

**WSR 08-17-001**  
**PERMANENT RULES**  
**DEPARTMENT OF HEALTH**

[Filed August 6, 2008, 2:19 p.m., effective September 6, 2008]

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

Purpose: The rules identify the training requirements for licensed massage practitioners to apply for an intraoral massage endorsement.

Statutory Authority for Adoption: Chapter 18.108 RCW, SHB 1397 (chapter 272, Laws of 2007).

Adopted under notice filed as WSR 08-11-117 on May 21, 2008.

Changes Other than Editing from Proposed to Adopted Version: The board added the word "directed" before hands-on supervision to clarify that the required supervised training must be face to face, in person, rather than on-line training. No other changes were made and no significant concepts were added or deleted.

A final cost-benefit analysis is available by contacting Kris Waideley, P.O. Box 47867, Olympia, WA 98504-7867, phone (360) 236-4847, fax (360) 664-9077, e-mail kris.waideley@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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.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: August 6, 2008.

Mary C. Selecky  
 Secretary

Karin Olsen  
 Board Chair

## NEW SECTION

### **WAC 246-830-490 Intraoral massage training.**

Licensed massage practitioners may perform intraoral massage after completing specific intraoral massage training and after receiving an intraoral massage endorsement to their massage practitioner license.

To qualify for an intraoral massage endorsement you must complete the following training:

(1) Sixteen hours of direct supervised training must include:

- (a) Hands-on intraoral massage techniques, cranial anatomy, physiology, and kinesiology; and
- (b) Hygienic practices, safety and sanitation; and
- (c) Pathology and contraindications.

Hygienic practices, safety and sanitation includes, but is not limited to: Gloves shall be worn during treatment and training which involves intraoral procedures. Fresh gloves shall be used for every intraoral patient contact. Gloves shall not be washed or reused for any purpose. The same pair of gloves shall not be used, removed, and reused for the same patient at the same visit or for any other purpose. Gloves that have been used for intraoral treatment shall not be reused for any other purpose; and

(2) Supervised training must be obtained from a licensed massage practitioner endorsed in intraoral massage or from an individual who is licensed, certified, or registered and who has performed intraoral massage services within their authorized scope of practice.

**WSR 08-17-009**  
**PERMANENT RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed August 7, 2008, 3:56 p.m., effective September 7, 2008]

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

Purpose: The rule updates the definition for "craniofacial team," clarifies who is eligible for orthodontic treatment and orthodontic-related services, replaces "MAA's orthodontic consultant" with "department," removes language regarding limitation extensions, extends the time period HRSA covers comprehensive full orthodontic treatment, removes references to specific medical conditions, updates cross-references, and clarifies, simplifies, and omits redundant language.

Citation of Existing Rules Affected by this Order: Amending WAC 388-535A-0010, 388-535A-0020, 388-535A-0030, 388-535A-0040, 388-535A-0050, and 388-535A-0060.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090.

Adopted under notice filed as WSR 08-12-073 on June 3, 2008.

A final cost-benefit analysis is available by contacting Dr. John Davis, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1748, fax (360) 586-1590, e-mail davisjd@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 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 6, Repealed 0.

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

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 0.

Date Adopted: August 8 [7], 2008.

Robin Arnold-Williams  
Secretary

**AMENDATORY SECTION** (Amending WSR 05-01-064, filed 12/8/04, effective 1/8/05)

**WAC 388-535A-0010 Definitions for orthodontic services.** The following definitions and those found in WAC 388-500-0005 apply to this chapter.

**"Appliance placement"** means the application of orthodontic attachments to the teeth for the purpose of correcting dentofacial abnormalities.

**"Cleft"** means an opening or fissure involving the dentition and supporting structures, especially one occurring in utero. These can be:

- (1) Cleft lip;
- (2) Cleft palate (involving the roof of the mouth); or
- (3) Facial clefts (e.g., macrostomia).

**"Comprehensive full orthodontic treatment"** means utilizing fixed orthodontic appliances for treatment of the permanent dentition leading to the improvement of a client's severe handicapping craniofacial dysfunction and/or dentofacial deformity, including anatomical and functional relationships.

**"Craniofacial anomalies"** means abnormalities of the head and face, either congenital or acquired, involving disruption of the dentition and supporting structures.

**"Craniofacial team"** means a ((~~department of health and medical assistance administration recognized~~) cleft palate/maxillofacial team or an American Cleft Palate Association-certified craniofacial team. These teams are responsible for the management (review, evaluation, and approval) of patients with cleft palate craniofacial anomalies to provide integrated ((e)) management, promote parent-professional partnership, and make appropriate referrals to implement and coordinate treatment plans.

**"Dental dysplasia"** means an abnormality in the development of the teeth.

**"EPSDT"** means the department's early and periodic screening, diagnosis, and treatment program for clients twenty years of age and younger as described in chapter 388-534 WAC.

**"Hemifacial microsomia"** means a developmental condition involving the first and second brachial arch. This creates an abnormality of the upper and lower jaw, ear, and associated structures (half or part of the face appears smaller sized).

**"Interceptive orthodontic treatment"** means procedures to lessen the severity or future effects of a malformation and to affect or eliminate the cause. Such treatment may occur in the primary or transitional dentition and may include such procedures as the redirection of ectopically erupting teeth, correction of isolated dental cross-bite, or recovery of recent minor space loss where overall space is adequate.

**"Limited transitional orthodontic treatment"** means orthodontic treatment with a limited objective, not involving the entire dentition. It may be directed only at the existing

problem, or at only one aspect of a larger problem in which a decision is made to defer or forego more comprehensive therapy.

**"Malocclusion"** means improper alignment of biting or chewing surfaces of upper and lower teeth.

**"Maxillofacial"** means relating to the jaws and face.

**"Occlusion"** means the relation of the upper and lower teeth when in functional contact during jaw movement.

**"Orthodontics"** means treatment involving the use of any appliance, in or out of the mouth, removable or fixed, or any surgical procedure designed to redirect teeth and surrounding tissues.

**"Orthodontist"** means a dentist who specializes in orthodontics, who is a graduate of a postgraduate program in orthodontics that is accredited by the American Dental Association, and who meets the licensure requirements of the department of health.

**AMENDATORY SECTION** (Amending WSR 05-01-064, filed 12/8/04, effective 1/8/05)

**WAC 388-535A-0020 ((Eligibility)) Clients who are eligible for orthodontic treatment and orthodontic services.** (1) Subject to the limitations of this chapter and the age restrictions listed in this section, the ((~~medical assistance administration (MAA)~~) department covers medically necessary orthodontic treatment and orthodontic-related services for severe handicapping malocclusions, craniofacial anomalies, or cleft lip or palate ((for children only)), as follows:

(a) Clients in the categorically needy program ((~~CN~~ or)) (CNP) and the medically needy program (MNP) may receive orthodontic treatment and orthodontic-related services through age twenty. Any orthodontic treatment plan that extends beyond the client's twenty-first birthday will not be approved by the department.

(b) ((~~Clients in the medically needy program (MNP) receive orthodontic services through age twenty.~~

((e))) Clients in the state children's health insurance program (CHIP) may receive orthodontic treatment and orthodontic-related services through age eighteen. ((See WAC 388-416-0015 for when certification periods may be extended.

((f))) (c) Clients who are eligible for services under the EPSDT program may receive orthodontic treatment and orthodontic-related services under the provisions of WAC 388-534-0100.

(2) ((~~MAA does not cover orthodontic services for adults.~~

((g))) Eligible clients may receive the same orthodontic treatment and orthodontic-related services in ((~~designated border~~) recognized out-of-state bordering cities on the same basis as if provided in-state. See WAC 388-501-0175.

**AMENDATORY SECTION** (Amending WSR 05-01-064, filed 12/8/04, effective 1/8/05)

**WAC 388-535A-0030 Providers of orthodontic treatment and orthodontic-related services.** The following provider types may furnish and be ((reimbursed)) paid for providing covered orthodontic treatment and orthodontic-related

services to eligible medical assistance ((administration (MAA))) clients:

- (1) Orthodontists;
- (2) Pediatric dentists;
- (3) General dentists; and
- (4) Department recognized craniofacial teams or other orthodontic specialists approved by ((MAA's orthodontic consultant)) the department.

**AMENDATORY SECTION** (Amending WSR 06-24-036, filed 11/30/06, effective 1/1/07)

**WAC 388-535A-0040 Covered and noncovered orthodontic treatment and orthodontic-related services and limitations to coverage.** (1) Subject to the limitations in this section and other applicable WAC, the department covers orthodontic treatment and orthodontic-related services for a client who has one of the ((following)) medical conditions((:)) listed in (a) and (b) of this subsection. Treatment and follow-up care must be performed only by an orthodontist or department-recognized craniofacial team and do not require prior authorization.

(a) ((Cleft lip, cleft palate, or other craniofacial anomalies when the client is treated by and receives follow up care from a department-recognized craniofacial team for:

((i))) Cleft lip and palate, cleft palate, or cleft lip with alveolar process involvement((:)).

((ii))) (b) The following craniofacial anomalies((, including but not limited to)):

- (A) Hemifacial microsomia;
- (B) Craniostenosis syndromes;
- (C) Cleidocranial dental dysplasia;
- (D) Arthrogryposis; or
- (E) Marfan syndrome.

((iii)) Other medical conditions with significant facial growth impact (e.g., juvenile rheumatoid arthritis (JRA)); or

((iv)) Post traumatic, post radiation, or post burn jaw deformity.

(b) Other severe handicapping malocclusions, including one or more of the following:

((i)) Deep impinging overbite when lower incisors are destroying the soft tissues of the palate;

((ii)) Crossbite of individual anterior teeth when destruction of the soft tissue is present;

((iii)) Severe traumatic malocclusion (e.g., loss of a premaxilla segment by burns or by accident, the result of osteomyelitis, or other gross pathology);

((iv)) Overjet greater than 9mm with incompetent lips or reverse overjet greater than 3.5mm with reported masticatory and speech difficulties; or

((v)) Medical conditions as indicated on the (2) Subject to prior authorization requirements and the limitations in this section and other applicable WAC, the department covers orthodontic treatment and orthodontic-related services for severe malocclusions with a Washington Modified Handicapping Labiolingual Deviation (HLD) Index Score ((that result in a score)) of twenty-five or higher. ((On a case-by-case basis, the department reviews all requests for treatment for conditions that result in a score of less than twenty five, based on medical necessity.

((2))) (3) The department may cover ((requests for)) orthodontic treatment for dental malocclusions other than those listed in subsection (1) and (2) of this section ((when the department determines that the treatment is medically necessary)) on a case-by-case basis and when prior authorized.

((3))) (4) The department does not cover the following orthodontic treatment or orthodontic-related services:

(a) Replacement of lost or repair of broken orthodontic appliances;

(b) Orthodontic treatment for cosmetic purposes;

(c) Orthodontic treatment that is not medically necessary (see WAC 388-500-0005);

(d) Out-of-state orthodontic treatment, except as stated in WAC 388-501-0180 (see also WAC 388-501-0175 for medical care provided in bordering cities); or

(e) Orthodontic treatment and orthodontic-related services that do not meet the requirements of this section or other applicable WAC.

((4))) (5) The department covers the following orthodontic treatment and orthodontic-related services, subject to the limitations listed (providers must bill for these services according to WAC 388-535A-0060):

(a) Panoramic radiographs ((X rays)) x-rays((, once per client in a three year period)) when medically necessary.

(b) Interceptive orthodontic treatment, once per ((the)) a client's lifetime.

(c) Limited transitional orthodontic treatment, ((up to one year from)) once per a client's lifetime. The treatment must be completed within twelve months of the date of the original appliance placement (see subsection ((5))) (6)(a) of this section for information on limitation extensions).

(d) Comprehensive full orthodontic treatment((, up to two years from)) once per a client's lifetime. The treatment must be completed within thirty months of the date of the original appliance placement (see subsection ((5))) (6)(a) of this section for information on limitation extensions).

(e) Orthodontic appliance removal only when:

(i) The client's appliance was placed by a different provider or dental clinic; and

(ii) The provider has not furnished any other orthodontic treatment or orthodontic-related services to the client.

(f) Other medically necessary orthodontic treatment and orthodontic-related services as determined by the department.

((5)) A request to exceed stated limitations or other restrictions on covered services is called a limitation extension (LE), which is a form of prior authorization. The department evaluates and approves requests for LE for orthodontic services when medically necessary, under the provisions of WAC 388-501-0165.)

(6) The department evaluates a request for ((any)) orthodontic ((service not listed as covered in this section under the provisions of WAC 388-501-0160)) treatment or orthodontic-related services:

(a) That are in excess of the limitations or restrictions listed in this section, according to WAC 388-501-0169; and

(b) That are listed as noncovered according to WAC 388-501-0160.

(7) The department reviews requests for orthodontic treatment or orthodontic-related services for clients who are

eligible for services under the EPSDT program according to the provisions of WAC 388-534-0100.

**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 05-01-064, filed 12/8/04, effective 1/8/05)

**WAC 388-535A-0050 Authorization and prior authorization for orthodontic treatment and orthodontic-related services.** (1) When the ((medical assistance administration (MAA))) department authorizes an interceptive orthodontic treatment, limited orthodontic treatment, ((or)) full orthodontic treatment, or orthodontic-related services for a client, including a client eligible for services under the EPSDT program, that authorization indicates only that the specific service is medically necessary; it is not a guarantee of payment. The client must be eligible for the covered service at the time the service is provided.

(2) For orthodontic treatment of a client with cleft lip, cleft palate, or other craniofacial anomaly, prior authorization((:

((a))) is not required if the client is being treated by a department-recognized craniofacial team, or an orthodontic specialist who has been approved by ((an MAA dental consultant)) the department to treat cleft lip, cleft palate, or other craniofacial anomalies((; and

((b)) Is required if the client is not being treated by a provider listed in (a) of this subsection).

(3) Subject to the conditions and limitations of this section and other applicable WAC, ((MAA)) the department requires prior authorization for orthodontic treatment and/or orthodontic-related services for other dental ((malocclusions)) malocclusions that are not listed in WAC 388-535A-0040(1).

**AMENDATORY SECTION** (Amending WSR 05-01-064, filed 12/8/04, effective 1/8/05)

**WAC 388-535A-0060 ((Reimbursement)) Payment for orthodontic treatment and orthodontic-related services.** (1) The ((medical assistance administration (MAA) reimburses)) department pays providers for furnishing covered orthodontic treatment and orthodontic-related services described in WAC 388-535A-0040 according to this section and other applicable WAC.

(2) ((MAA)) The department considers that a provider who furnishes covered orthodontic treatment and orthodontic-related services to an eligible client has accepted ((MAA's rates and)) the department's fees as published in the department's fee schedules.

(3) ((To be reimbursed for providing limited transitional orthodontic treatment, providers must bill MAA in intervals during the treatment and complete treatment within twelve months of the date of appliance placement:)) **Interceptive orthodontic treatment.** The department pays for interceptive orthodontic treatment as follows:

(a) The first three months of treatment starts the date the initial appliance is placed and includes active treatment for the first three months.

(b) Treatment must be completed within twelve months of the date of appliance placement.

**(4) Limited transitional orthodontic treatment.** The department pays for limited transitional orthodontic treatment as follows:

(a) The first three months of treatment starts the date the initial appliance is placed and includes active treatment for the first three months. The provider ((should)) must bill ((MAA)) the department with the date of service that the initial appliance is placed.

(b) Continuing follow-up treatment must be billed after each three-month treatment interval during the treatment.

(c) Treatment must be completed within twelve months of the date of appliance placement. Treatment provided after one year from the date the appliance is placed requires a limitation extension. See WAC ((388-535A-0040(5))) 388-535A-0040(6).

((4) To be reimbursed for providing comprehensive full orthodontic treatment, providers must bill MAA in intervals during the treatment and complete treatment within twenty-four months of the date of the appliance placement)) **(5) Comprehensive full orthodontic treatment.** The department pays for comprehensive full orthodontic treatment as follows:

(a) The first six months of treatment starts the date the initial appliance is placed and includes active treatment ((within)) for the first six months. The provider ((should)) must bill ((MAA)) the department with the date of service that the initial appliance is placed.

(b) Continuing follow-up treatment must be billed after each three-month treatment interval, with the first three-month interval beginning six months after the initial appliance placement.

(c) Treatment must be completed with thirty months of the date of appliance placement. Treatment provided after ((two years)) thirty months from the date the appliance is placed requires a limitation extension. See WAC ((388-535A-0040(5))) 388-535A-0040(6).

((5)) (6) Payment for orthodontic treatment and orthodontic-related services is based on ((MAA's)) the department's published fee schedule ((of maximum allowances; fees listed in the fee schedule are the maximum allowable fees)).

((6)) (7) Orthodontic providers who are in department-designated bordering cities must:

(a) Meet the licensure requirements of their state; and

(b) Meet the same criteria for payment as in-state providers, including the requirements to contract with ((MAA)) the department.

((7)) (8) If the client's eligibility for orthodontic treatment under WAC 388-535A-0020 ends before the conclusion of the orthodontic treatment, payment for any remaining treatment is the individual's responsibility((; MAA)). The department does not ((reimburse)) pay for these services.

((8)) (9) The client is responsible for payment of any orthodontic service or treatment received during any period of ineligibility, even if the treatment was started when the client was eligible((; MAA)). The department does not ((reimburse)) pay for these services.

((9)) (10) See WAC 388-502-0160 and 388-501-0200 for when a provider or a client is responsible to pay for a covered service.

**WSR 08-17-013**  
**PERMANENT RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed August 8, 2008, 11:56 a.m., effective September 8, 2008]

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

Purpose: These rule revisions update guidance on the administration of the salary bonus for teachers and other certificated staff that hold current certification by the national board for professional teaching standards. These revisions will implement 2SHB 2262, as passed during the 2007 legislative session and codified as RCW 28A.405.415, the 2007-09 state operating budget, SHB 1128, section 513(41), and the state supplemental operating budget, ESHB 2687, section 511(41).

Citation of Existing Rules Affected by this Order: Amending WAC 392-140-970 through 392-140-974.

Statutory Authority for Adoption: RCW 28A.150.290 (1).

Adopted under notice filed as WSR 08-12-090 on June 4, 2008.

Changes Other than Editing from Proposed to Adopted Version:

- Replaces term "certificated instructional staff" with broader term "certificated staff," and clarifies which employee duty categories are eligible for the bonus.
- Revises requirements for what constitutes a challenging, high poverty school and eligibility for the additional bonus.
- Clarifies when the bonus is included as "earnable compensation" for retirement purposes, and inflation increases.

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.

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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: August 8, 2008.

Dr. Terry Bergeson  
 Superintendent of  
 Public Instruction

**Chapter 392-140 WAC**

**FINANCE—SPECIAL ALLOCATIONS((INSTRUCTIONS, AND REQUIREMENTS))**

**SALARY BONUS FOR TEACHERS AND OTHER CERTIFICATED STAFF WHO ((ATTAIN)) HOLD CURRENT CERTIFICATION BY THE NATIONAL BOARD**

**AMENDATORY SECTION** (Amending WSR 02-15-023, filed 7/9/02, effective 8/9/02)

**WAC 392-140-970 Salary bonus for teachers and other certificated staff who ((attain)) hold current certification by the national board—Applicable provisions—Authority.** The provisions of WAC 392-140-970 through 392-140-974 govern administration of the salary bonus for teachers and other certificated staff who ((attain)) hold current certification by the national board for professional teaching standards. The authority for WAC 392-140-970 through 392-140-974 is the state Biennial Operating Appropriations Act, RCW 28A.405.415, and ((RCW)) 28A.150.290(1).

**AMENDATORY SECTION** (Amending WSR 02-15-023, filed 7/9/02, effective 8/9/02)

**WAC 392-140-971 Salary bonus for teachers and other certificated staff who ((attain)) hold current certification by the national board—Purpose.** These rules determine eligibility for state funding and establish guidelines for the administration of the bonus.

**AMENDATORY SECTION** (Amending WSR 02-15-023, filed 7/9/02, effective 8/9/02)

**WAC 392-140-972 Salary bonus for teachers and other certificated staff who ((attain)) hold current certification by the national board—Definitions.** As used in this chapter((:

((1)) "Form SPI 1525" means the form provided by the superintendent of public instruction on which districts may request payment of the salary bonus for teachers who attain certification by the national board for professional teaching standards.

((2)) "teachers and other certificated staff" ((means an employee)) includes employees assigned to one of the following duties as defined in the *S-275 Personnel Reporting Handbook*:

- ((a)) (1) Elementary teacher, duty root 31;
- ((b)) (2) Secondary teacher, duty root 32;
- ((c)) (3) Other teacher, duty root 33;
- ((d)) Long-term substitute teacher, duty root 52;
- ((e)) Contractor teacher, duty root 63; or
- ((f)) If the district certifies that the employee is assigned teaching responsibilities or serves as a mentor teacher:
- ((g)) (4) Other support personnel, duty root 40;
- ((h)) (5) Library media specialist, duty root 41;
- ((i)) (6) Counselor, duty root 42; ((or
- ((j)) (7) Occupational therapist, duty root 43;

- (8) Social worker, duty root 44;
- (9) Speech-language pathologist or audiologist, duty root 45;
- (10) Psychologist, duty root 46;
- (11) Nurse, duty root 47;
- (12) Physical therapist, duty root 48;
- (13) Reading resource specialist, duty root 49;
- (14) Long-term substitute teacher, duty root 52;
- (15) Contractor teacher, duty root 63;
- (16) Contractor educational staff associate, duty root 64;
- (17) Elementary principal, duty root 21;
- (18) Elementary vice-principal, duty root 22;
- (19) Secondary principal, duty root 23; or
- (20) Secondary vice-principal, duty root 24; and excludes employees not assigned to the above duties. This excludes employees whose duties consist entirely of the following:
- (21) Superintendent, duty root 11;
- (22) Deputy/assistant superintendent, duty root 12;
- (23) Other district administrator, duty root 13;
- (24) Other school administrator, duty root 25;
- (25) Extracurricular, duty root 51; or
- (26) Classified staff, duty roots 90 through 99.

**AMENDATORY SECTION** (Amending WSR 02-15-023, filed 7/9/02, effective 8/9/02)

**WAC 392-140-973 Salary bonus for teachers and other certificated staff who ((attain)) hold current certification by the national board—Eligibility.** Candidates who are eligible for the bonus shall be limited to those meeting the following requirements:

- (1) Hold current certification by the national board for professional teaching standards; and
- (2) Who are:
  - (a) Teachers and other certificated staff employed full time or part time under written contract by Washington public school districts or educational service districts pursuant to RCW 28A.405.210; or
  - (b) Teachers and other certificated staff employed full time or part time by a contractor pursuant to WAC 392-121-188 and 392-121-206 (2)(a); or
  - (c) Teachers and other certificated staff employed full time or part time by the Washington school for the deaf or Washington school for the blind; or
  - (d) Beginning in the 2007-08 school year and thereafter, national board certified teachers who received the bonus as a teacher or other certificated instructional staff in Washington and become public school principals or vice-principals shall continue to receive the bonus for as long as they are principals or vice-principals and maintain the national board certification.
  - (3) In addition to bonuses provided by subsection (2) of this section, teachers and other certificated staff shall be eligible for additional bonuses if the employee is in an instructional assignment in challenging, high poverty schools, subject to the following conditions and limitations:
    - (a) For the 2007-08 school year, challenging, high poverty schools are schools where, for the prior year, the student headcount enrollment eligible for the federal free or reduced-

price lunch program is at least 70 percent, as determined by any of the following sources:

- (i) The October 2006 count by the child nutrition section of the office of superintendent of public instruction; or
- (ii) The October 2006 count by the core student records system of the office of superintendent of public instruction.
- (b) For the 2008-09 school year, challenging, high poverty schools are schools eligible by either:
  - (i) Subsection (3)(a) of this section; or
  - (ii) Schools where, for the prior year, the student headcount enrollment eligible for the federal free or reduced price lunch program was at least:
    - (A) 70 percent for elementary schools;
    - (B) 60 percent for middle schools; or
    - (C) 50 percent for high schools; as determined by any of the following sources:
      - (D) The October 2007 count by the child nutrition section of the office of superintendent of public instruction; or
      - (E) The October 2007 count by the core student records system of the office of superintendent of public instruction. For purposes of the national board challenging, high poverty schools bonus, a building shall be categorized based upon the highest grades served as follows:
        - (I) A building whose highest grade served is 6th grade or lower shall be considered an elementary school;
        - (II) A building whose highest grade served is either 7th, 8th, or 9th grade shall be considered a middle school; and
        - (III) A building whose highest grade served is either 10th, 11th, or 12th grade shall be considered a high school; provided, that, a building shall not be considered unless it serves greater than 20 students as of the October 2006 count, and greater than 30 students as of the October 2007 count, or is the largest building in the district serving its designated category.
      - (c) For the 2009-10 school year and thereafter, challenging, high poverty schools are schools where, for either of the two prior years, the student headcount enrollment eligible for the federal free or reduced price lunch program was at least:
        - (i) 70 percent for elementary schools;
        - (ii) 60 percent for middle schools; or
        - (iii) 50 percent for high schools; as determined by the October count of the core student records system of the office of superintendent of public instruction.
      - (d) Teachers and other certificated staff that meet the qualifications for additional bonuses under this subsection who are assigned for less than one full school year or less than full time for the school year shall receive the additional bonuses in a prorated manner, subject to the following conditions and limitations:
        - (i) The portion of the employee's assignment to challenging, high poverty schools shall be determined as of either October 1 of the current school year or the employee's employment contract date for the current school year.
        - (ii) If the employee's assignment to challenging, high poverty schools is less than 1.0 full-time equivalent, the proration shall use the methodology in WAC 392-121-212 and shall be rounded to three decimal places.
        - (e) Principals and vice-principals shall not be eligible for additional bonuses that are based on instructional assignments in challenging, high poverty schools.

**AMENDATORY SECTION** (Amending WSR 03-21-100, filed 10/17/03, effective 11/17/03)

**WAC 392-140-974 Salary bonus for teachers and other certificated staff who ((attain)) hold current certification by the national board—Administrative procedures.** (1) School districts that employ teachers and other certificated staff eligible for the salary bonus shall report those employees to the office of superintendent of public instruction by submitting ((Form SPI 1525)) for each ((individual)) employee the required data as determined by the superintendent of public instruction.

(2) Districts shall document each ((teacher's)) employee's eligibility by maintaining on file for audit a copy of the ((teacher's)) employee's national board certification notice and((, if the teacher is not shown on Report S 275,)) evidence of employment and duties assigned. For employees eligible for additional bonuses pursuant to WAC 392-140-973(3), districts shall also document the employee's instructional assignments in challenging, high poverty schools.

(3) ((Report forms)) Requests received by the superintendent of public instruction by the 15th of the month shall be paid in that month's apportionment and displayed on Report 1197, in revenue account 4158.

(4) For each candidate, the superintendent of public instruction shall send the district the amount of the salary bonus set in the operating appropriations act plus an amount for the district's (employer) portion of ((social security benefits)) mandatory fringe benefits. The amount of the annual bonus in WAC 392-140-973(2) shall be five thousand dollars in the 2007-08 school year. Thereafter, the annual bonus shall increase by inflation. The amount of the additional bonus in WAC 392-140-973(3) shall be five thousand dollars in the 2007-08 school year. Thereafter, the additional bonus shall not increase by inflation.

(5) The district shall pay the bonus to the employee in a lump sum amount on a supplemental contract pursuant to RCW 28A.400.200.

(6) The salary bonus is excluded from the definition of "earnable compensation" under RCW 41.32.010(10) teachers' retirement through the 2007-08 school year. Beginning in the 2008-09 school year and thereafter, the salary bonus is included in the definition of "earnable compensation."

Adopted under notice filed as WSR 08-14-008 on June 19, 2008.

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 1, Repealed 0.

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

Date Adopted: August 6, 2008.

Ralph Osgood  
Assistant Director

**AMENDATORY SECTION** (Amending WSR 06-06-069, filed 2/28/06, effective 4/1/06)

**WAC 308-125-010 Definitions.** (1) Words and terms used in these rules shall have the same meaning as each has in the Certified Real Estate Appraiser Act, (chapter 18.140 RCW) and the Uniform Standards of Professional Appraisal Practice (USPAP).

(2) "Appraisal foundation" means a private association of appraiser professional organizations. The appraisal foundation develops appraisal standards which the regulatory agencies must use as minimum standards for federally related transactions and it develops qualification criteria for appraisers.

(3) "Appraisal subcommittee" means a committee created by Title XI. It monitors all activities related to the implementation of Title XI.

(4) "Appraisal standards board" means a board established by the appraisal foundation for the purpose of developing, publishing, interpreting and amending the *Uniform Standards of Professional Appraisal Practice*.

(5) "The *Uniform Standards of Professional Appraisal Practice* (USPAP)" means the current edition of the publication in force of the appraisal standards board (ASB) of the appraisal foundation. USPAP is the applicable standard for all appraisal practice in the state of Washington regulated under the provisions of chapter 18.140 RCW.

(6) "Appraiser qualifications board" means a board of the appraisal foundation for the purpose of developing, publishing, interpreting and amending the real property appraiser qualification criteria.

(7) "Real property appraiser qualification criteria" means the minimum criteria establishing the minimum education, experience and examination requirements for real property appraisers to obtain a state certification as established by the appraiser qualifications board (AQB) of the appraisal foundation under the provisions of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of

## WSR 08-17-016

### PERMANENT RULES

### DEPARTMENT OF LICENSING

[Filed August 8, 2008, 3:37 p.m., effective September 8, 2008]

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

Purpose: To correct grammar, further define the requirement for appraiser trainee registration and add the requirement for supervisor appraisers to register with the department.

Citation of Existing Rules Affected by this Order: Amending WAC 308-125-010, 308-125-025, and 308-125-095.

Statutory Authority for Adoption: RCW 18.140.030 (1), (7), (8), and (15).

1989, and any additional qualifying criteria established by the director in accordance with chapter 18.140 RCW.

(8) "Classroom hour" means fifty minutes out of each sixty minute hour.

(9) "Full-time" means the equivalent twelve-month period in which an applicant works at least one thousand hours in real estate appraisal.

(10) "Required core curriculum" means a set of appraiser subject matter areas (known as "modules") that require a specified number of educational hours at each credential level as established by the appraiser qualifications board.

(11) "Module" means an appraisal subject matter area (and required hours of coverage) as identified in the required core curriculum.

(12) "Residential properties" means one to four single family residential units and lots where the highest and best use is for one to four family purposes.

(13) "Significant professional appraisal assistance" ((means)) shall include but not be limited to the work contributed or performed toward the completion of an appraisal report by either a trainee, state-licensed, or state-certified appraiser, while under the direct supervision of a certified residential appraiser or certified general appraiser as required by the department as qualifying appraisal experience for licensing. Significant professional appraisal assistance shall consist of identifying and analyzing the scope of work, collection of data, analyzing data to derive an opinion of value, ((and)) or writing the appraisal report in accordance with the *Uniform Standards of Professional Appraisal Practice*.

**AMENDATORY SECTION** (Amending WSR 06-06-069, filed 2/28/06, effective 4/1/06)

**WAC 308-125-025 Application process to register as a real estate appraiser trainee.** (1) Anyone who is not a licensed or certified appraiser or a registered appraiser trainee cannot provide assistance that includes analytical work and exercising discernment or discretion that leads to an appraisal conclusion.

(2) As a prerequisite to registration as a registered appraiser trainee, the applicant shall present evidence satisfactory to the director of successful completion of the appraiser qualifications board module of qualifying core curriculum of approved qualifying education modules:

(a) Basic appraisal principles, thirty hours.

(b) Basic appraisal procedures, thirty hours.

(c) The National USPAP course or equivalent fifteen hours.

((2))) (3) Application for registration as a trainee from persons who have had either a real estate license or real estate appraiser license suspended or revoked shall not be accepted by the department until after the time period of the suspension or revocation has expired.

((3))) (4) An applicant for registration as a trainee shall present a completed registration form together with the appropriate fee and copies of core curriculum course completion certificates to the director prior to issuance of the approved trainee registration certificate.

((4))) (5) Registration as a trainee may be denied for unprofessional conduct as provided in RCW 18.235.130.

**AMENDATORY SECTION** (Amending WSR 06-06-069, filed 2/28/06, effective 4/1/06)

**WAC 308-125-095 Responsibilities of the appraiser supervisor.** (1) A certified real estate appraiser licensed by the state of Washington may supervise trainees in accordance with the following provisions:

(a) Not more than three real estate appraiser trainees may be supervised in accordance with the appraiser qualifications board standards unless written authorization by the department is granted to exceed that number of trainees at any one time.

(b) Supervision of trainees in the process of appraising real property shall occur within the boundaries of the state of Washington and comply with jurisdictional and established agreements with other states. If a trainee is supervised by a certified appraiser who is licensed in both the state of Washington and with another state or has a temporary license in another state; and the trainee is registered as a trainee in that other state by either temporary permit, license, or registration, then the appraisal assignments shall qualify as work experience on the experience log.

(c) Authorization to exceed supervision of three trainees may be granted by the director upon approval of a written request and under the provisions of subsection (2) of this section.

(d) A registered real estate appraiser trainee may assist in the completion of an appraisal report, including determination of an opinion of value and may sign the appraisal report, provided that he/she is actively and personally supervised by a state-certified real estate appraiser, and provided that the appraisal report is reviewed and signed by the state-certified real estate appraiser; and provided the state-certified appraiser accepts total responsibility for the appraisal report.

(e) The certified appraiser shall:

(i) Personally inspect with the trainee, at a minimum, the interior of twenty-five subject properties.

(ii) Personally review and verify each appraisal report prepared by the trainee as entered on the trainee experience log as qualifying work experience prior to the log being submitted to the department by the supervised trainee.

(iii) Personally review and verify each appraisal report prepared by a state licensed or certified residential appraiser as entered on the qualifying work experience log prior to the log being submitted to the department by the licensee.

(iv) Comply with all USPAP requirements.

(v) Maintain a separate "properties inspected with trainee" log for each supervised trainee. This log must be made available to the department upon request and is to be submitted with trainee's application for license or certification.

((vi) Register with the department as a supervisory appraiser and include the names of the registered real estate appraisers being supervised. Registration must be five business days prior to the start of supervision. The supervisory appraiser shall notify the department when they are no longer a supervisory appraiser of a trainee, with such notice including the name, address, and registration number of the registered trainee.)

(2) Authorization may be granted by the director to a certified appraiser to exceed the number of trainees allowed to be supervised providing:

(a) The certified appraiser has more than five years certified experience.

(b) The certified appraiser shall make a written application to the department requesting to supervise not more than three trainees with less than one year experience; and three trainees with more than one year experience; and five trainees with greater than two years experience. The total number of supervised trainees shall not exceed eight for all experience levels at any one time.

(c) The certified appraiser shall prepare and maintain trainee progress reports and make them available to the department until such time as the trainee becomes certified or licensed or after two years has lapsed since supervising the trainee.

(d) The certified appraiser shall provide to the department a mentoring plan for consideration prior to the department authorizing supervision of more than three trainees.

Date Adopted: August 11, 2008.

John P. Daly

Acting Deputy Director

**AMENDATORY SECTION** (Amending WSR 05-07-150, filed 3/23/05, effective 4/23/05)

**WAC 16-218-025 What does the department charge for chemical analysis regarding brewing values and additional constituents in raw hops, hop extract, hop pellets and hop powder?** (1) Before official sampling of baled hops takes place, each and every bale in a lot of hops must be readily accessible so that:

(a) Each bale can be properly stenciled (not done for brewing value only sampling); and

(b) Samples can be drawn from the bales selected by the inspector.

(2) Official samples drawn from baled hops must be brought back to the laboratory by the inspector for chemical analysis, simultaneous with grading analysis.

(3) Brewing value samples are obtained from a representative composite of the official samples drawn for grade analysis.

(4) Brewing value samples not sampled simultaneously for grade analysis will be charged at the same fee per bale.

(5) When department personnel officially sample hops, a brewing value certificate will be issued when the chemical analysis is done.

(6)(a) Submitted brewing value samples provided by a grower or dealer for chemical analysis must be representative of the lot(s).

(b) Submitted samples are delivered to the laboratory.

(7) Submitted brewing value certificates will be issued for submitted samples when the chemical analysis is done.

(8) Department fees for the chemical analyses of officially sampled raw hops are:

Type of Analyses	Fee	Minimum Fee
(a) ASBC spectrophotometric with moisture	\$0.35 per bale	\$30.00 per sample
(b) ASBC spectrophotometric/conductometric or EBC conductometric without moisture	\$0.30 per bale	\$30.00 per sample
(c) Mebak, Zurich, Verzele, Ganzlin, or conductometric	\$0.60 per bale	\$60.00 per sample

(9) Department fees for chemical analyses of submitted raw hops, hop extract, hop pellets or hop powders are:

Type of Analyses	Fee
(a) ASBC spectrophotometric	\$30.00
(b) ASBC conductometric	\$30.00
(c) EBC conductometric	\$30.00

Type of Analyses	Fee
(d) EBC conductometric (Wollmer, Zurich, Mebak, Verzele, Ganzlin, or Resins (hard or soft))	\$60.00
(e) ((Spectrophotometric of tannins, Wollmer, etc.	\$55.00
(f) Methylene chloride	\$80.00
(g) Tannin	\$55.00
(h) Ash	\$20.00
(i) SO <sub>2</sub>	\$25.00
((j)) H <sub>2</sub> O	\$10.00
((k)) HPLC	\$100.00
((l)) (f) Total oil	\$25.00
((m)) Oil constituents analysis	\$145.00
((n)) Wort test, particle size	\$10.00
(g)	

(10)(a) The department will assess hourly charges for analytical chemistry work if no other fee has been established.

(b) Hourly charges are set by written agreement and shall be based on the costs incurred to conduct the analysis, such as:

- Labor
- Laboratory equipment
- Chemicals and materials
- Administration and overhead.

**WSR 08-17-026**  
**PERMANENT RULES**  
**DEPARTMENT OF HEALTH**  
 (Board of Physical Therapy)

[Filed August 13, 2008, 8:43 a.m., effective August 13, 2008]

Effective Date of Rule: August 13, 2008.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Action is required by chapter 98, Laws of 2007 (SSB 5292).

Purpose: Amending chapter 246-915 WAC regarding the licensing and supervision of physical therapist assistants.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-915-160.

Statutory Authority for Adoption: RCW 18.74.023.

Adopted under notice filed as WSR 08-07-100 on March 19, 2008.

Changes Other than Editing from Proposed to Adopted Version: WAC 246-915-010(4) was removed because the language was not consistent with the statute. Trained supportive personnel was not described in the law. The board decided not to amend the mandatory reporting rules. The proposed amendment would have added physical therapist assistants to the board's mandatory reporting rules. Similar requirements are already provided in the secretary's mandatory reporting rules. This decision eliminates duplication of

reporting requirements and ensures clarity for the public and stakeholders regarding reporting requirements regarding physical therapist assistants. Moving forward with this final rule language is in the interest of providing regulations to begin processing physical therapist assistants' licensure applications without further delay.

A final cost-benefit analysis is available by contacting Kris Waideley, Board of Physical Therapy, P.O. Box 47867, Olympia, WA 98504-7867, phone (360) 236-4847, fax (360) 664-9077, e-mail kris.waideley@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 1, Amended 23, 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 1, Amended 23, Repealed 1.

Date Adopted: April 22, 2008.

Charles Martin  
 Physical Therapy Board Chair

**Chapter 246-915 WAC**

**PHYSICAL THERAPISTS**  
**AND PHYSICAL THERAPIST ASSISTANTS**

**AMENDATORY SECTION** (Amending WSR 04-13-052, filed 6/11/04, effective 7/12/04)

**WAC 246-915-010 Definitions.** For the purposes of this chapter and administering chapter 18.74 RCW, the following words and phrases have the following meanings:

(1) The "performance of tests of neuromuscular function" includes the performance of electroneuromyographic examinations.

(2) "Consultation" means a communication regarding a patient's evaluation and proposed treatment plan with an authorized health care practitioner.

(3) "Supervisor" means the licensed physical therapist.

(4) "Trained supportive personnel" ((as described in RCW 18.74.010(3))) means:

(a) "Physical therapist assistant." An individual who ((has successfully completed a board approved physical therapist assistant program)) meets all the requirements of this chapter and is licensed as a physical therapist assistant and who performs physical therapy procedures and related tasks that have been selected and delegated only by the supervising physical therapist. However, a physical therapist may not delegate sharp debridement to a physical therapist assistant; or

(b) "Physical therapy aide." An individual who is involved in direct physical therapy patient care who does not meet the definition of a physical therapist or physical therapist assistant and receives ongoing on-the-job training.

(5) "Direct supervision" means the supervisor is on the premises, is quickly and easily available and the patient has been examined by the physical therapist at such time as acceptable physical therapy practice requires, consistent with the delegated health care task.

(6) "Indirect supervision" means the supervisor is not on the premises, but has given either written or oral instructions for treatment of the patient and the patient has been examined by the physical therapist at such time as acceptable health care practice requires, and consistent with the particular delegated health care task.

(7) "Acquired immunodeficiency syndrome" or "AIDS" means the clinical syndrome of HIV-related illness as defined by the board of health by rule.

(8) "Office on AIDS" means the section within the department of social and health services or any successor department with jurisdiction over public health matters as defined in chapter 70.24 RCW.

(9) "Spinal manipulation" or "manipulative mobilization" means movement beyond the normal physiological range of motion.

(10) "Patient reevaluation" means the licensed physical therapist must physically observe and interview the patient.

AMENDATORY SECTION (Amending Order 328B, filed 2/1/93, effective 3/4/93)

**WAC 246-915-020 Physical therapist and physical therapist assistant examinations((—When held)).** (1) ((Examinations of applicants for licensure as physical therapists shall be held at least twice a year at the time and location prescribed by the board.

((2))) Physical therapy students in their last year may apply for licensure by examination prior to graduation under the following circumstances:

(a) Receipt of a letter from an official, of their physical therapy school, verifying the probability of graduation prior to the date of the examination for which they are applying.

(b) Results of the examination will be withheld until a diploma, official transcript or certification letter from the registrar's office certifying completion of all requirements for degree or certificate in physical therapy is received by the department.

((3))) (2) Applicants who do not pass the examination after two attempts shall demonstrate evidence satisfactory to the board of having successfully completed clinical training and/or ((coursework)) course work as determined by the board before being permitted two additional attempts.

AMENDATORY SECTION (Amending WSR 96-13-008, filed 6/6/96, effective 6/7/96)

**WAC 246-915-030 Examination.** (1) The examination acceptable to and approved for use under the provisions of RCW 18.74.035 shall be the examination for physical therapists and physical therapist assistants as reviewed and

approved by the board of physical therapy. A passing score is considered to be one of the following:

(a) Beginning November 8, 1995, the criterion referenced passing point recommended by the Federation of State Boards of Physical Therapy for the examination approved by the board. The passing point shall be set to equal a scaled score of 600 based on a scale ranging from 200 to 800.

(b) Beginning February 28, 1991, through July 12, 1995, not less than sixty-eight percent of the raw score for the examination approved by the board; or

(c) Prior to February 28, 1991, not less than sixty percent raw score on each of the three examination parts for the examination approved by the board.

(2) If a candidate fails to receive a passing score on the examination, he or she will be required to retake the examination.

(3) Where necessary, applicant's score will be rounded off to the nearest whole number.

AMENDATORY SECTION (Amending Order 294B, filed 8/4/92, effective 9/4/92)

**WAC 246-915-075 Temporary permits—Issuance and duration.** (1) Unless there is a basis for denial of a physical ((therapy)) therapist or physical therapist assistant license, an applicant who is licensed in another jurisdiction shall be issued a temporary practice permit after receipt of the following documentation by the department of health:

(a) Submission of a completed physical ((therapy)) therapist or physical therapist assistant license application on which the applicant indicates that he or she wishes to receive a temporary practice permit;

(b) Payment of the application fee ((and temporary practice permit fee));

(c) Submission of all required supporting documentation as described in the application forms and instructions provided by the department of health, excepting the seven hour AIDS education requirement as described in WAC 246-915-110.

(2) Applicants wishing to receive a temporary practice permit shall be granted an additional ninety days to complete the AIDS education requirement; however, issuance of a physical ((therapy)) therapist or physical therapist assistant license is contingent upon evidence of having met this requirement.

(3) The temporary permit shall expire upon the issuance of a license by the board; initiation of an investigation by the board of the applicant; or ninety days, whichever occurs first.

(4) An applicant who receives a temporary practice permit and who does not complete the application process may not receive additional temporary practice permits even upon submission of a new application in the future.

AMENDATORY SECTION (Amending WSR 04-13-052, filed 6/11/04, effective 7/12/04)

**WAC 246-915-078 Interim permits.** An applicant who has not previously taken the physical therapy examination or an applicant who has not previously held an interim or temporary permit in Washington or another state, may be eligible

for an interim permit under RCW 18.74.075 upon submission of the following:

- (1) Payment of the application fee;
- (2) Evidence of having obtained a physical therapy degree from a board approved school;
- (3) Completed a physical ((therapy)) therapist or physical therapist assistant license application on which the applicant:
  - (a) Requests to receive an interim permit;
  - (b) Provides the name, location and telephone number of his or her place of employment;
  - (c) Provides the name and license number of his or her licensed supervising physical therapist; and
  - (d) Provides written confirmation from the licensed supervising physical therapist attesting that he or she will:
    - (i) Ensure that a licensed physical therapist will remain on the premises at all times to provide "graduate supervision" as specified in RCW 18.74.075;
    - (ii) Report to the board any change in supervision or any change in location where services are provided;
    - (iii) Ensure that the holder of the interim permit wears identification showing his or her clinical title and/or role in the facility as a graduate physical therapist; and
    - (iv) Ensure that the holder of the interim permit ceases practice immediately upon notification of examination failure; or
    - (v) Ensure that the holder of the interim permit obtains his or her physical ((therapy)) therapist or physical therapist assistant license immediately upon notification of having passed the examination.

**AMENDATORY SECTION** (Amending WSR 04-08-101, filed 4/6/04, effective 5/7/04)

**WAC 246-915-085 Continuing competency.** Licensed physical therapists and physical therapist assistants must provide evidence of continuing competency in the form of continuing education and employment related to physical therapy every two years.

(1) Education - Licensed physical therapists and physical therapist assistants must complete 40 hours of continuing education every two years as required in chapter 246-12 WAC, Part 7.

(a) Continuing education specifically relating to the practice of physical therapy;

(b) Participation in a course with specific goals and objectives relating to the practice of physical therapy;

(c) Audio or video recordings or other multimedia devices, and/or book/article review. A maximum of ten hours may be used for books/articles reviewed;

(d) Correspondence course work completed.

(2) In addition to the requirements in subsection (1) of this section, 200 hours involving the application of physical therapy knowledge and skills, which may be obtained as follows:

(a) In the clinical practice of physical therapy; or

(b) In nonclinical activities that involve the direct application of physical therapy skills and knowledge, examples of which include, but are not limited to:

(i) Active service on boards or in physical therapy school or education program accrediting bodies;

(ii) Physical therapy teaching or presentations on:

(A) Patient/client management, prevention and wellness;

(B) Physical therapy ethics and standards of practice;

(C) Professional advocacy/involved;

(iii) Developing course work in physical therapy schools or education programs or physical therapy continuing education courses;

(iv) Physical therapy research as a principal or associate researcher; and

(v) Physical therapy consulting.

(3) Licensees shall maintain records of all activities relating to continuing education and professional experience for a period of four years. Acceptable documentation shall mean:

(a) Continuing education. Certificates of completion, course sponsors, goals and objectives of the course, credentials of the presenter as a recognized authority on the subject presented, dates of attendance and total hours, for all continuing education being reported.

(b) Audio or video recordings or other multimedia devices, and/or book/article review. A two-page synopsis of each item reviewed must be written by the licensee.

(i) For audio or video recordings or other multimedia devices, a two-page double-spaced synopsis for every one to four hours of running time must be written by the licensee. Time spent writing a synopsis is not reportable.

(ii) For book/article review, a two-page double-spaced synopsis on each subject reviewed must be written by the licensee. Time spent writing a synopsis is not reportable.

(c) Correspondence course work completed. Course description and/or syllabus and copies of the completed and scored examination must be kept on file by the licensee.

(d) Physical therapy employment. Certified copies of employment records or proof acceptable to the board of physical therapy employment for the hours being reported.

**AMENDATORY SECTION** (Amending WSR 07-07-066, filed 3/15/07, effective 4/15/07)

**WAC 246-915-120 Physical therapist applicants from unapproved schools.** (1) Applicants who have not graduated from a physical therapy program approved by the board must:

(a) Have a bachelor's degree in physical therapy with all credits earned at an institution of higher learning that confers at least a bachelor's degree in physical therapy which is approved by the country's Ministry of Education/Health, or governmental entity;

(b) Have a valid, unencumbered license or authorization to practice physical therapy in the country in which the physical therapy education was obtained;

(c) Have graduated from a program of physical therapy education with requirements substantially equal to those required of graduates of board-approved programs;

(d) Submit an application for review by the board;

(e) Submit official transcripts from the physical therapy program showing degree date; and

(f) Submit transcripts, fees, and other documentation to a credentialing service approved by the board and request the evaluation report be sent directly to the board.

(2) In addition to the other requirements of this rule, the applicant must demonstrate a working knowledge of English by obtaining:

(a) Scores of at least:

- (i) 4.5 on the test of written English (TWE);
- (ii) 50 on the test of spoken English (TSE); and
- (iii) 220 on the computer-based test of English as a foreign language (TOEFL) or 560 on the paper-based TOEFL; or

(b) Scores on the test of English as a foreign language (TOEFL) internet-based test (IBT) of at least:

- (i) 24 on the writing section;
- (ii) 26 on the speaking section;
- (iii) 21 on the reading section;
- (iv) 18 on the listening comprehension section; and
- (v) 89 on the overall examination.

(3) The board may request additional supporting documentation as necessary.

(4) The degree's total credits must be at least one hundred twenty-three. A semester credit is equal to fifteen hours of classroom instruction per semester. For courses with a laboratory component, a semester credit is also equal to thirty hours of laboratory instruction per semester. (A semester credit equals 0.67 quarter credits.)

The applicant may meet the objective of one hundred twenty-three semester credits requirement by using additional elective credits in either general or professional education beyond the minimal requirements.

(5) Substantially equal physical therapy education as used in subsection (1)(c) of this section, shall include a total of one hundred twenty-three semester credits or equivalent credits of college education including:

General education - at least fifty-four semester credits:

(a) Humanities - nine semester credits which may include English, speech, foreign language, literature, music/art, philosophy and other humanities courses;

(b) Social sciences - ten semester credits which may include history, social sciences, philosophy, civilization, psychology, sociology, economics and other social science courses;

(c) Biological, natural, and physical science - eight semester credits which may include chemistry, mathematics, physics, biology, zoology, anatomy, kinesiology, physiology and other biological and natural science courses. In addition, the applicant must have one semester (five semester credits) of chemistry with laboratory and one semester (four semester credits) of physics with laboratory.

(6) Professional education. An applicant who has graduated from an unapproved school must complete at least sixty-nine semester credits in the following topics:

(a) Basic health sciences. At least one semester (at least four semester credits) in each of the following topics:

- (i) Human anatomy (specific to physical therapy);
- (ii) Human physiology (specific to physical therapy);
- (iii) Neurological science;
- (iv) Kinesiology or functional anatomy;
- (v) Abnormal or developmental psychology; and

(vi) Pathology.

(b) Clinical sciences. The essential element of physical therapy education is teaching the student to assess and treat appropriately across the spectrum of age. Therefore, any educational course work should contain all of the following:

(i) Clinical medicine pertinent to physical therapy. Including, but not be limited to:

- (A) Neurology;
- (B) Orthopedics;
- (C) Pediatrics;
- (D) Geriatrics.

(ii) Physical therapy course work including, but not limited to:

- (A) Physical agents;
- (B) Musculoskeletal assessment and treatment;
- (C) Neuromuscular assessment and treatment;
- (D) Cardiopulmonary assessment and treatment;
- (E) Wound debridement/wound care;
- (F) Pharmacology.

(c) Clinical education. Clinical education must include demonstrated application of physical therapy theories, techniques, and procedures, as supervised by a physical therapist. The applicant must have at least two clinical affiliations of no less than eight hundred hours total.

(d) Related professional course work. The applicant must complete three semester courses in the following topics:

- (i) Professional ethics;
- (ii) Administration;
- (iii) Community health;
- (iv) Research;
- (v) Educational techniques; and
- (vi) Medical terminology.

(7) Applicants must have received a grade of "C" or higher in all professional education course work.

(8) The applicant may apply for the College-Level Education Program (CLEP) and their scores may be applied toward college credit. The board will consider the conversion of CLEP scores to college credits provided by a board-approved credentialing agency.

(9) The board may allow applicants who have not graduated from a physical therapy program approved by the board to correct deficiencies by completing board-approved course work. To obtain course work preapproval, the applicant must submit a written request along with the course description/syllabus for the proposed course.

#### AMENDATORY SECTION (Amending WSR 05-06-023, filed 2/22/05, effective 3/25/05)

#### **WAC 246-915-180 Professional conduct principles.**

(1) The patient's lawful consent is to be obtained before any information related to the patient is released, except to the consulting or referring authorized health care practitioner and/or authorized governmental agency(s).

(a) Physical therapists are responsible for answering legitimate inquiries regarding a patient's physical dysfunction and treatment progress, and

(b) Information is to be provided by physical therapists and physical therapist assistants to insurance companies for billing purposes only.

(2) Physical therapists and physical therapist assistants are not to compensate or to give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of, or in return for, professional publicity in a news item. A paid advertisement is to be identified as such unless it is apparent from the context it is a paid advertisement.

(3) It is the ((~~licensee's~~)) physical therapist's and physical therapist assistant's responsibility to report any unprofessional, incompetent or illegal acts that are in violation of chapter 18.74 RCW or any rules established by the board.

(4) It is the ((~~licensee's~~)) physical therapist's and physical therapist assistant's responsibility to recognize the boundaries of his or her own professional competencies and that he or she uses only those in which he or she can prove training and experience.

(5) Physical therapists and physical therapist assistants shall recognize the need for continuing education and shall be open to new procedures and changes.

(6) It is the ((~~licensee's~~)) physical therapist's and physical therapist assistant's responsibility to represent his or her academic credentials in a way that is not misleading to the public.

(7) It is the responsibility of the physical therapist and physical therapist assistant to refrain from undertaking any activity in which his or her personal problems are likely to lead to inadequate performance or harm to a client and/or colleague.

(8) A physical therapist and physical therapist assistant shall not use or allow to be used any form of public communication or advertising connected with his or her profession or in his or her professional capacity as a physical therapist which:

- (a) Is false, fraudulent, deceptive, or misleading;
- (b) ((~~Uses testimonials;~~;
- (c))) Guarantees any treatment or result;
- ((d))) (c) Makes claims of professional superiority.

(9) Physical therapists and physical therapist assistants are to recognize that each individual is different from all other individuals and to be tolerant of and responsive to those differences.

(10) Physical therapists shall not receive reimbursement for evaluating or treating him or herself.

(11) Physical therapists shall only delegate physical therapy tasks to trained supportive personnel as defined in WAC 246-915-010 (4)(a) and (b).

**AMENDATORY SECTION** (Amending WSR 04-08-102, filed 4/6/04, effective 5/7/04)

**WAC 246-915-182 Unprofessional conduct—Sexual misconduct.** (1) The physical therapist and physical therapist assistant shall never engage in sexual contact or sexual activity with current clients.

(2) Sexual contact or sexual activity is prohibited with a former client for two years after cessation or termination of professional services.

(3) The physical therapist and physical therapist assistant shall never engage in sexual contact or sexual activity with former clients if such contact or activity involves the abuse of

the physical therapist-client relationship. Factors which the board may consider in evaluating if the physical therapist or physical therapist assistant-client relationship has been abusive includes, but is not limited to:

(a) The amount of time that has passed since therapy terminated;

(b) The nature and duration of the therapy;

(c) The circumstances of cessation or termination;

(d) The former client's personal history;

(e) The former client's current mental status;

(f) The likelihood of adverse impact on the former client and others; and

(g) Any statements or actions made by the physical therapist or physical therapist assistant during the course of therapy suggesting or inviting the possibility of a post termination sexual or romantic relationship with the former client.

(4) The physical therapist and physical therapist assistant shall never engage in sexually harassing or demeaning behavior with current or former clients.

(5) These rules do not prohibit:

(a) The provision of physical therapy services on an urgent, unforeseen basis where circumstances will not allow a physical therapist or physical therapist assistant to obtain reassignment or make an appropriate referral;

(b) The provision of physical therapy services to a spouse, or family member, or any other person who is in a preexisting, established relationship with the physical therapist or physical therapist assistant where no evidence of abuse of the physical therapist or physical therapist assistant-client relationship exists.

**AMENDATORY SECTION** (Amending Order 259B, filed 3/24/92, effective 4/24/92)

**WAC 246-915-185 Standards for appropriateness of physical therapy care.** (1) Appropriate, skilled physical therapy treatment is treatment which is reasonable in terms of accepted physical therapy practice, and necessary to recovery of function by the patient. The use of a nontraditional treatment by itself shall not constitute unprofessional conduct, provided that it does not result in injury to a patient or create an unreasonable risk that a patient may be harmed.

(2) Appropriate physical therapy services must be of such a level of complexity and sophistication, or the condition of the patient must be such, that the services required can be safely and effectively performed only by a ((~~qualified~~)) physical therapist((~~;~~)) or physical therapist assistant under supervision of a ((~~qualified~~)) physical therapist.

**AMENDATORY SECTION** (Amending Order 103B, filed 12/21/90, effective 1/31/91)

**WAC 246-915-190 Division of fees—Rebating—Financial interest—Endorsement.** (1) Physical therapists and physical therapist assistants are not to directly or indirectly request, receive or participate in the dividing, transferring, assigning, rebating or refunding of an unearned fee, or to profit by means of a credit or other valuable consideration such as an unearned commission, discount, or gratuity in connection with the furnishing of physical therapy services.

(2) Physical therapists and physical therapist assistants who practice physical therapy as partners or in other business entities may pool fees and moneys received, either by the partnership or other entity, for the professional services furnished by any physical therapist or physical therapist assistant member or employee of the partnership or entity. Physical therapists and physical therapist assistants may divide or apportion the fees and moneys received by them, in the partnership or other business entity, in accordance with the partnership or other agreement.

(3) There shall be no rebate to any health care practitioner who refers or authorizes physical therapy treatment or evaluation as prohibited by chapter 19.68 RCW.

(4) Physical therapists and physical therapist assistants are not to influence patients to rent or purchase any items which are not necessary for the patient's care.

**AMENDATORY SECTION** (Amending Order 178B, filed 6/21/91, effective 7/22/91)

**WAC 246-915-300 Philosophy governing voluntary substance abuse monitoring programs.** The board recognizes the need to establish a means of proactively providing early recognition and treatment options for physical therapists and physical therapist assistants whose competency may be impaired due to the abuse of drugs or alcohol. The board intends that such physical therapists and physical therapist assistants be treated and their treatment monitored so that they can return to or continue to practice their profession in a way which safeguards the public. To accomplish this the board shall approve voluntary substance abuse monitoring programs and shall refer physical therapists and physical therapist assistants impaired by substance abuse to approved programs as an alternative to instituting disciplinary proceedings as defined in RCW 18.130.160.

**AMENDATORY SECTION** (Amending Order 178B, filed 6/21/91, effective 7/22/91)

**WAC 246-915-310 Terms used in WAC 246-915-300 through 246-915-330.** (1) "Approved substance abuse monitoring program" or "approved monitoring program" is a program the board has determined meets the requirements of the law and the criteria established by the board in WAC 246-915-320 which enters into a contract with physical therapists or physical therapist assistants who have substance abuse problems regarding the required components of the physical therapist's or physical therapist assistant's recovery activity and oversees the physical therapist's or physical therapist assistant's compliance with these requirements. Substance abuse monitoring programs do not provide evaluation or treatment to participating physical therapists or physical therapist assistants.

(2) "Contract" is a comprehensive, structured agreement between the recovering physical therapist or physical therapist assistant and the approved monitoring program stipulating the physical therapist's or physical therapist assistant's consent to comply with the monitoring program and its required components of the physical therapist's or physical therapist assistant's recovery activity.

(3) "Approved treatment facility" is a facility approved by the bureau of alcohol and substance abuse, department of social and health services according to RCW 70.96A.020(2) or 69.54.030 to provide intensive alcoholism or drug treatment if located within Washington state. Drug and alcohol treatment programs located out-of-state must be equivalent to the standards required for approval under RCW 70.96A.020 (2) or 69.54.030.

(4) "Substance abuse" means the impairment, as determined by the board, of a physical therapist's or physical therapist assistant's professional services by an addiction to, a dependency on, or the use of alcohol, legend drugs, or controlled substances.

(5) "Aftercare" is that period of time after intensive treatment that provides the physical therapist or physical therapist assistant and the physical therapist's or physical therapist assistant's family with group or individual counseling sessions, discussions with other families, ongoing contact and participation in self-help groups and ongoing continued support of treatment program staff.

(6) "Support group" is a group of health care professionals meeting regularly to support the recovery of its members. The group provides a confidential setting with a trained and experienced health care professional facilitator in which physical therapists or physical therapist assistants may safely discuss drug diversion, licensure issues, return to work and other professional issues related to recovery.

(7) "Twelve steps groups" are groups such as alcoholics anonymous, narcotics anonymous, and related organizations based on a philosophy of anonymity, belief in a power outside of oneself, a peer group association, and self-help.

(8) "Random drug screens" are laboratory tests to detect the presence of drugs of abuse in body fluids which are performed at irregular intervals not known in advance by the person being tested.

(9) "Health care professional" is an individual who is licensed, certified or registered in Washington to engage in the delivery of health care to patients.

**AMENDATORY SECTION** (Amending Order 178B, filed 6/21/91, effective 7/22/91)

**WAC 246-915-320 Approval of substance abuse monitoring programs.** The board will approve the monitoring program(s) which will participate in the board's substance abuse monitoring program. A monitoring program approved by the board may be contracted with an entity outside the department but within the state, out-of-state, or a separate structure within the department.

(1) The approved monitoring program will not provide evaluation or treatment to the participating physical therapists or physical therapist assistants.

(2) The approved monitoring program staff must have the qualifications and knowledge of both substance abuse and the practice of physical therapy as defined in this chapter to be able to evaluate:

(a) Clinical laboratories;

(b) Laboratory results;

(c) Providers of substance abuse treatment, both individuals and facilities;

(d) Support groups;  
 (e) The physical therapy work environment; and  
 (f) The ability of the physical therapist or physical therapist assistant to practice with reasonable skill and safety.

(3) The approved monitoring program will enter into a contract with the physical therapist or physical therapist assistant and the board to oversee the physical therapist's or physical therapist assistant's compliance with the requirements of the program.

(4) The approved monitoring program may make exceptions to individual components of the contract on an individual basis.

(5) The approved monitoring program staff will determine, on an individual basis, whether a physical therapist or physical therapist assistant will be prohibited from engaging in the practice of physical therapy for a period of time and restrictions, if any, on the physical therapist's or physical therapist assistant's access to controlled substances in the work place.

(6) The approved monitoring program shall maintain records on participants.

(7) The approved monitoring program will be responsible for providing feedback to the physical therapist or physical therapist assistant as to whether treatment progress is acceptable.

(8) The approved monitoring program shall report to the board any physical therapist or physical therapist assistant who fails to comply with the requirement of the monitoring program.

(9) The approved monitoring program shall receive from the board guidelines on treatment, monitoring, and limitations on the practice of physical therapy for those participating in the program.

#### AMENDATORY SECTION (Amending Order 178B, filed 6/21/91, effective 7/22/91)

**WAC 246-915-330 Participation in approved substance abuse monitoring program.** (1) In lieu of disciplinary action, the physical therapist or physical therapist assistant may accept board referral into the approved substance abuse monitoring program.

(a) The physical therapist or physical therapist assistant shall undergo a complete physical and psychosocial evaluation before entering the approved monitoring program. This evaluation will be performed by health care professional(s) with expertise in chemical dependency. The person(s) performing the evaluation shall not also be the provider of the recommended treatment.

(b) The physical therapist or physical therapist assistant shall enter into a contract with the board and the approved substance abuse monitoring program to comply with the requirements of the program which shall include, but not be limited to:

(i) The physical therapist or physical therapist assistant will undergo intensive substance abuse treatment in an approved treatment facility.

(ii) The physical therapist or physical therapist assistant will agree to remain free of all mind-altering substances including alcohol except for medications prescribed by an

authorized prescriber, as defined in RCW 69.41.030 and 69.50.101.

(iii) The physical therapist or physical therapist assistant must complete the prescribed aftercare program of the intensive treatment facility, which may include individual and/or group psychotherapy.

(iv) The physical therapist or physical therapist assistant must cause the treatment counselor(s) to provide reports to the approved monitoring program at specified intervals. Reports shall include treatment, prognosis and goals.

(v) The physical therapist or physical therapist assistant will submit to random drug screening as specified by the approved monitoring program.

(vi) The physical therapist or physical therapist assistant will attend support groups facilitated by a health care professional and/or twelve step group meetings as specified by the contract.

(vii) The physical therapist or physical therapist assistant will comply with specified employment conditions and restrictions as defined by the contract.

(viii) The physical therapist or physical therapist assistant shall sign a waiver allowing the approved monitoring program to release information to the board if the physical therapist or physical therapist assistant does not comply with the requirements of this contract.

(c) The physical therapist or physical therapist assistant is responsible for paying the costs of the physical and psychosocial evaluation, substance abuse treatment, and random drug screens.

(d) The physical therapist or physical therapist assistant may be subject to disciplinary action under RCW 18.130.160 if the physical therapist or physical therapist assistant does not consent to be referred to the approved monitoring program, does not comply with specified employment restrictions, or does not successfully complete the program.

(2) A physical therapist or physical therapist assistant who is not being investigated by the board or subject to current disciplinary action or currently being monitored by the board for substance abuse may voluntarily participate in the approved substance abuse monitoring program without being referred by the board. Such voluntary participants shall not be subject to disciplinary action under RCW 18.130.160 for their substance abuse, and shall not have their participation made known to the board if they meet the requirements of the approved monitoring program:

(a) The physical therapist or physical therapist assistant shall undergo a complete physical and psychosocial evaluation before entering the approved monitoring program. This evaluation will be performed by health care professional(s) with expertise in chemical dependency. The person(s) performing the evaluation shall not also be the provider of the recommended treatment.

(b) The physical therapist or physical therapist assistant shall enter into a contract with the approved substance abuse monitoring program to comply with the requirements of the program which shall include, but not be limited to:

(i) The physical therapist or physical therapist assistant will undergo intensive substance abuse treatment in an approved treatment facility.

(ii) The physical therapist or physical therapist assistant will agree to remain free of all mind-altering substances including alcohol except for medications prescribed by an authorized prescriber, as defined in RCW 69.41.030 and 69.50.101.

(iii) The physical therapist or physical therapist assistant must complete the prescribed aftercare program of the intensive treatment facility, which may include individual and/or group psychotherapy.

(iv) The physical therapist or physical therapist assistant must cause the treatment counselor(s) to provide reports to the approved monitoring program at specified intervals. Reports shall include treatment, prognosis and goals.

(v) The physical therapist or physical therapist assistant will submit to random drug screening as specified by the approved monitoring program.

(vi) The physical therapist or physical therapist assistant will attend support groups facilitated by a health care professional and/or twelve step group meetings as specified by the contract.

(vii) The physical therapist or physical therapist assistant will comply with employment conditions and restrictions as defined by the contract.

(viii) The physical therapist or physical therapist assistant shall sign a waiver allowing the approved monitoring program to release information to the board if the physical therapist or physical therapist assistant does not comply with the requirements of this contract.

(c) The physical therapist or physical therapist assistant is responsible for paying the costs of the physical and psychosocial evaluation, substance abuse treatment, and random drug screens.

(3) The treatment and pretreatment records of license holders referred to or voluntarily participating in approved monitoring programs shall be confidential, shall be exempt from RCW 42.17.250 through 42.17.450 and shall not be subject to discovery by subpoena or admissible as evidence except for monitoring records reported to the disciplinary authority for cause as defined in subsections (1) and (2) of this section. Records held by the board under this section shall be exempt from RCW 42.17.250 through 42.17.450 and shall not be subject to discovery by subpoena except by the license holder.

#### AMENDATORY SECTION (Amending WSR 05-09-003, filed 4/7/05, effective 5/8/05)

**WAC 246-915-350 Inactive credential.** (1) A physical therapist or physical therapist assistant may obtain an inactive credential. Refer to the requirements of chapter 246-12 WAC, Part 4.

(2) Practitioners with an inactive credential for three years or less who wish to return to active status must meet the requirements of chapter 246-12 WAC, Part 4.

(3) Practitioners with an inactive credential for more than three years, who have been in active practice in another United States jurisdiction, and wish to return to active status must:

(a) Submit verification of active practice from any other United States jurisdiction; and

(b) Meet the requirements of chapter 246-12 WAC, Part 4.

(4) Practitioners with an inactive credential for more than three years, who have not been in active practice in another United States jurisdiction, and wish to return to active status must:

(a) Successfully pass the examination as provided in RCW 18.74.035. The board may waive reexamination if the practitioner presents evidence of continuing competency satisfactory to the board; and

(b) Must meet the requirements of chapter 246-12 WAC, Part 2.

#### NEW SECTION

**WAC 246-915-995 Waiver of examination—Physical therapist assistants.** Persons eligible for waiver of examination for licensure as a physical therapist assistant under this section may apply for a license from July 1, 2008, through July 1, 2009. The board shall waive the examination and license a person after receipt of the following documentation by the department of health:

(1) Complete the application process including payment of fees; and

(2) Submit proof of graduation from a physical therapist assistant education program accredited by a national accreditation agency approved by the board at the time of graduation. A board approved physical therapist assistant program shall mean a United States physical therapist assistant education program accredited by the American Physical Therapy Association's Commission on Accreditation in Physical Therapy Education or a United States military physical therapy technician program that is substantially equivalent to an accredited United States physical therapist assistant program; and

(3) Provide verification of graduation on or before June 30, 2007 and verification of work experience within the last five years as a PTA in a physical therapy setting under the supervision of a licensed physical therapist legally able to practice in Washington.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-915-160

Responsibilities of supervision.

**WSR 08-17-029**

**PERMANENT RULES**

**SUPERINTENDENT OF  
PUBLIC INSTRUCTION**

[Filed August 13, 2008, 11:37 a.m., effective September 13, 2008]

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

Purpose: The purpose of the rule revision is to reflect the provisions of the legislative intent in RCW 28A.300.475

related to sexuality education in public schools and the provisions of parent excusal for student participation.

Citation of Existing Rules Affected by this Order: Amending WAC 392-410-140.

Statutory Authority for Adoption: RCW 28A.300.040.

Adopted under notice filed as WSR 08-11-032 on May 13, 2008.

Changes Other than Editing from Proposed to Adopted Version: Revised definition of "sexuality education" to reflect comments received. Removed requirement that the department of health (DOH) approve all materials for medical and scientific accuracy prior to use in public schools. Provided services of DOH upon request. This was at the request of DOH due to limited resources to conduct reviews of large numbers of materials.

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

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

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

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

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

Date Adopted: August 13, 2008.

Dr. Terry Bergeson  
Superintendent of  
Public Instruction

#### AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-410-140 Sex education—Definition—Optional course or subject matter—Excusal of students.**  
(1) Local option. The decision as to whether or not a program about sex education or human sexuality is to be introduced into the common schools is a matter for determination at the district level by the local school board, the duly elected representatives of the people of the community.

(2) Definition(s).

(a) Sex education for the purpose of this regulation is defined as the study of the anatomy and the physiology of the human ((reproduction)) reproductive system.

(b) Human sexuality for the purpose of this regulation is defined as the characteristics or qualities that distinguish between maleness and femaleness. It includes the physiological, psychological, and sociological processes experienced by an individual.

(c) Medically and scientifically accurate means information that is verified or supported by research in compliance with scientific methods, is published in peer reviewed journals, where appropriate, and is recognized as accurate and objective by professional organizations and agencies with

expertise in the field of sexual health including but not limited to the American College of Obstetricians and Gynecologists.

(3) By September 1, 2008, every public school that offers sexual health education must assure the sexual health education is medically and scientifically accurate, age appropriate, appropriate for students regardless of gender, race, disability status, or sexual orientation.

(4) Development of instruction in sex education and human sexuality. School districts shall involve parents and school district community groups in the planning, development, evaluation, and revision of any instruction in sex education and human sexuality offered as a part of the school program.

((4))) (5) All sexual health education programs must include an emphasis on abstinence as the only one hundred percent effective means of preventing unintended pregnancy, HIV and other sexually transmitted diseases. All sexual health education programs must also provide medically and scientifically accurate information on all other methods of preventing unintended pregnancy, HIV and other sexually transmitted diseases. Abstinence may not be taught to the exclusion of instruction on contraception and disease prevention.

(6) Schools may choose to use separate, outside speakers or prepared curriculum to teach different content areas or units within the comprehensive sexual health program. All such curricula, presentations and materials used must have been approved by the department of health as medically and scientifically accurate.

(7) Notification of parents. Each school district shall, at least one month before teaching a program in human sexuality education in any classroom or other school venue, provide notice to parents of the planned instruction and that the materials or course of study are available for inspection. Such notification includes all formats of instruction related to sexuality education including, but not limited to written materials, guest speakers, classroom presentations, videos, electronically formatted materials.

(8) Excusal of students—Alternative studies. Any parent or legal guardian who wishes to have his/her child excused from any planned instruction in sex education or human sexuality may do so upon filing a written request with the school district board of directors or its designee and the board of directors shall make available the appropriate forms for such requests. Alternative educational opportunities shall be provided for those excused.

The requirement to report harassment, intimidation, or bullying under RCW 28A.600.480(2) applies to this section.

#### **WSR 08-17-034**

#### **PERMANENT RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Order 08-197—Filed August 13, 2008, 3:02 p.m., effective September 13, 2008]

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

Purpose: Amending WAC 232-28-285 Pilot cougar hunting with the aid of dogs, 232-28-272 2006-2007, 2007-2008, 2008-2009 Black bear and cougar hunting seasons and regulations, 232-12-243 Public safety cougar removals and 232-16-800 Johnson Debay's Slough Game Reserve; adopting WAC 232-28-432 2008-09 Migratory waterfowl regulations and seasons; and repealing WAC 232-28-431 2007-08 Migratory waterfowl regulations and seasons.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-431; and amending WAC 232-28-285, 232-28-272, 232-12-243, and 232-16-800.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.040, 77.12.020, 77.12.570, 77.12.210.

Adopted under notice filed as WSR 08-12-106 on June 4, 2008, and WSR 08-14-078 on June 26, 2008.

Changes Other than Editing from Proposed to Adopted Version:

#### **WAC 232-28-285 Pilot cougar hunting seasons with the aid of dogs.**

**Changes, if any, from the text of the proposed rule and reasons for difference:**

- Consistent with commission intent in changing subsection (6)(a) revert to the original definition of dog owner means a person that owns and hunts with dogs that are capable of detecting, tracking and treeing a cougar.
- Under subsection (1) add Klickitat to the list of counties. This corrects a typographical error.
- Under hunt area table[:]

  - In the East Cascades South CMU row, change the total quota from "TBD" to "6."
  - In the East Cascades South CMU row, change the female quota from "TBD" to "2."

The purpose of these changes is to establish the kill quota levels for the pilot cougar hunt in Klickitat County.

- Reinsert the previous language under subsection (6)(a) to require that individuals own dogs as an alternative to the deleted language under subsection (8)(d). The reason for this change is to ensure that this hunt is not perceived as a "trophy hunt."
- Under subsection (8)(d) strike the language "dog handlers may not receive payment for their services." The reason for this change is because the commission does not have the authority to restrict payment.

#### **WAC 232-28-272 2006-2007, 2007-2008, 2008-2009 Black bear and cougar hunting seasons and regulations.**

**Changes, if any, from the text of the proposed rule and reasons for difference:**

- In the East Cascades South B unit, change the hunt season from "Aug. 1 - Nov. 30" to "Oct. 11 - Nov. 19, 2008."
- Add East Cascades South C unit:
  - Season: "Sept. 1 - Nov. 30."
  - Hunt area: "GMUs 382, 388, 578 within Klickitat County."

- Special restrictions: "Archery deer or elk hunters and muzzleloader deer or elk hunters who posses [possess] a valid big game license that includes cougar as a species option may hunt for cougar without the aid of dogs during their respective deer or elk seasons and must use equipment consistent with their deer or elk tag."

The purpose of these changes are to make the general season hunts consistent with other general season hunts in areas that also have a cougar permit hunt with the aid of dogs.

- Change East Cascades C to East Cascades South C. This corrects a typographical error.

#### **WAC 232-28-432 2008-09 Migratory waterfowl regulations and seasons.**

**Changes, if any, from the text of the proposed rule and reasons for difference:**

- Under duck season bag limits, reduce scaup bag limits from 3/6 to 2/4, reduce scaup season length from one hundred seven to eighty-six days, and close the canvasback season. These changes are necessary to comply with recent federal framework changes based on survey information and harvest strategies for these species.
- Under Ridgefield NWR goose season in Goose Management Area 2, change opening season date from November 11 to November 13 and extend the season by 3 days in late January. Ridgefield NWR requested these changes, which will avoid opening the season on a federal holiday and provide additional public hunting opportunity.
- Under Goose Management Area 2, change requirements for closures, hunting authorizations, and checking of birds at check stations to include all goose species, rather than just Canada geese. These changes were made to provide more consistency with seasons in Oregon and reduce regulation complexity.

#### **WAC 232-16-800 Johnson Debay's Slough Game Reserve.**

**Changes, if any, from the text of the proposed rule and reasons for difference:** Based on public input, adjust the northern reserve boundary along the Skagit River to exclude parts of two privately owned parcels and a small WDFW parcel. These lands are not believed to be critical to the function of the reserve in providing an undisturbed winter use area for wintering swans.

A final cost-benefit analysis is available by contacting Lori Preuss, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail preuslmp@dfw.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 4, 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: August 13, 2008.

Susan Yeager  
for Jerry Gutzwiler, Chair  
Fish and Wildlife Commission

**AMENDATORY SECTION** (Amending Order 04-284, filed 10/14/04, effective 11/14/04)

**WAC 232-12-243 Public safety cougar removals. (1)**

Definitions:

As used in this section and in the context of public safety cougar removals, the following definitions apply:

(a) "Confirmed" means qualified department staff is led to believe a cougar(s) was at the scene of the incident by interview of the complainant or observation of evidence at the scene.

(b) "Human-cougar safety incident" means aggressive or unusual behavior by a cougar which presents an actual or perceived threat to an individual.

(c) "Livestock or pet depredation" means incidents where livestock and/or pets are killed and/or injured by cougar.

(d) "Marginal cougar habitat" means those areas usually dominated by urban/suburban, developed lands with relatively high human densities.

(e) "Nuisance activity" means incidents associated with property disturbance, property damage, or livestock/pet harassment.

(f) "Preferred cougar habitat" means those areas usually dominated by rural, undeveloped lands with relatively low human densities.

(g) "Public safety need" means there exists a reasonable threat to human safety or property by one or more cougar, as indicated by the level of confirmed human-cougar safety incidents or livestock/pet depredations, and confirmed cougar sightings or nuisance activities.

(h) "Removal" means the act of killing one or more cougar with the aid of dogs.

(i) "Sighting" means a direct observation of one or more cougar, in urban or rural settings, near individuals or residences; typically more than chance observations.

(j) "Human-cougar interaction" means a human-cougar safety incident, livestock or pet depredation, cougar nuisance activity, or cougar sighting event.

(k) "Dog hunter" means a person that owns and hunts with dogs that are capable of detecting, tracking and treeing a cougar.

(2) Public safety cougar removal authorization: The commission authorizes the director to issue public safety cougar removal permits consistent with this rule. Prior to issuing public safety cougar removal permits, the department shall

use other practical alternatives to address a public safety need, including livestock or pet depredations. Other practical alternatives may include, but are not limited to, general cougar hunting seasons, general public information, educational programs, information to recreational hunters, cougar depredation/kill permits, and department capture and relocation/euthanasia of specific cougars.

(3) Public safety cougar removal criteria:

(a) The commission determines that when the above practical alternatives have been utilized within a game management unit, eleven confirmed human-cougar interactions per year, of which at least four must be confirmed human-cougar safety incidents or livestock/pet depredations, therein demonstrating that the practical alternatives have been inadequate to address the public safety need. The director then is authorized by the commission to remove one or more cougar, with the aid of dogs, in a selected area of that game management unit or nearby geographic area suitable for the use of dogs. The commission authorizes the director to remove one cougar per one hundred twenty square kilometers of complaint area in preferred cougar habitat, and one cougar per four hundred thirty square kilometers of complaint area in marginal cougar habitat.

(b) If warranted by conditions of this rule, public safety cougar removal(s) will be conducted annually between December 1st and March 15th in selected areas of game management units designated by the director to address a public safety need presented by one or more cougar, except in game management units in ((Chelan, Okanogan, Ferry, Stevens, and Pend Oreille)) counties where cougars will be removed to address public safety and protection of property with pilot cougar hunting seasons with the aid of dogs authorized under WAC 232-28-285.

(c) The department shall not target more than one hundred nine cougar during a public safety cougar removal period unless otherwise authorized by the commission.

(4) Public safety cougar removal permit issuance procedure.

(a) To participate in a public safety cougar removal, individuals must request that his/her name be placed on a list of available participants (participant list) by mailing their request to Washington Department of Fish and Wildlife, Enforcement Program - Public Safety Cougar Removal, 600 Capitol Way North, Olympia, WA 98501-1091. The request must include the individual's name, address, phone number, and game management units being applied for. Individuals may apply for no more than four game management units. An individual's request to be placed on a participant list for a removal period must be postmarked no later than October 1, or be received at the department's Olympia office no later than 5:00 p.m. on October 1, during the year the removal period begins.

(b) To be eligible for a public safety cougar removal permit (permit), the participant must be a Washington resident dog hunter who, at the time of application for a permit, possesses a valid big game license with cougar as a species option. The permit holder must use dogs while participating in a public safety cougar removal.

(c) Individuals eligible for participation in a public safety cougar removal will be randomly selected from the partici-

pant list. The department will issue a permit to the person whose name is selected from the participant list. Individuals selected will be notified by telephone or mail. Individuals selected must contact the department's enforcement program in Olympia and accept the public safety cougar removal permit within fifteen days of being notified. Failure to contact the department will result in forfeit of the permit and the individual will be placed on the participant list for later selections. Permits may not be sold or reassigned.

(d) Permit holders and all individuals who will accompany the permit holder must complete the department's public safety cougar removal education course prior to participating in a public safety cougar removal.

(5) Public safety cougar removals: Quota system and participation in cougar removal.

(a) Public safety cougar removals will be based on a quota system, where permit holders may hunt cougar until the allotted numbers of cougar have been killed from each game management unit or March 15, whichever is first.

(b) Permit holders who harvest a cougar before January 15 may continue hunting for a second cougar with dogs. The permit holder must purchase an additional cougar transport tag to hunt and harvest one additional cougar and the permit holder will be issued a second permit. Permit holders who harvest a cougar after January 15 are not eligible to harvest a second cougar with dogs.

(c) To verify if the cougar removal season is open or closed in each game management unit, the permit holders shall notify the department's enforcement program in Olympia within twenty-four hours prior to exercising a public safety cougar removal permit.

(d) No more than four total individuals may participate per public safety cougar removal, including the permit holder(s). Only the permit holder, whose name appears on the permit, may take a cougar.

(e) Hunters killing a cougar during a public safety cougar removal must notify the department's enforcement program in Olympia within twenty-four hours after harvesting the cougar.

(f) The department reserves the right to accompany permit holders while participating in a public safety cougar removal.

(6) Public safety cougar removal general requirements.

(a) A valid big game hunting license which includes cougar as a species option is required to hunt cougar. One cougar transport tag is included with a big game license that has cougar as a species option. A second cougar transport tag must be purchased to take a second cougar. Individuals may participate in multiple public safety cougar removals, but must purchase a cougar transport tag for each cougar removed. Purchases in excess of two cougar transport tags must be made at department offices.

(b) It is unlawful to kill or possess spotted cougar kittens or adult cougars accompanied by spotted kittens. Individuals selected for a public safety cougar removal permit may take one cougar per permit.

(c) Hunters may use any lawful big game modern firearm, archery, or muzzleloader equipment for hunting cougar. The use of dogs to hunt cougar is prohibited except during a public safety cougar removal.

(d) Any person who takes a cougar must notify the department within twenty-four hours of kill (excluding legal state holidays) and provide the hunter's name, date and location of kill, and sex of animal. The raw pelt of a cougar must be sealed by an authorized department employee within seventy-two hours of the notification of kill. Any person who takes a cougar must present the cougar skull, in such a manner that teeth and biological samples can be extracted, to an authorized department employee at the time of sealing.

(e) The public safety cougar removal permit (permit) belongs to the state of Washington. The permit holder may be required to return to or turn over to the department the permit when, in the judgment of the department, the permit holder violates any conditions of the permit, violates trespass laws while acting under this permit, or violates any other criminal law or hunting regulation of the state while acting under this permit. If the permit holder is required to return to or turn over to the department the permit, the permit holder may request an appeal of that action in accordance with chapter 34.05 RCW. Appeal request shall be filed in writing and returned within twenty days of the date of action and be addressed to WDFW Legal Services Office, 600 Capitol Way North, Olympia, Washington 98501-1091.

**AMENDATORY SECTION** (Amending Order 98-155, filed 8/13/98, effective 9/13/98)

**WAC 232-16-800 Johnson/Debay's Slough Game Reserve.** In Skagit County, beginning at the intersection of Francis Road and Debay's Slough Road; then south and west along Francis Road (3090 feet) to white corner marker; then north (1265 feet) to the middle of Debay's Slough (white corner marker); then westerly (2087 feet) along the channel of Debay's Slough to the western tip of the farmed portion of Debay's Island; then northerly (1485 feet) to the south bank of the Skagit River (white corner marker); then easterly (((1600)) 2200 feet) along the south bank of the Skagit River to fence line (white corner marker); then south along fence line (((855)) 150 feet) to corner post; then ((east)) southeast 1050 feet to fence line; then east 1090 feet along fence line ((435 feet))) to fence intersection; then south (300 feet) along fence line to existing tree line (white corner marker); then continue south (835 feet) to south shoreline of Debay's Slough (white corner marker); then easterly and southerly along the west shoreline of Debay's Slough (1770 feet) to the south side of Debay's Slough Road (white corner marker); then east along the south side of Debay's Slough Road to the intersection of Francis Road and the point of beginning.

**AMENDATORY SECTION** (Amending Order 06-92, filed 5/8/06, effective 6/8/06)

**WAC 232-28-272 2006-2007, 2007-2008, and 2008-2009 Black bear and cougar hunting seasons and regulations.**

**2006-2008 Fall Black Bear Seasons:**

Black Bear Management		Black Bear Management	Unit	Season	Hunt Area	Hunt Area	Hunt Area
Unit	Season		Columbia Basin			Aug. 1 - Nov. 15	GMUs 133, 136, 139, 142, 248, 254, 260-290, 371-381
Coastal	Aug. 1 - Nov. 15	GMUs 501, 504, 506, 530, 601, 602, 603, 607-621, 636-651, 658-663, 672-684	Long Island	Sept. 5 - Nov. 15, 2006	Sept. 4 - Nov. 15, 2007	Sept. 2 - Nov. 15, 2008	GMU 699
Puget Sound	Aug. 1 - Nov. 15	GMUs 407, 410, 454, 624, 627, 633, 652, 666, 667					
North Cascades	Aug. 1 - Nov. 15	GMUs 418-450, 460					
South Cascades	Aug. 1 - Nov. 15	GMUs 466, 485, 503, 505, 510-520, 524, 550-574, 653, 654					
Okanogan	Aug. 1 - Nov. 15	GMUs 203, 209-243					
East Cascades	Aug. 1 - Nov. 15	GMUs 244-247, 249-251, 328, 329-368, 382, 388, 578					
Northeastern A	Sept. 5 - Nov. 15, 2006	GMUs 101-117					
	Sept. 4 - Nov. 15, 2007						
	Sept. 2 - Nov. 15, 2008						
Northeastern B	Aug. 1 - Nov. 15	GMUs 121-130, 204					
Blue Mountains	Sept. 5 - Nov. 15, 2006	GMUs 145-154, 162-186					
	Sept. 4 - Nov. 15, 2007						
	Sept. 2 - Nov. 15, 2008						

**Bag Limit:** Two (2) black bear per annual hunting season only one of which may be taken in Eastern Washington.

**Area Restriction:** Special deer permit required to hunt black bear in GMU 485.

**Requirements for Fall Black Bear Seasons:**

**License Required:** A valid big game hunting license, which includes black bear as a species option, is required to hunt black bear. One black bear transport tag is included with a big game hunting license that has black bear as a species option. A second black bear transport tag must be purchased to take a second bear.

**Hunting Method:** Hunters may use any lawful big game modern firearm, archery, or muzzleloader equipment for hunting black bear. The use of hounds and bait to hunt black bear is prohibited statewide.

**Submitting Bear Teeth:** Successful bear hunters must submit the black bear premolar tooth located behind the canine tooth of the upper jaw.

**2006-2007, 2007-2008, and 2008-2009 Cougar Seasons:**

Unit	Season	Hunt Area	Special Restrictions
Coastal	Aug. 1 - Mar. 15	GMUs 501, 504, 506, 530, 601-621, 636-651, 658-663, 672-684, 699	Any legal weapon
Puget Sound	Aug. 1 - Mar. 15	GMUs 407, 410, 454, 624-633, 652, 666	Any legal weapon
North Cascades	Aug. 1 - Mar. 15	GMUs 418, 426, 437, 448, 450, 460, 466, 485	Any legal weapon
South Cascades	Aug. 1 - Mar. 15	GMUs 503, 505, 510-520, 524, 550-574, 653, 654, 667	Any legal weapon
East Cascades	Aug. 1 - Mar. 15	GMUs 328, 329, 334-340	Any legal weapon
North A			
East Cascades	Oct. 14 - Nov. 19, 2006	GMUs 203, 209-247, 249-251 within Chelan or Okanogan counties	Any legal weapon
North B	Oct. 13 - Nov. 19, 2007		
	Oct. 11 - Nov. 19, 2008		

<b>Unit</b>	<b>Season</b>	<b>Hunt Area</b>	<b>Special Restrictions</b>
East Cascades North C	Sept. 1 - Nov. 30	GMUs 203, 209-247, 249-251 within Chelan or Okanogan counties	Archery deer or elk hunters and muzzleloader deer or elk hunters who possess a valid big game license that includes cougar as a species option may hunt for cougar without the aid of dogs during their respective deer or elk seasons and must use equipment consistent with their deer or elk tag.
East Cascades <u>South A</u>	Aug. 1 - Mar. 15	GMUs 342-368(( <del>382, 388, 578</del> )	Any legal weapon
<u>East Cascades</u> <u>South B</u>	<u>Oct. 11 - Nov. 19, 2008</u>	<u>GMUs 382, 388, 578 within Klickitat County</u>	<u>Any legal weapon</u>
<u>East Cascades</u> <u>South C</u>	<u>Sept. 1 - Nov. 30</u>	<u>GMUs 382, 388, 578 within Klickitat County</u>	<u>Archery deer or elk hunters and muzzleloader deer or elk hunters who possess a valid big game license that includes cougar as a species option may hunt for cougar without the aid of dogs during their respective deer or elk seasons and must use equipment consistent with their deer or elk tag.</u>
Northeastern A	Aug. 1 - Mar. 15	GMUs 124-133	Any legal weapon
Northeastern B	Oct. 14 - Nov. 19, 2006	GMUs 101-121 within Ferry, Stevens, or Pend Oreille counties, 204	Any legal weapon
	Oct. 13 - Nov. 19, 2007		
	Oct. 11 - Nov. 19, 2008		
Northeastern C	Sept. 1 - Nov. 30	GMUs 101-121 within Ferry, Stevens, or Pend Oreille counties, 204	Archery deer or elk hunters and muzzleloader deer or elk hunters who possess a valid big game license that includes cougar as a species option may hunt for cougar without the aid of dogs during their respective deer or elk seasons and must use equipment consistent with their deer or elk tag.
Blue Mountains	Aug. 1 - Mar. 15	GMUs 145-154, 162-186	Any legal weapon
Columbia Basin	Aug. 1 - Mar. 15	GMUs 136-142, 248, 254-290, 330, 371-381	Any legal weapon

**Requirements for Cougar Seasons:**

**License Required:** A valid big game hunting license which includes cougar as a species option is required to hunt cougar.

**Bag Limit:** Two (2) cougar per license year excluding public safety cougar removals. It is unlawful to kill or possess spotted cougar kittens or adult cougars accompanied by spotted kittens.

**Area Restriction:** Special deer permit required to hunt cougar in GMU 485.

**Tag Information:** One cougar transport tag is included with a big game license that has cougar as a species option. A second cougar transport tag must be purchased to take a second cougar.

**Hunting Method:** Hunters may use any lawful big game modern firearm, archery, or muzzleloader equipment for

hunting cougar. The use of hounds to hunt cougar is prohibited except by a public safety cougar removal permit (WAC 232-12-243) or commission authorized hound permit (WAC 232-28-285).

**Cougar Pelt Sealing:** Any person who takes a cougar must comply with the sealing requirements in WAC 232-12-024.

**AMENDATORY SECTION** (Amending Order 07-273, filed 11/6/07, effective 12/7/07)

**WAC 232-28-285 ((2007-2008)) 2008-2009 Pilot cougar hunting seasons with the aid of dogs.** As used in this section and in the context of pilot cougar hunting seasons, the following definitions apply:

"Accompany" means the dog handler and permit hunter must be in the physical presence of each other at the time dogs are released from a leash or unrestrained or starting a cougar track.

"Pursue" or "pursuit" means dogs are:

- Not on a leash or restrained; or
- Starting a cougar track; or
- In the act of tracking a cougar; or
- At a treed cougar.

Transporting dogs in a motorized vehicle or walking a dog on a leash is not pursuit.

"Dog owner" means a person that owns and hunts with dogs that are capable of detecting, tracking and treeing a cougar.

"Quota" means the targeted harvest goal. The actual harvest level may exceed the quota.

"Kill permit" allows a hunter to pursue or kill cougar.

"Pursuit permit" allows a hunter to pursue cougar.

(1) The pilot cougar-hunting season will allow use of dogs to hunt cougar. The hunts will consist of pursuit-or-kill seasons and pursuit-only seasons, and are allowed only in Klickitat, Chelan, Okanogan, Ferry, Stevens, and Pend Oreille counties.

(2) Pursuit-or-kill seasons:

Cougar may be pursued or killed with the aid of dogs from December 1, ((2007)) 2008, until the female zone quota has been killed, the total zone quota has been killed, or March 31, ((2008)) 2009, whichever occurs first; EXCEPT GMUs 101 and 204 where cougar may be pursued or killed from January 1, ((2008)) 2009, until the female zone quota has been killed, the total zone quota has been killed, or March 31, ((2008)) 2009, whichever occurs first.

(3) Pursuit-only seasons:

(a) If a zone quota is killed prior to March 31, ((2008)) 2009, cougar may be pursued with dogs in all or portions of that zone until March 31, ((2008)) 2009. Hunters may only pursue cougars in designated pursuit only areas identified on their kill or pursuit-only permit. Hunters may not kill cougar during pursuit-only seasons.

(b) Hunters selected for the pursuit-or-kill season (accompanied by up to three of their identified handlers) may participate in a pursuit-only season. Permit hunters that harvest a cougar under a kill permit may continue to pursue cougars until March 31. If a zone quota is killed, the department ((will)) may also issue pursuit-only permit to hunters drawn at random from the unselected pool of applicants. The director will identify the number of pursuit-only hunters selected.

(4) Hunt areas and kill quotas:

Cougar seasons will be based on a quota system, where permit hunters using dogs may hunt and kill cougar until the allotted numbers of cougar have been killed from each hunt zone or March 31, ((2008)) 2009, whichever occurs first.

(a) Kill quotas start September 1 and will include all cougar killed during seasons with and without the aid of dogs, including cougar seasons under this section, cougar seasons without the aid of dogs authorized under WAC 232-28-272, depredation permits, landowner kill permits, and WDFW depredation authority.

(b) Individual problem cougar will continue to be killed on an as-needed basis utilizing depredation permits, land-owner kill permits, and WDFW depredation authority even if these kills result in exceeding a zone quota.

CMU	Hunt Choice	Hunt Zone	Area Description	QUOTA	
				Total	Female
East Cascades North	9001	Okanogan	Those portions of GMUs 203, 209, 215, 218, 233, 224, 231, 239, and 242 within Okanogan County	((28)) 17	((14)) 7
	9002	Chelan	Those portions of GMUs 243, 244, 245, 246, 247, 249, 250, and 251 within Chelan County	((10)) 6	((4)) 2
Northeastern	9003	Ferry-Okanogan	GMUs 101, 204	((26)) 16	((10)) 6
	9004	Stevens-Pend Oreille	Those portions of GMUs 105, 108, 111, 113, 117, 121 within Stevens and Pend Oreille counties	((38)) 23	((15)) 9
East Cascades South	9005	<u>Klickitat</u>	Those portions of GMUs 382, 388, 578 within Klickitat County	6	2

(5) Quota hotline:

Permit hunters participating in a pursuit-or-kill season must call the toll free cougar quota hotline within twenty-four hours prior to each day hunting cougar to determine if the zone quota has been killed and the zone is closed. Hunters who hunt more than one consecutive day must call the quota hotline once daily to determine if the zone quota is killed. Hunters who harvest a cougar with the aid of dogs must notify the department within twenty-four hours of kill (excluding legal state holidays) and provide the hunter's name, date and location of kill, and sex of animal. The raw pelt of a cougar, with proof of sex naturally attached, must be sealed by an authorized department employee within five

days of the notification of kill. Any person who takes a cougar must present the cougar skull in such a manner that teeth and biological samples can be extracted to an authorized department employee at the time of sealing.

(6) Kill or pursuit-only permit eligibility:

(a) To apply for a kill or pursuit-only permit under this section, individuals must sign an affidavit provided by the department, certifying under penalty of false swearing under RCW 9A.72.040 that they are a dog owner. The affidavit must be mailed to WDFW by the date and time identified by the director. Individuals not registered as a dog owner will not be issued a permit.

(b) To apply for a kill or pursuit-only permit under this section, individuals must purchase a cougar permit application and submit the application in compliance with WAC 232-28-291 by a date and time identified by the director.

(c) To be eligible for a permit, the participant must be a Washington resident who at the time of application for a permit possesses a valid big game license with cougar as a species option. The permit holder must use dogs while participating in a cougar hunt under this section.

(d) A permit will not be issued to any person who has been convicted of unlawful use of dogs under RCW 77.15.-245 within the five-year period prior to December 1, 2004. Any person issued a permit and who is subsequently convicted of any wildlife offense while participating in a pursuit-or-kill or pursuit-only season, or who violates any condition of the permit, will have the permit revoked and will be ineligible to participate in the remainder of the pilot program.

(7) Permit issuance procedure:

(a) The number of kill permits for a pursuit-or-kill season with the aid of dogs may be established by the director, but will not exceed two times the total cougar quota for each hunt zone.

(b) The department will issue kill or pursuit-only permits to the persons whose applications are drawn at random. Individuals selected will be notified by telephone or mail. ((Individuals selected must return the signed affidavit to the department's wildlife program in Olympia within fifteen days of being notified. Failure to return the completed affidavit to the department will result in forfeit of the permit.)) Kill and pursuit-only permits may not be sold or reassigned.

(c) If a female zone quota or total zone quota is not killed in a hunt zone by January 15 (or sooner as identified by the director), then the department ((will)) may issue kill permits to additional hunters. Hunters will be drawn at random from the unselected pool of applicants and must be a resident of one of the ((five)) participating counties.

(8) Qualifications for participation and requirements:

In addition to the provisions applicable to all cougar hunters:

(a) Successful applicants must complete a training program prior to participating in a pursuit-or-kill season or pursuit-only season with the aid of dogs.

(b) Participants must have their permit issued by the department in their possession while hunting cougar.

(c) Individuals selected for a kill permit may kill and possess ((two)) one cougar per permit and only the permittee may kill the cougar(s). ((However, a kill permit holder may not kill a second cougar in a hunt zone until January 15 (or sooner as identified by the director).))

(d) Individuals selected for a cougar kill or pursuit-only permit may use dog handlers. However, no more than three handlers may accompany the permittee while hunting or pursuing cougar. Dog handlers may not pursue cougar when the permit hunter is not present at the time the dogs are released from a leash or unrestrained. Dog handlers must have a dog handler identification card, issued by the department, in their possession while participating in a pursuit-or-kill season or pursuit-only season.

(e) Dog handlers must be a Washington resident and possess a valid hunting license.

(f) It is unlawful to kill or possess spotted cougar kittens or adult cougars accompanied by spotted kittens.

(g) Participants must have a vehicle placard issued by the department. The vehicle placard must be placed in the permittee's and dog handler's vehicles and be visible from outside the vehicles at all times while hunting or pursuing cougar.

(h) Kill and pursuit-only permit hunters are required to ((maintain and return to the department a pilot cougar hunting season logbook. At the end of each day hunting cougar, the permit hunters must record their hunting activities, including that of their dog handlers, in their logbook. If requested by department staff, permit hunters must provide the logbook for inspection. Logbooks must be mailed to the department at WDFW Pilot Cougar Hunt, 600 Capitol Way North, Olympia, WA 98501-1091)) report their hunting activity, whether they harvest a cougar or not, using the toll free cougar quota hotline. Unsuccessful hunters must report their hunting activity by April 10, ((2008)) 2009. A violation of this requirement under this subsection is punishable as an infraction under RCW 77.15.160.

(9) The permit belongs to the state of Washington. The permit holder may be required to return to or turn over to the department the permit when, in the judgment of the department, the permit holder violates any conditions of the permit, violates trespass laws while acting under this permit, or violates any other criminal law or hunting regulation of the state while acting under this permit. If the permit holder is required to return to or turn over to the department the permit, the permit holder may request an appeal of that action in accordance with chapter 34.05 RCW. Appeal request shall be filed in writing and returned within twenty days of the date of action and be addressed to WDFW Legal Services Office, 600 Capitol Way North, Olympia, Washington 98501-1091.

## NEW SECTION

### **WAC 232-28-432 2008-09 Migratory waterfowl seasons and regulations.**

#### **DUCKS**

##### **Statewide**

Oct. 11-15, 2008 and Oct. 18, 2008 - Jan. 25, 2009; except scaup season closed Oct. 11-31 and entire canvasback season closed.

Special youth hunting weekend open only to hunters 15 years of age or under (must be accompanied by an adult at least 18 years old who is not hunting): Sept. 20-21, 2008.

Daily bag limit: 7 ducks, to include not more than 2 hen mallard, 1 pintail, 2 scaup, 2 redhead, 1 harlequin, 4 scoter, and 4 long-tailed duck.

Possession limit: 14 ducks, to include not more than 4 hen mallard, 2 pintail, 4 scaup, 4 redhead, 1 harlequin, 8 scoter, and 8 long-tailed duck.

Season limit: 1 harlequin.

#### **WRITTEN AUTHORIZATION REQUIRED TO HUNT SEA DUCKS.**

All persons hunting sea ducks (harlequin, scoter, long-tailed duck) in Western Washington are required to obtain a written authorization and harvest report from the Washington department of fish and wildlife. Hunters who did not possess a 2007-08 authorization must submit an application form to WDFW (forms available at Washington department of fish and wildlife, Olympia and regional offices).

Immediately after taking a sea duck into possession, hunters must record in ink the information required on the harvest report. Return of the harvest report is mandatory. By February 15, 2009, hunters must return the harvest report to the Washington department of fish and wildlife, or report harvest information on the department's internet reporting system. Hunters failing to comply with reporting requirements will be ineligible to participate in the 2009-10 sea duck season.

#### **COOT (Mudhen)**

Same areas, dates (including youth hunting weekend), and shooting hours as the general duck season.

Daily bag limit: 25 coots.

Possession limit: 25 coots.

#### **COMMON SNIPE**

Same areas, dates (except youth hunting weekend), and shooting hours as the general duck season.

Daily bag limit: 8 snipe.

Possession limit: 16 snipe.

#### **GEESE (except Brant)**

Special youth hunting weekend open only to hunters 15 years of age or under (must be accompanied by an adult at least 18 years old who is not hunting): Sept. 20-21, 2008, statewide except Western Washington Goose Management Areas 2A and 2B.

Daily bag limit: 4 Canada geese.

Possession limit: 8 Canada geese.

#### **Western Washington Goose Seasons**

##### **Goose Management Area 1**

Island, Skagit, Snohomish counties.

Oct. 11, 2008 - Jan. 25, 2009 for snow, Ross', or blue geese. Oct. 11-23, 2008 and Nov. 1, 2008 - Jan. 25, 2009 for other geese (except Brant).

Daily bag limit: 4 geese.

Possession limit: 8 geese.

##### **WRITTEN AUTHORIZATION REQUIRED TO HUNT SNOW GEESE.**

All persons hunting snow geese in this season are required to obtain a written authorization and harvest report from the Washington department of fish and wildlife. Hunters who did not possess a 2007-08 authorization must submit an application form to WDFW (forms available at Washington department of fish and wildlife, Olympia and regional offices).

Immediately after taking a snow goose into possession, hunters must record in ink the information required on the harvest report. Return of the harvest report is mandatory. By February 15, 2009, hunters must return the harvest report to the Washington department of fish and wildlife, or report harvest information on the department's internet reporting system. Hunters failing to comply with reporting requirements will be ineligible to participate in the 2009-10 snow goose season.

It is unlawful to discharge a firearm for the purpose of hunting waterfowl within 100 feet of any paved public road on Fir Island in Skagit County. While hunting snow geese on Fir Island, if a hunter is convicted of 1) trespass, 2) shooting from, across, or along the maintained part of any public highway, 3) discharging a firearm for the purpose of hunting waterfowl within 100 feet of any paved public road on Fir Island in Skagit County, or 4) exceeding the daily bag limit for snow geese, written authorization will be invalidated for the remainder of the 2008-09 snow goose season and an authorization will not be issued for the 2009-10 snow goose season.

##### **QUALITY HUNTING AREAS IN GOOSE MANAGEMENT AREA 1.**

Hunters possessing written authorization to hunt snow geese in Goose Management Area 1 can apply for a special authorization to access private lands around Fir Island enrolled in a new quality snow goose hunting program. Hunters must apply for special authorization to hunt on these special areas by September 26, 2008, using the department's internet or mail application systems. A random drawing will select hunters for participation, and special hunt authorizations will be mailed prior to the season. Up to 3 individuals possessing snow goose authorizations can hunt with the successful applicant on each hunt day. Successful applicants must check in with the WDFW hunt coordinator at least one week prior to their first scheduled hunting day and all hunters must hunt over decoys. Special authorizations are not valid for commercial uses. Authorizations are valid for one week (only on Monday, Tuesday, Wednesday, Friday, and Saturday) during the period November 1, 2008 - January 25, 2009, and only on private lands specified by the WDFW hunt coordinator. Hunters will be assigned at random to private farms participating in the program.

##### **Goose Management Area 2A**

Cowlitz and Wahkiakum counties, and that part of Clark County north of the Washougal River.

Open in all areas except Ridgefield NWR from 8 a.m. to 4:00 p.m., Saturdays, Sundays, and Wednesdays only, Nov. 8-23, 2008 and Dec. 3, 2008 - Jan. 25, 2009. Ridgefield NWR open from 8 a.m. to 4:00 p.m. Tuesdays, Thursdays, and Saturdays only, Nov. 13-22, 2008 and Dec. 4, 2008 - Jan. 24, 2009, except closed Nov. 27 and Dec. 25, 2008, and Jan. 1, 2009.

Bag limits for Goose Management Area 2A:

Daily bag limit: 4 geese, to include not more than 1 dusky Canada goose and 2 cackling geese.

Possession limit: 8 geese, to include not more than 1 dusky Canada goose and 4 cackling geese.

Season limit: 1 dusky Canada goose.

### **Goose Management Area 2B**

Pacific County.

Open from 8 a.m. to 4:00 p.m., Saturdays and Wednesdays only, Oct. 11, 2008 - Jan. 10, 2009.

Bag limits for Goose Management Area 2B:

Daily bag limit: 4 geese, to include not more than 1 dusky Canada goose, 1 Aleutian goose, and 2 cackling geese.

Possession limit: 8 geese, to include not more than 1 dusky Canada goose, 2 Aleutian geese, and 4 cackling geese.

Season limit: 1 dusky Canada goose.

### **Special Provisions for Goose Management Areas 2A and 2B:**

A dusky Canada goose is defined as a dark-breasted (as shown in the Munsell color chart 10 YR, 5 or less) Canada goose with a culmen (bill) length of 40-50 mm. A cackling goose is defined as a goose with a culmen (bill) length of 32 mm or less.

The goose season for Goose Management Areas 2A and 2B will be closed early if dusky Canada goose harvests exceed area quotas which collectively total 80 geese. The fish and wildlife commission has authorized the director to implement emergency area closures in accordance with the following quotas: A total of 80 duskys, to be distributed 15 for Zone 1 (Ridgefield NWR); 25 for Zone 2 (Cowlitz County south of the Kalama River); 20 for Zone 3 (Clark County except Ridgefield NWR); 10 for Zone 4 (Cowlitz County north of the Kalama River and Wahkiakum County); and 10 for Zone 5 (Pacific County). Quotas may be shifted to other zones during the season to optimize use of the statewide quota and minimize depredation.

Hunting is only permitted by written authorization from the Washington department of fish and wildlife. New hunters and those who did not maintain a valid 2007-08 authorization must review goose identification training materials and score a minimum of 80% on a goose identification test to receive written authorization. Hunters who fail a test must wait 28 days before retesting, and will not be issued a reciprocal authorization until that time.

With written authorization, hunters will receive a harvest report. Hunters must carry the authorization card and harvest report while hunting. Immediately after taking a Canada goose (dusky, lesser/Taverner, cackling, or other subspecies) or other goose into possession, hunters must record in ink the information required on the harvest report. Hunters must go directly to the nearest check station and have geese tagged when leaving a hunt site, before 6:00 p.m. If a hunter takes the season bag limit of one dusky Canada goose or does not comply with requirements listed above regarding checking of birds and recording harvest on the harvest report, written authorization will be invalidated and the hunter will not be able to hunt geese in Goose Management Areas 2A and 2B for the remainder of the season and the special late goose season. It is unlawful to fail to comply with all provisions listed above for Goose Management Areas 2A and 2B.

### **Special Late Goose Season for Goose Management Area 2A:**

Open to Washington department of fish and wildlife master hunter program graduates and youth hunters (15 years of age or under, who are accompanied by a master hunter) possessing a valid 2008-09 southwest Washington goose hunting authorization, in areas with goose damage in Goose Management Area 2A on the following days, from 7:00 a.m. to 4:00 p.m.:

Saturdays and Wednesdays only, Feb. 7 - Mar. 10, 2009.

Daily bag limit: 4 geese, to include not more than 1 dusky Canada goose, and 2 cackling geese.

Possession limit: 8 geese, to include not more than 1 dusky Canada goose, and 4 cackling geese.

Season limit: 1 dusky Canada goose.

A dusky Canada goose is defined as a dark-breasted Canada goose (as shown in the Munsell color chart 10 YR, 5 or less) with a culmen (bill) length of 40-50 mm. A cackling goose is defined as a goose with a culmen (bill) length of 32 mm or less.

Hunters qualifying for the season will be placed on a list for participation in this hunt. Washington department of fish and wildlife will assist landowners with contacting qualified hunters to participate in damage control hunts on specific lands incurring goose damage. Participation in this hunt will depend on the level of damage experienced by landowners. The special late goose season will be closed by emergency action if the harvest of dusky Canada geese exceeds 85 for the regular and late seasons. All provisions listed above for Goose Management Area 2A regarding written authorization, harvest reporting, and checking requirements also apply to the special late season; except hunters must confirm their participation at least 24 hours in advance by calling the goose hunting hotline (listed on hunting authorization), and hunters must check out by 5:00 p.m. on each hunt day regardless of success. It is unlawful to fail to comply with all provisions listed above for the special late season in Goose Management Area 2A.

### **Goose Management Area 3**

Includes all parts of Western Washington not included in Goose Management Areas 1, 2A, and 2B.

Oct. 11-23, 2008 and Nov. 1, 2008 - Jan. 25, 2009.

Daily bag limit: 4 geese.

Possession limit: 8 geese.

### **Eastern Washington Goose Seasons**

#### **Goose Management Area 4**

Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla counties.

Oct. 11-13, 2008, and Saturdays, Sundays, and Wednesdays only during Oct. 18, 2008 - Jan. 18, 2009; Nov. 11, 27, and 28, 2008; Dec. 25, 26, 29, and 30, 2008; January 1, 2009; and every day Jan. 19-25, 2009.

**Goose Management Area 5**

Includes all parts of Eastern Washington not included in Goose Management Area 4.

Oct. 11-13, 2008, every day from Oct. 18, 2008 - Jan. 25, 2009.

Bag limits for all Eastern Washington Goose Management Areas:

Daily bag limit: 4 geese.

Possession limit: 8 geese.

**BRANT**

Open in Skagit County only on the following dates:

Jan. 15, 17, 18, 20, 22, 24, and 25, 2009.

If the 2008-09 preseason brant population in Skagit County is below 6,000 (as determined by the early January survey), the brant season in Skagit County will be canceled.

Open in Pacific County only on the following dates:

Jan. 10, 11, 13, 15, 17, 18, 20, 22, 24, and 25, 2009.

**WRITTEN AUTHORIZATION REQUIRED:**

All hunters participating in this season are required to obtain a written authorization and harvest report from the Washington department of fish and wildlife. Hunters who did not possess a 2007-08 authorization must submit an application form to WDFW (forms available at Washington department of fish and wildlife regional offices).

Immediately after taking a brant into possession, hunters must record in ink the information required on the harvest report. Return of the harvest report is mandatory. By February 15, 2009, hunters must return the harvest report to the Washington department of fish and wildlife, or report harvest information on the department's internet reporting system. Hunters failing to comply with reporting requirements will be ineligible to participate in the 2009-10 brant season.

Bag limits for Skagit and Pacific counties:

Daily bag limit: 2 brant.

Possession limit: 4 brant.

**SWANS**

Season closed statewide.

**FALCONRY SEASONS****DUCKS, COOTS, AND SNIPE (Falconry)**

(Bag limits include geese and mourning doves.)

Oct. 11-15, 2008 and Oct. 18, 2008 - Jan. 25, 2009 statewide.

Daily bag limit: 3, straight or mixed bag with geese and mourning doves during established seasons.

Possession limit: 6, straight or mixed bag with geese and mourning doves during established seasons.

**GESE (Falconry)**

(Bag limits include ducks, coot, snipe, and mourning doves.)

Goose Management Area 1: Oct. 11, 2008 - Jan. 25, 2009 for snow, Ross', or blue geese. Oct. 11-23, 2008 and Nov. 1, 2008 - Jan. 25, 2009 for other geese.

Goose Management Area 2A: Saturdays, Sundays, and Wednesdays only, Nov. 8-23, 2008 and Dec. 3, 2008 - Jan. 25, 2009.

Goose Management Area 2B: Saturdays and Wednesdays only, Oct. 11, 2008 - Jan. 10, 2009.

Goose Management Areas 3, 4, and 5: Oct. 11-23, 2008 and Nov. 1, 2008 - Jan. 25, 2009.

Daily bag limit for all areas: 3 geese (except brant), straight or mixed bag with ducks, coots, snipe, and mourning doves during established seasons.

Possession limit for all areas: 6 geese (except brant), straight or mixed bag with ducks, coots, snipe, and mourning doves during established seasons.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 232-28-431

2007-08 Migratory water-fowl seasons and regulations.

**WSR 08-17-035****PERMANENT RULES****LIQUOR CONTROL BOARD**

[Filed August 13, 2008, 3:34 p.m., effective September 13, 2008]

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

Purpose: As part of the liquor control board's on-going rules review, WAC 314-48-010 is being repealed. The process outlined in this rule is no longer necessary.

Citation of Existing Rules Affected by this Order: Repealing WAC 314-48-010.

Statutory Authority for Adoption: RCW 66.08.030.

Adopted under notice filed as WSR 08-12-113 on June 4, 2008.

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 1.

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

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: August 6, 2008.

Lorraine Lee  
Chairman

### REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 314-48-010      Transportation through state—Permit required.

**WSR 08-17-037**  
**PERMANENT RULES**  
**OFFICE OF**  
**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2008-17—Filed August 13, 2008, 4:14 p.m., effective September 13, 2008]

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

Purpose: These new rules repeal WAC 284-43-210 which requires carriers to submit access plans; the statutory basis was repealed in 2008. WAC 284-43-220 is amended to eliminate references to WAC 284-43-210.

Citation of Existing Rules Affected by this Order: Repealing WAC 284-43-210; and amending WAC 284-43-220.

Statutory Authority for Adoption: RCW 48.02.060.

Adopted under notice filed as WSR 08-11-110 on May 20, 2008.

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 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 1, Repealed 1.

Date Adopted: August 13, 2008.

Mike Kreidler  
Insurance Commissioner

### AMENDATORY SECTION (Amending Matter No. R 2003-01, filed 4/23/03, effective 5/24/03)

**WAC 284-43-220 Network reports—Format.** Each health carrier must file with the commissioner ((an aecess plan,)) a Provider Network Form A, Network Enrollment Form B and Geographic Network Report.

(1) ((**Acess plan.** A health carrier must describe each of its networks in an aecess plan as presribed by WAC 284-43-210.

((2))) **Provider Network Form A.** A carrier must file an electronic report of all participating providers by network. This report must contain all data items shown in Provider Network Form A prescribed by and available from the commissioner. Updated reports must be filed each month. Filing of this data satisfies the reporting requirements of RCW 48.44.080 and the requirements of RCW 48.46.030 relating to filing of notices that describes changes in the provider network.

((3))) **Network Enrollment Form B.** By March 31, 2004, and every year thereafter, a carrier must prepare an electronic report showing the total number of covered persons who were entitled to health care services during each month of the year, excluding nonresidents. A separate report must be filed for each network by line of business. The report must contain all data items shown in and conform to the format of Network Enrollment Form B prescribed by and available from the commissioner.

((4))) **Geographic Network Report.** By March 31st of every year, a carrier also must file an electronic or hard copy paper report meeting the standards below. The carrier must update the reports whenever a material change in the carrier's provider network occurs that significantly affects the ability of covered persons to access covered services. Each carrier must file for each network, using a network accessibility analysis system, such as GeoNetworks or any other similar system:

(a) A map showing the location of covered persons and primary care providers with a differentiation between single and multiple provider locations;

(b) An access table illustrating the relationship between primary care providers and covered persons as of December of each year by county, including at a minimum:

(i) Total number of covered persons;

(ii) Total number of primary care providers (or, if the plan is a Preferred Provider Organization style of managed care, the total number of contracted providers);

(iii) Number of covered persons meeting the carrier's self defined access standard;

(iv) Percentage of covered persons meeting the carrier's self defined access standard; and

(v) Average distance to at least one primary care provider for its covered persons; and

(c) An alphabetical list by county and city showing:

(i) Total number of covered persons;

(ii) Total number of primary care providers (or, if the plan is a Preferred Provider Organization style of managed care, the total number of contracted providers);

(iii) Total number of obstetric and women's health care providers;

(iv) Total number of specialists;

(v) Total number of nonphysician providers by license type;

(vi) Total number of hospitals; and

(vii) Total number of pharmacies.

((5))) **(4)** A carrier may vary the method of reporting required under subsection ((4))) **(3)** of this section upon

written request and subsequent written approval by the commissioner. In the request, the carrier must show that the carrier does not use or does not have easy access to electronic or data systems permitting the method of reporting required without incurring substantial costs.

((6)) (5) For purposes of this section:

(a) "Line of business" means either individual, small group or large group coverage;

(b) "Network" means the group of participating providers and facilities providing health care services to a particular line of business.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 284-43-210

Access plan.

### **WSR 08-17-038 PERMANENT RULES LIQUOR CONTROL BOARD**

[Filed August 14, 2008, 8:20 a.m., effective September 14, 2008]

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

Purpose: The purpose of this rule making is to clarify the process for emergency or summary suspension of a liquor license and the process by which a licensee's administrative appeal from an order of emergency suspension may be taken.

Statutory Authority for Adoption: RCW 66.08.030 and 66.08.150.

Adopted under notice filed as WSR 08-12-112 on June 4, 2008.

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 3, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, 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: August 6, 2008.

Lorraine Lee  
Chairman

#### NEW SECTION

**WAC 314-29-006 What is the process once the board summarily suspends a liquor license?** (1) The board may summarily suspend any license or permit after the board's enforcement division has completed a preliminary staff

investigation of the violation and upon a determination that immediate cessation of the licensed or permitted activities is necessary for the protection or preservation of the public health, safety or welfare.

(2) Suspension of any license or permit under this provision shall take effect immediately upon personal service on the licensee or employee thereof of the summary suspension order unless otherwise provided in the order.

(3) When a license or permit has been summarily suspended by the board, an adjudicative proceeding for revocation or other action must be promptly instituted before an administrative law judge assigned by the office of administrative hearings. If a request for an administrative hearing is timely filed by the licensee or permit holder, then a hearing shall be held within ninety days of the effective date of the summary suspension ordered by the board.

#### NEW SECTION

**WAC 314-29-007 How may a licensee challenge the summary suspension of his or her liquor license?** (1) Upon summary suspension of a license or permit by the board pursuant to WAC 314-29-006, an affected licensee or permit holder may petition the board for a stay of suspension pursuant to RCW 34.05.467 and 34.05.550(1). A petition for a stay of suspension must be received by the board within fifteen days of service of the summary suspension order. The petition for stay shall state the basis on which the stay is sought.

(2) A hearing shall be held before an administrative law judge within fourteen days of receipt of a timely petition for stay. The hearing shall be limited to consideration of whether a stay should be granted, or whether the terms of the suspension may be modified to allow the conduct of limited activities under current licenses or permits.

(3) Any hearing conducted pursuant to subsection (2) of this section shall be a brief adjudicative proceeding under RCW 34.05.485. The agency record for the hearing shall consist of the documentary information upon which the summary suspension was based. The licensee or permit holder shall have the burden of demonstrating by clear and convincing evidence that:

(a) The licensee or permit holder is likely to prevail upon the merits at hearing;

(b) Without relief, the licensee or permit holder will suffer irreparable injury. For purposes of this section, elimination of income from licensed or permitted activities shall not be deemed irreparable injury;

(c) The grant of relief will not substantially harm other parties to the proceedings; and

(d) The threat to the public health, safety, or welfare is not sufficiently serious to justify continuation of the suspension, or that modification of the terms of the suspension will adequately protect the public interest.

(4) The initial order on stay shall be effective immediately upon service unless another date is specified in the order.

#### NEW SECTION

**WAC 314-29-008 Review of orders on stay.** (1) The licensee, permit holder, or agency may petition the board for

review of an initial order on stay. Any petition for review must be in writing and received by the board within ten days of service of the initial order. If neither party has requested review within ten days of service, the initial order shall be deemed the final order of the board for purposes of RCW 34.05.467.

(2) If the board receives a timely petition for review, the board shall consider the petition within fifteen days of service of the petition for review. Consideration on review shall be limited to the record of the hearing on stay.

(3) The order of the board on the petition for review shall be effective upon personal service unless another date is specified in the order and is final pursuant to RCW 34.05.467. Final disposition of the petition for stay shall not affect subsequent administrative proceedings for suspension or revocation of a license or permit.

**WSR 08-17-046**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed August 14, 2008, 3:17 p.m., effective December 1, 2008]

Effective Date of Rule: December 1, 2008.

Purpose: This amendment clarifies the method of giving notice to the department and determining reimbursement of medical assistance (medicaid) moneys paid for an injured client.

Citation of Existing Rules Affected by this Order: Amending WAC 388-501-0100.

Statutory Authority for Adoption: 42 U.S.C. §§ 1396a, 1396k, 1396p; chapter 43.20B RCW, RCW 74.08.090.

Other Authority: RCW 74.09.180, 74.09.185.

Adopted under notice filed as WSR 08-11-091 on May 20, 2008.

A final cost-benefit analysis is available by contacting Roy Vervair, P.O. Box 45561, Olympia, WA 98504-5561, phone (360) 725-1060, fax (360) 586-9727, e-mail [vervarv@dshs.wa.gov](mailto:vervarv@dshs.wa.gov).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 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: August 14, 2008.

Robin Arnold-Williams  
Secretary

**AMENDATORY SECTION** (Amending WSR 07-23-080 and 08-01-041, filed 11/19/07 and 12/12/07, effective 12/1/08)

**WAC 388-501-0100 Subrogation.** (1) For the purpose of this section, "liable third party" means:

(a) ((A person who commits or is guilty of a private or civil wrong doing or the insurer of that person)) The tort-feasor or insurer of the tort-feasor, or both; and

(b) Any ((individual)) person, entity or program that is or may be liable to ((pay for all or part of the expenditures for medical assistance furnished under the state plan. That liability must be based on any contract or insurance purchased by the client or any other person on behalf of the client)) provide coverage for the illness or injuries for which the department is providing assistance or residential care.

(2) As a condition of medical care eligibility, a client must assign to the state any right the client may have to receive payment from any liable third party for medical expenses ((and/or)), assistance, or residential care.

(3) To the extent authorized by a contract executed under RCW 74.09.522, a managed health care plan has the rights and remedies of the department as provided in RCW 43.20B.060 and ((70.09.180)) 74.09.180.

(4) The department is not responsible ((to pay)) for medical care payment(s) for a client whose personal injuries are caused by the negligence or wrongdoing of another. However, the department may provide the medical care required as a result of an injury or illness to the client if ((both of the following apply):

((a))) the client is otherwise eligible for medical care((;  
and

((b)) No other liable third party has been identified at the time the claim is filed)).

(5) The department may pursue its right to recover the value of medical care provided to an eligible client from any liable third party or third party settlement or ((judgement)) judgment as a subrogee, assignee, or by enforcement of its public assistance lien as provided under RCW 43.20B.040 through 43.20B.070 ((and)), RCW 74.09.180 and 74.09.185.

(6) ((When a client obtains a settlement or judgement from a liable third party that includes compensation for medical or residential care, the department must be reimbursed for the payments made for the benefit of the client as a result of the injury or illness suffered by the client.

((a)) In the absence of evidence to the contrary as discussed below in subsection (6)(e), the department's rebuttable presumption is that the entire settlement or judgement, up to the amount of the medical damages suffered by the client, is intended to compensate the client for past medical expenses and will enforce its claim accordingly. The department is entitled to be reimbursed up to the full amount of medical assistance paid on behalf of the client for the medical damages related to the injury or illness suffered by the client less the department's proportionate share of attorney's fees and

~~costs incurred in obtaining the settlement or judgement, as required by law.~~

(b) The department determines its net recovery by deducting its proportionate share of attorney's fees and costs

from the gross medical damages amount according to the following formula, in the absence of a court approved allocation of the medical damages or an agreement with the department establishing the allocation of medical damages:

(i) Gross settlement/judgement amount	\$ _____
(ii) Total amount of medical assistance paid	\$ _____
(iii) Department's percentage of attorney's fees and costs ((ii) divided by (i))	_____ %
(iv) Attorney's fees \$ _____ + Legal costs \$ _____ =	Total \$ _____
(v) Medicaid's pro rata share of fees and costs ((iv) multiplied by (iii))	\$ _____
(vi) Medicaid's reimbursement ((ii) minus (v))	\$ _____

(e) If the client disagrees with the allocation as set forth in subsections (a) and (b) of this section:

(i) Prior to accepting or disbursing the settlement or judgement funds, the client or the client's legal representative must provide the department with documentation that a different allocation of medical damages was negotiated, proven at trial, or is being considered with the third party and/or their insurer or the client's insurance carrier in obtaining the settlement or judgement; and

(ii) If the client and the department are not able to come to an agreement as to the proper payment to be made to the department to satisfy the department's claim for reimbursement of the medical assistance paid on behalf of the client, the matter should be set before a court for an allocation hearing prior to the distribution of the settlement or judgement.

(d) If the injured client does not have legal representation in the personal injury action and does not incur attorney's fees or costs in obtaining the settlement or judgement, the department ensures that the client will receive not less than one third of the total settlement or judgement amount, or the balance of the settlement or judgement after the full amount of medical assistance is paid, whichever is greater, as satisfaction of all other damages suffered by the client;

(e) When the settlement or judgement obtained by the client exceeds the amount of the assistance paid, the department is entitled to recover up to the full amount of the medical assistance paid less the department's proportionate share of any attorney's fees and costs incurred in obtaining the settlement or judgement;

(f) When the amount of a settlement or judgement is less than or equal to the amount of the department's medical assistance payments:

(i) The department and the client and/or the client's legal representative must determine the appropriate allocation for medical damages; or

(ii) If the department and the client and/or the client's legal representative are unable to agree upon an allocation for medical damages, then a court must decide the amount the client must reimburse the department for medical assistance payments made on his or her behalf.

(g) Under no circumstances will the total amount that the department receives be less than one third of the gross amount of the settlement or judgement, unless the department agrees in writing to a lesser amount) Notice to the department and determining the reimbursement amount:

(a) The client or the client's legal representative must notify the department in writing at the time of filing any claim against a third party, commencing an action at law,

negotiating a settlement, or accepting an offer from the liable third party. Written notices to the department under this section should be sent to:

Health and Recovery Services Administration  
COB Casualty Unit  
PO Box 45561  
Olympia, WA 98504-5561  
Fax (360) 753-3077

(b) The client or the client's legal representative must provide the department with documentation proposing allocation of damages, if any, to be used for settlement or to be proven at trial.

(c) Where damages, including medical damages, have not been designated in the settlement or judgment, the client or the client's legal representative must contact the department to determine the appropriate reimbursement amount for payments the department made for the client's benefit.

(d) If the client and the department are unable to reach an agreement as to the appropriate reimbursement amount, any party may bring a motion in the superior court for a hearing to determine the amount of reimbursement to the department from settlement or judgment proceeds.

(7) ((Recovery according to the subrogation rights, assignment, or enforcement of the lien granted to the department is not reduced, prorated, or applied to only a portion of a judgment, award, or settlement.)) The secretary of the department or the secretary's designee must consent in writing to any discharge or compromise of any settlement or judgment of a lien created under RCW ((42.20B.060)) 43.20B.060. The department considers the compromise or discharge of a medical care lien only as authorized by federal regulation at 42 CFR 433.139.

(8) The doctrine of equitable subrogation does not apply to defeat, reduce, or prorate any recovery made by the department that is based on its assignment, lien, or subrogation rights.

## WSR 08-17-049 PERMANENT RULES HORSE RACING COMMISSION

[Filed August 14, 2008, 4:55 p.m., effective September 14, 2008]

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

Purpose: To amend chapter 260-48 WAC to (1) add new sections to define terms applicable to this chapter, require

approval of all new forms of betting, regulate parimutuel cash vouchers, and other stored value instruments and systems, and allow quinfecta wagering (the first five finishers); (2) make changes to the process for patrons to file a complaint for payment if a parimutuel ticket is lost or stolen or if the association withholds payment or refuses to cash a wager, and how to address claims of payment errors; and (3) make minor changes to the other sections in this chapter so they are more clearly understandable.

Citation of Existing Rules Affected by this Order: Amending WAC 260-48-500, 260-48-510, 260-48-520, 260-48-530, 260-48-550, 260-48-560, 260-48-570, 260-48-580, 260-48-590, 260-48-600, 260-48-610, 260-48-620, 260-48-630, 260-48-640, 260-48-650, 260-48-660, 260-48-670, 260-48-700, 260-48-710, 260-48-720, 260-48-800, 260-48-810, 260-48-820, 260-48-830, 260-48-840, 260-48-850, 260-48-860, 260-48-870, 260-48-890, 260-48-900, 260-48-910, 260-48-920, 260-48-925, 260-48-930, 260-48-935, 260-48-940, and 260-48-960.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 08-11-112 on May 20, 2008.

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.

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Number of Sections Adopted Using Negotiated Rule Making: New 5, Amended 37, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 14, 2008.

R. J. Lopez  
Deputy Secretary

## NEW SECTION

**WAC 260-48-490 Definitions.** (1) "Common pool wagering." The inclusion of wagers placed at guest association locations and secondary parimutuel organizations (SPMO) into a common parimutuel pool for the purpose of display of wagering information and calculation of payoffs on winning wagers.

(2) "Guest association." An association approved to offer simulcast races and parimutuel wagering on races conducted at other racetracks.

(3) "Host association." An association where live racing and parimutuel wagering are conducted and on which parimutuel wagering is conducted by guest associations or satellite locations.

(4) "Parimutuel system." The hardware, software and communications equipment used to record wagers, calculate

payouts for winning wagers, and transmit wagering transactions and parimutuel pool data for display to patrons and to communicate with other parimutuel systems linked to facilitate common pool wagering.

(5) "Parimutuel wagering." A form of wagering on the outcome of a horse race in which all wagers are pooled and held by a parimutuel pool host for distribution of the total amount, less the deductions authorized by law, to holders of tickets on the winning contestants.

(6) "Secondary parimutuel organization (SPMO)." An entity other than a licensed association that offers and accepts parimutuel wagers. This may include a satellite location (off-track wagering) or an advance deposit wagering service provider.

(7) "Self-service terminal." A computerized wagering device that allows the patron to wager by use of a touch activated screen using account cards, vouchers, winning tickets and cash.

(8) "Simulcast." Live video and audio transmission of a race and parimutuel information for the purpose of parimutuel wagering at locations other than a host association.

## AMENDATORY SECTION (Amending WSR 96-10-014, filed 4/19/96, effective 6/11/96)

**WAC 260-48-500 General provisions.** (1) Each association ((shall)) must conduct wagering in accordance with applicable laws and these rules. Such wagering ((shall)) must employ a parimutuel system approved by the commission. The ((totalisator shall)) parimutuel system must be tested prior to and during the meeting as required by the commission.

(2) Parimutuel wagering utilizes a parimutuel system to pool wagers. The parimutuel system may be located on property of the association or may, subject to compliance with applicable law and these rules, reside at another location.

(3) Wagering may be accepted by a separate parimutuel system in this or other jurisdictions, and combined via communication between parimutuel systems.

(4) The commission may enter into multijurisdictional agreements with other regulatory authorities to facilitate certification of compliance with requirements by, and licensing of, parimutuel companies (including their employees), entities providing services for simulcasting and common pool wagering, secondary parimutuel organizations, and advance deposit wagering systems. Such agreements must, at a minimum, ensure certification and licensing requirements comparable to this jurisdiction.

## AMENDATORY SECTION (Amending WSR 96-10-014, filed 4/19/96, effective 6/11/96)

**WAC 260-48-510 Records.** (1) The association ((shall be)) is responsible for the maintenance of all wagering records ((of all wagering)) so the commission may review ((such)) these records for any race including the opening line, subsequent odds fluctuation, the amount and at which window wagers were placed on any betting interest and ((such)) any other information ((as)) that may be required. ((Such)) Wagering records ((shall)) must be retained by each association and/or ((totalisator)) parimutuel company and safe-

guarded for one year after the last day of the race meet or as specified by the commission.

(2) The association ((shall)) must provide at the request of the commission a list of the licensed individuals afforded access to parimutuel records and equipment at the wagering facility.

**AMENDATORY SECTION** (Amending WSR 96-10-014, filed 4/19/96, effective 6/11/96)

**WAC 260-48-520 Parimutuel tickets.** A parimutuel ticket is evidence of a ((contribution to)) wager into the parimutuel pool operated by the association and is evidence of the association's obligation ((of the association)) to pay to the holder ((thereof such)) a portion of the distributable amount of the parimutuel pool ((as) that is represented by ((such)) a valid parimutuel ticket. The association ((shall)) must cash all valid winning parimutuel tickets when ((such)) they are presented for payment.

(1) To be deemed a valid parimutuel ticket, ((such)) the ticket ((shall)) must have been issued by a parimutuel ticket machine operated by the association and recorded as a ticket entitled to a share of the parimutuel pool((, and contain imprinted information as to)). The parimutuel ticket must also contain the following:

- (a) The name of the association operating the meeting((,));
- (b) A unique identifying number or code((,));
- (c) ((Identification of)) The terminal at which the ticket was issued((,));
- (d) ((A designation of the performance for which)) The date that the wagering transaction was issued((,));
- (e) The race number ((for which the pool is conducted.));
- (f) The type or types of wager(s) ((represented.));
- (g) The number or numbers representing the betting interests ((for which the wager is recorded.)); and
- (h) The amount or amounts of the ((contributions to)) wagers into the parimutuel pool or pools for which the ticket is evidence.

(2) No parimutuel ticket recorded or reported as ((previously)) paid, cancelled, or nonexistent ((shall)) will be ((deemed)) considered a valid parimutuel ticket ((by the association)).

(3) ((Every)) The association ((shall)) must maintain a record of ((outstanding)) all winning parimutuel tickets, ((which represent the winning tickets)) not presented for payment. A record of ((such)) these tickets ((so)) when cashed ((shall)) must be retained for a period of ((thirty)) twenty-four months from the date ((they were)) cashed. This record ((shall)) will be made available for inspection by the commission or its authorized representative ((upon request)) when requested.

**AMENDATORY SECTION** (Amending WSR 96-10-014, filed 4/19/96, effective 6/11/96)

**WAC 260-48-530 Parimutuel ticket sales.** (1) Parimutuel tickets ((shall)) may not be sold by anyone other than an association licensed to conduct parimutuel wagering.

(2) No parimutuel ticket may be sold on a race for which wagering has already been closed and ((no)) the association

((shall be)) is not responsible for ticket sales entered into but not completed by issuance of a ticket before the ((totalisator)) parimutuel system is closed for wagering ((on such race)).

(3) Parimutuel tickets may be exchanged or cancelled prior to the running of a race based upon the written policies of the association. Such ((policy shall)) policies must be filed with the commission.

(4) Payment on winning parimutuel wagers ((shall)) will be made on the basis of the order of finish as ((purposely)) posted and declared "official." Any subsequent change in the order of finish or award of purse money as may result from a subsequent ruling by the stewards or commission ((shall)) will in no way affect the parimutuel payoff. If an error in the posted order of finish or payoff figures is discovered, the official order of finish or payoff prices may be corrected and an announcement concerning the change ((shall)) will be made to the public.

(5) The association ((shall have)) has no obligation to enter a wager into a betting pool if unable to do so due to equipment failure.

(6) No person under the age of ((+8 shall)) eighteen may purchase or cash any parimutuel ticket. No employee of the association ((shall)) may knowingly sell to or cash for a person under the age of ((+8)) eighteen any parimutuel ticket. Unattended persons under the age of ((+8)) eighteen are not permitted in wagering areas.

**AMENDATORY SECTION** (Amending WSR 96-10-014, filed 4/19/96, effective 6/11/96)

**WAC 260-48-550 Claims for payment from parimutuel pool.** ((At a designated location, a written, verified claim for payment from a parimutuel pool shall be accepted by the association. In any case where the association has withheld payment or has refused to cash a parimutuel wager the claimant shall be informed that they may register a complaint with the commission. In the case of a claim made for payment on a parimutuel wager, the commission may adjudicate the claim and order payment thereon from the parimutuel pool or by the association, or may deny the claim, or may make such other order as it may deem proper.)) (1) A request for payment from the parimutuel pool may be made by submitting a valid claim form to the association mutual department under the following conditions:

- (a) A verifiable parimutuel ticket is lost or damaged; or
- (b) The association has withheld payment or refused to cash a parimutuel wager.

(2) The association mutual department will investigate the claim and make a determination as to whether there is sufficient information to identify the parimutuel ticket as a winning ticket.

(3) If the claim is denied, the claimant will be informed of the denial and that they may challenge the decision to the executive secretary.

(4) If the executive secretary denies the claim, the claimant may request a hearing before the commission as provided in WAC 260-08-675.

**AMENDATORY SECTION** (Amending WSR 96-10-014, filed 4/19/96, effective 6/11/96)

**WAC 260-48-560 Payment for errors.** If an error occurs in the payment amounts for parimutuel tickets ((which)) that are cashed or entitled to be cashed and as a result of ((such)) the error the parimutuel pool involved ((in the error)) is not correctly distributed among winning ticket holders, the following ((shall)) will apply:

(1) In the event the error results in an overpayment to the ticket holders the association ((shall)) will be responsible for such payment.

(2) In the event the error results in an underpayment to ticket holders:

(a) The association ((shall)) will accept timely claims for such underpayment, ((shall)) investigate such claims and ((shall)) pay each claim, or a part thereof, ((which it)) that the association determines to be valid, and ((shall)) will notify the claimant if the claim is rejected as invalid.

(b) Any person whose claim is ((rejected)) denied by the association may, within ((15)) fifteen days from the date the ((rejection)) denial notice was ((received)) served, request the ((commission)) executive secretary to determine the validity of the claim. The failure to file such request with the ((commission)) executive secretary within the ((said time shall)) fifteen days will constitute a waiver of the claim.

(c) ((A hearing shall be held on each such rejected claim timely filed with the commission. The commission shall give notice of such hearing to the claimant and the association. The commission may)) The executive secretary will investigate each claim denied, and determine ((a)) the validity of the claim ((to be valid, in whole or in part, and thereafter order the association to pay the claimant the amount of the claim determined to be valid, or may deny the claim in whole or in part. Any such determination shall be final and binding to all parties)). Within seven days of service of the executive secretary's determination, the claimant or the association may challenge the executive secretary's determination by requesting a hearing before the commission as provided in WAC 260-08-675.

(d) If no valid claims are presented, or after all filed claims have been resolved, the amount of the underpayment or any part thereof, ((shall)) will be applied to the next available corresponding pool (i.e. exacta pools). If there is no similar pool the underpayment ((shall)) will be applied to the win pool of the first race. Such payment ((shall)) will be publicly announced prior to this day.

((3) Any claim not filed with the association within 30 days inclusive of the date on which the underpayment was publicly announced shall be deemed waived and the association shall have no further liability therefor.))

**AMENDATORY SECTION** (Amending WSR 96-10-014, filed 4/19/96, effective 6/11/96)

**WAC 260-48-570 Betting explanation.** A summary explanation of parimutuel wagering and each type of betting pool offered ((shall)) will be published in the program for each race day. The rules of racing relative to each type of parimutuel pool offered must be prominently displayed on

association grounds and available upon request ((through association representatives)).

**AMENDATORY SECTION** (Amending WSR 96-10-014, filed 4/19/96, effective 6/11/96)

**WAC 260-48-580 Display of betting information.** (1) The association will display the approximate odds for win pool betting ((shall be posted on display devices)) within view of the wagering public and ((updated for)) update the ((first change)) odds when the total win pool has reached a minimum dollar amount established by the association((, and thereafter shall update)). The association will continue to update the odds at intervals of not more than ((90)) ninety seconds((, but)). In no event ((shall)) will the first change in odds occur later than ((12)) twelve minutes to post.

(2) The association may display the probable payoff or amounts wagered, in total and on each betting interest, for other pools ((may be displayed)) to the wagering public at intervals and in a manner approved by the commission.

(3) Official results and payoffs must be displayed ((upon)) immediately after each race ((being)) is declared official.

**AMENDATORY SECTION** (Amending WSR 96-10-014, filed 4/19/96, effective 6/11/96)

**WAC 260-48-590 Cancelled races.** If a race is cancelled or declared ("no race,") "no contest" refunds ((shall)) will be granted on valid wagers in accordance with these rules.

**AMENDATORY SECTION** (Amending WSR 00-06-070, filed 3/1/00, effective 4/1/00)

**WAC 260-48-600 Refunds.** (1) Notwithstanding other provisions of these rules, refunds of the entire pool ((shall)) will be made on:

(a) Win pools, exacta pools, and first-half double pools, offered in races in which the number of betting interests has been reduced to fewer than two.

(b) Place pools and quinella pools, trifecta pools and first-half twin trifecta pools, offered in races in which the number of betting interests has been reduced to fewer than three.

(c) Show pools, superfecta pools offered in races in which the number of betting interests has been reduced to fewer than four.

((d) Superfecta pools and first half twin trifecta pools, offered in races in which the number of betting interests has been reduced to fewer than six.))

((e) Trifecta pools, in races in which the number of betting interests has been reduced to fewer than five.))

(2) Authorized refunds ((shall)) will be paid ((upon presentation and surrender of the affected parimutuel ticket)) when the parimutuel ticket is presented and surrendered.

**AMENDATORY SECTION** (Amending WSR 96-10-014, filed 4/19/96, effective 6/11/96)

**WAC 260-48-610 Coupled entries and mutuel field.**

(1) Horses coupled in wagering as a coupled entry or mutuel field ((~~shall~~) will) be considered part of a single betting interest for the purpose of price calculations and distribution of pools. Should any horse in a coupled entry or mutuel field be officially withdrawn or scratched, the remaining horses in that coupled entry or mutuel field ((~~shall~~) will) remain valid betting interests and no refunds will be granted. If all horses within a coupled entry or mutuel field are scratched, then tickets on such betting interests ((~~shall~~) will) be refunded, notwithstanding other provisions of these rules.

(2) For the purpose of price calculations only, coupled entries and mutuel fields ((~~shall~~) will) be calculated as a single finisher, using the finishing position of the leading horse in that coupled entry or mutuel field to determine order of placing. This rule ((~~shall~~) will) apply to all circumstances, including situations involving a dead heat, except as otherwise provided by these rules.

**AMENDATORY SECTION** (Amending WSR 04-07-077, filed 3/15/04, effective 4/15/04)

**WAC 260-48-620 Pools dependent upon betting interests.** Unless the commission or its designee otherwise provides, at the time the pools are opened for wagering, the association:

(1) ((~~Shall~~) Must) offer win wagering on all races with three or more betting interests. May offer win wagering on all races with two betting interests.

(2) ((~~Shall~~) Must) offer place wagering on all races with four or more betting interests.

(3) ((~~Shall~~) Must) offer show wagering on all races with five or more betting interests.

(4) May offer quinella wagering on all races with three or more betting interests.

(5) May offer exacta wagering on all races with two or more betting interests.

(6) May offer trifecta wagering on all races with three or more betting interests.

(7) May offer twin trifecta wagering on all races with ((~~seven~~) six or ((~~more~~) less) betting interests.

(8) May offer superfecta wagering on all races with four or more betting interests.

(9) May offer quinfecta wagering on all races with five or more betting interests.

**NEW SECTION**

**WAC 260-48-625 Prior approval required for betting pools.** (1) An association that desires to offer new forms of wagering must apply in writing to the commission and receive written approval prior to implementing the new betting pool. New forms of wagering may only be offered by a host association after they have been established in rule, except as provided in WAC 260-48-710.

(2) An association may suspend previously approved forms of wagering with the prior approval of the commission. Any carryover will be held until the suspended form of

wagering is reinstated. An association may request approval of a form of wagering or separate wagering pool for a specific performance.

**AMENDATORY SECTION** (Amending WSR 03-07-057, filed 3/14/03, effective 4/14/03)

**WAC 260-48-630 Closing of wagering in a race.** (1) ((~~Coincident with~~) Upon the start of a live race, a commission representative ((~~shall~~) will immediately) close wagering for the race ((~~after which time~~) Once wagering is closed, no parimutuel tickets ((~~shall~~) will) be sold for that race.

((~~(2)~~) Coincident with) (2) Upon the start of any simulcast race, the association ((~~shall be~~) is) responsible to ensure that wagering is closed for the race ((~~after which time~~) Once wagering is closed, no parimutuel tickets ((~~shall~~) will) be sold for that race.

(3) The association ((~~shall~~) must maintain ((~~in good order~~) an electrical or other system approved by the commission for accurately locking ((~~of~~) all parimutuel machines.

**AMENDATORY SECTION** (Amending WSR 96-10-014, filed 4/19/96, effective 6/11/96)

**WAC 260-48-640 Complaints pertaining to parimutuel operations.** (1) When a patron makes an ((~~unresolvable~~) unresolved) complaint regarding the parimutuel department to an association, the association ((~~shall~~) will immediately issue a complaint report, ((~~setting out~~) including the following:

- (a) The name of the complainant;
- (b) The nature of the complaint;
- (c) The name of the persons, if any, against whom the complaint was made;
- (d) The date of the complaint;
- (e) The action taken or proposed to be taken, if any, by the association.

(2) The association ((~~shall~~) will submit every complaint report to the ((~~commission~~) executive secretary within ((~~48~~) forty-eight hours ((~~after~~) of the complaint ((was made)).

**AMENDATORY SECTION** (Amending WSR 96-10-014, filed 4/19/96, effective 6/11/96)

**WAC 260-48-650 Licensed employees.** All licensees ((~~shall~~) will report any known irregularities or wrong doings by any person involving parimutuel wagering immediately to the ((~~commission~~) board of stewards or the executive secretary if the incident occurs during a nonlive racing period, and will fully cooperate in subsequent investigations.

**AMENDATORY SECTION** (Amending WSR 96-10-014, filed 4/19/96, effective 6/11/96)

**WAC 260-48-660 Emergency situations.** Should any emergency arise in connection with the operation of the parimutuel department of the association, not covered by these rules, and an immediate decision is necessary, the mutuel manager may make the decision. The mutuel manager will immediately notify the board of stewards, or the

executive secretary if the emergency arises during a nonlive racing period.

**AMENDATORY SECTION** (Amending WSR 96-10-014, filed 4/19/96, effective 6/11/96)

**WAC 260-48-670 Limit payoffs.** An association may ((have the option to)) limit payoffs((,)) at satellite locations((, approved in accordance with See. 01. RCW 67.16.200,)) to \$2,500 in cash, with the balance delivered in the form of a check or by an electronic fund transfer by the end of the next business day.

#### NEW SECTION

**WAC 260-48-680 Parimutuel cash vouchers.** (1) A parimutuel cash voucher is a document or card produced by a parimutuel system device on which a stored cash value is represented and the value is recorded in and redeemed through the parimutuel system. Parimutuel cash vouchers may be offered by an association that issues parimutuel tickets. The stored value on a voucher may be redeemed in the same manner as a value of a winning parimutuel ticket for wagers placed at a parimutuel window or a self-service terminal, and may be redeemed for their cash value at any time.

(2) An association may, with the prior approval of the commission, issue special parimutuel cash vouchers as incentives or promotional prizes, and may restrict the use of those vouchers to the purchase of parimutuel wagers.

(3) The tote system transaction record for all parimutuel vouchers will include the following:

(a) The voucher identification number in subsequent parimutuel transactions;

(b) Any parimutuel wagers made from a voucher will identify the voucher by identification number.

#### NEW SECTION

**WAC 260-48-690 Other stored value instruments and systems.** (1) An association may not, without the prior approval of the commission, utilize any form of stored value instrument or system other than a parimutuel voucher for the purpose of making or cashing parimutuel wagers.

(2) Any request for approval of a stored value instrument or system will include a detailed description of the standards utilized:

(a) To identify the specific stored value instrument or account in the parimutuel system wagering transaction record;

(b) To verify the identity and business address of the person(s) obtaining, holding, and using the stored value instrument or system; and

(c) To record and maintain records of deposits, credits, debits, transaction numbers, and account balances involving the stored value instruments or accounts.

(3) A stored value instrument or system will prevent wagering transactions in the event such transactions would create a negative balance in an account, and will not automatically transfer funds into a stored value instrument or account without the direct authorization of the person holding the instrument or account.

(4) Any request for approval of a stored value instrument or system will include all records and reports relating to all transactions, account records, and customer identification and verification in hard copy or in an electronic format approved by the commission. All records will be retained for a period of not less than three years.

**AMENDATORY SECTION** (Amending WSR 04-21-053, filed 10/18/04, effective 11/18/04)

**WAC 260-48-700 ((Multijurisdictional)) Common pool wagering.** (1) ((Definitions:

(a) The host association is the association conducting a licensed parimutuel meeting from which authorized contests or entire performances are simulcast;

(b) The guest association is the association that offers licensed parimutuel wagering on contests conducted by the host association;

((2))) (a) Except as otherwise authorized by the commission, a request for simulcasting must be filed on a form provided by the commission not later than seven business days before the first simulcast race covered by the request. The executive secretary may approve a request for simulcasting, subject to rescission of the approval by the commission at its next regular meeting.

(b) The application must include at a minimum:

(i) The simulcast agreement between the host and guest association;

(ii) The approval by the horsemen's association represented at the host and guest site;

(iii) The alternate jurisdiction approval;

(iv) When acting as the host site, approval also requires a list of all locations that will be receiving and/or wagering on the races under the guest site; and

(v) The executive secretary may require the association to submit additional information if the executive secretary determines the additional information is necessary to effectively evaluate the request.

((3))) (2) A class 1 racing association ((shall)) may not ((be allowed to)) simulcast until the following are filed with the commission.

(a) A written agreement with the local horsemen's group.

(b) A description of how simulcast purse moneys are to be maintained.

(c) A description of how breeder awards are to be maintained.

(d) A monthly statement showing amounts contributed to and balance in the purse fund and the breeder's awards fund. This statement ((shall)) will be filed with the commission no later than ((ten)) fifteen days after the end of each month.

((4))) (3) The approval of any particular simulcasting or wagering on particular simulcast races or programs is not binding on the commission for other requests for approval of simulcasting or wagering on simulcast races or programs.

((5))) (4) In determining whether to approve a ((multijurisdictional)) common pool which does not include the host track or which includes contests from more than one association, the commission ((shall)) will consider and may approve use of a bet type which is not utilized at the host track, appli-

cation of a takeout rate not in effect at the host track, or other factors which are presented to the commission.

((6)) (5) No class 1 racing association ((shall)) will enter a contractual agreement that is in violation of, or may be construed as waiving any provision of chapter 67.16 RCW, Title 260 WAC and any federal, state or local law.

((7)) (6) The mutuel manager or the mutuel manager's designee ((shall)) must be present on association grounds at all times that the class 1 racing association is accepting wagers on simulcast races. He/she ((shall)) will be responsible for communicating all errors or omissions regarding simulcast wagering to the board of stewards or the executive secretary if errors or omissions occur during nonlive racing periods.

((8)) (7) There ((shall)) must be a facsimile machine located in each mutuel area or tote room and a direct, private telephone line to be located in the tote room. Phone access to the tote room ((shall)) will not require routing through the switchboard.

((9) Every class 1 racing association shall file with the commission an annual report of its simulcast operations including financial data as specified by the commission.

(10) Not less than thirty minutes)) (8) When necessary prior to the commencement of transmission of the performance of parimutuel contests for each day or night, the guest association ((shall)) will initiate a test program of its transmitter, encryption and decoding, and data communication to assure proper operation of the system.

((11)) (9) Washington intra-track breakage and minus pools ((shall)) will be prorated based on amounts wagered.

((12)) (10) The commission may permit adjustment of the takeout from the parimutuel pool so that the takeout rate in this jurisdiction is identical to that at the host jurisdiction, or identical to that of other jurisdictions participating in a merged pool.

((13)) (11) Any surcharges or withholdings in addition to the takeout ((shall)) will only be applied in the jurisdiction otherwise imposing such surcharges or withholdings.

((14)) (12) Where takeout rates in the merged pool are not identical, the net price calculation may be the method by which the differing takeout rates are applied.

((15)) (13) Parimutuel pools may be combined for computing odds and calculating payouts but will be held separate for auditing and all other purposes.

#### AMENDATORY SECTION (Amending WSR 04-21-053, filed 10/18/04, effective 11/18/04)

**WAC 260-48-710 Participation in common pools as guest.** (1) With the prior approval of the commission, parimutuel-wagering pools may be combined with corresponding wagering pools in the host jurisdiction, or with corresponding pools established by one or more other jurisdictions.

(2) Rules established in the jurisdiction of the host association designated for a parimutuel pool ((shall)) will apply.

(3) The guest association and all authorized receivers ((shall)) will conduct parimutuel wagering pursuant to the applicable jurisdiction rules.

(4) Class 1 racing associations which import simulcast races and propose to offer types of wagers other than those currently defined in chapter 260-48 WAC, ((shall)) will submit to the commission a copy of the host jurisdiction's rule governing the wager.

(5) If, after the close of wagering, a guest racetrack's wagers cannot be successfully merged in the ((multijurisdictional)) common pool via data circuit or manual merge, the mutuel manager ((shall)) will:

(a) Refund the pools not successfully merged after announcing to the public that the pools were not merged successfully and the pools will be refunded; or

(b) Pay the winning wagers based on the prices established at the host racetrack.

The mutuel manager ((shall)) will report the failure to merge any common pool to the ((commission)) board of stewards or the executive secretary if the failure to merge any common pool occurs during nonlive racing. The report must be ((made on a form prescribed by the executive secretary and be)) filed no later than the day after the date the common pool failed to merge.

In the event the host association has offered a wager not covered by chapter 260-48 WAC, the Association of Racing Commissioners International model rules regarding such wager ((shall)) will govern. Information regarding this emergency procedure ((shall)) will be posted throughout the class 1 racing association facility and published in its racing program.

(6) An authorized class 1 racing association when acting as a guest association ((shall)) will provide:

(a) ((A voice communication system between each guest association and the host association, providing timely voice contact among the commission designees and parimutuel departments.

((b))) Parimutuel terminals and odds displays, modems and equipment enabling parimutuel data transmissions, and data communications between the host and guest associations.

((e))) (b) Adequate transmitting and receiving equipment of acceptable broadcast quality, which ((shall)) will not interfere with the closed circuit TV system of the host association for providing any host facility patron information.

#### AMENDATORY SECTION (Amending WSR 04-21-053, filed 10/18/04, effective 11/18/04)

**WAC 260-48-720 Participation in common pools as host.** (1) A host association is responsible for content of the simulcast and ((shall)) will use all reasonable effort to present a simulcast that offers the viewers an exemplary depiction of each performance.

(2) Unless otherwise permitted by the commission, every simulcast will contain in its video content the date, a digital display of actual time of day, the host facility's name from where it emanates and the number of the contest being displayed.

(3) The host association ((shall)) will maintain such security controls including encryption over its uplink and communications systems as directed or approved by the commission.

(4) Any contract of ((~~multijurisdiction~~)) common pools entered into by the association ((~~shall~~) will) contain a provision to the effect that if, for any reason, it becomes impossible to successfully merge the bets placed in another jurisdiction into the ((~~multijurisdiction~~)) common pool formed by the class 1 racing association, or if, for any reason, the commission's or the association's representative determines that attempting to effect transfer of pool data from the guest ((~~jurisdiction~~)) association may endanger the association's wagering pool, the association ((~~shall~~) will) have no liability for any measures taken which may result in the guest's wagers not being accepted into the pool.

(5) If for any reason it becomes impossible to successfully merge pool data into the ((~~multijurisdiction~~)) common pool of the class 1 racing association, or it is determined that attempting to effect transfer of pool data from the guest jurisdiction may endanger the class 1 racing associations wagering pool, or cause an unreasonable delay of the racing program, the class 1 racing association's ((~~representative shall~~) mutuel manager or designee will) determine under the circumstances whether to manually merge guests pools, exclude guests pools or delay the Washington pools.

(6) Scratched horses ((~~must~~) will) be communicated via facsimile machine, telephone or other approved method by the host mutuel manager to all guest mutuel managers except when the operating ((~~totalisator~~)) parimutuel system protocol performs these functions automatically or when the information is disseminated to the wagering network via satellite or video display. The host mutuel manager ((~~must~~) will) communicate program changes to all guest sites via facsimile machine, telephone or other approved method.

#### AMENDATORY SECTION (Amending WSR 06-05-038, filed 2/9/06, effective 3/12/06)

**WAC 260-48-800 Parimutuel wagering pools.** (1) All permitted parimutuel wagering pools ((~~shall~~) will) be separately and independently calculated and distributed. Takeout ((~~shall~~) will) be deducted from each gross pool as stipulated by law. The remainder of the moneys in the pool ((~~shall~~) will) constitute the net pool for distribution as payoff on winning wagers.

(2) Either standard price or net price calculation procedures ((~~shall~~) will) be used to calculate wagering pools((~~;~~). However((~~;~~) net price calculation ((~~shall~~) will) be used any time international wagering is conducted.

(a) Standard price calculation procedure:

#### SINGLE PRICE POOL (WIN POOL)

Gross Pool	=	Sum of Wagers on all Betting Interests - Refunds
Takeout	=	Gross Pool x Percent Takeout
Net Pool	=	Gross Pool - Takeout
Profit	=	Net Pool - Gross Amount Bet on Winner
Profit Per Dollar	=	Profit/Gross Amount Bet on Winner
\$1 Unbroken Price	=	Profit Per Dollar + \$1

#### SINGLE PRICE POOL (WIN POOL)

\$1 Broken Price	=	\$1 Unbroken Price Rounded Down to the Break Point
Total Payout	=	\$1 Broken Price x Gross Amount Bet on Winner
Total Breakage	=	Net Pool - Total Payout

#### PROFIT SPLIT (PLACE POOL)

Profit is net pool less gross amount bet on all place finishers. Finishers split profit 1/2 and 1/2 (place profit), then divide by gross amount bet on each place finisher for two unique prices.

#### PROFIT SPLIT (SHOW POOL)

Profit is net pool less gross amount bet on all show finishers. Finishers split profit 1/3 and 1/3 and 1/3 (show profit), then divide by gross amount bet on each show finisher for three unique prices.

(b) Net price calculation procedure:

#### SINGLE PRICE POOL (WIN POOL)

Gross Pool	=	Sum of Wagers on all Betting Interests - Refunds
Takeout	=	Gross Pool x Percent Takeout for each Source
Net Pool	=	Gross Pool - Takeout
Net Bet on Winner	=	Gross Amount Bet on Winner x (1 - Percent Takeout)
Total Net Pool	=	Sum of all Sources Net Pools
Total Net Bet on Winner	=	Sum of all Sources Net Bet on Winner
Total Profit	=	Total Net Pool - Total Net Bet on Winner
Profit Per Dollar	=	Total Profit/Total Net Bet on Winner
\$1 Unbroken Base Price	=	Profit Per Dollar + \$1 for each Source
\$1 Unbroken Price	=	\$1 Unbroken Base Price x (1 - Percent Takeout)
\$1 Broken Price	=	\$1 Unbroken Price Rounded Down to the Break Point
Total Payout	=	\$1 Broken Price x Gross Amount Bet on Winner
Total Breakage	=	Net Pool - Total Payout

#### PROFIT SPLIT (PLACE POOL)

Total profit is the total net pool less the total net amount bet on all place finishers. Finishers split total profit 1/2 and 1/2 (place profit), then divide by total net amount bet on each place finisher for two unique unbroken base prices.

#### PROFIT SPLIT (SHOW POOL)

Total profit is the total net pool less the total net amount bet on all show finishers. Finishers split total profit 1/3 and 1/3

and 1/3 (show profit), then divide by total net amount bet on each show finisher for three unique unbroken base prices.

(3) If a profit split results in only one covered winning betting interest or combinations it ((shall)) will be calculated the same as a single price pool.

(4) The individual pools outlined in these rules may be given alternative names by each association, provided prior approval is obtained from the commission.

(5) In the event a minus pool occurs in any parimutuel pool, the expense of said minus pool ((shall)) will be borne by the association.

(6) The association ((must)) will pay to the holder of any ticket or tickets entitling the holder to participate in the distribution of a parimutuel pool the amount wagered by such holder plus a minimum of five percent thereof. This requirement is unaffected by the existence of a parimutuel pool which does not contain sufficient money to distribute said five percent to all persons holding such tickets.

(7) No person or corporation ((shall)) will directly or indirectly purchase parimutuel tickets or participate in the purchase of any part of a parimutuel pool for another for hire or for any gratuity.

**AMENDATORY SECTION** (Amending WSR 96-10-014, filed 4/19/96, effective 6/11/96)

**WAC 260-48-810 Win pools.** (1) The amount wagered on the betting interest which finishes first is deducted from the net pool, the balance remaining being the profit; the profit is divided by the amount wagered on the betting interest finishing first, such quotient being the profit per dollar wagered to win on that betting interest.

(2) The net win pool ((shall)) will be distributed as a single price pool to winning wagers in the following precedence, based upon the official order of finish:

(a) To those whose selection finished first; but if there are no such wagers, then

(b) To those whose selection finished second; but if there are no such wagers, then

(c) To those whose selection finished third; but if there are no such wagers, then

(d) The entire pool ((shall)) will be refunded on win wagers for that race.

(3) If there is a dead heat for first involving:

(a) Horses representing the same betting interest, the win pool ((shall)) will be distributed as if no dead heat occurred.

(b) Horses representing two or more betting interests, the win pool ((shall)) will be distributed as a profit split.

**AMENDATORY SECTION** (Amending WSR 96-10-014, filed 4/19/96, effective 6/11/96)

**WAC 260-48-820 Place pools.** (1) The amounts wagered to place on the first two betting interests to finish are deducted from the net pool, the balance remaining being the profit; the profit is divided into two equal portions, one being assigned to each winning betting interest and divided by the amount wagered to place on that betting interest, the resulting quotient is the profit per dollar wagered to place on that betting interest.

(2) The net place pool ((shall)) will be distributed to winning wagers in the following precedence, based upon the official order of finish:

(a) If horses of a coupled entry or mutuel field finished in the first two places, as a single price pool to those who selected the coupled entry or mutuel field; otherwise

(b) As a profit split to those whose selection is included within the first two finishers; but if there are no such wagers on one of those two finishers, then

(c) As a single price pool to those who selected the one covered betting interest included within the first two finishers; but if there are no such wagers, then

(d) As a single price pool to those who selected the third-place finisher; but if there are no such wagers, then

(e) The entire pool ((shall)) will be refunded on place wagers for that race.

(3) If there is a dead heat for first involving:

(a) Horses representing the same betting interest, the place pool ((shall)) will be distributed as a single price pool.

(b) Horses representing two or more betting interests, the place pool ((shall)) will be distributed as a profit split.

(4) If there is a dead heat for second involving:

(a) Horses representing the same betting interest, the place pool ((shall)) will be distributed as if no dead heat occurred.

(b) Horses representing two or more betting interests, the place pool is divided with one-half of the profit distributed to place wagers on the betting interest finishing first and the remainder is distributed equally amongst place wagers on those betting interests involved in the dead heat for second.

**AMENDATORY SECTION** (Amending WSR 96-10-014, filed 4/19/96, effective 6/11/96)

**WAC 260-48-830 Show pools.** (1) The amounts wagered to show on the first three betting interests to finish are deducted from the net pool, the balance remaining being the profit; the profit is divided into three equal portions, one being assigned to each winning betting interest and divided by the amount wagered to show on that betting interest, the resulting quotient being the profit per dollar wagered to show on that betting interest. The net show pool ((shall)) will be distributed to winning wagers in the following precedence, based upon the official order of finish:

(a) If horses of a coupled entry or mutuel field finished in the first three places, as a single price pool to those who selected the coupled entry or mutuel field; otherwise

(b) If horses of a coupled entry or mutuel field finished as two of the first three finishers, the profit is divided with two-thirds distributed to those who selected the coupled entry or mutuel field and one-third distributed to those who selected the other betting interest included within the first three finishers; otherwise

(c) As a profit split to those whose selection is included within the first three finishers; but if there are no such wagers on one of those three finishers, then

(d) As a profit split to those who selected one of the two covered betting interests included within the first three finishers; but if there are no such wagers on two of those three finishers, then

(e) As a single price pool to those who selected the one covered betting interest included within the first three finishers; but if there are no such wagers, then

(f) As a single price pool to those who selected the fourth-place finisher; but if there are no such wagers, then

(g) The entire pool ((shall)) will be refunded on show wagers for that race.

(2) If there is a dead heat for first involving:

(a) Two horses representing the same betting interest, the profit is divided with two-thirds distributed to those who selected the first-place finishers and one-third distributed to those who selected the betting interest finishing third.

(b) Three horses representing a single betting interest, the show pool ((shall)) will be distributed as a single price pool.

(c) Horses representing two or more betting interests, the show pool ((shall)) will be distributed as a profit split.

(3) If there is a dead heat for second involving:

(a) Horses representing the same betting interest, the profit is divided with one-third distributed to those who selected the betting interest finishing first and two-thirds distributed to those who selected the second-place finishers.

(b) Horses representing two betting interests, the show pool ((shall)) will be distributed as a profit split.

(c) Horses representing three betting interests, the show pool is divided with one-third of the profit distributed to show wagers on the betting interest finishing first and the remainder is distributed equally amongst show wagers on those betting interests involved in the dead heat for second.

(4) If there is a dead heat for third involving:

(a) Horses representing the same betting interest, the show pool ((shall)) will be distributed as if no dead heat occurred.

(b) Horses representing two or more betting interests, the show pool is divided with two-thirds of the profit distributed to show wagers on the betting interests finishing first and second and the remainder is distributed equally amongst show wagers on those betting interests involved in the dead heat for third.

#### AMENDATORY SECTION (Amending WSR 96-10-014, filed 4/19/96, effective 6/11/96)

**WAC 260-48-840 Double pools.** (1) The double requires selection of the first-place finisher in each of two specified races.

(2) The net double pool ((shall)) will be distributed to winning wagers in the following precedence, based upon the official order of finish:

(a) As a single price pool to those whose selection finished first in each of the two races; but if there are no such wagers, then

(b) As a profit split to those who selected the first-place finisher in either of the two races; but if there are no such wagers, then

(c) As a single price pool to those who selected the one covered first-place finisher in either race; but if there are no such wagers, then

(d) As a single price pool to those whose selection finished second in each of the two races; but if there are no such wagers, then

(e) The entire pool ((shall)) will be refunded on double wagers for those races.

(3) If there is a dead heat for first in either of the two races involving:

(a) Horses representing the same betting interest, the double pool ((shall)) will be distributed as if no dead heat occurred.

(b) Horses representing two or more betting interests, the double pool ((shall)) will be distributed as a profit split if there is more than one covered winning combination.

(4) Should a betting interest in the first-half of the double be scratched prior to the close of wagering for the first double race ((being declared official)) or a betting interest declared a nonstarter, all money wagered on combinations including the scratched betting interest ((shall)) will be deducted from the double pool and refunded.

(5) Should a betting interest in the second-half of the double be scratched prior to the close of wagering on the first double race, all money wagered on combinations including the scratched betting interest ((shall)) will be deducted from the double pool and refunded.

(6) Should a betting interest in the second-half of the double be scratched after the close of wagering on the first double race, or declared a nonstarter, all wagers combining the winner of the first race with the scratched betting interest in the second race ((shall)) will be allocated a consolation payoff. In calculating the consolation payoff the net double pool ((shall)) will be divided by the total amount wagered on the winner of the first race and an unbroken consolation price obtained. The broken consolation price is multiplied by the dollar value of wagers on the winner of the first race combined with the scratched betting interest to obtain the consolation payoff. Breakage is not declared in this calculation. The consolation payoff is deducted from the net double pool before calculation and distribution of the winning double payoff. Dead heats including separate betting interests in the first race ((shall)) will result in a consolation payoff calculated as a profit split.

(7) If either of the double races are cancelled prior to the first double race, or the first double race is declared "no ((raee)) contest," the entire double pool ((shall)) will be refunded on double wagers for those races.

(8) If the second double race is cancelled or declared "no ((raee)) contest" after the conclusion of the first double race, the net double pool ((shall)) will be distributed as a single price pool to wagers selecting the winner of the first double race. In the event of a dead heat involving separate betting interests, the net double pool ((shall)) will be distributed as a profit split.

(9) Before the running of the second double race the association ((shall)) will announce and/or post the payoff of each combination coupled with the winner of the first half of the double race.

**AMENDATORY SECTION** (Amending WSR 96-10-014, filed 4/19/96, effective 6/11/96)

**WAC 260-48-850 Pick three.** (1) The pick three requires selection of the first-place finisher in each of three specified races.

(2) The net pick three pool ((shall)) will be distributed to winning wagers in the following precedence, based upon the official order of finish:

(a) As a single price pool to those whose selection finished first in each of the three races; but if there are no such wagers, then

(b) As a single price pool to those who selected the first-place finisher in any two of the three races; but if there are no such wagers, then

(c) As a single price pool to those who selected the first-place finisher in any one of the three races; but if there are no such wagers, then

(d) The entire pool ((shall)) will be refunded on pick three wagers for those races.

(3) If there is a dead heat for first in any of the three races involving:

(a) Horses representing the same betting interest, the pick three pool ((shall)) will be distributed as if no dead heat occurred.

(b) Horses representing two or more betting interests, the pick three pool ((shall)) will be distributed as follows:

(i) As a profit split to those whose selection finished first in each of the three races, if there are no such wagers,

(ii) As a single price pool to those who selected the first place finisher in any two of the three races, if there are no such wagers,

(iii) As a single price pool to those who selected the first place finisher in any one of the three races, if there are no such wagers,

(iv) The entire pool ((shall)) will be refunded on pick three wagers for those races.

(4) Should a betting interest in any of the three pick three races be scratched, the actual favorite, as evidenced by total amounts wagered in the win pool at the close of wagering on that race, ((shall)) will be substituted for the scratched betting interest for all purposes, including pool calculations. In the event that the win pool total for two or more favorites is identical, the substitute selection ((shall)) will be the betting interest with the lowest program number. The ((totalisator shall)) parimutuel system will produce reports showing each of the wagering combinations with substituted betting interests which became winners as a result of the substitution, in addition to the normal winning combination.

(5) If all three pick three races are cancelled or declared "no ((raee)) contest," the entire pool ((shall)) will be refunded on pick three wagers for those races.

(6) If one or two of the pick three races are cancelled or declared "no ((raee)) contest," the pick three pool will remain valid and ((shall)) will be distributed in accordance with subsection 2 of this rule.

(7) Before the running of the third pick three race the association ((shall)) will announce and/or post the payoff of each combination coupled with the winners of the first and second races of the pick three.

(8) The pick three may be given a distinctive name to be selected by the association conducting such races, such as "TRIPLE," subject to the prior approval of the commission.

**AMENDATORY SECTION** (Amending WSR 96-10-014, filed 4/19/96, effective 6/11/96)

**WAC 260-48-860 Quinella pools.** (1) The quinella requires selection of the first two finishers, ((irrespective)) regardless of order, for a single race.

(2) The net quinella pool ((shall)) will be distributed to winning wagers in the following precedence, based upon the official order of finish:

(a) If horses of a coupled entry or mutuel field finish as the first two finishers, as a single price pool to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish; otherwise

(b) As a single price pool to those whose combination finished as the first two betting interests; but if there are no such wagers, then

(c) As a profit split to those whose combination included either the first- or second-place finisher; but if there are no such wagers on one of those two finishers, then

(d) As a single price pool to those whose combination included the one covered betting interest included within the first two finishers; but if there are no such wagers, then

(e) The entire pool ((shall)) will be refunded on quinella wagers for that race.

(3) If there is a dead heat for first involving:

(a) Horses representing the same betting interest, the quinella pool ((shall)) will be distributed to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish.

(b) Horses representing two betting interests, the quinella pool ((shall)) will be distributed as if no dead heat occurred.

(c) Horses representing three or more betting interests, the quinella pool ((shall)) will be distributed as a profit split.

(4) If there is a dead heat for second involving horses representing the same betting interest, the quinella pool ((shall)) will be distributed as if no dead heat occurred.

(5) If there is a dead heat for second involving horses representing two or more betting interests, the quinella pool ((shall)) will be distributed to wagers in the following precedence, based upon the official order of finish:

(a) As a profit split to those combining the winner with any of the betting interests involved in the dead heat for second; but if there is only one covered combination, then

(b) As a single price pool to those combining the winner with the one covered betting interest involved in the dead heat for second; but if there are no such wagers, then

(c) As a profit split to those combining the betting interests involved in the dead heat for second; but if there are no such wagers, then

(d) As a profit split to those whose combination included the winner and any other betting interest and wagers selecting any of the betting interests involved in the dead heat for second; but if there are no such wagers, then

(e) The entire pool ((shall)) will be refunded on quinella wagers for that race.

**AMENDATORY SECTION** (Amending WSR 96-10-014, filed 4/19/96, effective 6/11/96)

**WAC 260-48-870 Exacta pools.** (1) The exacta requires selection of the first two finishers, in their exact order, for a single race.

(2) The net exacta pool ((shall)) will be distributed to winning wagers in the following precedence, based upon the official order of finish:

(a) If horses of a coupled entry or mutuel field finish as the first two finishers, as a single price pool to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish; otherwise

(b) As a single price pool to those whose combination finished in correct sequence as the first two betting interests; but if there are no such wagers, then

(c) As a profit split to those whose combination included either the first-place betting interest to finish first or the second-place betting interest to finish second; but if there are no such wagers on one of those two finishers, then

(d) As a single price pool to those whose combination included the one covered betting interest to finish first or second in the correct sequence; but if there are no such wagers, then

(e) The entire pool ((shall)) will be refunded on exacta wagers for that race.

(3) If there is a dead heat for first involving:

(a) Horses representing the same betting interest, the exacta pool ((shall)) will be distributed as a single price pool to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish.

(b) Horses representing two or more betting interests, the exacta pool ((shall)) will be distributed as a profit split.

(4) If there is a dead heat for second involving horses representing the same betting interest, the exacta pool ((shall)) will be distributed as if no dead heat occurred.

(5) If there is a dead heat for second involving horses representing two or more betting interests, the exacta pool ((shall)) will be distributed to ticket holders in the following precedence, based upon the official order of finish:

(a) As a profit split to those combining the first-place betting interest with any of the betting interests involved in the dead heat for second; but if there is only one covered combination, then

(b) As a single price pool to those combining the first-place betting interest with the one covered betting interest involved in the dead heat for second; but if there are no such wagers, then

(c) As a profit split to those wagers correctly selecting the winner for first-place and those wagers selecting any of the dead-heated betting interests for second-place; but if there are no such wagers, then

(d) The entire pool ((shall)) will be refunded on exacta wagers for that race.

**AMENDATORY SECTION** (Amending WSR 04-07-077, filed 3/15/04, effective 4/15/04)

**WAC 260-48-890 Trifecta pools.** (1) The trifecta requires selection of the first three finishers, in their exact order, for a single race.

(2) The net trifecta pool ((shall)) will be distributed to winning wagers in the following precedence, based upon the official order of finish:

(a) As a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers, then

(b) As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then

(c) As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then

(d) The entire pool ((shall)) will be refunded on trifecta wagers for that race.

(3) If less than three betting interests finish and the race is declared official, payoffs will be made based upon the order of finish of those betting interests completing the race. The balance of any selection beyond the number of betting interests completing the race ((shall)) will be ignored.

(4) If there is a dead heat for first involving:

(a) Horses representing three or more betting interests, all of the wagering combinations selecting three betting interests which correspond with any of the betting interests involved in the dead heat ((shall)) will share in a profit split.

(b) Horses representing two betting interests, both of the wagering combinations selecting the two dead-heated betting interests, irrespective of order, along with the third-place betting interest ((shall)) will share in a profit split.

(5) If there is a dead heat for second, all of the combinations correctly selecting the winner combined with any of the betting interests involved in the dead heat for second ((shall)) will share in a profit split.

(6) If there is a dead heat for third, all wagering combinations correctly selecting the first two finishers, in correct sequence, along with any of the betting interests involved in the dead heat for third ((shall)) will share in a profit split.

(7) Trifecta wagering is prohibited on any race in which there is more than one coupled entry, except with written permission of the executive secretary.

(8) Trifecta wagering is prohibited on any race in which there is a mutuel field.

**AMENDATORY SECTION** (Amending WSR 04-07-077, filed 3/15/04, effective 4/15/04)

**WAC 260-48-900 Twin trifecta pools.** (1) The twin trifecta requires selection of the first three finishers, in their exact order, in each of two designated races. Each winning ticket for the first twin trifecta race must be exchanged for a free ticket on the second twin trifecta race in order to remain eligible for the second-half twin trifecta pool. Winning first-half wagers will receive both an exchange and a monetary payoff. Both of the designated twin trifecta races ((shall)) will be included in only one twin trifecta pool.

(2) Twin trifecta wagering may be conducted by Class A and B licensees at the discretion of the commission upon written application by an association.

(3) After wagering closes for the first-half of the twin trifecta and commissions have been deducted from the pool, the net pool ((shall)) will then be divided into two separate pools: The first-half twin trifecta pool and the second-half twin trifecta pool. The percentage allocated to each pool must be approved by the commission.

(4) In the first twin trifecta race only, winning wagers ((shall)) will be determined using the following precedence, based upon the official order of finish for the first twin trifecta race:

(a) As a single price pool to those whose combination finished in the correct sequence as the first three betting interest; but if there are no such wagers, then

(b) As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then

(c) As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then

(d) The entire twin trifecta pool for that day ((shall)) will be refunded on twin trifecta wagers for that race and the second-half ((shall)) will be canceled.

(5) If no first-half twin trifecta ticket selects the first three finishers of that race in exact order, winning ticket holders ((shall)) will not receive any exchange tickets for the second-half twin trifecta pool. In such case, the second-half twin trifecta pool ((shall)) will be retained and added to any existing twin trifecta carry-over pool.

(6) Winning tickets from the first-half of the twin trifecta ((shall)) will be exchanged for tickets selecting the first three finishers of the second-half of the twin trifecta. The second-half twin trifecta pool ((shall)) will be distributed to winning wagers in the following precedence, based upon the official order of finish for the second twin trifecta race:

(a) As a single price pool, including any existing carry-over moneys, to those whose combination finished in correct sequence as the first three betting interest; but if there are no such tickets, then

(b) The entire second-half twin trifecta pool for that race ((shall)) will be added to any existing carry-over moneys and retained for the corresponding second-half twin trifecta pool of the next consecutive race card.

(7) Subject to subsection 19(e) of the twin trifecta rules, if a winning first-half twin trifecta ticket is not presented for cashing and exchange prior to the second-half twin trifecta race, the ticket holder may still collect the monetary value associated with the first-half twin trifecta pool but forfeits all rights to any distribution of the second-half twin trifecta pool.

(8) Twin trifecta wagering is prohibited on any race in which there is a mutuel field, except with written permission of the executive secretary.

(9) Twin trifecta wagering is prohibited on any race in which there is more than one coupled entry.

(10) Should a betting interest in the first-half of the twin trifecta be scratched, those twin trifecta wagers including the scratched betting interest ((shall)) will be refunded.

(11) Should a betting interest in the second-half of the twin trifecta be scratched, an announcement concerning the scratch ((shall)) will be made and a reasonable amount of time ((shall)) will be provided for exchange of tickets that include the scratched betting interest.

(12) If there is a dead heat or multiple dead heats in either the first- or second-half of the twin trifecta, all twin trifecta wagers selecting the correct order of finish, counting a betting interest involved in a dead heat as finishing in any dead-heated position, ((shall)) will be a winner. In the case of dead heat occurring in:

(a) The first-half of the twin trifecta, the payoff ((shall)) will be calculated as a profit split

(b) The second-half of the twin trifecta, the payoff ((shall)) will be calculated as a single price pool.

(13) If either of the twin trifecta races are canceled prior to the first twin trifecta race, or the first twin trifecta race is declared "no ((raee)) contest," the entire twin trifecta pool for that day ((shall)) will be refunded on twin trifecta wagers for that race and the second-half ((shall)) will be canceled.

(14) If the second-half twin trifecta race is canceled or declared "no ((raee)) contest," all exchange tickets and outstanding first-half winning twin trifecta tickets ((shall)) will be entitled to the net twin trifecta pool for that race as a single price pool, but not the twin trifecta carry-over. If there are no such tickets, the net twin trifecta pool ((shall)) will be distributed as described in subsections (4) of the twin trifecta rules.

(15) If, due to a late scratch, the number of betting interests in the second-half of the twin trifecta is reduced to fewer than ((6)) 3, all exchange tickets and outstanding first-half winning tickets ((shall)) will be entitled to the second-half twin pool for that race as a single price pool, but not the twin trifecta carry-over.

(16) If it be determined by the stewards that a horse has been prevented from racing because of the failure of the stall door of the starting gate to open (nonstarter) in the second-half of the twin trifecta only, there will be no refund or consolation payoff. The official order of finish as posted ((shall)) will be used to determine payoffs. This will not affect other pools for this race.

(17) A written request for permission to distribute the twin trifecta carry-over on a specific race card may be submitted to the commission. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date of race card for the distribution.

(18) Contrary to subsection (5) of the twin trifecta rules, during a race card designated to distribute the twin trifecta carry-over, exchange tickets will be issued for those combinations selecting the greatest number of betting interests in their correct order of finish for the first-half of the twin trifecta. If there are no wagers correctly selecting the first-, second-, and third-place finishers, in their exact order, then exchange tickets ((shall)) will be issued for combinations as described in subsection (4) of the twin trifecta rules.

(19) Should the twin trifecta carry-over be designated for distribution on a specified date, the following precedence will be followed in determining winning tickets for the second-half of the twin trifecta after completion of the first-half of the twin trifecta:

(a) As a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers, then

(b) As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then

(c) As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then

(d) As a single price pool to holders of valid exchange tickets.

(e) As a single price pool to holders of outstanding first-half winning tickets.

(20) The twin trifecta carry-over ((shall)) will be designated for distribution on a specified date and race card only under the following circumstances:

(a) Upon written approval from the commission as provided in subsection (17) of the twin trifecta rules.

(b) On the closing race card of the meet or split meet.

(21) If, for any reason, the twin trifecta carry-over must be held over to the corresponding twin trifecta pool of the association's subsequent meet, the carry-over ((shall)) will be deposited in an interest-bearing account approved by the commission. The twin trifecta carry-over plus accrued interest ((shall)) will then be added to the second-half twin trifecta pool of the association's following meet.

(22) If racing is canceled prior to the first-half of the twin trifecta on the closing race card of the meet or split meet, the carry-over will be held over in accordance with subsection (20) of the twin trifecta rules.

(23) If racing is canceled after the running of the first-half but before the running of the second-half on the closing race card of the meet or split meet, the carry-over pool will be paid as a single price to holders of exchange tickets or outstanding winning tickets from the first-half.

(24) Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of valid exchange tickets is prohibited. This ((shall)) will not prohibit necessary communications between ((totalisator)) parimutuel system and parimutuel department employees for processing of pool data.

(25) The acceptance of a twin trifecta ticket by taking an issued ticket away from the window of the terminal from which it was issued ((shall)) will constitute an acknowledgement by the bettor that the ticket is correct. Exchange tickets may not be canceled and/or reissued except as provided by these rules. The association, ((totalisator)) parimutuel company, and state ((may)) will not be liable to any person for a twin trifecta ticket which is not:

(a) A winning ticket in accordance with the provisions of this rule; or

(b) Delivered for any reason, including but not limited to mechanical malfunction, electrical failure, machine locking, phone line failure, or other cause.

(26) Twin trifecta tickets ((shall)) will be sold and exchanged only by the association through parimutuel machines.

(27) The twin trifecta carry-over may be capped at a designated level approved or set by the commission so that if, at

the close of any race card, the amount in the twin trifecta carry-over equals or exceeds the designated cap, the twin trifecta carry-over will be frozen until it is won or distributed under other provisions of this rule. After the twin trifecta carry-over is frozen, 100 percent of the net twin trifecta pool for each individual race ((shall)) will be distributed to winners of the first-half of the twin trifecta pool.

#### AMENDATORY SECTION (Amending WSR 04-07-077, filed 3/15/04, effective 4/15/04)

**WAC 260-48-910 Superfecta pools.** (1) The superfecta requires selection of the first four finishers, in their exact order, for a single race.

(2) The net superfecta pool ((shall)) will be distributed to winning wagers in the following precedence, based upon the official order of finish:

(a) As a single price pool to those whose combination finished in correct sequence as the first four betting interests; but if there are no such wagers, then

(b) As a single price pool to those whose combination included, in correct sequence, the first three betting interests; but if there are no such wagers, then

(c) As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then

(d) As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then

(e) The entire pool ((shall)) will be refunded on superfecta wagers for that race.

(3) If less than four betting interests finish and the race is declared official, payoffs will be made based upon the order of finish of those betting interests completing the race. The balance of any selection beyond the number of betting interests completing the race ((shall)) will be ignored.

(4) If there is a dead heat for first involving:

(a) Horses representing four or more betting interests, all of the wagering combinations selecting four betting interests which correspond with any of the betting interests involved in the dead heat ((shall)) will share in a profit split.

(b) Horses representing three betting interests, all of the wagering combinations selecting the three dead-heated betting interests, irrespective of order, along with the fourth-place betting interest ((shall)) will share in a profit split.

(c) Horses representing two betting interests, both of the wagering combinations selecting the two dead-heated betting interests, irrespective of order, along with the third-place and fourth-place betting interests ((shall)) will share in a profit split.

(5) If there is a dead heat for second involving:

(a) Horses representing three or more betting interests, all of the wagering combinations correctly selecting the winner combined with any of the three betting interests involved in the dead heat for second ((shall)) will share in a profit split.

(b) Horses representing two betting interests, all of the wagering combinations correctly selecting the winner, the two dead-heated betting interests, irrespective of order, and the fourth-place betting interest ((shall)) will share in a profit split.

(6) If there is a dead heat for third, all wagering combinations correctly selecting the first two finishers, in correct sequence, along with any two of the betting interests involved in the dead heat for third ((shall)) will share in a profit split.

(7) If there is a dead heat for fourth, all wagering combinations correctly selecting the first three finishers, in correct sequence, along with any of the betting interests involved in the dead heat for fourth ((shall)) will share in a profit split.

(8) Superfecta wagering is prohibited on any race in which there is more than one coupled entry, except with written permission of the executive secretary.

(9) Superfecta wagering is prohibited on any race in which there is a mutuel field.

## NEW SECTION

### **WAC 260-48-915 Quinfecta pools with carryover.** (1)

The quinfecta requires selection of the first five finishers in their exact order, for a single race.

(2) The net quinfecta pool will be distributed as a single price pool to those who selected the first five finishers in exact order based on the official order of finish. If there are no such wagers, then the net quinfecta pool will be carried forward to the next quinfecta performance as a carryover or added to an existing carryover.

(3) If less than five betting interests finish the race and the race is declared official, the entire quinfecta pool for that performance will be refunded.

(4) If, due to a late scratch or a participant is declared a nonstarter, and this causes the number of betting interest in the quinfecta pool to be reduced to fewer than five, the entire quinfecta pool for that performance will be refunded.

(5) If the quinfecta contest is cancelled or declared "no contest," the entire quinfecta pool for that performance will be refunded.

(6) If horses representing the same betting interest finish in the first five positions, the quinfecta pool will be distributed as a single price pool to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish.

#### (7) If there is a dead heat for first involving:

(a) Horses representing five or more betting interests, all of the wagering combinations selecting five betting interests which correspond with any of the betting interests involved in the dead heat will share in a profit split.

(b) Horses representing four betting interests, all of the wagering combinations selecting the four dead-heated betting interests, irrespective of order, along with the fifth-place betting interest will share in a profit split.

(c) Horses representing three betting interests, all of the wagering combinations selecting the three dead-heated betting interests, irrespective of order, along with the fourth-place and fifth-place betting interests will share in a profit split.

(d) Horses representing two betting interests, both of the wagering combinations selecting the two dead-heated betting interests, irrespective of order, along with the third-place, fourth-place and fifth-place betting interests will share in a profit split.

(8) If there is a dead heat for second involving:

(a) Horses representing four or more betting interests, all of the wagering combinations correctly selecting the winner combined with any of the four or more betting interests involved in the dead heat for second will share in a profit split.

(b) Horses representing three betting interests, all of the wagering combinations correctly selecting the winner, the three dead-heated betting interests, irrespective of order, and the fifth-place betting interests will share in a profit split.

(c) Horses representing two betting interests, all of the wagering combinations correctly selecting the winner, the two dead-heated betting interests, irrespective of order, and the fourth-place and fifth-place betting interests will share in a profit split.

#### (9) If there is a dead heat for third involving:

(a) Horses representing three or more betting interests, all of the wagering combinations correctly selecting the winner, the second-place betting interest, and the three or more dead-heated betting interests will share in a profit split.

(b) Horses representing two betting interests, all the wagering combinations correctly selecting the winner, the second-place betting interest, the two dead-heated betting interests, irrespective of order and the fifth-place betting interest will share in a profit split.

(10) If there is a dead heat for fourth, all wagering combinations correctly selecting the first three finishers, in correct sequence, along with any two of the betting interests involved in the dead heat for fourth will share in a profit split.

(11) If there is a dead heat for fifth, all wagering combinations correctly selecting the first four finishers, in correct sequence, along with any of the betting interests involved in the dead heat for fourth will share in a profit split.

(12) Quinfecta wagering is prohibited on any race in which there is more than one coupled entry or a mutuel field, except with written permission of the board of stewards.

(13) Mandatory distribution of the carryover. The quinfecta carryover will be designated for a change in distribution on a specified date and performance under the following circumstances:

(a) Upon approval from the board of stewards. If the designated date of the race for the mandatory distribution is during the race meet and the carryover pool is not distributed, the quinfecta wager must be offered on a subsequent race until the carryover pool is distributed. A written request must contain the following information:

(i) The reason and justification for the change.

(ii) The date of the proposed distribution.

(b) On the closing performance of the meet.

(14) If the quinfecta pool and any carryover are approved for distribution, the net quinfecta pool and carryover, if any, will be distributed as a single price pool to winning wagers based upon the official order of finish.

(a) As a single price pool to those whose combination finished in correct sequence as the first five betting interests; but if there are no such wagers, then

(b) As a single price pool to those whose combination included, in correct sequence, the first four betting interests; but if there are no such wagers, then

(c) As a single price pool to those whose combination included, in correct sequence, the first three betting interests; but if there are no such wagers, then

(d) As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then

(e) As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then

(f) The entire net pool will be refunded on quinfesta wagers for that race and the carryover, if any, will be held over to a quinfesta pool of the subsequent meet.

(15) If, for any reason, the quinfesta carryover must be held over to the corresponding quinfesta pool of a subsequent meet, the carryover will be deposited in an interest-bearing account approved by the executive secretary. The quinfesta carryover plus accrued interest will then be added to the net quinfesta pool of the following meet on a date and performance approved by the board of stewards.

**AMENDATORY SECTION** (Amending WSR 96-10-014, filed 4/19/96, effective 6/11/96)

**WAC 260-48-920 Pick (n) pools.** (1) The pick (n) requires selection of the first-place finisher in each of a designated number of races. The association must obtain written approval from the commission concerning the scheduling of pick (n) races, the designation of one of the methods prescribed in part (2), and the amount of any cap to be set on the carryover. The number of races so designated must be more than three (3), but no greater than ten (10). Any changes to the approved pick (n) format require prior approval from the commission.

(2) The pick (n) pool ((~~shall~~)) will be apportioned under one of the following methods:

(a) Method 1, pick (n) with carryover: The net pick (n) pool and carryover, if any, ((~~shall~~)) will be distributed as a single price pool to those who selected the first-place finisher in each of the pick (n) races, based upon the official order of finish. If there are no such wagers, then a designated percentage of the net pool ((~~shall~~)) will be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) races; and the remainder ((~~shall~~)) will be added to the carryover.

(b) Method 2, pick (n) with minor pool and carryover: The major share of the net pick (n) pool and the carryover, if any, ((~~shall~~)) will be distributed to those who selected the first-place finisher in each of the pick (n) races, based upon the official order of finish. The minor share of the net pick (n) pool ((~~shall~~)) will be distributed to those who selected the first-place finisher in the second greatest number of pick (n) races, based upon the official order of finish. If there are no wagers selecting the first-place finisher of all pick (n) races, the minor share of the net pick (n) pool ((~~shall~~)) will be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) races; and the major share ((~~shall~~)) will be added to the carryover.

(c) Method 3, pick (n) with no minor pool and no carryover: The net pick (n) pool ((~~shall~~)) will be distributed as a single price pool to those who selected the first-place finisher

in the greatest number of pick (n) races, based upon the official order of finish. If there are no winning wagers, the pool is refunded.

(d) Method 4, pick (n) with minor pool and no carryover: The major share of the net pick (n) pool ((~~shall~~)) will be distributed to those who selected the first place finisher in the greatest number of pick (n) races, based upon the official order of finish. The minor share of the net pick (n) pool ((~~shall~~)) will be distributed to those who selected the first-place finisher in the second greatest number of pick (n) races, based upon the official order of finish. If there are no wagers selecting the first-place finisher in a second greatest number of pick (n) races, the minor share of the net pick (n) pool ((~~shall~~)) will be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) races. If the greatest number of first-place finishers selected is one (1), the major and minor shares are combined for distribution as a single price pool. If there are no winning wagers, the pool is refunded.

(e) Method 5, pick (n) with minor pool and no carryover: The major share of net pick (n) pool ((~~shall~~)) will be distributed to those who selected the first-place finisher in each of the pick (n) races, based upon the official order of finish. The minor share of the net pick (n) pool ((~~shall~~)) will be distributed to those who selected the first-place finisher in the second greatest number of pick (n) races, based upon the official order of finish. If there are no wagers selecting the first-place finisher in all pick (n) races, the entire net pick (n) pool ((~~shall~~)) will be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) races. If there are no wagers selecting the first-place finisher in a second greatest number of pick (n) races, the minor share of the net pick (n) pool ((~~shall~~)) will be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in each of the pick (n) races. If there are no winning wagers, the pool is refunded.

(f) Method 6, pick (n) with minor pool, jackpot pool, major carryover and jackpot carryover: Predetermined percentages of the net pick (n) pool ((~~shall~~)) will be set aside as a major pool, minor pool and jackpot pool. The major share of the net pick (n) pool and the major carryover, if any, ((~~shall~~)) will be distributed to those who selected the first-place finisher of each of the pick (n) races, based on the official order of finish. If there are no tickets selecting the first-place finisher in each of the pick (n) races, the major net pool ((~~shall~~)) will be added to the major carryover. If there is only one single ticket selecting the first-place finisher of each of the pick (n) races, based on the official order of finish, the jackpot share of the net pick (n) pool and the jackpot carryover, if any, ((~~shall~~)) will be distributed to the holder of that single ticket, along with the major net pool and the major carryover, if any. If more than one ticket selects the first-place finisher of each of the pick (n) races the jackpot net pool ((~~shall~~)) will be added to the jackpot carryover. The minor share of the net pick (n) pool ((~~shall~~)) will be distributed to those who selected the first-place finisher of the second greatest number of pick (n) races, based on the official order of finish. If there are no wagers selecting the first-place finisher of all pick (n) races, the minor net pool of the pick (n) pool

((shall)) will be distributed as a single price pool to those who selected the first-place finisher of the greatest number of pick (n) races.

(3) If there is a dead heat for first in any of the pick (n) races involving:

(a) Horses representing the same betting interest, the pick (n) pool ((shall)) will be distributed as if no dead heat occurred.

(b) Horses representing two or more betting interests, the pick (n) pool ((shall)) will be distributed as a single price pool with each winning wager receiving an equal share of the profit.

(4) Should a betting interest in any of the pick (n) races be scratched:

(a) The racing association may allow patrons the option of selecting an alternate betting interest prior to the running of the first leg of the pick (n). The selected alternate betting interest ((shall)) will be substituted for the scratched betting interest, for all purposes, including pool calculations.

(b) If no alternate betting interest is selected or the selected alternate betting interest is also scratched, the actual favorite, as evidenced by total amounts wagered in the win pool at the close of wagering on that race, ((shall)) will be substituted for the scratched betting interest for all purposes, including pool calculations. In the event that the win pool total for two or more favorites is identical, the substitute selection ((shall)) will be the betting interest with the lowest program number. The ((totalisator shall)) parimutuel system will produce reports showing each of the wagering combinations with substituted betting interests which became winners as a result of the substitution, in addition to the normal winning combination.

(5) The pick (n) pool ((shall)) will be cancelled and all pick (n) wagers for the individual race day ((shall)) will be refunded if:

(a) At least three races included as part of a pick 4, pick 5 or pick 6 are cancelled or declared "no ((raee)) contest."

(b) At least four races included as part of a pick 7, pick 8 or pick 9 are cancelled or declared "no ((raee)) contest."

(c) At least five races included as part of a pick 10 are cancelled or declared "no ((raee)) contest."

(6) If at least one race included as part of a pick (n) is cancelled or declared "no ((raee)) contest", but not more than the number specified in subsection 5 of this rule, the net pool ((shall)) will be distributed as a single price pool to those whose selection finished first in the greatest number of pick (n) races for that race day. Such distribution ((shall)) will include the portion ordinarily retained for the pick (n) carryover but not the carryover from previous race days.

(7) The pick (n) carryover may be capped at a designated level approved by the commission so that if, at the close of any race day, the amount in the pick (n) carryover equals or exceeds the designated cap, the pick (n) carryover will be frozen until it is won or distributed under other provisions of this rule. After the pick (n) carryover is frozen, 100 percent of the net pool, part of which ordinarily would be added to the pick (n) carryover, ((shall)) will be distributed to those whose selection finished first in the greatest number of pick (n) races for that race day.

(8) A written request for permission to distribute the pick (n) carryover on a specific race day may be submitted to the commission. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and race day for the distribution.

(9) Should the pick (n) carryover be designated for distribution on a specified date and race day in which there are no wagers selecting the first-place finisher in each of the pick (n) races, the entire pool ((shall)) will be distributed as a single price pool to those whose selection finished first in the greatest number of pick (n) races. The pick (n) carryover ((shall)) will be designated for distribution on a specified date and race day only under the following circumstances:

(a) Upon written approval from the commission as provided in subsection 8 of this rule.

(b) Upon written approval from the commission when there is a change in the carryover cap, a change from one type of pick (n) wagering to another, or when the pick (n) is discontinued.

(c) On the closing race day of the meet or split meet.

(10) If, for any reason, the pick (n) carryover must be held over to the corresponding pick (n) pool of a subsequent meet, the carryover ((shall)) will be deposited in an interest-bearing account approved by the commission. The pick (n) carryover plus accrued interest ((shall)) will then be added to the net pick (n) pool of the following meet on a date and race day so designated by the commission.

(11) With the written approval of the commission, the association may contribute to the pick (n) carryover a sum of money up to the amount of any designated cap.

(12) Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of live tickets remaining is strictly prohibited. This ((shall)) will not prohibit necessary communication between ((totalisator)) parimutuel system and parimutuel department employees for processing of pool data.

(13) The association may suspend previously-approved pick (n) wagering with the prior approval of the commission. Any carryover ((shall)) will be held until the suspended pick (n) wagering is reinstated. An association may request approval of a pick (n) wager or separate wagering pool for specific race day.

#### AMENDATORY SECTION (Amending WSR 06-07-062, filed 3/10/06, effective 4/10/06)

**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)) will designate one horse that ((shall)) will 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)) will 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)) will 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)) will be no payout for the group bet.

(5) The identity of the nongroup horse and the members of Group A and Group B ((shall)) will 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)) will 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)) will 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)) will 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)) will 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)) will cease and all wagers on both groups ((shall)) will 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)) will 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)) will 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)) will 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 non-group horse and one or more members of either group, or one or more members of different groups, the group bet payout ((shall)) will 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)) will 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)) will be final.

#### AMENDATORY SECTION (Amending WSR 02-10-100, filed 4/30/02, effective 5/31/02)

**WAC 260-48-930 Future wager pool.** (1) The future wager requires selection of the first-place finisher in a specified contest.

(2) The association ((shall)) will apply in writing to the ((Washington horse racing)) commission for approval to offer the future wager on the specified contest and ((shall)) will not offer the wager until the commission approval has been granted. The written application ((shall)) will include the date and time for the pool to be opened and closed, a description of the system for compiling the pool and calculating odds and payout prices, and the time interval for displaying the odds.

(3) The association, or in the case of ((interjurisdiction)) common pool wagering the host track, ((shall)) will name the contestants included in each betting interest on which future wagers may be made and ((shall)) will assign a program number to each betting interest.

(4) The amount wagered on the betting interest which finishes first in the specified race is deducted from the net pool, the balance remaining being the profit; the profit is divided by the amount wagered on the betting interest finishing first, such quotient being the profit per dollar wagered in the future pool on that betting interest.

(5) The net future pool ((shall)) will be distributed as a single price pool to winning wagers in the following precedence, based upon the official order of finish:

(a) To those whose selection finished first; but if there are no such wagers, then

(b) To those whose selection finished second; but if there are no such wagers, then

(c) To those whose selection finished third; but if there are no such wagers, then

(d) The entire pool ((shall)) will be refunded on future pool wagers for that contest.

(6) If there is a dead heat for first involving:

(a) Contestants representing the same betting interest, the future pool ((shall)) will be distributed as if no dead heat occurred.

(b) Contestants representing two or more betting interests, the future pool ((shall)) will be distributed as a profit split.

(7) No refund ((shall)) will be issued for future wager pool wagers on betting interests that do not start or finish the

race. If the association becomes aware or is notified that a betting interest is ineligible or unable to start the race and the pool is still open, the association ((shall)) will immediately close betting on that betting interest.

(8) The entire future wager pool ((shall)) will be refunded if:

(a) The situation described at subsection 5(d) occurs; or

(b) The specified race is declared no contest by the judges/stewards having jurisdiction over the specified race; or

(c) The specified race does not occur; or

(d) For whatever reason, the future wager pool cannot be determined and the payout price cannot be calculated.

**AMENDATORY SECTION** (Amending WSR 06-15-091, filed 7/14/06, effective 8/14/06)

**WAC 260-48-935 Choose (n) pools.** (1) The choose (n) is a form of parimutuel wagering, in which bettors attempt to select the winners of a specific number of races (n). The choose (n) pool ((must)) will be held separately from all other pools and will in no way be part of a daily double, exacta, trifecta or any other wagering pool. The choose (n) is a pool wherein the bettor is required to select any (n) winning horses from that particular card and is not a parlay (a wager using the proceeds of a previous winning bet).

(2) The association must obtain ((written)) approval from the executive secretary concerning the format and scheduling of choose (n) contests, the races in which choose (n) wagering will be permitted, and the amount of any cap to be set on the carryover. The choose (n) pool ((must)) will close after each race but will reopen with respect to subsequent races that have not yet been run provided that there are at least as many races remaining as required to be selected on a winning choose (n) ticket. Once approved, any changes will require approval from the executive secretary.

(3) The number of races in a choose (n) pool is designated by the association, while the specific races wagered on are at the discretion of the bettor. The races need not be consecutive and the first race of a choose (n) ticket may begin at any time provided that there are an adequate number of races left on the program. The bettor may purchase a choose (n) ticket allowing the bettor to select any (n) races from the entire card, unless the association has designated a race not eligible for the choose (n) pool.

(4) The choose (n) pool will be apportioned under one of the following methods:

(a) Method one - Choose (n) no carryover: The choose (n) "net wagering pool" will be equally distributed to the holder or holders of choose (n) tickets which correctly select (n) first place winners from the eligible races comprising the choose (n). If no choose (n) ticket correctly selects (n) first place winners from choose (n) eligible races, the "net wagering pool" of a choose (n) with no carryover amount will be equally distributed to the ticket holder or holders selecting the greatest number of first place winners of the races comprising the choose (n). If there are no winning wagers, the pool is refunded.

(b) Method two - Choose (n) with carryover: The choose (n) "net wagering pool" and carryover, if any, will be distrib-

uted as a single price pool to holders of choose (n) tickets which have correctly selected the winner of (n) races of the races comprising the choose (n). However, if no choose (n) ticket correctly selects the first place winner in (n) races comprising the choose (n), twenty-five percent of the net wagering pool for that particular choose (n) will be equally distributed to the holder or holders of choose (n) tickets correctly selecting the greatest number of first place winners of the races comprising the choose (n) and the remaining seventy-five percent of the net wagering pool for that particular choose (n) will be added as the "carryover amount" portion of the wagering pool for designated subsequent choose (n) offerings by the association. In any choose (n) with a "carryover amount" feature, one hundred percent of the "net wagering pool" for the particular choose (n) plus any accumulated "carryover amount," will be equally distributed to the holder or holders of choose (n) tickets which correctly select the first place winners in (n) races comprising the choose (n).

(5) The association will determine the denominations of the choose (n) tickets. No less than two or more than six races will comprise any choose (n) ticket.

(6) The choose (n) tickets ((must)) will be clearly and immediately distinguishable from other parimutuel tickets.

(7) Those horses constituting an entry or field, as defined by rule, will race in any choose (n) race as a single wagering interest for purposes of the choose (n) pool calculations. A scratch after wagering has begun of any part of the entry or field selection in a race will have no effect on the status of such entry or field as a wagering interest.

(8) At any time after wagering begins on the choose (n) contest, should a horse, entire betting entry or field be scratched or declared a nonstarter in any choose (n) race, no further tickets selecting such horses, entry or field will be issued, and wagers upon such horse, entry or field for purposes of the choose (n) will be deemed wagers upon the horse, entry or field on which the most money has been wagered in the win pool at the close of win betting for such race. In the event that two horses have the exact amount wagered on them, the horse, entry or field with the lowest program number will be designated.

(9) In the event of a dead heat for win between two or more horses in any of the choose (n) races, all such horses will be considered as the winning horse for the purpose of distributing the choose (n) pool.

(10) The choose (n) pool with a carryover will be calculated as follows:

(a) One hundred percent of the net amount in the choose (n) pool subject to distribution among winning ticket holders ((must)) will be distributed among holders of choose (n) tickets which have correctly selected the winner of (n) races of the races comprising the choose (n).

(b) In the event there is no choose (n) ticket which correctly designates the winner of (n) races from the races that comprise the choose (n), twenty-five percent of that racing date's net amount available for distribution ((must)) will be distributed among the holders of choose (n) tickets correctly designating the most winning selections of the races that comprise the choose (n), and the remaining seventy-five percent of said pool ((must)) will be carried over and added to the pool on the next day that the wager is conducted.

(c) If, on the last day on which the choose (n) is conducted at a horse race meeting, no one selects the winning horse in (n) races, the total amount of the choose (n) pool which exists on that day ((must)) will be paid to the bettor or bettors selecting the largest number of winning horses in those races. In no event will any part of the pool be carried over to the next year's race meeting, except for reasons beyond the control of the licensee and upon the approval of the executive secretary. If, for any reason, the choose (n) carryover must be held over to the corresponding choose (n) pool of a subsequent meet, the carryover will be deposited in an interest-bearing account approved by the executive secretary. The choose (n) carryover plus accrued interest will then be added to the net choose (n) pool of the following meet on a date and performance ((so designated by the executive secretary)) approved by the board of stewards.

(11) When the distance of the race is changed or the condition of the turf course warrants a change of racing surface in any of the races open to choose (n) wagering, and such change has not been made known to the betting public prior to the close of wagering for the first choose (n) race, the stewards will declare the changed races a "no contest" for choose (n) wagering purposes and the pool will be distributed in accordance with subsection (10) of this section. Following the designation of a race as a "no contest," no tickets ((may)) will be sold selecting a horse in such "no contest" race. Any race that has been canceled or declared a "no contest" ((may)) will not be considered a contested race for choose (n) purposes.

(12) If, for any reason, one or more races are canceled or declared a "no contest," the choose (n) pool will be paid using the following formula:

(a) Choose two: Any live ticket regardless of its starting point that has not completed at least two contested legs will be refunded. After two or more races have run, one hundred percent of the daily pool plus any carryover will be distributed in accordance with subsection (10) of this section.

(b) Choose three: Any ticket regardless of its starting point that has not completed at least three contested legs will be refunded. After three or more races have run((:)), one hundred percent of the daily pool plus any carryover ((must)) will be distributed in accordance with subsection (10) of this section.

(c) Choose four: Any ticket regardless of its starting point that has not completed at least four contested legs must be refunded. After four or more races have run((:)), one hundred percent of the daily pool plus any carryover ((must)) will be distributed in accordance with subsection (10) of this section.

(d) Choose five: Any ticket regardless of its starting point that has not completed at least four contested legs ((must)) will be refunded.

(i) In the event that only four choose five races are contested: One hundred percent of that day's net pool (not including any carryover), after refunds, will be paid to tickets with four wins and no losses.

(ii) In the event that at least five races have been contested for the choose five((:)), seventy-five percent of that day's net pool (after refunds) plus any carryover will be paid to tickets with five wins and twenty-five percent of the pool

will be paid to tickets with four wins and no losses. In the event no ticket has five wins, seventy-five percent of the daily pool will be paid to tickets with four wins and a selection in the canceled race and twenty-five percent paid to tickets with three wins and a selection in two of the canceled races.

(e) Choose six: Any ticket regardless of its starting point that has not completed at least four contested legs ((must)) will be refunded.

(i) In the event only four choose six races are contested((:)), one hundred percent of the day's net pool (not including any carryover) after refunds, ((must)) will be paid to tickets with four wins.

(ii) In the event that only five choose six races are contested((:)), seventy-five percent of the daily pool (after refunds) will be paid to tickets with five wins and twenty-five percent to tickets with four wins and no losses and a selection in the noncontested race.

(iii) In the event that at least six races have been contested for the choose six and two or more races have not been contested((:)), seventy-five percent of the daily pool plus any carryover ((must)) will be paid to tickets with six wins, eighteen and three-quarter percent of the daily pool to tickets with five wins and a selection in a noncontested race, and six and one-quarter percent of the daily pool will be paid to tickets with four wins and selections in two of the noncontested races. If no ticket has six wins, fifty percent of the daily pool ((must)) will be paid to tickets with five wins and a selection in a noncontested race, twenty-five percent of the daily pool to tickets with four wins and selections in two noncontested races, and twenty-five percent of the daily pool to tickets with five wins and one loss.

(iv) In the event that at least six races have been contested for the choose six and one race has not been contested((:)), seventy-five percent of the daily pool plus any carryover must be paid to tickets with six wins and twenty-five percent of the daily pool to tickets with five wins and a selection in the noncontested race. If no ticket has six wins, seventy-five percent of the daily pool must be paid to tickets with five wins and a selection in the noncontested race and twenty-five percent of the daily pool to tickets with five wins and one loss.

(v) In the event that there is no payable ticket in a category within any of these subsections, that portion of the daily pool will be divided equally between the other categories within that subsection. In the event that there is no payable ticket within a subsection, the entire daily pool will be carried over and added to the choose (n) pool on the next day that the choose (n) wagering is conducted.

(13) When there is a cancellation of the race card or a race is declared a no contest and there are any changes in the calculation of the choose (n) other than provided for in subsection (12) of this section, the change must be approved ((in writing by the executive secretary)) by board of stewards.

(14) If, for any reason, the race card is canceled, wagering on the choose (n) pool must close immediately and the choose (n) pool must be distributed in accordance with subsection (12) of this section.

(15) The choose (n) carryover may be capped at a designated level if approved by the ((executive secretary)) board of

stewards so that if at the close of any performance, the amount in the choose (n) carryover equals or exceeds the designated cap, the choose (n) carryover will be frozen until it is won or distributed under other provisions of this rule. After the choose (n) carryover is frozen, one hundred percent of the net pool, part of which would ordinarily be added to the choose (n) carryover, must be equally distributed to the ticket holder or holders selecting the greatest number of first place winners of the races comprising the choose (n) for that performance.

(16) A written request for permission to distribute the choose (n) carryover on a specific performance may be submitted to the ((executive secretary)) board of stewards. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.

(17) Should the choose (n) carryover be designated for distribution on a specified date and performance in which there are no wagers with (n) wins, the entire pool must be distributed as a single price pool to those whose selection finished first in the greatest number of choose (n) contests. The choose (n) carryover will be designated for distribution on a specified date and performance only under the following circumstances:

(a) Upon ((written)) approval from the ((executive secretary)) board of stewards as provided in ((subsection (16) of)) this section.

(b) Upon ((written)) approval from the ((executive secretary)) board of stewards when there is a change in the carry-over cap, a change from one type of choose (n) wagering to another, or when the choose (n) is discontinued.

(c) On the closing performance of the meet or split meet.

(18) With the ((written)) approval of the ((executive secretary)) board of stewards, the association may contribute to the choose (n) carryover a sum of money up to the amount of any designated cap.

(19) All choose (n) rules and methods of calculations must be available and posted for the bettors by the association.

(20) It is a violation of these rules for any person to provide information to any individual regarding covered combinations or amounts wagered on specific combinations. This rule is not intended to prohibit necessary communication between ((totalisator)) parimutuel system and parimutuel department employees for processing of pool data. The association may be permitted to provide information regarding number of tickets sold and number of live tickets remaining to the wagering public.

(21) The association may suspend previously approved choose (n) wagering with the prior approval of the ((executive secretary)) commission. Any carryover will be held until the suspended choose (n) wagering is reinstated. An association may request approval of a choose (n) wager or separate wagering pool for specific performances.

(22) Should circumstances occur which are not addressed by these rules, the stewards will resolve them in accordance with general parimutuel practice. Decisions regarding distribution of the choose (n) pool made by the stewards will be final.

AMENDATORY SECTION (Amending WSR 03-11-017, filed 5/12/03, effective 6/12/03)

**WAC 260-48-940 Head-to-head wagering** (1) Head-to-head wagering requires the selection of the winning contestant in a designated contest or series of contests, in a competition between two or more equally matched betting interests, or based on the sportsmanship and/or skill of the jockeys and/or trainers, regardless of the official placing of the other betting interests in that contest or series of contests.

(2) The choice of which contestants from a contest ((shall)) will participate in the head-to-head contest ((shall)) will be made as follows:

(a) The association must obtain approval from the board of stewards for each head-to-head contest.

(b) The matching of contestants for the head-to-head contest ((shall)) will be limited to contestant versus contestant, jockey versus jockey, and/or trainer versus trainer.

(c) The contestants chosen for the head-to-head wager ((shall)) will be conspicuously identified in the official program.

(3) The net head-to-head pool ((shall)) will be distributed to winning wagers in the following precedence, based on the official order of finish:

(a) As a single price pool to those whose selection finished first in a single head-to-head contest, or first in the greatest number of a series of head-to-head contests; but if there are no such wagers, then

(b) The head-to-head pool ((shall)) will be refunded.

(4) If there is a dead heat in a contest involving two or more of the contestants in:

(a) A single-contest head-to-head pool, then the entire pool ((shall)) will be refunded.

(b) One or more contests of a series, then all the contestants involved in the dead heat ((shall)) will be considered winners and the net pool ((shall)) will be distributed as a single price pool, provided that;

(c) In a series of contests, if there is a dead heat in half or more of the contests then the head-to-head pool for those contests ((shall)) will be refunded.

(5) If any head-to-head contest is canceled or declared no contest:

(a) In a single-contest head-to-head pool, the pool ((shall)) will be refunded.

(b) In a series of contests, if half or more of the contests are canceled or declared no contest, then the head-to-head pool for those contests ((shall)) will be refunded.

(6) If any contestant is scratched or declared a nonstarter in any head-to-head contest, then that contest ((shall)) will be canceled.

(7) If all contestants fail to finish in a head-to-head contest, then that contest ((shall)) will be canceled.

AMENDATORY SECTION (Amending WSR 05-19-016, filed 9/9/05, effective 10/10/05)

**WAC 260-48-960 Handicapping contests.** A licensed class 1 racing association may, with the approval of the commission, operate a handicapping contest at which the participants may be charged an entry fee. All paid-entry handicap-

ping contests must be conducted in accordance with the provisions of this rule.

(1) A handicapping contest is defined as a competitive event, where participants, using individual skill to evaluate a variety of factors including the past performance of horses to determine the relative qualities and abilities of horses in a race, attempt to outperform other participants in selecting the finish of horses. Participants who are most successful in selecting horses become eligible to win prizes as prescribed in the official rules of the contest. Prizes and format are pre-defined and at the discretion of the class 1 racing association.

(2) A class 1 racing association desiring to offer a paid-entry handicapping contest must first apply for and receive approval from the commission to conduct a handicapping contest ((in Washington)). The class 1 racing association must apply to the commission for approval of each and every contest. The class 1 racing association must include with its application the proposed rules for conducting the handicapping contest and the determination of prizes. The class 1 racing association ((shall)) will obtain written approval to operate the handicapping contest prior to the acceptance of any entry fees regarding said contest.

(3) The class 1 racing association approved to operate a handicapping contest ((shall)) will distribute at least ninety-five percent of the entry fees as prizes to the winners. Nothing in this section ((shall)) will preclude an operator from providing additional prizes or promotions.

(4) The entry fee to enter a handicapping contest ((shall)) will be set by the class 1 racing association. The entry fee and a description of all goods and services to be awarded as part of the handicapping contest must be fully disclosed to each participant prior to paying the entry fee. In addition, all prizes, including amenities such as airfare, meals and lodging, ((shall)) will also be fully disclosed to each participant prior to paying the entry fee.

(5) Races that are the subject of a handicapping contest must be races on which the class 1 racing association is authorized to conduct parimutuel wagering.

(6) The officers and employees of the class 1 racing association operating a handicapping contest, and their immediate families are prohibited from participating in any handicapping contest. Commissioners and employees of the commission are also prohibited from participating in any handicapping contest in Washington.

(7) The class 1 racing association ((shall)) will provide the commission a report on every handicapping contest including a record of all entry fees collected, the number of participants for each contest, the amount the class 1 racing association paid in prizes, and the name and address of each winning participant.

(8) Any violation of this section ((shall)) will be referred to the ((commission)) executive secretary. The ((commission shall)) executive secretary will have sole authority to ensure compliance with this rule, conduct hearings on violations, and determine penalties. Any decision of the executive secretary may be challenged as provided in WAC 260-08-675.

## WSR 08-17-050 PERMANENT RULES HORSE RACING COMMISSION

[Filed August 14, 2008, 4:55 p.m., effective September 14, 2008]

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

**Purpose:** As part of the agency's regulatory reform effort, the purpose of this permanent rule change is to repeal all the current sections in chapter 260-13 WAC and establish new sections that simplify the licensing requirements and process for Class A, B, and C racing facilities where parimutuel wagering is to be conducted.

**Citation of Existing Rules Affected by this Order:** Repealing WAC 260-13-010, 260-13-020, 260-13-030, 260-13-040, 260-13-050, 260-13-060, 260-13-070, 260-13-080, 260-13-090, 260-13-100, 260-13-110, 260-13-120, 260-13-130, 260-13-140, 260-13-150, 260-13-160, 260-13-170, [260-13-175], 260-13-180, 260-13-190, 260-13-200, 260-13-210, 260-13-220, 260-13-230, 260-13-240, 260-13-250, 260-13-260, 260-13-270, 260-13-280, 260-13-290, 260-13-300, 260-13-310, 260-13-320, 260-13-330, 260-13-340, 260-13-350, 260-13-360, 260-13-370, 260-13-380, 260-13-390, 260-13-400, 260-13-410, 260-13-420, 260-13-430, 260-13-440, 260-13-450, 260-13-460, 260-13-470, 260-13-480, and 260-13-490.

**Statutory Authority for Adoption:** RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 08-11-108 on May 20, 2008.

**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 18, Amended 0, Repealed 50.

**Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures:** New 18, Amended 0, Repealed 50.

**Number of Sections Adopted Using Negotiated Rule Making:** New 18, Amended 0, Repealed 50; **Pilot Rule Making:** New 0, Amended 0, Repealed 0; or **Other Alternative Rule Making:** New 0, Amended 0, Repealed 0.

Date Adopted: August 14, 2008.

R. J. Lopez  
Deputy Secretary

## Chapter 260-13 WAC

### **(LICENSING REQUIREMENTS FOR NEW TRACKS AND TRANSFERS OF EXISTING TRACKS) CLASS A, B, AND C LICENSE—HORSE RACING FACILITIES**

#### **NEW SECTION**

**WAC 260-13-500 Purpose.** The commission is authorized in chapter 67.16 RCW to license, regulate, and supervise all race meets held in this state. The purpose of this

chapter is to establish procedures for persons or entities to apply for a license to own and/or operate a horse racing facility in this state where parimutuel wagering is conducted. Every person or entity making application for a Class A, B, or C license to hold a race meet must comply with the provisions of this chapter and the applicable provisions of chapter 67.16 RCW. This chapter does not apply to an existing Class A, B, or C licensee required to submit an application for race dates and other information on its race meet, as may be required in chapter 260-20 WAC.

#### NEW SECTION

**WAC 260-13-505 Definitions.** The definitions in this section apply throughout this chapter unless the context requires otherwise.

(1) Class A license is a license to own and operate a horse racing facility where parimutuel wagering is conducted. A Class A license is granted to the licensee who has complete control over all aspects of ownership and operation of the horse racing facility.

(2) Class B license is a license to operate a horse racing facility where parimutuel wagering is conducted. A Class B license is granted to a licensee who has complete control over all aspects of operating the horse racing facility but does not retain ownership of the facility.

(3) Class C license is a license to operate a nonprofit horse racing facility where parimutuel wagering is conducted. A Class C license is granted to the licensee who has complete control over all aspects of operating a nonprofit horse racing facility.

#### NEW SECTION

**WAC 260-13-510 Application for Class A, B, or C license—Affidavit of the applicant.** An application for a Class A, B, or C license must include an affidavit of the applicant or the applicant's agent setting forth the following:

(1) The class of license being applied for;

(2) If the applicant is an individual, his/her legal name and the legal name of his/her spouse and dates of birth, telephone number(s) and address(es);

(3) If applicable, the name, address, and telephone number of the person representing the applicant and that the person is authorized to make application on the applicant's behalf. Documented proof of authority must be attached to the affidavit;

(4) If the applicant is a corporation:

(a) The name of the corporation;

(b) The date and place of incorporation;

(c) The names, dates of birth and addresses of directors and officers who are natural persons;

(d) The names and addresses of its shareholders:

(i) If a shareholder is a corporation, then the name and place of its incorporation, and the names and addresses and dates of birth of those corporations' directors and officers;

(ii) If the applicant is a corporation ultimately owned by a not-for-profit entity without any shareholders, or is a publicly traded corporation, the information required in this subsection will be required from the directors of the not-for-

profit entity, or the directors and officers of the publicly traded corporation, in lieu of the shareholders;

(iii) If the applicant is a general or limited partnership, the names, dates of birth, and addresses of the partners; if a partner is a corporation, the date of incorporation, the place of incorporation and the names and addresses and dates of birth of its directors and officers must be provided;

(5) A statement that the applicant for license accepts that at all times, the burden of proving the applicant's qualification for license rests with the applicant;

(6) A statement that the applicant consents to inquiries by the state of Washington, the commission, its employees, staff and agents into the financial, character, and other qualifications of the applicant by contacting individuals and organizations;

(7) A statement that the applicant, its owners, partners, members, directors, officers, and personnel accept any risk of adverse public notice, or circumstances, including financial loss, which may result from actions by the state of Washington, the commission, its employees, staff and agents and expressly waive any claim which otherwise could be made against the state of Washington, the commission, its employees, staff and agents;

(8) A statement that the information contained in the application is true and complete and that any false, incomplete, misleading information may be grounds for denial of the application or fine, suspension or revocation of existing license; and

(9) A statement that the applicant will comply with chapter 67.16 RCW and Title 260 WAC.

#### NEW SECTION

**WAC 260-13-515 Application for Class A, B, or C license—Additional requirements.** (1) As part of the application process, the commission has the right to require fingerprints from those persons the commission determines necessary to ensure those persons suitable for horse racing are granted a license to own and/or operate a racing facility where parimutuel wagering is conducted.

(2) The commission has the right to require additional information as part of the license application process.

(3) The applicant will provide ten copies of the application including all attachments and other documents required in this chapter. All ten copies of the application must be in printed or typewritten form on 8-1/2 by 11 inch paper. Immediately preceding each response, an applicant must restate the information requested. Any attachments or exhibits must be lettered or numbered separately. An applicant must provide photographs of any three-dimensional exhibits.

(4) Deadlines for submission of a license application may be specified by the commission.

#### NEW SECTION

**WAC 260-13-520 Disclosure of ownership and/or control.** An application for a Class A, B, or C license must disclose the following:

(1) The organizational structure of the applicant, whether individual business, corporation, nonprofit corporation, partnership, joint venture, trust, association, or other;

(2) If the applicant is an individual, the applicant's full legal name, whether the applicant is a United States citizen, any aliases and business names currently used by the applicant, and copies of state and federal tax returns for the past five years;

(3) If the applicant is a corporation:

(a) The applicant's full corporate name and any trade names currently used by the applicant;

(b) The jurisdiction and date of incorporation;

(c) The date the applicant began doing business in Washington and, if the applicant is incorporated outside Washington, a copy of the applicant's certificate of authority to do business in Washington;

(d) Copies of the applicant's articles of incorporation, bylaws, and state and federal corporate tax returns for the past five years;

(e) The general nature of the applicant's business;

(f) Whether the applicant is publicly held as defined by the rules and regulations of the Securities and Exchange Commission;

(g) The classes of stock of the applicant. As to each class, the number of shares authorized, number issued, number outstanding, par value per share, issue price, current market price, number of shareholders, terms, position, rights, and privileges must be disclosed;

(h) If the applicant has any other obligations or securities authorized or outstanding which bear voting rights either absolutely or upon any contingency, the nature thereof, face or par value, number of units authorized, number outstanding, and conditions under which they may be voted;

(i) The names, in alphabetical order, addresses and telephone numbers of the directors and, in a separate listing, officers of the applicant. As to each director and officer, the number of shares held of record as of the application date or beneficially of each class of stock, including stock options and subscriptions, and units held of record or beneficially of other obligations or securities which bear voting rights must be disclosed;

(j) The names, in alphabetical order, addresses and telephone numbers of each record holder as of the date of application or beneficial owner of shares, including stock options and subscriptions, of the applicant or units of other obligations or securities which bear voting rights. For each holder of shares or units, the number and class or type of shares or units must be disclosed;

(k) Whether the requirements of the Securities Act of 1933 and Securities and Exchange Act of 1934, as amended, and Securities and Exchange Commission rules and regulations have been met in connection with issuance of applicant's securities, and copies of most recent registration statement and annual report filed with the Securities and Exchange Commission;

(l) Whether the securities registration and filing requirements of the applicant's jurisdiction of incorporation have been met and a copy of most recent registration statement filed with the securities regulator in that jurisdiction; and

(m) Whether the securities registration and filing requirements of the state of Washington have been met. If they have not, the applicant must disclose the reasons why. The applicant must provide copies of all securities filings

with the Washington department of financial institutions securities division during the past five years;

(4) If the applicant is an organization other than a corporation or an individual:

(a) The applicant's full name and any trade names currently used by the applicant;

(b) The jurisdiction of organization of the applicant;

(c) The date the applicant commenced doing business in Washington;

(d) Copies of any agreements creating or governing the applicant's organization and the applicant's state and federal tax returns for the past five years;

(e) The general nature of the applicant's business;

(f) The names, in alphabetical order, address and telephone numbers of any partners and officers of the applicant and other persons who have or share policymaking authority. As to each, the applicant must disclose the nature and extent of any ownership interest, including options, or other voting interest, whether absolute or contingent, in the applicant; and

(g) The names, in alphabetical order, addresses and telephone numbers of any individual or other entity holding a record or beneficial ownership interest, including options, as of the date of the application or other voting interest, whether absolute or contingent, in the applicant. As to each, the applicant must disclose the nature and extent of the interest;

(5) Whether the applicant is directly or indirectly controlled to any extent or in any manner by another individual or entity. If so, the applicant must disclose the identity of the controlling entity and a description of the nature and extent of control;

(6) Any agreements or understandings which the applicant or any individual or entity identified pursuant to this part has entered into regarding ownership or operation of applicant's horse racing facility, and copies of any written agreements;

(7) Any agreements or understandings which the applicant has entered into for the payment of fees, rents, salaries, or other compensation by the applicant, and copies of any written agreements; and

(8) Whether the applicant, any partner, director, officer, other policymaker, holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of one percent or more in the applicant has held or holds a license or permit issued by a governmental authority to own and operate a horse racing facility or conduct any aspect of horse racing or gambling. If so, the applicant must disclose the identity of the license or permit holder, nature of the license or permit, issuing authority, and dates of issuance and termination.

## NEW SECTION

**WAC 260-13-530 Disclosure of character information.** An applicant for a Class A, B, or C license must disclose whether the applicant or any individual or other entity identified in the application has:

(1) Ever been charged in a criminal proceeding with a misdemeanor, gross misdemeanor or felony. If so, the applicant must disclose the date charged, court, whether convicted, date convicted, crime convicted of, and sentence.

(2) Ever been a party in a civil proceeding and alleged to have engaged in an unfair or anticompetitive business practice, a securities violation, or false or misleading advertising. If so, the date of commencement of the proceeding, court, circumstances, date of decision or other resolution, and result.

(3) Ever had a horse racing, gambling, or other business license or permit revoked or suspended or renewal denied or been a party in a proceeding to do so. If so, the applicant must disclose the circumstances, date, and the result of the decision.

(4) Ever been accused in an administrative or judicial proceeding of violation of a statute or rule relating to unfair labor practices, discrimination, horse racing or gambling. If so, the applicant must disclose the date of commencement, forum, circumstances, date of decision, and result.

(5) Commenced an administrative or judicial action against a governmental regulator of horse racing or gambling. If so, the applicant must disclose the circumstances, date, and the result of the decision.

(6) Ever been the subject of voluntary or involuntary bankruptcy proceedings. If so, the applicant must disclose the circumstances, date, and the result of the decision.

(7) Ever failed to satisfy any judgment, decree, or order of an administrative or judicial tribunal. If so, the applicant must disclose the date and circumstances.

(8) Ever been delinquent in filing a tax report required or remitting a tax imposed by any government. If so, the applicant must disclose the circumstances, date, and the result of the decision.

#### NEW SECTION

**WAC 260-13-540 Description of facilities.** An applicant for Class A, B, or C license, at the time of application, will provide the commission a detailed description, floor plans and site plans of the horse racing facility. At a minimum, the description must include the following:

(1) The address of the facility, its size, and geographical location, including reference to county and municipal boundaries;

(2) A site map showing current and proposed highways and streets adjacent to the facility;

(3) The types of racing for which the facility is designed, whether thoroughbred, harness, quarter horse, or other or combination thereof;

(4) The racetrack dimensions by circumference, width, banking, location of chutes, length of stretch, distance from judges' stand to first turn and type of surface. If the facility has more than one racetrack, the applicant must provide a description of each;

(5) A description of horse stalls at the facility, including the dimensions of stalls, separation, location, and total number of stalls;

(6) A description of the grandstand, giving total seating capacity, total reserved seating capacity, indoor and outdoor seating capacity, configuration of grandstand seating and parimutuel and concession facilities within the grandstand; the number and location of men's and women's restrooms, drinking fountains, and medical facilities available to

patrons; and a description of public pedestrian traffic patterns throughout the grandstand;

(7) A description of the receiving and test barns, giving distance from these barns to the track and paddock. In addition, the number of sampling stalls, placement of viewing ports on each stall, number of wash stalls with hot and cold water and drains, availability of video monitors and a description of the walking ring;

(8) A description of the paddock, number of stalls in the paddock, height from the floor to lowest point of the stall ceiling and entrance, and paddock public address and telephone services;

(9) A description of the jockeys' and/or drivers' quarters, giving changing areas, a listing of equipment to be installed in each, and the location of the jockeys' quarters in relation to the paddock;

(10) A description of the parimutuel system, giving approximate location of bettors' windows and cash security areas, and a description of the equipment, including the provider if known;

(11) A description of the parking, showing access to parking from surrounding streets and highways, number of parking spaces available, and distinguishing between public and other. Include a description of the road surface on parking areas and the distance between parking and the grandstand, and a map of the area showing the relationship of parking to surrounding streets and highways;

(12) A description of the height, type of construction, and materials of perimeter fence;

(13) A description of improvements and equipment at the racetrack for security purposes in addition to perimeter fence, including the provider of equipment if known;

(14) A description of starting, timing, photo finish, and photo-patrol or video equipment, including the provider if known;

(15) A description of work areas for the commission employees, including location, square footage, telephones and other electronic access points;

(16) A description of access of the facility to public transportation, specifics of the types of transportation and schedules, road maps of area indicating pick-up and drop-off points; and

(17) The manner the proposed wagering (including simulcast if applicable) system will operate and the regular hours of operation.

#### NEW SECTION

**WAC 260-13-550 Disclosure of development process.** An applicant for Class A, B, or C license, at the time of application, will disclose to the commission its development process, if any, which must include the following:

(1) The total cost of construction, renovation or repairs of the facility, distinguishing between fixed costs and projections;

(2) Identification of the following costs, distinguishing between fixed costs and projections:

(a) Facility design;

(b) Land acquisition;

(c) Site preparation;

- (d) Improvements and equipment, separately identifying the costs of improvements and equipment;
- (e) Interim financing;
- (f) Permanent financing; and
- (g) Organization, administrative, accounting, and legal;
- (3) Documentation of fixed costs;
- (4) The schedule for construction of the facility, including estimated completion date;
- (5) Schematic drawings;
- (6) Copies of any contracts with and performance bonds from the:
  - (a) Architect or other design professional;
  - (b) Project engineer;
  - (c) Construction engineer;
  - (d) Contractors and subcontractors; and
  - (e) Equipment procurement personnel; and
- (7) Whether the site has been acquired or leased by the applicant. If the site has been acquired by the applicant, documented proof of the acquisition must be provided. If the site is leased, the applicant must disclose what actions the applicant must take in order to use the site and provide a copy of the lease.

#### NEW SECTION

#### **WAC 260-13-560 Disclosure of financial resources.**

An applicant for a Class A, B, or C license must disclose the following:

(1) An audited financial statement reflecting the applicant's current assets, including investments in affiliated entities, loans and advances receivable and fixed assets and current liabilities, including loans and advances payable, long-term debt and equity;

(2) For a Class A license the equity and debt sources of funds to develop, own, and operate the facility. For a Class B or C license the equity and debt sources of funds to operate the facility:

(a) With respect to each source of equity contribution, identification of the source, amount, form, method of payment, nature and amount of present commitment, documentation and actions which the applicant will take to obtain more certain commitments and commitments for additional amounts; and

(b) With respect to each source of debt contribution, identification of the source, amount, terms of debt, collateral, identity of guarantors, nature and amount of commitments, documentation and actions which the applicant will take to obtain more certain commitments and commitments for additional amounts; and

(3) Identification and description of sources of additional funds if needed due to cost overruns, nonreceipt of expected equity or debt funds, failure to achieve projected revenues or other cause.

#### NEW SECTION

**WAC 260-13-570 Disclosure of financial plan.** An applicant for a Class A, B, or C license must disclose its financial plan. For a Class A license this must include the financial projections for the development period and each of the first five racing years. For a Class B or C license this

must include the financial projections for the first three racing years. For all licenses the financial plan must include separate schedules based upon the number of racing days and types of parimutuel betting the applicant requires to break even and the optimum number of races and types of betting applicant estimates each year. The financial plan must include:

- (1) The following assumptions and support for them:
  - (a) The average daily attendance;
  - (b) Average daily handle;
  - (c) Retention (RCW 67.16.170 and 67.16.175);
  - (d) Admission revenue and admission fees;
  - (e) Parking volume, fees, and revenues;
  - (f) Concessions, gift shop, and program sales;
  - (g) Cost of purses;
  - (h) Parimutuel system expense;
  - (i) State taxes;
  - (j) Real estate taxes;
  - (k) Washington-bred breeder awards (Class A and B only);
  - (l) Washington-bred owner's bonuses (Class A and B only);
  - (m) Class C purse funds (Class A and B only);
  - (n) Parimutuel tax (Class A and B only);
  - (o) Payroll;
  - (p) Operating supplies and services;
  - (q) Utilities;
  - (r) Repairs and maintenance;
  - (s) Insurance;
  - (t) Membership expense;
  - (u) Security expense;
  - (v) Legal and audit expense;
  - (w) Debt service; and
  - (x) Federal taxes;
- (2) The following profit and loss elements:
  - (a) Total revenue, including projected revenues from retention and breakage, admissions, parking, and concessions, gift, and program operations;
  - (b) Total operating expenses, including anticipated expenses for:
    - (i) Purses;
    - (ii) Parimutuel system;
    - (iii) Sales tax;
    - (iv) Parimutuel tax (Class A and B only);
    - (v) Real estate tax;
    - (vi) Admissions tax;
    - (vii) Washington-bred breeder awards (Class A and B only);
    - (viii) Washington-bred owner's bonuses (Class A and B only);
    - (ix) Class C purse fund (Class A and B only);
    - (x) Special assessments;
    - (xi) Cost of concession goods, gifts, and programs;
    - (xii) Advertising and promotion;
    - (xiii) Payroll;
    - (xiv) Operating supplies and service;
    - (xv) Maintenance and repairs;
    - (xvi) Insurance;
    - (xvii) Security;
    - (xviii) Legal and audit; and

(xix) Federal and state income taxes;

(c) Nonoperating expenses, including anticipated expenses for debt service, facility depreciation and identification of method used, and equipment depreciation and identification of method used;

(3) Projected cash flow, including assessment of:

(a) Income, including equity contributions, debt contributions, interest income, operating revenue; and

(b) Disbursements, including land, improvements, equipment, debt service, operating expense, organizational expense; and

(4) Projected balance sheets as of the end of the development, renovation or repair period and each of the five racing years for Class A license applicant or the first three racing years for Class B or C license applicant, setting forth:

(a) Current, fixed, and other noncurrent assets;

(b) Current and long-term liabilities; and

(c) Capital accounts.

The applicant must also provide an accountant's report supporting the financial projections.

#### NEW SECTION

**WAC 260-13-580 Disclosure of governmental actions.** An applicant for a Class A, B, or C license must disclose actions of government agencies, which include:

(1) The street and highway improvements necessary to ensure adequate access to applicant's facility, and the cost of improvements, status, likelihood of completion, and estimated date.

(2) The sewer, water, and other public utility improvements necessary to serve applicant's facility, and the cost of improvements, status, likelihood of completion, and estimated date.

(3) If applicant has obtained any required government approvals for its development, ownership, and operation of its horse racing facility:

(a) A description of the approval, unit of government, date, and documentation.

(b) Whether public hearings were held. If they were, the applicant must disclose when and where the hearings were conducted. If they were not held, the applicant must disclose why they were not held.

(c) Whether the unit of government attached any conditions to approval. If so, the applicant must disclose these conditions, including documentation.

(4) Whether any required governmental approvals remain to be obtained, as well as a description of the approval, unit of government, status, likelihood of approval, and estimated date.

(5) Whether an environmental assessment of the facility has been or will be prepared. If so, the applicant must disclose its status and the governmental unit with jurisdiction, and provide a copy of any assessment.

(6) Whether an environmental impact statement is required for applicant's facility. If so, the applicant must disclose its status and the governmental unit with jurisdiction, and provide a copy of any statement.

(7) Whether the applicant is in compliance with all statutes, charter provisions, ordinances, and regulations pertain-

ing to the development, ownership, and/or operation of its horse racing facility. If the applicant is not in compliance, the applicant must disclose the reasons why the applicant is not in compliance.

#### NEW SECTION

**WAC 260-13-590 Disclosure of management.** An applicant for a Class A, B, or C license must disclose the following regarding development, ownership, and operation of its parimutuel horse racing facility:

(1) A description of the applicant's management plan, with budget and identification of management personnel by function, job descriptions, and qualifications for each management position, and a copy of the organization chart;

(2) Management personnel, including the following:

(a) Legal name, aliases, and previous names;

(b) Current residence and business addresses and telephone numbers;

(3) Consultants and other contractors who have provided or will provide management-related services to applicant, including the following:

(a) Full name;

(b) Current address and telephone number;

(c) Nature of services;

(d) Qualifications and experience; and

(e) Description of terms and conditions of any contractor's agreement, and a copy of the agreement;

(4) Memberships of the applicant, management personnel, and consultants in horse racing organizations;

(5) Description of the applicant's security plan, including:

(a) Number of security personnel used by the applicant during a race meet, security staff levels during live racing, and at other times;

(b) Specific security plans for perimeter, stabling facilities, parimutuel betting facilities, purses, horsemen's bookkeeper, and cash room;

(c) Description of video monitoring equipment and its use;

(d) Whether the applicant will be a member of the Thoroughbred Racing Protective Bureau or other security organization; and

(e) Coordination of security with law enforcement agencies;

(6) Description of the applicant's plans for human and animal health and safety, including emergencies;

(7) Description of the applicant's marketing, promotion, and advertising plans;

(8) A description of the applicant's plan for concessions, including whether the licensee will operate concessions and, if not, who will, to the extent known;

(9) A description of the applicant's plan for conduct of horse racing, including types of racing, number of days, weeks, specific dates, number of races per day, time of day, and special events;

(10) A description of the applicant's plan for purses, including total purses, formula, minimum purse, stakes races, and purse handling procedures;

(11) A description of the applicant's plan for parimutuel betting, including, windows, selling machines and clerks; and accounting procedures, including its proposed system of internal audit and supervisory controls;

(12) Its plan for promoting the orderly growth of horse racing in Washington;

(13) A description of the impact of its horse racing facility, including:

(a) The effects of its ownership and/or operation of its horse racing facility on competitors within the horse racing industry. This disclosure must analyze the impact on all other existing race tracks in Washington at the time and when the racing dates are projected to commence;

(b) Economic impact, including:

(i) Employment created and specifics as to number of jobs, whether permanent or temporary, type of work, compensation, employer, and how created;

(ii) Purchases of goods and services and specifics as to money amounts and types of purchases;

(iii) Public and private investment; and

(iv) Tax revenues generated;

(c) Ecological impact; and

(d) Impact on energy conservation and development of alternative energy sources;

(14) Describe public support and opposition, whether by a governmental official or agency or private individual or group including any applicable documentation; and

(15) Provide the names, addresses, and telephone numbers of individuals who assisted the applicant in preparation of its application and describe each person's role in preparing the application.

#### NEW SECTION

**WAC 260-13-600 Licensing criteria—Class A, B, or C license.** The commission may deny a Class A, B, or C license to conduct a race meet when, in its judgment, a denial of a license appears to be in the best interest of horse racing and/or the public.

#### NEW SECTION

**WAC 260-13-610 Application fee—Class A, B, and C license.** (1) An applicant for a Class A or B license must submit to the executive secretary at the time of application a certified check or bank draft to the order of the state of Washington in the amount of fifty thousand dollars to cover the costs of the investigation mandated by these rules. Upon completion of the investigation, the commission must refund to the applicant any amount by which the fifty thousand dollars exceeds the actual costs of investigation. If costs of the investigation exceed fifty thousand dollars, the applicant must remit the amount of the difference by certified check or bank draft within ten days after receipt of a bill from the commission. Should an applicant fail to pay additional amounts when billed, the commission will suspend all further action or investigation on the application until receipt of all moneys due and owing. The commission may, at its discretion, require an additional amount by way of deposit if necessary to complete its investigation. An individual or other entity

applying for Class A and B licenses simultaneously must submit only one fifty thousand dollar investigation fee.

(2) An applicant for a Class C license is not required to pay an investigation fee set forth in subsection (1) of this section.

#### NEW SECTION

**WAC 260-13-620 Application requirements—Executive secretary's designee.** The executive secretary must designate an individual who will clarify Class A, B, and C license application requirements upon the oral or written request of a potential or actual applicant. The designee must respond to clarification requests in writing within five business days. No interpretation of application requirements by any other person will be binding upon the commission.

#### NEW SECTION

**WAC 260-13-630 Amendments to a license application.** The commission may only consider a substantive amendment to a license application after its submission if such amendment is made at the direction of the commission and/or is deemed by the commission to be in the best interests of the horse racing industry.

#### NEW SECTION

**WAC 260-13-640 Application for license—Opportunity for oral presentation.** The commission will provide an applicant for a license an opportunity to make an oral presentation of its application to the commission before the commission decides whether to issue a license. The commission is not required to provide an applicant more than one opportunity to make an oral presentation before the commission makes its decision.

#### NEW SECTION

**WAC 260-13-650 License fee—Class A, B, and C license.** (1) A Class A or B license does not become effective until the commission receives a certified check or bank draft to the order of the state of Washington equal to two hundred dollars times the number of racing days requested in the license application and is void if the license fee is not received within ten days after issuance. The commission must refund to the licensee the amount by which the fee paid exceeds two hundred dollars times the number of actual days of racing.

(2) A Class C license applicant must pay its daily licensing fee required in RCW 67.16.130(1) at the end of its race meet.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 260-13-010

Identification of applicant for Class A license.

WAC 260-13-020

Applicant's affidavit.

WAC 260-13-030	Disclosure of ownership and control.	WAC 260-13-300	Disclosure of public support and opposition.
WAC 260-13-040	Disclosure of character information.	WAC 260-13-310	Effects on competition.
WAC 260-13-050	Disclosure of improvements and equipment.	WAC 260-13-320	Disclosure of assistance in preparation of application.
WAC 260-13-060	Disclosure of development process.	WAC 260-13-330	Personal information and authorization for release.
WAC 260-13-070	Disclosure of financial resources.	WAC 260-13-340	Class B license criteria.
WAC 260-13-080	Disclosure of financial plan.	WAC 260-13-350	Class A and B license application disclosures.
WAC 260-13-090	Disclosure of governmental actions.	WAC 260-13-360	Class A and B license application submission.
WAC 260-13-100	Disclosure of management.	WAC 260-13-370	Investigation fee for Class A and B licenses.
WAC 260-13-110	Disclosure of public service.	WAC 260-13-380	Clarification of Class A and B license application requirements.
WAC 260-13-120	Disclosure of impact of facility.	WAC 260-13-390	Changes in Class A and B license applications.
WAC 260-13-130	Disclosure of public support and opposition.	WAC 260-13-400	Deadlines for submission of Class A and B license applications.
WAC 260-13-140	Effects on competition.	WAC 260-13-410	Oral presentation by applicant for a Class A or B license.
WAC 260-13-150	Disclosure of assistance in preparation of application.	WAC 260-13-420	Payment of Class A and B license fees.
WAC 260-13-160	Personal information and authorization for release.	WAC 260-13-430	Class A and B license application information.
WAC 260-13-170	Class A license criteria.	WAC 260-13-440	Delay in completion of race-track facility.
WAC 260-13-175	Definition of "applicant."	WAC 260-13-450	Construction, expansion, extension, alteration, or remodeling of facilities.
WAC 260-13-180	Identification of applicant for Class B license.	WAC 260-13-460	Identification of applicant for Class C license.
WAC 260-13-190	Applicant's affidavit.	WAC 260-13-470	Applicant's affidavit.
WAC 260-13-200	Disclosure of ownership and control.	WAC 260-13-480	Other requirements for Class C license.
WAC 260-13-210	Disclosure of character information.	WAC 260-13-490	Class C license criteria.
WAC 260-13-220	Disclosure of improvements and equipment.		
WAC 260-13-230	Disclosure of authorization to use horse racing facility.		
WAC 260-13-240	Disclosure of financial resources.		
WAC 260-13-250	Disclosure of financial plan.		
WAC 260-13-260	Disclosure of governmental actions.		
WAC 260-13-270	Disclosure of management.		
WAC 260-13-280	Disclosure of public service.		
WAC 260-13-290	Disclosure of economic impact.		

**WSR 08-17-051  
PERMANENT RULES**

**HORSE RACING COMMISSION**

[Filed August 14, 2008, 4:55 p.m., effective September 14, 2008]

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

Purpose: To amend WAC 260-70-630, specifically subsection (3) to clarify that the concentration of nandrolone in intact males is 45 nanograms of nandrolone metabolites per milliliter of urine.

Citation of Existing Rules Affected by this Order: Amending WAC 260-70-630.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 08-13-030 on June 10, 2008.

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 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 14, 2008.

R. J. Lopez  
Deputy Secretary

**AMENDATORY SECTION** (Amending WSR 08-05-091, filed 2/15/08, effective 6/1/08)

**WAC 260-70-630 Threshold levels.** (1) Permitted medications.

(a) The following quantitative medications are permissible in test samples up to the stated concentrations:

- Procaine - 25 ng/ml urine
- Benzocaine - 50 ng/ml urine
- Mepivacaine - 10 ng/ml urine
- Lidocaine - 50 ng/ml urine
- Bupivacaine - 5 ng/ml urine
- Clenbuterol - 25 pg/ml serum or plasma
- Acepromazine - 25 ng/ml urine
- Promazine - 25 ng/ml urine
- Salicylates - 750,000 ng/ml urine
- Albuterol - 1 ng/ml urine
- Pyrilamine - 50 ng/ml urine
- Theobromine - 2000 ng/ml urine

(b) The official urine or blood test sample may not contain more than one of the above substances, including their metabolites or analogs, and may not exceed the concentrations established in this rule.

(2) Environmental substances.

(a) Certain substances can be considered "environmental" in that they are endogenous to the horse or that they can arise from plants traditionally grazed or harvested as equine feed or are present in equine feed because of contamination or exposure during the cultivation, processing, treatment, storage, or transportation phases. Certain drugs are recog-

nized as substances of human use and could therefore be found in a horse. The following substances are permissible in test samples up to the stated concentrations:

Caffeine - 100 ng/ml serum or plasma

Benzoylecgonine - 50 ng/ml urine

Morphine Glucuronides - 50 ng/ml urine

(b) If a preponderance of evidence presented shows that a positive test is the result of environmental substance or inadvertent exposure due to human drug use, that evidence should be considered as a mitigating factor in any disciplinary action taken against the trainer.

(3) Androgenic-anabolic steroids.

(a) The following androgenic-anabolic steroids are permissible in test samples up to the stated concentrations:

Stanozolol (Winstrol) - 1 ng/ml urine in all horses regardless of sex.

Boldenone (Equipoise) - 15 ng/ml urine in intact males. No level is permitted in geldings, fillies or mares.

Nandrolone (Durabolin) - 1 ng/ml urine in geldings, fillies, and mares, and for nandrolone metabolite (5a-oestrane- $\beta$ ,17a-diol) - 45 ng/ml urine in intact males.

Testosterone - 20 ng/ml urine in geldings. 55 ng/ml urine in fillies and mares. Samples from intact males will not be tested for the presence of testosterone.

(b) All other androgenic-anabolic steroids are prohibited in race horses.

**WSR 08-17-056**

**PERMANENT RULES**

**LIQUOR CONTROL BOARD**

[Filed August 15, 2008, 2:17 p.m., effective September 15, 2008]

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

Purpose: This rule making is a result of the liquor control board's on-going rules review process. Rules dealing with administrative hearings and settlement agreements have been reviewed for clarity and relevance. Rules that duplicate provisions in the Administrative Procedure Act and the model rules adopted by the office of administrative hearings are repealed and others are modified.

Citation of Existing Rules Affected by this Order: Repealing WAC 314-42-025, 314-42-050, 314-42-060, 314-42-065, 314-42-075, 314-42-080, 314-42-090, 314-42-100 and 314-42-105; and amending WAC 314-29-003, 314-29-005, 314-29-010, 314-42-030, 314-42-040, 314-42-045, 314-42-070, and 314-42-085.

Statutory Authority for Adoption: RCW 66.08.030.

Adopted under notice filed as WSR 08-09-048 on April 11, 2008.

Changes Other than Editing from Proposed to Adopted Version: WAC 314-42-020 Appearance and practice before the board—Who may appear, was removed from the list of repealed rules and will remain a rule. In WAC 314-42-070 Presumptions, subsection (3) "Interference with remedy" was changed to "Spoliation" and the definition was clarified. WAC 314-42-055 was renumbered to WAC 314-42-095 to give it a more logical placement.

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 8, Repealed 9.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 8, Repealed 9.

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: August 6, 2008.

Lorraine Lee  
Chairman

### **Chapter 314-29 WAC**

#### **(HEARINGS) VIOLATIONS AND PENALTIES**

**AMENDATORY SECTION** (Amending WSR 03-09-015, filed 4/4/03, effective 5/5/03)

**WAC 314-29-003 Purpose.** The purpose of chapter 314-29 WAC is to outline what a liquor licensee or a mandatory alcohol server training permit holder can expect if a licensee or ((employee violates)) permit holder receives an administrative violation notice alleging a violation of a liquor control board ((law or rule)) statute or regulation.

**AMENDATORY SECTION** (Amending WSR 01-03-086, filed 1/17/01, effective 2/17/01)

**WAC 314-29-005 What are the procedures for notifying a licensee or a mandatory alcohol server training permit holder ((to be notified)) of an alleged violation of a board statute or regulation?** (1) When an enforcement ((agent)) officer believes that a licensee or a mandatory alcohol server training permit holder has violated a board statute or regulation, the ((agent will)) officer may prepare an administrative violation notice (AVN) and mail or deliver the notice to the licensee, licensee's agent or permit holder. ((This notice will constitute the notice of initial board action, and the remaining steps in the prehearing procedure as outlined in WAC 314-17-010 will be followed.))

(2) The AVN notice will include:

(a) A brief narrative description of the violation(s) the ((agent)) officer is charging;

(b) The date(s) of the violation(s);

(c) A copy of the law(s) and/or regulation(s) allegedly violated;

(d) An outline of the licensee's or permit holder's options as outlined in WAC 314-29-010; and

(e) The recommended penalty ((as follows:)).

((For cases in which there are no aggravating circumstances as outlined in WAC 314-12-330 and 314-12-340 as

now or hereafter amended,)) If the recommended penalty ((will be)) is the standard penalty ((as outlined in WAC 314-12-170 and 314-12-300 through WAC 314-12-320)), see WAC 314-29-020 through 314-29-035 for licensees, and ((in WAC 314-14-160 and 314-14-165)) WAC 314-17-100 and 314-17-105 for mandatory alcohol server training permit holders((, as now or hereafter amended)).

(ii) For cases in which there are aggravating or mitigating circumstances ((as outlined in WAC 314-12-330 and 314-12-340 as now or hereafter amended, the agent will describe the circumstances in a report to the director of the enforcement and education division or the director of the licensing and regulation division. Under the provisions of WAC 314-12-330 and 314-12-340 as now or hereafter amended, the director of the education and enforcement division or the director of the licensing and regulation division may recommend a penalty other than the standard penalty outlined in WAC 314-12-170 and 314-12-300 through WAC 314-12-320)), the penalty may be adjusted from the standard penalty. See WAC 314-29-015 for licensees, and ((in WAC 314-14-160)) WAC 314-17-110 for mandatory alcohol server training permit holders((, as now or hereafter amended)).

**AMENDATORY SECTION** (Amending WSR 01-03-086, filed 1/17/01, effective 2/17/01)

**WAC 314-29-010 What options does a licensee or permit holder have once he/she receives a notice of ((initial board action)) an administrative violation?** (1) ((When)) A licensee or a mandatory alcohol server training permit holder ((receives a notice of initial board action from a liquor control agent in the mail or in person, the licensee or permit holder)) has twenty days from receipt of the notice to:

- (a) Accept the recommended penalty; or
- (b) Request a settlement conference in writing; or
- (c) Request an administrative hearing in writing.

A response must be submitted on a form provided by the agency.

(2) **What happens if a licensee or mandatory alcohol server training permit holder does not respond to the administrative violation notice within twenty days?** If a licensee or permit holder does not respond to the administrative violation notice within twenty days, the recommended penalty will go into effect.

(3) **What are the procedures when a licensee or mandatory alcohol server training permit holder requests a settlement conference?**

(a) If the licensee or permit holder requests a settlement conference, the ((agent in charge or designee will schedule the conference)) hearing examiner or captain will contact the licensee or permit holder to discuss the violation.

(b) Both the licensee or permit holder and the ((agent in charge or designee)) hearing examiner or captain will discuss the circumstances surrounding the charge, the recommended penalty, and any aggravating or mitigating factors.

(c) If a compromise is reached, the ((agent in charge or designee)) hearing examiner or captain will prepare a ((proposed)) compromise settlement agreement ((and will forward it)). The hearing examiner or captain will forward the com-

promise settlement agreement, authorized by both parties, to the board for approval.

(i) If the board approves the compromise, a copy of the signed settlement agreement will be sent to the licensee or permit holder, and will ((conclude the case)) become part of the licensing history.

(ii) If the board does not approve the compromise, ((the board will notify)) the licensee or permit holder will be notified of the decision. The licensee or permit holder will be given the option ((of agreeing to any changes the board has made in the agreement)) to renegotiate with the hearings examiner or captain, of accepting the originally recommended penalty, or of requesting an administrative hearing on the charges ((in writing within twenty days of receipt of the notice of board action)).

(d) If the licensee or permit holder and the ((agent in charge or designee)) hearing examiner or captain cannot reach agreement on a settlement proposal, the licensee may accept the originally recommended penalty, or the ((agent in charge or designee)) hearing examiner or captain will forward a request for an administrative hearing to the board's hearings coordinator.

**((3) What are the procedures when a licensee or mandatory alcohol server training permit holder requests an administrative hearing?**

(a) If the licensee or permit holder requests an administrative hearing in writing within twenty days, it is conducted pursuant to chapter 34.05 RCW (Washington Administrative Procedure Act).

(b) The board's hearing coordinator will notify the assistant attorney general of the licensee's or permit holder's request for an administrative hearing.

(c) The assistant attorney general will draft an administrative complaint and send it to the licensee or permit holder and to the office of administrative hearings.

(d) The office of administrative hearings will schedule the hearing date, and notify the licensee or permit holder and his/her attorney and the assistant attorney general in writing of the hearing date, time, and location.

(e) The hearing will be conducted by an administrative law judge assigned by the office of administrative hearings. Subpoenas may be issued by an attorney for any party, or by the assigned administrative law judge.

(f) At the hearing, the assistant attorney general or a designee will present witnesses and other evidence on behalf of the board's enforcement staff.

(g) At the hearing, the licensee or permit holder may be represented by an attorney or may choose to represent himself or herself. The licensee or permit holder or his/her attorney will be allowed to present witnesses or other relevant information.

**((4) What will happen after the administrative hearing?**

(a) Following the hearing, the administrative law judge will prepare an initial order and send it to the licensee or permit holder and the assistant attorney general.

(b) Either the licensee or permit holder or the assistant attorney general may file a petition for review of the initial order with the liquor control board within twenty days of the

date of service of the initial order. The petition for review must:

(i) Specify the portions of the initial order to which exception is taken;

(ii) Refer to the evidence of record which is relied upon to support the petition; and

(iii) Be filed with the liquor control board within twenty days of the date of service of the petition.

(iv) Copies of the reply must be mailed to all other parties or their representatives at the time the reply is filed.

(e) The administrative record, the initial order, and any exceptions filed by the parties will be circulated to the board members for review.

(d) Following this review, the board will enter a final order which is appealable under the provisions of RCW 34.05.510 through 34.05.598 (Washington Administrative Procedure Act).

**((5) What happens if a licensee or mandatory alcohol server training permit holder does not respond to the notice of initial board action within twenty days? If a licensee or permit holder does not respond to the notice of initial board action within twenty days, the recommended penalty will go into effect.))**

**AMENDATORY SECTION (Amending WSR 01-11-058, filed 5/11/01, effective 6/11/01)**

**WAC 314-42-030 ((Appearance by)) May a former employee of board or former member of attorney general's staff((,)) appear before the board and under what circumstances?** No former employee of the board or member of the attorney general's staff may ((at any time after severing his/her employment with the board or the attorney general)) appear((, except with the written permission of the board,)) in a representative capacity on behalf of other parties in a formal proceeding wherein he/she previously took an active part as a representative of the board unless the board grants permission in writing.

**AMENDATORY SECTION (Amending WSR 01-11-058, filed 5/11/01, effective 6/11/01)**

**WAC 314-42-040 ((Practice and procedure.)) What rules apply to the procedures used in practice before the board?** The board ((hereby)) adopts the model rules of procedure, found in chapter 10-08 WAC, promulgated by the office of administrative hearings ((insofar as they are not in conflict with a specific board)) unless the board implements a different procedure by rule.

**AMENDATORY SECTION (Amending WSR 01-11-058, filed 5/11/01, effective 6/11/01)**

**WAC 314-42-045 ((Service of process—Filing)) How do you file papers with ((agency.)) the board?** Papers required to be filed with the board are deemed filed upon actual receipt by the board during office hours at its headquarters office in Olympia.

NEW SECTION

**WAC 314-42-051 What are the procedures when a licensee or mandatory alcohol server training permit holder requests an administrative hearing?** (1) If the licensee or permit holder requests an administrative hearing, it is conducted pursuant to chapter 34.05 RCW (Washington Administrative Procedure Act and chapter 314-42 WAC).

(2) The board's hearing coordinator will notify the assistant attorney general of the licensee's or permit holder's request for an administrative hearing.

(3) If the hearing concerns an administrative violation notice, the assistant attorney general will draft an administrative complaint and send it to the licensee or permit holder and to the office of administrative hearings.

(4) The office of administrative hearings will schedule the hearing date, and notify the licensee or permit holder and his/her attorney and the assistant attorney general in writing of the hearing date, time, and location.

(5) The hearing will be conducted by an administrative law judge assigned by the office of administrative hearings. Subpoenas may be issued by an attorney for any party, or by the assigned administrative law judge.

**AMENDATORY SECTION** (Amending WSR 01-11-058, filed 5/11/01, effective 6/11/01)

**WAC 314-42-070 Presumptions.** Upon proof by direct, clear, and convincing evidence of the predicate facts ((specified)) in the following ((six)) subdivisions ((hereof without substantial dispute and by direct, clear, and convincing evidence)), the board, with or without prior request and with adequate notice to all parties, may make the following presumptions((, where consistent with all surrounding facts and circumstances and consistent with the following subsections:)). The facts may not be in substantial dispute and must be consistent with all surrounding facts and circumstances.

(1) ((Continuity. That a fact of a continuous nature, proved to exist at a particular time, continues to exist as of the date of the presumption, if the fact is one which usually exists for at least that period of time;

((2))) **Identity.** ((That)) Persons and objects of the same name and description are identical((;));

((3))) **Delivery.** ((Except in a proceeding where the liability of the carrier for nondelivery is involved, that)) Mail ((matter)), communications, express or freight, properly addressed, marked, billed and delivered ((respectively)) to the post office, ((telegraph, cable or radio company)) or authorized common carrier of property with all postage((, tells and charges)) properly prepaid, is or has been delivered to the addressee or consignee in the ordinary course of business((;)).

((4)) **Ordinary course.** That a fact exists or does not exist, upon proof of the existence or nonexistence of another fact which in the ordinary and usual course of affairs, usually and regularly coexists with the fact presumed;

((5)) **Acceptance of benefit.** That a person for whom an act is done or to whom a transfer is made has, does or will accept same where it is clearly in his/her own self-interest to do so;

**(6) Interference with remedy.** That evidence, with respect to a material fact which in bad faith is destroyed, removed, suppressed or withheld by a party in control thereof, would if produced, corroborate the evidence of the adversary party with respect to such fact.)) **(3) Spoliation.** When a party in bad faith destroys, suppresses, or withholds evidence material to the case, the administrative law judge can presume the evidence would have been unfavorable to that party's position.

**AMENDATORY SECTION** (Amending WSR 01-11-058, filed 5/11/01, effective 6/11/01)

**WAC 314-42-085 Written arguments.** (1) At the conclusion of the evidentiary portion of a hearing, the ((examiner)) administrative law judge may call for an oral legal argument on the record, ((after which the examiner shall render his/her oral proposals;)) or((;)) the ((examiner)) administrative law judge may call for written arguments to be submitted to his/her office by the licensee or his/her attorney and the ((board's)) assistant attorney general. Such written arguments must be submitted in triplicate to the ((hearing examiner)) administrative law judge and may not be exchanged by opposing counsel.

(2) When both arguments have been received, the ((hearing examiner)) administrative law judge shall deliver one of the copies of the licensee's argument to the ((board's)) assistant attorney general, and one copy of the board's argument shall be forwarded to the licensee or his/her attorney.

(3) Unless a different time is fixed at the ((field)) hearing, written arguments must be filed within ten days after the conclusion of the taking of the testimony at the ((field)) hearing.

(4) After the receipt of both written arguments, the ((hearing examiner)) administrative law judge shall ((render his/her written proposals)) issue an initial order which will be served on the licensee or his/her attorney and the assistant attorney ((for the board)) general.

NEW SECTION

**WAC 314-42-095 What happens after an administrative hearing?** (1) Following an administrative hearing, the administrative law judge will prepare an initial order and send it to the licensee or permit holder, the assistant attorney general, the board's offices, and any other party to the administrative hearing.

(2)(a) Either the licensee, permit holder, or the assistant attorney general may file a petition for review of the initial order with the liquor control board within twenty days of the date of service of the initial order. With notice to all parties the board may change the time for filing a petition for review of the initial order. The board may extend or shorten the filing time based on a voluntary stipulation of the parties or upon motion of a party that demonstrates a clear and convincing showing of exigent circumstances. The petition for review must:

(i) Specify the portions of the initial order to which exception is taken; and

(ii) Refer to the evidence of record which is relied upon to support the petition.

(b) Within ten days after service of the petition for review, any party may file a reply with the liquor control board and copies of the reply must be mailed to all other parties or their representatives at the time the reply is filed.

(3) The administrative record, the initial order, and any petitions for review and replies filed by the parties will be circulated to the board members for review.

(4) Following this review, the board will enter a final order which is appealable under the provisions of RCW 34.05.510 through 34.05.598 (Washington Administrative Procedure Act). The board may issue a final order that differs from the initial order even though no party has filed a petition for review or reply.

### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 314-42-025	Appearance in certain proceedings may be limited to attorneys.
WAC 314-42-050	Subpoenas—Fees.
WAC 314-42-060	Depositions upon interrogatories—Submission of interrogatories.
WAC 314-42-065	Official notice—Material facts.
WAC 314-42-075	Stipulations and admissions of record.
WAC 314-42-080	Form and content of decisions in contested cases and proposed orders.
WAC 314-42-090	Definition of issues before hearing.
WAC 314-42-100	How can a person petition the board for the adoption, amendment, or repeal of a rule?
WAC 314-42-105	How can a person petition the board for a declaratory order?

### **WSR 08-17-063 PERMANENT RULES OFFICE OF INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2008-03—Filed August 18, 2008, 1:51 p.m., effective September 18, 2008]

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

Purpose: These new rules amend chapter 284-17 WAC to enable electronic filing for applications and renewals of agent licenses, establish reciprocity for nonresident "personal lines" licensees, based on their states of residence, clarify and

facilitate online licensing of insurance agents and brokers (producers), and clarify this state's "affiliation" rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 284-17-451, 284-17-453, 284-17-459, 284-17-461 and 284-17-475; amending WAC 284-17-120, 284-17-421, 284-17-437, 284-17-439, 284-17-441, 284-17-443, 284-17-445, 284-17-447, 284-17-449, 284-17-455, 284-17-457, 284-17-467, 284-17-473, 284-17-477, 284-17-479, 284-17-481, 284-17-482 and 284-17-483; and new section WAC 284-17-422.

Statutory Authority for Adoption: RCW 48.02.060.

Adopted under notice filed as WSR 08-14-168 on July 2, 2008.

Changes Other than Editing from Proposed to Adopted Version: WAC 284-17-120(2) Under the TYPE OF INSURANCE [LICENSE] heading added "Credit casualty agent or solicitor"; and under EXAMINATION REQUIRED [REQUIRED] heading added "Credit casualty."

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 19, Repealed 5.

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 19, Repealed 5.

Date Adopted: August 18, 2008.

Mike Kreidler  
Insurance Commissioner

### AMENDATORY SECTION (Amending Order R 94-14, filed 6/28/94, effective 7/29/94)

**WAC 284-17-120 Examination procedures for agents, solicitors and adjusters.** (1) ((The commissioner has contracted with an independent testing service for the administration of agents', solicitors', and adjusters' examinations. On and after June 1, 1982,)) Any person ((desiring)) applying to take an examination for ((the)) any type of license shown in subsection (2) of this section ((will be required to)) must submit a registration form and the ((appropriate)) applicable examination fee to ((the)) an independent testing service under contract with the commissioner for the administration of licensee examinations. ((Such)) This fee is not refundable. Registration forms and information about examinations may be obtained from the office of insurance commissioner, any prelicensing education provider, or from the independent testing service. Current information about the independent testing service, fees, dates of examinations, and other information related to licensing examinations, or to download an examination registration form, are available through the commissioner's web site ([www.insurance.wa.gov](http://www.insurance.wa.gov)).

(2) At least ((twice)) once each month at predetermined locations, the independent testing service will conduct the examinations required for the following types of licenses:

TYPE OF LICENSE	EXAMINATION(S) REQUIRED
Life insurance agent or solicitor .....	Life
Disability insurance agent or solicitor .....	Disability
Life and disability agent or solicitor .....	Life, disability
Property/casualty agent or solicitor .....	Property, casualty
Property/casualty and disability agent or solicitor .....	Property, casualty, dis- ability
Life/disability/ property/casualty agent or solicitor .....	Life, disability, prop- erty, casualty
Vehicle only agent or solicitor .....	Vehicle
Surety only agent or solicitor .....	Surety
Credit life and disability agent or solicitor .....	Credit life and disability
<u>Credit casualty agent or solicitor</u> .....	<u>Credit casualty</u>
Independent adjuster .....	Adjuster
Public adjuster .....	Adjuster
Life and disability broker .....	Life and disability
Property/casualty broker .....	Property and casualty (Disability questions are included)

(3) If an applicant fails to take a scheduled examination, a new registration form and ((appropriate)) applicable fees must be submitted for any later examination, unless the fee is waived because the commissioner finds that a serious emergency prevented the applicant's attendance.

(4) Tests will be graded by the independent testing service ((which will provide)) and each applicant ((with)) will be provided a score report, following examination. If the examination is passed, the score report must be forwarded by the applicant to the insurance commissioner with a completed insurance license application, ((two)) one finger print card((s)), appointment form(s) for each insurer to be represented, and the ((appropriate)) applicable license, ((appointment)) finger print, and filing fees.

AMENDATORY SECTION (Amending Matter No. R 2005-06, filed 5/30/06, effective 6/30/06)

**WAC 284-17-421 ((What)) Definitions ((apply to WAC 284-17-421 through 284-17-483?)).** The following definitions apply to WAC 284-17-421 through 284-17-499, unless the context clearly requires otherwise.

(1) "Business entity" means a corporation, partnership, firm, limited liability company, or limited liability partnership.

(2) "Sending written notice" or "sending a copy of the written notice" means transmitting the required information in writing and, where ((appropriate)) required, on forms designated by the commissioner for that purpose, via first class mail, commercial parcel delivery company, ((electronic)) telefacsimile ((transmission)), or ((e-mail)) electronic transmission.

(3) "NIPR" means the National Insurance Producer Registry or other equivalent organization or entity designated or maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries.

## NEW SECTION

**WAC 284-17-422 Reciprocity for nonresident agents holding personal lines only authority in the home state.** If an otherwise qualified applicant for a nonresident agent's license holds a license in his or her home state limited to personal lines only authority, this state will reciprocate by licensing the nonresident for property and casualty lines of authority.

(1) The licensee's authority to transact insurance in this state is limited to the scope of the license granted by the licensee's home state.

(2) For purposes of this section, "personal lines only authority" means property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes.

AMENDATORY SECTION (Amending Matter No. R 2005-06, filed 5/30/06, effective 6/30/06)

**WAC 284-17-437 ((How may an agent be appointed?)) Appointments of agents.** An agent may be appointed by using one of the following methods:

(1) By submitting the appointment electronically through NIPR ((preferred method)) or the commissioner's web site; or

(2) By submitting the appointment to the commissioner using the form provided by the commissioner for that purpose. The form may be ((obtained upon request or may be)) found ((at)) on the commissioner's web site (www.insurance.wa.gov).

AMENDATORY SECTION (Amending Matter No. R 2005-06, filed 5/30/06, effective 6/30/06)

**WAC 284-17-439 ((How will the commissioner notify an insurer if)) Notice that an agent is not eligible for an electronic appointment(?)**. If an agent is not eligible for an electronic appointment, the insurer will be notified ((when)) at the time the electronic notice of appointment is not accepted for transmission through NIPR or the commissioner's web site. An agent is not eligible for an appointment ((where)) if the agent's license is not valid or the agent is not licensed for all lines of insurance that the appointing insurer is authorized to transact in the state of Washington.

AMENDATORY SECTION (Amending Matter No. R 2005-06, filed 5/30/06, effective 6/30/06)

**WAC 284-17-441 ((How will the commissioner notify)) Notice to an insurer if an agent is ((ineligible)) not eligible for an appointment ((when)) if the appointment ((has)) was not ((been)) submitted electronically(?). If an appointment was not submitted electronically, the commissioner will ((notify an)) send a notice to the insurer notifying the insurer that ((an)) the agent is ((ineligible)) not eligible**

for ((an)) appointment ((when the appointment has not been submitted electronically by sending written notice to the insurer)).

**AMENDATORY SECTION** (Amending Matter No. R 2005-06, filed 5/30/06, effective 6/30/06)

**WAC 284-17-443 ((How may an insurer renew))**

**Renewal of an agent's appointment((?))**. Prior to the renewal date of an agent's appointment, the commissioner will send the insurer an appointment renewal ((appointment list will be sent to the insurer identifying all of the insurer's agents whose appointments are due to expire)) notification. An insurer may renew an appointment by:

(1) Sending ((written)) notice to the commissioner that the appointment will be renewed on the form provided by the commissioner for that purpose or through the commissioner's web site ([www.insurance.wa.gov](http://www.insurance.wa.gov)); and

(2) Paying the renewal fee for each agent appointed by the insurer ((on)) no later than the renewal date assigned by the commissioner.

**AMENDATORY SECTION** (Amending Matter No. R 2005-06, filed 5/30/06, effective 6/30/06)

**WAC 284-17-445 ((How may an insurer terminate))**

**Termination of an appointment((?)) by an insurer.** (1) An insurer may terminate an appointment by sending written notice of termination to the agent and by sending a notice of termination of the appointment to the commissioner((:(

((1))) electronically through NIPR ((preferred method)), the commissioner's web site, or

((2)) Using)) on the form provided by the commissioner for that purpose. The form may be obtained upon request or may be found ((at)) on the commissioner's web site ([www.insurance.wa.gov](http://www.insurance.wa.gov)).

(2) The effective date of the termination is the date of receipt by the commissioner.

**AMENDATORY SECTION** (Amending Matter No. R 2005-06, filed 5/30/06, effective 6/30/06)

**WAC 284-17-447 ((How may an agent terminate))**

**Termination of an appointment((?)) by an agent.** (1) An agent may terminate an appointment by sending advance written notice to the insurer, with a copy to the commissioner, stating((:

((1))) that the agent ((will)) is no longer authorized to act as a representative of the insurer((:and)).

(2) The effective date of the termination is the date of receipt by the commissioner.

((The agent must also send a copy of the written notice to the commissioner.))

**AMENDATORY SECTION** (Amending Matter No. R 2005-06, filed 5/30/06, effective 6/30/06)

**WAC 284-17-449 ((When an agent's appointment is terminated "for cause," what procedure must be followed in notifying the commissioner?)) Terminating an appointment "for cause."** (1) If an insurer ((or its authorized repre-

sentative)) terminates the appointment of an agent "for cause," the insurer must notify the insurance commissioner within thirty days following the effective date of the termination by sending ((written)) notice of the "for cause" termination ((of the appointment "for cause")) to the commissioner. A form for this purpose is available on the commissioner's web site ([www.insurance.wa.gov](http://www.insurance.wa.gov)).

(2) If requested by the commissioner, the insurer must provide additional information, documents, records or other data pertaining to the "for cause" termination or activity of the agent.

(3) "For cause" includes the following conduct:

(a) Providing incorrect, misleading, incomplete or materially untrue information in the license application;

(b) Violating any insurance law, or violating any regulation, subpoena or order of the commissioner or of another state's insurance commissioner;

(c) Obtaining or attempting to obtain a license through misrepresentation or fraud;

(d) Improperly withholding, misappropriating or converting any moneys or properties received in the course of transacting the business of insurance;

(e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(f) Having been convicted of a felony;

(g) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

(h) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

(i) Having an insurance license denied, suspended or revoked in any other state, province, district or territory;

(j) Forging another's name to an application for insurance or to any document related to an insurance transaction;

(k) Knowingly accepting insurance business from an individual who is not licensed;

(l) Being incompetent;

(m) Failing to account for premiums;

(n) Rebating; and

(o) Abandonment.

**AMENDATORY SECTION** (Amending Matter No. R 2005-06, filed 5/30/06, effective 6/30/06)

**WAC 284-17-455 ((Is an)) Agent ((required to be licensed for the same)) must be licensed for all lines of authority ((as)) of the appointing insurer((?))**. An ((applicant for an agent's license)) agent must be licensed for all lines of ((insuree)) authority that the appointing insurer is authorized to transact in the state of Washington with the following exceptions:

(1) Insurers authorized to write lines of ((insuree)) authority in addition to vehicle insurance or surety insurance may appoint agents to write vehicle insurance or surety insurance only. It is only necessary that these appointees take a qualifying examination for vehicle insurance or surety insurance.

(2) ((Where)) If the agent's appointment is for the "limited" licenses of travel, credit life and disability, credit casu-

alty, specialty producers, or rental car agents, it is not necessary for the applicant to be licensed for all lines of ((insur-  
ance)) authority that the appointing insurer is authorized to transact in the state of Washington.

AMENDATORY SECTION (Amending Matter No. R 2005-06, filed 5/30/06, effective 6/30/06)

**WAC 284-17-457 ((May a licensed)) Authority of an agent to act as a representative of an insurer and solicit insurance on its behalf before notifying the commissioner of the appointment((?)).** (1) A licensed agent may act as a representative of an insurer and solicit insurance on its behalf before notifying the commissioner of the appointment ((where)) only if:

- ((1)) (a) The agent is appointed by the insurer; and
- ((2)) (b) The notice of appointment is submitted electronically through NIPR or the commissioner's web site ([www.insurance.wa.gov](http://www.insurance.wa.gov)).

(2) This authority is limited to a thirty-day calendar period beginning the date the agent signs the first application for insurance.

(3) If the notice of appointment is not submitted electronically, the commissioner must receive written notice of the appointment and accept the appointment before the licensed agent may act as a representative of an insurer and solicit insurance on its behalf.

AMENDATORY SECTION (Amending Matter No. R 2005-06, filed 5/30/06, effective 6/30/06)

**WAC 284-17-467 ((What are the)) Consequences ((when an))—Agent ((has solicited insurance on behalf of an insurer as authorized by WAC 284-17-457 but is later determined)) not ((to be)) eligible for appointment by the insurer((?)).** ((When)) If an agent ((has solicited)) solicits insurance on behalf of an insurer, as authorized by WAC 284-17-457, but it is later determined ((not to be)) that the agent was not eligible for appointment by the insurer:

- (1) The insurance contract will be effective;
- (2) The agent ((is not entitled to)) must not receive compensation for any ((insurance or)) insurance product sold by the agent; and
- (3) The agent and the insurer may be subject to disciplinary action under RCW 48.17.530.

AMENDATORY SECTION (Amending Matter No. R 2005-06, filed 5/30/06, effective 6/30/06)

**WAC 284-17-473 ((Is a business entity licensed as an agent, adjuster or broker required to affiliate an individual licensee?)) "Affiliation," defined—Procedures for affiliation, renewal.** "Affiliation" is a type of appointment where a business entity authorizes one or more individual licensed agents, brokers, surplus line brokers or adjusters to represent the business entity. An affiliated licensee may exercise only the authority the business entity confers. The commissioner must receive notice of an affiliation and accept the affiliation before the licensee is allowed to represent the business entity.

(1) Each business entity ((licensed as an agent, adjuster or broker)) must ((notify)) submit to the commissioner ((of)) a notice of affiliation for all ((individual)) licensees ((that)) authorized to represent the business entity and act on its behalf ((using the)). A form is provided by the commissioner for that purpose. The form may which can be obtained upon request or ((may be)) found ((at)) on the commissioner's web site ([www.insurance.wa.gov](http://www.insurance.wa.gov)). Individual licensees that represent the business entity and act on its behalf are "affiliated" with the licensed business entity. A business entity licensee must have at least one individual licensee who is affiliated.)

(2) A licensed business entity must have at least one affiliated individual licensee.

(3) If an agent is affiliated with a licensed business entity, the agent is not required to be directly appointed by an insurer to sell its products if the business entity is appointed by the insurer.

(4) The affiliated agent's, broker's, or surplus line broker's authority to act as a representative of a business entity is limited to those lines of authority for which the agent, broker, or surplus line broker is qualified and that are consistent with the business entity's lines of authority.

(5) If an agent, broker, surplus line broker, or adjuster cannot be affiliated electronically, the commissioner will notify the business entity that the licensee is not eligible for affiliation. A licensee cannot be affiliated under the following circumstances:

(a) The person's license is not valid;

(b) The agent, broker, or surplus line broker is not licensed for at least one of the lines or limited lines of authority that the business entity is authorized to transact in this state; or

(c) The agent is not licensed for at least one of the lines or limited lines of authority of the business entity's appointing insurers.

(6)(a) At the time of renewal of a business entity license, a renewal affiliation list will be sent to the business entity listing the affiliated agents, brokers, surplus line brokers, or adjusters whose affiliations are due to expire.

(b) A business entity may renew an affiliation by sending a list of affiliations to be renewed to the commissioner and paying the renewal fees by mail or through the commissioner's web site ([www.insurance.wa.gov](http://www.insurance.wa.gov)).

AMENDATORY SECTION (Amending Matter No. R 2005-06, filed 5/30/06, effective 6/30/06)

**WAC 284-17-477 ((How long is)) Valid period of an affiliation ((valid?)).** ((An)) A business entity affiliation ((by a business entity)) which is not revoked ((will be)) by the commissioner or is not terminated by the business entity or licensee, is valid until the first renewal date after the notice of affiliation. ((Thereafter,)) Each affiliation may be renewed for a period of two years upon payment of the annual affiliation renewal fee for each affiliation ((at the time of renewal of the business entity license)).

**AMENDATORY SECTION** (Amending Matter No. R 2005-06, filed 5/30/06, effective 6/30/06)

**WAC 284-17-479 ((How may a business entity terminate)) Termination of an affiliation((?)) by a business entity.** (1) A business entity may terminate ((an)) the affiliation of an individual licensee by sending ((written)) notice of termination to the agent and a copy to the commissioner electronically through the commissioner's web site, or by submitting the form provided by the commissioner for that purpose. A form to notify the commissioner of termination of an affiliation by a business entity is available on the commissioner's web site ([www.insurance.wa.gov](http://www.insurance.wa.gov)).

(2) The effective date of the termination is the date of receipt by the commissioner.

**AMENDATORY SECTION** (Amending Matter No. R 2005-06, filed 5/30/06, effective 6/30/06)

**WAC 284-17-481 ((How should an insurer notify the commissioner of a)) Requirements for termination of an affiliation by a business entity "for cause."((?))** If a business entity or its authorized representative terminates the affiliation of a ((producer)) licensee "for cause," the business entity must notify the commissioner within thirty days following the effective date of the termination by sending ((written)) notice of termination of the affiliation to the commissioner on the form provided by the commissioner for that purpose, which is available on the commissioner's web site ([www.insurance.wa.gov](http://www.insurance.wa.gov)). For purposes of this section, "for cause" has the meaning set forth in WAC 284-17-449(3).

**AMENDATORY SECTION** (Amending Matter No. R 2005-06, filed 5/30/06, effective 6/30/06)

**WAC 284-17-482 ((What)) Information ((must)) to be provided relating to a "for cause" termination((?)) to the commissioner.** Upon the ((written)) request of the commissioner, the business entity ((shall)) must provide additional information, documents, records or other data pertaining to the "for cause" termination or conduct of the affiliated person. If available in electronic format, the information requested should be provided electronically through the commissioner's web site ([www.insurance.wa.gov](http://www.insurance.wa.gov)).

**AMENDATORY SECTION** (Amending Matter No. R 2005-06, filed 5/30/06, effective 6/30/06)

**WAC 284-17-483 ((How may an individual agent terminate)) Termination of an affiliation((?)) by a licensee.** (1) An individual agent may terminate ((the agent's)) an affiliation with a business entity by sending advance written notice to the business entity ((stating:

(())), with a copy to the commissioner. The notice must state that the agent ((will)) is no longer authorized to act on behalf of the business entity((and)).

(2) ((The effective date of the termination. The agent must also send a copy of the written notice to the commissioner.)) The effective date of the termination is the date of receipt by the commissioner.

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

WAC 284-17-451

What information must be provided relating to a "for cause" termination?

WAC 284-17-453

What conduct constitutes "for cause"?

WAC 284-17-459

How long may a licensed agent act as a representative of an insurer and solicit insurance on its behalf before notifying the commissioner of the appointment?

WAC 284-17-461

May a licensed agent act as a representative of an insurer and solicit insurance on its behalf before notifying the commissioner of the appointment if the notice of appointment is not submitted electronically?

WAC 284-17-475

Must an individual licensee who is affiliated with a business entity license be individually appointed by insurers if the business entity is appointed by the insurer?

**WSR 08-17-066****PERMANENT RULES****GAMBLING COMMISSION**

[Order 629—Filed August 18, 2008, 3:21 p.m., effective September 18, 2008]

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

Purpose: The petitioner, Monty Harmon, originally requested to increase the value of a promotional item operators can give their customers from five hundred dollars to five thousand dollars and allow licensees to provide additional entries into promotional contests of chance based on a player's time spent gambling and/or a player's betting levels. The petitioner's request was not filed at the March 2008 meeting. At the April 2008 meeting, the commission filed their own alternative to increase the limit on gambling promotional items from \$500 to \$5,000. The alternative did not include the petitioner's request to combine gambling promotions with promotional contests of chance. At the May 2008 meeting, the commission filed an alternative submitted by Mr. Harmon to remove all dollar limits on gambling promotional items. It did not include the petitioner's request to combine gambling promotions with promotional contests of chance. The commission adopted this alternative at the August commission [meeting]. As such, all dollar limits

have been removed from promotional items related to gambling.

Citation of Existing Rules Affected by this Order: Amending WAC 230-06-030 and 230-15-141.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 08-09-096 on April 21, 2008, and published May 7, 2008, for WAC 230-15-141; and WSR 08-11-049 filed on May 15, 2008, and published June 4, 2008, for WAC 230-06-030.

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 2, 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 2, Repealed 0.

Date Adopted: August 18, 2008.

Susan Arland  
Rules Coordinator

#### AMENDATORY SECTION (Amending Order 601, filed 8/22/06, effective 1/1/08)

**WAC 230-06-030 Restrictions and conditions for gambling promotions.** Licensees may conduct gambling promotions to encourage players to participate in a gambling activity, but you must follow these restrictions and conditions:

(1) ~~((Promotional items must not exceed five hundred dollars each; and~~

((2))) You must give all players an equal opportunity to participate; and

((3))) (2) You must establish standards to determine how you will give promotional items to players. You must not give the items based on an element of chance, such as a drawing or spinning wheel, unless you are doing so as part of a bingo game; and

((4))) (3) You must not give another chance to participate in a gambling activity as a promotional item; and

((5))) (4) You must display all rules or restrictions clearly in the gambling area and include them on promotional materials or advertisements; and

((6))) (5) You must not combine gambling activities and related gambling promotions in any way with a promotional contest of chance as defined in RCW 9.46.0356.

#### AMENDATORY SECTION (Amending Order 617, filed 10/22/07, effective 1/1/08)

#### **WAC 230-15-141 Additional merchandise or cash prizes for card games.**

##### **Nonproprietary games.**

(1) Licensees may add additional merchandise or cash prizes to nonproprietary games like Blackjack or Pai Gow. We consider these additional prizes a gambling promotion and they must((:

- (a) Not be greater than five hundred dollars each; and
- ((b))) meet all requirements of WAC 230-06-030.

##### **Proprietary games.**

(2) Licensees must not add additional merchandise or cash prizes to proprietary games without the approval of the company that owns the rights to the games.

(3) To indicate their approval, the owner of the rights to a proprietary game must:

(a) Submit an alternative pay-table that includes the additional or revised prize payout to us for review and approval; or

(b) Send an authorization letter to us allowing the addition of gambling promotions to their game.

(4) Once we approve the changes, the revised pay-tables are available to all card game licensees. The prizes become a part of the game rules and we consider them prize payouts on the game. Because of this, we do not consider the prizes a gambling promotion.

#### **WSR 08-17-067**

#### **PERMANENT RULES**

#### **LIQUOR CONTROL BOARD**

[Filed August 19, 2008, 8:45 a.m., effective September 19, 2008]

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

Purpose: This rule proposal implements a new liquor license for qualifying hotel premises. It clarifies food service requirements under this license and clarifies designation of areas of the hotel premises restricted to access by minors.

Citation of Existing Rules Affected by this Order: Repealing WAC 314-02-040; and amending WAC 314-02-005, 314-02-010, and 314-02-080.

Statutory Authority for Adoption: RCW 66.08.030 and 66.24.590.

Adopted under notice filed as WSR 08-12-114 on June 4, 2008.

Changes Other than Editing from Proposed to Adopted Version: The amendment to WAC 314-02-010 adding the definition of "adjacent" includes a diagram. The word "private and" was removed from the diagram showing "private and public right of way (ROW)" indicating that a private right of way will not prevent property on both sides of the right of way from being considered adjacent properties.

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 3, Repealed 1.

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

Number of Sections Adopted on the Agency's Own Initiative: New 6, Amended 3, 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: August 6, 2008.

Lorraine Lee  
Chairman

**AMENDATORY SECTION** (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

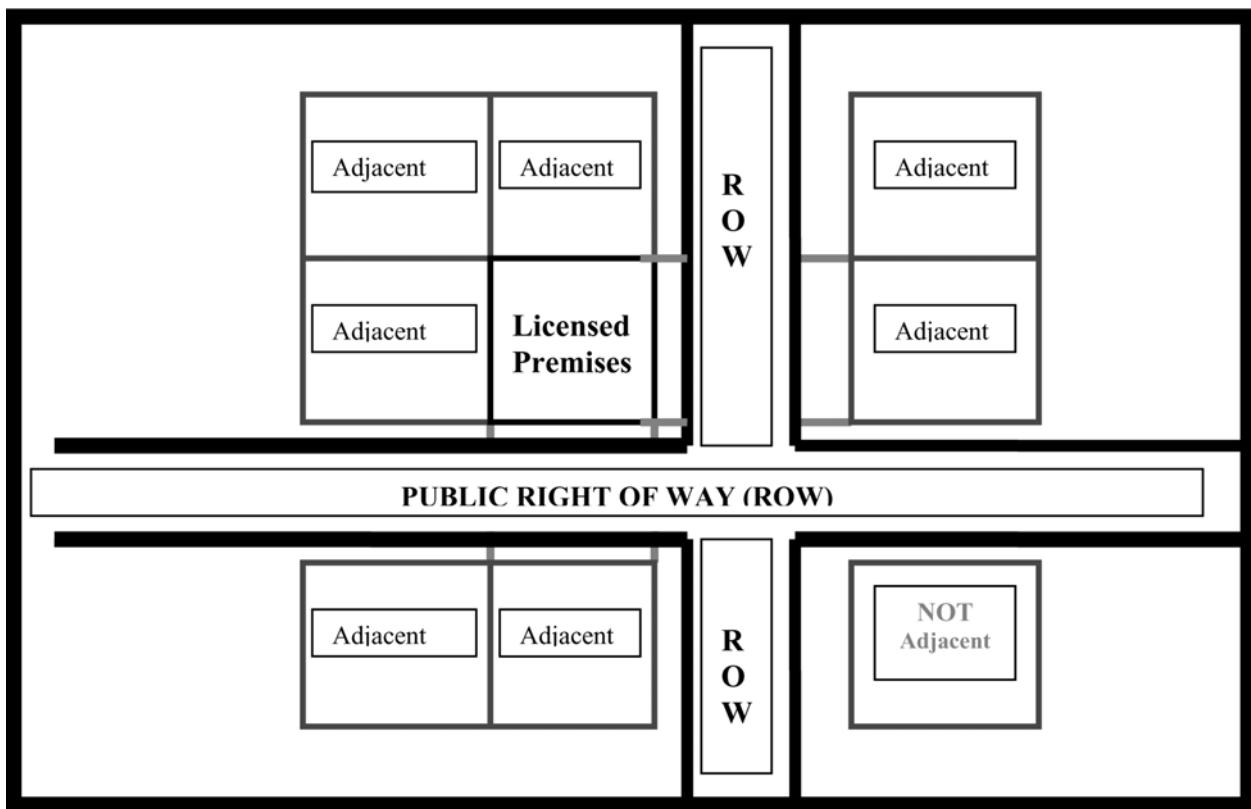
**WAC 314-02-005 What is the purpose of chapter 314-02 WAC?** Chapter 314-02 WAC outlines the qualifications for the following liquor licenses and permits:

- (1) Spirits, beer, and wine restaurants;
- (2) Hotels;
- (3) Beer and/or wine restaurants;
- ((3)) (4) Snack bars;
- ((4)) (5) Taverns;
- ((5)) (6) Motels;
- ((6)) (7) Bed and breakfasts;
- ((7)) (8) Nonprofit arts organizations;
- ((8)) (9) Public houses;
- ((9)) (10) Grocery stores;
- ((10)) (11) Beer/wine specialty shops; and
- ((11)) (12) Beer/wine gift delivery business.

**AMENDATORY SECTION** (Amending WSR 05-22-022, filed 10/24/05, effective 11/24/05)

**WAC 314-02-010 Definitions.** The following definitions are to clarify the purpose and intent of the rules and laws governing liquor licenses and permits. Additional definitions can be found in RCW 66.04.010.

- (1) "Adjacent" means having a common endpoint or border where the extension of the property lines of the licensed premises contacts that common border.



**(2)** "Banquet room" means any room used primarily for the sale and service of food and liquor to private groups.

((2)) **(3)** "Customer service area" means areas where food and/or liquor are normally sold and served to the public, i.e., lounges and dining areas. A banquet room is not considered a customer service area.

((3)) **(4)** "Dedicated dining area." In order for an area to qualify as a dedicated dining area, it must be a distinct portion of a restaurant that is used primarily for the sale, service, and consumption of food, and have accommodations for eating, e.g., tables, chairs, booths, etc. See WAC 314-02-025 for more information.

((4)) (5) "Designated area" means a space where alcohol may be sold, served, or consumed.

(6) "Food counter" means a table or counter set up for the primary purpose of food service to customers who sit or stand at the counter. Any alcohol served is incidental to food service.

((5)) (7) "Game room" means an area of a business set up for the primary purpose of patrons using games or gaming devices.

((6)) (8) "Liquor" means beer, wine, or spirits (per RCW 66.04.010(19) Definitions).

((7)) (8) "Liquor bar" means a table or counter where alcohol is stored or prepared and served to customers who sit or stand at the bar. Liquor bars can only be in lounges or in premises where minors are not allowed at any time.

((8)) (9) "Lounge" means the portion of a restaurant used primarily for the preparation, sale, and service of beer, wine, or spirits. Minors are not allowed in a lounge (see RCW 66.44.316 for information on employees and professional musicians under twenty-one years of age).

((9)) (10) "Minor" means a person under twenty-one years of age.

((10)) (11) "Service bar" means a fixed or portable table, counter, cart, or similar work station primarily used to prepare, mix, serve, and sell alcohol that is picked up by employees or customers. Customers may not be seated or allowed to consume food or alcohol at a service bar.

#### NEW SECTION

**WAC 314-02-041 What is a hotel license?** (1) Per RCW 66.24.590, this license allows a hotel to:

(a) Serve spirits by the individual serving at retail for consumption on the licensed premises;

(b) Serve beer, including strong beer, and wine for consumption on the licensed premises;

(c) Sell at retail, from locked honor bars, in individual units, spirits not to exceed fifty milliliters, beer in individual units not to exceed twelve ounces, and wine in individual bottles not to exceed three hundred eighty-five milliliters, to registered guests of the hotel for consumption in guest rooms;

(d) Provide, without additional charge, to overnight guests, spirits, beer, and wine by the individual serving for consumption on the licensed premises at a specified regular date, time, and place. Self-service by guests is prohibited;

(e) Sell beer, including strong beer, wine, or spirits, in the manufacturer's sealed container or by the individual drink to guests through room service, or through service to occupants of private residential units which are part of the buildings or complex of buildings, that include the hotel;

(f) Sell beer, including strong beer, and wine, in the manufacturer's sealed container at retail sales locations within the hotel premises; and

(g) Place in guest rooms at check-in, complimentary beer, including strong beer, or wine in a manufacturer's sealed container.

(2) The annual fee for a hotel license is two thousand dollars.

#### NEW SECTION

**WAC 314-02-0411 What are the food service requirements for a hotel license?** (1) A hotel licensee must have the ability to serve at least four complete meals to hotel guests or any other patron of the hotel who is offered alcohol service for on-premise consumption at a food outlet on the hotel premises. Food outlets include room service, banquets, bars/lounges, restaurants, or coffee shops. "Complete meal" is defined in WAC 314-02-035.

(2) Complete meals must be prepared on the hotel premises.

(3) A menu must be available to hotel guests and patrons offered alcohol service that lists, at a minimum, the required complete meals.

(4) The food items required to maintain the menu must be located on the licensed premises. These items must be edible.

(5)(a) Licensees must maintain complete meal service for a minimum of five hours a day between the hours of 11:00 a.m. and 2:00 a.m. on any day that liquor is served. The board may consider written requests for exceptions to this requirement due to a demonstrated hardship and may allow exceptions under terms and conditions the board determines are in the best interests of the public.

(b) Minimum food service must be available during hours of alcohol service when complete meal service is not offered. Minimum food service includes items such as hamburgers or fry orders. Snacks such as peanuts, popcorn, and chips do not qualify as minimum food service.

(6) Hours of complete meal service must be listed on the menu. If applicable, a statement must be posted or listed on the menu that minimum food service is available when alcohol is served and complete meal service is unavailable.

#### NEW SECTION

**WAC 314-02-0412 Are minors restricted from any areas of the hotel premises?** (1) If an area of the hotel premises is used primarily for alcohol service on a continuing basis, the area must be designated by the licensee as restricted to access by minors.

(2) The board may restrict alcohol service in areas of the hotel premises where:

(a) The designated area is designed as an attraction for minors; or

(b) Consumption of alcohol in a designated area presents an increased risk to public safety.

#### NEW SECTION

**WAC 314-02-0413 What are the requirements if the hotel licensee does not operate the business serving alcohol or food within the hotel premises?** (1)(a) If any facilities within the hotel premises used for alcoholic beverage service and the preparation, cooking, and serving of food are operated under contract or joint venture agreement with a business separate from the hotel business, the operator may hold a license separate from the license held by the operator of the hotel.

(b) Food and beverage inventory used in separately licensed operations on the hotel premises may not be shared and shall be separately owned and stored by the separate licensees.

(c) The board may require a hotel licensee to submit a copy of the contract or joint venture agreement when a party other than the hotel operator provides food and alcoholic beverage service. Such contract or agreement must require the provider of food and alcoholic beverage services to meet the food service requirements of WAC 314-02-0411.

(d) The hotel licensee is responsible for the conduct of alcohol sales and service by a separately licensed business and violation incurred by the separately licensed business may result in an administrative violation for the hotel licensee.

(2)(a) If alcohol is consumed in an area of the hotel premises operated by a business separate from the hotel business but under a contract or joint venture agreement with the hotel licensee to conduct activities other than food service, the hotel licensee is responsible for violations of alcohol laws and regulations resulting from conduct of the separate business.

(b) The board may require a hotel licensee to submit a copy of the contract or joint venture agreement between the licensee and the separate business.

#### NEW SECTION

#### **WAC 314-02-0414 Can a hotel licensee use its alcohol inventory for sales and service at events outside of the hotel premises? Per RCW 66.24.590, a licensee may:**

(1) Remove from the hotel licensee's liquor stocks at the licensed premises, liquor to be sold and served at an event on a specified date at a specified location not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization defined under RCW 66.24.375.

(2) If requested by the board, the licensee must notify the board or its designee of the date, time, and location of these events.

(3) Licensees may sell and serve liquor under this section on the premises of a domestic winery.

#### NEW SECTION

#### **WAC 314-02-0415 What are the requirements for instructing employees on spirits, beer, or wine?** (1) Per RCW 66.24.590, a licensee or its manager may furnish spirits, beer, or wine to the licensee's employees who are twenty-one years of age or older, free of charge, as a necessary part of instruction and training on spirits, beer, and wine.

(2) The licensee must use spirits, beer, and wine he or she obtains under the license for purposes of instruction.

(3) The instruction must be given at the hotel premises.

#### AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

#### **WAC 314-02-080 What are the requirements for a motel licensee or a hotel ((with a spirits, beer, and wine restaurant license)) licensee to sell liquor in honor bars?**

For the purposes of this chapter, an "honor bar" is a cabinet, box, cooler, or refrigerator in a guest room that can be opened only with a key, combination, magnetic card, or similar device. The following requirements apply to the use of an honor bar:

(1) The licensee must require proof of age before providing a guest access to an honor bar. The guest must sign a declaration, under penalty of perjury, verifying that:

(a) The guest is twenty-one years of age or older; and

(b) No one under twenty-one years of age will have access to the liquor in the honor bar.

(2) The honor bars must remain locked whenever the room is rented to a guest under twenty-one years of age.

(3) All liquor stored on the licensed premises must be either locked in an honor bar or locked in a secured liquor storage room.

(4) No person under twenty-one years of age may have access to the honor bars, liquor storage rooms, or keys, combinations, etc., to the locked honor bars or storage rooms.

(5) A honor bar or storage room may only be replenished during those hours when liquor may legally be sold (not between 2:00 a.m. and 6:00 a.m.), and only by employees who are twenty-one years of age or older. Beer and wine wholesalers may deliver, price, and stock product only in storage rooms.

(6) Liquor in honor bars may only be sold in individual containers in the following sizes:

(a) Spirits - not to exceed fifty milliliters;

(b) Beer - not to exceed twelve ounces; and

(c) Wine - not to exceed one hundred eighty-seven milliliters.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

#### WAC 314-02-040

Can a hotel with a spirits, beer, and wine restaurant license sell liquor by the bottle to guests?

#### **WSR 08-17-072**

#### **PERMANENT RULES**

#### **DEPARTMENT OF**

#### **LABOR AND INDUSTRIES**

[Filed August 19, 2008, 10:26 a.m., effective September 19, 2008]

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

Purpose: Chapter 296-127 WAC, Prevailing wage, the purpose of this rule making is to update the filing fees for intents and affidavits. The legislature increased the filing fees from \$25 to \$40 during the 2008 legislative session. The rule making will remove the \$25 filing fee from the rule. The filing fees for prevailing wage intents and affidavits will be removed from the rule. The rules will have a reference to RCW 39.12.070, which clearly states the current fee set by the legislature. This will prevent the program from having to conduct rule making every time a fee change occurs.

Citation of Existing Rules Affected by this Order: Amending WAC 296-127-040 and 296-127-045.

Statutory Authority for Adoption: Chapter 39.12 RCW, RCW 43.22.270, and chapter 285, Laws of 2008 (EHB 3381).

Adopted under notice filed as WSR 08-13-079 on June 17, 2008.

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

Date Adopted: August 19, 2008.

Judy Schurke  
Director

**AMENDATORY SECTION** (Amending WSR 94-01-100, filed 12/16/93, effective 1/16/94)

**WAC 296-127-040 Statement of intent to pay prevailing wages.** (1) All statements of intent to pay prevailing wages submitted to the industrial statistician of the department shall be accompanied by ((a)) ~~the fee ((of twenty-five dollars)) set in RCW 39.12.070~~ for each statement. Fees shall be made payable to the department of labor and industries.

(2) Any agency, division, or department of the state of Washington which through agreement with the department certifies statements of intent for its own contracts shall provide to the industrial statistician each month the number of statements of intent certified and quarterly shall send ((a)) ~~the fee ((of twenty dollars)) set in RCW 39.12.070~~ for each statement of intent to pay prevailing wages it has certified. This fee shall be sent to the industrial statistician and be made payable to the department of labor and industries.

**AMENDATORY SECTION** (Amending WSR 94-01-100, filed 12/16/93, effective 1/16/94)

**WAC 296-127-045 Affidavit of wages paid.** (1) All affidavits of wages paid submitted to the industrial statistician of the department shall be accompanied by ((a)) ~~the fee ((of twenty-five dollars)) set in RCW 39.12.070~~ for each affidavit of wages paid. All fees shall be made payable to the department of labor and industries.

(2) Any agency, division, or department of the state of Washington which through agreement with the department certifies affidavits of wages paid for its own contracts shall provide to the industrial statistician each month the number of affidavit of wages paid it has certified and quarterly shall

send ((a)) ~~the fee ((of twenty dollars)) set in RCW 39.12.070~~ for each affidavit of wages paid it has certified. This fee shall be sent to the industrial statistician and be made payable to the department of labor and industries.

## WSR 08-17-075

### PERMANENT RULES

### OLYMPIC REGION

### CLEAN AIR AGENCY

[Filed August 19, 2008, 11:49 a.m., effective September 19, 2008]

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

Purpose: The asbestos rules and associated fees have not changed since 1993. Changes in the asbestos rule will clarify several aspects of the program. The requirements will be less restrictive of residential projects. Changes in the fees will better cover the program expenses.

Citation of Existing Rules Affected by this Order: Amending Olympic Region Clean Air Agency Regulations, Rules 6.3 Asbestos and 3.5 Asbestos Fees.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 08-13-088 on June 17, 2008.

Changes Other than Editing from Proposed to Adopted Version: The definition of an "asbestos project" was changed. The following sentence was added: "This term does not include the removal of less than 10 linear feet or 11 square feet of asbestos containing material." The fee category for those projects was deleted as a part of this rule revision. This change was necessary to clarify that a permit was not required for that category.

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 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: August 13, 2008.

Richard A. Stedman  
Executive Director

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 08-18 issue of the Register.

**WSR 08-17-092**  
**PERMANENT RULES**  
**FOREST PRACTICES BOARD**

[Filed August 19, 2008, 3:54 p.m., effective September 19, 2008]

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

Purpose: Amend forest practices rules in WAC 222-16-010 Definitions and 222-16-050 Classes of forest practices, to:

- Add a definition of "conversion activities" to help field staff recognize activities common to converting land use from forestry to nonforestry;
- Delete the forest practices definition of "historic sites" so these sites are determined by the national and state register eligibility standards;
- Clarify that operations on certain historic sites require a Class IV-special application and SEPA review;
- Address ambiguities in and consistency between Class IV-special and Class III applications involving cultural resources; and
- Ensure that certain cultural resources management plans are recognized as protection tools that are exempt from this Class IV-special designation.

Adding a definition of "conversion activities" supports implementation of SSSB [2SSB] 5883, 2007 legislation. Rule changes related to historic sites are intended to clarify the rules that classify forest practices involving historic sites and other cultural resources.

Citation of Existing Rules Affected by this Order: Amending WAC 222-16-010 and 222-16-050.

Statutory Authority for Adoption: RCW 76.09.040.

Adopted under notice filed as WSR 08-09-122 on April 22, 2008.

Changes Other than Editing from Proposed to Adopted Version: Language is changed in the definition of "conversion activities" to provide additional explanation of utility rights of way and construction of roads that are evidence of conversion from forest land to other land uses.

A final cost-benefit analysis is available by contacting Gretchen Robinson, P.O. Box 47012, Olympia, WA 98504-7012, phone (360) 902-1705, fax (360) 902-1428, e-mail gretchen.robinson@dnr.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 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 2, 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: August 13, 2008.

Victoria Christiansen  
Chair

**AMENDATORY SECTION** (Amending WSR 08-06-039, filed 2/27/08, effective 3/29/08)

**WAC 222-16-010 \*General definitions.** Unless otherwise required by context, as used in these rules:

**"Act"** means the Forest Practices Act, chapter 76.09 RCW.

**"Affected Indian tribe"** means any federally recognized Indian tribe that requests in writing from the department information on forest practices applications and notification filed on specified areas.

**"Alluvial fan"** see "sensitive sites" definition.

**"Appeals board"** means the forest practices appeals board established in the act.

**"Aquatic resources"** means water quality, fish, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dunni*), the Van Dyke's salamander (*Plethodon vandykei*), the tailed frog (*Ascaphus truei*) and their respective habitats.

**"Area of resource sensitivity"** means areas identified in accordance with WAC 222-22-050 (2)(d) or 222-22-060(2).

**"Bankfull depth"** means the average vertical distance between the channel bed and the estimated water surface elevation required to completely fill the channel to a point above which water would enter the flood plain or intersect a terrace or hillslope. In cases where multiple channels exist, the bankfull depth is the average depth of all channels along the cross-section. (See board manual section 2.)

**"Bankfull width"** means:

(a) For streams - the measurement of the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. In cases where multiple channels exist, bankfull width is the sum of the individual channel widths along the cross-section (see board manual section 2).

(b) For lakes, ponds, and impoundments - line of mean high water.

(c) For tidal water - line of mean high tide.

(d) For periodically inundated areas of associated wetlands - line of periodic inundation, which will be found by examining the edge of inundation to ascertain where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.

**"Basal area"** means the area in square feet of the cross section of a treebole measured at 4 1/2 feet above the ground.

**"Bedrock hollows"** (colluvium-filled bedrock hollows, or hollows; also referred to as zero-order basins, swales, or bedrock depressions) means landforms that are commonly spoon-shaped areas of convergent topography within unchannelled valleys on hillslopes. (See board manual section 16 for identification criteria.)

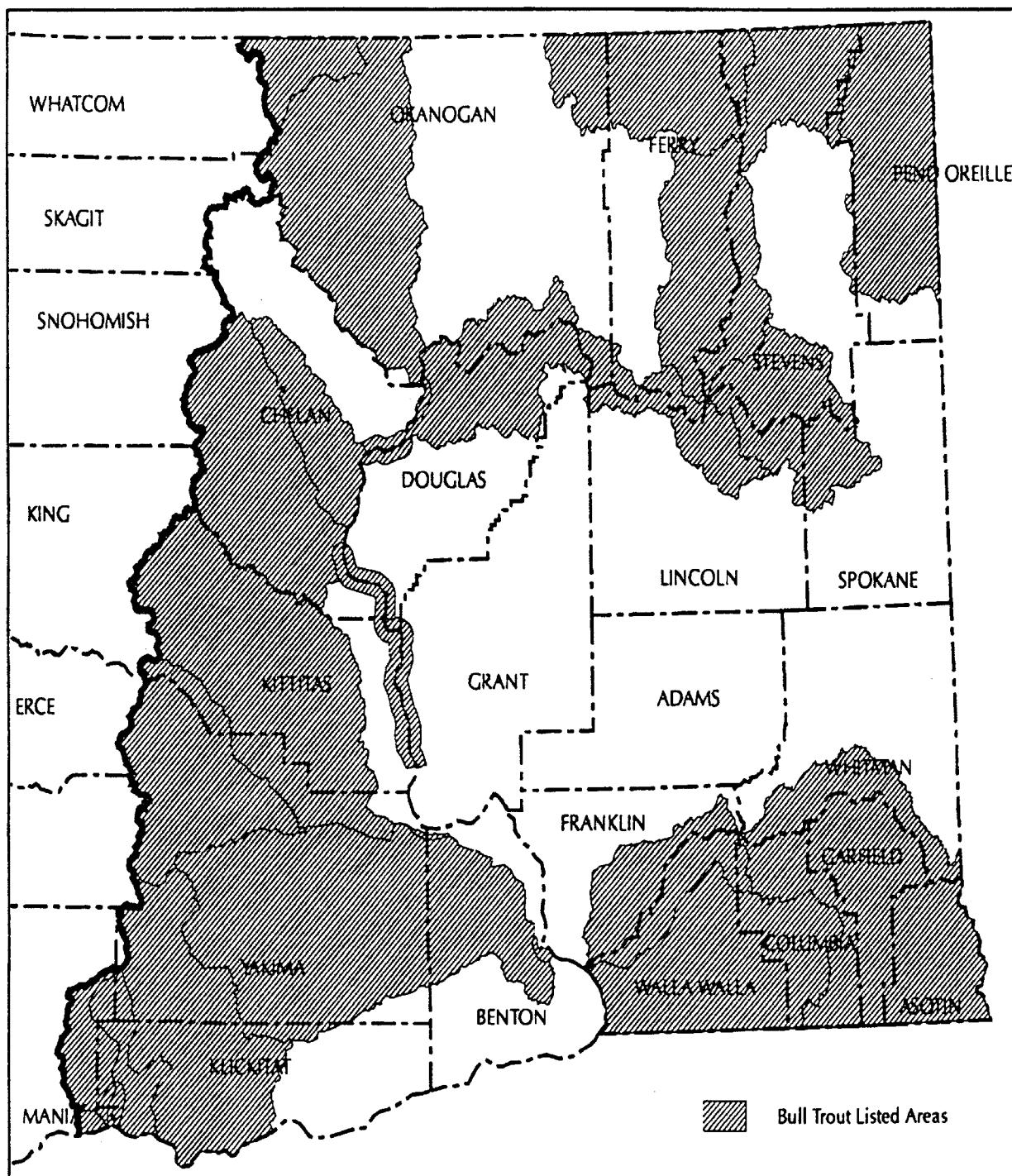
**"Board"** means the forest practices board established by the act.

**"Bog"** means wetlands which have the following characteristics: Hydric organic soils (peat and/or muck) typically 16 inches or more in depth (except over bedrock or hardpan); and vegetation such as sphagnum moss, Labrador tea, bog laurel, bog rosemary, sundews, and sedges; bogs may have an overstory of spruce, western hemlock, lodgepole pine, western red cedar, western white pine, Oregon crabapple, or quaking aspen, and may be associated with open water. This includes nutrient-poor fens. (See board manual section 8.)

**"Borrow pit"** means an excavation site outside the limits of construction to provide material necessary to that construction, such as fill material for the embankments.

**"Bull trout habitat overlay"** means those portions of Eastern Washington streams containing bull trout habitat as identified on the department of fish and wildlife's bull trout map. Prior to the development of a bull trout field protocol and the habitat-based predictive model, the "bull trout habitat overlay" map may be modified to allow for locally-based corrections using current data, field knowledge, and best professional judgment. A landowner may meet with the departments of natural resources, fish and wildlife and, in consultation with affected tribes and federal biologists, determine whether certain stream reaches have habitat conditions that are unsuitable for supporting bull trout. If such a determination is mutually agreed upon, documentation submitted to the department will result in the applicable stream reaches no longer being included within the definition of bull trout habitat overlay. Conversely, if suitable bull trout habitat is discovered outside the current mapped range, those waters will be included within the definition of "bull trout habitat overlay" by a similar process.

## Bull Trout Overlay Map



**"Channel migration zone (CMZ)"** means the area where the active channel of a stream is prone to move and this results in a potential near-term loss of riparian function and associated habitat adjacent to the stream, except as modified by a permanent levee or dike. For this purpose, near-term means the time scale required to grow a mature forest. (See board manual section 2 for descriptions and illustrations of CMZs and delineation guidelines.)

**"Chemicals"** means substances applied to forest lands or timber including pesticides, fertilizers, and other forest chemicals.

**"Clearcut"** means a harvest method in which the entire stand of trees is removed in one timber harvesting operation. Except as provided in WAC 222-30-110, an area remains clearcut until:

It meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2); and

The largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

**"Columbia River Gorge National Scenic Area or CRGNSA"** means the area established pursuant to the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(a).

**"CRGNSA special management area"** means the areas designated in the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(b) or revised pursuant to 16 U.S.C. §544b(c). For purposes of this rule, the special management area shall not include any parcels excluded by 16 U.S.C. §544f(o).

**"CRGNSA special management area guidelines"** means the guidelines and land use designations for forest practices developed pursuant to 16 U.S.C. §544f contained in the CRGNSA management plan developed pursuant to 15 U.S.C. §544d.

**"Commercial tree species"** means any species which is capable of producing a merchantable stand of timber on the particular site, or which is being grown as part of a Christmas tree or ornamental tree-growing operation.

**"Completion of harvest"** means the latest of:

Completion of removal of timber from the portions of forest lands harvested in the smallest logical unit that will not be disturbed by continued logging or an approved slash disposal plan for adjacent areas; or

Scheduled completion of any slash disposal operations where the department and the applicant agree within 6 months of completion of yarding that slash disposal is necessary or desirable to facilitate reforestation and agree to a time schedule for such slash disposal; or

Scheduled completion of any site preparation or rehabilitation of adjoining lands approved at the time of approval of the application or receipt of a notification: Provided, That delay of reforestation under this paragraph is permitted only to the extent reforestation would prevent or unreasonably hinder such site preparation or rehabilitation of adjoining lands.

**"Constructed wetlands"** means those wetlands voluntarily developed by the landowner. Constructed wetlands do not include wetlands created, restored, or enhanced as part of a mitigation procedure or wetlands inadvertently created as a result of current or past practices including, but not limited to: Road construction, landing construction, railroad construction, or surface mining.

**"Contamination"** means introducing into the atmosphere, soil, or water, sufficient quantities of substances as may be injurious to public health, safety or welfare, or to domestic, commercial, industrial, agriculture or recreational uses, or to livestock, wildlife, fish or other aquatic life.

**"Convergent headwalls"** (or headwalls) means teardrop-shaped landforms, broad at the ridgeline and terminating where headwaters converge into a single channel; they are broadly concave both longitudinally and across the slope, but may contain sharp ridges separating the headwater channels. (See board manual section 16 for identification criteria.)

**"Conversion activities"** means activities associated with conversions of forest land to land uses other than commercial timber operation. These activities may be occurring

during or after timber harvest on forest land. They may include but are not limited to the following:

- Preparation for, or installation of, utilities on the forest practices activity site. The development or maintenance of existing rights of way providing utilities exclusively for other ownerships shall not be considered conversions of forest land (see WAC 222-20-010(5)).

- Any of, or any combination of, the following activities in preparation for nonforestry use of the land: Grading, filling, or stump removal.

- Preparation for, or construction of, any structure requiring local government approval.

- Construction of, or improvement of, roads to a standard greater than needed to conduct forest practices activities.

- Clearing for, or expansion of, rock pits for nonforest practices uses or developing surface mines.

**"Conversion option harvest plan"** means a voluntary plan developed by the landowner and approved by the local governmental entity indicating the limits of harvest areas, road locations, and open space.

**"Conversion to a use other than commercial timber operation"** means a bona fide conversion to an active use which is incompatible with timber growing.

**"Cooperative habitat enhancement agreement (CHEA)"** see WAC 222-16-105.

**"Critical habitat (federal)"** means the habitat of any threatened or endangered species designated as critical habitat by the United States Secretary of the Interior or Commerce under Sections 3 (5)(A) and 4 (a)(3) of the Federal Endangered Species Act.

**"Critical nesting season"** means for marbled murrelets - April 1 to August 31.

**"Critical habitat (state)"** means those habitats designated by the board in accordance with WAC 222-16-080.

**"Cultural resources"** means archaeological and historic sites and artifacts, and traditional religious, ceremonial and social uses and activities of affected Indian tribes.

**"Cumulative effects"** means the changes to the environment caused by the interaction of natural ecosystem processes with the effects of two or more forest practices.

**"Daily peak activity"** means for marbled murrelets - one hour before official sunrise to two hours after official sunrise and one hour before official sunset to one hour after official sunset.

**"Debris"** means woody vegetative residue less than 3 cubic feet in size resulting from forest practices activities which would reasonably be expected to cause significant damage to a public resource.

**"Deep-seated landslides"** means landslides in which most of the area of the slide plane or zone lies below the maximum rooting depth of forest trees, to depths of tens to hundreds of feet. (See board manual section 16 for identification criteria.)

**"Demographic support"** means providing sufficient suitable spotted owl habitat within the SOSEA to maintain the viability of northern spotted owl sites identified as necessary to meet the SOSEA goals.

**"Department"** means the department of natural resources.

**"Desired future condition (DFC)"** is a reference point on a pathway and not an endpoint for stands. DFC means the stand conditions of a mature riparian forest at 140 years of age, the midpoint between 80 and 200 years. Where basal area is the only stand attribute used to describe 140-year old stands, these are referred to as the "Target Basal Area."

**"Diameter at breast height (dbh)"** means the diameter of a tree at 4 1/2 feet above the ground measured from the uphill side.

**"Dispersal habitat"** see WAC 222-16-085(2).

**"Dispersal support"** means providing sufficient dispersal habitat for the interchange of northern spotted owls within or across the SOSEA, as necessary to meet SOSEA goals. Dispersal support is provided by a landscape consisting of stands of dispersal habitat interspersed with areas of higher quality habitat, such as suitable spotted owl habitat

found within RMZs, WMZs or other required and voluntary leave areas.

**"Drainage structure"** means a construction technique or feature that is built to relieve surface runoff and/or intercepted ground water from roadside ditches to prevent excessive buildup in water volume and velocity. A drainage structure is not intended to carry any typed water. Drainage structures include structures such as: Cross drains, relief culverts, ditch diversions, water bars, or other such structures demonstrated to be equally effective.

**"Eastern Washington"** means the geographic area in Washington east of the crest of the Cascade Mountains from the international border to the top of Mt. Adams, then east of the ridge line dividing the White Salmon River drainage from the Lewis River drainage and east of the ridge line dividing the Little White Salmon River drainage from the Wind River drainage to the Washington-Oregon state line.

Eastern Washington Definition Map



**"Eastern Washington timber habitat types"** means elevation ranges associated with tree species assigned for the purpose of riparian management according to the following:

#### Timber Habitat Types

ponderosa pine  
mixed conifer  
high elevation

#### Elevation Ranges

0 - 2500 feet  
2501 - 5000 feet  
above 5000 feet

**"Edge"** of any water means the outer edge of the water's bankfull width or, where applicable, the outer edge of the associated channel migration zone.

**"End hauling"** means the removal and transportation of excavated material, pit or quarry overburden, or landing or

road cut material from the excavation site to a deposit site not adjacent to the point of removal.

**"Equipment limitation zone"** means a 30-foot wide zone measured horizontally from the outer edge of the bankfull width of a Type Np or Ns Water. It applies to all perennial and seasonal nonfish bearing streams.

**"Erodible soils"** means those soils that, when exposed or displaced by a forest practices operation, would be readily moved by water.

**"Even-aged harvest methods"** means the following harvest methods:

Clearcuts;

Seed tree harvests in which twenty or fewer trees per acre remain after harvest;

Shelterwood regeneration harvests in which twenty or fewer trees per acre remain after harvest;

Group or strip shelterwood harvests creating openings wider than two tree heights, based on dominant trees;

Shelterwood removal harvests which leave fewer than one hundred fifty trees per acre which are at least five years old or four feet in average height;

Partial cutting in which fewer than fifty trees per acre remain after harvest;

Overstory removal when more than five thousand board feet per acre is removed and fewer than fifty trees per acre at least ten feet in height remain after harvest; and

Other harvesting methods designed to manage for multiple age classes in which six or fewer trees per acre remain after harvest.

Except as provided above for shelterwood removal harvests and overstory removal, trees counted as remaining after harvest shall be at least ten inches in diameter at breast height and have at least the top one-third of the stem supporting green, live crowns. Except as provided in WAC 222-30-110, an area remains harvested by even-aged methods until it meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2) and the largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

**"Fen"** means wetlands which have the following characteristics: Peat soils 16 inches or more in depth (except over bedrock); and vegetation such as certain sedges, hardstem bulrush and cattails; fens may have an overstory of spruce and may be associated with open water.

**"Fertilizers"** means any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment.

**"Fill"** means the placement of earth material or aggregate for road or landing construction or other similar activities.

**"Fish"** means for purposes of these rules, species of the vertebrate taxonomic groups of *Cephalospidomorphi* and *Osteichthyes*.

**"Fish habitat"** means habitat, which is used by fish at any life stage at any time of the year including potential habitat likely to be used by fish, which could be recovered by restoration or management and includes off-channel habitat.

**"Fish passage barrier"** means any artificial in-stream structure that impedes the free passage of fish.

**"Flood level - 100 year"** means a calculated flood event flow based on an engineering computation of flood magnitude that has a 1 percent chance of occurring in any given year. For purposes of field interpretation, landowners may use the following methods:

Flow information from gauging stations;

Field estimate of water level based on guidance for "Determining the 100-Year Flood Level" in the forest practices board manual section 2.

The 100-year flood level shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or under license from the federal government, the state, or a political subdivision of the state.

**"Forest land"** means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. Forest land does not include agricultural land that is or was enrolled in the conservation reserve enhancement program by contract if such agricultural land was historically used for agricultural purposes and the landowner intends to continue to use the land for agricultural purposes in the future. For small forest landowner road maintenance and abandonment planning only, the term "forest land" excludes the following:

(a) Residential home sites. A residential home site may be up to five acres in size, and must have an existing structure in use as a residence;

(b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens, and the land on which appurtenances necessary to the production, preparation, or sale of crops, fruit, dairy products, fish, and livestock exist.

**"Forest landowner"** means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner. However, any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest landowner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land. The following definitions apply only to road maintenance and abandonment planning:

(1) **"Large forest landowner"** is a forest landowner who is not a small forest landowner.

(2) **"Small forest landowner"** is a forest landowner who at the time of submitting a forest practices application or notification meets all of the following conditions:

- Has an average annual timber harvest level of two million board feet or less from their own forest lands in Washington state;

- Did not exceed this annual average harvest level in the three year period before submitting a forest practices application or notification;

- Certifies to the department that they will not exceed this annual harvest level in the ten years after submitting the forest practices application or notification.

However, the department will agree that an applicant is a small forest landowner if the landowner can demonstrate that the harvest levels were exceeded in order to raise funds to pay estate taxes or to meet equally compelling and unexpected obligations such as court-ordered judgments and extraordinary medical expenses.

**"Forest practice"** means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

Road and trail construction;

Harvesting, final and intermediate;

Precommercial thinning;

Reforestation;

Fertilization;

Prevention and suppression of diseases and insects;

Salvage of trees; and

Brush control.

"Forest practice" shall not include: Forest species seed orchard operations and intensive forest nursery operations; or preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

**"Forest road"** means ways, lanes, roads, or driveways on forest land used since 1974 for forest practices. "Forest road" does not include skid trails, highways, or local government roads except where the local governmental entity is a forest landowner. For road maintenance and abandonment planning purposes only, "forest road" does not include forest roads used exclusively for residential access located on a small forest landowner's forest land.

**"Forest trees"** does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than 15 years if the trees were planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees" includes Christmas trees but does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

**"Full bench road"** means a road constructed on a side hill without using any of the material removed from the hillside as a part of the road. This construction technique is usually used on steep or unstable slopes.

**"Green recruitment trees"** means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(11).

**"Ground water recharge areas for glacial deep-seated slides"** means the area upgradient that can contribute water to the landslide, assuming that there is an impermeable perching layer in or under a deep-seated landslide in glacial deposits. (See board manual section 16 for identification criteria.)

**"Headwater spring"** means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

**"Herbicide"** means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any tree, bush, weed or algae and other aquatic weeds.

((**"Historic site"** includes:

~~Sites, areas and structures or other evidence of human activities illustrative of the origins, evolution and development of the nation, state or locality; or~~

~~Places associated with a personality important in history; or~~

~~Places where significant historical events are known to have occurred even though no physical evidence of the event remains.))~~

**"Horizontal distance"** means the distance between two points measured at a zero percent slope.

**"Hyporheic"** means an area adjacent to and below channels where interstitial water is exchanged with channel water and water movement is mainly in the downstream direction.

**"Identified watershed processes"** means the following components of natural ecological processes that may in some instances be altered by forest practices in a watershed:

Mass wasting;

Surface and road erosion;

Seasonal flows including hydrologic peak and low flows and annual yields (volume and timing);

Large organic debris;

Shading; and

Stream bank and bed stability.

**"Inner gorges"** means canyons created by a combination of the downcutting action of a stream and mass movement on the slope walls; they commonly show evidence of recent movement, such as obvious landslides, vertical tracks of disturbance vegetation, or areas that are concave in contour and/or profile. (See board manual section 16 for identification criteria.)

**"Insecticide"** means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect, other arthropods or mollusk pests.

**"Interdisciplinary team"** (ID Team) means a group of varying size comprised of individuals having specialized expertise, assembled by the department to respond to technical questions associated with a proposed forest practices activity.

**"Islands"** means any island surrounded by salt water in Kitsap, Mason, Jefferson, Pierce, King, Snohomish, Skagit, Whatcom, Island, or San Juan counties.

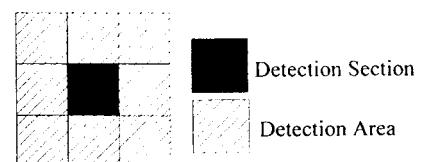
**"Limits of construction"** means the area occupied by the completed roadway or landing, including the cut bank, fill slope, and the area cleared for the purpose of constructing the roadway or landing.

**"Load bearing portion"** means that part of the road, landing, etc., which is supportive soil, earth, rock or other material directly below the working surface and only the associated earth structure necessary for support.

**"Local governmental entity"** means the governments of counties and the governments of cities and towns as defined in chapter 35.01 RCW.

**"Low impact harvest"** means use of any logging equipment, methods, or systems that minimize compaction or disturbance of soils and vegetation during the yarding process. The department shall determine such equipment, methods or systems in consultation with the department of ecology.

**"Marbled murrelet detection area"** means an area of land associated with a visual or audible detection of a marbled murrelet, made by a qualified surveyor which is documented and recorded in the department of fish and wildlife data base. The marbled murrelet detection area shall be comprised of the section of land in which the marbled murrelet detection was made and the eight sections of land immediately adjacent to that section.



**"Marbled murrelet nesting platform"** means any horizontal tree structure such as a limb, an area where a limb branches, a surface created by multiple leaders, a deformity, or a debris/moss platform or stick nest equal to or greater than 7 inches in diameter including associated moss if present, that is 50 feet or more above the ground in trees 32 inches dbh and greater (generally over 90 years of age) and is capable of supporting nesting by marbled murrelets.

**"Median home range circle"** means a circle, with a specified radius, centered on a spotted owl site center. The radius for the median home range circle in the Hoh-Clearwater/Coastal Link SOSEA is 2.7 miles; for all other SOSEAs the radius is 1.8 miles.

**"Merchantable stand of timber"** means a stand of trees that will yield logs and/or fiber:

Suitable in size and quality for the production of lumber, plywood, pulp or other forest products;

Of sufficient value at least to cover all the costs of harvest and transportation to available markets.

**"Multiyear permit"** means a permit to conduct forest practices which is effective for longer than two years but no longer than five years.

**"Northern spotted owl site center"** means:

(1) Until December 31, 2008, the location of northern spotted owls:

(a) Recorded by the department of fish and wildlife as status 1, 2 or 3 as of November 1, 2005; or

(b) Newly discovered, and recorded by the department of fish and wildlife as status 1, 2 or 3 after November 1, 2005.

(2) After December 31, 2008, the location of status 1, 2 or 3 northern spotted owls based on the following definitions:

Status 1: Pair or reproductive - a male and female heard and/or observed in close proximity to each other on the same visit, a female detected on a nest, or one or both adults observed with young.

Status 2: Two birds, pair status unknown - the presence or response of two birds of opposite sex where pair status cannot be determined and where at least one member meets the resident territorial single requirements.

Status 3: Resident territorial single - the presence or response of a single owl within the same general area on three or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or three or more responses over several years (i.e., two responses in year one and one response in year two, for the same general area).

In determining the existence, location, and status of northern spotted owl site centers, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

**"Notice to comply"** means a notice issued by the department pursuant to RCW 76.09.090 of the act and may require initiation and/or completion of action necessary to

prevent, correct and/or compensate for material damage to public resources which resulted from forest practices.

**"Occupied marbled murrelet site"** means:

(1) A contiguous area of suitable marbled murrelet habitat where at least one of the following marbled murrelet behaviors or conditions occur:

(a) A nest is located; or

(b) Downy chicks or eggs or egg shells are found; or

(c) Marbled murrelets are detected flying below, through, into or out of the forest canopy; or

(d) Birds calling from a stationary location within the area; or

(e) Birds circling above a timber stand within one tree height of the top of the canopy; or

(2) A contiguous forested area, which does not meet the definition of suitable marbled murrelet habitat, in which any of the behaviors or conditions listed above has been documented by the department of fish and wildlife and which is distinguishable from the adjacent forest based on vegetative characteristics important to nesting marbled murrelets.

(3) For sites defined in (1) and (2) above, the sites will be presumed to be occupied based upon observation of circling described in (1)(e), unless a two-year survey following the 2003 Pacific Seabird Group (PSG) protocol has been completed and an additional third-year of survey following a method listed below is completed and none of the behaviors or conditions listed in (1)(a) through (d) of this definition are observed. The landowner may choose one of the following methods for the third-year survey:

(a) Conduct a third-year survey with a minimum of nine visits conducted in compliance with 2003 PSG protocol. If one or more marbled murrelets are detected during any of these nine visits, three additional visits conducted in compliance with the protocol of the first nine visits shall be added to the third-year survey. Department of fish and wildlife shall be consulted prior to initiating third-year surveys; or

(b) Conduct a third-year survey designed in consultation with the department of fish and wildlife to meet site specific conditions.

(4) For sites defined in (1) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the vegetative characteristics listed under "suitable marbled murrelet habitat"; or

(c) The beginning of any narrow area of "suitable marbled murrelet habitat" less than 300 feet in width and more than 300 feet in length.

(5) For sites defined under (2) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the distinguishing vegetative characteristics important to murrelets; or

(c) The beginning of any narrow area of suitable marbled murrelet habitat, comparable to the area where the observed behaviors or conditions listed in (1) above occurred, less than 300 feet in width and more than 300 feet in length.

(6) In determining the existence, location and status of occupied marbled murrelet sites, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

**"Old forest habitat"** see WAC 222-16-085 (1)(a).

**"Operator"** means any person engaging in forest practices except an employee with wages as his/her sole compensation.

**"Ordinary high-water mark"** means the mark on the shores of all waters, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation: Provided, That in any area where the ordinary high-water mark cannot be found, the ordinary high-water mark adjoining saltwater shall be the line of mean high tide and the ordinary high-water mark adjoining freshwater shall be the line of mean high-water.

**"Other forest chemicals"** means fire retardants when used to control burning (other than water), nontoxic repellents, oil, dust-control agents (other than water), salt, and other chemicals used in forest management, except pesticides and fertilizers, that may present hazards to the environment.

**"Park"** means any park included on the parks register maintained by the department pursuant to WAC 222-20-100(2). Developed park recreation area means any park area developed for high density outdoor recreation use.

**"Partial cutting"** means the removal of a portion of the merchantable volume in a stand of timber so as to leave an uneven-aged stand of well-distributed residual, healthy trees that will reasonably utilize the productivity of the soil. Partial cutting does not include seedtree or shelterwood or other types of regeneration cutting.

**"Pesticide"** means any insecticide, herbicide, fungicide, or rodenticide, but does not include nontoxic repellents or other forest chemicals.

**"Plantable area"** is an area capable of supporting a commercial stand of timber excluding lands devoted to permanent roads, utility rights of way, that portion of riparian management zones where scarification is not permitted, and any other area devoted to a use incompatible with commercial timber growing.

**"Power equipment"** means all machinery operated with fuel burning or electrical motors, including heavy machinery, chain saws, portable generators, pumps, and powered backpack devices.

**"Preferred tree species"** means the following species listed in descending order of priority for each timber habitat type:

**Ponderosa pine habitat type**  
all hardwoods

**Mixed conifer habitat type**  
all hardwoods

<b>Ponderosa pine habitat type</b>	<b>Mixed conifer habitat type</b>
ponderosa pine	western larch
western larch	ponderosa pine
Douglas-fir	western red cedar
western red cedar	western white pine
	Douglas-fir
	lodgepole pine

**"Public resources"** means water, fish, and wildlife and in addition means capital improvements of the state or its political subdivisions.

**"Qualified surveyor"** means an individual who has successfully completed the marbled murrelet field training course offered by the department of fish and wildlife or its equivalent.

**"Rehabilitation"** means the act of renewing, or making usable and reforesting forest land which was poorly stocked or previously nonstocked with commercial species.

**"Resource characteristics"** means the following specific measurable characteristics of fish, water, and capital improvements of the state or its political subdivisions:

For fish and water:

Physical fish habitat, including temperature and turbidity;

Turbidity in hatchery water supplies; and

Turbidity and volume for areas of water supply.

For capital improvements of the state or its political subdivisions:

Physical or structural integrity.

If the methodology is developed and added to the manual to analyze the cumulative effects of forest practices on other characteristics of fish, water, and capital improvements of the state or its subdivisions, the board shall amend this list to include these characteristics.

**"Riparian function"** includes bank stability, the recruitment of woody debris, leaf litter fall, nutrients, sediment filtering, shade, and other riparian features that are important to both riparian forest and aquatic system conditions.

**"Riparian management zone (RMZ)"** means:

(1) **For Western Washington**

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Western Washington Total
	RMZ Width
I	200'
II	170'
III	140'
IV	110'
V	90'

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-021(2).)

**(2) For Eastern Washington**

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below), and

Site Class	Eastern Washington Total RMZ Width
I	130'
II	110'
III	90' or 100'*
IV	75' or 100'*
V	75' or 100'*

\* Dependent upon stream size. (See WAC 222-30-022.)

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-022(2).)

(3) **For exempt 20 acre parcels**, a specified area alongside Type S and F Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

**"RMZ core zone"** means:

(1) **For Western Washington**, the 50 foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021.)

(2) **For Eastern Washington**, the thirty foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-022.)

**"RMZ inner zone"** means:

(1) **For Western Washington**, the area measured horizontally from the outer boundary of the core zone of a Type S or F Water to the outer limit of the inner zone. The outer limit of the inner zone is determined based on the width of the affected water, site class and the management option chosen for timber harvest within the inner zone. (See WAC 222-30-021.)

(2) **For Eastern Washington**, the area measured horizontally from the outer boundary of the core zone 45 feet (for streams less than 15 feet wide) or 70 feet (for streams more than 15 feet wide) from the outer boundary of the core zone. (See WAC 222-30-022.)

**"RMZ outer zone"** means the area measured horizontally between the outer boundary of the inner zone and the RMZ width as specified in the riparian management zone definition above. RMZ width is measured from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021 and 222-30-022.)

**"Road construction"** means either of the following:

- (a) Establishing any new forest road;
- (b) Road work located outside an existing forest road prism, except for road maintenance.

**"Road maintenance"** means either of the following:

- (a) All road work located within an existing forest road prism;

(b) Road work located outside an existing forest road prism specifically related to maintaining water control, road safety, or visibility, such as:

- Maintaining, replacing, and installing drainage structures;
- Controlling road-side vegetation;
- Abandoning forest roads according to the process outlined in WAC 222-24-052(3).

**"Rodenticide"** means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents or any other vertebrate animal which the director of the state department of agriculture may declare by regulation to be a pest.

**"Salvage"** means the removal of snags, down logs, windthrow, or dead and dying material.

**"Scarification"** means loosening the topsoil and/or disrupting the forest floor in preparation for regeneration.

**"Sensitive sites"** are areas near or adjacent to Type Np Water and have one or more of the following:

(1) **Headwall seep** is a seep located at the toe of a cliff or other steep topographical feature and at the head of a Type Np Water which connects to the stream channel network via overland flow, and is characterized by loose substrate and/or fractured bedrock with perennial water at or near the surface throughout the year.

(2) **Side-slope seep** is a seep within 100 feet of a Type Np Water located on side-slopes which are greater than 20 percent, connected to the stream channel network via overland flow, and characterized by loose substrate and fractured bedrock, excluding muck with perennial water at or near the surface throughout the year. Water delivery to the Type Np channel is visible by someone standing in or near the stream.

(3) **Type Np intersection** is the intersection of two or more Type Np Waters.

(4) **Headwater spring** means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

(5) **Alluvial fan** means a depositional land form consisting of cone-shaped deposit of water-borne, often coarse-sized sediments.

(a) The upstream end of the fan (cone apex) is typically characterized by a distinct increase in channel width where a stream emerges from a narrow valley;

(b) The downstream edge of the fan is defined as the sediment confluence with a higher order channel; and

(c) The lateral margins of a fan are characterized by distinct local changes in sediment elevation and often show disturbed vegetation.

Alluvial fan does not include features that were formed under climatic or geologic conditions which are not currently present or that are no longer dynamic.

**"Shorelines of the state"** shall have the same meaning as in RCW 90.58.030 (Shoreline Management Act).

**"Side casting"** means the act of moving excavated material to the side and depositing such material within the limits of construction or dumping over the side and outside the limits of construction.

**"Site class"** means a grouping of site indices that are used to determine the 50-year or 100-year site class. In order

to determine site class, the landowner will obtain the site class index from the state soil survey, place it in the correct index range shown in the two tables provided in this definition, and select the corresponding site class. The site class will then drive the RMZ width. (See WAC 222-30-021 and 222-30-022.)

(1) For Western Washington

Site class	50-year site index range	
	(state soil survey)	
I	137+	
II	119-136	
III	97-118	
IV	76-96	
V	<75	

(2) For Eastern Washington

Site class	100-year site index range	50-year site index range
	(state soil survey)	(state soil survey)
I	120+	86+
II	101-120	72-85
III	81-100	58-71
IV	61-80	44-57
V	≤60	<44

(3) For purposes of this definition, the site index at any location will be the site index reported by the *Washington State Department of Natural Resources State Soil Survey*, (soil survey) and detailed in the associated forest soil summary sheets. If the soil survey does not report a site index for the location or indicates noncommercial or marginal forest land, or the major species table indicates red alder, the following apply:

(a) If the site index in the soil survey is for red alder, and the whole RMZ width is within that site index, then use site class V. If the red alder site index is only for a portion of the RMZ width, or there is on-site evidence that the site has historically supported conifer, then use the site class for conifer in the most physiographically similar adjacent soil polygon.

(b) In Western Washington, if no site index is reported in the soil survey, use the site class for conifer in the most physiographically similar adjacent soil polygon.

(c) In Eastern Washington, if no site index is reported in the soil survey, assume site class III, unless site specific information indicates otherwise.

(d) If the site index is noncommercial or marginally commercial, then use site class V.

See also section 7 of the board manual.

**"Site preparation"** means those activities associated with the removal of slash in preparing a site for planting and shall include scarification and/or slash burning.

**"Skid trail"** means a route used by tracked or wheeled skidders to move logs to a landing or road.

**"Slash"** means pieces of woody material containing more than 3 cubic feet resulting from forest practices activities.

**"Small forest landowner long-term application"** means a proposal from a small forest landowner to conduct forest practices activities for terms of three to fifteen years. Small forest landowners as defined in WAC 222-21-010(13) are eligible to submit long-term applications.

**"SOSEA goals"** means the goals specified for a spotted owl special emphasis area as identified on the SOSEA maps (see WAC 222-16-086). SOSEA goals provide for demographic and/or dispersal support as necessary to complement the northern spotted owl protection strategies on federal land within or adjacent to the SOSEA.

**"Spoil"** means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

**"Spotted owl dispersal habitat"** see WAC 222-16-085(2).

**"Spotted owl special emphasis areas (SOSEA)"** means the geographic areas as mapped in WAC 222-16-086. Detailed maps of the SOSEAs indicating the boundaries and goals are available from the department at its regional offices.

**"Stop work order"** means the "stop work order" defined in RCW 76.09.080 of the act and may be issued by the department to stop violations of the forest practices chapter or to prevent damage and/or to correct and/or compensate for damages to public resources resulting from forest practices.

**"Stream-adjacent parallel roads"** means roads (including associated right of way clearing) in a riparian management zone on a property that have an alignment that is parallel to the general alignment of the stream, including roads used by others under easements or cooperative road agreements. Also included are stream crossings where the alignment of the road continues to parallel the stream for more than 250 feet on either side of the stream. Not included are federal, state, county or municipal roads that are not subject to forest practices rules, or roads of another adjacent landowner.

**"Sub-mature habitat"** see WAC 222-16-085 (1)(b).

**"Suitable marbled murrelet habitat"** means a contiguous forested area containing trees capable of providing nesting opportunities:

(1) With all of the following indicators unless the department, in consultation with the department of fish and wildlife, has determined that the habitat is not likely to be occupied by marbled murrelets:

(a) Within 50 miles of marine waters;

(b) At least forty percent of the dominant and codominant trees are Douglas-fir, western hemlock, western red cedar or sitka spruce;

(c) Two or more nesting platforms per acre;

(d) At least 7 acres in size, including the contiguous forested area within 300 feet of nesting platforms, with similar forest stand characteristics (age, species composition, forest structure) to the forested area in which the nesting platforms occur.

**"Suitable spotted owl habitat"** see WAC 222-16-085(1).

**"Temporary road"** means a forest road that is constructed and intended for use during the life of an approved

forest practices application/notification. All temporary roads must be abandoned in accordance to WAC 222-24-052(3).

**"Threaten public safety"** means to increase the risk to the public at large from snow avalanches, identified in consultation with the department of transportation or a local government, or landslides or debris torrents caused or triggered by forest practices.

**"Threatened or endangered species"** means all species of wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior or Commerce, and all species of wildlife designated as "threatened" or "endangered" by the Washington fish and wildlife commission.

**"Timber"** means forest trees, standing or down, of a commercial species, including Christmas trees. However, timber does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.-035.

**"Unconfined avulsing stream"** means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex flood plain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement.

**"Validation,"** as used in WAC 222-20-016, means the department's agreement that a small forest landowner has correctly identified and classified resources, and satisfactorily completed a roads assessment for the geographic area described in Step 1 of a long-term application.

**"Water bar"** means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion.

**"Watershed administrative unit (WAU)"** means an area shown on the map specified in WAC 222-22-020(1).

**"Watershed analysis"** means, for a given WAU, the assessment completed under WAC 222-22-050 or 222-22-060 together with the prescriptions selected under WAC 222-22-070 and shall include assessments completed under WAC 222-22-050 where there are no areas of resource sensitivity.

**"Weed"** is any plant which tends to overgrow or choke out more desirable vegetation.

**"Western Washington"** means the geographic area of Washington west of the Cascade crest and the drainages defined in Eastern Washington.

**"Wetland"** means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, bogs, fens, and similar areas. This includes wetlands created, restored, or enhanced as part of a mitigation procedure. This does not include constructed wetlands or the following surface waters of the state intentionally constructed from wetland sites: Irrigation and drainage ditches, grass lined swales, canals, agricultural detention facilities, farm ponds, and landscape amenities.

**"Wetland functions"** include the protection of water quality and quantity, providing fish and wildlife habitat, and the production of timber.

**"Wetland management zone"** means a specified area adjacent to Type A and B Wetlands where specific measures are taken to protect the wetland functions.

**"Wildlife"** means all species of the animal kingdom whose members exist in Washington in a wild state. The term "wildlife" includes, but is not limited to, any mammal, bird, reptile, amphibian, fish, or invertebrate, at any stage of development. The term "wildlife" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

**"Wildlife reserve trees"** means those defective, dead, damaged, or dying trees which provide or have the potential to provide habitat for those wildlife species dependent on standing trees. Wildlife reserve trees are categorized as follows:

Type 1 wildlife reserve trees are defective or deformed live trees that have observably sound tops, limbs, trunks, and roots. They may have part of the top broken out or have evidence of other severe defects that include: "Cat face," animal chewing, old logging wounds, weather injury, insect attack, or lightning strike. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 1 wildlife reserve trees. These trees must be stable and pose the least hazard for workers.

Type 2 wildlife reserve trees are dead Type 1 trees with sound tops, limbs, trunks, and roots.

Type 3 wildlife reserve trees are live or dead trees with unstable tops or upper portions. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 3 wildlife reserve trees. Although the roots and main portion of the trunk are sound, these reserve trees pose high hazard because of the defect in live or dead wood higher up in the tree.

Type 4 wildlife reserve trees are live or dead trees with unstable trunks or roots, with or without bark. This includes "soft snags" as well as live trees with unstable roots caused by root rot or fire. These trees are unstable and pose a high hazard to workers.

**"Windthrow"** means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.

**"Yarding corridor"** means a narrow, linear path through a riparian management zone to allow suspended cables necessary to support cable logging methods or suspended or partially suspended logs to be transported through these areas by cable logging methods.

**"Young forest marginal habitat"** see WAC 222-16-085 (1)(b).

**AMENDATORY SECTION** (Amending WSR 07-20-044, filed 9/26/07, effective 10/27/07)

**WAC 222-16-050 \*Classes of forest practices.** There are 4 classes of forest practices created by the act. All forest practices (including those in Classes I and II) must be conducted in accordance with the forest practices rules.

(1) "**Class IV - special.**" Except as provided in WAC 222-16-051, application to conduct forest practices involving the following circumstances requires an environmental checklist in compliance with the State Environmental Policy Act (SEPA), and SEPA guidelines, as they have been determined to have potential for a substantial impact on the environment. It may be determined that additional information or a detailed environmental statement is required before these forest practices may be conducted.

\*(a) Aerial application of pesticides in a manner identified as having the potential for a substantial impact on the environment under WAC 222-16-070 or ground application of a pesticide within a Type A or B wetland.

(b) Specific forest practices listed in WAC 222-16-080 on lands designated as critical habitat (state) of threatened or endangered species.

(c) Harvesting, road construction, aerial application of pesticides and site preparation on all lands within the boundaries of any national park, state park, or any park of a local governmental entity, except harvest of less than five MBF within any developed park recreation area and park managed salvage of merchantable forest products.

\*(d) Timber harvest, or construction of roads, landings, gravel pits, rock quarries, or spoil disposal areas, on potentially unstable slopes or landforms described in (i) below that has the potential to deliver sediment or debris to a public resource or that has the potential to threaten public safety, and which has been field verified by the department (see WAC 222-10-030 SEPA policies for potential unstable slopes and landforms).

(i) For the purpose of this rule, potentially unstable slopes or landforms are one of the following: (See board manual section 16 for more descriptive definitions.)

(A) Inner gorges, convergent headwalls, or bedrock hollows with slopes steeper than thirty-five degrees (seventy percent);

(B) Toes of deep-seated landslides, with slopes steeper than thirty-three degrees (sixty-five percent);

(C) Ground water recharge areas for glacial deep-seated landslides;

(D) Outer edges of meander bends along valley walls or high terraces of an unconfined meandering stream; or

(E) Any areas containing features indicating the presence of potential slope instability which cumulatively indicate the presence of unstable slopes.

(ii) The department will base its classification of the application or notification on professional knowledge of the area, information such as soils, geologic or hazard zonation maps and reports or other information provided by the applicant.

(iii) An application would not be classified as Class IV-Special for potentially unstable slopes or landforms under this subsection if:

(A) The proposed forest practice is located within a WAU that is subject to an approved watershed analysis;

(B) The forest practices are to be conducted in accordance with an approved prescription from the watershed analysis (or as modified through the five-year review process); and

(C) The applicable prescription is specific to the site or situation, as opposed to a prescription that calls for additional analysis. The need for an expert to determine whether the site contains specific landforms will not be considered "additional analysis," as long as specific prescriptions are established for such landforms.

\*(e) Timber harvest, in a watershed administrative unit not subject to an approved watershed analysis under chapter 222-22 WAC, construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on snow avalanche slopes within those areas designated by the department, in consultation with department of transportation and local government, as high avalanche hazard where there is the potential to deliver sediment or debris to a public resource, or the potential to threaten public safety.

(f) Timber harvest((;)) or construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on the following except in (f)(iv) of this subsection:

(i) Archaeological sites or historic archaeological resources as defined in RCW 27.53.030; or

(ii) Historic sites ((registered with)) eligible for listing on the National Register of Historic Places or the Washington Heritage Register as determined by the Washington state department of archaeology and historic preservation((,-or on)); or

(iii) Sites containing evidence of Native American cairns, graves, or glyptic records((;)) as provided for in chapters 27.44 and 27.53 RCW. The department of archaeology and historic preservation shall consult with affected Indian tribes in identifying such sites.

(iv) A forest practice would not be classified as Class IV-special under this subsection if:

(A) Cultural resources management strategies from an approved watershed analysis conducted under chapter 222-22 WAC are part of the proposed forest practices, and the landowner states this in the application; or

(B) A management plan agreed to by the landowner, the affected Indian tribe, and the department of archaeology and historic preservation is part of the proposed application, and the landowner states this in the application.

\*(g) Forest practices subject to an approved watershed analysis conducted under chapter 222-22 WAC in an area of resource sensitivity identified in that analysis which deviates from the prescriptions (which may include an alternate plan) in the watershed analysis.

\*(h) Filling or draining of more than 0.5 acre of a wetland.

(2) "**Class IV - general.**" Applications involving the following circumstances are "Class IV - general" forest practices unless they are listed in "Class IV - special."

(a) Forest practices (other than those in Class I) on lands platted after January 1, 1960, as provided in chapter 58.17 RCW;

(b) Forest practices (other than those in Class I) on lands that have been or are being converted to another use;

(c) Forest practices which would otherwise be Class III, but which are taking place on lands which are not to be reforested because of likelihood of future conversion to urban development (see WAC 222-16-060 and 222-34-050); or

(d) Forest practices involving timber harvesting or road construction on lands that are contained within urban growth areas, designated pursuant to chapter 36.70A RCW, except where the forest landowner provides one of the following:

(i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest products operations for ten years accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or

(ii) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application.

Upon receipt of an application, the department will determine the lead agency for purposes of compliance with the SEPA pursuant to WAC 197-11-924 and 197-11-938(4) and RCW 43.21C.037(2). Such applications are subject to a thirty-day period for approval unless the lead agency determines a detailed statement under RCW 43.21C.030 (2)(c) is required. Upon receipt, if the department determines the application is for a proposal that will require a license from a county/city acting under the powers enumerated in RCW 76.09.240, the department shall notify the applicable county/city under WAC 197-11-924 that the department has determined according to WAC 197-11-938(4) that the county/city is the lead agency for purposes of compliance with the SEPA.

(3) **"Class I."** Those operations that have been determined to have no direct potential for damaging a public resource are Class I forest practices. When the conditions listed in "Class IV - Special" are not present, these operations may be commenced without notification or application.

(a) Culture and harvest of Christmas trees and seedlings.

\*(b) Road maintenance except: Replacement of bridges and culverts across Type S, F or flowing Type Np Waters; or movement of material that has a direct potential for entering Type S, F or flowing Type Np Waters or Type A or B Wetlands.

\*(c) Construction of landings less than one acre in size, if not within a shoreline area of a Type S Water, the riparian management zone of a Type F Water, the bankfull width of a Type Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

\*(d) Construction of less than six hundred feet of road on a sideslope of forty percent or less if the limits of construction are not within the shoreline area of a Type S Water, the riparian management zone of a Type F Water, the bankfull width of a Type Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

\*(e) Installation or removal of a portable water crossing structure where such installation does not take place within the shoreline area of a Type S Water and does not involve disturbance of the beds or banks of any waters.

\*(f) Initial installation and replacement of relief culverts and other drainage control facilities not requiring a hydraulic permit.

(g) Rocking an existing road.

(h) Loading and hauling timber from landings or decks.

(i) Precommercial thinning and pruning, if not within the CRGNSA special management area.

(j) Tree planting and seeding.

(k) Cutting and/or removal of less than five thousand board feet of timber (including live, dead and down material) for personal use (i.e., firewood, fence posts, etc.) in any twelve-month period, if not within the CRGNSA special management area.

(l) Emergency fire control and suppression.

(m) Slash burning pursuant to a burning permit (RCW 76.04.205).

\*(n) Other slash control and site preparation not involving either off-road use of tractors on slopes exceeding forty percent or off-road use of tractors within the shorelines of a Type S Water, the riparian management zone of any Type F Water, or the bankfull width of a Type Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

\*(o) Ground application of chemicals, if not within the CRGNSA special management area. (See WAC 222-38-020 and 222-38-030.)

\*(p) Aerial application of chemicals (except insecticides), outside of the CRGNSA special management area when applied to not more than forty contiguous acres if the application is part of a combined or cooperative project with another landowner and where the application does not take place within one hundred feet of lands used for farming, or within two hundred feet of a residence, unless such farmland or residence is owned by the forest landowner. Provisions of chapter 222-38 WAC shall apply.

(q) Forestry research studies and evaluation tests by an established research organization.

\*(r) Any of the following if none of the operation or limits of construction takes place within the shoreline area of a Type S Water or the riparian management zone of a Type F Water, the bankfull width of a Type Np Water or flowing Type Ns Water, or within the CRGNSA special management area and the operation does not involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than forty percent:

(i) Any forest practices within the boundaries of existing golf courses.

(ii) Any forest practices within the boundaries of existing cemeteries which are approved by the cemetery board.

(iii) Any forest practices involving a single landowner where contiguous ownership is less than two acres in size.

(s) Removal of beaver structures from culverts on forest roads. A hydraulics project approval from the Washington department of fish and wildlife may be required.

(4) **"Class II."** Certain forest practices have been determined to have a less than ordinary potential to damage a public resource and may be conducted as Class II forest practices: Provided, That no forest practice enumerated below may be conducted as a Class II forest practice if the operation requires a hydraulic project approval (RCW 77.55.100) or is within a "shorelines of the state," or involves owner of perpetual timber rights subject to RCW 76.09.067 (other than renewals). Such forest practices require an application. No forest practice enumerated below may be conducted as a "Class II" forest practice if it takes place on lands platted after January 1, 1960, as provided in chapter 58.17 RCW, or on lands that have been or are being converted to another use.

No forest practice enumerated below involving timber harvest or road construction may be conducted as a "Class II" if it takes place within urban growth areas designated pursuant to chapter 37.70A RCW. Such forest practices require a Class IV application. Class II forest practices are the following:

(a) Renewal of a prior Class II notification where no change in the nature and extent of the forest practices is required under rules effective at the time of renewal.

(b) Renewal of a previously approved Class III or IV forest practices application where:

(i) No modification of the uncompleted operation is proposed;

(ii) No notices to comply, stop work orders or other enforcement actions are outstanding with respect to the prior application; and

(iii) No change in the nature and extent of the forest practice is required under rules effective at the time of renewal.

(iv) Renewal of a previously approved multiyear permit for forest practices within a WAU with an approved watershed analysis requires completion of a necessary five-year review of the watershed analysis.

(c) Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type F Water, within the bankfull width of a Type Np Water, within a wetland management zone, within a wetland, or within the CRGNSA special management area:

(i) Construction of advance fire trails.

(ii) Opening a new pit of, or extending an existing pit by, less than one acre.

(d) Salvage of logging residue if none of the operation or limits of construction takes place within the riparian management zone of a Type F Water, within the bankfull width of a Type Np Water, within a wetland management zone or within a wetland; and if none of the operations involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than forty percent.

(e) Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type F Water, within the bankfull width of a Type Np Water, within a wetland management zone, within a wetland, or within the CRGNSA special management area, and if none of the operations involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than forty percent, and if none of the operations are located on lands with a likelihood of future conversion (see WAC 222-16-060):

(i) West of the Cascade summit, partial cutting of forty percent or less of the live timber volume.

(ii) East of the Cascade summit, partial cutting of five thousand board feet per acre or less.

(iii) Salvage of dead, down, or dying timber if less than forty percent of the total timber volume is removed in any twelve-month period.

(iv) Any harvest on less than forty acres.

(v) Construction of six hundred or more feet of road, provided that the department shall be notified at least two business days before commencement of the construction.

(5) **"Class III."** Forest practices not listed under Classes IV, I or II above are "Class III" forest practices. Among Class III forest practices are the following:

(a) Those requiring hydraulic project approval (RCW 77.55.100).

(b) Those within the shorelines of the state other than those in a Class I forest practice.

(c) Aerial application of insecticides, except where classified as a Class IV forest practice.

(d) Aerial application of chemicals (except insecticides), except where classified as Class I or IV forest practices.

(e) Harvest or salvage of timber except where classed as Class I, II or IV forest practices.

(f) All road construction except as listed in Classes I, II and IV forest practices.

(g) Opening of new pits or extensions of existing pits over 1 acre.

(h) Road maintenance involving:

(i) Replacement of bridges or culverts across Type S, F or flowing Type Np Waters; or

(ii) Movement of material that has a direct potential for entering Type S, F or flowing Type Np Waters or Type A or B Wetlands.

(i) Operations involving owner of perpetual timber rights subject to RCW 76.09.067.

(j) Site preparation or slash abatement not listed in Classes I or IV forest practices.

(k) Harvesting, road construction, site preparation or aerial application of pesticides on lands which contain cultural, historic or archaeological resources which, at the time the application or notification is filed, ((are:

(i) On or are eligible for listing on the National Register of Historic Places; or

((ii))) have been identified to the department as being of interest to an affected Indian tribe.

(l) Harvesting exceeding nineteen acres in a designated difficult regeneration area.

(m) Utilization of an alternate plan. See WAC 222-12-040.

(n) Any filling of wetlands, except where classified as Class IV forest practices.

(o) Multiyear permits.

(p) Small forest landowner long-term applications that are not classified Class IV-special or Class IV-general, or renewals of previously approved Class III or IV long-term applications.

**WSR 08-17-119  
PERMANENT RULES  
PUBLIC EMPLOYMENT  
RELATIONS COMMISSION**

[Filed August 20, 2008, 11:04 a.m., effective September 20, 2008]

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

**Purpose:** WAC 391-25-440 creates a process to streamline agency procedure by allowing unrepresented employees the opportunity to vote on whether they wish to be included in an existing bargaining unit. Currently, a labor organization must first petition to represent the smaller group of employees, and then petition to merge those employees

into the larger existing bargaining unit. This rule turns a two-step process into a one-step process. The rule requires that any petitioning labor organization affirmatively state their intent merge the unrepresented into an existing bargaining unit, and notices posted under WAC 391-25-140 shall affirmatively inform the employees that the employees are voting to be included into an existing bargaining unit.

Statutory Authority for Adoption: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.100, 41.76.060, 41.80.070.

Adopted under notice filed as WSR 08-13-081 on June 17, 2008.

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 1, 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: August 20, 2008.

Dario de la Rosa  
General Counsel

## NEW SECTION

**WAC 391-25-440 Election for inclusion of unrepresented employees.** (1) Where only one employee organization seeks to add an employee or group of previously unrepresented employees to an appropriate bargaining unit, which it already represents, under this chapter and the relevant statute, the organization may petition for a self-determination election to ascertain the employees' desire to be included in its existing bargaining unit.

(2) In order to invoke the self-determination election procedures under this section, the petitioning organization shall:

(a) Demonstrate that it has the support of at least thirty percent or more of the unrepresented employees to be included in the appropriate existing unit;

(b) Affirmatively state on the petition filed under WAC 391-25-070 that it requests a self-determination election to add the petitioned-for employees into an existing appropriate bargaining unit;

(c) Provide an accurate description of the existing bargaining unit that the petitioning organization seeks to merge the unrepresented employees into; and

(d) Demonstrate that the resulting bargaining unit is appropriate under the appropriate statute.

(i) If the propriety of the proposed resulting unit is disputed, the executive director or his or her designee shall make a determination following a hearing.

(ii) If the propriety of the proposed resulting unit is stipulated, the executive director or his or her designee shall determine whether the proposed unit is, on its face, an appropriate unit under the applicable statute.

(3) Any notice to employees required to be posted under WAC 391-25-140 shall affirmatively indicate that the petitioning organization seeks to merge the petitioned-for employees into an existing bargaining unit of employees represented by that organization through a self-determination election.

(4) If the resulting bargaining unit is determined to be appropriate, the agency shall conduct a self-determination election under this chapter for the petitioned-for employees to ascertain whether they desire to become part of the existing unit.

(a) Only the petitioned-for employees are eligible to vote in a self-determination election.

(b) Cross-check procedures under WAC 391-25-391 and 391-25-396 are applicable to this section.

(c) In such an election, if a majority of the eligible employees voting in the election vote for inclusion, they are deemed to have indicated their desire both to become part of the existing unit and to be represented by the petitioner. If a majority of voters vote against inclusion in the existing unit, they are considered as indicating a desire to remain unrepresented.

(5)(a) Should another organization seek to intervene in a proceeding filed under this section, it must demonstrate both:

(i) That it has support from at least thirty percent of the employees subject to the original petition; and

(ii) That if the same group of employees were added to an appropriate unit that it already represents under this chapter and the appropriate statute, the resulting unit would be an appropriate unit.

(b) If either (a)(i) or (ii) of this subsection are not established, the request for intervention will be denied, and the petition processed in accordance with this section.

(c) In the event the requirement of both (a)(i) and (ii) of this subsection are met, the election shall be for representation by the petitioner as part of the larger unit proposed by the petitioner, or representation by the intervener as part of the larger unit proposed by the intervener, or no representation.

(6) In the event a petition for representation of the same employees sought to be added to a larger unit by the petitioner under this section is filed pursuant to WAC 391-25-010 or 391-25-012, along with the requisite thirty percent showing of interest, and the petitioned-for unit is appropriate under the applicable statute, then the self-determination election petition filed under this section shall be dismissed. If either of those requirements is not met, the petition filed pursuant to WAC 391-25-010 or 391-25-012 will be dismissed and the original self-determination election petition processed in accordance with this section.