

WSR 06-05-022
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Aging and Disability Services Administration)
 [Filed February 6, 2006, 4:24 p.m., effective March 9, 2006]

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

Purpose: The department is adding and amending sections within chapter 388-106 WAC, Long-term care services; amending and repealing sections within chapter 388-71 WAC, Home and community services and programs; and amending sections within chapter 388-110 WAC, Contracted residential care services. These revisions are for the purpose of updating and clarifying WACs due to recent policy changes.

Summary of Significant WAC Changes

Chapter 388-106 WAC Changes	
Affected WAC	Change
388-106-0010	Changed the following definitions: <ul style="list-style-type: none"> • Ability to make self understood • Activities of daily living, bed mobility • Assistance available • Assistance with medication management • Categorically needy • Decision making • Estate recovery • Informal support • Institution • Self performance for ADLs • Self performance for IADLs • SSI-related • Support provided
388-106-0015	Updated WAC reference and corrected a typographical error.
388-106-0035	Clarified language on whether services are covered when client is out of state. Removed a DSHS form number that may change.
388-106-0050	Clarified when assessments occur and when an in-person assessment is not required.
388-106-0065	Removed examples of who can be present during an assessment.
388-106-0130	Added information about deduction for meal preparation, ordinary housework, and essential shopping. Included private duty nursing as a service that personal care hours can be used for.

388-106-0213	Updated age guidelines for children receiving MPC and added clarifying language.
388-106-0215 (new)	Included WAC on when MPC services start.
388-106-0200, 388-106-0300, 388-106-0305, 388-106-0400, and 388-106-0500	Included criteria for how nursing services are authorized.
388-106-0705 and 388-106-0715	Removed the provisions to deem eligibility. Clarified eligibility language regarding prepaid benefits.
388-106-1303 (new)	Proposed new rules on client responsibilities.
Chapter 388-71 WAC Changes	
388-71-0540, 388-71-0546, 388-71-0551, 388-71-0556, and 388-71-05695	Included references to managed care entities, who will also be responsible for ensuring that individual providers are qualified and trained.
388-71-0704	Included language on what services the adult day care center must provide onsite.
388-71-0706	Included language on what services the adult day health center must provide onsite.
388-71-0210 through 388-71-0260	Repeal.
Chapter 388-110 WAC Changes	
388-110-020	Updated definitions to include links to new chapter 388-106 WAC.
388-110-100	Revised the maximum number of days required for approval of social leave to eighteen days per calendar year and clarified language regarding Medicaid resident.
388-110-220	Updated definitions to include links to new chapter 388-106 WAC. Added dementia training topics. Changed definition of eating.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-71-0210, 388-71-0215, 388-71-0220, 388-71-0225, 388-71-0230, 388-71-0235, 388-71-0240, 388-71-0245, 388-71-0250, 388-71-0255, and 388-71-0260; and amending WAC 388-106-0010, 388-106-0015, 388-106-0035, 388-106-0050, 388-106-0065, 388-106-0130, 388-106-0200, 388-106-0213, 388-106-0300, 388-106-0305, 388-106-0400, 388-106-0500, 388-106-0705, 388-106-0715, 388-71-0540, 388-71-0546, 388-71-0551, 388-71-0556, 388-71-05695, 388-71-0704, 388-71-0706; 388-110-020, 388-110-100, and 388-110-220.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, 74.39A.010, and 74.39A.020.

Other Authority: RCW 74.08.090, 74.09.520, 74.39A.010, and 74.39A.020.

Adopted under notice filed as WSR 05-23-029 on November 8, 2005.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-106-0010, definition of "Self performance for ADLs," removed proposed language that requires further clarification; WAC 388-106-0015(1), revised "Medical" to "Medicaid personal care (MPC)" to correct a typo; 388-106-0050(3), removed "DSHS 14-405," as this is a form number that may change; and WAC 388-106-0213(2), added "Passive" prior to "range of motion" for clarification.

A final cost-benefit analysis is available by contacting Tiffany Sevruk, P.O. Box 45600, Olympia, WA 98504, phone (360) 725-2538, fax (360) 438-8633, e-mail sevruTA@dshs.wa.gov. The preliminary cost-benefit analysis is unchanged and will be final.

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 2, Amended 24, Repealed 11.

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 2, Amended 24, Repealed 11.

Date Adopted: February 3, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0010 What definitions apply to this chapter? "Ability to make self understood" means how you make yourself understood to those closest to you; express or communicate requests, needs, opinions, urgent problems and social conversations, whether in speech, writing, sign language, symbols, or a combination of these including use of a communication board or keyboard:

(a) Understood: You express ideas clearly;

(b) Usually understood: You have difficulty finding the right words or finishing thoughts, resulting in delayed responses((:)), or you require((s)) some prompting to make self understood;

(c) Sometimes understood: You have limited ability, but are able to express concrete requests regarding at least basic needs (e.g. food, drink, sleep, toilet);

(d) Rarely/never understood. At best, understanding is limited to caregiver's interpretation of client specific sounds

or body language (e.g. indicated presence of pain or need to toilet.)

"**Activities of daily living (ADL)**" means the following:

(a) Bathing: How you take a full-body bath/shower, sponge bath, and transfer in/out of tub/shower.

(b) Bed mobility: How you move to and from a lying position, turn side to side, and position your body while in bed, in a recliner, or other type of furniture.

(c) Body care: How you perform with passive range of motion, applications of dressings and ointments or lotions to the body and pedicure to trim toenails and apply lotion to feet. In adult family homes, contracted assisted living, enhanced adult residential care, and enhanced adult residential care-specialized dementia care facilities, dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC. Body care excludes:

(i) Foot care if you are diabetic or have poor circulation; or

(ii) Changing bandages or dressings when sterile procedures are required.

(d) Dressing: How you put on, fasten, and take off all items of clothing, including donning/removing prosthesis.

(e) Eating: How you eat and drink, regardless of skill. Eating includes any method of receiving nutrition, e.g., by mouth, tube or through a vein.

(f) Locomotion in room and immediate living environment: How you move between locations in your room and immediate living environment. If you are in a wheelchair, locomotion includes how self-sufficient you are once in your wheelchair.

(g) Locomotion outside of immediate living environment including outdoors: How you move to and return from more distant areas. If you are living in a boarding home or nursing facility (NF), this includes areas set aside for dining, activities, etc. If you are living in your own home or in an adult family home, locomotion outside immediate living environment including outdoors, includes how you move to and return from a patio or porch, backyard, to the mailbox, to see the next-door neighbor, etc.

(h) Walk in room, hallway and rest of immediate living environment: How you walk between locations in your room and immediate living environment.

(i) Medication management: Describes the amount of assistance, if any, required to receive medications, over the counter preparations or herbal supplements.

(j) Toilet use: How you use the toilet room, commode, bedpan, or urinal, transfer on/off toilet, cleanse, change pad, manage ostomy or catheter, and adjust clothes.

(k) Transfer: How you move between surfaces, i.e., to/from bed, chair, wheelchair, standing position. Transfer does not include how you move to/from the bath, toilet, or vehicle.

(l) Personal hygiene: How you maintain personal hygiene, including combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands (including nail care), and perineum (menses care). Personal hygiene does not include hygiene in baths and showers.

"Aged person" means a person sixty-five years of age or older.

"Agency provider" means a licensed home care agency or a licensed home health agency having a contract to provide long-term care personal care services to you in your own home.

"Application" means a written request for medical assistance or long-term care services submitted to the department by the applicant, the applicant's authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The applicant must submit the request on a form prescribed by the department.

"Assessment details" means a summary of information that the department entered into the CARE assessment describing your needs.

"Assessment or reassessment" means an inventory and evaluation of abilities and needs based on an in-person interview in your own home or your place of residence, using CARE.

"Assistance available" means the amount of informal support available if the need is partially met. The department determines the amount of the assistance available using one of four categories:

- (a) Less than one-fourth of the time;
- (b) One-fourth to one-half of the time;
- (c) Over one-half of the time to three-fourths of the time;

or

(d) Over three-fourths ~~((of the time))~~ but not all of the time.

"Assistance with body care" means you need assistance with:

- (a) Application of ointment or lotions;
- (b) Trimming of toenails;
- (c) Dry bandage changes; or
- (d) Passive range of motion treatment.

"Assistance with medication management" means you need assistance managing your medications. You are scored as:

(a) Independent if you remember to take medications as prescribed and manage your medications without assistance.

(b) Assistance required if you need assistance from a nonlicensed provider to facilitate your self-administration of a prescribed, over the counter, or herbal medication, as defined in chapter 246-888 WAC. Assistance required includes reminding or coaching you, handing you the medication container, opening the container, using an enabler to assist you in getting the medication into your mouth, alteration of a medication for self-administration, and placing the medication in your hand. This does not include assistance with intravenous or injectable medications. You must be aware that you are taking medications.

(c) Self-directed medication assistance/administration if you are a person with a functional disability who is capable of and who chooses to self-direct your medication assistance/administration.

(d) Must be administered if you must have medications placed in your mouth or applied or instilled to your skin or mucus membrane. Administration must either be performed by a licensed professional or delegated by a registered nurse

to a qualified caregiver (per chapter 246-840 WAC). Intravenous or injectable medications may never be delegated. Administration may also be performed by a family member or unpaid caregiver if facility licensing regulations allow.

"Authorization" means an official approval of a departmental action, for example, a determination of client eligibility for service or payment for a client's long-term care services.

"Blind person" means a person determined blind as described under WAC 388-511-1105 by the division of disability determination services of the medical assistance administration.

"Categorically needy" means the status of a person who is eligible for medical care under Title XIX of the Social Security Act. See WAC 388-475-0100 and chapter 388-513 WAC.

"Client" means an applicant for service or a person currently receiving services from the department.

"Current" means a behavior occurred within seven days of the CARE assessment date, including the day of the assessment. Behaviors that the department designates as current must include information about:

- (a) Whether the behavior is easily altered or not easily altered; and
- (b) The frequency of the behavior.

"Decision making" means your ability and actual performance in making everyday decisions about tasks or activities of daily living. The department determines whether you are:

(a) Independent: Decisions about your daily routine are consistent and organized; reflecting your lifestyle, choices, culture, and values.

(b) Modified independence/difficulty in new situations: You have an organized daily routine, are able to make decisions in familiar situations, but experience some difficulty in decision making when faced with new tasks or situations.

(c) Moderately impaired/poor decisions; unaware of consequences: Your decisions are poor and you require reminders, cues and supervision in planning, organizing and correcting daily routines. You attempt to make decisions, although poorly.

(d) Severely impaired/no or few decisions ~~((or preferences regarding ADLs))~~: Decision making is severely impaired; you never/rarely make decisions.

"Department" means the state department of social and health services, aging and disability services administration or its designee.

"Designee" means area agency on aging.

"Difficulty" means how difficult it is or would be for you to perform an instrumental activity of daily living (IADL). This is assessed as:

- (a) No difficulty in performing the activity;
- (b) Some difficulty in performing the activity (e.g., you need some help, are very slow, or fatigue easily); or
- (c) Great difficulty in performing the activity (e.g., little or no involvement in the activity is possible).

"Disabling condition" means you have a medical condition which prevents you from self performance of personal care tasks without assistance.

"Estate recovery" means ~~((after the client's death, the department's activity in recouping funds that were expended for long-term care services provided to the client during the client's lifetime, per WAC 388-527-2742))~~ the department's process of recouping the cost of Medicaid and long-term care benefit payments from the estate of the deceased client. See chapter 388-527 WAC.

"Home health agency" means a licensed:

(a) Agency or organization certified under Medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence and reimbursed through the use of the client's medical identification card; or

(b) Home health agency, certified or not certified under Medicare, contracted and authorized to provide:

(i) Private duty nursing; or

(ii) Skilled nursing services under an approved Medicaid waiver program.

"Income" means income as defined under WAC 388-500-0005.

"Individual provider" means a person employed by you to provide personal care services in your own home. See WAC 388-71-0500 through 388-71-05909.

"Disability" is described under WAC 388-511-1105.

"Informal support" means a person or resource that is available to provide assistance without home and community program funding. The person or resource providing the informal support must be age 18 or older.

"Institution" means medical facilities, nursing facilities, and institutions for the mentally retarded. It does not include correctional institutions. See medical institutions in WAC 388-500-0005.

"Instrumental activities of daily living (IADL)" means routine activities performed around the home or in the community and includes the following:

(a) Meal preparation: How meals are prepared (e.g., planning meals, cooking, assembling ingredients, setting out food, utensils, and cleaning up after meals). NOTE: The department will not authorize this IADL to plan meals or clean up after meals. You must need assistance with actual meal preparation.

(b) Ordinary housework: How ordinary work around the house is performed (e.g., doing dishes, dusting, making bed, tidying up, laundry).

(c) Essential shopping: How shopping is completed to meet your health and nutritional needs (e.g., selecting items). Shopping is limited to brief, occasional trips in the local area to shop for food, medical necessities and household items required specifically for your health, maintenance or well-being. This includes shopping with or for you.

(d) Wood supply: How wood is supplied (e.g., splitting, stacking, or carrying wood) when you use wood as the sole source of fuel for heating and/or cooking.

(e) Travel to medical services: How you travel by vehicle to a physician's office or clinic in the local area to obtain medical diagnosis or treatment-includes driving vehicle yourself, traveling as a passenger in a car, bus, or taxi.

(f) Managing finances: How bills are paid, checkbook is balanced, household expenses are managed. The department cannot pay for any assistance with managing finances.

(g) Telephone use: How telephone calls are made or received (with assistive devices such as large numbers on telephone, amplification as needed).

"Long-term care services" means the services administered directly or through contract by the aging and disability services administration and identified in WAC 388-106-0015.

"Medicaid" is defined under WAC 388-500-0005.

"Medically necessary" is defined under WAC 388-500-0005.

"Medically needy (MN)" means the status of a person who is eligible for a federally matched medical program under Title XIX of the Social Security Act, who, but for income above the categorically needy level, would be eligible as categorically needy. Effective January 1, 1996, an AFDC-related adult is not eligible for MN.

"Own home" means your present or intended place of residence:

(a) In a building that you rent and the rental is not contingent upon the purchase of personal care services as defined in this section;

(b) In a building that you own;

(c) In a relative's established residence; or

(d) In the home of another where rent is not charged and residence is not contingent upon the purchase of personal care services as defined in this section.

"Past" means the behavior occurred from eight days to five years of the assessment date. For behaviors indicated as past, the department determines whether the behavior is addressed with current interventions or whether no interventions are in place.

"Personal aide" is defined in RCW 74.39.007.

"Personal care services" means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) due to your functional limitations. Assistance is evaluated with the use of assistive devices.

"Physician" is defined under WAC 388-500-0005.

"Plan of care" means assessment details and service summary generated by CARE.

"Provider or provider of service" means an institution, agency, or person:

(a) Having a signed department contract to provide long-term care client services; and

(b) Qualified and eligible to receive department payment.

"Residential facility" means a licensed adult family home under department contract or licensed boarding home under department contract to provide assisted living, adult residential care or enhanced adult residential care.

"Self performance for ADLs" means what you actually did in the last seven days before the assessment, not what you might be capable of doing. Coding is based on the level of performance that occurred three or more times in the seven-day period and does not include support provided as defined in WAC 388-106-0010. Your self performance level is scored as:

(a) Independent if you received no help or oversight, or if you needed help or oversight only once or twice;

(b) Supervision if you received oversight (monitoring or standby), encouragement, or cueing three or more times;

(c) Limited assistance if you were highly involved in the activity and given physical help in guided maneuvering of limbs or other non-weight bearing assistance on three or more occasions. For bathing, limited assistance means physical help is limited to transfer only;

(d) Extensive assistance if you performed part of the activity, but on three or more occasions, you needed weight bearing support or you received full performance of the activity during part, but not all, of the activity. For bathing, extensive assistance means you needed physical help with part of the activity (other than transfer);

(e) Total dependence if you received full caregiver performance of the activity and all subtasks during the entire seven-day period from others. Total dependence means complete nonparticipation by you in all aspects of the ADL; or

(f) Activity did not occur if you or others did not perform an ADL over the last seven days before your assessment. The activity may not have occurred because:

- (i) You were not able (e.g., walking, if paralyzed);
- (ii) No provider was available to assist; or
- (iii) You declined assistance with the task.

"Self performance for IADLs" means what you actually did in the last ~~((seven))~~ thirty days before the assessment, not what you might be capable of doing. Coding is based on the level of performance that occurred three or more times in the ~~((seven))~~ thirty-day period. Your self performance is scored as:

(a) Independent if you received no help, set-up help, or supervision;

~~(b) ((Supervision if you received set-up help or arrangements only;~~

~~(c) Limited assistance if you sometimes performed the activity yourself and other times needed assistance)) Set-up help/arrangements only if on some occasions you did your own set-up/arrangement and at other times you received help from another person;~~

~~(c) Limited assistance if on some occasions you did not need any assistance but at other times in the last thirty days you required some assistance;~~

(d) Extensive assistance if you were involved in performing the activity, but required cueing/supervision or partial assistance at all times;

(e) Total dependence if you needed the activity fully performed by others; or

(f) Activity did not occur if you or others did not perform the activity in the last ~~((seven))~~ thirty days before the assessment.

"Service summary" is CARE information which includes: Contacts (e.g. emergency contact), services the client is eligible for, number of hours or residential rates, personal care needs, the list of formal and informal providers and what tasks they will provide, a provider schedule, referral needs/information, and dates and agreement to the services.

"SSI-related" is defined under WAC ~~((388-500-0005))~~ 388-475-0050.

"Status" means the amount of informal support available. The department determines whether the ADL or IADL is:

(a) Met, which means the ADL or IADL will be fully provided by an informal support;

(b) Unmet, which means an informal support will not be available to provide assistance with the identified ADL or IADL;

(c) Partially met, which means an informal support will be available to provide some assistance, but not all, with the identified ADL or IADL; or

(d) Client declines, which means you do not want assistance with the task.

"Supplemental Security Income (SSI)" means the federal program as described under WAC 388-500-0005.

"Support provided" means the highest level of support provided (to you) by others in the last seven days before the assessment, even if that level of support occurred only once.

(a) No set-up or physical help provided by others;

(b) Set-up help only provided, which is the type of help characterized by providing you with articles, devices, or preparation necessary for greater self performance of the activity ~~((such as)). For example, set-up help includes but is not limited to giving or holding out an item ((that you take from others)) or cutting food;~~

(c) One-person physical assist provided;

(d) Two- or more person physical assist provided; or

(e) Activity did not occur during entire seven-day period.

"You/your" means the client.

AMENDATORY SECTION (Amending WSR 05-19-045, filed 9/15/05, effective 10/16/05)

WAC 388-106-0015 What long-term care services does the department provide? The department provides long-term care services through programs that are designed to help you remain in the community. These programs offer an alternative to nursing home care (which is described in WAC 388-106-0350 through 388-106-0360). You may receive services from any of the following:

(1) ~~((Medical))~~ **Medicaid personal care (MPC)** is a Medicaid state plan program authorized under RCW 74.09.520. Clients eligible for this program may receive personal care in their own home or in a residential facility.

(2) **Community options program entry system (COPES)** is a Medicaid waiver program authorized under RCW 74.39A.030. Clients eligible for this program may receive personal care in their own home or in a residential facility.

(3) **Medically needy residential waiver (MNRW)** is a Medicaid waiver program authorized under RCW 74.39.041. Clients eligible for this program may receive personal care in a residential facility.

(4) **Medically needy in-home waiver (MNIW)** is a Medicaid waiver program authorized under RCW 74.09.700. Clients eligible for this program may receive personal care in their own home.

(5) **Chore** is a state-only funded program authorized under RCW 74.39A.110. Grandfathered clients may receive assistance with personal care in their own home.

(6) **Volunteer chore** is a state-funded program that provides volunteer assistance with household tasks to eligible clients.

(7) **Program of all-inclusive care for the elderly (PACE)** is a Medicaid/Medicare managed care program authorized under 42 CFR 460.2. Clients eligible for this program may receive personal care and medical services in their own home, in residential facilities, and in adult day health centers.

(8) **Adult day health** is a supervised daytime program providing skilled nursing and rehabilitative therapy services in addition to core services outlined in WAC 388-106-0800.

(9) **Adult day care** is a supervised daytime program providing core services, as defined under WAC 388-106-0800.

(10) **GAU-funded residential care** is a state-funded program authorized under WAC 388-400-0025. Clients eligible for this program may receive personal care services in an adult family home or an adult residential care facility.

(11) **Residential care discharge allowance** is a service that helps eligible clients to establish or resume living in their own home.

(12) **Private duty nursing** is a Medicaid service that provides an alternative to institutionalization in a hospital or nursing facility setting. Clients eligible for this program may receive at least four continuous hours of skilled nursing care on a day to day basis in their own home.

(13) **Senior Citizens Services Act (SCSA)** is a program authorized under chapter 74.38 RCW. Clients eligible for this program may receive community-based services as defined in RCW 74.38.040.

(14) **Respite program** is a program authorized under RCW 74.41.040 and WAC 388-106-1200. This program provides relief care for unpaid family or other caregivers of adults with a functional disability.

(15) **Programs for persons with developmental disabilities** are discussed in chapter ~~((388-825))~~ 388-823 through 388-853 WAC.

(16) **Nursing facility.**

(17) **Medicare/Medicaid Integration Project (MMIP)** is a DSHS prepaid managed care program, authorized under 42 CFR Part 438, that integrates medical and long-term care services for clients who are sixty-five years of age or older and eligible for Medicare (Parts A and B) and Medicaid.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0035 May I receive personal care services through any of the long-term care programs when I am out of the state of Washington? (1) You may receive personal care assistance through any long-term care programs in WAC 388-106-0015 subsections (1) through (5) when temporarily traveling out of state for less than thirty days, as long as your:

(a) Individual provider is contracted with the state of Washington;

(b) Travel plans are coordinated with ~~((the department))~~ your case manager prior to departure;

(c) Services are authorized on your plan of care prior to departure; and

(d) Services are strictly for your personal care and do not include your provider's travel time, expenses.

(2) You may not receive personal care services outside of the United States.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0050 What is an assessment? (1) An assessment is an ~~((inventory and evaluation of abilities and needs based on an))~~ in-person interview in your home or your place of residence that is conducted by the department to inventory and evaluate your ability to care for yourself. The department will assess you at least annually or more often when there are significant changes to your ability to care for yourself.

(2) Between assessments, the department may modify your current assessment without an in-person interview in your home or place of residence. The reasons that the department may modify your current assessment without conducting an in-person interview in your home or place of residence include but are not limited to the following:

(a) Errors made by department staff in coding the information from your in-person interview;

(b) New information requested by department staff at the time of your assessment and received after completion of the in-person interview (e.g. medical diagnosis);

(c) Changes in the level of informal support available to you; or

(d) Clarification of the coding selected.

(3) When the department modifies your current assessment, it will notify you using a Planned Action Notice of the modification regardless of whether the modification results in a change to your benefits. You will also receive a new service summary and assessment details.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0065 What is the process for conducting an assessment? The department:

(1) Will assess you using a department-prescribed assessment tool, titled the comprehensive assessment reporting evaluation (CARE).

(2) May request the assessment be conducted in private. However, you have the right to request that third parties be present ~~((e.g. a friend, a family member, or a legal representative)))~~.

(3) Has the right to end the assessment if behaviors by any party are impeding the assessment process. If an assessment is terminated, the department will reschedule.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0130 How does the department determine the number of hours I may receive for in-home care? (1) The department assigns a base number of hours to each classification group as described in WAC 388-106-0125.

(2) The department will deduct from the base hours to account for your informal supports, as defined in WAC 388-106-0010, as follows:

(a) The CARE tool determines the adjustment for informal supports by determining the amount of assistance available to meet your needs, assigns it a numeric percentage, and reduces the base hours assigned to the classification group by

the numeric percentage. The department has assigned the following numeric values for the amount of assistance available for each ADL and IADL:

Meds	Self Performance	Status	Assistance Available	Value Percentage
Self administration of medications	Rules for all codes apply except independent is not counted	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
1/2 to 3/4 time	.5			
	>3/4 time	.3		
Unscheduled ADLs	Self Performance	Status	Assistance Available	Value Percentage
Bed mobility, transfer, walk in room, eating, toilet use	Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
1/2 to 3/4 time	.5			
	>3/4 time	.3		
Scheduled ADLs	Self Performance	Status	Assistance Available	Value Percentage
Dressing, personal hygiene, bathing	Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.75
			1/4 to 1/2 time	.55
1/2 to 3/4 time	.35			
	>3/4 time	.15		
IADLs	Self Performance	Status	Assistance Available	Value Percentage
Meal preparation, Ordinary housework, Essential shopping*	Rules for all codes apply except independent is not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.3
			1/4 to 1/2 time	.2
1/2 to 3/4 time	.1			
	>3/4 time	.05		
IADLs	Self Performance	Status	Assistance Available	Value Percentage
Travel to medical	Rules for all codes apply except independent is not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
			1/2 to 3/4 time	.5
>3/4 time	.3			

Key:
 > means greater than
 < means less than
*Results in 5% deduction for each IADL from the base hours. Remaining hours may be used for completion of household and personal care tasks.

(b) To determine the amount of reduction for informal support, the value percentage is divided by the number of qualifying ADLs and IADLs needs. The result is value A. Value A is then subtracted from one. This is value B. Value B is divided by three. This is value C. Value A and Value C are summed. This is value D. Value D is multiplied by the "base hours" assigned to your classification group and the result is base in-home care hours reduced for informal supports.

(3) Also, the department will adjust in-home base hours for the following shared living circumstances:

(a) If there is more than one client living in the same household, the status under subsection (2)(a) of this section must be met or partially met for the following IADLs:

- (i) Meal preparation,
- (ii) Housekeeping,
- (iii) Shopping, and
- (iv) Wood supply.

(b) If you and your paid provider live in the same household, the status under subsection (2)(a) of this section must be met for the following IADLs:

- (i) Meal preparation,
- (ii) Housekeeping,
- (iii) Shopping, and
- (iv) Wood supply.

(c) When there is more than one client living in the same household and your paid provider lives in your household, the status under subsection (2)(a) of this section must be met for the following IADLs:

- (i) Meal preparation,
- (ii) Housekeeping,
- (iii) Shopping, and
- (iv) Wood supply.

(4) After deductions are made to your base hours, as described in subsections (2) and (3), the department may add on hours based on your living environment:

Condition	Status	Assistance Available	Add On Hours
Offsite laundry facilities, which means the client does not have facilities in own home and the caregiver is not available to perform any other personal or household tasks while laundry is done.	Unmet	N/A	8
Client is >45 minutes from essential services (which means he/she lives more than 45 minutes one-way from a full-service market).	Unmet	N/A	5
	Met	N/A	0
	Partially met	<1/4 time	5
		between 1/4 to 1/2 time	4
		between 1/2 to 3/4 time	2
>3/4 time		2	
Wood supply used as sole source of heat.	Unmet	N/A	8
	Met	N/A	0
	Declines	N/A	0
	Partially met	<1/4 time	8
		between 1/4 to 1/2 time	6
		between 1/2 to 3/4 time	4
		>3/4 time	2

(5) The result of actions under subsections (2), (3), and (4) is the maximum number of hours that can be used to develop your plan of care. The department must take into account cost effectiveness, client health and safety, and program limits in determining how hours can be used to meet your identified needs.

(6) You and your case manager will work to determine what services you choose to receive if you are eligible. The hours may be used to authorize:

(a) Personal care services from a home care agency provider and/or an individual provider.

(b) Home delivered meals (i.e. a half hour from the available hours for each meal authorized).

(c) Adult day care (i.e. a half hour from the available hours for each hour of day care authorized).

(d) A home health aide if you are eligible per WAC 388-106-0300 or WAC 388-106-0500.

(e) A private duty nurse (PDN) if you are eligible per WAC 388-71-0910 and WAC 388-71-0915 or WAC 388-551-3000 (i.e. one hour from the available hours for each hour of PDN authorized.).

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0200 What services may I receive under Medicaid personal care (MPC)? You may be eligible to receive only the following services under Medicaid personal care (MPC):

(1) Personal care services, as defined in WAC 388-106-0010, in your own home and, as applicable, assistance with personal care tasks while you are out of the home accessing community resources or working.

(2) Personal care services in one of the following residential care facilities:

(a) Adult family homes; or

(b) A licensed boarding home that has contracted with the department to provide adult residential care services.

(3) Nursing services, if you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities. The frequency and scope of the nursing services is based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager:

(a) Nursing assessment/reassessment;

(b) Instruction to you and your providers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In non-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource;

(e) File review; and/or

(f) Evaluation of health-related care needs affecting service planning and delivery.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0213 How are my needs assessed if I am a child applying for MPC services? If you are a child applying for MPC services, the department will complete a CARE assessment and:

(1) Consider and document the role of your legally responsible natural/step/adoptive parent(s).

(2) Code your needs as met based on the guidelines outlined in the following table:

		Activities of Daily Living (ADLs)																	
Ages		0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
■ = Code status as Met																			
Medication Management																			
Independent, supervision, limited, extensive, or total		■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Locomotion in Room ^{Note}																			
Independent, supervision, limited or extensive		■	■	■	■														
Total		■	■																
Locomotion Outside Room ^{Note}																			
Independent or supervision		■	■	■	■	■	■												
Limited or extensive		■	■	■	■														
Total		■	■																
Walk in Room ^{Note}																			
Independent, supervision, limited or extensive		■	■	■	■														
Total		■	■																
Bed Mobility																			
Independent, supervision, limited or extensive		■	■	■															
Total		■	■																
Transfers																			
Independent, supervision, limited, extensive or total & under 30 pounds		■	■	■															
(Total & over 30 pounds = no age limit)																			
Toilet Use																			
Support provided for nighttime wetting only (Independent, supervision, limited, extensive(or total)))		■	■	■	■	■	■	■	■										

Activities of Daily Living (ADLs)

Ages

■ = Code status as Met

	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Independent, supervision, limited, extensive	■	■	■	■	■	■												
Total	■	■	■	■														

Eating

Independent, supervision, limited, extensive, or total

■	■	■																
---	---	---	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Bathing

Independent or supervision

■	■	■	■	■	■	■	■	■	■	■	■	■						
---	---	---	---	---	---	---	---	---	---	---	---	---	--	--	--	--	--	--

Physical assistance all/part

■	■	■	■	■	■	■	■	■										
---	---	---	---	---	---	---	---	---	--	--	--	--	--	--	--	--	--	--

Total

■	■	■	■	■														
---	---	---	---	---	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Dressing

Independent or supervision

■	■	■	■	■	■	■	■	■	■	■	■	■						
---	---	---	---	---	---	---	---	---	---	---	---	---	--	--	--	--	--	--

Limited or extensive

■	■	■	■	■	■	■	■	■										
---	---	---	---	---	---	---	---	---	--	--	--	--	--	--	--	--	--	--

Total

■	■	■	■	■														
---	---	---	---	---	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Personal Hygiene

Independent or supervision

■	■	■	■	■	■	■	■	■	■	■	■	■						
---	---	---	---	---	---	---	---	---	---	---	---	---	--	--	--	--	--	--

Limited or extensive

■	■	■	■	■	■	■	■	■										
---	---	---	---	---	---	---	---	---	--	--	--	--	--	--	--	--	--	--

Total

■	■	■	■	■														
---	---	---	---	---	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Instrumental Activities of Daily Living

Ages

■ = Code status as Met

	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Telephone	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Transportation	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Shopping	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Wood Supply	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Housework	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Finances	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Meal Preparation	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■

NOTE: If the activity did not occur, the department codes self performance as total and status as met.

	Ages																	
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Additional guidelines based on age																		
Any foot care needs																		
Status Need met	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Any skin care (other than feet)																		
Status Need met	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Speech/Hearing																		
Score comprehension as understood	■	■	■															
MMSE can be administered = no	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■

	Ages																	
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Memory																		
Short term memory ok	■	■	■	■	■	■	■	■	■	■	■	■						
Long term memory ok	■	■	■	■	■	■	■	■	■	■	■	■						
Depression																		
Select interview = unable to obtain	■	■	■	■	■	■	■	■	■	■	■	■						
Decision making																		
Rate how client makes decisions = independent	■	■	■	■	■	■	■	■	■	■	■	■						
Bladder/Bowel																		
Support provided for nighttime wetting only - Individual management = Does not need/use	■	■	■	■	■	■	■	■	■	■	■	■						
Support provided for daytime wetting - Individual Management = Does not need/use	■	■	■	■	■	■												
Treatment																		
Passive range of motion	■	■	■	■														

(3) In addition, determine that the status and assistance available are met or partially met over three-fourths of the time, when you are living with your legally responsible natural/step/adoptive parent(s).

(4) Will not code mental health therapy, behaviors, or depression if you are in foster care.

NEW SECTION

WAC 388-106-0215 When do MPC services start?

Your eligibility for MPC begins the date the department authorizes services.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0300 What services may I receive under community options program entry system (COPEs) when I live in my own home? When you live in your own home, you may be eligible to receive only the following services under COPEs:

- (1) Personal care services as defined in WAC 388-106-0010 in your own home and, as applicable, while you are out of the home accessing community resources or working.
- (2) Adult day care if you meet the eligibility requirements under WAC 388-106-0805.
- (3) Environmental modifications, if the minor physical adaptations to your home:
 - (a) Are necessary to ensure your health, welfare and safety;
 - (b) Enable you to function with greater independence in the home;
 - (c) Directly benefit you medically or remedially;
 - (d) Meet applicable state or local codes; and
 - (e) Are not adaptations or improvements, which are of general utility or add to the total square footage.
- (4) Home delivered meals, providing nutritional balanced meals, limited to one meal per day, if:
 - (a) You are homebound and live in your own home;

- (b) You are unable to prepare the meal;
- (c) You don't have a caregiver (paid or unpaid) available to prepare this meal; and
- (d) Receiving this meal is more cost-effective than having a paid caregiver.
- (5) Home health aide service tasks in your own home, if the service tasks:
 - (a) Include assistance with ambulation, exercise, self-administered medications and hands-on personal care;
 - (b) Are beyond the amount, duration or scope of Medicaid reimbursed home health services as described in WAC 388-551-2120 and are in addition to those available services;
 - (c) Are health-related. Note: Incidental services such as meal preparation may be performed in conjunction with a health-related task as long as it is not the sole purpose of the aide's visit; and
 - (d) Do not replace Medicare home health services.
- (6) Personal emergency response system (PERS), if the service is necessary to enable you to secure help in the event of an emergency and if you:
 - (a) Live alone in your own home; or
 - (b) Are alone, in your own home, for significant parts of the day and have no regular provider for extended periods of time.
- (7) Skilled nursing, if the service is:
 - (a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse; and
 - (b) Beyond the amount, duration or scope of Medicaid-reimbursed home health services as provided under WAC 388-551-2100.
- (8) Specialized durable and nondurable medical equipment and supplies under WAC 388-543-1000, if the items are:
 - (a) Medically necessary under WAC 388-500-0005;
 - (b) Necessary for: Life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live;
 - (c) Directly medically or remedially beneficial to you; and

(d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under Medicaid and/or Medicare.

(9) Training needs identified in CARE or in a professional evaluation, which meet a therapeutic goal such as:

- (a) Adjusting to a serious impairment;
- (b) Managing personal care needs; or
- (c) Developing necessary skills to deal with care providers.

(10) Transportation services, ~~((#))~~ when the service:

- (a) Provides ~~((you))~~ access to community services and resources to meet your therapeutic goal;
- (b) Is not ~~((diversional))~~ diverting in nature; and
- (c) Is in addition to and does not replace the Medicaid-brokered transportation or transportation services available in the community.

(11) Nurse delegation services, when:

- (a) You are receiving personal care from a registered or certified nursing assistant who has completed nurse delegation core training;
- (b) Your medical condition is considered stable and predictable by the delegating nurse; and
- (c) Services are provided in compliance with WAC 246-840-930.

(12) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities~~((:))~~. The frequency and scope of the nursing services is based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager.

- (a) Nursing assessment/reassessment;
- (b) Instruction to you and your providers;
- (c) Care coordination and referral to other health care providers;
- (d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In non-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.
- (e) File review; and/or
- (f) Evaluation of health-related care needs affecting service plan and delivery.

(13) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to set up your own home. Services:

- (a) May include: Safety deposits, utility set-up fees or deposits, health and safety assurances such as pest eradication, allergen control or one-time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution; and
- (b) Do not include rent, recreational or ~~((diversional))~~ diverting items such as TV, cable or VCR's.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0305 What services may I receive under COPEs if I live in a residential facility? If you live in one of the following residential facilities: A licensed boarding home contracted with the department to provide assisted living, enhanced adult residential care, enhanced adult residential care-specialized dementia care or an adult family home, you may be eligible to receive only the following services under COPEs:

- (1) Personal care services as defined under WAC 388-106-0010.
- (2) Specialized durable and nondurable medical equipment and supplies under WAC 388-543-1000, when the items are:
 - (a) Medically necessary under WAC 388-500-0005; and
 - (b) Necessary: For life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live; and
 - (c) Directly medically or remedially beneficial to you; and
 - (d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under Medicaid and/or Medicare; and
 - (e) In addition to and do not replace the services required by the department's contract with a residential facility.
- (3) Training needs identified in CARE or in a professional evaluation, that are in addition to and do not replace the services required by the department's contract with the residential facility and that meet a therapeutic goal such as:
 - (a) Adjusting to a serious impairment;
 - (b) Managing personal care needs; or
 - (c) Developing necessary skills to deal with care providers.
- (4) Transportation services, when the service:
 - (a) Provides ~~((you))~~ access to community services and resources to meet a therapeutic goal;
 - (b) Is not ~~((diversional))~~ diverting in nature;
 - (c) Is in addition to and does not replace the Medicaid-brokered transportation or transportation services available in the community; and
 - (d) Does not replace the services required by DSHS contract in residential facilities.
- (5) Skilled nursing, when the service is:
 - (a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse;
 - (b) Beyond the amount, duration or scope of Medicaid-reimbursed home health services as provided under WAC 388-551-2100; and
 - (c) In addition to and does not replace the services required by the department's contract with the residential facility (e.g. intermittent nursing services as described in WAC 388-78A-2310).
- (6) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities~~((:))~~. The frequency and scope of the nursing services is based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager.

- (a) Nursing assessment/reassessment;
- (b) Instruction to you and your providers;
- (c) Care coordination and referral to other health care providers;
- (d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In none-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.
- (e) File review; and/or
- (f) Evaluation of health-related care needs affecting service plan and delivery.

(7) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to live in a residential facility. Services:

- (a) May include: Safety deposits, utility set up fees or deposits, health and safety assurances such as pest eradication, allergen control or one time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution.
- (b) Do not include rent, recreational or ~~((diversional))~~ diverting items such as TV, cable or VCR's.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0400 What services may I receive under medically needy residential waiver (MNRW)? You may be eligible to receive only the following MNRW services in one of the following residential facilities: A licensed boarding home contracted with the department to provide assisted living, enhanced residential care, enhanced adult residential care-specialized dementia care or an adult family home:

- (1) Personal care services as defined in WAC 388-106-0010.
- (2) Specialized durable and nondurable medical equipment and supplies under WAC 388-543-1000, when the items are:
 - (a) Medically necessary under WAC 388-500-0005; and
 - (b) Necessary: For life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live;
 - (c) Directly medically or remedially beneficial to you;
 - (d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under Medicaid and/or Medicare; and
 - (e) In addition to and do not replace the services required by the department's contract with the residential facility.
- (3) Training needs identified in CARE or in a professional evaluation that are in addition to and do not replace services required by the department's contract with the residential facility and that meet a therapeutic goal such as:
 - (a) Adjusting to a serious impairment;
 - (b) Managing personal care needs; or
 - (c) Developing necessary skills to deal with care providers.

- (4) Transportation services, when the service:
 - (a) Provides ~~((you))~~ access to community services and resources provided to meet a therapeutic goal;
 - (b) Is not ~~((diversional))~~ diverting in nature;
 - (c) Is in addition to and does not replace the Medicaid-brokered transportation or transportation services available in the community; and
 - (d) Does not replace the services required by the department's contract with a residential facility.
- (5) Skilled nursing, when the service is:
 - (a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse;
 - (b) Beyond the amount, duration or scope of Medicaid-reimbursed home health services as provided under WAC 388-551-2120; and
 - (c) In addition to and does not replace the services required by the department's contract with the residential facility (e.g. intermittent nursing services as described in WAC 388-78A-2310).
 - (6) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities~~((:))~~. The frequency and scope of the nursing services is based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager.

- (a) Nursing assessment/reassessment;
- (b) Instruction to care providers and clients;
- (c) Care coordination and referral to other health care providers;
- (d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In none-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.
- (e) File review; and/or
- (f) Evaluation of health-related care needs affecting service plan and delivery.
- (7) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to live in a residential facility. Services:
 - (a) May include: Safety deposits, utility set up fees or deposits, health and safety assurances such as pest eradication, allergen control or one time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution.
 - (b) Do not include rent, recreational or ~~((diversional))~~ diverting items such as TV, cable or VCR's.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0500 What services may I receive under medically needy in-home waiver (MNIW)? You may be eligible to receive only the following medically needy in-home waiver (MNIW) services in your own home:

(1) Personal care services as defined in WAC 388-106-0010 in your own home and, as applicable, while you are out of the home accessing community resources or working.

(2) Adult day care if you meet the eligibility requirements under WAC 388-106-0805.

(3) Environmental modifications, if the minor physical adaptations to your home:

(a) Are necessary to ensure your health, welfare and safety;

(b) Enable you to function with greater independence in the home;

(c) Directly benefit you medically or remedially;

(d) Meet applicable state or local codes; and

(e) Are not adaptations or improvements, which are of general utility or add to the total square footage.

(4) Home delivered meals, providing nutritional balanced meals, limited to one meal per day, if:

(a) You are homebound and live in your own home;

(b) You are unable to prepare the meal;

(c) You don't have a caregiver (paid or unpaid) available to prepare this meal; and

(d) Receiving this meal is more cost-effective than having a paid caregiver.

(5) Home health aide service, if the service tasks:

(a) Include assistance with ambulation, exercise, self-administered medications and hands on personal care;

(b) Are beyond the amount, duration or scope of Medicaid reimbursed home health services (WAC 388-551-2120) and are in addition to those available services;

(c) Are health-related. Note: Incidental services such as meal preparation may be performed in conjunction with a health-related task as long as it is not the sole purpose of the aide's visit; and

(d) Do not replace Medicare home health services.

(6) Personal emergency response system (PERS), if the service is necessary to enable you to secure help in the event of an emergency and if you:

(a) Live alone in your own home; or

(b) Are alone, in your own home, for significant parts of the day and have no regular provider for extended periods of time.

(7) Skilled nursing, if the service is:

(a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse; and

(b) Beyond the amount, duration or scope of Medicaid-reimbursed home health services as provided under WAC 388-551-2120.

(8) Specialized durable and nondurable medical equipment and supplies under WAC 388-543-1000, if the items are:

(a) Medically necessary under WAC 388-500-0005;

(b) Necessary: For life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live;

(c) Directly medically or remedially beneficial to you; and

(d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under Medicaid and/or Medicare.

(9) Training needs identified in CARE or in a professional evaluation, which meet a therapeutic goal such as:

(a) Adjusting to a serious impairment;

(b) Managing personal care needs; or

(c) Developing necessary skills to deal with care providers.

(10) Transportation services if you live in your own home, ~~((#))~~ when the service:

(a) Provides ~~((you))~~ access to community services and resources to meet a therapeutic goal;

(b) Is not ~~((diversional))~~ diverting in nature;

(c) Is in addition to and does not replace the Medicaid-brokered transportation or transportation services available in the community.

(11) Nurse delegation services when:

(a) You are receiving personal care from a registered or certified nursing assistant who has completed nurse delegation core training;

(b) Your medical condition is considered stable and predictable by the delegating nurse; and

(c) Services are provided in compliance with WAC 246-840-930.

(12) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities~~((:))~~. The frequency and scope of the nursing services is based on your individual need as determined by your CARE assessment and any collateral contact information obtained by your case manager.

(a) Nursing assessment/reassessment;

(b) Instruction to you and your providers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In none-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource;

(e) File review; and/or

(f) Evaluation of health-related care needs affecting service planning and delivery.

(13) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to set up your own home. Services:

(a) May include: Safety deposits, utility set up fees or deposits, health and safety assurances such as pest eradication, allergen control or one time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution.

(b) Do not include rent, recreational or ~~((diversional))~~ diverting items such as TV, cable or VCR's.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0705 Am I eligible for PACE services?

To qualify for Medicaid-funded PACE services, you must

apply for an assessment by contacting your local home and community services office. The department will assess and determine whether you:

(1) Are age:

(a) Fifty-five or older, and blind or have a disability, as defined in WAC 388-511-1105, SSI-related eligibility requirements; or

(b) Sixty-five or older.

(2) Need nursing facility level of care as defined in WAC 388-106-0355 (~~(. Note: If you are already enrolled, but no longer need nursing facility care, you may still be eligible for PACE services if the department reasonably expects you to need nursing facility care within the next six months in the absence of continued PACE coverage);~~);

(3) Live within the designated service area of the PACE provider;

(4) Meet financial eligibility requirements. This means the department will assess your finances (~~(and)~~), determine if your income and resources fall within the limits (~~(set in WAC 388-515-1505)~~), and determine the amount you may be required to contribute, if any, toward the cost of your care as described in WAC 388-515-1505;

(5) Not be enrolled in any other (~~(medical coverage plan that purchases services on a prepaid basis (e.g., prepaid health plan))~~) Medicare or Medicaid prepayment plan or optional benefit; and

(6) Agree to receive services exclusively through the PACE provider and the PACE provider's network of contracted providers.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0715 How do I (~~(disenroll from)~~) end my enrollment in the PACE program? (1) You may choose to voluntarily (~~(disenroll from)~~) end your enrollment in the PACE program without cause at any time. To do so, you must give the PACE provider written notice. If you give notice:

(a) Before the fifteenth of the month, (~~(disenrollment is)~~) the department will end your enrollment effective at the end of the month; or

(b) After the fifteenth, (~~(disenrollment is not)~~) the department will end your enrollment effective until the end of the following month.

(2) (~~(You may also be involuntarily disenrolled from the program by the PACE provider.)~~) Your enrollment may also end involuntarily if you:

(a) Move out of the designated service area or are out of the service area for more than thirty consecutive days, unless the PACE provider agrees to a longer absence due to extenuating circumstances;

(b) Engage in disruptive or threatening behavior such that the behavior jeopardizes your health or safety, or the safety of others;

(c) Fail to comply with your plan of care or the terms of the PACE enrollment agreement;

(d) Fail to pay or make arrangements to pay your part of the costs after the thirty-day grace period;

(e) Become financially ineligible for Medicaid services, unless you choose to pay privately;

(f) Are enrolled with a provider that loses its license and/or contract; or

(g) No longer meet the nursing facility level of care requirement as defined in WAC 388-106-0205 (~~(and are not deemed PACE eligible)~~).

(3) For any of the above reasons, the PACE provider must give you written notice, explaining that they are terminating benefits. If the provider gives you notice:

(a) Before the fifteenth of the month, then (~~(you may be disenrolled)~~) the department will end your enrollment at the end of the month; or

(b) After the fifteenth, then (~~(you may be disenrolled)~~) the department will end your enrollment at the end of the following month.

(4) Before the PACE provider can involuntarily (~~(disenroll you from)~~) end your enrollment in the PACE program, the department must review and approve (~~(all proposed involuntary disenrollments)~~) it.

NEW SECTION

WAC 388-106-1303 What responsibilities do I have as a client of the department? As a client of the department, you have a responsibility to:

(1) Give us enough information to assess your needs;

(2) Let the social services worker into your home so that your needs can be assessed;

(3) Follow your care plan;

(4) Not act in a way that puts anyone in danger;

(5) Provide a safe work place;

(6) Tell your social services worker if there is a change in:

(a) Your medical condition;

(b) The help you get from family or other agencies;

(c) Where you live; or

(d) Your financial situation.

(7) Tell your social services worker if someone else makes medical or financial decision for you;

(8) Choose a qualified provider;

(9) Keep provider background checks private;

(10) Tell your social services worker if you are having problems with your provider; and

(11) Choose your own health care. Tell your social services worker when you do not do what your doctor says.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-71-0540 When will the department (~~(or)~~), AAA, or managed care entity deny payment for services of an individual provider or home care agency provider? The department (~~(or)~~), AAA, or managed care entity will deny payment for the services of an individual provider or home care agency provider who:

(1) Is the client's spouse, per 42 C.F.R. 441.360(g), except in the case of an individual provider for a chore services client. Note: For chore spousal providers, the department pays a rate not to exceed the amount of a one-person

standard for a continuing general assistance grant, per WAC 388-478-0030;

(2) Is the natural/step/adoptive parent of a minor client aged seventeen or younger receiving services under Medicaid personal care;

(3) Has been convicted of a disqualifying crime, under RCW 43.43.830 and 43.43.842 or of a crime relating to drugs as defined in RCW 43.43.830;

(4) Has abused, neglected, abandoned, or exploited a minor or vulnerable adult, as defined in chapter 74.34 RCW;

(5) Has had a license, certification, or a contract for the care of children or vulnerable adults denied, suspended, revoked, or terminated for noncompliance with state and/or federal regulations;

(6) Does not successfully complete the training requirements within the time limits required in WAC 388-71-05665 through 388-71-05865;

(7) Is already meeting the client's needs on an informal basis, and the client's assessment or reassessment does not identify any unmet need; and/or

(8) Is terminated by the client (in the case of an individual provider) or by the home care agency (in the case of an agency provider).

(9) In addition, the department ((☞)), AAA, or managed care entity may deny payment to or terminate the contract of an individual provider as provided under WAC 388-71-0546, 388-71-0551, and 388-71-0556.

AMENDATORY SECTION (Amending WSR 01-11-019, filed 5/4/01, effective 6/4/01)

WAC 388-71-0546 When can the department ((☞)), AAA, or managed care entity reject the client's choice of an individual provider? The department ((☞)), AAA, or managed care entity may reject a client's request to have a family member or other person serve as his or her individual provider if the case manager has a reasonable, good faith belief that the person will be unable to appropriately meet the client's needs. Examples of circumstances indicating an inability to meet the client's needs could include, without limitation:

(1) Evidence of alcohol or drug abuse;

(2) A reported history of domestic violence, no-contact orders, or criminal conduct (whether or not the conduct is disqualifying under RCW 43.43.830 and 43.43.842);

(3) A report from the client's health care provider or other knowledgeable person that the requested provider lacks the ability or willingness to provide adequate care;

(4) Other employment or responsibilities that prevent or interfere with the provision of required services;

(5) Excessive commuting distance that would make it impractical to provide services as they are needed and outlined in the client's service plan.

AMENDATORY SECTION (Amending WSR 01-11-019, filed 5/4/01, effective 6/4/01)

WAC 388-71-0551 When can the department ((☞)), AAA, or managed care entity terminate or summarily suspend an individual provider's contract? The department ((☞)), AAA, or managed care entity may take action to

terminate an individual provider's contract if the provider's inadequate performance or inability to deliver quality care is jeopardizing the client's health, safety, or well-being. The department ((☞)), AAA, or managed care entity may summarily suspend the contract pending a hearing based on a reasonable, good faith belief that the client's health, safety, or well-being is in imminent jeopardy. Examples of circumstances indicating jeopardy to the client could include, without limitation:

(1) Domestic violence or abuse, neglect, abandonment, or exploitation of a minor or vulnerable adult;

(2) Using or being under the influence of alcohol or illegal drugs during working hours;

(3) Other behavior directed toward the client or other persons involved in the client's life that places the client at risk of harm;

(4) A report from the client's health care provider that the client's health is negatively affected by inadequate care;

(5) A complaint from the client or client's representative that the client is not receiving adequate care;

(6) The absence of essential interventions identified in the service plan, such as medications or medical supplies; and/or

(7) Failure to respond appropriately to emergencies.

AMENDATORY SECTION (Amending WSR 01-11-019, filed 5/4/01, effective 6/4/01)

WAC 388-71-0556 When can the department ((☞)), AAA, or managed care entity otherwise terminate an individual provider's contract? The department ((☞)), AAA, or managed care entity may otherwise terminate the individual provider's contract for default or convenience in accordance with the terms of the contract and to the extent that those terms are not inconsistent with these rules.

AMENDATORY SECTION (Amending WSR 04-02-001, filed 12/24/03, effective 1/24/04)

WAC 388-71-05695 Who is required to complete orientation, and when must it be completed? (1) Home care agency providers must complete orientation before working with the agency's clients. Orientation must be provided by appropriate agency staff.

(2) Individual providers must complete orientation provided by DSHS ((☞)), the area agency on aging (AAA, or managed care entity) no later than fourteen calendar days after beginning to work with their first DSHS client. Individual providers who live and are providing care at a great distance from the DSHS or AAA office may be oriented by distance learning, with phone contact by the person overseeing the orientation to answer questions.

(3) Parents who are individual providers for their adult children are exempt from the orientation requirement.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-71-0704 Adult day care—Services. Adult day care is a supervised daytime program providing core services as defined in WAC 388-106-0800. Core services are

appropriate for adults with medical or disabling conditions that do not require the intervention or services of a registered nurse or licensed rehabilitative therapist acting under the supervision of the client's physician. The adult day care center must offer and provide on site the following core services. These core services must meet the level of care needed by the client as assessed by the department case manager for waiver funded clients and do not exceed the scope of services that the adult day care center is able to provide.

(1) Assistance with activities of daily living:

(a) Locomotion outside of room, locomotion in room, walk in room;

(b) Body care;

(c) Eating;

(d) Repositioning;

(e) Medication management that does not require a licensed nurse;

(f) Transfer;

(g) Toileting;

(h) Personal hygiene at a level that ensures client safety while in attendance at the program; and

(i) Bathing at a level that ensures client safety and comfort while in attendance at the program.

(2) Social services on a consultation basis, which may include:

(a) Referrals to other providers for services not within the scope of Medicaid reimbursed adult day care services;

(b) Caregiver support and education; or

(c) Assistance with coping skills.

(3) Routine health monitoring with consultation from a registered nurse that a consulting nurse acting within the scope of practice can provide with or without a physician's order. Examples include:

(a) Obtaining baseline and routine monitoring information on client health status, such as vital signs, weight, and dietary needs;

(b) General health education such as providing information about nutrition, illnesses, and preventative care;

(c) Communicating changes in client health status to the client's caregiver;

(d) Annual and as needed updating of the client's medical record; or

(e) Assistance as needed with coordination of health services provided outside of the adult day care program.

(4) General therapeutic activities that an unlicensed person can provide or that a licensed person can provide with or without a physician's order. These services are planned for and provided based on the client's abilities, interests, and goals. Examples include:

(a) Recreational activities;

(b) Diversionary activities;

(c) Relaxation therapy;

(d) Cognitive stimulation; or

(e) Group range of motion or conditioning exercises.

(5) General health education that an unlicensed person can provide or that a licensed person can provide with or without a physician's order, including but not limited to topics such as:

(a) Nutrition;

(b) Stress management;

(c) Disease management skills; or

(d) Preventative care.

(6) A nutritional meal and snacks every four hours, including a modified diet if needed and within the scope of the program, as provided under WAC 388-71-0768;

(7) Supervision and/or protection if needed for client safety;

(8) Assistance with arranging transportation to and from the program; and

(9) First aid and provisions for obtaining or providing care in an emergency. NOTE: If the client requires the intervention or services of a registered nurse or licensed rehabilitative therapist acting under the supervision of a physician, consider adult day health services.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-71-0706 Adult day health—Services. Adult day health is a supervised daytime program providing skilled nursing and rehabilitative therapy services in addition to core services. Adult day health services are only appropriate for adults with medical or disabling conditions that require the intervention or services of a registered nurse or licensed rehabilitative therapist acting under the supervision of the client's physician.

The adult day health center must offer and provide on site the following services (~~(listed in WAC 388-106-0810)~~):

(1) All core services under WAC 388-71-0704;

(2) Skilled nursing services other than routine health monitoring with nurse consultation;

(3) At least one of the following skilled therapy services: physical therapy, occupational therapy, or speech-language pathology or audiology, as defined under chapters 18.74, 18.59 and 18.35 RCW; and

(4) Psychological or counseling services, including assessing for psycho-social therapy need, dementia, abuse or neglect, and alcohol or drug abuse; making appropriate referrals; and providing brief, intermittent supportive counseling.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-71-0210	What is the purpose of WAC 388-71-0210 through 388-71-0260?
WAC 388-71-0215	What definitions apply to WAC 388-71-0210 through 388-71-0260?
WAC 388-71-0220	What is an assessment?
WAC 388-71-0225	What is the purpose of a comprehensive assessment?
WAC 388-71-0230	How are my needs for MPC services assessed?
WAC 388-71-0235	What is a service plan?

WAC 388-71-0240	What services may I receive under MPC as a child?
WAC 388-71-0245	What services are not covered under MPC for children?
WAC 388-71-0250	Am I eligible for MPC services?
WAC 388-71-0255	How do children remain eligible for MPC services?
WAC 388-71-0260	Are there limitations to MPC services for children?

AMENDATORY SECTION (Amending WSR 04-16-063 and 04-18-001, filed 7/30/04 and 8/19/04, effective 9/19/04)

WAC 388-110-020 Definitions. "**Adult residential care**" is a package of services provided by a boarding home that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.020 to provide personal care services in accordance with Parts I and IV of this chapter.

"**Applicant**" means the individual, partnership, corporation or other entity which has applied for a contract with the department to provide assisted living services, enhanced adult residential care, enhanced adult residential care-specialized dementia care services, or adult residential care to state funded residents in a licensed boarding home.

"**Assisted living services**" is a package of services provided by a boarding home that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services in accordance with Parts I and II of this chapter. Assisted living services include housing for the resident in a private apartment-like unit.

"**Boarding home**" means the same as the definition found in RCW 18.20.020, or a boarding home located within the boundaries of a federally recognized Indian reservation and licensed by the tribe.

"**Case manager**" means the department staff person or designee assigned to negotiate, monitor, and facilitate a service plan for residents receiving services fully or partially paid for by the department.

"**Contractor**" means the individual, partnership, corporation, or other entity which is licensed by the department or tribe to operate the boarding home and contracts with the department to provide assisted living services, enhanced adult residential care, enhanced adult residential care-specialized dementia care services, or adult residential care to state funded residents in a licensed boarding home.

"**Department**" means the Washington state department of social and health services (DSHS).

"**Dignity**" means the quality or condition of being esteemed and respected in such a way as to validate the self-worth of the resident.

"**Enhanced adult residential care**" is a package of services provided by a boarding home that is licensed under chapter 18.20 RCW and that has a contract with the department to provide personal care services, intermittent nursing

services, and medication administration services in accordance with Parts I and III of this chapter.

"**Enhanced adult residential care-specialized dementia care services**" is a package of service, including specialized dementia care assessment and care planning, personal care services, intermittent nursing services, medication administration services, specialized environmental features and accommodations, and activity programming. Enhanced adult residential care-specialized dementia care services are delivered only within:

(1) Contracted boarding homes that are dedicated solely to the care of individuals with dementia, including Alzheimer's disease, and that meet the requirements of parts I and III of this chapter; or

(2) Designated, separate units located within contracted boarding homes that are dedicated solely to the care of individuals with dementia, including Alzheimer's disease, and that meet the requirements of parts I and III of this chapter.

"**Homelike**" means an environment having the qualities of a home, including privacy, comfortable surroundings, and the opportunity to decorate one's living area and arrange furnishings to suit one's individual preferences. A homelike environment provides residents with an opportunity for self-expression, and encourages interaction with the community, family and friends.

"**Independence**" means free from the control of others and being able to assert one's own will, personality and preferences.

"**Individuality**" means the quality of being unique; the aggregate of qualities and characteristics that distinguishes one from others. Individuality is supported by modifying services to suit the needs or wishes of a specific individual.

"**Medication administration**" means the direct application of a prescribed medication, whether by injection, inhalation, ingestion, or any other means, to the body of a resident by a person legally authorized to do so.

"**Personal care services**" means the same as physical or verbal assistance with activities of daily living included under "personal care services" described in WAC ((388-72A-0035(1))) 388-106-0010. Personal care services do not include assistance with instrumental activities of daily living described in WAC ((388-72A-0035(2))) 388-106-0010, nor assistance with tasks that must be performed by a licensed health professional.

"**Resident**" means a person residing in a boarding home for whom services are paid for, in whole or in part, by the department under a contract for assisted living services, enhanced adult residential care, enhanced adult residential care-specialized dementia care services, or adult residential care. "**Resident**" includes former residents when examining complaints about admissions, readmissions, transfers or discharges. For decision-making purposes, the term "**resident**" includes the resident's surrogate decision maker in accordance with state law or at the resident's request.

AMENDATORY SECTION (Amending WSR 04-16-063, filed 7/30/04, effective 9/1/04)

WAC 388-110-100 Discharge, social leave, and bed hold. The contractor is not required to discharge (move out)

and readmit a resident for absences of less than twenty-one consecutive days. The contractor must:

(1) Note an absence in a resident's record when a resident is absent from the boarding home for more than seventy-two consecutive hours;

(2) Obtain department approval for payment for social leave in excess of ~~((fifteen consecutive))~~ eighteen calendar days per year;

(3) Notify the department within one working day whenever the resident:

(a) Is hospitalized;

(b) Is discharged to another boarding home, nursing home or other health care facility;

(c) Dies; or

(d) Is missing from the boarding home and his or her whereabouts are unknown.

(4) Include the department's case manager in the development of a discharge (move out) plan, and have the case manager approve the plan before any required notice of discharge is issued to the resident, except in an emergency;

(5) Notify the medicaid resident of the boarding home's policies regarding bed-holds, consistent with subsections (6) and (7) of this section and WAC 388-105-0045 as soon as possible before, or as soon as practicable following hospitalization or discharge to a nursing home. The notification must include information concerning:

(a) Options for bed-hold payments, and

(b) Rights to return to the boarding home.

(6) Retain a bed or unit for a medicaid resident who is hospitalized or temporarily placed in a nursing home for up to twenty days when the medicaid resident is likely to return to the boarding home and the department makes payment to the boarding home for holding the bed or unit consistent with WAC 388-105-0045. If, prior to the end of the twenty days, the department determines, or the contractor determines and the department concurs, that the medicaid resident will likely not return to the boarding home:

(a) The department must terminate the bed-hold payment; and (b) The contractor may rent that bed or unit to another resident.

(7) Not seek third-party payment for the first twenty days of retaining the bed for a medicaid resident who is hospitalized or discharged to a nursing home and for whom the department is making a bed hold payment consistent with WAC 388-105-0045.

(a) The contractor may seek third-party payment consistent with RCW 18.20.290 and chapter 388-105 WAC to hold a bed or unit for the time following the first twenty days of a medicaid resident's absence for hospitalization or nursing home care.

(b) If third-party payment is not available, the ~~((contractor must readmit the))~~ medicaid resident may return to the first available and appropriate bed or unit if the medicaid resident:

(i) Continues to meet the boarding home's admission criteria; and

(ii) Chooses to return to the boarding home.

AMENDATORY SECTION (Amending WSR 04-16-063 and 04-18-001, filed 7/30/04 and 8/19/04, effective 9/19/04)

WAC 388-110-220 Enhanced adult residential care service standards. (1) In a boarding home with an enhanced adult residential care contract, the contractor must meet the requirements of parts I and III of this chapter, and for residents served under the enhanced adult residential care contract:

(a) Develop for each resident a negotiated service agreement that supports the principles of dignity, privacy, choice in decision making, individuality, and independence.

(b) Provide or arrange for, at no additional cost to the resident and consistent with the resident's negotiated service agreement and chapter 388-78A WAC:

(i) Intermittent nursing services;

(ii) Medication administration;

(iii) Personal care services; and

(iv) Supportive services that promote independence and self-sufficiency; and

(c) Not allow more than two residents per room.

(2) An enhanced adult residential care-specialized dementia care services contract is a distinct contract, separate from an enhanced adult residential care contract. In a boarding home with an enhanced adult residential care-specialized dementia care services contract, the contractor must:

(a) Meet the requirements of parts I and III of this chapter,

(b) Meet the requirements of subsection (1) of this section, and

(c) Maintain an enhanced adult residential care services contract or an assisted living services contract in addition to the enhanced adult residential care-specialized dementia care services contract.

(3) In a boarding home with an enhanced adult residential care-specialized dementia care services contract, for residents served under that contract, the contractor must:

(a) Complete a full assessment of residents as specified in chapter 388-78A WAC, at a minimum, on a semi-annual basis;

(b) Maintain awake staff twenty-four hours per day. The contractor must provide staffing that is adequate to respond to the assessed sleeping and waking patterns and needs of residents;

(c) Develop and implement policies and procedures:

(i) To manage residents who may wander;

(ii) To outline actions to be taken in case a resident elopes; and

(iii) To obtain consultative resources to address behavioral issues for residents. The contractor must include a plan that identifies the professional (i.e., clinical psychologist, psychiatrist, psychiatric nurse practitioner, or other behavioral specialist familiar with care of persons with dementia with complex or severe problems) who will provide the consultation, and when and how the consultation will be utilized.

(d) Ensure that each staff who works directly with residents has at least six hours of continuing education per year related to dementia, including Alzheimer's disease. This six hours of continuing education may be part of the ten hours of continuing education required by WAC 388-112-0205. Appropriate topics include, but are not limited to:

(i) ~~((Aggressive behaviors and catastrophic reactions; (ii)))~~ Agitation: Caregiving strategies;
 (ii) Challenging behaviors: Strategies for managing aggression and sexual behavior;
 (iii) Delusions and hallucinations;
 (iv) ~~((Dementia))~~ Using problem-solving strategies in dementia care;
 (v) Depression and dementia;
 (vi) Fall prevention for people with dementia;
 (vii) Personal care as meaningful activity;
 (viii) Promoting adequate food and fluid consumption;
 (ix) Promoting pleasant and purposeful activity; ~~((and))~~
~~((ix))~~ (x) Resistance to care: Caregiving strategies; and
 (xi) Recognizing and assessing pain in people with dementia.

(e) Provide all necessary physical assistance with bathing and toilet use for residents who require caregivers to perform these activities and subtasks of these activities, and required oversight and supervision, encouragement and ~~((euing))~~ cueing. For the purposes of this subsection:

(i) "Bathing" has the same meaning as described in WAC ~~((388-72A-0035))~~ 388-106-0010; and

(ii) "Toilet use" has the same meaning as described in WAC ~~((388-72A-0035))~~ 388-106-0010.

(f) Routinely provide ~~((extensive))~~ assistance with eating as necessary, including required oversight and supervision, encouragement and ~~((euing))~~ cueing. The contractor must also provide all necessary physical assistance with eating on an occasional basis for residents who require total feeding assistance. However, the contractor is not required to provide ~~((tube feedings or intravenous nutrition nor provide))~~ total feeding assistance for an extended or indefinite period. As used in this section, eating has the same meaning as described in WAC 388-106-0010, except that the contractor is not required to provide tube feedings or intravenous nutrition.

~~((i)) "Eating" has the same meaning as described in WAC 388-72A-0035, except that the contractor is not required to provide tube feedings or intravenous nutrition;~~

~~((ii)) "Extensive assistance" has the same meaning as described in WAC 388-72A-0040.)~~

(g) Provide daily activities consistent with the functional abilities, interests, habits and preferences of the individual residents. The contractor must support the participation of residents and the resident council, if there is one, in the development of recreational and activity programs that reflect the needs and choices of residents. On a daily basis, the contractor must provide residents access to:

(i) Opportunities for independent, self-directed, activities.

(ii) Individual activities, in which a staff person or volunteer engages the resident in a planned and/or spontaneous activity of interest. Activities may include personal care activities that provide opportunities for purposeful and positive interactions; and

(iii) Group activities.

(h) Offer opportunities for activities that accommodate variations in a resident's mood, energy and preferences. The contractor must make appropriate activities available based upon the resident's individual schedule and interests. For

example, individuals up at night must have access to staff support, food and appropriate activities;

(i) Make available multiple common areas, at least one of which is outdoors, that vary by size and arrangement such as: various size furniture groupings that encourage social interaction; areas with environmental cues that may stimulate activity, such as a resident kitchen or workshop; areas with activity supplies and props to stimulate conversation; a garden area; and paths and walkways that encourage exploration and walking. These areas must accommodate and offer opportunities for individual or group activity;

(j) Ensure that the outdoor area for residents:

(i) Is accessible to residents without staff assistance;

(ii) Is surrounded by walls or fences at least seventy-two inches high;

(iii) Has areas protected from direct sunshine and rain throughout the day;

(iv) Has walking surfaces that are firm, stable, slip-resistant and free from abrupt changes, and are suitable for individuals using wheelchairs and walkers;

(v) Has suitable outdoor furniture;

(vi) Has plants that are not poisonous or toxic to humans; and

(vii) Has areas for appropriate outdoor activities of interest to residents, such as walking paths, raised garden or flower beds, bird feeders, etc.

(k) Ensure that areas used by residents have a residential atmosphere, and residents have opportunities for privacy, socialization, and wandering behaviors;

(l) Ensure any public address system in the area of specialized dementia care services is used only for emergencies;

(m) Encourage residents' individualized spaces to be furnished and or decorated with personal items based on resident needs and preferences;

(n) Ensure residents have access to their own rooms at all times without staff assistance; and

(o) Make available and offer at no additional cost to the resident generic personal care items needed by the resident such as soap, shampoo, toilet paper, toothbrush, toothpaste, deodorant, sanitary napkins, and disposable razors. This does not include items covered by medical coupons or preclude residents from choosing to purchase their own personal care items.

WSR 06-06-040

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed February 23, 2006, 4:34 p.m., effective March 26, 2006]

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

Purpose: These new rules in chapter 388-825 WAC are necessary to implement ESSB 6090, 2005-2007 conference budget (section 205 (1)(e), chapter 518, Laws of 2005), which establishes a flexible family support pilot program for families who are providing care and support for family members with developmental disabilities. The family support

pilot program is funded through June 30, 2007. The division of developmental disabilities (DDD) determined that new sections of chapter 388-825 WAC are necessary to implement the legislature's directive in ESSB 6090. When effective, these rules replace the emergency rules filed as WSR 06-02-042 on December 29, 2005.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.040.

Other Authority: Section 205 (1)(e), chapter 518, Laws of 2005; Title 71A RCW.

Adopted under notice filed as WSR 05-24-090 on December 6, 2005.

Changes Other than Editing from Proposed to Adopted Version: **WAC 388-825-538** has been modified to expand the definition of a sibling to include a sibling under the age of twenty-two if the sibling is still in school. The text follows:

WAC 388-825-538 What is the definition of household? For the purpose of determining household size and gross annual household income, the definition of household follows:

(1) If you are under age eighteen, your household includes:

- (a) You;
- (b) Your natural or adoptive parent(s) or stepparent(s) living with you;
- (c) Your full, half, step, or adoptive siblings living with you if they are:
 - (i) Not married;
 - (ii) Not the head of a household; and
 - (iii) Under age eighteen, or under age twenty-two if they are students regularly attending school or college or training that is designed to prepare the siblings for a paying job.

(2) If you are age eighteen or older, your household includes only you.

WAC 388-825-534 has been expanded to include the federal poverty levels, which became effective on April 1, 2006. The text follows:

WAC 388-825-534 What are the annual federal poverty levels? (1) The annual federal poverty levels (FPL) are based on household size and established by the federal Office of Management and Budget.

(2) Effective April 2005, the annual federal poverty levels are:

Household Size	100% FPL	200% FPL	300% FPL	400% FPL
One	\$9,570	\$19,140	\$28,710	\$38,280
Two	\$12,830	\$25,660	\$38,490	\$51,320
Three	\$16,090	\$32,180	\$48,270	\$64,360
Four	\$19,350	\$38,700	\$58,050	\$77,400
Five	\$22,610	\$45,220	\$67,830	\$90,440
Six	\$25,870	\$51,740	\$77,610	\$103,480
Seven	\$29,130	\$58,260	\$87,390	\$116,520
Eight	\$32,390	\$64,780	\$97,170	\$129,560
Nine	\$35,650	\$71,300	\$106,950	\$142,600
Ten	\$38,910	\$77,820	\$116,730	\$155,640

For each household member over ten, add the following amounts to the ten-person standard:

100% FPL	200% FPL	300% FPL	400% FPL
\$3,260	\$6,520	\$9,780	\$13,040

(3) Effective April 2006, the annual federal poverty levels are:

Household Size	100% FPL	200% FPL	300% FPL	400% FPL
One	\$9,800	\$19,600	\$29,400	\$39,200
Two	\$13,200	\$26,400	\$39,600	\$52,800
Three	\$16,600	\$33,200	\$49,800	\$66,400
Four	\$20,000	\$40,000	\$60,000	\$80,000
Five	\$23,400	\$46,800	\$70,200	\$93,600
Six	\$26,800	\$53,600	\$80,400	\$107,200
Seven	\$30,200	\$60,400	\$90,600	\$120,800
Eight	\$33,600	\$67,200	\$100,800	\$134,400
Nine	\$37,000	\$74,000	\$111,000	\$148,000
Ten	\$40,400	\$80,800	\$121,200	\$161,600

For each household member over ten, add the following amounts to the ten-person standard:

100% FPL	200% FPL	300% FPL	400% FPL
\$3,400	\$6,800	\$10,200	\$13,600

This change was made because the department received the revised federal poverty levels subsequent to the hearing.

A final cost-benefit analysis is available by contacting Steve Brink, P.O. Box 45310, Olympia, WA 98507-5310, phone (360) 725-3416, fax (360) 407-0955, e-mail brinksc@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 33, 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 33, Amended 0, Repealed 0.

Date Adopted: February 15, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

NEW SECTION

WAC 388-825-500 What is the family support pilot?

(1) The Family Support Pilot (FSP) is a new state-only program funded by the legislature to provide services in a new program through June 2007.

(2) The purpose of the Family Support Pilot is to provide paid services in a flexible manner to eligible DDD clients.

NEW SECTION

WAC 388-825-505 What is the statutory authority for the family support pilot? The legislature directed DDD to implement the Family Support Pilot in the 2005-2007 conference budget, chapter 518, Laws of 2005 Section 205(1)(e).

NEW SECTION

WAC 388-825-510 Who is eligible to participate in the family support pilot? To be eligible to participate in the Family Support Pilot (FSP), you must meet all of the following criteria:

- (1) Be a client of DDD.
 - (a) Your eligibility must be current.
 - (b) WAC 388-823-1010 may require a review of your eligibility prior to any approval of paid services.
- (2) Be in DDD's current database as having requested FSP.
- (3) Live with family as defined in WAC 388-825-512.
- (4) Not be receiving any other DDD paid services as defined in WAC 388-825-516.
- (5) Have been determined ineligible for Medicaid Personal Care (MPC).
- (6) Have a gross household annual income of less than or equal to 400% of federal poverty level (FPL).
- (7) Have completed a mini-assessment per chapter 388-824 WAC.

NEW SECTION

WAC 388-825-512 What is the definition of family? Family means relatives who live in the same home with the eligible client. Relatives include parents, grandparents, brother, sister, step-parent, step-brother, step-sister, uncle, aunt, first cousin, niece or nephew.

NEW SECTION

WAC 388-825-513 What is the definition of an "award"? (1) An award is the dollar amount of services performed by a provider for an eligible client.
(2) The award will be paid directly to the provider.

NEW SECTION

WAC 388-825-514 If I participate in the FSP, will I be eligible for services through the DDD home and community based services (HCBS) waiver? You may request to be served in the DDD HCBS waiver per WAC 388-845-0050 but waiver enrollment is limited by waiver capacity and funding. Participation in the FSP will not affect your potential waiver eligibility.

NEW SECTION

WAC 388-825-516 If I receive other DDD funded services do I qualify for the FSP? You do not qualify for the FSP if any of the following apply:

- (1) You receive other DDD funded services identified in WAC 388-823-1015, including services through the DDD HCBS waiver per WAC 388-845-0050;

- (2) You are eligible for Medicaid Personal Care;
- (3) You receive the State Supplementary Payment administered by DDD; or
- (4) You are under age three. (All children under age three receive or are eligible to receive services through the Infant Toddler Early Intervention Program and/or child development services through DDD.)

NEW SECTION

WAC 388-825-520 If I qualify for and receive an FSP award, will my name remain on the family support waitlist? Participation in the FSP does not remove your name from the family support waitlist.

NEW SECTION

WAC 388-825-524 How do I apply for the FSP? You may apply for the FSP by completing and returning an FSP questionnaire that DDD will send to individuals and families who are on the family support waitlist as of August 1, 2005.

NEW SECTION

WAC 388-825-528 What will DDD do with the FSP questionnaire that you return? When you return the FSP questionnaire, DDD will determine your eligibility according to the criteria contained in WAC 388-825-510 and notify you of its decision according to WAC 388-825-588.

NEW SECTION

WAC 388-825-532 How does DDD determine the federal poverty level (FPL) for my household? DDD determines the federal poverty level (FPL) for your household by asking you for your gross annual household income and the number of people living in your household.

- (1) DDD cannot determine your financial eligibility for FSP without this information.
- (2) If you do not provide this information, you will not be eligible for FSP services.

NEW SECTION

WAC 388-825-534 What are the annual federal poverty levels? (1) The annual federal poverty levels (FPL) are based on household size and established by the federal Office of Management and Budget.

(2) Effective April 2005, the annual federal poverty levels are:

Household Size	100% FPL	200% FPL	300% FPL	400% FPL
One	\$9,570	\$19,140	\$28,710	\$38,280
Two	\$12,830	\$25,660	\$38,490	\$51,320
Three	\$16,090	\$32,180	\$48,270	\$64,360
Four	\$19,350	\$38,700	\$58,050	\$77,400
Five	\$22,610	\$45,220	\$67,830	\$90,440
Six	\$25,870	\$51,740	\$77,610	\$103,480
Seven	\$29,130	\$58,260	\$87,390	\$116,520
Eight	\$32,390	\$64,780	\$97,170	\$129,560

Household Size	100% FPL	200% FPL	300% FPL	400% FPL
Nine	\$35,650	\$71,300	\$106,950	\$142,600
Ten	\$38,910	\$77,820	\$116,730	\$155,640

For each household member over ten, add the following amounts to the ten-person standard:

100% FPL	200% FPL	300% FPL	400% FPL
\$3,260	\$6,520	\$9,780	\$13,040

(3) Effective April 2006, the annual federal poverty levels are:

Household Size	100% FPL	200% FPL	300% FPL	400% FPL
One	\$9,800	\$19,600	\$29,400	\$39,200
Two	\$13,200	\$26,400	\$39,600	\$52,800
Three	\$16,600	\$33,200	\$49,800	\$66,400
Four	\$20,000	\$40,000	\$60,000	\$80,000
Five	\$23,400	\$46,800	\$70,200	\$93,600
Six	\$26,800	\$53,600	\$80,400	\$107,200
Seven	\$30,200	\$60,400	\$90,600	\$120,800
Eight	\$33,600	\$67,200	\$100,800	\$134,400
Nine	\$37,000	\$74,000	\$111,000	\$148,000
Ten	\$40,400	\$80,800	\$121,200	\$161,600

For each household member over ten, add the following amounts to the ten-person standard:

100% FPL	200% FPL	300% FPL	400% FPL
\$3,400	\$6,800	\$10,200	\$13,600

NEW SECTION

WAC 388-825-536 What is "gross annual household income"? Gross annual household income means total unearned and earned income prior to any deductions or taxes for the past calendar year.

- (1) Ownership of income is defined in WAC 388-450-0005.
- (2) Income that is not counted is defined in WAC 388-450-0015.
- (3) Unearned income is defined in WAC 388-450-0025.
- (4) Earned income is defined in WAC 388-450-0030.

NEW SECTION

WAC 388-825-538 What is the definition of household? For the purpose of determining household size and gross annual household income, the definition of household follows:

- (1) If you are under age eighteen, your household includes:
 - (a) You;
 - (b) Your natural or adoptive parent(s) or stepparent(s) living with you;
 - (c) Your full, half, step, or adoptive siblings living with you if they are:
 - (i) Not married;
 - (ii) Not the head of a household; and

(iii) Under age eighteen, or under age twenty-two if they are students regularly attending school or college or training that is designed to prepare the siblings for a paying job.

(2) If you are age eighteen or older, your household includes only you.

NEW SECTION

WAC 388-825-540 Who must declare their income?

If you are a child under age of eighteen at the time you are declaring income, your custodial, natural/step/adoptive parent(s) or guardian(s) must declare income.

(2) If you are age eighteen or older, you are the only household member to declare income. You must report all unearned and earned income.

(3) Income is subject to verification upon department request.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 388-825-544 If I meet eligibility for FSP, will I receive paid services? You will have access to an amount of paid services called an "FSP Award" if:

- (1) You are determined eligible by DDD to participate in FSP;
- (2) You meet one of the priority groups in WAC 388-825-554; and
- (3) There is funding available.

NEW SECTION

WAC 388-825-548 What is the amount of the FSP awards? FSP Awards are based on your gross household income and the annual Federal Poverty Level (FPL) based on your household size and income.

Amount of Annual Income	Amount of Award
Equal to or less than 100% FPL	Up to \$4,000 per year
Greater than 100% but equal to or less than 200% FPL	Up to \$3,000 per year
Greater than 200% but equal to or less than 300% FPL	Up to \$2,000 per year
Greater than 300% but equal to or less than 400% FPL	Up to \$1,000 per year

NEW SECTION

WAC 388-825-552 What if there are two or more family members who qualify for FSP? Each family member who is eligible will be considered for an award.

NEW SECTION

WAC 388-825-554 How will DDD determine who will receive awards for FSP? Within the availability of staff time, DDD will distribute the awards to eligible FSP clients in order of the following priorities:

(1) Client or caregiver with health and safety needs that places the client at immediate risk of out-of-home placement in a nursing facility or ICF/MR.

(2) Clients living in single parent households;

(3) Clients with multiple disabilities; and

(4) Clients who are at least twenty-one years old and graduated from high school who need employment services.

NEW SECTION

WAC 388-825-558 What FSP services can my family and I receive? You and your family can use your FSP Award to pay for any of the following services identified and agreed to in your FSP service plan with DDD:

(1) Respite care which is intermittent relief to your caregiver.

(a) Respite care may be provided in your home or the home of a relative or licensed provider, or community setting/activity contracted for respite care.

(b) The respite provider must be a qualified individual or agency per WAC 388-825-300 through WAC 388-825-400.

(c) Respite care may be provided by a registered or licensed nurse if you require a licensed health professional as determined by DDD.

(2) Training and consultation for you or your family, including:

(a) Counseling related to your disability or genetic counseling.

(b) Parenting classes and disability related support groups.

(c) Behavior management/counseling.

(3) Assistive technologies or specialized or adaptive equipment related to your development disability:

(a) Mobility devices such as walkers and wheelchairs are included, as well as communication devices and medical supplies such as diapers for children three years of age or older.

(b) Professional justifications may be required by the department.

(4) Employment services for those clients twenty-one years of age and older. See chapter 388-850 WAC.

(5) Extraordinary household expenses resulting from the client's developmental disability such as a portion of the power bill for a ventilator dependent client.

(a) The expense is limited to the total cost divided by the total number of persons living in the family.

(b) This will not include the purchase of any appliances, furniture, or floor coverings.

NEW SECTION

WAC 388-825-560 What department restrictions apply to FSP? The following department restrictions apply to FSP:

(1) FSP services are authorized only after you have accessed what is available to you under Medicaid, and any other private health insurance plan, school or child development services.

(2) All FSP service payments must be agreed to by DDD and the client in a written service plan.

(3) The department will contract directly with providers. FSP funding cannot be authorized for services or treatments determined by the department to be experimental.

(4) Your choice of qualified providers and services is limited to the most cost effective option that meets your assessed need.

(5) Respite care cannot be a replacement for child care while the parent or guardian is at work regardless of the age of the child.

(6) The department shall not authorize a birth parent, adoptive parent, step-parent or any other primary caregiver or their spouse living in the same household with the client to provide respite, nursing, therapy or counseling services.

(7) FSP will not pay for conference registrations.

(8) FSP will not pay for behavior management/counseling procedures, modifications, or equipment that are restrictive.

(9) FSP will not pay for services provided after the death of the eligible client. Payment may occur after the date of death, but not the service.

(10) FSP will not pay for employment services if you are under age twenty-one or are designated to receive DDD funded transition services.

NEW SECTION

WAC 388-825-562 What is an FSP plan? (1) An FSP plan is a written plan you develop with your DDD case resource manager that identifies the services you will purchase with your FSP Award.

(2) The FSP plan will last for up to twelve months, but cannot extend beyond June 30, 2007.

(3) The department has the final approval over service authorization.

NEW SECTION

WAC 388-825-564 Does my family have a choice of FSP services? The individual and family identify and choose FSP services per WAC 388-825-558 through the department's assessment and planning process. Adult clients are included in the choice of FSP services.

NEW SECTION

WAC 388-825-572 What if I have needs that exceed my FSP award limit? If you have needs that exceed your FSP award limit, DDD may approve additional funding to meet certain extraordinary needs as "one-time award". This approval is an exception to your award limit and you cannot appeal the amount of the exception or denial of an exception.

NEW SECTION

WAC 388-825-575 What are one-time awards? A one-time award is limited to extraordinary support for individuals receiving FSP funding.

(1) The one-time award can only be approved for the following services performed by a DDD contracted provider:

(a) Respite care; and/or

(b) Behavior management/counseling.

(2) A one-time award may be approved only once during the period of time covered by your FSP plan.

(3) Providers of the services in subsection (1) of this section must be contracted with and paid directly by DDD.

NEW SECTION

WAC 388-825-576 How do I apply for a one-time award? You may apply for a one-time award by following the procedures contained in WAC 388-825-236.

NEW SECTION

WAC 388-825-578 What amount of one-time funding is available for my family? The maximum amount of one-time funding available for respite care and/or behavior management/counseling is the same as the amount of your award, determined by WAC 388-825-548.

NEW SECTION

WAC 388-825-581 How long do I remain eligible for the FSP? (1) If you are approved for an FSP award, your FSP plan will be reviewed annually for continued funding as long as FSP funding is available.

(2) The Family Support Pilot ends June 30, 2007.

NEW SECTION

WAC 388-825-584 Can I be terminated from FSP? You will be terminated from FSP if any of the following occur:

- (1) Your DDD eligibility is terminated per chapter 388-823 WAC;
- (2) You no longer live with a family as defined in WAC 388-825-512;
- (3) You begin living independently or with a spouse;
- (4) You begin to receive other DDD funded services;
- (5) Your household income exceeds 400% of the FPL;
- (6) You become eligible for Medicaid Personal Care; and or
- (7) FSP funding is no longer available.

NEW SECTION

WAC 388-825-586 When are changes in my circumstances considered effective? (1) Except for changes in income and/or household size, changes are effective immediately.

(2) Changes in gross annual household income and changes in household size are effective at the time your FSP plan is reviewed.

NEW SECTION

WAC 388-825-588 How will the department notify me of their decisions? The department will provide written notification to you and your legal representative of all eligibility and service decisions per WAC 388-825-100 through WAC 388-825-105. These notices will include your appeal rights.

NEW SECTION

WAC 388-825-591 What are my appeal rights under the FSP? You have appeal rights under WAC 388-825-120 to the following decisions:

- (1) Denial of eligibility to participate in the FSP per WAC 388-825-510.
- (2) A denial, reduction or termination of FSP services.
- (3) A denial or termination of your choice of a qualified provider.

NEW SECTION

WAC 388-825-595 How do I appeal a department action? Your appeal rights and procedures to appeal a department decision are in WAC 388-825-120 through WAC 388-825-165.

WSR 06-07-001

PERMANENT RULES

PUBLIC DISCLOSURE COMMISSION

[Filed March 1, 2006, 1:30 p.m., effective April 1, 2006]

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

Purpose: To adjust the I-134 dollar amounts based on changes in economic conditions as reflected in the inflationary index used by the commission (WAC 390-05-400); to adjust the public disclosure commission regular meeting schedule to accommodate commissioner scheduling conflicts (WAC 390-12-010) and; to incorporate modifications for the submission of hearing materials to include timing, electronic format, spacing, page limits, etc.

Citation of Existing Rules Affected by this Order: Amending WAC 390-05-400, 390-12-010, and 390-37-136.

Statutory Authority for Adoption: RCW 42.17.370 and 42.17.690.

Adopted under notice filed as WSR 06-04-081 on January 31, 2006; WSR 05-23-039 on November 9, 2005; and WSR 05-24-060 on December 2, 2005.

Changes Other than Editing from Proposed to Adopted Version: In WAC 390-37-136 a reference to subsection (3)(a) was inserted and a clarification as to who receives evidence or briefs.

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 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, 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 0.

Date Adopted: March 1, 2006.

Vicki Rippie
Executive DirectorAMENDATORY SECTION (Amending WSR 03-22-064,
filed 11/4/03, effective 1/1/04)**WAC 390-05-400 Changes in dollar amounts.** Pursuant to the requirement in RCW 42.17.690 that the commission biennially revise the dollar amounts found in Initiative 134 to reflect changes in economic conditions, the following revisions are made:

Code Section	Subject Matter	Amount Enacted or Last Revised	((2004)) <u>2006</u> Revision
.020	Definition of "Independent Expenditure"	\$ ((625)) <u>675</u>	\$ ((675)) <u>700</u>
.125	Reimbursement of candidate for loan to own campaign	\$ ((3,800)) <u>4,000</u>	\$ ((4,000)) <u>4,300</u>
.180(1)	Report— Applicability of provisions to Persons who made contributions Persons who made independent expenditures	\$ ((12,500)) <u>13,500</u> \$ ((625)) <u>675</u>	\$ ((13,500)) <u>14,500</u> \$ ((675)) <u>700</u>
.640(1)	Contribution Limits— Candidates for state leg. office Candidates for other state office	\$ ((625)) <u>700</u> \$ ((1,250)) <u>1,400</u>	((675)) ((1,350))
.640(2)	Contribution Limits— State official up for recall or pol comm. supporting recall— State Legislative Office Other State Office	\$ ((625)) <u>700</u> \$ ((1,250)) <u>1,400</u>	((675)) ((1,350))
.640(3)	Contribution Limits— Contributions made by political parties and caucus committees State parties and caucus committees County and leg. district parties Limit for all county and leg. district parties to a candidate	((64)) <u>.70</u> per voter ((32)) <u>.35</u> per voter ((32)) <u>.35</u> per voter	((68 per voter)) ((34 per voter)) ((34 per voter))
.640(4)	Contribution Limits— Contributions made by pol. parties and caucus committees to state official up for recall or committee supporting recall State parties and caucuses County and leg. district parties Limit for all county and leg. district parties to state official up for recall or pol. comm. supporting recall	((64)) <u>.70</u> per voter ((32)) <u>.35</u> per voter ((32)) <u>.35</u> per voter	((68 per voter)) ((34 per voter)) ((34 per voter))
.640 (6)	Limits on contributions to political parties and caucus committees To caucus committee To political party	\$ ((625)) <u>700</u> \$ ((3,200)) <u>3,500</u>	((675)) ((3,400))
.740	Contribution must be made by written instrument	\$ ((60)) <u>65</u>	\$ ((65)) <u>70</u>

AMENDATORY SECTION (Amending WSR 04-12-053, filed 5/28/04, effective 6/28/04)

WAC 390-12-010 Public disclosure commission—Regular meetings. Pursuant to RCW 42.30.075, regular meetings of the public disclosure commission are scheduled to be held on the fourth (~~Tuesday~~) Thursday of each month at 9:00 a.m. unless a different time is noted on an agenda, except November and December when a combined meeting is scheduled to be held during the first or second week of December. The meetings shall be held in the commission meeting room, second floor, Evergreen Plaza Building, 711 Capitol Way, Olympia, Washington, unless circumstances require relocating to another site. If relocating is required, the meeting shall be held at a place designated by the executive director of the commission.

AMENDATORY SECTION (Amending WSR 03-22-065, filed 11/4/03, effective 12/5/03)

WAC 390-37-136 Production of documents and use at hearing and other hearing procedures (adjudicative proceedings). (1) (~~Upon request by either the agency or its legal representative, or the party against whom the enforcement action is being taken or his/her representative, copies of all materials to be presented at the adjudicative proceeding shall be provided to the requester within seven calendar days of the request but, for good cause shown, not less than three business days prior to the date of the hearing.~~

~~(2) When exhibits of a documentary character are to be offered into evidence at the adjudicative proceeding, the party offering the exhibit shall provide a minimum of ten copies.~~

~~(3) If documentary evidence has not been exchanged prior to the hearing under subsection (1) of this section, the parties shall arrive at the hearing location in sufficient time before the time scheduled for the adjudicative proceeding for the purpose of exchanging copies of exhibits to be introduced.)~~ Unless a prehearing order states otherwise, the provisions of this rule apply to evidence and written argument (legal briefs) filed and served in hearings (adjudicative proceedings). Parties or the executive director may request a prehearing conference if provisions of this rule need to be adjusted or if the provisions are not adhered to by the parties.

(2) The parties are encouraged to exchange copies of proposed exhibits, exhibit lists and witness lists prior to the deadline specified in subsection (3)(a) of this section. The parties are encouraged to exchange documents by e-mail. The parties are encouraged to confer and determine whether there are any objections to the evidence and whether any agreements or stipulations can be reached regarding proposed exhibits, witnesses, and legal and factual issues.

(3)(a) Unless the commission determines otherwise, when evidence is to be offered at the adjudicative proceeding or when briefs are to be submitted at the adjudicative proceeding, the party offering the evidence or brief shall file with the commission and serve on all parties a copy of proposed exhibits, exhibit lists, witness lists, and briefs with the commission via an e-mail to the executive director or his or her designee by the date and time designated by the executive director or designee, which is typically by 1:00 p.m. Pacific

Time at least eight calendar days prior to the hearing. The e-mail shall provide the name of the party submitting the documents, the total number of pages, the software used to prepare the document, and the name, address, telephone number and e-mail address of the person sending the e-mail message.

(b) In the event electronic submission is not readily available to a *pro se* respondent or the evidence is not suited to e-mail transmission, other means of providing these materials to the commission may be approved by the chair or the executive director, or their designees if requested in advance of the date and time in (a) of this subsection.

(c) On the day the parties provide these materials electronically to the commission, they shall also mail or otherwise deliver a paper (or hard copy) set of the materials to the commission.

(d) The parties shall confirm in advance with the executive director that any documents provided electronically are able to be accessed by software available at the agency. If they are not accessible, the executive director shall direct how the documents are to be submitted.

(e) The documents are considered filed when received during actual business hours at the commission office. If received after actual business hours, they will be deemed filed the next business day.

(4) Respondent's exhibits shall be numbered R-1, R-2, etc. Commission staff exhibits shall be numbered S-1, S-2, etc. Jointly submitted exhibits shall be numbered J-1, J-2, etc. If an exhibit is not jointly submitted but there is no objection to it by the responding party, the party offering the exhibit shall designate agreed-to exhibits on the party's exhibit list.

(5) Briefs shall contain the name of the respondent in the caption and the cause number. Briefs shall be no more than twenty-five pages, double-spaced, excluding attachments or exhibits.

(6) The parties shall inform the executive director of any special equipment necessary for the adjudicative proceeding at the time documents are filed with the commission.

WSR 06-07-006

PERMANENT RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 06-35—Filed March 2, 2006, 2:55 p.m., effective April 2, 2006]

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

Purpose: Amend rules ballast water reporting.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-77-090.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 06-02-097 on January 4, 2006.

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 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: February 10, 2006.

Nancy Burkhart
for Ron Ozment, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 01-173, filed 8/20/01, effective 9/20/01)

WAC 220-77-090 Ballast water management and control—Reporting and sampling requirements. (1) Vessels which are subject to chapter 77.120 RCW and which intend to discharge ballast water into Washington state waters must report ballast water management information at least twenty-four hours prior to entering Washington waters by filing a ballast water report pursuant to Title 33 C.F.R. Part 151.2045 with the department's designated agents as follows:

(a) Vessels bound for Puget Sound or coastal ports must file their ballast water reporting form with the Marine Exchange of Puget Sound in Seattle. Forms must be submitted by fax or in electronic format.

(b) Vessels bound for Washington ports on the Columbia River must file their ballast water reporting form with the Merchants Exchange of Portland. Forms must be submitted by fax or in electronic format.

(2) Vessels not intending to discharge ballast water into Washington state waters shall notify the department in one of the following ways:

(a) Vessel operators who do not wish to file a ballast water reporting form may send a signed letter to the state ANS coordinator, at Department of Fish and Wildlife, 600 Capitol Way No., Olympia, WA 98501-1091, which includes the following information:

(i) Vessel name, identification number (International Maritime Organization, Lloyds of London or U.S. Coast Guard registry number), owner, agent and vessel type; and

(ii) A statement that the vessel will not discharge ballast water.

(b) Vessels that would normally discharge ballast water, but will not discharge on any given trip, may continue to file the ballast water reporting form, with "not discharging" written in the ballast water history section.

(3) The department, or designated representatives, may at reasonable times and in a reasonable manner, during a vessel's scheduled stay in port, take samples of ballast water and sediment, may examine ballast water management records, and may make other appropriate inquiries to assess the compliance of vessels with ballast water reporting and control requirements.

(4) Interim report for implementing 2007 ballast water exchange program.

(a) All vessels subject to chapter 77.120 RCW that enter Washington waters after July 1, 2007, will be prohibited from discharging ballast water under the safety exemptions to the ballast water exchange program. In order to implement the 2007 program, vessel information is required to be on file with the department prior to July 1, 2006.

(b) All vessels subject to chapter 77.120 RCW that enter Washington waters after July 1, 2006, are required, prior to July 1, 2006, to file a Washington State Interim Ballast Water Management Report Form on the report form provided in (d) of this subsection.

(c) A vessel subject to chapter 77.120 RCW that enters Washington waters after July 1, 2006, and for which the vessel owner has not submitted a Washington State Interim Ballast Water Management Report Form is subject to a five hundred dollar reporting penalty.

(d) Washington State Interim Ballast Water Management Report Form and Instructions:

Completion Instructions For:

Washington State Interim Ballast Water Management Report Form

(Please type in English)

SECTION 1. OWNER/OPERATOR

Vessel(s) Owner Information: Write in the name of the registered owner(s) of the vessel. If under charter, enter Operator name. Also provide mailing address.

Responsible Party Information: Print the person's name, company and contact information (current phone number and e-mail) of the person responsible for administering the management plan described below.

SECTION 2. FLEET INFORMATION

Vessel Name: Print the name of each vessel covered by this management report. A separate report is required for vessels that will use different methods of ballast management. For example: Five vessels may be listed in one report that are going to use the same type of ballast treatment system. A separate report would be required for another five vessels that intend to use ballast exchange and retaining ballast onboard as a management option.

Existing Vessel or New Build: Fill in "Existing Vessel" if this is an existing vessel currently in operation. Fill in "New Build 1," "New Build 2" etc., for vessels that are in a design or new construction phase, but not yet in operation.

IMO Number: Fill in identification number of the vessel used by the International Maritime Organization.

Type: List specific vessel type. Use the following abbreviations: bulk (bc), ro-ro (rr), container (cs), tanker (ts), passenger (pa), oil/bulk ore (ob), general cargo (gc), reefer (rf). Write out any additional vessel types.

GT: What is the Gross Tonnage of the vessel?

Ballast Capacity: What is the maximum volume of ballast water used when no cargo is on board? ***Please include volume units in m³.***

SECTION 3. BALLAST MANAGEMENT COMPLIANCE PLAN (2007)

a. Retaining ballast: Check yes or no to indicate if the vessel's ballast management plan considers retaining some or all ballast on board when in Washington state waters.

b. Local waters: Check yes or no to indicate if the vessel's ballast management plan includes the discharge of water that originated solely within local waters.

c. Ballast exchange: Check yes or no to indicate whether the vessel's ballast management plan will include ballast exchange.

d. If unable to exchange: Safety exemptions will no longer be an acceptable management option in Washington state waters after July 1, 2007. Vessel operators that are using ballast exchange should describe how they will manage ballast discharges into Washington state waters if unable to conduct a safe exchange at sea.

e. Ballast Treatment System: Vessel operators that intend to use a ballast treatment system as a ballast management option should complete subsections **f.** through **l.**

Note: Dates supplied within subsections **h.** through **k.** can be estimated. **Additional Comments** under subsection **l.** are optional.

FOOTER. SIGNATURE AND DATE

Signature of Responsible Party: Forms submitted by fax or mail require the signature of the responsible party. Forms submitted by e-mail do not require a signature; however, the responsible party sending the form by e-mail is certifying that all information contained is complete and accurate. If you choose to send the PDF version of the form by e-mail, a message will inform you that "you are sending a data file only, not the form." This is the correct submittal process.

Date of Submission: Provide date on which form was submitted.

1. Owner/Operator	Vessel(s) Owner Information:	Responsible Party Information:
	Name _____	Name _____
	Address _____	Address _____
	City, State/Province Zip _____	City, State/Province Zip _____
	Country _____	Country _____
	Telephone Number _____	Telephone Number _____
	E-mail _____	E-mail _____

2. Fleet Information						
	Vessel Name	Existing Vessel, or New Build	IMO#	Type	GT	Ballast Capacity
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						

Notes:
 1. If you need to list additional vessels, make sure cursor is in last row of table, select "Table" on the menu bar, choose "Insert," then select "Rows Below."
 2. Use one reporting form for each ballast water management plan.
 3. See attached instruction form.

3. Ballast Management Compliance Plan (2007)

a. Does this management plan include retaining ballast on board?	Yes	No
b. Does this management plan include the discharge of water that originated solely within "local waters" ?	Yes	No
c. Does this management plan include ballast exchange ?	Yes	No
d. If considering ballast exchange: How will you handle ballast if unable to exchange at sea?		
e. Does this management plan include a ballast treatment system ? If yes, complete f. through l.	Yes	No
f. Vendor Company		

g. Vendor Contact	
h. Final System Selection Date	j. System Purchase Date
i. System Installation Date	k. System Operational Date
l. Additional Comments	
Responsible Party Signature: _____ Date: _____ <i>By submitting this form by e-mail, the responsible party is certifying that all information provided is complete and accurate.</i>	

WSR 06-07-012
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed March 3, 2006, 4:21 p.m., effective April 3, 2006]

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

Purpose: WAC 388-105-0035 is being amended to limit the payment of a capital add-on rate to licensed boarding homes with assisted living (AL) contracts that make units that meet specified structural requirements available to Medicaid clients.

Citation of Existing Rules Affected by this Order: Amending WAC 388-105-0035.

Statutory Authority for Adoption: Chapter 74.39A RCW.

Adopted under notice filed as WSR 06-03-118 on January 17, 2006.

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 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 1, Repealed 0.

Date Adopted: February 28, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 02-22-058, filed 10/31/02, effective 12/1/02)

WAC 388-105-0035 (~~What are the~~) **Requirements for a capital add-on rate for licensed boarding homes contracted to provide assisted living ((facilities (ALF)?) (AL) services.** (1) ((Effective July 1, 2002,-)) (a) To the

extent of available funding, the department will grant a capital add-on rate to ~~((an ALF))~~ AL contractors that~~((=~~

~~(a) Meets))~~ have a Medicaid occupancy percentage that equals or exceeds the applicable biyearly Medicaid minimum occupancy percentage set in accordance with subsection (3) of this section and meet the construction requirements ~~((of WAC 388-110-140; and))~~

~~((b) Has a Medicaid occupancy percentage that equals or exceeds the applicable biyearly Medicaid minimum occupancy percentage set in accordance with subsection (3) of this section.))~~ in subsection (4) of this section.

(2) The department will determine an ~~((ALF's))~~ AL contractor's Medicaid occupancy percentage by dividing its Medicaid resident days by the product of all its licensed boarding home beds irrespective of use times calendar days for the six-month period beginning one year prior to the percentage effective date.

(3)(a) To set the biyearly Medicaid minimum occupancy percentage, the department will:

(i) Determine the estimated total budgeted funds for capital add-on rates for the six-month period;

(ii) Rank from highest to lowest the individual ~~((ALF))~~ AL contractor occupancy percentages determined in accordance with subsection (2) of this section;

(iii) Assign, beginning with the highest ~~((ALF))~~ AL contractor's Medicaid occupancy percentage, the estimated expenditure needed to pay the capital add-on rate to each facility for the six-month period;

(iv) Identify the ~~((ALF))~~ AL contractor's Medicaid occupancy percentage at which the estimated total budgeted funds determined under subsection (3)(a)(i) of this section would be expended; and

(v) Set that Medicaid occupancy percentage as the biyearly Medicaid minimum occupancy percentage.

(b) The biyearly Medicaid minimum occupancy percentage will be set every January 1 and July 1.

~~(4) To receive a capital add-on rate, the AL contractor that meets the Medicaid minimum occupancy percentage established in accordance with subsection (2) and (3) of this section must:~~

~~(a) Attest in writing that it has units that meet the following requirements and that it places Medicaid residents in such units, except the contractor need only place the Medicaid resident in a room with a roll-in shower when the resident's service plan and assessment details require the Medicaid resident to have a roll-in shower:~~

(i) A private apartment-like unit of two hundred and twenty square feet that may include counters, closets and built-ins, but must exclude the bathroom;

(ii) A separate private bathroom that includes a sink, toilet, and a shower or bathtub. The licensed boarding home must have a minimum of one wheelchair accessible bathroom with a roll-in shower of at least forty-eight inches by thirty inches for every two residents whose care is partially or fully funded by Medicaid;

(iii) A lockable entry door;

(iv) A kitchen area equipped with a refrigerator, microwave oven or stove top; a counter surface of a minimum of thirty inches wide by twenty-four inches in depth, a maximum height of thirty-four inches, and a knee space beneath at least twenty-seven inches in height; a storage space for utensils and supplies; and

(v) A living area wired for telephone and television service when available in the geographic location; or

(b) When the AL contractor does not have units that meet the requirements of subsection (4)(a) of this section, then the AL contractor may receive a capital add-on rate when its AL facility meets the definition of "new boarding home" in WAC 388-110-140 (2)(a) or its AL facility is "grandfathered" under WAC 388-110-140(3).

Statutory Authority for Adoption: Chapter 74.39A RCW.

Adopted under notice filed as WSR 06-03-119 on January 17, 2006.

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 2, Repealed 6.

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 2, Repealed 6.

Date Adopted: February 28, 2005 [2006].

Andy Fernando, Manager
Rules and Policies Assistance Unit

WSR 06-07-013

**PERMANENT RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed March 3, 2006, 4:24 p.m., effective April 3, 2006]

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

Purpose: These rules are being revised to update the home and community residential rates from the four level payment system to the comprehensive assessment reporting evaluation (CARE) payment levels and to reflect the vendor rate increases of July 1, 2005; and to amend the bed hold section to clarify the requirements for third-party payment and to clarify that an absence less than twenty-four hours is not subject to a bed hold payment.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-105-0010, 388-105-0015, 388-105-0020, 388-105-0025, 388-105-0030 and 388-105-0040; and amending WAC 388-105-0005 and 388-105-0045.

AMENDATORY SECTION (Amending WSR 04-09-092, filed 4/20/04, effective 5/21/04)

WAC 388-105-0005 ((What are)) The daily Medicaid payment rates for ((contracted)) clients assessed using the comprehensive assessment reporting evaluation (CARE) tool and that reside in adult family homes (AFH)((;)) and boarding homes contracted to provide assisted living (AL), adult residential care (ARC), and enhanced adult residential care (EARC) services((?)). For contracted AFH((;)) and boarding homes contracted to provide AL, ARC, and EARC services, the department pays the following daily rates for care of a Medicaid resident:

((Four level payment system rates for AFHs, ARCs, & EARCs			
Care Levels	Non-metropolitan	Metropolitan*	((King Co.
Level 1	\$ 45.70	\$ 44.43	\$ 44.43
Level 2	\$ 48.65	\$ 50.89	\$ 56.34
Level 3	\$ 56.32	\$ 58.76	\$ 65.01
Level 4	\$ 67.75))	\$ 71.67	\$ 77.91))

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE

KING COUNTY

CARE CLASSIFICATION	AL		ARC	EARC	AFH
	Without Capital	With Capital			
	Add-on	Add-on			
A Low (1)	\$64.02	\$69.03	\$45.27	\$45.27	\$45.90
A Med (2)	\$69.32	\$74.33	\$51.37	\$51.37	\$52.09
A High (3)	\$77.78	\$82.78	\$65.61	\$65.61	\$58.28

<u>B Low (4)</u>	<u>\$64.02</u>	<u>\$69.03</u>	<u>\$45.27</u>	<u>\$45.27</u>	<u>\$45.90</u>
<u>B Med (5)</u>	<u>\$71.44</u>	<u>\$76.45</u>	<u>\$57.47</u>	<u>\$57.47</u>	<u>\$58.28</u>
<u>B High (6)</u>	<u>\$85.18</u>	<u>\$90.19</u>	<u>\$73.75</u>	<u>\$73.75</u>	<u>\$66.52</u>
<u>C Low (7)</u>	<u>\$69.32</u>	<u>\$74.33</u>	<u>\$51.37</u>	<u>\$51.37</u>	<u>\$52.09</u>
<u>C Med (8)</u>	<u>\$77.78</u>	<u>\$82.78</u>	<u>\$65.61</u>	<u>\$65.61</u>	<u>\$66.52</u>
<u>C High (9)</u>	<u>\$96.83</u>	<u>\$101.84</u>	<u>\$85.96</u>	<u>\$85.96</u>	<u>\$87.15</u>
<u>D Low (10)</u>	<u>\$71.44</u>	<u>\$76.45</u>	<u>\$57.47</u>	<u>\$57.47</u>	<u>\$66.52</u>
<u>D Med (11)</u>	<u>\$77.78</u>	<u>\$82.78</u>	<u>\$65.61</u>	<u>\$65.61</u>	<u>\$74.78</u>
<u>D High (12)</u>	<u>\$96.83</u>	<u>\$101.84</u>	<u>\$85.96</u>	<u>\$85.96</u>	<u>\$87.15</u>

<u>COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE</u>					
<u>METROPOLITAN COUNTIES*</u>					
	<u>AL</u>		<u>ARC</u>	<u>EARC</u>	<u>AFH</u>
<u>CARE CLASSIFICATION</u>	<u>Without Capital</u>	<u>With Capital</u>			
	<u>Add-on</u>	<u>Add-on</u>			
<u>A Low (1)</u>	<u>\$58.73</u>	<u>\$63.28</u>	<u>\$45.27</u>	<u>\$45.27</u>	<u>\$45.90</u>
<u>A Med (2)</u>	<u>\$61.91</u>	<u>\$66.45</u>	<u>\$49.33</u>	<u>\$49.33</u>	<u>\$50.03</u>
<u>A High (3)</u>	<u>\$75.67</u>	<u>\$80.22</u>	<u>\$62.56</u>	<u>\$62.56</u>	<u>\$55.18</u>
<u>B Low (4)</u>	<u>\$58.73</u>	<u>\$63.28</u>	<u>\$45.27</u>	<u>\$45.27</u>	<u>\$45.90</u>
<u>B Med (5)</u>	<u>\$67.20</u>	<u>\$71.75</u>	<u>\$54.42</u>	<u>\$54.42</u>	<u>\$55.18</u>
<u>B High (6)</u>	<u>\$83.07</u>	<u>\$87.62</u>	<u>\$69.69</u>	<u>\$69.69</u>	<u>\$63.43</u>
<u>C Low (7)</u>	<u>\$61.91</u>	<u>\$66.45</u>	<u>\$49.33</u>	<u>\$49.33</u>	<u>\$50.03</u>
<u>C Med (8)</u>	<u>\$75.67</u>	<u>\$80.22</u>	<u>\$62.56</u>	<u>\$62.56</u>	<u>\$63.43</u>
<u>C High (9)</u>	<u>\$93.65</u>	<u>\$98.20</u>	<u>\$79.85</u>	<u>\$79.85</u>	<u>\$80.97</u>
<u>D Low (10)</u>	<u>\$67.20</u>	<u>\$71.75</u>	<u>\$54.42</u>	<u>\$54.42</u>	<u>\$63.43</u>
<u>D Med (11)</u>	<u>\$75.67</u>	<u>\$80.22</u>	<u>\$62.56</u>	<u>\$62.56</u>	<u>\$70.65</u>
<u>D High (12)</u>	<u>\$93.65</u>	<u>\$98.20</u>	<u>\$79.85</u>	<u>\$79.85</u>	<u>\$80.97</u>

*Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, and Yakima counties.

<u>COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE</u>					
<u>NON-METROPOLITAN COUNTIES**</u>					
	<u>AL</u>		<u>ARC</u>	<u>EARC</u>	<u>AFH</u>
<u>CARE CLASSIFICATION</u>	<u>Without Capital</u>	<u>With Capital</u>			
	<u>Add-on</u>	<u>Add-on</u>			
<u>A Low (1)</u>	<u>\$57.68</u>	<u>\$62.52</u>	<u>\$45.27</u>	<u>\$45.27</u>	<u>\$45.90</u>
<u>A Med (2)</u>	<u>\$61.91</u>	<u>\$66.75</u>	<u>\$48.32</u>	<u>\$48.32</u>	<u>\$49.00</u>
<u>A High (3)</u>	<u>\$75.67</u>	<u>\$80.51</u>	<u>\$61.55</u>	<u>\$61.55</u>	<u>\$54.15</u>
<u>B Low (4)</u>	<u>\$57.68</u>	<u>\$62.52</u>	<u>\$45.27</u>	<u>\$45.27</u>	<u>\$45.90</u>
<u>B Med (5)</u>	<u>\$67.20</u>	<u>\$72.04</u>	<u>\$53.41</u>	<u>\$53.41</u>	<u>\$54.16</u>
<u>B High (6)</u>	<u>\$83.07</u>	<u>\$87.91</u>	<u>\$67.65</u>	<u>\$67.65</u>	<u>\$62.41</u>

<u>C Low (7)</u>	<u>\$61.91</u>	<u>\$66.75</u>	<u>\$48.32</u>	<u>\$48.32</u>	<u>\$49.00</u>
<u>C Med (8)</u>	<u>\$75.67</u>	<u>\$80.51</u>	<u>\$61.55</u>	<u>\$61.55</u>	<u>\$62.41</u>
<u>C High (9)</u>	<u>\$93.65</u>	<u>\$98.49</u>	<u>\$76.80</u>	<u>\$76.80</u>	<u>\$77.88</u>
<u>D Low (10)</u>	<u>\$67.20</u>	<u>\$72.04</u>	<u>\$53.41</u>	<u>\$53.41</u>	<u>\$62.41</u>
<u>D Med (11)</u>	<u>\$75.67</u>	<u>\$80.51</u>	<u>\$61.55</u>	<u>\$61.55</u>	<u>\$68.59</u>
<u>D High (12)</u>	<u>\$93.65</u>	<u>\$98.49</u>	<u>\$76.80</u>	<u>\$76.80</u>	<u>\$77.88</u>

**** Non-Metropolitan Counties:** Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Orielle, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla and Whitman.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 04-09-092, filed 4/20/04, effective 5/21/04)

WAC 388-105-0045 Bed or unit hold Medicaid resident discharged for a hospital or nursing home stay from an adult family home (AFH) or a boarding home with an adult residential care services (ARC), enhanced adult residential care services (EARC), or assisted living services (AL) contract. (1) When an AFH, ARC, EARC, or AL contracts to provide services under chapter 74.39A RCW, the AFH, ARC, EARC, and AL ~~((provider))~~ contractor must hold a Medicaid eligible resident's bed or unit when:

- (a) Short-term care is needed in a nursing home or hospital;
- (b) The resident is likely to return to the AFH, ARC, EARC, or AL; and
- (c) Payment is made under subsection (3) of this section.

(2) When the department pays the ~~((provider))~~ contractor to hold the Medicaid resident's bed or unit during the resident's short-term nursing home or hospital stay, the ~~((provider))~~ contractor must hold the unit or bed for up to twenty days. A Medicaid resident's discharge from an AFH, ARC, EARC, or an AL facility for a short term stay in a nursing home or hospital must be longer than twenty-four hours before subsection (3) of WAC 388-105-0045 applies.

(3) The department will compensate the ~~((provider))~~ contractor for holding the bed or unit for the:

- (a) First through seventh day at seventy percent of the daily rate paid for care of the resident before the hospital or nursing home stay; and
- (b) Eighth through the twentieth day, at ten dollars and ~~((forty-three))~~ seventy-eight cents a day.

(4) The AFH, ARC, EARC, or AL facility may seek third-party payment to hold a bed or unit for twenty-one days or longer. The third-party payment shall not exceed the Medicaid daily rate paid to the facility for the resident. If third-party payment is not available and the returning Medicaid resident continues to meet the admission criteria under chapter 388-71 and/or 106 WAC, then the Medicaid resident may return to the first available and appropriate bed or unit.

(5) The department's social worker or case manager determines whether the:

(a) ~~((Care given))~~ Stay in a nursing home or hospital will be short-term; and

(b) Resident is likely to return to the AFH, ARC, EARC, or AL facility.

(6) When the resident's stay in the hospital or nursing home exceeds twenty days or the department's social worker or case manager determines that the Medicaid resident's stay in the nursing home or hospital is not short-term and the resident is unlikely to return to the AFH, ARC, EARC, or AL facility, then ~~((this))~~ only subsection (4) of this section ~~((does not apply))~~ applies to any private contractual arrangements that the ~~((provider))~~ contractor may make with a third party in regard to the discharged resident's unit or bed.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-105-0010 What are care levels?
- WAC 388-105-0015 How does the department determine whether the Medicaid resident needs assistance in completing ADLs and/or has unmet care needs?
- WAC 388-105-0020 How does the department determine at which care level the Medicaid resident will be placed?
- WAC 388-105-0025 How many ADL values and unmet care need points correspond to the four care levels?
- WAC 388-105-0030 What are the daily Medicaid payment rates for contracted assisted living facilities (AL) not receiving a capital rate add-on?
- WAC 388-105-0040 What are the daily capital add-on rates for assisted living facilities (AL) and the AL daily payment rates with a capital add-on rate?

WSR 06-07-014
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Health and Recovery Services Administration)
 [Filed March 3, 2006, 4:27 p.m., effective April 3, 2006]

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

Purpose: The department is revising this rule to update cross-references to other Washington Administrative Code sections.

Citation of Existing Rules Affected by this Order: Amending WAC 388-542-0020.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.522.

Adopted under notice filed as WSR 06-03-077 on January 12, 2006.

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 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 1, Repealed 0.

Date Adopted: February 24, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-16-064, filed 7/30/04, effective 8/30/04)

WAC 388-542-0020 Other rules that apply to SCHIP. In addition to the rules of this chapter, SCHIP clients are subject to the following rules:

(1) Chapter 388-538 WAC, Managed care (except WAC 388-538-061, WAC 388-538-063, and WAC 388-538-065);

(2) WAC 388-505-0210 (3) and (8), Children's medical eligibility;

(3) WAC 388-505-0211, Premium requirements for SCHIP children;

(4) WAC 388-416-0015(10), Certification periods; and

(5) WAC 388-418-0025 (4) and (5), Change of circumstance.

WSR 06-07-017

PERMANENT RULES

UTILITIES AND TRANSPORTATION

COMMISSION

[Docket No. UE-051106, General Order No. R-528—Filed March 6, 2006, 1:22 p.m., effective April 6, 2006]

In the matter of adopting a portion of chapter 480-108 WAC, relating to electric companies - interconnection with electric generators.

1 STATUTORY OR OTHER AUTHORITY: The Washington utilities and transportation commission takes this action under Notice No. WSR 06-03-126, filed with the code reviser

on January 18, 2006. The commission brings this proceeding pursuant to RCW 80.01.040 and 80.04.160.

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 that is order is entered.

4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE: RCW 34.05.325(6) requires that the commission prepare and provide to commenters a concise explanatory statement about an adopted rule. The statement must include the identification of the commission's reasons for adopting the rule, a description of the difference between the version of the proposed rules published in the register and the rules as adopted (other than editing changes), a summary of the comments received regarding the proposed rule changes, and the commission's responses to the comments, reflecting the commission's consideration of them.

5 The commission often includes a discussion of those matters in its rule adoption order. In addition, to avoid unnecessary duplication, the commission designates the discussion in this order as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda. Together, the documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.

6 The rules establish standards for interconnection of consumer-owned power generation facilities up to 25 kW capacity to electric utility delivery systems. These regulations include standards for applications for interconnection, processing of such applications, technical and engineering standards for interconnections, safety standards, insurance and liability provisions, and other provisions.

7 The commission is adopting this rule to advance state policy to encourage the use of renewable energy technologies.¹

¹ RCW 80.28.025 Establishes a state policy to encourage electric power resources from renewable sources through use of incentives.

8 SSB 5101, chapter 300, Laws of 2005, states that "the legislature intends to provide incentives for the greater use of locally created renewable energy technologies." SSB 5101 also provides that utilities, in return for a credit against the public utility excise tax, may supply an incentive payment to consumers for consumer-generated electricity from renewable energy systems. However, the incentive payments created by SSB 5101 are only available to customers connected to the distribution system of a light and power business if "uniform standards for interconnection to the electric distribution system" are in effect for utilities serving eighty percent of total customer load in the state.

Establishing standards for interconnection of customer-owned power generation facilities to the delivery systems of the investor-owned utilities constitutes substantial progress toward meeting the threshold condition established by SSB 5101 for customer incentive payments.

9 The rules encourage small-scale, customer-owned distributed generation facilities by establishing uniformity

among the investor-owned utilities regarding technical and process standards for interconnection of such facilities to utility delivery systems.

10 In addition, recently enacted amendments to Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) require the commission to consider and determine whether to establish standards for interconnection. The commission's inquiry and adoption of this rule complies with this requirement.

11 **REFERENCE TO AFFECTED RULES:** This order establishes the first portion of a new chapter of Washington Administrative Code, chapter 480-108 WAC, Electric companies—Interconnection with electric generators.

12 The commission intends to continue investigation of facilities greater than 25 kW in a supplemental CR-102.

13 This order adopts the following sections of Washington Administrative Code: WAC 480-108-001 Purpose and scope, 480-108-005 Application of rules, 480-108-010 Definitions, 480-108-020 Technical standards for interconnection, 480-108-030 Application for interconnection, 480-108-040 General terms and conditions of interconnection, 480-108-050 Certificate of completion, 480-108-060 Required filings—Exceptions, and 480-108-999 Adoption by reference.

14 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:** The commission filed a preproposal statement of inquiry (CR-101) on August 12, 2005, at WSR 05-17-083. The statement advised interested persons that the commission was considering entering a rule making to establish regulations to govern the interconnection of consumer-owned power generation facilities to utility delivery facilities.

15 **ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL STATEMENT:** The commission informed persons of its inquiry into this matter by providing notice of the subject and the CR-101 to all persons on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and the commission's lists of all registered electric and gas companies, persons interested in electric and gas issues, as well as to attorneys representing these companies. The commission posted the relevant rule making information on its internet web site at <http://www.wutc.wa.gov/051106>. In its notice the commission posed two questions and invited interested persons to respond and make proposals addressing electrical interconnection. The two questions were:

1. If the commission establishes regulations governing interconnection to utility distribution or transmission facilities that are not FERC-jurisdictional, should it strive for consistency with the FERC standards?

2. Do the FERC regulations in Order No. 2006 (particularly Appendices "E" and "F") represent a good technical framework for commission regulations to govern interconnection? What modifications and adjustments would be necessary if the commission were to use the FERC rules as a model?

The commission also welcomed any comprehensive recommendations or proposals that stakeholders or utilities might propose for statewide standards for interconnection as an alternative to the FERC model.

16 Pursuant to the notice, the commission received comments on October 14, 2005, from the following companies, organizations, and interested persons: Industrial Customers of Northwest Utilities ("ICNU"), the Renewable Northwest Project ("RNP")², and the Washington load-serving utilities ("utilities")³. The utilities proposed a set of standards that they jointly developed and recommended as a framework for establishing interconnection standards to be used by both commission-jurisdictional utilities and public utilities that are not jurisdictional to the commission.⁴

²The Renewable Northwest Project submitted joint comments along with the American Wind Energy Association and the Northwest Energy Coalition.

³The load-serving utilities, a group consisting of Puget Sound Energy, Avista Corporation, PacificCorp, Benton REA, Big Bend Rural Electric Cooperative, Chelan County PUD, City of Port Angeles, Clark Public Utilities, Elmhurst Mutual, Grant County PUD, Kittitas County PUD, Lewis County PUD, Seattle City Light, Snohomish County PUD, Tacoma Power, the Washington PUD Association, Western Rural Electric Cooperative Association, and the Association of Washington Cities.

⁴The commission commends the investor-owned and public utilities for working cooperatively to develop a proposed set of uniform interconnection standards. We particularly appreciate the constructive participation in our inquiry and rule-making process of the public utilities that are not within our jurisdiction.

17 The commission convened a workshop on December 2, 2005, to discuss interconnection issues and the utilities' proposal. More than forty interested persons attended and participated in the workshop.

18 Drawing on the written comments received and the discussion at the workshop, the commission circulated draft rules for comment on December 19, 2005. The commission received no further comments or suggestions.

19 **NOTICE OF PROPOSED RULE MAKING:** The commission filed a notice of proposed rule making (CR-102) on January 18, 2006, at WSR 06-03-126, scheduling the matter for oral comment and adoption at 2:30 p.m., Wednesday, February 22, 2006, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice provided interested persons the opportunity to submit written comments to the commission by February 8, 2006.

20 **COMMENTERS (WRITTEN COMMENTS):** The commission received one written comment from Mr. Chris Herman urging that the proposed rule be adopted as soon as possible.

21 **RULE-MAKING HEARING:** The commission considered the rule proposal for adoption, pursuant to the notice in WSR 06-03-126, at a rule-making hearing before Chairman Mark H. Sidran, Commissioner Patrick J. Oshie, and Commissioner Philip B. Jones. Mr. Tom DeBoer of Puget Sound Energy and Mr. Bruce Folsom of Avista Corporation testified in support of the proposed rule.

22 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the commission finds and concludes that it should adopt the rules in the CR-102 notice at WSR 06-03-126.

23 **CHANGES FROM PROPOSAL:** The commission adopts the proposal noticed at WSR 06-03-126 with minor editorial changes, addition of a section of citations to standards and rules adopted by reference and clarification that any disputes

arising under the rule will be addressed in accordance with chapter 480-07 WAC.

24 STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE: After reviewing the entire record, the commission determines that WAC 480-108-001, 480-108-005, 480-108-010, 480-108-020, 480-108-030, 480-108-040, 480-108-050, 480-108-060, and 480-108-999 should be adopted 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 8, 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 8, 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.

ORDER

25 THE COMMISSION ORDERS:

26 The commission adopts WAC 480-108-001, 480-108-005, 480-108-010, 480-108-020, 480-108-030, 480-108-040, 480-108-050, 480-108-060, and 480-108-999 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).

27 This order and the rules set out below, 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, this 6th day of March, 2006.

Washington utilities and transportation commission
Mark H. Sidran, Chairman
Patrick J. Oshie, Commissioner
Philip B. Jones, Commissioner

Chapter 480-108 WAC

ELECTRIC COMPANIES—INTERCONNECTION WITH ELECTRIC GENERATORS

NEW SECTION

WAC 480-108-001 Purpose and scope. (1) The purpose of this chapter is to establish rules for determining the terms and conditions governing the interconnection of electric generating facilities with a nameplate generating capacity of not more than 25 kilowatts to the electric system of an

electrical company over which the commission has jurisdiction.

(2) These rules are intended to be consistent with the requirements of chapter 80.60 RCW, Net metering of electricity; to partially comply with Section 1254 of the Energy Policy Act of 2005, Pub. L. No. 109-58 (2005); and to promote the purposes of Substitute Senate Bill No. 5101, chapter 300, Laws of 2005 (effective July 1, 2005).

(3) This chapter governs the terms and conditions under which the applicant's generating facility will interconnect with, and operate in parallel with, the electrical company's electric system. This chapter does not govern the settlement, purchase or delivery of any power generated by the applicant's generating facility.

NEW SECTION

WAC 480-108-005 Application of rules. (1) The rules in this chapter apply to any electrical company that is subject to the jurisdiction of the commission under RCW 80.04.010 and chapter 80.28 RCW. These rules also include various requirements applicable to the applicant and the generator.

(2) The tariff provisions filed by electrical companies must conform to these rules. If the commission accepts a tariff that conflicts with these rules, the acceptance does not constitute a waiver of these rules unless the commission specifically approves the variation consistent with WAC 480-100-008. Electrical companies shall modify, if necessary, any existing tariffs, including, but not limited to, tariffs implementing chapter 80.60 RCW, Net metering of electricity, which are currently on file and approved by the commission to conform to these rules.

(3) Disputes that arise under this chapter will be addressed in accordance with chapter 480-07 WAC.

NEW SECTION

WAC 480-108-010 Definitions. "Applicant" means any person, corporation, partnership, government agency, or other entity applying to interconnect a generating facility to the electrical company's electric system pursuant to this chapter.

"Application" means the written notice as defined in WAC 480-108-030 provided by the applicant to the electrical company that initiates the interconnection process.

"Certificate of completion" means the form as defined in WAC 480-108-050 completed by the applicant or generator and the electrical inspector having jurisdiction over the installation of the facilities indicating completion of installation and inspection of the interconnection.

"Commission" means the Washington utilities and transportation commission.

"Electric system" means all electrical wires, equipment, and other facilities owned or provided by the electrical company that are used to transmit electricity to customers.

"Electrical company" means any public service company as defined by RCW 80.04.010 engaged in the generation, distribution, sale or furnishing of electricity and which is subject to the jurisdiction of the commission.

"Generating facility" means a source of electricity owned by the applicant or generator that is located on the

applicant's side of the point of common coupling, and all facilities ancillary and appurtenant thereto, including interconnection facilities, which the applicant requests to interconnect to the electrical company's electric system.

"Generator" means the entity that owns and/or operates the generating facility interconnected to the electrical company's electric system.

"Initial operation" means the first time the generating facility is in parallel operation with the electric system.

"In-service date" means the date on which the generating facility and any related facilities are complete and ready for service, even if the generating facility is not placed in service on or by that date.

"Interconnection" means the physical connection of a generating facility to the electric system so that parallel operation may occur.

"Interconnection facilities" means the electrical wires, switches and other equipment used to interconnect a generating facility to the electric system.

"Model interconnection agreement" means standardized terms and conditions that govern the interconnection of generating facilities pursuant to this chapter. The model interconnection agreement may be modified to accommodate terms and conditions specific to individual interconnections, subject to the conditions set forth in these rules.

"Net metering" means measuring the difference between the electricity supplied by an electrical company and the electricity generated by a generating facility that is fed back to the electrical company over the applicable billing period.

"Network distribution system (grid or spot)" means electrical service from a distribution system consisting of two or more primary circuits from one or more substations or transmission supply points arranged such that they collectively feed secondary circuits serving one (a spot network) or more (a grid network) electrical company customers.

"Parallel operation" or "operate in parallel" means the synchronous operation of a generating facility while interconnected with an electrical company's electric system.

"Point of common coupling" or "PCC" means the point where the generating facility's local electric power system connects to the electrical company's electric system, such as the electric power revenue meter or at the location of the equipment designated to interrupt, separate or disconnect the connection between the generating facility and electrical company.

NEW SECTION

WAC 480-108-020 Technical standards for interconnection. The technical standards listed in this section shall apply to all generating facilities to be interconnected to the electrical company under this chapter.

(1) General interconnection requirements.

(a) Any generating facility desiring to interconnect with the electrical company's electric system or modify an existing interconnection must meet all minimum technical specifications applicable, in their most current approved version, as set forth in this chapter.

(b) The specifications and requirements in this section are intended to mitigate possible adverse impacts caused by the generating facility on electrical company equipment and personnel and on other customers of the electrical company. They are not intended to address protection of the generating facility itself, generating facility personnel, or its internal load. It is the responsibility of the generating facility to comply with the requirements of all appropriate standards, codes, statutes and authorities to protect its own facilities, personnel, and loads.

(c) The specifications and requirements in this section shall apply generally to the nonelectrical company-owned electric generation equipment to which this standard and agreement(s) apply throughout the period encompassing the generator's installation, testing and commissioning, operation, maintenance, decommissioning and removal of said equipment. The electrical company may verify compliance at any time, with reasonable notice.

(d) The generator shall comply with the requirements in (d)(i), (ii) and (iii) of this subsection. However, at its sole discretion, the electrical company may approve alternatives that satisfy the intent of, and/or may excuse compliance with, any specific elements of these requirements except local, state and federal building codes.

(i) Code and standards. Applicant shall conform to all applicable codes and standards for safe and reliable operation. Among these are the National Electric Code (NEC), National Electric Safety Code (NESC), the Institute of Electrical and Electronics Engineers (IEEE), American National Standards Institute (ANSI), and Underwriters Laboratories (UL) standards, and local, state and federal building codes. The generator shall be responsible to obtain all applicable permit(s) for the equipment installations on its property.

(ii) Safety. All safety and operating procedures for joint use equipment shall be in compliance with the Occupational Safety and Health Administration (OSHA) Standard at 29 CFR 1910.269, the NEC, Washington Administrative Code (WAC) rules, the Washington Industrial Safety and Health Administration (WISHA) Standard, and equipment manufacturer's safety and operating manuals.

(iii) Power quality. Installations will be in compliance with all applicable standards including IEEE Standard 519-1992 Harmonic Limits.

(2) Specific interconnection requirements.

(a) Applicant shall furnish and install on applicant's side of the meter, a UL-approved safety disconnect switch which shall be capable of fully disconnecting the applicant's generating facility from electrical company's electric system. The disconnect switch shall be located adjacent to electrical company meters and shall be of the visible break type in a metal enclosure which can be secured by a padlock. The disconnect switch shall be accessible to electrical company personnel at all times.

(b) The requirement in (a) of this subsection may be waived by the electrical company if:

(i) Applicant provides interconnection equipment that applicant can demonstrate, to the satisfaction of electrical company, performs physical disconnection of the generating equipment supply internally; and

(ii) Applicant agrees that its service may be disconnected entirely if generating equipment must be physically disconnected for any reason.

(c) The electrical company shall have the right to disconnect the generating facility at the disconnect switch under the following circumstances: When necessary to maintain safe electrical operating conditions; if the generating facility does not meet required standards; or if the generating facility at any time adversely affects or endangers any person, the property of any person, the electrical company's operation of its electric system or the quality of electrical company's service to other customers.

(d) Nominal voltage and phase configuration of applicant's generating facility must be compatible to the electrical company system at the point of common coupling.

(e) Applicant must provide evidence that its generation will never result in reverse current flow through the electrical company's network protectors. All instances of interconnection to secondary spot distribution networks shall require review and written preapproval by electrical company. Interconnection to distribution secondary grid networks is not allowed. Closed transition transfer switches are not allowed in secondary network distribution systems.

(3) Specifications applicable to all inverter-based interconnections. Any inverter-based generating facility desiring to interconnect with the electrical company's electric system or modify an existing interconnection must meet the technical specifications, in their most current approved version, as set forth below.

(a) IEEE Standard 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems.

(b) UL Standard 1741, Inverters, Converters, and Controllers for Use in Independent Power Systems. Equipment must be UL listed.

(c) IEEE Standard 929, IEEE Recommended Practice for Utility Interface of Photovoltaic (PV) Systems.

(4) Requirements applicable to all noninverter-based interconnections. Noninverter-based interconnection requests may require more detailed electrical company review, testing, and approval, at applicant cost, of the equipment proposed to be installed to ensure compliance with applicable technical specifications, in their most current approved version, including:

(a) IEEE Standard 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems.

(b) ANSI Standard C37.90, IEEE Standard for Relays and Relay Systems Associated with Electric Power Apparatus.

(c) Applicants proposing such interconnection may also be required to submit a power factor mitigation plan for electrical company review and approval.

NEW SECTION

WAC 480-108-030 Application for interconnection.

(1) When an applicant requests interconnection from an electrical company, the applicant shall be responsible for conforming to the rules and regulations that are in effect and on file with the commission. The electric utility will designate a point of contact and publish a telephone number or web site

address for this unique purpose. The applicant seeking to interconnect a generating facility under these rules must fill out and submit a signed application form to the electrical company. Information must be accurate, complete, and approved by the electrical company prior to installing the generating facility. The electrical company shall file a form of application with the commission.

(2) Application fees. The electrical company may require a nonrefundable interconnection application fee of no more than one hundred dollars.

(3) Application prioritization. All generation interconnection requests pursuant to this chapter will be prioritized by the electrical company in the same manner as any new load requests. Preference will not be given to either request type. The electrical company will process the application and provide interconnection in a time frame consistent with the average of other service connections.

(4) Application evaluation. All generation interconnection requests pursuant to this chapter will be reviewed by the utility for compliance with the rules of this chapter. If the utility in its sole discretion finds that the application does not comply with this chapter, the utility may reject the application. If the utility rejects the application, it shall provide the applicant with written notification stating its reasons for rejecting the application.

NEW SECTION

WAC 480-108-040 General terms and conditions of interconnection. The general terms and conditions listed in this section shall apply to all generating facilities interconnecting to the electrical company under this chapter.

(1) Any electrical generating facility with a maximum electrical generating capacity of 25 kW or less must comply with these rules to be eligible to interconnect and operate in parallel with the electrical company's electric system. The rules under this chapter shall apply to all interconnecting generating facilities that are intended to operate in parallel with an electrical company's electric system irrespective of whether the applicant intends to generate energy to serve all or a part of the applicant's load; or to sell the output to the electrical company or any third party purchaser.

(2) In order to ensure system safety and reliability of interconnected operations, all interconnected generating facilities shall be constructed and operated by generator in accordance with this chapter and all other applicable federal, state, and local laws and regulations.

(3) Prior to initial operation, all generators must submit a completed certificate of completion to the electrical company, execute an appropriate interconnection agreement and any other agreement(s) required for the disposition of the generating facility's electric power output as described in WAC 480-108-040(14). The interconnection agreement between the electrical company and generator outlines the interconnection standards, cost allocation and billing agreements, and on-going maintenance and operation requirements.

(4) Applicant or generator shall promptly furnish the electrical company with copies of such plans, specifications, records, and other information relating to the generating

facility or the ownership, operation, use, or maintenance of the generating facility, as may be reasonably requested by the electrical company from time to time.

(5) For the purposes of public and working personnel safety, any nonapproved generation interconnections discovered will be immediately disconnected from the electrical company system.

(6) To ensure reliable service to all electrical company customers and to minimize possible problems for other customers, the electrical company will review the need for a dedicated-to-single-customer distribution transformer. Interconnecting generating facilities under 25 kW may require a separate transformer. If the electrical company requires a dedicated distribution transformer, the applicant or generator shall pay for all costs of the new transformer and related facilities.

(7) Metering.

(a) Net metering for solar, wind, hydropower and fuel cells as set forth in chapter 80.60 RCW: The electrical company shall install, own and maintain a kilowatt-hour meter, or meters as the installation may determine, capable of registering the bi-directional flow of electricity at the point of common coupling at a level of accuracy that meets all applicable standards, regulations and statutes. The meter(s) may measure such parameters as time of delivery, power factor, voltage and such other parameters as the electrical company shall specify. The applicant shall provide space for metering equipment. It will be the applicant's responsibility to provide the current transformer enclosure (if required), meter socket(s) and junction box after the applicant has submitted drawings and equipment specifications for electrical company approval. The electrical company may approve other generating sources for net metering but is not required to do so.

(b) Production metering: The electrical company may require separate metering for production. This meter will record all generation produced and may be billed separately from any net metering or customer usage metering. All costs associated with the installation of production metering will be paid by the applicant.

(8) Common labeling furnished or approved by the electrical company and in accordance with NEC requirements must be posted on meter base, disconnects, and transformers informing working personnel that generation is operating at or is located on the premises.

(9) As currently set forth for qualifying generation under chapter 80.60 RCW, for solar, wind, hydro or fuel cells, no additional insurance will be necessary. For other generating facilities permitted under these standards but not contained within chapter 80.60 RCW, additional insurance, limitations of liability and indemnification may be required by the electrical company.

(10) Prior to any future modification or expansion of the generating facility, the generator will obtain electrical company review and approval. The electrical company reserves the right to require the generator, at the generator's expense, to provide corrections or additions to existing electrical devices in the event of modification of government or industry regulations and standards.

(11) For the overall safety and protection of the electrical company system, chapter 80.60 RCW currently limits interconnection of generation for net metering to 0.1% of the electrical company's peak demand during 1996. Additionally, interconnection of generating facilities to individual distribution feeders will be limited to 10% of the feeder's peak capacity. However, the electrical company may, in its sole discretion, allow additional generation interconnection beyond these stated limits.

(12) It is the responsibility of the generator to protect its facilities, loads and equipment and comply with the requirements of all appropriate standards, codes, statutes and authorities.

(13) Charges by the electrical company to the applicant or generator in addition to the application fee, if any, will be compensatory and applied as appropriate. Such costs may include, but are not limited to, transformers, production meters, and electrical company testing, qualification, and approval of non-UL 1741 listed equipment. The generator shall be responsible for any costs associated with any future upgrade or modification to its interconnected system required by modifications in the electrical company's electric system.

(14) This section does not govern the settlement, purchase or delivery of any power generated by applicant's generating facility. The purchase or delivery of power, including net metering of electricity pursuant to chapter 80.60 RCW, and other services that the applicant may require will be covered by separate agreement or pursuant to the terms, conditions and rates as may be from time to time approved by the commission. Any such agreement shall be complete prior to initial operation and filed with the commission.

(15) Generator may disconnect the generating facility at any time; provided, that the generator provide reasonable advance notice to the electrical company.

(16) Generator shall notify the electrical company prior to the sale or transfer of the generating facility, the interconnection facilities or the premises upon which the facilities are located. The applicant or generator shall not assign its rights or obligations under any agreement entered into pursuant to these rules without the prior written consent of electrical company, which consent shall not be unreasonably withheld.

NEW SECTION

WAC 480-108-050 Certificate of completion. All generating facilities must obtain an electrical permit and pass electrical inspection before they can be connected or operated in parallel with the electrical company's electric system. Generator shall provide to electrical company written certification that the generating facility has been installed and inspected in compliance with the local building and/or electrical codes.

NEW SECTION

WAC 480-108-060 Required filings—Exceptions. (1) The electrical company shall file, as part of its tariff, and maintain on file for inspection at its place of business, the charges, terms and conditions for interconnections pursuant to this chapter. Such filing shall include model forms of the following documents and contracts:

- (a) Application.
- (b) Model interconnection agreement.
- (c) Certificate of completion.

(2) The commission may grant such exceptions to these rules as may be appropriate in individual cases.

NEW SECTION

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

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

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

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

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

(2) National Electric Safety Code (NESC).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) Occupational Safety and Health Administration (OSHA) Standard at 29 CFR 1910.269.

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

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

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

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

(a) The commission adopts the version in effect on March 1, 2006.

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

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

WSR 06-07-025

PERMANENT RULES

DEPARTMENT OF TRANSPORTATION

[Filed March 7, 2006, 3:22 p.m., effective April 7, 2006]

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

Purpose: The general purpose is to update and correct the newly rewritten chapter.

WAC 468-38-070 Maximums for special permits—Nondivisible, subsection (3)(c) is amended to include a third scenario (iii) for a log truck with pole trailer hauling nondivisible poles. This is a unique vehicle combination and use that was inadvertently left out during the chapter rewrite. The amendment reflects current practice for permitting and load measurement. In addition, a sentence was added to (ii) stating there is an eighty-five foot limit for an unladen truck with unladen trailer which is needed for consistency with (i), and to match current practice.

WAC 468-38-075 Special permit exemptions for authorized vehicles/or loads, subsection (3) is amended to change the "combined length of one hundred feet" to "one hundred five feet," increasing the exemption parameter for restricted movement at night. This change gives carriers a consistent

set of criteria for nighttime border crossing between Washington and Oregon.

WAC 468-38-100 Pilot/escort vehicle and operator requirements, subsection (1)(d) is amended to add a truck/trailer configuration for escort requirements on two-lane highways. This configuration was erroneously omitted during the chapter rewrite. Inclusion of the configuration is consistent with current practice. Subsection (1)(g) is amended to reflect current practice for a single unit vehicle with rear overhang, limiting the overhang to twenty feet rather than to one-third of the overall length of vehicle and load. Subsection (15) is amended to correct a grammatical error.

WAC 468-38-120 Transport of extra-legal manufactured housing, amends subsection (6)(b) to more accurately reflect brake installation and brake performance criteria. The rewording reflects current practice and existing compliance criteria. Subsection (13) was created to place into rule the current practice of how to treat vehicles that are not classified as manufactured housing but are similarly constructed for transport purposes.

WAC 468-38-175 Travel restrictions—Days, times and highway use, subsection (6) is amended to allow the department to authorize the convoying of overlegal vehicles. The previous strict prohibition on convoying appears to be out-of-date, based primarily with two-lane roads in mind. There are times on multiple land highways, away from metropolitan areas, that convoying overlegal loads at posted speeds may be a benefit to the surrounding traffic and a cost savings to the shipper/transporter.

WAC 468-38-280 Retractable axles, subsection (3)(a) is amended to more clearly define a retractable axle that simulates (rather than becomes) a tandem drive axle for weight distribution purposes. This change will also eliminate inconsistencies between the rule and working definitions of tandem axles.

WAC 468-38-290 Farm implements, subsection (3)(a) is amended to correct a subsection reference error.

Citation of Existing Rules Affected by this Order: See Purpose above.

Statutory Authority for Adoption: RCW 46.44.090.

Adopted under notice filed as WSR 06-03-125 on January 18, 2006.

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 7, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7, 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: February 27, 2006.

John F. Conrad
Assistant Secretary
Engineering and
Regional Operations

AMENDATORY SECTION (Amending WSR 05-04-053, filed 1/28/05, effective 2/28/05)

WAC 468-38-070 Maximums and other criteria for special permits—Nondivisible. (1) **Are there maximum dimensions established for moving nondivisible over-dimensional vehicles and/or loads?** Yes. In all instances the general safety of the public is considered paramount and will ultimately govern over-dimensional moves. There are some general rules; however, physical barriers determine most maximums for over-dimensional moves. Over-dimensional maximums are addressed as follows:

(a) **Overwidth:** As stipulated in RCW 46.44.092, fourteen feet on any two-lane highway; twenty feet on any multiple-lane highway where a physical barrier serving as a median divider (i.e., jersey barrier, cyclone fence, guardrail, etc.) separates the oncoming and opposing traffic lanes; thirty-two feet on any multiple-lane undivided highway. Permits may be issued for widths in excess of the preceding limits when traveling on highway segments that by design can accommodate the greater width.

(b) **Overheight:** Any move involving height, especially permitted moves exceeding fourteen feet, are governed by the ability to clear overhead obstructions such as bridges, underpasses, wires, overhead signs, and other objects. The issuance of a permit does not insure the route to be free of overhead obstructions. It is the responsibility of the permit applicant to check, or prerun, the proposed route and provide for safe maneuvers around the obstruction or detours as necessary. Structures owned by the state should be reviewed with department field personnel to determine safe navigation of the move, including options for temporary removal of obstructions. Detours off the state route onto county or city roads require authorization from those jurisdictions. A traffic control plan (see WAC 468-38-405 (3)(d)) may be requested for approval by the department before a permit is issued.

(c) **Overlength:** Routes will be limited to over-dimensional moves based on ability to negotiate curves, interchanges, entrance and exit roadways and other obstacles.

(2) **Are there maximum weights established for moving nondivisible overweight vehicles and/or loads?** Yes. Weight maximums for the movement of a nondivisible load under special permit are established in RCW 46.44.091. In addition, tire loading for the movement of a nondivisible load is limited to the lesser of six hundred pounds per inch width of tire or the tire manufacturer's rating with proper inflation, as determined by the nomenclature imprinted on the tire.

(3) **Are there maximums and/or other criteria established for the use of specific vehicle combinations when moving over-dimensional nondivisible loads?** Yes. The maximums for specific vehicle combinations are as follows:

(a) **Truck-tractor pulling a semi-trailer or full trailer:** Trailers in excess of legal length and/or width dimensions, or the permitted length of fifty-six feet, shall not exceed the

length or width of the nondivisible load being transported. The department may grant an exception when the added dimension is necessary to spread the weight of the load to comply with requirements established by the department to protect the infrastructure. Jeeps and/or boosters may be added to the trailer to help distribute weight as necessary. A "pusher" power unit may also be added to the configuration upon approval of the department. Jeeps, boosters and pusher power units will be considered part of the trailing unit plus load measurement.

(b) **Truck-tractor pulling semi-trailer and full trailer (or two semi-trailers in B-train configuration):** The combined trailer length, including the space between trailers, may not exceed sixty-one feet. This combination is limited to nondivisible loads not to exceed ten feet wide. Both trailers may carry a nondivisible load, with the widest load carried on the first trailer. Trailers in excess of legal width shall not exceed the width of the nondivisible load being transported. This combination may not carry overweight, overlength or overweight loads.

(c) **Truck and trailer:** There are ~~((two))~~ three scenarios for this combination:

(i) **Both truck and trailer carrying loads:** The combined overall length of the combination when carrying a nondivisible overlength load must not exceed eighty-five feet. Any nondivisible overlength load is restricted to only one vehicle. The trailer may be loaded with the overhang entirely to the rear of the trailer, or the truck may be loaded with the overhang entirely to the front of the truck. Both truck and trailer may carry overwidth and overweight loads. The truck and/or trailer in this configuration may not carry an overweight nondivisible load.

(ii) **Unladen truck and trailer:** The unladen truck may be treated as a truck-tractor and the combination addressed as described in (a) of this subsection: Provided, That the truck-tractor is not carrying **any** load of any kind, and that its use as an unladen truck is specified on the special permit. The trailing unit is measured from the foremost point of the draw bar or load, whichever is greater, to the rearmost part of the trailer or load, whichever is greater. This combination may carry a nondivisible overweight load on the trailer. For example, an unladen dump truck may acquire a special permit to pull a tilt trailer with a dozer or backhoe where the trailer load causes the axles to exceed legal weight. An unladen truck with unladen trailer must not exceed an overall length of eighty-five feet.

(iii) **Log truck with pole trailer - nondivisible poles:** A log truck with pole trailer hauling a single load of nondivisible poles, where the log truck is supporting a proportionate share of the load, must be permitted for overlength based on load length, similar to a truck tractor semi-trailer configuration. Measurement will be taken from the front of load or bunks, whichever comes first, to the end of the load. No portion of the pole trailer may extend beyond the load in an overlength configuration.

(4) **Can a vehicle, or vehicle combination, carry multiple pieces when using an over-dimensional nondivisible special permit?** Yes, under the following conditions:

(a) The vehicle(s) and load are transported at legal weights.

(b) The largest nondivisible piece(s) must be loaded to its practicable minimum. No single piece may create a dimension greater than the dimension it would create if loaded properly and carried by itself.

(c) Additional pieces may be added within the envelope dimension created by the largest piece(s) loaded to its practicable minimum. The envelope should be viewed as an imaginary cube with height, length and width defined by the extremities, regardless of shape, of the over-dimensional piece(s) and other legal dimensions as necessary. The department will provide an illustrative example upon request.

(5) **Are there any circumstances when an over-dimensional vehicle(s) can move a legal size load?** Yes, when the following conditions have been met:

(a) The vehicle(s) are making the move in conjunction with being in route to pick up a nondivisible load under special permit (front haul); or

(b) The vehicle(s) are making the move in conjunction with returning from a delivery of a nondivisible load under special permit (back haul); and

(c) The route traveled is the same route that would have been used if a legal load had not been moved; and

(d) The front haul or back haul is noted on the special permit used for the nondivisible move.

AMENDATORY SECTION (Amending WSR 05-04-053, filed 1/28/05, effective 2/28/05)

WAC 468-38-075 Special permit exemptions for authorized vehicles and/or loads. (1) What special permit requirements/restrictions are exempted for an authorized overlength vehicle and/or load? The following exemptions for authorized overlength vehicles and/or loads include:

(a) The requirement to display "OVERSIZE LOAD" signs (WAC 468-38-155(7));

(b) The requirement to cease operation on routes governed by commuter hour restrictions, and during holiday travel restrictions (WAC 468-38-175 (1) and (2));

(c) The requirement that approved night movement be stated on the special permit (WAC 468-38-175(3)); and

(d) The restriction for movement during winter road conditions when the following sign is displayed: "TRACTION ADVISORY/OVERSIZE VEHICLES PROHIBITED" (WAC 468-38-095(8)). In addition to being an authorized vehicle, the vehicle must also comply with WAC 204-24-050 Use of tire chains or other traction devices.

(2) **What overlength vehicles and/or loads are authorized to receive the exemptions?** The following vehicles and/or loads are exempted from the requirements/restrictions identified in subsection (1) of this section:

(a) A truck-tractor/semi-trailer combination where the single trailer does not exceed fifty-six feet, including load;

(b) A truck-tractor/semi-trailer/trailer combination where the combined trailer length does not exceed sixty-eight feet, including load;

(c) A vehicle or vehicle combination with a front overhang not exceeding four feet beyond the three foot legal limit set in RCW 46.44.034 (see also bumper criteria set in RCW 46.37.517), and/or a rear overhang not exceeding fifteen feet;

(d) A single unit fixed load vehicle not exceeding an overall length of forty-five feet including the allowable overhangs in (c); and

(e) A nondivisible load, including the trailer upon which it is carried, not exceeding sixty-one feet.

(3) **Are there exemptions for permitted vehicles exceeding legal height or width?** Yes. A vehicle or vehicle combination that does not exceed a defined envelope of twelve feet wide, fourteen feet six inches high and an overall combined length of one hundred five feet is exempt from the restriction on movement at night, as referenced in subsection (1)(c) of this section.

(4) **Are there exemptions for vehicles operating with an overweight special permit?** Yes. A vehicle or vehicle combination operating on a special permit for overweight only, in compliance with all legal dimension limits, is exempt from all of the requirements/restrictions included in subsection (1)(a) through (d) of this section: Provided, That the vehicle or vehicle combination can maintain posted speed limits. This exemption may be used in conjunction with the height and width exemption in subsection (3) of this section.

AMENDATORY SECTION (Amending WSR 05-04-053, filed 1/28/05, effective 2/28/05)

WAC 468-38-100 Pilot/escort vehicle and operator requirements. (1) **When is a pilot/escort vehicle(s) required to accompany an extra-legal vehicle or load?** A pilot/escort vehicle(s) must accompany an extra-legal load when:

(a) The vehicle(s) or load is over eleven feet wide. Two pilot/escort vehicles are required on two lane roads, one in front and one in back.

(b) The vehicle(s) or load is over fourteen feet wide. One escort vehicle is required at the rear of the movement on multilane highways.

(c) The vehicle(s) or load is over twenty feet wide. Two pilot/escort vehicles are required on multilane undivided highways, one in front and one in back.

(d) The trailer length, including load, of a tractor/trailer combination exceeds one hundred five feet, or when the rear overhang of a load measured from the center of the rear axle exceeds one-third of the trailer length plus load of a tractor/trailer or truck/trailer combination. One pilot/escort vehicle is required at the rear of the movement on two-lane highways.

(e) The trailer length, including load, of a tractor/trailer combination exceeds one hundred twenty-five feet. One pilot/escort vehicle is required at the rear of the movement on multilane highways.

(f) The front overhang of a load measured from the center of the front steer axle exceeds twenty feet. One pilot/escort vehicle is required at the front on all two-lane highways.

(g) The rear overhang of a load on a single unit vehicle, measured from the center of the rear axle, exceeds (~~one-third the total length of a single unit vehicle with load~~) twenty feet. One pilot/escort vehicle is required at the rear of the movement on two-lane highways.

(h) The height of the vehicle(s) or load exceeds fourteen feet six inches. One pilot/escort vehicle with height measuring device (pole) is required at the front of the movement on all state highways and roads.

(i) The operator, using rearview mirrors, cannot see two hundred feet to the rear of the vehicle or vehicle combination.

(j) In the opinion of the department, a pilot/escort vehicle(s) is necessary to protect the traveling public. Assignments of this nature must be authorized through the department's administrator for commercial vehicle services.

(2) **Can a pilot/escort vehicle be temporarily reassigned a position relative to the load during a move?** When road conditions dictate that the use of the pilot/escort vehicle in another position would be more effective, the pilot/escort vehicle may be temporarily reassigned. For example: A pilot/escort vehicle is assigned to the rear of an overlength load on a two-lane highway. The load is about to enter a highway segment that has curves significant enough to cause the vehicle and/or load to encroach on the oncoming lane of traffic. The pilot/escort vehicle may be temporarily reassigned to the front to warn oncoming traffic.

(3) **Can a certified flag person ever substitute for a pilot/escort vehicle?** In subsection (1)(d) and (e) of this section, the special permit may authorize a riding flag person, in lieu of a pilot/escort vehicle, to provide adequate traffic control for the configuration.

(4) **Must an operator of a pilot/escort vehicle be certified to operate in the state of Washington?** Yes. To help assure compliance with the rules of this chapter, consistent basic operating procedures are needed for pilot/escort vehicle operators to properly interact with the escorted vehicle and the surrounding traffic. Operators of pilot/escort vehicles, therefore, must be certified as having received department-approved base level training as a pilot/escort vehicle operator. A pilot/escort vehicle operator with a Washington state driver's license must have a valid Washington state pilot/escort vehicle operator certificate/card which must be on the operator's person while performing escort vehicle operator duties. Escort vehicle operators with a driver's license from a jurisdiction other than Washington state may acquire a Washington state escort vehicle operator certificate/card, or operate with a certification from another jurisdiction approved by the department, subject to the periodic review of the issuing jurisdiction's certification program. A current list of approved programs will be maintained by the department's commercial vehicle services office. Washington state pilot/escort vehicle operator cards must be renewed every three years.

(5) **What are the pretrip procedures that must be followed by the operator of a pilot/escort vehicle?**

(a) Discuss with the operator of the extra-legal vehicle the aspects of the move including, but not limited to, the vehicle configuration, the route, and the responsibilities that will be assigned or shared.

(b) Prerun the route, if necessary, to verify acceptable clearances.

(c) Review the special permit conditions with the operator of the extra-legal vehicle.

(d) Determine proper position of required pilot/escort vehicles and set procedures to be used among the operators.

(e) Assure availability of additional certified flag persons if stated as a condition of the oversize/overweight special permit.

(f) Check mandatory equipment, provided in subsections (9) and (10) of this section. Each operator is responsible for his or her own vehicle.

(g) Check two-way communication system to ensure clear communications and predetermine the channel to be used.

(h) Adjust mirrors, mount signs and turn on lights, provided in subsections (8)(e) and (9)(a) and (b) of this section.

(6) What are the responsibilities of the operator of a pilot/escort vehicle when assigned to be in front of the extra-legal movement? The operator shall:

(a) Provide general warning to oncoming traffic of the presence of the permitted vehicle by use of signs and lights, provided in subsection (9) of this section;

(b) Notify the operator of the extra-legal vehicle, and the operator(s) of any trailing pilot/escort vehicle(s), about any condition that could affect either the safe movement of the extra-legal vehicle or the safety of the traveling public, in sufficient time for the operator of the extra-legal vehicle to take corrective action. Conditions requiring communication include, but are not limited to, road-surface hazards; overhead clearances; obstructions; traffic congestion; pedestrians; etc.;

(c) Provide guidance to the extra-legal vehicle through lane changes, egress from one designated route and access to the next designated route on the approved route itinerary, and around any obstacle;

(d) In the event of traffic buildup behind the extra-legal vehicle, locate a safe place adjacent to the highway where the extra-legal vehicle can make a temporary stop. Notify the operator of the extra-legal vehicle, and the operator(s) of any trailing pilot/escort vehicle(s), in sufficient time for the extra-legal vehicle to move out of the traffic flow into the safe place, allowing the following traffic to pass safely;

(e) In accordance with training, be far enough in front of the extra-legal vehicle to signal oncoming traffic to stop in a safe and timely manner before entering any narrow structure or otherwise restricted highway where an extra-legal vehicle has entered and must clear before oncoming traffic can enter;

(f) In accordance with training, do not be any farther ahead of the extra-legal vehicle than is reasonably prudent, considering speed of the extra-legal vehicle, other traffic, and highway conditions. Do not exceed one-half mile distance between pilot/escort vehicle and extra-legal vehicle in order to maintain radio communication, except when necessary to safely travel a long narrow section of highway; and

(g) Assist in guidance to a safe place, and/or traffic control, in instances when the extra-legal vehicle becomes disabled.

(7) What are the responsibilities of the operator of a pilot/escort vehicle when assigned to be at the rear of the extra-legal movement? The operator shall:

(a) Provide general warning to traffic approaching from the rear of the extra-legal vehicle ahead by use of signs and lights, provided in subsection (9) of this section;

(b) Notify the operator of the extra-legal vehicle, and the operator(s) of any leading pilot/escort vehicle(s), about any

condition that could affect either the safe movement of the extra-legal vehicle or the safety of the traveling public, in sufficient time for the operator of the extra-legal vehicle to take corrective action. Conditions requiring communication include, but are not limited to, objects coming loose from the extra-legal vehicle; flat tires on the extra-legal vehicle; rapidly approaching traffic or vehicles attempting to pass the extra-legal vehicle; etc.;

(c) Notify the operator of the extra-legal vehicle, and/or the operator of the lead pilot/escort vehicle, about traffic buildup or other delays to normal traffic flow resulting from the extra-legal move;

(d) In the event of traffic buildup behind the extra-legal vehicle, notify the operator of the extra-legal vehicle, and the operator(s) of any pilot/escort vehicle(s) in the lead, and assist the extra-legal vehicle in its move out of the traffic flow into the safe place, allowing the following traffic to pass safely;

(e) In accordance with training, be far enough behind the extra-legal vehicle to provide visual warning to approaching traffic to slow or stop in a timely manner, depending upon the action to be taken by the extra-legal vehicle, or the condition of the highway segment (i.e., limited sight distance, mountainous terrain, narrow corridor, etc.);

(f) Do not follow more closely than is reasonably prudent, considering the speed of the extra-legal vehicle, other traffic, and highway conditions. Do not exceed one-half mile distance between the pilot/escort vehicle and the extra-legal vehicle in order to maintain radio communication, except when necessary to safely travel a long narrow section of highway; and

(g) Assist in guidance to a safe place, and/or traffic control, in instances when the extra-legal vehicle becomes disabled.

(8) What kind of vehicle can be used as a pilot/escort vehicle? In addition to being in safe and reliable operating condition, the vehicle shall:

(a) Be either a single unit passenger car, including passenger van, or a two-axle truck;

(b) Not exceed a maximum gross vehicle weight rating of fourteen thousand pounds;

(c) Have a body width of at least sixty inches but no greater than one hundred two inches;

(d) Not exceed the legal limits of size and weight, as defined in chapter 46.44 RCW; and

(e) Be equipped with outside rear-view mirrors, located on each side of the vehicle.

(9) In addition to equipment required by traffic law, what additional equipment is required on the vehicle when operating as a pilot/escort, and when is it used?

(a) A minimum of two flashing or rotating amber (yellow) lights, positioned above the roof line, visible from a minimum of five hundred feet to approaching traffic from the front or rear of the vehicle. Light bars, with appropriately colored lights, meeting the visibility minimums are acceptable. Lights must only be activated while escorting an extra-legal vehicle, or when used as traffic warning devices while stopped at the side of the road taking height measurements during the prunning of a planned route. The vehicle's head-

lights must also be activated while escorting an extra-legal vehicle.

(b) A sign reading "OVERSIZE LOAD," measuring at least five feet wide, ten inches high with black lettering at least eight inches high in a one-inch brush stroke on yellow background. The sign shall be mounted over the roof of the vehicle and shall be displayed only while performing as the pilot/escort of an extra-legal load. When the vehicle is not performing as a pilot/escort, the sign must be removed, retracted or otherwise covered.

(c) A two-way radio communications system capable of providing reliable two-way voice communications, at all times, between the operators of the pilot/escort vehicle(s) and the extra-legal vehicle(s).

(10) What additional or specialized equipment must be carried in a pilot/escort vehicle?

(a) A standard eighteen-inch STOP AND SLOW paddle sign.

(b) Three bi-directional emergency reflective triangles.

(c) A minimum of one five-pound B, C fire extinguisher, or equivalent.

(d) A high visibility safety garment designed according to Class 2 specifications in ANSI/ISEA 107-1999, *American National Standard for High Visibility Safety Apparel*, to be worn when performing pilot/escort duties outside of the vehicle. The acceptable high visibility colors are fluorescent yellow-green, fluorescent orange-red or fluorescent red.

(e) A highly visible colored hard hat, also to be worn when performing pilot/escort duties outside of the vehicle, per WAC 296-155-305.

(f) A height-measuring device (pole), which is nonconductive and nondestructive to overhead clearances, when required by the terms of the special permit. The pole may be carried outside of the vehicle when not in use. See also subsection (14) of this section.

(g) First-aid supplies as prescribed in WAC 296-800-15020.

(h) A flashlight in good working order with red nose cone. Additional batteries should also be on hand.

(11) Can the pilot/escort vehicle carry passengers? A pilot/escort vehicle may not contain passengers, human or animal, except for a certified individual in training status or necessary flag person.

(12) Can the pilot/escort vehicle carry any other items, equipment, or load? Yes, as long as the items, equipment or load have been properly secured: Provided, no equipment or load may be carried in or on the pilot/escort vehicle that:

(a) Exceeds the height, length, or width of the pilot/escort vehicle, or overhangs the vehicle, or otherwise impairs its immediate recognition as a pilot/escort vehicle by the traveling public;

(b) Obstructs the view of the flashing or rotating amber lights, or "OVERSIZE LOAD" sign on the vehicle;

(c) Causes safety risks; or

(d) Otherwise impairs the performance by the operator or the pilot/escort vehicle of the duties required by these rules.

(13) Can a pilot/escort vehicle escort more than one extra-legal load at the same time? No, unless the depart-

ment determines there are special circumstances that have resulted in an express authorization on the special permit.

(14) When and how must a pilot/escort vehicle use a height-measuring device? The height-measuring device (pole) must be used when escorting an extra-legal load in excess of fourteen feet six inches high, unless an alternative authorization has been granted by the department and stated on the special permit, or in rule. The height pole must extend between three and six inches above the maximum height of the extra-legal vehicle, or load, to compensate for the affect of wind and motion. When not in the act of escorting an extra-legal move, or prerunning a route to determine height acceptance, the height pole shall be removed, tied down or otherwise reduced to legal height.

(15) Do the rules change when a uniformed off-duty law enforcement officer, using official police car or motorcycle, performs the escorting function? While the spirit of the rules remains the same, specific rules may be modified to fit the situation.

AMENDATORY SECTION (Amending WSR 05-04-053, filed 1/28/05, effective 2/28/05)

WAC 468-38-120 Transport of extra-legal manufactured housing. (1) **How many vehicles can be combined in the move of a manufactured home?** The vehicle combination is limited to two vehicles, a towing unit, sometimes referred to as a "toter," and the semi-trailer designed housing unit.

(2) **What are the dimensional limits of the combination?** While the overall combination is not limited by dimension, the following limits are established:

(a) **Length:** The length of the manufactured housing unit may not exceed seventy-five feet, including the length of the tongue.

(b) **Width:** The width of the manufactured housing unit must not exceed a box (base) width of sixteen feet. The unit may have an eave provided it does not extend beyond either side by:

(i) More than thirty inches for units with a box width less than sixteen feet wide; or

(ii) More than sixteen inches for a unit with a box width of sixteen feet; however, the overall width shall not, under any circumstances, exceed eighteen feet.

(c) **Width exemptions:** External features, such as door-knobs, window fasteners, eave cap, clearance lights, and load securing devices, that extend no more than two inches on each side of the unit, are exempt from the overall width measurement.

(d) **Height:** The height of the unit is limited to the actual overhead clearance of the route.

(3) What are the criteria for receiving an annual/monthly special permit versus a single trip special permit?

(a) **Annual/monthly permits** are issued only to dealers or manufacturers described in chapter 46.70 RCW or licensed transporters described in chapter 46.76 RCW. Use of the annual/monthly permit is restricted to the movement of housing units with a box width not exceeding fourteen feet wide, plus an eave not to exceed twelve inches, and a height not to

exceed fifteen feet measured from level ground when in transit mode.

(b) **Single trip permits** are required when the permit applicant is not a qualified dealer or transporter as described in (a) of this subsection, or when the width of the housing unit box exceeds fourteen feet wide, the overall width exceeds fifteen feet wide, and/or the height exceeds fifteen feet measured from level ground when in transit mode. **Housing units that exceed sixteen feet wide and/or sixteen feet high must also comply with the requirements of WAC 468-38-405 Superloads**, prior to the issuance of a special permit.

(4) **When is it necessary to include a pilot/escort vehicle(s) in the movement of a manufactured house?** The requirements for a pilot/escort vehicle escorting a manufactured home are the same as those found in WAC 468-38-100, except that the use of a height measuring device (pole) on the front pilot/escort vehicle is not required until the overall height of the housing unit exceeds fifteen feet. The vehicle or load width referenced in WAC 468-38-100 is to be interpreted as overall width when measuring a manufactured home.

(5) **What are the insurance requirements, and what special reporting responsibilities does the transporter have in case of an accident?**

(a) Insurance requirements for the movement of a manufactured home are outlined in RCW 46.44.180.

(b) When an incident occurs while transporting a manufactured house under special permit, the transporter must immediately notify the nearest state patrol office if the damage to the manufactured home is greater than two hundred fifty dollars or if the damage to other vehicles or structures exceeds one hundred dollars. The transport of the home must not resume without permission from the state patrol.

(6) **What requirements must a manufactured home meet for axles, brakes, tires and other suspension components before it can be transported?**

(a) **Axles** on each housing unit in transport must be in sufficient number to support enough tires to comply with (c)(i) and (ii) of this subsection. Any housing unit exceeding fourteen feet wide must have a minimum of four axles.

(b) **Brakes** must be designed and installed to activate if the housing unit accidentally breaks away from the towing vehicle. ~~((Brakes must be operational on all wheels, except))~~ The brakes on all vehicle/housing unit combinations must be capable of complying with the braking performance requirements of RCW 46.37.351. In addition, there must be compliance with the following special installation criteria:

(i) For housing units manufactured prior to June 15, 1976 (Pre June 15, 1976, housing units), brake installation must, at a minimum, comply with the following table:

Width of Unit at Base	Number of Axles Required	Wheels w/Brakes
> 8' 6" but < 10'	2 or more	All wheels on 2 axles (a towing unit w/minimum, 9,000 GVWR all wheels on 1 axle)
10' to 14' (under 60' in length)	2 or more (3 or more if > 60' long)	All wheels on 2 axles (tires w/minimum 8:00 x 14.5, 10 ply)

(ii) For all vehicle/housing unit combinations exceeding fourteen feet wide, all wheels on at least three of the axles must be properly equipped with brakes.

(c) **Tire** loadings are dependent on when the housing unit was manufactured and must comply as follows:

(i) **Tire loadings** on housing units manufactured **after January 1, 2002**, (labeled pursuant to *Code of Federal Regulation*, 24 CFR 3282.362 (c)(2)(i)) may not exceed the manufacturer's rating as marked on the sidewall. In the absence of a sidewall marking, the tires on the housing unit must comply with the load rating specified in any of the publications of any organization listed in the *Federal Motor Carrier Safety Standard (FMCSS) No. 119* (49 CFR 571.119, S5.1 (b)). Housing units with no verifiable date of manufacture must also not exceed the manufacturer's tire load rating.

(ii) **Tire loadings** on housing units manufactured **before January 1, 2002**, (labeled pursuant to 24 CFR 3282.362 (c)(2)(i)) must not exceed more than eighteen percent above the manufacturer's rating as marked on the sidewall. In the absence of a sidewall marking, the tires on the housing unit must not exceed eighteen percent above the load rating specified in any of the publications of any organization listed in the *Federal Motor Carrier Safety Standard (FMCSS) No. 119* (49 CFR 571.119, S5.1 (b)). Housing units transported on tires overloaded by nine percent or more must not be moved at speeds exceeding fifty miles per hour (eighty kilometers per hour).

(d) **Tow spare tires**, inflated and ready for use, must be carried during transport.

(e) The manufacturer's rating must not be exceeded for any **wheel, axle, drawbar, hitch, or other suspension device**.

(7) **Does a tow vehicle (toter) have any special requirements?** Yes. The tow vehicle must:

(a) Be equipped with dual wheels on the drive axle.

(b) Have a combined minimum gross axle weight rating, assigned by the manufacturer, of thirty-two thousand pounds, if the housing unit being transported exceeds fourteen feet wide.

(c) Have sufficient engine horsepower to maintain towing speeds of forty-five miles per hour on the interstate and thirty-five miles per hour on other highways.

(8) **What unique travel requirements must be complied with?** Requirements for signs, lights, unit covering, routes, speed, moving multiple units at the same time and lane of travel are as follows:

(a) **Signs** for the towing unit and housing unit must comply with WAC 468-38-155(7). The sign for the housing unit must be mounted on the rear of the unit, on a horizontal plane, between five and seven feet above the road surface.

(b) In addition to any other **lighting** requirements in law or rule, two six-inch flashing amber lights, with a minimum of thirty-five candle power, a flashing cycle of sixty to one hundred twenty times per minute during transit, must be mounted on the rear of the housing unit, on a horizontal plane, at least ten feet above the road surface. An additional two lights, of the same specifications, must be mounted above the roofline of the towing vehicle, either on the towing vehicle roof or the front of the housing unit. The two lights at

each location, front and rear, must be located as close to the outside extremities of the housing unit as practical.

(c) **Coverings** of open sides may be with a rigid material such as plywood or hardboard, or a sufficiently strong ply plastic. When plastic is used, a grillwork of lumber or similar material must be applied to prevent tears and/or billowing of the material.

(d) **Routes** of travel with restrictions must be strictly adhered to. Housing units in transport mode that exceed sixteen feet high or sixteen feet wide must be approved for travel on a case-by-case basis, as per WAC 468-38-405, Superloads. **Dealers selling extra-legal manufactured homes must advise the prospective purchaser in writing that not all state highways are approved for the transport of manufactured homes in excess of twelve feet wide.**

(e) **Speed** of the in-transit housing unit is governed by WAC 468-38-175(5).

(f) **Multiple housing units moving together** must comply with WAC 468-38-175(6), Moves in convoy.

(g) The **right-hand lane must be used for travel**, except when passing or avoiding an obstruction. On two-lane highways, housing units must not pass other vehicles except when required to pass a slow moving vehicle that is hindering safe traffic flow.

(9) **Is a decal from the county treasurer required before a manufactured home can be transported?** Yes, except as provided for in RCW 46.44.170 (2)(a) and (b), a decal issued by the county treasurer must be displayed on the rear of the manufactured home during transport on public highways of this state. If the manufactured home is being transported as multiple units (double-wide or more), an individual decal must be displayed on each unit being transported.

(10) **How is the county treasurer decal issued?** The decal is issued at the same time the county treasurer issues the tax certificate that shows all taxes have been paid to date.

(11) **RCW 46.44.170 requires the department to design the decal for uniform implementation. What are the design specifications?** The decal must:

(a) Be at least eight and one-half inches square.

(b) Be printed on Appleton Radiant Florescent Bristol (weight .010) or paper of comparable quality.

(c) Be fluorescent orange in color.

(d) Disclose the make, model and serial number of the manufactured home, the date issued, the name of the transporter, the transporter's WUTC permit number ID required, the department of transportation special motor vehicle permit number, and the name of the county issuing the decal.

(e) Clearly display the expiration date of the decal, which must not be more than fifteen days after the date issued.

(12) **Can decals be transferred to other housing units?** Under no circumstance can the decal be transferred.

(13) **What other vehicles are treated like manufactured housing for permitting purposes?** Any enclosed structure built on a manufactured housing type chassis with its own axles must comply with the provisions of this section to receive an overlegal permit, including, but not limited to: Portable construction offices, portable classrooms, and "park-model" trailers.

AMENDATORY SECTION (Amending WSR 05-04-053, filed 1/28/05, effective 2/28/05)

WAC 468-38-175 Highway travel restrictions—Days, times and highway use. What restrictions are imposed on vehicles operating under special permit relative to days, times and use of the highway? Day, time and highway use are divided into the following categories:

(1) **Days when travel is restricted:** Vehicles operating under special permit for overweight/overdimensional, except as provided for in WAC 468-38-075, may be restricted from the state highways on the holidays of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day after Thanksgiving, Christmas Day, and commencing at noon of the day preceding said holidays.

(2) **Commuter traffic restrictions:** Vehicles operating under special permit for overweight/overdimensional, except as provided for in WAC 468-38-075, may be restricted from specified sections of state highways having excessive volumes of traffic during morning and afternoon commuting hours. The department shall identify and publish on the internet, and as an addendum to the special permit, specific areas, hours and vehicle widths relating to the restrictions.

(3) **Nighttime travel:** Vehicles or combinations operating under a special permit for overweight/overdimensional may be permitted to move at night on state highways subject to department preferred hours and routes of travel. "Night movement approved" must be stated on the permit, except as provided for in WAC 468-38-075. Overdimensional moves authorized to move at night must have lighting equipment that complies with the *Code of Federal Regulation*, 49 CFR, Part 393.11. No movements shall be made when visibility is reduced to five hundred feet or when hazardous roadway conditions exist (including, but not limited to: Snow, ice, mudslide, wind or water flooding over roadway). It is the responsibility of the vehicle operator to discontinue the move and exit the highway to a safe location when any of the above conditions exist.

(4) **Reversible lane use:** Trucks carrying flammable liquid cargoes, as described in chapter 470-12 WAC, are restricted from using the reversible lanes on SR 5, Seattle freeway, between James Street and 110th Street N.E. The term flammable liquid as applied to this rule shall be as defined in RCW 46.04.187. This rule applies to all vehicles, whether operating under special permit or not.

(5) **Speed limits:** Speed of travel must comply with the following:

(a) Unless otherwise stated, maximum speed for a vehicle(s) under special permit shall be the same speed limit posted for trucks.

(b) When travel on the roadway shoulder is required on a two-lane highway to allow overtaking traffic to pass, the speed must not exceed twenty-five miles per hour.

(c) If a speed limit is stated on the special permit, it becomes one of the conditions under which the permit was issued. This stated speed must not be exceeded; however, if a lower speed is posted, it shall take precedence. Violation of the speed limit stated on the permit shall render the permit null and void.

(6) **Moves in convoy:** Extra-legal vehicles or loads requiring pilot/escort accompaniment must not travel in con-

voy, ~~((except))~~ unless specifically authorized to do so by the department, or as provided for in WAC 468-38-290 (8)(e).

AMENDATORY SECTION (Amending WSR 05-04-053, filed 1/28/05, effective 2/28/05)

WAC 468-38-280 Retractable axles. (1) **What criteria must a retractable axle meet in order to carry the weight provided in RCW 46.44.041?** The retractable axle must meet three criteria:

(a) The retractable axle must have a manufacturer's rating of at least eight thousand pounds. The weight carried on the axle must not exceed the design load capacity as indicated by an attached data plate or written certification from the vendor/manufacturer; and

(b) The weight carried per tire must not exceed the lesser of manufacturer's rating or five hundred pounds (six hundred when operating under a special permit for overweight) per inch width of tire as described in RCW 46.44.042; and

(c) The axle must be self-steering.

(2) **Are there restrictions on the location of the operating controls for the retractable axle?** Yes. The simple "up/down" control may be in the driver's compartment; however, any variable control used to adjust axle loadings, by regulating air pressure or other means, must not be within reach of the driver's compartment.

(3) **Are there any exceptions to the self-steering requirement?** Yes. The self-steering requirement does not apply when:

(a) The retractable axle, equipped with four tires, is used ~~((to create a tandem axle configuration))~~ for the purpose of weight distribution on a truck or truck-tractor and gives the appearance of, but does not function as, a tandem axle drive configuration. The distance between the drive axle and the retractable axle must not exceed sixty inches.

(b) A retractable axle is used adjacent to a fixed axle on a trailing unit and distance between the two axles does not exceed sixty inches.

AMENDATORY SECTION (Amending WSR 05-04-053, filed 1/28/05, effective 2/28/05)

WAC 468-38-290 Farm implements. (1) **For purposes of issuing special permits and certain permit exemptions, what is considered a farm implement?** A farm implement includes any device that directly affects the production of agricultural products, including fertilizer and chemical applicator apparatus (complete with auxiliary equipment). For purposes of this section, the implement must weigh less than forty-five thousand pounds, be less than twenty feet in width and not exceed fourteen feet high. If the implement is self-propelled, it must not exceed forty feet in length, or seventy feet overall length if being towed. The implement must move on pneumatic tires, or solid rubber tracks having protuberances that will not damage public highways. Implements exceeding any of these criteria must meet all appropriate requirements for special permits as referenced in other sections throughout this chapter.

(2) **What dimensional criteria must be met before a special permit is required to move extra-legal farm implements?** Self-propelled farm implements, including a farm

tractor pulling no more than two implements, that exceeds sixteen feet in width, but less than twenty feet wide, are required to get a special permit for movement of farm implements on state highways. Note: A tow vehicle capable of carrying a load (i.e., a truck of any kind) may not tow more than one trailing implement.

(3) **Will the ability to acquire a special permit to move oversize farm implements be affected if the implement(s) is carried on another vehicle?** The ability to use a special permit for farm implements as defined in subsection (1) of this section will not be affected unless one of the following circumstances occurs:

(a) The authorized users of the permit outlined in subsection ~~((4))~~ (5) of this section use a commercial for-hire service to move the implement(s); or

(b) The loaded farm implement creates a combined height that exceeds fourteen feet; or

(c) The loaded farm implement causes the hauling vehicle to exceed legal weight limits. The farm implement may weigh up to forty-five thousand pounds; however, the combined gross weight of implement and hauling unit may extend to the limits established in RCW 46.44.041 Maximum gross weights—Wheelbase and axle factors.

If any of the circumstances occur, the provisions of this subsection will not apply to the movement of the farm implement. The movement will be required to comply with the appropriate requirements for special permits as referenced in chapter 46.44 RCW and in other sections throughout this chapter.

(4) **How does the application process for a special permit for farm implements differ from the process outlined in WAC 468-38-050?** Due to the size of the implement and the potential for use in multiple jurisdictions, the written application must be submitted to the department's Olympia office for approval. Permits can be requested for a three-month period up to one year. Once approved, the special permit may be generated from the Olympia office by facsimile or a letter of authorization will be sent allowing the applicant to acquire a permit at the nearest permit sales location. If the movement of the farm implement(s) is confined to a single department maintenance area, the applicant may make direct written application to that maintenance area office in lieu of the Olympia office.

(5) **Who is authorized to acquire this specific special permit?** The acquisition and use of a special permit to move farm implements is restricted to a farmer, or anyone engaged in the business of selling, repairing and/or maintaining farm implements.

(6) **Does the permit restrict the movement to a specific area?** The special permit to move farm implements is generally restricted to six contiguous counties or less. With proper justification the area can be expanded.

(7) **Are notifications of movement required?** Movements of vehicles in excess of sixteen feet wide must be communicated to all department maintenance areas affected at least eight hours in advance. The communication is for the purpose of ensuring there will not be any planned activity that would restrict the move. Locations of maintenance area offices and phone listings are provided with each letter authorizing the purchase of the special permit.

(8) **What safety precautions must be taken when moving extra-legal farm implements?** The movement of extra-legal farm implements must comply with the following safety requirements:

(a) **Oversize load signs:** If the farm implement exceeds ten feet wide, it must display an "OVERSIZE LOAD" sign(s) visible to both oncoming traffic and overtaking traffic. Signs must comply with the requirements of WAC 468-38-155(7). If the implement is both preceded and followed by pilot/escort vehicles, a sign is not required on the implement itself.

(b) **Curfew/commuter hours:** Movement of a farm implement in excess of ten feet wide must comply with any published curfew or commuter hour restrictions.

(c) **Red flags:** If the farm implement is moving during daylight hours, and exceeds ten feet wide, the vehicle configuration must display clean, bright red flags. The flags must measure at least twelve inches square and be able to wave freely. The flags are to be positioned at all four corners, or extremities, of the overwidth implement and at the extreme ends of all protrusions, projections or overhangs. If a transported implement overhangs the rear of transporting vehicle or vehicle combination by more than four feet, one flag is required at the extreme rear. If the width of the rear overhang/protrusion exceeds two feet, there must be two flags positioned at the rear to indicate the maximum width of the overhang/protrusion.

(d) **Warning lights and slow moving emblem:** Lamps and other lighting must be in compliance with RCW 46.37.160. In addition to the lighting requirements, RCW 46.37.160 also requires the use of a "slow moving emblem" for moves traveling at twenty-five miles per hour or less.

(e) **Convoys:** Convoys, the simultaneous movement of two or more individually transported implements, are authorized when the following criteria are met:

(i) A minimum of five hundred feet is maintained between vehicles to allow the traveling public to pass safely;

(ii) If five or more vehicles are lined up behind any one of the implements, the operator must pull off the road at the nearest point wide enough to allow the vehicles to pass safely; and

(iii) The convoy is preceded and followed with properly equipped pilot/escort vehicles.

(9) **Are there any unique requirements or exemptions regarding the use of pilot/escort vehicles with farm implements?** Pilot/escort vehicles must comply with the requirements of WAC 468-38-100, except for the following specific exemptions related only to special permits for moving farm implements:

(a) A farmer, farm implement dealer, or agri-chemical dealer (including employees of each) is exempt from WAC 468-38-100(4) regarding operator certification, WAC 468-38-100 (8)(a) and (b) regarding escort vehicle physical description, WAC 468-38-100 (10)(f) regarding use of height measuring device, and WAC 468-38-100(11) regarding passengers, when moving a farm implement off the interstate and on the following interstate segments:

(i) I-90 between Exit 109 (Ellensburg) and Exit 270 (Four Lakes);

(ii) I-82 between Junction with I-90 (Ellensburg) and Exit 31 (Yakima);

(iii) I-82 between Exit 37 (Union Gap) and Washington/Oregon border;

(iv) I-182 between Junction with I-82 (West Richland) and Junction with SR-395; and

(v) I-5 between Exit 208 (Arlington) and Exit 250 (south of Bellingham).

(b) On two lane highways, one pilot/escort vehicle must precede and one must follow the implement(s) when the width exceeds twelve feet six inches. Implements up to twelve feet six inches wide are exempt from using pilot/escort vehicles.

(c) A flag person(s) may be used in lieu of a pilot/escort(s) for moves under five hundred yards. This allowance must be stated on any permit that may be required for the move.

(d) Posting a route may also be used in lieu of a pilot/escort vehicle(s) when the route is less than two miles. Signs must state, "OVERSIZE VEHICLE MOVING AHEAD" on a square at least three feet on each side (in diamond configuration), with black lettering on orange background. The signs must be placed at points before the oversize implement enters or leaves the highway, and at access points along the way. Signs must be removed immediately after the move has been completed.

WSR 06-07-035

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed March 8, 2006, 7:45 a.m., effective April 8, 2006]

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

Purpose: The amendments add need criteria for specialists, expanding to all physician specialties based on need. The amendments also allow up to five waivers to be approved for physicians practicing in nondesignated areas who meet the nondesignated area criteria. Other amendments include: Changing the application timing to allow physicians to submit an application once they are in the final year of their training, moving the date from June 1 to April 1 for unfilled waivers, expanding the number of specialist waivers to ten from eight, and general edits for clarity.

The anticipated effect is that Washington rules will be consistent with and meet the intent of the federal law authorizing the program.

Citation of Existing Rules Affected by this Order: Amending WAC 246-562-010, 246-562-020, 246-562-050, 246-562-060, 246-562-070, 246-562-080, 246-562-090, 246-562-120, and 246-562-130.

Statutory Authority for Adoption: Chapter 70.185 RCW.

Other Authority: Public Law 108-441.

Adopted under notice filed as WSR 06-01-101 on December 21, 2005.

A final cost-benefit analysis is available by contacting Jennell Prentice, P.O. Box 47834, Olympia, WA 98504-7834, phone (360) 236-2814, fax (360) 664-9273, e-mail J1Rules@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 2, Amended 2, 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 1, Amended 8, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 9, 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 3, Amended 9, Repealed 0.

Date Adopted: March 7, 2006.

M. C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 03-19-054, filed 9/11/03, effective 10/12/03)

WAC 246-562-010 Definitions. The following definitions (~~shall~~) apply in the interpretation and implementation of these rules.

(1) "Applicant" means a health care facility that seeks to employ a physician and is requesting state sponsorship or concurrence of a visa waiver.

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

(3) "Board eligible" means having satisfied the requirements necessary to sit for board examinations.

(4) "Employment contract" means a legally binding agreement between the applicant and the physician named in the visa waiver application which contains all terms and conditions of employment, including, but not limited to, the salary, benefits, length of employment and any other consideration owing under the agreement.

(5) "Full time" means a minimum forty hours of medical practice per week, not including call coverage, consisting of at least thirty-two hours seeing patients on an ambulatory or in-patient basis and may include up to eight hours administrative work for at least forty-eight weeks per year.

(6) "Health care facility" means an entity with an active Washington state business license doing business or proposing to do business in the practice location where the physician would be employed, whose stated purposes include the delivery of medical care.

~~((6))~~ (7) "Health professional shortage area" (HPSA) means an area federally designated as having a shortage of primary care physicians or mental health care.

~~((7))~~ (8) "Hospitalist" means a physician, usually an internist, who specializes in the care of hospitalized patients.

(9) "Low income" means that a family's total household income is less than two hundred percent of the federal poverty level as defined by the *U.S. Federal Poverty Guidelines* published annually.

~~((8))~~ (10) "Medically underserved area" (MUA) means a federally designated area based on whether the area exceeds a score for an Index of Medical Underservice, a value based on infant mortality, poverty rates, percentage of elderly and primary care physicians to population ratios.

~~((9))~~ (11) "Physician" means the foreign physician, named in the visa waiver application, who requires a waiver to remain in the United States to practice medicine.

~~((10))~~ (12) "Primary care physician" means a physician board certified or board eligible in family practice, general internal medicine, pediatrics, obstetrics/gynecology, geriatric medicine or psychiatry. Physicians who have completed any subspecialty or fellowship training, excluding OB training, are not considered primary care physicians for the purpose of this chapter.

(13) "Sliding fee discount schedule" means a written delineation documenting the value of charge discounts granted to patients based upon financial hardship.

~~((11))~~ (14) "Specialist" means a physician board certified or board eligible in a specialty other than family practice, general internal medicine, pediatrics, obstetrics/gynecology, geriatric medicine or psychiatry (the current definition of "primary care" for the waiver program).

(15) "Sponsorship" means a request by the department on behalf of a health care facility to federal immigration authorities to grant a visa waiver for the purpose of recruiting and retaining physicians.

~~((12))~~ (16) "Visa waiver" means a federal action that waives the requirement for a foreign physician, in the United States on a J-1 visa, to return to his/her home country for a two-year period following medical residency training.

~~((13))~~ (17) "Vacancy" means a full-time physician practice opportunity that is based on a planned retirement, a loss of an existing physician, or an expansion of physician services in the service area.

AMENDATORY SECTION (Amending WSR 03-19-054, filed 9/11/03, effective 10/12/03)

WAC 246-562-020 Authority to sponsor visa waivers. (1) The department of health may assist communities to recruit and retain physicians, or other health care professionals, as directed in chapter 70.185 RCW, by exercising an option provided in federal law, 8 U.S.C. Sec. 1184(l) as amended by Public Law ~~((407-273))~~ 108-441 and 22 C.F.R. 514.44(e). This option allows the department of health to sponsor a limited number of visa waivers each federal fiscal year if certain conditions are met.

(2) The department may acknowledge sponsorship proposed by federal agencies, including the United States Department of Health and Human Services.

(3) The department may carry out a visa waiver program, or, in the event of resource limitations or other considerations, may discontinue the program. Purposes of the program are:

(a) To increase the availability of physician services in existing federally designated shortage areas for health care facilities that have long standing vacancies;

(b) To improve access to physician services for communities and specific ~~(under-served)~~ underserved populations that are having difficulty finding physician services;

(c) To serve Washington communities which have identified a physician currently holding a J-1 visa as an ideal candidate to meet the community's need for primary health care

services or specialist services as allowed by WAC 246-562-080.

(4) The department may only sponsor a visa waiver request when:

(a) The application contains all of the required information and documentation;

(b) The application meets the criteria contained in chapter 246-562 WAC.

(5) The department will limit its activities:

(a) Prior to submission of an application, the department may provide information on preparing a complete application;

(b) For applicants that have benefited from department sponsorship previously, the applicant's history of compliance will be a consideration in future sponsorship decisions;

(c) Because the number of sponsorships the department may provide is limited, and because the number of shortage areas is great, sponsorship will be limited. In any single program year, a health care facility in any one designated health professional shortage area or medically underserved area:

(i) Will not be allotted more than two sponsorships; ~~((and))~~

(ii) Will not be allotted more than one specialist sponsorship as allowed by WAC 246-562-080(4); and

(iii) Will not be allotted more than one hospitalist sponsorship per hospital;

(d) In any given program year ~~((seventy-five percent))~~ twenty of the federally allocated sponsorships will be allotted for primary care physicians and ~~((twenty-five percent))~~ ten of the federally allocated sponsorships will be allotted for specialists through ~~((May))~~ March 31. Any waiver sponsorships that remain unfilled on ~~((June))~~ April 1 of each program year will be available to:

(i) Both primary care and specialist physicians consistent with the provisions of this chapter; and

(ii) Physicians intending to practice in nondesignated shortage areas in health care facilities that meet the criteria in WAC 246-562-075.

AMENDATORY SECTION (Amending WSR 03-19-054, filed 9/11/03, effective 10/12/03)

WAC 246-562-050 Review criteria. Applicants and physicians must meet the criteria established in 8 U.S.C. 1184(l) as amended by Public Law ~~((107-273))~~ 108-441 and 22 C.F.R. Sec. 514.44(e) which are incorporated by reference. Copies of these provisions may be requested from the department by writing to the Washington State Department of Health, Office of Community and Rural Health, Visa Waiver Program, PO Box 47834, Olympia, WA 98504-7834.

The criteria set out in chapter 246-562 WAC must also be met.

AMENDATORY SECTION (Amending WSR 03-19-054, filed 9/11/03, effective 10/12/03)

WAC 246-562-060 Criteria for applicants. (1) Applicants must be existing health care facilities that:

(a) Are licensed to do business in Washington state; and

(b) Have provided medical care in Washington state for a minimum of twelve months prior to submitting the application.

(2) Applicants may be for-profit, nonprofit, or government organizations.

(3) Except for state institutional and correctional facilities designated as federal shortage areas, the applicant must:

(a) Currently serve:

(i) Medicare clients;

(ii) Medicaid clients;

(iii) Low-income clients, such as subsidized basic health plan enrollees;

(iv) Uninsured clients; and

(v) The population of the federal designation.

(b) Demonstrate that during the twelve months prior to submitting the application, the health care facility was providing a minimum of ten percent of the applicant's total patient visits to Medicaid clients, and/or other low-income clients.

(c) Agree to implement a sliding fee discount schedule for the physician named in the J-1 visa waiver application. The schedule must be:

(i) Available in the client's principal language and English; and

(ii) Posted conspicuously; and

(iii) Distributed in hard copy to individuals making or keeping appointments with that physician.

(4) Applicants must ~~((have been actively recruiting to fill the practice vacancy from among))~~ provide documentation demonstrating that the employer made a good faith effort to recruit a qualified ((physicians who are)) graduate((s)) of a United States medical school((s)) for a physician vacancy in the same salary range. Active recruitment, specific to the location and physician specialty, must be for a period of not less than six months in the twelve months prior to submitting a visa waiver application to the department. Active recruitment documentation can ((be demonstrated by)) include one or more of the following ((methods)):

(a) Listings in national publications;

(b) Web-based advertisements;

(c) Statewide newspaper advertisements;

(d) Contractual agreement with a recruiter or recruitment firm; or

(e) Listing the position with the office of community and rural health, recruitment and retention program.

In-house job postings and word-of-mouth recruitment are not considered active recruitment for the purpose of the J-1 physician visa waiver program; however, they can be used in addition to the methods described in (a) through (e) of this subsection.

(5) Applicants must have a signed employment contract with the physician. ~~((Throughout the period of obligation, regardless of physician's visa status,))~~ The employment contract must:

(a) Meet state and federal requirements throughout the period of obligation, regardless of physician's visa status;

(b) Not prevent the physician from providing medical services in the designated shortage area after the term of employment (i.e., no noncompete clauses);

(c) Specify the period of employment.

(i) Three years minimum for primary care sponsorship;
or

(ii) Five years minimum for specialist sponsorship.

(6) Any amendments made to the required elements of the employment contract, subsection (5) of this section, during the first three years for primary care physicians or five years for nonprimary care specialist (~~(and subspecialist)~~) physicians of contracted employment must be reported to the department for review and approval. The department will complete review and approval of such amendments within thirty calendar days of receipt.

(7) Applicants must pay the physician prevailing wage as determined and approved by U.S. Department of Labor. Approval must be documented on a U.S. Department of Labor form ETA 9035 signed by an authorized official.

(8) If the applicant has previously requested sponsorship of a physician, WAC 246-562-020 will apply.

(9) If the applicant is not a publicly funded provider, additional criteria apply. The applicant must provide documentation of notification of intent to submit application for J-1 visa physician waiver to all publicly funded providers who provide medical care in HPSA or MUA designated area. Publicly funded providers include, but are not limited to, public hospital districts, local health departments, or community and/or migrant health centers.

Notification must:

(a) Be sent at least thirty days prior to submitting the application to the department;

(b) Include a statement giving the publicly funded providers thirty days to provide comment to the department regarding the J-1 physician visa application; and

(c) Provide the department's address.

~~(10) ((Applicants must provide written notice to the department and all publicly funded providers in the health care facility's HPSA or MUA designated area within thirty days of the physician's start date of employment.~~

~~The notice must include:~~

~~(a) The physician's name, employment start date and practice location;~~

~~(b) Services to be provided; and~~

~~(c) Identification of accepted patients, such as Medicaid, Medicare, or basic health plan.~~

~~((11))~~ Applicants must submit status reports to the department every six months, with required supporting documentation, during the initial term of employment, three years for primary care physicians or five years for specialists.

~~((12))~~ **(11)** Applicants must cooperate in providing the department with clarifying information, verifying information already provided, or in any investigation of the applicant's financial status.

AMENDATORY SECTION (Amending WSR 98-20-067, filed 10/2/98, effective 11/2/98)

WAC 246-562-070 Criteria for the proposed practice location to be served by the physician. (1) The proposed practice location must be located in:

(a) A federally designated primary care health professional shortage area(s); or

(b) A federally designated mental health professional shortage area(s) for psychiatrists; or

(c) A federally designated whole-county medically ~~((under-served))~~ underserved area(s); or

(d) A combination of federally designated areas.

(2) If the federal designation is based on a specific population, the health care facility must serve the designated population.

(3) If the practice location is in both a population designation area and a medically ~~((under-served))~~ underserved area, the designated population must be served.

(4) If the practice location is not located in a federally designated shortage area or whole-county medically underserved area, the applicant must meet the criteria in WAC 246-562-075.

(5) The health care facility named in the visa waiver application may be an existing practice location or a new practice location ((for the health care facility named in the visa waiver application)). If a new practice location is planned, additional criteria apply. New practice locations must:

(a) Have the legal, financial, and organizational structure necessary to provide a stable practice environment, and must provide a business plan that supports this information;

(b) Support a full-time physician practice;

(c) Have written referral plans that describe how patients using the new primary care location will be connected to existing secondary and tertiary care if needed.

NEW SECTION

WAC 246-562-075 Criteria for waiver sponsorships in nondesignated shortage areas. Public Law 108-441 allows states to sponsor up to five waivers each program year for physicians who will practice medicine in a health care facility that is not located in a designated health professional shortage area but serves patients who reside in designated shortage areas. Waivers will not be open to physicians practicing in nondesignated shortage areas until April 1 of each program year. For waiver approval, the health care facility must:

(1) Provide care to patients who reside in designated shortage areas.

(a) Describe the facility's service area.

(b) Provide a patient visit report that identifies total patient visits in last six months of service by patient origin zip code.

(2) Describe who will benefit from the physician's services.

(a) Identify the percentage of Medicaid and Medicare patients who will have access to this physician.

(b) Describe how the facility will assure access to this physician for low-income or uninsured patients.

(c) Explain if the physician has language skills that will benefit patients at this facility.

(3) Provide a detailed report of the extensive recruitment efforts made to recruit a U.S. physician for the specific position that the J-1 physician will fill.

(a) Explain why this physician is necessary at this location.

(b) Explain why it is difficult to recruit a U.S. physician for this location.

(c) Provide the number of physicians interviewed for this position.

(d) Provide the number of physicians offered this position.

AMENDATORY SECTION (Amending WSR 03-19-054, filed 9/11/03, effective 10/12/03)

WAC 246-562-080 Criteria for the physician. (1) The physician must not have a J-1 visa waiver pending for any other employment offer. Physicians must provide a letter attesting that no other applications are pending.

(2) Physicians must have the qualifications described in recruitment efforts for a specific vacancy.

(3) Physicians are considered eligible to apply for a waiver when:

(a) They have successfully completed their residency or fellowship program; or

(b) They are in the ~~((last six months))~~ final year of a residency or fellowship program, and the physician provides a letter from their program that:

(i) Identifies the date the physician will complete the residency or fellowship program; and

(ii) Confirms the physician is in good standing with the program.

(4) Physicians ~~((applying as primary care physicians))~~ must ~~((- a))~~ provide direct patient care ~~((- and~~

~~(b) Be trained in:~~

~~(i) Family practice; or~~

~~(ii) General internal medicine; or~~

~~(iii) Pediatrics; or~~

~~(iv) Geriatric medicine; or~~

~~(v) Obstetrics and gynecology; or~~

~~(vi) Psychiatry and its subspecialties; and~~

~~(e) Except for geriatric medicine and psychiatrists, not have any additional specialty training. Continuing medical education (CME) will not be considered specialty training for the purposes of this rule.~~

~~(5) Physicians applying as specialists must:~~

~~(a) Provide direct patient care;~~

~~(b) Be trained in a subspecialty as defined by the Accreditation Council for Graduate Medical Education and published in the 1999-2000 Graduate Medical Education Directory, which is hereby incorporated by reference of:~~

~~(i) Internal medicine, except for geriatric medicine; or~~

~~(ii) Family practice, except for geriatric medicine; or a specialty as defined by the Accreditation Council for Graduate Medical Education and published in the 1999-2000 Graduate Medical Education Directory, which is hereby incorporated by reference of~~

~~(iii) General surgery;~~

~~(iv) Radiology diagnostic;~~

~~(v) Anesthesiology;~~

~~(vi) Otolaryngology (ENT); or~~

~~(vii) Urology.~~

~~(6) Copies of the 1999-2000 Graduate Medical Education Directory are available from the American Medical Association or can be viewed at the Washington State~~

~~Department of Health, Office of Community and Rural Health, 310 Israel Road SE, Tumwater WA 98501).~~

~~((7)) (5) The physician must comply with all provisions of the employment contract.~~

~~(6) The physician must:~~

~~(a) Accept Medicaid assignment; and~~

~~(b) Post and implement a sliding fee discount schedule; and~~

~~(c) Serve the low-income population; and~~

~~(d) Serve the uninsured population; and~~

~~(e) Serve the shortage designation population; or~~

~~(f) Serve the population of a local, state, or federal governmental institution or corrections facility as an employee of the institution.~~

~~(7) Physicians must have an active Washington state medical license ~~((- unless unusual circumstances delay licensing. If the application for a Washington state medical license has been received by the Washington state medical quality assurance commission four or more weeks prior to submission of the visa waiver application;)).~~ The applicant may substitute a copy of the license application and request an exception if the application for a Washington state medical license was submitted to the Washington state medical quality assurance commission four or more weeks prior to submission of the visa waiver application.~~

~~(8) Physicians must be an active candidate for board certification on or before the start date of employment.~~

~~(9) ~~((Physicians must have at least one letter of recommendation from their residency program if applying as a primary care physician or from their fellowship program if applying as a specialist that:~~~~

~~(a) Addresses the physician's interpersonal and professional ability to effectively care for diverse and low-income people in the United States; and~~

~~(b) Describes an ability to work well with supervisory and subordinate medical staff, and adapt to the culture of United States health care facilities; and~~

~~(c) Documents level of specialty training, if any; and~~

~~(d) Is prepared on residency program letterhead and is signed by residency program staff or faculty; and~~

~~(e) Includes name, title, relationship to physician, address and telephone number of signatory.~~

~~(10) The physician must comply with all provisions of the employment contract.~~

~~(11) Physician must:~~

~~(a) Accept Medicaid assignment; and~~

~~(b) Post and implement a sliding fee discount schedule; and~~

~~(c) Serve the low-income population; and~~

~~(d) Serve the uninsured population; and~~

~~(e) Serve the shortage designation population; or~~

~~(f) Serve the population of a local, state, or federal governmental institution or corrections facility as an employee of the institution.) Physicians must provide the following documentation:~~

~~(a) A current Curriculum Vitae;~~

~~(b) U.S. Department of State Data Sheet, Form DS-3035;~~

~~(c) All DS-2019/IAP-66 Forms (Certificate of Exchange visitor status);~~

(d) Letter from residency program if applying as a primary care physician or from fellowship program if applying as a specialist that:

(i) Addresses the physician's interpersonal and professional ability to effectively care for diverse and low-income people in the United States; and

(ii) Describes an ability to work well with supervisory and subordinate medical staff, and adapt to the culture of United States health care facilities; and

(iii) Documents level of specialty training, if any; and

(iv) Is prepared on residency or fellowship program letterhead and is signed by residency or fellowship program staff or faculty; and

(v) Includes name, title, relationship to physician, address and telephone number of signatory.

(e) Physician attestation statement;

(f) No objection statement;

(g) Personal statement from physician regarding reason for requesting waiver;

(h) I-94 Entry and Departure cards; and

(i) G-28 from attorney, when applicable.

NEW SECTION

WAC 246-562-085 Eligibility for primary care and specialist waivers. (1) Primary care waivers.

(a) Primary care waivers are available to the following physician specialties:

(i) Family medicine;

(ii) General internal medicine;

(iii) Pediatrics;

(iv) Geriatric medicine;

(v) Obstetrics and gynecology; or

(vi) Psychiatry and its subspecialties.

(b) Physicians who have completed any additional subspecialty training are not eligible for a primary care waiver, with the exception of geriatric medicine and psychiatry. Continuing medical education (CME) will not be considered subspecialty training for the purposes of this rule.

(2) **Specialist waivers.** Specialist waivers are available to nonprimary care physician specialties. Applicants submitting an application for a specialist physician must:

(a) **Demonstrate a need for the nonprimary care specialty by addressing one of the following need criteria:**

(i) The physician specialty is needed to meet state or federal health care facility regulations, for example to maintain the hospital trauma designation level.

(A) Identify the regulation; and

(B) Address how the facility is currently meeting this regulation.

(ii) The physician specialty is needed to address a major health problem in the facility service area.

(A) Identify the health problem and how this specialty will address it;

(B) Provide incident rates of the pathology and tie diagnosis codes to payer mix (i.e., how many patients are affected and how many are low-income or uninsured?); and

(C) If this specialty is not available in the community, identify the nearest location where this specialty service can be obtained.

(ii) The physician specialty is needed to address population-to-physician ratio because the current ratio does not meet national standards.

(A) Provide the population-to-physician ratio for the specialty, include source for data provided;

(B) Provide the number of physicians (FTE) practicing this specialty in the same health professional shortage area/facility service area;

(C) Provide the distance to the nearest physician practicing the same specialty; and

(D) Describe how the demand for the specialty has been handled in the past.

(b) **Describe the referral system that includes:**

(i) On-call sharing;

(ii) Affiliation agreements with other health care entities in the service area, specifically with publicly funded employers, such as public hospital districts, community health centers, local, state, or federal governmental institutions or correctional facilities, who have an obligation to provide care to underserved populations.

(c) **Provide at least one letter of support for this type of physician specialty** from a primary care provider practicing with publicly funded employers, such as public hospital districts, community health centers, local, state, or federal governmental institutions or correctional facilities, who have an obligation to provide care to underserved populations outside of the applicant's organization.

(d) Provide written notice to the department and all publicly funded providers in the health care facility's HPSA or MUA designated area **within thirty days** of the physician's start-date of employment. The notice must include:

(i) The physician's name, employment start date and practice location;

(ii) Services to be provided; and

(iii) Identification of accepted patients, such as Medicaid, Medicare, or basic health plan.

NEW SECTION

WAC 246-562-087 Eligibility for facilities hiring physicians as hospitalists. (1) A health care facility is limited to one hospitalist sponsorship per hospital per program year. Multiple employers at the same location are not allowed.

(2) A facility may only use inpatient data on the patient visit report required in WAC 246-562-060 to demonstrate that ten percent of applicant's total patient visits were to Medicaid and/or other low-income patients.

(3) A facility must identify primary care physicians in the community who will accept unattached Medicaid, Medicare or uninsured patients for follow-up care.

AMENDATORY SECTION (Amending WSR 98-20-067, filed 10/2/98, effective 11/2/98)

WAC 246-562-090 Application form. (1) Physician visa waiver program application forms are available (~~and~~) on-line at www.doh.wa.gov/hsqa/ocrh or may be requested from: Washington State Department of Health, Office of Community and Rural Health, Visa Waiver Program, PO Box 47834, Olympia, WA 98504-7834.

(2) Applications must be completed (~~in their entirety, addressing~~), address all state and federal requirements, and must include all required documents as specified in the application form.

AMENDATORY SECTION (Amending WSR 03-19-054, filed 9/11/03, effective 10/12/03)

WAC 246-562-120 Department review and action.

(1) The department will review applications for completeness in date order received.

(2) Applications must be mailed, sent by commercial carrier, or delivered in person. Applications may not be sent by telefax, or electronically.

(3) The department may limit the time period during which applications may be submitted including cutting off applications after the state has sponsored all applications allowed in a given federal fiscal year.

(4) Should multiple primary care physician applications arrive at the department on the same day, the department will rank those applications according to the following criteria:

(a) Facilities located in federally designated shortage (~~facilities~~) areas will rank (~~first~~) ahead of those facilities located in nondesignated areas.

~~(b) ((Those applicants serving shortage areas that require the greatest number of physicians relative to population to remove them from federal shortage status will rank second.~~

~~(e)) Federally designated shortage facilities will rank first.~~

(c) Publicly funded employers, such as public hospital districts, community health centers, local, state, or federal governmental institutions or correctional facilities, who have an obligation to provide care to (~~under-served~~) underserved populations, will rank (~~third~~) second.

(d) Critical access hospitals and rural health clinics will rank third.

(e) All other private practice, for profit facilities will rank last.

~~(f) If multiple applications within a designated category arrive on the same day (~~those applications will be ranked within that category based on random selection.~~~~

~~(e)) or if a ranked order cannot be determined by using the criteria in (a) through (~~(d)~~) (f) of this subsection, then applications will be ranked (~~(based on random selection)~~) by:~~

~~(i) Percentage of services provided to low-income, uninsured and sliding fee based patients;~~

~~(ii) Distance from applicant's practice location to nearest publicly funded provider;~~

~~(iii) Language skill of provider matching those significantly represented in the community;~~

~~(iv) Type of services provided, outpatient versus inpatient; and~~

~~(v) Facility location, rural versus urban based on RUCA codes to most current census data.~~

(5) Should multiple specialist applications arrive at the department on the same day, the department will rank these applications according to the following criteria:

(a) Facilities located in federally designated shortage areas will rank ahead of those facilities located in nondesignated areas.

(b) Hospitals or other health care facilities at risk of being out of state compliance standards will rank first. For example: The physician specialty is needed to maintain trauma designation or meet certificate of need requirements.

~~(c) Federally designated shortage facilities will rank (~~first~~) second.~~

~~((b)) (d) Publicly funded employers, such as public hospital districts, community health centers, local, state, or federal governmental institutions or correctional facilities, who have an obligation to provide care to underserved populations will rank (~~second~~) third.~~

~~((e)) (e) All other private practice, for profit facilities will rank last.~~

~~(f) If multiple applications within a designated category arrive on the same day, (~~those applications will be ranked within that category based on random selection.~~~~

~~(d)) or if a ranked order cannot be determined by using the criteria in (a) through (~~(e)~~) (e) of this subsection, then applications will be ranked (~~(based on random selection)~~) by:~~

~~(i) Percentage of services provided to low-income, uninsured and sliding fee based patients;~~

~~(ii) Distance from applicant's practice location to nearest publicly funded provider;~~

~~(iii) Language skill of provider matching those significantly represented in the community;~~

~~(iv) Type of services provided, outpatient versus inpatient; and~~

~~(v) Facility location, rural versus urban based on RUCA codes to most current census data.~~

(6) The department will review applications within ten working days of receipt of the application to determine if the application is complete.

(7) The department will return incomplete applications to the applicant, and provide a written explanation of missing items.

(8) Incomplete applications may be resubmitted with additional required information. Resubmitted applications will be considered new applications and will be reviewed in date order received on resubmission.

(9) The department will return applications that are received after the maximum number of sponsorships have been approved. This does not apply to copies of other federal J-1 applications.

(10) The department will return sponsorship applications to applicants who have had two approved sponsorships in the current year for the shortage area.

(11) If the Washington state medical license is pending at the time the application is submitted to the department, the department may:

(a) Sponsor or concur;

(b) Hold the application in order received; or

(c) Return the application as incomplete.

(12) The department will review complete applications against the criteria specified in this chapter.

(13) The department may:

(a) Request additional clarifying information;

(b) Verify information presented;

(c) Investigate financial status of the applicant;

(d) Further investigate any comments generated by publicly funded provider notification of application for waiver;

(e) Return the application as incomplete if the applicant does not supply requested clarifying information within thirty days of request. Incomplete applications must be resubmitted. Resubmitted applications will be considered new applications and will be reviewed in date order received.

(14) The department will notify the applicant in writing of action taken. If the decision is to decline sponsorship, the department will provide an explanation of how the application failed to meet the stated criterion or criteria.

(15) The department may deny a visa waiver request or, prior to U.S. Department of State approval, may withdraw a visa waiver recommendation for cause, which shall include the following:

- (a) The application is not consistent with state and/or federal criteria;
- (b) Fraud;
- (c) Misrepresentation;
- (d) False statements;
- (e) Misleading statements; or
- (f) Evasion or suppression of material facts in the visa waiver application or in any of its required documentation and supporting materials.

(16) Applications denied may be resubmitted with concerns addressed. Resubmitted applications will be considered new applications and will be reviewed in date order received.

AMENDATORY SECTION (Amending WSR 03-19-054, filed 9/11/03, effective 10/12/03)

WAC 246-562-130 Eligibility for future participation in the visa waiver program. (1) Health care facilities may be denied future participation in the state visa waiver program if:

(a) The required six-month reports are not submitted in a complete and timely manner.

(b) A sponsored physician does not serve the designated shortage area and/or shortage population for the full three years of employment for primary care physicians or the full five years of employment for specialists.

(c) A sponsored physician does not remain employed by the applicant for the full three years of employment for primary care physicians or the full five years of employment for specialists.

(d) The applicant has a history of noncompliance with any of the provisions of this chapter or federal labor law requirements.

(2) A health care facility may request a determination of eligibility prior to submitting an application. The department will review the situation upon receipt of a written request.

WSR 06-07-036

PERMANENT RULES

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed March 8, 2006, 7:48 a.m., effective April 8, 2006]

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

Purpose: Amendment of WAC 246-817-440 Continuing education requirements. The amendment will increase the

maximum number of continuing dental education hours allowed for home study from three hours to seven hours per year. Home study includes educational audio or videotapes, films, slides, internet or independent reading, where an assessment tool is required upon completion.

Citation of Existing Rules Affected by this Order: Amending WAC 246-817-440.

Statutory Authority for Adoption: RCW 18.32.002 and 18.32.0365.

Adopted under notice filed as WSR 05-23-097 on November 17, 2005.

A final cost-benefit analysis is available by contacting Lisa Anderson, Program Manager, P.O. Box 47867, Olympia, WA 98504-7867, phone (360) 236-4863, fax (360) 664-9077, e-mail lisa.anderson@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 1, 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 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 1, Repealed 0.

Date Adopted: February 3, 2006.

Russell B. Timms, DDS, Chair
Dental Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 01-16-007, filed 7/19/01, effective 8/19/01)

WAC 246-817-440 Continuing education requirements. (1) **Purpose.** The dental quality assurance commission (DQAC) has determined that the public health, safety and welfare of the citizens of the state will be served by requiring all dentists, licensed under chapter 18.32 RCW, to continue their professional development via continuing education after receiving such licenses.

(2) **Effective date.** The effective date for the continuing education requirement for dentists is July 1, 2001. The first reporting cycle for verifying completion of continuing education hours will begin with renewals due July 1, 2002, and each renewal date thereafter. Every licensed dentist (~~will be required to~~) must sign an affidavit attesting to the completion of the required number of hours as a part of their annual renewal requirement.

(3) **Requirements.** Licensed dentists must complete twenty-one clock hours of continuing education, each year, in conjunction with their annual renewal date. DQAC may randomly audit up to twenty-five percent of practitioners for compliance after the credential is renewed as allowed by chapter 246-12 WAC, Part 7.

(4) **Acceptable continuing education - Qualification of courses for continuing education credit.** DQAC will not authorize or approve specific continuing education courses. Continuing education course work must contribute to the professional knowledge and development of the practitioner, or enhance services provided to patients.

For the purposes of this chapter, acceptable continuing education (~~shall be defined as~~) means courses offered or authorized by industry recognized state, private, national and international organizations, agencies or institutions of higher learning. Examples of sponsors, or types of continuing education courses may include, but are not limited to:

(a) The American Dental Association, Academy of General Dentistry, National Dental Association, American Dental Hygienists' Association, National Dental Hygienists' Association, American Dental Association specialty organizations, including the constituent and component/branch societies.

(b) Basic first aid, CPR, BLS, ACLS, OSHA/WISHA, or emergency related training; such as courses offered or authorized by the American Heart Association or the American Cancer Society; or any other organizations or agencies.

(c) Educational audio or videotapes, films, slides, internet, or independent reading, where an assessment tool is required upon completion are acceptable but may not exceed (~~three~~) seven hours per year.

(d) Teaching a seminar or clinical course for the first time is acceptable but may not exceed ten hours per year.

(e) Nonclinical courses relating to dental practice organization and management, patient management, or methods of health delivery may not exceed seven hours per year. Estate planning, financial planning, investments, and personal health courses are not acceptable.

(f) Dental examination standardization and calibration workshops.

(g) Provision of clinical dental services in a formal volunteer capacity may be considered for continuing education credits when preceded by an educational/instructional training prior to provision of services. Continuing education credits in this area shall not exceed seven hours per renewal cycle.

(5) Refer to chapter 246-12 WAC, Part 7, administrative procedures and requirements for credentialed health care providers for further information regarding compliance with the continuing education requirements for health care providers (~~including:~~

- ~~(a) When is continuing education required?~~
- ~~(b) How to prove compliance.~~
- ~~(c) Auditing for compliance.~~
- ~~(d) What is acceptable audit documentation?~~
- ~~(e) When is a practitioner exempt from continuing education?~~
- ~~(f) How credit hours for continuing education courses are determined.~~
- ~~(g) Carrying over continuing education credits.~~
- ~~(h) Taking the same course more than once during a reporting cycle).~~

WSR 06-07-044

PERMANENT RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 06-38—Filed March 9, 2006, 10:33 a.m., effective April 9, 2006]

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

Purpose: Commercial shellfish pot gear—Escape mechanism required. Crawfish escape panels.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-035.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 05-20-113 on October 5, 2005; and WSR 05-22-036 on October 27, 2005.

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 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: February 10, 2006.

Nancy Burkhart
for Ron Ozment, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 03-180, filed 8/6/03, effective 9/6/03)

WAC 220-52-035 (~~(Crab and shrimp)~~) Commercial shellfish pot gear—Escape mechanism required. It is unlawful to fish for or possess crab (~~(or)~~), shrimp, or crawfish taken for commercial purposes with shellfish pot gear unless the gear allows for escapement using at least one of the following methods:

(1) Attachment of pot lid hooks or tiedown straps with a single strand or loop of untreated cotton twine or other natural fiber no larger than thread size 120 so that the pot lid will open freely if the twine or fiber is broken.

(2) An opening in the pot mesh no less than three inches by five inches which is laced or sewn closed with untreated cotton twine or other natural fiber no larger than thread size 120. The opening must be located within the top half of the pot and be unimpeded by the entry tunnels, bait boxes, or any other structures or materials.

WSR 06-07-045
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 06-39—Filed March 9, 2006, 10:34 a.m., effective April 9, 2006]

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

Purpose: General provisions—Lawful and unlawful acts—Food fish other than salmon. Shark anti-finning rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-20-020.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 06-02-062 on January 3, 2006.

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 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: February 10, 2006.

Nancy Burkhart
for Ron Ozment, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 02-278, filed 11/6/02, effective 12/7/02)

WAC 220-20-020 General provisions—Lawful and unlawful acts—Food fish other than salmon. (1) It is unlawful to fish for or possess for commercial purposes any round, undressed white sturgeon less than 48 inches or greater than 60 inches in length or any round, undressed green sturgeon less than 48 inches or greater than 66 inches in length.

(2) It is unlawful to fish for or possess for commercial purposes or possess aboard a commercial fishing vessel for any purpose any species of halibut (*Hippoglossus*) unless permitted by the current regulations of the International Pacific Halibut Commission.

(3) It is unlawful to fish for or possess for commercial purposes sturgeon taken from any of the waters of Puget Sound or tributaries, and any sturgeon taken with any type of commercial gear incidental to a lawful fishery shall immediately be returned to the water unharmed.

(4) It is unlawful to fish for food fish for commercial purposes in the waters of Shilshole Bay inland and inside a line projected in a southwesterly direction from Meadow Point to West Point.

(5) It is unlawful to fish for or possess for commercial purposes any starry flounder less than 14 inches in length

taken by any commercial gear, in all Puget Sound Marine Fish-Shellfish Areas.

(6) It shall be unlawful to harvest herring eggs naturally deposited on marine vegetation or other substrate, unless a person has a permit issued by the director.

(7) It is unlawful to fish for or possess carp taken for commercial purposes except as authorized by written permit from the director, except that carp taken incidental to a commercial fishery for other species may be retained for commercial purposes. Failure to comply with the provisions of the carp permit constitutes unlawful use of the carp commercial fishery license

(8) It is unlawful to fin sharks in Washington state waters, and it is unlawful to possess shark fins in the field unless the carcass of the shark is retained, except that once a commercially taken shark carcass has been delivered to a licensed wholesale dealer or a person acting in that capacity, and the sale of the shark has been recorded on a fish receiving ticket, the shark fins need not be retained with the shark carcass.

WSR 06-07-046
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 06-40—Filed March 9, 2006, 10:35 a.m., effective April 9, 2006]

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

Purpose: Oregon license reciprocity.

Citation of Existing Rules Affected by this Order: Amending WAC 220-55-210.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 05-24-137 on December 7, 2005.

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 1, 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: February 10, 2006.

Nancy Burkhart
for Ron Ozment, Chair
Fish and Wildlife Commission

NEW SECTION

WAC 220-55-210 Oregon license reciprocity. (1) A person may, from a vessel or other floating device, fish for game fish, food fish, unclassified fish, and shellfish, unless otherwise prohibited, from Pacific Ocean waters within three miles of the Washington coast from Leadbetter Point to the Washington-Oregon boundary, and from the concurrent waters of the Columbia River where the river forms the boundary between Oregon and Washington if the person possesses a valid Oregon resident angling license or a valid Oregon resident shellfish license, but only if Oregon recognizes as valid a comparable Washington personal use license in Pacific Ocean waters within three miles of the Oregon coast from the Oregon-Washington boundary to Cape Falcon and the concurrent waters of the Columbia River.

(2) This reciprocity applies only to fishing from a vessel or other floating device. Fishing from the Washington shore requires a Washington personal use license.

(3) This reciprocity applies only to Oregon residents, and residents of other states must possess either a valid Washington license or a valid Oregon license to take game fish, food fish, unclassified fish, and shellfish from the waters of the respective states.

(4) Any game fish, food fish, unclassified fish, or shellfish landed into Washington must conform with current rules in effect for the point of landing including, but not limited to, daily limits, possession limits, size restrictions, and sex restrictions.

WSR 06-07-048**PERMANENT RULES****DEPARTMENT OF PERSONNEL**

[Filed March 9, 2006, 11:46 a.m., effective April 10, 2006]

Effective Date of Rule: April 10, 2006.

Purpose: The purpose of these rules is to address temporary layoff for Washington management service employees.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 06-04-094 on February 1, 2006.

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: March 9, 2006.

Eva N. Santos

Director

NEW SECTION

WAC 357-58-550 May an employer temporarily lay-off a WMS employee? For any of the reasons specified in WAC 357-58-445, an employer may temporarily layoff a WMS employee by:

- (1) Reducing the number of hours an employee is scheduled to work; or
- (2) Furloughing the employee.

NEW SECTION

WAC 357-58-551 Are there any limits to temporary layoff? Under the provisions of WAC 357-58-550, an employer may not:

- (1) Furlough a WMS employee for more than thirty calendar days in a calendar year; or
- (2) Temporarily reduce a WMS employee's regular work schedule to less than twenty hours a week for more than sixty calendar days in a calendar year.

NEW SECTION

WAC 357-58-552 Under the provisions of temporary layoff, what happens if an employer has less than 20 hours per week of work for a WMS employee to perform? If an employer has less than twenty (20) hours per week of work for a WMS employee to perform during a period of temporary layoff, the employer must notify the WMS employee that he/she is being furloughed. The employer may then offer the available work hours to the WMS employee as an acting appointment under the provisions of WAC 357-58-265.

NEW SECTION

WAC 357-58-553 What is the notice requirement to temporarily layoff a WMS employee? An employer must provide the WMS employee seven (7) calendar days' notice of temporary layoff. The temporary layoff notice must inform the WMS employee of his/her status during temporary layoff and the expected duration of the temporary layoff.

NEW SECTION

WAC 357-58-554 What is a WMS employee's status during temporary layoff? (1) Hours not worked due to temporary layoff are not treated as leave without pay, therefore:

- (a) A WMS employee's anniversary date, seniority, or unbroken service date is not adjusted for periods of time spent on temporary layoff; and
 - (b) A WMS employee continues to accrue vacation and sick leave in accordance with chapter 357-31 WAC.
- (2) A WMS employee who is temporarily laid off is not entitled to:

(a) Layoff rights, including the ability to bump any other position or be placed on the employer's internal or statewide layoff list;

(b) Payment for his/her vacation leave balance; and

(c) Use of his/her accrued vacation leave for hours the employee is not scheduled to work if the temporary layoff was due to lack of funds.

(3) If the temporary layoff was not due to lack of funds, an employer may allow a WMS employee to use accrued vacation leave in lieu of temporary layoff.

NEW SECTION

WAC 357-58-555 At the conclusion of a temporary layoff, does a WMS employee have the right to return to the position he/she held immediately prior to being temporarily laid off? At the conclusion of the temporary layoff, the WMS employee has the right to resume the position he/she held immediately prior to being temporarily laid off. The employee returns with the same status and percentage of appointment he/she held prior to the layoff.

WSR 06-07-049

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed March 9, 2006, 11:47 a.m., effective April 10, 2006]

Effective Date of Rule: April 10, 2006.

Purpose: The purpose of these rules is to address motions for reconsideration of a Washington personnel resources board decision.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 06-04-095 on February 1, 2006.

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 4, 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 4, Amended 0, Repealed 0.

Date Adopted: March 9, 2006.

Eva N. Santos
Director

NEW SECTION

WAC 357-52-221 What is the timeline for a party to file a motion for reconsideration of a board's final order? After issuance of a final board order, any party may file a

motion for reconsideration. Such motions must be filed with the board and the opposing party within 14 calendar days of service of the board's order. Within 7 calendar days of the date on which the motion was filed, a party may file an answer to the motion with the board and the opposing party.

NEW SECTION

WAC 357-52-222 On what grounds may a party file a motion for reconsideration of a board's final order? A motion for reconsideration must be based on at least one of the following grounds:

(1) Errors of procedure material to the party seeking reconsideration;

(2) Misinterpretation of fact or law material to the party seeking reconsideration;

(3) Irregularity in the hearing before the board by which the party seeking reconsideration was prevented from having a fair hearing; or

(4) Clerical mistakes in the final decision and order.

NEW SECTION

WAC 357-52-223 How is a motion for reconsideration responded to by the board? In response to a motion for reconsideration, the board may deny the motion, modify its decision or reopen the hearing. The motion is deemed denied unless the board takes action within thirty calendar days of the date on which the motion was filed.

NEW SECTION

WAC 357-52-224 Is a board order on a motion for reconsideration subject to further review? A board order on a motion for reconsideration is not subject to further review.

WSR 06-07-051

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed March 9, 2006, 3:55 p.m., effective April 9, 2006]

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

Purpose: Chapter 458-57 WAC provides tax reporting information for the taxpayers who must file an estate tax return for a decedent's estate. The six current rules are amended to reflect the 2005 supreme court ruling in *Hemphill v. State of Washington, Dept. of Rev.*, 153 Wa.2d 544, 105 P.3d 391 (2005).

Seven new rules are adopted to implement the new Washington estate tax that became effective May 17, 2005. The new rules clarify the nature of the new tax, property subject to the tax, the Washington qualified terminable interest property election, the new method of estate tax apportionment, filing dates, refunds, the new farm deduction, and escheat estates and absentee distributee property. These new rules are: WAC 458-57-105 Nature of estate tax, definitions, 458-57-115 Valuation of property, property subject to estate tax, how to calculate the tax, 458-57-125 Apportionment of

tax when there are out-of-state assets, 458-57-135 Washington estate tax return to be filed—Penalty for late filing—Interest on late payments—Waiver or cancellation of penalty—Application of payment, 458-57-145 Administration of the tax—Releases, amended returns refunds, and statute of limitations, 458-57-155 Farm deduction, and 458-57-165 Escheat estates and absentee distributee (missing heir) property.

Citation of Existing Rules Affected by this Order: Amending WAC 458-57-005 Nature of estate tax, definitions, 458-57-015 Valuation of property, property subject to estate tax, how to calculate the tax, 458-57-017 Property subject to generation-skipping transfer tax, how to calculate the tax, allocation of generation-skipping transfer exemption, 458-57-025 Determining the tax liability of nonresidents, 458-57-035 Washington estate tax return to be filed—Penalty for late filing—Interest on late payments—Waiver or cancellation of penalty—Application of payment, and 458-57-045 Administration of the tax—Releases, amended returns refunds, heirs of escheat estates.

Statutory Authority for Adoption: RCW 83.100.047 and 83.100.200.

Adopted under notice filed as WSR 05-24-053 on December 1, 2005.

Changes Other than Editing from Proposed to Adopted Version: Additional language is underlined with language being removed reflected in ~~strikeout~~.

WAC 458-57-015 (4)(a)(iii), the following changes were made to correct a formatting error in the table provided in this subsection. The resulting figures are consistent with computation examples provided in subsection (4)(b) of this rule.

Year	Percentage
2002	((-.75)) <u>75%</u>
2003	((-.50)) <u>50%</u>
2004	((-.25)) <u>25%</u>
2005	((0.00)) <u>0%</u>

WAC 458-57-115 [(2)](c)(iii), additional language was added:

(B) Section 2056 (b)(7) of the IRC states that a QTIP election is irrevocable once made. Section 2044 states that the value of any property for which a deduction was allowed under section 2056 (b)(7) must be included in the gross estate of the recipient. Similarly, a QTIP election made on the Washington return is irrevocable, and a surviving spouse who receives property for which a Washington QTIP election was made must include the value of the remaining property in his or her gross estate for Washington estate tax purposes. If the value of property for which a federal QTIP election was made is different, this value is not includible in the surviving spouse's gross estate for Washington estate tax purposes; instead, the value of property for which a Washington QTIP election was made is includible.

(C) The Washington QTIP election must adequately identify the assets, by schedule and item number, included as part of the election, either on the return or, if those assets have not been determined when the estate tax return is filed, on a statement to that effect, prepared when the assets are defini-

tively identified. Identification of the assets is necessary when reviewing the surviving spouse's return, if a return is required to be filed. This statement may be filed with the department at that time or when the surviving spouse's estate tax return is filed.

WAC 458-57-115 [(2)](c), a new subsection (iv) was added:

(iv) Washington qualified domestic trust (QDOT) election. (a) A deduction is allowed for property passing to a surviving spouse who is not a U.S. citizen in a qualified domestic trust (a "QDOT"). An executor may elect to treat a trust as a QDOT on the Washington estate tax return even though no QDOT election is made with respect to the trust on the federal return; and also may forgo making an election on the Washington estate tax return to treat a trust as a QDOT even though a QDOT election is made with respect to the trust on the federal return. An election to treat a trust as a QDOT may not be made with respect to a specific portion of an entire trust that otherwise would qualify for a material deduction, but if the trust is actually severed pursuant to authority granted in the governing instrument or under local law prior to the due date for the election, a QDOT election may be made for any one or more of the severed trusts.

(B) A QDOT election may be made on the Washington estate tax return with respect to property passing to the surviving spouse in a QDOT, and also with respect to property passing to the surviving spouse if the requirements of IRC Section 2056 (d)(2)(B) are satisfied. Unless specifically stated otherwise herein, all provisions of Sections 2056(d) and 2056A of the IRC, and the federal regulations promulgated thereunder, are applicable to a Washington QDOT election. Section 2056A(d) of the IRC states that a QDOT election is irrevocable once made. Similarly, a QDOT election made on the Washington estate tax return is irrevocable. For purposes of this subsection, a QDOT means, with respect to any decedent, a trust described in IRC Section 2056A(a), provided, however, that if an election is made to treat a trust as a QDOT on the Washington estate tax return but no QDOT election is made with respect to the trust on the federal return:

(I) The trust must have at least one trustee that is an individual citizen of the United States resident in Washington State, or a corporation formed under the laws of the state of Washington, or a bank as defined in IRC Section 581 that is authorized to transact business in, and is transacting business in, the state of Washington (the trustee required under this subsection is referred to herein as the "Washington Trustee");

(II) The Washington Trustee must have the right to withhold from any distribution from the trust (other than a distribution of income) the Washington QDOT tax imposed on such distribution;

(III) The trust must be maintained and administered under the laws of the state of Washington; and

(IV) The trust must meet the additional requirements intended to ensure the collection of the Washington QDOT tax set forth in subsection (iv)(D) below.

(C) The QDOT election must adequately identify the assets, by schedule and item number, included as part of the election, either on the return, or, if those assets have not been determined when the estate tax return is filed, or a statement to that effect, prepared when the assets are definitively iden-

tified. This statement may be filed with the department at that time or when the first taxable event with respect to the trust is reported to the department.

(D) In order to qualify as a QDOT, the following requirements regarding collection of the Washington QDOT tax must be satisfied.

(I) If a QDOT election is made to treat a trust as a QDOT on both the federal and Washington estate tax returns, the Washington QDOT election will be valid so long as the trust satisfies the statutory requirements of Treas. Reg. Section 20.2056A-2(d).

(II) If an election is made to treat a trust as a QDOT only on the Washington estate tax return, the following rules apply:

If the fair market value of the trust assets exceeds \$2 million as of the date of the decedent's death, or, if applicable, the alternate valuation date, the trust must comply with Treas. Reg. Section 20.2056A-2 (d)(1)(i), except that: If the bank trustee alternative is used, the bank must be a bank that is authorized to transact business in, and is transacting business in, the state of Washington, or a bond or an irrevocable letter of credit meeting the requirements of Treas. Reg. Section 20.2056A-2 (d)(1)(i)(B) or (C) must be furnished to the department.

If the fair market value of the trust assets is \$2 million or less as of the date of the decedent's death, or, if applicable, the alternate valuation date, the trust must comply with Treas. Reg. Section 20.2056A-2 (d)(1)(ii), except that not more than 35 percent of the fair market value of the trust may be comprised of real estate located outside of the state of Washington.

A taxpayer may request approval of an alternate plan or arrangement to assure the collection of the Washington QDOT tax. If such plan or arrangement is approved by the department, such plan or arrangement will be deemed to meet the requirements of this subparagraph (iv)(D).

(E) The Washington estate tax will be imposed on:

(I) Any distribution before the date of the death of the surviving spouse from a QDOT (except those distributions excepted by IRC Section 2056A (b)(3)), and

(II) The value of the property remaining in the QDOT on the date of the death of the surviving spouse (or the spouse's deemed date of death under IRC Section 2056A (b)(4)). The tax is computed using Table W. The tax is due on the date specified in IRC Section 2056A (b)(5). The tax shall be reported to the department in a form containing the information that would be required to be included on federal Form 706-QDT with respect to the taxable event, and any other information requested by the department, and the computation of the Washington tax shall be made on a supplemental statement. If Form 706-QDT is required to be filed with the Internal Revenue Service with respect to a taxable event, a copy of such form shall be provided to the department. Neither the residence of the surviving spouse or other QDOT beneficiary nor the situs of the QDOT assets are relevant to the application of the Washington tax. In other words, if Washington state estate tax would have been imposed on property passing to a QDOT at the decedent's date of death but for the deduction allowed by this subsection (iv), the Washington tax will apply to the QDOT at the time of the tax-

able event as set forth in this subsection (iv)(E) regardless of, for example, whether the distribution is made to a beneficiary who is not a resident of Washington, or whether the surviving spouse was a nonresident of Washington at the date of the surviving spouse's death.

(F) If the surviving spouse of the decedent becomes a citizen of the United States and complies with the requirements of Section 2056A (b)(12) of the IRC, then the Washington tax will not apply to (I) any distribution before the date of the death of the surviving spouse from a QDOT, or (II) the value of the property remaining in the QDOT on the date of the death of the surviving spouse (or the spouse's deemed date of death under IRC Section 2056A (b)(4)).

WAC 458-57-135 (3)(b), additional language was added:

In any case where a federal return must be filed under the current Internal Revenue Code (IRC) or in the year 2009 and thereafter, if the gross estate of a decedent exceeds two million dollars, a state return must be filed with the Washington state department of revenue (department) on or before the date that the federal return is required or would have been required to be filed. (This may include a federally granted extension of time for filing. See subsection (2)(b).) Section 6075 of the IRC requires that the federal return be filed within nine months after the date of the decedent's death.

WAC 458-57-135 (3)(c), two new subsections were added:

(ii) Extensions to file for estates that are not required to file a federal estate tax return. For those estates that are not required to file a federal return, the personal representative may request a one-time automatic six-month extension to file. The request must be in writing and acknowledge that interest will begin to accrue from the original due date of the state return. The written request for the extension must be made prior to the date the state return is due.

(iv) Extension to pay tax owed for estates that are not required to file a federal estate tax return. For those estates that are not required to file a federal return, the personal representative may request an extension of time for paying the tax owed when payment of the tax would cause an undue hardship upon the estate or for a payment plan for closely held businesses. The granting of an extension of time to pay the tax owed or for a payment plan for closely held business will not operate to prevent the running of interest. RCW 83.100.070.

(A) Hardship extensions to pay.

In any case in which the department finds that payment, on the due date prescribed, or any part of a deficiency would impose undue hardship upon the estate, the department may extend the time for payment for a period or periods not to exceed one year for any one period and for all periods not to exceed four years from the original due date of payment.

The extension will not be granted upon a general statement of hardship. The term "undue hardship" means more than an inconvenience to the estate. It must appear that a substantial financial loss, for example, due to the sale of property at a sacrifice price, will result to the estate from making payment of the tax owed at the date payment is due. If a market exists, a sale of property at the current market price is not ordinarily considered as resulting in an undue hardship. No

extension will be granted if the deficiency is due to negligence or intentional disregard of rules and regulations or to fraud with intent to evade the tax.

An application for such an extension must be in writing and must contain, or be supported by, information in a written statement declaring that it is made under penalties of perjury showing the undue hardship that would result to the estate if the extension were refused. The application, with the supporting information, must be filed with the department. When received, it will be examined, and, if possible, within thirty days will be denied, granted, or tentatively granted subject to certain conditions of which the personal representative will be notified. The department will not consider an application for such an extension unless it is applied for on or before the due date for payment. If the personal representative desires to obtain an additional extension, it must be applied for on or before the date of the expiration of the previous extension.

The amount of tax owed for which an extension is granted, along with interest as determined by RCW 83.100-.070, shall be paid on or before the expiration of the period of extension without the necessity of notice and demand from the department.

(v) Payment plans for closely held businesses. The department will abide by the provisions of Section 6166 of the 2005 IRC for the granting of payment plans for closely held businesses.

WAC 458-57-155, the term "federal taxable estate" was replaced with "an adjusted gross estate."

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 7, 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 7, Amended 6, 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 7, Amended 6, Repealed 0.

Date Adopted: March 9, 2006.

Janis P. Bianchi, Manager
Interpretations and Technical Advice Unit

AMENDATORY SECTION (Amending WSR 02-18-078, filed 8/30/02, effective 9/30/02)

WAC 458-57-005 Nature of estate tax, definitions. (1) **Introduction.** This rule describes the nature of Washington state's estate tax as it is imposed by chapter 83.100 RCW (Estate and Transfer Tax Act) for deaths occurring on or before May 16, 2005. The estate tax rules for deaths occurring on or after May 17, 2005, can be found in WAC 458-57-105 through 458-57-165. It also defines terms that will be

used throughout chapter 458-57 WAC (Washington Estate and Transfer Tax Reform Act Rules).

(2) **Nature of Washington's estate tax.** The estate tax is neither a property tax nor an inheritance tax. It is a tax imposed on the transfer of the entire taxable estate and not upon any particular legacy, devise, or distributive share.

(a) The state of Washington operates under RCW 83.100.020, which references the Internal Revenue Code (IRC) as it existed **January 1, ((2001)) 2005.** ~~((Federal estate tax law changes enacted after January 1, 2001, do not apply to the reporting requirements of Washington's estate tax. For deaths occurring January 1, 2002, and after, Washington has different estate tax reporting requirements than those of the federal government. There will be estates that must file an estate tax return with the state of Washington, even though they are not required to file with the federal government. Washington will continue to collect 100% of the available state death tax credit under the 2001 IRC for all estates that must file a Washington return.))~~ The Washington State Estate and Transfer Tax Return and the instructions for completing the return can be found on the department's web site at <http://www.dor.wa.gov/> under the heading titled forms. The return and instructions can also be obtained by calling the estate tax section at ~~((360-753-5547 or 360-753-7518 or by writing to the following address:~~

~~State of Washington
Department of Revenue
Special Programs Division
P.O. Box 448
Olympia, WA 98507-0448))~~ 360-570-3265 (option 2).

(b) The estate tax does not apply to completed absolute lifetime transfers. Section 2035(d) of the ~~((2001))~~ Internal Revenue Code generally exempts such transfers. To the extent permitted by this provision, lifetime transfers are not subject to Washington estate tax. The state of Washington does not have a gift tax.

(3) **Definitions.** The following terms and definitions are applicable throughout chapter 458-57 WAC:

(a) "Decedent" means a deceased individual;

(b) "Department" means the department of revenue, the director of that department, or any employee of the department exercising authority lawfully delegated to him by the director;

(c) "Escheat" of an estate means that whenever any person dies, whether a resident of this state or not, leaving property in an estate subject to the jurisdiction of this state and without being survived by any person entitled to that same property under the laws of this state, such estate property shall be designated escheat property and shall be subject to the provisions of RCW 11.08.140 through ~~((11-08-280-))~~ 11.08.300;

(d) "Federal credit" means the maximum amount of the credit for state taxes allowed by section 2011 of the ~~((2001))~~ Internal Revenue Code. This credit is calculated using an "adjusted taxable estate" figure, which is simply the taxable estate, less sixty thousand dollars. However, when the term "federal credit" is used in reference to a generation-skipping transfer (GST), it means the maximum amount of the credit for state taxes allowed by section 2604 of the ~~((2001))~~ Internal Revenue Code;

(e) "Federal return" means any tax return required by chapter 11 (Estate tax) or chapter 13 (Tax on generation-skipping transfers) of the ((2004)) Internal Revenue Code;

(f) "Federal tax" means tax under chapter 11 (Estate tax) of the ((2004)) Internal Revenue Code. However, when used in reference to a GST, "federal tax" means the tax under chapter 13 (Tax on generation skipping transfers) of the ((2004)) Internal Revenue Code;

(g) "Generation-skipping transfer" or "GST" means a "generation-skipping transfer" as defined and used in section 2611 of the ((2004)) Internal Revenue Code;

(h) "Gross estate" means "gross estate" as defined and used in section 2031 of the ((2004)) Internal Revenue Code;

(i) "Internal Revenue Code" or "IRC" means the United States Internal Revenue Code of 1986, as amended or renumbered on January 1, ((2004)) 2005;

(j) "Nonresident" means a decedent who was domiciled outside Washington at the time of death;

(k) "Person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity and, to the extent permitted by law, any federal, state, or other governmental unit or subdivision or agency, department, or instrumentality thereof;

(l) "Person required to file the federal return" means any person required to file a return required by chapter 11 or 13 of the ((2004)) Internal Revenue Code, such as the personal representative of an estate, a transferor, trustee, or beneficiary of a generation-skipping transfer, or a qualified heir with respect to qualified real property, as defined and used in section 2032A(c) of the ((2004)) Internal Revenue Code;

(m) "Person responsible," means the person responsible for filing the federal and state returns and is the same person described in subsection (l) ~~((above))~~ of this section;

(n) "Property," when used in reference to an estate tax transfer, means property included in the gross estate. However, when used in reference to a generation-skipping transfer, "property" means all real and personal property subject to the federal tax;

(o) "Resident" means a decedent who was domiciled in Washington at time of death;

(p) "State return" means the Washington Estate Tax Return required by RCW 83.100.050;

(q) "Transfer" means "transfer" as used in section 2001 of the ((2004)) Internal Revenue Code, or a disposition or cessation of qualified use as defined and used in section 2032A of the ((2004)) Internal Revenue Code; and

(r) "Trust" means "trust" under Washington law and any arrangement described in section 2652 of the ((2004)) Internal Revenue Code.

AMENDATORY SECTION (Amending WSR 02-18-078, filed 8/30/02, effective 9/30/02)

WAC 458-57-015 Valuation of property, property subject to estate tax, how to calculate the tax. (1) Introduction. This rule applies to deaths occurring on or before May 16, 2005, and is intended to help taxpayers determine and pay the correct amount of estate tax with their state return. The estate tax rules for deaths occurring on or after

May 17, 2005, can be found in WAC 458-57-105 through 458-57-165. It explains the necessary steps for determining the tax, and provides examples of how the federal estate tax unified credit relates to the amount that must be reported on the state return. (If a nonresident decedent has property located within Washington at the time of death refer to WAC 458-57-025 to determine the amount of tax payable to Washington.)

(2) **Valuation.** The value of every item of property in a decedent's gross estate is its fair market value. However, the personal representative may elect to use the alternate valuation method under section 2032 of the ((2004)) Internal Revenue Code (IRC), and in that case the value is the fair market value at that date, including the adjustments prescribed in that section of the IRC.

The valuation of certain farm property and closely held business property, properly made for federal estate tax purposes pursuant to an election authorized by section 2032A of the ((2004)) IRC, is binding for state estate tax purposes.

(3) **Property subject to estate tax.** The estate tax is imposed on transfers of the taxable estate, as defined in section 2051 of the ((2004)) IRC.

(a) The first step in determining the value of the decedent's taxable estate is to determine the total value of the gross estate. The value of the gross estate includes the value of all the decedent's tangible and intangible property at the time of death. In addition, the gross estate may include property in which the decedent did not have an interest at the time of death. A decedent's gross estate for federal estate tax purposes may therefore be different from the same decedent's estate for local probate purposes. Sections 2031 through 2046 of the ((2004)) IRC provide a detailed explanation of how to determine the value of the gross estate. The following are examples of items that may be included in a decedent's gross estate and not in the probate estate:

- (i) Certain property transferred by the decedent during the decedent's lifetime without adequate consideration;
- (ii) Property held jointly by the decedent and others;
- (iii) Property over which the decedent had a general power of appointment;
- (iv) Proceeds of certain policies of insurance on the decedent's life annuities; and
- (v) Dower and curtesy of a surviving spouse or a statutory estate in lieu thereof.

(b) The value of the taxable estate is determined by subtracting the authorized exemption and deductions from the value of the gross estate. Under various conditions and limitations, deductions are allowable for expenses, indebtedness, taxes, losses, charitable transfers, and transfers to a surviving spouse. Sections 2051 through 2056A of the ((2004)) IRC provide a detailed explanation of how to determine the value of the taxable estate.

(4) **Imposition of Washington's estate tax.** A tax in an amount equal to the federal credit is imposed by RCW 83.100.030 upon the taxable estate of every decedent. Washington's estate tax is due in every case in which the gross estate tax exceeds the unified credit as specified in section 2010 of the ((2004)) IRC, and there is credit available to be taken, with the exception that all applicable federal estate tax

credits are to be applied to the estate's tax liability before the state estate tax liability is computed.

(a) The following tables are taken from the ((2001)) IRC. They show the maximum amount of federal credit available for state death taxes. The amount of federal credit computed multiplied by the appropriate fraction is ((also)) the amount of Washington estate tax due.

Calculate the credit for state death taxes

(i) Step one - calculate the adjusted taxable estate:

Worksheet

Adjusted Taxable Estate

1. Taxable estate (from ((Tax Computation, WA Form REV 85-0046)) federal form 706, Part 2, Line 3) \$.
2. Adjustment \$60,000
3. Adjusted taxable estate. Subtract line 2 from line 1. Use this amount to compute maximum credit for state death taxes in Table ((+)) (B).

(ii) Step two - apply Table B to the adjusted taxable estate to calculate the credit for state death taxes:

(A)—Taxable estate, equal to or more than...	(B)—and, Taxable estate, less than...	(C)—Base credit on amount in column (A)	(D)—Rate of credit on excess over amount in column (A) (AS A PER-CENT)
\$ 0	\$ 40,000	\$ 0	0.0
\$ 40,000	\$ 90,000	\$ 0	0.8
\$ 90,000	\$ 140,000	\$ 400	1.6
\$ 140,000	\$ 240,000	\$ 1,200	2.4
\$ 240,000	\$ 440,000	\$ 3,600	3.2
\$ 440,000	\$ 640,000	\$ 10,000	4.0
\$ 640,000	\$ 840,000	\$ 18,000	4.8
\$ 840,000	\$ 1,040,000	\$ 27,600	5.6
\$ 1,040,000	\$ 1,540,000	\$ 38,800	6.4
\$ 1,540,000	\$ 2,040,000	\$ 70,800	7.2
\$ 2,040,000	\$ 2,540,000	\$ 106,800	8.0
\$ 2,540,000	\$ 3,040,000	\$ 146,800	8.8
\$ 3,040,000	\$ 3,540,000	\$ 190,800	9.6
\$ 3,540,000	\$ 4,040,000	\$ 238,800	10.4
\$ 4,040,000	\$ 5,040,000	\$ 290,800	11.2
\$ 5,040,000	\$ 6,040,000	\$ 402,800	12.0
\$ 6,040,000	\$ 7,040,000	\$ 522,800	12.8
\$ 7,040,000	\$ 8,040,000	\$ 650,800	13.6
\$ 8,040,000	\$ 9,040,000	\$ 786,800	14.4
\$ 9,040,000	\$ 10,040,000	\$ 930,800	15.2
\$ 10,040,000	.....	\$ 1,082,800	16.0

(iii) Step three - multiply the credit for state death taxes by the percentage for the year of the decedent's death:

<u>Year</u>	<u>Percentage</u>
<u>2002</u>	<u>75%</u>
<u>2003</u>	<u>50%</u>
<u>2004</u>	<u>25%</u>
<u>2005</u>	<u>0%</u>

(b) Examples. The following are examples of how the estate tax is applied. These examples should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances.

(i) A married woman dies in the year 2002, leaving her husband and children surviving. Her taxable estate, computed after allowance of the marital deduction, is (((\$900,000)) \$1,100,000. The adjusted taxable estate is (((\$840,000 (\$900,000 - \$60,000)) \$1,040,000 (\$1,100,000 - \$60,000). The Washington state estate tax due is (((\$27,600 (the base credit shown in column (C) on the first \$840,000)) \$29,100 (\$38,800 multiplied by .75).

(ii) A married man dies with all of his property passing to his wife, outright under a community property agreement. His marital deduction under section 2056 of the ((2001)) IRC reduces his federal taxable estate below the applicable exclusion amount. Because his taxable estate is below the applicable exclusion amount, while no Washington estate tax is due a return must be filed.

(iii) The federal taxable estate of a decedent is \$100,000 (before gifts are added, which place the estate into a taxable category). The adjusted taxable estate is \$40,000 for state estate tax purposes (\$100,000 - \$60,000). No Washington estate tax is due because section 2011 of the ((2001)) IRC provides for no credit unless the adjusted taxable estate exceeds \$40,000. *Gifts can push an estate into a taxable category.

(iv) A widow dies in 2003, leaving a taxable estate of (((\$725,000)) \$1,030,000. The amount of tax payable to the state of Washington is computed as follows: Taxable estate of (((\$725,000)) \$1,030,000 less \$60,000 equals an adjusted taxable estate of (((\$665,000)) \$970,000. The state death tax credit ((2001)) IRC section 2011) on the first (((\$640,000)) \$840,000 is (((\$18,000)) \$27,600. The state death tax credit for the (((\$25,000)) \$130,000 increment (((\$665,000 - \$640,000)) \$970,000 - \$840,000) is (((\$1,200)) \$7,280 ((4.8% of \$25,000)) 5.6% of \$130,000). The total Washington estate tax liability is (((\$19,200 (\$18,000 + \$1,200)) \$17,440 (\$27,600 + \$7,280) x .50 however, the state estate tax cannot exceed the adjusted gross estate tax (line 14) which in this case would be (((\$9,250)) \$12,300. Therefore, the state estate tax would be (((\$9,250)) \$12,300 because it is the lower of the two. This occurs in a small window over the applicable exemption threshold amount.

AMENDATORY SECTION (Amending WSR 02-18-078, filed 8/30/02, effective 9/30/02)

WAC 458-57-017 Property subject to generation-skipping transfer tax, how to calculate the tax, allocation of generation-skipping transfer exemption. (1) **Introduction.** The generation-skipping transfer tax was repealed effective May 17, 2005. If the taxable termination or distribution is the result of a death that occurred on or after May 17, 2005, there is no Washington generation-skipping transfer tax. This repeal does not affect generation-skipping transfer taxable terminations or distributions that result from a death that occurred on or before May 16, 2005. This rule applies only to taxable terminations or distributions that

occur as the result of a death that occurred on or before May 16, 2005.

(2) This rule is intended to help taxpayers determine and pay the correct amount of generation-skipping transfer (GST) tax with their state return. It explains what property is subject to the tax, the calculation of the tax, and the allocation of the generation-skipping transfer exemption.

~~((2))~~ (3) **Property subject to generation-skipping transfer tax.** If real or tangible personal property subject to federal GST tax, as defined and used in section 2611 of the ~~((2001))~~ IRC, is located in this state or if the trust has its principal place of administration in this state at the time of the generation-skipping transfer, a tax in an amount equal to the federal credit provided by section 2604 of the ~~((2001))~~ IRC is imposed on every generation-skipping transfer.

~~((3))~~ (4) **Calculation of the tax.** The allowable Washington credit equals the federal GST tax on the transfer multiplied by 5% (.05). If state GST tax credit was paid to another state(s), the taxpayer must attach evidence of the credit paid to the Washington return. The Washington State Estate and Transfer Tax Return and the instructions for calculating the GST tax can be found on the department's web site at <http://www.dor.wa.gov/> under the heading titled forms. The return and instructions can also be obtained by calling the estate tax section at ~~((360-753-5547 or 360-753-7518 or by writing to the following address:~~

State of Washington
Department of Revenue
Special Programs Division
P.O. Box 448
Olympia, WA 98507-0448)) 360-570-3265, option 2.

~~((4))~~ (5) **Allocation of generation-skipping transfer exemption.** The allocation(s) of the GST exemption for Washington purposes will be the same as the allocation(s) made for federal GST exemption purposes up to the amount allowed by section 2631 of the ~~((2001))~~ IRC.

AMENDATORY SECTION (Amending WSR 02-18-078, filed 8/30/02, effective 9/30/02)

WAC 458-57-025 Determining the tax liability of nonresidents. (1) **Introduction.** This rule applies to deaths occurring on or before May 16, 2005, and discusses how property of nonresident decedents is taxed if that property is located within Washington at the time of death. The estate tax rules for deaths occurring on or after May 17, 2005, can be found in WAC 458-57-105 through 458-57-165.

(2) **Nonresident decedents and Washington's estate tax.** If any decedent has tangible personal property and/or real property located in Washington state at the time of death, that property is subject to Washington's estate tax.

(a) **The reciprocity exemption.** A nonresident decedent's estate is exempt from Washington's estate tax if the nonresident's state of domicile exempts the property of Washington residents from estate, inheritance, or other death taxes normally imposed by the domicile state. The nonresident decedent must have been a citizen and resident of the United States at the time of death. Also, at the time of death the laws of the domicile state must have made specific reference to this state, or must have contained a reciprocal provi-

sion under which nonresidents of the domicile state were exempted from applicable death taxes with respect to property or transfers otherwise subject to the jurisdiction of that state.

In those instances where application of this provision results in loss of available federal credit which would otherwise be allowed for federal tax purposes, Washington will absorb that proportional share which is applicable to property within the jurisdiction of this state. Application of this provision will not act to increase the total tax obligation of the estate.

(b) **Property of a nonresident's estate which is located in Washington.** A nonresident decedent's estate may have either real property or tangible personal property located in Washington at the time of death.

(i) All real property physically situated in this state, with the exception of federal trust lands, and all interests in such property, are deemed "located in" Washington. Such interests include, but are not limited to:

- (A) Leasehold interests;
- (B) Mineral interests;
- (C) The vendee's (but not the vendor's) interest in an executory contract for the purchase of real property;
- (D) Trusts (beneficial interest in trusts of realty); and
- (E) Decedent's interest in jointly owned property (e.g., tenants in common, joint with right of survivorship).

(ii) Tangible personal property of a nonresident decedent shall be deemed located in Washington only if:

- (A) At the time of death the property is situated in Washington; and
- (B) It is present for a purpose other than transiting the state.

(iii) For example, consider a nonresident decedent who was a construction contractor doing business as a sole proprietor. The decedent was constructing a large building in Washington. At the time of death, any of the decedent's equipment that was located at the job site in Washington, such as tools, earthmovers, bulldozers, trucks, etc., would be deemed located in Washington for estate tax purposes. Also, the decedent had negotiated and signed a purchase contract for speculative property in another part of Washington. For estate tax purposes, that real property should also be considered a part of the decedents' estate located in Washington.

(c) **Formula to calculate Washington's estate tax for nonresident decedents.** The amount of tax payable to Washington for a nonresident decedent equals the amount of federal credit multiplied by a fraction, the numerator of which is the value of the property located in Washington, and the denominator of which is the value of the decedent's gross estate. Restated: $\text{Federal Credit} \times (\text{Gross Value of Property in Washington} / \text{Decedent's Gross Estate}) = \text{Amount of Washington Estate Tax Due}$. This formula uses the gross value determined for estate tax purposes of any property located in Washington. No reduction will be allowed for any mortgages, liens, or other encumbrances or debts associated with such property except to the extent allowable in computing the gross estate for estate tax purposes.

AMENDATORY SECTION (Amending WSR 02-18-078, filed 8/30/02, effective 9/30/02)

WAC 458-57-035 Washington estate tax return to be filed—Penalty for late filing—Interest on late payments—Waiver or cancellation of penalty—Application of payment. (1) **Introduction.** This rule applies to deaths occurring on or before May 16, 2005, and discusses the due date for filing of Washington's estate tax return and payment of the tax due. It explains that a penalty is imposed on the taxes due with the state return when the return is not filed on or before the due date, and that interest is imposed when the tax due is not paid by the due date. The rule also discusses the limited circumstances under which the law allows the department of revenue to cancel or waive the penalty, and the procedure for requesting that cancellation or waiver. The Washington State Estate and Transfer Tax Return and the instructions for completing return can be found on the department's web site at <http://www.dor.wa.gov/> under the heading titled forms. The return and instructions can also be obtained by calling the estate tax section at ((360-753-5547 or 360-753-7518 or by writing to the following address:

State of Washington
Department of Revenue
Special Programs Division
P.O. Box 448

Olympia, WA 98507-0448)) 360-570-3265, option 2. The estate tax rules for deaths occurring on or after May 17, 2005, can be found in WAC 458-57-105 through 458-57-165.

(2) Filing the state return—Payment of the tax due.

The Washington estate tax return (state return) referred to in RCW 83.100.050 and a copy of the federal estate tax return (federal return)~~((, if one must be filed,))~~ and all supporting documentation is due nine months from the date of the decedent's death. The tax due with the state return must be paid on or before the due date.

(a) Section 6075 of the ((2001)) Internal Revenue Code (IRC) requires that the federal return be filed within nine months after the date of the decedent's death. In the case of any estate for which a federal return must be filed under the current IRC, a state return must be filed with the Washington state department of revenue (department) on or before the date on which the federal return is required to be filed. (This may include a federally granted extension of time for filing. See (b) of this subsection ((2)(b)).)

(b) ~~((Extensions to file or extensions for payment of tax for estates that must file a federal estate tax return.~~

(i)) Section 6081 of the ((2001)) IRC permits the granting of a reasonable extension of time for filing the federal return, generally not to exceed six months from the original due date. If a federal extension of the time to file is granted, the personal representative is required to file a true copy of that extension with the department on or before the original due date, or within thirty days of the issuance of the federal extension, whichever is later. RCW 83.100.050(2). If the personal representative fails to do so, the department may require the personal representative to file the state return on the date that the federal return would have been due had the federal extension not been granted.

((i)) (c) When the personal representative obtains an extension of time for payment of the federal tax, or elects to

pay that tax in installments, the personal representative may choose to pay the state estate tax over the same time period and in the same manner as the federal tax. The personal representative is required to file a true copy of that extension with the department on or before the original due date, or within thirty days of the issuance of the federal extension, whichever is later. RCW 83.100.060(2). If the personal representative fails to do so, the department may require the personal representative to pay the state tax on the date that the federal tax would have been due had the federal extension not been granted.

~~((c) Extensions to file for estates that are not required to file a federal estate tax return. For those estates that are not required to file a federal return, the personal representative may request a one-time automatic six-month extension to file. The request must be in writing and acknowledge that interest will begin to accrue from the original due date of the state return. The written request for the extension must be made prior to the date the state return is due.~~

~~(d) Extension to pay tax owed for estates that are not required to file a federal estate tax return. For those estates that are not required to file a federal return, the personal representative may request an extension of time for paying the tax owed when payment of the tax would cause an undue hardship upon the estate or for a payment plan for closely held businesses. The granting of an extension of time to pay the tax owed or for a payment plan for closely held business will not operate to prevent the running of interest. RCW 83.100.070.~~

~~(i) Hardship extensions to pay:~~

~~(A) In any case in which the department finds that payment, on the due date prescribed, or any part of a deficiency would impose undue hardship upon the estate, the department may extend the time for payment for a period or periods not to exceed one year for any one period and for all periods not to exceed four years from the original due date of payment.~~

~~(B) The extension will not be granted upon a general statement of hardship. The term "undue hardship" means more than an inconvenience to the estate. It must appear that a substantial financial loss, for example, due to the sale of property at a sacrifice price, will result to the estate from making payment of the tax owed at the date payment is due. If a market exists, a sale of property at the current market price is not ordinarily considered as resulting in an undue hardship. No extension will be granted if the deficiency is due to negligence or intentional disregard of rules and regulations or to fraud with intent to evade the tax.~~

~~(C) An application for such an extension must be in writing and must contain, or be supported by, information in a written statement declaring that it is made under penalties of perjury showing the undue hardship that would result to the estate if the extension were refused. The application, with the supporting information, must be filed with the department. When received, it will be examined, and, if possible, within thirty days will be denied, granted, or tentatively granted subject to certain conditions of which the personal representative will be notified. The department will not consider an application for such an extension unless it is applied for on or before the due date for payment. If the personal representative desires to obtain an additional extension, it must be~~

applied for on or before the date of the expiration of the previous extension.

(D) The amount of tax owed for which an extension is granted, along with interest as determined by RCW 83.100.070, shall be paid on or before the expiration of the period of extension without the necessity of notice and demand from the department.

(ii) Payment plans for closely held businesses.—The department will abide by the provisions of section 6166 of the 2001 IRC for the granting of payment plans for closely held businesses.

(e)) (d) The department shall issue a release when Washington's estate tax has been paid. Upon issuance of a release, all property subject to the tax shall be free of any claim for the tax by the state. RCW 83.100.080.

(3) **The late filing penalty.** If the state return is not filed by the due date, or any extension of the state return's due date, the person required to file the return may be subject to a late filing penalty.

(a) **When does the penalty apply?** This penalty applies if the person required to file the return has not timely filed the state return with the department prior to being notified by the department, in writing, of the necessity to file the state return. The late payment penalty is equal to five percent of the tax due for each month during which the state return has not been filed, not to exceed the lesser of twenty-five percent of the tax or one thousand five hundred dollars. RCW 83.100.070.

(b) **How is the penalty computed?** The penalty is the equivalent of five percent for each month, but is accrued on a daily basis for those periods less than a month. For any portion of a month, it is calculated by taking the five percent monthly rate and dividing it by the number of days from the beginning of the month through the date the return is filed, including the filing date.

For example, assume a state return is due on February 3rd but is not filed until April 20th of the same year. The state return is delinquent starting with February 4th. The amount of tax due with the state return is \$10,000.

(i) The penalty should be computed as follows:

(Feb 4-Mar 3 \$10,000 tax at 5% per month	\$500.00
Mar 4-Apr 3 \$10,000 tax at 5% per month	\$500.00
Apr 4-Apr 20 \$10,000 tax at .1667% x 17 days	\$283.39
Total delinquent penalty due on April 20th filing date	\$1,283.39

(ii) In this example, the first two calendar months are complete and incur the full five percent penalty. The last portion of a month is a total of seventeen days, including both April 4th and April 20th. Since April has thirty days total, the five percent monthly rate is divided by the thirty days in April to arrive at a daily rate of .001667 (or .1667 percent). The daily rate is then multiplied by the seventeen days of penalty accrual to arrive at the total percentage of penalty due for that portion of a month (.001667 x 17 days = .028339 or 2.8339 percent).)

Feb 4-Feb 28 \$10,000 tax at 5% per month	\$446.43
Mar 1-Mar 31 \$10,000 tax at 5% per month	\$500.00
Apr 1-Apr 20 \$10,000 tax at .1667% x 17 days	\$333.34

Total delinquent penalty due on April 20th filing date \$1,297.77

(ii) In this example, the first month (February) is a partial month. February has twenty-eight days, the five percent monthly rate is divided by twenty-eight days to arrive at a daily rate of .0017857 (or .17857 percent). The daily rate is then multiplied by the twenty-five days of penalty accrual to arrive at the total percentage of penalty due for that portion of a month (.0017857 x 25 days = .044643 or 4.4643 percent). The second calendar month (March) is complete and incurs the full five percent penalty. The last portion of a month is a total of seventeen days, including both April 4th and April 20th. Since April has thirty days total, the five percent monthly rate is divided by the thirty days in April to arrive at a daily rate of .001667 (or .1667 percent). The daily rate is then multiplied by the twenty days of penalty accrual to arrive at the total percentage of penalty due for that portion of a month (.001667 x 20 days = .03334 or 3.334 percent).

(4) **Interest is imposed on late payment.** The department is required by law to impose interest on the tax due with the state return if payment of the tax is not made on or before the due date. RCW 83.100.070. Interest applies to the delinquent tax only, and is calculated from the due date until the date of payment. Interest imposed for periods after December 31, 1996, will be computed at the annual variable interest rate described in RCW 82.32.050(2). Interest imposed for periods prior to January 1, 1997, will be computed at the rate of twelve percent per annum.

(5) **Waiver or cancellation of penalties.** RCW 83.100.-070(3) authorizes the department to waive or cancel the penalty for late filing of the state return under limited circumstances.

(a) **Claiming the waiver.** A request for a waiver or cancellation of penalties should contain all pertinent facts and be accompanied by such proof as may be available. The request must be made in the form of a letter and submitted to the department's special programs division. The person responsible bears the burden of establishing that the circumstances were beyond the responsible person's control and directly caused the late filing. The department will cancel or waive the late filing penalty imposed on the state return when the delinquent filing is the result of circumstances beyond the control of the person responsible for filing of the state return. The person responsible for filing the state return is the same person who is responsible for filing the federal return.

(b) **Circumstances eligible for waiver.** In order to qualify for a waiver of penalty the circumstances beyond the control of the person responsible for filing the state return must directly cause the late filing of the return. These circumstances are generally immediate, unexpected, or in the nature of an emergency. Such circumstances result in the person responsible not having reasonable time or opportunity to obtain an extension of their due date (see subsection (2)(b) of this section) or to otherwise timely file the state return. Circumstances beyond the control of the responsible person include, but are not necessarily limited to, the following:

(i) The delinquency was caused by the death or serious illness of the person responsible for filing the state return or a member of the responsible person's immediate family. In

order to qualify for penalty waiver, the death or serious illness must directly prevent the person responsible from having reasonable time or opportunity to arrange for timely filing of the state return. Generally, the death or serious illness must have occurred within sixty days prior to the due date, provided that a valid state return is filed within sixty days of the due date.

(ii) The delinquency was caused by an unexpected and unavoidable absence of the person responsible. Generally, this absence must be within sixty days prior to the due date, provided that a valid state return is filed within sixty days of the due date. "Unavoidable absence of the person responsible" does not include absences because of business trips, vacations, personnel turnover, or personnel terminations.

(iii) The delinquency was caused by the destruction by fire or other casualty of estate records necessary for completion of the state return.

(iv) An estate tax return was timely filed, but was filed incorrectly with another state due to an issue of the decedent's domicile.

(v) A Washington estate tax return was properly prepared and timely filed, but was sent to the location for filing of the federal estate tax return.

(6) **Waiver or cancellation of interest.** Title 83 RCW (Estate Taxation) does not provide any circumstances that allow for waiver of the interest, even though penalty may be waived under limited circumstances (see subsection (5) of [this section](#)).

(7) **Application of payment towards liability.** The department will apply taxpayer payments first to interest, next to penalties, and then to the tax, without regard to any direction of the taxpayer.

AMENDATORY SECTION (Amending WSR 02-18-078, filed 8/30/02, effective 9/30/02)

WAC 458-57-045 Administration of the tax—Releases, amended returns, and refunds~~(, heirs of escheat estates)~~. (1) **Introduction.** This rule applies to deaths occurring on or before May 16, 2005. This rule contains information on releases issued by the department for state estate taxes paid. It explains how and when an amended state return should be filed. ~~((The rule also gives several requirements for notification to the department when a claimed heir to an escheat estate is located.))~~ Information on escheat estates and absentee distributees (missing heirs) can be found at RCW 458-57-165. The estate tax rules for deaths occurring on or after May 17, 2005, can be found in WAC 458-57-105 through 458-57-165.

(2) **Releases.** When the state estate taxes have been paid in full, the department will issue a release to the personal representative upon request. The request will include a completed state return and a copy of the completed federal return, if one was filed. The final determination of the amount of taxes due from the estates that have filed federal returns is contingent on receipt of a copy of the final closing letter issued by the Internal Revenue Service (IRS). The department may require additional information to substantiate information provided by those estates that are not required to file federal returns. The release issued by the department will

not bind or estop the department in the event of a misrepresentation of facts.

(3) **Amended returns.** An amended state return must be filed with the department within five days after any amended federal return is filed with the IRS and must be accompanied by a copy of the amended federal return. ~~((For those estates that are not required to file a federal return, an amended estate tax return must be received within three years from the date the original estate tax return was filed or within two years of paying the tax, whichever is later.))~~

(a) Any time that the amount of federal tax due is adjusted or when there is a final determination of the federal tax due the person responsible must give written notification to the department. This notification must include copies of any final examination report, any compromise agreement, the state tax closing letter, and any other available evidence of the final determination.

(b) If any amendment, adjustment or final determination results in additional state estate tax due, interest will be calculated on the additional tax due at the annual variable interest rate described in RCW 82.32.050(2).

(4) **Refunds.** Only the personal representative or the personal representative's retained counsel may make a claim for a refund of overpaid tax. If the application for refund, with supporting documents, is filed within four months after an adjustment or final determination of tax liability, the department shall pay interest until the date the refund is mailed. If the application for refund, with supporting documents, is filed after four months after the adjustment or final determination, the department shall pay interest only until the end of the four-month period. Any refund issued by the department will include interest at the existing statutory rate defined in RCW 82.32.050(2), computed from the date the overpayment was received by the department until the date it is mailed to the estate's representative. RCW 83.100.130(2).

~~((5) Heirs of escheat estates. Heirs to an estate may be located after the estate escheats to Washington. The personal representative of an escheat estate or a claimed heir must provide the department with all information and documentary evidence available that supports the heir's claim. All supporting documents must be in the English language when submitted to the department. The English translation of any foreign document shall be authenticated as reasonably required by the department.~~

~~(a) In all cases where there is a court hearing or the taking of a deposition on the question of a claimed heir, the personal representative shall give the department twenty days' written notice of such hearing or matter.~~

~~(b) The personal representative must give the department at least twenty days' written notice of the hearing on the final account and petition for distribution.~~

~~(c) The department has no statutory authority to pay interest on escheat refunds.))~~

NEW SECTION

WAC 458-57-105 Nature of estate tax, definitions. (1) **Introduction.** This rule applies to deaths occurring on or after May 17, 2005, and describes the nature of Washington state's estate tax as it is imposed by chapter 83.100 RCW

(Estate and Transfer Tax Act). It also defines terms that will be used throughout chapter 458-57 WAC (Washington Estate and Transfer Tax Reform Act rules). The estate tax rule on the nature of estate tax and definitions for deaths occurring on or before May 16, 2005, can be found in WAC 458-57-005.

(2) **Nature of Washington's estate tax.** The estate tax is neither a property tax nor an inheritance tax. It is a tax imposed on the transfer of the entire taxable estate and not upon any particular legacy, devise, or distributive share.

(a) **Relationship of Washington's estate tax to the federal estate tax.** The department administers the estate tax under the legislative enactment of chapter 83.100 RCW, which references the Internal Revenue Code (IRC) as it existed January 1, 2005. Federal estate tax law changes enacted after January 1, 2005, do not apply to the reporting requirements of Washington's estate tax. The department will follow federal Treasury Regulations section 20 (Estate tax regulations), in existence on January 1, 2005, to the extent they do not conflict with the provisions of chapter 83.100 RCW or 458-57 WAC. For deaths occurring January 1, 2009, and after, Washington has different estate tax reporting and filing requirements than the federal government. There will be estates that must file an estate tax return with the state of Washington, even though they are not required to file with the federal government. The Washington state estate and transfer tax return and the instructions for completing the return can be found on the department's web site at <http://www.dor.wa.gov/> under the heading titled forms. The return and instructions can also be requested by calling the department's estate tax section at 360-570-3265, option 2.

(b) **Lifetime transfers.** Washington estate tax taxes lifetime transfers only to the extent included in the federal gross estate. The state of Washington does not have a gift tax.

(3) **Definitions.** The following terms and definitions are applicable throughout chapter 458-57 WAC:

(a) "Absentee distributee" means any person who is the beneficiary of a will or trust who has not been located;

(b) "Decedent" means a deceased individual;

(c) "Department" means the department of revenue, the director of that department, or any employee of the department exercising authority lawfully delegated to him by the director;

(d) "Escheat" of an estate means that whenever any person dies, whether a resident of this state or not, leaving property in an estate subject to the jurisdiction of this state and without being survived by any person entitled to that same property under the laws of this state, such estate property shall be designated escheat property and shall be subject to the provisions of RCW 11.08.140 through 11.08.300;

(e) "Federal return" means any tax return required by chapter 11 (Estate tax) of the Internal Revenue Code;

(f) "Federal tax" means tax under chapter 11 (Estate tax) of the Internal Revenue Code;

(g) "Federal taxable estate" means the taxable estate as determined under chapter 11 of the Internal Revenue Code without regard to:

(i) The termination of the federal estate tax under section 2210 of the IRC or any other provision of law; and

(ii) The deduction for state estate, inheritance, legacy, or succession taxes allowable under section 2058 of the IRC.

(h) "Gross estate" means "gross estate" as defined and used in section 2031 of the Internal Revenue Code;

(i) "Internal Revenue Code" or "IRC" means, for purposes of this chapter, the United States Internal Revenue Code of 1986, as amended or renumbered on January 1, 2005;

(j) "Person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity and, to the extent permitted by law, any federal, state, or other governmental unit or subdivision or agency, department, or instrumentality thereof;

(k) "Person required to file the federal return" means any person required to file a return required by chapter 11 of the Internal Revenue Code, such as the personal representative (executor) of an estate;

(l) "Property," when used in reference to an estate tax transfer, means property included in the gross estate;

(m) "Resident" means a decedent who was domiciled in Washington at time of death;

(n) "State return" means the Washington estate tax return required by RCW 83.100.050;

(o) "Taxpayer" means a person upon whom tax is imposed under this chapter, including an estate or a person liable for tax under RCW 83.100.120;

(p) "Transfer" means "transfer" as used in section 2001 of the Internal Revenue Code. However, "transfer" does not include a qualified heir disposing of an interest in property qualifying for a deduction under RCW 83.100.046;

(q) "Washington taxable estate" means the "federal taxable estate":

(i) Less one million five hundred thousand dollars for decedents dying before January 1, 2006, or two million dollars for decedents dying on or after January 1, 2006;

(ii) Less the amount of any deduction allowed under RCW 83.100.046 as a farm deduction;

(iii) Less the amount of the Washington qualified terminable interest property (QTIP) election made under RCW 83.100.047;

(iv) Plus any amount deducted from the federal estate pursuant to IRC § 2056 (b)(7) (the federal QTIP election);

(v) Plus the value of any trust (or portion of a trust) of which the decedent was income beneficiary and for which a Washington QTIP election was previously made pursuant to RCW 83.100.047; and

(vi) Less any amount included in the federal taxable estate pursuant to IRC § 2044 (inclusion of amounts for which a federal QTIP election was previously made).

NEW SECTION

WAC 458-57-115 Valuation of property, property subject to estate tax, and how to calculate the tax. (1)

Introduction. This rule applies to deaths occurring on or after May 17, 2005, and is intended to help taxpayers prepare their return and pay the correct amount of Washington state estate tax. It explains the necessary steps for determining the tax and provides examples of how the tax is calculated. The estate tax rule on valuation of property etc., for deaths occur-

ring on or before May 16, 2005, can be found in WAC 458-57-015.

(2) Determining the property subject to Washington's estate tax.

(a) **General valuation information.** The value of every item of property in a decedent's gross estate is its date of death fair market value. However, the personal representative may elect to use the alternate valuation method under section 2032 of the Internal Revenue Code (IRC), and in that case the value is the fair market value at that date, including the adjustments prescribed in that section of the IRC. The valuation of certain farm property and closely held business property, properly made for federal estate tax purposes pursuant to an election authorized by section 2032A of the 2005 IRC, is binding on the estate for state estate tax purposes.

(b) **How is the gross estate determined?** The first step in determining the value of a decedent's Washington taxable estate is to determine the total value of the gross estate. The value of the gross estate includes the value of all the decedent's tangible and intangible property at the time of death. In addition, the gross estate may include property in which the decedent did not have an interest at the time of death. A decedent's gross estate for federal estate tax purposes may therefore be different from the same decedent's estate for local

probate purposes. Sections 2031 through 2046 of the IRC provide a detailed explanation of how to determine the value of the gross estate.

(c) **Deductions from the gross estate.** The value of the federal taxable estate is determined by subtracting the authorized exemption and deductions from the value of the gross estate. Under various conditions and limitations, deductions are allowable for expenses, indebtedness, taxes, losses, charitable transfers, and transfers to a surviving spouse. While sections 2051 through 2056A of the IRC provide a detailed explanation of how to determine the value of the taxable estate the following areas are of special note:

(i) Funeral expenses.

(A) Washington is a community property state and under *Estate of Julius C. Lang v. Commissioner*, 97 Fed. 2d 867 (9th Cir. 1938) affirming the reasoning of *Wittwer v. Pember-ton*, 188 Wash. 72, 76, 61 P.2d 993 (1936) funeral expenses reported for a married decedent must be halved. Administrative expenses are not a community debt and are reported at 100%.

(B) **Example.** John, a married man, died in 2005 with an estate valued at \$2.5 million. On Schedule J of the federal estate tax return listed following as expenses:

SCHEDULE J - Funeral Expenses and Expenses Incurred in Administering Property Subject to Claims			
Item Number	Description	Expense Amount	Total Amount
1	A. Funeral expenses: Burial and services	\$4,000	
	(1/2 community debt)	(\$2,000)	
	Total funeral expenses. . . . .			$2,000
	B. Administration expenses:		
	1. Executors' commissions - amount estimated/agreed upon paid. (Strike out the words that do not apply).		\$10,000
	2. Attorney fees - amount estimated/agreed upon/paid. (Strike out the words that do not apply).		\$5,000

The funeral expenses, as a community debt, were properly reported at 50% and the other administration expenses were properly reported at 100%.

(ii) **Mortgages and liens on real property.** Real property listed on Schedule A should be reported at its fair market value without deduction of mortgages or liens on the property. Mortgages and liens are reported and deducted using Schedule K.

(iii) Washington qualified terminable interest property (QTIP) election.

(A) A personal representative may choose to make a larger or smaller percentage or fractional QTIP election on the Washington return than taken on the federal return in order to reduce Washington estate liability while making full use of the federal unified credit.

(B) Section 2056 (b)(7) of the IRC states that a QTIP election is irrevocable once made. Section 2044 states that the value of any property for which a deduction was allowed under section 2056 (b)(7) must be included in the gross estate of the recipient. Similarly, a QTIP election made on the Washington return is irrevocable, and a surviving spouse who receives property for which a Washington QTIP election was

made must include the value of the remaining property in his or her gross estate for Washington estate tax purposes. If the value of property for which a federal QTIP election was made is different, this value is not includible in the surviving spouse's gross estate for Washington estate tax purposes; instead, the value of property for which a Washington QTIP election was made is includible.

(C) The Washington QTIP election must adequately identify the assets, by schedule and item number, included as part of the election, either on the return or, if those assets have not been determined when the estate tax return is filed, on a statement to that effect, prepared when the assets are definitively identified. Identification of the assets is necessary when reviewing the surviving spouse's return, if a return is required to be filed. This statement may be filed with the department at that time or when the surviving spouse's estate tax return is filed.

(D) **Example.** A decedent dies in 2009 with a gross estate of \$5 million. The decedent established a QTIP trust for the benefit of her surviving spouse in an amount to result in no federal estate tax. The federal unified credit is \$3.5 million for the year 2009. In 2009 the Washington statutory

deduction is \$2 million. To pay no Washington estate tax the personal representative of the estate has the option of electing a larger percentage or fractional QTIP election resulting in the maximization of the individual federal unified credit and paying no tax for Washington purposes.

The federal estate tax return reflected the QTIP election with a percentage value to pay no federal estate tax. On the Washington return the personal representative elected QTIP treatment on a percentage basis in an amount so no Washington estate tax is due. Upon the surviving spouse's death the assets remaining in the Washington QTIP trust must be included in the surviving spouse's gross estate.

(iv) Washington qualified domestic trust (QDOT) election.

(A) A deduction is allowed for property passing to a surviving spouse who is not a U.S. citizen in a qualified domestic trust (a "QDOT"). An executor may elect to treat a trust as a QDOT on the Washington estate tax return even though no QDOT election is made with respect to the trust on the federal return; and also may forgo making an election on the Washington estate tax return to treat a trust as a QDOT even though a QDOT election is made with respect to the trust on the federal return. An election to treat a trust as a QDOT may not be made with respect to a specific portion of an entire trust that otherwise would qualify for the marital deduction, but if the trust is actually severed pursuant to authority granted in the governing instrument or under local law prior to the due date for the election, a QDOT election may be made for any one or more of the severed trusts.

(B) A QDOT election may be made on the Washington estate tax return with respect to property passing to the surviving spouse in a QDOT, and also with respect to property passing to the surviving spouse if the requirements of IRC section 2056 (d)(2)(B) are satisfied. Unless specifically stated otherwise herein, all provisions of sections 2056(d) and 2056A of the IRC, and the federal regulations promulgated thereunder, are applicable to a Washington QDOT election. Section 2056A(d) of the IRC states that a QDOT election is irrevocable once made. Similarly, a QDOT election made on the Washington estate tax return is irrevocable. For purposes of this subsection, a QDOT means, with respect to any decedent, a trust described in IRC section 2056A(a), provided, however, that if an election is made to treat a trust as a QDOT on the Washington estate tax return but no QDOT election is made with respect to the trust on the federal return:

(I) The trust must have at least one trustee that is an individual citizen of the United States resident in Washington state, or a corporation formed under the laws of the state of Washington, or a bank as defined in IRC section 581 that is authorized to transact business in, and is transacting business in, the state of Washington (the trustee required under this subsection is referred to herein as the "Washington Trustee");

(II) The Washington Trustee must have the right to withhold from any distribution from the trust (other than a distribution of income) the Washington QDOT tax imposed on such distribution;

(III) The trust must be maintained and administered under the laws of the state of Washington; and

(IV) The trust must meet the additional requirements intended to ensure the collection of the Washington QDOT tax set forth in (c)(iv)(D) of this subsection.

(C) The QDOT election must adequately identify the assets, by schedule and item number, included as part of the election, either on the return, or, if those assets have not been determined when the estate tax return is filed, or a statement to that effect, prepared when the assets are definitively identified. This statement may be filed with the department at that time or when the first taxable event with respect to the trust is reported to the department.

(D) In order to qualify as a QDOT, the following requirements regarding collection of the Washington QDOT tax must be satisfied.

(I) If a QDOT election is made to treat a trust as a QDOT on both the federal and Washington estate tax returns, the Washington QDOT election will be valid so long as the trust satisfies the statutory requirements of Treas. Reg. Section 20.2056A-2(d).

(II) If an election is made to treat a trust as a QDOT only on the Washington estate tax return, the following rules apply:

If the fair market value of the trust assets exceeds \$2 million as of the date of the decedent's death, or, if applicable, the alternate valuation date, the trust must comply with Treas. Reg. Section 20.2056A-2 (d)(1)(i), except that: If the bank trustee alternative is used, the bank must be a bank that is authorized to transact business in, and is transacting business in, the state of Washington, or a bond or an irrevocable letter of credit meeting the requirements of Treas. Reg. Section 20.2056A-2 (d)(1)(i)(B) or (C) must be furnished to the department.

If the fair market value of the trust assets is \$2 million or less as of the date of the decedent's death, or, if applicable, the alternate valuation date, the trust must comply with Treas. Reg. Section 20.2056A-2 (d)(1)(ii), except that not more than 35 percent of the fair market value of the trust may be comprised of real estate located outside of the state of Washington.

A taxpayer may request approval of an alternate plan or arrangement to assure the collection of the Washington QDOT tax. If such plan or arrangement is approved by the department, such plan or arrangement will be deemed to meet the requirements of this (c)(iv)(D).

(E) The Washington estate tax will be imposed on:

(I) Any distribution before the date of the death of the surviving spouse from a QDOT (except those distributions excepted by IRC section 2056A (b)(3)); and

(II) The value of the property remaining in the QDOT on the date of the death of the surviving spouse (or the spouse's deemed date of death under IRC section 2056A (b)(4)). The tax is computed using Table W. The tax is due on the date specified in IRC section 2056A (b)(5). The tax shall be reported to the department in a form containing the information that would be required to be included on federal Form 706-QDT with respect to the taxable event, and any other information requested by the department, and the computation of the Washington tax shall be made on a supplemental statement. If Form 706-QDT is required to be filed with the Internal Revenue Service with respect to a taxable event, a

copy of such form shall be provided to the department. Neither the residence of the surviving spouse or other QDOT beneficiary nor the situs of the QDOT assets are relevant to the application of the Washington tax. In other words, if Washington state estate tax would have been imposed on property passing to a QDOT at the decedent's date of death but for the deduction allowed by this subsection (c)(iv)(E) (II), the Washington tax will apply to the QDOT at the time of a taxable event as set forth in this subsection (c)(iv)(E)(II) regardless of, for example, whether the distribution is made to a beneficiary who is not a resident of Washington, or whether the surviving spouse was a nonresident of Washington at the date of the surviving spouse's death.

(F) If the surviving spouse of the decedent becomes a citizen of the United States and complies with the requirements of section 2056A (b)(12) of the IRC, then the Washington tax will not apply to: Any distribution before the date of the death of the surviving spouse from a QDOT; or the value of the property remaining in the QDOT on the date of the death of the surviving spouse (or the spouse's deemed date of death under IRC section 2056A (b)(4)).

(d) **Washington taxable estate.** The estate tax is imposed on the "Washington taxable estate." The "Washington taxable estate" means the "federal taxable estate":

(i) Less one million five hundred thousand dollars for decedents dying before January 1, 2006, or two million dollars for decedents dying on or after January 1, 2006;

(ii) Less the amount of any deduction allowed under RCW 83.100.046 as a farm deduction;

(iii) Less the amount of the Washington qualified terminable interest property (QTIP) election made under RCW 83.100.047;

(iv) Plus any amount deducted from the federal estate pursuant to IRC § 2056 (b)(7) (the federal QTIP election);

(v) Plus the value of any trust (or portion of a trust) of which the decedent was income beneficiary and for which a Washington QTIP election was previously made pursuant to RCW 83.100.047; and

(vi) Less any amount included in the federal taxable estate pursuant to IRC § 2044 (inclusion of amounts for which a federal QTIP election was previously made).

(e) **Federal taxable estate.** The "federal taxable estate" means the taxable estate as determined under chapter 11 of the IRC without regard to:

(i) The termination of the federal estate tax under section 2210 of the IRC or any other provision of law; and

(ii) The deduction for state estate, inheritance, legacy, or succession taxes allowable under section 2058 of the IRC.

(3) Calculation of Washington's estate tax.

(a) The tax is calculated by applying Table W to the Washington taxable estate. See (d) of this subsection for the definition of "Washington taxable estate."

Table W

Washington Taxable Estate is at Least	But Less Than	The Amount of Tax Equals Initial Tax Amount	Plus Tax Rate %	Of Washington Taxable Estate Value Greater Than
\$0	\$1,000,000	\$0	10.00%	\$0
\$1,000,000	\$2,000,000	\$100,000	14.00%	\$1,000,000
\$2,000,000	\$3,000,000	\$240,000	15.00%	\$2,000,000
\$3,000,000	\$4,000,000	\$390,000	16.00%	\$3,000,000
\$4,000,000	\$6,000,000	\$550,000	17.00%	\$4,000,000
\$6,000,000	\$7,000,000	\$890,000	18.00%	\$6,000,000
\$7,000,000	\$9,000,000	\$1,070,000	18.50%	\$7,000,000
\$9,000,000		\$1,440,000	19.00%	\$9,000,000

(b) Examples.

(i) A widow dies on September 25, 2005, leaving a gross estate of \$2.1 million. The estate had \$100,000 in expenses deductible for federal estate tax purposes. Examples of allowable expenses include funeral expenses, indebtedness, property taxes, and charitable transfers. The Washington taxable estate equals \$500,000.

Gross estate	\$2,100,000
Less allowable expenses deduction	- \$100,000
Less \$1,500,000 statutory deduction	- \$1,500,000
Washington taxable estate	\$500,000

Based on Table W, the estate tax equals \$50,000 (\$500,000 x 10% Washington estate tax rate).

(ii) John dies on October 13, 2005, with an estate valued at \$3 million. John left \$1.5 million to his spouse, Jane, using the unlimited marital deduction. There is no Washington estate tax due on John's estate.

Gross estate	\$3,000,000
Less unlimited marital deduction	- \$1,500,000
Less \$1,500,000 statutory deduction	- \$1,500,000
Washington taxable estate	\$0

Although Washington estate tax is not due, the estate is still required to file a Washington estate tax return along with a photocopy of the filed and signed federal return and all supporting documentation.

NEW SECTION

WAC 458-57-125 Apportionment of tax when there are out-of-state assets. (1) **Introduction.** This rule applies to deaths occurring on or after May 17, 2005, and discusses how to apportion the estate tax when there is out-of-state property included in the gross estate. The estate tax rule on apportionment of estate tax for deaths occurring on or before May 16, 2005, can be found in WAC 458-57-025.

(2) **Calculation of apportioned tax.** Apportionment is allowed for estate property located outside of Washington. The amount of tax is determined using Table W (see WAC 458-57-115) multiplied by a fraction. The numerator of the fraction is the value of the property located in Washington. The denominator of the fraction is the value of the decedent's gross estate. Property qualifying for the farm deduction is excluded from the numerator and denominator of the fraction. See WAC 458-57-155 (Farm deduction) for additional information on the farm deduction.

$$(\$2,800,000 (\$3,100,000 - \$300,000) / \$3,100,000) \times \$100,000 = \$90,323$$

The estate does not have to pay estate tax to the state of Arizona in order to reduce the tax owed to Washington. The estate tax due to Washington is \$90,323.

(4) **When is property located in Washington?** A decedent's estate may have either real property or tangible personal property located in Washington at the time of death.

(a) All real property physically situated in this state, with the exception of federal trust lands, and all interests in such property, are deemed "located in" Washington. Such interests include, but are not limited to:

- (i) Leasehold interests;
- (ii) Mineral interests;
- (iii) The vendee's (but not the vendor's) interest in an executory contract for the purchase of real property;
- (iv) Trusts (beneficial interest in trusts of realty); and
- (v) Decedent's interest in jointly owned property (e.g., tenants in common, joint with right of survivorship).

(b) Tangible personal property of a nonresident decedent shall be deemed located in Washington only if:

- (i) At the time of death the property is situated in Washington; and
- (ii) It is present for a purpose other than transiting the state.

(c) **Example.** A nonresident decedent was a construction contractor doing business as a sole proprietor. The decedent was constructing a large building in Washington. At the time of death, any of the decedent's equipment that was located at the job site in Washington, such as tools, earthmovers, bulldozers, trucks, etc., would be deemed located in Washington for estate tax purposes. Also, the decedent had negotiated and signed a purchase contract for speculative property in another part of Washington. For estate tax purposes, that real property should also be considered a part of the decedent's estate located in Washington.

NEW SECTION

WAC 458-57-135 Washington estate tax return to be filed—Penalty for late filing—Interest on late payments—Waiver or cancellation of penalty—Application

(3) **Example.** A widow dies in 2006 leaving a gross estate of \$3.1 million. The estate had \$100,000 in expenses deductible for federal estate tax purposes. The decedent also owned a home in Arizona valued at \$300,000.

Gross estate	\$3,100,000
Less allowable expenses deduction	- \$100,000
Less \$2,000,000 statutory deduction	- \$2,000,000
Washington taxable estate	\$1,000,000

Based on the tax table, the estate tax equals \$100,000 (\$1,000,000 x 10% Washington estate tax rate). Because the decedent owned an out-of-state asset, the tax due to Washington is prorated by multiplying the amount of tax owed by a fraction. The numerator of the fraction is the value of the property located in Washington divided by the denominator that equals the value of the decedent's gross estate. The fraction is then multiplied by the amount of tax.

of payment. (1) **Introduction.** This rule applies to deaths occurring on or after May 17, 2005, and discusses the due date for filing of Washington's estate tax return and payment of the tax due. It explains that a penalty is imposed on the taxes due with the state return when the return is not filed on or before the due date, and that interest is imposed when the tax due is not paid by the due date. The rule also discusses the limited circumstances under which the law allows the department of revenue to cancel or waive the penalty, and the procedure for requesting that cancellation or waiver. The estate tax rule on the estate tax return etc., for deaths occurring on or before May 16, 2005, can be found in WAC 458-57-035.

(2) **Estate tax return.** The Washington state estate and transfer tax return and the instructions for completing return can be found on the department's web site at <http://www.dor.wa.gov/> under the heading titled forms. The return and instructions can also be obtained by calling the estate tax section at 360-570-3265, option 2.

(3) **Filing the state return—Payment of the tax due.**

(a) The Washington estate tax return (state return) referred to in RCW 83.100.050 is due nine months after the date of the decedent's death. The following is the list of documents that must accompany the state return:

- (i) A copy of the filed Federal Form 706 United States Estate (and Generation-skipping Transfer), 706NA, or 706QDT Tax Return(s), signed by the person required to file;
- (ii) All supporting documentation for completed federal return schedules;
- (iii) If applicable, a copy of an approved Form 4768 Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-skipping Transfer) Taxes;
- (iv) Copy(ies) of any Washington schedules that differ from the federal form schedules, along with supporting documentation;
- (v) Photocopy of death certificate;
- (vi) Photocopy of letters of administration, if any;
- (vii) Copy of the will and trust(s), if any;
- (viii) Copy of other state estate or inheritance return(s) and proof of payment(s), if any; and

(ix) Payment, if tax is due.

The tax due with the state return must be paid on or before the due date.

(b) In any case where a federal return must be filed under the current Internal Revenue Code (IRC) or in the year 2009 and thereafter, if the gross estate of a decedent exceeds two million dollars, a state return must be filed with the Washington state department of revenue (department) on or before the date that the federal return is required or would have been required to be filed. (This may include a federally granted extension of time for filing. See subsection (2)(b).) Section 6075 of the IRC requires that the federal return be filed within nine months after the date of the decedent's death.

(c) Extensions to file or extensions for payment of tax.

(i) Section 6081 of the IRC permits the granting of a reasonable extension of time for filing the federal return, generally not to exceed six months from the original due date. If a federal extension of the time to file is granted, the personal representative is required to file a true copy of that extension or installment approval with the department on or before the original due date, or within thirty days of the issuance of the federal extension or installment approval, whichever is later. RCW 83.100.050(2). If the personal representative fails to do so, the department may require the personal representative to file the state return on the date that the federal return would have been due had the federal extension not been granted.

(ii) When the personal representative obtains an extension of time for payment of the federal tax, or elects to pay that tax in installments, the personal representative may choose to pay the state estate tax over the same time period and in the same manner as the federal tax. The personal representative is required to file a true copy of that extension with the department on or before the original due date, or within thirty days of the issuance of the federal extension, whichever is later. RCW 83.100.060(2). If the personal representative fails to do so, the department may require the personal representative to pay the state tax on the date that the federal tax would have been due had the federal extension not been granted.

(iii) **Extensions to file for estates that are not required to file a federal estate tax return.** For those estates that are not required to file a federal return, the personal representative may request a one-time automatic six-month extension to file. The request must be in writing and acknowledge that interest will begin to accrue from the original due date of the state return. The written request for the extension must be made prior to the date the state return is due.

(iv) **Extension to pay tax owed for estates that are not required to file a federal estate tax return.** For those estates that are not required to file a federal return, the personal representative may request an extension of time for paying the tax owed when payment of the tax would cause an undue hardship upon the estate or for a payment plan for closely held businesses. The granting of an extension of time to pay the tax owed or for a payment plan for closely held business will not operate to prevent the running of interest. RCW 83.100.070.

Hardship extensions to pay.

In any case in which the department finds that payment, on the due date prescribed, or any part of a deficiency would

impose undue hardship upon the estate, the department may extend the time for payment for a period or periods not to exceed one year for any one period and for all periods not to exceed four years from the original due date of payment.

The extension will not be granted upon a general statement of hardship. The term "undue hardship" means more than an inconvenience to the estate. It must appear that a substantial financial loss, for example, due to the sale of property at a sacrifice price, will result to the estate from making payment of the tax owed at the date payment is due. If a market exists, a sale of property at the current market price is not ordinarily considered as resulting in an undue hardship. No extension will be granted if the deficiency is due to negligence or intentional disregard of rules and regulations or to fraud with intent to evade the tax.

An application for such an extension must be in writing and must contain, or be supported by, information in a written statement declaring that it is made under penalties of perjury showing the undue hardship that would result to the estate if the extension were refused. The application, with the supporting information, must be filed with the department. When received, it will be examined, and, if possible, within thirty days will be denied, granted, or tentatively granted subject to certain conditions of which the personal representative will be notified. The department will not consider an application for such an extension unless it is applied for on or before the due date for payment. If the personal representative desires to obtain an additional extension, it must be applied for on or before the date of the expiration of the previous extension.

The amount of tax owed for which an extension is granted, along with interest as determined by RCW 83.100.-070, shall be paid on or before the expiration of the period of extension without the necessity of notice and demand from the department.

(v) **Payment plans for closely held businesses.** The department will abide by the provisions of section 6166 of the 2005 IRC for the granting of payment plans for closely held businesses.

(4) **The late filing penalty.** If the state return is not filed by the due date, or any extension of the state return's due date, the person required to file the return may be subject to a late filing penalty.

(a) **When does the penalty apply?** Penalty applies if the person required to file the return has not timely filed the state return with the department prior to being notified by the department, in writing, of the necessity to file the state return. The late payment penalty is equal to five percent of the tax due for each month during which the state return has not been filed, not to exceed the lesser of twenty-five percent of the tax or one thousand five hundred dollars. RCW 83.100.070.

(b) **How is the penalty computed?** The penalty is the equivalent of five percent for each month, but is accrued on a daily basis for those periods less than a month. For any portion of a month, it is calculated by taking the five percent monthly rate and dividing it by the number of days from the beginning of the month through the date the return is filed, including the filing date.

For example, a state return is due on February 3rd but is not filed until April 20th of the same year. The state return is

delinquent starting with February 4th. The amount of tax due with the state return is \$10,000.

(i) The penalty is computed as follows:

Feb 4-Feb 28	\$10,000 tax at 5% per month	\$446.43
Mar 1-Mar 31	\$10,000 tax at 5% per month	\$500.00
Apr 1-Apr 20	\$10,000 tax at .1667% x 20 days	\$333.34
Total delinquent penalty due on April 20th filing date		\$1,297.77

(ii) In this example, the first month (February) is a partial month. February has twenty-eight days, the five percent monthly rate is divided by twenty-eight days to arrive at a daily rate of .0017857 (or .17857 percent). The daily rate is then multiplied by the twenty-five days of penalty accrual to arrive at the total percentage of penalty due for that portion of a month (.0017857 x 25 days = .044643 or 4.4643 percent). The second calendar month (March) is complete and incurs the full five percent penalty. The last portion of a month is a total of seventeen days, including both April 4th and April 20th. Since April has thirty days total, the five percent monthly rate is divided by the thirty days in April to arrive at a daily rate of .001667 (or .1667 percent). The daily rate is then multiplied by the twenty days of penalty accrual to arrive at the total percentage of penalty due for that portion of a month (.001667 x 20 days = .03334 or 3.334 percent).

(5) **Interest is imposed on late payment.** The department is required by law to impose interest on the tax due with the state return if payment of the tax is not made on or before the due date. RCW 83.100.070. Interest applies to the delinquent tax only, and is calculated from the due date until the date of payment. Interest imposed for periods after December 31, 1996, will be computed at the annual variable interest rate described in RCW 82.32.050(2). Interest imposed for periods prior to January 1, 1997, will be computed at the rate of twelve percent per annum.

(6) **Waiver or cancellation of penalties.** RCW 83.100.070(3) authorizes the department to waive or cancel the penalty for late filing of the state return under limited circumstances.

(a) **Claiming the waiver.** A request for a waiver or cancellation of penalties should contain all pertinent facts and be accompanied by such proof as may be available. The request must be made in the form of a letter and submitted to the department's special programs division. The person responsible bears the burden of establishing that the circumstances were beyond their control and directly caused the late filing. The department will cancel or waive the late filing penalty imposed on the state return when the delinquent filing is the result of circumstances beyond the control of the person responsible for filing of the state return. The person responsible for filing the state return is the same person who is responsible for filing the federal return.

(b) **Circumstances eligible for waiver.** In order to qualify for a waiver of penalty the circumstances beyond the control of the person responsible for filing the state return must directly cause the late filing of the return. These circumstances are generally immediate, unexpected, or in the nature of an emergency. Such circumstances result in the person not having reasonable time or opportunity to obtain an extension

of their due date (see subsection (2)(b)) or to otherwise timely file the state return. Circumstances beyond the control include, but are not necessarily limited to, the following:

(i) The delinquency was caused by the death or serious illness of the person responsible for filing the state return or a member of the immediate family. In order to qualify for penalty waiver, the death or serious illness must directly prevent them from having reasonable time or opportunity to arrange for timely filing of the state return. Generally, the death or serious illness must have occurred within sixty days prior to the due date, provided that a valid state return is filed within sixty days of the due date.

(ii) The delinquency was caused by an unexpected and unavoidable absence of the person responsible. Generally, this absence must be within sixty days prior to the due date, provided that a valid state return is filed within sixty days of the due date. "Unavoidable absence of the person responsible" does not include absences because of business trips, vacations, personnel turnover, or personnel terminations.

(iii) The delinquency was caused by the destruction by fire or other casualty of estate records necessary for completion of the state return.

(iv) An estate tax return was timely filed, but was filed incorrectly with another state due to an issue of the decedent's domicile.

(v) A Washington estate tax return was properly prepared and timely filed, but was sent to the location for filing of the federal estate tax return.

(7) **Waiver or cancellation of interest.** Title 83 RCW (Estate taxation) does not provide any circumstances that allow for waiver of the interest, even though penalty may be waived under limited circumstances (see subsection (6) of this section).

(8) **Application of payment towards liability.** The department will apply taxpayer payments first to interest, next to penalties, and then to the tax, without regard to any direction of the taxpayer.

NEW SECTION

WAC 458-57-145 Administration of the tax—Releases, amended returns, refunds, and statute of limitations. (1) **Introduction.** This rule applies to deaths occurring on or after May 17, 2005, and contains information on releases issued by the department for state estate taxes paid. It explains how and when an amended state return should be filed and information on refunds and statute of limitations. The estate tax rule on releases, amended returns etc., for deaths occurring on or before May 16, 2005, can be found in WAC 458-57-045.

(2) **Releases.** When the state estate taxes have been paid in full, the department will issue a release to the personal representative. The final determination of the amount of taxes due from the estates that have filed federal returns is contingent upon receipt of a copy of the final closing letter issued by the Internal Revenue Service (IRS). The department may require additional information to substantiate information provided by those estates that are not required to file federal returns. The release issued by the department will not bind or

estop the department in the event of a misrepresentation of facts.

(3) **Amended returns.** An amended state return must be filed with the department within five days of amending a federal return with the IRS and must be accompanied by a copy of the amended federal return. For those estates that are not required to file a federal return, an amended estate tax return must be received within three years from the date the original estate tax return was filed or within two years of paying the tax, whichever is later.

(a) Any time that the amount of federal tax due is adjusted or when there is a final determination of the federal tax due, the person responsible for filing must give written notification to the department. This notification must include copies of any final examination report, any compromise agreement, the state tax closing letter, and any other available evidence of the final determination.

(b) If any amendment, adjustment or final determination results in additional state estate tax due, interest will be calculated on the additional tax due at the annual variable interest rate described in RCW 82.32.050.

(4) **Refunds.** Only the personal representative or the personal representative's retained counsel may make a claim for a refund of overpaid tax. If the application for refund, with supporting documents, is filed within four months after an adjustment or final determination of tax liability, the department shall pay interest until the date the refund is mailed. If the application for refund, with supporting documents, is filed after four months after the adjustment or final determination, the department shall pay interest only until the end of the four-month period. Any refund issued by the department will include interest at the existing statutory rate defined in RCW 82.32.050, computed from the date the overpayment was received by the department until the date it is mailed to the estate's representative. RCW 83.100.130.

(5) **Statute of limitations.**

(a) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the close of the calendar year in which a Washington return is due under this chapter, including any extension of time for filing, except upon a showing of fraud or of misrepresentation of a material fact by the taxpayer.

(b) For persons liable for tax under RCW 83.100.120, the period for assessment or correction of an assessment extend an additional three years beyond the period described in (a) of this subsection.

(c) A taxpayer may extend the periods of limitation under (a) or (b) of this subsection by executing a written waiver. The execution of the waiver shall also extend the period for making a refund as provided in RCW 83.100.130.

NEW SECTION

WAC 458-57-155 Farm deduction. (1) Introduction.

This rule applies to deaths occurring on or after May 17, 2005, and is intended to help taxpayers determine if the estate is eligible for the farm deduction and to correctly calculate the deduction.

(2) **Definitions.** The following terms and definitions are applicable throughout chapter 458-57 WAC:

(a) "Active management" means the making of the management decisions of a farm, other than the daily operating decisions;

(b) "Farm" includes stock, dairy, poultry, fruit, furbearing animal, and truck farms; plantation; ranches; nurseries; ranges; greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities; and orchards and woodlands;

(c) "Farming purposes" means:

(i) Cultivating the soil or raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of animals on a farm;

(ii) Handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; and

(iii)(A) The planting, cultivating, caring for, or cutting of trees; or

(B) The preparation, other than milling, of trees for market.

(d) "Member of the family" means, with respect to any individual, only:

(i) An ancestor of the individual;

(ii) Spouse of the individual;

(iii) A lineal descendant of the individual; of the individual's spouse, or a parent of the individual; or

(iv) The spouse of any lineal descendant described in (d)(iii) of this subsection.

A legally adopted child of an individual shall be treated as the child of such individual by blood.

(e) "Qualified heir" means, with respect to any property, a member of the decedent's family who acquired property, or to whom property passed, from the decedent.

(f)(i) "Qualified real property" means real property which was acquired from or passed from the decedent to a qualified heir of the decedent and which, on the date of the decedent's death, was being used for a qualified use by the decedent or a member of the decedent's family, but only if:

(A) Fifty percent or more of the adjusted value of the gross estate consists of the adjusted value of real or personal property which:

(I) On the date of the decedent's death, was being used for a qualified use by the decedent or a member of the decedent's family; and

(II) Was acquired from or passed from the decedent to a qualified heir of the decedent;

(B) Twenty-five percent or more of the adjusted value of the gross estate consists of the adjusted value of real property which meets the requirements of (f)(i)(A)(II) and (C) of this subsection; and

(C) During the eight-year period ending on the date of the decedent's death there have been periods aggregating five years or more during which:

(I) The real property was owned by the decedent or a member of the decedent's family and used for a qualified use by the decedent or a member of the decedent's family; and

(II) There was material participation by the decedent or a member of the decedent's family in the operation of the farm. For the purposes of this subsection (f)(i)(C)(II), material participation shall be determined in a manner similar to the manner used for purposes of section 1402 (a)(1) of the Internal Revenue Code (IRC).

(ii) For the purposes of this subsection, the term "adjusted value" means:

(A) In the case of the gross estate, the value of the gross estate, determined without regard to any special valuation under section 2032A of the IRC, reduced by any amounts allowable as a deduction under section 2053 (a)(4) of the IRC; or

(B) In the case of any real or personal property, the value of the property for purposes of chapter 11 of the IRC, determined without regard to any special valuation under section 2032A of the IRC, reduced by an amount allowable as a deduction in respect of such property under section 2053 (a)(4) of the IRC.

(g) "Qualified use" means the property is used as a farm for farming purposes. In the case of real property which meets the requirements of (f)(i)(C) of this subsection, residential buildings and related improvements on the real property occupied on a regular basis by the owner or lessee for the purpose of operating or maintaining the real property, and roads, buildings, and other structures and improvements functionally related to the qualified use shall be treated as real property devoted to the qualified use. For tangible personal property eligible for a deduction under subsection (1)(b) of this section, "qualified use" means the property is used primarily for farming purposes on a farm.

(h) "Qualified woodland" means any real property which:

(i) Is used in timber operations; and

(ii) Is an identifiable area of land such as an acre or other area for which records are normally maintained in conducting timber operations.

(i) "Timber operations" means:

(i) The planting, cultivating, caring for, or cutting of trees; or

(ii) The preparation, other than milling, of trees for market.

(3) Farm deduction—Qualification criteria.

(a) A deduction from the Washington taxable estate is available for the value of qualified real property and the value of any tangible personal property used by the decedent or a member of the decedent's family for a qualified use. In certain circumstances an estate of a tenant farmer may deduct the value of agricultural personal property. See subsection (7) of this section. If the estate is eligible for the federal special valuation of farmland it would also be eligible for the state deduction. The estate does not have to elect special valuation treatment for federal purposes in order to take the state deduction. Unlike the federal special valuation for farmland there is no requirement that the heir to the land and equipment continue farming.

(b) There are several criteria that must be met before the deduction can be taken:

(i) Decedent at the time of his or her death was a citizen or resident of the United States;

(ii) Fifty percent or more of the estate's adjusted value must be in agricultural real and personal property;

(iii) On the date of the decedent's death the real and personal property must have been used for a qualified use (farming) by the decedent or a member of the decedent's family;

(iv) The real and personal property must pass from the decedent to a qualified heir; and

(v) Twenty-five percent or more of the estate consists of agricultural real property (land) that was actively managed by the decedent or the decedent's family.

(4) What does "acquired from the decedent" mean?

Property shall be considered to have been acquired from or to have passed from the decedent if:

(a) The property is so considered under section 1014(b) of the IRC;

(b) The property is acquired by any person from the estate; or

(c) The property is acquired by any person from a trust, to the extent the property is includible in the gross estate of the decedent.

(5) Treatment of qualified real property held as a community property. If the decedent and the decedent's surviving spouse at any time held qualified real property as community property, the interest of the surviving spouse in the property shall be taken into account under this section.

(6) Value of trees growing on woodlands. In the case of qualified woodland, the value of trees growing on the woodland may be deducted if otherwise qualified under this section.

(7) Tenant farmers. If the following criteria are met, the estate of a tenant farmer may deduct from the Washington taxable estate the value of the agricultural personal property:

(a) Decedent at the time of his or her death was a citizen or resident of the United States;

(b) Fifty percent or more of the estate adjusted value must be in agricultural personal property;

(c) On the date of the decedent's death the personal property must have been used for a qualified use (farming) by the decedent or a member of the decedent's family; and

(d) The personal property must pass from the decedent to a qualified heir.

(8) Examples.

(a) The decedent died May 18, 2005, with an adjusted gross estate valued at \$4 million. The decedent was a dry land wheat farmer and owned 2000 acres of land valued at \$2 million (\$1,000 per acre) and \$500,000 in farm equipment. The decedent was a U.S. citizen, owned and worked the acreage for the last twenty years, and left the farm to his son, a qualified heir. The value of the farm acreage and equipment exceeds the required 50% or more of the adjusted gross estate ($\$2,000,000 + \$500,000 > \$4,000,000 \times 50\%$). The value of the 2000 acres and the farm equipment can be deducted from the decedent's federal taxable estate. In this example estate tax is not due. The calculations are shown below:

Federal taxable estate	\$4,000,000
Less \$2,500,000 farm deduction	- \$2,500,000
Less \$1,500,000 statutory exemption	- \$1,500,000
Washington taxable estate	\$0

Although Washington estate tax is not due, the estate is still required to file a Washington estate tax return along with a photocopy of the filed and signed federal return and all supporting documentation.

(b) The decedent died August 28, 2005, with an adjusted gross estate valued at \$5 million. The decedent was a hay farmer and owned 600 acres of land valued at \$1.8 million (\$3,000 per acre) and \$500,000 in farm equipment. The decedent was a U.S. citizen, owned and worked the acreage for the last twenty years, and left the farm to his son, a qualified heir. The value of the farm acreage and equipment did not meet the required 50% or more of the adjusted gross estate, therefore, the estate cannot deduct the value of the farm and farm equipment (\$1,800,000 + \$500,000 < \$5,000,000 x 50%). Here are the calculations:

Federal taxable estate	\$4,000,000
Less \$1,500,000 statutory exemption	- \$1,500,000
Washington taxable estate	\$3,500,000

Based on the tax table, the estate owes \$470,000 in Washington estate tax.

(c) The decedent died May 23, 2005, with an adjusted gross estate valued at \$1.6 million. The decedent was a tenant hay farmer that owned \$400,000 of hay in storage that had been harvested but not sold and \$800,000 in farm equipment. The decedent was a U.S. citizen, used the farm equipment in a qualified use for the last six years, and left the equipment to his son-in-law, a qualified heir. The value of the farm equipment met the required 50% or more of the adjusted gross estate so it can be deducted from the decedent's federal taxable estate (\$800,000 = \$1,600,000 x 50%). In this example no estate tax is due. The calculations are shown below:

Federal taxable estate	\$1,600,000
Less \$800,000 farm deduction	- \$800,000
Less \$1,500,000 statutory exemption	- \$1,500,000
Washington taxable estate	\$0

Although Washington estate tax is not due, the estate is still required to file a Washington estate tax return along with a photocopy of the filed and signed federal return and all supporting documentation.

(d) The decedent died April 7, 2006, with an adjusted gross estate valued at \$2.5 million. The decedent owned 100 acres of timberland valued at \$100,000 (\$1,000 per acre), timber valued at \$800,000 (\$80,000 per acre), 200 acres of pasture land valued at \$500,000 (\$2,500 per acre) and \$50,000 in farm equipment. The decedent was a U.S. citizen, owned and worked the acreage for the last ten years, and left the timber and farm land to his daughter, a qualified heir. The value of the timberland and farm acreage and equipment exceeded the required 50% or more of the adjusted gross estate therefore the estate can deduct the value of the timber and farm land and farm equipment (\$100,000 + \$800,000 + \$500,000 + \$50,000 > \$2,500,000 x 50%). The calculations are shown below:

Federal taxable estate	\$2,500,000
Less \$1,450,000 farm deduction	- \$1,450,000

Less \$2,000,000 statutory exemption	- \$2,000,000
Washington taxable estate	\$0

Although Washington estate tax is not due, the estate is still required to file a Washington estate tax return along with a photocopy of the filed and signed federal return and all supporting documentation.

NEW SECTION

WAC 458-57-165 Escheat estates and absentee distributee (missing heir) property. (1) Introduction. This rule explains the notification requirements to the department and other procedural information for potential escheat estates and the procedures for reporting absentee distributee property.

(2) Escheat estates.

(a) Escheat of an estate means that a person dies, whether a resident of this state or not, leaving property subject to the jurisdiction of this state without being survived by any person entitled to the property under RCW 11.04.015 (descent and distribution) and the property reverts to the state.

(b) **Notification to the department of a potential escheat estate.** The department must be promptly notified in writing of the potential escheat on revenue form 85 0030-1 Notice of Escheat Property when a decedent dies without a will and has no known intestate heirs. This form can be found on the department's web site at <http://dor.wa.gov/> under the tab titled forms. The form can also be obtained by calling the estate tax section at 360-570-3265, option 2.

(c) **Department may elect to serve as personal representative.**

(i) The department may elect to serve as the personal representative of an escheat estate under RCW 11.28.120. The department will review the submitted notice of escheat property and then elect or decline to serve as personal representative. A copy of this election is mailed to the person reporting the escheat property.

(ii) **Written notice to the department of proceedings.** If the department declines to serve as personal representative, the appointed personal representative must serve the department with written notice at least twenty days prior to any hearing on proceedings involving the valuation or sale of property, on any petition for the allowance of fees, and on all interim reports, final accounts or petitions for the determination of heirship. Failure to comply with the notice provisions of RCW 11.08.170 could result in any orders being voided.

(d) **Oversight of estate when department declines to serve as personal representative—Opposition to nonintervention powers—Review of pleadings and petitions.** The department supervises escheat property during probate. The department has the duty to protect and conserve escheat property for the benefit of the permanent common school fund until the property is forwarded to the state treasurer or the real property is deeded over to the department of natural resources. Because of the duty to protect and conserve escheat property, the department will oppose the granting of nonintervention powers to the personal representative. The department will review all pleadings and petitions to deter-

mine the progression of probate and to determine if fees and expenses charged to the estate are appropriate.

(e) **Heirs of escheat estates.** Heirs to an estate may be located after the estate escheats to the state. The personal representative of an escheat estate or a claimed heir must provide the department with all information and documentary evidence available that supports the heir's claim. All supporting documents must be in the English language when submitted to the department. The English translation of any foreign document shall be authenticated as reasonably required by the department.

(i) Under RCW 11.08.240 all claims for escheated property must be made within seven years from the date of issuance of letters testamentary or of administration. The claim is made to the court having original jurisdiction of the estate and a copy served upon the department.

(ii) In all cases where there is a court hearing or the taking of a deposition on the question of a claimed heir, the personal representative shall give the department twenty days written notice of such hearing or matter.

(iii) The personal representative must give the department at least twenty days written notice of the hearing on the final account and petition for distribution.

(iv) The department has no statutory authority to pay interest on escheat refunds.

(3) Absentee distributee (missing heir).

(a) Absentee distributee means any person who is a beneficiary of a will or trust who has not been located. If a personal representative cannot locate a beneficiary of a will or trust the personal representative is required to follow the procedures outlined in RCW 11.76.200 through 11.76.230.

(b) Appointment of agent—Bond.

(i) When an estate has been or is about to be distributed by decree of the court to any person who has not been located, the personal representative must petition the court to appoint an agent for the purposes of representing the interests of the absentee distributee and to take possession and charge of the property for the benefit of the absentee person.

(ii) The agent shall make, subscribe, and file an oath for the faithful performance of his or her duties, and shall give a bond to the state, to be approved by the court before the agent receives the property.

(iii) The agent shall hold the property for three years. If the absentee distributee is not found or does not come forward to make a claim, the property must be turned over to the county treasurer. Any property not in the form of cash shall be sold under order of the court and all funds after deducting a reasonable sum for expenses and services of the agent. The expenses and the fees of the agent are fixed by the court.

(c) **County treasurer.** The county treasurer is required to issue a triplicate receipt for the funds, one to be filed with the county auditor, one with the probate court, and one with the department. If the funds remain in the county treasury unclaimed for a period of four years and ninety days, the treasurer is required to remit them to the department for deposit in the permanent common school fund.

(d) **Claims made after the time limitation.** After any time limitation prescribed in RCW 11.76.220, 11.76.240 or 11.76.243 the absentee claimant may notify the department of his or her claim and file in the court which had jurisdiction

of the original probate a petition claiming the assets of the estate. Upon proof being made to the court and the determination that the claimant is entitled to the property the assets shall be paid to the claimant without interest.

WSR 06-07-058

PERMANENT RULES

HORSE RACING COMMISSION

[Filed March 10, 2006, 12:54 p.m., effective April 10, 2006]

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

Purpose: To amend chapter 260-84 WAC to correct errors in the penalty matrixes and to add to this chapter the penalties for violations of chapter 260-34 WAC.

Citation of Existing Rules Affected by this Order: Amending WAC 260-84-060 and 260-84-090.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 06-03-131 on January 18, 2006.

Changes Other than Editing from Proposed to Adopted Version: In WAC 260-84-060 the penalty for unlicensed or improperly licensed personnel at the class C meets was changed from \$100 to \$500. In WAC 260-84-065(7), WAC 260-34-020(2) was removed as one of the violations in which the stewards may stay the penalty.

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 1, Amended 2, 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 1, Amended 2, 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 9, 2006.

R. M. Leichner
Executive Secretary

AMENDATORY SECTION (Amending WSR 05-07-064, filed 3/11/05, effective 4/11/05)

WAC 260-84-060 Penalty matrixes. (1) The imposition of reprimands, fines and suspensions shall be based on the following penalty matrixes:

Class A (&#2264;) and B Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Smoking in restricted areas WAC 260-20-030	\$25	\$50	\$100
Disturbing the peace WAC 260-80-140	Warning to \$200 and/or suspension	Warning to \$500 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010	\$50	\$100	\$150
Unlicensed or improperly licensed personnel (trainer's responsibility) WAC 260-28-230	\$500		
Licensing - failure to divulge a felony WAC 260-36-120	\$100 or possible denial of license		
Licensing - failure to divulge a gross misdemeanor or misdemeanor WAC 260-36-120	Warning to \$50		
Licensing - providing false information on application WAC 260-36-120	\$50 to \$250 or possible denial of license		
Licensing - nonparticipation WAC 260-36-080	License canceled		
Violation of any claiming rule in chapter 260-60 WAC	\$200 to \$500 plus possible suspension		
Use of improper, profane or indecent language to a racing official WAC 260-80-130	\$50	\$100	\$250
Unsafe vehicle operation WAC 260-20-020	Warning to \$50	\$100 and recommend racing association revoke vehicle pass	
Financial responsibility WAC 260-28-030	Resolve <u>within</u> 30 days or before the end of the meet (whichever is sooner) (to resolve) or suspension		
Failure to appear - (hearing) <u>for ruling conference</u> WAC 260-24-510	Suspension (pending appearance)		
Failure to honor riding engagements (call) - agents WAC 260-32-400	\$75	\$100	\$200
Reporting incorrect weight - jockeys WAC 260-32-150	\$50	\$100	\$200
Failure to appear for films - jockeys WAC 260-24-510	\$50	\$100	\$200
Failure to fulfill riding engagement WAC 260-32-080	\$100	\$150	\$200
Easing mount without cause WAC 260-52-040	\$250	\$250 and/or suspension	\$500 and/or suspension
Jockey failing to maintain straight course or careless riding WAC 260-52-040	Warning to \$750 and/or suspension (riding days)		
Jockey's misuse of whip WAC 260-52-040	Warning to \$2500		
Use of stimulating device (may include batteries) WAC 260-52-040	1 year suspension plus mandatory referral to commission for revocation		

Class A ((E)) and B Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Possession of stimulating device (may include batteries) WAC 260-52-040 and 260-80-100	1 year suspension plus mandatory referral to commission for revocation		
Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010 and 260-80-020	1 year suspension plus mandatory referral to commission for revocation		
Entering ineligible horse WAC 260-40-140 and 260-80-030	\$50	\$100	\$100
Arriving late to the paddock WAC 260-28-200	Warning to \$50	Warning to \$50	\$50 to \$100
Failure to have registration papers on file - resulting in a scratch WAC 260-40-090	\$50 to \$100	\$100	\$100
Failure to (handle business properly - late equipment change, etc.) <u>obtain permission for equipment changes</u> WAC 260-44-010	Warning to \$50	\$100	\$100
Failure to report (the correct name of a horse working) <u>performance records</u> WAC 260-40-100	Warning to \$50	\$100	\$150
Insufficient workouts - resulting in scratch WAC 260-40-100	\$50 to \$100	\$100	\$100

Class C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Smoking in restricted areas WAC 260-20-030	\$25	\$50	\$100
Disturbing the peace WAC 260-80-140	Warning to \$100 and/or suspension	\$250 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010	\$50	\$100	\$150
Unlicensed or improperly licensed personnel (trainer's responsibility) WAC 260-28-230	\$(100) <u>500</u>		
Licensing - failure to divulge a felony WAC 260-36-120	\$100 or possible denial of license		
Licensing failure to divulge a misdemeanor or gross misdemeanor WAC 260-36-120	Warning to \$25		
Licensing - providing false information on application WAC 260-36-120	\$50 to \$250 or possible denial of license		
Licensing - nonparticipation WAC 260-36-080	License canceled		
Violation of any claiming rule in chapter 260-60 WAC	\$100 to \$250 plus possible suspension		

Class C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Use of improper, profane or indecent language to a racing official WAC 260-80-130	\$50	\$100	\$250
Unsafe vehicle operation WAC 260-20-020	Warning to \$50		
Financial responsibility WAC 260-28-030	Resolve 30 days or before the end of the fall meet (whichever is sooner) to resolve or suspension		
Failure to appear(hearing) for <u>ruling conference</u> WAC 260-24-510	Suspension (pending appearance)		
Failure to honor riding engagements (call) - agents WAC 260-32-400	\$25	\$50	\$100
Reporting incorrect weight - jockeys WAC 260-32-150	\$25	\$50	\$100
Failure to appear for films - jockeys WAC 260-24-510	\$25	\$50	\$100
Failure to fulfill riding engagement WAC 260-32-080	\$50	\$100	\$200
Easing mount without cause WAC 260-52-040	\$100	\$200 and/or suspension	\$400 and/or suspension
Jockey failing to maintain straight course or careless riding WAC 260-52-040	Warning to \$750 and/or suspension (riding days)		
Jockey's misuse of whip WAC 260-52-040	Warning to \$2500		
Use of stimulating device (may include batteries) WAC 260-52-040	1 year suspension plus mandatory referral to commission for revocation		
Possession of stimulating device (may include batteries) WAC 260-52-040 and 260-80-100	1 year suspension plus mandatory referral to commission for revocation		
Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010 and 260-80-020	1 year suspension plus mandatory referral to commission for revocation		
Entering ineligible horse WAC 260-40-140 and 260-80-030	\$25	\$50	\$50
Arriving late to the paddock WAC 260-28-200	Warning to \$25	\$50	\$50
Failure to have registration papers on file - resulting in a scratch WAC 260-40-090	\$50	\$100	\$100
Failure to (handle business properly - late equipment change, etc.) <u>obtain permission for equipment changes</u> WAC 260-44-010	Warning to \$50	\$50	\$50

Class A, B (&) and C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
((Engaging in the illegal sale or distribution of alcohol WAC 260-34-045	30-day suspension	1-year suspension plus mandatory referral to commission for revocation	
Using an illegal controlled substance other than marijuana WAC 260-34-045	30-day suspension	1-year suspension plus mandatory referral to commission for revocation	
Being under the influence of alcohol and/or drugs WAC 260-34-045	Warning to 1-day suspension	3-day suspension	30-day suspension (1-year suspension plus mandatory referral to the commission for revocation for 4th offense)
Possession or use of marijuana WAC 260-34-045	3-day suspension	30-day suspension	1-year suspension plus mandatory referral to commission for revocation
Illegal possession of any felony drug or controlled substance WAC 260-34-045	1-year suspension plus mandatory referral to commission for revocation		
Refusal to submit to a drug or alcohol test WAC 260-34-045 and 260-34-060	1-year suspension plus mandatory referral to commission for revocation		
Possession of any equipment or material used for the manufacture or distribution of any drug or controlled substance, or engaging in the sale, manufacture or distribution of any drug or controlled substance on the grounds WAC 260-08-150	Immediate ejection from the grounds and mandatory referral to the commission for revocation))		
Tampering with a fire protection, prevention or suppression system or device WAC 260-20-030	\$50	\$100	\$250 plus possible suspension
Failure to post problem gambling signs WAC 260-12-250	Warning to \$50	\$100	\$200
Issuing a check to the commission with not sufficient funds WAC 260-28-030	\$25	\$50	\$100
Failure to follow instructions of the outrider WAC ((260-12-690)) <u>260-24-690</u>	\$50	\$100	\$200
Failure to complete provisional license application within fourteen days WAC 260-36-200	Warning to \$100 and denial of license	\$250 and denial of license	\$500 and denial of license
Failure to pay or default on L&I payment WAC ((260-28-220)) <u>260-28-235</u>	Suspension until paid plus \$25 for each quarter payment is late		
Failure to ((maintain employee L&I records for groomers and assistant trainers)) <u>register employees with the commission</u> (trainer's responsibility) WAC 260-28-230	Warning to \$50		

Class A, B ((E)) and C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Unlicensed person on the backside WAC 260-20-040 and 260-20-090	Report violation to the racing association		

(2) In determining whether an offense is a first, second, third or subsequent offense, the commission, or designee shall include violations, which occurred in Washington as well as any other recognized racing jurisdiction. If a penalty is not listed under second or third/subsequent offense columns, the penalty listed in the "first offense" column shall apply to each violation.

(3) Except as otherwise provided in this chapter, for any other violation not specifically listed above, the stewards shall have discretion to impose the penalties as provided in WAC 260-24-510 (3)(b). For violations considered minor, the fine can be up to \$500 and/or suspension for up to sixty days. Fines for violations considered major can be up to \$2,500 and/or suspension up to one year.

(4) Circumstances which may be considered for the purpose of mitigation or aggravation of any penalty shall include, but are not limited to, the following:

- (a) The past record of the licensee or applicant;
- (b) The impact of the offense on the integrity of the parimutuel industry;
- (c) The danger to human and/or equine safety;
- (d) The number of prior violations of ~~((the))~~ these rules of racing or violations of racing rules in other jurisdictions; and/or
- (e) The deterrent effect of the penalty imposed.

(5) For violations covered by chapter 260-70 WAC, Medication, the stewards shall follow the penalty guidelines as set forth in WAC 260-84-090.

(6) The stewards may refer any matter to the commission and may include recommendations for disposition. The absence of a stewards' referral shall not preclude commission action in any matter. A stewards' ruling shall not prevent the commission from imposing a more severe penalty.

NEW SECTION

WAC 260-84-065 Licensees—Drug and alcohol penalties. (1) Engaging in the illegal sale or distribution of alcohol in violation of WAC 260-34-020(2).

- (a) First offense - thirty-day suspension; and
- (b) Second or subsequent offense - one-year suspension and referral to the commission for revocation.

(2) Use or possession of an illegal controlled substance, other than marijuana.

- (a) First offense - thirty-day suspension; and
- (b) Second offense - one-year suspension and referral to the commission for revocation.

- (3) Possession or use of marijuana.
 - (a) First offense - three-day suspension;
 - (b) Second offense - thirty-day suspension; and
 - (c) Third or subsequent offenses - one-year suspension and referral to commission for revocation.

(4) Under the influence of or affected by intoxicating liquor and/or drugs in violation of WAC 260-34-020(1).

- (a) First offense - warning to one-day suspension;
- (b) Second offense - three-day suspension;
- (c) Third offense - thirty-day suspension; and
- (d) Subsequent offenses - one-year suspension and referral to commission for revocation.

(5) Refusal to submit to a drug or alcohol test, one-year suspension plus referral to commission for revocation.

(6) Possession of any equipment or material used to manufacture or distribute any controlled substance, or engaging in the sale, manufacturing or distribution of any illegal controlled substance on the grounds in violation of WAC 260-34-020 (3), (4), and (5), immediate ejection from the grounds and referral to the commission for revocation.

(7)(a) For violations of WAC 260-34-020 (1) and (4), the board of stewards may stay a suspension if the licensee or applicant shows proof of participation in a drug rehabilitation or alcohol treatment program approved or certified by the department of social and health services. Individuals will only be allowed a stay of a suspension under this subsection once in a five-year period. If during this time a licensee or applicant violates the provisions of chapter 260-34 WAC, the violation for which the stay of suspension was entered will be considered as a prior violation for penalty purposes. Before being granted a stay of the suspension, the licensee or applicant must also agree to the following conditions:

- (i) Remain in compliance with the rehabilitation and/or treatment program.
- (ii) Submit to random drug or alcohol testing at the discretion of the board of stewards or commission security investigators for a period of five years.
- (iii) Have no further incidents of violating chapter 260-34 WAC within the next twelve calendar months.

(b) If the board of stewards, after a conference, finds that the licensee or applicant failed to comply with the conditions of the stay, the original suspension may be imposed. Failure to remain in compliance with the rehabilitation and/or treatment program shall be considered a failure to comply with the conditions of the stay.

(c) Upon successful completion of a drug or alcohol rehabilitation or treatment program, a licensee or applicant can request the board of stewards lift the suspension.

AMENDATORY SECTION (Amending WSR 05-07-064, filed 3/11/05, effective 4/11/05)

WAC 260-84-090 Equine medication and prohibited substances—Penalties—Guidelines. (1) Upon a finding of a violation of the medication and prohibited substances rules in chapter 260-70 WAC, the stewards shall consider the classification level of the medication, drug or substance (~~((as established in WAC 260-70-680))~~) prior to imposing a penalty. The stewards shall also consult with an official veterinarian to determine the nature and seriousness of the laboratory finding or the medication violation and whether the vio-

lation was a result of the administration of a therapeutic medication as documented in a veterinarian's report received per WAC 260-70-540.

(2) A lesser penalty than that established in WAC 260-84-110 may be imposed if a majority of the stewards determine that mitigating circumstances warrant a lesser penalty. If a majority of the stewards determine a greater penalty is appropriate or that a penalty in excess of the authority granted them is appropriate, they may impose the maximum penalty authorized and refer the matter to the commission with specific recommendations for further action. In determining if there are mitigating circumstances surrounding a medication violation for substances referred to in chapter 260-70 WAC, at least the following shall be considered:

((1)) (a) The past record of the trainer and/or veterinarian in medication/drug cases;

((2)) (b) The potential of the medication/drug to influence a horse's racing performance;

((3)) (c) The availability of the medication/drug;

((4)) (d) Whether there is reason to believe the responsible party knew of the administration of the medication/drug used;

((5)) (e) The steps taken by the trainer to safeguard the horse;

((6)) (f) The probability of environmental contamination or inadvertent exposure due to human drug use;

((7)) (g) The purse of the race;

((8)) (h) Whether the medication found was one for which the horse was receiving a treatment as determined by the veterinarian report(s);

((9)) (i) Whether there was any suspicious betting pattern in the race; and

((10)) (j) Whether the presence of the medication/drug in urine was confirmed in serum or plasma.

(3) If a majority of the stewards determine a penalty greater than established in these rules is appropriate, they may impose the maximum penalty authorized and refer the matter to the commission with specific recommendations for further action.

(4) If the penalty is not otherwise established for a violation of chapter 260-70 WAC, the penalty shall be determined by the board of stewards.

WSR 06-07-059

PERMANENT RULES

HORSE RACING COMMISSION

[Filed March 10, 2006, 12:55 p.m., effective April 10, 2006]

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

Purpose: To amend chapter 260-80 WAC as part of the agency's regulatory reform effort, and to write and organize rules in a clear and concise manner that they are easily understood by those to whom they apply.

Citation of Existing Rules Affected by this Order: Repealing WAC 260-80-080, 260-80-090 and 260-80-120; and amending WAC 260-80-020, 260-80-050, 260-80-100, and 260-80-110.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 06-03-091 on January 13, 2006.

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 1, Amended 5, Repealed 3.

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 1, Amended 5, Repealed 3; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 9, 2006.

R. M. Leichner

Executive Secretary

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-80-020 Accepting bribe. No ~~((racing official or his assistant, no owner, trainer, jockey, agent, no person having charge of or access to any race horse, nor any other))~~ person shall accept or offer to accept on his own behalf or on behalf of another, any bribe, gift or gratuity in any form to influence the result of a race or which would tend to do so.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-80-050 Conspiracy. No person shall conspire with any other person for the commission of ~~((or connive with any other person in))~~ any corrupt or fraudulent practice in relation to racing nor shall he commit such an act on his own account.

AMENDATORY SECTION (Amending Order 6, filed 12/3/70)

WAC 260-80-100 Appliance to alter speed of horse. No electrical or mechanical device or other appliance designed or intended to increase or decrease the speed of a horse ~~((t))~~, or that would tend ~~((so to do))~~ to increase or decrease the speed of a horse, other than the ordinary whip shall be possessed by ~~((any one))~~ anyone or applied by ~~((any one))~~ anyone to a horse, at any time on the grounds of an association, during a meeting whether in a race or otherwise.

Any person aiding or abetting in the use or possession of, or soliciting or inducing the use or possession of such a device or appliance shall be subject to the same penalties as the penalty for possession or use.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-80-110 Tampering with horse. No person shall improperly tamper or attempt to tamper with any horse in such a way as to affect his speed in a race, or in such a way as is intended to affect the horse's speed in a race, nor shall ~~(he)~~ any person counsel or in any way aid or abet any such tampering.

NEW SECTION

WAC 260-80-150 Mistreatment of horses. While on the association grounds no person shall subject any horse to any form of cruelty, mistreatment, neglect, abuse, abandonment, injury, maiming or killing or administer any noxious substance to or deprive any horse of necessary care or sustenance, shelter or veterinary care. This section does not apply to treatment or euthanasia of a horse by a licensed veterinarian consistent with standard veterinary practices.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 260-80-080	Horseshoes.
WAC 260-80-090	Bar plates.
WAC 260-80-120	Paying fine of jockey.

WSR 06-07-061

PERMANENT RULES

HORSE RACING COMMISSION

[Filed March 10, 2006, 12:57 p.m., effective April 10, 2006]

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

Purpose: To repeal WAC 260-60-430 Claimed horses—Subsequent entry.

Citation of Existing Rules Affected by this Order: Repealing WAC 260-60-430.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 06-03-043 on January 10, 2006.

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 1.

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 1; Pilot Rule Mak-

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

Date Adopted: March 9, 2006.

R. M. Leichner
Executive Secretary

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 260-60-430	Claimed horse—Subsequent entry.
----------------	---------------------------------

WSR 06-07-062

PERMANENT RULES

HORSE RACING COMMISSION

[Filed March 10, 2006, 12:58 p.m., effective April 10, 2006]

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

Purpose: To adopt a new form of wagering, "group bet wagering" into chapter 260-48 WAC.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 06-03-042 on January 10, 2006.

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 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 1, 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: March 9, 2006.

R. M. Leichner
Executive Secretary

NEW SECTION

WAC 260-48-925 Group bet wagering. (1) The group bet is a form of parimutuel wagering and part of the win pool in every race in which it is offered. The group bet is a bet to win on every participant in the selected group.

(2) A racing association may not offer a group bet unless the format associated with the particular group bet wagering event is first approved by the executive secretary. The request must be made in writing at least three days prior to the commencement of public wagering on the proposed group bet and the licensee may not offer public wagering on the proposed group bet until written approval of the executive

secretary is issued. In approving any request of a racing association related to a group bet, the executive secretary may impose such conditions as are consistent with the best interests of racing and the interests of the wagering public.

(3) In each race in which the group bet is offered, the association shall designate one horse that shall not be a member of either group (usually the morning line favorite) and designate the remaining horses as members of one of two groups, Group A and Group B. The horses comprising each group shall number two or more horses and the number of horses in each group need not be the same, except as provided in subsection (8)(c) or (d) of this section. Each horse in a race where the group bet is offered must be a member of Group A, a member of Group B, or the sole nongroup horse.

(4) In each race in which the group bet is offered, there shall be a win payoff for bettors selecting the winning participant in standard win betting and, in the event a member of one of the groups wins the race, a group bet win payout for those bettors wagering on the winning group. If the nongroup horse wins the race, there shall be no payout for the group bet.

(5) The identity of the nongroup horse and the members of Group A and Group B shall be disseminated in the track program. This information may also be disseminated by the track announcer, on television monitors and, where applicable, by authorized advance deposit wagering service providers.

(6) The minimum bet for the group bet is the same as the minimum bet to win. The amount bet on Group A and Group B shall be allocated among the members of the respective group in proportion to the amount bet on such member to win in standard win betting. Allocations may be made in fractional amounts less than the minimum permissible bet to win.

(7) The payout for a winning group bet shall be the same regardless of which member of the group is the race winner. The probable and actual payoff for a winning group bet on Group A or Group B shall be displayed in a similar manner as the probable and actual payout for a standard win bet.

(8) In the event of scratches in a race with a group bet, the following procedure will be followed:

(a) In the event that the nongroup horse is scratched or declared a nonstarter, group betting shall cease and all wagers on both groups refunded.

(b) In the event of a scratch or a declaration of nonstarter of all of the members of a group, group betting shall cease and all wagers on both groups shall be refunded.

(c) In the event of a scratch or declaration of nonstarter of a member of a group, moneys previously allocated to the scratched runner or nonstarter shall be reallocated amongst the remaining member or members of that group.

(d) In the event of a scratch or declaration of nonstarter of one or more horses in a group resulting in only one horse remaining in that group, the remaining horse in that group shall remain a valid betting interest and no refund will be granted.

(9) In the event of a dead heat to win involving two or more members of the same group, the group bet payout shall be calculated in the same manner as if there was one winner of the race and such winner was a member of such group. In the event of a dead heat to win involving the nongroup horse

and one or more members of either group, or one or more members of different groups, the group bet payout shall be determined in the same manner as the calculation of the win payoff, i.e., by dividing the net win wagering pool.

(10) If circumstances occur which are not addressed by these rules, they shall be resolved by the board of stewards in a manner that is consistent with this rule and in accord with accepted parimutuel practices. Decisions regarding the group bet made by the board of stewards shall be final.

WSR 06-07-063

PERMANENT RULES

HORSE RACING COMMISSION

[Filed March 10, 2006, 1:00 p.m., effective April 10, 2006]

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

Purpose: To amend chapter 260-44 WAC as part of the agency's regulatory reform effort, to write and organize rules in a clear and concise manner that they are easily understood by those to whom they apply, and to amend our rules consistency [consistent] with model rules of racing.

Citation of Existing Rules Affected by this Order: Repealing WAC 260-44-060 and 260-44-070; and amending WAC 260-44-010, 260-44-020, 260-44-030, 260-44-050, 260-44-080, 260-44-100, 260-44-110, and 260-44-120.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 06-03-089 on January 13, 2006.

Changes Other than Editing from Proposed to Adopted Version: Removed "or a substitute whip" from the proposed new language in WAC 260-44-050(2) and removed "in handicap races or races where the condition of the race expressly state to the contrary," from WAC 260-44-080(4).

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 1, Amended 8, Repealed 2.

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 1, Amended 8, Repealed 2; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 9, 2006.

R. M. Lechner
Executive Secretary

AMENDATORY SECTION (Amending Order 73.1, filed 5/18/73)

WAC 260-44-010 Equipment changes. (1) ((Permission for any changes of equipment from that which a horse

carried in his last previous race must be obtained from the stewards.

(2) Permission for a horse to add blinkers to his equipment or discontinue the use of them must be approved by the starter before being granted by the stewards.

(3) Horses' tongues) The starter and the stewards must approve the addition or removal of blinkers. Approval by the starter must be obtained before the stewards will consider approving the change.

(2) The stewards must approve the addition or removal of front leg wraps.

(3) A trainer may ((be tied)) tie down ((with clean bandages or clean gauze)) a horse's tongue. The stewards may monitor the use of tongue ties.

(4) Whips shall be considered ((as)) standard equipment in all ((quarter)) horse races.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-44-020 Weights for age. The following weights are carried when they are not stated in the conditions of the race:

SCALE OF WEIGHTS FOR AGE

Distance	Age	June	July	Aug.	Sept.
Half Mile	2 years . . . . .	...	...	105	108
	3 years	123	125	126	127
	4 years	130	130	130	130
	5 & up	130	130	130	130
Six Furlongs	2 years . . . . .	...	...	102	105
	3 years	121	123	125	126
	4 years	130	130	130	130
	5 & up	130	130	130	130
One Mile.	2 years . . . . .	...	...	...	96
	3 years	115	117	119	121
	4 years	126	126	126	126
	5 & up	126	126	126	126
One Mile & a Quarter.	2 years . . . . .	...	...	...	...
	3 years	113	116	118	120
	4 years	126	126	126	126
One & a Half Miles.	3 years	111	114	117	119
	4 years	126	126	126	126
	5 & up	126	126	126	126
Two Miles.	3 years	109	112	114	117
	4 years	126	126	125	125
	5 & up	126	126	125	125

(1) In races of intermediate lengths not specified above, the weights for the shorter distance are carried.

(2) In all races except handicap((s)) aces and races where the conditions expressly state to the contrary, two-year-old fillies ((two years old)) are allowed 3 lbs., and three-year-old and older fillies and mares ((three years old and

upward)) are allowed 5 lbs., before the 1st of September, and 3 lbs., ((afterwards)) thereafter.

(3) ((Welter weights are 28 lbs. added to the weight for age.

(4)) In all overnight races ((for two year olds, for three year olds or for four year olds and upward,)) the minimum weight shall be 112 pounds, subject to sex and apprentice allowance. This rule shall not apply to handicap((s or to races written for three year olds and upward)) aces.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-44-030 Penalties and allowances. (1) No horse shall carry extra weight, ((nor)) or be barred from any race for having run second or ((in any)) lower ((place)) in a previous race.

(2) Penalties and allowances of weight are not cumulative, unless ((so declared)) provided by the conditions of the race.

(3) No horse shall receive allowance of weight, or be relieved from extra weight, for having been beaten in one or more races((; provided that this)). This rule shall not prohibit maiden allowances, or allowances to horses that have not won within a specified time, or that have not won races of a specified value.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-44-050 Weighing out—Equipment included in jockey's weight. ((If a horse runs in muzzle, martingale or breast plate, they must be included in the jockey's weight. His)) (1) The jockey's weight shall also include his clothing((;)) and boots, and the saddle((;)) and its attachments.

(2) The following items shall not be included in a jockey's weight: Whip, head number, bridle, bit, reins, number cloth, blinker, protective helmet or safety vest.

(3) No bridle shall exceed two pounds in weight.

(4) Whips shall have closed poppers, with a maximum length of four inches and minimum width of one and one-quarter inches. Whips shall have three rows of one-inch feathers made of leather or other materials approved by the stewards. The maximum length of a whip shall not exceed thirty-one inches (including popper). The maximum weight of a whip shall not exceed one pound.

AMENDATORY SECTION (Amending Resolution No. 87-02, filed 7/8/87)

WAC 260-44-080 Weighing out—Overweight—Declarations—Posting—Maximum. (1) If a jockey intends to carry overweight, he/she must declare the amount ((thereof)) at the time of weighing out((; or if)). If the jockey is in doubt as to his/her proper weight, ((he)) the jockey may declare the weight he will carry.

(2) If a jockey ((intends to carry)) reports an overweight exceeding ((by more than)) two pounds ((the weight which his horse is to carry)), the owner or trainer ((consenting, he must declare the amount of overweight to the clerk of the

scales at least forty-five minutes before the time appointed for the race, and the clerk shall cause the overweight to be stated on the notice board immediately)) has the option to replace the jockey without being assessed a double-jock mount fee. Failure on the part of a jockey to comply with this rule shall be reported to the stewards by the clerk of scales.

(3) No horse shall carry more than seven pounds overweight, except as provided in subsection (4) of this section.

(4) ~~((However, at nonprofit race tracks;))~~ Horses running at Class C race meets may carry more than seven pounds overweight with the permission of the stewards up to a maximum weight of one hundred thirty-five pounds~~((; except handicaps and races where the conditions expressly state to the contrary)).~~

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-44-100 Weighing out—Attendants. ~~((The association shall provide the))~~ Only attendants ~~((who))~~ provided by the association will be permitted to assist jockeys in weighing out.

AMENDATORY SECTION (Amending WSR 99-05-049, filed 2/12/99, effective 3/15/99)

WAC 260-44-110 Weighing in—Procedure. (1) After a race has been run and after the jockey has pulled up the horse ~~((he or she has ridden)),~~ the jockey shall ride promptly to the ~~((winner's circle))~~ designated unsaddling area and ~~((there))~~ dismount~~((; after obtaining permission from the judges and present himself)).~~ The jockey shall proceed to the clerk of the scales to be weighed in ~~((accordance with a method approved by the commission)).~~ If a jockey is prevented from riding his/her mount to the ~~((judge's stand))~~ designated unsaddling area because of an accident or of illness to either ~~((to himself or his))~~ the jockey or the horse, ~~((he))~~ the jockey may walk or be carried to the scales, or ~~((he))~~ the stewards may ~~((be excused by))~~ excuse the ~~((stewards))~~ jockey from weighing.

(2) Except by permission of the stewards, upon arrival at the designated unsaddling area after a race, every jockey must~~((; upon returning to the placing judge's stand;))~~ unsaddle the horse he/she has ridden~~((; and)).~~ No person shall touch the jockey or the horse except by ~~((his))~~ the horse's bridle, ~~((nor))~~ or cover the horse in any manner until the jockey has removed the equipment to be weighed.

(3) No person shall assist a jockey in removing from his/her horse the equipment that is to be included in the jockey weight, except by permission of the stewards.

(4) Each jockey shall~~((; in weighing in;))~~ carry over to the scales all pieces of equipment with which he/she weighed out. ~~((Thereafter he may hand it to his attendant.))~~

AMENDATORY SECTION (Amending WSR 99-05-049, filed 2/12/99, effective 3/15/99)

WAC 260-44-120 Weighing in—Weigh in/weight—Tolerances—Penalties. (1) Each jockey shall weigh in at the same weight as that at which he weighed out~~((; and if)).~~ If a jockey is short of ~~((#))~~ the weigh out amount by more

than two pounds, his mount shall be disqualified. ~~((Should))~~ If a weight discrepancy arises after a race has been declared official, a change in the order of finish shall include a redistribution of purse moneys. The disqualification will not affect the parimutuel payoffs.

(2) It is a violation of these rules for a jockey to weigh in more than two pounds under the assigned weight. Either the jockey or the trainer, or both may be held responsible for this violation.

(3) If any jockey weighs in at more than two pounds over his/her proper or declared weight, ~~((he shall be fined or suspended or ruled off at the discretion of))~~ the clerk of scales will report the overweight to the stewards~~((; who shall have regard))~~ for possible disciplinary action. In considering discipline, the stewards shall consider any excess weight caused by rain or mud~~((; and the case shall be reported to the commission for such action as it may deem proper to take)).~~

NEW SECTION

WAC 260-44-150 Horseshoes. (1) A horse starting in a race shall be fully shod with racing plates.

(2) Use of bar shoes must be declared at time of entry.

(3) During off-track conditions the trainer is responsible to report any additional traction devices to the board of stewards or designee.

(4) For turf racing, horses must be shod with racing plates approved by the association.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 260-44-060 Weighing out—Equipment not included.

WAC 260-44-070 Weighing out—Bridle, whip, maximum weights and measurements.

WSR 06-07-064

PERMANENT RULES

HORSE RACING COMMISSION

[Filed March 10, 2006, 1:01 p.m., effective April 10, 2006]

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

Purpose: To amend chapter 260-34 WAC as part of the agency's regulatory reform effort, and to write and organize rules in a clear and concise manner that they are easily understood by those to whom they apply. In addition the amended language removes penalties for violations of chapter 260-34 WAC, which have been adopted into chapter 260-84 WAC.

Citation of Existing Rules Affected by this Order: Repealing WAC 260-34-035, 260-34-045, 260-34-060, 260-34-070, 260-34-080, 260-34-090, 260-34-100 and 260-34-180; and amending WAC 260-34-010, 260-34-020, and 260-34-030.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 06-03-044 on January 10, 2006.

Changes Other than Editing from Proposed to Adopted Version: In the adopted version, the term "correctional institution" is defined to include any prison, jail or similar institution in this state or elsewhere (WAC 260-34-030).

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 3, Repealed 8.

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 3, Repealed 8; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 9, 2006.

R. M. Leichner
Executive Secretary

AMENDATORY SECTION (Amending WSR 05-07-066, filed 3/11/05, effective 4/11/05)

WAC 260-34-010 Primary purpose. In order to protect the integrity of horse racing in the state of Washington, and to protect the safety of the public and all participants, the Washington horse racing commission intends to regulate the use of any illegal controlled substances and the use of alcohol by licensees at all race meets. This chapter shall be applicable to all licensees or applicants on the grounds of any (~~race track~~) racetrack during its licensed race meet.

AMENDATORY SECTION (Amending WSR 05-07-066, filed 3/11/05, effective 4/11/05)

**WAC 260-34-020 (~~Use of controlled substances~~)
Drug and alcohol violations.** No licensee or applicant (~~shall~~), while acting in an official capacity or participating directly in horse racing, shall commit any of the following violations:

(1) Be under the influence of or affected by intoxicating liquor and/or drugs, have an alcohol concentration of 0.08 percent or higher, or have within their body any illegal controlled substance while on the grounds of any licensed race meet;

(2) Engage in the illegal sale or distribution of alcohol;

(3) Engage in the illegal sale or distribution of a controlled substance;

(4) Possess an illegal controlled substance;

(5) Possess on the grounds of any licensed race meet any equipment, products or materials of any kind which are used or intended for use in planting, propagating, cultivating,

growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, or concealing an illegal controlled substance, or any equipment, products or materials of any kind, which are used or intended for use in injecting, ingesting, inhaling or otherwise introducing into the human body an illegal controlled substance; or

(6) Refuse to submit to blood, breath and/or urine testing, when notified that such testing is conducted pursuant to the conditions of WAC 260-34-030.

Failure to provide a blood, breath and/or urine sample when directed or intentional contamination of the sample by any person tested for the purpose of preventing accurate analysis of the sample, or other actions with intent to subvert the test, shall be considered a refusal to submit to a test.

"Controlled substance" or "drug" as used in this chapter means any substance listed in chapter 69.50 RCW or legend drug as defined in chapter 69.41 RCW. The presence of a controlled substance or drug in any quantity measured by the testing instrument establishes the presence of that substance for the purpose of this section. The fact that a licensee or applicant is or has been entitled to use a drug under the laws of the state of Washington shall not constitute a defense against a violation for being under the influence of or affected by intoxicating liquor and/or any drug.

AMENDATORY SECTION (Amending WSR 05-07-066, filed 3/11/05, effective 4/11/05)

WAC 260-34-030 Testing. (1) A steward of the horse racing commission, a commission security investigator or the commission, acting through the executive secretary, may require any licensee or applicant to provide breath blood and/or urine samples for the purpose of drug or alcohol analysis under any of the following circumstances:

(a) When a steward or commission security investigator finds that there is reasonable suspicion to believe that the applicant or licensee has used or is under the influence of alcohol and/or any drug.

(b) When an applicant or licensee has a documented history of an unexplained positive test which indicates illegal drug usage or has a documented history of violating chapter 69.41, 69.45 or 69.50 RCW, WAC 260-34-020 or similar drug-related violation within five years of conviction or release from a correctional institution for that violation. The term "correctional institution" shall include any prison, jail or similar institution in this state or elsewhere.

(c) When a steward or commission security investigator decides to test any licensee or applicant as a condition of any conditional or probationary license.

(2) For licensees or applicants who are subject to a field screening urine test under the provisions in this chapter, and whose test shows the presence of a controlled substance or alcohol, the field screening test results shall be confirmed by a laboratory acceptable to the commission (~~which shall include gas chromatography/mass spectrometry (GC/MS) procedures.~~

(a) ~~When the sample quantity permits, each test sample shall be divided into portions so that one portion may be used for the confirmation procedure and another portion may be~~

utilized by the licensee to obtain an independent analysis of the sample. The commission shall provide for a secure chain of custody for the sample to be made available to the licensee.

(b) All costs for the transportation and testing for the sample portion made available for the licensee shall be the financial responsibility of the requesting person. The licensee or applicant being tested shall reimburse the commission the cost of transportation and testing within thirty days of receipt of notice of the costs).

(3) The result of a test conducted with a preliminary breath test (PBT) instrument approved by the state toxicologist in chapter 448-15 WAC or other breath test equipment approved under chapter 448-16 WAC shall constitute evidence of a violation of these rules. The results of such a test may be considered for purposes of determining whether the licensee or applicant has consumed alcohol, the level of alcohol concentration, and whether the licensee or applicant has violated a prohibition on the use or consumption of alcohol established in a conditional license.

~~((4) Upon request of the licensee or applicant, testing may be by a blood alcohol test. The requesting licensee or applicant shall pay the cost of a blood test.))~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 260-34-035 Exercising the privileges of their license.
- WAC 260-34-045 Violations of the privileges granted licensees.
- WAC 260-34-060 Refusal to test.
- WAC 260-34-070 Responsibility to report valid prescriptions.
- WAC 260-34-080 Testing procedure.
- WAC 260-34-090 A positive test.
- WAC 260-34-100 Confidentiality of test results.
- WAC 260-34-180 Testing expense.

**WSR 06-07-065
PERMANENT RULES
HORSE RACING COMMISSION**

[Filed March 10, 2006, 1:02 p.m., effective April 10, 2006]

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

Purpose: To amend chapter 260-32 WAC as part of the agency's regulatory reform effort, to write and organize rules in a clear and concise manner that they are easily understood by those to whom they apply, and to amend our rules consistency [consistent] with model rules of racing.

Citation of Existing Rules Affected by this Order: Repealing WAC 260-32-020, 260-32-030, 260-32-050, 260-32-060, 260-32-090, 260-32-110, 260-32-115, 260-32-240, 260-32-310, 260-32-320, 260-32-330, 260-32-

340 and 260-32-350; and amending WAC 260-32-010, 260-32-040, 260-32-070, 260-32-080, 260-32-100, 260-32-130, 260-32-140, 260-32-150, 260-32-160, 260-32-170, 260-32-180, 260-32-190, 260-32-210, 260-32-220, 260-32-230, 260-32-300, 260-32-370, 260-32-400, and 260-32-420.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 06-03-092 on January 13, 2006.

Changes Other than Editing from Proposed to Adopted Version: A new section, WAC 260-32-175 included in the proposed version was removed from the adopted version.

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 2, Amended 19, Repealed 14.

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 2, Amended 19, Repealed 14; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 9, 2006.

R. M. Leichner
Executive Secretary

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-32-010 ~~((License required—Minimum age.))~~ **Minimum requirements to obtain a jockey's license.**

~~((1) Each jockey must obtain a license from the commission:~~

~~(2) No boy under sixteen years shall be granted a jockey's license.))~~ In order to obtain a jockey license a person must meet the following minimum requirements:

- (1) Be at least eighteen years of age; and
- (2) Be engaged by a trainer to ride in a race.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-32-040 **Jockey may not be owner or trainer.** ~~((No licensed))~~ A jockey shall not be ((the)) an owner or trainer of any ((race horse)) horse competing at the race meet where the jockey is riding.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-32-070 **Weighing out.** Jockeys are required to present themselves to be weighed out ~~((at the time fixed))~~ as directed by the clerk of the scales.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-32-080 Must fulfill engagements. All jockeys shall faithfully fulfill all engagements in respect to racing, unless excused by the board of stewards or a physician.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-32-100 Appearance and costume. In riding a race a jockey must be neat in appearance. All riders must be dressed in clean jockey ~~((costumes))~~ attire, caps, and jackets of silk or waterproof material, white ~~((breeches))~~ jockey's pants and ~~((top))~~ jockey boots. During off-track conditions protective rain pants may be of a different color.

NEW SECTION

WAC 260-32-105 Safety equipment. (1) It shall be mandatory that jockeys wear a protective helmet and safety vest in compliance with WAC 260-12-180.

(2) The weight of the protective helmet shall not be included in the jockey's weight.

(3) The safety vest shall weigh no more than two pounds and shall not be included in the jockey's weight.

(4) Safety vests shall not be altered.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-32-130 Colors. A jockey must wear the colors of the owner or owners of the horse he/she is riding (except by special permission of the stewards) ~~((and the posting of such a change in colors on the bulletin board))~~, and a number on the saddle cloth corresponding to the number of the horse ~~((as exhibited after the weighing out))~~ in the official program.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-32-140 Numbers. A jockey ~~((shall))~~ may be required to wear a number on his/her right arm. The number on the jockey's arm ~~((and it))~~ and the saddle cloth number shall correspond to the number of the horse in the official program.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-32-150 Reporting in prior to race—Attendance pending engagements. Every jockey who is engaged in a race shall report to the scale room on the day of the race at the time required by the officials. He/she shall then report his/her engagements and overweight, if any, to the clerk of scales, and thereafter, except with the permission of the stewards, shall not leave the jockey room, except to view the races from a point approved by the stewards or to ride in a race, until all of his/her engagements of the day have been fulfilled.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-32-160 Physical examinations. ~~((Before the commencement of a meeting all jockeys must be examined by a licensed physician, designated by the board of stewards in order to establish their physical condition and freedom from disabling defects or contagious disease.))~~ During the conduct of a meeting, if the board of stewards has reasonable concerns that a jockey may be unfit to ride due to physical ailment, the board of stewards may require that any jockey be ~~((reexamined))~~ examined by a physician and may refuse to allow said jockey to ride until he ~~((successfully passes such examination))~~/she presents a physician's statement that the jockey is physically fit to ride.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-32-170 Betting. ~~((No jockey shall make a bet on any race nor accept the promise, or the token of any bet, with respect to the race in which he is riding, except through or from the owner or trainer of the horse he rides, and then only on that horse.))~~ (1) A jockey shall only be allowed to wager on a race in which the jockey is riding, and then only if:

(a) The owner or trainer of the horse, which the jockey is riding, makes the wager for the jockey;

(b) The jockey only wagers on his/her mount to win or finish first in combinations with other horses in multiple wagers; and

(c) Records of such wagers are kept and available for presentation upon request by the stewards.

(2) A jockey shall be allowed to wager on any race as long as the jockey has fulfilled his/her riding engagements for the day and left the jockey's quarters.

AMENDATORY SECTION (Amending WSR 98-07-070, filed 3/17/98, effective 4/17/98)

WAC 260-32-180 Fees. (1) ~~((Jockey's riding fees, for a meeting must be approved by the commission.))~~ The commission must approve jockey riding fees prior to the beginning of a race meet.

(a) If any owner or trainer engages two or more jockeys for the same race, he/she shall pay the losing fee for each ~~((engaged))~~ jockey not riding in the race, as well as the proper fee to the jockey who does ride. In the event an owner or trainer elects to remove a jockey from his/her mount after scratch time or such other time as designated by the stewards, the stewards may require a double jockey fee to be paid. The double jockey fee to be paid may be equal to that earned by the jockey who rode the race or a losing fee, as determined by the board of stewards.

(b) A jockey's fee shall be considered earned when the ~~((jockey is weighed out by the))~~ clerk of scales weighs out the jockey. The fee shall not be considered earned if the jockey, of his/her own free will, takes himself/herself off his/her mount, where injury to the horse or rider is not involved. Any conditions or considerations not covered by the above ruling shall be at the discretion of the stewards.

(2) In a dead heat the jockeys involved shall divide equally the sum total of the fees they would have received individually had one beaten the other or others. Likewise, the owners of the horses involved shall pay their equal share.

AMENDATORY SECTION (Amending WSR 91-15-036, filed 7/16/91, effective 8/16/91)

WAC 260-32-190 Temporary suspension. (1) If a jockey is suspended for an offense not involving fraud, and the suspension is for ten days or less, then the jockey may ride in those stakes races, futurity races, futurity trials, or other races which are designated by the ~~((respective))~~ board of stewards as races in which the jockey may compete, even though under suspension.

~~((2))~~ ~~((Official rulings for riding infractions not involving fraud, with sanctions of suspension for ten days or less shall state the term of the suspension and shall not prohibit participation in designated races.~~

~~((3))~~ A listing of the designated races shall be posted in the jockey's room, and any other such place deemed appropriate by the stewards.

~~((4))~~ (3) A suspended jockey must be named at the time of entry to participate in any designated race.

~~((5))~~ (4) A day in which a jockey participated in a designated race while on suspension shall count as a suspension day, except:

(a) A day in which a suspended jockey participates in more than one designated race in Washington shall not count as a suspension day; and

(b) A day in which a jockey participates in one or more designated races in another jurisdiction shall not count as a suspension day.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-32-210 Payment of ~~((forfeitures))~~ fines. ~~((A forfeiture))~~ All fines must be paid by the jockey ~~((himself and any))~~. Any other person paying ~~((it))~~ a jockey's fine shall be subject to ~~((punishment))~~ disciplinary action.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-32-220 Jockey limited to one agent who shall make all engagements. ~~((Every))~~ A jockey may have only one agent ~~((and no more))~~. All engagements to ride ~~((; other than those for his contract employer,))~~ shall be made by his/her agent. All jockeys are bound by agreements made on their behalf by their jockey agent.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-32-230 Attendants. No jockey shall have an attendant other than those provided by the association. ~~((Such attendants shall be paid from an assessment collected from the jockeys.))~~

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-32-300 Application of rules for jockeys. Jockey apprentices ~~((shall be bound by))~~ must comply with all the rules for jockeys ~~((; except insofar as said rules may be in conflict with the following specific regulations for apprentices))~~.

NEW SECTION

WAC 260-32-305 Probationary mounts. The board of stewards may grant a temporary license to a jockey apprentice allowing them to ride up to three probationary mounts.

AMENDATORY SECTION (Amending WSR 98-01-146, filed 12/19/97, effective 1/19/98)

WAC 260-32-370 Apprentice jockeys. (1) An applicant for an apprentice jockey license may be prohibited from riding until the stewards or the commission has sufficient opportunity (not to exceed 14 days) to verify the applicant's previous riding experience.

(2) An apprentice jockey may be granted an apprentice certificate by the board of stewards. The apprentice certificate shall grant an apprentice all the allowances and conditions stated in these rules.

(3) An apprentice jockey eligible for a ten-pound allowance may not accept mounts on two year olds and first time starters, without prior approval of the board of stewards.

(4) The conditions of an apprentice jockey license do not apply to quarter horse or mixed breed racing. A jockey's performances in quarter horse or mixed breed racing do not apply to the conditions of an apprentice jockey.

~~((3))~~ (5) An applicant with an approved apprentice certificate from another jurisdiction may be licensed as an apprentice jockey.

~~((4))~~ (6) An apprentice certificate may be obtained from the stewards on a form provided by the commission. A person shall not receive more than one apprentice certificate. In case of emergencies, a copy of the original may be obtained from the commission where it was issued.

~~((5))~~ (7) The apprentice jockey shall be responsible to have his/her apprentice certificate with them at all times. Prior to riding, the apprentice certificate shall be submitted to the clerk of scales at each racing association in which the apprentice is licensed and riding.

~~((6))~~ (8) The apprentice jockey shall keep an accurate updated record of his/her first forty winners, to be recorded on the certificate by the clerk of scales.

~~((7))~~ (9) An apprentice jockey may claim the following weight allowances in all overnight races except stakes and handicaps:

(a) Ten pound allowance beginning with the first mount and continuing until the apprentice has ridden five winners:

(b) Seven pound allowance until the apprentice has ridden an additional thirty-five winners; and

(c) If an apprentice has ridden a total of forty winners prior to the end of a period of one year from the date of riding their fifth winner, the apprentice jockey shall have an allowance of five pounds until the end of that year;

(d) If after one year from the date of the fifth winning mount, the apprentice jockey has not ridden forty winners, the applicable weight allowance shall continue for one more year or until the 40th winner, whichever comes first. In no event may a weight allowance be claimed for more than two years from the date of the fifth winning mount, unless an extension has been granted.

~~((8))~~ (e) An apprentice may waive the ten- or seven-pound allowance, but shall not be eligible to reinstate either allowance once waived.

(10) The commission may extend the period in which an apprentice jockey is allowed a weight allowance ~~((of an apprentice jockey))~~ when, at the discretion of the commission, an apprentice jockey is unable to continue riding due to:

- (a) Physical disablement or illness;
- (b) Military service;
- (c) Attendance in an institution of secondary or higher education;
- (d) Restriction on racing;
- (e) Other valid reasons.

~~((9))~~ (11) In order to qualify for an extension, an apprentice jockey shall have been rendered unable to ride for a period of not less than seven consecutive days during the period in which the apprentice was entitled to an apprentice weight allowance. ~~((Under exceptional circumstances, total days lost collectively will be given consideration.~~

~~(10))~~ (12) The commission currently licensing the apprentice jockey shall have the authority to grant an extension to an eligible applicant, but only after the apprentice has produced documentation, verifying time lost as defined by this regulation.

~~((11))~~ (13) An apprentice may petition ~~((one of))~~ the jurisdictions in which he or she is licensed and riding for an extension of the time for claiming apprentice weight allowances granted by the commission, and the apprentice shall be bound by the decision of the jurisdiction so petitioned.

~~((12) Apprentice jockeys shall be bound by all rules for jockeys, except insofar as said rules may be in conflict with WAC 260-32-400.))~~

AMENDATORY SECTION (Amending WSR 92-21-027, filed 10/13/92, effective 11/13/92)

WAC 260-32-400 Powers and duties. (1) Each jockey agent shall be licensed ~~((on a regular form provided))~~ by the commission.

(2) No jockey agent shall be the owner or trainer of any horse.

(3) A jockey agent may represent up to three jockeys ~~((providing the conditions justify and upon approval of the stewards)).~~

(4) No jockey agent shall make or assist in making any engagement for any rider other than those he is licensed to represent, without prior approval of the board of stewards, which may be granted for a temporary time period not to exceed ten days.

(5) If a jockey agent is absent for a period of more than ten days, the jockey will be required to engage another jockey agent.

(6) Each jockey agent shall keep, on a form provided by the association, a record by races of all engagements made by him of the riders he is representing. This record must be kept up to date and held ready at all times for the inspection by the stewards.

(7) If any jockey agent gives up the making of engagements for any rider, he/she shall immediately notify the stewards, and he/she shall also turn over to the stewards a list of any unfilled engagements he/she may have made for that rider. A jockey agent may not drop a rider without notifying the board of stewards in writing. ~~((All rival claims for the services of a rider will be adjusted by the stewards.))~~ The stewards will decide all rival claims for the services of a rider. Jockey agents who fail to honor commitments made are subject to disciplinary action.

AMENDATORY SECTION (Amending Order 82-03, filed 4/9/82)

WAC 260-32-420 ((Visitation privileges.)) Prohibited areas. A jockey agent ~~((must receive permission from the stewards to visit))~~ is prohibited from entering the jockey quarters, winner's circle, racing surface, paddock, ~~((and film review room))~~ or saddling enclosure unless permitted by the stewards.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 260-32-020	Riding prior to licensure.
WAC 260-32-030	Apprentice may ride in same race with jockeys.
WAC 260-32-050	Stable prerequisite to contract holding.
WAC 260-32-060	Riding for other than contract employer.
WAC 260-32-090	Riding against starter of contract employer.
WAC 260-32-110	Protective helmet.
WAC 260-32-115	Safety vests.
WAC 260-32-240	Priority of retainers.
WAC 260-32-310	Contracts—Form—Filing.
WAC 260-32-320	Contracts—Transfers.
WAC 260-32-330	Stable prerequisite to contract holding.
WAC 260-32-335	Apprentice certificates.
WAC 260-32-340	Application for license—Supporting documents.
WAC 260-32-350	Riding for other than contracted employer—Fee entitlement.

WSR 06-07-066

PERMANENT RULES

HORSE RACING COMMISSION

[Filed March 10, 2006, 1:02 p.m., effective April 10, 2006]

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

Purpose: To adopt a new section in chapter 260-28 WAC. The new section, WAC 260-28-290, prohibits a licensed trainer who owns a horse (wholly or in part) from having another trainer train the horse on the grounds where the trainer is licensed. The board of stewards at a Class C race meet can grant an exception to this ownership interest only when the trainer has an ownership interest in a different breed of horse regularly trained by the owner/trainer.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 06-03-090 on January 13, 2006.

Changes Other than Editing from Proposed to Adopted Version: The exemption for Class C race meets was removed and the exception to this rule will only be allowed only where the trainer has an ownership interest in different breeds of horses participating in the race meet, and seeks permission to have a particular breed trained by someone else.

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 1, 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 1, 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: March 9, 2006.

R. M. Leichner

Executive Secretary

NEW SECTION**WAC 260-28-290 Trainer—Ownership interest.**

When participating as a licensed trainer at a race meet, the trainer is responsible for training all horses participating at the race meet that are owned wholly or in part by the trainer. The board of stewards has discretion to permit an exception to this rule only where the trainer has an ownership interest in different breeds of horses participating in the race meet, and seeks permission to have a particular breed trained by someone else.

WSR 06-07-067

PERMANENT RULES

HORSE RACING COMMISSION

[Filed March 10, 2006, 1:03 p.m., effective April 10, 2006]

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

Purpose: To amend WAC 260-12-180 to require all persons on horseback, and on association grounds to only wear safety helmets and safety vests that meet industry safety standards. In addition this section is amended to set standards for equestrian footwear. To amend WAC 260-28-230 to require trainers to be responsible to keep the commission advised of the names of their employees and to also ensure their employees wear safety equipment that complies with WAC 260-12-180.

Citation of Existing Rules Affected by this Order: Amending WAC 260-12-180 and 260-28-230.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 06-03-041 on January 10, 2006.

Changes Other than Editing from Proposed to Adopted Version: In WAC 260-12-180(3) jockeys were granted an exemption from the requirements of this subsection when the jockeys are riding in a race or on their mounts immediately prior to riding in a race.

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 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 2, 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 9, 2006.

R. M. Leichner

Executive Secretary

AMENDATORY SECTION (Amending WSR 01-01-035, filed 12/8/00, effective 1/8/01)

WAC 260-12-180 Safety equipment required. (1)

When on association grounds, all persons ((while)) on horseback shall wear a securely fastened safety helmet ((and safety vest)) that meets current standards for equipment designed and manufactured for use while riding horses as established by the American Society for Testing and Materials/Safety Equipment Institute (ASTM/SEI), the British Standards Institute (BSI) or similar organization. ((Safety equipment shall be approved by the commission.))

(2) All persons on horseback shall wear a securely fastened safety vest that is designed to provide shock-absorbing

protection of at least a rating of 5, as defined by the British Equestrian Trade Association (BETA).

(3) In addition, all persons on horseback shall wear equestrian footwear with a 1/2 to 3/4 inch heel and that covers the rider's ankle, except jockeys while riding in a race, or while on their mount immediately prior to riding in a race, shall wear jockey boots as required by WAC 260-32-100.

This rule does not apply to nonracing related events conducted for entertainment purposes. Safety equipment for such entertainment events shall be at the discretion of the racing association.

AMENDATORY SECTION (Amending WSR 00-06-072, filed 3/1/00, effective 4/1/00)

WAC 260-28-230 Trainer—Duty to register personnel—(~~Occupational licenses~~)—Safety equipment. (~~Each trainer shall register with the racing commission every person in his/her employ and be responsible for all his/her employees securing occupational licenses.~~

~~He/she shall also be responsible for every jockey and all his/her employees wearing a safety helmet and safety vest while on horse back. The safety helmet and safety vest shall be of a type approved by the commission and any changes in the helmet or the vest must be approved in writing by the stewards.))~~ A trainer shall be required to notify the commission of the names of every person in the trainer's employ and be responsible to ensure that all the trainer's employees are properly licensed by the commission before being allowed to work. If a trainer releases any employee, the trainer shall notify the stewards within forty-eight hours.

A trainer shall also be responsible to ensure that all the trainer's employees wear a safety helmet and safety vest while on horseback, in compliance with WAC 260-12-180.

WSR 06-07-073

PERMANENT RULES

GAMBLING COMMISSION

[Order 455—Filed March 13, 2006, 3:34 p.m., effective April 13, 2006]

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

Purpose: A card room submitted a petition for rule change to increase the number of tables one pit supervisor can oversee from five to six tables. This number was specific to the petitioner's card room. Staff recommended increasing the number of tables from five to seven. Staff had no regulatory concerns increasing the number from five to seven. Furthermore, it streamlines this rule by removing an exception which allows one supervisor seven tables, if *only* seven tables were in operation.

Citation of Existing Rules Affected by this Order: Amending WAC 230-40-815.

Statutory Authority for Adoption: RCW 9.46.070 and 9.46.0282.

Adopted under notice filed as WSR 06-04-041 on January 26, 2006, with a published date of February 15, 2006.

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 1, 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 1, Repealed 0.

Date Adopted: March 10, 2006.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 418, filed 4/16/03, effective 7/1/03)

WAC 230-40-815 Administrative and accounting control structure—Organization—House-banking. Each licensee operating a house-banked card game shall ensure that all games are closely controlled, operated fairly and in accordance with all rules of the commission. The following control procedures and conditions shall be met:

Internal controls.

(1) The licensee shall have a system of internal controls that include at least the following:

(a) Administrative controls, which include, but are not limited to, the organization's plan, procedures, and records concerned with decision processes leading to management's authorization of transactions; and

(b) Accounting controls which include the licensee's plan, procedures, and records concerned with the safeguarding of assets and the reliability of financial records. These controls must be designed to provide reasonable assurance that:

(i) Transactions are executed in accordance with management's general and specific authorization;

(ii) Transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles, and to maintain accountability for assets;

(iii) Access to assets is permitted only in accordance with management's authorization; and

(iv) The recorded accountability for assets is compared with existing assets at least annually and appropriate action is taken within five working days with respect to any differences.

Administrative controls.

(2) The licensee's system of administrative controls shall provide for the following:

(a) Competent personnel with an understanding of prescribed procedures;

(b) The segregation of incompatible functions so that no employee is in a position to perpetrate and conceal errors or irregularities in the normal course of his or her duties; and

(c) Each employee of a house-banked card room shall be licensed by the commission and shall be knowledgeable in all accounting and internal control practices and procedures relevant to each employee's individual function.

Separate departments and functions.

(3) The licensee shall, at a minimum, establish the following departments or functions that shall be independent from all other departments or functions:

Surveillance.

(a) A surveillance department which shall not include security functions or personnel. The head of surveillance shall be responsible for, but not limited to, the following:

(i) The clandestine surveillance of the operation and conduct of the table games;

(ii) The clandestine surveillance of the operation of the cashier's cage;

(iii) The video and audio recording of activities in the count rooms;

(iv) The detection of cheating, theft, embezzlement, and other illegal activities in the gaming facility, count rooms, and cashier's cage;

(v) The video recording of unusual or suspected illegal activities;

(vi) The notification of appropriate supervisors and commission staff, within three working days, upon the detection of cheating, theft, embezzlement, or other illegal activities;

(vii) Ensuring that each dealer is evaluated to determine if all required dealer procedures and techniques set forth in the licensee's approved internal controls are followed; and

(viii) Ensuring all surveillance employees have a demonstrated knowledge of the following:

(A) Operating surveillance systems;

(B) Rules of play and procedures for the games being played; and

(C) The overall procedures relating to the duties of all employees of the house-banked card room being monitored (dealers, shift managers, floor supervisors, cage cashier's and count team members).

Security.

(b) A security department, supervised by a security department manager, is responsible for at least the following:

(i) Control of cards and dealing shoes, including storage of new and used cards and shoes, and control of the disposition and/or destruction of same when removed from service; and

(ii) Transfer of cash and chips to and from the gaming tables, cage and count room.

Gaming operations.

(c) A gaming operation department supervised by a gaming operation department manager who shall be responsible for the operation of all house-banked card games conducted by ensuring the following:

(i) Card games are operated by licensed dealers who are assigned to each gaming table;

(ii) A floor supervisor is assigned the responsibility for the overall supervision of the conduct of gaming within a pit

and can supervise no more than ~~((five))~~ seven tables ~~((: Provided, That a single supervisor may supervise up to seven tables, if only seven tables are in operation and the layout was preapproved by commission staff));~~

(ii) A licensee which utilizes two separate areas of a gaming establishment shall require at least one supervisor in each area; and

(iv) A shift manager, who reports to the gaming operation department manager, is assigned to supervise floor supervisors and all gaming related activities that occur during each shift. In the absence of the gaming operation department manager, the shift manager shall have the authority of a gaming operation department manager: Provided, That in addition to the floor supervisors required in this subsection, licensees operating more than ten tables shall be required to have a shift manager on the premises.

Accounting.

(d) An accounting department supervised by an individual who shall report directly to the chief executive officer or chief operations officer. The responsibilities of the accounting department shall include, but not be limited to, the following:

(i) Implementing and monitoring of accounting controls;

(ii) The preparation, control, and storage of records and data required;

(iii) The control of unused forms inventory along with reconciliation of forms used; and

(iv) The control and supervision of the cashier's cage.

Modifications.

(4) Any changes to the licensee's system of internal controls must be submitted to commission staff and be approved prior to implementation.

Employees shall be informed of internal controls.

(5) All licensed operators shall inform their card room employees of the internal controls related to their respective area of responsibility. Furthermore, both the operator and all card room employees shall follow these internal controls at all times.

WSR 06-07-077

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed March 13, 2006, 4:29 p.m., effective April 13, 2006]

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

Purpose: The changes in this rule correct punctuation and WAC cross references.

Citation of Existing Rules Affected by this Order: Amending WAC 388-513-1305, 388-513-1315, 388-513-1320, 388-513-1330, and 388-513-1345.

Statutory Authority for Adoption: RCW 74.08.090.

Adopted under notice filed as WSR 06-03-078 on January 12, 2006.

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 5, 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 5, Repealed 0.

Date Adopted: March 7, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 00-01-051, filed 12/8/99, effective 1/8/00)

WAC 388-513-1305 Determining eligibility for non-institutional medical assistance in an alternate living facility (ALF). This section describes how the department defines the monthly income standard and uses it to determine eligibility for noninstitutional medical assistance for a client who lives in a department-contracted ALF. Refer to WAC 388-478-0045 for the personal needs allowance (PNA) amount that applies in this rule.

(1) Alternate living facilities include the following:

- (a) An adult family home (AFH);
- (b) An adult residential care facility (ARC);
- (c) An adult residential rehabilitation center (ARRC);
- (d) An adult residential treatment facility (ARTF);
- (e) An assisted living facility (AL);
- (f) A division of developmental disabilities (DDD) group home (GH); and

(g) An enhanced adult residential care facility (EARC).

(2) The monthly income standard for noninstitutional medical assistance under the categorically needy (CN) program that cannot exceed the special income level (SIL) equals the following amounts. For a client who lives in:

(a) An ARC, an ARRC, an ARTF, an AL, a DDD GH, or an EARC, the department-contracted rate based on a thirty-one day month plus the PNA; or

(b) An AFH, the department-contracted rate based on a thirty-one day month plus the PNA plus the cost of any add-on hours authorized by the department.

(3) The monthly income standard for noninstitutional medical assistance under the medically needy (MN) program equals the private facility rate based on a thirty-one-day month plus the PNA.

(4) The monthly income standard for noninstitutional medical assistance under the general assistance (GA) program equals the GA grant standard described in WAC ((~~388-478-0030~~) 388-478-0045).

(5) The department determines a client's nonexcluded resources for noninstitutional medical assistance under the:

(a) General assistance (GA) and Temporary Assistance for Needy Families (TANF) programs as described in chapter 388-470 WAC; and

(b) SSI-related medical program as described in chapter ((~~388-470~~) 388-475 WAC ((and WAC 388-505-0595)).

(6) The department determines a client's nonexcluded income for noninstitutional medical assistance as described in:

(a) Chapter 388-450 WAC((~~WAC 388-505-0595, 388-506-0620, and 388-511-1130~~)) for GA and TANF programs; and

(b) Chapter 388-475 WAC and WAC 388-506-0620 for SSI-related medical programs.

(7) The department approves CN noninstitutional medical assistance for a period of up to twelve months for a client who receives supplemental security income (SSI) or who is SSI-related as described in WAC ((~~388-503-0510(1)~~) 388-475-0050, if:

(a) The client's nonexcluded resources described in subsection (5) do not exceed the standard described in WAC 388-513-1350(1); and

(b) The client's nonexcluded income described in subsection (6) does not exceed the CN standard described in subsection (2).

(8) The department approves MN noninstitutional medical assistance for a period of months described in chapter 388-416 WAC for an SSI-related client, if:

(a) The client's nonexcluded resources described in subsection (5) do not exceed the standard described in WAC 388-513-1350(1); and

(b) The client satisfies any spenddown liability as described in chapter 388-519 WAC.

(9) The department approves GA and TANF noninstitutional medical assistance for a period of months described in chapter 388-416 WAC ((~~for a client determined eligible for the program as described in WAC 388-400-0025~~)).

(10) The client described in subsections (7) and (9) keeps the PNA amount and pays remaining income to the facility for board and room.

AMENDATORY SECTION (Amending WSR 04-18-054, filed 8/27/04, effective 9/27/04)

WAC 388-513-1315 Eligibility for long-term care (institutional, waiver, and hospice) services. This section describes how the department determines a client's eligibility for institutional, waiver, or hospice services under the categorically needy (CN) program and institutional or hospice services under the medically needy (MN) program. Also described are the eligibility requirements for these services under the general assistance (GA) program in subsection (11) and emergency medical programs described in subsections (10) and (12).

(1) To be eligible for long-term care (LTC) services described in this section, a client must:

(a) Meet the general eligibility requirements for medical programs described in WAC 388-503-0505 (2) and (3)(a) through (f);

(b) Attain institutional status as described in WAC 388-513-1320; and

(c) Not be subject to a penalty period of ineligibility as described in WAC (~~(388-513-1365 and)~~) 388-513-1364 through 388-513-1366.

(2) To be eligible for institutional, waiver, or hospice services under the CN program, a client must either:

(a) Be related to the Supplemental Security Income (SSI) program as described in WAC (~~(388-503-0510(1))~~) 388-475-0050(1) or be approved for the general assistance expedited Medicaid disability (GA-X) program; and

(b) Meet the following financial requirements, by having:

(i) Gross nonexcluded income described in subsection (7)(a) that does not exceed the special income level (SIL); and

(ii) Nonexcluded resources described in subsection (6) that do not exceed the resource standard described in WAC 388-513-1350(1), unless subsection (3) applies; or

(c) Be eligible for the CN children's medical program as described in WAC 388-505-0210; or

(d) Be eligible for the temporary assistance for needy families (TANF) program or state family assistance (SFA) program as described in WAC 388-505-0220.

(3) The department allows a client to have nonexcluded resources in excess of the standard described in WAC 388-513-1350(1) during the month of either an application or eligibility review if, when excess resources are added to nonexcluded income, the combined total does not exceed the SIL.

(4) To be eligible for waiver or hospice services, a client must also meet the program requirements described in:

(a) WAC 388-515-1505 for COPES services;

(b) WAC 388-515-1510 for DDD waiver and OBRA services; or

(c) Chapter 388-551 WAC for hospice services.

(5) To be eligible for institutional or hospice services under the MN program, a client must be:

(a) Eligible for the MN children's medical program as described in WAC 388-505-0210; or

(b) Related to the SSI program as described in WAC (~~(388-503-0510(1))~~) 388-475-0050(1) and meet all requirements described in WAC 388-513-1395.

(6) To determine resource eligibility for an SSI-related client under the CN or MN program, the department:

(a) Considers resources available as described in WAC 388-513-1350;

(b) Excludes resources described in WAC 388-513-1360(~~, 388-513-1365, and~~) and 388-513-1364 through 388-513-1366; and

(c) Compares the nonexcluded resources to the standard described in WAC 388-513-1350(1).

(7) To determine income eligibility for an SSI-related client under the CN or MN program, the department:

(a) Considers income available as described in WAC 388-513-1325 and 388-513-1330;

(b) Excludes income for CN and MN programs as described in WAC 388-513-1340;

(c) Disregards income for the MN program as described in WAC 388-513-1345; and

(d) Follows program rules for the MN program as described in WAC 388-513-1395.

(8) A client who meets the requirements of the CN program is approved for a period of up to twelve months for:

(a) Institutional services in a medical facility;

(b) Waiver services at home or in an alternate living facility; or

(c) Hospice services at home or in a medical facility.

(9) A client who meets the requirements of the MN program is approved for a period of months described in WAC 388-513-1395 (5)(a)(ii) for:

(a) Institutional services in a medical facility; or

(b) Hospice services at home or in a medical facility.

(10) The department determines eligibility for LTC services under the alien emergency medical (AEM) program described in WAC 388-438-0110 for a client who meets all other requirements for such services but does not meet citizenship requirements.

(11) The department determines eligibility for institutional services under the GA program described in WAC 388-448-0001 for a client who meets all other requirements for such services but is not eligible for programs described in subsections (8) through (10).

~~(12) ((The department determines eligibility for institutional services under the medically indigent program described in WAC 388-438-0100 for a client who meets all other requirements for such services but is not eligible for programs described in subsections (8) through (11)).~~

~~(13))~~ A client is eligible for Medicaid as a resident in a psychiatric facility, if the client:

(a) Has attained institutional status as described in WAC 388-513-1320; and

(b) Is less than twenty-one years old or is at least sixty-five years old.

~~((14))~~ (13) The department determines a client's eligibility as it does for a single person when the client's spouse has already been determined eligible for LTC services.

~~((15))~~ (14) The department considers the parents' income and resources available ~~((as described in WAC 388-405-0055-1)(c))~~ for a minor who is less than eighteen years old and is receiving or is expected to receive inpatient chemical dependency and/or inpatient mental health treatment.

~~((16))~~ (15) The department considers the parents' income and resources available only as contributed for a client who is less than twenty-one years old and has attained institutional status as described in WAC 388-513-1320

~~((17))~~ (16) The department determines a client's participation in the cost of care for LTC services as described in WAC 388-513-1380.

AMENDATORY SECTION (Amending WSR 00-01-051, filed 12/8/99, effective 1/8/00)

WAC 388-513-1320 Determining institutional status for long-term care (LTC) services. Institutional status is an eligibility requirement for LTC services.

(1) To attain institutional status, a client must:

(a) Be approved for and receiving waiver~~((ed))~~ or hospice services; or

(b) Reside or be likely to reside in a medical facility for a continuous period of:

- (i) Ninety days for a child seventeen years of age or younger receiving inpatient chemical dependency and/or inpatient mental health treatment; or
- (ii) Thirty days for:
 - (A) An SSI-related client;
 - (B) A child not described in subsection (1)(b)(i); or
 - (C) A client related to medical eligibility as described in WAC 388-513-1315 (10)(~~(c)~~) or (11)(~~(c)~~-(12)).
- (2) A client's institutional status is not affected by a:
 - (a) Transfer between medical facilities; or
 - (b) Change from one kind of long-term care services to another.
 - (3) A client loses institutional status when the client:
 - (a) Is absent from the medical facility for at least thirty consecutive days; or
 - (b) Does not receive waiver(~~(ed)~~) or hospice services for at least thirty consecutive days.

AMENDATORY SECTION (Amending WSR 00-01-051, filed 12/8/99, effective 1/8/00)

WAC 388-513-1330 Determining available income for legally married couples for long-term care (LTC) services. This section describes income the department considers available when determining a legally married client's eligibility for LTC services.

(1) The department must apply the following rules when determining income eligibility for LTC services:

(a) WAC 388-450-0005 (3)(~~(and (4))~~), Income—Ownership and availability and WAC 388-475-0200, SSI-related medical;

(b) WAC 388-450-0085, Self-employment income—Allowable expenses;

(c) WAC 388-450-0210 (4)(b)(~~(c)~~) and (e), ((and (h))) Countable income for medical programs, and WAC 388-475-0750, SSI-related medical - Countable unearned income;

(d) WAC 388-506-0620, SSI-related medical clients; and

(e) ((WAC 388-511-1130, SSI-related income availability; and

~~(f))~~ WAC 388-513-1315 (15) and (16), Eligibility for long-term care (institutional, waiver(~~(ed)~~), and hospice) services.

(2) For an institutionalized client married to a community spouse who is not applying or approved for LTC services, the department considers the following income available, unless subsection (4) applies:

- (a) Income received in the client's name;
- (b) Income paid to a representative on the client's behalf;
- (c) One-half of the income received in the names of both spouses; and
- (d) Income from a trust as provided by the trust.

(3) The department considers the following income unavailable to an institutionalized client:

- (a) Separate or community income received in the name of the community spouse; and
- (b) Income established as unavailable through a fair hearing.
- (4) For the determination of eligibility only, if available income described in subsections (2)(a) through (d) minus

income exclusions described in WAC 388-513-1340 exceeds the special income level (SIL), then:

(a) The department follows community property law when determining ownership of income;

(b) Presumes all income received after marriage by either or both spouses to be community income; and

(c) Considers one-half of all community income available to the institutionalized client.

(5) If both spouses are either applying or approved for LTC services, then:

(a) The department allocates one-half of all community income described in subsection (4) to each spouse; and

(b) Adds the separate income of each spouse respectively to determine available income for each of them.

(6) The department considers income generated by a transferred resource to be the separate income of the person or entity to which it is transferred.

(7) The department considers income not generated by a transferred resource available to the client, even when the client transfers or assigns the rights to the income to:

(a) The spouse; or

(b) A trust for the benefit of the spouse.

(8) The department evaluates the transfer of a resource described in subsection (6) according to WAC 388-513-1365 and 388-513-1366 to determine whether a penalty period of ineligibility is required.

AMENDATORY SECTION (Amending WSR 00-01-087, filed 12/14/99, effective 1/14/00)

WAC 388-513-1345 Determining disregarded income for institutional or hospice services under the medically needy (MN) program. This section describes income the department disregards when determining a client's eligibility for institutional or hospice services under the MN program. The department considers disregarded income available when determining a client's participation in the cost of care.

(1) The department disregards the following income amounts in the following order:

(a) Income that is not reasonably anticipated, or is received infrequently or irregularly, when such income does not exceed:

(i) Twenty dollars per month if unearned; or

(ii) Ten dollars per month if earned.

(b) The first twenty dollars per month of earned or unearned income, unless the income paid to a client is:

(i) Based on need; and

(ii) Totally or partially funded by the federal government or a private agency.

(2) For a client who is related to the Supplemental Security Income (SSI) program as described in WAC ~~((388-503-0510(4)))~~ 388-475-0050(1), the first sixty-five dollars per month of earned income not excluded under WAC 388-513-1340, plus one-half of the remainder.

(3) For a TANF/SFA-related client, fifty percent of gross earned income.

(4) Department of Veterans Affairs benefits if:

(a) Those benefits are designated for:

(i) Unusual medical expenses;

- (ii) Aid and attendance allowance; or
- (iii) Housebound allowance; and
- (b) The client:
 - (i) Resides in a state veterans' home; and
 - (ii) Has no dependents.
- (5) Income the Social Security Administration (SSA) withholds from SSA Title II benefits for the recovery of an SSI overpayment.

WSR 06-07-078
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed March 13, 2006, 4:30 p.m., effective May 1, 2006]

Effective Date of Rule: May 1, 2006.

Purpose: To amend WAC 388-450-0005 Income—Ownership and availability, 388-450-0015 What types of income are not used when figuring out my benefits?, and 388-450-0175 GA-U (general assistance-unemployable) earned income incentive and deduction, in order to update references to other department rules and reflect current policy how the department considers various sources of income in determining eligibility and benefits for department programs.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0005, 388-450-0015, and 388-450-0175.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Adopted under notice filed as WSR 06-04-044 on January 26, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, 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 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 3, Repealed 0.

Date Adopted: March 8, 2006.

Andy Fernando, Manager
 Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 02-17-030, filed 8/12/02, effective 9/12/02)

WAC 388-450-0005 ((Income—Ownership and availability—)) How does the department decide if I own a type of income and if this income is available to meet my

needs? This section applies to cash assistance, medical programs for children, pregnant women and families, and food assistance.

(1) ~~((The department counts))~~ We count all available income owned ~~((or possessed by a client to figure the client's eligibility and benefit level))~~ or held by people in your assistance unit under chapter 388-408 WAC to decide if you are eligible for benefits and calculate your monthly benefits when:

(a) You get or expect to get the income in the month.

(b) ~~((It is income))~~ We must count the income based on rules under chapter 388-450 WAC.

(c) You own the income. We use ~~((applicable))~~ state and federal laws ~~((pertaining to))~~ about who owns property ~~((ownership))~~ to ~~((determine))~~ decide if you actually own the income. ~~((For married persons, ownership of))~~ If you are married, we decide if income is separate ((and)) or community income ((is determined)) according to chapter 26.16 RCW.

(d) You have control over the income, which means the income is actually available to you. If you have a representative payee, protective payee, or other person who manages your income for you as described in chapter 388-460 WAC, we consider this as you having control over this income.

(e) You can ~~((user))~~ use the income to meet your current needs. We count the gross amount of available income in the month ~~((it is received))~~ your assistance unit gets it. If you normally get the income:

(i) ~~((If the income is usually available))~~ On a specific day, we ~~((consider))~~ count it ~~((to be))~~ as available on that date.

(ii) ~~((If you usually get the income))~~ Monthly or ((semi-monthly)) twice monthly and your pay date changes due to a reason beyond your control, such as a weekend or holiday, we count it in the month you ~~((actually get it))~~ would normally get it.

(iii) ~~((If you usually get the income))~~ Weekly or ((bi-weekly)) every-other week and your pay date changes due to a reason beyond your control, we count it in the month you would normally get it.

(2) ~~((We consider the income that is legally yours as available income,))~~ If income is legally yours, we consider the income as available to you even if it is paid to someone else for you. For example, the father of your child has a court order to pay you two hundred fifty dollars per month in child support. Instead of giving the money directly to you (as required in the court order), he gives the money to your landlord to pay part of your rent. We still count the two hundred fifty dollars as income even though you never actually got the money.

(3) We may also count the income of certain people who live in your home, even if they are not getting ~~((assistance))~~ or applying for benefits. Their income counts as part of your income.

(a) For cash assistance, we count the income of ineligible, disqualified, or financially responsible people as defined in WAC ~~((388-405-0100))~~ 388-450-0100.

(b) For food assistance, we count the income of ineligible assistance unit members as defined in WAC 388-408-0035.

(c) For family and SSI-related medical assistance, we count the income of financially responsible people as defined in WAC 388-408-0055 and chapter 388-475 WAC.

(d) For long-term care services, we count the income of financially responsible people as defined in WAC 388-506-0620.

(4) If you have a joint bank account with someone who is not in your AU, we ~~((consider))~~ count any money deposited into that account as your income unless:

~~((i))~~ (a) You can show that all or part of the funds belong ~~((exclusively))~~ only to the other account holder and are held or used ~~((solely))~~ only for the benefit of that holder; or

~~((ii))~~ (b) Social Security Administration (SSA) used that money to determine the other account holder's eligibility for SSI benefits.

(5) Potential income is income you may ~~((have access to))~~ be able to get that can be used to ~~((reduce the))~~ lower your need for assistance. If we determine that you have a potential source of income ~~((source exists))~~, you must make a reasonable effort to make the income available in order to get cash or medical assistance.

(a) We do not count that income until you actually get it; and

(b) You can choose whether to ~~((receive))~~ get TANF/SFA or Supplemental Security Income (SSI) benefits.

(6) ~~((The income of an alien's sponsor is considered available to the alien under the rules of this chapter when determining the alien's eligibility and benefit level))~~ If your assistance unit includes a sponsored immigrant, we consider the income of the immigrant's sponsor as available to the immigrant under the rules of this chapter. We use this income when deciding if your assistance unit is eligible for benefits and to calculate your monthly benefits.

(7) For SSI-related medical:

(a) ~~((Income is considered available and owned when it is))~~ We consider income to be owned by someone and available to the person when the person:

(i) ~~((Received))~~ Gets the income; and

(ii) Can ~~((be used))~~ use the income to meet ~~((the clients))~~ their needs for food, clothing and shelter, except as provided in WAC 388-511-1130.

(b) Loans and ~~((certain other receipts))~~ getting cash in certain other ways are not defined as income for SSI-related medical purposes as described in 20 C.F.R. Sec. 416.1103.

(8) For medical programs, see WAC 388-561-0100 for more information about trusts.

(9) You may give us proof about ~~((an))~~ a type of income ~~((source))~~ at anytime, including when we ask for it or if you disagree with a decision we made, about:

(a) Who owns the income;

(b) Who has legal control of the income;

(c) The amount of the income; or

(d) ~~((The availability of the income))~~ If the income is available.

AMENDATORY SECTION (Amending WSR 05-03-078, filed 1/17/05, effective 2/17/05)

WAC 388-450-0015 ~~((are))~~ What types of income does the department not ((used when figuring)) use to figure out my benefits? This section applies to cash assistance, Children's, Family, or Pregnancy Medical, and Basic Food benefits.

(1) There are some types of income ~~((that))~~ we ~~((the department))~~ do not count ~~((when figuring))~~ to figure out if you can get benefits and the amount you can get. Some examples of income we do not count are:

(a) Bona fide loans as defined in WAC ~~((388-470-0025))~~ 388-470-0045, except certain student loans as specified under WAC 388-450-0035;

(b) Federal earned income tax credit (EITC) payments;

(c) Title IV-E and state foster care maintenance payments if ~~((the foster child is not included))~~ you choose not to include the foster child in your assistance unit;

(d) Energy assistance payments;

(e) Educational assistance ~~((as specified in))~~ we do not count under WAC 388-450-0035;

(f) Native American benefits and payments ~~((as specified in))~~ we do not count under WAC 388-450-0040;

(g) Income from employment and training programs ~~((as specified in))~~ we do not count under WAC 388-450-0045;

(h) Money withheld from a ~~((client's))~~ benefit to repay an overpayment from the same income source. For Basic Food, ~~((this exclusion does not apply when the))~~ we do not exclude money that is withheld ((to recover an intentional noncompliance overpayment from)) because you were overpaid for purposely not meeting requirements of a federal, state, or local means tested program such as TANF/SFA, GA, and SSI;

(i) Legally obligated child support payments received by someone who gets TANF/SFA ~~((recipients))~~ benefits;

(j) One-time payments issued under the Department of State or Department of Justice Reception and Replacement Programs, such as Voluntary Agency (VOLAG) payments; and

(k) Payments ~~((specifically excluded from being counted))~~ we are directly told to exclude as income under state or federal law. ~~((Disregard certain payments made by the Veterans Administration to children of Vietnam veterans (P.L. 106-419, see FR 67147§3.815);))~~

(l) **For cash and Basic Food:** payments made to ~~((a third party on behalf))~~ someone outside of the household for the benefits of the assistance unit using funds that are not owed to the household; and

(m) **For medical assistance:** only the portion of income used to repay the cost of obtaining that income source.

(2) For Children's, Family, or Pregnancy Medical, we also do not count any insurance proceeds or other income you have recovered as a result of being a Holocaust survivor.

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-450-0175 ~~((GA-U earned income incentive and deduction-))~~ Does the department offer an income deduction as an incentive for GA-U clients to work? ~~((This section applies to the GA-U cash assistance program.))~~

The department gives special deductions to people who receive income from work while receiving General Assistance-Unemployable (GA-U). We allow the following deductions before using your earnings to determine your eligibility and monthly benefits:

~~(1) ((When a client's countable income is determined,)) We subtract eighty-five dollars plus one half of the remainder of ((a client's)) your monthly gross earned income ((is disregarded)) as an incentive to employment.~~

~~(2) ((In addition to the work incentive provided in subsection (1) of this section, work expenses are disregarded in an amount equal to)) We also subtract an amount equal to twenty percent of ((the)) your gross earned income to allow for work expenses ~~((or~~~~

~~(3) At the option of the client, actual verified work expenses, including:~~

~~(a) Mandatory deductions required by law or as a condition of employment, such as FICA, income tax, and mandatory retirement contributions;~~

~~(b) Union dues when union membership is required for employment;~~

~~(c) Clothing costs when the clothing is necessary for employment;~~

~~(d) Tools necessary for employment;~~

~~(e) Other expenses reasonably associated with employment, such as legally binding contracts with employment agencies; and~~

~~(f) Transportation expenses as follows:~~

~~(i) If public transportation (other than for hire vehicles such as taxis) is available and practical, the actual monthly cost, based on a commuter's pass, ticket book, or tokens at reduced quantity rates, even if the client does not use public transportation; or~~

~~(ii) If public transportation is not available or practical, the actual amount if the client pays another person to drive; or~~

~~(iii) If public transportation is not available or practical and the client uses his or her own vehicle, the costs, based on the percentage of work-related miles driven, for service and repairs, replacement of worn parts, registration and license fees, the interest on car payments, and either eight cents per mile or the actual cost for gas, oil, fluids, and depreciation)).~~

WSR 06-07-081

PERMANENT RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 06-47—Filed March 14, 2006, 11:04 a.m., effective April 14, 2006]

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

Purpose: Amend rules on scientific collection permits and sale of zoo animals.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-12-276; and amending WAC 220-20-045 and 232-12-067.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 06-04-018 on January 23, 2006.

Changes Other than Editing from Proposed to Adopted Version: WAC 220-20-045:

(1)(d) Add, "Multiple activities of a similar nature may be grouped under a single project."

New (1)(f) "'Scientific collection permit' and 'scientific permit' as referenced in RCW 77.15.660 and 77.32.240 have the same meaning."

(2) After "unclassified wildlife" add "or prohibited aquatic species...."

(3)(a) Change "within sixty days" to "no more than sixty days...."

(3)(c)(iii) Add, "Students under the direct on-site supervision of an instructor in an official course of study under an accredited educational institution may collect on behalf of the instructor holding a scientific collection permit and are not required to be listed on the permit."

New (3)(f) "An amendment to a project application will be treated as a project application except for the addition or deletion of names of participants in the collection."

(6) Add, "or may be revoked if, during the project period, the applicant or any other person involved in the collection commits a fish or wildlife violation...."

(7)(a) Change "(d)(iii)" to "(d)(ii)."

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 1.

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: March 10, 2005 [2006].

Nancy Burkhart
for Ron Ozment, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 76-96, filed 9/23/76)

WAC 220-20-045 Scientific collection permits. (1) The following definitions apply to this section:

(a) "Collect" means to take control or to attempt to take control of fish, shellfish, wildlife, or the nests of birds. Collect does not include transitory holding of reptiles, amphibians and invertebrates solely for identification purposes.

(b) "Display" means to place or locate fish, shellfish, wildlife, or the nests of birds, so that public viewing is allowed.

(c) "Encountered" means targeted or nontargeted specimens captured, handled or physically affected by the collecting activity.

(d) "Project" means a planned undertaking of common temporal or geographical activities to reach a common objective. Multiple activities of a similar nature may be grouped under a single project.

(e) "Research" means scientific investigation, and includes education. Electrofishing is a form of scientific investigation.

(f) "Scientific collection permit" and "scientific permit" as referenced in RCW 77.15.660 and 77.32.240 have the same meaning.

(2) It ((shall be)) is unlawful for any person((, group, corporation, association, or governmental entity)) to ((conduct any scientific study involving the handling, collection, or release of food)) collect fish ((or)), shellfish, wildlife, or the nests of birds for research or display purposes on the ((beaches)) lands or in the waters of the state of Washington for species, by means, in amounts, or in such condition not authorized under personal use or commercial rules, or in violation of any rule prohibiting possession of unclassified wildlife or prohibited aquatic species, without first obtaining a permit from the department ((of fisheries, and)). It ((shall be)) is unlawful to fail to comply with any of the provisions of the permit and it is unlawful to buy or sell fish, shellfish, wildlife, or the nests of birds taken under the permit, and it is unlawful to consume or offer for human consumption any fish, shellfish, or wildlife taken under the permit.

(3) Application procedure:

(a) ((A request for such a permit must be received 30 days prior to the date such study, collection, release, or research is started.)) All applications for scientific collection must be submitted on a department application form and delivered to the department office in Olympia. Approval or denial of a scientific collection permit application will be given no more than sixty days after receipt of a complete application.

(b) A separate permit application must be submitted for each project.

(c) Each request for a permit to collect for research purposes must be accompanied by the following information:

(i) A study title.

(ii) ((An introduction describing the management problems to be addressed and why resolution is necessary.)) A statement of the applicant's qualifications for conducting the project. A statement of the qualifications of anyone conducting activities under the permit, including experience with the methodology of the proposed collection, and the applicant's access to facilities and competence to care for the specimens to be collected, if the collected specimens will be retained in live form by the applicant.

(iii) ((A)) A study plan which includes: Specific objective(s) for the proposed project including defining an identifiable end point or conclusion toward which efforts are to be directed; the justification for the project; methodology of collection; project start and end dates; project location including county name; names of participants in the collection; names and numbers of species expected to be collected or encountered; and proposed final disposition of specimens collected. Students under the direct on-site supervision of an instructor in an official course of study under an accredited educational institution may collect on behalf of the instructor holding a

scientific collection permit and are not required to be listed on the permit.

((iv)) A justification which identifies the user(s) of the information and indicates how the findings will be used.

(v) A procedure which explains the approach or plan of action and which provides the organizational framework and logical sequence of events that will lead to the attainment of the study objectives.

(vi) A location of the study area.

(vii) An identification of supervisory and technical personnel responsible for the study.

((e)) (d) Each request for a permit to collect for display purposes must be accompanied by the following information:

(i) A statement of the qualifications of the applicant and all other persons conducting activities under the permit, including experience with the methodology of the proposed collection, and, if live fish, shellfish or wildlife are to be displayed, the name of the publicly owned facility where the display will occur and the competence of the facility operators to care for the specimens.

(ii) A project description, which includes: Reason for display; project location including county name; methodology of collection; names of participants in the collection; names and numbers of species expected to be collected or encountered; display site; length of display; and proposed final disposition of specimens collected.

(e) Any application for a scientific collection permit using firearms must contain a statement that all persons who will use firearms are legally capable of possessing firearms.

(f) An amendment to a project application will be treated as a project application except for the addition or deletion of names of participants in the collection.

(4) Permit periods: Permits are valid for the project period, but not to exceed one year from the date of issuance, except multiyear permits, at the discretion of the department, may be issued for public health purposes.

(5) Reporting: A final report as specified in the permit conditions must be submitted to the department upon completion of the ((study,)) research((, collection,)) or ((release)) display project, and must be received by the department no later than 60 days after the expiration of the permit. Renewable annual permit holders must submit a report each year, and the report must be received by the department within 60 days of the anniversary date of the initial issuance date of the permit. In addition to the final or annual report, interim reports ((will)) may be required. Issuance of additional permits or permit renewals are subject to prior submission of a project report.

((4)) (6) Permit granting and denial: Permits will normally be granted for requests which ((increase the data base)) contribute to the body of fish, shellfish, or wildlife knowledge, increase or maximize the ((fishery)) fish, shellfish, and wildlife resource, avoid damage to the various resources, and do not unnecessarily duplicate previous research. Permits will not be granted if the project conflicts with existing activities or conservation goals. Permits will not be granted if the applicant was a prior permit holder and failed to submit required reports. Permits may be denied if the applicant or any other person involved in the collection has a history of fish or wildlife violations or may be revoked if, during the

project period, the applicant or any other person involved in the collection commits a fish or wildlife violation.

~~((e) Continuing studies or research or other scientific projects may be extended annually by concurrence of the director.~~

~~(f) An advisory committee of potentially affected groups will be established to provide technical input.)~~ (7) Miscellaneous permit provisions:

(a) A copy of the scientific collection permit must be in the physical possession of any person exercising the privileges authorized by the permit. Only collection participants named under subsection (3)(c)(iii) or (d)(ii) of this section may collect under the permit.

(b) A scientific collection permit does not authorize the release of specimens collected under the permit except for an immediate release to the exact site where the collection occurred unless release is specifically allowed as a condition of the permit. Release at any other site requires a transport, release, or planting permit. The conditions of the permit may specify that no release of certain specimens will be allowed.

(c) If the scientific collection allows retention of specimens, an interim, final, or annual collection report for the period documenting when the specimen was collected must be retained for the period of retention of the specimen.

(d) As a condition of receiving a scientific collection permit, the applicant agrees that fish and wildlife officers may, at reasonable times and in a reasonable manner, inspect the specimens collected, as well as the permits, records and facilities of a permit holder.

(e) A scientific collection permit may be revoked for violating the conditions of the permit.

(8) Appeal procedure: A person who is denied a scientific collection permit, who disputes the conditions of a permit, or who has a permit revoked may appeal the department action. Appeals must be filed in writing, and delivered to Legal Services, Department of Fish and Wildlife, 600 Capitol Way N., Olympia, WA 98501-1091. Specific grounds for contesting the revocation, denial, or permit conditions must be stated in the appeal. An appeal will be held under the provisions of chapter 34.05 RCW, the Administrative Procedure Act.

AMENDATORY SECTION (Amending Order 296, filed 8/24/87)

WAC 232-12-067 Sale of fish and wildlife by zoos and aquariums. (1) It is unlawful for publicly owned zoos or aquariums who lawfully acquired fish, shellfish, wildlife or the nests of birds under WAC ~~220-20-045~~ or 232-12-064 to offer for sale or sell ~~((that wildlife))~~ such animals or nests or the progeny of ~~((that wildlife))~~ such animals except outside the state or except within the state to other publicly owned zoos or aquariums or accredited institutional members of the American Zoo and Aquarium Association ((of Zoological Parks and Aquariums (AAZPA))) (AZA).

~~(2) ((It is unlawful for publicly owned zoos or aquariums who lawfully acquired wildlife under WAC 232-12-274 to offer for sale or sell that wildlife or the progeny of that wildlife except the progeny may be sold to other publicly owned zoos or aquariums or accredited institutional members of the~~

~~American Association of Zoological Parks and Aquariums (AAZPA).~~

~~(3))~~ Publicly owned zoos and aquariums will keep accurate and current records of the sale of fish, shellfish and wildlife progeny as required by the director. These records will be maintained on a calendar year basis and retained for a period of 5 years.

~~((4))~~ (3) It is unlawful for any publicly owned zoo or aquarium to fail to complete and submit to the department by January 31 of each year a report containing information required by the director.

~~((5))~~ (4) Fish and wildlife ((agents)) officers may inspect at reasonable times and in a reasonable manner the fish, shellfish, wildlife, nests of birds, permits, records, and facilities of any publicly owned zoo or aquarium offering for sale or selling ~~((wildlife))~~ such animals or nests.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-12-276 Scientific permits.

WSR 06-07-084

PERMANENT RULES

GAMBLING COMMISSION

[Order 456—Filed March 14, 2006, 2:36 p.m., effective July 1, 2006]

Effective Date of Rule: July 1, 2006.

Purpose: A punch board and pull-tab (PB/PT) service business provides nonmanagement related record-keeping services to PB/PT operators. If the businesses combined total gross billings are \$20,000 or less, they can operate under a PB/PT service business permit for \$217, with a renewal fee of \$53. If the business exceeds the \$20,000 threshold, they would need a service supplier license, which costs \$630 each year. A licensed service supplier requested an amendment to increase the threshold to qualify for a PB/PT service business permit from \$20,000 to \$25,000. The commission adopted this change at their March 10, 2006, commission meeting.

Citation of Existing Rules Affected by this Order: Amending WAC 230-02-205, 230-02-208, and 230-04-133.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 06-04-040 on January 26, 2006, with a published date of February 15, 2006.

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 3, 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 0.

Date Adopted: March 13, 2006.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 436, filed 9/16/04, effective 1/1/05)

WAC 230-02-205 Gambling service supplier defined.

A "gambling service supplier" is any person who provides gambling related services for compensation, whether directly or indirectly.

(1) Gambling related services include at least the following:

(a) Providing consulting or advisory services regarding gambling activities;

(b) Providing gambling related management services;

(c) Providing financing for purchases or leases of gambling equipment or for providing infrastructure that supports gambling operations for more than one licensee. For purposes of this section, financing by any bank, mutual savings bank, or credit union regulated by the department of financial institutions or any federally regulated commercial lending institution shall not be deemed as providing gambling related services;

(d) Providing any other service or activity where influence may be exerted over any gambling activity licensed by the commission;

(e) Providing assembly of components for gambling equipment under a contract with a licensed manufacturer;

(f) Providing installation, integration, maintenance, or any other service of digital surveillance systems that allows direct access to the operating system; or

(g) Training individuals to conduct authorized gambling activities.

(2) The term "gambling services supplier" does not include the following:

(a) Universities and colleges that are regulated by the Washington state board of community and technical colleges and the higher education coordinating board which train individuals to conduct authorized gambling activities;

(b) Licensed manufacturers or distributors who service and repair pull-tab dispensing devices, bingo equipment or any other authorized gambling equipment;

(c) Attorneys, accountants, and governmental affairs consultants whose primary business is providing professional services that are unrelated to the management or operation of gambling activities; and

(d) Persons that only provide nonmanagement related recordkeeping services for punch board and pull-tab operators, when the combined total gross billings from such services does not exceed (~~(twenty)~~) twenty-five thousand dollars during any calendar year.

AMENDATORY SECTION (Amending Order 362, filed 9/23/98, effective 1/1/99)

WAC 230-02-208 Punch board and pull-tab service business defined. "Punch board and pull-tab service business" is defined as a person that provides recordkeeping services for punch board and pull-tab operators for compensation and:

(1) The individuals are not employees of the operator;

(2) The recordkeeping services do not include recommendations or advice of a management nature;

(3) The combined total gross billings for such services during any calendar year does not exceed (~~(twenty)~~) twenty-five thousand dollars; and

(4) The records completed are normally the responsibility of the operator. For purposes of this section, recordkeeping duties that are normally the responsibility of the operator include at least the following:

(a) Reconciling sales, prizes, and cash on hand for punch boards and pull-tab series;

(b) Completing mandatory records required by WAC 230-08-010: Provided, That recordkeeping services provided by a professional accounting business are exempt from these requirements when:

(i) The business performs services other than punch board and pull-tab records for the licensee;

(ii) The business has clients other than punch board and pull-tab licensees; and

(iii) The recordkeeping service only includes transcribing entries from the licensee into the required format; and/or

(c) Storing boards and series removed from play.

AMENDATORY SECTION (Amending Order 377, filed 11/30/99, effective 12/31/99)

WAC 230-04-133 Punch board and pull-tab service business—Registration required—Procedures—Restrictions. It is in the public's interest to closely control gambling devices and records relating to the operation of a gambling activity. The commission must identify all individuals and businesses that have control over gambling devices, including punch boards and pull-tabs, and all records relating to the operation of gambling activities. Businesses that provide punch board and pull-tab record services, as defined by WAC 230-02-208, shall register with the commission and receive a permit prior to providing services to a licensee. The following procedures and restrictions apply to punch board and pull-tab service businesses:

(1) Each business seeking to register as a punch board and pull-tab service business shall submit a permit application on a form provided by the commission. Such application shall be complete in every respect, accompanied by proper fees, and signed by the applicant. The application shall include at least the following:

(a) A complete description of the services provided; and

(b) Personal and criminal history forms for all individuals involved in providing services.

(2) The permit shall be valid for a period not to exceed one year from the date approved.

(3) Any changes in information provided with the application must be submitted to the commission within thirty days of change.

(4) The permit becomes void and the business must apply for a gambling service supplier license to continue providing services if any of the conditions listed below occur:

(a) The nature of the business being provided changes to include services defined in WAC 230-02-205(1); or

(b) The combined total gross billings from providing services exceeds ~~((twenty))~~ twenty-five thousand dollars during the permit period.

(5) The permit may be revoked by the director at any time for the following reasons:

(a) Reasons set forth in WAC 230-04-400 or RCW 9.46.075; or

(b) The permit holder has acted with gross negligence or intentionally misstated or manipulated a licensee's records or punch board/pull-tab games; or

(c) Failure to produce an operator's record or copies thereof, or punch board or pull-tab games when requested by a commission agent.

(6) Immediately upon request, a punch board and pull-tab service business shall provide the commission or any of its representatives a complete list of customers and the location where records of each are maintained.

(7) If a punch board and pull-tab service business or associate of such business has any interest in a licensed manufacturer or distributor, they shall inform the commission, any operator to which they provide services, and the manufacturer or distributor of the relationship. The director may restrict the manufacturer or distributor from selling punch boards or pull-tabs to such operator.

(8) Punch board and pull-tab service business permit holders shall follow the records requirements of WAC 230-08-026 (1)(a), (c), (d), (2), and (3). In addition, such businesses shall be familiar with minimum recordkeeping requirements and availability of records for services they provide, including but not limited to WAC 230-08-010, 230-12-010 and 230-30-072.

WSR 06-07-088

PERMANENT RULES

ENVIRONMENTAL HEARINGS OFFICE

(Pollution Control Hearings Board)

[Filed March 15, 2006, 8:39 a.m., effective April 15, 2006]

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

Purpose: Chapter 371-08 WAC was previously amended to conform to 2004 SSB 5590 and to make minor changes in the procedural rules of the pollution control hearings board (PCHB). The rule, as originally amended, failed to amend WAC 371-08-555. This rule governs appeal of PCHB decisions to superior court. An emergency rule was adopted (WSR 06-07-002) and is currently in effect making this change. This proposed rule will make the rules change permanent.

Citation of Existing Rules Affected by this Order: Amending WAC 371-08-555.

Statutory Authority for Adoption: RCW 43.21B.170 (PCHB rule-making authority); chapter 34.05 RCW.

Other Authority: RCW 43.21B.190.

Adopted under notice filed as WSR 06-03-050 on January 11, 2006.

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 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, 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: March 14, 2006.

William H. Lynch
Director

AMENDATORY SECTION (Amending WSR 97-19-064, filed 9/15/97, effective 10/16/97)

WAC 371-08-555 Time for filing petitions for review to superior court. An appeal of a final board order is called a petition for review. A petition for review must be filed with superior court within thirty days of the date ~~((that the board issues its))~~ of receipt of the final order or decision. The petitioner shall file a copy of the petition for review to superior court with the board and shall serve all parties of record. All appeals must first be filed in superior court even if direct review to the court of appeals will be sought.

WSR 06-07-098

PERMANENT RULES

OFFICE OF THE

INSURANCE COMMISSIONER

[Matter No. R 2005-03—Filed March 15, 2006, 3:30 p.m., effective April 15, 2006]

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

Purpose: WAC 284-24-120 exempts large risks from rate filing requirements. WAC 284-20-150 will exempt large risks from form filing requirements, so large risks can negotiate both price and coverage terms with admitted insurers.

Statutory Authority for Adoption: RCW 48.02.060, 48.18.100(6), and 48.18.103(3).

Adopted under notice filed as WSR 06-01-099 on December 21, 2005.

Changes Other than Editing from Proposed to Adopted Version: WAC 284-20-150 (7)(c): The exception in subsection (7)(c) was changed following enactment of SHB 2553 (2005) to include a more general description of the exception than the earlier version; that version excluded only "motor

vehicle service contract reimbursement insurance, as defined in RCW 48.96.010(4)." This change to the proposed exception for "reimbursement insurance policies" should enable effectuation of future laws that require such policies without requiring further amendments to this subsection.

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 1, 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: March 13, 2006.

Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-20-150 Rules that exempt certain commercial property casualty forms from filing requirements. (1) For purposes of this rule, "large commercial property casualty account" means insurance coverage that:

(a) Involves the lines of property and casualty insurance defined in RCW 48.11.040, 48.11.050, 48.11.060, 48.11.070, and/or 48.11.080; and

(b) Is purchased by a business, not-for-profit organization, or public entity with enough insurance buying experience to negotiate with insurers in a largely unregulated environment and that meets any two of the following criteria:

(i) Annual premiums of one hundred thousand dollars or more, excluding workers compensation insurance issued by the department of labor and industries and types of insurance listed in subsection (7) of this section;

(ii) Net revenues or sales in excess of one hundred million dollars;

(iii) More than two hundred employees;

(iv) Net worth over fifty million dollars;

(v) Is a not-for-profit organization or public entity with an annual budget or assets of at least forty-five million dollars;

(vi) Is a municipality with a population over fifty thousand.

(2) This rule exempts forms issued to insure a large commercial property casualty account from the filing requirement of chapter 48.18 RCW, as permitted under RCW 48.18.103(3).

(3) Each insurer or its agent must notify the insured in writing that the policy forms are not filed with or approved by the commissioner before the insurer issues an insurance policy under this rule.

(4) The Washington Insurance Examining Bureau will not audit property forms used to insure large commercial property casualty accounts under WAC 284-20-006.

(5) If grounds exist under RCW 48.18.110(1), the commissioner may subsequently disapprove any form used to insure a large commercial property casualty account. If the form is disapproved under RCW 48.18.110(1), the insurer must construe the form as if it fully complied with the requirements of RCW 48.18.510.

(6) Each insurer must keep copies of policy forms used to insure large commercial property casualty accounts for at least six years from the date each policy is issued under this section. These records must be made available to the commissioner upon request.

(7) Subsection (2) of this section does not apply to:

(a) Professional liability insurance, including medical malpractice insurance;

(b) Directors' and officers' liability insurance purchased by individuals;

(c) Reimbursement insurance policies that reimburse service contract providers or protection product guarantee providers for contractual obligations assumed under a service contract or protection product guarantee; and

(d) Master policies under which certificates of coverage are issued to individual consumers, households, businesses, or other organizations.

WSR 06-07-100

PERMANENT RULES

UTILITIES AND TRANSPORTATION COMMISSION

[Docket No. T-051359, General Order No. R-529—Filed March 15, 2006, 3:32 p.m., effective April 15, 2006]

In the matter of amending WAC 480-31-050, 480-31-070, 480-31-080 and 480-70-161; adopting WAC 480-31-052 and 480-31-054; and repealing WAC 480-70-161, relating to notice and providing hearing for transportation companies.

1 STATUTORY OR OTHER AUTHORITY: The Washington utilities and transportation commission takes this action under Notice No. WSR 06-03-130, filed with the code reviser on January 18, 2006. The commission brings this proceeding pursuant to RCW 80.01.040(4), 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 that this order is entered.

4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE: RCW 34.05.325(6) requires that the commission prepare and provide to commenters a concise explanatory statement about an adopted rule. The statement must include the identification of the commission's reasons for adopting the rule, a description of the differences between the version of the proposed rules published in the register and the rules as adopted (other than editing changes), a summary of the

comments received regarding the proposed rule changes, and the commission's responses to the comments reflecting the commission's consideration of them.

5 In this docket, to avoid unnecessary duplication, the commission designates the discussion in this order as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda preceding the filing of the CR-102 proposal and the adoption hearing. Together, the documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.

6 **REFERENCE TO AFFECTED RULES:** This rule repeals, amends or adopts the following sections of the Washington Administrative Code: Repealing WAC 480-70-166 Canceling certificates; amending WAC 480-31-050 Certificates, 480-31-070 Insurance, 480-31-080 Fees and annual report and 480-70-161 Suspending and canceling certificates; and adopting WAC 480-31-052 Suspending and canceling certificates; and 480-31-054 Certificates, reinstatement.

7 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:** The commission filed a proposal statement of inquiry (CR-101) on October 5, 2005, at WSR 05-20-093. The statement advised interested persons that the commission was considering entering a rule making to amend sections of chapter 480-31 WAC, Private, nonprofit transportation providers; chapter 480-51 WAC, Commercial ferries; and chapter 480-70 WAC, Solid waster collection companies, to reflect recent changes to chapters 81.66, 81.77, and 81.84 RCW, relating to notice and opportunity for hearing prior to suspension or revocation of a certificate, and in conjunction with a request for a certificate to operate in a territory served by an existing certificate holder.

8 The commission filed an amended preproposal statement of inquiry (CR-101) on November 23, 2005, at WSR 05-23-175. This notice expanded the original CR-101 filed at WSR 05-20-093 to consider adding new language or sections in chapters 480-31 and 480-70 WAC to implement the statutory amendments. The amended CR-101 also eliminated chapter 480-51 WAC, Commercial ferries, from this rule making.

9 **ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL STATEMENT:** The commission also informed persons of the inquiry into this matter by providing notice of the subject and the CR-101 to all persons on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending a notice to all transportation companies and solid waste companies operating in the state, to the commission's list of transportation attorneys, and by posting all information on the commission's web site.

10 **NOTICE OF PROPOSED RULE MAKING:** The commission filed a notice of proposed rule making (CR-102) on January 18, 2006, at WSR 06-03-130. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 06-03-130 at 2:30 p.m., Wednesday, February 22, 2006, in the Commission's Hearing Room, Second Floor, Chandler Plaza 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 **COMMENTERS (WRITTEN COMMENTS):** The commission received no written comments.

12 **RULE-MAKING HEARING:** The rule proposal was considered for adoption, pursuant to the notice in WSR 06-03-130, at a rule-making hearing on Wednesday, February 22, 2006, before Chairman Mark H. Sidran, Commissioner Patrick J. Oshie, and Commissioner Philip B. Jones. The commission received no oral comments.

13 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the commission finds and concludes that it should amend, adopt, and repeal the rules as proposed in the CR-102 at WSR 06-03-130.

14 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the commission determines that WAC 480-70-166 should be repealed, WAC 480-31-050, 480-31-070, 480-31-080, and 480-70-161 should be amended, and WAC 480-31-052 and 480-31-054 should be adopted 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 2, Amended 4, 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 0, Repealed 0.

ORDER

15 THE COMMISSION ORDERS:

16 (1) The commission repeals WAC 480-70-166.

17 (2) The commission amends and adopts WAC 480-31-050, 480-31-070, 480-31-080, 480-70-161, 480-31-052, and 480-31-054 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 (3) This order and the rules set out below, 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, March 14, 2006.

Washington Utilities and Transportation Commission

Mark H. Sidran, Chairman

Patrick J. Oshie, Commissioner

Philip B. Jones, Commissioner

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

WAC 480-31-050 Certificates. (1) The commission will issue a certificate to any corporation which files a completed application, as provided by the commission, which provides:

(a) Satisfactory proof of its status as a private, nonprofit corporation;

(b) Information sufficient to determine the particular service to be provided;

(c) Satisfactory proof of insurance or surety bond, in accordance with WAC 480-31-070 (Insurance);

(d) The number and type of vehicles to be operated, together with satisfactory proof that the vehicles are adequate for the proposed service, that the vehicles are or will be licensed in compliance with the laws of the state, and that drivers of such vehicles will be adequately trained and qualified.

(2) Applications for certificates must be on forms to be furnished by the commission, giving all information requested and accompanied by a fifty dollar application fee.

(3) Remittances will be made by money order, bank draft, personal check or certified check, made payable to the Washington utilities and transportation commission.

(4) No provider may operate, establish, or begin operation of any business for the purpose of transporting persons with special transportation needs on the public highways of this state, without first having obtained from the commission a certificate.

(5) No certificate will be issued to persons operating under a trade name, unless a certificate of said trade name is filed in accordance with the provisions of RCW 19.80.010, and a copy thereof filed with the commission.

(6) Each vehicle operated by a provider must carry a copy of the company's certificate, and will be subject at all times to inspection by an authorized representative of the commission.

~~(7) ((Any certificate to operate as a private, nonprofit transportation provider obtained by any false affidavit or representation will be subject to cancellation by the commission.~~

~~(8))~~ No certificate will be sold, assigned, leased, acquired, or transferred except upon authorization of the commission.

NEW SECTION

WAC 480-31-052 Suspending and canceling certificates. (1) **Cause for suspension.** The commission may suspend a certificate for cause. Cause includes, but is not limited to:

(a) Failure to maintain evidence of required liability insurance coverage for all areas of a private, nonprofit transportation provider's operations;

(b) Failure to file an annual report or pay required regulatory fees;

(c) Failure or refusal to comply with operating standards that protect the public health, safety, or welfare;

(d) Allowing others to operate under a provider's certificated authority without having first obtained commission approval;

(e) Operating in a manner that violates the rights of customers and/or constitutes an unfair or deceptive business practice; or

(f) Repeated failure or refusal to comply with laws and rules pertaining to operations of private, nonprofit transportation providers.

(2) **Cause for cancellation.** The commission may cancel a certificate for cause. Cause includes, but is not limited to:

(a) Operating without proper insurance;

(b) Failure to file an annual report or pay required fees;

(c) Failure to correct within the time specified in a suspension order all conditions listed in the suspension order that led to the certificate's suspension;

(d) Continued violations of laws and rules affecting the public health, safety, or welfare when the commission has reason to believe the private, nonprofit transportation provider will not comply with those laws and rules following a specified period of suspension;

(e) Failure to supply requested information needed by the commission in the performance of its regulatory functions; or

(f) Submission of false, misleading or inaccurate information.

(3) **Notice of pending suspension and cancellation.** When the commission believes cause exists to suspend or cancel a certificate, it will issue a notice to the private, nonprofit transportation provider of the commission's intention to suspend or cancel the authority.

(4) **Contest of suspension and cancellation.** A private, nonprofit transportation provider may contest the pending suspension and/or cancellation of its certificate by requesting a hearing or brief adjudicative proceeding within ten days following the date of the notice.

NEW SECTION

WAC 480-31-054 Certificates, reinstatement. (1) The commission may reinstate a certificate canceled for cause under the provisions of WAC 480-31-052 (Suspending and canceling certificates) if the private, nonprofit transportation provider:

(a) Corrects all conditions leading to the cancellation;

(b) Provides a written statement explaining the circumstances surrounding the cancellation and commits that it is unlikely to recur; and

(c) Files an application to reinstate authority with the proper application fee.

(2) The commission may reinstate a certificate suspended under the provisions of WAC 480-31-052 (Suspending and canceling certificates) if the provider satisfies the terms of the suspension and all conditions leading to the suspension are corrected.

AMENDATORY SECTION (Amending Order R-440, Docket No. TC 961102, filed 3/27/97, effective 4/27/97)

WAC 480-31-070 Insurance. (1) Evidence of liability and property damage insurance or a surety bond must be on file before a certificate will be issued to a private, nonprofit transportation provider. The insurance or surety bond must have been written by a company authorized to write such insurance in the state of Washington. The combined bodily injury and property damage liability insurance or surety bond must not be less than:

Five hundred thousand dollars combined single limit for vehicles with a passenger capacity of less than sixteen passengers, including the driver;

One million dollars combined single limit for vehicles with a passenger capacity of sixteen or more passengers, including the driver.

~~((Failure to file and keep such insurance or surety bond in full force and effect will be cause for dismissal of an application or cancellation of a certificate.))~~

(2) A provider's insurance agency or company must submit evidence of insurance ((must be submitted)) on a "uniform motor carrier bodily injury and property damage liability certificate of insurance" (form E).

(3) All liability and property damage insurance policies issued to providers must carry a "uniform motor carrier bodily injury and property damage liability endorsement."

(4) Insurance termination. All insurance policies issued must provide that the same will continue in full force and effect until canceled by at least thirty days' written notice served on the insured and the commission by the insurance company. The thirty-day notice will commence to run from the date notice is actually received by the commission, except for binders which may be canceled on ten days' written notice.

A provider's insurance agency or company must submit notice of cancellation or expiration ((must be submitted)) in duplicate on forms prescribed by the commission and must not ((be submitted)) submit the notice more than sixty days before the desired termination date, except binders which may be canceled by ten days' written notice from the insurance agency or company.

(5) No provider may operate upon the public highways of this state without insurance as required by this section. ~~((The permit of any provider who fails to maintain evidence on file that its insurance is in current effect will 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 providers of impending suspension for failure to maintain evidence of insurance and enter a timely order of suspension, but failure to do so will not invalidate the suspension.))~~

AMENDATORY SECTION (Amending Order R-440, Docket No. TC 961102, filed 3/27/97, effective 4/27/97)

WAC 480-31-080 Fees and annual report. (1) A private, nonprofit transportation provider must pay to the commission the sum of ten dollars annually for each vehicle oper-

ated. The provider must pay the annual fee ((must be paid)) with the filing of the annual report ((of the provider)).

(2) At the close of each calendar year, every provider must secure from the commission the proper forms and file with the commission its annual report as soon as possible after the close of the calendar year, but no later than May 1st of the succeeding year. ~~((Failure to file such report will be sufficient cause for the commission, in its discretion to revoke a certificate.))~~

AMENDATORY SECTION (Amending Docket No. TG-990161, General Order No. R-479, filed 3/23/01, effective 4/23/01)

WAC 480-70-161 Suspending and canceling certificates. (1) **Cause for suspension.** The commission may suspend a certificate for cause. Cause includes, but is not limited to:

(a) Failure to maintain evidence of required liability insurance coverage for all areas of a company's operations;

(b) Failure to file an annual report or pay required regulatory fees;

(c) Failure to comply with the rates and rules contained in the company's filed tariff;

(d) Failure or refusal to comply with operating standards that protect the public health, safety or welfare;

(e) Allowing others to operate under a company's certificated authority without having first obtained commission approval; or

(f) Operating in a manner that violates the rights of customers and/or constitutes an unfair or deceptive business practice.

~~(2) ((**Notice of suspension.** The commission will issue an order notifying the company of the commission's action to suspend a certificate. Suspension is effective on the date the commission mails the suspension order (service date).))~~

~~(3))~~ **Cause for cancellation.** The commission may cancel a certificate for cause. Cause includes, but is not limited to:

(a) Operating without proper insurance;

(b) Failure to file an annual report or pay required regulatory fees;

(c) Failure to correct within the time specified in a suspension order all conditions listed in the suspension order that led to the certificate's suspension;

(d) Continued violations of applicable laws and rules affecting the public health, safety, or welfare when the commission has reason to believe the company will not comply with those laws and rules following a specified period of suspension;

(e) Repeated failure or refusal to comply with applicable laws and rules pertaining to operations of solid waste collection companies;

(f) Failure to supply requested information needed by the commission in the performance of its regulatory functions;

(g) Submission of false, misleading, or inaccurate information; or

(h) Allowing others to operate under a company's certificated authority without having first obtained commission approval.

(3) Notice of pending suspension and cancellation.

When the commission believes cause exists to suspend or cancel a certificate, it will issue a notice to the company of the commission's intention to suspend or cancel the authority.

(4) Contest of suspension and cancellation. A company may contest the pending suspension and/or cancellation of its certificate by requesting a hearing or brief adjudicative proceeding within ten days following the date of the notice.

~~((4) Suspension without opportunity for prior hearing. The commission may suspend a certificate without providing an opportunity for prior hearing if there is imminent danger to the public health, safety, or welfare, and there is insufficient time to conduct a hearing. If the commission invokes this suspension clause, the commission will, as soon as is practical, schedule a hearing or brief adjudicative proceeding to determine if the suspension should continue in force and effect.))~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 480-70-166 Canceling certificates.

WSR 06-07-101**PERMANENT RULES****HEALTH CARE AUTHORITY**

(Community Health Services)

[Order 05-07—Filed March 15, 2006, 4:12 p.m., effective July 1, 2006]

Effective Date of Rule: July 1, 2006.

Purpose: The health care authority will allocate funds that have been specifically appropriated by the legislature in the 2005-07 operating budget (ESSB 6090, section 213(8)), for dental residency programs operated by contractors with American Dental Association (ADA) accreditation. Support of this pilot project will increase access to oral health care for low income individuals.

Statutory Authority for Adoption: RCW 41.05.220.

Adopted under notice filed as WSR 06-04-010 on January 20, 2006.

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 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 1, Amended 0, Repealed 0.

Date Adopted: March 10, 2006.

Pete Cutler
Rules Coordinator

NEW SECTION**WAC 182-20-500 Dental residency pilot project. (1)**

The provisions of this section apply to organizations that wish to apply for funding to operate a dental residency program pursuant to the provisions of RCW 18.32.040.

(2) The authority will, upon request, supply to interested parties the application forms and information needed to apply for funding for a dental residency program.

(3) The forms shall require applicants to provide the following information:

(a) The applicant's name, address, and telephone number;

(b) A full description of the dental residency program to be funded;

(c) A brief statement of intent to apply for funding.

(4) Clinics that wish to apply for funding must meet the following criteria:

(a) Have American Dental Association (ADA) accreditation;

(b) Comply with the department of health's dental residency licensure requirements; and

(c) Operate a one-year advanced education in general dentistry residency (AEGD) program.

(5) The authority will allocate funds pursuant to written procedures which may be updated annually. The authority will, upon request, supply a copy of the allocation procedures to interested parties.

WSR 06-07-141**PERMANENT RULES****DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed March 21, 2006, 11:26 a.m., effective May 1, 2006]

Effective Date of Rule: May 1, 2006.

Purpose: Workers' compensation self insurance rules and regulations, chapter 296-15 WAC. This chapter governs employers who are permitted to self insure their workers' compensation obligation pursuant to Title 51 RCW. This filing includes new sections to define "default" and "financial watch" and establishes guidelines if a self-insured employer defaults on their workers' compensation obligation or if they experience a negative financial situation.

Statutory Authority for Adoption: RCW 51.04.020, 51.14.020, 51.32.190, 51.14.090, and 51.14.095.

Adopted under notice filed as WSR 06-03-106 on January 17, 2006.

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 2, 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 2, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 2, 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: March 21, 2006.

Gary Weeks
Director

NEW SECTION

WAC 296-15-123 Financial watch. (1) What is financial watch? Financial watch occurs when the department has concerns regarding a self-insured employer's ability to promptly provide benefits to its injured workers based on an analysis of the audited financial statements provided by that employer.

The purpose of financial watch is two-fold:

(a) It serves to alert the employer that the department is concerned with its ability to provide benefits to its injured workers; and

(b) It enforces the due diligence that the department must exercise in preserving the financial integrity of each self-insurer.

(2) What factors can lead to a firm being placed on financial watch? Contributing factors that can lead to a firm being placed on financial watch are negative changes in the following ratios and trends:

- (a) Net losses;
- (b) Ratio of debt to equity;
- (c) Liquidity ratios;
- (d) Ratios of debt and equity to total assets;
- (e) Ratio of net income to revenue;
- (f) Trends in earnings;
- (g) Trends in liquidity;
- (h) Trends in levels of debt;
- (i) Ratio of tangible net worth to levels of debt.

To assess an employer's ability to promptly provide any and all required benefits to its injured workers, the department will utilize these and other analytical ratios. The department may also utilize industry standards and other relevant information in its analysis.

(3) What are the consequences of being placed on financial watch? At the department's discretion, the surety requirement for a firm being placed on financial watch may be increased by up to twenty-five percent. No reduction in surety will be allowed while an employer is on financial watch.

(4) How long can a firm remain on financial watch? The status of a firm on financial watch will be re-evaluated annually upon receipt of its audited financial statements. The department may request interim financial information in addition to the annual audited financial statement.

If significant improvement is not demonstrated to the department's satisfaction after three years of being placed on financial watch, the department may undertake action to withdraw the self-insurance certification of that employer.

NEW SECTION

WAC 296-15-125 Default by a self-insurer. (1) What is a default? A default occurs when a self-insured employer no longer provides benefits to its injured workers in accordance with Title 51 of the Revised Code of Washington. A default can be a voluntary action of the self-insured employer, or an action brought on by the employer's inability to pay the obligation.

(2) What happens when the department first learns a self-insured employer has defaulted on its obligation? The department first corresponds with the self-insured employer to determine if the self-insurer will resume the provision of benefits. If the self-insurer does not respond to the department and resume the provision of benefits within ten days, the self-insured employer is determined to have defaulted.

(3) What happens when the department confirms that a self-insurer has defaulted on its obligation? There are two actions that the department takes when a default by a self-insured employer is confirmed:

(a) First, the department assumes jurisdiction of the claims of the defaulting self-insurer and begins to provide benefits to those injured workers.

(b) Second, the department makes demand upon the surety provided by that self-insurer for the full amount of the surety. The proceeds of the surety are deposited with the department and accrue interest, which will be used to supplement the surety in providing benefits to those injured workers.

(4) What happens to a self-insured employer's certification when it defaults? The employer surrenders its self-insurance certification when it defaults. Any remaining employment in the state would need industrial insurance coverage through the state fund effective with the default by the employer.

WSR 06-07-142

PERMANENT RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed March 21, 2006, 11:27 a.m., effective May 1, 2006]

Effective Date of Rule: May 1, 2006.

Purpose: Logging standards, the purpose of this rule making is to be at-least-as-effective-as the Occupational Safety and Health Administration (OSHA). The department received a letter from OSHA indicating that we were not as-effective-as the federal requirements relating to the logging standard.

WAC 296-54-507 Employers responsibilities.

- Changed the requirement to provide safety training for each employee.

WAC 296-54-51140 Hand protection.

- Changed requirement to read that employer will provide hand protection.

WAC 296-54-51180 Personal flotation devices.

- Deleted language that said employees are not considered exposed to the danger of drowning when the water depth is known to be less than chest deep on the exposed individual.

WAC 296-54-515 Accident prevention program.

- Added language which states that the accident prevention program must be effective in practice.
- Included an item in the safety training program which covers the safe use, operation and maintenance to tools, machines and vehicles.

WAC 296-54-527 Seat belts.

- Removed the exemption to the requirement that all employees must use available seat belts.

WAC 296-54-537 Chain saws.

- Added a requirement that chain saws must be operated and adjusted in accordance with manufacturer's instructions.
- Added a requirement that the chain saw must be started with the chain brake engaged, unless the manufacturer prohibits.

WAC 296-54-557 Wire rope.

- Removed the exemption that said the section did not apply to chokers.

WAC 296-54-573 Logging machines—General.

- Added a requirement that the floor and lower portion of cabs be completely enclosed.

WAC 296-54-57355 Logging machines—Protective structures for operators.

- Reformatted subsection (11) to line up with OSHA's rule.

WAC 296-54-581 Helicopter logging—General.

- Added the words "rescue situation" to the sentence about prohibiting the riding of a hook.

Citation of Existing Rules Affected by this Order: WAC 296-54-507 Employers responsibilities, 296-54-51140 Hand protection, 296-54-51180 Personal flotation devices, 296-54-515 Accident prevention program, 296-54-527 Seat belts, 296-54-537 Chain saws, 296-54-557 Wire rope, 296-54-573 Logging machines—General, 296-54-57355 Logging machines—Protective structures for operators, and 296-54-581 Helicopter logging—General.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Adopted under notice filed as WSR 06-01-072 on December 20, 2005.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 8, 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 4, 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 12, Repealed 0.

Date Adopted: March 21, 2006.

Gary Weeks
Director

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-54-507 Employer's responsibilities. The employer must comply with the requirements of all safety and health regulations and must:

(1) Provide safety training for (~~new employees~~) each employee.

(2) Take additional precautions to ensure safe logging operations when extreme weather or other extreme conditions create hazards. If the logging operation cannot be made safe, the work must be discontinued until safe to resume.

(3) Ensure that danger trees within reach of landings, rigging, buildings, or work areas are either fell before regular logging operations begin, or arrange work so that employees are not exposed to the related hazards.

(4) Develop and maintain a chemical hazard communication program as required by WAC 296-800-170. The program must provide information to all employees about hazardous chemicals or substances to which they are exposed, or may become exposed, in the course of their employment.

(5) Ensure that intoxicating beverages and narcotics are prohibited on or near the worksite. The employer must remove from the worksite any employee under the influence of alcohol or narcotics.

Note: Narcotics do not include prescription drugs taken under a doctor's direction if the use does not endanger any employee.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-51140 Hand protection. (1) (~~Each~~) The employer must provide, and make sure that each employee handling wire rope ((or other rough materials must wear)) uses, hand protection that provides adequate protection from puncture wounds, cuts, and lacerations.

(2) Hand protection must be maintained in serviceable condition.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-515 Accident prevention program. (1) The employer must develop a formal accident prevention program, tailored to the needs of the particular logging oper-

ation and to the type of hazards involved. The program must be implemented in a manner that is effective in practice.

(2) The accident prevention program must be in writing.

(3) The accident prevention program must cover at least the following elements:

(a) A safety training program that describes the employer's total safety program.

~~((a))~~ (b) How and when to report injuries;

~~((b))~~ (c) The location of first-aid supplies;

~~((c))~~ (d) Safe use, operation and maintenance of tools, machines and vehicles the employee uses or operates;

(e) How to report unsafe conditions and practices;

~~((d))~~ (f) The use and care of required personal protective equipment;

~~((e))~~ (g) An on-the-job review of the practices necessary to perform job assignments safely; and

~~((f))~~ (h) Recognition of safety and health hazards associated with the employee's specific work tasks, including using measures and work practices to prevent or control those hazards.

(4) The employer must document and maintain current records of required training, including:

- Who was trained;
- The date(s) of the training; and
- The signature of the trainer or the employer.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-527 Seat belts. Each machine equipped with ROPS or FOPS and each vehicle (whether provided by the employee or the employer) must meet the following requirements:

(1) A seat belt must be provided for each vehicle, vehicle occupant, and all machines equipped with ROPS.

Note: An employer is not required to retrofit a ~~((machine or))~~ vehicle that was not equipped with seat belts at the time of manufacture.

(2) Each employee must use the available seat belt while the vehicle or machine is being operated.

~~((EXCEPTION: During road construction operations only, when road building machine operators are faced with a significant steep and deep cliff on the side, a seat belt is not required to be worn, if the employee's immediate supervisor approves of such action:))~~

(3) Each employee must securely and tightly fasten the seat belt to restrain the employee within the vehicle or machine cab.

(4) Each machine seat belt must meet the requirements of the Society of Automotive Engineers Standard SAE J386, June 1985, "Operator Restraint Systems for Off-Road Work Machines." Seat belts need not be provided for equipment that is designed only for stand-up operations.

(5) Seat belts must not be removed from any vehicle or machine. The employer must replace each seat belt that was removed from any vehicle or machine that was equipped with seat belts at the time of manufacture.

(6) Each seat belt must be maintained in a serviceable condition.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-537 Chain saws. (1) Operators must inspect chain saws daily to ensure that handles and guards are in place, and controls and other moving parts are functional.

(a) Each chain saw placed into initial service after February 9, 1995, must be equipped with a chain brake and, shall otherwise meet the requirements of ANSI B175.1-1991 "Safety Requirements for Gasoline-Powered Chain Saws" and the requirements of this chapter;

(b) Each chain saw placed into service before February 9, 1995, must be equipped with a protective device that minimizes chain saw kickback, i.e., reduced kickback bar, chains, bar tip guard, or chain brake; ~~((and))~~

(c) No chain saw kickback device shall be removed or otherwise disabled; and

(d) Chain saws must be operated and adjusted in accordance with the manufacturer's instructions.

(2) Saw pinching and subsequent chain saw kickback must be prevented by using wedges, levers, guidelines, and saw placement, or by undercutting.

(3) Chain saws must be:

(a) Shutoff while fueling;

(b) Fueled outdoors at least ten feet from anyone smoking or from other potential sources of ignition; and

(c) Started at least 10 feet (3 m) from the fueling area.

(4) Chain saws must have a positive means of stopping the engine.

(5) Unless the carburetor is being adjusted, the chain saw must be shut off before any adjustments or repairs are made to the saw, chain, or bar.

(6) Using a chain saw with a faulty clutch is prohibited.

(7) The bar must be handled only when the chain saw motor is shut off.

(8) The drive end of the chain saw bar must be guarded.

(9) The chain saw must have an automatic throttle control that will return the engine to idle speed when the throttle is released.

Note: Idle speed is when the engine is running and the chain does not rotate on the bar.

(10) The chain saw must be started;

(a) With the chain brake engaged, unless the manufacturer prohibits; or

(b) On the ground, log or where otherwise firmly supported. Drop starting a chain saw is prohibited.

(11) A chain saw must be held with the thumbs and fingers of both hands encircling the handles during operation unless the employer demonstrates that a greater hazard is posed by keeping both hands on the chain saw in a specific situation.

(12) The chain saw must be carried in a manner that will prevent operator contact with the cutting chain and muffler.

(13) The chain saw must be shut off or at idle before the faller starts to retreat.

(14) The chain saw must be shut down or the chain brake engaged whenever a saw is carried:

(a) Further than 50 feet (15.2 m); or

(b) Less than 50 feet if conditions such as, but not limited to, the terrain, underbrush, and slippery surfaces, may create a hazard for an employee.

(15) Using a chain saw to cut directly over head is prohibited.

(16) The chain saw operator must be certain of footing before starting to cut. The chain saw must not be used in a position or at a distance that could cause the operator to become off-balance, to have unsteady footing, or to relinquish a firm grip on the saw.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-557 Wire rope. (1) Wire rope must be of the same or better grade as originally recommended by the equipment manufacturer.

(2) Wire rope must be removed from service when any of the following conditions exist:

(a) In running ropes, six randomly distributed broken wires in one lay or three broken wires in one strand in one lay;

(b) Wear of one-third the original diameter of outside individual wires. Kinking, crushing, birdcaging, or any other damage resulting in distortion of the rope structure;

(c) Evidence of any heat damage from any cause;

(d) Reductions from nominal diameter of more than 3/64-inch for diameters to and including 3/4-inch, 1/16-inch for diameters 7/8-inch to 1-1/8-inch, inclusive, 3/32-inch for diameters 1-1/4-inches to 1-1/2-inches inclusive;

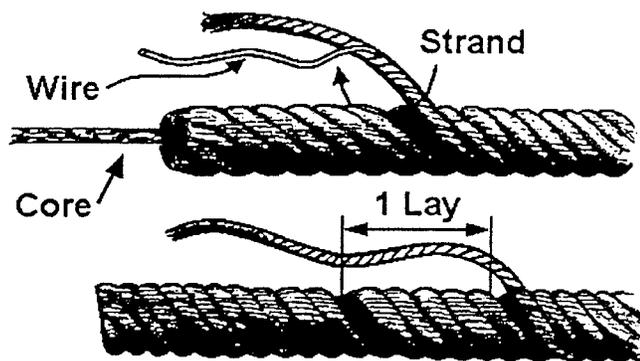
(e) In standing ropes, more than two broken wires in one lay in sections beyond end connections or more than one broken wire at an end connection;

(f) In standing ropes, when twelve and one-half percent of the wires are broken within a distance of one wrap (lay); and

(g) Corroded, damaged, or improperly applied end connections.

(3) Wire rope must be kept lubricated as conditions of use require.

((EXCEPTION: This section does not apply to chokers.))



Wire rope selection is an important element in cable logging.

WIRE ROPE

AMENDATORY SECTION (Amending WSR 04-14-028, filed 6/29/04, effective 1/1/05)

WAC 296-54-573 Logging machines—General. (1)

All logging machinery must have speed limiting devices, safety stops, or emergency shut down devices or shut off valves, with the controls located so that in the event of an emergency, the prime mover may be shut down from a safe place.

(2) The floor and lower portion of cabs must be completely enclosed with solid material, except at entrances, to prevent the operator from being injured by obstacles which otherwise could enter the cab compartment.

(3) Machine operators must be experienced in operating the equipment they use.

EXCEPTION: Inexperienced employees may operate equipment to gain experience while in training but may do so only while working under the immediate supervision of an experienced authorized person.

~~((3))~~ (4) All machine controls must be marked as to their purpose in the operation of the machine.

~~((4))~~ (5) The rated capacity of any vehicle transporting a machine must not be exceeded.

~~((5))~~ (6) Machines must be loaded, secured, and unloaded in a manner that will not create a hazard for any employee.

Note: This requirement includes the loading, securing and unloading of a machine on and off a transport vehicle.

~~((6))~~ (7) The employer must not make any modifications or additions that affect the capacity or safe operation of the equipment without written approval of the manufacturer or a qualified engineer. If modifications or changes are made, the capacity, operation and maintenance instruction plates, tags, or decals, must be changed accordingly. The original safety factor of the equipment must never be reduced.

~~((7))~~ (8) Equipment must be classed and used according to the manufacturer's rating. Where low gear ratios or other devices are installed to increase the line pull in accordance with subsection ~~((6))~~ (7) of this section, the size of the rigging must be increased accordingly so that it will safely withstand the increased strains.

~~((8))~~ (9) Each machine, including any machine provided by an employee, must be maintained in serviceable condition and the following:

(a) Each machine must be inspected before initial use during each workshift. Defects or damage must be repaired or the unserviceable machine is replaced before beginning work.

(b) Operating and maintenance instructions must be available on the machine or in the area where the machine is being operated. Each machine operator and maintenance employee must comply with the operating and maintenance instructions.

(c) Each machine must be operated only from the operator's station or as otherwise recommended by the manufacturer.

(d) Employees must not be allowed to ride on any load.

~~((9))~~ (10) The yarding machine or vehicle, including its load, must be operated with safe clearance from all obstructions.

~~((10))~~ (11) While manual/mechanized falling is in progress, all logging machines must be operated at least two tree lengths away from trees being fell.

EXCEPTION: This provision does not apply to logging machines performing tree pulling operations or logging machines called upon by the cutter to ground hazard trees. All cutters must be notified of the logging machine entrance into the area and all falling within two tree lengths of the logging machine must stop.

~~((11))~~ (12) If a hydraulic or pneumatic storage device can move the moving elements such as, but not limited to, blades, buckets, saws and shears, after the machine is shut down, the pressure or stored energy from the element must be discharged as specified by the manufacturer.

~~((12))~~ (13) Loads must not exceed the rated capacity of the pallet, trailer, or other carrier.

~~((13))~~ (14) Boom-type logging machines must have a boom stop to prevent over-topping of the boom.

~~((14))~~ (15) Boom points of timber booms must be equipped with metal straps, plates, or other devices as needed to properly secure eyebolts and fittings used to support lines, blocks, or other rigging.

~~((15))~~ (16) Logging machine sleds or bases must be strong enough to withstand any stresses imposed upon them.

~~((16))~~ (17) Stationary logging machines must be securely anchored or otherwise stabilized to prevent unintended movement while yarding or skidding.

~~((17))~~ (18) Logging machines and their components must be securely anchored to their bases.

~~((18))~~ (19) Logging machines must be kept free of flammable waste materials and any materials that might contribute to slipping, tripping or falling.

~~((19))~~ (20) A safe and adequate means of access and egress to all parts of logging machinery where persons must go must be provided and maintained in a safe and uncluttered condition. Machine access systems, meeting the specifications of the Society of Automotive Engineers, SAE J185, June 1988, "Recommended Practice for Access Systems for Off-Road Machines," must be provided for each machine where the operator or any other employee must climb onto the machine to enter the cab or to perform maintenance. Walking and working surfaces of each machine and machine work station must have a slip-resistant surface to assure safe footing.

~~((20))~~ (21) Enclosed-type cabs installed on mobile logging machines must have two means of exit. One may be an emergency exit and be available for use at all times regardless of the position of the side arms or other movable parts of the machine. An easily removable window is acceptable as the emergency exit if it is large enough for an employee to readily exit.

EXCEPTION: ~~((Mobile logging machines))~~ Cable yarders manufactured before July 1, 1980 are not required to have two means of exit.

~~((21))~~ (22) Before leaving the operator's station of a machine, the operator must ensure the machine is secured as follows:

- (a) The parking brake or brake locks must be applied;
- (b) The transmission must be placed in the manufacturer's specified park position; and

(c) Each moving element such as, but not limited to, blades, buckets, saws and shears, must be lowered to the ground or otherwise secured.

~~((22))~~ (23) Storing employee property, tools, or other miscellaneous materials on or within three feet of any logging machine is prohibited if retrieving the items would expose an employee to the hazardous pinch point area between the rotating superstructure and the nonrotating undercarriage.

~~((23))~~ (24) Employees must approach the hazardous pinch point area only after informing the operator of that intent and receiving acknowledgment from the operator that the operator understands the employee's intention. All logging machines must be stopped while any employee is in the hazardous pinch point area.

~~((24))~~ (25) After adjustments or repairs are made, logging machines must not be operated until all guards are reinstalled, safety devices reactivated, and maintenance equipment removed.

~~((25))~~ (26) Fairleads must be properly aligned at all times and designed to prevent line damage.

~~((26))~~ (27) Employee(s) ~~((except a mechanic or employee in training to operate equipment,))~~ must not ride on any mobile logging machine unless provided with seating, seat belts, and other protection equivalent to that provided for the operator.

EXEMPTION: Mechanics in the course of their job and trainees, operating under circumstances that minimize their exposure to dangerous situations, are exempt from this requirement.

~~((27))~~ (28) Riding on arches, reaches or turn of logs is prohibited.

~~((28))~~ (29) Tractors, skidders, arches, or logs being yarded by them must not run over or rub against anchored lines, tailhold stumps, or other rigging.

~~((29))~~ (30) Ends of lines attached to drums on logging machines must be secured by end attachments that develop the ultimate strength of the line unless three wraps of line are maintained on the drum at all times.

EXCEPTION: This does not apply to tractors or skidders.

~~((30))~~ (31) Wire rope must be wound on drum spools in a manner to prevent excessive wear, kinking, chafing or fouling.

~~((31))~~ (32) Guylines required in rigging spars or towers must be evenly spooled to prevent fouling.

~~((32))~~ (33) A guide pulley, tool, stick, iron bar or other mechanical or manual means must be used when guiding lines onto drums. Guiding lines onto drums with any part of the body in direct contact with the line is prohibited.

~~((33))~~ (34) A limit switch must be installed on electric-powered log loaders to prevent the lift arms from traveling too far in the event the control switch is not released in time.

~~((34))~~ (35) All forklift type log handling machines must be equipped with a grapple system and the arms must be closed whenever logs are being carried.

~~((35))~~ (36) When forklift machines are used to load, unload, or handle trailers, a positive means of holding the lifting attachment on the fork must be installed and used.

~~((36))~~ (37) Loads on forklift type log handling machines must be transported as low as safely operable without obstructing visibility.

~~((37))~~ (38) Guyline drum controls and outrigger controls must be separated and clearly identified in a manner that will prevent the engaging of the wrong control.

~~((38))~~ (39) Each machine must be equipped with guarding to protect employees from exposed moving elements, such as, but not limited to, shafts, belts, pulleys on chains, sprockets and gears in accordance with the requirements of this standard and chapter 296-806 WAC, Machine safety. Guards must be in place at all times when machines are in use.

Note: This does not apply to lifting or yarding components such as, but not limited to, cable nip points, sheaves and blocks.

~~((39))~~ (40) Each machine used for debarking, limbing, and chipping must be guarded to protect employees from flying wood chunks, logs, chips, bark, limbs, and other material in accordance with the requirements of this standard and chapter 296-806 WAC, Machine safety.

~~((40))~~ (41) Grab rails must be provided and maintained in good repair on all walkways of stationary units elevated more than four feet.

~~((41))~~ (42) Towed equipment such as, but not limited to, skid pans, pallets, arches, and trailers, must be attached to each machine or vehicle to allow a full ninety degree turn; to prevent overrunning of the towing machine or vehicles; and to ensure that the operator is always in control of the towed equipment.

~~((42))~~ (43) Timbers used for masts or booms shall be straight-grained, solid, and capable of withstanding the working load.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-57355 Logging machines—Protective structures for operators. (1) Each tractor, skidder, log stacker and mechanical felling device, such as tree shears or feller-buncher, placed into initial service after February 9, 1995, must be equipped with falling object protective structure (FOPS) and/or rollover protective structure (ROPS). The employer must replace FOPS or ROPS which have been removed from any machine.

EXCEPTION: This requirement does not apply to machines which are capable of 360 degree rotation.

(2) ROPS must be installed, tested, and maintained in accordance with the Society of Automotive Engineers SAE J1040, April 1988, "Performance Criteria for Rollover Protective Structures (ROPS) for Construction, Earthmoving, Forestry, and Mining Machines."

(3) The ROPS must be high enough and wide enough so that it will not impair the movements of the operator or prevent his immediate escape from the vehicle in emergencies and must allow as much visibility as possible. Clearance above the deck and the ROPS of the vehicle at exits must be at least fifty-two inches (1.3 meters).

(4) Certified roll-over protective systems must be identified by a metal tag permanently attached to the ROPS in a

position where it may be easily read from the ground. The tag must be permanently and clearly stamped, etched or embossed indicating the name and address of the certifying manufacturer or registered professional engineer, the ROPS model number (if any) and the vehicle make, model or serial number the ROPS is designed to fit.

(5) Roll-over protective structure systems must be maintained in a manner that will preserve their original strength. Welding must be performed by qualified welders only. (A qualified welder is defined under "welder qualification" in American Welding Society A.W.S. A3.0-69.)

(6) FOPS structures must be installed, tested and maintained according to:

(a) The society of automotive engineers SAE J231-1971, "minimum performance criteria for falling object protective structures (FOPS) prior to February 9, 1995."

(b) Society of automotive engineers SAE J231, January 1981, "minimum performance criteria for falling object protective structures (FOPS) for each tractor, skidder, log stacker, log loader and mechanical falling device, such as tree shears or faller-buncher, placed into initial service after February 9, 1995."

(7) The employer must replace FOPS that have been removed from any machine.

(8) Vehicles with ROPS or FOPS as required in subsection (1) of this section, must comply with the society of automotive engineers SAE J397a-1972, "deflection limiting volume for laboratory evaluation of roll-over protective structures (ROPS) and falling object protective structures (FOPS) of construction and industrial vehicles." Vehicles placed into initial service after February 9, 1995, must meet the requirements of SAE J397-1988.

(9) The opening in the rear of the ROPS on the crawler or rubber-tired tractors (skidders) must be covered with 1/4-inch diameter woven wire having not less than 1-1/2 inches or more than 2-inch mesh, or material which will afford equivalent protection for the operator.

(a) The covering must be attached to the structural members so that enough clearance is provided between the screen and the back of the operator.

(b) Structural members must be free from projections that would tend to puncture or tear flesh or clothing.

(c) Suitable safeguards or barricades must be installed, in addition to the screen, to protect the operator when there is a possibility of being struck by any material that could enter from the rear.

(10) Crawler and rubber-tired tractors (skidders) working in areas where limbs or brush may endanger the operator must be guarded.

(a) Shear or deflector guards must be installed on each side of the vehicle at an angle leading forward and down from the top front edge of the canopy of the vehicle, which will tend to slide the brush or limbs up and over the top of the canopy.

(b) Open mesh material with openings of a size that will reject the entrance of an object larger than 1-3/4-inches in diameter, must be extended forward as far as possible from the rear corners of the cab sides to give the maximum protection against obstacles, branches, etc., entering the cab area.

(c) Deflectors must also be installed ahead of the operator to deflect whipping saplings and branches.

(d) Deflectors must be located so as not to impede entrance to or exit from the compartment area.

(e) The floor and lower portion of the cab must be completely enclosed with solid material, except at entrances, to prevent the operator from being injured by obstacles which otherwise could enter the cab compartment.

(11) (~~Enclosures for agricultural and industrial tractors manufactured after September 1, 1972, must be constructed, designed and installed as detailed in the society of automotive engineers technical report J168.~~) Each machine manufactured after August 1, 1996, must have a cab that is fully enclosed with mesh material with openings no greater than 2 inches (5.08 cm) at its lease dimension. The cab may be enclosed with other material(s) where the employer demonstrates such material(s) provides equivalent protection and visibility.

EXCEPTION: Equivalent visibility is not required for the lower portion of the cab where there are control panels or similar obstructions in the cab, or where visibility is not necessary for safe operation of the machine.

Enclosures for agricultural and industrial tractors manufactured after September 1, 1972, must be constructed, designed and installed as detailed in the society of automotive engineers technical report J168.

(12) Overhead protection and other barriers must be installed to protect the operator from lines, limbs, and other moving materials on or over all loading or skidding machines and on all yarding machines where the operator's station is mounted on board. The overhead covering of each cab must be of solid material and extend over the entire canopy. A skylight in a logging machine must be made of safety glass or provide equivalent protection.

Note: This does not apply to self-loaders.

Reference: For requirements relating to overhead protection on forklifts, see chapter 296-863 WAC, Forklifts and other powered industrial trucks.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-581 Helicopter logging—General. (1)

Prior to daily logging operations, a briefing must be conducted. The briefing must set forth the plan of operation for the pilot(s) and ground personnel. Anytime a change in operating procedure is necessary, affected personnel must be notified.

(2) Employees and equipment must remain in the clear and employees must never be under a suspended load.

(3) Employees must not work under hovering craft except for that limited period of time necessary to guide, secure, hook/unhook loads, and perform maintenance/inspections or other related job duties.

(4) The location of the drop zone, decking areas, loading areas, and designated safety zones must be established by a pilot and a responsible supervisor taking into consideration current operating conditions.

(5) Personal protective equipment.

(a) Employees must wear high visibility hard hats secured by a chinstrap.

(b) Employees hooking and receiving the load must wear high visibility vests or outer garments.

(6) Whenever approaching or leaving a support helicopter with blades rotating, employees must:

(a) Remain in full view of the pilot and keep in a crouched position;

(b) Obtain a visual or audible acknowledgment from the pilot before entering or exiting the helicopter;

(c) Avoid the area from the cockpit or cabin rearward unless authorized by the helicopter company to work there; and

(d) Exercise special caution to keep clear of rotors when visibility is reduced.

(7) Before approaching or departing the service area for maintenance, visual and/or audible communication must be established.

(8) There must be reliable communication available between the helicopter, woods crew, landing, and service areas. In the absence of radio communication there must be a designated signal person.

(9) Developed hand signals must be clearly communicated and understood by all persons working in the area who may be affected by their use.

(10) Riding the load or hook of a helicopter is prohibited except in an emergency rescue situation.

(11) Unauthorized employees must not be allowed to approach within fifty feet of the helicopter when the rotor blades are turning.

(12) Every practical precaution must be taken to provide for the protection of employees from flying objects in the rotor downwash.

(13) Loads must be properly slung. Tag lines used by ground personnel to position loads must be of a length that will not permit their being drawn up into rotors. Pressed sleeve, swaged eyes, or equivalent means must be used for all freely suspended loads to prevent hand splices from spinning open or cable clamps from loosening.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-593 Log unloading, booms, and rafting grounds—Storage and sorting areas—General. (1) At least two persons must be present for all storing, sorting, or boom work, except for boomboat operations.

(2) Employees working on, over, or along water, where there is a danger of drowning, must be provided with and wear approved personal flotation devices.

(a) Employees are not considered exposed to the danger of drowning when:

(i) Employees work behind standard height and strength guardrails;

(ii) Employees work inside operating cabs or stations that will prevent accidentally falling into the water; or

(iii) Employees wear approved safety belts with lifeline attached to prevent falling into the water.

(b) Before and after each use, personal flotation devices must be inspected for defects that would reduce their

designed effectiveness. Using a defective personal flotation device is prohibited.

(c) An approved personal flotation device must be approved by the United States Coast Guard as a Type I PFD, Type II PFD, Type III PFD, or Type V PFD, or their equivalent, as required in 46 CFR 160 (Coast Guard Lifesaving Equipment Specifications) and 33 CFR 175.23 (Coast Guard table of devices equivalent to personal flotation devices). Ski belt or inflatable personal flotation devices are prohibited.

(3) In operations where regular logging machinery, rigging, etc., is used, the applicable rules apply.

~~((3))~~ (4) The employer must provide and ensure the use of artificial lights where employees work between the hours of sunset and sunrise. The lights must be located in a manner that will:

- Be reasonably free of glare;
- Provide uniform distribution of illumination; and
- Avoid sharply defined shadows.

~~((4))~~ (5) On all log dumps, adequate power for the unloading method used must be provided. All machines used for hoisting, reloading, or lowering must be of an approved design and have enough power to control or hold the maximum load imposed in mid-air.

~~((5))~~ (6) Methods of unloading logs must be arranged and used in a manner to provide full protection to all employees.

~~((6))~~ (7) Binders must not be released from any load until an effective safeguard is provided.

~~((7))~~ (8) All mobile log handling machines must be equipped with a means to prevent the logs from accidentally leaving the forks, and it must be used.

~~((8))~~ (9) The operator of the unloading machine must have an unobstructed view of the unloading area or must make certain no one is in the area where the logs are to be unloaded. Rearview mirrors must be installed on mobile log handling equipment to assist the operator in determining that the area behind the machine is clear before backing up.

~~((9))~~ (10) Unloading lines must be arranged so that it is not necessary for an employee to attach them on the pond or dump side of the load.

~~((10))~~ (11) Life rings with a minimum of ninety feet of 1/4-inch line with a minimum breaking strength of five hundred pounds attached, must be provided at convenient points adjacent to water that is five feet or more in depth. Life rings must be a minimum of thirty inches outside diameter and seventeen inches inside diameter and be maintained so as to retain a thirty-two pound positive buoyancy.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-54-51180 Personal flotation devices.

WSR 06-07-144

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed March 21, 2006, 4:18 p.m., effective April 21, 2006]

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

Purpose: The department is amending these rules to change the community spouse income and family allocation standard to \$1604 (effective April 1, 2005); increase the shelter allocation standard to \$481 (effective April 1, 2005); change the personal needs allowance (PNA) allowed for clients residing in a medical facility who are not receiving general assistance to \$51.62 (effective July 1, 2005); change the community spouse maintenance allocation to \$2,489 (effective January 1, 2006); include information regarding health insurance premiums for the Medicare/Medicaid integration project (MMIP) and program of all-inclusive care for the elderly (PACE); and improve the clarity and readability of the rule. The department incorrectly included the community spousal resource share standard on the proposed rule-making notice filed as WSR 06-01-044; it is not part of this WAC section.

Citation of Existing Rules Affected by this Order:
Amending WAC 388-513-1380.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530.

Other Authority: Section 207, chapter 518, Laws of 2005; Sec. 1924 Social Security Act (42 U.S.C. 1396r-5).

Adopted under notice filed as WSR 06-01-044 on December 15, 2005.

Changes Other than Editing from Proposed to Adopted Version: As a result of a comment received, the section title of WAC 388-513-1380 is amended to read, "Determining a client's financial participation in the cost of care for long-term care (LTC) services." This change will better convey to the reader the subject of the rule.

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 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 1, Repealed 0.

Date Adopted: March 16, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-07-033, filed 3/9/05, effective 4/9/05)

WAC 388-513-1380 Determining a client's financial participation in the cost of care for long-term care (LTC) services. This rule describes how the department allocates income and excess resources when determining participation in the cost of care (in the post-eligibility process). The department applies rules described in WAC 388-513-1315 to define which income and resources must be used in this process.

(1) For a client receiving institutional or hospice services in a medical ~~((facility))~~ institution, the department applies all subsections of this rule.

(2) For a client receiving ~~((waivered))~~ waiver services at home or in an alternate living facility, the department applies only those subsections of this rule that are cited in the rules for those programs.

(3) For a client receiving hospice services at home, or in an alternate living facility, the department applies rules used for the community options program entry system (COPEs) for hospice applicants with income under the Medicaid special income level (SIL), if the client is not otherwise eligible for another noninstitutional categorically needy Medicaid program. (Note: For hospice applicants with income over the Medicaid SIL, medically needy Medicaid rules apply.)

(4) Excess resources are reduced in an amount equal to ~~((incurred))~~ medical expenses incurred by the client (for definition see WAC 388-519-0110(10)) that are not subject to third-party payment and for which the client is liable, including:

(a) Health insurance and Medicare premiums, deductions, and co-insurance charges;

(b) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan; and

(c) The amount of excess resources is limited to the following amounts:

(i) For LTC services provided under the categorically needy (CN) program, the amount described in WAC 388-513-1315(3); or

(ii) For LTC services provided under the medically needy (MN) program, the amount described in WAC 388-513-1395 (2)(a) or (b).

(5) The department allocates nonexcluded income ~~((up to a total of the medically needy income level (MNIL)))~~ in the following order and the combined total of (5)(a), (b), (c), and (d) cannot exceed the medically needy income level (MNIL):

(a) A personal needs allowance (PNA) of:

(i) One hundred sixty dollars for a client living in a state veterans' home;

(ii) Ninety dollars for a veteran or a veteran's surviving spouse, who receives ~~((a))~~ the ninety dollar VA improved pension and does not live in a state veterans' home; or

(iii) Forty-one dollars and sixty-two cents for all ~~((other))~~ clients in a medical ((facility)) institution receiving general assistance.

(iv) Effective July 1, 2005, fifty-one dollars and sixty-two cents for all other clients in a medical institution.

(b) Federal, state, or local income taxes owed by the client.

(c) Wages for a client who:

(i) Is related to the supplemental security income (SSI) program as described in WAC 388-503-0510(1); and

(ii) Receives the wages as part of a department-approved training or rehabilitative program designed to prepare the client for a less restrictive placement. When determining this deduction employment expenses are not deducted.

(d) Guardianship fees and administrative costs including any attorney fees paid by the guardian, after June 15, 1998, only as allowed by chapter 388-79 WAC.

(6) The department allocates nonexcluded income after deducting amounts described in subsection (5) in the following order:

(a) Income garnisheed for child support:

(i) For the time period covered by the PNA; and

(ii) Not deducted under another provision in the post-eligibility process.

(b) A monthly maintenance needs allowance for the community spouse not to exceed, effective January 1, ~~((2005))~~ 2006, two thousand ~~((three))~~ four hundred ~~((seventy-eight))~~ eighty-nine dollars, unless a greater amount is allocated as described in subsection (8) of this section. The monthly maintenance needs allowance:

(i) Consists of a combined total of both:

(A) An amount added to the community spouse's gross income to provide a total of one thousand ~~((five))~~ six hundred ~~((sixty-two))~~ four dollars, effective April 1, 2005; and

(B) Excess shelter expenses as ~~((specified))~~ described under subsection (7) of this section; and

(ii) Is allowed only to the extent the client's income is made available to the community spouse.

(c) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of the community spouse or institutionalized ~~((spouse))~~ person who:

(i) Resides with the community spouse~~(s)~~;

(A) In an amount equal to one-third of ~~((the amount that))~~ one thousand ((five)) six hundred ((sixty-two)) four dollars ~~((exceeds))~~ less the dependent family member's income; and

(B) Is effective April 1, 2005.

(ii) Does not reside with the community spouse or institutionalized person, in an amount equal to the MNIL for the number of dependent family members in the home less ~~((the income of))~~ the dependent family ((members)) member's income.

(iii) Child support received from noncustodial parent is the child's income.

(d) Incurred medical expenses described in subsections (4)(a) and (b) not used to reduce excess resources with the following exceptions:

(i) Private health insurance premiums for Medicare/Medicaid integration project (MMIP); and

(ii) Managed care health insurance premiums for program of all-inclusive care for the elderly (PACE).

(e) Maintenance of the home of a single client or institutionalized couple:

(i) Up to one hundred percent of the one-person federal poverty level per month;

(ii) Limited to a six-month period;

(iii) When a physician has certified that the client is likely to return to the home within the six-month period; and

(iv) When social services staff documents initial need for the income exemption ~~((and reviews the client's circumstances after ninety days))~~.

(7) For the purposes of this section, "excess shelter expenses" means the actual expenses under subsection (7)(b) less the standard shelter allocation under subsection (7)(a). For the purposes of this rule:

(a) The standard shelter allocation is four hundred ~~((sixty-nine))~~ eighty-one dollars, effective April 1, ~~((2004))~~ 2005; and

(b) Shelter expenses are the actual required maintenance expenses for the community spouse's principal residence for:

- (i) Rent;
- (ii) Mortgage;
- (iii) Taxes and insurance;
- (iv) Any maintenance care for a condominium or cooperative; and

(v) The food stamp standard utility allowance for four persons, provided the utilities are not included in the maintenance charges for a condominium or cooperative.

(8) The amount allocated to the community spouse may be greater than the amount in subsection (6)(b) only when:

(a) A court enters an order against the client for the support of the community spouse; or

(b) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(9) A client who is admitted to a medical facility for ninety days or less and continues to receive full SSI benefits is not required to use the SSI income in the cost of care for medical services. Income allocations are allowed as described in this section from non-SSI income.

WSR 06-07-157

PERMANENT RULES

GAMBLING COMMISSION

[Order 457—Filed March 22, 2006, 9:35 a.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: The gambling commission is rewriting its rules manual using plain English techniques. The rules manual has been divided into sections and is being rewritten a section at a time. The first sections reviewed are the licensing chapter. As part of the rewrite, some items from other chapters (chapter 230-02 WAC, General provisions and definitions; chapter 230-04 WAC, Licensing; chapter 230-08 WAC, Records and reports; and chapter 230-12 WAC, Rules of general applicability), may be incorporated into the new licensing chapter. Following are rules regarding licensing and permitting which are rewritten in plain English and numbered as chapter 230-03 WAC. Fees related to permits, licenses, and identification stamps are numbered as chapter 230-05 WAC.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 06-04-057 on January 27, 2006, with a published date of February 15, 2006.

Changes Other than Editing from Proposed to Adopted Version: WAC 230-03-020 and 230-03-210 were updated to

reflect changes to current rules filed under WSR 06-04-040 with a published date of February 15, 2006, and adopted under WSR 06-07-084. The amendment increased the threshold to qualify for a punchboard/pull-tab business permit from \$20,000 to \$25,000.

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 76, 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 76, Amended 0, Repealed 0.

Date Adopted: March 22, 2006.

Susan Arland

Rules Coordinator

Chapter 230-03 WAC

PERMITTING AND LICENSING RULES

TERMS USED IN THIS CHAPTER

NEW SECTION

WAC 230-03-001 "We," "our," and "us" mean the commission and staff. In this chapter, "we," "our," and "us" mean the commission and commission staff. If a rule refers to the duties or rights of the commissioners or the director, the rule states specifically "commissioners" or "director."

ACTIVITIES REQUIRING A PERMIT AND RULES FOR THOSE ACTIVITIES

NEW SECTION

WAC 230-03-005 Permits for recreational gaming activities. A recreational gaming activity (RGA) is a non-gambling activity, using poker tables and gambling equipment authorized for use in fund-raising events, conducted no more than two times per calendar year, by, or on behalf of, a sponsoring organization, business, or association, or department of an organization, business, or association.

(1) An organization, business, or association, or department of an organization, business, or association, that holds or sponsors an RGA must either:

(a) Apply for and get a permit before the event; or

(b) Hire a licensed fund-raising equipment distributor to organize and conduct the activity.

(2) Only members and guests of the sponsoring organization, business, or association, or department of the sponsor-

ing organization, business, or association, may participate in the RGA.

(3) Permit holders must:

(a) Rent the gambling equipment used in the RGA from:

(i) A licensed distributor of fund-raising event equipment; or

(ii) A licensee who has conducted a fund-raising event within the last twelve months; and

(b) Use scrip or chips which have no cash value; and

(c) Limit the RGA to eight hours.

(4) The permit holder may charge a fee to enter the premises if that fee pays for:

(a) An accompanying meal and entertainment associated with the RGA; or

(b) The costs of renting the equipment used in the RGA.

(5) The permit holder may allow participants to redeem their scrip or chips for prizes. All prizes must be donated to, or provided by, the permit holder.

NEW SECTION

WAC 230-03-010 Fund-raising equipment distributors must report recreational gaming activities. If a licensed fund-raising equipment distributor contracts to organize and conduct a recreational gaming activity (RGA) on behalf of the organization, business, or association, or department of an organization, business, or association, the licensed distributor must send us a monthly schedule of those RGAs. The schedule must:

(1) Include the name of the sponsoring organization, business, or association, or department of an organization, business, or association, and the date, location, and time of the RGA.

(2) Identify any prior RGAs conducted by all licensed distributors on behalf of the sponsoring organization, business, or association, or department of an organization, business, or association, within the last calendar year.

NEW SECTION

WAC 230-03-015 Permits to conduct bingo at agricultural fairs. (1) You must apply to us if you wish to operate bingo games at agricultural fairs licensed to conduct bingo. You may apply for either:

(a) An annual permit to conduct bingo games at agricultural fairs; or

(b) A special property bingo permit to conduct bingo games at a single agricultural fair.

(2) Each agricultural fair is fully responsible for the operation of bingo conducted under its license.

NEW SECTION

WAC 230-03-020 Punch board and pull-tab service business permit. (1) You must apply for a punch board and pull-tab service business permit if you:

(a) Reconcile sales, prizes, and cash on hand for punch board and pull-tab series; or

(b) Complete records we require; or

(c) Store punch boards and pull-tab series removed from play.

(2) The owners or employees of the punch boards and pull-tab service business must not be employees of the operator.

(3) The owners or employees of the punch boards and pull-tab service business must not provide management advice to the operator.

(4) The punch board and pull-tab service business must apply for a gambling service supplier license if combined gross billings exceed twenty-five thousand dollars during the permit period.

NEW SECTION

WAC 230-03-025 Applying for a manufacturer's special sales permit. (1) You may apply for a manufacturer's special sales permit if you:

(a) Sell authorized gambling equipment; and

(b) Demonstrate that the anticipated profits from your sales will be below the cost of obtaining a manufacturer license.

(2) Otherwise, you must apply for a manufacturer license.

NEW SECTION

WAC 230-03-030 Other licenses, certificates, inspections, or permits needed to be considered for a gambling license. Applicants must prove that they have the required applicable business licenses, permits, health certificates, fire inspections, and use and occupancy permits required by local authorities before being considered for a gambling license.

NEW SECTION

WAC 230-03-035 Applying for a license. (1) You must fully complete the license application form we provide in order to be considered for a license. You must return it, along with the appropriate fees, to our headquarters office.

(2) If your application is incomplete, you must provide us with the required items within thirty days of notification or we may administratively close the application.

NEW SECTION

WAC 230-03-040 Signing the application. The applicant signs the application under oath and under penalty of perjury under the laws of the state of Washington. This oath affirms that the information on the application and any accompanying materials is accurate and complete.

(1) The person signing the application must be:

(a) The highest ranking officer of a charitable, nonprofit, or profit-seeking corporation, or limited liability company seeking licensure; or

(b) The owner of a sole proprietorship seeking licensure; or

or
(c) All partners of a partnership or general partner of a limited partnership seeking licensure; or

(d) The mayor or the mayor's designated representative of an incorporated city or town submitting the application.

(2) The person seeking an individual license and a designated officer of the organization for which the person will work must both sign the application.

NEW SECTION

WAC 230-03-045 Defining substantial interest holder. (1) "Substantial interest holder" means a person who has actual or potential influence over the management or operation of any organization, association, or other business entity.

(2) Evidence of substantial interest may include, but is not limited to:

(a) Directly or indirectly owning, operating, managing, or controlling an entity or any part of an entity; or

(b) Directly or indirectly profiting from an entity or assuming liability for debts or expenditures of the entity; or

(c) Being an officer or director or managing member of an entity; or

(d) Owning ten percent or more of any class of stock in a privately or closely held corporation; or

(e) Owning five percent or more of any class of stock in a publicly traded corporation; or

(f) Owning ten percent or more of the membership shares/units in a privately or closely held limited liability company; or

(g) Owning five percent or more of the membership shares/units in a publicly traded limited liability company; or

(h) Providing ten percent or more of cash, goods, or services for the start up of operations or the continuing operation of the business during any calendar year or fiscal year. To calculate ten percent of cash, goods, or services, take the operational expenses of the business over the past calendar or fiscal year, less depreciation and amortization expenses, and multiply that number by ten percent; or

(i) Receiving, directly or indirectly, a salary, commission, royalties, or other form of compensation based on the gambling receipts.

NEW SECTION

WAC 230-03-050 Additional information required from applicants for licensing. (1) Applicants must give us details or copies of the following information on or attached to their application:

(a) Articles of incorporation and bylaws; or, if not a corporation, a copy of any bylaws and other documents which set out the organizational structure and purposes of the organization; and

(b) The name of the resident agent as required by state law, and the agent's business and home address; and

(c) Internal Revenue Service tax exemption letter, if one is necessary; and

(d) All lease or rental agreements, whether oral or written, between the applicant and the owner of the site where applicant will conduct gambling activity; and

(e) Any franchise agreements or other agreements, whether written or oral, between applicant and distributors or manufacturers of equipment or between applicant and any other person whose agreements relate to gambling activities or gambling equipment; and

(f) All proposed financing, consulting, and management agreements or contracts between applicant and any gambling service supplier; and

(g) Enough personal information to ensure each substantial interest holder is qualified to hold a license or participate in an authorized gambling activity.

(2) Applicants must also give us any other information we request within thirty days of the request or within any other time frame we provide.

NEW SECTION

WAC 230-03-051 Incorporated cities and towns exempt from some information requirements for application. Incorporated cities or towns in the state of Washington must provide:

(1) All lease or rental agreements, whether oral or written, between the applicant and the owner of the site where applicant will conduct gambling activity; and

(2) Any franchise agreements or other agreements, whether written or oral, between applicant and distributors or manufacturers of equipment or between applicant and any other person whose agreements relate to gambling activities or gambling equipment; and

(3) All proposed financing, consulting, and management agreements or contracts between applicant and any gambling service supplier.

NEW SECTION

WAC 230-03-055 Reporting changes to application. You must notify us if any information required on the application changes or becomes inaccurate in any way within ten days of the change.

NEW SECTION

WAC 230-03-060 Fingerprinting of applicants. Applicants or persons holding a substantial interest may undergo a national criminal history background check, using fingerprints for the following licenses:

(1) Amusement games for commercial use: Class E and above; and

(2) Card games: Class E, Class F and house-banked card rooms; and

(3) Punch boards/pull-tabs for commercial stimulant: Class F and above; and

(4) Manufacturers: Class B and above; and

(5) Distributors: Class B and above; and

(6) Gambling service suppliers; and

(7) Representatives for distributors, manufacturers, gambling service suppliers, and linked bingo prize providers; and

(8) Managers of commercial gambling operations; and

(9) Public card room employees; and

(10) Linked bingo prize providers.

NEW SECTION

WAC 230-03-065 Spouses must also be qualified. (1) Applicants' spouses must also meet the qualifications to hold a gambling license when married persons who maintain a

marital community apply for or hold a license to operate gambling activities. This includes, but is not limited to, owners and substantial interest holders of commercial gambling establishments and officers of charitable or nonprofit organizations.

(2) If you are a licensed employee of a gambling operation, your spouse does not need to meet the licensing qualifications.

NEW SECTION

WAC 230-03-070 Training required for licensing. (1)

You must complete a training course we establish if you:

- (a) Signed the licensing application; or
- (b) Are a manager; or
- (c) Are responsible for conducting gambling activities or completing records.

(2) You must complete training within thirty days of the effective date of your license.

(3) We do not require manufacturers or manufacturers' representatives to complete training.

NEW SECTION

WAC 230-03-075 Withdrawing your application. (1)

You may withdraw your license application for any reason by sending written notice to us. We must receive your written request at our headquarters office before we issue or deny the license.

(2) Withdrawing an application will not affect any future application for a license.

NEW SECTION

WAC 230-03-080 License approval process. (1) The director may issue a temporary license on completion of the licensing investigation for licenses issued under RCW 9.46.070 (1) and (2).

(2) The commissioners take action on applications at a public meeting. These actions may include license approval, holding an application over to a future meeting, or returning an application to staff for further investigation.

NEW SECTION

WAC 230-03-085 Denying, suspending, or revoking a license or permit. We may deny, suspend, or revoke any license or permit, when the applicant, licensee, or anyone holding a substantial interest in the applicant's or licensee's business or organization:

(1) Commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075; or

(2) Has been convicted of, or forfeited bond on a charge of, or pleaded guilty to a misdemeanor or felony crime involving physical harm to individuals. "Physical harm to individuals" includes any form of criminal assault, any crime involving a threat of physical harm against another person, or any crime involving an intention to inflict physical harm on another person; or

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

(4) Has failed to pay gambling taxes to local taxing authorities and the local taxing authority must petition us to take action; or

(5) Is serving a period of probation or community supervision imposed as a sentence for any juvenile, misdemeanor, or felony criminal offense, whether or not the offense is covered under RCW 9.46.075(4); or

(6) Is the subject of an outstanding gross misdemeanor or felony arrest warrant; or

(7) Poses a threat to the effective regulation of gambling, or creates or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of gambling activities, as demonstrated by:

- (a) Prior activities; or
- (b) Criminal record; or
- (c) Reputation; or
- (d) Habits; or
- (e) Associations; or

(8) Knowingly provides or provided goods or services to an entity that illegally operates gambling activities.

ADDITIONAL LICENSING REQUIREMENTS FOR CHARITABLE AND NONPROFIT APPLICANTS

NEW SECTION

WAC 230-03-090 Defining "agricultural." (1) "Agricultural" as used in RCW 9.46.0209 means promoting the art or science of:

- (a) Cultivating land; or
- (b) Harvesting crops or aquatic resources; or
- (c) Raising livestock.

(2) This definition includes incorporated granges as described in chapter 24.28 RCW.

NEW SECTION

WAC 230-03-095 Defining "athletic." "Athletic" as used in RCW 9.46.0209 means activities which promote physical fitness, sportsmanship, or development of amateur athletes.

NEW SECTION

WAC 230-03-100 Defining "charitable." "Charitable," "eleemosynary," and "benevolent" as used in RCW 9.46.0209 mean the same thing. They mean:

- (1) Relief of poverty, indigence, or personal distress;
- (2) Help for disadvantaged persons;
- (3) Treatment and prevention of physical or mental distress;

(4) Assisting youths, seventeen years old or younger, through programs that teach them cultural and social skills necessary to integrate them into society, improve their physical fitness, or prevent delinquency.

NEW SECTION

WAC 230-03-105 Defining "civic." "Civic" as used in RCW 9.46.0209 means relating to or belonging to a city, a citizen, or citizenship.

NEW SECTION

WAC 230-03-110 Defining "educational." "Educational" as used in RCW 9.46.0209 means training or instructing individuals for the purpose of improving or developing their capabilities. It also means instructing the public on subjects useful to individuals and beneficial to the community.

NEW SECTION

WAC 230-03-115 Defining "fraternal." "Fraternal" as used in RCW 9.46.0209 means fraternal societies incorporated under chapter 24.20 RCW and organized under the lodge system with local self-governing branches chartered by a parent organization.

NEW SECTION

WAC 230-03-120 Defining "patriotic." "Patriotic" as used in RCW 9.46.0209 means encouraging love of country, loyalty, and support of the United States; veterans' groups are included in this definition.

NEW SECTION

WAC 230-03-125 Defining "political." "Political" as used in RCW 9.46.0209 means the process of electing candidates to public or party offices.

NEW SECTION

WAC 230-03-130 Defining "religious." "Religious" as used in RCW 9.46.0209 means the advancement of a theological philosophy and the practices and rituals associated with the beliefs or creed of a church, religious society, congregation, or religious denomination, when such practices or rituals are legal.

NEW SECTION

WAC 230-03-135 Defining "social." "Social" as used in RCW 9.46.0209 means providing recreation or recreational facilities and conducting other activities for a membership.

NEW SECTION

WAC 230-03-140 Full and regular membership requirements. (1) "Bona fide member" means the same thing as "bona fide active member." Bona fide members hold full and regular membership status.

(2) To have full and regular membership status in a Washington charitable or nonprofit organization, you must:

(a) Be at least eighteen years old, unless the organization:

(i) Has a primary purpose that is the development of youth; and

(ii) Is applying only for a raffle or amusement game license; and

(iii) Has at least three members or advisors who are at least eighteen years old and who supervise the operation of the gambling activity; and

(iv) Has an adult member or advisor designated as the manager for the gambling activity; and

(b) Take part in at least one of the following activities of the organization:

(i) Attend at least one regular membership meeting per year; or

(ii) Vote for officers and/or board members; or

(iii) Help set policy by serving as a member of the board of directors or a similar policy setting position; or

(iv) Serve as a volunteer providing services or raising funds from nongambling sources; or

(v) Maintain a level of communication that demonstrates knowledge of the activities of the organization; and

(c) Live within one hundred miles of the main administrative offices of your organization which are located in Washington, or attend seventy-five percent of the organization's board meetings.

NEW SECTION

WAC 230-03-145 Additional requirements for charitable and nonprofit licensing. (1) Organizations must provide the following records for us to determine the organization's qualifications as a bona fide charitable or nonprofit organization as set forth in RCW 9.46.0209:

(a) Official minutes of the organization's formation meeting and all membership and board meetings for the last twelve months including issues discussed, decisions made, and members in attendance; and

(b) A listing of the names of all "full and regular members." The organization must provide full names, addresses, telephone numbers, and the dates they became full and regular members; and

(c) A copy of the most recently approved articles of incorporation or bylaws or both; and

(d) All correspondence with the Internal Revenue Service and the secretary of state regarding the organization's status as a nonprofit organization; and

(e) Proof of federal tax deductible status for contributions to the organization.

(2) Organizations must provide documents that demonstrate that the organization made significant progress in meeting its stated charitable or nonprofit purpose(s) during the twelve consecutive months before applying for a license.

(3) Organizations must provide, in their bylaws or in their articles of incorporation, a statement that guarantees that, if the organization is dissolved, all the assets remaining after satisfaction of all their debts must be distributed to another charitable or nonprofit organization qualified under RCW 9.46.0209.

(4) Charitable or nonprofit organizations must provide us with the names of gambling managers who will oversee gambling activities. The organization must note on the appli-

cation which manager has the highest level of authority and assign that person the title "primary gambling manager" on the application.

NEW SECTION

WAC 230-03-150 Additional requirements for branches or chapters of eligible parent organizations. The parent organization must be eligible for a license if an applicant is a branch or chapter of a parent organization. The branch or chapter must also prove that it is, in its own right, qualified to receive a license.

NEW SECTION

WAC 230-03-155 Submitting a proposed plan of operations for charitable and nonprofit organizations. (1) An organization must submit a proposed plan of operations, including a market study, if the organization:

- (a) Requests licensing to conduct gambling activities with combined annual gross receipts in excess of three million dollars; or
 - (b) Plans to pay premises rent exceeding two thousand dollars per month, including all terms.
- (2) The plan must show enough detail to allow us to assess the potential for compliance with cash flow requirements. It must also include at least the following information:
- (a) Research procedures and planning assumptions used; and
 - (b) Planned number of customers or attendance; and
 - (c) Days and hours of operations; and
 - (d) Estimated gross gambling receipts from each activity; and
 - (e) Estimated expenses and net income; and
 - (f) Details of income generating activities planned in conjunction with the gambling activity, such as snack bar operations or other retail sales and the anticipated net income from those activities; and
 - (g) Any other information related to your gambling license application that we request.
- (3) If planned activities include bingo, the organization must provide:
- (a) Anticipated market area and map of competing organizations that operate similar gambling activities, along with their days of operation; and
 - (b) Number of bingo sessions, bingo card prices, and estimated sales per player; and
 - (c) Bingo prize payouts and game schedules.

NEW SECTION

WAC 230-03-160 Licensed charitable or nonprofit organizations prohibited from managing or operating commercial gambling activities. If a licensed charitable or nonprofit organization manages or operates an authorized gambling activity, it must not manage or operate any commercial gambling activity authorized under chapter 9.46 RCW.

ADDITIONAL REQUIREMENTS FOR COMMERCIAL AMUSEMENT GAME LICENSE APPLICANTS

NEW SECTION

WAC 230-03-165 Information required with license application for commercial amusement games. You must provide in writing all information necessary to comply with RCW 9.46.0331 if you are applying for a commercial amusement game license. Additionally, you must provide the following information:

(1) All locations:	<ul style="list-style-type: none"> (a) A list of times and dates when the applicant will operate the activity; and (b) A copy of any rental/lease agreement which allows operation of commercial amusement games at any location the applicant does not own or otherwise control. The applicant must disclose full details of the rental/lease agreement, including any revenue sharing provisions, all costs the applicant will share, and any restrictions on the number of amusement games the applicant operates; and (c) Copies of any rental or lease contracts related to the amusement game equipment.
(2) Permanent locations:	<ul style="list-style-type: none"> (a) Amusement parks: The number of mechanical or aquatic rides, theatrical productions, motion pictures, and slide show presentations available for the public. (b) Regional shopping centers: Size of the shopping center, in gross square feet, not including parking areas. (c) Taverns and restaurants with cocktail lounges: Washington state liquor control board license number and expiration date, and a statement of whether the business prohibits minors from all portions of the premises.

	<p>(d) Movie theaters, bowling alleys, miniature golf course facilities, skating facilities, and amusement centers: Complete description of the business activities conducted. For an amusement center, the number of amusement devices, income derived from those devices, and all other business activities conducted during the last twelve months.</p> <p>(e) Any business whose primary activity is to provide food service for on-premises consumption: Amount of gross income the entire business generates; and the portion of gross income the food service for on-premises consumption generates.</p> <p>(f) Department or grocery stores: Type of retail products sold; size of the store premises, in gross square feet, not including parking areas.</p>
(3) Limited time locations:	The applicant must receive written permission from the sponsor of any activity and provide planned operating dates for all locations at which the applicant plans to operate during the year. This operating plan must be updated any time the dates of operation change.

ADDITIONAL REQUIREMENTS FOR COMMERCIAL STIMULANT APPLICANTS

NEW SECTION

WAC 230-03-170 Defining "business premises." "Business premises" as used in RCW 9.46.0217 means the building, or portion of the building, set out on the license application.

NEW SECTION

WAC 230-03-175 Requirements for commercial stimulant businesses. Businesses must provide evidence for us to determine the business' qualifications as a commercial stimulant as set forth in RCW 9.46.0217. That evidence includes, but is not limited to:

- (1) Proof that it is an "established business" as used in RCW 9.46.0217. "Established business" means any business that has been open to the public for sales of food or drink for on-premises eating and drinking for ninety days or more; or

- (a) Provides us with a proposed operating plan which includes:
 - (i) Hours of operation; and
 - (ii) Estimated gross sales from each separate activity the business will conduct on the business premises including, but not limited to:
 - (A) Food or drinks for "on-premises" eating and drinking; and
 - (B) Food or drinks "to go"; and
 - (C) All other business activities; and
- (b) Is ready to conduct food or drink sales; and
- (c) Passes an inspection by us; and
- (2) Proof that it is "primarily engaged in the selling of food or drink for consumption on premises" as used in RCW 9.46.070(2). "Primarily engaged in the selling of food or drink for consumption on premises" means that before receiving a gambling license the business has total gross sales of food or drink for on-premises consumption equal to or greater than all other combined gross sales, rentals, or other income-producing activities which occur on the business premises when measured on an annual basis.

ADDITIONAL LICENSING REQUIREMENTS CARD ROOM LICENSE APPLICANTS

NEW SECTION

WAC 230-03-180 Additional information required for a house-banked card room application. If you apply for a house-banked card room license, you must provide at least the following as part of your application:

- (1) A detailed description, including flow charts, of your planned internal accounting and administrative control system. You must provide the information in the standard format we require; and
- (2) A detailed diagram of the planned physical layout of the business premises. The diagram must include at least:
 - (a) The location of all gambling tables; and
 - (b) The location of all surveillance cameras; and
 - (c) The count room; and
 - (d) The surveillance room; and
 - (e) The cashier's cage; and
- (3) A detailed description of the card games offered for play, including rules of play, and the type of gambling tables operated, including table layouts.

ADDITIONAL REQUIREMENTS FOR MANUFACTURER, DISTRIBUTOR, AND GAMBLING SERVICE SUPPLIER LICENSE APPLICANTS LICENSING MANUFACTURERS AND DISTRIBUTORS

NEW SECTION

WAC 230-03-185 Applying for a manufacturer license. You must apply for a manufacturer license if you:

- (1) Make or assemble a completed piece or pieces of gambling equipment for use in authorized gambling activities; or

(2) Convert, modify, combine, add to, or remove parts or components of any gambling equipment for use in authorized gambling activities.

NEW SECTION

WAC 230-03-190 Applying for a distributor license.

You must apply for a distributor license if you:

(1) Buy or otherwise obtain a finished piece of gambling equipment for use in authorized gambling activities from another person and sell or provide that gambling equipment to a third person for resale, display, or use; or

(2) Are a manufacturer who sells or provides gambling equipment you do not make to any other person for resale, display, or use; or

(3) Service and repair authorized gambling equipment. However, distributors must not add, modify, or alter the gambling equipment; or

(4) Modify gambling equipment using materials provided by manufacturers to upgrade equipment to current technology.

NEW SECTION

WAC 230-03-195 Additional information required from manufacturer and distributor license applicants. If you are applying for a manufacturer or distributor license, you must attach the following to your application form:

(1) A list of all businesses or corporations which you, or officers, directors, or substantial interest holders of your business, either directly or indirectly, own or control as a substantial interest holder; and

(2) A list of all businesses or corporations licensed to conduct gambling activities or to supply gambling-related equipment, supplies, or services in which you, officers, directors, or substantial interest holders of your business have any interest; and

(3) A list of all jurisdictions in which you or any of the officers, directors, or substantial interest holders of your business have had a gambling-related license at any level during the previous ten years; and

(4) A statement about whether you, or officers, directors, or substantial interest holders have ever been part of a business that had a gambling-related license denied, revoked, or suspended by any jurisdiction for a period longer than thirty days.

NEW SECTION

WAC 230-03-200 Defining "gambling equipment."

"Gambling equipment" means any device, gambling-related software, expendable supply, or any other paraphernalia used as a part of gambling or to make gambling possible. "Gambling equipment" includes, but is not limited to:

(1) Amusement games;

(2) Punch boards and pull-tabs;

(3) Devices for dispensing pull-tabs;

(4) Electronic devices for conducting, facilitating, or accounting for the results of gambling activities, including, but not limited to:

(a) Components of a tribal lottery system;

(b) Electronic devices for reading and displaying outcomes of gambling activities; and

(c) Accounting systems that are a part of, or directly connected to, a gambling system including, but not limited to:

(i) Bet totalizers; or

(ii) Progressive jackpot meters; or

(iii) Keno systems;

(5) Bingo equipment;

(6) Devices and supplies used to conduct card games, fund-raising events, recreational gaming activities, or Class III gaming activities, as defined in the Indian Gaming Regulatory Act at U.S.C. 25 chapter 29 § 2703 and in tribal-state compacts including, but not limited to:

(a) Gambling chips;

(b) Cards;

(c) Dice;

(d) Card shuffling devices;

(e) Graphical game layouts for table games;

(f) Ace finders or no-peek devices;

(g) Roulette wheels;

(h) Keno equipment; and

(i) Tables manufactured exclusively for gambling purposes.

LICENSING GAMBLING SERVICE SUPPLIERS

NEW SECTION

WAC 230-03-210 Applying for a gambling service supplier license. (1) You must apply for a gambling service supplier license if you perform any of the following gambling-related services for compensation:

(a) Consulting or advisory services regarding gambling activities; or

(b) Gambling management services; or

(c) Financing for purchases or leases of gambling equipment or for providing infrastructure that supports gambling operations for more than one licensee; or

(d) Providing the assembly of components for gambling equipment under a contract with a licensed manufacturer; or

(e) Installing, integrating, maintaining, or servicing digital surveillance systems that allow direct access to the operating system; or

(f) Training individuals to conduct authorized gambling activities; or

(g) Providing any other service or activity where influence may be exerted over any gambling activity licensed by the commission.

(2) You do not need a gambling service supplier license if you are:

(a) A bank, mutual savings bank, or credit union regulated by the department of financial institutions or any federally regulated commercial lending institution; or

(b) A university or college regulated by the Washington state board of community and technical colleges and the higher education coordinating board that trains individuals to conduct authorized gambling activities; or

(c) An attorney, accountant, or governmental affairs consultant whose primary business is providing professional ser-

vices that are unrelated to the management or operation of gambling activities; or

(d) A person that only provides nonmanagement-related recordkeeping services for punch board and pull-tab operators, when the combined total gross billings from such services does not exceed twenty-five thousand dollars during any calendar year.

NEW SECTION

WAC 230-03-215 Gambling service suppliers prohibited from assuming ultimate responsibility. If you are or are applying to be a gambling service supplier, you must not assume ultimate responsibility for any licensee's gambling activity.

NEW SECTION

WAC 230-03-220 Marketing level restrictions for punch board or pull-tab manufacturers, distributors, or operators. (1) The different marketing levels for punch board and pull-tabs are:

- (a) Operator; and
- (b) Distributor or manufacturer.

(2) If you are a manufacturer or distributor, or spouse of a manufacturer or distributor of punch boards, pull-tabs, pull-tab dispensing devices, or related equipment, you must not have a substantial interest in a business that operates punch boards or pull-tabs.

NEW SECTION

WAC 230-03-225 Marketing level restrictions for punch board or pull-tab gambling service suppliers. If you are a substantial interest holder in a licensed gambling service supplier who provides services to punch board and pull-tab operators, you must not hold a substantial interest in a licensed manufacturer or distributor of punch boards or pull-tabs.

LICENSING LINKED BINGO PRIZE PROVIDERS

NEW SECTION

WAC 230-03-230 Applying for linked bingo prize provider license. (1) You must apply for a linked bingo prize provider license if you provide bingo operators the means to link bingo prizes, including:

- (a) Equipment and supplies to offer linked bingo; and
- (b) Linked bingo prize management; and
- (c) Distribution of necessary gambling equipment and supplies.

(2) Distributors must receive a linked bingo prize provider license before providing gambling equipment and supplies to play linked bingo games.

INDIVIDUAL LICENSES

Licensing Charitable or Nonprofit Gambling Managers

NEW SECTION

WAC 230-03-235 Applying for charitable or nonprofit gambling manager license. You must apply for a charitable or nonprofit gambling manager license if you are an employee or member of a charitable or nonprofit organization who:

- (1) Will have control to a material degree over a Class D and above bingo license; or
- (2) Will have control to a material degree over a Class C and above punch boards and pull-tabs license; or
- (3) Will be the supervisor of gambling managers who manage a Class D and above bingo license or Class C and above punch boards and pull-tabs license; or
- (4) Will be assigned the highest level of authority by the officers or governing board of directors to manage the day-to-day affairs of the organization and is responsible for safeguarding assets purchased with gambling funds and/or managing the disbursement of gambling funds when the organization:
 - (a) Is licensed to receive more than three hundred thousand dollars in gross gambling receipts; or
 - (b) Has established a trust and/or endowment fund to which gambling receipts in excess of one hundred thousand dollars have been contributed; or
 - (5) Will be the supervisor of the operation of progressive jackpot pull-tab games.

NEW SECTION

WAC 230-03-240 Working before receiving a charitable or nonprofit gambling manager license. (1) You may begin performing the duties of a charitable or nonprofit gambling manager only after you have submitted a completed application and fees for licensing.

(2) If you meet any of the conditions of RCW 9.46.158, you must not perform any of the duties of a charitable or nonprofit gambling manager until you receive a license from us.

(3) If you elect to perform any of the duties of a charitable or nonprofit gambling manager before licensing, we will keep your entire application fee regardless of the outcome of your application.

NEW SECTION

WAC 230-03-245 Licensing period for charitable or nonprofit gambling manager. The charitable and nonprofit gambling manager license is valid for no more than one year beginning on the date we received your application and fees.

LICENSING COMMERCIAL GAMBLING MANAGERS

NEW SECTION

WAC 230-03-250 Applying for a commercial gambling manager license. You must have a commercial gam-

bling manager license if you supervise the operation of progressive jackpot pull-tab games. We do not require owners, partners, major officers, or owners of a substantial interest of a corporation to have commercial gambling manager licenses.

NEW SECTION

WAC 230-03-255 Working before receiving a commercial gambling manager license. (1) You may begin performing the duties of a commercial gambling manager only after you have submitted a completed application and fees for licensing.

(2) If you meet any of the conditions of RCW 9.46.158, you must not perform any of the duties of a commercial gambling manager until you receive a license from us.

(3) If you elect to perform any of the duties of a commercial gambling manager before licensing, we will keep your entire application fee, regardless of the outcome of your application.

NEW SECTION

WAC 230-03-260 Licensing period for commercial gambling manager. The commercial gambling manager license is valid for no more than one year beginning on the date we received your application and fees.

LICENSING CARD ROOM EMPLOYEES

NEW SECTION

WAC 230-03-265 Applying for a card room employee license. You must apply for a card room employee license if you will be involved in the operation of a:

- (1) Class E card room; or
- (2) Class F card room; or
- (3) House-banked card room; and
- (4) You perform any of the following functions:
 - (a) Collecting fees; or
 - (b) Dealing; or
 - (c) Supervising any card game or other card room employee, such as acting as a pit boss, floor person, or section supervisor; or
 - (d) Selling or redeeming chips; or
 - (e) Performing cashier or cage duties such as counting and handling chips or cash, completing credit slips, fill slips, or inventory slips, or accounting for other card room receipts in the cage; or
 - (f) Observing dealers and card games to detect cheating or control functions; or
 - (g) Controlling card room funds including keys to secure locations; or
 - (h) Taking part in the operation of a card game.

NEW SECTION

WAC 230-03-270 Working as a card room employee before receiving a license. (1) If you have applied for a card room employee license, you may perform card room duties

before receiving the license if you have waited at least ten days from the date we received your application and fees.

(2) We may waive the ten-day waiting period if:

(a) Your employer can demonstrate an urgent and unexpected need for you as an employee; and

(b) Your employer's business would close or the control structure of the activity would be weakened if we failed to grant such waiver; and

(c) Your employer could not control the circumstances causing the need for a waiver; and

(d) You pay the fee for the waiver.

(3) If you meet any of the conditions of RCW 9.46.158, you must not perform the duties of a card room employee until you receive a license.

(4) If you choose to perform the duties of a card room employee before receiving your license, we will keep the entire application fee regardless of the outcome of your application.

NEW SECTION

WAC 230-03-275 Licensing period for card room employee. The card room employee license is valid for no more than one year beginning on the date we receive your application and fees.

NEW SECTION

WAC 230-03-280 Substantial interest holders not required to be licensed as card room employees. If you are a substantial interest holder in a business licensed to operate a public card room or a spouse of the same, you do not have to have an additional license to perform card room employee duties connected with that card room.

NEW SECTION

WAC 230-03-285 Class III gaming employee working as card room employee. A certified Class III gaming employee must submit an add/transfer application and pay a fee before beginning work for a public card room.

NEW SECTION

WAC 230-03-290 Card room employees working for additional employer or changing employer. A card room employee must submit an add/transfer application and pay a fee before beginning work for an additional public card room or changing public card room employers.

REPRESENTATIVE LICENSING

NEW SECTION

WAC 230-03-300 Applying for a manufacturer's representative license. You must apply for a manufacturer's representative license if you are employed by a licensed manufacturer to sell, promote, or provide that manufacturer's gambling equipment, or supplies, or you supervise those who do.

NEW SECTION

WAC 230-03-305 Applying for a distributor's representative license. You must apply for a distributor's representative license if you are employed by a licensed distributor to sell, promote, or provide that distributor's gambling equipment, or supplies, or you supervise those who do.

NEW SECTION

WAC 230-03-310 Applying for a gambling service supplier's representative license. You must apply for a gambling service supplier's representative license if you are employed by a licensed gambling service supplier to provide gambling-related services, or you supervise those who do.

NEW SECTION

WAC 230-03-315 Applying for a linked bingo prize provider representative license. You must apply for a linked bingo prize provider representative license if you are employed by a linked bingo prize provider in any of the provider's activities in connection with the management of a linked bingo prize game or distribution of supplies for those games.

NEW SECTION

WAC 230-03-320 Substantial interest holders not required to be licensed as representatives. If you are a substantial interest holder in a business licensed to operate a manufacturer, distributor, gambling service supplier, or linked bingo prize provider or a spouse of the same, you do not have to have an additional license to perform representative duties connected with that licensed business.

NEW SECTION

WAC 230-03-325 Office, clerical, or warehouse workers not required to be licensed as representatives. If you are an office, clerical, or warehouse worker and have contact with customers or potential customers only by telephone at your employer's business premises and work under the immediate and direct supervision of a substantial interest holder or a licensed manager or supervisor, you do not have to have a representative license.

NEW SECTION

WAC 230-03-330 Representing only one employer at a time. (1) If you are a licensed representative or applying for a representative license, you must represent only one licensed manufacturer, distributor, gambling service supplier, or linked bingo prize provider at a time.

(2) If the owner you work for owns more than one licensed business, you may represent the owner in all those licensed businesses without applying for another representative license.

NEW SECTION

WAC 230-03-335 Representatives must not work before receiving a license. If you are applying for a license as a representative for a manufacturer, distributor, gambling services supplier, or linked bingo prize provider, you must not work until you receive a license from us.

NEW SECTION

WAC 230-03-340 Gambling service supplier representative must report conflicts of interest. If a licensed gambling service supplier representative has a substantial interest in a licensed manufacturer or distributor, they must inform us, the punch board, pull-tab, or bingo operators to whom they provide services, and the affected licensed manufacturer or distributor of the substantial interest and their intention to act as a gambling service supplier representative.

Chapter 230-05 WAC**FEEES**NEW SECTION

WAC 230-05-001 Prorating or refunding of fees. (1) We may prorate license fees when we adjust expiration dates to schedule our workload.

(2) We may adjust expiration dates to end on the same day for organizations licensed for more than one activity. Whenever we adjust license expiration dates under this provision, we may prorate the required fees.

(3) We will not prorate or refund fees when:

- (a) You discontinue your gambling activities; or
- (b) You voluntarily surrender your license or permit; or
- (c) We suspend or revoke your license.

(4) We keep a portion of your application fees whether we deny or administratively close your application or you withdraw it.

(5) If you are a licensee, you may apply for a partial refund of your license fee if your annual gross gambling receipts are less than the minimum for your license class. We will refund the difference between the fees you paid and the fees for the license class level you actually met. You must request the refund within twelve months.

NEW SECTION

WAC 230-05-005 Fees for review of gambling equipment, supplies, services, or games. You must apply to us if you want to submit gambling equipment, supplies, services, or games for our review. You must pay the application deposit before we perform the review. You must also reimburse us for any additional costs of the review.

NEW SECTION

WAC 230-05-010 Returned checks. (1) If your bank returns your check for license fees to us for any reason, you must:

- (a) Pay us in full, by certified check, money order, or cash, within five days of notification; and
- (b) Pay an additional processing charge of thirty dollars.
- (2) If you fail to pay within five days of notification:
 - (a) We will administratively close your application; or
 - (b) Your license expires and all gambling activity must stop.
- (3) If we administratively close your application or your license expires, you must give us a new application with fees paid by certified check, money order, or cash in order to be considered for a license.

NEW SECTION

WAC 230-05-015 Two-part payment plan for license fees. (1) If you are renewing an annual license or applying for an additional license, you may pay the license fee in two payments if:

- (a) You elect to participate; and
- (b) The license fee is at least eight hundred dollars; and
- (c) You pay an administrative processing fee as set out in WAC 230-05-020 or 230-05-030, plus one-half of the annual license fee at the time of application or renewal.

(2) We issue licenses under the two-part payment plan with an expiration date of not more than one year and a second-half payment due date.

(a) If we receive your second-half payment on or before the due date, the license will remain in effect until the expiration date.

(b) If you fail to submit the second-half payment on or before the due date, the license expires and gambling activities must stop.

(3) Your gross gambling receipts during the first-half payment period must not exceed fifty percent of the authorized class limitation for annual gross gambling receipts. Licensees whose gross gambling receipts exceed fifty percent of the authorized level must apply for a license at the appropriate license class and pay the full upgrade fee, plus an administrative processing fee, as set out in WAC 230-05-020 and 230-05-030.

NEW SECTION

WAC 230-05-020 Charitable or nonprofit organization fees. Bona fide charitable and nonprofit organizations must pay the following fees to us when applying for gambling licenses, permits, miscellaneous changes, or inspection services:

1. Amusement games

License	Annual Gross Gambling Receipts	Fee
Class A	Premises only	\$54
Class B	Up to \$10,000	\$54
Class C	Up to \$25,000	\$294
Class D	Up to \$50,000	\$472
Class E	Over \$50,000	\$822

2. Bingo

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class A	Up to \$25,000	\$54	\$1,000
Class B	Up to \$75,000	\$171	\$1,000
Class C	Up to \$150,000	\$350	\$2,000
Class D	Up to \$350,000	\$944	\$4,000
Class E	Up to \$650,000	\$1,590	\$8,000
Class F	Up to \$1,500,000	\$3,196	\$15,000
Class G	Up to \$2,000,000	\$4,612	\$23,000
Class H	Up to \$3,000,000	\$6,162	\$30,000
Class I	Up to \$4,000,000	\$7,700	\$38,000
Class J	Up to \$5,000,000	\$9,238	\$45,000
Class K	Up to \$6,000,000	\$10,364	\$53,000
Class L	Up to \$7,000,000	\$11,846	\$60,000
Class M	Up to \$8,000,000	\$13,330	\$65,000
Class N	Up to \$9,000,000	\$14,500	\$70,000
Class O	Up to \$10,000,000	\$16,000	\$75,000
Class P	Up to \$11,000,000	\$17,500	\$80,000
Class Q	Up to \$12,000,000	\$21,000	\$85,000
Class R	Up to \$13,000,000	\$24,000	\$90,000
Class S	Up to \$14,000,000	\$27,000	\$95,000

* See chapter 230-06 WAC, Exceeding license class.

3. Card games

License	Description	Fee
Class A	Nonhouse-banked - fee to play	\$589
Class B	Limited card games - hearts, rummy, pitch, pinochle, and cribbage - fee to play	\$171
Class C	Tournament only - no more than thirty consecutive days per tournament	\$54
Class D	Nonhouse-banked - no fee to play	\$54

4. Fund-raising event

License	Description	Fee
Class A	One event - not more than 24 consecutive hours	
	First time applicant	\$350
	Previously licensed applicant	\$206
Class B	One event - not more than 72 consecutive hours	
	First time applicant	\$589
	Previously licensed applicant	\$361
Class C	Additional participant in joint event - not lead organization	\$171
Class D	Limited fund-raising event - one event - not more than six consecutive hours	
	First time applicant	\$154

License	Description	Fee
	Previously licensed applicant	\$103
Class E	Fund-raising event equipment distributor - rents or leases equipment no more than ten times per year	\$233
Class F	Fund-raising event equipment distributor - rents or leases equipment more than ten times per year	\$589

5. Punch boards/pull-tabs

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class A	Up to \$50,000	\$561	\$5,000
Class B	Up to \$100,000	\$1,002	\$5,000
Class C	Up to \$200,000	\$1,892	\$10,000
Class D	Up to \$300,000	\$2,750	\$10,000
Class E	Up to \$400,000	\$3,552	\$10,000
Class F	Up to \$500,000	\$4,288	\$10,000
Class G	Up to \$600,000	\$4,970	\$10,000
Class H	Up to \$700,000	\$5,594	\$10,000
Class I	Up to \$800,000	\$6,162	\$10,000
Class J	Up to \$1,000,000	\$6,986	\$20,000
Class K	Up to \$1,250,000	\$7,756	\$25,000
Class L	Up to \$1,500,000	\$8,470	\$25,000
Class M	Up to \$1,750,000	\$9,038	\$25,000
Class N	Up to \$2,000,000	\$9,594	\$25,000
Class O	Up to \$2,500,000	\$10,542	\$30,000
Class P	Up to \$3,000,000	\$11,200	\$35,000
Class Q	Up to \$4,000,000	\$13,200	\$40,000
Class R	Up to \$5,000,000	\$15,000	\$50,000
Class S	Up to \$6,000,000	\$17,000	\$60,000
Class T	Up to \$7,000,000	\$19,000	\$70,000
Class U	Up to \$8,000,000	\$21,000	\$80,000
Class V	Over \$8,000,000	\$23,000	\$80,000

* See chapter 230-06 WAC, Exceeding license class.

6. Raffles

License	Annual Gross Gambling Receipts	Fee
Class A	Up to \$5,000	\$54
Class B	Up to \$10,000	\$171
Class C	Up to \$25,000	\$350
Class D	Up to \$50,000	\$589
Class E	Up to \$75,000	\$944
Class F	Over \$75,000	\$1,414

7. Combination license

License	Description	Fee
Class A	Allows gross gambling receipts of up to \$25,000 from bingo, \$7,500 from raffles, and \$7,500 from amusement games, not to exceed \$30,000 combined gross gambling receipts from all such activities. Allows Class D card games.	\$106
Class B	Allows gross gambling receipts of up to \$60,000 from bingo, \$15,000 from raffles, and \$15,000 from amusement games, not to exceed \$75,000 combined gross gambling receipts from all such activities. Allows Class D card games.	\$276
Class C	Allows gross gambling receipts of up to \$125,000 from bingo, \$30,000 from raffles, and \$30,000 from amusement games, not to exceed \$150,000 combined gross gambling receipts from all such activities. Allows Class D card games.	\$639

8. Special property bingo

Once annually	\$26
---------------	------

9. Permits

Recreational gaming activity	\$54
------------------------------	------

10. Changes

Type	Fee
Name	\$26
Location	\$26
Fund-raising event date or time	\$26
License class	\$26
Duplicate license	\$26

11. Other fees

Type	Fee
Replacement identification stamps	\$26
Failing to apply for license class upgrade	Up to fifty percent of the difference between our fees for the licensee's present license class and the new license class or one thousand dollars, whichever is less, plus \$26
Review, inspection and/or evaluation of equipment, paraphernalia, services, or schemes	Deposit and fees as required

12. Two part payment plan participation

Annual participation	\$26
----------------------	------

NEW SECTION

WAC 230-05-025 Commercial stimulant fees. All commercial stimulant license applicants must pay the following fees to us when applying for gambling licenses:

1. Card games - Nonhouse-banked

License	Description	Fee
Class B	Up to five tables of limited card games - hearts, rummy, pitch, pinochle, and/or cribbage - fee to play	\$175
Class C	Tournament only, no more than thirty consecutive days per tournament	
C-5	Up to five tables	\$175
C-10	Up to ten tables	\$318
C-15	Up to fifteen tables	\$529
Class D	Up to five tables - no fee to play	\$55
Class E	Fee to play	
E-1	One table only	\$422
E-2	Up to two tables	\$727
E-3	Up to three tables	\$1,210
E-4	Up to four tables	\$2,426
E-5	Up to five tables	\$3,650
Additional tables	Per table - up to a maximum of fifteen	\$1,060
Class F	Endorsement/upgrade of Class E includes permission to use alternative fee collections and use of player-supported jackpots	\$1,590

2. Card games - House-banked

All tables within a card room operating any house-banked card game must be licensed under this license class.

License	Fee
Annual	\$6,368
Additional fee per table - up to fifteen tables	\$1,590

3. Punch boards and pull-tabs

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class A	Up to \$50,000	\$577	\$5,000
Class B	Up to \$100,000	\$1,030	\$5,000
Class C	Up to \$200,000	\$1,942	\$10,000
Class D	Up to \$300,000	\$2,826	\$10,000
Class E	Up to \$400,000	\$3,650	\$10,000

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class F	Up to \$500,000	\$4,408	\$10,000
Class G	Up to \$600,000	\$5,108	\$10,000
Class H	Up to \$700,000	\$5,748	\$10,000
Class I	Up to \$800,000	\$6,332	\$10,000
Class J	Up to \$1,000,000	\$7,180	\$20,000
Class K	Up to \$1,250,000	\$7,970	\$25,000
Class L	Up to \$1,500,000	\$8,704	\$25,000
Class M	Up to \$1,750,000	\$9,310	\$25,000
Class N	Up to \$2,000,000	\$9,862	\$25,000
Class O	Up to \$2,500,000	\$10,836	\$30,000
Class P	Up to \$3,000,000	\$11,200	\$35,000
Class Q	Up to \$4,000,000	\$13,200	\$40,000
Class R	Up to \$5,000,000	\$15,000	\$50,000
Class S	Up to \$6,000,000	\$17,000	\$60,000
Class T	Up to \$7,000,000	\$19,000	\$70,000
Class U	Up to \$8,000,000	\$21,000	\$80,000
Class V	Over \$8,000,000	\$23,000	\$80,000

* See chapter 230-06 WAC, Exceeding license class.

NEW SECTION

WAC 230-05-030 Fees for other businesses. All other business license applicants must pay the following fees to us when applying for gambling licenses, miscellaneous changes, or inspection services:

1. Commercial amusement games

License	Annual Gross Gambling Receipts	Fee
Class A	Premises only	*\$301/ \$137
Class B	Up to \$50,000	\$422
Class C	Up to \$100,000	\$1,086
Class D	Up to \$250,000	\$2,426
Class E	Up to \$500,000	\$4,256
Class F	Up to \$1,000,000	\$7,306
Class G	Over \$1,000,000	\$9,140

* We reduce the license fee by \$164 when you apply for additional licenses at the same business premises, apply for multiple licenses at the same business premises, or a licensee is renewing an annual license.

2. Distributor

License	Annual Gross Sales	Fee
Class A	Nonpunch board/pull-tab only	\$605
Class B	Up to \$250,000	\$1,210
Class C	Up to \$500,000	\$1,818
Class D	Up to \$1,000,000	\$2,426
Class E	Up to \$2,500,000	\$3,160
Class F	Over \$2,500,000	\$3,890

3. Fund-raising event equipment distributor

License	Description	Fee
Class A	Rents or leases equipment for fund-raising event or recreational gaming activity up to 10 times per year.	\$239
Class B	Rents or leases equipment for fund-raising event or recreational gaming activity more than 10 times per year.	\$603

4. Gambling service supplier

License	Fee
Annual	\$630
Financing, consulting, and management contract review	\$136

5. Linked bingo prize provider

License	Fee
Annual	\$4,048

6. Manufacturer

License	Annual Gross Sales	Fee
Class A	Pull-tab dispensing devices only	\$605
Class B	Up to \$250,000	\$1,210
Class C	Up to \$500,000	\$1,818
Class D	Up to \$1,000,000	\$2,426
Class E	Up to \$2,500,000	\$3,160
Class F	Over \$2,500,000	\$3,890

7. Permits

Type	Description	Fee
Agricultural fair	One location and event only	\$26
Agricultural fair annual permit	Annual permit for specified different events and locations	\$175
Recreational gaming activity		\$55
Manufacturer's special sales permit		\$211
Punch board and pull-tab service business permit	Initial application fee	\$217
Punch board and pull-tab service business permit	Renewal	\$53

8. Changes

Application	Description	Fee
Name		\$26
Location		\$26
Business classification	Same owners	\$55

Application	Description	Fee
Exceeding license class	New class fee, less previous fee paid, plus	\$26
Duplicate license		\$26
Corporate stock/limited liability company shares/units		\$55
License transfers		\$55

9. Other fees

Type	Fee
Defective punch board/pull-tab cost recovery fees	Up to \$100
Failing to apply for license class upgrade	Up to fifty percent of the difference between our fees for the licensee's present license class and the new license class or one thousand dollars, whichever is less, plus \$26
Review of gambling equipment, supplies, services, or games	Cost reimbursement

10. Identification stamps

Type	Fee	
(a) Punch boards and pull-tabs		
(i) Standard	Wagers fifty cents and below	\$.27
	Wagers over fifty cents	\$1.05
(ii) Progressive jackpot pull-tab series	Per series	\$10.60
(iii) Pull-tab series with carry-over jackpots	Per series	\$1.05
(b) Pull-tab dispensing devices		
(i) Mechanical and electro-mechanical		\$.27
(ii) Electronic	Dispensing devices that require initial and ongoing evaluation of electronic components or functions, such as reading encoded data on pull-tabs, accounting for income or prizes	\$106.17 annually
Replacement of identification stamps		\$26

Type	Fee
(c) Disposable bingo cards	
(i) Single game sets of individual cards or sheets of cards	\$.27
(ii) Multigame card packets	\$1.16
(iii) Cards used to play for linked bingo prizes	Fee per 250 cards \$.42
(iv) Cards used to play for linked bingo prizes	Fee per 5,000 cards \$8.49
(d) Coin or token-activated amusement games	
Annually - operated at any Class A amusement game license location	\$26.53
(e) Electronic bingo card daubers	
Annual	\$10.60
(f) Electronic card facsimile table	
Annual	\$361.51

11. Two-part payment plan participation

Annual participation	\$26
----------------------	------

NEW SECTION

WAC 230-05-035 Individuals license fees. Individuals must pay the following fees to us when they apply for gambling licenses, permits, miscellaneous changes:

1. Charitable or nonprofit gambling manager

License	Fee
Original	\$171
Renewal	\$82
Change of employer	\$82

2. Linked bingo prize provider representative

License	Fee
Original	\$239
Renewal	\$146

3. Commercial gambling manager

License	Fee
Original	\$175
Renewal	\$84
Change of employer	\$84

4. Distributor's or gambling services supplier's representative

License	Fee
Original	\$239
Renewal	\$146

5. Manufacturer's representative

License	Fee
Original	\$239
Renewal	\$146

6. Public card room employee

License	Fee
Class A - Performs card room employee duties in a Class E card room	
Original	\$175
Renewal	\$84
Class B - Performs card room employee duties in enhanced and house-banked card rooms	
Original, in-state	\$237
Original, out-of-state	\$295
Renewal	\$146
Transfer/additional employee/conversion/emergency waiver request	\$57

7. Other fees

Change of name	\$26
Duplicate license	\$26