

**WSR 09-21-040**  
**PERMANENT RULES**  
**GROWTH MANAGEMENT**  
**HEARINGS BOARDS**

[Filed October 13, 2009, 2:49 p.m., effective November 13, 2009]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of these amendments to the rules is to reflect the consolidation of the administrative functions of the three growth management hearings boards into a single office. Amendments are needed to provide accurate contact information and clarity as to procedures along with consistency of terminology.

Citation of Existing Rules Affected by this Order: Amending chapter 242-04 WAC (all sections).

Statutory Authority for Adoption: RCW 36.70A.270(7).

Adopted under notice filed as WSR 09-15-153 on July 21, 2009.

Changes Other than Editing from Proposed to Adopted Version: WAC 242-04-050(1) was amended to include "Suite 103" in the address line.

WAC 242-04-050(1) was amended to provide correct e-mail address for the western board.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 14, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 14, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 30, 2009.

James J. McNamara  
 Chair, Rules Committee

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-04-010 Purpose.** The purpose of this chapter is to ensure compliance by each individual board ((and)), the joint boards, and the office of the growth management hearings boards with the provisions of chapter 42.17 RCW, and in particular with RCW 42.17.250 through 42.17.340, dealing with public records.

AMENDATORY SECTION (Amending WSR 94-23-112, filed 11/22/94, effective 12/23/94)

**WAC 242-04-020 Definitions.** (1) "Board" means the Eastern Washington, Western Washington, or Central Puget Sound growth management hearings board. Each is a quasi-judicial body created pursuant to chapter 36.70A RCW.

Where appropriate the term board also refers to the staff and employees of each board.

(2) "Joint boards" means the three independent boards meeting or acting jointly.

(3) "Office of the growth management hearings boards" means the administrative office of the three growth management hearings boards established in RCW 36.70A.250.

(4) "Public record" means any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

~~((4))~~ (5) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion pictures, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

AMENDATORY SECTION (Amending WSR 00-09-094, filed 4/19/00, effective 5/20/00)

**WAC 242-04-030 Description of organization and public meetings.** (1) Each board is an independent agency of the state of Washington, composed of three members appointed by the governor. Each board elects an administrative chairperson from its members at least annually.

(2) The administrative chairpersons constitute the administrative committee of the joint boards. ~~((The administrative committee elects an administrative chairperson from its members at least annually.))~~

(3) Regular meetings of each board will be held at ~~((its principal))~~ the office of the growth management hearings boards or other designated location at the following times:

(a) Eastern Washington board - on the first Wednesday of each month at 10:00 a.m.

(b) Western Washington board - on the second Wednesday of each month at 11:00 a.m.

(c) Central Puget Sound board - on the first Monday of each month at 10:00 a.m.

(4) The joint boards, comprised of the members of the three individual boards, shall meet at least annually at a time and location to be announced.

(5) The office of the growth management hearings boards provides for the administrative operations of the three individual boards and the joint boards.

AMENDATORY SECTION (Amending WSR 08-10-030, filed 4/28/08, effective 5/29/08)

**WAC 242-04-050 Communications with each board or the joint boards.** (1) All communications with a board, including but not limited to the submission of materials pertaining to its operations and/or administration or enforcement of chapter 42.17 RCW and these rules, requests for copies of each board's decisions and other matters, shall be addressed to the appropriate ~~((board's office))~~ board as follows:

- ((a) Eastern Washington Growth Management Hearings Board  
15 West Yakima Avenue, Suite 102  
Yakima, Washington 98902  
509-574-6960  
509-574-6964 fax  
e-mail: [A.Andreas@EW.GMHB.WA.GOV](mailto:A.Andreas@EW.GMHB.WA.GOV)  
web site: [www.gmhba.wa.gov/eastern](http://www.gmhba.wa.gov/eastern)
- (b) Western Washington Growth Management Hearings Board  
319 - 7th Avenue S.E. (as of June 2008)  
Olympia, WA 98501  
P.O. Box 40953  
Olympia, Washington 98504-0953  
(360) 664-8966  
(360) 664-8975 fax  
e-mail: [western@ww.gmhba.wa.gov](mailto:western@ww.gmhba.wa.gov)  
web site: [www.gmhba.wa.gov/western](http://www.gmhba.wa.gov/western)
- (c) Central Puget Sound Growth Management Hearings Board  
800 Fifth Avenue, Suite 2356  
Seattle, Washington 98104  
(206) 389-2625  
(206) 389-2588 fax  
e-mail: [central@cps.gmhba.wa.gov](mailto:central@cps.gmhba.wa.gov)  
web site: [www.gmhba.wa.gov/central](http://www.gmhba.wa.gov/central))

The Office of the Growth Management Hearings Boards  
(Insert name of appropriate board)  
319 - 7th Avenue S.E.  
Olympia, WA 98501  
P.O. Box 40953  
Olympia, WA 98504-0953  
360-586-0260  
360-664-6975 fax  
e-mail: [eastern@ew.gmhba.wa.gov](mailto:eastern@ew.gmhba.wa.gov)  
[western@ww.gmhba.wa.gov](mailto:western@ww.gmhba.wa.gov)  
[central@cps.gmhba.wa.gov](mailto:central@cps.gmhba.wa.gov)  
web site: [www.gmhba.wa.gov](http://www.gmhba.wa.gov)

(2) All communications with the joint boards shall be addressed ((in care of the Western Washington board)) as noted in subsection (1) of this section.

**Reviser's note:** The typographical errors in 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 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-04-060 Public records officer.** (1) The administrative chairperson ((of each)) responsible for management of the office of the growth management hearings boards, or his/her designee, shall be in charge of the public records for all three boards and for the joint boards.

(2) ((The administrative chairperson of the joint boards, or designee, shall be in charge of the public records for the joint boards.

(3)) Such person((s)) shall be responsible for implementation of these rules and regulations regarding release of public records, and generally assuring compliance with the pub-

lic records disclosure requirements of chapter 42.17 RCW, and in particular RCW 42.17.250 through 42.17.340.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-04-070 Office hours.** Public records shall be available for inspection and copying during the customary office hours of ((each)) the office of the growth management hearings boards. For the purposes of this chapter, the customary office hours shall be from 8:00 a.m. to noon and from 1:00 p.m. to 5:00 p.m., Monday through Friday, excluding legal holidays.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-04-080 Requests for public records.** In accordance with the provisions of chapter 42.17 RCW, that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied, or copies of such records may be obtained, by members of the public upon compliance with the following procedures:

(1) A request shall be made in writing upon a form prescribed by ((a board or)) the joint boards which shall be available at ((its)) the office of the growth management hearings boards. A completed form shall be presented to ((that board)) the public records officer or to any staff member ((of the board's staff)) at the office of the growth management hearings boards during customary office hours. The request shall include the following information:

(a) The name and address of the person requesting the record and the organization represented, if any;

(b) The time of day and calendar date on which the request was made;

(c) A description of the material requested;

(d) If the matter requested is referenced within the current index maintained by the public records officer, a reference to the requested record as it is described in such current index;

(e) If the requested matter is not identifiable by reference to a current index, an appropriate identification of the record requested.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the ((board)) public records officer or staff member to whom the request is made to assist the member of the public in appropriately identifying the public record requested.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-04-090 Responses to requests for public records.** Within five business days of receiving a public record request, ((a board)) the public records officer must respond by either:

(1) Providing the record;

(2) Acknowledging that the ((board)) public records officer has received the request for an individual board or the

joint boards and providing a reasonable estimate of the time that the ~~((board))~~ public records officer will require to respond to the request. Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, ~~((a-board))~~ the public records officer may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the ~~((board))~~ public records officer need not respond to it; or

(3) Denying the public record request.

AMENDATORY SECTION (Amending WSR 98-01-144, filed 12/19/97, effective 1/20/98)

**WAC 242-04-100 Copying.** No fee shall be charged for the inspection of public records. ~~((Each board))~~ The public records officer, on behalf of either an individual board or the joint boards, shall charge a reasonable fee for providing copies of public records and for use of ~~((each board's))~~ the office of the growth management hearings boards' photocopy equipment. ~~((Each board))~~ The public records officer may charge a reasonable fee for electronic facsimile transmissions (fax). The charge is the amount necessary to reimburse ~~((each))~~ the office of the growth management hearings boards for its actual costs incident to such copying or transmission.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-04-110 Exemptions.** (1) ~~((Each))~~ The public records officer, on behalf of each individual board or the joint boards, reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 242-04-080 is exempt under the provisions of RCW 42.17.310 including but not limited to the following:

(a) Personal information in files maintained for members and employees of ~~((a))~~ an individual board, the joint boards, or the office of the growth management hearings boards, to the extent that disclosure would violate their right to privacy;

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

(c) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant;

(d) The residential addresses and residential telephone numbers of employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

(2) Pursuant to RCW 42.17.260, ~~((each board))~~ the public records officer reserves the right to delete identifying details when ~~((#))~~ he/she makes available or publishes any

public records, in all cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 42.17 RCW. ~~((Each board))~~ The public records officer will fully justify such deletion in writing.

(3) All public records otherwise exempt by law shall be considered exempt under the provision of these rules.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-04-120 Review of denials of public records requests.** Any person who objects to a denial of a public records request or who objects to the reasonableness of the estimate of the time ~~((a-board))~~ the public records officer requires to respond to a public records request, shall petition the superior court in the county in which the record is maintained under the provisions of RCW 42.17.340.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-04-130 Protection of public records.** In order to protect the public records in the custody of each individual board ~~((or))~~ the joint boards, or the office of the growth management hearings boards, the following guidelines shall be followed by any person inspecting such public records:

(1) No public records shall be removed from the office;

(2) Inspection of any public record shall be conducted in the presence of ~~((a-board member))~~ the public records officer or his/her designee;

(3) No public record may be marked or defaced in any manner during inspection;

(4) Public records which are maintained in the file jacket, or in chronological order, may not be dismantled except for purpose of copying, and then only by ~~((a-board member))~~ the public records officer or his/her designee;

(5) Access to file cabinets, shelves, vaults, and other storage locations is restricted to the public records officer, board members, and staff.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-04-140 Records index.** (1) Index. ~~((Each board and the joint boards))~~ The public records officer has available to all persons a current index which provides identifying information as to records which have been issued, adopted, or promulgated since May 15, 1992, as follows:

(a) Final orders, including concurring and dissenting opinions, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by ~~((a))~~ an individual board and/or the joint boards;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Individual board and joint board planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, a consultant's factual reports and studies, scientific reports and studies, and any

other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with ((a)) an individual board, the joint boards, or the office of the growth management hearings boards relating to any regulations, supervisory or enforcement responsibilities of ((a)) the growth management hearings boards, where ((a)) an individual board determines or is asked to determine the rights of the state, the public, a subdivision of state government, or of any private party.

(2) Availability. The current index promulgated by ((each board and the joint boards)) the public records officer shall be available for inspection by all persons under the same rules and on the same conditions as are applied to public records available for inspection.

AMENDATORY SECTION (Amending WSR 94-23-112, filed 11/22/94, effective 12/23/94)

**WAC 242-04-150 Adoption of form.** Each individual board and the joint boards adopts the use by all persons requesting inspection and/or copies of records the form set out below, entitled "Request for inspecting and/or copying public records."

We have received your request for inspection of and/or copies of our public records. Please complete this form and return it with the amount required, if applicable. We will forward the requested copies to you as soon as we receive this completed form with payment.

Health Insurance Partnership Board

Return to:

((~~name and address of applicable board~~))

PUBLIC RECORDS OFFICER

OFFICE OF THE GROWTH MANAGEMENT HEARINGS BOARDS

(INSERT APPROPRIATE BOARD'S NAME)

REQUEST FOR INSPECTING AND/OR COPYING PUBLIC RECORDS

Date:

Name:

Address:

Day Phone Number:

Description of Record(s) Requested:

I certify that the information obtained through this request for public records will be used in compliance with chapter 42.17 RCW.

\_\_\_\_\_  
Signature

Number of Copies

Number of Pages

Per Page Cost \$

Total Charge \$

**WSR 09-22-005  
PERMANENT RULES  
DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed October 22, 2009, 10:32 a.m., effective November 22, 2009]

Effective Date of Rule: Thirty-one days after filing.

Purpose: These amendments are required to meet the 2009-2011 final legislative budget reductions for pharmaceuticals. Specifically, the department is reducing the coverage of cough and cold products to a few basic products (expectorant, decongestant, cough suppressant, and saline dose drops).

Citation of Existing Rules Affected by this Order: Amending WAC 388-530-2000 and 388-530-2100.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090, SSA § 1927 (42 U.S.C. 1396r-8(d)(2)(D)).

Other Authority: Section 1109, chapter 564, Laws of 2009 (ESHB 1244).

Adopted under notice filed as WSR 09-16-040 on July 28, 2009.

Changes Other than Editing from Proposed to Adopted Version: **The following two cross-references were incorrect and were fixed:**

WAC 388-530-2100 (1)(b)(v) Noncovered—Outpatient drugs and pharmaceutical supplies:

(v) For treatment of cough or cold symptoms, except as listed in WAC 388-530-2000 (1)(d)(i).

WAC 388-530-2100 (1)(g) Noncovered—Outpatient drugs and pharmaceutical supplies:

(g) Over-the-counter (OTC) drugs, vitamins, and minerals, except ((when determined by the department to be the least costly therapeutic alternative for a medically accepted indication)) as allowed under WAC 388-530-2000 (d)(1)(i).

**The link to the web site was replaced with the following:** WAC 388-530-2000 (1)(d) - ~~The list of covered OTC drugs, vitamins, and minerals can be found at <http://hrsa.dshs.wa.gov/pharmacy>.~~ The department will maintain and publish a list of the covered OTC drugs available to clients which have been determined to be the least costly therapeutic alternatives for medically accepted indications.

A final cost-benefit analysis is available by contacting Dr. Siri Childs, Pharmacy Administration, P.O. Box 45560, Olympia, WA 98504-5560, phone (360) 725-1564, fax (360) 586-9727, e-mail childsa@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: October 22, 2009.

Susan N. Dreyfus  
Secretary

**AMENDATORY SECTION** (Amending WSR 09-05-007, filed 2/5/09, effective 3/8/09)

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

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

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

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

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

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

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

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

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

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

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

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

(i) When prescribed for clinically documented deficiencies;

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

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

(d) OTC drugs, vitamins, and minerals when determined by the department to be the least costly therapeutic alternative for a medically accepted indication. The department will maintain and publish a list of the covered OTC drugs available to clients which have been determined to be the least costly therapeutic alternatives for medically accepted indications. Subsection (1)(d) does not apply to products pre-

scribed for the treatment of cough or cold symptoms. See WAC 388-530-2000 (1)(i) and 388-530-2100 (1)(b)(v) for coverage of products prescribed for the treatment of cough and cold symptoms.

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

(i) Prescribed by a provider with prescribing authority;

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

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

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

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

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

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

(i) For the treatment of cough and cold symptoms:

(i) Only the following generic, single ingredient formulations:

(A) Guaifenesin 100 mg/5 ml liquid or syrup;

(B) Dextromethorphan 15 mg/5 ml liquid or syrup;

(C) Pseudoephedrine 30 mg or 60 mg tablets;

(D) Saline nasal spray 0.65%; and

(ii) Generic combination product dextromethorphan-guaifenesin 10-100 mg/5 ml syrup, including sugar-free formulations.

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

**AMENDATORY SECTION** (Amending WSR 09-05-007, filed 2/5/09, effective 3/8/09)

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

(a) A drug that is:

(i) Not approved by the Food and Drug Administration (FDA); or

(ii) Prescribed for a nonmedically accepted indication, including diagnosis, dose, or dosage schedule that is not evidenced-based.

(b) A drug prescribed:

(i) For weight loss or gain;

(ii) For infertility, frigidity, impotency;

(iii) For sexual or erectile dysfunction; ((~~or~~))

(iv) For cosmetic purposes or hair growth; or

(v) For treatment of cough or cold symptoms, except as listed in WAC 388-530-2000 (1)(i).

(c) Drugs used to treat sexual or erectile dysfunction, in accordance with section 1927 (d)(2)(K) of the Social Security Act, unless such drugs are used to treat a condition other than sexual or erectile dysfunction, and these uses have been approved by the Food and Drug Administration.

(d) Drugs listed in the federal register as "less-than-effective" ("DESI" drugs) or which are identical, similar, or related to such drugs.

(e) Outpatient drugs for which the manufacturer requires as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or manufacturer's designee.

(f) A product:

(i) With an obsolete national drug code (NDC) for more than two years;

(ii) With a terminated NDC;

(iii) Whose shelf life has expired; or

(iv) Which does not have an eleven-digit NDC.

(g) Over-the-counter (OTC) drugs, vitamins, and minerals, except ~~((when determined by the department to be the least costly therapeutic alternative for a medically accepted indication))~~ as allowed under WAC 388-530-2000 (1)(i).

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

(i) Free pharmaceutical samples.

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

(2) If a noncovered drug is prescribed through the early and periodic screening, diagnosis, and treatment (EPSDT) process, an authorization request may be submitted indicating that the request is EPSDT related, and the request will be evaluated according to the process in WAC 388-501-0165. (See WAC 388-534-0100 for EPSDT rules).

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

### WSR 09-22-023

#### PERMANENT RULES

#### PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed October 26, 2009, 10:05 a.m., effective December 1, 2011]

Effective Date of Rule: December 1, 2011.

Purpose: ESHB 2261 states that after January 1, 2010, the PESB may no longer require a college preparation program completion for teachers seeking professional certification. WAC 181-78A-010, 181-78A-500, 181-78A-505, 181-78A-515, 181-78A-520, 181-78A-530, 181-78A-535, and 181-78A-540 are each amended to remove requirements for attending and completing a college preparation program for professional certification. Requirements for teachers to achieve professional certification will be added to those candidate equipments articulated in chapter 181-79A WAC.

Citation of Existing Rules Affected by this Order: Amending x [WAC 181-78A-010, 181-78A-500, 181-78A-

505, 181-78A-515, 181-78A-520, 181-78A-525, 181-78A-530, 181-78A-535, and 181-78A-540.]

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 09-16-137 on August 5, 2009.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 400, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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Date Adopted: September 23, 2009.

David Brenna  
Legislative and  
Policy Coordinator

AMENDATORY SECTION (Amending WSR 07-19-056, filed 9/14/07, effective 10/15/07)

**WAC 181-78A-010 Definition of terms.** The following definitions shall be used in this chapter:

(1) "College or university" means any regionally accredited baccalaureate degree granting Washington institution of higher learning or cooperative group of such institutions which has or develops programs of preparation in education which are submitted to the professional educator standards board for approval.

(2) "Endorsement" means a specification placed on a certificate to indicate the subject area, grade level, and/or specialization for which the individual is prepared to teach.

(3) "Interstate compact" means the contractual agreement among several states authorized by RCW 28A.690.010 and 28A.690.020 which facilitates interstate reciprocity.

(4) "Program approval" means the approval by the professional educator standards board of an educator preparation program within Washington state.

(5) "Field experience" means a sequence of learning experiences which occur in actual school settings or clinical or laboratory settings. Such learning experiences are related to specific program outcomes and are designed to integrate educational theory, knowledge, and skills in actual practice under the direction of a qualified supervisor.

(6) "Regionally accredited institution of higher education" means a community college, college, or university which is a candidate for accreditation or is accredited by one of the following regional accrediting bodies:

- (a) Middle States, Association of Colleges and Schools;
- (b) New England Association of Schools and Colleges;
- (c) North Central Association of Colleges and Schools;
- (d) Northwest Association of Schools and of Colleges and Universities;
- (e) Southern Association of Colleges and Schools;
- (f) Western Association of Schools and Colleges: Accrediting Commission for Junior and Senior Colleges.

(7) "An approved performance-based educator preparation program" means a program that requires the candidate to demonstrate in multiple ways, over time, specific professional educator standards board required standards, criteria, knowledge and skills, including, where appropriate, evidence related to positive impact on student learning.

(8) "A positive impact on student learning" means that a teacher through instruction and assessment has been able to document students' increased knowledge and/or demonstration of a skill or skills related to the state goals and/or essential academic learning requirements: Provided, That teachers employed by private schools who are candidates for the professional teaching certificate shall document students' increased knowledge and/or demonstration of a skill or skills related to either:

- (a) The state goals or essential academic learning requirements; or
- (b) Such alternative learning goals as the private school has established.

(9) "Collaboration" (as used in WAC 181-78A-500 through 181-78A-540) means ongoing communication among the professional growth team members using a variety of formats (e.g., conferences, electronic mail, conference calls, etc.) to reach consensus regarding the content - course work, experiences, competencies, knowledge(§) and skills - of the candidate's professional growth plan.

(10) "Professional growth team."

(a) ~~((Teacher "professional growth team" means a team comprised of the candidate for professional certification, a colleague specified by the candidate, a college or university advisor appointed by the college or university, and a representative from the school district in which the candidate teaches.~~

~~(b))~~ Principal/program administrator "professional growth team," for the purpose of professional certification, means a team comprised of the candidate for the professional certificate, a district representative or designee, a professional association representative, and a college or university advisor. "Professional growth team," for the purpose of renewal of the professional certificate, means a team comprised of the individual renewing the certificate and the superintendent, or superintendent designee or appointed representative.

~~((e))~~ (b) School counselor, school psychologist, and school social worker "professional growth team" for the purpose of professional certification, means a team comprised of the candidate for the professional certificate, a college/university program administrator/designee, and a colleague/peer from the same professional role specified by the candidate. A district representative is also required to serve on the professional growth team. Provided that, a candidate may petition

the university to have membership of a district representative waived.

(11) "Individual professional growth plan" means the document which identifies the specific competencies, knowledge(§), skills and experiences needed to meet the standards set forth in WAC 181-78A-540. ~~((The individual professional growth plan shall meet requirements set forth in WAC 181-78A-535 (4)(a).~~

~~(12) "Preassessment seminar" means that component of the approved professional certificate program in which the candidate for a professional certificate, in collaboration with members of his/her professional growth team, identifies specific competencies, knowledges, skills and/or experiences needed to meet standards for the certificate as required by WAC 181-78A-540. The preassessment seminar shall meet requirements set forth in WAC 181-78A-535 (4)(a).~~

~~(13))~~ (12) "Culminating seminar" means that component of the approved professional certificate program in which the candidate for a professional certificate presents his/her final documentation and evidence of professional certificate level knowledge, skill and performance, and positive impact on student learning. The culminating seminar shall meet requirements set forth in WAC 181-78A-535 ~~((4)(e))~~ (2).

AMENDATORY SECTION (Amending WSR 09-16-053, filed 7/29/09, effective 8/29/09)

**WAC 181-78A-500 Professional certificate program approval.** All professional certificate programs for ~~((teachers,))~~ principals/program administrators, and school counselors, school psychologists, and school social workers shall be approved pursuant to the requirements in WAC 181-78A-520 through 181-78A-540. Only colleges/universities with professional educator standards board-approved residency certificate ~~((teacher,))~~ principals/program administrator, and school counselor, school psychologist, school social worker preparation programs, and educational service districts are eligible to apply for approval to offer professional certificate programs. Educational service districts ~~((are encouraged to))~~ may partner with institutions of higher education, local school districts, or consortia of school districts to provide professional certificate programs.

AMENDATORY SECTION (Amending WSR 07-04-004, filed 1/24/07, effective 2/24/07)

**WAC 181-78A-515 Program approval standards for professional certificate approved programs.** The program approval standards for approved programs ~~((for teachers))~~ are as follows:

(1) **Professional education advisory boards.** The college, university or educational service district, in compliance with the provisions of WAC 181-78A-250 and 181-78A-520, has established and maintained a professional education advisory board to participate in decisions related to the development, implementation, and revision of the professional certificate program ~~((for teachers))~~.

(2) **Accountability.** Each college, university or educational service district, in compliance with the provision of

WAC 181-78A-525, has established a performance-based program.

(3) **Resources.** The college, university or educational service district, in compliance with the provision of WAC 181-78A-530, is responsible for providing the resources needed to develop and maintain quality professional programs.

(4) **Program design.** Each college, university or educational service district, in compliance with the provision of WAC 181-78A-535, is responsible for establishing an approved professional certificate program which accommodates the individual professional growth needs of each candidate as set forth in his/her professional growth plan.

(5) **Knowledge and skills.** Each college, university or educational service district, in compliance with the provision of WAC 181-78A-540, has established policies requiring that all candidates for certification demonstrate the standards and criteria for the professional certificate set forth in WAC 181-78A-540.

AMENDATORY SECTION (Amending WSR 09-16-053, filed 7/29/09, effective 8/29/09)

**WAC 181-78A-520 Approval standard—Professional education advisory board.** The following evidence shall be evaluated to determine whether each professional certificate program is in compliance with the program approval standards of WAC 181-78A-515(1).

~~((+))~~ College or university.

~~((+))~~ (1) The professional education advisory board established for the preservice program in accordance with WAC 181-78A-209 shall also serve as the professional advisory board for the professional certificate program.

~~((+))~~ (2) The professional education advisory board has participated in the development of the professional certificate program and has recommended approval of the proposed program prior to its submission to the professional educator standards board for approval.

~~((+))~~ (3) The professional education advisory board has reviewed the annual summary on the status of all candidates in the program required by WAC 181-78A-525(7).

~~((+))~~ (4) The professional education advisory board has made recommendation(s), as appropriate, for program changes to the professional certificate administrator who shall implement or respond to the recommendation(s) in a timely manner.

~~((2))~~ Educational service district.

~~(a)~~ The educational service district electing to seek approval to offer a teacher professional certificate program has established and maintained a professional education advisory board to participate in decisions related to the development, implementation, and revision of the professional certificate program for teachers:

~~(i)~~ Membership. The professional education advisory board shall consist of the following:

~~(A)~~ Educational service district teacher assistance program coordinator;

~~(B)~~ One college or university representative, from the educational service district region, appointed by the Washington association of colleges for teacher education;

~~(C)~~ One superintendent appointed by the Washington association of school administrators from the educational service district region;

~~(D)~~ One district human resource representative;

~~(E)~~ One teacher with national board certification, from the educational service district region, appointed by the Washington Education Association;

~~(F)~~ One teacher with professional certification, from the educational service district region, appointed by the Washington Education Association;

~~(G)~~ One educational service district representative with responsibility for inservice/professional development; and

~~(H)~~ One principal, from the educational service district region, appointed by the Washington Association of School Principals.

~~(ii)~~ The professional education advisory board has participated in the development of the professional certificate program and has recommended approval of the proposed program prior to its submission to the professional educator standards board for approval.

~~(iii)~~ The professional education advisory board has reviewed the annual summary on the status of all candidates in the program required by WAC 181-78A-525(7).

~~(iv)~~ The professional education advisory board has made recommendation(s), as appropriate, for program changes to the professional certificate administrator who shall implement or respond to the recommendation(s) in a timely manner.

~~(v)~~ Annual report. The professional education advisory board shall submit an executive summary to the professional educator standards board no later than July 31 of each year that includes the following:

~~(A)~~ Evidence to demonstrate links between ongoing educational service district professional development opportunities/learning improvement initiatives and the professional certificate program;

~~(B)~~ A summary of the status of all candidates in the program; and

~~(C)~~ A description of formal and informal partnerships with school districts or consortia of school districts.

~~(b)~~ The educational service district electing to seek approval to offer an administrator professional certificate program has established and maintained a professional education advisory board to participate in decisions related to the development, implementation, and revision of the professional certificate program.

~~(i)~~ Membership. The professional education advisory board shall consist of the following:

~~(A)~~ One college or university representative, from the educational service district region, appointed by the Washington council of educational administration programs;

~~(B)~~ One superintendent appointed by the Washington association of school administrators from the educational service district region;

~~(C)~~ One district human resource representative;

~~(D)~~ One teacher with national board certification, from the educational service district region, appointed by the Washington education association;

~~(E)~~ One educational service district representative with responsibility for inservice/professional development; and

~~(F) Two principals, from the educational service district region, appointed by the Washington association of school principals:~~

~~(ii) The professional education advisory board has participated in the development of the professional certificate program and has recommended approval of the proposed program prior to its submission to the professional educator standards board for approval.~~

~~(iii) The professional education advisory board has reviewed the annual summary on the status of all candidates in the program required by WAC 181-78A-525(7).~~

~~(iv) The professional education advisory board has made recommendation(s), as appropriate, for program changes to the professional certificate administrator who shall implement or respond to the recommendation(s) in a timely manner.~~

~~(v) Annual report. The professional education advisory board shall submit an executive summary to the professional educator standards board no later than July 31 of each year that includes the following:~~

~~(A) Evidence to demonstrate links between ongoing educational service district professional development opportunities/learning improvement initiatives and the professional certificate program;~~

~~(B) A summary of the status of all candidates in the program; and~~

~~(C) A description of formal and informal partnerships with school districts or consortia of school districts.)~~

AMENDATORY SECTION (Amending WSR 09-16-053, filed 7/29/09, effective 8/29/09)

**WAC 181-78A-525 Approval standard—Accountability.** The following evidence shall be evaluated to determine whether each professional certificate program is in compliance with the program approval standards of WAC 181-78A-515(2). Each college, university or educational service district shall:

(1) Submit for initial approval to the professional educator standards board a performance-based professional certificate program which shall include the ~~((five))~~ program components specified in WAC 181-78A-535~~((4))~~.

(2) Provide documentation that the respective professional education advisory board has participated in the development of and has approved the proposal.

(3) Identify the professional certificate administrator who shall be responsible for the administration of the professional certificate program.

(4) Delegate to the professional certificate administrator responsibility for reviewing or overseeing the following: Application for the professional certificate program; advising candidates once accepted; developing and implementing the individualized professional growth plan, the instruction and assistance components, and the assessment seminar; maintaining current records on the status of all candidates accepted into the professional certificate program; and serving as the liaison with the superintendent of public instruction certification office to facilitate the issuance of the professional certificates when candidates have met the required standards.

(5) Establish the admission criteria that candidates for the professional certificate shall meet to be accepted into the professional certificate program.

(6) Describe the procedures that the approved program will use to determine that a candidate has successfully demonstrated the standards and criteria for the professional certificate set forth in WAC 181-78A-540.

(7) Prepare an annual summary of the status of all candidates in the program and submit the summary to the respective professional education advisory board.

(8) Submit any additional information required to the respective professional education advisory board that it requests.

(9) Submit an annual report to the professional educator standards board as part of a less intensive evaluation cycle which will include the following:

(a) A summary of program requirements, linkages of the program to individual professional growth plans, linkages to school district and school improvement plans, and, to the extent possible, linkages to school district professional development programs where such programs are in place in school districts.

(b) A summary of program design, assessment procedures and program revisions in the previous year.

(c) The number of candidates completing the program during the period between September 1 and August 31.

(d) The number of candidates enrolled in the program.

(e) Other information related to the professional certificate program requested by the professional educator standards board.

(10) Facilitate an on-site review of the program when requested by the professional educator standards board to ensure that the program meets the state's program approval standards and to provide assessment data relative to the performance standards.

Provided, That subsequent to the initial program review specified in WAC 181-78A-105 on-site reviews shall be scheduled concurrently with regularly scheduled reviews of residency educator preparations offered by the university or on a five-year cycle for programs offered through an educational service district; provided that the professional educator standards board may approve a variation in the schedule as it deems appropriate.

AMENDATORY SECTION (Amending WSR 07-04-004, filed 1/24/07, effective 2/24/07)

**WAC 181-78A-530 Approval standard—Resources.** The following evidence shall be evaluated to determine whether each professional certificate program is in compliance with the resources program approval standard of WAC 181-78A-515(3):

(1) Administrators, faculty, and ~~((teachers))~~ facilitators implementing the college, university or educational service district professional certificate program have appropriate qualifications (academic, experience, or both) for the roles to which they are assigned. Such responsibilities may be shared, when appropriate, among the collaborating agencies.

(2) The college, university or educational service district shall have responsibility for maintaining fiscal records and

ensuring adequate financial support for the professional certificate program.

(3) Instructional, technological, and other needed resources shall be sufficient in scope, breadth, and recency to support the professional certificate program.

AMENDATORY SECTION (Amending WSR 09-16-053, filed 7/29/09, effective 8/29/09)

**WAC 181-78A-535 Approval standard—Program design.** The following requirements shall govern the design of the professional certificate program:

~~(1) ((Teacher:~~

~~(a) To be eligible to apply for admission to a professional certificate program, a candidate shall hold a contract as a teacher in a public or a professional educator standards board-approved private school or state agency providing educational services for students and shall have completed provisional status with a school district under RCW 28A.405.220 or the equivalent with a professional educator standards board-approved private school or state agency providing educational services for students or the candidate provides to the program a letter from the candidate's employing district, professional educator standards board-approved private school, or state agency providing educational services for students, documenting the employer's support for the candidate's full admission to the professional certificate program: Provided, That a candidate for the professional teacher's certificate may enroll in and complete the preassessment seminar described in subsection (4)(a) of this section prior to admission to a professional certificate program.~~

~~(b) The professional certificate program must be available to all qualified candidates.~~

~~(c) Using the descriptions of practice related to the criteria for the professional certificate, as approved by the professional educator standards board and published by the office of the superintendent of public instruction, which may not be changed without prior professional educator standards board approval, the professional certificate program shall be developed by a college or university and its professional education advisory board or an educational service district with its professional education advisory board. Additional agencies may participate in the development of the program if the approved provider and its professional education advisory board so choose.~~

~~(d) Each program shall consist of:~~

~~(i) A preassessment seminar which considers input from the candidate's "professional growth team" (WAC 181-78A-505), the candidate's past experience, the context in which he/she teaches, information from past annual evaluations if the individual chooses, the candidate's personal and professional goals, his/her self-evaluation, and evidences of the candidate's impact on student learning.~~

~~The seminar will culminate in preparation and approval of the candidate's individual professional growth plan designed to provide the candidate with the knowledge and skills needed to demonstrate successfully the standards and criteria required by WAC 181-78A-540.~~

~~A representative of the college/university and the candidate shall develop the professional growth plan to be~~

~~reviewed and agreed upon after input from and consultation and "collaboration" (WAC 181-78A-010(9)) with his/her "professional growth team" (WAC 181-78A-010(10)).~~

~~The individual professional growth plan shall be based on:~~

~~(A) An analysis of the instructional context and teaching assignment(s) to determine strategies which the teacher should use to achieve a positive impact on student learning.~~

~~(B) An assessment of the candidate's ability to demonstrate successfully the professional certificate standards and criteria.~~

~~(C) Specifications of assistance and instructional components needed and any required course work.~~

~~(ii) Course work, past and current experience, inservice, continuing education and other activities directed at developing and verifying that the candidate has achieved acceptable knowledge, skill and performance on all criteria required statewide as essential to "effective teaching" as defined in WAC 181-78A-540(1).~~

~~(iii) Course work, past and current experience, inservice, continuing education and other activities directed at developing and verifying that the candidate has achieved acceptable knowledge, skill and performance on all criteria required statewide as essential to "professional development" as defined in WAC 181-78A-540(2).~~

~~(iv) Course work, past and current experience, inservice, continuing education and other activities directed at developing and verifying that the candidate has achieved acceptable knowledge, skill and performance on all criteria required statewide as essential to professional contributions as defined in WAC 181-78A-540(3).~~

~~(v) A culminating seminar in which the candidate presents his/her final documentation and evidence of professional certificate level knowledge, skill and performance; positive impact on student learning; identification of future goals and professional/career interests; and specification of areas for continuing education and development. The candidate must provide multiple forms of evidence which shall include, but are not limited to, the descriptions of practice related to the criteria for the professional certificate as approved by the professional educator standards board and published by the office of the superintendent of public instruction, which may not be changed without prior professional educator standards board approval.~~

~~(vi) Candidates who do not successfully complete a culminating seminar shall receive an individualized analysis of strengths and weaknesses and a plan for appropriate assistance and instruction.~~

~~(vii) No limits shall be placed on the number of times a candidate with a valid residency certificate may participate in the culminating seminar.~~

~~(2)) **Principal/program administrator.**~~

~~(a) To be eligible to apply for enrollment in a professional certificate program, a candidate shall hold a contract as a principal, assistant principal, or program administrator in a public school or professional educator standards board-approved private school.~~

~~(b) The professional certificate program must be available to all qualified candidates.~~

(c) Using the six knowledge and skills standards, and the standards-based benchmarks as approved by the professional educator standards board and published by the office of the superintendent of public instruction, which may not be changed without professional educator standards board approval, the professional certificate program shall be developed by a college or university and its professional education advisory board or educational service district with its professional education advisory board. Additional agencies may participate in the development of the program if the approved provider and its professional education advisory board so choose.

(d) Each program shall consist of:

(i) An entry seminar during which the professional growth plan shall be developed. The plan shall be based on an assessment of the candidate's ability to demonstrate six standards at the professional certificate benchmark level (WAC 181-78A-270 (2)(b)), performance evaluation data, and an analysis of the administrative context and assignment.

(ii) Formalized learning opportunities, past and current experience, professional development opportunities, and other activities directed at developing and verifying that the candidate has achieved acceptable knowledge, skill, and performance at the professional certificate benchmark level, or above, on all standards as defined in WAC 181-78A-270 (2)(b).

(iii) A final presentation to a panel that includes experienced administrators, during which the candidate provides evidence of professional certificate level knowledge, skill and performance; positive impact on student learning; and a professional growth plan that includes the identification of future goals and professional/career interests as well as a five-year plan for professional development designed to meet the requirements for certificate renewal.

(e) Candidates who do not successfully complete a final presentation shall receive an individualized analysis of strengths and weaknesses and a plan for assistance, and shall be allowed additional opportunities to present evidence pertaining to benchmarks not previously met.

~~((3))~~ **(2) Educational staff associate (ESA) - school counselor, school psychologist, school social worker.**

(a) To be eligible for enrollment in a professional certificate program, a candidate shall be employed in his/her ESA role in a public school, a professional educator standards board-approved private school, or state agency providing educational services for students.

(b) The professional certificate must be available to all qualified candidates.

(c) Using the knowledge and skills standards in WAC 181-78A-270 (5), (7), and (9), and the standards-based benchmarks as approved by the professional educator standards board and published by the office of the superintendent of public instruction, which may not be changed without professional educator standards board approval, the professional certificate program shall be developed by a college or university and its professional education advisory board. Additional agencies may participate in the development of the program if the college or university and professional education advisory board so choose.

(d) Each program shall consist of:

(i) An entry seminar during which the professional growth plan shall be developed. The plan will be agreed upon after input from and consultation with the ESA candidate's professional growth team (WAC 181-78A-010 (10)(c)) or the professional education advisory board (PEAB). The individual's professional growth plan shall be based on an assessment of the candidate's ability to demonstrate the standards at the professional certificate benchmark level in the specific ESA role pursuant to WAC 181-78A-270 (5), (7), or (9).

(ii) Formalized learning opportunities, and other activities directed at developing and verifying that the candidate has achieved acceptable knowledge, skill, and performance at the professional certificate benchmark level, or above, on all standards in the specific ESA role as defined in WAC 181-78A-270 (5), (7), or (9).

(iii) A culminating seminar in which the candidate presents his/her final documentation and evidence of professional certificate level knowledge, skill, and performance; positive impact on student learning; and specification of areas for continuing education and development.

(e) The candidate will present his/her portfolio to the professional education advisory board (PEAB) or the professional growth team (PGT) who will make a recommendation to the university program administrator/designee regarding the extent to which the candidate meets the professional certificate standards.

(f) Candidates who demonstrate they meet all standards and certification requirements pursuant to WAC 181-79A-150 will be recommended by the university program administrator/designee for the professional certificate.

(g) Candidates who do not successfully complete a culminating seminar shall receive an individualized analysis of strengths and weaknesses and a plan for assistance.

(h) No limit shall be placed on the number of times a candidate with a valid residency certificate may enroll in the culminating seminar.

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

**WAC 181-78A-540 Approval standard—Knowledge and skills.** (1) ~~(Teacher.~~ A successful candidate for the teacher professional certificate shall demonstrate:

~~(a) The knowledge and skills for effective teaching which ensure student learning by:~~

~~(i) Using instructional strategies that make learning meaningful and show positive impact on student learning;~~

~~(ii) Using a variety of assessment strategies and data to monitor and improve instruction;~~

~~(iii) Using appropriate classroom management principles, processes and practices to foster a safe positive, student-focused learning environment;~~

~~(iv) Designing and/or adapting challenging curriculum that is based on the diverse needs of each student;~~

~~(v) Demonstrating cultural sensitivity in teaching and in relationships with students, families, and community members;~~

~~(vi) Integrating technology into instruction and assessment; and~~

~~(vii) Informing, involving, and collaborating with families and community members as partners in each student's educational process including using information about student achievement and performance.~~

~~(b) A successful candidate for the professional certificate shall demonstrate the knowledge and skills for professional development by:~~

~~(i) Evaluating the effects of his/her teaching through feedback and reflection;~~

~~(ii) Using professional standards and district criteria to assess professional performance, and plan and implement appropriate growth activities; and~~

~~(iii) Remaining current in subject area(s), theories, practice, research and ethical practice.~~

~~(c) A successful candidate for the professional certificate shall demonstrate professional contributions to the improvement of the school, community, and the profession by:~~

~~(i) Advocating for curriculum, instruction, and learning environments that meet the diverse needs of each student;~~

~~(ii) Participating collaboratively in school improvement activities and contributing to collegial decision-making.~~

~~(2)) **Principal/program administrator.** A successful candidate for the principal/program administrator professional certificate shall demonstrate the knowledge and skills at the professional certificate benchmark levels for the six standards pursuant to WAC 181-78A-270 (2)(b).~~

~~((3)) **(2) Educational staff associate - school counselor, school psychologist, or school social worker.** A successful candidate for the ESA professional certificate shall demonstrate the knowledge and skills at the professional certificate benchmark levels for the standards in the specific ESA role pursuant to WAC 181-78A-270 (5), (7), or (9).~~

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 181-78A-505      Overview—Teacher professional certificate program.

**WSR 09-22-024**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed October 26, 2009, 10:17 a.m., effective November 26, 2009]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule making adds language to WAC 296-17-90445. It adds information about how occupational disease claims are included in retrospective rating adjustment calculations. The language explains how chargeable claim costs are assigned to retro and nonretro employers, and that claim costs not assigned to any employer will be eliminated from the retro processes through the calculation of the performance adjustment factor.

Citation of Existing Rules Affected by this Order: Amending WAC 296-17-90445.

Statutory Authority for Adoption: RCW 51.16.035, 51.16.100, 51.04.020(1), 51.18.010.

Other Authority: Title 51 RCW.

Adopted under notice filed as WSR 09-16-142 on August 5, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 26, 2009.

Judy Schurke  
Director

AMENDATORY SECTION (Amending WSR 07-17-140, filed 8/21/07, effective 10/1/07)

**WAC 296-17-90445 Valuation of coverage period. Our responsibility:**

- Nine months after the coverage period has ended, we will do an initial valuation of the losses for each employer and group participating in retrospective rating.

**Note:** Effective with the October 1, 2000, coverage period and all subsequent coverage periods thereafter, each retrospective rating plan has three mandatory valuations and no optional valuations. The first valuation takes place roughly nine months from the last day of the coverage period. Each subsequent valuation will occur at twelve-month intervals from the initial evaluation date.

**Example:** Assume that your coverage period began July 1, 2001, and ended June 30, 2002 (twelve calendar months). Our first valuation date would occur the end of March 2003. This is roughly nine months from the last day of the coverage period.

- On the valuation date, all claims with injury dates that fall within the coverage period are valued and the incurred losses that have been established for these claims are "captured" or "frozen."

**Note:** Our valuation is limited to the open or closed status of a claim on the evaluation date. We do not consider adjudicative decisions (i.e., claim allowance, case reserve, wage determination and dependent status) surrounding a claim in our valuation.

For occupational disease claims that arise from exposure to the disease hazard by two or more employers, the claim costs are prorated and assigned to each period of employment involving the exposure. Each employer responsible for at least ten percent of the claimant's exposure to the hazard is charged (see WAC 296-17-870(6)).

To compute the performance adjustment factors, assigned occupational disease losses are considered "retro losses" if on the date of the last injurious exposure with an employer, the employer was enrolled in retro. Occupational disease losses are considered "nonretro losses" if on the date of the last injurious exposure with an employer, the employer was insured with the state fund, but not enrolled in the retro program. Occupational disease losses that cannot be assigned as either retro or nonretro losses will not be considered in computing performance adjustment factors.

- During the adjustment process we convert the captured incurred loss of each claim into developed losses using the appropriate loss development and performance adjustment factors. Retrospective premium is then calculated using the applicable formulas and tables in the retrospective rating manual.

- Prior to the application of the performance adjustment factor, we will cap the pure developed loss value for any one claim or group of claims arising from a single accident that has collective pure developed losses in excess of five hundred thousand dollars at a maximum of five hundred thousand dollars.

- Since the standard premium used in the retro calculation is based on premiums reported but not necessarily paid, we will deduct from the standard premium calculation any unpaid member premiums.

**Note:** A sponsoring organization and L&I can enter into an agreement for an alternate debt recovery method.

- Approximately twenty days after the valuation date, if entitled, we will send you your premium refund.

**Note:** If you participate in an individual plan or retro group, we will not issue a refund check if it is less than ten dollars. If a refund is less than ten dollars, we will credit the amount to your industrial insurance account and you can deduct the amount from your next premium payment. All retro group refunds are paid directly to the sponsoring organization. It is the responsibility of the sponsoring organization to distribute any refund to the group members. L&I does not regulate how refunds are distributed to group members. Employers that participate in retro are not required to share any of their retro refund with employees nor can they charge employees in the event of an additional assessment.

- We will send you a bill if you owe us additional premium.

**Note:** If you owe additional premium, it is due thirty days after we communicate the decision to you. We will charge penalties on any additional premium not paid when it is due (RCW 51.48.210). If you (employer in an individual plan or sponsoring organization of a retro group) are entitled to a refund for one coverage period and owe additional premiums for another coverage period, we will deduct the additional premiums due L&I from the refund. We will refund the difference to you. In the event that this adjustment still leaves a premium balance due, we will send you a bill for the balance. If an organization sponsors multiple retro groups and one group earns a refund and the other owes additional premium from a retro adjustment, we will deduct the additional premium from the refund due and issue a net refund to the organization for the difference or bill them for the remaining additional premium as applicable.

**WSR 09-22-043**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**EARLY LEARNING**

[Filed October 28, 2009, 8:57 a.m., effective December 1, 2009]

Effective Date of Rule: December 1, 2009.

Purpose: The department of early learning (DEL) is adopting changes to rules that help eligible parents obtain state-paid child care subsidies under the working connections child care (WCCC) and seasonal child care (SCC) programs.

The WCCC and SCC rules are consolidated into chapter 170-290 WAC. Seasonal child care rules in chapter 170-292 WAC are repealed.

See Reviser's note below.

Citation of Existing Rules Affected by this Order: See Reviser's note below.

Statutory Authority for Adoption: See Reviser's note below.

Other Authority: Chapter 265, Laws of 2006, chapter 43.215 RCW.

Adopted under notice filed as WSR 09-12-115 on June 3, 2009.

Changes Other than Editing from Proposed to Adopted Version: See Reviser's note below.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 45, Amended 52, Repealed 43.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 45, Amended 52, Repealed 43.

Date Adopted: October 28, 2009.

Elizabeth M. Hyde  
 Director

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 09-24 issue of the Register.

**WSR 09-22-047**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed October 28, 2009, 3:18 p.m., effective November 28, 2009]

Effective Date of Rule: Thirty-one days after filing.

Purpose: These amendments are necessary to meet the legislative requirements of sections 201 and 209 of the operating budget for fiscal years 2010 and 2011 for durable med-

ical equipment. Specifically, the department is (1) eliminating the coverage of the following items for adults - bathroom and shower equipment, disinfectant sprays, surgical stockings, custom vascular supports, graduated compression stockings, and blood pressure monitoring equipment; (2) reducing coverage of the following items for adults and children: Nonsterile and sterile gloves, incontinent supplies, and diabetes test supplies (lancets and test strips); and (3) adding light boxes, bumper pads, surgical masks, and handheld showers to the noncovered list.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-543-2300; and amending WAC 388-543-1150, 388-543-1300, and 388-543-1600.

Statutory Authority for Adoption: Section 1109, chapter 564, Laws of 2009 (ESHB 1244).

Other Authority: RCW 74.04.050, 74.04.057, 74.08.-090.

Adopted under notice filed as WSR 09-16-039 on July 28, 2009.

A final cost-benefit analysis is available by contacting Erin Mayo, DSHS/HRSA, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1729, fax (360) 586-9727, e-mail erin.mayo@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 1.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 1.

Date Adopted: October 28, 2009.

Susan N. Dreyfus  
Secretary

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 09-23 issue of the Register.

**WSR 09-22-050**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**  
(Securities Division)

[Filed October 29, 2009, 12:35 p.m., effective November 29, 2009]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The securities division is adopting amendments to its franchise registration rules set forth in chapter 460-80 WAC in light of the amended franchise disclosure rules adopted by the Federal Trade Commission in 2007 and their preemptive effect on state laws, as well as to better coordinate

our rules with other states that regulate the offer and sale of franchises through the adoption of the instructions for the preparation of the franchise disclosure document in the 2008 Franchise Registration and Disclosure Guidelines promulgated by the North American Securities Administrators Association, Inc. The securities division is also codifying several interpretive and policy statements. The amendments include:

- Adoption of the FTC franchise disclosure document as the required format for disclosure;
- Update of the franchise registration application requirements;
- Adoption of new sections to specify franchise registration amendment and renewal requirements; franchise agreement addendum requirement; and the acceptability of guarantees of performance, surety bonds, deferrals and other arrangements in lieu of an impound;
- Repeal of outdated sections on franchise offering circulars and purchase receipts;
- Update of financial statement and franchise disclosure document receipt requirements;
- Codification of interpretive and policy statements concerning the determination of the filing date, the requirements for requesting interpretive and no-action letters, and franchise advertising via the internet; and
- Other minor updates and corrections.

The text of chapter 460-80 WAC marked to show the amendments is filed with this notice.

Citation of Existing Rules Affected by this Order: Repealing WAC 460-80-310 and 460-80-430; and amending WAC 460-80-100, 460-80-108, 460-80-110, 460-80-125, 460-80-140, 460-80-195, 460-80-300, 460-80-315, 460-80-400, 460-80-410, 460-80-440, 460-80-450, and 460-80-500.

Statutory Authority for Adoption: Chapter 19.100 RCW.

Other Authority: RCW 19.100.250, 19.100.010, 19.100.030, 19.100.040, 19.100.050, 19.100.070, 19.100.080, 19.100.100, 19.100.110.

Adopted under notice filed as WSR 09-19-065 on September 14, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 4, Repealed 1; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 9, Amended 13, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 6, Amended 5, Repealed 2.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 9, Amended 13, Repealed 2.

Date Adopted: October 29, 2009.

Scott Jarvis  
Director

#### NEW SECTION

**WAC 460-80-050 Document filed with the director when received.** A document is filed with the director when it is received by the director or by a person as the director designates by rule or order.

#### NEW SECTION

**WAC 460-80-060 Interpretive opinions and no-action letters.** The director, in his or her discretion, may honor requests from interested persons for no-action letters and interpretive opinions pursuant to RCW 19.100.250. The following procedures must be followed in requesting a no-action letter or interpretive opinion from the director:

(1) The request must be submitted to the director in writing. The letter should be captioned with the name of the party who will be relying upon the director's response and should indicate that a no-action letter or interpretive opinion is sought.

(2) The requesting letter should cite the particular statutes or rules for which interpretation or no-action is sought.

(3) The names of all involved companies and parties should be disclosed. The director does not issue interpretive or no-action letters relating to unnamed companies or individuals or hypothetical situations, nor on matters of pending, or in preparation for, litigation.

(4) The request should be tailored to resolving the immediate issues and should not attempt to discuss every possible situation that may arise in the future.

(5) The letter should be concise and contain all material facts necessary to resolve the issues at hand. Relevant supporting documents may be included, but are not a substitute for subsection (6) of this section.

(6) It is important that the letter identify the issues at hand, the proposed resolution, and the precedents or other legal authority supporting that position.

The director may decline to respond to letters that are not prepared in accordance with the above listed procedures.

#### AMENDATORY SECTION (Amending Order 11, filed 3/3/72)

**WAC 460-80-100 Notice of claim for exemption.** Any franchisor or subfranchisor who claims an exemption under RCW 19.100.030 (4)(a) and (b)(i) shall file with the ~~((administrator of the state securities division a statement giving notice of such claim for exemption, the name and address of the franchisor or subfranchisor, the name under which the franchisor or subfranchisor is doing business, and a statement setting forth the information upon which the exemption under RCW 19.100.030 (4)(b)(i) is claimed, including the most recent audited financial statement showing compliance with the requirements of RCW 19.100.030 (4)(b)(i)(A)))~~ director a completed Annual Notice of Claim of Exemption form along with the fee prescribed in RCW 19.100.240 made payable to the treasurer of the state of Washington.

#### AMENDATORY SECTION (Amending WSR 92-02-054, filed 12/30/91, effective 1/30/92)

**WAC 460-80-108 Exemption for offer and sale to accredited investors pursuant to RCW 19.100.030(5).** For the purpose of the exemption of RCW 19.100.030(5), an "accredited investor" shall mean any person who comes within any of the following categories, or who the franchisor reasonably believes comes within any of the following categories, at the time of the sale of the franchise to that person:

(1) Any bank as defined in section 3 (a)(2) of the Securities Act of 1933, or any savings and loan association or other institution as defined in section 3 (a)(5)(A) of the Securities Act of 1933 whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any insurance company as defined in section 2(13) of the Securities Act of 1933; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2 (a)(48) of that act; any small business investment company licensed by the U.S. Small Business Administration under section 301 (c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; any employee benefit plan within the meaning of ~~((Title I of))~~ the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

(2) Any private business development company as defined in section 202 (a)(22) of the Investment Advisers Act of 1940;

(3) Any organization described in section 501 (c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the franchise offered, with total assets in excess of \$5,000,000;

(4) Any director, executive officer, or general partner of the franchisor of the franchises being offered or sold, or any director, executive officer, or general partner of a general partner of that franchisor;

(5) Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds \$1,000,000;

(6) Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(7) Any trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the franchise offered, whose purchase is directed by a sophisticated person as described in 17 CFR Sec. 230.506 (b)(2)(ii); and

(8) Any entity in which all of the equity owners are accredited investors.

AMENDATORY SECTION (Amending Order SDO-38-80, filed 3/19/80)

**WAC 460-80-110 Franchise registration application.**

All applications for registration, renewal or amendment of a franchise shall ~~((have as the first page thereof a facing page))~~ be in the form as provided by the ~~((department of licensing))~~ director and ~~((containing))~~ contain the information specified therein. The application for registration, renewal or amendment must be accompanied by the fee prescribed in RCW 19.100.240 made payable ~~((by check))~~ to the treasurer of the state of Washington.

AMENDATORY SECTION (Amending WSR 92-02-054, filed 12/30/91, effective 1/30/92)

**WAC 460-80-125 Franchise registration application instructions.** The following must be adhered to with respect to all applications for registration, registration renewal or registration amendment:

(1) Completion of application. An application for registration of the offer or sale of franchises shall include the following, all of which shall be verified by means of the prescribed signature page:

- (a) ~~((Facing page))~~ Application;
- (b) Supplemental information page(s);
- (c) ~~((Salesmen))~~ Seller disclosure form;
- (d) A copy of the ~~((proposed offering circular))~~ Franchise Disclosure Document.

(2) The following shall be attached to the application:

- (a) ~~((A second copy of the proposed offering circular;~~
- ~~((b) A cross-reference sheet showing the location in the franchise agreement of the information required to be included in the application and in the offering circular. If any item calling for information is inapplicable or the answer thereto is in the negative and is omitted, a statement to that effect shall be made in the cross-reference sheet;~~

~~((c))~~ A consent to service of process; and

~~((d) Two copies))~~ (b) One copy of any advertising to be used in connection with the offer or sale in this state of franchises.

(3) ~~((Definitions:~~

~~((a) "Predecessor," for the purposes of the disclosure required by item 1 in the body of the offering circular, is defined as follows: A "predecessor" of a franchisor is (i) a person the major portion of whose assets have been acquired directly or indirectly by the franchisor, or (ii) a person from whom the franchisor acquired directly or indirectly the major portion of its assets;~~

~~((b) "Franchise broker," for the purposes of the disclosure required by the cover page and item 2 in the body of the offering circular, is defined as follows: A "franchise broker" is any person engaged in the business of representing a franchisor or subfranchisor in offering for sale or selling a franchise, except anyone whose identity and business experience is otherwise required to be disclosed at item 2 in the body of the offering circular.~~

~~((4))~~ Disclosure: ~~((Each disclosure item should be either positively or negatively commented upon by use of a statement which fully incorporates the information required by the item.))~~ The offering circular shall be prepared in accor-

dance with the Instructions for Preparation of the Franchise Disclosure Document contained in section IV. of the 2008 Franchise Registration and Disclosure Guidelines promulgated by the North American Securities Administrators Association, Inc. (NASAA).

~~((5))~~ (4) Subfranchisors: When the person filing the application for registration is a subfranchisor, the application shall also include the same information concerning the subfranchisor as is required from the franchisor; the franchisor, as well as the subfranchisor, shall execute a signature page.

~~((6))~~ (5) Signing of application: The application shall be signed by an officer or general partner of the applicant; however, it may be signed by another person holding a power of attorney for such purposes from the applicant. If signed on behalf of the applicant pursuant to such power of attorney, the application shall include as an additional exhibit a copy of said power of attorney or a copy of the corporate resolution authorizing the attorney to act.

~~((7))~~ (6) Manually or digitally signed consent of accountant: All applications shall be accompanied by a manually or digitally signed consent of the independent public accountants for the use of their audited financial statements as such statements appear in the offering circular.

~~((8) Application to amend the registration: An amendment to an application filed either before or after the effective date of registration shall contain only the information being amended identified by item number and shall be verified by means of the prescribed signature page. Each amendment shall be accompanied by a facing page in the form prescribed on which the applicant shall indicate the filing is an amendment and the number of the amendment, if more than one.~~

~~((9) Undersealing of changes: If the registration renewal statement or any amendment to an application for registration alters the text of the offering circular, or of any item, or other document previously filed as a part of the application for registration, the changes in such text shall be indicated by means of undersealing or in some other appropriate manner.))~~

NEW SECTION

**WAC 460-80-135 Franchise registration amendment and renewal instructions.** An application to renew or amend a franchise registration must comply with the following requirements:

(1) An application for renewal of a franchise registration must be filed with the director no later than fifteen business days prior to the expiration of registration in order to avoid a lapse in registration and the need to file an initial application for registration. If the registration has already expired, the applicant must mark the application as an initial registration and pay the fee required for filing an initial application for registration in RCW 19.100.240.

(2) An amendment to a franchise application is required to be filed as soon as reasonably possible and in any case, before the further sale of any franchise, if a material adverse change in the condition of the franchisor or any of its subfranchisors or any material change in the information contained in its Franchise Disclosure Document should occur.

(3) The following documents must be filed for each amendment or application for renewal of a franchise registration:

(a) A completed application marked amendment or renewal, as applicable. If the application is for renewal, do not mark the amendment boxes on the application even if the documents have been revised since the last filing.

(b) All documents set forth in WAC 460-80-125 required for an initial application with all additions, deletions and other changes to the previously filed documents black-lined. Changes must be clearly marked so that each change is noticed easily. Do NOT use margin balloons or color highlights to show changes. Do not use less than 11 point type for changed text. Use a black-lining system that underlines changes and shows deletions by a strike through.

(c) A clean copy of the updated Franchise Disclosure Document.

(4) If the director requires changes to any documents submitted, the franchisor must file a complete clean copy of the revised Franchise Disclosure Document and any other revised documents, and a black-lined copy of all the revised pages, unless directed otherwise.

AMENDATORY SECTION (Amending Order SDO-38-80, filed 3/19/80)

**WAC 460-80-140 Financial statements.** ~~((a) Financial statements required to be filed in connection with an application for registration or renewal of an offer or sale of a franchise shall be prepared in accordance with generally accepted accounting principles as set forth in rules as adopted pursuant to chapter 460-60A WAC etc. Such financial statements should be audited by a certified public accountant having the same qualifications and restrictions as those set forth in WAC 460-60A-100, except where the particular form or this section permits the use of unaudited statements for interim periods.~~

~~(b) In extraordinary cases the director may waive the requirement for audited statements if the statements have been prepared by an independent certified public accountant or independent public accountant and the director is otherwise satisfied as to the reliability of such statements and as to the ability of the franchisor to perform future commitments. Such waiver will ordinarily be granted only upon a showing that the franchisor has not had prior audited statements; that the close of the most recent or current fiscal year is so near the time of filing of the application that it would be unreasonably costly or impractical to provide audited statements with the application; and that audited statements will be furnished within a reasonable time after the end of the most recent or current fiscal year. In such cases the director may impose an impound condition and such other conditions and restrictions as in his discretion may be appropriate.~~

~~(c) The use of unaudited financial statements as provided in these rules does not relieve the applicant or any person from any liability for false and misleading statements contained in such financial statements.)~~ The Franchise Disclosure Document must include financial statements that comply with the instructions for Item 21 of the Franchise Disclosure Document, 16 CFR § 465.5(u).

AMENDATORY SECTION (Amending Order 11, filed 3/3/72)

**WAC 460-80-195 Approval is not an endorsement.** The filing of the application for registration or the effectiveness of the registration does not constitute a finding by the director that any document filed under ~~((this act))~~ the Franchise Investment Protection Act, chapter 19.100 RCW, is true, complete and not misleading. Neither any such fact nor the fact that an exemption is available for a transaction means that the director has passed in any way upon the merits or qualification of, or recommended or given approval to any person, franchise or transaction.

AMENDATORY SECTION (Amending Order SDO-38-80, filed 3/19/80)

**WAC 460-80-300 Receipt of offering circular.** Each ~~((prospective purchaser of a franchise))~~ person that sells a franchise that is registered or required to be registered pursuant to RCW 19.100.020 shall ((sign a)) ensure that the Franchise Disclosure Document and other required documents are delivered to each offeree in accordance with RCW 19.100.-080 and shall obtain a signed receipt ((in substantially the following form that they have received the offering circular and that they received the same before signing the receipt and completing the sale.

ACKNOWLEDGEMENT OF RECEIPT OF OFFERING CIRCULAR BY PROSPECTIVE FRANCHISEE FROM  
(NAME OF FRANCHISOR)

The undersigned, personally and/or as an officer or partner of the proposed franchisee, does hereby acknowledge receipt of "the franchise offering circular for prospective franchisees required by the state of Washington" including all exhibits attached thereto, to-wit: ~~(List exhibits to be attached, including, but not limited to, financial statements, franchise agreement, lease agreements, etc.)~~ I acknowledge that I received the offering circular at least 48 hours prior to signing this receipt and completing the sale.

Dated: .....

.....  
individually and/or as an officer  
or partner of .....  
a (..... corporation)  
(..... partnership))

therefore in the form prescribed by the director.

NEW SECTION

**WAC 460-80-305 Franchise agreement addendum.** Every franchisor registered or required to be registered pursuant to RCW 19.100.020 shall, in each sale of a franchise in Washington, conform its franchise agreement to the Franchise Investment Protection Act, chapter 19.100 RCW, and the rules adopted thereunder or include in its franchise agreement or Franchise Disclosure Document an addendum con-

cerning the applicability of the Franchise Investment Protection Act, chapter 19.100 RCW. The addendum shall be in the form prescribed by the director.

AMENDATORY SECTION (Amending WSR 95-08-015, filed 3/24/95, effective 4/24/95)

**WAC 460-80-315 Washington ((uniform franchise offering circular)) Franchise Disclosure Document.** To implement the offering circular and disclosure requirements of RCW 19.100.030 (4)(a) and 19.100.040, the director adopts the ((Uniform Franchise Offering Circular (UFOC) as amended)) requirements for preparing the contents of a Franchise Disclosure Document set forth in sections III. and VII. of the 2008 Franchise Registration and Disclosure Guidelines promulgated by the North American Securities Administrators Association, Inc. (NASAA) ((on April 25, 1993)).

AMENDATORY SECTION (Amending Order 11, filed 3/3/72)

**WAC 460-80-400 Impounds.** The director may, by rule or order, require as a condition to the effectiveness of the registration the impound of franchise fees if he or she finds that such requirement is appropriate to protect ((the)) prospective franchisees.

AMENDATORY SECTION (Amending Order 11, filed 3/3/72)

**WAC 460-80-410 Imposition of impound.** In a case where the applicant has failed to demonstrate that adequate financial arrangements have been made to fulfill obligations to provide real estate, improvements, equipment, inventory, training or other items included in the offering, the director ((or administrator)) may impose as a condition to the registration of a franchise offering an impoundment of the franchise fees and other funds paid by the franchisee or subfranchisor until no later than the time of opening of the franchise business.

AMENDATORY SECTION (Amending Order 11, filed 3/3/72)

**WAC 460-80-440 Depository.** Funds subject to an impound condition shall be placed in a separate trust account with a ((national)) bank ((located in Washington or a Washington bank or)), trust company, or an independent escrow agent acceptable to the director. A ((written consent)) copy of the ((depository to act in such capacity)) impound agreement shall be filed with the director.

AMENDATORY SECTION (Amending Order 11, filed 3/3/72)

**WAC 460-80-450 Release of impounds.** The director will authorize the depository to release to the franchisor such amounts of the impounded funds applicable to a specified franchisee (or subfranchisor) upon a showing that the franchisor has fulfilled its obligations under the franchise agree-

ment, or that for other reasons the impound is no longer required for protection of franchisees.

((An application for an order of)) A request to the director ((authorizing)) to authorize the release of impounds to the franchisor shall ((be verified and shall)) contain the following:

((a)) (1) A statement of the franchisor that all required proceeds from the sale of franchises have been placed with the depository in accordance with the terms and conditions of the impound ((condition)) agreement.

((b)) (2) A statement of the depository signed by an appropriate officer setting forth the aggregate amount of impounds placed with the depository.

((c)) (3) The names of each franchisee (or subfranchisor) and the amount held in the impound for the account of each franchisee (or subfranchisor).

((d)) (4) A statement by the franchisee that the franchisor has performed his obligations under the franchise contract.

((e)) (5) Such other information as the director may require in a particular case.

#### NEW SECTION

**WAC 460-80-460 Guarantee of performance, deferrals and other arrangements.** In lieu of an impound under RCW 19.100.050, the director may accept a guarantee of the franchisor's performance under the franchise agreement by the franchisor's parent or affiliate, a surety bond, an agreement to defer payment of the franchise fee, or other arrangements to protect the interests of a franchisee acceptable to the director. Any such agreements must be in the form and content prescribed by the director.

AMENDATORY SECTION (Amending Order 11, filed 3/3/72)

**WAC 460-80-500 Advertising—Filing requirement—Timing.** All advertising to be used to offer a franchise, subject to the registration requirement, for sale must be filed in the office of the director at least ((7)) seven days prior to the publication ((and all advertising shall be subject to the following statement of policy:

(a) An advertisement should not contain any statement or inference that a purchase of a franchise is a safe investment or that failure, loss or default is impossible or unlikely, or that earnings or profits are assured.

(b) An advertisement should not normally contain a projection of future franchisee earnings unless such projection is (i) based on past earnings records of all franchisees operating under conditions, including location, substantially similar to conditions affecting franchises being offered (ii) for a reasonable period only and (iii) is substantiated by data which clearly supports such projections.

(c) An advertisement should normally contain the name and address of the person using the advertisement.

(d) If the advertisement contains any endorsement or recommendation of the franchises by any public figure, whether express or implied (for example, by the inclusion of such person's photograph or name in the advertisement), full disclosure shall be made of any compensation or other benefit

~~given or promised by the franchisor or any person associated with the franchisor to such person, directly or indirectly. The disclosure required in this subsection (d) shall be made in the same document containing the advertisement or, if such advertisement is presented on radio or television, as a part of the same program, without any intermission or other intervening material.~~

~~(e) Any advertisement which refers to an exemption from or reduction in taxation under any law should be based on an opinion of counsel, and the name of such counsel should be stated in the advertisement).~~

#### NEW SECTION

**WAC 460-80-510 Advertising—Contents.** All advertising to be used to offer a franchise, subject to the registration requirement, for sale is subject to the following limitations:

(1) An advertisement shall not contain any statement or inference that a purchase of a franchise is a safe investment or that failure, loss, or default is impossible or unlikely, or that earnings or profits are assured.

(2) An advertisement should not normally contain a projection of future franchisee earnings unless such projection is:

(a) Based on past earnings records of all franchisees operating under conditions, including location, substantially similar to conditions affecting franchises being offered;

(b) For a reasonable period only; and

(c) Is substantiated by data which clearly supports such projections.

(3) An advertisement should normally contain the name and address of the person using the advertisement.

(4) If the advertisement contains any endorsement or recommendation of the franchises by any public figure, whether express or implied (for example, by the inclusion of such person's photograph or name in the advertisement), full disclosure shall be made of any compensation or other benefit given or promised by the franchisor or any person associated with the franchisor to such person, directly or indirectly. The disclosure required in this subsection shall be made in the same document containing the advertisement or, if such advertisement is presented on radio or television, as a part of the same program, without any intermission or other intervening material.

(5) Any advertisement which refers to an exemption from or reduction in taxation under any law should be based on an opinion of counsel, and the name of such counsel should be stated in the advertisement.

#### NEW SECTION

**WAC 460-80-520 Advertising—Internet advertising and trade shows.** "Advertisement" as defined under RCW 19.100.010 includes, in addition to the items expressly set forth in that provision, communications on the internet and at trade shows in connection with an offer or sale of a franchise.

#### NEW SECTION

**WAC 460-80-530 Advertising—Exception from filing requirement for internet advertising not directed into this state.** Internet advertising of a franchise offering that is required to be registered in this state is not subject to the requirements for filing advertisements set forth in RCW 19.100.100 so long as the following conditions are satisfied:

(1) The franchisor discloses to the director the uniform resource locator ("URL") address or similar address or device identifying the location of the internet advertising:

(a) On the cover page of the Franchise Disclosure Document included with an application for registration that is effective in the state of Washington; or

(b) On a notice filed with the director within five business days after publication; and

(2) The internet advertising is not directed to any person in the state of Washington by, or on behalf of, the franchisor or anyone acting with the franchisor's knowledge.

#### NEW SECTION

**WAC 460-80-540 Advertising—Exception from franchise registration for internet advertisements not directed into this state.** The offer or sale of a franchise via the internet is not subject to registration pursuant to RCW 19.100.020 where:

(1) The offer is made pursuant to an available and perfected exemption from franchise registration; or

(2) If the franchise is not registered or exempt:

(a) The internet offer indicates, directly or indirectly, that the franchises are not being offered to residents of Washington;

(b) The internet offer is not otherwise specifically directed to any person in this state by, or on behalf of, the franchisor or anyone acting with the franchisor's knowledge; and

(c) No franchises are sold in Washington by, or on behalf of, the franchisor until the offering is registered and declared effective and the Washington Franchise Disclosure Document has been delivered to the offeree before the sale and in compliance with the Franchise Investment Protection Act, chapter 19.100 RCW.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 460-80-310                      Offering circular.

WAC 460-80-430                      Purchase receipts.

#### **WSR 09-22-051**

#### **PERMANENT RULES**

#### **DEPARTMENT OF LICENSING**

[Filed October 29, 2009, 1:06 p.m., effective December 1, 2009]

Effective Date of Rule: December 1, 2009.

Purpose: The department of licensing is revising WAC 308-14-200 for the court reporter licensing program. Changes to the rules will increase fees and provide a sufficient level of revenue to cover the costs to administer the program.

Citation of Existing Rules Affected by this Order: Amending WAC 308-14-200 Court reporter fees.

Statutory Authority for Adoption: RCW 43.24.086, 18.145.050.

Adopted under notice filed as WSR 09-19-139 on September 23, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: October 29, 2009.

Walt Fahrer  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-16-036, filed 7/23/07, effective 9/1/07)

**WAC 308-14-200 Court reporter fees.** The following fees shall be charged by the business and professions division, department of licensing:

Title of Fee	Fee
Certification	
Application	<del>\$(116.00)</del> <u>150.00</u>
Renewal	<del>((61.00))</del> <u>125.00</u>
Late renewal penalty	<del>((80.00))</del> <u>125.00</u>
Verification	25.00
Duplicate	15.00

**WSR 09-22-052  
PERMANENT RULES  
PROFESSIONAL EDUCATOR  
STANDARDS BOARD**

[Filed October 29, 2009, 1:49 p.m., effective November 29, 2009]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 181-82A-204, clarifies teaching experience requirements for applicants in Pathway 1 and 2 who are seeking additional endorsements. Refiled with changes adopted in WSR 09-12-057 but inadvertently filed without waiver language adopted by the board during public hearing.

Citation of Existing Rules Affected by this Order: Amending WAC 181-82A-204.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 09-03-071 on January 15, 2009.

Changes Other than Editing from Proposed to Adopted Version: Public hearing resulted in providing language for a waiver of experience requirement for teachers who are unemployed and hold elementary education endorsements.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 252, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 18, 2009.

David Brenna  
Legislative and  
Policy Coordinator

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

**WAC 181-82A-204 Endorsement requirements.** (1) Candidates completing endorsements required to obtain a residency certificate, shall complete college/university teacher preparation programs approved by the professional educator standards board pursuant to chapter 181-78A WAC, which include methodology (see WAC 181-78A-264(5)) and field experience/internship (see WAC 181-78A-264(6)) and pursuant to endorsement program approval requirements in this chapter.

(2) In order to add an additional endorsement, the candidate shall:

(a) Have completed a state-approved endorsement program which includes methodology (see WAC 181-78A-264(5)) and addresses all endorsement-specific competencies adopted by the professional educator standards board and published by the superintendent of public instruction. The requirement for field experience shall be at the discretion of the college/university. Provided, that in cases where pro-

grams require a field experience/internship, the colleges/universities should make every attempt to allow the individual to complete field-based requirements for the endorsement within the confines of the individual's teaching schedule; or

(b) Achieve National Board certification in a Washington teaching endorsement area and hold a valid National Board certificate; or

(c) Pass the subject knowledge test approved by the professional educator standards board for the certificate endorsement being sought. The instructional methodology and content-related skills of the desired subject endorsement must be compatible with one or more of the current endorsement(s) on the applicant's teacher certificate, per the list of Pathway 1 endorsements adopted by the professional educator standards board and published by the superintendent of public instruction. The applicant must document a minimum of ninety days teaching experience as a contracted teacher via full-time, part-time, or substitute experience, in a public or state approved private school, or state agency providing educational services for students, in the endorsement area that is compatible in instructional methodology and content-related skills to the Pathway 1 endorsement; or

(d)(i) Pass the subject knowledge test approved by the professional educator standards board for the certificate endorsement being sought and successfully meet all eligibility criteria and process requirements for Pathway 2 endorsements as adopted by the professional educator standards board and published by the superintendent of public instruction. The desired subject endorsement must be identified as a Pathway 2 endorsement for one or more of the current endorsement(s) on the applicant's teacher certificate, per the list of Pathway 2 endorsements adopted by the professional educator standards board and published by the superintendent of public instruction. The applicant must document a minimum of ninety days teaching experience as a contracted teacher via full-time, part-time, or substitute experience, in a public or state approved private school, or state agency providing educational services for students, in the endorsement area that is compatible in instructional methodology and content-related skills to the Pathway 2 endorsement.

The ninety day teaching requirement is waived per RCW 28A.660.045 for individuals having an elementary education certificate but who are not employed in positions requiring an elementary education certificate and pursuing an endorsement in middle level mathematics or science.

(ii) Teacher preparation programs that offer Pathway 2 endorsement programs shall follow process steps as adopted by the professional educator standards board and published by the superintendent of public instruction to verify successful completion of the Pathway 2 process and to recommend adding the endorsement to the applicant's teacher certificate.

(3) Candidates from out-of-state shall be required to present verification that they completed a state-approved program (equivalent to a major) in a Washington endorsement area.

(4) Course work used to meet endorsement requirements must be completed through a regionally accredited college/university.

(5) Only course work in which an individual received a grade of C (2.0) or higher or a grade of pass on a pass-fail sys-

tem of grading shall be counted toward the course work required for the approved endorsement program.

(6) Nothing within this chapter precludes a college or university from adopting additional requirements as conditions for recommendation, by such college or university, to the superintendent of public instruction for a particular subject area endorsement.

**WSR 09-22-056**  
**PERMANENT RULES**  
**SECRETARY OF STATE**

[Filed October 30, 2009, 10:44 a.m., effective November 30, 2009]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To clarify terminology regarding financial reporting requirements and to consolidate fees into one rule.

Citation of Existing Rules Affected by this Order: Amending WAC 434-120-025, 434-120-045, 434-120-107, 434-120-110, 434-120-140, 434-120-160, 434-120-220, and 434-120-240.

Statutory Authority for Adoption: RCW 19.09.315, 19.09.540, 43.07.125.

Adopted under notice filed as WSR 09-19-016 on September 4, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 2, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 6, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 8, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 30, 2009.

Steve Excell  
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

**WAC 434-120-025 Definitions.** (1) A "bona fide officer or employee" of a charitable organization is one:

(a) Whose conduct is subject to direct control by such organization;

(b) Who does not act in the manner of an independent contractor in his or her relation with the organization; and

(c) Whose compensation is not computed on funds raised or to be raised.

(2) "Annual gross revenue" means, for any accounting period, the total gross ((receipts)) amounts, including cash or noncash contributions received by or on behalf of a charitable

organization from all sources ((of revenue)), without subtracting any costs or expenses.

(3) "Charitable organization" means any entity that solicits or collects contributions from the general public where the contribution is or is purported to be used to support a charitable purpose, but does not include any commercial fundraiser, commercial fund-raising entity, commercial coventurer, or any fund-raising counsel, as defined in this section. Churches and their integrated auxiliaries are not charitable organizations, but are subject to RCW 19.09.100 (12), (15), and (18).

(4) "Charitable purpose" means any religious, charitable, scientific, testing for public safety, literary, or educational purpose or any other purpose that is beneficial to the community, including but not limited to recreational, environmental, humanitarian, patriotic, or civic purposes, the support of national or international amateur sports competition, the prevention of cruelty to children or animals, the advancement of social welfare, or the benefit of law enforcement personnel, firefighters, and other persons who protect public safety. The term "charitable" is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.

(5) "Charitable trust" means any real or personal property right held by an entity or person that is intended to be used for a charitable purpose(s). The trust may be created by will, deed, articles of incorporation, or other governing instrument. It may be express or constructive.

(6) "Commercial coventurer" means a corporation, partnership, sole proprietorship, limited liability company, limited partnership, limited liability partnership, individual, or other entity that:

(a) Is regularly and primarily engaged in making sales of goods or services for profit directly to the general public; and

(b) Is not otherwise regularly or primarily engaged in making charitable solicitations in this state or otherwise raising funds in this state for one or more charitable organizations; and

(c) Represents to prospective purchasers that if they purchase a good or service from the commercial coventurer, a specified portion of the sales price or a certain sum of money or some other specified thing of value will be donated to a named charitable organization; and

(d) Does not ask purchasers to make checks or other instruments payable to a named charitable organization or any entity other than the commercial coventurer itself under its regular commercial name.

(7) "Commercial fund-raiser" or "commercial fund-raising entity" means any entity that for compensation or other consideration within this state directly or indirectly solicits or receives contributions for or on behalf of any charitable organization or charitable purpose, or that is engaged in the business of or is held out to persons in this state as independently engaged in the business of soliciting or receiving contribu-

tions for such purposes. However, a commercial coventurer, fund-raising counsel, or consultant, as defined by this section, is not a commercial fund-raiser or commercial fund-raising entity.

(8) "Compensation," means salaries, wages, fees, commissions, or any other remuneration or valuable consideration. Compensation shall not include reimbursement for expenses incurred and documented or noncash awards or prizes, valued at one hundred dollars or less, given annually to each volunteer.

(9) "Contribution" means the payment, donation, promise, or grant, for consideration or otherwise, of any money or property of any kind or value which contribution is wholly or partly induced by a solicitation. Reference to dollar amounts of "contributions" or "solicitations" in this chapter means in the case of payments or promises to pay for merchandise or rights of any description, the value of the total amount paid or promised to be paid for such merchandise or rights.

(10) "Cost of solicitation" means and includes all direct and indirect costs, expenditures, debts, obligations, salaries, wages, commissions, fees, or other money or thing of value paid or incurred in making a solicitation.

(11) "Entity" means an organization, individual or institution with its own existence for legal and/or federal tax purposes. It has the capacity to enter into agreements or contracts, assume obligations, incur and pay debts, sue and be sued in its own right, and to be held responsible for its actions. Entity may include, but is not limited to, an individual, organization, corporation, association, limited liability company, trust, group, partnership, proprietorship, company, estate, agency or unit of state government, person as defined in RCW 1.16.080, or any combination thereof.

For purposes of complying with registration requirements under Washington's Charitable Solicitations Act, "entity" does not include a branch, chapter, unit, affiliate or similar subordinate of another entity if said subordinate:

(a) Is under the direct supervision and control of the related entity;

(b) Does not have its own separate existence from the related entity for legal and/or federal tax purposes; and

(c) The related entity maintains registration under chapter 19.09 RCW.

Regardless of whether or not a subordinate is required to register under the act, it shall comply with the conditions set forth under RCW 19.09.100.

Interpretive note: Notwithstanding other facts that may be indicative of a separate existence for legal and federal tax purposes, a branch, chapter, unit, affiliate or similar subordinate; (i) has its own existence for legal purposes if said subordinate has an organizational structure separate from a related entity; and (ii) has its own existence for federal tax purposes if it has been issued a federal employer identification number separate from a related entity, falls under a central organization's IRS group exemption, has obtained its own federal tax exempt status separate from a related entity, is required to file a separate federal informational return, or is included in a central organization's group return.

(12) "Fund-raising counsel" or "consultant" means any entity or individual who is retained by a charitable organization for a fixed fee or rate, that is not computed on a percent-

age of funds raised, or to be raised, under a written agreement only to plan, advise, consult, or prepare materials for a solicitation of contributions in this state, but who does not manage, conduct, or carry on a fund-raising campaign and who does not solicit contributions or employ, procure, or engage in any compensated person to solicit contributions, and who does not at any time, have custody or control of contributions. A volunteer, employee, or salaried officer of a charitable organization maintaining a permanent establishment or office in this state is not a fund-raising counsel. An attorney, investment counselor, or banker who advises an individual, corporation, or association to make a charitable contribution is not a fund-raising counsel as a result of the advice.

(13) "General public" or "public" means any individual located in Washington state without a membership or other official relationship with a charitable organization before a solicitation by the charitable organization.

(14) "Income-producing assets" means assets that are purchased with the prospect that the assets will generate income or appreciate in the future. In finance, an investment is a monetary asset purchased with the idea that the asset will provide income in the future or appreciate and be sold at a higher price; these investments would include, but are not limited to stocks, bonds or real property.

(15) "Membership" means that for the payment of fees, dues, assessments, etc., an organization provides services and confers a bona fide right, privilege, professional standing, honor, or other direct benefit, in addition to the right to vote, elect officers, or hold office. The term "membership" does not include those persons who are granted a membership upon making a contribution as the result of solicitation.

(16) "Other employee" of a charitable organization means any person:

(a) Whose conduct is subject to direct control by such organization;

(b) Who does not act in the manner of an independent contractor in his or her relation with the organization; and

(c) Who is not engaged in the business of or held out to persons in this state as independently engaged in the business of soliciting contributions for charitable purposes or religious activities.

(17) "Political organization" means those organizations whose activities are subject to chapter 42.17 RCW or the Federal Election Campaign Act of 1971, as amended.

(18) "Religious organizations" means those entities that are not churches or integrated auxiliaries as defined and includes nondenominational ministries, interdenominational and ecumenical organizations, mission organizations, speakers' organizations, faith-based social agencies, and other entities whose principal purpose is the study, practice, or advancement of religion.

(19) "Renewal date" means the fifteenth day of the fifth month after the close of the organization's fiscal or accounting year.

(20) The "review" as used in WAC 434-120-107(2), means a review of a tax reporting form, including financial presentations included in the tax return, for state reporting purposes in accordance with chapter 19.09 RCW. "Review" does not mean a "review engagement" as defined by the American Institute of Certified Public Accountants (AICPA)

Statements of Standards for Accounting and Review Services (SSARS).

(21) "Secretary" means the secretary of state or the secretary's designee, or authorized representative.

~~((21))~~ (22) "Signed" means hand-written, or, if the secretary adopts rules facilitating electronic filing that pertain to this chapter, in the manner prescribed by those rules.

~~((22))~~ (23)(a) "Solicitation" means any oral or written request for a contribution, including the solicitor's offer or attempt to sell any property, rights, services, or other thing in connection with which:

(i) Any appeal is made for any charitable purpose; or

(ii) The name of any charitable organization is used as an inducement for consummating the sale; or

(iii) Any statement is made that implies that the whole or any part of the proceeds from the sale will be applied toward any charitable purpose or donated to any charitable organization.

(b) The solicitation shall be deemed complete when made, whether or not the person making it receives any contribution or makes any sale.

(c) A commercial fund-raiser is considered to solicit or receive contributions from the public directly if contributions are solicited or received by the fund-raiser or by any officer, employee, principal, or shareholder of the commercial fund-raiser, including immediate family members.

(d) Contributions are considered to be solicited or received indirectly if they are solicited or received by:

(i) Any organization owned or controlled by the commercial fund-raiser or owned or controlled by any officer, employee, principal, or shareholder of the commercial fund-raiser, including immediate family members; or

(ii) Any person or organization, other than the charitable organization for which funds are solicited, with which the commercial fund-raiser as a contractual relationship governing the solicitation or receipt of contributions.

(e) "Solicitation" as defined in RCW 19.09.020~~((21))~~ (18), for the purposes of these regulations, does not include any of the following:

(i) An application or request for application for a grant, contract, or similar funding from any foundation, corporation, governmental agency or similar entity which has an established application and review procedure for reviewing such requests;

(ii) The attempt to sell a service or good which constitutes the basis of the charitable organization's activities under which the federal income tax exemption was granted, or is the primary purpose for the existence of the charitable organization. This includes, but is not limited to, admission to a theatrical or other performance presented by a charitable organization that is a drama, musical, dance, or similar group and fees for services such as a hospital provides or use of the charitable organization's facilities; or

(iii) Bingo activities, raffles, and amusement games conducted under chapter 9.46 RCW and applicable rules of the Washington state gambling commission.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

**WAC 434-120-045 Change in status, notification.** An entity required to register under chapter 19.09 RCW shall notify the charities program in writing of any changes to its registration pursuant to WAC 434-120-105 and 434-120-215, or any other changes within thirty days after the change.

The organization shall submit changes using the form available from the charities program and the appropriate fee per WAC 434-120-145. ~~((The fee for information changes is ten dollars per submittal of change.))~~

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

**WAC 434-120-107 Audited financial report—Tiered reporting requirements (effective January 1, 2010).** (1) Charitable organizations submitting an initial registration, shall meet the financial reporting requirements, specified in

RCW 19.09.075 or WAC 434-120-105. If an organization does not file a federal form (990, 990PF, 990EZ, 990T), the organization must complete the solicitation report contained in the form prescribed by the secretary.

(2) Charitable organizations ~~((that have))~~ with more than one million dollars in annual gross revenue averaged over the last three fiscal years, shall have the federal ~~((financial))~~ tax reporting form (990, 990EZ, 990PF or 990T) prepared or reviewed by a certified public accountant or other professional, independent third-party who normally prepares or reviews the federal returns in the ordinary course of their business. ~~((The independent review must be submitted to the secretary in substantially the following form.))~~ If the federal tax form is not signed by a preparer who is so qualified, the charitable organization must, using a reporting form provided by the secretary, confirm that the federal tax form was reviewed by an independent third-party who normally prepares or reviews federal returns in the ordinary course of their business.

~~((Independent Report Form~~

**Report For:**

Organization Name \_\_\_\_\_ Charities Registration Number \_\_\_\_\_

Review of IRS Form \_\_\_\_\_ (Form Name) For Fiscal/Accounting Year Ending \_\_\_\_\_

**Prepared or Reviewed By:**

Name \_\_\_\_\_

Company \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Phone \_\_\_\_\_

E-mail \_\_\_\_\_

**Please check one of the following:**

\_\_\_\_\_ I am a Certified Public Accountant.

\_\_\_\_\_ I have prepared or been responsible for the preparation of such forms in the ordinary course of my business.

~~I am independent with respect to the affairs of this organization as described by the Internal Revenue Service.~~

~~My review did not include any direct investigation of the accuracy of the information submitted using this form or of the underlying data from which it was prepared.~~

~~Based solely on the form as it was provided to me, I reviewed its completeness and internal consistency to the extent appropriate, based on my professional judgment, giving due consideration to the nature of the activities of the organization. On the basis of this review, I am satisfied that the organization has taken proper care to meet the requirement for entering information on and assembling the form for submission.~~

~~The filing organization is solely responsible for assuring the accuracy of the form and its suitability for the purposes for which it may be submitted.~~

Signature \_\_\_\_\_

Date \_\_\_\_\_

Printed Name \_\_\_\_\_))

(3) Charitable organizations ~~((that have))~~ with more than three million dollars in annual gross revenue averaged over the last three fiscal years, shall submit an audited financial statement prepared by an independent certified public accountant for the year immediately following ~~((the))~~ any year in which the organization ~~((achieved))~~ achieves a three year average of more than three million dollars. For organi-

zations with more than three million dollars in annual gross revenue averaged over the last three fiscal years, but directly or indirectly receive five hundred thousand dollars or less in cash contributions averaged over the last three fiscal years, the audit requirement is waived. Organizations with five hundred thousand dollars or less in cash contributions averaged over the last three fiscal years shall meet the financial

reporting requirements described in subsection (2) of this section. For purposes of meeting the financial requirements in this section, "cash" includes currency, checks, credit card payments, donor advised funds, and electronic fund transfers, but does not include gifts of tangible, real, or personal property or in-kind services.

(4) The secretary may waive the requirement to file audited financial statements prepared by an independent certified public accountant when the organization can demonstrate that they have reached a three year average of more than three million dollars in gross revenue through unusual or nonrecurring revenue received in a single year without which they would have not met the three year annual gross average threshold.

(5) This rule becomes effective January 1, 2010.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

**WAC 434-120-110 Organizations exempt from filing requirements—Optional filing.** (1) Charitable organizations exempt from the filing requirements of this chapter under RCW 19.09.076(1) and WAC 434-120-100 (2)((a);) (b), (c), or (e) may register with the charities program.

(2) Charitable organizations choosing to register under this section shall register by:

(a) Completing the registration form specified by the secretary; and

(b) Paying the appropriate registration fee (~~of twenty dollars~~) per WAC 434-120-145.

(3) Charitable organizations registered under this section may change or update their registration by:

(a) Filing the update with the charities program; and

(b) Paying the (~~ten-dollar update~~) appropriate fee per WAC 434-120-145.

(4) Expedited processing under WAC 434-112-080 is available for registrations and updates under this section.

(5) The secretary offers this optional registration because some grant making entities and programs require registration with the charities program.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

**WAC 434-120-140 How and when.** (1) Original registration: An entity required to register as a charitable organization shall complete the form described in WAC 434-120-105 and submit it with the fee in WAC 434-120-145 prior to conducting any solicitation.

(2) Annual renewal:

(a) An entity shall renew its charitable registration by no later than the fifteenth day of the fifth month after the end of its fiscal year.

(b) The renewal shall include the same information required for registration as described in WAC 434-120-105 and RCW 19.09.075, except that a determination letter from the Internal Revenue Service need not be attached if it was previously filed. The solicitation report will be based on the most recent filing with the Internal Revenue Service or if the organization does not file with the Internal Revenue Service, the solicitation report will be based on the most recently com-

pleted fiscal year. No organization may submit the same fiscal information for two consecutive years.

(c) No change in an entity's fiscal year shall cause the due date of a renewal to be more than one year after the previous registration or renewal. For purposes of renewals that include financial information for a partial year, due to a change of fiscal year, threshold levels for registration and financial statement requirements shall be determined on a prorated basis.

(3) An organization shall notify the charities program of a change in organization name, mailing address, organization structure, principal officer, Washington representative, tax status, fiscal year, or any other information filed under RCW 19.09.075 or WAC 434-120-105.

(4) The organization shall submit changes using the form available from the charities program within thirty days after the change and include the (~~ten-dollar~~) appropriate fee per WAC 434-120-145.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

**WAC 434-120-160 Fees for late registration.** (1) A charitable organization that fails to renew its registration by its renewal date shall pay a late fee of fifty dollars. The charitable organization shall pay an additional fifty dollar late fee for each year, including the current year, that it was not registered under this act, but was required to do so. If the registration has lapsed for a period of more than two years, the entity shall provide solicitation information for the previous two years, and shall reregister as a new charitable organization.

(2) The fees for late registration shall be in addition to the filing fees under WAC 434-120-145, and any other(;) remedies that may be imposed by law, including penalties for soliciting without being registered.

(3) The charitable organization may ask the secretary to waive fees for late registration. The request must include a description of the circumstances that justify a waiver of the late fees. Under special circumstances the secretary may waive fees for late registration that are imposed by these regulations.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

**WAC 434-120-220 Change in status, notification.** A commercial fund-raiser shall:

(1) Notify the charities program of a change in organization name, mailing address, principal officer, owner, business structure, Washington representative, fiscal year or any other information filed under RCW 19.09.079 or WAC 434-120-215.

(2) The commercial fund-raiser shall submit changes using the form available from the charities program within thirty days after the change and include the (~~ten-dollar~~) appropriate fee per WAC 434-120-250.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

**WAC 434-120-240 Contract between a commercial fund-raiser and a charitable organization.** (1) A commercial fund-raiser and charitable organization entering into a contract shall register the contract by completing the contract registration form, attaching a copy of the written contract, and filing the form and contract with the secretary. The contract shall be registered before the commencement of the campaign.

(2) The charitable organization is responsible for registering the contract and paying the appropriate fee per WAC 434-120-250.

(3) ~~((The fee for registering a contract under this section is ten dollars.~~

(4)) Both the contract and registration form shall be signed by the commercial fund-raiser owner or principal and the charitable organization president, treasurer, or comparable officer.

~~((5))~~ (4) In addition to the statutory requirements of RCW 19.09.097, the terms of the contract shall specify who will maintain the donor list.

#### WSR 09-22-057

#### PERMANENT RULES

### UTILITIES AND TRANSPORTATION COMMISSION

[Docket TV-090400, General Order R-555—Filed October 30, 2009, 1:19 p.m., effective November 30, 2009]

In the matter of amending and repealing rules in chapter 480-14 WAC relating to motor carriers, excluding household goods carriers and common carrier brokers.

**1 STATUTORY OR OTHER AUTHORITY:** The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 09-18-110, filed with the code reviser on September 2, 2009. The commission brings this proceeding pursuant to RCW 80.01.040 and 81.04.160.

**2 STATEMENT OF COMPLIANCE:** This proceeding complies with the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

**3 DATE OF ADOPTION:** The commission adopts this rule on the date this order is entered.

**4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** RCW 34.05.325(6) requires the commission to prepare and publish a concise explanatory statement about an adopted rule. The statement must identify the commission's reasons for adopting the rule, describe the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), summarize the comments received regarding the proposed rule changes, and state the commission's responses to the comments reflecting the commission's consideration of them.

**5** To avoid unnecessary duplication in the record of this docket, the commission designates the discussion in this order, including Appendix A, as its concise explanatory state-

ment, supplemented where not inconsistent by the staff memoranda preceding the filing of the CR-102 proposal and the adoption hearing. Together, these documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.

**6 REFERENCE TO AFFECTED RULES:** This order amends and repeals the following sections of the Washington Administrative Code:

Amend WAC 480-14-010 Purpose and application.

Amend WAC 480-14-020 Rules, general application of rules—How changed.

Amend WAC 480-14-040 Definitions.

Amend WAC 480-14-050 Reference to other chapters.

Repeal WAC 480-14-070 Federal regulations, 49 CFR, Part 390—General applicability and definitions.

Repeal WAC 480-14-080 Rule book fee—Updates—Notification of pending and adopted rule changes—Compliance with rules.

Amend WAC 480-14-090 Permits.

Amend WAC 480-14-100 Operations must be under permit name.

Amend WAC 480-14-110 Improper use of permit or registration receipt.

Amend WAC 480-14-120 Address, change of.

Repeal WAC 480-14-130 Remittances.

Amend WAC 480-14-140 Fees.

Amend WAC 480-14-150 Regulatory fee.

Amend WAC 480-14-160 Procedures for contest of fees.

Repeal WAC 480-14-170 Periodic reporting requirements.

Amend WAC 480-14-180 Applications.

Amend WAC 480-14-190 Permanent common carrier permits.

Amend WAC 480-14-200 Armored car service.

Amend WAC 480-14-210 Change of carrier name and business structure.

Amend WAC 480-14-220 Permits, cancelled—New application.

Amend WAC 480-14-230 Operation of equipment by a cancelled or suspended carrier; voluntary cancellation; involuntary suspension and cancellation.

Amend WAC 480-14-240 Inactive status of permits during military service.

Amend WAC 480-14-250 Insurance requirements; cause for suspension or cancellation.

Repeal WAC 480-14-260 Leasing.

Amend WAC 480-14-290 Interstate operations; requirements; definitions.

Amend WAC 480-14-300 Registered carriers.

Repeal WAC 480-14-320 Registered exempt carriers.

Repeal WAC 480-14-340 Equipment—Identification.

Repeal WAC 480-14-350 Equipment, lawful operation of.

Repeal WAC 480-14-360 Equipment—Inspection—Ordered out-of-service for repairs.

Repeal WAC 480-14-370 Equipment—Drivers—Safety.

Repeal WAC 480-14-380 Hours of service—On duty—Federal safety regulations.

Repeal WAC 480-14-390 Hazardous materials regulations.

Repeal WAC 480-14-400 Transportation of radioactive materials—Driving and parking rules.

Repeal WAC 480-14-420 Optional provisions.

Repeal WAC 480-14-900 Appendix A.

Amend WAC 480-14-999 Adoption of reference.

**7 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:** A prepropositional statement of inquiry is not required under RCW 34.05.353 Expedited rule making.

**8 EXPEDITED RULE MAKING AND ACTIONS THEREUNDER:** The commission filed notice of expedited rule making (CR-105) on May 6, 2009, at WSR 09-10-087. The notice informed interested persons that the rules were being proposed under an expedited rule-making process as required by RCW 34.05.353, to amend chapter 480-14 WAC, Motor carriers. The commission provided notice of its expedited rule making to all persons requesting such information pursuant to RCW 34.05.3353 [34.05.353], to all registered motor carriers, and to the commission's list of transportation attorneys. The notice provided interested persons the opportunity to submit written comments to the commission no later than July 6, 2009. The commission posted the relevant rule-making information on its internet web site at [www.utc.wa.gov/090400](http://www.utc.wa.gov/090400).

**9 WRITTEN COMMENTS:** The commission received written comments from two individuals. Under the expedited rule-making statute, RCW 34.05.353, if a written notice of objection to the expedited rule making is timely filed and is not withdrawn, the notice of proposed expedited rule making is considered a statement of inquiry (CR-101). A summary/matrix of the comments received with staff's response is posted on the commission's web site at [www.utc.wa.gov/090400](http://www.utc.wa.gov/090400).

**10 NOTICE OF PROPOSED RULE MAKING:** The commission filed a notice of proposed rule making (CR-102) on September 2, 2009, at WSR 09-18-110. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 09-18-110 at 1:30 p.m., October 14, 2009, in the Commission's Hearing Room, Second Floor, Richard Hemsstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice provided interested persons the opportunity to submit written comments to the commission.

**11 MEETINGS OR WORKSHOPS:** The commission held no meetings or workshops on this matter.

**12 WRITTEN COMMENTS:** The commission received no written comments in response to the CR-102.

**13 RULE-MAKING HEARING:** The commission considered the proposed rules for adoption at a rule-making hearing on October 14, 2009, before Chairman Jeffrey D. Goltz and Commissioner Patrick J. Oshie. No interested person appeared or made oral comments.

**14 COMMISSION ACTION:** After considering all of the information regarding this proposal, the commission finds and concludes that it should amend and repeal the rules as proposed in the CR-102 at WSR 09-18-110.

**15 STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the commission determines that chapter 480-14 WAC should be amended and repealed to read as set forth in Appendix A, as rules of the

Washington utilities and transportation commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 22, Repealed 15.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

#### ORDER

##### 16 THE COMMISSION ORDERS:

17 The commission amends and repeals chapter 480-14 WAC to read as set forth in Appendix A, as rules of the Washington utilities and transportation commission, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

18 This order and the rules set out in Appendix A, after being recorded in the register of the Washington utilities and transportation commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, October 30, 2009.

Washington state utilities and transportation commission

Jeffrey D. Goltz, Chairman

Patrick J. Oshie, Commissioner

AMENDATORY SECTION (Amending Order R-435, Docket No. TV-941290, filed 11/22/95, effective 12/23/95)

**WAC 480-14-010 Purpose and application.** ~~((The federal government has preempted state economic regulation of motor carriers effective January 1, 1995, except for carriers of household goods and common carrier brokers. These rules are established to comply with federal law. This chapter supersedes chapter 480-12 WAC for all common and contract carriers previously regulated in that chapter except carriers of household goods and common carrier brokers, who continue to be regulated by that chapter.))~~ These rules require intrastate common carriers of property by motor vehicle to obtain and maintain intrastate common carrier operating permits, to file reports and pay regulatory fees, and to file and maintain evidence of required insurance coverage. The rules also require interstate carriers to secure appropriate authority from the United States Department of Transportation (USDOT) and to register with the commission and pay fees as required by the Uniform Carrier Registration (UCR) program or any successor program.

AMENDATORY SECTION (Amending Order R-435, Docket No. TV-941290, filed 11/22/95, effective 12/23/95)

**WAC 480-14-020 Rules, general application of rules**~~((—How changed))~~. (1) No rule contained in this chapter can be changed, altered or revised except by general order of the commission pursuant to the Washington State Administrative Procedure Act.

(2) The rules in this chapter are for general application only, and are subject to such changes and modifications as the commission may deem advisable from time to time, and also to such exceptions as may be considered just and reasonable in individual cases.

(3) ~~((Application for exception to))~~ A person requesting an exemption from any of ((the)) these rules ((and regulations of the commission shall be made in accordance with the following instructions:

~~((a) Application should be directed))~~ must direct his or her request to the commission at its Olympia headquarters office. ~~((The application should be typewritten on 8-1/2 x 11 inch paper, on one side of the sheet only.~~

~~((b))~~ The ((applicant)) person must identify the rule from which exemption is sought and give a full explanation ~~((as to))~~ of the reason(s) the ((exception)) exemption is desired.

AMENDATORY SECTION (Amending Docket No. A-010827, General Order No. R-491, filed 9/28/01, effective 10/29/01)

**WAC 480-14-040 Definitions.** As used in this chapter, the following definitions shall apply:

(1) ~~((The term "motor carrier" means "common carrier," "private carrier" and "exempt carrier," as herein defined.~~

(2)) The term "common carrier" means any person who undertakes to transport property, including general commodities, materials transported by armored car service, and/or hazardous materials, for the general public by motor vehicle for compensation, including under individual contracts or agreements, and including motor vehicle operations of other carriers by rail or water and of express or forwarding companies. ~~((For the purposes of chapter 480-15 WAC, the term "common carrier" also includes persons engaged in the business of transporting household goods as common carriers or of providing, contracting for, or undertaking to provide transportation of property for compensation over the public highways of the state of Washington as brokers or forwarders.~~

(3) The term "private carrier" means a person who, in its own vehicle, transports only property owned or being bought or sold by it in good faith and only when such transportation is purely an incidental adjunct to some established private business owned or operated by it in good faith.

(4)) The term does not include household goods carriers, as defined by WAC 480-15-020, solid waste collection companies, as defined by WAC 480-70-041, or "exempt carriers."

(2) The term "exempt carrier" means any person operating a vehicle exempted from certain regulatory provisions ~~((of the act))~~ under RCW 81.80.040.

~~((5) The terms "registered carrier" and "registered exempt carrier" have the meanings set out in WAC 480-14-290.~~

~~((6))~~ (3) The term "carrier of hazardous materials" means any person who transports radioactive materials, hazardous waste, hazardous materials and hazardous substances as defined in Title 49 Code of Federal Regulations. Information about 49 CFR regarding the version currently in effect and where to obtain it is set out in WAC 480-14-999.

~~((7))~~ (4) The term "carrier of general commodities" means any person transporting the property of others for compensation, except persons performing the service of transporting household goods as defined in WAC 480-15-020.

~~((8))~~ (5) The term "armored car service" means carriers transporting property of very high value (gold, silver, currency, valuable securities, jewels and other property of very high value) using specially constructed armored trucks and providing policy protection to safeguard freight while it is being transported and delivered. It also means carriers which operate ordinary equipment in the carriage of high value commodities when guards are necessary to accompany the shipment.

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

**WAC 480-14-050 ((Reference to other chapters.)) Procedures and documents.** (1) **Procedures.** ~~((Except as otherwise provided in this chapter, the commission's rules relating to procedure, chapter 480-07 WAC, shall govern the administrative practice and procedure in and before the commission in proceedings involving motor freight carriers.~~

(2) **Communications.** ~~Except as provided in chapter 480-04 WAC, all written communications and documents should be addressed to the secretary, Washington utilities and transportation commission, at the headquarters office of the commission at Olympia, Washington, and not to individual members of the commission staff.~~

(a) ~~Except as provided in chapter 480-04 WAC, all communications and documents are deemed to be officially received only when delivered at the office of the secretary.~~

(b) ~~In addressing communications to the commission each permit holder must use the name shown upon its permit and indicate permit number.~~

(c) ~~Except as provided in WAC 480-07-143, 480-07-145, and 480-14-420, receipt in the commission's telefacsimile machine does not constitute filing with the commission.~~

(3)) The commission's procedural rules are contained in chapter 480-07 WAC and apply to common carriers regulated under this chapter. If a rule in this chapter conflicts with a rule in chapter 480-07 WAC, the rule in this chapter applies.

(2) **Documents**~~((—When filed))~~. ~~((Except as provided in chapter 480-04 WAC;))~~ All petitions, complaints, applications for common carrier permits or extensions, or any other matter required to be served upon or filed with the Washington utilities and transportation commission ((shall)) must be served or filed upon the commission at its headquarters office as shown in WAC ((480-04-030)) 480-04-035, upon the secretary of the commission. ~~((Except as provided in chapter 480-04 WAC;))~~ Any petition, complaint, application, or other matter required to be served upon or filed with the commis-

sion (~~shall~~) will not be considered served or filed until it is received at the headquarters office (~~of the commission at Olympia, Washington~~).

AMENDATORY SECTION (Amending Order R-435, Docket No. TV-941290, filed 11/22/95, effective 12/23/95)

**WAC 480-14-090 Permits.** (~~((1) Location of original copy. Permits must be kept at the main office of the carrier.~~) **(2) Copies required on power units.**) Permit holders must carry a copy of operating authority issued by the Washington utilities and transportation commission on each power unit operated in intrastate operations.

AMENDATORY SECTION (Amending Order R-435, Docket No. TV-941290, filed 11/22/95, effective 12/23/95)

**WAC 480-14-100 Operations must be under permit name.** Every common carrier (~~shall~~) must conduct its operations under (~~the name~~) its corporate, trade(~~ing~~) or assumed(~~ed~~, ~~that is~~) name as described in its permit(~~s~~ and) No common carrier (~~shall~~) may perform any carrier service, or hold itself out to perform such service, by advertisement or otherwise in any name other than (~~that in which its permit is issued~~) its corporate, trade or assumed name as described in its permit.

AMENDATORY SECTION (Amending Order R-435, Docket No. TV-941290, filed 11/22/95, effective 12/23/95)

**WAC 480-14-110 Improper use of permit or registration receipt.** (~~The use of~~) No person or firm may use a permit or registration receipt (~~by any person or firm other than~~) except the carrier to whom it was issued (~~is unlawful~~).

AMENDATORY SECTION (Amending Order R-435, Docket No. TV-941290, filed 11/22/95, effective 12/23/95)

**WAC 480-14-120 Change of address**(~~ing~~, ~~change of~~). A carrier must immediately report to the commission in writing any change in the address of its principal place of business.

AMENDATORY SECTION (Amending Order R-435, Docket No. TV-941290, filed 11/22/95, effective 12/23/95)

**WAC 480-14-140 Fees.** Fees for applications (~~shall be~~) are as follows:

Type of Application	Fee (Applicable)
<del>((Conversion of permits existing prior to January 1, 1995, to new permits</del> . . . . .	<del>\$0))</del>
Change of name or business structure . . . . .	\$50
Permanent common carrier operating authority	
Hazardous materials . . . . .	\$275
General commodities . . . . .	\$275
Armored car service . . . . .	\$275

Type of Application	Fee (Applicable)
Extension of common carrier permit authority	
Hazardous materials . . . . .	\$100
General commodities . . . . .	\$100
Armored car service . . . . .	\$100
Reinstatement of authority (within 10 months of cancellation)	
Hazardous materials . . . . .	\$100
General commodities . . . . .	\$100
Armored car service . . . . .	\$100

AMENDATORY SECTION (Amending Order R-435, Docket No. TV-941290, filed 11/22/95, effective 12/23/95)

**WAC 480-14-150 Periodic reports and regulatory fees.** (1) (~~Every common motor carrier operating in intrastate commerce shall, if requested by the commission, on or before the first day of May of each year, file with the commission with its periodic special report as defined in WAC 480-14-170, on a form provided by~~) The commission (~~ing~~) may require, on an annual basis, a special report from each common carrier that operated within the state during the prior calendar year. The report must be filed on or before the first day of May, to cover the operations of the prior calendar year. The report must include a statement on oath showing (~~ing~~) the common carrier's gross operating revenue from intrastate operations during the prior calendar year.

(2) Each common carrier (~~shall submit with its statement of gross operating revenue the carrier's~~) must pay a regulatory fee (~~ing~~, ~~calculated as~~) at the time it files a report. The regulatory fee is 0.0025 times the stated gross operating revenue, unless that rate is reduced or waived by commission order.

AMENDATORY SECTION (Amending Order R-435, Docket No. TV-941290, filed 11/22/95, effective 12/23/95)

**WAC 480-14-160 ((Procedures for contest of) Contested fees.** (1) A person may contest any fee imposed by (~~the authority of chapter 81.80 RCW under RCW 81.80.115 by the procedure set out in this section~~) these rules.

(~~Any person on whom a fee is imposed by the authority of chapter 81.80 RCW shall~~) (a) The person must first pay the fee.

(b) Within six months of the date the fee is due, the payor may petition the commission for a refund of the fee paid (~~ing~~, ~~in writing, filed no later than six months after the fee is first due and payable~~).

(c) The petition (~~shall state~~) must be in writing and must include:

- (i) The name of the payor/petitioner (~~ing~~);
- (ii) The date and the amount paid (~~ing~~, ~~including~~);
- (iii) A copy of any receipt, if available (~~ing~~);
- (iv) The nature of the fee paid (~~ing~~);
- (v) The amount of the fee that is contested (~~ing~~).

(vi) The statute under which the fee is imposed, if known (to the petitioner, and).

(vii) Any reasons why the commission may not impose the fee.

(2) The commission may grant the petition administratively or may set the petition for adjudication or for brief adjudication.

AMENDATORY SECTION (Amending Order R-435, Docket No. TV-941290, filed 11/22/95, effective 12/23/95)

**WAC 480-14-180 Applications for intrastate authority.** ~~((1) Intrastate authority-))~~ No person ~~((shall))~~ may conduct operations as a ~~((motor freight))~~ common carrier in Washington intrastate commerce without having first obtained a permit from the commission to do so.

~~((a) Applications))~~ (1) Common carriers must apply to the commission to acquire permanent common carrier authority, ~~((extension of))~~ to extend existing permanent common carrier authority, or to change ~~((of))~~ a carrier name or business structure ~~((shall be made)).~~ Common carriers must apply on forms furnished by the commission and ~~((shall contain))~~ must include all the information, documents~~((;))~~ and exhibits called for in the form or the form's instructions. The commission may refuse to accept any application until all required information is supplied.

~~((b) No application will be accepted for filing))~~ (2) The commission will not accept an application unless it is accompanied by the required fee as shown in WAC 480-14-140.

~~((c))~~ (3) The commission's acceptance of an application for filing does not indicate the commission's approval, nor is the commission precluded from finding that the information presented in the application is insufficient.

~~((2) Interstate authority. Each carrier operating in interstate commerce on the public roads of the state of Washington shall apply to register its insurance with the commission pursuant to WAC 480-14-250. Every such application shall be granted if it contains all necessary information and documentation, if the information provided is true and correct, and if the required fee is paid.~~

(3) All exhibits or papers submitted with an application must be legibly written or typed on one side only of 8 1/2 by 11 inch paper.

(4) Applications for permits and for registration shall require that the applicant certify the truth of all information submitted with the application, under penalties of perjury. False, misleading, or incomplete information may subject the applicant to prosecution, to civil penalties, or to revocation or suspension of authority.

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

**WAC 480-14-190 ((Permanent)) Common carrier permits.** (1) ~~((For the purposes of this rule, applications for authority shall include applications for original or extended common carrier authority for general commodities (excluding household goods), materials transported by armored car, and/or hazardous materials.~~

~~((2))~~ The commission will issue a common carrier permit ((shall be issued)) to any applicant ((satisfying the following requirements:

(a) Filing an application satisfying the requirements of WAC 480-14-180.

(b) Filing, or causing to be filed, insurance in accordance with the requirements of WAC 480-14-250.

(c) Passing a safety fitness review of the applicant's knowledge and ability to conform with the motor carrier safety and/or hazardous materials regulations. The safety fitness review may be waived if the applicant can furnish a copy of a U.S. Department of Transportation "satisfactory" safety rating issued within twenty four months before the date of the application. The commission may require an on-site safety compliance review to satisfy the safety fitness review requirements prior to issuing any permit.

~~((3) An application may be dismissed for failure to complete needed steps and it may be dismissed, denied, or granted in part based upon the satisfactory compliance with this chapter-))~~ that files an application satisfying the requirements of WAC 480-14-180 and that files insurance in accordance with the requirements of WAC 480-14-250.

(2) The commission may dismiss an incomplete application. The applicant may request a review of dismissal ~~((or full or partial denial))~~ through a brief adjudicative proceeding, pursuant to WAC 480-07-610.

AMENDATORY SECTION (Amending Order R-435, Docket No. TV-941290, filed 11/22/95, effective 12/23/95)

**WAC 480-14-200 Armored car service.** ~~((Motor))~~ Common carriers defined as providing "armored car service" under WAC 480-14-040(8), when transporting cash or coin with a value exceeding one hundred thousand dollars, are subject to the following provisions:

(1) The vehicle must be accompanied by at least two armed security guards qualified under chapter 18.170 RCW and chapter 308-18 WAC.

(2) When the vehicle is located in an unsecured area, one guard must remain within the area.

(3) Those portions of the vehicle surrounding the cargo and personnel must have a UL 752 Testing Certification to Level 1 Medium Powered Small Arms (MPSA); except that~~((;))~~ any vehicle owned by an armored car service and operated as an armored car prior to ~~((the effective date of this rule))~~ December 23, 1995, is exempt from this regulation.

AMENDATORY SECTION (Amending Order R-435, Docket No. TV-941290, filed 11/22/95, effective 12/23/95)

**WAC 480-14-210 Change of carrier name and business structure.** (1) ~~((For the purposes of this rule,))~~ An application((s)) to change carrier name or business structure ((means the following)) is required when:

(a) The carrier changes ((of the carrier's)) its registered name, with no change in ownership or business structure.

(b) The carrier changes ((of)) its business structure:

(i) From an individual to a corporation ((to incorporate an individual's business)) or limited liability corporation (LLC), when the individual is the majority stockholder((, or by an)).

(ii) ~~From an individual to a partnership, when the individual is the majority partner((,or)).~~

(iii) ~~From a corporation or LLC to a proprietorship of the majority shareholder((,or by)).~~

(iv) ~~From a partnership to a proprietorship of the majority partner.~~

(c) ~~((Change of))~~ The carrier changes its name ((resulting from)) because of a change in business structure from a partnership to a corporation ((established to incorporate the partnership business,)) or LLC when the partners are the majority stockholders in the same proportionate ownership.

(d) ~~((Change of))~~ The carrier changes its name resulting from a change in business structure from a corporation or LLC to another corporation or LLC where both corporations are wholly owned by the same stockholders in the same proportions.

(2) A carrier must file a new permanent common carrier application ((is required, rather than a change of name,)) when the resulting business entity does either more or less than assume all of the existing business.

~~((H))~~ (3) A carrier must file a new permanent common carrier application when the transaction involves the sale or acquisition of assets other than the property of the acquired or substituted business((,)) or ~~((the))~~ if the carrier conducts ~~((of))~~ different activities~~((, a new permit must be applied for)).~~

AMENDATORY SECTION (Amending Order R-435, Docket No. TV-941290, filed 11/22/95, effective 12/23/95)

**WAC 480-14-220 ((Permits, cancelled—New))**  
**Application for reinstatement of a canceled permit.**  
~~((When a permit is cancelled by the commission either for cause, or on request of the carrier, the carrier may secure a new permit by correcting))~~ (1) A common carrier may apply to reinstate a canceled permit within ten months of the cancellation date provided the carrier:

(a) Corrects the cause of cancellation~~((, satisfying)).~~

(b) Satisfies any outstanding fees or filings~~((, and submitting)).~~

(c) Submits the appropriate application ((with the pertinent application)) and fee ((within ten months after date of cancellation)) as required in WAC 480-14-140.

(2) If the common carrier does not ((filed)) file for reinstatement within ten months~~((, the application will be considered in all respects as))~~ of cancellation, it must submit a new application ((and must be accompanied by full fees and)) for a common carrier permit under WAC 480-14-190 subject to all provisions ~~((of))~~ in WAC 480-14-180.

AMENDATORY SECTION (Amending Order R-435, Docket No. TV-941290, filed 11/22/95, effective 12/23/95)

**WAC 480-14-230 ((Operation of equipment by a cancelled or suspended carrier; voluntary cancellation; involuntary suspension and cancellation.))** **Suspension and cancellation of a permit.** ~~((1))~~ The operation) A common carrier may not operate any of its equipment ((in any manner by a carrier whose)) while its permit ((has been cancelled or)) is suspended ((is unlawful)) or canceled. ((Carrier

permits may be suspended or cancelled by the commission under the following circumstances:

(2) **Voluntary cancellation.** A carrier may request that its permit be cancelled. Cancellation will be effective upon entry of an order of voluntary cancellation by the commission secretary. The commission will reinstate any permit that has been voluntarily cancelled by order of the secretary upon application of the carrier and payment of the required fee within ten months after the order of cancellation, provided the permit holder meets current entry requirements.

(3) **Policy regarding compliance activities, penalties, remediation, involuntary suspension or cancellation.** It is the policy of the commission that the purpose for the regulations implemented in this chapter is to secure compliance with laws and rules protecting the public health and safety, and that the commission shall direct its efforts toward education to the end that voluntary compliance is achieved.

(a) Penalties are intended as a tool of enforcement and remediation and may be assessed upon violations in the manner the commission believes will best assure future compliance by the responding carrier and other carriers.

(b) Involuntary suspension and cancellation are intended for circumstances in which the commission believes education and penalties have not been or will not be effective to secure compliance and for serious actions such as fraud, misrepresentation, and willful violation of legal requirements.

(4)) (1) **Involuntary suspension.**

(a) The commission may suspend a carrier permit ~~((for cause. Cause includes, but is not limited to, the following circumstances:~~

(i) The carrier has failed to maintain evidence that it has the required level of insurance in effect for its operations.

(ii) The carrier fails or refuses to participate in compliance education or conferences, or fails or refuses to comply with rules or other requirements protecting the public health or safety following commission staff instructions regarding compliance.

(iii) The carrier commits or allows to exist an infraction of rule or law that poses an immediate danger to the public health or safety, when putting one or more vehicles out of service will not protect the public health or safety.

(b) The commission will provide to the carrier such notice as is feasible of a commission action suspending a permit, weighing the potential threat to the public health, safety or welfare and the effect of the suspension on the carrier.

(i)) if the carrier fails to maintain evidence that it has the required level of insurance in effect for its operations.

(b) The commission will make a good faith effort to notify a carrier that its evidence of insurance is likely to become invalid~~((, but)).~~ The commission will suspend any carrier who fails to maintain evidence of current insurance ~~((on file with the commission)),~~ whether or not it is able to provide advance notice.

~~((ii))~~ The commission may suspend a carrier permit, effective with the service of notice, when it believes that the carrier's continued operations pose an imminent danger to the public health, safety or welfare.

(e) The commission may suspend a permit without prior hearing when the action is needed to protect the public health, safety or welfare and there is insufficient time for a suspen-

sion hearing. A carrier whose permit is suspended may secure reinstatement of the permit by correcting conditions leading to suspension. A carrier may contest suspension by requesting a brief adjudication or an adjudication.

~~(5))~~ **(2) Voluntary cancellation.** A carrier may request that its permit be canceled. The commission will enter an order canceling the permit. The commission will reinstate the permit, provided the carrier meets current entry requirements, if the carrier applies for reinstatement and pays the application fee within ten months of cancellation.

**(3) Involuntary cancellation ((for cause)).** The commission may cancel a permit ((for cause. Cause includes, but is not limited to, the following circumstances)) because the carrier fails to:

(a) ~~((Failure to pay the))~~ Pay required regulatory ~~((fee or))~~ fees.

(b) ~~((Failure to))~~ Demonstrate that the carrier has corrected the conditions leading to suspension within the time defined in the order of suspension.

(c) ~~((Committing or allowing to exist violations of pertinent requirements of law or rule affecting the public health or safety when the commission has reason to believe that the carrier would not comply following a period of suspension.~~

(d) ~~Repeated failure or refusal of the carrier to comply with regulatory requirements or to))~~ Provide information ~~((;))~~ as required by the commission or ~~((the submission of))~~ submits false, misleading ~~((;))~~ or inaccurate information ~~((of a sort that is necessary to the commission for performance of its functions)).~~

~~((6))~~ **(4) Cancellation hearing ((prior to)).** The commission will hold a hearing prior to canceling a carrier's authority, pursuant to RCW 81.80.280, except when cancellation results from failure to correct causes of a suspension in which an adjudication or brief adjudication was held or was available to the carrier. A carrier whose permit is cancelled may apply for reinstatement under WAC 480-14-220, or may apply for a new permit under WAC 480-14-180, if the carrier has corrected the causes of cancellation ~~((are corrected)).~~

**AMENDATORY SECTION** (Amending Order R-435, Docket No. TV-941290, filed 11/22/95, effective 12/23/95)

**WAC 480-14-240 Inactive status of permits during military service.** (1) When the holder of a common carrier permit is called into or enters the military service of the United States and must cease its common carrier operations ~~((over the public highways, the commission will upon application place that carrier's permit in an inactive file for the period of military service.~~

(2) The carrier shall file with the commission a written, informal application which lists), the carrier may apply to the commission, at no charge, for inactive status. The written, informal application must include:

- (a) The applicant's name and permit number ~~((;))~~;
- (b) The branch of military service the applicant is to enter ~~((;))~~;
- (c) The date upon which the applicant requests the inactive status to begin ~~((;))~~;
- (d) A statement that the applicant will not permit its equipment to be operated under inactive status.

(2) Upon receipt of the properly completed application, the commission will place the permit in inactive status for the period of military service.

(3) ((Application for reinstatement of a)) The carrier must apply to reinstate its permit ((placed on inactive status during military service shall be made)) within six months after ((such)) military service has ((terminated)) ended. In its application, the carrier must state it will comply with the requirements of law governing its operations. The commission ((shall, at no charge,)) will grant reinstatement ((upon a showing of compliance with the requirements of the law governing operation over the public highways)) at no charge.

**AMENDATORY SECTION** (Amending Docket No. A-010827, General Order No. R-491, filed 9/28/01, effective 10/29/01)

**WAC 480-14-250 Insurance requirements((; cause for suspension or cancellation)).** (1) ~~((Requirements:))~~ **Required insurance coverage.**

Each applicant for common carrier authority ~~((;))~~ and each common carrier ~~((; shall))~~ must file with the commission evidence of currently effective liability and property damage insurance written by a company authorized to write such insurance in the state of Washington, covering each motor vehicle as defined in RCW 81.80.010 used or to be used under the permit ~~((granted)).~~

(a) For vehicles with gross vehicle weight ratings of ten thousand pounds or more, filings ~~((shall))~~ must be for the amount shown on the following table:

Category of Carrier Operation	Filing Required
1. Property (nonhazardous) .....	\$750,000
2. Hazardous substances, as defined in 49 Code of Federal Regulations (CFR) 171.8 transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk <del>((Class A or B explosives, poison gas (Poison A), liquefied compressed gas or compressed gas))</del> Division 1.1, 1.2 and 1.3 materials, Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material, in bulk Division 2.1 or 2.2; or highway route controlled <del>((quantity radioactive materials))</del> quantities of a Class 7 material, as defined in 49 CFR <del>((173.455))</del> 173.403	\$5,000,000
3. Oil listed in 49 CFR 172.101; hazardous waste, hazardous materials and hazardous substances defined in 49 CFR 171.8 and listed in 49 CFR 172.101, but not mentioned in 2. above or in 4. below .....	\$1,000,000
4. Any quantity of <del>((Class A or B explosives))</del> Division 1.1, 1.2, or 1.3 material; any quantity of <del>((poison gas (Poison A))</del> a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; or highway route controlled <del>((quantity radioactive materials))</del> quantities of a Class 7 material, as defined in 49 CFR <del>((173.455))</del> 173.403	\$5,000,000

(b) For vehicles with gross vehicle weight ratings less than ten thousand pounds, filings shall be for the amounts shown on the following table:

Category of Carrier Operation	Filing Required
1. Property (nonhazardous) .....	\$300,000

Category of Carrier Operation	Filing Required
2. Property (hazardous); any quantity of <del>((Class A or B explosives))</del> <u>Division 1.1, 1.2, or 1.3 material</u> ; any quantity of <del>((poison gas (Poison A)))</del> <u>a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material</u> ; or highway route controlled <del>((quantity radioactive materials))</del> <u>quantities of a Class 7 material, as defined in 49 CFR ((173.455)) 173.403</u>	\$5,000,000

(c) ~~((For))~~ Insurance requirements do not apply to taxicabs whose only operation subject to commission jurisdiction is the operation of small parcel general freight service under a permit issued pursuant to chapter 81.80 RCW ~~((shall))~~. Those taxicabs must comply with the provisions of RCW 46.72.040 and 46.72.050 in lieu of the above. ~~((Such))~~ However, all carriers must comply with the reporting requirements of this section.

(d) ~~((Carriers registering under WAC 480-14-300 as registered interstate carriers may provide evidence of insurance in the amount prescribed by the Interstate Commerce Commission or its successor agency written by a company authorized to write insurance in any state.~~

~~((e) Failure to file and keep))~~ The commission may dismiss an application or suspend or cancel a permit if a carrier does not file proof that such insurance is in full force and effect ~~((shall be cause for dismissal of an application or cancellation of a permit)).~~

~~((f))~~ (e) Carriers must submit evidence of insurance ~~((shall be submitted))~~ by either ~~((or))~~ a Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance ~~((, filed in triplicate with the commission,))~~ (Form E) or a written binder ~~((issued by an insurance agent or insurance company))~~ evidencing the required coverage ~~((s as required above)).~~ ~~((H))~~ A binder ~~((is submitted, it shall))~~ may not be effective for ~~((not))~~ longer than sixty days, during which time the carrier must file the ~~((required evidence of insurance))~~ Form E.

(2) Continuing proof of insurance ~~((, continuation of)).~~ ~~((Proper))~~ A carrier must file evidence of continued insurance ~~((shall be filed))~~ with the commission not less than ten days prior to the termination date of the current insurance ~~((then on file in order that there shall be no question of continuous coverage as required by law)).~~

(3) Insurance endorsement. All liability and property damage insurance policies issued to ~~((motor freight))~~ common carriers ~~((shall))~~ must carry a "uniform motor carrier bodily injury and property damage liability endorsement."

(4) Insurance termination. All insurance policies issued under the requirements of chapter 81.80 RCW ~~((shall))~~ must provide that the ~~((same shall))~~ coverage continues in full force and effect unless and until canceled by at least thirty days' written notice served on the insured and the ~~((Washington utilities and transportation))~~ commission by the insurance company ~~((, with)).~~ The thirty days' notice ~~((to))~~ must commence to run from the date notice is actually received by the commission ~~((, except for binders which may be cancelled on ten days' written notice)).~~

~~((Notice of cancellation or expiration shall be submitted in duplicate))~~ (a) An insurance binder may be canceled on ten days' written notice.

(b) The carrier or carrier's insurance company must notify the commission of cancellation or expiration on forms prescribed by the commission ~~((and shall not be submitted)).~~

(c) The carrier or carrier's insurance company must provide notice of cancellation or expiration not more than sixty days before the ~~((desired))~~ termination date, except binders which may be ~~((cancelled by written notification from the insurance agency or the insurance company))~~ canceled on ten days' written notice.

~~((No common carrier may operate upon the public highways of this state without insurance as required in this section. The permit of any common carrier who fails to maintain evidence on file that its insurance is in current force and effect as required herein shall be suspended by operation of law beginning with the time of the failure, until the permit is canceled or the cause of the suspension is cured and the permit is reinstated. The commission will make a good faith effort to notify carriers of impending suspension for failure to maintain evidence of insurance and will make a good faith effort to enter a timely order of suspension, but failure to do so shall not invalidate the suspension.~~

~~((5) Information about 49 CFR regarding the version currently in effect and where to obtain it is set out in WAC 480-14-999.))~~

AMENDATORY SECTION (Amending Order R-435, Docket No. TV-941290, filed 11/22/95, effective 12/23/95)

WAC 480-14-290 Interstate operations ~~((, requirements, definitions)).~~ ~~((It shall be unlawful for any carrier to perform any))~~ No person may perform interstate transportation service for compensation upon the public roads of this state without first having secured appropriate authority from the ~~((Interstate Commerce Commission))~~ United States Department of Transportation (USDOT) or its successor agency ~~((, if that authority is required, and without possessing valid insurance and valid evidence that it has registered as specified in these rules.~~

(1) Registered carriers. Carriers operating in interstate or foreign commerce under authority issued by the Interstate Commerce Commission or its successor agency are "registered carriers."

(2) Registered exempt carriers. Carriers operating in interstate or foreign commerce under the exemptions of the Federal Motor Carrier Act without interstate authority issued by the Interstate Commerce Commission or its successor agency are "registered exempt carriers."

~~((3) Compliance required.~~ Registered and registered exempt carriers in the conduct of interstate operations must comply with the laws and rules that apply to that activity and to equipment in which it is conducted. Interstate carriers conducting Washington intrastate operations must, as to the intrastate activity, comply with the laws and rules applicable to the activity and to equipment in which it is conducted)).

AMENDATORY SECTION (Amending Order R-435, Docket No. TV-941290, filed 11/22/95, effective 12/23/95)

WAC 480-14-300 ((Registered)) Interstate carrier ~~((s))~~ fees. ~~((1) It shall be unlawful for))~~ A carrier operating under interstate authority issued by the ~~((Interstate Com-~~

merce Commission or its successor agency to operate a vehicle in interstate commerce on the public roads of this state without having first secured valid insurance as required by the Interstate Commerce Commission or its successor agency, registered with a base state as required in 49 CFR Part 1023, paid the required Washington state registration fee for that vehicle, and without having in the vehicle a legible receipt showing base state registration. The receipt shall be subject to inspection at all times by the law enforcement agents and the commission's representatives.

(2) The registration fee for registered carriers in Washington state is ten dollars for each vehicle operated within the state.

(3) Washington-based carriers. Washington is a participant in the base state insurance registration program established in 49 USC § 11506 and 49 CFR Part 1023. Any carrier whose base state as defined in federal regulation is Washington state shall register for interstate operations as follows:

(a) Between August 1 and November 30 of each year, each such Washington-based interstate carrier shall apply to the commission to register for the following year.

(b) The registering carrier shall state the number of vehicles to be operated in each participating state, provide other required information, and submit the registration fee established by that state for each such vehicle.

(c) The commission within thirty days will provide to the carrier a receipt or receipts showing, at a minimum, the carrier's name and address, its Interstate Commerce Commission or successor agency permit number, and the names of the states for which it has registered.

(d) The carrier shall place a receipt or an authorized copy in each vehicle for which it has paid the required fee.

(e) Any Washington-based carrier that begins interstate operations in a state for which it has not registered may register for that state at any time, stating the number of vehicles to be operated in each state and submitting the required information and registration fee for each vehicle. The commission will provide a new receipt, if the carrier has not previously registered, or supplemental receipt, if it has registered, showing the states for which the carrier has registered.

(4) No carrier may operate a vehicle in Washington state that is not registered as specified in this rule unless it is registered for interstate exempt traffic under WAC 480-14-320)) United States Department of Transportation (USDOT) or its successor agency must register with the commission and pay fees as required by the Uniform Carrier Registration (UCR) program or any successor program as required by the laws and rules of USDOT.

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

**WAC 480-14-999 Adoption ((of)) by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publication((s)), effective dates, references within this chapter, and availability of the resource((s) are as follows:

(1) ~~North American Standard Out of Service Criteria (OOSC)~~ is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, 2006.

(b) This publication is referenced in WAC 480-14-360 (Equipment—Inspection—Ordered out-of-service for repairs), WAC 480-14-370 (Equipment—Drivers—Safety), and WAC 480-14-390 (Hazardous materials regulations).

(c) The ~~North American Out of Service Criteria~~ is a copyrighted document. Copies are available from CVSA in Washington, D.C.

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

((a)) (1) The commission adopts the version in effect on April 30, 2008, for 49 CFR Parts 171, 172 and 395.

((b)) (2) This publication is referenced in WAC 480-14-250 (Insurance requirements; cause for suspension or cancellation) ((and WAC 480-14-380 (Hours of service—On duty—Federal safety regulations))).

((c)) (3) Copies of Title 49 ((Code of Federal Regulations)) CFR are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 480-14-070	Federal regulations, 49 CFR, Part 390—General applicability and definitions.
WAC 480-14-080	Rule book fee—Updates—Notification of pending and adopted rule changes—Compliance with rules.
WAC 480-14-130	Remittances.
WAC 480-14-170	Periodic reporting requirements.
WAC 480-14-260	Leasing.
WAC 480-14-320	Registered exempt carriers.
WAC 480-14-340	Equipment—Identification.
WAC 480-14-350	Equipment, lawful operation of.
WAC 480-14-360	Equipment—Inspection—Ordered out-of-service for repairs.
WAC 480-14-370	Equipment—Drivers—Safety.
WAC 480-14-380	Hours of service—On duty—Federal safety regulations.

WAC 480-14-390	Hazardous materials regulations.
WAC 480-14-400	Transportation of radioactive materials—Driving and parking rules.
WAC 480-14-420	Optional provisions.
WAC 480-14-900	Appendix A.

in demonstrations ~~((or))~~, parades, or other similar activities in such a manner as to unreasonably disrupt the orderly flow of pedestrian or vehicular traffic on the state capitol grounds or the conduct of state business by state employees on the state capitol grounds or in any buildings on the state capitol grounds.

AMENDATORY SECTION (Amending Order 79-01, filed 4/11/79)

**WAC 236-12-440 Permits for demonstrations, parades, processions.** ~~((Any))~~ In order not to disrupt the orderly flow of pedestrian or vehicular traffic on the state capitol grounds, a person or group of persons desiring to conduct a demonstration, parade~~((or))~~ or procession of seventy-five or more people on the state capitol grounds shall apply to the ~~((director))~~ department for ~~((written approval))~~ a permit using the process outlined in chapter 236-17 WAC. ~~((Application must be made, in writing, at least four days, excluding Saturdays, Sundays and holidays, prior to the time the demonstration, parade, or procession is to take place.))~~

#### Chapter 236-17 WAC

### USE OF THE PUBLIC AREAS OF THE CAPITOL BUILDINGS AND GROUNDS

#### GENERAL PROVISIONS

##### NEW SECTION

**WAC 236-17-010 Purpose.** These rules guide the use of the public areas of the capitol buildings and grounds by the public for free speech and assembly activities, for commercial activities, and for private activities. General administration's objective is to balance the conduct of government business, public access and expression, and the stewardship of the historic capitol buildings and grounds. These rules are not applicable to the conduct of government.

##### NEW SECTION

**WAC 236-17-020 Nondiscrimination.** General administration will not discriminate in the application of these rules on the basis of race, religion or creed, color, national origin, age, disability, the use of a service animal, marital status, veteran's status, sexual orientation or gender identity, or political viewpoint.

##### NEW SECTION

**WAC 236-17-030 Definitions.** For purposes of these rules, these words or phrases have the following meaning:

- (1) "Activity" means one or more people gathering for a common purpose or cause.
- (2) "Applicant," "I," "you" or "your" refers to any person(s) or organization(s) seeking permission to use the public areas of the capitol buildings and grounds.
- (3) "Banners and signs" means pieces of material presented publicly to display a message, slogan, advertisement, or other similar information. Government-recognized flags

#### WSR 09-22-059

#### PERMANENT RULES

#### DEPARTMENT OF

#### GENERAL ADMINISTRATION

[Filed October 30, 2009, 2:17 p.m., effective November 30, 2009]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of this rule is to establish how general administration will consider reasonable time, place and manner criteria in evaluating and approving requests for use of the public areas of the capitol buildings and grounds.

General administration's objective is to balance the conduct of government business, public access and expression, and the stewardship of the historic capitol buildings and grounds.

Citation of Existing Rules Affected by this Order: Amending WAC 236-12-430 Demonstrations, parades—Obstructing traffic, state business—Prohibiting and 236-12-440 Permits for demonstrations, parades, processions.

Statutory Authority for Adoption: RCW 43.19.125 and 46.08.150.

Adopted under notice filed as WSR 09-17-130 on August 19, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 25, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 25, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 30, 2009.

Linda Villegas Bremer  
Director

AMENDATORY SECTION (Amending Order 81-1, filed 5/7/81)

**WAC 236-12-430 Demonstrations, parades—Obstructing traffic, state business—Prohibiting.** No person~~((or))~~ singly, or in combination with others, shall engage

are not considered banners or signs for purposes of these rules.

(4) "Capitol buildings and grounds" means those buildings and grounds over which the department of general administration exercises custody and control under RCW 43.19.125.

(a) "Buildings" means enclosed buildings and adjoining structures. Buildings include, but are not limited to, the Legislative Building, the Temple of Justice, the Old Capitol Building, and the Natural Resources Building.

(b) "Grounds" means exterior spaces including, but not limited to, walkways, plazas, lawns, plantings and parks.

The grounds include such locations as the capitol campus, Heritage Park, Marathon Park, Centennial Park, Sylvester Park, the surface and shores of Capitol Lake, and Deschutes Parkway.

(5) "Commercial activity" means an activity that promotes, creates, or exchanges commercial products or services. Commercial activities include, but are not limited to, advertising, fund-raising, buying or selling any product or service, encouraging paid membership in any group, association or organization, or the marketing of commercial activities. Commercial activities do not include such activities by or for government entities.

(6) "Director" means the director of the department of general administration.

(7) "Exhibit" or "display" means an object or collection of objects presented publicly with the intention to communicate facts, a particular impression, a viewpoint or an opinion. Exhibits or displays include, but are not limited to, paintings, sculpture, ceramics, photographs, video or computer screens, informational booths and tables, or other similar objects and arrangements. Exhibits and displays do not include equipment used in the performance of medical or therapeutic services during a permitted activity, such as a blood drive, delivering flu shots, or administering a therapeutic massage.

(8) "Free speech and assembly activity" means an activity for the purpose of communicating information or ideas to others that will draw the attention, attendance, or participation of others. Free speech and assembly activities include, but are not limited to, assemblies, marches, rallies, performances, community events, press conferences, demonstrations, celebrations, ceremonies, speeches and other similar expressive activities.

(9) "General administration," "department," "us," or "we" refers to the department of general administration.

(10) "Permit" means a written permit issued by the department of general administration authorizing the use of public areas of the capitol buildings and grounds as required by these rules.

(11) "Private activity" means an activity sponsored by a private individual, business or organization that is not open to the general public. Private activities include, but are not limited to, banquets, receptions, award ceremonies, weddings, concerts, dances, and seminars.

(12) "Public area" means those areas of the capitol buildings and grounds that are generally open to the public, such as a building's primary public entrance lobby; rotundas and adjoining public mezzanines; and exterior plazas and lawns. Public areas do not include offices, meeting rooms, and other

work areas that are ordinarily reserved for or primarily devoted to conducting the business and operations of state government; the governor's mansion; and any area which is identified by a sign pursuant to WAC 236-12-450 indicating that the area is not open to the public.

(13) "Service animal" means an animal, including guide dogs, trained to do work or perform tasks for the benefit of a person with a disability, as defined by applicable state and/or federal laws.

## PERMIT APPLICATION REQUIREMENTS

### NEW SECTION

**WAC 236-17-100 Do I need to apply for a permit?** A permit process is essential to balancing the conduct of government business, public access and expression, and the stewardship of the historic capitol buildings and grounds. A permit enables you to reserve access to specific locations and amenities for specific times, so that the department can schedule and manage the many activities and visitors that come to the capitol buildings and grounds each year.

You do not need a permit for free speech and assembly activities involving less than twenty-five people in capitol buildings or involving less than seventy-five people on the capitol grounds.

You must obtain a permit for free speech and assembly activities involving twenty-five or more people in capitol buildings or more than seventy-five people on the capitol grounds, and for all private or commercial activities.

### NEW SECTION

**WAC 236-17-110 When do I have to apply?** You must give us a completed application at least two full working days prior to the date that you wish to reserve if your activity requires a permit. Saturdays, Sundays, and state holidays are not working days, and the day you submit your application does not count as a working day. For example, you must submit your application by the close of business on Monday to hold an event on the following Thursday, and you must submit your application by the close of business on Wednesday to hold an event on the following Saturday, Sunday, or Monday.

You may not submit an application more than one year in advance of the date that you wish to reserve.

A permit is not required for a spontaneous activity in response to news or events coming into public knowledge which precludes meeting the two day advance notice requirement; however, you must notify us of your activity at least two hours in advance during working hours so that we can determine if there are conflicts with other permitted activities.

### NEW SECTION

**WAC 236-17-120 What information do I have to provide?** (1) On your application, you must provide the following information:

(a) Your name, mailing address, and a current e-mail address or telephone number.

(b) Your desired date, time, duration, and location for your activity.

(c) A description of the nature and type of activity.

(d) An estimate of the number of people who will attend your activity.

(e) A description of any equipment or gear to be used for your activity.

(2) We may also require additional information, including but not limited to:

(a) Any special consideration or accommodations being requested; and

(b) Any services provided by general administration that you will need and for which there are fees. These may include, but are not limited to, custodial services, sound or electrical equipment set-up or tear-down, or temporary amenities such as speaker stands, tents, platforms, stages, or chairs.

#### NEW SECTION

**WAC 236-17-130 How long will it take to make a decision on my application?** We will issue your permit or deny your application as promptly as reasonably possible, and in all cases within two full working days of receiving your completed application form. We will state the reasons for any denial to you in writing.

#### NEW SECTION

**WAC 236-17-140 How will general administration make a decision on my application?** First priority for the use of capitol buildings and grounds is for state government activities. If there would be no conflict with state government activities, we will process permit applications for other uses on a first-come, first-served basis.

We will also consider whether your requested activity complies with our general use requirements (WAC 236-17-200 through 236-17-280) and any other applicable requirements set forth in this chapter.

#### NEW SECTION

**WAC 236-17-150 How can I appeal a denial of my application?** To appeal a denial of your application, you must submit your appeal in writing to the director of general administration within five full working days of the date of denial. Your appeal must state why you think the application was improperly denied.

The director will issue a decision on the appeal in writing within three full working days of receiving it, and this will be the final decision of the department of general administration.

### GENERAL USE REQUIREMENTS

#### NEW SECTION

**WAC 236-17-200 General use requirements.** The following general use requirements apply to all activities in the public areas of the capitol buildings and grounds, including free speech and assembly activities and private or commercial activities, regardless of whether a permit is required under this chapter. These requirements are not applicable to

government activities. These requirements facilitate use of the public areas of the capitol buildings and grounds while protecting the normal conduct of state operations, the safety of people and property, and the condition and appearance of the capitol buildings and grounds.

All activities in the public areas of the capitol buildings and grounds must comply with all applicable laws, rules and regulations.

#### NEW SECTION

**WAC 236-17-210 General administration may set reasonable time, place, and manner limits on activities.**

We may establish reasonable time, place, and manner restrictions for use of the public areas of the capitol buildings and grounds, according to design, health, safety, operational or other such considerations. We may make further details about such reasonable time, place, and manner restrictions available for public inspection during normal business hours or post them where appropriate. These may include, but are not limited to:

(1) Time and duration available for use;

(2) The maximum number of people or vehicles allowed at any particular location for any given time or period; and

(3) Locations available for use.

We will not permit an activity that would conflict with the date, time, or location of a previously permitted activity. We may recommend to you other options for dates, times, or locations if your request would conflict with a previously permitted activity.

No exhibits or displays may be placed in, or posted or affixed to, any capitol building.

Banners and signs may be used during an activity in a capitol building only if they are handheld and not affixed to sticks or poles. We will allow you to post way-finding signs during your permitted activity, subject to reasonable time, place, and manner limits.

You may place or post banners, signs, exhibits or displays on the capitol grounds. Such items must be removed at the end of the activity. Such items must identify the sponsor and contain a disclaimer stating that the items are not owned, maintained, promoted, or supported by or associated with the state. The state assumes no liability for loss or damage to such items.

#### NEW SECTION

**WAC 236-17-220 Activities may not disrupt the conduct of government business.** You may not engage in any activity that unreasonably disrupts, conflicts with, or interferes with the normal conduct of any state business, meeting, or proceeding.

#### NEW SECTION

**WAC 236-17-230 Activities may not obstruct safe access for people or vehicles.** You may not unreasonably obstruct entrances, exits, staircases, doorways, hallways, or the safe and efficient flow of people or vehicles.

NEW SECTION

**WAC 236-17-240 Activities may not create a hazard to people or damage to property.** We will not permit activities in any location where the activities would present a hazard to people or property.

You may not alter or cause damage to capitol buildings or grounds.

NEW SECTION

**WAC 236-17-250 Service animals are allowed.** You may have service animals in the public areas of the capitol buildings and grounds. You may not have other pets or domestic animals in the public areas of capitol buildings, except as part of the conduct of state government business.

You may have pets or domestic animals in the public areas of the capitol grounds; however, you must keep them under your direct physical control and clean up after them at all times. If the director designates off-leash areas in the public areas of the capitol grounds, any such areas will be clearly posted.

You may not allow your pet or domestic animal to menace or injure other people or animals.

NEW SECTION

**WAC 236-17-260 Permits are not transferable.** You may not transfer your permit to another person or organization. Your permitted activities may only be held in the area and during the time period designated by the permit.

NEW SECTION

**WAC 236-17-270 General administration may cancel a permit.** We may cancel your permit at any time if your activity does not comply with any applicable laws and rules or the terms of the permit. If your permit is canceled and you persist in your activity, you may be subject to appropriate law enforcement action.

NEW SECTION

**WAC 236-17-280 General administration may limit use at any time due to unforeseen operational circumstances.** We reserve the right to cancel a permit or limit use of the public areas of the capitol buildings and grounds at any time due to unforeseen operational circumstances, including, but not limited to, urgent security concerns, emergency repairs, or other necessary state government activities. We will make reasonable efforts to alleviate the effects of such circumstances on permitted activities.

**FREE SPEECH AND ASSEMBLY ACTIVITIES**NEW SECTION

**WAC 236-17-300 Exercise of rights to free speech and assembly.** People have the right to exercise their rights to free speech and assembly at the capitol buildings and grounds, subject to reasonable time, place, and manner limits. In addition to our general use requirements described above,

the following requirements facilitate use of the public areas of the capitol buildings and grounds, regardless of whether a permit is required under this chapter, while protecting the normal conduct of state operations, the safety of people and property, and the condition and appearance of the capitol buildings and grounds.

NEW SECTION

**WAC 236-17-310 There is no fee for free speech and assembly activity permits.** There is no fee for a permit for free speech and assembly activities. However, you may be responsible for paying for any services provided by general administration that you will need (such as for equipment set-up or custodial services). In order to manage our services effectively, you must submit your request for our services at least five full working days prior to your activity, regardless of when you submit your permit application for your activity.

NEW SECTION

**WAC 236-17-320 General administration may set reasonable time, place, and manner limits on free speech and assembly activities.** We may set reasonable time, place, and manner limits on free speech and assembly activities in the public areas of the capitol buildings and grounds, according to design, health, safety, operational or other such considerations. These may include, but are not limited to, limits designated by the director under WAC 236-17-210.

Free speech and assembly activities may not exceed fourteen consecutive calendar days in duration. We may set further limits on duration in order to accommodate and manage the many activities and visitors that come to the capitol buildings and grounds.

**PRIVATE AND COMMERCIAL ACTIVITIES**NEW SECTION

**WAC 236-17-400 Private and commercial activities may be permitted if consistent with state government needs.** In addition to the general use requirements described above, these requirements accommodate private and commercial use of the public areas of the capitol buildings and grounds to the extent such use is consistent with state government needs and while protecting the normal conduct of state operations, the safety of people and property, and the condition and appearance of the capitol buildings and grounds.

NEW SECTION

**WAC 236-17-410 Private and commercial activities may be charged applicable fees.** General administration will establish a fee schedule for permits for private and commercial activities and make the fee schedule available for public inspection. You are also responsible for paying for any services provided by general administration that you will need (such as for equipment set-up or custodial services). In order to manage our services effectively, you must submit your request for our services at least five full working days

prior to your activity, regardless of when you submit your permit application for your activity.

#### NEW SECTION

**WAC 236-17-420 General administration may set reasonable time, place, and manner limits on private and commercial activities.** We may set reasonable time, place, and manner limits on private and commercial activities in the public areas of the capitol buildings and grounds, according to design, health, safety, operational or other such considerations. These may include, but are not limited to, limits designated by the director under WAC 236-17-210.

Private and commercial activities may not exceed four-teen consecutive calendar days in duration.

Private or commercial sales, solicitation, or fund-raising activities are not permitted in the public areas of capitol campus buildings.

We may designate locations on the capitol grounds for private or commercial sales, solicitation, or fund-raising activities.

#### NEW SECTION

**WAC 236-17-430 General administration may require additional conditions for private and commercial activities.** We may require additional conditions for private and commercial activities through written contract or agreement, including, but not limited to:

- (1) Liability insurance covering the applicant and the activity;
- (2) Hold harmless and indemnification provisions; and
- (3) Information on your ability to finance, plan, and manage the activity in order to protect the normal conduct of state operations, the safety of people and property, and the condition and appearance of the capitol buildings and grounds.

**WSR 09-22-064  
PERMANENT RULES  
OFFICE OF**

**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2009-10—Filed November 2, 2009,  
7:50 a.m., effective December 3, 2009]

Effective Date of Rule: Thirty-one days after filing.

Purpose: These rules establish the application process to obtain a discount health plan organization license and establish reporting and record-keeping requirements.

Statutory Authority for Adoption: RCW 48.155.007.

Other Authority: RCW 48.02.060.

Adopted under notice filed as WSR 09-19-101 on September 21, 2009.

A final cost-benefit analysis is available by contacting Donna Dorris, P.O. Box 40258, Olympia, WA 98504, phone (360) 725-7040, fax (360) 586-3109, e-mail donnad@oic.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 6, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 6, Amended 0, Repealed 0.

Date Adopted: October 30, 2009.

Mike Kreidler  
Insurance Commissioner

### Chapter 284-155 WAC

#### HEALTH CARE DISCOUNT PLAN ORGANIZATION STANDARDS

#### NEW SECTION

**WAC 284-155-005 Purpose.** These regulations implement chapter 48.155 RCW and create the processes and procedures for licensing a discount plan organization.

#### NEW SECTION

**WAC 284-155-010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

"Applicant" means any discount plan organization applying for a license under these regulations, and includes a discount plan organization or person holding a license or other form of authority from another state to operate as a discount plan organization.

"Application" means the written request for a license and the information required by the commissioner to obtain a license to transact discount plan business.

"License" means the license issued by the commissioner required to transact discount plan business under these regulations.

"Renewal application" means the renewal application under these regulations.

#### NEW SECTION

**WAC 284-155-015 Licensing forms and filing procedures.** (1) An applicant applying for a new license or a licensed discount plan organization applying for license renewal must complete and file all required forms. All forms, including the application form, the renewal form, and the annual report form required by this regulation are available on the commissioner's web site at [www.insurance.wa.gov](http://www.insurance.wa.gov). Applicants must fully complete and file only forms approved by the commissioner.

(2) If a licensed discount plan organization fails to file the renewal application or the renewal application fee sooner than ninety days before its license expires, the license will expire on its expiration date and the discount plan organization must complete and file a new application and pay the fee for a new license.

(3) Upon the expiration of a discount plan organization's license, all operations must be immediately suspended, including any advertising, marketing, solicitation, enrollment, and renewal of contracts or other activities specified under these regulations.

(4) Annual report filing requirements:

(a) Licensed discount plan organizations are not required to prepare a separate annual report filing or pay the annual report fee if they file the information required for their annual report at the time they file their renewal application, but only if they do so prior to the March 31st deadline for filing the annual report.

(b) If a licensed discount plan organization does not include its annual report information with its renewal application, it must file an annual report with the commissioner prior to the March 31st deadline for filing an annual report. If the renewal application is due after March 31st, a licensed discount plan organization must file an annual report by March 31st, and may not defer filing the annual report on the basis that it plans to include the annual report information with its renewal.

(5) Any discount plan organization that has transacted or is transacting discount plan business to which the regulation applies prior to or as of July 26, 2009, must complete and file the commissioner's required application form along with all other required forms and information, on or before January 26, 2010. If a discount plan organization does not apply for a license as specified by the commissioner on or before October 26, 2009, it must discontinue operations after January 26, 2010, unless the commissioner has issued the license by January 26, 2010.

#### NEW SECTION

##### **WAC 284-155-020 Audited financial statements.** (1)

All audited financial statements filed with the commissioner under these regulations must:

(a) Be prepared in accordance with generally accepted auditing principles;

(b) Be certified by an independent certified public accountant; and

(c) Meet the standards and requirements of WAC 284-07-100 through 284-07-230 to the extent reasonably applicable, provided, that WAC 284-07-100 (5), (6), and (7) shall not apply to discount plan organizations; and provided further, that discount plan organizations shall not be required to file any report, letter, or other document required to be filed with the commissioner by WAC 284-07-100 through 284-07-230 with the National Association of Insurance Commissioners (NAIC).

(2) All audited financial statements filed with an annual report under this regulation shall cover the same fiscal period as the discount plan organization's annual report.

(3) Unless an applicant has the commissioner's written permission, the applicant's own most recent financial statements audited by an independent certified public accountant must accompany the application. An applicant granted prior permission by the commissioner to substitute its parent company's audited financial statements for the financial statements of the applicant must specifically segregate and report the applicant's financial results as required by the commissioner.

(4) Unless a licensed discount plan organization has the commissioner's written permission, the licensee must include its own most recent financial statements audited by an independent certified public accountant with its renewal application or the annual report filed with the commissioner. A discount plan organization granted prior permission by the commissioner to substitute its parent company's audited financial statements for the financial statements of the applicant must specifically segregate and report the discount plan organization's financial results as required by the commissioner.

(5) If the commissioner determines there is good cause for a delay, the commissioner may grant an extension of time to file the audited financial statement. Discount plan organizations or applicants must submit a written request for an extension of time to file the audited financial statement at least ten business days prior to the filing deadline.

#### NEW SECTION

**WAC 284-155-025 Indemnity requirements for discount plan organizations.** (1) A discount plan organization providing a surety bond to protect the financial interests of Washington members must name the state of Washington as the obligee, but the bond will be for the benefit of the Washington members who have purchased the discount plan.

(2) All surety bonds obtained by discount plan organizations for the purpose of complying with their financial responsibility under this section must operate to ensure Washington consumers provision of all terms of their discount plan membership, including refunds.

(3) A discount plan organization, in lieu of a surety bond, may provide a deposit in trust with the commissioner to protect the financial interests of Washington members as set forth in RCW 48.155.040.

(a) The deposit in trust must be in cash or other investments specifically authorized and eligible for investment pursuant to chapter 48.13 RCW.

(b) All deposits and withdrawals must be made by using forms found on the commissioner's web site at [www.insurance.wa.gov](http://www.insurance.wa.gov).

#### NEW SECTION

**WAC 284-155-030 Discount plan organization—General requirements for records availability and form and report filing.** (1) All discount plan organization records and reports must be maintained at the discount plan organization's principal business address and are subject to review by the commissioner's representatives during the discount plan organization's usual and customary business hours.

(2) The commissioner may require discount plan organizations to provide copies of discount plan organization docu-

ments, records, and reports in lieu of making the records available for on-site review.

(3) All records, reports, notices, or other documents required by this regulation must be transmitted electronically in Adobe Acrobat PDF format.

(4) A discount plan organization must respond promptly to any inquiry from the insurance commissioner relative to the business of a discount plan organization. A lack of response within fifteen business days from the receipt of an inquiry will be considered untimely. A response must be in writing, unless otherwise indicated in the inquiry.

### WSR 09-22-065

#### PERMANENT RULES

#### DEPARTMENT OF COMMERCE

[Filed November 2, 2009, 8:48 a.m., effective December 3, 2009]

Effective Date of Rule: Thirty-one days after filing.

Purpose: In the 2009 legislative session, Governor Greigore signed E2SSB 5649 into law. The purpose of this rule is to clarify the new requirements for employment related to section 202 (3)(e) in E2SSB 5649 relate only to employees who conduct weatherization activities, including any sponsor employees or local agency staff and contractors. In addition, the bill added new terms which require definitions to assist with smooth program implementation. In this rule, we define "hire from the community," "family wage job," "low-income," and "disadvantaged populations."

Citation of Existing Rules Affected by this Order: Amending WAC 365-180-030 and 365-180-070.

Statutory Authority for Adoption: RCW 70.164.040.

Adopted under notice filed as WSR 09-18-117 on September 2, 2009.

Changes Other than Editing from Proposed to Adopted Version: We define "disadvantaged populations" as populations facing barriers to employment. Other edits were for clarity only.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 2, 2009.

Rogers Weed  
Director

AMENDATORY SECTION (Amending Order 92-01, filed 1/7/92, effective 2/7/92)

**WAC 365-180-030 Definitions.** (1) "Community" means the local program area served by the weatherizing agency.

(2) "Department" means the department of ~~((community development))~~ commerce.

~~((2))~~ (3) "Disadvantaged populations" means populations facing barriers to employment.

(4) "Energy matchmakers local coordinated plan" means a proposal(s) for use of funding for local low-income weatherization programs in a specific geographical area.

~~((3))~~ (5) "Family wage job" is defined as a job that pays, as a minimum, prevailing wage.

(6) "Low-income" means ~~((household income that is))~~ households at or below eighty percent of the state area median income. However, priority will be given to households at or below one hundred twenty-five percent of the federally established poverty level.

~~((4))~~ (7) "Nonutility sponsor" means an organization that is not an energy supplier and that submits a local coordinated plan.

~~((5))~~ (8) "Residence" means a house, including a stationary mobile home, an apartment, a group of rooms, or a single room occupied as separate living quarters; but excluding institutional buildings such as: A university, group care facility, nursing home, half-way residence, hospital, hotel, motel, etc.

~~((6))~~ (9) "Sponsor" means an organization that submits a match proposal as part of the energy matchmakers local coordinated plan.

~~((7))~~ (10) "Sponsor match" means the share, if any, of the cost of weatherization to be paid by the sponsor.

~~((8))~~ (11) "Weatherization" means materials or measures, including the education of the low-income household about energy saving behaviors in the home, and their installation or application, that are used to improve the thermal efficiency of a residence.

~~((9))~~ (12) "Weatherizing agency" means a public or nonprofit private organization, approved by the department, responsible for doing all aspects of the weatherization work.

AMENDATORY SECTION (Amending Order 88-01, filed 1/4/88)

**WAC 365-180-070 Local coordinated plan—Funding proposal process—Award of contracts.** (1) A sponsor shall make a formal proposal using forms issued by the department.

(2) The employment requirements of RCW 70.164.040 (3)(e), apply only to individuals hired specifically to repair homes prior to weatherization, and to construct or install weatherization materials in low-income residences.

(3) A review team will evaluate the energy matchmakers local coordinated plans, and will be composed of persons with knowledge of energy conservation and of community-based public and private service organizations.

~~((3))~~ (4) Plans which include a commitment of matching resources will be given priority for funding.

~~((4))~~ (5) The department shall have the final discretion to award funds.

~~((5))~~ (6) The department will enter into a contract with weatherizing agencies identified in successful local coordinated plans. This contract shall be signed by an official with authority to bind the weatherizing agency and returned to the department prior to the release of any funds under this program.

**WSR 09-22-078**  
**PERMANENT RULES**  
**WASHINGTON STATE PATROL**

[Filed November 3, 2009, 12:01 p.m., effective December 4, 2009]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amending WAC 204-10-024 and 204-10-014 to remove language which is no longer required due to the passage of SB 5581 which implemented the language into RCW 46.37.430.

Citation of Existing Rules Affected by this Order: Amending WAC 204-10-024 and 204-10-014.

Statutory Authority for Adoption: RCW 46.37.005 and 46.37.320.

Adopted under notice filed as WSR 09-17-085 on August 17, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 3, 2009.

John R. Batiste  
Chief

AMENDATORY SECTION (Amending WSR 08-19-079, filed 9/16/08, effective 10/17/08)

**WAC 204-10-014 Definitions.** (1) "Eye glasses" mean any spectacles, sunglasses, or goggles having two separately mounted lenses, but shall exclude contact lenses.

(2) "Goggles" means an optical device worn before the eyes, the predominant function of which is to protect the eyes without obstructing peripheral vision. They provide protection from the front and sides and may or may not form a complete seal with the face.

(3) "Face shield" means an eye protector attached to a helmet or headband(s) and which covers the wearer's eyes

and face at least to a point approximately to the tip of the nose and whose predominant function is protection of the eyes.

(4) "FMVSS" means Federal Motor Vehicle Safety Standard, chapter 49 Code of Federal Regulations (CFR) Part 571.

~~((5))~~ ("Frame" means those parts of eye glasses or goggles containing the lens housings. The frame may be associated with padding.

~~((6))~~ "Headband" means that part of the device consisting of a supporting band or other structure that either encircles the head or protective helmet, or can be attached thereto.

~~((7))~~ (6) "Motor vehicle" means passenger vehicles, multipurpose passenger vehicles, motorcycles, trucks and buses which are intended for use on public highways, excluding commercial vehicles as defined under RCW 46.04.140.

~~((8))~~ "Motor vehicle window glazing" means glass material that meets the appropriate FMVSS for use in motor vehicles.

~~((9))~~ (7) "Recognized manufacturer" means a person, firm, copartnership, association, or corporation who is or has engaged in the business of manufacturing motor vehicles intended for use on the public highways and offered for sale in interstate commerce.

~~((10))~~ "Recreational products" means any toys, cartoon characters, stuffed animals, signs, and other vision-reducing articles and materials that may be applied to or suspended near motor vehicle windows for entertainment and/or amusement purposes.

~~((11))~~ (8) "Reflectorized warning device" means any device defined in RCW 46.37.450 or any device composed of a reflective sheeting material which consists of spherical lens elements embedded with a transparent plastic having a smooth, flat outer surface. The sheeting shall be weather resistant and have a protected, low tac, precoated adhesive backing.

~~((12))~~ (9) "Reflex reflector" means a device that is used on vehicles to give an indication of presence to an approaching driver by reflecting light from the headlamps of the approaching vehicle.

~~((13))~~ (10) "SAE" means the Society of Automotive Engineers. Copies of the SAE Standards are available for review at the Washington State Patrol, 210 11th Avenue, Olympia, WA 98504, and may also be ordered from the Society of Automotive Engineers International, 400 Commonwealth Drive, Warrendale, PA 15086-7511.

~~((14))~~ "Sunscreening devices" are those products and/or materials applied or installed on motor vehicle windows for the purpose of reducing adverse effects of the sun. Such devices include, but are not limited to, semipermanently installed roll-up style shades and louver materials as well as temporarily applied articles such as towels, sheets, and blankets.

~~((15))~~ (11) "Wheelchair conveyance" means any vehicle specially manufactured or designed for transportation of a physically or medically impaired person who is either wheelchair-bound or otherwise walking impaired. The vehicle may be a separate vehicle used in lieu of a wheelchair or a vehicle used for transporting the impaired person who is simultaneously occupying a wheelchair.

AMENDATORY SECTION (Amending WSR 08-19-079, filed 9/16/08, effective 10/17/08)

**WAC 204-10-024 Windows.** (1) ~~((Window glazing, manufactured and installed in accordance with 49 CFR 571.205 must not be etched or otherwise permanently altered if such glazing is installed in the windshield or any other window location of a motor vehicle passenger compartment. The only exception to this rule is the etching of the vehicle identification number permissible with the following provisions:~~

~~(a) The maximum height of the letters or numbers must not exceed one-half inch.~~

~~(b) The etched vehicle identification number must not be located in any position as to interfere with the vision of the occupant(s).~~

~~(2))~~ The windshield must be framed and in such a position that it affords continuous horizontal frontal protection to the driver and front seat occupants. The minimum vertical height of the unobstructed windshield glass must be six inches, or as originally equipped by a recognized manufacturer.

~~((3))~~ (2) The vehicle must be provided with a windshield and side windows or openings which allow the driver a minimum outward horizontal vision capability, ninety degrees each side of a vertical plane passing through the fore and aft centerline of the vehicle. This range of vision:

(a) May be interrupted by window framing not exceeding four inches in width at each side location.

(b) Must have no obstruction forward of the windshield which extends more than two inches upward into the horizontally forward projected vision area of the windshield except windshield wiper components and hood ornaments identical to those originally installed by a recognized manufacturer. For the purposes of this section, the projected vision area of the windshield shall be defined as that area above a line from the top of the steering wheel to the top of the front fenders or hood, whichever is higher.

~~((4) Sunscreening devices and/or recreational products:~~

~~(a) Must not be applied to or suspended between the driver and the windshield or the windows to the immediate right and left of the driver.~~

~~(b) May be applied to other windows provided that such devices do not interfere, by their size or position, with the driver's ability to see other vehicles, persons, and objects and do not reduce the driver's area of vision uniformly and by no more than fifty percent, as measured on a horizontal plane.~~

~~(c) May be applied to the rear window, provided that the vehicle must be equipped with outside rear view mirrors on both the left and the right.~~

~~This rule does not permit or prohibit the use and placement of federal, state, or local certificates or decals on any window as are required or prohibited by applicable laws or regulations. Any such decal or certificate must, however, be of such size and placement so that the ability of the driver to safely operate the vehicle is not impaired.~~

~~(5) Due to the nature of use, function and operation of such vehicles, transit city buses are exempt from the provisions of subsection (4)(a) and (b) of this section. The following are exempted from the provisions of subsection (4)(b) of this section:~~

~~(a) Hearses.~~

~~(b) Ambulances.~~

~~(c) Limousines, passenger buses, and transit city buses used to transport persons for compensation.~~

~~Such vehicles must have mirrors on both the right and left to provide vision at least two hundred feet to the rear. This section does not limit liability of the operators and/or owners of such vehicles involved in accidents resulting from reduced visibility.~~

~~(6))~~ (3) If a windshield is not required under 49 CFR 571, the operator must wear eye protection as outlined in chapter 46.37 RCW and WAC 204-10-026.

## WSR 09-22-091

### PERMANENT RULES

### DEPARTMENT OF AGRICULTURE

[Filed November 4, 2009, 8:25 a.m., effective January 1, 2010]

Effective Date of Rule: January 1, 2010.

Purpose: This rule-making order amends chapter 16-401 WAC by adding a new section that establishes annual licensing and assessment fees for Christmas tree growers. During the 2007 legislative session, at the request of the Christmas tree industry, the Washington state legislature adopted amendments to chapter 15.13 RCW (see chapter 335, Laws of 2007) relative to Christmas tree grower licensure. This legislation authorizes the department to adopt rules for annual license fees that may include a base fee and per acre assessment and fee collection methods. During the 2009 legislative session, the legislature authorized (as required by Initiative 960) the Washington state department of agriculture to establish Christmas tree grower licensing fees (see chapter 564, Laws of 2009).

Statutory Authority for Adoption: RCW 15.13.311, chapter 34.05 RCW, chapter 335, Laws of 2007, chapter 564, Laws of 2009.

Adopted under notice filed as WSR 09-19-142 on September 23, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: November 4, 2009.

Dan Newhouse  
Director

NEW SECTION**WAC 16-401-045 Christmas tree grower license fees.**

(1) All Christmas tree growers, except those exempted in subsection (5) of this section, must obtain a Christmas tree grower license.

(2) The licensing period for a Christmas tree grower license is February 1st to January 31st.

(3) The annual fee for a Christmas tree grower license is forty dollars plus an acreage assessment of three dollars per acre. The annual Christmas tree grower license fee for any person may not exceed five thousand dollars.

(4) Growers must submit an application for Christmas tree grower license and the annual fee to the department by February 1st.

(5) Any Christmas tree grower owning Christmas trees, whose business consists solely of retail sales to the ultimate consumer, is exempt from the requirements of this section if:

(a) The grower has less than one acre of Christmas trees; or

(b) The grower harvests, by u-cut or otherwise, fewer than four hundred Christmas trees per year.

**WSR 09-22-097****PERMANENT RULES****STATE BOARD OF HEALTH**

[Filed November 4, 2009, 10:20 a.m., effective December 5, 2009]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The amended rule: Removes the option to administer one percent silver nitrate solution into the newborn's eyes, incorporates updated treatment options, and adds language that instructs healthcare providers to document when parents/legal guardians refuse the treatment. In addition, language has been added to accommodate situations where there is a national drug shortage. In those circumstances the rule directs providers to guidance from Center for Disease Control (CDC).

Citation of Existing Rules Affected by this Order: Amending WAC 246-100-202.

Statutory Authority for Adoption: RCW 70.24.130.

Adopted under notice filed as WSR 09-11-110 on June 3 [May 19], 2009.

Changes Other than Editing from Proposed to Adopted Version: Language has been added to accommodate situations where there is a national drug shortage.

A final cost-benefit analysis is available by contacting Bat-Sheva Stein, Department of Health, P.O. Box 47880, Olympia, WA 98504-7880, phone (360) 236-3582, fax (360) 586-7868, e-mail Bat-sheva.stein@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 8, 2009.

Craig McLaughlin

Executive Director

AMENDATORY SECTION (Amending WSR 05-11-110, filed 5/18/05, effective 6/18/05)

**WAC 246-100-202 Special diseases—Sexually transmitted diseases—Duties and authorities.** (1) Health care providers shall:

(a) Report each case of sexually transmitted disease as required in chapter 246-101 WAC; and

(b) At each medical encounter, when providing treatment for an infectious sexually transmitted disease, provide instruction, appropriate to each patient regarding:

(i) Communicability of the disease; and

(ii) Requirements to refrain from acts that may transmit the disease to another; and

(c) Ensure completion of a prenatal serologic test for syphilis in each pregnant woman pursuant to RCW 70.24.090 including:

(i) Submitting a blood sample for syphilis to a laboratory approved to perform prenatal serologic tests for syphilis, as required in RCW 70.24.090, at the time of the first prenatal visit; and

(ii) Deciding whether or not to omit the serologic test for syphilis if the test was performed elsewhere during the current pregnancy; and

(d) When diagnosing or caring for a patient with gonococcal or chlamydial ophthalmia neonatorum, reporting the case to the local health officer or local health department in accordance with the provisions of chapter 246-101 WAC; and

(e) ~~((When attending or assisting in the birth of any infant or caring for an infant after birth, ensure instillation of a department approved prophylactic ophthalmic agent into the conjunctival sacs of the infant within the time frame established by the department in policy statement of ophthalmia agents approved for the prevention of ophthalmia neonatorum in the newborn, issued June 19, 1981.))~~ Instill a prophylactic ophthalmic agent into both eyes of the newborn as prophylaxis against ophthalmia neonatorum up to two hours after the delivery, whether the delivery occurred vaginally or by Cesarean section. Acceptable ophthalmic prophylactic agents are application of erythromycin or tetracycline. In the event the U.S. Food and Drug Administration declares a shortage of these prophylactic ophthalmic agents health care providers may substitute alternative prophylactic ophthalmic agents recommended by the Centers for Disease Control and Prevention. If the newborn's parent(s) or legal guardian refuses this procedure, the health care provider will document the refusal in the newborn's medical record.

(2) Laboratories, health care providers, and other persons shall deny issuance of a certificate or statement implying an individual is free from sexually transmitted disease.

(3) State and local health officers or their authorized representatives shall have authority to conduct or cause to be conducted an interview and investigation of persons infected or reasonably believed to be infected with a sexually transmitted disease.

(a) For the purpose of this section, "reasonable belief" and "reasonably believed" shall mean a health officer's belief based upon a credible report from an identifiable individual indicating another person is likely to have a sexually transmitted disease (STD) or to have been exposed to a STD;

(b) Investigations shall be conducted using procedures and measures described in WAC 246-100-036(4).

(4) Local health officers, health care providers, and others shall comply with the provisions in chapter 70.24 RCW, in addition to requirements in chapters 246-100 and 246-101 WAC.

(5) Any person who violates a rule adopted by the board for the control and treatment of a sexually transmitted disease is subject to penalty under RCW 70.24.080.