

WSR 09-19-030
EXPEDITED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed September 9, 2009, 10:42 a.m.]

Title of Rule and Other Identifying Information: WAC 415-200-020 Regular board meetings.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Rules Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail rules@drs.wa.gov, AND RECEIVED BY 5:00 p.m. on Monday, November 23, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to repeal WAC 415-200-020, as it has been determined to be no longer necessary.

Reasons Supporting Proposal: WAC 415-200-020 addresses the frequency and location of meetings of the employee retirement benefits board (ERBB). The frequency of ERBB meetings is dictated by statute, RCW 41.50.086. The department notifies the public of the date and location of all ERBB meetings by complying with the public meeting notice requirements of chapter 42.30 RCW, the Open Public Meetings Act, by filing a yearly schedule of ERBB meetings with the office of the code reviser. Repealing this rule provides the department the flexibility of changing the location of ERBB meetings as needed, without having to amend its rules each time.

As permitted by RCW 34.05.353 (1)(a), the department is repealing a rule that relates only to internal government operations and is not subject to violation by a person.

Statutory Authority for Adoption: RCW 41.50.050.

Statute Being Implemented: RCW 41.50.086.

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

Name of Proponent: Department of retirement systems, governmental.

Name of Agency Personnel Responsible for Drafting: Sarah White, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7291; Implementation and Enforcement: Jeff Wickman, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7303.

September 9, 2009
 Sarah White
 Rules Coordinator

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 415-200-020

Regular board meetings.

WSR 09-19-077
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed September 16, 2009, 1:51 p.m.]

Title of Rule and Other Identifying Information: WAC 458-61A-302 Disposition of proceeds and affidavit batch transmittal explains how the counties, the department of revenue, and the state treasurer process the taxes and administrative fees received under chapter 458-61A WAC, Real estate excise tax (REET).

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Marilou Rickert, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, fax (360) 586-0127, e-mail MarilouR@DOR.WA.GOV, AND RECEIVED BY November 23, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend WAC 458-61A-302 to recognize provisions of HB 2170 (chapter 486, Laws of 2005). This legislation removed the dedication of the state portion of the REET "for the support of common schools." Additional editing changes to existing language in the rule are also proposed.

Copies of draft rules are available for viewing and printing on our web site at <http://dor.wa.gov/content/FindALawOrRule/RuleMaking/agenda.aspx>.

Reasons Supporting Proposal: The amendment is needed to conform to existing law.

Statutory Authority for Adoption: RCW 34.05.353 (1)(a), 82.32.300, and 82.01.060(2).

Statute Being Implemented: RCW 82.45.180.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Marilou Rickert, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6115; Implementation and Enforcement: Stuart Thronson, 1025 Union Avenue S.E., Suite #100, Olympia, WA, (360) 570-3230.

September 16, 2009

Alan R. Lynn
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-23-093, filed 11/16/05, effective 12/17/05)

WAC 458-61A-302 Disposition of proceeds and affidavit batch transmittal. (1) **Introduction.** This rule explains how the counties, the department of revenue, and the state treasurer process the taxes and administrative fees received under this chapter.

(2) **County treasurer.** The county treasurer distributes the proceeds of the real estate excise tax along with the cash receipt journal summary in accordance with the provisions of chapters 82.45 and 82.46 RCW. When no real estate excise tax is due on a transaction, the county will collect an administrative fee for processing the real estate excise tax affidavit. RCW 82.45.180.

(3) **Adjustments.** Requests from county treasurers for adjustments to the funds that have been distributed to the state treasurer must be sent to the department for approval or denial. ~~((The department will forward to the state treasurer those requests that it approves.))~~ If the department denies a request for adjustment, the department will return the request to the county treasurer with an explanation for the denial.

(4) **Tax paid directly to the department.** Real estate excise tax for transfers of a controlling interest in an entity owning real property in Washington, and any other tax payment under this chapter made directly to the department, are remitted to the state treasurer for deposit in accordance with the provisions of chapter 82.45 RCW. ~~((The state treasurer deposits the proceeds of the state portion of the tax in the general fund for the support of the common schools.))~~ The state treasurer deposits and distributes the proceeds of any local taxes in accordance with the provisions of chapters 82.45 and 82.46 RCW.

(5) **Affidavit batch transmittal.**

(a) **Due date.** The county will submit copies of all the real estate excise tax affidavits for the entire month, together with a completed affidavit batch transmittal form, to the department by the fifth business day following the close of the month in which the tax was received. The affidavit batch must include all affidavits processed during the month, plus copies of any documents related to refunds made by the county.

(b) **Alternate transmittal method.** An alternate method for submitting affidavits may be used in lieu of the paper method described in this rule with the prior approval of the department. Use of an alternate method (e.g., electronic transmittal) requires a signed memorandum of understanding (MOU) between the county and the department.

(c) **Distribution.** The county will complete the affidavit transmittal form, supplied by the department, and send one copy with the affidavit batch to the department. ~~((The county will send a second copy of the affidavit batch transmittal with the monthly cash receipts journal summary to the state treasurer's office as documentation for the remittance of the real estate excise tax deposit.))~~

(d) **Reporting of refunds.** The county must report any refunds made during the month on the adjustment section provided on the batch transmittal form and attach all refund documentation.

(e) **Retention of records.** The county treasurer will retain the approved real estate excise tax affidavits, including

any supplemental statements, for a period of not less than four years following the year in which the affidavit is received. See RCW 82.45.150 and 82.32.340.

WSR 09-19-087
EXPEDITED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS

(Securities Division)

[Filed September 18, 2009, 9:16 a.m.]

Title of Rule and Other Identifying Information: The securities division proposes to amend WAC 460-44A-503 to correct a typographical error.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Faith L. Anderson, Associate General Counsel, Department of Financial Institutions, Securities Division, P.O. Box 9033, Olympia, WA 98507-9033, AND RECEIVED BY November 23, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules in WAC 460-44A-503 set forth the requirements for filing notices on Form D in connection with offerings of securities that are conducted in reliance upon the private and limited offering exemptions from securities registration set forth in WAC 460-44A-504 and 460-44A-505, and for offerings of securities made in reliance on federal Rule 506 of Regulation D under the Securities Act of 1933 in combination with WAC 460-44A-506. These rules were amended in 2008 to, among other things, adopt text from federal Rule 503 of Regulation D to require amendments to Form D be filed with the securities division in the same circumstances and on the same schedule as required by the Securities and Exchange Commission ("SEC"). The notice of proposed rule making and the rule-making order filed in connection with the 2008 amendments gave notice of the intent of the securities division to adopt the SEC's amendment filing rules for Form D notices. We received and responded to one comment letter that included comments regarding the proposed adoption of the SEC's amendment filing requirements. The final codification of these rules contains a typographical error in that current WAC 460-44A-503 (3)(b)(x) should be numbered WAC 460-44A-503 (3)(c). The securities division is now proposing to correct this typographical error. This rule should be amended to correct this typographical error. The text of WAC 460-44A-503 marked to show the proposed amendment is filed with this notice.

Statutory Authority for Adoption: RCW 21.20.450, 21.20.320 (1), (9), (17).

Statute Being Implemented: Chapter 21.20 RCW.

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

Name of Proponent: Department of financial institutions, governmental.

Name of Agency Personnel Responsible for Drafting: Faith L. Anderson, 150 Israel Road S.W., Olympia, WA 98501, (360) 725-7825; Implementation: Scott Jarvis, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8700; and Enforcement: Michael E. Stevenson, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8824.

September 17, 2009

Scott Jarvis
Director

AMENDATORY SECTION (Amending WSR 08-16-072, filed 7/31/08, effective 9/15/08)

WAC 460-44A-503 Filing of notice and payment of fee. (1) An issuer offering or selling securities in reliance on WAC 460-44A-504, 460-44A-505, or 460-44A-506 shall file with the administrator of securities of the department of financial institutions or his or her designee a notice and pay a filing fee as follows:

(a)(i)(A) For an offering of a security in reliance upon the Securities Act of 1933, Regulation D, Rule 230.506 and RCW 21.20.327(2) and 21.20.320(1), the issuer shall file a notice on Securities and Exchange Commission Form D marking Rule 506 and pay a filing fee of three hundred dollars no later than fifteen days after the first sale of such securities in the state of Washington, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date would be the first business day following.

(B) For an offering in reliance on Securities and Exchange Commission Rule 505 and WAC 460-44A-505, the issuer shall file the initial notice on Securities and Exchange Commission Form D marking Rule 505 and pay a filing fee of three hundred dollars no later than fifteen days after the first sale of securities in the state of Washington which results from an offer being made in reliance upon WAC 460-44A-505, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date would be the first business day following;

(C) For an offering in reliance on Securities and Exchange Commission Rule 504 and WAC 460-44A-504, the issuer shall file the initial notice on Securities and Exchange Commission Form D marking Rule 504 and pay a filing fee of fifty dollars no later than ten business days (or such lesser period as the administrator may allow) prior to receipt of consideration or the delivery of a signed subscription agreement by an investor in the state of Washington which results from an offer being made in reliance upon WAC 460-44A-504;

(D) For an offering in reliance on Securities and Exchange Commission Rule 147 and WAC 460-44A-504, the issuer shall file the initial notice on Washington Securities Division Form WAC 460-44A-504/Rule 147 and pay a filing fee of fifty dollars no later than ten business days (or

such lesser period as the administrator may allow) prior to receipt of consideration or the delivery of a signed subscription agreement by an investor in the state of Washington which results from an offer being made in reliance on the exemption of WAC 460-44A-504;

(ii) The issuer shall include with the initial notice a statement indicating:

(A) The date of first sale of securities in the state of Washington; or

(B) That sales have yet to occur in the state of Washington.

(b) The issuer shall file with the administrator or his or her designee such other notices on Form D as are required to be filed with the Securities and Exchange Commission. For purposes of this section, the initial notice on Securities and Exchange Commission Form D shall consist of either the Temporary Form D (17 CFR 239.500T) as adopted by the Securities and Exchange Commission together with an executed uniform consent to service of process on Form U-2 while Temporary Form D remains in effect from September 15, 2008 through March 15, 2009, or the notice of sales on Form D filed in paper or electronic format with the Securities and Exchange Commission through the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S-T (17 CFR Part 232) and in effect on September 15, 2008.

(c) If the issuer files a notice of sales on Temporary Form D or a copy of the notice of sales on Form D filed in electronic format with the Securities and Exchange Commission, it shall either be manually signed by a person duly authorized by the issuer or a photocopy of a manually signed copy.

(d) By filing for the exemption of WAC 460-44A-504 or 460-44A-505, the issuer undertakes to furnish to the administrator, upon request, the information to be furnished or furnished by the issuer under WAC 460-44A-502 (2)(b) or otherwise to any purchaser that is not an accredited investor. Failure to submit the information in a timely manner will be a ground for denial or revocation of the exemption of WAC 460-44A-504 or 460-44A-505.

(2) An issuer may file an amendment to a previously filed notice of sales on Form D at any time.

(3) An issuer must file an amendment to a previously filed notice of sales on Form D for an offering:

(a) To correct a material mistake of fact or error in the previously filed notice of sales on Form D, as soon as practicable after discovery of the mistake or error;

(b) To reflect a change in the information provided in the previously filed notice of sales on Form D, as soon as practicable after the change, except that no amendment is required to reflect a change that occurs after the offering terminates or a change that occurs solely in the following information:

(i) The address or relationship of the issuer of a related person identified in response to Item 3 of the notice of sales on Form D;

(ii) An issuer's revenues or aggregate net asset value;

(iii) The minimum investment amount, if the change is an increase, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in a decrease of more than ten percent;

(iv) Any address or state(s) of solicitation shown in response to Item 12 of the notice of sales on Form D;

(v) The total offering amount, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than ten percent;

(vi) The amount of securities sold in the offering or the amount remaining to be sold;

(vii) The number of nonaccredited investors who have invested in the offering, as long as the change does not increase the number to more than thirty-five;

(viii) The total number of investors who have invested in the offering;

(ix) The amount of sales commissions, finders' fees or use of proceeds for payments to executive officers, directors or promoters, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than ten percent; and

((~~*~~)) (c) Annually, on or before the first anniversary of the filing of the notice of sales on Form D or the filing of the most recent amendment to the notice of sales on Form D, if the offering is continuing at that time.

(4) An issuer that files an amendment to a previously filed notice of sales on Form D must provide current information in response to all requirements of the notice of sales on Form D regardless of why the amendment is filed.

(5) Amendments to notices filed before September 15, 2008 and to notices filed on or after September 15, 2008 in paper format using Temporary Form D (17 CFR 239.500T) must use Temporary Form D but need only report the issuer's name and the information required by Part C and any material change in the facts from those set forth in Parts A and B.

WSR 09-19-098
EXPEDITED RULES

DEPARTMENT OF AGRICULTURE

[Filed September 21, 2009, 10:38 a.m.]

Title of Rule and Other Identifying Information: WAC 16-06-165 Department organization description by division and program.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Dannie McQueen, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, AND RECEIVED BY November 24, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of

this proposal is to change the name of the livestock nutrient management program to the dairy nutrient management program. There are no anticipated effects to this housekeeping change.

Reasons Supporting Proposal: Changing the name of the program will provide updated information to the public.

Statutory Authority for Adoption: RCW 34.05.353.

Statute Being Implemented: RCW 34.05.353.

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

Name of Proponent: Department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Dannie McQueen, Olympia, (360) 902-1809.

September 18, 2009

Betty Ramage

Assistant Director

AMENDATORY SECTION (Amending WSR 09-12-013, filed 5/21/09, effective 6/21/09)

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

Director's office:

- 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.

Administrative services division:

- The administrative services division includes accounting, budget, payroll, forms and records, adjudicative proceedings, public disclosure, Washington administrative code filings, personnel office, information technology services, 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:

- The fruit and vegetable inspection program provides phytosanitary certification, shipping point inspection, third-party grading of raw product for processing 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))~~ dairy 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 laws and rules related to pesticides, animal feed and

fertilizer, and administers the waste pesticide disposal program.

- The pesticide compliance program enforces state and federal pesticide laws, conducts routine inspections of pesticide applications and pesticide distribution facilities, and investigates allegations of pesticide misuse.
- The registration services program registers pesticides, fertilizer and animal feed distributed in Washington; inspects fertilizer and feed manufacturing, storage and distribution facilities; conducts waste pesticide collection events; and conducts environmental assessments related to pesticide use in the state of Washington.
- The certification and training program provides outreach and safety training on the use of pesticides, licenses pesticide application equipment, structural pest inspectors, dealer managers, 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.

WSR 09-19-143
EXPEDITED RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Docket TV-091038—Filed September 23, 2009, 8:16 a.m.]

Title of Rule and Other Identifying Information: Chapter 480-15 WAC, Household goods carriers, this rule making would amend language in rules relating to household goods carrier permits and advertisement to implement the 2009 legislature's HB 1536.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Executive Director and Secretary, Docket TV-091038, Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, WA 98504-7250, AND RECEIVED BY November 23, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 480-15 WAC contains rules for household goods carriers. The rules cover the intrastate transportation of household goods and set out the requirements for permits, insurance coverage, safety, and consumer protection for loss and damage claims and complaints.

The 2009 legislature passed HB 1536, relating to advertisements and permits for household goods carriers. HB 1536 became effective July 26, 2009.

HB 1536 bans household goods carriers from advertising services without first obtaining a valid permit from the commission; increases the penalty up to five thousand dollars for operating as a mover without a permit and up to ten thousand dollars for operating in violation of a cease and desist order; and, requires carriers to show their permit number, physical address and telephone number in all advertising.

Reasons Supporting Proposal: The proposed rules will implement legislative changes to chapter 81.80 RCW affecting household goods carriers in Washington.

Statutory Authority for Adoption: RCW 80.01.040 and 81.04.160.

Statute Being Implemented: Chapter 94, Laws of 2009 (HB 1536).

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

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

Name of Agency Personnel Responsible for Drafting: Vicki Elliott, Policy Specialist, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, (360) 664-1119; Implementation and Enforcement: David W. Danner, Exec-

utive Director and Secretary, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, (360) 664-1208.

September 23, 2009

David W. Danner

Executive Director

and Secretary

AMENDATORY SECTION (Amending Docket TV-070466, General Order R-547, filed 12/27/07, effective 1/27/08)

WAC 480-15-020 Definitions. For the purpose of this chapter, the words, terms, and phrases in this section have the following meaning:

Accessorial services: Any service provided by a household goods carrier that supplements, or is incidental to, the transportation of household goods. Examples include packing, unpacking, wrapping or protecting a portion of the shipment or providing special equipment or services such as hoisting.

Agent: A permitted carrier, who, under the provisions of a formal written agreement, performs services on behalf of another permitted carrier.

Application docket: A commission publication listing applications requesting operating authority.

Authority: The rights granted to a carrier to transport household goods.

Cancellation: An act by the commission to terminate a household goods carrier's authority.

Carrier or household goods carrier: A ~~((company performing household goods moves))~~ person who transports for compensation, by motor vehicle within this state, or who advertises, solicits, offers, or enters into an agreement to transport household goods.

Commission: The Washington utilities and transportation commission.

Customer: Anyone who hires a household goods carrier.

Engaging in business as a household goods carrier: Transporting household goods for compensation, by motor vehicle within this state, or advertising, soliciting, offering, or entering into an agreement to transport household goods.

Estimate:

(a) Nonbinding estimate: The written estimate the carrier gives to the customer in advance of the move. A nonbinding estimate is not binding on the mover. The final charges will be based upon the actual cost of the move and the services provided, although a carrier may not charge more than twenty-five percent over the nonbinding estimate.

(b) Binding estimate: The written estimate the carrier gives to the customer in advance of the move, signed by the carrier and the customer, and by which both the carrier and customer are bound. The carrier may not charge any amount other than the binding estimate and the customer must pay the amount of the binding estimate.

(c) Supplemental estimate: An amendment to the original nonbinding estimate, necessary when the circumstances of a move change in a way from the original written estimate that increases the cost of the move.

Filing: Any application, petition, tariff proposal, annual report, comment, complaint, pleading or other document submitted to the commission.

Household goods: The personal effects and property used, or to be used, in a residence when transported or arranged to be transported between residences or between a residence and a storage facility with the intent to later transport to a residence or when referenced in connection with advertising, soliciting, offering, or entering into an agreement for such transportation. Transportation of the goods must be arranged and paid for by the customer or by another individual, company or organization on behalf of the customer.

Local move: A move taking place within the limits of a city or town or moves where the shipment is transported fifty-five miles or less.

Long distance move: A move where the shipment is transported fifty-six miles or more.

Motor vehicle or vehicle: Any motor truck, tractor or other self-propelled vehicle, any trailer, semi-trailer or any combination of such vehicles moving as a single unit.

Permit: A document issued by the commission describing the authority granted to a household goods carrier.

Person: Any individual, firm, corporation, company, or partnership.

Shipment: A load of household goods moved by a carrier from a single residence or as a single transaction.

State: The state of Washington.

Suspension also includes **suspend, suspended, suspending:** An act by the commission to withhold temporarily a household goods carrier's authority.

Tariff: A publication containing rates and charges carriers must assess on shipments of household goods and the rules that govern how rates and charges are assessed.

AMENDATORY SECTION (Amending Docket TV-070466, General Order R-547, filed 12/27/07, effective 1/27/08)

WAC 480-15-145 Enforcement. The commission has a number of options available to enforce its statutes, rules, orders and tariff requirements, as follows:

(1) RCW 81.04.110 allows the commission to file a complaint and hold a hearing.

(2) RCW 81.04.260 allows the commission to file in court for an immediate injunction for violations of law, commission rule, order, direction or requirement of the commission.

(3) RCW 81.04.380 allows penalties against public service companies of up to one thousand dollars for each violation for each day the violation occurs or continues to occur.

(4) RCW 81.04.387 allows penalties against corporations, other than public service companies, of up to one thousand dollars for each offense.

(5) RCW 81.04.390 provides that violations may be treated as misdemeanors.

(6) RCW 81.04.405 allows penalties of one hundred dollars for each violation for each day the violation occurs or continues to occur. These penalties are issued through a penalty assessment with a fifteen-day response period.

(7) RCW 81.04.510 (~~and 81.80.070~~) allows the commission to issue cease and desist orders against a carrier operating without a permit.

(8) Section 4(5), chapter 94, Laws of 2009 (HB 1536), allows a penalty of up to ten thousand dollars per violation for any person who engages in business as a household goods carrier in violation of a cease and desist order.

(9) RCW 81.80.280 allows the commission to cancel, suspend, alter, or amend a permit for violations of federal or state law, or commission rule.

~~((9) RCW 81.80.070 also)~~ (10) Section 4(4), chapter 94, Laws of 2009 (HB 1536), allows a penalty of ((one thousand five hundred)) up to five thousand dollars to any carrier operating without a permit. If the basis for the violation is advertising, each advertisement reproduced, broadcast, or displayed via a particular medium constitutes a separate violation.

~~((10))~~ (11) RCW 81.80.355 provides that advertising without a permit may be treated as a misdemeanor.

~~((11))~~ (12) RCW 81.80.357 allows a penalty of five hundred dollars for each violation when a carrier does not include its permit number, physical address, and telephone number in its advertisements.

~~((12))~~ (13) WAC 480-120-172 allows a telecommunications company to disconnect a customer's service if that service is used for illegal purposes, such as operating without a permit issued by the commission.

AMENDATORY SECTION (Amending Docket TV-070466, General Order R-547, filed 12/27/07, effective 1/27/08)

WAC 480-15-180 Carrier operations that require a household goods permit. A carrier must receive a permit from the commission before transporting household goods, for compensation, by motor vehicle (including a rental truck) over public roads between two points within the state (~~unless the carrier is operating in the territory described in subsection (1) or (2) of this section:~~

~~(1) Under RCW 81.80.040(1), a carrier does not need a permit to operate exclusively between points within the limits of a city or town with a population of less than ten thousand, unless it borders a city or town with a population of greater than ten thousand.~~

~~(2) Under RCW 81.80.040(2), a carrier does not need a permit to operate exclusively between points within a city with a population between ten thousand and thirty thousand if the commission has issued an order exempting transportation within that city from regulation. As of June 2007, these cities included:~~

~~(a) Cities of Mountlake Terrace and Mercer Island, exempted by commission General Orders 178, effective March 3, 1965, and R-66, effective May 8, 1974.~~

~~(b) City of Ellensburg, exempted by commission General Order 199, effective April 17, 1968), or before advertising, soliciting, offering, or entering into an agreement to transport household goods.~~

AMENDATORY SECTION (Amending Docket TV-070466, General Order R-547, filed 12/27/07, effective 1/27/08)

WAC 480-15-450 Involuntary cancellation of a permit. (1) The commission may cancel a permit without the carrier's authorization for good cause. Good cause includes, but is not limited to, the carrier:

- (a) Failing to file an annual report or pay required regulatory fees.
- (b) Failing to correct, within the time frame specified in the suspension order, all conditions that led to the suspension of a permit.
- (c) Failing or refusing to comply with applicable laws and commission rules pertaining to operations of household goods carriers, including safety requirements set in law or rule.
- (d) Failing to supply information necessary to the commission for the performance of its regulatory functions when the commission requests the carrier to do so.
- (e) Submitting false, misleading or inaccurate information.
- (f) Allowing others to transport goods under the carrier's permit authority.
- (g) Operating in a manner that constitutes unfair or deceptive business practices.
- (h) Committing fraud.

(2) The commission will hold a hearing prior to cancelling a permit unless the permit is subject to cancellation because the carrier failed, within the time frame specified by a suspension order, to correct the causes of the suspension. In that case:

(a) The commission will send the carrier notice of the date the commission will cancel a permit. The commission will enter an order canceling the permit thirty days after the service date of the notice.

(b) A carrier may contest the cancellation of its permit by requesting a hearing or brief adjudicative proceeding. Chapter 480-07 WAC describes the procedures for such hearings.

(3) When the commission has canceled a household goods carrier permit, the carrier must, when directed by the commission, provide notice to every customer that its permit has been canceled, and provide proof of such notice to the commission.

(4) If the permit is canceled and the carrier corrects all conditions that led to cancellation of the permit, the carrier may apply for reinstatement.

(a) To reinstate the permit within thirty days of cancellation, the carrier must file an application for reinstatement and pay the applicable reinstatement fees as stated in WAC 480-15-230.

(b) If the carrier files an application for reinstatement after thirty days of cancellation, the application will be considered in all aspects to be an application for new authority and will be subject to all terms and conditions specified in WAC 480-15-240 for new entrants.

AMENDATORY SECTION (Amending Docket TV-070466, General Order R-547, filed 12/27/07, effective 1/27/08)

WAC 480-15-610 Advertising. (1) Carriers must include the commission-issued permit number, name or trade name as recorded at the commission, (~~(business)~~) physical address and (~~(business)~~) telephone number in any advertising for household goods moving services. Advertising includes, but is not limited to:

- (a) Advertisements in telephone books, newspapers, correspondence, cards, or any other written document.
 - (b) Signs, posters or similar displays.
 - (c) Web sites or other on-line advertising.
- (2) Advertisements may not be misleading, false or deceptive.

(3) Radio or television advertising need not contain the carrier's permit number if the carrier provides its permit number, physical address, and telephone number to the person selling the advertisement and it is recorded in the advertising contract.

(4) Carriers may advertise services provided as an agent of, or connecting carrier to, another household goods carrier if they include the name and permit number of the other household goods carrier in their advertising.

~~((4))~~ (5) No person may falsify a permit number or use a false or inaccurate permit number in connection with any advertisement, solicitation or any form of identification as an authorized household goods carrier.

(6) Carriers may not advertise services or rates and charges that conflict with those in the tariff.