

WSR 09-20-073**EXPEDITED RULES****OFFICE OF****INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2009-18—Filed October 5, 2009,
11:41 a.m.]

Title of Rule and Other Identifying Information: Long-term care producer licensing and education rule repealing WAC 284-54-750 which is superseded by WAC 284-17-262.

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 Donna Dorris, Insurance Commissioner, P.O. Box 40258, Olympia, WA 98504-0258, e-mail Donnad@oic.wa.gov, AND RECEIVED BY January 5, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To repeal WAC 284-54-750, adopted in September of 1987. WAC 284-54-750 sets specific licensing certification and special education course requirements for licensees involved in the transaction of long-term care insurance. WAC 284-17-262 adopted in November 2008 supersedes the requirements of WAC 284-54-750.

Reasons Supporting Proposal: WAC 284-54-750 and 284-17-262 both relate to certification by an insurer of completion of long-term care insurance education due dates, and are inconsistent. This creates confusion for licensees required to submit information.

Statutory Authority for Adoption: RCW 48.83.170.

Statute Being Implemented: Chapter 48.83 RCW.

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

Name of Proponent: Mile [Mike] Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Donna Dorris, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7040; Implementation: John Hamje, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7262; and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

October 5, 2009

Mike Kreidler
Insurance Commissioner

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 284-54-750

Standards for education of licensees soliciting long-term care contracts.

WSR 09-20-094**EXPEDITED RULES****OFFICE OF****INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2009-02—Filed October 7, 2009,
6:31 a.m.]

Title of Rule and Other Identifying Information: Provisions relating to electronic authentication.

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 Chris Carlson, Office of the Insurance Commissioner, P.O. Box 40258, Olympia, WA 98504-0258, e-mail ChrisCA@oic.wa.gov, AND RECEIVED BY December 8, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making will repeal WAC 284-01-050 dealing with electronic signatures.

Reasons Supporting Proposal: The current WAC 284-01-050 is unnecessary and conflicts with 15 U.S.C. § 7002 (a)(2)(ii), which bans a state law from requiring a specific technology or giving a specific technology greater legal preference in electronic signatures.

Statutory Authority for Adoption: RCW 48.02.060.

Statute Being Implemented: Title 48 RCW.

Rule is necessary because of federal law, 15 U.S.C. § 7002 (a)(2)(ii).

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

Name of Agency Personnel Responsible for Drafting: Chris Carlson, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7042; 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.

October 7, 2009

Mike Kreidler
Insurance Commissioner

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 284-01-050 Provisions relating to electronic authentication.

**WSR 09-20-099
EXPEDITED RULES
UTILITIES AND TRANSPORTATION
COMMISSION**

[Commission Docket A-091124—Filed October 7, 2009, 9:21 a.m.]

Title of Rule and Other Identifying Information: The rule making would revise adoption-by-reference dates in Title 480 WAC to incorporate the most recent versions of adopted federal rules and other adopted publications and correct reference, grammatical, and punctuation errors.

Affected chapters include chapters 480-62, 480-75, 480-93, 480-100, 480-108, and 480-120 WAC.

Proposed Adoption by Reference Date Changes and Other Administrative Changes Docket A-091124			
Action	WAC No.	Rule Title	Proposed Changes ^a
Chapter 480-62 WAC, Railroad companies—Operations			
Amend	480-62-235	Flaggers.	1. Adoption by reference changed as follows: <ul style="list-style-type: none"> • American National Standards for High-Visibility Public Safety Vests ANSI/ISEA 207-2006 <ul style="list-style-type: none"> o No significant changes - new ANSI standard for safety equipment that is already required by current language.
Amend	480-62-240	Passenger carrying vehicles—Equipment.	1. Adoption by reference changed as follows: <ul style="list-style-type: none"> • ANSI Z308.1-2009, Minimum Requirements for Workplace First Aid Kits - 2009, Edition <ul style="list-style-type: none"> o No significant changes - new edition of previously adopted reference.
Amend	480-62-999	Adoption by reference.	1. Adoption by reference dates changed as follows: <ul style="list-style-type: none"> • Manual on Uniform Traffic Control Devices (MUTCD) - December 31, 2007, Edition <ul style="list-style-type: none"> o No significant changes - new edition of previously adopted reference. • Washington state department of transportation rules - December 4, 2005, Edition <ul style="list-style-type: none"> o No significant changes - new edition of previously adopted reference. • American National Standard for Minimum Requirements for Workplace First Aid Kits ANSI Z308.1 2009 - May 31, 2009, Edition <ul style="list-style-type: none"> o No significant changes - new edition of previously adopted reference.

Proposed Adoption by Reference Date Changes and Other Administrative Changes Docket A-091124			
Action	WAC No.	Rule Title	Proposed Changes ^a
Chapter 480-75 WAC, Hazardous liquid pipelines—Safety			
Amend	480-75-999	Adoption by reference.	<p>1. Adoption by reference dates changed as follows:</p> <ul style="list-style-type: none"> • Title 49 Code of Federal Regulations <ul style="list-style-type: none"> ○ October 1, 2009 - Part 191 <ul style="list-style-type: none"> ■ No significant changes - new edition of previously adopted reference. ○ October 1, 2009 - Part 195 <ul style="list-style-type: none"> ■ No significant changes - new edition of previously adopted reference. • The American Society of Mechanical Engineers (ASME) B31.4 – 2002, Edition <ul style="list-style-type: none"> ○ No significant changes – new edition of previously adopted reference. • Section IX of the ASME Boiler and Pressure Vessel Code - 2004, Edition, including addenda through July 1, 2005 <ul style="list-style-type: none"> ○ No significant changes - new edition of previously adopted reference. • American Petroleum Institute (API) standard 1104 - 19th Edition 1999, including errata October 31, 2001; and 20th Edition 2007, including errata 2008 <ul style="list-style-type: none"> ○ No significant changes - new edition of previously adopted reference. • API RP standard 1117 - Third Edition, July 2008, including errata December 2008 <ul style="list-style-type: none"> ○ No significant changes - new edition of previously adopted reference.
Chapter 480-93 WAC, Gas companies—Safety			
Amend	480-93-999	Adoption by reference.	<p>1. Adoption by reference dates changed as follows:</p> <ul style="list-style-type: none"> • Title 49 Code of Federal Regulations <ul style="list-style-type: none"> ○ October 1, 2009 - Part 191 <ul style="list-style-type: none"> ■ No significant changes - new edition of previously adopted reference. ○ October 1, 2009 - Part 192 <ul style="list-style-type: none"> ■ No significant changes - new edition of previously adopted reference. ○ October 1, 2009 - Part 193 <ul style="list-style-type: none"> ■ No significant changes - new edition of previously adopted reference. ○ October 1, 2009 - Part 199 <ul style="list-style-type: none"> ■ No significant changes - new edition of previously adopted reference. • Section IX of the ASME Boiler and Pressure Vessel Code - 2004, Edition, including addenda through July 1, 2005 <ul style="list-style-type: none"> ○ No significant changes - new edition of previously adopted reference. • American Petroleum Institute (API) standard 1104 - 19th Edition 1999, including errata October 31, 2001; and 20th Edition 2007, including errata 2008 <ul style="list-style-type: none"> ○ No significant changes - new edition of previously adopted reference.

Proposed Adoption by Reference Date Changes and Other Administrative Changes Docket A-091124			
Action	WAC No.	Rule Title	Proposed Changes ^a
Chapter 480-100 WAC, Electric companies			
Amend	480-100-999	Adoption by reference.	1. Adoption by reference dates changed as follows: <ul style="list-style-type: none"> • ANSI C12.1, Code for Electricity Metering, 2001 - as of 2008 <ul style="list-style-type: none"> o No significant changes - new edition of previously adopted reference.
Chapter 480-108 WAC, Electric companies—Interconnection with electric generators			
Amend	480-108-999	Adoption by reference.	1. Adoption by reference changed as follows: <ul style="list-style-type: none"> • Institute of Electrical and Electronics Engineers (IEEE) Standard 929, Recommended Practice for Utility Interface of Photovoltaic (PV) Systems, published in 2000 <ul style="list-style-type: none"> o Reference is repealed.
Chapter 480-120 WAC, Telecommunications companies			
Amend	480-120-999	Adoption by reference.	1. Adoption by reference dates changed as follows: <ul style="list-style-type: none"> • American National Standards for Telecommunications - "Network Performance Parameters for Dedicated Digital Services for Rates Up To and Including DS3 - Specifications" - (ANSI T1.510-1999) - as of December 29, 1999, and reaffirmed 2008 <ul style="list-style-type: none"> o No significant changes – revised title of a previously adopted reference. • Title 47 Code of Federal Regulations, except Sections 64.2001 through 64.2011 <ul style="list-style-type: none"> o October 1, 1998 – No change to current rule – See Note 1. • Title 47 Code of Federal Regulations, Sections 64.2001 through 64.2011 <ul style="list-style-type: none"> o October 1, 2008 – No significant change – Revises to include complete Subpart U.

^a The proposed rules adopt federal statutes and regulations, state laws and national consensus codes that establish industry standards. These other statutes [statutes], regulations, laws and codes regulate the same subject matter as the adopting or incorporating rule in Title 480 WAC. These rules need to be updated to reflect current published versions of federal rules and national safety standards and correct typographical, grammatical, and punctuation errors. There are no significant changes or substantial modifications to any rules in Title 480 WAC.

Note

I. 47 C.F.R., except Sections 64.2001 through 64.2011, as of October 1, 1998

At this time, staff will continue using the 1998 FCC Part 32 because it contains the required level of detail that fills our needs. Updated versions of Part 32 do not include some accounts and has combined other accounts. Also, the FCC has opened a rule making regarding accounting rules. Staff would prefer to maintain the current accounting requirements until the FCC's accounting rule changes are solidified, and until the potential effect of changes to intercarrier compensation on accounting needs can be determined, before making changes to the utilities and transportation commission's (UTC) accounting rules. If the FCC decides to change the accounting rules in a significant way, then the UTC would be able to carefully analyze how its needs can be met through maintaining the federally-required uniform system of accounts, whatever it might turn out to be, and then can decide what additional accounting requirements it may have.

NOTICE

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Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal would revise the adoption-by-reference dates to reflect the current version of adopted material and make other minor administrative changes in Title 480 WAC.

Reasons Supporting Proposal: The commission adopts by reference several parts in Title 47 and Title 49 of the Code of Federal Regulations and other state rules and national standards. This adoption package will make commission rules consistent with current published versions of federal rules, reflect the most current versions of the national safety standards and correct typographical, grammatical, and punctuation errors.

Statutory Authority for Adoption: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.353.

Statute Being Implemented: Not applicable.

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

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

Name of Agency Personnel Responsible for Drafting: Alan Lundeen, Damage Prevention Manager, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, (360) 664-1118; Implementation and Enforcement: David W. Danner, Executive Director and Secretary, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, (360) 664-1208.

October 7, 2009
David W. Danner
Executive Director
and Secretary

AMENDATORY SECTION (Amending Docket No. TR-981102, General Order No. R-477, filed 1/30/01, effective 3/2/01)

WAC 480-62-235 Flaggers. (1) The rules in this section apply whenever a railroad company engages in the maintenance, repair, or construction of a grade crossing or grade separated crossing; however, they do not apply when flaggers are provided only because of a crossing signal malfunction or only because of inspections or repairs to a crossing signal system. The latter circumstances are covered by 49 CFR, Part 234. In addition, 49 CFR Part 234.5 recommends that railroad companies follow the requirements of Part VI of the Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD) to the extent possible. The commission further recommends that railroads also abide by the following rules to the extent possible in situations covered by 49 CFR Part 234.

(2) Except as otherwise required in this section, traffic control devices, signs, barricades, and signaling methods must be set up and used by individuals trained in and familiar with the provisions of and according to the guidelines in the Manual on Uniform Traffic Control Devices, Part VI.

(3) Flaggers are to be used only when other reasonable means of control will not adequately control traffic in work zones. It may be reasonable in some cases to close the road on which the crossing is located, but only if agreed to by the public authority responsible for the roadway.

(4) Standards for high-visibility safety apparel.

(a) While flagging during daylight hours, a flagger must, at a minimum, wear:

- A high-visibility safety garment designed according to Class 2 specifications in ANSI/ISEA ((+07-1999)) 207-2006,

American National Standard((s)) for High-Visibility Public Safety ((Apparel)) Vests, specifically, a garment containing at least seven hundred seventy-five square inches of background material and two hundred one square inches of retroreflective material; and

- A high-visibility hard hat.

(b) While flagging at night, a flagger must, at a minimum, wear:

- A high-visibility safety garment designed according to Class 2 specifications in ANSI/ISEA ((+07-1999)) 207-2006 over white coveralls, or other coveralls or trousers designed according to ANSI/ISEA ((+07-1999)) 207-2006 standards; and

- A high-visibility hard hat that is marked with at least twelve square inches of reflectorized material providing three hundred sixty degrees of visibility.

(c) While flagging during inclement weather, yellow rain gear, white rain gear, or rain gear designed according to ANSI/ISEA ((+07-1999)) 207-2006 may be substituted for white coveralls.

(5) Railroad companies must develop and use a method to ensure that whenever there is any potential hazard associated with motor vehicles, construction equipment, or on-track equipment, that flaggers have adequate warning of objects approaching from behind the flagger.

Note: The following are some nonmandatory examples of methods that may be used to adequately warn flaggers:

- Mount a mirror on the flagger's hard hat;
- Use a motion detector with audible warning; or
- Use a spotter.

(6)(a) Railroad companies must conduct an on-site safety briefing for flaggers each time a flagger reports for duty, and also when job site conditions change significantly. The briefing must include applicable portions of the traffic control plan and any changes applicable during the flagger's shift. If not covered in the traffic control plan, the briefing must also include:

- The flagger's role and location at the job site;
- Motor vehicles and equipment in operation at the site;
- Job site traffic patterns;
- Communications and signals to be used between flaggers and equipment operators;
- Expected train and other on-track equipment movements;
- On-foot escape route; and
- Other hazards specific to the job site.

(b) When flaggers are used on a job site at a roadway allowing speeds of forty-five mph or more and the job will last more than one day, the railroad company must keep on the site a current site-specific traffic control plan. The purpose of this plan is to help move traffic through or around the construction zone in a way that protects the safety of the traveling public, pedestrians and workers. The plan must include, but is not limited to, such items as:

- Sign use and placement;
- Application and removal of pavement markings;
- Construction;
- Scheduling;
- Methods and devices for delineation and channelization;
- Placement and maintenance of devices;

- Placement of flaggers;
- Roadway lighting;
- Traffic regulations; and
- Surveillance and inspection.

(7)(a) Where flaggers are used on roads allowing speeds of at least forty-five mph, the railroad company must provide an additional warning sign marked "BE PREPARED TO STOP."

(b) This sign is in addition to those required by Part VI of the Manual on Uniform Traffic Control Devices. It should be placed between the last two warning signs in the series or on the opposite side of the road when used on undivided roads.

(c) This additional sign does not increase the required advance warning area.

(d) The purpose of this additional sign is to clearly point out that a flagger will be encountered and the driver should be prepared to stop.

(8) To protect flaggers, railroad companies must ensure that:

(a) Flagger workstations are illuminated at night and during inclement weather by floodlights. It is important to adequately illuminate the workstation without creating glare in the eyes of approaching drivers. The adequacy and proper placement of floodlights can best be determined by driving through and observing the workstation from each direction on the roadway.

(b) Warning signs reflect the actual condition of the work zone. When not in use, warning signs should either be taken down or covered.

(c) Flaggers are not assigned other duties while engaging in flagging activities.

(d) Flaggers do not use devices (e.g., cell phones, pagers, or radio headphones) that may distract the vision, hearing, or attention of the flagger. Devices such as two-way radios used for communication between flaggers to direct traffic or ensure flagger safety are acceptable.

(e) Flaggers receive appropriate breaks from flagging so they can remain attentive and alert.

(9) Unless an emergency makes it impossible, before performing any work, railroad companies must coordinate all repair, maintenance, and construction work with the governing authority responsible for the road on which the crossing exists.

(10) Information about Title 49 CFR, the Manual on Uniform Traffic Control Devices, and ANSI/ISEA ((407-1999)) 207-2006 regarding the versions adopted and where to obtain them is set out in WAC 480-62-999.

AMENDATORY SECTION (Amending Docket No. A-020379, General Order No. R-501, filed 8/26/02, effective 9/26/02)

WAC 480-62-240 Passenger carrying vehicles—Equipment. (1) Equipment requirements for all vehicles.

(a) Vehicles must comply with all applicable equipment requirements of Title 46 RCW.

(b) Vehicles must have exhaust systems that prevent exposure of passengers to the vehicle's emissions.

(c) Vehicles must have two external rear vision mirrors, one at each side of the cab. The mirrors must be firmly attached to the motor vehicle at a point where the driver is

provided a view of the highway to the rear along both sides of the vehicle. An outside mirror may be placed only on the driver's side on vehicles in which the driver has a view to the rear by means of an interior mirror.

(d) Vehicles must be equipped with a steering system maintained to insure that lash or preplay do not exceed those values set forth in 49 CFR, Parts 570.7 and 570.60 (Vehicle in Use Inspection Standards). Information about Title 49 CFR regarding the version adopted and where to obtain it is set out in WAC 480-62-999.

(e) Vehicles must have a heating system that will maintain an ambient temperature of at least fifty-five degrees in passenger areas.

(f) Vehicles must have at least three red-burning fuses, three red portable emergency reflectors, or at least two red cloth flags suitable for warning the motoring public in an emergency. The driver must ensure that such equipment is in the vehicle and is maintained in good condition. Any devices that may create a spark or open flame must be carried in a separate compartment or a closed metal container provided for that purpose.

(g) Vehicles must have a two and one-half pound dry chemical fire extinguisher or its equivalent, properly filled and located where it is readily accessible for use. The extinguisher must allow visual determination of the state of its charge at all times. The extinguishing agent must be non-toxic and preferably noncorrosive. The fire extinguisher must be suitable for attachment to the motor vehicle, bear the label of approval by the Underwriters Laboratories, Inc., and be kept in good working condition at all times.

(h) Vehicles must have a first-aid kit located where it is readily accessible. The kit must contain all of the items specified in ANSI ((2308-1)) Z308.1-2009, Minimum Requirements for Workplace First Aid Kits. Additionally, the kit must contain gloves capable of preventing exposure to blood-borne pathogens. Items used from first-aid kits must be replaced before the next shift, and kits must be checked for compliance with this rule if the seal on the kit is broken. Information about ANSI ((2308-1)) Z308.1-2009 regarding the version adopted and where to obtain it is set out in WAC 480-62-999.

(2) Equipment requirements for specified vehicles.

(a) Coupling devices used on a vehicle equipped with retractable flange wheels for operation on railroad tracks must be substantial and made of metal. The devices must be equipped with safety chains or straps of sufficient strength to prevent separation in the event of accidental uncoupling.

(b) A passenger compartment separate from the cab of the vehicle must be made of metal and be fastened directly to the frame of the vehicle. The compartment must have an interior lining sufficient to absorb condensation, and padded seats and backrests firmly secured in place. The floor of the compartment must be constructed to bear the weight of all cargo and passengers. The floor must not have unnecessary openings, and it must be constructed to prevent the entry of noxious fumes or permeation with flammable materials. The compartment must have a curtain of nonpermeable material of sufficient weight and size to close off the rear opening and a tailgate which must be closed whenever the vehicle is in motion. If the bottom of the entrance to the passenger com-

partment is more than three feet six inches above ground level, the vehicle must have permanent or temporary steps designed for the safe boarding and discharge of passengers.

(c) Communication between a cab and a separated passenger compartment must be provided by means of a light or audible device mounted in the cab of the vehicle that may be activated by a passenger in the rear compartment.

(d) On vehicles designed to transport nine or more passengers, an emergency exit must be placed at the end of the vehicle opposite the regular entrance. The exit must be at least six and one-half square feet in area, and the smallest dimension must be at least eighteen inches. The route to and from the emergency exit must be unobstructed at all times.

AMENDATORY SECTION (Amending Docket No. A-081419, General Order R-554, filed 12/23/08, effective 1/23/09)

WAC 480-62-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, 2007.

(b) This publication is referenced in WAC 480-62-160 (Compliance policy), WAC 480-62-200 (Roadway worker safety and operating rules and statutes), WAC 480-62-205 (Track safety standards), WAC 480-62-210 (Crossing signal circuitry), WAC 480-62-215 (Hazardous materials regulations), WAC 480-62-235 (Flaggers), and WAC 480-62-240 (Passenger carrying vehicles—Equipment).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(2) **Manual on Uniform Traffic Control Devices**, cited as Manual on Uniform Traffic Control Devices, or MUTCD, is published by the United States Government Printing Office.

(a) The commission adopts the version in effect (~~on November 2004~~) on December 31, 2007.

(b) This publication is referenced in WAC 480-62-230 (Traffic control devices), WAC 480-62-235 (Flaggers), and WAC 480-62-245 (Passenger carrying vehicles—Operation).

(c) Copies of the MUTCD are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(3) **Washington state department of transportation rules**, cited as chapter 468-95 WAC, are published by the statute law committee.

(a) The commission adopts the version in effect on (~~March 25, 2004~~) December 4, 2005.

(b) This publication is referenced in WAC 480-62-230 (Traffic control devices).

(c) Copies of the Washington state department of transportation rules are available from the department of transportation or on the internet web site for the office of the code reviser (slc.leg.wa.gov).

(4) **ANSI Z308.1 - ((2003)) 2009 American National Standard for Minimum Requirements for Workplace First Aid Kits** is published by the American National Standards Institute.

(a) The commission adopts the version in effect on (~~April 29, 2003~~) May 31, 2009.

(b) This publication is referenced in WAC 480-62-240 (Passenger carrying vehicles—Equipment).

(c) Copies of ANSI Z308.1 - ((2003)) 2009 American National Standard for Minimum Requirements for Workplace First Aid Kits are available from Global Engineering Documents in Englewood, Colorado.

(5) **ANSI/ISEA ((107-2004)) 207-2006 - American National Standard for High-Visibility Public Safety ((Apparel)) Vests** is published by the American National Standards Institute.

(a) The commission adopts the version in effect on (~~September 15, 2004~~) August 9, 2006.

(b) This publication is referenced in WAC 480-62-235 (Flaggers).

(c) Copies of ANSI/ISEA ((107-1999)) 207-2006 - American National Standard for High-Visibility Public Safety ((Apparel)) Vests are available from Global Engineering Documents in Englewood, Colorado.

(6) **Title 49 United States Code**, cited as 49 U.S.C., is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on January 2, 2002.

(b) This publication is referenced in WAC 480-62-200 (Roadway worker safety and operating rules and statutes).

(c) Copies of Title 49 United States Code are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending Docket A-081419, General Order R-554, filed 12/23/08, effective 1/23/09)

WAC 480-75-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **Title 49 Code of Federal Regulations**, cited as 49 CFR, Parts 195 and 199 including all appendices and amendments except for 49 CFR Sections 195.0 and 195.1, and 49 CFR Sections 199.1 and 199.2, published by the United States Government Printing Office.

(a) The commission adopts the version in effect on (~~September 2, 2008~~) October 1, 2009.

(b) This publication is referenced in WAC 480-75-370 (Design factor (*F*) for steel pipe), WAC 480-75-630 (Incident reporting), and WAC 480-75-660 (~~(((Operations safety plan requirements)))~~) Procedural manual for operations, maintenance, and emergencies.

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/> (~~and from various third-party vendors~~).

(2) **The American Society of Mechanical Engineers** (ASME) B31.4, ((1998)) 2002 edition.

(a) This publication is referenced in WAC 480-75-350 (Design specifications for new pipeline projects), WAC 480-75-440 (Pipeline repairs), and WAC 480-75-450 (Construction specifications).

(b) Copies of ASME B31.4 are available from (~~The American Society of Mechanical Engineers, Park Avenue New York, New York~~) ASME, <http://www.asme.org/codes/>. It is also available for inspection at the commission.

(3) The ((2004)) 2004 edition, including addenda through July 1, 2005, of Section IX of the ASME Boiler and Pressure Vessel Code.

(a) This publication is referenced in WAC 480-75-430 (Welding procedures).

(b) Copies of the 2004 edition, including addenda through July 1, 2005, of Section IX of the ASME Boiler and Pressure Vessel Code are available from (~~The American Society of Mechanical Engineers, Park Avenue, New York, New York~~) ASME, <http://www.asme.org/codes/>. It is also available for inspection at the commission.

(4) The commission adopts **American Petroleum Institute (API) standard 1104** 19th edition including errata October 31, 2001; and 20th edition 2007, including errata December 2008.

(a) This publication is referenced in WAC 480-75-430 (Welding procedures) and WAC 480-75-460 (Welding inspection requirements).

(b) Copies of API standard 1104 (19th edition 1999 including errata October 31, 2001; and 20th edition 2007, including errata 2008) are available from (~~the Office of API Publishing Services in Washington DC~~), <http://www.api.org/>.

(5) The commission adopts **API RP standard 1117** ((Second)) Third Edition, ((August 1996)) July 2008, including errata December 2008.

(a) This publication is referenced in WAC 480-75-500 (Moving and lowering hazardous liquid pipelines).

(b) Copies of API standard 1117 ((Second)) Third Edition, July 2008, including errata December 2008 are available from (~~Global Engineering Documents in Englewood, Colorado~~) API, <http://www.api.org/>.

AMENDATORY SECTION (Amending Docket A-081419, General Order R-554, filed 12/23/08, effective 1/23/09)

WAC 480-93-999 Adoption by reference. In this chapter, the commission adopts by reference each of the regulations and/or standards identified below. Each regulation or standard is listed by publication, publisher, scope of what the commission is adopting, effective date of the regulation or standard, the place within the commission's rules the regulation or standard is referenced, and where to obtain the regulation or standard.

(1) Parts 191, 192, 193, and 199 of Title 49 Code of Federal Regulations, including all appendices and amendments

thereto as published by the United States Government Printing Office.

(a) The commission adopts the version of the above regulations that were in effect on ((~~September 2, 2008~~)) October 1, 2009, except the following sections are not adopted by reference: 191.1, 192.1(a), 193.2001(a), 199.1. In addition, please note that in WAC 480-93-013, the commission includes "new construction" in the definition of "covered task," as defined in 49 CAR § 192.801 (b)(2).

(b) This publication is referenced in WAC 480-93-005, 480-93-080, 480-93-100, 480-93-110, 480-93-124, 480-93-155, 480-93-170, 480-93-180, and 480-93-18601.

(c) (~~The Code of Federal Regulations is published by the federal government.~~) Copies of Title 49 Code of Federal Regulations are available from (~~most Government Printing Offices, including the Seattle office of the Government Printing Office, as well as from various third-party vendors and various libraries, including the branch of the state library located at the commission~~) the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>. It is also available for inspection at the commission.

(2) Section IX of the **American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code.**

(a) The commission adopts the ((2004)) 2004 edition of Section IX of the ASME Boiler and Pressure Vessel Code, including addenda through July 1, 2005.

(b) This publication is referenced in WAC 480-93-080.

(c) Copies of Section IX of the ASME Boiler and Pressure Vessel Code ((2004)) 2004 edition, including addenda through July 1, 2005 are available from (~~The American Society of Mechanical Engineers, Park Avenue, New York, New York, and various libraries, including the branch of the state library located at the commission~~) ASME, <http://www.asme.org/codes/>. It is also available for inspection at the commission.

(3) The American Petroleum Institute (API) standard 1104 (19th edition 1999, including errata October 31, 2001; and 20th edition 2007, including errata 2008).

(a) The commission adopts the 19th edition 1999, including errata October 31, 2001; and 20th edition 2007, including errata 2008 of this standard.

(b) This standard is referenced in WAC 480-93-080.

(c) Copies of API standard 1104 (19th edition 1999, including errata October 31, 2001; and 20th edition 2007, including errata 2008) are available from the Office of API Publishing Services (~~in Washington DC, and various libraries, including the branch of the state library located at the commission~~), <http://www.api.org/>. It is also available for inspection at the commission.

AMENDATORY SECTION (Amending Docket A-081419, General Order R-554, filed 12/23/08, effective 1/23/09)

WAC 480-100-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) **Title 18 Code of Federal Regulations**, cited as 18 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on April 1, 2008.

(b) The accounting and reporting for the types of transactions and events covered by the amendment should not be construed as indicative of their treatment by this commission for ratemaking purposes.

(c) This publication is referenced in WAC 480-100-203 (Accounting system requirements), WAC 480-100-244 (Transferring cash or assuming obligation), WAC 480-100-252 (Federal Energy Regulatory Commission (FERC) Form No. 1), and WAC 480-100-268 (Essential utilities services contracts report).

(d) Copies of Title 18 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(2) The **Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies** is published by the National Association of Regulatory Utility Commissioners (NARUC).

(a) The commission adopts the version in effect in 1985.

(b) This publication is referenced in WAC 480-100-228 (Retention and preservation of records and reports).

(c) The *Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies* is a copyrighted document. Copies are available from NARUC in Washington, D.C.

(3) The **National Electrical Code** is published by the National Fire Protection Association (NFPA).

(a) The commission adopts the version published in 2005.

(b) This publication is referenced in WAC 480-100-163 (Service entrance facilities).

(c) The National Electrical Code is a copyrighted document. Copies are available from the NFPA in Quincy, Massachusetts.

(4) The **American National Standard for Electric Meters: Code for Electricity Metering**, ANSI C12.1 is published by the American National Standards Institute.

(a) The commission adopts the version published in ~~((2001))~~ 2008.

(b) This publication is referenced in WAC 480-100-318 (Meter readings, multipliers, and test constants), WAC 480-100-338 (Accuracy requirements for electric meters), and WAC 480-100-343 (Statement of meter test procedures).

(c) The ANSI C12.1 is a copyrighted document. Copies are available from Global Engineering Documents in Englewood, Colorado.

AMENDATORY SECTION (Amending Docket A-081419, General Order R-554, filed 12/23/08, effective 1/23/09)

WAC 480-108-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library or as otherwise indicated. The publications,

effective date, references within this chapter, and availability of the resources are as follows:

(1) The National Electrical Code is published by the National Fire Protection Association (NFPA).

(a) The commission adopts the version published in 2005.

(b) This publication is referenced in WAC 480-108-020.

(c) The National Electrical Code is a copyrighted document. Copies are available from the NFPA at 1 Batterymarch Park, Quincy, Massachusetts, 02169 or at internet address <http://www.nfpa.org>.

(2) National Electric Safety Code (NESC).

(a) The commission adopts the version published in 2002.

(b) This publication is referenced in WAC 480-108-020.

(c) Copies of the National Electric Safety Code are available from the Institute of Electrical and Electronics Engineers at <http://standards.ieee.org/nesc>.

(3) Institute of Electrical and Electronics Engineers (IEEE) Standard 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems.

(a) The commission adopts the version published in 2003.

(b) This publication is referenced in WAC 480-108-020.

(c) Copies of IEEE Standard 1547 are available from the Institute of Electrical and Electronics Engineers at <http://www.ieee.org/web/standards/home>.

~~((4))~~ ~~((Institute of Electrical and Electronics Engineers (IEEE) Standard 929, Recommended Practice for Utility Interface of Photovoltaic (PV) Systems.~~

~~((a))~~ ~~The commission adopts the version published in 2000.~~

~~((b))~~ ~~This publication is referenced in WAC 480-108-020.~~

~~((c))~~ ~~Copies of IEEE Standard 929 are available from the Institute of Electrical and Electronics Engineers at <http://www.ieee.org/web/standards/home>.~~

~~((5))~~ American National Standards Institute (ANSI) Standard C37.90, IEEE Standard for Relays and Relay Systems Associated with Electric Power Apparatus.

(a) The commission adopts the version published in 2005.

(b) This publication is referenced in WAC 480-108-020.

(c) Copies of IEEE Standard C37.90 are available from the Institute of Electrical and Electronics Engineers at <http://www.ieee.org/web/standards/home>.

~~((6))~~ ~~((5))~~ Institute of Electrical and Electronics Engineers (IEEE) Standard 519, Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems.

(a) The commission adopts the version published in 1992.

(b) This publication is referenced in WAC 480-108-020.

(c) Copies of IEEE Standard 519 are available from the Institute of Electrical and Electronics Engineers at <http://www.ieee.org/web/standards/home>.

~~((7))~~ ~~((6))~~ Institute of Electrical and Electronics Engineers (IEEE) Standard 141, Recommended Practice for Electric Power Distribution for Industrial Plants.

(a) The commission adopts the version published in 1994 and reaffirmed in 1999.

(b) This publication is referenced in WAC 480-108-020.

(c) Copies of IEEE Standard 141 are available from the Institute of Electrical and Electronics Engineers at <http://www.ieee.org/web/standards/home>.

~~((8))~~ (7) Institute of Electrical and Electronics Engineers (IEEE) Standard 142, Recommended Practice for Grounding of Industrial and Commercial Power Systems.

(a) The commission adopts the version published in ~~((1994))~~ 2007.

(b) This publication is referenced in WAC 480-108-020.

(c) Copies of IEEE Standard 142 are available from the Institute of Electrical and Electronics Engineers at <http://www.ieee.org/web/standards/home>.

~~((9))~~ (8) Underwriters Laboratories (UL), including UL Standard 1741, Inverters, Converters, and Controllers for Use in Independent Power Systems.

(a) The commission adopts the version published in 2005.

(b) This publication is referenced in WAC 480-108-020.

(c) UL Standard 1741 is available from Underwriters Laboratory at <http://www.ul.com>.

~~((10))~~ (9) Occupational Safety and Health Administration (OSHA) Standard at 29 CFR 1910.269.

(a) The commission adopts the version published in 1994.

(b) This publication is referenced in WAC 480-108-020.

(c) Copies of Title 29 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

~~((11))~~ (10) Washington Industrial Safety and Health Administration (WISHA) Standard, chapter 296-155 WAC.

(a) The commission adopts the version in effect on July 1, 2008.

(b) This publication is referenced in WAC 480-108-020.

(c) The WISHA Standard is available from the Washington Department of Labor and Industries at P.O. Box 44000, Olympia, WA 98504-4000, or at internet address <http://www.lni.wa.gov>.

AMENDATORY SECTION (Amending Docket No. UT-990146, General Order No. R-507, filed 12/12/02, effective 7/1/03)

WAC 480-120-401 Network performance standards.

(1) All companies must meet the applicable network performance standards set forth in this section. The standards applied to each service quality measurement are the minimum acceptable quality of service under normal operating conditions. All performance standards apply to each central office individually and must be measured at or below that level. The performance standards do not apply to abnormal conditions, including, but not limited to work stoppage directly affecting provision of service in the state of Washington, holidays, force majeure, or major outages caused by persons or entities other than the local exchange company (LEC) or its agents.

(2) **Switches.** End-office switches, in conjunction with remote switches where deployed, must meet the following standards:

(a) **Dial service.** For each switch, companies must meet the following minimum standards during the switch's average busy-hour of the average busy season:

(i) Dial tone must be provided within three seconds on at least ninety-eight percent of calls placed; and

(ii) Ninety-eight percent of calls placed must not encounter an intraswitch blocking condition within the central office, or blocking in host-remote, or interoffice local trunks.

(b) **Intercept.** Central office dial equipment must provide adequate access to an operator or to a recorded announcement intercept to all vacant codes and numbers. Less than one percent of intercepted calls may encounter busy or no-circuit-available conditions during the average busy-hour, of the busy-season.

(3) **Interoffice facilities.** Blocking performance during average busy-hour for ninety-nine percent of trunk groups for any month must be less than one-half of one percent for inter-toll and intertandem facilities and less than one percent for local and EAS interoffice trunk facilities. The blocking standard for E911 dedicated interoffice trunk facilities must be less than one percent during average busy-hour of the average busy season. Two consecutive months is the maximum that a single trunk group may be below the applicable standard.

(4) **Outside plant.**

(a) **Local loops.** Each LEC must design, construct, and maintain subscriber loops to the standard network interface or demarcation point as follows:

(i) For voice grade, local exchange service loops must meet all performance characteristics specified in Section 4 of the Institute of Electrical and Electronic Engineers (IEEE) Standard Telephone Loop Performance Characteristics. Information about this standard regarding the version adopted and where to obtain it is set forth in WAC 480-120-999.

(ii) For voice grade service, the circuit noise level on customer loops measured at the customer network interface must be equal to or less than 20.0 dBrnC, except that digitized loops and loops in excess of 18,000 feet must have a noise level objective of less than 25.0 dBrnC, and noise levels must not exceed 30 dBrnC.

(b) **Special circuits.** Off-premise station circuit loss must not exceed 5.0 dB at 1004 Hz when measured between the customer switch demarcation and the customer station demarcation. LECs with over fifty thousand access lines must maintain design criteria for special circuits. Companies must make channel performance criteria available to customers upon request.

(c) **Digital services.** LECs must meet the availability objectives for digital private line circuit performance specified in the American National Standards for Telecommunications, "*Network Performance Parameters for Dedicated Digital Services for Rates Up To and Including DS3 - Specifications*." Information about this standard regarding the version adopted and where to obtain it is set forth in WAC 480-120-999. Upon request of a customer, a LEC may provide to that customer digital services that do not meet the performance standards set forth in (b) of this subsection.

(5) **Service to interexchange carriers.** LECs must provide service to interexchange carriers at the grade of service ordered by the interexchange carrier. At a minimum, each

interexchange carrier must order sufficient facilities from each LEC such that no more than two percent of all calls are blocked at the LEC's switch.

(6) Companies must monitor the network performance of the equipment they own, operate, or share at frequent intervals so that adequate facilities can be designed, engineered and placed in service when needed to meet the standards of this section.

(7) Each Class A LEC must arrange and design incoming trunks to the primary repair service center so that traffic overflows during service interruptions can be redirected or forwarded to an alternate repair or maintenance service center location.

AMENDATORY SECTION (Amending Docket A-081419, General Order R-554, filed 12/23/08, effective 1/23/09)

WAC 480-120-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **American National Standards for Telecommunications** - "*Network Performance Parameters for Dedicated Digital Services for Rates Up To and Including DS3 - Specifications*" (ANSI T1.510-1999) is published by the American National Standards Institute (ANSI).

(a) The commission adopts the version in effect on December 29, 1999, and reaffirmed ((2004)) 2008.

(b) This publication is referenced in WAC 480-120-401 (Network performance standards).

(c) The American National Standards for Telecommunications "*Network Performance Parameters for Dedicated Digital Services for Rates Up To and Including DS3 - Specifications*" is a copyrighted document. Copies are available from ANSI in Washington, D.C. and from various third-party vendors.

(2) **The Institute of Electrical And Electronic Engineers (IEEE) Standard Telephone Loop Performance Characteristics** (ANSI/IEEE Std 820-1984) is published by the ANSI and the IEEE.

(a) The commission adopts the version in effect as published in 2005.

(b) This publication is referenced in WAC 480-120-401 (Network performance standards).

(c) *The IEEE Standard Telephone Loop Performance Characteristics* is a copyrighted document. Copies are available from ANSI and IEEE in Washington, D.C. and from various third-party vendors.

(3) **The National Electrical Safety Code** is published by the IEEE.

(a) The commission adopts the version in effect on January 1, 2002.

(b) This publication is referenced in WAC 480-120-402 (Safety).

(c) *The National Electrical Safety Code* is a copyrighted document. Copies are available from IEEE in Washington, D.C. and from various third-party vendors.

(4) **Title 47 Code of Federal Regulations**, cited as 47 CFR, is published by the United States Government Printing Office, except sections ((64.2003)) 64.2001 through ((64.2009)) 64.2011.

(a) The commission adopts the version in effect on October 1, 1998.

(b) This publication is referenced in WAC 480-120-359 (Accounting requirements for companies not classified as competitive) and WAC 480-120-349 (Retaining and preserving records and reports).

(c) Copies of Title 47 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(5) Sections ((64.2003)) 64.2001 through ((64.2009)) 64.2011 of **Title 47 of the Code of Federal Regulations**, cited as 47 CFR §§ ((64.2003)) 64.2001 through ((64.2009)) 64.2011, are published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, 2008.

(b) This publication is referenced in WAC 480-120-202 (Customer Proprietary Network Information).

(c) Copies of Sections ((64.2003)) 64.2001 through ((64.2009)) 64.2011 of Title 47 of the Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from third-party vendors.

WSR 09-20-106

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed October 7, 2009, 10:13 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-126 Sales of motor vehicle fuel, special fuels, and nonpollutant fuel, provides tax reporting information to persons selling motor vehicle fuel, special fuel (diesel), and non-pollutant fuel (propane).

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 Gayle Carlson, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, fax (360) 586-0127, e-mail GayleC@dor.wa.gov, AND RECEIVED BY December 7, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 82.08.0255 (1)(c) and 82.12.0256 (1)(c) provide a retail sales and use tax exemption for motor vehicle and special fuels purchased by counties and public transportation benefit areas (PTBAs) for

use in passenger-only ferry vessels. The exemption as it applies to county-owned ferries is addressed in current subsection (3)(a), with subsection (3)(d) addressing the exemption as it applies to PTBAs. The discussion regarding county-owned ferries clearly identifies the statutory requirement that the exemption is limited to fuels used in passenger-only ferries, while the discussion for fuel used by a PTBA does not. The department proposes to amend the rule to correct this oversight. The proposed rule combines the discussion of the exemption as it applies to fuel purchased for both county-owned and PTBA-owned passenger-only ferries in a single subsection (3)(a).

Reasons Supporting Proposal: To provide a clearer explanation of the exemption provided in RCW 82.08.0255 (1)(c) and 82.12.0256 (1)(c).

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: RCW 82.08.0255, 82.12.-0256, 82.08.865, and 82.12.865.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Gayle Carlson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6126; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Gilbert Brewer, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

October 7, 2009

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-16-045, filed 7/29/08, effective 8/29/08)

WAC 458-20-126 Sales of motor vehicle fuel, special fuels, and nonpollutant fuel. (1) **Introduction.** This section explains the retail sales and use taxes for motor vehicle fuel, special fuels, and fuels commonly referred to as natural gas and propane. This section also provides documentation requirements to buyers and sellers of fuel for both on and off highway use.

(2) **What are motor vehicle fuel and special fuels, and how are they taxed?** "Motor vehicle fuel" as used in this section means gasoline or any other inflammable gas or liquid the chief use of which is as fuel for the propulsion of motor vehicles. (See RCW 82.36.010.) "Special fuels" as used in this section mean all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles, except that it does not include motor vehicle fuel as defined above. (See RCW 82.38.020.) Diesel fuel is an example of a special fuel.

The retail sales tax or use tax applies to sales and uses of motor vehicle fuel or special fuel, unless an exemption applies, when the taxes of chapter 82.36 or 82.38 RCW have not been paid or have been refunded. Generally the fuel taxes apply to sales of fuel for highway consumption and the sales or use tax applies to fuel sold for consumption off the high-

ways (e.g., boat fuel, or fuel for farm machinery or construction equipment, etc.).

(3) **What motor vehicle fuel and special fuels exemptions are available?**

(a) ~~((County owned ferries.))~~ **Passenger-only ferries.** RCW 82.08.0255 and 82.12.0256 provide exemptions from the retail sales tax and use tax for motor vehicle fuel or special fuel((s)), purchased on or after April 27, 2007, for use in passenger-only ferry vessels. This exemption applies only to public transportation benefit areas created under chapter 36.57A RCW, county owned ferries, or county ferry districts created under chapter 36.54 RCW ~~((for use in passenger-only ferries)).~~

(b) **Nonprofit transportation providers.** RCW 82.-08.0255 and 82.12.0256 provide retail sales tax and use tax exemptions for sales of or uses of motor vehicle fuel or special fuels purchased by private, nonprofit transportation providers certified under chapter 81.66 RCW, who are entitled to fuel tax refund or exemption under chapter 82.36 or 82.38 RCW.

(c) **Public transportation.** RCW 82.08.0255 and ~~((82.-12.0256))~~ 82.12.0256 provide exemptions for the retail sales tax and use tax when motor vehicle fuel or special fuels are purchased or used for the purpose of public transportation, and the purchaser is entitled to a refund or an exemption under RCW 82.36.275 or 82.38.080(3).

(d) ~~((Public transportation benefit areas (PTBA). For purchases on or after April 27, 2007, RCW 82.08.0255 and 82.12.0256 provide retail sales tax and use tax exemptions for motor vehicle fuel and special fuels purchased by a PTBA created under chapter 36.57A RCW.~~

(e)) **Special fuels used in interstate commerce.** The retail sales tax does not apply to sales of special fuels delivered in this state which are later transported and used outside this state by persons engaged in interstate commerce. (RCW 82.08.0255(2).) This exemption also applies to persons hauling their own goods in interstate commerce.

Exemption certificate. Persons selling special fuels to interstate carriers must obtain a completed exemption certificate "Certificate of Special Fuel Sales to Interstate Carriers" from the purchaser in order to document the entitlement to the exemption. The exemption certificate can be obtained from the department of revenue (department) on the internet at <http://www.dor.wa.gov/>, or by contacting the department's taxpayer services division at:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
1-800-647-7706

The provisions of the exemption certificate may be limited to a single sales transaction, or may apply to all sales transactions as long as the seller has a recurring business relationship with the buyer. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months.

~~((f))~~ (e) **Farm fuel users of diesel or aircraft fuels.** For the purpose of this section, a "farm fuel user" means either a farmer or a person who provides horticultural ser-

vices for farmers, such as soil preparation, crop cultivation, or crop harvesting services.

(i) Effective March 6, 2006, RCW 82.08.865 and 82.12.865 exempt farm fuel users from retail sales and use taxes for diesel and aircraft fuel purchased for nonhighway use.

(ii) Substitute Senate Bill (SSB) 5009, chapter 443, Laws of 2007, added biodiesel fuel as exempt from retail sales and use taxes when purchased or used by farm fuel users for nonhighway use. This exemption, effective May 11, 2007, also applies to a fuel blend if all the component fuels of the blend would otherwise be exempt under RCW 82.08.865 and 82.12.865 if the component fuels were sold as separate products. The exemptions do not apply to fuel used for residential heating purposes.

(iii) When purchasing an eligible fuel, a farm fuel user must provide the seller with a completed "Farmers' Retail Sales Tax Exemption Certificate," which can be obtained from the department on the internet at <http://www.dor.wa.gov/>, or by contacting the department's taxpayer services division at:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
1-800-647-7706

Sellers of eligible fuels to farm fuel users must document the tax exempt sales of red-dyed diesel, biodiesel, or aircraft fuel by accepting the certificate mentioned above and retaining it in their records for five years.

(4) **Nonpollutant fuels.** Nonpollutant fuels are described as natural gas and liquefied petroleum gas, commonly called propane. Nonpollutant fuels can be purchased for either highway or "off-highway" use. Sales of nonpollutant fuels for highway use are normally subject to taxes under either chapter 82.36 or 82.38 RCW. Nonpollutant fuels purchased for "off-highway" use are subject to retail sales tax or use tax

(a) **Highway fuel used by Washington licensed vehicle owners.** RCW 82.38.075 provides for payment of an annual fee by users of nonpollutant fuel in lieu of the motor vehicle fuel tax. This fee is paid at the time of original and annual renewals of vehicle license registrations. A decal or other identifying device must be displayed as prescribed by the department of licensing as authority to purchase these nonpollutant fuels.

Fuel dealers should not collect sales or use tax on any nonpollutant fuel sold to Washington licensed vehicle owners for highway use when the vehicle displays a valid decal or other identifying device issued by the department of licensing.

(b) **"Off-highway" fuel use.** Nonpollutant fuels purchased for "off-highway" use are not subject to the taxes of chapter 82.36 or 82.38 RCW, and therefore the retail sales tax applies.

(c) **Bulk purchases of fuel.** The department recognizes that certain licensed special fuel users may find it more practical to accept deliveries of nonpollutant fuels into a bulk storage facility rather than into the fuel tanks of motor vehi-

cles. Persons selling nonpollutant fuels to such bulk purchasers must obtain from the purchaser an exemption certificate in order to document entitlement to the exemption. The "Certificate for Purchase of Nonpollutant Special Fuels" must certify the amount of fuel which will be consumed by the purchaser in using motor vehicles upon the highways of this state. This procedure is limited, however, to persons duly registered with the department. The registration number given on the certificate ordinarily will be sufficient evidence that the purchaser is properly registered. The "Certificate for Purchase of Nonpollutant Special Fuels" can be obtained from the department on the internet at <http://www.dor.wa.gov/>, or by contacting the department's taxpayer services division at:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
1-800-647-7706

(i) When fuel is purchased for both on and off highway use, and it is not possible for a special fuel user licensee to determine the exact proportion purchased for highway use in this state, the amount of the off-highway use special fuel may be estimated. In the event such an estimate is used and retail sales tax is not paid, the purchaser must make an adjustment on the next excise tax return and remit use tax on the portion of the fuel used for off-highway purposes.

(ii) Nonpollutant fuel not placed in vehicle fuel tanks by the seller are subject to retail sales tax, unless a "Certificate for Purchase of Nonpollutant Special Fuels" is obtained from the purchaser. The seller must collect and remit the retail sales tax to the department, or retain the certificate as part of his permanent records. When nonpollutant fuel is delivered by the seller into the bulk storage facilities of a special fuel user licensee or is otherwise sold to such buyers under conditions where it is not delivered into the fuel tanks of motor vehicles, it will be presumed that the entire amount of fuel sold is subject to retail sales tax unless the seller has obtained a completed certificate.

(d) **Vehicles licensed outside the state of Washington.** Owners of out-of-state licensed vehicles are exempt from the requirement to purchase an annual license as provided in RCW 82.38.075. In lieu of taxes of chapters 82.36 and 82.38 RCW, retail sales tax is due on their purchases of nonpollutant fuel, for either highway or off-highway use.

(5) **Refunds are available for fuel taxes paid when fuel is consumed off the highway.** If a person purchases motor vehicle fuel or special fuels and pays the fuel taxes of chapter 82.36 or 82.38 RCW, and then consumes the fuel off the highway, the person is entitled to a refund of these taxes under the procedures of chapter 82.36 or 82.38 RCW. However, a person receiving a refund of vehicle fuel taxes because of the off-highway consumption of the fuel in this state is subject to use tax on the value of the fuel. The department of licensing administers the fuel tax refund provisions and will deduct from the amount of a refund the amount of use tax due.