

**WSR 08-24-034**  
**WITHDRAWAL OF PROPOSED RULES**  
**EXECUTIVE ETHICS BOARD**  
 [Filed November 24, 2008, 2:04 p.m.]

The executive ethics board would like to withdraw the CR-102 proposed rule making, filed on September 30, 2008, regarding WAC 292-110-010 Use of state resources. It has been determined that further research and stakeholder input is necessary.

Melanie de Leon  
 Executive Director

**WSR 08-24-062**  
**PROPOSED RULES**  
**DEPARTMENT OF AGRICULTURE**  
 [Filed November 26, 2008, 2:36 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-17-045.

Title of Rule and Other Identifying Information: Chapter 16-06 WAC, Public records.

Hearing Location(s): Washington State Department of Agriculture, Natural Resources Building, Conference Room 259, 1111 Washington Street S.E., Olympia, WA 98504-2560, on January 7, 2009, at 1:30 p.m.

Date of Intended Adoption: January 12, 2009.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2092, by January 8, 2009, 5:00 p.m.

Assistance for Persons with Disabilities: Contact WSDA receptionist by January 2, 2009, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In accordance with the Public Records Act, the department of agriculture maintains a procedural rule describing its organizational structure and outlines the process to follow when persons are interested in accessing public records held by the department. The existing rule requires updating, which is what the proposed rule represents.

In addition, information, information in plans, records, and reports obtained by state and local agencies from dairies, animal feeding operations, and concentrated animal feeding operations, not required to apply for a national pollutant discharge elimination system permit is disclosable only in ranges that provide meaningful information to the public while ensuring confidentiality of business information. After consulting with affected parties, the proposed rule contains ranges for the following information: (1) Number of animals; (2) volume of livestock nutrients generated; (3) number of acres covered by the plan or used for land application of livestock nutrients; (4) livestock nutrients transferred to other persons; and (5) crop yields.

Statutory Authority for Adoption: For WAC 16-05-155 is chapters 34.05, 42.17, 42.56, and 43.23 RCW; all other sections is chapters 34.05, 42.56, and 43.23 RCW.

Statute Being Implemented: Chapters 34.05, 42.17, 42.56, and 43.23 RCW.

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

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Dannie McQueen, 1111 Washington Street S.E., Olympia, WA 98504-2560, (360) 902-1809.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule benefits individuals who desire access to the department of agriculture's records and does not add any economic burdens on those individuals.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a named agency in RCW 34.05.328 (5)(a)(i).

November 19, 2008

Betty Ramage

Assistant Director

AMENDATORY SECTION (Amending WSR 96-14-086, filed 7/2/96, effective 8/2/96)

**WAC 16-06-150** ~~The ((reason for)) purpose of the rule. The ((reason for)) purpose of this chapter is to ((ensure compliance by))~~ establish the procedures the Washington state department of agriculture ((with)) will follow to provide full access to public records, and to implement the provisions of the Public Records ((Disclosure)) Act, chapter 42.56 RCW ((42.17.250 through 42.17.340, and RCW 34.05.220 through 34.05.240 and RCW 34.05.330)). These rules provide information to persons requesting access to the department's public records and establish procedures for both requestors and department staff.

AMENDATORY SECTION (Amending WSR 96-14-086, filed 7/2/96, effective 8/2/96)

**WAC 16-06-155** ~~Definitions. ((1) "Denial of disclosure" denotes any exempting from disclosure of any public record.~~

~~((2)) "Department" means the Washington state department of agriculture.~~

~~((3)) "Disclosure" means inspection ((and/)) or copying.~~

~~((4)) "Public records" include any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by the department regardless of physical form or characteristics.~~

~~((5)) "Writing" means handwriting, typewriting, printing, photostating, telefaxing, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and~~

other documents, including existing data compilations from which information may be obtained or translated.

AMENDATORY SECTION (Amending WSR 96-14-086, filed 7/2/96, effective 8/2/96)

**WAC 16-06-160 Description of ((agency)) department organization, address and telephone number of Olympia administrative offices.** The administrative offices of the Washington state department of agriculture are located in the Natural Resources Building, 1111 Washington Street SE, P.O. Box 42560, Olympia, Washington 98504-2560. The information telephone number is (360) 902-1800. The department is organized into ~~((six))~~ seven divisions:

- (1) ~~((Agency operations))~~ Director's office;
- (2) Administrative services division;
- ~~((2))~~ (3) Animal services division;
- (4) Commodity inspection division;
- ~~((3) Consumer and producer protection division;~~
- ~~(4) Food safety and animal health division;)~~
- (5) ~~((Laboratory services division; and))~~ Food safety and consumer services division;
- (6) Pesticide management division; and
- (7) Plant protection division.

The department maintains service locations or major field offices around the state. Several of these offices are headed by a supervisor or chief. The administrative offices located in Olympia ~~((will))~~ can assist persons in ~~((determining))~~ locating office locations around the state. ~~((An))~~ The department's organization chart ~~((of the department))~~ is available upon request from the Public Records Officer and the Human Resources Office, Washington State Department of Agriculture, P.O. Box 42560, Olympia, Washington 98504-2560.

AMENDATORY SECTION (Amending WSR 96-14-086, filed 7/2/96, effective 8/2/96)

**WAC 16-06-165 ((Agency)) Department organization description by division and program.** An organizational description by division and program is as follows:

**Director's office:**

- ~~((-~~ Legislative affairs
- Policy development and review))
- The director's office covers legislative affairs, internal program review, domestic and international marketing, policy development and review, bioenergy coordination, agency communications, and quality and performance.

**~~((Agency operations))~~ Administrative services division:**

- ~~((-~~ • The administrative services division includes accounting, budget, payroll, forms and records, adjudicative proceedings, public disclosure, Washington administrative code filings, personnel office, ~~((data processing))~~ information technology services, ~~((information office, international marketing and commodity commission and fairs commission activities))~~ safety and risk management, commodity commission activities, and the fairs commission program.

**Animal services division:**

- The animal health program conducts programs to monitor, diagnose, manage and eradicate specific animal diseases such as tuberculosis, scrapie, and poultry diseases, and conducts programs to prevent the introduction of foreign animal diseases. The program manages animal health emergencies and responds to certain animal welfare issues.
- The livestock brand inspection program registers brands and inspects livestock when animal ownership changes or animals leave the state. This program provides services to cattle and horse owners in an effort to prevent theft of the animals and licenses feedlots and sales facilities. The establishment and licensure of livestock markets is also implemented within this program.
- The animal identification program implements the voluntary national animal identification system in Washington state to facilitate the tracking of animals and managing animal disease outbreaks.

**Commodity inspection division:**

- ~~((-~~ Fruit and vegetable inspection program for quality, grade, condition, size and pack
- Conducts statewide grain inspection

**Consumer and producer protection division:**

- Commission merchants program
- Livestock identification, brand registration and inspection
- Establishment of livestock markets
- Grain warehouse audit
- Weights and measures program
- Seed program regulates the quality and labeling of various crop seeds in Washington

**Food safety and animal health division:**

- Dairy inspection program
- Food processing program
- Organic food program
- Egg inspection program
- Animal health program

**Laboratory services division:**

- Performs chemical and micro-biological analyses in support of the food safety and pesticide management programs
- Administers hop inspection and analyses
- Pest management program is responsible for nonnative insect detection and control, and plant pest and disease identification; develops and enforces plant quarantines
- Apiary program provides education and registration over Washington apiarists
- Nursery program certifies nursery stock and issues phytosanitary certificates for materials moving out-of-state))
- The fruit and vegetable inspection program provides phytosanitary certification, shipping point inspection, third-party grading of raw product for process-

- ing and export certification, and licenses controlled atmosphere storage facilities.
- The grain inspection program provides inspection, analytical, and weighing services to ensure orderly commerce for grain, dry peas, lentils, rapeseed, and similar commodities produced in Washington state or shipped through Washington ports from other states.
- The grain warehouse audit program licenses, bonds, and audits public grain storage warehouses and grain dealers who buy covered commodities from producers. Auditing procedures include verification of grain records and purchase contracts with producers, and a physical inventory of stored commodities at warehouses.
- The seed program inspects fields for insects and disease; inspects and tests seed for purity and germination; provides phytosanitary certification for export; and issues labeling permits. The program areas of responsibility are seed certification, seed testing, phytosanitary inspection and testing, and seed law enforcement.

#### **Food safety and consumer services division:**

- The food safety program inspects and licenses dairy and food processing facilities and provides services aimed to protect the public from injury and illness caused by food, dairy, and egg products that are contaminated, adulterated or otherwise unfit for consumption.
- The livestock nutrient management program inspects dairy farms; provides assistance; and enforces laws that include state and federal water quality laws and rules regarding animal feeding operations.
- The microbiology laboratory supports the food safety program by testing food and dairy products for quality measures and for food poisoning organisms, and by examining food products for contamination by insects, rodents or filth. The laboratory also supports animal health programs by testing animal blood and tissue for disease to aid in disease eradication programs and to allow animals to move interstate or internationally.
- The organic food program inspects and licenses organic producers and processors. The program provides services to consumers and supports the organic food industry by ensuring that all food products making organic claims meet standards for organic production and labeling.

#### **Pesticide management division:**

- (-): The pesticide management division administers the ((regulations of)) laws and rules related to pesticides, animal feed((s)) and fertilizer ((laws)), and administers the pesticide waste disposal program ((broken down into three units of the division)).
- (-): The compliance ((unit)) program enforces state and federal pesticide laws, animal feed laws and fertilizer laws; and investigates complaints of pesticide misuse.

- (-): The registration ((unit)) program registers pesticides, fertilizers and animal feeds sold and used in the state of Washington.
- (-): The ((program development and)) certification ((unit)) and training program conducts ((the)) waste pesticide disposal ((program)) activities; provides interagency coordination on pesticide-related issues; provides safety training on the use of pesticides, ((which includes)) including public outreach and new program development; licenses pesticide application equipment, pesticide dealers, structural pest inspectors, and commercial, public, and private pesticide applicators, operators and consultants; approves recertification courses; and tracks educational credits on pesticide and inspector licensees.

#### **Plant protection division:**

- The chemistry and hop program supports several department programs by analyzing samples taken in investigations of alleged pesticide misuse; monitors food for pesticide residues; analyzes commercial feed and fertilizer samples to determine if they meet label guarantees; grades hops for seed, stem and leaf content; and analyzes hops for brewing value.
- The commission merchants program licenses commission merchants, dealers, brokers, and cash buyers, which includes administering required bonds and the investigation of complaints.
- The pest program provides services aimed to prevent the establishment of high-risk and exotic insects, plant diseases, weeds and other pest species through surveys, inspections, quarantines, and eradication projects.
- Plant services program provides regulatory inspection of nurseries in an effort to provide consumers and the nursery industry with healthy, pest-free and disease-free plant materials; enforces quarantines to prevent pest introductions; and provides testing and inspection services to assure pest-free planting stock.
- The weights and measures program checks prepackaged items to verify quantity of contents; inspects and tests commercial weighing and measuring devices; licenses public weighmasters and weighers; responds to consumer complaints; surveys labeling and advertising of products packaged or sold by weight, measure, or count; and develops standards and conducts compliance activities related to motor fuels and biofuels.

AMENDATORY SECTION (Amending WSR 96-14-086, filed 7/2/96, effective 8/2/96)

**WAC 16-06-180 ((The agency's)) Public records officer ((is available for assistance, appeals of denial of disclosure and information about the agency's index)).** (1) ((The department shall designate one public records officer, located in the agency operations division who shall:

(a) Be responsible for implementing the department's process regarding disclosure of public records;

~~(b) Coordinate departmental staff in this regard, generally ensuring the compliance of the staff with public records disclosure requirements;~~

~~(c) Make the final decision if a records request has been denied and a petition for review is filed under the procedures in WAC 16-06-220;~~

~~(d) Have the option of waiving the requirement that a records request be in written form;~~

~~(e) Maintain the agency's index as required under chapter 42.17 RCW.) Any person wishing to request access to the department's public records, or seeking assistance in making a public records request, should contact the public records officer.~~

~~(2) ((The address of) You may contact the public records officer ((is:) by mail at Washington State Department of Agriculture, 1111 Washington Street SE, P.O. Box 42560, Olympia, Washington 98504-2560((; or call the Olympia administrative office)), by telephone at ((f)360((g))-902-1809, by fax at 360-902-2092, or by e-mail at: publicdisclosure@agr.wa.gov.~~

~~(3) The name of the department's current public records officer is also on file with the office of the code reviser in accordance with RCW 42.56.580 and is published in the *Washington State Register*.~~

~~(4) The public records officer will oversee compliance with the Public Records Act, but a designee of the public records officer may process the request or otherwise fulfill the duties of the public records officer. The public records officer will provide the fullest assistance to requestors.~~

AMENDATORY SECTION (Amending WSR 96-14-086, filed 7/2/96, effective 8/2/96)

**WAC 16-06-185 Availability of public records.** (1) All ~~the~~ department's public records ~~((of the department))~~ are available for disclosure except as otherwise provided by chapter 42.56 RCW or any other law. ~~((Requests for public record may be initiated at any department office during customary business hours, Monday through Friday, excluding legal holidays.))~~ Many records are available on the department's web site at: <http://agr.wa.gov>. Requestors are encouraged to view the records available on the web site prior to submitting a records request.

(2) The department ~~((shall))~~ will respond promptly to requests for disclosure. E-mail requests will be handled in the same manner as other types of mail received by the department. Public records requests received by e-mail after regular business hours will be considered received on the next business day. Within five business days of receiving a public records request, the department ~~((shall))~~ will respond by doing one or more of the following:

~~(a) ((Providing the record))~~ Make the records available for inspection or copying;

~~(b) ((Acknowledging the department has received the request and providing a reasonable estimate of the time the department will require to respond to the request))~~ Send the copies to the requestor if copies are requested and payment of a deposit for the copies is made or terms of payment have been agreed upon; ((or))

~~(c) ((Deny))~~ Provide a reasonable estimate of when records will be available;

~~(d) Request clarification from the requestor if the request is unclear or does not sufficiently identify the requested records. Clarification may be requested and provided by telephone; or~~

~~(e) Deny the public records request.~~

~~(3) ((Additional time for the department to respond to a request may be based on the need to:~~

~~(a) Clarify the intent of the request;~~

~~(b) Locate and assemble the information requested;~~

~~(c) Notify third persons or agencies affected by the request; or~~

~~(d) Determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.~~

~~(4) In acknowledging receipt of a public record request that is unclear, the department may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the department need not respond to it.~~

~~(5) If the department does not respond in writing within five business days of receipt of the request for disclosure, the person seeking disclosure shall be entitled to:~~

~~(a) Consider the request denied; and~~

~~(b) Petition the public records officer under WAC 16-06-180.)~~ The public records officer may revise the estimate of when records will be available when it is necessary to clarify the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt from disclosure.

~~(4)(a) Some records are exempt from disclosure, in whole or in part. If the department believes that a record is exempt from disclosure and should be withheld, the department will provide a written statement of the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld.~~

~~(b) If only a portion of a record is exempt from disclosure, the department will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the records are being redacted.~~

~~(5) In the event the requested records name a specific person or pertain to a specific person and may be exempt from disclosure, the department may, prior to providing the records, give notice to others whose rights may be affected by the disclosure. Sufficient notice will be given to allow affected persons to seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.~~

~~(6)(a) The public records officer may provide access for inspection and copying of records in installments when the request is for a large number of records.~~

~~(b) The public records officer may stop searching for the remaining records and close the request if within thirty days the requestor fails to claim or inspect records in one or more of the installments.~~

~~(c) The department has the discretion to determine the order in which it responds to requests for public records based on staff and resource availability, the size of the~~

request, and the ease in locating or duplicating the records requested.

(7) The public records officer will close the request and indicate to the requestor that the department has closed the request when the requestor:

(a) Withdraws the request;

(b) Fails to provide clarification when requested by the department;

(c) Fails to fulfill obligations to inspect the records; or

(d) Fails to pay the deposit or pay the final payment for the requested copies.

(8) If, after the department has informed the requestor that it has provided all available records, the department becomes aware of additional responsive records existing at the time of the request, it will promptly inform the requestor of the additional records and provide them on an expedited basis.

AMENDATORY SECTION (Amending WSR 96-14-086, filed 7/2/96, effective 8/2/96)

**WAC 16-06-190 ((Request)) Public records ((in writing using a department issued form or the format provided in this rule)) requests.** (1) ~~((All requests for the disclosure of a public record shall be in writing on a department of agriculture disclosure form as prescribed by WAC 16-06-235, or a format which substantially complies with WAC 16-06-235, and identifies the record being sought with reasonable certainty. The written request shall include but is not limited to:))~~ A person wishing to inspect or copy the department's public records may make the request in writing on the department's public records request form or in writing by first class mail, e-mail, or fax. Requests for public records may be initiated at any department office during customary business hours, Monday through Friday, excluding legal holidays. Requests must include the following information:

(a) The name, address and telephone number or other contact information of the person requesting the records;

(b) The ((calendar)) date on which the request is made; and

(c) Sufficient information to readily identify ((documents)) records being requested.

~~(2) ((A request for disclosure shall be made during customary office hours.~~

~~(3) In all cases in which a member of the public is making the request, it shall be the obligation of department staff to assist the member of the public to appropriately identify the public record being requested.~~

~~(4) A form for requesting department documents can be obtained from any administrative office of the department or a person can format a request in a similar format as prescribed in WAC 16-06-235-))~~ (a) The request should be submitted to the public records officer at: Washington State Department of Agriculture, P.O. Box 42560, Olympia, Washington 98504-2560.

(b) The request may also be submitted by fax to 360-902-2092 or by e-mail at: publicdisclosure@agr.wa.gov.

(3) If a requestor cannot submit a request for public records in writing and desires to make an oral request either in person or by telephone, the public records officer or designee

receiving the request will summarize the request in writing and then verify in writing with the requestor that the summary correctly memorializes the request.

AMENDATORY SECTION (Amending WSR 96-14-086, filed 7/2/96, effective 8/2/96)

**WAC 16-06-200 Costs of disclosure.** (1) No fee ~~((shall))~~ will be charged for the inspection of public records.

(2) The department ~~((shall))~~ charges a fee of fifteen cents per page of copy when copy charges exceed ten dollars for providing copies of public records. The department may also charge actual costs of mailing, including the cost of the shipping container. This charge is the amount necessary to reimburse the department for ~~((its))~~ copying costs incident to ~~((such copying and shall be payable at the time copies are furnished))~~ the disclosure request.

(3) The department may charge the actual cost involved for the duplication of tape recordings, video tapes, photographs, slides, postage, or delivery~~((;))~~ if these costs exceed ten dollars.

(4) The public records officer ~~((or the public records coordinator))~~ may waive ~~((any of the foregoing costs))~~ the fee when the expenses of processing payment exceeds the costs of providing copies.

(5) Electronic records: The department may charge the actual costs incurred for providing recordings in electronic format, such as the cost of scanning records or the cost of providing records on a CD-ROM. There will be no charge for e-mailing electronic records to a requestor unless another cost applies.

AMENDATORY SECTION (Amending WSR 96-14-086, filed 7/2/96, effective 8/2/96)

**WAC 16-06-205 Protection of public records.** In order to adequately protect the department's public records ~~((of the department)),~~ the following will apply:

(1) ~~((No))~~ Public records ((shall)) made available for inspection may not be removed from the ~~((department's premises))~~ area the department makes available for inspection. The department has the discretion to designate the means and the location for the inspection of records.

(2) Inspection of any public record ~~((shall))~~ will be conducted in the presence of a designated department employee.

(3) ~~((No))~~ Public records may not be marked or altered in any manner during inspection.

(4) After inspection is complete, the public records officer or designee will make requested copies or arrange for copying.

(5) Public records that are maintained in a file or jacket, or in chronological order, may not be dismantled except by a designated department employee for purposes of copying.

~~((5))~~ Upon request of a member of the public to examine ~~((6))~~ Whenever a public records request involves an entire file ((or)), a group of ((documents)) records, ((as distinguished from a request to examine certain individual documents)) or a large number of records, the department ((shall be)) is allowed a reasonable time to ((inspect)) review the ((file)) records to determine whether information ((pro-

ected)) is exempt from disclosure ((by)) under chapter ((42.17)) 42.56 RCW ((is contained therein)) or other law.

~~((6) When copying public documents, the copy machine will be operated by staff persons of the department only.))~~

AMENDATORY SECTION (Amending WSR 96-14-086, filed 7/2/96, effective 8/2/96)

**WAC 16-06-210 Exemptions.** ~~((The department reserves the right to determine if a requested public record is exempt or nondisclosable under RCW 42.17.250 et seq. Nondisclosable records include, but are not limited to:~~

~~(1) Personal information in any files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy pursuant to RCW 42.17.310 (1)(b);~~

~~(2) Investigative material pursuant to RCW 42.17.310 (1)(d) and (e);~~

~~(3) Test questions, scoring keys and other examination data used to administer a license, pursuant to RCW 42.17.310 (1)(f);~~

~~(4) Preliminary drafts, notes, recommendations, and intra-agency memoranda in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with action (RCW 42.17.310 (1)(i));~~

~~(5) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts;~~

~~(6) Lists of individuals requested for commercial purposes. The department shall not disclose such records unless specifically authorized or directed to do so by law. Provided, That lists of applicants for professional licenses and of professional licensees shall be made available to those professional associations or educational organizations recognized by their professional licensing or examination board, upon payment of a reasonable charge therefor. Provided further, That such recognition may be refused only for a good cause pursuant to a hearing under the provisions of chapter 34.05 RCW.~~

~~(7) Information on commercial fertilizer distribution, pursuant to RCW 42.17.317.~~

~~(8) Information on commercial feed pursuant to RCW 15.53.9018.~~

~~(9) Confidential information regarding individual company operations or production found in the Washington State Seed Act, RCW 15.49.370(8).~~

~~(10) Business related information obtained under the Organic Food Products Act concerning an entity certified under that act or an applicant for such certification, which is found under RCW 15.86.110.~~

~~(11) Privileged or confidential information or data required under the Washington Pesticide Control Act which contains trade secrets, commercial or financial information, which is found under RCW 15.58.065.~~

~~(12) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapters 43.163 and 53.31 RCW, and by~~

~~persons pertaining to export projects pursuant to RCW 43.23.035.~~

~~(13) Pursuant to chapter 43.23 RCW, except for release of statistical information not descriptive of any readily identifiable person or persons, all financial and commercial information and records supplied by persons to the department with respect to export market development projects shall be kept confidential unless confidentiality is waived by the party supplying the information. For purposes of this section, persons include any natural person, joint venture, firm, partnership or association, private or public corporation, or governmental entity.~~

~~(14) The following agricultural business and commodity commission records are exempt from the disclosure requirements of chapter 42.17 RCW:~~

~~(a) Production or sales records required to determine assessment levels and actual assessment payments to commodity commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88 and 16.67 RCW or required by the department of agriculture under RCW 15.13.310(4) or 15.49.370(6);~~

~~(b) Consignment information contained on phytosanitary certificates issued by the department of agriculture under chapters 15.13, 15.49 and 15.17 RCW or federal phytosanitary certificates issued under 7 C.F.R. 353 through cooperative agreements with the animal and plant health inspection service, United States Department of Agriculture or on applications for phytosanitary certification required by the department of agriculture; and~~

~~(c) Financial and commercial information and records supplied by persons to commodity commissions formed under chapters 15.24, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88 and 16.67 RCW with respect to domestic or export marketing activities or individual producer's production information.) The Public Records Act provides that a number of types of information or records are exempt from public inspection and copying. In addition, records are exempt from disclosure if any other statute exempts or prohibits disclosure. Requestors should be aware of the following exemptions to public disclosure specific to department records. This list is not exhaustive and other exemptions may apply:~~

~~(1) Personal information in any files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy (reference RCW 42.56.230(2)).~~

~~(2) Investigative records (reference RCW 42.56.240).~~

~~(3) Test questions, scoring keys, and other examination data used to administer a license (reference RCW 42.56.250 (1)).~~

~~(4) Records that are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts (reference RCW 42.56.290).~~

~~(5) Lists of individuals requested for commercial purposes (reference RCW 42.56.070(9)).~~

~~(6) Social Security numbers are confidential and not subject to disclosure except when expressly required by or governed by other law (reference RCW 41.56.250; for full text, see subsection (9) of this section).~~

(7) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required or governed by other law (reference RCW 42.56.230(4)).

(8) Applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to the applicant (reference RCW 42.56.250(2)).

(9) Residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, Social Security numbers and emergency contact information of employees or volunteers of a public agency, and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, Social Security numbers, and emergency contact information of dependents of employees or volunteers of a public agency that are held by any agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency (reference RCW 42.56.250(3)).

(10) Information provided for the semi-annual report for fertilizers, minerals and limes that would reveal the business operation of the person making the report (reference RCW 15.54.362(5) and 42.56.380(2)).

(11) The semiannual report required in the Commercial Feed Act is not a public record, and any information given in such report which would reveal the business operation of the person making the report is exempt from disclosure, and information obtained by the department from other governmental agencies or other sources that is used to verify information received in the report is exempt from public disclosure (reference RCW 15.53.9018).

(12) The department has the authority to publish reports of official seed inspections, seed certifications, laboratory statistics, verified violations of this chapter, and other seed branch activities which do not reveal confidential information regarding individual company operations or production (reference RCW 15.49.370(8)).

(13) Business related information obtained under the Organic Food Products Act concerning an entity certified under that act or an applicant for certification under RCW 15.86.110, and records whose disclosure is prohibited by the federal Organic Certification Act, 7 U.S.C. Sec. 6515(g) and the rules adopted under that act (reference RCW 42.56.380(1)).

(14) Consignment information contained on phytosanitary certificates issued by the department under chapters 15.13, 15.17, and 15.49 RCW or federal phytosanitary certificates issued under 7 C.F.R. 353 through cooperative agreements with the animal and plant health inspection service, United States Department of Agriculture, or on applications for phytosanitary certification required by the department (reference RCW 42.56.380(4)).

(15) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by the former chapter 15.110 RCW or chapter 43.325 RCW (the energy freedom loan program) (reference RCW 42.56.270(4)).

(16) Information obtained under RCW 15.19.080 regarding the purchases, sales, or production of an individual American ginseng grower or dealer (reference RCW 42.56.380(6)).

(17) Financial statement information required to determine whether or not an applicant for a license to operate a warehouse under chapter 22.09 RCW, agriculture commodities, meets minimum net worth requirements (reference RCW 22.09.040(9)).

(18) All financial statement information to determine whether or not an applicant for a license to be a grain dealer under chapter 22.09 RCW meets the minimum net worth requirements (reference RCW 22.09.045(7)).

(19) Information submitted by an individual or business for the purpose of participating in a state or national animal identification system. Disclosure to local, state, and federal officials is not public disclosure. This exemption does not affect the disclosure of information used in reportable animal health investigations under chapter 16.36 RCW once they are complete (reference RCW 42.56.380(9)).

(20) Results of testing for animal diseases not required to be reported under chapter 16.36 RCW that is done at the request of the animal owner or the owner's designee and that can be identified to a particular business or individual is exempt from disclosure (reference RCW 42.56.380(10)).

(21) Information that can be identified to a particular business and that is collected under chapter 15.17 RCW, standards of grades and packs, and specifically RCW 15.17.140(2) and 15.17.143 for certificates of compliance (reference RCW 42.56.380(7)).

(22) Financial statement information provided under RCW 16.65.030 (1)(d), public livestock markets, is confidential information and not subject to public disclosure (reference RCW 16.65.030 (1)(d) and 42.56.380(8)).

(23) Privileged or confidential information or data that contains trade secrets, commercial, or financial information and is required and submitted under the Washington Pesticide Control Act (reference RCW 15.58.060 (1)(c) and 15.58.065).

(24) Except for release of statistical information not descriptive of any readily identifiable person or persons, all financial and commercial information and records supplied by persons to the department with respect to export market development projects (reference RCW 43.23.270 and 42.56.-270(3)).

(25) Information submitted by an applicant under chapter 17.24 RCW that is privileged or confidential because it contains trade secrets or commercial or financial information (reference RCW 17.24.061).

(26) Production or sales records required to determine assessment levels and actual assessment payments to commodity boards and commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.89, 15.100, and 16.67 RCW, or required by the department to administer these chapters or the department's programs (reference RCW 42.56.380(3)).

(27) Financial and commercial information and records supplied by persons:

(a) To the department for the purpose of conducting a referendum for the potential establishment of a commodity board or commission; or

(b) To the department or commodity boards or commissions formed under chapters 15.24, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.89, 15.100, or 16.67 RCW, with respect to domestic or export marketing activities or individual producer's production information (reference RCW 42.56.380(5)).

(28) Farm plans developed by conservation districts, unless the farm plan is used for the application or issuance of a permit (reference RCW 42.56.270(17)).

(29) Under RCW 42.56.610 and 90.64.190, information identifying the number of animals; volume of livestock nutrients generated; number of acres covered by the plan or used for land application of livestock nutrients; livestock nutrients transferred to other persons; and crop yields in plans, records, and reports obtained by state and local agencies from dairies, animal feeding operations, and concentrated animal feeding operations not required to apply for a National Pollutant Discharge Elimination System permit is disclosable in the following ranges:

(a) Number of animals: Beef cattle

- 1 to 19
- 20 to 159
- 160 to 299
- 300 to 999
- 1,000 to 5,999
- 6,000 to 10,999
- 11,000 to 15,999
- 16,000 to 20,999
- 21,000 to 25,999
- 26,000 to 31,199
- 31,200 to 37,439
- 37,440 to 44,999
- 45,000 and above

(b) Number of animals: Mature dairy cattle

- 1 to 37
- 38 to 199
- 200 to 699
- 700 to 1,699
- 1,700 to 2,699
- 2,700 to 3,699
- 3,700 to 4,699
- 4,700 to 5,699
- 5,700 to 6,839
- 6,840 and above

(c) Number of animals: Dairy heifers

- 1 to 49
- 50 to 149
- 150 to 299
- 300 to 999
- 1,000 to 1,999
- 2,000 to 2,999
- 3,000 to 3,999
- 4,000 and above

(d) Number of animals: Swine (fifty-five pounds or greater)

- 1 to 19
- 20 to 159

- 160 to 399
- 400 to 749
- 750 to 2,499
- 2,500 to 4,249
- 4,250 to 5,999
- 6,000 to 7,749
- 7,750 and above

(e) Number of animals: Swine (less than fifty-five pounds)

- 1 to 99
- 100 to 499
- 500 to 1,099
- 1,100 to 1,999
- 2,000 to 2,999
- 3,000 to 9,999
- 10,000 to 16,999
- 17,000 to 23,999
- 24,000 to 30,999
- 31,000 and above

(f) Number of animals: Layers (all ages)

- 1 to 199
- 200 to 999
- 1,000 to 10,999
- 11,000 to 24,999
- 25,000 to 81,999
- 82,000 to 138,999
- 139,000 to 195,999
- 196,000 to 252,999
- 253,000 to 309,999
- 310,000 to 371,999
- 372,000 to 446,399
- 446,400 to 535,679
- 535,680 to 642,815
- 642,816 to 771,379
- 771,380 to 925,655
- 925,656 to 1,110,787
- 1,110,788 to 1,332,945
- 1,332,946 and above

(g) Number of animals: Broilers (all ages)

- 1 to 199
- 200 to 999
- 1,000 to 17,999
- 18,000 to 37,499
- 37,500 to 124,999
- 125,000 to 212,499
- 212,500 to 299,999
- 300,000 and above

(h) Number of animals: Horses

- 1 to 19
- 20 to 79
- 80 to 149
- 150 to 499
- 500 to 849
- 850 to 1,199
- 1,200 to 1,549
- 1,550 and above

(i) Livestock nutrients generated or exported by volume (ft<sup>3</sup>/day)

- 1 to 74
- 75 to 134



135 to 299  
300 to 449  
450 to 749  
750 to 1,499  
1,500 to 2,499  
2,500 to 4,999  
5,000 to 8,499  
8,500 to 11,999  
12,000 to 15,999  
16,000 and above

(j) Livestock nutrients generated or exported by weight (tons/year)

1 to 5,256  
5,257 to 10,512  
10,513 to 21,024  
21,025 to 42,048  
42,049 to 84,096  
84,097 to 164,184  
164,185 to 262,734  
262,735 to 394,200  
394,201 to 558,384  
558,385 to 722,634  
722,635 to 919,734  
919,735 to 1,051,134  
1,051,135 and above

(k) Number of acres covered by the plan or used for land application of livestock nutrients

0 to 25  
26 to 65  
66 to 120  
121 to 300  
301 to 550  
551 to 900  
901 to 1,300  
1,301 to 1,800  
1,801 to 2,500  
2,501 to 3,200  
3,201 to 4,000  
4,001 to 6,000  
6,001 to 9,000  
9,001 to 11,500  
11,501 to 14,000  
14,001 and above

(l) Crop yields - tons/acre

0 to 1  
1.1 to 2  
2.1 to 3.5  
3.6 to 5  
5.1 to 7  
7.1 to 9  
9.1 to 12  
12.1 to 14.5  
14.6 to 17  
17.1 to 19.5  
19.6 to 22  
22.1 to 26  
26.1 and above

AMENDATORY SECTION (Amending WSR 96-14-086, filed 7/2/96, effective 8/2/96)

**WAC 16-06-220 Review of denial of request for inspection ~~((for))~~ or copying of public records.** (1) Any person who objects to the initial denial of a records request ~~((for a public record may petition for prompt review of such decision by submitting a written request for review to the department's public records officer located in the Olympia administrative office. The written request shall specifically refer to the written statement that constituted or accompanied the denial of disclosure))~~ may petition in writing to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the department denying the request.

(2) ~~((Immediately after receiving a petition for review of a decision denying a public record, the public records designee or public records coordinator denying the request shall refer it to the public records officer. The public records officer shall review decisions denying disclosure in the most prompt fashion possible, and such review shall be deemed completed at the end of the second business day following receipt by the department of the petition for review. This shall constitute final agency action for the purposes of judicial review, pursuant to RCW 42.17.320. If the public records officer neither approves nor disapproves the denial of the request before the end of the second business day following the denial of inspection, the denial of inspection shall be deemed approved by the department, and constitutes a final agency action pursuant to RCW 42.17.320.))~~ The public records officer will immediately consider the petition and either affirm or reverse the denial within two business days following the department's receipt of the petition, or within such other time as the department and the requestor mutually agree to.

(3) Under RCW 42.56.530, if the department denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) Any person may obtain court review of a denial of a public records request under RCW 42.56.550 at the conclusion of two business days after the initial denial, regardless of any internal administrative appeal.

AMENDATORY SECTION (Amending WSR 96-14-086, filed 7/2/96, effective 8/2/96)

**WAC 16-06-225 Records index.** (1) ~~The department's public records officer ((of the department)), located in the Olympia administrative office, ((shall))~~ will develop and maintain an agency index of ~~((-(1)(a) Records issued prior to July 1, 1990, by relying on agency))~~ the following records:

- (a) Department records retention schedules;
- (b) Final orders;
- (c) Declaratory orders entered after June 30, 1990;
- (d) Interpretative statements;
- (e) Policy statements; and
- (f) ~~((Agency))~~ Department rule docket ~~((; and~~
- (g) ~~Other agency information as required.~~

The schedule for revising and/or updating the index will occur annually on June 30 of each year).

(2) Information on obtaining or viewing the department's index ((should be directed to)) can be obtained from the public records officer at the department's headquarters office located at: Department of Agriculture, 1111 Washington Street, SE, P.O. Box 42560, Olympia, Washington 98504-2560.

NEW SECTION

**WAC 16-06-250 Processing of public records requests—Electronic records.** (1) Requesting electronic records: The process for requesting electronic public records is the same as for requesting paper public records.

(2) Providing electronic records:

(a) The department has the discretion to determine whether to provide records electronically or in paper form.

(b) When a requestor requests records in an electronic format, the public records officer will endeavor to provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the department and is generally commercially available, or in a format that is reasonably translatable from the format in which the department keeps the record.

(c) When electronic records require redaction, or are contained in a proprietary data base, or otherwise cannot be reasonably provided in an electronic format, the department will provide paper copies of the records to the requestor.

(3) Customized access to data bases: With the consent of the requestor, the department may provide customized access under RCW 43.105.280 if the record is not reasonably locatable or not reasonably translatable into the format requested. The department may charge a fee consistent with RCW 43.105.280 for customized access.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 16-06-170 For assistance with disclosure of agency documents, you may contact a public records designee.
- WAC 16-06-175 You may also contact an agency public records coordinator for assistance.
- WAC 16-06-195 Disclosure procedure.
- WAC 16-06-215 Qualifications on nondisclosure.
- WAC 16-06-230 Interagency disclosure.
- WAC 16-06-235 Request for public records disclosure form.

**WSR 08-24-078**

**PROPOSED RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed December 1, 2008, 2:55 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-10-109.

Title of Rule and Other Identifying Information: WAC 388-530-1000 Outpatient drug program—General, 388-530-2000 Covered—Outpatient drugs, devices, and drug-related supplies, and 388-530-2100 Noncovered—Outpatient drugs and pharmaceutical supplies.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on January 6, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 7, 2009.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on January 6, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by December 24, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsjl4@dshs.wa.gov](mailto:johnsjl4@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed amendment is to update a cross reference and to clarify that the department does not cover over-the-counter drugs, vitamins, and minerals except when determined by the department to be the least costly therapeutic alternative for a medically accepted indication.

Reasons Supporting Proposal: The department continues to support transparent outpatient drug program rules.

Statutory Authority for Adoption: RCW 74.08.090, 74.04.050, 74.09.530, and 74.09.700.

Statute Being Implemented: RCW 74.08.090, 74.04.-050, 74.09.530, and 74.09.700.

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

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

Name of Agency Personnel Responsible for Drafting: Jonell O. Blatt, P.O. Box 45504, Olympia, WA 988504 [98504]-5504, (360) 725-1571; Implementation and Enforcement: Dr. Siri Childs, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1564.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rule and concludes that no new costs will be imposed on small businesses affected by the rule change. Therefore, the preparation of a comprehensive small

business economic impact statement is not required under RCW 19.85.030.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jonell O. Blatt, P.O. Box 45504, Olympia, WA 98504-5504, phone (360) 725-1571, fax (360) 586-9727, e-mail blattjo@dshs.wa.gov.

November 25, 2008

Stephanie E. Schiller

Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-21-107, filed 10/16/08, effective 11/16/08)

**WAC 388-530-1000 Outpatient drug program—**

**General.** (1) The purpose of the outpatient drug program is to reimburse providers for outpatient drugs, vitamins, minerals, devices, and drug-related supplies according to department rules and subject to the limitations and requirements in this chapter.

(2) The department reimburses for outpatient drugs, vitamins, minerals, devices, and pharmaceutical supplies that are:

(a) Covered. Refer to WAC 388-530-2000 for covered drugs, vitamins, minerals, devices, and drug-related supplies and to WAC 388-530-2100 for noncovered drugs and drug-related supplies;

(b) Prescribed by a provider with prescriptive authority (see exceptions for family planning and emergency contraception for women eighteen years of age and older in WAC 388-530-2000 (1)(b), and over-the-counter (OTC) drugs to promote smoking cessation in WAC 388-530-2000 (1)(~~a~~)(~~v~~))(g);

(c) Within the scope of an eligible client's medical assistance program;

(d) Medically necessary as defined in WAC 388-500-0005 and determined according to the process found in WAC 388-501-0165; and

(e) Authorized, as required within this chapter;

(f) Billed according to WAC 388-502-0150 and 388-502-0160; and

(g) Billed according to the requirements of this chapter.

(3) Coverage determinations for the department are made by the department's pharmacists or medical consultants in accordance with applicable federal law. The department's determination may include consultation with the drug use review (DUR) board.

(4) The department may not reimburse for prescriptions written by healthcare practitioners whose application for a core provider agreement (CPA) has been denied, or whose CPA has been terminated.

(5) The department may not reimburse for prescriptions written by non-CPA healthcare practitioners who do not have a current core provider agreement with the department when the department determines there is a potential danger to the client's health and/or safety.

AMENDATORY SECTION (Amending WSR 08-21-107, filed 10/16/08, effective 11/16/08)

**WAC 388-530-2000 Covered—Outpatient drugs, devices, and drug-related supplies.** (1) The department covers:

(a) Outpatient drugs, including over-the-counter drugs, as defined in WAC 388-530-1050, subject to the limitations and requirements in this chapter, when:

(i) The drug is approved by the Food and Drug Administration (FDA);

(ii) The drug is for a medically accepted indication as defined in WAC 388-530-1050;

(iii) The drug is not excluded from coverage under WAC 388-530-2100;

(iv) The manufacturer has a signed drug rebate agreement with the federal Department of Health and Human Services (DHHS). Exceptions to the drug rebate requirement are described in WAC 388-530-7500 which describes the drug rebate program; and

(v) Prescribed by a provider with prescriptive authority (see exceptions for family planning and emergency contraception for women eighteen years of age and older in WAC 388-530-2000 (1)(b), and over-the-counter (OTC) drugs to promote smoking cessation in WAC 388-530-2000 (1)(g).

(b) Family planning drugs, devices, and drug-related supplies per chapter 388-532 WAC and as follows:

(i) Over-the-counter (OTC) family planning drugs, devices, and drug-related supplies without a prescription when the department determines it necessary for client access and safety.

(ii) Family planning drugs that do not meet the federal drug rebate requirement in WAC 388-530-7500 on a case-by-case basis; and

(iii) Contraceptive patches, contraceptive rings, and oral contraceptives, only when dispensed in at least a three-month supply, unless otherwise directed by the prescriber. There is no required minimum for how many cycles of emergency contraception may be dispensed.

(c) Prescription vitamins and mineral products, only as follows:

(i) When prescribed for clinically documented deficiencies;

(ii) Prenatal vitamins, when prescribed and dispensed to pregnant women; or

(iii) Fluoride prescribed for clients under the age of twenty-one.

(d) OTC drugs, vitamins, and minerals when determined by the department to be the least costly therapeutic alternative for a medically accepted indication.

(e) Drug-related devices and drug-related supplies as an outpatient pharmacy benefit when:

(i) Prescribed by a provider with prescribing authority;

(ii) Essential for the administration of a covered drug;

(iii) Not excluded from coverage under WAC 388-530-2100; and

(iv) Determined by the department, that a product covered under chapter 388-543 WAC Durable medical equipment and supplies should be available at retail pharmacies.

~~((e))~~ (f) Preservatives, flavoring and/or coloring agents, only when used as a suspending agent in a compound.

~~((f))~~ (g) Over-the-counter (OTC) drugs, without a prescription, to promote smoking cessation only for clients who are eighteen years of age or older and participating in a department-approved smoking cessation program providing sufficient funds are appropriated by the state legislature. Limitation extensions as described in WAC 388-501-0169 are prohibited for the age and counseling requirements in this section.

~~((g))~~ (h) Prescription drugs to promote smoking cessation only for clients who are eighteen years of age or older and participating in a department-approved smoking cessation program providing sufficient funds are appropriated by the state legislature. Limitation extensions as described in WAC 388-501-0169 are prohibited for the age and counseling requirements in this section.

(2) The department does not reimburse for any drug, device, or drug-related supply not meeting the coverage requirements under this section.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 08-21-107, filed 10/16/08, effective 11/16/08)

**WAC 388-530-2100 Noncovered—Outpatient drugs and pharmaceutical supplies.** (1) The department does not cover:

- (a) A drug that is:
  - (i) Not approved by the Food and Drug Administration (FDA); or
  - (ii) Prescribed for a nonmedically accepted indication, including diagnosis, dose, or dosage schedule that is not evidenced-based.
- (b) A drug prescribed:
  - (i) For weight loss or gain;
  - (ii) For infertility, frigidity, impotency;
  - (iii) For sexual or erectile dysfunction; or
  - (iv) For cosmetic purposes or hair growth.
- (c) Drugs used to treat sexual or erectile dysfunction, in accordance with section 1927 (d)(2)(K) of the Social Security Act, unless such drugs are used to treat a condition other than sexual or erectile dysfunction, and these uses have been approved by the Food and Drug Administration.
- (d) Drugs listed in the federal register as "less-than-effective" ("DESI" drugs) or which are identical, similar, or related to such drugs.
- (e) Outpatient drugs for which the manufacturer requires as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or manufacturer's designee.
- (f) A product:
  - (i) With an obsolete national drug code (NDC) for more than two years;
  - (ii) With a terminated NDC;
  - (iii) Whose shelf life has expired; or
  - (iv) Which does not have an eleven-digit NDC.
- (g) Over-the-counter (OTC) drugs, vitamins, and minerals, except when determined by the department to be the least costly therapeutic alternative for a medically accepted indication.

(h) Any drug regularly supplied by other public agencies as an integral part of program activity (e.g., immunization vaccines for children).

~~((h))~~ (i) Free pharmaceutical samples.

~~((i))~~ (j) Over-the-counter or prescription drugs to promote smoking cessation unless the client is eighteen years old or older and participating in a department-approved cessation program.

(2) A client can request an exception to rule (ETR) as described in WAC 388-501-0160.

## WSR 08-24-080

### PROPOSED RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Management Services Administration)

[Filed December 1, 2008, 2:57 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-11-097.

Title of Rule and Other Identifying Information: Amending WAC 388-06-0110, describing who must have background checks, 388-06-0150, describing what information must be reviewed by the department when performing a background check, and 388-06-0160, describing who pays for background checks.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on January 6, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 7, 2009.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on January 6, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by December 23, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsjl4@dshs.wa.gov](mailto:johnsjl4@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS is proposing these rules to comply with chapter 387, Laws of 2007 (ESSB 5774), impacting background check requirements for certain child care providers and children returning to their home; and to comply with the federal Adam Walsh Act of 2006. These rules describe the requirements related to background checks for individuals who will have unsupervised access to children or to individuals with developmental disabilities in homes, facilities or operations licensed or contracted by the department to provide care.

Reasons Supporting Proposal: Same as above.

Statutory Authority for Adoption: RCW 74.15.030, 43.43.837, 13.34.138, 26.33.190, 26.44.030.

Statute Being Implemented: RCW 43.43.837, 26.33.-190.

Rule is necessary because of federal law, P.L. 109-248 Adam Walsh Act.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Cindy LaRose, P.O. Box 45025, Olympia, WA 98504-5025, (360) 902-8072.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is exempt under RCW 19.85.025(3) because it adopts or incorporates without material change portions of chapter 387, Laws of 2007, and portions of the federal Adam Walsh Act.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is exempt from preparing further analysis under RCW 34.05.328 (5)(b)(iii) because it adopts or incorporates without material change portions of chapter 387, Laws of 2007, and portions of the federal Adam Walsh Act.

November 24, 2008

Stephanie E. Schiller

Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 01-18-025, filed 8/27/01, effective 10/1/01)

**WAC 388-06-0110 Who must have background checks?** The department requires background checks on individuals who will have unsupervised access to children or to individuals with a developmental disability in homes, facilities, or operations licensed, relicensed, or contracted by the department to provide care as required under chapter 74.15 RCW. The department requires background checks on the following people:

(1) A person licensed, certified, or contracted by us to care for children (chapter 74.15 RCW and RCW 43.43.832);

(2) A prospective or current employee for a licensed care provider or a person or entity contracting with us;

(3) A volunteer or intern with regular or unsupervised access to children who is in a home or facility that offers licensed care to children;

(4) A person who is at least sixteen years old, is residing in a foster home, relative's home, or child care home and is not a foster child;

(5) A person not related to the child who the court has approved placement as allowed in RCW 13.34.130;

(6) A relative other than a parent who may be caring for a child or an individual with a developmental disability;

~~((6))~~ (7) A person who regularly has unsupervised access to a child or an individual with a developmental disability;

~~((7))~~ (8) A provider who has unsupervised access to a child or individual with a developmental disability in the home of the child or individual with a developmental disability; and

~~((8))~~ (9) Prospective adoptive parents ((as defined in RCW 26.33.020)).

**AMENDATORY SECTION** (Amending WSR 01-18-025, filed 8/27/01, effective 10/1/01)

**WAC 388-06-0150 What does the background check cover?** (1) The department must review the following records:

(a) Criminal convictions and pending charges based on identifying information provided by you. However, if you have lived in Washington State for less than three years prior to the check, the department must conduct a fingerprint based background check for you to have unsupervised access to children or to individuals with developmental disabilities.

~~(b) ((For children's administration, child protective service case file information (CAMIS) for founded reports of child abuse or neglect; and))~~ If the background check is being conducted for Children's Administration, it must also include:

(i) A review of child protective services case files information or other applicable information system.

(ii) Administrative hearing decisions related to any DSHS license that has been revoked, suspended, or denied.

~~(c) ((For children's administration, administrative hearing decisions related to any DLR license that has been revoked, suspended or denied))~~ If the background check is being conducted by Children's Administration for placement of a child in out-of-home care, including foster homes, adoptive homes, relative placements, and placement with other suitable persons under chapter 13.34 RCW, the department must check the following in addition to the requirements above for each person over eighteen years of age residing in the home:

(i) Child abuse and neglect registries in each state a person has lived in the five years prior to conducting the background check.

(ii) Washington state patrol (WSP) and federal bureau of investigation (FBI) fingerprint based background checks regardless of how long you have resided in Washington.

(2) The department may also review:

(a) Any civil judgment, determination or disciplinary board final decisions of child abuse or neglect.

(b) Law enforcement records of convictions and pending charges in other states or locations if:

(i) You have lived in another state.

(ii) Reports from other credible sources indicating a need to investigate another state's records.

~~((3) The department may review law enforcement records of convictions and pending charges in other states or locations if:~~

~~(a) You have lived in another state; and~~

~~(b) Reports from credible community sources indicate a need to investigate another state's records.~~

~~(4) If you have lived in Washington state less than three years immediately prior to your application to have unsupervised access to children or to individuals with a developmental disability, the department requires that you be fingerprinted for a background check with the Washington state patrol (WSP) and the Federal Bureau of Investigation (FBI); as mandated by chapter 74.15 RCW-))~~

AMENDATORY SECTION (Amending WSR 01-18-025, filed 8/27/01, effective 10/1/01)

**WAC 388-06-0160 Who pays for the background check?** (1) Children's administration (CA) pays (~~(for)~~) the DSHS general administrative costs for background checks for foster home applicants, CA relative and other suitable caregivers, and CA adoptive home applicants.

(2) Children's administration pays (~~(for fingerprinting expenses)~~) the WSP and FBI-fingerprint processing fees for (~~(those)~~) foster home applicants (~~(and relatives)~~), CA relative and other suitable caregivers, CA adoptive home applicants, and other adults in the home who require fingerprinting under chapter 13.34 RCW.

(3) Children's administration does not pay (~~(for)~~) fingerprinting fees or expenses for employees, contractors, or volunteers associated with any other type of home or facility.

(4) The division of developmental disabilities pays for background checks for individuals seeking authorization to provide services to their clients.

**WSR 08-24-082**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed December 1, 2008, 3:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-09-112.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-450-0015 What types of income does the department not use to figure out my benefits? and 388-470-0045 How do my resources count toward the resource limits for cash assistance and family medical programs?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on January 6, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 7, 2009.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail [schilse@dshs.wa.gov](mailto:schilse@dshs.wa.gov), fax (360) 664-6185, by 5 p.m. on January 6, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by December 23, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsj14@dshs.wa.gov](mailto:johnsj14@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-450-0015 and 388-470-0045 to exclude federal economic stimulus payments as income in the month of receipt and to exclude the payments as a resource for an additional two months.

Reasons Supporting Proposal: These proposed rules are needed to apply the federal policy regarding economic stimulus rebate payments to general assistance programs.

Statutory Authority for Adoption: RCW 74.04.005, 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 not necessitated by federal law, federal or state court decision.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Melissa Mathson, 712 Pear Street S.E., Olympia, WA 98503, (360) 725-4563.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendments only affect DSHS clients by excluding economic stimulus payments from countable income and resources.

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."

November 24, 2008

Stephanie E. Schiller

Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-07-078, filed 3/13/06, effective 5/1/06)

**WAC 388-450-0015 What types of income does the department not use to figure out my benefits?** This section applies to cash assistance, children's, family, or pregnancy medical, and basic food benefits.

(1) There are some types of income we do not count to figure out if you can get benefits and the amount you can get. Some examples of income we do not count are:

(a) Bona fide loans as defined in WAC 388-470-0045, except certain student loans as specified under WAC 388-450-0035;

(b) Federal earned income tax credit (EITC) payments;

(c) Federal economic stimulus payments;

(~~(d)~~) (d) Title IV-E and state foster care maintenance payments if you choose not to include the foster child in your assistance unit;

(~~((e))~~) (e) Energy assistance payments;

(~~((f))~~) (f) Educational assistance we do not count under WAC 388-450-0035;

(~~((g))~~) (g) Native American benefits and payments we do not count under WAC 388-450-0040;

(~~((h))~~) (h) Income from employment and training programs we do not count under WAC 388-450-0045;

(~~((i))~~) (i) Money withheld from a benefit to repay an overpayment from the same income source. For Basic Food, we **do not** exclude money that is withheld because you were overpaid for purposely not meeting requirements of a federal,

state, or local means tested program such as TANF/SFA, GA, and SSI;

~~((j))~~ (j) Legally obligated child support payments received by someone who gets TANF/SFA benefits;

~~((j))~~ (k) One-time payments issued under the Department of State or Department of Justice Reception and Replacement Programs, such as Voluntary Agency (VOLAG) payments; and

~~((k))~~ (l) Payments we are directly told to exclude as income under state or federal law.

~~((h))~~ (m) **For cash and Basic Food:** Payments made to someone outside of the household for the benefits of the assistance unit using funds that are not owed to the household; and

~~((m))~~ (n) **For medical assistance:** Only the portion of income used to repay the cost of obtaining that income source.

(2) For children's, family, or pregnancy medical, we also do not count any insurance proceeds or other income you have recovered as a result of being a Holocaust survivor.

AMENDATORY SECTION (Amending WSR 03-05-015, filed 2/7/03, effective 3/1/03)

**WAC 388-470-0045 How do my resources count toward the resource limits for cash assistance and family medical programs?** (1) We count the following resources toward your assistance unit's resource limits for cash assistance and family medical programs to decide if you are eligible for benefits under WAC 388-470-0005:

(a) Liquid resources not specifically excluded in subsection (2) below. These are resources that are easily changed into cash. Some examples of liquid resources are:

(i) Cash on hand;

(ii) Money in checking or savings accounts;

(iii) Money market accounts or certificates of deposit (CDs) less any withdrawal penalty;

(iv) Available retirement funds or pension benefits, less any withdrawal penalty;

(v) Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;

(vi) Available trusts or trust accounts; or

(vii) Lump sum payments as described in chapter 388-455 WAC.

(b) The cash surrender value (CSV) of whole life insurance policies.

(c) The CSV over fifteen hundred dollars of revocable burial insurance policies or funeral agreements.

(d) The amount of a child's irrevocable educational trust fund that is over four thousand dollars per child.

(e) Funds withdrawn from an individual development account (IDA) if they were removed for a purpose other than those specified in RCW 74.08A.220.

(f) Any real property like a home, land or buildings not specifically excluded in subsection (3) below.

(g) The equity value of vehicles as described in WAC 388-470-0070.

(h) Personal property that is not:

(i) A household good;

(ii) Needed for self-employment; or

(iii) Of "great sentimental value," due to personal attachment or hobby interest.

(i) Resources of a sponsor as described in WAC 388-470-0060.

(j) For cash assistance only, sales contracts.

(2) The following types of liquid resources do not count when we determine your eligibility:

(a) Bona fide loans, including student loans;

(b) Basic Food benefits;

(c) Income tax refunds in the month of receipt;

(d) Earned income tax credit (EITC) in the month received and the following month;

(e) Advance earned income tax credit payments;

(f) Federal economic stimulus payments in the month received and the following two months;

(g) Individual development accounts (IDAs) established under RCW 74.08A.220;

~~((g))~~ (h) Retroactive cash benefits or TANF/SFA benefits resulting from a court order modifying a decision of the department;

~~((h))~~ (i) Underpayments received under chapter 388-410 WAC;

~~((i))~~ (j) Educational benefits that are excluded as income under WAC 388-450-0035;

~~((j))~~ (k) The income and resources of an SSI recipient;

~~((k))~~ (l) A bank account jointly owned with an SSI recipient if SSA already counted the money for SSI purposes;

~~((l))~~ (m) Foster care payments provided under Title IV-E and/or state foster care maintenance payments;

~~((m))~~ (n) Adoption support payments;

~~((n))~~ (o) Self-employment accounts receivable that the client has billed to the customer but has been unable to collect; and

~~((o))~~ (p) Resources specifically excluded by federal law.

(3) The following types of real property do not count when we determine your eligibility:

(a) Your home and the surrounding property that you, your spouse, or your dependents live in;

(b) A house you do not live in, if you plan on returning to the home and you are out of the home because of:

(i) Employment;

(ii) Training for future employment;

(iii) Illness; or

(iv) Natural disaster or casualty.

(c) Property that:

(i) You are making a good faith effort to sell;

(ii) You intend to build a home on, if you do not already own a home;

(iii) Produces income consistent with its fair market value, even if used only on a seasonal basis; or

(iv) A household member needs for employment or self-employment. Property excluded under this section and used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing.

(d) Indian lands held jointly with the Tribe, or land that can be sold only with the approval of the Bureau of Indian Affairs.

(4) If you deposit excluded liquid resources into a bank account with countable liquid resources, we do not count the excluded liquid resources for six months from the date of deposit.

(5) If you sell your home, you have ninety days to reinvest the proceeds from the sale of a home into an exempt resource.

(a) If you do not reinvest within ninety days, we will determine whether there is good cause to allow more time. Some examples of good cause are:

(i) Closing on your new home is taking longer than anticipated;

(ii) You are unable to find a new home that you can afford;

(iii) Someone in your household is receiving emergent medical care; or

(iv) Your children are in school and moving would require them to change schools.

(b) If you have good cause, we will give you more time based on your circumstances.

(c) If you do not have good cause, we count the money you got from the sale as a resource.

**WSR 08-24-084**

**WITHDRAWAL OF PROPOSED RULES  
GAMBLING COMMISSION**

(By the Code Reviser's Office)

[Filed December 2, 2008, 8:47 a.m.]

WAC 230-15-135, proposed by the gambling commission in WSR 08-11-063 appearing in issue 08-11 of the State Register, which was distributed on June 4, 2008, 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 08-24-085**

**WITHDRAWAL OF PROPOSED RULES  
GAMBLING COMMISSION**

(By the Code Reviser's Office)

[Filed December 2, 2008, 8:47 a.m.]

WAC 230-15-225, proposed by the gambling commission in WSR 08-11-064 appearing in issue 08-11 of the State Register, which was distributed on June 4, 2008, 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 08-24-086**

**WITHDRAWAL OF PROPOSED RULES  
GAMBLING COMMISSION**

(By the Code Reviser's Office)

[Filed December 2, 2008, 8:48 a.m.]

WAC 230-15-035, proposed by the gambling commission in WSR 08-11-065 appearing in issue 08-11 of the State Register, which was distributed on June 4, 2008, 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 08-24-087**

**WITHDRAWAL OF PROPOSED RULES  
GAMBLING COMMISSION**

(By the Code Reviser's Office)

[Filed December 2, 2008, 8:48 a.m.]

WAC 230-15-210, proposed by the gambling commission in WSR 08-11-066 appearing in issue 08-11 of the State Register, which was distributed on June 4, 2008, 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 08-24-088**

**WITHDRAWAL OF PROPOSED RULES  
GAMBLING COMMISSION**

(By the Code Reviser's Office)

[Filed December 2, 2008, 8:48 a.m.]

WAC 230-15-055, proposed by the gambling commission in WSR 08-11-067 appearing in issue 08-11 of the State Register, which was distributed on June 4, 2008, 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 08-24-096**

**PROPOSED RULES  
DEPARTMENT OF LICENSING**

[Filed December 2, 2008, 12:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-19-011.

Title of Rule and Other Identifying Information: Chapter 308-63 WAC, Wreckers.



Hearing Location(s): 2424 Bristol Court S.W., 3rd Floor C/R 346, Olympia, WA 98502, on January 15, 2009, at 2:00 p.m.

Date of Intended Adoption: February 2, 2009.

Submit Written Comments to: Mary Morris, P.O. Box 9039, Olympia, WA 98507, e-mail mmorris@dol.wa.gov, fax (360) 586-6703, by January 12, 2009.

Assistance for Persons with Disabilities: Contact Laura Desmul by January 12, 2009, TTY (360) 664-8885 or (360) 902-3600.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To review current rules to ensure necessity, effectiveness, efficiency, clarity, intent, coordination with other jurisdictions and agencies, cost benefits and fairness in accordance with Governor's Executive Order 97-02.

Reasons Supporting Proposal: Governor's order for WAC review.

Statutory Authority for Adoption: RCW 46.80.140.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state patrol, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Charles R. Coach, 2424 Bristol Court S.W., Olympia, WA 98507, (360) 664-6453; and Enforcement: Daniel N. Devoe, 2424 Bristol Court S.W., Olympia, WA 98507, (360) 664-6451.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal does not propose additional duties on the industry.

A cost-benefit analysis is not required under RCW 34.05.328. The contents of the proposed rules are explicitly and specifically dictated by statute.

November 26, 2008

Mykel D. Gable

Assistant Director

Vehicles

AMENDATORY SECTION (Amending WSR 01-03-141, filed 1/24/01, effective 2/24/01)

**WAC 308-63-010 Definitions—General.** (1) Department - means the department of licensing of the state of Washington.

(2) Director - means the director of the department of licensing.

(3) Destroy - means the dismantling, disassembling or wrecking of a vehicle with the intent of never again operating such as a vehicle, or the sustaining of damage to a vehicle either (a) to the extent that the cost of repairing it exceeds its fair market value immediately prior to the accident or occurrence, or (b) to the extent that the cost of repairing it plus its salvage value in its damaged condition exceeds or approximately equals the market value of the vehicle in its repaired or restored condition.

(4) Acquire - (~~shall be construed to~~) means the physical custody together with proof of ownership as provided under WAC 308-63-080.

(5) Custody - means the possession of a vehicle that the wrecker owns but for which ownership documents required in WAC 308-63-080 have not been received, or a vehicle placed for safekeeping by a law enforcement officer or others.

(6) Obscure - means to screen the wrecker activity from public view.

(7) Segregated area - means an area within the wrecking yard, which must be designated by a physical barrier. The physical barrier may be portable, made of substantial posts and connected by rope, chain, cable, or of other equally strong construction.

AMENDATORY SECTION (Amending WSR 05-14-093, filed 6/30/05, effective 7/31/05)

**WAC 308-63-020 (~~Definitions~~) Bill of sale. May I acquire a vehicle (~~or a vehicle part~~) on a bill of sale?**

(1) Bill of sale for acquiring vehicles. A bill of sale (~~shall~~) must include the names and addresses of the seller and purchaser; a description of the vehicle being purchased, including the make, model and identification or serial number; the date of purchase; and the purchase price of the vehicle. Bills of sale are acceptable in lieu of title in the cases of:

(a) Vehicles from nontitle jurisdictions;

(b) When an insurance company or private owner has (~~turned in~~) surrendered the title to a vehicle previously destroyed as provided under WAC 308-56A-460; or

(c) For vehicles of the type to which titles are not issued.

**May I acquire a vehicle part on a bill of sale?**

(2) In the case of vehicle parts a bill of sale from the seller describing the specific part and giving the full name, address and verification of the seller's identity, plus date of sale. In addition, if a major component part is acquired the vehicle identification number from which it came must also be set forth on the bill of sale. A copy of each bill of sale (~~shall~~) must be maintained on acquired parts for a period of three years.

AMENDATORY SECTION (Amending WSR 01-03-141, filed 1/24/01, effective 2/24/01)

**WAC 308-63-040 Wreckers—Application for license. How must I apply for a vehicle wrecker license?**

An original or renewal application for a wrecker license (~~shall~~) must be filed with the director on the form provided by the department for this purpose. The application must be endorsed by the chief of police of any city with a population over five thousand; otherwise, by a member of the Washington state patrol. The endorsement certifies that the wrecker has an established place of business at the address shown on the application and that the applicant's vehicle(s) are properly identified in accordance with WAC 308-63-070(5).

Each application (~~shall~~) must specify the number of vehicles owned, leased, rented or otherwise operated by the applicant for towing or transportation of vehicles on public roadways in the conduct of the business. Each endorsement (~~shall~~) must identify the vehicle by make, model, year or other adequate description, and identification number.

AMENDATORY SECTION (Amending WSR 05-14-093, filed 6/30/05, effective 7/31/05)

**WAC 308-63-050 Expiration of motor vehicle wrecker's license. When does my vehicle wrecker license expire?** (1) A vehicle wrecker's license ~~((shall))~~ will expire twelve consecutive months from the date of issuance.

(2) Vehicle wrecker license plates ~~((shall))~~ will expire on the same date as the expiration of the license.

AMENDATORY SECTION (Amending WSR 05-14-093, filed 6/30/05, effective 7/31/05)

**WAC 308-63-060 Vehicle wrecker—Special plates. How do I use the special vehicle wrecker license plates?**

All vehicles used for towing or transporting vehicles or vehicle parts by a vehicle wrecker on the highways of this state in the conduct of the business ~~((shall))~~ must bear regular license plates and, in addition, special wrecker's plates. Wrecker's plates may be obtained at a fee of six dollars which includes one dollar for reflectorization under RCW 46.16.237 for the first set, and three dollars including reflectorization for each additional set.

The wrecker may purchase sets of plates equal in number to the number of vehicles reported on the application as owned, rented, leased and operated by the applicant for towing or transporting of vehicles or vehicle parts in the conduct of the business. Should the wrecker purchase, lease, or rent additional vehicles for towing or transporting of vehicles or vehicle parts, the applicant ~~((shall))~~ must so inform the department and may ~~((at the department's discretion,))~~ obtain additional plates for such vehicles.

Each vehicle used for towing or transporting of vehicles or vehicle parts ~~((shall))~~ must display both wrecker plates of the same number on the transporting or towing vehicle with one on the front of the transporting vehicle and the other on the back. ~~((However, when any vehicle being towed does not have valid license plates, the set of wrecker plates may be split, with one being displayed on the front of the towing vehicle and the other on the rear of the vehicle being towed.))~~

AMENDATORY SECTION (Amending WSR 05-14-093, filed 6/30/05, effective 7/31/05)

**WAC 308-63-070 Wreckers—General procedures and requirements.** Vehicle wreckers ~~((shall))~~ must comply with all rules ~~((and regulations))~~ set forth in this chapter and the requirements of chapter 46.80 RCW relative to the handling of vehicle parts or vehicles to be dismantled.

(1) Enclosure. The activities of a vehicle wrecker ~~((shall))~~ must be conducted entirely within the established place of business. A physical barrier ~~((shall))~~ must designate the boundary of the wrecking yard. Where necessary to obscure public view of the premises, it ~~((shall))~~ must be enclosed by a sight-obscuring wall or fence at least eight feet high.

(a) Where required, such sight-obscuring wall or fence ~~((shall))~~ must be painted or stained in a neutral shade to blend with the surrounding premises. If the fence is made of chain link, it must have sufficient slats or other construction to obscure public view of the premises.

(b) A living hedge of equal height and sufficient density to prevent view of the premises may be substituted for the wall or fence.

(c) All enclosures and barriers ~~((shall))~~ must be kept in good repair.

(d) Reasonable consideration ~~((shall))~~ will be given to the topography of the land by enforcement personnel when inspecting premises for such fence, enclosure or barrier.

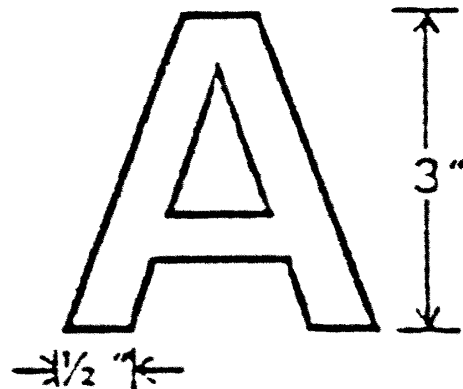
(e) Exceptions to this section must be granted in writing by the department.

(2) Additional places of business. Each licensed vehicle wrecker may maintain one or more additional places of business within the same county, under the same ~~((permit))~~ license. The vehicle wrecker may maintain as many storage yards or sales outlets as needed so long as each is registered with the department. Each wrecking or storage yard ~~((shall))~~ must comply with local zoning regulations ~~((and with such other requirements as the department may provide, particularly those in subsection (1) of this section)),~~ chapter 46.80 RCW, and the requirements of this chapter. Duplicate vehicle wrecker's licenses will be issued to be posted at each additional place of business.

(3) Change of address. The department ~~((shall))~~ must be notified ~~((immediately))~~ within ten days of any change of address of any business location or of the addition of any such location.

(4) Display of license certificate. The license certificate ~~((of))~~ issued by the department to a licensed wrecker ~~((shall))~~ must be displayed conspicuously at each business address and ~~((shall))~~ must be available for periodic inspection by law enforcement officers and authorized representatives of the department.

(5) Identification of licensee's vehicles. All vehicles equipped for lifting or transporting vehicles or vehicle parts which are operated on the highways of this state ~~((shall))~~ must display the licensee's name, the city in which the licensee's established place of business is located, and the current business telephone number of the licensee. Such information ~~((shall))~~ must be painted on or permanently affixed to both sides of the vehicle. Each letter and numeral shall be made with at least a half-inch in solid width and ~~((shall))~~ must be at least three inches high. See example.



(6) License plates from vehicles entered into the wrecking yard ~~((shall))~~ must be removed within twenty-four hours.

Plates on vehicles in the segregated area may be left on until the vehicle is entered into the wrecking yard. The wrecker (~~shall~~) must destroy such plates prior to submitting the monthly report for the month the vehicle was entered into the wrecking yard.

(7) Major component parts. Under RCW 46.80.010(5) the term "engines, short blocks, transmissions and drive axles" (~~shall~~) will not include cores or parts, to include catalytic converters, which are limited to value as scrap metal or for remanufacturing only. The term "seat" (~~shall be interpreted to~~) will mean bucket seat. The term "drive axle" means a differential assembly.

(8) Vehicles in custody and awaiting approved ownership documents, as provided under WAC 308-63-080, must be placed in a segregated storage area within the wrecking yard which must be designated by a physical barrier. Vehicles may remain in this area after ownership documents have arrived and the vehicle has been properly entered into the wrecking yard inventory. There will be no dismantling or parts removal in this area. The physical barrier may be portable, made of substantial posts and connected by a chain, cable, or of other equally strong construction.

This area can be used for storage of dealer cars or equipment if the vehicle wrecker is both a vehicle wrecker and a dealer however, there will be no storage of vehicle parts.

AMENDATORY SECTION (Amending WSR 05-14-093, filed 6/30/05, effective 7/31/05)

**WAC 308-63-080 Vehicle wrecker—Procedures for acquiring vehicles and vehicle parts. (~~With~~) What ownership documents may I use to acquire vehicles or vehicle parts? (~~Supporting acquisition.~~)** The vehicle wrecker may acquire vehicles and vehicle parts if the seller can furnish ownership documents as follows:

(1) Certificate of title, including salvage certificates, properly endorsed in the case of vehicles from states issuing a title.

(2) Bills of sale pursuant to WAC 308-63-020(1) for vehicles from nontitle jurisdictions, for vehicles that have had their title surrendered to a state after having been declared a total loss, and for vehicles of the type to which titles are not issued.

(3) Affidavit of lost or stolen title if executed by the registered and legal owner of record.

(4) Insurance company bills of sale pursuant to WAC 308-56A-460(~~(3)~~) (2).

(5) Affidavit of sale of an abandoned vehicle pursuant to WAC 308-61-026(1).

(6) Affidavit of junk vehicle pursuant to RCW 46.55-230.

(7) A court order.

(8) A bill of sale for parts pursuant to WAC 308-63-020(2).

(9) A bill of sale from another licensed vehicle wrecker.

(10) Bill of sale from a salvage pool auction.

AMENDATORY SECTION (Amending WSR 06-23-038, filed 11/7/06, effective 12/8/06)

**WAC 308-63-090 Vehicle wrecker—Records and procedures for monthly reports. What records must I keep and how do I handle the monthly report? (1) Wrecker books and files.** The wrecker must maintain books and files that contain the following:

(a) A record of each vehicle or part acquired giving:

(i) A description of the vehicle or part by make, model, year, and for major component parts, except core parts, the vehicle identification number and "yard number" assigned at the time the vehicle or major component part was placed in the wrecking yard;

(ii) The date purchased or acquired by the vehicle wrecker, and the name of the person, firm or corporation from which the vehicle or part was obtained;

(iii) The certificate of ownership number if registered in a title state, or registration number if a nontitling state; or description of the document used in lieu of title, such as an affidavit of sale, a bill of sale for a vehicle or vehicle part;

(iv) The name of the state and license number in the state that a vehicle was last registered; and

(v) A statement indicating whether any used car or truck at least six years but not more than twenty years old met the market value threshold amount (~~immediately before it was~~) prior to the vehicle being wrecked, destroyed or damaged, as required by RCW 46.12.070 and WAC 308-56A-460(3). If this statement is not provided, when required, the department will treat the vehicle as if the wrecker indicated that the market value threshold was met (~~when~~) prior to the vehicle being wrecked.

(b) A record of the disposition of the motor, body, and major component parts giving the name of the person purchasing the part(s), if any. Sales to scrap processors must be accompanied by an invoice or bill of sale, listing each vehicle by its yard number. The wrecker must retain a copy of the invoice or bill of sale for purposes of inspection for three years.

These records will be subject to inspection by authorized representatives of the department and law enforcement officials during regular business hours. The information must be entered in the wrecker's records within two business days of the event requiring the entry, such as receipt of a vehicle.

(2) **The vehicle wrecker must furnish written reports.** By the tenth of the month following the month of acquisition of vehicles entered into the wrecking yard inventory, each wrecker must submit a report on the form prescribed by the department documenting that the vehicles were acquired and entered into the wrecking yard inventory during the previous month. Vehicles being held in the segregated storage area awaiting ownership documents, under WAC 308-63-070(8), will not be reported. The report must be made in duplicate. The original must be sent to the department and the duplicate retained for the wrecker's files. If no vehicles were acquired during that month, the monthly report must be sent in stating "none." The report must contain information for vehicles only as the wrecker is required to keep by subsection (1)(a)(i), (ii), (iii), (iv), and (v) of this section. The report must be accompanied by properly endorsed certificates of ownership or other adequate evidence of ownership and reg-

istration certificates. Records on acquisitions and sales of vehicle parts need not be included in reports submitted to the department but records must be kept for three years from date of purchase and made available for inspection.

(3) **Identity of vehicles in yard.** A yard number must identify all vehicles placed in the wrecking yard. The number must be assigned in the wrecker's records with numerals marked so as to be clearly visible and legible. If a part of a vehicle is sold which has the number on it, the yard number of the vehicle must be remarked in another location on the vehicle. Core parts do not need to be identified.

AMENDATORY SECTION (Amending WSR 05-14-093, filed 6/30/05, effective 7/31/05)

**WAC 308-63-100 Vehicle wrecker—Must furnish bill of sale for parts. What document must I use to sell a vehicle part?** No vehicle wrecker may sell a vehicle part unless the vehicle wrecker gives the purchaser a bill of sale for such part. Whenever the vehicle wrecker sells a motor, frame, or other major component part, except for a core part, the bill of sale must describe the part fully, giving make, model, year, and vehicle identification number or yard number of the vehicle from which the part was taken.

No vehicle wrecker may sell vehicles to a scrap processor or to a hulk hauler for transportation to a scrap processor without giving the scrap processor or the hulk hauler an invoice or bill of sale listing each vehicle by yard number. The vehicle wrecker (~~shall~~) must retain a copy of such invoices for inspection purposes.

AMENDATORY SECTION (Amending WSR 05-14-093, filed 6/30/05, effective 7/31/05)

**WAC 308-63-110 Vehicle wrecker—Selling used vehicles. Where do I store inoperable vehicles that I acquire for sale under my vehicle dealer license?** (1) All vehicles acquired for sale under a vehicle dealer's license which are inoperable at the time of acquisition (~~shall~~) must be kept inside the wrecking yard and (~~shall~~) must be segregated from the remainder of the operation by a continuous physical barrier.

(2) "Inoperable" as used in this section (~~shall~~) means a vehicle which does not comply with requirements for vehicles used on public streets with regard to brakes, lights, tires, safety glass and other safety equipment. However, for purposes of this section, inoperable (~~shall~~) does not include a requirement to be currently licensed.

AMENDATORY SECTION (Amending WSR 00-13-019, filed 6/12/00, effective 7/13/00)

**WAC 308-63-120 Statement of change in business structure, ownership interest or control. When must I report a change?** Any person, firm, association, corporation or trust licensed under chapter 46.80 RCW must, within ten days following any change in its business or ownership structure, file a statement with the department, describing with particularity the change in its business structure or the change in ownership interest.

AMENDATORY SECTION (Amending WSR 05-14-093, filed 6/30/05, effective 7/31/05)

**WAC 308-63-130 Termination of business. If I terminate my business, must I surrender my vehicle wrecker license?** A vehicle wrecker who terminates business (~~shall~~) must, within ten days of such termination return the vehicle wrecker license and special license plates to the department for cancellation.

AMENDATORY SECTION (Amending WSR 00-13-019, filed 6/12/00, effective 7/13/00)

**WAC 308-63-140 Sale, transfer or other disposition of noncorporate licensee. What must I do if there is a change of ownership in my noncorporate license?** Upon the sale, transfer or other disposition of an ownership interest in a noncorporate licensee:

(1) A new bond or rider to the bond revealing the change in ownership (~~shall~~) must be filed with the department.

(2) A new application for an appropriate license by the purchaser or transferee is required and the fee will be the same as for an original application.

(3) The former owner must surrender to the department the special license plates. The new owners or transferees must purchase new plates in their own name.

AMENDATORY SECTION (Amending WSR 00-13-019, filed 6/12/00, effective 7/13/00)

**WAC 308-63-160 Incorporation of licensee while licensed. If my business is not a corporation, what do I do if I incorporate?** A licensee which incorporates while licensed:

(1) (~~shall~~) Must file an application for an appropriate license.

(2) (~~shall~~) Must file a new bond with the department.

(3) The firm may request the preincorporation license number upon application.

## WSR 08-24-106

### PROPOSED RULES

### OFFICE OF

### INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2008-21—Filed December 3, 2008, 7:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-13-096.

Title of Rule and Other Identifying Information: These proposed rules define things of value that a title company is permitted to give to any person in a position to refer or influence the referral of title insurance business, as required by RCW 48.29.005(5).

Hearing Location(s): Insurance Commissioner's Office, Room TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on January 9, 2009, at 1:30 p.m.

Date of Intended Adoption: January 12, 2009.

Submit Written Comments to: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, e-mail KacyS@oic.wa.gov, fax (360) 586-3109, by January 7, 2009.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by January 7, 2009, TTY (360) 586-0241 or (360) 725-7087.

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** These proposed rules implement RCW 48.29.210 enacted in 2008 that prohibits title insurance companies and title insurance agents from giving things of value to any person in a position to refer or influence the referral of title insurance business to the title company except as permitted by rules adopted by the commissioner. The proposed rule making will repeal the existing rule (WAC 284-30-800) regarding illegal inducements by title companies and replace it with rules that provide specifics as to what things of value title companies can and cannot give to persons in a position to refer or influence the referral of title insurance business.

**Reasons Supporting Proposal:** During the 2008 legislative session, the legislature enacted RCW 48.29.210 prohibiting title insurance companies and title insurance agents from providing things of value to any person in a position to refer or influence the referral of title insurance business to the title company except as permitted by rules adopted by the commissioner. These proposed rules effectuate chapter 48.29 RCW.

**Statutory Authority for Adoption:** RCW 48.02.060, 48.29.005.

**Statute Being Implemented:** RCW 48.29.210.

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:** Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7036; **Implementation and Enforcement:** John Hamje, P.O. Box 40257, Olympia, WA 98504-0257, (360) 725-7262.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Although proposed WAC 284-29-200 to 284-29-265 will affect many small producers within Washington state these proposed rules do not require a small business economic impact statement for the following reasons:

(A) For any activity that would be subject to penalty, except for record keeping, the penalty would be due to engaging in an act prohibited by law (because the commissioner had not expressly permitted the activity in these proposed sections); and

(B) Any additional cost involved in keeping records required by the new proposed regulations for limited number of activities permitted by the commissioner in the proposed WAC sections will constitute a "minor cost," as defined by RCW 19.85.020.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kacy Scott, P.O. Box 40258, Olym-

pia, WA 98504-0258, phone (360) 725-7041, fax (360) 586-3535, e-mail Kacys@oic.wa.gov.

December 3, 2008

Mike Kreidler  
Insurance Commissioner

## Chapter 284-29 WAC

### TITLE INSURANCE

#### NEW SECTION

**WAC 284-29-200 Scope and purpose.** (1) RCW 48.29.210(2) states: "A title insurer, title insurance agent, or employee, agent, or other representative of a title insurer or title insurance agent shall not, directly or indirectly, give anything of value to any person in a position to refer or influence the referral of title insurance business to either the title insurance company or title insurance agent, or both, except as permitted under rules adopted by the commissioner." WAC 284-29-200 through 284-29-265 establishes standards for acceptable giving of things of value by a title company to any person in a position to refer or influence the referral of title insurance business to the title company. If the thing of value is not clearly and specifically included in WAC 284-29-200 through 284-29-265 as a thing of value that a title company may give to a person, its giving is prohibited.

(2) RCW 48.29.210 not only applies to title insurance producers or associates of producers, but to every person in position, directly or indirectly, to refer or influence the referral of title insurance business.

(3) No title company is required to give to any person any of the things of value that are permitted by WAC 284-29-200 through 284-29-265 and a person is not entitled to receive any of the permitted things of value from a title company.

(4) Adoption of WAC 284-29-200 through 284-29-265 must not be construed to mean that the commissioner encourages title companies to give anything of value to any person in a position to refer or influence the referral of title insurance business.

(5) Nothing contained in WAC 284-29-200 through 284-29-265 prohibits the payment by a title insurer or title insurance agent to a producer of a return on ownership interest in the title insurer or title insurance agent as set forth in RCW 48.29.213.

(6) Title companies must not enter into any agreement, arrangement, scheme, or understanding or in any other manner pursue any course of conduct, designed to avoid RCW 48.29.210 and WAC 284-29-200 through 284-29-265.

#### NEW SECTION

**WAC 284-29-205 Definitions.** For purposes of WAC 284-29-200 through 284-29-265:

(1) "Advertising" or "advertisement" means a representation about any product, service, equipment, facility, or activity or any person who makes, distributes, sells, rents, leases, or otherwise makes available such a product, service, equipment, facility, or activity, when the representation:

(a) Is communicated to a person that, to any extent, by content or context, informs the recipient about such product, service, equipment, facility, or activity;

(b) Recognizes, honors, or otherwise promotes such a product, service, equipment, facility, or activity; or

(c) Invites, advises, recommends, or otherwise solicits a person to participate in, inquire about, purchase, lease, rent, or use such a product, service, equipment, facility, or activity.

(2) "Associates of producers" has the same meaning as set forth in RCW 48.29.010 (3)(f).

(3) "Bona fide employee of a title company" means an individual who devotes substantially all of his or her time to performing services on behalf of a title company and whose compensation for these services is in the form of salary or its equivalent by the title company.

(4) "Give" means to transfer to another person, or cause another person to receive, retain, use or otherwise benefit from a thing of value whether or not the title company receives compensation in return. It also means the transfer to a third person of anything of value that in any manner benefits a person in a position to refer or influence the referral of title insurance business.

(5) "Market rate" means the price at which a seller, under no obligation or duress to sell, is willing to accept and a buyer, under no obligation or duress to buy, is willing to pay in an arms-length transaction. The market rate is determined by comparing the items or services purchased or sold to similar items or services that have been recently purchased by others or sold to others, including others not in the title insurance business.

(6) "Person" has the meaning set forth in RCW 48.01.-070.

(7) "Producers of title insurance business" or "producer" has the meaning set forth in RCW 48.29.010 (3)(e); this term includes associates of producers and any person in a position to refer or influence the referral of title business to the title company.

(8) "Representative of a title company" means any person acting directly or indirectly on behalf of the title company.

(9) "Restrictive covenants" means private agreements that restrict the use or occupancy of real property generally by specifying lot sizes, building lines, occupancy, architectural styles, and the use to which the property may be put. Restrictive covenants do not include matters such as easements and road maintenance agreements.

(10) "Self-promotional" means an advertisement or promotional function which is conducted by a single title company solely for the benefit of the title company or a promotional item intended for distribution by a single title company and only on behalf of the title company.

(11) "Thing of value" means anything that has a monetary value. It includes but is not limited to cash or its equivalent, tangible objects, services, use of facilities, monetary advances, extensions of lines of credit, creation of compensating balances, title company employee time, advertisements, discounts, salaries, commissions, services at special prices or rates, sales or rentals at special prices or rates, and any other form of consideration, reward or compensation.

(12) "Title company" means either a title insurance company authorized to conduct title insurance business in this state under chapter 48.05 RCW or a title insurance agent defined in RCW 48.17.010(15), or both. The term includes employees, representatives, and agents of title insurance companies and title insurance agents.

(13) "Trade association" means an association of persons, a majority of whom are producers or persons whose primary activity involves real property. Trade association does not include an association of persons, a majority of whom are title insurance companies and title insurance agents.

#### NEW SECTION

**WAC 284-29-210 Real property information.** (1) A title company may give to a producer without charge information about a specific parcel of real property located in any county, commonly referred to as a "listing package," which consists of information relating to the ownership and status of title to real property. The listing package must be limited to a single copy of one or more of the following six items of information:

- (a) The last deed appearing of record;
- (b) Deeds of trust, mortgages, and real estate contracts which appear to be in full force and effect;
- (c) A map of the property which may show the property's location or dimensions, or both;
- (d) Applicable restrictive covenants;
- (e) Tax information; and
- (f) Property characteristics such as number of rooms, square footage and year built.

(2) A listing package must not include any other real property information such as market value information, demographics, or additions, addenda, or attachments which may be construed as conclusions reached by the title company regarding matters of marketable ownership or encumbrances.

(3) A generic cover letter printed on the standard letterhead of the title company may be attached to the listing package.

(a) The cover letter may include a brief statement identifying by name only, any of the six permitted items included in subsection (1) of this section that may be attached to the cover letter;

(b) The cover letter may contain a disclaimer as to conclusions of marketable ownership or encumbrances; and

(c) The content of the cover letter or listing package is strictly limited to the items listed in this section and must not include any advertising or marketing for the benefit of the recipient.

(4) A title company may give, without charge, to a producer a single copy of a document affecting title to a specific parcel of real property only if:

(a) The cost to the title company of giving the copy of the document, including but not limited to labor and materials, is ten dollars or less; and

(b) The document is not in any manner given to the producer in conjunction with or in association with the giving of other documents related to property in the general locale for which the single document is being given.

(5) A title company must not give a producer reports containing publicly recorded information, comparable sale information, appraisals, estimates, or income production potential, information kits or similar packages containing information about one or more parcels of real property, except as permitted by this section, without charging and actually receiving payment for the actual cost of the work performed and the material provided (for example, costs related to providing farm packages, labels, lot book reports, home books, and tax information).

(6) A title company may give, at no charge, to the proposed insured or insured, copies of any documents set forth as exceptions in a commitment or policy.

(7) If a title company owns or leases and maintains a complete set of tract indexes in a particular county in which the county government does not make copies of recorded documents available on the county's web site, then the title company may make copies of the recorded documents available at no charge to the general public on the title company's web site.

#### NEW SECTION

**WAC 284-29-215 Advertising.** (1) A title company may advertise in a trade association publication only if all of the following conditions are met:

(a) The publication is an official publication of the trade association;

(b) The publication must be nonexclusive so that any title company has an equal opportunity to advertise in the publication;

(c) The title company must pay no more than the standard rate for the advertisement applicable to members of the trade association;

(d) The title company's advertisement must be solely self-promotional; and

(e) The payment for the advertisement must be included as an expenditure for the purposes of the limits in WAC 284-29-220(5).

(2) Except as provided in subsection (1) of this section, a title company must not directly, indirectly, by payment to a third-party or otherwise, use any means of communication or media to advertise on behalf of, for, or with a producer, including but not limited to:

(a) Advertising real property for sale or lease unless the property is owned by the title company;

(b) Advertising or promoting the listings of real property for sale by real estate licensees; or

(c) Advertising in connection with the promotion, sale, or encumbrance of real property.

(3) No advertisement may be placed in a publication that is published or distributed by or on behalf of a producer of title business, including but not limited to, web sites, flyers, postcards, for sale signs, flyer boxes, or any other means of communication or any other media.

(4) Title companies may pay for a self-promotional advertisement in the publications or broadcasts of the following persons:

(a) Newspapers;

(b) Telephone directories;

(c) Internet web sites, subject to the limits of subsection (3) of this section;

(d) Television stations;

(e) Radio stations; and

(f) Real estate licensees who do not represent buyers and sellers or who do not function as agents as defined in RCW 18.86.010(2) provided that the publication must be nonexclusive so that any title company has an equal opportunity to advertise in the publication.

#### NEW SECTION

**WAC 284-29-220 Trade associations.** (1) A title company may donate the time of its employees to serve on a trade association committee.

(2) A title company may donate to, contribute to or otherwise sponsor a trade association event only if all of the following conditions are met:

(a) The event is a recognized association event that generally benefits all members and affiliated members of the association in an equal manner;

(b) The donation must not benefit a selected producer member of the association unless through a random process; and

(c) Solicitation for the donation must be made of all association members and affiliated members in an equal manner and amount.

(3) A title company may pay for its employees and a single guest of each employee to attend trade association events only if all of the following conditions are met:

(a) The title company pays a fee equal to fees paid by producer members of the association in the events;

(b) The title company employees and their guest(s) actually attend the event (except when attendance is prevented by an emergency); and

(c) The guest of the title company employee is not a producer (except where the guest is related to the title company employee by blood or marriage or their domestic partner).

(4) For purposes of this section, trade association events include, but are not limited to, conventions, award banquets, symposiums, educational seminars, breakfasts, lunches, dinners, receptions, cocktail parties, open houses, sporting activities and other similar activities.

(5) A title company may:

(a)(i) Donate to, contribute to, or otherwise sponsor a trade association event under subsection (2) of this section;

(ii) Advertise in a trade association publication under WAC 284-29-215(1); and

(iii) Sponsor a trade association educational seminar under WAC 284-29-235(3);

(b) Give a thing of value listed under (a) of this subsection to a trade association only if all of the following requirements are met:

(i) The thing of value is limited to one thousand dollars per event, advertisement, or sponsorship of an educational seminar;

(ii) The title company must not give a thing of value to all trade associations more than three times in a calendar year;

(iii) The title company must not combine any of these permitted expenditures into one expenditure; and

(iv) The title company must not accumulate or carry forward left over or unused expenditures from one of these permitted expenditures to a subsequent expenditure.

(6) If a title company owns or leases and maintains a complete set of tract indexes in more than one county:

(a) The limits set forth in subsection (5) of this section apply on a county by county basis for donations, contributions, sponsorships, payments for events, advertisements, or sponsorship of educational seminars of trade associations a majority of whose members are located in that county;

(b) A donation, contribution, sponsorship, payment for an event, advertisement, or sponsorship of an educational seminar to a statewide trade association shall constitute one of its expenditures for each and every county in which the title company is authorized to issue title insurance policies; and

(c) The title company must not combine or accumulate unused expenditures of these permitted expenditures from one county to another county nor to a statewide trade association.

(7) If a title company that is under common ownership makes a donation, contribution, sponsorship, payment for an event, advertisement, or sponsorship of an educational seminar to a statewide trade association, the expenditure shall constitute an expenditure as one of the expenditures for each and every one of the title companies that are under common control.

#### NEW SECTION

**WAC 284-29-225 Self-promotional items.** A title company may give a thing of value with its preprinted company logo, except money or gift cards, to a producer if the cost to the title company is five dollars or less per thing of value and only if the thing of value does not contain the name or logo of the producer or any reference to the producer.

#### NEW SECTION

##### **WAC 284-29-230 Permitted business entertainment.**

(1) A title company may make expenditures for business meals on behalf of any individual, only if the expenditure meets all the following criteria:

(a) An individual representing the title company is present during the business meal;

(b) There is a substantial and substantive title insurance business discussion directly before, during or after the business meal;

(c) No more than four individuals that are employed by or are independent contractors of the same producer are provided a business meal in a single day (spouses and guests of the producer must be included in the count for purposes of determining the four-person maximum); and

(d) The title company does not expend more than one hundred dollars per individual throughout any calendar year for all business meals.

(2) The business meals permitted in subsection (1) of this section must not include open houses of producers wherever

located, including but not limited to, at the producers premises or facilities or homes of property for sale.

(3) For purposes of this section, "meals" includes, but is not limited to, breakfast, brunch, lunch, dinner, receptions, or cocktails and other beverages, whether the meals occur on or off the title company's premises.

(4) For purposes of determining the maximum permitted expenditure under subsection (1) of this section, all of the following requirements must be met:

(a) All costs associated with a meal must be included in the calculation of expenses. When calculating the cost of a meal, the title company must include all costs paid by the title company for travel, transportation, hotel, equipment or facility rental, food, cocktails and other beverages, refreshments, and registration or entry fees, except those fees incurred solely by the title company and that do not benefit the producer.

(b) Attendance at or an invitation to a meal must not be based on or be given as compensation for forwarding or directing title business to the title company.

(c) For accounting purposes, the expenditures by a title company for a meal may be prorated among all attendees, including the title company employees.

(5) A title company may host no more than two self-promotional functions per year, only if all of the following requirements are met:

(a) Any self-promotional function must be at the title company's owned or occupied facility at which the title company conducts its regular business. The self-promotional function must be nonexclusive and open to all producers.

(b) A title company must not spend more than fifteen dollars per guest reasonably expected to attend at any one self-promotional function.

(c) A title company must not combine permitted expenditures for two self-promotional functions into a single self-promotional function.

(d) A title company must not accumulate or carry forward left over or unused expenditures from one self-promotional function to a subsequent self-promotional function.

(e) If a title company owns or leases and maintains a complete set of tract indexes in more than one county, then the limits set forth in this subsection apply on a county by county basis.

(i) The self-promotional functions must be at the title company's owned or occupied facility at which the title company conducts its regular business in the county for which it owns or leases and maintains a complete set of tract indexes.

(ii) The title company must not combine permitted expenditures for a self-promotional function from one county to another county.

(6) The limits contained in subsections (1) and (5) of this section are separate limits and an expenditure made for an activity under one of these subsections is not applied to the limit under the other subsection.

#### NEW SECTION

**WAC 284-29-235 Educational seminars.** (1) A title company may conduct educational programs at no charge only if the content of the program consists solely of education



regarding title insurance, title to real property, and escrow topics.

(a) A title company must spend no more than ten dollars per person for refreshments at any one educational program.

(b) Any materials that the title company provides to attendees must be directly related to the topic of the seminar or are self-promotional advertising of the title company.

(2) A title company may provide a speaker at no charge for an educational program conducted or presented by other persons, only if the following conditions are met:

(a) The speaker is an employee of the title company;

(b) If a title insurance agent is providing the speaker, the speaker may be an employee of the title insurer for whom the title insurance agent has been properly appointed;

(c) The topic of the presentation by the employee is solely related to title insurance, escrow, or real property law; and

(d) Any materials that the speaker provides to attendees are directly related to the topic of the speaker or are self-promotional advertising of the title company of the employee.

(3) A title company may sponsor an educational seminar of a trade association subject to the limits in WAC 284-29-220.

(4) A title company may sponsor an educational program on topics other than title insurance, title to real property, and escrow only if:

(a) The educational program is open to all producers; and

(b) The attendees actually pay to attend the program the greater of:

(i) All expenses and costs associated with the delivery of the educational program by the title company; or

(ii) What the attendee would pay to attend a similar seminar sponsored by entities other than title companies on the open market.

The calculation by the title company of the expenses and costs associated with the delivery of the education program must include, but not be limited to, all travel, refreshments, speaker fees or wages of the speaker, facility rental, preparation of materials distributed at the program, parking, advertisement, and wages of arranging and planning for the program.

#### NEW SECTION

**WAC 284-29-240 Political action committees.** Title companies and their employees may donate to registered political action committees.

#### NEW SECTION

##### **WAC 284-29-245 Locale of title company employees.**

A title company and its employees must not lease or rent a workspace location owned or leased by a producer unless all of the following conditions are met:

(1) The space is secured by a bona fide written lease or rental agreement;

(2) The rent paid for the workspace is consistent with the prevailing rent charged for similar space in the market area of the workspace;

(3) Renting the space is not contingent upon the volume of title company business and is paid only in cash and not by trade or barter;

(4) There is no sharing of employees unless the title company only pays for its reasonably proportionate share;

(5) There is no common usage of equipment between the title company and the producer unless the title company only pays for its proportionate share; and

(6) The workspace is occupied by a bona fide employee of the title company a minimum thirty hours per week, except for holidays and bona fide emergencies, and is open to the public during regular business hours. However, if for appropriate business reasons the title company ceases conducting business at the locale and there is a remaining term on the lease or rental agreement, the title company may continue to pay the rent until the expiration of the lease or rental agreement or the next renewal date of the lease or rental agreement, whichever is earlier.

#### NEW SECTION

**WAC 284-29-250 Memorial gifts and charitable contributions—Limitations.** (1) A title company may provide no more than two hundred dollars in value of food, floral bouquets, or memorial donations for the death of a producer or a producer's immediate family member. This includes contributions to medical funds for a producer or a producer's seriously injured or seriously ill immediate family member.

(2) A title company may contribute to a charity only if:

(a) The contribution by the title company is made payable directly to the charity; and

(b) The solicitation for the contribution and the contribution are not, directly or indirectly, in exchange for the referral of title insurance business.

(3) Title company employees may attend and volunteer their time at events hosted by charities.

#### NEW SECTION

**WAC 284-29-255 Other things of value that title companies are permitted to give to producers.** (1) A title company must not give, offer to give, provide, or offer to provide nontitle services (for example: Computerized book-keeping, forms management, computer programming, trust accounting for trust accounts not held in the name of the title company, short sale consultants, or transaction coordination) or any similar benefit to a producer, without charging and actually receiving a fee equal to the value of the services provided and in an amount at not less than what the producer would pay if the services were purchased on the open market or the title company's cost to provide the service, whichever is greater.

(2) A title company must not allow the use of any part of its premises (for example, its conference rooms or meeting rooms) to a producer without receiving a fair rental charge equal to the average rental for similar premises in the area.

(3) A title company may allow the use of a part of its premises (for example, its conference rooms or meeting rooms) for no charge to a meeting of a trade association for no more than four meetings in a calendar year.

(4) Title company employees may attend activities and business meetings of producers if all of the following standards are met:

(a) There is no cost to the employee or title company other than the employee's own entry fees, registration fees, meals, or other costs associated with the activity or business meeting;

(b) The fees paid by the title company are no greater than those charged to producer attendees; and

(c) If the title company pays a fee for an employee to attend the activity or business meeting, the title company employee must actually attend the activity or business meeting, unless an emergency prevents attendance.

(5) A title company may advance the recording fees for transactions for which the title company is either issuing the title insurance or conducting the escrow, or both, provided the title company is promptly reimbursed for the recording fees that it advanced.

#### NEW SECTION

##### **WAC 284-29-260 Examples of prohibited matters.**

The following is a partial, nonexclusive list of things of value that a title company must not give to a producer. Even though a thing of value is not included on this list a title company must not give any other things of value to a producer unless clearly and specifically permitted by WAC 284-29-200 through 284-29-255.

(1) Except as permitted in WAC 284-29-200 through 284-29-255:

(a) A title company must not cosponsor, subsidize, or contribute fees, prizes, gifts, or give things of value for a promotional function or activity off the title company's premises whether the function is self-promotional or not.

(b) Examples of off-premises functions or activities include, but are not limited to:

(i) Meetings;

(ii) Meals, including breakfasts, luncheons, dinners or cocktail parties;

(iii) Conventions, installation ceremonies, celebrations, hospitality rooms or similar functions;

(iv) Outings such as boat trips, fishing trips, motor vehicle rallies, sporting events of any kind, gambling trips, hunting trips, ski trips, shopping trips, golf tournaments, trips to or events at recreational or entertainment areas;

(v) Open house celebrations, or open houses at homes or property for sale;

(vi) Dances; or

(vii) Artistic performances.

(2) A title company must not sponsor, subsidize, supply prizes or labor, or otherwise give things of value for promotional activities of producers.

(3) A title company must not give or offer to give, either directly or indirectly, a compensating balance or deposit in a lending institution for the express or implied purpose of influencing the extension of credit by the lending institution to any producer.

(4) A title company must not disburse or offer to disburse on behalf of any person escrow funds held by the title

company before the conditions of the escrow applicable to the disbursements are met.

(5) A title company must not advance, pay or offer to advance or pay money on behalf of any person into escrow to facilitate a closing unless:

(a) The property that is the subject of the escrow is owned by or being purchased by the title company;

(b) The payment is made in compliance with a court order requiring the title company to make the payment; or

(c) In settlement of a bona fide dispute for which the title company may be liable.

(6) A title company must not give, pay or offer to pay, either directly or indirectly, or make payment to a third party for the benefit of any producer for:

(a) The services of a title company employee or representative or an outside professional whose services are required by any producer to complete or structure a particular transaction;

(b) The salary or any part of compensation of an employee of a producer;

(c) The salary or any part of the salary, commission, or any other form of compensation to any employee of the title company who is at the same time actively engaged as a producer;

(d) A fee for making an inspection or appraisal of property, whether or not the fee bears a reasonable relationship to the services performed;

(e) Services required to be performed by any producer in his or her professional capacity;

(f) Any evidence of title or copy of the contents of a document which is not produced or issued by the title company;

(g) The rent for all or any part of any space occupied by any producer, except as provided in WAC 284-29-245;

(h) Money, prizes, or other things of value in any kind of a contest or promotional activity;

(i) Any advertisement published in the name of, for, or on behalf of any producer;

(j) A business form of any producer which is provided for the convenience and benefit of the producer, except a form regularly used in the conduct of the title company's business;

(k) Any earnest money purchase agreements or purchase and sale agreements;

(l) Flyer boxes and stands, for sale signs and posts, or services for the placement of any of them;

(m) Postcards, stamps, flyers, newsletters, folders, invitations, copying, cutting or services related to preparing any of these items;

(n) Car washes or coupons for car washes;

(o) Pictures of producers;

(p) Gift cards of in any amount;

(q) Massages;

(r) Discount certificates; or

(s) The cost of or reimbursement for advisory fees.

(7) A title company must not provide, or offer to provide, all or any part of the time or productive effort of any employee of the title company to any producer. For example, title company employees must not be used by or loaned out to a producer for the self-promotional interests of the producer

except as part of the title company's day-to-day business with producers.

(8) A title company must not give or offer to give, pay for, or offer to pay for, furniture; office supplies, including but not limited to, file folders, telephones, computers or other equipment; or automobiles to any producer. A title company must not pay for, or offer to pay for, any portion of the cost of renting, leasing, operating, or maintaining any of these items.

(9) Delivery services between a title company and a producer must be performed by the title company's messenger service or employees and must consist only of delivering items directly related to the title company's title insurance or escrow business from the title company to a producer or from a producer to the title company.

(10) In accordance with its title insurance rates filed with the commissioner, a title company must not provide a title insurance commitment without actually receiving payment for the cancellation fee within the earlier of the following:

(a) One hundred eighty days of the first issuance of the commitment; or

(b) Sixty days of:

(i) The cancellation of the commitment;

(ii) When the title company reasonably should know that the commitment has been canceled; or

(iii) When the title company reasonably should know that the transaction for which the commitment was issued has been insured by another title company.

(11) A title company must not pay a producer member of its board of directors fees in excess of those paid to nonproducer directors.

(12) A title company must not enter into, agree to, or pay anything of value to a producer under any marketing agreement, access agreement, advertising agreement or any similar agreement.

(13) A title company must not make a donation to any charity in any manner that can reasonably be associated with a producer in exchange for the referral of title insurance business or obtaining customer service information from the title company.

(14) A title company must not pay any fee or consideration to any producer that is in any manner based in whole or in part on the number of transactions between the title company and the producer, regardless of the service being provided.

(15) A title company must not provide escrow, closing, or settlement services for a charge (independent of the rate charged for involved title insurance) that is less than the title company's actual cost either for:

(a) The cost of all parties to the escrow; or

(b) One party's proportionate share of the cost of the escrow.

#### NEW SECTION

**WAC 284-29-265 Recordkeeping.** (1) A title company must keep and maintain complete, accurate, and sufficient records to demonstrate compliance with WAC 284-29-200 through this section and keep them for a period of five years after the end of the year during which any thing of value was given to a producer.

(2) All records of a title company kept in order to meet the terms of WAC 284-29-200 through this section must be made available to the commissioner or the commissioner's representative during regular business hours.

(3) Failure of the title company to keep the records required by WAC 284-29-200 through this section is a violation of RCW 48.29.210.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 284-30-800

Unfair practices applicable to title insurers and their agents.

#### **WSR 08-24-107**

#### **PROPOSED RULES**

#### **OFFICE OF**

#### **INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2007-09—Filed December 3, 2008, 8:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-17-163.

Title of Rule and Other Identifying Information: The sale of juvenile life insurance policies.

Hearing Location(s): Insurance Commissioner's Office, Room TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on January 6, 2009, at 10:00 a.m.

Date of Intended Adoption: January 13, 2009.

Submit Written Comments to: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, e-mail KacyS@oic.wa.gov, fax (360) 586-3109, by January 5, 2009.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by January 5, 2009, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules provide detail on acceptable written standards and procedures for the sale of juvenile life insurance, designed to ensure that policies are not sold for fraudulent or speculative purposes.

Reasons Supporting Proposal: The commissioner surveyed life insurers, asking for their written policies and procedures pursuant to RCW 48.23.345. Some insurers writing juvenile policies in Washington do not have written policies and procedures. Other standards, policies and procedures do not go far enough to protect juveniles from fraudulent or speculative policy purchases. The rules interpret the statute for insurers.

Statutory Authority for Adoption: RCW 48.02.060 and 48.23.345.

Statute Being Implemented: RCW 48.34.345.

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: Meg Jones, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7197; Implementation: Beth Berendt, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117; and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There are no domestic insurance companies offering juvenile life insurance that meet the law's definition of "small."

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7041, fax (360) 586-3535, e-mail Kacys@oic.wa.gov.

December 3, 2008

Mike Kreidler

Insurance Commissioner

#### NEW SECTION

**WAC 284-23-800 Purpose and scope.** The purpose of these rules is to prevent the purchase of juvenile life insurance for speculative or fraudulent reasons, by ensuring that insurance underwriting practices consider such risk, and by setting forth the minimum practices required to insure the life of a juvenile. These rules apply to any insurance issued in Washington state on the life of a juvenile.

#### NEW SECTION

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

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

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

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

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

#### NEW SECTION

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

(1) An insurer may require applicants to cancel other life insurance-in-force before issuing its policy when the total

coverage from all combined life insurance exceeds the issuing insurer's maximum for juveniles.

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

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

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

(b) Any juvenile age fifteen or older must sign the initial application for insurance on the juvenile's life.

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

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

(b) Identify the amount, if any, of other life insurance contracts on the life of the juvenile which are in force at the time of application.

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

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

(e) Whether the overall amount of insurance on the juvenile exceeds the annual household income, and if so, why such an amount was approved.

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

**WSR 08-24-108**  
**PROPOSED RULES**  
**DEPARTMENT OF PERSONNEL**

[Filed December 3, 2008, 8:37 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-31-165 At what rate do employees accrue vacation leave?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on January 8, 2009, at 8:30 a.m.

Date of Intended Adoption: January 8, 2009.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail [connieg@dop.wa.gov](mailto:connieg@dop.wa.gov), fax (360) 586-4694, by January 2, 2009. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by January 2, 2009, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The following changes are housekeeping in nature.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, Olympia, WA, (360) 664-6408; Implementation and Enforcement: Department of personnel.

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

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

December 3, 2008

Eva N. Santos

Director

AMENDATORY SECTION (Amending WSR 05-21-059, filed 10/13/05, effective 11/15/05)

**WAC 357-31-165 At what rate do employees accrue vacation leave?** (1) Full-time employees accrue vacation leave at the following rates:

(a) During the first year of continuous state employment - twelve days (eight hours per month);

(b) During the second year of continuous state employment - thirteen days (eight hours, forty minutes per month);

(c) During the third and fourth years of continuous state employment - fourteen days (nine hours, twenty minutes per month);

(d) During the fifth, sixth, and seventh years of total state employment - fifteen days (ten hours per month);

(e) During the eighth, ninth, and tenth years of total state employment - sixteen days (ten hours, forty minutes per month);

(f) During the eleventh year of total state employment - seventeen days (eleven hours, twenty minutes per month).

(g) During the twelfth year of total state employment - eighteen days (twelve hours per month).

(h) During the thirteenth year of total state employment - nineteen days (twelve hours, forty minutes per month).

(i) During the fourteenth year of total state employment - twenty days (thirteen hours, twenty minutes per month).

(j) During the fifteenth year of total state employment - twenty-one days (fourteen hours per month).

(k) During the sixteenth and succeeding years of total state employment - twenty-two days (fourteen hours, forty minutes per month).

(2) Higher education employers may establish accrual rates that exceed the rates listed in subsection (1) of this section. This does not apply to individual positions.

(3) As provided in WAC 357-58-175, an employer may authorize a lump-sum accrual of vacation leave or accelerate the vacation leave accrual rate to support the recruitment and/or retention of a candidate or incumbent for a WMS position. Vacation leave accrual rates may only be accelerated using the rates established in subsection (1) of this section and must not exceed the maximum listed in subsection (1)(k) of this section.

(4) The following applies for purposes of computing the rate of vacation leave accrual:

(a) Employment in the legislative and/or the judicial branch except for time spent as an elected official or in a judicial appointment is credited.

(b) Employment exempt by the provisions of WAC 357-04-040, 357-04-045, 357-04-050, 357-04-055 is not credited.

(c) Each contract year, or equivalent, of full-time faculty and/or administrative exempt employment with a higher education employer is credited as one year of qualifying service.

(d) Exempt employment with a general government employer is credited, other than that specified in WAC 357-04-055 which is excluded.

**WSR 08-24-109**  
**PROPOSED RULES**  
**DEPARTMENT OF PERSONNEL**

[Filed December 3, 2008, 8:38 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-01-172 Family members, 357-31-070 When is an employer required to approve an employee's request to use a personal holiday?, 357-31-100 Must an employer have a policy for requesting and approving leave?, 357-31-130 When can an employee use accrued sick leave?, 357-31-200 When must an employer grant the use of vacation leave?, 357-31-230 When can an employee use accrued compensatory time?, 357-31-567 When must an employer grant the use of recognition leave?, 357-31-730 When an employee or the

employee's family member is a victim of domestic violence, sexual assault, or stalking and the employee is seeking to use accrued leave or unpaid leave what documentation may the employee be required to submit?, 357-31-010 Which employees qualify for holiday compensation?, and 357-58-205 Under what conditions may an employer reassign a WMS employee?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on January 8, 2009, at 8:30 a.m.

Date of Intended Adoption: January 8, 2009.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail [connieg@dop.wa.gov](mailto:connieg@dop.wa.gov), fax (360) 586-4694, by January 2, 2009. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by January 2, 2009, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The following changes are housekeeping in nature.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, Olympia, WA, (360) 664-6408; Implementation and Enforcement: Department of personnel.

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

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

December 3, 2008

Eva N. Santos

Director

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

**WAC 357-01-172 Family members.** Individuals considered to be members of the family are parent, step-parent, sister, brother, parent-in-law, spouse, grandparent, grandchild, minor/dependent child, and child. For the purpose of (~~WAC 357-31-730(2)~~) domestic violence, sexual assault, or stalking provisions within Title 357 WAC family member also includes a domestic partner as defined in RCW 26.60-020 or a person with whom the employee has a dating relationship as defined in RCW 26.50.010.

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

**WAC 357-31-070 When is an employer required to approve an employee's request to use a personal holiday?**

(1) An employer must approve the use of a personal holiday as long as:

(a) The employee is entitled to a personal holiday in accordance with RCW 1.16.050 and WAC 357-31-055;

(b) The employee has requested the personal holiday in accordance with the employer's leave procedures; and

(c) The employee's absence does not interfere with the operational needs of the employer.

(2) At any time, an employer must allow an employee to use part or all of the personal holiday for any of the following reasons:

(a) To care for a minor/dependent child with a health condition that requires treatment or supervision;

(b) To care for a spouse, parent, parent-in-law or grandparent of the employee who has a serious health condition or an emergency health condition;

(c) If the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking as defined in (~~section 2, chapter 286, Laws [of] 2008~~) RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730; or

(d) In accordance with WAC 357-31-373, for an employee to be with a spouse who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse has been notified of an impending call or order to active duty, before deployment, or when the military spouse is on leave from deployment.

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

**WAC 357-31-100 Must an employer have a policy for requesting and approving leave?** Each employer must develop a leave policy which specifies the procedure for requesting and approving all leave, as provided in the civil service rules. The employer's policy must:

(1) Allow an employee to use vacation leave without advance approval when the employee is requesting to use vacation leave to respond to family care emergencies, or for an emergency health condition as provided in WAC 357-31-200(2);

(2) Allow an employee to use a reasonable amount of accrued leave or unpaid leave when the employee is a victim, or has a family member, as defined in chapter 357-01 WAC, who is a victim of domestic violence, sexual assault, or stalking as defined in (~~section 2, chapter 286, Laws [of] 2008~~) RCW 49.76.020; and

(3) Address advance notice from the employee when the employee is seeking leave under subsection (2) of this section. When advance notice cannot be given because of an emergency or unforeseen circumstances due to domestic violence, sexual assault, or stalking, the employee or the employee's designee must give notice to the employer no later than the end of the first day that the employee takes such leave.

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

**WAC 357-31-130 When can an employee use accrued sick leave?** The employer may require medical ver-

ification or certification of the reason for sick leave use in accordance with the employer's leave policy.

(1) Employers **must** allow the use of accrued sick leave under the following conditions:

(a) Because of and during illness, disability, or injury that has incapacitated the employee from performing required duties.

(b) By reason of exposure of the employee to a contagious disease when the employee's presence at work would jeopardize the health of others.

(c) To care for a minor/dependent child with a health condition requiring treatment or supervision.

(d) To care for a spouse, parent, parent-in-law, or grandparent of the employee who has a serious health condition or emergency health condition.

(e) For family care emergencies per WAC 357-31-290, 357-31-295, 357-31-300, and 357-31-305.

(f) For personal health care appointments.

(g) For family members' health care appointments when the presence of the employee is required if arranged in advance with the employing official or designee.

(h) When an employee is required to be absent from work to care for members of the employee's household or relatives of the employee/employee's spouse who experience an illness or injury, not including situations covered by subsection (1)(d) of this section.

(i) The employer must approve up to five days of accumulated sick leave each occurrence. Employers may approve more than five days.

(ii) For purposes of this subsection, "relatives" is limited to spouse, child, grandchild, grandparent or parent.

(i) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in (~~section 2, chapter 286, Laws [of] 2008-~~) RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(j) In accordance with WAC 357-31-373, for an employee to be with a spouse who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse has been notified of an impending call or order to active duty, before deployment, or when the military spouse is on leave from deployment.

(2) Employers **may** allow the use of accrued sick leave under the following conditions:

(a) For condolence or bereavement.

(b) When an employee is unable to report to work due to inclement weather in accordance with the employer's policy on inclement weather as described in WAC 357-31-255.

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

**WAC 357-31-200 When must an employer grant the use of vacation leave?** (1) An employee's request to use vacation leave must be approved under the following conditions:

(a) As a result of the employee's serious health condition.

(b) To care for a spouse, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition.

(c) To care for a minor/dependent child with a health condition that requires treatment or supervision.

(d) For parental leave as provided in WAC 357-31-460.

(e) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in (~~section 2, chapter 286, Laws [of] 2008-~~) RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(f) In accordance with WAC 357-31-373, for an employee to be with a spouse who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse has been notified of an impending call or order to active duty, before deployment, or when the military spouse is on leave from deployment.

(2) In accordance with the employer's leave policy, approval for the reasons listed in (1)(a) through (f) above may be subject to verification that the condition or circumstance exists.

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

**WAC 357-31-230 When can an employee use accrued compensatory time?** (1) Employees must request to use accrued compensatory time in accordance with the employer's leave policy. When considering employees' requests, employers must consider the work requirements of the department and the wishes of the employee.

(2) An employee must be granted the use of accrued compensatory time to care for a spouse, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition, or to care for a minor/dependent child with a health condition that requires treatment or supervision. In accordance with the employer's leave policy, approval of the employee's request to use accrued compensatory time (~~maybe~~) may be subject to verification that the condition exists.

(3) An employee must be granted the use of accrued compensatory time if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in (~~section 2, chapter 286, Laws [of] 2008-~~) RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(4) In accordance with WAC 357-31-373, an employee must be granted the use of accrued compensatory time to be with a spouse who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse has been notified of an impending call or order to active duty, before deployment, or when the military spouse is on leave from deployment.

(5) Compensatory time off may be scheduled by the employer during the final sixty days of a biennium.

(6) Employers may require that accumulated compensatory time be used before vacation leave is approved, except in those instances where this requirement would result in loss of accumulated vacation leave.

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

**WAC 357-31-567 When must an employer grant the use of recognition leave?** (1) An employee's request to use recognition leave must be approved under the following conditions:

(a) An employee must be granted the use of recognition leave if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in (~~section 2, chapter 286, Laws of 2008~~) RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730; and

(b) In accordance with WAC 357-31-373, an employee must be granted the use of recognition leave to be with a spouse who is a member of the Armed Forces of the United States, National Guard, or Reserves after the military spouse has been notified of an impending call or order to active duty, before deployment, or when the military spouse is on leave from deployment.

(2) In accordance with the employer's leave policy, approval for the reasons listed in (1)(a) and (b) above may be subject to verification that the condition or circumstance exists.

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

**WAC 357-31-730 When an employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking and the employee is seeking to use accrued leave or unpaid leave what documentation may the employee be required to submit?** (1) When an employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking, as defined in (~~section 2, chapter 286, Laws of 2008~~) RCW 49.76.020, and the employee is seeking to use their accrued leave or take leave without pay the employer may require that the request be supported by verification. An employee may satisfy the verification requirement by providing the employer with one or more of the following:

(a) A police report indicating that the employee or the employee's family member was a victim of domestic violence, sexual assault, or stalking;

(b) A court order protecting or separating the employee or employee's family member from the perpetrator of the act of domestic violence, sexual assault, or stalking;

(c) Evidence from the court or prosecuting attorney that the employee or the employee's family member appeared, or is scheduled to appear, in court in connection with an incident of domestic violence, sexual assault, or stalking;

(d) An employee's written statement that the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking; or

(e) Documentation that the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking, from any of the following persons from whom the employee or employee's family member sought assistance in addressing the domestic violence, sexual assault, or stalking: An advocate for victims of domestic violence, sexual assault, or stalking; an attorney; a member of the clergy; or a medical or other professional.

(2) If the victim of domestic violence, assault, or stalking is the employee's family member, as defined in chapter 357-01 WAC, verification of the familial relationship between the employee and the victim may include but is not limited to: A statement from the employee; a birth certificate; a court document; or other similar documentation.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 06-11-049, filed 5/11/06, effective 6/12/06)

**WAC 357-31-010 Which employees qualify for holiday compensation?** (1) Full-time general government employees (~~(and cyclic year position employees)~~) who work full monthly schedules qualify for holiday compensation if they are employed before the holiday and are in pay status:

(a) For at least eighty nonovertime hours during the month of the holiday; or

(b) For the entire work shift preceding the holiday.

(2) Full-time higher education employees and cyclic year position employees who work full monthly schedules qualify for holiday compensation if they are in pay status for the entire work shift preceding the holiday.

(3) Cyclic year position employees scheduled to work less than full monthly schedules throughout their work year qualify for holiday compensation if they work or are in pay status on their last regularly scheduled working day before the holiday(s) in that month.

(4) Part-time general government employees who are in pay status during the month of the holiday qualify for holiday pay on a pro rata basis in accordance with WAC 357-31-020, except that part-time employees hired during the month of the holiday will not receive compensation for holidays that occur prior to their hire date.

(5) Part-time higher education employees who satisfy the requirements of subsection (1) of this section are entitled to the number of paid hours on a holiday that their monthly schedule bears to a full-time schedule.

AMENDATORY SECTION (Amending WSR 05-12-069, filed 5/27/05, effective 7/1/05)

**WAC 357-58-205 Under what conditions may an employer reassign a WMS employee?** At any time, an agency may reassign an employee or a position and (~~it's~~ ~~its~~) its incumbent to meet client or organizational needs. If the new location is within a reasonable commute, as defined by the agency, the employee must accept the reassignment.



If the reassignment is beyond a reasonable commute and the employee does not agree to the reassignment, the employee has layoff rights in accordance with this chapter.

**WSR 08-24-110**  
**PROPOSED RULES**  
**DEPARTMENT OF PERSONNEL**

[Filed December 3, 2008, 8:39 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-31-325 Must an employer grant leave with pay for other miscellaneous reasons such as to take a state examination?, 357-31-326 When may an employer grant leave with pay?, 357-31-327 When must an employer grant leave without pay?, and 357-31-330 For what reasons may an employer grant leave without pay?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on January 8, 2009, at 8:30 a.m.

Date of Intended Adoption: January 8, 2009.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail [connieg@dop.wa.gov](mailto:connieg@dop.wa.gov), fax (360) 586-4694, by January 2, 2009. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by January 2, 2009, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of WAC 357-31-325 and 357-31-326 is to clarify when an employer must grant leave with pay and when an employer may grant leave with pay. The amendments to WAC 357-31-327 and 357-31-330 are housekeeping in nature.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, Olympia, WA, (360) 664-6408; Implementation and Enforcement: Department of personnel.

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

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

December 3, 2008

Eva N. Santos

Director

AMENDATORY SECTION (Amending WSR 08-07-062, filed 3/17/08, effective 4/18/08)

**WAC 357-31-325 Must an employer grant leave with pay for other miscellaneous reasons such as to take a state examination?** ~~((+))~~ Leave with pay **must** be granted to an employee:

~~((+))~~ (1) To allow an employee to receive assessment from the employee assistance program; or

~~((+))~~ (2) When an employee is scheduled to take an examination or participate in an interview for a position with a state employer during scheduled work hours.

~~((+))~~ (a) Employers may limit the number of occurrences or the total amount of paid leave that will be granted to an employee to participate in an interview or take an examination during scheduled work hours.

~~((+))~~ (b) Employers may deny an employee's request to participate in an interview or take an examination during scheduled work hours based upon operational necessity.

~~((2) An employer may grant leave with pay for an employee to perform civil duties as a volunteer including but not limited to fire fighting, search and rescue efforts, or donating blood.)~~

~~((3) In the department of natural resources, leave with pay equivalent to one regular workshift may be allowed for the purpose of rest and recuperation after ten consecutive calendar days performing emergency work under an incident command system, defined in RCW 38.52.010.)~~

NEW SECTION

**WAC 357-31-326 When may an employer grant leave with pay?** (1) An employer **may** grant leave with pay for an employee to perform civil duties as a volunteer including but not limited to fire fighting, search and rescue efforts, or donating blood.

(2) In the department of natural resources, leave with pay equivalent to one regular workshift **may** be allowed for the purpose of rest and recuperation after ten consecutive calendar days performing emergency work under an incident command system, defined in RCW 38.52.010.

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

**WAC 357-31-327 When ((M)) must an employer grant leave without pay ((for other miscellaneous reasons))?** An employer must grant leave without pay under the following conditions:

(1) When an employee who is a volunteer fire fighter is called to duty to respond to a fire, natural disaster, or medical emergency;

(2) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in ~~((section 2, chapter 286, Laws [of] 2008.))~~ **RCW 49.76.020.** An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730; or

(3) In accordance with WAC 357-31-373, for an employee to be with a spouse who is a member of the armed

forces of the United States, National Guard, or reserves after the military spouse has been notified of an impending call or order to active duty, before deployment, or when the military spouse is on leave from deployment.

AMENDATORY SECTION (Amending WSR 05-08-138, filed 4/6/05, effective 7/1/05)

**WAC 357-31-330 For what reasons may an employer ~~(authorize)~~ grant leave without pay?** Leave without pay may be allowed for any of the following reasons in accordance with the employer's leave policy:

- (1) For any reason leave with pay may be granted, as long as the conditions for leave with pay are met;
- (2) Educational leave;
- (3) Leave for government service in the public interest;
- (4) Military leave of absence as required by WAC 357-31-370;
- (5) Parental leave as required by WAC 357-31-460;
- (6) Family care emergencies as required by WAC 357-31-295;
- (7) Bereavement or condolence;
- (8) Absence due to inclement weather as provided in WAC 357-31-255;
- (9) To accommodate annual work schedules of employees occupying cyclic year positions as specified in WAC 357-19-295;
- (10) Serious health condition of an eligible employee's child, spouse, or parent as required by WAC 357-31-525;
- (11) Leave taken voluntarily to reduce the effect of an employer's layoff;
- (12) Leave that is authorized in advance by the appointing authority as part of a plan to reasonably accommodate a person of disability; or
- (13) Employees receiving time loss compensation

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.