



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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FILED

DATE: November 20, 2018

TIME: 2:42 PM

WSR 18-23-100

Agency: Washington State Patrol

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 18-12-019 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) Towing Business Requirements

Hearing location(s):

Date: Time: Location: (be specific) Comment:

December 27, 2018	11:00am	106 11 th Avenue SW, Rm G015B Olympia, WA 98504	
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Date of intended adoption: December 26, 2018 (Note: This is NOT the effective date)

Submit written comments to:

Name: Kimberly Mathis, Rules Coordinator
Address: 106 11th Avenue SW; Olympia, WA 98504
Email: wsprules@wsp.wa.gov
Fax:
Other:
By (date) December 26, 2018

Assistance for persons with disabilities:

Contact Kimberly Mathis
Phone: 360-596-4017
Fax:
TTY:
Email: wsprules@wsp.wa.gov
Other:
By (date) December 26, 2018

Purpose of the proposal and its anticipated effects, including any changes in existing rules: There is a need to update and clarify the application and qualifications for a letter of appointment in WAC 204-91A-060. Additionally, stakeholders have asked the agency to amend the disqualifications for applicants, partners, corporate officers, and employees.

Reasons supporting proposal: Updates are to provide clarity and consistency in terms used throughout the chapter and clean up existing language.

Statutory authority for adoption: RCW 46.37.005, 46.55.050, 46.55.115

Statute being implemented: RCW 46.37.005, 46.55.050, 46.55.115

Is rule necessary because of a:

- Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Name of proponent: (person or organization) Washington State Patrol

- Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Kimberly Mathis	Olympia, WA	360-596-4017
Implementation:	Washington State Patrol	Olympia, WA	360-596-4017
Enforcement:	Washington State Patrol	Olympia, WA	360-596-4017

Is a school district fiscal impact statement required under RCW 28A.305.135?

- Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

Is a cost-benefit analysis required under RCW 34.05.328?

- Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

- No: Please explain: This rule is exempt pursuant to RCW 34.05.328(5)(b)(v)

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- RCW 34.05.310 (4)(b) (Internal government operations)
- RCW 34.05.310 (4)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- RCW 34.05.310 (4)(g) ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW ____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's analysis showing how costs were calculated. _____
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Date: 11/20/2018

Name: John R. Batiste

Title: Chief

Signature:

WAC 204-91A-060 Application and qualifications for letter of appointment. (1) An application must be approved and a letter of appointment issued by the patrol before an operator is authorized to provide towing services for the patrol pursuant to this chapter. However, nothing herein prohibits the patrol from calling a towing business upon the specific request of a person responsible for a vehicle or his/her agent.

(2) An application for letter of appointment must be completed by:

Type of business	Who must complete the application
Tow company	Owner/operator
Partnership	Each partner
Corporation	The patrol may require each of the present and subsequent officers, managers, and stakeholders holding 10% or more of the total issued stock to complete an application.

(3) To be issued a letter of appointment, the applicant(s) must:

(a) Complete the application form provided by the patrol; and
(b) Attach to the application a signed "letter of contractual agreement" listing the maximum tow rates to be charged for services resulting from state patrol originated calls; and

(c) Satisfy the requirements contained in WAC 204-91A-070; and

(d) Demonstrate through a letter included with the application that they have at least two years of experience within the towing industry, or be granted a waiver if the owner/operator does not have the required two years experience.

(i) The two years of experience must have been acquired within five years of the date of application. The two years of experience may be satisfied by demonstrating any of the following:

(A) He or she has been a registered tow truck operator for a minimum of two years prior to the date of application with at least one approved "A" or "B" class tow truck, additional trucks are optional, and has a working knowledge of the paperwork requirements for impounds; or

(B) He or she has worked as an employee of a tow company on the state patrol's rotational tow list and gained experience within the towing industry including, but not limited to, the operation of vehicles, complying with the state and federal standards and regulations, and processing of paperwork for auditing and other purposes; or

(C) He or she will keep in place the existing management team/employees for a minimum of one year upon purchasing the business.

(ii) If the owner/operator does not have the required two years experience, the owner/operator may be granted a waiver of this requirement. If the owner/operator is granted a waiver, the letter of appointment may be granted on a probationary basis for a period of one year from the date of the waiver.

(4) Upon receipt by the patrol of a completed application:

(a) The district office must:

(i) Complete the tow zone portion of the application form. The district commander or designee will enter "approved" or "disapproved" next to the zone designation and sign the application form; and

(ii) Forward the application form to the section.

(b) The section will review the application form to ensure the applicant(s) meet all the requirements as outlined under subsections (5) through (9) of this section. If the application is denied, a letter will be sent to the applicant(s) from the section articulating the reasons for the denial. If the application is approved it will be assigned a docket number which will be its permanent identification number for all matters relating to the application and letter of appointment.

(5) The patrol will refuse to issue or may revoke a letter of appointment or contract if the applicant, partner, corporate officer involved in daily operations, or any employee who operates a tow truck, assists in vehicle auctions, or is involved in daily operations:

(a) Has been convicted of any of the following:

(i) Any class A felony or any "sex offense" as defined in RCW 9.94A.030, regardless of the date of conviction; or

(ii) Any class B felony within the last ten years; or

(iii) Any class C felony within the last five years; or

(iv) A DUI, as defined in chapter 46.61 RCW, two or more times within the last five years; or

(v) Any gross misdemeanor listed in this subsection within the last three years:

(A) Any attempt, conspiracy or solicitation to commit a class C felony as defined in RCW 9A.28.020, 9A.28.030, and 9A.28.040;

(B) Any domestic violence as defined in RCW 10.99.020;

(C) Assault in the fourth degree as defined in RCW 9A.36.041;

(D) Reckless endangerment as defined in RCW 9A.36.050;

(E) Coercion as defined in RCW 9A.36.070;

(F) Interfering with reporting domestic violence as defined in RCW 9A.36.150;

(G) Aiming or discharging firearm, dangerous weapon as defined in RCW 9.41.230;

(H) Dangerous weapon as defined in RCW 9.41.250;

(I) Unlawful carrying/handling weapon apparently capable of producing bodily harm as defined in RCW 9.41.270;

(J) Possessing dangerous weapon on school facilities as defined in RCW 9.41.280;

(K) Failure to register as felony firearm offender as defined in RCW 9.41.335;

(L) Any sexual motivation as defined in RCW 9.94A.835 and 13.40.135;

(M) Failure to report child pornography as defined in RCW 9.68A.080;

(N) Communication with minor for immoral purposes as defined in RCW 9.68A.090;

(O) Permitting commercial sexual abuse of a minor as defined in RCW 9.68A.103;

(P) Sexual misconduct with a minor in the second degree as defined in RCW 9A.44.096;

(Q) Voyeurism as defined in RCW 9A.44.115;

(R) Failure to register as sex offender or kidnapping offender as defined in RCW 9A.44.132;

(S) Custodial sexual misconduct in the second degree as defined in RCW 9A.44.170;

(T) Indecent exposure as defined in RCW 9A.88.010;
(U) Vehicle prowling in the second degree as defined in RCW 9A.52.100;
(V) Making or having burglar tools as defined in RCW 9A.52.060;
(W) Criminal trespass in the first degree as defined in RCW 9A.52.070;
(X) Theft in the third degree as defined in RCW 9A.56.050;
(Y) Making or possessing motor vehicle theft tools as defined in RCW 9A.56.063;
(Z) Theft of rental, leased, lease-purchased, or loaned property as defined in RCW 9A.56.096;
(AA) Possession of stolen property in the third degree as defined in RCW 9A.56.170;
(BB) Obscuring identity of machine as defined in RCW 9A.56.180;
(CC) Criminal impersonation in the second degree as defined in RCW 9A.60.045;
(DD) Unlawful issuance of checks or drafts as defined in RCW 9A.56.060;
(EE) Food stamps—Unlawful sale as defined in RCW 9.91.140;
(FF) Food stamps—Trafficking as defined in RCW 9.91.142;
(GG) Theft of motor vehicle fuel as defined in RCW 46.61.740;
(HH) Driving under the influence as defined in RCW 46.61.502;
(II) Physical control of vehicle under the influence as defined in RCW 46.61.504;
(JJ) Reckless driving as defined in RCW 46.61.500;
(KK) Reckless endangerment of roadway workers as defined in RCW 46.61.527;
(LL) Hit and run attended as defined in RCW 46.52.020;
(MM) Operating railroad, steamboat, vehicle while intoxicated as defined in RCW 9.91.020;
(NN) Operation of personal watercraft in a reckless manner as defined in RCW 79A.60.040;
(OO) Obstructing a law enforcement officer as defined in RCW 9A.76.020;
(PP) Stalking as defined in RCW 9A.46.110;
(QQ) Harassment as defined in RCW 9A.46.020;
(RR) Violation of antiharassment order as defined in RCW 9A.46.040;
(SS) Violation of order restricting contact as defined in RCW 9A.46.080;
(TT) Escape in the third degree as defined in RCW 9A.76.130;
(UU) Rendering criminal assistance in the first degree as defined in RCW 9A.76.070;
(VV) Malicious mischief in the third degree as defined in RCW 9A.48.090;
(WW) Making a false or misleading statement to a public servant as defined in RCW 9A.76.175;
(XX) False reporting as defined in RCW 9A.84.040;
(YY) False swearing as defined in RCW 9A.72.040;
(ZZ) Criminal mistreatment in the third degree as defined in RCW 9A.42.035;
(AAA) Abandonment of a dependent person in the third degree as defined in RCW 9A.42.080;
(BBB) Violation of order as defined in RCW 26.50.110;
(CCC) Jury tampering as defined in RCW 9A.72.140;
(DDD) Tampering with evidence as defined in RCW 9A.72.150;

(EEE) Animal cruelty in the second degree as defined in RCW 16.52.207;

(FFF) Reckless burning in the second degree as defined in RCW 9A.48.050;

(GGG) Any comparable out-of-state, federal or municipal crimes.

(b) Must register as a sex offender or kidnapping offender; or

(c) Has been granted a deferred prosecution under chapter 10.05 RCW for any gross misdemeanor within the last three years.

(6) The patrol may refuse to issue or may revoke a letter of appointment or contract if the applicant, partner, corporate officer involved in daily operations, or any employee who operates a tow truck, assists in vehicle auctions, or is involved in daily operations:

(a) Has been convicted of any misdemeanor listed in this subsection within the last year; or:

(i) Any domestic violence as defined in RCW 10.99.020;

(ii) Alteration of identifying marks as defined in RCW 9.41.140;

(iii) Any sexual motivation as defined in RCW 9.94A.835 and 13.40.135;

(iv) Indecent exposure as defined in RCW 9A.88.010;

(v) Permitting prostitution as defined in RCW 9A.88.090;

(vi) Patronizing a prostitute as defined in RCW 9A.88.110;

(vii) Criminal trespass in the second degree as defined in RCW 9A.52.080;

(viii) Food stamps—Unlawful sale as defined in RCW 9.91.140;

(ix) Driver under twenty-one consuming alcohol or marijuana as defined in RCW 46.61.503;

(x) Hit and run unattended as defined in RCW 46.52.010;

(xi) Negligent driving in the first degree as defined in RCW 46.61.5249;

(xii) Escape in the third degree as defined in RCW 9A.76.130;

(xiii) Rendering criminal assistance in the second degree as defined in RCW 9A.76.080;

(xiv) Rendering criminal assistance in the third degree as defined in RCW 9A.76.090;

(xv) Criminal mistreatment in the fourth degree as defined in RCW 9A.42.037;

(xvi) Leaving a child in the care of a sex offender as defined in RCW 9A.42.110;

(xvii) Violation of restraining order or preliminary injunction as defined in RCW 26.44.063;

(xviii) Temporary restraining order restricting visitation for persons accused of sexually or physically abusing a child as defined in RCW 26.44.150;

(xix) Refusing to summon aid for a peace officer as defined in RCW 9A.76.030;

(xx) Resisting arrest as defined in RCW 9A.76.040;

(xxi) Bail jumping as defined in RCW 9A.76.170;

(xxii) Disorderly conduct as defined in RCW 9A.84.030; and

(xxiii) Any comparable out-of-state, federal or municipal crimes.

(b) Has been granted a deferred prosecution under chapter 10.05 RCW for any misdemeanor within the last year.

(7) The patrol may refuse to issue or may revoke a letter of appointment or contract if any applicant, partner or corporate officer involved in daily operations, or any employee who operates a tow truck or assists in vehicle auctions:

(a) Has demonstrated a willful disregard for complying with ordinances, statutes, administrative rules or court orders, whether at the local, state or federal level; or

(b) Fails to demonstrate character and general fitness sufficient to command the confidence of the patrol and warrant a belief that the business will be operated honestly, fairly and efficiently in the conduct of towing, impound, and vehicle auction activities. In determining character and general fitness, the patrol may consider:

(i) Prior contacts with law enforcement; and

(ii) Criminal record; and

(iii) Reputation in the community; and

(iv) Associations.

(8) A misrepresentation of fact found to have been made by an applicant during the application process or by a letter of appointment holder shall be deemed a lack of good faith and shall constitute good and sufficient cause for the denial of an application or the revocation or suspension of the letter of appointment.

(9) Only one application per year to tow on the patrol's rotational tow list will be accepted and considered for an applicant who has had their previous application denied or had their letter or contract of appointment revoked. The year will run from the date of application denial or the date of revocation of the letter of appointment.

(10) The term "conviction" as used in this section will have the same meaning as used in RCW 9.94A.030.

(11) Crimes referenced in this section are as defined in the criminal code as they existed at the time of the violation, as they now exist or may later be amended in the state of Washington. Out-of-state convictions for offenses will be classified according to the comparable offense definitions and sentences provided by Washington law.

(12) An individual may request to review their record using the form outlined in WAC 446-20-400. The request must be made by the person whose record is sought. When requested by the patrol, other documentation to prove identification must be provided prior to viewing the record. An individual wishing to contest the information contained in their criminal history must do so using the process established in chapter 446-20 WAC.

(13) For the purpose of this chapter, the term daily operations will mean processing:

(a) The acceptance or release of a vehicle under a letter of appointment; or

(b) Transactions for any tow requested under a letter of appointment.