WSR 09-23-068
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Division of Child Support)
[Filed November 13, 2009, 11:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-14-073.

Title of Rule and Other Identifying Information: The division of child support (DCS) proposes to adopt changes to chapter 388-14A WAC to implement SSB 5166 (chapter 408, Laws of 2009) and to make certain changes to clarify procedures. DCS adopted emergency rules under WSR 09-15-183 which were effective on July 26, 2009, the effective date of the new law. This CR-102 continues the regular rule-making process.

Amending WAC 388-14A-4500 What is the division of child support's license suspension program?, 388-14A-4505 The notice of noncompliance and intent to suspend licenses, 388-14A-4510 Who is subject to the DCS license suspension program?, 388-14A-4515 How do I avoid having my license suspended for failure to pay child support?, 388-14A-4520 Signing a ((~~repayment~~)) payment agreement may avoid certification for noncompliance, 388-14A-4525 How to obtain a release of certification for noncompliance and 388-14A-4530 ((~~Administrative hearings~~)) What happens at an administrative hearing regarding license suspension ((~~are limited in scope.~~))?; and new sections WAC 388-14A-4512 When may the division of child support certify a noncustodial parent for license suspension?, 388-14A-4527 How does a noncustodial parent request an administrative hearing regarding license suspension?, 388-14A-4535 Can the noncustodial parent file a late request for hearing if a license has already been suspended?, and 388-14A-4540 When is a DCS conference board available regarding license suspension issues?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (behind Goodyear Courtesy Tire) (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at http://www1.dshs.wa.gov/msa/rpau/docket.html or by calling (360) 664-6094), on January 5, 2010, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 6, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on January 5, 2010.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by December 22, 2009, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington legislature adopted SSB 5166 (chapter 408, Laws of 2009) regarding license suspension for noncompliance with child support orders. DCS must adopt rules to implement this legislation, which took effect on July 26, 2009. DCS adopted emergency rules under WSR 09-15-183 which were effective on that date. DCS proposes to adopt changes to chapter 388-14A WAC to implement SSB 5166 and to make certain changes to clarify procedures.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: SSB 5166 (chapter 408, Laws of 2009), RCW 34.05.060, 43.20A.550, 74.04.055, 74.04.057, 74.20A.310, 74.20A.320(10), 74.20A.350(14).

Statute Being Implemented: SSB 5166 (chapter 408, Laws of 2009), which amends RCW 74.20A.320 and adds four new sections to chapter 74.20A RCW.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nancy Koptur, DCS HQ, P.O. Box 9162, Olympia, WA 98507, (360) 664-5065.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not have an economic impact on small businesses. It only affects individuals who have support obligations or individuals who are owed child support.

A cost-benefit analysis is not required under RCW 34.05.328. The rule does meet the definition of a significant legislative rule but DSHS/DCS rules relating to the care of dependent children are exempt from preparing further analysis under RCW 34.05.328 (5)(b)(vii).

November 13, 2009
Stephanie E. Vaughn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-18-114, filed 9/2/03, effective 10/15/03)

WAC 388-14A-4500 What is the division of child support's license suspension program? (1) RCW 74.20A.320 and sections 2 through 4 of SSB 5166 (chapter 408, Laws of 2009) provide((~~s~~)) that, in some circumstances, the division of child support (DCS) may certify for license suspension a noncustodial parent (NCP) who is not in compliance with a child support order. These statutes call((~~s~~)) the NCP "the responsible parent."

(a) "Certify" means to notify the department of licensing or other state licensing entities that the NCP is not in compliance with a child support order and to ask them to take appropriate action against licenses held by the NCP. Before DCS can certify an NCP, DCS serves a notice on the NCP as described in WAC 388-14A-4505 and 388-14A-4510. This notice is called the notice of noncompliance and intent to suspend licenses, and is sometimes called the notice of noncompliance.

(b) "Responsible parent" is defined in 388-14A-1020. The responsible parent is also called the "noncustodial parent."

(2) "Noncompliance with a child support order" is defined in RCW 74.20A.020(18) and in WAC 388-14A-4510 (3).

(3) When DCS certifies the NCP, the department of licensing or other licensing entities take action to deny, suspend, or refuse to renew the NCP's license, according to the terms of RCW 74.20A.320 (((~~(8) and (12)~~))) (4) and section 3 of SSB 5166 (chapter 408, Laws of 2009).

(4) This section and sections WAC 388-14A-4505 through 388-14A-4530 cover the DCS license suspension program.

(5) DCS may certify an NCP who is not in compliance with a child support order to the department of licensing or any appropriate licensing entity. In determining which licensing entity receives the certification, DCS considers:

(a) The number and kind of licenses held by the parent; and

(b) The effect that suspension of a particular license will have in motivating the parent to pay support or to contact DCS to make appropriate arrangements for other relief.

(6) DCS may certify a parent to any licensing agency through which it believes the parent has obtained a license. DCS may certify a parent to as many licensing agencies as DCS feels necessary to accomplish the goals of the license suspension program.

(7) In certain circumstances spelled out in WAC 388-14A-4510 (2) and (3), DCS may serve the notice of noncompliance on a noncustodial parent but may stay the commencement of the ((~~twenty-day~~)) objection period in WAC 388-14A-4505 (4)(b).

AMENDATORY SECTION (Amending WSR 03-18-114, filed 9/2/03, effective 10/15/03)

WAC 388-14A-4505 The notice of noncompliance and intent to suspend licenses. (1) Before certifying a noncustodial parent (NCP) for noncompliance, the division of child support (DCS) must serve the NCP with a notice of noncompliance and intent to suspend licenses. This notice tells the NCP that DCS intends to submit the NCP's name to the department of licensing and any other appropriate licensing entity as a licensee who is not in compliance with a child support order.

(2) DCS must serve the notice by certified mail, return receipt requested. If DCS is unable to serve the notice by certified mail, DCS must serve the notice by personal service, as provided in RCW 4.28.080.

(3) The notice must include a copy of the NCP's child support order and must contain the address and phone number of the DCS office which issued the notice.

(4) The notice must contain the information required by RCW 74.20A.320(2), ((~~telling the NCP that~~)) including:

(a) ((~~The NCP may request an administrative hearing, but that the hearing is limited in scope (see WAC 388-14A-4530)~~)) The address and telephone number of DCS office that issued the notice;

(b) ((~~DCS will certify the NCP unless the NCP makes a request for hearing within twenty calendar days of the date of service of the notice, except when a longer period of time is given, as provided in WAC 388-14A-4510 (2) or (3);~~

~~(c) The NCP may avoid certification by agreeing to make timely payments of current support and agreeing to a reasonable payment schedule on the support debt;~~

~~(d) Certification by DCS will result in suspension or nonrenewal of the NCP's license by the licensing entity until DCS issues a release stating that the NCP is in compliance with the child support order;~~

~~(e) Suspension of a license may affect the NCP's insurance coverage, depending on the terms of any policy;~~

~~(f) Filing a petition to modify the support obligation may stay (or put a hold on) the certification process; and~~

~~(g) Even after certification, the NCP may obtain a release from certification by complying with the support order~~)) That in order to prevent DCS from certifying the NCP's name to the department of licensing or other licensing entity, the NCP has twenty days from receipt of the notice, or sixty days after receipt if the notice was served outside the state of Washington, to contact the department and:

(i) Pay the overdue support amount in full;

(ii) Request a hearing as provided in WAC 388-14A-4527;

(iii) Agree to a payment schedule as provided in WAC 388-14A-4520; or

(iv) File an action to modify the child support order with the appropriate court or administrative forum, in which case DCS will stay the certification process up to six months.

(c) That failure to contact DCS within twenty days of receipt of the notice (or sixty days if the notice was served outside of the state of Washington) will result in certification of the NCP's name to the department of licensing and any other appropriate licensing entity for noncompliance with a child support order. Upon receipt of the notice:

(i) The licensing entity will suspend or not renew the NCP's license and the department of licensing (DOL) will suspend or not renew any driver's license that the NCP holds until the NCP provides DOL or the other licensing entity with a release from DCS stating that the NCP is in compliance with the child support order;

(ii) The department of fish and wildlife will suspend a fishing license, hunting license, occupational licenses (such as a commercial fishing license), or any other license issued under chapter 77.32 RCW that the NCP may possess. In addition, suspension of a license by the department of fish and wildlife may also affect the NCP's ability to obtain permits, such as special hunting permits, issued by the department. Notice from DOL that an NCP's driver's license has been suspended shall serve a notice of the suspension of a license issued under chapter 77.32 RCW.

(d) That suspension of a license will affect insurability if the NCP's insurance policy excludes coverage for acts occurring after the suspension of a license; and

(e) If the NCP subsequently comes into compliance with the child support order, DCS will promptly provide the NCP and the appropriate licensing entities with a release stating the NCP is in compliance with the order.

AMENDATORY SECTION (Amending WSR 03-18-114, filed 9/2/03, effective 10/15/03)

WAC 388-14A-4510 Who is subject to the DCS license suspension program? (1) The division of child support (DCS) may serve a notice of noncompliance on a non-

custodial parent (NCP) who is not in compliance with a child support order ((~~when:~~)).

(a) ((~~The NCP is required to pay child support under a court order or administrative order;~~

~~(b) The NCP is at least six months in arrears; and~~

~~(c) The NCP is not currently making payments to the Washington state support registry under a wage withholding action issued by DCS.~~

~~(2)~~)) DCS may serve a notice of noncompliance on an NCP who meets the criteria of ((~~subsection (1) above~~)) this section, even if the NCP is in jail or prison. Unless the NCP has other resources available while in jail or prison, DCS stays the commencement of the ((~~twenty-day~~)) objection period set out in WAC 388-14A-4505 (4)(b) until the NCP has been out of jail or prison for thirty days.

(((~~(3)~~))) (b) DCS may serve a notice of noncompliance on an NCP who meets the criteria of ((~~subsection (1) above~~)) this section, even if the NCP is a public assistance recipient. DCS stays the commencement of the ((~~twenty-day~~)) objection period in WAC 388-14A-4505 (4)(b) until the thirty days after the NCP's cash assistance grant is terminated.

(((~~(4)~~))) (2) Compliance with a child support order for the purposes of the license suspension program means the NCP owes no more than six months' worth of child support.

(3) ((~~"~~))Noncompliance with a child support order((~~"~~)) for the purposes of the license suspension program means an NCP has:

(a) An obligation to pay child support under a court or administrative order; and

(b) Accumulated a support debt, also called an ((~~arrearage or~~)) arrears or arrearage, totaling more than six months' worth of child support payments; or

(((~~(b)~~))) (c) Failed to do one of the following:

(i) Make payments required by a court order or administrative order towards a support debt in an amount that is more than six months' worth of payments; or

(ii) Make payments to the Washington state support registry under a written agreement with DCS toward((~~s a~~)) current support ((~~debt in an amount that is more than six months' worth of payments~~)) and arrearages and the arrearages still amount to more than six months' worth of child support payments((~~; or~~

~~(c) Failed to make payments required by a court order or administrative order towards a support debt in an amount that is more than six months' worth of payments~~)).

(((~~(5) There is no minimum dollar amount for the six months of arrears. The following are examples of when a NCP is at least six months in arrears:~~

~~(a) The child support order requires monthly payments of five hundred dollars. The NCP has not made a single payment since the order was entered seven months ago. This NCP is at least six months in arrears;~~

~~(b) The child support order requires monthly payments of one hundred dollars. The NCP has paid for the last few months, but owes a back debt of over six hundred dollars. This NCP is at least six months in arrears;~~

~~(c) The NCP owes a support debt according to a judgment, which requires payments of one hundred dollars per month. The NCP has not made payment for eight months. This NCP is at least six months in arrears; or~~

~~(d) The child support order required monthly payments of two hundred dollars, but the child is over eighteen so no current support is owed. However, the NCP has a debt of over twelve hundred dollars. This NCP is at least six months in arrears.~~

~~(6) For the purposes of the license suspension program, a NCP is in compliance with the child support order when the amount owed in arrears is less than six months' worth of support~~)).

(4) There is no minimum dollar amount required for license suspension, as long as the arrears owed by the NCP amount to more than six months' worth of support payments:

Example 1. Assume the child support order sets current support at one hundred dollars per month: The NCP has not made a single payment since the order was entered seven months ago. This NCP is more than six months in arrears.

Example 2. Assume the child support order sets current support at one hundred dollars per month: The NCP has paid for the last few months, but owes arrears of over six hundred dollars. This NCP is more than six months in arrears.

Example 3. Assume the child support order sets current support at one hundred dollars per month: The child is over eighteen, and no more current support is owed. However, the NCP has a debt of over one thousand two hundred dollars. This NCP is more than six months in arrears.

Example 4. Assume a judgment of three thousand dollars is entered by the court: The order requires the NCP to pay fifty dollars per month toward the arrears. The NCP has not made payments toward this obligation for eight months. This NCP is more than six months in arrears.

NEW SECTION

WAC 388-14A-4512 When may the division of child support certify a noncustodial parent for license suspension? The division of child support (DCS) may certify a noncustodial parent (NCP) as being in noncompliance with a support order and may request the department of licensing (DOL) or any other licensing entity to suspend the NCP's license if:

(1) The NCP has failed to make a timely objection to a notice of noncompliance served under WAC 388-14A-4505. A timely objection must be filed within twenty days of receipt of the notice, or within sixty days of receipt if the notice was served outside of the state of Washington;

(2) The NCP has failed to file a motion with the appropriate court or administrative forum to modify the child support obligation within twenty days of service of the notice of noncompliance served under WAC 388-14A-4505 (or within sixty days if the notice was served outside of the state of Washington);

(3) The NCP has failed to comply with a payment agreement entered into under WAC 388-14A-4520;

(4) A hearing results in a final administrative order which determines that the NCP is not in compliance with a child support order and has not made a good faith effort to comply;

(5) The court enters a judgment on a petition for judicial review upholding an administrative order that determined

that the NCP is not in compliance with a child support order and did not made a good faith effort to comply;

(6) The NCP has failed to comply with a payment schedule ordered by an administrative law judge (ALJ) under WAC 388-14A-4530; or

(7) The NCP failed to make satisfactory progress toward modification of the support order after a stay was granted under WAC 388-14A-4515(2).

AMENDATORY SECTION (Amending WSR 03-18-114, filed 9/2/03, effective 10/15/03)

WAC 388-14A-4515 How do I avoid having my license suspended for failure to pay child support? (1) After service of the notice of noncompliance, the division of child support (DCS) stays (delays) certification action if the noncustodial parent (NCP) takes one of the following actions within twenty days of service ((~~of the notice~~)), or within sixty days of service if the notice was served outside of Washington:

(a) Contacts DCS and makes arrangements to pay the support debt in full;

(b) Requests an administrative hearing ((~~under WAC 388-14A-4530~~)) as provided in WAC 388-14A-4527; ((~~or~~))

(((~~b~~))) (c) Provides proof that the NCP receives TANF, GAU, GAX or SSI;

(d) Provides proof that the NCP is currently incarcerated at a state or federal correctional facility;

(e) Provides proof that NCP has filed a proceeding to modify the support order; or

(f) Contacts DCS to negotiate ((~~a reasonable payment schedule on the arrears and agrees to make timely payments of current support~~)) and sign a written payment agreement as described in WAC 388-14A-4520.

(i) The stay for negotiation and obtaining signatures may last a maximum of thirty calendar days ((~~after~~)) from the date the NCP contacts DCS; and

(ii) If no written payment ((~~schedule~~)) agreement has been ((~~agreed to in writing after~~)) signed within thirty calendar days ((~~have passed~~)) from the date the NCP contacted DCS, DCS ((~~may proceed with certification of noncompliance;~~

~~(iii) A reasonable payment schedule is described in WAC 388-14A-4520, below; and~~

~~(iv) The NCP may request a conference board review under WAC 388-14A-6400 if the NCP feels that DCS has not negotiated in good faith~~)) schedules the matter for administrative hearing under WAC 388-14A-4530.

(2) If the NCP files a court or administrative action to modify the child support obligation, DCS stays the certification action.

(((~~3~~))) (a) The stay for modification action may not exceed six months unless DCS finds good cause to extend the stay.

(((~~4~~))) (b) The NCP must notify DCS that a modification proceeding is pending and must provide a copy of the motion or request for modification to DCS.

(((~~5~~))) (3) A stay of certification does not require DCS to withdraw the notice of noncompliance.

(4) A stay of certification granted because the NCP is incarcerated, or because the NCP receives TANF, GAU, GAX or SSI is lifted thirty days after the justification no longer applies to the NCP.

AMENDATORY SECTION (Amending WSR 03-18-114, filed 9/2/03, effective 10/15/03)

WAC 388-14A-4520 Signing a ((~~repayment~~)) payment agreement may avoid certification for noncompliance. (1) If a noncustodial parent (NCP) signs a ((~~repayment~~)) payment agreement, the division of child support (DCS) stays the certification action. ((~~The NCP must agree to pay current support in a timely manner and make regular payments on the support debt.~~))

(2) The signing of a payment agreement does not require DCS to withdraw the notice of noncompliance.

(3) By signing a payment agreement, the NCP waives the right to an administrative hearing on any notice of noncompliance served before the date the NCP signs the agreement.

(4) The ((~~repayment~~)) payment agreement must state that if the NCP fails to make payments under the terms of the agreement and the NCP owes a debt of more than six months' worth of child support payments, DCS may resume certification action with no further notice to the NCP.

(((~~3) The signing of a repayment agreement does not require DCS to withdraw the notice of noncompliance.~~)))

(((~~4~~))) (5) In ((~~setting the repayment amount~~)) proposing or approving a payment agreement, DCS must take into account:

(a) The amount of the arrearages.

(b) The amount of the current support order.

(c) The ((~~financial situation of the NCP and the~~)) earnings of the NCP.

(d) The needs of all children who rely on the NCP for support. ((~~The NCP must supply sufficient financial information to allow DCS to analyze and document the NCP's financial situation and requirements, including normal living expenses and emergencies.~~))

(e) Any documented factors which make the NCP eligible for a monthly arrears payment less than the amount suggested in the table in subsection (8) of this section, including but not limited to:

(i) Special needs children; or

(ii) Uninsured health care expenses.

(f) Any documented factors which make the NCP eligible for an arrears payment higher than the amount suggested in the table in subsection (8) of this section, including but not limited to the factors listed in RCW 26.19.075 for deviation from the standard calculation for child support obligations.

(g) If the NCP does not supply sufficient financial information and documentation to allow DCS to analyze and document the NCP's current financial situation and requirements, DCS may not be able to tailor a payment plan to the individual circumstances of the NCP.

(((~~5~~))) (6) The payment agreement must require timely payments of current support and on the arrears, but may in appropriate circumstances:

(a) Provide for the payment of less than the current monthly support obligation for a reasonable time without requiring any payment on the arrears; and

(b) Provide for the payment of current support only for a reasonable time without requiring any payment on the arrears; and

(c) Require a reasonable payment schedule on the arrears once the NCP is paying the entire current monthly support obligation.

(7) The payment agreement may, in appropriate cases, require the NCP to engage in employment-enhancing activities to attain a satisfactory payment level. These employment-enhancing activities must be tailored to the individual circumstances of the NCP.

(8)(a) A reasonable monthly arrears payment is defined as a percentage of the NCP's "adjusted net income," which is the NCP's net monthly income minus any current support obligation. Documented factors as specified in subsection (4) of this section may be the basis for adjustments to the amounts on this table in order to develop a payment agreement which is tailored to the individual financial circumstances of the NCP.

(b) The following table sets forth the suggested monthly payments on arrears:

Monthly adjusted net income (ANI)	Monthly arrears payment = Percentage of ANI
$1,000 or less	2%
$1,001 to $1,200	3%
$1,201 to $1,500	4%
$1,501 to $1,900	5%
$1,901 to $2,400	6%
$2,401 to $3,000	7%
$3,001 or more	8%

(((~~(6)~~))) (c) Examples of how to calculate the arrears payment are as follows:

(a) Monthly net income	=	$1,500
Current support	=	$300
Adjusted net income (ANI)	=	$1,200
Arrears payment = 3% of ANI (((~~$1,200~~)))	=	$36
(b) Monthly net income	=	$3,100
Current support	=	$-0-
Adjusted net income (ANI)	=	$3,100
Arrears payment = 8% of ANI (((~~$3,100~~)))	=	$248

(((~~(7) The NCP must document any factors which make the NCP eligible for an arrears payment less than the amount shown in the table in subsection (5). Such factors include, but are not limited to:~~

~~(a) Special needs children, or~~

~~(b) Uninsured medical expenses.~~

~~(8) The custodial parent and/or DCS must document any factors which make the NCP eligible for an arrears payment higher than the amount shown in the table in subsection (5). Such factors include, but are not limited to the factors listed in RCW 26.19.075 for deviation from the standard calculation for child support obligations.~~

~~(9) If the NCP signs a repayment agreement under this section under the circumstances spelled out in WAC 388-14A-4510 (2) or (3), the NCP may make voluntary payments but DCS does not resume certification action until thirty days after NCP is released or stops receiving public assistance~~))

(9) If the NCP and DCS are unable to agree to a payment plan, DCS schedules the matter for an administrative hearing.

(10) If the NCP fails to make payments under the terms of the agreement, DCS may resume certification action with no further notice to the NCP.

AMENDATORY SECTION (Amending WSR 03-18-114, filed 9/2/03, effective 10/15/03)

WAC 388-14A-4525 How to obtain a release of certification for noncompliance. (1) After the division of child support (DCS) has certified a noncustodial parent (NCP) to a licensing entity for noncompliance, the NCP may obtain a release from DCS ((~~by taking the following actions~~)) if one of the following occurs:

(a) ((~~Paying~~)) NCP pays the support debt in full, in which case DCS withdraws the notice of noncompliance; ((~~or~~))

(b) ((~~Signing~~)) NCP enters into a ((~~repayment~~)) payment agreement under WAC 388-14A-4520 ((~~and paying the first installment due under the agreement. Signing a repayment agreement does not require DCS to withdraw the notice of noncompliance~~));

(c) DCS confirms that the NCP receives GAU, GAX, TANF or SSI;

(d) DCS confirms that the NCP is currently incarcerated at a state or federal correctional facility;

(e) The prosecuting attorney determines that the NCP is substantially complying with a contempt repayment agreement and recommends release;

(f) DCS receives any type of recurring payment, including but not limited to:

(i) Employer payments;

(ii) Unemployment compensation;

(iii) Labor and industries benefits;

(iv) Social security benefits;

(v) Retirement account garnishments;

(g) DCS believes that release of the certification for noncompliance will facilitate the NCP seeking employment, modification of the child support order(s), or compliance with the current order(s);

(h) DCS certified the NCP because the NCP failed to make a timely objection to the notice of noncompliance and:

(i) The NCP filed a late request for hearing; and

(ii) The final administrative order entered under WAC 388-14A-4530 contains a finding that the NCP made a good faith effort to comply with the order and establishes a payment schedule.

(2) If the NCP and DCS are unable to reach a payment agreement that would lead to release of the certification, the NCP may request a conference board under WAC 388-14A-6400.

(3) By signing a payment agreement with DCS, the NCP waives the administrative hearing right associated with any notice of noncompliance under WAC 388-14A-4505 which was served before the agreement was signed.

(4) DCS retains the right to reinstate the suspension action if the NCP meets the conditions of reinstatement but:

(a) Fails to follow through in a timely fashion with any verbal or written agreement made with DCS; or

(b) Fails to comply with the payment schedule contained in an administrative order entered under WAC 388-14A-4530.

(5) DCS may reinstate the suspension action at any time after releasing the certification, as long as the NCP's case still meets qualifications for certification.

(6) Unless the NCP pays the support debt in full, DCS is not required to withdraw the notice of noncompliance.

(7) DCS must provide a copy of the release to any licensing entity to which DCS has certified the NCP.

((~~(3)~~)) (8) The NCP must comply with any requirements of the licensing entity to get the license reinstated or reissued.

NEW SECTION

WAC 388-14A-4527 How does a noncustodial parent request an administrative hearing regarding license suspension? (1) After service of a notice of noncompliance and intent to suspend licenses under WAC 388-14A-4505, the noncustodial parent (NCP) may request an administrative hearing, also known as an adjudicative proceeding, under chapter 34.05 RCW.

(a) Any objection to the notice of noncompliance is considered to be a request for hearing, no matter how the objection is phrased.

(b) An objection that does not lead to the signing of a payment agreement under WAC 388-14A-4520 is considered to be a request for hearing on the notice.

(c) Even if the NCP specifically makes a request for hearing, the division of child support (DCS) always attempts to negotiate a payment agreement under WAC 388-14A-4520.

(2) A hearing request may be made in writing or orally, and may be made in person or by phone.

(3) A timely request for hearing must be received by DCS within twenty days of service of the notice of noncompliance, or within sixty days if the notice was served outside of the state of Washington.

(4) The effective date of a written request for hearing is the day the request is received by DCS. A written request for hearing must include:

(a) The NCP's current mailing address; and

(b) The NCP's daytime phone number, if available.

(5) The NCP may make an oral request for hearing under WAC 388-14A-6100:

(a) The request must contain sufficient information for DCS to identify the NCP, the DCS action objected to, and the case or cases involved in the hearing request.

(b) The effective date of an oral request for hearing is the date that the NCP makes a complete oral request for hearing, to any DCS representative in person or by leaving a message on the automated voice mail system of any DCS field office.

(6) If the NCP makes a timely request for hearing, DCS stays (delays) the certification process until a final administrative order is entered.

(7) If the NCP makes a late request for hearing after DCS has already certified the NCP to a licensing agency based on NCP's failure to make a timely objection to the notice of noncompliance and the licensing agency has suspended the NCP's license, DCS schedules the matter for hearing with the office of administrative hearings, as provided in WAC 388-14A-4535.

(8) If DCS certified the NCP to a licensing agency based on NCP's failure to comply with a payment agreement or a payment schedule established by a final administrative order, the NCP does not have any additional hearing right on the original notice of noncompliance.

(a) If the NCP previously signed a payment agreement, the NCP waived the administrative hearing right associated with any notice of noncompliance which was served before the agreement was signed.

(b) If the NCP failed to comply with a payment schedule established by a final administrative order, the NCP has already exercised the hearing right associated with the underlying notice of noncompliance.

(c) The NCP may attempt to negotiate a payment agreement with DCS, and may request a conference board if negotiations are not successful, as provided in subsections (2) and (3) of WAC 388-14A-4525.

AMENDATORY SECTION (Amending WSR 03-18-114, filed 9/2/03, effective 10/15/03)

WAC 388-14A-4530 ((~~Administrative hearings~~)) What can happen at an administrative hearing regarding license suspension ((~~are limited in scope.~~))? (1) An administrative hearing on a notice of noncompliance under WAC 388-14A-4505 is limited to the following issues:

(a) Whether the person named in the child support order is the noncustodial parent (NCP);

(b) Whether the NCP is required to pay child support under a child support order; ((~~and~~))

(c) Whether the NCP is ((~~at least~~)) more than six months in arrears; and

(d) Whether the NCP has made a good faith effort to comply with the order.

(2) When determining whether the NCP has made a good faith effort to comply with the order, the administrative law judge (ALJ) must consider whether the NCP:

(a) Kept DCS informed of any changes in address or employment;

(b) Provided employer information when employed so that DCS could institute income withholding;

(c) Paid at least one month's worth of current support by voluntary payment during a period when the NCP was not employed; or

(d) Can show any other relevant fact-based factors on which the ALJ may base a finding of good faith.

(3) If the ALJ finds that the NCP is not in compliance with the support order, but has made a good faith effort to comply, the ALJ must formulate a payment schedule after considering:

(a) The amount of the arrearages owed;

(b) The amount of the current support order;

(c) The earnings of the NCP; and

(d) The needs of all children who rely on the NCP for support.

(4) The ALJ must:

(a) Consider the individual financial circumstances of the NCP in evaluating the parent's ability to pay; and

(b) Establish a fair and reasonable payment schedule tailored to the NCP's individual circumstances.

(5) The payment schedule may:

(a) Include a graduated payment plan as described in WAC 388-14A-4520(8);

(b) Require the NCP to engage in employment-enhancing activities in order to attain a satisfactory payment level; and

(c) May be for the payment of less than current monthly support for a reasonable time.

(6) Unless the NCP shows an ability to pay immediately, the payment schedule is not required to include a lump sum payment for the amount of the arrears.

(7) The administrative order must contain a provision stating that:

(a) If the NCP does not comply with the payment schedule, DCS may proceed with the certification process with no further notice to the NCP;

(b) The payment schedule is for the limited purpose of avoiding license suspension; and

(c) DCS's authority to collect any and all amounts authorized under chapters 26.18, 26.23, 47.20 and 74.20A RCW is not affected by the payment schedule.

(8) The administrative law judge (ALJ) is not required to calculate the outstanding support debt beyond determining whether the NCP is at least six months in arrears. Any debt calculation shall not be binding on the department or the NCP beyond the determination that there is at least six months of arrears.

((~~(3) If the NCP requests a hearing on the notice, DCS stays the certification process until the hearing results in a finding that the NCP is not in compliance with the order, or that DCS is authorized to certify the NCP.~~

~~(4)~~)) (9) If the NCP requests a hearing on the notice of noncompliance under the circumstances spelled out in WAC 388-14A-4510 (((~~(2) and (3)~~)) (1)(a) or (b), DCS asks the office of administrative hearings to schedule a hearing. If the hearing results in a finding that the NCP is not in compliance with the order, or that DCS is authorized to certify the NCP, DCS stays the certification process until thirty days after the NCP:

(a) Is released from jail or prison; or

(b) Stops receiving cash public assistance.

NEW SECTION

WAC 388-14A-4535 Can the noncustodial parent file a late request for hearing if a license has already been suspended? (1) The noncustodial parent (NCP) may file a late request for hearing if the division of child support (DCS) has certified the noncustodial parent (NCP) because of the NCP's failure to object to the notice of noncompliance as provided in WAC 388-14A-4512(1), even if the department of licensing (DOL) or other licensing entity has suspended the NCP's license.

(2) When an NCP files a late request for hearing, DCS does not release the certification until:

(a) The NCP pays the support debt in full;

(b) DCS and the NCP sign a payment agreement under WAC 388-14A-4520;

(c) There is a final administrative order entered establishing a payment schedule because the NCP made a good faith effort to comply with the order; or

(d) There is a final administrative order entered determining that the NCP did not owe more than six months worth of support and that license suspension was not appropriate at the time of the certification.

(3) If the late request for hearing is filed within one year of the date the notice was served, DCS schedules the matter for administrative hearing under WAC 388-14A-4530.

(4) If the late request for hearing is filed more than one year after the date the notice was served, DCS schedules the matter for administrative hearing under WAC 388-14A-4530. At the hearing:

(a) The NCP must show good cause for the late request for hearing.

(b) The administrative law judge (ALJ) must find that the NCP has made a showing of good cause before granting relief in an administrative order.

(5) DCS and the NCP may negotiate and sign a payment agreement under WAC 388-14A-4520 at any time during this process.

(6) If DCS certified the NCP to a licensing agency based on NCP's failure to comply with a payment agreement or a payment schedule established by a final administrative order, the NCP does not have any additional hearing right on the original notice of noncompliance.

(a) If the NCP previously signed a payment agreement, the NCP waived the administrative hearing right associated with any notice of noncompliance which was served before the agreement was signed. See WAC 388-14A-4525(3).

(b) If the NCP failed to comply with a payment schedule established by a final administrative order, the NCP has already exercised the hearing right associated with the underlying notice of noncompliance.

NEW SECTION

WAC 388-14A-4540 When is a DCS conference board available regarding license suspension issues? (1) A noncustodial parent (NCP) may request a conference board under WAC 388-14A-6400 to resolve any complaints and problems concerning a division of child support (DCS) case.

(2) If the NCP and DCS are not successful in negotiating a payment agreement to avoid license suspension or to get a license reinstated, NCP may request a conference board at any time.

(a) A conference board is not available to the NCP regarding negotiations that occur immediately after the service of a notice of noncompliance under WAC 388-14A-4505.

(b) During that time period, the NCP has a right to an administrative hearing on the notice, and if the NCP is not able to negotiate a payment agreement, the appropriate remedy is an administrative hearing under WAC 388-14A-4530.

WSR 09-24-014
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed November 23, 2009, 7:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-14-017.

Title of Rule and Other Identifying Information: The department is amending WAC 388-478-0015 Need standards for cash assistance.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at http://www1.dshs.wa.gov/msa/rpau/docket.html or by calling (360) 664-6094), on January 5, 2010, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 6, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on January 5, 2010.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by December 22, 2009, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The community services division, economic services administration, is proposing to amend WAC 388-478-0015 in order to revise the basic need standards for cash assistance programs.

The CR-101 was filed on June 22, 2009, as WSR 09-14-017.

Reasons Supporting Proposal: DSHS is required by RCW 74.04.770 to establish standards of need for cash assistance programs on an annual basis.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, and 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.-055, 74.04.057, 74.04.770, and 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Aurea Figueroa-Rogers, P.O. Box 45440, Olympia, WA 98504, (360) 725-4623.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendments only affect DSHS clients by revising the need standards for cash assistance.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to …rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents." These rules affect the need standards for cash assistance as outlined in WAC 388-478-0015.

November 17, 2009
Stephanie E. Vaughn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-24-070, filed 12/1/08, effective 1/1/09)

WAC 388-478-0015 Need standards for cash assistance. The need standards for cash assistance units are:

(1) For assistance units with obligation to pay shelter costs:

Assistance Unit Size	Need Standard
1	$((~~1,131~~)) 1,159
2	((~~1,431~~)) 1,467
3	((~~1,767~~)) 1,811
4	((~~2,085~~)) 2,137
5	((~~2,403~~)) 2,462
6	((~~2,721~~)) 2,788
7	((~~3,145~~)) 3,223
8	((~~3,480~~)) 3,567
9	((~~3,816~~)) 3,911
10 or more	((~~4,152~~)) 4,255

(2) For assistance units with shelter provided at no cost:

Assistance Unit Size	Need Standard
1	$((~~600~~)) 603
2	((~~759~~)) 762
3	((~~937~~)) 941
4	((~~1,106~~)) 1,111
5	((~~1,275~~)) 1,280
6	((~~1,444~~)) 1,450
7	((~~1,669~~)) 1,676
8	((~~1,847~~)) 1,854
9	((~~2,025~~)) 2,033
10 or more	((~~2,203~~)) 2,212

WSR 09-24-031
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed November 23, 2009, 10:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-18-106.

Title of Rule and Other Identifying Information: WAC 458-20-273 Renewable energy system cost recovery, this rule explains the cost-recovery incentive program for renewable energy systems.

Hearing Location(s): Department of Revenue, Capital Plaza Building, Fourth Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA 98504, on January 6, 2010, at 10:00 a.m.

Date of Intended Adoption: January 15, 2010.

Submit Written Comments to: Mark E. Bohe, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, fax (360) 586-0127, by January 6, 2010.

Assistance for Persons with Disabilities: Contact Martha Thomas at (360) 725-7497 no later than ten days before the hearing date. Deaf and hard of hearing individuals may call 1-800-451-7985 (TTY users).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESSB 6170 (chapter 469, Laws of 2009) amended RCW 82.16.110, 82.16.120, and 82.16.130. The legislation: (1) Increases the annual payment limitations to customers, (2) increases the limitations on incentive payments made by participating light and power businesses, (3) changes the formula used to determine payment amounts based on "economic development kilowatt-hours," and (4) extends the incentive program to community solar projects.

The department is proposing to amend WAC 458-20-273 to recognize these statutory changes.

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

Reasons Supporting Proposal: To recognize statutory changes.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060.

Statute Being Implemented: RCW 82.16.110, 82.16.120, and 82.16.130.

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: Mark E. Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6133; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Gilbert Brewer, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impose any new performance requirement or administrative burden on any small business not required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. This is not a significant legislative rule as defined in RCW 34.05.328.

November 23, 2009
Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-16-097, filed 7/31/06, effective 8/31/06)

WAC 458-20-273 Renewable energy system cost recovery. ((~~The customer investment cost recovery incentive payment ("incentive payment") covers the purchase and use of renewable energy systems that produce electricity, such as: Solar energy systems, wind generators, and certain types of anaerobic digesters that process manure from cattle into biogas and dried manure using microorganisms in a closed oxygen-free container. Any individual, business, or local government that purchases and uses such a system may apply for an incentive payment from the light and power business that serves their property. Your light and power business may make payment to you in the form of a credit offsetting the amount you owe on your power bill. The light and power business then gets a credit on its public utility tax for the amount it pays to customers as incentive payments. The department of revenue is not regulating light and power businesses; it is only administering a tax credit program relating to the public utility tax. Therefore, the department will only audit light and power businesses to determine whether their claimed credit amount equals the amount of the total of customers' incentive payments, whether they proportionally reduced the payments to each customer by an equal percentage if the limit of total allowed payments is reached, and whether the customer payments are based on measured production of the renewable energy systems. A light and power or gas distribution business will not qualify for an incentive payment. This program applies to measured customers' renewable energy system kilowatt-hours generated between July 1, 2005, and June 30, 2014.~~

~~The purpose of the law creating this incentive payment program is to develop a market for renewable energy systems and to promote the manufacture of these systems in Washington state. To facilitate this purpose, these regulations are written to facilitate prospective customers of renewable energy systems in the purchase and use of their systems, in conjunction with the incentive payment program.~~

(~~1~~) ~~**What is my first step as a possible customer of a renewable energy system?** First, contact the light and power business serving your property to confirm it is participating in this incentive payment program. Participation by light and power businesses is discretionary. Further, ask your light and power business for a copy of its procedural requirements and application for participating in this incentive payment program. Only your light and power business has the authority to determine whether your incentive payment will be authorized or denied.~~

(~~2~~) ~~**How do I certify my renewable energy system?** After contacting your light and power business, you must apply for a system certification to the department of revenue. The department of revenue will consult with the climate and~~

rural energy development center at Washington State University's energy extension regarding your certification request. The certification form can be downloaded from the department of revenue's web site located at: dor.wa.gov, or may be obtained by calling the department at: 1-800-647-7706. The certification form requires certain verifiable information, including the following:

(a) Your name, address, and the address of the renewable energy system;

(b) Your department of revenue tax registration number, which will automatically be assigned to individuals when they submit their application and is a business' present UBI number (do not use your Social Security number or your federal employer's identification number);

(c) Your statement that your renewable energy system generating electricity is located on your own real property and that your property is also served by a participating light and power business;

(d) Your statement that the electricity you produce on your own renewable energy system does not include electricity generated by a light and power business or a gas distribution business;

(e) You must also state that your renewable energy electric generation system uses:

• Any solar inverter or modules manufactured in Washington state;

• A wind generator powered by blades manufactured in Washington state;

• A solar inverter manufactured in Washington state;

• A solar module manufactured in Washington state;

• Solar or wind equipment manufactured outside Washington state; or

• An anaerobic digester which processes manure from cattle into biogas and dried manure using microorganisms in a closed oxygen-free container.

(f) You must also state that your own generated electricity can be transformed or transmitted for entry into or operation in parallel with electric transmission and distribution systems;

(g) The date that your local jurisdiction issued its final electrical permit on your renewable energy system;

(h) Your statement that you understand that this information is provided to the department of revenue in determining whether the light and power business correctly calculates its credit allowed for customer incentive payments and that your statements are true, complete, and correct to the best of your knowledge and belief under penalty of perjury; and

(i) If you have just purchased a property with a certified renewable energy system, you must reapply for certification as the new owner.

(3) **How long will it take before I receive notification of whether the department of revenue, in consultation with the climate and rural energy development center at Washington State University's energy extension, has approved the request for my system's certification?** The department of revenue will notify you in writing within thirty days whether your request for system certification qualifies for the incentive payment program. Certification is merely an administrative and preliminary step, however, and ultimately it is the application procedure with the light and power business that serves your property which will determine whether your incentive payment is authorized or denied.

(4) **After the department of revenue approves my system's certification, how do I apply for my incentive payment?** The next step is to apply for your incentive payment from the light and power business that serves the property you own, on which the renewable energy system is located. You must annually apply by August 1st of each calendar year. The department of revenue will create an application form for use by customers when applying for the incentive payment with their light and power business. However, individual light and power businesses may create their own forms or use the department's form in conjunction with their additional addendums. Further, your light and power business has the authority to verify and make separate determinations on the matters covered in your earlier certification with the department of revenue. If your light and power business finds the certification process made an error in determining whether your renewable energy system's generated electricity can be transformed or transmitted for entry into or operation in parallel with electricity transmission and distribution systems, then the determination by the light and power business shall be controlling and it has the authority to decertify your system.

There is a special transition rule for the first annual period from July 1, 2005, through June 30, 2006. For only the first year of the incentive program, recognizing that each utility will establish its own procedures and requirements for metering the output of customers' renewable energy systems, the department will accept kWh production readings taken from the inverter or from an owner installed production meter. The owner must report the reading of the meter from July 1, 2005 (or make a good faith estimation if no reading exists) and the reading on June 30, 2006. Your June 30, 2006 reading may be relied upon by your light and power business as the first reading for the subsequent year July 1, 2006, through June 30, 2007. Further, if your light and power business decides to replace your production meter during the subsequent year July 1, 2006, through June 30, 2007, it may rely on the last reading on your prior meter before it's replaced. You must also report the array size in DC watts. This information will be used to validate reported watt hours for the first year. Your participating light and power business is not required to perform independent reading or monitoring of your system's electric generation during the first year. Further, for the first year only, the light and power business serving your property shall have one hundred twenty days to notify you whether your incentive payment is authorized or denied and shall process your annual payment, if any, by January 31, 2007. You must file your request for system certification with the department of revenue no later than September 30, 2006. Each light and power business will decide its own deadline for submission of your annual application for incentive payment during this first year.

Some of the verifiable information you must provide includes:

• Your name, address, and the address of the renewable energy system;

• Your department of revenue tax registration number, which will automatically be assigned to individuals when they submit their certification request described above and is a business' present UBI number (do not use your Social Security number or your federal employer's identification number);

• The date of the letter from the department of revenue certifying that your renewable energy system is eligible for incentive payments;

• Your statement that your system has been operable throughout the year and that your light and power business will be allowed reasonable access to read your electric production meter for your system in order to calculate the kilowatt-hours generated by your renewable energy system during the prior fiscal year beginning July 1st and ending on June 30th; and

• Your statement that you understand that this information is provided to the department of revenue in determining whether the light and power business correctly calculates its credit allowed for customer incentive payments and that your statements are true, complete, and correct to the best of your knowledge and belief under penalty of perjury.

The light and power business serving your property has the authority to request other information it believes is necessary in making its determinations under the incentive payment program.

(5) **What are the possible procedures you and your light and power business may follow in setting up your incentive payments?** Recommended procedures you should follow when requesting your light and power businesses to set up your incentive payments and the possible procedures your light and power business may follow are as follows:

• First, since participation under this incentive program is voluntary for light and power businesses, contact the light and power business serving your property and ask whether it is participating and what application procedures you must follow.

• If your light and power business is participating in the incentive program, then you submit an application to your light and power business.

• You submit to your light and power business proof that your renewable energy system is certified by the department of revenue for the incentive payment program.

• You submit to the light and power business a copy of the approved certification and letter from the department of revenue. You should submit this information to the light and power business before August 1st in order to receive payment for any production that occurred prior to July 1st.

• If your light and power business approves your application, then it will require a signed agreement that it will provide to you.

• You or your licensed electrical contractor or certified electrician obtain an electrical permit and install the system. (A licensed electrical contractor or certified electrician must install the system, unless you perform the work yourself on your home with the help of an uncompensated volunteer who assists you. See WAC 296-46B-925(13) for guidance on the proper installation of your system.)

• Once installation is complete your renewable energy system must pass a final electrical inspection from the local code official.

• Your local light and power business will send a utility serviceman to inspect your system and may install an electric production meter if one meeting its qualifications is not already installed.

• Your production meter is read by the light and power business at least annually and it processes your annual incentive payment.

• Your light and power business notifies you within sixty days whether your incentive payment is authorized or denied.

• Your light and power business calculates annual production payments based on the meter reading or readings made prior to the accounting date of July 1st.

• Your incentive payment check (or credit to your account) is sent to you by your light and power business on or before December 15th.

(6) **What is the formal agreement between me and my light and power business?** The formal agreement between you and the light and power business serving your property governs the relationship between you and your light and power business. This document may:

• Contain the necessary safety requirements and interconnection standards;

• Allow the light and power business the contractual right to review your substantiation documents for four years, upon five working days' notice;

• Allow the light and power business the contractual right to assess against you, with interest, for any overpayment of incentive payments made to you;

• Delineate any extra metering costs for an electric production meter to be installed on your property;

• Contain a statement allowing the department of revenue to send proof of your system's certification electronically to your light and power business, which will include your department of revenue taxpayer's identification number; and

• Contain other information required by the light and power business to effectuate and properly process your incentive payment.

(7) **How long will it take before I receive notification as to whether the light and power business that serves my property has approved my incentive payment?** The light and power business that serves your property has sixty days to notify you in writing as to whether your request for an incentive payment is authorized or denied.

(8) **How is my incentive payment calculated?** Your incentive payment is calculated using a formula. First the incentive payment may be paid at fifteen cents per "economic development kilowatt hour." An economic development kilowatt-hour is the actual kilowatt-hour measurement of your generated electricity multiplied by the appropriate economic development factor. The economic development factors, which you multiply to the base rate of fifteen cents per actual kilowatt hours that your renewable energy system produces, are:

• Two and four tenths (2.4) if your system generates electricity using only solar modules manufactured in Washington;

• One and two tenths (1.2) if your solar or wind system uses an inverter manufactured in Washington;

• One (1.0) if your wind system uses only blades manufactured in Washington, or if your system is an anaerobic digester, or if your solar system is other than described above; and

• Eight tenths (0.8) if your system is a wind generator with blades not manufactured in Washington.

The following table describes the application of the economic development factors. The actual incentive payment you receive must be computed using your renewable energy system's actual measured electric kilowatt-hours generated.

Annual Investment Cost Recovery Incentive Payment Calculation Table

Customer-generated power Applicable rates	**Base rate (0.15) multiplied by applicable factor equals incentive payment rate**	**Kilowatt-hours generated**	**Incentive payment amount equals incentive payment rate multiplied by kilowatt-hours generated**
Solar modules manufactured in Washington state **Factor: 2.4** (two and four-tenths)	$0.36		
Solar or wind generating equipment with an inverter manufactured in Washington state **Factor: 1.2** (one and two-tenths)	$0.18		
Anaerobic digester or other solar equipment or wind generator equipped with blades manufactured in Washington state **Factor: 1.0** (one)	$0.15		
All other electricity produced by wind **Factor: 0.8** (eight-tenths)	$0.12		

(9) **Are the factors for systems cumulative?** The factors are cumulative. For example, if your system is solar and has both solar modules and an inverter manufactured in Washington state, you would compute your economic development hours by using the factor three and six tenths (3.6) (computed 2.4 plus 1.2). Therefore you would multiply the fifteen cent base rate per actual kilowatt-hour generated by your system by three and six tenths (3.6) to get your incentive payment rate.

(10) **What is the definition of the phrase: Manufactured in Washington state?** The department of revenue defines manufacturing in WAC 458-20-136. Of particular interest is WAC 458-20-136(7), which defines when assembly constitutes manufacturing. The department of revenue, in consultation with the climate and rural energy development center at Washington State University's energy extension, will apply this rule on manufacturing when analyzing your request for certification. Further, the climate and rural development center at Washington State University's energy extension may establish guidelines and standards for technologies that are identified as Washington manufactured and therefore most beneficial to the state's environment.

For systems installed after the date these rules are adopted, your manufacturer must supply you with a statement delineating your system's level of manufacture in the state of Washington. This manufacturer's statement must be specific as to what processes were carried out in Washington state to qualify the system for one or more of the multiplying factors discussed in subsection (8) of this section. The manufacturer's statement must be under penalty of perjury and specifically state that the manufacturer understands that the department of revenue will use the statement in deciding whether customer incentive payments and corresponding tax credits are allowed under the renewable energy system cost recovery incentive payment program. You must retain this documentation for five years after the receipt of your last incentive payment from your light and power business.

(11) **What are the limitations on the incentive payments?** No individual, business, or local governmental entity is eligible for incentive payments in excess of two thousand dollars per year. However, as an example, if a customer installs a system on his or her home and then further installs two other separate systems on two separate business properties with different UBI numbers, then the customer is allowed the full two thousand dollar annual limit of the incentive payments for each property owned by an individual and each of the two separate businesses. In this example there are three qualifying systems on three separate properties owned by three separate entities allowing the full two thousand dollar limit on all three properties. If, however, the two business properties belong to only one business operating under one UBI number, then there are only allowed incentive payments up to the two thousand dollar annual limit for his or her home and for the one business. This is true even if the business operates from more than one location with qualifying renewable energy systems at each location because the two thousand dollar annual limit is allowed once to each individual and each business. Thus, in this case the individual and his or her one business are each only allowed one full two thousand dollar annual limit on their qualifying properties.

The issuing of incentive payments by participating light and power businesses is limited by the greater of:

(a) Twenty-five one hundredths of one percent (0.25%) of the light and power business' prior year's taxable sales under Washington state's law; or

(b) Twenty-five thousand dollars ($25,000.00).

Based on this public utility tax credit limitation, your and all other qualifying customers' incentive payments may be proportionally reduced.

The light and power business must measure the actual kilowatt hours of your renewable energy system's generated electricity using an electric production meter. If your renewable energy system is a hybrid system of combined solar and wind, it will be classified as a solely wind system for purposes of the incentive payment program, unless the solar and wind productions are separately metered. Systems that are interconnected to gas, diesel, ethanol, natural gas or other similarly fueled generators do not qualify for the incentive payment program. If a customer has an older system not manufactured in Washington and a separate new system manufactured in Washington on the same property, both systems will be classified as not made in Washington, unless the old and new systems' production are separately metered.

(12) **Does the light and power business serving my property have to participate in the incentive payment program?** No, each light and power business will have the discretion to decide whether to be part of the incentive payment program.

(13) **If I install a qualified renewable energy system on the apartment building where I am a tenant, can I submit for incentive payments?** No, you must own the property which is served by your renewable energy system. Even if your renewable energy system meets all requirements, except that it is installed on a building where you have a leasehold interest, it will not qualify for incentive payments.

(14) **May an individual, business, or local governmental entity involved in the light and power business or in the gas distribution business apply for incentive payments?** No, the law excludes both light and power businesses and gas distribution businesses from participating in the incentive payment program.

(15) **Must I retain all my records, which substantiate my claim of eligibility for incentive payments?** Yes, you and all other customers applying for and receiving incentive payments must retain the records substantiating your right to receive the incentive payments and the correct amount for five years. The light and power business that made the payment or the department of revenue may examine the records upon five working days' notice. If the records show that you received an overpayment, the light and power business may assess you for the amount of the overpayment. Conversely, if an underpayment has occurred, the light and power business may authorize a further payment to cover the prior deficiency. Interest will be added to overpayments of incentive payments to you and other customers. The amount of interest you would owe on an overpayment is calculated in the same manner that the department of revenue assesses interest upon delinquent taxes under RCW 82.32.050.

(16) **Is there also a public utility tax credit associated with the incentive payments?** Yes, the tax credit is for the benefit of the participating light and power business. Your light and power company is allowed a credit on its Washington state public utility taxes equal to the actual amount paid out as incentive payments to its customers under this law. The maximum amount of this credit is limited (see subsection (11) of this section).

(17) **Does the department of revenue consider the incentive payment I receive taxable income?** No, the department of revenue characterized the payment you receive, paid by your light and power company, as a subsidy or rebate for the purchase or installation of an energy conservation measure. Therefore, the department does not characterize the incentive payment as income under Washington state's law.

(18) **How is my incentive payment from the light and power business handled if the incentive is paid in the form of a credit against my power bill?** If your light and power business chooses this method, your incentive payment will be shown on your customer billing statement as a credit offsetting the amount you owe to the light and power business. The incentive payment is not a discount. Thus, the light and power business will only be allowed to claim a public utility tax credit for the incentive payments actually made, and is not also allowed a discount deduction.

(19) **Is the federal government eligible to participate in the incentive payment program?** No, only individuals, businesses, and local governments whose properties and renewable energy systems are located in the state of Washington are eligible to participate in the incentive payment program.

(20) **Are individuals, businesses and local governments that are not interconnected to the electric transmission and distribution system and who are not customers of a light and power business eligible for the incentive payment program?** No, only qualifying renewable energy systems located on interconnected properties belonging to customers of a light and power business are eligible for participation in the incentive payment program. The term property means within the established boundaries of the lot served by the light and power business. However, the renewable energy system generating the electricity does not itself have to be interconnected to the electric transmission and distribution system as long as it is located on a property served by a light and power business.

For example, if a customer of a light and power business living in a home connected to the power grid builds a studio addition served by a renewable energy system that is not connected to the power grid, that customer is eligible for the incentive payment program.

Another example, if a customer of a light and power business owning a manufacturing facility connected to the power grid builds an unattached vehicle garage on the same lot that the factory is located and the garage is not interconnected, the renewable energy system supplying electricity to this garage is eligible for the incentive payment program.

If the facts are the same as above, but the manufacturing facility's owner buys a new lot across the street and the only improvement on this separate lot is the unattached vehicle garage that is not connected to the power grid, then the renewable energy system attached to the garage would not be eligible for the incentive payment program.

~~(21) **Does the law require that light and power businesses serving eighty percent of the total customer load in the state adopt uniform standards for interconnection to the electric distribution system and if so, how does that affect me as a customer?** Yes, the law does require that light and power businesses serving eighty percent of the total customer load in the state adopt uniform standards for interconnection to the electric distribution system. However, the renewable energy tax credit implementation advisory committee, consisting of the department of revenue, department of community, trade, and economic development, utilities and transportation commission, and the climate and rural energy development center at Washington State University's energy extension, has made a determination that for purposes of this incentive payment program, that the customer load requirement has been met. This decision, once made, is binding for the incentive payment program until its expiration, including any possible extensions. Thus, this requirement has no effect on any customer, when deciding whether to participate in this incentive payment program.~~)) (1) **Introduction.** The customer investment cost recovery incentive payment (incentive payment) covers the purchase and use of renewable energy systems that produce electricity, such as: Solar energy systems; wind generators; and certain types of anaerobic digesters that process manure from cattle into biogas and dried manure using microorganisms in a closed oxygen-free container.

(a) Any individual, business, or local government, or participant in a qualifying community solar project that purchases and uses or supports such a system may apply for an incentive payment from the light and power business that serves their property.

(b) Participation by a light and power business in this incentive payment program is discretionary.

(c) No incentive payment may be made for kilowatt-hours generated before July 1, 2005, or after June 30, 2020. The right to earn tax credits under this section expires June 30, 2020. Credits may not be claimed after June 30, 2021.

(2) **Definitions.** The definitions in this section apply throughout this section unless the context clearly requires otherwise.

(a) "Applicant" means an individual, business, local government, or participant in a community solar project with an ownership interest in the system or in the value of the electricity produced by the project that applies for an incentive payment under this section.

(b) "Community solar project" means:

(i) A solar energy system owned by local individuals, households, nonprofit organizations, or nonutility businesses that is placed on the property owned by a cooperating local governmental entity that is not in the light and power business or in the gas distribution business; or

(ii) A utility-owned solar energy system that is voluntarily funded by the utility's ratepayers where, in exchange for their financial support, the utility gives contributors a payment or credit on their utility bill for the value of the electricity produced by the project.

(c) For purposes of "community solar project" as defined in (b) of this subsection:

(i) "Nonprofit organization" means an organization exempt from taxation under Title 26 U.S.C. Sec. 501 (c)(3) of the federal Internal Revenue Code of 1986, as amended, as of January 1, 2009; and

(ii) "Utility" means a light and power business, an electric cooperative, or a mutual corporation that provides electricity service.

(d) "Customer-generated electricity" means the alternating current electricity that is generated from a renewable energy system located on an individual's, businesses', or local government's real property that is also provided electricity generated by a light and power business. Except for community solar projects, a system located on a leasehold interest does not qualify under this definition. Except for a utility-owned solar energy system that is voluntarily funded by the utility's ratepayers, "customer-generated electricity" does not include electricity generated by a light and power business with greater than one thousand megawatt hours of annual sales or a gas distribution business.

(e) "Local governmental entity" means any unit of local government of the state including, but not limited to, counties, cities, towns, municipal corporations, quasi-municipal corporations, special purpose districts, and school districts.

(f) "Light and power business" means the business of operating a plant or system of generation, production or distribution of electrical energy for hire or sale and/or for the wheeling of electricity for others.

(g) "Gas distribution business" means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.

(h) "Photovoltaic cell" means a device that converts light directly into electricity without moving parts.

(i) "Renewable energy system" means a solar energy system, an anaerobic digester as defined in RCW 82.08.900, or a wind generator used for producing electricity.

(j) "Solar energy system" means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity.

(k) "Solar inverter" means the device used to convert direct current to alternating current in a photovoltaic cell system.

(l) "Solar module" means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

(3) **Who may apply?** Any of the following may apply for an incentive payment:

• An individual, business, or local governmental entity, not in a light and power business or in a gas distribution business; or

• A participant in a community solar project with an ownership interest in the system or in the value of the electricity produced by the project.

(4) **Must you be a customer of a light and power business to be an applicant?** Only qualifying renewable energy systems located on interconnected properties belonging to customers of a light and power business are eligible to be applicants in the incentive payment program.

(a) **Property served.** The term property means within the established boundaries of the lot served by the light and

power business. However, the renewable energy system generating the electricity does not itself have to be interconnected to the electric transmission and distribution system as long as it is located on a property served by a light and power business.

(b) **Examples.** The following examples identify facts and then state a conclusion. These examples are only a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(i) **Example 1.** Jane, a customer of Light and Power Business lives, in a home connected to the power grid. Jane builds a studio addition served by a renewable energy system that is not connected to the power grid. Jane is eligible for the incentive payment program because she is a customer of the light and power business within the boundaries of a property served by the same light and power business.

(ii) **Example 2.** Steve, a customer of Light and Power Business, owns a manufacturing facility connected to the power grid. Steve builds an unattached vehicle garage on the same lot that the facility is located. The garage is served by a renewable energy system that is not interconnected. Steve is eligible for the incentive payment program.

(iii) **Example 3.** Assume the facts are the same as in Example 2 above, but Steve buys a new lot across the street and the only improvement on this separate lot is the unattached vehicle garage that is not connected to the power grid. In this case, Steve is not eligible for the incentive payment program because the renewable energy system is not within the boundaries of a property served by his light and power business.

(5) **To whom do I apply?** An applicant must apply to the light and power business serving the location of the renewable energy system, each fiscal year beginning on July 1, 2005, for an investment cost recovery incentive payment for the kilowatt-hours of customer-generated electricity.

(6) **Do I have to do anything before applying to the light and power business?** Before submitting an application for the first time for the incentive payment allowed under this section, the applicant must submit to the department of revenue and to the climate and rural energy development center at the Washington State University, established under RCW 28B.30.642, a certification in a form and manner prescribed by the department of revenue. There are two forms for this certification entitled:

• Community Solar Project Renewable Energy System Cost Recovery Certification, which is located at http://dor.wa.gov/docs/forms/excstx/dffrlfrm/commsolproj.pdf; and

• Renewable Energy System Cost Recovery Certification, which is located at http://dor.wa.gov/docs/forms/misc/renewenersystcertinvcstrecincprgm.pdf.

(a) **Property purchased with existing system.** If an applicant has just purchased a property with a certified renewable energy system, the applicant must reapply for certification as the new owner.

(b) **Requirements of the application for certification.** This application will require, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system;

(ii) The applicant's tax registration number;

(iii) Confirmation that the electricity produced by the applicant meets the definition of "customer-generated electricity" and that the renewable energy system produces electricity with:

(A) Any solar inverters and solar modules manufactured in Washington state;

(B) A wind generator powered by blades manufactured in Washington state;

(C) A solar inverter manufactured in Washington state;

(D) A solar module manufactured in Washington state;

(E) Solar or wind equipment manufactured outside of Washington state; or

(F) An anaerobic digester which processes manure from cattle into biogas and dried manure using microorganisms in a closed oxygen-free container.

(iv) Confirmation that the electricity can be transformed or transmitted for entry into or operation in parallel with the electricity transmission and distribution systems;

(v) The date that the applicant's local jurisdiction issued its final electrical permit on applicant's renewable energy system; and

(vi) A statement that the applicant understands that this information is true, complete, and correct to the best of applicant's knowledge and belief under penalty of perjury.

(c) **Response from the department of revenue.** Within thirty days of receipt of the certification the department of revenue will notify the applicant by mail, or electronically as provided in RCW 82.32.135, whether the renewable energy system qualifies for an incentive payment under this section.

(i) The department of revenue may consult with the climate and rural energy development center to determine eligibility for the incentive.

(ii) System certifications and the information contained therein are subject to disclosure under RCW 82.32.330 (3)(m).

(7) **How often do I apply to the light and power business?** You must annually apply by August 1st of each year to the light and power business serving the location of your renewable energy system. The incentive payment applied for covers the production of electricity by the system between July 1st and June 30th of each year.

(8) **What about the application to the light and power business?** The department of revenue has two application forms for use by customers when applying for the incentive payment with their light and power business. These applications are:

• Community Solar Project Renewable Energy System Cost Recovery Annual Incentive Payment Application located at dor.wa.gov/docs/forms/excstx/dffrlfrm/appincentpaycommsolproj.pdf; and

• Renewable Energy System Cost Recovery Annual Incentive Payment Application located at http://dor.wa.gov/docs/forms/misc/renewenersyscustcstrecincpmtappl.pdf.

However, individual light and power businesses may create their own forms or use the department of revenue's form in conjunction with their additional addendums.

(a) **Information required on the application to the light and power business.** The application must include, but is not limited to, the following information:

• The name and address of the applicant and location of the renewable energy system;

• The applicant's tax registration number;

• The date of the notification from the department of revenue stating that the renewable energy system is eligible for the incentives under this section;

• A statement of the amount of kilowatt-hours generated by the renewable energy system in the prior fiscal year; and

• A statement that the applicant understands that this information is provided to the department of revenue in determining whether the light and power business correctly calculates its credit allowed for customer incentive payments and that the statements are true, complete, and correct to the best of applicant's knowledge and belief under penalty of perjury.

(b) **Light and power business response.** Within sixty days of receipt of the incentive payment application the light and power business serving the location of the system must notify the applicant in writing whether the incentive payment will be authorized or denied.

(i) The light and power business may consult with the climate and rural energy development center to determine eligibility for the incentive payment.

(ii) Incentive payment applications and the information contained therein are subject to disclosure under RCW 82.32.330 (3)(m).

(c) **Light and power business may verify initial certification of system.** Your light and power business has the authority to verify and make separate determinations on the matters covered in your earlier certification with the department of revenue. If your light and power business finds the certification process made an error in determining whether your renewable energy system's generated electricity can be transformed or transmitted for entry into or operation in parallel with the electricity transmission and distribution systems, then the determination by the light and power business will be controlling and it has the authority to decertify your system.

(9) **What are the possible procedures an applicant and their light and power business may follow in setting up incentive payments?** This subsection first discusses recommended procedures an applicant should follow when requesting that the light and power businesses set up applicant's incentive payments and second discusses the possible procedures the light and power business may follow.

(a) **Steps an applicant may take include, but are not limited to:**

• Contacting their light and power business to ask whether it is participating and what application procedures apply;

• Submitting an application to the light and power business that serves their property;

• Submitting to the light and power business proof that the applicant's renewable energy system is certified by the department of revenue for the incentive payment program;

• Submitting to the light and power business a copy of the approved certification and letter from the department of revenue; and

• Signing an agreement that the light and power business will provide to the applicant.

(b) **Steps the applicant's local light and power business may take include, but are not limited to:**

• Sending a utility serviceman to inspect the system;

• Installing an electric production meter if one meeting its specifications is not already installed since a meter is required to properly measure production;

• Reading the applicant's production meter at least annually;

• Processing the annual incentive payment;

• Notifying the applicant within sixty days whether the incentive payment is authorized or denied;

• Calculating annual production payments based on the meter reading or readings made prior to the accounting date of July 1st; and

• Sending the applicant's incentive payment check (or crediting to the applicant's account) on or before December 15th.

(10) **How may the procedures differ with my light and power business when dealing with a utility-owned solar energy system?** A utility-owned solar energy system is voluntarily funded by ratepayers of the specific light and power business offering the program. Only customer-ratepayers of that utility may participate in the program. In exchange for a customer's support the utility gives contributors a payment or credit on their utility bill for the value of the electricity produced by the project. It is important that the applicant realize that as a customer-ratepayer contributing to this program, applicant is in effect investing in the utility to receive a stated "value." This value is defined in the agreement between the applicant and the utility and this agreement is a contract. Applicants need to protect their interest in this investment the same as a person would in any other investment.

(11) **What is the formal agreement between the applicant and the light and power business?** The formal agreement between the applicant and the light and power business serving the property governs the relationship between the parties. This document may:

• Contain the necessary safety requirements and interconnection standards;

• Allow the light and power business the contractual right to review the applicant's substantiation documents for four years, upon five working days' notice;

• Allow the light and power business the contractual right to assess against the applicant, with interest, for any overpayment of incentive payments;

• Delineate any extra metering costs for an electric production meter to be installed on the applicant's property;

• Contain a statement allowing the department of revenue to send proof of the applicant's system certification electronically to applicant's light and power business, which will include the applicant's department of revenue taxpayer's identification number;

• Contain other information required by the light and power business to effectuate and properly process the applicant's incentive payment; and

• In the case of a utility-owned solar energy system, contain a detailed description of the "value" the applicant will receive in consideration of the financial support given to the utility.

(12) **Must you keep records regarding your incentive payments?** Applicants receiving incentive payments must keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of incentive applied for and received.

(a) **Examination of records.** Such records must be open for examination at any time upon notice by the light and power business that made the payment or by the department of revenue.

(b) **Overpayment.** If upon examination of any records or from other information obtained by the light and power business or department of revenue it appears that an incentive has been paid in an amount that exceeds the correct amount of incentive payable, the light and power business may assess against the person the amount found to have been paid in excess of the correct amount of the incentive payment. Interest will be added to that amount in the manner that the department of revenue assesses interest upon delinquent tax under RCW 82.32.050.

(c) **Underpayment.** If it appears that the amount of incentive paid is less than the correct amount of incentive payable, the light and power business may authorize additional payment.

(13) **How is an incentive payment computed?** The computation for the incentive payment involves a base rate that is multiplied by an economic development factor determined by the amount of the system's manufacture in Washington state. The base rate is then multiplied by the economic development factor to determine the incentive payment rate. The incentive payment rate is then multiplied by the system's kilowatt-hours generated to determine the incentive payment.

(a) **Determining the base rate.** The first step in computing the incentive payment is to determine the correct base rate to apply, specifically:

• Fifteen cents per economic development kilowatt-hour; or

• Thirty cents per economic development kilowatt-hour for community solar projects.

If requests for incentive payments exceed the amount of funds available for credit to the participating light and power business, the incentive payments must be reduced proportionately.

(b) **Economic development factors.** For the purposes of this computation, the base rate paid for the investment cost recovery incentive may be multiplied by the following economic development factors:

(i) For customer-generated electricity produced using solar modules manufactured in Washington state, two and four-tenths;

(ii) For customer-generated electricity produced using a solar or a wind generator equipped with an inverter manufactured in Washington state, one and two-tenths;

(iii) For customer-generated electricity produced using an anaerobic digester, or by other solar equipment or using a wind generator equipped with blades manufactured in Washington state, one; and

(iv) For all other customer-generated electricity produced by wind, eight-tenths.

(c) **Tables for use in computation.** The following tables describe the computation of the incentive payment using the appropriate base rate and then multiplying it by the applicable economic development factors to determine the incentive payment rate. The incentive payment rate is then multiplied by the kilowatt-hours generated. The actual incentive payment you receive must be computed using your renewable energy system's actual measured electric kilowatt-hours generated.

Annual Incentive Payment Calculation Table for Noncommunity Projects

Customer-generated power applicable factors	Base rate (0.15) multiplied by applicable factor equals incentive payment rate	Kilowatt-hours generated	Incentive payment amount equals incentive payment rate multiplied by kilowatt-hours generated
Solar modules manufactured in Washington state **Factor: 2.4** (two and four-tenths)	$0.36		
Solar or wind generating equipment with an inverter manufactured in Washington state **Factor: 1.2** (one and two-tenths)	$0.18		
Anaerobic digester or other solar equipment or wind generator equipped with blades manufactured in Washington state **Factor: 1.0** (one)	$0.15		

Customer-generated power applicable factors	Base rate (0.15) multiplied by applicable factor equals incentive payment rate	Kilowatt-hours generated	Incentive payment amount equals incentive payment rate multiplied by kilowatt-hours generated
All other electricity produced by wind **Factor: 0.8** (eight-tenths)	$0.12		

Annual Incentive Payment Calculation Table for Community Solar Projects

Customer-generated power applicable factors	Base rate (0.30) multiplied by applicable factor equals incentive payment rate	Kilowatt-hours generated	Incentive payment amount equals incentive payment rate multiplied by kilowatt-hours generated
Solar modules manufactured in Washington state **Factor: 2.4** (two and four-tenths)	$0.72		
Solar equipment with an inverter manufactured in Washington state **Factor: 1.2** (one and two-tenths)	$0.36		
Other solar equipment **Factor: 1.0** (one)	$0.30		

(14) **What if a system has both a module and inverter manufactured in Washington?** The above-described economic development factors are cumulative. For example, if your system is solar and has both solar modules and an inverter manufactured in Washington state, you would compute your incentive payment by using the factor three and six-tenths (3.6) (computed 2.4 plus 1.2). Therefore you would multiply either the fifteen cent or thirty cent base rate by three and six-tenths (3.6) to get your incentive payment rate and then multiple this by the kilowatt-hours generated to get the incentive payment amount.

(15) **What constitutes manufactured in Washington?** When determining what constitutes manufacturing in Washington state, the department of revenue defines manufacturing in WAC 458-20-136. Of particular interest is WAC 458-20-136(7), which defines when assembly constitutes manufacturing. The department of revenue, in consultation with the climate and rural energy development center at Washington State University's energy extension, will apply this rule on manufacturing when analyzing a request for certification.

(16) **How can an applicant determine the system's level of manufacture in Washington state?** For systems installed after the date this section is adopted, the manufacturer must supply the applicant with a statement delineating the system's level of manufacture in Washington state.

(a) **Manufacturer's statement.** This manufacturer's statement must be specific as to what processes were carried out in Washington state to qualify the system for one or more of the multiplying economic development factors discussed in subsection (13) of this section.

(b) **Penalty of perjury.** The manufacturer's statement must be under penalty of perjury and specifically state that the manufacturer understands that the department of revenue will use the statement in deciding whether customer incentive payments and corresponding tax credits are allowed under the renewable energy system cost recovery incentive payment program.

(c) **Document retention.** The applicant must retain this documentation for five years after the receipt of applicant's last incentive payment from the light and power business.

(17) **What about guidelines and standards for manufactured in Washington?** The climate and rural energy development center at Washington State University energy program may establish guidelines and standards for technologies that are identified as Washington manufactured and therefore most beneficial to the state's environment.

(18) **Do condominiums or community solar projects need more than one meter?** No, the requirement of measuring the kilowatt hours of customer-generated electricity for computing the incentive payments only requires one meter for the renewable energy system, not one meter for each applicant. Thus for example, in the case of a renewable energy system on a condominium with multiple owners, only one meter is needed to measure the system's production and then each applicant's share can be calculated by using each applicant's percentage of ownership in the system.

(19) **May community solar projects have one common record keeper to be in charge of determining ownership interests in the project?** Yes, the light and power business may utilize the services of a common record keeper for a community solar project to determine the owner interest of each applicant applying for an incentive payment. However, the light and power business must retain a copy of each annual application used for authorizing and calculating each incentive payment.

(20) **Is there an annual limit on an incentive payment to one payee?** There is an annual limit on an incentive payment.

(a) **Applicant limit.** No individual, household, business, or local governmental entity is eligible for incentive payments of more than five thousand dollars per year.

(b) **Community solar projects.** Each applicant in a community solar project is eligible for up to five thousand dollars per year.

(21) **Are the renewable energy system's environmental attributes transferred?** The environmental attributes of the renewable energy system belong to the applicant, and do not transfer to the state or the light and power business upon receipt of the incentive payment.

(22) **Is the light and power business allowed a tax credit for the amount of incentive payments made during the year?** A light and power business will be allowed a credit against public utility taxes in an amount equal to incentive payments made in any fiscal year under RCW 82.16.120. The following restrictions apply:

• The credit must be taken in a form and manner as required by the department of revenue.

• The credit for the fiscal year may not exceed one percent of the light and power business' taxable power sales due under RCW 82.16.020 (1)(b) or one hundred thousand dollars, whichever is greater.

• Incentive payments to applicants in a utility-owned community solar project as defined in RCW 82.16.110 (1)(a)(ii) may only account for up to twenty-five percent of the total allowable credit.

• The credit may not exceed the tax that would otherwise be due under the public utility tax described in chapter 82.16 RCW. Refunds will not be granted in the place of credits.

• Expenditures not used to earn a credit in one fiscal year may not be used to earn a credit in subsequent years.

(23) **What if a light and power business claims an incentive payment in excess of the correct amount?** For any light and power business that has claimed credit for amounts that exceed the correct amount of the incentive payable under RCW 82.16.120, the amount of tax against which credit was claimed for the excess payments will be immediately due and payable.

• The department of revenue will assess interest but not penalties on the taxes against which the credit was claimed.

• Interest will be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the credit was claimed, and will accrue until the taxes against which the credit was claimed are repaid.

(24) **Does the department of revenue consider the incentive payment taxable income?** No, the department of revenue does not consider the incentive payment an applicant receives to be taxable income.

(25) **What is the relationship between the department of revenue and the light and power business under this program?** The department of revenue is not regulating light and power businesses; it is only administering a tax credit program relating to the public utility tax. Therefore, for purposes of the customer investment cost recovery incentive payment, the department of revenue will only audit light and power businesses to determine whether:

• The claimed credit amount equals the amount of the total of applicants' incentive payments;

• Payments to each applicant are proportionally reduced by an equal percentage if the limit of total allowed payments is reached; and

• Applicant payments are based on measured production of the renewable energy systems.

WSR 09-24-034
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed November 23, 2009, 1:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-20-001.

Title of Rule and Other Identifying Information: Chapter 46.70 RCW, Dealers and manufacturers.

Hearing Location(s): 2424 Bristol Court S.W., 3rd Floor, C/R 346, Olympia, WA 98502, on January 13, 2010, at 9:30 a.m.

Date of Intended Adoption: February 25, 2010.

Submit Written Comments to: Mary Morris, P.O. Box 9039, Olympia, WA 98507, e-mail MMorris@dol.wa.gov, fax (360) 586-6703, by December 30, 2009.

Assistance for Persons with Disabilities: Contact Cathy Bently by December 30, 2009, TTY (360) 664-8885 or (360) 902-3600.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: One amendment will help ensure that temporary subagency licenses will be issued timely. Another amendment would require that the location of a sale be reflected in documents of sale.

Reasons Supporting Proposal: Enforce the law requiring that a temporary subagency license must be issued prior to the sale, and allowing for at least one day between any two offsite sales.

Statutory Authority for Adoption: RCW 46.70.160.

Statute Being Implemented: Not applicable.

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

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. No impact to small business.

A cost-benefit analysis is not required under RCW 34.05.328. No financial impact.

November 23, 2009
Walt Fahrer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-16-090, filed 8/3/04, effective 9/3/04)

WAC 308-66-140 Place of business and places of business. Which business names and locations do I need to license?

(1) A dealer must inform the department in writing of each and every:

(a) Name under which the dealer does business, and

(b) Location at which the dealer does business.

The dealer must inform the department in writing within ten days of any addition, deletion or change in the name or location. The dealer must apply for a temporary subagency license at least ten days prior to the sales event that requires that license. There must be at least one day with no sales activity between any two ten day temporary permit periods.

(2) A dealer shall designate one name and one location as the principal name and principal place of business.

(a) All other names under which the dealer does business shall be designated and licensed as subagencies of that dealership;

(b) All other locations that are physically and geographically separated from the principal place of business shall be designated and licensed as subagencies of that dealership;

(c) If a dealer is required to obtain a subagency license under (2)(b) of this section, the dealer shall not be required to obtain an additional subagency license under (2)(a) of this section, unless the dealer does business under more than one name at that subagency location;

(d) The department will not require a subagency license for a name solely due to the use of a ".com" or other URL extension in an internet address; or because a dealership uses a derivative of its licensed "doing business as" name for its internet address. The web site must clearly display the licensed "doing business as" name.

(3) If the dealer ceases to maintain "an established place of business" at that subagency location, the director shall suspend, revoke and/or refuse to renew a subagency license of a dealership.

(4) All temporary subagencies must be covered by the bond of the dealer's principal place of business.

(5) A vehicle dealer, whether franchised or nonfranchised, that is unable to locate the dealer's used vehicle sales facilities adjacent to or at the established place of business need not obtain and hold a subagency license if:

(a) The vehicle sales lot is contained within the same city block, or

(b) Is directly across the street, or

(c) Is within sight, and

(d) Its location is zoned properly, and

(e) The dealer bond covers the sales lot.

(6) If the sales lot referred to in section 5 is in sight of the principal place of business, no sign is required at that sales lot.

(7) The department may require that a dealer provide evidence that each place of business conforms to all zoning and land use ordinances.

(8) Each and every subagency license of a dealership shall automatically be deemed ((~~cancelled~~)) canceled upon the termination, for whatever reason, of the principal license of that dealership.

(9) No license shall be issued to any applicant for a vehicle dealer or vehicle manufacturer license under a name that is the same as that of any dealer or manufacturer holding a current license issued pursuant to chapter 46.70 RCW.

(10) The sign at the certified location and the business telephone listing must reflect the "doing business as" (dba) name.

AMENDATORY SECTION (Amending WSR 98-20-039, filed 9/30/98, effective 10/31/98)

WAC 308-66-170 Denial, suspension or revocation of license. (1) When the license of a vehicle dealer has been suspended or revoked, the department shall post a closure notice at or near the principal entry to the place of business. Such notice shall include a statement that the dealership is closed as to the sale of vehicles because of the suspension or revocation of a license. In case of a suspension, the duration of the suspension shall be stated on the notice. A dealer shall not remove any closure notice without permission from an authorized representative of the director.

(2) Practices inimical to the health and safety of the citizens of the state of Washington pursuant to RCW 46.70.101 (1)(b)(viii) and (2)(k) shall include, but not be limited to, failure to comply with the following federal and state standards, as presently constituted and as hereafter amended, amplified or revised, pertaining to the construction and safety of vehicles:

(a) "Federal motor vehicle safety standards," 49 Code of Federal Regulations, part 571;

(b) "Control of air pollution from new motor vehicles and new motor vehicle engines," 40 Code of Federal Regulations, part 85;

(c) "Vehicle lighting and other equipment," chapter 46.37 RCW;

(d) Rules and regulations adopted by the Washington state patrol pursuant to RCW 46.37.005, Title 204 WAC;

(e) "Mobile/manufactured homes, commercial coaches, park trailers, and recreational vehicles," chapter 296-150B WAC;

(f) Housing and Community Development Act of 1974, Public Law 93-383, Title VI Mobile home construction and safety standards, §§ 603, 604, 610, 615, 616, 617.

(3) The department may deny a temporary subagency license if it is not applied for at least ten days prior to the sales event that requires the license.

WSR 09-24-083
PROPOSED RULES
DEPARTMENT OF FISH AND WILDLIFE

[Filed November 30, 2009, 3:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-20-034.

Title of Rule and Other Identifying Information: WAC 220-52-068 Scallop fishery—Coastal waters—Outlaw use of dredge gear.

Hearing Location(s): Washington Department of Fish and Wildlife, Region Six Office, 48 Devonshire Road, Montesano, WA 98563, on January 5, 2010, at 9:00 a.m.

Date of Intended Adoption: On or after January 6, 2010.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Lori.Preuss@dfw.wa.gov, fax (360) 902-2155 by January 1, 2010.

Assistance for Persons with Disabilities: Contact Dan Ayres by January 4, 2010, TTY (360) 902-2207 or (360) 249-4628 ext. 209.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: State laws and rules can be more restrictive than their federal counterparts, but not less restrictive. WAC 220-52-068 requires the use of scallop dredge gear to harvest scallops in the coastal fishery. This conflicts with National Marine Fisheries Service regulation, 50 C.F.R. Part 660.306, prohibiting the use of dredge gear in groundfish essential fish habitat (EFH). Specifically, dredge gear is prohibited from high tide out to two hundred miles, which coincides with where groundfish EFH occurs. The department wants to amend WAC 220-52-068 to make it consistent with federal rules.

Reasons Supporting Proposal: WAC 220-52-068 is not consistent with federal rules. Amending WAC 220-52-068 eliminates the inconsistency.

Statutory Authority for Adoption: RCW 77.04.020, 77.12.045, 77.12.047.

Statute Being Implemented: RCW 77.04.020, 77.12.-045, 77.12.047.

Rule is necessary because of federal law, 50 C.F.R. Part 660.306.

Name of Proponent: The Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Dan Ayres, 48 Devonshire Road, Montesano, WA 98563, (360) 249-4628; Implementation: Jim Scott, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2651; and Enforcement: Chief Bruce Bjork, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This activity has been prohibited federally for a few years, so these changes will not impact small businesses.

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

November 30, 2009
Lori Preuss
Rules Coordinator

AMENDATORY SECTION (Amending Order 00-165, filed 8/22/00, effective 9/22/00)

WAC 220-52-068 Scallop fishery—Coastal waters. (1) It is unlawful to fish for or possess scallops taken for commercial purposes from the waters of the Exclusive Economic Zone ((~~except as provided for in this section.~~

~~(1) Season: July 1 through November 30 in the waters of the Exclusive Economic Zone~~)).

(2) It is unlawful to trawl for scallops in Washington territorial waters west of the Bonilla-Tatoosh line or in Marine Fish-Shellfish Management and Catch Reporting Area 29.

(((~~(2) Gear: Only scallop dredge gear may be used. Scallop dredge gear may not exceed fifteen feet in width per unit of gear and must have three inch or larger net mesh or rings throughout. Scallop dredges may not use a dredge liner nor have chaffing gear covering any portion of the top half of the dredge.~~

~~(3) Licensing: A shrimp trawl—non-Puget Sound fishery license is the license required to operate the gear provided for in this section.~~

~~(4) Incidental catch: It is unlawful to retain food fish or shellfish taken incidental to any lawful scallop fishery, except that it is lawful to retain octopus and squid.~~)) (3) A violation of this section is punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty; and RCW 77.15.550 Violation of commercial fishing area or time—Penalty.

WSR 09-24-087
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF ECOLOGY
(By the Code Reviser's Office)
[Filed December 1, 2009, 8:31 a.m.]

WAC 173-517-130 and 173-517-190, proposed by the department of ecology in WSR 09-11-095 appearing in issue 09-11 of the State Register, which was distributed on June 3, 2009, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 09-24-095
PROPOSED RULES
NOXIOUS WEED CONTROL BOARD
[Filed December 1, 2009, 11:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-17-122.

Title of Rule and Other Identifying Information: Chapter 16-750 WAC, state noxious weed list and schedule of monetary penalties. The board is proposing to amend the state noxious weed list and state weed board meeting guidelines.

Hearing Location(s): Natural Resources Building, Room 175 A & B, 1111 Washington Street S.E., Olympia, WA 98504, on January 11, 2010, at 11:00 a.m.

Date of Intended Adoption: January 12, 2010.

Submit Written Comments to: Cindy Orr, WSNWCB, P.O. Box 42560, Olympia, WA 98504-2560, e-mail corr@agr.wa.gov, fax (360) 902-2094, by January 4, 2010.

Assistance for Persons with Disabilities: Contact Cindy Orr by January 4, 2010, TTY (800) 833-6388 or (360) 725-5764.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state noxious weed list provides the basis for noxious weed control efforts for county and district weed control boards and other entities. It also provides guidelines for the state noxious weed control board.

This proposal amends chapter 16-750 WAC by:

(1) Amending the definition of control.

(2) Amending the schedule of monetary penalties.

Reasons Supporting Proposal: Duties of the Washington state noxious weed control board include adopting rules defining the words "control," "contain," "eradicate," and the term "prevent the spread of noxious weeds" and adopting a schedule of monetary penalties (WAC 16-750-105). Amending the definition of control incorporates plain talk as directed by Executive Order 05-03 and makes the definition easier to understand. Amending the schedule of monetary penalties limits monetary penalties to five days following the expiration of the notice of violation.

Statutory Authority for Adoption: Chapter 17.10 RCW.

Statute Being Implemented: Chapter 17.10 RCW.

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. An analysis determined that a small business economic impact statement was not necessary for these proposed amendments. See "Reasons Supporting Proposal" above. A copy of the analysis may be obtained by contacting Cindy Orr, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 725-5764, fax (360) 902-2094, e-mail corr@agr.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state noxious weed control board is not one of the agencies listed in this section.

December 1, 2009

Alison Halpern

Executive Secretary

AMENDATORY SECTION (Amending WSR 99-24-029, filed 11/23/99, effective 1/3/00)

WAC 16-750-003 Definitions. (1) The definitions in this section shall apply throughout this chapter, unless the context plainly requires otherwise:

(a) "Action" means the transaction of the official business of the Washington state noxious weed control board including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, and final actions.

(b) "Board" means the Washington state noxious weed control board, or a duly authorized representative.

(c) "Director" means the director of the department of agriculture, or the director's appointed representative.

(d) "Executive secretary" means the executive secretary of the Washington state noxious weed control board.

(e) "Department" means the department of agriculture of this state.

(f) "Final action" means a collective positive or negative decision, or an actual vote by a majority of board members when sitting as a body or entity, upon a motion, proposal, resolution, or order.

(g) "Meeting" means meetings at which action is taken.

(h) "Regular meetings" means recurring meetings held in accordance with a periodic schedule in compliance with applicable statute or rule.

(2) The definitions in this subsection apply throughout this chapter, chapter 17.10 RCW, and any rules adopted thereunder unless the context plainly requires otherwise:

(a) "Control" of noxious weeds means to prevent all seed production and to prevent the dispersal of ((~~the following propagules of aquatic noxious weeds - turions, fragments, tubers, and nutlets~~)) all propagative parts capable of forming new plants.

(b) "Contain" means to confine a noxious weed and its propagules to an identified area of infestation.

(c) "Eradicate" means to eliminate a noxious weed within an area of infestation.

(d) "Prevent the spread of noxious weeds" means to contain noxious weeds.

(e) Class A noxious weeds are those noxious weeds not native to the state that are of limited distribution or are unrecorded in the state and that pose a serious threat to the state.

(f) Class B noxious weeds are those noxious weeds not native to the state that are of limited distribution or are unrecorded in a region of the state and that pose a serious threat to that region.

(g) "Class B designate" means those Class B noxious weeds whose populations in a region or area are such that all seed production can be prevented within a calendar year.

(h) Class C are any other noxious weeds.

(3) Any county noxious weed control board may enhance the clarity of any definition contained in subsection (2) of this section, making that definition more specific, but shall not change its general meaning.

AMENDATORY SECTION (Amending WSR 99-24-029, filed 11/23/99, effective 1/3/00)

WAC 16-750-020 Noxious weeds—Civil infractions—Schedule of monetary penalties. Civil infractions under chapter 17.10 RCW shall be assessed a monetary penalty according to the following schedule:

(1) Any owner knowing of the existence of any noxious weeds on the owner's land who fails to control the noxious weeds will be assessed the following monetary penalties. The penalties are assessed per parcel, per noxious weed species, per day up to five days, after expiration of the notice to control filed pursuant to RCW 17.10.170:

(a) Any Class A noxious weed:

1st offense within five years	$ 750
2nd and any subsequent offense	1,000

(b) Any Class B designate noxious weed in the noxious weed control region in which the land lies:

1st offense within five years	$ 500
2nd offense	750
3rd and any subsequent offense	1,000

(c) Any Class B nondesignate noxious weed in the noxious weed control region in which the land lies; or any Class C noxious weed:

1st offense within five years	$ 250

2nd offense	500
3rd offense	750
4th and any subsequent offense	1,000

(2) Any person who enters upon any land in violation of an order in force pursuant to RCW 17.10.210 will be assessed as follows:

1st offense within five years	$ 500
2nd offense	750
3rd and any subsequent offense	1,000

(3) Any person who interferes with the carrying out of the provisions of chapter 17.10 RCW shall be assessed as follows:

1st offense within five years	$ 500
2nd offense	750
3rd and any subsequent offense	1,000

WSR 09-24-099
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed December 1, 2009, 4:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-18-102.

Title of Rule and Other Identifying Information: Amending WAC 296-17-31002 General rule definitions and 296-17-31017 Multiple classifications; new section WAC 296-17-310171 How to report hours for employees supporting multiple business operations; and repealing WAC 296-17-31020 Employee supporting multiple business operations.

Hearing Location(s): Tumwater L&I Building, 7273 Linderson Way S.W., Tumwater, WA 98501, on January 26, 2010, at 9:00 a.m.

Date of Intended Adoption: May 4, 2010.

Submit Written Comments to: Ronald Moore, P.O. Box 44140, Olympia, WA 98501, e-mail MOOA235@lni.wa.gov, fax (360) 902-4988, by 5 p.m., January 26, 2010.

Assistance for Persons with Disabilities: Contact office of information and assistance by January 23, 2010, TTY (306) [(360)] 902-5797.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Currently our reporting requirements for workers with duties supporting more than one basic classification are addressed in three separate sections of chapter 296-17 WAC. These are WAC 296-17-31002 General rule definitions, 296-17-31017 Multiple classifications, and 296-17-31020 Employee supporting multiple business operations. Scenarios have been presented that are not clearly addressed by any of our current regulations and/or they could be applied to more than one of these regulations. The new rule clarifies our regulations by addressing all situations where a worker is supporting multiple basic classifications in a single new section, WAC 296-17-310171 How to report hours for employees supporting multiple business operations.

Reasons Supporting Proposal: The new rule will clarify for employers their reporting requirements when an employee performs work for more than one classification. By consolidating these reporting requirements into one rule, we will reduce the potential for overlap or gaps between the previously separate sections.

Statutory Authority for Adoption: RCW 51.04.020 and 51.16.035.

Statute Being Implemented: RCW 51.04.020 and 51.16.035.

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

Name of Proponent: Labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Richard Bredeson, Tumwater, Washington, (360) 902-4985; Implementation: Ronald C. Moore, Tumwater, Washington, (360) 902-4748; and Enforcement: Robert Malooly, Tumwater, Washington, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. In this case the agency is exempt from conducting a small business economic impact statement since the proposed rules set or adjust fees or rates to legislative standards described in RCW 34.05.310 (4)(f).

A cost-benefit analysis is not required under RCW 34.05.328. Since the proposed rules are consistent with recognized principals of workers' compensation insurance and adjust fees pursuant to legislative standards they are exempted by RCW 34.05.328 (5)(b)(vi) from the requirement for a cost-benefit analysis.

December 1, 2009
Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 09-16-110, filed 8/4/09, effective 10/1/09)

WAC 296-17-31002 General rule definitions. In developing the general reporting rules and classifications which govern Washington's workers' compensation classification plan, we have used certain words or phrases which could have several meanings. Many of these words or phrases are defined by law in the Revised Code of Washington (*Title 51 RCW*) and can be found in **Appendix A** of this manual. Some words, however, are not defined by law. To reduce the misunderstanding which can result by our use of certain words or phrases not defined in law (*Title 51 RCW*), we have developed definitions which will govern what these words and phrases mean for purposes of these chapters (*chapters 296-17 and 296-17A of the Washington Administrative Code (WAC)*).

***The following words or phrases mean*:**

Account: A unique numerical reference that we assign to you that identifies your business or businesses and allows us to track exposure that you report to us and losses (*claims*) which we pay on your behalf.

Account manager: An individual who works in the underwriting section of the department of labor and indus-

tries and manages an employer's workers' compensation insurance account. An account manager is also referred to as an underwriter.

Actual hours worked: A worker's composite work period beginning with the starting time of day that the employee's work day commenced, and includes the entire work period, excluding any nonpaid lunch period, and ending with the quitting time each day work was performed by an employee. The following example is provided to illustrate how work hours are to be reported. If you have questions on reporting please contact our underwriting section at 360-902-4817.

***Example*:** *A carpet installer arrives at the employer's place of business at 8:00 a.m. to pick up supplies, carpet, and the job assignment. The carpet installer arrives at the job site at 9:00 a.m. and works until 12 noon. The installer takes a half hour nonpaid lunch period and resumes working from 12:30 p.m. until 4:00 p.m. The installer then returns to the employer's premise to drop off supplies and carpet waste. The installer leaves the employer's premise at 5:30 p.m. The employer is to report nine hours of work time regardless of whether the employee is paid by the hour or by the number of yards of carpet installed.*

All: When a classification contains a descriptive phrase beginning with "*all*" such as in "*all employees,*" "*all other employees*," "*all operations*," or "*all work to completion*," it includes all operations and employments which are normally associated with the type of business covered by the classification. This condition applies even if the operations or employments are physically separated or conducted at a separate location. Operations or employments are to be classified separately when the classification wording requires it, or when the operations or employments are not incidental to, and not usually associated with, the business described by the classification.

And: When this word is contained in any rule it is to be considered the same as the phrase "and/or."

Basic classification: A grouping of businesses or industries having common or similar exposure to loss without regard to the separate employments, occupations or operations which are normally associated with the business or industry. Basic classifications describe a specific type of business operation or industry such as mechanical logging, sawmills, aircraft manufacturing, or restaurants. In most business operations some workers are exposed to very little hazard, while others are exposed to greater hazard. Since a basic classification reflects the liability (*exposure to hazard*) of a given business or industry, all the operations and occupations that are common to an industry are blended together and included in the classification. The rate for a basic classification represents the average of the hazards within the classification. All classifications contained in this manual are considered basic classifications with the exception of classifications 4806, 4900, 4904, 5206, 6301, 6302, 6303, 7100, 7101, and temporary help classifications 7104 through 7122. Classification descriptions contained in WAC 296-17A-0101 through 296-17A-7400 establish the intended purpose or scope of each classification. These descriptions will routinely include types of businesses, operations, processes or employments which are either included or excluded from the classification. These references are not to be considered an all inclusive listing unless the classification wording so specifies.

Bone fide officer: Any person empowered in good faith by stockholders or directors, in accordance with articles of incorporation or bylaws, to discharge the duties of such officer.

But not limited to: When this phrase is used in any rule in this manual it is not to be interpreted as an all inclusive list. Such a list is meant to provide examples of operations, employments, processes, equipment or types of businesses which are either included or excluded from the scope of the classification.

Excludes or excluding: When a classification contains a descriptive phrase beginning with "*excludes*" or "*excluding*" such as "*excluding drivers or delivery*," "*excluding second hand appliance stores*," or "*excludes construction operations*," you must report those operations in a separate classification. If a business fails to keep the records required in the auditing recordkeeping section of this manual and we discover this, we will assign all workers hours for which records were not maintained to the highest rated classification applicable to the work which was performed.

Exposure: Worker hours, worker days, licenses, material, payroll or other measurement which we use to determine the extent to which an employer's workers have been exposed to the hazards found within a particular business or industry classification.

Free from direction or control: The contracted individual has the responsibility to deliver a finished product or service without the contracting firm or individual either exercising direct supervision over the work hours or the methods and details of performance or having the right to exercise that authority under the contract.

((~~**Governing classification:** Is the basic classification assigned to a business that produces the largest number of worker hours during a calendar year (*twelve months*). The governing classification rule applies only to situations where a business has been assigned two or more basic classifications and is used for the sole purpose of determining what classification applies to employees and covered owners who support two or more operations. The governing classification rule is not to be used to determine the basic classification of a business.~~))

Includes or including: When a classification contains a descriptive phrase beginning with "*includes*" or "*including*" such as "*including clerical office*," "*including meter readers*," or "*includes new construction or extension of lines*," you must report these operations in that basic classification even though they may be specifically described by some other classification contained in this manual or may be conducted at a separate location.

Industrial insurance: Refer to the definition of "workers' compensation insurance."

N.O.C.: This abbreviation stands for not otherwise classified. Classifications are often worded in this way when there are many variations of the same general type of business and it would be nearly impossible to list all the variations. Before a classification designated with N.O.C. is used, all other related classifications must be reviewed to deter-

mine if the business or industry is specified in another classification.

Example**:** *You operate a retail store that sells greeting cards. In our search to classify your business we come across a classification that covers retail stores N.O.C. Before our underwriter assigns this classification to your business, they would look at other retail store classifications to see if a more precise classification could be found. In our review we note several classifications such as grocery and department stores where greeting cards are sold. None of these classifications, however, specify that they include stores that exclusively sell greeting cards. Classification 6406 "Retail stores, N.O.C.," on the other hand, contains language in its description that states it includes stores that sell items such as greeting cards, table top appliances, tropical fish and birds, and quick print shops. We would assign classification 6406 "Retail stores, N.O.C." to your business.*

Or: Refer to the definition of the word "*and.*"

Premium: The total amount of money owed to the department of labor and industries as calculated by multiplying the assigned classification composite rate by the total units of exposure.

Principal place of business: The physical location of the business from which the contract of service is directed and controlled.

Rate: The amount of premium due for each unit of exposure. All rates are composite rates per worker hour except as otherwise provided for by other rules in this manual.

Related by blood within the third degree: The degree of kinship as computed according to the rules of civil law.

Related by marriage: The union subject to legal recognition under the domestic relations laws of this state.

Risk: All insured operations of one employer within the state of Washington.

Temporary help: The term "temporary help" means the same as temporary service contractors defined in (*Title 19 RCW*) and applies to any person, firm, association or corporation conducting a business which consists of employing individuals directly for the purpose of furnishing such individuals on a part-time or temporary help basis to others.

Underwriter: Refer to the definition of an "account manager."

Within a reasonable period: Establishing an account with state agencies shall be the time prior to the first date on which the individual begins performance of service toward the contract or the date upon which the individual is required to establish an account with a state agency, as otherwise required by law, whichever event shall last occur.

Work day: Any consecutive twenty-four hour period.

Work hour: Refer to the definition of "actual hours worked."

Workers' compensation insurance: The obligation imposed on an employer by the industrial insurance laws (*Title 51 RCW*) of the state of Washington to insure the payment of benefits prescribed by such laws.

AMENDATORY SECTION (Amending WSR 98-18-042, filed 8/28/98, effective 10/1/98)

WAC 296-17-31017 Multiple classifications. (1) **Can I have more than one basic classification assigned to my account?**

Yes, we will assign other classifications to your business when the assignment of another basic classification is required or permitted by the description(s) of the employer's other classification(s).

Whenever you have more than one classification assigned to your account, you must keep detailed records of the actual time spent by each employee in each classification. Use of percentages, averages or estimates is not permitted. If you do not have original time card or time book entries to support your reporting, or you do not provide them on request, all worker hours in question will be assigned to the highest rated classification applicable to your business operations.

Example**:** *You operate a retail book store. We would assign classification 6406 to your retail book store. Assume that as a part of the book store business you have a separate lunch counter and espresso bar in one section of the book store. A review of classification 6406 reveals that lunch counters are to be reported separately in classification 3905. We would assign classification 3905 for your lunch counter and espresso bar operation. This classification (3905) would be in addition to the book store classification (6406). Remember to keep accurate records of the exposure of each employee by classification. If you do not keep accurate records we will assign the exposure of each employee to the highest rated classification applicable to the work they performed for you. A detailed explanation of payroll records you must keep can be found in WAC 296-17-35201.*

(2) **Are there other circumstances when I can have more than one basic classification assigned to my account?**

Yes, under certain circumstances we will assign more than one basic classification to your account. These circumstances include:

• The employer is operating a secondary business which includes operations that we do not consider a normal part of that employer's principal business in Washington, or

• The employer has multiple retail store locations.

In these instances we will assign additional basic classifications *only if all of the following conditions are met*:

• The employer maintains separate payroll records for each business,

• Different employees work in each business,

• Each business is separated by structural partitions if they share a common business location,

• Each business can exist independently of the other, and

• The classification language of the principal business does not prohibit the assignment of the secondary classification.

If all of the above *five* conditions are not met, then the operations of the secondary business will be reported in the highest rated classification that applies to the employer.

(3) **What do you mean by the term "principal business?"**

The principal business is represented by the basic classification assigned to an employer which produces the greatest amount of exposure. The principal business does not include standard exception or general exclusion classifications or operations.

(4) ((~~**If I have more than one basic classification assigned to my business and I have employees who do work in more than one of these classifications, can I divide their hours between these classifications on my quarterly report?**~~

~~Yes, you can divide the work hours of any one employee between two or more basic classifications provided the following conditions are met:~~

~~• The basic classification assigned to your business allows or requires a division of hours; and~~

~~• You keep detailed records of the actual time spent by each employee in each classification. Use of percentages, averages or estimates is not permitted. If you do not have original time card or time book entries to support your reporting, all worker hours in question will be assigned to the highest rated classification applicable to the work being performed.~~

~~***Example:*** *In a previous rule (WAC 296-17-31017) we described a book store business that operated a lunch counter and espresso bar in connection with the book store. In that example, the book store business was assigned classification 6406. A review of classification 6406 revealed that the lunch counter operation was to be reported separately in classification 3905. Assume that you have one employee who, in addition to stocking and selling books, prepares sandwiches for customers on occasion. You must keep accurate time records by day for each employee. This time record must reflect the actual time the employee worked in the book store operation and the actual time worked preparing sandwiches. If you fail to keep these records all work hours in question would be assigned to the highest rated classification which, in this example, is classification 3905.*~~

~~(5)~~)) **If my business is assigned a basic classification and a standard exception classification and I have an employee who works in both classifications, can I divide their exposure (hours) between the two classifications on my quarterly report?**

No, you cannot divide an employee's exposure (*work hours*) between a basic classification and standard exception classification. An explanation of "standard exception classification" is discussed in the next section (*WAC 296-17-31018(2)*). If an employee performs work covered by a basic classification and a standard exception classification, all of their exposure (*hours*) must be reported in the basic classification applicable to your business. You cannot report the exposure (*hours*) of any employee in a standard exception classification if they perform duties covered by a basic classification assigned to your business. Refer to WAC 296-17-31018 for a list and explanation of the "*exception classifications.*"

((~~(6)~~)) (5) **I have more than one standard exception classification assigned to my business. One of my employees works in more than one of the standard exception classifications. Can I divide their exposure (hours) between two or more standard exception classifications on my quarterly report?**

No, you cannot divide an employee's work hours between two standard exception classifications. You must report all exposure (*work hours*) in the highest rated standard exception classification applicable to the work being performed.

NEW SECTION

WAC 296-17-310171 How to report hours for employees supporting multiple business operations. I have more than one basic classification assigned to my business and I have workers who work in more than one of these classifications. Can I divide their hours between these basic classifications on my quarterly report? Yes, you may divide a worker's hours between basic classifications when:

• The classification descriptions allow a division of hours; and

• You maintain records from which the department can determine the hours the worker worked in each classification.

If the classification descriptions do not allow a division of hours, or if you fail to maintain adequate records, you must report the workers' hours in the highest rated risk classification applicable to your business, unless you can establish that the worker did not work in that class.

***Example*:** An employer has the risk classifications and rates shown below:

Risk Class	Description	Rate
0507 05	Roofing work	5.1370
05010 00	Wood frame building construction	2.9554
0513 00	Interior finish carpentry	1.3821

If the employer did not maintain records showing in which classes a worker worked, all of the worker's hours must be reported in class 0507.

If the employer had records that showed the worker only worked in classifications 0510 and 0513, but no further detail, all of the worker's hours must be reported in classification 0510.

If the employer had records that showed the hours the worker worked in classification 0510 and the hours the worker worked in 0513, the employer may report the worker's hours in both classes.

I have employees with duties that support more than one basic classification, but I am unable to distinguish their hours between classifications. In what classification(s) do I report these workers' hours? Sometimes employers are unable to divide a worker's hours between two or more classifications because the same work is incidental to more than one classification. You must report these hours in your governing classification. See **"What is my governing classification?"**

What is incidental work? Incidental work is any work, unless specifically excluded, that supports the operations

described in your classification description(s), but takes place away from where the product or service is produced.

For example:

There is no incidental work:

• At the construction site if the employer is the builder;

• At the assembly facility if the employer is the manufacturer;

• In the emergency room if the employer is the hospital;

• In the kitchen, if the employer is in the restaurant.

Incidental work may include:

• Laundry workers employed by but not working at a hotel;

• Warehouse workers employed by but not working at a retail store;

• A technical support team working for but not at a wholesale distributor;

• Pick-up or delivery work;

• Travel time.

What is my governing classification? Your governing classification is the risk classification that describes what we consider your principal business. It is the basic classification assigned to your business with the largest number of worker hours/units reported in the experience rating period as defined by WAC 296-17-850(2). If you're not sure which classification is your governing classification, you should contact your account manager or refer to the expected loss summary in your current experience rating calculation.

If you're a new business and/or a business not experience rated, a provisional governing classification may be approved by your account manager.

The following exception classifications cannot be considered a governing classification: 4900, 4904, 4911, 5206, 6301, 6302, 6303, 7100, and 7101.

***Example 1*:** You operate both a motel with classification 4905, and a restaurant with classification 3905. You have an off-site laundry facility that cleans the linens for both the restaurant and for the motel.

In the sample 2009 expected loss summary shown below, the governing classification is the restaurant classification 3905 with a total of 108,199 units.

You must report all the laundry worker hours in your governing classification.

Expected Loss Summary

Class	Fiscal Year	Employee Units	Expected Loss Rate	Expected Losses	Primary Ratio	Expected Primary Losses
4905	2005	10,571	.4288	4,532.84	.5790	2,624.51
4905	2006	12,437	.3982	4,952.41	.5790	2,867.45
4905	2007	14,676	.3516	5,160.08	.5790	2,987.69
Class Total		37,684		14,645.33		8,479.65
3905	2005	24,701	.1539	3,801.48	.5980	2,273.29
3905	2006	35,825	.1445	5,176.71	.5980	3,095.67
3905	2007	47,673	.1290	6,149.82	.5980	3,677.59
Class Total		108,199		15,128.01		9,046.55

***Example 2*:** You are a cabinet manufacturer who also offers installation services to your customers. Your manufacturing operations are under classification 2907 and your employees performing the installation service are under classification 0513. Your expected loss summary confirms you report more hours for manufacturing work in classification 2907 than for installation work in classification 0513. You must report all the delivery work in class 2907.

***Example 3*:** You have a floor covering store and also offer installation services to your customers. Your store operations are under classification 6309 and your employees performing the installation service are under classification 0502. Your expected loss summary confirms you report more hours for installation work in classification 0502 than for store operations in classification 6309. You must report all the delivery work in class 0502.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-17-31020	Employee supporting multiple business operations.

WSR 09-24-101
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed December 1, 2009, 5:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-17-040.

Title of Rule and Other Identifying Information: Chapter 246-926 WAC amending to add licensure requirements for radiologist assistants, an advanced level radiologic technologist.

Hearing Location(s): Department of Health, 310 Israel Road S.E., Room 152, Tumwater, WA 98501, on January 22, 2010, at 3:00 p.m.

Date of Intended Adoption: February 12, 2010.

Submit Written Comments to: Susan Gragg, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, web site http://www3.doh.wa.gov/policyreview/, fax (360) 236-2406, by January 20, 2010.

Assistance for Persons with Disabilities: Contact Susan Gragg by January 20, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of health is proposing new rules to implement the new radiologist assistant (RA) profession created by the 2009 SSB 6439, now codified in chapter 18.84 RCW. The proposed rules will establish enforceable standards of practice, education and examination requirements, and licensing fees.

Reasons Supporting Proposal: The proposed rules will ensure the people of this state are protected by setting the scope of practice for the radiologist assistant profession and licensing only appropriately educated and trained individuals.

Statutory Authority for Adoption: RCW 18.84.040.

Statute Being Implemented: Chapter 18.84 RCW.

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

Name of Proponent: Department of health, radiologic technology program, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Susan Gragg, P.O. Box 47852, Olympia, WA 98504-7852, (360) 236-4941.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Susan Gragg, P.O. Box 47852, Olympia, WA 98504-7852, phone (350) [(360)] 236-4941, fax (360) 236-2406, e-mail susan.gragg@doh.wa.gov.

December 1, 2009
Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 06-01-104, filed 12/21/05, effective 1/21/06)

WAC 246-926-020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) ((~~"Unprofessional conduct" as used in this chapter means the conduct described in RCW 18.130.180.~~

~~(2) "Hospital" means any health care institution licensed pursuant to chapter 70.41 RCW.~~

~~(3) "Nursing home" means any health care institution which comes under chapter 18.51 RCW.~~

~~(4) "Department" means the department of health.~~

~~(5) "Radiological technologist" means a person certified under chapter 18.84 RCW.~~

~~(6) "Registered X-ray technician" means a person who is registered with the department, and who applies ionizing radiation at the direction of a licensed practitioner.~~

~~(7) "Direct supervision" means the appropriate licensed practitioner is on the premises and is quickly and easily available.~~

~~(8) "Mentally or physically disabled" means a radiological technologist or X-ray technician who is currently mentally incompetent or mentally ill as determined by a court, or who is unable to practice with reasonable skill and safety to patients by reason of any mental or physical condition and who continues to practice while so impaired.~~)) "ARRT" means the American Registry of Radiologic Technologists.

(2) "Department" means the department of health.

(3) "Direct supervision" means the appropriate licensed practitioner is on the premises and is quickly and easily available.

(a) For a diagnostic, therapeutic, or nuclear medicine radiologic technologist, the appropriate licensed practitioner is a physician licensed under chapter 18.71 or 18.57 RCW.

(b) For a radiologist assistant, the appropriate licensed practitioner is a radiologist.

(4) "General supervision" for a radiologist assistant means the procedure is furnished under the supervising radiologist's overall direction and control. The supervising radiologist must be on-call or be available for consultation.

(5) "Hospital" means any health care institution licensed pursuant to chapter 70.41 RCW.

(6) "Nursing home" means any health care institution which comes under chapter 18.51 RCW.

(7) "Personal supervision" for a radiologist assistant means the supervising radiologist must be in the room during the performance of the procedure.

(8) "Radiological technologist" means a person certified under chapter 18.84 RCW.

(9) "Radiologist" means a licensed physician licensed under chapter 18.71 or 18.57 RCW and certified by the American Board of Radiology or the American Osteopathic Board of Radiology.

(10) "Radiologist assistant" means an advanced-level diagnostic radiologic technologist certified under chapter 18.84 RCW.

(11) "Registered X-ray technician" means a person who is registered with the department, and who applies ionizing radiation at the direction of a licensed practitioner.

(12) "Unprofessional conduct" as used in this chapter means the conduct described in RCW 18.130.180.

AMENDATORY SECTION (Amending WSR 06-01-104, filed 12/21/05, effective 1/21/06)

WAC 246-926-140 Approved schools for diagnostic, therapeutic, or nuclear medicine radiologic technologists. Approved schools and standards of instruction for diagnostic radiologic technologist, therapeutic radiologic technologist, and nuclear medicine technologist are those recognized as radiography, radiation therapy technology, and nuclear medicine technology educational programs that have obtained accreditation from the Joint Review Committee on Education in Radiologic Technology, the Joint Review Committee for

Educational Programs in Nuclear Medicine Technology or the former American Medical Association Committee on Allied Health Education and Accreditation.

AMENDATORY SECTION (Amending Order 237, filed 2/7/92, effective 2/19/92)

WAC 246-926-150 Certification designation for diagnostic, therapeutic, or nuclear medicine radiologic technologists. A certificate shall be designated in a particular field of radiologic technology by:

(1) The educational program completed; diagnostic radiologic technologist - radiography program; therapeutic radiologic technologist - radiation therapy technology program; and nuclear medicine technologist - nuclear medicine technology program; or

(2) By meeting the alternative training requirements established in WAC 246-926-100((,)) and 246-926-110, 246-926-120, or 246-926-130.

AMENDATORY SECTION (Amending WSR 06-01-104, filed 12/21/05, effective 1/21/06)

WAC 246-926-180 Parenteral procedures for diagnostic or therapeutic radiologic technologists. (1) A certified diagnostic or therapeutic radiologic technologist may administer diagnostic and therapeutic agents under the direct supervision of a physician licensed under chapter 18.71 or 18.57 RCW. Diagnostic and therapeutic agents may be administered via intravenous, intramuscular, or subcutaneous injection. In addition to direct supervision, before the radiologic technologist may administer diagnostic and therapeutic agents, the following guidelines must be met:

(a) The radiologic technologist has had the prerequisite training and thorough knowledge of the particular procedure to be performed;

(b) Appropriate facilities are available for coping with any complication of the procedure as well as for emergency treatment of severe reactions to the diagnostic or therapeutic agent itself, including readily available appropriate resuscitative drugs, equipment, and personnel; and

(c) After parenteral administration of a diagnostic or therapeutic agent, competent personnel and emergency facilities must be available to the patient for at least thirty minutes in case of a delayed reaction.

(2) A certified radiologic technologist may perform venipuncture under the direct supervision of a physician licensed under chapter 18.71 or 18.57 RCW.

AMENDATORY SECTION (Amending WSR 06-01-104, filed 12/21/05, effective 1/21/06)

WAC 246-926-190 State examination/examination waiver/examination application deadline for diagnostic, therapeutic, or nuclear medicine radiologic technologists. (1) The ((~~American Registry of Radiologic Technologists~~)) ARRT certification examinations for radiography, radiation therapy technology, and nuclear medicine technology are the state examinations for certification as a radiologic technologist.

(2) The examination shall be conducted in accordance with the ((~~American Registry of Radiologic Technologists~~)) ARRT security measures and contract.

(3) Applicants taking the state examination must submit the application, supporting documents, and fees to the department of health for approval prior to being scheduled to take the examination.

(4) Examination candidates shall be advised of the results of their examination in writing by the department of health.

(5) The examination candidate must have a minimum scaled score of seventy-five to pass the examination.

NEW SECTION

WAC 246-926-300 Radiologist assistant scope of practice. (1) A radiologist assistant may perform advanced diagnostic imaging procedures under the direction of a supervising radiologist. Those procedures include, but are not limited to:

(a) Enteral and parenteral procedures;

(b) Injecting diagnostic agents to sites other than intravenous;

(c) Diagnostic aspirations and localizations; and

(d) Assisting radiologists with other invasive procedures.

(2) The tasks a radiologist assistant may perform include those identified in the *ARRT Registered Radiologist Assistant Role Delineation* published January 2005.

(3) Initial findings and observations made by a radiologist assistant communicated solely to the supervising radiologist do not constitute diagnoses or interpretations.

(4) At the direction of a physician, a radiologist assistant may administer imaging agents and prescribed medications; however, nothing in this chapter allows a radiologist assistant to prescribe medications.

NEW SECTION

WAC 246-926-310 What are the requirements to be certified as a radiologist assistant? (1) Individuals wanting to be certified as a radiologist assistant must:

(a) Graduate from an educational program recognized by the ARRT;

(b) Obtain a passing score on the national ARRT registered radiologist assistant examination; and

(c) Submit the application, supporting documents, and fees to the department of health.

(2) An individual certified as a radiologist practitioner assistant through the certification board of radiology practitioner assistants who takes and passes the national ARRT registered radiologist assistant examination by December 31, 2011, shall be considered to have met the education and examination requirements for certification as a radiologist assistant.

NEW SECTION

WAC 246-926-320 Radiologist assistant—Supervisory plans. (1) A radiologist assistant must submit to the

department a supervisory plan on a form approved by the department.

(a) The plan must be approved before the radiologist assistant can practice.

(b) The plan must be signed by both the radiologist assistant and a radiologist licensed in this state.

(c) A radiologist assistant may assist a radiologist other than his or her supervising radiologist so long as it is done with the knowledge and agreement of the supervising radiologist, and is reflected in an approved supervisory plan.

(2) A radiologist assistant can have multiple supervisory plans provided each one is approved by the department.

(3) A radiologist assistant does not have to be employed by his or her supervising radiologist.

(4) Changes to supervisory plans.

(a) The radiologist assistant must submit a new supervisory plan to change any part of the supervisory plan. The changes are not effective until the new plan is approved by the department.

(b) If the supervisory relationship ends, the radiologist assistant must immediately cease practice under that plan and must notify the department in writing within seven calendar days.

AMENDATORY SECTION (Amending WSR 08-16-008, filed 7/24/08, effective 7/25/08)

WAC 246-926-990 Radiologist assistants; diagnostic, therapeutic, and nuclear medicine radiologic technologists((,)); X-ray technicians—Certification and registration fees and renewal cycle. (1) Certificates and registrations must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. ((~~The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.~~))

Title of Fee	Fee
(2) The following nonrefundable fees will be charged for certified diagnostic, therapeutic, and nuclear medicine radiologic technologists:	
Application	$150.00
Renewal	70.00
Late renewal penalty	50.00
Expired certificate reissuance	80.00
Certification of registration or certificate	15.00
Duplicate registration or certificate	15.00
(3) The following nonrefundable fees will be charged for registered X-ray technicians:	
Application	75.00
Renewal	75.00
Late renewal penalty	50.00
Expired reissuance	50.00
Certification of registration or certificate	15.00
Duplicate registration or certificate	15.00
(4) The following nonrefundable fees will be charged for certified radiologist assistants:	
Application	150.00
Renewal	150.00
Late renewal penalty	75.00
Expired reissuance	75.00
Certification of registration or certificate	15.00
Duplicate registration or certificate	15.00

WSR 09-24-103
PROPOSED RULES
OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Docket Number R 2009-15—Filed December 2, 2009, 7:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-17-125.

Title of Rule and Other Identifying Information: Guaranteed asset protection waiver registration and oversight program.

Hearing Location(s): Training Room 120, 5000 Capitol Boulevard, Tumwater, WA 98503, on January 5, 2010, at 10:00 a.m.

Date of Intended Adoption: January 6, 2010.

Submit Written Comments to: Meg Jones, P.O. Box 40258, Olympia, WA 98502, e-mail megj@oic.wa.gov, fax (360) 586-3109, by January 4, 2010.

Assistance for Persons with Disabilities: Contact Lorrie Villaflores by January 4, 2010, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal explains the commissioner's application procedures and requirements, and describes a registrant's obligations related to advertising, keeping consumers and the commissioner advised of changes in contact information, and record retention requirements. The commissioner anticipates that the proposed rules will:

• Implement chapter 48.160 RCW, which was passed by the 2009 Washington legislature; and

• Clarify what registrants must do to legally operate in Washington when selling or administering guaranteed asset protection waiver agreements.

Reasons Supporting Proposal: The statute enacted by the 2009 legislature establishing the guaranteed asset protection waiver registration program assigned specific responsibilities to the commissioner. To carry out these responsibilities, the commissioner must explain to potential registrants

the steps to follow, and the interpretation of some undefined aspects of the legislation.

Statutory Authority for Adoption: RCW 48.02.060, 48.160.070.

Statute Being Implemented: Chapter 48.160 RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Meg L. Jones, 5000 Capitol Boulevard, Olympia, WA, (360) 725-7170; Implementation: Gayle Pasero, 5000 Capitol Boulevard, Olympia, WA, (360) 725-7210; and Enforcement: Carol Sureau, 5000 Capitol Boulevard, Olympia, WA, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The businesses that must register do not qualify as small businesses under chapter 19.85 RCW. For those that are small businesses, the rules impose a minor, one-time only cost.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Meg Jones, P.O. Box 40258, Olympia, WA 98502, e-mail megj@oic.wa.gov, fax (360) 586-3109, phone (360) 725-7170.

December 2, 2009
Mike Kreidler
Insurance Commissioner

Chapter 284-160 WAC

GUARANTEED ASSET PROTECTION WAIVER

RULES FOR THE GUARANTEED ASSET PROTECTION WAIVER PROGRAM

NEW SECTION

WAC 284-160-010 Purpose of this chapter. (1) The purpose of this chapter is to adopt processes and procedures for creditors to use when they register with the commissioner under chapter 48.160 RCW, and otherwise implement the chapter.

(2) This chapter is effective on January 1, 2010. All guaranteed asset protection waiver creditors must comply with this chapter on or after that date. Applicants registered before the effective date of this chapter do not need to refile their application to be in compliance.

NEW SECTION

WAC 284-160-020 Definitions. For purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Complete filing" means the package of information containing the registration application, other supporting documents requested by the commissioner, and fees.

(2) "Creditor" means the same as in RCW 48.160.010(3), and includes any person acting as an obligor for a guaranteed asset protection waiver.

(3) "Days" means calendar days including Saturday and Sunday and holidays unless otherwise specified.

(4) "File" means a record in any retrievable format, and unless otherwise specified, includes paper and electronic formats.

(5) "Home state" means the District of Columbia and any state or territory of the United States or province of Canada in which a creditor maintains its principal place of residence or principal place of business and is licensed to do business.

(6) "Registrant" means a person registering with the commissioner under the guaranteed asset protection waiver program as required by chapter 48.160 RCW.

(7) "Written" or "in writing" means any retrievable method of recording an agreement or document, and unless otherwise specified, includes paper and electronic formats.

NEW SECTION

WAC 284-160-030 Persons required to register. Any person offering or selling guaranteed asset protection waivers to residents of the state of Washington or borrowers in the state of Washington, or acting as an obligor for guaranteed asset protection waivers sold to residents of this state, must register with the commissioner as required by RCW 48.160.020 unless:

(1) The person is exempt under RCW 48.160.001(2);

(2) The person is a retail seller of motor vehicles assigning:

(a) More than eighty-five percent of guaranteed asset protection waiver agreements within thirty days of such agreements' effective date; and

(b) One hundred percent of guaranteed protection waiver agreements within forty-five days of each agreement's effective date; or

(3) The person is an insurer authorized to transact insurance business in Washington state.

NEW SECTION

WAC 284-160-050 Use of legal name and address. (1) Every guaranteed asset protection waiver contract issued to a resident of Washington state or in Washington state must conspicuously disclose the legal name, home office address, and local contact address of the creditor.

(2) Upon any assignment or transfer of the waiver, as allowed under RCW 48.160.030, the disclosure provided to the consumer must conspicuously include:

(a) The legal name and home office address of both the person or entity transferring the obligation;

(b) The legal name and home office address of the assignee for the guaranteed asset protection waiver; and

(c) The local address, telephone and e-mail contact information for the assignee for the guaranteed asset protection waiver.

(3) The contract must not use a trade name, a group designation, name of a parent company, name of a particular division, service mark, slogan, symbol, or other device or reference without also disclosing the legal name of the creditor, or in such a manner that it would have the capacity or tendency to mislead or deceive as to the true identity of the creditor or create the impression that a company other than the

creditor would have any responsibility for the financial obligation under the contract.

(4) No contract, solicitation or marketing document or disclosure notice to a consumer may use any combination of words, symbols or physical materials which by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective consumers into believing that the program or contract is in some manner connected with such government program or agency. Creditors may disclose that they are registered with the commissioner.

(5) The commissioner will use the last mailing address provided by the registrant to the commissioner as the address of record. Registrants must advise the commissioner of any change of address within thirty days after the end of the month in which the change of address occurs. This includes any change in the registrant's mailing, business or e-mail address. Failure to advise the commissioner of a change of address may subject a registrant to disciplinary action under RCW 48.160.070.

(6) When communicating with the commissioner's office for any reason, applicants and registrants must use their legal name.

NEW SECTION

WAC 284-160-060 Guaranteed asset protection waiver program registration requirements. (1) An applicant for registration to issue guaranteed asset protection waivers must file a completed application as required by the commissioner on the application form and its accompanying instructions. The application form and instructions for completing the form are available on the commissioner's web site at www.insurance.wa.gov. The application form and any required documents must be completed and submitted to the commissioner electronically, unless the applicant receives prior approval to file a paper copy of the application and documents.

(2) In order to transact the business of issuing and administering guaranteed asset protection waiver contracts in the state of Washington, the commissioner must have approved the registration application packets filed by an applicant for registration. Applicants must submit packets that comply with chapter 48.160 RCW and with these rules.

NEW SECTION

WAC 284-160-070 Required notices and disclosures. When a registrant under this chapter provides notice to a borrower of the sale, transfer or any type of assignment of the waiver obligation, they must comply with the requirements in RCW 48.160.030.

(1) The selling, transferring or assigning creditor must mail the notice to the borrower's last known address using U.S. mail. The selling, transferring or assigning creditor may also provide electronic notice to the borrower, but such notice does not satisfy the notice requirement under the statute.

(2) The notice of transfer, assignment or sale of the waiver obligation must contain the legal name and official business address, and if different, the local business address of the new person or entity responsible to the borrower for waiver benefits. If that person or entity is different from the contact person or entity to apply to for benefits, then the notice must also contain the legal name, official business and local business addresses for the contact person.

NEW SECTION

WAC 284-160-080 Payment of refund on canceled guaranteed asset protection contracts. When a borrower cancels a guaranteed asset protection contract and a refund is due that is payable to the borrower, the current obligor on the guaranteed asset protection contract must refund the amount due, and must not require the borrower to request the refund from the original or a prior obligor on the contract.

NEW SECTION

WAC 284-160-090 Registrant documentation. For each guaranteed asset protection contract entered into, registrants must retain records, preferably in electronic format, of all transactions associated with the contract, including correspondence from the borrower, notices sent to the borrower, and agreements or contracts associated with the sale or transfer of the guaranteed asset protection obligation. Creditors must retain the records for the duration of the waiver agreement and for an additional two years after its termination date. Termination occurs when a contract expires, is canceled by either party, or waiver under the agreement on behalf of a borrower occurs.

NEW SECTION

WAC 284-160-100 Use of the term "insurance." A guaranteed asset protection program must not use the term "insurance" to describe the program in its advertisements, marketing efforts, promotions, marketing materials, guaranteed asset protection program documents, brochures, or contracts, except when referring to the borrower's automobile insurance policy, or making the statement that the waiver is not insurance as required in RCW 48.160.050(10).

WSR 09-24-106
PROPOSED RULES
SECRETARY OF STATE
(Elections Division)

[Filed December 2, 2009, 9:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-19-062.

Title of Rule and Other Identifying Information: Election related procedures, including upgrades, clarification and improvements to candidate filing, vote by mail, recounts voting systems, and the state voters' pamphlet. Also includes an updated voter registration form.

Hearing Location(s): Office of the Secretary of State, Elections Division, 520 Union Avenue S.E., Olympia, WA, on January 8, 2010, at 2:30 p.m.

Date of Intended Adoption: January 11, 2010.

Submit Written Comments to: Joanie Deutsch, P.O. Box 40220, Olympia, WA 98504-0220, e-mail joanie.deutsch@sos.wa.gov, fax (360) 586-5629, by January 8, 2010.

Assistance for Persons with Disabilities: Contact Carolyn Berger, by January 8, 2010, TTY (800) 422-8683 or (360) 902-4182.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules are regarding a number of issues needed for preparation and implementation of upcoming elections. A new section clarifying procedures in the event of an emergency. Updating and amending candidate filing, vote by mail, recount, voting systems and the state voters' pamphlet. Inserting a new voter registration form.

Statutory Authority for Adoption: RCW 29A.04.611.

Statute Being Implemented: RCW 29A.20.021, 29A.24.031, 29A.24.040, 29A.46.260, 29A.48.020, 29A.48.050, 29A.64.011, 29A.08.135, 29A.08.605, 29A.08.010, 29A.12.030, 29A.12.050, 29A.12.080, 29A.32.050, and 29A.32.060.

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

Name of Proponent: Office of the secretary of state, elections division, governmental.

Name of Agency Personnel Responsible for Drafting: Joanie Deutsch, P.O. Box 40220, Olympia, WA 98504-0220, (360) 902-4182; Implementation and Enforcement: Katie Blinn, P.O. Box 40220, Olympia, WA 98504-0220, (360) 902-4168.

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

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

December 2, 2009
Steve Excell
Assistant Secretary of State

NEW SECTION

WAC 434-208-120 Emergencies. As chief election officer, the secretary of state shall make reasonable rules consistent with federal and state election laws to effectuate any provision of Title 29A RCW and to facilitate the execution of its provisions in an orderly, timely, and uniform manner relating to any federal, state, county, city, town, and district election. In the event of a natural or manmade disaster or catastrophe, the secretary of state will consult with county auditors of impacted counties to determine the impact of the disaster or catastrophe on the administration of the election, and how best to mitigate that impact. The secretary of state may adopt emergency rules and procedures necessary to facilitate administration of the election in the impacted counties. The emergency rules and procedures must be limited in duration and scope to that necessary to administer the election. A natural or manmade disaster or catastrophe may include, but is not limited to, fire, flood, mudslide, landslide, tsunami, extreme snow or wind, pandemic, technological failure, or broad scale violence or terrorism.

NEW SECTION

WAC 434-215-004 Filing information—Questionnaire—Compiling and dissemination. (1) Prior to March 1, the county auditor shall send a questionnaire to the administrative authority of each local jurisdiction for which the auditor is the candidate filing officer subject to the provisions of RCW 29A.04.321 and 29A.04.330. The questionnaire must be sent in the year the local jurisdiction is scheduled to elect officers. The purpose of the questionnaire shall be to confirm information which the auditor must use to properly conduct candidate filings for each office. The questionnaire should request, at a minimum, confirmation of offices to be filled at the general election that year, the name of the incumbent, and the annual salary for the position at the time of the filing period. Responses should be received prior to April 1 of that year so that the filing information can be compiled and disseminated to the public at least two weeks prior to the candidate filing period.

(2) If a jurisdiction fails to notify the county auditor that an office is to be filled at the general election and therefore the office is not included in the regular candidate filing period, the county auditor shall conduct a special three day filing period for that office under the time frames established in RCW 29A.24.171 through 29A.24.191.

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

WAC 434-215-012 Declaration of candidacy((~~—Offices subject to a primary~~)). Declarations of candidacy filed either in person or by mail shall be in substantially the following form:

((~~STRICKEN GRAPHIC~~

FOR OFFICE USE ONLY

Date _____ Fee Paid $_____ Filing No. _____ Office Code _____
☐Check ☐Debit/Credit
☐Cash ☐Filing Fee Petition Voter Registration # _____ Clerk Initials _____

DECLARATION OF CANDIDACY

1. I, _____ am a registered voter residing at:
(PRINT NAME AS YOU ARE REGISTERED TO VOTE)
2. _____
(STREET ADDRESS OR RURAL ROUTE) (CITY) (COUNTY) (ZIP)

and, at the time of filing this declaration, I am legally qualified to assume office if elected.

3. My campaign contact information is:

_____
(MAILING ADDRESS) (CITY) (STATE) (ZIP)

_____
(TELEPHONE NUMBER) (EMAIL ADDRESS)

4. I declare myself as a candidate for the office of:

_____
(NAME OF OFFICE including DISTRICT or POSITION NUMBER)

_____
(CONGRESSIONAL OR LEGISLATIVE DISTRICT, COUNTY, CITY, OR OTHER JURISDICTION)

5. Filing Fee (check one):
☐ There is no filing fee because the office has no fixed annual salary;
☐ I am submitting a filing fee of $10 because the fixed annual salary of the office is $1,000 or less;
☐ I am submitting a filing fee of $_____, an amount equal to 1% of the annual salary; or
☐ I am without sufficient assets or income to pay the filing fee and am submitting a filing fee petition in lieu of this fee.

6. Please print my name on the ballot exactly as follows: _____
(PLEASE PRINT)

7. If the office is partisan, your party preference, if any, will be printed on the ballot exactly as follows:

☐ (Prefers ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐ Party) or
☐ (States No Party Preference)

If you fail to check a box or provide a party name, "(States No Party Preference)" will be printed.

I declare that this information is, to the best of my knowledge, true. I also swear, or affirm, that I will support the Constitution and laws of the United States and the Constitution and laws of the State of Washington.

Note: Your signature must be personally attested to by a notary public or by the officer with whom the declaration is filed.

8. **Sign Here X** _____
(SIGNATURE OF CANDIDATE AS REGISTERED TO VOTE)

STATE OF WASHINGTON, COUNTY OF _____

Signed or Attested before me on _____
(DATE)

by _____
(CANDIDATE)

(SEAL OR STAMP)

_____
(SIGNATURE OF NOTARY)

_____
(TITLE)

MY APPOINTMENT EXPIRES: _____

Candidate: Return all copies to your Elections Dept.
Distribution: White—County; Yellow—PDC; Pink—Candidate

~~STRICKEN GRAPHIC~~))

Washington State Declaration of Candidacy

office

jurisdiction and office name | position number

personal information

as registered to vote

first name | middle | last

date of birth (mm / dd / yyyy) | phone number

residential address | city / zip

ballot information

exact name I would like printed on the ballot

political party I prefer, if filing for partisan office:

○ (Prefers ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐ Party)

○ (States No Party Preference)

campaign information

campaign address (if different from residential address) | city / zip

email address | phone number

website

filing fee

○ The office has no fixed annual salary: no filing fee

○ The office has a fixed annual salary of $1,000 or less: $10

○ The office has a fixed annual salary over $1,000: 1% of salary

○ I am submitting a filing fee petition instead of a filing fee

for office use only

oath

I declare that the above information is true, that I am a registered voter residing at the address listed above, that I am a candidate for the office listed above, and that, at the time of filing this declaration, I am legally qualified to assume office.

I swear, or affirm, that I will support the Constitution and laws of the United States, and the Constitution and laws of the State of Washington.

sign here [ ] date here [ ]

The filing officer must provide a paper or electronic copy of the filed declaration of candidacy to the candidate and to the public disclosure commission.

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

WAC 434-215-025 Filing fee petitions. (1) When a candidate submits a filing fee petition in lieu of his or her filing fee, as authorized by RCW 29A.24.091, voters eligible to vote on the office in the general election are eligible to sign the candidate's filing fee petition.

(2) The filing fee petition described in RCW 29A.24.-101(3) does not apply. The filing fee petition must be in substantially the following form:

The warning prescribed by RCW 29A.72.140; followed by:

"We, the undersigned registered voters of [the jurisdiction of the office], hereby petition that [candidate's] name be printed on the ballot for the office of [office for which candidate is filing a declaration of candidacy]."

(3) A candidate submitting a filing fee petition in the place of a filing fee may not file the declaration of candidacy electronically.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-215-070 Electronic filing—((~~Standards~~)) Requirements. An electronic system to file declarations of candidacy shall be an online system accessible to candidates on the world wide web that ((~~records the information specified in RCW 29A.24.031 (1) through (4) and WAC 434-215-090. At a minimum, the system shall perform the following functions~~)) is capable of:

(1) ((~~Verify~~)) Recording each candidate's name, date of birth, voter registration address, mailing address, phone number, e-mail address, and political party preference for partisan offices, and the office and position number for which each candidate is filing;

(2) Verifying the candidate's voter registration status, and that the voter registration address is within the jurisdiction of the office for which the candidate is filing;

(~~(2) Check the candidate's name against the name returned by the electronic transfer of funds process;~~

~~(3) Allow the filing officer to verify filings before filing information is made public;~~

~~(4) Accept~~)) (3) Accepting electronic transfer of funds for the payment of filing fees((~~, except that a candidate submitting a filing fee petition in the place of a filing fee may not file the declaration of candidacy electronically~~));

(((~~5) Inform~~)) (4) Informing, and require ((~~the~~)) each candidate to acknowledge, that submission of the form constitutes agreement that the information provided with the filing is true, that he or she will support the Constitution and laws of the United States and the state of Washington, and that he or she agrees to electronic payment of ((~~the~~)) any filing fees; and

(((~~6) Inform the candidate that knowingly providing false information on a declaration of candidacy is a class C felony as provided by RCW 29A.84.311.~~)) (5) Allowing the filing officer to verify each filing before it is made public.

NEW SECTION

WAC 434-215-170 Filing qualifications. State law requires a candidate, at the time of filing the declaration of candidacy, to possess all qualifications of the office. A candidate is not relieved of this requirement simply because he or she expects to possess the qualifications at a later date, such as prior to the beginning of the term.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-215-090	Electronic filing—Required information.

AMENDATORY SECTION (Amending WSR 09-03-110, filed 1/21/09, effective 2/21/09)

WAC 434-250-040 Instructions to voters. (1) Instructions that accompany an absentee ballot must include:

(a) How to cancel a vote by drawing a line through the text of the candidate's name or ballot measure response;

(b) Notice that, unless specifically allowed by law, more than one vote for an office or ballot measure will be an overvote and no votes for that office or ballot measure will be counted;

(c) ((~~Notice that, if a voter has signed or otherwise identified himself or herself on a ballot, the ballot will not be counted;~~

~~(d)~~)) An explanation of how to complete and sign the affidavit on the return envelope;

(((~~e~~))) (d) An explanation of how to make a mark, witnessed by two other people, if unable to sign the affidavit;

(((~~f~~))) (e) An explanation of how to place the ballot in the security envelope and place the security envelope in the return envelope;

(((~~g~~))) (f) An explanation of how to obtain a replacement ballot if the original ballot is destroyed, spoiled, or lost;

(((~~h~~))) (g) Notice that postage is required, if applicable;

(((~~i~~))) (h) Notice that, in order for the ballot to be counted, it must be either postmarked or deposited at a designated deposit site no later than election day;

(((~~j~~))) (i) An explanation of how to learn about the locations, hours, and services of voting centers and ballot deposit sites, including the availability of accessible voting equipment;

(((~~k~~))) (j) For a primary election that includes a partisan office, a notice on a separate insert ((~~printed on colored paper~~)) explaining:

"Washington has a new primary. You do not have to pick a party. In each race, you may vote for any candidate listed. The two candidates who receive the most votes in the August primary will advance to the November general election.

Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

((~~(l)~~)) (k)(i) For a general election that includes a partisan office, the following explanation:

"Washington has a new election system. In each race for partisan office, the two candidates who receive the most votes in the August primary advance to the November general election.

Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(ii) In a year that president and vice-president appear on the general election ballot, the following must be added to the statement required by ((~~(l)~~)) (k)(i) of this subsection:

"The election for president and vice-president is different. Candidates for president and vice-president are the official nominees of their political party."

((~~(m)~~)) (l) Any other information the county auditor deems necessary.

(2) Instructions that accompany a special absentee ballot must also include:

(a) A listing of all offices and measures that will appear upon the ballot, together with a listing of all persons who have filed for office or who have indicated their intention to file for office; and

(b) Notice that the voter may request and subsequently vote a regular absentee ballot, and that if the regular absentee ballot is received by the county auditor prior to certification of the election, it will be tabulated and the special absentee ballot will be voided.

AMENDATORY SECTION (Amending WSR 09-03-110, filed 1/21/09, effective 2/21/09)

WAC 434-250-050 Envelopes. Absentee ballots must be accompanied by the following:

(1) A security envelope, which may not identify the voter and must have a hole punched in a manner that will reveal whether a ballot is inside;

(2) A return envelope, which must be addressed to the county auditor and have a hole punched in a manner that will reveal whether the security envelope is inside. The return envelope must display the official election materials notice required by the United States Postal Service, the words "POSTAGE REQUIRED" or "POSTAGE PAID" in the upper right-hand corner, and the following oath with a place for the voter to sign, date, and write his or her daytime phone number:

I do solemnly swear or affirm under penalty of perjury that I am:

((~~I am~~)) A citizen of the United States;

((~~I am~~)) A legal resident of the state of Washington;

((~~I will be~~)) At least 18 years old on ((~~or before~~)) election day;

((~~I am~~)) Not ((~~presently denied my voting rights as a result of being convicted of a felony~~)) ineligible to vote due to a felony conviction;

((~~I have~~)) Not ((~~been judicially declared mentally incompetent~~)) disqualified from voting due to a court order; and

((~~I have not already voted~~)) Voting only once in this election((~~; and~~

~~I understand it is illegal to cast a ballot or sign a ballot envelope on behalf of another voter~~)).

It is illegal to forge a signature or cast another person's ballot. Attempting to vote when not qualified, attempting to vote more than once, or falsely signing this oath is a felony punishable by a maximum imprisonment of five years, a maximum fine of $10,000, or both.

Signature of voter _____ Date_____

The return envelope must include space for witnesses to sign.

The return envelope must conform to postal department regulations.

County auditors may use existing stock of envelopes until June 30, 2010.

AMENDATORY SECTION (Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

WAC 434-250-100 Ballot deposit sites and voting centers. (1) If a location only receives ballots and does not issue any ballots, it is considered a ballot deposit site. Ballot deposit sites may be staffed or unstaffed.

(a) If a ballot deposit site is staffed, it must be staffed by at least two people. Deposit site staff may be employees of the county auditor's office or persons appointed by the auditor. If a deposit site is staffed by two or more persons appointed by the county auditor, the appointees shall be representatives of different major political parties whenever possible. Deposit site staff shall subscribe to an oath regarding the discharge of their duties. Staffed deposit sites open on election day must be open from 7:00 a.m. until 8:00 p.m. Staffed deposit sites may be open prior to the election according to dates and times established by the county auditor. Staffed deposit sites must have a secure ballot box that is constructed in a manner to allow return envelopes, once deposited, to only be removed by the county auditor or by the deposit site staff. If a ballot envelope is returned after 8:00 p.m. on election day, deposit site staff must note the time and place of deposit on the ballot envelope, and such ballots must be referred to the canvassing board.

(b) Unstaffed ballot deposit sites consist of secured ballot boxes that allow return envelopes, once deposited, to only be removed by authorized staff. Ballot boxes located outdoors must be constructed of durable material able to withstand inclement weather, and be sufficiently secured to the ground or another structure to prevent their removal. From eighteen days prior to election day until 8:00 p.m. on election day, two people who are either employees of or appointed by the county auditor must empty each ballot box with sufficient frequency to prevent damage and unauthorized access to the ballots.

(2) If a location offers replacement ballots, provisional ballots, or voting on a direct recording electronic device, it is considered a voting center. The requirements for staffed ballot deposit sites apply to voting centers. Each voting center must:

(a) Be posted according to standard public notice procedures;

(b) Be an accessible location consistent with chapters 29A.16 RCW and 434-257 WAC;

(c) Be marked with signage outside the building indicating the location as a place for voting;

(d) Offer disability access voting in a location or manner that provides for voter privacy;

(e) Offer provisional ballots, which may be sample ballots that meet provisional ballot requirements;

(f) Record the name, signature and other relevant information for each voter who votes on a direct recording electronic voting device in such a manner that the ballot cannot be traced back to the voter;

(g) Request identification, consistent with RCW 29A.44.205 and WAC 434-253-024, from each voter voting on a direct recording electronic voting device or voting a provisional ballot;

(h) Issue a provisional ballot to each voter who is unable to provide identification in accordance with (g) of this subsection;

(i) Have electronic or telephonic access to the voter registration system consistent with WAC 434-250-095 if voters are voting on a direct recording electronic voting device;

(j) Provide either a voters' pamphlet or sample ballots;

(k) Provide voter registration forms;

(l) Display a HAVA voter information poster;

(m) Display the date of that election;

(n) Provide instructions on how to properly mark the ballot;

(o) Provide election materials in alternative languages if required by the Voting Rights Act; and

(p) Use an accountability form to account for all ballots issued.

(3) Ballot boxes must be ((~~locked and sealed~~)) secured at all times, with seal logs that document each time the box is opened and by whom. Ballots must be placed into ((~~sealed~~)) secured transport carriers and returned to the county auditor's office or another designated location. At exactly 8:00 p.m. on election day, all ballot boxes must be emptied or sealed to prevent the deposit of additional ballots.

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

WAC 434-250-310 Notice of elections by mail. (1) A jurisdiction requesting that a special election be conducted entirely by mail, as authorized by RCW 29A.48.020, may include the request in the resolution calling for the special election, or may make the request by a separate resolution. Not less than ((~~forty-seven~~)) forty days prior to the date for which a mail ballot special election has been requested, the county auditor shall inform the requesting jurisdiction, in writing, whether the request is granted and, if not granted, the reasons why.

(2) In the event that a primary is to be conducted by mail, the auditor must notify the jurisdiction involved not later than seventy-nine days before the primary date.

(3) A county auditor conducting an election by mail, including a county auditor that conducts every election by mail, must state:

(a) The election will be conducted by mail;

(b) ((~~The precincts that are voting by mail if it is only specific precincts rather than the entire county;~~

~~(c)~~)) The location where voters may obtain replacement ballots;

(((~~(d)~~))) (c) Whether return postage is required;

(((~~(e)~~))) (d) The dates, times and locations of designated deposit sites and voting centers; and

(((~~(f)~~))) (e) If the county auditor does not conduct all elections by mail, the fact that regular polling places will not be open.

AMENDATORY SECTION (Amending WSR 07-12-032, filed 5/30/07, effective 6/30/07)

WAC 434-264-010 Recount((~~—Definition~~)). A recount is the process for retabulating the votes for a specific office or issue on all valid ballots, including write-ins, cast in a primary or election. If a ballot has been duplicated in accordance with WAC 434-261-005, the duplicate shall be counted.

NEW SECTION

WAC 434-324-026 Voter registration form.

instructions

You must be a United States citizen to register to vote.

how to register to vote or update a registration

Please print all information clearly using black or blue pen.

Mail or deliver this form to your County Elections Office. Addresses are on the next page.

for more information

online www.vote.wa.gov

call 1-800-448-4881

visit your County Elections Office

This registration will be in effect for the next election if postmarked or delivered no later than the Monday four weeks before Election Day.

If you miss this deadline, please contact your County Elections Office.

You will receive your ballot by mail. Contact your County Elections Office for in-person voting options.

If you knowingly provide false information on this voter registration form or knowingly make a false declaration about your qualifications for voter registration you will have committed a class C felony that is punishable by imprisonment for up to 5 years, a fine of up to $10,000, or both.

Your name, address, gender and date of birth are public information.

*optional information

09/2009

Washington State Voter Registration Form

register online at www.vote.wa.gov

qualifications

if you mark no to either of these questions, do not complete this form

I am a citizen of the United States of America. ○ yes ○ no

I will be at least 18 years old by the next election. ○ yes ○ no

personal information

last name | first name | middle

date of birth (mm / dd / yyyy) | phone number* | ○ male ○ female

residential address (in Washington)

city | zip

mailing address (if different than residential address)

city | state / zip

email address*

○ I am in the Armed Forces (includes National Guard and Reserves)

○ I am a U.S. citizen living outside the U.S.

Washington driver's license / state ID #

if you do not have a Washington driver's license or state ID card, provide the last four digits of your Social Security number

x x x - x x - | | | | |

oath

I declare that the facts on this voter registration form are true. I am a citizen of the United States, I am not presently denied the right to vote as a result of being convicted of a felony, I will have lived in Washington at this address for thirty days immediately before the next election at which I vote, and I will be at least 18 years old when I vote.

sign here | date here

former registration

if you are already registered and are changing your name or address, fill out this section (this information will be used to update your registration)

former last name | first name | middle

former residential address | city | state / zip

NEW SECTION

WAC 434-324-036 County-to-county transfers. Pursuant to RCW 29A.08.420, a registered voter may transfer his or her registration to another county by submitting a new voter registration application. Prior to sending a verification notice, the county auditor shall use the voter registration data base to verify whether the registration is a transfer. The minimum information necessary to complete the transfer to the new county is name, residential address and a signature. The new county may request additional information to confirm that the registration application is a transfer.

AMENDATORY SECTION (Amending WSR 09-18-098, filed 9/1/09, effective 10/2/09)

WAC 434-324-106 Felony ((~~conviction—Secretary's quarterly comparisons~~)) screening process. (1) ((~~Once a quarter~~)) The law on when the right to vote is restored following a felony conviction is established in RCW 29A.08.520. Three times a year, the secretary must ((~~perform comparisons with the department of corrections, as authorized in RCW 29A.08.520, to search for registration records of felons who are under the authority of the department of corrections due to an adult felony conviction~~)) compare the voter registration records to lists of felons who are either incarcerated or on community supervision with the department of corrections, and to lists of felons convicted in federal district courts with a sentence of at least fifteen months incarceration. The secretary must create a list of felon voters by matching the first name, last name, date of birth, and other identifying information.

(2) For each felon voter, the secretary must change the voter's registration status to "pending cancellation." This change of status must be entered prior to the first extraction or pull of absentee or mail ballots. The official statewide voter registration data base must automatically notify the county election management system of the change. Voters with pending cancellation status must not be included in a poll book or be mailed an absentee or mail ballot.

(3) The secretary must mail a notification letter to each felon whose status is pending cancellation. The notification letter must be sent to the felon's last known registration mailing address and, if the person is incarcerated or on community supervision with the department of corrections, to the offender's department of corrections address indicating that his or her voter registration is about to be canceled. The letter must contain language notifying the felon that he or she must contact the auditor's office to contest the pending cancellation. The letter must also inform the felon that he or she may request a provisional ballot for any pending elections. The notification letter must include:

(a) An explanation that a felon loses the right to vote until the right is restored;

(b) For a conviction in a Washington state court, the right to vote is restored as long as the felon is not serving a sentence of confinement or subject to community custody with the department of corrections. For a conviction in another state or federal court, the right to vote is restored as long as the felon is no longer incarcerated;

(c) The reason the felon has been identified as ineligible to vote;

(d) An explanation that the felon's voter registration will be canceled due to the felony conviction; and

(e) How to contest the pending cancellation. The secretary must send to each auditor the voter registration and conviction information for each matched felon registered in that county.

(4) If the felon fails to contact the auditor within thirty days, the felon's voter registration must be canceled. If an election in which the felon would otherwise be eligible to vote is scheduled to occur during the thirty days, the felon must be allowed to vote a provisional ballot.

(5) The felon's eligibility status may be resolved and the pending cancellation status reversed without scheduling a hearing if the felon provides satisfactory documentation that the felon's ((~~civil~~)) voting rights have been restored, the conviction is not a felony, the person convicted is not the registered voter, or the felon is otherwise eligible to vote. The auditor must notify the voter, retain a scanned copy of all documentation provided, and notify the secretary. The secretary must flag the voter registration record to prevent future cancellation on the same basis.

(6) If the felon requests a hearing, the auditor must schedule a public hearing to provide the felon an opportunity to dispute the finding. In scheduling the hearing, the auditor may take into account whether an election in which the felon would otherwise be eligible to vote is scheduled. The notice must be mailed to the felon's last known registration mailing address and must be postmarked at least seven calendar days prior to the hearing date. Notice of the hearing must also be provided to the prosecuting attorney.

(7) The auditor must provide the prosecuting attorney a copy of all relevant registration and felony conviction information. The prosecuting attorney must obtain documentation, such as a copy of the judgment and sentence, or custody or supervision information from the Washington department of corrections, the out-of-state court or prison, or the federal court or Bureau of Prisons, sufficient to prove by clear and convincing evidence that the felon is ineligible to vote. It is not necessary that the copy of the document be certified.

(8) If the prosecuting attorney is unable to obtain sufficient documentation to ascertain the felon's voting eligibility in time to hold a hearing prior to certification of an election in which the felon would otherwise be eligible to vote, the prosecuting attorney must request that the auditor dismiss the current cancellation proceedings. The auditor must reverse the voter's pending cancellation status, cancel the hearing, and notify the voter. A provisional ballot voted in the pending election must be counted if otherwise valid. The prosecuting attorney must continue to research the felon's voting eligibility. If the prosecuting attorney is unable to obtain sufficient documentation to ascertain the felon's voting eligibility prior to the next election in which the felon would otherwise be eligible to vote, the prosecuting attorney must notify the auditor. The auditor must notify the secretary, who must flag the voter registration record to prevent future cancellation on the same basis.

(9) A hearing to determine voting eligibility is an open public hearing pursuant to chapter 42.30 RCW. If the hearing

occurs within thirty days before, or during the certification period of, an election in which the felon would otherwise be eligible to vote, the hearing must be conducted by the county canvassing board. If the hearing occurs at any other time, the county auditor conducts the hearing. Before a final determination is made that the felon is ineligible to vote, the prosecuting attorney must show by clear and convincing evidence that the voter is ineligible to vote due to a felony conviction. The felon must be provided a reasonable opportunity to respond. The hearing may be continued to a later date if continuance is likely to result in additional information regarding the felon's voting eligibility. If the felon is determined to be ineligible to vote due to felony conviction and lack of rights restoration, the voter registration must be canceled. If the voter is determined to be eligible to vote, the voter's pending cancellation status must be reversed and the secretary must flag the voter registration record to prevent future cancellation on the same basis. The felon must be notified of the outcome of the hearing and the final determination is subject to judicial review pursuant to chapter 34.05 RCW.

(10) If the felon's voter registration is canceled after the felon fails to contact the auditor within the thirty day period, the felon may contact the auditor at a later date to request a hearing to dispute the cancellation. The auditor must schedule a hearing in substantially the same manner as provided in subsections (6) through (9) of this section.

AMENDATORY SECTION (Amending WSR 09-03-110, filed 1/21/09, effective 2/21/09)

WAC 434-335-030 Initial application for certification. Any person or corporation (applicant) owning or representing a voting system or a vote tabulating system, part of a system, equipment, materials or procedure may apply in writing to the secretary of state for certification ((~~December 1st and ending June 30th the following year. Certification examinations and hearings are only conducted between December 1st and September 15th of each year~~)).

(1) The application must include, but is not limited to, the following information:

(a) A description of the applicant, business address, ((~~customer references,~~)) and list of election products((~~.~~));

(b) A description of the equipment or software under review, the equipment or software version numbers((~~, release numbers,~~)) and operating and maintenance manuals((~~, training materials, and technical and operational specifications.~~

~~(c) Documentation of all other states that have tested, certified and used the equipment in a binding election, and the length of time used in that state. The information for each state must include the version numbers of the operating system, software, and firmware, the dates and jurisdictions, and any reports compiled by state or local governments concerning the performance of the system~~)).

(2) The secretary of state may request the applicant provide additional information such as:

(a) Customer references, training materials, and technical and operational specifications;

(((~~d~~))) (b) A copy of a letter from the applicant to each voting system test laboratory which((~~:~~

~~(i) Directs the voting system test laboratory to send a copy of the completed voting system test laboratory qualification report to the secretary of state;~~

~~(ii)~~)) authorizes the voting system test laboratory to discuss testing procedures and findings with the secretary of state((~~; and~~

~~(iii) Authorizes the voting system test laboratory to allow the secretary of state to review all records of any qualification testing conducted on the equipment.~~

~~(e) A technical data package conforming to the *2002 Voting Systems Standards (VSS)*, Vol. II, Sec. 2 standards that includes:~~

~~(i) Identification of all COTS hardware and software products and communications services used in the operation of the voting system (ref. VSS, 2.2.1.c);~~

~~(ii) A system functionality description (ref. VSS, 2.3);~~

~~(iii) A system security specification (ref. VSS, 2.6);~~

~~(iv) System operations procedures (ref. VSS, 2.8);~~

~~(v) System maintenance procedures (ref. VSS, 2.9);~~

~~(vi) Personnel deployment and training requirements (ref. VSS, 2.10);~~

~~(vii) Configuration management plan (ref. VSS, 2.11);~~

~~(viii) System change notes (if applicable, ref. VSS, 2.13);~~

~~(ix) A system change list, if any, of modifications currently in development;~~

~~(x) A system usability testing report; and~~

~~(xi) A set of procedures for county personnel on how the operating system, equipment, and application software should be optimally configured and used in a secure environment.~~

~~(2) The vendor must either file the system executables for the certified system with the National Software Reference Library (NSRL) or place the source code of an electronic voting system in escrow, which must be accessible by the secretary of state under prescribed conditions~~)).

(3) All documents, or portions of documents, containing proprietary information are not subject to public disclosure. The secretary of state must agree to use proprietary information solely for the purpose of analyzing and testing the system, and to the extent permitted by law, may not use the proprietary information or disclose it to any other person or agency without the prior written consent of the applicant.

AMENDATORY SECTION (Amending WSR 09-03-110, filed 1/21/09, effective 2/21/09)

WAC 434-335-060 Examination of equipment. Secretary of state staff will initiate an examination of the applicant's equipment after receiving a completed application and a working model of the equipment, documentation, and software to be reviewed.

The examination ((~~consists of a series of functional application tests designed to insure~~)) verifies that the system or equipment meets all applicable federal guidelines, and consists of a series of functional application tests designed to ensure that the system or equipment meets Washington state law and rules. The software tested shall be the approved software from the voting system test laboratory.

The examination may include an additional voting system test laboratory test at the discretion of the secretary of state. The examination shall include the set-up and conduct of ((~~two~~)) mock elections ((~~and~~)), including a machine recount. The ((~~voting system test laboratory shall provide to the secretary of state the voting system software they tested and, if requested, the hash codes of the software they tested.~~

~~(1) The first election must replicate an even year general election.~~

~~(2) The second election must replicate a primary, and include the use of split precincts and precinct committee officer contests.~~

~~Both~~)) elections must feature at least ten precincts, with at least ten ballots in each precinct, and must test split precincts, precinct committee officer contests, and both partisan and nonpartisan offices. The tests must include ballots of various ballot ((~~codes~~)) styles, ((~~including~~)) and include multiple candidates, ((~~cumulative reports, precinct reports, and canvass reports, as detailed in the test plan provided by the secretary of state~~)) write-in candidates and overvoted contests.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-150 Modification of certified equipment. After a voting system is certified, any improvements or changes to the system must be submitted to the secretary of state for ((~~approval~~)) certification. The secretary of state will determine if the modifications require ((~~a recertification of the system or~~)) state testing and a review board hearing, or if the changes may be ((~~approved~~)) certified administratively.

AMENDATORY SECTION (Amending WSR 09-03-110, filed 1/21/09, effective 2/21/09)

WAC 434-335-170 Application for ((~~administrative approval~~)) certification of modified voting systems or devices. The application ((~~for review of~~)) to certify a modification of an existing certified system must include, but is not limited to, the following information:

(1) Description of the applicant((~~.~~));

(2) Description of the equipment or software under review, the modification, and all version numbers ((~~and release numbers.~~));

(3) All changes to the operating and maintenance manuals((~~, training materials, and technical and operational specifications required by the modification.~~

~~(4) All certification documents from all other states that have certified the equipment with the modification.~~));

(((~~5~~))) (4) Reports for all tests conducted on the modification by a voting system test laboratory((~~. The voting system test laboratory must meet the criteria established by the election assistance commission for such agents.~~));

(((~~6~~))) (5) Documentation that the modification meets all applicable federal voting equipment guidelines((~~.~~));

(((~~7~~))) (6) A complete description, in operational and technical detail, of all differences between the previously certified equipment or system and the modified equipment or system, prepared by the applicant.

AMENDATORY SECTION (Amending WSR 09-12-078, filed 5/29/09, effective 6/29/09)

WAC 434-335-240 Acceptance testing of voting systems and equipment. Whenever a county auditor acquires a new system or an upgrade to an existing system that has been certified by the secretary of state, the county must perform acceptance tests of the equipment before it may be used to count votes at any election. The equipment must operate correctly, pass all tests, and be substantially the same as the equipment certified by the secretary of state. The minimum testing standards are described as follows:

(1) The model number, version number, release number, and any other number, name or description that identifies the product must be the same as the identifying numbers for the product already certified by the secretary of state.

(2) The county must receive all manuals and training necessary for the proper operation of the system.

(3) For new hardware or hardware upgrades, the county must test the functionality of the hardware to verify the hardware works as designed. The test must include operating the hardware and submitting it to a series of assessments that determine the hardware works, performs, and functions as intended.

Acceptance testing and installation of the equipment may occur only between December 1st and September 15th of each year.

AMENDATORY SECTION (Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

WAC 434-335-510 Definitions. "Calibration" is the touch screen setting on ((~~a disability access~~)) an accessible voting unit with touch screen capability that controls the target area.

"Direct recording electronic device" is a device that electronically records a voter's ((~~responses electronically~~)) choices.

"Electronic ballot marker" is a device that physically marks a voter's ((~~responses~~)) choices on a preprinted paper ballot.

"Target area" is ((~~the~~)) each area on the ballot ((~~face that records the voter's choice~~)) where the voter's choices are recorded.

"Touch screen" is a type of computer interface on a voting device that allows the voter to ((~~select~~)) make a choice by touching the screen.

AMENDATORY SECTION (Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

WAC 434-335-520 Logic and accuracy ((~~test plan preparation—Disability access~~)) testing of accessible voting units. (1) ((~~The test plan used for the official logic and accuracy test for disability access units must be prepared by the county in the same manner as for optical and digital scan ballots.~~)) The ((~~official testing~~)) logic and accuracy test of accessible voting units must be completed before ((~~a disability access unit~~)) they may be used for marking or casting ballots. Counties must complete the testing to have in-person

((~~disability access~~)) accessible voting available starting twenty days before the day of a primary or election.

(2) ((~~This test serves as the official logic and accuracy test of poll site based optical scan ballot counters.~~)) A log must be created during the test, recording the time of each test, the precinct numbers, the seal number, the machine number, and the initials of each person testing the system. The log must be included in the official logic and accuracy test materials. This process is open to observation and subject to all notices and observers pursuant to WAC 434-335-290 and 434-335-320.

AMENDATORY SECTION (Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

WAC 434-335-550 Direct recording electronic target area tests. Each county employing a direct recording electronic ((~~balloting system~~)) voting device must conduct a test to confirm that the target area indicated on each ballot face is programmed correctly. The county must test all ballot styles on at least one device to ensure that the programming is correctly ((~~counting and accumulating~~)) marking every office, measure, and selection by the voter.

AMENDATORY SECTION (Amending WSR 02-02-067, filed 12/28/01, effective 1/28/02)

WAC 434-381-170 Statement and argument format. (1) Statements or arguments submitted for inclusion in the voters pamphlet shall not exceed the word limit set by statute.

(a) Arguments for or against measures may contain up to four headings used to highlight major points in the argument and will ((~~not~~)) count toward the maximum word count set for arguments;

(b) The ((~~initial~~)) four headings may not exceed fifteen words for each heading;

(c) ((~~Additional headings may be used after the initial four headings in an argument, which will count toward the maximum word count of the argument;~~

~~(d)~~)) Photographs or charts may be used in candidate statements or arguments substituting fifty words from the statement or argument for each square inch used by the photograph or chart. This subsection does not apply to the photographs submitted pursuant to WAC 434-381-130 (size and quality of photographs).

(2) Statements and arguments submitted to the secretary of state shall be printed in a format that in the opinion of the secretary will provide the best reproduction.

(a) Statements and arguments will be typeset in a standard font without the use of boldface or underlining;

(b) Italics may be used to add emphasis to statements or arguments;

(c) Argument headings will be typeset ((~~entirely~~)) in boldface ((~~capital~~)) letters.

WSR 09-24-107
PROPOSED RULES
DEPARTMENT OF HEALTH
(Medical Quality Assurance Commission)
[Filed December 2, 2009, 9:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-08-103.

Title of Rule and Other Identifying Information: WAC 246-919-606 Nonsurgical medical cosmetic procedures (medical physicians) and 246-918-126 Nonsurgical medical cosmetic procedures (medical physician assistants).

Hearing Location(s): Holiday Inn, One South Grady Way, Renton, WA, on January 14, 2010, at 7:00 p.m.

Date of Intended Adoption: January 14, 2010.

Submit Written Comments to: Beverly Teeter, Deputy Executive Director, P.O. Box 47866, Olympia, WA 98504, beverly.teeter@doh.wa.gov, web site http://www3.doh.wa.gov/policyreview/, fax (360) 236-2795, by January 4, 2010.

Assistance for Persons with Disabilities: Contact Julie Kitten, program manager, by January 4, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: There is no state law specifically regulating nonsurgical medical cosmetic procedures, specifically the injection of medication or substances into humans or the use of prescription devices for cosmetic purposes. Rules are needed to clarify this area of medicine and set minimum standards for the performance and the delegation of nonsurgical medical cosmetic procedures by physicians and physician assistants in our state. The proposed rules will establish standards so that physicians and physician assistants apply the same standards of good medical practice to the performance and delegation of nonsurgical medical cosmetic procedures.

Reasons Supporting Proposal: The number of offices and clinics nationwide providing nonsurgical medical cosmetic procedures is increasing at a rapid rate. More consumers are demanding medical cosmetic procedures, and more physicians and nonphysicians are entering this lucrative field, many without adequate training or an appropriate health care license. The commission is concerned that in these offices and clinics individuals with little or no training, without an appropriate license, or without adequate supervision, are injecting medication or substances into patients, or are using prescription devices on patients.

Statutory Authority for Adoption: RCW 18.71.017 and 18.71A.020.

Statute Being Implemented: RCW 18.130.050(4).

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Beverly A. Teeter, 243 Israel Road S.E., Tumwater, WA 98501, (360) 236-2758.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry. A copy of the statement may be obtained by con-

tacting Beverly A. Teeter, P.O. Box 47866, Olympia, WA 98504, phone (360) 236-2758, fax (360) 236-2795, e-mail beverly.teeter@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Beverly A. Teeter, P.O. Box 47866, Olympia, WA 98501 [98504], phone (360) 236-2758, fax (360) 236-2795, e-mail beverly.teeter@doh.wa.gov.

December 1, 2009
Maryella E. Jansen
Executive Director

NEW SECTION

WAC 246-918-126 Nonsurgical medical cosmetic procedures. (1) The purpose of this rule is to establish the duties and responsibilities of a physician assistant who injects medication or substances for cosmetic purposes or uses prescription devices for cosmetic purposes. These procedures can result in complications such as visual impairment, blindness, inflammation, burns, scarring, disfiguration, hypopigmentation and hyperpigmentation. The performance of these procedures is the practice of medicine under RCW 18.71.011.

(2) This section does not apply to:

(a) Surgery;

(b) The use of prescription lasers, noncoherent light, intense pulsed light, radiofrequency, or plasma as applied to the skin; this is covered in WAC 246-919-605 and 246-918-125;

(c) The practice of a profession by a licensed health care professional under methods or means within the scope of practice permitted by such license;

(d) The use of nonprescription devices; and

(e) Intravenous therapy.

(3) Definitions. These definitions apply throughout this section unless the context clearly requires otherwise.

(a) "Nonsurgical medical cosmetic procedure" means a procedure or treatment that involves the injection of a medication or substance for cosmetic purposes, or the use of a prescription device for cosmetic purposes. Laser, light, radiofrequency and plasma devices that are used to topically penetrate the skin are devices used for cosmetic purposes, but are excluded under subsection (2)(b) of this section, and are covered by WAC 246-919-605 and 246-918-125.

(b) "Physician" means an individual licensed under chapter 18.71 RCW.

(c) "Physician assistant" means an individual licensed under chapter 18.71A RCW.

(d) "Prescription device" means a device that the federal Food and Drug Administration has designated as a prescription device, and can be sold only to persons with prescriptive authority in the state in which they reside.

PHYSICIAN ASSISTANT RESPONSIBILITIES

(4) A physician assistant may perform a nonsurgical medical cosmetic procedure only after the commission approves a practice plan permitting the physician assistant to perform such procedures. A physician assistant must ensure that the supervising or sponsoring physician is in full compliance with WAC 246-919-606.

(5) A physician assistant may not perform a nonsurgical cosmetic procedure unless his or her supervising or sponsoring physician is fully and appropriately trained to perform that same procedure.

(6) Prior to performing a nonsurgical medical cosmetic procedure, a physician assistant must have appropriate training in, at a minimum:

(a) Techniques for each procedure;

(b) Cutaneous medicine;

(c) Indications and contraindications for each procedure;

(d) Preprocedural and postprocedural care;

(e) Recognition and acute management of potential complications that may result from the procedure; and

(f) Infectious disease control involved with each treatment.

(7) The physician assistant must keep a record of his or her training in the office and available for review upon request by a patient or a representative of the commission.

(8) Prior to performing a nonsurgical medical cosmetic procedure, either the physician assistant or the delegating physician must:

(a) Take a history;

(b) Perform an appropriate physical examination;

(c) Make an appropriate diagnosis;

(d) Recommend appropriate treatment;

(e) Obtain the patient's informed consent including disclosing the credentials of the person who will perform the procedure;

(f) Provide instructions for emergency and follow-up care; and

(g) Prepare an appropriate medical record.

(9) The physician assistant must ensure that there is a written office protocol for performing the nonsurgical medical cosmetic procedure. A written office protocol must include, at a minimum, the following:

(a) A statement of the activities, decision criteria, and plan the physician assistant must follow when performing procedures under this rule;

(b) Selection criteria to screen patients for the appropriateness of treatment;

(c) A description of appropriate care and follow-up for common complications, serious injury, or emergencies; and

(d) A statement of the activities, decision criteria, and plan the physician assistant must follow if performing a procedure delegated by a physician pursuant to WAC 246-919-606, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician concerning specific decisions made.

(10) A physician assistant may not delegate the performance of a nonsurgical medical cosmetic procedure to another individual.

(11) A physician assistant may perform a nonsurgical medical cosmetic procedure that uses a medication or substance that the federal Food and Drug Administration has not approved for the particular purpose for which it is used so long as the physician assistant's sponsoring or supervising physician is on-site during the entire procedure.

(12) A physician assistant may perform a nonsurgical medical cosmetic procedure at a remote site. A physician assistant must comply with the established regulations gov-

erning physician assistants working in remote sites, including obtaining commission approval to work in a remote site under WAC 246-918-120.

(13) A physician assistant must ensure that each treatment is documented in the patient's medical record.

(14) A physician assistant may not sell or give a prescription device to an individual who does not possess prescriptive authority in the state in which the individual resides or practices.

(15) A physician assistant must ensure that all equipment used for procedures covered by this section is inspected, calibrated, and certified as safe according to the manufacturer's specifications.

(16) A physician assistant must participate in a quality assurance program required of the supervising or sponsoring physician under WAC 246-919-606.

NEW SECTION

WAC 246-919-606 Nonsurgical medical cosmetic procedures. (1) The purpose of this rule is to establish the duties and responsibilities of a physician who delegates the injection of medication or substances for cosmetic purposes or the use of prescription devices for cosmetic purposes. These procedures can result in complications such as visual impairment, blindness, inflammation, burns, scarring, disfiguration, hypopigmentation and hyperpigmentation. The performance of these procedures is the practice of medicine under RCW 18.71.011(3).

(2) This rule does not apply to:

(a) Surgery;

(b) The use of prescription lasers, noncoherent light, intense pulsed light, radiofrequency, or plasma as applied to the skin; this is covered in WAC 246-919-605 and 246-918-125;

(c) The practice of a profession by a licensed health care professional under methods or means within the scope of practice permitted by such license;

(d) The use of nonprescription devices; and

(e) Intravenous therapy.

(3) Definitions. These definitions apply throughout this section unless the context clearly requires otherwise.

(a) "Nonsurgical medical cosmetic procedure" means a procedure or treatment that involves the injection of a medication or substance for cosmetic purposes, or the use of a prescription device for cosmetic purposes. Laser, light, radiofrequency and plasma devices that are used to topically penetrate the skin are devices used for cosmetic purposes, but are excluded under subsection (2)(b) of this section, and are covered by WAC 246-919-605 and 246-918-125.

(b) "Physician" means an individual licensed under chapter 18.71 RCW.

(c) "Prescription device" means a device that the federal Food and Drug Administration has designated as a prescription device, and can be sold only to persons with prescriptive authority in the state in which they reside.

PHYSICIAN RESPONSIBILITIES

(4) A physician must be fully and appropriately trained in a nonsurgical medical cosmetic procedure prior to performing the procedure or delegating the procedure. The physician must keep a record of his or her training in the office and available for review upon request by a patient or a representative of the commission.

(5) Prior to authorizing a nonsurgical medical cosmetic procedure, a physician must:

(a) Take a history;

(b) Perform an appropriate physical examination;

(c) Make an appropriate diagnosis;

(d) Recommend appropriate treatment;

(e) Obtain the patient's informed consent;

(f) Provide instructions for emergency and follow-up care; and

(g) Prepare an appropriate medical record.

(6) Regardless of who performs the nonsurgical medical cosmetic procedure, the physician is ultimately responsible for the safety of the patient.

(7) Regardless of who performs the nonsurgical medical cosmetic procedure, the physician is responsible for ensuring that each treatment is documented in the patient's medical record.

(8) The physician must ensure that there is a quality assurance program for the facility at which nonsurgical medical cosmetic procedures are performed regarding the selection and treatment of patients. An appropriate quality assurance program must include the following:

(a) A mechanism to identify complications and untoward effects of treatment and to determine their cause;

(b) A mechanism to review the adherence of supervised health care professionals to written protocols;

(c) A mechanism to monitor the quality of treatments;

(d) A mechanism by which the findings of the quality assurance program are reviewed and incorporated into future protocols required by subsection (10)(d) of this section and physician supervising practices; and

(e) Ongoing training to maintain and improve the quality of treatment and performance of supervised health care professionals.

(9) A physician may not sell or give a prescription device to an individual who does not possess prescriptive authority in the state in which the individual resides or practices.

(10) The physician must ensure that all equipment used for procedures covered by this section is inspected, calibrated, and certified as safe according to the manufacturer's specifications.

PHYSICIAN DELEGATION

(11) A physician who meets the above requirements may delegate a nonsurgical medical cosmetic procedure to a properly trained physician assistant, registered nurse or licensed practical nurse, provided all the following conditions are met:

(a) The treatment in no way involves surgery as that term is understood in the practice of medicine;

(b) The physician delegates procedures that are within the delegate's lawful scope of practice;

(c) The delegate has appropriate training in, at a minimum:

(i) Techniques for each procedure;

(ii) Cutaneous medicine;

(iii) Indications and contraindications for each procedure;

(iv) Preprocedural and postprocedural care;

(v) Recognition and acute management of potential complications that may result from the procedure; and

(vi) Infectious disease control involved with each treatment.

(d) The physician has a written office protocol for the delegate to follow in performing the nonsurgical medical cosmetic procedure. A written office protocol must include, at a minimum, the following:

(i) The identity of the physician responsible for the delegation of the procedure;

(ii) Selection criteria to screen patients for the appropriateness of treatment;

(iii) A description of appropriate care and follow-up for common complications, serious injury, or emergencies; and

(iv) A statement of the activities, decision criteria, and plan the delegate shall follow when performing delegated procedures, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician concerning specific decisions made.

(e) The physician ensures that the delegate performs each procedure in accordance with the written office protocol;

(f) Each patient signs a consent form prior to treatment that lists foreseeable side effects and complications, and the identity and license of the delegate or delegates who will perform the procedure; and

(g) Each delegate performing a procedure covered by this section must be readily identified by a name tag or similar means so that the patient understands the identity and license of the treating delegate.

(12) If a physician delegates the performance of a procedure that uses a medication or substance that is not approved by the federal Food and Drug Administration for the particular purpose for which it is used, the physician must be on-site during the entire duration of the procedure.

(13) If a physician delegates the performance of a procedure that uses a medication or substance that is approved by the federal Food and Drug Administration for the particular purpose for which it is used, the physician need not be on-site during the procedure, but must be reachable by phone and able to respond within thirty minutes to treat complications.

(14) If the physician is unavailable to supervise a delegate as required by this section, the physician must make arrangements for an alternate physician to provide the necessary supervision. The alternate supervisor must be familiar with the protocols in use at the site, will be accountable for adequately supervising the treatment under the protocols, and must have comparable training as the primary supervising physician.

(15) A physician performing or delegating nonsurgical cosmetic procedures may not sponsor more than three physician assistants at any one time.

(16) A physician may not permit a delegate to further delegate the performance of a nonsurgical medical cosmetic procedure to another individual.

WSR 09-24-109
PROPOSED RULES
DEPARTMENT OF HEALTH
(Medical Quality Assurance Commission)
[Filed December 2, 2009, 9:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-03-178.

Title of Rule and Other Identifying Information: WAC 246-919-601 Safe and effective analgesia and anesthesia administration in office-based surgical settings.

Hearing Location(s): Holiday Inn, One South Grady Way, Renton, WA, on January 14, 2010, at 6:30 p.m.

Date of Intended Adoption: January 14, 2010.

Submit Written Comments to: Beverly A. Teeter, Deputy Executive Director, Medical Quality Assurance Commission, P.O. Box 47866, Olympia, WA 98504, web site http://www3.doh.wa.gov/policyreview/, fax (360) 236-2795, by December 31, 2009.

Assistance for Persons with Disabilities: Contact Beverly A. Teeter, deputy executive director, by December 31, 2009, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule is to establish consistent standards for physicians who administer sedation in an office-based setting. The proposed rule will require physicians who perform office-based surgery using major conduction anesthesia, moderate sedation or deep sedation or analgesia to obtain certification or accreditation for the office, be competent and qualified, return patients who enter a deeper level of sedation than intented [intended] to a lighter level of sedation as quickly as possible, separate surgical and monitoring procedures, create written emergency protocols, ensure that one provider is currently certified in advanced resuscitative techniques, and maintain legible, complete and accurate medical records.

Reasons Supporting Proposal: The commission is proposing this rule because currently there is no direct regulation for office-based surgery settings. RCW 18.71.017(2) authorizes the commission to adopt rules governing the administration of sedation and anesthesia in the office of physicians, including necessary training and equipment. Rules are needed to establish enforceable standards to reduce the risk of substandard care, inappropriate anesthesia, and serious complications by physicians when performing office-based surgery.

Statutory Authority for Adoption: RCW 18.71.017 and 18.130.050.

Statute Being Implemented: RCW 18.71.017(2).

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Beverly A. Teeter, 243 Israel Road S.E., Mailstop 47866, Tumwater, WA 98501, (360) 236-2758.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule

would not impose more than minor costs on businesses in an industry. A copy of the statement may be obtained by contacting Beverly Teeter, 243 Israel Road S.E., Tumwater, WA 98501, phone (360) 236-2758, fax (360) 236-2795, e-mail beverly.teeter@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Beverly Teeter, 243 Israel Road S.E., Tumwater, WA 98501, phone (360) 236-2758, fax (360) 236-2795, e-mail beverly.teeter@doh.wa.gov. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

December 1, 2009
Maryella E. Jansen
Executive Director

OFFICE-BASED SURGERY RULES

Medical Quality Assurance Commission

NEW SECTION

WAC 246-919-601 Safe and effective analgesia and anesthesia administration in office-based surgical settings. (1) Purpose. The purpose of this rule is to promote and establish consistent standards, continuing competency, and to promote patient safety. The medical quality assurance commission establishes the following rule for those physicians licensed under this chapter who perform surgical procedures and use anesthesia, analgesia or sedation in office-based settings.

(2) Definitions. The following terms used in this subsection apply throughout this rule unless the context clearly indicates otherwise:

(a) "Commission" means the medical quality assurance commission.

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

(c) "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body, in which the patient is without protective reflexes and is unable to maintain an airway. Sedation that unintentionally progresses to the point at which the patient is without protective reflexes and is unable to maintain an airway is not considered general anesthesia.

(d) "Local infiltration" means the process of infusing a local anesthetic agent into the skin and other tissues to allow painless wound irrigation, exploration and repair, foreign puncture, and other procedures.

(e) "Major conduction anesthesia" means the administration of a drug or combination of drugs to interrupt nerve impulses without loss of consciousness, such as epidural, caudal, or spinal anesthesia, lumbar or brachial plexus blocks, and intravenous regional anesthesia. Major conduction anesthesia does not include isolated blockade of small peripheral nerves, such as digital nerves.

(f) "Minimal sedation" means a drug-induced state during which patients respond normally to verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are unaffected. Minimal sedation is limited to unsupplemented oral and intramuscular medications.

(g) "Moderate sedation" or "analgesia" means a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

(h) "Office-based surgery" means any surgery or invasive medical procedure requiring analgesia or sedation, including, but not limited to, local infiltration for tumescent liposuction, performed in a location other than a licensed hospital, a hospital-associated surgical center, or an ambulatory surgical facility.

(i) "Physician" means an individual licensed under chapter 18.71 RCW.

(3) Exemptions. This rule does not apply to physicians when:

(a) Performing surgery and medical procedures that require only minimal sedation (anxiolysis), or infiltration of local anesthetic around peripheral nerves.

(b) Performing surgery in a licensed hospital, a hospital-associated surgical center, or an ambulatory surgical facility.

(c) Performing surgery utilizing general anesthesia. General anesthesia cannot be a planned event in an office-based surgery setting. Facilities where physicians do procedures involving general anesthesia are regulated by rules related to licensed hospitals, hospital-associated surgical centers, and ambulatory surgical facilities.

(d) Performing oral and maxillofacial surgery, and the physician:

(i) Is licensed both as a physician under chapter 18.71 RCW and as a dentist under chapter 18.32 RCW;

(ii) Complies with dental quality assurance commission regulations;

(iii) Holds a valid:

(A) Moderate sedation permit; or

(B) Moderate sedation with parenteral agents permit; or

(C) General anesthesia and deep sedation permit; and

(iv) Practices within the scope of their specialty.

(4) Application of rule.

This rule applies to physicians practicing independently or in a group setting who perform office-based surgery employing one or more of the following levels of sedation or anesthesia:

(a) Moderate sedation or analgesia; or

(b) Deep sedation or analgesia; or

(c) Major conduction anesthesia.

(5) Accreditation or certification. Within one hundred eighty calendar days of the effective date of this rule, a physician who performs a procedure under this rule must ensure that the procedure is performed in a facility that is appropriately equipped and maintained to ensure patient safety through accreditation or certification and in good standing from one of the following:

(a) The Joint Commission;

(b) The Accreditation Association for Ambulatory Health Care;

(c) The American Association for Accreditation of Ambulatory Surgery Facilities; or

(d) The Centers for Medicare and Medicaid Services.

(6) Competency. A physician performing office-based surgery using a form of sedation or anesthesia as defined in subsection (4) of this section must be competent and qualified to perform the operative procedure and to provide sedation and analgesia.

(7) Qualifications for administration of sedation and analgesia may include:

(a) Completion of a continuing medical education course in conscious sedation;

(b) Relevant training in a residency training program; or

(c) Having privileges for conscious sedation granted by a hospital medical staff.

(8) At least one physician currently certified in advanced resuscitative techniques appropriate for the patient age group (e.g., ACLS, PALS or APLS) must be present or immediately available with age-size-appropriate resuscitative equipment throughout the procedure and until the patient has met the criteria for discharge from the facility.

(9) Sedation assessment and management.

(a) Sedation is a continuum. Depending on the patient's response to drugs, the drugs administered, and the dose and timing of drug administration, it is possible that a deeper level of sedation will be produced than initially intended.

(b) Physicians intending to produce a given level of sedation should be able to "rescue" patients who enter a deeper level of sedation than intended.

(c) If a patient enters into a deeper level of sedation than planned, the physician must return the patient to the lighter level of sedation as quickly as possible, while closely monitoring the patient to ensure the airway is patent, the patient is breathing, and that oxygenation, the heart rate and blood pressure are within acceptable values.

(10) Separation of surgical and monitoring functions.

(a) The physician performing the surgical procedure must not provide the anesthesia or monitoring.

(b) The licensed health care practitioner, designated by the physician to perform the anesthesia or monitor the patient, must not perform or assist in the surgical procedure.

(11) Emergency care and transfer protocols. A physician performing office-based surgery must ensure that in the event of a complication or emergency:

(a) All office personnel are familiar with a written and documented plan to timely and safely transfer patients to an appropriate hospital.

(b) The plan must include arrangements for emergency medical services and appropriate escort of the patient to the hospital.

(12) Medical record. The physician performing office-based surgery must maintain a legible, complete, comprehensive and accurate medical record for each patient.

(a) The medical record must include:

(i) Identity of the patient;

(ii) History and physical, diagnosis and plan;

(iii) Appropriate lab, X ray or other diagnostic reports;

(iv) Appropriate preanesthesia evaluation;

(v) Narrative description of procedure;

(vi) Pathology reports;

(vii) Document which, if any, tissues and other specimens have been submitted for histopathologic diagnosis;

(viii) Provision for continuity of postoperative care; and

(ix) Documentation of the outcome and the follow-up plan.

(b) When moderate or deep sedation, or major conduction anesthesia is used, the patient medical record must include a separate anesthesia record that documents:

(i) The type of sedation or anesthesia used;

(ii) Drugs (name and dose) and time of administration;

(iii) Documentation at regular intervals of information obtained from the intraoperative and postoperative monitoring;

(iv) Fluids administered during the procedure;

(v) Patient weight;

(vi) Level of consciousness;

(vii) Estimated blood loss;

(viii) Duration of procedure; and

(ix) Any complication or unusual events related to the procedure or sedation/anesthesia.

WSR 09-24-110
PROPOSED RULES
COMMUNITY COLLEGES OF SPOKANE

[Filed December 2, 2009, 10:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR [09-19-097].

Title of Rule and Other Identifying Information: Amendment of WAC 132Q-07-030 Outside speakers, 132Q-07-040 Distribution of materials, 132Q-30-242 Discrimination and 132Q-30-246 Harassment.

Hearing Location(s): Community Colleges of Spokane board of trustees meeting held at the Institute for Extended Learning (IEL) Lodge, 3305 West Fort George Wright Drive, Spokane, WA, on January 15, 2010, at 8:30 a.m.

Date of Intended Adoption: February 16, 2010.

Submit Written Comments to: Anne Tucker, Community Colleges of Spokane, P.O. Box 6000, Mailstop 1009, Spokane, WA 99217-6000, e-mail atucker@ccs.spokane.edu, fax (509) 434-5025, by February 5, 2010.

Assistance for Persons with Disabilities: Contact Cheryl Churchill by February 5, 2010, (509) 434-5060.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On September 15, 2009, the board of trustees of Washington State Community College District 17 (Community Colleges of Spokane)

directed administration to amend WAC 132Q-07-030 Outside speakers, 132Q-07-040 Distribution of materials, 132Q-30-242 Discrimination and 132Q-30-246 Harassment in accordance with the terms of the agreed order settling the *Sheeran vs. Shea First Amendment Rights* suit filed in U.S. District Court, Eastern District of Washington.

Statutory Authority for Adoption: RCW 28B.50.140.

Statute Being Implemented: RCW 28B.50.140.

Rule is necessary because of state court decision, *Sheeran v. Shay [Shea] First Amendment Rights* suit.

Name of Proponent: Community Colleges of Spokane, public.

Name of Agency Personnel Responsible for Drafting: Anne Tucker, PIO, Suite 139, 501 North Riverpoint Boulevard, Spokane, WA 99202, (509) 434-5109; Implementation: Chief Student Services Officers: Terri McKenzie, Spokane Community College, Suite 105, Administration Building 50, 1810 North Greene Street, Spokane, WA, (509) 533-7015, or Alex Roberts, Spokane Falls Community College, SUB Building 17, 3410 West Fort George Wright Drive, Spokane, WA, (509) 533-3514, or Amy Lopes-Wasson, Institute for Extended Learning, Suite 245, 2917 West Fort George Wright Drive, Spokane, WA, (509) 279-6045; and Enforcement: College Presidents/CEO: Dr. Joe Dunlap, Spokane Community College, Suite 110, Administration Building 50, 1810 North Greene Street, Spokane, WA, (509) 533-7042, or Dr. Mark Palek, Spokane Falls Community College, Administration Building 17, 3410 West Fort George Wright Drive, Spokane, WA, (509) 533-3535, or Mr. Scott Morgan, Institute for Extended Learning, Suite 248, 2917 West Fort George Wright Drive, Spokane, WA, (509) 279-6040.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rule changes only affect students enrolled at Community Colleges of Spokane.

A cost-benefit analysis is not required under RCW 34.05.328. This rule change makes no monetary change to cost or benefit.

November 23, 2009
Anne Tucker
Public Information Officer

AMENDATORY SECTION (Amending WSR 07-10-042, filed 4/25/07, effective 6/25/07)

WAC 132Q-07-030 Outside speakers. (1) Any recognized campus student organization may invite speakers on campus ((~~with the written approval of its advisor~~)), subject to provisions of this section.

(2) The appearance of an invited speaker on a campus does not represent an endorsement, either implicit or explicit, of views or opinions of the speaker by CCS, its students, its faculty, its college personnel, its administration or its board.

(3) The scheduling of speakers including, but not limited to, those expecting to use campus facilities, including notification of the identity of the speaker(s), time of the speech, the place of the speech and the manner in which the speech will be transmitted shall be made through the facilities scheduling office of the campus at which the speaker will appear((~~, with prior approval from the appropriate college student activities office~~)).

(4) If it is expected that an outside speaker is to be compensated with any institutional funds, the appropriate student activities office will be notified at least thirty days prior to the appearance of an invited speaker, at which time a personal services contract (available in the student activities office) must be completed with all particulars regarding speaker, time, place, etc., signed by the sponsoring organization's advisor, and filed with the student activities office. Exceptions to the thirty-day ruling may be made by the appropriate administrator.

(((~~(5) The appropriate student activities office may require a question period or arrange to have views other than those of the invited speakers represented at the meeting, or at a subsequent meeting.~~)))

AMENDATORY SECTION (Amending WSR 03-18-021, filed 8/25/03, effective 9/25/03)

WAC 132Q-07-040 Distribution of materials. (1) Handbills, leaflets, newspapers, and similarly related material (including religious matter) distributed free of charge by any student, nonstudent, ((~~by~~)) member of a recognized student organization or ((~~by~~)) college personnel((~~,~~)) may be distributed upon a college campus ((~~with prior approval by the appropriate student center administrator~~)), provided that such distribution does not interfere with the free flow of vehicle or pedestrian traffic.

(2) Newspapers, leaflets, and similarly related materials offered for sale by any student or nonstudent person or organization may be distributed and sold only through the college book store as are other commercial forms of merchandise, subject to reasonable rules and regulations that may be imposed by the bookstore manager. Exceptions may be made by the appropriate vice-president or designee.

(3) ((~~All~~)) The organization or individual publishing and distributing handbills, leaflets, newspapers, and similarly related material (including religious matter) ((~~must bear identification as to the publishing agency and distributing organization or individual~~)) is encouraged but not required to include its or his/her name and contact information on the distributed material.

(4) Any distribution of the materials regulated in this section shall not be construed as endorsement of the same by the college or by the board of trustees of Community Colleges of Spokane.

AMENDATORY SECTION (Amending WSR 07-10-042, filed 4/25/07, effective 6/25/07)

WAC 132Q-30-242 Discrimination. Discrimination on the basis of race, national or ethnic origin, creed, age, sex, marital status, ((~~veteran's~~)) veteran status, sexual orientation((~~,~~)) or disability is prohibited in conformity with federal and state laws. Discrimination includes ((~~sexual or racial harassment which is defined as~~)) conduct that is severe, persistent or pervasive, and objectively offensive as to substantially disrupt or undermine a person's ability to participate in or to receive the benefits, services or opportunities of community colleges of Spokane and includes conduct that:

(1) Is sexually or racially motivated and has the purpose or effect of unreasonably interfering with a person's work or educational performance; and/or

(2) ((~~Creating~~)) Creates an intimidating, hostile, or offensive environment.

AMENDATORY SECTION (Amending WSR 07-10-042, filed 4/25/07, effective 6/25/07)

WAC 132Q-30-246 Harassment. Conduct by any means that is sufficiently severe, pervasive((~~,~~)) or persistent, and objectively offensive so as to threaten an individual or limit the individual's ability to work, study, or participate in the activities of the college.

WSR 09-24-113
PROPOSED RULES
DEPARTMENT OF HEALTH
(Medical Quality Assurance Commission)
[Filed December 2, 2009, 10:39 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-919-396 Physicians and 246-918-075 Physician assistants, creating permanent new sections to provide for temporary practice permits to be issued to an applicant for a physician or physician assistant license while a fingerprint-based national background check is completed.

Hearing Location(s): Holiday Inn Seattle at Renton, One South Grady Way, Renton, WA 98057, on January 14, 2010, at 7:30 p.m.

Date of Intended Adoption: January 14, 2010.

Submit Written Comments to: Julie Kitten, Department of Health, Medical Quality Assurance Commission, P.O. Box 47866, Olympia, WA 98504-7866, web site http://www3.doh.wa.gov/policyreview/, fax (360) 236-2795, by January 8, 2010.

Assistance for Persons with Disabilities: Contact Julie Kitten by January 7, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To provide for permanent temporary practice permits to be issued to an applicant for a physician or physician assistant license if a fingerprint-based national background check must be conducted. The national background check process is lengthy and has caused licensing delays that may affect the public's access to health care. To receive the temporary practice permit, the applicant must meet all other licensing requirements, qualifications, and have no criminal record in Washington. The proposed rules will provide for qualified applicants to practice in the full scope of their profession until the permit expires. The proposed permanent rules will replace emergency rules adopted effective October 13, 2009.

Reasons Supporting Proposal: In 2008 4SHB 1103 (chapter 134, Laws of 2008) passed authorizing fingerprint-based national background checks for those situations when a background check in RCW 18.130.064 was inadequate. The legislation authorized the department to issue a temporary practice permit to an applicant who must have the national background check. The proposed rules will reduce the barriers for applicants who otherwise meet all licensing requirements. This rule will also improve the public's access to health care.

Statutory Authority for Adoption: RCW 18.130.064, 18.130.075.

Statute Being Implemented: RCW 18.130.064, 18.130.075.

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

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

Name of Agency Personnel Responsible for Drafting: Julie Kitten, Department of Health, Medical Quality Assurance Commission, P.O. Box 47866, Olympia, WA 98504-7866, (360) 236-2757; Implementation and Enforcement: Beverly Teeter, Department of Health, Medical Quality Assurance Commission, P.O. Box 47866, Olympia, WA 98504-7866, (360) 236-2758.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(g)(ii), a small business economic impact statement is not required for proposed rules that adopt, amend, or repeal a filing or related process requirement for applying to an agency for a license or permit.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(v) exempts rules the content of which is explicitly and specifically dictated by statute.

December 1, 2009
Maryella E. Jansen
Executive Director
Medical Quality
Assurance Commission

NEW SECTION

WAC 246-918-075 Background check—Temporary practice permit. The medical quality assurance commission (MQAC) conducts background checks on applicants to assure safe patient care. Completion of a national criminal background check may require additional time. The MQAC may issue a temporary practice permit when the applicant has met all other licensure requirements, except the national criminal background check requirement. The applicant must not be subject to denial of a license or issuance of a conditional license under this chapter.

(1) If there are no violations identified in the Washington criminal background check and the applicant meets all other licensure conditions, including receipt by the department of health of a completed Federal Bureau of Investigation (FBI) fingerprint card, the MQAC may issue a temporary practice permit allowing time to complete the national criminal background check requirements.

The MQAC will issue a temporary practice permit that is valid for six months. A one time extension of six months will be granted if the national background check report has not been received by the MQAC.

(2) The temporary practice permit allows the applicant to work in the state of Washington as a physician assistant during the time period specified on the permit. The temporary practice permit is a license to practice medicine as a physician assistant.

(3) The MQAC issues a license after it receives the national background check report if the report is negative and the applicant otherwise meets the requirements for a license.

(4) The temporary practice permit is no longer valid after the license is issued or action is taken on the application because of the background check.

NEW SECTION

WAC 246-919-396 Background check—Temporary practice permit. The medical quality assurance commission (MQAC) conducts background checks on applicants to assure safe patient care. Completion of a national criminal background check may require additional time. The MQAC may issue a temporary practice permit when the applicant has met all other licensure requirements, except the national criminal background check requirement. The applicant must not be subject to denial of a license or issuance of a conditional license under this chapter.

(1) If there are no violations identified in the Washington criminal background check and the applicant meets all other licensure conditions, including receipt by the department of health of a completed Federal Bureau of Investigation (FBI) fingerprint card, the MQAC may issue a temporary practice permit allowing time to complete the national criminal background check requirements.

The MQAC will issue a temporary practice permit that is valid for six months. A one time extension of six months will be granted if the national background check report has not been received by the MQAC.

(2) The temporary practice permit allows the applicant to work in the state of Washington as a physician during the time period specified on the permit. The temporary practice permit is a license to practice medicine.

(3) The MQAC issues a license after it receives the national background check report if the report is negative and the applicant otherwise meets the requirements for a license.

(4) The temporary practice permit is no longer valid after the license is issued or action is taken on the application because of the background check.

WSR 09-24-114
PROPOSED RULES
BOARD OF PILOTAGE COMMISSIONERS

[Filed December 2, 2009, 11:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-15-170.

Title of Rule and Other Identifying Information: WAC 363-116-078 Training program.

Hearing Location(s): 2901 Third Avenue, 1st Floor, Agate Conference Room, Seattle, WA 98121, on January 14, 2010, at 9:30 a.m.

Date of Intended Adoption: January 14, 2010.

Submit Written Comments to: Captain Harry Dudley, Chairman, 2901 Third Avenue, Suite 500, Seattle, WA 98121, e-mail larsonp@wsdot.wa.gov, fax (206) 515-3906, by January 7, 2010.

Assistance for Persons with Disabilities: Contact Judy Bell by January 11, 2010, (206) 515-3647.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule is intended to extend the time period during which a pilot trainee has to complete the initial evaluation period of his/her training program.

If not modified, this timeline would force the termination of a training program before giving a trainee ample time to successfully complete the specified local knowledge examination. An extension of time for the administration of this examination is necessary so that a trainee is not eliminated from training.

Reasons Supporting Proposal: This rule as proposed is currently in effect under emergency provisions which will expire on March 26, 2010. It is intended that it become a permanent rule in order to remedy this situation in all current and future training programs.

Statutory Authority for Adoption: Chapter 88.16 RCW.

Statute Being Implemented: Chapter 88.16 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The board has received this proposal from its trainee evaluation committee favoring the adoption of this new rule. Further written and oral comments are welcome throughout the rule-making process. The board may adopt a rule that varies from the proposed rule upon consideration of presentations and written comments from the public and any other interested party.

Name of Proponent: Board of pilotage commissioners, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Board of Pilotage Commissioners, 2901 Third Avenue, Seattle, WA 98121, (206) 515-3904.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The application of the proposed modifications is clear in the description of the proposal and its anticipated effects as well as the following proposed language.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the adoption of these rules. The Washington state board of pilotage commissioners is not a listed agency in RCW 34.05.328 (5)(a)(i).

December 2, 2009

Peggy Larson

Administrator

AMENDATORY SECTION (Amending WSR 08-15-119, filed 7/21/08, effective 8/21/08)

WAC 363-116-078 Training program. After passing the written examination and simulator evaluation, pilot applicants pursuing a pilot license must enter and successfully complete a training program specified by the board.

(1) Notification. Pilot applicants on the list waiting to enter the training program shall provide the board with a current address to be used for notification for entry into the training program. Such address shall be a place at which mail is delivered. In addition, a pilot applicant may provide the board with other means of contact such as a phone number, fax number, and/or an e-mail address. The mailing address will, however, be considered the primary means of notification by the board. It will be the responsibility of the pilot applicant to ensure that the board has a current mailing address at all times. If a pilot applicant cannot personally receive mail at the address provided to the board for any period of time, another person may be designated in writing with a notarized copy to the board as having power of attorney specifically to act in the pilot applicant's behalf regarding such notice. If notice sent to the address provided by the pilot applicant is returned after three attempts to deliver, that pilot applicant will be skipped and the next pilot applicant on the list will be contacted for entry into the training program. A person so skipped will remain next on the list. A pilot applicant or his/her designated attorney in fact shall respond within fifteen calendar days of receipt of notification to accept, refuse, or request a delayed entry into the training program.

(2) Entry. At such time that the board chooses to start a pilot applicant in the training program, notification shall be given to the first person on the list. Pilot applicants shall be eligible in the order of their total combined scores on the written examination and simulator evaluation or as otherwise may be determined by the board. A pilot applicant who refuses entry into the program will be removed from the waiting list with no further obligation by the board to offer a position in the training program to such pilot applicant. A pilot applicant who is not able to start the training program on the date the board sets for that pilot applicant's entry into the training program may, with written consent of the board, delay entry into the training program for up to two months. The board will then give notice to the next pilot applicant on the list to enter the training program. The pilot applicant who delays entry, shall remain eligible for the next position in the training program, provided that the next position becomes available within the earlier of:

(a) Four years from the pilot applicant's taking the written examination; or

(b) The date scheduled for the next pilotage examination. Pilot applicants not able to start in the training program within two months of the date the board sets for that pilot applicant's entry into the training program and who do not obtain the board's written consent to delay entry into the training program shall no longer be eligible for the training program without retaking the examination provided in WAC 363-116-076 and the simulator evaluation provided in WAC 363-116-077.

(3) Training license. Prior to receiving a training license pilot applicants must pass a physical examination by a board-designated physician and in accordance with the requirements of WAC 363-116-120 for initial pilot applicants. A form provided by the board must be completed by the physician and submitted to the board along with a cover letter indicating the physician's findings and recommendations as to the pilot applicant's fitness to pilot. The physical examination must be taken not more than ninety days before issuance of the training license. Holders of a training license will be required to pass a general physical examination annually within ninety days prior to the anniversary date of that license. Training license physical examinations will be at the expense of the pilot applicant. All training licenses shall be signed by the chairperson or his/her designee and shall have an expiration date. Training licenses shall be surrendered to the board upon completion or termination of the training program.

(4) Development. As soon as practical after receiving notification of eligibility for entry into the training program as set forth in this section, the pilot applicant shall meet with the trainee evaluation committee for the purpose of devising a training program for that pilot applicant. The training program shall be tailored to the ability and experience of the individual pilot applicant and shall consist of observation trips, training trips in which the pilot applicant pilots the vessel under the supervision of licensed pilots, ship assist tug trips, and such other forms of learning and instruction that may be designated. The trainee evaluation committee shall recommend a training program for adoption by the board. After adoption by the board, it will be presented to the pilot applicant. If the pilot applicant agrees in writing to the training program, the board shall issue a training license to the pilot applicant, which license shall authorize the pilot applicant to take such actions as are contained in the training program. If the pilot applicant does not agree to the terms of the training program in writing within fifteen business days of it being received by the pilot applicant, that pilot applicant shall no longer be eligible for entry into the training program and the board may give notice to the next available pilot applicant that he/she is eligible for the training program.

(5) Initial evaluation.

(a) The trainee evaluation committee shall create an initial evaluation at the beginning of each pilot applicant's training program subject to approval by the board. The goal of the initial evaluation is to, as soon as practical after adequate observation trips, have the pilot trainee involved in hands-on piloting and ship handling under the supervision of licensed pilots and subject to the evaluation of training pilots. To this end the trainee evaluation committee shall devise an initial evaluation of a specified length not to exceed ((~~six~~)) eleven months or within such time frame as may be established by the board if the pilot trainee is on stipend and ((~~nine~~)) fifteen months if not on stipend. The initial evaluation shall:

(i) Afford the pilot trainee early and concentrated exposure to a commonly navigated waterway, channel or tributary within the pilotage district and the main ship channel routes between such area and the seaward boundary of the pilotage district;

(ii) Except for pilot trainees taking an examination prior to July 1, 2008, provide the pilot trainee the opportunity to study for and pass any local knowledge examinations provided by the board as to the conditions found in such waterway, channel or tributary;

(iii) Specify a number of training trips in which the pilot trainee pilots vessels under the supervision of licensed pilots; and

(iv) Specify a number of training trips in which the pilot trainee pilots vessels under the supervision of training pilots and the pilot members of the trainee evaluation committee.

(b) As a condition of completing the initial evaluation, the pilot trainee shall:

(i) Pass any required local knowledge examinations given by the board covering the routes described in (a)(i) of this subsection. This examination can be repeated as necessary, provided that it may not be taken more than once in any ((~~thirty~~)) seven day period and further provided that it must be successfully passed before the expiration date of the initial evaluation; and

(ii) Possess a first class pilotage endorsement without tonnage or other restrictions on his/her United States government license to pilot in at least one route in the pilotage district in which the pilot applicant seeks a license.

(c) After completion of the initial evaluation, the trainee evaluation committee shall make a recommendation to the board and the board shall determine, whether the pilot trainee has demonstrated the potential for superior piloting and ship handling and has demonstrated the ability to assimilate and retain the local knowledge necessary to pilot. Unless the board finds that such superior potential exists, it shall terminate the pilot trainee's participation in the training program.

(6) Specification of trips. To the extent possible, the training program shall provide a wide variety of assignments, observation and training trips. The training program may contain deadlines for achieving full or partial completion of certain necessary actions. Where relevant, it may specify such factors as route, sequence of trips, weather conditions, day or night, stern or bow first, draft, size of ship and any other relevant factors. The board may designate specific trips or specific numbers of trips that shall be made with training pilots or with the pilot members of the trainee evaluation committee or with pilots of specified experience. In the Puget Sound pilotage district, pilot applicants taking an examination before July 1, 2008, shall complete a minimum of one hundred thirty trips. After July 1, 2008, all Puget Sound pilotage district pilot applicants shall complete a minimum of one hundred fifty trips. The board shall set from time to time the minimum number of trips for pilot applicants in the Grays Harbor pilotage district. The board will ensure that during the training program the pilot trainee will get significant review by training pilots and the pilot members of the trainee evaluation committee.

(7) Local knowledge. The training program shall provide opportunities for the education of pilot trainees and shall provide for testing of pilot trainees on the local knowledge necessary to become a pilot. This education program shall be developed by the trainee evaluation committee and recommended to the board for adoption and shall be tailored to the needs of the individual pilot trainee. It shall be the responsibility of the pilot trainee to obtain the local knowledge necessary to be licensed as a pilot in the district for which he/she is applying. Prior to the completion of the training program, the board, or its designee, may give such local knowledge examination(s) as it deems appropriate to the pilot trainees who shall be required to pass such examination(s) before completing the training program. The trainee evaluation committee may require a pilot trainee to sit for a local knowledge examination provided the trainee evaluation committee informs the pilot trainee in writing sixty days in advance of the scheduled date of the examination. Failure to sit for the examination on the date scheduled may constitute cause for removal from the training program. The trainee evaluation committee may also establish in writing such interim performance requirements as it deems necessary. These local examinations can be repeated as necessary, except that an examination for the same local area may not be taken more than once in any ((~~thirty~~)) seven day period and all required local ((~~know~~)) knowledge examinations must be successfully passed before the expiration date of the training program. The local knowledge required of a pilot trainee and the local knowledge examination(s) may include the following subjects as they pertain to the pilotage district for which the pilot trainee seeks a license:

(a) Area geography;

(b) Waterway configurations including channel depths, widths and other characteristics;

(c) Hydrology and hydraulics of large ships in shallow water and narrow channels;

(d) Tides and currents;

(e) Winds and weather;

(f) Local aids to navigation;

(g) Bottom composition;

(h) Local docks, berths and other marine facilities including length, least depths and other characteristics;

(i) Mooring line procedures;

(j) Local traffic operations e.g., fishing, recreational, dredging, military and regattas;

(k) Vessel traffic system;

(l) Marine VHF usage and phraseology, including bridge-to-bridge communications regulations;

(m) Air draft and keel clearances;

(n) Submerged cable and pipeline areas;

(o) Overhead cable areas and clearances;

(p) Bridge transit knowledge - signals, channel width, regulations, and closed periods;

(q) Lock characteristics, rules and regulations;

(r) Commonly used anchorage areas;

(s) Danger zone and restricted area regulations;

(t) Regulated navigation areas;

(u) Naval operation area regulations;

(v) Local ship assist and escort tug characteristics;

(w) Tanker escort rules - state and federal;

(x) Use of anchors and knowledge of ground tackle;

(y) Applicable federal and state marine and environmental safety law requirements;

(z) Marine security and safety zone concerns;

(aa) Harbor safety plan and harbor regulations;

(bb) Chapters 88.16 RCW and 363-116 WAC, and other relevant state and federal regulations in effect on the date the

examination notice is published pursuant to WAC 363-116-076; and

(cc) Courses in degrees true and distances in nautical miles and tenths of miles between points of land, navigational buoys and fixed geographical reference points, and the distance off points of land for such courses as determined by parallel indexing along pilotage routes.

(8) Length.

(a) In the Puget Sound pilotage district, for pilot applicants taking an examination before July 1, 2008, the minimum length of the training program shall be seven months. For pilot applicants who take an examination on or after July 1, 2008, the minimum length of the training program shall be eight months. The maximum length of the training program shall be thirty-six months if the pilot applicant elects to receive a stipend. The length of the training program shall be established by the board based on the recommendation of the trainee evaluation committee.

(b) In the Grays Harbor pilotage district, the length of the training program shall be set by the board based on the recommendation of the trainee evaluation committee.

(9) Rest. It is the pilot trainee's responsibility to provide adequate rest time so that he/she is fully able to pilot on training trips. Pilot trainees shall not take pilot training trips in which they will be piloting the vessel without observing the rest rules for pilots in place by federal or state law or regulation. For purposes of calculating rest required before a training trip in which the pilot trainee will be piloting after an observation trip in which the pilot trainee did not pilot the vessel, such observation trip shall be treated as though it had been a normal pilot training assignment. Nothing herein shall be construed as requiring any particular amount of rest before any observation trip in which the pilot trainee will not be piloting.

(10) Stipend.

(a) At the initial meeting with the trainee evaluation committee the pilot applicant shall indicate whether he/she wishes to receive a stipend during the training program. In the Puget Sound pilotage district, as a condition of receiving such stipend, pilot applicants will agree to forego during the training program other full- or part-time employment which prevents them from devoting themselves on a full-time basis to the completion of the training program. With the consent of the board and the restructuring of the training program, pilot trainees may elect to change from a stipend to nonstipend status, and vice versa, during the training program. The stipend paid to pilot trainees shall be six thousand dollars per month (or such other amount as may be set by the board from time to time), shall be contingent upon the board's setting of a training surcharge in the tariffs levied pursuant to WAC 363-116-185 and 363-116-300 sufficient to cover the expense of the stipend and shall be paid from a pilot training account as directed by the board and pursuant thereto shall be paid to pilot trainees as set forth below:

(i) Determinations as to stipend entitlement will be made on a full calendar month basis and documentation of trips will be submitted to the board by the fifth day of the following month. The stipend will be paid on an all or nothing basis for each month except that prorations shall be allowed at the rate of two hundred dollars per day (or such other amount as may be set by the board from time to time), under the following circumstances:

(A) For the first and last months of the training program (unless the training program starts on the first or ends on the last day of a month); or

(B) For a pilot trainee who is deemed unfit for duty by a board-designated physician during a training month; or

(C) For a pilot trainee who requests a change from a nonstipend status to a stipend status, or from a stipend status to a nonstipend status as set forth in (a)(vi) of this subsection.

(ii) A certain minimum number of trips are required each month for eligibility to receive the stipend. This minimum number shall be specified in the training program and shall be the total number of trips required in the training program divided by the number of months in the training program. Only trips required by the training program can be used to satisfy this minimum. Trips will be documented at the end of each month.

(iii) It is the pilot trainee's responsibility to make all hard-to-get trips before the end of the training program. If a training program is extended due to a failure to get all of these trips, the board may elect not to pay the stipend if the missing trips were available to the pilot trainee but not taken.

(iv) The trainee evaluation committee with approval by the board may allocate, assign or specify training trips among multiple pilot trainees. Generally, the pilot trainee who finished the qualifying examination and simulator evaluation with the highest score has the right of first refusal of training trips provided that the trainee evaluation committee may, with approval by the board, allocate or assign training trips differently as follows:

(A) When it is necessary to accommodate any pilot trainee's initial evaluation program;

(B) When it is necessary to spread hard-to-get trips among pilot trainees so that as many as possible complete required trips on time. If a pilot trainee is deprived of a hard-to-get trip by the trainee evaluation committee, that trip will not be considered "available" under (a)(ii) of this subsection. However, the pilot trainee will still be required to complete the minimum number of trips for the month in order to receive a stipend, and the minimum number of trips as required to complete his/her training program;

(v) If a pilot trainee elects to engage in any full- or part-time employment, the terms and conditions of such employment must be submitted to the trainee evaluation committee for prior determination by the board of whether such employment complies with the intent of this section prohibiting employment that "prevents (pilot trainees) from devoting themselves on a full-time basis to the completion of the training program."

(vi) If a pilot trainee requests to change to a nonstipend status as provided in this section such change shall be effective for a minimum nonstipend period of thirty days, provided that before any change takes effect the board and the pilot trainee must agree in writing on the terms of a revised training program.

(b) Any approved pilot association or other organization collecting the pilotage tariff levied by WAC 363-116-185 or 363-116-300 shall transfer the pilot training surcharge receipts to the board at least once a month or otherwise dis-

pose of such funds as directed by the board. The board may set different training stipends for different pilotage districts. Receipts from the training surcharge shall not belong to the pilot providing the service to the ship that generated the surcharge or to the pilot association or other organization collecting the surcharge receipts, but shall be disposed of as directed by the board. Pilot associations or other organizations collecting surcharge receipts shall provide an accounting of such funds to the board on a quarterly basis or at such other intervals as may be requested by the board. Any audited financial statements filed by pilot associations or other organizations collecting pilotage tariffs shall include an accounting of the collection and disposition of these surcharges. The board shall direct the disposition of all funds in the account.

(11) Trainee evaluation committee. There is hereby created a trainee evaluation committee to which members shall be appointed by the board. The committee shall include at a minimum: Three active licensed Washington state pilots, who, to the extent possible, shall be from the district in which the pilot trainee seeks a license and at least one of whom shall be a member of the board; one representative of the marine industry from the relevant pilotage district (who may be a board member) who holds, or has held, the minimum U.S. Coast Guard license required by RCW 88.16.090; and one other member of the board who is not a pilot. The committee may include such other persons as may be appointed by the board. The committee shall be chaired by a pilot member of the board and shall meet as necessary to complete the tasks accorded it. In the event that the trainee evaluation committee cannot reach consensus with regard to any issue it shall report both majority and minority opinions to the board.

(12) Training pilots. The board shall designate as training pilots those pilots with a minimum of seven years of piloting in the relevant district who are willing to undergo such training as the board may require and provide. The board may establish a lower experience level for the Grays Harbor pilotage district. Training pilots shall receive such training from the board to better enable them to give guidance and training to pilot trainees and to properly evaluate the performance of pilot trainees. The board shall keep a list of training pilots available for public inspection at all times. All pilot members of the trainee evaluation committee shall also be training pilots.

(13) Evaluation. When a pilot trainee pilots a vessel under the supervision of another pilot, the supervising pilot shall, to the extent possible, communicate with and give guidance to the pilot trainee in an effort to make the trip a valuable learning experience. After each such trip, the supervising pilot shall complete a form provided by the board evaluating the pilot trainee's performance. Evaluation forms prepared by licensed pilots who are not training pilots shall be used by the trainee evaluation committee and the board for assessing a pilot trainee's progress, providing guidance to the pilot trainee and for making alterations to the training program. All evaluation forms shall be delivered or mailed by the supervising pilot to the board. They shall not be given to the pilot trainee. The supervising pilot may show the contents of the form to the pilot trainee, but the pilot trainee has no right to see the form until it is filed with the board. The trainee evaluation committee shall review these evaluation forms from time to time and the chairperson of the trainee evaluation committee shall report the progress of all pilot trainees at each meeting of the board. If it deems it necessary, the trainee evaluation committee may recommend, and the board may make, changes from time to time in the training program requirements applicable to a pilot trainee, including the length of the training program.

(14) Removal. A pilot trainee may be removed from the training program by the board if it finds any of the following:

(a) Failure to maintain the minimum federal license required by RCW 88.16.090;

(b) Conviction of an offense involving drugs or involving the personal consumption of alcohol;

(c) Failure to devote full time to training in the Puget Sound pilotage district if receiving a stipend;

(d) The pilot trainee is not physically fit to pilot;

(e) Failure to make satisfactory progress toward timely completion of the program or timely meeting of interim performance requirements in the training program;

(f) Inadequate performance on examinations or other actions required by the training program;

(g) Failure to demonstrate the superior skills required in the initial evaluation;

(h) Inadequate performance on training trips; or

(i) Violation of a training program requirement, law, regulation or directive of the board.

(15) Completion of the training program shall include the requirement that the pilot trainee:

(a) Successfully complete the requirements set forth in the training program;

(b) Possess a valid first class pilotage endorsement without tonnage or other restrictions on his/her United States government license to pilot in all of the waters of the pilotage district in which the pilot applicant seeks a license; and

(c) Successfully complete any local knowledge examination(s) required by the board and specified in the training program.

WSR 09-24-115
PROPOSED RULES
LIQUOR CONTROL BOARD

[Filed December 2, 2009, 11:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-11-051.

Title of Rule and Other Identifying Information: Created new chapter 314-03 WAC, Allowed activities. Rules were created to explain the conditions on internet sales and delivery for grocery stores and beer/wine specialty shops.

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Lacey, WA 98504, on January 6, 2010, at 10:00 a.m.

Date of Intended Adoption: January 20, 2010.

Submit Written Comments to: Karen McCall, P.O. Box 43098, Olympia, WA 98504-3098, e-mail rules@liq.wagov [rules@liq.wa.gov] fax (360) 664-9689, by January 6, 2010.

Assistance for Persons with Disabilities: Contact Karen McCall by January 6, 2010, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules reflect current agency practices and more clearly provide direction to grocery store and specialty shop liquor licensees who want to offer internet sales and delivery to their customers.

Reasons Supporting Proposal: There was no reference in rule to internet sales and delivery. Clarification of existing practices in rule benefits those liquor licensees involved.

Statutory Authority for Adoption: RCW 66.08.030.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen Rogers, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1622; Implementation: Alan Rathbun, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Pat Parmer, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1729.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal imposes no monetary impact to liquor licensees.

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

December 2, 2009
Sharon Foster
Chairman

Chapter 314-03 WAC

ALLOWED ACTIVITIES

NEW SECTION

WAC 314-03-020 Consumer orders, internet sales, and delivery for grocery stores and beer and wine specialty shops. A grocery store or beer and wine specialty shop licensee may accept orders for beer or wine from, and deliver beer or wine to, customers.

(1) **Resale.** Liquor shall not be for resale.

(2) **Stock location.** Liquor must come directly from a licensed retail location.

(3) **How to place an order.** Liquor may be ordered in person at a licensed location, by mail, telephone or internet, or by other similar methods.

(4) **Sales and payment.**

(a) Only a licensee or a licensee's direct employees may accept and process orders and payments. A contractor may not do so on behalf of a licensee, except for transmittal of payment through a third-party service. A third-party service may not solicit customer business on behalf of a licensee.

(b) All orders and payments shall be fully processed before liquor transfers ownership or, in the case of delivery, leaves a licensed premises.

(c) *Payment method.* Payment methods include, but are not limited to: Cash, credit or debit card, check or money order, electronic funds transfer, or an existing prepaid account. An existing prepaid account may not have a negative balance.

(d) *Internet.* To sell liquor via the internet, a new license applicant must request internet-sales privileges in his or her application. An existing licensee must notify the board prior to beginning internet sales. A corporate entity representing multiple stores may notify the board in a single letter on behalf of affiliated licensees, as long as the liquor license numbers of all licensee locations utilizing internet sales privileges are clearly identified.

(5) **Delivery location.** Delivery shall be made only to a residence or business that has an address recognized by the United States postal service; however, the board may grant an exception to this rule at its discretion. A residence includes a hotel room, a motel room, or other similar lodging that temporarily serves as a residence.

(6) **Hours of delivery.** Liquor may be delivered each day of the week between the hours of six a.m. and two a.m. Delivery must be fully completed by two a.m.

(7) **Age requirement.**

(a) Per chapter 66.44 RCW, any person under twenty-one years of age is prohibited from purchasing, delivering, or accepting delivery of liquor.

(b) A delivery person must verify the age of the person accepting delivery before handing over liquor.

(c) If no person twenty-one years of age or older is present to accept a liquor order at the time of delivery, the liquor shall be returned.

(8) **Intoxication.** Delivery of liquor is prohibited to any person who shows signs of intoxication.

(9) **Containers and packaging.**

(a) Individual units of liquor must be factory sealed in bottles, cans or other like packaging. Delivery of growlers, jugs or other similar, nonfactory-sealed containers is prohibited. Delivery of malt liquor in kegs or other containers capable of holding four gallons or more of liquid is allowed, provided that kegs or containers are factory sealed and that the keg sales requirements (see WAC 314-02-115) are met prior to delivery. For the purposes of this subsection, "factory sealed" means that a unit is in one hundred percent resalable condition, with all manufacturer's seals intact.

(b) The outermost surface of a liquor package, delivered by a third party, must have language stating that:

(i) The package contains liquor;

(ii) The recipient must be twenty-one years of age or older; and

(iii) Delivery to intoxicated persons is prohibited.

(10) **Required information.**

(a) Records and files shall be retained at a licensed premises. Each delivery sales record shall include the following:

(i) Name of the purchaser;

(ii) Name of the person who accepts delivery;

(iii) Street addresses of the purchaser and the delivery location; and

(iv) Times and dates of purchase and delivery.

(b) A private carrier must obtain the signature of the person who receives liquor upon delivery.

(c) A sales record does not have to include the name of the delivery person, but it is encouraged.

(11) **Web site requirements.** When selling over the internet, all web site pages associated with the sale of liquor must display a licensee's registered trade name.

(12) **Accountability.** A licensee shall be accountable for all deliveries of liquor made on its behalf.

(13) **Violations.** The board may impose administrative enforcement action upon a licensee, or suspend or revoke a licensee's delivery privileges, or any combination thereof, should a licensee violate any condition, requirement or restriction.