

WSR 06-24-002
PROPOSED RULES
OLYMPIC REGION
CLEAN AIR AGENCY

[Filed November 22, 2006, 2:51 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Olympic Region Clean Air Agency Regulations, Rules 2.5 and 3.4. Two unrelated actions are occurring with this change. The maximum daily penalty amount is being increased from \$10,000.00 to \$14,915.00. The second change is to the fee charged for land clearing burn permits. The land clearing burn permit fee will change from \$100.00 for each permit to \$75.00 per acre cleared.

Hearing Location(s): Olympic Region Clean Air Agency, 2940 B Limited Lane N.W., Olympia, WA 98502, on January 10, 2007, at 10:00 a.m.

Date of Intended Adoption: January 10, 2007.

Submit Written Comments to: Olympic Region Clean Air Agency, 2940 B Limited Lane N.W., Olympia, WA 98502, e-mail Robert@orca.org, fax (360) 491-6308, by January 8, 2007.

Assistance for Persons with Disabilities: Contact Dan Nelson by January 3, 2007, (360) 586-1044.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: 1. Though used infrequently, the maximum daily penalty serves as a deterrent to violating clean air regulations. The legislature recognized the need to increase the maximum daily penalty to account for inflation. This change will increase the maximum daily penalty as allowed by RCW 70.94.431.

2. The land clearing burn permit fee is being modified to provide a fee that is more representative of the emissions created by burning debris. The fee will be reduced for applicants burning one acre or less. For each additional acre cleared the fee will be \$75.00 per acre.

Reasons Supporting Proposal: The land clearing burn permit fee would drop \$25 for approximately half of the applicants. This method is equitable on a cost per acre of clearing. The polluter pays based on the amount of emissions - more clearing means a higher fee.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: Chapter 70.94 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Olympic Region Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Robert Moody, 2940 B Limited Lane N.W., Olympia, WA 98502, (360) 586-1044.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the Regulatory Fairness Act (chapter 19.85 RCW) because air pollution control authorities are not deemed state agencies (RCW 70.94.141).

A cost-benefit analysis is not required under RCW 34.05.328. Air pollution control authorities are not deemed to be state agencies (RCW 70.94.141).

November 22, 2006

Richard A. Stedman

Executive Director

AMENDED SECTION

RULE 2.5 REGULATORY ACTIONS AND PENALTIES

The Control Officer may take any of the following regulatory actions to enforce the provisions of chapter 70.94 RCW or any of the rules or regulations in force pursuant thereto, which are incorporated by reference.

(a) Civil Penalties

(1) Any person who violates any of the provisions of chapter 70.94 RCW or any of the rules or regulations in force pursuant thereto, may incur a civil penalty in an amount not to exceed (~~(\$10,000.00)~~) \$14,915.00 per day for each violation.

(2) Any person who fails to take action as specified by an Order issued pursuant to chapter 70.94 RCW or Regulations of the Olympic Region Clean Air Agency (ORCAA) shall be liable for a civil penalty of not more than (~~(\$10,000.00)~~) \$14,915.00 for each day of continued noncompliance.

(3) Within 30 days after receipt of Notice of Civil Penalty, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. Any such request must contain the following:

(i) The name, mailing address, and telephone number of the appealing party;

(ii) A copy of the Notice of Civil Penalty appealed from;

(iii) A short and plain statement showing the grounds upon which the appealing party considers such Order to be unjust or unlawful;

(iv) A clear and concise statement of facts upon which the appealing party relies to sustain his or her grounds for appeal;

(v) The relief sought, including the specific nature and extent; and

(vi) A statement that the appealing party has read the notice of appeal and believes the contents to be true followed by the party's signature.

Upon receipt of the application, the Control Officer shall remit or mitigate the penalty only upon a demonstration by the requestor of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

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

AMENDED SECTION

RULE 3.4 OUTDOOR BURNING PERMIT FEES

Agricultural Burn permit: For 10 acres (or equivalent) or less the fee is twenty-five dollars (\$25.00). For greater than 10 acres (or equivalent) the fee will be two dollars and fifty cents (\$2.50) per acre.

Land Clearing Burn Permit: Land clearing burning permits issued by ORCAA will be charged (~~a fee in the amount~~

~~of one hundred dollars (\$100.00))~~ \$75 for one acre or less. For greater than one acre the fee will be \$75 per acre cleared, rounded to the nearest full acre.

WSR 06-24-029
PROPOSED RULES
GAMBLING COMMISSION
 [Filed November 29, 2006, 2:35 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-18-025.

Title of Rule and Other Identifying Information: Amending WAC 230-20-059 Minimum cash flow requirements for bingo games—Contributions to stated purpose—Sanctions.

Hearing Location(s): DoubleTree Guest Suites, 16500 Southcenter Parkway, Seattle, WA 98188, (206) 575-8220, on January 12, 2007, at 9:30 a.m.

Date of Intended Adoption: January 12, 2007.

Submit Written Comments to: Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504, e-mail Susana@wsgc.wa.gov, fax (360) 486-3625, by January 1, 2007.

Assistance for Persons with Disabilities: Contact Shirley Corbett by January 1, 2007, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: We have received a petition for rule change from the Washington Charitable and Civic Gaming Association. The petitioner requests that charitable and nonprofit organizations that offer bingo be allowed up to a 50% variance on net return requirements for the calendar year 2006. The 25% variance currently in WAC 230-20-059 would remain unchanged.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington Charitable and Civic Gaming Association, private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Sharon Reese, Deputy Director, Lacey, (360) 486-3452.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025, and/or the proposed rule change clarifies language of rules without changing the effect.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

November 29, 2006
 Susan Arland
 Rules Coordinator

AMENDATORY SECTION (Amending Order 428, filed 3/17/04, effective 4/17/04)

WAC 230-20-059 Minimum cash flow requirements for bingo games—Contributions to stated purpose—Sanctions. Bingo shall be conducted only as a social pastime or for fund-raising to support the stated purpose(s) of a charitable or nonprofit organization. Organizations licensed to conduct bingo games shall comply with the following procedures and limitations:

Contributions.

(1) To ensure that organizations licensed to conduct bingo games meet the intent of RCW 9.46.010 and provide funds adequate to promote charitable and nonprofit programs, such organizations shall not allow their bingo operation to award prizes or pay expenses to conduct bingo games that are excessive and all capital expenditures for the bingo operation that exceed six thousand dollars shall be specifically approved by the governing board.

An organization licensed to conduct bingo games shall ensure that the adjusted cash flow from the bingo operation available for its charitable and nonprofit programs is at least the following amount during each calendar year:

(a) For gross receipts above \$1,500,000 up to \$2,500,000 - 3% of gross receipts over \$1,500,000;

(b) For gross receipts above \$2,500,000 up to \$3,500,000 - \$30,000 plus 4% of gross receipts over \$2,500,000;

(c) For gross receipts above \$3,500,000 up to \$4,500,000 - \$70,000 plus 5% of gross receipts over \$3,500,000; and

(d) For gross receipts above \$4,500,000 - \$120,000 plus 6% of gross receipts over \$4,500,000.

(e) If the licensee does not operate for a full year, the requirements shall be prorated based on full quarters operated.

Definitions.

(2) The following definitions shall apply to this section:

(a) "Gross receipts" shall mean the combined gross gambling receipts from bingo, pull-tab and punch board activities.

(b) "Adjusted cash flow from the bingo operation" shall mean the combined gross income of the bingo operation less all prizes and expenses, whether paid or accrued. For the purposes of computing expenses, depreciation or amortization, shall not be considered an expense of the bingo operation.

(c) "Bingo operation" shall mean bingo games and all associated activities conducted in conjunction with bingo games at the same location including punch boards, pull-tabs, snack bar, retail sales activities, rental of the bingo premises and drawings authorized under WAC 230-20-242.

Sanctions for failing to maintain a positive adjusted cash flow.

(3) To ensure a licensee maintains a positive cash flow and is not operating primarily for gambling purposes, adjusted cash flow shall be measured quarterly. If a licensee does not maintain a positive cash flow from the bingo operation during any two consecutive calendar quarters, measured

independently, the director shall summarily suspend the organization's bingo license.

Sanctions for failing to meet adjusted cash flow requirements - relief.

(4)(a) If a bingo licensee fails to meet the adjusted cash flow requirements of subsection (1) of this section for any calendar year, administrative action shall be taken to revoke the organization's bingo license: Provided, That if a licensee fails to meet the minimum adjusted cash flow requirements for any calendar year and has maintained a positive cash flow as required by subsection (3) of this section. The director shall automatically grant relief allowing a twenty-five percent reduction to the annual dollar amount of required adjusted cash flow in subsection (1) of this section, for the year in which the licensee is out of compliance;

(b) No organization granted relief under (a) of this subsection, shall be eligible to receive relief for any of the four calendar years following the calendar year for which the relief was granted; and

(c) ~~((Relief may be granted under (a) of this subsection for the calendar year beginning January 1, 2003.))~~ For the calendar year 2006, the director shall automatically grant relief allowing up to a fifty percent reduction to the annual dollar amount of required adjusted cash flow in subsection (1) of this section.

WSR 06-24-032

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed November 29, 2006, 4:37 p.m.]

Continuance of WSR 06-21-109.

Preproposal statement of inquiry was filed as WSR 06-13-054.

Title of Rule and Other Identifying Information: The board of registration for architects is proposing changes to WAC 308-12-010 State board of registration for architects, 308-12-025 Application for examination, 308-12-050 Registration by reciprocity, 308-12-081 The seal, 308-12-115 Definitions, and 308-12-320 Renewal of license.

The board is proposing adding WAC 308-12-111 Board member rules of conduct—Activities incompatible with public duties—Financial interests in transactions, 308-12-180 Brief adjudicative proceedings, and 308-12-190 Records required for the brief adjudicative proceeding.

The board is proposing the repeal of WAC 308-12-210 Application of brief adjudicative proceedings and 308-12-220 Preliminary record in brief adjudicative proceedings.

Hearing Location(s): Radisson Hotel Gateway Seattle-Tacoma Airport, 18118 International Boulevard, Seattle, WA 98118, phone (206) 219-6722, on December 6, 2006, at 7:00 p.m.

Date of Intended Adoption: December 19, 2006.

Submit Written Comments to: Written comments were already solicited for original hearing date scheduled for November 29, 2006.

Assistance for Persons with Disabilities: Contact Elizabeth Stancil, TTY (360) 664-8885 or (360) 664-6597.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To add clarity to rule language and to reflect a current course of the profession.

Statutory Authority for Adoption: RCW 18.96.060 Board—Rules—Quorum—Hearings.

Statute Being Implemented: RCW 18.96.060 Board—Rules—Quorum—Hearings.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Brett W. Lorentson, 405 Black Lake Boulevard S.W., Olympia, WA 98501-9045, (360) 664-1576; Implementation: Lorin Doyle, 405 Black Lake Boulevard S.W., Olympia, WA 98501-9045, (360) 664-1387; and Enforcement: Joe Vincent, Jr., 405 Black Lake Boulevard S.W., Olympia, WA 98501-9045, (360) 664-1386.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not disproportionately affect small business.

A cost-benefit analysis is not required under RCW 34.05.328. The department of licensing is not one of the named agencies that must comply with this statute.

November 29, 2006

Joe Vincent, Jr.
Administrator

WSR 06-24-046

PROPOSED RULES

WASHINGTON STATE PATROL

[Filed December 1, 2006, 10:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-21-028.

Title of Rule and Other Identifying Information: Public records compliance, WAC 446-10-010 through 446-10-150.

Hearing Location(s): General Administration Building, Commercial Vehicle Division Conference Room, 210 11th Avenue S.W., Room G21, Olympia, WA 98504, (360) 753-5467, on January 10, 2007, at 11:30 a.m.

Date of Intended Adoption: January 11, 2007.

Submit Written Comments to: Gretchen Dolan, P.O. Box 42631, Olympia, WA 98504-2631, e-mail Gretchen.dolan@wsp.wa.gov, fax (360) 753-0234, by January 9, 2007.

Assistance for Persons with Disabilities: Contact Gretchen Dolan by January 9, 2007, (360) 753-5467.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To provide information to records requestors and state and local agencies about "best practices" for complying with the Public Records Act, RCW 42.56.040 through 42.56.570. The model rules will establish a culture of compliance among agencies and culture of cooperation among requestors by standardizing best practices throughout the state. The WSP WAC rules are

outdated and in an effort to comply with the wishes of the 2005 legislature we wish to modify them to more closely resemble the attorney general model rules, and update agency rules regarding disclosure of public records.

Statutory Authority for Adoption: RCW 42.56.040 through 42.56.570.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Ms. Gretchen Dolan, Washington State Patrol, Public Disclosure Section, P.O. Box 42631, Olympia, WA 98504-2631, (360) 753-5467.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328.

November 30, 2006

John R. Batiste
Chief

AMENDATORY SECTION (Amending Order 79-2, filed 3/23/79)

WAC 446-10-010 Authority and purpose. ~~((The purpose of this chapter shall be to ensure compliance by the Washington state patrol with the provisions of chapter 1, Laws of 1973 (Initiative 276) [chapter 42.17 RCW], Disclosure Campaign finances Lobbying Records; and in particular with subsections 25-32 of that act, dealing with public records.))~~ (1) RCW 42.56.070(1) requires each agency to make available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public record" to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the agency. RCW 42.56.070(2) requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act (the act), that exempts or prohibits the disclosure of public records held by that agency.

(2) The purpose of these rules is to establish the procedures the Washington state patrol shall follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the Washington state patrol and establish processes for both requestors and Washington state patrol staff that are designed to best assist members of the public in obtaining such access.

(3) The purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. In carrying out its responsibilities under the act, the Washington state patrol shall be guided by the provisions of the act describing its purposes and interpretation.

AMENDATORY SECTION (Amending WSR 95-24-041, filed 11/30/95, effective 12/31/95)

WAC 446-10-030 Description of central and field organizations of the Washington state patrol. (1) The Washington state patrol is a law enforcement agency (~~and service~~). The (~~administrative offices of the department and its staff are located~~) Washington state patrol is headquartered in the General Administration Building, 210 - 11th Avenue S.W., Olympia, Washington 98504. The department has eight district headquarters with working addresses as follows:

District	I	- 2502 112th Street East, Tacoma 98445-5104
District	II	- 2803 - 156th Avenue S. E., Bellevue 98007
District	III	- 2715 Rudkin Road, Union Gap 98903
District	IV	- West 6403 Rowand Road, Spokane 99204-5300
District	V	- ((605 East Evergreen Boulevard, Vancouver 98661-3812)) <u>11018 N.E. 51st Circle, Vancouver 98682-3812</u>
District	VI	- 2822 Euclid Avenue, Wenatchee 98801-5916
District	VII	- 2700 116th Street N.E., Marysville 98271-9425
District	VIII	- 4811 Werner Road, Bremerton 98312-3333

(2) Any person wishing to request access to public records of the Washington state patrol, or seeking assistance in making such a request, shall contact the public records officer of the Washington state patrol:

Public Records Officer
Washington State Patrol
P.O. Box 42631
Olympia, WA 98504
Phone: 360-753-5467
Fax: 360-753-0234
E-mail: pubrecs@wsp.wa.gov

Information is also available at the Washington state patrol's web site at <http://www.wsp.wa.gov/>.

(3) The public records officer shall oversee compliance with the act, but another Washington state patrol staff member may process the request. Therefore, these rules shall refer to the public records officer "or designee." The public records officer or designee and the Washington state patrol shall provide the "fullest assistance" to requestors: create and maintain for use by the public and Washington state patrol officials an index to public records of the Washington state patrol; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the Washington state patrol.

AMENDATORY SECTION (Amending Order 79-2, filed 3/23/79)

WAC 446-10-050 Availability of public records ((available)). ((All public records of the department, as defined in WAC 446-10-020(1), are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by section 31, chapter 1, Laws of 1973, and WAC 446-10-100.)) (1) **Hours for inspection of records.** Public records are available for inspection and copying during normal business hours of the Washington state patrol; 8:00 a.m. to noon, and 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. Records must be inspected at the offices of the Washington state patrol.

(2) **Records index.** An index of public records is available for use by members of the public. The index includes a list of current manuals of the Washington state patrol, a current list of laws, other than those listed in chapter 42.56 RCW, that exempts or prohibits disclosure of specific information or records, and current *Washington Administrative Code* agency rules. The index may be accessed on-line at www.wsp.wa.gov/, or at any public Washington state patrol office.

(3) **Organization of records.** The Washington state patrol shall maintain its records in a reasonably organized manner. The Washington state patrol shall take reasonable actions to protect records from damage and disorganization. A requestor shall not take Washington state patrol records from Washington state patrol offices without the permission of the public records officer or designee. Records may be available on the Washington state patrol web site at www.wsp.wa.gov/. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(4) **Making a request for public records.**

(a) Any person wishing to inspect or obtain copies of public records of the Washington state patrol shall make the request in writing using the Washington state patrol request form, or by letter, fax, or e-mail addressed to the public records officer. Each request should include the following information:

- Name of requestor;
- Address of requestor;
- Other contact information, including telephone number and/or any e-mail address; and
- Identification of the public records adequate for the public records officer or designee to locate the records.

(b) If the requestor wishes to inspect rather than obtain copies of records, they shall indicate this preference in their request. Pursuant to WAC 446-10-090, standard photocopies shall be provided at fifteen cents per page, plus postage.

(c) A form is available for use by requestors on-line at www.wsp.wa.gov/.

AMENDATORY SECTION (Amending Order 79-2, filed 3/23/79)

WAC 446-10-080 Processing of requests for public records. ((In accordance with requirements of chapter 1, Laws of 1973 [chapter 42.17 RCW], that agencies prevent

unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such records may be obtained by members of the public upon compliance with the following procedures:

(1) If, after access to the departmental index, a particular record is desired and that record is not an item routinely available as a matter of public service, a request shall be made in writing upon a form prescribed by the department which shall be available at its administrative office. The form shall be presented to the public records officer or to any member of the department's staff if the public records officer is not available at the administrative office of the department during customary office hours. The request shall include the following information:

(a) The name and address of the person requesting the record;

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

(c) The nature of the request;

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

(e) If the requested matter is not identifiable by reference to the department's current index, an appropriate description of the record requested.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or staff member to whom the request is made to assist the member of the public in an appropriately identifying the public record requested.)) (1) **Providing "fullest assistance."** The Washington state patrol is charged by statute with adopting rules which provide for how it shall "provide full access to public records," "protect records from damage or disorganization," "prevent excessive interference with other essential functions of the agency," provide "fullest assistance" to requestors, and provide the "most timely possible action" on public records requests. The public records officer or designee shall process requests in the order they are received and allowing for the most requests to be processed in the most efficient manner.

(2) **Acknowledging receipt of request.** Within five business days of receipt of the request, the public records officer or designee shall do one or more of the following:

(a) Make the records available for inspection;

(b) Provide the requested records (or provide a bill for the records if applicable) to the requestor;

(c) Provide a reasonable estimate of when records shall be available; or

(d) Deny the request, and providing a statutory explanation as to the reason for the denial.

(3) **Consequences of failure to respond.** If the Washington state patrol does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer to determine the reason for the failure to respond.

(4) **Protecting rights of others.** In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public

records officer or designee may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. This notice is given so affected persons may seek an order from a court to prevent or limit the disclosure. The notice to the affected persons may include a copy of the request.

(5) **Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part. If the Washington state patrol believes that a record is exempt from disclosure and should be withheld, the public records officer or designee shall state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer or designee shall redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(6) **Inspection of records.**

(a) Consistent with other demands, the Washington state patrol shall provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document without approval from the public records officer or designee. The requestor shall indicate which documents he or she wishes the agency to copy.

(b) The requestor must claim or review the assembled records within thirty days of the Washington state patrol's notification to him or her that the records are available for inspection or copying. The agency shall notify the requestor in writing of this requirement and inform the requestor that he or she is to contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the Washington state patrol may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which may be processed as a new request.

(7) **Providing copies of records.** After inspection is complete or in lieu of inspection, the public records officer or designee shall make the requested copies or arrange for copying and provide them to the requestor.

(8) **Providing records in installments.** When the request is for a large number of records, the public records officer or designee may provide access for inspection and copying in installments, if he or she reasonably determines that it would be more practical to provide the records in that way. If, within thirty days, the requestor fails to inspect one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(9) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee shall indicate that the Washington state patrol has completed the request and provided all available (nonexempt) records.

(10) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or

final payment for the requested copies, the public records officer shall close the request and indicate to the requestor that the Washington state patrol has closed the request.

(11) **Later discovered documents.** If, after the Washington state patrol has informed the requestor that it has provided all available records, the Washington state patrol becomes aware of additional responsive documents existing at the time of the request, it shall promptly inform the requestor of the additional documents and provide them on an expedited basis.

AMENDATORY SECTION (Amending WSR 97-01-018, filed 12/9/96, effective 1/9/97)

WAC 446-10-090 ((Charge)) Costs for providing copies of public records. ((No fee shall be charged for the inspection of public records. The department shall charge a fee of fifteen cents per page of copy for providing copies of written public records and for use of the department copy and duplicating equipment, and actual costs for postage, mailing and shipping services. The department may charge the actual cost for providing copies of public records, including duplications of photographs, audio tapes, video tapes, diagrams and/or drawings of collision scenes. These charges are the amounts necessary to reimburse the department for its actual costs incident to such copying and mailing.

Payment for the copying of public records may be required by the department prior to the release of the documents to the requester. Only company checks, money orders, or personal checks will be accepted as payment. No cash shall be allowed.)) (1) **Costs for paper copies.** There is no fee charged for inspecting public records. A requestor may obtain standard black and white photocopies for fifteen cents per page. Before beginning to make copies, the public records officer or designee may estimate costs of copying the records, and may require a deposit of up to ten percent of all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The Washington state patrol shall not charge sales tax when it makes copies of public records.

(2) **Costs for electronic records.** The cost of electronic copies of records shall be the actual cost of the CD, DVD, audio or video tape, or disc.

(3) **Costs of mailing.** The Washington state patrol may also charge actual costs of mailing, including the cost of the shipping container.

(4) **Payment.** Payment may be made by check or money order only, payable to the Washington state patrol.

AMENDATORY SECTION (Amending Order 79-2, filed 3/23/79)

WAC 446-10-100 Exemptions. ((1) The department reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 446-10-080 is exempt under the provisions of section 31, chapter 1, Laws of 1973 [chapter 42.17 RCW].

(2) In addition, pursuant to section 26, chapter 1, Laws of 1973 [chapter 42.17 RCW], the department reserves the right to delete identifying details when it makes available or publishes any public record, in any cases when there is reason to believe that disclosures of such details would be an invasion of personal privacy protected by chapter 1, Laws of 1973 [chapter 42.17 RCW]. The public records officer will fully justify such deletion in writing.

(3) All denials of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.)

(1) The Public Records Act, chapter 42.56 RCW, provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. A list of statutes containing exemptions, outside the Public Records Act, that restrict the availability of some documents held by Washington state patrol for inspection and copying can be found in the Washington state patrol public records index which is available on-line at www.wsp.wa.gov/ or at any Washington state patrol public office.

(2) The Washington state patrol is prohibited by statute from disclosing lists of individuals for commercial purposes.

AMENDATORY SECTION (Amending Order 79-2, filed 3/23/79)

WAC 446-10-110 Review of denials of public records ((requests)). (1) Petition for internal administrative review of denial of access. Any person who objects to the initial denial or partial denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The ~~((written request))~~ petition shall ((specifically refer to)) include a copy of, or reasonably identify, the written statement by the public records officer or ((other staff member which constituted or accompanied the denial)) designee denying the request.

(2) ~~((Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the chief of the department. The chief shall immediately consider the matter and either affirm or reverse such denial or call a special meeting of the department as soon as legally possible to review the denial. In any case, the request shall be returned with a final decision within two business days following the original denial.))~~ Consideration of petition for review. The public records officer shall promptly provide the petition and any other relevant information to the chief or designee. The chief or designee shall immediately consider the petition and either affirm or reverse the denial within two business days following the Washington state patrol's receipt of the petition, or within such other time as the Washington state patrol and the requestor mutually agree upon.

(3) ~~((Administrative remedies shall not be considered exhausted until the department has returned the petition with a decision or until the close of the second business day following the denial of inspection, whichever occurs first.))~~

Review by the attorney general's office. Pursuant to RCW 42.56.530, if the Washington state patrol denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) Judicial review. Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative approval.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 446-10-020	Definitions.
WAC 446-10-060	Public records officer.
WAC 446-10-070	Office hours.
WAC 446-10-120	Protection of public records.
WAC 446-10-130	Records index.
WAC 446-10-140	Request for information.
WAC 446-10-150	Adoption of form.

WSR 06-24-047

PROPOSED RULES

WASHINGTON STATE PATROL

[Filed December 1, 2006, 10:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-21-112.

Title of Rule and Other Identifying Information: Equipment standards, chapter 204-10 WAC.

Hearing Location(s): General Administration Building, Commercial Vehicle Division Conference Room, 210 11th Avenue S.W., Room G21, Olympia, WA 98504, (360) 753-3697, on January 11, 2007, at 10:00.

Date of Intended Adoption: January 12, 2007.

Submit Written Comments to: Christine Fox, P.O. Box 42600, Olympia, WA 98504-2600, e-mail christine.fox@wsp.wa.gov, fax (360) 753-5496, by January 10, 2007.

Assistance for Persons with Disabilities: Contact Christine Fox by January 10, 2007, (360) 753-3697.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To update existing language with current Federal Motor Vehicle Safety Standards (FMVSS) 108 and add clarifying language in other sections. The amendments are a result of reviewing the WAC with current FMVSS.

Statutory Authority for Adoption: RCW 46.37.005.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Christine Fox, General

Administration Building, P.O. Box 42600, Olympia, WA 98504-2600, (360) 753-3697.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328.

November 30, 2006

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 99-18-027, filed 8/24/99, effective 9/24/99)

WAC 204-10-020 Lighting devices. Aftermarket neon lighting devices and other novelty lighting, including but not limited to lighting on tire stems or valves, windshield wipers or washer, under the vehicle body/carriage, door handles, trunk handles, and/or antenna may not be used on motor vehicles while they are in motion on public roadways.

(1) Federal Motor Vehicle Safety Standard (FMVSS) 108 and Society of Automotive Engineers (SAE) J 578 are hereby adopted by references as the standards for the following aftermarket lighting devices:

- (a) Headlamps
- (b) Taillamps
- (c) Stoplamps
- (d) License plate lamps
- (e) Turn signal lamps
- (f) Side marker lamps
- (g) Intermediate side marker lamps
- (h) Backup lamps
- (i) Identification lamps
- (j) Clearance lamps
- (k) Parking lamps
- (l) Reflex reflectors
- (m) Intermediate reflex reflectors
- (n) Intermediate side reflex reflectors
- (o) Intermediate side marker reflectors
- (p) Turn signal operating units
- (q) Turn signal flashers
- (r) Vehicular hazard warning signal operating units
- (s) Vehicular hazard warning signal flashers
- (t) Motorcycle headlamps
- (u) Center high mounted/third brake light

(2) Society of Automotive Engineers standards are hereby adopted by reference as the standard for the following lighting devices:

- (a) Fog lamps (SAE J583), aftermarket fog lamps shall be white to amber only
- (b) Fog tail lamps (SAE J1319)
- (c) Auxiliary driving lamps (SAE J581), shall be white only and are not intended to be used alone or with the lower beam of a standard headlamp system
- (d) ~~(Auxiliary low beam lamps (or auxiliary passing lamps) (SAE J582)~~
- ~~(e))~~ Spot lamps (SAE J591)
- ~~((f))~~ (e) Cornering lamps (SAE J852)
- ~~((g))~~ (f) Supplemental high-mounted stop and rear turn signal lamps (SAE J1957 and J2068)
- ~~((h))~~ (g) Side turn signal lamps (SAE J914)

~~((i))~~ (h) 360 degree emergency warning lamps (SAE J845)

~~((j))~~ (i) Flashing warning lamps for agricultural equipment (SAE J974)

~~((k))~~ (j) Flashing warning lamps for authorized emergency, maintenance, and service vehicles (SAE J595)

~~((l))~~ (k) Flashing warning lamp for industrial equipment (SAE J96)

~~((m))~~ ~~Warning lamp alternating flashers (J1054)~~

~~((n))~~ (l) Green lamp for use on volunteer fireman's private vehicle (SAE J595) - flashing warning lamps for authorized emergency, maintenance, and service vehicles.

~~((o))~~ (m) Color of the lens shall be green as that color is described in SAE Standard J578 (Color specifications for electric signal lighting devices) rather than red or amber as specified in SAE J595.

~~((p))~~ (n) Side cowl, fender, or running board courtesy lamps (SAE J575)

(3) Standards promulgated by the commission on equipment for the following lighting devices shall be as set forth in the Washington Administrative Code chapters as indicated:

(a) Deceleration alert lamp system (chapter 204-62 WAC)

(b) Headlamp modulator (chapter 204-78 WAC)

(c) Headlamp flashing system (chapter 204-80 WAC)

(d) School bus warning lamps (chapter ~~((204-74))~~ 204-74A WAC)

(e) Additional hazard strobe lamp. Municipal transit vehicles (as defined in RCW 46.04.355) may be equipped with a single additional hazard strobe lamp. Such lamps must meet the Class I requirements of SAE Standard J1318

(i) A clear lens strobe lamp, less than eight inches in height, may be mounted on the centerline of the roof in the rear one-half of the bus

(ii) The hazard strobe lamp will be activated by a switch independent of all other lamp switches. The hazard strobe lamp switch shall be plainly labeled and have a pilot lamp that shall indicate when the lamp is in operation

(iii) The use of a hazard strobe lamp is permitted only when the bus is occupied with passengers and one or more of the following conditions exist:

(A) The bus is in motion in inclement, sight obscuring conditions, including, but not limited to rain, fog, snow, and smoke;

(B) There is a need to improve the visibility of the bus when stopping, standing, or starting onto a highway or there is limited visibility caused by geographic hazards, such as winding roadways, hills, trees, etc.

The strobe lamp shall not be activated solely because of darkness.

WSR 06-24-049
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed December 1, 2006, 12:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-22-124.

Title of Rule and Other Identifying Information: Chapter 246-455 WAC, Hospital inpatient discharge information reporting, also known as comprehensive hospital abstract reporting system (CHARS).

Hearing Location(s): Radisson Hotel Gateway, 18118 International Boulevard, Seattle, WA 98188, on January 9, 2007, at 10:00 a.m.

Date of Intended Adoption: January 15, 2007.

Submit Written Comments to: Larry Hettick, 101 Israel Road S.E., P.O. Box 47814, Olympia, WA 98504-7914, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 664-8579, by January 8, 2007.

Assistance for Persons with Disabilities: Contact Larry Hettick by January 2, 2007, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule is a response to the pending revision to the federal Uniform Billing Form (UB-04)/Centers for Medicare and Medicaid Services (CMS) in the spring of 2007. CHARS utilizes this billing document as the source of information and the rule needs to reflect the federal changes. Through stakeholder input over the past year, the list of data elements collected from hospitals will increase to provide more complete data. Included in the current rule is a list of required data elements and definitions. Only definitions unique to Washington state will remain in the rule, while the federally defined elements will be available in the CHARS procedure manual.

Reasons Supporting Proposal: This rule provides for the collection of hospital information pertaining to every inpatient hospital discharge in the state. This information is the only comprehensive dataset available for all hospital inpatients in the state of Washington. Therefore, it is widely used by the department of health, other Washington state agencies, hospitals, insurers, researchers, consumers, consultants, and other states. The expanded data elements will provide a better tool for all users of this data set, while maintaining the security and integrity of the data.

Statutory Authority for Adoption: RCW 43.70.040 and 43.70.052.

Statute Being Implemented: RCW 43.70.040 and 43.70.052.

Rule is necessary because of federal law, Administrative Simplification Compliance Act, Public Law 107-105 and 42 C.F.R. 424.32.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Larry Hettick, 101 Israel Road S.E., Tumwater, (360) 236-4210.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Per RCW 19.85.030 [(1)](a) the proposed rule will not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is not required under RCW 34.05.328. Per RCW 34.05.328 (5)(b)(iii), the rule does not impose more stringent performance requirements on private

entities than on public entities unless required to do so by federal or state law.

December 1, 2006

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 03-13-029, filed 6/10/03, effective 7/11/03)

WAC 246-455-001 Purpose. This chapter is adopted by the Washington state department of health pursuant to RCW 43.70.040, 43.70.052, and 70.170.010 relating to the collection and maintenance of patient discharge data, including data necessary for identification of discharges by diagnosis-related groups.

AMENDATORY SECTION (Amending WSR 03-13-029, filed 6/10/03, effective 7/11/03)

WAC 246-455-010 Definitions. As used in this chapter, unless the context requires otherwise,

- (1) "Department" means department of health.
- (2) "Diagnosis-related groups" is a classification system that groups hospital patients according to principal and secondary diagnosis, presence or absence of a surgical procedure, age, presence or absence of significant comorbidities or complications, and other relevant criteria.
- (3) "Hospital" means any health care institution which is required to qualify for a license under RCW 70.41.020(2); or as a psychiatric hospital under chapter 71.12 RCW.
- (4) ~~((Uniform Billing "UB-92/UB-02 data set" means the data element specifications developed by the National Uniform Billing Committee which can be found at www.NUBC.org;~~
- (5) ~~"Patient discharge" means the termination of an inpatient admission or stay, including an admission as a result of a birth, in a Washington hospital.~~
- (6) ~~"HMO" means a health maintenance organization.~~
- (7) ~~"SNF" means a skilled nursing facility.~~
- (8) ~~"HCF" means a health care facility.~~
- (9) ~~"HHA" means a home health agency.~~
- (10) ~~"IV" means intravenous.~~
- (11) ~~"UPIN" means unique physician identification number.~~
- (12) "CHARS" means comprehensive hospital abstract reporting system.
- (5) "CHARS Procedure Manual" means the written instructions for reporting hospital discharge data to the department.
- (6) "CHARS 837 Companion Guide" means the written technical guidelines for creating the ASC X12 837 Health Care Claim file for CHARS.
- (7) Uniform Billing "UB-92/UB-04 data set" means the data element specifications developed by the National Uniform Billing Committee which can be found at www.NUBC.org. The UB-92 specifications will be used until they are replaced by the UB-04 of the National Uniform Billing Committee. Data elements are completely defined in the *CHARS Procedure Manual* which may be obtained on the department's web site or by contacting the department.

(8) "Patient discharge" means the termination of an inpatient admission or observation stay, including an admission as a result of a birth, in a Washington hospital.

(9) "Office of Management and Budget" means a body within the Executive Office of the President of the United States which is tasked with coordinating United States Federal agencies and can be found at www.whitehouse.gov/OMB.

(10) "Individually identifiable health information" means any health information that can be linked or traced to an individual or family. It includes but is not limited to: Past, present and future health care; billings or payments for health care; physical or mental health conditions; and physical or mental health diagnosis.

(11) "Direct identifiers" means names and parts of names, Social Security numbers and parts of Social Security numbers, date of birth, admission date, exact discharge date, procedure date, nine-digit zip code and identifiers and patient control numbers assigned by a hospital for record retrieval.

(12) "Minimum necessary use" means that the use and disclosure of individually identifiable health information will be limited to the minimum amount necessary to accomplish the authorized purpose.

(13) "Data sharing agreement" means a signed agreement between government agencies, or researchers having an Institutional Review Board approval for transmitting, receiving and using records containing individually identifiable health information. Sharing such records requires each agency to have independent statutory authority to receive and disclose the information. The agreement specifies, at a minimum, what information will be exchanged, and the conditions or restrictions under which the information will be used and protected.

AMENDATORY SECTION (Amending WSR 03-13-029, filed 6/10/03, effective 7/11/03)

WAC 246-455-020 Reporting of UB-92/UB-04 data set information. (1) Effective ((with)) for all hospital patient discharges on or after April 1, 1994, hospitals shall collect and report the following UB-92 or ((UB-02)) UB-04 data set elements to the department:

(a) Patient control number

Patient's unique alpha-numeric number assigned by the hospital to facilitate retrieval of individual patient records((- This number should be constructed to allow prompt hospital access to the patient's discharge record for data verification.))

(b) Type of bill

((This three-digit code requires 1 digit each, in the following sequence form: Type of facility, bill classification, frequency:

- Digit #1 must be "1" to indicate a hospital.
- Digit #2 must be a "1," a "2" or an "8" to indicate an inpatient.
- Digit #3 must be a "1" to indicate admit through discharge claim.))

(c) Medicare provider number

((This is the number assigned to the provider by Medicare.)) (UB-92), National Provider Identifier (UB-04), or department assigned identifier, as applicable

(d) Patient ((identifier

The patient identifier shall be composed of the first two letters of the patient's last name, the first two letters of the patient's first name, or one or two initials if no first name is available, or when the last name is a single letter add three letters of first name, and the patient's birthdate.)) last name (at least the first four letters)

(e) ((ZIP Code

Patient's five or nine digit ZIP Code. In the case of a foreign country, enter the first nine characters of the name.

(f) Birthdate

The patient's date of birth in MMDDYYYY format.

(g) Sex

Patient's sex in M/F format.

(h) Admission date

Admission date in MMDDYY format.

(i) Type of admission

This field is filled with one of the following codes:

- 1 Emergency
- 2 Urgent
- 3 Elective
- 4 Newborn

(j) Source of admission

This field is completed with one of the following codes:

- 1 Physician referral
- 2 Clinic referral
- 3 HMO referral
- 4 Transfer from another hospital
- 5 Transfer from a SNF
- 6 Transfer from another HCF
- 7 Emergency room
- 8 Court/law enforcement
- 9 Other

When type of admission is a "4 newborn," enter one of the following for source of admission:

- 1 Normal delivery
- 2 Premature delivery
- 3 Sick baby
- 4 Extramural birth
- 5 Multiple birth

(k) Patient status

Patient discharge disposition in one of the following codes:

- 01 Discharged home or self care
- 02 Discharged to another short-term general hospital
- 03 Discharged to SNF
- 04 Discharged to an ICF
- 05 Discharged to another type institution
- 06 Discharged to home under care of HHA
- 07 Left against medical advice

- 08 Discharged/transferred to home under care of home-IV provider
- 20 Expired

(l) Statement covers period

This is the beginning and ending dates for which the UB-92 covers.

(m) Revenue code

The Medicare required revenue code (as defined in the *UB-92 Procedure Manual*), which identifies a specific accommodation, ancillary service or billing calculation.

(n) Units of service

The Medicare required units of service (as defined in the *UB-92 Procedure Manual*) which provide a quantitative measure of services rendered by revenue category to or for the patient. Where no units of service are required by Medicare, the units of service may be those used by the hospital.

(o) Total charges by revenue code category

Total charges pertaining to the related revenue code.

(p) Payer identification #1

Enter the three-digit code that identifies the primary payer. The required code options include:

- 001 for Medicare
- 002 for Medicaid
- 004 for health maintenance organizations
- 006 for commercial insurance
- 008 for workers' compensation which includes state fund, self-insured employers, and labor and industries crime victims claims
- 009 for self pay
- 610 for health care service contractors, e.g., Blue Cross, county medical bureaus, Washington Physicians Service
- 625 for other sponsored patients, e.g., CHAMPUS, Indian health
- 630 charity care, as defined in chapter 70.170 RCW

(q) Payer identification #2

Same requirements as in payer identification #1. This field should only be completed when a secondary payer has been identified.

(r) Principal diagnosis code

ICD-9-CM code describing the principal diagnosis (the condition established after study to be chiefly responsible for causing the admission of the patient for care).

(s) Other diagnoses codes

ICD-9-CM codes identifying up to eight additional conditions that coexist at the time of admission, or develop subsequently, and which have an effect on the treatment received or the length of stay).

(t) Principal procedure code

The ICD-9-CM code that identifies the principal procedure performed during the patient admission.

(u) Other procedure codes

ICD-9-CM codes identifying up to five significant procedures other than the principal procedure performed during the admission.

(v) Attending physician identification

The UPIN number of the licensed physician who would normally be expected to certify and recertify the medical necessity of the services rendered and/or who has primary responsibility for the patient's medical care and treatment. For physicians who do not have a UPIN number, the state Medicaid number or the state license number should be used.

(w) Other physician identification

The UPIN number of the licensed physician who performed the principal procedure. For physicians who do not have a UPIN number, the state Medicaid number or the state license number should be used. If no principal procedure was performed, this field should be left blank.)) Patient first name (at least the first three letters)

(f) Patient middle initial

(g) Patient Social Security number (at least the last four digits)

(h) Patient zip code (U.S.A.)

(i) Patient country code (outside U.S.A.)

(j) Patient's date of birth

(k) Sex

(l) Admission date

(m) Type of admission

(n) Source of admission

(o) Patient discharge status

(p) Statement covers period (from - through)

(q) Revenue code

(r) Units of service

(s) Total charges

(t) Payer identification

(u) Principal diagnosis code

(v) Other diagnosis codes

(w) External cause of injury (ECI) code

(x) Principal procedure code

(y) Other procedure code

(z) Attending provider identifier (legacy ID for UB-92):

National Provider Identifier or legacy for UB-04 according to Centers for Medicare and Medicaid Services (CMS) schedule
(aa) Operating physician identifier (legacy ID for UB-92): National Provider Identifier or legacy for UB-04 according to CMS schedule, as applicable

(bb) Other provider identifiers (legacy ID for UB-92):

National Provider Identifier or legacy for UB-04 according to CMS schedule, as applicable

(cc) Admission hour

(dd) Race - per minimum Office of Management and Budget (OMB) standards

(ee) Ethnicity - per minimum OMB standards

(ff) Discharge hour

(gg) Procedure date

(hh) Present on admission status

(ii) Health care provider taxonomy code

(jj) Health care common procedure coding system (HCPCS)

(kk) Service date

(2) The hospital shall report all ((inpatients)) patient discharge data described in WAC 246-455-010 and 246-455-020 according to UB-92/UB-04 specifications unless noted otherwise. ((Each patient discharge must carry a separate, unique patient control number on a separate UB-92 record.

For example, a mother and her newborn require separate UB-92s, each with a separate, unique patient control number.)

AMENDATORY SECTION (Amending WSR 03-13-029, filed 6/10/03, effective 7/11/03)

WAC 246-455-040 Acceptable media for submission of data. Hospitals shall submit data in the form prescribed by the department in the *CHARS Procedure Manual and CHARS 837 Companion Guide*. Additional information not listed in WAC 246-455-020 may be required by the department to successfully process data submission files. ((A copy)) Copies of the CHARS Procedure Manual and CHARS 837 Companion Guide may be obtained on the department's web site or by contacting the department ((or on the department's web site)).

AMENDATORY SECTION (Amending WSR 94-12-090, filed 6/1/94, effective 7/2/94)

WAC 246-455-050 Time deadline for submission of data. ~~((The))~~ Hospitals shall submit data to the department or its designee within forty-five days following the end of each calendar month.

AMENDATORY SECTION (Amending WSR 03-13-029, filed 6/10/03, effective 7/11/03)

WAC 246-455-080 ~~((Confidentiality)) Security of the data.~~ ~~(1) The department and ((any of)) its contractors or agents shall maintain the confidentiality of any individually identifiable health information ((which may in any manner identify individual patients per)) as required by RCW 70.170.090 and federal Health Insurance Portability and Accountability Act standards.~~

~~((The following confidential data elements are not public data: Patient control number, patient identifier, patient birth date, admission date, discharge day, and nine digit ZIP code. The following data elements are public data: Patient's age at admission, discharge month and year, length of stay, and a five digit ZIP code.~~

~~Records containing confidential data elements may be disclosed for research purposes after approval from the Washington state institutional review board in accordance with RCW 42.48.020.)~~ ~~(2) The department shall institute security and system safeguards to prevent and detect unauthorized access, modification, or manipulation of individually identifiable health information. Accordingly, the safeguards will include:~~

~~(a) Documented formal procedures for handling the information;~~

~~(b) Physical safeguards to protect computer systems and other pertinent equipment from intrusion;~~

~~(c) Processes to protect, control and audit access to the information;~~

~~(d) Processes to protect the information from unauthorized access or disclosure when it is transmitted over communication networks;~~

~~(e) Processes to protect the information when it is physically moved from one location to another;~~

~~(f) Processes to ensure the information is encrypted when:~~

~~(i) It resides in an area that is readily accessible by individuals who are not authorized to access the information (e.g., shared network drives or outside the agency data centers);~~

~~(ii) It is stored in a format that is easily accessible by individuals who are not authorized to access the information (e.g., text files and spreadsheets);~~

~~(iii) It is stored on removable media, or portable devices (e.g., tapes, electronic disks, thumb drives, external hard drives, laptops and handheld devices).~~

AMENDATORY SECTION (Amending WSR 94-12-090, filed 6/1/94, effective 7/2/94)

WAC 246-455-090 ~~((Certification of data accuracy-)) Release of the data.~~ ~~((The department shall furnish each hospital a report of its quarterly discharge data contained in the department's discharge data system. The chief executive officer of the hospital shall, within fourteen calendar days of receipt of the report, certify that the information contained in the department's discharge data system is complete and accurate to within ninety-five percent of the total discharges and total charges experienced at the hospital during that quarter, or submit the necessary corrections to the data to permit such certification.))~~ ~~(1) To acknowledge the need to protect patient privacy, federal privacy rules are used as models for deidentification of individually identifiable health information and for minimum necessary disclosure of individually identifiable health information in the release of CHARS data.~~

~~(2) Direct identifiers will not be released to the public.~~

~~(3) Confidential data sets may contain all or portions of the confidential elements, including the most direct identifiers. Confidential data sets will be released under the following conditions:~~

~~(a) Data sets containing any of the direct identifiers will be constructed by applying the standard of inclusion of the minimum elements necessary for the recipient's project requirements.~~

~~(b) Research projects may receive these data sets following approval by Washington state institutional review board, and receipt of a signed data use agreement with the board and the department of health.~~

~~(c) Projects of state, local and federal agencies directly related to quality assurance or quality improvement of the data activities, hospitalization payment rate setting, program evaluation or public health surveillance may receive these data sets through a signed contract that includes a data use agreement.~~

~~The department reserves the right to determine whether a use is appropriate.~~

~~(4) The data sharing agreements for confidential data sets must include language which:~~

~~(a) Establishes who will use and receive the data set;~~

~~(b) Requires that the data not be used to identify or contact individuals;~~

~~(c) Requires appropriate safeguards to prevent the use or disclosure of the information other than as provided for in the agreement;~~

(d) Establishes the permitted use of the data set and excludes other uses;

(e) Requires immediate notification to DOH of any suspected security breach;

(f) Requires a report to DOH of any use or disclosure not permitted in the agreement;

(g) Contains penalties for violation of the agreement;

(h) Requires that the data set be destroyed or returned; and

(i) Requires all users, including contractors and subcontractors, to read the agreement, abide by its provisions and sign it.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-455-030 Reporting of E-Codes.

WSR 06-24-052
PROPOSED RULES
GAMBLING COMMISSION
[Filed December 1, 2006, 2:52 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-07-111.

Title of Rule and Other Identifying Information: New chapter 230-15 WAC.

Hearing Location(s): Red Lion Hotel, 2300 Evergreen Park Drive, Olympia, WA 98502, (360) 943-4000, on March 9, 2007, at 9:30 a.m.

Date of Intended Adoption: March 9, 2007.

Submit Written Comments to: Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504, e-mail Susana@wsgc.wa.gov, fax (360) 486-3625, by March 1, 2007.

Assistance for Persons with Disabilities: Contact Shirley Corbett by March 1, 2007, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The gambling commission is rewriting its rules manual using plain English techniques. The rules manual has been divided into sections and is being rewritten a section at a time. Attached are rules relating to card games. These rules are written in plain talk and now numbered as chapter 230-15 WAC. Any changes to rules that are more than a rewrite to plain English, substantive changes, are explained below (see reviser's note below).

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-

3446; and Enforcement: Sharon Reese, Deputy Director, Lacey, (360) 486-3452.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025, and/or the proposed rule change clarifies language of rules without changing the effect.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

November 29, 2006

Susan Arland

Rules Coordinator

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 07-01 issue of the Register.

WSR 06-24-059
PROPOSED RULES
HORSE RACING COMMISSION
[Filed December 4, 2006, 12:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-17-030.

Title of Rule and Other Identifying Information: WAC 260-70-680 Uniform classification guidelines.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98001, on January 11, 2007, at 9:30 a.m.

Date of Intended Adoption: January 11, 2007.

Submit Written Comments to: Douglas Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail dmoore@whrc.state.wa.us, fax (360) 459-6461, by January 8, 2007.

Assistance for Persons with Disabilities: Contact Patty Sorby by January 8, 2007, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend WAC 260-70-680 in clear language and to comply with the international model rules and/or the Racing Medication and Testing Consortium recommended guidelines.

Reasons Supporting Proposal: To separate the different medications into categories that reflect their ability to affect a racehorse's performance. This gives the commission information in assessing penalties for violations regarding medication violations.

Statutory Authority for Adoption: RCW 67.16.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting: Douglas Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert Leichner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

December 4, 2006

R. M. Leichner
Executive Secretary

AMENDATORY SECTION (Amending WSR 06-09-009, filed 4/10/06, effective 5/11/06)

WAC 260-70-680 Uniform classification guidelines.

((The following outline describes the types of substances placed in each category. This list shall be publicly posted in the offices of the official veterinarian and the racing secretary.

(1) Class 1

Opiates, opium derivatives, synthetic opioids, psychoactive drugs, amphetamines and U.S. Drug Enforcement Agency (DEA) scheduled I and II drugs. Also found in this class are drugs which are potent stimulants of the nervous system. Drugs in this class have no generally accepted medical use in the racehorse and their pharmacological potential for altering the performance of a race is very high.

(2) Class 2

Drugs in this category have a high potential for affecting the outcome of a race. Most are not generally accepted as therapeutic agents in the racehorse. Many are products intended to alter consciousness or the psychic state of humans, and have no approved or indicated use in the horse. Some, such as injectable local anesthetics, have legitimate use in equine medicine, but should not be found in a racehorse. The following groups of drugs are in this class:

- (a) Opiate partial agonists, or agonist antagonists;
- (b) Nonopiate psychotropic drugs, which may have stimulant, depressant, analgesic or neuroleptic effects;
- (c) Miscellaneous drugs which might have a stimulant effect on the central nervous system (CNS);
- (d) Drugs with prominent CNS depressant action;
- (e) Antidepressant and antipsychotic drugs, with or without prominent CNS stimulatory or depressant effects;
- (f) Muscle blocking drugs, which have a direct neuromuscular blocking action;
- (g) Local anesthetics which have a reasonable potential for use as nerve blocking agents (except procaine); and
- (h) Snake venoms and other biologic substances, which may be used as nerve blocking agents.

(3) Class 3

Drugs in this class may or may not have an accepted therapeutic use in the horse. Many are drugs that affect the cardiovascular, pulmonary and autonomic nervous systems. They all have the potential of affecting the performance of a racehorse. The following groups of drugs are in this class:

- (a) Drugs affecting the autonomic nervous system which do not have prominent CNS effects, but which do have prominent cardiovascular or respiratory system effects (bronchodilators are included in this class);
- (b) A local anesthetic, which has nerve blocking potential but also has a high potential for producing urine residue

levels from a method of use not related to the anesthetic effect of the drug (procaine);

- (c) Miscellaneous drugs with mild sedative action, such as the sleep inducing antihistamines;
- (d) Primary vasodilating/hypotensive agents; and
- (e) Potent diuretics affecting renal function and body fluid composition.

(4) Class 4

This category is comprised primarily of therapeutic medications routinely used in racehorses. These may influence performance, but generally have a more limited ability to do so. Groups of drugs assigned to this category include the following:

- (a) Nonopiate drugs which have a mild central analgesic effect;
- (b) Drugs affecting the autonomic nervous system, which do not have prominent CNS, cardiovascular or respiratory effects;
- (i) Drugs used solely as topical vasoconstrictors or decongestants;
- (ii) Drugs used as gastrointestinal antispasmodics;
- (iii) Drugs used to void the urinary bladder;
- (iv) Drugs with a major effect on CNS vasculature or smooth muscle of visceral organs.
- (v) Antihistamines, which do not have a significant CNS depressant effect (this does not include H1 blocking agents, which are listed in Class 5);
- (c) Mineralocorticoid drugs;
- (d) Skeletal muscle relaxants;
- (e) Anti-inflammatory drugs—those that may reduce pain as a consequence of their anti-inflammatory actions, which include:
 - (i) Nonsteroidal anti-inflammatory drugs (NSAIDs);
 - (ii) Corticosteroids (glucocorticoids); and
 - (iii) Miscellaneous anti-inflammatory agents.
- (f) Anabolic and/or androgenic steroids and other drugs;
- (g) Less potent diuretics;
- (h) Cardiac glycosides and antiarrhythmics including:
 - (i) Cardiac glycosides;
 - (ii) Antiarrhythmic agents (exclusive of lidocaine, bretylium and propranolol); and
 - (iii) Miscellaneous cardiotonic drugs.
- (i) Topical anesthetics—agents not available in injectable formulations;
- (j) Antidiarrheal agents; and
- (k) Miscellaneous drugs including:
 - (i) Expectorants with little or no other pharmacologic action;
 - (ii) Stomachics; and
 - (iii) Mucolytic agents.

(5) Class 5

Drugs in this category are therapeutic medications for which concentration limits have been established as well as certain miscellaneous agents. Included specifically are agents, which have very localized action only, such as anti-ulcer drugs and certain antiallergic drugs. The anticoagulant drugs are also included.)) This section classifies each drug, its trade name, and penalty class. This section will be posted in the offices of official veterinarian and the racing secretary.

The penalties for violation of this section will be found in WAC 260-84-090.

(1) Class 1

Class 1 drugs are stimulant and depressant drugs that have the highest potential to affect the performance of a horse, and have no generally accepted medical use. Many of these agents are Drug Enforcement Agency (DEA) Schedule II substances. These include the following drugs and their metabolites: Opiates, opium derivatives, synthetic opioids and psychoactive drugs, amphetamines and amphetamine-like drugs as well as related drugs, including but not limited to apomorphine, nikethamide, mazindol, pemoline, and pentylenetetrazol.

Drug	Trade Name	Penalty Class
<u>Alfentanil</u>	<u>Alfenta</u>	<u>A</u>
<u>Amphetamine</u>		<u>A</u>
<u>Anileridine</u>	<u>Leritine</u>	<u>A</u>
<u>Apomorphine</u>		<u>A</u>
<u>Benzylpiperazine (BZP)</u>		<u>A</u>
<u>Carfentanil</u>		<u>A</u>
<u>Cocaine</u>		<u>B</u>
<u>Dextromoramide</u>	<u>Palfium, Narcolo</u>	<u>A</u>
<u>Diamorphine</u>		<u>A</u>
<u>Endorphins</u>		<u>A</u>
<u>Enkephalins</u>		<u>A</u>
<u>Ethylmorphine</u>	<u>Dionin</u>	<u>A</u>
<u>Etorphine HCl</u>	<u>M99</u>	<u>A</u>
<u>Fentanyl</u>	<u>Sublimaze</u>	<u>A</u>
<u>Hydromorphone</u>	<u>Dilaudid</u>	<u>A</u>
<u>Hydroxyamphetamine</u>	<u>Paradrine</u>	<u>A</u>
<u>Levorphanol</u>	<u>Levo-Dremoran</u>	<u>A</u>
<u>Lofentanil</u>		<u>A</u>
<u>Mazindol</u>	<u>Sanorex</u>	<u>A</u>
<u>Meperidine</u>	<u>Demerol</u>	<u>A</u>
<u>Mephentermine</u>		<u>A</u>
<u>Metaraminol</u>	<u>Aramine</u>	<u>A</u>
<u>Methadone</u>	<u>Dolophine</u>	<u>A</u>
<u>Methamphetamine</u>	<u>Desoxyn</u>	<u>A</u>
<u>Methaqualone</u>	<u>Quaalude</u>	<u>A</u>
<u>Methylphenidate</u>	<u>Ritalin</u>	<u>A</u>
<u>Metopon (methyldihydro-morphinone)</u>		<u>A</u>
<u>Morphine</u>		<u>B</u>
<u>Nikethamide</u>	<u>Coramine</u>	<u>A</u>
<u>Oxycodone</u>	<u>Percodan</u>	<u>A</u>
<u>Oxymorphone</u>	<u>Numorphan</u>	<u>A</u>
<u>Pemoline</u>	<u>Cylert</u>	<u>A</u>
<u>Pentylenetetrazol</u>	<u>Metrazol, Nioric</u>	<u>A</u>
<u>Phenazocine</u>	<u>Narphen</u>	<u>A</u>

Drug	Trade Name	Penalty Class
<u>Phencyclidine (PCP)</u>	<u>Sernylan</u>	<u>A</u>
<u>Phendimetrazine</u>	<u>Bontril, etc.</u>	<u>A</u>
<u>Phenmetrazine</u>	<u>Preludin</u>	<u>A</u>
<u>Picrotoxin</u>		<u>A</u>
<u>Piritramide</u>		<u>A</u>
<u>Remifentanil</u>	<u>Ultiva</u>	<u>A</u>
<u>Strychnine</u>		<u>B</u>
<u>Sufentanil</u>	<u>Sufenta</u>	<u>A</u>

(2) Class 2

Class 2 drugs are drugs that have a high potential to affect the performance of a horse, but less of a potential than class 1 drugs. Class 2 drugs are either not generally accepted as therapeutic agents in racing horses, or are therapeutic agents that have a high potential for abuse.

Drug	Trade Name	Penalty Class
<u>Acecarbromal</u>		<u>A</u>
<u>Acetophenazine</u>	<u>Tindal</u>	<u>A</u>
<u>Adinazolam</u>		<u>A</u>
<u>Alcuronium</u>	<u>Alloferin</u>	<u>A</u>
<u>Alphaprodine</u>	<u>Nisentil</u>	<u>A</u>
<u>Alpidem</u>	<u>Anaxyl</u>	<u>A</u>
<u>Alprazolam</u>	<u>Xanax</u>	<u>A</u>
<u>Althesin</u>	<u>Saffan</u>	<u>A</u>
<u>Amisulpride</u>	<u>Solian</u>	<u>A</u>
<u>Amitriptyline</u>	<u>Elavil, Amitril, Endep</u>	<u>A</u>
<u>Amobarbital</u>	<u>Amytal</u>	<u>A</u>
<u>Amoxapine</u>	<u>Asendin</u>	<u>A</u>
<u>Amperozide</u>		<u>A</u>
<u>Anilopam</u>	<u>Anisine</u>	<u>A</u>
<u>Aprobarbital</u>	<u>Alurate</u>	<u>A</u>
<u>Azacylonol</u>	<u>Frenque</u>	<u>A</u>
<u>Azaperone</u>	<u>Stresnil, Suicalm, Fentaz (with Fentanyl)</u>	<u>A</u>
<u>Barbital</u>	<u>Veronal</u>	<u>A</u>
<u>Barbiturates</u>		<u>A</u>
<u>Bemegrade</u>	<u>Megimide, Mikedimide</u>	<u>A</u>
<u>Benperidol</u>		<u>A</u>
<u>Bentazepam</u>	<u>Tiadipona</u>	<u>A</u>
<u>Benzactizine</u>	<u>Deprol, Bronchodiletten</u>	<u>A</u>
<u>Benzoctamine</u>		<u>A</u>
<u>Benzodiazepines</u>		<u>A</u>
<u>Benzphetamine</u>	<u>Didrex</u>	<u>A</u>

Drug	Trade Name	Penalty Class
<u>Benzotropine</u>	<u>Cogentin</u>	<u>A</u>
<u>Biriperone</u>		<u>A</u>
<u>Bromazepam</u>	<u>Lexotan, Lecto- pam</u>	<u>A</u>
<u>Bromisovalum</u>	<u>Diffucord, etc.</u>	<u>A</u>
<u>Bromocriptine</u>	<u>Parlodel</u>	<u>A</u>
<u>Bromperidol</u>	<u>Bromidol</u>	<u>A</u>
<u>Brotizolam</u>	<u>Brotocol</u>	<u>A</u>
<u>Bupivacaine</u>	<u>Marcaine</u>	<u>A</u>
<u>Buprenorphine</u>	<u>Temgesic</u>	<u>A</u>
<u>Buspirone</u>	<u>Buspar</u>	<u>A</u>
<u>Buspropion</u>	<u>Wellbutrin</u>	<u>A</u>
<u>Butabarbital (Secbuto- barbitone)</u>	<u>Butacaps, Buta- sol, etc.</u>	<u>A</u>
<u>Butalbital (Talbutal)</u>	<u>Fiorinal</u>	<u>A</u>
<u>Butanilicaine</u>	<u>Hostacain</u>	<u>A</u>
<u>Butaperazine</u>	<u>Repoise</u>	<u>A</u>
<u>Butoctamide</u>	<u>Listomin</u>	<u>A</u>
<u>Caffeine</u>		<u>B</u>
<u>Camazepam</u>	<u>Paxor</u>	<u>A</u>
<u>Captodiamine</u>	<u>Covatine</u>	<u>A</u>
<u>Carbidopa + levodopa</u>	<u>Sinemet</u>	<u>A</u>
<u>Carbromol</u>	<u>Mifudorm</u>	<u>A</u>
<u>Carphenazine</u>	<u>Proketazine</u>	<u>A</u>
<u>Carpipramine</u>	<u>Prazinil</u>	<u>A</u>
<u>Chloralose (Alpha- Chloralose)</u>		<u>A</u>
<u>Chloral betaine</u>	<u>Beta-Chlor</u>	<u>A</u>
<u>Chloral hydrate</u>	<u>Nactec, Oridrate, etc.</u>	<u>A</u>
<u>Chloraldehyde (chloral)</u>		<u>A</u>
<u>Chlordiazepoxide</u>	<u>Librium</u>	<u>A</u>
<u>Chlormezanone</u>	<u>Trancopal</u>	<u>A</u>
<u>Chloroform</u>		<u>A</u>
<u>Chlorhexidol</u>		<u>A</u>
<u>Chloroprocaine</u>	<u>Nesacaine</u>	<u>A</u>
<u>Chlorproethazine</u>	<u>Newiplege</u>	<u>A</u>
<u>Chlorpromazine</u>	<u>Thorazine, Lar- gactil</u>	<u>A</u>
<u>Chlorprothixene</u>	<u>Taractan</u>	<u>A</u>
<u>Citalopram</u>	<u>Celex</u>	<u>A</u>
<u>Clobazam</u>	<u>Urbanyl</u>	<u>A</u>
<u>Clocapramine</u>		<u>A</u>
<u>Clomethiazole</u>		<u>A</u>
<u>Clomipramine</u>	<u>Anafranil</u>	<u>A</u>
<u>Clonazepam</u>	<u>Klonopin</u>	<u>A</u>
<u>Clorazepate</u>	<u>Tranxene</u>	<u>A</u>

Drug	Trade Name	Penalty Class
<u>Clothiapine</u>	<u>Entermin</u>	<u>A</u>
<u>Clotiazepam</u>	<u>Trecalmo, Rize</u>	<u>A</u>
<u>Cloxazolam</u>	<u>Enadel, Sepazon, Tolestan</u>	<u>A</u>
<u>Clozapine</u>	<u>Clozaril, Leponex</u>	<u>A</u>
<u>Codeine</u>		<u>A</u>
<u>Conorphone</u>		<u>A</u>
<u>Corticaine</u>	<u>Ultracain</u>	<u>A</u>
<u>Crotetamide</u>		<u>A</u>
<u>Cyamemazine</u>	<u>Tercian</u>	<u>A</u>
<u>Cyclobarbital</u>	<u>Phanodorm</u>	<u>A</u>
<u>Decamethonium</u>	<u>Syncurine</u>	<u>A</u>
<u>Demoxepam</u>		<u>A</u>
<u>Desipramine</u>	<u>Norpromine, Pertofrane</u>	<u>A</u>
<u>Dezocine</u>	<u>Dalgan®</u>	<u>A</u>
<u>Diazepam</u>	<u>Valium</u>	<u>B</u>
<u>Dichloralphenazone</u>	<u>Febenol, Isocom</u>	<u>A</u>
<u>Diethylpropion</u>	<u>Tepanil, etc.</u>	<u>A</u>
<u>Diethylthiambutene</u>	<u>Themalon</u>	<u>A</u>
<u>Dihydrocodeine</u>	<u>Parcodin</u>	<u>A</u>
<u>Dilorazepam</u>	<u>Briantum</u>	<u>A</u>
<u>Diprenorphine</u>	<u>M50/50</u>	<u>A</u>
<u>Dixyrazine</u>	<u>Esucos</u>	<u>A</u>
<u>Dopamine</u>	<u>Intropin</u>	<u>A</u>
<u>Doxapram</u>	<u>Dopram</u>	<u>A</u>
<u>Doxefazepam</u>	<u>Doxans</u>	<u>A</u>
<u>Doxepin</u>	<u>Adapin, Sinequan</u>	<u>A</u>
<u>Droperidol</u>	<u>Inapsine, Drolep- tan, Innovar-Vet (with Fentanyl)</u>	<u>A</u>
<u>Enciprazine</u>		<u>A</u>
<u>Ephedrine</u>		<u>A</u>
<u>Epinephrine</u>		<u>A</u>
<u>Erythropoietin (EPO)</u>	<u>Epogen, Procrit, etc.</u>	<u>A</u>
<u>Estazolam</u>	<u>Domnamid, Euro- din, Nuctalon</u>	<u>A</u>
<u>Ethamivan</u>		<u>A</u>
<u>Ethchlorvynol</u>	<u>Placidyl</u>	<u>A</u>
<u>Ethinamate</u>	<u>Valmid</u>	<u>A</u>
<u>Ethopropazine</u>	<u>Parsidol</u>	<u>A</u>
<u>Ethylisobutrazine</u>	<u>Diquel</u>	<u>A</u>
<u>Etidocaine</u>	<u>Duranest</u>	<u>A</u>
<u>Etifoxin</u>	<u>Stresam</u>	<u>A</u>
<u>Etizolam</u>	<u>Depas, Pasaden</u>	<u>A</u>
<u>Etodroxizine</u>	<u>Indunox</u>	<u>A</u>

Drug	Trade Name	Penalty Class
<u>Etomidate</u>		<u>A</u>
<u>Fenarbamate</u>	<u>Tymium</u>	<u>A</u>
<u>Fenfluramine</u>	<u>Pondimin</u>	<u>A</u>
<u>Fluanisone</u>	<u>Sedalane</u>	<u>A</u>
<u>Fludiazepam</u>	<u>Erispam</u>	<u>A</u>
<u>Flunitrazepam</u>	<u>Rohypnol, Narcozep, Darkene, Hypnodorm</u>	<u>A</u>
<u>Fluopromazine</u>	<u>Psyquil, Siquil</u>	<u>A</u>
<u>Fluoresone</u>	<u>Caducid</u>	<u>A</u>
<u>Fluoxetine</u>	<u>Prozac</u>	<u>A</u>
<u>Flupenthixol</u>	<u>Depixol, Fluaxol</u>	<u>A</u>
<u>Fluphenazine</u>	<u>Prolixin, Permitil, Anatensol</u>	<u>A</u>
<u>Flurazepam</u>	<u>Dalmane</u>	<u>A</u>
<u>Fluspirilene</u>	<u>Imap, Redeptin</u>	<u>A</u>
<u>Flutoprazepam</u>	<u>Restas</u>	<u>A</u>
<u>Fluvoxamine</u>	<u>Dumirox, Faverin, etc.</u>	<u>A</u>
<u>Gallamine</u>	<u>Flaxedil</u>	<u>A</u>
<u>Gepirone</u>		<u>A</u>
<u>Glutethimide</u>	<u>Doriden</u>	<u>A</u>
<u>Halazepam</u>	<u>Paxipam</u>	<u>A</u>
<u>Haloperidol</u>	<u>Haldol</u>	<u>A</u>
<u>Haloxazolam</u>	<u>Somelin</u>	<u>A</u>
<u>Hemoglobin glutamers</u>	<u>Oxyglobin, Hemopure</u>	<u>A</u>
<u>Hexafluorenum</u>	<u>Myalexen</u>	<u>A</u>
<u>Hexobarbital</u>	<u>Evipal</u>	<u>A</u>
<u>Homophenazine</u>	<u>Pelvichthol</u>	<u>A</u>
<u>Hydrocodone (dihydrocodeinone)</u>	<u>Hycodan</u>	<u>A</u>
<u>Hydroxyzine</u>	<u>Atarax</u>	<u>B</u>
<u>Ibomal</u>	<u>Noctal</u>	<u>A</u>
<u>Imipramine</u>	<u>Imavate, Presamine, Tofranil</u>	<u>A</u>
<u>Isapirone</u>		<u>A</u>
<u>Isocarboxazid</u>	<u>Marplan</u>	<u>A</u>
<u>Isomethadone</u>		<u>A</u>
<u>Isoproterenol</u>	<u>Isoprel</u>	<u>A</u>
<u>Ketamine</u>	<u>Ketalar, Ketaset, Vetalar</u>	<u>B</u>
<u>Ketazolam</u>	<u>Anxon, Laftram, Solatran, Loftran</u>	<u>A</u>
<u>Lenperone</u>	<u>Elanone-V</u>	<u>A</u>
<u>Levomethorphan</u>		<u>A</u>
<u>Lidocaine</u>	<u>Xylocaine</u>	<u>B</u>

Drug	Trade Name	Penalty Class
<u>Lithium</u>	<u>Lithizine, Duralith, etc.</u>	<u>A</u>
<u>Lobeline</u>		<u>A</u>
<u>Loflazepate, Ethyl</u>	<u>Victan</u>	<u>A</u>
<u>Loprazolam</u>	<u>Dormonort, Havlane</u>	<u>A</u>
<u>Lorazepam</u>	<u>Ativan</u>	<u>A</u>
<u>Lormetazepam</u>	<u>Noctamid</u>	<u>A</u>
<u>Loxapine</u>	<u>Laxitane</u>	<u>A</u>
<u>Maprotiline</u>	<u>Ludiomil</u>	<u>A</u>
<u>Mebutamate</u>	<u>Axiten, Dormate, Capla</u>	<u>A</u>
<u>Meclofenoxate</u>	<u>Lucidril, etc.</u>	<u>A</u>
<u>Medazepam</u>	<u>Nobrium, etc.</u>	<u>A</u>
<u>Melperone</u>	<u>Eunerpan</u>	<u>A</u>
<u>Meparfynol</u>	<u>Oblivon</u>	<u>A</u>
<u>Mepazine</u>	<u>Pacatal</u>	<u>A</u>
<u>Mephenoqualone</u>	<u>Control, etc.</u>	<u>A</u>
<u>Mephentoin</u>	<u>Mesantoin</u>	<u>A</u>
<u>Mephobarbital (Methylphenobarbital)</u>	<u>Mebaral</u>	<u>A</u>
<u>Mepivacaine</u>	<u>Carbocaine</u>	<u>B</u>
<u>Meprobamate</u>	<u>Equanil, Miltown</u>	<u>A</u>
<u>Mesoridazine</u>	<u>Serentil</u>	<u>A</u>
<u>Metaclazepam</u>	<u>Talis</u>	<u>A</u>
<u>Metazocine</u>		<u>A</u>
<u>Metharbital</u>	<u>Gemonil</u>	<u>A</u>
<u>Methohexital</u>	<u>Brevital</u>	<u>A</u>
<u>Methotrimeprazine</u>	<u>Levoprome, Neurocil, etc.</u>	<u>A</u>
<u>Methypylon</u>	<u>Noludar</u>	<u>A</u>
<u>Metocurine</u>	<u>Metubine</u>	<u>A</u>
<u>Metomidate</u>	<u>Hypnodil</u>	<u>A</u>
<u>Mexazolam</u>	<u>Melex</u>	<u>A</u>
<u>Midazolam</u>	<u>Versed</u>	<u>A</u>
<u>Mirtazepine</u>	<u>Remeron</u>	<u>A</u>
<u>Modafinil</u>	<u>Provigil</u>	<u>A</u>
<u>Molindone</u>	<u>Moban</u>	<u>A</u>
<u>Moperone</u>	<u>Luvatren</u>	<u>A</u>
<u>Mosaprimine</u>		<u>A</u>
<u>Nalbuphine</u>	<u>Nubain</u>	<u>A</u>
<u>Nalorphine</u>	<u>Nalline, Lethidrone</u>	<u>A</u>
<u>Nefazodone</u>	<u>Serzone</u>	<u>A</u>
<u>Nimetazepam</u>	<u>Erimin</u>	<u>A</u>
<u>Nitrazepam</u>	<u>Mogadon</u>	<u>A</u>

Drug	Trade Name	Penalty Class
<u>Nordiazepam</u>	<u>Calmday, Nordaz, etc.</u>	<u>A</u>
<u>Norepinephrine</u>		<u>A</u>
<u>Nortriptyline</u>	<u>Aventyl, Pamelor</u>	<u>A</u>
<u>Olanzapine</u>	<u>Zyprexa</u>	<u>A</u>
<u>Oxazepam</u>	<u>Serax</u>	<u>A</u>
<u>Oxazolam</u>	<u>Serenal</u>	<u>A</u>
<u>Oxyperitine</u>	<u>Forit, Integrin</u>	<u>A</u>
<u>Pancuronium</u>	<u>Pavulon</u>	<u>A</u>
<u>Paraldehyde</u>	<u>Paral</u>	<u>A</u>
<u>Paroxetine</u>	<u>Paxil, Seroxat</u>	<u>A</u>
<u>Penfluridol</u>	<u>Cyperon</u>	<u>A</u>
<u>Pentobarbital</u>	<u>Nembutal</u>	<u>A</u>
<u>Perazine</u>	<u>Taxilan</u>	<u>A</u>
<u>Periciazine</u>	<u>Alodept, etc.</u>	<u>A</u>
<u>Perlapine</u>	<u>Hypnodin</u>	<u>A</u>
<u>Perphenazine</u>	<u>Trilafon</u>	<u>A</u>
<u>Phenaglycodol</u>	<u>Acalo, Alcamid, etc.</u>	<u>A</u>
<u>Phenelzine</u>	<u>Nardelzine, Nardil</u>	<u>A</u>
<u>Phenobarbital</u>	<u>Luminal</u>	<u>A</u>
<u>Phentermine</u>	<u>Iomamin</u>	<u>A</u>
<u>Piminodine</u>	<u>Alvodine, Cima-don</u>	<u>A</u>
<u>Pimozide</u>	<u>Orap</u>	<u>A</u>
<u>Pinazepam</u>	<u>Domar</u>	<u>A</u>
<u>Pipamperone</u>	<u>Dipiperon</u>	<u>A</u>
<u>Pipequaline</u>		<u>A</u>
<u>Piperacetazine</u>	<u>Psymod, Quide</u>	<u>A</u>
<u>Piperocaine</u>	<u>Metycaine</u>	<u>A</u>
<u>Pipotiazine</u>	<u>Lonseren, Piportil</u>	<u>A</u>
<u>Pipradrol</u>	<u>Dataril, Gerondyl, etc.</u>	<u>A</u>
<u>Piquindone</u>		<u>A</u>
<u>Prazepam</u>	<u>Verstran, Centrax</u>	<u>A</u>
<u>Prilocaine</u>	<u>Citanest</u>	<u>A</u>
<u>Prochlorperazine</u>	<u>Darbazine, Compazine</u>	<u>A</u>
<u>Propanidid</u>		<u>A</u>
<u>Propiomazine</u>	<u>Largon</u>	<u>A</u>
<u>Propionylpromazine</u>	<u>Tranvet</u>	<u>A</u>
<u>Propiram</u>		<u>A</u>
<u>Propofol</u>	<u>Diprivan, Disoprivan</u>	<u>A</u>
<u>Propoxycaine</u>	<u>Ravocaine</u>	<u>A</u>
<u>Prothipendyl</u>	<u>Dominal</u>	<u>A</u>

Drug	Trade Name	Penalty Class
<u>Protriptyline</u>	<u>Concordin, Triptil</u>	<u>A</u>
<u>Proxibarbital</u>	<u>Axeen, Centralgol</u>	<u>A</u>
<u>Pyrrithyldione</u>	<u>Hybersulfan, Sonodor</u>	<u>A</u>
<u>Quazipam</u>	<u>Doral</u>	<u>A</u>
<u>Quetiapine</u>	<u>Seroquel</u>	<u>A</u>
<u>Racemethorphan</u>		<u>A</u>
<u>Racemorphan</u>		<u>A</u>
<u>Raclopride</u>		<u>A</u>
<u>Remoxipride</u>	<u>Roxiam</u>	<u>A</u>
<u>Reserpine</u>	<u>Serpasil</u>	<u>A</u>
<u>Rilmazafone</u>		<u>A</u>
<u>Risperidone</u>		<u>A</u>
<u>Ritanserin</u>		<u>A</u>
<u>Rivastigmine</u>	<u>Exelon</u>	<u>A</u>
<u>Romifidine</u>	<u>Sedivet</u>	<u>B</u>
<u>Ropivacaine</u>	<u>Naropin</u>	<u>A</u>
<u>Secobarbital (Quinalbarbitone)</u>	<u>Seconal</u>	<u>A</u>
<u>Selegiline</u>	<u>Eldepryl, Jumex</u>	<u>A</u>
<u>Sertraline</u>	<u>Lustral, Zoloft</u>	<u>A</u>
<u>Snake Venoms</u>		<u>A</u>
<u>Spiclomazine</u>		<u>A</u>
<u>Spiperone</u>		<u>A</u>
<u>Succinylcholine</u>	<u>Sucostrin, Quelin, etc.</u>	<u>A</u>
<u>Sulfondiethylmethane</u>		<u>A</u>
<u>Sulfonmethane</u>		<u>A</u>
<u>Sulforidazine</u>	<u>Inofal</u>	<u>A</u>
<u>Sulpiride</u>	<u>Aiglonyl, Sulpitil</u>	<u>A</u>
<u>Sultopride</u>	<u>Barnetil</u>	<u>A</u>
<u>Talbutal</u>	<u>Lotusate</u>	<u>A</u>
<u>Tandospirone</u>		<u>A</u>
<u>Temazepam</u>	<u>Restoril</u>	<u>A</u>
<u>Tetrabenazine</u>	<u>Nitoman</u>	<u>A</u>
<u>Tetracaine</u>	<u>Pontocaine</u>	<u>A</u>
<u>Tetrazepam</u>	<u>Musaril, Myolastin</u>	<u>A</u>
<u>Thebaine</u>		<u>A</u>
<u>Thialbarbital</u>	<u>Kemithal</u>	<u>A</u>
<u>Thiamylal</u>	<u>Surital</u>	<u>A</u>
<u>Thiethylperazine</u>	<u>Torecan</u>	<u>A</u>
<u>Thiopental</u>	<u>Pentothal</u>	<u>A</u>
<u>Thiopropazate</u>	<u>Dartal</u>	<u>A</u>
<u>Thioproperazine</u>	<u>Majeptil</u>	<u>A</u>
<u>Thioridazine</u>	<u>Mellaril</u>	<u>A</u>
<u>Thiothixene</u>	<u>Navane</u>	<u>A</u>

Drug	Trade Name	Penalty Class
<u>Tiaproide</u>	<u>Italprid, Luxoben, etc.</u>	<u>A</u>
<u>Tiletamine</u>	<u>Component of Telazol</u>	<u>A</u>
<u>Timiperone</u>	<u>Tolopelon</u>	<u>A</u>
<u>Tofisopam</u>	<u>Grandaxain, Seriel</u>	<u>A</u>
<u>Topirimate</u>	<u>Topamax</u>	<u>A</u>
<u>Tramadol</u>	<u>Ultram</u>	<u>A</u>
<u>Tranlycypromine</u>	<u>Parnate</u>	<u>A</u>
<u>Trazodone</u>	<u>Desyrel</u>	<u>A</u>
<u>Triazolam</u>	<u>Halcion</u>	<u>A</u>
<u>Tribromethanol</u>		<u>A</u>
<u>Tricaine methane-sulfonate</u>	<u>Finquel</u>	<u>A</u>
<u>Trichloroethanol</u>		<u>A</u>
<u>Trichloroethylene</u>	<u>Trilene, Trimar</u>	<u>A</u>
<u>Triclofos</u>	<u>Triclos</u>	<u>A</u>
<u>Trifluomeprazine</u>	<u>Nortran</u>	<u>A</u>
<u>Trifluoperazine</u>	<u>Stelazine</u>	<u>A</u>
<u>Trifluperidol</u>	<u>Triperidol</u>	<u>A</u>
<u>Triflupromazine</u>	<u>Vetame, Vesprin</u>	<u>A</u>
<u>Trimipramine</u>	<u>Surmontil</u>	<u>A</u>
<u>Tubocurarine (Curare)</u>	<u>Metubin</u>	<u>A</u>
<u>Tybamate</u>	<u>Benvil, Nospan, etc.</u>	<u>A</u>
<u>Urethane</u>		<u>A</u>
<u>Valnoctamide</u>	<u>Nirvanyl</u>	<u>A</u>
<u>Venlafaxine</u>	<u>Effexor</u>	<u>A</u>
<u>Veralipride</u>	<u>Accional, Veralipril</u>	<u>A</u>
<u>Vercuronium</u>	<u>Norcuron</u>	<u>A</u>
<u>Viloxazine</u>	<u>Catatrol, Vivalan, etc.</u>	<u>A</u>
<u>Vinbarbital</u>	<u>Delvinol</u>	<u>A</u>
<u>Vinylbital</u>	<u>Optanox, Speda</u>	<u>A</u>
<u>Yohimbine</u>		<u>A</u>
<u>Zolazepam</u>		<u>A</u>
<u>Zolpidem</u>	<u>Ambien, Stilnox</u>	<u>A</u>
<u>Zopiclone</u>	<u>Imovan</u>	<u>A</u>
<u>Zotepine</u>	<u>Lodopin</u>	<u>A</u>
<u>Zuclopenthixol</u>	<u>Ciatyl, Cesordinol</u>	<u>A</u>

(3) Class 3

Class 3 drugs are drugs that may or may not have generally accepted medical use in the racing horse, but the pharmacology of which suggests less potential to affect performance than class 2 drugs.

Drug	Trade Name	Penalty Class
<u>Acebutolol</u>	<u>Sectral</u>	<u>B</u>
<u>Acepromazine</u>	<u>Atrovet, Notensil, PromAce®</u>	<u>B</u>
<u>Albuterol (Salbutamol)</u>	<u>Proventil, Ventolin</u>	<u>B</u>
<u>Alprenolol</u>		<u>A</u>
<u>Ambenonium</u>	<u>Mytelase, Myeuran</u>	<u>B</u>
<u>Aminophylline</u>	<u>Aminophyllin, etc.</u>	<u>B</u>
<u>Amlodipine</u>	<u>Norvasc</u>	<u>A</u>
<u>Amyl nitrite</u>		<u>A</u>
<u>Arecoline</u>		<u>A</u>
<u>Atenolol</u>	<u>Tenormin</u>	<u>B</u>
<u>Atropine</u>		<u>B</u>
<u>Betaxolol</u>	<u>Kerlone</u>	<u>B</u>
<u>Bethanidine</u>	<u>Esbatal</u>	<u>A</u>
<u>Biperiden</u>	<u>Akineton</u>	<u>A</u>
<u>Bisoprolol</u>	<u>Zebeta, Bisobloc, etc.</u>	<u>B</u>
<u>Bitolterol</u>	<u>Effectin</u>	<u>A</u>
<u>Bretylium</u>	<u>Bretylol</u>	<u>B</u>
<u>Brimonidine</u>	<u>Alphagan</u>	<u>B</u>
<u>Bromfenac</u>	<u>Duract</u>	<u>A</u>
<u>Bromodiphenhydramine</u>		<u>B</u>
<u>Bumetanide</u>	<u>Bumex</u>	<u>B</u>
<u>Butorphanol</u>	<u>Stadol, Torbugesic</u>	<u>B</u>
<u>Candesartan</u>	<u>Atacand</u>	<u>B</u>
<u>Captopril</u>	<u>Capolen</u>	<u>B</u>
<u>Carazolol</u>	<u>Carbacel, Conductor</u>	<u>A</u>
<u>Carbachol</u>	<u>Lentin, Doryl</u>	<u>B</u>
<u>Carbamezapine</u>	<u>Tegretol</u>	<u>B</u>
<u>Carbinoxamine</u>	<u>Clistin</u>	<u>B</u>
<u>Carteolol</u>	<u>Cartrol</u>	<u>B</u>
<u>Carvedilol</u>	<u>Coreg</u>	<u>B</u>
<u>Cimeterol</u>		<u>A</u>
<u>Clenbuterol</u>	<u>Ventipulmin</u>	<u>B</u>
<u>Clonidine</u>	<u>Catapres</u>	<u>B</u>
<u>Cyclandelate</u>	<u>Cyclospasmol</u>	<u>A</u>
<u>Cycrimine</u>	<u>Pagitane</u>	<u>B</u>
<u>Detomidine</u>	<u>Dormosedan</u>	<u>B</u>
<u>Dextropropoxyphene</u>	<u>Darvon</u>	<u>B</u>
<u>Diazoxide</u>	<u>Proglycem</u>	<u>B</u>
<u>Dimeflin</u>		<u>A</u>
<u>Diphenhydramine</u>	<u>Benadryl</u>	<u>B</u>

Drug	Trade Name	Penalty Class
<u>Dipyridamole</u>	<u>Persantine</u>	<u>B</u>
<u>Dobutamine</u>	<u>Dobutrex</u>	<u>B</u>
<u>Doxylamine</u>	<u>Decapryn</u>	<u>B</u>
<u>Dyphylline</u>		<u>B</u>
<u>Edrophonium</u>	<u>Tensilon</u>	<u>B</u>
<u>Enalapril (metabolite enalaprilat)</u>	<u>Vasotec</u>	<u>B</u>
<u>Erthrityl tetranitrate</u>	<u>Cardilate</u>	<u>A</u>
<u>Esmolol</u>	<u>Brevibloc</u>	<u>B</u>
<u>Etamiphylline</u>		<u>B</u>
<u>Ethacrynic acid</u>	<u>Edecrin</u>	<u>B</u>
<u>Ethylnorepinephrine</u>	<u>Bronkephrine</u>	<u>A</u>
<u>Fenoldopam</u>	<u>Corlopam</u>	<u>B</u>
<u>Fenoterol</u>	<u>Berotec</u>	<u>B</u>
<u>Fenspiride</u>	<u>Respiride</u> <u>Respan, etc.</u>	<u>B</u>
<u>Flupirtine</u>	<u>Katadolone</u>	<u>A</u>
<u>Formoterol</u>	<u>Altram</u>	<u>B</u>
<u>Gabapentin</u>	<u>Neurontin</u>	<u>A</u>
<u>Glycopyrrolate</u>	<u>Robinul</u>	<u>B</u>
<u>Guanadrel</u>	<u>Hylorel</u>	<u>A</u>
<u>Guanethidine</u>	<u>Ismelin</u>	<u>A</u>
<u>Guanabenz</u>	<u>Wytensin</u>	<u>B</u>
<u>Heptaminol</u>	<u>Corofundol</u>	<u>B</u>
<u>Homatropine</u>	<u>Homapin</u>	<u>B</u>
<u>Hydralazine</u>	<u>Apresoline</u>	<u>B</u>
<u>Ipratropium</u>		<u>B</u>
<u>Irbesarten</u>	<u>Avapro</u>	<u>A</u>
<u>Isoetharine</u>	<u>Bronkosol</u>	<u>B</u>
<u>Isosorbide dinitrate</u>	<u>Isordil</u>	<u>B</u>
<u>Ketorolac</u>	<u>Toradol</u>	<u>A</u>
<u>Labetalol</u>	<u>Normodyne</u>	<u>B</u>
<u>Losartan</u>	<u>Hyzaar</u>	<u>B</u>
<u>Mabuterol</u>		<u>A</u>
<u>Mecamylamine</u>	<u>Inversine</u>	<u>B</u>
<u>Medetomidine</u>	<u>Domitor</u>	<u>B</u>
<u>Metaproterenol</u>	<u>Alupent, Metaprel</u>	<u>B</u>
<u>Methacholine</u>		<u>A</u>
<u>Methixene</u>	<u>Trest</u>	<u>A</u>
<u>Methoxamine</u>	<u>Vasoxyl</u>	<u>A</u>
<u>Methoxyphenamine</u>	<u>Orthoxide</u>	<u>A</u>
<u>Methylatropine</u>		<u>B</u>
<u>Methyldopa</u>	<u>Aldomet</u>	<u>A</u>
<u>Metolazone</u>		<u>B</u>
<u>Metoprolol</u>	<u>Lopressor</u>	<u>B</u>
<u>Mibefradil</u>	<u>Posicor</u>	<u>B</u>

Drug	Trade Name	Penalty Class
<u>Midodrine</u>	<u>Pro-Amiline</u>	<u>B</u>
<u>Minoxidil</u>	<u>Loniten</u>	<u>B</u>
<u>Moexipril (metabolite moexiprilat)</u>	<u>Uniretic</u>	<u>B</u>
<u>Muscarine</u>		<u>A</u>
<u>Nadolol</u>	<u>Corgard</u>	<u>B</u>
<u>Naratriptan</u>	<u>Amerge</u>	<u>B</u>
<u>Nefopam</u>		<u>A</u>
<u>Neostigmine</u>	<u>Prostigmine</u>	<u>B</u>
<u>Nitroglycerin</u>		<u>B</u>
<u>Oxprenolol</u>	<u>Trasicor</u>	<u>B</u>
<u>Papaverine</u>	<u>Pavagen, etc.</u>	<u>A</u>
<u>Paramethadione</u>	<u>Paradione</u>	<u>A</u>
<u>Pargyline</u>	<u>Eutonyl</u>	<u>A</u>
<u>Penbutolol</u>	<u>Levatol</u>	<u>B</u>
<u>Pentaerythritol tetranitrate</u>	<u>Duotrate</u>	<u>A</u>
<u>Pentazocine</u>	<u>Talwin</u>	<u>B</u>
<u>Phenoxybenzamine</u>	<u>Dibenzyline</u>	<u>B</u>
<u>Phentolamine</u>	<u>Regitine</u>	<u>B</u>
<u>Phenylephrine</u>	<u>Isophrin, Neo-Synephrine</u>	<u>B</u>
<u>Phenylpropanolamine</u>	<u>Propadrine</u>	<u>B</u>
<u>Physostigmine</u>	<u>Eserine</u>	<u>A</u>
<u>Pindolol</u>	<u>Viskin</u>	<u>B</u>
<u>Pirbuterol</u>	<u>Maxair</u>	<u>B</u>
<u>Piretanide</u>	<u>Arelix, Tauliz</u>	<u>B</u>
<u>Prazosin</u>	<u>Minipress</u>	<u>B</u>
<u>Primidone</u>	<u>Mysoline</u>	<u>B</u>
<u>Procaine</u>		<u>B</u>
<u>Procaterol</u>	<u>Pro Air</u>	<u>A</u>
<u>Procyclidine</u>	<u>Kemadrin</u>	<u>B</u>
<u>Promazine</u>	<u>Sparine</u>	<u>B</u>
<u>Promethazine</u>	<u>Phenergan</u>	<u>B</u>
<u>Propentophylline</u>	<u>Karsivan</u>	<u>B</u>
<u>Propranolol</u>	<u>Inderal</u>	<u>B</u>
<u>Protokylol</u>	<u>Ventaire</u>	<u>A</u>
<u>Pseudoephedrine</u>	<u>Cenafed, Novafed</u>	<u>B</u>
<u>Pyridostigmine</u>	<u>Mestinon</u> <u>Regonol</u>	<u>B</u>
<u>Pyrilamine</u>	<u>Neoantergan</u> <u>Equihist</u>	<u>B</u>
<u>Ractopamine</u>	<u>Raylean</u>	<u>B</u>
<u>Ritodrine</u>	<u>Yutopar</u>	<u>B</u>
<u>Rizatriptan</u>	<u>Maxalt</u>	<u>B</u>
<u>Salmeterol</u>		<u>B</u>
<u>Scopolamine (Hyoscine)</u>	<u>Triptone</u>	<u>B</u>

Drug	Trade Name	Penalty Class
<u>Sibutramine</u>	<u>Meridia</u>	<u>B</u>
<u>Sotalol</u>	<u>Betapace, Sotacor</u>	<u>B</u>
<u>Sumatriptan</u>	<u>Imitrex</u>	<u>B</u>
<u>Telmisartan</u>	<u>Micardis</u>	<u>B</u>
<u>Terbutaline</u>	<u>Brethine, Bricanyl</u>	<u>B</u>
<u>Testolactone</u>	<u>Teslac</u>	<u>B</u>
<u>Theophylline</u>	<u>Aqualphyllin, etc.</u>	<u>B</u>
<u>Timolol</u>	<u>Blocardrin</u>	<u>B</u>
<u>Tolazoline</u>	<u>Priscoline</u>	<u>B</u>
<u>Torsemide (Torasemide)</u>	<u>Demadex</u>	<u>A</u>
<u>Trandolapril (and metabolite, Trandolaprilat)</u>	<u>Tarka</u>	<u>B</u>
<u>Trihexylphenidyl</u>	<u>Artane</u>	<u>A</u>
<u>Trimethadione</u>	<u>Tridione</u>	<u>B</u>
<u>Trimethaphan</u>	<u>Arfonad</u>	<u>A</u>
<u>Tripelennamine</u>	<u>PBZ</u>	<u>B</u>
<u>Valsartan</u>	<u>Diovan</u>	<u>B</u>
<u>Xylazine</u>	<u>Rompun, Bay Va 1470</u>	<u>B</u>
<u>Zolmitriptan</u>	<u>Zomig</u>	<u>B</u>
<u>Zonisamide</u>	<u>Zonegran</u>	<u>B</u>

(4) Class 4

Class 4 drugs include therapeutic medications that would be expected to have less potential to affect the performance of a racing horse than class 3 drugs.

Drug	Trade Name	Penalty Class
<u>Acetaminophen (Paracetamol)</u>	<u>Tylenol, Tempra, etc.</u>	<u>C</u>
<u>Acetanilid</u>		<u>B</u>
<u>Acetazolamide</u>	<u>Diamox, Vetamox</u>	<u>B</u>
<u>Acetophenetidin (Phenacetin)</u>		<u>B</u>
<u>Acetylsalicylic acid (Aspirin)</u>		<u>C</u>
<u>Alclofenac</u>		<u>B</u>
<u>Aclomethasone</u>	<u>Aclovate</u>	<u>C</u>
<u>Aldosterone</u>	<u>Aldocortin, Electrocortin</u>	<u>B</u>
<u>Ambroxol</u>	<u>Ambрил, etc.</u>	<u>B</u>
<u>Amcinonide</u>	<u>Cyclocort</u>	<u>C</u>
<u>Aminocaproic acid</u>	<u>Amicar, Caprocid</u>	<u>C</u>
<u>Aminodarone</u>		<u>B</u>
<u>2-Aminoheptaine</u>	<u>Tuamine</u>	<u>B</u>
<u>Aminopyrine</u>		<u>B</u>
<u>Amisometradine</u>	<u>Rolictron</u>	<u>B</u>
<u>Amlopidine</u>	<u>Norvasc, Ammivin</u>	<u>B</u>

Drug	Trade Name	Penalty Class
<u>Amrinone</u>		<u>B</u>
<u>Anisotropine</u>	<u>Valpin</u>	<u>B</u>
<u>Antipyrine</u>		<u>B</u>
<u>Apazone (Azapropazone)</u>	<u>Rheumox</u>	<u>B</u>
<u>Aprindine</u>		<u>B</u>
<u>Baclofen</u>	<u>Lioresal</u>	<u>B</u>
<u>Beclomethasone</u>	<u>Propaderm</u>	<u>C</u>
<u>Benazepril</u>	<u>Lotrel</u>	<u>B</u>
<u>Bendroflumethiazide</u>	<u>Naturetin</u>	<u>B</u>
<u>Benoxapofen</u>		<u>B</u>
<u>Benoxinate</u>	<u>Dorsacaine</u>	<u>C</u>
<u>Benzocaine</u>		<u>B</u>
<u>Benzthiazide</u>		<u>B</u>
<u>Bepidil</u>	<u>Bepadin</u>	<u>B</u>
<u>Betamethasone</u>	<u>Betasone, etc.</u>	<u>C</u>
<u>Bethanechol</u>	<u>Urecholine, Duvoid</u>	<u>C</u>
<u>Boldenone</u>	<u>Equipoise</u>	<u>C</u>
<u>Bromhexine</u>	<u>Oletor, etc.</u>	<u>B</u>
<u>Brompheniramine</u>	<u>Dimetane, Disomer</u>	<u>B</u>
<u>Budesonide</u>	<u>Pulmacort, Rhinocort</u>	<u>C</u>
<u>Butacaine</u>	<u>Butyn</u>	<u>B</u>
<u>Butamben (butyl aminobenzoate)</u>	<u>Butesin</u>	<u>C</u>
<u>Butoxycaine</u>	<u>Stadacain</u>	<u>B</u>
<u>Calusterone</u>	<u>Methosorb</u>	<u>C</u>
<u>Camphor</u>		<u>C</u>
<u>Carisoprodol</u>	<u>Relo, Soma</u>	<u>B</u>
<u>Celecoxib</u>	<u>Celebrex</u>	<u>B</u>
<u>Chlormerodrin</u>	<u>Neohydrin</u>	<u>B</u>
<u>Chlorophenesin</u>	<u>Maolate</u>	<u>C</u>
<u>Chloroquine</u>	<u>Avloclor</u>	<u>C</u>
<u>Chlorothiazide</u>	<u>Diuril</u>	<u>B</u>
<u>Chlorpheniramine</u>	<u>Chlortriemton, etc.</u>	<u>B</u>
<u>Chlorthalidone</u>	<u>Hydroton</u>	<u>B</u>
<u>Chlorzoxazone</u>	<u>Paraflex</u>	<u>B</u>
<u>Cinchocaine</u>	<u>Nupercaine</u>	<u>C</u>
<u>Clibucaine</u>	<u>Batrax</u>	<u>C</u>
<u>Clidinium</u>	<u>Quarezan, Clindex, etc.</u>	<u>B</u>
<u>Clobetasol</u>	<u>Temovate</u>	<u>C</u>
<u>Clocortolone</u>	<u>Cloderm</u>	<u>C</u>
<u>Clofenamide</u>		<u>B</u>
<u>Clormecaine</u>	<u>Placacid</u>	<u>C</u>

Drug	Trade Name	Penalty Class
<u>Colchicine</u>		<u>B</u>
<u>Cortisone</u>	<u>Cortone, etc.</u>	<u>C</u>
<u>Cyclizine</u>	<u>Merazine</u>	<u>B</u>
<u>Cyclobenzaprine</u>	<u>Flexeril</u>	<u>B</u>
<u>Cyclomethylcaine</u>	<u>Surfacaine</u>	<u>C</u>
<u>Cyclothiazide</u>	<u>Anhydron, Renazide</u>	<u>B</u>
<u>Cyproheptadine</u>	<u>Periactin</u>	<u>C</u>
<u>Danazol</u>	<u>Danocrine</u>	<u>C</u>
<u>Dantrolene</u>	<u>Dantrium</u>	<u>C</u>
<u>Dembroxol (Dembrexine)</u>	<u>Sputolysin</u>	<u>C</u>
<u>Deoxycorticosterone</u>	<u>Percortin, DOCA, Descotone, Dorcostrin</u>	<u>C</u>
<u>Desonite</u>	<u>Des Owen</u>	<u>C</u>
<u>Desoximetasone</u>	<u>Topicort</u>	<u>C</u>
<u>Dexamethasone</u>	<u>Azium, etc.</u>	<u>C</u>
<u>Dextromethorphan</u>		<u>B</u>
<u>Dibucaine</u>	<u>Nupercainal, Cinchocaine</u>	<u>C</u>
<u>Dichlorphenamide</u>	<u>Daramide</u>	<u>C</u>
<u>Diclofenac</u>	<u>Voltaren, Voltarol</u>	<u>C</u>
<u>Diflorasone</u>	<u>Florone, Maxiflor</u>	<u>C</u>
<u>Diflucortolone</u>	<u>Flu-Cortinest, etc.</u>	<u>C</u>
<u>Diflunisal</u>		<u>B</u>
<u>Digitoxin</u>	<u>Crystodigin</u>	<u>B</u>
<u>Digoxin</u>	<u>Lanoxin</u>	<u>B</u>
<u>Dihydroergotamine</u>		<u>B</u>
<u>Diltiazem</u>	<u>Cardizem</u>	<u>B</u>
<u>Dimethisoquin</u>	<u>Quotane</u>	<u>B</u>
<u>Diphenoxylate</u>	<u>Difenoxin, Lomotil</u>	<u>B</u>
<u>Dipyrrone</u>	<u>Novin, Methampyrone</u>	<u>C</u>
<u>Disopyramide</u>	<u>Norpace</u>	<u>B</u>
<u>Dromostanolone</u>	<u>Drolban</u>	<u>C</u>
<u>Dyclonine</u>	<u>Dyclone</u>	<u>C</u>
<u>Eltenac</u>		<u>C</u>
<u>Ergonovine</u>	<u>Ergotrate</u>	<u>C</u>
<u>Ergotamine</u>	<u>Gynergen, Cafergot, etc.</u>	<u>B</u>
<u>Etanercept</u>	<u>Enbrel</u>	<u>B</u>
<u>Ethoheptazine</u>	<u>Zactane</u>	<u>B</u>
<u>Ethosuximide</u>	<u>Zarontin</u>	<u>B</u>
<u>Ethotoin</u>	<u>Peganone</u>	<u>B</u>
<u>Ethoxzolamide</u>	<u>Cardrase, Ethamide</u>	<u>C</u>

Drug	Trade Name	Penalty Class
<u>Ethylaminobenzoate (Benzocaine)</u>	<u>Semets, etc.</u>	<u>C</u>
<u>Ethylestrenol</u>	<u>Maxibolin, Organon</u>	<u>C</u>
<u>Etodolac</u>	<u>Lodine</u>	<u>C</u>
<u>Felodipine</u>	<u>Plendil</u>	<u>B</u>
<u>Fenbufen</u>	<u>Cincopal</u>	<u>B</u>
<u>Fenclozic acid</u>	<u>Myalex</u>	<u>B</u>
<u>Fenoprofen</u>	<u>Nalfon</u>	<u>B</u>
<u>Fexofenadine</u>	<u>Allegra</u>	<u>C</u>
<u>Flecainide</u>	<u>Idalon</u>	<u>B</u>
<u>Floctafenine</u>	<u>Idalon, Idarac</u>	<u>B</u>
<u>Flucinolone</u>	<u>Synalar, etc.</u>	<u>C</u>
<u>Fludrocortisone</u>	<u>Alforone, etc.</u>	<u>C</u>
<u>Flufenamic acid</u>		<u>B</u>
<u>Flumethasone</u>	<u>Flucort, etc.</u>	<u>C</u>
<u>Flumethiazide</u>	<u>Ademol</u>	<u>B</u>
<u>Flunarizine</u>	<u>Sibelium</u>	<u>B</u>
<u>Flunisolide</u>	<u>Bronilide, etc.</u>	<u>C</u>
<u>Flunixin</u>	<u>Banamine</u>	<u>C</u>
<u>Fluocinolone</u>	<u>Synalar</u>	<u>C</u>
<u>Fluocinonide</u>	<u>Licon, Lidex</u>	<u>C</u>
<u>Fluoroprednisolone</u>	<u>Predef-2X</u>	<u>C</u>
<u>Fluoxymesterone</u>	<u>Halotestin</u>	<u>C</u>
<u>Fluprednisolone</u>	<u>Alphadrol</u>	<u>C</u>
<u>Flurandrenolide</u>	<u>Cordran</u>	<u>C</u>
<u>Flurbiprofen</u>	<u>Froben</u>	<u>B</u>
<u>Fluticasone</u>	<u>Flixonase, Flutide</u>	<u>C</u>
<u>Guaifenesin (glycerol guaiacolate)</u>	<u>Gecolate</u>	<u>C</u>
<u>Halcinonide</u>	<u>Halog</u>	<u>C</u>
<u>Halobetasol</u>	<u>Ultravate</u>	<u>C</u>
<u>Hexocyclium</u>	<u>Tral</u>	<u>B</u>
<u>Hexylcaine</u>	<u>Cyclaine</u>	<u>C</u>
<u>Hydrochlorthiazide</u>	<u>Hydrodiuril</u>	<u>B</u>
<u>Hydrocortisone (Cortisol)</u>	<u>Cortef, etc.</u>	<u>C</u>
<u>Hydroflumethiazide</u>	<u>Saluron</u>	<u>B</u>
<u>Ibuprofen</u>	<u>Motrin, Advil, Nurpin, etc.</u>	<u>C</u>
<u>Indomethacin</u>	<u>Indocin</u>	<u>B</u>
<u>Infliximab</u>	<u>Remicade</u>	<u>B</u>
<u>Isoflupredone</u>	<u>Predef</u>	<u>C</u>
<u>Isometheptene</u>	<u>Octin, Octon</u>	<u>B</u>
<u>Isopropamide</u>	<u>Darbid</u>	<u>B</u>
<u>Isoxicam</u>	<u>Maxicam</u>	<u>B</u>
<u>Isoxsuprine</u>	<u>Vasodilan</u>	<u>C</u>

Drug	Trade Name	Penalty Class
<u>Isradipine</u>	<u>DynaCirc</u>	<u>B</u>
<u>Ketoprofen</u>	<u>Orudis</u>	<u>C</u>
<u>Letosteine</u>	<u>Viscotiol, Visiotal</u>	<u>C</u>
<u>Loperamide</u>	<u>Imodium</u>	<u>B</u>
<u>Loratidine</u>	<u>Claritin</u>	<u>B</u>
<u>Meclizine</u>	<u>Antivert, Bonine</u>	<u>B</u>
<u>Meclofenamic acid</u>	<u>Arquel</u>	<u>C</u>
<u>Medrysone</u>	<u>Medriusar, etc.</u>	<u>C</u>
<u>Mefenamic acid</u>	<u>Ponstel</u>	<u>B</u>
<u>Meloxicam</u>	<u>Mobic</u>	<u>B</u>
<u>Mepenzolate</u>	<u>Cantil</u>	<u>B</u>
<u>Mephenesin</u>	<u>Tolserol</u>	<u>B</u>
<u>Meralluride</u>	<u>Mercuhydrin</u>	<u>B</u>
<u>Merbaphen</u>	<u>Novasural</u>	<u>B</u>
<u>Mercaptomerin</u>	<u>Thiomerin</u>	<u>B</u>
<u>Mercumalilin</u>	<u>Cumertilin</u>	<u>B</u>
<u>Mersalyl</u>	<u>Salyrgan</u>	<u>B</u>
<u>Metaxalone</u>	<u>Skelaxin</u>	<u>B</u>
<u>Methandriol</u>	<u>Proboldic</u>	<u>C</u>
<u>Methandrostenolone</u>	<u>Dianabol</u>	<u>C</u>
<u>Methantheline</u>	<u>Banthine</u>	<u>B</u>
<u>Methapyrilene</u>	<u>Histadyl, etc.</u>	<u>B</u>
<u>Methazolamide</u>	<u>Naptazane</u>	<u>C</u>
<u>Methdilazine</u>	<u>Tacaryl</u>	<u>B</u>
<u>Methocarbamol</u>	<u>Robaxin</u>	<u>B</u>
<u>Methotrexate</u>	<u>Folex, Nexate, etc.</u>	<u>B</u>
<u>Methscopolamine</u>	<u>Pamine</u>	<u>B</u>
<u>Methsuximide</u>	<u>Celontin</u>	<u>B</u>
<u>Methylchlorthiazide</u>	<u>Enduron</u>	<u>B</u>
<u>Methandrostenolone</u>	<u>Dianabol</u>	<u>C</u>
<u>Methylergonovine</u>	<u>Methergine</u>	<u>C</u>
<u>Methylprednisolone</u>	<u>Medrol</u>	<u>C</u>
<u>Methyltestosterone</u>	<u>Metandren</u>	<u>C</u>
<u>Methysergide</u>	<u>Sansert</u>	<u>B</u>
<u>Metiamide</u>		<u>B</u>
<u>Metoclopramide</u>	<u>Reglan</u>	<u>C</u>
<u>Mexilitine</u>	<u>Mexilil</u>	<u>B</u>
<u>Milrinone</u>		<u>B</u>
<u>Mometasone</u>	<u>Elocon</u>	<u>C</u>
<u>Montelukast</u>	<u>Singulair</u>	<u>C</u>
<u>Nabumetone</u>	<u>Anthraxan, Relafen, Reliflex</u>	<u>B</u>
<u>Naepaine</u>	<u>Amylsine</u>	<u>C</u>
<u>Nandrolone</u>	<u>Nandrolin, Lauerabolin, Durabolin</u>	<u>C</u>
<u>Naphazoline</u>	<u>Privine</u>	<u>B</u>

Drug	Trade Name	Penalty Class
<u>Naproxen</u>	<u>Equiproxen, Naprosyn</u>	<u>C</u>
<u>Nicardipine</u>	<u>Cardine</u>	<u>B</u>
<u>Nifedipine</u>	<u>Procardia</u>	<u>B</u>
<u>Niflumic acid</u>	<u>Nifluril</u>	<u>B</u>
<u>Nimesulide</u>		<u>B</u>
<u>Nimodipine</u>	<u>Nemotop</u>	<u>B</u>
<u>Norethandrone</u>		<u>C</u>
<u>Nortestosterone</u>	<u>Nemotop</u>	<u>C</u>
<u>Orphenadrine</u>	<u>Norlfex</u>	<u>B</u>
<u>Oxandrolone</u>	<u>Anavar</u>	<u>C</u>
<u>Oxaprozin</u>	<u>Daypro, Deflam</u>	<u>C</u>
<u>Oxymetazoline</u>	<u>Afrin</u>	<u>B</u>
<u>Oxymetholone</u>	<u>Adroyd, Anadrol</u>	<u>C</u>
<u>Oxyphenbutazone</u>	<u>Tandearil</u>	<u>C</u>
<u>Oxyphencyclimine</u>	<u>Daricon</u>	<u>B</u>
<u>Oxyphenonium</u>	<u>Antrenyl</u>	<u>B</u>
<u>Paramethasone</u>	<u>Haldrone</u>	<u>C</u>
<u>Pentoxyfylline</u>	<u>Trental, Vazofirin</u>	<u>C</u>
<u>Phenacemide</u>	<u>Phenurone</u>	<u>B</u>
<u>Phensuximide</u>	<u>Milontin</u>	<u>B</u>
<u>Phenytoin</u>	<u>Dilantin</u>	<u>B</u>
<u>Piroxicam</u>	<u>Feldene</u>	<u>B</u>
<u>Polythiazide</u>	<u>Renese</u>	<u>B</u>
<u>Pramoxine</u>	<u>Tronothaine</u>	<u>C</u>
<u>Prednisolone</u>	<u>Delta-Cortef, etc.</u>	<u>C</u>
<u>Prednisone</u>	<u>Meticorten, etc.</u>	<u>C</u>
<u>Probenecid</u>		<u>C</u>
<u>Procainamide</u>	<u>Pronestyl</u>	<u>B</u>
<u>Propafenone</u>	<u>Rythmol</u>	<u>B</u>
<u>Proprantherline</u>	<u>Pro-Banthine</u>	<u>B</u>
<u>Proparacaine</u>	<u>Ophthaine</u>	<u>C</u>
<u>Propylhexedrine</u>	<u>Benzedrex</u>	<u>B</u>
<u>Quinidine</u>	<u>Quinidex, Quinica-rdine</u>	<u>B</u>
<u>Rofecoxib</u>	<u>Vioxx</u>	<u>B</u>
<u>Salicylamide</u>		<u>C</u>
<u>Salicylate</u>		<u>C</u>
<u>Spironolactone</u>	<u>Aldactone</u>	<u>B</u>
<u>Stanozolol</u>	<u>Winstrol-V</u>	<u>C</u>
<u>Sulfasalazine</u>	<u>Azulfidine, Azaline</u>	<u>C</u>
<u>Sulindac</u>	<u>Clinoril</u>	<u>B</u>
<u>Tenoxicam</u>	<u>Alganex, etc.</u>	<u>B</u>
<u>Terfenadine</u>	<u>Seldane, Triludan</u>	<u>B</u>
<u>Testosterone</u>		<u>C</u>

Drug	Trade Name	Penalty Class
<u>Tetrahydrozoline</u>	<u>Tyzine</u>	<u>B</u>
<u>Theobromine</u>		<u>B</u>
<u>Thiosalicylate</u>		<u>C</u>
<u>Thiphenamil</u>	<u>Trocinate</u>	<u>B</u>
<u>Tiaprofenic acid</u>	<u>Surgam</u>	<u>B</u>
<u>Tocainide</u>	<u>Tonocard</u>	<u>B</u>
<u>Tolmetin</u>	<u>Tolectin</u>	<u>B</u>
<u>Tranexamic acid</u>		<u>C</u>
<u>Trenbolone</u>	<u>Finoplix</u>	<u>C</u>
<u>Triamcinolone</u>	<u>Vetalog, etc.</u>	<u>C</u>
<u>Triamterene</u>	<u>Dyrenium</u>	<u>B</u>
<u>Trichlormethiazide</u>	<u>Naqua, Naquasone</u>	<u>C</u>
<u>Tolmetin</u>	<u>Tolectin</u>	<u>B</u>
<u>Tranexamic acid</u>		<u>D</u>
<u>Tridihexethyl</u>	<u>Pathilon</u>	<u>B</u>
<u>Trimeprazine</u>	<u>Temaril</u>	<u>B</u>
<u>Triprolidine</u>	<u>Actidil</u>	<u>B</u>
<u>Tuaminoheptane</u>	<u>Tuamine</u>	<u>C</u>
<u>Vedaprofen</u>		<u>B</u>
<u>Verapamil</u>	<u>Calan, Isoptin</u>	<u>B</u>
<u>Xylometazoline</u>	<u>Otrivin</u>	<u>B</u>
<u>Zafirlukast</u>	<u>Accolate</u>	<u>C</u>
<u>Zeranol</u>	<u>Ralgro</u>	<u>C</u>
<u>Zileuton</u>	<u>Zyflo</u>	<u>C</u>
<u>Zomepirac</u>	<u>Zomax</u>	<u>B</u>

(5) Class 5

Class 5 drugs include those therapeutic medications for which concentration limits have generally been established by racing jurisdictions as well as certain miscellaneous agents such as DMSO and other medications.

Drug	Trade Name	Penalty Class
<u>Anisindione</u>		<u>D</u>
<u>Cilostazol</u>	<u>Pletal</u>	<u>D</u>
<u>Cimetidine</u>	<u>Tagamet</u>	<u>D</u>
<u>Cromolyn</u>	<u>Intel</u>	<u>D</u>
<u>Dicumarol</u>	<u>Dicumarol</u>	<u>D</u>
<u>Dimethylsulfoxide (DMSO)</u>	<u>Domoso</u>	<u>D</u>
<u>Dimethylsulphone (MSM)</u>		<u>D</u>
<u>Diphenadione</u>		<u>D</u>
<u>Famotidine</u>	<u>Gaster, etc.</u>	<u>D</u>
<u>Lansoprazole</u>		<u>D</u>
<u>Misoprostel</u>	<u>Cytotec</u>	<u>D</u>
<u>Nedocromil</u>	<u>Tilade</u>	<u>D</u>
<u>Nizatidine</u>	<u>Axid</u>	<u>D</u>

Drug	Trade Name	Penalty Class
<u>Omeprazole</u>	<u>Prilosec, Losec</u>	<u>D</u>
<u>Phenindione</u>	<u>Hedulin</u>	<u>D</u>
<u>Phenprocoumon</u>	<u>Liquamar</u>	<u>D</u>
<u>Pirenzapine</u>	<u>Gastrozepin</u>	<u>D</u>
<u>Polyethylene glycol</u>		<u>D</u>
<u>Ranitidine</u>	<u>Zantac</u>	<u>D</u>
<u>Warfarin</u>	<u>Coumadin, Cou-farin</u>	<u>D</u>

WSR 06-24-060

PROPOSED RULES

HORSE RACING COMMISSION

[Filed December 4, 2006, 12:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-07-056.

Title of Rule and Other Identifying Information: WAC 260-84-090 Equine medication and prohibited substances—Penalties, 260-84-110 Penalties for uniform classifications and repealing WAC 260-84-100, 260-84-120, and 260-84-130.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98001, on January 11, 2007, at 9:30 a.m.

Date of Intended Adoption: January 11, 2007.

Submit Written Comments to: Douglas Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail dmoore@whrc.state.wa.us, fax (360) 459-6461, by January 8, 2007.

Assistance for Persons with Disabilities: Contact Patty Sorby by January 8, 2007, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend WAC 260-84-090 in clear language and repeal applicable sections in chapter 260-84 WAC.

Reasons Supporting Proposal: To adopt the recommended model rules to comply with the international model rules and/or Racing Medication and Testing Consortium. This also incorporates sections into more understandable and clear language for licensees and stakeholders.

Statutory Authority for Adoption: RCW 67.16.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting: Douglas Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert Leichner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

December 4, 2006
R. M. Leichner
Executive Secretary

AMENDATORY SECTION (Amending WSR 06-07-058, filed 3/10/06, effective 4/10/06)

WAC 260-84-090 Equine medication and prohibited substances—(~~Penalties—~~) Penalty guidelines. (1) A report from the commission's approved laboratory of a positive test for a prohibited drug, medication or substance, or a medication exceeding threshold levels in WAC 260-70-630 or 260-70-640, or the presence or lack of presence of furosemide is prima facie evidence of a violation. In the absence of substantial evidence to the contrary, the trainer will be responsible.

(2) Upon a finding of a violation of the medication and prohibited substances rules in chapter 260-70 WAC, the stewards (~~shall consider the classification level~~) will use the penalty class of the medication, drug or substance (~~prior to~~) when imposing a penalty. During the stewards ruling conference the stewards (~~shall~~) may also (~~consult with~~) receive testimony from an official veterinarian to determine the nature and seriousness of the laboratory finding or the medication violation, and whether the violation was a result of the administration of a therapeutic medication (~~as~~) documented in a veterinarian's report received per WAC 260-70-540.

(~~2~~) (3) A lesser penalty than that established in (~~WAC 260-84-110~~) these rules may be imposed if a majority of the stewards determine that mitigating circumstances warrant a lesser penalty. (~~If a majority of the stewards determine a greater penalty is appropriate or that a penalty in excess of the authority granted them is appropriate, they may impose the maximum penalty authorized and refer the matter to the commission with specific recommendations for further action.~~) In determining if there are mitigating circumstances (~~surrounding~~) for a medication violation for substances referred to in chapter 260-70 WAC, (~~at least~~) the (~~following shall be considered~~) stewards may consider:

- (a) The past record of the trainer (~~and/or~~) veterinarian, and owner in medication/drug cases;
- (b) The potential of the medication/drug to influence a horse's racing performance;
- (c) The legal availability of the medication/drug;
- (d) Whether there is reason to believe the responsible party knew of the administration of the medication/drug used, or intentionally administered the medication/drug;
- (e) The steps taken by the trainer to safeguard the horse;
- (f) The probability of environmental contamination or inadvertent exposure due to human drug use;
- (g) (~~The purse of the race;~~
- (~~h~~) Whether the medication/drug found was one for which the horse was receiving a treatment as determined by the veterinarian report(s);

(~~h~~) (h) Whether there was any suspicious betting pattern in the race; (~~and~~

(~~h~~) (i) Whether the (~~presence of the medication/drug in urine was confirmed in serum or plasma~~) licensed trainer was acting under the advice of a licensed veterinarian; and

(j) Other mitigating information.

(~~3~~) If a majority of the stewards determine a penalty greater than established in these rules is appropriate, they may impose the maximum penalty authorized and refer the matter to the commission with specific recommendations for further action.

(4) If the penalty is not otherwise established for a violation of chapter 260-70 WAC, the penalty shall be determined by the board of stewards. (4) For other violations of chapter 260-70 WAC, not specifically listed, the stewards have authority to impose penalties as provided in WAC 260-24-510 (3)(b).

AMENDATORY SECTION (Amending WSR 05-07-064, filed 3/11/05, effective 4/11/05)

WAC 260-84-110 Penalties for uniform classifications. (1) (~~Penalties shall be assessed against any person found to be responsible or party to the improper administration of a drug or the intentional administration of a drug resulting in a positive test. In assessing penalties under this section, violations in the last three hundred sixty five days from Washington and all recognized racing jurisdictions shall be considered.~~

(a) ~~Class 1—One to five year suspension and at least \$5,000 fine and loss of purse.~~

(b) ~~Class 2—Six months to one year suspension and \$1,500 to \$2,500 fine and loss of purse.~~

(c) ~~Class 3—Sixty days to six months suspension and up to \$1,500 fine and possible loss of purse.~~

(d) ~~Class 4—Zero to sixty days suspension and up to \$1,000 fine and possible loss of purse.~~

(e) ~~Class 5—Warning to fifteen days suspension with a possible loss of purse and/or fine.~~

(2) A lesser penalty may be imposed if a majority of the stewards determine that mitigating circumstances, as outlined in WAC 260-70-090 exist. In issuing penalties against individuals in violation of medication or drug rules, a regulatory distinction will be made between the detection of therapeutic medications used routinely to treat racehorses and those drugs that have no reason to be found at any concentration in the test sample on race day.

(2) The stewards or the commission will use the penalty class and schedule established in WAC 260-70-680 to determine the penalty for a violation of this section.

(3) If a licensed veterinarian is administering or prescribing a drug not listed in WAC 260-70-680, the stewards will notify the official veterinarian and provide the name and quantity to the Racing Medication and Testing Consortium (RMTC) for classification.

(4) Any drug or metabolite found to be present in a pre- or post-race sample, which is not classified in WAC 260-70-680 will be assumed to be a class 1 drug and the trainer and owner will be subject to the penalties for a penalty class A substance.

(5) The following are the penalties for drugs in penalty class A in WAC 260-70-680, including violations for exceeding thresholds established in WAC 260-70-630, and for violations of prohibited practices as listed in WAC 260-70-545:

	<u>1st Offense</u>	<u>2nd Lifetime Offense in any Jurisdiction</u>	<u>3rd Lifetime Offense in any Jurisdiction</u>
<u>Trainers, or any other person, including veterinarians, found to be responsible for the improper or intentional administration of any drug or substance resulting in a positive test.</u>	<u>In the absence of mitigating factors - 1 year suspension and \$10,000 fine (or 10% of the total purse, whichever is greater). If aggravating factors exist - Immediate suspension and referred to the commission for a 3-year suspension and a \$25,000 fine or 25% of the purse (whichever is greater), or any other action the commission deems necessary.</u>	<u>Immediate suspension and referral to the commission for a 3-year revocation, and a fine of not less than \$25,000 and not more than \$50,000 (or 50% of the purse, whichever is greater).</u>	<u>Immediate suspension and referral to the commission for a 5-year revocation, and a fine of not less than \$50,000 and not more than \$100,000 (or 100% of the purse, whichever is greater).</u>
<u>Owners.</u>	<u>Disqualification and loss of purse. The horse will be placed on the veterinarian's list for 90 days and must pass an examination conducted by an official veterinarian before being eligible to be entered.</u>	<u>Disqualification and loss of purse. The horse will be placed on the veterinarian's list for 120 days and must pass an examination conducted by an official veterinarian before being eligible to be entered.</u>	<u>30 to 90 day suspension, disqualification, loss of purse and \$50,000 fine. The horse will be placed on the veterinarian's list for 180 days and must pass an examination conducted by an official veterinarian before being eligible to be entered.</u>

(6) The following are the penalties for penalty class B drugs in WAC 260-70-680, including exceeding thresholds established in WAC 260-70-630, the presence of more than one NSAID in a plasma/serum sample as provided in WAC 260-70-640, and for violations of the established level for total carbon dioxide as provided in WAC 260-70-675:

	<u>1st Offense</u>	<u>2nd Lifetime Offense in any Jurisdiction</u>	<u>3rd Lifetime Offense in any Jurisdiction</u>
<u>Trainers, or any other person, including veterinarians, found to be responsible for the improper or intentional administration of any drug or substance resulting in a positive test.</u>	<u>15 to 60-day suspension plus a \$500 to \$1000 fine</u>	<u>30 to 180-days suspension plus a \$1,000 to \$2,500 fine.</u>	<u>60-day to 1 year suspension plus a \$2,500 to \$5,000 fine (or 5% of the purse, whichever is greater), and possible referral to the commission.</u>
<u>Owners.</u>	<u>Disqualification and loss of purse (in the absence of mitigating circumstances). The horse must pass an examination conducted by an official veterinarian before being eligible to be entered.</u>	<u>Disqualification and loss of purse (in the absence of mitigating circumstances). The horse must pass an examination conducted by an official veterinarian before being eligible to be entered.</u>	<u>Disqualification and loss of purse. In the absence of mitigating circumstances a \$5,000 fine. The horse will be placed on the veterinarian's list for 45 days and must pass an examination conducted by an official veterinarian before being eligible to be entered.</u>

(7) The following are the penalties for penalty class C drugs in WAC 260-70-680, including threshold levels in WAC 260-70-630, overages of permitted medications in WAC 260-70-640 and furosemide in WAC 260-70-650 and 260-70-660:

<u>Phenylbutazone (5.1 - 9.9 mcg/ml)</u> <u>Flunixin (21 - 99 ng/ml)</u> <u>Ketoprofen (11 - 49 ng/ml)</u> <u>Furosemide (>100 ng/ml) and no furosemide when identified as administered</u>

	<u>1st Offense in 365-day period</u>	<u>2nd Offense in 365-day period</u>	<u>3rd Offense in 365-day period</u>
<u>Trainer (absent mitigating circumstances).</u>	<u>Minimum fine of \$250.</u>	<u>Minimum fine of \$500.</u>	<u>Minimum fine of \$1,000 fine and 15-day suspension.</u>
<u>Phenylbutazone (≥10.0 mcg/ml) Flunixin (≥ 100 ng/ml) Ketoprofen (≥ 50 ng/ml) and other penalty class C violations</u>			
	<u>1st Offense in 365-day period</u>	<u>2nd Offense in 365-day period</u>	<u>3rd Offense in 365-day period</u>
<u>Trainer (absent mitigating circumstances).</u>	<u>Minimum fine of \$500.</u>	<u>Minimum fine of \$1,000 and 15-day suspension.</u>	<u>Minimum fine of \$2,500 and 30-day suspension.</u>
<u>Owner.</u>	<u>Loss of purse. Horse must pass an examination conducted by an official veterinarian before being eligible to be entered.</u>	<u>Loss of purse. If same horse, placed on veterinarian list for 45 days and must pass an examination conducted by an official veterinarian before being eligible to be entered.</u>	<u>Loss of purse. Minimum \$5,000 fine. If same horse, placed on veterinarian list for 60 days and must pass an examination conducted by an official veterinarian before being eligible to be entered.</u>

(8) The recommended penalty for a violation involving a drug that is a penalty class D drug is a warning to the trainer and owner. Multiple violations may result in fines and/or suspensions.

(9) Any licensee, including veterinarians, found to be responsible for the improper or intentional administration of any drug resulting in a positive test, may be subject to the same penalties set forth for the licensed trainer.

(10) The licensed owner, veterinarian or any other licensee involved in a positive laboratory finding will be notified of a stewards' ruling conference as provided in WAC 260-24-510. In addition their presence may be required at any stewards' ruling conferences relative to the case.

(11) Any veterinarian found to be involved in the administration of any drug carrying with the penalty class A will be referred to the department of agriculture, board of veterinary medicine for consideration of further disciplinary action. This is in addition to any penalties issued by the stewards or the commission.

(12) The stewards or commission will ensure that a licensed trainer is not able to benefit financially during the period for which the individual has been suspended. This includes, but is not limited to, ensuring that horses are not transferred to a family member licensed by the commission.

(13) Persons revoked under the provisions of this section may not reapply for a license during their period of revocation.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 260-84-100 Furosemide penalties.
- WAC 260-84-120 Penalties relating to permitted medication.
- WAC 260-84-130 Penalties for prohibited practices.

**WSR 06-24-061
PROPOSED RULES
GAMBLING COMMISSION**

[Filed December 4, 2006, 2:05 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-07-111.

Title of Rule and Other Identifying Information: New chapter 230-15 WAC.

Hearing Location(s): Red Lion Hotel, 2300 Evergreen Park Drive, Olympia, WA 98502, (360) 943-4000, on March 9, 2007, at 9:30 a.m.

Date of Intended Adoption: March 9, 2007.

Submit Written Comments to: Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504, e-mail Susana@wsgc.wa.gov, fax (360) 486-3625, by March 1, 2007.

Assistance for Persons with Disabilities: Contact Shirley Corbett by March 1, 2007, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The gambling commission is rewriting its rules manual using plain English techniques. The rules manual has been divided into sections and is being rewritten a section at a time. This rule was inadvertently not included in the rewritten card room rules, chapter 230-15 WAC, which were filed by the commission at their October 2006, commission meeting.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-

3446; and Enforcement: Sharon Reese, Deputy Director, Lacey, (360) 486-3452.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025, and/or the proposed rule change clarifies language of rules without changing the effect.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

December 4, 2006
Susan Arland
Rules Coordinator

NEW SECTION

WAC 230-15-319 Retaining video recordings. (1)

Class F and house-banked card game licensees must label video recordings and audio recordings, as required, to identify the activities recorded.

(2) Licensees must keep:

(a) All recordings for seven gambling days, for example, Monday's gambling day recording may be recorded over on Tuesday of the following week; and

(b) Recordings documenting jackpot pay outs for at least thirty days:

(i) For player supported jackpots, retain recordings of jackpots of five hundred dollars or more; and

(ii) For house-banked games, retain recordings of jackpots of three thousand dollars or more; and

(c) Recordings of evidentiary value for as long as we request.

(3) We may increase these retention requirements by notifying licensees.

WSR 06-24-064

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed December 4, 2006, 3:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-21-069.

Title of Rule and Other Identifying Information: WAC 388-515-1550 Medically needy in-home waiver (MNIW).

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on January 9, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 10, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500

10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on January 9, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by January 5, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:

- This proposed change increases the personal needs allowance (PNA) for the medically needy in-home waiver program to match the PNA allowed for the categorically needy waiver described in WAC 388-515-1505.
- The deduction for medical and remedial care expenses that were incurred as a result of imposition of assets penalty period is limited to zero.
- DSHS is making changes to the language in order to make rules clearer.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.520, 74.09.530, chapter 276 (6)(b), Laws of 2004.

Statute Being Implemented: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.520, 74.09.530, chapter 276 (6)(b), Laws of 2004.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Lori Rolley, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2271.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed these rules and determined that no new costs will be imposed on small businesses or nonprofits.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(vii), relating only to client medical or financial eligibility.

November 30, 2006

Andy Fernando, Manager

Rules and Policies Assistance Unit

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

WAC 388-515-1550 Medically needy in-home waiver (MNIW) effective May 1, 2004. This section describes the financial eligibility requirements for waiver services under the medically needy in-home waiver (MNIW) and the rules used to determine a client's responsibility in the total cost of care.

- (1) To be eligible for MNIW, a client must:
- (a) Not meet financial eligibility for Medicaid personal care or the COPES program;
 - (b) Be eighteen years of age or older;
 - (c) Meet the SSI-related criteria described in WAC 388-475-0050(1);

(d) Require the level of care provided in a nursing facility as described in WAC 388-106-0355;

(e) In the absence of waiver services described in WAC 388-106-0500, continue to reside in a medical facility as defined in WAC 388-513-1301, or will likely be placed in one within the next thirty days;

(f) Have attained institutional status as described in WAC 388-513-1320;

(g) Have been determined to be in need of waiver services as described in WAC 388-106-0510;

(h) Be able to live at home with community support services and choose to remain at home;

(i) Not be subject to a penalty period of ineligibility for the transfer of an asset as described in WAC ~~388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366~~; and

(j) Meet the resource and income requirements described in subsections (2) through (6) of this section.

(2) The department determines a client's nonexcluded resources under MNIW as described in WAC 388-513-1350 ~~((1) through (4)(a) and 388-513-1360;))~~.

(3) Nonexcluded resources, after disregarding excess resources described in subsection (4) of this section, must be at or below the resource standard described in WAC 388-513-1350 ~~((1) and (2))~~.

(4) In determining a client's resource eligibility, the department disregards excess resources above the standard described in subsection (3) of this section:

(a) In an amount equal to incurred medical expenses such as:

(i) Premiums, deductibles, and co-insurance/co-payment charges for health insurance and Medicare premiums;

(ii) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan; or

(iii) Necessary medical care covered under the state's Medicaid plan.

(b) As long as the incurred medical expenses:

(i) Are not subject to third-party payment or reimbursement;

(ii) Are not the result of medical and remedial care expenses that were incurred as the result of imposition of a transfer of asset penalty described in WAC 388-513-1363, 388-513-1364 and 388-513-1365.

(iii) Have not been used to satisfy a previous spenddown liability;

~~((iii))~~ (iv) Have not previously been used to reduce excess resources;

~~((iv))~~ (v) Have not been used to reduce client responsibility toward cost of care; and

~~((v))~~ (vi) Are amounts for which the client remains liable.

(5) The department determines a client's countable income under MNIW in the following way:

(a) Considers income available described in WAC 388-513-1325 and 388-513-1330 (1), (2), and (3);

(b) Excludes income described in WAC 388-513-1340;

(c) Disregards income described in WAC 388-513-1345;

(d) Deducts monthly health insurance premiums, except Medicare premiums, not used to reduce excess resources in subsection (4) of this section;

(e) Allows an income deduction for a nonapplying spouse, equal to the one person medically needy income level (MNIL) less the nonapplying spouse's income, if the nonapplying spouse is living in the same home as the applying person.

(6) A client whose countable income exceeds the MNIL may become eligible for MNIW:

(a) When they have or expect to have medical expenses to offset their income which is over the MNIL; and

(b) Subject to availability in WAC 388-106-0535.

(7) The portion of a client's countable income over the MNIL is called "excess income."

(8) A client who has or will have "excess income" is not eligible for MNIW until the client has medical expenses which are equal in amount to that excess income. This is the process of meeting "spenddown." The excess income from each of the months in the base period is added together to determine the total "spenddown" amount.

(9) The following medical expenses may be used to meet spenddown if not already used in subsection (4) of this section to disregard excess resources or to reduce countable income as described in subsection (5)(d) of this section:

(a) An amount equal to incurred medical expenses such as:

(i) Premiums, deductibles, and co-insurance/co-payment charges for health insurance and Medicare premiums;

(ii) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan; and

(iii) Necessary medical care covered under the state's Medicaid plan.

(b) The cost of waiver services authorized during the base period.

(c) As long as the incurred medical expenses:

(i) Are not subject to third-party payment or reimbursement;

(ii) Are not the result of medical and remedial care expenses that were incurred as the result of imposition of a transfer of asset penalty described in WAC 388-513-1363, 388-513-1364 and 388-513-1365.

(iii) Have not been used to satisfy a previous spenddown liability;

~~((iii))~~ (iv) Have not been used to reduce client responsibility toward cost of care; and

~~((iv))~~ (v) Are amounts for which the client remains liable.

(10) Eligibility for MNIW is effective the first full month the client has met spenddown.

(11) In cases where spenddown has been met, medical coverage and MNIW begin the day services are authorized.

(12) A client who meets the requirements for MNIW chooses a three or six month base period. The months must be consecutive calendar months.

(13) The client's income that remains after determining available income in WAC 388-513-1325 and 388-513-1330 (1), (2), (3) and excluded income in WAC 388-513-1340 is paid towards the cost of care after deducting the following amounts in the order listed:

(a) An earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

(b) Personal needs allowance (PNA) in an amount equal to the one-person (~~(MNL)~~) Federal Poverty Level (FPL) described in WAC (~~(388-478-0070(1)(a))~~) 388-478-0075(4);

(c) Medicare and health insurance premiums not used to meet spenddown or reduce excess resources;

(d) Incurred medical expenses described in subsection (4) of this section not used to meet spenddown or reduce excess resources.

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.

WSR 06-24-065
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed December 4, 2006, 4:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-10-089 and 05-13-127.

Title of Rule and Other Identifying Information: WAC 388-105-0050 Supplementation—General requirements and 388-105-0055 Supplementation—Unit or bedroom.

Supplementation is an additional payment requested from a Medicaid recipient or a third-party by an adult family home (AFH) contractor or a licensed boarding home contractor with a contract to provide adult residential care (ARC), enhanced adult residential care (EARC), or assisted living (AL) services. The contractor may request an additional payment from the client or a third party, when the services, items, activities, room and board are not covered by the Medicaid daily rate and/or the contractor is not required to provide them under chapters 388-76, 388-78A or 388-110 WAC or in accordance with his or her contract with the department.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on January 9, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 10, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on January 9, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by January 5, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to make it clear when an AFH, AL, ARC or EARC contractor may request an additional payment from a Medicaid client or from a third party on behalf of a Medicaid client.

The anticipated effect is to prevent a Medicaid recipient from paying for services, items, activities, or room and board covered by the Medicaid rate and required to be provided by the contractor. Also, to prevent supplementation of the Medicaid rate, whereby, a contractor requires a payment unrelated to a service, item, activity, or room and board from the Medicaid client in order for the client to reside in the facility.

Reasons Supporting Proposal: To prevent the loss of federal financial participation by complying with 42 C.F.R. 447.15 Acceptance of State payment as payment in full.

Statutory Authority for Adoption: RCW 74.39A.901.

Statute Being Implemented: Chapter 74.39A RCW.

Rule is necessary because of federal law, 42 C.F.R. 447.15.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Patricia Hague, Mailstop 45600, Olympia, Washington, (360) 725-2447; Implementation: Bill Moss, Mailstop 45600, Olympia, Washington, (360) 725-2311; and Enforcement: Joyce Stockwell, Mailstop 45600, Olympia, Washington, (360) 725-2401.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.030 (1)(a), the proposed rules do not impose a cost on businesses in the home and community residential care industry.

Under RCW 19.85.025(3), this chapter does not apply to the adoption of a rule described in RCW 34.05.310(4). RCW 34.05.310 (4)(e) Rules the content of which is explicitly and specifically dictated by statute; and (f) Rules that set or adjust fees or rates pursuant to legislative standards. RCW 74.39A.-901 explicitly requires the department to obtain and retain federal financial participation. To do that, the department must comply with 42 C.F.R. 447.15. The rules indicate that the payment rates are payment in full for services provided by the contractors.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b)(v) and (vi): (v) Rules the content of which is explicitly and specifically dictated by statute; and (vi) Rules that set or adjust fees or rates pursuant to legislative standards;

RCW 74.39A.901 explicitly requires the department to obtain and retain federal financial participation. To do that the department must comply with 42 C.F.R. 447.15. The rules indicate that the payment rates are payment in full for services provided by the contractors.

November 30, 2006

Andy Fernando, Manager

Rules and Policies Assistance Unit

NEW SECTION

WAC 388-105-0050 Supplementation - General Requirements. (1) Supplementation of the Medicaid daily payment rate is an additional payment requested from a Medicaid recipient or a third-party payer by an Adult Family Home (AFH) contractor or a licensed boarding home contractor with a contract to provide Adult Residential Care (ARC), Enhanced Adult Residential Care (EARC), or Assisted Living (AL) services.

(2) The AFH, ARC, EARC, or AL contractor may not request supplemental payment of a Medicaid recipient's daily rate for services or items that are covered in the daily rate, and the contractor is required to provide:

(a) Under licensing chapters 388-76 or 78A WAC and chapter 388-110 WAC; and/or

(b) In accordance with his or her contract with the department.

(3) Before a contractor may request supplemental payments, the contractor must have a supplemental payment policy that has been given to all applicants for admittance and current residents. In the policy, the contractor must inform the applicant for admittance or current resident that:

(a) The department made Medicaid payment plus any client participation assigned by the department is payment in full for the services, items, activities, and room and board required by the resident's negotiated service plan per chapter 388-78A WAC or the negotiated care plan per chapter 388-76 WAC and its contract with the department; and

(b) Additional payments requested by the contractor are for services, items, activities, and room and board not covered by the Medicaid per diem rate.

(4) For services, items and activities, the supplementation policy must comply with RCW 70.129.030(4).

(5) For units or bedrooms for which the contractor may request supplemental payments, the contractor must include in the supplemental payment policy the:

(a) Units and/or bedrooms for which the contractor may request supplementation;

(b) Action the contractor will take when a private pay resident converts to Medicaid and the resident or a third party is unwilling or unable to pay a supplemental payment in order for the resident to remain in his or her unit or bedroom. When the only units or bedrooms available are those for which the contractor charges a supplemental payment, the contractor's policy may require the Medicaid resident to move from the facility. However, the contractor must give the Medicaid resident thirty days notice before requiring the Medicaid resident to move.

(6) For the Medicaid resident for whom the contractor receives supplemental payments, the contractor must indicate in the resident's record the:

(a) Unit or bedroom for which the contractor is receiving a supplemental payment;

(b) Services, items, or activities for which the contractor is receiving supplemental payments;

(c) Who is making the supplemental payments;

(d) Amount of the supplemental payments; and

(e) Private pay charge for the unit or bedroom for which the contractor is receiving a supplemental payment.

(7) When the contractor receives supplemental payment for a unit or bedroom, the contractor must notify the Medicaid resident's case manager of the supplemental payment.

NEW SECTION

WAC 388-105-0055 Supplementation - Unit or Bedroom. When the AFH, ARC, EARC, or AL contractor only has one type of unit or all private bedrooms, the contractor may not request supplementation from the Medicaid appli-

cant/resident or a third party, unless the unit or private bedroom has an amenity that some or all of the other units or private bedrooms lack e.g., a bathroom in private bedroom, a view unit, etc.

WSR 06-24-066

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

(Medical Assistance)

[Filed December 4, 2006, 4:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-14-041.

Title of Rule and Other Identifying Information: WAC 388-438-0110 Alien emergency medical (AEM).

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on January 9, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 10, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on January 9, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by January 5, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Current rule states a person eligible for alien emergency medical (AEM) program receives categorically needy (CN) scope of care. While it is possible for an AEM client to receive most CN-scope services, those services must be necessary to the treatment of the emergency medical condition for which the person was found eligible. The department is also adding hospice services to the AEM "not covered" list (unless approved by the department's medical consultant).

Reasons Supporting Proposal: To make the meaning of the rule clearer.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530.

Statute Being Implemented: RCW 74.04.050, 74.04.-057, 74.08.090, 74.09.500, and 74.09.530.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Joanie Scotson, P.O. Box

45534, Olympia, WA 98504-5534, (360) 725-11542 [725-1330].

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule amendment does not impact small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Client eligibility rules for medical assistance programs are exempt under RCW 34.05.328 (5)(b)(vii).

November 30, 2006

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 06-04-047, filed 1/26/06, effective 2/26/06)

WAC 388-438-0110 The alien emergency medical (AEM) program. (1) The alien emergency medical (AEM) program is a required federally funded program. It is for aliens who are ineligible for other Medicaid programs, due to the citizenship or alien status requirements described in WAC 388-424-0010.

(2) Except for the social security number, citizenship, or alien status requirements, an alien must meet categorical Medicaid eligibility requirements as described in:

- (a) WAC 388-505-0110, for an SSI-related person;
- (b) WAC 388-505-0220, for family medical programs;
- (c) WAC 388-505-0210, for a child under the age of nineteen; or

(d) WAC 388-523-0100, for medical extensions.

(3) When an alien has monthly income that exceeds the CN medical standards, the department will consider AEM medically needy coverage for children or for adults who are age sixty-five or over or who meet SSI disability criteria. See WAC 388-519-0100.

(4) To qualify for the AEM program, the alien must meet one of the criteria described in subsection (2) of this section and have a qualifying emergency medical condition as described in WAC 388-500-0005.

(5) The alien's date of arrival in the United States is not used when determining eligibility for the AEM program.

(6) The department does not deem a sponsor's income and resources as available to the client when determining eligibility for the AEM program. The department counts only the income and resources a sponsor makes available to the client.

(7) Under the AEM program, ~~((a person receives CN scope of care, as described in WAC 388-529-0100.))~~ covered services are limited to those medical services necessary for treatment of the person's emergency medical condition. The following services are not covered:

- (a) Organ transplants and related services;
- (b) Prenatal care, except labor and delivery;
- (c) School-based services;
- (d) Personal care services;
- (e) Waiver services; ~~((and))~~
- (f) Nursing facility services, unless they are approved by the department's medical consultant; and
- (g) Hospice services, unless they are approved by the department's medical consultant.

(8) ~~((When a person's income exceeds the CN income standard as described in subsection (3) of this section, the person has spend down liability and MN scope of care. MN scope of care is described in WAC 388-529-0100.))~~ The medical service limitations and exclusions described in subsection (7) also apply under the MN program.

(9) A person determined eligible for the AEM program is certified for three months. The number of three-month certification periods is not limited, but, the person must continue to meet eligibility criteria in subsection (2) and (4) of this section.

(10) A person is not eligible for the AEM program if they entered the state specifically to obtain medical care.

WSR 06-24-067

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed December 4, 2006, 4:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-17-136.

Title of Rule and Other Identifying Information:
Amending WAC 388-550-2598 Critical access hospital (CAH) program.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097, on January 9, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 10, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on January 9, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by January 5, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The health and recovery services administration (HRSA) is amending this rule to add language to clarify when the hospitals need to submit revenue codes and procedure codes to cost centers cross-walk data to the department for calculation of rates and cost settlement, and to clarify the due date for receipt of the hospital's final settled Medicare cost report (form 2552-96) by the department for cost settlement.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.500.

Statute Being Implemented: RCW 74.08.090 and 74.09.500.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1342; Implementation and Enforcement: Larry Linn, P.O. Box 45510, Olympia, WA 98504-5510, (360) 725-1856.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rule and concluded that no new costs will be imposed on businesses affected by them. The preparation of a comprehensive small business economic impact statement is not required.

A cost-benefit analysis is not required under RCW 34.05.328. The department has determined the proposed rule does not meet the definition of "significant legislative rule" under RCW 34.05.328, and therefore a cost-benefit analysis is not required. However, the department has voluntarily prepared an analysis of the costs and benefits of the proposed rule, which is available by contacting Larry Linn, P.O. Box 45510, Health and Recovery Services Administration, Olympia, WA 98504-5510, phone (360) 725-1856, fax (360) 743-9152, e-mail linnld@dshs.wa.gov.

November 30, 2006

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 06-04-089, filed 1/31/06, effective 3/3/06)

WAC 388-550-2598 Critical access hospitals (CAHs).

(1) The department reimburses ~~((eligible))~~ department-approved critical access hospitals (CAHs) for inpatient and outpatient hospital services provided to fee-for-service medical assistance clients on a cost basis, using departmental weighted costs-to-charges (DWCC) ratios and a retrospective cost settlement process. The department pays CAH fee-for-service hospital claims subject to retrospective cost settlement, adjustments such as a third-party payment amount, and any client responsibility amount.

(2) For inpatient and outpatient hospital services provided to clients enrolled in a managed care plan, DWCC rates for each CAH are incorporated into the calculations for the managed care capitated premiums. The department considers managed care Healthy Options DWCC payment rates to be cost. Cost settlements are not performed by the department for managed care claims.

(3) The following definitions and abbreviations and those found in WAC 388-500-0005 and 388-550-1050 apply to this section:

- (a) "CAH," see "critical access hospital."
- (b) ~~((("CAH HFY" see "CAH hospital fiscal year."))~~
- (c) ~~"CAH hospital fiscal year" means each individual hospital's fiscal year.~~
- (~~(d)~~) "Cost settlement" means a reconciliation of the fee-for-service interim CAH payments with a CAH's actual costs determined in conjunction with use of the CAH's final settled

Medicare cost report (Form 2552-96) after the end of the CAH's HFY.

~~((c))~~ (c) "Critical access hospital (CAH)" means a hospital that is approved by the department of health (DOH) for inclusion in DOH's critical access hospital program.

~~((d))~~ (d) "Departmental weighted costs-to-charges (DWCC) rate" means a rate the department uses to determine a CAH payment. See subsection (8) for how the department calculates a DWCC rate.

~~((e))~~ (e) "DWCC rate" see "departmental weighted costs-to-charges (DWCC) rate."

(f) "HFY" see "hospital fiscal year."

(g) "Hospital fiscal year" means each individual hospital's fiscal year.

(h) "Interim CAH payment" means the actual payment the department makes for claims submitted by a CAH for services provided during its current hospital fiscal year, using the appropriate DWCC rate, as determined by the department.

(i) "Revenue codes and procedure codes to cost centers crosswalk" means a document that indicates the revenue and procedure codes that are grouped to each hospital's Medicare Cost Report in reported cost centers.

(4) To be reimbursed as a CAH by the department, a hospital must be approved by the department of health (DOH) for inclusion in DOH's critical access hospital program. The hospital must provide proof of CAH status to the department upon request. CAHs reimbursed under the CAH program must meet the general applicable requirements in chapter 388-502 WAC. For information on audits and the audit appeal process, see WAC 388-502-0240.

(5) A CAH must have and follow written procedures that provide a resolution to complaints and grievances.

(6) To ensure quality of care:

(a) A CAH is responsible to investigate any reports of substandard care or violations of the facility's medical staff bylaws; and

(b) A complaint or grievance regarding substandard conditions or care may be investigated by any one or more of the following:

(i) Department of health (DOH); or

(ii) Other agencies with review authority for department programs.

(7) The department may conduct a postpay or on-site review of any CAH.

(8) The department prospectively calculates fee-for-service and managed care inpatient and outpatient DWCC rates separately for each CAH. To calculate prospective interim inpatient and outpatient DWCC rates for each hospital currently in the CAH program, the department:

(a) Obtains from each CAH its estimated aggregate charge master change for its next HFY;

(b) Obtains from each CAH the costs-to-charges ratio of each respective cost center the "as filed" version of the Medicare ((HCFA-2552)) cost report the CAH initially submits for cost settlement of its most recently completed HFY~~((:~~

~~(i) The costs-to-charges ratio of each respective service cost center; and~~

~~(ii) Total costs, charges, and number of patient days of each respective accommodation cost center.);~~

(c) Obtains from each CAH the revenue codes and procedure codes to cost centers crosswalk related to the Medicare cost report used for cost settlement. Each CAH must indicate any differences between the revenue codes and procedure codes to cost centers crosswalk and the standard groupings of revenue codes and procedure codes to cost centers crosswalk statistics the department provides to the hospital from the department's CAH DWCC rate calculation model. (Example: A CAH reports to the department that for its DWCC rate calculation, the Anesthesia Cost Center, Revenue Code 370, should be grouped to the Surgery Cost Center, Revenue Code 360.)

(d) Obtains from the Medicaid management information system (MMIS) the following fee-for-service summary claims data submitted by each CAH for services provided during the same HFY identified in (b) of this subsection:

- (i) Medical assistance program codes;
- (ii) Inpatient and outpatient claim types;
- (iii) Procedure codes, revenue codes, or diagnosis-related group (DRG) codes;
- (iv) Allowed charges and third party liability/client and department paid amounts; and
- (v) Units of service.

~~((e))~~ (e) Obtains from the managed care encounter data the following data submitted by each CAH for services provided during the same HFY identified in (b) of this section:

- (i) Medical assistance program codes;
- (ii) Inpatient and outpatient claim types;
- (iii) Procedure codes, revenue codes, or diagnosis-related group (DRG) codes; and
- (iv) Allowed charges.

~~((f))~~ (f) Separates the inpatient claims data and outpatient claims data;

~~((g))~~ (g) Obtains the cost center allowed charges by classifying inpatient and outpatient allowed charges from ~~((e) and)~~ (d) and (e) of this subsection billed by a CAH (using any one of, or a combination of, procedure codes, revenue codes, or DRG codes) into the related cost center in the CAH's "as filed" Medicare ~~((HCPA-2552))~~ cost report the CAH initially submits to the department~~((:))~~. The department:

(i) Uses the claims classifications and cost center combinations as defined in the department's CAH DWCC rate calculation model;

(ii) Assigns a CAH that does not have a cost center ratio that CAH's cost center average;

(iii) Allows changes only if a revenue codes and procedure codes to cost centers crosswalk has been submitted and a cost center average is being used; and

(iv) Does not allow an unbundling of cost centers.

~~((g))~~ (h) Determines the departmental-weighted costs for each cost center by multiplying the cost center's allowed charges from ~~((e))~~ (d) and (e) of this subsection for the appropriate inpatient or outpatient claim type by the related service cost center ratio;

~~((h))~~ (i) Sums all allowed charges from ~~((e))~~ (d) and (e) of this subsection;

~~((i))~~ (j) Sums all departmental-weighted costs for inpatient and outpatient claims from ~~((g))~~ (h) of this subsection;

~~((j))~~ (k) Multiplies each hospital's total departmental-weighted costs from ~~((h))~~ (j) of this subsection by the Medicare market basket inflation rate. The Medicare market basket inflation rate is published and updated periodically by the centers for Medicare and Medicaid services (CMS);

~~((k))~~ (l) Multiplies each hospital's total allowed charges from ~~((h))~~ (i) of this subsection by the CAH estimated charge master change from (a) of this subsection. If the charge master change factor is not available from the hospital, the department will apply a reasonable alternative factor; and

~~((l))~~ (m) Determines the DWCC inpatient and outpatient rates by dividing the ~~((total appropriate departmental-weighted costs from (9)(i) of this subsection by the total appropriate allowed charges from (h))~~ calculation result from (k) of this section by the calculation result from (l) of this subsection.

(9) For a currently enrolled hospital provider that is new to the CAH program, the basis for calculating initial prospective DWCC rates for inpatient and outpatient hospital claims for:

(a) Fee-for-service clients is:

(i) The hospital's most ~~((recently submitted))~~ recent "as filed" Medicare cost report, and

(ii) The appropriate MMIS summary claims data for that ~~((hospital fiscal year (HFY)))~~ HFY.

(b) Managed care clients is:

(i) The hospital's most ~~((recently submitted))~~ recent "as filed" Medicare cost report; and

(ii) The appropriate managed care encounter data for that HFY.

(10) For a newly licensed hospital that is also a CAH, the department uses the current statewide average DWCC rates for the initial prospective DWCC rates.

(11) For a CAH that comes under new ownership, the department uses the prior owner's DWCC rates.

(12) In addition to the prospective managed care inpatient and outpatient DWCC rates, the department:

(a) Incorporates the DWCC rates into the calculations for the managed care capitated premiums that will be paid to the managed care plans; and

(b) Requires all managed care plans having contract relationships with CAHs to pay the inpatient and outpatient DWCC rates applicable to managed care claims. For purposes of this section, the department considers the DWCC rates used to reimburse CAHs for care given to clients enrolled in a managed care plan to be cost. Cost settlements are not performed for managed care claims.

(13) For fee-for-service claims only, the department uses the same methodology as outlined in subsection (8) to perform~~((s))~~ an interim retrospective cost settlement for each CAH after the end of the CAH's HFY, using "as filed" Medicare cost report data, the revenue codes and procedure codes to cost centers crosswalk provided by the CAH, and claims data from the ~~((MMIS related to))~~ fee-for-service claims. Specifically, the department:

(a) Compares actual department total interim CAH payments to the departmental-weighted CAH fee-for-service costs for the period being cost settled; and

(b) Pays the hospital the difference between CAH costs and interim CAH payments if actual CAH costs are determined to exceed the total interim CAH payments for that period. The department recoups from the hospital the difference between CAH costs and interim CAH payments if actual CAH costs are determined to be less than total interim CAH payments.

(14) The department performs finalized cost settlements using the same methodology as outlined in subsection (13) of this section, except that the department uses the hospital's final settled Medicare cost report instead of the initial "as filed" Medicare cost report. (~~Whenever a CAH's Medicare cost report is settled by the Medicare fiscal intermediary,~~) The CAH must (send the settled) submit its final settled Medicare cost report to the department (to be used in) by the sixtieth day of receiving its Medicare cost report that has been settled by the Medicare fiscal intermediary. The department will use the final settled Medicare cost report for a final cost settlement.

WSR 06-24-068
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
[Filed December 4, 2006, 4:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-21-067.

Title of Rule and Other Identifying Information: **Part 2 of 4:** New sections WAC 388-535-1084 Covered dental-related services for clients through age twenty—Restorative services, 388-535-1086 Covered dental-related services for clients through age twenty—Endodontic services, 388-535-1088 Covered dental-related services for clients through age twenty—Periodontic services, and 388-535-1090 Covered dental-related services for clients through age twenty—Prosthodontics (removable).

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on January 9, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 10, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on January 9, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by January 5, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The new sections

clarify and update policies for dental-related services for clients through age twenty; ensure that department policies are applied correctly and equitably; replace the terms "medical assistance administration" and "MAA" with "the department"; update policy regarding prior authorization requirements; clarify policy on covered versus noncovered benefits; and clarify additional benefits and limitations associated with those services for clients through age twenty.

Reasons Supporting Proposal: To clarify new dental-related services covered and the limitations associated with those services; to make HRSA's rules regarding covered and noncovered dental-related services for clients through age twenty clearer and easier to understand for clients and dental providers; and to identify the requirements and criteria that must be met in order to obtain covered dental-related services.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.500, 74.09.520.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, 626 8th Avenue, Olympia, WA 98504-5504, (360) 725-1342; Implementation and Enforcement: Dr. John Davis, 626 8th Avenue, Olympia, WA 98504-5504, (360) 725-1748.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not create more than minor costs to small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Dr. John Davis, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1748, TTY/TDD 1-800-848-5429, fax (360) 586-1590, e-mail davisjd@dshs.wa.gov.

November 30, 2006

Andy Fernando, Manager
Rules and Policies Assistance Unit

NEW SECTION

WAC 388-535-1084 Covered dental-related services for clients through age twenty—Restorative services. The department covers medically necessary dental-related restorative services, subject to the coverage limitations listed, for clients through age twenty as follows:

(1) **Restorative/operative procedures.** The department covers restorative/operative procedures performed in a hospital or an ambulatory surgical center for:

(a) Clients ages eight and younger;

(b) Clients ages nine through twenty only on a case-by-case basis and when prior authorized; and

(c) Clients of the division of developmental disabilities according to WAC 388-535-1099.

(2) **Amalgam restorations for primary and permanent teeth.** The department considers:

(a) Tooth preparation, all adhesives (including amalgam bonding agents), liners, bases, and polishing as part of the amalgam restoration.

(b) The occlusal adjustment of either the restored tooth or the opposing tooth or teeth as part of the amalgam restoration.

(c) Buccal or lingual surface amalgam restorations, regardless of size or extension, as a one surface restoration. The department covers one buccal and one lingual surface per tooth.

(d) Multiple amalgam restorations of fissures and grooves of the occlusal surface of the same tooth as a one surface restoration.

(e) Amalgam restorations placed within six months of a crown preparation by the same provider or clinic to be included in the payment for the crown.

(3) Amalgam restorations for primary posterior teeth only. The department:

(a) Covers amalgam restorations for a maximum of two surfaces for a primary posterior tooth. (See subsection (9)(c) of this section for restorations for a primary posterior tooth requiring a three or more surface restoration.)

(b) Does not pay for additional amalgam or composite restorations on the same tooth after two surfaces.

(4) Amalgam restorations for permanent posterior teeth only. The department:

(a) Covers two occlusal amalgam restorations for teeth one, two, three, fourteen, fifteen, and sixteen, if the restorations are anatomically separated by sound tooth structure.

(b) Covers amalgam restorations for a maximum of five surfaces per tooth for a permanent posterior tooth, once per client, per provider or clinic, in a two-year period.

(c) Covers amalgam restorations for a maximum of six surfaces per tooth for teeth one, two, three, fourteen, fifteen, and sixteen, once per client, per provider or clinic, in a two-year period (see (a) of this subsection).

(d) Does not pay for replacement of amalgam restoration on permanent posterior teeth within a two-year period unless the restoration has an additional adjoining carious surface. The department pays for the replacement restoration as one multi-surface restoration. The client's record must include radiographs and documentation supporting the medical necessity for the replacement restoration.

(5) Resin-based composite restorations for primary and permanent teeth. The department:

(a) Considers tooth preparation, acid etching, all adhesives (including resin bonding agents), liners and bases, polishing, and curing as part of the resin-based composite restoration.

(b) Considers the occlusal adjustment of either the restored tooth or the opposing tooth or teeth as part of the resin-based composite restoration.

(c) Considers buccal or lingual surface resin-based composite restorations, regardless of size or extension, as a one surface restoration. The department covers only one buccal and one lingual surface per tooth.

(d) Considers resin-based composite restorations of teeth where the decay does not penetrate the DEJ to be sealants (see WAC 388-535-1082(4) for sealants coverage).

(e) Considers multiple preventive restorative resin, flowable composite resin, or resin-based composites for the occlusal, buccal, lingual, mesial, and distal fissures and grooves on the same tooth as a one surface restoration.

(f) Does not cover preventive restorative resin or flowable composite resin on the interproximal surfaces (mesial and/or distal) when performed on posterior teeth or the incisal surface of anterior teeth.

(g) Considers resin-based composite restorations placed within six months of a crown preparation by the same provider or clinic to be included in the payment for the crown.

(6) Resin-based composite restorations for primary teeth only. The department covers:

(a) Resin-based composite restorations for a maximum of three surfaces for a primary anterior tooth (see subsection (9)(b) of this section for restorations for a primary anterior tooth requiring a four or more surface restoration). The department does not pay for additional composite or amalgam restorations on the same tooth after three surfaces.

(b) Resin-based composite restorations for a maximum of two surfaces for a primary posterior tooth (see subsection (9)(c) of this subsection for restorations for a primary posterior tooth requiring a three or more surface restoration). The department does not pay for additional composite or amalgam restorations on the same tooth after two surfaces.

(c) Glass ionomer restorations only for primary teeth, and only for clients ages four and younger. The department pays for these restorations as a one surface resin-based composite restoration.

(7) Resin-based composite restorations for permanent teeth only. The department covers:

(a) Two occlusal resin-based composite restorations for teeth one, two, fourteen, fifteen, and sixteen if the restorations are anatomically separated by sound tooth structure.

(b) Resin-based composite restorations for a maximum of five surfaces per tooth for a permanent posterior tooth, once per client, per provider or clinic, in a two-year period.

(c) Resin-based composite restorations for a maximum of six surfaces per tooth for permanent posterior teeth one, two, three, fourteen, fifteen, and sixteen, once per client, per provider or clinic, in a two-year period (see (a) of this subsection).

(d) Resin-based composite restorations for a maximum of six surfaces per tooth for a permanent anterior tooth, once per client, per provider or clinic, in a two-year period.

(e) Replacement of resin-based composite restoration on permanent teeth within a two-year period only if the restoration has an additional adjoining carious surface. The department pays the replacement restoration as a one multi-surface restoration. The client's record must include radiographs and documentation supporting the medical necessity for the replacement restoration.

(8) Crowns. The department:

(a) Covers the following crowns once every five years, per tooth, for permanent anterior teeth for clients ages twelve through twenty when the crowns meet prior authorization criteria in WAC 388-535-1220 and the provider follows the prior authorization requirements in (d) of this subsection:

(i) Porcelain/ceramic crowns to include all porcelains, glasses, glass-ceramic, and porcelain fused to metal crowns; and

(ii) Resin crowns and resin metal crowns to include any resin-based composite, fiber, or ceramic reinforced polymer compound.

(b) Covers full coverage metal crowns once every five years, per tooth, for permanent posterior teeth to include high noble, titanium, titanium alloys, noble, and predominantly base metal crowns for clients ages eighteen through twenty when they meet prior authorization criteria and the provider follows the prior authorization requirements in (d) and (e) of this subsection.

(c) Considers the following to be included in the payment for a crown:

(i) Tooth and soft tissue preparation;

(ii) Amalgam and resin-based composite restoration, or any other restorative material placed within six months of the crown preparation. Exception: The department covers a one surface restoration on an endodontically treated tooth, or a core buildup or cast post and core;

(iii) Temporaries, including but not limited to, temporary restoration, temporary crown, provisional crown, temporary prefabricated stainless steel crown, ion crown, or acrylic crown;

(iv) Packing cord placement and removal;

(v) Diagnostic or final impressions;

(vi) Crown seating, including cementing and insulating bases;

(vii) Occlusal adjustment of crown or opposing tooth or teeth; and

(viii) Local anesthesia.

(d) Requires the provider to submit the following with each prior authorization request:

(i) Radiographs to assess all remaining teeth;

(ii) Documentation and identification of all missing teeth;

(iii) Caries diagnosis and treatment plan for all remaining teeth, including a caries control plan for clients with rampant caries;

(iv) Pre- and post-endodontic treatment radiographs for requests on endodontically treated teeth; and

(v) Documentation supporting a five-year prognosis that the client will retain the tooth or crown if the tooth is crowned.

(e) Requires a provider to bill for a crown only after delivery and seating of the crown, not at the impression date.

(9) **Other restorative services.** The department covers:

(a) All recementations of permanent indirect crowns.

(b) Prefabricated stainless steel crowns with resin window, resin-based composite crowns, prefabricated esthetic coated stainless steel crowns, and fabricated resin crowns for primary anterior teeth once every three years without prior authorization if the tooth requires a four or more surface restoration.

(c) Prefabricated stainless steel crowns for primary posterior teeth once every three years without prior authorization if decay involves three or more surfaces, or if the tooth had a pulpotomy.

(d) Prefabricated stainless steel crowns for permanent posterior teeth once every three years when prior authorized.

(e) Prefabricated stainless steel crowns for clients of the division of developmental disabilities according to WAC 388-535-1099.

(f) Core buildup, including pins, only on permanent teeth, when prior authorized at the same time as the crown prior authorization.

(g) Cast post and core or prefabricated post and core, only on permanent teeth, when prior authorized at the same time as the crown prior authorization.

NEW SECTION

WAC 388-535-1086 Covered dental-related services for clients through age twenty—Endodontic services. The department covers medically necessary dental-related endodontic services, subject to the coverage limitations listed, for clients through age twenty as follows:

(1) **Pulp capping.** The department considers pulp capping to be included in the payment for the restoration.

(2) **Pulpotomy.** The department covers:

(a) Therapeutic pulpotomy on primary posterior teeth only; and

(b) Pulpal debridement on permanent teeth only, excluding teeth one, sixteen, seventeen, and thirty-two. The department does not pay for pulpal debridement when performed with palliative treatment of dental pain or when performed on the same day as endodontic treatment.

(3) **Endodontic treatment.** The department:

(a) Covers endodontic treatment with resorbable material for primary maxillary incisor teeth D, E, F, and G, if the entire root is present at treatment.

(b) Covers endodontic treatment for permanent anterior, bicuspid, and molar teeth, excluding teeth one, sixteen, seventeen, and thirty-two.

(c) Considers the following included in endodontic treatment:

(i) Pulpotomy when part of root canal therapy;

(ii) All procedures necessary to complete treatment; and

(iii) All intra-operative and final evaluation radiographs for the endodontic procedure.

(d) Pays separately for the following services that are related to the endodontic treatment:

(i) Initial diagnostic evaluation;

(ii) Initial diagnostic radiographs; and

(iii) Post treatment evaluation radiographs if taken at least three months after treatment.

(e) Requires prior authorization for endodontic retreatment and considers endodontic retreatment to include:

(i) The removal of post(s), pin(s), old root canal filling material, and all procedures necessary to prepare the canals;

(ii) Placement of new filling material; and

(iii) Retreatment for permanent anterior, bicuspid, and molar teeth, excluding teeth one, sixteen, seventeen, and thirty-two.

(f) Pays separately for the following services that are related to the endodontic retreatment:

(i) Initial diagnostic evaluation;

(ii) Initial diagnostic radiographs; and

(iii) Post treatment evaluation radiographs if taken at least three months after treatment.

(g) Does not pay for endodontic retreatment when provided by the original treating provider or clinic unless prior authorized by the department.

(h) Covers apexification for apical closures for anterior permanent teeth only on a case-by-case basis and when prior authorized. Apexification is limited to the initial visit and three interim treatment visits.

(i) Covers apicoectomy and a retrograde fill for anterior teeth only.

NEW SECTION

WAC 388-535-1088 Covered dental-related services for clients through age twenty—Periodontic services. The department covers medically necessary periodontic services, subject to the coverage limitations listed, for clients through age twenty as follows:

(1) **Surgical periodontal services.** The department covers the following surgical periodontal services, including all postoperative care:

(a) Gingivectomy/gingivoplasty only on a case-by-case basis and when prior authorized; and

(b) Gingivectomy/gingivoplasty for clients of the division of developmental disabilities according to WAC 388-535-1099.

(2) **Nonsurgical periodontal services.** The department:

(a) Covers periodontal scaling and root planing once per quadrant, per client in a two-year period on a case-by-case basis, when prior authorized for clients ages thirteen through eighteen, and only when:

(i) The client has radiographic evidence of periodontal disease;

(ii) The client's record includes supporting documentation for the medical necessity, including complete periodontal charting and a definitive diagnosis of periodontal disease;

(iii) The client's clinical condition meets current published periodontal guidelines; and

(iv) Performed at least two years from the date of completion of periodontal scaling and root planing or surgical periodontal treatment.

(b) Covers periodontal scaling and root planing once per quadrant, per client, in a two-year period for clients ages nineteen through twenty. Criteria in (a)(i) through (iv) of this subsection must be met.

(c) Considers ultrasonic scaling, gross scaling, or gross debridement to be included in the procedure and not a substitution for periodontal scaling and root planing.

(d) Covers periodontal scaling and root planing only when the services are not performed on the same date of service as prophylaxis, periodontal maintenance, gingivectomy, or gingivoplasty.

(e) Covers periodontal scaling and root planing for clients of the division of developmental disabilities according to WAC 388-535-1099.

(3) **Other periodontal services.** The department:

(a) Covers periodontal maintenance once per client in a twelve-month period on a case-by-case basis, when prior

authorized, for clients ages thirteen through eighteen, and only when:

(i) The client has radiographic evidence of periodontal disease;

(ii) The client's record includes supporting documentation for the medical necessity, including complete periodontal charting and a definitive diagnosis of periodontal disease;

(iii) The client's clinical condition meets current published periodontal guidelines; and

(iv) Performed at least twelve months from the date of completion of periodontal scaling and root planing, or surgical periodontal treatment.

(b) Covers periodontal maintenance once per client in a twelve month period for clients ages nineteen through twenty. Criteria in (a)(i) through (iv) of this subsection must be met.

(c) Covers periodontal maintenance only if performed on a different date of service as prophylaxis, periodontal scaling and root planing, gingivectomy, or gingivoplasty.

(d) Covers periodontal maintenance for clients of the division of developmental disabilities according to WAC 388-535-1099.

NEW SECTION

WAC 388-535-1090 Covered dental-related services for clients through age twenty — Prosthodontics (removable). The department covers medically necessary prosthodontics (removable) services, subject to the coverage limitations listed, for clients through age twenty as follows:

(1) **Prosthodontics.** The department:

(a) Requires prior authorization for all removable prosthodontic and prosthodontic-related procedures, except as stated in (c)(ii)(B) of this subsection. Prior authorization requests must meet the criteria in WAC 388-535-1220. In addition, the department requires the dental provider to submit:

(i) Appropriate and diagnostic radiographs of all remaining teeth.

(ii) A dental record which identifies:

(A) All missing teeth for both arches;

(B) Teeth that are to be extracted; and

(C) Dental and periodontal services completed on all remaining teeth.

(ii) A prescription written by a dentist when a denturist's prior authorization request is for an immediate denture or a cast metal partial denture.

(b) Covers complete dentures, as follows:

(i) A complete denture, including an immediate denture or overdenture, is covered when prior authorized.

(ii) Three-month post-delivery care (e.g., adjustments, soft relines, and repairs) from the seat date of the complete denture, is considered part of the complete denture procedure and is not paid separately.

(iii) Replacement of an immediate denture with a complete denture is covered if the complete denture is prior authorized at least six months after the seat date of the immediate denture.

(iv) Replacement of a complete denture or overdenture is covered only if prior authorized at least five years after the

seat date of the complete denture or overdenture being replaced. The replacement denture must be prior authorized.

(c) Covers partial dentures, as follows:

(i) A partial denture, including a resin or flexible base partial denture, is covered for anterior and posterior teeth when the partial denture meets the following department coverage criteria.

(A) The remaining teeth in the arch must have a reasonable periodontal diagnosis and prognosis;

(B) The client has established caries control;

(C) One or more anterior teeth are missing or four or more posterior teeth are missing;

(D) There is a minimum of four stable teeth remaining per arch; and

(E) There is a three-year prognosis for retention of the remaining teeth.

(ii) Prior authorization of partial dentures:

(A) Is required for clients ages nine and younger; and

(B) Not required for clients ages ten through twenty.

Documentation supporting the medical necessity for the service must be included in the client's file.

(iii) Three-month post-delivery care (e.g., adjustments, soft relines, and repairs) from the seat date of the partial denture, is considered part of the partial denture procedure and is not paid separately.

(iv) Replacement of a resin or flexible base denture is covered only if prior authorized at least three years after the seat date of the resin or flexible base partial denture being replaced. The replacement denture must be prior authorized and meet department coverage criteria in (c)(i) of this subsection.

(d) Covers cast-metal framework partial dentures, as follows:

(i) Cast-metal framework with resin-based partial dentures, including any conventional clasps, rests, and teeth, are covered for clients ages eighteen through twenty only once in a five-year period, on a case-by-case basis, when prior authorized and department coverage criteria listed in subsection (d)(v) of this subsection are met.

(ii) Cast-metal framework partial dentures for clients ages seventeen and younger are not covered.

(iii) Three-month post-delivery care (e.g., adjustments, soft relines, and repairs) from the seat date of the cast metal partial denture is considered part of the partial denture procedure and is not paid separately.

(iv) Replacement of a cast metal framework partial denture is covered on a case-by-case basis and only if placed at least five years after the seat date of the partial denture being replaced. The replacement denture must be prior authorized and meet department coverage criteria listed in (d)(v) of this subsection.

(v) Department authorization and payment for cast metal framework partial dentures is based on the following criteria:

(A) The remaining teeth in the arch must have a stable periodontal diagnosis and prognosis;

(B) The client has established caries control;

(C) All restorative and periodontal procedures must be completed before the request for prior authorization is submitted;

(D) There are fewer than eight posterior teeth in occlusion;

(E) There is a minimum of four stable teeth remaining per arch; and

(F) There is a five-year prognosis for the retention of the remaining teeth.

(vi) The department may consider resin partial dentures as an alternative if the department determines the criteria for cast metal framework partial dentures listed in (d)(v) of this subsection are not met.

(e) Requires a provider to bill for removable prosthetic procedures only after the seating of the prosthesis, not at the impression date. Refer to subsection (2)(e) and (f) for what the department may pay if the removable prosthesis is not delivered and inserted.

(f) Requires a provider to submit the following with a prior authorization request for removable prosthetics for a client residing in a nursing home, group home, or other facility:

(i) The client's medical diagnosis or prognosis;

(ii) The attending physician's request for prosthetic services;

(iii) The attending dentist's or denturist's statement documenting medical necessity;

(iv) A written and signed consent for treatment from the client's legal guardian when a guardian has been appointed; and

(v) A completed copy of the Denture/Partial Appliance Request for Skilled Nursing Facility Client form (DSHS 13-788) available from the department's published billing instructions.

(g) Limits removable partial dentures to resin-based partial dentures for all clients residing in one of the facilities listed in (f) of this subsection. The department may consider cast metal partial dentures if the criteria in subsection (1)(d) are met.

(h) Requires a provider to deliver services and procedures that are of acceptable quality to the department. The department may recoup payment for services that are determined to be below the standard of care or of an unacceptable product quality.

(2) **Other services for removable prosthodontics.** The department covers:

(a) Adjustments to complete and partial dentures three months after the date of delivery.

(b) Repairs to complete and partial dentures, once in a twelve month period. The department covers additional repairs on a case-by-case basis and when prior authorized.

(c) A laboratory reline or rebase to a complete or cast-metal partial denture, once in a three-year period when performed at least six months after the seating date. An additional reline or rebase may be covered for complete or cast-metal partial dentures on a case-by-case basis when prior authorized.

(d) Up to two tissue conditionings, and only when performed within three months after the seating date.

(e) Laboratory fees, subject to the following:

(i) The department does not pay separately for laboratory or professional fees for complete and partial dentures; and

(ii) The department may pay part of billed laboratory fees when the provider obtains prior authorization, and the client:

- (A) Is not eligible at the time of delivery of the prosthesis;
 - (B) Moves from the state;
 - (C) Cannot be located;
 - (D) Does not participate in completing the complete, immediate, or partial dentures; or
 - (E) Dies.
- (f) A provider must submit copies of laboratory prescriptions and receipts or invoices for each claim when billing for laboratory fees.

WSR 06-24-069
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Health and Recovery Services Administration)
 [Filed December 4, 2006, 4:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-21-067.

Title of Rule and Other Identifying Information: **Part 1 of 4:** New sections WAC 388-535-1079 Dental-related services for clients through age twenty—General and 388-535-1082 Covered dental-related services for clients through age twenty—Preventive services; and amending WAC 388-535-1080 Covered dental-related services for clients through age twenty—Diagnostic.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on January 9, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 10, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on January 9, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by January 5, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The new and amended sections clarify and update policies for dental-related services for clients through age twenty; ensure that department policies are applied correctly and equitably; replace the terms "medical assistance administration" and "MAA" with "the department"; update policy regarding prior authorization requirements; clarify policy on covered versus noncovered benefits; and clarify additional benefits and limi-

tations associated with those services for clients through age twenty.

Reasons Supporting Proposal: To clarify new dental-related services covered and the limitations associated with those services; to make HRSA's rules regarding covered and noncovered dental-related services for clients through age twenty clearer and easier to understand for clients and dental providers; and to identify the requirements and criteria that must be met in order to obtain covered dental-related services.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.500, 74.09.520.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, 626 8th Avenue, Olympia, WA 98504-5504, (360) 725-1342; Implementation and Enforcement: Dr. John Davis, 626 8th Avenue, Olympia, WA 98504-5504, (360) 725-1748.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not create more than minor costs for small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Dr. John Davis, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1748, TTY/TDD 1-800-848-5429, fax (360) 586-1590, e-mail davisjd@dshs.wa.gov.

November 30, 2006
 Andy Fernando, Manager
 Rules and Policies Assistance Unit

NEW SECTION

WAC 388-535-1079 Dental-related services for clients through age twenty—General. (1) Subject to coverage limitations, the department pays for dental-related services and procedures provided to clients through age twenty when the services and procedures:

- (a) Are within the scope of an eligible client's medical care program;
- (b) Are medically necessary;
- (c) Meet the department's prior authorization requirements, if any;
- (d) Are within accepted dental or medical practice standards;
- (e) Are consistent with a diagnosis of dental disease or condition;
- (f) Are reasonable in amount and duration of care, treatment, or service; and
- (g) Are listed as covered in the department's published rules, billing instructions and fee schedules.

(2) Under the Early Periodic Screening and Diagnostic Treatment (EPSDT) program, clients ages twenty and younger may be eligible for the dental-related services listed as noncovered in WAC 388-535-1100, if the services include

those medically necessary services and other measures provided to correct or ameliorate conditions discovered during a screening performed under the EPSDT program. See WAC 388-534-0100 for information about EPSDT.

(3) Clients who are eligible for services through the division of developmental disabilities may receive dental-related services according to WAC 388-535-1099.

(4) The department evaluates a request for dental-related services:

(a) That are in excess of the dental program's limitations or restrictions, according to WAC 388-501-0169; and

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

AMENDATORY SECTION (Amending WSR 03-19-078, filed 9/12/03, effective 10/13/03)

WAC 388-535-1080 Covered dental-related services(~~—Children~~) for clients through age twenty—Diagnostic. ((1) The medical assistance administration (MAA) pays for covered dental and dental-related services for children listed in this section only when they are:

(a) Within the scope of an eligible client's medical care program;

(b) Medically necessary; and

(c) Within accepted dental or medical practice standards and are:

(i) Consistent with a diagnosis of dental disease or condition; and

(ii) Reasonable in amount and duration of care, treatment, or service.

(2) MAA covers the following dental-related services for eligible children:

(a) Medically necessary services for the identification of dental problems or the prevention of dental disease, subject to the limitations of this chapter;

(b) Oral health evaluations and assessments, which must be documented in the client's file according to WAC 388-502-0020, as follows:

(i) MAA allows a comprehensive oral evaluation once per provider as an initial examination, and it must include:

(A) An oral health and developmental history;

(B) An assessment of physical and oral health status; and

(C) Health education, including anticipatory guidance.

(ii) MAA allows a periodic oral evaluation once every six months. Six months must elapse between the comprehensive oral evaluation and the first periodic oral evaluation.

(iii) MAA allows a limited oral evaluation only when the provider performing the limited oral evaluation is not providing pre-scheduled dental services for the client. The limited oral evaluation must be:

(A) To provide limited or emergent services for a specific dental problem; or

(B) To provide an evaluation for a referral.

(c) Radiographs as follows:

(i) Intraoral (complete series, including bitewings), allowed once in a three-year period;

(ii) Bitewings, total of four allowed every twelve months; and

(iii) Panoramic, for oral surgical purposes only, as follows:

(A) Not allowed with an intraoral complete series; and

(B) Allowed once in a three-year period, except for preoperative or postoperative surgery cases. Preoperative radiographs must be provided within fourteen days prior to surgery, and postoperative radiographs must be provided within thirty days after surgery.

(d) Fluoride treatment (either gel or varnish, but not both) as follows for clients through age eighteen (additional applications require prior authorization):

(i) Topical application of fluoride gel, once every six months; or

(ii) Topical application of fluoride varnish, up to three times in a twelve-month period;

(iii) See subsection (3) of this section for clients of the division of developmental disabilities.

(e) Sealants for children only, once per tooth in a three-year period for:

(i) The occlusal surfaces of:

(A) Permanent teeth two, three, fourteen, fifteen, eighteen, nineteen, thirty, and thirty-one only; and

(B) Primary teeth A, B, I, J, K, L, S, and T only.

(ii) The lingual pits of teeth seven and ten; and

(iii) Teeth with no decay.

(f) Prophylaxis treatment, which is allowed:

(i) Once every six months for children age eight through eighteen;

(ii) Only as a component of oral hygiene instruction for children through age seven; and

(iii) For clients of the division of developmental disabilities, see subsection (3) of this section.

(g) Space maintainers, for children through age eighteen only, as follows:

(i) Fixed (unilateral type), one per quadrant;

(ii) Fixed (bilateral type), one per arch; and

(iii) Re cementation of space maintainer, once per quadrant or arch.

(h) Amalgam or composite restorations, as follows:

(i) Once in a two-year period; and

(ii) For the same surface of the same tooth.

(i) Crowns as described in WAC 388-535-1230, Crowns;

(j) Restoration of teeth and maintenance of dental health, subject to limitations of WAC 388-535-1100 and as follows:

(i) Multiple restorations involving the proximal and occlusal surfaces of the same tooth are considered to be a multisurface restoration, and are reimbursed as such; and

(ii) Proximal restorations that do not involve the incisal angle in the anterior tooth are considered to be a two-surface restoration, and are reimbursed as such;

(k) Endodontic (root canal) therapies for permanent teeth except for wisdom teeth;

(l) Therapeutic pulpotomies, once per tooth, on primary teeth only;

(m) Pulp vitality test, as follows:

(i) Once per day (not per tooth);

(ii) For diagnosis of emergency conditions only; and

(iii) Not allowed when performed on the same date as any other procedure, with the exception of an emergency examination or palliative treatment.

- (n) Periodontal sealing and root planing as follows:
 - (i) See subsection (3) of this section for clients of the division of developmental disabilities;
 - (ii) Only when the client has radiographic (X-ray) evidence of periodontal disease. There must be supporting documentation, including complete periodontal charting and a definitive periodontal diagnosis;
 - (iii) Once per quadrant in a twenty-four month period; and
 - (iv) Not allowed when performed on the same date of service as prophylaxis, periodontal maintenance, gingivectomy, or gingivoplasty.
- (o) Periodontal maintenance as follows:
 - (i) See subsection (3) of this section for clients of the division of developmental disabilities;
 - (ii) Only when the client has radiographic (X-ray) evidence of periodontal disease. There must be supporting documentation, including complete periodontal charting and a definitive periodontal diagnosis;
 - (iii) Once per full mouth in a twelve-month period; and
 - (iv) Not allowed when performed on the same date of service as prophylaxis, periodontal sealing, gingivectomy, or gingivoplasty.
- (p) Complex orthodontic treatment for severe handicapping dental needs as specified in chapter 388-535A WAC, Orthodontic services;
- (q) Occlusal orthotic appliance for temporomandibular joint disorder (TMJ/TMD) or bruxism, one in a two-year period;
- (r) Medically necessary oral surgery when coordinated with the client's managed care plan (if any);
- (s) Dental services or treatment necessary for the relief of pain and infections, including removal of symptomatic wisdom teeth. MAA does not cover routine removal of asymptomatic wisdom teeth without justifiable medical indications;
- (t) Behavior management for clients through age eighteen only, whose documented behavior requires the assistance of more than one additional dental professional staff to protect the client from self-injury during treatment. See subsection (3) of this section for clients of the division of developmental disabilities.
- (u) Nitrous oxide for children through age eighteen only, when medically necessary. See subsection (3) of this section for clients of the division of developmental disabilities.
- (v) Professional visits, as follows:
 - (i) Bedside call at a nursing facility or residence when requested by the client or the client's surrogate decision maker as defined in WAC 388-97-055, or when a referral for services is made by the attending physician, the director of nursing, or the nursing facility supervisor, as appropriate; allowed once per day (not per client and not per facility), per provider.
 - (ii) Hospital call, including emergency care, allowed one per day.
 - (w) Emergency palliative treatment, as follows:
 - (i) Allowed only when no other definitive treatment is performed on the same day; and
 - (ii) Documentation must include tooth designation and a brief description of the service.

- (3) For clients of the division of developmental disabilities, MAA allows services as follows:
 - (a) Fluoride application, either varnish or gel, allowed three times per calendar year;
 - (b) Prophylaxis, allowed three times per calendar year;
 - (c) Periodontal sealing and root planing, allowed once every six months;
 - (d) Periodontal maintenance, allowed three times every twelve months;
 - (e) Nitrous oxide;
 - (f) Behavior management that requires the assistance of one additional dental professional staff; and
 - (g) Panoramic radiographs, with documentation that behavior management is required.
- (4) MAA covers medically necessary services provided in a hospital under the direction of a physician or dentist for:
 - (a) The care or treatment of teeth, jaws, or structures directly supporting the teeth if the procedure requires hospitalization; and
 - (b) Short stays when the procedure cannot be done in an office setting. See WAC 388-550-1100(6), Hospital coverage.
- (5) MAA covers anesthesia for medically necessary services as follows:
 - (a) The anesthesia must be administered by:
 - (i) An oral surgeon;
 - (ii) An anesthesiologist;
 - (iii) A dental anesthesiologist;
 - (iv) A certified registered nurse anesthetist (CRNA); or
 - (v) A general dentist who has a current conscious sedation permit from the department of health (DOH).
 - (b) MAA pays for anesthesia services according to WAC 388-535-1350.
- (6) For clients residing in nursing facilities or group homes:
 - (a) Dental services must be requested by the client or a referral for services made by the attending physician, the director of nursing or the nursing facility supervisor, or the client's legal guardian;
 - (b) Mass screening for dental services of clients residing in a facility is not permitted; and
 - (c) Nursing facilities must provide dental-related necessary services according to WAC 388-97-012, Nursing facility care.
- (7) 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. MAA evaluates and approves requests for LE for dental-related services when medically necessary, under the provisions of WAC 388-501-0165)) The department covers medically necessary dental-related diagnostic services, subject to the coverage limitations listed, for clients through age twenty as follows:
 - (1) **Clinical oral evaluations.** The department covers:
 - (a) Oral health evaluations and assessments. The services must be documented in the client's record in accordance with WAC 388-502-0020.
 - (b) Periodic oral evaluations as defined in WAC 388-535-1050, once every six months. Six months must elapse between the comprehensive oral evaluation and the first periodic oral evaluation.

(c) Limited oral evaluations as defined in WAC 388-535-1050, only when the provider performing the limited oral evaluation is not providing routine scheduled dental services for the client. The limited oral evaluation:

(i) Must be to evaluate the client for a:

(A) Specific dental problem or oral health complaint;

(B) Dental emergency; or

(C) Referral for other treatment.

(ii) When performed by a denturist, is limited to the initial examination appointment. The department does not cover any additional limited examination by a denturist for the same client until three months after a removable prosthesis has been seated.

(d) Comprehensive oral evaluations as defined in WAC 388-535-1050, once per client, per provider or clinic, as an initial examination. The department covers an additional comprehensive oral evaluation if the client has not been treated by the same provider or clinic within the past five years.

(e) Limited visual oral assessments as defined in WAC 388-535-1050, up to two per client, per year, per provider only when the assessment is:

(i) Not performed in conjunction with other clinical oral evaluation services;

(ii) Performed to determine the need for sealants or fluoride treatment and/or when triage services are provided in settings other than dental offices or clinics; and

(iii) Provided by a licensed dentist or licensed dental hygienist.

(2) Radiographs (X-rays). The department:

(a) Covers radiographs that are of diagnostic quality, dated, and labeled with the client's name. The department requires original radiographs to be retained by the provider as part of the client's dental record, and duplicate radiographs to be submitted with prior authorization requests, or when copies of dental records are requested.

(b) Uses the prevailing standard of care to determine the need for dental radiographs.

(c) Covers an intraoral complete series (includes four bitewings), once in a three-year period only if the department has not paid for a panoramic radiograph for the same client in the same three-year period.

(d) Covers periapical radiographs that are not included in a complete series. Documentation supporting the medical necessity for these must be included in the client's record.

(e) Covers an occlusal intraoral radiograph once in a two-year period. Documentation supporting the medical necessity for these must be included in the client's record.

(f) Covers a maximum of two bitewing radiographs once every twelve months for clients through age eleven.

(g) Covers a maximum of four bitewing radiographs once every twelve months for clients ages twelve through twenty.

(h) Covers panoramic radiographs in conjunction with four bitewings, once in a three-year period, only if the department has not paid for an intraoral complete series for the same client in the same three-year period.

(i) May cover panoramic radiographs for preoperative or postoperative surgery cases more than once in a three-year

period, only on a case-by-case basis and when prior authorized.

(j) Covers cephalometric film:

(i) For orthodontics, as described in chapter 388-535A WAC; or

(ii) Only on a case-by-case basis and when prior authorized.

(k) Covers radiographs not listed as covered in this subsection, only on a case-by-case basis and when prior authorized.

(l) Covers oral and facial photographic images, only on a case-by-case basis and when requested by the department.

(3) Tests and examinations. The department covers:

(a) One pulp vitality test per visit (not per tooth):

(i) For diagnosis only during limited oral evaluations; and

(ii) When radiographs and/or documented symptoms justify the medical necessity for the pulp vitality test.

(b) Diagnostic casts other than those included in an orthodontic case study, on a case-by-case basis, and when requested by the department.

NEW SECTION

WAC 388-535-1082 Covered dental-related services for clients through age twenty—Preventive services. The department covers medically necessary dental-related preventive services, subject to the coverage limitations listed, for clients through age twenty as follows:

(1) Dental prophylaxis. The department covers prophylaxis:

(a) Which includes scaling and polishing procedures to remove coronal plaque, calculus, and stains when performed on primary, transitional, or permanent dentition, once every six months for clients through age eighteen.

(b) Which includes scaling and polishing procedures to remove coronal plaque, calculus, and stains when performed on transitional or permanent dentition, once every twelve months for clients ages nineteen through twenty.

(c) Only when the service is performed six months after periodontal scaling and root planing, or periodontal maintenance services, for clients ages thirteen through eighteen.

(d) Only when the service is performed twelve months after periodontal scaling and root planing, or periodontal maintenance services for clients ages nineteen through twenty.

(e) Only when not performed on the same date of service as periodontal scaling and root planing, periodontal maintenance, gingivectomy or gingivoplasty.

(f) For clients of the division of developmental disabilities according to WAC 388-535-1099.

(2) Topical fluoride treatment. The department covers:

(a) Fluoride varnish, rinse, foam or gel for clients ages six and younger, up to three times within a twelve-month period.

(b) Fluoride varnish, rinse, foam or gel for clients ages seven through eighteen, up to two times within a twelve-month period.

(c) Fluoride varnish, rinse, foam or gel, up to three times within a twelve-month period during orthodontic treatment.

(d) Fluoride rinse, foam or gel for clients ages nineteen through twenty, once within a twelve-month period.

(e) Additional topical fluoride applications only on a case-by-case basis and when prior authorized.

(f) Topical fluoride treatment for clients of the division of developmental disabilities according to WAC 388-535-1099.

(3) **Oral hygiene instruction.** The department covers:

(a) Oral hygiene instruction only for clients through age eight.

(b) Oral hygiene instruction up to two times within a twelve-month period.

(c) Individualized oral hygiene instruction for home care to include tooth brushing technique, flossing, and use of oral hygiene aides.

(d) Oral hygiene instruction only when not performed on the same date of service as prophylaxis.

(e) Oral hygiene instruction only when provided by a licensed dentist or a licensed dental hygienist and the instruction is provided in a setting other than a dental office or clinic.

(4) **Sealants.** The department covers:

(a) Sealants only when used on a mechanically and/or chemically prepared enamel surface.

(b) Sealants once per tooth in a three-year period for clients through age eighteen.

(c) Sealants only when used on the occlusal surfaces of:

(i) Permanent teeth two, three, fourteen, fifteen, eighteen, nineteen, thirty, and thirty-one; and

(ii) Primary teeth A, B, I, J, K, L, S, and T.

(d) Sealants only if evidence of occlusal or interproximal decay has not penetrated to the dentoenamel junction (DEJ).

(e) Sealants only when placed on a tooth with no pre-existing occlusal restoration, or any occlusal restoration placed on the same day.

(f) Additional sealants on a case-by-case basis and when prior authorized.

(5) **Space maintenance.** The department covers:

(a) Fixed unilateral or fixed bilateral space maintainers for clients through age eighteen.

(b) Only one space maintainer per quadrant.

(c) Space maintainers only for missing primary molars A, B, I, J, K, L, S, and T.

(d) Replacement space maintainers only on a case-by-case basis and when prior authorized.

WSR 06-24-070

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed December 4, 2006, 4:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-21-067 and 05-20-086.

Title of Rule and Other Identifying Information: **Part 4 of 4:** Amending WAC 388-535-1100 Dental-related services not covered for clients through age twenty, 388-535-1220 Obtaining prior authorization for dental-related services for clients through age twenty, 388-535-1245 Access to baby and child dentistry (ABCD) program; and repealing WAC 388-535-1200 Dental-related services requiring prior authorization—Children, 388-535-1230 Crowns for children, and 388-535-1240 Dentures, partial dentures, and overdentures for children.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097, on January 9, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 10, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on January 9, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by January 5, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The amended sections clarify and update policies for dental-related services for clients through age twenty; ensure that department policies are applied correctly and equitably; replace the terms "medical assistance administration" and "MAA" with "the department"; update policy regarding prior authorization requirements; clarify policy on covered versus noncovered benefits; clarify additional benefits and limitations associated with those services for clients through age twenty; clarify policy for the ABCD program; and repeal WAC 388-535-1200, 388-535-1230, and 388-535-1240 and incorporate updated policy into new sections.

Reasons Supporting Proposal: To clarify new dental-related services covered and the limitations associated with those services; to make HRSA's rules regarding covered and noncovered dental-related services for clients through age twenty clearer and easier to understand for clients and dental providers; and to identify the requirements and criteria that must be met in order to obtain covered dental-related services.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090, 74.09.500, 74.09.520.

Statute Being Implemented: RCW 74.04.050, 74.08.090, 74.09.500, 74.09.520.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, 626 8th Avenue, Olympia, WA 98504-5504, (360) 725-1342; Implementation and Enforcement: Dr. John

Davis, 626 8th Avenue, Olympia, WA 98504-5504, (360) 725-1748.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not create more than minor costs to small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Dr. John Davis, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1748, TTY/TDD 1-800-848-5429, fax (360) 586-1590, e-mail davisjd@dshs.wa.gov.

November 30, 2006

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 03-19-078, filed 9/12/03, effective 10/13/03)

WAC 388-535-1100 Dental-related services not covered (~~—Children~~) for clients through age twenty. (1) The ~~((medical assistance administration (MAA) does not cover children's dental-related services described in subsection (2) of this section unless the services are:~~

~~(a) Required by a physician as a result of an EPSDT screen as provided under chapter 388-534 WAC; or~~

~~(b) Included in an MAA-waivered program;~~

~~(2) MAA does not cover the following services for children:~~

~~(a) Any service specifically excluded by statute;~~

~~(b) More costly services when less costly, equally effective services as determined by the department are available;~~

~~(c) Services, procedures, treatment, devices, drugs, or application of associated services which the department or the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)) consider investigative or experimental on the date the services were provided;~~

~~(d) Routine fluoride treatments (gel or varnish) for clients age nineteen through twenty, unless the clients are:~~

~~(i) Clients of the division of developmental disabilities; or~~

~~(ii) Diagnosed with xerostomia, in which case the provider must request prior authorization.~~

~~(e) Crowns, as follows:~~

~~(i) For wisdom and peg teeth;~~

~~(ii) Laboratory processed crowns for posterior teeth;~~

~~(iii) Temporary crowns, including stainless steel crowns placed as temporary crowns; and~~

~~(iv) Post and core for crowns.~~

~~(f) Root canal services for primary or wisdom teeth;~~

~~(g) Root planing, unless they are clients of the division of developmental disabilities;~~

~~(h) Bridges;~~

~~(i) Transitional or treatment dentures;~~

~~(j) Teeth implants, including follow up and maintenance;~~

~~(k) Cosmetic treatment or surgery, except for medically necessary reconstructive surgery to correct defects attributable to an accident, birth defect, or illness;~~

~~(l) Porcelain margin extensions (also known as crown lengthening), due to receding gums;~~

~~(m) Extraction of asymptomatic teeth;~~

~~(n) Minor bone grafts;~~

~~(o) Nonemergent oral surgery performed in an inpatient hospital setting, except for the following:~~

~~(i) For clients of the division of developmental disabilities, or for children eighteen years of age or younger whose surgeries cannot be performed in an office setting. This requires written prior authorization for the inpatient hospitalization; or~~

~~(ii) As provided in WAC 388-535-1080(4).~~

~~(p) Dental supplies such as toothbrushes (manual, automatic, or electric), toothpaste, floss, or whiteners;~~

~~(q) Dentist's time writing prescriptions or calling in prescriptions or prescription refills to a pharmacy;~~

~~(r) Educational supplies;~~

~~(s) Missed or canceled appointments;~~

~~(t) Nonmedical equipment, supplies, personal or comfort items or services;~~

~~(u) Provider mileage or travel costs;~~

~~(v) Service charges or delinquent payment fees;~~

~~(w) Supplies used in conjunction with an office visit;~~

~~(x) Take-home drugs;~~

~~(y) Teeth whitening; or~~

~~(z) Restorations for anterior or posterior wear with no evidence of decay.~~

~~(3) MAA evaluates a request for any service that is listed as nonecovered under the provisions of WAC 388-501-0165)) department does not cover the following for clients through age twenty:~~

~~(a) The dental-related services described in subsection (2) of this section unless the services include those medically necessary services and other measures provided to correct or ameliorate conditions discovered during a screening performed under the early periodic screening, diagnosis and treatment (EPSDT) program. See WAC 388-534-0100 for information about the EPSDT program.~~

~~(b) Any service specifically excluded by statute.~~

~~(c) More costly services when less costly, equally effective services as determined by the department are available.~~

~~(d) Services, procedures, treatment, devices, drugs, or application of associated services:~~

~~(i) Which the department or the Centers for Medicare and Medicaid Services (CMS) considers investigative or experimental on the date the services were provided.~~

~~(ii) That are not listed as covered in one or both of the following:~~

~~(A) Washington Administrative Code (WAC).~~

~~(B) The department's current published documents.~~

~~(2) The department does not cover dental-related services listed under the following categories of service for clients through age twenty (see subsection (1)(a) of this section for services provided under the EPSDT program):~~

~~(a) **Diagnostic services.** The department does not cover:~~

~~(i) Extraoral radiographs.~~

~~(ii) Comprehensive periodontal evaluations.~~

~~(b) **Preventive services.** The department does not cover:~~

~~(i) Nutritional counseling for control of dental disease.~~

~~(ii) Tobacco counseling for the control and prevention of oral disease.~~

(iii) Removable space maintainers of any type.

(iv) Sealants placed on a tooth with the same-day occlusal restoration, pre-existing occlusal restoration, or a tooth with occlusal decay.

(v) Space maintainers for clients ages nineteen through twenty.

(c) Restorative services. The department does not cover:

(i) Gold foil restorations.

(ii) Metallic, resin-based composite, or porcelain/ceramic inlay/onlay restorations.

(iii) Crowns for cosmetic purposes (e.g., peg laterals and tetracycline staining).

(iv) Crowns for third molars one, sixteen, seventeen, and thirty-two.

(v) Temporary or provisional crowns (including ion crowns).

(vi) Labial veneer resin or porcelain laminate restorations.

(vii) Any type of coping.

(viii) Crown repairs.

(ix) Polishing or recontouring restorations or overhang removal for any type of restoration.

(d) Endodontic services. The department does not cover:

(i) Any endodontic therapy on primary teeth, except as described in WAC 388-535-1086 (3)(a).

(ii) Apexification/recalcification for root resorption of permanent anterior teeth.

(iii) Any apexification/recalcification procedures for bicuspid or molar teeth.

(iv) Any apicoectomy/periradicular services for bicuspid or molar teeth.

(v) Any surgical endodontic procedures including, but not limited to, retrograde fillings (except for anterior teeth), root amputation, reimplantation, and hemisections.

(e) Periodontic services. The department does not cover:

(i) Surgical periodontal services including, but not limited to:

(A) Gingival flap procedures.

(B) Clinical crown lengthening.

(C) Osseous surgery.

(D) Bone or soft tissue grafts.

(E) Biological material to aid in soft and osseous tissue regeneration.

(F) Guided tissue regeneration.

(G) Pedicle, free soft tissue, apical positioning, subepithelial connective tissue, soft tissue allograft, combined connective tissue and double pedicle, or any other soft tissue or osseous grafts.

(H) Distal or proximal wedge procedures.

(ii) Nonsurgical periodontal services including, but not limited to:

(A) Intracoronal or extracoronal provisional splinting.

(B) Full mouth or quadrant debridement.

(C) Localized delivery of chemotherapeutic agents.

(D) Any other type of nonsurgical periodontal service.

(f) Removable prosthodontics. The department does not cover:

(i) Removable unilateral partial dentures.

(ii) Any interim complete or partial dentures.

(iii) Precision attachments.

(iv) Replacement of replaceable parts for semi-precision or precision attachments.

(g) Implant services. The department does not cover:

(i) Any type of implant procedures, including, but not limited to, any tooth implant abutment (e.g., periosteal implant, eposteal implant, and transosteal implant), abutments or implant supported crown, abutment supported retainer, and implant supported retainer.

(ii) Any maintenance or repairs to procedures listed in (g)(i) of this subsection.

(iii) The removal of any implant as described in (g)(i) of this subsection.

(h) Fixed prosthodontics. The department does not cover:

(i) Any type of fixed partial denture pontic or fixed partial denture retainer.

(ii) Any type of precision attachment, stress breaker, connector bar, coping, cast post, or any other type of fixed attachment or prosthesis.

(i) Oral and maxillofacial surgery. The department does not cover:

(i) Any oral surgery service not listed in WAC 388-535-1094.

(ii) Any oral surgery service that is not listed in the department's list of covered Current Procedural Terminology (CPT) codes published in the department's current rules or billing instructions.

(j) Adjunctive general services. The department does not cover:

(i) Anesthesia, including, but not limited to:

(A) Local anesthesia as a separate procedure.

(B) Regional block anesthesia as a separate procedure.

(C) Trigeminal division block anesthesia as a separate procedure.

(D) Medication for oral sedation, or therapeutic intramuscular (IM) drug injections, including antibiotic and injection of sedative.

(E) Application of any type of desensitizing medicament or resin.

(ii) Other general services including, but not limited to:

(A) Fabrication of an athletic mouthguard.

(B) Occlusion analysis.

(C) Occlusal adjustment or odontoplasties.

(D) Enamel microabrasion.

(E) Dental supplies such as toothbrushes, toothpaste, floss, and other take home items.

(F) Dentist's or dental hygienist's time writing or calling in prescriptions.

(G) Dentist's or dental hygienist's time consulting with clients on the phone.

(H) Educational supplies.

(I) Nonmedical equipment or supplies.

(J) Personal comfort items or services.

(K) Provider mileage or travel costs.

(L) Fees for no-show, cancelled, or late arrival appointments.

(M) Service charges of any type, including fees to create or copy charts.

(N) Office supplies used in conjunction with an office visit.

(O) Teeth whitening services or bleaching, or materials used in whitening or bleaching.

AMENDATORY SECTION (Amending WSR 03-19-078, filed 9/12/03, effective 10/13/03)

WAC 388-535-1220 Obtaining prior authorization for dental-related services(~~(—Children)~~) for clients through age twenty. ~~((When the medical assistance administration (MAA) authorizes a dental-related service for children, that authorization indicates only that the specific service is medically necessary; it is not a guarantee of payment. The client must be eligible for covered services at the time those services are provided.~~

~~(1) MAA)) (1) The department uses the determination process for payment described in WAC 388-501-0165 for covered dental-related services for clients through age twenty that require prior authorization.~~

~~(2) The department requires a dental provider who is requesting prior authorization to submit sufficient objective clinical information to establish medical necessity. The request must be submitted in writing on an American Dental Association (ADA) claim form, which may be obtained by writing to the American Dental Association, 211 East Chicago Avenue, Chicago, Illinois 60611. ((The request must include at least all of the following:))~~

~~(3) The department may request additional information as follows:~~

~~(a) ((Physiological description of the disease, injury, impairment, or other ailment;~~

~~(b)) Additional radiographs (x-rays)(refer to WAC 388-535-1080(2)).;~~

~~((e) Treatment plan;~~

~~(d)) (b) Study models ((, if requested)); ((and~~

~~(e)) (c) Photographs(, if requested); and~~

~~(d) Any other information as determined by the department.~~

~~(4) The department may require second opinions and/or consultations before authorizing any procedure.~~

~~((2) MAA authorizes requested services that meet the criteria in WAC 388-535-1080.~~

~~(3) MAA denies a request for dental services when the requested service is:~~

~~(a) Not medically necessary; or~~

~~(b) A service, procedure, treatment, device, drug, or application of associated service which the department or the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)) consider investigative or experimental on the date the service is provided.~~

~~(4) MAA may require second opinions and/or consultations before authorizing any procedure.~~

~~(5) Authorization is valid only if the client is eligible for covered services on the date of service)) (5) When the department authorizes a dental-related service for a client, that authorization indicates only that the specific service is medically necessary; it is not a guarantee of payment. The authorization is valid for six months and only if the client is eligible for covered services on the date of service.~~

~~(6) The department denies a request for a dental-related service when the requested service:~~

~~(a) Is covered by another department program;~~

~~(b) Is covered by an agency or other entity outside the department; or~~

~~(c) Fails to meet the program criteria, limitations, or restrictions in chapter 388-535 WAC.~~

AMENDATORY SECTION (Amending WSR 02-11-136, filed 5/21/02, effective 6/21/02)

WAC 388-535-1245 Access to baby and child dentistry (ABCD) program. The access to baby and child dentistry (ABCD) program is a program established to increase access to dental services ~~((in targeted areas))~~ for Medicaid-eligible ~~((infants, toddlers, and preschoolers. Public and private sectors cooperate to administer the program))~~ clients ages five and younger.

(1) Client eligibility for the ABCD program is as follows:

(a) Clients must be age five ((years of age or)) and younger ((and reside in targeted areas selected by the medical assistance administration (MAA))). Once enrolled in the ABCD program, ~~((an))~~ eligible clients ~~((is))~~ are covered until ((reaching age six)) their sixth birthday.

~~(b) ((Eligible clients enrolled in a managed care plan are eligible for the ABCD program under fee-for-service.~~

~~(e) Eligible))~~ Clients ((enrolled in)) eligible under one of the following medical assistance programs are eligible for the ABCD program:

~~(i) Categorically needy program (((CN or)) CNP);~~

~~(ii) Limited casualty program((/))_medically needy program (LCP((/))_MNP); ((and))~~

~~(iii) Children's health program; or~~

~~(iv) State children's health insurance program (SCHIP).~~

(c) ABCD program services for eligible clients enrolled in a managed care organization (MCO) plan are paid through the fee-for-service payment system.

(2) Health care providers and community service programs ~~((in the targeted areas))~~ identify and refer eligible clients to the ABCD program. If enrolled, the client and an adult family member may receive:

~~(a) ((An ABCD program identification card;~~

~~(b)) Oral health ((information)) education;~~

~~((e)) (b) "Anticipatory guidance" (expectations of the client and the client's family members, including the importance of keeping appointments); and~~

~~((d)) (c) Assistance with ((obstacles to care, such as lack of)) transportation((; and~~

~~(e) Case management services, for families who do not cooperate with the training(s) in this subsection.~~

~~(3) Families who do not cooperate with the training(s) in subsection (2) of this section may be disqualified from the ABCD program. The client remains eligible for MAA dental coverage as described in this chapter.~~

~~(4) The)), interpreter services, and other issues related to dental services.~~

(3) Dentists must be certified through the continuing education program in the University of Washington School of Pediatric Dentistry((s continuing education program certifies dental providers)) to furnish ABCD program services.

~~((5)MAA)~~ (4) The department pays enhanced fees to ABCD-certified participating providers for furnishing ABCD program services. ((In addition to services provided under MAA's dental care program, the ABCD program provides family oral health education, which is allowed twice per year, per family, and must include)) ABCD program services include, when appropriate:

- ~~(a) ((Risk assessment;~~
- ~~(b)) Family oral health ((instruction/training;~~
- ~~(c) Dietary counseling;~~
- ~~(d) Fluoride supplements, if appropriate; and~~
- ~~(e) Documentation in))~~ education. An oral health education visit:

(i) Must have a duration of at least twenty minutes for each visit:

(ii) Is limited to one visit per day per family, up to two visits per calendar year; and

- (iii) Must include all of the following:
- (A) "Lift lip" training;
- (B) Oral hygiene training;
- (C) Risk assessment for early childhood caries;
- (D) Dietary counseling;
- (E) Topical application of gel or varnish;
- (F) Discussion of fluoride supplements; and
- (G) Documentation in the client's file or the client's designated adult member's (family member or other responsible adult) file to record the activities provided and duration of the oral education visit.

(b) Comprehensive and periodic oral evaluation, up to two visits per client, per calendar year;

(c) Amalgam and resin restorations on primary teeth, as specified in current department-published documents;

- (d) Therapeutic pulpotomy;
- (e) Prefabricated stainless steel crowns on primary teeth, as specified in current department-published documents;

(f) Resin-based composite crowns on anterior primary teeth; and

(g) Other dental-related services, as specified in current department-published documents.

(5) The client's file must show documentation of the ABCD program services provided.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-535-1200	Dental-related services requiring prior authorization—Children.
WAC 388-535-1230	Crowns for children.
WAC 388-535-1240	Dentures, partial dentures, and overdentures for children.

WSR 06-24-071

**PROPOSED RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed December 4, 2006, 4:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-21-067.

Title of Rule and Other Identifying Information: **Part 3 of 4:** New sections WAC 388-535-1092 Covered dental-related services for clients through age twenty—Maxillofacial prosthetic services, 388-535-1094 Covered dental-related services for clients through age twenty—Oral and maxillofacial surgery services, 388-535-1096 Covered dental-related services for clients through age twenty—Orthodontic services, 388-535-1098 Covered dental-related services for clients through age twenty—Adjunctive general services, and 388-535-1099 Covered dental-related services for clients of the division of developmental disabilities.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097, on January 9, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 10, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on January 9, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by January 5, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The new sections clarify and update policies for dental-related services for clients through age twenty; ensure that department policies are applied correctly and equitably; replace the terms "medical assistance administration" and "MAA" with "the department"; update policy regarding prior authorization requirements; clarify policy on covered versus noncovered benefits; clarify additional benefits and limitations associated with those services for clients through age twenty.

Reasons Supporting Proposal: To clarify new dental-related services covered and the limitations associated with those services; to make HRSA's rules regarding covered and noncovered dental-related services for clients through age twenty clearer and easier to understand for clients and dental providers; and to identify the requirements and criteria that must be met in order to obtain covered dental-related services.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.500, 74.09.520.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, 626 8th Avenue, Olympia, WA 98504-5504, (360) 725-1342; Implementation and Enforcement: Dr. John Davis, 626 8th Avenue, Olympia, WA 98504-5504, (360) 725-1748.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not create more than minor costs to small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Dr. John Davis, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1748, TTY/TDD 1-800-848-5429, fax (360) 586-1590, e-mail davisjd@dshs.wa.gov.

November 30, 2006

Andy Fernando, Manager
Rules and Policies Assistance Unit

NEW SECTION

WAC 388-535-1092 Covered dental-related services for clients through age twenty—Maxillofacial prosthetic services. The department covers medically necessary maxillofacial prosthetic services, subject to the coverage limitations listed, for clients through age twenty as follows:

- (1) Maxillofacial prosthetics are covered only on a case-by-case basis and when prior authorized; and
- (2) The department must pre-approve a provider qualified to furnish maxillofacial prosthetics.

NEW SECTION

WAC 388-535-1094 Covered dental-related services for clients through age twenty—Oral and maxillofacial surgery services. The department covers medically necessary oral and maxillofacial surgery services, subject to the coverage limitations listed, for clients through age twenty as follows:

- (1) **Oral and maxillofacial surgery services.** The department:
 - (a) Requires enrolled providers who do not meet the conditions in WAC 388-535-1070(3) to bill claims for services that are listed in this subsection using only the Current Dental Terminology (CDT) codes.
 - (b) Requires enrolled providers (oral and maxillofacial surgeons) who meet the conditions in WAC 388-535-1070(3) to bill claims using Current Procedural Terminology (CPT) codes unless the procedure is specifically listed in the department's current published billing instructions as a CDT covered code (e.g., extractions).
 - (c) Covers nonemergency oral surgery performed in a hospital or ambulatory surgery center only for:
 - (i) Clients ages eight and younger;
 - (ii) Clients ages nine through twenty only on a case-by-case basis and when prior authorized; and
 - (iii) Clients of the division of developmental disabilities according to WAC 388-535-1099.
 - (d) Requires the client's dental record to include supporting documentation for each type of extraction or any other

surgical procedure billed to the department. The documentation must include:

- (i) Appropriate consent form signed by the client or the client's legal representative;
 - (ii) Appropriate radiographs;
 - (iii) Medical justification with diagnosis;
 - (iv) Client's blood pressure, when appropriate;
 - (v) A surgical narrative;
 - (vi) A copy of the post-operative instructions; and
 - (vii) A copy of all pre- and post-operative prescriptions.
- (e) Covers routine and surgical extractions.
- (f) Covers debridement of a granuloma or cyst that is five millimeters or greater in diameter. The department includes debridement of a granuloma or cyst that is less than five millimeters as part of the global fee for the extraction.
- (g) Covers biopsy, as follows:
- (i) Biopsy of soft oral tissue or brush biopsy do not require prior authorization; and
 - (ii) All biopsy reports or findings must be kept in the client's dental record.
 - (h) Covers alveoloplasty only on a case-by-case basis and when prior authorized. The department covers alveoloplasty only when not performed in conjunction with extractions.
 - (i) Covers surgical excision of soft tissue lesions only on a case-by-case basis and when prior authorized.
 - (j) Covers only the following excisions of bone tissue in conjunction with placement of immediate, complete, or partial dentures when prior authorized:
 - (i) Removal of lateral exostosis;
 - (ii) Removal of torus palatinus or torus mandibularis; and
 - (iii) Surgical reduction of soft tissue or osseous tuberosity.
- (2) **Surgical incisions.** The department covers the following surgical incision-related services:
- (a) Uncomplicated intraoral and extraoral soft tissue incision and drainage of abscess. The department does not cover this service when combined with an extraction or root canal treatment. Documentation supporting medical necessity must be in the client's record.
 - (b) Removal of foreign body from mucosa, skin, or subcutaneous alveolar tissue when prior authorized. Documentation supporting the medical necessity for the service must be in the client's record.
 - (c) Frenuloplasty/frenulectomy for clients through age six. The department covers frenuloplasty/frenulectomy for clients ages seven through twelve only on a case-by-case and when prior authorized. Documentation supporting the medical necessity for the service must be in the client's record.
- (3) **Occlusal orthotic devices.** (Refer to WAC 388-535-1098 (5)(c) for occlusal guard coverage and limitations on coverage.) The department covers:
- (a) Occlusal orthotic devices for clients ages twelve through twenty only on a case-by-case basis and when prior authorized.
 - (b) An occlusal orthotic device only as a laboratory processed full arch appliance.

NEW SECTION

WAC 388-535-1096 Covered dental-related services for clients through age twenty—Orthodontic services. The department covers orthodontic services, subject to the coverage limitations listed, for clients through age twenty according to chapter 388-535A WAC.

NEW SECTION

WAC 388-535-1098 Covered dental-related services for clients through age twenty—Adjunctive general services. The department covers medically necessary dental-related adjunctive general services, subject to the coverage limitations listed, for clients through age twenty as follows:

- (1) **Adjunctive general services.** The department:
 - (a) Covers palliative (emergency) treatment, not to include pupal debridement (see WAC 388-535-1086 (2)(b)), for treatment of dental pain, limited to once per day, per client, as follows:
 - (i) The treatment must occur during limited evaluation appointments;
 - (ii) A comprehensive description of the diagnosis and services provided must be documented in the client's record; and
 - (iii) Appropriate radiographs must be in the client's record supporting the medical necessity of the treatment.
 - (b) Covers local anesthesia and regional blocks as part of the global fee for any procedure being provided to clients.
 - (c) Covers office based oral or parenteral conscious sedation, deep sedation, or general anesthesia, as follows:
 - (i) The provider's current anesthesia permit must be on file with the department.
 - (ii) For clients of the division of developmental disabilities, the services must be performed according to WAC 388-535-1099.
 - (iii) For clients ages eight and younger, documentation supporting the medical necessity of the anesthesia service must be in the client's record.
 - (iv) For clients ages nine through twenty, deep sedation or general anesthesia services are covered on a case-by-case basis and when prior authorized, except for oral surgery services. Oral surgery services listed in WAC 388-535-1094 do not require prior authorization.
 - (v) Prior authorization is not required for oral or parenteral conscious sedation for any dental service. Documentation supporting the medical necessity of the service must be in the client's record.
 - (vi) For clients ages nine through eighteen who have a diagnosis of oral facial cleft, the department does not require prior authorization for deep sedation or general anesthesia services when the dental procedure is directly related to the oral facial cleft treatment.
 - (vii) For clients through age twenty, the provider must bill anesthesia services using the CDT codes listed in the department's current published billing instructions.
 - (d) Covers inhalation of nitrous oxide for clients through age twenty, once per day.
 - (e) Requires providers of oral or parenteral conscious sedation, deep sedation, or general anesthesia to meet:
 - (i) The prevailing standard of care;

- (ii) The provider's professional organizational guidelines;
- (ii) The requirements in chapter 246-817 WAC; and
- (iv) Relevant department of health (DOH) medical, dental, or nursing anesthesia regulations.
- (f) Pays for anesthesia services according to WAC 388-535-1350.
- (g) Covers professional consultation/diagnostic services as follows:
 - (i) A dentist or a physician other than the practitioner providing treatment must provide the services; and
 - (ii) A client must be referred by the department for the services to be covered.
- (2) **Nonemergency dental services.** The department covers nonemergency dental services performed in a hospital or ambulatory surgical center only for:
 - (a) Clients ages eight and younger.
 - (b) Clients ages nine through twenty only on a case-by-case basis and when prior authorized.
 - (c) Clients of the division of developmental disabilities according to WAC 388-535-1099.
- (3) **Professional visits.** The department covers:
 - (a) Up to two house/extended care facility calls (visits) per facility, per provider. The department limits payment to two facilities per day, per provider.
 - (b) One hospital call (visit), including emergency care, per day, per provider, per client.
 - (c) Emergency office visits after regularly scheduled hours. The department limits payment to one emergency visit per day, per provider.
- (4) **Drugs and/or medicaments (pharmaceuticals).** The department covers drugs and/or medicaments only when used with parenteral conscious sedation, deep sedation, or general anesthesia. The department's dental program does not pay for oral sedation medications.
- (5) **Miscellaneous services.** The department covers:
 - (a) Behavior management when the assistance of one additional dental staff other than the dentist is required, for:
 - (i) Clients ages eight and younger;
 - (ii) Clients ages nine through twenty, only on a case-by-case basis and when prior authorized; and
 - (iii) Clients of the division of developmental disabilities according to WAC 388-535-1099.
 - (b) Treatment of post-surgical complications (e.g., dry socket). Documentation supporting the medical necessity of the service must be in the client's record.
 - (c) Occlusal guards when medically necessary and prior authorized. (Refer to WAC 388-535-1094(3) for occlusal orthotic device coverage and coverage limitations.) The department covers:
 - (i) An occlusal guard only for clients ages twelve through twenty when the client has permanent dentition; and
 - (ii) An occlusal guard only as a laboratory processed full arch appliance.

NEW SECTION

WAC 388-535-1099 Covered dental-related services for clients of the division of developmental disabilities. The department pays for dental-related services under the categories of services listed in this section for clients of the

division of developmental disabilities, subject to the coverage limitations listed. Chapter 388-535 WAC applies to clients of the division of developmental disabilities unless otherwise stated in this section.

(1) **Preventive services.**

(a) Dental prophylaxis. The department covers dental prophylaxis or periodontal maintenance up to three times in a twelve-month period (see subsection (3) of this section for limitations on periodontal scaling and root planing).

(b) Topical fluoride treatment. The department covers topical fluoride varnish, rinse, foam or gel, up to three times within a twelve-month period.

(c) Sealants. The department covers sealants:

(i) Only when used on the occlusal surfaces of:

(A) Primary teeth A, B, I, J, K, L, S, and T; or

(B) Permanent teeth two, three, four, five, twelve, thirteen, fourteen, fifteen, eighteen, nineteen, twenty, twenty-one, twenty-eight, twenty-nine, thirty, and thirty-one.

(ii) Once per tooth in a two-year period.

(2) **Crowns.** The department covers stainless steel crowns every two years for the same tooth and only for primary molars and permanent premolars and molars, as follows:

(a) For clients ages twenty and younger, the department does not require prior authorization for stainless steel crowns. Documentation supporting the medical necessity of the service must be in the client's record.

(b) For clients ages twenty-one and older, the department requires prior authorization for stainless steel crowns.

(3) **Periodontic services.**

(a) **Surgical periodontal services.** The department covers:

(i) Gingivectomy/gingivoplasty once every three years. Documentation supporting the medical necessity of the service must be in the client's record (e.g., drug induced gingival hyperplasia).

(ii) Gingivectomy/gingivoplasty with periodontal scaling and root planing or periodontal maintenance when the services are performed:

(A) In a hospital or ambulatory surgical center; or

(B) For clients under conscious sedation, deep sedation, or general anesthesia.

(b) **Non-surgical periodontal services.** The department covers:

(i) Periodontal scaling and root planing, up to two times per quadrant in a twelve-month period.

(ii) Periodontal scaling (four quadrants) substitutes for an eligible periodontal maintenance or oral prophylaxis, twice in a twelve-month period.

(4) **Adjunctive general services.**

(a) **Adjunctive general services.** The department covers:

(i) Oral parenteral conscious sedation, deep sedation, or general anesthesia for any dental services performed in a dental office or clinic. Documentation supporting the medical necessity must be in the client's record.

(ii) Sedations services according to WAC 388-535-1098 (1)(c) and (e).

(b) **Non-emergency dental services.** The department covers non-emergency dental services performed in a hospital or an ambulatory surgical center for services listed as covered in WAC 388-535-1082, WAC 388-535-1084, WAC 388-

535-1086, WAC 388-535-1088, and WAC 388-535-1094. Documentation supporting the medical necessity of the service must be included in the client's record.

(5) **Miscellaneous services—Behavior management.**

The department covers behavior management provided in dental offices or dental clinics for clients of any age. Documentation supporting the medical necessity of the service must be included in the client's record.

WSR 06-24-075

PROPOSED RULES

**PARKS AND RECREATION
COMMISSION**

[Filed December 4, 2006, 4:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-10-070 and 06-10-084.

Title of Rule and Other Identifying Information: The staff of the state parks and recreation commission have completed a review of chapters 352-11, 352-32 and 352-37 WAC and the statutory requirements of the State Environmental Policy Act (SEPA) to ensure the language and provisions of the commission's rules reflect the agency's business practices and the statutory responsibilities of the commission. The agency has determined the need to revise the rules in these chapters.

Hearing Location(s): Normandy Park Community Center (The Cove), 1500 S.W. Shorebrook Drive, Normandy Park, WA 98166, on January 11, 2007, at 9:00 a.m.

Date of Intended Adoption: January 11, 2007.

Submit Written Comments to: Pamela McConkey, P.O. Box 42650, Tumwater, WA 90850-2650 [98504-2650], e-mail Pamela.McConkey@parks.wa.gov, phone (360) 902-8595, fax (360) 586-5875, by December 27, 2006.

Assistance for Persons with Disabilities: Contact Pauli Larson by January 4, 2007, TTY (360) 664-3133 or (360) 902-8505.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule-making action is intended to make necessary modifications to park rules and to accurately reflect changes to the agency's business practices. These proposed rules help to align current administrative rules governing public use of state park areas with other commission rules that apply to chapter 352-11 WAC, SEPA.

Staff recommends changes that: Reduce duplication between agency and state SEPA rules; removes internal agency process requirements regarding internal processes from WAC; reflect SEPA responsibilities in the current organizational structure; and improve the technical accuracy of the rule. The change repeals six sections, adds one new section, and modifies seven sections.

New/Modified Definitions in chapters 352-32 and 352-37 WAC: Staff recommends new definitions and modifications to existing definitions for clarity.

Begin Decriminalization Process: Decriminalizing the following offenses. WAC 352-32-01001, 352-32-121, 352-

32-125, 352-32-140, 352-32-15001, 352-32-170, 352-32-251, 352-32-252, 352-37-030, 352-37-040, 352-37-050, 352-37-060, 352-37-080, 352-37-090, 352-37-105, 352-37-110, 352-37-130, 352-37-140, 352-37-170, 352-37-190, and 352-37-330.

Technical Changes: *General housekeeping amendments (address corrections, typographical, references, improving technical accuracy, etc.) to WAC 352-32-030, 352-32-037, 352-32-045, 352-32-056, 352-32-070, 352-32-085, 352-32-130, 352-32-157, 352-32-165, 352-32-195, 352-32-210, 352-32-235, 352-32-250, 352-32-300, 352-32-340, 352-32-350, 352-37-070, 352-37-100, 352-37-200, and 352-37-210.*

Substantive changes are requested in the following chapters:

WAC 352-32-047 Special recreation event permit. *Provide for SEPA review consistent with the Public Assembly WAC 352-32-165.*

WAC 352-32-060 Pets. *Include language to protect domestic livestock or agricultural activities on adjacent land and permit designated areas for pets off-leash.*

WAC 352-32-251 Limited income senior citizen, disability, and disabled veteran passes. *(1) Include RCW language and impose restrictions for abuse of privileges.*

WAC 352-32-252 Off-season senior citizen pass—Fee. *Include RCW language and clarify privileges.*

WAC 352-32-280. *Repeal free camping for law enforcement officers.*

Proposed New Sections:

WAC 352-32-057 and 352-37-095 Disturbances. *Provide guidance for rangers and visitors regarding behaviors.*

WAC 352-32-175 Water. *Prohibit removal of water from state park areas for personal or commercial use outside state park boundaries.*

WAC 352-32-237 and 352-37-255 Geocache. *Permit park visitors to place a cache on state parks' property.*

Reasons Supporting Proposal: The proposal clarifies, standardizes and simplifies the language contained in a number of rules in each chapter of WAC. The changes make park rules more understandable to the public, and also give additional tools to state parks' staff as they protect park resources and park visitors.

Statutory Authority for Adoption: RCW 79A.05.030, 79A.05.035, 79A.05.070, 79A.05.165, and chapter 43.21C RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state parks and recreation commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Pamela McConkey, State Park Headquarters, P.O. Box 42650, Tumwater, WA 98504-2650, (360) 902-8595; and Enforcement: Phil Shave, State Park Headquarters, P.O. Box 42650, Tumwater, WA 98504-2650, (360) 902-8606.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These chapters of administrative rule do not regulate or have economic impact through regulations on small business. There are no compliance costs to small business as a result of the modifications to these rules.

A cost-benefit analysis is not required under RCW 34.05.328. Significant legislative rule-making requirements are not imposed on the state parks and recreation commission, nor has the commission voluntarily applied those requirements.

December 4, 2006
 Jim French, Administrator
 Statewide Recreation Programs

AMENDATORY SECTION (Amending WSR 96-01-029, filed 12/11/95, effective 1/11/96)

WAC 352-11-020 Adoption by reference. The Washington state parks and recreation commission adopts the following sections or subsections of chapter 197-11 WAC by reference.

WAC	
197-11-040	Definitions.
197-11-050	Lead agency.
197-11-055	<u>Timing of the SEPA process.</u>
197-11-060	Content of environmental review.
197-11-070	Limitations on actions during SEPA process.
197-11-080	Incomplete or unavailable information.
197-11-090	Supporting documents.
197-11-100	Information required of applicants.
197-11-210	SEPA/GMA integration.
197-11-220	SEPA/GMA definitions.
197-11-228	Overall SEPA/GMA integration procedures.
197-11-230	Timing of an integrated GMA/SEPA process.
197-11-232	SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping.
197-11-235	Documents.
197-11-250	SEPA/Model Toxics Control Act integration.
197-11-253	SEPA lead agency for MTCA actions.
197-11-256	Preliminary evaluation.
197-11-259	Determination of nonsignificance for MTCA remedial action.
197-11-262	Determination of significance and EIS for MTCA remedial actions.
197-11-265	Early scoping for MTCA remedial actions.
197-11-268	MTCA interim actions.
197-11-300	Purpose of this part.
197-11-305	Categorical exemptions.
197-11-310	Threshold determination required.
197-11-315	Environmental checklist.
197-11-330	Threshold determination process.
197-11-335	Additional information.
197-11-340	Determination of nonsignificance (DNS).
197-11-350	Mitigated DNS.
197-11-360	Determination of significance (DS)/initiation of scoping.
197-11-390	Effect of threshold determination.
197-11-400	Purpose of EIS.
197-11-402	General requirements.

197-11-405	EIS types.	197-11-744	Environmental document.
197-11-406	EIS timing.	197-11-746	Environmental review.
197-11-408	Scoping.	197-11-750	Expanded scoping.
197-11-410	Expanded scoping. (Optional)	197-11-752	Impacts.
197-11-420	EIS preparation.	197-11-754	Incorporation by reference.
197-11-425	Style and size.	197-11-756	Lands covered by water.
197-11-430	Format.	197-11-758	Lead agency.
197-11-435	Cover letter or memo.	197-11-760	License.
197-11-440	EIS contents.	197-11-762	Local agency.
197-11-442	Contents of EIS on nonproject proposals.	197-11-764	Major action.
197-11-443	EIS contents when prior nonproject EIS.	197-11-766	Mitigated DNS.
197-11-444	Elements of the environment.	197-11-768	Mitigation.
197-11-448	Relationship of EIS to other considerations.	197-11-770	Natural environment.
197-11-450	Cost-benefit analysis.	197-11-772	NEPA.
197-11-455	Issuance of DEIS.	197-11-774	Nonproject.
197-11-460	Issuance of FEIS.	197-11-776	Phased review.
197-11-500	Purpose of this part.	197-11-778	Preparation.
197-11-502	Inviting comment.	197-11-780	Private project.
197-11-504	Availability and cost of environmental documents.	197-11-782	Probable.
197-11-508	SEPA register.	197-11-784	Proposal.
197-11-535	Public hearings and meetings.	197-11-786	Reasonable alternative.
197-11-545	Effect of no comment.	197-11-788	Responsible official.
197-11-550	Specificity of comments.	197-11-790	SEPA.
197-11-560	FEIS response to comments.	197-11-792	Scope.
197-11-570	Consulted agency costs to assist lead agency.	197-11-793	Scoping.
197-11-600	When to use existing environmental documents.	197-11-794	Significant.
197-11-610	Use of NEPA documents.	197-11-796	State agency.
197-11-620	Supplemental environmental impact statement—Procedures.	197-11-797	Threshold determination.
197-11-625	Addenda—Procedures.	197-11-799	Underlying governmental action.
197-11-630	Adoption—Procedures.	197-11-800	Categorical exemptions.
197-11-635	Incorporation by reference—Procedures.	197-11-810	Exemptions and nonexemptions applicable to specific state agencies.
197-11-640	Combining documents.	197-11-880	Emergencies.
197-11-650	Purpose of this part.	197-11-890	Petitioning DOE to change exemptions.
197-11-655	Implementation.	197-11-900	Purpose of this part.
197-11-660	Substantive authority and mitigation.	197-11-902	Agency SEPA policies.
197-11-680	Appeals.	197-11-904	Agency SEPA procedures.
197-11-700	Definitions.	197-11-906	Content and consistency of agency procedures.
197-11-702	Act.	197-11-908	Critical areas.
197-11-704	Action.	197-11-912	Procedures on consulted agencies.
197-11-706	Addendum.	197-11-914	SEPA fees and costs.
197-11-708	Adoption.	197-11-916	Application to ongoing actions.
197-11-710	Affected tribe.	197-11-920	Agencies with environmental expertise.
197-11-712	Affecting.	197-11-922	Lead agency rules.
197-11-714	Agency.	197-11-924	Determining the lead agency.
197-11-716	Applicant.	197-11-926	Lead agency for governmental proposals.
197-11-718	Built environment.	197-11-928	Lead agency for public and private proposals.
197-11-720	Categorical exemption.	197-11-930	Lead agency for private projects with one agency with jurisdiction.
197-11-722	Consolidated appeal.	197-11-932	Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
197-11-724	Consulted agency.	197-11-934	Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.
197-11-726	Cost-benefit analysis.	197-11-936	Lead agency for private projects requiring licenses from more than one state agency.
197-11-728	County/city.	197-11-938	Lead agencies for specific proposals.
197-11-730	Decision maker.	197-11-940	Transfer of lead agency status to a state agency.
197-11-732	Department.		
197-11-734	Determination of nonsignificance (DNS).		
197-11-736	Determination of significance (DS).		
197-11-738	EIS.		
197-11-740	Environment.		
197-11-742	Environmental checklist.		

197-11-942	Agreements on lead agency status.
197-11-944	Agreements on division of lead agency duties.
197-11-946	DOE resolution of lead agency disputes.
197-11-948	Assumption of lead agency status.
197-11-960	Environmental checklist.
197-11-965	Adoption notice.
197-11-970	Determination of nonsignificance (DNS).
197-11-980	Determination of significance and scoping notice (DS).
197-11-985	Notice of assumption of lead agency status.
197-11-990	Notice of action.

AMENDATORY SECTION (Amending WSR 96-01-029, filed 12/11/95, effective 1/11/96)

WAC 352-11-040 Additional definitions. In addition to the definitions contained in WAC 197-11-700 through 197-11-799, the following terms shall have the listed meanings:

(1) "Agency" means the entire staff and appointed commission members constituting the Washington state parks and recreation commission.

(2) "Authorized public use" as used in WAC 197-11-800 Part nine - Categorical exemptions means that a particular parcel of real property has ~~((developed facilities which have))~~ been classified for public use, or has developed facilities subject to public use or has been specifically designated and classified for such public use ~~((without developed facilities))~~. No "authorized public use" shall be construed to have occurred on parcels of real property being held for future use and development nor on portions of existing park lands remote from existing public use facilities, including developed trail systems.

(3) "Commission" means the Washington state parks and recreation commission.

(4) "Decision maker" means any agency staff authorized to take an action as provided through agency delegation of authority.

(5) "Demolition of any structure or facility with recognized historical significance" as used in WAC 197-11-800 Part nine - Categorical exemptions means the destruction of any character-defining feature or other change which would degrade or destroy the significance of that structure or facility.

(6) "Director" means the director of the Washington state parks and recreation commission.

~~((5))~~ "Program" means any of the headquarters' sections or divisions of the Washington state parks and recreation commission that administers a program, such as, but not limited to, boating safety, winter recreation, and youth programs.

(6) "Regions" means any of the regional offices of the Washington state parks and recreation commission.

~~(7)~~ "Section" means any section within the divisional structure of the Washington state parks and recreation commission. ~~((7))~~ "Existing roads in nonresidential areas" as used in WAC 197-11-800 Part nine - Categorical exemptions means any transportation corridor through the land affected, not formally zoned or designated for residential use, where

such use does not interfere with normal public use of the property.

(8) "Grazing lease" as used in WAC 197-11-800 Part nine - Categorical exemptions shall include lands grazed through authorization prior to acquisition by the agency, regardless of formal "leasing."

AMENDATORY SECTION (Amending WSR 96-01-029, filed 12/11/95, effective 1/11/96)

WAC 352-11-055 Timing of the SEPA process. (1) ~~((Integrating SEPA and agency activities.))~~ The SEPA process shall be integrated with agency activities following and according to established agency SEPA procedures at the earliest possible time to ensure that planning and decisions reflect environmental values, to avoid delays later in the process, and to seek to resolve potential problems.

~~(2) ((Timing of review of proposals. The agency shall prepare its threshold determination and environmental impact statement (EIS), if required, at the earliest possible point in the planning and decision-making process, when the principal features of a proposal and its environmental impacts can be reasonably identified.~~

~~(a) A proposal exists when the agency is presented with an application or has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the environmental effects can be meaningfully evaluated.~~

~~(i) The fact that proposals may require future agency approvals or environmental review shall not preclude current consideration, as long as proposed future activities are specific enough to allow some evaluation of their probable environmental impacts.~~

~~(ii) Preliminary steps or decisions are sometimes needed before a proposal is sufficiently definite to allow meaningful environmental analysis.~~

~~(b) Environmental reviews will normally begin when sufficient information is available for agency staff to make preliminary decisions. The agency may also organize environmental review in phases, as specified in WAC 197-11-060(5).~~

~~(c) Appropriate consideration of environmental information shall be completed before the agency commits to a particular course of action under WAC 197-11-070.~~

~~(3) Applications and rule making. The timing of environmental review for applications and for rule making shall be as follows:~~

~~(a) At the latest, the agency shall begin environmental review, if required, when an application is complete. The agency may initiate review earlier and may have informal conferences with applicants. A final threshold determination or final environmental impact statement (FEIS) shall normally precede or accompany the final staff recommendation, if any, in a quasi-judicial proceeding on an application. The substance of an ex parte communication of parties with any member of the commission concerning the decision of action will be placed on the record and subject to public announcement and opportunity for rebuttal at public hearings as required by RCW 42.36.060.~~

(b) For rule making, the DNS or DEIS shall normally accompany the proposed rule. A FEIS, if any, shall be issued at least seven days before adoption of a final rule under WAC 197-11-460(4).

(4)) Additional timing considerations.

(a) ~~((Commission staff receiving a completed application and environmental checklist shall forward such application and checklist to the responsible official who will determine whether the commission or another agency is the SEPA lead agency under WAC 197-11-050 and 197-11-922 through 197-11-940 within five working days. If the commission is not the lead agency, the responsible official shall send the completed environmental checklist and a copy of the application, together with an explanation of the determination to the identified lead agency.~~

~~(b) Commission))~~ Agency staff receiving an application will forward it to the responsible official who will determine whether the proposal is an "action" and, if so, whether ~~((#)) another agency is the lead agency for the proposal. If not, the responsible official will determine if the action is "categorically exempt" from SEPA. If the proposal is an "action" and is not exempt, the responsible official will ask the applicant to complete an environmental checklist. A new checklist is not needed if the responsible official and applicant agree that an EIS is required, SEPA compliance has been completed, SEPA compliance has been initiated by another agency, or a complete checklist is included with the application.~~

~~(b) Notwithstanding the guidance and requirements of WAC 197-11-922 through 197-11-948, if the agency is presented with an application to undertake a project generally falling under the jurisdiction and/or environmental expertise of another state or local agency, staff will direct the applicant to initiate SEPA with the appropriate agency before it considers the action being requested by the applicant.~~

~~(c) ((If the only nonexempt action is commission approval of detailed project plans and specifications, an applicant may request that the commission complete SEPA compliance before the applicant submits the detailed plans and specifications.~~

~~(d) The commission))~~ Agency staff and applicants may hold preliminary discussions or exploration of ideas and options prior to commencing formal environmental review, under provisions of this chapter and chapter 197-11 WAC, subject to RCW 42.36.060.

~~((5) An overall decision to proceed with a course of action may involve a series of actions or decisions by one or more agencies. If several agencies have jurisdiction over a proposal, they shall coordinate their SEPA processes wherever possible. The agencies shall comply with lead agency determination requirements in WAC 197-11-050 and 197-11-922 through 197-11-948.~~

~~(6) To meet the requirement to insure that environmental values and amenities are given appropriate consideration along with economic and technical considerations, environmental documents and analysis shall be circulated and reviewed with other planning documents to the fullest extent possible.~~

~~(7) For its own public proposals, the responsible official may extend the time limits prescribed in this chapter.~~

~~(8) When the commission staff has prepared a commission agenda item for approval by the commission, the FEIS, DNS, or exemption statement shall accompany the agenda item to the commission for its review.)~~ (3) All commission actions require SEPA.

NEW SECTION

WAC 352-11-330 Threshold determination process—Additional considerations. (1) Applicants are required to fully complete an environmental checklist to aid the agency in rendering a threshold determination.

(2)(a) To make the final determination, the responsible official will consider: All comments received, mitigation measures proposed, and suggested changes to the project.

(b) If there are substantial changes to the project during the SEPA process, the final determination must undergo similar public notice as the initial determination. Projects without changes or only minor changes do not require public notice of a final determination.

AMENDATORY SECTION (Amending Order 84, filed 10/3/84)

WAC 352-11-350 Mitigated DNS. (1) An applicant may ask the agency whether issuance of a determination of significance (DS) is likely for a proposal. This request for early notice must:

(a) Be written;

(b) Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the commission is lead agency; and

(c) Precede the agency's actual threshold determination for the proposal.

(2) The responsible official ~~((or his designee shall respond to the request within ten working days of receipt of the letter; the response shall:~~

~~(a) Be written;~~

~~(b) State whether the agency is considering issuance of a DS;~~

~~(c) Indicate the general or specific area(s) of concern that led the agency to consider a DS; and~~

~~(d) State))~~ can suggest that the applicant may change or clarify the proposal to mitigate the impacts indicated ~~((in the letter, revising))~~ and revise the environmental checklist as necessary to reflect the changes or clarifications.

(3) The agency shall not continue with the threshold determination until after receiving a written response from the applicant changing or clarifying the proposal or asking that the threshold determination be based on the original proposal.

(4) If the applicant submits a changed or clarified proposal, along with a revised environmental checklist, the agency will make its threshold determination based on the changed or clarified proposal.

(a) If the agency's response to the request for early notice indicated specific mitigation measures that would remove all probable significant adverse environmental impacts, and the applicant changes or clarifies the proposal to include all of those specific mitigation measures, the agency shall issue a determination of nonsignificance and circulate the DNS for

comments as directed in WAC (~~(197-11-350)~~) 197-11-340(2).

(b) If the agency indicated general or specific areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the agency shall determine if the changed or clarified proposal may have a probable significant environmental impact, issuing a DNS or DS as appropriate.

(5) The agency may specify mitigation measures that would allow it to issue a DNS without a request for early notice from an applicant. If it does so, and the applicant changes or clarifies the proposal to include those measures, the agency shall issue a DNS and circulate it for review under WAC 197-11-350(2).

(6) When an applicant changes or clarifies the proposal, the clarifications or changes may be included in written attachments to the documents already submitted. If the environmental checklist and supporting documents would be difficult to read and/or understand because of the need to read them in conjunction with the attachment(s), the agency may require the applicant to submit a new checklist.

~~(7) ((The agency may change or clarify features of its own proposals before making the threshold determination.~~

~~(8))~~ The agency's written response under subsection (2) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarification of or changes to a proposal, as opposed to a written request for early notice, shall not bind the agency to consider the clarifications or changes in its threshold determination.

~~((9))~~ (8) When an applicant submits a changed or clarified proposal pursuant to this section, it shall be considered part of the applicant's application for a permit or other approval for all purposes, including enforcement of the permit or other approval. Unless the agency's decision expressly states otherwise, when a mitigated DNS is issued for a proposal, any decision approving the proposal shall be based on the proposal as changed or clarified pursuant to this section.

AMENDATORY SECTION (Amending Order 84, filed 10/3/84)

WAC 352-11-420 EIS preparation. For draft and final EISs and supplemental environmental impact statements (SEISs):

(1) Preparation of the EIS is the responsibility of the agency, by or under the direction of its responsible official, as specified by the agency's procedures. No matter who participates in the preparation of the EIS, it is the EIS of the agency. The responsible official, prior to distributing an EIS, shall be satisfied that it complies with this chapter and chapter 197-11 WAC.

(2) The agency may have an EIS prepared by agency staff, an applicant or its agent, or by an outside consultant retained by either an applicant or the agency. The agency shall assure that the EIS is prepared in a professional manner and with appropriate interdisciplinary methodology. The responsible official shall direct the areas of research and examination to be undertaken as a result of the scoping process, as well as the organization of the resulting document.

(3) If a person other than the agency is preparing the EIS, the agency shall:

(a) Coordinate any scoping procedures so that the individual preparing the EIS receives all substantive information submitted by any agency and the public that is needed by the person;

(b) Assist in obtaining any information on file with another agency that is needed by the person preparing the EIS;

(c) Allow any party preparing an EIS access to all public records of the agency that relate to the subject of the EIS, under RCW 42.17.250 through 42.17.340.

(4) Normally, the agency will prepare an EIS(~~(s)~~) for its own proposals.

(5) For applicant proposals, the agency normally will require the applicant to prepare or help prepare the EIS at the applicant's expense, under provisions of this chapter and chapter 197-11 WAC.

(6) The agency may require an applicant to provide information that the agency does not possess, including specific investigations. The applicant is not required to supply information that is not required under this chapter and chapter 197-11 WAC.

AMENDATORY SECTION (Amending Order 84, filed 10/3/84)

WAC 352-11-510 Public notice requirements. (1) The agency shall give public notice when issuing a DNS under WAC (~~(197-11-350)~~) 197-11-340(2), a scoping notice under WAC 352-11-420, or a draft EIS under WAC 197-11-455.

~~(2) ((Whenever possible, the agency shall integrate the public notice required under this section with existing notice procedures for the agency's permit or approval required for the proposal.~~

~~(a) When more than one permit or approval required from or by the agency has public notice requirements, the notice procedures that would reach the widest audience shall be used, if possible.~~

~~(b) If the public notice requirements for the permit or approval must be completed at a specific time in the permitting process and that timing does not coincide with the timing requirements for SEPA public notice, the agency must use one or more public notice methods in subsection (3) of this section.~~

~~(c) If there are no public notice requirements for any of the permits/approvals required for a proposal, the agency must use one or more public notice methods in subsection (3) of this section.~~

~~(3))~~ The agency shall use one or more of the following methods of public notice, taking into consideration the geographic area affected by the proposal, the size and complexity of the proposal, the public notice requirements for the permit or approval required from the agency, other public notice(s) required by agencies with jurisdiction, public interest expressed in the proposal, and whether the proposal is a project or regulation:

(a) Notifying persons or groups who have expressed interest in the proposal, of the type of proposal, or proposals

in the geographic area in which the proposal will be implemented if approved;

(b) Publication in a newspaper of general circulation in the area in which the proposal will be implemented;

(c) Posting the property for site-specific proposals;

(d) Notifying the news media; ~~((and or))~~

(e) Placing notice in appropriate regional, neighborhood, ethnic, or trade journals;

(f) Hosting a public hearing on the proposal; or

(g) Other methods of notice expressly authorized by the department of ecology.

~~((4))~~ (3) The agency may require an applicant to perform the public notice requirement at the applicant's expense.

AMENDATORY SECTION (Amending WSR 96-01-029, filed 12/11/95, effective 1/11/96)

WAC 352-11-665 Policies and procedures for conditioning or denying permits or other approvals. (1)(a) The overriding policy of the Washington state parks and recreation commission is to avoid or mitigate adverse environmental impacts which may result from the agency's decisions.

~~(b) ((The commission shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:~~

~~(i) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;~~

~~(ii) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;~~

~~(iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;~~

~~(iv) Preserve important historic, cultural, and natural aspects of our national heritage;~~

~~(v) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;~~

~~(vi) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and~~

~~(vii) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.~~

~~(c) The agency recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.~~

~~(d))~~ The agency shall ensure that presently unquantified environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations.

(2) Policies - specific. ~~((The commission is responsible for the following approvals, permits, or rulemaking and for the acquisition of land suitable for parks, for repair, maintenance and new construction of park facilities which have potential to impact the environment and which are subject to the provisions of this chapter:~~

~~(a) Authority to acquire and develop parks and parkways (chapter 43.51 RCW);~~

~~(b) Grant concessions or leases in state parks and parkways (RCW 43.51.040(5));~~

~~(c) Grant franchises and easements for any legitimate purpose on parks and parkways (RCW 43.51.060(5));~~

~~(d) Enter into agreements whereby individuals or companies may rent undeveloped parks or parkway land for grazing, agricultural, or mineral development (RCW 43.51.060(7));~~

~~(e) Lease park land for television stations (RCW 43.51.062 and 43.51.063);~~

~~(f) Grant permits for improvement of parks (RCW 43.51.130 through 43.51.160);~~

~~(g) Administer the seashore conservation area including:~~

~~(i) Establish reasonable regulations for the use and control of vehicular traffic on or along the ocean beach highways (RCW 43.51.680, 79.94.340 and 79.94.360);~~

~~(ii) Sale of sand from accretions to supply the needs of cranberry growers (RCW 43.51.685); and or~~

~~(iii) Grant leases and permits for the removal of sands for construction purposes (RCW 43.51.685).~~

~~(h) Stewardship, management and development of resources, including land acquisition in accordance with the State Wildlife and Recreation Lands Management Act (chapter 43.98B RCW);~~

~~(i) Administration, acquisition, development, operation and maintenance of snowmobile facilities (RCW 46.10.080);~~

~~(j))~~ Agency policies, plans, rules and regulations are rooted in the agency's legislation, stewardship policies and rules promulgated by the agency. The following may be used to fulfill the intent of SEPA and may be used to mitigate significant adverse environmental impacts of agency actions:

(a) Authorities provided to the agency through Title 79A RCW Public recreation lands;

(b) Any other approval authority which may be granted to the commission in the future;

(c) Rules promulgated under Title 352 WAC;

(d) Approved commission and administrative policies;

(e) Other state agencies' applicable habitat conservation plans;

(f) Acquisition, development and maintenance of scenic and recreational highways, and rest areas, including landscaping and signing (chapter 47.39 RCW)((;

(k) Review and approval or disapproval of plans for acquisition and operation of parks and recreation facilities by any port district (RCW 53.08.270);

(l) Acquisition, development, operation and maintenance of recreational trails (chapter 67.32 RCW);

(m) Development of a statewide scenic rivers program plan, including proposals for acquisition and development of public access sites and facilities (chapter 79.72 RCW);

(n) Grant approvals for the construction, operation and maintenance of winter recreational devices, including but not limited to ski lifts, ski tows, j-bars, t-bars, ski mobiles, chair lifts and similar devices and equipment (RCW 70.88.010 through 70.88.040).

(o) Any other approval authority which may be granted to the commission in the future.

~~(3)(a) SEPA procedures. When the environmental document for a proposal for approval by the agency shows it will cause significant adverse impacts that the proponent does not plan to mitigate, the responsible official shall consider whether:~~

~~(i) The environmental document identified mitigation measures that are reasonable and capable of being accomplished;~~

~~(ii) Other local, state, or federal requirements and enforcement would mitigate the significant adverse environmental impacts; and~~

~~(iii) Reasonable mitigation measures are sufficient to mitigate the significant adverse impacts.~~

~~(b) The responsible official may:~~

~~(i) Condition the approval for a proposal if mitigation measures are reasonable and capable of being accomplished and the proposal is inconsistent with the policies in subsection (1) of this section.~~

~~(ii) Deny the permit or approval for a proposal if reasonable mitigation measures are insufficient to mitigate significant adverse environmental impacts and the proposal is inconsistent with the policies in subsection (1) of this section.~~

~~(c) The procedures in WAC 197-11-660 must also be followed when conditioning or denying permits or other approvals).~~

~~(3) The agency may exercise substantive authority to mitigate the environmental impacts of a project, according to the limitations provided in WAC 197-11-660, by conditioning or denying that project based upon agency SEPA policies.~~

AMENDATORY SECTION (Amending WSR 96-01-029, filed 12/11/95, effective 1/11/96)

WAC 352-11-910 Designation of responsible official.

~~(1) ((The ultimate responsible official is the commission. Normally, the operational responsibility shall be delegated via the director to the (manager), environmental programs. The manager, environmental programs may delegate this authority to the assistant manager, environmental programs and to the regional environmental specialists.)) The authority of responsible official is delegated via the director, or designee, to staff.~~

~~(2) Depending upon the size and scope of the proposed action, ((consideration may be given to establishing)) the responsible official may be established at the level of ((assistant director, resources development, Washington state parks and recreation commission, or at the level of)) director, deputy director, or assistant deputy director.~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 352-11-310 Threshold determination process—Additional considerations.

WAC 352-11-508 Notice of environmental documents.

WAC 352-11-615 Coordination on combined agency—Federal action.

WAC 352-11-800 Threshold levels adopted by counties/cities.

WAC 352-11-905 Responsibilities of individuals and work units within the agency.

WAC 352-11-908 Critical areas.

AMENDATORY SECTION (Amending WSR 05-24-030, filed 11/30/05, effective 12/31/05)

WAC 352-32-010 Definitions. Whenever used in this chapter the following terms shall be defined as herein indicated:

"Aircraft" shall mean any machine designed to travel through the air, whether heavier or lighter than air; airplane, dirigible, balloon, helicopter, etc. The term aircraft shall not include paraglider or remote controlled aircraft.

"Aquatic facility" shall mean any structure or area within a state park designated by the director or designee for aquatic activities, including, but not limited to, swimming pools, wading pools, swimming beaches, floats, docks, ramps, piers or underwater parks.

"Bivouac" shall mean to camp overnight on a vertical rock climbing route on a ledge or in a hammock sling.

"Campfires" shall mean any open flame from a wood source.

"Camping" shall mean erecting a tent or shelter or arranging bedding, or both, or parking a recreation vehicle or other vehicle for the purpose of remaining overnight.

"Camping party" shall mean an individual or a group of people (two or more persons not to exceed eight) that is organized, equipped and capable of sustaining its own camping activity in a single campsite. A "camping party" is a "camping unit" for purposes of RCW 79A.05.065.

"Commercial recreation use" is a recreational activity in a state park that is packaged and sold as a service by an organization or individual, other than state parks or a state park concessionaire.

"Commercial recreation provider" is any individual or organization that packages and sells a service that meets the definition of a commercial recreation use.

"Commercial use (nonrecreation)" is any activity involving commercial or business purpose within a state park that may impact park facilities, park visitors or staff and is compatible with recreational use and stewardship, limited in duration and does not significantly block/alter access or negatively impact recreational users.

"Commission" shall mean the Washington state parks and recreation commission.

"Conference center" shall mean a state park facility designated as such by the director or designee that provides specialized services, day-use and overnight accommodations available by reservation for organized group activities.

"Day area parking space" shall mean any designated parking space within any state park area designated for daytime vehicle parking.

"Director" shall mean the director of the Washington state parks and recreation commission or the director's designee.

"Disrobe" shall mean to undress so as to appear nude.

"Emergency area" is an area in the park separate from the designated overnight camping area, which the park manager decides may be used for camping when no alternative camping facilities are available within reasonable driving distances.

"Environmental interpretation" shall mean the provision of services, materials, publications and/or facilities, including environmental learning centers (ELCs), for other than basic access to parks and individual camping, picnicking, and boating in parks, that enhance public understanding, appreciation and enjoyment of the state's natural and cultural heritage through agency directed or self-learning activities.

"Environmental learning centers (ELCs)" shall mean those specialized facilities, designated by the director or designee, designed to promote outdoor recreation experiences and environmental education in a range of state park settings.

"Extra vehicle" shall mean each additional unhitched vehicle in excess of the one recreational vehicle that will be parked in a designated campsite or parking area for overnight.

"Fire" shall mean any open flame from any source or device including, but not limited to, campfires, stoves, candles, torches, barbeques and charcoal.

"Fish" shall mean all marine and freshwater fish and shellfish species including all species of aquatic invertebrates.

"Geocache" shall mean geocaches, letterboxes, and related activities. Geocaching is an outdoor treasure hunting game in which participants (called "geocachers") use a Global Positioning System receiver or other navigational techniques to hide and seek containers (called "geocaches" or "caches").

"Group" shall mean twenty or more people engaged together in an activity.

"Group camping areas" are designated areas usually primitive with minimal utilities and site amenities and are for the use of organized groups. Facilities and extent of development vary from park to park.

"Hiker/biker campsite" shall mean a campsite that is to be used solely by visitors arriving at the park on foot or bicycle.

"Intimidate" means to engage in conduct that would make a reasonable person fearful.

"Motorcycle" means every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a farm tractor and a moped.

"Multiple campsite" shall mean a designated and posted camping facility encompassing two or more individual standard, utility or primitive campsites.

"Obstruct pedestrian or vehicular traffic" means to walk, stand, sit, lie, or place an object in such a manner as to block passage by another person or a vehicle, or to require another person or a driver of a vehicle to take evasive action to avoid physical contact. Acts authorized as an exercise of one's constitutional right to picket or to legally protest, and acts autho-

ized by a permit issued pursuant to WAC 352-32-165 shall not constitute obstruction of pedestrian or vehicular traffic.

"Overflow area" shall mean an area in a park separate from designated overnight and emergency camping areas, designated by the park manager, for camping to accommodate peak camping demands in the geographic region.

"Overnight accommodations" shall mean any facility or site designated for overnight occupancy within a state park area.

"Paraglider" shall mean an unpowered ultralight vehicle capable of flight, consisting of a fabric, rectangular or elliptical canopy or wing connected to the pilot by suspension lines and straps, made entirely of nonrigid materials except for the pilot's harness and fasteners. The term "paraglider" shall not include hang gliders or parachutes.

"Person" shall mean all natural persons, firms, partnerships, corporations, clubs, and all associations or combinations of persons whenever acting for themselves or by an agent, servant, or employee.

"Personal watercraft" means a vessel of less than sixteen feet that uses a motor powering a water jet pump, as its primary source of motive power and that is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

"Popular destination park" shall mean any state park designated by the director or designee as a popular destination park because, it is typically occupied to capacity on Friday or Saturday night during the high use season.

"Primitive campsite" shall mean a campsite not provided with flush comfort station nearby and which may not have any of the amenities of a standard campsite.

"Public assembly" shall mean a meeting, rally, gathering, demonstration, vigil, picketing, speechmaking, march, parade, religious service, or other congregation of persons for the purpose of public expression of views of a political or religious nature for which there is a reasonable expectation that ~~((more than one hundred))~~ a minimum of twenty persons will attend based on information provided by the applicant. Public assemblies must be open to all members of the public, and are generally the subject of attendance solicitations circulated prior to the event, such as media advertising, flyers, brochures, word-of-mouth notification, or other form of prior encouragement to attend.

Alternatively, the agency director or designee may declare an event to be a public assembly in the following cases: Where evidentiary circumstances and supporting material suggest that more than one hundred persons will attend, even where the applicant does not indicate such an expectation; or where there is reason to expect a need for special preparations by the agency or the applicant, due to the nature or location of the event.

"Ranger" shall mean a duly appointed Washington state parks ranger who is vested with police powers under RCW 79A.05.160, and shall include the park manager in charge of any state park area.

"Recreation vehicle" shall mean a vehicle/trailer unit, van, pickup truck with camper, motor home, converted bus, or any similar type vehicle which contains sleeping and/or housekeeping accommodations.

"Remote controlled aircraft" shall mean nonpeopled model aircraft that are flown by using internal combustion, electric motors, elastic tubing, or gravity/wind for propulsion. The flight is controlled by a person on the ground using a hand held radio control transmitter.

"Residence" shall mean the long-term habitation of facilities at a given state park for purposes whose primary character is not recreational. "Residence" is characterized by one or both of the following patterns:

(1) Camping at a given park for more than thirty days within a forty-day time period April 1 through September 30; or forty days within a sixty-day time period October 1 through March 31. As provided in WAC 352-32-030(7), continuous occupancy of facilities by the same camping party shall be limited to ten consecutive nights April 1 through September 30. Provided that at the discretion of the park ranger the maximum stay may be extended to fourteen consecutive nights if the campground is not fully occupied. Campers may stay twenty consecutive nights October 1 through March 31 in one park, after which the camping unit must vacate the overnight park facilities for three consecutive nights. The time period shall begin on the date for which the first night's fee is paid.

(2) The designation of the park facility as a permanent or temporary address on official documents or applications submitted to public or private agencies or institutions.

"Seaweed" shall mean all species of marine algae and flowering sea grasses.

"Sno-park" shall mean any designated winter recreational parking area.

"Special groomed trail area" shall mean those sno-park areas designated by the director as requiring a special groomed trail permit.

"Special recreation event" shall mean a group recreation activity in a state park sponsored or organized by an individual or organization that requires reserving park areas, planning, facilities, staffing, or other services beyond the level normally provided at the state park to ensure public welfare and safety and facility and/or environmental protection.

"Standard campsite" shall mean a designated camping site which is served by nearby domestic water, sink waste, garbage disposal, and flush comfort station.

"State park area" shall mean any area under the ownership, management, or control of the commission, including trust lands which have been withdrawn from sale or lease by order of the commissioner of public lands and the management of which has been transferred to the commission, and specifically including all those areas defined in WAC 352-16-020. State park areas do not include the seashore conservation area as defined in RCW 79A.05.605 and as regulated under chapter 352-37 WAC.

"Trailer dump station" shall mean any state park sewage disposal facility designated for the disposal of sewage waste from any recreation vehicle, other than as may be provided in a utility campsite.

"Upland" shall mean all lands lying above mean high water.

"Utility campsite" shall mean a standard campsite with the addition of electricity and which may have domestic water and/or sewer.

"Vehicle" shall include every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway. For the purposes of this chapter, this definition excludes bicycles, wheelchairs, motorized foot scooters, electric personal assistive mobility devices (EPAMDs), snowmobiles and other nonlicensed vehicles.

"Vehicle parking permit" means the permit issued on a daily, multiple day or annual basis for parking a vehicle in any state park area designated for daytime vehicle parking, excluding designated sno-park parking areas.

"Vessel" shall mean any watercraft used or capable of being used as a means of transportation on the water.

"Walk-in campsite" shall mean a campsite that is accessed only by walking to the site and which may or may not have vehicle parking available near by.

"Watercraft launch ((site))" ((shall mean any facility located in a state park area designated for the purpose of placing or retrieving any vehicle borne or trailer borne)) is any developed launch ramp designated for the purpose of placing or retrieving watercraft into or out of the water.

"Water trail advisory committee" shall mean the twelve-member committee constituted by RCW 79A.05.420.

"Water trail camping sites" shall mean those specially designated group camp areas identified with signs, that are near water ways, and that have varying facilities and extent of development.

"Wood debris" shall mean down and dead tree material.

AMENDATORY SECTION (Amending WSR 98-04-065, filed 2/2/98, effective 3/5/98)

WAC 352-32-01001 Feeding wildlife. No person shall intentionally feed, attract, or artificially sustain wildlife in state park areas. The feeding of indigenous wildlife is prohibited in all state park areas unless otherwise posted. This section does not apply to authorized feeding programs established with the Washington state department of fish and wildlife.

Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 03-01-079, filed 12/13/02, effective 1/13/03)

WAC 352-32-030 Camping. (1) Camping facilities of the state parks within the Washington state parks and recreation commission system are designed and administered specifically to provide recreational opportunities for park visitors. Use of park facilities for purposes which are of a nonrecreational nature, such as long-term residency at park facilities, obstructs opportunities for recreational use, and is inconsistent with the purposes for which those facilities were designed.

No person or camping party may use any state park facility for residence purposes, as defined (WAC 352-32-010).

(2) No person shall camp in any state park area except in areas specifically designated and/or marked for that purpose or as directed by a ranger.

(3) Occupants shall vacate camping facilities by removing their personal property therefrom no later than 1:00 p.m.,

if the applicable camping fee has not been paid or if the time limit for occupancy of the campsite has expired or the site is reserved by another party. Remaining in a campsite beyond the established checkout time shall subject the occupant to the payment of an additional camping fee.

(4) Use of utility campsites by tent campers shall be subject to payment of the utility campsite fee except when otherwise specified by a ranger.

(5) A campsite is considered occupied when it is being used for purposes of camping by a person or persons who have paid the camping fee within the applicable time limits or when it has been reserved through the appropriate procedures of the reservation system. No person shall take or attempt to take possession of a campsite when it is being occupied by another party, or when informed by a ranger that such site is occupied, or when the site is posted with a "reserved" sign. In the case of a reserved site, a person holding a valid reservation for that specific site may occupy it according to the rules relating to the reservation system for that park. In order to afford the public the greatest possible use of the state park system on a fair and equal basis, campsites in those parks not on the state park reservation system will be available on a first-come, first-serve basis. No person shall hold or attempt to hold campsite(s), for another camping party for present or future camping dates, except as prescribed for multiple campsites. Any site occupied by a camping party must be actively utilized for camping purposes.

(6) One person may register for one or more sites within a multiple campsite by paying the multiple campsite fee and providing the required information ~~((on))~~ regarding the occupants of the other sites. An individual may register and hold a multiple campsite for occupancy on the same day by other camping parties. Multiple campsites in designated reservation parks ~~((are reservable))~~ may be reserved under the reservation system.

(7) In order to afford the general public the greatest possible use of the state park system, on a fair and equal basis, and to prevent residential use, continuous occupancy of facilities by the same camping party shall be limited. Campers may stay ten consecutive nights in one park, after which the camping party must vacate the park for three consecutive nights, April 1 through September 30, not to exceed thirty days in a forty-day time period~~((:))~~; provided that at the discretion of the park ranger the maximum stay may be extended to fourteen consecutive nights if the campground is not fully occupied. Campers may stay twenty consecutive nights in one park, after which the camping party must vacate the park for three consecutive nights, October 1 through March 31, not to exceed forty days in a sixty-day time period. This limitation shall not apply to those individuals who meet the qualifications of WAC 352-32-280 and 352-32-285.

(8) A maximum of eight people shall be permitted at a campsite overnight, unless otherwise authorized by a ranger. The number of vehicles occupying a campsite shall be limited to one car and one recreational vehicle: Provided, That one additional vehicle without built-in sleeping accommodations may occupy a designated campsite when in the judgment of a ranger the constructed facilities so warrant. The number of tents allowed at each campsite shall be limited to

the number that will fit on the developed tent pad or designated area as determined by a ranger.

(9) Persons traveling by bicycles, motor bikes or other similar modes of transportation and utilizing campsites shall be limited to eight persons per site, provided no more than four motorcycles may occupy a campsite.

(10) Water trail camping sites are for the exclusive use of persons traveling by human and wind powered beachable vessels as their primary mode of transportation to the areas. Such camping areas are subject to the campsite capacity limitations as otherwise set forth in this section. Exceptions for emergencies may be approved by the ranger on an individual basis. Water trail site fees, as published by state parks, must be paid at the time the site is occupied.

(11) Overnight stays (bivouac) on technical rock climbing routes will be allowed as outlined in the park's site specific climbing management plan. All litter and human waste must be contained and disposed of properly.

(12) Emergency camping areas may be used only when all designated campsites are full and at the park ranger's discretion. Persons using emergency areas must pay the applicable campsite fee and must vacate the site when directed by the park ranger.

(13) Designated overflow camping areas may be used only when all designated campsites in a park are full and the demand for camping in the geographic area around the park appears to exceed available facilities. Persons using overflow camping areas must pay the applicable campsite fee.

(14) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 98-04-065, filed 2/2/98, effective 3/5/98)

WAC 352-32-037 Environmental learning centers (ELCs). All ELCs ~~((are reservable))~~ can be reserved by:

- (1) Complying with the reservation procedure; and
- (2) Paying the appropriate fees and deposits ~~((both of which are))~~ as published by state parks.

Use of ELCs shall be on a first-come-first-served basis if the facility is not reserved.

AMENDATORY SECTION (Amending WSR 03-01-079, filed 12/13/02, effective 1/13/03)

WAC 352-32-045 Reservations for use of designated group facilities. (1) All designated group facilities shall be reservable by groups as defined in WAC 352-32-010.

(2) All designated group facilities shall have a predetermined use capacity. No group exceeding this capacity in number shall use these areas. Groups making reservations shall be charged the applicable fee for a minimum of 20 people.

(3) Use of designated group facilities may be by reservation. Requests made at ~~((the))~~ parks, not on central reservation system, for reservations for groups of 20 to 250 shall be made 15 days in advance and for groups in excess of 250 shall be made 30 days in advance of the proposed use date, using the group use permit. All conditions outlined on the group use permit shall be binding on the group.

(4) Submittal of the group use permit request and payment in full of appropriate fees are required for the use of these facilities. Fees must be paid by credit card, certified check or money order. Fees are published by state parks. Refunds will be made only to those groups which cancel their reservations thirty or more days before the effective date of the reservations.

(5) For overnight group use, parking will be in the provided, defined areas. If additional parking is required, it may be available in the park's extra vehicle parking facility following the payment of the appropriate extra vehicle parking fee.

(6) The organization or delegated group leader making the reservation is responsible for any damages or extra cleaning that occurs as a result of the use of the facility(ies) beyond normal care and wear.

(7) Facility reservations for parks not on the central reservation system are made at the park and will be accepted for the calendar year, on or after the first working day in January of that calendar year. Reservations shall be made by a person of the age of majority, who must be in attendance during the group's activities. Reservations at the parks will be accepted in writing, in person, or by phone at the discretion of the park manager. In person and phone reservation requests shall only be accepted at the park during normal park operation hours. All reservation requests will be processed in order of arrival. Group facility areas not reserved are available on a first-come, first-serve basis.

(8) Any group wishing to sell or dispense alcoholic beverages must request and obtain all appropriate licenses and permits. In order to sell alcoholic beverages, the group must obtain a temporary concession permit from the headquarters office of the (~~Washington state parks and recreation~~) commission.

(9) It shall be within the authority of the park manager, or his representative, to rescind the rights of a reservation, and remove from the park, any or all members of the group whose behavior, at any time, is in conflict with any state laws, becomes detrimental to the health and safety of the group or other park users, or becomes so unruly as to affect the reasonable enjoyment of the park by other park users.

AMENDATORY SECTION (Amending WSR 98-04-065, filed 2/2/98, effective 3/5/98)

WAC 352-32-047 Special recreation event permit.

Any person or group, hereinafter referred to as the "applicant," desiring to make use of a portion of a state park for a special recreation event which will require special planning, facilities, staffing, or environmental protection measures, or the closure of the area to, or restriction of, established recreational uses, shall apply for a special recreation event permit. The director or designee may consult with the appropriate local government in reviewing the application and may issue a permit subject to conditions established by the agency. Such conditions may include but not be limited to the closure of the specified area to other recreational activities, including motor vehicle traffic, which are determined to have the potential to interfere with the event or which could risk the safety of the recreating public or the special event partici-

pants. However, no such permit may result in the unreasonable exclusion of recreationists from the remainder of the park. All events authorized under this permit shall be open to public participation and/or observation.

A special recreation event permit shall be issued only for recreational events where there is a reasonable expectation that a minimum of twenty persons will participate. The event must be oriented towards a recreational pursuit. Not more than three permits will be issued to a given applicant for a similar event at the same park during a one-year period.

Persons or organizations that desire to conduct a special recreation event in a state park shall submit a permit application obtainable at any state park and the basic permit application fee as published by state parks to the park where the event is proposed to take place.

If the agency determines it is necessary, the applicant must submit a completed environmental checklist along with the application. Upon request, the agency may assist the applicant in completing the environmental checklist and may request compensation in accordance with agency State Environmental Policy Act (SEPA) rules, chapter 352-11 WAC.

Permit applications must be submitted at least sixty days in advance of the proposed event so that the information supplied in the application may be verified and so that the agency can notify and coordinate action with officials of other jurisdictions and agencies responsible for health, safety and welfare. The sixty-day time limit is also necessary to comply with SEPA review requirements to identify any potential environmental impacts and mitigation. This requirement for an application to be filed sixty days prior to an event may be waived in rare circumstances where arrangements can be made in a shorter time while still complying with all other requirements of this section.

Such application shall be submitted at least (~~thirty~~) sixty days in advance of the proposed date of the event, to allow, where applicable, for necessary internal review and analysis, consultation with local governments, public notice, establishment of permit conditions, and required agency preparations and coordination. The director or designee shall approve or disapprove a permit application and establish the conditions for an approved application. The permittee must pay any fees published by state parks for the use of park lands or facilities. The director or designee shall determine the need for any fees necessary to cover costs incurred by the agency for additional staffing, equipment, facilities, or special services not normally provided by state parks, as well as the need for any bond, damage deposit, or liability insurance arising from any potential hazards associated with the conduct of the event. Any such fees, bond, damage deposit, or liability insurance shall be provided by the applicant prior to the issuance of the permit.

If additional unanticipated costs are incurred by the commission resulting from the event, the applicant shall reimburse the commission for such costs in a timely manner. If the additional costs are not paid, the director may recover such costs from the bond or damage deposits provided. Any funds remaining from the bond or damage deposit shall be returned to the applicant.

AMENDATORY SECTION (Amending WSR 03-01-079, filed 12/13/02, effective 1/13/03)

WAC 352-32-056 Peace and quiet. To insure peace and quiet for visitors:

(1) No person shall conduct themselves so that park users are disturbed in their sleeping quarters or in campgrounds or park employees in their sleeping quarters between the quiet hours of 10:00 p.m. and 6:30 a.m.

(2) No person shall, at any time, use sound-emitting electronic equipment including electrical speakers, radios, phonographs, televisions, or other such equipment, at a volume which emits sound beyond the person's vehicle or immediate area of use, individual camp or picnic site that may disturb other park users without specific permission of the park ranger.

(3) Engine driven electric generators may be operated only between the hours of 8:00 a.m. and 9:00 p.m.

(4) Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 352-32-057 Disturbances. Disorderly conduct, or conduct with the intent to intimidate or obstruct pedestrian or vehicular traffic, or which otherwise impedes or disturbs state park employees or volunteers in the performance of their duties, or which impedes or disturbs the general public in the use and enjoyment of state park areas, is prohibited.

Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 00-13-070, filed 6/16/00, effective 7/17/00)

WAC 352-32-060 Pets. (1) All pets or domestic animals must be kept under physical control, on a leash no greater than eight feet in length, or otherwise physically restrained, at all times while in a state park area.

(2) Pets and domestic animals may not be allowed to dig or otherwise disturb or damage the natural or cultural features of any state park area.

(3) In any state park area, pets or domestic animals, except for assistance ~~((dogs))~~ animals for persons with disabilities, are not permitted on any designated swimming beach; within a natural area preserve; during the skiing season on any designated alpine ski site or cross country ski trail in which the track has been prepared, set, or groomed; or in any public building unless so posted.

(4) In any state park area, pets or domestic animals, except for assistance dogs for persons with disabilities, may be prohibited in areas where there could be conflict with domestic livestock or agricultural activities on adjacent land, for the protection of wildlife, sensitive natural systems, special cultural areas, or for other recreational or health and safety purposes, if approved by the director or designee and so posted.

(5) No person shall allow his/her pet or domestic animal to bite or in any way molest or annoy other park visitors. No person shall permit his/her pet or domestic animal to bark or otherwise disturb the peace and tranquillity of the park.

(6) Any person bringing a pet or domestic animal into a state park area shall dispose of animal feces in a plastic or paper sack. The sack shall then be deposited in a solid waste container.

(7) Pet off-leash areas may be approved and designated by the director or designee. Approved pet off-leash areas will be exempt from subsections (1), (2), and (3) of this section. Approved pet off-leash areas may be closed permanently or temporarily by the director or designee for the protection of wildlife, sensitive natural systems, and special cultural areas. Any park area designated for pets off-leash shall be conspicuously posted as such by the director or designee.

(8) Any violation of this section is an infraction under chapter 7.84 RCW.

~~((8))~~ (9) This section shall not apply to the recreational use of horses, llamas, sled dogs, or similar animals as authorized by WAC 352-32-070.

AMENDATORY SECTION (Amending WSR 00-13-070, filed 6/16/00, effective 7/17/00)

WAC 352-32-070 Use of horses, llamas, sled dogs or similar animals for recreation. (1) No horses, llamas, sled dogs or similar animals used for recreation shall be permitted on trails in any state park area, except where designated and posted to specifically or conditionally permit such activity. The director or designee may open or close trails to such use. This decision shall include an evaluation of factors including, but not limited to, conflict with other park users, public safety, and damage to park resources and/or facilities. This evaluation shall include a reasonable effort to involve interested trail users of the park in question, including, at a minimum, one public meeting advertised and conducted in the region where the park is located. Trails designated open for such use may be temporarily closed by the park manager due to emergency health, safety, or resource protection considerations.

(2) No horses, llamas, sled dogs or similar animals used for recreation shall be permitted off trails in any state park area, except where authorized by the commission and posted to specifically or conditionally permit such activity.

(3) Horses, llamas, sled dogs or similar animals used for recreation shall not be permitted in any designated swimming areas, campgrounds - except designated horse((-)) or pack-oriented camping areas - or picnic areas, nor within a natural area preserve.

(4) Horses, llamas, sled dogs or similar animals used for recreation shall not be permitted within natural areas or natural forest areas, except that relocation of existing equestrian or other similar trails into natural areas or natural forest areas may be permitted upon a finding by the director or designee that such relocation is for the purpose of reducing overall resource impacts to a state park area.

(5) No person shall ride any horse or other animal in such a manner that might endanger life or limb of any person or animal, or damage park resources and/or facilities, and no person shall allow a horse or other animal to stand unattended or insecurely tied. Persons using horses or other animals for recreation shall obey regulatory signs, including those per-

manently or temporarily erected, that govern the timing, location, speed, type and/or manner of use.

(6) Any person bringing a horse, llama, sled-dog or similar animal into a state park area shall cleanup animal feces in parking lots, at trail heads and other central locations used by park visitors.

(7) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 00-13-070, filed 6/16/00, effective 7/17/00)

WAC 352-32-085 Technical rock climbing. (1) Whenever used in this section, technical rock climbing shall mean climbing while using such aids as pitons, carabiners or snap links, chalk, ropes, fixed or removable anchors, or other similar equipment. Technical rock climbing includes bouldering and free soloing (respectively low and high elevation climbing without ropes).

(2) Technical rock climbing will be allowed in state parks except it is:

(a) Not permitted in natural area preserves;

(b) Conditioned in heritage areas, natural areas and natural forest areas;

(c) Not permitted where the director or designee has closed the area pursuant to subsection (3) of this section;

(d) Limited in state park areas without climbing management plans pursuant to subsection (6) of this section to the use of routes with established fixed protection, new routes that do not use fixed protection, nor require gardening/cleaning with any type of cleaning tool;

(e) Not permitted in state park areas closed to public use.

(3) The director or designee may, permanently or for a specified period or periods of time, close any state park area to technical rock climbing if the director or designee concludes that a technical rock climbing closure is necessary for the protection of the health, safety and welfare of the public, park visitors or staff, or park resources. Prior to closing any park or park area to technical rock climbing, the director or ~~(the)~~ designee shall hold a public meeting in the general area of the park or park area to be closed to technical rock climbing. Prior notice of the meeting shall be published in a newspaper of general circulation in the area and at the park at least thirty days prior to the meeting. In the event that the director or designee determines that it is necessary to close a rock climbing area immediately to protect against an imminent and substantial threat to the health, safety and welfare of the public, park visitors or staff, or park resource, the director or designee may take emergency action to close a park area to rock climbing without first complying with the publication and hearing requirements of this subsection. Such emergency closure may be effective for only so long as is necessary for the director or designee to comply with the publication and hearing requirements of this subsection.

(4) The director or designee shall ensure that any park area closed to technical rock climbing pursuant to subsection (3) of this section is conspicuously posted as such at the entrance of said park area. Additionally, the director or designee shall maintain a list of all parks and park areas closed to

technical rock climbing pursuant to subsection (3) of this section.

(5) The director or designee shall establish a committee of technical rock climbers, to advise park staff on park management issues related to technical rock climbing for each state park area where deemed necessary by the agency.

(6) Each state park area with an established advisory committee of technical rock climbers will have a climbing management plan which will specify technical rock climbing rules concerning overnight stays on climbing routes, bolting, power drills, stabilization of holds, group size and activities, gardening/cleaning of routes pursuant to chapter 352-28 WAC and RCW 79A.05.165, chalk, special use designations for climbing areas, protection of sensitive park resources, and other such issues required by the director or designee. Climbing management plans that relate to natural forest areas or heritage areas must be approved by the commission. The director or designee shall ensure that any technical rock climbing rules contained in a climbing management plan are conspicuously posted at the entrance of the affected park area.

(7) Bolting will be allowed as specified in climbing management plans.

(8) The use of power drills will be allowed only if the park climbing management plans specifically permit under specified conditions for bolt replacement and bolt installation on new routes. They are otherwise prohibited.

(9) The addition of holds onto the rock face by any means, including gluing, chipping, or bolting is prohibited.

(10) Except as provided in WAC 352-32-310, any violation of this section and rules contained in the park management plan and posted at the park is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 04-01-067, filed 12/12/03, effective 1/12/04)

WAC 352-32-121 Other weapons. No person shall display, discharge or propel across, in, or into any upland state park area as defined in WAC 352-32-010, a bow and arrow, spear, spear gun, harpoon, or air or gas weapon, or any device capable of injuring or killing any person or animal, or damaging or destroying any public or private property, except where the commission for good cause has authorized a special recreational activity upon finding that it is not inconsistent with state park use.

Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-01-069, filed 12/9/04, effective 1/9/05)

WAC 352-32-125 Fires and campfires. All fires, except campfires, fires for stoves, candles, torches, barbecues and charcoal, are prohibited in state parks. Campfires are restricted to within the designated campfire pit, ring or other provided campfire enclosure and the flame must be no higher than two feet. On ocean beaches, campfires must be at least one hundred feet from the dunes, no more than four feet in diameter and no more than four feet high. No campfires are allowed on any shellfish bed. Park rangers may impose addi-

tional restrictions on fires for the protection of the health, safety and welfare of the public, park visitors or staff, or for the protection of park resources.

Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-24-030, filed 11/30/05, effective 12/31/05)

WAC 352-32-130 Aircraft. (1) No aircraft shall land on or take off from any body of water or land area in a state park area not specifically designated for landing aircraft. This provision does not apply to official aircraft used in the performance of search and rescue missions, medical emergencies, law enforcement activities, emergency evacuations or fire fighting activities. It also does not apply in cases where the director or designee specifically authorizes such landings or take offs, in writing, associated with the operational, or administrative needs of the agency or state.

(2) Individuals who have complied with the registration process provided or who have obtained a special recreation event permit pursuant to WAC 352-32-047 may launch and land paragliders in state park areas specifically designated by the director or designee as available for paragliding. Prior to any such designation, the director or designee shall advertise and conduct a public meeting in the region where the park is located. The director or designee shall consider the potential impacts of paragliding in the proposed area, including but not limited to the following factors: The degree of conflict paragliding may have with other park uses, public safety issues, and any potential damage to park resources/facilities. Any park designated for paragliding shall be conspicuously posted as such by the agency.

(3) Individuals paragliding in state parks must:

(a) Comply with the registration process provided for such purposes;

(b) Observe all applicable laws and regulations;

(c) Never destroy or disturb park facilities, natural features, or historical or archeological resources;

(d) Conduct themselves with thoughtfulness, courtesy and consideration for others, and not interfere with other recreational activities;

(e) Conduct themselves in compliance with the following basic safety regulations:

(i) Comply with specific site operational rules that are posted;

(ii) Fly in a manner consistent with the pilot rating held;

(iii) Preplanned landings should be made in areas no smaller than forty feet wide by one hundred feet long;

(iv) Make preflight checks of weather, equipment and site conditions;

(v) Observe all published traffic and right of way flight guidelines, including yielding right of way to all aircraft;

(vi) Wear protective clothing, headgear, Coast Guard approved flotation gear, reserve parachute, supplemental oxygen and communication equipment as appropriate for conditions;

(vii) Fly in a manner that does not create a hazard for other persons or property;

(viii) Fly only during daylight hours, or hours otherwise specified by posting at the site;

(ix) Do not fly over congested areas of parks or open air assembly of persons;

(x) Fly only in designated areas of parks;

(xi) Fly with visual reference to the ground surface at all times(-);

(xii) Do not tether paraglider to the ground or other stable nonmovable object.

(f) Not fly while under the influence of alcohol or drugs.

(4) Individuals flying remote controlled aircraft must do so only within flying areas designated by the director or designee and only when following the remote controlled aircraft management plan approved by the director or designee and posted for that designated area.

(a) Prior to any such designation, the director or designee shall advise and conduct a public meeting in the region where the park is located. The director or designee shall consider the potential impacts of remote controlled aircraft flying in the proposed area, including, but not limited to, the following factors: The degree of conflict remote controlled aircraft flying may have with other park uses, public safety issues, and any potential damage to park resources/facilities. Any park area designated for remote controlled aircraft flying shall be conspicuously posted as such by the director or designee.

(b) The director or designee shall establish a committee to advise park staff on park management issues related to remote controlled aircraft flying for each state park area designated as a remote controlled aircraft flying site.

(c) Each state park area with an established advisory committee, which includes remote controlled aircraft flyers will have an approved management plan which will specify remote controlled aircraft flying rules concerning types of aircraft, flying hours, identified approved flying zones, identified runways for take-offs and landings, engine muffler requirements, use of and posting of radio frequency, fuel spills and cleanup. The director or designee shall ensure that any remote controlled aircraft flying rules contained in the remote controlled aircraft flying management plan are conspicuously posted at the entrance of the affected park area.

(d) The director or designee may permanently, or for a specified period or periods of time, close any designated flying area to remote controlled aircraft flying if the director or designee concludes that a remote controlled aircraft flying closure is necessary for the protection of the health, safety, and welfare of the public, park visitors or staff, or park resources. Prior to closing any designated flying area to remote controlled aircraft flying, the director or designee shall hold a public meeting near the state park area to be closed to remote controlled aircraft flying. Prior notice of the meeting shall be published in a newspaper of general circulation in the area and at the park at least thirty days prior to the meeting. In the event that the director or designee or park manager determines that it is necessary to close a designated flying area immediately to protect against an imminent and substantial threat to the health, safety, and welfare of the public, park visitors or staff, or park resources, the director or designee or park manager may take emergency action to close a state park area to remote controlled aircraft flying without first complying with the publication and meeting

requirements of this subsection. Such emergency closure may be effective for only so long as is necessary for the director or designee to comply with the publication and meeting requirements of this subsection. The director or designee shall ensure that any designated flying area closed to remote controlled aircraft flying is conspicuously posted as such at the entrance of the affected park area.

(e) Except as provided in WAC 352-32-310, any violation of this section or failure to abide by a conspicuously posted remote controlled aircraft flying rule is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 98-04-065, filed 2/2/98, effective 3/5/98)

WAC 352-32-140 Fireworks. No person shall possess, discharge, set off, or cause to be discharged, in or into any state park area, any firecrackers, torpedoes, rockets, fireworks, explosives, or substance harmful to the life or safety of persons or property. Provided that the director or designee may issue permits for firework displays subject to conditions established by the agency and as provided in chapter 70.77 RCW.

Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 00-13-070, filed 6/16/00, effective 7/17/00)

WAC 352-32-15001 Little Spokane River natural area—Prohibited uses. (1) The Little Spokane River Natural Area was established by the commission to conserve a unique natural environment in a nearly undeveloped state for passive low density outdoor recreation activities. To conserve the natural resources, scenic beauty and tranquility of the area, the following are prohibited within the Little Spokane River Natural Area:

- (a) Bicycles.
- (b) Camping.
- (c) Commercial development or activities.
- (d) Consumption of alcoholic beverages.
- (e) Fires or fireworks.
- (f) Horseback riding.
- (g) Hunting.
- (h) Motorized boats, personal watercraft, or boats propelled by means other than oars or paddles; use of canoes, rowboats, kayaks and rafts is specifically authorized.
- (i) Pets including all dogs except assistance dogs for persons with disabilities.
- (j) Swimming, or use of innertubes, air mattresses or similar floatation devices.
- (k) Travel by foot, skis or snowshoes off designated trails or outside designated corridors.

(2) This section does not apply to government employees, or their agents in the performance of their duties, or search and rescue, medical emergency response, law enforcement or fire fighting activities.

(3) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 00-13-070, filed 6/16/00, effective 7/17/00)

WAC 352-32-157 Lakes located partially within state park boundaries—Internal combustion engines prohibited. (1) In order to preserve the scenic quality, peace and tranquility, and to protect and preserve wildlife, increase visitor safety, and to limit the degradation of lake water quality, the ((Washington state parks and recreation)) commission, in conjunction with the following ordinance(s), prohibits the use of internal combustion engines on the following lakes partially within park boundaries:

Cascade Lake at Moran State Park, San Juan county ordinance 10.16.030.

(2) This provision does not apply to government employees, or their agents in the performance of their duties, or search and rescue, medical emergency response, law enforcement or fire fighting activities.

(3) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 00-13-070, filed 6/16/00, effective 7/17/00)

WAC 352-32-165 Public assemblies, meetings. (1) Public assemblies are permitted in state park areas on grounds which are open to the public generally, provided a permit therefore has been issued as herein provided.

(2) An application for such a permit may be submitted on such forms as may be provided by the commission, or in any written form so long as the permit application sets forth the following:

- (a) Name, address and phone number of the applicant;
- (b) Date, time, duration, nature and place of the proposed event, including a description or schedule of events and activities;
- (c) Estimate of the number of persons expected to attend including the basis for the estimate;
- (d) Special equipment, including temporary structures such as speakers' stands, platforms, lecterns, chairs, benches or the like, and any sound amplification equipment to be used in connection with the event;
- (e) Special facilities, including emergency first aid, additional sanitation and refuse collection facilities, to be used in connection with the event;
- (f) Crowd control to be provided by the event sponsor;
- (g) Designation of a responsible contact individual with whom park officials may coordinate event activities, plans and preparations.

(3) The equipment and facilities referenced in subsection (2)(d) and (e), of this section, are to be provided by the event sponsor, unless other mutually satisfactory arrangements are made to use locally available commission owned equipment and facilities.

(4) The applicant must supply satisfactory evidence of arrangements for such equipment, facilities, and crowd control.

(5) ~~((The applicant must submit a completed environmental checklist along with the application. Environmental checklists are available at libraries, city planning offices, state parks, and similar outlets.))~~ If the agency determines it

is necessary, the applicant must submit a completed environmental checklist along with the application. Upon request, the agency will assist the applicant in completing the environmental checklist and may (~~be compensated~~) request compensation in accordance with agency State Environmental Policy Act (SEPA) rules, chapter 352-11 WAC (~~(497-11-914)~~).

(6) Permit applications must be submitted at least sixty days in advance of the proposed event so that the information supplied in the application may be verified and so that the agency can notify and coordinate action with officials of other jurisdictions and agencies responsible for health, safety and welfare. The sixty-day time limit is also necessary in order to comply with SEPA review requirements to identify any potential environmental impacts and mitigation. This requirement for an application to be filed sixty days prior to an event may be waived in rare circumstances where arrangements can be made in a shorter time while still complying with all other requirements of this section.

(7) The permit application must be submitted along with a nonrefundable permit fee as published by state parks to the Washington State Parks and Recreation Commission, 7150 Cleanwater (~~Lane~~) Drive, P.O. Box 42650, Olympia, Washington 98504-2650. The director, or designee, may issue a permit consistent with the application, or otherwise modified in a manner which is acceptable to the applicant. The following criteria will be evaluated in considering a permit application:

(a) The ability of the applicant to finance, plan and manage the activity in accordance with sanitation, safety, medical care, fire control, security, crowd, noise, and traffic control requirements, and consistent with the protection of park resources and image;

(b) The extent to which the proposed activity, in both nature and timing, threatens interference with customary usage of the park by members of the public or interferes with the convenience of park neighbors and the general public;

(c) The experience of the applicant in performing similar activities in the past;

(d) Measures undertaken to mitigate any changes in customary park usage or damage to park resources caused by the activity.

(8) Following an evaluation of the above listed criteria, the director or designee will issue a permit unless:

(a) The application does not adequately address the evaluation criteria; or

(b) A prior application for the same time and place has been made which has been or will be granted; or

(c) The event will present a clear and present danger to the public health or safety; or

(d) The event is of such nature or duration that it cannot reasonably be accommodated in the particular park area requested. In considering this, the director or designee shall take into account the potential for significant environmental impact.

(9) The director or designee will acknowledge receipt of the permit application within ten days. The acknowledgement will estimate the timeline for processing the application based on the complexity of the requested use. The director or designee shall make the final ruling on the permit application

as soon as possible but no later than ten days prior to the proposed event. The granting of this permit does not exempt the applicant from complying with other state, county or local permit requirements nor does it excuse compliance with the State Environmental Policy Act, where applicable. A threshold determination will be made by the agency to determine potential environmental impact. Applicants should be aware that timelines may exist under the State Environmental Policy Act and implementing regulations which are independent of this permit requirement.

(10) All permit denials will be in writing, will contain a statement of the specific reasons for the denial, and will advise the applicants of the right to request judicial review of the denial as provided in subsection (12) of this section.

(11) A permit issued may contain such conditions as are reasonably consistent with protection and use of the park area for the purposes for which it is maintained. It may also contain reasonable limitations on the time and area within which the event is permitted.

(a) The commission may require applicants to arrange for general liability insurance to cover participants, and the state of Washington will be named as an additional insured.

(b) The commission may require the filing of a bond with satisfactory surety payable to the state, to cover costs such as restoration, rehabilitation and cleanup of the area used, and other costs resulting from the permittee activity. In lieu of a bond, a permittee may elect to deposit cash equal to the amount of the required bond.

(12) Applicants whose permit application is denied may in writing request that the commission seek judicial review of the denial, in which event the commission shall timely seek a declaratory judgment pursuant to the Uniform Declaratory Judgment Act, chapter 7.24 RCW, and Superior Court Rule 57, in the superior court for Thurston County. Such requests shall be mailed, or otherwise delivered to the Director, Washington State Parks and Recreation Commission, 7150 Cleanwater (~~Lane~~) Drive, P.O. Box 42650, Olympia, Washington 98504-2650, within ten days from the date the application is denied.

AMENDATORY SECTION (Amending WSR 98-04-065, filed 2/2/98, effective 3/5/98)

WAC 352-32-170 Rubbish. (1) No person shall leave, deposit, drop, or scatter bottles, broken glass, ashes (except human crematory ashes), waste paper, cans, or other rubbish, in a state park area, except in a garbage can or other receptacle designated for such purposes.

(2) No person shall deposit any household or commercial garbage, refuse, waste, or rubbish, which is brought as such from any private property, in any state park area garbage can or other receptacle designed for such purpose.

(3) Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 352-32-175 Water. No person shall take greater than five gallons of water from state park areas for personal or commercial use outside state park boundaries, except for:

- (1) Those with signed agreements with state parks for water use;
- (2) Registered campers and overnight moorage visitors;
- (3) Those persons who have paid the trailer dump station or watercraft launch fees when filling fresh water holding tanks in recreational vehicles or vessels;
- (4) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 00-13-070, filed 6/16/00, effective 7/17/00)

WAC 352-32-195 Solicitation. Except as may be otherwise allowed in connection with a permit issued under WAC 352-32-165 or 352-32-047, or a cooperative agreement pursuant to RCW 79A.05.070(2), no person shall engage in commercial solicitation, or sell or peddle any services, goods, wares, merchandise, liquids, or edibles for human consumption in any state park area, except by concession or permit granted by the commission.

Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-01-069, filed 12/9/04, effective 1/9/05)

WAC 352-32-210 Consumption of alcohol in state park areas. (1) Opening, possessing alcoholic beverage in an open container, or consuming any alcoholic beverages in any state park or state park area is prohibited except in the following designated areas and under the following circumstances in those state parks or state park areas not posted by the director or designee as closed to alcohol pursuant to subsection (4) of this section:

- (a) In designated campsites or in other overnight accommodations, by registered occupants or their guests; provided ELC users obtain written permission through state parks application process;
- (b) In designated picnic areas, which shall include those sites within state park areas where picnic tables, benches, fireplaces, and/or outdoor kitchens are available, even though not signed as designated picnic areas and public meeting rooms;
- (c) In any reservable group day use facility by any authorized group which has paid the reservation fee and applicable damage deposit and which has obtained prior permit authorization to have alcohol by the park manager; and
- (d) In any building, facility or park area operated and maintained under a concession agreement, wherein the concessionaire has been licensed to sell alcoholic beverages by the Washington state liquor control board, and where the dispensation of such alcoholic beverages by such concessionaire has been approved by the commission.

(2) Opening, possessing alcoholic beverage in an open container, or consuming any alcoholic beverages is prohibited at the following locations:

- (a) Dash Point State Park;
- (b) Saltwater State Park;
- (c) Sacajawea State Park;

Except in the following designated areas and under the following circumstances:

(i) In designated campsites, or in other overnight accommodations by registered occupants or their guests.

(ii) In any building, facility or park area operated and maintained under a concession agreement wherein the concessionaire has been licensed to sell alcoholic beverages by the Washington state liquor control board, and where the dispensation of such alcoholic beverages by such concessionaire has been approved by the commission.

(iii) In any reservable group day use facility by any authorized group which has paid the reservation fee and applicable damage deposit and which has obtained prior permit authorization to have alcohol by the park manager.

(3) The director or designee may, for a specified period or periods of time, close any state park or state park area to alcohol if the director or designee concludes that an alcohol closure is necessary for the protection of the health, safety and welfare of the public, park visitors or staff, or park resources. The director or designee shall consider factors including but not limited to the effect or potential effect of alcohol on public and employee safety, park appearance, atmosphere, and noise levels, conflicts with other park uses or users, the demand for law enforcement, and the demand on agency staff. Prior to closing any park or park area to alcohol, the director or designee shall hold a public hearing in the general area of the park or park area to be closed to alcohol. Prior notice of the meeting shall be published in a newspaper of general circulation in the area. In the event the director or designee determines that an immediate alcohol closure is necessary to protect against an imminent and substantial threat to the health, safety and welfare of the public, park visitors or staff, or park resources, the director or designee may take emergency action to close a park or park area to alcohol without first complying with the publication and hearing requirements of this subsection. Such emergency closure may be effective for only so long as is necessary for the director or designee to comply with the publication and hearing requirements of this subsection.

(4) The director or designee shall ensure that any park or park area closed to alcohol pursuant to subsection (3) of this section is conspicuously posted as such at the entrance to said park or park area. Additionally, the director or designee shall maintain for public distribution a current list of all parks and park areas closed to alcohol pursuant to subsection (3) of this section.

(5) Dispensing alcoholic beverages from containers larger than two gallons is prohibited in state park areas except when authorized in writing and in advance by the park manager.

(6) The provisions of this rule shall not apply to any part of the Seashore Conservation Area, as designated and established by RCW 79A.05.605.

(7) Opening, consuming, or storing alcoholic beverages in Fort Simcoe State Park and Squaxin Island State Park is prohibited.

(8) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-01-069, filed 12/9/04, effective 1/9/05)

WAC 352-32-235 Use of metal detectors in state parks. The use and operation of metal detectors, as well as the removal of small contemporary materials, is permitted within selected state parks as designated by the director or designee, in accordance with all commission direction on land management, and subject to the conditions and limitations specified.

(1) The use of metal detectors is permitted only within specified portions of approved state parks as posted for public reference. Metal detecting may be allowed in an approved campsite occupied by the registered (~~detectorist~~) metal detector user and in unoccupied campsites within approved campgrounds.

(2) The use of metal detectors within a state park shall be limited to daylight hours that the park has posted as "open." No use shall be allowed during periods of seasonal or emergency park closure, except where otherwise posted.

(3) Any person wishing to use a metal detector shall so indicate to park personnel at the park where the use is to occur, by complying with the registration process provided for such purpose.

(4) Exceptional uses of metal detectors in state parks may be allowed through the issuance of a special recreation event application, available from the agency.

(5) This section does not apply to commission employees while engaged in the performance of their duties.

(6) Persons operating metal detectors in state parks and state park areas shall:

(a) Observe all laws and regulations.

(b) Never destroy or disturb park facilities, natural features, or historical or archeological resources. No item which is, or appears to be of historical or archaeological significance, may be removed from the site at which it was found. Any such find shall be immediately reported to park personnel, and the area in which the find occurred shall be closed.

(c) Limit digging implements to ice picks, screwdrivers and probes not to exceed two inches in width and sand scoops not to exceed six inches in width and eight inches in length, containing perforations no less than one-half inch in width, to be used only on sand surfaces. Any holes dug shall be limited to six inches maximum depth and shall be immediately refilled and the surface restored to its earlier condition.

(d) Properly dispose of all found or recovered trash and litter.

(e) Conduct themselves with thoughtfulness, courtesy and consideration for others, and not interfere with other recreational activities. An operator shall not allow any emitted metal detector sound audible to other park users.

(7) Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 352-32-237 Geocache. (1) In order to place a cache on state parks' property, an individual or organization must obtain a geocache placement permit from state parks. Any cache located on state parks' property that does not have a permit on file is subject to removal from its location, and

after notification of the owner (if known), may be disposed of within ten days.

(2) The geocache owner must check the geocache at least every ninety days unless an extension is approved by the park manager not to exceed one hundred eighty days. Proof of the check will be by e-mail, letter, or personal communication by the owner with the park manager or designee, and the owner's entry in the cache log book indicating the date of inspection.

(3) The following items shall not be placed in the geocache: Food items; illegal substances; medications; personal hygiene products; pornographic materials; inappropriate, offensive, or hazardous materials or weapons of any type. Log books are required for each cache and are to be provided by the owner of the cache.

(4) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-01-069, filed 12/9/04, effective 1/9/05)

WAC 352-32-250 Standard fees charged. Fees shall be charged in parks operated by the commission for use of lands, facilities, programs, services, and materials as published by state parks: Provided, however, That the commission may suspend any or all of these fees if revenues generated by the fees are not returned to the benefit of the parks: Provided further, That the director or designee has the authority to discount fees in order to take advantage of marketing opportunities to encourage use and increase revenues. Any such discounts shall be effective for a limited period of time up to one year in duration. The director or designee may consider the following factors in temporarily establishing or discounting fees:

Prevailing rates for comparable facilities;

Day of the week;

Season of the year;

Amenities of the park area and site;

Demand for facilities;

Low-income eligibility requirements as adopted by state parks; and

Such other considerations as the director or designee deems appropriate. The director or designee shall prescribe the specific details and manner in which fees shall be applied. The director or designee may also waive fees for marketing or promotional purposes or to redress visitor complaints. The director or designee may also establish temporary fees for a maximum of one year for new facilities or services. An administrative fee, as published by state parks, will be assessed for replacement of lost, damaged, or destroyed passes or permits.

(1) The director or designee may authorize reciprocity or cooperative arrangements with other state and/or federal agencies for the use of annual permits for like services, provided, that Washington licensed vehicles and/or residents shall be required to have and/or display the appropriate Washington permit or other permit as approved by the director or designee(;;).

(2) Overnight camping - standard campsite; utility campsite; emergency campsite; overflow campsite; hiker/biker campsite; walk-in campsite; primitive campsite for nonmo-

torized for motorized vehicle - fees will be charged as published by state parks. Payment for utility campsite will be collected whether utility hookups are actually used or not, except when otherwise specified by a ranger(§).

(3) Overnight camping - multiple campsites: Where campsites are designated and posted as a "multiple campsite," an individual may rent the multiple campsite by paying the multiple campsite fee and providing the required information on the occupants of the other sites. The multiple campsite fee will be calculated by multiplying the standard, utility or primitive campsite fee, as applicable, by the number of individual campsites to be used in the designated multiple campsite(§).

(4) Group camping area - certain parks: Individual camping units using these facilities must pay campsite fees as published by state parks(§).

(5) Convenience camping - fees will be charged for use of overnight accommodations such as yurts, cabins, platform tents, etc.

(6) Conference center facilities - fees will be charged for use of facilities and services as set forth in the fee schedule published by state parks and will include, but not be limited to: Overnight accommodations in individual recreational housing units or dormitory units; use of meeting rooms, performance venues and rally areas; linen and janitorial services; group food services; and use of equipment, supplies, and staff time necessary to support group activities. Certain deposits, reservation and cancellation fees also apply as set forth in the fee schedule published by state parks and may not be refundable.

~~((6))~~ (7) Environmental interpretation:

(a) Service fees will be established by the director or designee in order to recover, to the maximum extent practicable, all direct and indirect costs of environmental interpretation services on a program-wide basis based on anticipated attendance.

(b) Material and publication fees will be established by the director or designee. All material and publication fees will be deposited in the parks improvement account to be used for purposes specified in RCW 79A.05.060.

(c) Facility use, including environmental learning center fees, will be established by the commission. A facility use fee schedule is available by contacting Washington State Parks and Recreation Commission, 7150 Cleanwater ~~(Lane)~~ Drive, P.O. Box 42650, Olympia, WA 98504-2650(§).

~~((7))~~ (8) Adirondacks - not to include those located in ELC areas: Occupancy shall be limited to the number of built-in bunks provided(§).

~~((8))~~ (9) Extra vehicle overnight parking fee will be charged for each additional unhitched vehicle in excess of the one recreational vehicle allowed at each campsite: Provided, An extra vehicle overnight parking fee shall not be imposed when:

(a) Up to four motorcycles occupy one campsite, exclusive of other vehicles or recreation vehicles; or

(b) When the recreational vehicle and the towed vehicle arrive at the park hitched together, and after the camper has registered for and occupied the assigned campsite either the recreational vehicle or the towed vehicle remain parked at the campsite for the duration of the camper's stay(§).

~~((9))~~ (10) Unattended vehicle overnight parking permit: Unoccupied vehicles parked overnight in designated areas must register and pay the nightly permit fee. The permit must be prominently displayed in the vehicle(§).

~~((10))~~ (11) Watercraft launch ~~((site))~~ permit fee ~~((---))~~ shall be charged ~~((according to))~~ at designated facilities ~~((provided))~~. Watercraft launch permit shall not be required for:

(a) ~~((Vehicles, other than those))~~ Registered ~~((as extra))~~ overnight ~~((parking vehicles, registered for camping or overnight mooring))~~ guests in the park containing the watercraft launch ~~((site))~~;

(b) ~~((Vehicles of persons using any recreational housing or conference facilities at Fort Worden State Park;~~

~~((e))~~ ~~((Vehicles of))~~ Persons holding limited-income senior citizen, disability or disabled veteran passes;

~~((d))~~ (c) Vehicles displaying a valid annual natural investment permit (watercraft launch) ((site)) permit(§

~~((11))~~ Annual watercraft launch site permit valid for one year from month of purchase at any launch site designated by the director or designee. Permit must be displayed as instructed on permit backing);

(12) Trailer dump station fee - fee shall not be required for:

(a) Registered camping vehicles in the park containing the dump station;

(b) Vehicles of persons holding limited-income senior citizen, disability or disabled veterans passes;

(c) Vehicles displaying a valid annual natural investment permit.

(13) Variable pricing - variable prices will apply for use of campsites and/or facilities during such periods as the director or designee may specify(§).

(14) Popular destination park - a surcharge will apply for use of standard or utility campsites located in a popular destination park during such periods as the director may specify.

(15) Water trail site fees - for one day/night will be set by the commission(§).

~~((15))~~ (16) In addition to the regular fee, a surcharge may be imposed for failure to pay the self-registration fee(§).

~~((16))~~ (17) Group day use facilities - a minimum daily permit fee will be charged for groups of 20 or more(§).

~~((17))~~ (18) Reservation transaction - fees will be charged as published by state parks(§) and are not refundable.

~~((18))~~ (19) Moorage facilities - fee will be charged as published by state parks(§).

~~((19))~~ (20) Hot showers, electric stoves - fees will be charged as published by state parks. Fees published by state parks do not apply in those circumstances set forth in WAC 352-32-280 and 352-32-285 as now or hereafter amended(§).

~~((20))~~ (21) Film permits and site location fees will be charged as outlined in chapter 352-74 WAC.

(22) Off-season pass fees will be charged as published by state parks.

(23) Administrative fees will be charged as published by state parks for the replacement of lost, stolen or destroyed passes and permits.

~~(24)~~ (24) Commercial recreation provider permit registration - a fee shall be charged, as published by state parks for registration as a commercial recreation provider~~(?)~~.

~~((21))~~ (25) Commercial recreation provider permit - a fee shall be charged, as published by state parks for obtaining a permit to engage in commercial recreational use of state parks, as defined in WAC 352-32-010.

~~((22))~~ (26) Sno-park permit - seasonal and daily permit fees will be charged as published by state parks.

~~((23))~~ (27) Special groomed trail permit - a statewide special groomed trail permit will be required for use of special groomed trail areas. The fee charged will be as published by state parks.

~~((24))~~ (28) Wood debris collection permit - fee will be charged for collection and removal of wood debris from a state park area pursuant to RCW 4.24.210. The fee may be waived for volunteers assisting with emergency salvage and storm cleanup in the parks.

~~((25))~~ (29) Merchandise - prices for merchandise including but not limited to interpretive, recreational and historic materials, literature, food, beverage, grocery and other items at agency operated sales points will be based on market rates and practices.

~~((26))~~ (30) Back country camping permit - fee will be charged as published by state parks for selected state park areas as designated by the director.

~~((27))~~ (31) Group use registration - fee will be charged for groups of a size to be specified in the fee schedule on a park by park basis who have not otherwise reserved group facilities.

~~((28))~~ (32) Special event - fees will be charged based on the cost of providing events and market rates for comparable activities at other locations.

~~((29))~~ (33) Public assembly - permit fees based on costs as indicated in WAC 352-32-165.

(34) Aquatic and other state park facilities - fees will be charged as published by state parks.

~~((30))~~ Vehicle parking permit:

~~(a) The director or designee shall designate state parks where a vehicle parking permit shall be required for parking and shall publish a fee schedule to include any or all of the following:~~

~~(i) A single day or multiple day vehicle parking permit;~~

~~(ii) An annual vehicle parking permit;~~

~~(b) Vehicle parking permits shall not be required for:~~

~~(i) Vehicles registered for overnight accommodations, other than those registered as extra overnight parking vehicles;~~

~~(ii) Vehicles whose occupants hold a current pass authorized in WAC 352-32-251, Limited income senior citizen, disability, and disabled veteran passes;~~

~~(iii) Vehicles whose occupants hold a current watercraft launch site permit;~~

~~(iv) Vehicles whose occupants perform volunteer activities approved by the park ranger;~~

~~(v) Vehicles whose occupants engage in official business as authorized by agreement or otherwise approved by the park ranger;~~

~~(e) Any vehicle parking permit must be displayed as instructed on the permit.~~

~~(34))~~ (35) Checks dishonored by nonacceptance or nonpayment (NSF checks) - handling fee and interest:

(a) A handling fee may be assessed consistent with the maximum amount allowed in the office of state procurement, department of general administration's state contract and as published by state parks for checks as defined by chapter 62A.3-104 RCW, dishonored by nonacceptance or nonpayment.

(b) Interest at the maximum rate allowable may be charged on the NSF check as defined by chapter 62A.3-515 RCW, and as published by state parks for a check not paid within fifteen days after a statutory notice of dishonor is sent to maker's last known address.

(36) Fees subject to certificate of participation (COP) and as determined by the commission.

AMENDATORY SECTION (Amending WSR 05-24-030, filed 11/30/05, effective 12/31/05)

WAC 352-32-251 Limited income senior citizen, disability, and disabled veteran passes. (1)(a) Persons who are senior citizens, meet the eligibility requirements of RCW 79A.05.065, and have been residents of Washington state for at least the past twelve consecutive months shall, upon application to the commission accompanied by either a copy of a federal income tax return filed for the previous calendar year, or a senior citizen property tax exemption pursuant to RCW 84.36.381, or a notarized affidavit of income on a form provided by the commission, receive a limited income senior citizen pass at no charge, which entitles the holder's camping party to ~~((free parking at any state park,))~~ free use of trailer dump stations, watercraft launch sites, and to a 50 percent reduction in ~~((any))~~ the campsite fee~~((s))~~, or moorage fee~~((s levied))~~ as published by ((the commission)) state parks. Limited income senior citizen passes shall remain valid so long as the pass holder meets eligibility requirements.

(b) Proof submitted to the commission for the return of a senior citizen pass surrendered upon request to a commission employee who has reason to believe the user does not meet the eligibility criteria shall be the same as listed in subsections (1) and (5) of this section for original pass issuance.

(2) Persons who are:

(a) Permanently disabled, legally blind, or profoundly deaf, meet the eligibility requirements of RCW 79A.05.065, and have been residents of Washington state for at least the past twelve consecutive months shall, upon application to the commission, receive a five year disability pass at no charge ((and));

(b) Temporarily disabled ((persons)) and who meet the eligibility requirements of RCW 79A.05.065 and have been residents of Washington state for at least the past twelve consecutive months shall, upon application to the commission, receive a one year disability pass at no charge ((which entitles the holder's camping party to free parking at any state park,)); and

(c) Residents of Washington who have been issued a card, decal (placard) or special license plate for a permanent disability under RCW 46.16.381 shall be entitled, along with the members of their camping party to free use of trailer dump stations, watercraft launch sites, and to a 50 percent

reduction in ~~((any))~~ the campsite fee~~((s))~~, or moorage fee~~((s levied))~~ as published by ~~((the commission))~~ state parks.

(3) Persons who are veterans, meet the eligibility requirements of RCW 79A.05.065, and have been residents of Washington state for at least the past twelve consecutive months shall, upon application to the commission, receive a lifetime disabled veteran pass at no charge. Pass holders must provide proof of continued residency as determined by the director or designee. The pass entitles the holder's camping party to ~~((free parking at any state park and to))~~ free use of ~~((any))~~ a state park campsite, trailer dump station, watercraft launch site, moorage facility, and reservation service.

(4) Applications for limited income senior citizen, disability, and disabled veteran passes shall be made on forms prescribed by the commission.

(5) Verification of age shall be by original or copy of a birth certificate, notarized affidavit of age, witnessed statement of age, baptismal certificate, or driver's license. Verification of residency shall be by original or copy of a Washington state driver's license, voter's registration card, or senior citizen property tax exemption.

~~(6) ((For pass holders who travel by vehicle or recreational vehicle, camping party shall include the pass holder and up to seven guests of the holder who travel with the holder and use one campsite or portion of a designated group camping or emergency area. There is no additional fee for one extra vehicle without built-in sleeping accommodations that is part of the camping party of a pass holder at one campsite or portion of a designated group camping or emergency area, when in the judgment of a ranger, the constructed facilities so warrant, and the total number of guests of the holder do not exceed seven.~~

~~(7) For pass holders who travel by a mode of transportation other than vehicle or recreational vehicle, camping party shall include the pass holder and up to seven guests who travel with the pass holder and use one campsite or portion of a designated group camping or emergency area.~~

~~(8))~~ Pass holders must be present and show their valid pass and identification upon registration or when requested by any commission employee or representative.

(7) Pass holders that violate or abuse the privileges of their pass, as listed below, may be subject to suspension of their pass and assessed other fees.

(a) Duplicate or multiple reservations for the same night - thirty-day suspension.

(b) Use of pass by unauthorized person - sixty-day suspension and/or a fee equal to two times the campsite fee.

(c) Two or more no-shows (failure to use or cancel reservation) for reservations between May 1 and November 1 - ninety-day suspension.

(d) Repeated park rule violations - minimum ninety-day suspension.

The pass will be confiscated by the ranger on duty or their designee and sent to the Olympia headquarters office. At the end of the suspension the pass will be returned to the authorized pass holder at no cost.

(8) Pass holders may appeal a suspension of their pass by providing written justification/explanation to the state parks director or designee at 7150 Cleanwater Drive, P.O. Box 42650, Olympia, WA 98504.

(9) Pass holder discounts shall apply only to those fees listed in subsections (1), (2), and (3) of this section. Pass holder discounts will not apply to all other fees as published by state parks, including but not limited to, extra vehicles, vacation housing, yurts, and cabins.

(10) If the conditions of a pass holder change or the pass holder changes residency to a place outside Washington state during the time period when a pass is valid such that a pass holder no longer meets the eligibility requirements of RCW 79A.05.065 and WAC 352-32-251, the pass becomes invalid, and the pass holder shall return the pass to the commission or surrender the pass to a state park representative.

(11) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 03-01-079, filed 12/13/02, effective 1/13/03)

WAC 352-32-252 Off-season senior citizen pass—
Fee. (1) Persons who are senior citizens, are at least sixty-two years of age, and have been residents of Washington state for at least the past twelve consecutive months shall, upon application to the commission, receive an off-season senior citizen pass which entitles the holder's camping party to camp at any camping areas made available by the commission, as well as use of agency mooring facilities, at no cost beyond the charges provided for in subsection (3) of this section, effective October 1 through March 31, and Sunday through Thursday nights in April as determined by the director and posted. Each such pass shall be valid only during one off-season period.

(2) Applications for off-season senior citizen passes shall be made on forms prescribed by the commission and shall be accepted only after August 1 for the following off-season period.

(3) There shall be a fee for each off-season senior citizen pass. Limited income senior citizen pass holders may purchase the off-season pass at a 50 percent discount. A surcharge equal to the fee for an electrical hookup published by state parks shall be assessed for each night an off-season senior citizen pass holder uses a campsite with an electrical hookup.

~~(4) ((For pass holders who travel by car or recreational vehicle camping party shall include the pass holder and up to seven guests of the holder who travel with the holder and use one campsite or portion of a designated group camping or emergency area. One additional vehicle without built-in sleeping accommodations may be part of the camping unit of a holder at one campsite or portion of a designated group camping or emergency area, when in the judgment of a ranger, the constructed facilities so warrant, and the total number of guests of the holder do not exceed seven.~~

(5) For pass holders who travel by a mode of transportation other than car or recreational vehicle, camping party shall include the pass holder and up to seven guests who travel with the holder and use one campsite or portion of a designated group camping or emergency area.) Pass holders must be present and show their valid pass and identification upon registration or when requested by any commission employee or representative.

(5) Pass holder discounts shall apply only to those fees in subsections (1) and (3) of this section. Pass holder discounts will not apply to other fees as published by state parks, including but not limited to, extra vehicles, vacation housing, yurts, and cabins.

(6) If a pass holder changes residency to a place outside Washington state during the time period when a pass is valid, the pass becomes invalid and the pass holder shall return the pass to the commission or surrender the pass to a state park representative.

(7) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 00-13-070, filed 6/16/00, effective 7/17/00)

WAC 352-32-280 Applicability of standard fees. The fees published by state parks pursuant to RCW 79A.05.-070(6), shall not apply in the following circumstances:

(1) Whenever fees are charged by a concessionaire pursuant to a valid concession agreement granted by the commission pursuant to RCW 79A.05.030(5).

(2) Whenever fees are established pursuant to a development or management plan authorized or directed to be prepared by the legislature or state agency other than the commission, as, for example the Fort Worden State Park development and management plans.

~~(3) ((Whenever any law enforcement officer occupies a campsite if the following conditions are met:~~

~~(a) The law enforcement officer's authority is effective in the geographic area where the campsite is located.~~

~~(b) The park manager, or his representative, has determined that the officer's police powers may be useful in maintaining a peaceful environment in the park.~~

~~(c) The officer agrees to act in his official capacity if requested by park staff.~~

~~(4))~~ Whenever any improvement club or voluntary association, or committees representing such clubs or associations, acting pursuant to the commission's permission granted pursuant to RCW 79A.05.140 - 79A.05.155, utilizes any park facilities. Continuous occupancy of facilities by the same person or persons qualifying under this subsection shall be limited to 30 consecutive nights, unless otherwise approved by the director or designee.

~~((5))~~ (4) Whenever any individual, appointed by a court of law to perform work in a park in lieu of other sentencing, utilizes any park facilities.

~~((6))~~ (5) Whenever any individual utilizes any park facility in accordance with the terms of any contract, lease, or concession agreement, with the commission.

(6) The limit placed on any camper by WAC 352-32-030(5) shall not apply to persons qualifying under this section.

AMENDATORY SECTION (Amending WSR 98-04-065, filed 2/2/98, effective 3/5/98)

WAC 352-32-300 Easement, franchise, license, and special use permit applications and fees. (1) A party that desires to have a request for an easement, franchise, license, or special use permit considered by the commission shall

submit an application on a form provided by the director to the:

Washington State Parks and
Recreation Commission
7150 Cleanwater ((Lane)) Drive
P.O. Box 42650
Olympia, WA 98504-2650

Each application from a party other than a government agency shall be accompanied by a nonrefundable application fee according to a schedule adopted by the commission.

A party shall pay the commission processing and use fees as apply according to a schedule adopted by the commission.

A party shall pay the commission for any appraisal, appraisal review, and survey costs incurred by the commission during the consideration of an application for an easement, franchise, license, or special use permit. The amount of any appraisal, appraisal review, and survey costs shall be determined by the director or designee.

An application fee and any processing fees, use fees, and appraisal, appraisal review, and survey payments shall be submitted to the commission at the address listed above and shall be in the form of a check or money order payable to the ~~((Washington state parks and recreation))~~ commission.

(2) The application fee, processing fee, use fee, and the appraisal, appraisal review, and survey payments established by subsection (1) of this section may be waived by the director or designee when the director or designee determines that the action authorized by an easement, franchise, license, or special use permit will be of benefit to the general public, if approved by the commission.

AMENDATORY SECTION (Amending WSR 01-20-036, filed 9/26/01, effective 10/27/01)

WAC 352-32-340 Approval of community-based park improvements—Policies. The director((;)) or ~~((the director's))~~ designee, shall approve or disapprove all permits for community-based park improvements. Specific policies concerning community-based park improvements are available upon request.

A community-based park improvement is a construction project, proposed to be accomplished by individuals, groups, churches, charities, organizations, agencies, clubs, or associations using donated labor and/or materials, that results in a permanent change to state park lands or structures, or that creates an additional structure on state park lands.

AMENDATORY SECTION (Amending WSR 05-01-069, filed 12/9/04, effective 1/9/05)

WAC 352-32-350 Seaweed harvest. (1) For the purposes of this section, seaweed is defined as all species of marine algae and flowering sea grasses.

(2) Pursuant to RCW 79A.05.165(1), all state park areas are closed to the harvest of seaweed except Fort Ebey, Fort Flagler and Fort Worden state parks which are open to the noncommercial harvest of seaweed in accordance with RCW

79.96.210 from April 16 - May 15 each year. Seaweed harvesting in state park areas is limited to posted park hours.

(3) Seaweed shall be harvested using the following techniques: The leaves of bull kelp (*Nereocystis*) will be cut no closer than twenty-four inches (61 cm) above the bulb, and short stemmed kelps such as sugar wrack (*Laminaria*) and wing kelp (*Alaria*) are to be cut no closer than twelve inches (30 cm) above the anchor point. Cutting will be done using a knife or similar instrument, leaving the anchor point in place at all times. No tearing of the plants from the substrate or trimming is allowed, and rakes, tined forks, or similar tools are prohibited. The limit weight is ten pounds wet weight (fresh-picked before cleaning) per person per day, and drying or partial drying is prohibited prior to weighing. Each harvester must use a scale to determine when the harvest weight limit has been reached, and use their own container. Multiple limits may not be combined in the same container.

(4) The director (~~(of state parks)~~) or designee may take immediate action to reduce harvest levels where there is evidence of environmental damage. Such state park areas shall post changes in the daily harvest limits to inform the public of the reduced harvest levels.

(5) No person shall harvest or possess any seaweed within a state park area closed to harvest pursuant to subsection (2) or (4) of this section, except as necessary for scientific research authorized in writing by the environmental program manager at state parks.

(6) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-24-030, filed 11/30/05, effective 12/31/05)

WAC 352-37-020 Definitions. Whenever used in this chapter the following terms shall have the meanings herein defined unless the context clearly indicates otherwise:

"Aircraft" shall mean any machine designed to travel through the air, whether heavier or lighter than air; airplane, dirigible, balloon, helicopter, etc. The term aircraft shall not include paraglider or remote controlled aircraft.

"Campfires" shall mean any open flame from a wood source.

"Camping" shall mean erecting a tent or shelter or arranging bedding, or both, or parking a recreation vehicle or other vehicle for the purpose of remaining overnight.

"Commission" shall mean the Washington state parks and recreation commission.

"Director" shall mean the director of the Washington state parks and recreation commission or the director's designee.

"Driveable beach" shall mean that area of the ocean beaches lying between the upper or landward limit of the hard sand area and the clam beds.

"Dry sand area" shall mean that area lying above and to the landward side of the hard sand area as defined in this section.

"Fire" shall mean any open flame from any source or device including, but not limited to, campfires, stoves, candles, torches, barbecues and charcoal.

"Geocache" means geocaches, letterboxes, and related activities. Geocaching is an outdoor treasure hunting game in which participants (called geocachers) use a Global Positioning System receiver or other navigational techniques to hide and seek containers (called "geocaches" or "caches").

"Hard sand area" shall mean that area over which the tide ebbs and flows on a daily basis; and which is sufficiently hard or firm to support the weight of, and to provide unhindered traction for, an ordinary passenger vehicle.

"Hovercraft" shall mean a powered vehicle supported by a cushion of air capable of transporting persons.

"Intimidate" means to engage in conduct which would make a reasonable person fearful.

"Long Beach Peninsula" shall mean that area of the ocean beaches as defined in this section lying between Cape Disappointment on the south and Leadbetter Point on the north.

"Motor vehicle" shall mean every vehicle that is self-propelled. For the purposes of this chapter, a motor vehicle must be approved for highway use in accordance with Title 46 RCW.

"North Beach" shall mean that area of the ocean beaches as defined in this section lying between Damon Point on the south and Cape Flattery on the north.

"Obstruct pedestrian or vehicular traffic" means to walk, stand, sit, lie, or place an object in such a manner as to block passage by another person or a vehicle, or to require another person or a driver of a vehicle to take evasive action to avoid physical contact. Acts authorized as an exercise of one's constitutional right to picket or to legally protest, and acts authorized by a permit issued pursuant to WAC 352-32-165 shall not constitute obstruction of pedestrian or vehicular traffic.

"Ocean beaches" shall mean all lands fronting on the Pacific Ocean between Cape Disappointment and Leadbetter Point; between Toke Point and the south jetty on Point Chehalis; and between Damon Point and the Makah Indian Reservation, and occupying the area between the line of ordinary high tide and the line of extreme low tide, as these lines now are or may hereafter be located, and, where applicable, between the Seashore Conservation Line, as established by survey of the (~~(Washington state parks and recreation)~~) commission and the line of extreme low tide, as these lines now are or may hereafter be located, or as defined in RCW 79A.05.605, provided, that the ocean beaches shall not include any lands within the established boundaries of any Indian reservation.

"Parasail" shall mean a parachute-type device attached to a rope pulled by a motor vehicle, resulting in the participant being lifted from the ground by the force of the wind.

"Person" shall mean all natural persons, firms, partnerships, corporations, clubs, and all associations or combinations of persons whenever acting for themselves or by an agent, servant, or employee.

"Seashore conservation area" shall mean all lands now or hereafter under state ownership or control as defined in RCW 79A.05.605.

"South Beach" shall mean that area of the ocean beaches as defined in this section lying between Toke Point on the south and the south jetty on Point Chehalis on the north.

"Wind/sand sailer" shall mean a wheeled, wind-driven recreational conveyance.

AMENDATORY SECTION (Amending WSR 05-01-068, filed 12/9/04, effective 1/9/05)

WAC 352-37-030 Vehicular traffic—Where permitted—Generally. Subject to the restrictions set forth in subsequent sections of this chapter, and except at the point of intersection of any access road and the beach, the use of motor vehicles on and along the ocean beaches shall be permitted only on that area between the extreme upper or landward limit of the hard sand area and the clam beds, defined as the "driveable beach" in WAC 352-37-020. The operation of any vehicle is prohibited above and on the landward side of the driveable beach. The provisions of this section shall not apply to official vehicles engaged in authorized law enforcement, maintenance, or sanitary patrol activities or emergency vehicles while engaged in the performance of any necessary service.

The Long Beach Peninsula, South Beach, and North Beach Recreation Management Plans, as referenced in RCW 79A.05.600 through 79A.05.695, as adopted by local governments located on the same beach and approved by the commission, identify those areas where the operation or parking of any vehicle is prohibited. Exceptions that allow for the use of any vehicles in these areas identified as exclusive pedestrian/nonmotorized use areas are found in WAC 352-37-070. Except as provided in WAC ((352-37-220)) 352-37-330, any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-01-068, filed 12/9/04, effective 1/9/05)

WAC 352-37-040 Long Beach Peninsula. (1) Leadbetter Point exclusive pedestrian/nonmotorized vehicle use area is described as the area from the northern tip of Leadbetter Point to the north side of the Oysterville beach access road.

(a) Motor vehicles are not allowed year round in the area located between the northern tip of Leadbetter Point and the southern boundary of Leadbetter Point State Park.

(b) Motor vehicles are not allowed in the area located between the southern boundary of Leadbetter Point State Park to the north side of the Oysterville beach access road, from April 15 to the day following Labor Day of the same year.

(2) Long Beach/Seaview exclusive pedestrian/nonmotorized vehicle use area is described as the area from the south side of the Bolstad Avenue beach access road south to the north side of the Seaview beach access road at 38th Avenue.

Motor vehicles are not allowed from April 15 to the day following Labor Day of the same year.

(3) Ft. Canby unit exclusive pedestrian/nonmotorized vehicle use area is described as the area from the north jetty of the Columbia River located in Cape Disappointment State Park to north head/south boundary of Beard's Hollow.

Motor vehicles are not allowed on Benson Beach in front of Cape Disappointment State Park for the entire year. Motor

vehicles may not be used on the beach in front of the state park for any clam season at any time of the year.

(4) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 90-07-050, filed 3/19/90, effective 4/19/90)

WAC 352-37-050 South Beach. (1) East North Cove exclusive pedestrian/nonmotorized vehicle use area is described as the beach on the Pacific County owned property described as the north half of the northeast quarter section of the southwest quarter section of the southwest quarter of Section 4, Township 14N, Range 11 WWM.

Motor vehicles are not allowed from April 15 to the day following Labor Day of the same year.

(2) The Willapa National Wildlife Refuge/Warrenton Cannery road beach access exclusive pedestrian/nonmotorized vehicle use area is described as the area south of the south edge of the Warrenton Cannery beach access road east to east boundary line of the Willapa National Wildlife Refuge.

(a) Part west of Willapa National Wildlife Refuge. In the portion of this area west of the west boundary line of the Willapa National Wildlife Refuge, motor vehicles are not allowed from April 15 to the day following Labor Day of the same year.

(b) Part within the Willapa National Wildlife Refuge. In the portion of this area within Willapa National Wildlife Refuge, motor vehicles are not allowed from April 15 to the day following Labor Day of the same year. Motor vehicles may not be used in the wildlife refuge during the portion of any clam season which is between April 15 and the day following Labor Day of the same year.

(3) Twin Harbors Gap road to the south jetty exclusive pedestrian/nonmotorized vehicle use area is described as that area from the northern edge of the Twin Harbors beach access road to the south jetty on Point Chehalis.

(a) On the beach in front of the Westport Light State Park, motorized vehicles are not allowed from April 15 to the day following Labor Day of the same year. Motor vehicles may not be used on the beach in front of the state park during the portion of any clam season which is between April 15 and the day following Labor Day of the same year.

(b) On the beach in front of Westhaven State Park motorized vehicles are not allowed for the entire year. Motor vehicles may not be used on the beach in front of the state park for any clam season at any time of the year.

(c) In the balance of the area, motorized vehicles are not allowed from April 15 to the day following Labor Day of the same year.

(4) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 90-07-050, filed 3/19/90, effective 4/19/90)

WAC 352-37-060 North Beach. (1) North jetty to Marine View Drive beach access exclusive pedestrian/nonmotorized vehicle use area is described as that area from the

south edge of the Marine View Drive beach access to the north jetty of the Chehalis River.

Motor vehicles will not be allowed in this area from April 15 to the day after Labor Day of the same year.

(2) Pacific Way to Chance A La Mer beach access exclusive pedestrian/nonmotorized vehicle use area is described as the area from the north edge of the Pacific Way beach access road north to the south edge of the Chance A La Mer beach access road.

Motor vehicles are not allowed April 15 to the day after Labor Day of the same year.

(3) Ocean City beach access north for 1.8 miles exclusive pedestrian/nonmotorized vehicle use area is described as that area from the northern edge of the Ocean City beach access road north for 1.8 miles.

Motor vehicles are not allowed in this area from April 15 to the day after Labor Day of the same year.

(4) Benner Gap road north to the north bank of the Copalis River exclusive pedestrian/nonmotorized vehicle use area is described as the area from the north edge of the Benner Gap beach access road north to the north bank of the Copalis River. If the Copalis River shifts south of the north boundary of Griffiths-Priday State Park, the north boundary of Griffiths-Priday State Park shall be the north boundary of this area.

Motor vehicles are not allowed in this area for the entire year.

(5) Copalis Rock north to Boone Creek exclusive pedestrian/nonmotorized vehicle use area is described as the area from the north edge of Copalis Rock north to the north bank of Boone Creek.

Motor vehicles are not allowed in this area from April 15 to the day following Labor Day of the same year.

(6) Roosevelt Beach Gap road north to Annelyde Gap road exclusive pedestrian/nonmotorized vehicle use area is described as the area from the north edge of the Roosevelt beach access road to the south edge of the Annelyde beach access road.

Motor vehicles are not allowed in this area from April 15 to the day following Labor Day of the same year.

(7) Moclips Gap road north to the south boundary of the Quinault Indian reservation exclusive pedestrian/nonmotorized vehicle use area is described as the area from the north edge of the Moclips beach access road (Second Street) to the south boundary of the Quinault Indian reservation.

Motor vehicles are not allowed in this area from April 15 to the day following Labor Day of the same year.

(8) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-01-068, filed 12/9/04, effective 1/9/05)

WAC 352-37-070 Conditions under which motor vehicles may be used in the exclusive pedestrian/ nonmotorized use areas. Unless specifically (~~excepted~~) accepted in the description of the times during which motor vehicles are not allowed for each exclusive pedestrian/nonmotorized vehicle use area, motor vehicles may be used in the pedes-

trian/nonmotorized vehicle use areas under the following circumstances:

(1) Motor vehicles may be used in the areas during any recreational razor clam digging seasons designated by the department of fisheries which take place partially or entirely during the period when motor vehicles are otherwise not allowed to use the area.

(2) Motor vehicles may also be used in the areas during special events approved by the commission as set forth in WAC 352-37-200 Special group recreation event permit, which specifically allows the use of motorized vehicles. The vehicle may be used for access or in the event.

(3) As provided by RCW 79A.05.660, public vehicles operated in the performance of official duties and vehicles responding to an emergency can use the areas at any time.

(4)(a) Motor vehicles may be used to remove sand from a beach access, gap road, or other area provided that all required permits have been obtained and the removal complies with all applicable requirements.

(b) On the Long Beach Peninsula pursuant to RCW 4.24.210, 79A.05.035(5), and 79A.05.655(3), the Pacific County planning department and the city of Long Beach may issue permits for wood debris removal during any period of closure to vehicular traffic, in their respective jurisdictions, if in the opinion of said jurisdiction the amount, size, and location of such wood debris is determined to constitute a hazard to the general public and/or impede the movement of public vehicles on the ocean beach. Said permits shall be valid for twenty-four hours only. Persons seeking permits for removal of wood debris within the seashore conservation area must apply to the director or designee for a wood debris removal permit.

(5)(a) Motor vehicles may be used to remove wood debris under RCW 4.24.210 and 79A.05.035(5) provided that all required permits have been obtained and the removal complies with all applicable requirements.

(b) On the Long Beach Peninsula in accordance with RCW 79A.05.655(4), the Pacific County planning department and the city of Long Beach may issue permits, on their respective jurisdictions, for the removal of sand on the ocean beach during periods of closure to vehicular traffic. Said sand removal shall occur only on beach access roads and private property under the terms of a covenant, easement, or deed that allows such activity. The local jurisdictions shall exercise good judgment in setting the terms of such sand removal permits. Such terms should prohibit sand removal during weekends, holidays, festivals, and other occasions when and where there is increased use of the ocean beach by the public. The hours of sand removal shall also be specified and shall prohibit this activity from occurring too early or too late in the day in order to minimize disturbance of nearby businesses, residents, and visitors.

(6) In case of an emergency, motor vehicles may be used to maintain and construct erosion control devices, including bulkheads, provided that all required permits have been obtained and the operation of the vehicles and the construction complies with all applicable requirements.

AMENDATORY SECTION (Amending WSR 92-19-098, filed 9/17/92, effective 10/18/92)

WAC 352-37-080 Equestrian traffic. (1) Equestrian traffic shall be permitted on and along the ocean beaches within the seashore conservation area year round except where prohibited by this rule or other provision of statute or rule.

(2) Equestrian traffic shall be permitted only on that area between the extreme upper and landward limit of the hard sand area and the clam beds.

(3) Equestrian access shall be permitted at the point of intersection of any access road and the beach or any equestrian trail designated by the commission. Upland owners shall also be allowed equestrian access to and from their property, except for commercial purposes.

(4) Within the seashore conservation area, equestrian traffic shall yield the right of way to all pedestrian or vehicular traffic.

(5) Horses shall be ridden at a walk or led through areas of heavy pedestrian concentration.

(6) Equestrian traffic will not be permitted on the Long Beach Peninsula between Bolstad Avenue beach access road and 10th Street beach access road from April 15 to the day following Labor Day of the same year.

(7) Except as provided in WAC (~~(352-37-220)~~) 352-37-330, any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-01-068, filed 12/9/04, effective 1/9/05)

WAC 352-37-090 Pedestrians to be granted right of way. Vehicular and equestrian traffic shall at all times yield the right of way to pedestrians and nonmotorized vehicles on the ocean beaches. Except as provided in WAC (~~(352-37-220)~~) 352-37-330, any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 352-37-095 Disturbances. Disorderly conduct, or conduct with the intent to intimidate or obstruct pedestrian or vehicular traffic, or which otherwise impedes or disturbs state park employees or volunteers in the performance of their duties, or which impedes or disturbs the general public in the use and enjoyment of state park areas, is prohibited.

Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-01-068, filed 12/9/04, effective 1/9/05)

WAC 352-37-100 Parking. Parking of vehicles shall be permitted only in an area extending one hundred feet westward from the upper or landward limit of the hard sand area, or driveable beach area (WAC 352-37-020) or where otherwise specifically designated by the (~~Washington state parks and recreation~~) commission. Beach parking shall only be allowed in areas open for beach driving. Except as provided

in WAC 352-37-220, any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-01-068, filed 12/9/04, effective 1/9/05)

WAC 352-37-105 Fires and campfires. All fires, except campfires, fires for stoves, candles, torches, barbecues and charcoal, are prohibited in state parks. Campfires are restricted to within the designated campfire pit, ring or other provided campfire enclosure and the flame must be no higher than two feet. On ocean beaches, campfires must be at least one hundred feet from the dunes, no more than four feet in diameter and no more than four feet high. No campfires are allowed on any shellfish bed. Park rangers may impose additional restrictions on fires for the protection of the health, safety and welfare of the public, park visitors or staff, or for the protection of park resources.

Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 92-19-098, filed 9/17/92, effective 10/18/92)

WAC 352-37-110 Overnight parking or camping prohibited. Overnight parking or camping shall be prohibited on any area of the ocean beaches. Except as provided in WAC (~~(352-37-220)~~) 352-37-330, any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 92-19-098, filed 9/17/92, effective 10/18/92)

WAC 352-37-130 Speed limits. (1) No person shall operate any motor vehicle on or along any ocean beach at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event speed shall be so controlled as may be necessary to avoid colliding with any person, animal, vehicle or other conveyance on or entering the driveable beach in compliance with legal requirements in the duty of all persons to use due care.

(2) Except when a special hazard exists that requires lower speed for compliance with subsection (1) of this section, the maximum speed limit for operation of motor vehicles on the ocean beaches shall be twenty-five miles per hour.

(3) The driver of every motor vehicle operating on the ocean beaches shall, consistent with the requirements of subsection (1) of this section, drive at an appropriate reduced speed when approaching and crossing a beach access road, when approaching one or more parked vehicles, when approaching or traveling past or in the vicinity of a pedestrian or group of pedestrians, and when special hazard exists with respect to pedestrians or other traffic or by reason of weather or beach conditions.

(4) Except as provided in WAC (~~(352-37-220)~~) 352-37-330, any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 90-07-050, filed 3/19/90, effective 4/19/90)

WAC 352-37-140 Certain practices prohibited. The following practices while operating any motor vehicle on or along the ocean beaches are specifically prohibited:

- (1) Squirreling;
- (2) Circling;
- (3) Cutting figure eights;
- (4) Racing;
- (5) The operation of any motor vehicle in such a manner as to constitute a threat to the operator thereof, his or her passengers, pedestrians or equestrians using the beaches, animals or any other vehicle or other property.

(6) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 90-07-050, filed 3/19/90, effective 4/19/90)

WAC 352-37-170 Aircraft. (1) On the North Beach airplanes may land and take off on the ocean beach in the area commencing at the Copalis River north to the "rocks."

(2) The use of the beach by aircraft shall be subject to the jurisdiction of the aeronautics commission and all state and federal laws applicable to aircraft and pilots. Except as specified in subsection (1) of this section, airplanes shall only be allowed to make emergency landings on the ocean beaches.

(3) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-01-068, filed 12/9/04, effective 1/9/05)

WAC 352-37-190 Excluded/limited recreation activities. The following forms of public outdoor recreation activities or devices are prohibited on the ocean beaches unless specifically designated therefore or authorized by the director or designee as a special recreation event.

- (1) Vehicles not licensed and certificated pursuant to chapters 46.12 and 46.16 RCW.
- (2) Wind/sand sailers.
- (3) Parasails.
- (4) Hovercraft.
- (5) Powered parasail.
- (6) Ultra-light aircraft.
- (7) Powered hang gliders.

(8) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-01-068, filed 12/9/04, effective 1/9/05)

WAC 352-37-200 Special group recreation event permit. (1) Any person or group desiring to make use of a portion of the ocean beaches for a group recreation event which will require the closure of the area to certain conflicting recreational uses, may apply to the director for a special group recreation event permit. The director, or ((his/her)) designee, may issue such a permit after consultation with the appropriate local government, if the event does not unduly

interfere with normal public recreation. Such authorization shall include the closure of the specified area to recreational activities, including motor vehicle traffic, which are determined to have the potential to interfere with the event or which could risk the safety of the recreating public or the special event participants. However, no such authorization may result in the unreasonable exclusion of pedestrian recreationists from the specified portion of the ocean beach; all events authorized under this permit shall be open to public participation and/or observation.

(2) In determining whether to issue the permit, the director or designee will review the proposal for consistency with established approval criteria developed by the agency, which are designed to ensure the appropriateness of the event to the ocean beaches, and the basis for any associated public recreation restrictions. The criteria are available upon request from the agency.

(3) A special group recreation event permit shall be issued only for recreational events where there is a reasonable expectation that a minimum of twenty persons will participate. The event must be oriented towards a recreational pursuit. Not more than three permits will be issued to a given applicant for the same event during a one-year period. The group recreation activity must be consistent with the seashore conservation area (RCW 79A.05.600 through 79A.05.630), and may include an activity otherwise excluded under this chapter. Special group recreation events shall not exceed three days or seventy-two hours.

(4) Persons or organizations that desire to conduct a special group recreation event on the ocean beaches shall submit a permit application provided by the director and appropriate fees to the:

Washington State Parks and
Recreation Commission
7150 Cleanwater ((Lane)) Drive
P.O. Box 42650
Olympia, WA 98504-2650

Such application shall be submitted at least fifteen days in advance of the proposed date of the event, to allow for necessary internal review and analysis, consultation with local governments, public notice, establishment of permit conditions, and required agency preparations and coordination. The director or ((his/her)) designee shall approve or disapprove a permit application and establish the conditions for an approved application. The permittee must pay any fees published by state parks for the use of park lands or facilities. The director or ((he)) designee shall determine the need for any fees necessary to cover costs incurred by the agency, as well as the need for any bond, damage deposit, or liability insurance arising from any potential hazards associated with the character of the event. Any such fees, bond, damage deposit, or liability insurance shall be provided prior to the issuance of the permit.

(5) If additional costs are incurred by the commission resulting from the event, the applicant shall reimburse the commission for such costs in a timely manner. If the additional costs are not paid, the director or designee may recover such costs from the bond or damage deposits provided if pre-

viously required. Any funds remaining from the bond or damage deposit shall be returned to the applicant.

AMENDATORY SECTION (Amending WSR 90-07-050, filed 3/19/90, effective 4/19/90)

WAC 352-37-210 Severability clause. If any provision of these rules or their application to any person or circumstance is held invalid, the remainder of these rules(;-) or their application to other persons or circumstances is not affected.

NEW SECTION

WAC 352-37-255 Geocache. (1) In order to place a cache on state parks' property, an individual or organization must obtain a geocache placement permit from state parks. Any cache located on state parks' property that does not have a permit on file is subject to removal from its location, and after notification of the owner (if known), may be disposed of within ten days.

(2) The geocache owner must check the geocache at least every ninety days unless an extension is approved by the park manager, not to exceed one hundred eighty days. Proof of the check will be by e-mail, letter, or personal communication by the owner with the park manager or designee, and the owner's entry in the cache log book indicating the date of inspection.

(3) The geocache may be placed on Washington state parks and recreation commission managed property only by written permission from the commission.

(4) The following items shall not be placed in the geocache: Food items; illegal substances; medications; personal hygiene products; pornographic materials; inappropriate, offensive, or hazardous materials or weapons of any type. Log books are required for each cache and are to be provided by the owner of the cache.

(5) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-24-030, filed 11/30/05, effective 12/31/05)

WAC 352-37-300 Sanitation. No person shall, in the seashore conservation area:

(1) Drain or dump refuse or waste from any trailer, camper, automobile, or other vehicle, or vessel, except in designated disposal areas or receptacles.

(2) Urinate or defecate except in designated facilities.

(3) Pollute, or in any way contaminate by dumping or otherwise depositing therein any waste or refuse of any nature, kind, or description, including human or animal bodily waste, any stream, river, lake, or other body of water running in, through, or adjacent to, the seashore conservation area.

(4) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-24-030, filed 11/30/05, effective 12/31/05)

WAC 352-37-330 Penalties. Any violation designated in this chapter as a civil infraction shall constitute a misde-

meanor until the violation is included in a civil infraction monetary schedule adopted by rule by the state supreme court pursuant to chapter 7.84 RCW, except that a violation of WAC 352-37-230 shall at all times be a gross misdemeanor.

WSR 06-24-076

**WITHDRAWAL OF PROPOSED RULES
STATE TOXICOLOGIST**

(By the Code Reviser's Office)

[Filed December 5, 2006, 8:30 a.m.]

WAC 448-15-010, 448-15-020, 448-15-030, 448-15-040, 448-15-050, and 448-15-060, proposed by the state toxicologist in WSR 06-11-029 appearing in issue 06-11 of the State Register, which was distributed on June 7, 2006, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 06-24-077

**PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD**

[Filed December 5, 2006, 8:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-17-165.

Title of Rule and Other Identifying Information: WAC 181-79A-140 Types of certificates and 181-79A-231 Limited certificates.

Hearing Location(s): Comfort Inn & Conference Center, 1620 74th Avenue S.W., Tumwater, WA 98501, (360) 352-0691, on January 17, 2007, at 8:30 a.m.

Date of Intended Adoption: January 17, 2007.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236, Olympia, WA 98504-7236, e-mail nasue.nishida@k12.wa.us, fax (360) 586-4548, by January 10, 2007.

Assistance for Persons with Disabilities: Contact Nasue Nishida by January 10, 2007, TTY (360) 664-3631 or (360) 725-6275.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: For the creation of an alternative routes for principals program, adding "provisional alternative administrative certificate" to this list.

Reasons Supporting Proposal: Washington state has a shortage of school principals. This pilot will provide another vehicle for preparing principals, using the alternative routes to certifying teachers model.

Statutory Authority for Adoption: RCW 28A.410.210 and 28A.410.010.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nasue Nishida, Old Capitol Building, 600 South Washington Street, Olympia, 98504, (360) 725-6275.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nasue Nishida, P.O. Box 47236, Olympia, WA 98504-7236, phone (360) 725-6275, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

December 1, 2006

Nasue Nishida
Policy and Research Analyst

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

WAC 181-79A-140 Types of certificates. Six types of certificates shall be issued:

(1) Teacher. The teacher certificate, including teacher exchange permits as provided in WAC 181-79A-220, authorizes service as a classroom teacher.

(2) Career and technical. The career and technical education certificate authorizes service in career and technical education programs in accordance with the provisions of chapter 181-77 WAC.

(3) First people's language/culture. The first people's language/culture teacher certificate authorizes service as defined under WAC 181-78A-700(8).

(4) Administrator.

(a) The administrator certificate for principal authorizes service as a building administrator or assistant principal.

(b) The administrator certificates for superintendent or program administrator will be issued to persons who meet professional educator standards board certification standards for service in the roles of superintendent or program administrator.

(5) Educational staff associate. The educational staff associate certificate authorizes service in the roles of school speech pathologists or audiologists, school counselors, school nurses, school occupational therapists, school physical therapists, school psychologists, and school social workers: Provided, That nothing within chapter 181-79A WAC authorizes professional practice by an educational staff associate which is otherwise prohibited or restricted by any other law, including licensure statutes and rules and regulations promulgated by the appropriate licensure board or agency.

(6) Limited certificates. The following limited certificates are issued to individuals under specific circumstances set forth in WAC 181-79A-231:

(a) Conditional certificate.

(b) Substitute certificate.

(c) Emergency certificate.

(d) Emergency substitute certificate.

(e) Nonimmigrant alien exchange teacher.

(f) Intern substitute teacher certificate.

(g) Transitional certificate.

(h) Provisional alternative administrative certificate.

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

WAC 181-79A-231 Limited certificates. Notwithstanding other requirements prescribed in this chapter for eligibility for certification in the state of Washington, the following certificates shall be issued under specific circumstances set forth below for limited service:

(1) Conditional certificate.

(a) The purpose of the conditional certificate is to assist local school districts, approved private schools, and educational service districts in meeting the state's educational goals by giving them flexibility in hiring decisions based on shortages or the opportunity to secure the services of unusually talented individuals. The professional educator standards board encourages in all cases the hiring of fully certificated individuals and understands that districts will employ individuals with conditional certificates only after careful review of all other options. The professional educator standards board asks districts when reviewing such individuals for employment to consider, in particular, previous experience the individual has had working with children.

(b) Conditional certificates are issued upon application by the local school district, approved private school, or educational service district superintendent to persons who meet the age, good moral character, and personal fitness requirements of WAC 181-79A-150 (1) and (2), if one of the following conditions is verified:

(i) The applicant is highly qualified and experienced in the subject matter to be taught and has unusual distinction or exceptional talent which is able to be demonstrated through public records of accomplishments and/or awards; or

(ii) No person with regular teacher certification in the endorsement area is available as verified by the district or educational service district superintendent or approved private school administrator, or circumstances warrant consideration of issuance of a conditional certificate.

(c) In addition, conditional certificates are issued to persons in the following categories only if no person with regular certification is available:

(i) The applicant qualifies to instruct in the traffic safety program as paraprofessionals pursuant to WAC 392-153-020 (2) and (3); or

(ii) The applicant is assigned instructional responsibility for intramural/interscholastic activities which are part of the district or approved private school approved program; or

(iii) The applicant possesses a state of Washington license for a registered nurse: Provided, That the district will be responsible for orienting and preparing individuals for their assignment as described in (e)(iii) of this subsection; or

(iv) The applicant has completed a bachelor's degree or higher from a regionally accredited college/university. All speech-language pathologists or audiologists providing services under a current and valid conditional certificate issued as of June 30, 2003, will be fully qualified consistent with WAC 181-79A-223 by the year 2010. First conditional certificates, issued to speech-language pathologists or audiologists

after June 30, 2003, which are valid for up to two years, may be reissued once for up to two years, if the individual provides evidence that he/she is enrolled in and completing satisfactory progress in a master's degree program resulting in the initial ESA school speech-language pathologists or audiologist certificate.

(v) The applicant for a conditional teaching certificate in special education shall hold a bachelor's degree or higher from a regionally accredited college/university.

(vi) The issuance of a conditional certificate to a special education teacher after July 1, 2003, is contingent upon the individual being enrolled in an approved teacher preparation program resulting in a residency teacher certificate endorsed in special education. The conditional certificate is valid for up to two years and may be reissued once for one year upon verification by the college/university that the individual is completing satisfactory progress in the residency teacher certificate program.

(vii) An individual with full certification and endorsed in special education shall be assigned as a mentor to the special education teacher serving on a conditional certificate for the duration of the conditional certificate.

(d) The educational service district or local district superintendent or administrator of an approved private school will verify that the following criteria have been met when requesting the conditional certificate:

(i) The district or educational service district superintendent or approved private school administrator has indicated the basis on which he/she has determined that the individual is competent for the assignment;

(ii) The individual is being certificated for a specific assignment and responsibility in a specified activity/field;

(e) When requesting the conditional certificate for persons who provide classroom instruction, the educational service district superintendent or local district superintendent or approved private school administrator will verify that the following additional criteria will be met:

(i) After specific inclusion on the agenda, the school board or educational service district board has authorized submission of the application.

(ii) The individual will be delegated primary responsibility for planning, conducting, and evaluating instructional activities with the direct assistance of a school district or approved private school mentor and will not be serving in a paraprofessional role which would not require certification;

(iii) Personnel so certificated will be oriented and prepared for the specific assignment by the employing district or approved private school. A written plan of assistance will be developed, in cooperation with the person to be employed within twenty working days from the commencement of the assignment. In addition, prior to service the person will be apprised of any legal liability, the responsibilities of a professional educator, the lines of authority, and the duration of the assignment;

(iv) Within the first sixty working days, personnel so certificated will complete sixty clock hours (six quarter hours or four semester hours) of course work in pedagogy and child/adolescent development appropriate to the assigned grade level(s) as approved by the employing school district or approved private school.

(f) The certificate is valid for two years or less, as evidenced by the expiration date which is printed on the certificate, and only for the activity specified. The certificate may be reissued for two years and for two-year intervals thereafter upon application by the employing local school district, approved private school, or educational service district and upon completion of sixty clock hours (six quarter hours or four semester hours) of course work since the issuance of the most recent certificate. The requesting local school district, approved private school, or educational service district shall verify that the sixty clock hours taken for the reissuance of the certificate shall be designed to support the participant's professional growth and enhance the participant's instructional knowledge or skills to better assist students meeting the state learning goals and/or essential academic learning requirements.

(2) Substitute certificate.

(a) The substitute certificate entitles the holder to act as substitute during the absence of the regularly certificated staff member for a period not to exceed thirty consecutive school days during the school year in any one assignment. This certificate may be issued to:

(i) Teachers, educational staff associates or administrators whose state of regular Washington certificates have expired; or

(ii) Persons who have completed state approved preparation programs and baccalaureate degrees at regionally accredited colleges and universities for certificates; or

(iii) Persons applying as out-of-state applicants who qualify for certification pursuant to WAC 181-79A-257 (1)(c) and (d).

(b) The substitute certificate is valid for life.

(3) Emergency certification.

(a) Emergency certification for specific positions may be issued upon the recommendation of school district and educational service district superintendents or approved private school administrators to persons who hold the appropriate degree and have substantially completed a program of preparation in accordance with Washington requirements for certification: Provided, That a qualified person who holds regular certification is not available or that the position is essential and circumstances warrant consideration of issuance of an emergency certificate: Provided further, That a candidate for emergency certification as a school counselor, school psychologist, or social worker shall be the best qualified of the candidates for the position as verified by the employing school district and shall have completed all course work for the required master's degree with the exception of the internship: Provided further, That a candidate for emergency certification as a school psychologist shall be enrolled in an approved school psychologist preparation program and shall be participating in the required internship.

(b) The emergency certificate is valid for one year or less, as evidenced by the expiration date which is printed on the certificate.

(4) Emergency substitute certification.

(a) If the district or approved private school has exhausted or reasonably anticipates it will exhaust its list of qualified substitutes who are willing to serve as substitutes, the superintendent of public instruction may issue emergency

substitute certificates to persons not fully qualified under subsection (2) of this section for use in a particular school district or approved private school once the list of otherwise qualified substitutes has been exhausted.

(b) Such emergency substitute certificates shall be valid for three years or less, as evidenced by the expiration date which is printed on the certificate.

(5) Nonimmigrant alien exchange teacher. Applicants for certification as a nonimmigrant alien exchange teacher must qualify pursuant to WAC 181-79A-270 and be eligible to serve as a teacher in the elementary or secondary schools of the country of residence.

(6) Intern substitute teacher certificate.

(a) School districts and approved private schools may request intern substitute teacher certificates for persons enrolled in student teaching/internships to serve as substitute teachers in the absence of the classroom teacher.

(b) The supervising college or university must approve the candidate for the intern substitute teacher certificate.

(c) Such certificated substitutes may be called at the discretion of the school district or approved private school to serve as a substitute teacher only in the classroom(s) to which the individual is assigned as a student teacher/intern.

(d) The intern substitute teacher certificate is valid for one year, or less, as evidenced by the expiration date which is printed on the certificate.

(7) Transitional certificate.

(a) An individual whose continuing certificate has lapsed according to WAC 181-85-040 may be issued a transitional certificate to be employed on a conditional basis upon request by a school district, approved private school, or educational service district superintendent. The holder of the transitional certificate must complete any continuing certificate reinstatement requirements established by the professional educator standards board within two years of the date the holder was issued the transitional certificate in order to continue to be employed. The transitional certificate expiration date shall not be calculated under professional educator standards board policy WAC 181-79A-117.

(b) No individual whose continuing certificate has been suspended or revoked shall be eligible to be employed under this section.

(c) School districts, approved private schools, and educational service districts are strongly encouraged to develop with the holder of a transitional certificate a plan of assistance to be sure the holder completes the necessary continuing certificate reinstatement requirements under WAC 181-85-130 within the two-year conditional employment period specified under (a) of this subsection if the holder is to continue to be employed.

(d) The transitional certificate is not renewable and may not be reissued.

(8) Provisional alternative administrative certificate.

(a) This certificate shall be issued to individuals admitted to the professional educator standards board alternative route to principal certification pilot program.

(b) The certificate is valid for one year from date of issue.

(c) A comprehensive assessment of the intern's performance by school officials and program faculty and a recom-

mendation that the person be issued a residency principal certificate upon successful completion of the program.

WSR 06-24-078

PROPOSED RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed December 5, 2006, 8:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-17-166.

Title of Rule and Other Identifying Information: WAC 181-78A-207, 181-78A-209, 181-78A-250, 181-78A-500, 181-78A-505, 181-78A-515, 181-78A-520, 181-78A-525, 181-78A-530, and 181-78A-535.

Hearing Location(s): Comfort Inn & Conference Center, 1620 74th Avenue S.W., Tumwater, WA 98501, (360) 352-0691, on January 17, 2007, at 8:30 a.m.

Date of Intended Adoption: January 17, 2007.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236, Olympia, WA 98504-7236, e-mail nasue.nishida@k12.wa.us, fax (360) 586-4548, by January 10, 2007.

Assistance for Persons with Disabilities: Contact Nasue Nishida by January 10, 2007, TTY (360) 664-3631 or (360) 725-6275.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Comply with SB 5983 to "provide criteria for the approval of educational service districts, beginning no later than August 31, 2007, to offer programs leading to professional certification. The rules shall be written to encourage institutions of higher education and educational service districts to partner with local school districts or consortia of school districts, as appropriate, to provide instruction for teachers seeking professional certification ..."

Reasons Supporting Proposal: Comply with SB 5983.

Statutory Authority for Adoption: RCW 28A.410.210 and 28A.410.010.

Statute Being Implemented: RCW 28A.410[.210] (2)(5).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nasue Nishida, Old Capitol Building, 600 South Washington Street, Olympia, 98504, (360) 725-6275.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nasue Nishida, P.O. Box 47236,

Olympia, WA 98504-7236, phone (360) 725-6275, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

December 1, 2006

Nasue Nishida

Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

WAC 181-78A-207 Qualification to be appointed to college or university professional education advisory boards. (1) Appointees to service on professional education advisory boards from required agencies, other than the designee(s) of the college or university president, at the time of their appointment, must be employed in or reside in a school district with which the college or university has a current written agreement to provide field experiences for students involved in the preparation program for which the professional education advisory board has responsibility.

(2) Professional education advisory boards may authorize the appointment of additional representatives from other school districts or other public and private agencies as long as one-half or more of the members of the professional education advisory board consist of representatives who meet the qualifications of subsection (1) of this section and who are from the role for which the professional education advisory board has responsibility.

(3) If any professional education advisory board receives a written request from other school districts or other public or private agencies for representation on such professional education advisory board, the current members of such professional education advisory board shall vote on such request at the next regular meeting of such board: Provided, That a college or university may elect to add private school representatives to a professional education advisory board without adding to the representation from the role for which the professional education advisory board has responsibility if the professional education advisory board authorizes such action by a majority vote.

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

WAC 181-78A-209 College or university professional education advisory boards—Membership. The professional education advisory boards shall at a minimum consist of the following:

(1) **TEACHER.**

(a) One-half or more of the voting members shall be classroom teachers. All, but one, will be appointed by the president of the Washington Education Association. One of these teachers shall be employed in a private school and appointed by the Washington Federation of Independent Schools.

(b) At least one principal appointed by the president of the Association of Washington School Principals.

(c) At least one school administrator appointed by the Washington Association of School Administrators.

(d) At least one college or university representative who may serve in a voting or nonvoting role.

(e) At colleges or universities where career and technical education programs are offered, one career and technical education director or career and technical education teacher, with expertise in one of the approved career and technical education programs at the college or university, appointed by the Washington Association of Vocational Administrators in cooperation with the college or university.

(2) **ADMINISTRATOR.**

(a) One-half or more of the voting members shall be administrators. One-half of these administrators (at least one-fourth of the total voting membership) shall be appointed by the president of the Washington Association of School Administrators. All but one of the remaining administrators shall be appointed by the president of the Association of Washington School Principals. The remaining administrator shall be employed in an approved private school and appointed by the Washington Federation of Independent Schools.

(b) At least one or more classroom teachers appointed by the president of the Washington Education Association.

(c) At least one college or university representative who may serve in a voting or nonvoting role.

(3) **SCHOOL COUNSELOR.**

(a) At least one-half of the voting members shall be school counselors appointed by the president of the Washington School Counselors Association.

(b) At least one teacher appointed by the president of the Washington Education Association.

(c) At least one principal appointed by the Association of Washington School Principals.

(d) At least one administrator appointed by the Washington Association of School Administrators.

(e) At least one college or university representative who may serve in a voting or nonvoting role.

(4) **SCHOOL PSYCHOLOGIST.**

(a) At least one-half of the voting members shall be school psychologists appointed by the president of the Washington State Association of School Psychologists.

(b) At least one teacher appointed by the president of the Washington Education Association.

(c) At least one principal appointed by the Association of Washington School Principals.

(d) At least one administrator appointed by the Washington Association of School Administrators.

(e) At least one college or university representative who may serve in a voting or nonvoting role.

(5) **SCHOOL SOCIAL WORKER.**

(a) At least one-half of the voting members shall be school social workers appointed by the president of the Washington Association of School Social Workers.

(b) At least one teacher appointed by the president of the Washington Education Association.

(c) At least one principal appointed by the Association of Washington School Principals.

(d) At least one administrator appointed by the Washington Association of School Administrators.

(e) At least one college or university representative who may serve in a voting or nonvoting role.

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

WAC 181-78A-250 Approval standards~~((—))~~**professional education advisory board.** Building on the mission to prepare educators who demonstrate a positive impact on student learning, the following evidence shall be evaluated to determine whether each preparation program is in compliance with the program approval standards of WAC 181-78A-220(1):

(1) The college or university professional education advisory board has been established in accordance with WAC 181-78A-209.

(2) The educational service district professional education advisory board for a teacher professional certification program has been established in accordance with WAC 181-78A-520.

(3) The professional education advisory board has adopted operating procedures and has met at least four times a year.

~~((3))~~ (4) The professional education advisory board has reviewed all program approval standards at least once every five years.

~~((4))~~ (5) The professional education advisory board annually has reviewed follow-up studies, placement records, and summaries of performance on the pedagogy assessment for teacher candidates.

~~((5))~~ (6) The professional education advisory board has made recommendations when appropriate for program changes to the institution which must in turn consider and respond to the recommendations in writing in a timely fashion.

~~((6))~~ (7) The professional education advisory board annually has seen, reviewed and approved an executive summary of the activities of the professional education advisory board. The college ~~((or))~~, university or educational service district has submitted the approved executive summary to the professional educator standards board.

~~((7))~~ (8) The professional education advisory board for administrator preparation programs participated in the candidate selection process for principal preparation programs.

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

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

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

WAC 181-78A-505 Overview—Teacher professional certificate program. (1) By September 1, 2001, all colleges ~~((and))~~, universities or educational service districts offering a professional certificate program must be in compliance with the new program standards.

(2) To obtain a professional certificate, the residency teacher will need to complete a professional educator standards board-approved professional certificate program collaboratively developed by a college~~((or))~~, university or educational service district and the professional educational advisory board (PEAB).

(3)(a) Prior to full admission to a professional certificate program, excluding the preassessment seminar, the candidate shall complete provisional status with a school district under RCW 28A.405.220, or the equivalent with a professional educator standards board-approved private school or state agency providing educational services for students.

(b) The candidate may be fully admitted to the professional certificate program, prior to completion of provisional status, if the candidate provides to the program a letter from the candidate's employing school district, private school, or state agency providing educational services for students, documenting the employer's support for the candidate's full admission to the professional certificate program.

(4) The professional certificate requires successful demonstration of three standards (effective teaching, professional development, and professional contributions) and 12 criteria, pursuant to WAC 181-78A-540, related to these standards. Wherever appropriate, the residency teacher will need to provide evidence that his/her teaching has had a positive impact on student learning as defined in WAC 181-78A-010(8).

(5)(a) The candidate and college ~~((or))~~, university or educational service district shall develop an individual professional growth plan to be reviewed and agreed upon after input from and consultation and collaboration (WAC 181-78A-010(9)) with his/her professional growth team.

(b) The individual professional growth plan will be based on an analysis of the student/learning context in that teacher's assignment and a preassessment of that teacher's ability to demonstrate the standards and criteria set forth in WAC 181-78A-540.

(c) The individual professional growth plan shall include instruction and assistance components for each residency teacher. The instruction and assistance components will be designed to give the residency teacher the necessary knowledge and skills needed to demonstrate successfully the standards and criteria set forth in WAC 181-78A-540.

(6) The final component of the program will be a culminating assessment seminar in which the residency teacher's ability to demonstrate the standards and criteria cited above will be evaluated. These assessments shall include multiple forms of data collected over time, including evidence of positive impact on student learning, where appropriate.

(7) As part of the program development, the college~~((or))~~, university or educational service district and the PEAB shall establish criteria and procedures for determining when the residency teacher has successfully completed the program. When the program administrator has verified to the superin-

tendent of public instruction that the candidate has completed the approved program, the state will issue the residency teacher a professional certificate.

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

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

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

(2) **Accountability.** Each college ~~((or))~~, university or educational service district, in compliance with the provision of WAC 181-78A-525, has established a performance-based program.

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

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

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

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

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

(1) College or university.

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

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

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

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

(2) Educational service district.

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

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

(i) Educational service district teacher assistance program coordinator;

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

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

(iv) One district human resource representative;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) Submit annual evaluations of the professional certificate program until the program receives full approval and participate in a less intensive evaluation cycle every three years thereafter.

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

Provided, That the on-site reviews shall be scheduled on a five-year cycle unless the professional educator standards board approves a variation in the schedule.

Provided further, That (~~(institutions))~~ colleges and universities seeking National Council for the Accreditation of Teacher Education (NCATE) accreditation may request from the professional educator standards board approval for con-

current site visits which shall utilize the same documentation whenever possible.

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

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

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

(2) The college (~~(or)~~), university or educational service district shall have responsibility for maintaining fiscal records and ensuring adequate financial support for the professional certificate program.

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

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

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

(1) **Teacher.**

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

(b) The professional certificate program must be available to all qualified candidates. An expedited professional certificate process shall be available for out-of-state teachers who have five or more years of successful teaching experience to demonstrate skills and impact on student learning.

(c) Using the descriptions of practice related to the criteria for the professional certificate, as approved by the professional educator standards board and published by the office of the superintendent of public instruction, which may not be changed without prior professional educator standards board approval, the professional certificate program shall be devel-

oped by a college ((~~or~~)), university or educational service district and its professional education advisory board. Additional agencies may participate in the development of the program if the college ((~~or~~)), university or educational service district and professional education advisory board so choose.

(d) Each program shall consist of:

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

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

A representative of the college/university and the candidate shall develop the professional growth plan to be reviewed and agreed upon after input from and consultation and "collaboration" (WAC 181-78A-010(9)) with his/her "professional growth team" (WAC 181-78A-010(10)).

The individual professional growth plan shall be based on:

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

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

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

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

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

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

(v) A culminating seminar in which the candidate presents his/her final documentation and evidence of professional certificate level knowledge, skill and performance; positive impact on student learning; identification of future goals and professional/career interests; and specification of areas for continuing education and development. The candidate must provide multiple forms of evidence which shall include, but are not limited to, the descriptions of practice

related to the criteria for the professional certificate as approved by the professional educator standards board and published by the office of the superintendent of public instruction, which may not be changed without prior professional educator standards board approval.

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

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

(2) Principal/program administrator.

(a) To be eligible to apply for enrollment in a professional certificate program, a candidate shall hold a contract as an administrator for which the credential is required in a public school or professional educator standards board-approved private school.

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

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

(d) Each program shall consist of:

(i) A preassessment seminar during which the professional growth plan shall be developed. The plan will be agreed upon after input from and consultation with his/her professional growth team (WAC 181-78A-010 (10)(b)). The individual professional growth plan shall be based on an assessment of the candidate's ability to demonstrate six standards at the professional certificate benchmark level (WAC 181-78A-270 (2)(b)), performance evaluation data, and an analysis of the administrative context and assignment.

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

(iii) A culminating seminar in which the candidate presents his/her final documentation and evidence of professional certificate level knowledge, skill and performance; positive impact on student learning; development of a professional growth plan that includes the identification of future goals and professional/career interests as well as a five-year plan for professional development designed to meet the requirements for certificate renewal.

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

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

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

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

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

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

(d) Each program shall consist of:

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

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

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

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

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

**WSR 06-24-079
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD**

[Filed December 5, 2006, 8:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-20-022.

Title of Rule and Other Identifying Information: WAC 181-78A-272 Approval of residency certificate preparation programs for principals/program administrators, school psychologists, school counselors and school social workers.

Hearing Location(s): Comfort Inn & Conference Center, 1620 74th Avenue S.W., Tumwater, WA 98501, (360) 352-0691, on January 17, 2007, at 8:30 a.m.

Date of Intended Adoption: January 17, 2007.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236, Olympia, WA 98504-7236, e-mail nasue.nishida@k12.wa.us, fax (360) 586-4548, by January 10, 2007.

Assistance for Persons with Disabilities: Contact Nasue Nishida by January 10, 2007, TTY (360) 664-3631 or (360) 725-6275.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Include principal alternative route pilot program for one year and identify the elements of such a program.

Reasons Supporting Proposal: Washington state has a shortage of school principals. This pilot will provide another vehicle for preparing principals, using the alternative routes to certifying teachers model.

Statutory Authority for Adoption: RCW 28A.410.210 and 28A.410.010.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nasue Nishida, Old Capitol Building, 600 South Washington Street, Olympia, 98504, (360) 725-6275.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nasue Nishida, P.O. Box 47236, Olympia, WA 98504-7236, phone (360) 725-6275, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

December 1, 2006

Nasue Nishida

Policy and Research Analyst

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

WAC 181-78A-272 Approval of residency certificate preparation programs for principals/program administrators, school psychologists, school counselors and school social workers. (1) Colleges/universities offering residency certificate programs for principals/program administrators shall have these programs approved by the professional educator standards board by August 31, 2004. Colleges/universities offering residency certificate programs for school psychologists, school counselors, and school social

workers shall have these programs approved by the professional educator standards board by August 31, 2005.

(2) Principal alternative route pilot program. Colleges and universities with approved residency certificate programs will be invited to participate.

(a) The program shall be comprised of the following:

(i) Two summer academies plus a year long mentored internship;

(ii) Assignment of the intern to a full-time second level administrative position for one school year while enrolled in the alternative route program;

(iii) A comprehensive assessment of the intern's performance by school officials and program faculty and a recommendation that the person be issued a residency principal certificate upon successful completion of the program.

(b) The pilot will be implemented for one academic year beginning June 2007.

WSR 06-24-080

PROPOSED RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed December 5, 2006, 8:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-21-089.

Title of Rule and Other Identifying Information: WAC 181-78A-700 First peoples' language/culture certification pilot program.

Hearing Location(s): Comfort Inn & Conference Center, 1620 74th Avenue S.W., Tumwater, WA 98501, (360) 352-0691, on January 17, 2007, at 8:30 a.m.

Date of Intended Adoption: January 17, 2007.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236, Olympia, WA 98504-7236, e-mail nasue.nishida@k12.wa.us, fax (360) 586-4548, by January 10, 2007.

Assistance for Persons with Disabilities: Contact Nasue Nishida by January 10, 2006 [2007], TTY (360) 664-3631 or (360) 725-6275.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to make the first peoples' language/culture certificate program permanent.

Reasons Supporting Proposal: The pilot program's final report, which included reports from the individual participating tribes, illustrate the positive impact this program is having on both the revitalization of teaching and learning of tribal languages and on student, family and community engagement and learning. These reports are powerful in that they are evidence-based, using concrete examples to illustrate program progress and impact.

Statutory Authority for Adoption: RCW 28A.410.210 and 28A.410.010.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nasue Nishida, Old Capitol Building, 600 South Washington Street, Olympia, 98504, (360) 725-6275.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nasue Nishida, P.O. Box 47236, Olympia, WA 98504-7236, phone (360) 725-6275, fax (360) 586-4548, e-mail nasue.nishida@k12.[wa.us].

December 1, 2006

Nasue Nishida

Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 06-11-161, filed 5/24/06, effective 6/24/06)

WAC 181-78A-700 First peoples' language/culture certification pilot program—Findings, purposes and intent—Definitions—(~~Pilot~~) Program established—Tribal eligibility to participate—(~~Pilot~~) Program requirements—Assignment of teachers—Reports. (1) FINDINGS. The professional educator standards board endorses the following:

(a) Teaching first peoples' languages can be a critical factor in successful educational experiences and promoting cultural sensitivity for all students. The effect is particularly strong for native American students;

(b) First peoples' languages are falling silent. Despite tribal efforts, first peoples' languages are not fully incorporated into the school systems. This is a loss to the cultural heritage of the affected tribes and to the cultural resources of Washington state;

(c) Recognition of native American languages under RCW 28A.230.090(3) and 28B.80.350(2), as satisfying state or local graduation requirements and minimum college admission requirements, while concentrating on promoting a positive impact on student learning through state policies, is insufficient to meet the educational needs of native American students;

(d) The potential to have a positive impact on student learning is in part dependent on the willingness of the local education agency to collaborate with the sovereign tribal government's language/culture program;

(e) It is within the statutory authority of the professional educator standards board to enhance the learning opportunities for all students by helping prevent the loss of first peoples' languages through assisting the state's sovereign neighbors to sustain, maintain or recover their linguistic heritage, history and culture;

(f) From the Multi-Ethnic Think Tank position statement, June 2001:

(i) "... A culturally inclusive pedagogy will ensure the success of all students, who will develop greater appreciation of other cultures and worldviews;"

(ii) "All students have prior experiences that frame their worldview; learn from childbirth and are lifelong learners; can academically achieve at high levels when they are appropriately taught; and are entitled to learn in a multicultural context;"

(g) Research has shown that students who study another language may benefit in the following ways: Greater academic success in other areas of study, including reading, social studies, and mathematics; a clearer understanding of the English language including function, vocabulary and syntax; and an increase on standardized test scores, especially in verbal areas;

(h) From the Native American Languages Act, Public Law 101-477, Section 102, 1990:

(i) "The traditional languages of Native Americans are an integral part of their cultures and identities and form the basic medium for the transmission, and thus survival, of Native American cultures, literatures, histories, religions, political institutions, and values;"

(ii) "Languages are the means of communication for the full range of human experiences and are critical to the survival of cultural and political integrity of any people"; and

(i) There are many sovereign tribal nations in the state of Washington and they serve the needs of many groups of first peoples, each possessing unique languages, cultures and worldviews.

(2) **PURPOSES.** The purpose of this section is to establish a ((pilot)) first peoples' language program to accomplish the following goals:

(a) To honor the sovereign status of tribal governments in their sole expertise in the transmission of their indigenous languages, heritage, cultural knowledge, customs, traditions and best practices for the training of first peoples' language/culture teachers;

(b) Contribute to a positive impact on student learning by promoting continuous improvement of student achievement of the sovereign tribal government's language/culture learning goals, as established by each sovereign tribal government's language/culture program, and by supporting the goals for multicultural education included in the 2001 position statement developed by the Washington state Multi-Ethnic Think Tank;

(c) Contribute to the preservation, recovery, revitalization, and promotion of first peoples' languages and cultures;

(d) Meaningfully acknowledge that language is inherently integral to native American culture and ways of life;

(e) Implement in a tangible way the spirit of the 1989 Centennial Accord between Washington state and the sovereign tribal governments in the state of Washington.

(f) Provide a mechanism for the professional educator standards board to recognize tribally qualified language/culture teachers as eligible to receive a Washington state first peoples' language/culture teaching certificate; and

(g) Provide the opportunity for native American students to learn first peoples' languages and cultures while at school and provide another avenue for students to learn core curricula through first peoples' worldviews.

(3) **INTENT.** It is the intent of the professional educator standards board to work in collaboration with the sovereign tribal governments of Washington state to establish a Wash-

ington state first peoples' language/culture teacher certification program ((on a pilot basis)) in order to:

(a) Act in a manner consistent with the policy as specified in the Native American Languages Act, P.L. 101-477 Sec. 104(1) "preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages";

(b) Act in a manner consistent with Washington state's government-to-government relationship with Washington state sovereign tribal governments and use the Washington state first peoples' language/culture certification ((pilot)) programs to model effective government-to-government relationships;

(c) Act in a manner consistent with the goal of the state Basic Education Act under RCW 28A.150.210;

(d) Act in a manner consistent with the following purposes of Public Law 107-110, "No Child Left Behind Act":

(i) "Holding schools, local education agencies, and States accountable for improving the academic achievement of all students, and identifying and turning around low-performing schools that have failed to provide a high-quality education to their students, while providing alternatives to students in such schools to enable the students to receive a high-quality education," [Sec. 1002(4)];

(ii) "Providing children an enriched and accelerated educational program, including the use of schoolwide programs or additional services that increase the amount and quality of instructional time," [Sec. 1002(8)];

(iii) "Promoting schoolwide reform and ensuring the access of children to effective, scientifically based instructional strategies and challenging academic content," [Sec. 1002(9)];

(iv) "...Supporting local education agencies, Indian tribes, organizations, postsecondary institutions and other entities to meet the unique education, culturally related academic needs of American Indian and Alaskan Native Students" [Sec. 7102(a)];

(e) Act on its involvement with and adoption of the 1991 joint policy statement on Indian education:

"K-12 American Indian dropout prevention is a priority of schools. Effective education needs to be implemented throughout the K-12 school system if the American Indian student is to achieve academic and personal success";

(f) Acknowledge that there is a public responsibility to make available to all students in the state of Washington an accurate and balanced study of the American Indian experiences with and contributions to life on this continent;

(g) Act on the following professional educator standards board beliefs:

(i) In order to meet the needs of all students, highly qualified teachers are required;

(ii) All professional educator standards board policies and activities should meet the needs of the state's diverse student population;

(iii) In order for all students to achieve at high levels, multiple learning styles and needs must be supported; and

(h) Act on the following goals from the professional educator standards board's 2002-05 work plan:

(i) Professional education and certification requirements are aligned with education reform and support a positive impact on student learning;

(ii) All students shall be provided equitable educational opportunities.

(4) **DEFINITIONS.**

(a) "Positive impact on student learning" shall mean:

(i) The same as under WAC 181-78A-010(8) and 180-16-220 (2)(b); and

(ii)(A) Supporting the goal of basic education under RCW 28A.150.210, "... to provide students with the opportunity to become responsible citizens, to contribute to their own economic well-being and to that of their families and communities, and to enjoy productive and satisfying lives...";

(B) Promoting continuous improvement of student achievement of the state learning goals and the sovereign tribal government's language/culture learning goals as established by each sovereign tribal government's language/culture program;

(C) Recognizing nonacademic student learning and growth related, but not limited, to: Oral traditions, community involvement, leadership, interpersonal relationship skills, teamwork, self-confidence, resiliency, and strengthened unique cultural identities;

(iii) Developing greater appreciation of other cultures and worldviews;

(b) A "culturally sensitive environment" honors the unique history, culture, values, learning styles, and community of the student. For example, to demonstrate the value of the language and culture, the homeroom teacher participates in the language/culture classroom. A "culturally sensitive environment" also includes those provisions as outlined in the Washington state joint policy on equity in education, revised in May 2000.

(c) For the purpose of this section, "highly qualified teachers" shall mean those teachers who meet the standards of the sovereign tribal government's language/culture program.

(5) ~~((PILOT))~~ **PROGRAM ESTABLISHED.** A Washington state first peoples' language/culture teacher certification program is established in February ~~((2003))~~ 2007. ~~((Following completion of the reporting requirements in subsection (9) of this section, the program will be extended, modified or made permanent, as determined by the professional educator standards board in consultation with participating sovereign tribal governments.))~~ First peoples' language/culture teacher certificates issued prior and subsequent to June 30, 2006, shall not expire ~~((June 30, 2007, subject to any extension or modification made by the professional educator standards board)).~~

(6) **TRIBAL ELIGIBILITY TO PARTICIPATE.** Any sovereign tribal government in the state of Washington shall be eligible to participate individually on a government-to-government basis in the pilot program.

(7) ~~((PROJECT))~~ **PROGRAM REQUIREMENTS.**

(a) Each sovereign tribal government will appoint and certify individuals who meet the tribe's criteria for certification as instructors in the Washington state first peoples' language/culture ~~((pilot))~~ program.

(b) Each sovereign tribal government's language/culture ~~((project))~~ program shall submit to the professional educator

standards board the following information for each eligible language/culture teacher desiring to participate in the ~~((pilot project))~~ program:

(i) Written documentation that each designated teacher has completed the sovereign tribal government's language/culture teacher certification program;

(ii) Written documentation that each designated teacher has completed the background check required under RCW 28A.410.010 and WAC 181-79A-150 (1) and (2);

(iii) Written documentation that each designated teacher has completed a course on issues of abuse as required by RCW 28A.410.035 and WAC 181-79A-030(6);

(iv) Designation of which language(s), or dialects thereof, shall be listed on the Washington state first peoples' language/culture certificate;

(c) After meeting the requirements of subsection (8)(b) of this section and receiving professional educator standards board approval, the office of the superintendent of public instruction shall issue each teacher a Washington state first peoples' language/culture teaching certificate;

(d) To support a positive impact on student learning, the local education agency in consultation with the sovereign tribal government's language/culture program is strongly encouraged to provide:

(i) A minimum of one contact hour per day, five days a week;

(ii) Access to the same students from year to year, to the extent possible, so that students who receive instruction during the first year of the project can continue to receive instruction throughout the three years of the project;

(iii) A culturally sensitive environment as defined in subsection (4)(b) of this section; or

(iv) Some combination of (d)(i), (ii), and (iii) of this subsection which will allow a positive impact on student learning;

(e) To support a positive impact on student learning, the sovereign tribal government's language/culture program will provide written documentation of how teaching the first peoples' language/culture has supported the promotion of continuous improvement of student achievement of the program learning goals as established by each sovereign tribal government's language/culture program;

(f) Each tribe will individually determine the continuing education and first peoples' language/culture certificate renewal requirements for their tribal language endorsement. As such, each tribe will do the following:

(i) Notify the professional educator standards board of their continuing education and first peoples' language/culture certificate renewal requirements; and

(ii) Notify the certification division of the office of superintendent of public instruction when:

(A) A teacher has met the requirements for renewal/continuing education; or

(B) A teacher has not met the requirements for renewal/continuing to hold a first peoples' language/culture certificate; or

(C) A tribe, at any time, withdraws a teacher certification for any reason.

(g) To support a greater understanding of the government-to-government relationship, the professional develop-

ment and certification committee of the professional educator standards board and the professional educator standards board are strongly encouraged to make site visits and attend meetings with the local education agency and the sovereign tribal government's language/culture program;

~~((g))~~ (h) Nothing in this section shall be interpreted as precluding any eligible tribe in consultation with the state or in consultation with any local education agency from entering into an inter-governmental agreement or compact related to the teaching of first peoples' languages and cultures in order to address unique issues related to individual sovereign tribal governments.

(8) **ASSIGNMENT OF TEACHERS.**

(a) The holder of a Washington state first peoples' language/culture teacher certificate shall be deemed qualified to be a teacher of first peoples' language/culture with the ability to meet individual tribal competency criteria for language/culture, history, and English.

(b) A Washington state first peoples' language/culture teacher certificate qualifies the holder to accept a teaching position in a public school district.

(c) The holder of a Washington state first peoples' language/culture teacher certificate who does not also hold an initial or residency certificate shall be assigned to teach only the language(s)/culture(s) designated on the certificate, and no other subject.

(d) The Washington state first peoples' language/culture teacher certificate is recognized by the state of Washington for as long as the teacher holds a valid language/culture certificate from a participating sovereign tribal government.

(e) A Washington state first peoples' language/culture teacher certificate will serve as the endorsement in first peoples' language/culture for anyone holding an initial or residency certificate.

(9) ~~((REPORTS.~~

~~(a) Annually, for the duration of the pilot program, each participating tribe shall submit a report to the professional educator standards board with documentation of how its particular project is having a positive impact on student learning.~~

~~(b) Not later than October 31, 2006, a committee of the professional educator standards board, in consultation with the participating sovereign tribal governments, shall create and submit a report to the professional educator standards board with the following information:~~

~~(i) An end of program analysis of the positive impact on student learning of each pilot project;~~

~~(ii) An appraisal of the government to government relationships established under the program, at both the state and local levels; and~~

~~(iii) The report shall include a recommendation on whether to extend, modify or make permanent the Washington state first peoples' language/culture teacher certification pilot program.)~~ **TRIBAL PREPARATION PROGRAM REVIEW.**

(a) Every five years, the joint committee of the professional educator standards board and the first peoples' language/culture committee shall prepare a report that includes:

(i) Reports from each participating tribe related to progress in meeting program objectives, with particular emphasis on positive impact on students;

(ii) Appraisal of the government-to-government relationship; and

(iii) Any relevant recommendations for continued program success.

(b) In order to promote understanding and collaboration, beginning with the second year of the program, the professional educator standards board may accept invitations from participating tribes to visit at least two tribal programs per year as identified and invited by the first peoples' language/culture committee meeting.

(c) Annually, the professional educator standards board will commit to ensuring a professional educator standards board member(s) and staff attends the first peoples' language/culture committee meeting. The professional educator standards board will proactively identify opportunities to share information about the first peoples' language/culture program in order to support its growth and development.

WSR 06-24-081

PROPOSED RULES

**PROFESSIONAL EDUCATOR
STANDARDS BOARD**

[Filed December 5, 2006, 8:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-21-066.

Title of Rule and Other Identifying Information: WAC 181-78A-509 Overview—Educational staff associate—School counselor/school psychologist/school social worker professional certificate programs.

Hearing Location(s): Comfort Inn & Conference Center, 1620 74th Avenue S.W., Tumwater, WA 98501, (360) 352-0691, on January 17, 2007, at 8:30 a.m.

Date of Intended Adoption: January 17, 2007.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236, Olympia, WA 98504-7236, e-mail nasue.nishida@k12.wa.us, fax (360) 586-4548, by January 10, 2007.

Assistance for Persons with Disabilities: Contact Nasue Nishida by January 10, 2007, TTY (360) 664-3631 or (360) 725-6275.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Change implementation of educational staff associates (ESA) professional certificate programs from September 1, 2007, to September 1, 2008.

Reasons Supporting Proposal: Because the ESA professional certificate benchmarks have recently been approved, implementation by professional certificate programs will take time to implement. Current WAC states September 1, 2007, as the deadline for programs to be within compliance. This may not be a realistic timeline given the benchmarks have just been approved.

Statutory Authority for Adoption: RCW 28A.410.210 and 28A.410.010.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nasue Nishida, Old Capitol Building, 600 South Washington Street, Olympia, 98504, (360) 725-6275.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nasue Nishida, P.O. Box 47236, Olympia, WA 98504-7236, phone (360) 725-6275, fax (360) 586-4548, e-mail nasue.nishida@k12.[wa.us].

December 1, 2006

Nasue Nishida
Policy and Research Analyst

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

WAC 181-78A-509 Overview—Educational staff associate—School counselor/school psychologist/school social worker professional certificate programs. By September 1, ((2007)) 2008, all colleges and universities offering ESA professional certificate programs must be in compliance with the new program standards. To obtain a professional ESA certificate, individuals will need to hold a valid ESA residency certificate, be employed in his/her ESA role in a public school district, professional educator standards board-approved private school or state agency providing educational services for students, and complete a professional educator standards board-approved professional ESA certificate program in his/her ESA role.

(1) The professional certificate requires successful demonstration of the ESA role standards at the professional certificate benchmark levels, or above, and the candidate will need to provide evidence that he/she has had a positive impact on student learning.

(2) The candidate shall develop an individual professional growth plan to be reviewed and agreed upon after input from and consultation with his/her professional growth team. The individual growth plan shall be based on an assessment of the candidate's ability to demonstrate standards at the professional benchmark level and evidence of a positive impact on student learning.

WSR 06-24-088
PROPOSED RULES
HORSE RACING COMMISSION
[Filed December 5, 2006, 10:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-17-031.

Title of Rule and Other Identifying Information: WAC 260-84-060 Penalty matrixes and 260-84-065 Licensees—Drug and alcohol penalties.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98001, on January 11, 2007, at 9:30 a.m.

Date of Intended Adoption: January 11, 2007.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail dmoore@whrc.state.wa.us, fax (360) 459-6462, by January 8, 2007.

Assistance for Persons with Disabilities: Contact Patty Sorby by January 8, 2007, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend penalty matrix in WAC 260-84-060 and drug and alcohol penalties in WAC 260-84-065 to update the rules of racing.

Reasons Supporting Proposal: New penalties are needed to update the current rules of racing, chapter 260-84 WAC.

Statutory Authority for Adoption: RCW 67.16.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting: Douglas Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert Leichner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

December 5, 2006

R. M. Leichner
Executive Secretary

AMENDATORY SECTION (Amending WSR 06-07-058, filed 3/10/06, effective 4/10/06)

WAC 260-84-060 Penalty matrixes. (1) The imposition of reprimands, fines and suspensions shall be based on the following penalty matrixes:

Class A and B Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Smoking in restricted areas WAC 260-20-030	\$25	\$50	\$100
Disturbing the peace WAC 260-80-140	Warning to \$200 and/or suspension	Warning to \$500 and/or suspension	Suspension

Class A and B Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Person performing duties for which they are not licensed WAC 260-36-010	\$50	\$100	\$150
Unlicensed or improperly licensed personnel or failure to report correct stall or registration paper count for L&I purposes (trainer's responsibility) WAC 260-28-230 and 260-36-220	((\$500) Required to pay full labor and industries premium and assessed a fine equal to 50% of the premium due		
Licensing - failure to divulge a felony WAC 260-36-120	\$100 or possible denial of license		
Licensing - failure to divulge a gross misdemeanor or misdemeanor WAC 260-36-120	Warning to \$50		
Licensing - providing false information on application WAC 260-36-120	\$50 to \$250 or possible denial of license		
Licensing - nonparticipation WAC 260-36-080	License canceled		
Violation of any claiming rule in chapter 260-60 WAC	\$200 to \$500 plus possible suspension		
Use of improper, profane or indecent language to a racing official WAC 260-80-130	\$50	\$100	\$250
Unsafe vehicle operation WAC 260-20-020	Warning to \$50	\$100 and recommend racing association revoke vehicle pass	
Financial responsibility WAC 260-28-030	Resolve within 30 days or before the end of the meet (whichever is sooner) or suspension		
Failure to appear - for ruling conference WAC 260-24-510	Suspension		
Failure to honor riding engagements (call) - agents WAC 260-32-400	\$75	\$100	\$200
Reporting incorrect weight - jockeys WAC 260-32-150	\$50	\$100	\$200
Failure to appear for films - jockeys WAC 260-24-510	\$50	\$100	\$200
Failure to fulfill riding engagement WAC 260-32-080	\$100	\$150	\$200
Easing mount without cause WAC 260-52-040	\$250	\$250 and/or suspension	\$500 and/or suspension
Jockey failing to maintain straight course or careless riding WAC 260-52-040	Warning to \$750 and/or suspension (riding days)		
Jockey's misuse of whip WAC 260-52-040	Warning to \$2500		
Use of stimulating device (may include batteries) WAC 260-52-040	1 year suspension plus mandatory referral to commission for revocation		

Class A and B Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Possession of stimulating device (may include batteries) WAC 260-52-040 and 260-80-100	1 year suspension plus mandatory referral to commission for revocation		
Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010 and 260-80-020	1 year suspension plus mandatory referral to commission for revocation		
Entering ineligible horse WAC 260-40-140 and 260-80-030	\$50	\$100	\$100
Arriving late to the paddock WAC 260-28-200	Warning to \$50	Warning to \$50	\$50 to \$100
Failure to have registration papers on file - resulting in a scratch WAC 260-40-090	\$50 to \$100	\$100	\$100
Failure to obtain permission for equipment changes WAC 260-44-010	Warning to \$50	\$100	\$100
Failure to report performance records WAC 260-40-100	Warning to \$50	\$100	\$150
Insufficient workouts - resulting in scratch WAC 260-40-100	\$50 to \$100	\$100	\$100

Class C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Smoking in restricted areas WAC 260-20-030	\$25	\$50	\$100
Disturbing the peace WAC 260-80-140	Warning to \$100 and/or suspension	\$250 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010	\$50	\$100	\$150
Unlicensed or improperly licensed personnel or failure to report correct stall or registration paper count for L&I purposes (trainer's responsibility) WAC 260-28-230 and 260-36-220	((\$500)) <u>Required to pay full labor and industries premium and assessed a fine equal to 50% of the premium due</u>		
Licensing - failure to divulge a felony WAC 260-36-120	\$100 or possible denial of license		
Licensing failure to divulge a misdemeanor or gross misdemeanor WAC 260-36-120	Warning to \$25		
Licensing - providing false information on application WAC 260-36-120	\$50 to \$250 or possible denial of license		
Licensing - nonparticipation WAC 260-36-080	License canceled		

Class C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Violation of any claiming rule in chapter 260-60 WAC	\$100 to \$250 plus possible suspension		
Use of improper, profane or indecent language to a racing official WAC 260-80-130	\$50	\$100	\$250
Unsafe vehicle operation WAC 260-20-020	Warning to \$50		
Financial responsibility WAC 260-28-030	Resolve 30 days or before the end of the fall meet (whichever is sooner) to resolve or suspension		
Failure to appear for ruling conference WAC 260-24-510	Suspension		
Failure to honor riding engagements (call) - agents WAC 260-32-400	\$25	\$50	\$100
Reporting incorrect weight - jockeys WAC 260-32-150	\$25	\$50	\$100
Failure to appear for films - jockeys WAC 260-24-510	\$25	\$50	\$100
Failure to fulfill riding engagement WAC 260-32-080	\$50	\$100	\$200
Easing mount without cause WAC 260-52-040	\$100	\$200 and/or suspension	\$400 and/or suspension
Jockey failing to maintain straight course or careless riding WAC 260-52-040	Warning to \$750 and/or suspension (riding days)		
Jockey's misuse of whip WAC 260-52-040	Warning to \$2500		
Use of stimulating device (may include batteries) WAC 260-52-040	1 year suspension plus mandatory referral to commission for revocation		
Possession of stimulating device (may include batteries) WAC 260-52-040 and 260-80-100	1 year suspension plus mandatory referral to commission for revocation		
Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010 and 260-80-020	1 year suspension plus mandatory referral to commission for revocation		
Entering ineligible horse WAC 260-40-140 and 260-80-030	\$25	\$50	\$50
Arriving late to the paddock WAC 260-28-200	Warning to \$25	\$50	\$50
Failure to have registration papers on file - resulting in a scratch WAC 260-40-090	\$50	\$100	\$100
Failure to obtain permission for equipment changes WAC 260-44-010	Warning to \$50	\$50	\$50

Class A, B and C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Tampering with a fire protection, prevention or suppression system or device WAC 260-20-030	\$50	\$100	\$250 plus possible suspension
Failure to post problem gambling signs WAC 260-12-250	Warning to \$50	\$100	\$200
Issuing a check to the commission with not sufficient funds WAC 260-28-030	\$25	\$50	\$100
Failure to follow instructions of the outrider WAC 260-24-690	\$50	\$100	\$200
Failure to complete provisional license application within fourteen days WAC 260-36-200	Warning to \$100 and denial of license	\$250 and denial of license	\$500 and denial of license
Failure to pay or default on L&I payment agreement WAC 260-28-235	Per L&I premium payment agreement, immediate suspension until paid plus \$25 for each quarter payment is late		
Failure to register employees with the commission (trainer's responsibility) WAC 260-28-230	Warning to \$50		
Unlicensed person on the backside WAC 260-20-040 and 260-20-090	Report violation to the racing association		
<u>Failure to wear proper safety equipment WAC 260-12-180</u>	<u>\$50</u>	<u>\$100</u>	<u>\$200</u>
<u>Failure to display or possess license badge when in restricted area WAC 260-36-110</u>	<u>\$25</u>	<u>\$50</u>	<u>\$100</u>

(2) In determining whether an offense is a first, second, third or subsequent offense, the commission, or designee shall include violations, which occurred in Washington as well as any other recognized racing jurisdiction. If a penalty is not listed under second or third/subsequent offense columns, the penalty listed in the "first offense" column shall apply to each violation.

(3) Except as otherwise provided in this chapter, for any other violation not specifically listed above, the stewards (~~shall~~) have discretion to impose the penalties as provided in WAC 260-24-510 (3)(~~(b)~~)(a). For violations considered minor, the fine can be up to \$500 and/or suspension for up to sixty days. Fines for violations considered major can be up to \$2,500 and/or suspension up to one year.

(4) Circumstances which may be considered for the purpose of mitigation or aggravation of any penalty shall include, but are not limited to, the following:

- (a) The past record of the licensee or applicant;
- (b) The impact of the offense on the integrity of the parimutuel industry;
- (c) The danger to human and/or equine safety;
- (d) The number of prior violations of these rules of racing or violations of racing rules in other jurisdictions; and/or
- (e) The deterrent effect of the penalty imposed.

(5) For violations covered by chapter 260-70 WAC, Medication, the stewards shall follow the penalty guidelines as set forth in WAC 260-84-090.

(6) The stewards may refer any matter to the commission and may include recommendations for disposition. The absence of a stewards' referral shall not preclude commission action in any matter. A stewards' ruling shall not prevent the commission from imposing a more severe penalty.

AMENDATORY SECTION (Amending WSR 06-07-058, filed 3/10/06, effective 4/10/06)

WAC 260-84-065 Licensees—Drug and alcohol penalties. (1) Engaging in the illegal sale or distribution of alcohol in violation of WAC 260-34-020(2).

- (a) First offense - thirty-day suspension; and
- (b) Second or subsequent offense - one-year suspension and referral to the commission for revocation.

(2) (~~(Use or possession of an illegal controlled substance, other than marijuana.)~~) Possessing any equipment, products or materials of any kind, which are used or intended for use in injecting, ingesting, inhaling or otherwise introducing into the human body an illegal controlled substance, other than marijuana in violation of WAC 260-34-020(5); or possessing or having within their body while on the grounds of a licensed race meet any illegal controlled substance, in violation of WAC 260-34-020 (1) or (4).

- (a) First offense - thirty-day suspension; and
- (b) Second offense - one-year suspension and referral to the commission for revocation.

~~(3) ((Possession or use of marijuana:))~~ Possessing any equipment, products or materials of any kind, which are used or intended for use in ingesting, inhaling or otherwise introducing into the human body marijuana, in violation of WAC 260-34-020(5); or possessing or having within their body marijuana, an illegal controlled substance, while on the grounds of any licensed race meet, in violation of WAC 260-34-020(1).

(a) First offense - three-day suspension;
 (b) Second offense - thirty-day suspension; and
 (c) Third or subsequent offenses - one-year suspension and referral to commission for revocation.

(4) Being under the influence of or affected by intoxicating liquor and/or drugs in violation of WAC 260-34-020(1).

(a) First offense - warning to one-day suspension;
 (b) Second offense - three-day suspension;
 (c) Third offense - thirty-day suspension; and
 (d) Subsequent offenses - one-year suspension and referral to commission for revocation.

(5) ~~((Refusal))~~ Refusing to submit to a drug or alcohol test, in violation of WAC 260-34-020(6) will result in a penalty of a one-year suspension plus referral to the commission for revocation.

(6) ~~((Possession of))~~ Possessing any equipment or material used to manufacture or distribute any controlled substance, or engaging in the sale, manufacturing or distribution of any illegal controlled substance or possessing an illegal controlled substance with intent to deliver on the grounds of any licensed race meet in violation of WAC 260-34-020 (3)~~((, (4), and))~~ or (5), immediate ejection from the grounds ~~((and))~~, a one-year suspension plus referral to the commission for revocation.

(7)(a) For violations of WAC 260-34-020 (1) and (4), the board of stewards may stay a suspension if the licensee or applicant shows proof of participation in a drug rehabilitation or alcohol treatment program approved or certified by the department of social and health services. Individuals will only be allowed a stay of a suspension under this subsection once in a five-year period. If during ~~((this time))~~ the period of the stay a licensee or applicant violates the provisions of chapter 260-34 WAC, the violation for which the stay of suspension was entered will be considered as a prior violation for penalty purposes. Before being granted a stay of the suspension, the licensee or applicant must also agree to comply with the following conditions during the duration of the treatment program:

(i) Remain in compliance with the rehabilitation and/or treatment program.

(ii) Submit to random drug or alcohol testing at the discretion of the board of stewards or commission security investigators ~~((for a period of five years))~~.

(iii) Have no ~~((further incidents of violating))~~ violations of chapter 260-34 WAC ~~((within the next twelve calendar months))~~.

Upon completion of the rehabilitation or treatment program, the licensee or applicant must provide documentation of completion to the board of stewards. Upon making a determination that the licensee or applicant successfully completed the rehabilitation or treatment program, the board of stewards may direct that the final disposition of the violation

will be that the licensee or applicant completed a treatment program in lieu of suspension.

(b) If the board of stewards, after a conference, finds that the licensee or applicant failed to comply with the conditions ~~((of the stay, the original suspension may be imposed. Failure to remain in compliance with the rehabilitation and/or treatment program shall be considered a failure to comply with the conditions of the stay.~~

~~((e) Upon successful completion of a drug or alcohol rehabilitation or treatment program, a licensee or applicant can request the board of stewards lift the suspension))~~ required in (a)(iii) of this subsection, the board of stewards has discretion to impose the original suspension authorized by this rule. If the failure to comply with the conditions of the stay is a violation of chapter 260-34 WAC, the board of stewards may also hold a ruling conference for that rule violation and impose such penalty as is provided for that violation.

(8) Any licensee or applicant who tests positive (presumptive or confirmatory) for the presence of an illegal controlled substance is prohibited from performing any duties for which a license is required until the licensee does not test positive (presumptive or confirmatory) for the presence of any illegal controlled substance.

(9) Any licensee or applicant who is affected by intoxicating liquor or who has an alcohol concentration of 0.08 percent or higher is prohibited from performing any duties for which a license is required until the licensee is not affected by intoxicating liquor and his/her alcohol concentration is below 0.08 percent.

WSR 06-24-089

PROPOSED RULES

HORSE RACING COMMISSION

[Filed December 5, 2006, 10:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-17-029.

Title of Rule and Other Identifying Information: WAC 260-48-540.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98001, on January 11, 2007, at 9:30 a.m.

Date of Intended Adoption: January 11, 2007.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail dmoore@whrc.state.wa.us, fax (360) 459-6461, by January 8, 2007.

Assistance for Persons with Disabilities: Contact Patty Sorby by January 8, 2007, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend WAC 260-48-540 to allow the executive secretary to authorize advance wagering.

Reasons Supporting Proposal: This proposal would give the racing associations more flexibility to accept wagers prior to one hour to post.

Statutory Authority for Adoption: RCW 67.16.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert Leichner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

December 5, 2006
R. M. Leichner
Executive Secretary

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

WAC 260-48-540 Advance wagering. No association ~~((shall))~~ may permit wagering to begin more than one hour before the scheduled post time of the first race unless ~~((it has first obtained the authorization of the commission))~~ the association first obtains authorization from the executive secretary.

WSR 06-24-090
PROPOSED RULES
HORSE RACING COMMISSION

[Filed December 5, 2006, 10:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-17-027.

Title of Rule and Other Identifying Information: WAC 260-34-030 Testing.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98001, on January 11, 2007, at 9:30 a.m.

Date of Intended Adoption: January 11, 2007.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail dmoore@whrc.state.wa.us, fax (360) 459-6461, by January 8, 2007.

Assistance for Persons with Disabilities: Contact Patty Sorby by January 8, 2007, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend WAC 260-34-030 to allow random testing of any licensee on horseback.

Reasons Supporting Proposal: To address safety issues and possibly decrease labor and industries claims.

Statutory Authority for Adoption: RCW 67.16.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting: Douglas Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert Leichner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

December 5, 2006
R. M. Leichner
Executive Secretary

AMENDATORY SECTION (Amending WSR 06-07-064, filed 3/10/06, effective 4/10/06)

WAC 260-34-030 Testing. (1) A steward of the horse racing commission, a commission security investigator or the commission, acting through the executive secretary, may require any licensee or applicant to provide breath blood and/or urine samples for the purpose of drug or alcohol analysis under any of the following circumstances:

(a) When a steward or commission security investigator finds that there is reasonable suspicion to believe that the applicant or licensee has used or is under the influence of alcohol and/or any drug.

(b) When an applicant or licensee has a documented history of an unexplained positive test which indicates illegal drug usage or has a documented history of violating chapter 69.41, 69.45 or 69.50 RCW, WAC 260-34-020 or similar drug-related violation within five years of conviction or release from a correctional institution for that violation. The term "correctional institution" shall include any prison, jail or similar institution in this state or elsewhere.

(c) When a steward or commission security investigator decides to test any licensee or applicant as a condition of any conditional or probationary license.

(d) When any person is riding a horse on the grounds of a licensed racing association.

(2) For licensees or applicants who are subject to a field screening urine test under the provisions in this chapter, and whose test shows the presence of a controlled substance or alcohol, the field screening test results shall be confirmed by a laboratory acceptable to the commission.

(3) The result of a test conducted with a preliminary breath test (PBT) instrument approved by the state toxicologist in chapter 448-15 WAC or other breath test equipment approved under chapter 448-16 WAC shall constitute evidence of a violation of these rules. The results of such a test may be considered for purposes of determining whether the licensee or applicant has consumed alcohol, the level of alcohol concentration, and whether the licensee or applicant has violated a prohibition on the use or consumption of alcohol established in a conditional license.

**WSR 06-24-091
PROPOSED RULES
DEPARTMENT OF PERSONNEL**

[Filed December 5, 2006, 10:39 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-31-150 Can an employee be paid for accrued sick leave?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on January 11, 2007, at 8:30 a.m.

Date of Intended Adoption: January 11, 2007.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, fax (360) 586-4694, by January 5, 2007. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact Department of Personnel by January 5, 2007, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed change is housekeeping in nature.

Statutory Authority for Adoption: Chapter 41.06 RCW. Statute Being Implemented: RCW 41.06.150.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: It was brought to our attention that the reference to WAC 357-31-330 in subsection (2) of WAC 357-31-150 is incorrect. The reference should be to WAC 357-31-375.

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Connie Goff, 521 Capitol Way South, Olympia, WA, (360) 664-6250; Implementation and Enforcement: Department of personnel.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

A cost-benefit analysis is not required under RCW 34.05.328.

December 4, 2006

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-08-136, filed 4/6/05, effective 7/1/05)

WAC 357-31-150 Can an employee be paid for accrued sick leave? In accordance with the attendance incentive program established by RCW 41.04.340, employees are eligible to be paid for accrued sick leave as follows:

(1) In January of each year, an employee whose sick leave balance at the end of the previous year exceeds four hundred eighty hours may elect to convert the sick leave hours earned in the previous calendar year, minus those hours used during the year, to monetary compensation.

(a) No sick leave hours may be converted which would reduce the calendar year-end balance below four hundred eighty hours.

(b) Monetary compensation for converted hours is paid at the rate of twenty-five percent and is based on the employee's current salary.

(c) All converted hours are deducted from the employee's sick leave balance.

(d) Hours which are accrued, donated, and returned from the shared leave program in the same calendar year may be included in the converted hours for monetary compensation.

(2) Employees who separate from state service because of retirement or death must be compensated for their total unused sick leave accumulation at the rate of twenty-five percent or the employer may deposit equivalent funds in a medical expense plan as provided in WAC 357-31-((330))375. Compensation must be based on the employee's salary at the time of separation. For the purpose of this subsection, retirement does not include "vested out-of-service" employees who leave funds on deposit with the department of retirement systems (DRS).

(3) No contributions are to be made to the department of retirement systems (DRS) for payments under subsection (1) or (2) of this section, nor are such payments reported to DRS as compensation.

**WSR 06-24-092
PROPOSED RULES
DEPARTMENT OF PERSONNEL**

[Filed December 5, 2006, 10:41 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-01-072 Child, 357-31-070 When is an employer required to approve an employee's request to use a personal holiday?, 357-31-285 Is an employer required to authorize the absence of an employee for family care emergencies?, and 357-31-460 For what purpose must parental leave be granted?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on January 11, 2007, at 8:30 a.m.

Date of Intended Adoption: January 11, 2007.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, fax (360) 586-4694, by January 5, 2007. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact Department of Personnel by January 5, 2007, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of changing the definition of "child" is because the current definition is identical to the definition of "minor/dependent child." We have also added "minor/dependent" to several places to clarify that is the definition that should be looked at.

Statutory Authority for Adoption: Chapter 41.06 RCW. Statute Being Implemented: RCW 41.06.150.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: These changes are necessary to clarify the definitions of "child" and "minor/dependent child."

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Connie Goff, 521 Capitol Way South, Olympia, WA, (360) 664-6250; Implementation and Enforcement: Department of personnel.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

A cost-benefit analysis is not required under RCW 34.05.328.

December 4, 2006

Eva N. Santos

Director

AMENDATORY SECTION (Amending WSR 06-19-063, filed 9/19/06, effective 10/20/06)

WAC 357-01-072 Child. A biological, adopted, or foster child, or a stepchild, a legal ward, or a child of a person standing in loco parentis(~~(, who is)~~).

~~((1) under eighteen years of age; or~~

~~(2) eighteen years of age or older and incapable of self-care because of a mental or physical disability.))~~

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 05-08-136, filed 4/6/05, effective 7/1/05)

WAC 357-31-070 When is an employer required to approve an employee's request to use a personal holiday?

(1) An employer must approve the use of a personal holiday as long as:

(a) The employee is entitled to a personal holiday in accordance with RCW 1.16.050 and WAC 357-31-055;

(b) The employee has requested the personal holiday in accordance with the employer's leave procedures; and

(c) The employee's absence does not interfere with the operational needs of the employer.

(2) At any time, an employer must allow an employee to use part or all of the personal holiday for either of the following reasons:

(a) To care for a minor/dependent child with a health condition that requires treatment or supervision.

(b) To care for a spouse, parent, parent-in-law or grandparent of the employee who has a serious health condition or an emergency health condition.

AMENDATORY SECTION (Amending WSR 05-08-137, filed 4/6/05, effective 7/1/05)

WAC 357-31-285 Is an employer required to authorize the absence of an employee for family care emergen-

cies? Absence because of an employee's inability to report for or continue scheduled work due to a family care emergency:

(1) **Must** be authorized for care of the employee's spouse, household member or the employee's/spouse's minor/dependent child, parent or grandparent up to the limits specified in WAC 357-31-300.

(2) **May** be authorized for care of others, including a child over the age of eighteen who is capable of self care, in accordance with the employer's leave policy.

AMENDATORY SECTION (Amending WSR 05-08-140, filed 4/6/05, effective 7/1/05)

WAC 357-31-460 For what purposes must parental leave be granted? (1) Employers must grant parental leave to employees for purposes of:

(a) The birth and care of a newborn child of the employee; or

(b) Placement of a minor/dependent child with the employee for adoption or foster care.

(2) Parental leave must be taken during the first year following the child's birth or placement of the minor/dependent child with the employee for adoption or foster care.

WSR 06-24-093

PROPOSED RULES

DEPARTMENT OF PERSONNEL

[Filed December 5, 2006, 10:42 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-28-026 For what reasons may the director adopt special pay ranges and/or compensation practices for institutions of higher education and related boards?, 357-28-027 How long will higher education special pay ranges remain in effect?, 357-28-028 By whom and for what reasons may a higher education special pay request be submitted to the director?, and 357-28-029 When making a special pay request for higher education, what information must the requesting party provide department of personnel staff?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on January 11, 2007, at 8:30 a.m.

Date of Intended Adoption: January 11, 2007.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, fax (360) 586-4694, by January 5, 2007. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact Department of Personnel by January 5, 2007, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed new sections will ensure system-wide consistency for special pay salary ranges for higher education institutions. This proposal will not change the intent and purpose of special pay.

Statutory Authority for Adoption: Chapter 41.06 RCW.
Statute Being Implemented: RCW 41.06.150.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: No change to the intent of special pay is proposed.

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Connie Goff, 521 Capitol Way South, Olympia, WA, (360) 664-6250; Implementation and Enforcement: Department of personnel.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

A cost-benefit analysis is not required under RCW 34.05.328.

December 4, 2006

Eva N. Santos

Director

NEW SECTION

WAC 357-28-026 For what reasons may the director adopt special pay ranges and/or compensation practices for institutions of higher education and related boards? The director may adopt special pay ranges and/or compensation practices which are locally competitive to alleviate recruitment and/or retention problems, to maintain effective operations of an institution, or to address other unique working conditions.

NEW SECTION

WAC 357-28-027 How long will higher education special pay ranges remain in effect? Except when the director specifies otherwise, special pay ranges will remain in effect until the system-wide pay range for the class equals or exceeds the special pay range.

NEW SECTION

WAC 357-28-028 By whom and for what reasons may a higher education special pay request be submitted to the director? A special pay request may be submitted by institutions of higher education and related boards:

- (1) When a unique configuration of work requires skills, duties, or working conditions beyond those typically required of comparable positions;
- (2) To alleviate employment problems such as recruitment and/or retention;
- (3) When failure to grant special pay could result in recruitment and/or retention problems which would seriously jeopardize the effective operation of the institution; or
- (4) To prevent salary inversion or compression problems with other classes in the same or related series which have been granted special pay.

NEW SECTION

WAC 357-28-029 When making a special pay request for higher education, what information must the requesting party provide department of personnel staff?

It is the responsibility of the requesting party to provide department of personnel staff with information necessary to make recommendation to the director. Information to be provided must include:

- (1) Data supporting the pay practice in the locality of the institution for which the request is being made; and
- (2) Rationale supporting the request; and
- (3) When applicable, data showing recruitment/retention difficulty.

WSR 06-24-094

PROPOSED RULES

DEPARTMENT OF PERSONNEL

[Filed December 5, 2006, 10:44 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-46-100 Who administers and establishes operating procedures for the general government transition pool program?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on January 11, 2007, at 8:30 a.m.

Date of Intended Adoption: January 11, 2007.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, fax (360) 586-4694, by January 5, 2007. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact Department of Personnel by January 5, 2007, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the change is housekeeping in nature.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: It has been suggested that we change the language in WAC 357-46-100(1) to mirror the language in WAC 357-16-125(7) which is easier to understand. This does not change the intent of WAC 357-46-100.

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Connie Goff, 521 Capitol Way South, Olympia, WA, (360) 664-6250; Implementation and Enforcement: Department of personnel.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

A cost-benefit analysis is not required under RCW 34.05.328.

December 4, 2006
Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 06-03-073, filed 1/12/06, effective 2/13/06)

WAC 357-46-100 Who administers and establishes operating procedures for the general government transition pool program? The department administers the general government transition pool program. The director develops and implements appropriate operating procedures to facilitate the program. The operating procedures include the following requirements:

(1) ~~((General government employers must certify transition pool candidates when a certified pool contains eligible candidates other than layoff or internal promotional candidates))~~ General government employers must provide for consideration of transition pool candidates when a certified pool contains eligible candidates other than candidates from the employer's internal or statewide layoff list or the employer's internal promotional eligibles.

(2) Transition pool candidates must satisfy the competency and other position requirements to be considered for a position.

WSR 06-24-095
PROPOSED RULES
DEPARTMENT OF PERSONNEL

[Filed December 5, 2006, 10:46 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-19-115 To which employer and position would an employee revert?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on January 11, 2007, at 8:30 a.m.

Date of Intended Adoption: January 11, 2007.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, fax (360) 586-4694, by January 5, 2007. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact Department of Personnel by January 5, 2007, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed change is housekeeping in nature.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The two subsections following (1) were filed with the code reviser as (c) and (d) and should have been (a) and (b).

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Connie Goff, 521 Capitol Way South, Olympia, WA, (360) 664-6250; Implementation and Enforcement: Department of personnel.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

A cost-benefit analysis is not required under RCW 34.05.328.

December 4, 2006
Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 06-15-065, filed 7/13/06, effective 8/14/06)

WAC 357-19-115 To which employer and position would an employee revert? A permanent employee who does not satisfactorily complete the trial service period or a Washington management service (WMS) review period or has failed to progress to the next step of an in-training plan in accordance with WAC 357-19-285, has reversion rights with the current employer at the time of reversion. An employee has the right to revert to a position, if available, in accordance with the following:

(1) For employees reverting from trial service following a promotion, transfer or elevation, the employer must revert the employee to a vacant position, or a position filled by a nonpermanent appointee as defined in WAC 357-01-210, for which the employee satisfies competencies and other position requirements and which is:

~~((a))~~ ~~((c))~~ (a) Allocated to the class the employee last held permanent status in; or

~~((b))~~ ~~((d))~~ (b) If no positions are available, allocated to a class which has the same or lower salary range maximum.

(2) For employees reverting from trial service following a voluntary demotion, the employer must revert the employee to a vacant position, or a position filled by a nonpermanent appointee as defined in WAC 357-01-210, for which the employee satisfies the competencies and other position requirements and which is allocated to a class which has the same or lower salary range maximum as the class from which the employee is reverting.

WSR 06-24-100
PROPOSED RULES
STATE BOARD OF EDUCATION

[Filed December 5, 2006, 2:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-19-067.

Title of Rule and Other Identifying Information: Chapter 180-37 WAC, Pupils—Nonpublic agencies.

Hearing Location(s): North Thurston Board Room, 305 College Street N.E., Lacey, WA 98516, on January 25, 2007, at 9:00 a.m.

Date of Intended Adoption: January 26, 2007.

Submit Written Comments to: Edith Harding, Executive Director, P.O. Box 47206, Olympia, WA 98504-7206, e-mail ehardng@ospi.wednet.edu, fax (360) 586-2357, by January 11, 2007.

Assistance for Persons with Disabilities: Contact Laura Moore, Executive Assistant, by January 11, 2007, TTY (360) 664-3631 or (360) 725-6025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This is a repeal of the entire chapter as the underlying authority has been repealed in E2SHB 3098.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 28A.355.100.

Statute Being Implemented: E2SHB 3098 (chapter 263, Laws of 2006).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: State board of education, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Edith Harding, State Board of Education, Olympia, Washington, (360) 725-6025.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

December 5, 2006
Edith W. Harding
Executive Director

Hearing Location(s): North Thurston Board Room, 305 College Street N.E., Lacey, WA 98516, on January 25, 2007, at 9:00 a.m.

Date of Intended Adoption: January 26, 2007.

Submit Written Comments to: Edith Harding, Executive Director, P.O. Box 47206, Olympia, WA 98504-7206, e-mail ehardng@ospi.wednet.edu, fax (360) 586-2357, by January 11, 2007.

Assistance for Persons with Disabilities: Contact Laura Moore, Executive Assistant, by January 11, 2007, TTY (360) 664-3631 or (360) 725-6025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Add a section to allow private schools to seek a temporary exemption from course and credit requirements.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 28A.230.090.

Statute Being Implemented: E2SHB 3098 (chapter 263, Laws of 2006).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: State board of education, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Edith Harding, State Board of Education, Olympia, Washington, (360) 725-6025.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

December 5, 2006
Edith W. Harding
Executive Director

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 180-37-005 Purpose and authority.

WAC 180-37-010 Nonpublic agency approval procedure.

WSR 06-24-102
PROPOSED RULES
STATE BOARD OF EDUCATION

[Filed December 5, 2006, 2:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-19-068.

Title of Rule and Other Identifying Information: WAC 180-51-095 Temporary exemption from course and credit requirements.

NEW SECTION

WAC 180-51-095 Temporary exemption from course and credit requirements. Annual exemptions to the definition of an annualized high school credit may be granted upon the request of an approved private school which offers evidence that delineates content, time, or competency assessments which are substantially equivalent to the definition stated in WAC 180-51-050. The waiver process shall be administered by the superintendent of public instruction.

WSR 06-24-109
PROPOSED RULES
HORSE RACING COMMISSION

[Filed December 6, 2006, 8:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-07-057.

Title of Rule and Other Identifying Information: WAC 260-28-295 Trainer responsibility; and repealing WAC 260-28-180 and 260-70-520.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98001, on January 11, 2007, at 9:30 a.m.

Date of Intended Adoption: January 11, 2007.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail dmoore@whrc.state.wa.us, fax (360) 459-6462, by January 8, 2007.

Assistance for Persons with Disabilities: Contact Patty Sorby by January 8, 2007, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To incorporate all trainer responsibility into one chapter and section of Title 260 WAC and to provide clear and understandable rules.

Reasons Supporting Proposal: Trainers will be able to find all responsibilities in one section of the rules of racing for ease and convenience.

Statutory Authority for Adoption: RCW 67.16.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert Leichner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

December 5, 2006

R. M. Leichner
Executive Secretary

NEW SECTION

WAC 260-28-295 Trainer responsibility. The purpose of this section is to identify the minimum responsibilities of the trainer that pertain specifically to the health and well-being of horses in his/her care.

(1) The trainer is responsible for and is the absolute insurer of the condition of the horses entered regardless of the acts of third parties.

(2) The trainer is responsible for the condition of horses in his/her care.

(3) The trainer is responsible for the presence of any prohibited drug, medication, or other prohibited substance, including permitted medication in excess of the maximum allowable concentration, in horses in his/her care. A positive test for a prohibited drug, medication or substance, including permitted medication in excess of the maximum allowable concentration, as reported by a commission-approved laboratory, is prima facie evidence of a violation of this rule. In the absence of substantial evidence to the contrary, the trainer will be held responsible.

(4) A trainer will prevent the administration of any drug or medication or other prohibited substance that may cause a violation of these rules.

(5) A trainer whose horse has been claimed remains responsible for violation of any rules regarding that horse's participation in the race in which the horse is claimed.

(6) The trainer is responsible for:

(a) Maintaining the assigned stable area in a clean, neat and sanitary condition at all times;

(b) Using the services of those veterinarians licensed by the commission to attend to horses that are on association grounds;

(c) The proper identity, custody, care, health, condition and safety of horses in his/her care;

(d) Immediately reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;

(e) Promptly reporting to the racing secretary and an official veterinarian when a posterior digital neurectomy (heel nerving) is performed on a horse in his/her care and ensuring that such fact is designated on its certificate of registration;

(f) Promptly report to the racing secretary, when mares who have been entered to race, have been bred;

(g) Promptly reporting the serious injury and/or death of any horse at locations under the jurisdiction of the commission to the stewards and the official veterinarian and compliance with the rules in this chapter governing postmortem examinations;

(h) Maintaining knowledge of the medication record and medication status of horses in his/her care;

(i) Immediately reporting to the stewards and the official veterinarian knowledge or reason to believe, that there has been any administration of a prohibited medication, drug or substance;

(j) Ensuring the fitness to perform creditably at the distance entered;

(k) Ensuring that every horse he/she has entered to race is present at its assigned stall for a prerace soundness inspection as prescribed in chapter 260-70 WAC;

(l) Ensuring proper bandages, equipment and shoes; and

(m) Attending the collection of a urine or blood sample or delegating a licensed employee or the owner to do so.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 260-28-180

Trainer—Insurer of condition of horse.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 260-70-520

Trainer responsibility.

WSR 06-24-110
PROPOSED RULES
HORSE RACING COMMISSION

[Filed December 6, 2006, 8:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-17-088.

Title of Rule and Other Identifying Information: WAC 260-24-510 Stewards.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98001, on January 11, 2007, at 9:30 a.m.

Date of Intended Adoption: January 11, 2007.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail dmoore@whrc.state.wa.us, fax (360) 459-6461, by January 8, 2007.

Assistance for Persons with Disabilities: Contact Patty Sorby by January 8, 2007, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend WAC 260-24-510 to clear language and adjust the process for allowing stays of stewards penalties.

Reasons Supporting Proposal: This amendment would allow the stewards to issue a suspension and if the individual constitutes an immediate, substantial danger to human and/or equine health, safety, or welfare that no stay would be issued except by a hearing before the commission.

Statutory Authority for Adoption: RCW 67.16.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting: Douglas Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert Leichner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

December 6, 2006

R. M. Leichner

Executive Secretary

AMENDATORY SECTION (Amending WSR 05-07-065, filed 3/11/05, effective 4/11/05)

WAC 260-24-510 Stewards. (1) General authority:

(a) The stewards for each race meet ~~((shall be))~~ are responsible to the executive secretary for the conduct of the race meet and the initial agency determination of alleged rule violations in accordance with these rules;

(b) The stewards ~~((shall))~~ will enforce the rules of racing in chapters 260-12 through 260-84 WAC, excluding chapters 260-49 and 260-75 WAC. The stewards will take notice of alleged misconduct or rule violations and initiate investigations into such matters;

(c) The stewards' authority includes regulation of all racing officials, track management, licensed personnel, other persons responsible for the conduct of racing, and patrons, as necessary to insure compliance with these rules;

(d) All nominations, entries, declarations and scratches ~~((shall))~~ will be monitored by a steward;

(e) The stewards ~~((shall))~~ have authority to resolve conflicts or disputes related to violations of the rules of racing and to discipline violators in accordance with the provisions of these rules;

(f) ~~((The stewards shall take notice of any questionable conduct with or without complaint thereof;~~

~~((g)))~~ The stewards have the authority to interpret the rules and to decide all questions of racing. The stewards of the race meet are hereby given authority to exercise their full power, recommending to the commission the imposition of more severe penalties if necessary.

(2) The stewards' period of authority ~~((shall))~~ will commence ~~((ten days prior to the beginning of each race meet, or at such other time as is necessary in the opinion of the executive secretary,))~~ and ~~((shall))~~ terminate at the direction of the executive secretary. One steward ~~((shall))~~ will be designated as the presiding steward by the ~~((commission))~~ executive secretary.

(3) Stewards ruling conference regarding violations of rules of racing:

(a) ~~((The stewards shall take notice of alleged misconduct or rule violations and initiate investigations into such matters.~~

~~((b)))~~ The stewards ~~((shall))~~ have authority to charge any licensee or other person with a violation of these rules, to make rulings and to impose penalties including the following:

(i) Issue a reprimand;

(ii) Assess a fine not to exceed \$2,500.00, except as provided in WAC ~~((260-70-690))~~ 260-84-060 and 260-84-110;

(iii) Require forfeiture or redistribution of purse or award, when specified by applicable rules;

(iv) Place a licensee on probation;

(v) Suspend a license or racing privileges for not more than one year per violation;

(vi) Revoke a license; or

(vii) Exclude from grounds under the jurisdiction of the commission.

~~((e)))~~ (b) The stewards' imposition of reprimands, fines and suspensions ~~((shall))~~ will be based on the ~~((penalty matrix))~~ penalties in ~~((WAC 260-84-060))~~ chapter 260-84 WAC.

For any ~~((other))~~ violation not specifically listed in ~~((WAC 260-84-060))~~ chapter 260-84 WAC, the stewards ~~((shall))~~ have discretion to impose the penalties as provided in ~~((b))~~ (a) of this subsection.

~~((d)))~~ (c) The stewards may direct a jockey to meet with the film analyst whenever a jockey is involved in questionable, unsafe or potentially dangerous riding. Jockeys referred to the film analyst ~~((shall))~~ must appear when directed. Failure to appear when directed ~~((shall))~~ will be considered a violation of the rules of racing for which penalties may be imposed.

~~((e))~~ (d) The stewards ~~((shall))~~ have the authority to conduct a ruling conference, and the authority to:

(i) Direct the attendance of witnesses and commission employees;

(ii) Direct the submission of documents, reports or other potential evidence;

(iii) Inspect license documents, registration papers and other documents related to racing or the rule violation;

(iv) Question witnesses; and

(v) Consider all relevant evidence.

~~((f))~~ (e) The stewards ~~((shall))~~ must serve notice of a conference to person(s) alleged to have committed a violation, which ~~((shall))~~ must contain the following information:

(i) A statement of the time and place the conference will be held;

(ii) A reference to the particular sections of the WAC involved;

(iii) A short and plain statement of the alleged violation; and

(iv) A statement that if the person does not appear, the ruling will be made in his/her absence, and that failure to appear will be considered a separate violation of the rules of racing.

~~((g))~~ (f) Failure to appear for a ruling conference ~~((shall))~~ will be considered a violation of the rules of racing for which penalties may be imposed.

~~((h))~~ (g) It is the duty and obligation of every licensee to make full disclosure to the board of stewards and commission investigators conducting an investigation into any alleged violation of these rules, of any knowledge he/she possesses of a violation of any rule of racing. No person may refuse to respond to questions before the stewards or commission investigators on any relevant matter within the authority of the stewards or commission, except in the proper exercise of a legal privilege, nor ~~((shall))~~ may any person respond falsely before the stewards or to commission investigators.

~~((i))~~ (h) At the ruling conference, the stewards ~~((shall))~~ will allow the person alleged to have committed a violation to make a statement regarding the alleged violation.

~~((j))~~ (i) All ruling conferences ~~((shall))~~ will be recorded.

~~((k))~~ (j) Every ruling by the stewards from a ruling conference must be served in writing on the person(s) or parties found in violation within five days and ~~((shall))~~ must include:

(i) Time and place the ruling was made;

(ii) Statement of rules violated;

(iii) Details of the violation;

(iv) Penalties to be imposed;

(v) Procedure for requesting a hearing before the commission to challenge the ruling; and

(vi) Plain statement of the options of the person found in violation, which ~~((shall))~~ must include:

(A) Accepting the penalty imposed by the stewards; or

(B) Requesting a hearing before the commission challenging the stewards' ruling within seven days of service of the ruling.

(k) Any penalty imposed by the stewards will be stayed if a request for hearing before the commission is filed within the seven days of service of the ruling.

(l) If the stewards determine that a person's actions constitute an immediate, substantial danger to human and/or equine health, safety, or welfare, and a request for hearing before the commission is filed within seven days of service of the ruling, no stay will be granted except by a hearing before the commission. The hearing before the commission will occur within thirty days of filing the request for hearing before the commission.

(m) The stewards' ruling ~~((shall))~~ will be posted and a copy provided to the racing association.

~~((n))~~ (n) If a person does not file a request for hearing before the commission within seven days or in the format required by chapter 260-08 WAC, then the person is deemed to have waived his or her right to a hearing before the commission. After seven days, if a request for hearing before the commission has not been filed, the stewards' penalty ~~((shall))~~ will be imposed.

~~((o))~~ (o) "Service" of the notice of ruling conference or a stewards' ruling ~~((shall))~~ may be by either personal service to the person or by depositing the notice of ruling conference or stewards' ruling into the mail to the person's last known address in which case service is complete upon deposit in the U.S. mail.

~~((p))~~ (p) If the stewards determine that a person's actions constitute an immediate, substantial danger to human and/or equine health, safety, or welfare, the stewards may enter a ruling summarily suspending the license and/or ~~((eject))~~ ejecting the person from the grounds pending a ruling conference before the board of stewards. A summary suspension takes effect immediately on issuance of the ruling. If the stewards suspend a license under this subsection, the licensee is entitled to a ruling conference before the board of stewards, not later than five days after the license was summarily suspended. The licensee may waive his/her right to a ruling conference before the board of stewards on the summary suspension.

(4) Protests, objections and complaints. The stewards ~~((shall cause))~~ will ensure that an investigation ~~((to be))~~ is conducted and ~~((shall render))~~ a decision is rendered in every protest, objection and complaint made to them. The stewards are vested with the power to determine the extent of disqualification in case of fouls. They may place the offending horse behind such horses as in their judgment it interfered with, or they may place it last.

(5) Stewards' presence:

(a) On each racing day at least one steward ~~((shall))~~ will be on duty at the track beginning three hours prior to first race post time. ~~((The full board of stewards shall sit in regular session to exercise their authority and perform the duties imposed on them by the rules of racing.))~~

(b) Three stewards ~~((shall))~~ must be present in the stewards' stand during the running of each race. In case of emergency, the executive secretary may appoint a substitute steward.

(6) Order of finish for parimutuel wagering:

(a) The stewards ~~((shall))~~ will determine the official order of finish for each race in accordance with these rules of racing;

(b) The decision of the stewards as to the official order of finish, including the disqualification of a horse or horses as a

result of any event occurring during the running of the race, ~~((shall be))~~ is final for purposes of distribution of the parimutuel wagering pool.

(7) The stewards have the authority to cancel wagering on an individual betting interest or on an entire race and also have the authority to cancel a parimutuel pool for a race or races, if such action is necessary to protect the integrity of parimutuel wagering.

(8) Records and reports:

(a) The stewards ~~((shall))~~ will prepare a weekly report of their regulatory activities. The report ~~((shall))~~ will contain the name of the racetrack, the date, the weather and track conditions, claims, inquiries, protests, objections, complaints and conferences. The report ~~((shall))~~ will be filed with and approved by the executive secretary;

(b) Not later than seven days after the last day of a race meeting, the presiding steward ~~((shall))~~ will submit ~~((to the executive secretary))~~ a written report regarding the race meeting to the executive secretary. The report ~~((shall))~~ will contain:

(i) The stewards' observations and comments regarding the conduct of the race meeting, the overall conditions of the association grounds during the race meeting; and

(ii) Any recommendations for improvement by the association or action by the commission.

(9) Stewards' list:

(a) The stewards ~~((shall))~~ will maintain a stewards' list of the horses which are ineligible to be entered in a race because of poor or inconsistent performance or behavior on the racetrack that may endanger the health or safety of other participants in racing;

(b) The stewards may place a horse on the stewards' list when there exists a question as to the exact identification or ownership of said horse;

(c) A horse which has been placed on the stewards' list because of inconsistent performance or behavior, may be removed from the stewards' list when, in the opinion of the stewards, the horse can satisfactorily perform competitively in a race without endangering the health or safety of other participants in racing;

(d) A horse which has been placed on the stewards' list because of questions as to the exact identification or ownership of said horse, may be removed from the stewards' list when, in the opinion of the stewards, proof of exact identification and/or ownership has been established.

(e) An owner or trainer who disagrees with the stewards' decision of placing or maintaining a horse on the stewards' list may request and be granted a stewards' ruling conference to challenge the decision of the stewards.

Preproposal statement of inquiry was filed as WSR 05-22-113.

Title of Rule and Other Identifying Information: Locum tenens provision (a person who is temporarily fulfilling the duties and responsibilities of another).

Hearing Location(s): General Administration, 1st Floor Auditorium, 11th and Columbia, Olympia, Washington 98504, on January 10, 2007, at 10:00.

Date of Intended Adoption: February 12, 2007.

Submit Written Comments to: Kacy Scott, P.O. Box 40255, Olympia, WA 98504-0258, e-mail Kacys@oic.wa.gov, fax (360) 586-3109, by January 8, 2007.

Assistance for Persons with Disabilities: Contact Lorie Villaflora by January 8, 2007, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These proposed rules would require health carriers to permit a contracted provider to select another provider who will serve as a substitute in the absence of the contracted provider for a period of not more than sixty days. The substitute provider is not required to be a member of the carrier's network.

Reasons Supporting Proposal: The Washington State Chiropractic Association petitioned the insurance commissioner for adoption of a rule to require carriers to include a "locum tenens" provision in contracts with chiropractors. After careful consideration the commissioner decided to include all provider types in proposed regulations. The resulting rule will affect all provider types who have a state license to "diagnose and treat human disease, ailment, or pain." This includes, but is not limited to, chiropractors.

Statutory Authority for Adoption: RCW 48.02.060 and 48.43.515.

Statute Being Implemented: RCW 48.43.515.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Melodie Bankers, P.O. Box 40258, (360) 725-7039; Implementation: Beth Berendt, P.O. Box 40255, (360) 725-7117; and Enforcement: Carol Sureau, P.O. Box 40255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The cost of compliance with this proposed rule for small businesses regulated by the office of the insurance commissioner would be minor or negligible.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7041, fax (360) 586-3109, e-mail Kacys@oic.wa.gov.

December 6, 2006

Mike Kreidler

Insurance Commissioner

**WSR 06-24-120
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2005-04—Filed December 6, 2006, 9:31 a.m.]

Original Notice.

NEW SECTION

WAC 284-43-260 Standards for temporary substitution of contracted network providers—"Locum tenens" providers. It is a longstanding and widespread practice for contracted network providers to retain substitute providers to take over their professional practices when the contracted network providers are absent for reasons such as illness, pregnancy, vacation, or continuing medical education, and for the contracted network provider to bill and receive payment for the substitute providers' services as though they were provided by the contracted network provider. The contracted network provider generally pays the substitute provider based on an agreement between the contracted network provider and the substitute provider, and the substitute provider has the status of an independent contractor rather than an employee of the contracted network provider. These substitute providers are commonly called "locum tenens" providers. The following are minimum standards for temporary provider substitution and do not prevent a carrier from entering into other agreed arrangements with its contracted network providers for terms that are less restrictive or more favorable to contracted network providers.

(1) Carriers must permit a contracted network provider to arrange for temporary substitution by a substitute provider. The substitute provider must be legally authorized to practice in this state and must have a current Washington license to diagnose and treat human disease, ailment, injury, or pain.

(2) Carriers must permit a period of substitution of at least sixty continuous days during any calendar year.

WSR 06-24-121**PROPOSED RULES****OFFICE OF THE****INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2004-03—Filed December 6, 2006, 9:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-13-153.

Title of Rule and Other Identifying Information: Corporate-owned life insurance in Washington state.

Hearing Location(s): Insurance Commissioner's Office, 302 Sid Snyder Avenue, Room 200, Olympia, WA 98504, on January 10, 2007, at 2:00 p.m.

Date of Intended Adoption: February 12, 2007.

Submit Written Comments to: Kacy Scott, P.O. Box 40255, Olympia, WA 98504-0258, e-mail Kacys@oic.wa.gov, fax (360) 586-3109, by January 9, 2007.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by January 8, 2007, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESB 5196 was enacted during the 2005 legislative session. This law directed the commissioner to adopt rules to implement RCW 48.18.010, 48.18.030, 48.18.060, 48.18.580, and 48.18.583. These proposed rules will require that an employee be a key

person and the employer must obtain and keep evidence that the employer has an "insurable interest" in the life of the employee.

Reasons Supporting Proposal: In the past, despite the existence of a strict insurable interest requirement for group life insurance, corporations have purchased policies on employees in whom there exists no clear insurable interest. These proposed rules will provide a clearer understanding that the carrier must obtain and keep evidence that an insurable interest exists for every employee upon whose life insurance is purchased and that the person's mere status as an employee is insufficient to meet the insurable interest requirement. The employee must be a "key person."

Statutory Authority for Adoption: RCW 48.02.060 and 48.18.586.

Statute Being Implemented: RCW 48.18.010, 48.10.030 [48.18.030], 48.18.060, 48.18.580, and 48.18.583.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Melodie Bankers, P.O. Box 40258, Olympia, WA 98504-0255, (360) 725-7039; Implementation: Beth Berendt, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117; and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule will have negligible or minor impact on small businesses regulated by the office of the insurance commissioner.

A cost-benefit analysis is not required under RCW 34.05.328. This proposed rule is an interpretive rule as defined by RCW 34.05.328(5).

December 6, 2006

Mike Kreidler

Insurance Commissioner

NEW SECTION

WAC 284-23-580 Insurer must obtain and keep evidence that insured is a key person—Definition of "key person." (1) If a business entity seeks to be the owner or beneficiary of a contract of life insurance on an employee, the insurer must obtain and keep evidence that the business entity had an "insurable interest" in the life of the insured as required by RCW 48.18.030(3) and was a "key person" at the time the contract was made.

(2) The term "key person" means a "highly compensated individual" where, during the year the contract was made, the employee:

(a) Was one of the five highest paid officers of the employer;

(b) Was a shareholder who owned more than ten percent in value of the stock of the employer; or

(c) Was among the highest paid ten percent of all employees.

WSR 06-24-128
PROPOSED RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Docket PL-061026—Filed December 6, 2006, 10:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-15-123.

Title of Rule and Other Identifying Information: Chapter 480-75 WAC Hazardous liquid, gas, oil and petroleum pipeline companies—Safety.

WAC 480-75-270 Damage prevention, identifies hazardous liquid operators' obligation to adhere to the provisions of chapter 19.122 RCW as applicable.

WAC 480-75-300 Leak detection, clarifies conditions that require leak protection.

WAC 480-75-450 Construction specifications, removes an exemption from the longitudinal seam orientation requirement.

WAC 480-75-630 Incident reporting, adds another type of reportable incident and modifies others.

WAC 480-75-650 Annual reports, amends who receives annual reports and the date they are due.

Hearing Location(s): WUTC Hearing Room 206, 2nd Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, on February 7, 2007, at 1:30 p.m.

Date of Intended Adoption: February 7, 2007.

Submit Written Comments to: Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., P.O. Box 47250, Olympia, WA 98504-7250, e-mail records@wutc.wa.gov, fax (360) 586-1150, by January 10, 2007.

Assistance for Persons with Disabilities: Contact Mary DeYoung by February 5, 2007, TTY (800) 416-5289 or (360) 664-1133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Since the commission has adopted rules in chapter 480-75 WAC, Hazardous liquid, gas, oil and petroleum pipeline companies—Safety, stakeholders and agency staff have identified a variety of issues, and changes in the federal rules that suggest that the commission should review certain rules relating to safety operation of hazardous liquid pipelines. This rule making proposes changes to WAC 480-75-300, 480-75-450, 480-75-630, and 480-75-650 and to add a new rule ensuring that pipeline operators comply with damage prevention requirements in chapter 19.122 RCW.

Reasons Supporting Proposal: The proposed changes will provide clarity in some areas of the rules, eliminate requirements that are no longer necessary and provide compliance with federal rules.

Statutory Authority for Adoption: RCW 80.01.040, 81.01.010, 81.88.060.

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Ilyne Lawson, Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1302; Implementation and Enforcement: Carole J. Washburn, Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1174.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules will not result in or impose an increase in costs. Because there will not be any increase in costs resulting from the proposed rule changes, a small business economic impact statement is not required under RCW 19.85.030(1).

A cost-benefit analysis is not required under RCW 34.05.328. The commission is not an agency to which RCW 34.05.328 applies. The proposed rule is not a significant legislative rule as referenced in RCW 34.05.328(5).

December 6, 2006

Carole J. Washburn
Executive Secretary

NEW SECTION

WAC 480-75-270 Damage prevention. Each operator must comply with the provisions of chapter 19.122 RCW, to the extent those provisions apply to the operator. A failure to comply with any of the provisions of chapter 19.122 RCW is a violation of this rule. Each day a violation persists is a separate violation of this rule. In determining whether an operator has complied with the provisions of chapter 19.122 RCW, the definitions contained in that chapter will apply. The definitions in chapter 480-75 WAC (other than the definition of "operator") do not apply.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-300 Leak detection. (1) Companies must rapidly locate leaks from their pipeline. Companies must provide leak detection (~~((f))~~) under flow and no flow conditions.

(2) Leak detection systems must be capable of detecting an eight percent of maximum flow leak within fifteen minutes or less.

(3) Companies must have a leak detection procedure and a procedure for responding to alarms. The operator must maintain leak detection maintenance and alarm records.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-450 Construction specifications. Operators must assure that new pipeline construction (~~((must))~~) conforms to the requirements of ASME B31.4. Information about the ASME edition adopted and where to obtain it are set out in WAC 480-75-999, Adoption by reference. The longitudinal seams of connecting pipe joints must be offset by at least two inches. In addition, the longitudinal seams must be located on the upper half of the pipe when laid in the trench.

~~((Seamless pipe is exempted from the requirements of the longitudinal seam orientation.))~~

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-630 Incident reporting. (1) Every company must give prompt telephonic notice to the commission within two hours of discovery of an incident such as a release of a hazardous liquid resulting in:

(a) A fatality;
 (b) Personal injury requiring hospitalization;
 (c) ~~Fire or explosion not intentionally set by the operator;~~
 (d) Spills of five gallons or more of product ~~((the commission request voluntary compliance with 49 CFR, Part 195.50 (b). If the Washington state legislature adopts this change, then notice of the five gallon spill will be mandatory));~~

~~((d))~~ (e) Damage to the property of the company and others of a combined total cost exceeding twenty-five thousand dollars (automobile collisions and other equipment accidents not involving hazardous liquid or hazardous-liquid-handling equipment need not be reported under this rule);

~~((e))~~ (f) A significant occurrence in the judgment of the company, even though it does not meet the criteria of (a) through ~~((d))~~ (e) of this subsection;

~~((f))~~ (g) The news media reports the occurrence, even though it does not meet the criteria of (a) through ~~((e))~~ (f) of this subsection.

(2) A written report must be sent to the commission within one month of the incident. The report must include the following:

(a) Name(s) and address(es) of any person or persons injured or killed or whose property was damaged;

(b) The extent of injuries and damage;

(c) A description of the incident including date, time, and place;

(d) A description and maximum operating pressure of the hazardous liquid facilities implicated in the incident and the system operating pressure at the time of the incident;

(e) The date and time the hazardous liquid facility returns to safe operations; and

(f) The date, time, and type of any temporary or permanent repair.

(3) An operator must give the commission telephonic notification within twenty-four hours of emergency situations including emergency shutdowns, material defects, or physical damage that impairs the serviceability of the pipeline.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-650 Annual reports. ~~((1) The annual report form No. 6 promulgated by the Federal Energy Regulatory Commission (FERC) is hereby adopted for hazardous liquid pipeline companies. At the close of each calendar year, hazardous liquid pipeline companies must secure from the FERC two copies of the annual report forms. The annual~~

~~report must be completed for the calendar year's operations. One completed copy of the annual report must be submitted to the commission no later than April 1 of the succeeding year. The second completed copy must be retained by the company.~~

~~(2) For those companies not required to file form No. 6 the commission requires those companies to file annual report form 224-225 prescribed by the commission. The annual report will be mailed to each company by February 15 of each year. Companies must submit an annual report to the commission no later than April 1 of the succeeding year.)~~
Operators must file the following annual reports with the commission no later than April 1 for the preceding calendar year:

(1) A copy of Pipeline and Hazardous Safety Administration (PHMSA) F-7000.1-1 annual report required by the PHMSA, Office of Pipeline Safety.

(2) A report titled, "Hazardous Liquid Annual Report Form." The annual report must include in detail the following information:

(a) Interstate and intrastate pipeline mileage in Washington state; and

(b) List of reportable and nonreportable safety-related conditions as defined in 49 CFR 195.55.

WSR 06-24-134

PROPOSED RULES

DEPARTMENT OF HEALTH

(Podiatric Medical Board)

[Filed December 6, 2006, 10:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-07-020.

Title of Rule and Other Identifying Information: Podiatric medicine, WAC 246-922-001 Scope of practice. This will include certified registered nurse anesthetists (CRNA) as appropriate practitioners to independently administer general or spinal anesthetic to podiatric patients.

Hearing Location(s): Clarion Hotel, 3000 South 176th Street, SeaTac, WA 98188, on January 18, 2007, at 9:00 a.m.

Date of Intended Adoption: January 18, 2007.

Submit Written Comments to: Arlene A. Robertson, P.O. Box 47866, Olympia, WA 98504-7866, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2406, by January 12, 2007.

Assistance for Persons with Disabilities: Contact Arlene Robertson by January 12, 2007, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal identifies which practitioners may provide anesthesia services for surgical patients of podiatric physicians.

Reasons Supporting Proposal: The current rule only allows for administration of general or spinal anesthetic to podiatric patients by or under the supervision of a physician authorized under chapter 18.71 or 18.57 RCW. It does not allow for a CRNA to administer anesthesia independently under RCW 18.79.240 (1)(r). Amending the rule is the only

option to allow a CRNA to administer anesthesia independently to podiatric patients.

Statutory Authority for Adoption: RCW 18.22.015.

Statute Being Implemented: RCW 18.22.035.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, podiatric medical board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Arlene Robertson, Program Manager, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4945.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department did not complete a small business economic impact statement under RCW 19.85.030(1) because the rule does not impose costs to businesses within the industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Arlene Robertson, Program Manager, P.O. Box 47866, Olympia, WA 98504-7866, phone (360) 236-4945, fax (360) 236-2406, e-mail arlene.robertson@doh.wa.gov.

December 4, 2006
Blake T. Maresh
Executive Director

AMENDATORY SECTION (Amending Order 158B, filed 4/25/91, effective 5/26/91)

WAC 246-922-001 Scope of practice. (1) An "ailment of the human foot" as set forth in RCW 18.22.010 is defined as any condition, symptom, disease, complaint, or disability involving the functional foot. The functional foot includes the anatomical foot and any muscle, tendon, ligament, or other soft tissue structure directly attached to the anatomical foot and which impacts upon or affects the foot or foot function and osseous structure up to and including the articulating surfaces of the ankle joint.

(2) In diagnosing or treating the ailments of the functional foot, a podiatric physician and surgeon is entitled to utilize medical, surgical, mechanical, manipulative, radiological, and electrical treatment methods and the diagnostic procedure or treatment method may be utilized upon an anatomical location other than the functional foot. The diagnosis and treatment of the foot includes diagnosis and treatment necessary for preventive care of the well foot.

(3) A podiatric physician and surgeon may examine, diagnose, and commence treatment of ailments for which differential diagnoses include an ailment of the human foot. Upon determination that the condition presented is not an ailment of the human foot, the podiatric physician and surgeon shall obtain an appropriate consultation or make an appropriate referral to a licensed health care practitioner authorized by law to treat systemic conditions. The podiatric physician and surgeon may take emergency actions as are reasonably necessary to protect the patient's health until the intervention of a licensed health care practitioner authorized by law to treat systemic conditions.

(4) A podiatric physician and surgeon may diagnose or treat an ailment of the human foot caused by a systemic condition provided an appropriate consultation or referral for the systemic condition is made to a licensed health care practitioner authorized by law to treat systemic conditions.

(5) A podiatric physician and surgeon shall not administer a general or spinal anesthetic, however, a podiatric physician and surgeon may treat ailments of the human foot when the treatment requires use of a general or spinal anesthetic provided that the administration of the general or spinal anesthetic is by ~~((or under the supervision of))~~ a physician authorized under chapter 18.71 or 18.57 RCW; or a certified registered nurse anesthetist authorized under chapter 18.79 RCW.

WSR 06-24-135

PROPOSED RULES

DEPARTMENT OF HEALTH

(Podiatric Medical Board)

[Filed December 6, 2006, 10:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-11-093.

Title of Rule and Other Identifying Information: New sections WAC 246-922-600 Sexual misconduct and 246-922-620 Abuse, these new rules will specify the types of conduct that will be considered sexual misconduct and boundary violations, which includes abuse, that will be considered unprofessional conduct for podiatric physicians.

Hearing Location(s): Clarion Hotel, 3000 South 176th Street, SeaTac, WA 98188, on January 18, 2007, at 9:30 a.m.

Date of Intended Adoption: January 18, 2007.

Submit Written Comments to: Arlene Robertson, Podiatric Medical Board, P.O. Box 47866, Olympia, WA 98504-7866, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2406, by January 12, 2007.

Assistance for Persons with Disabilities: Contact Arlene Robertson by January 12, 2007, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The podiatric medical board (board) is proposing new rules to establish consistent and enforceable definitions of abuse and sexual misconduct with patients or former patients for podiatric physicians. Because it is a greater challenge to clearly define some behaviors as moral turpitude, the proposed rules will allow the board to take action on a broader range of inappropriate behaviors. The proposed rules will also help podiatric physicians avoid inappropriate behavior and educate the public on expectations from their health care provider.

Reasons Supporting Proposal: RCW 18.130.180(24) provides that sexual contact and abuse by podiatric physicians are violations of unprofessional conduct. Although the board has sexual misconduct guidelines in place, it is difficult to take disciplinary action based on guidelines. The proposed rules clarify the law and will provide direction for podiatric physicians and patients by identifying the types of inappropriate behaviors considered unprofessional conduct. The

proposed rule support the governor's executive order to improve patient safety.

Statutory Authority for Adoption: RCW 18.22.015, 18.130.050.

Statute Being Implemented: RCW 18.130.180.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, podiatric medical board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Arlene Robertson, Program Manager, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4945.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared under RCW 19.85.030(1) because the proposed rule does not impose costs to businesses within an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Arlene Robertson, Program Manager, P.O. Box 47866, Olympia, WA 98504-7866, phone (360) 236-4945, fax (360) 236-2406, e-mail arlene.robertson@doh.wa.gov.

December 4, 2006

Blake T. Maresh

Executive Director

NEW SECTION

WAC 246-922-600 Sexual misconduct. (1) Definitions:

(a) "Patient" means a person who is receiving health care or treatment, or has received health care or treatment without a termination of the podiatric physician-patient relationship. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent and context of the professional relationship between the podiatric physician and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor.

(b) "Podiatric physician" means a person licensed to practice podiatric medicine and surgery under chapter 18.22 RCW.

(c) "Key third party" means a person in a close personal relationship with the patient and includes, but is not limited to, spouses, domestic partners, parents, siblings, children, guardians and proxies.

(2) A podiatric physician shall not engage in sexual misconduct with a current patient or a key third party. A podiatric physician engages in sexual misconduct when he or she engages in the following behaviors with a patient or key third party:

- (a) Sexual intercourse or genital to genital contact;
- (b) Oral to genital contact;
- (c) Genital to anal contact or oral to anal contact;
- (d) Kissing in a romantic or sexual manner;

(e) Touching breasts, genitals or any sexualized body part for any purpose other than appropriate examination or treatment;

(f) Examination or touching of genitals without using gloves;

(g) Not allowing a patient the privacy to dress or undress;

(h) Encouraging the patient to masturbate in the presence of the podiatric physician or masturbation by the podiatric physician while the patient is present;

(i) Offering to provide practice-related services, such as medication, in exchange for sexual favors;

(j) Soliciting a date;

(k) Engaging in a conversation regarding the sexual history, preferences or fantasies of the podiatric physician.

(3) A podiatric physician shall not engage in any of the conduct described in subsection (2) of this section with a former patient or key third party if the podiatric physician:

(a) Uses or exploits the trust, knowledge, influence, or emotions derived from the professional relationship; or

(b) Uses or exploits privileged information or access to privileged information to meet the podiatric physician's personal or sexual needs.

(4) To determine whether a patient is a current patient or a former patient, the board will analyze each case individually, and will consider a number of factors, including, but not limited to, the following:

(a) Documentation of formal termination;

(b) Transfer of the patient's care to another health care provider;

(c) The length of time that has passed;

(d) The length of time of the professional relationship;

(e) The extent to which the patient has confided personal or private information to the podiatric physician;

(f) The nature of the patient's health problem;

(g) The degree of emotional dependence and vulnerability.

(5) This section does not prohibit conduct that is required for medically recognized diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.

(6) It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.

(7) A violation of any provision of this section shall constitute grounds for disciplinary action.

NEW SECTION

WAC 246-922-620 Abuse. (1) A podiatric physician commits unprofessional conduct if the podiatric physician abuses a patient or key third party. A podiatric physician abuses a patient when he or she:

(a) Makes statements regarding the patient's body, appearance, sexual history, or sexual orientation that have no legitimate medical or therapeutic purpose;

(b) Removes a patient's clothing or gown without consent;

(c) Fails to treat an unconscious or deceased patient's body or property respectfully;

(d) Engages in any conduct, whether verbal or physical, which unreasonably demeans, humiliates, embarrasses, threatens, or harms a patient.

(2) A violation of any provision of this section shall constitute grounds for disciplinary action.

WSR 06-24-136

PROPOSED RULES

DEPARTMENT OF HEALTH

(Board of Physical Therapy)

[Filed December 6, 2006, 10:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-07-176.

Title of Rule and Other Identifying Information: WAC 246-915-120 Applicants from unapproved schools.

Hearing Location(s): Department of Health, Town Center 2, Room 158, 111 Israel Road S.E., Tumwater, WA 98501, on January 16, 2007, at 9:15 a.m.

Date of Intended Adoption: January 16, 2007.

Submit Written Comments to: Kris Waidely, Department of Health, Board of Physical Therapy, P.O. Box 47867, Olympia, WA 98504-7867, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 664-9077, by January 8, 2007.

Assistance for Persons with Disabilities: Contact Kris Waidely by January 5, 2007, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule establishes the minimum education standards to assure consumers that only qualified physical therapists are providing the care authorized under Washington rules. Under this proposed rule, foreign educated applicants who were previously ineligible for licensure may obtain additional course work and then reapply for licensure.

Reasons Supporting Proposal: According to the American Physical Therapy Association, more than 70% of physical therapy practice involves the elderly, children and vulnerable adults. These patients may be unable to communicate or report acts of misconduct, negligence or incompetence. Many therapists attend to these patients in their homes or in long-term care facilities and are minimally supervised or not supervised at all. The proposed rule provides public protection by establishing minimum educational standards.

Statutory Authority for Adoption: RCW 18.74.023.

Statute Being Implemented: RCW 18.74.023.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kris Waidely, 310 Israel Road S.E., (360) 236-4847.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has not conducted a small business [economic] impact statement (SBEIS). The proposed rule does not impose more than

minor costs on businesses in an industry. Per RCW 19.85.030 the agency has not conducted an SBEIS because the proposed rule does not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kris Waidely, P.O. Box 47867, Olympia, WA 98504-7867, phone (360) 236-4847, fax (360) 664-9077, e-mail kris.waidely@doh.wa.gov.

December 6, 2006

Kris Waidely

Program Manager

AMENDATORY SECTION (Amending Order 403B, filed 2/4/94, effective 3/7/94)

WAC 246-915-120 Applicants from unapproved schools. ~~((Applicants who have not graduated from a physical therapy program approved by the board must have a valid, unencumbered license to practice physical therapy in the country in which the physical therapy education was obtained must have graduated from a program of physical therapy education with requirements substantially equal to those required of graduates of board approved schools, and must submit an application for review by the board. Supporting documentation will include but not be limited to:~~

~~(1) Official transcript from the physical therapy program showing degree date;~~

~~(2) Evaluation report of transcripts from a credentialing service approved by the board;~~

~~(3) Verification that English is the national language of the country where the physical therapy program is located and the physical therapy program employs English as the language of training; or achieved a score of not less than five hundred fifty on the test of English as a foreign language (TOEFL); and that the applicant has a score of not less than two hundred thirty on the test of spoken English (TSE);~~

~~(4) Verification of a valid, unencumbered license or authorization to practice physical therapy from the country in which the physical therapy education was obtained.))~~ (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.

WSR 06-24-138

PROPOSED RULES

DEPARTMENT OF HEALTH

(Board of Osteopathic Medicine and Surgery)

[Filed December 6, 2006, 10:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-11-091.

Title of Rule and Other Identifying Information: New sections for osteopathic physicians: WAC 246-853-600 Sexual misconduct and 246-853-610 Abuse; and osteopathic physician assistants: WAC 246-854-200 Sexual misconduct and 246-854-210 Abuse. The rules will specify the types of sexual misconduct and boundary violations, which include

abuse, that will be considered unprofessional conduct for osteopathic physicians and osteopathic physician assistants.

Hearing Location(s): St. Francis Hospital, 34515 9th Avenue South, Federal Way, WA 98003, on January 26, 2007, at 9:00 a.m.

Date of Intended Adoption: January 26, 2007.

Submit Written Comments to: Arlene Robertson, Board of Osteopathic Medicine and Surgery, P.O. Box 47866, Olympia, WA 98504-7866, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2406, by January 19, 2007.

Assistance for Persons with Disabilities: Contact Arlene Robertson by January 19, 2007, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board of osteopathic medicine and surgery (board) is proposing new rules to establish consistent and enforceable definitions of abuse and sexual misconduct with patients or former patients for osteopathic physicians and osteopathic physician assistants (practitioners). Because it is a greater challenge to clearly define some behaviors as moral turpitude, the proposed rules will allow the board to take action on a broader range of inappropriate behaviors. The proposed rules will also help practitioners avoid inappropriate behavior and educate the public on expectations from their health care provider.

Reasons Supporting Proposal: The proposed rules will define sexual misconduct and abuse, regarding practitioner/patient relationships. The board's intent is to protect the public from practitioners who use their position to foster inappropriate conduct with patients. The proposed rules will create enforceable standards for the board to take action against osteopathic physicians and osteopathic physician assistants who violate the sexual misconduct and patient abuse standards. The proposal responds to the governor's executive order to promote patient safety and awareness.

Statutory Authority for Adoption: RCW 18.57.005, 18.130.050.

Statute Being Implemented: RCW 18.130.180.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, board of osteopathic medicine and surgery, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Arlene Robertson, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4945.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared under RCW 19.85.030(1) because the proposed rule language does not impose costs to businesses within an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Arlene Robertson, P.O. Box 47866, Olympia, WA 98504-7866, phone (360) 236-4945, fax (360) 236-2406, e-mail arlene.robertson@doh.wa.gov.

December 4, 2006

Blake T. Maresh
Executive Director

NEW SECTION

WAC 246-853-600 Sexual misconduct. (1) Definitions:

(a) "Patient" means a person who is receiving health care or treatment, or has received health care or treatment without a termination of the osteopathic physician-patient relationship. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent and context of the professional relationship between the osteopathic physician and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor.

(b) "Osteopathic physician" means a person licensed to practice osteopathic medicine and surgery under chapter 18.57 RCW.

(c) "Key third party" means a person in a close personal relationship with the patient and includes, but is not limited to, spouses, partners, parents, siblings, children, guardians and proxies.

(2) An osteopathic physician shall not engage in sexual misconduct with a current patient or a key third party. An osteopathic physician engages in sexual misconduct when he or she engages in the following behaviors with a patient or key third party:

- (a) Sexual intercourse or genital to genital contact;
- (b) Oral to genital contact;
- (c) Genital to anal contact or oral to anal contact;
- (d) Kissing in a romantic or sexual manner;
- (e) Touching breasts, genitals or any sexualized body part for any purpose other than appropriate examination or treatment;
- (f) Examination or touching of genitals without using gloves;
- (g) Not allowing a patient the privacy to dress or undress;
- (h) Encouraging the patient to masturbate in the presence of the osteopathic physician or masturbation by the osteopathic physician while the patient is present;
- (i) Offering to provide practice-related services, such as medication, in exchange for sexual favors;
- (j) Soliciting a date;
- (k) Engaging in a conversation regarding the sexual history, preferences or fantasies of the osteopathic physician.

(3) An osteopathic physician shall not engage in any of the conduct described in subsection (2) of this section with a former patient or key third party if the osteopathic physician:

- (a) Uses or exploits the trust, knowledge, influence, or emotions derived from the professional relationship; or
- (b) Uses or exploits privileged information or access to privileged information to meet the osteopathic physician's personal or sexual needs.

(4) To determine whether a patient is a current patient or a former patient, the board will analyze each case individually, and will consider a number of factors, including, but not limited to, the following:

- (a) Documentation of formal termination;
- (b) Transfer of the patient's care to another health care provider;
- (c) The length of time that has passed;

- (d) The length of time of the professional relationship;
- (e) The extent to which the patient has confided personal or private information to the osteopathic physician;
- (f) The nature of the patient's health problem;
- (g) The degree of emotional dependence and vulnerability.

(5) This section does not prohibit conduct that is required for medically recognized diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.

(6) It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.

(7) A violation of any provision of this rule shall constitute grounds for disciplinary action.

NEW SECTION

WAC 246-853-610 Abuse. (1) An osteopathic physician commits unprofessional conduct if the osteopathic physician abuses a patient or key third party. An osteopathic physician abuses a patient when he or she:

- (a) Makes statements regarding the patient's body, appearance, sexual history, or sexual orientation that have no legitimate medical or therapeutic purpose;
- (b) Removes a patient's clothing or gown without consent;
- (c) Fails to treat an unconscious or deceased patient's body or property respectfully;
- (d) Engages in any conduct, whether verbal or physical, which unreasonably demeans, humiliates, embarrasses, threatens, or harms a patient.

(2) A violation of any provision of this rule shall constitute grounds for disciplinary action.

NEW SECTION

WAC 246-854-200 Sexual misconduct. (1) Definitions:

(a) "Patient" means a person who is receiving health care or treatment, or has received health care or treatment without a termination of the osteopathic physician assistant-patient relationship. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent and context of the professional relationship between the osteopathic physician assistant and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor.

(b) "Osteopathic physician assistant" means a person licensed to practice osteopathic medicine and surgery under chapter 18.57A RCW.

(c) "Key third party" means a person in a close personal relationship with the patient and includes, but is not limited to, spouses, partners, parents, siblings, children, guardians and proxies.

(2) An osteopathic physician assistant shall not engage in sexual misconduct with a current patient or a key third party. An osteopathic physician assistant engages in sexual misconduct when he or she engages in the following behaviors with a patient or key third party:

- (a) Sexual intercourse or genital to genital contact;
- (b) Oral to genital contact;
- (c) Genital to anal contact or oral to anal contact;
- (d) Kissing in a romantic or sexual manner;
- (e) Touching breasts, genitals or any sexualized body part for any purpose other than appropriate examination or treatment;
- (f) Examination or touching of genitals without using gloves;
- (g) Not allowing a patient the privacy to dress or undress;
- (h) Encouraging the patient to masturbate in the presence of the osteopathic physician assistant or masturbation by the osteopathic physician assistant while the patient is present;
- (i) Offering to provide practice-related services, such as medication, in exchange for sexual favors;
- (j) Soliciting a date;
- (k) Engaging in a conversation regarding the sexual history, preferences or fantasies of the osteopathic physician assistant.

(3) An osteopathic physician assistant shall not engage in any of the conduct described in subsection (2) of this section with a former patient or key third party if the osteopathic physician assistant:

- (a) Uses or exploits the trust, knowledge, influence, or emotions derived from the professional relationship; or
- (b) Uses or exploits privileged information or access to privileged information to meet the osteopathic physician assistant's personal or sexual needs.

(4) To determine whether a patient is a current patient or a former patient, the board will analyze each case individually, and will consider a number of factors, including, but not limited to, the following:

- (a) Documentation of formal termination;
- (b) Transfer of the patient's care to another health care provider;
- (c) The length of time that has passed;
- (d) The length of time of the professional relationship;
- (e) The extent to which the patient has confided personal or private information to the osteopathic physician assistant;
- (f) The nature of the patient's health problem;
- (g) The degree of emotional dependence and vulnerability.

(5) This section does not prohibit conduct that is required for medically recognized diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.

(6) It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.

(7) A violation of any provision of this rule shall constitute grounds for disciplinary action.

NEW SECTION

WAC 246-854-210 Abuse. (1) An osteopathic physician assistant commits unprofessional conduct if the osteopathic physician assistant abuses a patient or key third party. An osteopathic physician assistant abuses a patient when he or she:

(a) Makes statements regarding the patient's body, appearance, sexual history, or sexual orientation that have no legitimate medical or therapeutic purpose;

(b) Removes a patient's clothing or gown without consent;

(c) Fails to treat an unconscious or deceased patient's body or property respectfully; or

(d) Engages in any conduct, whether verbal or physical, which unreasonably demeans, humiliates, embarrasses, threatens, or harms a patient.

(2) A violation of any provision of this rule shall constitute grounds for disciplinary action.