

WSR 16-05-004
PREPROPOSAL STATEMENT OF INQUIRY
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed February 3, 2016, 4:02 p.m.]

Subject of Possible Rule Making: Chapter 181-77 WAC, Standards for career and technical education certification.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 28A.210.410, 28A.305.130, 28A.410.010, and 28A.150.220.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The professional educator standards board (PESB) is responsible for standards for career and technical education certification including criteria, eligibility, issuance and renewal.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. PESB meeting[s] are open to the public and regularly scheduled. The calendar of meetings is announced on the web site www.PESB.wa.gov.

February 3, 2016
 David Brenna
 Senior Policy Analyst

WSR 16-05-015
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF REVENUE

[Filed February 5, 2016, 11:14 a.m.]

Subject of Possible Rule Making: WAC 458-20-190 (Rule 190) Sales to and by the United States—Doing business on federal reservations—Sales to foreign governments.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 82.32.300 and 82.01.060(2).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Rule 190 explains the tax reporting responsibilities of persons making sales to the United States and to foreign governments. This rule also explains the tax reporting responsibilities of persons engaging in business activities within federal reservations and cleaning up radioactive waste and other by-products of weapons production for the United States.

The department is proposing to revise Rule 190 to include information on whether purchases made with Red Cross funds or FEMA funds are subject to tax. This information is currently available in ETA 3156. Subsection (5)(a) has been expanded to include additional information on documenting United States government credit card purchases.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Parties interested in this rule making may contact the individual listed below. The

public may also participate by providing written comments throughout this rule making or giving oral testimony at the public meeting or public hearing.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. A preliminary draft of possible rule changes is available via the department's online Rules Agenda.

Written comments may be submitted by mail and should be directed to Leslie Mullin, e-mail LeslieMu@dor.wa.gov, or mailing address ITA Division, P.O. Box 47453, Olympia, WA 98504-7453.

Written and oral comments will be accepted at the public meeting.

Public Meeting Location: Capital Plaza Building, 4th Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA, on March 24, 2016, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499 or Renee Cosare, (360) 725-7514, no later than ten days before the meeting date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Call-in option can be provided upon request no later than three days before the meeting date.

February 5, 2016
 Kevin Dixon
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-10-030, filed 4/26/10, effective 5/27/10)

WAC 458-20-190 Sales to and by the United States and certain entities created by the United States—Doing business on federal reservations—Sales to foreign governments. (1) **Introduction.** Federal law prohibits (~~Washington~~) states from directly imposing taxes (~~upon~~) on the United States. Persons doing business with the United States, however, are (~~nonetheless~~) subject to the taxes imposed by the state of Washington, unless specifically exempt. This rule explains the tax reporting responsibilities of persons making sales to the United States and to foreign governments. The rule also explains the tax reporting responsibilities of persons engaging in business activities within federal reservations and cleaning up radioactive waste and other by-products of weapons production for the United States.

~~((Persons engaged in construction, installation, or improvement to real property of or for the United States should also refer to))~~ **(a) Other rules that may be relevant.**

~~(i) WAC 458-20-17001 ((f))Government contracting((g etc.)) Persons building, repairing, or improving streets, roads, and other transportation facilities, which are owned by the United States should also refer to))~~—Construction, installations, or improvements to government real property.

~~(ii) WAC 458-20-171 ((f))Building, repairing or improving streets, roads, etc.((g Persons selling cigarettes to the United States or any other federal entity should also refer to))~~, which are owned by a municipal corporation or political subdivision of the state or by the United States and which are used primarily for foot or vehicular traffic.

~~(iii) WAC 458-20-178 Use tax and the use of tangible personal property.~~

(iv) WAC 458-20-186 ~~((t))~~Tax on cigarettes~~((t))~~.

(b) Examples. This rule provides examples that identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(2) "United States" defined.

(a) For the purposes of this rule, the term "United States" means the federal government, including the executive, legislative, and judicial branches, its departments, and federal entities exempt from state or local taxation by ~~((reason of))~~ specific federal statutory exemption.

The mere fact that an entity is a federal entity, such as an instrumentality or a federal corporation, does not mean that the entity is immune from tax. The taxability of a federal entity and whether ~~((or not))~~ the entity is required to collect and remit retail sales/use tax depends on the benefits and immunities conferred ~~((upon))~~ on it by Congress. Thus, to determine the current taxable status of federal entities, the relevant portion of the federal law should be examined.

(b) "United States" does not include entities associated with but not a part of the United States, such as the National Guard (an instrumentality of the state of Washington). Nor does it include entities contracting with the United States government to administer its programs.

(3) Prohibition against taxing the United States. The state of Washington is prohibited from imposing taxes directly ~~((upon))~~ on the United States.

(a) This prohibition applies to taxes imposed for the privilege of engaging in business such as ~~((the))~~ business and occupation (B&O) (chapter 82.04 RCW) and ~~((the))~~ public utility (chapter 82.16 RCW) taxes.

It also applies to taxes imposed on a buyer or user of goods or services, including, but not limited to, the:

(i) State and local retail sales and car rental taxes (chapters 82.08 and 82.14 RCW);

(ii) State and local use tax (chapters 82.12 and 82.14 RCW);

(iii) Solid waste collection tax (chapter 82.18 RCW); and

(iv) Local government taxes such as the special hotel/motel (chapter 67.28 RCW) and convention and trade center (chapter 67.40 RCW) taxes.

(b) The state is also prohibited from requiring the United States to collect taxes imposed on the buyer (e.g., the retail sales tax) as an agent for the state. However, buyers must pay use tax on retail purchases from the United States, unless specifically exempt by law.

(c) In addition, federal law exempts certain nongovernmental entities from state taxes (for which Congress has given specific federal statutory tax exemptions). These specific federal statutory exemptions ~~((given by Congress))~~ may not be absolute and may be limited to specific activities of an entity.

(d) The American Red Cross is an instrumentality of the United States. As a federal corporation providing aid and relief, it is exempt from retail sales, use, and ~~((business and occupation))~~ B&O taxes under state law. RCW 82.08.0258, 82.12.0259, and 82.04.380.

The Red Cross provides some victims of natural disasters assistance by check, voucher, and/or direct deposits to

the individuals' personal bank accounts. Assistance may also be provided with "client assistance cards" that may be used by the recipients at locations where bankcards are accepted or at automated teller machines (ATM). The retail sales tax treatment of purchases made using these payment methods is:

(i) Electronic funds transfers and checks. Purchases made by an individual using funds that have been transferred into the individual's bank account or received in the form of a check are subject to retail sales tax in the same manner as any other purchase made by that individual, unless specifically exempt by law.

(ii) Vouchers. A voucher is a certificate issued by the Red Cross to an individual that may be exchanged for a specific good or service. As the goods and services will be paid for directly by the Red Cross, the sales are not subject to retail sales tax. A vendor who accepts a voucher will send it and/or other proof of sale to the Red Cross, which will then send a check to the vendor to pay for the purchase.

(iii) Client assistance cards. Sales to individuals who use client assistance cards issued by the Red Cross, or who pay with cash withdrawn from an ATM using the card, are subject to retail sales tax, unless otherwise exempt from tax. These sales are not direct sales to the federal government or one of its instrumentalities.

(e) The Federal Emergency Management Administration (FEMA) is an agency of the federal government. As a federal corporation providing aid and relief, it is exempt from retail sales, use, and B&O taxes under state law. RCW 82.08.0258, 82.12.0259, and 82.04.380.

FEMA provides some victims of natural disasters assistance by check, voucher, and/or direct deposits to the individuals' personal bank accounts. Assistance may also be provided with emergency debit cards that can be used by the recipients at locations where bankcards are accepted or at ATMs. The retail sales tax treatment of purchases made using these payment methods is:

(i) Electronic funds transfer and checks. Sales are subject to retail sales tax as described in (d)(i) of this subsection.

(ii) Vouchers. Sales are not subject to retail sales tax. As with the Red Cross, see (d)(ii) of this subsection, the goods and services will be paid for directly by FEMA.

(iii) Emergency debit cards. As with the Red Cross "client assistance cards" see (d)(iii) of this subsection, purchases made with these cards, or with cash withdrawn from an ATM using these cards, are subject to retail sales tax.

(4) Persons doing business with the United States. Persons selling goods or services to the United States are subject to taxes imposed on the seller, such as the ~~((business and occupation-))~~B&O~~((t))~~ and public utility taxes, unless a specific tax exemption applies. Persons receiving income from contracting with the United States government to administer its programs, either in whole or in part, are also subject to tax, unless a specific tax exemption applies.

(a) Certain invoiced amounts not included in gross income. Persons who contract with the United States may, for federal accounting purposes, be contractually required to invoice goods or services provided to the United States by third parties. The purpose of the invoices is to match the expenditures with the appropriate category of congressional funding. ~~((These))~~ Amounts received under such invoices

should be excluded from the person's gross income when reporting on the ~~((combined))~~ excise tax return if all of the following conditions ~~((exist))~~ are met with respect to the goods or services:

- (i) The third party directly invoices the United States;
- (ii) The United States directly pays the third party; and
- (iii) The person has no liability, either primarily or secondarily, for making payment to the third party or for remitting payment to the third party.

(b) **Tax obligation with respect to the use of tangible personal property.** Persons performing services for the United States are also subject to the retail sales or use tax on property they use or consume when performing services for the United States, unless specifically exempt.

(i) **Manufacturing articles for commercial or industrial use.** In the case of products manufactured or produced by the person using the products as a consumer, the measure of the use tax is generally the value of the products as explained in WAC 458-20-112 ~~((Value of products). However,))~~. If the articles manufactured or produced by the user are used in the manufacture or production of products sold or to be sold to the department of defense of the United States, the value of articles used is the value of the ingredients of such articles. The manufacturing B&O tax also applies to the value of articles manufactured for commercial or industrial use.

(ii) **Use of government provided property.** When articles or goods used are acquired by bailment, the measure of the use tax to the bailee is the reasonable rental with the value to be determined as nearly as possible according to the rental price at the place of use of similar products of like quality and character. For more information on leases or rentals of tangible personal property see WAC 458-20-211 ~~((Leases or rental of tangible personal property, bailments))~~. Thus, if a person has a contract to provide services for the United States and uses government supplied tangible personal property to perform the services, ~~((then))~~ the person must pay use tax on the fair market rental value of the government supplied tangible personal property.

Persons who incorporate government provided articles into construction projects or improvements made to real property of or for the United States should refer to WAC 458-20-17001 ~~((Government contracting, etc.))~~ for more specific tax-reporting information.

(c) **Exemption for certain machinery and equipment.** Manufacturers or processors for hire may be eligible for the retail sales or use tax exemption provided by RCW 82.08.02565 and 82.12.02565 on machinery and equipment used directly in a manufacturing or research and development operation. For information on the sales and use tax exemptions see WAC 458-20-13601 ~~((Manufacturers and processor for hire—Sales and use tax exemption for machinery and equipment))~~.

(5) **Documenting exempt sales to the United States.** Only ~~((those))~~ sales made directly to the United States are exempt from retail sales tax or other tax imposed on the buyer. To be entitled to the exemption, the purchase must be paid for using a qualified U.S. government credit card, a check from the United States payable to the seller, a United

States voucher, or with cash accompanied by the federal SF (Standard Form) 1165.

Sales to employees or representatives of the United States are subject to tax, even though the United States may reimburse the employee or representative for all or a part of the expense. Purchases by any other person, whether with federal funds or through a reimbursement arrangement, are subject to tax unless specifically exempt by law.

(a) **Documenting tax-exempt sales.** Sellers must document the tax-exempt nature of sales made to the United States by keeping a copy of the United States credit card receipt, a copy of the check from the United States, a copy of the federal government voucher, or a signed copy of federal SF 1165. To determine whether purchases made with a U.S. Government credit card are exempt from retail sales tax, the department will look at the prefix of the card, which consists of the first four digits and the sixth digit. As amended in 2009, RCW 19.200.010 now prohibits sellers from retaining credit and debit card receipts containing more than the last five digits of the card number. Sellers, in addition to a receipt, should retain the remaining credit card numbers by other means, such as on a log, for example, that contains the following information:

- (i) At least the sixth digit of the eligible card;
- (ii) Federal employee's name;
- (iii) Federal government agency's name;
- (iv) Type of agency card (e.g., purchase card, fleet card, travel card, integrated card);
- (v) Expiration date of credit card; and
- (vi) Name of the credit card company.

(b) **Payment ~~((occurring via))~~ made by government contracted credit card.** Various United States government contracted credit cards are used to make payment for purchases of goods and services by or for the United States government. Sole responsibility for payment of these purchases may rest with the United States government or with the employee. The United States government's system of issuing government contracted credit cards is subject to change. For specific information about determining when payment is the direct responsibility of the United States government or the employee, contact the department's taxpayer services division at:

~~((Department of Revenue))~~
Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478

or call the department's telephone information center at 1-800-647-7706 or visit the department's web site at ~~((http://dor.wa.gov))~~ dor.wa.gov.

(6) **Doing business on federal reservations.** The state of Washington has jurisdiction and authority to levy and collect taxes ~~((upon))~~ from persons residing within, or with respect to business transactions conducted ~~((upon))~~ on, federal reservations. 4 U.S.C. §§ 105-110. The term "federal reservation," as used in this rule, means any land or premises within the exterior boundaries of the state of Washington that are held or acquired by and for the use of the United States, its departments, institutions or entities. This means that a

concessionaire operating within a federal reservation under a grant or permit issued by the United States or by a department or entity of the United States is taxable to the same extent as any private operator engaging in a similar business outside a federal reservation and without specific authority from the United States.

(a) **Sales tax collection requirements.** Persons making retail sales to members of the armed forces or others residing within or conducting business ~~((upon))~~ on federal reservations are required to collect and remit retail sales tax from the buyer.

(b) **Cigarette tax stamps.** Washington cigarette tax stamps must generally be affixed to all cigarettes sold to persons residing within or conducting business ~~((upon))~~ on federal reservations. However, such stamps need not be affixed to cigarettes sold to the United States or any of its entities including voluntary organizations of military personnel authorized by the Secretary of Defense or the Secretary of the Navy or by the United States or any of its entities to authorized purchasers, for use on such reservation. For additional information on cigarette stamps, rates, and refunds see WAC 458-20-186 ((Tax on cigarettes)).

(7) **Sales made to authorized purchasers of the United States.** As explained in subsection (3)(b) of this rule, while sales by the United States are exempt of retail sales tax the purchaser is generally responsible for remitting use tax directly to the department ~~((of revenue)).~~ Federal law prohibits the imposition of use tax on tangible personal property sold to authorized purchasers by the United States, its entities, or voluntary unincorporated organization of armed forces personnel. 4 U.S.C. § 107(a).

(a) **Who is an "authorized purchaser"?** A person is an "authorized purchaser" only with respect to purchases he or she is permitted to make from commissaries, ships' stores, or voluntary unincorporated organizations of personnel of any branch of the armed forces of the United States, under regulations promulgated by the departmental secretary having jurisdiction over such branch. 4 U.S.C. § 107(b).

(b) **What is a "voluntary unincorporated organization"?** "Voluntary unincorporated organizations" are those organizations comprised of armed forces personnel operated under regulations promulgated by the departmental secretary having jurisdiction over such branch. Examples of voluntary unincorporated organizations are post flying clubs, officers or noncommissioned officers open messes, and recreation associations.

(8) **Purchases by persons using federal funds.** Retail sales or use tax ~~((is applicable))~~ applies to retail purchases made by any buyer, other than the United States, including the state of Washington and all of its political subdivisions, irrespective of whether or not the buyer uses or is reimbursed with federal funds, unless the purchase is specifically exempt by law.

(9) **Cleaning up radioactive waste and other by-products of weapons production and nuclear research and development.** RCW 82.04.263 provides a preferential tax rate for the gross income derived from cleaning up for the United States, or its instrumentalities, radioactive waste and other by-products of weapons production and nuclear research and development. This tax rate applies whether the

person performing these activities is a general contractor or subcontractor.

(a) **What activities are entitled to the preferential tax rate?** Only those activities that meet the definition of "cleaning up radioactive waste and other by-products of weapons production and nuclear research and development" are entitled to the preferential tax rate. The statute defines "cleaning up radioactive waste and other by-products of weapons production and nuclear research and development" to mean:

(i) The handling, storing, treating, immobilizing, stabilizing, or disposing of radioactive waste, radioactive tank waste and capsules, nonradioactive hazardous solid and liquid wastes, or spent nuclear fuel;

(ii) Conditioning of spent nuclear fuel;

(iii) Removing contamination in soils and groundwater;

(iv) Decontaminating and decommissioning of facilities; and

(v) Services supporting the performance of cleanup. A service supports the performance of cleanup if it:

(A) Is within the scope of work under a clean-up contract with the United States Department of Energy; or

(B) Assists in the accomplishment of a requirement of a clean-up project undertaken by the United States Department of Energy under a subcontract entered into with the prime contractor or another subcontractor in furtherance of a clean-up contract between the United States Department of Energy and a prime contractor.

(b) **When does a service not assist in the accomplishment of a requirement of a clean-up project?** Subject to specific exceptions provided by law, a service does not assist in the accomplishment of a clean-up project when the same services are routinely provided to businesses not engaged in clean-up activities.

The following exceptions are always deemed to contribute to the accomplishment of a requirement of a clean-up project undertaken by the United States Department of Energy:

- Information technology and computer support services;
- Services rendered in respect to infrastructure; and
- Security, safety, and health services.

(c) **Guideline examples.** The following examples are to be used as a guideline when determining whether a service is "routinely provided to businesses not engaged in clean-up activities."

(i) **Accounting services.** The classification does not apply to general accounting services but does apply to performance audits performed for persons cleaning up radioactive waste.

(ii) **Legal services.** The classification does not apply to general legal services but does apply to those legal services that assist in the accomplishment of a requirement of a clean-up project undertaken by the United States Department of Energy. Thus, legal services provided to contest any local, state, or federal tax liability or to defend a company against worker's compensation claim arising from a worksite injury do not qualify for the classification. However, legal services related to the resolution of contractual dispute between the parties to a clean-up contract between the United States Department of Energy and a prime contractor do qualify.

(iii) **General office janitorial.** General office janitorial services do not qualify for the radioactive waste clean-up classification, but the specialized cleaning of equipment exposed to radioactive waste does qualify.

(d) **Clean-up examples.** ~~((The examples in this subsection identify a number of facts and then state a conclusion. These examples should only be used as a general guide. Similar determinations for other situations can be made only after a review of all facts and circumstances.))~~

(i) Company C is a land excavation contractor ~~((who))~~ that contracts with Prime Contractor to dig trenches where waste will be reburied after processing. Company C's contract for digging trenches qualifies for the preferential tax rate under RCW 82.04.263 because the activity of digging trenches is one of the physical acts of cleaning up.

(ii) Company D contracts with Company C from the previous example to provide payroll and accounting services. Company D's activity does not qualify for the preferential tax rate under RCW 82.04.263 because the activity of general accounting is not an activity involving the physical act of cleaning up, nor is it a service supporting the performance of cleanup as defined in (a)(v) of this subsection.

(iii) Company E is an environmental engineering company ~~((which))~~ that contracts with Prime Contractor to develop a plan on how best to decontaminate the soil at a tank farm and will monitor the cleanup/decontamination as it progresses. Company E's activities qualify for the preferential tax rate under RCW 82.04.263 because the activities are services supporting the performance of cleanup.

(iv) Company F is a security company that contracts with Prime Contractor to provide overall security to the federal reservation, including providing security at clean-up sites. Security services at clean-up sites are services that support the performance of cleanup.

(e) **Taxability of tangible personal property used or consumed in cleaning up radioactive waste and other by-products of weapons production and nuclear research and development.** Persons cleaning up radioactive waste and other by-products of weapons production and nuclear research and development for the United States, or its instrumentalities, are consumers of any property they use or consume when performing these services. RCW 82.04.190. Therefore, tangible personal property used or consumed in the cleanup is subject to retail sales or use tax. If the seller does not collect retail sales tax on a retail sale, the buyer is required to pay the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department, unless specifically exempt by law. The ~~((combined))~~ excise tax return" does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the use tax line of the buyer's ~~((combined))~~ excise tax return. ~~((Refer to))~~ For detailed information on the use tax, see WAC 458-20-178 ~~((for detailed information regarding use tax)).~~

(10) **Sales to foreign governments or foreign diplomats.** For specific ~~((details))~~ information concerning the taxability of sales of goods and services to foreign missions and diplomats, contact the department's taxpayer services division at:

~~((Department of Revenue))~~
Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478

or call the department's telephone information center at 1-800-647-7706 or visit the department's web site at ~~((http://dor.wa.gov))~~ dor.wa.gov.

WSR 16-05-038

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF LICENSING

[Filed February 9, 2016, 1:35 p.m.]

Subject of Possible Rule Making: Chapter 308-72 WAC, Motor vehicle fuel tax.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 82.36.435, 46.87.010(2), and 82.41.120.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: New and amended rules are required to assist licensees and the public regarding tax administration, including fuel tax refunds, tax return filing, and tax calculation requirements as a result of the passage of SHB 1883 in 2013 legislation. Chapter 308-72 WAC applicable information will merge into chapter 308-77 WAC, Special fuel tax rules and regulations.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Negotiated rule making, industry stakeholders and licensees.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Paul Johnson, Department of Licensing, P.O. Box 9228, Olympia, WA 98507-9228, phone (360) 664-1844, fax (360) 570-7849, e-mail pajohnson@dol.wa.gov.

February 9, 2016
Damon Monroe
Rules Coordinator

WSR 16-05-039

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF LICENSING

[Filed February 9, 2016, 1:37 p.m.]

Subject of Possible Rule Making: Chapter 308-78 WAC, Aircraft fuel tax.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 82.42.130(1).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: New and amended rules are required to assist licensees and the public regarding tax administration, including fuel tax refunds, tax return filing, and tax calculation requirements as a result of the passage of SHB 1883 in 2013 legislation.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Negotiated rule making, industry stakeholders and licensees.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Paul Johnson, Department of Licensing, P.O. Box 9228, Olympia, WA 98507-9228, phone (360) 664-1844, fax (360) 570-7849, e-mail pajohnson@dol.wa.gov.

February 9, 2016
Damon Monroe
Rules Coordinator

WSR 16-05-040

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF LICENSING

[Filed February 9, 2016, 1:42 p.m.]

Subject of Possible Rule Making: Chapter 308-77 WAC, Special fuel tax rules and regulations.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 82.38.260.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: New and amended rules are required to assist licensees and the public regarding tax administration, including fuel tax refunds, tax return filing, and tax calculation requirements as a result of the passage of SHB 1883 in 2013 legislation. Chapter 308-72 WAC applicable information will merge into chapter 308-77 WAC, Special fuel tax rules and regulations.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Negotiated rule making, industry stakeholders and licensees.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Paul Johnson, Department of Licensing, P.O. Box 9228, Olympia, WA 98507-9228, phone (360) 664-1844, fax (360) 570-7849, e-mail pajohnson@dol.wa.gov.

February 9, 2016
Damon Monroe
Rules Coordinator

WSR 16-05-042

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed February 10, 2016, 9:19 a.m.]

Subject of Possible Rule Making: The department is proposing to amend WAC 388-412-0020 When do I get my ben-

efits?, 388-412-0015 General information about your food assistance allotments, and other related rules as may be required.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, 7 C.F.R. 274.2.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Changes proposed under this filing will amend WAC 388-412-0020 and 388-412-0015 to extend the time frame in which the department issues ongoing monthly benefits for Basic Food, the Washington combined application program, the food assistance program (FAP) for legal immigrants, and transitional food assistance. Changes proposed may also eliminate combined issuance of food benefits for households applying on or after the 16th day of the month.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The United States Department of Agriculture, Food and Nutrition Service (FNS) enforces the provisions of the federal supplemental nutrition assistance program (SNAP) as enacted in the 2008 Food and Nutrition Act and codified in the Code of Federal Regulations. The department will amend rules that are consistent with the act, federal regulations, and FNS administrative notices and formal guidance.

The state legislature authorizes the department to administer SNAP and FAP for legal immigrants under RCW 74.04.500, 74.04.510, and 74.08A.120.

DSHS incorporates regulations from the federal agencies, exercises state options, and implements approved waivers of federal regulatory requirements by adopting administrative rules for FAPs administered under the Washington Basic Food program.

Process for Developing New Rule: DSHS welcomes the public to take part in developing the rules. Anyone interested should contact the staff person identified below. At a later date, DSHS will file a proposal with the office of the code reviser with a notice of proposed rule making. A copy of the proposal will be sent to everyone on the mailing list and to anyone who requests a copy.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Ezra Paskus, Program Manager, Economic Services Administration, Community Services Division, P.O. Box 45470, Olympia, WA 98504-5470, phone (360) 725-4611, fax (360) 725-4905, e-mail paskuet@dshs.wa.gov.

February 9, 2016
Katherine I. Vasquez
Rules Coordinator

WSR 16-05-060
PREPROPOSAL STATEMENT OF INQUIRY
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed February 12, 2016, 12:37 p.m.]

Subject of Possible Rule Making: WAC 392-121-107 Definition—Course of study.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 28A.150.290 and 28A.710.220.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: This WAC requires updating to add dropout reengagement programs pursuant to chapter 392-700 WAC to the list of activities that are defined as course of study.

Process for Developing New Rule: Early solicitation of public comments and recommendations respecting new, amended, or repealed rules, and consideration of the comments and recommendations in the course of drafting rules.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Becky McLean, OSPI Enrollment Supervisor, Old Capitol Building, P.O. Box 47200, Olympia, WA, (360) 725-6306.

February 10, 2016
Randy Dorn
Superintendent of
Public Instruction

February 16, 2016
Jilene A. Siegel
Rules Coordinator

WSR 16-05-081
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed February 16, 2016, 11:14 a.m.]

Subject of Possible Rule Making: Deferred compensation program enrollment and default investments.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 41.50.050.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To update the enrollment process and establish the default investment.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Jilene Siegel, Rules Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail Rules@drs.wa.gov, phone (360) 664-7291.

February 16, 2016
Jilene A. Siegel
Rules Coordinator

WSR 16-05-080
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed February 16, 2016, 11:12 a.m.]

Subject of Possible Rule Making: Clarifying separation from service and separation from employment for the purpose of determining eligibility for retirement.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 41.50.050.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: This rule will clarify how the department determines whether a member has separated from service or employment, as required by state laws and Internal Revenue Service (IRS) interpretations.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Compliance with IRS requirements will be assured through review of IRS publications and consultation with legal counsel.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Jilene Siegel, Rules Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail Rules@drs.wa.gov, phone (360) 664-7291.

WSR 16-05-082
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed February 16, 2016, 11:14 a.m.]

Subject of Possible Rule Making: Clarifying the process to petition for a review of the department's administrative decision.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 41.50.050.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: This rule will clarify how the department processes stakeholders' petitions for review of administrative decisions.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Jilene Siegel, Rules Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail Rules@drs.wa.gov, phone (360) 664-7291.

February 16, 2016
Jilene A. Siegel
Rules Coordinator

WSR 16-05-095
PREPROPOSAL STATEMENT OF INQUIRY
UTILITIES AND TRANSPORTATION
COMMISSION

[Docket PG-160121—Filed February 17, 2016, 8:16 a.m.]

Subject of Possible Rule Making: The Washington utilities and transportation commission (commission) opens this inquiry to consider amending WAC 480-93-240 Annual pipeline safety fee methodology, related to gas pipeline companies. This rule has not been substantially amended since 2005 and this update would include:

- Methodology for allocating the annual overhead charge.
- Accounting for penalty money collected under the state's dig law (chapter 19.122 RCW).
- Consideration of assessing an annual fee for jurisdictional master meter operators.
- Consideration of federal fund proceeds received that are different than projected.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 80.01.040, 80.04.160, 81.88.040, and 80.24.-060.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Under the original rule (adopted January 2002), a substantial portion of the fees were allocated to each company based on their percentage of the total pipeline miles located in Washington. This rule was substantially modified in 2005 (effective July 1, 2006) wherein the new fee methodology allocated the program's cost based on effort expended on each company using the program's timekeeping system. Indirect costs (agency overhead) continued to be allocated based on the proportion of pipeline miles. The methodology for allocating the annual overhead charge does not appear to equitably spread among companies. Further, some jurisdictional company units do not have "pipeline miles" (liquefied natural gas facilities) which makes allocation impossible. Accounting for penalty money collected under the state's dig law (chapter 19.122 RCW) is another issue to be addressed. The dig law was amended in 2011 and penalties collected under this amended statute are now distributed differently than when the current rule was adopted. Further, master meter operators, which are jurisdictional to the commission for safety inspections, are currently not assessed an annual fee.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The Pipeline and Hazardous Material Safety Administration (PHMSA) a division of the United States Department of Transportation establishes regulations covering the transmission of gas and hazardous liquid by pipeline. Further, PHMSA has direct regulatory authority over all interstate pipelines.

Process for Developing New Rule: The commission will ask for initial written comments, schedule a workshop, and will provide the opportunity for stakeholders to submit additional written comments on draft rules and proposed CR-102 rules prior to adoption.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Interested persons may file comments with the Exec-

utive Director and Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, phone (360) 664-1234, fax (360) 586-1150, e-mail records@utc.wa.gov, or through the UTC web portal <http://www.utc.wa.gov>/e-filing by **5:00 p.m., Monday, March 21, 2016.**

WRITTEN COMMENTS AND STAKEHOLDER WORKSHOP: The commission has scheduled a stakeholder workshop in this rule making for **Wednesday, April 20, 2016, beginning at 9:30 a.m.**, in the Commission's Hearing Room, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. Written comments may be submitted to the commission at the address given above and should be filed with the commission no later than **5:00 p.m., Monday, March 21, 2016**, for consideration at the April 20, 2016, stakeholder workshop.

Electronic copies. The commission requests that comments be provided in electronic format to enhance public access, for ease of providing comments, to reduce the need for paper copies, and to facilitate quotations from the comments. Comments may be submitted via the commission's web portal at www.utc.wa.gov/e-filing or by electronic mail to the commission's records center at records@utc.wa.gov. Please include:

- The docket number of this proceeding (PG-160121).
- The commenting party's name.
- The title and date of the comment or comments.

An alternative method for submitting comments may be by mailing/delivering an electronic copy on a flash drive, DVD, or compact disk including the filed document(s). Parties must furnish electronic copies in MS Word 6.0 (or later) supplemented by a separate file in .pdf (Adobe Acrobat) format. Include all of the information requested above. The commission will post on the commission's web site all comments that are provided in electronic format. The web site is located at <http://www.utc.wa.gov/160121>. If you are unable to file your comments electronically or to submit them on a disk, the commission will always accept a paper document.

Opportunity for further comment is anticipated. Information about the schedule and other aspects of the rule making, including comments, will be posted on the commission's web site as it becomes available. If you wish to receive further information on this rule making, you may (1) call the commission's records center at (360) 664-1234, (2) e-mail the commission at records@utc.wa.gov, or (3) mail written comments to the address above to the attention of Steven V. King, executive director and secretary. When contacting the commission, please refer to Docket PG-160121 to ensure that you are placed on the appropriate service list. Questions may be addressed to Alan Rathbun, (360) 664-1219 or e-mail arathbun@utc.wa.gov.

NOTICE

TO CONTINUE RECEIVING NOTICES AND INFORMATION ABOUT THIS RULE MAKING—The commission wants to ensure its mailings are sent to persons who are interested in the topic and want to receive that information. ANY PERSON WHO COMMENTS will continue to receive notices and information. If you do not submit comments but wish to remain on

the mailing list for this rule making, please advise the records center by any one of the following methods: (1) Send a note with your name, address (or a copy of your mailing label), and telephone number referencing Docket PG-160121, and the words "Please keep me on the mailing list;" or (2) e-mail your name, address, and telephone number, referencing Docket PG-160121, and the words "Please keep me on the mailing list" to records@utc.wa.gov. Please note that all information in the mailings will be accessible through the commission's internet web site at <http://www.utc.wa.gov/160121>. **THOSE INTERESTED PERSONS WHO DO NOT RESPOND MAY NOT RECEIVE FURTHER MAILINGS OR INFORMATION ON THE RULE MAKING.**

February 17, 2016
Steven V. King
Executive Director
and Secretary

WSR 16-05-096
PREPROPOSAL STATEMENT OF INQUIRY
UTILITIES AND TRANSPORTATION
COMMISSION

[Docket PL-160122—Filed February 17, 2016, 8:17 a.m.]

Subject of Possible Rule Making: The Washington utilities and transportation commission (commission) opens this inquiry to consider amending WAC 480-75-240 Annual pipeline safety fee methodology, related to hazardous liquid pipeline companies. This rule has not been substantially amended since 2005 and this update would include:

- Methodology for allocating the annual overhead charge.
- Accounting for penalty money collected under the state's dig law (chapter 19.122 RCW).
- Consideration of assessing an annual fee for jurisdictional master meter operators.
- Consideration of federal fund proceeds received that are different than projected.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 80.01.040, 80.04.160, 81.88.040, and 81.24-.090.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Under the original rule (adopted January 2002), a substantial portion of the fees were allocated to each company based on their percentage of the total pipeline miles located in Washington. This rule was substantially modified in 2005 (effective July 1, 2006) wherein the new fee methodology allocated the program's cost based on effort expended on each company using the program's timekeeping system. Indirect costs (agency overhead) continued to be allocated based on the proportion of pipeline miles. The methodology for allocating the annual overhead charge does not appear to equitably spread among companies. Further, some jurisdictional company units do not have "pipeline miles" (liquefied natural gas facilities) which makes allocation impossible. Accounting for penalty money collected under the state's dig law (chapter 19.122 RCW) is another issue to be addressed. The dig law was amended in 2011 and

penalties collected under this amended statute are now distributed differently than when the current rule was adopted. Further, master meter operators, which are jurisdictional to the commission for safety inspections, are currently not assessed an annual fee.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The Pipeline and Hazardous Material Safety Administration (PHMSA) a division of the United States Department of Transportation establishes regulations covering the transmission of gas and hazardous liquid by pipeline. Further, PHMSA has direct regulatory authority over all interstate pipelines.

Process for Developing New Rule: The commission will ask for initial written comments, schedule a workshop, and will provide the opportunity for stakeholders to submit additional written comments on draft rules and proposed CR-102 rules prior to adoption.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Interested persons may file comments with the Executive Director and Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, phone (360) 664-1234, fax (360) 586-1150, e-mail records@utc.wa.gov, or through the UTC web portal <http://www.utc.wa.gov/> e-filing by **5:00 p.m., Monday, March 21, 2016.**

WRITTEN COMMENTS AND STAKEHOLDER WORKSHOP: The commission has scheduled a stakeholder workshop in this rule making for **Wednesday, April 20, 2016, beginning at 9:30 a.m.**, in the Commission's Hearing Room, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. Written comments may be submitted to the commission at the address given above and should be filed with the commission no later than **5:00 p.m., Monday, March 21, 2016**, for consideration at the April 20, 2016, stakeholder workshop.

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- The docket number of this proceeding (PL-160122).
- The commenting party's name.
- The title and date of the comment or comments.

An alternative method for submitting comments may be by mailing/delivering an electronic copy on a flash drive, DVD, or compact disk including the filed document(s). Parties must furnish electronic copies in MS Word 6.0 (or later) supplemented by a separate file in .pdf (Adobe Acrobat) format. Include all of the information requested above. The commission will post on the commission's web site all comments that are provided in electronic format. The web site is located at <http://www.utc.wa.gov/160122>. If you are unable to file your comments electronically or to submit them on a disk, the commission will always accept a paper document.

Opportunity for further comment is anticipated. Information about the schedule and other aspects of the rule making, including comments, will be posted on the commission's web site as it becomes available. If you wish to receive further information on this rule making, you may (1) call the commission's records center at (360) 664-1234, (2) e-mail the commission at records@utc.wa.gov, or (3) mail written comments to the address above to the attention of Steven V. King, executive director and secretary. When contacting the commission, please refer to Docket PL-160122 to ensure that you are placed on the appropriate service list. Questions may be addressed to Alan Rathbun, (360) 664-1219 or e-mail arathbun@utc.wa.gov.

NOTICE

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February 17, 2016
Steven V. King
Executive Director
and Secretary

WSR 16-05-098

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF ECOLOGY

[Order 16-03—Filed February 17, 2016, 9:32 a.m.]

Subject of Possible Rule Making: This rule making will amend chapter 173-303 WAC, Dangerous waste regulations. These regulations set standards for the safe management of dangerous wastes. The department of ecology (ecology) plans to amend specific sections of the dangerous waste regulations to incorporate new federal hazardous waste rules, including but not limited to: (1) Management standards for hazardous waste pharmaceuticals; (2) conditional exclusions for solvent-contaminated wipes; (3) definition of solid waste revisions to solid waste variances and to the definition of legitimacy; and (4) revisions to the export provisions of the cathode ray tube (CRT) rule. Amendments will also include several minor technical and editorial corrections and clarifications.

Rule Background Information:

Management Standards for Hazardous Waste Pharmaceuticals. These rules are currently proposed by the Environmental Protection Agency (EPA) as a sector-specific regulatory framework for managing hazardous waste pharmaceuticals at health care facilities and pharmaceutical reverse distributors. Although these are a streamlined set of regulations for generators of pharmaceuticals, EPA proposes to make them mandatory standards which states must adopt and affected generators must follow. Ecology plans to adopt the same standards for state-only pharmaceuticals to help ensure consistent, safe management of all pharmaceutical wastes.

Conditional Exclusions for Solvent-Contaminated Wipes. The EPA rule conditionally excludes solvent-contaminated wipes (also called shop towels or rags) from dangerous waste regulation when they are laundered and reused. Ecology plans to adopt this part of the rule. EPA's rule also excludes solvent-contaminated wipes that are disposed. Ecology will ask for stakeholder input during the rule-making process to help determine if the wipes disposal option should also be adopted.

Definition of Solid Waste: Revisions to Solid Waste Variances and to the Definition of Legitimacy. Ecology plans to adopt certain standards as required by EPA's January 13, 2015, definition of solid waste rule. This includes rules codifying existing recycling legitimacy criteria guidance and updates to recycling variance requirements. During this rule making we do not plan to adopt optional exclusions for hazardous secondary materials being reclaimed.

Revisions to the Export Provisions of the CRT Rule. The EPA rule revises certain export provisions of the CRT exclusion ecology adopted in 2007. EPA implements export regulations, and these revisions will allow EPA to better track exports of CRTs for reuse and recycling ensuring safer management of these materials.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapter 70.105 RCW, Hazardous Waste Management Act.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Ecology is required to adopt certain federal hazardous waste rules to remain authorized by EPA and consistent with EPA regulations. A key reason for starting rule making now on the pharmaceutical rule is to resolve problems with pharmaceutical waste management. A health care sector stakeholder group recommended ecology adopt newly proposed EPA rules for management of hazardous waste pharmaceuticals, and ecology's hazardous waste and toxics reduction (HWTR) program agrees with this approach. Adopting new pharmaceutical waste rules will help health care facilities and waste management vendors properly manage this waste stream, reduce the regulatory burden associated with waste management, and reduce confusion. Additionally, the new rules prohibit disposal of drugs to the sewer, resulting in fewer toxic chemicals in our waterways. Adopting the solvent wipes rule allows more flexibility to safely manage dangerous waste wipes while reducing regulatory requirements.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: EPA has authority to regulate hazardous waste within

Washington state. Ecology will keep EPA informed about our rule-making efforts, and provide drafts and formal rule proposals for their review. We will communicate and coordinate with EPA throughout the process. Ecology will work closely with other interested state and local government agencies and encourage them to provide input in development of rule language.

Process for Developing New Rule: Ecology will follow the standard process for the adoption of rules under the Administrative Procedure Act (chapter 34.05 RCW).

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Rule Coordinator, Robert Rieck, Hazardous Waste and Toxics Reduction Program, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6751, e-mail Robert.rieck@ecy.wa.gov. Important: Interested parties can join the dangerous waste rule-making listserv <http://listserv.wa.gov/cgi-bin/wa?A0=DW-RULES>.

Participation of Interested Parties: Stakeholders and governmental entities including local, state and tribal governments will be notified of various ecology actions as the rule making progresses. We will use the Dangerous Waste Rules listserv, Turbowaste annual report e-mail contacts, *ShopTalk*, and the HWTR rule-making web site to keep the regulated community updated about the changes. Early draft rule language will be available for review and comments. These comments will be considered as ecology writes the formal proposed rules. Ecology expects to hold at least one informal public meeting about the planned rule changes. Depending on responses from that meeting, we may hold additional meetings for affected regulatory sectors and interested governmental entities. Visit the HWTR rule-making web site at http://www.ecy.wa.gov/programs/hwtr/laws_rules/wac173303/1603ov.html.

February 16, 2016
Ken Zarker
Pollution Prevention and
Regulatory Assistance
Section Manager
Hazardous Waste and
Toxics Reduction Program