

WSR 10-01-007
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed December 2, 2009, 4:29 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-17-023.

Title of Rule and Other Identifying Information: Revises WAC 181-78A-105, amends time frames for reviews of preparation programs. Adds flexibility and aligns reviews with reporting requirements to board.

Hearing Location(s): Inn at Gig Harbor, 3211 56th Street N.W., Gig Harbor, WA 98335, on March 24, 2010, at 8:30 a.m.

Date of Intended Adoption: March 24, 2010.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by March 5, 2010.

Assistance for Persons with Disabilities: Contact David Brenna by March 5, 2010, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes time line requirements for approved programs allowing more time to prepare site reviews and report to the board.

Reasons Supporting Proposal: Stakeholder recommendations.

Statutory Authority for Adoption: RCW 28A.410.210.

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

Name of Proponent: Professional educators standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 47236 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-3631, e-mail david.brenna@k12.wa.us.

December 2, 2009

David Brenna

Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 09-20-109, filed 10/7/09, effective 11/7/09)

WAC 181-78A-105 Procedures for initial approval of an educator preparation program. Each college or university desiring to establish a preparation program shall comply with the following:

(1) Advise the professional educator standards board of its desire to establish a preparation program.

(2) Develop with the assistance of the professional education advisory board (~~((and designated staff of the office of the superintendent of public instruction;))~~) a written preproposal plan which addresses all preproposal components adopted and published by the professional educator standards board and submit such plan to the designated official of the professional educator standards board for review and comment. (~~((Resubmit such plan to the designated official.))~~)

(3) Submit such plan to the professional educator standards board. The college or university may be granted approval for full proposal development or denied approval.

(a) If approved, the college or university shall comply with the following:

(i) Establish the appropriate professional education advisory board pursuant to WAC 181-78A-205;

(ii) Develop with assistance of the professional education advisory board (~~((and designated staff of the office of the superintendent of public instruction;))~~) a written plan which includes the following:

(A) Timelines for the implementation of all applicable program approval standards during the first year of the program;

(B) The criteria that the program will use to assess, in multiple ways over time, its candidates' knowledge and skills including evidence related to positive impact on student learning (WAC 181-78A-205(4))(~~((, provided that a college/university with an approved residency principal program which adds an approved program administrator program is not required to have a site visit of the program administrator program until the next regularly scheduled site visit of that institution;))~~);

(C) How the professional education advisory board was involved in program development, including a letter of support; and

(D) Letters of support from partnership districts and/or other agencies.

(iii) Present the written plan to the professional educator standards board.

(A) The program may be conditionally approved (~~((for up to a two-year period))~~) in a specific location(s) for a period of up to twenty-seven months following the beginning of instruction. The institution shall notify the professional educator standards board when instruction has begun. If not approved, the college or university may resubmit its revised plan or request a contested hearing via an appeal team appointed by the professional educator standards board.

(B) (~~((During the second year))~~) Prior to the expiration of approval, staff of the ((office of the superintendent of public instruction)) professional educator standards board shall conduct a site visit and/or other forms of documentation to determine if the program is in full compliance with the 1997 program approval standards; provided that a college/university with an approved residency principal program which adds an approved program administrator program is not required to have a site visit of the program administrator program until the next regularly scheduled site visit of that institution.

(b) If denied, the college or university may resubmit its plan based upon the suggestions of the professional educator standards board.

(4) Programs shall be approved for a specific location(s) identified in the written plan presented to the professional educator standards board. Institutions seeking to expand an existing program to a new location shall submit a request to the professional educator standards board which contains the following:

- (a) A description of the location and facilities;
- (b) Verification that no complaints have been filed against the program in its current location(s);
- (c) A summary of the findings from the most recent site review, including how weaknesses, if any, have been addressed;
- (d) A statement that supports need for the program;
- (e) Cost to the students;
- (f) Mode(s) of the program delivery; and
- (g) Letters of support from program partners. The length of time for which the program approval status shall be granted shall coincide with the length of time for which the program in its current location(s) last received approval. The program review cycle for programs at all locations shall be the same.

WSR 10-01-037
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed December 7, 2009, 4:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-20-076.

Title of Rule and Other Identifying Information: WAC 220-33-030 Shad.

Hearing Location(s): Natural Resources Building, First Floor, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on February 5-6, 2010, at 8:30 a.m.

Date of Intended Adoption: March 12, 2010.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Lori.Preuss@dfw.wa.gov, fax (360) 902-2155, by January 30, 2010.

Assistance for Persons with Disabilities: Contact Susan Yeager by January 30, 2010, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal will make the Columbia River shad fishery a permanent season, eliminating the need for annual emergency regulations to be implemented.

Reasons Supporting Proposal: The fishery has been adopted under emergency rules on an annual basis. This proposal will help fishers and processors to plan for same season each year. The rule will be consistent with the Oregon department of fish and wildlife's rule in concurrent waters of the Columbia River.

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: The Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Cindy LeFleur, 2108 Grand Boulevard, Vancouver, WA 98661, (360) 906-6708; Implementation: Jim Scott, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2651; and Enforcement: Chief 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. The proposed changes do not impose any additional burdens or costs on fishers or dealers participating in commercial shad fisheries.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not involve hydraulics.

December 7, 2010

Lori Preuss

Rules Coordinator

AMENDATORY SECTION (Amending Order 88-86, filed 9/2/88)

WAC 220-33-030 Shad. It is unlawful to fish for shad in the lower Columbia River for commercial purposes, or to possess shad taken from those waters for commercial purposes, except as provided in this section:

Gear

(1) Gill net gear may be used to fish for shad if:

(a) The cork line of the gill net does not exceed ~~((1,500))~~ 900 feet in length (150 fathoms) and has sufficient buoyancy to float the cork line on the surface. Also, the net may not exceed 40 meshes in depth.

(b) The webbing of the gill net is constructed of mesh having a breaking strength of less than 10 pounds. The gill net may be constructed of monofilament webbing or twine.

(c) The mesh size of the gill net is not less than 5-3/8 inches or more than 6-1/4 inches stretch measure.

(d) The gill net does not have more than a single web. The gill net web shall be suspended between a single cork line and a single lead line.

(e) The gill net does not have added lines, strings, back-walls, trammels, or aprons. Riplines may be used but may not be less than 10 fathoms (60 feet) apart.

Fishing periods

(2) The lower Columbia River is ~~((closed))~~ open to commercial shad fishing ~~((except as provided by emergency rule of the director))~~ in Shad Area 2S from 3:00 p.m. to 10:00 p.m. daily, Monday through Friday (except on the observed Memorial Day holiday), from May 10 through June 20 annually. Shad taken incidentally during an open commercial salmon or sturgeon fishing period may be retained for commercial purposes.

General

(3) As used in this chapter and in emergency rules of the director, unless the context clearly requires otherwise:

(a) "Shad Area 2S" means those waters of Salmon Management and Catch Reporting Area (SMCRA) 1D and 1E that are upstream of a line projected true north and south from the Oregon shore through the Washougal blinker light (light "50" flashing red) to a fishing boundary marker on the Washington shore (~~(and to the Oregon shore)~~) (upper boundary of SMCRA 1E).

(b) "Camas-Washougal Reef Area" means those waters of SMCRA 1D inside of a line commencing at the white six-second equal-interval light approximately 3/4 mile east of the Washougal Woolen Mill pipeline and projected westerly to the Washougal blinker light, thence to the white four-second blinker light on the east end of Lady Island, thence easterly and along the shoreline of Lady Island to the State Highway 14 Bridge, thence easterly and along the shoreline of Lady Island to the State Highway 14 Bridge, thence easterly across the State Highway 14 Bridge to the mainland.

WSR 10-01-059
PROPOSED RULES
SECRETARY OF STATE
[Filed December 10, 2009, 9:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-20-021.

Title of Rule and Other Identifying Information: International student exchange program.

Hearing Location(s): 801 Capitol Way South, Olympia, WA 98504, on January 26, 2010, at 10:00 a.m.

Date of Intended Adoption: January 27, 2010.

Submit Written Comments to: Scott Murphy, P.O. Box 40234, Olympia, WA 98504-0234, e-mail Scott.Murphy@sos.wa.gov, fax (360) 586-4989, by January 25, 2010.

Assistance for Persons with Disabilities: Contact Sharon Baker by January 25, 2010, (360) 725-0312, Sharon.baker@sos.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updating references and creating consistency between state and federal standards.

Reasons Supporting Proposal: Current rules reference requirements to be obtained from a federal agency that no longer exists but has been replaced by another. Federal standards on insurance had changed and state standards should meet this same standard.

Statutory Authority for Adoption: RCW 19.166.050.

Statute Being Implemented: RCW 19.166.010 through [19.166.]100.

Rule is necessary because of federal law, [no further information supplied by agency.]

Name of Proponent: Division of corporations, office of the secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting: Pamela Floyd, 801 Capitol Way South, Olympia, WA 98504,

(360) 725-0310; Implementation: Scott Murphy, 801 Capitol Way South, Olympia, WA 98504, (360) 725-0310; and Enforcement: Douglas D. Walsh, 800 Fifth Avenue, Suite 2000, Seattle, WA 98104, (206) 464-6388.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These changes reflect changes in federal law and have no further economic impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are adopting by reference without material change, Washington state statutes and are not required to do a cost-benefit analysis per RCW 34.05.328 (5)(iii).

December 10, 2009

Steve Excell

Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 92-10-023, filed 4/29/92, effective 5/30/92)

WAC 434-166-010 Authority. These rules are adopted under the authority of chapter 19.166 RCW (~~(19.166.040 and 19.166.060)~~) to provide for the administration of the International Student Exchange Agency Registration Act, hereafter referred to as the "act." These regulations shall be considered a supplement to and not a replacement for the act.

AMENDATORY SECTION (Amending WSR 00-21-086, filed 10/17/00, effective 11/17/00)

WAC 434-166-030 Official address, telephone number of the office of the secretary of state, international student exchange (~~(division)~~) program. The address to be used for delivery and receipt of mail, information, registration applications, amendments, fees, and other material required by the act is:

Office of the Secretary of State
International Student Exchange (~~(Division~~
~~801 Capitol Way S)~~) Program
P.O. Box 40234
Olympia WA 98504-0234

The telephone number to be used for inquiries relating to this act and to be disclosed by the organization as required by RCW 19.166.070, is: (~~((360)-753-7120))~~ 360-725-0377.

AMENDATORY SECTION (Amending WSR 92-10-023, filed 4/29/92, effective 5/30/92)

WAC 434-166-040 Office hours. Customary hours of operation of the International Student Exchange Division are 8:00 a.m. to (~~(4:30))~~ 5:00 p.m., Monday through Friday, except holidays. Registration documents received after (~~(4:00))~~ 4:30 p.m. will not be processed until the next day.

AMENDATORY SECTION (Amending WSR 92-10-023, filed 4/29/92, effective 5/30/92)

WAC 434-166-050 Public records. Except as provided by RCW (~~(42.17.310))~~ 42.56.230, all documents relating to the International Student Exchange Division are public

record and are available for public inspection and copying pursuant to rules of procedure, chapter 434-12A WAC.

AMENDATORY SECTION (Amending WSR 92-10-023, filed 4/29/92, effective 5/30/92)

WAC 434-166-080 Definitions. Terms defined in RCW 19.166.020 shall apply in these regulations. In addition, the following definitions shall be applicable when used in these regulations:

(1) "Secretary" means the secretary of state or an employee of the secretary acting under the authority of the secretary.

(2) "Act" means the International Student Exchange Agency Registration Act, chapter 128, Laws of 1991 and Title 19 RCW.

(3) "International student exchange visitor placement organization" or "organization" means any organization which arranges for the placement of two or more international student exchange visitors in the state of Washington during any consecutive five-year period.

(4) "International student exchange visitor" or "student" means any foreign national who:

(a) Is eighteen years of age or under, or up to the age of twenty-one; and

(b) Is engaged in full-time participation in a prescribed course of study in this state conducted by any secondary public institution of learning; and

(c) Has been selected to participate in an exchange visitor program sponsored by an international student exchange visitor placement organization; and

(d) Enters the state of Washington with a nonimmigrant visa.

(5) "Responsible officer" means the officer or employee of the international student placement organization who has primary authority for supervising placements in the state of Washington.

(6) "Responsible officer address" means the physical location of the responsible officer.

(7) "Immediate family" means the parent(s) or legal guardian(s) of an international student exchange visitor.

(8) "Nonimmigrant visa" means a visa category used by nonresident aliens whose primary purpose for visiting the United States is to study full time at an approved institution.

(9) "Host family" means the family residing in the state of Washington that the international student exchange visitor resides with during his or her period of academic study.

(10) ~~("USIA" shall mean United States Information Agency.~~

~~(11) "USIA regulations" means regulations promulgated by the United States Information Agency (USIA) governing exchange visitor programs designated by them.~~

~~(12) "USIA designation letter" means the letter from USIA showing acceptance into its' program.~~

~~(13)) "CSIET" means the Council on Standards for International Educational Travel.~~

~~((14)) (11) "CSIET standards" means standards published by CSIET and used by the CSIET to evaluate the operations of international student exchange visitor placement organizations.~~

~~((15)) (12) "CSIET's approval for listing letter" means the letter from CSIET showing that the placement organization meets the standards set by the CSIET and has been accepted for the current listing.~~

~~((16)) (13) "High school" means any secondary public institution of learning in the state of Washington.~~

AMENDATORY SECTION (Amending WSR 92-10-023, filed 4/29/92, effective 5/30/92)

WAC 434-166-110 Health and accident insurance.

(1) Each organization shall ensure that every student participating in the exchange program has health and accident insurance from the time of departure from home to the time the student returns to his or her home country. Minimum acceptable insurance is:

(a) Medical and accident coverage of fifty thousand dollars per illness or accident;

(b) Preparation and transportation of remains to the student's home country (minimum of ~~((five)) seven~~ thousand five hundred dollars) in the event of death. Coverage may be provided in one of the following ways:

(i) By the student;

(ii) By the organization.

(2) The organization is responsible for providing each student, each student's immediate family and the host family detailed printed information regarding the terms and limits of insurance coverage and procedures for filing a claim (including forms wherever possible).

(3) The organization shall maintain in its files proof of health and accident insurance.

AMENDATORY SECTION (Amending WSR 92-10-023, filed 4/29/92, effective 5/30/92)

WAC 434-166-130 Selection of host family. (1) The organization is responsible for making all arrangements for the placement of each student with a host family whose home is located in a place convenient to the educational institution in which the student is to be enrolled.

(2) The organization shall make every effort to assure the maximum degree of compatibility between the family and the student, including, wherever possible, the presence in the family of a teenage student.

(3) The organization's representative shall visit the home of, and personally interview, each host family before a student is assigned to such family including verifying that each member of the host family eighteen years of age and older has undergone a criminal background check.

(4) The organization shall ensure that its representative selects only those homes which reflect the high quality expected of the International Student Exchange Agency Program.

(5) A written record shall be made of this visit and interview by the representative, a copy of which shall be maintained by the organization.

(6) Selection of host families and assignment of students shall be made as far in advance of the student's arrival as possible, but in no event less than three weeks prior to departure from the student's home.

(7) No organization shall bring a student into the United States without written acceptance from the host family.

(8) The host family shall be advised in writing of the name, age, educational status, other background information, and anticipated arrival time of the assigned student.

(9) The student's immediate family shall be advised in writing of the name, address, family composition, and other background information concerning the host family at the earliest possible time, to permit the exchange of correspondence between the respective families in advance of the student's arrival.

(10) Copies of these notifications shall be maintained in its files by the organization.

AMENDATORY SECTION (Amending WSR 92-10-023, filed 4/29/92, effective 5/30/92)

WAC 434-166-220 Change of responsible officer and/or responsible officer address. An organization may change its responsible officer or responsible officer address by delivering to the secretary, within thirty days of the change, a statement of change form prescribed by the secretary that sets forth:

(1) The name of the organization;

(2) If the current officer address is to be changed, the street address of the current officer and the street address of the new officer address in accordance with WAC 434-166-210;

(3) If the current responsible officer is to be changed, the name of the current responsible officer and the name of the new responsible officer; and

(4) The new officer's written consent accepting the responsibility of the responsible officer.

AMENDATORY SECTION (Amending WSR 92-10-023, filed 4/29/92, effective 5/30/92)

WAC 434-166-230 Resignation of responsible officer. (1) A responsible officer may resign by signing and delivering to the secretary of state for filing a statement of resignation. The statement must also include a statement that the responsible officer address is also discontinued.

(2) After filing the statement the secretary of state shall mail a copy of the filed statement and a statement of change form to the organization at its organizational address.

(3) The organization shall appoint a new responsible officer and responsible officer address within thirty days of notification.

AMENDATORY SECTION (Amending WSR 92-10-023, filed 4/29/92, effective 5/30/92)

WAC 434-166-250 Individual located in state of Washington. (1) The organization shall maintain an in-state telephone number as required by RCW 19.166.070. This telephone number shall be registered to an individual residing in the state of Washington, which may be:

- (a) An employee for the organization; or
- (b) An officer for the organization; or
- (c) A volunteer for the organization.

(2) The organization shall ~~((insure))~~ ensure that this individual has:

(a) A listing of all placements of students by the organization and the location of each in the state of Washington;

(b) Knowledge of emergency procedures;

(c) Twenty-four-hour contact with the organization for emergencies;

(d) Knowledge and capability to assist and advise the students in their relationship with the organization;

(e) A business or residential address within a one hundred twenty mile radius of all placements of students.

(3) Each individual maintaining the in-state telephone number for the organization shall sign a written agreement with the organization~~(-)~~, a copy of which shall be submitted to the secretary with the registration application.

AMENDATORY SECTION (Amending WSR 96-10-052, filed 4/29/96, effective 5/30/96)

WAC 434-166-260 Requirement to register. Each organization operating in Washington is required to register with the secretary, if two or more students are placed in Washington public high schools within a five year period. Registration is due in the office of the secretary during the enrollment period of March 1st through June 15th preceding the beginning of the next school year.

~~((Organizations governed by chapter 19.166 RCW and also registered as a nonprofit corporation under Title 24 RCW shall renew both registrations concurrently in the enrollment period specified in this section.))~~

The secretary shall provide, annually, a list of all international student exchange agencies registered as of June 15th to the superintendent of public instruction on or before August 5th of the same year. Subsequent lists may be provided at a later date.

AMENDATORY SECTION (Amending WSR 92-10-023, filed 4/29/92, effective 5/30/92)

WAC 434-166-270 Transaction of business or conducting affairs. No organization that is a foreign corporation ~~((or))~~, limited partnership, or limited liability company defined in RCW 23B.01.400(2), 24.03.005(2), 24.06.005(2) ~~((and))~~, 25.10.010(4), and 25.15.005(3) will be registered under this program unless and until the organization complies with foreign corporation ~~((or))~~, limited partnership, or limited liability company registration requirements.

AMENDATORY SECTION (Amending WSR 96-10-052, filed 4/29/96, effective 5/30/96)

WAC 434-166-280 Application for registration. (1) Any organization meeting the requirements set forth in chapters 19.166 RCW and 434-166 WAC shall register with the secretary of state. Such registration shall be made on a form prescribed by the secretary of state and filed with the secretary's office.

(2) The applicant must also provide evidence that they have met the established standards as an international student exchange visitor placement organization, by:

(a) Submitting a copy of the ((USIA's)) U.S. Department of State's Designation Letter showing current registration; or

(b) Submitting a copy of the CSJET's Approval for Listing Letter showing current registration; or

(c) Submitting a notarized statement, on a form prescribed by the secretary of state, declaring that the organization has met all standards and obligations as required by chapters 19.166 RCW and 434-166 WAC.

(3) Registrations filed during the enrollment period specified in WAC 434-166-260 are valid until June 15th of the next year. All other registrations expire June 15th of the next enrollment period.

AMENDATORY SECTION (Amending WSR 99-16-066, filed 8/2/99, effective 9/2/99)

WAC 434-166-290 Application for ((re)registration) renewal. (1) Prior to the expiration of the registration period, organizations may seek ((re)registration) renewal within the enrollment period specified in WAC 434-166-260 by completing the registration requirements as set forth in RCW 19.166.040 and WAC 434-166-280.

(2) The secretary may mail a ((re)registration) renewal form to the responsible officer/responsible officer address within forty-five days prior to the registration expiration.

(3) Failure of the secretary to notify the organization of ((re)registration) renewal does not relieve the organization's obligation for filing ((its' re)registration) its renewal documents.

(4) Applications to ((re)register) renew must be filed by the due date specified by RCW 19.166.040; no extensions will be granted by the secretary.

AMENDATORY SECTION (Amending WSR 92-10-023, filed 4/29/92, effective 5/30/92)

WAC 434-166-300 Fees. (1) Organizations required to register or ((re)register) renew under RCW 19.166.030 and chapter 434-166 WAC shall pay a fee of fifty dollars per application.

(2) A notification of change of information required under RCW 19.166.050 shall be accepted without fee.

AMENDATORY SECTION (Amending WSR 99-16-066, filed 8/2/99, effective 9/2/99)

WAC 434-166-310 Termination. Registrations of organizations shall be terminated when any of the following circumstances set forth occur:

(1) Voluntary termination. An organization may voluntarily terminate its registration by notifying the secretary of such intent. The organization's registration shall terminate upon such notification.

(2) Failure to apply for ((re)registration) renewal. Failure to apply for ((re)registration) renewal will result in the automatic termination of the organization's registration. If so terminated, the former organization must apply for a new registration.

(3) Loss of license, permit or accreditation. An organization's registration shall automatically terminate in the event that the organization fails to remain in compliance with local,

state statute and regulations, federal, or professional requirements necessary to carry out the activities for which it was registered.

(4) Ownership change. An organization's registration shall automatically terminate in the event of a change of structure of the organization.

(5) Failure to notify. An organization's registration shall automatically terminate in the event the organization fails to notify the secretary within thirty days of any changes in their registration documents within thirty days, as required by RCW 19.166.040(3).

WSR 10-01-060

PROPOSED RULES

SECRETARY OF STATE

[Filed December 10, 2009, 10:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-20-022.

Title of Rule and Other Identifying Information: Trademark registrations.

Hearing Location(s): 801 Capitol Way South, Olympia, WA 98504, on January 27, 2010, at 10:00 a.m.

Date of Intended Adoption: January 28, 2010.

Submit Written Comments to: D Ann Peters, P.O. Box 40234, Olympia, WA 98504-0234, e-mail Dann.peters@sos.wa.gov, fax (360) 586-4989, by January 26, 2010.

Assistance for Persons with Disabilities: Contact Sharon Baker by January 26, 2010, (360) 725-0312.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updating rejection process, creating consistency between state and federal classification codes, and setting copy fees.

Reasons Supporting Proposal: Over time, the codes are changed at the federal level and state law requires that Washington's classification codes conform to the United States patent and trademark office.

Statutory Authority for Adoption: RCW 19.77.090, 19.77.115.

Statute Being Implemented: RCW 19.77.080, 19.77-115.

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

Name of Proponent: Division of corporations, office of the secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting: Pamela Floyd, 801 Capitol Way South, Olympia, WA 98504, (360) 725-0310; Implementation: Scott Murphy, 801 Capitol Way South, Olympia, WA 98504, (360) 725-0310; and Enforcement: Office of Attorney General, 1125 Washington Street S.E., P.O. Box 40100, Olympia, WA 98504, (360) 753-6200.

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

A cost-benefit analysis is not required under RCW 34.05.328. These rules are adopting by reference without material change, Washington state statutes and are not

required to do a cost-benefit analysis per RCW 34.05.328 (5)(iii).

December 10, 2009
Steve Excell
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

WAC 434-12-005 Trademark filing—Fees—Office hours—Location. (1) Trademarks are filed with the corporations division of the secretary of state. ~~((Please refer to chapter 434-112 WAC for corporations division office hours, location, filing procedures and telephone numbers.))~~

(2) Filing and other fees for trademarks are set forth in WAC 434-112-080 through 434-112-090.

(3) Photocopy fees for trademarks are per WAC 434-12A-100.

(4) Certified copies of trademarks are ten dollars for each certification plus the photocopy fee.

AMENDATORY SECTION (Amending WSR 04-05-041, filed 2/12/04, effective 3/14/04)

WAC 434-12-015 Classification of goods and services. (1) The corporations division adopts the following table for classification of goods and services:

Goods

1. Chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins; unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesives used in industry.

2. Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants; mordants; raw natural resins; metals in foil and powder form for painters, decorators, printers and artists.

3. Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.

4. Industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminants; candles, wicks.

5. Pharmaceutical, veterinary, and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.

6. Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; nonelectric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; ores.

7. Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmis-

sion components (except for land vehicles); agricultural implements other than hand-operated; incubators for eggs.

8. Hand tools and implements (hand-operated); cutlery; side arms; razors.

9. Scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signaling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire extinguishing apparatus.

10. Surgical, medical, dental, and veterinary apparatus and instruments, artificial limbs, eyes, and teeth; orthopedic articles; suture materials.

11. Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply, and sanitary purposes.

12. Vehicles; apparatus for locomotion by land, air, or water.

13. Firearms; ammunition and projectiles; explosives; fireworks.

14. Precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes; jewelry, precious stones; horological and chronometric instruments.

15. Musical instruments.

16. Paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); playing cards; printers' type; printing blocks.

17. Rubber, gutta-percha, gum, asbestos, mica and goods made from these materials and not included in other classes; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, not of metal.

18. Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and traveling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.

19. Building materials (nonmetallic); nonmetallic rigid pipes for building; asphalt, pitch and bitumen; nonmetallic transportable buildings; monuments, not of metal.

20. Furniture, mirrors, picture frames; goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics.

21. Household or kitchen utensils and containers (not of precious metal or coated therewith); combs and sponges; brushes (except paint brushes); brush making materials; articles for cleaning purposes; steel wool; unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes.

22. Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes); padding and stuffing materials (except of rubber or plastics); raw fibrous textile materials.

23. Yarns and threads, for textile use.

24. Textiles and textile goods, not included in other classes; beds and table covers.

25. Clothing, footwear, headgear.

26. Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers.

27. Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings (nontextile).

28. Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees.

29. Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs, milk and milk products; edible oils and fats.

30. Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking powder; salt, mustard; vinegar, sauces (condiments); spices; ice.

31. Agricultural, horticultural and forestry products and grains not included in other classes; live animals; fresh fruits and vegetables; seeds, natural plants and flowers; foodstuffs for animals; malt.

32. Beers; mineral and aerated waters and other nonalcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.

33. Alcoholic beverages (except beers).

34. Tobacco; smokers' articles; matches.

Services

35. Advertising; business management; business administration; office functions.

36. Insurance; financial affairs; monetary affairs; real estate affairs.

37. Building construction(;) and repair; installation services.

38. Telecommunications.

39. Transport; packaging and storage of goods; travel arrangement.

40. Treatment of materials.

41. Education and entertainment; providing of training; entertainment; sporting and cultural activities.

42. Computer and scientific; scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; legal services.

43. Hotels and restaurants; services for providing food and drink; temporary accommodations.

44. Medical, beauty and agricultural; medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services.

45. Personal and legal; personal and social services rendered by others to meet the needs of individuals; security services for the protection of property and individuals.

(2) This table is adopted from the schedule for classification of goods and services published by the United States Patent and Trademark Office.

WSR 10-01-061

PROPOSED RULES

SECRETARY OF STATE

[Filed December 10, 2009, 10:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-22-060.

Title of Rule and Other Identifying Information: Electronic Authentication Act, chapter 19.34 RCW.

Hearing Location(s): 801 Capitol Way South, Olympia, WA 98504, on January 28, 2010, at 10:00 a.m.

Date of Intended Adoption: January 29, 2010.

Submit Written Comments to: Pamela Floyd, P.O. Box 40234, Olympia, WA 98504-0234, e-mail Pam.Floyd@sos.wa.gov, fax (360) 586-4989, by January 27, 2010.

Assistance for Persons with Disabilities: Contact Sharon Baker by January 27, 2010, (360) 725-0312.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this change is to reduce the fiscal impact on certification authorities registering in Washington state in an attempt to attract.

Reasons Supporting Proposal: At this time, the state has only two certification authorities licensed to offer digital signature technology. The requirement that they register each year is expensive and time consuming. The law allows for a biennial registration and this change implements the biennial renewal process.

Statutory Authority for Adoption: RCW 19.34.101, 19.34.500.

Statute Being Implemented: RCW 19.34.100.

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

Name of Proponent: Division of corporations, office of the secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Pamela Floyd, 801 Capitol Way South, Olympia, WA 98504, (360) 725-0310.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No additional costs are imposed on businesses, rather a savings for the businesses that are licensed under this chapter. Lengthening the renewal period will have the effect of lowering costs.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are adopting by reference without material change, Washington state statutes and are not required to do a cost-benefit analysis per RCW 34.05.328

(5)(iii). The effect of this change is to implement RCW 19.34.101.

December 10, 2009
Steve Excell
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 98-16-031, filed 7/29/98, effective 8/29/98)

WAC 434-180-130 Fees. Fees for services performed by the secretary of state are established in the following amounts:

(1) For application for a license as a certification authority:

(a) For the applicant's first year doing business as a licensed certification authority in this state: One thousand four hundred dollars;

(b) For the applicant's second year doing business as a licensed certification authority in this state: One thousand eight hundred dollars; and

(c) For the applicant's third (~~(or subsequent)~~) year and for each subsequent biennial renewal doing business as a licensed certification authority in this state: Two thousand eight hundred dollars.

(2) For recognition as a repository, in addition to the license issuance or renewal fee paid pursuant to this section:

(a) For the applicant's first year doing business as a recognized repository in this state: One thousand four hundred dollars;

(b) For the applicant's second year doing business as a recognized repository in this state: One thousand eight hundred dollars; and

(c) For the applicant's third (~~(or subsequent)~~) year and for each subsequent biennial renewal doing business as a recognized repository in this state: Two thousand eight hundred dollars.

(3) For recognition of a foreign license: One-half of the otherwise applicable fee as set forth under subsection (1) or (2) of this section.

(4) For qualification of operative personnel:

(a) For administering and scoring the examination required by WAC 434-180-215(3), fifty dollars per individual; and

(b) For qualifying operative personnel pursuant to WAC 434-180-215 and 434-180-220, other than (or in addition to) administering and scoring the examination, twenty-five dollars per individual.

AMENDATORY SECTION (Amending WSR 97-24-053, filed 11/26/97, effective 12/27/97)

WAC 434-180-205 Issuance of license or renewal. The secretary shall, within a reasonable time, issue or renew a license as a certification authority if the applicant has:

(1) Submitted all documentation required by WAC 434-180-200 and 434-180-210; and

(2) The secretary has determined that the applicant meets all requirements for licensure.

(3) Issuance or renewal of a license shall be valid for a period of (~~(one)~~) two years. Failure to receive a notice of the

need to renew a license is an insufficient reason for failing to file the required application for renewal.

WSR 10-01-063

PROPOSED RULES

DEPARTMENT OF HEALTH

(Veterinary Board of Governors)

[Filed December 10, 2009, 1:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-13-106.

Title of Rule and Other Identifying Information: WAC 246-935-400 through 246-935-440, adding a new section to define nondiscretionary functions used in preparation, and the administration of, legend drugs, nonlegend drugs and controlled substances associated with the practice of veterinary medicine which may be delegated to a licensed veterinary technician by a licensed veterinarian.

Hearing Location(s): Department of Health, Creekside Three at Center Point, Conference Room 2, 20435 72nd Avenue South, Kent, WA 98032, on January 26, 2010, at 10:00 a.m.

Date of Intended Adoption: January 26, 2010.

Submit Written Comments to: Judy Haenke, Program Manager, P.O. Box 47852, Olympia, WA 98504-7868, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by January 25, 2010.

Assistance for Persons with Disabilities: Contact Judy Haenke by January 19, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these rules is to define and clarify nondiscretionary functions used in preparing, and the administration of legend drugs, nonlegend drugs, and controlled substances that may be delegated by a veterinarian to a licensed veterinary technician. The supervising veterinarian shall have legal responsibility for the health, safety, and welfare of the animal patient which the licensed veterinary technician serves.

Reasons Supporting Proposal: SHB 1271 (chapter 136, Laws of 2009, amending RCW 18.92.013) allows a veterinarian to delegate to a veterinary technician certain nondiscretionary functions used in the preparing of legend drugs, nonlegend drugs and controlled substances. The bill also authorizes a licensed veterinary technician to administer legend drugs and controlled substances. Developing standards to define specific nondiscretionary functions will provide the public with assurance that authorized drugs are being prepared and administered under appropriate supervision.

Statutory Authority for Adoption: RCW 18.92.030, 18.92.013.

Statute Being Implemented: RCW 18.92.013.

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

Name of Proponent: Department of health, veterinary board of governors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Judy Haenke, Program

Manager, P.O. Box 47852, Olympia, WA 98504-7868, (360) 236-4947.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Judy Haenke, Program Manager [Manager], P.O. Box 47869, Olympia, WA 98504, phone (360) 236-4947, fax (360) 236-2901, e-mail judy.haenke@doh.wa.gov.

December 10, 2009
Harmon A. Rogers, DVM, Chair
Veterinary Board of Governors

PREPARATION AND ADMINISTRATION OF LEGEND DRUGS, NONLEGEND DRUGS AND CONTROLLED SUBSTANCES

NEW SECTION

WAC 246-935-400 Citation and purpose. As provided in RCW 18.92.013, the purpose of WAC 246-935-400 through 246-935-440, unless the context clearly requires otherwise, is to define and clarify nondiscretionary functions used in preparing, and administration of, legend drugs, nonlegend drugs, and controlled substances that may be delegated by a veterinarian to a licensed veterinary technician. The supervising veterinarian shall have legal responsibility for the health, safety, and welfare of the animal patient which the licensed veterinary technician serves. The supervising veterinarian shall delegate animal health care tasks only if the licensed veterinary technician is qualified to perform the task and the task is not precluded by the medical condition of the animal patient.

NEW SECTION

WAC 246-935-410 Definitions. The definitions in this section apply throughout WAC 246-935-400 through 246-935-440 unless the context clearly requires otherwise.

"Administer" means the direct application of a drug whether by injection, inhalation, ingestion, or any other means, to the body of a patient.

"Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal or state laws, or federal or board of pharmacy rules.

"Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a legend drug or controlled substance, whether or not there is an agency relationship.

"Legend drugs" means any drugs which are required by state law or regulation of the state board of pharmacy to be dispensed on prescription only or are restricted to use by practitioners only.

"Preparing" includes the proper selection, measuring, labeling, or packaging necessary to prepare a prescription or order from a licensed veterinarian for delivery.

NEW SECTION

WAC 246-935-420 Delegated nondiscretionary functions used in preparing, and the administration of, legend drugs, nonlegend drugs and controlled substances. Nondiscretionary functions, tasks or actions used in preparing, and the administration of, legend drugs, nonlegend drugs and controlled substances, delegated orally or in writing by the supervising veterinarian to the licensed veterinary technician are:

- Accessing the drug;
- Selecting the appropriate quantity;
- Packaging and labeling of the drug;
- Administering the drug to the animal patient; and
- Delivery of the drug to the owner or authorized agent.

NEW SECTION

WAC 246-935-430 Controlled substance storage and records. (1) Under WAC 246-933-320, it is the responsibility of a licensed veterinarian to assure that:

(a) All controlled substances are maintained in a locked cabinet or other suitable secure container according to federal and Washington state laws;

(b) Controlled substance records are readily retrievable, according to federal and Washington state laws. Records shall be maintained in sufficient detail to account for the receipt, use, and disposition of all controlled substances.

(2) A licensed veterinary technician shall ensure that proper storage and records of controlled substances are maintained during the performance of delegated functions related to controlled substances.

NEW SECTION

WAC 246-935-440 Maintenance of patient medical records. The licensed veterinary technician shall include sufficient information in the patient medical record to document the care and treatment provided by the licensed veterinary technician. The records relating to delegated nondiscretionary functions used in preparing, and the administration of, legend drugs, nonlegend drugs and controlled substances shall, at a minimum, include dosage and route of the drugs prepared, administered, or delivered in response to a prescription or order from a licensed veterinarian.

WSR 10-01-068

PROPOSED RULES

DEPARTMENT OF HEALTH

(Veterinary Board of Governors)

[Filed December 11, 2009, 11:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-01-100.

Title of Rule and Other Identifying Information: WAC 246-933-320 General requirements for all veterinary medical facilities, proposed amendments to veterinary patient record requirements only.

Hearing Location(s): Department of Health, Creekside Three at Center Point, 20435 72nd Avenue South, Conference Room 2, Kent, WA 98032, on January 26, 2010, at 10:30 a.m.

Date of Intended Adoption: January 26, 2010.

Submit Written Comments to: Judy Haenke, Program Manager, P.O. Box 47850, Olympia, WA 98504-8750, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by January 25, 2010.

Assistance for Persons with Disabilities: Contact Judy Haenke, program manager, by January 19, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments are limited to veterinary patient records. The purpose of the amendments is to clarify what must be included and maintained in the patient record. The proposed rule also clarifies who may request copies of patient records, sets forth fees that may be charged for providing patient records and shortens the time period for responding to a request for records from fifteen days to ten days.

Reasons Supporting Proposal: The proposed amendments clarify who may request veterinary patient records, how much can be charged for reproducing the records and when records must be made available to the animal patient's owner or authorized agent. Clarifying the process for release of veterinary medical records will result in improved continuity of care for animal patients.

Statutory Authority for Adoption: RCW 18.92.030.

Statute Being Implemented: RCW 18.92.030.

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

Name of Proponent: Department of health and veterinary board of governors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Judy Haenke, Program Manager, P.O. Box 47852, (360) 236-4947.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Judy Haenke, Program Manager, Veterinary Board of Governors, P.O. Box 47850, Olympia, WA 98504-8750, phone (360) 236-4947, fax (360) 236-2901, e-mail judy.haenke@doh.wa.gov.

December 10, 2009

Harmon P. Rogers, DVM, Chair
Veterinary Board of Governors

AMENDATORY SECTION (Amending WSR 03-14-035, filed 6/23/03, effective 7/24/03)

WAC 246-933-320 General requirements for all veterinary medical facilities. (1) **Construction and maintenance:** All facilities shall be so constructed and maintained as to provide comfort and safety for patients and clients. All areas of the premises shall be maintained in a clean and orderly condition, free of objectionable odors. All facilities

shall comply with applicable state, county and municipal laws, ordinances and regulations.

(2) **Ventilation:** Adequate heating and cooling shall be provided for the comfort of the animals, and the facility shall have sufficient ventilation in all areas.

(3) **Lighting:** Proper lighting shall be provided in all rooms utilized for the practice of veterinary medicine. Outside lighting shall be adequate to identify the building and to assist the clients.

(4) **Water:** Potable water shall be provided.

(5) **Basic sanitation:** Any equipment, instruments or facilities used in the treatment of animals shall be clean and sanitary at all times to protect against the spread of diseases, parasites and infection.

(6) **Waste disposal:** Covered waste containers, impermeable by water, shall be used for the removal and disposal of animal and food wastes, bedding, animal tissues, debris and other waste.

Disposal facilities shall be so operated as to minimize insect or other vermin infestation, and to prevent odor and disease hazards or other nuisance conditions.

The facility shall use refrigeration and employ a procedure for the prompt, sanitary and esthetic disposal of dead animals which complies with all applicable state, county and municipal laws, ordinances and regulations.

(7) **Records:**

(a) Every veterinarian shall keep daily written (~~reports~~) records of the animals he or she treats.

(b) Separate records for companion animals shall be kept for each animal.

(c) The medical record for a litter may be recorded either on the dam's record or on a litter record until the individual animals are permanently placed or reach the age of three months.

(d) Records for food and fibre producing animals and animals kept in herds or flocks, etc., may be maintained on a group or (~~client~~) owner or authorized agent basis.

(e) All records shall be legible, readily retrievable and shall be kept for a period of three years following the last treatment or examination.

(f) The author of all medical record entries must be identified by code or employee number, or initials.

(g) The records shall include, but not be limited to, the following:

(i) Name, address and telephone number of the owner or authorized agent.

(ii) Name, number or other identification of the animal or group.

(iii) Species, breed, age, sex, weight and color of the animal.

(iv) Immunization record.

(v) Beginning and ending dates of custody of the animal.

~~((vi))~~ (h) The records must include sufficient information (~~in the history and examination portions of the record~~) to justify the tentative diagnosis and to warrant the treatment. This would include, but not be limited to:

~~((A))~~ (i) A short history of the animal's condition as it pertains to its medical status.

~~((B))~~ (ii) Physical examination findings and any laboratory or other diagnostic tests performed ~~((and))~~ or recommended.

~~((vii))~~ (iii) Provisional or final diagnosis.

~~((viii))~~ (iv) Treatment administered ~~((and))~~ or recommended.

~~((ix))~~ (v) Dosage and route of medications administered, prescribed or dispensed.

~~((x))~~ (vi) Anesthesia dosage and route of administration.

~~((xi))~~ (vii) Description of surgery performed.

~~((xii))~~ (viii) Progress of the case.

~~((xiii) If applicable, documentation of the low income status for persons that seek the limited veterinary services provided by qualified animal care and control agencies and humane societies.~~

~~(b))~~ (8) Veterinary medical records and ~~((radiographs))~~ medical images are the property of the veterinarian or the veterinary facility that originally ordered their preparation.

(9) When requested by the ~~((client))~~ owner or authorized agent, copies of records will be made available as promptly as required ~~((under the))~~ by medical necessity or public health circumstances, but no later than ~~((fifteen))~~ ten working days upon the ~~((client's))~~ owner or authorized agent's request.

(a) The veterinarian may charge ~~((a reasonable))~~ the copying fee ~~((, not to exceed the actual cost for providing the veterinary care information))~~ as set forth in WAC 246-08-400 as now or hereafter amended.

(b) A ~~((radiograph))~~ medical image shall be released upon the request of another veterinarian who has the authorization of the owner or authorized agent of the animal to which it pertains. ~~((Such radiograph))~~

The medical image shall be returned ~~((to))~~ within ten working days following receipt of a written request from the originating veterinarian or veterinary facility ~~((within fifteen working days of receipt of a written request))~~. If the originating veterinarian provides a copy of the medical image, he or she may charge the actual costs of duplicating the medical image.

~~((8))~~ (10) Storage: All supplies, including food and bedding, shall be stored in facilities which adequately protect such supplies against infestation, contamination or deterioration. Refrigeration shall be provided for all supplies that are of a perishable nature, including foods, drugs and biologicals.

~~((9))~~ (11) Biologicals and drugs: Biologicals and other drugs shall be stored in such a manner as to prevent contamination and deterioration in accordance with the packaging and storage requirements of the current editions of the *U.S. Pharmacopeia*, 12601 Twinbrook Parkway, Rockville, Maryland 20852, and the *National Formulary*, Mack Publishing Company, 20th and Northampton Streets, Easton, Pennsylvania 18042 ~~((and))~~ or manufacturers' recommendation.

All controlled substances shall be maintained in a locked cabinet or other suitable secure container in accordance with federal and Washington state laws.

Controlled substance records shall be readily retrievable, in accordance with federal and Washington state laws.

WSR 10-01-076
PROPOSED RULES
SECRETARY OF STATE
[Filed December 15, 2009, 8:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-20-042.

Title of Rule and Other Identifying Information: Limited partnership filings—Centralized system.

Hearing Location(s): Division of Corporations and Charities, 801 Capitol Way South, Olympia, WA 98504, on January 27, 2010, at 2:00 p.m.

Date of Intended Adoption: January 28, 2010.

Submit Written Comments to: Pamela Floyd, P.O. Box 40234, Olympia, WA 98504-0234, e-mail pam.floyd@sos.wa.gov, fax (360) 586-4989 by December 7, 2009 [January 26, 2010].

Assistance for Persons with Disabilities: Contact Sharon Baker by December 7, 2009 [January 26, 2010], TTY (800) 422-8683.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules will set fees, outline procedures, and set forth guidelines for implementation of the Uniform Limited Partnership Act of 2009, chapter 25.10 RCW, including establishing a new entity, the limited liability limited partnership.

Reasons Supporting Proposal: These rules implement the processes in chapter 25.10 RCW.

Statutory Authority for Adoption: RCW 25.10.171, 25.10.916, 43.07.120.

Statute Being Implemented: Chapter 25.10 RCW.

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

Name of Proponent: Office of secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Pamela Floyd, 801 Capitol Way South, Olympia, WA 98501, (360) 725-0310; and Enforcement: Kyle Crews, Office of the Attorney General, 1125 Washington Street S.E., Olympia, WA 98504-40100, (360) 664-2510.

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

A cost-benefit analysis is not required under RCW 34.05.328. These rules are adopting by reference without material change, Washington state statutes and are not required to do a cost-benefit analysis per RCW 34.05.328 (5)(iii).

December 15, 2009

Steve Excell

Assistant Secretary of State

AMENDATORY SECTION (Amending Order 87-04, filed 8/6/87)

WAC 434-55-010 Purpose and authority. These regulations are adopted pursuant to ~~((RCW 25.10.600–25.10.610 and chapter 55, Laws of 1987))~~ chapter 188, Laws of 2009, to implement a centralized system for limited partnership filings at the office of the secretary of state.

AMENDATORY SECTION (Amending WSR 94-19-003, filed 9/8/94, effective 10/9/94)

WAC 434-55-016 Office hours. (1) Normal business hours of the corporations division are 8:00 a.m. to 5:00 p.m., Monday through Friday except holidays. ((Over the counter service is available to provide same day service for individuals requests brought in before 4:30 p.m. and telephone service is available from 8:00 a.m. to 5:00 p.m.))

(2) Documents, including substitute service-of-process on the secretary of state, delivered after ((normal working hours)) 5:00 p.m. 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.

(3) Certain expedited ((or)) and over-the-counter services are subject to the special service fees established ((elsewhere)) in ((these regulations)) WAC 434-112-080 through 434-112-090.

AMENDATORY SECTION (Amending WSR 94-19-003, filed 9/8/94, effective 10/9/94)

WAC 434-55-040 ~~((Original signature required.))~~
Document filing standards. ((1) At any time that the statute requires a limited partnership document filing with the secretary of state to be in duplicate form, the secretary of state will accept the following:

- (a) Two original copies, each with original signatures; or
- (b) One original with original signatures and a true and correct photocopy thereof.

In the case of duplicate originals submitted with only one original and one copy thereof, the secretary of state will retain as its official file copy the certificate or document with original signatures and will return to the limited partnership for its records the document version bearing copied signatures. If the entity provides only the original copy, the division may charge a photocopy fee to make an exact copy.

((2)) All documents presented to the secretary of state for filing under the Limited Partnership Act shall be of no larger size than standard legal paper (8-1/2 x 14). The materials shall be submitted in form and quality which is suitable for future microfilming or digital reproduction ((by a similar photographic process)). The secretary of state will not accept documents for filing which are ((not typed, or with)) illegible ((text)).

AMENDATORY SECTION (Amending Order 82-7, filed 10/6/82)

WAC 434-55-050 Statement of name reservation ((or registration)). A name for a limited partnership may be reserved by filing an application ((therefor)) and paying the applicable fee per WAC 434-112-085. The applicant may use the secretary of state's regular form for reservation of name, or may submit a written request. A written request must identify the name ((desired, the fact that it is requested for a limited partnership, the entity for which the name is)) to be reserved ((;)) and which of the following subsections apply:

(1) A person intending to organize a limited partnership under this chapter and to adopt the name;

(2) A limited partnership or a foreign limited partnership authorized to transact business in this state intending to adopt the name;

(3) A foreign limited partnership intending to obtain a certificate of authority to transact business in this state and adopt the name;

(4) A person intending to organize a foreign limited partnership and intending to have it obtain a certificate of authority to transact business in this state and adopt the name;

(5) A foreign limited partnership formed under the name;

or
(6) A foreign limited partnership formed under a name that does not comply with RCW 25.10.061 (2) or (3), but the name reserved under RCW 25.10.071 (1)(f) may differ from the foreign limited partnership's name only to the extent necessary to comply with RCW 25.10.061 (2) and (3). The request must also include the name of the agent making the request and ((his/its)) street and mailing address, and must be signed by the agent, partner or other authorized representative of the limited partnership.

In view of the increasing competition for business names, persons making name reservation requests are advised to submit ((up to)) three prioritized names per request. The secretary of state will review the names requested in order of priority indicated and will reserve the available name of highest priority. If no name reservation can be accepted, the reservation fee is returned to the requestor.

NEW SECTION

WAC 434-55-052 Transfer of name reservation. A person who has reserved a name may transfer that name by filing with the applicable fee from WAC 434-112-085 a notice of transfer that includes the reserved name to be transferred, and the name and street and mailing address of the person transferring the reserved name as well as the person to which reservation is to be transferred. It must also include which of the following subsections apply:

(1) A person intending to organize a limited partnership under this chapter and to adopt the name;

(2) A limited partnership or a foreign limited partnership authorized to transact business in this state intending to adopt the name;

(3) A foreign limited partnership intending to obtain a certificate of authority to transact business in this state and adopt the name;

(4) A person intending to organize a foreign limited partnership and intending to have it obtain a certificate of authority to transact business in this state and adopt the name;

(5) A foreign limited partnership formed under the name;

or
(6) A foreign limited partnership formed under a name that does not comply with RCW 25.10.061 (2) or (3), but the name reserved under RCW 25.10.071 (1)(f) may differ from the foreign limited partnership's name only to the extent necessary to comply with RCW 25.10.061 (2) and (3).

NEW SECTION

WAC 434-55-056 Filing a certificate of limited partnership—Designation as a limited liability limited part-

nership. In order for a limited partnership to form, a certificate of limited partnership must be delivered to the secretary of state for filing that includes:

- (1) Name of limited partnership that complies with section 108, chapter 188, Laws of 2009.
- (2) Street and mailing address of initial designated office in Washington.
- (3) Name and street and mailing address of the initial agent for service of process.
- (4) Name and street and mailing address of each general partner of the limited partnership.
- (5) A statement whether it is a limited liability limited partnership.
- (6) Additional information is required by Article 11, chapter 188, Laws of 2009.

NEW SECTION

WAC 434-55-057 Electronic filing. See WAC 434-112-065 through 434-112-075.

NEW SECTION

WAC 434-55-058 Filing an annual report. As of January 1, 2010, all limited partnerships registered in the secretary of state's office are required to file an annual report with the appropriate fee, each year, in the month they formed. The annual report will include:

- (1) Name of domestic or foreign limited partnership;
- (2) Street and mailing address of designated office;
- (3) Name and street and mailing address of its agent;
- (4) In the case of a domestic limited partnership, the street and mailing address of its principal office;
- (5) In the case of a foreign limited partnership, the state or other jurisdiction under whose law the foreign limited partnership is formed and any alternate name adopted under chapter 188, Laws of 2009; and
- (6) If a filed annual report contains an address of a designated office or the name or address of an agent that differs from the information shown in the records of the secretary immediately before the filing, the differing information in the annual report is considered a statement of change.

NEW SECTION

WAC 434-55-059 Filing a statement of change. A limited partnership or foreign limited partnership may change its registered office or registered agent by delivering to the secretary of state for filing, with the appropriate fee per WAC 434-112-085, a statement of change that includes:

- (1) Name of the limited partnership or foreign limited partnership;
- (2) The street and mailing address of its current designated office;
- (3) If the current designated office is to be changed, the street and mailing address of the new designated office;
- (4) The name and street and mailing address of its current agent for service of process; and
- (5) If the current agent for service of process or an address of the agent is to be changed, the new information.

AMENDATORY SECTION (Amending WSR 99-12-008, filed 5/20/99, effective 6/20/99)

WAC 434-55-060 Document filing fees—Limited partnerships. ~~((The following fees are due and must be submitted concurrently with the limited partnership documents presented to the secretary of state for filing under the Washington Uniform Limited Partnership Act:~~

- ~~(1) Filing of a certificate of limited partnership for a domestic limited partnership: One hundred seventy-five dollars.~~
- ~~(2) Filing an application for registration of a foreign limited partnership: One hundred seventy-five dollars.~~
- ~~(3) Dissolution or cancellation by judicial decree: No charge.~~
- ~~(4) Filing of a certificate of cancellation for a domestic or foreign limited partnership: No charge.~~
- ~~(5) Filing of a certificate of amendment for a domestic or foreign limited partnership: Twenty-five dollars.~~
- ~~(6) Filing a certificate of restatement: Thirty dollars.~~
- ~~(7) Filing an application to reserve or transfer a limited partnership name: Ten dollars.~~
- ~~(8) Application for reinstatement: One hundred dollars plus all delinquent fees and a twenty-five percent penalty computed on total amount.~~
- ~~(9) Articles of merger: Twenty dollars for each listed company.~~
- ~~(10) Agent's consent to act as agent or agent's resignation if appointed without consent: No charge.~~
- ~~(11) Filing any other statement or report required by the Limited Partnership Act: Ten dollars.~~
- ~~(12) For certified copies of any document the fee is five dollars plus a photocopy fee of twenty cents for each additional page.~~
- ~~(13) For certificates of existence the fee is ten dollars per certificate.~~
- ~~(14) For photocopies fees are as follows:~~
 - ~~(a) Certificate of limited partnership, five dollars;~~
 - ~~(b) Any single document, other than a certificate of limited partnership, one dollar plus twenty cents for each additional page;~~
 - ~~(c) Surcharge for files exceeding one hundred pages of copy, thirteen dollars for each fifty page increment (number of pages determined by weight of copies);~~
- ~~(15) Service of process on the office of the secretary of state as agent of a limited partnership: Fifty dollars.)) See WAC 434-112-085 and 434-112-090.~~

AMENDATORY SECTION (Amending WSR 99-12-008, filed 5/20/99, effective 6/20/99)

WAC 434-55-065 In-person or expedited ((counter)) service—Special fees. ~~((1) The corporations division counter is open to in-person requests from 8:00 a.m. to 4:00 p.m. each business day. Staff provides expedited, same-day processing of corporate documents or requests received prior to 3:30 p.m. on that day. These services are available for the following transactions:~~

- ~~(a) Charter document review and filing;~~
- ~~(b) Name reservation review and filing;~~
- ~~(c) Document certification;~~

- (d) Document copying and status certificates;
- (e) Status change filings;
- (f) Service of process;
- (g) International student exchange agency registration.

(2) The fee for same-day service is ten dollars for single or multiple transactions within each new or existing limited partnership file or each new or existing limited liability partnership file. In addition, a regulatory fee for each transaction may apply.

(3) There is no expedited fee for the following transactions:

- (a) Reinstatements;
- (b) In-person inspection or review of limited partnership files or other public documents located in the corporations division office;
- (c) Documents left at the counter for processing with mail-in documents received the same day; or
- (d) A search for nonactive limited partnership files less than twenty years old.

(4)(a) If staff cannot complete the expedited service request before the end of the same day, the transaction will be completed first on the following business day.

(b) 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 before emergency services are provided.

(5) Over the counter service hours may be shortened under extraordinary circumstances. Separate service requests by one person may be limited to those relating to three corporations per day. Documents submitted by courier services or document handling companies may receive twenty-four-hour service. 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.

Under special circumstances, the filing party may petition the secretary in writing to request a waiver of emergency or penalty fees.)) See WAC 434-112-080 and 434-112-090.

AMENDATORY SECTION (Amending WSR 94-19-003, filed 9/8/94, effective 10/9/94)

WAC 434-55-066 Miscellaneous charges—Special service fees. ((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 cancelled and all other late filing fees and penalties will be instituted.)) See WAC 434-112-085 and 434-112-090.

AMENDATORY SECTION (Amending WSR 94-19-003, filed 9/8/94, effective 10/9/94)

WAC 434-55-080 Registered office address—Requirements. The name and street address of a registered office is required. A post office box address may be used in ((conjunction with)) addition to a registered geographic office address ((when:

(1) The United States Postal Service cannot or will not deliver to the street address; and

(2) The post office box address is in the same Washington city or town as the registered office address; and

(3) The agent notifies the office of the secretary of state and the corporation of any changes in either the street address or the post office box address)).

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-55-015	Official address and telephone number.
WAC 434-55-070	Telephone services.

WSR 10-01-084

**WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF SOCIAL
AND HEALTH SERVICES
(By the Code Reviser's Office)
[Filed December 16, 2009, 8:10 a.m.]**

WAC 388-828-1020, 388-828-1440, 388-828-1460, 388-828-1520, 388-828-5640, 388-828-8065, 388-828-8070, 388-828-8075, 388-828-8080, 388-828-8085, 388-828-8090 and 388-828-8095, proposed by the department of social and health services in WSR 09-12-060 appearing in issue 09-12 of the State Register, which was distributed on June 17, 2009, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 10-01-102

**PROPOSED RULES
TRANSPORTATION COMMISSION
[Filed December 17, 2009, 11:42 a.m.]**

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-19-093.

Title of Rule and Other Identifying Information: Clarifying and consolidating the process to request and consider a route jurisdiction transfer. Repealing chapters 468-700 and

468-705 WAC and adopting clarified procedures as chapter 468-710 WAC.

Hearing Location(s): Washington State Department of Transportation, Commission Board Room (1D2), 310 Maple Park Avenue S.E., Olympia, WA 98504, on February 17, 2010, at 9:00 a.m.

Date of Intended Adoption: February 17, 2010.

Submit Written Comments to: Reema Griffith, Executive Director, WSTC, P.O. Box 47308, Olympia, WA 98504-7308, e-mail griffir@wstc.wa.gov, fax (360) 705-6802, by February 1, 2010.

Assistance for Persons with Disabilities: Contact Reema Griffith by February 1, 2010, TTY (800) 833-6388 ask to be connected to (360) 705-7070.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Based upon legislative action moving the route jurisdiction program from the transportation improvement board to the transportation commission, existing administrative rules for this program were transferred to the commission. These rules provide guidelines for applying the statutory criteria in administering the program. Route jurisdiction transfers add, delete, or make other changes to the state highway system.

This proposal makes technical, nonsubstantive changes to the rules, eliminating redundant language that duplicated statutory provisions, clarifying how an entity requests a route jurisdiction transfer, and consolidating WAC sections related to the notice, hearing and comment process to improve the flow and clarity of the rules.

Reasons Supporting Proposal: To simplify and clarify the route jurisdiction transfer process.

Statutory Authority for Adoption: RCW 47.01.425.

Statute Being Implemented: RCW 47.01.425.

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

Name of Proponent: Washington state transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Reema Griffith, P.O. Box 47308, Olympia, WA 98504, (360) 705-7070.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule impacts only city, county and state agencies.

A cost-benefit analysis is not required under RCW 34.05.328. This rule impacts only city, county and state agencies.

December 17, 2009
Reema Griffith
Executive Director

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 468-700-010 Purpose and authority.
- WAC 468-700-100 Definitions.
- WAC 468-700-150 Criteria for rural highway routes.

- WAC 468-700-200 Criteria for urban highway routes.
- WAC 468-700-250 Interpretation and application of criteria to specific routes.
- WAC 468-700-300 Administration costs.
- WAC 468-700-350 Board review of route jurisdiction transfer requests.
- WAC 468-700-400 Reports to legislative transportation committee.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 468-705-010 Contents of request for jurisdiction transfer.
- WAC 468-705-050 Annual cutoff date for jurisdiction transfer requests.
- WAC 468-705-100 Additional public testimony for consideration of jurisdiction transfer requests.
- WAC 468-705-150 Notice of solicitation for public testimony.
- WAC 468-705-200 Notice of preliminary finding.
- WAC 468-705-250 Comment period.
- WAC 468-705-300 Notice of final finding.
- WAC 468-705-350 Contents of report to legislative transportation committee.

Chapter 468-710 WAC

ROUTE JURISDICTION TRANSFER RULES, REGULATIONS AND REQUIREMENTS

NEW SECTION

WAC 468-710-010 Purpose and authority. RCW 47.01.425 provides that the transportation commission shall receive and review letters of request from cities, counties, or the department of transportation requesting any addition or deletion from the state highway system. The commission shall use the criteria established in RCW 47.17.001 to evaluate these requests and to adopt administrative rules.

NEW SECTION

WAC 468-710-020 Definitions. For purposes of implementing the requirements of RCW 47.01.425 and 47.17.001, relative to the transportation commission, the following definitions shall apply:

Commission - When commission is used in this chapter, it refers to the transportation commission.

Connecting link - Connecting links should provide system continuity, including needed alternate routing of regionally oriented through-traffic or access to major regional-based public facilities or traffic generators. Generally, links bypass the central business district and/or the central city and form loops and beltways.

Connection to places - Places may be considered connected if they are within approximately two miles of a state highway.

Corridor - A corridor may vary depending on the characteristics of a region and the use of the facilities. The corridor limits used by the commission to analyze a state highway route will be as described by the metropolitan planning organization (MPO) or regional transportation planning organization (RTPO) for the area where the route is located.

Parallel highway route - Parallel route consideration is used to analyze alternative routes within the same corridor. Outside a corridor, a route should be considered a viable highway route if it meets the other criteria in this chapter.

Population equivalency of one thousand or more - To determine the equivalent population of a recreation area, refer to the WSDOT publication, "*Guidelines for Amending Urban Boundaries, Functional Classifications, and Federal-Aid Systems.*"

Rural highway route - A rural highway route is the portion of a route that lies outside a federal urban area boundary.

Urban highway route - An urban highway route is the portion of a route that is within a federal urban area boundary.

NEW SECTION

WAC 468-710-030 Criteria for rural and urban highway routes. In considering whether to make additions, deletions, or other changes to the state highway system, the legislature is guided by criteria in RCW 47.17.001. Counties, cities, the department of transportation and the commission will use these same criteria to assess the merits of any proposed changes to the state highway system.

NEW SECTION

WAC 468-710-040 Requesting a route jurisdiction transfer. The agency initiating a route jurisdiction transfer request shall do so by submitting a written request to the commission utilizing the criteria specified in RCW 47.17.001. This written request shall be signed by the head of the requesting agency.

NEW SECTION

WAC 468-710-050 Annual cutoff date for jurisdiction transfer requests. Prior to February 1, yearly, cities, counties or the department of transportation shall submit a letter of request for jurisdiction transfer to the commission. The written request shall be in conformance with the procedures established in this chapter.

NEW SECTION

WAC 468-710-060 Additional public testimony for consideration of jurisdiction transfer requests. (1) At the

discretion of the commission, and in addition to a regularly scheduled commission meeting, public testimony may be solicited relative to a specific jurisdiction transfer request. The commission will record public testimony and develop summary minutes of the meeting.

(2) If public testimony is solicited, the commission will provide written notice to each agency involved in the transfer, legislators whose districts are impacted by the proposed route transfer and any others who have specifically requested in writing to be provided notice.

NEW SECTION

WAC 468-710-070 Review and comment period. (1) The commission shall prepare a preliminary finding for all jurisdiction transfer requests and provide written notice of the preliminary finding to the interested parties indicated in WAC 468-710-060(2) for review and comment.

(2) For preliminary findings, the commission will provide thirty calendar days from the date the notice is mailed for interested parties to provide written comments on the preliminary finding. The individuals giving comment must provide their name and address and the comments must address the criteria specified in RCW 47.17.001.

NEW SECTION

WAC 468-710-080 Notice and report of final finding. (1) Following the thirty calendar-day comment period, the commission will prepare a report of final finding and recommendation for submittal to the senate and house transportation committees. The commission will consider any comments or additional information and provide written notice of the final finding to the interested parties indicated in WAC 468-710-060(2).

(2) The contents of the report should include:

- (a) Name of agency submitting the request for transfer;
- (b) Route being considered for transfer;
- (c) A map;
- (d) Comparison against the criteria specified in RCW 47.17.001;
- (e) Findings;
- (f) recommendation; and
- (g) Supplemental information, such as:
 - (i) Summary minutes of meetings;
 - (ii) Comments received;
 - (iii) Response to comments; and
 - (iv) Other appropriate information.

WSR 10-01-112

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF PERSONNEL

[Filed December 17, 2009, 2:11 p.m.]

The department of personnel is requesting to withdraw the proposed rule modification filed on November 4, 2009, as WSR 09-21-060.

If you have any questions, please contact Kristie Wilson at (360) 664-6408.

Eva Santos
Director

WSR 10-01-126
PROPOSED RULES
CLARK COLLEGE

[Filed December 18, 2009, 12:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-22-088.

Title of Rule and Other Identifying Information: Clark College code of student conduct.

Hearing Location(s): Ellis Dunn Community Room, Gaiser Student Center, Clark College, 1933 Fort Vancouver Way, Vancouver, WA 98663, on February 16, 2010, at 5:00 p.m.

Date of Intended Adoption: February 16, 2010.

Submit Written Comments to: Mr. Ted Broussard, Interim Associate Vice-President of Student Affairs, Gaiser Hall 215, Clark College, 1933 Fort Vancouver Way, Vancouver, WA 98663, e-mail tbroussard@clark.edu, fax (360) 992-2878, by February 12, 2010.

Assistance for Persons with Disabilities: Contact Tami Jacobs by February 12, 2010, TTY (360) 992-2835 or (360) 992-2580.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify procedures, to align the code of student conduct with other college policies and procedures, and to make substantive changes to the code that will focus more on the educational outcomes of the disciplinary process, create a more student-friendly, easier-to-understand version of the code, and respond to new and different issues that have arisen since the last revision in 1997.

Reasons Supporting Proposal: Clark College's code of student conduct has not been updated in twelve years. The proposed new code brings the college current with existing policies, procedures and practices, resolves questions not anticipated in 1997, and provides substantive clarity for students, administrators, staff, and faculty.

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: Clark College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Ted Broussard, 215 Gaiser Hall, 1933 Fort Vancouver Way, Vancouver, WA 98662, (360) 992-2983.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required - there will be no impact on small business if the proposed code is adopted.

A cost-benefit analysis is not required under RCW 34.05.328. Costs associated with implementing and enforcing code of student conduct are already accounted for in the college's budget.

December 18, 2009

Robert D. Williamson

Vice-President of

Administrative Services

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132N-120-010	Code of student conduct.
WAC 132N-120-020	Authority.
WAC 132N-120-030	Definitions.
WAC 132N-120-040	Jurisdiction.
WAC 132N-120-050	Student rights.
WAC 132N-120-060	Student responsibilities.
WAC 132N-120-065	Denial of access to Clark College.
WAC 132N-120-070	Disciplinary action.
WAC 132N-120-080	Initial disciplinary proceedings.
WAC 132N-120-090	Appeals.
WAC 132N-120-100	Committee on student conduct.
WAC 132N-120-110	Adjudicative proceedings before the committee on student conduct.
WAC 132N-120-120	Recordkeeping.
WAC 132N-120-130	Evidence admissible in hearings.
WAC 132N-120-140	Initial order—Petition for administrative review—Final order.
WAC 132N-120-150	Summary action.
WAC 132N-120-160	Suspension for failure to appear.
WAC 132N-120-170	Appeals from summary suspension hearing.
WAC 132N-120-180	Final decision.

Chapter 132N-121 WAC

CODE OF STUDENT CONDUCT

NEW SECTION

WAC 132N-121-010 Code of student conduct. (1) Clark College provides its community and students with education and services of the highest quality. We do this in a manner which exhibits concern and sensitivity to students, faculty, staff and others who utilize our services and facilities. It is essential that members of Clark College exhibit appropriate and conscientious behavior in dealing with others.

(2) Clark College expects all students to conduct themselves in a manner consistent with its high standards of scholarship and conduct. Student conduct, which distracts from or interferes with accomplishment of these purposes, is not acceptable. Students are expected to comply with these standards of conduct for students both on and off campus and acknowledge the college's authority to take disciplinary action.

(3) Admission to Clark College carries with it the presumption that students will conduct themselves as responsible members of the academic community. This includes an expectation that students will obey the law, comply with policies, procedures and rules of the college and its departments, maintain a high standard of integrity and honesty and respect the rights, privileges and property of other members of Clark College.

(4) It is assumed that students are and wish to be treated as adults. As such, students are responsible for their conduct. These standards of conduct for students promote Clark College's educational purposes and provide students a full understanding of their rights and responsibilities. Sanctions for violations of the standards of conduct for students will be administered under this chapter. When violations of laws of the state of Washington and/or the United States are also involved, the college may refer such matters to proper authorities and in the case of minors, this conduct may be referred to parents or legal guardians.

NEW SECTION

WAC 132N-121-020 Authority. The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice-president of student affairs or designee. The student conduct officer shall serve as the principal investigator and administrator for alleged violations of this code.

NEW SECTION

WAC 132N-121-030 Definitions. As used in this chapter, the following words and phrases shall be defined as follows:

(1) "ASCC" means the associated students of Clark College as defined in the constitution of that body.

(2) "Assembly" means any overt activity engaged in by one or more persons, the object of which is to gain publicity, advocate a view, petition for a cause, or disseminate information to any person, persons, or group of persons.

(3) "Board" means the board of trustees of Community College District No. 14, state of Washington.

(4) "College" means Clark College and any other community college centers or facilities established within Washington state Community College District No. 14.

(5) "College community" means trustees, students, staff, faculty, and visitors on college-owned or controlled facilities.

(6) "College facilities" and "college facility" mean and include any and all real and personal property owned, rented, leased or operated by the board of trustees of Washington state Community College District No. 14, and shall include all buildings and appurtenances attached thereto and all parking lots and other grounds. College facilities extend to distance education classroom environments, and agencies or institutions that have educational agreement with the college.

(7) "College official" includes any person employed by the college performing assigned duties.

(8) "College premises" includes all land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the college.

(9) "Committee on student conduct" is the body authorized by the vice-president of student affairs to determine whether a student has violated the code of student conduct and the type of sanction(s) imposed when a violation has been committed.

(10) "Complainant" means any person who submits a charge alleging that a student violated the code of student conduct.

(11) "Controlled substance" means and includes any drug or substance as defined in chapter 69.50 RCW as now law or hereafter amended.

(12) "Day" means calendar day, and does not include Saturdays, Sundays, or legal holidays. Timelines set forth in this chapter may be extended in unusual circumstances as determined by the vice-president for student affairs. Also see WAC 10-08-080 Computation of time, adopted pursuant to WAC 132N-108-010.

(13) "Faculty member" and "instructor" mean any employee of Community College District No. 14 who is employed on a full-time or part-time basis as a teacher, instructor, counselor or librarian.

(14) "President" means the president of Clark College and Community College District No. 14, state of Washington, and for the purposes of these rules includes "acting president" or the delegated authority in the absence of the president.

(15) "RCW" means Revised Code of Washington which can be accessed at <http://apps.leg.wa.gov/rcw/>.

(16) "Student" means and includes any person who is registered for classes or is formally in the process of applying for admission to the college. Persons who are not registered for a particular term but who have a continuing relationship with the college, or persons who withdraw after allegedly violating the conduct code, are considered "students."

(17) "Student conduct officer (SCO)" means the college administrator designated by the vice-president of student

affairs who is responsible for investigating alleged violations of this code and administering the rights and responsibilities code. The term also includes a college official designated by the student conduct officer to act on his/her behalf in matters related to this chapter.

(18) "Student organization" means any number of students who have met the formal requirements of clubs and organizations.

(19) "Trespass" means the definition of trespass as contained within chapter 9A.52 RCW, as now law or hereafter amended.

NEW SECTION

WAC 132N-121-040 Jurisdiction. (1) The standards of conduct for students adopted herein apply to conduct that occurs on college premises, at college-sponsored activities, and to off-campus conduct as outlined below that adversely affects the well-being of the Clark College community and/or the pursuit of its objectives. Jurisdiction extends to locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel activities funded by ASCC, athletic events, training internships, cooperative and distance education, practicums, supervised work experiences or any other college-sanctioned social or club activities. Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The vice-president of student affairs has sole discretion, on a case-by-case basis, to determine whether the code of student conduct will be applied to conduct occurring off campus.

(2) Faculty members, college employees, students, and members of the public who breach or aid or abet another in the breach of any provision of this chapter shall be subject to:

(a) Possible prosecution under the state criminal law;

(b) Any other civil or criminal remedies available to the public; or

(c) Appropriate disciplinary action pursuant to the state of Washington personnel resource board rules, collective bargaining agreements, or the district's policies and regulations.

(3) This chapter is not exclusive, and where conduct becomes known which may also violate any other rule or provision of law, nothing herein shall limit the right or duty of any person to report elsewhere or seek another remedy for that conduct.

NEW SECTION

WAC 132N-121-045 Students studying abroad. Students who participate in any college-sponsored or sanctioned international study program shall observe the following:

(1) The laws of the host country;

(2) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying;

(3) Any other agreements related to the student's study program in another country; and

(4) Clark College's standards of conduct for students.

NEW SECTION

WAC 132N-121-050 Student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

(1) Academic freedom.

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(2) Due process.

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

NEW SECTION

WAC 132N-121-060 Grounds for discipline. Discipline may be imposed for the commission or attempted commission (including aiding or abetting in the commission or attempted commission) of the following types of misconduct, as well as such other violations as may be specified in college regulations:

(1) Obstruction or disruption of:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activity, whether occurring on or off college property; or

(b) Any other authorized noncollege activity when the conduct occurs on college premises.

(2) Assault, physical abuse, verbal abuse, threats, intimidation, harassment, coercion, or other conduct which harms, threatens, or endangers the health or safety of any person.

(3) Attempted or actual damage to, theft of, or misuse of real or personal property of:

(a) The college or state;

(b) Any student or college officer, employee, or organization; or

(c) Any other person or organization lawfully present on college property; or possession of stolen property.

(4) Unauthorized possession or unauthorized use of college equipment and supplies including, but not limited to, converting college equipment or supplies for personal gain or use without proper authority.

(5) Failure to comply with the directions of a college officer or employee who is acting in the legitimate performance of his/her duties, and/or failure to properly identify oneself to these persons when requested to do so.

(6) Participation in any activity which unreasonably disrupts the operations of the college or infringes on the rights of another member of the college community, or leads or incites another person to engage in such an activity.

(7) Possession or use of firearms, explosives, dangerous chemicals or other dangerous weapons which can be used to inflict bodily harm or to damage real or personal property is prohibited on the college campus, at any other facilities leased or operated by the college, or at any activity under the administration or sponsorship of the college.

Exceptions to this policy are permitted when the weapon is used in conjunction with an approved college instructional program, is carried by duly constituted law enforcement officer, or is otherwise permitted by law.

(8) Hazing. Any method of initiation into a student club or organization, or any pastime or amusement engaged in with respect to such a group or organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending the college as described in RCW 28B.10.900.

(9) Initiation violation. Conduct associated with initiation into a student club or organization, or any pastime or amusement engaged in with respect to such a group or organization, not amounting to a violation of RCW 28B.10.900. Conduct covered by this section may include embarrassment, ridicule, sleep deprivation, unprotected speech amounting to verbal abuse, or personal humiliation.

(10) Use, possession, delivering, selling or being under the influence of alcoholic beverages, except at sanctioned events approved by the college president or designee and in compliance with state law; or public intoxication.

(11) Use, possession, delivering, selling or being under the influence of legend drugs, including anabolic steroids, narcotic or any other controlled substance, except upon valid prescription by a licensed health care professional or practitioner.

(12) Obstruction of the free flow of pedestrian or vehicular movement on college premises or at a college activity.

(13) Conduct which is disorderly, lewd, or indecent, disturbing the peace, or assisting or encouraging another person

to disturb the peace. Disorderly conduct includes, but is not limited to, any unauthorized use of electronic or other devices to make an audio or video record of any person while on college premises without his or her prior knowledge or without his or her effective consent, when such a recording is likely to cause injury or distress. This includes surreptitiously capturing images of another person in a gym, locker room, or restroom.

(14) Discrimination on the basis of race, color, religion, creed, national origin, sexual orientation, mental, physical, sensory disability, age or sex, gender identity, gender expression, political affiliation, disabled veteran status, marital status, honorably discharged veteran or Vietnam-era veteran status.

(15) Sexual harassment. This includes, but is not limited to, engaging in unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature where such behavior offends the recipient or a third party, causes discomfort or humiliation, unreasonably interferes with a person's work or educational performance, or creates an intimidating, offensive, or hostile work or learning environment.

(16) Stalking. Behavior or conduct either in person or through electronic communication in which a student willfully and repeatedly engages in a course of conduct directed at another person with the intent and/or reasonable effect of creating fear or emotional distress and where the college determines that such behavior or conduct serves no legitimate purpose.

(17) Smoking or other tobacco usage is not permitted within the perimeter of Clark College property. This includes all college sidewalks, parking lots, landscaped areas, recreational areas, and buildings on Clark College property. See Clark College Administrative Procedures 510.030 for complete smoking/tobacco products policy.

(18) Theft or abuse of computer facilities or information technology resources; use of computing facilities and resources to send obscene, abusive, harassing, or threatening messages; or violation of Student Computing Resources Policy. It is the obligation of students to be aware of their responsibilities as outlined in the Student Computing Resources Policy (http://www.clark.edu/student_services/computing_resources/policy.php).

(19) Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(20) Abuse or misuse of any of the procedures relating to the code of student conduct, including:

(a) Failure to obey the notice from the committee on student conduct or college official to appear for a meeting or hearing as part of the student conduct system.

(b) Willful destruction, falsification, distortion, or misrepresentation of information before the committee on student conduct or the student conduct officer.

(c) Disruption or interference with the orderly conduct of a committee on student conduct proceeding.

(d) Filing fraudulent charges or initiating a student conduct proceeding in bad faith.

(e) Attempting to discourage an individual's proper participation in, or use of, the student conduct system.

(f) Attempting to influence the impartiality of a member of the committee on student conduct prior to or during the course of a committee on student conduct proceeding.

(g) Harassment (verbal or physical) or intimidation of a member of the committee on student conduct prior to, during, or after a student conduct code proceeding.

(h) Failure to comply with any term or condition of any disciplinary sanction(s) imposed under the standards of conduct for students.

(i) Influencing or attempting to influence another person to commit an abuse of the student conduct code system.

(21) Trespassing. Knowingly entering or remaining unlawfully in or on college premises or any portion thereof. Any person who has been given notice by a college official excluding him or her from all or a portion of college premises is not licensed, invited, or otherwise privileged to enter or remain on the identified portion of college premises, unless given prior explicit written permission by a college official.

(22) Operation of any motor vehicle on college property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person.

(23) Violation of any federal, state, or local law, rule, or regulation.

(24) Aiding, abetting, inciting, encouraging, or assisting another person to commit any of the foregoing acts of misconduct.

(25) Tampering with an election conducted by or for students.

NEW SECTION

WAC 132N-121-062 Academic dishonesty. Acts of academic dishonesty include:

(1) Cheating, which includes using, or attempting to use, any material, assistance, or source which has not been authorized by the instructor to satisfy any expectation or requirement in an instructional course; an act of deceit by which a student attempts to misrepresent academic skills or knowledge; unauthorized or attempted unauthorized copying or collaboration; or acquiring, without permission, tests or other academic material belonging to a member of the college faculty or staff.

(2) Plagiarism, which includes using another person's ideas, words, or other work in an instructional course without properly crediting that person. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.

(3) Submitting information that is known to be false (while concealing that falsity).

(4) Forgery, alteration or misuse of any instrument of identification or any document or record used by the college.

(5) Fabrication, which is the intentional misrepresentation, invention or counterfeiting of information in the course of an academic activity. Fabrication includes:

(a) Counterfeiting data, research results, information, or procedures with inadequate foundation in fact;

(b) Counterfeiting a record of internship or practicum experiences;

(c) Submitting a false excuse for absence or tardiness;

(d) Unauthorized multiple submission of the same work; sabotage of others' work.

(6) Engaging in any behavior specifically prohibited by a faculty member in the course syllabus or class discussion.

(7) Collusion. Facilitating dishonesty, failing to report known incidents of academic dishonesty; assisting another to commit an act of academic dishonesty, such as paying or bribing someone to acquire a test or assignment, or increase the score on a test or assignment; taking a test or doing an assignment for someone else; participating in obtaining or distributing any part of a test or any information about a test; or allowing someone to do these things for one's own benefit.

(8) Knowingly furnishing false information to any college official, faculty member, or office including, but not limited to, submission of fraudulent transcripts from other institutions.

(9) Acts of academic dishonesty will be reported by the faculty member to the vice-president of student affairs' designated student conduct officer.

NEW SECTION

WAC 132N-121-065 Trespass. The vice-president of student affairs or designee shall have the authority and power to:

(1) Prohibit the entry, or withdraw the license or privilege of any person or group of persons to enter onto or remain in any college property or facility; or

(2) Give notice against trespass by any manner provided by law, to any person, persons, or group of persons against whom the license or privilege has been withdrawn or who have been prohibited from, entering onto or remaining upon all or any portion of college property or a college facility; or

(3) Order any person, persons, or group of persons to leave or vacate all or any portion of college property or a college facility.

Such power and authority may be exercised to halt any event which is deemed to be unreasonably disruptive of order or impedes the movement of persons or vehicles or which disrupts or threatens to disrupt the ingress and/or egress of persons from facilities owned and/or operated by the college. Any individual remaining on or reentering college property after receiving notice that his or her license or privilege to be on that property has been revoked shall be subject to disciplinary action and/or charges of criminal trespass.

NEW SECTION

WAC 132N-121-070 Disciplinary sanction. The following sanctions may be imposed by the student conduct officer on any student found to have violated the code of student conduct. In the case of minors, misconduct may be referred to parents or legal guardians pursuant to Family Educational Rights and Privacy Act (FERPA) guidelines. More than one sanction may be imposed for any one violation.

(1) Warning. Notice to a student, either verbally or in writing, by the student conduct officer that the student has failed to satisfy the college's expectations regarding conduct. Such warnings will include a statement that continuation or repetition of the specific conduct involved or other miscon-

duct may be cause for more serious disciplinary action. There shall be no appeal from a warning.

(2) Reprimand. Formal action censuring a student for violating the student code of conduct. Reprimands shall be made in writing to the student by the student conduct officer. A reprimand indicates to the student that continuing or repeating the specific conduct involved or other misconduct will result in more serious disciplinary action. There shall be no appeal from a reprimand.

(3) Disciplinary probation. Formal action placing conditions upon the student's continued attendance. Notice shall be in writing and shall specify the period of probation and the conditions, such as limiting the student's participation in extracurricular activities. Probation may be for a specific term or may extend to graduation or other termination of the student's enrollment in the college. A student on probation is not eligible to run for or hold an office in any student organization. Repetition of the conduct which resulted in probation or failure to complete conditions of probation during the probationary period, may be cause for suspension or other disciplinary action.

(4) Loss of privileges. Denial of specified privileges for a designated period of time. Violation of any conditions in the written notice of loss of privileges may be cause for further disciplinary action.

(5) Suspension. Temporary dismissal from the college and termination of student status. Notice shall be given in writing and specify the duration of the dismissal and any special conditions that must be met before readmission. Refund of tuition or fees for the quarter in which disciplinary action is taken shall be in accordance with the college's refund policy.

(6) Expulsion. Permanent termination of a student's status. Notice must be given in writing. The student may also be barred from college premises. There shall be no refund of tuition or fees for the quarter in which the action is taken but fees paid in advance for a subsequent quarter will be refunded.

(7) Restitution. Requirement of a student to compensate for damage or loss to college or other property, or perform a public service activity. Failure to make restitution within the time limits established by the student conduct officer will result in suspension for an indefinite period of time. A student may be reinstated upon payment or completion of the required service activity.

(8) Education. The college may require the student to complete an educational requirement directly related to the violation committed, at the student's expense.

(9) Revocation of admission or degree. Admission to or a degree awarded from the college may be revoked for fraud, misrepresentation, or other violation of standards of conduct for students in obtaining the degree, or for other serious violations committed by a student prior to graduation.

(10) Withholding degree. The college may withhold awarding a degree otherwise earned until the completion of the process set forth in this chapter, including the completion of all sanctions imposed.

(11) No trespass order. A student may be restricted from college property based on his/her misconduct.

(12) Assessment. The student may be required to have an assessment at the student's expense, such as alcohol/drug or anger management, by a certified professional, and complete the recommended treatment. The student will sign all necessary releases to allow the college access to the assessment. Recommendations as part of an assessment may be included as required conditions of a disciplinary probation, suspension, or reinstatement after a period of suspension.

(13) Loss of recognition. A student organization's recognition may be withheld permanently or for a specific period of time. Loss of recognition is defined as withholding college services or administrative approval from a student organization. Services and approval to be withdrawn include intramural sports, information technology services, college facility use and rental, and involvement in organizational activities.

(14) Hold on transcript or registration. This is a temporary measure restricting release of a student's transcript or access to registration. Upon satisfactory completion of the conditions of the sanction, the hold is released.

(15) No contact order. A prohibition of direct or indirect physical, verbal, or written contact (to include electronic) with another individual or group.

(16) Other than college expulsion or revocation or withholding of a degree, disciplinary sanctions are not made part of the student's academic record, but are part of the student's disciplinary record.

(17) If a student's behavior is found to have been motivated by another's race, color, religion, creed, national origin, sexual orientation, mental, physical, sensory disability, age, sex, gender identity, gender expression, political affiliation, disabled veteran status, marital status, honorably discharged veteran or Vietnam-era veteran status, such finding is considered an aggravating factor in determining a sanction for such conduct.

(18) Violation of any term or condition of any disciplinary sanction constitutes a new violation and may subject the student to additional sanctions.

(19) A disciplinary sanction, except a warning, shall be imposed through written notice either personally delivered or sent to the student's last known address of record by regular mail or certified mail. Each notice of disciplinary action shall state:

(a) A reasonable description of the facts on which the action is based;

(b) The provision(s) of the student conduct code found to have been violated;

(c) The sanction(s) imposed; and

(d) The student's right to appeal a disciplinary action, except for a warning or reprimand.

NEW SECTION

WAC 132N-121-080 Initial disciplinary proceedings.

(1) Any member of the college community may file a written complaint alleging that a student has committed a violation of the code of student conduct with the office of the vice-president of student affairs. The complaint should state specifically the alleged violation and summarize the supporting evidence. If the student conduct officer determines the com-

plaint has merit, the student conduct officer shall initiate disciplinary proceedings. The student may be placed on suspension pending commencement of disciplinary action, pursuant to the conditions set forth in WAC 132N-121-150.

(2) A student accused of violating the code of student conduct shall be notified of an initial disciplinary proceeding and the opportunity to meet with the student conduct officer to resolve the case without a formal hearing. The student shall be provided with written notice including the specific complaint, the policy, procedure, or section of the code of student conduct allegedly violated, and the range of possible sanctions which might result from disciplinary proceedings. The student will be given seven days to respond. If the student fails to respond or fails to appear, the initial disciplinary hearing may be held in the student's absence and shall not preclude the student conduct officer from making a decision and imposing or recommending sanctions.

(3) After considering the evidence in the case, and interviewing the student, if the student has appeared at the scheduled meeting, and reviewing the case with any new information, the student conduct officer may take any of the following actions:

- (a) Terminate the proceedings and exonerate the student;
- (b) Dismiss the case after whatever intervention and advice is deemed appropriate;
- (c) Impose any of the disciplinary sanctions from WAC 132N-121-070.

NEW SECTION

WAC 132N-121-090 Appeals. (1) A student may appeal any disciplinary sanction imposed by the student conduct officer, other than warning or reprimand, by filing a written request with the chair of the committee on student conduct, within seven days from the date of receipt of the decision.

(2) The request should state clearly whether the student is requesting the appeal to be heard as a brief adjudicative proceeding informally by the chair of the committee on student conduct or for the appeal to be conducted formally by the entire committee membership, in an adjudicative proceeding according to RCW 34.05.410. Appeals from a suspension or expulsion from the college shall be heard in an adjudicative proceeding.

(3) Appeals conducted as a brief adjudicative proceeding.

(a) Where an adjudicative proceeding is neither required by law nor requested by the student or the college, the matter may be resolved informally in a brief adjudicative proceeding conducted in accordance with RCW 34.05.485. Brief adjudicative proceedings shall be conducted in any manner which will bring about a prompt, fair resolution of the matter. The chair of the committee on student conduct shall serve as the sole presiding officer of the brief adjudicative proceeding. The presiding officer shall give each party an opportunity to be informed of the college's view on the matter and the student's view of the matter. No witnesses may appear to testify. Within ten days of the brief adjudicative proceeding, the chair shall render a written decision which will include a brief statement of the reasons for the decision. This shall be an ini-

tial order. If no further administrative review is requested, the initial order shall become the final order.

(b) Within twenty-one days after the initial order has either been personally delivered or sent to the student's last known address of record by regular mail or certified mail, he or she may petition for administrative review by the vice-president of student affairs or designee. A copy of the petition must be served on all parties or their representatives at the time the petition is filed. The reviewing officer may be the vice-president or an administrator who has not been involved in the action. The review shall be governed by RCW 34.05.491. The decision of the vice-president of student affairs or designee is final and no further administrative review is available.

(4) Appeals conducted as adjudicative proceedings by committee on student conduct. In all cases where the student is appealing suspension or expulsion from the college, the student shall be entitled to an adjudicative proceeding under WAC 132N-121-110 if he or she files a proper written application for such a proceeding. The vice-president of student affairs shall be responsible for convening the committee on student conduct, setting the time and place of the hearing, and providing notice of the hearing as prescribed in RCW 34.05.434.

(5) A decision of the committee on student conduct or a sanction imposed by the student conduct officer may be appealed in writing to the president within ten days following receipt of the committee decision.

(a) Except as required to explain the basis of new information, an appeal to the president is limited to a review of the verbatim record of the committee hearing and supporting documents for one or more of the following purposes:

(i) To determine whether the committee on student conduct hearing was conducted fairly in light of the charges, and whether information was presented in conformity with prescribed procedures giving the accused student a reasonable opportunity to prepare and to present a response to the allegations. Deviations from designated procedures are not a basis for sustaining an appeal unless significant prejudice is evident.

(ii) To determine whether the decision is supported by the evidence.

(iii) To determine whether the sanctions imposed are appropriate for the violation which the student was found to have committed.

(iv) To consider new information, sufficient to alter a decision, or other relevant facts not disclosed in the original hearing because such information and/or facts were not known to the student appealing at the time of the committee on student conduct hearing.

(b) The president shall review the record within fifteen days of the notice of appeal and make one of the following determinations:

- (i) Affirm the decision and uphold the sanctions; or
- (ii) Reverse the decision; or
- (iii) Affirm the decision and modify the sanctions imposed.

(c) The president shall provide a written conclusion to all parties within twenty days after completion of his or her review.

(d) If the appeal is upheld, the matter shall be returned to the committee on student conduct to reopen the hearing to reconsider of the original determination and/or sanctions.

(e) If the appeal is not upheld, the president's decision shall be final.

NEW SECTION

WAC 132N-121-100 Committee on student conduct.

(1) The committee on student conduct consists of five members. The committee shall provide a fair and impartial hearing and will make decisions on all disciplinary decisions appealed to it. The committee shall include:

(a) Two full-time students and two alternates appointed by the ASCC of Clark College vice-president of elections and appointments (one-year appointments);

(b) Two faculty members and two alternates appointed by the president or designee (two-year appointments, staggered terms);

(c) One member of the administration, but not the vice-president of student affairs, and one alternate appointed by the president of the college (two-year appointment).

(2) Appointments to the committee will be made no later than November 1 of each academic year. Vacancies on the committee shall be filled as they arise.

(3) Hearings may be heard by a quorum of three members of the committee so long as a faculty member and one student are included on the hearing panel. If the case involves academic dishonesty, at least two of the individuals hearing the case must be members of the faculty. The vice-president of student affairs shall appoint the chair and that person will continue in office until he or she resigns or is recalled by the vice-president of student affairs. The vice-president of student affairs may appoint a special presiding officer to the committee on student conduct in complex cases or in any case in which the student is represented by legal counsel. Special presiding officers may participate in committee deliberations but shall not vote.

(4) Members of the committee on student conduct shall not participate in any case in which they are a defendant, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

NEW SECTION

WAC 132N-121-110 Hearing procedures before the committee on student conduct. (1) An appeal before the committee on student conduct will be conducted as an adjudicative proceeding in accordance with RCW 34.05.413 through 34.05.476. The committee on student conduct shall commence the hearing within fifteen days after the written request has been received. The office of the vice-president of student affairs will notify the parties of the time and place of the hearing. The time limit for scheduling the hearing may be extended at the discretion of the vice-president of student affairs.

(2) The presiding officer shall be the chair of the committee on student conduct. The presiding officer is responsible for:

(a) Regulating the course of the hearing in accordance with RCW 34.05.449 and applicable college rules;

(b) Taking whatever steps are necessary during the hearing to ensure that the process is conducted in a respectful and orderly manner; and

(c) Issuing and signing the written decision(s) of the committee.

(3) The presiding officer is authorized to conduct pre-hearing conferences and/or to make prehearing decisions concerning the extent and forms of any discovery, the possibility of obtaining stipulations, admissions, settlement, and other procedural matters.

(4) All procedural questions are subject to the final decision of the presiding officer. If a challenge arises concerning the application of any rule or policy, the hearing will continue and the challenge may be submitted by the chair in writing to the vice-president of student affairs, who will seek legal advice from an assistant attorney general.

(5) The student has a right to a fair and impartial hearing. However, the student's failure to answer the charges, appear at the hearing or cooperate in the hearing shall not preclude the committee on student conduct from making its findings of facts, conclusions, and recommendations. This shall not limit the possibility of a default pursuant to RCW 34.05.440.

(6) Hearings shall be closed in accordance with FERPA, 20 U.S.C. Sec. 1232g, unless the student waives this requirement in writing and requests to have the hearing open to the public. However, if education records or information from education records will be disclosed at the hearing, or more than one student is involved, the hearing will remain closed unless all students have consented to open the hearing. In hearings involving more than one accused student, the presiding officer may permit joint or separate hearings. If at any time during the hearing, a visitor disrupts the proceedings, the presiding officer may exclude that person from the hearing.

(7) The complainant, the student, and their respective advisors may attend those portions of the appeal hearing at which information is received, but may not attend the committee's deliberations. Admission of any other person to the hearing is at the discretion of the presiding officer.

(8) The student and complainant are entitled to be assisted by an advisor of their choosing, at their own expense. The complainant and student are responsible for presenting their own information, therefore, an advisor is not permitted to address the committee or participate directly in the hearing. An advisor may communicate only with the person they are advising. A student should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the hearing. Delays or continuances will not be allowed due to the scheduling conflicts of an advisor. If the student is the subject of a pending subsequent criminal matter arising out of the same circumstances, the student may be allowed to have an attorney serve as their advisor, at the student's own expense, to behave in the same manner as any other advisor.

(9) Formal rules of process, procedure, and/or technical rules of evidence such as are applied in criminal or civil cases, will not apply in student conduct proceedings.

(10)(a) The student is entitled to present evidence in his or her behalf and to cross-examine witnesses testifying on behalf of the college. The student is responsible for informing his or her witnesses of the time and place of the hearing.

(b) Direct examination, cross-examination, and rebuttal may be limited to the extent necessary for the full disclosure of all relevant facts and issues.

(c) The committee may receive sworn written testimony in lieu of oral testimony at the hearing.

(d) If not inconsistent with this subsection, the presiding officer may refer to the Washington Rules of Evidence as guidelines for evidentiary rulings in accordance with RCW 34.05.452.

(e) In determining the appropriate sanction that should be recommended, evidence of past misconduct that the presiding officer deems relevant may be considered.

(11) Members of the committee on student conduct must avoid ex parte (one-sided) communications with any party involved in the hearing regarding any issue other than communications necessary to maintain an orderly procedural flow to the hearing.

(12) There will be a single verbatim record, such as a tape recording or transcript, of the information gathering portion of the hearing. Deliberations shall not be recorded. The record shall be the property of the college.

NEW SECTION

WAC 132N-121-112 Decision by the committee on student conduct and notification. (1) At the conclusion of the hearing and deliberations, the committee on student conduct shall meet in closed session to consider all evidence presented and decide by majority vote whether the student has violated the code of student conduct, and if so, the committee determines and imposes the appropriate sanctions from WAC 132N-121-070.

(2) The burden of proof that guides the committee's decision is the preponderance of evidence, whether it is more likely than not that the student violated the code of student conduct.

(3) The committee's written decision shall include findings of fact and conclusions which inform the parties of the basis for the decision. The decision should also include information about the appeal process.

(4) The presiding officer notifies the student in writing, in person, by mail or electronic mail of the committee's decision. Notice is sent within ten days after the hearing is concluded. If the college is not in session, this period may be reasonably extended.

(5) The written decision of the committee shall become the final order, without further action, unless within ten days following receipt of the decision, the student files a written appeal with the college president.

NEW SECTION

WAC 132N-121-120 Recordkeeping. (1) The record in an adjudicative proceeding shall consist of all documents as required by law and as specified in RCW 34.05.476.

(2) The office of the vice-president of student affairs shall maintain records of student grievance and disciplinary proceedings for at least six years.

(3) The disciplinary record is confidential.

(4) Students may request a copy of their own disciplinary record at their own reasonable expense by making a written request to the vice-president of student affairs. Personally identifiable student information is redacted to protect another student's privacy.

(5) Students may authorize release of their own disciplinary record to a third party in compliance with FERPA, 20 U.S.C. Sec. 1232g, by making a written request to the vice-president of student affairs.

(6) The college may inform the complainant of the outcome of any disciplinary proceeding involving a crime of violence or nonforcible sex offense, as permitted by FERPA, 20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99.

(7) The college may not communicate a student's disciplinary record to any person or agency outside the college without the prior written consent of the student, except as required or permitted by law. Exceptions include, but are not limited to:

(a) The student's parents or legal guardians may review these records if the student is a minor or a dependent, if the student is a minor and disciplinary action involves the use or possession of alcohol or controlled substance, or in connection with a health or safety emergency regardless if the student is a dependent or a minor, as permitted by FERPA, 20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99.

(b) To another educational institution, upon request, where the student seeks to, intends to, or has enrolled.

(c) Information concerning registered sex offenders.

NEW SECTION

WAC 132N-121-150 Summary suspension proceedings. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which the student might otherwise be eligible, during which an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer or designee may impose a summary suspension:

(a) In situations involving an immediate danger to the health, safety, or welfare of any part of the college community or the public at large;

(b) To ensure the student's own physical safety and well-being; or

(c) If the student poses an ongoing threat of disruption to, or interference with, the operations of the college and the student's conduct prevents other students, employees, or members of the college community from completing their duties as employees or students.

(3) The student conduct officer or designee shall give the student oral or written notice of the reasons for the summary suspension, and of any possible additional disciplinary or

corrective actions that may be taken. If oral notice is given, a written notification shall be personally served on the student, or sent to the student's last known address of record by regular or certified mail within two working days.

(4) The notification shall be entitled "notice of summary suspension proceedings" and shall include:

(a) The charges against the student including reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location that the student must appear before the student conduct officer for a hearing on the summary suspension; and

(c) A notice against trespass that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the student shall be considered trespassing and subject to arrest for criminal trespass, if the student enters the college campus other than to meet with the student conduct officer or designee, or to attend the hearing.

(5) The hearing on the summary suspension shall be held as soon as practicable after the summary suspension. The hearing may be combined with an initial disciplinary proceeding in accordance with WAC 132N-121-080.

(6) The summary suspension does not replace the regular process, which shall proceed on the schedule described in this chapter, up to and through a hearing before the committee on student conduct, if required.

(7) The student conduct officer or designee shall determine whether there is probable cause to believe that summary suspension is necessary and/or whether some other disciplinary action is appropriate.

(8) The student shall have the opportunity to explain why summary suspension is not necessary either through oral testimony or written statement. If the notice to appear for a summary suspension hearing has been personally delivered to the student or sent to the student's last known address of record by regular mail, certified mail and the student fails to appear at the time designated, the student conduct officer or designee may enforce the suspension, and shall send written notice of summary suspension to the student at the last known address of record on file.

(9) The student conduct officer or designee may continue the summary suspension and may impose any other disciplinary action that is appropriate, if he or she finds that there is probable cause to believe that:

(a) The student has committed one or more violations of the student conduct code;

(b) Such violation(s) constitute grounds for disciplinary action; and

(c) Summary suspension is necessary.

(10) **Notice of suspension.**

(a) If summary suspension is upheld and/or if the student is otherwise disciplined, the student will be provided with a written copy of the student conduct officer or designee's findings of fact and conclusions that support the decision that summary suspension of the student should continue.

(b) The student suspended pursuant to the authority of this rule shall receive a copy of the "notice of suspension" either personally or sent to the student's last known address of record by regular mail, certified mail, within three days fol-

lowing the conclusion of the hearing with the student conduct officer or designee.

(c) The "notice of suspension" shall inform the student of the duration of the summary suspension or nature of the disciplinary action(s), conditions under which the summary suspension may be terminated or modified, and procedures by which the validity of the summary suspension can be appealed.

(11) The student conduct officer or designee shall provide copies of the notice of suspension to all persons or offices that may be bound by it.

NEW SECTION

WAC 132N-121-151 Appeals from summary suspension hearing. Any student aggrieved by an order issued at the summary suspension proceeding may appeal by filing a written request with the chair of the committee on student conduct within ten days from the date on which the student was notified of the decision. However, no such appeal shall be entertained, unless:

(1) The student has first appeared through oral testimony or by a written statement at the student hearing in accordance with WAC 132N-121-150; and

(2) The appeal conforms to the standards set forth in WAC 132N-121-090.

NEW SECTION

WAC 132N-121-500 Classroom misconduct and authority to suspend for no more than one day. (1) Faculty members have the authority to take appropriate action to maintain order and proper conduct in the classroom and to maintain the effective cooperation of students in fulfilling the objectives of the course.

(2) Bringing any person, thing, or object to a teaching and learning environment that may disrupt the environment or cause a safety or health hazard, without the express approval of the faculty member is expressly prohibited.

(3) Faculty members or college administrators have the right to suspend any student from any single class or related activity for no more than one instructional day, if the student's misconduct creates disruption to the point that it is difficult or impossible to maintain the decorum of the class, related activity or the learning and teaching environment. The faculty member or college administrator shall report this suspension to the vice-president of student affairs or designee who, in consultation with the faculty member, may set conditions for the student upon return to the class or activity.

WSR 10-01-128

PROPOSED RULES

SPOKANE REGIONAL CLEAN AIR AGENCY

[Filed December 18, 2009, 4:23 p.m.]

Supplemental Notice to WSR 09-21-087.

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

Title of Rule and Other Identifying Information: Revocation of old Regulation I, Article VI, Section 6.04 Odors and Nuisances and addition of new section entitled Section 6.04 Emission of Air Contaminant Detrimental to Person or Property.

The language in Attachment "C" has been slightly revised from the last submittal (WSR 09-21-087). Although Spokane Regional Clean Air Agency (SRCAA) believes these revisions are nonsubstantive, nonetheless we are treating them as such to ensure that the public is provided ample opportunity to comment. Therefore, SRCAA is resubmitting the regulation with another public comment period and a new hearing.

Summary of Proposed Revisions:

- Revoke present regulation;
- Add a reference to Regulation I, Article I, Section 1.04 for the applicable definitions;
- Add a notification that SRCAA implements and enforces WAC 173-400-040 as well as Regulation I, Article VI, Section 6.04. ~~The more stringent of the two regulations supersedes the lesser.~~ [Note: This sentence has been removed from the previous CR-102 (WSR 09-21-087) proposal.];
- Adopt by reference RCW 70.94-640 [70.94.640] (Odors or fugitive dust caused by agricultural activities consistent with good agricultural practices exempt from chapter.) CR-102 (WSR 09-21-087) proposal;
- Incorporate the requirements from Puget Sound Clean Air Agency's (PSCAA) Section 9.11; and
- Establishes odor standards that are clear to the regulated community and the public, into SRCAA's regulation.
 - Agency may take enforcement action if it documents that all of the following occur:
 - Control Officer or a duly authorized representative detects an odor level greater than or equal to 2 based on the following scale;
 - Level 0 - no odor detected,
 - Level 1 - odor barely detected,
 - Level 2 - odor is distinct and definite, any unpleasant characteristics recognizable,
 - Level 3 - odor is objectionable enough or strong enough to cause attempts at avoidance, and
 - Level 4 - odor is so strong that a person does not want to remain present.
 - A person making a complaint signs an affidavit stating that they have experienced air contaminant emissions in sufficient quantities and of such characteristics and duration so as to unreasonably interfere with their enjoyment of life and property; and
 - The source of the odor;
 - A description of what the affidavit should contain was added. (*i.e. the affidavit should describe or identify, to the extent possible, the frequency, intensity, duration, offensiveness, and location of the odor experienced by the complainant.*)
- A new subsection was added stating: "*With respect to odor, the Agency will determine whether or not a viola-*

tion of subsection C has occurred based on its review of the information documented under subsection D, as well as any other relevant information obtained during the investigation."

This additional language has been added to clarify that the Agency will not just be issuing penalties blindly based on affidavits, but that the Agency will be reviewing the statements and the other documentation to make its determination as to whether a violation occurred.

- The rule also establishes that if a person/facility proves to the Agency's satisfaction that it has employed controls and operating practices to the greatest degree practicable, that the Agency may decline to pursue formal enforcement action.
- In the case where the above occurs, the Agency will document criteria used in making the decision and will be made available to any person making a public records request to the Agency for said documentation, including, but not limited to complaining parties. This does not apply to information deemed confidential in accordance with RCW 70.94.205.

Hearing Location(s): Spokane Regional Clean Air Agency, 3104 East Augusta Avenue, Spokane, WA 99207, on March 4, 2010, at 9:00 a.m.

Date of Intended Adoption: March 4, 2010.

Submit Written Comments to: Charles E. Studer, 3104 East Augusta Avenue, Spokane, WA 99207, e-mail cestuder@scapca.org, fax (509) 477-4727 ext. 107, by January 22, 2010.

Assistance for Persons with Disabilities: Contact Charles E. Studer by February 23, 2010, TTY (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Although SRCAA's legal authority to take enforcement action for odors which unreasonably interfere with another property owner's use and enjoyment is broad as provided by state law and SRCAA regulation, SRCAA has not typically taken enforcement action for violation of odor nuisance regulations because SRCAA inspectors often determine that unreasonable off-site odors exist as reported by the complainant(s) and that the source of the odor is unquestionably the identified facility; however, during the investigation, it is often extremely difficult to identify specific operations or maintenance requirements which were not complied with which resulted in the odor.

During the past four and one-half years, SRCAA has received nearly 800 odor complaints and has issued only one odor Notice of Violation (Notice of Violation).

These revisions will revoke our present odor and nuisance rule and add a new way of enforcement consistent with the practices of PSCAA's Rule 9.11, which has been challenged to the Pollution Control Hearings Board (PCHB). Each time PSCAA's enforcement action has been upheld.

Reasons Supporting Proposal: SRCAA expects that these changes to the rule will establish clear enforceable odor standards that can be understood by both the public and the regulated community and will strengthen the enforceability of nuisance occurrences.

Statutory Authority for Adoption: RCW 70.94.141 and 70.94.380.

Statute Being Implemented: Chapter 70.94 RCW and 42 U.S.C. 7401 et seq.

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: SRCAA's proposed regulation clearly communicates the odor standards to the regulated community, and is relatively straightforward for inspectors to apply in appropriate cases. SRCAA's proposed regulation also provides an enforcement standard which is consistent with the standard established in the Washington Clean Air Act for nuisance odors. The benefit of enforcing a regulation that is nearly identical to PSCAA's nuisance regulation Section 9.11 is that odor violations issued by PSCAA which have been appealed to the Washington PCHB have been affirmed by the PCHB. Although the current and proposed regulation does not establish a "zero" odor standard, which people sometimes expect, one of the most significant benefits of a revised odor nuisance regulation may be that people impacted by strong and unreasonable odors are more likely see some level of relief because of the more objective nature of the revised regulation.

Name of Proponent: Spokane Regional Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Charles E. Studer, 3401 East Augusta Avenue, Spokane, WA 99207, (509) 477-4727 ext. 107; Implementation: William O. Dameworth, 3401 East Augusta Avenue, Spokane, WA 99207, (509) 477-4727 ext. 1217; and Enforcement: Matt Holmquist, 3401 East Augusta Avenue, Spokane, WA 99207, (509) 477-4727 ext. 102.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Chapter 19.85 RCW applies to state agencies only as specified in RCW 19.85.01 [19.85.011].

RCW 70.94.141(1) states: "An air pollution control authority shall not be deemed to be a state agency."

SRCAA is a local air pollution control authority. Therefore chapter 19.85 WAC [RCW] does not apply to local air pollution control authority rule development/amendments.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.010 states: "Agency" means any state board, commission, department, institution of higher education, or officer, authorized by law to make rules or to conduct adjudicative proceedings, except those in the legislative or judicial branches, the governor, or the attorney general except to the extent otherwise required by law and any local governmental entity that may request the appointment of an administrative law judge under chapter 42.41 RCW. RCW 70.94.141(1) states: "An air pollution control authority shall not be deemed to be a state agency." Therefore, RCW 34.05.-328 does not apply to this rule amendment.

December 18, 2009

Charles E. Studer
Environmental Engineer

ATTACHMENT C

AMENDATORY SECTION (Amending Order Res. 04-01, filed 3/4/2004)

SECTION 6.04 EMISSION OF AIR CONTAMINANT: DETRIMENT TO PERSON OR PROPERTY ((ODORS AND NUISANCES))

A. **Definitions:** All definitions in SRCAA Regulation I, Article 1, Section 1.04 apply to this Section, unless otherwise defined herein.

B. The Agency implements and enforces WAC 173-400-040 in Spokane County in addition to Section 6.04. The provisions of RCW 70.94.640 are herein incorporated by reference.

C. It shall be unlawful for any person to cause or allow the emission of any air contaminant in sufficient quantities and of such characteristics and duration as is, or is likely to be:

1. Injurious to the health or safety of human, animal, or plant life;
2. Injurious or cause damage to property; or
3. Which unreasonably interferes with enjoyment of life and property.

D. With respect to odor, the Agency may take enforcement action, pursuant to chapter 70.94 RCW, under this section if the Control Officer or a duly authorized representative has documented all of the following:

1. The detection by the Control Officer or a duly authorized representative of an odor at a level 2 or greater, according to the following odor scale:

Level 0 - no odor detected.

Level 1 - odor barely detected.

Level 2 - odor is distinct and definite, any unpleasant characteristics recognizable.

Level 3 - odor is objectionable enough or strong enough to cause attempts at avoidance, and

Level 4 - odor is so strong that a person does not want to remain present.

2. An affidavit from a person making a complaint that demonstrates that they have experienced air contaminant emissions in sufficient quantities and of such characteristics and duration so as to unreasonably interfere with their enjoyment of life and property (the affidavit should describe or identify, to the extent possible, the frequency, intensity, duration, offensiveness, and location of the odor experienced by the complainant); and

3. The source of the odor.

E. With respect to odor, the Agency will determine whether or not a violation of subsection C has occurred based on its review of the information documented under subsection D, as well as any other relevant information obtained during the investigation

F. When determining whether to take formal enforcement action authorized in subsection D above, the Agency may consider written evidence provided by the person causing the odors which demonstrates to the satisfaction of the Agency that all controls and operating practices to prevent or minimize odors to the greatest degree practicable are being employed. If the Agency determines that all such efforts are being employed by the person causing the odors and that no

additional control measures or alternate operating practices are appropriate, the Agency may decline to pursue formal enforcement action.

G. The Agency will document all the criteria used in making its determination in subsection F above as to whether or not the person causing the odors is employing controls and operating practices to prevent or minimize odors to the greatest degree practicable. Said documentation, except information that meets the criteria of confidential in accordance with RCW 70.94.205, will be made available to any person making a public records request to the Agency for said documentation, including, but not limited to complaining parties.

H. Nothing in this Section shall be construed to impair any cause of action or legal remedy of any person, or the public for injury or damages arising from the emission of any air contaminant in such place, manner or concentration as to constitute air pollution or a common law nuisance.

~~((A. Effective control apparatus and measures shall be installed and operated to reduce odor-bearing gases and particulate matter emitted into the atmosphere to a reasonable minimum.~~

~~B. The Board or Control Officer may establish reasonable requirements that the building or equipment be closed and ventilated in such a way that all the air, gas, and particulate matter are effectively treated for removal or destruction of odorous matter or other air contaminants before emission to the atmosphere.~~

~~C. Odors caused by agricultural activities consistent with good agricultural practices exempt from this section:~~

~~1. Odors caused by agricultural activities consistent with good agricultural practices on agricultural land are exempt from the requirements of this section unless they have a substantial adverse effect on public health. In determining whether agricultural activity is consistent with good agricultural practices, the Authority shall consult with a recognized third-party expert in activity prior to issuing any notice of violation.~~

~~2. Any notice of violation issued under this section pertaining to odors cause by agricultural activity shall include a statement as to why the activity is inconsistent with good agricultural practices, or a statement that the odors have substantial adverse effect on public health.~~

~~3. In any appeal to the Pollution Control Hearings Board or any judicial appeal of final order pertaining to odors caused by agricultural activity, the Authority shall prove the activity is inconsistent with good agricultural practices or that the odors have a substantial adverse impact on public health.~~

~~4. If a person engaged in agricultural activity on a contiguous piece of agricultural land sells or has sold a portion of that land for residential purposes, the exemption of this section shall not apply.~~

~~5. As used in this section:~~

~~a. "Agricultural activity" means the growing, raising, or production of horticultural or viticultural crops, berries, poultry, livestock, grain, mint, hay, and dairy products.~~

~~b. "Good agricultural practices" mean economically feasible practices which are customary among or appropriate to farms and ranches of a similar nature in the local area.~~

e. "Agricultural land" means at least five acres of land devoted primarily to the commercial production of livestock or agricultural commodities.

~~6. The Authority, implements and enforces WAC 173-400-040(4), in Spokane County in addition to Parts A through C.6 of this Section. The more stringent requirement in WAC 173-400-040(4) or Section 6.03 supersedes the lesser.))~~

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 10-01-130

PROPOSED RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2009-05—Filed December 21, 2009, 8:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-13-035.

Title of Rule and Other Identifying Information: Juvenile life insurance standards safeguarding against purchase of policies for speculative or fraudulent purposes (WAC 284-23-800 through 284-23-806).

Hearing Location(s): Office of the Insurance Commissioner, 5000 Capitol Boulevard, Tumwater, WA, on March 22, 2010, at 9:00 a.m.

Date of Intended Adoption: March 29, 2010.

Submit Written Comments to: Kacy Scott, P.O. Box 40258, Olympia, WA 98504, e-mail kacys@oic.wa.gov, fax (360) 586-3109, by March 19, 2010.

Assistance for Persons with Disabilities: Contact Lorrie [Lorie] Villaflores by March 19, 2010, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Purpose: Amend the current rules for clarity and ease of compliance.

Anticipated Effects:

- Definition of insurable interest is identical to statutory definition.
- Insurers have greater latitude in developing standards to prevent speculative or fraudulent purchase of juvenile life [insurance].

Statutory Authority for Adoption: RCW 48.02.060 (3)(a).

Statute Being Implemented: RCW 48.23.345.

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: Note that the rule does not apply to group life policies.

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7041; Implementation: Beth Berendt, P.O. Box

40254, Olympia, WA 98504-0255, (360) 725-7117; and Enforcement: Carol Sureau, P.O. Box 40254, Olympia, WA 98504-0255, (360) 725-7150.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The impacted businesses do not meet the definition of small business for purposes of chapter 19.85 RCW.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7041, e-mail kacys@oic.wa.gov.

December 21, 2009

Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2007-09, filed 1/21/09, effective 2/21/09)

WAC 284-23-800 Purpose and scope. The purpose of these rules is to ~~((prevent))~~ set standards for detecting and preventing the purchase of juvenile life insurance for speculative or fraudulent reasons, by ensuring that insurance underwriting practices consider such risk, and by setting forth the minimum practices required to insure the life of a juvenile. These rules apply to ~~((any))~~ life insurance ((issued in Washington state on)) policies governed by chapter 48.23 RCW that insure the life of a juvenile.

AMENDATORY SECTION (Amending Matter No. R 2007-09, filed 1/21/09, effective 2/21/09)

WAC 284-23-803 Definitions. For the purpose of this rule, the following definitions apply, unless the context clearly requires otherwise:

(1) "Insurable interest" means a relationship to the insured at the time of application ~~((congruent with the continuance of the life of the insured, and))~~ as ~~((further))~~ defined in RCW 48.18.030 and 48.18.060(2).

(2) "Juvenile" means a person younger than eighteen years of age.

(3) "Juvenile Life Insurance Contract" means a life insurance policy or contract issued on the life of a juvenile.

(4) "Parent or legal guardian" means a natural parent, an adoptive parent whose status is documented in a final court order of adoption or a court appointed legal guardian for the juvenile. Step-parents who have not legally adopted the juvenile, foster parents, noncustodial parents or relatives acting in loco parentis are not considered parents or legal guardians of the juvenile for purposes of this rule.

AMENDATORY SECTION (Amending Matter No. R 2007-09, filed 1/21/09, effective 2/21/09)

WAC 284-23-806 Required procedures and standards for sale of juvenile life insurance policies. Beginning July 1, 2009, an insurer must comply with the following procedures and standards when ~~((selling))~~ underwriting juvenile life insurance policies:

(1) An insurer may refuse an applicant's request for life insurance when the combined life insurance-in-force exceeds the issuing insurer's maximum for juveniles.

(2) Life insurance upon a juvenile ~~((may))~~ must not be made or take effect unless at the time the contract is made, the applicant is a person having an insurable interest in the life of ~~((a minor or is a person upon whom the minor is dependent for support and maintenance))~~ the juvenile. The insurer must obtain and keep documentation sufficient to demonstrate that the ~~((person applying))~~ applicant for the policy has an insurable interest in the life of the ~~((insured))~~ juvenile.

(3) In addition to the signature of the applicant, the ~~((following consent as evidenced by signature must be obtained before submitting the application for underwriting:~~

(a) ~~The parent or legal guardian with whom the juvenile resides must sign the application if the applicant is not a parent or legal guardian.~~

~~((b))~~ consent of the parent or legal guardian with whom the juvenile resides, as evidenced by signature, must be obtained before submitting the application for underwriting. Any juvenile age fifteen or older must sign the ~~((initial))~~ application for insurance on the juvenile's life.

(4) An insurer must have justification for ~~((selling))~~ issuing a life insurance policy on the life of a juvenile ~~((in excess of reasonably anticipated costs associated with the juvenile's funeral, other death expenses or costs of mental health treatment for family members or loss of income to the family. The insurer must provide the insurance commissioner with documentation from its records and files to support the justification upon request)).~~ The justification must ~~((contain))~~ address the following elements:

(a) The ~~((justification))~~ issued policy must conform to the insurer's established standards and practices for underwriting juvenile life insurance or explain any variance.

(b) As part of its underwriting practice, the insurer must identify the amount, if any, of other life insurance contracts on the life of the juvenile which are in force or applied for at the time of application.

(c) ~~((Whether and to what extent the beneficiary or applicant is dependent on the juvenile for income or other support.~~

~~The value of life insurance or accidental death benefits issued for other siblings or immediate family members, and if not grossly proportional to the underwritten policy benefit or individually equivalent to coverage on other family members, why proportionality or equivalency was not required.~~

~~((Whether the overall amount of insurance on the juvenile exceeds the annual household income, and if so, why such an amount was approved.))~~ The insurer must confirm that the policy death benefit is grossly proportional to the value of life insurance or accidental death benefits issued for other siblings or immediate family members, and if not, justify why proportionality or equivalency was not required.

(d) The insurer must have good cause to underwrite when the overall amount of insurance on the juvenile exceeds the annual household income, and if it does so, justify why such an amount was approved. The extent to which the beneficiary or applicant is dependent on the juvenile for income or other support is an example of such a justification.

(5) For each application for juvenile life insurance rejected by an insurer, each insurer must maintain at its home or principal office a complete file containing the original signed application, underwriting analysis, correspondence with the applicant and any other documents pertinent to the decision to reject the applicant as an insured, for a period of not less than ten years from the date the application was signed by the applicant. Such file shall be subject to inspection by the insurance commissioner.

WSR 10-01-131
PROPOSED RULES
OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2008-11—Filed December 21,
2009, 9:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-09-134.

Title of Rule and Other Identifying Information: Conducting business in own legal name.

Hearing Location(s): OIC Tumwater Office, Training Room 120, 5000 Capitol Boulevard, Tumwater, WA, <http://www.insurance.wa.gov/about/directions.shtml>, on March 22, 2010, at 10:00 a.m.

Date of Intended Adoption: March 29, 2010.

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 March 21, 2010.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by March 21, 2010, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these proposed rules is to ensure that insurers and the entities they contract with use their "legal name" when conducting insurance business, which includes all correspondence, policies, communications, and advertisements, so that consumers and the office [of] the insurance commissioner will be able to identify which insurer is involved in any insurance transaction.

Reasons Supporting Proposal: Many insurers are affiliates of holding company systems using a group name to identify the various insurance companies in the holding company system on documents used in transacting business with the public and regulators. When the legal name of the insurance company involved in a particular matter is not accurately and completely identified, consumers and the office of the insurance commissioner may be confused.

Statutory Authority for Adoption: RCW 48.02.060.

Statute Being Implemented: RCW 48.05.190.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7041; Implementation 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. This rule places additional regulatory burdens on two primary business groups: Insurers and those they contract with as "contracted entities." There are no affected domestic insurers that meet the law's definition of a small business. The only substantively new requirement of the "contracted entities" (some of whom probably are small businesses under the law's definition) is to use their complete mailing address and NAIC company code on all written or electronic communications to consumers or the commissioner. Given the simplicity of complying and the ease of adding this information to correspondence, this requirement will cause these entities to incur only minor costs, as defined under the law. Therefore, no small business economic impact statement is required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kacy Scott, P.O. Box 4025 [40258], Olympia, WA 98504-0258, phone (360) 725-7041, fax (360) 586-3109, e-mail kacys@oic.wa.gov.

December 21, 2009

Mike Kreidler

Insurance Commissioner

NEW SECTION

WAC 284-30-670 Insurers must transact business in their legal name. (1) Definitions that apply to this section:

(a) "Legal name" or "full name of the insurer" means the name displayed on the Washington state certificate of authority issued by the commissioner.

(b) "Contracted entity" means an entity contracted to transact any aspect of the business of insurance, such as adjudicating claims, determining eligibility, or underwriting or marketing products on behalf of an insurer, and includes such entities as producers, claims administrators, and managing general agents as defined in RCW 48.98.005(3).

(c) "Transacting business" includes the transaction of insurance, as defined in RCW 48.01.060.

(2) Each insurer and contracted entity must identify itself by its own legal name when:

(a) Transacting business with a consumer, insured, potential customer or claimant as defined in WAC 284-30-320(2); and

(b) Communicating orally, electronically, or in writing with the commissioner.

(3) In all written or electronic communications with the commissioner, each insurer and contracted entity must provide its:

(a) Complete mailing address and legal name; and

(b) NAIC company code.

(4) Each insurer and contracted entity must clearly display the insurer's legal name on all advertisements directed to potential insureds.

(a) When a producer, licensee, or other marketing entity advertises an insurer's product that it sells for more than one insurer, it must use its own name and address, and does not need to include the legal name of the insurer.

(b) Advertisements directed to producers, providers, or other marketing entities, but not directed to consumers or potential insureds, are exempt from this subsection.

(5) An insurer must ensure that a contracted entity transacting business on its behalf meets the requirements of this section. Each single violation may subject the insurer to all applicable provisions of Title 48 RCW, including, but not limited to, RCW 48.05.140 and 48.05.185.

WSR 10-01-132
PROPOSED RULES
OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2008-13—Filed December 21, 2009, 9:10 a.m.]

Supplemental Notice to WSR 09-17-124.

Preproposal statement of inquiry was filed as WSR 08-09-136.

Title of Rule and Other Identifying Information: Personal injury protection (PIP) coverage on automobile liability insurance policies.

Hearing Location(s): OIC Tumwater Office, Training Room 120, 5000 Capitol Boulevard, Tumwater, WA, <http://www.insurance.wa.gov/about/directions.shtml>, on March 17, 2010, at 11:00 a.m.

Date of Intended Adoption: March 29, 2010.

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 March 16, 2010.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by March 16, 2010, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 48.22.085 through 48.22.100 provide for the mandatory offering of PIP with the issuance of automobile liability insurance policies. There are companies that do not demonstrate a clear understanding of the amounts and way that PIP coverage must be offered to insureds, and when insurers must offer PIP coverage on commercial auto liability policies. These proposed rules are intended to clarify this confusion and assist insurers in issuing PIP coverage with automobile insurance policies.

Reasons Supporting Proposal: There are companies that do not demonstrate a clear understanding of the amounts and way that PIP coverage must be offered to insureds, and when insurers must offer PIP coverage on commercial auto liability policies.

Statutory Authority for Adoption: RCW 48.02.060, 48.22.105.

Statute Being Implemented: RCW 48.18.300.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Kacy Scott, P.O. Box 40248 [40258], Olympia, WA 98504-0258, (360) 725-7041; Implementation 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. None of the domestic insurers actively offering coverage in Washington state meet the definition of small business under the law.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kacy Scott, P.O. Box 4025 [40258], Olympia, WA 98504-0258, phone (360) 725-7041, fax (360) 586-3109, e-mail kacys@oic.wa.gov.

December 21, 2009

Mike Kreidler

Insurance Commissioner

NEW SECTION

WAC 284-20-300 Mandatory offering of personal injury protection. (1) Insurers issuing an automobile liability insurance policy must offer the minimum personal injury protection coverage limits required in RCW 48.22.095, and must make available, if requested, additional personal injury protection limits as defined in RCW 48.22.100. Insurers may also offer other personal injury protection limits, in addition to these required offerings.

(2) If the named insured rejects personal injury protection coverage, the insurer must promptly delete the coverage after the insurer receives the rejection notice from the named insured. The insurer must retain a copy of the rejection notice or request to delete coverage with the policy record.

(3) Insurers may use electronic forms, electronic signatures and electronic attestations, per WAC 284-01-050, to comply with this rule. The insurer must maintain an auditable compliance record and provide this information to the commissioner upon request.

(4) This section does not apply to corporations, partnerships, or any other nonhuman entity named as the insured.

WSR 10-01-139
PROPOSED RULES
WHATCOM COMMUNITY COLLEGE

[Filed December 21, 2009, 11:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-20-085.

Title of Rule and Other Identifying Information: Student rights and responsibilities—Student complaint procedure, WAC 132U-120-260 through 132U-120-330. WAC 132U-120-270 through 132-120-330 was repealed. Changes are made to WAC 132U-120-260.

Hearing Location(s): Whatcom Community College, Laidlaw Center, Boardroom, 237 West Kellogg Road, Bellingham, WA 98226, on Friday, February 5, 2010, at 1:00 p.m.

Date of Intended Adoption: Friday, February 5, 2010.

Submit Written Comments to: Laurel Denison, 237 West Kellogg Road, e-mail kparrier@whatcom.ctc.edu, fax (360) 383-3077, by February 3, 2010.

Assistance for Persons with Disabilities: Contact Keri Burch, interpreter coordinator, by February 3, 2010, VP (360) 225-7182 or (360) 383-3043.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To assure that a student complaint process exists; create an amendment that separates specific procedural steps from the policy; allows for minor revisions as necessary.

Reasons Supporting Proposal: The structure of the student rights and responsibilities committee has changed and term lengths etc. need to be amended, and discrimination requirements have changed, requiring amendments to the WACs.

Statutory Authority for Adoption: RCW 28B.50.130.

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

Name of Proponent: Whatcom Community College, governmental.

Name of Agency Personnel Responsible for Drafting: Laurel Denison, 237 West Kellogg Road, Bellingham, WA 98226, (360) 383-3077; Implementation: Patricia Onion, 237 West Kellogg Road, Bellingham, WA 98226, (360) 383-3070; and Enforcement: Ron Leatherbarrow, 237 West Kellogg Road, Bellingham, WA 98226, (360) 383-3222.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No monetary implications are attached to this policy. No costs imposed on small business through adoption of these rule amendments.

A cost-benefit analysis is not required under RCW 34.05.328. No economic impact. Rules relate to internal college operations.

December 18, 2010

Patricia Onion

Vice-President for
Educational Services

STUDENT COMPLAINTS ((~~PROCEDURE~~))

AMENDATORY SECTION (Amending WSR 03-01-072, filed 12/12/02, effective 1/12/03)

WAC 132U-120-260 Purpose. ~~((The purpose of this procedure is to:~~

- ~~• Protect each student's freedom of expression in the learning environment;~~
- ~~• Protect each student from improper, arbitrary or capricious academic evaluations (grades) or actions made by an instructor;~~
- ~~• Offer each student reasonable protection against arbitrary or capricious actions taken by college officials;~~
- ~~• Provide a mechanism for students to express concerns in an effort to improve the learning environment.~~

~~The emphasis of this procedure is on informal resolution of the complaint. Most differences are best resolved by direct, courteous, and respectful communication. Formal complaints, which involve hearings before the student rights and responsibilities committee, should be rare.)) Whatcom~~

Community College is committed to providing quality service to students, including providing accessible services, accurate information, and equitable and fair application of policies and procedures, including evaluation of class performance, grading, and rules and regulations for student participation in college activities and student conduct. The college procedures pertaining to student complaints are delineated in the Whatcom Community College policy and procedures manual and published on the college web site.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132U-120-270	Complaints excluded.
WAC 132U-120-285	Time limits.
WAC 132U-120-320	Withdrawal of complaint.
WAC 132U-120-330	Administrative, faculty and staff grievances.

WSR 10-01-142
PROPOSED RULES
DEPARTMENT OF
NATURAL RESOURCES
[Filed December 21, 2009, 2:30 p.m.]

Original Notice.

Expedited rule making—Proposed notice was filed as WSR 09-17-079.

Title of Rule and Other Identifying Information: Amending WAC 332-120-070 Application permit form and 332-130-025 Corner restoration—Recording form.

Hearing Location(s): Department of Natural Resources, NRB Room 371, 1111 Washington Street S.E., Olympia, WA 98504, on January 26, 2010, at 1:00.

Date of Intended Adoption: February 23, 2010.

Submit Written Comments to: Gwen Gervelis, PLS, P.O. Box 47030, Olympia, WA 98504, e-mail Gwen.gervelis@dnr.wa.gov, fax (360) 902-1191, by February 2, 2010.

Assistance for Persons with Disabilities: Contact department of natural resources by January 4, 2010, TTY (360) 902-1156.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending WAC 332-120-070 Application permit form and 332-130-025 Corner restoration—Recording form.

Reasons Supporting Proposal: Forms are very cumbersome in WAC. They are difficult to fill out and arduous to update. Removing them will allow the department of natural resources to pursue current, more efficient technology such as online filing and update the layout of the form to conform to current practice.

Statutory Authority for Adoption: RCW 58.24.030, 58.24.040, and 58.09.050.

Statute Being Implemented: RCW 58.24.030, 58.24.040, and 58.09.050.

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

Name of Proponent: Survey Advisory Board, public.

Name of Agency Personnel Responsible for Drafting and Implementation: Gwen Gervelis, 1111 Washington Street S.E., Olympia, WA, (360) 902-1181; and Enforcement: George Twiss, 405 Black Lake Boulevard, Olympia, WA 98502, (360) 664-1565.

No small business economic impact statement has been prepared under chapter 19.85 RCW. An economic impact statement is not required because following this rule will be less than a minor cost to business.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required because this rule does not meet the requirement of significant legislative rule under RCW 34.05.328 (5)(c)(iii).

Clay Sprague
Deputy Supervisor Uplands

AMENDATORY SECTION (Amending Order 617, filed 2/25/94, effective 3/28/94)

WAC 332-120-070 Application/permit form. ((The following form shall be used when making application to remove or destroy a survey monument:))

((STRICKEN GRAPHIC _____))

**APPLICATION FOR PERMIT
TO REMOVE OR DESTROY
A SURVEY MONUMENT**

PERMIT NO.

You are hereby authorized to remove or destroy
the described survey monument(s):

AUTHORIZING SIGNATURE/DATE
(DNR or Other Authorizing Agency)

APPLICANT INFORMATION:

NAME: _____ TELEPHONE NO: _____ DATE: _____
COMPANY OR AGENCY NAME AND ADDRESS: _____

I estimate that this work will be finished by (date)_____.

_____ I request a variance from the requirement to reference to the Washington Coordinate System. (Please provide your justification in the space below.)

The variance request is ____ approved; ____ not approved. (FOR DNR USE ONLY) Reason for not approving:

MULTIPLE MONUMENTS:

_____ Check here if this form is being used for more than one monument. You must attach separate sheets showing the information required below for each monument affected. You must seal, sign and date each sheet.

INDEXING INFORMATION FOR AN INDIVIDUAL MONUMENT:

- 1) THE MONUMENT IS LOCATED IN: SEC _____ TWP _____ RGE _____ 1/4-1/4 _____
- 2) ADDITIONAL IDENTIFIER: (e.g., BLM designation for the corner, street intersection, plat name, block, lot, etc.) _____

MONUMENT INFORMATION: Describe: 3) the monument/accessories found marking the position, 4) the temporary references set to remonument the position (include coordinates when applicable), and 5) the permanent monument(s) to be placed on completion (if a permanent witness monument(s) is set include the references to the original position).

SEAL/SIGNATURE/DATE SIGNED

(Form prescribed 2/94 by the Public Land Survey Office, Dept. of Natural Resources, pursuant to RCW 58.24.040 (8).)

STRICKEN GRAPHIC))

~~((STRICKEN GRAPHIC~~

COMPLETION REPORT FOR MONUMENT REMOVAL OR DESTRUCTION

(TO BE COMPLETED AND SENT TO THE DNR AFTER THE WORK IS DONE.)

_____ I have perpetuated the position(s) as per the detail shown on the application form.

SEAL/SIGNATURE/DATE SIGNED

OR

_____ I was unable to fulfill the plan as shown on the application form. Below is the detail of what I did do to perpetuate the original position(s). (If the application covered multiple monuments attach sheets providing the required information. Seal, sign and date each sheet.)

SEAL/SIGNATURE/DATE SIGNED

~~STRICKEN GRAPHIC))~~

All applications must be completed on forms provided by the department and following instructions provided by the department. Completed applications shall be filed at the department.

AMENDATORY SECTION (Amending WSR 97-02-071, filed 12/31/96, effective 1/31/97)

WAC 332-130-025 Corner restoration—Recording form. The record of corner information required to be filed with the county auditor by the Survey Recording Act shall be filed on a form ((substantially like the following:))

((STRICKEN GRAPHIC _____

LAND CORNER RECORD

GRANTOR/SURVEYOR/PUBLIC OFFICER: This corner record correctly represents work performed by me or under my direction in conformance with the Survey Recording Act.

COMPANY OR AGENCY:

ADDRESS:

GRANTEE: PUBLIC SEAL/SIGNATURE/DATE

LEGAL: TWP; RGE: CORNER CODE:
ADDITIONAL IDENTIFIER: (BLM designation, street or plat names, block, lot, etc.)

COUNTY:

WASHINGTON PLANE COORDINATES: N: E:

ORDER: ZONE: DATUM (Date of adjustment):

CORNER INFORMATION: Discuss the history, evidence found, and perpetuation of the corner. Diagram the references; provide the date of work; and, if applicable, a reference to a map of record and/or the field book/page no. Use the back, if needed.

This form is in compliance with the intent of RCW 65.04.045 and prescribed by the Public Land Survey Office, Department of Natural Resources - 1/97.

_____ STRICKEN GRAPHIC))

((STRICKEN GRAPHIC))

MARK THE CORNER LOCATION BELOW AND FILL IN THE CORNER CODE BLANK ON THE OTHER SIDE:
For corners at the intersection of two lines, the corner code is the alphanumeric coordinate that corresponds to the appropriate intersection of lines.

For corners that are only on one line, the corner code is the line designation and the related line segment; i.e., a corner on line 5 between "B" and "C" is designated BC-5.

For corners that are between lines, the corner code is both line segments; i.e., a corner in the SE1/4 of the SE1/4 of section 18 is designated MN 4-5.

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25		
A																											A
B																											B
C			6			5				4				3				2				1					C
D																											D
E																											E
F																											F
G			7			8				9				10				11				12					G
H																											H
J																											J
K																											K
L			18			17				16				15				14				13					L
M																											M
N																											N
O																											O
P			19			20				21				22				23				24					P
Q																											Q
R																											R
S																											S
T			30			29				28				27				26				25					T
U																											U
V																											V
W																											W
X			31			32				33				34				35				36					X
Y																											Y
Z																											Z
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25		

RCW 58.09.060 (2) requires the following information on this form: an accurate description and location, in reference to the corner position, of all monuments and accessories (a) found at the corner and (b) placed or replaced at the corner; (c) basis of bearings used to describe or locate such monuments or accessories; and (d) corollary information that may be helpful to relocate or identify the corner position.

SPACE FOR ADDITIONAL COMMENT:

STRICKEN GRAPHIC))

provided by the department and following instructions provided by the department.

WSR 10-01-144
PROPOSED RULES

PUBLIC DISCLOSURE COMMISSION

[Filed December 21, 2009, 2:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-16-044.

Title of Rule and Other Identifying Information: WAC 390-19-020 Electronic filing—Mandatory filing—Procedures for electronic filing of campaign finance disclosure forms.

Hearing Location(s): Commission Hearing Room, 711 Capital Way, Room 206, Olympia, WA 98504, on January 28, 2010, at 9:30 a.m.

Date of Intended Adoption: January 28, 2010.

Submit Written Comments to: Doug Ellis, Public Disclosure Commission (PDC), P.O. Box 40908, Olympia, WA 98504-0908, e-mail dellis@pdc.wa.gov, fax (360) 753-1112, by January 21, 2010.

Assistance for Persons with Disabilities: Contact Nicole Stauffer by phone (360) 753-1111, (360) 586-0544.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The amended rule would allow for electronic filing of PDC forms C-1 Registration statement for candidates and C-1pc Registration statement for political committees.

Reasons Supporting Proposal: To provide option for candidates and political committees to file registration statements electronically, thereby improving timeliness and reducing processing and data entry by the agency.

Statutory Authority for Adoption: RCW 42.17.370(1).

Statute Being Implemented: Chapter 42.17 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The amended rule provides the option for candidates and political committees to file registration statements electronically, thereby improving timeliness and reducing processing and data entry by the agency.

Name of Proponent: [PDC], governmental.

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 the rule amendment 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 [applicable] to the adoption of these rules.

December 21, 2009

Douglas J. Ellis
Assistant Director

AMENDATORY SECTION (Amending WSR 09-02-021, filed 12/30/08, effective 1/30/09)

WAC 390-19-020 Electronic filing—Mandatory filing. (1) RCW 42.17.3691 mandates that persons satisfying the qualifying criteria in that section file all contribution and expenditure reports by electronic means.

(2) Persons filing by electronic means shall register with the PDC and receive a filer identification number and password. Filers must have a current C-1 Candidate Registration Statement or a C-1pc Committee Registration Statement

~~((with)) and an original signature on file with the PDC prior to receiving a filer identification number. ((Forms C-1 and C-1pc may not be filed electronically.))~~

(3) A filer subject to RCW 42.17.3691 shall file all PDC C-3 and C-4 reports and all appropriate schedules electronically in compliance with subsection (5) of this section.

(4) Any filer required to file electronically, but who files on paper, is in violation of RCW 42.17.3691 and may be subject to enforcement action unless the filer is a candidate who has sought and been granted an exception from electronic filing under WAC 390-19-050.

(5) A filer subject to electronic filing shall file reports using one of the following:

(a) The ORCA software (Online Reporting of Campaign Activity) provided free-of-charge by the PDC; or

~~(b) ((Software that creates electronic files that conform to the Political Disclosure Standard Electronic Reporting Format provided by the PDC; or~~

~~(e))) Any other electronic filing application provided or approved by the PDC.~~

WSR 10-01-148

PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed December 22, 2009, 8:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-17-081.

Title of Rule and Other Identifying Information: Amending chapter 172-139 WAC to clarify standards relative to the conduct of commercial activities, by external organizations or persons, on property owned or controlled by Eastern Washington University.

Hearing Location(s): Eastern Washington University, Main Campus, Tawanka Commons, Room 215, Cheney, Washington 99004, on January 29, 2010, at 3:00 p.m.

Date of Intended Adoption: January 29, 2010.

Submit Written Comments to: University Policy Administrator, 214 Showalter Hall, Cheney, WA 99004, e-mail tlutey@ewu.edu, fax (509) 359-7036, by January 28, 2010.

Assistance for Persons with Disabilities: Contact Trent Lutey by January 28, 2010, (509) 359-6322.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal clarifies chapter 172-139 WAC by adding a purpose statement and updating language to reflect current organizational structure and practices.

Reasons Supporting Proposal: These changes are necessary to reflect current organizational titles and business practices, and to clarify the scope of the rule.

Statutory Authority for Adoption: RCW 28B.35.120.

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

Name of Proponent: Eastern Washington University, governmental.

Name of Agency Personnel Responsible for Drafting: Laurie Connelly, 214 Showalter Hall, Cheney, WA 99004,

(509) 359-2371; Implementation and Enforcement: Mary Voves, 307 Showalter Hall, Cheney, WA 99004, (509) 359-4210.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Revisions to chapter 172-139 WAC do not impose a disproportionate impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Chapter 172-139 WAC is not considered a significant legislative rule by Eastern Washington University.

December 22, 2009

Trent Lutey
University Policy Administrator

Chapter 172-139 WAC

Commercial activities

NEW SECTION

WAC 172-139-005 Purpose. This chapter establishes standards for the conduct of commercial activities on Eastern Washington University property by external persons or organizations. This includes property and facilities that are owned, operated, or otherwise controlled by Eastern Washington University.

AMENDATORY SECTION [(Amending WSR 92-21-043, filed 10/16/92, effective 11/16/92)]

WAC 172-139-010 Commercial activities. Eastern Washington University facilities shall not be used for commercial solicitation, advertising, or promotional activities except when the activities clearly serve educational objectives. Examples of acceptable activities include (ing but not limited to) the display of books of interest to the academic community, or the display or demonstration of technical or research equipment, or ((and when the)) other commercial activities that relate to educational objectives. In all cases, such commercial activities must be ((and are)) conducted under the sponsorship or at the request of a university department or of a ((the executive)) vice-president or authorized designee. Approved((- Provided, That)) commercial activities shall not interfere with or operate to the detriment of the conduct of university affairs or the free flow of pedestrian or vehicular traffic.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION [(Amending WSR 92-21-043, filed 10/16/92, effective 11/16/92)]

WAC 172-139-020 Commercial activities in the Pence Union Building. Exceptions to WAC 172-139-010 are granted for the Pence Union Building (PUB) subject to the following provisions:

(1)((- Provided, That)) Any commercial the activity conducted under this section shall ((does)) not duplicate services provided by the university.

(2) Vendors, organizations, or individuals must obtain ((and prior)) approval ((is obtained)) from the director of the student union building prior to conducting any commercial activity ((auxiliary services)).

(3) The University shall charge ((V)) vendors ((are assessed charges)) for use of ((the)) PUB facilities.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION [(Amending WSR 92-21-043, filed 10/16/92, effective 11/16/92)]

WAC 172-139-030 Handbills. (1) No person shall place in or on any vehicle parked on the university campus, any handbill, except as provided in subsection (3)((2)(e)) of this section.

(2) For the purposes of this chapter, the following definition applies: A "handbill" is any printed or written matter, sample, or device which:

(a) Advertises for sale any merchandise, product, service, or commodity; or

(b) Directs attention, either directly or indirectly, to any business or mercantile or commercial establishment, or other activity, for the purpose of promoting an interest in sales or use; or

(c) Directs attention to or advertises any meeting, theatrical performance, exhibition, or event of any kind, for which an admission fee is charged for the purpose of private gain or profit. ((- Provided, That t))

(3) The terms of this ((clause)) section shall not apply to a university-sponsored activity for which the handbills have been approved for such distribution by the ((director of student)) Associate Vice President for ((a)) Auxiliary and Business ((s)) Services ((in the Pence Union Building)).

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION [(Amending WSR 92-21-043, filed 10/16/92, effective 11/16/92)]

WAC 172-139-040 Penalties for violations of commercial activities regulations. (1) Any violation of this chapter by a student of Eastern Washington University is a violation of the student conduct code, WAC 172-121-200 ((0-040)).

(2) Nonstudents violating this chapter may be referred to civil authorities for appropriate prosecutions, including violations of the laws of criminal trespass and/or litter control.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

WSR 10-01-162
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
[Filed December 22, 2009, 12:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-14-125.

Title of Rule and Other Identifying Information: The department is amending chapter 388-548 WAC, Federally qualified health centers (FQHC).

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://www.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on January 26, 2010, at 10:00 a.m.

Date of Intended Adoption: Not sooner than January 27, 2010.

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 26, 2010.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by January 5, 2010, 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 purpose of this chapter is to implement the federal payment methodology for FQHC under section 702 of the Benefit Improvement and Protection Act (BIPA) of 2000. The act replaced cost-based reimbursement methodology with medicaid FQHC prospective payment system (PPS). This rule will replace the emergency rule that is currently in effect under WSR 09-22-029. It describes the reimbursement methodology the department will use, as authorized under 42 U.S.C. 1396a(bb), to meet the legislature's intent that the department continue to meet federal payment standards for FQHCs with a lower overall level of appropriation as required under sections 201 and 209 of the 2009-2011 final legislative budget.

Reasons Supporting Proposal: The rule is needed to serve as the foundation for the program and its operations. The Administrative Procedure Act requires agency policy to be codified. These rules incorporate policies into rule, incorporate federal payment methodology into rule, and provide a point of access for the public to read rules for the program.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090, sections 201 and 209 of 2009-2011 budget bill.

Rule is necessary because of federal law, BIPA of 2000 section 702.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy L. Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; Implementation and Enforce-

ment: Kevin Collins, P.O. Box 5510 [45510], Olympia, WA 98504-5510, (360) 725-2104.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not impose any new costs on small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kevin Collins, P.O. Box 45510, Olympia, WA 98504-5510, phone (360) 725-2104, fax (360) 586-9727, e-mail collikm@dshs.wa.gov.

December 16, 2009
Stephanie E. Vaughn
Rules Coordinator

Chapter 388-548 WAC

Federally Qualified Health Centers

NEW SECTION

WAC 388-548-1000 Federally qualified health centers—Purpose. This chapter establishes the department's:

- (1) Requirements for enrollment as a federally qualified health center (FQHC) provider; and
- (2) Reimbursement methodology for services provided by FQHCs to clients of medical assistance.

NEW SECTION

WAC 388-548-1100 Federally qualified health centers—Definitions. This section contains definitions of words or phrases that apply to this chapter. Unless defined in this chapter or WAC 388-500-0005, the definitions found in the Webster's New World Dictionary apply.

APM index - The alternative payment methodology (APM) is used to update APM encounter payment rates on an annual basis. The APM index is a measure of input price changes experienced by Washington's federally-qualified health center (FQHC) and rural health clinic (RHC) providers. The index is derived from the federal medicare economic index (MEI) and Washington-specific variable measures.

Base year - The year that is used as the benchmark in measuring a center's total reasonable costs for establishing base encounter rates.

Cost report - A statement of costs and provider utilization that occurred during the time period covered by the cost report. FQHCs must complete a cost report when there is a change in scope, rebasing of the encounter rate, or when the department sets a base rate.

Encounter - A face-to-face visit between a client and a FQHC provider (e.g., a physician, physician's assistant, or advanced registered nurse practitioner) who exercises independent judgment when providing services that qualify for an encounter rate.

Encounter rate - A cost-based, facility-specific rate for covered FQHC services, paid to an FQHC for each valid encounter it bills.

Enhancements (also called managed care enhancements) - A monthly amount paid by the department to

FQHCs for each client enrolled with a managed care organization (MCO). Plans may contract with FQHCs to provide services under managed care programs. FQHCs receive enhancements from the department in addition to the negotiated payments they receive from the MCOs for services provided to enrollees.

Federally qualified health center (FQHC) - An entity that has entered into an agreement with the centers for medicare and medicaid services (CMS) to meet medicare program requirements under 42 CFR 405.2434 and:

(1) Is receiving a grant under section 329, 330, or 340 of the public health service (PHS) act, or is receiving funding from such a grant under a contract with the recipient of such a grant and meets the requirements to receive a grant under section 330 of the public health service act;

(2) Based on the recommendation of the PHS, is determined by CMS to meet the requirements for receiving such a grant;

(3) Was treated by CMS, for purposes of part B, as a comprehensive federally funded health center (FFHC) as of January 1, 1990; or

(4) Is an outpatient health program or facility operated by a tribe or tribal organizations under the Indian Self-Determination Act or by an Urban Indian organization receiving funding under Title V of the Indian Health Care Improvement Act.

Fee-for-service - A payment method the department uses to pay providers for covered medical services provided to medical assistance clients, except those services provided under the department's prepaid managed care organizations or those services that qualify for an encounter rate.

Interim rate - The rate established by the department to pay an FQHC for covered FQHC services prior to the establishment of a permanent rate for that facility.

Rebasing - The process of recalculating the conversion factors, per diems, per case rates, or RCC rates using historical data.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 388-548-1200 Federally qualified health centers—Enrollment. (1) To enroll as a medical assistance provider and receive payment for services, a federally qualified health center (FQHC) must:

(a) Receive FQHC certification for participation in the Title XVIII (medicare) program according to 42 CFR 491;

(b) Sign a core provider agreement; and

(c) Operate in accordance with applicable federal, state, and local laws.

(2) The department uses one of two timeliness standards for determining the effective date of a medicaid-certified FQHC.

(a) The department uses medicare's effective date if the FQHC returns a properly completed core provider agreement and FQHC enrollment packet within sixty calendar days from the date of medicare's letter notifying the center of the medicare certification.

(b) The department uses the date the signed core provider agreement is received if the FQHC returns the properly completed core provider agreement and FQHC enrollment packet sixty-one or more calendar days after the date of medicare's letter notifying the clinic of the medicare certification.

NEW SECTION

WAC 388-548-1300 Federally qualified health centers—Services. (1) The following outpatient services qualify for FQHC reimbursement:

(a) Physician services specified in 42 CFR 405.2412.

(b) Nurse practitioner or physician assistant services specified in 42 CFR 405.2414.

(c) Clinical psychologist and clinical social worker services specified in 42 CFR 405.2450.

(d) Visiting nurse services specified in 42 CFR 405.2416.

(e) Nurse-midwife services specified in 42 CFR 405.2401.

(f) Preventive primary services specified in 42 CFR 405.2448.

(2) The department pays for FQHC services when they are:

(a) Within the scope of an eligible client's medical assistance program. Refer to WAC 388-501-0060 scope of services; and

(b) Medically necessary as defined WAC 388-500-0005.

(3) FQHC services may be provided by any of the following individuals in accordance with 42 CFR 405.2446:

(a) Physicians;

(b) Physician assistants (PA);

(c) Nurse practitioners (NP);

(d) Nurse midwives or other specialized nurse practitioners;

(e) Certified nurse midwives;

(f) Registered nurses or licensed practical nurses; and

(g) Psychologists or clinical social workers.

NEW SECTION

WAC 388-548-1400 Federally qualified health centers—Reimbursement and limitations. (1) Effective January 1, 2001, the payment methodology for federally qualified health centers (FQHC) conforms to 42 U.S.C. 1396a(bb). As set forth in 42 U.S.C. 1396a (bb)(2) and (3), all FQHCs that provide services on January 1, 2001, and through December 31, 2008, are reimbursed on a prospective payment system (PPS).

(2) Effective January 1, 2009, FQHCs have the choice to continue being reimbursed under the PPS or to be reimbursed under an alternative payment methodology (APM), as authorized by 42 U.S.C. 1396a (bb)(6). As required by 42 U.S.C. 1396a(bb), payments made under the APM must be at least as much as PPS.

(3) The department calculates the FQHC's PPS encounter rate as follows:

(a) Until the FQHC's first audited department cost report is available, the department pays an average encounter rate of other similar FQHCs within the state, otherwise known as an interim rate;

(b) Upon availability of the FQHC's audited cost report, the department sets the clinic's encounter rate at one hundred percent of its total reasonable costs as defined in the cost report. The FQHC receives this rate for the remainder of the calendar year during which the audited cost report became available. Thereafter, the encounter rate is then inflated each January 1 by the medicare economic index (MEI) for primary care services.

(4) For FQHCs in existence during calendar years 1999 and 2000, the department sets the payment prospectively using a weighted average of one hundred percent of the center's total reasonable costs for calendar years 1999 and 2000

$$\text{Specific FQHC Base Encounter Rate} = \frac{(\text{1999 Rate} \times \text{1999 Encounters}) + (\text{2000 Rate} \times \text{2000 Encounters})}{(\text{1999 Encounters} + \text{2000 Encounters}) \text{ for each FQHC}}$$

(c) Beginning in calendar year 2002 and any year thereafter, the encounter rate is increased by the MEI for primary care services, and adjusted for any increase or decrease within the center's scope of services.

(5) The department calculates the FQHC's APM encounter rate as follows:

(a) For the period beginning January 1, 2009, the APM utilizes the FQHC base encounter rates, as described in WAC 388-548-1400 (4)(b).

(i) The base rates are adjusted to reflect any valid changes in scope of service between years 2002 and 2009.

(ii) The adjusted base rates are then inflated by each annual percentage, from years 2002 through 2009, of the APM index. The result is the year 2009 APM rate for each FQHC that chooses to be reimbursed under the APM.

(b) The department will ensure that the APM pays an amount that is at least equal to the PPS, the annual inflator used to increase the APM rates is the greater of the APM index or the MEI.

(c) The department will periodically rebase the APM rates. The department will not rebase rates determined under the PPS.

(6) The department limits encounters to one per client, per day except in the following circumstances:

(a) The visits occur with different doctors with different specialties; or

(b) There are separate visits with unrelated diagnoses.

(7) FQHC services and supplies incidental to the provider's services are included in the encounter rate payment.

(8) Payments for nonFQHC services provided in an FQHC are made on a fee-for-service basis using the department's published fee schedules. NonFQHC services are subject to the coverage guidelines and limitations listed in chapters 388-500 through 557 WAC.

(9) For clients enrolled with a managed care organization, covered FQHC services are paid for by that plan.

(10) Only clients enrolled in Title XIX (medicaid) or Title XXI (CHIP) are eligible for encounter or enhancement payments. The department does not pay the encounter rate or the enhancement rate for clients in state-only medical programs. Services provided to clients in state-only medical programs are considered fee-for-service regardless of the type of service performed.

(11) For clients enrolled with a managed care organization (MCO), the department pays each FQHC a supplemental

and adjusted for any increase or decrease in the scope of services furnished during the calendar year 2001 to establish a base encounter rate.

(a) The department adjusts a PPS base encounter rate to account for an increase or decrease in the scope of services provided during calendar year 2001 in accordance with WAC 388-548-1500.

(b) The PPS base encounter rates are determined using audited cost reports and each year's rate is weighted by the total reported encounters. The department does not apply a capped amount to these base encounter rates. The formula used to calculate the base encounter rate is as follows:

payment in addition to the amounts paid by the MCO. The supplemental payments, called enhancements, are paid in amounts necessary to ensure compliance with 42 U.S.C. 1396a (bb)(5)(A).

(a) The FQHCs receive an enhancement payment each month for each managed care client assigned to them by an MCO.

(b) To ensure that the appropriate amounts are paid to each FQHC, the department performs an annual reconciliation of the enhancement payments. For each FQHC, the department will compare the amount actually paid to the amount determined by the following formula: (managed care encounters times encounter rate) less FFS equivalent of MCO services. If the center has been overpaid, the department will recoup the appropriate amount. If the center has been underpaid, the department will pay the difference.

NEW SECTION

WAC 388-548-1500 Federally qualified health centers—Change in scope of service. (1) For centers reimbursed under the prospective payment system (PPS), the department considers a federally qualified health center (FQHC) change in scope of service to be a change in the type, intensity, duration, and/or amount of services provided by the FQHC. Changes in scope of service apply only to covered medicaid services.

(2) When the department determines that a change in scope of service has occurred after the base year, the department adjusts the FQHC's encounter rate to reflect the change.

(3) FQHCs must:

(a) Notify the department's FQHC program manager in writing, at the address published in the department's federally qualified health centers billing instructions, of any changes in scope of service no later than sixty calendar days after the effective date of the change; and

(b) Provide the department with all relevant and requested documentation pertaining to the change in scope of service.

(4) The department adjusts the encounter rate to reflect the change in scope of service using one or more of the following:

(a) A medicaid comprehensive desk review of the FQHC's cost report;

(b) Review of a medicare audit of the FQHC's cost report; or

(c) Other documentation relevant to the change in scope of service.

(5) The adjusted encounter rate will be effective on the date the change of scope of service is effective.

(6) For centers reimbursed under the alternative payment methodology (APM), the department considers an FQHC change in scope of service to be a change in the type of services provided by the FQHC. Changes in intensity, duration, and/or amount of services will be addressed in the next scheduled encounter rate rebase. Changes in scope of service apply only to covered medicaid services.

(7) When the department determines that a change in scope of service has occurred after the base year, the department adjusts the FQHC's encounter rate to reflect the change.

(8) FQHCs must:

(a) Notify the department's FQHC program manager in writing, at the address published in the department's FQHC billing instructions, of any changes in scope of service no later than sixty calendar days after the effective date of the change; and

(b) Provide the department with all relevant and requested documentation pertaining to the change in scope of service.

(9) The department adjusts the encounter rate to reflect the change in scope of service using one or more of the following:

(a) A medicaid comprehensive desk review of the FQHC's cost report;

(b) Other documentation relevant to the change in scope of service.

(10) The adjusted encounter rate will be effective on the date the change of scope of service is effective.

WSR 10-01-163

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed December 22, 2009, 12:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-15-164.

Title of Rule and Other Identifying Information: The department is amending WAC 388-549-1100 Rural health clinics—Definitions, 388-549-1400 Rural health clinics—Reimbursement and limitations, and 388-549-1500 Rural health clinics—Change in scope of service.

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://www.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on January 26, 2010, at 10:00 a.m.

Date of Intended Adoption: Not sooner than January 27, 2010.

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 26, 2010.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by January 5, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments are necessary to describe the payment methodology the department will use for rural health clinics, as authorized by 42 U.S.C. 1396a(bb).

Reasons Supporting Proposal: The rules are necessary to match the language in the department's state plan which ensures state receipt of federal funds. These permanent rules replace emergency rules which became effective July 1, 2009.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.510, 74.09.522.

Statute Being Implemented: RCW 74.08.090, 42 U.S.C. 1396a(bb), 42 C.F.R. 405.2472, 42 C.F.R. 491.

Rule is necessary because of federal law, 42 U.S.C. 1396a(bb), 42 C.F.R. 405.2472, 42 C.F.R. 491.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy L. Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; Implementation and Enforcement: Irina Lusby, P.O. Box 5510, Olympia, WA 98504-5510, (360) 725-1882.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not impose any new costs on small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Irina Lusby, RHC Program Manager, P.O. Box 45510, Olympia, WA 98504-5510, phone (360) 725-1882, fax (360) 586-9727, e-mail lusbyis@dshs.wa.gov.

December 16, 2009

Stephanie E. Vaughn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-05-011, filed 2/7/08, effective 3/9/08)

WAC 388-549-1100 Rural health clinics—Definitions. This section contains definitions of words and phrases that apply to this chapter. Unless defined in this chapter or WAC 388-500-0005, the definitions found in the Webster's New World Dictionary apply.

"APM index"—The alternative payment methodology (APM) is used to update APM encounter payment rates on an annual basis. The APM index is a measure of input price changes experienced by Washington's federally qualified health center (FQHC) and rural health clinic (RHC) providers.

"Base year"—The year that is used as the benchmark in measuring a clinic's total reasonable costs for establishing base encounter rates.

"Change in scope of service"—A change in the type, intensity, duration, or amount of service.)

"Encounter"—A face-to-face visit between a client and a qualified rural health clinic (RHC) provider (e.g., a physician, physician's assistant, or advanced registered nurse practitioner) who exercises independent judgment when providing services that qualify for an encounter rate.

"Encounter rate"—A cost-based, facility-specific rate for covered RHC services, paid to a rural health clinic for each valid encounter it bills.

"Enhancements" (also called ~~((healthy options (HO)))~~ managed care enhancements)—A monthly amount paid to RHCs for each client enrolled with a managed care organization (MCO). Plans may contract with RHCs to provide services under ~~((healthy options))~~ managed care programs. RHCs receive enhancements from the department in addition to the negotiated payments they receive from the MCOs for services provided to enrollees.

"Fee-for-service"—A payment method the department uses to pay providers for covered medical services provided to medical assistance clients, except those services provided under the department's prepaid managed care organizations or those services that qualify for an encounter ~~((rate))~~ payment.

"Interim rate"—The rate established by the department to pay a rural health clinic for covered RHC services prior to the establishment of a ~~((prospective payment system (PPS)))~~ permanent rate for that facility.

"Medicare cost report"—The cost report is a statement of costs and provider utilization that occurred during the time period covered by the cost report. RHCs must complete and submit a report annually to medicare.

"Mobile unit"—The objects, equipment, and supplies necessary for provision of the services furnished directly by the RHC are housed in a mobile structure.

"Permanent unit"—The objects, equipment and supplies necessary for the provision of the services furnished directly by the clinic are housed in a permanent structure.

"Rebasing"—The process of recalculating the conversion factors, per diems, per case rates, or RCC rates using historical data.

"Rural area"—An area that is not delineated as an urbanized area by the Bureau of the Consensus.

"Rural health clinic (RHC)"—A clinic, as defined in 42 CFR 405.2401(b), that is primarily engaged in providing RHC services and is:

- Located in a rural area designated as a shortage area as defined under 42 CFR 491.2;
- Certified by medicare as a RHC in accordance with applicable federal requirements; and
- Not a rehabilitation agency or a facility primarily for the care and treatment of mental diseases.

"Rural health clinic (RHC) services"—Outpatient or ambulatory care of the nature typically provided in a physician's office or outpatient clinic ~~((and the like))~~ or similar setting, including specified types of diagnostic examination,

laboratory services, and emergency treatments. The specific list of services which must be made available by the clinic can be found under 42 CFR part 491.9.

AMENDATORY SECTION (Amending WSR 08-05-011, filed 2/7/08, effective 3/9/08)

WAC 388-549-1400 Rural health clinics—Reimbursement and limitations. (1) ~~((For rural health clinics (RHC) certified by medicare on and after January 1, 2001, the department pays RHCs an encounter rate per client, per day using a prospective payment system (PPS) as required by 42 USC 1396a(bb) for RHC services))~~ Effective January 1, 2001, the payment methodology for rural health clinics (RHC) conforms to 42 USC 1396a(bb). RHCs that provide services on January 1, 2001 through December 31, 2008 are reimbursed on a prospective payment system (PPS).

Effective January 1, 2009, RHCs have the choice to continue being reimbursed under the PPS or be reimbursed under an alternative payment methodology (APM), in accordance with 42 USC 1396a (bb)(6).

~~((+))~~ (2) The department calculates the RHC's PPS encounter rate for RHC core services as follows:

~~((+))~~ (a) Until the RHC's first audited medicare cost report is available, the department pays an average encounter rate of other similar RHCs ~~((such))~~ whether the RHC is classified as hospital-based or free-standing within the state, otherwise known as an interim rate.

~~((+))~~ (b) Upon availability of the RHC's audited medicare cost report, the department sets the clinic's encounter rate at one hundred percent of its costs as defined in the cost report divided by the total number of encounters the clinic has provided during the time period covered in the audited cost report. The RHC will receive this rate for the remainder of the calendar year during which the audited cost report became available. The encounter rate is then inflated each January 1 by the medicare economic index (MEI) for primary care services.

~~((+))~~ (3) For RHCs in existence during calendar years 1999 and 2000, the department sets the payment prospectively using a weighted average of one hundred percent of the clinic's total reasonable costs for calendar years 1999 and 2000 and adjusted for any increase or decrease in the scope of services furnished during the calendar year 2001 to establish a base encounter rate.

(a) The department adjusts a PPS base encounter rate to account for an increase or decrease in the scope of services provided during calendar year 2001 in accordance with WAC 388-549-1500.

(b) The PPS base encounter rates are determined using medicare's audited cost reports and each year's rate is weighted by the total reported encounters. The department does not apply a capped amount to these base encounter rates. The formula used to calculate the base encounter rate is as follows:

$$\text{Specific RHC Base Encounter Rate} = \frac{(\text{1999 Rate} \times \text{1999 Encounters}) + (\text{2000 Rate} \times \text{2000 Encounters})}{(\text{1999 Encounters} + \text{2000 Encounters}) \text{ for each RHC}}$$

(c) Beginning in calendar year 2002 and any year thereafter, the encounter rate is increased by the MEI and adjusted for any increase or decrease in the clinic's scope of services.

~~((3))~~ (4) The department calculates the RHC's APM encounter rate as follows:

(a) For the period beginning January 1, 2009, the APM utilizes RHC base encounter rates as described in WAC 388-549-1400 (3)(b). The base rates are inflated by each annual percentage, from years 2002 through 2009, of the APM index. The result is the year 2009 APM rate for each RHC that chooses to be reimbursed under the APM.

(b) To ensure that the APM pays an amount that is at least equal to the PPS in accordance with 42 USC 1396a (bb)(6), the annual inflator used to increase the APM rates is the greater of the APM index or the MEI.

(c) The department periodically rebases the APM rates. The department does not rebase rates determined under the PPS.

(d) When rebasing the APM encounter rates, the department applies a productivity standard to the number of visits performed by each practitioner group (physicians and mid-levels) to determine the number of encounters to be used in each RHC's rate calculation. The productivity standards are determined by reviewing all available RHC cost reports for the rebasing period and setting the standards at the levels necessary to allow ninety-five percent of the RHCs to meet the standards. The encounter rates of the clinics that meet the standards are calculated using each clinic's actual number of encounters. The encounter rates of the other five percent of clinics are calculated using the productivity standards. This process is applied at each rebasing, so the actual productivity standards may change each time encounter rates are rebased.

(5) The department pays for one encounter, per client, per day except in the following circumstances:

(a) The visits occur with different doctors with different specialties; or

(b) There are separate visits with unrelated diagnoses.

~~((4))~~ (6) RHC services and supplies incidental to the provider's services are included in the encounter rate payment.

~~((5))~~ (7) ~~((Services other than RHC services that are provided in an RHC are not included in the RHC encounter rate.))~~ Payments for non-RHC services provided in an RHC are made on a fee-for-service basis using the department's published fee schedules. Non-RHC services are subject to the coverage guidelines and limitations listed in chapters 388-500 through 388-557 WAC.

~~((6))~~ (8) For clients enrolled with a managed care organization, covered RHC services are paid for by that plan.

~~((7))~~ (9) The department does not pay the encounter rate or the enhancements for clients in state-only programs. Services provided to clients in state-only programs are considered fee-for-service, regardless of the type of service performed.

(10) For clients enrolled with a managed care organization (MCO), the department pays each RHC a supplemental payment in addition to the amounts paid by the MCO. The supplemental payments, called enhancements, are paid in amounts necessary to ensure compliance with 42 USC 1396a (bb)(5)(A).

(a) The RHCs receive an enhancement payment each month for each managed care client assigned to them by an MCO.

(b) To ensure that the appropriate amounts are paid to each RHC, the department performs an annual reconciliation of the enhancement payments. For each RHC, the department will compare the amount actually paid to the amount determined by the following formula: (managed care encounters times encounter rate) less fee-for-service equivalent of MCO services. If the clinic has been overpaid, the department will recoup the appropriate amount. If the clinic has been underpaid, the department will pay the difference.

AMENDATORY SECTION (Amending WSR 08-05-011, filed 2/7/08, effective 3/9/08)

WAC 388-549-1500 Rural health clinics—Change in scope of service. (1) For clinics reimbursed under the prospective payment system (PPS), the department considers a rural health clinic's (RHC) change in scope of service to be a change in the type, intensity, duration, and/or amount of services provided by the RHC. Changes in scope of service apply only to covered medicaid services.

~~((2))~~ (a) When the department determines that a change in scope of service has occurred after the base year, the department will adjust the RHC's ~~((prospective payment system (PPS)))~~ encounter rate to reflect the change.

~~((3))~~ (b) RHCs must:

~~((a))~~ (i) Notify the department's RHC program manager in writing, at the address published in the department's rural health clinic billing instructions, of any changes in scope of service no later than sixty days after the effective date of the change; and

~~((b))~~ (ii) Provide the department with all relevant and requested documentation pertaining to the change in scope of service.

~~((4))~~ (c) The department adjusts the ~~((PPS))~~ encounter rate to reflect the change in scope of service using one or more of the following:

~~((a))~~ (i) A medicaid comprehensive desk review of the RHC's cost report;

~~((b))~~ (ii) Review of a medicare audit of the RHC's cost report; or

~~((c))~~ (iii) Other documentation relevant to the change in scope of service.

~~((5))~~ (d) The adjusted encounter rate will be effective on the date the change of scope of service is effective.

(2) For clinics reimbursed under the alternative payment methodology (APM), the department considers an RHC change in scope of service to be a change in the type of services provided by the RHC. The department addresses changes in intensity, duration, and/or amount of services in the next scheduled encounter rate rebase. Changes in scope of service apply only to covered medicaid services.

(a) When the department determines that a change in scope of service has occurred after the base year, the department adjusts the RHC's encounter rate to reflect the change.

(b) RHCs must:

(i) Notify the department's RHC program manager in writing, at the address published in the department's rural

health clinic billing instructions, of any changes in scope of service no later than sixty calendar days after the effective date of the change; and

(ii) Provide the department will all relevant and requested documentation pertaining to the change in scope of service.

(c) The department adjusts the encounter rate to reflect the change in scope of service using one or more of the following:

(i) A medicaid comprehensive desk review of the RHC's cost report;

(ii) Review of a medicare audit of the RHC's cost report, if available; or

(iii) Other documentation relevant to the change in scope of service.

(d) The adjusted encounter rate will be effective on the date the change of scope of service is effective.

WSR 10-01-164

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed December 22, 2009, 12:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-09-100.

Title of Rule and Other Identifying Information: The department is amending WAC 388-546-5500 Modifications of privately owned vehicles.

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://www.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on January 26, 2010, at 10:00 a.m.

Date of Intended Adoption: Not sooner than January 27, 2010.

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 26, 2010.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by January 5, 2010, 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 health and recovery services administration (HRSA) is revising WAC 388-546-5500 because it no longer covers modifications of privately owned vehicles. This amendment is required to implement cost savings initiatives effective July 1, 2009, and to be in compliance with the department's federal state plan assurances.

Reasons Supporting Proposal: This amendment is necessary for the department to implement cost savings initia-

tives effective July 1, 2009, and to be in compliance with the department's federal state plan assurances. When finalized, the permanent rule will replace the emergency rule currently in place under WSR 09-22-036.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090, 42 C.F.R. Part 440.

Rule is necessary because of federal law, 42 C.F.R. Part 440.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy L. Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; Implementation and Enforcement: Walter Neal, P.O. Box 45531, Olympia, WA 98504-5531, (360) 725-1703.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department analyzed the proposed rule amendments and concludes that they will impose no new costs on small businesses. The preparation of a comprehensive small business economic impact statement is not required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Walter Neal, Transportation Program Manager, P.O. Box 45531, Olympia, WA 98504-5531, phone (360) 725-1703, fax (360) 586-9727, e-mail nealw@dshs.wa.gov.

December 16, 2009

Stephanie E. Vaughn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-06-029, filed 3/2/01, effective 4/2/01)

WAC 388-546-5500 Modifications of privately owned vehicles-Noncovered. (1) ~~((MAA may cover and reimburse the purchase of vehicle driving controls, a vehicle wheelchair lift conversion, or the purchase or repair of a vehicle wheelchair lift, when:~~

~~(a) The requested item is necessary for the client's transportation to medically necessary MAA-covered services; and~~

~~(b) The client owns a vehicle that MAA determines is suitable for modification; and~~

~~(c) Medical transportation provided under WAC 388-546-5000 through 388-546-5400 cannot meet the client's need for transportation to and from medically necessary covered services at a lower total cost to the department (including anticipated costs); and~~

~~(d) Prior approval from MAA is obtained)) The department does not cover the purchase or repair of equipment for privately owned vehicles or modifications of privately owned vehicles under the nonemergency transportation program.~~

(2) ~~((Any vehicle driving controls, vehicle wheelchair lift conversion or vehicle wheelchair lift purchased by MAA under this section becomes the property of the client on whose behalf the purchase is made. MAA assumes no continuing liability associated with the ownership or use of the device.~~

~~(3) MAA limits the purchase of vehicle driving control(s), vehicle wheelchair lift conversion or vehicle wheelchair lift to one purchase per client. If a device purchased under this section becomes inoperable due to wear or breakage and the cost of repair is more than the cost of replacement, MAA will consider an additional purchase under this section as long as the criteria in subsection (1) of this section are met.~~

~~(4) MAA must remain the payer of last resort under this section.~~

~~(5) MAA does not cover the purchase of any new or used vehicle under this section or under this chapter)) The purchase or repair of equipment for privately owned vehicles or modifications of privately owned vehicles is not a healthcare service. Exception to rule (ETR) as described in WAC 388-501-0160 is not available for this nonhealthcare service.~~

WSR 10-01-170

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed December 22, 2009, 12:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-21-109.

Title of Rule and Other Identifying Information: WAC 458-20-21701 Enhanced collection tools, explains procedures for electronic notice and order to withhold and deliver service (E-Withhold) and mitigation options for financial institutions required to respond to service by the department of revenue.

Hearing Location(s): Capital Plaza Building, 4th Floor, Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA 98504, on January 26, 2010, at 3:00 p.m.

Date of Intended Adoption: February 3, 2010.

Submit Written Comments to: Walt Tanimoto or Bobbi Carter, P.O. Box 14699, Olympia, WA 98511-4699, e-mail dorewithholds@dor.wa.gov, fax (360) 586-8816, by January 26, 2010.

Assistance for Persons with Disabilities: Contact Martha Thomas at (360) 725-7497 no later than ten days before the hearing date. Deaf and hard of hearing individuals may call 1-800-451-7985 (TTY users).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 562, Laws of 2009 (ESSB 6169), authorizes the department of revenue (department) to electronically serve a notice and order to withhold and deliver to any financial institution in the form of a listing of unsatisfied tax warrants filed under chapter 82.32 RCW. The department is proposing a rule explaining the procedure for electronic issuance of these notices. This rule explains the process for the electronic issuance of a notice and order to withhold and deliver, and the responsibility of the financial institution being served such a notice.

Copies of draft rules are available for viewing and printing on our web site at <http://dor.wa.gov/content/FindALawOrRule/RuleMaking/agenda.aspx>.

Reasons Supporting Proposal: A rule is needed to implement the provisions of chapter 562, Laws of 2009, authorizing the electronic service of a notice and order to withhold and deliver to financial institutions.

Statutory Authority for Adoption: RCW 82.01.060 and 82.32.300.

Statute Being Implemented: RCW 82.32.235 and chapter 562, Laws of 2009.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Marilou Rickert, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6115; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Gilbert Brewer, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will impose no more than minor costs on affected businesses.

A cost-benefit analysis is not required under RCW 34.05.328. This is not a significant legislative rule as defined in RCW 34.05.328.

December 22, 2009

Alan R. Lynn

Rules Coordinator

NEW SECTION

WAC 458-20-21701 Enhanced collection tools. (1) Introduction. This section explains procedures for electronic notice and order to withhold and deliver service, and mitigation options for financial institutions required to respond to service by the department of revenue (department). This new service option is in addition to other forms of service authorized in RCW 82.32.235 and described in WAC 458-20-217(4). Electronic service under this rule will be referred to as "E-Withhold."

(2) What is E-Withhold? E-Withhold is a data-driven effort to identify assets that may satisfy unpaid tax lien liabilities. RCW 82.32.235 provides thirty days for financial institutions to respond to E-Withhold service. The department will perform an additional review/validation after the initial response is received from a financial institution to ensure accuracy before directing a financial institution to withhold and remit funds.

The department has developed detailed instructions for E-Withholds, which include information about file formats, response codes, payment references, access to the secured file transfer service, and other details needed by financial institutions. This information can be viewed at dor.wa.gov/E-Withhold.

(3) Who can be served by E-Withhold? E-Withhold service applies to "financial institutions." Financial institutions are defined as banks, trust companies, mutual savings banks, savings and loan associations, or credit unions authorized to do business and accept deposits in this state under state or federal law.

(4) **How will E-Withholds be served?** The department will serve a list of all or a portion of all properly filed and unsatisfied tax warrants (the E-Withhold list) to financial institutions by secured file transfer (SFT) service. Tax warrants with established and maintained payment agreements, or taxpayers under federal bankruptcy protection at the time the list is created will not be included. The department will not serve an E-Withhold list to a financial institution more than once per calendar month. The department will send an e-mail notification to a financial institution when service has occurred, and also send a courtesy copy via U.S. mail. The department will maintain contact information for each financial institution for E-Withhold service and processing issues. Financial institutions should notify the department of changes to contact information using the e-mail address referenced in subsection (7) of this section.

(5) **What is included on an E-Withhold list?** A list will contain information provided on a manually issued notice and order to withhold and deliver plus tax identification numbers provided to the department by taxpayers. Financial institutions served via E-Withhold must ensure that the data provided remains confidential and secure per RCW 82.32.-330.

Assets subject to E-Withhold include, but are not limited to:

- Checking, saving, or share accounts;
- Time or certificates of deposit;
- Investment or brokerage accounts;
- Contents of safe deposit boxes;
- Credit card receipts; and
- Contract collections.

Examples of assets exempt from E-Withhold are described in WAC 458-20-217(4).

(6) **When are funds withheld and due to the department?** Official service of the notice and order to withhold and deliver occurs at the time the E-Withhold list is placed into the designated SFT folder. The SFT service records a date and time stamp for actions occurring on it. Financial institutions have thirty days after date of service to remit (deliver) any proceeds from the E-Withhold to the department.

Financial institutions access the E-Withhold list from the SFT folder and use the data to identify if they have any accounts or assets of the listed entities and debtors. The financial institution must provide a response within ten days of original service with the results of its efforts to identify accounts or assets so that the department can verify/validate the accounts or assets are correctly subject to the E-Withhold. After completing the review/validation process, the department will notify the financial institution via e-mail that it has placed a revised E-Withhold list in the designated SFT folder with instructions to withhold (or not). If the financial institution is instructed to withhold a taxpayer's assets, the department will immediately so notify the taxpayer by U.S. mail.

When the department responds with instructions to withhold on located accounts/assets, the financial institution completes their processes to withhold and deliver any available funds.

Instructions for the contents of safe deposit boxes are at dor.wa.gov/E-Withhold.

(7) **What if a financial institution can't meet E-Withhold procedural requirements?** When a financial institution faces significant issues in meeting any of the requirements of this rule or the operational procedures referenced in subsection (2) of this section, it must submit a written request to the department for special handling. The request must identify the condition(s) creating the challenge(s). The department will work with financial institutions on a case-by-case basis to develop a mitigation plan that will achieve the desired outcome of locating and recovering assets to pay filed tax liens.

Criteria the department will consider when analyzing ways to mitigate impact include:

- A financial institution's lack of staff or technical inability to respond to electronic service; and
- Membership limits or restrictions that significantly reduce the potential of locating assets for some or most of the delinquent taxpayers, geographic remoteness from large numbers of taxpayers.

Requests for a mitigation plan or other E-Withhold questions should be sent via:

E-mail to:
dorewithholds@dor.wa.gov

U.S. mail to:

Department of Revenue
Attn: Compliance Division - CRRT
P.O. Box 14699
Tumwater, WA 98511-4699

WSR 10-01-172
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed December 22, 2009, 12:29 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-19-122.

Title of Rule and Other Identifying Information: Chapter 296-17A WAC, Classifications for workers' compensation insurance.

Hearing Location(s): Tumwater L&I Building, 7273 Linderson Way S.W., Tumwater, WA, on January 26, 2010, at 10:00 a.m.

Date of Intended Adoption: February 16, 2010.

Submit Written Comments to: Mr. Ronald Moore, P.O. Box 44140, Olympia, WA 98504-4140, e-mail MOOA235@lni.wa.gov, fax (360) 902-4729, by January 26, 2010.

Assistance for Persons with Disabilities: Contact Bill Moomau at (360) 902-4774 or TTY (360) 902-5797, by January 19, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department has conducted a study of the classification for dairy products manufacturing compared to other food products manufacturing. Classification 4002, for dairy products, has experienced a steady decline in hours with only a few such businesses

remaining in the state fund. With no difference in the environment, processes, or hazards present among these businesses, revisions are being considered for the following classifications:

WAC 296-17A-4002-00 and 296-17A-4002-01 Dairy products manufacturing - repealing these classifications.

WAC 296-17A-3902 Food products manufacturing - creating a new subclassification to cover those businesses currently reporting in classifications WAC 296-17A-4002-00 and 296-17A-4002-01.

Reasons Supporting Proposal: This rule making will bring together operations that are so compatible that there is no basis for keeping them separate.

Statutory Authority for Adoption: RCW 51.16.035, 51.16.100, 51.04.020(1).

Statute Being Implemented: RCW 51.16.035 and 51.16.100.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Renee Brady, Tumwater, (360) 902-4773; Implementation: Ronald C. Moore, Tumwater, (360) 902-4748; and Enforcement: Robert Malooly, Tumwater, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. In this case, the agency is exempt from conducting a small business economic impact statement since the proposed rules set or adjust fees or rates to legislative standards described in RCW 34.05.310 (4)(f).

A cost-benefit analysis is not required under RCW 34.05.328. In this case, the agency is exempt from conducting a cost-benefit analysis since the proposed rules set or adjust fees or rates pursuant to legislative standards described in RCW 34.05.328 (5)(b)(vi) and because the content of the rules are specifically dictated by statute described in RCW 34.05.328 (5)(b)(v). Preparation of a small business economic impact statement and the evaluation of probable costs is required when a rule proposal has the potential of placing a more than minor economic impact on business.

December 22, 2009

Judy Schurke

Director

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3902 Classification 3902.

3902-00 Fruit and vegetable: Cannery and freezer operations

Applies to establishments engaged in fruit and vegetable canning or freezing operations for wholesale customers. Operations contemplated by this classification include the receipt of fruit and vegetables directly from growers or dealers, preparing produce for canning by removing foreign materials such as leaves or weeds, washing, sterilizing, grading, peeling, slicing, coring, blanching, scalding and pre-cooking, premeasuring, mixing them in a hopper with sugar or other ingredients, and further processing into canned or

frozen products. Pea vining, when performed by employees of a cannery, is also included in this classification.

This classification excludes establishments engaged in evaporating, preserving or dehydrating fruits and vegetables which are to be reported separately in classification 3902-01; establishments engaged in manufacturing fruit juice, cider, jam or jelly which are to be reported separately in classification 3902-02; establishments engaged in packing *fresh* vegetables and fruits which are to be reported separately in classification 2104; and pea vining when done by employees of farm operations or farm labor contractors which is to be reported separately in the applicable farm classification.

3902-01 Fruit and vegetable: Evaporating, preserving or dehydrating

Applies to establishments engaged in evaporating, preserving, or dehydrating fruits and vegetables for wholesale customers. Operations contemplated by this classification include the receipt of fruit and vegetables directly from growers or dealers, washing, peeling, cooking, pressing fruits and vegetables by machine, adding preservatives and congealants, pasteurizing, then dehydrating, drying, or evaporating to remove the moisture which preserves the fruits and vegetables and leaves only the dry, solid portion. Finished products are packaged in cans, plastic bags, or boxes for shipping.

This classification excludes establishments engaged in canning or freezing of fruits and vegetables which are to be reported separately in classification 3902-00; establishments engaged in manufacturing fruit juice, cider, jam or jelly which are to be reported separately in classification 3902-02; establishments engaged in packing fresh vegetables and fruits which are to be reported separately in classification 2104; and farm operations which are to be reported separately in the applicable farm classification.

3902-02 Fruit syrup or juice, cider, jam or jelly: Manufacturing

Applies to establishments engaged in the manufacture of fruit syrup, juice, cider, jam, or jelly. Operations contemplated by this classification include the receipt of fruit directly from growers or dealers, washing, peeling, and cooking the fruit, extracting juice and separating seeds from pulp with fruit presses or separators, adding sugars, congealants and preservatives, pasteurizing, blending juices to produce a variety of flavors, and further processing to produce bottled, canned, or concentrate products.

This classification excludes establishments engaged in canning or freezing of fruits and vegetables which are to be reported separately in classification 3902-00; establishments engaged in evaporating, preserving or dehydrating fruits and vegetables which are to be reported separately in classification 3902-01; and farm operations which are to be reported separately in the applicable farm classification.

3902-11 Chocolate, cocoa, corn products: Manufacturing

Applies to establishments engaged in the manufacture of cocoa or chocolate such as Dutch or sweet chocolate or of corn products such as, but not limited to, tortillas. Operations contemplated by this classification include receipt of corn and cocoa beans from growers or dealers, processing operations, testing, packaging and shipping. Foreign matter is

removed from the cocoa beans and they are sorted, divided, cleaned, and roasted in ovens. Shells are cracked, usually by machines, and the beans examined to ensure quality. Depending on the products being manufactured, beans may be pasteurized, ground, further dried, mixed with chocolate liquor, sugar, powdered milk, cocoa butter, or potassium solutions to make into finished products. Depending on the corn product being made, ingredients are pressed, kneaded, cut, shaped or flattened, and baked or cooked.

This classification excludes establishments engaged in the manufacture of crackers, potato chips, ravioli, tamale, and pasta, or chocolate candy and confections which are to be reported separately in classification 3906, and farm operations which are to be reported separately in the applicable farm classification.

3902-12 Baking powder, dextrine, glucose and starch: Manufacturing

Applies to establishments engaged in the manufacture of baking powder, dextrine, glucose and starch. Operations contemplated by this classification include the receipt of vegetables and grains, such as, but not limited to, potatoes, corn, and wheat from growers or dealers, processing operations, testing, storing finished products in storage tanks, packaging into drums or cans, and shipping. Vegetables or grains are cleaned, sorted, and foreign matter removed. They are dumped onto conveyors and transported to grinding machines where they are ground into a starch paste. Water may be added to make liquid starch or starch milk or dryers may remove excess moisture. Starch blends may be made from raw starch suspensions using chemical solutions. Shakers remove bran, gluten or other particles from the starch suspension. Dextrine is made by further mixing the starch with dextrine paste, adding chemicals, cooking and stirring until the starch is converted to dextrine. Baking powder is made by mixing baking soda, starch, and an acid compound such as cream of tartar.

This classification excludes establishments engaged in the manufacture of food sundries not covered by another classification which are to be reported separately in classification 3902-14 and farm operations which are to be reported separately in the applicable farm classification.

3902-13 Nut shelling, egg breaking, coconut shredding and peanut handling

Applies to establishments engaged in nut shelling, egg breaking, coconut shredding, and peanut handling. Nuts are received from suppliers in bulk and placed into machinery which cracks shells and separates broken shells from the nut meat. Another machine sorts whole nut meats from those that are chipped, broken, or contaminated. At each machine, nuts are examined for rejects, and foreign matter is removed with a vacuum hose or by hand. They may be chopped, sliced, or left whole, then poured from the machines into sacks or containers. The meats of certain nuts, such as almonds, may be ground into meal, then canned for shipment. This classification also includes the grading and polishing of nuts, and shredding of coconuts. Egg breaking machines break eggs and separate the yolk from the white. They are observed for color, quantity, and clarity; inferior yolks or whites are discarded prior to being automatically dropped

onto separator trays with individual cups. Eggs may then be mixed with water, pasteurized or dried prior to packaging.

This classification excludes establishments engaged in the manufacture of oils which are to be reported separately in classification 3902-27 and establishments engaged in the manufacture of food sundries which are to be reported separately in classification 3902-14.

3902-14 Food sundries, N.O.C.: Manufacturing or processing

Applies to establishments engaged in the manufacture of a variety of miscellaneous food products not covered by another classification (N.O.C.). Products include, but are not limited to, imitation crab, spices, peanut butter, condiments, salsa, salad dressings, mayonnaise, soups, tofu, instant potatoes, salads and certain ready-to-eat dishes that are usually sold to wholesale distributors. This classification also applies to the grinding and roasting of coffee beans. Operations contemplated by this classification include the receipt of raw ingredients from growers or dealers, processing operations, testing, quality control, laboratory operations, packaging and shipping. Individual processes, which vary depending on the product being manufactured, include, but are not limited to, cleaning, dividing, grinding, mixing, blending with other ingredients, cooking, cooling, dividing again into desired portions, and packaging. The products are packaged in plastic bags, bottles, or cans, usually by machine. Some products require vacuum sealing, pasteurizing, or freezing.

This classification excludes establishments engaged in the manufacture of crackers, potato chips, ravioli, tamale, pasta, cough drops, confectionery, and chewing gum which are to be reported separately in classification 3906 and farm operations which are to be reported separately in the applicable farm classification.

3902-15 Pickles and sauerkraut: Manufacturing

Applies to establishments engaged in the manufacture of pickles and sauerkraut. Operations contemplated by this classification include the receipt of produce from growers or dealers, processing operations, testing, laboratory operations, packaging and shipping. Produce, such as cucumbers and cabbage, is cleaned, cut, chopped and placed in barrels, vats, or tanks of brine (a mixture of salt, sugar, spices, vinegar) until cured. At the end of curing period, product may be packed into glass jars, plastic bags, or cans. This classification also applies to the pickling of fruits or vegetables such as, but not limited to, tomatoes, peppers, and asparagus.

This classification excludes establishments engaged in canning or freezing of fruits and vegetables which are to be reported separately in classification 3902-00; establishments engaged in evaporating, preserving or dehydrating fruits and vegetables which are to be reported separately in classification 3902-01; establishments engaged in packing fresh vegetables and fruits which are to be reported separately in classification 2104; and farm operations which are to be reported separately in the applicable farm classification.

3902-17 Pet food: Manufacturing

Applies to establishments engaged in the manufacture of frozen or canned pet foods. Operations contemplated by this classification include the receipt of raw ingredients, processing operations, packaging and shipping. After bones and for-

eign matter are removed, raw ingredients are cleaned and ground. Depending on the product, various ingredients such as, but not limited to, animal meat and fat, fish by-products, cornmeal, soybean meal, ground wheat, rice, poultry, yeast, whey, salt, acids, chemicals, minerals, vitamins, water, or oil are mixed in large vats either by machine or by hand. Mixture is frozen or baked, dried, and packed into cans.

This classification excludes establishments engaged in the manufacture of dry pet food using a milling process which is to be reported separately in classification 2101 and farm operations which are to be reported separately in the applicable farm classification.

3902-24 Breakfast food: Manufacturing

Applies to establishments engaged in the manufacture of breakfast foods such as cereals or breakfast bars. Operations contemplated by this classification include the receipt of ingredients, processing operations, quality control, laboratory operations, packaging, and shipping. Flour, meal, or milled grains such as, but not limited to, corn, oats, barley, wheat, and nuts are mixed with other ingredients, formed into a dough, rolled out and extruded into flakes or other shapes. Pressure cylinders may be used to expand or puff whole grains. Cereals may be sifted through screens to check for size, color, and uniformity or otherwise tested for quality, then baked or dried in bulk prior to packaging.

This classification excludes establishments engaged in the manufacture of wholesale bakery goods which are to be reported separately in classification 3906; establishments engaged in milling or grinding operations which are to be reported separately in classification 2101; and farm operations which are to be reported separately in the applicable farm classification.

3902-26 Poultry canning and canneries, N.O.C.

Applies to establishments engaged in canning poultry or canning operations not covered by another classification (N.O.C.). Operations contemplated by this classification include the receipt of poultry or other products, processing operations, quality control, laboratory operations, packaging, and shipping. The process includes, but is not limited to, washing, cutting or chopping, and cooking poultry or other foods items. Preservatives or flavorings may be added before product is sealed in cans or jars.

This classification excludes establishments engaged in canning or freezing fruits or vegetables which are to be reported separately in classification 3902-00 and establishments engaged in canning or dehydrating meat products which are to be reported separately in classification 4301.

3902-27 Vegetable oil or butter substitutes: Manufacturing

Applies to establishments engaged in the manufacture of salad or vegetable oils, shortening, margarine or other butter substitutes. Operations contemplated by this classification include the receipt of seeds or beans from growers or through dealers, processing operations, quality control, laboratory operations, packaging and shipping. To make oils, soybeans, cottonseeds, safflower seeds, or shelled corn is cracked, ground, milled, steam cooked, and pressed to extract the oil. Depending on the product being made, other ingredients such as water, milk, powdered milk or salt may be blended with

the oil, then heated, filtered, and filled into cans or bottles. To make shortening or butter substitutes, flavoring, catalytic agents, and chemicals are added to harden the oils; some products are kneaded to spread the coloring uniformly; then they are packaged in cans, plastic containers, or wrapped in plastic or foil. Machinery includes, but is not limited to, grinders, screens, presses, extractors, dryers, and conveyors.

This classification excludes establishments engaged in the manufacture of "real" butter which are to be reported separately in classification ((4002)) 3902-28 and farm operations which are to be reported separately in the applicable farm classification.

3902-28 Dairy products: Bottling or manufacturing

Applies to establishments engaged in the bottling or manufacture of dairy products such as, but not limited to, bottled liquid or dried products derived from milk, butter, natural or processed cheeses, prepared products such as custard, dips or spread, whipped toppings, ice cream, ice cream mixes, and sherbet. Raw milk is received from suppliers and may go through heat treating, pasteurizing, cooling, and separators which adjust fat content by skimming the milk or adding cream, then pumping into vessels or vats. Additives, preservatives, flavorings, enzymes, or lactic acid may be added depending on the product being made. Further processing to manufacture cheese and other prepared dairy foods may include, but not be limited to, mixing, draining, pressing, spray drying, aging, cutting, and shredding. Product may be bottled or otherwise packaged for shipment.

This classification excludes establishments primarily engaged in the manufacture of dairy-based salad dressings which are to be reported separately in classification 3902-14 and dairy cattle farming operations which are to be reported separately in classification 7301.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-17A-4002 Classification 4002.

WSR 10-01-177
PROPOSED RULES
DEPARTMENT OF HEALTH
 (Veterinary Board of Governors)
 [Filed December 22, 2009, 2:20 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-933-255 How to obtain a temporary practice permit while the national background check is completed for veterinarians and 246-935-135 How to obtain a temporary practice permit while the national background check is completed for veterinary technicians.

Hearing Location(s): Department of Health, Creekside Three at Center Point, Conference Room 2, 20435 72nd Ave-

nue South, Kent, WA 98032, on January 26, 2010, at 9:00 a.m.

Date of Intended Adoption: January 26, 2010.

Submit Written Comments to: Judy Haenke, Program Manager, P.O. Box 47852, Olympia, WA 98504-7852, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by January 25, 2010.

Assistance for Persons with Disabilities: Contact Judy Haenke by January 19, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To provide for temporary practice permits to be issued to an applicant for a license to practice veterinary medicine, surgery and dentistry through WAC 246-933-255, or to an applicant to practice as a licensed veterinary technician through WAC 246-935-135 if a fingerprint-print-based national background check must be conducted. The national background check process is lengthy and has caused licensing delays that may affect the public access to animal health care. To receive the permit, the applicant must meet all other licensing requirements, qualifications, and have no criminal record in Washington. The proposed rule will provide for qualified applicants to practice in the full scope of their profession until the permit expires.

Reasons Supporting Proposal: In 2008 4SHB [1103] (chapter 134, Laws of 2008) passed authorizing fingerprint-based national background checks for those situations when a background check in RCW 18.130.064 was inadequate. The legislation authorized the secretary to issue a temporary practice permit to an applicant who must have the national background check. The proposed rule will reduce the barriers for out-of-state licensed applicants who otherwise meet all licensing requirements. This rule will also improve the public's access to animal health care.

Statutory Authority for Adoption: RCW 18.130.064, 18.130.075, 18.92.030.

Statute Being Implemented: RCW 18.130.064, 18.130.-075, 18.92.030.

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

Name of Proponent: Department of health, veterinary board of governors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Judy Haenke, Program Manager, P.O. Box 47852, Olympia, WA 98504-7852, (360) 236-4947.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(g)(ii), a small business economic impact statement is not required for proposed rules that adopt, amend, or repeal a filing or related process requirement for applying to an agency for a license or permit.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(v) exempts rules the content of which is explicitly and specifically dictated by statute.

December 18, 2009

Harmon A. Rogers, DVM, Chair
Veterinary Board of Governors

NEW SECTION

WAC 246-933-255 How to obtain a temporary practice permit while the national background check is completed. Fingerprint-based national background checks may cause a delay in licensing. Individuals who satisfy all other licensing requirements and qualifications may receive a temporary practice permit while the national background check is completed.

(1) A temporary practice permit may be issued to an applicant who:

(a) Holds an unrestricted, active license in another state to practice veterinary medicine, surgery and dentistry that has substantially equivalent licensing standards to those in Washington state;

(b) Is not subject to denial of a license or issuance of a conditional or restricted license; and

(c) Does not have a criminal record in Washington state.

(2) A temporary practice permit grants the individual the full scope of practice of veterinary medicine, surgery and dentistry.

(3) A temporary practice permit will not be renewed, reissued, or extended. A temporary practice permit expires when any one of the following occurs:

(a) The license is granted;

(b) A notice of decision on application is mailed to the applicant, unless the notice of decision on the application specifically extends the duration of the temporary practice permit; or

(c) One hundred eighty days after the temporary practice permit is issued.

(4) To receive a temporary practice permit, the applicant must:

(a) Submit the necessary application, fee(s), and documentation for the license.

(b) Meet all requirements and qualifications for the license, except the results from a fingerprint-based national background check, if required.

(c) Provide verification of having an active unrestricted license to practice veterinary medicine, dentistry and surgery from another state that has substantially equivalent licensing standards as Washington state.

(d) Submit the fingerprint card and a written request for a temporary practice permit when the department notifies the applicant the national background check is required.

NEW SECTION

WAC 246-935-135 How to obtain a temporary practice permit while the national background check is completed. Fingerprint-based national background checks may cause a delay in licensing. Individuals who satisfy all other licensing requirements and qualifications may receive a temporary practice permit while the national background check is completed.

(1) A temporary practice permit may be issued to an applicant who:

(a) Holds an unrestricted, active license to practice as a veterinary technician in another state that has substantially equivalent licensing standards to those in Washington state;

(b) Is not subject to denial of a license or issuance of a conditional or restricted license; and

(c) Does not have a criminal record in Washington state.

(2) A temporary practice permit grants the individual the full scope of practice as a veterinary technician.

(3) A temporary practice permit will not be renewed, reissued, or extended. A temporary practice permit expires when any one of the following occurs:

(a) The license is granted;

(b) A notice of decision on application is mailed to the applicant, unless the notice of decision on the application specifically extends the duration of the temporary practice permit; or

(c) One hundred eighty days after the temporary practice permit is issued.

(4) To receive a temporary practice permit, the applicant must:

(a) Submit the necessary application, fee(s), and documentation for the license.

(b) Meet all requirements and qualifications for the license, except the results from a fingerprint-based national background check, if required.

(c) Provide verification of having an active unrestricted license to practice as a veterinary technician from another state that has substantially equivalent licensing standards as Washington state.

(d) Submit the fingerprint card and a written request for a temporary practice permit when the department notifies the applicant the national background check is required.

WSR 10-01-178

PROPOSED RULES

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed December 22, 2009, 2:24 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-817-185 and 246-817-186, temporary practice permits. Amending to provide for temporary practice permits to be issued to applicants for dentists, expanded function dental auxiliaries, and dental assistants while a fingerprint-based national background check is completed.

Hearing Location(s): Department of Health, 310 Israel Road S.E., Room 152/153, Tumwater, WA 98501, on January 29, 2010, at 8:00 a.m.

Date of Intended Adoption: January 29, 2010.

Submit Written Comments to: Jennifer Santiago, P.O. Box 47867, Olympia, WA 98504-7867, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by January 22, 2010.

Assistance for Persons with Disabilities: Contact Jennifer Santiago by January 22, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed

rules will provide for temporary practice permits to be issued to applicants for dentists, expanded function dental auxiliaries, and dental assistants while a fingerprint-based national background check is completed. The process to complete the national background check is lengthy and has caused licensing delays that affect the public's access to health care. Temporary practice permits will be issued to applicants who meet all other licensing requirements and qualifications. Amendments also remove eligibility for the temporary permit if an applicant is waiting for a dental examination. Washington state stopped administering a licensing examination in 1993 and this rule has not been updated to reflect updated licensing standards. A regional examination is now required to meet licensing standards.

Reasons Supporting Proposal: Delays in licensing for qualified applicants for dentists, expanded function dental auxiliaries, and dental assistants affect patient safety and impacts a patient's access to care. Washington state no longer administers a state licensing examination.

Statutory Authority for Adoption: RCW 18.130.064, 18.130.075, and 18.32.0365.

Statute Being Implemented: RCW 18.130.064, 18.130.075, and 18.32.0365.

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

Name of Proponent: Dental quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jennifer Santiago, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4893.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(g)(ii), a small business economic impact statement is not required for proposed rules that adopt, amend, or repeal a filing or related process requirement for applying to an agency for a license or permit.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(v) exempts rules the content of which is explicitly and specifically dictated by statute. RCW 34.05.328 (5)(b)(iv) exempts rules that only correct typographical errors, make address or name changes or clarify the language of a rule without changing its effect.

December 22, 2009

Karen Homitz, D.D.S., Chair
Dental Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-185 Temporary practice permits—Eligibility. Fingerprint-based national background checks may cause a delay in credentialing. Individuals who satisfy all other licensing requirements and qualifications may receive a temporary practice permit while the national background check is completed.

(1) A temporary practice permit, as defined in RCW 18.130.075, shall be issued at the written request of an applicant(=

~~(a) Licensed in another state, with licensing standards substantially equivalent to Washington, who applies for the~~

dental examination and meets the eligibility criteria for the examination as outlined in this chapter; or

~~(b) Currently licensed and practicing clinical dentistry in another state, who applies for dental licensure without examination and meets the eligibility criteria for the licensure without examination program as outlined in this chapter.~~

~~(2) In addition to the requirements outlined in subsection (1)(a) or (b) of this section,)) for dentists, expanded function dental auxiliaries, and dental assistants. The applicant must be credentialed in another state, with credentialing standards substantially equivalent to Washington.~~

~~(2) The conditions of WAC 246-817-160 ((shall also)) must be met for applicants who are graduates of dental schools or colleges not accredited by the American Dental Association Commission on Dental Accreditation.~~

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-186 Temporary practice permits— Issuance and duration. (1) Unless there is a basis for denial of the ~~((license))~~ credential or for issuance of a conditional ~~((license))~~ credential, the applicant shall be issued a temporary practice permit ~~((by the))~~ when DQAC~~((, upon))~~ receives:

(a) ~~((Receipt of))~~ A completed application form ~~((on which a request for a temporary practice permit is indicated)),~~ documents, completed fingerprint card, and fees for the credential;

(b) ~~((Payment of the appropriate application fee;))~~ A written request for a temporary practice permit;

(c) ~~((Receipt of))~~ Written verification of all ~~((dental licenses))~~ credentials, whether active or not, attesting that the applicant has a ~~((dental license))~~ credential in good standing and is not the subject of any disciplinary action for unprofessional conduct or impairment; and

(d) ~~((Receipt of))~~ Results of disciplinary national practitioner data bank reports.

(2) The temporary practice permit shall expire when one of the following occurs:

(a) ~~((Immediately upon issuance of))~~ A full, unrestricted ~~((dental license by the DQAC))~~ credential is granted;

(b) ~~((Upon notice of failure of the dental examination;))~~ A notice of decision is mailed;

(c) ~~((Upon issuance of a statement of intent to deny; or (d) Within a maximum of))~~ One hundred ((twenty)) ~~eighty~~ days after the temporary practice permit is issued.

(3) A temporary practice permit shall not be renewed, reissued or extended.

(4) A temporary practice permit grants the individual the full scope of practice for the profession.

Preproposal statement of inquiry was filed as WSR 09-17-121.

Title of Rule and Other Identifying Information: Chapter 296-150I WAC, Manufactured housing installer training and certification program.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., S117, Tumwater, WA, on February 1, 2010, at 10:00 a.m.

Date of Intended Adoption: February 16, 2010.

Submit Written Comments to: Sally Elliott, Department of Labor and Industries, P.O. Box 44400, Olympia, WA 98504-4400, e-mail yous235@lni.wa.gov, fax (360) 902-5292, by February 1, 2010.

Assistance for Persons with Disabilities: Contact Sally Elliott by January 15, 2010, (360) 902-6411 or yous235@lni.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The installer certification program certifies all individuals who install manufactured housing. The program provides training and testing for all installers and assists harmed consumers if the job is not done properly.

The program's expenditures are projected to exceed revenue for fiscal year 2010 by \$38,000. In order to meet the shortage, the program will be increasing the fees to cover operating costs. This fee increase was further supported by the passage of the chapter 464, Laws of 2009 (ESHB 1244 - 2009 budget), which includes the authority to increase these fees to cover operating expenses.

The following changes will also be made:

- Update the rules to reflect the new application process for certified installers.
- The department has the authority to suspend or revoke an installer's certificate. Rules need to be developed to set a time frame on how long a certificate will be suspended or revoked.
- Increase fees to cover operating expenses.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: Chapter 43.22A RCW and chapter 464, Laws of 2009 (ESHB 1244).

Statute Being Implemented: Chapter 43.22A RCW and chapter 464, Laws of 2009 (ESHB 1244).

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Pete Schmidt, Tumwater, (360) 902-5571; Implementation and Enforcement: Steve McClain, Tumwater, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department is exempt from conducting a small business economic impact statement since the proposed rules set or adjust fees or rates to legislative standards described in RCW 19.85.025 referencing RCW 34.05.310 (4)(f).

A cost-benefit analysis is not required under RCW 34.05.328. The department is exempt from conducting a cost-benefit analysis since the proposed rules set or adjust

WSR 10-01-189

PROPOSED RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed December 22, 2009, 3:15 p.m.]

Original Notice.

fees or rates pursuant to legislative standards described in RCW 34.05.328 (5)(b)(vi).

December 22, 2009
Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-1501-0050 What is the application process? A person desiring to be certified as a manufactured home installer under chapter 43.22A RCW must submit a signed application form and fee specified in WAC 296-1501-3000 to the department, which contains the following information:

(1) The applicant's full name, date of birth, driver's license number or other government identification number, and Social Security number ~~((of the person applying for certification))~~. Social Security numbers are required on applications for professional licenses pursuant to RCW 26.23.150 and federal law PL 104-193, The Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(2) ~~((Application fee specified in WAC 296-1501-3000.~~

~~((3)))~~ Written affidavit documenting evidence of experience as required under RCW 43.22A.040.

~~((4))~~ Any application received after the class cut-off date is subject to the late application fee specified in WAC 296-1501-3000.) (3) Business name, phone number, and contractor registration number, if applicable. Status of applicant, i.e., owner or employee.

(4) Training/examination location and date preference.

(5) If the application is denied by the department as a result of the applicant's failure to meet the requirements of chapter 43.22A RCW and this chapter, the department will attempt to notify the applicant prior to the date the applicant is scheduled to attend the training and examination.

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-1501-0070 Manufactured home installer certification renewal—Application process. (1) A certified manufactured home installer desiring to renew certification as a manufactured home installer under chapter 43.22A RCW must file a certification renewal application with the department.

~~((1)))~~ (2) The application must:

(a) Be ~~((hand-delivered to the department or postmarked no later than midnight on the date of expiration of an installer's current certification))~~ received by the department on or before the installer's certification expiration date.

(b) Be accompanied by the certification renewal fee specified in WAC 296-1501-3000.

~~((2)))~~ (3) If a certified installer fails to apply for renewal and provide proof of continuing education within ninety days ~~((of))~~ prior to the expiration of the installer's current certification, the installer must reapply for installer certification and meet all requirements for installer certification as set forth in chapter 43.22A RCW and this chapter.

~~((3)))~~ (4) Before a new certification is issued, the certified installer must provide proof to the department that the certified installer has met the continuing education requirements set forth in this chapter.

~~((4)))~~ (5) The department will attempt to notify installers prior to expiration; however, it is the installer's responsibility to ensure timely renewal.

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-1501-0080 ~~((Notification to employer.))~~ Installer certification—Revocation. (1) The department will revoke an installer's certification if they receive three or more final infractions during their current three year certification period. The department will judge the installer to be incompetent of the state installation code. Revocation of the installer certification will be valid for two years from the effective date of the revocation.

(2) Where applicable, the department must send notice to the certificate holder's employer regarding revocation of an installer certification.

(3) A person may reapply for a manufactured home installer certification two years after the effective date of the revocation by submitting a completed application and payment for training and examination. Upon passing the written examination, a certificate of manufactured home installation will be issued.

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-1501-0120 Manufactured home installation permit and inspections—Obligation of certified installer. (1) If a certified installer obtains the manufactured home installation or placement permit from the local enforcement agency, the certified installer shall ensure that all required installation inspections, relative to the work performed by the certified installer, are completed.

(2) Installer certification requirements do not eliminate any requirements of chapter 18.27 RCW to become a registered contractor.

(3) An out-of-state mobile/manufactured home dealer who performs the set-up, installation, or repair work must be an active registered contractor. The mobile/manufactured home dealer must employ at least one certified installer to supervise the installation.

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-1501-0140 Manufactured home installation—Installer certification tags required. Prior to installing, performing on-site work or equipment installation work on a manufactured home, certified manufactured home installers or the retailers by whom they are employed must obtain an "installer certification tag" from the department or from the local enforcement agency who participates in tag sales. The installer certification tag shall be in the form approved by the department. No manufactured home may be installed by a certified installer without an installer certifica-

tion tag affixed thereto. Only currently certified manufactured home installers shall be issued installer certification tags.

Homeowners performing the installation, on-site work or equipment installation work on their own manufactured home are not required to acquire and affix an installer certification tag.

(1) Installer certification tags may only be purchased by a certified manufactured home installer or by a manufactured home retailer licensed by Washington state department of licensing.

(a) The certified manufactured home installer or manufactured home retailer purchasing the installer certification tag is responsible for complying with the security, use, and reporting requirements of this chapter.

(b) Manufactured home retailers may purchase installer certification tags in bulk and issue them to certified manufactured home installers employed by the manufactured home retailer.

(2) In order to purchase installer certification tags, the certified manufactured home installer or manufactured home retailer shall submit an application to the department or local enforcement agency on a form approved by the department. The application shall be accompanied by the appropriate installer certification tag fee as set forth in WAC 296-150I-3000.

(3) The department or manufactured home retailer may issue a maximum of thirty certification tags to a certified manufactured home installer. A certified manufactured home installer may not have more than thirty installer certification tags issued at any one time for which the reporting requirements of this section have not been met.

(4) Installer certification tags cannot be transferred or assigned without the written approval of the department. Fees paid for installer certification tags are not refundable.

(a) If a certified manufactured home installer's certification is suspended, revoked, or expires, all unused installer certification tags assigned to the certified manufactured home installer must be returned to the department.

(b) If a certified manufactured home installer or manufactured home retailer ceases to do business, all unused installer certification tags must be returned to the department.

(c) If a manufactured home retailer changes ownership, unused installer certification tags may be transferred to the new ownership if the department approves the transfer following receipt of a written request for transfer from the manufactured home retailer.

(5) Issuance of installer certification tags may be denied if:

(a) The certified manufactured home installer's certification has been revoked or suspended pursuant to chapter 43.22A RCW;

(b) The certified manufactured home installer has failed to comply with the reporting requirements of this chapter;

(c) The department has evidence that the certified manufactured home installer has misused the installer certification tag by not complying with the requirements of this chapter; ~~((Ø))~~

(d) The certified manufactured home installer possesses installer certification tags in excess of the quantity authorized

by subsection (3) of this section for which the reporting requirements of this chapter have not been met; or

(e) The certified manufactured home installer is not an active registered contractor or an employee of a manufactured home retailer or active registered contractor licensed in Washington.

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0200 How does the department ensure compliance with the requirements of chapter 43.22A RCW? The department of labor and industries will ensure installers comply with the requirements of RCW 43.22A.130 which requires a certified manufactured/mobile home installer to be present for each phase of the installation being performed by all members of the installation crew by:

(1) Random site inspections; and

(2) Audit of installers certification tag reports.

The certified installer must enter their Washington installer certification number (~~((WAINS))~~) on the installer tag for each element they are supervising.

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0310 What instructions are used for a manufactured home installation? To the extent that the installation of a manufactured home is not covered by a manufacturer's, engineer's, or architect's instructions, the manufactured home shall comply with the installation requirements of this section.

(1) Installation of a new manufactured home.

(a) The initial manufactured home installation must be conducted according to the manufacturer's instructions.

(b) If the manufacturer's instructions do not address an aspect of the installation, you may request:

(i) Specific instructions from the manufacturer; or

(ii) Specific instructions from a professional engineer or architect licensed in Washington state.

For example:

- A manufactured home is installed over a basement and the manufacturer's instructions do not address this application;

- A manufactured home is installed on a site where the specific soil bearing capacity is not addressed in the manufacturer's instructions.

(c) All manufactured homes installed in Washington state must be permanently anchored except for those installed on dealer lots. On dealer lots, temporary sets are permitted without anchoring being installed. A manufactured home must be anchored according to the manufacturer's installation instructions or according to the design of a professional engineer or architect licensed in Washington state. Local jurisdictions **may not** prescribe anchoring methods.

(d) A manufactured home must have a skirting around its entire perimeter. It must be installed per the manufacturer's installation instructions or if the manufacturer is not specific, to the standards in this section. Do not enclose with skirting areas under recessed entries, porches or decks, (whether constructed as part of the home or added on-site) unless skirting

is of the fully vented type and installed so as to allow water to freely flow out from under the home. Porch areas open to the crawl space area of the home must have ground cover removed; ground directly below the porch must slope away from the home. It must be vented and allow access to the under floor area per the manufacturer's installation instructions or per the standards below if the manufacturer's instructions are not available.

If the manufacturer's skirting and access instructions are not specific, skirting, ventilation and access shall be installed as follows:

(i) Skirting:

- Must be made of materials suitable for ground contact.
- Metal fasteners must be made of galvanized, stainless steel or other corrosion-resistant material.
- Ferrous metal members in contact with the earth, except those made of galvanized or stainless steel, must be coated with an asphaltic emulsion.
- Must not trap water between the skirting and siding or trim.
- Must be recessed behind the siding or trim.

(ii) Ventilation:

For homes sited in a flood plain, contact the local jurisdiction regarding proper skirting ventilation. Except for those manufactured homes sited in a flood plain, all skirting and vent openings must:

- Be covered with corrosion-resistant wire mesh to prevent the entrance of rodents. The size of the mesh opening cannot exceed 1/4 inch.
- Have a net area of not less than one square foot for each one hundred fifty square feet of under floor area.
- Be located as close to corners and as high as practical and they must provide cross ventilation on at least two opposite sides.

(iii) Access:

- The under floor area of a manufactured home must have a finished opening at least eighteen inches by twenty-four inches in size.
- Opening must be located so that all areas under a manufactured home are available for inspection.
- Opening must be covered and that cover must be made of metal, pressure treated wood or vinyl.

(e) A manufactured home site must be prepared per the manufacturer's installation manual or per ANSI A225.1, 1994 edition, section 3.

(f) Heat duct crossovers must be installed per the manufacturer's installation instruction manual or per ANSI A225.1 or the following instructions if the manufacturer's instructions are not available:

Heat duct crossovers must be supported at least one inch above the ground by strapping or blocking. They must be installed to avoid standing water. Also, they must be installed to prevent compression, sharp bends, and to minimize stress at the connections.

(g) Dryer vents must exhaust to the exterior side of the wall or skirting. Dryer ducts outside the manufactured home shall comply with the dryer manufacturer's specifications or shall be made of metal with smooth interior surfaces.

(h) Hot water tank pressure relief lines must exhaust to the exterior side of the exterior wall or skirting and must

exhaust downward. The end of the pipe must be at least six inches but not more than two feet above the ground.

(i) Water heater pans are only required where the installation instructions are specific for warranty or the home was produced after June 2006. The pressure relief line must exit the skirting of the home as well as the relief line for any pan installed and not to be interconnected.

(ii) Expansion tanks are not required by the department; however, you may want to check with your local jurisdiction prior to installation of your water heater.

(i) Water piping must be protected against freezing as per the manufacturer's installation instructions or by use of a heat tape listed for use with manufactured homes and installed per the heat tape manufacturer's installation instructions.

(j) The testing of water lines, waste lines, gas lines, and electrical systems must be as per the manufacturer's installation instructions. If the manufacturer's installation instructions require testing of any of these systems, the local jurisdiction is responsible for verifying that the tests have been performed and passed. Electrical connections and testing are the responsibility of the electrical section of labor and industries except where a city has assumed the electrical inspection responsibilities for their jurisdiction. In that case, the city's electrical inspectors are responsible for the electrical connections and testing.

(k) During the installation process, a ground cover must be installed under all manufactured homes. The ground cover must be a minimum of six-mil **black** polyethylene sheeting or its equivalent (exception to ANSI A225.1 (3.5.2)). The ground cover may be omitted if the under floor area of the home has a concrete slab floor with a minimum thickness of three and one-half inches.

(l) Clearances underneath manufactured homes must be maintained at a minimum of eighteen inches beneath at least seventy-five percent of the lowest member of the main frame (I-beam or channel beam) and the ground or footing. No more than twenty-five percent of the lowest member of the main frame of the home shall be less than eighteen inches above the ground or footing. In no case shall clearance be less than twelve inches anywhere under the home (exception to ANSI A225.1 (4.1.3.3)).

(m) Heat pump and air conditioning condensation lines must be extended to the exterior of the manufactured home.

(2) Installation of a relocated manufactured (mobile) home.

(a) A relocated manufactured home installation should be conducted according to the manufacturer's installation instructions.

(b) If the manufacturer's instructions are unavailable, you may use either:

(i) The American National Standard Institute (ANSI) standard ANSI A225.1 - Manufactured Homes Installation, 1994 edition instructions; or

(ii) The instructions of a professional engineer or architect licensed in Washington state.

(c) If either (b)(i) or (ii) of this subsection is used, all of the requirements of subsection (1)(c) through (m) of this section must also be followed.

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0350 Who may install a manufactured home? (1) A manufactured home may be installed by:

- A homeowner;
- A certified installer;
- An individual who is supervised by an on-site certified installer; or
- A specialty trades person, such as a plumber or electrician, for certain aspects of installation.

(2) A certified installer must be a registered contractor, an employee of a registered contractor, or an employee of a registered dealership. (See chapter 43.22A RCW for details about which aspects of installation require the presence of a certified installer.)

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0370 Does a manufactured home installation require an inspection? All manufactured home installations must be inspected and approved by the local enforcement agency.

Local enforcement agencies may enter into interagency agreements with the department to perform on-site installation inspections on behalf of the authority having jurisdiction (AHJ). A permit must be purchased with the department for these inspections.

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0410 What are the requirements if a home is damaged during transit or during set-up? (1) Manufactured and mobile homes that are structurally damaged during transportation or when being set up on a new or secondary set-up and are repaired at a location other than the manufacturer's facility shall require ~~((a permit))~~ an approval with labor and industries.

The repair and inspection shall be performed to either:

- (a) Plans approved by the manufacturer's design approval primary inspection agency; or
- (b) Plans approved by an engineer or architect licensed in Washington and have the plans approved by the FAS plan review section;

(2) ~~((An alteration insignia shall be placed upon the home after the repair has been approved.~~

~~((3)))~~ Electrical and plumbing alterations to the damaged manufactured/mobile home shall be performed by a Washington state licensed electrician and/or plumber.

EXCEPTIONS: Damaged home is taken back to the factory. Minor damage such as shingles, broken window(s), paint damage, minor siding damage, torn bottom paper etc., would not require a permit.

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-3000 Penalties, fees, and refunds. Monetary penalties for an infraction shall be assessed for

each violation of chapter 43.22A RCW in the amount of \$1,000.00.

The following fees are payable to the department in advance:

Training and certification	\$ ((200.00)) <u>260.00</u>
Training only ((8)) <u>10</u> hours	\$ ((100.00)) <u>130.00</u>
Manufactured/mobile home installation inspector training	\$ ((100.00)) <u>130.00</u>
((Late application	<u>\$20.00))</u>
Refund	\$ ((20.00)) <u>26.00</u>
Certification renewal	\$ ((100.00)) <u>130.00</u>
Continuing education class	\$ ((40.00)) <u>52.00</u>
Retake failed examination and training ((:))	<u>\$39.00</u>
((First retake	<u>\$0.00</u>
Subsequent retakes	<u>\$30.00))</u>
Manufactured home installer ((certification)) <u>training manual</u>	\$ ((10.00)) <u>13.00</u>
Installer certification tag	\$ ((7.00)) <u>9.10</u>

(1) The department shall refund fees paid for training and certification or certification renewal as a manufactured home installer if the application is denied for failure of the applicant to comply with the requirements of chapter 43.22A RCW or these rules.

(2) If an applicant has paid fees to attend training or to take an examination and is unable to attend the scheduled training or examination, the applicant may:

- (a) Change to another scheduled training and examination; or
 - (b) Request a refund.
- (3) An applicant who fails the examination shall not be entitled to a refund.

WSR 10-01-190
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
 (Board of Boiler Rules)
 [Filed December 22, 2009, 3:17 p.m.]

Original Notice.
Preproposal statement of inquiry was filed as WSR 09-14-102.

Title of Rule and Other Identifying Information: Board of boiler rules—Substantive (chapter 296-104 WAC).

Hearing Location(s): Department of Labor and Industries, 950 Broadway, Suite 200, Tacoma, WA, on February 10, 2010, at 10:00 a.m.

Date of Intended Adoption: February 24, 2010.

Submit Written Comments to: Sally Elliott, Department of Labor and Industries, P.O. Box 44400, Olympia, WA 98504-4400, e-mail yous235@lni.wa.gov, fax (360) 902-5292 by 5:00 p.m. on February 10, 2010.

Assistance for Persons with Disabilities: Contact Sally Elliott by January 18, 2010, yous235@lni.wa.gov or (360) 902-6411.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to make clarification and technical changes to the Board of boiler rules—Substantive (chapter 296-104 WAC) based on actions and requests of the Board of boiler rules. The changes will:

- As a result of HB 1366, extend the inspection frequencies for internal inspection of low pressure heating boilers.
- Amend the definitions of low pressure heating boiler and hot waters [water] heaters. The department has policies that have been approved and enforced as rules but need to be formally added to the rules.
- Amend the shop inspection requirements to allow the program to discontinue services when the shop inspection program cannot support the activity.
- Move three of the most frequently used fees to the beginning of the fee table in WAC 296-104-700 for easy identification. The fee amounts remain the same.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 70.79.030, 70.79.040, 70.79.150, 70.79.290, 70.79.330, and 70.79.350.

Statute Being Implemented: Chapter 70.79 RCW and chapter 90, Laws of 2009 (HB 1366).

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

Name of Proponent: Board of boiler rules, governmental.

Name of Agency Personnel Responsible for Drafting: Board of Boiler Rules, Tumwater, Washington, (360) 902-5270; Implementation and Enforcement: Linda Williamson, Tumwater, Washington, (360) 902-5270.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The board of boiler rules has considered whether these proposed rules are subject to the Regulatory Fairness Act and has determined that they do not require a small business economic impact statement because the costs associated with the proposed rules will not place a more than minor impact on any business or contractor and/or they are exempted by law (see RCW 19.85.025 referencing RCW 34.05.310(4)) from the small business economic impact requirements.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not prepared because the costs associated with the proposed changes are exempted by law since the proposed changes are updating the rule for

clarification (see RCW 19.85.025 referencing RCW 34.05.-310(4) and 34.05.328 (5)(b)(vi)).

December 22, 2009

Robert E. Olson, Chair
Board of Boiler Rules

AMENDATORY SECTION (Amending WSR 08-12-015, filed 5/27/08, effective 6/30/08)

WAC 296-104-010 Administration—What are the definitions of terms used in this chapter? "Agriculture purposes" shall mean any act performed on a farm in production of crops or livestock, and shall include the storage of such crops and livestock in their natural state, but shall not be construed to include the processing or sale of crops or livestock.

"Attendant" shall mean the person in charge of the operation of a boiler or unfired pressure vessel.

"Automatic operation of a boiler" shall mean automatic unattended control of feed water and fuel in order to maintain the pressure and temperature within the limits set. Controls must be such that the operation follows the demand without interruption. Manual restart may be required when the burner is off because of low water, flame failure, power failure, high temperatures or pressures.

"Board of boiler rules" or **"board"** shall mean the board created by law and empowered under RCW 70.79.010.

"Boiler and unfired pressure vessel installation/reinstallation permit," shall mean a permit approved by the chief inspector before starting installation or reinstallation of any boiler and unfired pressure vessel within the jurisdiction of Washington.

Owner/user inspection agency's, and Washington specials are exempt from "boiler and unfired pressure vessel installation/reinstallation permit."

"Boilers and/or unfired pressure vessels" - below are definitions for types of boilers and unfired pressure vessels used in these regulations:

- **"Condemned boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel that has been inspected and declared unsafe or disqualified for further use by legal requirements and appropriately marked by an inspector.
- **"Expansion tank"** shall mean a tank used to absorb excess water pressure. Expansion tanks installed in closed water heating systems and hot water supply systems shall meet the requirements of ASME Section IV, HG-709.
- **"Hot water heater"** shall mean a closed vessel designed to supply hot water for external use to the system. All vessels must be listed by a nationally recognized testing agency and shall be protected with an approved temperature and pressure safety relief valve and shall not exceed any of the following limits:
 - * Pressure of 160 psi (1100 kpa);
 - * Temperature of 210 degrees F (99°C)((±)).

Additional requirements:

- * ~~((Capacity of))~~ Hot water heaters exceeding 120 ~~((U.S.))~~ gallons (454 liters) must be ASME code stamped;
- ~~((Input of 200,000 BTU/hr (58.58 kw). Note that if input exceeds 200,000 BTU/hr (58.58 kw), other terms defined in this section may apply.))~~
- * Hot water heaters exceeding 200,000 BTU/hr (58.58 kw) input must be ASME code stamped.
- **"Low pressure ((heating)) boiler"** shall mean a steam ~~((or vapor))~~ boiler operating at a pressure not exceeding 15 psig or a boiler in which water ~~((or other fluid))~~ is heated and intended for operation at pressures not exceeding 160 psig or temperatures not exceeding 250 degrees F by the direct application of energy from the combustion of fuels or from electricity, solar or nuclear energy ~~((, excluding lined hot water heaters supplying potable hot water for external use to the system))~~. Low pressure boilers open to atmosphere and vacuum boilers are excluded.
- **"Nonstandard boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel that does not bear marking of the codes adopted in WAC 296-104-200.
- **"Power boiler"** shall mean a boiler in which steam or other vapor is generated at a pressure of more than 15 psig for use external to itself or a boiler in which water is heated and intended for operation at pressures in excess of 160 psig and/or temperatures in excess of 250 degrees F by the direct application of energy from the combustion of fuels or from electricity, solar or nuclear energy.
- **"Reinstalled boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel removed from its original setting and reset at the same location or at a new location without change of ownership.
- **"Rental boiler"** shall mean any power or low pressure heating boiler that is under a rental contract between owner and user.
- **"Second hand boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel of which both the location and ownership have changed after primary use.
- **"Standard boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel which bears the marking of the codes adopted in WAC 296-104-200.
- **"Unfired pressure vessel"** shall mean a closed vessel under pressure excluding:
 - * Fired process tubular heaters;
 - * Pressure containers which are integral parts of components of rotating or reciprocating mechanical devices where the primary design considerations and/or stresses are derived from the functional requirements of the device;
 - * Piping whose primary function is to transport fluids from one location to another;
 - * Those vessels defined as low pressure heating boilers or power boilers.

- **"Unfired steam boiler"** shall mean a pressure vessel in which steam is generated by an indirect application of heat. It shall not include pressure vessels known as evaporators, heat exchangers, or vessels in which steam is generated by the use of heat resulting from the operation of a processing system containing a number of pressure vessels, such as used in the manufacture of chemical and petroleum products, which will be classed as unfired pressure vessels.

"Certificate of competency" shall mean a certificate issued by the Washington state board of boiler rules to a person who has passed the tests as set forth in WAC 296-104-050.

"Certificate of inspection" shall mean a certificate issued by the chief boiler inspector to the owner/user of a boiler or unfired pressure vessel upon inspection by an inspector. The boiler or unfired pressure vessel must comply with rules, regulations, and appropriate fee payment shall be made directly to the chief boiler inspector.

"Code, API-510" shall mean the Pressure Vessel Inspection Code of the American Petroleum Institute with addenda and revisions, thereto made and approved by the institute which have been adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.

"Code, ASME" shall mean the boiler and pressure vessel code of the American Society of Mechanical Engineers with addenda thereto made and approved by the council of the society which have been adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.

"Code, NBIC" shall mean the National Board Inspection Code of the National Board of Boiler and Pressure Vessel Inspectors with addenda and revisions, thereto made and approved by the National Board of Boiler and Pressure Vessel Inspectors and adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.

"Commission" shall mean an annual commission card issued to a person in the employ of Washington state, an insurance company or a company owner/user inspection agency holding a Washington state certificate of competency which authorizes them to perform inspections of boilers and/or unfired pressure vessels.

"Department" as used herein shall mean the department of labor and industries of the state of Washington.

"Director" shall mean the director of the department of labor and industries.

"Domestic and/or residential purposes" shall mean serving a private residence or an apartment house of less than six families.

"Existing installations" shall mean any boiler or unfired pressure vessel constructed, installed, placed in operation, or contracted for before January 1, 1952.

"Inspection certificate" see "certificate of inspection."

"Inspection, external" shall mean an inspection made while a boiler or unfired pressure vessel is in operation and includes the inspection and demonstration of controls and safety devices required by these rules.

"Inspection, internal" shall mean an inspection made when a boiler or unfired pressure vessel is shut down and handholes, manholes, or other inspection openings are open or removed for examination of the interior. An external ultra-

sonic examination of unfired pressure vessels less than 36" inside diameter shall constitute an internal inspection.

"**Inspector**" shall mean the chief boiler inspector, a deputy inspector, or a special inspector.

- "**Chief inspector**" shall mean the inspector appointed under RCW 70.79.100 who serves as the secretary to the board without a vote.
- "**Deputy inspector**" shall mean an inspector appointed under RCW 70.79.120.
- "**Special inspector**" shall mean an inspector holding a Washington commission identified under RCW 70.79.130.

"**Nationwide engineering standard**" shall mean a nationally accepted design method, formulae and practice acceptable to the board.

"**Operating permit**" see "certificate of inspection."

"**Owner**" or "**user**" shall mean a person, firm, or corporation owning or operating any boiler or unfired pressure vessel within the state.

"**Owner/user inspection agency**" shall mean an owner or user of boilers and/or pressure vessels that maintains an established inspection department, whose organization and inspection procedures meet the requirements of a nationally recognized standard acceptable to the department.

"**Place of public assembly**" or "**assembly hall**" shall mean a building or portion of a building used for the gathering together of 50 or more persons for such purposes as deliberation, education, instruction, worship, entertainment, amusement, drinking, or dining or waiting transportation. This shall also include child care centers (those agencies which operate for the care of thirteen or more children), public and private hospitals, nursing and boarding homes.

"**Special design**" shall mean a design using nationwide engineering standards other than the codes adopted in WAC 296-104-200 or other than allowed in WAC 296-104-230.

AMENDATORY SECTION (Amending WSR 09-12-033, filed 5/27/09, effective 6/30/09)

WAC 296-104-100 Inspection—How often must boilers and unfired pressure vessels be inspected? In accordance with RCW 70.79.080, 70.79.090, and 70.79.240 the following inspection requirements shall apply:

(1) **Power boilers** shall be inspected:

(a) Externally while under pressure - Annually.

(b) Internally and externally while not under pressure - Annually, except as noted in the following paragraph.

A power boiler in a national board accredited owner-user inspection program may have the internal inspection intervals extended by the owner-user inspection organization to five years maximum under the following conditions:

(i) The boiler water treatment and specific chemical limits are prescribed and monitored by an individual or company that specializes in the water treatment field;

(ii) Nondestructive examination (NDE) is performed along with the internal inspections;

(iii) The boiler is monitored within a manned operating facility;

(iv) Inspection, maintenance, and water treatment records are maintained;

(v) There is sufficient inspection history for the boiler or a boiler in similar service to justify the increase in the inspection interval; and

(vi) This provision shall not apply to a black liquor recovery boiler or any boiler with an unsuitable corrosion rate, remaining life, and/or repair history.

(2) **Organic vapor boilers** shall be inspected:

(a) Externally while under pressure - Annually.

(b) Internally and externally while not under pressure - Biennially.

(3) **Low pressure (~~heating~~) boilers** shall be inspected:

(a) Externally while in operation and under pressure - Biennially.

(b) Internally while not under pressure (except where construction does not permit((s, internally while not under pressure. Also, as a minimum, an internal of their low water fuel cutoff(s) must be completed, where construction permits - Biennially)) an internal) - every fourth year.

(c) Internally, all steam heating boilers will have as a minimum, an internal of their low water fuel cut off - Biennially.

(d) Internally, none required for nonvapor boilers using glycol, or adequately treated with corrosion inhibitor.

(4) **Hot water heaters** shall be inspected:

(a) Externally - Biennially.

(b) Internally - None required.

(5) **Unfired pressure vessels** shall be inspected:

(a) Externally - Biennially.

(b) Internally:

(i) When subject to corrosion and construction permits - Biennially. Vessels in an owner-user inspection program may follow intervals established by the NBIC or API-510 ninth edition with addenda.

(ii) Pulp or paper dryer rolls may be inspected on a five-year basis in accordance with TAPPI TIP 0402-16 2001 edition, provided the owner has established a written inspection program accepted by the inspector that meets the minimum requirements of TAPPI TIP 0402-16 2001 edition.

(iii) Vessels not subject to corrosion do not require an internal.

AMENDATORY SECTION (Amending WSR 06-24-042, filed 11/30/06, effective 1/1/07)

WAC 296-104-170 Inspection—When are shop inspections required? Shop inspections shall be as required in the standards of construction as adopted in WAC 296-104-200. Only inspectors and supervisors of inspectors holding a national board commission with the appropriate endorsements shall make shop inspections in this state.

Upon request from a boiler or pressure vessel manufacturer holding an ASME Certificate of Authorization within the jurisdiction, the department (~~shall~~) may provide inspection services as required by the ASME Code. The manufacturer receiving such inspection services shall reimburse the department for the time and expenses in accordance with the fee schedule established in WAC 296-104-700.

AMENDATORY SECTION (Amending WSR 08-12-015, filed 5/27/08, effective 6/30/08)

WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses? The following fees shall be paid by, or on behalf of, the owner or user upon the completion of the inspection. The inspection fees apply to inspections made by inspectors employed by the state.

Boiler and pressure vessel installation/reinstallation permit (excludes inspection and certificate of inspection fee): \$50.00.

Certificate of inspection fees: For objects inspected, the certificate of inspection fee per object is \$20.70.

Hot water heaters per RCW 70.79.090, inspection fee: \$6.50.

Heating boilers:	Internal	External
Cast iron—All sizes	\$34.80	\$27.80
All other boilers less than 500 sq. ft.		\$27.80
500 sq. ft. to 2500 sq. ft.	\$69.40	\$34.80
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	\$27.80	\$13.70
Power boilers:	Internal	External
Less than 100 sq. ft.	\$34.80	\$27.80
100 sq. ft. to less than 500 sq. ft.	\$42.10	\$27.80
500 sq. ft. to 2500 sq. ft.	\$69.40	\$34.80
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	\$27.80	\$13.70
Pressure vessels:		
((Automatic utility hot water supply heaters per RCW 70.79.090		\$6.50
All other pressure vessels:))		
Square feet shall be determined by multiplying the length of the shell by its diameter.		
	Internal	External
Less than 15 sq. ft.	\$27.80	\$20.70
15 sq. ft. to less than 50 sq. ft.	\$41.30	\$20.70
50 sq. ft. to 100 sq. ft.	\$48.10	\$27.80
For each additional 100 sq. ft. or any portion thereof	\$48.10	\$13.70

~~((Certificate of inspection fees: For objects inspected, the certificate of inspection fee is \$20.70 per object.~~

~~Boiler and pressure vessel installation/reinstallation permit (excludes inspection and certificate of inspection fee) \$50.00))~~

Nonnuclear shop inspections, field construction inspections, and special inspection services:

For each hour or part of an hour up to 8 hours \$42.10

For each hour or part of an hour in excess of 8 hours \$62.80

Nuclear shop inspections, nuclear field construction inspections, and nuclear triennial shop survey and audit:

For each hour or part of an hour up to 8 hours \$62.80

For each hour or part of an hour in excess of 8 hours \$98.20

Nonnuclear triennial shop survey and audit:

When state is authorized inspection agency:

For each hour or part of an hour up to 8 hours \$42.10

For each hour or part of an hour in excess of 8 hours \$62.80

When insurance company is authorized inspection agency:

For each hour or part of an hour up to 8 hours \$62.80

For each hour or part of an hour in excess of 8 hours \$98.20

Examination fee: A fee of \$77.70 will be charged for each applicant sitting for an inspection examination(s).

Special inspector commission: An initial fee of \$26.30 and an annual renewal fee of \$10.50 along with an annual work card fee of \$15.80.

Expenses shall include:

Travel time and mileage: The department shall charge for its inspectors' travel time from their offices to the inspection sites and return. The travel time shall be charged for at the same rate as that for the inspection, audit, or survey. The department shall also charge the current Washington office of financial management accepted mileage cost fees or the actual cost of purchased transportation. Hotel and meals: Actual cost not to exceed the office of financial management approved rate.

Requests for Washington state specials and extensions of inspection frequency: For each vessel to be considered by the board, a fee of \$390.50 must be paid to the department before the board meets to consider the vessel. The board may, at its discretion, prorate the fee when a number of vessels that are essentially the same are to be considered.

WSR 10-01-196
PROPOSED RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Filed December 23, 2009, 8:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-07-096.

Title of Rule and Other Identifying Information: WAC 480-100-505 Smart grid technology report, the proposed rule would establish requirements for each electric utility to submit periodic reports to the commission of the utility's evaluation of smart grid technologies that are available or likely soon to be available and any plans for implementing smart grid technologies affecting or applicable to ratepayers of Washington state. By order entered September 14, 2009, the commission determined not to go forward with the other federal electric and natural gas utility standards.

Hearing Location(s): Commission Hearing Room 206, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, on February 25, 2010, at 1:30 p.m.

Date of Intended Adoption: February 25, 2010.

Submit Written Comments to: Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., P.O. Box 47250, Olympia, WA 98504-7250, e-mail records@utc.wa.gov, fax (360) 586-1150, by January 28, 2010.

Assistance for Persons with Disabilities: Contact Susan Holman by February 11, 2010, TTY (360) 586-8203 or (360) 664-1243.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Pursuant to 16 U.S.C. §§ 2621 (a) and (d)(18), State regulatory commissions are required to consider and determine whether to require utilities to demonstrate that they considered qualified smart grid systems before investment in nonadvanced grid technologies based on appropriate factors that include: Total resource cost, cost-effectiveness, improved reliability, security, system performance, and societal benefit. The commission initiated this inquiry to determine whether adoption by rule of this standard for consideration of smart grid investment would be in the public interest and would further the objectives of the Public Utilities Regulatory Policy Act to encourage: Conservation of energy supplied by electric utilities; optimal efficiency of electric utility facilities and resources; and equitable rates for electric consumers.

The proposed rule will require electric utilities to report on smart grid technologies they are considering. The proposed rule does not alter chapter 480-100 WAC (integrated resource planning) because it does not require additional planning and does not alter the requirement in chapter 480-100 WAC for electric utilities to acquire the lowest reasonable cost set of resources. The proposed rule is in the public interest because it will provide information in a report on applicable smart grid technologies that are available or likely soon to be available allowing public consideration of smart grid technologies available or soon to be available for possible use by the electric utility.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 80.01.040 and 80.04.160.

Statute Being Implemented: Not applicable.

Rule is necessary because of federal law, 16 U.S.C. §§ 2621 (a) and (d)(18).

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

Name of Agency Personnel Responsible for Drafting: Steve Johnson, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1346; Implementation and Enforcement: David W. Danner, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1208.

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

A cost-benefit analysis is not required under RCW 34.05.328. The commission is not an agency to which RCW 34.05.328 applies. The proposed rule is not a significant legislative rule of the sort referenced in RCW 34.05.328(5).

December 23, 2009

David W. Danner

Executive Director and Secretary

NEW SECTION

WAC 480-100-505 Smart grid technology report. (1)

Purpose. The purpose of this section is to establish requirements for each electric utility to submit periodic reports to the commission of the utility's evaluation of smart grid technologies that are available or likely soon to be available and any plans for implementing smart grid technologies affecting or applicable to ratepayers of Washington state.

(2) Definitions.

(a) "Smart grid function" means one or more of the following:

(i) The ability to develop, store, send and receive digital information concerning electricity use, costs, prices, time of use, nature of use, storage, or other information relevant to management of the electricity grid, utility operations, or customer energy use.

(ii) The ability to sense local disruptions or changes in power flows on the electricity grid and to communicate such information instantaneously and automatically for purposes of enabling automatic protective responses or to inform the utility to make manual changes to sustain reliability and security or improve efficiency of grid operations.

(iii) The ability of the utility to deliver signals, measurements or communications to allow an end-use load device to respond automatically or in a manner programmed by its owner or operator without human action.

(iv) The ability to use digital information to operate functions on the electricity grid that were previously electro-mechanical or manual.

(v) The ability to use digital controls to manage and modify electricity demand, enable congestion management, assist in voltage control, provide operating reserves, or provide frequency regulation.

(vi) The ability to deliver two-way communication of real time prices or other contract terms and to enable customer demand response programs.

(vii) The ability to manage new end-use services to reduce operating or power costs, improve reliability, or improve energy efficiency, such as charging electric vehicles.

(viii) The ability to use real time measurement of power generated from customer-owned power facilities to reduce operating or power cost, improve energy efficiency, or improve reliability.

(ix) The ability to use digital information to improve the reliability or efficiency of generating equipment in an integrated manner to improve flexibility, functionality, interoperability, cyber-security, situational awareness, and operational efficiency of the transmission and distribution system.

(b) "Smart grid pilot" means a project designed to test the feasibility of smart grid technologies or customer acceptance of such.

(c) "Smart grid technologies" means any technology intended to improve the reliability or efficiency, or to reduce the operating costs, of electrical transmission and distribution systems by enabling one or more smart grid functions. Smart grid technologies include, without limitation, measurement devices, communication equipment, information processing equipment and software, and control devices.

(d) "Smart grid technology report" or "report" means a report describing the utility's evaluation of, and any implementation plans for, smart grid technologies.

(3) Reporting requirement.

(a) Each electric utility must file with the commission a smart grid technology report no later than September 1, 2010, and a subsequent report no later than September 1st of each even-numbered year thereafter through September 2016.

(b) Unless otherwise ordered by the commission, this reporting requirement shall expire after the filing of the report due September 1, 2016.

(4) Content. At a minimum, the smart grid technology report must include:

(a) A description of the smart grid technologies the utility has considered for integration into its system, and the utility's evaluation of such technologies. The description required by this subsection shall contain details that the utility has considered and evaluated: Examples of such details include:

(i) Goal or purpose of the smart grid technologies described in the report;

(ii) Total costs of the deployment and use of smart grid technologies including meter or other equipment costs, installation costs, and any incremental administration costs including the cost of changes to data storage, processing and billing systems;

(iii) Overall cost-effectiveness of smart grid technologies planned to be implemented and, to the extent it can be quantified, possible impacts on customer bills;

(iv) Operational savings associated with meter reading or other utility functions;

(v) Effects on system capability to meet or modify energy or peak loads;

(vi) Effects on service reliability including storm damage response and recovery, outage frequency and duration and voltage quality;

(vii) Effects on integration of new utility loads, such as recharging batteries in electrically powered vehicles;

(viii) Cyber and physical security of utility operational information;

(ix) Cyber and physical security of customer information and effects, if any, on existing consumer protection policies;

(x) Interoperability and upgradability of technology and compliance with applicable national standards;

(xi) Customer acceptance and behavioral response;

(xii) Tariff and rate design changes necessary to implement the technology;

(xiii) Nonquantifiable societal benefits, if any; and

(xiv) Economic considerations recognizing the above-listed factors.

(b) Identification of any smart grid technologies that may be cost-effective and available for the utility and its customers during the subsequent ten-year period.

(c) A description of the utility's plans and timeline for implementing any smart grid technologies during the two years following submission of the report.

(d) After the first report, all subsequent reports should include information on the utility's progress on any smart grid technologies scheduled for implementation as stated in its previously filed reports and any smart grid pilot project the utility has undertaken.

(5) The smart grid technology report may include:

(a) The utility's assessment of the risk of investment in smart grid technologies and any recommendations for regulatory treatment, supported by the utility's rationale for such treatment.

(b) Any other factors considered by the utility.

(6) To the extent that some of the information required or allowed to be included in the report also is included in other reports, such as the utility's most recent integrated resource plan, the utility may incorporate that information by specific reference.

(7) The commission may consider the information contained in a smart grid technology report when it evaluates, in rate and other appropriate proceedings, the performance of the utility and its investments in transmission, distribution and metering infrastructure.

WSR 10-01-203

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed December 23, 2009, 11:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-21-047.

Title of Rule and Other Identifying Information: WAC 458-20-10201 Application process and eligibility requirements for reseller permits and 458-20-10202 Brief adjudicative proceedings for matters related to reseller permits.

Hearing Location(s): Capital Plaza Building, 4th Floor, Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA 98504, on January 28, 2010, at 1:30 p.m.

Date of Intended Adoption: February 5, 2010.

Submit Written Comments to: Jay M. Jetter, P.O. Box 47453, Olympia, WA 98504-7453, e-mail JayJ@dor.wa.gov, phone (360) 570-6057, fax (360) 586-0127, by January 28, 2010.

Assistance for Persons with Disabilities: Contact Martha Thomas at (360) 725-7497 no later than ten days before the hearing date. Deaf and hard of hearing individuals may call 1-800-451-7985 (TTY users).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of revenue (department) proposes these rules to explain the application process and eligibility requirements for businesses to receive department-issued reseller permits as well as the appeals process for those applications for reseller permits that have been denied. Effective January 1, 2010, reseller permits will replace resale certificates as the means to substantiate wholesale purchases.

Copies of draft rules are available for viewing and printing on our web site at <http://dor.wa.gov/content/FindALawOrRule/RuleMaking/default.aspx>.

Reasons Supporting Proposal: The department originally adopted emergency rules on these subjects effective August 31, 2009, and is now engaging in this rule making to adopt permanent rules.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: RCW 82.32.780 and 82.32.783.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Jay M. Jetter, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6057; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Gilbert Brewer, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impose any new performance requirement or administrative burden on any small business not already required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. This is not a significant legislative rule as defined in RCW 34.05.328.

December 23, 2009

Alan R. Lynn

Rules Coordinator

NEW SECTION

WAC 458-20-10201 Application process and eligibility requirements for reseller permits.

Part I - General

(101) Introduction. Effective January 1, 2010, seller's permits issued by the department of revenue (department) replace resale certificates as the documentation necessary to substantiate the wholesale nature of a sales transaction pursuant to chapter 563, Laws of 2009 (the act). To reduce the potential for confusion, a "seller's permit" will be described as a "reseller permit." The act provides unique requirements and provisions for construction contractors. (See Part III of this section.) The act authorizes the department to accept applications for reseller permits, issue reseller permits, adopt rules, and take any other action before January 1, 2010, necessary to ensure the effective implementation of the act. This section explains the criteria under which the department will automatically issue a reseller permit, the application process for both construction contractors and taxpayers engaging in other business activities when the department does not automatically issue or renew a reseller permit, and the criteria that may result in the denial of an application for a reseller permit.

(102) What is a reseller permit? A reseller permit is the document issued to a taxpayer by the department, a copy of which the taxpayer provides to a seller to substantiate a wholesale purchase. A wholesale purchase is not subject to retail sales tax. See RCW 82.04.060; 82.08.020. Reseller permits are to be used for wholesale purchases made on and after January 1, 2010.

In addition to this section, information regarding the reseller permit is available at the following sources:

- <http://apps.leg.wa.gov/billinfo/>, through which a copy of chapter 563, Laws of 2009 and background information about the legislation can be obtained;
- <http://dor.wa.gov/resellerpermit>, which is the department's specific web page for information relating to reseller permits;
- WAC 458-20-10202, which explains the process a taxpayer uses when appealing the department's denial of an application for a reseller permit; and
- WAC 458-20-102, which explains the taxpayer's responsibilities regarding the use of a reseller permit, the seller's responsibility for retaining a copy of a reseller permit, and the implications for a taxpayer not properly using a reseller permit and a seller not obtaining a copy of a reseller permit from the taxpayer.

Buyers and sellers should refer to the following for information regarding the resale certificate, which is the document used to substantiate the wholesale nature of a sales transaction occurring before January 1, 2010:

- WAC 458-20-102A (Resale certificates), which explains the taxpayer's responsibilities regarding the use of a resale certificate, the seller's responsibility for retaining a resale certificate, and the implications for a taxpayer not properly using a certificate and a seller not obtaining a certificate from the taxpayer. It is important to note that sellers should retain resale certificates for five years from the date of last use (e.g., December 31, 2014, for sales made in 2009) as the certificates may be requested by the department to verify the wholesale nature of a sale made before January 1, 2010.

Part II - Businesses Other than Contractors

(201) Can any business obtain a reseller permit? No. This act was passed by the legislature to address the significant retail sales tax noncompliance problem resulting from both the intentional and unintentional misuse of resale certificates. The department will not issue a reseller permit unless the business can substantiate that the business is entitled to make wholesale purchases. Some businesses may not receive a reseller permit, and if they do make wholesale purchases, they will need to pay retail sales tax to the seller and then claim a "taxable amount for tax paid at source" deduction or request a refund from the department as discussed in subsection (206) of this section.

(202) How does a business obtain a reseller permit? The department will initially automatically issue a reseller permit to some businesses. These businesses will be notified in September 2009. Those businesses that do not receive an automatically issued reseller permit may apply to the department to obtain a reseller permit. Beginning in September 2009, applications will be available at: <http://dor.wa.gov/resellerpermit> or by calling 1-800-647-7706. Completed applications should be mailed or faxed to the department at:

Department of Revenue
Taxpayer Account Administration
P.O. Box 47476
Olympia, WA 98504-7476
Fax: 360-705-6733

(203) When does a business apply for a reseller permit? A business can apply for a reseller permit anytime after September 1, 2009. In order for approved applicants to receive their reseller permits by January 1, 2010, the department recommends that businesses submit their fully completed applications no later than October 15, 2009.

(204) What criteria will the department consider when making its decision whether a business will receive a reseller permit?

(a) Except as provided in (b) of this subsection, a business other than a construction contractor will receive a reseller permit if it satisfies the following criteria (construction contractors should refer to subsection (305) of this section for an explanation of the requirements unique to them):

(i) The business has an active tax reporting account with the department;

(ii) The business must have reported gross income on tax returns covering a monthly or quarterly period during the immediately preceding six months or, if the business reports on an annual basis, on the immediately preceding annual tax return; and

(iii) Five percent or more of the business's gross income reported during the applicable six- or twelve-month period described in (a)(ii) of this subsection was reported under a retailing, wholesaling, or manufacturing business and occupation (B&O) tax classification.

(b) Notwithstanding (a) of this subsection, the department may deny an application for a reseller permit if:

(i) The department determines that an applicant is not entitled to make purchases at wholesale based on the nature of the applicant's business;

(ii) The applicant has been assessed the penalty for the misuse of a resale certificate or a reseller permit; or

(iii) The department determines that denial of the application is in the best interest of collecting the taxes due under Title 82 RCW.

(c) For purposes of this subsection, "gross income" means gross proceeds of sales as defined in RCW 82.04.070 and value of products manufactured as determined under RCW 82.04.450.

(d) In the event that a business has reorganized, the new business resulting from the reorganization may be denied a reseller permit if the former business would not have qualified for a reseller permit under (a) or (b) of this subsection. For purposes of this subsection, "reorganize" means:

(i) The transfer, however effected, of a majority of the assets of one business to another business where any of the persons having an interest in the ownership or management in the former business maintain an ownership or management interest in the new business, either directly or indirectly;

(ii) A mere change in identity or form of ownership, however effected; or

(iii) The new business is a mere continuation of the former business based on significant shared features such as owners, personnel, assets, or general business activity.

(205) What if I am a new business and don't have a past reporting history? New businesses will generally be issued permits if they indicate they will engage in activity taxable under a retailing, wholesaling, or manufacturing B&O tax classification.

(206) What if I don't get a reseller permit and some of my purchases do qualify as wholesale purchases? It is possible that some taxpayers that do not qualify for a reseller permit will make wholesale purchases. In these circumstances, the taxpayer must pay retail sales tax on these purchases and then claim a "taxable amount for tax paid at source" deduction on the taxpayer's excise tax return. Alternatively, the taxpayer may request a refund from the department of retail sales tax it paid on purchases that are later resold without being used (intervening use) by the taxpayer or for purchases that would otherwise have met the definition of wholesale sale if the taxpayer had provided the seller with a reseller permit or uniform exemption certificate as authorized in RCW 82.04.470. See also WAC 458-20-229 (Refunds). However, such a deduction in respect to the purchase of services is not permitted if the services are not of a type that can be sold at wholesale under the definition of wholesale sale in RCW 82.04.060.

Part III - Construction Contractors

(301) How does a contractor obtain a reseller permit? The act does not authorize the department to automatically issue a reseller permit to "contractors." Contractors must apply for a reseller permit and meet certain eligibility requirements.

(302) How do I determine whether I am a "contractor"? For purposes of the reseller permit:

(a) A "contractor" is any person engaging in the activities described by:

(i) RCW 82.04.050 (2)(b), which are activities generally referred to as "retail construction" when performed for con-

sumers, "wholesale construction" when performed for a person other than a consumer (e.g., a prime contractor), and "speculative construction" or "speculative building" when the taxpayer is constructing on land that it owns. See also WAC 458-20-170 (Constructing and repairing of new or existing buildings or other structures upon real property) for additional information;

(ii) RCW 82.04.050(8), which are activities often referred to as "public road construction." See also WAC 458-20-171 (Building, repairing or improving streets, roads, etc., which are owned by a municipal corporation or political subdivision of the state or by the United States and which are used primarily for foot or vehicular traffic) for additional information; and

(iii) RCW 82.04.050(10), which are activities often referred to as "U.S. government construction" or "government contracting." See also WAC 458-20-17001 (Government contracting—Construction, installations, or improvements to government real property) for additional information.

(b) "Retail construction" is defined as the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and it also includes the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture. Retail construction activity generally involves residential and commercial construction performed for others, including road construction for the state of Washington. It generally includes construction activities that are not specifically designated as speculative building, government contracting, public road construction, logging road construction, radioactive waste cleanup on federal lands, or designated hazardous site clean-up jobs.

(c) "Materials" is defined as tangible personal property that becomes incorporated into the real property being constructed, repaired, decorated, or improved. Materials are the type of tangible personal property that contractors on retail construction projects purchase at wholesale, such as lumber, concrete, paint, wiring, pipe, roofing materials, insulation, nails, screws, drywall, and flooring material. Materials do not include consumable supplies, tools, or equipment, whether purchased or rented, such as bulldozers. However, for purposes of the percentage discussed in subsection (305)(a)(iii) of this section, purchases of consumable supplies, tools, and equipment rentals may be included with material purchases if all such purchases are commingled in the applicant's records and it would be impractical to exclude such purchases.

(d) "Labor" is defined as the work of subcontractors (including personnel provided by temporary staffing companies) hired by a contractor to perform a portion of the construction services in respect to real property owned by a third party. In the case of speculative builders, labor includes the work of any construction contractor hired by the speculative builder. Labor does not include the work of taxpayer's employees. Nor does the term include consultants, engineers,

construction managers, or other independent contractors hired to oversee a project. However, for purposes of the percentage discussed in subsection (305)(a)(iii) of this section, purchases of labor may include the wages of taxpayer's employees and amounts paid to consultants, engineers, construction managers or other independent contractors hired to oversee a project if all such purchases are commingled in the applicant's records and it would be impractical to exclude such purchases.

(303) How does a contractor apply for a reseller permit? A contractor applies for a reseller permit in the same manner as noncontractor taxpayers apply as provided in subsection (202) of this section. Contractors who the department has determined may be eligible for a reseller permit will be notified in September 2009 and receive an application with their notification. The application identifies information specific to contractors that must be provided.

(304) When does a contractor apply for a reseller permit? The same guidelines for noncontractor applicants as provided in subsection (203) of this section also apply to contractor applicants.

(305) What are the criteria specific to contractors to receive a reseller permit?

(a) The department may issue a permit to a contractor that:

(i) Provides a completed application with no material misstatement as that term is defined in (c) of this subsection;

(ii) Demonstrates it is entitled to make purchases at wholesale; and

(iii) Reported on its application that more than twenty-five percent of its total dollar amount of material and labor purchases in the preceding twelve months were for retail construction activities performed by the contractor. The department may, however, approve an application not meeting this criterion if the department is satisfied that approval is unlikely to jeopardize collection of the taxes due under Title 82 RCW.

(b) If the criteria in (a) of this subsection are satisfied, the department will then consider the following factors when determining whether to issue a reseller permit to a contractor:

(i) Whether the contractor has an active tax reporting account with the department;

(ii) Whether the contractor has reported gross income on tax returns covering a monthly or quarterly period during the immediately preceding six months or, if the contractor reports on an annual basis, on the immediately preceding annual tax return;

(iii) Whether the contractor has the appropriate certification and licensing with the Washington state department of labor and industries;

(iv) Whether the contractor has been assessed the penalty for the misuse of a resale certificate or a reseller permit; and

(v) Any other factor resulting in a determination by the department that denial of the contractor's application is in the best interest of collecting the taxes due under Title 82 RCW.

(c) For purposes of this subsection, a "material misstatement" is a false statement knowingly or purposefully made by the applicant with the intent to deceive or mislead the department. For example, a contractor who reports on its application that it had more than twenty-five percent of its

purchases of materials and labor during the preceding twelve months for retail construction activity when it in fact did not have any purchases of materials and labor during the preceding twelve months for retail construction activity has made a "material misstatement."

(d) For purposes of this subsection, "gross income" means gross proceeds of sales as defined in RCW 82.04.070 and value of products manufactured as determined under RCW 82.04.450.

(e) The provisions of subsection (204)(d) of this section are equally applicable to contractors.

(306) What if a contractor does not obtain a reseller permit and some of its purchases do qualify as wholesale purchases? The provisions of subsection (206) of this section are equally applicable to contractors.

NEW SECTION

WAC 458-20-10202 Brief adjudicative proceedings for matters related to reseller permits. (1) Introduction. The department of revenue (department) conducts adjudicative proceedings pursuant to chapter 34.05 RCW, the Administrative Procedure Act (APA). The department adopts in this section the brief adjudicative procedures as provided in RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings for the following matters related to reseller permits:

(a) A determination of whether an applicant for a reseller permit meets the criteria for a reseller permit per WAC 458-20-10201; and

(b) On the administrative appeal of an initial order denying the taxpayer's application for a reseller permit, a determination as to whether the department's order denying the application was correctly based on the criteria for approving reseller permits as set forth in WAC 458-20-10201.

This section explains the procedure and process pertaining to the adopted brief adjudicative proceedings.

(2) **Record in brief adjudicative proceedings.** The record with respect to a taxpayer's appeal per RCW 34.05.482 through 34.05.485 of the department's denial of an application for a reseller permit will consist of:

(a) The taxpayer's application for the reseller permit, the taxpayer's notice of appeal, the taxpayer's written response, if any, to the reasons set forth in the department's notice of denial of a reseller permit, and all records relied upon by the department or submitted by the taxpayer; and

(b) All correspondence between the taxpayer requesting the reseller permit and the department regarding the application for the reseller permit.

(3) **Conduct of brief adjudicative proceedings.** If the department denies an application for a reseller permit, it will notify the taxpayer of the denial in writing, stating the reasons for the denial. To initiate an appeal of the denial of the reseller permit application, the taxpayer must file a written appeal no later than twenty-one days after service of the department's written notice that the taxpayer's application has been denied.

(a) A form notice of appeal of the denial of a reseller permit application (Reseller Permit Appeal Petition) is available at <http://dor.wa.gov/resellerpermit> or by calling 1-800-647-

7706. The completed form should be mailed or faxed to the department at:

Department of Revenue
Taxpayer Account Administration
P.O. Box 47476
Olympia, WA 98504-7476
Fax: 360-705-6733

(b) A presiding officer, who will be either the assistant director of the taxpayer account administration division or such other person as designated by the director of the department (director), will conduct brief adjudicative proceedings. The presiding officer for brief adjudicative proceedings will have agency expertise in the subject matter but will not otherwise have participated in responding to the taxpayer's application for a reseller permit.

(c) As part of the appeal, the taxpayer or the taxpayer's representative may present written documentation and explain the taxpayer's view of the matter. The presiding officer may request additional documentation from the taxpayer or the department and will designate the date by which the documents must be submitted.

(d) No witnesses may appear to testify.

(e) In addition to the record, the presiding officer for brief adjudicative proceedings may employ agency expertise as a basis for decision.

(f) Within twenty-one days of receipt of the taxpayer's appeal of the denial of a reseller permit, the presiding officer will enter an initial order, including a brief explanation of the decision per RCW 34.05.485. All orders in these brief adjudicative proceedings will be in writing. The initial order will become the department's final order unless an appeal is filed with the department's appeals division in subsection (4) of this section.

(4) **Review of initial orders from brief adjudicative proceeding.** A taxpayer that had its application for a reseller permit denied in an initial order issued per subsection (3) of this section may request a review by the department by filing a petition for review or by making an oral request for review with the department's appeals division within twenty-one days after the service of the initial order on the taxpayer. A form for an appeal of an initial order per subsection (3) of this section denying the taxpayer's application for a reseller permit is available at <http://dor.wa.gov/resellerpermit>. A request for review should state the reasons the review is sought. A taxpayer making an oral request for review may at the same time mail a written statement to the address below stating the reasons for the appeal and its view of the matter. The address, telephone number, and fax number of the appeals division are:

Appeals Division, Reseller Permit Appeals
Department of Revenue
P.O. Box 47476
Olympia, WA 98504-7476
Telephone Number: 1-800-647-7706
Fax: 360-705-6733

(a) A reviewing officer, who will be either the assistant director of the appeals division or such other person as designated by the director, will conduct brief adjudicative proceed-

ings and determine whether the department's denial of the taxpayer's application was correctly based on the criteria for approving reseller permits as set forth in WAC 458-20-10201. The reviewing officer will review the record and, if needed, convert the proceeding to a formal adjudicative proceeding.

(b) The agency record need not constitute the exclusive basis for the reviewing officer's decision. The reviewing officer will have the authority of a presiding officer.

(c) The order of the reviewing officer will be in writing and include a brief statement of the reasons for the decision, and it must be entered within twenty days of the petition for review. The order will include a notice that judicial review may be available. The order of the reviewing officer represents the final decision of the department.

(d) A request for administrative review is deemed denied if the department does not issue an order on review within twenty days after the petition for review is filed or orally requested.

(5) **Conversion of a brief adjudicative proceeding to a formal proceeding.** The presiding officer or reviewing officer may convert the brief adjudicative proceeding to a formal proceeding at any time on motion of the taxpayer, the department, or the presiding/reviewing officer's own motion.

(a) The presiding/reviewing officer will convert the proceeding when it is found that the use of the brief adjudicative proceeding violates any provision of law, when the protection of the public interest requires the agency to give notice to and an opportunity to participate to persons other than the parties, and when the issues and interests involved warrant the use of the procedures of RCW 34.05.413 through 34.05.479.

(b) When a proceeding is converted from a brief adjudication to a formal proceeding, the director may become the presiding officer or may designate a replacement presiding officer to conduct the formal proceedings upon notice to the taxpayer and the department.

(c) In the conduct of the formal proceedings, WAC 458-20-10002 will apply to the proceedings.

(6) **Court appeal.** Court appeal from the final order of the department is available pursuant to Part V, chapter 34.05 RCW. However, court appeal may be available only if a review of the initial decision has been requested under subsection (4) of this section and all other administrative remedies have been exhausted. See RCW 34.05.534.

(7) **Computation of time.** In computing any period of time prescribed by this section or by the presiding officer, the day of the act or event after which the designated period is to run is not to be included. The last day of the period is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the next day which is not a Saturday, Sunday or legal holiday. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays and holidays are excluded in the computation. Service as discussed in subsection (8) of this section is deemed complete upon mailing.

(8) **Service.** All notices and other pleadings or papers filed with the presiding or reviewing officer must be served on the taxpayer, their representatives/agents of record, and the department.

(a) Service is made by one of the following methods:

(i) In person;

(ii) By first-class, registered or certified mail;

(iii) By fax and same-day mailing of copies;

(iv) By commercial parcel delivery company; or

(v) By electronic delivery pursuant to RCW 82.32.135.

(b) Service by mail is regarded as completed upon deposit in the United States mail properly stamped and addressed.

(c) Service by electronic fax is regarded as completed upon the production by the fax machine of confirmation of transmission.

(d) Service by commercial parcel delivery is regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(e) Service by electronic delivery is regarded as completed on the date that the department electronically sends the information to the parties or electronically notifies the parties that the information is available to be accessed by them.

(f) Service to a taxpayer, their representative/agent of record, the department, and presiding officer must be to the address shown on the notice described in subsection (3)(a) of this section.

(g) Service to the reviewing officer must be to the appeals division at the address shown in subsection (4) of this section.

(h) Where proof of service is required, the proofs of service must include:

(i) An acknowledgment of service;

(ii) A certificate, signed by the person who served the document(s), stating the date of service; that the person did serve the document(s) upon all or one or more of the parties of record in the proceeding by delivering a copy in person to (names); and that the service was accomplished by a method of service as provided in this subsection.

(9) **Continuance.** The presiding officer or reviewing officer may grant a request for a continuance by motion of the taxpayer, the department, or on its own motion.