger" means a threat to human and/or animal life or university property that is immediate or reasonably foreseeable under the circumstances.

"Organic debris" means animal feces, urine, vomit, blood, etc.

"Owner" means any person having an interest in or right of possession to an animal, or any person having control, custody, or possession of an animal.

"Running at large" means to be off the owner's residential premises and not under the owner's direct control.

"Service animal" means an animal, including guide dogs, individually trained to do work or perform tasks for the benefit of an individual with a disability, as defined by applicable state and/or federal laws, which includes but is not limited to, guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing, providing minimal protection, pulling a wheelchair, or fetching dropped items.

"Service animal in training" means an animal that is being trained for the purpose of assisting or accommodating

an individual with a disability as defined by applicable state and/or federal laws.

"University property" means property that the university owns as well as property that the university operates, leases, rents, or otherwise controls.

"Working animal" means an animal that is trained for specific tasks and under the control of police, security or emergency personnel, or other university employees or agents. Examples of working animals include, but are not limited to, patrol, rescue, or sentry dogs and therapy animals.

### NEW SECTION

**WAC 478-128-030 Animal control.** (1) All animals brought onto university property shall be subject to license and leash laws of the applicable city, county, or state jurisdiction.

(2) Except as provided in (a) through (e) of this subsection, no animals shall be allowed in any buildings or structures the university owns, operates, leases, rents, or controls.

(a) "Service animals" and "service animals in training" may be permitted consistent with university policies, and/or state and federal laws.

(b) Working animals under the control of police, security or emergency personnel, or a trained university employee may be permitted for specific functions consistent with the animal's training.

(c) Pets may be permitted in university residences for students, employees, patient's families, and the general public, consistent with housing agreements and policies established for each residence facility.

(d) The recognized university mascot, properly leashed, may be permitted at appropriate university assemblages in auditoria, ballrooms, dining areas, and at athletic events.

(e) Animals included as part of special events may be permitted, subject to guidelines established for specific university facilities and those established by the use of university facilities committee in accordance with chapters 478-136 and 478-137 WAC (for example, hosting a visiting team's animal mascot at Husky football games).

(3) Further restrictions to animals may apply to specific areas of university property, consistent with university policies and/or state and federal laws, including, but not limited to, food preparation areas, animal research facilities and grounds, medically sensitive patient and clinic areas, and biologically sensitive or hazardous research sites.

(4) No animal shall be permitted to run at large on university property. Animals that are tethered in the owner's absence and not under the owner's direct control are also considered to be "running at large."

(5) No animal shall be permitted to enter any pond, fountain, or stream located on university property.

(6) No animal which emits frequent or long-continued noise so as to disturb or disrupt normal administrative or academic routine shall be permitted on university property. Moreover, any animal that places human and/or animal life or university property in imminent danger shall be removed immediately from university property.

(7) Fecal matter or other organic debris deposited by animals must be removed immediately and properly disposed of by the animal's owner.

#### NEW SECTION

##### **WAC 478-128-040 Enforcement and penalties.** (1)

Any animal found on university property under conditions violating any provision of this chapter shall be subject to apprehension and impoundment in accordance with the requirements of the applicable university, city, county or state rules, regulations, or laws.

(2) Owners found in violation of any provision of this chapter may be cited, banned from any university property, or otherwise fined or penalized as provided under applicable university, city, county, or state rules, regulations, or laws.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 478-124-060	Animal control policy—Purpose.
WAC 478-124-070	Animal control policy—Definitions.
WAC 478-124-080	Animal control policy—Animal control.
WAC 478-124-090	Animal control policy—Enforcement.
WAC 478-124-100	Animal control policy—Penalties.

#### **WSR 09-01-124**

##### **PROPOSED RULES**

##### **DEPARTMENT OF ECOLOGY**

[Order 08-14—Filed December 19, 2008, 2:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-16-107.

Title of Rule and Other Identifying Information: Preassessment screening and oil spill compensation schedule regulations (chapter 173-183 WAC). The department of ecology is proposing to amend the natural resource damage liability formula multipliers and multiplier descriptions used for the calculation of damages from oil spills into marine and estuarine waters, the Columbia River estuary, freshwater wetlands, and freshwater streams, rivers, and lakes.

Hearing Location(s): City of Federal Way City Hall, Council Chambers, 33325 8th Avenue South, Federal Way, WA 98003, contact information (253) 835-7000, workshop 10 a.m., public hearing 11 a.m., on January 27, 2009; at the Washington State University Vancouver Campus, Multi-Media Classroom, Building (VMCC), Room 6, 14204 N.E. Salmon Creek Avenue, Vancouver, WA 98686, contact information (360) 546-9588, workshop 6 p.m., public hearing

7 p.m., on January 28, 2009; and at Highline Community College, Artist-Lecture Center, Building 7, 2400 South 240th Street, Des Moines, WA 98198, contact information (206) 878-3710, workshop 6 p.m., public hearing 7 p.m., on February 2, 2009.

Date of Intended Adoption: March 10, 2009.

Submit Written Comments to: Harry Chichester, P.O. Box 47600, Olympia, WA 98504-7600, e-mail spills rulemaking@ecy.wa.gov, phone (360) 407-7202, fax (360) 407-7288, received by 5 p.m. on February 9, 2009.

Assistance for Persons with Disabilities: Contact Harry Chichester at (360) 407-7202 by January 26, 2009. If you have hearing loss, call 711 for Washington Relay Service. If you have a speech disability, call (877) 833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to amend the compensation schedule mathematical formula multipliers in regulation so that the full range of compensation (\$1 to \$100 per gallon of oil spilled) required in state law can be calculated. Multiplier descriptions in regulation would also be changed to reflect the new ceiling value of \$100 per gallon. This proposal would:

(1) Amend WAC 173-183-830(3), 173-183-840(2), 173-183-850(2), and 173-183-860(2), by replacing current multipliers with new multipliers that are capable of achieving the full range of compensation required in state law.

(2) Amend WAC 173-183-830(3), 173-183-840(2), 173-183-850(2), and 173-183-860(2), by replacing the \$50 ceiling limit value with the new \$100 ceiling limit described in state law.

Reasons Supporting Proposal: Chapter 347, Laws of 2007 (SB 5552) changed the upper limit of the natural resource damage assessment (NRDA) compensation range in RCW 90.48.366 from \$50 to \$100 per gallon of oil spilled. Current formula multipliers in chapter 173-183 WAC are mathematically incapable of achieving the full range of compensation required. This amendment proposal will make our rules consistent with law, allowing the full range of compensation to be calculated.

Statutory Authority for Adoption: RCW 90.48.366, 90.56.050, and 90.48.035.

Statute Being Implemented: Chapter 90.48 RCW as modified by 2007 legislature, chapter 347, Laws of 2007 (SB 5552).

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

Name of Proponent: Washington department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Harry Chichester, Department of Ecology, Headquarters, Lacey, Washington, (360) 407-7202; Implementation: Dave Byers, Department of Ecology, Headquarters, Lacey, Washington, (360) 407-6974; and Enforcement: Rebecca Post, Department of Ecology, Headquarters, Lacey, Washington, (360) 407-7114.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not required for this rule making because it meets the exemption in RCW 19.85.025(3) referencing RCW 34.05.310(4). This rule making meets the

exemption in RCW 34.05.310 (4)(e) because its content is "explicitly and specifically dictated by statute."

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not prepared because this is not a significant rule making. Its content is "explicitly and specifically dictated by statute," meeting the exemption in RCW 34.05.328 (5)(b)(v).

December 19, 2008  
Polly Zehm  
by Rob Duff  
Acting Deputy Director

AMENDATORY SECTION (Amending Order 03-03, filed 5/12/03, effective 6/12/03)

**WAC 173-183-830 Calculation of damages for spills into marine and estuarine waters, except the Columbia River estuary.** (1) The formula provided in subsection (2) of this section shall be used to determine damages liability for spills into marine and estuarine waters, except the estuarine waters of Columbia River. The value of the variables used in the formula shall be determined by:

- (a) The OSC as enumerated in WAC 173-183-810(1);
- (b) The mutually agreed upon independent expert, if applicable, as described in WAC 173-183-810(2); and
- (c) The RDA committee chair as enumerated in WAC 173-183-820 (1)(a).

(2) In making the determination of percent-coverage of habitat types, the RDA committee chair may assume that the habitat-type visible at low tide extends out to the 20 meter depth contour.

(3) Damages liability shall be calculated using the following formula:

Damages (\$) =

$$\text{gallons spilled} * ((\cancel{0}+)) \underline{0.208} * [(OIL_{AT} * SVS_{AT,j}) + (OIL_{MI} * SVS_{MI,j}) + (OIL_{PER} * SVS_{PER,j})]$$

where: gallons spilled = the number of gallons of oil spilled as determined by the procedures outlined in WAC 173-183-810;

SVS<sub>ij</sub> = spill vulnerability score (from WAC 173-183-400(3));

OIL<sub>AT</sub> = Acute Toxicity Score for Oil (from WAC 173-183-340);

OIL<sub>MI</sub> = Mechanical Injury Score for Oil (from WAC 173-183-340); and

OIL<sub>PER</sub> = Persistence Score for Oil (from WAC 173-183-340).

i = acute toxicity, mechanical injury and persistence effect of oil

j = the most sensitive season affected by the spill  
((~~0~~+)) 0.208 = multiplier to adjust the damages calculated to the \$((~~1~~-50)) 1-100 per gallon range.

Formula results shall be rounded to the nearest 0.01 to determine damages liability as follows: Decimals less than

0.005 shall be rounded down, and decimals equal to or greater than 0.005 shall be rounded up.

**Reviser's note:** The brackets and enclosed material in the text of 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.

AMENDATORY SECTION (Amending Order 91-13, filed 4/23/92, effective 5/24/92)

**WAC 173-183-840 Calculation of damages for spills into the Columbia River estuary.** (1) The formula provided in subsection (2) of this section shall be used to determine damages liability for spills into the estuarine waters of Columbia River. The value of the variables used in the formula shall be determined by:

- (a) The OSC as enumerated in WAC 173-183-810(1);
- (b) The mutually agreed upon independent expert, if applicable, as described in WAC 173-183-810(2); and
- (c) The RDA committee chair as enumerated in WAC 173-183-820 (1)(b).

(2) Damages liability shall be calculated using the following formula:

Damages (\$) =

$$\text{gallons spilled} * ((\cancel{0}+)) \underline{0.508} * SVS_j * (OIL_{AT} + OIL_{MI} + OIL_{PER})$$

where: gallons spilled = the number of gallons of oil spilled as determined by procedures outlined in WAC 173-183-810

SVS<sub>j</sub> = spill vulnerability score (from WAC 173-183-500(3));

j = the most sensitive season affected by the spill

OIL<sub>AT</sub> = Acute Toxicity Score for Oil (from WAC 173-183-360);

OIL<sub>MI</sub> = Mechanical Injury Score for Oil (from WAC 173-183-360); and

OIL<sub>PER</sub> = Persistence Score for Oil (from WAC 173-183-360).

((~~0~~+)) 0.508 = multiplier to adjust the damages calculated to the \$((~~1~~-50)) 1-100 per gallon range.

Formula results shall be rounded to the nearest 0.01 to determine damages liability as follows: Decimals less than 0.005 shall be rounded down, and decimals equal to or greater than 0.005 shall be rounded up.

AMENDATORY SECTION (Amending Order 03-03, filed 5/12/03, effective 6/12/03)

**WAC 173-183-850 Calculation of damages for spills in freshwater streams, rivers, and lakes.** (1) The formula provided in subsection (2) of this section shall be used to determine damages liability for spills into freshwater streams, rivers, and lakes. The value of the variables used in the formula shall be determined by:

- (a) The OSC as enumerated in WAC 173-183-810(1);
- (b) The mutually agreed upon independent expert, if applicable, as described in WAC 173-183-810(2); and

(c) The RDA committee chair as enumerated in WAC 173-183-820 (1)(c).

(2) Damages liability shall be calculated using the following formula:

Damages (\$) =

gallons spilled\* ~~((0-08))~~ 0.162\* SVS\* (OIL<sub>AT</sub> + OIL<sub>MI</sub> + OIL<sub>PER</sub>)

where: gallons spilled = the number of gallons of oil spilled as determined by the procedures outlined in WAC 173-183-810;

SVS = Spill vulnerability score [from WAC 173-183-600(3)];

OIL<sub>AT</sub> = Acute Toxicity Score for Oil [from WAC 173-183-340];

OIL<sub>MI</sub> = Mechanical Injury Score for Oil [from WAC 173-183-340]; and

OIL<sub>PER</sub> = Persistence Score for Oil [from WAC 173-183-340].

~~((0-08))~~ 0.162 = multiplier to adjust damages calculated to the ~~\$(+50))~~ 1-100 per gallon range;

Formula results shall be rounded to the nearest 0.01 to determine damages liability as follows: Decimals less than 0.005 shall be rounded down, and decimals equal to or greater than 0.005 shall be rounded up.

**Reviser's note:** The brackets and enclosed material in the text of 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.

**AMENDATORY SECTION** (Amending Order 03-03, filed 5/12/03, effective 6/12/03)

**WAC 173-183-860 Calculation of damages for spills into freshwater wetlands.** (1) The formula provided in subsection (2) of this section shall be used to determine damages liability for spills into freshwater wetlands. The value of the variables used in the formula shall be determined by:

(a) The OSC as enumerated in WAC 173-183-810(1);

(b) The mutually agreed upon independent expert, if applicable, as described in WAC 173-183-810(2); and

(c) the RDA committee chair as enumerated in WAC 173-183-820 (1)(d).

(2) Damages liability shall be calculated using the following formula:

Damages (\$) =

gallons spilled\* ~~((0-84))~~ 1.620\* SVS\* (OIL<sub>AT</sub> + OIL<sub>MI</sub> + OIL<sub>PER</sub>)

where: gallons spilled = the number of gallons of oil spilled as determined by procedures outlined in WAC 173-183-810;

SVS = Spill vulnerability score [from WAC 173-183-700(3)];

OIL<sub>AT</sub> = Acute Toxicity Score for Oil [from WAC 173-183-340];

OIL<sub>MI</sub> = Mechanical Injury Score for Oil [from WAC 173-183-340]; and

OIL<sub>PER</sub> = Persistence Score for Oil [from WAC 173-183-340].

~~((0-84))~~ 1.620 = multiplier to adjust damages calculated to the ~~\$(+50))~~ 1-100 per gallon range;

Formula results shall be rounded to the nearest 0.01 to determine damages liability as follows: Decimals less than 0.005 shall be rounded down, and decimals equal to or greater than 0.005 shall be rounded up.

**Reviser's note:** The brackets and enclosed material in the text of 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 09-01-144

### PROPOSED RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed December 22, 2008, 5:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-12-031.

Title of Rule and Other Identifying Information: The department is amending:

WAC 388-505-0230 Long term care for families and children, 388-505-0235 Definitions, 388-505-0240 General eligibility, 388-505-0245 Resource eligibility, 388-505-0250 Eligibility for individuals twenty-one years of age or older, 388-505-0255 Eligibility for individuals nineteen and twenty years of age, 388-505-0260 Eligibility for children eighteen years of age or younger, 388-505-0265 How the department determines how much of an institutionalized individual's income must be paid towards the cost of care, and 388-505-0270 When an involuntary commitment to Eastern or Western State Hospital is covered by medicaid.

Hearing Location(s): Office Building 2 - Auditorium, (DSHS Headquarters), 1115 Washington, Olympia, WA 98504, public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>, or by calling (360) 664-6094, on February 10, 2009, at 10:00 a.m.

Date of Intended Adoption: Not sooner than February 11, 2009.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail [schilse@dshs.wa.gov](mailto:schilse@dshs.wa.gov), fax (360) 664-6185, by 5 p.m. on February 10, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by January 27, 2009, 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 department is codifying institutional medical eligibility for clients who are

categorically related to the temporary assistance for needy families (TANF) program.

Reasons Supporting Proposal: These rules will bring the state into compliance with federal regulations. This rule will also clarify program rules for children admitted to medical facilities and psychiatric inpatient treatment.

Statutory Authority for Adoption: RCW 74.04.055, 74.04.057, 74.08.090, 74.09.530, and 42 C.F.R. 441.151.

Statute Being Implemented: RCW 74.09.530.

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

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

Name of Agency Personnel Responsible for Drafting: Wendy Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; Implementation and Enforcement: Catherine Fisher, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1357.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the rules and determined that no new costs will be imposed on small businesses or nonprofit organization.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 354.05.328 (5)(b) (vii) relating only to client medical or financial eligibility and liability for care of dependents.

December 11, 2008  
Stephanie E. Schiller  
Rules Coordinator

#### NEW SECTION

**WAC 388-505-0230 Long term care for families and children.** (1) The sections that follow describe the eligibility requirements for institutional medical benefits for parents and children who are not aged, blind or disabled, and who are admitted for a long term stay to a medical institution, an inpatient psychiatric facility or an institution for mental diseases (IMD):

- (a) WAC 388-505-0235 Definitions;
- (b) WAC 388-505-0240 General eligibility for family institutional medical coverage;
- (c) WAC 388-505-0245 Resource eligibility for family institutional medical coverage;
- (d) WAC 388-505-0250 Eligibility for family institutional medical for individuals twenty-one years of age or older;
- (e) WAC 388-505-0255 Eligibility for family institutional medical for individuals nineteen and twenty years of age;
- (f) WAC 388-505-0260 Eligibility for family institutional medical for children eighteen years of age or younger;
- (g) WAC 388-505-0265 How the department determines how much of an institutionalized individual's income must be paid towards the cost of care; and
- (h) WAC 388-505-0270 When an involuntary commitment to Eastern or Western State Hospital is covered by Medicaid.

(2) Individuals who are already eligible for a noninstitutional family or children's medical program when they are

admitted for long term care do not need to submit a new application for institutional medical coverage. The department treats their admittance to the facility as a change of circumstances and determines their eligibility based upon the length of stay at the facility.

#### NEW SECTION

**WAC 388-505-0235 Definitions.** The following terms are used in WAC 388-505-0230 through 388-505-0270:

**"Categorically needy income level (CNIL)"** - The standard used by the department to determine eligibility under a categorically needy medicaid program.

**"Categorically needy (CN) medical"** - Full scope of care medical benefits. CN medical may be either federally-funded under Title XIX of the social security act or state-funded.

**"Categorically needy (CN) medicaid"** - Federally-funded full scope of care medical benefits under Title XIX of the social security act.

**"Federal benefit rate (FBR)"** - The payment standard set by the social security administration for recipients of supplemental security income (SSI). This standard is adjusted annually in January.

**"Federal poverty level"** - The income standards published annually by the federal government in the Federal Register found at <http://aspe.hhs.gov/poverty/index.shtml>. The income standards change on April first every year.

**"Institution for mental diseases (IMD)"** - A hospital, nursing facility, or other institution of more than sixteen beds, that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services. Inpatient chemical dependency facilities of more than sixteen beds which provide residential treatment for alcohol and substance abuse are also considered an IMD.

**"Institutional status"** - An individual meets institutional status when he or she is admitted to a medical institution, inpatient psychiatric facility, or IMD for a period of thirty days or longer. The time period is ninety days or longer for individuals seventeen years of age and younger who are admitted to an inpatient psychiatric facility or institution for mental diseases. Institutional status is described in WAC 388-513-1320.

**"Legal dependent"** - A minor child, seventeen years of age and younger, and an individual eighteen years of age and older claimed as a dependent for income tax purposes; or a parent of either the applicant or the applicant's spouse claimed as a dependent for income tax purposes; or the brother or sister (including half and adoptive siblings) claimed by either the applicant or the applicant's spouse as a dependent for income tax purposes.

**"Medical institution"** - A medical facility that provides twenty-four hour supervision and skilled nursing care. Facilities which meet this definition include:

- (1) Hospitals;
- (2) Nursing homes or the nursing home section of a state veteran's facility;
- (3) Hospice care centers;



(4) An intermediate care facility for the mentally retarded (ICF/MR); or

(5) A residential habilitation center (RHC).

**"Medically needy income level (MNIL)"** - The standard used by the department to determine eligibility under the medically needy medicaid program. The MNIL standards are described in WAC 388-478-0070.

**"Medically needy (MN) medicaid"** - Federally-funded medical coverage under title XIX of the social security act. MN coverage has a more limited scope of care than CN coverage.

**"Personal needs allowance (PNA)"** - An amount designated to cover the expenses of an individual's clothing and personal incidentals while living in a medical institution, inpatient psychiatric facility, or institution for mental diseases.

**"Psychiatric facility"** - Designated long term inpatient psychiatric residential treatment facilities, state psychiatric hospitals, designated distinct psychiatric units, and medicare-certified distinct units in acute care hospitals.

**"Spendedown"** - The amount of medical expenses an individual is required to incur prior to medical benefits being authorized. Spendedown is described in WAC 388-519-0100 and 388-519-0110.

**"Title XIX"** - The portion of the federal social security act, 42 U.S.C. 1396, that authorizes grants to states for medical assistance programs. Title XIX is also called medicaid.

#### NEW SECTION

**WAC 388-505-0240 General eligibility for family institutional medical coverage.** (1) This section applies to all individuals applying for long term care services under the family institutional medical program. Additional rules may apply based upon an individual's age at the time he or she applies for long term care services and whether the facility the individual is admitted to is a medical institution, inpatient psychiatric facility, or an institution for mental diseases (IMD). Additional rules are described in WAC 388-505-0245 through 388-505-0265.

(2) Individuals must meet the following requirements to qualify for family institutional coverage:

(a) Institutional status described in WAC 388-513-1320. An individual meets institutional status if he or she is admitted to:

(i) A medical institution and resides, or is likely to reside, there for thirty days or longer, regardless of age;

(ii) An inpatient psychiatric facility or IMD and resides, or is likely to reside, there for thirty days or longer and is eighteen through twenty years of age; or

(iii) An inpatient psychiatric facility or IMD and resides, or is likely to reside, there for ninety days or longer and is seventeen years of age or younger.

(b) General eligibility requirements described in WAC 388-503-0505 (with the exception that subsections (3)(c) and (3)(d) of that section do not apply to individuals who are eligible under the alien emergency medical (AEM) program) and meet one of the following:

(i) Be a parent of, or a relative caring for, an eligible dependent child and meet the program requirements under:

(A) A family medical program described in WAC 388-505-0220;

(B) A transitional family medical program described in WAC 388-523-0100; or

(C) The temporary assistance for needy families (TANF) cash assistance program.

(ii) Be a child and meet the program requirements under apple health for kids as described in WAC 388-505-0210;

(iii) Be a pregnant woman and meet the program requirements for a pregnancy medical program as described in WAC 388-462-0015;

(iv) Meet the alien emergency medical (AEM) program requirements as described in WAC 388-438-0110 (with the exception that for family long term care services, AEM coverage may be authorized for children through twenty-one years of age) and:

(A) Have a qualifying emergency condition; and

(B) For payment for long term care services and room and board costs in the institution, request authorization from the department's medical consultant if the individual is admitted to a medical institution under hospice or is admitted to a nursing facility.

(v) Be an individual nineteen through twenty years of age but not eligible under subsections (i) through (iv) of this section.

(c) Resource requirements described in WAC 388-505-0245;

(d) Have countable income below the applicable standard described in WAC 388-505-0250(4), 388-505-0255(3) or 388-505-0260(4);

(e) Contribute income remaining after the post eligibility process described in WAC 388-505-0265 towards the cost of care in the facility; and

(f) Be assessed as needing nursing facility level of care as described in WAC 388-106-0355 if the admission is to a nursing facility. (This does not apply to nursing facility admissions under the hospice program.)

(3) Once the department determines an individual meets institutional status, it does not count the income of parent(s), a spouse, or dependent child(ren) when determining countable income. The department counts the following as the individual's income:

(a) Income received by the individual in his or her own name;

(b) Funds given to him or her by another individual towards meeting his or her needs; and

(c) Current child support received on behalf of the individual by his or her parents.

(4) Individuals eligible for a cash grant under the temporary assistance for needy families (TANF) program can remain eligible for a cash payment and the categorically needy (CN) medicaid program while in the institution. The expected length of stay in the institution may impact the amount of the TANF payment.

(a) When the institutionalized individual is expected to return to the home within one hundred and eighty days, the department considers this to be a temporary absence from the home and the individual remains eligible for their full TANF grant. Rules defining a temporary absence are described in WAC 388-454-0015.

(b) When the department determines that the institutionalized individual's stay in the facility is likely to exceed one hundred and eighty days, the department reduces his or her share of the TANF grant to the personal needs allowance (PNA) described in WAC 388-478-0040. This is also referred to as the clothing, personal maintenance and necessary incidentals (CPI) amount.

(5) Individuals who are not United States citizens or qualified aliens do not need to provide or apply for a social security number or meet the citizenship requirements under WAC 388-424-0010(1) or 388-424-0010(2) as long as the requirements in subsection (2) of this section are met.

(6) Individuals who are aged, blind or disabled under federal criteria may qualify for institutional benefits with income of up to three hundred percent of the federal benefit rate (FBR). Rules relating to institutional eligibility for aged, blind or disabled individuals are described in WAC 388-513-1315.

(7) If an individual does not meet institutional status, the department determines his or her eligibility for a noninstitutional medical program. An individual who is determined eligible for CN or medically needy (MN) coverage under a noninstitutional program who is admitted to a nursing facility for less than thirty days is approved for coverage for the nursing facility room and board costs, as long as the individual is assessed by the department as meeting nursing home level of care as described in WAC 388-106-0355.

#### NEW SECTION

**WAC 388-505-0245 Resource eligibility for family institutional medical coverage.** (1) The department does not restrict or limit resources available to individuals eighteen years of age or younger when determining eligibility for family institutional medical coverage. The department does not consider, or count towards eligibility, any resources owned by the individual in this age category, or any resources owned by the individual's parent(s), spouse, or child(ren), if applicable.

(2) For individuals nineteen years of age or older, there is a one thousand dollar countable resource limit for new applicants for family medical coverage not meeting the additional resource exclusion of WAC 388-470-0026, and all of the following apply:

(a) In order to determine which resources it must count, the department follows rules in WAC 388-470-0026, 388-470-0045 (with the exception of subsection (3) relating to primary residence), 388-470-0060, and 388-470-0070.

(b) Applicants and current categorically needy (CN) or medically needy (MN) medical assistance clients receiving long term care services under the family institutional medical program are subject to transfer of asset regulations as described in WAC 388-513-1363 through 388-513-1366.

(c) Individuals who apply for long term care services on or after May 1, 2006, who have an equity interest greater than five hundred thousand dollars in their primary residence are not eligible for long term care services. This does not apply if the individual's spouse or blind, disabled or dependent child under twenty-one years of age is lawfully residing in the primary residence. Individuals who are denied or terminated

from long term care services due to excess home equity may apply for an undue hardship waiver as described in WAC 388-513-1367.

(d) Once an individual has been determined eligible for any family medical program, the department does not consider any subsequent increase in that individual's resources after the month of application, as described in WAC 388-470-0026. Subsequent increases in a family's resources are not applied towards the cost of care in any month in which the resources have exceeded the eligibility standard.

(e) When both spouses of a legally married couple are institutionalized, the department determines resource eligibility for each spouse separately, as if each were a single individual.

(f) When only one spouse in a legally married couple applies for family institutional coverage, the rules in WAC 388-513-1350 (8) through (13) apply.

(g) For countable resources over one thousand dollars that are not otherwise excluded by WAC 388-470-0026:

(i) The department reduces the excess resources in an amount equal to medical expenses incurred by the institutionalized individual, such as:

(A) Premiums, deductibles, coinsurance or copayments for health insurance and medicare;

(B) Necessary medical care recognized under state law, but not covered under the state's medical plan; and

(C) Necessary medical care recognized under state law, but incurred prior to medicaid eligibility.

(ii) Medical expenses that the department uses to reduce excess resources must not:

(A) Be the responsibility of a third party payer;

(B) Have been used to satisfy a previous spenddown liability;

(C) Have been previously used to reduce excess resources;

(D) Have been used to reduce client responsibility toward cost of care;

(E) Have been incurred during a transfer of asset penalty; or

(F) Have been written off by the medical provider (the individual must be financially liable for the expense).

(h) If an individual has excess resources remaining, after using incurred medical expenses to reduce those resources, the department uses the following calculations to determine if an individual is eligible for family institutional medical coverage under the CN or MN program:

(i) If countable income is below the CN income standard, and the combination of countable income plus excess resources is below the monthly cost of care at the state medicaid rate, the individual is eligible for family institutional medical coverage under the CN program.

(ii) If countable income is below the CN income standard, but the combination of countable income plus excess resources is above the monthly cost of care at the state medicaid rate, the individual is not eligible for family institutional medical coverage.

(iii) If countable income is over the CN income standard, and the combination of countable income plus excess resources is below the monthly cost of care at the institution's private rate plus the amount of any recurring medical

expenses for institutional services, the individual is eligible for family institutional coverage under the MN program. (MN coverage applies only to individuals twenty years of age or younger.)

(iv) If countable income is over the CN income standard, but the combination of countable income plus excess resources is higher than the monthly cost of care at the institution's private rate plus the amount of any recurring medical expenses for institutional services, the individual is not eligible for family institutional coverage under the MN program. (MN coverage applies only to individuals twenty years of age or younger.)

#### NEW SECTION

**WAC 388-505-0250 Eligibility for family institutional medical for individuals twenty-one years of age or older.** (1) Individuals twenty-one years of age or older must meet the requirements in WAC 388-505-0240 to qualify for family institutional medical coverage.

(2) Individuals, twenty-one through sixty-four years of age who are admitted to an institution for mental diseases (IMD) are not eligible for coverage under this section. Individuals who are voluntarily admitted to a psychiatric hospital may be eligible for coverage under the psychiatric indigent inpatient program described in WAC 388-865-0217.

(3) Rules governing resources are described in WAC 388-505-0245. However, if an applicant has countable resources over the standard described in WAC 388-505-0245, he or she may spend down any excess amount towards his or her cost of care as described in WAC 388-505-0265(6).

(4) The categorically needy income level (CNIL) for individuals who qualify for family institutional medical coverage under this section is the temporary assistance for needy families (TANF) one person payment standard based on the requirement to pay shelter costs described in WAC 388-478-0020. An individual's countable income must be at or below this amount to be eligible.

(5) If the individual's income exceeds the standards to be eligible under a categorically needy (CN) medicaid family program, he or she is not eligible for coverage under the medically needy (MN) medicaid program.

(6) Individuals eligible under the provisions of this section may be required to contribute a portion of their income towards the cost of care as described in WAC 388-505-0265.

#### NEW SECTION

**WAC 388-505-0255 Eligibility for family institutional medical for individuals nineteen and twenty years of age.** (1) Individuals nineteen and twenty years of age must meet the requirements in WAC 388-505-0240 to qualify for family institutional medical coverage.

(2) Rules governing resources are described in WAC 388-505-0245. However, if an applicant has countable resources over the standard described in WAC 388-505-0245, he or she may spend down any excess resources over the standard by applying the excess amount towards his or her cost of care as described in WAC 388-505-0265(6).

(3) The categorically needy income level (CNIL) for individuals who qualify for family institutional medical cov-

erage under this section is the temporary assistance for needy families (TANF) one person payment standard based on the requirement to pay shelter costs described in WAC 388-478-0020. An individual's countable income must be at or below this amount to be eligible.

(4) If an individual's countable income exceeds the standard described in subsection (3) of this section, the department determines whether he or she is eligible for coverage under the medically needy (MN) medicaid program.

(a) Individuals with countable income below the state monthly cost of care in the facility are eligible for MN without spenddown.

(b) If the individual's countable income exceeds the state monthly cost of care but is under the private cost of care plus the amount of any recurring medical expenses for institutional services, he or she may be required to spend down their income as described in WAC 388-519-0110.

(c) If the individual's countable income exceeds the private monthly cost of care plus the amount of any recurring medical expenses for institutional services, he or she is not eligible for family institutional medical coverage.

(5) If an individual is a medicaid applicant or current medical assistance client in the month of his or her twenty-first birthday and receives active inpatient psychiatric or inpatient chemical dependency treatment which extends beyond his or her twenty-first birthday, the department approves or continues CN or MN medicaid coverage until the date the individual is discharged from the facility or until his or her twenty-second birthday, whichever occurs first.

(6) Individuals eligible under the provisions of this section may be required to contribute a portion of their income towards the cost of care as described in WAC 388-505-0265.

#### NEW SECTION

**WAC 388-505-0260 Eligibility for family institutional medical for children eighteen years of age or younger.** (1) Individuals eighteen years of age or younger must meet the requirements in WAC 388-505-0240 to qualify for family institutional medical coverage.

(2) When an individual eighteen years of age or younger is eligible for premium-based categorically needy (CN) coverage under apple health for kids as described in WAC 388-505-0210(4), the department re-determines his or her eligibility using the provisions of this section so that the individual is not required to pay the premium.

(3) The department does not restrict or limit the resources available to individuals eighteen years of age or younger when determining eligibility for family institutional medical coverage. The department does not consider, or count towards eligibility any resources owned by the individual in this age category, or any resources owned by the individual's parent(s), spouse, or child(ren), if applicable.

(4) The categorically needy income level (CNIL) for individuals who qualify for family institutional medical coverage under this section is two hundred percent of the federal poverty level income standard. Once the department determines an individual meets institutional status, it does not count the income of a parent(s), spouse, or dependent chil-

dren (if applicable) when determining the individual's countable income.

(5) The department approves CN medical coverage under this section for twelve calendar months. If an individual is discharged from the facility before the end of his or her certification period, he or she remains continuously eligible for CN medical coverage through the end of the original certification date, unless he or she ages out of the program, moves out of state, is incarcerated, or dies.

(6) If an individual is not eligible for CN medical coverage under this section, the department determines his or her eligibility for coverage under the medically needy (MN) program.

(a) MN coverage is only available for an individual who meets the citizenship requirements under WAC 388-424-0010(1) or (2).

(b) Individuals with countable income below the state monthly cost of care in the facility are eligible for MN withspenddown.

(c) If the individual's countable income exceeds the state monthly cost of care, but is under the private monthly cost of care plus the amount of any recurring medical expenses for institutional services, the department may require the individual to spend down his or her income as described in WAC 388-519-0110.

(d) If the individual's countable income exceeds the private monthly cost of care plus the amount of any recurring medical expenses for institutional services, he or she is not eligible for family institutional medical coverage.

(7) The facility where the individual resides may submit an application on the individual's behalf and may act as an authorized representative for the individual if the individual is:

(a) In a court ordered, out-of-home placement under chapter 13.34 RCW; or

(b) Involuntarily committed to an inpatient treatment program by a court order under chapter 71.34 RCW.

(8) Individuals eligible for family institutional medical coverage under the provisions of this section may be required to contribute a portion of their income towards the cost of care as described in WAC 388-505-0265.

#### NEW SECTION

#### **WAC 388-505-0265 How the department determines how much of an institutionalized individual's income must be paid towards the cost of care.**

(1) Individuals who reside in a medical institution, inpatient psychiatric facility or an institution for mental diseases (IMD) may be required to pay a portion of their income towards the cost of care. This section explains how the department calculates how much an individual is required to pay to the facility. This process is known as the post-eligibility process. If an individual does not have income, he or she does not have to pay.

(2) The department determines available income by considering an individual's total gross income before any mandatory deductions from earnings. Income that was not counted in the initial eligibility process is counted for the post-eligibility process unless the income is excluded under federal or

state law. See WAC 388-450-0015 for examples of excluded income types.

(3) The following income allocations and exemptions are deducted from an individual's total gross income to determine his or her available income. The department uses the rules described in WAC 388-513-1380 to calculate the amount of these allocations and exemptions, with the exception that under the family institutional medical program, there is no deduction for earned income in the post-eligibility process.

(a) Personal needs allowance (PNA) and maintenance allocation. The combined totals of all of the following deductions cannot exceed the medically needy income level (MNIL):

(i) PNA as allowed under WAC 388-478-0040;

(ii) Mandatory federal, state, or local income taxes owed by the client; and

(iii) Court ordered guardianship fees and administrative costs, including attorney fees, as described in chapter 388-79 WAC.

(b) Income garnished to comply with a court order for child support.

(c) Community spouse allocation.

(d) Family maintenance allocation if married with dependents.

(e) Legal dependent allocation for an unmarried client with dependents. The maximum allocation is based upon the MNIL standard for the number of dependents minus the dependent's income.

(f) Medical expense allocation. The department allows a deduction for unpaid medical expenses for which the individual is still liable. Medical expenses allowed for this allocation are described in WAC 388-513-1350.

(g) Housing maintenance exemption:

(i) For an individual who is financially responsible for the costs of maintaining a home while he or she is in an institution, the department allows a deduction, limited to a six-month period, of up to one hundred percent of the one-person poverty level per month, when a physician has certified that the individual is likely to return to the home within the six-month period.

(ii) An individual eighteen years of age or younger is not eligible for the housing maintenance exemption unless the housing expense is the individual's financial responsibility. Children are not financially responsible for the housing expenses incurred by their parents.

(4) Individuals may keep a personal needs allowance of up to the one person temporary assistance for needy families (TANF) payment standard (based upon the requirement to pay shelter costs) in the month they are admitted and in the month they are discharged from the facility.

(5) Any income which remains must be paid to the facility towards the cost of care.

(6) Individuals nineteen years of age or older who qualify for categorically needy (CN) or medically needy (MN) coverage but have countable resources in excess of the resource limits as described in WAC 388-505-0245 must pay an amount equal to the excess amount to the facility towards the cost of their care in the month of application. This

amount is in addition to the amount calculated under subsections (2) through (4) of this section (if any).

#### NEW SECTION

**WAC 388-505-0270 When an involuntary commitment to Eastern or Western State Hospital is covered by medicaid.** (1) Individuals admitted to Eastern or Western State Hospital for inpatient psychiatric treatment may qualify for categorically needy (CN) medicaid coverage and general assistance (GA) cash benefits to cover their personal needs allowance (PNA).

(2) To be eligible under this program, individuals must:

(a) Be eighteen through twenty years of age or sixty-five years of age or older;

(b) Meet institutional status under WAC 388-513-1320;

(c) Be involuntarily committed to an inpatient treatment program by a court order under chapter 71.34 RCW;

(d) Meet the general eligibility requirements for the GA cash program as described in WAC 388-400-0025;

(e) Have countable income below the payment standard described in WAC 388-478-0040; and

(f) Have countable resources below one thousand dollars. Individuals eligible under the provisions of this section may not apply excess resources towards the cost of care to become eligible. An individual with resources over the standard is not eligible for assistance under this section.

(3) GA clients who receive active psychiatric treatment in Eastern or Western State Hospital at the time of their twenty-first birthday continue to be eligible for medicaid coverage until the date they are discharged from the facility or until their twenty-second birthday, whichever occurs first.

#### **WSR 09-01-146**

#### **PROPOSED RULES**

#### **OFFICE OF**

#### **INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2008-23—Filed December 22, 2008, 9:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-15-157.

Title of Rule and Other Identifying Information: Prohibitions on use of genetic information in medicare supplemental insurance.

Hearing Location(s): Insurance Commissioner's Office, Room TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on January 27, 2009, at 10:00 a.m.

Date of Intended Adoption: February 3, 2009.

Submit Written Comments to: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, e-mail KacyS@oic.wa.gov, fax (360) 586-3109, by January 26, 2009.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by January 26, 2009, TTY (306) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The federal Genetic Information Nondiscrimination Act (GINA) prohib-

its employers and insurers from using genetic information when making employment or coverage decisions. Section 104 of GINA prohibits denial, conditioning, or discrimination in the pricing of a medicare supplemental policy on the basis of genetic information and limits the ability of medicare supplement issuers to request or require genetic testing. It also prohibits the collection of genetic information for underwriting or other purposes prior to enrollment in medicare supplement insurance.

Reasons Supporting Proposal: The NAIC adopted an amendment to its Medicare Supplement Model Regulation which, in turn, will be adopted by Washington. GINA gives states until July 1, 2009 to adopt the new nondiscrimination section of the NAIC model regulation.

Statutory Authority for Adoption: RCW 48.66.165.

Statute Being Implemented: Chapter 48.66 RCW.

Rule is necessary because of federal law, 110 P.L. 275.

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Melodie Bankers, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7039; Implementation: Beth Berendt, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117; and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under provisions of H.R. 493 (the Genetic Information Nondiscrimination Act of 2008) Washington state and the office of the insurance commissioner would lose authority to accept and approve rate and form filings for Medigap policies if these rules are not adopted by July 1, 2009, as written in the law. This would result in this authority reverting to the federal government, which would apply the same standards as are being proposed in these rules. Either result will be the same for small businesses; therefore the proposed rules will have nothing more than a minor impact for small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These proposed rules use almost exactly the same language as is found both in the NAIC Model Act language (adopted in October 2008) and language expressly required by H.R. 493 (the Genetic Information Nondiscrimination Act of 2008). Any changes in language from these two documents are not substantive in nature. Therefore, under provisions of RCW 34.05.328 (5)(b)(iii), a cost-benefit analysis is not required.

December 22, 2008

Mike Kreidler

Insurance Commissioner

#### NEW SECTION

**WAC 284-66-068 Prohibition against use of genetic information and requests for genetic testing.** Except as provided in subsection (3) of this section:

(1) An issuer of a medicare supplement insurance policy or certificate must not deny or condition the issuance of effectiveness of the policy or certificate and must not discriminate in the pricing of the policy or certificate of an individual on the basis of the genetic information with respect to

any individual. This includes the imposition of any exclusion of benefits under the policy based on a preexisting condition or adjustment of premium rates based on genetic information. This subsection shall not be construed to limit the ability of an issuer, to the extent otherwise permitted by law from:

(a) Denying or conditioning the issuance or effectiveness of the policy or certificate or increasing the premium based on the manifestation of a disease or disorder of the insured or applicant; or

(b) Increasing the premium for any policy issued to an individual based on the manifestation of a disease or disorder of an individual who is covered under the policy. The manifestation of a disease or disorder in one individual must not be used as genetic information about other group members or to increase the premium for the group.

(2) An issuer of a medicare supplement insurance policy or certificate must not request or require an individual or a family member of the individual to undergo a genetic test. This subsection shall not be construed to preclude an issuer from obtaining and using the results of a genetic test in making a determination regarding payment consistent with subsection (1) of this section. For purposes of this section, "payment" has the meaning set forth in Part C of Title XI and Section 264 of the Health Insurance Portability and Accountability Act of 1996, as may be revised from time to time. An issuer may request only the minimum information necessary to accomplish the intended purpose.

(3) An issuer may request, but must not require, that an individual or a family member of the individual undergo a genetic test only if all of the following conditions are met:

(a) The request is made for research that complies with Part 46 of Title 45, Code of Federal Regulations, or its equivalent, or any other applicable state or local law or rule for the protection of human subjects in research;

(b) The issuer clearly indicates to each individual, or in the case of a minor child, to the legal guardian of the child, to whom the request is made that:

(i) Compliance with the request is voluntary; and

(ii) Noncompliance will have no effect on enrollment status or premium or contribution amounts;

(c) Genetic information collected or acquired under this subsection must not be used for underwriting, determination of eligibility to enroll or maintain enrollment status, premium rates, or the issuance, renewal, or replacement of a policy or certificate;

(d) The issuer notifies the secretary of the United States Department of Health and Human Services in writing that the issuer is conducting activities pursuant to the exception provided for under this subsection, including a description of the activities conducted;

(e) The issuer complies with all other conditions required by regulation by the secretary of the United States Department of Health and Human Services for activities conducted under this subsection;

(4) An issuer must not request, require, or purchase genetic information for underwriting purposes;

(5) An issuer shall not request, require, or purchase genetic information with respect to any individual prior to such individual's enrollment under the policy in connection with such enrollment; and

(6) If an issuer obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning any individual, the request, requirement, or purchase will not be considered a violation of subsection (5) of this section only if the request, requirement, or purchase is not in violation of subsection (4) of this section.

(7) For purposes of this section:

(a) "Issuer" has the meaning set forth in WAC 284-66-030(4) and includes any third-party administrator or other person acting for or on behalf of the issuer.

(b) "Family member" means any individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of the individual.

(c) "Genetic information" means information about the individual's genetic tests, the genetic tests of family members of the individual, and the manifestation of a disease or disorder in family members. The term includes any requests for or receipt of genetic services or participation in clinical research which includes genetic services by the individual or a family member. Any reference to genetic information concerning an individual or family member who is a pregnant woman includes genetic information of any fetus carried by the pregnant woman, or with respect to an individual or family member utilizing reproductive technology, includes genetic information of any embryo legally held by an individual or family member. Genetic information does not include information about the gender or age of any individual.

(d) "Genetic services" means a genetic test, genetic counseling (including obtaining, interpreting, or assessing genetic information), or genetic education.

(e) "Genetic test" means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detect genotypes, mutations, or chromosomal changes. The term genetic test does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes or an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

(f) "Underwriting purposes" means:

(i) Rules for, or termination of, eligibility (including enrollment and continued eligibility) for benefits under the policy;

(ii) The computation of premium or contribution amounts under the policy;

(iii) The application of any preexisting condition exclusion under the policy; and

(iv) Other activities related to the creation, renewal, or replacement of a policy of health insurance or health benefits.

## WSR 09-01-149

### PROPOSED RULES

### DEPARTMENT OF

### RETIREMENT SYSTEMS

[Filed December 22, 2008, 12:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-13-048 and 07-13-041.

Title of Rule and Other Identifying Information: WAC 415-104-225 Am I a LEOFF member? and 415-104-475 How does a fire fighter who provides emergency medical services transfer PERS service credit to LEOFF Plan 2?

Hearing Location(s): Department of Retirement Systems, 6835 Capitol Boulevard, Conference Room 115, Tumwater, WA, on February 3, 2009, at 2:00 p.m.

Date of Intended Adoption: February 4, 2009.

Submit Written Comments to: Sarah Monaly, Rules Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail rules@drs.wa.gov, fax (360) 753-3166, by 5:00 p.m. on February 3, 2009.

Assistance for Persons with Disabilities: Contact Sarah Monaly, rules coordinator, by January 28, 2009, TDD (360) 664-7291, TTY (360) 586-5450, phone (360) 664-7291.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to implement SHB 1936 (2005), which added emergency medical technicians (EMT) to the definition of "fire fighter" for the law enforcement officers' and firefighters' retirement system (LEOFF). This proposal will also implement HB 1680 (2007), which related to the transfer of service credit of EMTs who are currently LEOFF Plan 2 members but have previous service as EMTs in the public employees' retirement system (PERS). HB 1680 allows for the automatic transfer of service credit for LEOFF Plan 2 EMTs who die or retire for disability prior to completing the transfer requirements.

Reasons Supporting Proposal: Both legislative measures are in effect and department rules need updating to reflect these changes. Department of retirement systems (DRS) rules assist plan members, retirees, employers, and department staff.

Statutory Authority for Adoption: RCW 41.50.050(5).

Statute Being Implemented: RCW 41.26.030 and 41.26.547.

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: Sarah Monaly, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7291; Implementation and Enforcement: Michelle Hardesty, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7193.

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. DRS is not one of the named departments in this section (RCW 34.05.328).

December 22, 2008

Sarah Monaly

Rules Coordinator

AMENDATORY SECTION (Amending WSR 02-18-046, filed 8/28/02, effective 9/30/02)

**WAC 415-104-225 Am I a LEOFF member?** If you are employed by an employer as a full-time, fully compensated law enforcement officer or fire fighter, you are required to be a LEOFF member.

**(1) Law enforcement officers.**

(a) You are a law enforcement officer only if you are commissioned and employed on a full-time, fully compensated basis as a:

(i) City police officer;

(ii) Town marshal or deputy marshal;

(iii) County sheriff;

(iv) Deputy sheriff, if you passed a civil service exam for deputy sheriff and you possess all of the powers, and may perform any of the duties, prescribed by law to be performed by the sheriff;

(b) Effective January 1, 1994, "law enforcement officer" also includes commissioned persons employed on a full-time, fully compensated basis as a:

(i) General authority Washington peace officer under RCW 10.93.020(3);

(ii) Port district general authority law enforcement officer and you are commissioned and employed by a port district general authority law enforcement agency;

(iii) State university or college general authority law enforcement officer; or

(c) Effective January 1, 1993, "law enforcement officer" also includes commissioned persons employed on a full-time, fully compensated basis as a public safety officer or director of public safety of a city or town if, at the time you first became employed in this position, the population of the city or town did not exceed ten thousand. See RCW 41.26.030(3).

(d) If you meet the requirements of (a), (b) or (c) of this subsection, you qualify as a law enforcement officer regardless of your rank or status as a probationary or permanent employee.

(e) You are not a law enforcement officer if you are employed in either:

(i) A position that is clerical or secretarial in nature and you are not commissioned; or

(ii) A corrections officer position and the only training required by the Washington criminal justice training commission for your position is basic corrections training under WAC 139-10-210.

**(2) Fire fighters.**

(a) You are a fire fighter if you are employed in a uniformed fire fighter position by an employer on a full-time, fully compensated basis, and as a consequence of your employment, you have the legal authority and responsibility to direct or perform fire protection activities that are required for and directly concerned with preventing, controlling and extinguishing fires.

((a)) (i) "Fire protection activities" may include incidental functions such as housekeeping, equipment maintenance, grounds maintenance, fire safety inspections, lecturing, performing community fire drills and inspecting homes and schools for fire hazards. These activities qualify as fire protection activities only if the primary duty of your position is preventing, controlling and extinguishing fires.

~~((b))~~ (ii) You are a fire fighter if you qualify as supervisory fire fighter personnel.

~~((c))~~ (iii) If your employer requires fire fighters to pass a civil service examination, you must be actively employed in a position that requires passing such an examination in order to qualify as a fire fighter unless you qualify as supervisory fire fighter personnel.

~~((d))~~ (iv) You are a fire fighter if you meet the requirements of this section regardless of your rank or status as a probationary or permanent employee or your particular specialty or job title.

~~((e))~~ (v) You do not qualify for membership as a fire fighter if you are a volunteer fire fighter or resident volunteer fire fighter.

(b) You are a fire fighter if you are employed on a full-time, fully compensated basis by an employer as an emergency medical technician (EMT). To be an "emergency medical technician" you must:

(i) Be certified by the department of health to perform emergency medical services at the level of care of an EMT; and

(ii) Complete the requirements of your employer, if any, to perform the job duties of an EMT.

(3) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

- (a) "Commissioned" - WAC 415-104-011.
- (b) "Director of public safety" - WAC 415-104-011.
- (c) "Employer" - RCW 41.26.030.
- (d) "Fire fighter" - RCW 41.26.030.
- (e) "Full time" - WAC 415-104-011.
- (f) "Fully compensated" - WAC 415-104-011.
- (g) "Law enforcement officer" - RCW 41.26.030.
- (h) "Member" - RCW 41.26.030.
- (i) "Public safety officer" - WAC 415-104-011.
- (j) "Uniformed fire fighter position" - WAC 415-104-011.

AMENDATORY SECTION (Amending WSR 04-04-039, filed 1/29/04, effective 3/1/04)

**WAC 415-104-475 How does a fire fighter who provides emergency medical services transfer PERS service credit to LEOFF Plan 2? (1) Who may use this section?** You may use this section if you are:

(a) ~~((Are currently employed in a law enforcement officers' and fire fighters' (LEOFF) Plan 2 covered position working for a fire department;~~

~~(b) Were formerly employed in a position providing emergency medical services and the position was covered under PERS Plan 1 or 2; and~~

~~(c) Worked for an employer that **relocated** your position to a fire department;)) A member of PERS Plan 1 or Plan 2 eligible for membership in LEOFF Plan 2 as an EMT under RCW 41.26.030;~~

(b) Currently a LEOFF Plan 2 member who chose LEOFF membership after separating from service as an EMT in a PERS Plan 1 or Plan 2 eligible position; or

(c) Currently a LEOFF Plan 2 member and were formerly employed providing emergency medical services in a

PERS Plan 1 or Plan 2 eligible position which was relocated by your employer to a fire department.

(2) **How do I know if my job providing emergency medical services was "relocated" to a fire department?** To be considered "relocated":

(a) The duties of the position must have required providing emergency medical services and the position must have been covered under PERS Plan 1 or Plan 2;

(b) The employer must have been a city, town, county, or district that transferred the position to a fire department; and

(c) The fire department must have ~~((covered))~~ determined the transferred position ~~((under))~~ was eligible for LEOFF Plan 2.

(3) ~~((I worked as an emergency medical technician/paramedic (EMT) and I am now enrolled in LEOFF Plan 2. Can I transfer my EMT service into LEOFF Plan 2? Yes. You may transfer your EMT service into LEOFF Plan 2 if:~~

~~(a) You provided emergency medical services as an EMT; and~~

~~(b) You are in a LEOFF Plan 2 position with the fire department as a result of your employer relocating your position as described in subsection (2) of this section.~~

~~((4)) Who determines whether or not my job providing emergency medical services was "relocated" to a fire department? ((The department of retirement systems (DRS)) will determine whether or not your job was relocated based on the criteria described in subsection (2) of this section. To do so, DRS will contact your former employer ((that covered your job providing emergency medical services under)) where you provided emergency medical services in a PERS eligible position and verify:~~

~~(a) That your position was relocated to a fire department; and~~

~~(b) The number of months you worked in that position.~~

~~((5)) (4) I formerly worked as an EMT for a PERS employer that relocated ((my)) the job to a fire department. I was not working in the job at the time it was relocated ((but am now working for the fire department in the same job)). I am now in a LEOFF Plan 2 eligible position. Can I transfer my PERS Plan 1 or Plan 2 EMT service to LEOFF Plan 2? Yes((-Even though)), whether or not you were ((not)) working in the job at the time it was relocated, you can transfer your PERS Plan 1 or Plan 2 EMT service as long as you are employed ((with the fire department covered under)) as a fire fighter in a LEOFF Plan 2 eligible position at the time you request the transfer.~~

~~((6) Can I transfer PERS EMT service into LEOFF Plan 2 if I worked for an employer that did not "relocate" the position to a fire department? No. To transfer PERS EMT service to LEOFF Plan 2, you must have worked in a position that was relocated as described in subsections (1) and (2) of this section.~~

~~((7)) (5) What do I need to do if I have PERS Plan 1 or Plan 2 EMT service that can be transferred to LEOFF Plan 2? If you have PERS Plan 1 or Plan 2 EMT service that you want to transfer to LEOFF Plan 2, then you must do the following:~~

~~(a) Contact the LEOFF unit at DRS. Once DRS verifies you meet the criteria to transfer as described in subsec-~~



tion((s)) (1) ~~((and (2)))~~ of this section, DRS will provide you an *EMT Transfer Packet* that includes an "EMT transfer cost estimate ~~((and benefit comparison."~~ DRS will also provide you))" and an "EMT Request for Transfer" form. ~~((("))~~ You may also request a benefit comparison. You must complete, sign, and return the form to the LEOFF unit to choose to transfer the service credit.

(b) You must pay the difference in the member contribution rates between the PERS rate and the LEOFF rate, plus interest, for each month of EMT service that you transfer. This bill must be paid in full within five years of your election to transfer your EMT service.

~~((8))~~ **How is the interest calculated?** Interest is calculated at eight percent annually, compounded monthly, and is based on the difference between the required PERS contribu-

tion amount and the required LEOFF Plan 2 contribution amount for each month you transfer. DRS calculates the interest for the rate difference for each month being transferred, beginning with the oldest month, then totals each month's interest calculation for the "interest" portion of the bill.

Example: DRS creates a bill in October 2003 to transfer the months of June and July 2002. The member contribution rate difference for each month is \$35.00. The interest for June would be \$4.18, and for July \$3.92. The total interest charge for these two months is \$8.10; the total bill is \$78.10 (\$35.00 x 2 + \$8.10). The interest calculated for June 2002 is more because it includes one more month of interest than the month of July 2002. The chart below shows how the interest is calculated:

Month/Year of Interest Calculation		Interest for June 2002 @ .00667 <sup>+</sup>		Interest for July 2002 @ .00667	
June	2002	\$35.00	.23		
July	2002	\$35.23	.23	\$35.00	.23
August	2002	\$35.46	.24	\$35.23	.23
September	2002	\$35.70	.24	\$35.46	.24
October	2002	\$35.94	.24	\$35.70	.24
November	2002	\$36.18	.24	\$35.94	.24
December	2002	\$36.42	.24	\$36.18	.24
January	2003	\$36.66	.24	\$36.42	.24
February	2003	\$36.90	.25	\$36.66	.24
March	2003	\$37.15	.25	\$36.90	.25
April	2003	\$37.40	.25	\$37.15	.25
May	2003	\$37.65	.25	\$37.40	.25
June	2003	\$37.90	.25	\$37.65	.25
July	2003	\$38.15	.25	\$37.90	.25
August	2003	\$38.40	.26	\$38.15	.25
September	2003	\$38.66	.26	\$38.40	.26
October	2003	\$38.92	.26	\$38.66	.26
<b>Total</b>					
<b>October</b>	<b>2003</b>		<b>\$4.18</b>		<b>\$3.92</b>

~~((9))~~ **Do I have to pay the bill in a lump sum?** No. You may make installment payments. Interest will be recalculated each month against the unpaid balance.

~~((10))~~ **What is the time frame for transferring?** You must make the decision to transfer no later than June 30, 2008. You must complete the transfer by June 30, 2013.

~~((11))~~ ~~((6))~~ **Do I have to pay the bill in a lump sum?** No. you do not have to pay the bill in a lump sum, you may make installment payments. Interest on the unpaid balance will accrue monthly, at a rate of eight percent annually.

~~((7))~~ **Is there a deadline for requesting to transfer?** Yes, you must submit a completed "EMT Request to Transfer" form to the department no later than June 30, 2013.

~~((8))~~ **When will the EMT service be transferred into my LEOFF Plan 2 account?** The EMT service will be transferred after:

- (a) The bill is paid in full((:)) and
- ~~((b))~~ five years have passed after DRS receives your request to transfer; or

~~((b))~~ You meet one of the conditions described in subsection (15) of this section.

~~((12))~~ ~~((9))~~ **What if I ~~((decide))~~ choose not to transfer my PERS EMT service into LEOFF Plan 2?** ~~((Your EMT service will remain in PERS and))~~ If you do not choose to transfer your PERS Plan 1 or Plan 2 EMT service, it will remain in PERS. You may either withdraw it or begin receiving a PERS retirement benefit when you are eligible. If you do not withdraw or retire from PERS, you will be a dual member of PERS and LEOFF Plan 2 under the provisions of chapter 41.54 RCW.

~~((13))~~ ~~((10))~~ **Can I retire before the transfer of my PERS EMT service is completed?** Yes((-

~~((a))~~, you may retire from LEOFF Plan 2 once you are eligible, but your retirement benefit will be calculated using only your LEOFF Plan 2 service.

~~((b))~~ ~~((After))~~ Once the conditions described in subsection ~~((14))~~ ~~((8))~~ of this section have been met, the PERS Plan 1 or Plan 2 EMT service will be transferred into your LEOFF Plan

2 account and your retirement benefit will be recalculated and increased to include the transferred service. The increase will be prospective only from the day following the five-year waiting period.

For example, if you requested the transfer on September 15, ~~((2003)) 2006~~, made the required payment, and you retired on August 1, 2007, your retirement benefit would be increased on September 16, ~~((2008)) 2011~~.

~~((14)) (11)~~ **What if I request to transfer my PERS Plan 1 or Plan 2 EMT service but change my mind before the transfer is completed?** If you decide ~~((to)) not to~~ transfer your PERS Plan 1 or Plan 2 EMT service into LEOFF Plan 2, you must notify the LEOFF unit at DRS within five years from the date you requested the transfer. LEOFF staff will cancel your request and refund any money you have paid on the transfer bill.

~~((15)) (12)~~ **Can I transfer non-EMT PERS service into LEOFF Plan 2?** No, you may not transfer non-EMT PERS service into LEOFF Plan 2. Only the PERS Plan 1 or Plan 2 service credit you earned working as an EMT ~~((for an employer that relocated your EMT position to a fire department))~~ can be transferred into LEOFF Plan 2.

~~((16)) (13)~~ **Can I transfer my PERS Plan 1 or Plan 2 EMT service into LEOFF Plan 2 and withdraw my non-EMT PERS service?** Yes, you may transfer your PERS Plan 1 or Plan 2 EMT service into LEOFF Plan 2 and withdraw your non-EMT PERS service. You can withdraw your non-EMT PERS service as soon as the PERS EMT service is fully transferred to LEOFF Plan 2. To be fully transferred, the conditions described in subsection ~~((11)) (8)~~ of this section must be met.

~~((17)) (14)~~ **Can I transfer my PERS EMT service into LEOFF Plan 1?** No, you may not transfer your PERS EMT service into LEOFF Plan 1. If you reentered LEOFF Plan 1 membership after your position was relocated to a fire department, you may choose to remain in PERS or return to LEOFF Plan 1 membership, but you may not transfer the PERS EMT service into LEOFF Plan 1.

~~((18)) (15)~~ **What happens if I die or retire for disability before the PERS EMT service is transferred into my LEOFF Plan 2 account?**

~~((a)) If your bill is not paid in full at the time of your death, the transfer will be canceled and any payments made will be refunded to your designated beneficiary.~~

~~((b)) If the bill is paid in full at the time of your death, but the five-year waiting period has not expired, then the following rules will apply.~~

~~((i)) If you die with less than ten years of service, or you have at least ten years of service but you don't have an eligible surviving spouse or minor children, the contributions in your LEOFF 2 account, including any payments made on the EMT optional service bill, will be refunded to your designated beneficiary.~~

~~((ii)) If you die with at least ten years of service and have an eligible surviving spouse or minor children and if your spouse or children choose a monthly benefit payment instead of a lump sum payment, the monthly benefit will be increased the day following the end of the five-year waiting period.~~

~~((iii)) If you die after retirement and chose a survivor option, your survivor's benefit will be increased the first day following the expiration of the five-year waiting period.~~

~~((19)) If you elect to transfer your PERS Plan 1 or Plan 2 EMT service to LEOFF Plan 2 but die or retire for disability before the transfer is complete, then one of the following will occur:~~

~~((a)) If your EMT bill is paid in full but the five-year waiting period has not expired, and you are approved for disability or you die, then DRS will transfer your applicable service credit, accumulated contributions, and interest to your LEOFF Plan 2 account immediately. The transferred service credit, accumulated contributions, and interest will be used to calculate your benefit or, in the case of your death, the benefit your spouse or minor children will receive.~~

~~((b)) If your EMT bill is not paid in full and you retire for disability, DRS will transfer your applicable service credit, accumulated contributions, and interest into your LEOFF Plan 2 account and use them to calculate your benefit. You will then have the following options:~~

~~((i)) Pay the bill in full;~~

~~((ii)) Choose to have your monthly benefit actuarially reduced to reflect the unpaid amount of the bill; or~~

~~((iii)) Continue to make payments against the remaining amount of the bill. You must pay the bill in full no later than five years from your original election date.~~

~~((c)) If the EMT bill is not paid in full and you die, DRS will transfer your applicable service credit, accumulated contributions, and interest into your LEOFF Plan 2 account and use them to calculate the benefit for your spouse or minor children. Your spouse or minor children will have the following options:~~

~~((i)) Pay the bill in full;~~

~~((ii)) Choose to have their monthly benefit actuarially reduced to reflect the unpaid amount of the bill; or~~

~~((iii)) Continue to make payments against the remaining amount of the bill. Your spouse or minor children must pay the bill in full no later than five years from your original election date.~~

~~Note: If the EMT bill is not paid in full within the five-year period, the monthly benefit will be actuarially reduced to reflect the unpaid amount of the bill.~~

~~(16) Terms used:~~

~~(a) DRS - Department of retirement systems.~~

~~(b) EMT - Emergency medical technician or paramedic who provides emergency ~~((medical)) medical services ((and is covered under LEOFF Plan 2 working for a fire department)).~~~~

~~(c) LEOFF - Law enforcement officers' and fire fighters' retirement system.~~

~~(d) PERS - Public employees' retirement system.~~

**WSR 09-01-151**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Disability Services Administration)  
[Filed December 22, 2008, 1:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-21-152.

Title of Rule and Other Identifying Information: DSHS is amending WAC 388-561-0200 Annuities established prior to November 1, 2008, and WAC 388-561-0201 Annuities established on or after November 1, 2008.

This rule making amends the effective date of rules adopted as WSR 08-20-117. The new proposed effective date for these rules is April 1, 2009. The title of the proposed WAC may change if the adoption date is different.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on January 27, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 28, 2009.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSR-PAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on January 27, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by January 13, 2009, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsj14@dshs.wa.gov](mailto:johnsj14@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendments are necessary to meet the requirements of section 6012 of the Deficit Reduction Act (DRA) of 2005. Section 6012 added new requirements to Title XIX of the Social Security Act pertaining to the treatment of annuities. Rules are amended to include the new requirements of the DRA, clarify language, and update WAC references.

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.

Statute Being Implemented: RCW 74.04.050, 74.04.-057, 74.08.090, 74.09.500, 74.09.530.

Rule is necessary because of federal law, Section 6012 of the Deficit Reduction Act (DRA) of 2005.

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 the rules and determined that no new costs will be imposed on small businesses or nonprofit organizations.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(vii), relating only to client medical or financial eligibility.

December 19, 2008  
Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-20-117 and 08-21-083, filed 9/30/08 and 10/14/08, effective 4/1/09)

**WAC 388-561-0200 Annuities established prior to ((November)) April 1, ((2008)) 2009** (1) The department determines how annuities affect eligibility for medical programs.

(2) A revocable annuity is considered an available resource.

(3) An irrevocable annuity established prior to May 1, 2001 is not an available resource when issued by an individual, insurer, or other body licensed and approved to do business in the jurisdiction in which the annuity is established.

(4) The income from an irrevocable annuity, meeting the requirements of this section, is considered in determining eligibility and the amount of participation in the total cost of care. The annuity itself is not considered a resource or income.

(5) An annuity established on or after May 1, 2001 and before ((November)) April 1, ((2008)) 2009 will be considered an available resource unless it:

(a) Is irrevocable;

(b) Is paid out in equal monthly amounts within the actuarial life expectancy of the annuitant;

(c) Is issued by an individual, insurer or other body licensed and approved to do business in the jurisdiction in which the annuity is established; and

(d) Names the department as the beneficiary of the remaining funds up to the total of medicaid funds spent on the client during the client's lifetime. This subsection only applies if the annuity is in the client's name.

(6) An irrevocable annuity established on or after May 1, 2001 and before ((November)) April 1, ((2008)) 2009 that is not scheduled to be paid out in equal monthly amounts, can still be considered an unavailable resource if:

(a) The full pay out is within the actuarial life expectancy of the client; and

(b) The client:

(i) Changes the scheduled pay out into equal monthly payments within the actuarial life expectancy of the annuitant; or

(ii) Requests that the department calculate and budget the payments as equal monthly payments within the actuarial life expectancy of the annuitant. The income from the annuity remains unearned income to the annuitant.

(7) An irrevocable annuity, established prior to May 1, 2001 that is scheduled to pay out beyond the actuarial life expectancy of the annuitant, will be considered a resource transferred without adequate consideration at the time it was purchased. A penalty period of ineligibility, determined according to WAC 388-513-1365, may be imposed equal to the amount of the annuity to be paid out in excess of the annuitant's actuarial life expectancy.

(8) An irrevocable annuity, established on or after May 1, 2001 and before ~~((November)) April 1, ((2008)) 2009~~ that is scheduled to pay out beyond the actuarial life expectancy of the annuitant, will be considered a resource transferred without adequate consideration at the time it was purchased. A penalty may be imposed equal to the amount of the annuity to be paid out in excess of the annuitant's actuarial life expectancy. The penalty for a client receiving:

(a) Long-term care benefits will be a period of ineligibility (see WAC 388-513-1365).

(b) Other medical benefits will be ~~((ineligibility [ineligible]))~~ ineligible in the month of application.

(9) An irrevocable annuity is considered unearned income when the annuitant is:

(a) The client;

(b) The spouse of the client;

(c) The blind or disabled child, as defined in WAC 388-475-0050 (b) and (c), of the client;

(d) A person designated to use the annuity for the sole benefit of the client, client's spouse, or a blind or disabled child, as defined in WAC 388-475-0050 (b) and (c), of the client.

(10) An annuity is not considered an available resource when there is a joint owner, co-annuitant or an irrevocable beneficiary who will not agree to allow the annuity to be cashed, UNLESS the joint owner or irrevocable beneficiary is the community spouse. In the case of a community spouse, the cash surrender value of the annuity is considered an available resource and counts toward the maximum community spouse resource allowance.

AMENDATORY SECTION (Amending WSR 08-20-117 and 08-21-083, filed 9/30/08 and 10/14/08, effective 4/1/09)

**WAC 388-561-0201 Annuities established on or after ~~((November)) April 1, ((2008)) 2009.~~** (1) The department determines how annuities affect eligibility for medical programs. Applicants and recipients of medicaid must disclose to the state any interest the applicant or spouse has in an annuity.

(2) A revocable annuity is considered an available resource.

(3) The following annuities are not considered ~~((available resources))~~ a transfer of a resource as described in WAC 388-513-1363:

(a) An annuity described in subsection (b) or (q) of section 408 of the Internal Revenue Code of 1986;

(b) Purchased with proceeds from an account or trust described in subsection (a), (c), or (p) of section 408 of the Internal Revenue Code of 1986;

(c) Purchased with proceeds from a simplified employee pension (within the meaning of section 408 of the Internal Revenue Code of 1986); or

(d) Purchased with proceeds from a Roth IRA described in section 408A of the Internal Revenue Code of 1986.

(4) The purchase of an annuity established on or after ~~((November)) April 1, ((2008)) 2009~~, will be considered as an available resource unless it:

(a) Is immediate, irrevocable, nonassignable; and

(b) Is paid out in equal monthly amounts with no deferral and no balloon payments:

(i) Over a term equal to the actuarial life expectancy of the annuitant;

(ii) Over a term that is not less than five years if the actuarial life expectancy of the annuitant is at least five years; or

(iii) Over a term not less than the actuarial life expectancy of the annuitant, if the actuarial life expectancy of the annuitant is less than five years.

(iv) Actuarial life expectancy shall be determined by tables that are published by the office of the chief actuary of the social security administration (<http://www.ssa.gov/OACT/STATS/table4c6.html>).

(c) Is issued by an individual, insurer or other body licensed and approved to do business in the jurisdiction in which the annuity is established;

(d) Names the state as the remainder beneficiary when the ~~((applicant))~~ purchaser of the annuity is the annuitant and is an applicant for or recipient of medicaid, or a community spouse of an applicant for or recipient of long-term care or waiver services:

(i) In the first position for the total amount of medical assistance paid for the individual, including both long-term care services and waiver services; or

(ii) In the second position for the total amount of medical assistance paid for the individual, including both long-term care services and waiver services, if there is a community spouse, or a minor or disabled child as defined in WAC 388-475-0050 (b) and (c) who is named as the beneficiary in the first position.

(e) Names the state as the beneficiary upon the death of the community spouse for the total amount of medical assistance paid on behalf of the individual at any time of any payment from the annuity if a community spouse is the annuitant;

(f) Names the state as the beneficiary in the first position for the total amount of medical assistance paid on behalf of the individual at the time of any payment from the annuity, including both long-term care services and waiver services, unless the annuitant has a community spouse or minor or disabled child, as defined in WAC 388-475-0050 (b) and (c). If the annuitant has a community spouse or minor or disabled child, such spouse or child may be named as beneficiary in the first position, and the state shall be named as beneficiary in the second position:

(i) If the community spouse, minor or disabled child, or representative for a child named as beneficiary is in the first position as described in (f) and transfers his or her right to receive payments from the annuity for less than fair market value, then the state shall become the beneficiary in the first position.

(5) If the annuity is not considered a resource, the stream of income produced by the annuity is considered available income.

(6) An irrevocable annuity established on or after ~~((November)) April 1, ((2008)) 2009~~ that meets all of the requirements of subsection (4) except that it is not immediate or scheduled to be paid out in equal monthly amounts will not be treated as a resource if:

(a) The full pay out is within the actuarial life expectancy of the annuitant; and

(b) The annuitant:

(i) Changes the scheduled pay out into equal monthly payments within the actuarial life expectancy of the annuitant; or

(ii) Requests that the department calculate and budget the payments as equal monthly payments within the actuarial life expectancy of the annuitant beginning with the month of eligibility. The income from the annuity remains unearned income to the annuitant.

(7) An irrevocable annuity, established on or after ~~((November))~~ April 1, ((2008)) 2009 that is scheduled to pay out beyond the actuarial life expectancy of the annuitant, will be considered a resource.

(8) An irrevocable annuity established on or after ~~((November))~~ April 1, ((2008)) 2009 that meets all of the requirements of subsection (4) or (5) is considered unearned income when the annuitant is:

(a) The client;

(b) The spouse of the client;

(c) The blind or disabled child, as defined in WAC 388-475-0050 (b) and (c), of the client; or

(d) A person designated to use the annuity for the sole benefit of the client, client's spouse, or a blind or disabled child of the client.

(9) An annuity is not considered an available resource when there is a joint owner, co-annuitant or an irrevocable beneficiary who will not agree to allow the annuity to be cashed, unless the joint owner or irrevocable beneficiary is the community spouse. In the case of a community spouse, the cash surrender value of the annuity is considered an available resource and counts toward the maximum community spouse resource allowance.

(10) Nothing in this section shall be construed as preventing the department from denying eligibility for medical assistance for an individual based on the income or resources derived from an annuity other than an annuity described in subsections (3), (4), and (5).

#### WSR 09-01-154

#### PROPOSED RULES

#### DEPARTMENT OF LICENSING

[Filed December 23, 2008, 8:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-22-020.

Title of Rule and Other Identifying Information: WAC 308-96A-073 Antique vehicle—Horseless carriage license plate.

Hearing Location(s): Department of Licensing, Conference Room 108, 1125 Washington Street S.E., Olympia, WA 98507, on January 27, 2009, at 11:00 a.m.

Date of Intended Adoption: February 24, 2009.

Submit Written Comments to: Dale R. Brown, P.O. Box 2957, Mailstop 48205, 1125 Washington Street S.E., Olympia, WA 98507-2957, e-mail [dbrown@dol.wa.gov](mailto:dbrown@dol.wa.gov), fax (360) 902-7821 or 902-7822.

Assistance for Persons with Disabilities: Contact Dale R. Brown by January 26, 2009, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule making is required to clarify the rule pertaining to horseless carriage and collectors.

Reasons Supporting Proposal: This amendment will provide a definition of a vehicle owned by a collector.

Statutory Authority for Adoption: RCW 46.01.110.

Statute Being Implemented: RCW 46.16.305.

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

Name of Proponent: None.

Name of Agency Personnel Responsible for Drafting: Dale Brown, 1125 Washington Street S.E., Olympia, WA, (360) 902-4020; Implementation and Enforcement: Toni Wilson, 1125 Washington Street S.E., Olympia, WA, (360) 902-3811.

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 19.85.030 (1)(a). The proposed rule making does not impose more than a minor cost on businesses in the industry.

A cost-benefit analysis is not required under RCW 34.05.328. The contents of the proposed rules are explicitly and specifically dictated by statute.

December 11, 2008

Mykel D. Gable

Assistant Director

Vehicle Services

AMENDATORY SECTION (Amending WSR 02-16-071, filed 8/6/02, effective 9/6/02)

**WAC 308-96A-073 Antique vehicle—Horseless carriage license plate.** (1) What is a horseless carriage license plate? A horseless carriage license plate is a single license plate issued to a qualified motor vehicle owned by a collector as defined in RCW 46.04.125. It must be displayed on the rear of the vehicle for which it was issued.

(2) What vehicles qualify for a horseless carriage license plate? Any motor vehicle which is:

(a) At least forty years old; and

(b) Capable of being operated upon the highway; and

(c) Currently registered in Washington; and

(d) Operated primarily as a collector vehicle under RCW 46.16.307.

~~((2) How is a horseless carriage license plate displayed? The horseless carriage license plate must be displayed on the rear of the vehicle for which it was issued.))~~

(3) ~~((If I sell my vehicle))~~ May I ((keep)) transfer my horseless carriage license plate to another antique vehicle? ~~((Yes. You may keep the))~~ No. Horseless carriage license plates ~~((but it is))~~ are not transferrable to any other motor vehicle.

(4) What additional fees are required to obtain a horseless carriage license plate? In addition to all other license fees required by law, the applicant must pay ~~((an additional license))~~ a fee of thirty-five dollars for ~~((this))~~ a horseless carriage license plate.

(5) **Are horseless carriage license plates subject to periodic replacement?** No, the horseless carriage license plates are exempt from the vehicle license plate replacement schedule and are valid for the life of the vehicle.

**WSR 09-01-174**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Health and Recovery Services Administration)  
[Filed December 23, 2008, 12:46 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-22-021.

Title of Rule and Other Identifying Information: The department is amending WAC 388-543-1200 DME—Providers who are eligible to provide services.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on January 27, 2008 [2009], at 10:00 a.m.

Date of Intended Adoption: Not sooner than January 28, 2009.

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 DSHSRPAU RULESCOORDINATOR@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on January 27, 2008 [2009].

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by January 13, 2009, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsj14@dshs.wa.gov](mailto:johnsj14@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is removing the requirement for DME providers under WAC 388-543-1200 (1)(b) which states "Have appropriately trained, qualified staff." The department is also changing all references to "MAA" within this section to "the department."

Reasons Supporting Proposal: This requirement sets up an expectation that the department will monitor the training the provider's staff receive and determine if they are "qualified." This is not the case. There are no standards for defining what is "qualified" for DME staff, nor is there a certification process, nor does the department have a system that monitors whether vendors are complying with this requirement.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090.

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

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

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

ment: Erin Mayo, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1729.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the rules and determined that no new costs will be imposed on small businesses or nonprofit organization.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Erin Mayo, DME Program Manager, DSHS, Health and Recovery Services Administration, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1729, fax (360) 586-9727, e-mail [mayoe@dshs.wa.gov](mailto:mayoe@dshs.wa.gov).

December 19, 2008

Stephanie E. Schiller

Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-01-078, filed 12/13/00, effective 1/13/01)

**WAC 388-543-1200 Providers who are eligible to provide services.** (1) ~~((MAA))~~ The department requires a provider who supplies DME and related supplies, prosthetics, orthotics, medical supplies and related services to ~~((# MAA))~~ a client to meet all of the following. The provider must:

(a) Have the proper business license; and  
(b) ~~((Have appropriately trained qualified staff, and~~  
~~((#)))~~ Be certified, licensed and/or bonded if required, to perform the services billed to the department. Out-of-state prosthetic and orthotics providers must meet their state regulatory requirements.

(2) ~~((MAA))~~ The department may reimburse qualified providers for DME and related supplies, prosthetics, orthotics, medical supplies, repairs, and related services on a fee-for-service (FFS) basis as follows:

(a) DME providers for DME and related repair services;  
(b) Medical equipment dealers, pharmacies, and home health agencies under their medical vendor provider number for medical supplies, subject to the limitations in this section;

(c) Licensed prosthetics and orthotics providers who are licensed by the Washington state department of health in prosthetics and orthotics. This does not apply to medical equipment dealers and pharmacies that do not require licensure to provide selected prosthetics and orthotics;

(d) Physicians who provide medical equipment and supplies in the physician's office. ~~((MAA))~~ The department may pay separately for medical supplies, subject to the provisions in ~~((MAA's))~~ the department's resource based relative value scale (RBRVS) fee schedule; and

(e) Out-of-state orthotics and prosthetics providers who meet their state regulations.

(3) ~~((MAA))~~ The department terminates from medicaid participation any provider who violates program regulations and policies, as described in WAC 388-502-0020.

**WSR 09-01-176**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Disability Services Administration)  
[Filed December 23, 2008, 2:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-21-076.

Title of Rule and Other Identifying Information: Change of ownership (CHOW): Amending the following sections from the boarding home licensing chapter regarding CHOW, WAC 388-78A-2770 Change in licensee and 388-78A-2780 Requirements to change boarding home licensee.

Add the following sections to the boarding home licensing chapter regarding CHOW: WAC 388-78A-2773 Change in licensee/change of ownership—When change in licensee not required, 388-78A-2775 Change in licensee/change of ownership—Application, 388-78A-2777 Change in licensee/change of ownership—Revised application, 388-78A-2783 Change in licensee/change of ownership—Relinquishment of license, 388-78A-2785 Change in licensee/change of ownership—Ninety days notice, and 388-78A-2787 Change in licensee/change of ownership—Sixty days notice.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on January 27, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 28, 2009.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURULESCOORDINATOR@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on January 27, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by January 13, 2009, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Change of ownership (CHOW): To promote resident well-being; to reduce unnecessary resident anxiety; and to reduce unnecessary boarding home staff turnover/staffing challenges.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: Chapters 18.20, 74.34 RCW.

Statute Being Implemented: Chapters 18.20, 74.34 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: Todd Erik Henry, P.O. Box 45600, Olympia, WA 98513, (360) 725-2580; Implementation and Enforcement: Lori Melchiori, P.O. Box 45600, Olympia, WA 98513, (360) 725-2580.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department determined that the amendments were no more than "minor costs" as defined in 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 Todd Henry, Boarding Home Program, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2580, fax (360) 438-7903, e-mail henryte@dshs.wa.gov.

December 19, 2009  
Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

**WAC 388-78A-2770 Change in licensee/change of ownership—When change in licensee is required.** ~~((+))~~

The licensee of a boarding home must change whenever the following events occur, including, but not limited to:

~~((+))~~ (1) The licensee's form of legal organization is changed (e.g., a sole proprietor forms a partnership or corporation);

~~((+))~~ (2) The licensee transfers ownership of the boarding home business enterprise to another party regardless of whether ownership of some or all of the real property and/or personal property assets of the boarding home is also transferred;

~~((+))~~ (3) The licensee dissolves, or consolidates or merges with another legal organization and the licensee's legal organization does not survive;

~~((+))~~ (4) If, during any continuous twenty-four-month period, fifty percent or more of the "licensed entity" is transferred, whether by a single transaction or multiple transactions, to:

~~((+))~~ (a) A different person (e.g., new or former shareholders or partners); or

~~((+))~~ (b) A person that had less than a five percent ownership interest in the boarding home at the time of the first transaction.

~~((+))~~ (5) Any other event or combination of events that results in a substitution, elimination, or withdrawal of the licensee's control of the boarding home. As used in this section, "control" means the possession, directly or indirectly, of the power to direct the management, operation and/or policies of the licensee or boarding home, whether through ownership, voting control, by agreement, by contract or otherwise.

~~((2))~~ ~~The licensee is not required to change when the following, without more, occur:~~

~~(a) The licensee contracts with a party to manage the boarding home enterprise for the licensee pursuant to an agreement as specified in WAC 388-78A-2590; or~~

~~(b) The real property or personal property assets of the boarding home are sold or leased, or a lease of the real property or personal property assets is terminated, as long as there is not a substitution or substitution of control of the licensee or boarding home.)~~

NEW SECTION

**WAC 388-78A-2773 Change in licensee/change of ownership—When change in licensee not required.** The licensee is not required to change when only the following, without more, occur:

(1) The licensee contracts with a party to manage the boarding home enterprise for the licensee pursuant to an agreement as specified in WAC 388-78A-2590; or

(2) The real property or personal property assets of the boarding home are sold or leased, or a lease of the real property or personal property assets is terminated, as long as there is not a substitution or substitution of control of the licensee or boarding home.

NEW SECTION

**WAC 388-78A-2775 Change in licensee/change of ownership—Application.** (1) The prospective licensee must complete, sign and submit to the department a change of ownership application prior to the proposed date of change in licensee.

(2) The annual boarding home license fee, if a license fee is due, must accompany the change in ownership application.

(3) The prospective licensee must submit the following information that must be submitted along with the change of ownership application:

(a) Evidence of control of the real estate on which the boarding home is located, such as a purchase and sales agreement, lease contract, or other appropriate document; and

(b) Any other information requested by the department.

(4) The prospective licensee must submit the completed application to the department within the applicable timeframes of WAC 388-78A-2785 or 388-78A-2787.

NEW SECTION

**WAC 388-78A-2777 Change in licensee/change of ownership—Revised application.** The prospective licensee must submit a revised application to the department if:

(1) Any information included on the original application is no longer accurate; or

(2) Requested by the department.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

**WAC 388-78A-2780 ((Requirements to change boarding home licensee)) Change in licensee/change of ownership—Notice to department and residents.** (1) In order to change the licensee of a boarding home, the current licensee must notify the ~~((department and all residents))~~ following in writing of the proposed change in licensee ~~((at least ninety days prior to the proposed date of change, including))~~:

(a) The department; and

(b) All residents, or resident representatives (if any).

(2) The licensee must include the following information in the written notice:

(a) Name of the present licensee and prospective licensee;

(b) Name and address of the boarding home for which the licensee is being changed;

(c) Date of proposed change; and

(d) If the boarding home contracts with the department or other public agencies that may make payments for residential care on behalf of residents, the anticipated effect, such as discharge from the boarding home, the change of licensee will have on residents whose care and services are supported through these contracts.

~~((2) The prospective licensee must, at least ninety days prior to the proposed date of change:~~

~~(a) Sign the application;~~

~~(b) Submit the annual license fee, if a license fee is due;~~

~~(c) Submit evidence of control of the real estate on which the boarding home is located, such as a purchase and sales agreement, lease contract, or other appropriate document;~~

~~(d) Submit a revised application if any information included on the original application is no longer accurate; and~~

~~(e) Complete and submit a revised application if requested by the department.)~~

~~((3) Send a letter to the department stating the licensee's intent to relinquish the boarding home license on the effective date of change in licensee.)~~

NEW SECTION

**WAC 388-78A-2783 Change in licensee/change of ownership—Relinquishment of license.** (1) On the effective date of the change in licensee, the current boarding home licensee is required to relinquish their boarding home license.

(2) To relinquish a license, the licensee must mail the department the boarding home license along with a letter, addressed to the department, stating licensee's intent to relinquish the boarding home license to the department.

NEW SECTION

**WAC 388-78A-2785 Change in licensee/change of ownership—Ninety days notice.** The current boarding home licensee must provide written notice to the department and residents, or resident representatives (if any), ninety calendar days prior to the date of the change of licensee, if the proposed change of boarding home licensee is anticipated to result in the discharge or transfer of any resident.

NEW SECTION

**WAC 388-78A-2787 Change in licensee/change of ownership—Sixty days notice.** The current boarding home licensee must provide written notice to the department and residents, or resident representatives (if any), at least sixty calendar days prior to the date of the change of licensee, if the proposed change of boarding home licensee is not anticipated to result in the discharge or transfer of any resident.



**WSR 09-01-180**  
**PROPOSED RULES**  
**PIERCE COLLEGE**

[Filed December 23, 2008, 5:04 p.m.]

Continuance of WSR 08-22-050.

Exempt from preproposal statement of inquiry under WSR 08-17-093.

Title of Rule and Other Identifying Information: Student rights and responsibilities/student code of conduct policy.

Hearing Location(s): Pierce College Fort Steilacoom, Board Room (C325H), 9401 Farwest Drive S.W., Lakewood, WA 98498 and Pierce College Puyallup, Room C-210, 1601 39th Avenue S.E., Puyallup, WA 98374, on January 27, 2009, at 12:00 noon.

Date of Intended Adoption: February 18, 2009.

Submit Written Comments to: Marie Harris, Executive Assistance to the Chancellor, 1601 39th Avenue S.E. Puyallup, WA 98374, e-mail mharris@pierce.ctc.edu, fax (253) 864-3123, by January 20, 2009.

Assistance for Persons with Disabilities: Contact Susan McPhee by January 13, 2009, TTY (253) 964-6228 or (253) 964-6525.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Address current social and technological issues related to student rights, responsibilities, standards of conduct, and procedures for judicial proceedings.

Reasons Supporting Proposal: Provide adequate advance public notice of the hearing in the student newspapers.

Statutory Authority for Adoption: RCW 28B.50.140 (13).

Statute Being Implemented: RCW 28B.50.140(13).

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

Name of Proponent: Pierce College, public.

Name of Agency Personnel Responsible for Drafting: Nancy Houck, Director of Student Success, Pierce College Fort Steilacoom, (253) 964-6581; Implementation: Nancy Houck and Mari Kruger, Pierce College Fort Steilacoom and Pierce College Puyallup, (253) 964-6581; and Enforcement: Vice-Presidents for Learning and Student Success, Pierce College District, (253) 964-6581.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will not impose costs for the institution.

A cost-benefit analysis is not required under RCW 34.05.328. There is no direct cost.

December 24 [23], 2008

Michele Johnson  
 Chancellor

**WSR 09-01-181**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed December 24, 2008, 8:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-19-032.

Title of Rule and Other Identifying Information: The department is amending WAC 388-519-0100 Eligibility for the medically needy program and 388-519-0110 Spenddown of excess income for the medically needy program; and other related rules as appropriate.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on January 27, 2009, at 10:00 a.m.

Date of Intended Adoption: Not sooner than January 28, 2009.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on January 27, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by January 13, 2009, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is clarifying language, updating outdated WAC references, and adding additional provisions relating to expenses an individual can use toward meeting spenddown. The rules allow both paid and unpaid medical expenses incurred by a client during the retroactive eligibility period to be applied towards the client's spenddown in the current eligibility period. Treatment of hospital bills will no longer be singled out, but will mirror the federal rule by eliminating specific references to hospital bills and amending the language regarding the prioritization of expenses.

Reasons Supporting Proposal: To comply with federal regulations and provide program transparency.

Statutory Authority for Adoption: RCW 74.04.055, 74.04.050, 74.04.057, 74.08.090, and 74.09.500.

Statute Being Implemented: 42 C.F.R. 435.831 (3)(e) and (f).

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: Jonell Blatt, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1571; Implementation and Enforcement: Catherine Fisher, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1357.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does

not increase or impose new costs or otherwise impact small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Per RCW 34.05.328 (5)(b)(vii), client eligibility rules for financial and medical assistance programs are exempt from the cost-benefit analysis requirement.

December 15, 2008  
Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

**WAC 388-519-0100 Eligibility for the medically needy program.** (1) ~~((A person))~~ An individual who meets the following conditions ~~((is considered))~~ may be eligible for medically needy (MN) coverage under the special rules in chapters 388-513 WAC(-) and 388-515 WAC:

(a) ~~((A person who meets the institutional status requirements of WAC 388-513-1320))~~ Meets the institutional status requirements of WAC 388-513-1320; ~~((or))~~

(b) ~~((A person who receives waiver services under chapter 388-515 WAC))~~ Resides in a medical institution as described in WAC 388-513-1395; or

(c) Receives waiver services under a medically needy in-home waiver (MNIW) according to WAC 388-515-1550 or a medically needy residential waiver (MNRW) according to WAC 388-515-1540.

(2) ~~((MN coverage is considered under this chapter when a person:~~

(a) Is not excluded under subsection (1) of this section; and

(b) Is not eligible for categorically needy (CN) medical coverage because they have CN countable income which is above the CN income standard)) An SSI-related individual who lives in a department contracted alternate living facility may be eligible for MN coverage under the rules described in WAC 388-513-1305.

(3) ~~((MN coverage is available for children, for persons who are pregnant or for persons who are SSI-related. MN coverage is available to an aged, blind, or disabled ineligible spouse of an SSI recipient even though that spouse's countable income is below the CN income standard. Adults with no children must be SSI related in order to be qualified for MN coverage))~~ An individual may be eligible for MN coverage under this chapter when he or she is:

(a) Not covered under subsection (1) and (2) of this section; and

(b) Eligible for categorically needy (CN) medical coverage in all other respects except that his or her CN countable income is above the CN income standard.

(4) ~~((A person not eligible for CN medical and who is applying for MN coverage has the right to income deductions in addition to those used to arrive at CN countable income. The following deductions are used to calculate their countable income for MN. Those deductions to income are applied to each month of the base period and determine MN countable income))~~ MN coverage may be available if the individual is:

(a) ~~((All health insurance premiums expected to be paid by the client during the base period are deducted from their income))~~ A child; ~~((and))~~

(b) ~~((For persons who are SSI-related and who are married, see the income provisions for the nonapplying spouse in WAC 388-450-0210))~~ A pregnant woman; ~~((and))~~

(c) ~~((For persons who are not SSI-related and who are married, an income deduction is allowed for a nonapplying spouse:~~

(i) If the nonapplying spouse is living in the same home as the applying person; and

(ii) The nonapplying spouse is receiving community and home based services under chapter 388-515 WAC; then

(iii) ~~The income deduction is equal to the one person MNIL less the nonapplying spouse's actual income))~~ A refugee;

(d) An SSI-related individual including an aged, blind or disabled individual with countable income under the CN income standard, who is an ineligible spouse of an SSI recipient; or

(e) A hospice client with countable income which is above the special income level (SIL).

(5) ~~((A person who meets the above conditions is eligible for MN medical coverage if their MN countable income is at or below the medically needy income level (MNIL) in WAC 388-478-0070. They are certified as eligible for up to twelve months of MN medical coverage. Certain SSI or SSI-related clients have a special MNIL. That MNIL exception is described in WAC 388-513-1305))~~ An individual who is not eligible for CN medical and who is applying for MN coverage has the right to income deductions in addition to those used to arrive at CN countable income. Deductions to income are applied to each month of the base period to determine MN countable income. The following deductions are used to calculate countable income for MN:

(a) All health insurance premiums expected to be paid by the individual during the base period(s);

(b) Any allocations to a spouse or to dependents for an SSI-related individual who is married or who has dependent children. Rules for allocating income are described in WAC 388-475-0900; and

(c) For an SSI-related individual who is married and lives in the same home as his or her spouse who receives home and community based waiver services under chapter 388-515 WAC, an income deduction equal to the medically needy income level (MNIL) minus the nonapplying spouse's income.

(6) ~~((A person whose MN countable income exceeds the MNIL may become eligible for MN medical coverage when they have or expect to have medical expenses. Those medical expenses or obligations may be used to offset any portion of their income which is over the MNIL))~~ The MNIL for individuals who qualify for MN coverage under subsection (1) of this section is based on rules in chapter 388-513 and 388-515 WAC.

(7) ~~((That portion of a person's MN countable income which is over the department's MNIL standard is called "excess income."))~~ The MNIL for all other individuals is described in WAC 388-478-0070. If an individual has countable income which is at or below the MNIL, he or she is cer-

tified as eligible for up to twelve months of MN medical coverage.

(8) ~~((When a person has or will have "excess income" they are not eligible for MN coverage until they have medical expenses which are equal in amount to that excess income. This is the process of meeting "spenddown"))~~ If an individual has countable income which is over the MNIL, the countable income that exceeds the department's MNIL standards is called "excess income."

(9) When individuals have "excess income" they are not eligible for MN coverage until they provide evidence to the department of medical expenses incurred by themselves or family members who live in the home for whom they are financially responsible. An expense has been incurred when:

(a) The individual has received the medical treatment or medical supplies, is financially liable for the medical expense but has not yet paid the bill; or

(b) The individual has paid for the expense within the current or retroactive base period described in WAC 388-519-0110.

(10) Incurred medical expenses or obligations may be used to offset any portion of countable income that is over the MNIL. This is the process of meeting "spenddown."

(11) The department calculates the amount of an individual's spenddown by multiplying the monthly excess income amount by the number of months in the certification period as described in WAC 388-519-0110. The allowable medical expenses must be greater than or equal to the total calculated spenddown amount based on a three or a six month certification period.

(12) An ~~((person))~~ individual who is considered for MN coverage under this chapter may not spenddown excess resources to become eligible for the MN program. Under this chapter ~~((a person is))~~ individuals are ineligible for MN coverage if their resources exceed the program standard in WAC 388-478-0070. ~~((A person))~~ An individual who is considered for MN coverage under ~~((chapter 388-513))~~ WAC 388-513-1395, 388-505-0250 or 388-505-0255 is allowed to spenddown excess resources.

~~((10) No extensions of coverage or automatic redetermination process applies to MN coverage. A client must submit an application for each eligibility period under the MN program.))~~

(13) There is no automatic redetermination process for MN coverage. An individual must submit an application for each eligibility period under the MN program.

(14) An individual who requests a timely administrative hearing under WAC 388-458-0040 is not eligible for continued benefits under the medically needy program.

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

**WAC 388-519-0110 Spenddown of excess income for the medically needy program.** (1) ~~((The person applying for MN medical))~~ An individual who applies for medical assistance and is eligible for medically needy (MN) coverage with a spenddown may choose((s)) a three month or a six month base period ((for spenddown calculation)). A base period is a time period used to compute the amount of the spenddown

liability. The months must be consecutive calendar months unless one of the conditions in subsection (4) of this section ~~((apply))~~ applies.

(2) A ~~((person's))~~ base period begins on the first day of the month ~~((of application)), in which an individual applies for medical assistance,~~ subject to the exceptions in subsection (4) of this section.

(3) An individual may request a separate base period ~~((may be made for a retroactive period. The retroactive base period is made up of the))~~ to cover the time period up to three calendar months immediately prior to the month of application. This is called a retroactive base period.

(4) A base period may vary from the terms in subsections (1), (2), or (3) of this section if:

(a) A three month base period would overlap a previous eligibility period; or

(b) ~~((A client is not or will not be resource eligible for the))~~ The individual has countable resources that are over the applicable standard for any part of the required base period; or

(c) The client is not or will not be able to meet the TANF-related or SSI-related requirement for the required base period; or

(d) The ~~((client))~~ individual is ~~((or will be))~~ eligible for categorically needy (CN) coverage for part of the required base period; or

(e) The client was not otherwise eligible for MN coverage for each of the months of the retroactive base period.

(5) ~~((The amount of a person's))~~ An individual's spenddown<sup>(2)</sup> liability is calculated by the department. The MN countable income from each month of the base period is compared to the medically needy income level (MNIL). ~~((The excess income from each of the))~~ Income which is over the MNIL (based on the individual's household size) in each month((s)) in the base period is added together to determine the total ~~(("))~~ spenddown<sup>(2)</sup> ~~((for the base period))~~ amount. The MNIL standard is found at [http://www.dshs.wa.gov/pdf/esa/manual/standards\\_C\\_MedAsstChart.pdf](http://www.dshs.wa.gov/pdf/esa/manual/standards_C_MedAsstChart.pdf) and is updated annually in January.

(6) If household income varies and ~~((a person's))~~ an individual's MN countable income falls below the MNIL for one or more months, the difference is used to offset the excess income in other months of the base period. If this results in a spenddown amount of zero dollars and cents, see WAC ~~((388-519-0100(5)))~~ 388-519-0100(7).

(7) ~~((Once a person's spenddown amount is known, their qualifying medical expenses are subtracted from that spenddown amount to determine the date of eligibility. The following medical expenses are used to meet spenddown:~~

(a) First, Medicare and other health insurance deductibles, coinsurance charges, enrollment fees, or copayments;

(b) Second, medical expenses which would not be covered by the MN program;

(c) Third, hospital expenses paid by the person during the base period;

(d) Fourth, hospital expenses, regardless of age, owed by the applying person;

(e) Fifth, other medical expenses, potentially payable by the MN program, which have been paid by the applying person during the base period; and

~~(f) Sixth, other medical expenses, potentially payable by the MN program which are owed by the applying person)) If income decreases, the department approves CN coverage for each month in the base period when the individual's countable income and resources are equal to or below the applicable CN standards. Children under the age of nineteen and pregnant women who become CN eligible in any month of the base period remain continuously eligible for CN coverage for the remainder of the certification even if there is a subsequent increase in income.~~

~~(8) ((If a person meets the spenddown obligation at the time of application, they are eligible for MN medical coverage for the remainder of the base period. The beginning date of eligibility would be determined as described in WAC 388-416-0020)) Once an individual's spenddown amount has been determined, qualifying medical expenses are deducted. To be considered a qualifying medical expense, the expense must:~~

~~(a) Be an expense for which the individual is financially liable;~~

~~(b) Not have been used to meet another spenddown;~~

~~(c) Not be the confirmed responsibility of a third party. The department allows the entire expense if the third party has not confirmed its coverage of the expense within:~~

~~(i) Forty-five days of the date of service; or~~

~~(ii) Thirty days after the base period ends.~~

~~(d) Be an incurred expense for the individual or:~~

~~(i) The individual's spouse;~~

~~(ii) A family member, residing in the home of the individual, for whom the individual is financially responsible; or~~  
~~(iii) A relative, residing in the home of the individual, who is financially responsible for the individual.~~

~~(e) Meet one of the following conditions:~~

~~(i) Be an unpaid liability at the beginning of the base period;~~

~~(ii) Be for medical services either paid or unpaid and incurred during the base period;~~

~~(iii) Be for medical services incurred and paid during the three month retroactive base period if eligibility for medical assistance was not established in that base period. Paid expenses that meet this requirement may be applied towards the current base period; or~~

~~(iv) Be for medical services incurred during a previous base period and either unpaid or paid for, if it was necessary for the individual to make a payment due to delays in the certification for that base period.~~

~~(9) ((If a person's spenddown amount is not met at the time of application, they are not eligible until they present evidence of additional expenses which meets the spenddown amount)) An exception to the provisions in subsection (8) of this section exists for qualifying medical expenses that have been paid on behalf of the individual by a publicly administered program during the current base period. The department uses the qualifying medical expenses to meet the spenddown liability. To qualify for this exception the program must:~~

~~(a) Not be federally funded or make the payments from federally matched funds;~~

~~(b) Not pay the expenses paid on behalf of the individual; and~~

~~(c) Provide proof of the expenses paid on behalf of the individual.~~

~~(10) ((To be counted toward spenddown, medical expenses must)) Once the department has determined that the expenses meet the definition of a qualified expense as defined in subsection (8) or (9) of this section, the expenses are subtracted from the spenddown liability to determine the date the individual is eligible for medical coverage to begin. Qualifying medical expenses are deducted in the following order:~~

~~(a) ((Not have been used to meet a previous spenddown)) First, medicare and other health insurance deductibles, co-insurance charges, enrollment fees, copayments and premiums that are the individual's responsibility under Part A, Part B, Part C and Part D. (Health insurance premiums are income deductions under WAC 388-519-0100(5)); ((and))~~

~~(b) ((Not be the confirmed responsibility of a third party. The entire expense will be counted unless the third party confirms its coverage within:~~

~~(i) Forty-five days of the date of the service; or~~

~~(ii) Thirty days after the base period ends; and~~

~~(e) Meet one of the following conditions:~~

~~(i) Be an unpaid liability at the beginning of the base period and be for services for:~~

~~(A) The applying person; or~~

~~(B) A family member legally or blood-related and living in the same household as the applying person.~~

~~(ii) Be for medical services either paid or unpaid and incurred during the base period; or~~

~~(iii) Be for medical services paid and incurred during a previous base period if that client payment was made necessary due to delays in the certification for that base period)) Second, medical expenses incurred and paid by the individual during the three month retroactive base period if eligibility for medical assistance was not established in that base period;~~

~~(c) Third, current payments on, or unpaid balance of, medical expenses incurred prior to the current base period which have not been used to establish eligibility for medical coverage in any other base period. The department sets no limit on the age of an unpaid expense; however, the expense must still be a current liability and be unpaid at the beginning of the base period;~~

~~(d) Fourth, other medical expenses that would not be covered by the department's medical programs, minus any third party payments which apply to the charges. The items or services allowed as a medical expense must have been provided or prescribed by a licensed health care provider;~~

~~(e) Fifth, other medical expenses which have been incurred by the individual during the base period that are potentially payable by the MN program (minus any confirmed third party payments that apply to the charges), even if payment is denied for these services because they exceed the department limits on amount, duration or scope of care. Scope of care is described in WAC 388-501-0060 and 388-501-0065; and~~

~~(f) Sixth, other medical expenses that have been incurred by the individual during the base period that are potentially payable by the MN program (minus any confirmed third party payments that apply to the charges) and that are within the department limits on amount, duration or scope of care.~~

(11) ~~((An exception to the provisions in subsection (10) of this section exists. Medical expenses the person owes are applied to spenddown even if they were paid by or are subject to payment by a publicly administered program during the base period. To qualify, the program cannot be federally funded or make the payments of a person's medical expenses from federally matched funds. The expenses do not qualify if they were paid by the program before the first day of the base period))~~ If an individual submits verification of qualifying medical expenses with his or her application that meets or exceeds the spenddown liability, he or she is eligible for MN medical coverage for the remainder of the base period unless their circumstances change. See WAC 388-418-0005 to determine which changes must be reported to the department. The beginning of eligibility is determined as described in WAC 388-416-0020.

(12) ~~((The following medical expenses which the person owes are applied to spenddown. Each dollar of an expense or obligation may count once against a spenddown cycle that leads to eligibility for MN coverage:~~

~~(a) Charges for services which would have been covered by the department's medical programs as described in WAC 388-501-0060 and 388-501-0065, less any confirmed third party payments which apply to the charges; and~~

~~(b) Charges for some items or services not typically covered by the department's medical programs, less any third party payments which apply to the charges. The allowable items or services must have been provided or prescribed by a licensed health care provider; and~~

~~(c) Medical insurance and Medicare copayments or coinsurance (premiums are income deductions under WAC 388-519-0100(4)); and~~

~~(d) Medical insurance deductibles including those Medicare deductibles for a first hospitalization in sixty days))~~ If an individual cannot meet the spenddown amount at the time the application is submitted, the individual is not eligible until he or she provides proof of additional qualifying expenses that meet the spenddown liability.

(13) Each dollar of a qualifying medical expense(s) may ~~((be used more than once if))~~ count against a spenddown period that leads to eligibility for MN coverage. However, medical expenses may be used more than once under the following circumstances:

~~(a) The ~~((person))~~ individual did not meet ~~((their))~~ his or her total spenddown ~~((amount))~~ liability and ~~((did not))~~ become eligible in ~~((that))~~ a previous base period and the bill remains unpaid; ~~((and))~~ or~~

~~(b) The medical expense was ~~((applied to that unsuccessful spenddown and remains an unpaid))~~ a bill incurred and paid within three months of the current application and the department could not establish eligibility for medical assistance for the individual in the retroactive base period.~~

(14) ~~((To be considered toward spenddown, written proof of))~~ The individual must provide the proof of qualifying medical expenses ~~((for services rendered to the client must be presented))~~ to the department. The deadline for ~~((presenting))~~ providing medical expense information is thirty days after the base period ends unless there is a good ~~((cause))~~ reason for delay ~~((can be documented))~~.

(15) ~~((The medical expenses applied to the spenddown amount are the client's financial obligation and are not reimbursed by the department (see WAC 388-502-0100).~~

~~(16))~~ Once ~~((a person))~~ an individual meets ~~((their))~~ the spenddown ~~((and they are issued a medical identification card for MN coverage))~~ requirement and the certification begin date has been established, newly identified expenses cannot be considered toward that spenddown unless there is a good reason for the delay in submitting the expense or there was department error in determining the correct begin date. ~~((Once the application is approved and coverage begins the beginning date of the certification period cannot be changed due to a clients failure to identify or list medical expenses.))~~

(16) Good reasons for delay in providing medical expense information to the department include, but are not limited to:

(a) The individual did not receive a timely bill from his or her medical provider or insurance company;

(b) The individual has medical issues that prevents him or her from submitting proof in a timely manner; or

(c) The individual meets the criteria for needing a supplemental accommodation under chapter 388-472 WAC.

(17) The department is not responsible to pay for any expense or portion of an expense that has been assigned to an individual's spenddown liability. If an expense is potentially payable under the MN program, and only a portion of the medical expense has been assigned to meet spenddown, the medical provider may not bill the individual for more than the amount which was assigned to the remaining spenddown liability. See WAC 388-502-0160 Billing a client.

(18) The department determines whether any payment is due to the medical provider on medical expenses that have been partially assigned to meet a spenddown liability, according to WAC 388-502-0100.

(19) If the medical expense assigned to spenddown was incurred outside of a period of MN eligibility, or if the expense is not the type that is covered by the department's medical assistance programs, the department is not responsible for any portion of the bill.

## WSR 09-01-186

### PROPOSED RULES DEPARTMENT OF EARLY LEARNING

[Filed December 24, 2008, 9:46 a.m.]

Continuance of WSR 08-22-102.

Preproposal statement of inquiry was filed as WSR 07-19-028.

Title of Rule and Other Identifying Information: Chapter 170-292 WAC, Seasonal child care, this continuance notice is filed to reschedule a public hearing that was cancelled because of snow, and to extend the written comment deadline on this rule accordingly.

Hearing Location(s): Sea-Mar Clinic, 1400 La Venture Road, Mt. Vernon, WA 98273, on January 21, 2009, at 6:00 p.m.

Date of Intended Adoption: Not earlier than January 23, 2009.

Submit Written Comments to: DEL Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-0970, e-mail Rules@del.wa.gov or fax (360) 413-3482, by 5:00 p.m., January 22, 2009.

Assistance for Persons with Disabilities: Contact rules@del.wa.gov by January 16, 2009, (360) 725-4397.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: A December 17, 2008, public hearing on this proposal was cancelled because of snow. This notice sets a new hearing date, changes the written comment deadline, and sets a new "date of intended adoption." Anyone wishing to give written comments on this proposal send them to the e-mail address, fax number or postal mailing address above by 5:00 p.m. on January 22, 2009. Visit the department of early learning (DEL) web site at <http://www.del.wa.gov/> to read the proposed rules.

This proposed rule revision is not intended to update the entire WAC chapter. A subsequent filing will revise all other necessary sections. The current proposal would:

- Update WAC number and program name references, mostly changing chapters 388-292 and 388-290 WAC references to chapters 170-292 and 170-290 WAC respectively, and changing references from DSHS to DEL where appropriate,
- Change the definition of "eligible children." This program change is the result of a recent federal clarification of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996,
- Establish a process for eligibility waivers, and
- Make other editing changes and clarifications that would not change the effect of the rules.

Reasons Supporting Proposal: The proposed rules will assure all parties have updated and accurate information that reflect the latest programmatic changes to the seasonal child care subsidy program.

Statutory Authority for Adoption: Chapter 43.215 RCW.

Statute Being Implemented: Chapter 265, Laws of 2006, chapter 43.215 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: Section 501, chapter 265, Laws of 2006, transferred responsibilities for seasonal child care from DSHS to the DEL, making many references in these rules to DSHS laws, rules and programs obsolete.

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jenny Lemstrom, P.O. Box 40970, Olympia, WA 98504-0970, (360) 725-4673.

No small business economic impact statement has been prepared under chapter 19.85 RCW. (A) Under RCW 19.85-025 and 34.05.310(4) a small business economic impact statement is not required for rules that:

(1) Adopt without material change requirements of federal or state statutes or rule. The proposed new definition of "eligible child" adopts the requirements of federal law 8

U.S.C. 1642 without material change. The department received a clarification of this law from the United States Department of Health and Human Services on May 2, 2008, which is available on-line at <http://www.acf.hhs.gov/programs/ccb/law/guidance/current/pi2008-01/pi2008-01.htm>; or

(2) Only correct typographical errors, make address or name changes, or clarify language of the rule without changing its effect. Other sections of the proposal update name references from: DSHS to DEL, Title 388 WAC to Title 170 WAC, and related program names. Several WAC sections are amended, and a new definitions section is proposed to clarify the language of, but not change, other current program requirements.

(B) The department has determined that a small business economic impact statement is not required for new WAC 170-292-0180 Eligibility waivers. Costs of complying with the rule, if any, to affected small businesses would not be more than "minor" as defined in RCW 19.85.020. Implementation of eligibility waivers may result in increased revenue for seasonal child care contractors and child care providers that may offset incidental administrative costs.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not prepared. Under RCW 34.05.328 (5)(a)(i), the DEL is not listed among the agencies to which the requirements of RCW 34.05.328 applies.

December 23, 2008

Kate Verville

Chief Operating Officer

## WSR 09-01-190

### PROPOSED RULES

#### WASHINGTON STATE UNIVERSITY

[Filed December 24, 2008, 10:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-21-142.

Title of Rule and Other Identifying Information: Update the rules regarding registered student organizations. Includes amendments to WAC 504-28-010, 504-28-020 and 504-28-050, and repeal of WAC 504-28-030.

Hearing Location(s): Lighty 405, WSU Pullman, Pullman, Washington, on February 5, 2009, at 4:00 p.m.

Date of Intended Adoption: March 27, 2009.

Submit Written Comments to: Ralph Jenks, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, e-mail [jenks@wsu.edu](mailto:jenks@wsu.edu), fax (509) 335-3969, by February 5, 2009.

Assistance for Persons with Disabilities: Contact Deborah Bartlett, (509) 335-2005, by February 5, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update the rules and language regarding registered student organizations, to accommodate a multi-campus system, and to clarify requirements for participation and membership in such organizations.

Reasons Supporting Proposal: To modernize and bring the rules into conformance with current practices.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Name of Proponent: Washington State University, public.

Name of Agency Personnel Responsible for Drafting: Terry A. Boston, Sr., Executive Director, Streit Perhm 151a, Pullman, WA 99164-1722, (509) 335-8155; Implementation and Enforcement: Lucila Loera, Dean of Students, Lighty SVS 360, Pullman, WA 99164-1066, (509) 335-5757.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule has no impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. The university does not consider this rule to be a significant legislative rule.

December 24, 2008

Ralph T. Jenks, Director  
Procedures, Records, and Forms  
and University Rules Coordinator

AMENDATORY SECTION (Amending WSR 95-07-046, filed 3/8/95, effective 4/8/95)

**WAC 504-28-010 Student organizations.** (1) ~~((Recognition process))~~ Registration.

(a) ~~((Recognition.))~~ The university ~~((recognizes))~~ registers a wide variety of student ~~((groups))~~ organizations to facilitate the diverse interests of the student body. Attendant to ~~((recognition, groups))~~ registration, organizations are granted certain privileges and assume certain responsibilities as set forth in these rules. ~~((Recognition))~~ Registration in no way implies that the university plans, organizes, or sanctions any particular activity or policy of a student ~~((group))~~ organization. The term registration as it applies to student organizations in this chapter has the same meaning as the term recognition as used with respect to student organizations in chapter 504-26 WAC.

(b) ~~((Union board. The union board recommends and reviews policies pertaining to all student organizations. Based on those policies the associate director, activities and recreational sports, determines whether or not it is appropriate that the university recognize a particular organization. The board serves as an appeal body.))~~ Pursuant to established policies, the university department responsible for student affairs makes student organization registration determinations.

(2) Membership in organizations.

(a) Full membership in student organizations ~~((will be))~~ is restricted to enrolled graduate and undergraduate students at Washington State University.

(b) Faculty and others may participate as honorary or associate members ~~((t))~~ at the option of the ~~((group))~~ organization, as specified in the ~~((group's))~~ organization's constitution.

(c) Only a full member~~((s))~~ may be eligible to vote on matters of business or hold an elective office in the organization.

~~((3))~~ Obtaining recognition for organizations.

~~((a))~~ To become an approved student organization, recognition must be granted by the associate director, activities and recreational sports, or the union board. Contact the activities/recreational sports office, CUB 337.

~~((b))~~ Before requesting recognition, the group should hold a meeting of interested persons to draft a constitution, elect officers, and select an advisor. Constitutions normally include:

~~((i))~~ Name of the organization.

~~((ii))~~ Purpose and objectives.

~~((iii))~~ Qualifications for membership.

~~((iv))~~ Sources of financial support (e.g., dues, initiation fees, local and national aid, and financial projects).

~~((v))~~ Description of offices including qualifications, duties and method of election.

~~((vi))~~ National-local affiliations and any financial obligation (to an affiliate) resulting therefrom.

~~((vii))~~ Parliamentary authority and method of amending the constitution.

~~((viii))~~ Adoption and amendment procedures.

~~((ix))~~ A description of the organization's safety program.

~~((x))~~ Responsibilities of the advisor.

~~((e))~~ (d) Washington State University ((will)) does not ((recognize)) register any student organization which directly or indirectly denies membership to any student because of race, religion, sex, color, national or ethnic origin, age, marital status, sexual orientation, gender identity/gender expression, veteran status or disability except that the permissibility of a single-sex organization ((will be)) is evaluated in ((accord)) accordance with Title IX guidelines. ((Recognized)) Registered student organizations must ((insure)) ensure that additional policies and procedures do not create de facto differentiation. Student organizations that select their members based on commitment to a creed or a set of beliefs (e.g., political or religious beliefs) may limit full membership and participation privileges to eligible individuals who, upon individual inquisition, affirm that they agree with the organization's beliefs and support the organization's goals; so long as no eligible individual is excluded from membership and participation on the basis of race, religion, sex, color, national or ethnic origin, age, marital status, sexual orientation, gender identity/gender expression, veteran status, or disability except that the permissibility of a single-sex organization is evaluated in accordance with Title IX guidelines.

~~((d))~~ (e) Students who ((feel)) believe they have been denied membership in violation of ((e) of this) subsection (2)(d) of this section may appeal to the ((union board)) director of the university department responsible for student affairs.

~~((e))~~ (f) Washington State University ((shall)) does not ((recognize)) register a student ((group)) organization if ((recognition)) registration would violate local, state, or federal law.

~~((4))~~ (3) Requirements and responsibilities of ((recognized)) registered student organizations.

(a) Officers of ~~((organizations))~~ each organization are responsible for seeing that ~~((the))~~ their organization abides by university rules and regulations~~((s))~~ concerning scheduling,

financial projects, advertising, and other policies ~~((of the union board))~~ applicable to their respective campus as established by the department responsible for student affairs.

(b) ~~((Recognized))~~ Registered student organizations must have an advisor (see WAC 504-28-020 Advisors).

(c) Registered student organization funds must be deposited into a ~~((faculty, student, and alumni))~~ registered student organization account ~~((in the controller's office, which acts as a free banking service))~~ with the university. The university financial services office assists registered student organizations in establishing accounts and processing transactions.

(d) Each registered student organization must keep the following records ~~((must be kept))~~ current ~~((in))~~ with the ~~((activities/recreational sports office))~~ university department responsible for student affairs:

(i) Constitution and bylaws.

(ii) Officer roster card.

(iii) Student organization report ~~((forms available in the activities/recreational sports office;))~~ including activities, accomplishments, and financial status.

(iv) ~~((Special))~~ Student event registration forms.

~~((5))~~ (4) Privileges of ~~((recognized))~~ registered student organizations.

(a) ~~((Recognized))~~ Registered student organizations have the right to sponsor on-campus activities that comply with university rules, policies, and guidelines.

(b) ~~((Recognized student organizations may use university facilities and services through appropriate scheduling offices.~~

~~((c) The activities/recreational sports office staff is available to serve approved organizations in all areas of concern.~~

~~((d) Free banking service is provided to approved organizations through faculty student alumni accounts.))~~ The university department responsible for student affairs assists registered student organizations in understanding and complying with university rules and policies.

AMENDATORY SECTION (Amending WSR 95-07-046, filed 3/8/95, effective 4/8/95)

**WAC 504-28-020 Advisors to ~~((recognized))~~ registered student organizations.** (1) Advisors are members of the Washington State University faculty ~~((or))~~ staff, or graduate students ~~((whom))~~ serving in current graduate assistantships who are chosen by the student members ~~((choose))~~ and whose interest in the ~~((group))~~ organization indicates that they would judiciously advise the organization concerning its goals, purposes, and procedures. Advisors guide the ~~((group))~~ organization in accordance with the purposes and ideals of the university and the organization. ~~((They))~~ Advisors do not directly control the ~~((group's))~~ organization's programs and activities.

(2) Advisors assist the ~~((union board to implement the))~~ university department responsible for student affairs in implementing policies for student organizations.

(3) Advisor responsibilities may include the following:

(a) Attending the organization's meetings.

(b) Assisting in planning the organization's program.

(c) Supervising the handling of funds and approving all expenditures and contracts.

(d) Assisting in arranging for university facilities and equipment.

AMENDATORY SECTION (Amending WSR 95-07-046, filed 3/8/95, effective 4/8/95)

**WAC 504-28-050 Financial projects.** (1) Definition.

~~((a))~~ A financial project is any approved activity of a registered student organization which is undertaken to raise funds and/or to defray expenses. Projects may be for the benefit of organizations themselves or for charity groups.

(2) Approval.

(a) The ~~((union board and/or its designated representative has been given the responsibility of approving all))~~ registered student organization must obtain advice from the university department responsible for student affairs on financial projects ~~((so that the following services can be provided))~~ in the following areas:

(i) Planning advice~~((:))~~;

(ii) Advertising and publicity assistance~~((:))~~;

(iii) Facility and equipment arrangements~~((:))~~; and

(iv) Consumer protection.

(b) The financial projects requested and the proposed budget must be completed, approved, and filed with the ~~((activities/recreational sports office))~~ university department responsible for student affairs in advance of the proposed date using the ~~((special events))~~ student event registration form. Forms are available ~~((in the activities/recreational sports office))~~ at the university department responsible for student affairs.

(c) For approval, the organization must have funds on hand to cover ~~((100%))~~ 100 percent of the estimated expenses of a proposed financial project.

(d) Projects involving films are subject to additional ~~((union board))~~ student affairs policies. Copies of the policies are available in CUB scheduling and the ~~((activities/recreational sports office))~~ university department responsible for student affairs.

(e) Scholarship fund projects must be administered in accordance with university policy governing such funds. Sponsoring organizations may reserve the right to select recipients and to establish the amount of grants in accordance with policies of the ~~((student))~~ university and the financial ~~((aids))~~ aid office.

~~((f))~~ ~~((Financial projects involving tables in the west entrance of the CUB, on the mall, or on the library plaza must be approved using the special events form. The forms may be picked up in the activities/recreational sports office. After approval the table requests are taken to scheduling to reserve a table. There shall be only one table per organization, available on a first-come, first-served basis.~~

~~((g))~~ Raffles are subject to state law. ~~((Contact the activities/recreational sports office))~~ Registered student organizations should contact the university department responsible for student affairs for current regulations.

~~((h))~~ Retailing ~~((g))~~ Retail sales of student classroom books, supplies, and equipment by university departments, personnel, registered student organizations, or students on ~~((the))~~ a WSU campus is prohibited.

(3) Additional requirements.



(a) ~~((All advertising and publicity for each project must include:~~

~~(i) The name of the sponsoring organization.~~

~~(ii) The product or service being sold.)) Student organizations are required to comply with university facilities use rules and policies in order to use university facilities for commercial and charitable uses associated with financial projects.~~

~~(b) ((Any distributing, soliciting or selling must be done without individuals hawking or shouting.~~

~~(c)) An organization seeking approval to sell a ~~((prod-uct))~~ good or service must provide proof of ownership prior to approval.~~

~~((d) Individual students wishing to sell goods on campus must contact the director of the Compton Union Building.))~~

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 504-28-030                      Scheduling of events.

### **WSR 09-01-197**

#### **PROPOSED RULES**

#### **SECRETARY OF STATE**

[Filed December 24, 2008, 11:33 a.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 08-22-001.

Title of Rule and Other Identifying Information: Chapter 434-110 WAC, Corporation filing procedures and special fees and chapter 434-112 WAC, Corporations division and charities program services.

Hearing Location(s): Office of the Secretary of State, Conference Room, 416 Sid Snyder Way, Olympia, WA 98504, on January 27, 2009, at 4:00 p.m.

Date of Intended Adoption: February 24, 2009.

Submit Written Comments to: Megan Moreno, P.O. Box 40220, Olympia, WA 98504-0220, e-mail mmoreno@secstate.wa.gov, fax (360) 586-5629, by January 30, 2009.

Assistance for Persons with Disabilities: Contact Megan Moreno by January 23, 2009, TTY (360) 422-8683.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes have been proposed to update and correct outdated information.

Statutory Authority for Adoption: RCW 23.86.070, 23B.01.200, 23B.01.220, 24.03.405, 25.10.600, 43.07.120.

Statute Being Implemented: Chapters 434-110 and 434-112 WAC.

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

Name of Proponent: Office of the secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Pam Floyd, P.O. Box 40234, Olympia, WA 98504, (360) 725-0312.

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. The office of the secretary of state is exempt under RCW 34.05.328.

December 24, 2008

Steve Excell

Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 94-19-004, filed 9/8/94, effective 10/9/94)

**WAC 434-110-010 Purpose.** These rules establish procedures and fee schedules for filings, for expedited ~~((and tele-phone))~~ services, and for access to public records in the corporations division of the office of the secretary of state. These rules are adopted pursuant to Titles 23, 23B, 24, and 46 RCW, and chapters 19.77 and 43.07 RCW.

AMENDATORY SECTION (Amending WSR 00-21-084, filed 10/17/00, effective 11/17/00)

**WAC 434-110-030 Office hours.** (1) Business office hours are from 8:00 a.m. to 5:00 p.m. daily, Monday through Friday, excluding legal holidays. Walk-in, counter services are available for an expedited fee specified in WAC ~~((434-110-060))~~ 434-112-080. Emergency counter service at other times is available under terms of WAC ~~((434-110-060 (5) (b)))~~ 434-112-080(8).

(2) Documents, including substitute service-of-process on the secretary of state, delivered after normal working hours will be deemed to be received on the next working day. The secretary assumes no responsibility for any form of delivery other than that received personally by an employee of the office of the secretary of state.

AMENDATORY SECTION (Amending WSR 00-21-084, filed 10/17/00, effective 11/17/00)

**WAC 434-110-050 Mail-in service.** (1) Expedited services for mail-in requests are available for an expedited fee specified in WAC ~~((434-110-060))~~ 434-112-080(3).

(2) All mailed-in documents are processed and filed in order of date of receipt unless incomplete or incorrect. ~~((At the customer's request, a staff member will call (collect) to confirm the filing date of a document.))~~ A specific filing date may be reserved for up to thirty days in advance. The necessary documents, in appropriate format with correct fees, must be in the office by the specified date. ~~((Requests for information in a nonactive or archived file, will be processed on a time available basis.))~~

(3) Requests for name searches coupled with a name reservation are completed in order of date received. A name reservation may be made by completing the form provided by the corporations division or in a letter clearly containing all the following information:

(a) The corporate name desired, with two alternate names;

(b) The name, address, and telephone number of the applicant;

(c) The signature of the applicant; and

(d) The application date.

An application on behalf of a client should also include the client's name and complete address.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

**WAC 434-110-100 Registered office address—Requirements.** (1) A post office box address may be used in addition to a registered geographic office address when the United States Postal Service cannot or will not deliver to the street address.

(2) The registered agent is required to notify the office of the secretary of state and the corporation of any changes in either the street address or the post office box address. Change of address is subject to the fee stated in WAC 434-112-085 ~~((1)(j))~~ (2)(g).

AMENDATORY SECTION (Amending WSR 94-19-004, filed 9/8/94, effective 10/9/94)

**WAC 434-110-120 Initial and annual reports—Form of content.** (1) Any corporation filing under the Washington Business Corporations Act shall file its initial (annual) report on the form provided by the secretary of state or shall clearly and concisely provide the information topically sectioned exactly in the following manner:

(a) Section 1. Corporate name and registered agent and office address currently on file with the corporations division, the unified business identification number, corporations account number, state of incorporation, and original date filed in Washington;

(b) Section 2. If there has been a change in registered agent or registered office address include the effective date and the new agent's signature signifying acceptance of the appointment or the new address;

(c) Section 3. Address of principal place of business in Washington or, if a foreign corporation, the principal office address in state of original incorporation, the corporation telephone number, and a brief statement of nature of business;

(d) Section 4. A list of names and addresses of all corporate officers and directors; and

(e) Section 5. Signature of either the chair or president of the board of directors or an officer listed within the report.

(2) All profit and nonprofit corporations shall file their annual reports on the form prescribed by the secretary of state or clearly and concisely topically sectioned exactly in the following manner:

(a) Section 1. Corporate name and registered agent and office address currently on file with the corporations division, the unified business identification number, corporations account number, state of incorporation and original date filed in Washington;

(b) Section 2. If there has been a change in registered agent or registered office address include the effective date and the new agent's signature signifying acceptance of the appointment or the new address;

(c) Section 3. A list of names and addresses of all corporate officers and directors; and

(d) Section 4. The signature of either the chair or president of the board of directors or an officer listed within the report.

All annual reports must be accompanied by the statutory fee in RCW 23B.01.530 or ~~((24.03.450))~~ 24.03.405 (1)(b).

AMENDATORY SECTION (Amending WSR 93-20-072, filed 10/1/93, effective 11/1/93)

**WAC 434-110-130 Annual reports—Due date for all nonprofit corporations.** ~~((Beginning in January 1994, and for every year thereafter,))~~ Each nonprofit corporation shall file its annual report on the last day of the month of its original registration as a corporation. ((The fee paid to file the 1993 annual report or for filing new articles of incorporation in 1993 shall be sufficient to maintain an organization's good standing until its 1994 renewal date comes due. The corporations division shall notify all nonprofit corporations of this change in renewal dates by mail sent on December 15, 1993. Thereafter, beginning in January of 1994,)) The division shall notify each nonprofit corporation of its annual renewal date forty-five days in advance by a mailing that includes the annual report form. Failure to receive an annual report notice is insufficient reason for failing to file the statutorily required annual report.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-110-020 Office address.

WAC 434-110-040 Telephone services.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

**WAC 434-112-020 Corporations division address, telephone number and office hours.** ~~((1) The mailing address of the corporations division is: P.O. Box 40234-0234, Olympia, Washington 98504-40234.~~

~~(2) The corporations division is located in the James M. Dolliver Building at 801 Capitol Way South, Olympia, Washington.~~

~~(3) The telephone numbers for corporations division services are 360-753-7115 and 360-753-7120. The TDD line is 360-753-1485. Telephone services are available from 8:00 a.m. to 5:00 p.m. Pacific time, Monday through Friday, except for state holidays.~~

~~(4) The telephone number for charities program services is 360-753-0863. The toll free number in Washington is 1-800-332-GIVE (1-800-332-4483). The TDD number for the charities program is 1-888-658-1485. Telephone services are available from 8:00 a.m. to 5:00 p.m. Pacific time, Monday through Friday, except for state holidays.~~

~~(5) The corporations division counter is open for corporations and charities program services to in-person requests from 8:00 a.m. to 5:00 p.m. each business day. The corporations division is unable to guarantee same day processing of any filing or request submitted after 4:30 p.m. on that day.~~

See WAC 434-112-080 for fees and regulations related to expedited processing.)

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

**WAC 434-112-025 Documents delivered after normal working hours.** (1) Documents, including substitute service of process on the secretary of state, delivered after the normal working hours of 8:00 a.m. to 5:00 p.m., will be deemed to be received on the next working day.

(2) Filings submitted on-line will be deemed to be received as of the date and time the corporations division computer system records the complete submission and credit card approval for the transaction.

(3) The secretary assumes no responsibility for any form of delivery other than that:

(a) Received personally by an employee of the office of the secretary of state; or

(b) Received by the corporations division computer system as a result of an on-line filing.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

**WAC 434-112-030 Certificates for business filings.** ~~((+))~~ Certificates issued by the secretary of state or the secretary's designee in furtherance of duties under Titles 18, 19, 23, 23B, 24 and 25 RCW shall:

~~((a))~~ (1) Bear a rendition of the Washington state seal;

~~((b))~~ (2) Bear a mechanical or electronic reproduction of the secretary's signature; and

~~((c))~~ (3) Be regarded as the secretary of state's official certification of the matters itemized in the certificate.

~~((2))~~ The secretary may make commemorative certificates available. When such certificates are available, any person or entity completing a filing under the authority listed in WAC 434-112-010 (2)(a) through (d) may purchase a commemorative certificate bearing a gold foil seal documenting the filing.

~~(a)~~ The cost for a commemorative certificate is one hundred dollars;

~~(b)~~ Expedited service is not available for commemorative certificates.)

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

**WAC 434-112-040 Document standards for filings—Cover sheet requirement and document quality.** (1) A completed contact information cover sheet shall be submitted with each filing with the corporations division or the charities program if:

(a) The filing party is not the registered agent and would like the completed filing returned to them directly;

(b) The filing party would like expedited service under WAC 434-112-080; or

(c) The filing party would like correspondence related to a charities program filing sent to an individual at an address other than the mailing address of record.

(2) The cover sheet will include contact telephone and address information related to the filing, and provide an opportunity to advise the corporations division whether the request is for expedited service and designate the address to which the corporations division is to return the completed request.

(3) All corporations related filings received without a contact information cover sheet will be returned to the registered agent for the entity when processing is complete.

(4) Correspondence pertaining to a charities program filing received without a contact information cover sheet will be sent to the entity's mailing address of record when processing is complete.

(5) The corporations division including the charities program may reject and return documents and copies that are not legible or not capable of being recorded as an image with adequate resolution and clarity.

(a) Paper and ink must be of weight and color capable of producing a legible image regardless of the system used by the corporations division for creating the image.

(b) Documents completed in pencil will not be accepted for filing.

~~(c)~~ ~~((All filings except on-line filings must be submitted on 8 1/2 x 11 paper.~~

~~(d))~~ All text must be written or printed in eight point type or larger.

~~((6))~~ ~~All filings not presented on forms provided by the office of the secretary of state must have a three inch top margin on page one, with one inch side and bottom margins. Pages after page one must have a one inch margin on the top, bottom and sides.)~~

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

**WAC 434-112-075 On-line services.** (1) The corporations division web site is located at [www.secstate.wa.gov/](http://www.secstate.wa.gov/). The web site provides a variety of services for charities and corporations including on-line lookup, on-line filing and downloadable forms. Please see the web site for the most up to date list of services available.

(2) The following business entities may pay their annual license fees and submit their annual reports on-line, provided they meet the requirements of this subsection:

(a) Domestic or foreign profit corporations organized under Title 23B RCW, including professional service corporations under chapter 18.100 RCW; and Massachusetts trusts under chapter 23.90 RCW.

(b) Foreign and domestic limited liability companies registered or formed under chapter 25.15 RCW, including limited liability companies formed under RCW 25.15.045 to provide professional services.

(3) Entities filing annual reports on-line must have twenty-five or fewer board members, officers, shareholders, members or managers to report.

(4) On-line filings for foreign and domestic corporations, foreign and domestic limited liability companies, and registrations under the charities programs:

(a) Will be processed as expedited filings under WAC ~~((434-112-065))~~ 434-112-080;

(b) Will be subject to the expedited processing fee set forth in WAC ((434-112-065)) 434-112-080; and

(c) Be treated as received when the corporations division system records receipt of the completed transaction including payment authorization.

(5) When submitting an on-line filing, the person completing the filing shall sign the application by: Typing their full name in the space provided on the web form; stating their capacity with the entity addressed in the filing; and following the directions for signing the web form.

**AMENDATORY SECTION** (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

**WAC 434-112-080 In-person or expedited service—Special fees.** (1) The corporations division counter is open for corporations and charities program services to in-person requests from 8:00 a.m. to 5:00 p.m. each business day.

(a) Staff provides expedited, same-day processing of documents or requests submitted in person prior to 4:30 p.m. on that day. The corporations division is unable to guarantee same day processing of any filing or request submitted after 4:30 p.m. on that day.

(b) Expedited requests submitted by fax, mail or on-line will be completed within two working days of submission, or as soon thereafter as possible.

(2) Expedited services under this section are available for the following transactions:

(a) Business filing transactions:

(i) Charter document review and filing;

(ii) Name reservation review and filing;

(iii) Document certification;

(iv) Document copying or status certificates;

(v) Status change filings;

(vi) Reinstatements; and

(vii) Trademark filings.

(b) Charities program filings:

(i) Document review and filing including initial registration and renewals of charities, commercial fund-raisers and charitable trusts;

(ii) Document copying and status verification letters;

(iii) Status change filings.

(c) Apostille requests submitted at the corporations division counter.

(3) The fee for ((same-day)) expedited service is twenty dollars for single or multiple transactions within each new or existing corporation program file, or charities program file. In addition, the filing fee for each transaction will apply.

(4) Except for on-line filings, the filing party shall indicate that expedited processing is requested by:

(a) Submitting a completed contact information cover sheet as described by WAC 434-112-040 indicating that the document is submitted for expedited filing; or

(b) Placing the word "expedite" conspicuously on either the face of the document to be filed, or on any cover letter submitted with the document.

(5) All documents submitted for filing on-line and corporations documents submitted via facsimile transmission are treated as expedited processing requests. Registrations with the charities program may not be submitted by facsimile.

Documents transmitted via facsimile will receive expedited ((forty-eight hour)) processing within two working days of submission, or as soon thereafter as possible when the documents are received between 8:00 a.m. and 5:00 p.m. Pacific time each business day. The fee for facsimile filings is twenty dollars for single or multiple transactions within each new or existing corporation or trademark file. In addition, the filing fee for each transaction will apply.

(6) There is no expedited fee for the following transactions, unless they are submitted via facsimile transmission ((as set forth under subsection (3) of this section)) or on-line:

(a) Registered agent or address change;

(b) Initial reports;

(c) License renewal and required annual report;

(d) Amended annual reports;

(e) In-person inspection or review of corporation files or other public documents located in the corporations division office;

(f) Documents left at the counter for processing with mail-in documents received the same day; or

(g) A search for nonactive corporations less than twenty years old or trademark files less than six years old.

(7) If staff cannot complete the expedited service request before the end of the same day, or the second consecutive business day for facsimile filings, the transaction will be completed ((on the following business day)) as soon as possible.

(8) Emergency services needed outside regular business hours requiring employee overtime are one hundred fifty dollars per hour plus regulatory or statutory fees due for the form of the filing. When the division receives an emergency request, staff notifies the customer of the service fee and any other reasonable conditions set by the director. The customer must agree to pay the fees or have received a fee waiver before emergency services are provided.

(9) Service may be limited under extraordinary circumstances.

(a) Over-the-counter service hours may be shortened under extraordinary circumstances.

(b) Separate over-the-counter service requests by one person may be limited to those relating to three corporations per day.

(c) Documents submitted by courier services or document-handling companies may receive twenty-four-hour service or as soon thereafter as possible.

(d) A customer may make alternate arrangements with the director prior to bringing or sending in documents, if a sudden, unexpected situation occurs during the business day.

(10) A person submitting a filing or request may submit a written request asking the secretary to waive emergency or penalty fees.

(a) The request must include the special circumstances justifying the fee waiver.

(b) Under special circumstances the secretary may waive emergency or penalty fees.

(11) Fees for expedited or in-person processing will not be refunded ((if processing the request is delayed or not completed due to documents that lack required information, that contain provisions prohibited by Washington law, or are not

presented in a manner that can be legibly preserved in the records of the office of the secretary of state)).

AMENDATORY SECTION (Amending WSR 07-20-065, filed 9/28/07, effective 10/29/07)

**WAC 434-112-085 Fees and penalties.** (1) For Washington registered profit domestic and foreign corporations, including profit cooperative associations, employee cooperative associations, limited liability companies, limited partnerships, Massachusetts trusts and limited liability partnerships, fees and penalties are as follows:

(a) Articles of incorporation, certificates of formation, certificate of limited partnership ((agreements)) and other original filings, one hundred seventy-five dollars;

(b) Articles of amendment, restatement, correction, or revocation of dissolution, thirty dollars; articles of amendment for limited partnerships are twenty-five dollars;

(c) License renewal with required annual report filed after due date and before administrative dissolution, penalty fee of twenty-five dollars, plus the statutory fee of fifty dollars and the department of licensing handling fee of nine dollars; limited partnership and limited liability partnership annual report statutory fee is fifty dollars;

(d) Reinstatement, one hundred dollars plus all delinquent license or annual fees and a twenty-five percent penalty computed on the total amount;

(e) Articles of merger or exchange, twenty dollars for each listed company;

(f) Resignation of registered agent, twenty dollars;

(g) Resignation of officer or director, an initial report or amended annual report, and the appointment or change of registered agent or change of registered address, ten dollars;

(h) Registration, reservation, or transfer of name, thirty dollars;

(i) Articles of dissolution, certificate of withdrawal, dissolution by judicial decree, or revocation of certificate of authority by either failure to renew or judicial decree, no fee;

(j) Agent's consent to act as agent, agent's resignation if appointed without consent, or annual report when filed concurrently with annual license fee, no fee; and

(k) Other statement or report filed, ten dollars.

(2) For Washington registered domestic and foreign non-profit corporations, nonprofit miscellaneous and mutual corporations, building corporations, and other associations and corporations under Title 24 RCW, fees and penalties are as follows:

(a) Articles of incorporation and other original filings, thirty dollars;

(b) Articles of amendment, restatement, ~~((or correction))~~ twenty dollars;

(c) Articles of dissolution or certificate of withdrawal, no fee;

(d) Revocation of dissolution, twenty dollars;

(e) Reinstatement following administrative dissolution, thirty dollars plus all delinquent annual fees and a five-dollar penalty;

(f) Articles of merger or exchange, twenty dollars for each listed corporation;

(g) Resignation of officer or director, an initial report or amended annual report, the appointment or change of registered agent, or change of registered address, ten dollars;

(h) Resignation of registered agent, twenty dollars;

(i) Registration, reservation, or transfer of reservation of name, twenty dollars;

(j) Certificate of election adopting provisions of chapter 24.03 RCW as described in RCW 24.03.017, thirty dollars; and

(k) Other statement or report filed, ten dollars.

(3) For registering trademarks for use within the state, the fees are as follows:

(a) For a five-year registration or renewal, fifty dollars for each class in which the trademark is registered;

(b) For recording the assignment of a trademark and its registration or application for registration, ten dollars;

(c) For a new certificate with the name of the new assignee, five dollars;

(d) For reservation of a trademark for one hundred eighty days, thirty dollars for each class in which the trademark is reserved;

(e) For amendment of a trademark to add new classes of goods or services, fifty dollars for each class added by the amendment;

(f) Cancellation of trademark, no fee; and

(g) Other statement or report filed, ten dollars.

(4) For registration of a declaration of state registered domestic partnership, or registration of a notice of termination of state registered domestic partnership, fifty dollars each.

(5) Fees paid under WAC 434-112-085 are not refundable. Under special circumstances, the filing party may petition the secretary in writing to request a waiver of emergency or penalty fees.

AMENDATORY SECTION (Amending WSR 07-20-065, filed 9/28/07, effective 10/29/07)

**WAC 434-112-090 Miscellaneous fees.** (1) ~~((For photocopies, fees are as follows:))~~ Copy fees for corporate documents are:

(a) Each annual report, five dollars;

(b) Initial articles of incorporation, initial certificate of formation, other initial organizing document ~~((or any single document))~~, ten dollars;

(c) Articles of incorporation, certificate of formation, other organizing documents including all subsequent amendments and restatements, twenty dollars;

(d) Copy of any filing related to a state registered domestic partnership, five dollars;

(e) Surcharge for files exceeding one hundred pages of copy, thirteen dollars for each fifty-page increment (number of pages determined by weight of copies);

(2) For certificates of existence fees are as follows:

(a) With complete historical data, under embossed seal, thirty dollars;

(b) ~~((Computer generated))~~ Without complete historical data, twenty dollars;

(c) Duplicate certificate twenty dollars.

(3) For additional certificates of registration or termination of a state registered domestic partnership, five dollars. For an additional or replacement state registered domestic partnership wallet card, ten dollars.

(4) For verifying the signature of a notary or public official for an apostille or certification authenticating a sworn document, the fee is fifteen dollars. ~~((This includes:~~

~~(a) A ten-dollar fee for verifying the signature of a notary or public official; and~~

~~(b) A five-dollar fee for providing a certificate under seal pursuant to RCW 47.03.120 (1)(b).))~~

(5) For each certified copy of any document the fee is ~~((ten dollars plus a ten-dollar copy fee per document))~~ twenty dollars.

(6) For any service of process the fee is fifty dollars.

(7) Dishonored checks. If a person, corporation or other submitting entity has attempted to pay any fee due to the secretary of state by means of a check, and the check is dishonored by the financial institution when presented, the secretary of state will impose a twenty-five-dollar penalty, payable to the secretary of state.

In the event a valid replacement check and dishonor charge is not received in the office of the secretary of state within the time prescribed by its accounting division, the transaction covered by the dishonored check will be canceled and all other late filing fees and penalties will be instituted.

AMENDATORY SECTION (Amending WSR 07-20-065, filed 9/28/07, effective 10/29/07)

**WAC 434-112-100 State registered domestic partnerships.** (1) State registered domestic partnerships will be registered by the corporations program, in the corporations division of the office of the secretary of state.

(2) Declarations of state registered domestic partnerships, and notices of termination of state registered domestic partnerships may be submitted to the corporations division by mail, or in person. See WAC 434-112-020 for the corporations division ~~((address and))~~ hours of service.

(3) The document standards in WAC 434-112-040(5) apply to declarations of state registered domestic partnerships and to notices of termination of state registered domestic partnerships.

(4) At the time of registration of a declaration of state registered domestic partnership or of filing of a notice of termination of state registered domestic partnership the corporations division will provide to each state registered domestic partner:

(a) One original certificate of registration or termination. Further certificates or additional certificates requested after registration are available subject to the fees set forth in WAC 434-112-090.

(b) One wallet sized card documenting registration of the state registered domestic partnership.

(5) Registrations of state registered domestic partnerships are public records and all documents related to the registration are subject to public disclosure.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-112-095

Fee prepayment—When required.