WSR 13-09-006
PROPOSED RULES
PUBLIC DISCLOSURE COMMISSION

[Filed April 5, 2013, 9:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-05-011.

Title of Rule and Other Identifying Information: WAC 390-17-100 Contribution withholding authorizations, the rule implements RCW 42.17A.495 and addresses procedures for making payroll deductions for campaign contributions.

Hearing Location(s): 711 Capitol Way, Room 206, Olympia, WA 98504, on May 22, 2013, at 9:30 a.m.

Date of Intended Adoption: May 22, 2013.

Submit Written Comments to: Nancy Krier, 711 Capitol Way, Room 206, Olympia, WA 98504, e-mail nancy.krier@pdc.wa.gov, fax (360) 753-1112, by May 13, 2013.

Assistance for Persons with Disabilities: Contact Jana Greer by e-mail at jana.greer@pdc.wa.gov, (360) 586-0544 or (360) 753-1111.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The public disclosure commission (PDC) implements the campaign finance laws in chapter 42.17A RCW. Under RCW 42.17A.495, no employer or other person or entity responsible for the disbursement of funds in payment of wages or salaries may withhold or divert a portion of an employee's wages or salaries for contributions to political committees or for use as political contributions except upon the written request of the employee. The commission is required to develop a form for individuals who authorize a withholding of their salaries or wages for the purpose of making such a campaign contribution. The form is described in rule at WAC 390-17-100. The current form (and the information in any other authorization form), requires a written authorization, including a "signature" by the individual authorizing the deduction.

The proposed amendments address the information necessary for an individual to make an electronic authorization for the withholding. The proposed amendments explain statutory requirements for public inspection and recordkeeping. The proposed amendments make other changes to provide clarity.

Reasons Supporting Proposal: The proposed amendments would make several improvements to the rule. First, they modernize the rule, providing an option for electronic payroll authorizations when the employers or other persons who withhold or divert wages or salaries have mechanisms that permit individuals to designate a payroll deduction electronically. Second, the proposed amendments provide more information to the employers and others who withhold or divert wages by describing the recordkeeping and public inspection requirements in RCW 42.17A.495. Finally, the proposed amendments improve the rule's grammar and formatting, making the rule easier to read.

Statutory Authority for Adoption: RCW 42.17A.110, 42.17A.495.

Statute Being Implemented: RCW 42.17A.495.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: This rule should result in no increased costs to the agency.

Name of Proponent: PDC, governmental.

Name of Agency Personnel Responsible for Drafting: Nancy Krier, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 753-1980; Implementation and Enforcement: Andrea McNamara Doyle, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 753-1111.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments has minimal impact on small business. The PDC is not subject to the requirement to prepare a school district fiscal impact statement, per RCW 28A.305.135 and 34.05.320.

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 RCW 34.05.328. Further, the PDC does not voluntarily make that section applicable to the adoption of these rules pursuant to subsection (5)(a)(ii), and to date, the joint administrative rules review committee has not made the section applicable to the adoption of these rules.

March 28, 2013
Nancy Krier
General Counsel

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-17-100 Contribution withholding authorizations. (1) Each employer or other person who withholds or otherwise diverts a portion of wages or salary of a Washington resident or a nonresident whose primary place of work is in the state of Washington((~~,~~)) shall have on file the individual's written authorization before withholding or diverting the individual's wages or salary for:

(a) ((~~For~~)) The purpose of making one or more contributions to any political committee required to report pursuant to RCW 42.17A.205, 42.17A.215, 42.17A.225, 42.17A.235 or 42.17A.240; or

(b) ((~~For~~)) Use, specifically designated by the contributing employee, for political contributions to candidates for state or local office ((~~is required for (a) and (b) of this subsection to have on file the written authorization of the individual subject to the payroll withholding or diversion of wages~~)).

(2) Forms used for payroll deduction may either conform to the suggested format below or be in a different format including an electronic format if it provides the following information:

(a) The name of the individual authorizing the withholding or diversion;

(b) The name of the individual's employer;

(c) The name of each political committee or candidate for which contributions are to be withheld;

(d) If more than one political committee or candidate is specified, the total dollar amount per pay period (or per week, month or year) to be withheld for each committee or candidate;

(e) A statement specifying that the authorization may be revoked at any time and such revocation shall be in writing;

(f) A statement that reads: "No employer or labor organization may discriminate against an officer or employee in the terms or conditions of employment for (i) the failure to contribute to, (ii) the failure in any way to support or oppose, or (iii) in any way supporting or opposing a candidate, ballot proposition, political party, or political committee"; or a statement that informs the employee of the prohibition against employer and labor organization discrimination described in RCW 42.17A.495;

(g) The individual's signature or other reliable and secure verification that the individual is authorizing the withholding or diversion; and

(h) The date on which the form was completed.

(3) Forms used for payroll deduction may have information in addition to that listed ((~~above~~)) in subsection (2) of this section. A form that satisfies subsection (2) of this section constitutes the written authorization of the individual authorizing the withholding or diversion.

(4) Employers and other persons who withhold or divert wages or salaries must:

(a) Maintain the completed forms, with the individual's signature or verification, for as long as the withholding or diversion continues;

(b) Keep the forms and other documents described in RCW 42.17A.495(4) open for public inspection for three years after the last disbursement of wages or salaries; and

(c) Provide the forms and other documents described in RCW 42.17A.495(4) to the commission upon request.

Political Contribution Withholding Authorization

No employer or other person may withhold a portion of a Washington State resident's earnings (or that of a nonresident whose primary place of work is in Washington) in order to make contributions to a political committee that must report to the Public Disclosure Commission or to a candidate for state or local office without written permission from that individual. Completion of this form entitles the entity specified to make such a withholding. This authorization form remains in effect until revoked in writing by the employee.

I, _____, authorize _____

First Name Middle Initial Last Name Name of Employer or Other Person

_____ to withhold $ _____ per/pay period/week/month/year/

Amount Circle One

from my earnings in order to make political contributions to _____

Name of

_____

political committee(s) and/or candidate(s) to receive deductions

If more than one recipient is indicated, each is to receive the following portion of the deduction made: _____.

Signature: _____ **Date:** _____

According to state law, no employer or labor organization may discriminate against an officer or employee in the terms or conditions of employment for (a) the failure to contribute to, (b) the failure in any way to support or oppose, or (c) in any way supporting or opposing a candidate, ballot proposition, political party, or political committee.

WSR 13-09-007

PROPOSED RULES

SEATTLE COMMUNITY COLLEGES

[Filed April 5, 2013, 10:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-23-032.

Title of Rule and Other Identifying Information: Policy on the use of the college facilities, limitation of use and trespass, amending WAC 132F-136-030 and 132F-136-050; use of facilities for First Amendment activities (new chapter 132F-142 WAC).

Hearing Location(s): Seattle Central Community College, Broadway Performance Hall, 1625 Broadway, Seattle, WA 98122, on May 23, 2013, at 3:00 p.m. to 4:00 p.m.

Date of Intended Adoption: June 13, 2013.

Submit Written Comments to: Amanda Davis Simpfenderfer, 1500 Harvard Avenue, Seattle, WA 98122, e-mail amanda.simpfenderfer@seattlecolleges.edu, fax (206) 934-3894, by April 5, 2013.

Assistance for Persons with Disabilities: Contact Amanda.simpfenderfer@seattlecolleges.edu by May 22, 2013, (206) 934-3873.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update and creation of new policies regarding the usage of the Seattle Com-

munity Colleges for First Amendment activities on campus. The changes outline how the campus can be used for First Amendment activities.

Reasons Supporting Proposal: To ensure that Seattle Community Colleges are upholding First Amendment rights while respecting the educational process and amending the trespass rule to provide for administrative review.

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: Seattle Community College District VI, public.

Name of Agency Personnel Responsible for Drafting: Kurt Buttleman, Seattle Community College District Office, (206) 934-4111.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules are not predicted to impose any costs on businesses in an industry.

A cost-benefit analysis is not required under RCW 34.05.328. The Seattle Community Colleges are not required to provide a cost-benefit analysis under RCW 34.05.328 (5)(a).

April 4, 2013
Jill Wakefield
Chancellor

AMENDATORY SECTION (Amending WSR 12-12-010, filed 5/24/12, effective 6/24/12)

WAC 132F-136-030 Limitation of use. (1) Primary consideration shall be given at all times to activities specifically related to the college's mission, and no arrangements shall be made that may interfere with, or operate to the detriment of, the college's own teaching, research, or public service programs.

(2) ((~~In general, the~~)) College facilities ((~~of the college shall not~~)) may be rented to((~~, or used by,~~)) private or commercial organizations or associations((~~, nor~~)) but shall ((~~the facilities~~)) not be rented to persons or organizations conducting programs for private gain.

(3) ((~~College facilities may not be used for commercial sales, advertising, or promotional activities except when such activities clearly serve educational objectives (as in display of books of interest to the academic community or in the display or demonstration of technical or research equipment) and when they are conducted under the sponsorship or at the request of a college department, administrative office or student organization.~~

~~(4) College facilities may not be used for purposes of political campaigning by or for candidates who have filed for public office except for student-sponsored activities.~~

~~(5) Activities of commercial or political nature will not be approved if they involve the use of promotional signs or posters on buildings, trees, walls, or bulletin boards, or the distribution of samples outside rooms or facilities to which access has been granted.~~

~~(6)~~)) College facilities are available to recognized student groups, subject to these general policies and to the rules and regulations of the college governing student affairs.

(((~~(7) Handbills, leaflets, and similar materials except those which are commercial, obscene, or unlawful in character may be distributed only in designated areas on the campus where, and at times when, such distribution shall not interfere with the orderly administration of the college affairs or the free flow of traffic. Any distribution of materials as authorized by the designated administrative officer and regulated by established guidelines shall not be construed as support or approval of the content by the college community or the board of trustees.~~

~~(8) Use of audio amplifying equipment is permitted only in locations and at times that will not interfere with the normal conduct of college affairs as determined by the appropriate administrative officer.~~

~~(9)~~)) (4) No person or group may use or enter onto college facilities having in their possession firearms, even if licensed to do so, except commissioned police officers as prescribed by law.

(((~~(10) The right of peaceful dissent within the college community shall be preserved. The college retains the right to insure the safety of individuals, the continuity of the educational process, and the protection of property. While peaceful dissent is acceptable, violence or disruptive behavior is an illegitimate means of dissent. Should any person, group or organization attempt to resolve differences by means of violence, the college and its officials need not negotiate while such methods are employed.~~

~~(11) Orderly picketing and other forms of peaceful dissent are protected activities on and about the college premises. However, interference with free passage through areas where members of the college community have a right to be, interference with ingress and egress to college facilities, interruption of classes, injury to persons, or damage to property exceeds permissible limits.~~

~~(12) Peaceful picketing and other orderly demonstrations are permitted in public areas and other places set aside for public meetings in college buildings. Where college space is used for an authorized function, such as a class or a public or private meeting under approved sponsorship, administrative functions or service related activities, groups must obey or comply with directions of the designated administrative officer or individual in charge of the meeting.~~

~~(13) If a college facility abuts a public area or street, and if student activity, although on public property, unreasonably interferes with ingress and egress to college buildings, the college may choose to impose its own sanctions although remedies might be available through local law enforcement agencies.~~

~~(14) College and noncollege groups may use the campus for first amendment activities between the hours of 6:00 a.m. and 10:00 p.m. and the colleges and their campuses are not open to the public except during these times.~~

~~(15) There shall be no overnight camping on college facilities or grounds. Camping is defined to include sleeping, carrying on cooking activities, or storing personal belongings, for personal habitation, or the erection of tents or other~~

~~shelters or structures used for purposes of personal habitation.~~))

AMENDATORY SECTION (Amending WSR 12-12-010, filed 5/24/12, effective 6/24/12)

WAC 132F-136-050 Trespass. (1) Individuals who are not students or members of the faculty or staff and who violate the district's rules, or whose conduct threatens the safety or security of its students, staff, or faculty will be advised of the specific nature of the violation, and if they persist in the violation, they will be requested by the campus president, or his or her designee, to leave the college property. Such a request will be deemed to prohibit the entry of, withdraw the license or privilege to enter onto or remain upon any portion of the college property by the person or group of persons requested to leave, and subject such individuals to arrest under the provisions of chapter 9A.52 RCW or Seattle Municipal Code 12A.08.040.

(2) Members of the college community (students, faculty, and staff) who do not comply with these regulations will be reported to the appropriate college office or agency for action in accord with established college policies.

(3) When the college revokes the license or privilege of any person to be on college property, temporarily or for a stated period of time, that person may file a request for review of the decision with the ((~~manager of campus security~~)) vice-president of administration or designee within ten days of receipt of the trespass notice. The request must contain the reasons why the individual disagrees with the trespass notice. The trespass notice will remain in effect during the pendency of any review period. The decision of the ((~~manager of campus security~~)) vice-president of administration or designee will be the final decision of the college and should be issued within five work days.

Chapter 132F-142 WAC

USE OF FACILITIES FOR FIRST AMENDMENT ACTIVITIES

NEW SECTION

WAC 132F-142-010 Statement of purpose. The Seattle Community Colleges are educational institutions provided and maintained by the people of the state of Washington. College facilities are reserved primarily for educational use including, but not limited to, instruction, research, public assembly of college groups, student activities and other activities directly related to the educational mission of the colleges. The public character of the colleges does not grant to individuals the right to substantially interfere with, or otherwise disrupt the normal activities for and to which the colleges' facilities and grounds are dedicated. Accordingly, the colleges are designated public forums opened for the purposes recited herein and further subject to the time, place, and manner provisions set forth in these rules.

The purpose of the time, place and manner regulations set forth in this policy is to establish procedures and reasonable controls for the use of college facilities for both college and noncollege groups. It is intended to balance the colleges' responsibility to fulfill their mission as state educational institutions of Washington with the interests of college groups and noncollege groups who are interested in using the campus for purposes of constitutionally protected speech, assembly or expression. The colleges recognize that college groups should be accorded the opportunity to utilize the facilities and grounds of the colleges to the fullest extent possible. The college intends to open its campus to noncollege groups to the extent that the usage does not conflict with the rights of college groups or substantially disrupt the educational process.

NEW SECTION

WAC 132F-142-020 Definitions. (1) "College facilities" or "campus" includes all buildings, structures, grounds, office space, and parking lots.

(2) "College group" means individuals who are currently enrolled students or current employees of the Seattle Community Colleges or individuals who are sponsored by faculty, a recognized student organization or a recognized employee group of the college.

(3) "Noncollege group" means individuals or groups who are not currently enrolled students or current employees of the Seattle Community Colleges.

(4) "Public forum areas" means those areas of each campus that the college has chosen to be open as places for expressive activities protected by the first amendment, subject to reasonable time, place or manner provisions.

(5) "Sponsor" means that when a college group invites a noncollege group onto campus, the college group will be responsible for the activity and will designate an individual to be present at all times during the activity. The sponsor will ensure that those participating in the sponsored activity are aware of the college's rules and policies governing the activity. This definition does not apply to noncollege groups that rent college facilities.

NEW SECTION

WAC 132F-142-030 Use of facilities. (1) There shall be no camping on college facilities or grounds between the hours of 10:00 p.m. and 6:00 a.m. Camping is defined to include sleeping, cooking activities, or storing personal belongings, for personal habitation, or the erection of tents or other shelters or structures used for purposes of personal habitation.

(2) Any sound amplification device may only be used at a volume which does not disrupt or disturb the normal use of classrooms, offices or laboratories, or any previously scheduled college activity.

(3) College groups are encouraged to notify the campus public safety department no later than twenty-four hours in advance of an activity. However, unscheduled activities are permitted so long as the activity does not displace any other activities occurring at the college.

(4) All sites used for first amendment activities should be cleaned up and left in their original condition and may be subject to inspection by a representative of the college after the activity. Reasonable charges may be assessed against the

sponsoring organization for the costs of extraordinary cleanup or for the repair of damaged property.

(5) All college and noncollege groups must comply with fire, safety, sanitation or special regulations specified for the activity.

(6) The activity must not be conducted in such a manner as to obstruct vehicular, bicycle, pedestrian, or other traffic or otherwise interfere with ingress or egress to the college, college buildings or facilities, or college activities. The activity must not create safety hazards or pose safety risks to others.

(7) The activity must not substantially interfere with educational activities inside or outside any college building or otherwise prevent the college from fulfilling its mission and achieving its primary purpose of providing an education to its students. The activity must not substantially infringe on the rights and privileges of college students, employees or invitees to the college.

(8) College facilities may not be used for commercial sales, solicitations, advertising or promotional activities, unless:

(a) Such activities serve educational purposes of the college; and

(b) Such activities are under the sponsorship of a college department, office, or officially chartered student club.

(9) The activity must also be conducted in accordance with any other applicable college policies and rules, local ordinances, state, and federal laws.

NEW SECTION

WAC 132F-142-040 Additional requirements for noncollege groups. (1) College facilities may be rented by noncollege groups in accordance with the college's facilities use policy. Noncollege groups may otherwise use college facilities in accordance with the Seattle Community Colleges' rules.

(2) The college designates its grounds and outdoor spaces as the public forum area(s) for use by noncollege groups for first amendment activities on campus. Nothing in these rules prohibits noncollege groups from engaging in first amendment activities at open public meetings, subject to the requirements of RCW 42.30.050.

(3) Noncollege groups at North Seattle Community College and South Seattle Community College may use the public forum areas for first amendment activities between the hours of 6:00 a.m. and 10:00 p.m. and those colleges and their campuses are not open to the general public except during these times. Due to Seattle Central Community College's urban setting, there are no temporal restrictions on first amendment activities at that college except as otherwise provided in these rules.

(4) Before engaging in first amendment activities, upon request by the college, all noncollege groups must report to campus security to sign in and notify the college of the noncollege group's presence on campus and to acknowledge receipt of these rules and to ensure that there are no scheduling conflicts. This notice does not involve any application or approval process, and therefore, the ability to use designated areas will not be denied unless they are already reserved for use by another group. This notice is intended to provide the college with knowledge of the noncollege group's presence on campus so that the college can notify the appropriate members of its staff whose services might be needed or impacted by the use of the designated area. When signing in, the individual or group must provide the following information:

(a) The name, address, and telephone number of the individual, group, entity, or organization sponsoring the activity (hereinafter "the sponsoring organization"); and

(b) The name, address, and telephone number of a contact person for the sponsoring organization; and

(c) The date, time, and requested location of the activity; and

(d) The type of sound amplification devices to be used in connection with the activity, if any; and

(e) The estimated number of people expected to participate in the activity.

NEW SECTION

WAC 132F-142-050 Distribution of materials. Information may be distributed as long as it is not obscene or does not promote the imminent prospect of actual violence or harm. The distributor is encouraged, but not required, to include its name and address on the distributed information. College groups may post information on bulletin boards, kiosks and other display areas designated for that purpose, and may distribute materials throughout the open areas of campus. Noncollege groups may distribute materials only on the grounds and outside spaces of the campuses.

WSR 13-09-012
PROPOSED RULES
PUBLIC DISCLOSURE COMMISSION

[Filed April 8, 2013, 10:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-11-034.

Title of Rule and Other Identifying Information: WAC 390-18-010 Advertising, political advertising, electioneering communications, and independent expenditures and 390-18-025 Advertising—Identification of "top five contributors," the rules address advertising, political advertising, electioneering communications and independent expenditures.

Hearing Location(s): 711 Capitol Way, Room 206, Olympia, WA 98504, on May 22, 2013, at 9:30 a.m.

Date of Intended Adoption: May 22, 2013.

Submit Written Comments to: Nancy Krier, 711 Capitol Way, Room 206, Olympia, WA 98504, e-mail nancy.krier@pdc.wa.gov, fax (360) 753-1112, by May 13, 2013.

Assistance for Persons with Disabilities: Contact Jana Greer by e-mail at jana.greer@pdc.wa.gov, (360) 586-0544 or (360) 753-1111.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The public disclosure commission (PDC) implements the campaign finance laws in chapter 42.17A RCW. RCW 42.17A.320 describes the sponsor identification that must be included in political

advertising, electioneering communications and independent expenditures. In 2012, RCW 42.17A.320 was amended to add a requirement that ballot measure ads costing $1,000 and sponsored by political committees must include the "top five contributors" in the sponsor identification. Chapter 226, Laws of 2012. The proposed amendments to WAC 390-18-010 and 390-18-025 explain those additional disclosure requirements for ballot measure ads.

Reasons Supporting Proposal: The proposed amendments bring the rules into conformance with RCW 42.17A.320 as amended, providing political committee sponsors a fuller explanation of the advertising identification requirements for ballot measure ads.

Statutory Authority for Adoption: RCW 42.17A.110, 42.17A.320.

Statute Being Implemented: RCW 42.17A.320.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: This rule should result in no increased costs to the agency.

Name of Proponent: PDC, governmental.

Name of Agency Personnel Responsible for Drafting: Nancy Krier, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 753-1980; Implementation and Enforcement: Andrea McNamara Doyle, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 753-1111.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments has minimal impact on small business. The PDC is not subject to the requirement to prepare a school district fiscal impact statement, per RCW 28A.305.-135 and 34.05.320.

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 RCW 34.05.328. Further, the PDC does not voluntarily make that section applicable to the adoption of these rules pursuant to subsection (5)(a)(ii), and to date, the joint administrative rules review committee has not made the section applicable to the adoption of these rules.

April 8, 2013
Nancy Krier
General Counsel

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-18-010 Advertising, political advertising, electioneering communications, and independent expenditures. (1) For the purposes of chapter 42.17A RCW and Title 390 WAC:

(a) "Sponsor of an electioneering communication, independent expenditure or political advertising" is defined in RCW 42.17A.005.

(b) Unless the context clearly provides otherwise, "advertising" or "advertisement" means political advertising, electioneering communications, or independent expenditures that are for political advertising and/or electioneering communications subject to the provisions of chapter 42.17A RCW and as defined in RCW 42.17A.005 or 42.17A.255.

(2) With advertising for which no payment is demanded or for which a cost is not readily ascertainable, the sponsor is the candidate, political committee or person who solicits or arranges for the advertising to be displayed or broadcast.

(3) If more than one person sponsors specific advertising, the identity of each sponsor must be shown. However, if a person contributes in cash or in-kind to a candidate or political committee to assist in paying the cost of advertising, that person is not deemed a sponsor provided the contribution is reported in accordance with applicable provisions of chapter 42.17A RCW and Title 390 WAC.

(4) Printed advertising shall clearly state, in an area set apart from any other printed matter, that it has been paid for by the sponsor (Example: (1) Paid for by the XYZ committee, mailing address, city, state, zip code; (2) Vote for John Doe, paid for by John Doe, mailing address, city, state, zip code). ((~~However,~~))

(a) Political committees that sponsor political advertising costing one thousand dollars or more supporting or opposing a ballot measure must clearly state the "top five contributors" to that political committee pursuant to WAC 390-18-025.

(b) Printed advertising undertaken as an independent expenditure or electioneering communication shall comply with the "no candidate authorized this ad" sponsor identification and, if relevant, the "top five contributors" and identification of the individual, corporation, union, association, or other entity that established, maintains, or controls the sponsoring political committee provisions of RCW 42.17A.320 and provide this information in an area set apart from any other printed matter.

(c) Political committees that sponsor independent expenditure or electioneering communication printed advertising are required to provide the "top five contributors" to that political committee pursuant to WAC 390-18-025; however, this requirement does not apply to bona fide political parties sponsoring independent expenditures.

(5)(a) Advertising consisting of more than one page but intended to be presented as a single item (e.g., 3-page letter with return envelope) must identify the sponsor on the first page or fold of the advertising. Identification on an enclosed return envelope or the envelope in which the advertising is sent is not sufficient.

(b) Advertising which is a collection of several items relating to more than one candidate or committee and distributed simultaneously must show the respective sponsor on the respective items.

(6) The name of the sponsor of all radio or television advertising shall be clearly spoken or identified as required in RCW 42.17A.320.

(a) Political committees that sponsor political advertising costing one thousand dollars or more supporting or opposing a ballot measure shall comply with the "top five contributors" provisions of RCW 42.17A.320 and this information shall be clearly spoken or identified as provided in RCW 42.17A.320. The "top five" contributors shall be identified pursuant to WAC 390-18-025.

(b) All radio, telephone and television advertising undertaken as an independent expenditure as defined in RCW 42.17A.005 shall comply with the "no candidate authorized this ad" sponsor identification and, if relevant, the "top five contributors" provisions of RCW 42.17A.320 and this information shall be clearly spoken or identified as provided in RCW 42.17A.320.

(((~~b~~))) (c) All radio and television advertising undertaken as an electioneering communication as defined in RCW 42.17A.005 shall comply with the "no candidate authorized this ad" sponsor identification and, if relevant, the "top five contributors" provisions of RCW 42.17A.320 and this information shall be clearly spoken or identified as provided in RCW 42.17A.320.

(((~~c~~))) (d) Political committees that sponsor independent expenditure or electioneering communication radio and television advertising are required to clearly speak or otherwise identify the "top five contributors" to that political committee pursuant to WAC 390-18-025; however, this requirement does not apply to bona fide political parties sponsoring independent expenditures.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-18-025 Advertising—Identification of "top five contributors." (1) For purposes of RCW 42.17A.320 (2), (4) ((~~and~~)), (5) and (6), "top five contributors" means the five persons, as defined in RCW 42.17A.005, giving the largest aggregate contributions exceeding seven hundred dollars during the twelve-month period preceding the date on which the advertisement is published or otherwise presented to the public. If more than five contributors give an amount equal to the largest aggregate contribution exceeding seven hundred dollars and the funds are received during the relevant twelve-month period, the political committee sponsoring the advertisement shall select five of these contributors to identify as the top five contributors.

(2) For independent expenditure advertisements or electioneering communications, the "top five contributors" identification requirement of RCW 42.17A.320 applies to all political committees that make independent expenditures, including continuing political committees and out-of-state political committees subject to chapter 42.17A RCW other than a bona fide political party committee.

(3) For political advertisements supporting or opposing ballot measures costing one thousand dollars, the "top five contributors" identification requirement of RCW 42.17A.320 applies to all political committees.

(4) If a political committee keeps records necessary to track contributions according to the use intended by contributors, and the committee subsequently makes independent expenditures for advertisements supporting or opposing a candidate or slate of candidates or an electioneering communication identifying a specific candidate or slate of candidates, that committee may identify the top five contributors giving for that purpose, as opposed to identifying the overall top five contributors to the committee as is otherwise required by RCW 42.17A.320 and this section.

However, a contributor's contributions earmarked for independent expenditures supporting or opposing a specific candidate or slate of candidates or electioneering communications identifying a specific candidate or slate of candidates shall not be used with respect to a different candidate or slate of candidates without the contributor being identified as one of the top five contributors for the actual expenditure if that contributor is one of the top five contributors for that expenditure.

WSR 13-09-026
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed April 9, 2013, 12:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-04-091.

Title of Rule and Other Identifying Information: The community services division (CSD) is proposing to amend WAC 388-482-0005 How does being a student impact my eligibility for the Washington Basic Food program?

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html), on May 21, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 22, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on May 21, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by May 7, 2013, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-482-0005 to remove references to the food stamp employment and training program and replace it with the Basic Food employment and training. CSD will also use this opportunity to edit rule language to provide more clarity of student status as it relates to Basic Food eligibility and improve accuracy in the Basic Food program.

Reasons Supporting Proposal: The department seeks to avoid Basic Food payment errors and improve overall program access. This will help assure Washington state continues to receive federal funding for its supplemental nutrition assistance program (SNAP) and avoid financial penalties.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Statute Being Implemented: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. § 273.5.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Robert Thibodeau, 712 Pear Street S.E., Olympia, WA 98504, (360) 725-4634.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendment only affects DSHS program denial letter preparation procedures to align them with procedures described in other rule sections.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

April 1, 2013
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-22-037, filed 10/28/03, effective 12/1/03)

WAC 388-482-0005 How does being a student of higher education impact my eligibility for the Washington Basic Food program? (1) For Basic Food, we consider you a student of higher education if you are:

(a) Age eighteen through forty-nine;

(b) Physically and mentally able to work (we determine if you are unable to work); ((~~and~~))

(c) Enrolled in an institution of higher education at least half-time as defined by the institution; and

(d) Enrolled in coursework considered to be higher education.

(2) An institution of higher education is:

(a) Any educational institution that requires a high school diploma or general education development certificate (GED);

(b) A business, trade, or vocational school that requires a high school diploma or GED; or

(c) A two-year or four-year college or university that offers a degree but does not require a high school diploma or GED.

(3) If you are a student of higher education, you must also meet one of the following conditions to be eligible for Basic Food:

(a) You have paid employment of at least twenty hours per week.

(b) ((~~Be~~)) You are self-employed, work, and earn at least the amount you would earn working twenty hours at the federal minimum wage;

(c) ((~~Be~~)) You were participating in a state or federal work study program ((~~at the time you applied for Basic Food benefits. For the purpose of being eligible for Basic Food, work study is:~~

~~(i) Working and receiving money from the work study program; and~~

~~(ii) Not turning down a work assignment~~)) during the regular school year.

(i) To qualify under this condition, you must:

(A) Have approval for work study at the time of application for Basic Food;

(B) Have work study that is approved for the school term; and

(C) Anticipate actually working during that time.

(ii) The work study exemption begins:

(A) The month in which the school term starts; or

(B) The month work study is approved, whichever is later.

(iii) Once begun, the work study exemption shall continue until:

(A) The end of the month in which the school term ends; or

(B) We find out you refused a work study assignment.

(d) ((~~Be~~)) You are responsible for more than half the care of a dependent person in your assistance unit (AU) who is age five or younger;

(e) ((~~Be~~)) You are responsible for more than half the care of a dependent person in your AU who is between age six and eleven, if we have determined that there is not adequate child care available during the school year to allow you to:

(i) Attend class and satisfy the twenty-hour work requirement; or

(ii) Take part in a work study program.

(f) ((~~Be~~)) You are a single parent responsible for the care of your natural, step, or adopted child who is eleven or younger;

(g) ((~~Be~~)) You are an adult who has the parental responsibility of a child who is age eleven or younger if none of the following people live in the home:

(i) The child's parents; or

(ii) Your spouse.

(h) You participate in the WorkFirst program under WAC 388-310-0200;

(i) You receive TANF or SFA benefits;

(j) You attend an institution of higher education through:

(i) The Workforce Investment Act (WIA);

(ii) The ((~~food stamp~~)) Basic Food employment and training (BF E&T) program under chapter 388-444 WAC;

(iii) An approved state or local employment and training program; or

(iv) Section 236 of the Trade Act of 1974.

(4) If you are a student of higher education and the only reason you are eligible for Basic Food is because you ((~~participate~~)) are participating in work study, you are only eligible while you work and receive money from work study. If your work study stops during the summer months, you must meet another condition to be an eligible student during this period.

(5) If you are a student of higher education, your status as a student:

(a) Begins the first day of the school term; and

(b) Continues through vacations. This includes the summer break if you plan to return to school for the next term.

(6) We do not consider you a student of higher education if you:

(a) Graduate;

(b) Are suspended or expelled;

(c) Drop out; or

(d) Do not intend to register for the next normal school term other than summer school.

WSR 13-09-027
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Community Services Division)
[Filed April 9, 2013, 1:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-03-148.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-444-0005 Am I required to work or look for work in order to be eligible for Basic Food?, 388-444-0055 What are the penalties if I refuse or fail to meet Basic Food work requirements?, 388-444-0065 Am I eligible for Basic Food if I quit my job?, 388-444-0070 What is good cause for quitting my job?, and 388-444-0075 What are the penalties if I quit a job without good cause?

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html), on May 21, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 22, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on May 21, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by May 7, 2013, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The community services division is proposing to amend WAC 388-444-0005, 388-444-0055, 388-444-0065, 388-444-0070, and 388-444-0075 to update Basic Food work requirement rules to be consistent with federal regulations, and Washington approved Basic Food state plan. The department is also removing the requirement to obtain comparable employment after serving a disqualification period for quitting a job without good cause or voluntarily reducing work effort without good cause.

Reasons Supporting Proposal: Previous versions of this rule were missing the "voluntarily reduction in work effort" provisions that must be stated and included in the Basic Food work requirements rules to be consistent with federal law. Also, based on comments received during internal review and preproposal review it was decided to exercise the supplemental nutrition assistance program state agency option and not require individual participants to obtain comparable employment after serving the appropriate disqualification period for quitting a job without good cause or voluntarily reducing work effort without good cause.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Statute Being Implemented: RCW 74.04.005, 74.04.-050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. § 273.7.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Robert Thibodeau, 712 Pear Street S.E., Olympia, WA 98504, (360) 725-4634.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendment only affects DSHS program denial letter preparation procedures to align them with procedures described in other rule sections.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

April 1, 2013
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-18-048, filed 8/26/10, effective 10/1/10)

WAC 388-444-0005 Am I required to work or look for work in order to be eligible for Basic Food? Some people must register for work to receive Basic Food.

(1) If you receive Basic Food, we register you for work if you are:

(a) Age sixteen through fifty-nine with dependents;

(b) Age sixteen or seventeen, not attending secondary school and not the head-of-household;

(c) Age fifty through fifty-nine with no dependents; or

(d) Age eighteen through forty-nine, able-bodied and with no dependents as provided in WAC 388-444-0030.

(2) Unless you are exempt from work registration under WAC 388-444-0010, we register you for work:

(a) When you apply for Basic Food benefits or are added to someone's assistance unit; and

(b) Every twelve months thereafter.

(3) If we register you for work, you must:

(a) Contact us as required;

(b) Provide information regarding your employment status and availability for work if we ask for it;

(c) Report to an employer if we refer you;

(d) Not voluntarily quit a job or reduce your work effort as defined under WAC 388-444-0065 unless you have good cause under WAC 388-444-0070; and

(e) Accept a bona fide offer of suitable employment. We define unsuitable employment under WAC 388-444-0060.

(4) If we register you for work, you must meet all of the requirements under subsection (3) of this section. If you do not meet these requirements, we disqualify you from receiving benefits as described in WAC 388-444-0055, unless you meet the good cause conditions as defined in WAC 388-444-0050.

AMENDATORY SECTION (Amending WSR 10-18-048, filed 8/26/10, effective 10/1/10)

WAC 388-444-0055 What are the penalties if I refuse or fail to meet Basic Food work requirements? (1) If we register you for work you must meet the work requirements under WAC 388-444-0005 or 388-444-0030 unless you have good cause as defined in WAC 388-444-0050. If you do not follow these rules, you will become an ineligible assistance unit member as described under WAC 388-408-0035. The remaining members of the assistance unit continue to be eligible for Basic Food.

(2) If you do not meet work requirements and we find that you did not have good cause, you cannot receive Basic Food for the following periods of time and until you meet program requirements:

(a) For the first failure, one month;

(b) For the second failure, three months; and

(c) For the third or subsequent failure, six months.

(3) If you become exempt under WAC 388-444-0010 and are otherwise eligible, you may begin to receive Basic Food.

(4) If you do not comply with the work requirements of the following programs, you cannot receive Basic Food unless you meet one of the conditions described under WAC 388-444-0010 except subsections ((~~(1)(d)~~)) (4) or ((~~(e)~~)) (5):

(a) WorkFirst;

(b) Unemployment compensation;

(c) The refugee cash assistance program.

(5) Within ten days after learning of your refusal to participate in your program, the financial worker will send you a notice that your Basic Food benefits will end unless you comply with your program requirements.

(6) If you do not comply within ten days, you will be issued a notice disqualifying you from receiving Basic Food until you comply with your program, or until you meet the work registration disqualification requirements in subsection (2) of this section.

(7) After the penalty period in subsection (2) of this section is over, and you meet work requirements and you are otherwise eligible, you may receive Basic Food:

(a) If you are alone in the assistance unit and apply to reestablish eligibility; or

(b) If you are a member of an assistance unit, you may resume receiving Basic Food.

(8) During the penalty period, if you begin to participate in one of the programs listed in subsection (4)(a) through (c) and that penalty is removed, the work registration disqualification also ends. If you are otherwise eligible, you may begin to receive Basic Food.

AMENDATORY SECTION (Amending WSR 10-23-112, filed 11/17/10, effective 12/18/10)

WAC 388-444-0065 Am I eligible for Basic Food if I quit my job or reduce my work effort? (1) You are not eligible for Basic Food if you voluntarily quit your current job without good cause as defined in WAC 388-444-0070, and ((~~you are in one of the following categories~~)):

(a) You were working ((~~twenty~~)) or self-employed and working thirty hours or more per week or ((~~the job provided~~)) you had weekly earnings at least equal to the federal minimum wage multiplied by ((~~twenty~~)) thirty hours; and

(b) The quit was within sixty days before you applied for Basic Food or any time after; and

(c) At the time of quit you ((~~were applying for Basic Food and~~)) would have been required to register for work as defined in WAC 388-444-0005((~~;~~

~~(d) If you worked or you were self-employed and working thirty hours a week or you had weekly earnings at least equal to the federal minimum wage multiplied by thirty hours~~)).

(2) You are not eligible for Basic Food if you voluntarily reduce your work effort without good cause as defined in WAC 388-444-0070, and:

(a) You were working or self-employed and working thirty hours or more per week or you had weekly earnings at least equal to the federal minimum wage multiplied by thirty hours; and

(b) The reduction was within sixty days before you applied for Basic Food or any time after; and

(c) If after the reduction, you are working less than thirty hours per week or your weekly earnings are not at least equal to the federal minimum wage multiplied by thirty hours; and

(d) At the time of reduction you would have been required to register for work as defined in WAC 388-444-0005.

(3) You are not eligible to receive Basic Food if you have participated in a strike against a federal, state or local government and have lost your employment because of such participation.

AMENDATORY SECTION (Amending WSR 10-23-112, filed 11/17/10, effective 12/18/10)

WAC 388-444-0070 What is good cause for quitting my job or reducing my work effort? Unless otherwise specified the following rules apply to all persons receiving Basic Food.

(1) You must have a good reason (good cause) for quitting a job or reducing your work effort, as defined in WAC 388-444-0065, or you will be disqualified from receiving Basic Food under WAC 388-444-0075. Good cause includes the following:

(a) Your employment is unsuitable as under WAC 388-444-0060;

(b) You were discriminated against by an employer based on age, race, sex, color, religious belief, national origin, political belief, marital status, or the presence of any sensory, mental, or physical disability or other reasons in RCW 49.60.180;

(c) Work demands or conditions make continued employment unreasonable, such as working without being paid on schedule;

(d) You accepted other employment or are enrolled at least half time in any recognized school, training program, or institution of higher education;

(e) You must leave a job because another assistance unit member accepted a job or is enrolled at least half time in any recognized school, training program, or institution of higher education in another county or similar political subdivision and your assistance unit must move;

(f) You are under age sixty and retire as recognized by your employer;

(g) You accept a bona fide offer of employment of ((~~twenty~~)) thirty hours or more a week or where the weekly earnings are equivalent to the federal minimum wage multiplied by ((~~twenty~~)) thirty hours. However, because of circumstances beyond your control, the job either does not materialize or results in employment of ((~~twenty~~)) less than thirty hours ((~~or less~~)) a week or weekly earnings of less than the federal minimum wage multiplied by ((~~twenty~~)) thirty hours;

(h) You leave a job in connection with patterns of employment where workers frequently move from one employer to another, such as migrant farm labor or construction work; and

(i) Circumstances included under WAC 388-444-0050;

(2) You are eligible for Basic Food after quitting a job or reducing your work effort if the circumstances of the job involve:

(a) Changes in job status resulting from ((~~reduced~~)) involuntary reduction of employment hours ((~~of employment~~)) while working for the same employer;

(b) Termination of a self-employment enterprise; or

(c) Resignation from a job at the demand of an employer.

(3) You must provide proof that you had good cause for quitting a job or reducing your work effort. However, we do not deny your application for Basic Food if you are unable to get this proof even with our help.

AMENDATORY SECTION (Amending WSR 10-23-112, filed 11/17/10, effective 12/18/10)

WAC 388-444-0075 What are the penalties if I quit a job or reduce my work effort without good cause? (1) If you have applied for Basic Food and have voluntarily quit a job or reduced your work effort as defined under WAC 388-444-0065 without good cause within sixty days before applying for Basic Food, we deny your application and you must have a penalty period as described under subsection (3) from the date of your application.

(2) If you already receive Basic Food and you quit your job or reduce your work effort without good cause, we send you a letter notifying you that you will be disqualified from Basic Food. The disqualification in subsection (3) of this section begins the first of the month following the notice of adverse action.

(3) You are disqualified for the following minimum periods of time and until the conditions in subsection (4) of this section are met:

(a) For the first quit or reduction of work effort, one month;

(b) For the second quit or reduction of work effort, three months; and

(c) For the third or subsequent quit or reduction of work effort, six months.

(4) You may reestablish eligibility after serving the disqualification period((~~,~~)) if ((~~otherwise eligible by:~~

~~(a) Getting a new job; or~~

~~(b) Participating in Workfare as provided in WAC 388-444-0040~~)) you comply with the work requirements under WAC 388-444-0005 and are otherwise eligible.

(5) If you become exempt from work registration under WAC 388-444-0010, we end your disqualification for a job quit or reduction of work effort unless you are exempt ((~~for~~)) because you are applying for or receiving unemployment compensation (UC), or participating in an employment and training program under TANF.

(6) If you are disqualified and move from the assistance unit and join another assistance unit, we continue to treat you as an ineligible member of the new assistance unit for the remainder of the disqualification period.

WSR 13-09-029
PROPOSED RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed April 9, 2013, 4:05 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-01-097.

Title of Rule and Other Identifying Information: Chapter 392-117 WAC is the subject of this proposed change. The objective is to include CEDARS data submissions in the timely reporting WAC language.

Hearing Location(s): Superintendent of Public Instruction (OSPI), Old Capitol Building, 600 Washington, Olympia, WA 98504, on May 22, 2013, at 10:00 a.m.

Date of Intended Adoption: May 23, 2013.

Submit Written Comments to: T. J. Kelly, P.O. Box 47200, Olympia, WA 98504-7200, e-mail thomas.kelly@k12.wa.us, fax (360) 664-3683, by May 22, 2013.

Assistance for Persons with Disabilities: Contact Wanda Griffin by May 8, 2013, TTY (360) 725-6270 or (360) 725-6132.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The objective of this proposal is to ensure that districts are regularly submitting CEDARS data. Various data elements are taken from CEDARS at any given time to perform various types of tests or analyses with respect to all aspects of managing and operating a school district.

Reasons Supporting Proposal: The goal of increased data quality and acquiring a complete data set from school districts.

Statutory Authority for Adoption: RCW 28A.150.290 and 84.52.0531.

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

Name of Agency Personnel Responsible for Drafting and Implementation: T. J. Kelly, OSPI, Olympia, Washington, (360) 725-6301; and Enforcement: JoLynn Berge, OSPI, Olympia, Washington, (360) 725-6292.

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

A cost-benefit analysis is not required under RCW 34.05.328. OSPI is not subject to RCW 34.05.328 per subsection (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

April 9, 2013
Randy Dorn
State Superintendent

AMENDATORY SECTION (Amending Order 91-09, filed 6/14/91, effective 7/15/91)

WAC 392-117-010 Purpose. The purpose of this chapter is to provide policies and procedures to encourage timely reporting of general apportionment data, educational data, and year end financial report data by school districts, charter schools, and educational service districts to the superintendent of public instruction.

AMENDATORY SECTION (Amending Order 91-09, filed 6/14/91, effective 7/15/91)

WAC 392-117-020 School district and educational service district reporting responsibilities. Each school district, charter school, and educational service district shall provide, upon written request of the superintendent of public instruction, such data as the superintendent deems appropriate. These requirements include, but are not limited to, data for determining the financial condition and results of operation of the school districts, charter schools, and educational service districts of the state, data for substantiating appropriation requests to the state legislature, data for administering state legal requirements, ((~~and~~)) data for substantiating ((~~each~~)) the district's and charter school's entitlement to state basic education apportionment, and educational data for the superintendent's comprehensive education data and research system (CEDARS).

NEW SECTION

WAC 392-117-038 Failure to meet CEDARS submission requirements. School districts, charter schools, tribal schools, and other local education agencies receiving state funds who fail to meet CEDARS reporting requirements as outlined in the annual CEDARS data manual are subject to the following course of action. Upon the superintendent of public instruction's determination that a local education agency has failed to meet CEDARS reporting requirements, the superintendent will provide notice of the determination to the local education agency. The local education agency will have ninety days from the receipt of the notice to correctly report CEDARS data. If the local education agency's failure to meet CEDARS reporting requirements is not corrected within forty-five days of the superintendent's first notice, the superintendent will provide a second notice to the local education agency. The second notice will describe the superintendent's determination and will identify the deadline for corrective action. If the local education agency does not correctly report CEDARS data within ninety days of its receipt of the superintendent's first notice, the superintendent may withhold the local education agency's subsequent monthly apportionment payment until CEDARS reporting requirements are met.

WSR 13-09-037
PROPOSED RULES
PARKS AND RECREATION COMMISSION
[Filed April 11, 2013, 2:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-05-075.

Title of Rule and Other Identifying Information: The agency has completed a review of the following chapter of administrative rules and has proposed amendments to this chapter. Chapter 352-32 WAC, Public use of state parks and chapter 352-74 WAC, Film permits.

Hearing Location(s): City of Spokane Valley, Regional Events Center, 2426 North Discovery Place, Spokane, WA 99216, on June 27, at 9:00 a.m.

Date of Intended Adoption: June 27, 2013.

Submit Written Comments to: Becki Ellison, 1111 Israel Road, Olympia, WA 98504, e-mail becki.ellison@parks.wa.gov, fax (360) 586-6580, by June 1, 2013.

Assistance for Persons with Disabilities: Contact Becki Ellison at becki.ellison@parks.wa.gov or (360) 902-8502.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: State parks staff has reviewed the commission rules in consideration of changes to current business practices. The agency is proposing minor changes to chapter 352-32 WAC in order to clarify and align the rules with internal policies. WAC 352-32-030 Camping, 352-32-045 Reservations for use of group facilities, 352-32-080 Swimming, 352-32-210 Consumption of alcohol in state parks, 352-32-237 Geocache, 352-32-240 Nondiscrimination certification, and 352-32-310 Penalties.

Substantive changes are requested in chapter 352-74 WAC, Film permits, the proposed amendment[s] add still photography to all [sections in] chapter 352-74 WAC, Film permits, which results in multiple changes, update of an address and adjustments to reflect current business practices.

Reasons Supporting Proposal: The proposed changes are the result of the agency biennial review of commission rules which govern public use of parks and beaches. The review considers suggestions from park visitors, user groups and field staff. The proposal clarifies, standardizes and simplifies the language contained in a number of rules in each chapter of WAC. The changes make park rules more understandable to the public and also give additional tools to state parks' staff to protect the park resources and visitors.

Statutory Authority for Adoption: RCW 79A.05.030, 79A.05.035.

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

Name of Proponent: Washington state parks and recreation commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Becki Ellison, 1111 Israel Road, Olympia, WA 98504, (360) 902-8502; and Enforcement: Robert Ingram, 1111 Israel Road, Olympia, WA 98504, (360) 902-8615.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These chapters of administrative rule do not regulate or have economic impact through regulations on small business. There are no compliance costs to small business as a result of the modifications to these rules.

A cost-benefit analysis is not required under RCW 34.05.328. Significant legislative rule-making requirements are not imposed on the state parks and recreation commission, nor has the commission voluntarily applied those requirements.

April 2, 2013
Valeria Evans
Management Analyst

AMENDATORY SECTION (Amending WSR 12-22-031, filed 10/31/12, effective 12/1/12)

WAC 352-32-030 Camping. (1) Camping facilities of the state parks within the Washington state parks and recreation commission system are designed and administered specifically to provide recreational opportunities for park visitors. Use of park facilities for purposes which are of a nonrecreational nature, such as long-term residency at park facilities, obstructs opportunities for recreational use, and is inconsistent with the purposes for which those facilities were designed.

No person or camping party may use any state park facility for residence purposes, as defined (WAC 352-32-010).

(2) No person shall camp in any state park area except in areas specifically designated and/or marked for that purpose or as directed by a ranger.

(3) Occupants shall vacate camping facilities by removing their personal property therefrom no later than 1:00 p.m., if the applicable camping fee has not been paid or if the time limit for occupancy of the campsite has expired or the site is reserved by another party. Remaining in a campsite beyond the established checkout time shall subject the occupant to the payment of an additional camping fee.

(4) Use of utility campsites by tent campers shall be subject to payment of the utility campsite fee except when otherwise specified by a ranger.

(5) A campsite is considered occupied when it is being used for purposes of camping by a person or persons who have paid the camping fee within the applicable time limits or when it has been reserved through the appropriate procedures of the reservation system. No person shall take or attempt to take possession of a campsite when it is being occupied by another party, or when informed by a ranger that such site is occupied, or when the site is posted with a "reserved" sign or when the campsite has an incoming reservation. In the case of a reserved site, a person holding a valid reservation for that specific site may occupy it according to the rules relating to the reservation system for that park. In order to afford the public the greatest possible use of the state park system on a fair and equal basis, campsites in those parks not on the state park reservation system will be available on a first-come, first-serve basis. No person shall hold or attempt to hold campsite(s), for another camping party for present or future camping dates, except as prescribed for multiple campsites. Any site occupied by a camping party must be actively utilized for camping purposes.

(6) One person may register for one or more sites within a multiple campsite by paying the multiple campsite fee and providing the required information regarding the occupants of the other sites. An individual may register and hold a multiple campsite for occupancy on the same day by other camping parties. Multiple campsites in designated reservation parks may be reserved under the reservation system.

(7) In order to afford the general public the greatest possible use of the state park system, on a fair and equal basis, and to prevent residential use, continuous occupancy of facilities by the same camping party shall be limited. Campers may stay ten consecutive nights in one park, after which the camping party must vacate the park for three consecutive nights, April 1 through September 30, not to exceed thirty days in a forty-day time period; provided that at the discretion of the park ranger the maximum stay may be extended to fourteen consecutive nights if the campground is not fully occupied. Campers may stay twenty consecutive nights in one park, after which the camping party must vacate the park for three consecutive nights, October 1 through March 31, not to exceed forty days in a sixty-day time period. This limitation shall not apply to those individuals who meet the qualifications of WAC 352-32-280 and 352-32-285.

(8) A maximum of eight people shall be permitted at a campsite overnight, unless otherwise authorized by a ranger. The number of vehicles occupying a campsite shall be limited to one car and one recreational vehicle: Provided, That one additional vehicle without built-in sleeping accommodations may occupy a designated campsite when in the judgment of a ranger the constructed facilities so warrant. The number of tents allowed at each campsite shall be limited to the number that will fit on the developed tent pad or designated area as determined by a ranger.

(9) Persons traveling by bicycles, motor bikes or other similar modes of transportation and utilizing campsites shall be limited to eight persons per site, provided no more than four motorcycles may occupy a campsite.

(10) Water trail camping sites are for the exclusive use of persons traveling by human and wind powered beachable vessels as their primary mode of transportation to the areas. Such camping areas are subject to the campsite capacity limitations as otherwise set forth in this section. Exceptions for emergencies may be approved by the ranger on an individual basis. Water trail site fees, as published by state parks, must be paid at the time the site is occupied.

(11) Overnight stays (bivouac) on technical rock climbing routes will be allowed as outlined in the park's site spe-

cific climbing management plan. All litter and human waste must be contained and disposed of properly.

(12) Emergency camping areas may be used only when all designated campsites are full and at the park ranger's discretion. Persons using emergency areas must pay the applicable campsite fee and must vacate the site when directed by the park ranger.

(13) Designated overflow camping areas may be used only when all designated campsites in a park are full and the demand for camping in the geographic area around the park appears to exceed available facilities. Persons using overflow camping areas must pay the applicable campsite fee.

(14) Overnight camping will be allowed in approved areas within designated sno-parks in Washington state parks, when posted, provided the appropriate required sno-park permit is displayed.

(15) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 07-03-121, filed 1/22/07, effective 2/22/07)

WAC 352-32-045 Reservations for use of designated group facilities. (1) All designated group facilities shall be reservable by groups as defined in WAC 352-32-010.

(2) All designated group facilities shall have a predetermined use capacity. No group exceeding this capacity in number shall use these areas. Groups making reservations shall be charged the applicable fee for a minimum of 20 people.

(3) Use of designated group facilities may be by reservation. Requests made at parks, not on central reservation system, for reservations for groups of 20 to 250 shall be made 15 days in advance and for groups in excess of 250 shall be made 30 days in advance of the proposed use date, using the group use permit. All conditions outlined on the group use permit shall be binding on the group.

(4) Submittal of the group use permit request and payment in full of appropriate fees are required for the use of these facilities. Fees must be paid by credit card, certified check or money order. Fees are published by state parks. Refunds will be made only to those groups which cancel their reservations thirty or more days before the effective date of the reservations.

(5) For overnight group use, parking will be in the provided, defined areas. If additional parking is required, it may be available in the park's extra vehicle parking facility following the payment of the appropriate extra vehicle parking fee.

(6) The organization or delegated group leader making the reservation is responsible for any damages or extra cleaning that occurs as a result of the use of the facility(ies) beyond normal care and wear.

(7) Facility reservations for parks not on the central reservation system are made at the park and will be accepted ((~~for the calendar year, on or after the first working day in January of that calendar year~~)) nine months in advance. Reservations shall be made by a person of the age of majority, who must be in attendance during the group's activities. Reservations at the parks will be accepted in writing, in person, or by phone at the discretion of the park manager. In person and phone reservation requests shall only be accepted at the park during normal park operation hours. All reservation requests will be processed in order of arrival. Group facility areas not reserved are available on a first-come, first-serve basis.

(8) Any group wishing to sell or dispense alcoholic beverages must request and obtain all appropriate licenses and permits. In order to sell alcoholic beverages, the group must obtain a temporary concession permit from the headquarters office of the commission.

(9) It shall be within the authority of the park manager, or his representative, to rescind the rights of a reservation, and remove from the park, any or all members of the group whose behavior, at any time, is in conflict with any state laws, becomes detrimental to the health and safety of the group or other park users, or becomes so unruly as to affect the reasonable enjoyment of the park by other park users.

AMENDATORY SECTION (Amending WSR 00-13-070, filed 6/16/00, effective 7/17/00)

WAC 352-32-080 Swimming. (1) Swimming areas in state park areas are marked with buoys, log booms, or other markers, clearly designating the boundaries of such areas.

(2) Any person swimming outside the boundaries of a designated swimming area, or in any area not designated for swimming, or in any area, whether designated for swimming or not, where no lifeguard is present, shall do so at his or her own risk.

(3) All persons using any designated swimming area shall obey all posted beach rules and/or the instructions of lifeguards, rangers, or other state parks employees.

Children twelve years of age or younger, must be accompanied by a responsible adult while using the swim area.

(4) No person shall swim in any designated watercraft launching area.

(5) No person shall give or transmit a false signal or false alarm of drowning in any manner.

(6) Use of ((~~inflated mattresses,~~)) rubber rafts, rubber boats, inner tubes, or other large floating objects, exceeding three feet in width are prohibited in designated swimming areas except U.S. Coast Guard approved life jackets, ((~~in state park areas~~)) small children's floatation devices or toys and one-person inflatable mattresses for the purpose of buoyancy while swimming or playing in any designated swimming area ((~~is prohibited~~)) are allowed. Concessionaires are not permitted to rent or sell ((~~such~~)) prohibited floating devices within state parks without written approval of the ((~~commission~~)) director or designee.

(7) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 08-24-006, filed 11/20/08, effective 12/21/08)

WAC 352-32-210 Consumption of alcohol in state park areas. (1) Opening, possessing alcoholic beverage in an open container, or consuming any alcoholic beverages in any state park or state park area is prohibited except in the following designated areas and under the following circumstances

in those state parks or state park areas not posted by the director or designee as closed to alcohol pursuant to subsection (4) of this section:

(a) In designated campsites or in other overnight accommodations, by registered occupants or their guests; provided ELC users obtain written permission through state parks application process;

(b) In designated picnic areas, which shall include those sites within state park areas where picnic tables, benches, fireplaces, and/or outdoor kitchens are available, even though not signed as designated picnic areas and public meeting rooms;

(c) In any reservable group day use facility by any authorized group which has paid the reservation fee and applicable damage deposit and which has obtained prior permit authorization to have alcohol by the park manager; and

(d) In any building, facility or park area operated and maintained under a concession agreement, wherein the concessionaire has been licensed to sell alcoholic beverages by the Washington state liquor control board, and where the dispensation of such alcoholic beverages by such concessionaire has been approved by the commission.

(2) ((~~Opening,~~)) Possessing alcoholic beverage in an open container, or consuming any alcoholic beverages is prohibited at the following locations:

(a) Dash Point State Park;

(b) Saltwater State Park;

(c) Sacajawea State Park;

(d) Flaming Geyser State Park;

Except in the following designated areas and under the following circumstances:

(i) In designated campsites, or in other overnight accommodations by registered occupants or their guests.

(ii) In any building, facility or park area operated and maintained under a concession agreement wherein the concessionaire has been licensed to sell alcoholic beverages by the Washington state liquor control board, and where the dispensation of such alcoholic beverages by such concessionaire has been approved by the commission.

(iii) In any reservable group day use facility by any authorized group which has paid the reservation fee and applicable damage deposit and which has obtained prior permit authorization to have alcohol by the park manager.

(3) The director or designee may, for a specified period or periods of time, close any state park or state park area to alcohol if the director or designee concludes that an alcohol closure is necessary for the protection of the health, safety and welfare of the public, park visitors or staff, or park resources. The director or designee shall consider factors including but not limited to the effect or potential effect of alcohol on public and employee safety, park appearance, atmosphere, and noise levels, conflicts with other park uses or users, the demand for law enforcement, and the demand on agency staff. Prior to closing any park or park area to alcohol, the director or designee shall hold a public hearing in the general area of the park or park area to be closed to alcohol. Prior notice of the meeting shall be published in a newspaper of general circulation in the area. In the event the director or designee determines that an immediate alcohol closure is necessary to protect against an imminent and substantial threat to the health, safety and welfare of the public, park visitors or staff, or park resources, the director or designee may take emergency action to close a park or park area to alcohol without first complying with the publication and hearing requirements of this subsection. Such emergency closure may be effective for only so long as ((~~is necessary for the director or designee to comply with the publication and hearing requirements of this subsection~~)) the imminent and substantial threat exists.

(4) The director or designee shall ensure that any park or park area closed to alcohol pursuant to subsection (3) of this section is conspicuously posted as such at the entrance to said park or park area. Additionally, the director or designee shall maintain for public distribution a current list of all parks and park areas closed to alcohol pursuant to subsection (3) of this section.

(5) Dispensing alcoholic beverages from containers larger than two gallons is prohibited in state park areas except when authorized in writing and in advance by the park manager.

(6) The provisions of this rule shall not apply to any part of the Seashore Conservation Area, as designated and established by RCW 79A.05.605.

(7) Opening, consuming, or storing alcoholic beverages in Fort Simcoe State Park and Squaxin Island State Park is prohibited.

(8) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 07-03-121, filed 1/22/07, effective 2/22/07)

WAC 352-32-237 Geocache. (1) In order to place a cache on state parks' property, an individual or organization must obtain a geocache placement permit from state parks. Any cache located on state parks' property that does not have a permit on file is subject to removal from its location, and after notification of the owner (if known) and Washington state geocache association (WSGA), may be disposed of within ten days.

(2) ((~~The geocache owner must check the geocache at least every ninety days unless an extension is approved by the park manager not to exceed one hundred eighty days. Proof of the check will be by e-mail, letter, or personal communication by the owner with the park manager or designee, and the owner's entry in the cache log book indicating the date of inspection.~~

~~(3)~~)) The following items shall not be placed in the geocache: Food items; illegal substances; medications; personal hygiene products; pornographic materials; inappropriate, offensive, or hazardous materials or weapons of any type. Log books are required for each cache and are to be provided by the owner of the cache.

(((~~(4)~~))) (3) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending Order 27, filed 9/23/76)

WAC 352-32-240 Nondiscrimination certification. (1) This is to certify that the Washington state parks and rec-

reation commission is an equal opportunity employer, and that no person in the United States is denied the benefits of full and equal enjoyment of the right of employment or any goods, services, facilities, privileges, advantages, and accommodations of, or on any property administered by the Washington state parks and recreation commission ((~~because of race, creed, color, age, sex, national origin, or physical disability~~)).

(2) The provisions of this certification shall apply to all contractors, lessees, licensees, and concessionaires operating under any legal instrument issued by the Washington state parks and recreation commission, as well as areas operated by the Washington state parks and recreation commission itself.

AMENDATORY SECTION (Amending WSR 04-01-067, filed 12/12/03, effective 1/12/04)

WAC 352-32-310 Penalties. Any violation designated in this chapter as a civil infraction ((~~shall constitute a misdemeanor until the violation is included in a civil infraction monetary schedule adopted by rule by the state supreme court~~)) pursuant to chapter 7.84 RCW, will be treated as infractions regardless of whether they appear in the IRLJ 6.2 penalty schedule, except that a violation of ((~~WAC 352-32-220, 352-32-260, and 352-32-265 shall at all times constitute a civil infraction, and~~)) WAC 352-32-120 shall at all times be a gross misdemeanor.

AMENDATORY SECTION (Amending WSR 08-24-006, filed 11/20/08, effective 12/21/08)

WAC 352-74-010 Purpose. This chapter is promulgated in order to establish procedures for the issuance of permits for filming/still photography within state parks.

The agency permits commercial filming and still photography when it is consistent with the park's mission and will not harm the resource or interfere with the visitor experience.

All commercial filming activities taking place within a park require a permit. Commercial filming includes capturing a moving image on film and video as well as sound recordings.

AMENDATORY SECTION (Amending WSR 08-24-006, filed 11/20/08, effective 12/21/08)

WAC 352-74-030 Filming/still photography within state parks. The commission recognizes the desire of individuals and organizations to film/still photography within the state parks. Individuals and organizations may film/still photography within state parks in a manner which is not disruptive to park users or resources when the filming/still photography is for personal or news purposes. Individuals and organizations that desire to film/still photography within state parks for other than personal or news purposes may do so only in accordance with the film/still photography permit requirements of this chapter and subject to the discretion of the commission as otherwise set forth herein.

Filming/still photography for strictly educational purposes may have some or all of the applicable fees waived.

AMENDATORY SECTION (Amending WSR 08-24-006, filed 11/20/08, effective 12/21/08)

WAC 352-74-040 Film/still photography permit application. Persons or organizations that desire to film/still photography within a state park for other than personal or news purposes shall submit a completed film/still photography permit application with the appropriate fees to the appropriate location:

Eastern Region
270 9th Street N.E.
Suite 200
East Wenatchee, WA 98802

Fort Worden State Park
200 Battery Way
Port Townsend, WA 98368

Northwest Region
220 N. Walnut Street
Burlington, WA 98233

((~~Puget Sound Region
2840 Riverwalk Drive S.E.
Auburn, WA 98002-8207~~))

Southwest Region
((~~11838 Tilley Road S.~~))
P.O. Box 42650
Olympia, WA ((~~98512-9167~~)) 98504

AMENDATORY SECTION (Amending WSR 08-24-006, filed 11/20/08, effective 12/21/08)

WAC 352-74-045 Filming/still photography fees. (1) Permit application fee - Each application shall be accompanied by the appropriate application fee, based on the amount of time between the date of application and the date of facility use, which shall be in the form of a check or money order payable to the Washington state parks and recreation commission.

(2) Site location fee - Prior to commencing filming/still photography activities or otherwise as specified by the director or designee, each applicant shall pay an additional site location fee, set by the director or designee based on the magnitude and duration of the impact on park resources and normal public use, the uniqueness of the site, and such other considerations as the director or designee deem appropriate.

(3) Previous filming/still photography which is later commercially merchandised will be subject to the same rules and provisions as new projects described herein.

AMENDATORY SECTION (Amending WSR 08-24-006, filed 11/20/08, effective 12/21/08)

WAC 352-74-050 Approval or disapproval of film/still photography permit application. The director or designee shall approve or disapprove a film/still photography permit application and establish the filming locations, time periods, and conditions for an approved application.

The director or designee may require an approved applicant to submit the following to the commission prior to the issuance of a film/still photography permit:

(1) Fees payable to the Washington state parks and recreation commission in the form of a check or money order in an amount, as determined by the director or designee, which

covers the charges for the facilities to be used by a film maker/still photographer and any staff costs to be incurred by the commission due to the filming that are beyond the regular responsibilities of the staff of the commission;

(2) A bond or damage deposit payable to the Washington state parks and recreation commission in an amount, as determined by the director or designee, which is sufficient to cover any damages to park resources or facilities which may occur during the filming/still photography; and

(3) Certification that an approved applicant has liability insurance in an amount, as determined by the director or designee, which is sufficient to cover any liability costs associated with the actions of a film maker/still photographer during filming.

AMENDATORY SECTION (Amending WSR 08-24-006, filed 11/20/08, effective 12/21/08)

WAC 352-74-060 Issuance and revocation of film/still photography permit. The director or designee, shall issue a film/still photography permit to an approved applicant after the applicant has submitted any fees, bond, damage deposit, and insurance certification established pursuant to WAC 352-74-050 and has demonstrated in its application or otherwise to the satisfaction of the director that filming/still photography:

(1) Is compatible with the activities of park visitors;

(2) Will not damage facilities or resources, or interfere with park operations;

(3) Will not disrupt wildlife;

(4) Will not imply the endorsement of the commission for the content of the film;

(5) Will acknowledge the cooperation of the commission;

(6) Is not inconsistent in the judgment of the director with the purposes for, or conditions on which, the property where the filming is to take place was acquired; and

(7) Will conform with all of the applicable statutes, rules, policies, and procedures of the commission, and the instructions of the commission staff who supervise the filming/still photography.

If a film maker/still photographer does not comply with all of the applicable statutes, rules, policies, and procedures of the commission, the conditions upon which the permit was granted, and the instructions of the commission staff who supervise the filming/still photography, then the director or designee shall revoke the film/still photography permit.

AMENDATORY SECTION (Amending WSR 08-24-006, filed 11/20/08, effective 12/21/08)

WAC 352-74-070 Additional fees and release of bond or damage deposit. After completion of filming/still photography the director or designee shall determine if any additional fees are to be assessed a film maker/still photographer and whether or not any bond or damage deposit submitted by a film maker/still photographer may be released.

If the director or designee determines that no additional fees are to be assessed and that a bond or damage deposit is to be released, then a bond or damage deposit shall be returned to a film maker/still photographer.

If the director or designee determines that additional fees are to be assessed or that a bond or damage deposit is not to be released, then the film maker/still photographer shall be so informed.

If a film maker/still photographer pays additional fees in the form of a check or money order payable to the Washington state parks and recreation commission which is submitted to the director within thirty days of receipt of the notice to pay the fees, then the director or designee shall return a bond or damage deposit to a film maker/still photographer.

If a film maker/still photographer does not pay additional fees within the time period and in accordance with the procedures set forth above, then the director or designee shall exercise the rights of the commission under a bond or damage deposit to pay the additional fees and so inform a film maker/still photographer or exercise any such other legal rights as may be available.

WSR 13-09-039
PROPOSED RULES
DEPARTMENT OF HEALTH
(Dental Quality Assurance Commission)
[Filed April 11, 2013, 4:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-14-068 and 13-04-075.

Title of Rule and Other Identifying Information: Chapter 246-817 WAC, amending the chapter to establish requirements for dental anesthesia assistant certification. Amendments also include adding dental assistants and expanded function dental auxiliaries to WAC 246-817-450 and 246-817-460.

Hearing Location(s): Department of Health, Point Plaza East, 310 Israel Road S.E., Room 152/153, Tumwater, WA 98501, on June 7, 2013, at 8:00 a.m.

Date of Intended Adoption: June 7, 2013.

Submit Written Comments to: Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504-7852, e-mail http://www3.doh.wa.gov/policyreview/, fax (360) 236-2901, by May 31, 2013.

Assistance for Persons with Disabilities: Contact Jennifer Santiago by May 31, 2013, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: E2SSB 5620 (chapter 23, Laws of 2012) now chapter 18.350 RCW creates a new credential/profession, certified dental anesthesia assistant (DAA). The proposed rules implement E2SSB 5620 (chapter 23, Laws of 2012) and establish certification criteria. The DAA would work under supervision of an oral and maxillofacial surgeon or dental anesthesiologist. The level of supervision required varies with the task being performed. Adds all dental professionals regulated by the dental quality assurance commission to the established sexual misconduct rules.

Reasons Supporting Proposal: The bill authorizes the dental quality assurance commission to develop rules for approving training programs, renewal of certification, and

continuing education requirements for DAAs. The proposed rules help ensure public safety by including all dental professionals under the authority of the commission in the sexual misconduct rules. The existing sexual misconduct rules were established in 2006 prior to the creation of registered dental assistants, licensed expanded function dental auxiliaries, and certified dental anesthesia assistants.

Statutory Authority for Adoption: Chapter 18.350 RCW, RCW 18.32.0365 and 18.32.640.

Statute Being Implemented: Chapter 18.350 RCW.

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

Name of Proponent: Department of health, dental quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jennifer Santiago, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4893.

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 copy of the statement may be obtained by contacting Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4893, fax (360) 236-2901, e-mail jennifer.santiago@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4893, fax (360) 236-2901, e-mail jennifer.santiago@doh.wa.gov.

April 11, 2013
Paul W. Bryan, D.M.D., Chair
Dental Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 10-07-026, filed 3/8/10, effective 4/8/10)

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 for dentists, expanded function dental auxiliaries, dental anesthesia assistants, 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 must be met for applicants who are graduates of dental schools or colleges not accredited by the American Dental Association Commission on Dental Accreditation.

NEW SECTION

WAC 246-817-205 Dental anesthesia assistant certification requirements. An applicant for certification as a dental anesthesia assistant must submit to the department:

(1) A completed application on forms provided by the secretary;

(2) Applicable fees as defined in WAC 246-817-99005;

(3) Evidence of:

(a) Completion of a commission approved dental anesthesia assistant education and training. Approved education and training includes:

(i) Completion of the "Dental Anesthesia Assistant National Certification Examination (DAANCE)" or predecessor program, provided by the American Association of Oral and Maxillofacial Surgeons (AAOMS); or

(ii) Completion of the "Oral and Maxillofacial Surgery Assistants Course" course provided by the California Association of Oral and Maxillofacial Surgeons (CALAOMS); or

(iii) Completion of substantially equivalent education and training approved by the commission.

(b) Completion of training in intravenous access or phlebotomy. Training must include:

(i) Eight hours of didactic training that must include:

(A) Intravenous access;

(B) Anatomy;

(C) Technique;

(D) Risks and complications; and

(ii) Hands on experience starting and maintaining intravenous lines with at least ten successful intravenous starts on a human or simulator/manikin; or

(iii) Completion of substantially equivalent education and training approved by the commission;

(c) A current and valid certification for health care provider basic life support (BLS), advanced cardiac life support (ACLS), or pediatric advanced life support (PALS);

(d) A valid Washington state general anesthesia permit of the oral and maxillofacial surgeon or dental anesthesiologist where the dental anesthesia assistant will be performing his or her services;

(e) Completion of seven clock hours of AIDS education and training as required by chapter 246-12 WAC, Part 8; and

(4) Any other information determined by the commission.

AMENDATORY SECTION (Amending WSR 06-07-036, filed 3/8/06, effective 4/8/06)

WAC 246-817-440 Dentist continuing education requirements. (1) **Purpose.** The dental quality assurance commission (DQAC) has determined that the public health, safety and welfare of the citizens of the state will be served by requiring all dentists, licensed under chapter 18.32 RCW, to continue their professional development via continuing education after receiving such licenses.

(2) **Effective date.** The effective date for the continuing education requirement for dentists is July 1, 2001. The first reporting cycle for verifying completion of continuing education hours will begin with renewals due July 1, 2002, and each renewal date thereafter. Every licensed dentist must sign an affidavit attesting to the completion of the required number of hours as a part of their annual renewal requirement.

(3) **Requirements.** Licensed dentists must complete twenty-one clock hours of continuing education, each year, in conjunction with their annual renewal date. DQAC may randomly audit up to twenty-five percent of practitioners for

compliance after the credential is renewed as allowed by chapter 246-12 WAC, Part 7.

(4) **Acceptable continuing education - Qualification of courses for continuing education credit.** DQAC will not authorize or approve specific continuing education courses. Continuing education course work must contribute to the professional knowledge and development of the practitioner, or enhance services provided to patients.

For the purposes of this chapter, acceptable continuing education means courses offered or authorized by industry recognized state, private, national and international organizations, agencies or institutions of higher learning. Examples of sponsors, or types of continuing education courses may include, but are not limited to:

(a) The American Dental Association, Academy of General Dentistry, National Dental Association, American Dental Hygienists' Association, National Dental Hygienists' Association, American Dental Association specialty organizations, including the constituent and component/branch societies.

(b) Basic first aid, CPR, BLS, ACLS, OSHA/WISHA, or emergency related training; such as courses offered or authorized by the American Heart Association or the American Cancer Society; or any other organizations or agencies.

(c) Educational audio or videotapes, films, slides, internet, or independent reading, where an assessment tool is required upon completion are acceptable but may not exceed seven hours per year.

(d) Teaching a seminar or clinical course for the first time is acceptable but may not exceed ten hours per year.

(e) Nonclinical courses relating to dental practice organization and management, patient management, or methods of health delivery may not exceed seven hours per year. Estate planning, financial planning, investments, and personal health courses are not acceptable.

(f) Dental examination standardization and calibration workshops.

(g) Provision of clinical dental services in a formal volunteer capacity may be considered for continuing education credits when preceded by an educational/instructional training prior to provision of services. Continuing education credits in this area shall not exceed seven hours per renewal cycle.

(5) Refer to chapter 246-12 WAC, Part 7, administrative procedures and requirements for credentialed health care providers for further information regarding compliance with the continuing education requirements for health care providers.

NEW SECTION

WAC 246-817-445 Dental anesthesia assistant continuing education requirements. (1) To renew a certification a certified dental anesthesia assistant must complete a minimum of twelve hours of continuing education every three years and follow the requirements of chapter 246-12 WAC, Part 7.

(2) Continuing education must involve direct application of dental anesthesia assistant knowledge and skills in one or more of the following categories:

(a) General anesthesia;

(b) Moderate sedation;

(c) Physical evaluation;

(d) Medical emergencies;

(e) Health care provider basic life support (BLS), advanced cardiac life support (ACLS), or pediatric advanced life support (PALS);

(f) Monitoring and use of monitoring equipment;

(g) Pharmacology of drugs; and agents used in sedation and anesthesia.

(3) Continuing education is defined as any of the following activities:

(a) Attendance at local, state, national, or international continuing education courses;

(b) Health care provider basic life support (BLS), advanced cardiac life support (ACLS), or pediatric advanced life support (PALS), or emergency related classes;

(c) Self-study through the use of multimedia devices or the study of books, research materials, or other publications.

(i) Multimedia devices. The required documentation for this activity is a letter or other documentation from the organization. A maximum of two hours is allowed per reporting period.

(ii) Books, research materials, or other publications. The required documentation for this activity is a two-page synopsis of what was learned written by the credential holder. A maximum of two hours is allowed per reporting period.

(d) Distance learning. Distance learning includes, but is not limited to, correspondence course, webinar, print, audio/video broadcasting, audio/video teleconferencing, computer aided instruction, e-learning/on-line-learning, or computer broadcasting/webcasting. A maximum of four hours of distance learning is allowed per reporting period.

SEXUAL MISCONDUCT ((~~RULES FOR DENTISTS~~))

AMENDATORY SECTION (Amending WSR 08-01-137, filed 12/19/07, effective 1/19/08)

WAC 246-817-450 Definitions. The definitions in this section apply throughout this section and WAC 246-817-460 unless the context clearly requires otherwise.

(1) "((~~Dentist~~)) Health care provider" means an individual applying for a credential or credentialed specifically as defined in chapters 18.32, 18.260, and 18.350 RCW.

(2) "Health care information" means any information, whether oral or recorded in any form or medium that identifies or can readily be associated with the identity of, and relates to the health care of, a patient.

(3) "Key party" means a person legally authorized to make health care decisions for the patient.

(4) "Legitimate health care purpose" means activities for examination, diagnosis, treatment, and personal care of patients, including palliative care, as consistent with community standards of practice for the dental profession. The activity must be within the scope of practice of the ((~~dentist~~)) health care provider.

(5) "Patient" means an individual who receives health care services from a ((~~dentist~~)) health care provider. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors,

including the nature, extent and context of the professional relationship between the ((~~dentist~~)) health care provider and the person. The fact that a person is not receiving treatment or professional services is not the sole determining factor.

AMENDATORY SECTION (Amending WSR 08-01-137, filed 12/19/07, effective 1/19/08)

WAC 246-817-460 Sexual misconduct. (1) A ((~~dentist~~)) health care provider shall not engage, or attempt to engage, in sexual misconduct with a current patient, or key party, inside or outside the health care setting. Sexual misconduct shall constitute grounds for disciplinary action. Sexual misconduct includes but is not limited to:

(a) Sexual intercourse;

(b) Touching the breasts, genitals, anus or any sexualized body part except as consistent with accepted community standards of practice for examination, diagnosis and treatment and within the ((~~dentist's~~)) health care provider's scope of practice;

(c) Rubbing against a patient or key party for sexual gratification;

(d) Kissing;

(e) Hugging, touching, fondling or caressing of a romantic or sexual nature;

(f) Examination of or touching genitals without using gloves;

(g) Not allowing a patient privacy to dress or undress except as may be necessary in emergencies or custodial situations;

(h) Not providing the patient a gown or draping except as may be necessary in emergencies;

(i) Dressing or undressing in the presence of the patient or key party;

(j) Removing patient's clothing or gown or draping without consent, emergent medical necessity or being in a custodial setting;

(k) Encouraging masturbation or other sex act in the presence of the ((~~dentist~~)) health care provider;

(l) Masturbation or other sex act by the ((~~dentist~~)) health care provider in the presence of the patient or key party;

(m) Soliciting a date with a patient or key party;

(n) Discussing the sexual history, preferences or fantasies of the ((~~dentist~~)) health care provider;

(o) Any behavior, gestures, or expressions that can reasonably be interpreted as seductive or sexual;

(p) Sexually demeaning behavior including any verbal or physical contact which can reasonably be interpreted as demeaning, humiliating, embarrassing, threatening or harming a patient or key party;

(q) Photographing or filming the body or any body part or pose of a patient or key party, other than for legitimate health care purposes; or for the educational or marketing purposes with the consent of the patient; and

(r) Showing a patient or key party sexually explicit photographs, other than for legitimate health care purposes.

(2) A ((~~dentist~~)) health care provider shall not:

(a) Offer to provide health care services in exchange for sexual favors;

(b) Use health care information to contact the patient or key party for the purpose of engaging in sexual misconduct;

(c) Use health care information or access to health care information to meet or attempt to meet the ((~~dentist's~~)) health care provider's sexual needs.

(3) A ((~~dentist~~)) health care provider shall not engage in the activities listed in subsection (1) of this section with a former patient or key party if the ((~~dentist~~)) health care provider:

(a) Uses or exploits the trust, knowledge, influence or emotions derived from the professional relationship; or

(b) Uses or exploits privileged information or access to privileged information to meet the ((~~dentist's~~)) health care provider's personal or sexual needs.

(4) When evaluating whether a ((~~dentist~~)) health care provider has engaged or has attempted to engage in sexual misconduct, the commission will consider factors, including but not limited to:

(a) Documentation of a formal termination;

(b) Transfer of care to another health care provider;

(c) Duration of the ((~~dentist-patient~~)) health care provider-patient relationship;

(d) Amount of time that has passed since the last dental health care services to the patient;

(e) Communication between the ((~~dentist~~)) health care provider and the patient between the last dental health care services rendered and commencement of the personal relationship;

(f) Extent to which the patient's personal or private information was shared with the ((~~dentist~~)) health care provider;

(g) Nature of the patient's health condition during and since the professional relationship; and

(h) The patient's emotional dependence and vulnerability.

(5) Patient or key party initiation or consent does not excuse or negate the ((~~dentist's~~)) health care provider's responsibility.

(6) These rules do not prohibit:

(a) Providing health care services in case of emergency where the services cannot or will not be provided by another health care provider;

(b) Contact that is necessary for a legitimate health care purpose and that meets the standard of care appropriate to the dental profession; or

(c) Providing dental services for a legitimate health care purpose to a person who is in a preexisting, established personal relationship with the ((~~dentist~~)) health care provider where there is no evidence of, or potential for, exploiting the patient.

AMENDATORY SECTION (Amending WSR 09-04-042, filed 1/30/09, effective 3/2/09)

WAC 246-817-710 Definitions((~~—The definitions in this section apply throughout WAC 246-817-701 through 246-817-790 unless the context clearly requires otherwise~~)). The definitions in this section apply throughout WAC 246-817-701 through 246-817-790 unless the context clearly requires otherwise.

(1) **"Analgesia"** is the diminution of pain in the conscious patient.

(2) **"Anesthesia"** is the loss of feeling or sensation, especially loss of sensation of pain.

(3) **"Anesthesia ((~~assistant/anesthesia~~)) monitor"** means a credentialed health care provider specifically trained in monitoring patients under sedation and capable of assisting with procedures, problems and emergency incidents that may occur as a result of the sedation or secondary to an unexpected medical complication.

(4) **"Anesthesia provider"** means a dentist, physician anesthesiologist, dental hygienist or certified registered nurse anesthetist licensed and authorized to practice within the state of Washington.

(5) **"Close supervision"** means that a supervising dentist whose patient is being treated has personally diagnosed the condition to be treated and has personally authorized the procedures to be performed. The supervising dentist is continuously on-site and physically present in the treatment facility while the procedures are performed by the assistive personnel and capable of responding immediately in the event of an emergency. The term does not require a supervising dentist to be physically present in the operatory.

(6) **"Deep sedation/analgesia"** is a drug induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

(((6) ~~**"Direct supervision"** means that a licensed provider whose patient is being treated has personally diagnosed the condition to be treated and has personally authorized the procedure to be performed. A dentist must be physically present in the treatment facility while the procedures are performed.~~))

(7) **"Dental anesthesia assistant"** means a health care provider certified under chapter 18.350 RCW and specifically trained to perform the functions authorized in RCW 18.350.040 under supervision of an oral and maxillofacial surgeon or dental anesthesiologist.

(8) **"Direct visual supervision"** means ((~~direct~~)) supervision by an oral and maxillofacial surgeon or dental anesthesiologist by verbal command and under direct line of sight ((~~to the activity being performed, chairside~~)).

(((~~8~~))) (9) **"General anesthesia"** is a drug induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, produced by a pharmacologic or nonpharmacologic method, or combination thereof may be impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

(((~~9~~))) (10) **"Local anesthesia"** is the elimination of sensations, especially pain, in one part of the body by the topical application or regional injection of a drug.

(((~~10~~))) (11) **"Minimal sedation"** is a drug induced state during which patients respond normally to verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are unaffected.

(((~~11~~))) (12) **"Moderate sedation"** is a drug induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. Moderate sedation can include both moderate sedation/analgesia (conscious sedation) and moderate sedation with parenteral agent.

(((~~12~~))) (13) **"Parenteral"** means a technique of administration in which the drug bypasses the gastrointestinal (GI) tract (i.e., intramuscular, intravenous, intranasal, submucosal, subcutaneous, intraosseous).

AMENDATORY SECTION (Amending WSR 09-04-042, filed 1/30/09, effective 3/2/09)

WAC 246-817-720 Basic life support requirements. Dental staff providing direct patient care in an in-office or out-patient setting must hold a current and valid health care provider basic life support (BLS) certification. Dental staff providing direct patient care include: Licensed dentists, licensed dental hygienists, licensed expanded function dental auxiliaries, certified dental anesthesia assistants, and registered dental assistants.

Newly hired office staff providing direct patient care are required to obtain the required certification within forty-five days from the date hired.

NEW SECTION

WAC 246-817-771 Dental anesthesia assistant. (1) A dental anesthesia assistant must be certified under chapter 18.350 RCW and WAC 246-817-205.

(2) A dental anesthesia assistant may only accept delegation from an oral and maxillofacial surgeon or dental anesthesiologist who holds a valid Washington state general anesthesia permit.

(3) Under close supervision, the dental anesthesia assistant may:

(a) Initiate and discontinue an intravenous line for a patient being prepared to receive intravenous medications, sedation, or general anesthesia; and

(b) Adjust the rate of intravenous fluids infusion only to maintain or keep the line patent or open.

(4) Under direct visual supervision, the dental anesthesia assistant may:

(a) Draw up and prepare medications;

(b) Follow instructions to deliver medications into an intravenous line upon verbal command;

(c) Adjust the rate of intravenous fluids infusion beyond a keep open rate;

(d) Adjust an electronic device to provide medications, such as an infusion pump;

(e) Administer emergency medications to a patient in order to assist the oral and maxillofacial surgeon or dental anesthesiologist in an emergency.

(5) The responsibility for monitoring a patient and determining the selection of the drug, dosage, and timing of all anesthetic medications rests solely with the supervising oral and maxillofacial surgeon or dental anesthesiologist.

(6) A certified dental anesthesia assistant shall notify the commission in writing, on a form provided by the department, of any changes in his or her supervisor.

(a) The commission must be notified of the change prior to the certified dental anesthesia assistant accepting delegation from another supervisor. The certified dental anesthesia assistant may not practice under the authority of this chapter unless he or she has on file with the commission such form listing the current supervisor.

(b) A supervisor must be an oral and maxillofacial surgeon or dental anesthesiologist who holds a valid Washington state general anesthesia permit.

(c) For the purposes of this subsection "any change" means the addition, substitution, or deletion of supervisor from whom the certified dental anesthesia assistant is authorized to accept delegation.

WSR 13-09-042
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed April 12, 2013, 9:28 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-08-400 How much can a health care provider charge for searching and duplicating health care records, pursuant to RCW 70.02.010(15), and making technical corrections.

Hearing Location(s): Department of Health, 111 Israel Road S.E., Room 158, Tumwater, WA 98501, on June 5, 2013, at 9:00 a.m.

Date of Intended Adoption: June 6, 2013.

Submit Written Comments to: Sherry Thomas, Department of Health, P.O. Box 47850, Olympia, WA 98504-7850, e-mail [web site] http://www3.doh.wa.gov/policyreview/, fax (360) 236-4626, by June 5, 2013.

Assistance for Persons with Disabilities: Contact Sherry Thomas by May 29, 2013, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose is to adjust the maximum fees health care providers are allowed to charge for searching and duplicating health care records. The adjustment is legislatively required to occur every two years, and must be based on the change in the consumer price index (CPI) for the Seattle-Tacoma area (see below). In addition, we are making technical corrections to subsection (4) to refer to the full HIPAA regulation citation, and to refer to "health care" provider and "health care" records, rather than "medical" provider and records to make the references consistent with the authorizing statute.

Consumer Price Index - All Urban Consumers
Original Data Value

Series Id: CUURA423SA0
Not Seasonally Adjusted
Area: Seattle-Tacoma-Bremerton, Washington
Item: All items
Base Period: 1982-84=100
Years: 2010 to 2012

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
2010	226.085		226.513		226.118		227.645		227.251		226.862		226.693
2011	229.482		231.314		233.250		233.810		235.916		234.812		232.765
2012	235.744		237.931		239.540		240.213		241.355		237.993		238.663

Consumer Price Index - All Urban Consumers
12-Month Percent Change

Series Id: CUURA423SA0
Not Seasonally Adjusted
Area: Seattle-Tacoma-Bremerton, Washington
Item: All items
Base Period: 1982-84=100
Years: 2010 to 2012

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
2010		0.6		0.3		-0.5		0.2		0.4		0.6	0.3
2011		1.5		2.1		3.2		2.7		3.8		3.5	2.7
2012		2.7		2.9		2.7		2.7		2.3		1.4	2.5

Reasons Supporting Proposal: The proposed rule sets reasonable fees providers are allowed to charge for cost recovery. The adjustment is required by law to occur every two years. The CPI for the Seattle-Tacoma area changed from 226.862 in December 2010 to 237.993 in December 2012, which is a 4.9 percent increase.

Statutory Authority for Adoption: RCW 70.02.010(15) and 43.70.040.

Statute Being Implemented: RCW 70.02.010(15).

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Sherry Thomas, 111 Israel Road, Tumwater, WA 98501, (360) 236-4612.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 34.05.310 (4)(e), a small business economic impact statement is not required for a proposed rule that sets or adjusts fees or rates pursuant to legislative standards. In addition, the technical changes to correct the HIPAA citation and clarify wording are exempt under RCW 34.05.310 (4)(d) because they clarify language without changing its effect.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards, and subsection (5)(b)(iv) exempts changes to clarify language of a rule without changing its effect.

April 11, 2013
Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 11-12-027, filed 5/24/11, effective 7/1/11)

WAC 246-08-400 How much can a ((~~medical~~)) health care provider charge for searching and duplicating ((~~medical~~)) health care records? RCW 70.02.010(15) allows ((~~medical~~)) health care providers to charge fees for searching and duplicating ((~~medical~~)) health care records. The fees a provider may charge cannot exceed the fees listed below:

(1) Copying charge per page:

(a) No more than one dollar and ((~~four~~)) nine cents per page for the first thirty pages;

(b) No more than ((~~seventy-nine~~)) eighty-two cents per page for all other pages.

(2) Additional charges:

(a) The provider can charge a ((~~twenty-three~~)) twenty-four dollar clerical fee for searching and handling records;

(b) If the provider personally edits confidential information from the record, as required by statute, the provider can charge the usual fee for a basic office visit.

(3) This section is effective July 1, ((~~2011~~)) 2013, through June 30, ((~~2013~~)) 2015.

(4) HIPAA covered entities((~~: See~~)) shall refer to HIPAA regulation ((~~Section~~)) 45 C.F.R. 164.524 (c)(4) ((~~to determine applicability of this rule~~)).

WSR 13-09-044
PROPOSED RULES
CENTRALIA COLLEGE
[Filed April 12, 2013, 10:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-04-072 on February 4, 2013.

Title of Rule and Other Identifying Information: WAC 132L-136-011 Use of facilities, 132L-136-070 Limitations of use, 132L-136-010 Use of facilities (re: Smoking), 132L-136-021 Smoking policy, 132L-120-080 Student responsibilities, 132L-26-030 Employee notification, 132L-108-040 Application for adjudicative proceeding, 132L-133-020 Organization—Operation—Information, and 132L-276-070 Office hours.

Hearing Location(s): Centralia College Atrium, 600 Centralia College Boulevard, Centralia, WA 98531-4099, on May 21, 2013, at 3:30.

Date of Intended Adoption: May 28, 2013.

Submit Written Comments to: Julie Ledford, Vice-President of Human Resources and Legal Affairs, 600 Centralia College Boulevard, Centralia, WA 98531-4099, e-mail jledford@centralia.edu, fax (360) 330-7501, by May 14, 2013.

Assistance for Persons with Disabilities: Contact Julie Ledford by May 6, 2013, TTY (360) 736-9391.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend to update and adopt WACs related to use of facilities - smoking and expressive speech, as well as updating addresses, hours of operation, and emergency notification system.

Reasons Supporting Proposal: The college is in the process of amending to update its internal policy and procedures consistent with changes in governance structure, campus safety - emergency notification system, smoking, expressive speech, and addresses and hours.

Statutory Authority for Adoption: RCW 28B.50.140 and chapter 34.05 RCW.

Statute Being Implemented: RCW 28B.50.140.

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

Name of Proponent: Centralia College (District 12), governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Julie Ledford, Centralia, Washington, (360) 736-9391.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Centralia College has determined that [it] is not subject to the Regulatory Fairness Act because the rule is for the purpose of updating our internal policy and procedures consistent with changes in governance structure, campus safety - emergency notification system, smoking, expressive speech, and updating of addresses and hours.

A cost-benefit analysis is not required under RCW 34.05.328. Centralia College is not a listed agency in RCW 34.05.328.

April 10, 2013
James M. Walton
President

AMENDATORY SECTION (Amending WSR 04-19-062, filed 9/15/04, effective 10/16/04)

WAC 132L-120-080 Student responsibilities. (1) Students who choose to attend Centralia College also choose to participate actively in the adult learning process offered by the college. As a process, learning is not a product or commodity that is bought and sold, but rather, is a relationship between teachers who are willing and competent to teach and learners who are willing and competent to learn. Therefore, the responsibility for learning is shared equally between students and faculty.

(2) The college is responsible for providing its students with an educational environment rich in the high quality resources needed by students to attain their individual educational goals. In return, students are responsible for making themselves aware of the full breadth of the resources available, for the timely choosing and appropriate use of those resources, and for the specific behavioral tasks necessary for attaining desired learning outcomes. Examples of specific student responsibilities are:

(a) To know and adhere to the college's policies, practices, and procedures;

(b) To participate actively in the learning process, both in and out of the classroom;

(c) To seek timely assistance in meeting educational goals;

(d) To attend all class sessions;

(e) To participate in class activities;

(f) To participate actively in the advising process;

(g) To develop skills required for learning, e.g., basic skills, time management, motivation, study skills, and openness to the educational process;

(h) To assume final responsibility for the selection of appropriate educational goals;

(i) To assume final authority for the selection of courses appropriate for meeting chosen educational goals;

(j) To seek out and use campus resources; and

(k) To contribute towards improving the college.

(3) Any student is subject to these rules, independent of any other status the individual may have with the college. Any action taken against a student under these rules shall be independent of other actions taken by virtue of another relationship with the college in addition to that of student.

(4) The college recognizes a responsibility to resolve behavioral problems before they escalate into serious problems. Therefore, the chief judicial affairs officer shall seek the assistance of other college departments or offices in investigating student behavioral problems. The chief judicial affairs officer will be as proactive as is possible concerning the resolution of student behavioral problems and use reasonable arbitration and conflict resolution methods in order to prevent such problems from escalating. The chief judicial affairs officer may seek and authorize settlements involving disputes related to student conduct when such settlements will better serve the college's broader interests.

(5) Students are expected to obey all college rules and regulations and obey the law. Any student shall be subject to disciplinary action as provided for in this code who, either as a principal actor, aider, abettor, or accomplice violates any local, state, or federal law, interferes with the personal rights or privileges of others or the educational process of the college; violates any provision of this code; or commits any of the following prohibited actions. The standard of conduct as listed below should be interpreted by students as general notice of prohibited conduct. They should be read broadly, and are not designed to define misconduct in exhaustive terms:

(a) Assault, intimidation, or interference.

(b) Disorderly, disruptive, or abusive conduct: Disorderly, disruptive, or abusive behavior that interferes with the rights of others or which obstructs or disrupts teaching, learning, research, or administrative functions. Such conduct includes, but is not limited to: Interference with any speaker or audience; blocking or impeding pedestrian or vehicular traffic; blocking access to or from campus buildings or offices; and activities of observers or participants that disrupt classes, meetings, office or business activities, or any other normal functions of the college.

(c) Failure to follow instructions: Inattentiveness, inability, or failure of student to follow the reasonable instructions of any college employee acting within his or her professional responsibility; refusal to comply with any lawful order to leave the college campus or any portion thereof.

(d) Illegal assembly, obstruction, or disruption: Any assembly or other act which interferes with vehicular or pedestrian traffic, classes, hearings, meetings, the educational and administrative functions of the college, or the private rights and privileges of others.

(e) False complaint: Filing a formal complaint falsely accusing another student with violating a provision of this code or falsely accusing a college employee of a misdeed. Also includes making any intentional false claim, charge, or statement against any member of the college community to harass, defame, or intimidate that individual.

(f) False alarms: Falsely setting off or otherwise tampering with any emergency safety equipment, alarm, or other device established for the safety of individuals and/or college facilities. This includes reporting any type of emergency known to be false.

(g) Sexual harassment: Engaging in unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature or because of the sex of the recipient, where such behavior ((~~offends the recipient or a third party, causes discomfort or humiliation, creates an intimidating, offensive, or hostile work or classroom environment that~~)) is sufficiently severe, persistent, or pervasive so as to substantially interfere((~~s~~)) with ((~~job or school performance~~)) the victim's ability to fully participate in the educational program or alters conditions of employment.

(h) Racial harassment: Engaging in verbal, written, or physical conduct relating to a person's race or color when the harassing conduct is sufficiently severe, persistent, or pervasive that it ((~~affects a person's ability to participate in or benefit from an educational program or activity or creates an intimidating, threatening, abusive, or otherwise hostile educational or work environment; or the harassing conduct~~)) has the ((~~purpose or~~)) effect of substantially or unreasonably interfering with a person's ((~~academic or work performance; or the harassing conduct otherwise adversely affects an individual's learning opportunities or employment opportuni-~~

~~ties~~)) ability to participate in or benefit from an educational program or activity or alters the conditions of employment. A hostile environment may be created by behaviors such as, but not necessarily limited to:

(i) Intimidation and implied or overt threats of physical violence motivated by race, color, or national origin;

(ii) Physical acts of aggression or assault upon another, or damage to another's property that is motivated by the individual's race, color, or national origin;

(iii) Depending on the circumstances and context, demeaning racial jokes, taunting, racial slurs, and derogatory racial "nicknames," innuendoes, or other negative or derogatory remarks of a racial nature or relating to national origin;

(iv) Depending on the circumstances and context, graffiti and/or slogans or visual displays such as cartoons or posters depicting racial/ethnic slurs or racially/ethnically derogatory sentiments;

(v) Criminal offenses directed at persons because of their race or national origin.

(i) Furnishing false or incomplete information: The submission of information known to be false or incomplete to any college official. This includes, but is not limited to, providing false or incomplete information during an investigation, or before any student or employee disciplinary, grievance, or tenure process or hearing, or on any college document or form, or to any college employee or agent requesting information as part of their official duties and responsibilities.

(j) Intimidation of witnesses: Threatening or otherwise placing undue emotional pressure on any witness or potential witness during an investigation or informal or formal college hearing.

(k) Destruction of evidence: Knowingly destroying any evidence that could be used during an investigation or informal or formal college hearing for the purpose of denying its use as part of the investigation or hearing.

(l) Sexual assault: Any type of sexual assault in any form, including acquaintance rape and other forced and/or nonconsensual sexual activity.

(m) Physical or emotional abuse: Actual or attempted physical or emotional abuse of any person or conduct which threatens or endangers the health and safety of any person or which intentionally or recklessly causes a reasonable apprehension of harm to any person.

(n) Harassment: Behavior of any sort or any malicious act which serves no legitimate or legal purpose which causes harm to any person's physical or mental well-being. Includes intentionally and repeatedly following or contacting another person by any means in a manner that alarms, annoys, intimidates, ((~~harasses, causes substantial emotional distress,~~)) causes fear for personal safety or property, or is detrimental to that person or that would cause any of these reactions in a reasonable person. A warning that the behavior is unwanted is not required if a reasonable person would have known that the behavior in question was more likely than not to result in any of the above reactions in another reasonable person and no legitimate or legal purpose is evident.

(o) Threat: Conduct intended to threaten bodily harm, damage to property, or to endanger the health or safety of any person on the college campus. Includes behavior that involves an expressed or implied threat to interfere with an individual's personal safety, academic efforts, employment, or participation in college activities and causes the person to have a reasonable apprehension that such interference is about to occur.

(p) Reckless conduct: Recklessly engaging in conduct which creates a substantial risk of physical harm to either one's self or another person.

(q) Incitement: Intentionally inciting others to engage immediately in any unlawful activity, which incitement leads directly to such conduct.

(r) Undue noise: Unauthorized creation of noise in such a way as to interfere with college functions or using sound amplification equipment in a loud and raucous manner.

(s) Aiding or abetting misconduct: Aiding, assisting, abetting, or serving as an accomplice in the commission of any illegal act or any act prohibited by this code.

(t) Failure to cooperate with an investigation: Failure to cooperate with any lawful investigation of any conduct violation when such investigation is carried out by any college employee acting within the scope of their responsibilities; failure to cooperate with an investigation of any conduct violation, or interference with a proper investigation of any conduct violation by withholding evidence, encouraging or threatening another to withhold evidence.

(u) Theft or robbery: Theft of the property of the district or of another; actual or attempted theft of property or services belonging to the college, any member of its community, or any campus visitor; includes knowingly possessing stolen property.

(v) Malicious mischief: Intentional or negligent damage to or destruction of any college facility or other public or private real or personal property.

(w) Unauthorized use of college equipment and supplies: Using college equipment or supplies for personal gain or use without proper authority.

(x) Unauthorized entry, access, or presence: Unauthorized entry, access, or presence upon the property of the college or into a college facility or portion thereof which has been reserved, restricted in use, or placed off limits; unauthorized presence in any college facility or office at any time; or unauthorized possession or use of a key, access code, or password to any college facility or system. Unauthorized entry, access, or presence also applies to unauthorized access to any college, student, or staff data base, computer system, telephone system, or information system.

(y) Computer, telephone, or electronic technology violation: Conduct that violates college published policies on computer, telephone, or electronic technology use. This includes the use of any college computer, computer system, telephone system, information system, or other electronic technology to violate any local, state, or federal law.

(z) Cheating, fabrication, facilitating academic dishonesty, multiple submission, and plagiarism. Cheating is intentionally using or attempting to use unauthorized materials, information, or study aids in any academic exercise. The term academic exercise includes all form of work submitted for credit or hours. Fabrication is the intentional and unauthorized falsification or invention of any information or citation in an academic exercise. Facilitating academic dishonesty is

intentionally or knowingly helping or attempting to help another to violate a provision of this section of the discipline code. Multiple submission includes submitting the same or substantially the same paper or oral report in more than one course without the instructor's permission in the later course(s). Plagiarism is the deliberate adoption or reproduction of ideas or words or statements of another person as one's own without acknowledgment.

(aa) Forgery or alteration of records: Forging or tendering any forged records or instruments of any district record or instrument to an employee or agent of the college.

(bb) Refusal to provide identification in appropriate circumstances: Refusal to provide positive identification (e.g., valid driver's license, student identification card, or state identification card) in appropriate circumstances to any college employee in the lawful discharge of said employee's duties.

(cc) Smoking: Smoking ((~~in any classroom or laboratory, the library, or in any college facility or office posted "no smoking" or in any area of the campus posted "no smoking."~~)) is prohibited on campus except in designated smoking areas.

(dd) Controlled substances: Using, possessing, being demonstrably under the influence of, or selling any narcotic or controlled substance or legend drugs including anabolic steroids, except when the use or possession of a drug is specifically prescribed as medication by an authorized health care provider licensed by law to prescribe the said medication.

(ee) Alcoholic beverages: Being demonstrably under the influence of any form of alcoholic beverage. Possessing or consuming any form of alcoholic beverage on college property or any college-controlled facility or at any college activity, program, or event, with the exception of sanctioned events, approved by the president or his or her designee.

(ff) Violation of college policy: Violation of clearly stated proscriptions in any published college policy, rule, or regulation.

(gg) Ethics violation: The ((~~breech~~)) breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular trade, skill, craft, or profession for which the student is taking courses or is pursuing as their educational goal or major. These ethics codes must be distributed to students as part of an educational program, course, or sequence of courses and the student must be informed that a violation of such ethics codes may subject the student to disciplinary action by the college.

(hh) Hazing: Conspiracy to engage in hazing or participation in hazing another. Hazing shall include any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group, 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 Centralia College. Consent is no defense to hazing. The term does not include customary athletic events or other similar contests or competitions. Hazing is also a misdemeanor, punishable under state law.

(ii) Initiation violation: Conduct associated with initiation into a student organization, association, or living group, or any pastime or amusement engaged in with respect to an organization, association, or living group not amounting to a violation of under the definition of hazing. Conduct covered by this definition may include embarrassment, ridicule, sleep deprivation, verbal abuse, or personal humiliation. Consent is no defense to initiation violation.

(jj) Prohibition of animals: No student may bring into or allow any animal, with the exception of service animals, to enter any college owned or controlled facility. All dogs on campus shall be under direct physical control, leashed by their owner or custodian.

(kk) Misuse of student identification: Includes, but is not limited to, alteration of validly issued identification in any manner; use of, or allowing use of, identification by a person other than the one for whom the identification was issued; or use of counterfeit student identification.

(ll) Other misconduct: Any other conduct or action in which the college can demonstrate a clear and distinct interest and which threatens the educational process or any other legitimate function of the college or the health or safety of any member of the college community or visitor.

(mm) Failure to comply with the following regulations governing firearms and weapons:

(i) It shall be the policy of the college that carrying, exhibiting, displaying, or drawing any weapon or weapon facsimile, such as a gun or firearm, dagger, sword, knife, or any other cutting or stabbing instrument or club or any other weapons apparently capable of producing bodily harm and/or property damage is prohibited, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for safety of other persons is prohibited.

(ii) Explosives, incendiary devices, or any similar device, object, or product is prohibited.

(iii) The above regulations shall not apply to equipment or material owned, used, or maintained by the college; nor will they apply to law enforcement officers.

(nn) Gambling: Any form of gambling is prohibited.

(oo) Lewd conduct: Engaging in lewd, indecent, or obscene behavior as defined by applicable law is prohibited.

(pp) Bicycling and skating: All persons using bicycles, skates or other similar nonpowered conveyances or vehicles shall do so in a manner that does not endanger the health, safety or welfare of themselves or others, and that does not unduly interfere with pedestrians, cause damage, block or impede access, create noise or distraction that interferes with the learning environment, or in any manner that interferes with the rights of others.

(qq) Skateboarding: No skateboarding shall be allowed on or in any Centralia College owned or controlled campus or facility.

(6) The college will consider as an aggravating factor in determining sanctions any violation of law or of this student code in which it can be shown that the accused intentionally selected the person or target of the violation based upon race, religion, color, disability, sexual orientation, national origin, or ancestry, and therefore may impose harsher or additional sanctions and penalties.

(7) Violation of any of the above regulations may also constitute violation of the criminal laws or ordinances of various cities, municipalities, counties, the state of Washington, or the United States and may subject a violator to criminal sanctions in addition to any sanctions imposed by the college.

AMENDATORY SECTION (Amending WSR 90-05-005, filed 2/9/90, effective 3/12/90)

WAC 132L-108-040 Application for an adjudicative proceeding. An application for an adjudicative proceeding shall be in writing. Application forms are available at the following address: Administrative Services, Hanson Administration Building, corner of Walnut and Rock streets. The mailing address is 600 ((~~West Locust~~)) Centralia College Blvd., Centralia, WA 98531-4099.

Written application for an adjudicative proceeding should be submitted to the above address within 20 days of the agency action giving rise to the application, unless provided for otherwise by statute or rule.

AMENDATORY SECTION (Amending WSR 04-19-062, filed 9/15/04, effective 10/16/04)

WAC 132L-133-020 Organization—Operation—Information. (((~~(a)~~))) (1) Organization. Centralia College is established in Title 28B RCW as a public institution of higher education. A five-member board of trustees, appointed by the governor, governs the institution. The board employs a president, who acts as the chief executive officer of the institution. The president establishes the structure of the administration.

(((~~(b)~~))) (2) Operation. The administrative services office is located at the following address: Hanson Administration Building, Corner of Walnut and Rock Streets. The mailing address is 600 ((~~West Locust~~)) Centralia College Blvd., Centralia, WA 98531-4099.

((~~The operating hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays for fall, winter and spring quarters (approximately September 1 through June 15). Summer hours (approximately June 16 through August 31) are 7:30 a.m. to 5:00 p.m. Monday through Thursday, and 7:30 a.m. to 11:30 a.m. on Friday, except holidays.~~)) Educational operations are located at the following addresses: 600 ((~~West Locust~~)) Centralia College Blvd., Centralia, WA 98531-4099 and Centralia College East, 701 Airport Way, Morton, WA 98356.

(((~~(c)~~))) (3) Additional and detailed information concerning the educational offerings may be obtained from the catalog((~~, copies of which are available at the following address: Admissions~~)) on the Centralia College web site at www.centralia.edu and in the Enrollment Services Office, 600 ((~~West Locust~~)) Centralia College Blvd., Centralia, WA 98531-4099.

AMENDATORY SECTION (Amending Order 72-1, filed 1/19/72)

WAC 132L-136-010 Definition. ((~~Because of the fire hazard and as a courtesy to nonsmokers, smoking is prohibited in classrooms and laboratories during scheduled classes and in other areas where posted.~~)) "Smoke" or "smoking" means carrying or smoking of any kind of lighted pipe, cigar, cigarette, or any other lighted smoking equipment; the use of any tobacco or nicotine product; or the use of any facsimile of a tobacco or nicotine product, including electronic cigarettes. Nicotine gum, patches, or like products are permissible.

NEW SECTION

WAC 132L-136-012 Sound amplification devices. Sound amplification devices may only be used at a volume that does not disrupt or disturb the normal use of classrooms, offices, or laboratories, or any previously scheduled college event or activity.

NEW SECTION

WAC 132L-136-013 Kiser natural outdoor learning lab (KNOLL). The Kiser natural outdoor learning lab (KNOLL) is an outdoor classroom and is not a public forum.

AMENDATORY SECTION (Amending WSR 04-19-062, filed 9/15/04, effective 10/16/04)

WAC 132L-136-021 Smoking policy. Smoking is prohibited ((~~in all buildings and facilities and within twenty feet of all entry doors where posted~~)) on campus except in designated smoking areas.

AMENDATORY SECTION (Amending WSR 04-19-062, filed 9/15/04, effective 10/16/04)

WAC 132L-136-070 Limitations of use. (1) College facilities may not be used in ways which interfere with or are detrimental to the college's own instructional and educational programs.

(2) College facilities may not be used for commercial sales, advertising, or promotional activities except when such activities serve educational purposes of the college and are conducted under the sponsorship of a college department of office.

(3) Each group or organization which uses college facilities must abide by the policies and procedures for use as determined by the board of trustees and/or the college president and shall be subject to revocation of their privilege to use the facilities for failing to do so.

(4) The administration reserves the right to deny or cancel the use of facilities ((~~when such use or meeting may in any way be prejudicial to the best interests~~)) anytime the administration determines that such use or meeting interferes with or disrupts the instructional, educational or business functions of the college.

AMENDATORY SECTION (Amending WSR 04-19-062, filed 9/15/04, effective 10/16/04)

WAC 132L-26-030 ((~~Employee~~)) Public notification—Time. If the president declares a condition of suspended operations, the public will be notified of this closure via ((~~local radio station transmission~~)) the media and social

media at least one hour prior to the opening of the business day.

AMENDATORY SECTION (Amending WSR 04-19-062, filed 9/15/04, effective 10/16/04)

WAC 132L-276-070 Office hours. Public records shall be available for inspection and copying during the ((~~customary~~)) open office hours of the college. ((~~For the purposes of this chapter, the customary office hours shall be from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. During summer operations, Friday hours shall be from 9:00 a.m. to 11:00 a.m.~~))

WSR 13-09-049
PROPOSED RULES
PUBLIC DISCLOSURE COMMISSION

[Filed April 15, 2013, 3:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-19-074.

Title of Rule and Other Identifying Information: Amending WAC 390-05-290 Definition—Political advertising, 390-05-520 Periodical, 390-18-030 Advertising—Exemptions from identification and 390-17-405 Volunteer services; and new section WAC 390-18-015 Online political advertising.

Hearing Location(s): 711 Capitol Way, Room 206, Olympia, WA 98504, on May 22, 2013, at 9:30 a.m.

Date of Intended Adoption: May 22, 2013.

Submit Written Comments to: Nancy Krier, 711 Capitol Way, Room 206, Olympia, WA 98504, e-mail nancy.krier@pdc.wa.gov, fax (360) 753-1112, by May 13, 2013.

Assistance for Persons with Disabilities: Contact Jana Greer by e-mail jana.greer@pdc.wa.gov, (360) 586-0544 or (360) 753-1111.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The public disclosure commission (PDC) implements the campaign finance and disclosure laws in chapter 42.17A RCW. Those laws describe that political campaign contributions and expenditures are to be fully disclosed, and that sponsors of political advertising are to be identified to the public. The commission's rules are in Title 390 WAC. The commission proposes to amend four rules (WAC 390-05-290, 390-05-520, 390-18-030 and 390-17-405), and adopt one new rule (WAC 390-18-015) to address online political advertising and volunteer online services provided to a candidate or political committee.

In 2007, through an interpretive statement, the commission provided guidance to campaigns with respect to online campaign activity. The commission also determined it would not engage in rule making on that subject at that time, but in the future would review that guidance and may subsequently update its rules as online campaign activity developed.

Since May 2012, the commission has been reviewing and considering information about developments occurring since 2007 in online political advertising and current uses of technology by campaigns in Washington. The commission has determined that online campaign activity is becoming increasingly used by candidates, political committees and others to support or oppose candidate and ballot measures and to sway voters, but its rules in Title 390 WAC do not yet reflect such developments. Therefore, the commission determined it should provide more guidance and clarification to campaigns with respect to their online activity and the requirements under chapter 42.17A RCW, and it should update its rules to improve disclosure to the public about who is sponsoring online political advertising. The commission determined that it should revise its rules to:

- Update definitions to address online campaign activity, including to provide definitions of "mass communication" and "online" (proposed amendments to WAC 390-05-290 and 390-05-520);

- Explain disclosure requirements for online political advertising (proposed new WAC 390-18-015);

- Update exemptions from sponsor identification in political advertising to provide alternatives when it is impractical to provide the identification because of technological limitations for small online ads (proposed amendments to WAC 390-18-030);

- Update exemptions from sponsor identification to address political advertising produced and disseminated by individuals using their own modest resources and acting independently of campaigns and other entities, recognizing such activity now occurs online (proposed amendments to WAC 390-18-030); and

- Update the volunteer services rule to include web-based activity by campaign volunteers (such as responding to e-mails, maintaining the campaign's web site, and the like) (proposed amendments to WAC 390-17-405).

Reasons Supporting Proposal: The proposed rule amendments and proposed new rule modernize and clarify the political advertising and campaign rules by recognizing and addressing online advertising and online volunteer services to a campaign. The proposals benefit campaigns and political advertising sponsors by providing more contemporary guidance. The proposals benefit the public, including the voters, by enhancing disclosure of who is sponsoring online political advertising in today's campaigns.

Statutory Authority for Adoption: RCW 42.17A.110, 42.17A.320.

Statute Being Implemented: RCW 42.17A.005, 42.17A.320.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: This rule should result in no increased costs to the agency.

Name of Proponent: PDC, governmental.

Name of Agency Personnel Responsible for Drafting: Nancy Krier, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 753-1980; Implementation and Enforcement: Andrea McNamara Doyle, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 753-1111.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments has minimal impact on small business. The PDC is not subject to the requirement to prepare a school district fiscal impact statement, per RCW 28A.305.-135 and 34.05.320.

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 RCW 34.05.328. Further, the PDC does not voluntarily make that section applicable to the adoption of these rules pursuant to subsection (5)(a)(ii), and to date, the joint administrative rules review committee has not made the section applicable to the adoption of these rules.

April 15, 2013

Nancy Krier

General Counsel

AMENDATORY SECTION (Amending Order 85-03, filed 7/9/85)

WAC 390-05-290 ((~~Definition —~~))Political advertising definitions. (1) "Mass communication" means a communication intended to reach a large audience through any of the following methods:

(a) Advertising displays, newspaper advertising, billboards, signs;

(b) Brochures, articles, tabloids, fliers, periodicals;

(c) Radio or television presentations;

(d) Sample ballots (see WAC 390-17-030);

(e) Online or other electronic transmission methods;

(f) One hundred or more letters, e-mails, text messages or similar communications that are identical or substantially similar in nature, directed to specific recipients, and sent within a thirty-day period; and

(g) Other mass means of disseminating political advertising, unless excluded by chapter 42.17A RCW or commission rule.

(2) "Online" means disseminating through a network of interconnected computers or devices, such as the internet or similar systems enabling electronic dissemination or exchange of communications. Examples include, but are not limited to, internet web sites, web-based social media (such as Facebook, Twitter, and other electronic publishing platforms), e-mails, and text messages.

(3) "Political advertising" is defined under RCW 42.17A.005 to include a mass communication used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.

(4) Political advertising does not include letters to the editor, news or feature articles, editorial comment or replies thereto in a regularly published newspaper, periodical, or on a radio or television broadcast where payment for the ((~~printed~~)) space or ((~~broadcast~~)) time is not normally required.

AMENDATORY SECTION (Amending WSR 06-11-132, filed 5/23/06, effective 6/23/06)

WAC 390-05-520 Periodical. For electioneering communications, "periodical" means a publication on paper that is serial in nature and appears or is intended to appear indefinitely ((~~at regular~~)), issued regularly or at stated intervals at least once every three months. For all other political advertising, "periodical" means a publication that is serial in nature and appears or is intended to appear indefinitely, issued regularly or at stated intervals at least once every three months.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-17-405 Volunteer services. (1) In accordance with RCW 42.17A.005 (13)(b)(vi), an individual may perform services or labor for a candidate or political committee without incurring a contribution, so long as the individual is not compensated by any person for the services or labor rendered and the services are of the kind commonly performed by volunteer campaign workers. These commonly performed services include:

(a) Office staffing;

(b) Doorbelling or leaflet drops;

(c) Mail handling (folding, stuffing, sorting and postal preparation, processing e-mails to and from the campaign);

(d) Political or fund-raising event staffing;

(e) Telephone bank activity (conducting voter identification, surveys or polling, and get-out-the-vote campaigns);

(f) Construction and placement of yard signs, hand-held signs or in-door signs;

(g) Acting as a driver for candidate or candidate or committee staff;

(h) Scheduling of campaign appointments and events;

(i) Transporting voters to polling places on election day;

(j) Except as provided in subsection (2) of this section, preparing campaign disclosure reports required by chapter 42.17A RCW and otherwise helping to ensure compliance with state election or public disclosure laws;

(k) Campaign consulting and management services, polling and survey design, public relations and advertising (including online advertising), or fund-raising performed by any individual, so long as the individual does not ordinarily charge a fee or receive compensation for providing the service; ((~~and~~))

(l) Creating, designing, posting to and maintaining a candidate or political committee's official campaign web site or online forum, so long as the individual does not ordinarily charge a fee or receive compensation for providing the service; and

(m) All similar activities as determined by the commission.

(2) An attorney or accountant may donate his or her professional services to a candidate, a candidate's authorized committee, a political party or a caucus political committee, without making a contribution in accordance with RCW 42.17A.005 (13)(b)(viii), if the attorney or accountant is:

(a) Employed and his or her employer is paying for the services rendered;

(b) Self-employed; or

(c) Performing services for which no compensation is paid by any person. However, neither RCW 42.17A.005 (13)(b)(viii) nor this section authorizes the services of an attorney or an accountant to be provided to a political committee without a contribution ensuing, unless the political committee is a candidate's authorized committee, political party or caucus political committee and the conditions of RCW 42.17A.005 (13)(b)(viii) and (a), (b) or (c) of this subsection are satisfied, or unless the political committee pays the fair market value of the services rendered.

NEW SECTION

WAC 390-18-015 Online political advertising. (1) For the purposes of RCW 42.17A.320, the procedures in this rule apply to online political advertising unless otherwise exempted by chapter 42.17A RCW or commission rule.

(2) All online advertising must include a candidate's party preference as described in RCW 42.17A.320(1).

(3) Advertising disseminated in a paper publication and reproduced in an identical manner in the online edition (such as an online edition of a newspaper), or disseminated only in an online edition of the publication must include the disclosures required in WAC 390-18-010(4).

(4) Independent expenditure advertising prepared for radio, telephone and television that is reproduced in an identical manner online or prepared only for online dissemination must provide the disclosures required in WAC 390-18-010 (6)(a).

(5) Political committee web sites and other online forums created by a political committee must include the sponsor's name and address. Political committees sponsoring online independent expenditures advertising must provide the disclosures required in WAC 390-18-010 (6)(c).

(6) Other online political advertising sponsored for the purpose of appealing, directly or indirectly, for votes or for financial or other support in an election campaign must include the sponsor's name and address.

(7) Small online advertising may provide required disclosures by using an automatic display described in WAC 390-18-030 when advertising character or size limits imposed by the online provider make full compliance with RCW 42.17A.320 impractical.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-18-030 Advertising—Exemptions from identification and alternatives for online advertising. ((~~Pursuant to~~)) (1) RCW 42.17A.320(((~~(6),~~)) requires that political advertising must identify certain information. The commission is authorized to exempt advertising where the sponsor identification disclosures required by RCW 42.17A.320 (1) and (2) are impractical. In addition, other political advertising is exempt from providing certain disclosures.

(2) The following forms of advertising need not include the sponsor's name and address, the "no candidate authorized this ad" sponsor identification, the "top five contributors," or the identification of the individual, corporation, union, association, or other entity that established, maintains, or controls the sponsoring political committee as otherwise required by RCW 42.17A.320 (1) and (2) because such identification is impractical: Ashtrays, badges and badge holders, balloons, bingo chips, brushes, bumper stickers ((—)) - size 4" x 15" or smaller, buttons, cigarette lighters, clothes pins, clothing, coasters, combs, cups, earrings, emery boards, envelopes, erasers, frisbees, glasses, golf balls, golf tees, hand-held signs, hats, horns, ice scrapers, inscriptions, key rings, knives, labels, letter openers, magnifying glasses, matchbooks, nail clippers, nail files, newspaper ads of one column inch or less (excluding online ads), noisemakers, paper and plastic cups, paper and plastic plates, paper weights, pencils, pendants, pennants, pens, pinwheels, plastic tableware, pocket protectors, pot holders, reader boards where message is affixed in moveable letters, ribbons, 12-inch or shorter rulers, shoe horns, skywriting, staple removers, stickers ((—)) - size 2-3/4" x 1" or smaller, sunglasses, sun visors, swizzle sticks, state or local voters pamphlets published pursuant to law, tickets to fund-raisers, water towers, whistles, yard signs ((—)) - size 4' x 8' or smaller, yo-yos, and all other similar items.

(3) Online political advertising must provide the same disclosures that apply to non-online advertising to the extent practical. As an alternative, small online advertising with character or size limits imposed by the provider in a manner that makes full compliance with RCW 42.17A.320 impractical may provide the required disclosures by using an automatic display with the advertising that takes the reader directly to the required disclosures.

(a) These automatic displays must be clear and conspicuous, unavoidable, immediately visible, remain visible for at least four seconds, and display a color contrast as to be legible. Online advertising that includes only audio must include the disclosures in a manner that is clearly spoken.

(b) Examples include nonblockable pop-ups, roll-overs, a separate text box or link that automatically appear with or in the advertising, or other similar mechanisms that disclose the information required in RCW 42.17A.320.

(4) Political advertising created and distributed by an individual using his or her own modest resources is not required to provide the disclosures in RCW 42.17A.320, when all of the following criteria are satisfied:

(a) The individual spends less than one hundred dollars in the aggregate to produce and distribute the advertising or less than fifty dollars to produce and distribute online political advertising;

(b) The individual acts independently and not as an agent of a candidate, authorized committee, political committee, corporation, union, business association, or other organization or entity;

(c) The advertising is not a contribution under RCW 42.17A.005 (13)(a)(ii) or (iii) or WAC 390-05-210;

(d) The individual does not receive donations, contributions, or payments from others for the advertising, and is not compensated for producing or distributing the advertising; and

(e) The advertising is either:

• A letter, flier, handbill, text or e-mail from the individual that does not appear in a newspaper or other similar mass publication (except for letters to the editor and similar communications addressed in WAC 390-05-490(4)); or

• Disseminated on the individual's social media site, personal web site, or an individual's similar online forum where information is produced and disseminated only by the individual.

(5) Political advertising that is internal political communications to members is not required to separately include the disclosures in RCW 42.17A.320 where the sponsor's name is otherwise apparent on the face of the communication.

WSR 13-09-050
PROPOSED RULES
GAMBLING COMMISSION
[Filed April 15, 2013, 3:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-05-082.

Title of Rule and Other Identifying Information: WAC 230-06-052 Withdrawing gambling equipment authorization.

Hearing Location(s): Bellevue Red Lion, 11211 Main Street, Bellevun [Bellevue], WA 98004, (425) 455-5240, on July 11 or 12, 2013, at 9:00 a.m. or 1:00 p.m.

NOTE: Meeting dates and times are tentative. Visit our web site at www.wsgc.wa.gov and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: July 11 or 12, 2013.

Submit Written Comments to: Susan Newer, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan.Newer@wsgc.wa.gov, fax (360) 486-3625, by July 1, 2013.

Assistance for Persons with Disabilities: Contact Gail Grate by July 1, 2013, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Staff is requesting a new rule to establish and outline the process for when staff withdraws approval of gambling equipment. This proposed new rule is based on both WAC 230-15-045 Withdrawing card game authorization and 230-06-050 Review of electronic or mechanical gambling equipment, to allow a process for withdrawing authorization.

Reasons Supporting Proposal: We do not have rules addressing the process for withdrawing authorization of gambling equipment. This new rule is similar to what occurs when gambling equipment submissions are denied. It establishes a rule which allows staff to withdraw authorization of gambling equipment.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Name of Proponent: Washington state gambling commission, governmental.

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025, and/or the proposed rule change clarifies language of rules without changing the effect.

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

April 15, 2013
Susan Newer
Rules Coordinator

NEW SECTION

WAC 230-06-052 Withdrawing gambling equipment authorization. If the director or the director's designee withdraws authorization of gambling equipment:

(1) The director or the director's designee will give the applicant written notice and an opportunity to object to the decision. If the applicant does not agree with the decision, they may file a petition for declaratory order with the commission to be heard as a full review (de novo) by an administrative law judge, according to RCW 34.05.240 and chapter 230-17 WAC.

(2) The director or the director's designee will provide written notice to other impacted licensees who have the gambling equipment after a final decision is made.

WSR 13-09-052
WITHDRAWAL OF PROPOSED RULES
GAMBLING COMMISSION
(By the Code Reviser's Office)
[Filed April 16, 2013, 8:31 a.m.]

WAC 230-15-040 and 230-15-685, proposed by the gambling commission in WSR 12-20-062 appearing in issue 12-20 of the State Register, which was distributed on October 17, 2012, 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 13-09-053
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(By the Code Reviser's Office)
[Filed April 16, 2013, 8:32 a.m.]

WAC 388-106-0135 and 388-106-1305, proposed by the department of social and health services in WSR 12-20-074 appearing in issue 12-20 of the State Register, which was distributed on October 17, 2012, 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 13-09-054
PROPOSED RULES
UTILITIES AND TRANSPORTATION COMMISSION

[Docket UE-112133—Filed April 16, 2013, 8:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-01-100.

Title of Rule and Other Identifying Information: Chapter 480-108 WAC, Electric companies—Interconnection with electric generators.

Hearing Location(s): Commission's Hearing Room 206, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, on June 13, 2013, at 1:30 p.m.

Date of Intended Adoption: June 13, 2013.

Submit Written Comments to: Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, WA 98504-7250, e-mail records@utc.wa.gov, fax (360) 586-1150, by May 17, 2013. Please include Docket UE-112133 in your communication.

Assistance for Persons with Disabilities: Contact Debbie Aguilar by May 30, 2013, TTY (360) 586-8203 or (360) 664-1132.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington utilities and transportation commission (commission) proposes changes to rules governing the standards for interconnecting electric generators in the service territories of electric investor-owned utilities in chapter 480-108 WAC. The proposed rules were developed through extensive stakeholder involvement and modify the current rules to: (1) Streamline the application processes; (2) remove impediments to and encourage emerging technologies; and (3) update regulations to address advancements in technologies and processes.

Reasons Supporting Proposal: The proposed rules will provide for more expedited application processing for less complex generation facilities, remove unnecessary and outdated regulations, include provisions for new and emerging technologies and reduce cost and time for processing interconnection applications.

Statutory Authority for Adoption: RCW 80.01.040 and 80.04.160.

Statute Being Implemented: Not applicable.

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

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

Name of Agency Personnel Responsible for Drafting: Al Wright, 1300 South Evergreen Park Drive S.W. Olympia, WA 98504, (360) 664-1209; Implementation and Enforcement: Steven V. King, 1300 South Evergreen Park Drive S.W. Olympia, WA 98504, (360) 664-1115.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

I. Introduction: In early 2011, at the request of the house technology, energy, and communications committee, the commission conducted a study of distributed electric generation and offered recommendations for changes in statute and rules to encourage development of cost-effective distributed generation within investor-owned utility service territories. As a result of those recommendations, the commission initiated a rule making in December 2011, in Docket UE-112133 to determine if amending the rules in chapter 480-108 WAC governing the interconnection of distributed generation facilities within utility electric systems was warranted.

Over the last eighteen months, the commission has held several stakeholder workshops with interested persons to discuss draft rule language, receive comments, and explore options. The commission has prepared three sets of draft rules and submitted them to stakeholders for comment. The draft rules are now sufficiently developed to publish them as proposed rules, and proceed to the next phase of the rule making. When issuing a notice of proposed rules, agencies must provide a copy of the small business economic impact statement (SBEIS) prepared in accordance with chapter 19.85 RCW, or explain why an SBEIS was not prepared. *RCW 34.05.320 (1)-(k)*. The commission has prepared this SBEIS in compliance with the requirement.

II. SBEIS Requirements: The Regulatory Fairness Act, codified in chapter 19.85 RCW, provides that an agency must conduct an SBEIS "if the proposed rule will impose more than minor costs on businesses in an industry." *RCW 19.85.030*. An SBEIS is intended to assist agencies in evaluating any disproportionate impacts of the rule making on small businesses. A business is categorized as "small" under the Regulatory Fairness Act if the business employs fifty or fewer employees.

Under RCW 19.85.040(1), agencies must determine whether there is a disproportionate impact on small businesses in the industry, and under RCW 19.85.030(2), consider means to minimize the costs imposed on small businesses. In determining whether there is a disproportionate impact on small businesses, agencies must compare the cost of compliance for small businesses with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the rule using either the cost per employee, the cost per hour of labor, or the cost per $100 of sales revenue, as a basis for comparing costs. *See RCW 19.85.040(1)*.

III. SBEIS Evaluation Procedure: The commission has prepared an SBEIS for the proposed rules in Docket UE-112133 to determine whether the rule would impose a disproportionate impact on small businesses and, if so, to consider means to minimize costs to small businesses.

On December 21, 2012, the commission mailed a notice to all stakeholders interested in the commission's interconnection rule making, providing a link to the draft rules and an

opportunity to respond to an SBEIS questionnaire. The notice requested that the affected companies provide information concerning the cost impact of draft rules, and to provide specific information for each draft rule that the company identified as causing an impact. The commission received comments from a total of fifteen stakeholders, including the three investor-owned electric companies regulated by the commission: Puget Sound Energy (PSE), Pacific Power d/b/a PacifiCorp, and Avista. None of the investor-owned electric companies regulated by the commission are small businesses. The responses from the fifteen stakeholders are discussed below in Sections IV and V.

To conduct an SBEIS pursuant to the Regulatory Fairness Act, the commission must either determine the cost per employee, the cost per hour of labor or the cost per $100 of sales revenue. This rule making does not require that information to be known or required for the commission to effectively revise the interconnection rules under chapter 480-108 WAC. Therefore, although the results of this survey are based on limited quantitative data, there was a wealth of experience and history of interconnection activities and resultant impacts expressed by the commission's stakeholders throughout this process.

The commission conducted its analysis by considering the purpose of the rule, the reason for the new rule revisions, and the cost of compliance asserted by the companies and other stakeholders. Commission staff evaluated whether the estimated cost was reasonable or whether it is already a cost of compliance, and in weighing all the information, determined if any mitigation of the requirements of the draft rules were appropriate. Given the limitation of available economic data, the commission made every effort to evaluate the impacts of the revised rule, to ensure that the effect of the rule making is fair and does not impose a disproportionate burden on the affected companies.

IV. Compliance Requirements of the Draft Proposed Rule: The commission initiated this rule making in late December 2011, by issuing a CR-101 rule-making notice. The commission has taken the following steps in pursuing this rule making:

- The commission received comments on the CR-101 notice, summarized those comments, and held a workshop for interested parties on March 26, 2012.
- A stakeholder workgroup was formed to determine if representatives from private and public utilities, as well as other stakeholders, could reach agreement on rule changes.
- The stakeholder workgroup held a number of meetings and produced a July 13, 2012, report recommending new model rules to replace chapter 480-108 WAC.
- In late July 2012, the commission circulated the stakeholder workgroup's model rules and received comments on September 7, 2012.
- Based on the stakeholder workgroup's report and the September 7, 2012, comments, the commission determined that the existing rule language should be amended and the format be replaced, to the extent practicable, with the proposed model rule developed by the stakeholder's workgroup, and the September 7, 2012, comments.
- On November 21, 2012, the commission issued a notice requesting comments on draft amended rules, including an opportunity to respond to an SBEIS questionnaire.
- The commission received comments on December 21, 2012, from fifteen different parties that totaled about fifty-five pages.
- In incorporating the December 21 comments into the existing draft rule, it became clear that substantial editing and formatting changes were necessary.
- As a result of the December 21 comments, the commission issued a second set of draft rules on February 5, 2013, for stakeholder review and technical editing.
- On March 6, 2013, the commission received the last round of comments on the second set of draft rules and is now ready to publish and circulate proposed rules, filing a CR-102 with the office of the code reviser.

V. Results of Analysis: During the CR-101 comment and review process, the commission's analysis centered on the following:

- During the process the commission identified six major policy areas requiring analysis. The commission's analysis about the costs of rules resulting from resolution of these issues is as follows:

(1) External Disconnect Switch - The issue in the rule making stems from a dispute about the need for this switch as a safety requirement necessary for facility maintenance given the technological advances in automated shutoffs on modern inverters. Some stakeholders requesting removal of the requirement arguing that the requirement imposes additional costs, although not substantial, on the person interconnecting with a utility. In the proposed rules, the commission resolves this debate by providing that a utility may not require an external disconnect switch for small inverter systems unless such an external switch is required by the Washington state department of labor and industries (LNI) rules. Removing the utilities' discretion to require the switch installation imposes no additional costs on the person installing the equipment, or the utility in the proposed rule. Regardless of the commission's rule, if LNI require[s] an external disconnect switch, one must be installed. This provision does not result in any additional cost nor the shifting of costs to any other person or utility as a result of the interconnection. LNI has separate authority for determining if a disconnect switch or any other safety measures are required on distributed generation interconnections.

(2) Tiered Application System - The current rule includes a two-tiered application process with limited discretion to deviate from the prescribed paths. This requires very simple interconnection facilities to be subject to lengthy and costly application processes were found to be no longer necessary. The proposed rules include a more precise and targeted three-tier application process that allows for a high percentage of the smaller facilities to be processed in an expedited and fast track process, with much less expense and time.

This approach, developed with support of impacted stakeholders, results in economic saving to the small facility applicant with no cost shifting to any other persons or utilities.

(3) Standardization of Application Forms; Interconnect Agreements; and Fees - The current rules allowed for a number of application processes, interconnect agreements and fee structures. The proposed rules, developed with the support of impacted stakeholders, will standardize, to the extent possible, these application formats and fees. The economic impact of this standardization of forms and fees should provide some level of efficiency that would result in cost saving to all affected persons and utilities. The applicant will most likely be the recipient of the cost savings, with no cost shifting to any other person or utilities.

(4) Direct Transfer Trip - This mechanism is another safety device that is required in the current rules. It is a relatively expensive device for a single interconnect customer, especially small facility owners. The proposed rule allows for the direct transfer trip switch to be required only at the discretion of the utility for the larger, more complex distributed generation systems; and only after that utility provides a written justification for the need for the switch. This should result in fewer switches being required[,] a reduction in costs to the applicant[,] and no potential damage to the utility. The applicant will most likely be the recipient of the cost savings, with no cost shifting to any other parties.

(5) Third-Party Ownership - The issue of whether to include third-party ownership into the definition of a net-metered interconnection customer was raised by stakeholders promoting interconnection of distributed generation. This issue has a number of implications regarding the number and type of interconnections to the electric distribution system. The proposed rules allow for third-party ownership for net-metered interconnection systems. Allowing third-party ownership for net-metered customers may result in an increase in sales and installations of net-metered distributed generation systems, which could benefit those persons or companies marketing distributed energy systems in the state. If third-party ownership results in out-of-state firms taking business from in-state firms, there could be an economic impact on those in-state firms, however, this may also result in an increase in jobs and economic activity in the state. The utilities assert that allowing third-party ownership will increase the amount of net-metering in the state, which will increase the revenue loss the utilities are experiencing due to net-metering, which results in cost-shifting to non-net-metered customers. Utilities may request cost-recovery from the commission through decoupling or other mechanisms, to address this cost impact.

(6) Insurance Requirements - The final policy issue is whether to eliminate the insurance requirement for all interconnection customers at 100 kW or less, similar to the existing requirement for net-metered interconnection customers in Washington state. The comments allege some potential economic and liability impacts from eliminating such insurance requirements. This concern is valid in its theoretical assertion; however, the actual information from other western states, where this provision has been in effect for a number of years, indicates that added liability and cost impacts appear to be very small to zero. The only ability for cost shifting in this debate is with the shift of liability which information from other states indicates does not exist.

- In addition to these six issues, as a result of the last round of comments, the commission identified a minor concern regarding voltage regulation control in the context of interconnection of facilities. The investigation of this issue indicates it can be resolved through a notification procedure and without any increases in cost impacts to small businesses or cost shifting to other involved stakeholders.
- In conclusion, the results of the analysis based on stakeholder comments and the commission's ongoing work to resolve the three remaining policy issues indicates that none of these issues will result in disproportionate economic impact to small businesses in Washington state nor will there be any major cost shifting to any other persons or utilities as a result of the proposed rules.

VI. Proposed Rules That May Create Costs: The commission's analysis of the major policy issues in question in this rule making supports a finding that none of the proposed rule changes will result in disproportionate economic impacts on small businesses or any other stakeholders involved in these proceedings.

VII. Summary of Findings: Responses to the SBEIS survey and other information from the stakeholders leads the commission to find that there is very little probability of imposing more than minor costs on electric generation and distribution related businesses operating in Washington state. In fact, the proposed rules have a higher probably [probability] of reducing costs over the long term to small and large electric generation and distribution related businesses in Washington state.

VIII. Mitigation: The commission's analysis supports a finding of no disproportionate economic impacts to small businesses or other stakeholders involved in the proposed rules. As the analysis indicates there is a high probably [probability] of cost savings to most involved parties in implementing these rules, including small businesses, therefore there is no need for any mitigation measures to be considered.

IX. Conclusion: Chapter 19.85 RCW requires that an agency prepare an SBEIS to assess whether proposed rules would impose more than minor costs on businesses in an industry, in this case, electric companies associated with interconnection facilities on electric distributions systems. Staff mailed surveys designed to obtain information about the cost of compliance with the draft proposed rules to all the stakeholders and companies known to the commission to be involved in or affected by this rule making. Staff received responses from less than twenty stakeholders and/or companies affected. Only a few comments were received indicating any indications of direct economic impacts.

The commission has determined the proposed revisions to chapter 480-108 WAC are necessary and prudent to conduct its statutory responsibilities and, in addition, the analysis indicates there is little or no possibility of these proposed rules causing cost increases to small or other businesses in the implementing of these rules. In addition, the commission has

determined there is a high probability of cost savings to most involved parties, including small businesses, in implementing these rules.

Therefore, based on all information collected throughout the rule-making process to date, the commission concludes there is no new major economic impact that will result from this rule making. In addition, the commission concludes that, at least, minor long-term economic improvements and saving will result from this rule making.

A copy of the statement may be obtained by contacting Washington Utilities and Transportation Commission, Records Center, Docket UE-112133, 1300 South Evergreen Park Drive S.W., P.O. Box 47250, Olympia, WA 98504-7250, phone (360) 664-1234, fax (360) 586-1150, e-mail records@utc.wa.gov.

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 rules are not significant legislative rules of the sort referenced in RCW 34.05.328(5).

April 16, 2013
Steven V. King
Acting Executive Director
and Secretary

AMENDATORY SECTION (Amending Docket UE-060649, General Order 545, filed 9/27/07, effective 10/28/07)

WAC 480-108-001 Purpose and scope. (1) ((~~The purpose of~~)) This chapter ((~~is two-fold:~~

~~(a) Part 1 of this chapter~~)) establishes rules for:

(a) Determining the charges, terms and conditions governing the interconnection of customer-owned electric generating facilities with a nameplate generating capacity of no more than ((~~300 kilowatts (kW)~~)) 20 megawatts (MW) to the electric system of an electrical company over which the commission has jurisdiction.

(b) ((~~Part 2 of this chapter establishes rules~~)) Requiring each electrical company to file interconnection service tariffs for interconnection of some electric generating facilities ((~~with a nameplate generating capacity greater than 300 kW but no more than 20 megawatts (MW)~~)) to the electric system of an electrical company over which the commission has jurisdiction. The terms and conditions in such interconnection service tariffs must be either equivalent in all procedural and technical respects with the electrical company's interconnection service offered under its open access transmission tariff approved by the Federal Energy Regulatory Commission, or they must ((~~comply with a specified set of requirements set out in WAC 480-108-090~~)) be consistent with this chapter.

(2) These rules are intended:

(a) To be consistent with the requirements of chapter 80.60 RCW, Net metering of electricity;

(b) To comply with Section 1254 of the Energy Policy Act of 2005, Pub. L. No. 109-58 (2005) that amended section 111(d) of the Public Utility Regulatory Policy Act (PURPA) relating to Net Metering (subsection 11) and Interconnection (subsection 15)((~~; and~~

~~(c) To promote the purposes of RCW 82.16.120 (effective July 1, 2005)~~)).

(3) This chapter governs the terms and conditions under which an interconnection customer's generating facility, including without limitation net-metered facilities, will interconnect with, and operate in parallel with, the ((~~electrical company's~~)) electric system. This chapter does not govern the settlement, purchase or delivery of any power generated by an interconnection customer's net-metered or production-metered generating facility.

(4) This chapter does not govern interconnection of, or electrical company services to, PURPA qualifying facilities pursuant to chapter 480-107 WAC.

(5) This chapter does not govern standby generators designed and used only to provide power to the customer when ((~~the local electric distribution~~)) electrical company service is interrupted and that operate in parallel with the electric ((~~distribution company~~)) system for less than 0.5 seconds both to and from emergency service.

(6) The specifications and requirements in these rules are intended to mitigate possible adverse impacts caused by a generating facility on electrical company equipment and personnel and on other customers of the electrical company. They are not intended to address protection of the interconnection customer's generating facility, facility personnel, or internal load. It is the responsibility of the interconnection customer to comply with the requirements of all appropriate standards, codes, statutes and authorities to protect its own facilities, personnel, and loads.

AMENDATORY SECTION (Amending Docket UE-060649, General Order 545, filed 9/27/07, effective 10/28/07)

WAC 480-108-005 Application of rules. (1) ((~~The rules in~~)) This chapter ((~~apply~~)) applies to any electrical company ((~~that is~~)) subject to commission jurisdiction under RCW 80.04.010 and chapter 80.28 RCW. ((~~These rules~~)) This chapter also ((~~include various~~)) includes eligibility and other requirements applicable to existing or potential interconnection customers.

(2) This chapter governs interconnections subject to the jurisdiction of the commission and does not govern interconnections subject to the jurisdiction of the Federal Energy Regulatory Commission.

(3) The tariff provisions filed by electrical companies must conform to these rules. If the commission accepts a tariff that conflicts with these rules, the acceptance does not constitute a waiver of these rules unless the commission specifically approves the variation consistent with WAC 480-100-008.

(4) Electrical companies shall modify existing tariffs, if necessary, to conform to these rules. This includes, but is not limited to, tariffs implementing chapter 80.60 RCW, Net metering of electricity.

(5) Disputes that arise under this chapter will be addressed in accordance with chapter 480-07 WAC. Any existing or potential interconnection customer may ask the commission to review the interpretation or application of these rules by an electrical company by making an informal

complaint under WAC 480-07-910, Informal complaints, or by filing a formal complaint under WAC 480-07-370, Pleadings—General.

AMENDATORY SECTION (Amending Docket UE-060649, General Order 545, filed 9/27/07, effective 10/28/07)

WAC 480-108-010 Definitions. "Application" means the written notice as defined in WAC 480-108-030 that the interconnection customer provides to the electrical company to ((~~initiate~~)) start the interconnection process.

"Business day" means Monday through Friday excluding official federal and state holidays.

"Certificate of completion" means the form described in WAC 480-108-050(2) that must be completed by the interconnection ((~~customer and the~~)) customer's electrical inspector ((~~having jurisdiction over the installation of the facilities~~)) and approved by the electrical company indicating completion of installation and inspection of the interconnection. ((~~As provided in WAC 480-108-050, the certificate of completion must be reviewed and approved, in writing, by the electrical company before the interconnection customer's generation facility may be connected and operated in parallel with the electrical company's electrical system.~~))

"Commission" means the Washington utilities and transportation commission.

"Electric system" means all electrical wires, equipment, and other facilities owned by the electrical company ((~~that are~~)) used to transmit electricity to customers.

"Electrical company" means any public service company, as defined by RCW 80.04.010, engaged in the generation, distribution, sale or furnishing of electricity and subject to the jurisdiction of the commission.

"Generating facility" means a source of electricity owned, or whose electrical output is owned, by the interconnection customer that is located on the interconnection customer's side of the point of common coupling, and all ancillary and appurtenant facilities, including interconnection facilities, which the interconnection customer requests to interconnect to the ((~~electrical company's~~)) electric system.

((~~"~~))**"Grid network distribution system"** means electrical service from a distribution system consisting of two or more primary circuits from one or more substations or transmission supply points ((~~arranged such~~)) that ((~~they~~)) collectively feed secondary circuits serving more than one location and more than one electrical company customer.

((~~**"Interconnection customer"** means the person, corporation, partnership, government agency, or other entity that owns and operates a generating facility interconnected or requested to be interconnected to the electrical company's electric system. The interconnection customer may assign to another party responsibility for compliance with the requirements of this rule only with the express written permission of the electrical company.~~))

"Initial operation" means the first time the generating facility ((~~is~~)) operates in parallel ((~~operation~~)) with the electric system.

"In-service date" means the date on which the generating facility and any related facilities are complete and ready for service, even if the generating facility is not placed in service on or by that date.

"Interconnection" means the physical connection of a generating facility to the electric system so that parallel operation may occur.

"Interconnection agreement" means an agreement between an electrical company and the interconnection customer which outlines the interconnection requirements, costs and billing agreements, insurance requirements, and ongoing inspection, maintenance, and operational requirements.

"Interconnection customer" means the person, corporation, partnership, government agency, or other entity that proposes to interconnect, or has executed an interconnection agreement with the electrical company and that:

(a) Owns a generating facility interconnected to the electric system;

(b) Is a customer-generator of net-metered facilities, as defined in RCW 80.60.010(2); or

(c) Is otherwise allowed by law. The interconnection customer is responsible for the generating facility, and may assign to another party responsibility for compliance with the requirements of this rule only with the express written permission of the electrical company. A net metered interconnection customer may lease from, or purchase power from, a third-party owner of an on-site generating facility.

"Interconnection facilities" means the electrical wires, switches and other equipment owned by the electrical company or the interconnection customer and used to interconnect a generating facility to the electric system. Interconnection facilities are located between the generating facility and the point of common coupling. Interconnection facilities do not include system upgrades.

"Islanding" means the condition that occurs when power from the electric system is no longer present and the generating facility continues exporting energy onto the electric system.

"Minor modification" means a physical modification to the electric system with a cost of no more than ten thousand dollars.

"Model interconnection agreement" means a written agreement including ((~~standardized~~)) standard terms and conditions ((~~that govern~~)) for the interconnection of generating facilities ((~~pursuant to~~)) under this chapter. The model interconnection agreement may be modified to accommodate terms and conditions specific to individual interconnections, subject to the conditions set forth in these rules.

"Nameplate capacity" means the manufacturer's output capacity of the generating facility. For a system that uses an inverter to change DC energy supplied to an AC quantity, the nameplate capacity will be the manufacturer's AC output rating for the inverter(s). Nameplate capacities shall be measured in the unit of kilowatts.

"Net metering" means measuring the difference between the electricity supplied by an electrical company and the electricity generated by a generating facility that is fed back to the electrical company over the applicable billing period.

"Network protectors" means devices installed on a spot network distribution system designed to detect and inter-

rupt reverse current-flow (flow out of the network) as quickly as possible, typically within three to six cycles.

"Parallel operation" or **"operate in parallel"** means the synchronous operation of a generating facility while interconnected with an ((~~electrical company's~~)) electric system.

"Point of common coupling" or **"PCC"** means the point where the generating facility's local electric power system connects to the ((~~electrical company's~~)) electric system, such as the electric power revenue meter or at the location of the equipment designated to interrupt, separate or disconnect the connection between the generating facility and electrical company. The point of common coupling is the point of measurement for the application of ((~~IEEE 1547, clause 4~~)) Institute of Electrical and Electronics Engineers standard (IEEE) 1547.

"PURPA qualifying facility" means a generating facility that meets the criteria specified by the Federal Energy Regulatory Commission (FERC) in 18 C.F.R. Part 292 Subpart B and that sells power to an electrical company under chapter 480-107 WAC.

"Spot network distribution system" means electrical service from a distribution system consisting of two or more primary circuits from one or more substations or transmission supply points arranged such that they collectively feed a secondary circuit serving a single location (e.g., a large facility or campus) containing one or more electrical company customers.

"System upgrades" means the additions, modifications and upgrades to the ((~~electrical company's electrical~~)) electric system at or beyond the point of common coupling necessary to ((~~facilitate the interconnection of~~)) interconnect the generating facility. System upgrades do not include interconnection facilities.

"Third-party owner" means an entity that owns a generating facility located on the premises of an interconnection customer and has entered into a contract with the interconnection customer for provision of power from the generating facility. When a third-party owns a net-metered generating facility, the interconnection customer maintains the net metering relationship with the electrical company. The electrical company shall not allow a third-party owner to resell the electricity produced from a net metered generating facility.

PART 1: INTERCONNECTION OF GENERATION FACILITIES ((~~WITH NAMEPLATE CAPACITY RATING OF 300 KW OR LESS~~)) UNDER TIER 1, TIER 2, OR TIER 3 PROCEDURES

AMENDATORY SECTION (Amending Docket UE-060649, General Order 545, filed 9/27/07, effective 10/28/07)

WAC 480-108-015 Scope of Part 1. (1) The provisions in Part 1 of this chapter apply to interconnections, and to applications to interconnect, ((~~customer-owned~~)) generating facilities with a nameplate capacity ((~~rating~~)) of ((~~300 kW~~)) 20 MW or less to an ((~~electrical company's electrical~~)) electric system under this chapter. Interconnections fall within three categories - Tier 1, 2, and 3, which differ by capacity and complexity. This section defines the applicability and technical standards for these interconnection categories.

(2) This chapter facilitates the interconnection process for both the interconnection customer and the electrical company by classifying interconnections based on shared characteristics. As smaller facilities with appropriate interconnection technologies are expected to have a much lower impact on the electric system, expedited processes and standardized interconnection requirements are allowed for these interconnections. Larger generating facilities using different generating and interconnection technologies can have significant impacts on the electric system, such that more in-depth review is required and additional technical requirements may apply.

(3) Tiers 1, 2, and 3 listed below contain initial applicability tests that determine which tier process an interconnection customer and electrical company will use, along with process descriptions, technical requirements and completion criteria for each tier. Tier 3 facilities include a set of alternative service tariffs and other requirements. Additionally, all facilities must meet the appropriate requirements of this chapter, and the rules and standards adopted by reference in WAC 480-108-999.

AMENDATORY SECTION (Amending Docket UE-060649, General Order 545, filed 9/27/07, effective 10/28/07)

WAC 480-108-020 Eligibility and technical ((~~standards for~~)) requirements for Tier 1, Tier 2, and Tier 3 interconnection. (((~~1) General interconnection requirements.~~

~~(a) The interconnection of a generating facility with the electrical company's electric system, the modification of a generating facility that is currently interconnected to the electrical company's electric system, or the modification of an existing interconnection must meet all minimum technical specifications applicable, in their most current approved version, as set forth in WAC 480-108-999.~~

~~(b) Interconnection of a generation facility with a nameplate capacity rating of 300 kW or less must comply with all applicable requirements in Table 1.~~

Table 1. 300 kW Capacity or Less.

	Single Phase		Three Phase	
Feature	< 50 kW Inverter based	< 50 kW Noninverter based	< 300 kW Inverter based	< 300 kW Noninverter based
IEEE 1547 compliant	X	X	X	X
UL 1741 listed	X		X	
Interrupting devices (capable of interrupting maximum available fault current)	X (8)	X	X (8)	X
Interconnection disconnect device (manual, lockable, visible, accessible)	X (1)	X	X	X
System protection		X (3)(4)(6)		X (3)(4)(5)(6)
Over-voltage trip	X (8)	X	X (8)	X
Under-voltage trip	X (8)	X	X (8)	X
Over/under frequency trip	X (8)	X	X (8)	X
Automatic synchronizing check		X		X
Ground over-voltage or over-current trip for utility system faults				X (2)
Power factor		X (7)		X (7)

Notes:
X - Required feature (blank = not required).
(1) - Electrical company may choose to waive this requirement.
(2) - May be required by electrical company; selection based on grounding system.
(3) - No single point of failure shall lead to loss of protection.
(4) - All protective devices shall fully meet the requirements of American National Standards Institute C37.90.
(5) - Electrical company will specify the transformer connection.
(6) - It is the customer's responsibility to ensure that its system is effectively grounded as defined by IEEE Std. 142 at the point of common coupling.
(7) - Variance may be allowed based upon specific requirements per electrical company review. Charges may be incurred for losses.
(8) - UL 1741 listed equipment provides required protection.

(((c) Any single or aggregated generating facility with a capacity greater than 50 kW requires a three-phase interconnection.

(d) The specification and requirements in this section are intended to mitigate possible adverse impacts caused by the generating facility on electrical company equipment and personnel and on other customers of the electrical company. The specifications and requirements in this section are not intended to address protection of the generating facility or its internal load, or generating facility personnel. The interconnection customer is responsible for complying with the requirements of all appropriate standards, codes, statutes, and authorities to protect its own facilities, personnel, and loads.

(e) The specifications and requirements in this section apply generally to the interconnection to an electrical company's electric system of customer-owned and operated electric equipment and any other facilities or equipment not owned by the electrical company to which interconnection agreement(s) apply throughout the period encompassing the interconnection customer's installation, testing and commissioning, operation, maintenance, decommissioning and removal of equipment. The electrical company may verify compliance at any time, with reasonable notice.

(f) The electrical company may refuse to establish or maintain interconnection with any interconnection customer that fails to comply with the requirements in (f)(i), (ii) and (iii) of this subsection. However, at its sole discretion, the electrical company may approve alternatives that satisfy the intent of, and/or may excuse compliance with, any specific elements of these requirements except local, state and federal building codes.

(i) Code and standards. All interconnections must conform to all applicable codes and standards for safe and reliable operation. Among these are the National Electric Code (NEC); National Electric Safety Code (NESC); the standards of the Institute of Electrical and Electronics Engineers (IEEE); the standards of the North American Electric Reliability Corporation (NERC); the standards of the Western Electricity Coordinating Council (WECC); American National Standards Institute (ANSI); Underwriters Laborato-

~~ries (UL) standards; local, state and federal building codes, and any electrical company's written electric service requirement approved by the commission. Electrical companies may require verification that an interconnection customer has obtained all applicable permit(s) for the equipment installations on its property.~~

~~(ii) Safety. All safety and operating procedures for interconnection facilities must comply with the Occupational Safety and Health Administration (OSHA) Standard at 29 C.F.R. 1910.269, the NEC, Washington Administrative Code (WAC) rules, the Washington Industrial Safety and Health Administration (WISHA) Standard, and equipment manufacturer's safety and operating manuals.~~

~~(iii) Power quality. Installations must be in compliance with all applicable standards including, without limitation, IEEE Standard 519 Harmonic Limits, and IEEE Standard 141 Flicker as measured at the PCC.~~

~~(2) Specific interconnection requirements.~~

~~(a) The electrical company must verify that the interconnection customer has furnished and installed on its side of the meter, a UL-approved safety disconnect switch that can fully disconnect the interconnection customer's generating facility from the electrical company's electric system. The disconnect switch must be located adjacent to electrical company meters and shall be of the visible break type in a metal enclosure that can be secured by a padlock. The disconnect switch must be accessible to electrical company personnel at all times.~~

~~(b) The requirement in (a) of this subsection may be waived by the electrical company if the interconnection customer:~~

~~(i) Provides interconnection facilities that the interconnection customer can demonstrate, to the satisfaction of electrical company, perform physical disconnection of the generating equipment supply internally; and~~

~~(ii) Agrees that its service may be disconnected entirely if generating equipment must be physically disconnected for any reason.~~

~~Such waiver granted by the electrical company to the interconnection customer must be explicit and in writing.~~

~~(c) The electrical company has the right to disconnect the generating facility at the disconnect switch:~~

~~(i) When necessary to maintain safe electrical operating conditions;~~

~~(ii) If the generating facility does not meet required standards; or~~

~~(iii) If the generating facility at any time adversely affects or endangers any person, the property of any person, the electrical company's operation of its electric system or the quality of electrical company's service to other customers.~~

~~(d) Nominal voltage and phase configuration of interconnection customer's generating facility must be compatible with the electrical company's system within generally accepted engineering standards including without limitation IEEE Standards 141 and 519 at the point of common coupling.~~

~~(e) The electrical company must verify on the basis of evidence provided by the interconnection customer that a generating facility interconnected to a grid network distribution system or a spot network distribution system will not impair public safety or quality of service to the electrical company's other customers as a result of reverse current flow through the electrical company's network protectors.~~

~~(f) All instances of interconnection to spot network distribution systems require review, studies as necessary, and written approval by the electrical company.~~

~~(g) All instances of interconnection to grid network distribution systems require review, studies as necessary, and written approval by the electrical company.~~

~~(h) Closed transition transfer switches are not allowed in network distribution systems.~~

~~(3) Specifications applicable to all inverter-based interconnections. In addition to the requirements contained in subsections (1) and (2) of this section, the interconnection of any inverter-based generating facility with the electrical company's electric system, or the modification of an existing interconnection with an inverter-based generating facility must meet the following additional technical specifications, in their most current approved version:~~

~~(a) IEEE Standard 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems;~~

~~(b) UL Standard 1741, Inverters, Converters, and Controllers for Use in Independent Power Systems. Equipment must be UL listed; and~~

~~(c) IEEE Standard 929, IEEE Recommended Practice for Utility Interface of Photovoltaic (PV) Systems.~~

~~(4) In addition to the requirements in subsections (2) and (3) of this section, all noninverter-based interconnections and all inverter-based interconnections failing to meet the requirements of subsection (3) of this section may require more detailed electrical company review. The electrical company must demonstrate the need for additional testing and approval of equipment if the same equipment has been tested and approved previously for any of the electrical company's interconnection customers. Electrical companies may require interconnection customers to pay for needed testing and approval of the equipment proposed to be installed to ensure compliance with applicable technical specifications, in their most current approved version, including:~~

~~(a) IEEE Standard 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems, for systems 10 MVA or less; and~~

~~(b) ANSI Standard C37.90, IEEE Standard for Relays and Relay Systems Associated with Electric Power Apparatus.~~

~~(5) The electric company may require interconnection customers proposing noninverter-based interconnection to submit a power factor mitigation plan for electrical company review and approval.~~)) (1) **Applicability.**

(a) **Tier 1.** Interconnection of a generating facility will use Tier 1 processes and technical requirements if the proposed generating facility meets all of the following:

(i) Uses inverter-based interconnection equipment;

(ii) Is single phase;

(iii) Has a nameplate capacity of 25 kW or less;

(iv) Is proposed for interconnection at secondary voltages (600 V class);

(v) Requires no construction or upgrades to electrical company facilities, other than meter changes;

(vi) The aggregated generating capacity on the service wire does not exceed the service wire capability;

(vii) The aggregated generating capacity on the transformer secondary does not exceed the nameplate of the transformer;

(viii) If proposed to be interconnected on a center tap neutral of a 240 volt service, its addition shall not create an imbalance between the two sides of the 240 volt service of more than 5 kVA; and

(ix) The aggregated nameplate capacity of all generating facilities on any line section does not exceed fifteen percent of the line section annual peak load as most recently measured or calculated for that line section, or fifteen percent of the circuit annual peak load as most recently measured or calculated for the circuit. For the purposes of this subsection:

(A) "All generating facilities" means all interconnected generating facilities, the proposed generating facility, and all other proposed generating facilities already in the queue defined in WAC 480-108-030(7); and

(B) "Line section" means that portion of an electric system connected to the generating facility and bounded by sectionalizing devices or the end of the distribution line.

(b) **Tier 2.** Interconnection of a generating facility will use Tier 2 processes and technical requirements if the proposed generating facility meets all of the following criteria:

(i) It does not qualify for Tier 1 interconnection applicability requirements;

(ii) Has a nameplate capacity of 500 kW or less;

(iii) Is proposed for interconnection to an electric system distribution facility operated at or below 38 kV class;

(iv) Is not a synchronous generator;

(v) If it is proposed to be interconnected on a shared secondary, the aggregate generating capacity on the shared secondary, including the proposed generating facility, must not exceed the lesser of the service wire capability or the nameplate of the transformer;

(vi) The aggregated nameplate capacity of all generating facilities on any line section does not exceed fifteen percent of the line section annual peak load as most recently measured or calculated for that line section, or fifteen percent of the circuit annual peak load as most recently measured or calculated for the circuit. For the purposes of this subsection:

(A) "All generating facilities" means all interconnected generating facilities, the proposed generating facility, and other proposed generating facilities already in the queue defined in WAC 480-108-030(7); and

(B) "Line section" means that portion of an electric system connected to the generating facility and bounded by sectionalizing devices or the end of the distribution line;

(vii) Any upgrades required to the electric system must fall within the requirements in subsection (2)(b)(ii) of this section;

(viii) For interconnection of a proposed generating facility to the load side of spot network protectors, the proposed generating facility must utilize an inverter. The aggregate nameplate capacity of all inverter-based systems must not exceed the smaller of five percent of a spot network's maximum load or 50 kW;

(ix) The aggregated nameplate capacity of existing and proposed generating facilities must not contribute more than ten percent to the distribution circuit's maximum fault current at the point on the primary voltage distribution line nearest the point of interconnection; and

(x) The generating facility's point of interconnection must not be on a circuit where the available short circuit current, with or without the proposed generating facility, exceeds 87.5 percent of the interrupting capability of the electrical company's protective devices and equipment (including substation breakers, fuse cutouts, and line reclosers).

(c) **Tier 3.** Interconnection of a generating facility will use Tier 3 processes and technical requirements if the proposed generating facility does not qualify for Tier 1 or Tier 2.

(2) **Technical requirements.**

(a) **Tier 1.**

(i) The purpose of the protection required for Tier 1 generating facilities is to prevent islanding and to ensure that inverter output is disconnected when the electric system is deenergized.

(ii) An interrupting device must be provided which is capable of safely interrupting the maximum available fault current (typically the maximum fault current is that supplied by the electrical company).

(iii) The generating facility must operate within the voltage and power factor ranges specified by the electrical company and as allowed by Underwriters Laboratories standard (UL) 1741.

(iv) **Disconnect switch.** Unless the Washington state department of labor and industries requires a visible, lockable AC disconnect switch, an electrical company shall not require a visible, lockable AC disconnect switch for interconnection customers installing and operating an inverter-based UL 1741 certified system interconnected through a self-contained socket-based meter of 320 amps or less.

(b) **Tier 2.**

(i) In all cases, the interconnection facilities must isolate the generating facility from the electric system as specified by IEEE 1547, and the interconnection agreement. The interconnection customer shall prevent its generating facility equipment from automatically reenergizing the electric system as specified by IEEE 1547, and the interconnection agreement. For inverter-based systems, the interconnecting facility must comply with IEEE 1547, UL 1741 and the interconnection agreement set forth by the electric utility. For noninverter based systems a separate protection package will be required to meet IEEE 1547 and the interconnection agreement set forth by the electric utility.

(ii) If the generating facility fails to meet the characteristics for Tier 2 applicability, but the electrical company determines that the generating facility could be interconnected safely if minor modifications to the transmission or distribution system were made (for example, changing meters, fuses, or relay settings), then the electrical company may offer the interconnection customer a good-faith, nonbinding estimate of the costs of such proposed minor modifications. If the interconnection customer authorizes the electrical company to proceed with the minor modifications and agrees to pay the entire cost of the modifications, then the electrical company may approve the application using Tier 2 processes and technical requirements.

(iii) For proposed generating facilities 50 kW and greater, three-phase connection may be required by the electric company.

(iv) For three-phase induction generator interconnections, the electrical company may, in its sole discretion, specify that ground fault protection must be provided. Use of ground overvoltage or ground overcurrent elements may be specified, depending on whether the electrical company uses three-wire or effectively grounded four-wire systems.

(v) If the generating facility is single-phase and interconnected on a center tap neutral of a 240 volt service, it must not create an imbalance between the two sides of the 240 volt service of more than 5 kW.

(vi) If the generating facility is proposed for interconnection at primary (greater than 600 V class) distribution voltages, the connection of the transformer(s) used to connect the generating facility to the electric system must be the electrical company's standard connection. This is intended to limit the potential for creating overvoltages on the electric system for a loss of ground during the operating time of functions designed to prevent islanding.

(vii) For primary-voltage connections to three-phase, three-wire systems, the transformer primary windings must be connected phase to phase.

(viii) For primary-voltage connections to three-phase, four-wire systems, the transformer primary windings may be connected phase to neutral.

(c) **Tier 3.**

(i) In all cases, the interconnection facilities must isolate the generating facility from the electric system as specified by IEEE 1547, and the interconnection agreement. The interconnection customer shall prevent its generating facility equipment from automatically reenergizing the electric system as specified by IEEE 1547, and the interconnection agreement. For inverter-based systems, the interconnecting facility must comply with IEEE 1547, UL 1741 and the interconnection agreement set forth by the electric utility. For noninverter based systems a separate protection package will be required to meet IEEE 1547 and the interconnection agreement set forth by the electric utility.

(ii) The system must be designed to prevent a single point of failure from causing a loss of protective functions. This can be achieved by installing multiple discrete-function relays providing the required functions as a set, or by installing redundant multifunction devices, each of which provides all of the required functions.

(iii) Ground fault protection must be provided, unless waived by the utility in writing. Use of ground overvoltage or ground overcurrent elements may be specified, depending on whether the utility uses three-wire or effectively grounded four-wire systems.

(iv) Breaker failure detection must be provided, and secondary action initiated in the event that the interconnection breaker fails to clear for the trip condition, consistent with utility practice. This may require installation of dual generator breakers tripped by similar interconnection relays, or a main and backup relay with the same functions and zones of protection, one of which trips the generator breaker and one which trips the main incoming breaker.

(v) **System impact studies.** The electrical company may require a feasibility, system impact, facilities, or other study as described in WAC 480-108-030 (10)(c). These studies are intended to quantify the impacts of the generating facility on the electric system, and may include an analysis of power flow, stability, metering, relay/protection, and communications/telemetry. Acceptance of the results of these studies by the interconnection customer is a condition of approval of the application because the studies provide the basis for the detailed technical requirements for interconnection.

AMENDATORY SECTION (Amending Docket UE-060649, General Order 545, filed 9/27/07, effective 10/28/07)

WAC 480-108-030 Application for interconnection. (1) **Standard application.**

(a) The electrical company must file a standard application form ((~~of application~~)) with the commission((~~, which the~~)) that potential interconnection ((~~customer seeking to interconnect a generating facility~~)) customers must use to request interconnection under ((~~Part 1 of~~)) this chapter ((~~must fill out and submit to the electrical company along with~~)). The interconnection customer's request must include the application fee established ((~~according to~~)) in subsection (((~~4~~))) (5) of this section. The electrical company must make the standard application form available on its web site and, unless unreasonably burdensome, allow for submission via the internet.

(b) **Notification of potential voltage irregularities.** Application materials shall include a notice explaining that voltage may be routinely at the upper limits of the range described in WAC 480-100-373, and this may limit the ability of a generating facility to export power to the electric system.

(2) **Point of contact and information disclosure.** The electrical company ((~~will~~)) must designate a point of contact and publish a telephone number and((~~/or~~)) web site address for the ((~~unique~~)) purpose of assisting potential interconnection customers. The electrical company must comply with reasonable requests for information including relevant system studies, interconnection studies, and other materials useful for ((~~an~~)) a potential interconnection customer to understand the circumstances of an interconnection at a particular point on the ((~~electrical company's~~)) electric system, to the extent provision of such information does not violate confidentiality provisions of prior electrical company agreements.

(3) ((~~Prior to submitting its interconnection request,~~)) When a potential interconnection customer ((~~may ask~~)) requests interconnection from the electrical company ((~~whether and how~~)), the ((~~proposed~~)) potential interconnection ((~~is subject to this chapter. The~~)) customer must conform to the rules and regulations in effect and on file with the electrical company ((~~must respond within fifteen business days~~)). The potential interconnection customer seeking to interconnect a generating facility under this chapter must fill out and submit, electronically or otherwise, a signed application form to the electrical company. Information on the form must be accurate and complete.

(4) **Phased installation.** When a project is designed for phased installation, the potential interconnection customer may choose to submit an application for approval of the final project size, or may choose to submit applications at each phase of the project. Each application will be evaluated based on the nameplate capacity stated on the application. If separate applications are submitted for each phase of a project, a separate application fee is required for each phase of the project.

(a) If the potential interconnection customer applies with a final phased in project size and the electrical company approves the application, then the potential interconnection customer must notify the electrical company as additional units are added.

(b) If a potential interconnection customer submits an application for an individual phase of a project, the potential interconnection customer may not develop the project beyond the size approved.

((~~(4)~~)) (5) **Application fees.** The electrical company must establish a nonrefundable interconnection application fee set according to facility size to be paid by the interconnection customer to the electrical company when the interconnection customer submits its application. If an application is withdrawn, the application fee shall be applied to a request for reapplication submitted within thirty business days of the withdrawal. The fee, intended to cover the costs of processing the application, will be no greater than:

(a) One hundred dollars for facilities 0 to 25 kilowatts (kW); ((~~and~~))

(b) Five hundred dollars for facilities 26 to ((~~300~~)) 500 kW((~~,~~)); and

(((~~(5) Interconnection application.~~)) (c) One thousand dollars for facilities 500 kW to 20 MW.

(6) **Nondiscriminatory processing and evaluation.** All generating facility interconnection applications will be processed and evaluated by the electrical company in a nondiscriminatory manner, consistent with other service requests and in a manner that does not delay other service requests. The electrical company must ((~~stamp all interconnection requests to~~)) document the date and time that all interconnection applications are received. ((~~The original~~))

(7) **Timelines.** The timeline for the application review process begins when the interconnection application and application fee are received. A project enters the queue on the date ((~~and time stamp affixed~~)) that the electrical company sends a notice of complete application to the interconnection ((~~request will serve~~)) customer, as ((~~the beginning point for purposes of~~)) described in this section. An electrical company may send any ((~~timetables in the application and review process~~)) notice described in this section by electronic mail.

(((~~(6) Application evaluation. Upon~~))

(8) **Tier 1 applications.**

(a) **Tier 1 standard application.** Deviations from standard business practices described in this subsection are not violations of this rule. The electrical company's standard business practice for Tier 1 interconnection applications, shall:

(i) Offer a single application for interconnection, net metering and production metering; and

(ii) Include, in the same package as the notice of approval, an executable interconnection agreement and if applicable:

(A) The dollar amount due to complete the interconnection including the cost of the production meter;

(B) An executable net metering agreement;

(C) Notice of the steps the interconnection customer must take to receive any renewable energy production incentive payments administered by the electrical company;

(D) Any other information likely to expedite the remainder of the interconnection process.

(b) **Tier 1 application timeline.**

(i) **Notice of receipt.** Notice of receipt of an ((~~interconnection~~)) application((~~,~~)) and application fee shall be sent by the electrical company ((~~must~~)) to the interconnection customer within five business days.

(ii) **Notice of complete application.**

(A) The electrical company shall notify the interconnection customer ((~~within ten business days~~)) if the application is complete or incomplete, and if incomplete specifying any deficiencies, within ten business days after the notice of receipt of application.

(B) When an electrical company sends a notice of an incomplete application to an interconnection customer, the interconnection customer shall provide a complete application to the electrical company within fifteen business days of the notice. The electrical company may, but is not required to, grant an extension in writing. If the interconnection customer fails to complete the application, the application expires at the end of the incomplete application period.

(iii) **Approval or denial.** Within twenty business days after a complete application notice is sent to an interconnection customer, the electrical company shall approve, approve with conditions, or deny the application with written justification. The electrical company shall include, in the same package as the notice of approval, an executable interconnection agreement and any other information likely to expedite the remainder of the interconnection process. If delays result from unforeseen circumstances, customer variance requests, or other incentive program approval requirements, the customer shall be promptly notified.

(iv) **Operation.** An interconnection customer must interconnect and operate the generating facility within one year from the date of approval of the application, or the application expires, unless the electrical company, in its sole discretion, grants an extension in writing.

(9) **Tier 2 application timeline.**

(a) **Notice of receipt.** Notice of receipt of an application and application fee shall be sent by the electrical company to the interconnection customer within five business days.

(b) **Notice of complete application.**

(i) The electrical company shall notify the interconnection customer if the application is complete or incomplete, and if incomplete specifying any deficiencies, within twenty business days after notice of receipt of application.

(ii) When an electrical company sends a notice of an incomplete application to an interconnection customer, the interconnection customer shall provide a complete application to the electrical company within fifteen business days of the notice. The electrical company may, but is not required

to, grant an extension in writing. If the interconnection customer fails to complete the application, the application expires at the end of the incomplete application period.

(c) **Approval or denial.** Within thirty business days after a complete application notice is sent to an interconnection customer, the electrical company shall approve, approve with conditions, or deny the application with written justification. If delays result due to unforeseen circumstances, customer variance requests, or incentive program approval requirements, the interconnection customer shall be promptly notified.

(d) **Offer of agreement.** The electrical company must offer the interconnection customer an executable interconnection agreement within five business days of the notification of approval described in (c) of this subsection.

(e) **Operation.** An interconnection customer must interconnect and operate the generating facility within one year from the date of approval of the application, or the application expires, unless the electrical company, in its sole discretion, grants an extension in writing.

(10) **Tier 3 application timeline.**

(a) **Notice of receipt.** Notice of receipt of an application and application fee shall be sent by the electrical company to the interconnection customer within five business days.

(b) **Notice of complete application.**

(i) The electrical company shall notify the interconnection customer if the application is complete or incomplete, and if incomplete specifying any deficiencies, within ten business days after notice of receipt of application.

(ii) When an electrical company sends a notice of an incomplete application to an interconnection customer, the interconnection customer shall provide a complete application to the electrical company within thirty business days of the notice. The electrical company may, but is not required to, grant an extension in writing. If the interconnection customer fails to complete the application, the application expires at the end of the incomplete application period.

(c) **Technical review and additional studies.**

(i) **Technical review.** Once an application is accepted by the electrical company as complete, the electrical company will review the application to determine if the interconnection request complies with the technical standards established in WAC 480-108-020 and to determine whether ((~~the interconnection request is complete. If the application is not complete, the electrical company must provide a written list detailing all additional information~~)) any additional engineering, safety, reliability or other studies are required. If the electrical company determines that additional studies are required, the electrical company must provide the interconnection customer a form of agreement that includes a description of what studies are required and a good faith estimate of the cost and time necessary to ((~~complete the application. The interconnection customer must supply the~~)) perform the studies. The electrical company must notify the interconnection customer of the result of these determinations within thirty business days of when the application is deemed complete, as described in subsection (b) of this section. The interconnection customer may request that studies be combined.

(ii) **Approval with no additional studies.** If the electrical company notifies the interconnection customer that the request complies with the technical requirements established in WAC 480-108-020 and no additional studies are required to determine the feasibility of the interconnection, the electrical company must offer the interconnection customer an executable interconnection agreement within five business days of such notification. The electrical company also will provide any additional interim agreements, such as construction agreements, that may be necessary ((~~information or request an extension of~~)) and a good faith estimate of the cost and time ((~~within ten business days. If the interconnection customer does not provide within ten business days the listed information~~)) necessary to complete the ((~~application or request an extension of time, the electrical company may reject the application~~)) interconnection.

(iii) **Cost of additional studies and upgrades.**

(A) **Cost allocation.** The interconnection customer is responsible for all reasonable costs incurred by the electrical company to study the proposed interconnection and to design and construct any required interconnection facilities or system upgrades. The interconnection customer is responsible for reasonable ongoing operation and maintenance costs for facilities added to the electric system that are dedicated to that interconnection customer's use.

(B) **Cost disputes.** Within thirty business days after receiving a notice that additional studies are required, as described in (c)(i) of this subsection, the interconnection customer may supply an alternative cost estimate from a third-party qualified to perform the studies required by the electrical company.

(C) **Study agreement and deposit.** After the electrical company and the interconnection customer agree on the estimated cost of the required studies and the identity of parties to perform the required studies, the interconnection customer and electrical company must execute an agreement describing these studies and any deposit to be paid to the electrical company. The deposit is not to exceed the lower of one thousand dollars, or fifty percent of the estimated study cost. After a study agreement is executed, the electrical company shall make its best effort to complete the required studies, consistent with time requirements for the studies and other service requests of a similar magnitude.

(iv) **Denial after additional studies.** The electrical company will provide the interconnection customer with the results of the studies conducted under this subsection. If the studies determine that the interconnection is not feasible, the electrical company will provide notice of denial to the interconnection customer and the reasons for the denial.

(v) **Modification after additional studies.** Based on the results of the studies, the electrical company and interconnection customer may agree to modify the previously complete application without penalty to the interconnection customer. A modified application shall be considered an approved final application.

(vi) **Approval after additional studies.** If the studies determine that the interconnection is feasible, the electrical company will notify the interconnection customer and provide an executable interconnection agreement to the interconnection customer within five business days of such notification if no system upgrades are required, or fifteen business days if system upgrades are required. The electrical company

also will provide any additional interim agreements, such as construction agreements, that may be necessary and a good faith estimate of the cost and time necessary to complete the interconnection.

(vii) An interconnection customer's failure to execute and return completed agreements and required deposits within the time frames specified in this section or by the electrical company may result in termination of the application process by the electrical company under terms and conditions stated in such agreements.

(d) Other than modifications to the complete application described in (c)(v) of this subsection, changes by the interconnection customer to a previously approved completed application will be considered a new application and shall be accompanied by a new application fee. Denied applications expire on the date of denial.

(e) An interconnection customer must execute an interconnection agreement, and simultaneously pay any deposit required by the electrical company not to exceed fifty percent of the estimated costs to complete the interconnection, within thirty business days from the date of approval of the final application. If the electrical company must upgrade or construct new electric system facilities, the interconnection customer must meet the credit requirements of the electric company prior to the start of construction. An interconnection customer must begin operation of the generating facility within two years of the effective date of the interconnection agreement, or both the application and subsequent interconnection agreement expire. At the electrical company's discretion, an extension may be granted in writing.

PART 2: GENERAL TERMS AND CONDITIONS FOR INTERCONNECTIONS

AMENDATORY SECTION (Amending Docket UE-060649, General Order 545, filed 9/27/07, effective 10/28/07)

WAC 480-108-040 General terms and conditions of interconnection. (1) The ((~~general~~)) terms ((~~and~~)), conditions ((~~listed~~)), and technical requirements in this section ((~~shall~~)) apply to ((~~all interconnections of customer-owned generating facilities with nameplate capacity less than or equal to 300 kW to an~~)) the interconnection customer and generating facility throughout the generating facility's installation, testing, commissioning, operation, maintenance, decommissioning and removal. The electrical ((~~company's~~)) company may verify compliance at any time, with reasonable notice.

(2) Any generating facility proposing to be interconnected with the electric system ((~~under Part 1 of~~)) or any proposed change to a generating facility that requires modification of an existing interconnection agreement must meet all applicable terms, conditions, and technical requirements set forth in this chapter, including the regulations and standards adopted by reference in WAC 480-108-999.

(((~~1) Any~~)) (3) The terms, conditions and technical requirements in this section are intended to mitigate possible adverse impacts caused by the generating facility on electrical ((~~generating facility with a maximum nameplate capacity rating~~)) company equipment and personnel and on other customers of the electrical company. They are not intended to address protection of ((~~300 kW~~)) the generating facility itself, generating facility personnel, or ((~~less must~~)) its internal load. It is the responsibility of the generating facility to comply with the requirements of all appropriate standards, codes, statutes and authorities to protect its own facilities, personnel, and loads.

(4) The interconnection customer shall comply with and must ensure its generating facility meets the requirements in (a), (b), and (c) of this subsection. However, at its sole discretion, the electrical company may approve, in writing, alternatives that satisfy the intent of, or waive compliance with, any specific elements of these requirements except local, state and federal building codes.

(a) **Codes and standards.** These include the National Electric Code (NEC), National Electric Safety Code (NESC), the Institute of Electrical and Electronics Engineers (IEEE), American National Standards Institute (ANSI), and Underwriters Laboratories (UL) standards, and local, state and federal building codes. The interconnection customer shall be responsible for obtaining all applicable permit(s) for the equipment installations on its property.

(b) **Safety.** All safety and operating procedures for joint use equipment shall be in compliance with the Occupational Safety and Health Administration (OSHA) standard at 29 C.F.R. 1910.269, the NEC, Washington Administrative Code (WAC) rules ((~~to be~~)), the Washington division of occupational safety and health (DOSH) standard, and equipment manufacturer's safety and operating manuals.

(c) **Power quality.** Installations will be in compliance with all applicable standards including IEEE standard 519 Harmonic Limits, or more stringent harmonic requirements of the electrical company that have been approved by the commission.

(5) Any electrical generating facility must comply with this chapter to be eligible to interconnect and operate in parallel with the ((~~electrical company's~~)) electric system. ((~~The rules under this chapter~~)) These specifications and standards shall apply to all ((~~interconnection customer-owned~~)) interconnecting generating facilities that are intended to operate in parallel with ((~~an electrical company's~~)) the electric system ((~~irrespective~~)) regardless of whether the interconnection customer intends to generate energy to serve all or a part of the interconnection customer's load; or to sell the output to the electrical company or any third party purchaser.

(((~~2)~~)) (6) In order to ensure system safety and reliability of interconnected operations, all interconnected generating facilities ((~~must~~)) shall be constructed ((~~and~~)), operated and maintained by the interconnection customer in accordance with ((~~this chapter~~)) these rules, with the interconnection agreement, with the applicable manufacturer's recommended maintenance schedule and operating requirements, good electric company practice, and all other applicable federal, state, and local laws and regulations.

(((~~(3) Prior to initial operation, all interconnection customers must submit a completed certificate of completion to the electrical company, execute an appropriate interconnection agreement and any other agreement(s) required for the disposition of the generating facility's electric power output~~

~~as described in WAC 480-108-040(15). The interconnection agreement between the electrical company and the interconnection customer outlines the interconnection standards, cost allocation and billing agreements, and on-going maintenance and operation requirements.~~

~~(4) The~~)) (7) This section does not govern the settlement, purchase, sale, transmission or delivery of any power generated by interconnection customer's generating facility. The purchase, sale or delivery of power, including net metered electricity pursuant to chapter 80.60 RCW, and other services that the interconnection customer may require will be covered by separate agreement or pursuant to the terms, conditions and rates as may be from time to time approved by the commission. Separate agreements may be required with the electrical company, the balancing area authority or transmission provider, or other party but not necessarily with the electrical company. Any such agreement shall be complete prior to initial operation.

(8) An interconnection customer shall promptly furnish the electrical company with copies of such plans, specifications, records, and other information relating to the generating facility or the ownership, operation, use, ((~~electrical company access to,~~)) or maintenance of the generating facility, as may be reasonably requested by the electrical company from time to time.

(((~~(5)~~))) (9) **Disconnection.**

(a) **Electrical company's right to disconnect.**

(i) An electrical company may disconnect a generating facility as described in this subsection. The electrical company shall provide reasonable advance notice to an interconnection customer before any scheduled disconnection, or reasonable notice after an unscheduled disconnection.

(ii) **Unapproved interconnection.** For the purposes of public and working personnel safety, ((~~the electrical company may~~)) any unapproved generating facility will be immediately ((~~disconnect~~)) disconnected from the ((~~electrical company~~)) electric system ((~~any nonapproved generation~~)). Such disconnection of unapproved interconnections((~~,~~)) may result in disconnection of electric service to customers of the electrical company other than the owner of the generating facility.

(iii) **Unapproved operation.** If a generating facility does not operate in a manner consistent with this chapter or an approved tariff, the electrical company may disconnect the generating facility.

(iv) **Temporary disconnection.** To maintain electrical company operating and personnel safety the electrical company has the right to temporarily disconnect electric service to the interconnection customer if the generating facility must be physically disconnected for any reason. The disconnection of the generating facility (due to an emergency or maintenance or other condition on the electric system) will result in loss of electrical service to the customer's facility or residence for the duration of time that work is actively in progress. If no disconnect switch is present, the duration of such an outage may be longer than it would be with the switch.

(b) **Interconnection customer's right to disconnect.** The interconnection customer may disconnect the generating facility at any time, provided that the interconnection customer provides reasonable advance notice to the electrical company.

(((~~(6)~~))) (10) To ensure reliable service to all electrical company customers and to minimize possible problems for other customers, the electrical company ((~~will~~)) may review the need for upgrades to its system, including a dedicated((~~-to-single-customer distribution~~)) transformer. If the electrical company ((~~requires a dedicated distribution transformer~~)) notifies the interconnection customer that upgrades are required before or at the time of application approval, the interconnection customer ((~~must~~)) shall pay for all ((~~reasonable~~)) costs of ((~~the new transformer and related facilities in accordance~~)) those upgrades, except where inconsistent with ((~~subsection (13) of this section~~)) these rules.

(((~~(7)~~))) (11) The electrical company may require, and if it so requires will provide its reasoning in writing, a transfer trip system or an equivalent protective function for a generating facility, that cannot: Detect distribution system faults (both line-to-line and line-to-ground) and clear such faults within time and operating parameters found in IEEE 1547 Tables 1 and 2; or detect the formation of an unintended island and cease to energize the electric system within two seconds.

(12) **Metering.**

(a) **Net metering** ((~~for solar, wind, hydropower fuel cells and facilities that simultaneously produce electricity and useful thermal energy as set forth in chapter 80.60 RCW. The electrical company will~~)). The electrical company shall install, own, and maintain a kilowatt-hour meter((~~,~~)) or meters ((~~as the installation may determine,~~)) capable of registering the bi-directional flow of electricity at the point of common coupling ((~~at a level of accuracy that meets~~)). The meters shall meet or exceed all applicable accuracy standards((~~, regulations and statutes~~)). The meter(((~~(s)~~))) may measure ((~~such~~)) parameters ((~~as~~)) including the time of delivery, power factor, and voltage ((~~and such other parameters as the electrical company specifies~~)). The interconnection customer ((~~must~~)) shall provide space for metering equipment. The interconnection customer must provide the current transformer enclosure (if required), meter socket(s) and junction box after the electrical company approves the interconnection ((~~customer has submitted~~)) customer's drawings and equipment specifications ((~~for electrical company approval. The electrical company may approve other generating sources for net metering but is not required to do so~~)).

(b) **Production metering((~~:~~)).** The electrical company may require separate metering((~~, including, if necessary for safety or reliability, metering capable of being remotely accessed,~~)) for production. This meter will record all generation produced and may be billed separately from any net metering or customer usage metering. All costs associated with the installation of production metering will be paid by the interconnection customer.

(((~~(8) Common~~))) (13) **Labeling.** The interconnection customer must post common labeling, furnished or approved by the electrical company and in accordance with NEC requirements ((~~must be posted~~)), on the meter base, disconnects, and transformers informing working personnel that ((~~generation~~)) a generating facility is operating at or is located on the premises.

(((~~(9) As currently set forth for qualifying generation under chapter 80.60 RCW (net metering), no~~)) (14) **Insurance.** No additional insurance ((~~will be~~)) is necessary for ((~~interconnections that qualify for net metering. For generation other than qualifying generation under chapter 80.60 RCW, additional insurance, limitations of liability and indemnification may be required by the~~)) a generating facility with a nameplate capacity under 100 kW.

(15) **Future modification.** An interconnection customer must obtain electrical company((~~.~~

~~(10) The electrical company must review and approve~~)) approval before any future modification or expansion of ((~~an interconnected~~)) a generating facility. The electrical company may require the interconnection customer, at the interconnection customer's expense, to provide ((~~and pay for~~)) corrections or additions to existing ((~~interconnection facilities if~~)) electrical devices in the event of modification of government or industry regulations and standards ((~~are modified. The~~)), or major changes in the electric ((~~company must notify the interconnection customer in writing of any such requirement. The electrical company may terminate interconnection service if~~)) system which impacts the interconnection ((~~customer does not within thirty business days of the date of the notice arrange with the electrical company a mutually agreed schedule to comply with such requirements~~)).

(((~~(11) For the overall safety and protection of the electrical company system,~~)) (16) Chapter 80.60 RCW limits ((~~interconnection of generation for net metering to .25 percent of the electrical company's peak demand during 1996 and, beginning in 2014, to .50 percent of the electrical company's peak demand during 1996. Additionally, interconnection of generating facilities for net metering to individual distribution feeders is limited to 10 percent of the feeder's peak capacity. The electrical company also~~)) the total capacity of generation for net metering. However, the electrical company may restrict or prohibit new or expanded ((~~interconnected generation capacity~~)) net metered systems on any feeder, circuit or network if the restriction is supported by engineering, safety, or reliability studies ((~~establish a need for restriction or prohibition.~~

~~(12) The interconnection customer is responsible for protecting its facilities, loads and equipment and complying with the requirements of all appropriate standards, codes, statutes and authorities.~~

~~(13)~~)) (17) **Cost allocation.** Charges by the electrical company to the interconnection customer in addition to the application fee, if any, ((~~must be cost-based and consistent with generally accepted engineering practices~~)) will be compensatory and applied as appropriate. Such ((~~charges~~)) costs may include, but are not limited to, ((~~the cost of engineering studies; the cost of~~)) transformers, production meters, and electrical company testing((~~; the cost of~~)), qualification, studies and approval of non-UL 1741 listed equipment((~~; the cost of interconnection facilities, and the cost of any required system upgrades. Unless an electrical company demonstrates by reference to its integrated resource plan prepared pursuant to WAC 480-100-238, its conservation targets pursuant to RCW 19.285.040, its studies performed under WAC 480-108-065, or other evidence that an interconnection will provide quantifiable benefits to the electrical company's other customers, electrical company charges to the interconnection customer will include all costs made necessary by the requested interconnection service. If an electrical company demonstrates that an interconnection will produce quantifiable benefits for the electrical company's other customers, it may incur a portion of these costs for commission consideration for recovery in its general rates commensurate with such benefits. If after consideration of any costs approved by the commission for recovery in general rates the remaining costs are less than any amounts paid by the interconnection customer, the electrical company must refund the excess amount to the interconnection customer.~~

~~(14)~~)). The interconnection customer ((~~is~~)) shall be responsible for any costs associated with any future upgrade((~~s~~)) or modification to its ((~~generating facility or interconnection facilities made necessary~~)) interconnected system required by modifications ((~~the electrical company makes to its~~)) in the electric system.

(((~~(15) This section does not govern the settlement, purchase or delivery of any power generated by the interconnection customer's generating facility. The purchase or delivery of power, including net metering of electricity pursuant to chapter 80.60 RCW, power purchases and sales to PURPA qualifying facilities pursuant to chapter 480-107 WAC, and other services that the interconnection customer may require will be covered by separate agreement or pursuant to the terms, conditions and rates as may be from time to time approved by the commission. Any such agreement shall be completed~~)) (18) **Sale and assignment.** The interconnection customer shall notify the electrical company prior to ((~~initial operation and filed with the commission.~~

~~(16) The interconnection customer may disconnect the generating facility at any time after providing reasonable advance notice to the electrical company.~~

~~(17) The electrical company must require an interconnection customer to provide notice of~~)) the sale or transfer of the ((~~interconnection customer's~~)) generating facility, the interconnection facilities or the premises upon which the ((~~interconnection~~)) facilities are located. ((~~To continue~~)) The interconnection ((~~service~~)) customer shall not assign its rights or obligations under any agreement entered into pursuant to ((~~a new owner,~~)) these rules without the prior written consent of electrical company ((~~must require the new owner to execute a new interconnection agreement~~)); such consent shall not be unreasonably withheld.

(19) If the interconnection customer is a different entity than the owner of the real property on which the generating facility is located, the interconnection customer shall indemnify the electrical company for all risks to the owner of the real property, including disconnection of service. In addition, the interconnection customer shall obtain all legal rights and easements requested by the electrical company for the electrical company to access, install, own, maintain, operate or remove its equipment and the disconnect switch, if installed, on the real property where the generating facility is located, at no cost to the electrical company.

(20) **Inverters.** If an inverter is utilized, the inverter must be certified by an independent, nationally recognized testing laboratory to meet the requirements of UL 1741. Inverters certified to meet the requirements of UL 1741 must

use undervoltage, overvoltage, and over/under frequency elements to detect loss of electrical company power and initiate shutdown.

AMENDATORY SECTION (Amending Docket UE-060649, General Order 545, filed 9/27/07, effective 10/28/07)

WAC 480-108-050 ((~~Certificate of~~)) Completion of interconnection process. ((~~Interconnection customers must obtain an electrical permit and pass electrical inspection for all generating and interconnection facilities before they can be connected or operated in parallel with the electrical company's electric system. The electrical company must receive written certification from the interconnection customer that the generating facility has been installed and inspected in compliance with the local building and/or electrical codes. The electrical company must review and approve in writing the certificate of completion, before the interconnection customer's generating facility may be operated in parallel with the electrical company's electric system. The electrical company shall not unreasonably withhold such approval, but shall have the right to inspect and test the interconnection facilities in accordance with IEEE 1547.1 prior to parallel operation.~~)) The interconnection process is complete and the generating facility can begin operation when:

(1) The interconnection customer and the electric company execute an interconnection agreement;

(2) The interconnection customer provides, and the electrical company issues written approval for, a certificate of completion demonstrating:

(a) The receipt of any required electrical and building permits, and installation in compliance with electrical and local building codes;

(b) Installation in compliance with the technical requirements for interconnection in this chapter;

(c) Inspection and approval of the system by the electrical inspector having jurisdiction over the installation.

(3) All required agreements with the balancing area authority having jurisdiction, and all agreements covering the purchase, sale or transport of electricity and provision of any ancillary services have been completed and signed by all parties;

(4) **Witness test.** If required by the electrical company, a representative of the electrical company witnesses and approves the operation of the generating facility in accordance with the requirements of this chapter; and

(5) All requirements and conditions of the interconnection agreement have been satisfied and permission granted by the electrical company to proceed with commercial operation.

((~~PART 2: INTERCONNECTION OF GENERATION FACILITIES WITH NAMEPLATE CAPACITY RATING GREATER THAN 300 KW BUT NO MORE THAN 20 MW~~))

AMENDATORY SECTION (Amending Docket UE-060649, General Order 545, filed 9/27/07, effective 10/28/07)

WAC 480-108-080 Interconnection service tariffs. (1) ((~~No later than January 31, 2008~~)) Within sixty business days of the effective date of this rule, each electrical company over which the commission has jurisdiction must file an interconnection service tariff for ((~~facilities with nameplate generating capacity greater than 300 kW but no more than 20 MW~~)) interconnections consistent with this chapter.

(2) Interconnection service ((~~tariffs must~~)) includes only the terms and conditions that govern physical interconnection to the electrical company's delivery system and does not include sale or transmission of power by the interconnecting customer or retail service to the interconnecting customer.

(3) **Tier 3 tariff requirements.** Tariffs that govern the interconnection of Tier 3 generating facilities under this chapter must either:

(a) Offer service equivalent in all procedural and technical respects to the interconnection service the electrical company offers under the small generator interconnection provisions of its open access transmission tariff as approved by the Federal Energy Regulatory Commission (FERC); or

(b) Comply with the terms of an "alternative interconnection service tariff" described in subsection (5) of this section.

(4) **FERC Small Generator Interconnection Agreements.** ((~~(3)~~)) For purposes of ((~~Part 2 of~~)) this ((~~chapter~~)) section, "small generator interconnection provisions" means the procedural and technical requirements established by the FERC in Standardization of Small Generator Interconnection Agreements and Procedures, Order No. 2006, 70 FR ((~~34100~~)) 34190 (June 13, 2005), FERC Stats. & Regs. 31,180 (2005) (Order No. 2006), order on reh'g, Order No. 2006-A, 70 FR 71760 (Nov. 30, 2005), FERC Stats. & Regs. 31,196 (2005), order on clarif'n, Order No. 2006-B, 71 FR 42587 (July 27, 2006), FERC Stats. & Regs. ¶ 61,046 (2006). "Small generator interconnection provisions" does not include the 10 kW inverter process required under the above-listed FERC regulations.

(((~~(4) Interconnection service includes only the terms and conditions that govern physical interconnection to the electrical company's delivery system and does not include sale or transmission of power by the interconnecting customer or retail service to the interconnecting customer.~~)))

(5) **Tier 3 alternative interconnection service tariff.** If an electrical company demonstrates that the small generator interconnection provisions will impair service adequacy, reliability or safety or will otherwise be incompatible with its electric system, the electrical company may file a Tier 3 alternative interconnection service tariff. An alternative interconnection service tariff must meet the following requirements:

(a) All interconnection customers must be treated equally without undue discrimination or preference.

(b) Electric companies must ensure that interconnection service will not impair safe, adequate and reliable electric service to its retail electric customers.

(c) Technical requirements for all interconnections must comply with IEEE, NESC, NEC, North American Electric Reliability Corporation, Western Electricity Coordinating Council and other applicable safety and reliability standards.

(d) Charges by the electrical company to the interconnection customer in addition to the application fee, if any, must be cost-based and consistent with generally accepted engineering practices. Unless an electrical company demonstrates by reference to its integrated resource plan prepared pursuant to WAC 480-100-238, its conservation targets pursuant to RCW 19.285.040, the studies it performs under WAC 480-108-120, or other evidence that an interconnection will provide quantifiable benefits to the electrical company's other customers, an interconnecting customer must pay all costs made necessary by the requested interconnection service. Such costs include, but are not limited to, the cost of engineering studies, upgrades to the electric system made necessary by the interconnection, metering and insurance. If an electrical company demonstrates that an interconnection will produce quantifiable benefits for the electrical company's other customers, it may incur a portion of these costs for commission consideration for recovery in its general rates commensurate with such benefits. If after consideration of any costs approved by the commission for recovery in general rates the remaining costs are less than any amounts paid by the interconnection customer, the electrical company must refund the excess to the interconnection customer.

(e) Interconnection customers must be responsible for all operation, maintenance and code compliance for facilities and equipment on the customer's side of the point of common coupling.

(f) Interconnection service tariffs must describe:

(i) The process, timelines and cost of feasibility and facility impact studies the electrical company may require before allowing interconnection.

(ii) The prioritization or other processes by which the electrical company will manage multiple requests for interconnection service.

(g) Interconnection service tariffs must state:

(i) Specific time frames for electrical companies to respond to interconnection applications.

(ii) Specific time frames for interconnection customers to respond to study and interconnection agreements offered by the electrical company. Time frames must be adequate for the electrical company and the interconnection customer to have adequate opportunity to examine engineering studies and project design options.

(h) The electrical company must make knowledgable personnel available to answer questions regarding applicability of the interconnection service tariff and otherwise provide assistance to a customer seeking interconnection service. The electrical company must comply with reasonable requests for information including relevant system studies, interconnection studies, and other materials useful for an interconnection customer to understand the circumstances of an interconnection at a particular point on the electric system, to the extent provision of such information does not violate confidentiality provisions of prior electrical company agreements.

AMENDATORY SECTION (Amending Docket UE-060649, General Order 545, filed 9/27/07, effective 10/28/07)

WAC 480-108-110 Required filings—Exceptions. (1) The electrical company must file for commission approval, as part of its tariff, and maintain on file for inspection at its place of business, the charges, terms and conditions for interconnections pursuant to ((~~Part 2 of~~)) this chapter. Such filing must include model forms of the following documents and contracts:

(a) Application;

(b) Feasibility Study Agreement;

(c) System Impact Study Agreement;

(d) Facilities Study Agreement;

(e) Construction Agreement;

(f) Interconnection Agreement; and

(g) Certificate of Completion.

(2) The commission may grant such exceptions to these rules as may be appropriate in individual cases.

AMENDATORY SECTION (Amending Docket UE-060649, General Order 545, filed 9/27/07, effective 10/28/07)

WAC 480-108-120 Cumulative effects of interconnections ((~~with a nameplate capacity rating greater than 300 kW but no more than 20 MW~~)). Electrical companies will evaluate on an ongoing basis, but not less than once every five years, the cumulative effect, including benefits to its other customers, of interconnections made under ((~~Part 2 of~~)) this chapter on its electric system and will retain appropriate records of its evaluations.

AMENDATORY SECTION (Amending Docket A-121496, General Order R-569, filed 2/11/13, effective 3/14/13)

WAC 480-108-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library or as otherwise indicated. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) The National Electrical Code is published by the National Fire Protection Association (NFPA).

(a) The commission adopts the edition published on January 24, 2012.

(b) This publication is referenced in WAC ((~~480-108-020~~)) 480-108-040.

(c) The National Electrical Code is a copyrighted document. Copies are available from the NFPA at 1 Batterymarch Park, Quincy, Massachusetts, 02169 or at internet address http://www.nfpa.org/.

(2) National Electrical Safety Code (NESC).

(a) The commission adopts the 2012 edition.

(b) This publication is referenced in WAC ((~~480-108-020~~)) 480-108-040.

(c) Copies of the National Electrical Safety Code are available from the Institute of Electrical and Electronics Engineers at http://standards.ieee.org/nesc.

(3) Institute of Electrical and Electronics Engineers (IEEE) Standard 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems.

(a) The commission adopts the version published in 2003 and reaffirmed in 2008.

(b) This publication is referenced in WAC ((~~480-108-020~~)) 480-108-040.

(c) Copies of IEEE Standard 1547 are available from the Institute of Electrical and Electronics Engineers at http://www.ieee.org/web/standards/home.

(4) American National Standards Institute (ANSI) Standard C37.90, IEEE Standard for Relays and Relay Systems Associated with Electric Power Apparatus.

(a) The commission adopts the version published in 2005.

(b) This publication is referenced in WAC ((~~480-108-020~~)) 480-108-040.

(c) Copies of IEEE Standard C37.90 are available from the Institute of Electrical and Electronics Engineers at http://www.ieee.org/web/standards/home.

(5) Institute of Electrical and Electronics Engineers (IEEE) Standard 519, Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems.

(a) The commission adopts the version published in 2004.

(b) This publication is referenced in WAC ((~~480-108-020~~)) 480-108-040.

(c) Copies of IEEE Standard 519 are available from the Institute of Electrical and Electronics Engineers at http://www.ieee.org/web/standards/home.

(6) Institute of Electrical and Electronics Engineers (IEEE) Standard 141, Recommended Practice for Electric Power Distribution for Industrial Plants.

(a) The commission adopts the version published in 1994 and reaffirmed in 1999.

(b) This publication is referenced in WAC ((~~480-108-020~~)) 480-108-040.

(c) Copies of IEEE Standard 141 are available from the Institute of Electrical and Electronics Engineers at http://www.ieee.org/web/standards/home.

(7) Institute of Electrical and Electronics Engineers (IEEE) Standard 142, Recommended Practice for Grounding of Industrial and Commercial Power Systems.

(a) The commission adopts the version published in 2007.

(b) This publication is referenced in WAC ((~~480-108-020~~)) 480-108-040.

(c) Copies of IEEE Standard 142 are available from the Institute of Electrical and Electronics Engineers at http://www.ieee.org/web/standards/home.

(8) Underwriters Laboratories (UL), including UL Standard 1741, Inverters, Converters, Controllers and Interconnection Systems Equipment for Use with Distributed Energy Resources.

(a) The commission adopts the version published in 2010.

(b) This publication is referenced in WAC ((~~480-108-020~~)) 480-108-040.

(c) UL Standard 1741 is available from Underwriters Laboratory at http://www.ul.com.

(9) Occupational Safety and Health Administration (OSHA) Standard at 29 C.F.R. 1910.269.

(a) The commission adopts the version published in 1994.

(b) This publication is referenced in WAC ((~~480-108-020~~)) 480-108-040.

(c) Copies of Title 29 Code of Federal Regulations are available from the U.S. Government Online Bookstore, http://bookstore.gpo.gov/, and from various third-party vendors.

((~~(10) Washington Industrial Safety and Health Administration (WISHA) Standard, chapter 296-155 WAC.~~

~~(a) The commission adopts the version in effect on April 17, 2012.~~

~~(b) This publication is referenced in WAC 480-108-020.~~

~~(c) The WISHA Standard is available from the Washington Department of Labor and Industries at P.O. Box 44000, Olympia, WA 98504-4000, or at internet address http://www.lni.wa.gov/.~~))

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 480-108-035	Model interconnection agreement, review and acceptance of interconnection agreements and costs.
WAC 480-108-055	Dispute resolution.
WAC 480-108-060	Required filings—Exceptions.
WAC 480-108-065	Cumulative effects of interconnections with a nameplate capacity rating of 300 kW or less.
WAC 480-108-070	Scope of Part 2.
WAC 480-108-090	Alternative interconnection service tariff.

WSR 13-09-062
PROPOSED RULES
OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2013-06—Filed April 16, 2013, 4:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-05-078.

Title of Rule and Other Identifying Information: Filing of service contracts and insurance credit scoring models using the system for electronic rate and form filing (SERFF).

Hearing Location(s): Insurance Commissioner's Office, TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on May 21, 2013, at 10:00 a.m.

Date of Intended Adoption: May 22, 2013.

Submit Written Comments to: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, e-mail rulescoordinator @oic.wa.gov, fax (360) 586-3109, by May 20, 2013.

Assistance for Persons with Disabilities: Contact Lorrie [Lorie] Villaflores by May 20, 2013, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule will require motor vehicle service contract providers to file their service contract forms through SERFF and require insurers and insurance credit scoring vendors to file their insurance scoring models through SERFF.

Reasons Supporting Proposal: SERFF is a key component of the National Association of Insurance Commissioners (NAIC) speed to market initiative. The SERFF system allows insurance companies and other entities to send and states to receive, comment on, and approve or reject, rate and form filings electronically. SERFF improves the efficiency of the rate and form filing and approval process and reduces the time involved in making regulatory filings, and provides that public records will be more accurate.

Statutory Authority for Adoption: RCW 48.02.060, 48.18.545, 48.19.035, and 48.110.150.

Statute Being Implemented: RCW 48.18.100, 48.19.040, and 48.110.073.

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: Lee Barclay, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7115; Implementation and Enforcement: Beth Berendt, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117.

No small business economic impact statement has been prepared under chapter 19.85 RCW. None of the service contractors or insurers potentially affected by this proposed regulation is a domestic small business as defined by chapter 19.85 RCW. 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 Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7036, fax (360) 586-3109, e-mail rulescoordinator@oic.wa.gov.

April 16, 2013
D. McCurley
Acting Chief Deputy
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. 2007-11, filed 10/15/08, effective 2/1/09)

WAC 284-20C-005 Definitions that apply to this chapter. The definitions in this section apply throughout this chapter:

(1) "Complete filing" means a package of information containing motor vehicle service contracts, supporting information, documents and exhibits.

(2) "Contract" means a service contract covering motor vehicles, as described in chapter 48.110 RCW. Under this definition:

(a) "Motor vehicle" means the same as in RCW 48.110.020(11), and only includes vehicles that are self-propelled by a motor; and

(b) "Service contract" means the same as in RCW 48.110.020(16).

(3) "Date filed" means the date a complete motor vehicle service contract filing has been received and accepted by the commissioner.

(4) "Filer" means a person, organization or other entity that files motor vehicle service contracts with the commissioner.

(5) "Objection letter" means correspondence sent by the commissioner to the filer that:

(a) Requests clarification, documentation or other information;

(b) Explains errors or omissions in the filing; or

(c) Disapproves a motor vehicle service contract under RCW 48.110.073.

(6) "SERFF" means the System for Electronic Rate and Form Filing. SERFF is a proprietary National Association of Insurance Commissioners (NAIC) computer-based application that allows filers to create and submit rate, rule and form filings electronically to the commissioner.

(7) "Service contract provider" or "provider" means the same as in RCW 48.110.020(18).

(8) "Type of insurance" means a specific type of insurance listed in the *Uniform Property and Casualty Product Coding Matrix* published by the NAIC and available at www.naic.org.

NEW SECTION

WAC 284-20C-015 Filing instructions that are incorporated into this chapter. SERFF is a dynamic application that the NAIC will revise and enhance over time. To be consistent with NAIC filing standards and provide timely instructions to filers, the commissioner must incorporate documents posted on the SERFF web site into this chapter. By reference, the commissioner incorporates these documents into this chapter:

(1) The *SERFF Industry Manual* available within the SERFF application; and

(2) The *Washington State Motor Vehicle Service Contract Filing Instructions* posted on the commissioner's web site, www.insurance.wa.gov.

AMENDATORY SECTION (Amending Matter No. 2007-11, filed 10/15/08, effective 2/1/09)

WAC 284-20C-020 General motor vehicle service contract filing rules. Filers and providers must submit complete filings that comply with these rules:

(1) ((~~Filers~~)) Filings must ((~~submit complete filings that~~)) comply with the filing instructions and procedures in the *SERFF Industry Manual* available within the SERFF application and *Washington State Motor Vehicle Service Contract Filing Instructions* ((~~posted on the commissioner's web site (www.insurance.wa.gov), which the commissioner incorporates into this section by reference~~)).

(2) Filers must submit every service contract to the commissioner ((~~in paper format with a completed motor vehicle service contract transmittal document~~)) electronically using SERFF.

(a) Every service contract filed in SERFF must be attached to the form schedule.

(b) All written correspondence related to a service contract filing must be sent in SERFF.

(3) Filers must not combine "prior approval" and "use and file" contracts in one filing. Filers must file these types of contracts separately:

(a) Contracts filed under RCW 48.110.073(2); or

(b) Contracts filed under RCW 48.110.073(3).

(4) All filed contracts must be legible for both the commissioner's review and retention as a public record. Filers must submit new and replaced contracts to the commissioner for review in final printed form displayed in ten-point or larger type.

(5) Each contract must have a unique identifying number and a way to distinguish it from other editions of the same contract.

(6) Filers must submit a completed compliance checklist with each new motor vehicle service contract as supporting documentation. If the filing includes more than one new contract, the filer may:

(a) Complete a separate checklist for each motor vehicle service contract; or

(b) Complete one checklist and submit an explanatory memorandum that lists any material differences between the filed contracts.

AMENDATORY SECTION (Amending Matter No. R 2004-01, filed 12/29/04, effective 7/1/05)

WAC 284-24A-005 ((~~What~~)) Definitions ((~~are important to these rules?~~)) that apply to this chapter. The definitions in this section apply throughout this chapter:

(1) "Demographic factors" means the factors listed below if they are used in an insurer's rates, rating tiers, rating factors, rating rules or risk classification plan:

((~~•~~)) (a) Age of the insured;

((~~•~~)) (b) Sex of the insured;

((~~•~~)) (c) The rating territory assigned to the property location for residential property insurance and to the vehicle's garage location for personal auto insurance.

(2) "Premium" means the same as RCW 48.18.170.

(3) "Rate" means the cost of insurance per exposure unit.

(4) "Rating factor" means a number used to calculate premium.

(5) "Risk classification plan" means a plan to formulate different premiums for the same coverage based on group characteristics.

(6) "SERFF" means the System for Electronic Rate and Form Filing. SERFF is a proprietary National Association of Insurance Commissioners (NAIC) computer-based application that allows insurers and other entities to create and submit rate, rule and form filings electronically to the commissioner.

(7) "Significant factor" means an important element of a consumer's credit history or insurance score. Examples of significant factors include:

((~~•~~)) (a) Bankruptcies, judgments, and liens;

((~~•~~)) (b) Delinquent accounts;

((~~•~~)) (c) Accounts in collection;

((~~•~~)) (d) Payment history;

((~~•~~)) (e) Outstanding debt;

((~~•~~)) (f) Length of credit history; and

((~~•~~)) (g) Number of credit accounts.

(8) "Substantive underwriting factor" means a factor that is very important to an underwriting decision. Examples of substantive underwriting factors include:

((~~•~~)) (a) History of filing claims;

((~~•~~)) (b) History of moving violations or accidents;

((~~•~~)) (c) History of driving uninsured;

((~~•~~)) (d) Type of performance for which a vehicle is designed; and

((~~•~~)) (e) Maintenance of a structure to be insured.

(9) "Vehicle" means any motorized vehicle that can be insured under a private passenger auto insurance policy.

NEW SECTION

WAC 284-24A-007 Filing documents incorporated by reference into this chapter. SERFF is a dynamic application that the NAIC will revise and enhance over time. To be consistent with NAIC filing standards and provide timely instructions to filers, the commissioner will incorporate documents posted on the SERFF web site into this chapter. By reference, the commissioner incorporates these documents into this chapter:

(1) The *SERFF Industry Manual* posted on the SERFF web site (www.serff.com); and

(2) The *Washington State SERFF Personal Insurance Scoring Model Filing General Instructions* posted on the commissioner's web site (www.insurance.wa.gov).

AMENDATORY SECTION (Amending Matter No. R 2001-11, filed 9/6/02, effective 10/7/02)

WAC 284-24A-020 ((~~How should~~)) Filing an insurance scoring model ((~~be filed?~~)). (1) Insurance scoring models must be filed separately. The model must not be filed with any rate or rule filing.

(2) The insurance scoring model must be filed ((~~with the current transmittal form accepted by the commissioner. A copy is available at http://www.insurance.wa.gov/ or by contacting the rates and forms division~~)) in SERFF in accordance with the *Washington State SERFF Personal Insurance Scor-*

ing Model Filing General Instructions posted on the commissioner's web site (www.insurance.wa.gov).

AMENDATORY SECTION (Amending Matter No. R 2001-11, filed 9/6/02, effective 10/7/02)

WAC 284-24A-025 ((~~Will the commissioner accept~~)) Filings by insurance scoring model vendors((~~?~~)). (1) The commissioner will allow vendors to file insurance scoring models. The vendor must file the scoring model in SERFF in accordance with the *Washington State SERFF Personal Insurance Scoring Model Filing General Instructions* posted on the commissioner's web site (www.insurance.wa.gov).

(2) Insurers may use models filed by vendors after the commissioner determines the model complies with Washington state laws.

(3) An insurer may use a model that has been filed by a vendor and accepted by the commissioner if the insurer submits a filing in SERFF that:

(a) ((~~Submits a transmittal form; and~~

~~(b) A cover letter that:~~

~~(i)~~)) References the vendor that filed the model;

((~~(ii)~~)) (b) References the filing number and model name used by the vendor;

((~~(iii)~~)) (c) States whether the insurance scoring model will be used for underwriting, rating, or both; and

((~~(iv)~~)) (d) Proposes an effective date for the insurer's use of the model.

AMENDATORY SECTION (Amending Matter No. R 2001-11, filed 9/6/02, effective 10/7/02)

WAC 284-24A-030 ((~~How will an insurer or vendor know its insurance scoring model will remain confidential and proprietary?~~)) Confidentiality of insurance scoring models. (1) The law says insurance scoring models will remain confidential unless the commissioner is taking an enforcement action. An insurer or vendor may request that its insurance scoring model be available for public inspection.

(2) ((~~The transmittal form has a box an insurer or vendor may check if it wants the model to remain confidential.~~

~~(a) If the box is checked "yes," the model will be withheld from public inspection.~~

~~(b) If the box is checked "no," the model will be available for public inspection.~~)) To restrict public access to an insurance scoring model filing, the insurer or vendor must follow the procedures in the *Washington State SERFF Personal Insurance Scoring Model Filing General Instructions* posted on the commissioner's web site (www.insurance.wa.gov).

WSR 13-09-066
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed April 17, 2013, 9:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-18-033.

Title of Rule and Other Identifying Information: WAC 458-20-179 (Rule 179) Public utility tax, WAC 458-20-17901 (Rule 17901) Public utility tax—Energy conservation and cogeneration deductions, and 458-20-180 (Rule 180) Motor ~~transportation, urban transportation~~ carriers.

Hearing Location(s): Capital Plaza Building, 4th Floor L&P Conference Room, 1025 Union Avenue S.E., Olympia, WA, on May 23, 2013, at 10:00 a.m. Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Date of Intended Adoption: May 30, 2013.

Submit Written Comments to: Gayle Carlson, P.O. Box 47453, Olympia, WA 98504-7453, e-mail GayleC@dor.wa.gov, by May 23, 2013.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499, or Renee Cosare, (360) 725-7514, no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 82.16 RCW imposes a public utility tax on the act or privilege of engaging in certain public service and transportation businesses within this state. Rules 179, 17901, and 180 provide information about this tax, including who is liable for the tax and available exemptions and deductions. The department is proposing a general update and reorganization of the information provided in these rules. Included among the proposed changes:

- Incorporate SSB 6614 (chapter 295, Laws of 2010) into Rule 179,
- Incorporate relevant deduction information from Rule 17901 into Rule 179 and repeal Rule 17901,
- Remove Rule 179 examples on log hauling that were previously incorporated into Rule 13501 *Timber harvest operations,*
- Move deduction information specific to motor carriers from Rule 179 to Rule 180, and
- Incorporate information from ETA 3028 *Payments for Temporary Relocation of Utility Facilities* into Rule 179.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: Chapter 82.16 RCW.

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: Gayle Carlson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1576; Implementation and Enforcement: Alan Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules do not impose any new performance requirements or administrative burden on any small business not required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are not significant legislative rules as defined by RCW 34.05.328.

April 17, 2013
Alan R. Lynn
Assistant Director

AMENDATORY SECTION (Amending WSR 94-13-034, filed 6/6/94, effective 7/7/94)

WAC 458-20-179 Public utility tax. (((~~(1) Introduction. Persons engaged in certain public service businesses are taxable under the public utility tax. (See chapter 82.16 RCW.) These businesses are exempt from the business and occupation tax on the gross receipts which are subject to the public utility tax. (See RCW 82.04.310.) However, many persons taxable under the public utility tax are also engaged in some other business activity which is taxable under the business and occupation (B&O) tax. For example, a gas distribution company engaged in operating a plant or system for distribution of natural gas for sale, may also be engaged in selling at retail various gas appliances. Such a company would be taxable under the public utility tax with respect to its distribution of natural gas to consumers, and also taxable under the business and occupation tax with respect to its sale of gas appliances. It should also be noted that some services which generally are taxable under the public utility tax are taxable under the B&O tax if the service is performed for a new customer, prior to receipt of regular utility services by the customer.~~

~~(2) **Definitions.** The following definitions apply to this section:~~

~~(a) The term "gross income" means the value proceeding or accruing from the performance of the particular public service or transportation businesses involved. It includes operations incidental to the public utility activity, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.~~

~~(b) The term "service charge" means those specific charges made to a customer for providing a specific service. The term includes the actual charge to a customer for the sale or distribution of water, gas, or electricity. This term does not include utility local improvement district assessments (ULID) or local improvement district assessments (LID).~~

~~(c) The term "subject to control by the state" means control by the utilities and transportation commission or any other state department required by law to exercise control of a business of a public service nature as to rates charged or services rendered.~~

~~(3) **Persons taxable under the public utility tax.** The term "public service businesses" includes any of the businesses defined in RCW 82.16.010 (1) through (9), and (11). It also includes any business subject to control by the state, or having the powers of eminent domain, or any business declared by the legislature to be of a public service nature, irrespective of whether the business has the powers of eminent domain or the state exercises its control over the business. It includes, among others, without limiting the scope thereof: Railroad, express, railroad car, water distribution, sewerage collection, light and power, telegraph, gas distribution, urban transportation and common carrier vessels under sixty-five feet in length, motor transportation, tugboat businesses, certain airplane transportation, boom, dock, ferry, pipe line, toll bridge, toll logging road, and wharf businesses. (See WAC 458-20-251 for sewerage collection.) Persons engaged in these business activities are subject to the public utility tax even if they are not publicly recognized as providing that type of service or the amount of income from these activities is not substantial.~~

~~(a) "Light and power business" includes charges made for the "wheeling" of electricity for others. "Wheeling" is the activity of delivering or distributing electricity owned by others using power lines and equipment of the person doing the wheeling.~~

~~(b) Persons engaged in hauling for hire by motor vehicle should also refer to WAC 458-20-180.~~

~~(c) Persons hauling property, other than U.S. mail, by air transportation equipment are taxable under the other public service public utility tax. Income from the hauling of U.S. mail or passengers is not subject to the public utility tax because of specific federal law. (See 49 U.S.C. section 1301 and section 1513(a).)~~

~~(d) Persons engaged in hauling persons or property for hire by watercraft between points in Washington are taxable under the public utility tax. Income from operating tugboats of any size and income from the sale of transportation services by vessels over sixty-five feet is taxable under the public service utility tax classification. Income from the sale of transportation services using vessels under sixty-five feet, other than tugboats, is taxable under "vessels under sixty-five feet" public utility tax classification. These classifications include businesses engaged in chartering or transporting persons by water from one location in Washington to another location within this state. This does not include sightseeing tours or activities which are in the nature of guided tours where the tour may include some water transportation. Persons engaged in providing tours should refer to WAC 458-20-258.~~

~~(e) Income from activities which are incidental to a public utility activity are generally taxable under the public utility tax when performed for an existing customer. This includes charges for line extensions, connection fees, line drop charges, start up fees, pole replacements, testing, replacing meters, line repairs, line raisings, pole contact charges, load factor charges, meter reading fees, etc. However, if any of these services are performed for a customer prior to sale of a public utility service to the customer, the income is taxable under the business and occupation tax. (See subsection (4) of this section.)~~

~~(4) **Business and occupation tax.** As indicated above, services which are incidental to a public utility activity are generally subject to the public utility tax. However, these types of charges are taxable under the service and other business activities B&O tax classification if performed for a customer prior to receipt of the utility services (gas, water, electricity) by a new customer. A "new customer" is a customer who previously has not received utility services, such as~~

water, gas, or electricity, at the location where the charge for a specific service was provided. For example, a customer of a water supplier who currently receives water at a residence constructs a new residence a short distance from the first location. This customer will be considered a "new customer" with respect to any charges for services performed at the new location until the customer actually receives water at the new location, even though this customer may be receiving services at a different location. The charge for installing a meter or a connection charge for this customer at the new location would be taxable under the service and other activities B&O tax classification.

Amounts charged to customers as interest or penalties are generally taxable under the service and other business activities B&O tax classification. This includes interest charged for failure to timely pay for utility services or for special services which were performed prior to the customer receiving services, such as connection charges. However, any interest and/or penalty charged because of the failure to timely pay a LID or ULID assessment will not be taxable for the public utility tax or the B&O tax.

(5) **Tax rates.** The rates of tax for each business activity are imposed under RCW 82.16.020 and set forth on appropriate lines of the combined excise tax return forms.

(6) **Uniform system of accounts.** In distinguishing gross income taxable under the public utility tax from gross income taxable under the business and occupation tax, the department of revenue will be guided by the uniform system of accounts established for the specific type of utility concerned. However, because of differences in the uniform systems of accounts established for various types of utility businesses, such guides will not be deemed controlling for the purposes of classifying revenue under the Revenue Act.

(7) **Volume exemption.** Persons subject to the public utility tax are exempt from the payment of this tax if the taxable income from utility activities does not meet a minimum threshold. Prior to July 1, 1994, there was a similar exemption for the business and occupation tax with different threshold amounts. Beginning July 1, 1994, the law provides for a B&O tax credit for taxpayers who have a minimal B&O tax liability. (See WAC 458-20-104.) The volume exemption for the public utility tax applies independently of the business and occupation tax credit or exemption. The volume exemption for the public utility tax applies for any reporting period in which taxable income reported under the combined total of all public utility tax classifications does not equal or exceed the minimum taxable amount for the reporting periods assigned to such persons according to the following schedule:

Monthly reporting basis	$500 per month
Quarterly reporting basis	$1500 per quarter
Annual reporting basis	$6000 per annum

(8) **Exemption of amounts or value paid or contributed to any county, city, town, political subdivision, or municipal corporation for capital facilities.** RCW 82.04.417 previously provided an exemption from the public utility tax and the business and occupation tax for amounts received by cities, counties, towns, political subdivisions, or municipal corporations representing contributions for capital facilities. These contributions are often referred to as "contributions in aid of construction." This law was repealed effective July 1, 1993, and this exemption is no longer available after that date. (See chapter 25, Laws of 1993 sp.s.) However, contributions in the form of equipment or facilities will not be considered as taxable income. For example, if an industrial customer purchases and installs transformers which it donates to a public utility district as a condition of receiving future service, the public utility district will not be subject to the public utility tax or B&O tax on the receipt of the donated transformers. For a water or sewerage collection business, the value of pipe, valves, pumps, or similar items donated by a developer to the utility business would not be taxable income to the utility business. Monetary payments are considered to be payments for installation of facilities so that a customer may receive the public utility commodity or service. When the facilities are installed or constructed by the customer and subsequently given to the utility business, there is no payment for installation of the facilities.

(9) **Specific deductions.** Amounts derived from the following sources may be deducted from the gross income under the public utility tax if included in the gross amounts reported:

(a) Amounts derived by municipally owned or operated public services businesses directly from taxes levied for the support thereof, but not including service charges which are spread on the property tax rolls and collected as taxes. LID and ULID assessments, including interest and penalties on such assessments, will not be considered part of the taxable income because they are exercises of the jurisdiction's taxing authority. These assessments may be composed of a share of the costs of capital facilities, installation labor, connection fees, etc. A deduction may be taken for these amounts if they are included in the LID or ULID assessments.

(b) Amounts derived from the sale of commodities to persons in the same public service business as the seller, for resale as such within this state. This deduction is allowed only with respect to water distribution, light and power, gas distribution or other public service businesses which furnish water, electrical energy, gas or any other commodity in the performance of a public service business.

(c) Amounts actually paid by a taxpayer to another person taxable under chapter 82.16 RCW as the latter's portion of the consideration due for services jointly furnished by both. This includes the amount paid to a ferry company for the transportation of a vehicle and its contents (but not amounts paid to state-owned or operated ferries) when such vehicle is carrying freight or passengers for hire and is being operated by a person engaged in the business of urban transportation or motor transportation. It does not include amounts paid for the privilege of moving such vehicles over toll bridges. However, this deduction applies only to the purchases of services and does not include the purchase of commodities. The following examples show how this deduction and the deduction for sales of commodities would apply:

(i) CITY Water Department purchases water from Neighboring City Water Department. CITY sells the water to its customers. Neighboring City Water Department may take a deduction for its sales of water to CITY since this is a sale of water (commodities) to a person in the same public service

business. CITY may not take a deduction for its payment to Neighboring City Water as "services jointly furnished." The service or sale of water to the end consumers was made solely by CITY and was not a jointly furnished service.

(ii) Customer A hires ABC Transport to haul goods from Tacoma, Washington to a manufacturing facility at Bellingham. ABC Transport subcontracts part of the haul to XYZ Transport and has XYZ haul the goods from Tacoma to Everett where the goods are loaded into ABC's truck. ABC may deduct the payments it makes to XYZ as a "jointly furnished service."

(d) Amounts derived from the distribution of water through an irrigation system, solely for irrigation purposes.

(e) Amounts derived from the transportation of commodities from points of origin in this state to final destination outside this state, or from points of origin outside this state to final destination in this state with respect to which the carrier grants to the shipper the privilege of stopping the shipment in transit at some point in this state for the purpose of storing, manufacturing, milling, or other processing, and thereafter forwards the same commodity, or its equivalent, in the same or converted form, under a through freight rate from point of origin to final destination.

(f) Amounts derived from the transportation of commodities from points of origin in the state to an export elevator, wharf, dock or shipside on tidewater or navigable tributaries thereto from which such commodities are forwarded, without intervening transportation, by vessel, in their original form, to an interstate or foreign destination: Provided, That no deduction will be allowed when the point of origin and the point of delivery to such export elevator, wharf, dock, or shipside are located within the corporate limits of the same city or town. The following examples show how this deduction applies:

(i) ABC Trucking delivers logs to a storage area which is adjacent to the dock from where shipments are made by vessel to a foreign country. The logs go through a peeling process at the storage area prior to being placed on the vessel. The peeling process changes the form of the original log. Because the form of the log is changed, ABC Trucking may not take a deduction for the haul to the storage area. It is immaterial that the trucker may be paid based on an "export" rate.

(ii) ABC Trucking hauls logs from the woods to a log storage area which is adjacent to the dock. The logs will be sorted prior to being placed in the hold of the vessel, but no further processing will be performed. The storage area is quite large and the logs will be moved by log stacker and will be placed alongside the ship. The logs are loaded using the ship's tackle and then transported to a foreign country. ABC Trucking may take a deduction for the amounts received for transporting the logs from the woods to the log storage area. The movement of the logs within the log storage area is not considered to be "intervening transportation," but is part of the stevedoring activity.

(iii) ABC Trucking hauls logs from the woods to a "staging area" where the logs are sorted. After sorting, XY Hauling will transport some of the logs from the staging area to local mills for lumber manufacturing and other logs to the dock which is located approximately five miles from the staging area where the logs immediately are loaded on a vessel for shipment to Japan. The dock and staging area are not within the corporate city limits of the same city. ABC Trucking may not take a deduction for amounts received for hauling logs to the staging area. Even though some of these logs ultimately will be exported, ABC Trucking is not delivering the logs directly to the dock where the logs will be loaded on a vessel.

However, XY Hauling may take a deduction for the income from hauls to the dock. Its haul was the final transportation prior to the logs being placed on the vessel for shipment to Japan. The logs remained in their original form with no additional processing. The haul also did not originate or terminate within the corporate city limits of the same city or town. All the conditions were met for XY Hauling to claim the deduction.

(g) Amounts derived from the distribution of water by a nonprofit water association which are used for capital improvements by that association.

(h) Amounts received from sales of power which is delivered by the seller out-of-state. A deduction may also be taken for the sale of power to a person who will resell the power outside Washington where the power is delivered in Washington. These sales of power are also not subject to the manufacturing B&O tax.

(i) Amounts received for providing commuter share riding or ride sharing for the elderly and the handicapped in accordance with RCW 46.74.010.

(j) Amounts expended to improve consumers' efficiency of energy end use or to otherwise reduce the use of electrical energy or gas by the consumer. (For details see WAC 458-20-17901.)

(k) Income from transporting persons or property by air, rail, water, or by motor transportation equipment where either the origin or destination of the haul is outside the state of Washington.

(10) **Other deductions.** In addition to the deductions discussed above there also may be deducted from the reported gross income (if included within the gross), the following:

(a) The amount of cash discount actually taken by the purchaser or customer.

(b) The amount of credit losses actually sustained.

(c) Amounts received from insurance companies in payment of losses.

(d) Amounts received from individuals and others in payment of damages caused by them to the utility's plant or equipment.

(11) **Exchanges by light and power businesses.** There is no specific exemption which applies to an "exchange" of electrical energy or the rights thereto. However, exchanges of electrical energy between light and power businesses do qualify for deduction in computing the public utility tax as being sales of power to another light and power business for resale. An exchange is a transaction which is considered to be a sale and involves a delivery or transfer of energy or the rights thereto by one party to another for which the second party agrees, subject to the terms and conditions of the agreement, to deliver electrical energy at the same or another time. Examples of deductible exchange transactions include, but are not limited to, the following:

~~(a) The exchange of electric power for electric power between one light and power business and another light and power business;~~

~~(b) The transmission or transfer of electric power by one light and power business to another light and power business pursuant to the agreement for coordination of operations among power systems of the pacific northwest executed as of September 15, 1964;~~

~~(c) The Bonneville Power Administration's acquisition of electric power for resale to its Washington customers in the light and power business;~~

~~(d) The residential exchange of electric power entered into between a light and power business and the administrator of the Bonneville Power Administration (BPA) pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501, Sec. 5(c), 16 U.S.C. 839(c) (Supp. 1982). In some cases, power is not physically transferred, but the purpose of the residential exchange is for BPA to pay a "subsidy" to the exchanging utilities. For public utility tax reporting purposes, these subsidies will be treated as a nontaxable adjustment (rebate or discount) for purchases of power from BPA.~~

~~(12) **Customer billing information.** RCW 82.16.090 requires that customer billings issued by light or power businesses or gas distribution businesses serving more than twenty thousand customers shall include the following information:~~

~~(a) The rates and amounts of taxes paid directly by the customer upon products or services rendered by such businesses; and~~

~~(b) The rate, origin and approximate amount of each tax levied upon the revenue of such businesses which has been added as a component of the amount charged to the customer. This does not include taxes levied by the federal government or taxes levied under chapters 54.28, 80.24, or 82.04 RCW.~~

~~(13) **Motor or urban transportation.** For specific rules pertaining to the classifications of "urban transportation" and "motor transportation," see WAC 458-20-180.~~)) **Introduction.** This rule explains the public utility tax (PUT) imposed by chapter 82.16 RCW. The PUT is a tax for engaging in certain public service and transportation businesses within this state.

The department of revenue (department) adopted other rules that relate to the application of PUT. Readers may want to refer to the following rules:

(1) WAC 458-20-104, Small business tax relief based on income of business;

(2) WAC 458-20-121, Sales of heat or steam—Including production by cogeneration;

(3) WAC 458-20-175, Persons engaged in the business of operating as a private or common carrier by air, rail or water in interstate or foreign commerce;

(4) WAC 458-20-180, Motor carriers;

(5) WAC 458-20-192, Indians—Indian country;

(6) WAC 458-20-193D, Transportation, communication, public utility activities, or other services in interstate or foreign commerce; and

(7) WAC 458-20-251, Sewerage collection and other related activities.

This rule contains examples which identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

Part I - General Information

(101) **Persons subject to the public utility tax.** The PUT is imposed by RCW 82.16.020 on certain public service and transportation businesses including railroad, express, railroad car, water distribution, sewerage collection, light and power, telegraph, gas distribution, motor transportation, urban transportation, vessels under sixty-five feet in length operating upon the waters within the state of Washington, and tugboat businesses.

(a) **Hauling by watercraft.** Income from hauling persons or property for hire by watercraft between points in Washington is subject to one of two PUT classifications, depending on the nature of the service. Income from:

• Operating tugboats of any size, and the sale of transportation services by vessels sixty-five feet and over, is subject to tax under the "other public service business" PUT classification.

• The sale of transportation services using vessels under sixty-five feet, other than tugboats, is subject to tax under the "vessels under sixty-five feet" public utility tax classification.

These classifications do not include sightseeing tours, fishing charters, or activities which are in the nature of guided tours where the tour may include some water transportation. Persons engaged in providing tours should refer to WAC 458-20-258, Travel agents and tour operators.

(b) **Other businesses subject to the public utility tax.** The PUT also applies to any other public service business subject to control by the state, or having the powers of eminent domain, or any business declared by the legislature to be of a public service nature, unless the activity is subject to tax under chapter 82.04 RCW, Business and occupation (B&O) tax.

(i) The phrase "subject to control by the state" means control by the utilities and transportation commission or any other state agency required by law to exercise control of a business of a public service nature regarding rates charged or services rendered. Examples of other public service businesses include, but are not limited to: Airplane transportation, boom, dock, ferry, pipeline, toll bridge, water transportation, and wharf businesses. RCW 82.16.010.

(ii) Persons engaged in the same business activities as the businesses described above are subject to the PUT even if they are not publicly recognized as providing that type of service or the amount of income from these activities is not substantial. For example, an industrial manufacturing company that owns and operates a well, and that sells a relatively small amount of water to its wholly owned subsidiary, is subject to the PUT as a water distribution business on its sales of water.

(c) **Are amounts derived from interest and penalties taxable?** Amounts charged to customers as interest or penalties are generally subject to the service and other activities B&O tax. This includes interest charged for failure to timely pay for utility services or for incidental services. Incidental services include for example meter installation or other activ-

ities which are performed prior to the customer receiving utility services. Any interest or penalty resulting from the failure to timely pay a local improvement district or utility local improvement district assessment is not subject to public utility or B&O taxes.

(102) **Tax rates and measure of tax.** The rates of tax for each business activity subject to the PUT are imposed under RCW 82.16.020 and set forth on appropriate lines of the state public utility tax addendum for the excise tax return. The measure of the PUT is the gross income of the business. The term "gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental to that business. No deduction may be taken on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discounts, delivery costs, taxes, or any other expense whatsoever paid or accrued, nor on account of losses. RCW 82.16.010(3).

(103) **Persons subject to public utility tax may also be subject to B&O tax.** The B&O tax does not apply to any business activities for which PUT is specifically imposed, including amounts derived from activities for which a deduction from the PUT is available under RCW 82.16.050. RCW 82.04.310(1). However, many persons engaged in business activities subject to the PUT are also engaged in other business activities subject to B&O tax.

For example, a gas distribution company operating a system for the distribution of natural gas for sale may also make retail sales of gas appliances. The gas distribution company is subject to the PUT on its distribution of natural gas to consumers. However, it is also subject to retailing B&O tax and must collect and remit retail sales tax on its retail sales of gas appliances. Repairs of customer owned appliances would also be considered a retailing activity and subject to retail sales tax.

In distinguishing gross income taxable under the PUT from gross income taxable under the B&O tax, the department is guided by the uniform system of accounts established for the specific type of utility concerned. Because of differences in the uniform systems of accounts established for various types of utility businesses, such guides are not controlling for the purposes of classifying revenue under the Revenue Act.

(104) **Charges for service connections, line extensions, and other similar services.**

(a) For existing customers, amounts derived from services that are incidental to a public utility activity are subject to PUT. Thus, amounts received for the following are subject to PUT:

(i) Service connection, start-up, and testing fees;

(ii) Charges for line extensions, repairs, raisings, and/or drops;

(iii) Meter or pole replacement;

(iv) Meter reading or load factor charges; and

(v) Connecting or disconnecting.

(b) For new customers, amounts received for any of the services noted above in Part (104)(a) of this rule are subject to service and other activities B&O tax.

A "new customer" is a customer who previously has not received the utility service at the location. For example, a customer of a water distribution company who currently receives water at a residence and constructs a new residence at a different location is considered a "new customer" with respect to any meter installation services performed at the new residence, until the customer actually receives water at that location. It is immaterial that this customer may be receiving water at the old residence. The charge for installing the meter for this customer at the new location is subject to service and other activities B&O tax.

(105) **Contributions of equipment or facilities.** Contributions to a utility business in the form of equipment or facilities are not considered income to the utility business, if the contribution is a condition of receiving service.

(a) **Example 1.** An industrial customer purchases and pays sales tax on transformers it installs. The customer then provides the transformers to a public utility district as a condition of receiving future service. The public utility district is not subject to the PUT or B&O tax on the receipt of the transformers. Use tax is not owed by the utility district as the customer paid sales tax at the time of purchase.

(b) **Example 2.** For a water or sewerage collection business, the value of pipe, valves, pumps, or similar items provided by a developer for purposes of servicing the developed area is likewise not subject to PUT or B&O tax.

Part II - Exemptions, Deductions, and Nontaxable Receipts

(201) **Exemptions.** This subsection describes PUT exemptions. Also see subsections in this rule that discuss specific utilities.

(a) **Income exemption.** Persons subject to the PUT are exempt from the payment of the tax if their taxable income from utility activities does not meet a minimum threshold. RCW 82.16.040. For detailed information about this exemption, refer to WAC 458-20-104, Small business tax relief based on income of business.

(b) **Ride sharing.** RCW 82.16.047 exempts amounts received in the course of commuter ride sharing or ride sharing for persons with special transportation needs in accordance with RCW 46.74.010. For detailed information about this exemption, refer to WAC 458-20-261, Commute trip reduction incentives.

(c) **State route number 16.** RCW 82.16.046 exempts amounts received from operating state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW.

(202) **Deductions.** In general, costs of doing business are not deductible under the PUT. However, RCW 82.16.050 does provide for limited deductions. This subsection describes a number of PUT deductions. The deductible amounts should be included in the gross income reported on the state public utility tax addendum for the excise tax return and then deducted on the deduction detail page to determine the amount of taxable income. Deductions taken but not identified on the appropriate deduction detail page may be disallowed. Also see Parts III and IV of this rule, which identify additional deductions available to power and light, gas distribution, and water distribution businesses.

(a) **Cash discounts.** The amount of cash discount actually taken by the purchaser or customer is deductible under RCW 82.16.050(4).

(b) **Credit losses.** The amount of credit losses actually sustained by taxpayers whose regular books of account are kept on an accrual basis is deductible under RCW 82.16.050 (5). For additional information regarding credit losses see WAC 458-20-196, Bad debts.

(c) **Taxes.** Amounts derived by municipally owned or operated public service businesses directly from taxes levied for their support are deductible under RCW 82.16.050(1). However, service charges that are spread on the property tax rolls and collected as taxes are not deductible.

Local improvement district and utility local improvement district assessments, including interest and penalties on such assessments, are not income because they are exercises of the jurisdiction's taxing authority. These assessments may be composed of a share of the costs of capital facilities, installation labor, connection fees, etc.

(d) **Prohibitions imposed by federal law or the state or federal constitutions.** Amounts derived from business that the state is prohibited from taxing under federal law or the state or federal constitutions are deductible under RCW 82.16.050(6).

(e) **Sales of commodities for resale.** Amounts derived from the sale of commodities to persons in the same public service business as the seller for resale within this state are deductible under RCW 82.16.050(2). This deduction is allowed only with respect to water distribution, gas distribution, or other public service businesses that furnish water, gas, or any other commodity in the performance of a public service business. For example, income from the sale of natural gas by a gas distributing company to natural gas companies located in Washington, who resell the gas to their customers, is deductible from the gas distributing company's gross income.

(f) **Services furnished jointly.** In general, costs of doing business are not deductible under the PUT. However, RCW 82.16.050(3) allows a deduction for amounts actually paid by a taxpayer to another person taxable under the PUT as the latter's portion of the consideration due for services furnished jointly by both, provided the full amount paid by the customer for the service is received by the taxpayer and reported as gross income subject to the PUT. This deduction applies only when the services are performed for a customer of the taxpayer, not when the services are performed for the taxpayer. Additionally, the services must be furnished jointly by both the taxpayer and another person taxable under the PUT.

Example 1. Manufacturing Company hires ABC Transport (ABC) to haul goods from Tacoma to a manufacturing facility in Bellingham. ABC subcontracts part of the haul to XYZ Freight (XYZ) and has XYZ haul the goods from Tacoma to Everett, where the goods are loaded into ABC's truck and transported to Bellingham. Assuming all other requirements of the deduction are met, ABC may deduct the payments it makes to XYZ from its gross income as XYZ's portion of the consideration paid by Manufacturing Company for transportation services furnished jointly by both ABC and XYZ. See WAC 458-20-180 for additional information on motor carriers.

Example 2. Dakota Electricity Generator (DEG) sells electricity to Mod Industrial Firm (MIF). DEG hires Wheeler #1 to transmit the electricity from DEG to MIF. Wheeler #1 subcontracts a portion of the transmission service to Wheeler #2.

• Wheeler #1 and Wheeler #2 are jointly furnishing transmission services to DEG. Assuming all other requirements of the deduction are met, Wheeler #1 may claim a "services jointly provided" deduction in the amount paid to Wheeler #2.

• DEG may not claim a "services jointly provided" deduction for the amount DEG paid Wheeler #1. DEG and Wheeler #1 are ***not*** jointly furnishing a service to MIF. DEG is selling electricity to MIF, and Wheeler #1 is selling transmission services to DEG.

Example 3. City A's water department purchases water from City B's water department. City A sells the water to its customers. City A may not take a deduction for its payment to City B's water department as "services jointly provided." The sale of water by City A to its customers is not a service jointly provided to City A's customers by both City A and City B.

City B, however, may take a deduction under RCW 82.16.050(2) for its sales of water to City A since this is a sale of commodities to a person in the same public service business, for resale within this state.

(203) **Nontaxable amounts.** The following amounts are not considered taxable income.

(a) **Insurance claim amounts.** Amounts received from insurance companies in payment of losses, which are distinguishable from amounts received to settle contract payment disagreements.

(b) **Payment of damages.** Amounts received from individuals and others in payment of damages caused by them to the utility's plant or equipment.

(c) **Amounts from eminent domain proceedings or governmental action.** Amounts received as compensation for compensatory or involuntary taking of facilities of a public utility, by the exercise of eminent domain or governmental action, are considered liquidated damages.

Part III - Light and Power Business

(301) **Light and power business.** Public utility tax is imposed by RCW 82.16.020 on gross income from providing light and power services. Light and power business means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale. RCW 82.16.010.

(302) **Requirements for light and power businesses.** RCW 82.16.090 requires that customer billings issued by light and power businesses serving more than twenty thousand customers include the following information:

(a) The rates and amounts of taxes paid directly by the customer upon products or services rendered by such business; and

(b) The rate, origin, and approximate amount of each tax levied upon the revenue of such business which has been added as a component of the amount charged to the customer.

This does not include taxes levied by the federal government or taxes levied under chapters 54.28, 80.24, or 82.04 RCW.

(303) **Income for moving or enhancing facilities.** When a public utility, such as a power and light business, moves its facilities at the request of an existing customer, whether to a temporary or a permanent relocation, the income received is subject to service and other activities B&O tax. For example, if residents of a housing area contract with a power company to convert overhead wiring currently servicing their homes to underground for aesthetic purposes, the income to the power company would be taxable under service and other activities B&O tax.

When a public utility enhances its service capability for and at the request of a customer, income received for the enhancement and any movement of facilities would be taxable under PUT. For example, if an existing customer requested the utility's power lines be upgraded and relocated from single-phase to three-phase, the income is taxable under PUT.

(304) **Wheeling of electricity.** "Wheeling of electricity" is the activity of delivering or distributing electricity owned by others using power lines and equipment of the person doing the wheeling. Income from wheeling electricity is subject to the PUT.

(305) **Exchanges of electricity by light and power businesses.** There is no specific exemption that applies to an "exchange" of electrical energy or its rights. However, exchanges of electrical energy between light and power businesses do qualify for deduction in computing the PUT as being sales of power to another light and power business for resale. RCW 82.16.050(11). An exchange is a transaction that is considered to be a sale and involves a delivery or transfer of energy or its rights by one party to another for which the second party agrees, subject to the terms and conditions of the agreement, to deliver electrical energy at the same or another time. Examples of deductible exchange transactions include, but are not limited to, the following:

(a) The exchange of electric power for electric power between one light and power business and another light and power business;

(b) The transmission of electric power by one light and power business to another light and power business pursuant to the agreement for coordination of operations among power systems of the Pacific Northwest executed as of September 15, 1964;

(c) The acquisition of electric power by the Bonneville Power Administration (BPA) for resale to its Washington customers in the light and power business;

(d) The residential exchange of electric power entered into between a light and power business and the administrator of the BPA pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501, Sec. 5(c), 16 U.S.C. Sec. 839c. In some cases, power is not physically transferred, but the purpose of the residential exchange is for BPA to pay a "subsidy" to the exchanging utilities. These subsidies are considered a nontaxable adjustment (rebate or discount) for purchases of power from BPA.

(306) **Exemptions.** The following exemptions are available for sales of electricity, and are in addition to the general exemptions found in Part II of this rule.

(a) **Sales of electricity to an electrolytic processor.** RCW 82.16.0421 provides an exemption for sales of electricity made by light and power businesses to chlor-alkali electrolytic processing businesses or sodium chlorate electrolytic processing businesses for the electrolytic process. This exemption, which is scheduled to expire June 30, 2019, applies to sales of electricity made by December 31, 2018.

The exemption does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the electrolytic process.

(i) **Exemption certificate required.** In order to claim the exemption, the chlor-alkali electrolytic processing business or the sodium chlorate electrolytic processing business must provide the light and power business with an exemption certificate. RCW 82.16.0421. A certificate can be obtained from the department's internet site at http://dor.wa.gov.

(ii) **Annual report requirement.** RCW 82.16.0421 requires taxpayers receiving the benefit of this tax preference to file an annual report by April 30th of the year following any calendar year in which a taxpayer becomes eligible to claim the tax preference. RCW 82.32.534.

(iii) **Qualification requirements.** To qualify all the following requirements must be met:

(A) The electricity used in the electrolytic process must be separately metered from the electricity used for the general operations of the business;

(B) The price charged for the electricity used in the electrolytic process must be reduced by an amount equal to the tax exemption available to the light and power business; and

(C) Disallowance of all or part of the exemption is a breach of contract and the damages to be paid by the chlor-alkali electrolytic processing business or the sodium chlorate electrolytic processing business is the amount of the tax exemption disallowed.

(b) **Sales of electricity to aluminum smelters.** RCW 82.16.0498 provides an exemption to be taken in the form of a credit. The credit is allowed if the contract for sale of electricity to an aluminum smelter specifies that the price charged for the electricity will be reduced by an amount equal to the credit. The exemption does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the smelting process. The credit allowed is the same amount as the utility tax that would otherwise have been due under RCW 82.16.020.

(c) **BPA credits or funds.** Effective June 10, 2010, RCW 82.04.310 exempts from the B&O tax credits or payments received by persons from the BPA, for the purpose of implementing energy conservation programs or demand-side management programs. This exemption is scheduled to expire June 30, 2015.

(307) **Deductions.** The following deductions are available for sales of electricity, and are in addition to the general deductions found in Part II of this rule.

(a) **Sales of electricity for resale or for consumption outside Washington.** Amounts derived from the production, sale, or transfer of electrical energy for resale within or outside the state of Washington or for consumption outside the state are deductible under RCW 82.16.050(11). These sales of electricity are also not subject to the manufacturing B&O tax. RCW 82.04.310.

(b) **Low density light and power businesses.** RCW 82.16.053 provides a deduction for light and power businesses having seventeen or fewer customers per mile of distribution power lines with retail power rates that exceed the state average power rate. The statute requires the department to determine the state average electric power rate each year and make this rate available to these businesses. This rate and additional information regarding this deduction can be found via the department's internet site at http://dor.wa.gov.

(c) **Conservation - Electrical energy and gas.** RCW 82.16.055 provides deductions relating to the production or generation of energy from cogeneration or renewable resources, and for measures to improve the efficiency of energy end-use.

(i) **Restrictions.** The below mentioned deductions are subject to the following restrictions:

(A) They apply only to new facilities for the production or generation of energy from cogeneration or renewable energy resources or measures to improve the efficiency of energy end-use on which construction or installation was begun after June 12, 1980, and before January 1, 1990;

(B) The measures or projects must be, at the time they are placed in service, reasonably expected to save, produce, or generate energy at a total incremental system cost per unit of energy delivered to end-use which is less than or equal to the incremental system cost per unit of energy delivered to end-use from similarly available conventional energy resources that utilize nuclear energy or fossil fuels and that the gas or electric utility could acquire to meet energy demand in the same time period; and

(C) They may be taken for a period not exceeding thirty years after the project is placed in operation. Any recurring costs determined to be eligible for deduction under this rule will cease to be eligible in whole or part at the time of termination of any energy conservation measure or project that originally authorized the deduction under RCW 82.16.055.

(ii) **What can be deducted.** The following may be deducted from a taxpayer's gross income:

(A) Amounts equal to the cost of production at the plant for consumption within the state of Washington of electrical energy produced or generated from cogeneration as defined in RCW 82.08.02565;

(B) Amounts equal to the cost of production at the plant for consumption within the state of Washington of electrical energy or gas produced or generated from renewable energy resources such as solar energy, wind energy, hydroelectric energy, geothermal energy, wood, wood wastes, municipal wastes, agricultural products and wastes, and end-use waste heat;

(C) Amounts expended to improve consumers' efficiency of energy end-use or to otherwise reduce the use of electrical energy or gas by the consumer;

(D) Amounts received by a utility as a contribution for the installation of service, and later refunded to the customer, are deductible from gross income at the time the amounts are refunded.

(308) **Credits.** Credit is available to light and power businesses that make contributions to an electric utility rural economic development revolving fund. The credit is equal to fifty percent of contributions made during a fiscal year to an electric utility rural economic development revolving fund.

(a) Light and power businesses may take a credit up to twenty-five thousand dollars, not to exceed the PUT that would normally be due, against their public utility tax liability each fiscal year for contributions made.

(b) Expenditures from the electric utility rural economic development revolving fund must be made solely on qualifying projects, in a designated qualifying rural area. For additional information see RCW 82.16.0491.

(c) The total amount of credits available statewide on a fiscal year basis for all qualified businesses is three hundred fifty thousand dollars. The department will allow earned credits on a first-come, first-served basis. The right to earn these tax credits expired June 30, 2011. Unused earned credits may be carried forward to subsequent years provided the department has given prior approval.

Part IV - Gas and Water Distribution Businesses

(401) **Gas distribution.** Gross income received for the distribution of gas is taxable under PUT as provided by RCW 82.16.020. Gas distribution business means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural. RCW 82.16.010. See Part II for general exemptions and deductions that may apply to gas distribution.

(402) **Requirements for gas distribution businesses.** RCW 82.16.090 requires that customer billings issued by gas distribution businesses serving more than twenty thousand customers include the following information:

(a) The rates and amounts of taxes paid directly by the customer upon products or services rendered by such business; and

(b) The rate, origin, and approximate amount of each tax levied upon the revenue of such business which has been added as a component of the amount charged to the customer. This does not include taxes levied by the federal government or taxes levied under chapters 54.28, 80.24, or 82.04 RCW.

(c) In addition to the general exemptions and deductions noted in Part II of this rule, the law provides the following:

(i) **Sales of natural or manufactured gas to aluminum smelters.** RCW 82.16.0498 provides an exemption to be taken in the form of a credit for sales of natural or manufactured gas to aluminum smelters. The credit is allowed if the contract for sale of gas to an aluminum smelter specifies that the price charged for the gas will be reduced by an amount equal to the credit. The credit allowed is the same amount as the utility tax that would otherwise have been due under RCW 82.16.020.

(ii) **Conservation - Energy from gas.** RCW 82.16.055 provides deductions for the production or generation of energy from cogeneration or renewable resources and for measures to improve the efficiency of energy end-use. See subsection (307)(c) of this rule.

(402) **Water distribution.** PUT is imposed on amounts derived from the distribution of water under RCW 82.16.020. Water distribution business means the business of operating a plant or system for the distribution of water for hire or sale. RCW 82.16.010. In addition to the general exemptions and

deductions noted in Part II of this rule, the law provides the following:

(a) **Water distribution by a nonprofit water association.** Amounts derived from the distribution of water by a nonprofit water association and used for capital improvements, related to the water distribution service, by that association are deductible under RCW 82.16.050(12).

(b) **Distribution of irrigation water.** Amounts derived from the distribution of water through an irrigation system, for irrigation purposes, are deductible under RCW 82.16.050(7). The phrase "for irrigation purposes" means water that is used solely for nourishing plant life. Thus, when a water distribution business supplies potable water and some of the water is segregated and separately supplied solely for the nourishing of plant life as opposed to water supplied for domestic, municipal, or industrial uses, charges for such separately supplied water may be deducted from gross income subject to PUT.

In order to meet the "irrigation system" requirement, a water distribution business must demonstrate that its distribution system has turnouts or similar connections for irrigation purposes that are separate from service hookups or similar connections for domestic, industrial, or municipal uses. Under the appropriate circumstances, the use of separate meters and cross-connection or back flow devices may be evidence of such separate connections.

AMENDATORY SECTION (Amending Order ET 83-16, filed 3/15/83)

WAC 458-20-180 Motor ((~~transportation, urban transportation~~)) carriers. ((~~The term "motor transportation business" means the business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed for hire, and includes, but is not limited to the operation of any motor propelled vehicle as an auto transportation company (except urban transportation business), common carrier or contract carrier as defined by RCW 81.68.010 and 81.80.010.~~

~~It includes the business of hauling for hire any extracted or manufactured material, over the highways of the state and over private roads but does not include the transportation of logs or other forest products exclusively upon private roads.~~

~~It does not include the hauling of any earth or other substance excavated or extracted from or taken to the right of way of a publicly owned street, place, road or highway, by a person taxable under the classification of public road construction of the business and occupation tax. (See WAC 458-20-171.)~~

~~The term "urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, insofar as (A) operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof, or (B) operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof. Included herein, but without limiting the scope thereof, is the business of operating passenger vehicles of every type and also the business of operating cartage, pickup or delivery services, including in such services the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property.~~

~~It does not include the business of operating any vehicle for the conveyance of persons or property for hire when such operating extends more than five miles beyond the corporate limits of any city (or contiguous cities) through which it passes. Thus an operation extending from a city to a point which is more than five miles beyond its corporate limits does not constitute urban transportation, even though the route be through intermediate cities which enables the vehicle, at all times to be within five miles of the corporate limits of some city.~~

~~The terms "motor transportation" and "urban transportation" include the business of renting or leasing trucks, trailers, busses, automobiles and similar motor vehicles to others for use in the conveyance of persons or property when as an incident of the rental contract such motor vehicles are operated by the lessor or by an employee of the lessor. These terms include the business of operating taxicabs, armored cars, and contract mail delivery vehicles, but do not include the businesses of operating auto wreckers or towing vehicles (taxable as sales at retail or wholesale under RCW 82.04.050), school busses, ambulances, nor the collection and disposal of refuse and garbage (taxable under the business and occupation tax classification, service and other activities). Amounts received for providing commuter share riding or ride sharing for the elderly and the handicapped in accordance with RCW 46.74.010 are not subject to tax.~~

~~Retail Sales Tax~~

~~Persons engaged in the business of motor transportation or urban transportation are required to collect the retail sales tax upon gross retail sales of tangible personal property sold by them. The retail sales tax must also be collected upon retail sales of services defined as "sales" in RCW 82.04.040 and "sales at retail" in RCW 82.04.050, including charges for the rental of motor vehicles or other equipment without an operator.~~

~~Persons engaged in the business of motor transportation or urban transportation must pay the retail sales tax to their vendors when purchasing motor vehicles, trailers, equipment, tools, supplies and other tangible personal property for use in the conduct of such businesses. (See WAC 458-20-174 for limited exemptions allowed in the act for motor carriers operating in interstate or foreign commerce.) Persons buying motor vehicles, trailers and similar equipment solely for the purpose of renting or leasing the same without an operator are making purchases for resale and are not required to pay the retail sales tax to their vendors.~~

~~Business and Occupation Tax~~

~~**Retailing.** Persons engaged in either of said businesses are taxable under the retailing classification upon gross retail sales of tangible personal property sold by them and upon retail sales of services defined as "sales" in RCW 82.04.040 or "sales at retail" in RCW 82.04.050.~~

~~**Service and other business activities.** Persons engaged in either of said businesses are taxable under the service and other activities classification upon gross income received from checking service, packing and crating, the mere loading or unloading for others, commissions on sales of tickets for other lines, travelers' checks and insurance, etc. and the transportation of logs and other forest products exclusively over private roads.~~

~~**Public Utility Tax**~~

~~Persons engaged in the business of urban transportation are taxable under the urban transportation classification upon the gross income from such business.~~

~~Persons engaged in the business of motor transportation are taxable under the motor transportation classification upon the gross income from such business.~~

~~Persons engaged in the business of both urban and motor transportation are taxable under the motor transportation classification upon gross income, unless a proper segregation of such revenue is shown by the books of account of such persons. (See WAC 458-20-193 for interstate and foreign commerce.)~~)) (1) **Introduction.** This rule explains the tax reporting responsibilities of persons engaged in the business of transporting by motor vehicle persons or property for hire. It explains transportation business and the application of public utility tax (PUT), business and occupation (B&O), and retail sales taxes to persons engaged in the business.

(a) **Examples.** This rule contains examples which identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(b) **References to related rules.** The department of revenue (department) has adopted other rules that relate to the application of the PUT. Readers may want to refer to the following rules:

(i) WAC 458-20-104, Small business tax relief based on income of business;

(ii) WAC 458-20-13501, Timber harvest operations, which provides guidance regarding hauling of logs;

(iii) 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;

(iv) WAC 458-20-174, Sales of motor vehicles, trailers, and parts to motor carriers operating in interstate or foreign commerce;

(v) WAC 458-20-175, Persons engaged in the business of operating as a private or common carrier by air, rail or water in interstate or foreign commerce;

(vi) WAC 458-20-178, Use tax;

(vii) WAC 458-20-179, Public utility tax;

(viii) WAC 458-20-193D, Transportation, communication, public utility activities, or other services in interstate or foreign commerce.

(2) **What is a motor transportation business?** A "motor transportation business" is a business operating any motor propelled vehicle transporting persons or property of others for hire and includes, but is not limited to, the operation of any motor propelled vehicle as an auto transportation company, common carrier, or contract carrier as defined by RCW 81.68.010 and 81.80.010. (See RCW 82.16.010.) The term "motor transportation business" does not include any "urban transportation business" as described in subsection (3) of this rule.

(a) It includes hauling for hire any extracted or manufactured material, over the state's highways and over private roads but does not include:

(i) The transportation of logs or other forest products exclusively upon private roads or private highways (which is subject to the service B&O tax, e.g., see WAC 458-20-13501, Timber harvest operations); and

(ii) Effective July 1, 2009, a log transportation business, see RCW 82.16.010(6).

(b) It does not include the hauling of any earth or other substance excavated or extracted from or taken to the right of way of a publicly owned street, place, road, or highway, by a person taxable under the public road construction B&O tax classification, regardless of whether or not the earth moving portion is separately stated. (See WAC 458-20-171.)

(3) **What is an urban transportation business?** An "urban transportation business" is a business operating any vehicle for public use in the transportation of persons or property for hire, when:

• Operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof; or

• Operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof.

(a) **The five mile standard.** "Operating entirely within five miles of the corporate limits thereof" means the five-mile standard is applied on a straight line from the corporate limits and not based on road mileage. It is immaterial how many miles the carrier travels from the origin to the termination of the haul as long as the origin and the termination of the haul are within five miles of the corporate limits. (See RCW 82.16.010.)

(b) **What is included in urban transportation?** Urban transportation includes, but is not limited to, the business of operating passenger vehicles of every type and also the business of operating cartage, pickup or delivery services, including the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property. See subsection (6)(d) of this rule for deduction information for interstate transportation of persons or property.

(c) **What is not urban transportation?** Urban transportation does not include the business of operating any vehicle for transporting persons or property for hire when the origin or termination is more than five miles beyond the corporate limits of any city (or contiguous cities) through which it passes. Thus an operation extending from a city to a point which is more than five miles beyond its corporate limits does not constitute urban transportation. This is true even if the route is through intermediate cities which enable the vehicle to always be within five miles of a city's corporate limits.

See subsection (2) of this rule for "What is a motor transportation business?"

(4) **What does "motor transportation" and "urban transportation" include?** Motor and urban transportation include the business of operating motor-driven vehicles, upon public roads, used in transporting persons or property belonging to others, on a for-hire basis. These terms include the business of operating taxicabs, armored cars, and contract mail delivery vehicles, but do not include the businesses of operating auto wreckers or towing vehicles (taxable as sales at retail under RCW 82.04.050), school busses, ambulances, nor the collection and disposal of solid waste (taxable under the service and other activities B&O tax classification).

(5) **Why is the distinction between the motor and urban transportation classifications important?** These tax classifications have different tax rates and it is important to segregate the gross income of each activity. Persons engaged in the business of motor transportation have their gross income taxed under the motor transportation PUT classification. Persons engaged in the business of urban transportation have their gross income taxed under the urban transportation PUT classification. Persons engaged in both urban and motor transportation have their gross income taxed under the motor transportation classification, unless the revenue is segregated as shown by their records.

(6) **Are deductions available?** Income, as described below, can be deducted from the taxable amounts reported, provided the amounts were originally included in the gross income. See WAC 458-20-179 for generally applicable deductions for PUT, such as bad debt and cash discount.

(a) **Fees and charges for public transportation services.** RCW 82.16.050(14) provides a deduction for amounts derived from fees or charges imposed on persons for transit services provided by a public transportation agency. Public transportation agencies must spend an amount equal to the tax reduction provided by this deduction solely to:

• Adjust routes to improve access for citizens using food banks and senior citizen services; or

• To extend or add new routes to assist low-income citizens and seniors.

(b) **Services furnished jointly.** In general, costs of doing business are not deductible under the public utility tax (PUT). However, RCW 82.16.050(3) does allow a deduction for amounts actually paid by a taxpayer to another person taxable under the PUT as the latter's portion of the consideration due for services furnished jointly by both, provided the full amount paid by the customer for the service is received by the taxpayer and reported as gross income subject to the PUT. This deduction does not apply to services performed for the taxpayer. Instead, the services must be performed for a customer of the taxpayer, and must be furnished jointly by both the taxpayer and another person taxable under the PUT.

This includes the amount paid to a ferry company for the transportation of a vehicle and its contents (but not amounts paid to state owned or operated ferries) when the vehicle is carrying freight or passengers for hire and is being operated by a person engaged in the business of motor or urban transportation. This does not include amounts paid for transporting such vehicles over toll bridges.

Example: A customer hires ABC Transport (ABC) to haul goods from Tacoma to a manufacturing facility in Bellingham. ABC subcontracts part of the haul to XYZ Freight (XYZ) and has XYZ haul the goods from Tacoma to Everett where the goods are loaded into ABC's truck and transported to Bellingham. Assuming all other requirements of the deduction are met, ABC may deduct the payments it makes to XYZ from its gross income as XYZ's portion of the consideration paid by the customer for transportation services furnished jointly by ABC and XYZ.

(c) **Transportation of commodities to export facilities.** Income received from transporting commodities from points of origin in this state to an export elevator, wharf, dock, or ship side on tidewater or its navigable tributaries is deductible under RCW 82.16.050(9). The deduction is only available when the commodities are forwarded, without intervening transportation, by vessel, in their original form, to interstate or foreign destinations. However, this deduction is not available when the point of origin and the point of delivery to the export elevator, wharf, dock, or ship side are located within the corporate limits of the same city or town.

(i) **Example 1:** AB Transport moves freight by tug and barge from points in Washington to terminal facilities at tidewater ports in Washington. The freight is subsequently shipped from the ports by vessel to interstate and foreign destinations. AB Transport may deduct the gross income from these shipments under RCW 82.16.050(9).

(ii) **Example 2:** ABC Trucking hauls widgets from the manufacturing plant to a storage area which is adjacent to the dock. The storage area is quite large and the widgets are moved from the storage area to alongside the ship in time for loading. The widgets are loaded on the ship and then transported to a foreign country. ABC Trucking may take a deduction for the amounts received for transporting the widgets from the manufacturer to the storage area. The movement of the widgets within the storage area is not considered to be "intervening transportation," but is part of the stevedoring activity.

(iii) **Example 3:** ABC Trucking hauls several types of widgets from the manufacturing plant to a "staging area" where the widgets are sorted. After sorting, XY Hauling transports some of the widgets from the staging area to local buyers and other widgets to the dock which is located approximately five miles from the staging area where the widgets are immediately loaded on a vessel for shipment to Japan. The dock and staging area are not within the corporate city limits of the same city. ABC Trucking may not take a deduction for amounts received for hauling widgets to the staging area. Even though some of the widgets ultimately were exported, ABC Trucking did not deliver the widgets to the dock where the widgets were loaded on a vessel.

However, XY Hauling may take a deduction for the gross income for hauls from the staging area to the dock. The widgets were loaded on the vessel in their original form with no additional processing. The haul also did not originate or terminate within the corporate city limits of the same city or town. All the conditions were met for XY Hauling to claim the deduction.

(d) **Interstate transportation of persons or property.** Income received from transporting persons or property by

motor transportation equipment where either the origin or destination of the haul is outside the state of Washington is deductible. The interstate movement originates or terminates at the point where the transport obligation of the interstate carrier begins or ends. See WAC 458-20-193D for additional information on interstate activities. Transportation provided within the state prior to the point of origin of the interstate movement or subsequent to the point of destination within this state is wholly intrastate and not deductible.

Example: Airport B Shuttle provides transportation to and from the airport for persons departing or arriving from destinations which may or may not be out of state. This service is not incidental to any interstate movement and thus gross income is taxable under either motor or urban transportation.

(e) **Interstate transportation of commodities.** Income received from the transportation of commodities from points of origin in this state to final destination outside this state, or from points of origin outside this state to final destination in this state are deductible under RCW 82.16.050(8) where the carrier grants to the shipper the privilege of stopping the shipment in transit at some point in this state for the purpose of storing, manufacturing, milling, or other processing, and thereafter forwards the same commodity, or its equivalent, in the same or converted form, under a through freight rate from point of origin to final destination.

(f) **Transportation of agricultural commodities.** Certain income received from the transportation of agricultural commodities can be deducted when the commodities do not include manufactured substances or articles. For the income to be deducted, the commodities must be transported from points of origin in the state to interim storage facilities in this state for transshipment, without intervening transportation, to an export elevator, wharf, dock, or ship side on tidewater or its navigable tributaries to be forwarded, without intervening transportation, by vessel, in their original form, to interstate or foreign destinations. If agricultural commodities are transshipped from interim storage facilities in this state to storage facilities at a port on tidewater or its navigable tributaries, the same agricultural commodity dealer must operate both the interim storage facilities and the storage facilities at the port. RCW 82.16.050(10).

(i) The deduction under this subsection is available only when the person claiming the deduction obtains a completed "Certificate of Agricultural Commodity Shipped to Interstate and Foreign Destinations" from the agricultural commodity dealer operating the interim storage facilities.

(ii) A blank certificate can be found via the department's Internet site at http://dor.wa.gov. The form may also be obtained by contacting the department's telephone information center at 1-800-647-7706, or by writing the department at:

Taxpayer Information and Education
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478

(7) **Exemption for income from persons with special transportation needs.** RCW 82.16.047 provides an exemption from PUT for amounts received for providing commuter share riding or ride sharing for persons with special transportation needs in accordance with RCW 46.74.010. Transportation must be provided by a public social service agency or a private, nonprofit transportation provider as defined in RCW 81.66.010.

(8) **Business activities other than hauling.** Persons engaged in the business of motor or urban transportation may also receive income from other business activities. The tax consequences of this income is generally based on whether or not these services are performed as a part of or are incidental to the hauling activity, or are services where the taxpayer does not haul the shipment.

(a) **Handling and other services that are a part of or incidental to the hauling activity.** When a person performs activities such as packing, crating, loading or unloading of goods that the person is hauling for the customer, those services are considered to be performed as a part of the hauling activity, or are services incidental to the haul itself. The gross income from those services is taxed in the same manner as the hauling activity, e.g., motor or urban transportation.

Example. Mary hires Luke's Packing & Hauling Co. (Luke's) to load, haul, and unload her belongings at a local storage facility just a couple of miles down the street from the city apartment she is vacating. Luke's will report the gross income from Mary under the urban transportation PUT classification.

(b) **Handling and other services that are not a part of or incidental to the hauling activity.**

(i) If a person engaged in hauling activities packs, crates, loads, or unloads goods that the person is not also hauling for the customer, the gross income from these activities will generally be subject to service and other activities B&O tax.

Example. James hires Luke's Packing & Hauling (Luke's) to wrap, pack, and crate his belongings in preparation for long-term storage. Luke's will not be hauling James' belongings as Haul and Storage Inc. has been hired to pick up the belongings and put them in their storage facility. Luke's will report the gross income for wrapping, packing, and crating James' belongings under the service and other activities B&O tax classification.

(ii) A person engaged in hauling activities may also perform services that are not a part of or are separate from the hauling activity. The gross income from these activities is not subject to the motor or urban transportation PUT, but is instead subject to tax based on the nature of the activity and other provisions of the law.

Example. Affordable Hauling and Storage (Affordable) hauls products for hire and also operates a warehouse. Big Manufacturing Company (Big) hires Affordable to pick-up and deliver products to and from Affordable's warehouse for long-term storage. Affordable charges Big for the hauling services as they occur and also separately invoices Big a monthly fee for storing the products. The income from the hauling services is subject to the motor transportation or urban transportation PUT classification, as the case may be. The monthly storage charges are subject to the warehousing B&O tax classification (see WAC 458-20-182 for an explanation of the tax-reporting responsibilities of warehouse businesses).

(c) **Sales, leases, or rentals of tangible personal property by motor carriers.** Persons engaged in either motor or urban transportation may also sell, lease, or rent tangible personal property, such as forklifts or trailers. Gross income from the sale, lease, or rental of tangible personal property without an operator to a consumer, is subject to retailing B&O and retail sales taxes, unless a specific exemption applies. If the sale is a sale for resale, the sale is subject to the wholesaling B&O tax classification. (See WAC 458-20-211 for more information regarding the tax reporting responsibilities of persons that lease or rent tangible personal property.)

If the sale, lease, or rental of the property qualifies for one of the retail sales tax exemptions for equipment used in interstate commerce provided by RCW 82.08.0262 or 82.08.0263 (e.g., as may be the case with a trailer used in interstate commerce), the retailing of interstate transportation equipment B&O tax classification applies. (See WAC 458-20-174 for limited exemptions for motor carriers operating in interstate or foreign commerce.)

(9) **Purchases of tangible personal property.** Persons engaged in the business of motor or urban transportation must pay retail sales tax to their vendors when purchasing motor vehicles, trailers, parts, equipment, tools, supplies, and other tangible personal property for use in conducting their business. (See WAC 458-20-174 for limited exemptions for motor carriers operating in interstate or foreign commerce.)

(10) **Purchases made for rental or lease to others.** Persons buying motor vehicles, trailers and similar equipment solely for the purpose of renting or leasing the same without an operator are making purchases for resale. For sales made on or after January 1, 2010, the seller must obtain a reseller permit from the buyer to document the wholesale nature of any sale as provided in WAC 458-20-102 (Reseller permits). Resale certificates used prior to January 1, 2010, must be kept on file by the seller for five years from the date of last use or until December 31, 2014.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 458-20-17901	Public utility tax—Energy conservation and cogeneration deductions.