

WSR 07-06-041
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
[Filed March 1, 2007, 2:37 p.m., effective April 1, 2007]

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

Purpose: The new and amended sections clarify and update policies for dental-related services for clients age twenty-one and older; 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 age twenty-one and older; and repeal WAC 388-535-1270 and 388-535-1290 and incorporate updated policy into new sections. Clients and dental providers will be able to identify the requirements and criteria that must be met in order to obtain covered dental-related services.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-535-1270 and 388-535-1290; and amending WAC 388-535-1050, 388-535-1065, 388-535-1255, and 388-535-1280.

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

Adopted under notice filed as WSR 07-02-088 (part 1 of 4), 07-02-089 (part 2 of 4), 07-02-090 (part 3 of 4), and 07-02-091 (part 4 of 4) on January 3, 2007.

Changes Other than Editing from Proposed to Adopted Version: **Amended Sections:**

WAC 388-535-1247 (1) Subject to coverage limitations, ~~the department pays for ...when the services and procedures: ...~~(d) Are documented in the client's record in accordance with chapter 388-502 WAC:

~~(d)~~ (e) Are within prevailing standard of care accepted dental or medical practice standards;

~~(e)~~ (f) Are consistent...;

~~(f)~~ (g) Are reasonable...; and

~~(g)~~ (h) Are listed...

WAC 388-535-1266 (1)(a) Requires prior authorization... In addition, the department requires the dental provider to ~~submit all the following~~: (i) ~~Submit~~: (A) Appropriate and diagnostic radiographs of all remaining teeth; ~~(ii)~~ (B) A dental record that identifies: ~~(A)~~ (I) All missing teeth for both arches; ~~(B)~~ (II) Teeth that are to be extracted; and ~~(C)~~ (III) Dental and periodontal services completed on all remaining teeth. ~~(iii)~~ (C) A prescription written ...

(ii) Obtain a signed agreement of acceptance from the client at the conclusion of the final denture try-in for a department authorized complete denture or a cast-metal denture described in this section. If the client abandons the complete denture or the cast-metal partial denture after signing the agreement of acceptance, the department will deny subsequent requests for the same type dental prosthesis if the request occurs prior to the dates specified in this section. A copy of the signed agreement that documents the client's acceptance of the dental prosthesis must be submitted to the

department's dental prior authorization section before the department pays the claim.

WAC 388-535-1267 (1)(h) Covers alveoloplasty:—~~(i) Only only when three or more teeth are extracted per arch; and (ii) That is not performed in conjunction with extractions only on a case-by-case basis and when prior authorized.~~

A final cost-benefit analysis is available by contacting Dr. John Davis, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1748, fax (360) 568-1590, e-mail davisjs@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 9, Amended 4, Repealed 2.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 9, Amended 4, Repealed 2.

Date Adopted: February 27, 2007.

Robin Arnold-Williams
Secretary

AMENDATORY SECTION (Amending WSR 04-14-100, filed 7/6/04, effective 8/6/04)

WAC 388-535-1050 Dental-related definitions. The following definitions and abbreviations and those found in WAC 388-500-0005 apply to this chapter. The ~~((medical assistance administration (MAA)))~~ department also uses dental definitions found in the American Dental Association's Current Dental Terminology (CDT) and the American Medical Association's Physician's Current Procedural Terminology (CPT). Where there is any discrepancy between the CDT or CPT and this section, this section prevails. (CPT is a trademark of the American Medical Association.)

"**Access to baby and child dentistry (ABCD)**" is a program to increase access to dental services in targeted areas for Medicaid eligible infants, toddlers, and preschoolers up through the age of five. See WAC 388-535-1300 for specific information.

"**American Dental Association (ADA)**" is a national organization for dental professionals and dental societies.

~~((**Adult** for the general purposes of the medical assistance administration's (MAA) dental program, means a client twenty-one years of age or older (MAA's payment structure changes at age nineteen, which affects specific program services provided to adults or children):))~~

"**Anterior**" ~~((means teeth))~~ refers to teeth (maxillary and mandibular incisors and canines) and tissue in the front of the mouth. Permanent maxillary anterior teeth include teeth six, seven, eight, nine, ten, and eleven. Permanent mandibular anterior teeth include teeth twenty-two, twenty-three,

twenty-four, twenty-five, twenty-six, and twenty-seven. Primary maxillary anterior teeth include teeth C, D, E, F, G, and H. Primary mandibular anterior teeth include teeth M, N, O, P, Q, and R.

~~((1) "Mandibular anterior teeth" — incisors and canines: Permanent teeth twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, and twenty-seven; and primary teeth M, N, O, P, Q, and R.~~

~~(2) "Maxillary anterior teeth" — incisors and canines: Permanent teeth six, seven, eight, nine, ten, and eleven; and primary teeth C, D, E, G, and H.)~~

"**Asymptomatic**" means having or producing no symptoms.

"**Base metal**" means dental alloy containing little or no precious metals.

"**Behavior management**" means using the assistance of one additional dental professional staff to manage the behavior of ~~((a developmentally disabled client or))~~ a client ~~((age eighteen or younger))~~ to facilitate the delivery of dental treatment.

"**By report**" - a method of reimbursement in which ~~((MAA))~~ the department determines the amount it will pay for a service when the rate for that service is not included in ~~((MAA's))~~ the department's published fee schedules. Upon request the provider must submit a "report" which describes the nature, extent, time, effort and/or equipment necessary to deliver the service.

"**Caries**" means carious lesions or tooth decay through the enamel or decay of the root surface.

~~((**"Child"** for the general purposes of the medical assistance administration's (MAA) dental program, means a client twenty years of age or younger. (MAA's payment structure changes at age nineteen, which affects specific program services provided to children or adults.))~~

"**Comprehensive oral evaluation**" means a thorough evaluation and ~~((recording))~~ documentation of a client's dental and medical history to include extra-oral and intra-oral hard and soft tissues, dental caries, missing or unerupted teeth, restorations, occlusal relationships, periodontal conditions (including periodontal charting), hard and soft tissue anomalies, and oral cancer screening.

"**Conscious sedation**" is a drug-induced depression of consciousness during which a client~~(s)~~ responds purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, spontaneous ventilation is adequate, and cardiovascular function is maintained.

"**Core buildup**" refers to building up of clinical crowns, including pins.

"**Coronal**" is the portion of a tooth that is covered by enamel~~(, and is separated from the root or roots by a slightly constricted region, known as the cemento-enamel junction))~~.

"**Coronal polishing**" is a mechanical procedure limited to the removal of plaque and stain from exposed tooth surfaces.

"**Crown**" means a restoration covering or replacing ~~((the major))~~ part~~(;)~~ or the whole ~~((of, the))~~ clinical crown of a tooth.

"**Current dental terminology (CDT)**" is a systematic listing of descriptive terms and identifying codes for report-

ing dental services and procedures performed by dental practitioners. CDT is published by the Council on Dental Benefit Programs of the American Dental Association (ADA).

~~"**Current procedural terminology (CPT)**" ~~((means a description of medical procedures and is available from the American Medical Association of Chicago, Illinois)) is a systematic listing of descriptive terms and identifying codes for reporting medical services, procedures, and interventions performed by physicians and other practitioners who provide physician-related services. CPT is copyrighted and published annually by the American Medical Association (AMA).~~~~

"**Decay**" is a term for caries or carious lesions and means decomposition of tooth structure.

"**Deep sedation**" is a drug-induced depression of consciousness during which a client cannot be easily aroused, ventilatory function may be impaired, but the client responds to repeated or painful stimulation.

"**Dental general anesthesia**" see "**general anesthesia.**"

"**Dentures**" means an artificial replacement for natural teeth and adjacent tissues, and includes complete dentures, immediate dentures, overdentures, and partial dentures.

"**Denturist**" means a person licensed under chapter 18.30 RCW to make, construct, alter, reproduce, or repair a denture.

"**Endodontic**" means ~~((disease and injuries to the pulp requiring root canal therapy and related follow-up))~~ the etiology, diagnosis, prevention and treatment of diseases and injuries of the pulp and associated periradicular conditions.

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

"**Extraction**" see "**simple extraction**" and "**surgical extraction.**"

"**Flowable composite ~~((resin))~~" is a ~~((low viscosity resin))~~ diluted resin-based composite dental restorative material that is used in cervical ~~((lesions))~~ restorations and ~~((other))~~ small, low stress bearing occlusal restorations.**

"**Fluoride varnish, rinse, foam or gel**" ~~((means))~~ is a substance containing dental fluoride~~(;)~~ which is applied to teeth.

"**General anesthesia**" is a drug-induced loss of consciousness during which a client~~(s-are))~~ is not arousable even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Clients may require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

"**High noble metal**" ~~((means))~~ is a dental alloy containing at least sixty percent pure gold.

"**Limited oral evaluation**" ~~((means))~~ is an evaluation limited to a specific oral health condition or problem. Typically a client receiving this type of evaluation has a dental emergency, such as trauma or acute infection.

"**Limited visual oral assessment**" ~~((means a screening of the hard and soft tissues in the mouth))~~ is an assessment by

a dentist or dental hygienist to determine the need for fluoride treatment and/or when triage services are provided in settings other than dental offices or dental clinics.

"Major bone grafts" ((means)) is a transplant of solid bone tissue(s).

"Medically necessary" see WAC 388-500-0005.

"Minor bone grafts" ((means)) is a transplant of non-solid bone tissue(s), such as powdered bone, buttons, or plugs.

"Noble metal" ((means)) is a dental alloy containing at least twenty-five percent but less than sixty percent pure gold.

"Oral evaluation" see **"comprehensive oral evaluation."**

"Oral hygiene instruction" means instruction for home oral hygiene care, such as tooth brushing techniques or flossing.

"Oral prophylaxis" ((means)) is the ((preventive)) dental procedure of scaling and polishing which includes removal of calculus, ((soft deposits)) plaque, and stains from teeth ((and tooth implants)).

"Partials" or "partial dentures" ((means)) are a removable prosthetic appliance ((replacing one or more)) that replaces missing teeth in one arch((-and receiving its support and retention from both the underlying tissues and some or all of the remaining teeth)).

"Periodic oral evaluation" ((means)) is an evaluation performed on a patient of record to determine any changes in the client's dental or medical status since a previous comprehensive or periodic evaluation. ((This includes a periodontal charting at least once per year.))

"Periodontal maintenance" ((means)) is a procedure ((for clients who have previously been treated for periodontal disease and starts after completion of active (surgical or non-surgical) periodontal therapy. It includes removal of the supra and subgingival microbial flora and calculus from teeth and tooth implants)) performed for clients who have previously been treated for periodontal disease with surgical or nonsurgical treatment. It includes the removal of supragingival and subgingival microorganisms and deposits with hand and mechanical instrumentation, an evaluation of periodontal conditions, and a complete periodontal charting as appropriate.

"Periodontal scaling and root planing" ((means instrumentation of the crown and root surfaces of the teeth or tooth implants)) is a procedure to remove plaque, calculus, ((microbial flora, and bacterial toxins)) microorganisms, and rough cementum and dentin from tooth surfaces. This includes hand and mechanical instrumentation, an evaluation of periodontal conditions, and a complete periodontal charting as appropriate.

"Posterior" ((means)) refers to the teeth (maxillary and mandibular premolars and molars) and tissue towards the back of the mouth. Permanent maxillary posterior teeth include teeth one, two, three, four, five, twelve, thirteen, fourteen, fifteen, and sixteen. Permanent mandibular posterior teeth include teeth seventeen, eighteen, nineteen, twenty, twenty-one, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two. Primary maxillary posterior teeth include teeth A,

B, I, and J. Primary mandibular posterior teeth include teeth K, L, S, and T.

((1) ~~"Mandibular posterior teeth"~~— molars and premolars: Permanent teeth seventeen, eighteen, nineteen, twenty, twenty-one, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two; and primary teeth K, L, S, and T.

(2) ~~"Maxillary posterior teeth"~~— molars and premolars: Permanent teeth one, two, three, four, five, twelve, thirteen, fourteen, fifteen, and sixteen; and primary teeth A, B, I, and J.))

"Proximal" ((means)) is the surface of the tooth near or next to the adjacent tooth.

"Radiograph" is an image or picture produced on a radiation sensitive film emulsion or digital sensor by exposure to ionizing radiation.

"Reline" means to resurface the tissue side of a denture with new base material or soft tissue conditioner in order to achieve a more accurate fit.

"Root canal" is ((a portion of the pulp cavity inside the root of a tooth and)) the chamber within the root of the tooth that contains the pulp.

"Root canal therapy" is the treatment of ((disease and injuries of)) the pulp and associated periradicular conditions.

"Root planing" is a procedure to remove ((microbial flora, bacterial toxins)) plaque, calculus, ((and diseased)) microorganisms, and rough cementum ((or dentin on the root)) and dentin from tooth surfaces ((and pockets, including tooth implants)). This includes hand and mechanical instrumentation.

"Scaling" is a procedure to remove plaque, calculus, and stain deposits from tooth surfaces((-including tooth implants)).

"Sealant" is a dental material applied to teeth to prevent dental caries.

"Simple extraction" ((means)) is the routine removal of a tooth ((structure)).

"Standard of care" means what reasonable and prudent practitioners would do in the same or similar circumstances.

"Surgical extraction" ((means)) is the removal of a tooth ((structure with)) by cutting of the gingiva and bone((-including)). This includes soft tissue extractions, partial boney extractions, and complete boney extractions.

"Symptomatic" means having symptoms (e.g., pain, swelling, and infection).

"((Temporomandibular)) Temporomandibular joint dysfunction (TMJ/TMD)" ((means)) is an abnormal functioning of the ((temporomandibular)) temporomandibular joint or other areas secondary to the dysfunction.

"Therapeutic pulpotomy" ((means)) is the surgical removal of a portion of the pulp (inner soft tissue of a tooth), to retain the healthy remaining pulp.

"Usual and customary" means the fee that the provider usually charges non-Medicaid customers for the same service or item. This is the maximum amount that the provider may bill ((MAA)) the department.

"Wisdom teeth" ((means)) are the third molars, teeth one, sixteen, seventeen, and thirty-two.

"Xerostomia" ((means)) is a dryness of the mouth due to decreased saliva.

AMENDATORY SECTION (Amending WSR 04-14-100, filed 7/6/04, effective 8/6/04)

WAC 388-535-1065 Coverage limits for dental-related services provided under ~~((state only funded))~~ the GA-U and ADATSA programs. (1) Clients who receive medical care services under the following ~~((state funded only))~~ programs may receive ~~((only the limited coverage))~~ the dental-related services described in ~~((subsection (2) of))~~ this section:

(a) General assistance unemployable (GA-U); and
(b) Alcohol and drug abuse treatment and support act (ADATSA) ~~((GA-W))~~.

(2) The ~~((medical assistance administration (MAA)))~~ department covers the following dental-related services ~~((described and limited in this chapter))~~ for a client~~((s))~~ eligible ~~((for))~~ under the GA-U or ~~((GA-W only when those services are provided as part of a medical treatment for))~~ ADATSA program:

(a) ~~((Apical abscess verified by clinical examination and radiograph(s), and treated by))~~ Services provided only as part of dental treatment for:

- (i) Limited oral evaluation;
- (ii) Periapical or bite-wing radiographs that are medically necessary to diagnose only the client's chief complaint;
- (iii) Palliative treatment ~~((e.g., open and drain, open and breach))~~ to relieve dental pain;
- ~~((ii) Tooth extraction; or~~
- ~~((iii) Root canal therapy for permanent anterior teeth only;~~
- ~~(b) Tooth fractures (limited to extraction);~~
- ~~(c) Total dental extraction prior to and because of radiation therapy for cancer of the mouth))~~
- (iv) Pulpal debridement to relieve dental pain; or
- (v) Endodontic (root canal only) treatment for maxillary and mandibular anterior teeth (cuspids and incisors) when prior authorized).

(b) Tooth extraction when at least one of the following apply:

- (i) The tooth has a radiograph apical lesion;
- (ii) The tooth is endodontically involved, infected, or abscessed;
- (iii) The tooth is not restorable; or
- (iv) The tooth is not periodontally stable.

(3) Tooth extractions require prior authorization when:
(i) The extraction of a tooth or teeth results in the client becoming edentulous in the maxillary arch or mandibular arch; and

(ii) A full mouth extraction is necessary because of radiation therapy for cancer of the head and neck.

(4) Each dental-related procedure described under this section is subject to the coverage limitations listed in chapter 388-535 WAC for clients through age twenty.

(5) The department does not cover any dental-related services not listed in this section for clients eligible under the GA-U or ADATSA program, including any type of removable prosthesis (denture).

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

NEW SECTION

WAC 388-535-1247 Dental-related services for clients age twenty-one and older-General. (1) Subject to coverage limitations, the department pays for dental-related services and procedures provided to clients age twenty-one and older when the services and procedures:

- (a) Are within the scope of an eligible client's medical care program;
- (b) Are medically necessary as defined in WAC 388-500-0005;
- (c) Meet the department's prior authorization requirements, if any;
- (d) Are documented in the client's record in accordance with chapter 388-502 WAC;
- (e) Are within prevailing standard of care accepted dental or medical practice standards;
- (f) Are consistent with a diagnosis of dental disease or condition;
- (g) Are reasonable in amount and duration of care, treatment, or service; and
- (h) Are listed as covered in the department's published rules, billing instructions and fee schedules.

(2) Clients who are eligible for services through the division of developmental disabilities may receive dental-related services under the provisions of WAC 388-535-1099.

(3) 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 under the provisions in WAC 388-501-0160.

AMENDATORY SECTION (Amending WSR 03-19-079, filed 9/12/03, effective 10/13/03)

WAC 388-535-1255 Covered dental-related services—Adults. ~~((1))~~ The medical assistance administration (MAA) pays for covered dental and dental-related services for adults 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 adults, subject to the restrictions and limitations in this section and other applicable WAC:~~

(a) ~~Medically necessary services for the identification of dental problems or the prevention of dental disease, subject to the limitations of this chapter.~~

(b) ~~A comprehensive oral evaluation once per provider as an initial examination, that must include:~~

- (i) ~~A complete dental and medical history and a general health assessment;~~
- (ii) ~~A complete thorough evaluation of extra-oral and intra-oral hard and soft tissue; and~~

(iii) The evaluation and recording of dental caries, missing or unerupted teeth, restorations, occlusal relationships, periodontal conditions (including periodontal charting), hard and soft tissue anomalies, and oral cancer screening.

(c) Periodic oral evaluations once every six months to include a periodontal screening/charting at least once per year. There must be six months between the comprehensive oral evaluation and the first periodic oral evaluation.

(d) Limited oral evaluations only when the provider is not providing prescheduled dental services for the client. The limited oral evaluation must be:

(i) To provide limited or emergent services for a specific dental problem; and/or

(ii) To provide an evaluation for a referral.

(e) Radiographs, as follows:

(i) Intraoral, complete series (including bitewings); allowed only once in a three-year period;

(ii) Panoramic film, allowed only once in a three-year period and only for oral surgical purposes (see subsection (3) of this section for clients of the division of developmental disabilities);

(iii) Periapical radiographs as needed (periapical radiographs and bitewings taken on the same date of service cannot exceed MAA's fee for a complete intraoral series); and

(iv) Bitewings, up to four allowed every twelve months.

(f) Fluoride treatment as follows (see subsection (3) of this section for clients of the division of developmental disabilities):

(i) Topical application of fluoride gel or fluoride varnish for adults age nineteen through sixty-four with xerostomia (requires prior authorization); and

(ii) Topical application of fluoride gel or fluoride varnish for adults age sixty-five and older for:

(A) Rampant root surface decay; or

(B) Xerostomia.

(g) Oral prophylaxis treatment, which is:

(i) Allowed once every twelve months for adults age nineteen and older, including nursing facility clients, and for clients of the division of developmental disabilities as provided in subsection (3) of this section;

(ii) Not reimbursed when oral prophylaxis treatment is performed on the same date of service as periodontal sealing and root planing, gingivectomy, or gingivoplasty; and

(iii) Reimbursed only if periodontal maintenance is not billed for the same client within the same twelve-month period.

(h) Restoration of teeth and maintenance of dental health, subject to the limitations in WAC 388-535-1265 and the following:

(i) Amalgam and composite restorations are allowed once for the same surface of the same tooth per client, per provider;

(ii) Multiple restorations involving the proximal and occlusal surfaces of the same tooth are considered to be a single multisurface restoration. Payment is limited to that of a single multisurface restoration.

(iii) Proximal restorations that do not involve the incisal angle in the anterior teeth are considered to be a two-surface restoration. Payment is limited to a two-surface restoration.

(iv) Proximal restorations that involve the incisal angle are considered to be either a three- or four-surface restoration. All surfaces must be listed on the claim for payment.

(v) MAA pays for a maximum of six surfaces for a posterior tooth, which is allowed once per client, per provider, in a two-year period.

(vi) MAA pays for a maximum of six surfaces for an anterior tooth, which is allowed once per client, per provider, in a two-year period.

(vii) MAA pays for a core buildup on an anterior or a posterior tooth, including any pins, which is allowed once per client, per provider, in a two-year period, subject to the following:

(A) MAA does not pay for a core buildup when a permanent or temporary crown is being placed on the same tooth.

(B) MAA does not pay for a core buildup when placed in combination with any other restoration on the same tooth.

(viii) MAA pays for flowable composites as a restoration only, when used with a cavity preparation for a carious lesion that penetrates through the enamel:

(A) As a small Class I (occlusal) restoration; or

(B) As a Class V (buccal or lingual) restoration.

(i) Endodontic (root canal) therapy for permanent anterior teeth only.

(j) Periodontal sealing and root planing, which is:

(i) Allowed for clients of the division of developmental disabilities as provided in subsection (3) of this section;

(ii) Allowed for clients age nineteen and older;

(iii) Allowed only when the client has radiographic evidence of periodontal disease. There must be supporting documentation in the client's record, including complete periodontal charting and a definitive periodontal diagnosis;

(iv) Allowed once per quadrant in a twenty-four month period;

(v) Allowed only when the client's clinical condition meets existing periodontal guidelines; and

(vi) Not allowed when performed on the same date of service as oral prophylaxis, periodontal maintenance, gingivectomy or gingivoplasty. Refer to subsection (2)(g) of this section for limitations on oral prophylaxis. Refer to subsection (2)(k) of this section for limitations on periodontal maintenance.

(k) Periodontal maintenance, which is:

(i) Allowed for clients of the division of developmental disabilities as provided in subsection (3) of this section;

(ii) Allowed for clients age nineteen and older;

(iii) Allowed only when the client has been previously treated for periodontal disease, including surgical or nonsurgical periodontal therapy;

(iv) Allowed when supporting documentation in the client's record includes a definitive periodontal diagnosis and complete periodontal charting;

(v) Allowed when the client's clinical condition meets existing periodontal guidelines;

(vi) Allowed when periodontal maintenance starts at least twelve months after completion of periodontal sealing and root planing or surgical treatment and paid only at twelve month intervals;

(vii) Not reimbursed when the periodontal maintenance is performed on the same date of service as periodontal sealing and root planing, gingivectomy, or gingivoplasty; and

(viii) Reimbursed only if oral prophylaxis is not billed for the same client within the same twelve-month period.

(l) Dentures and partial dentures according to WAC 388-535-1290.

(m) Simple extractions (includes local anesthesia, suturing, and routine postoperative care).

(n) Surgical extractions, subject to the following:

(i) Includes local anesthesia, suturing, and routine postoperative care; and

(ii) Requires documentation in the client's file to support soft tissue, partially bony, or completely bony extractions.

(o) Medically necessary oral surgery when coordinated with the client's managed care plan (if any).

(p) Palliative (emergency) treatment of dental pain and infections, minor procedures, which is:

(i) Allowed once per client, per day.

(ii) Reimbursed only when performed on a different date from:

(A) Any other definitive treatment necessary to diagnose the emergency condition; and

(B) Root canal therapy.

(iii) Reimbursed only when a description of the service is included in the client's record.

(q) Behavior management that requires the assistance of one additional dental professional staff for clients of the division of developmental disabilities. See subsection (3) of this section.

(3) For clients of the division of developmental disabilities, MAA allows services as follows:

(a) Fluoride application, either varnish or gel, three times per calendar year;

(b) One of the following combinations of preventive or periodontal procedures, subject to the limitations listed:

(i) Prophylaxis or periodontal maintenance, three times per calendar year;

(ii) Periodontal sealing and root planing, two times per calendar year; or

(iii) Prophylaxis or periodontal maintenance, two times per calendar year, and periodontal sealing and root planing, once per calendar year.

(c) Gingivectomy or gingivoplasty, allowed for four or more contiguous teeth or bounded teeth spaces per quadrant, once every three years.

(d) Nitrous oxide;

(e) Behavior management that requires the assistance of one additional dental professional staff. A description of behavior management must be documented in the client's record;

(f) Panoramic radiographs;

(g) General anesthesia or conscious sedation with parenteral or multiple oral agents when medically necessary for providing treatment; and

(h) Limited visual oral assessment (does not replace an oral evaluation) when the assessment includes appropriate referrals, charting of patient data and oral health status and informing the client's parent or guardian of the results, and when at least one of the following occurs:

(i) The provision of triage services;

(ii) An intraoral screening of soft tissues by a public health dental hygienist to assess the need for prophylaxis, fluoride varnish, or referral for other dental treatments by a dentist; or

(iii) In circumstances where the client will be referred to a dentist for treatment, the referring provider will not provide treatment or provide a full evaluation at the time of the assessment.

(4) MAA covers dental services that are medically necessary and 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;

(b) Short stays when the procedure cannot be done in an office setting. See WAC 388-550-1100(6); and

(c) A hospital call, including emergency care, allowed one per day, per client, per provider.

(5) MAA covers general anesthesia and conscious sedation with parenteral or multiple oral agents for medically necessary dental services as follows:

(a) For treatment of clients who are eligible under the division of developmental disabilities.

(b) For oral surgery procedures.

(c) When justification for administering the general anesthesia instead of a lesser type of sedation is clearly documented in the client's record.

(d) When the anesthesia is administered by:

(i) An oral surgeon who has a current conscious sedation permit or a current general anesthesia permit from DOH;

(ii) An anesthesiologist;

(iii) A dental anesthesiologist who has a current conscious sedation permit or a current general anesthesia permit from DOH;

(iv) A certified registered nurse anesthetist (CRNA), if the performing dentist has a current conscious sedation permit or a current general anesthesia permit from the department of health (DOH); or

(v) A dentist who has a current conscious sedation permit or a current general anesthesia permit from DOH.

(e) When the provider meets the prevailing standard of care and at least the requirements in WAC 246-817-760, Conscious sedations with parenteral or multiple oral agents and WAC 246-817-770, General anesthesia.

(6) MAA pays for anesthesia services according to WAC 388-535-1350.

(7) MAA covers dental-related services for clients residing in nursing facilities or group homes as follows:

(a) Dental services must be requested by the client or the client's surrogate decision-maker as defined in WAC 388-97-055, or a referral for services must be 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; and

(b) Nursing facilities must provide dental-related necessary services according to WAC 388-97-012, Nursing facility care.) The department covers dental-related diagnostic services only as listed in this section for clients age twenty-one and older (for dental-related services provided to clients eli-

gible under the GA-U or ADATSA program, see WAC 388-535-1065).

(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 twelve months. Twelve 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 dentist, is limited to the initial examination appointment. The department does not cover an additional limited oral examination by a dentist for the same client until three months after the 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 evaluation services;

(ii) Performed to determine the need for 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 required.

(b) Uses the prevailing standard of care to determine the need for dental radiographs.

(c) Covers 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 in the client's record.

(e) Covers up to four bitewing radiographs once in a twelve month period.

(f) Covers panoramic radiographs in conjunction with four bitewings, once in a three-year period, only if the depart-

ment has not paid for an intraoral complete series for the same client in the same three-year period.

(g) 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.

NEW SECTION

WAC 388-535-1257 Covered dental-related services for clients age twenty-one and older-Preventive services. The department covers dental-related preventive services only as listed in this section for clients age twenty-one and older (for dental-related services provided to clients eligible under the GA-U or ADATSA program, see WAC 388-535-1065).

(1) **Dental prophylaxis.** The department covers dental prophylaxis:

(a) Which includes scaling and polishing procedures to remove coronal plaque, calculus, and stains once every twelve months;

(b) Only when the service is performed twelve months after periodontal scaling and root planing, or periodontal maintenance services;

(c) Only when not performed on the same date of service as periodontal scaling and root planing, or periodontal maintenance, gingivectomy or gingivoplasty; and

(d) For clients of the division of development disabilities according to WAC 388-535-1099.

(2) **Topical fluoride treatment.** The department covers:

(a) Fluoride rinse, foam or gel, once within a twelve month period;

(b) Fluoride varnish, rinse, foam or gel for clients who are age sixty-five and older, or clients who reside in alternative living facilities, up to three times within a twelve-month period;

(c) Additional topical fluoride applications when prior authorized; and

(d) Topical fluoride treatment for clients of the division of developmental disabilities according to WAC 388-535-1099.

NEW SECTION

WAC 388-535-1259 Covered dental-related services for clients age twenty-one and older-Restorative services. The department covers dental-related restorative services only as listed in this section for clients age twenty-one and older (for dental-related services provided to clients eligible under the GA-U or ADATSA program, see WAC 388-535-1065).

(1) **Amalgam restorations for permanent teeth.** The department:

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

(b) Considers the occlusal adjustment of either the restored tooth or the opposing tooth or teeth as part of the restoration;

(c) Considers buccal or lingual surface amalgam 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 multiple amalgam restorations of fissures and grooves of the occlusal surface of the same tooth as a one surface restoration;

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

(f) 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;

(g) 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 also (e) of this subsection; and

(h) Does not pay for replacement of an amalgam restoration by the same provider on a permanent posterior tooth 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.

(2) Resin-based composite restorations for 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. The department does not cover sealants for clients age twenty-one and older;

(e) Considers multiple preventive restorative resins or flowable composite resins 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) of posterior teeth or the incisal surface of anterior teeth;

(g) Covers two occlusal resin-based composite restorations for teeth one, two, three, fourteen, fifteen, and sixteen if the restorations are anatomically separated by sound tooth structure;

(h) Covers 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;

(i) Covers 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 also (g) of this subsection;

(j) Covers 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; and

(k) Does not pay for replacement of resin-based composite restorations by the same provider on permanent 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.

(3) Crowns. The department:

(a) Does not cover permanent crowns for clients age twenty-one and older, except for prefabricated stainless steel crowns for posterior permanent teeth on a case-by-case basis when prior authorized; and

(b) Covers crowns for clients of the division of developmental disabilities according to WAC 388-535-1099.

NEW SECTION

WAC 388-535-1261 Covered dental-related services for clients age twenty-one and older-Endodontic services.

The department covers dental-related endodontic services only as listed in this section for clients age twenty-one and older (for dental-related services provided to clients eligible under the GA-U or ADATSA program, see WAC 388-535-1065).

(1) Pulpal debridement. The department covers pulpal debridement on permanent teeth. Pulpal debridement is not covered when performed with palliative treatment or when performed on the same day as endodontic treatment.

(2) Endodontic treatment. The department:

(a) Covers endodontic treatment for permanent anterior teeth only;

(b) Considers the following included in endodontic treatment:

(i) Pulpectomy 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.

(c) 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.

(d) 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 maxillary and mandibular anterior teeth only.

(e) 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.
- (f) Does not pay for endodontic retreatment when provided by the original treating provider or clinic.

NEW SECTION

WAC 388-535-1263 Covered dental-related services for clients age twenty-one and older - Periodontic services. The department covers dental-related periodontic services only as listed in this section for clients age twenty-one and older (for dental-related services provided to clients eligible under the GA-U or ADATSA program, see WAC 388-535-1065).

(1) **Surgical periodontal services.** The department covers surgical periodontal services, including all postoperative care for clients of the division of development 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 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) Considers ultrasonic scaling, gross scaling, or gross debridement to be included in the procedure and not a substitution for periodontal scaling and root planing.

(c) 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.

(d) 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 when:

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

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

(iii) The client's clinical condition meets existing 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 only if performed on a different date of service as prophylaxis, periodontal scaling and root planing, gingivectomy, or gingivoplasty.

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

NEW SECTION

WAC 388-535-1266 Covered dental-related services for clients age twenty-one and older - Prosthodontics (removable). The department covers dental-related prosthodontics (removable) services only as listed in this section for clients age twenty-one and older (for dental-related services provided to clients eligible under the GA-U or ADATSA program, see WAC 388-535-1065).

(1) **Removable prosthodontics.** The department:

(a) Requires prior authorization requests for all removable prosthodontics and prosthodontic-related procedures listed in this subsection. Prior authorization requests must meet the criteria in WAC 535-1280. In addition, the department requires the dental provider to:

(i) Submit:

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

(B) A dental record that identifies:

(I) All missing teeth for both arches;

(II) Teeth that are to be extracted; and

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

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

(ii) Obtain a signed agreement of acceptance from the client at the conclusion of the final denture try-in for a department authorized complete denture or a cast-metal denture described in this section. If the client abandons the complete denture or the cast-metal partial denture after signing the agreement of acceptance, the department will deny subsequent requests for the same type dental prosthesis if the request occurs prior to the dates specified in this section. A copy of the signed agreement that documents the client's acceptance of the dental prosthesis must be submitted to the department's dental prior authorization section before the department pays the claim.

(b) Covers a complete denture, as follows:

(i) A complete denture, including an immediate denture or overdenture, is covered when prior authorized and the complete denture meets department coverage criteria;

(ii) Post-delivery care (e.g., adjustments, soft relines, and repairs) provided within three months of the seat date of a 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 only when the replacement occurs at least six months from the seat date of the immediate denture. The replacement complete denture must be prior authorized; and

(iv) Replacement of a complete denture or overdenture is covered only when the replacement occurs at least five years from 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) Department authorization and payment for a resin or flexible base partial denture for anterior and posterior teeth is based on the following 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 per arch 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 all remaining teeth.

(ii) Post-delivery care (e.g. adjustments, soft relines, and repairs) provided after three months from the seat date of the partial denture, is considered part of the partial denture and is not paid separately; and

(iii) Replacement of a resin or flexible base denture is covered only when the replacement occurs at least three years from the seat date of the partial denture being replaced. The replacement denture must be prior authorized and meet department coverage criteria.

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

(i) A cast metal framework with resin-based denture, including any conventional clasps, rests, and teeth, is covered on a case-by-case basis when prior authorized and department coverage criteria listed in (d)(iv) of this subsection are met.

(ii) Post-delivery care (e.g., adjustments, soft relines, and repairs) provided within three months of the seat date of the cast metal partial denture, is considered part of the partial denture procedure and is not paid separately.

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

(iv) 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;

(F) There is a five-year prognosis, based on the sole discretion of the department, for retention of all remaining teeth.

(v) The department may consider resin partial dentures as an alternative if the criteria for cast metal framework partial dentures listed in (d)(iv) of this subsection do not meet department specifications.

(e) Requires the provider to bill for covered removable prosthetic procedures only after the seating of the prosthesis,

not at the impression date. Refer to (2)(c) and (d) of this subsection if the removable prosthesis is not delivered and inserted.

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

(i) The client's medical diagnosis and 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 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.

(g) Limits removable partial dentures to resin based partial dentures for all clients who reside in one of the facilities listed in (f) of this subsection. The department may consider cast metal partial dentures if the criteria in (d) of this subsection 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 prosthetics.** The department covers:

(a) Repairs to complete and partial dentures;

(b) 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 seat date; and

(c) Laboratory fees, subject to all of the following:

(i) The department does not pay laboratory and professional fees for complete and partial dentures, except as stated in (ii) of this subsection;

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

(A) At the time of delivery of the prosthesis, the patient is no longer an eligible medical assistance client (see also WAC 388-535-1280(3));

(B) The client moves from the state; or

(C) The client dies.

(iii) A provider must submit copies of laboratory prescriptions and receipts or invoices for each claim when billing for laboratory fees.

NEW SECTION

WAC 388-535-1267 Covered dental-related services for clients age twenty-one and older - Oral and maxillofacial surgery services. The department covers oral and maxillofacial surgery services only as listed in this section for clients age twenty-one and older (for dental-related services provided to clients eligible under the GA-U or ADATSA program, see WAC 388-535-1065).

(1) **Oral and maxillofacial surgery services.** The department:

(a) Requires enrolled dental 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) Does not cover oral surgery services described in WAC 388-535-1267 that are performed in a hospital operating room or ambulatory surgery center.

(d) Requires the client's record to include supporting documentation for each type of extraction or any other surgical procedure billed to the department. The documentation must include:

(i) An 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 must be kept in the client's record.

(h) Covers alveoplasty only when three or more teeth are extracted per arch.

(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 incision-related services.** 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; and

(b) Removal of foreign body from mucosa, skin, or subcutaneous alveolar tissue when prior authorized. Documentation supporting medical necessity must be in the client's record.

NEW SECTION

WAC 388-535-1269 Covered dental-related services for clients age twenty-one and older - Adjunctive general services. The department covers dental-related adjunctive general services only as listed in this section for clients age twenty-one and older (for dental-related services provided to clients eligible under the GA-U or ADATSA program, see WAC 388-535-1065).

(1) **Adjunctive general services.** The department:

(a) Covers palliative (emergency) treatment, not to include pulpal debridement, 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 diagnosis and services provided must be documented in the client's record; and

(iii) Appropriate radiographs must be in the client's record to support medical necessity for 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 sedation:

(i) For services listed as covered in WAC 388-535-1267;

(ii) For all current published Current Procedural Terminology (CPT) dental codes;

(iii) When the provider's current valid anesthesia permit is on file with the department; and

(iv) For clients of the division of developmental disabilities according to WAC 388-535-1099.

(d) Covers office based general anesthesia for:

(i) Extraction of three or more teeth;

(ii) Services listed as covered in WAC 388-535-1267 (1)(h) and (j);

(iii) For all current published CPT dental codes;

(iv) When the provider's current valid anesthesia permit is on file with the department; and

(v) For clients of the division of developmental disabilities, according to WAC 388-535-1099.

(e) Covers inhalation of nitrous oxide, once per day.

(f) Requires providers of oral or parenteral conscious sedation, or general anesthesia to meet:

(i) The prevailing standard of care;

(ii) The provider's professional organizational guidelines;

(iii) The requirements in chapter 246-817 WAC; and

(iv) Relevant department of health (DOH) medical, dental, and nursing anesthesia regulations;

(g) Pays for anesthesia services according to WAC 388-535-1350;

(h) 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 for 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. The department does not pay for additional hospital calls if billed for the same client on the same day.

(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 (pharmaceuticals) 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 that requires the assistance of one additional dental staff other than the dentist only for clients of the division of developmental disabilities. See WAC 388-535-1099.

(b) Treatment of post-surgical complications (e.g., dry socket). Documentation supporting the medical necessity for the service must be in the client's record.

NEW SECTION

WAC 388-535-1271 Dental-related services not covered for clients age twenty-one and older. (1) The department does not cover the following for clients age twenty-one and older (see WAC 388-535-1065 for dental-related services for clients eligible under the GA-U or ADATSA program):

(a) The dental-related services and procedures described in subsection (2) of this section;

(b) Any service specifically excluded by statute;

(c) More costly services when less costly, equally effective services as determined by the department are available; and

(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 published documents (e.g., billing instructions).

(2) The department does not cover dental-related services listed under the following categories of service for clients age twenty-one and older:

(a) **Diagnostic services.** The department does not cover:

(i) Detailed and extensive oral evaluations or re-evaluations;

(ii) Comprehensive periodontal evaluations;

(iii) Extraoral or occlusal intraoral radiographs;

(iv) Posterior-anterior or lateral skull and facial bone survey films;

(v) Sialography;

(vi) Any temporomandibular joint films;

(vii) Tomographic survey;

(viii) Cephalometric films;

(ix) Oral/facial photographic images;

(x) Viral cultures, genetic testing, caries susceptibility tests, adjunctive pre-diagnostic tests, or pulp vitality tests; or

(xi) Diagnostic casts.

(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) Oral hygiene instructions (included as part of the global fee for oral prophylaxis);

(iv) Removable space maintainers of any type;

(v) Sealants;

(vi) Space maintainers of any type or recementation of space maintainers; or

(vii) Fluoride trays of any type.

(c) **Restorative services.** The department does not cover:

(i) Restorative/operative procedures performed in a hospital operating room or ambulatory surgical center for clients age twenty-one and older. For clients of the division of developmental disabilities, see WAC 388-535-1099;

(ii) Gold foil restorations;

(iii) Metallic, resin-based composite, or porcelain/ceramic inlay/onlay restorations;

(iv) Prefabricated resin crowns;

(v) Temporary or provisional crowns (including ion crowns);

(vi) Any type of permanent or temporary crown. For clients of the division of developmental disabilities see WAC 388-535-1099;

(vii) Recementation of any crown, inlay/onlay, or any other type of indirect restoration;

(viii) Sedative fillings;

(ix) Preventive restorative resins;

(x) Any type of core buildup, cast post and core, or prefabricated post and core;

(xi) Labial veneer resin or porcelain laminate restoration;

(xii) Any type of coping;

(xiii) Crown repairs; or

(xix) Polishing or recontouring restorations or overhang removal for any type of restoration.

(d) **Endodontic services.** The department does not cover:

(i) Indirect or direct pulp caps;

(ii) Endodontic therapy on any primary teeth for clients age twenty-one and older;

(iii) Endodontic therapy on permanent bicuspid or molar teeth;

(iv) Any apexification/recalcification procedures;

(v) Any apicoectomy/periradicular service; or

(vi) Any surgical endodontic procedures including, but not limited to, retrograde fillings, root amputation, reimplantation, and hemisections.

(e) **Periodontic services.** The department does not cover:

(i) Surgical periodontal services that include, but are not limited to:

- (A) Gingival or apical flap procedures;
- (B) Clinical crown lengthening;
- (C) Any type of 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; or

(H) Distal or proximal wedge procedures; or

(ii) Nonsurgical periodontal services, including but not limited to:

- (A) Intracoronary or extracoronary provisional splinting;
- (B) Full mouth debridement;
- (C) Localized delivery of chemotherapeutic agents; or
- (D) Any other type of nonsurgical periodontal service.

(f) **Prosthodontics (removable).** The department does not cover any type of:

- (i) Removable unilateral partial dentures;
- (ii) Adjustments to any removable prosthesis;
- (iii) Chairside complete or partial denture relines;
- (iv) Any interim complete or partial denture;
- (v) Precision attachments; or
- (vi) Replacement of replaceable parts for semi-precision or precision attachments.

(g) **Oral and maxillofacial prosthetic services.** The department does not cover any type of oral or facial prosthesis other than those listed in WAC 388-535-1266.

(h) **Implant services.** The department does not cover:

(i) Any 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 (h)(i) of this subsection; or

(iii) The removal of any implant as described in (h)(i) of this subsection.

(i) **Prosthodontics (fixed).** The department does not cover any type of:

- (i) Fixed partial denture pontic;
- (ii) Fixed partial denture retainer;
- (iii) Precision attachment, stress breaker, connector bar, coping, or cast post; or
- (iv) Other fixed attachment or prosthesis.

(j) **Oral and maxillofacial surgery.** The department does not cover:

(i) Any nonemergency oral surgery performed in a hospital or ambulatory surgical center for Current Dental Terminology (CDT) procedures;

(ii) Vestibuloplasty;

(iii) Frenuloplasty/frenulectomy;

(iv) Any oral surgery service not listed in WAC 388-535-1267;

(v) 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;

(vi) Any type of occlusal orthotic splint or device, bruxing or grinding splint or device, temporomandibular joint splint or device, or sleep apnea splint or device; or

(vii) Any type of orthodontic service or appliance.

(k) **Adjunctive general services.** The department does not cover:

(i) Anesthesia to include:

(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) Analgesia or anxiolysis as a separate procedure except for inhalation of nitrous oxide;

(E) Medication for oral sedation, or therapeutic drug injections, including antibiotic or injection of sedative; or

(F) Application of any type of desensitizing medicament or resin.

(ii) Other general services including, but not limited to:

(A) Fabrication of athletic mouthguard, occlusal guard, or nightguard;

(B) Occlusion analysis;

(C) Occlusal adjustment or odontoplasties;

(D) Enamel microabrasion;

(E) Dental supplies, including but not limited to, 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) Missed or late appointment fees;

(M) Service charges of any type, including fees to create or copy charts;

(N) Office supplies used in conjunction with an office visit; or

(O) Teeth whitening services or bleaching, or materials used in whitening or bleaching.

AMENDATORY SECTION (Amending WSR 03-19-080, filed 9/12/03, effective 10/13/03)

WAC 388-535-1280 Obtaining prior authorization for dental-related services(~~—Adults~~) for clients age twenty-one and older. (~~When the medical assistance administration (MAA) authorizes dental-related services for adults, 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) The department uses the determination process described in WAC 388-501-0165 for covered dental-related services for clients age twenty-one and older that require prior authorization.

(2) (~~MAA~~) 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:~~

- ~~(a) The client's patient identification code (PIC);~~
 - ~~(b) The client's name and address;~~
 - ~~(c) The provider's name and address;~~
 - ~~(d) The provider's telephone and fax number (including area code);~~
 - ~~(e) The provider's MAA-assigned seven-digit provider number;~~
 - ~~(f) The physiological description of the disease, injury, impairment, or other ailment;~~
 - ~~(g) The most recent and relevant radiographs that are identified with client name, provider name, and date the radiograph was taken;~~
 - ~~(h) The treatment plan;~~
 - ~~(i) Periodontal when radiographs do not sufficiently support the medical necessity for extractions;~~
 - ~~(j) Study model, if requested; and~~
 - ~~(k) Photographs, if requested.~~
- ~~(2) MAA considers requests for services according to WAC 388-535-1270.~~

~~(3) MAA denies a request for dental services when the requested service is:~~

- ~~(a) Not listed in chapter 388-535 WAC as a covered service;~~
 - ~~(b) Not medically necessary;~~
 - ~~(c) A service, procedure, treatment, device, drug, or application of associated service that the department or the Centers for Medicare and Medicaid Services (CMS) consider investigative or experimental on the date the service is provided; or~~
 - ~~(d) Covered under another department program or by an agency outside the department.~~
- ~~(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))~~

~~(3) The department may request additional information as follows:~~

- ~~(a) Additional radiographs (x-rays) (refer to WAC 388-535-1255(2));~~
- ~~(b) Study models;~~
- ~~(c) Photographs; and~~
- ~~(d) Any other information as determined by the department.~~

~~(4) The department may require second opinions and/or consultations before authorizing any procedure.~~

~~(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.~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-535-1270	Dental-related services requiring prior authorization—Adults.
WAC 388-535-1290	Dentures and partial dentures for adults.

WSR 07-07-005

PERMANENT RULES

PUBLIC DISCLOSURE COMMISSION

[Filed March 8, 2007, 2:08 p.m., effective April 8, 2007]

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

Purpose: To conform to current statutory references in chapter 348, Laws of 2006 and remove references to repealed WAC 390-16-311 and RCW 42.17.630.

Citation of Existing Rules Affected by this Order: Amending 11 WAC 390-37-090 [no further information supplied by agency].

Statutory Authority for Adoption: RCW 42.17.370.

Adopted under notice filed as WSR 06-18-033 on August 28, 2006.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 11, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 11, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 11, Repealed 0.

Date Adopted: March 8, 2007.

Vicki Rippie
Executive Director

AMENDATORY SECTION (Amending WSR 06-07-001, filed 3/1/06, effective 4/1/06)

WAC 390-05-400 Changes in dollar amounts. Pursuant to the requirement in RCW 42.17.690 that the commission biennially revise the dollar amounts found in Initiative 134 to reflect changes in economic conditions, the following revisions are made:

Code Section	Subject Matter	Amount Enacted or Last Revised	2006 Revision
.020	Definition of "Independent Expenditure"	\$ 675	\$ 700
.125	Reimbursement of candidate for loan to own campaign	\$ 4,000	\$ 4,300
.180(1)	Report— Applicability of provisions to Persons who made contributions Persons who made independent expenditures	\$ 13,500 \$ 675	\$ 14,500 \$ 700
.640((1)) (2)	Contribution Limits— Candidates for state leg. office Candidates for other state office	\$ 700 \$ 1,400	
.640((2)) (3)	Contribution Limits— State official up for recall or pol comm. supporting recall— State Legislative Office Other State Office	\$ 700 \$ 1,400	
.640((3)) (4)	Contribution Limits— Contributions made by political parties and caucus committees State parties and caucus committees County and leg. district parties Limit for all county and leg. district parties to a candidate	.70 per voter .35 per voter .35 per voter	
.640((4)) (5)	Contribution Limits— Contributions made by pol. parties and caucus committees to state official up for recall or committee supporting recall State parties and caucuses County and leg. district parties Limit for all county and leg. district parties to state official up for recall or pol. comm. supporting recall	.70 per voter .35 per voter .35 per voter	
.640((6)) (7)	Limits on contributions to political parties and caucus committees To caucus committee To political party	\$ 700 \$ 3,500	
.740	Contribution must be made by written instrument	\$ 65	\$ 70

AMENDATORY SECTION (Amending WSR 93-22-002, filed 10/20/93, effective 11/20/93)

WAC 390-16-230 Surplus campaign funds—Use in future. (1) If at any time in the future or after the last day of the election cycle for candidates as defined in RCW (~~(42.17.630(3))~~) 42.17.020(9) any contribution is received or an expenditure is made from surplus funds for any purpose which would qualify the recipient or person who made the

expenditure as a candidate or political committee, it will be presumed the recipient or person who made the expenditure of such funds has initiated a new candidacy or committee. Surplus funds may only be expended for a new candidacy if the candidate is seeking the same office sought at his or her last election. Within fourteen days of the day such contribution is received or expenditure is made, such candidate or political committee shall file (a) a final report for the previous

campaign as provided in RCW 42.17.080 and 42.17.090 and (b) a statement of organization and initial report for the new campaign as provided by RCW 42.17.040, 42.17.080 and 42.17.090. The surplus funds may be carried forward to the new campaign, reported as one sum and listed as a contribution identified as "funds from previous campaign." All augmentations to and all expenditures made from the retained surplus funds after the last day of the election cycle shall be reported in detail as to source, recipient, purpose, amount and date of each transaction.

(2) For candidates as defined in RCW ~~((42.17.630(3)))~~ 42.17.020(9), if at any time after the last day of the election cycle, any contribution is received or expenditure is made from such surplus funds for any purpose which would qualify the recipient or person who made the expenditure as a candidate or authorized committee, it will be presumed the recipient or person who made the expenditure of such funds has initiated a new candidacy or committee. Surplus funds may only be expended for a new candidacy if the candidate is seeking the same office sought at his or her last election. Within fourteen days of the day such contribution is received or expenditure is made, such candidate or authorized committee shall file (a) a final report for the previous campaign as provided in RCW 42.17.080 and 42.17.090 and (b) a statement of organization and initial report for the new campaign as provided by RCW 42.17.040, 42.17.080 and 42.17.090. The surplus funds as of the last day of the election cycle may be carried forward to the new campaign, reported as one sum and listed as a contribution identified as "funds from previous campaign." "Funds from previous campaign" carried forward by a candidate to his or her new campaign are not subject to contribution limits set forth in RCW 42.17.640.

(3) A political committee formed to support or oppose a particular ballot proposition or particular candidates which retains surplus funds to use in support or opposition of other candidates or of other ballot propositions has become a continuing political committee and must thereafter register and report in accordance with chapter 42.17 RCW.

AMENDATORY SECTION (Amending WSR 06-11-132, filed 5/23/06, effective 6/23/06)

WAC 390-17-030 Sample ballots and slate cards. (1) **Intent.** The commission finds that, under certain conditions, expenditures for slate cards and other candidate listings fall within the scope of RCW 42.17.640 ~~((14)(a)))~~ (15) and are, therefore, exempt from contribution limits and eligible for payment with a bona fide political party's exempt funds. Slate cards and other candidate listings remain reportable under chapter 42.17 RCW and subject to the political advertising provisions of the law.

The purpose of this exemption from the contribution limits is to allow political parties and other sponsors to tell the general public which candidates they support. The exemption is not intended as a device to circumvent the contribution limits and full reporting requirements by undertaking any degree of significant campaigning on behalf of candidates.

(2) For purposes of RCW 42.17.020(21) and 42.17.640 ~~((14)(a)))~~ (15), "sample ballots" means slate cards, or other

candidate listings, whether written or oral, that satisfy the qualifying criteria specified in subsection (10) of this section.

(3) Sample ballots constitute political advertising for a slate or list of candidates and must be properly identified and otherwise in compliance with the provisions of RCW 42.17.510 through 42.17.550.

(4)(a) **A bona fide political party** may use contributions it receives pursuant to RCW 42.17.640 ~~((14)))~~ (15) to produce and distribute sample ballots.

(b) Expenditures for sample ballots do not count against a bona fide political party's contribution limit to the candidates listed on the sample ballot. Further, when reporting sample ballot expenditures, a bona fide political party is not required to attribute a portion of the expenditure to each of the candidates listed on the sample ballot, but the names of the candidates must be reported along with the other information required by chapter 42.17 RCW and chapter 390-17 WAC.

(5) **Any person**, as defined by RCW 42.17.020, who makes an expenditure for sample ballots has made an expenditure that does not count against that person's contribution limit to the candidates listed.

(6) **An in-state political committee**, when disclosing expenditures for sample ballots as part of its C-4 report, is not required to attribute a portion of the expenditure to the candidates listed on the sample ballot, but the names of the candidates and their respective party affiliations must be reported along with other information required by chapter 42.17 RCW and chapter 390-17 WAC.

(7) **An out-of-state committee**, when disclosing expenditures for sample ballots on a C-5 report, is not required to allocate a portion of the expenditure to the candidates listed on the sample ballot, but must report that an expenditure for sample ballots was made, the name and address of the person to whom the expenditure was made, the full amount of the expenditure, and the name, office sought and party affiliation of each candidate listed on the sample ballot. The report is due no later than the ~~((20th))~~ 10th day of the month following the month in which the expenditure was made.

(8) If a **lobbyist or lobbyist employer** makes expenditures for sample ballots, those expenditures are required to be reported in detail on the lobbyist's monthly L-2 report. Itemization of these expenditures must include the names and respective party affiliations of the candidates listed on the sample ballot, but no portion of the expenditure need be allocated to individual candidates listed on the sample ballot.

(9) **The candidates listed on a sample ballot** are not required to report any portion of the expenditure as an in-kind contribution to their campaigns.

(10) **Qualifying criteria for sample ballots, slate cards and other candidate listings.** In order not to count against a person's contribution limit to the candidates listed on a sample ballot and, in the case of a bona fide political party, in order to be eligible for payment with contributions received pursuant to RCW 42.17.640 ~~((14)))~~ (15), a sample ballot must satisfy **all** of the criteria in (a) through (d) of this subsection.

(a) The sample ballot must list the names of at least three candidates for election to public office in Washington state and be distributed in a geographical area where voters are eli-

gible to vote for at least three candidates listed. The candidate listing may include any combination of three or more candidates, whether the candidates are seeking federal, state or local office in Washington.

(b) The sample ballot must not be distributed through public political advertising; for example, through broadcast media, newspapers, magazines, billboards or the like. The sample ballot may be distributed through direct mail, telephone, electronic mail, Web sites, electronic bulletin boards, electronic billboards or personal delivery by volunteers.

(c) The content of a sample ballot is limited to:

- The identification of each candidate (pictures may be used);
- The office or position currently held;
- The office sought;
- Party affiliation; and
- Information about voting hours and locations.

Therefore, the sample ballot must exclude any additional biographical data on candidates and their positions on issues as well as statements about the sponsor's philosophy, goals or accomplishments. The list must also exclude any statements, check marks or other indications showing support of or opposition to ballot propositions.

(d) The sample ballot is a stand-alone political advertisement. It must not be a portion of a more comprehensive message or combined in the same mailing or packet with any other information, including get-out-the-vote material, candidate brochures, or statements about the sponsor's philosophy, goals or accomplishments. On Web sites, electronic bulletin boards or electronic billboards, the sample ballot must be a separate document.

AMENDATORY SECTION (Amending WSR 06-11-132, filed 5/23/06, effective 6/23/06)

WAC 390-17-060 Exempt activities—Definitions, reporting. (1)(a) "Exempt contributions" are contributions made to a political committee which are earmarked for exempt activities as described in RCW 42.17.640 (~~((14)(a) and (b))~~). Such contributions are required to be reported under RCW 42.17.090, are subject to the restrictions in RCW 42.17.105(8), but are not subject to the contribution limits in RCW 42.17.640. Any written solicitation for exempt contributions must be so designated. Suggested designations are "not for individual candidates" or "for exempt activities."

(b) Contributions made to a caucus political committee, to a candidate or candidate's authorized committee which are earmarked for voter registration, absentee ballot information, get-out-the-vote campaigns, sample ballots are presumed to be for the purpose of promoting individual candidates and are subject to the contribution limits in RCW 42.17.640.

(c) Contributions made to a caucus political committee, to a candidate or candidate's authorized committee which are earmarked for internal organization expenditures or fund-raising are presumed to be with direct association with individual candidates and are subject to the contribution limits in RCW 42.17.640.

(2) "Exempt contributions account" is the separate bank account into which only exempt contributions are deposited

and out of which only expenditures for exempt activities shall be made.

(3) "Exempt activities" are those activities referenced in RCW 42.17.640(~~((14))~~) as further clarified by subsections (4), (5), (6), and (7) of this section. Only exempt activities are eligible for payment with exempt contributions.

(4)(a) Except as permitted by WAC 390-17-030, Sample ballots and slate cards, activities referenced in RCW 42.17.640 (~~((14)(a))~~) that promote or constitute political advertising for one or more clearly identified candidates do not qualify as exempt activities.

(b) A candidate is deemed to be clearly identified if the name of the candidate is used, a photograph or likeness of the candidate appears, or the identity of the candidate is apparent by unambiguous reference.

(5) Activities referenced in RCW 42.17.640 (~~((14)(a))~~) that do not promote, or constitute political advertising for, one or more clearly identified candidates qualify as exempt activities. For example, get-out-the-vote telephone bank activity that only encourages persons called to "vote republican" or "vote democratic" in the upcoming election may be paid for with exempt contributions regardless of the number of candidates who are benefited by this message.

(6)(a) "Internal organization expenditures" referenced in RCW 42.17.640 (~~((14)(b))~~) are expenditures for organization purposes, including legal and accounting services, rental and purchase of equipment and office space, utilities and telephones, postage and printing of newsletters for the organization's members or contributors or staff when engaged in organizational activities such as those previously listed, all without direct association with individual candidates.

(b) "Fund-raising expenditures" referenced in RCW 42.17.640 (~~((14)(b))~~) are expenditures for fund-raising purposes, including facilities for fund-raisers, consumables furnished at the event and the cost of holding social events and party conventions, all without direct association with individual candidates.

(c) If expenditures made pursuant to subsections (a) and (b) above are made in direct association with individual candidates, they shall not be paid with exempt contributions.

(7) For purposes of RCW 42.17.640 (~~((14)(a))~~) and this section, activities that oppose one or more clearly identified candidates are presumed to promote the opponent(s) of the candidate(s) opposed.

AMENDATORY SECTION (Amending WSR 96-05-001, filed 2/7/96, effective 3/9/96)

WAC 390-17-065 Recordkeeping and reporting of exempt contributions accounts. (1) Any political committee that receives exempt contributions as defined by RCW 42.17.640 (~~((14)(a) or (b))~~) and WAC 390-17-060 shall keep the contributions in a separate bank account. Exempt contributions commingled with contributions subject to contribution limits are presumed to be subject to the limits. Expenditures to promote candidates or which are made for purposes other than those specified in RCW 42.17.640 (~~((14)(a) or (b))~~) shall not be made with funds from the exempt contributions account.

(2)(a) Separate campaign disclosure reports shall be completed and filed for an exempt contributions account.

(b) Political committees maintaining an exempt contributions account shall make known the existence of the account by filing a statement of organization for the account pursuant to RCW 42.17.040.

(c) Political committees maintaining an exempt contributions account shall be subject to the provisions of chapter 42.17 RCW and file the disclosure reports required by this chapter for the account pursuant to RCW 42.17.080.

(3) Contributors shall not use a single written instrument to make simultaneous contributions to an exempt contributions account and any other committee account; separate written instruments must be used to make contributions to an exempt contributions account.

AMENDATORY SECTION (Amending WSR 94-07-141, filed 3/23/94, effective 4/23/94)

WAC 390-17-300 Contribution designation for primary and general election. (1) Pursuant to RCW 42.17.640 ((+)), if a contribution is designated in writing by the contributor for a specific election, the contribution will be attributed to the contributor's limit for that designated election.

(2) An undesignated contribution made prior to the date of a primary election shall be attributed to the contributor's limit for the primary election. Undesignated contributions made after the date of the primary shall be attributed to the contributor's limit for the general election.

(3) Any portion of an undesignated contribution made prior to the date of the primary which exceeds the contributor's primary election contribution limit shall be attributed to the contributor's limit for the general election.

(4) Contributions for the primary election shall be accounted for separately from those for the general election, such that campaign records reflect one aggregate contribution total for each contributor giving in the primary election as well as one aggregate contribution total for each contributor giving in the general election.

(5) General election contributions shall not be spent for the primary election if to do so would cause the contributor of the general election contribution to exceed that contributor's contribution limit for the primary election.

(6) If a candidate loses in the primary election, or otherwise is not a candidate in the general election, all contributions attributed to the primary election remaining after repayment of outstanding campaign obligations shall be considered surplus funds, disposal of which is governed by RCW 42.17.095. If a candidate loses in the primary election, or otherwise is not a candidate in the general election, all contributions attributed to the general election shall be returned to the contributors of the funds in an amount equal to the contributor's general election aggregate total. If a portion of a contributor's general election contribution was spent on the primary election consistent with subsection (5) of this section, the amount returned to the contributor may be reduced by the amount of the contribution spent on the primary election.

AMENDATORY SECTION (Amending WSR 01-22-050, filed 10/31/01, effective 1/1/02)

WAC 390-17-302 Contributions after the primary election. (1) Pursuant to RCW 42.17.640((+)), the date of the primary is the last day for making primary-related contributions unless a state office candidate loses in the primary, that candidate's authorized committee has insufficient funds to pay debts outstanding as of the date of the primary, and the contributions are used to satisfy this outstanding debt.

(2) For purposes of the contribution limit in RCW 42.17.640, any contribution made up to thirty days after the primary election pursuant to RCW 42.17.640((+)) is aggregated with contributions made on or before the date of the primary from the same contributor and any person with whom that contributor shares a limit under RCW 42.17.660 and WAC 390-16-309 ((and 390-16-311)).

(3) The day following the primary election is considered the first day of the thirty-day period during which contributions may be made to state office candidates who lose in the primary election and who have outstanding primary debts.

(4) For purposes of RCW 42.17.640((+)), "outstanding primary debts," "outstanding debts" and "debts outstanding" all mean:

(a) Unpaid primary-election related debts incurred on or before the date of the primary by the authorized committee of a candidate who lost the primary election for a state office; and

(b) Reasonable costs associated with activities of the losing candidate's authorized committee necessary to retire the primary-related debts it incurred on or before the date of the primary. Examples of such reasonable costs include:

(i) Necessary administrative expenses (office space rental, staff wages, taxes, supplies, telephone and computer costs, postage, and the like) for activities actually and directly related to retiring the committee's debt; and

(ii) Necessary expenses actually and directly related to the fund-raising activities undertaken to retire the debt, as long as all persons solicited for contributions are notified that the contributions are subject to that contributor's primary election limit for that losing candidate.

(5) Nothing in this section is to be construed as authorizing contributors to make, or state office candidates who lose the primary to receive, contributions that are used for a purpose not specifically authorized by RCW 42.17.640((+)), including use for some future election or as surplus funds.

(6) All contributions received in excess of the sum needed to satisfy outstanding primary debts shall be returned to the original contributors in an amount not to exceed the amount contributed in accordance with the first in, first out accounting principle wherein the most recent contribution received is the first to be returned until all excess funds are returned to contributors.

AMENDATORY SECTION (Amending WSR 02-03-018, filed 1/4/02, effective 2/4/02)

WAC 390-17-315 Political committees—Qualifications to contribute. In order to make contributions as permitted by RCW 42.17.640((+)), a political committee shall, within 180 days prior to making the contribution, have

received contributions of \$10 or more from at least ten individuals registered to vote in Washington state at the time they contributed to the political committee. Upon written request of the commission or other person seeking this information, the political committee shall provide within 14 days a list of these ten individuals, identified by name, address, amount of contribution and date contribution was received.

AMENDATORY SECTION (Amending WSR 96-05-001, filed 2/7/96, effective 3/9/96)

WAC 390-17-320 Contributions from corporations, businesses, unions and political committees. Pursuant to RCW 42.17.640(~~((14))~~), entities prohibited from contributing to a candidate for state office, a state official against whom recall charges have been filed or a political committee having the expectation of making expenditures in support of the recall of the official shall not earmark or otherwise direct a contribution to one of these recipients through a political committee.

AMENDATORY SECTION (Amending WSR 98-12-037, filed 5/28/98, effective 6/28/98)

WAC 390-17-405 Volunteer services. (1) In accordance with RCW 42.17.020 (~~((14))~~) (15)(b)(vi), an individual may perform services or labor for a candidate or political committee without incurring a contribution, so long as the individual is not compensated by any person for the services or labor rendered and the services are of the kind commonly performed by volunteer campaign workers. These commonly performed services include:

- (a) Office staffing;
- (b) Doorbelling or leaflet drops;
- (c) Mail handling (folding, stuffing, sorting and postal preparation);
- (d) Political or fund raising event staffing;
- (e) Telephone bank activity (conducting voter identification, surveys or polling, and get-out-the-vote campaigns);
- (f) Construction and placement of yard signs, hand-held signs or in-door signs;
- (g) Acting as a driver for candidate or candidate or committee staff;
- (h) Scheduling of campaign appointments and events;
- (i) Transporting voters to polling places on election day;
- (j) Except as provided in subsection (2), preparing campaign disclosure reports required by chapter 42.17 RCW and otherwise helping to ensure compliance with state election or public disclosure laws;
- (k) Campaign consulting and management services, polling and survey design, public relations and advertising, or fund-raising performed by any individual, so long as the individual does not ordinarily charge a fee or receive compensation for providing the service; and
- (l) All similar activities as determined by the commission.

(2) An attorney or accountant may donate his or her professional services to a candidate, a candidate's authorized committee, a political party or a caucus political committee, without making a contribution in accordance with RCW

42.17.020 (~~((14))~~) (15)(b)(viii), if the attorney or accountant is:

- (a) Employed and his or her employer is paying for the services rendered;
- (b) Self-employed; or
- (c) Performing services for which no compensation is paid by any person. However, neither RCW 42.17.020 (~~((14))~~) (15)(b)(viii) nor this section authorizes the services of an attorney or an accountant to be provided to a political committee without a contribution ensuing, unless the political committee is a candidate's authorized committee, political party or caucus political committee and the conditions of RCW 42.17.020 (~~((14))~~) (15)(b)(viii) and (a), (b) or (c) of this subsection are satisfied, or unless the political committee pays the fair market value of the services rendered.

AMENDATORY SECTION (Amending WSR 05-04-039, filed 1/27/05, effective 2/27/05)

WAC 390-17-310 Doing business in Washington. A corporation or business entity is "doing business in Washington state" for purposes of RCW 42.17.640(~~((14))~~) if it conducts continuous or substantial activities in Washington state of such character as to give rise to a legal obligation.

In determining whether a corporation or business entity is doing business in Washington state, the commission will take into consideration the following nonexclusive list of indicators:

- Purposefully availing itself of the privilege of conducting business in the state by invoking both benefits and protections of state law.
- Appointing an agent for service of process in Washington state.
- Registering as a corporation in Washington.
- Operating business locations in Washington.
- Hiring employees to work in Washington.
- Purchasing or selling goods or services in Washington.
- Operating an interactive internet web site for the purpose of conducting business.

WSR 07-07-007

PERMANENT RULES

HORSE RACING COMMISSION

[Filed March 8, 2007, 4:55 p.m., effective April 8, 2007]

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

Purpose: To amend chapter 260-28 WAC, Ownership, trainers and employees.

Citation of Existing Rules Affected by this Order: Repealing WAC 260-28-040, 260-28-090, 260-28-150, 260-28-160, 260-28-170, 260-28-190, 260-28-250, 260-28-260 and 260-28-270; and amending WAC 260-28-010, 260-28-020, 260-28-030, 260-28-050, 260-28-060, 260-28-070, 260-28-080, 260-28-100, 260-28-110, 260-28-120, 260-28-130, 260-28-200, 260-28-210, 260-28-220, 260-28-230, 260-28-235, 260-28-240, and 260-28-280.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 07-03-010 on January 4, 2007.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 18, Repealed 9.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 18, Repealed 9.

Number of Sections Adopted Using Negotiated Rule Making: New 1, Amended 18, Repealed 9; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 8, 2007.

R. J. Lopez
Deputy Secretary

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-28-010 Authorized agent. ~~((An authorized agent is an agent appointed by document signed by the owner before a notary public and lodged with the secretary. An agent so appointed will be recognized by the commission as having authority to handle any and all matters pertaining to the stable for which he is authorized to act, and the acts of such agent shall be deemed the acts of the owner, and owner accepts responsibility for his agent's acts. The term of the license shall expire December 31st of each year, unless the agent's appointment is revoked by the owner in writing or until revoked for cause by the commission.))~~ An authorized agent is a person appointed by an owner or by a stable to act as their agent. Before an authorized agent can act on behalf of the owner or the stable, the agent must be licensed by the commission as an authorized agent. All licensed authorized agents must also file a notarized document signed by the owner or stable manager with the commission verifying their authorization to act as authorized agent along with the scope of their duties. A trainer is not required to be an authorized agent in order to represent the owner in the matter of entries, nominations, scratches, and the employment of jockeys.

AMENDATORY SECTION (Amending WSR 04-24-019, filed 11/22/04, effective 12/23/04)

WAC 260-28-020 Stable names—Registration fees and restrictions. ~~((Each stable name must be duly registered with the commission.~~

~~(1) In applying to race under a stable name the applicant must disclose the identity or identities behind a stable name. If a partnership is involved in the identity behind a stable name, the rules covering partnerships must be complied with.~~

~~(2) Changes in identities must be reported immediately to and approval obtained from the commission.~~

~~(3) No person can use his real name for racing purposes so long as he has a registered one, without permission of the board of stewards.~~

~~(4) A trainer who is a licensed owner or part owner may use a stable name as owner or part owner. However, no trainer may be licensed as trainer other than in his legal name.~~

~~(5) Any person who has been registered under a stable name may, at any time, cancel it after he has given written notice to the commission.~~

~~(6) A stable name may be changed at any time by registering a new stable name and by paying the fee as required above.~~

~~(7) A person cannot register as his stable name one which has been registered by any other person with an association conducting a recognized meeting, or the Jockey Club (N.Y.) or with another racing authority.~~

~~(8) A person may not register as his stable name one which is the real name of any owner of race horses, nor one which is the real or assumed name of any prominent person not owning race horses.~~

~~(9) A stable name shall be plainly distinguishable from that of another duly registered stable name.~~

~~(10) No stable name shall be used if in the judgment of the stewards it is being used for advertising purposes.~~

~~(11) Any combination of more than three owners will be required to race under a stable name.))~~ Licensed owners and lessees may adopt a stable name subject to the approval of the stewards.

(1) Four or more owners are required to race under a stable name.

(2) The applicant must identify all persons using the stable name. Changes must be reported immediately to the stewards.

(3) Application for a stable name must include a designation of a managing owner and an address. Receipt of any correspondence, notice or order at such address will constitute official notice to all persons involved in the ownership of such horse.

(4) All persons with an ownership interest in the stable name must comply with all rules regarding licensing of owners.

(5) A person who has registered a stable name may cancel it upon written notice to the stewards.

(6) The stewards will not approve a stable name that has been registered by any other person with any association conducting a recognized race meeting.

(7) No stable name may be used, if in the judgment of the stewards, it is being used for advertising purposes.

(8) A stable name must be clearly distinguishable from other stable names.

AMENDATORY SECTION (Amending WSR 03-07-056, filed 3/14/03, effective 4/14/03)

WAC 260-28-030 Financial responsibility. (1) ~~((No licensee shall))~~ A licensee may not willfully fail or refuse to pay money due for services, supplies, or fees connected with his or her operations as a licensee. ((No licensee shall)) A licensee may not falsely deny such an amount due or the validity of a complaint on such an amount due for the purpose of

hindering, delaying, or defrauding the person to whom the amount is due.

(2) A financial responsibility complaint against a licensee must be in writing, signed by the complainant, and accompanied by documentation of the services, supplies or fees alleged to have been provided, or by a judgment from a civil court that has been issued within two years of the date of the complaint.

(3) Any licensee failing to make restitution as a result of a complaint where the amount owed is undisputed or judgment may be subject to disciplinary action, including a license suspension.

(4) The stewards will consider for disciplinary action only those financial responsibility complaints that meet the following criteria:

(a) The complaint involves services, supplies or fees that are directly related to the licensee's Washington racetrack and training operations; and

(b) The debt or cause of action originated in Washington, or the civil court judgment was issued in Washington, within two years of the date the complaint is filed.

(5) In determining whether to act on a financial responsibility complaint, the stewards may consider the number of financial responsibility complaints made by the complainant against the same licensee within a two-year period immediately preceding the current complaint.

(6) ~~((No))~~ A licensee ~~((shall))~~ may not write, issue, make or present any check in payment for any license fee, fine, nomination or entry fee or other fees, or for any service or supplies when the licensee knows or should reasonably know that the check will be refused for payment by the bank upon which it is written, or that the account upon which the check is written does not contain sufficient funds for payment of the check, or that the check is written on a closed or nonexistent account. The fact that such a check is returned to the payee by the bank as refused is ~~((a))~~ grounds for ~~((a))~~ license suspension pending satisfactory redemption of the returned check.

AMENDATORY SECTION (Amending Order 82-05, filed 6/25/82)

WAC 260-28-050 Colors—Registration and fees. (1) Racing colors must be registered, and authority for their use ~~((sanctioned))~~ approved by a steward. ~~((Such registration shall))~~ Approval will be made annually~~((, upon issuance of an))~~ when the owner's license is approved.

(2) Colors registered with any racing commission or with the Jockey Club ~~((of New York shall be respected))~~ will be honored in Washington and only the registrant ~~((shall))~~ will be permitted to use them.

(3) No person ~~((shall))~~ may start a horse in racing colors other than those registered in his ~~((own or assumed))~~ her name ~~((, but a temporary change from the recorded))~~ or stable name. A temporary change of racing colors ~~((may))~~ must first be ~~((approved by the stewards))~~ authorized by the jockey room supervisor.

(4) Any disputes ~~((between claimants to the right of particular))~~ related to racing colors ~~((shall))~~ will be decided by the stewards.

~~((5))~~ Any temporary change from the recorded colors of the owner must be approved by the stewards and posted by the clerk of the scales on the notice board.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-28-060 Engagements and transfer ~~((of same)).~~ (1) When a horse is claimed ~~((out of a claiming race)),~~ any nominations previously made to a stake or any breed association sponsored race for the horse~~((s engagements are included))~~ will remain valid.

(2) ~~((Subscriptions and all))~~ Nominations, entries or rights of entry ~~((are))~~ remain valid when a horse is sold ~~((with his engagements duly transferred; in duly registered partnerships when subscriptions, entries and rights of entries survive in the remaining partners; and when entries under the decedent's subscription has been made previous to the decedent's death by the transfer of the right of entry))~~ or claimed, except when the horse is transferred to a person whose license is suspended or who is otherwise disqualified to race or enter the horse, then the nomination will be void as of the date of the transfer.

(3) ~~((Subscriptions and all entries or rights of entry under them become void on the death of a subscriber, except in case of duly registered partnerships or except subject to the sanction of the stewards, when the personal representative of an estate shall in writing, request that the benefits of such accrue to the estate of the decedent subscriber for the privilege of transfer, and shall agree to assume any and all obligations incident to the original entries.))~~ The death of a nominator to a stake race will not render void any nomination, entry, or right of entry. All rights, privileges and obligations will attach to the legal heir of the decedent or the new owner of the horse.

(4) ~~((In case of any transfer of a horse with its engagements, such horse will not be eligible to start in any stakes, unless at the usual time of the running of the stakes, or prior thereto, the transfer of the horse and its engagements shall be exhibited when demanded to the racing secretary.~~

~~((5))~~ Should ~~((If))~~ a horse ~~((be))~~ is sold ~~((with his engagements, or any part of them,))~~ or claimed the seller cannot ~~((strike))~~ withdraw the horse ~~((out of any such))~~ from any engagements.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-28-070 Ownerships to be filed with commission and racing secretary. ~~((All ownerships in a horse, except a trainer's percentage of his winnings, shall be filed with the racing secretary, before the horse shall start, as also shall every change in ownership thereafter during the meeting.))~~ Before a horse may start, all persons with an ownership interest in the horse must be disclosed to the commission and racing secretary.

(1) A trainer's entitlement to a percentage of a horse's winnings is not considered an ownership interest.

(2) If ownership changes during the race meet, the new owner must notify the commission.

AMENDATORY SECTION (Amending Order 75-1, filed 2/18/75)

WAC 260-28-080 (~~Corporate ownership and leases.~~) Ownership by corporations, companies, or other organizations. ((No license as an owner shall be granted to a corporation or to the lessee or lessees of any corporation unless such corporation shall have no more than ten stockholders or members each of whom shall be the registered and beneficial owner of stock or membership in such corporation; nor shall any corporation having more than ten such stockholders have the power to lease for racing purposes to any natural person or persons or partnership any horse owned or controlled by it. Each stockholder must file an application for an owner's license: Provided, That the commission, through its board of stewards, may waive the requirement of ten or less stockholders and permit a corporation which has up to twenty five stockholders to be licensed if all of the stockholders have sufficient local connections so that the process of checking applications is not unduly burdensome.)

All the stockholders or members of a corporation which owns or leases horses for racing purposes in the state of Washington and also all such corporations shall make and file with the commission as and when requested by it, a report or reports containing such information as the commission may specify; and upon refusal or failure to file such report or reports the commission may refuse a license to any lessee or lessees of such corporation or may revoke any such license which it may have granted.) (1) If the legal owner of any horse is a corporation, company, or other organization, each shareholder or member must be licensed.

(2) Each corporation, company, or other organization must disclose to the commission all shareholders or members of the organization.

(3) Corporations, companies, or other organizations must submit an application for a stable license.

NEW SECTION

WAC 260-28-085 Leases. A horse may be raced under a lease if a completed breed registry or other notarized lease form is attached to the certificate of registration and on file with the commission. The lessee must be licensed as the horse owner. If the legal owner of the horse is ineligible for licensing, the lessee will not be licensed.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-28-100 Change of trainers. If an owner changes trainers, he/she must notify the racing commission ((and require)) within seventy-two hours. This form must be signed by the new trainer ((to sign his name on said owner's registration)) acknowledging that he/she accepts responsibility for the horse or horses, and by the previous trainer to release any obligations in connection with the horse or horses.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-28-110 Employment of jockey to prevent riding. ((No)) An owner ((shall)) or trainer may not employ a jockey for the purpose of preventing ((him)) the jockey from riding in any race.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-28-120 Bribes and gratuities. ((No)) An owner ((shall)) or trainer may not accept, directly or indirectly, any bribe, gift or gratuity in any form which might influence the result of any race, ((or tend to do so)) or which was intended to influence the result of any race.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-28-130 May not employ ((nonlicensed)) unlicensed veterinarian((—Report of certain illnesses and treatments)). ((No owner or trainer or their representative, shall employ a veterinarian who is not licensed as such by the state board of veterinary examiners. Licensed)) Owners and trainers will only employ veterinarians who are properly licensed by the Washington state department of health and the commission. Racing associations ((shall)) will use all reasonable efforts to prevent ((nonlicensed)) unlicensed veterinarians from practicing on their ((premises)) grounds. ((Every such veterinarian who shall prescribe or use any medication or treatment which contains a drug or drugs which he has reason to believe are of such character as would affect the racing condition of a horse in a race, shall at the time of prescribing or use deliver to the trainer of the horse under treatment a written statement, setting forth the date, the name of the horse and of the owner, and the name of said drug or drugs so prescribed or used. A copy of this statement shall also be delivered to the board of stewards. Any illness with unusual symptoms shall immediately be reported by the trainer or attending veterinarian to the stewards.))

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-28-200 Trainer—Paddock duties. (1) A trainer ((shall)) must have his or her horse in the paddock at the time appointed.

(2) A trainer ((shall)) must attend his or her horse in the paddock, and ((shall)) must be present to ((supervise his saddling)) saddle the horse, unless he/she has obtained the permission of a steward to send another licensed trainer as a substitute.

AMENDATORY SECTION (Amending Order 4, filed 12/24/69)

WAC 260-28-210 Trainer—Substitute for absent trainer. If a trainer ((is to)) will be absent from the track where his or her horses are participating in races, ((he)) the trainer must first obtain a licensed trainer to substitute for him

or her during ~~((his))~~ the trainer's absence. ~~((Such a))~~ The substitute trainer must be approved by ~~((the board of stewards upon forms approved by the racing commission))~~ a steward prior to the original trainer's absence. The original trainer ~~((is))~~ remains the absolute insurer of ~~((the))~~ any horses he or she has entered. ~~((The))~~ Once a substitute trainer has been approved by a steward, the substitute trainer will then become the absolute insurer of any additional horses he or she may enter.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-28-220 Trainer—Duty to register horses with racing secretary. Each trainer ~~((shall))~~ must register with the racing secretary all the horses in his or her charge, giving the name, age, sex, breeding and ownership of each horse.

AMENDATORY SECTION (Amending WSR 06-07-067, filed 3/10/06, effective 4/10/06)

WAC 260-28-230 Trainer—Duty to register personnel—Safety equipment. A trainer ~~((shall be))~~ is required to notify the commission of the name(s) of every person in the trainer's employ and ~~((be))~~ is responsible to ensure that all the trainer's employees are properly licensed by the commission before being allowed to work. If a trainer releases any employee from employment, the trainer ~~((shall))~~ must notify the stewards within forty-eight hours.

A trainer ~~((shall also be responsible to))~~ must ensure that all the trainer's employees wear a safety helmet and safety vest while on horseback, in compliance with WAC 260-12-180.

AMENDATORY SECTION (Amending Rules of racing, filed 5/4/66)

WAC 260-28-235 Trainer—Duty to provide employees financial relief from injury. ~~((As a proper means of financial relief from injury, the Washington horse racing commission requires as a condition to issuance of a license that the applicant file proof of compliance with one of the following coverages:~~

~~(1) That the trainer cover his employees under state industrial insurance through the Washington state department of labor and industries.~~

~~(2) Trainers obtain coverage from private insurance carrier duly licensed to do business in the state of Washington, and approved by the Washington horse racing commission.~~

~~(3) Posting of surety bond with sureties to be approved by the commission, in such amount as designated by the Washington horse racing commission.)~~ At the time of submitting a license application, all trainers must pay the industrial insurance premium assessment required by RCW 67.16.300 and 51.16.210 for each person in their employment.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-28-240 Trainer—Restriction as to horses owned by disqualified person. A trainer ~~((shall))~~ may not have in his or her charge or under his or her supervision any horse owned, in whole or in part, by a disqualified person.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-28-280 Trainer—Reporting sickness of horse. A trainer ~~((shall see to it that a report is made promptly to the racing secretary and track veterinarian of any and all sickness of his horse or horses))~~ must immediately report any sickness or illness of any of his or her horses to an official veterinarian.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 260-28-040	Feed and supplies may be bought at open market.
WAC 260-28-090	Owner to register horses with racing secretary.
WAC 260-28-150	Registration of stable personnel.
WAC 260-28-160	Partnerships.
WAC 260-28-170	Duty to name jockey upon making entry.
WAC 260-28-190	Trainer—Authority to represent owner.
WAC 260-28-250	Trainer—Bribery prohibited.
WAC 260-28-260	Trainer—Removing horses from grounds.
WAC 260-28-270	Trainer—Employing jockey to prevent riding.

WSR 07-07-008

PERMANENT RULES

HORSE RACING COMMISSION

[Filed March 8, 2007, 4:55 p.m., effective April 8, 2007]

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

Purpose: Amend WAC 260-34-020 Drug and alcohol testing, to include possession of an illegal controlled substance with intent to deliver as a prohibited activity.

Citation of Existing Rules Affected by this Order: Amending WAC 260-34-020.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 07-03-017 on January 5, 2007.

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

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

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

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

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

Date Adopted: March 8, 2007.

R. J. Lopez
Deputy Secretary

AMENDATORY SECTION (Amending WSR 06-07-064, filed 3/10/06, effective 4/10/06)

WAC 260-34-020 Drug and alcohol violations. No licensee or applicant, while acting in an official capacity or participating directly in horse racing, shall commit any of the following violations:

(1) Be under the influence of or affected by intoxicating liquor and/or drugs, have an alcohol concentration of 0.08 percent or higher, or have within their body any illegal controlled substance while on the grounds of any licensed race meet;

(2) Engage in the illegal sale or distribution of alcohol;

(3) Engage in the illegal sale or distribution of a controlled substance or possess an illegal controlled substance with intent to deliver;

(4) Possess an illegal controlled substance;

(5) Possess on the grounds of any licensed race meet any equipment, products or materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, or concealing an illegal controlled substance, or any equipment, products or materials of any kind, which are used or intended for use in injecting, ingesting, inhaling or otherwise introducing into the human body an illegal controlled substance; or

(6) Refuse to submit to blood, breath and/or urine testing, when notified that such testing is conducted pursuant to the conditions of WAC 260-34-030.

Failure to provide a blood, breath and/or urine sample when directed or intentional contamination of the sample by any person tested for the purpose of preventing accurate analysis of the sample, or other actions with intent to subvert the test, shall be considered a refusal to submit to a test.

"Controlled substance" or "drug" as used in this chapter means any substance listed in chapter 69.50 RCW or legend drug as defined in chapter 69.41 RCW. The presence of a controlled substance or drug in any quantity measured by the testing instrument establishes the presence of that substance

for the purpose of this section. The fact that a licensee or applicant is or has been entitled to use a drug under the laws of the state of Washington shall not constitute a defense against a violation for being under the influence of or affected by intoxicating liquor and/or any drug.

WSR 07-07-009

PERMANENT RULES

HORSE RACING COMMISSION

[Filed March 8, 2007, 4:55 p.m., effective April 8, 2007]

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

Purpose: Adopt new chapter 260-37 WAC, national racing compact, to allow persons using their national racing compact license in Washington and set a payment schedule for receipt of payments from national racing compact.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 07-03-134 on January 23, 2007.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 0, Repealed 0.

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

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

Date Adopted: March 8, 2007.

R. J. Lopez
Deputy Secretary

Chapter 260-37 WAC

LIVE HORSE RACING COMPACT

NEW SECTION

WAC 260-37-010 Use of compact committee license—Fee. (1) A person holding a valid compact committee license issued under chapter 67.17 RCW who intends to participate in horse racing in Washington must pay a fee for the use of the compact committee license equal to the cost of the same type of license listed in WAC 260-36-085. The fee will be paid to the compact committee, which will forward any such fees collected to the commission at least monthly.

(2) A person holding a valid compact committee license is exempt from paying the fingerprint fee listed in WAC 260-36-085.

NEW SECTION

WAC 260-37-020 Payment of compact committee license use fee. The compact committee designated in chapter 67.17 RCW is authorized to make payments to the commission on a monthly payment basis for the license fees charged by the commission to persons for use of their compact committee license.

NEW SECTION

WAC 260-37-030 Compact licensees bound by rules. All requirements of Title 260 WAC are applicable to persons holding a compact committee license, except where incompatible with the intent of chapter 67.17 RCW.

WSR 07-07-010**PERMANENT RULES****HORSE RACING COMMISSION**

[Filed March 8, 2007, 4:55 p.m., effective April 8, 2007]

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

Purpose: To amend chapter 260-40 WAC, Entries, starts, nominations and scratches.

Citation of Existing Rules Affected by this Order: Repealing WAC 260-40-060, 260-40-080, 260-40-150, 260-40-190 and 260-40-200; and amending WAC 260-40-010, 260-40-020, 260-40-030, 260-40-040, 260-40-050, 260-40-070, 260-40-090, 260-40-100, 260-40-110, 260-40-120, 260-40-130, 260-40-140, 260-40-145, 260-40-160, 260-40-180, 260-40-185, 260-40-240, 260-40-250, 260-40-260, and 260-40-280.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 07-03-144 on January 23, 2007.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 5, Amended 20, Repealed 5.

Number of Sections Adopted Using Negotiated Rule Making: New 5, Amended 20, Repealed 5; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 8, 2007.

R. J. Lopez
Deputy Secretary

Chapter 260-40 WAC**ENTRIES, STARTS, ~~((DECLARATIONS))~~
NOMINATIONS AND SCRATCHES**

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-40-010 ~~((Declarations))~~ Nominations and scratches. (1) ~~((No))~~ A horse ~~((shall))~~ may not be considered nominated or scratched ~~((or declared))~~ out of an engagement until the owner ~~((or his authorized agent, or some person deputized by him shall have given due)),~~ trainer or designee provides written notice ~~((in writing))~~ to the racing secretary before the time ~~((stipulated))~~ set by the ~~((regulations of the))~~ association.

(2) For stake races, if a horse is not named through the entry box ~~((the day before the race at the usual time of closing))~~ before the close of entries for that race, the horse is automatically out.

(3) ~~((The declaration of a horse out of an engagement is irrevocable.~~

~~((4) All horses must be scratched at designated scratch time set by racing secretary.~~

~~((5) If the miscarriage of any declaration by mail or otherwise is alleged, satisfactory proof of such miscarriage shall be required of the complainant, otherwise, the declaration shall not be accepted as of the time alleged.~~

~~((6) Any trainer who has entered a horse, will be allowed the right and privilege of scratching from said race prior to scratch time, until there remain in the race only eight interests. If there are more requests to withdraw than are available, permission to withdraw shall be decided by lot. However, in all races involving the daily double, no entry may be withdrawn that would reduce the starting field to less than the number designated by the racing secretary, without permission of the stewards. No other entries will be excused as provided above except upon receipt of a veterinarian's certificate of unfitness, change of track conditions since time of entry or other causes acceptable to the stewards.))~~ If the validity of any nomination is alleged, the complainant must provide satisfactory proof of the error that is alleged; otherwise, the nomination will be accepted.

(4) Any owner, trainer, or designee who has entered a horse will be allowed the right to scratch the horse from the race entered prior to the published scratch time, until no fewer than eight interests remain in the race. If there are more requests to scratch than are available, permission to scratch must be decided by lot. However, in all races involving the daily double, no entry may be scratched that would reduce the starting field to less than the number designated by the racing secretary, without permission of the board of stewards. No other entries will be excused as provided above except upon receipt of a veterinarian's certificate of unfitness, change of track conditions since time of entry or other causes acceptable to the board of stewards.

(5) All horses must be scratched by the designated scratch time set by the association, and consistent with subsection (1) of this section.

(6) If the racing secretary does not designate a scratch time, no horse will be allowed to scratch without permission of the board of stewards.

(7) The scratch of a horse out of an engagement is irrevocable.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-40-020 Entry prerequisite to start. A horse ~~((shall))~~ may not ((be qualified to)) start in any race unless ((he) the horse has been ((and continues)) properly entered ((therein)).

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-40-030 Racing secretary to receive entries and ~~((declarations))~~ nominations. ~~((For all races,))~~ (1) The racing secretary is the person authorized to receive entries and ~~((declarations))~~ nominations for all races, except as provided in WAC 260-40-250(2).

(2) The racing secretary may refuse the entry of any person, or the transfer of any entry for reasons deemed, by the racing secretary, to be in the best interest of racing.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-40-040 ~~((Entries and declarations, how made—Blank forms.))~~ Making entries and nominations. (1) Entries and ~~((declarations shall))~~ nominations must be made in writing and signed by the owner ~~((of the horse, or his authorized agent or some person deputized by him, and each)),~~ trainer or designee. Each association ~~((shall))~~ will provide blank forms on which entries and declarations are ~~((to be))~~ made.

(2) Entries may be made by telephone ~~((or telegraph,))~~ but must be confirmed ~~((promptly))~~ in writing prior to the closing of entries.

NEW SECTION

WAC 260-40-045 Authority to represent owner. A trainer may represent the owner in the matter of entries, nominations, scratches, and the employment of jockeys.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-40-050 Ownership interest required—Entries and nominations. ~~((No person not having an interest in a horse, equal at least to the interest or property of any other one person is entitled to enter the horse in a race as the owner.))~~ (1) The majority ownership interest must approve the nomination or entry of any horse into a race.

(2) The person with a majority ownership interest in a horse, or the authorized agent or managing owner, as provided in WAC 260-28-080, must approve the nomination or entry of the horse into a race.

(3) All owners of a horse are individually and collectively responsible for any fees resulting from nominations, entries, or starting fees.

NEW SECTION

WAC 260-40-055 Jockey to be named at the time of entry. Prior to the close of entries, an owner, trainer, or authorized agent must furnish the name of the jockey who is to ride in the race. If the jockey named on the entry at the time of the draw does not accept the mount, the stewards may name a replacement jockey.

NEW SECTION

WAC 260-40-065 Coupled and multiple entries. (1) Two or more horses owned or leased in whole or part by the same owner must be joined as a coupled entry and single betting interest when entered in the same race. Coupled entries may be uncoupled in stakes races. Common ownership entries may be uncoupled in stakes races with the approval of the board of stewards.

(2) A coupled entry may not exclude a single entry, except in a race where the conditions are specific as to preference.

(3) At the time of making a same ownership entry, the trainer, owner, or authorized agent must select which horse will run in the event the coupled entry is not allowed.

(4) A trainer, owner, or authorized agent may not enter and start more than two horses of the same or separate ownership in a purse race or overnight event, except under the following conditions:

(a) Stake races;

(b) Races in which there are fees required to nominate or enter; and

(c) Allowance/optional claiming or maiden special weight races. In these races a trainer may not enter more than three horses. The third entry may not exclude a single entry, or be allowed if there are less than seven entries received prior to the entry of the trainer's third horse.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-40-070 Description and identification of horse. (1) ~~((If entered))~~ When entering a horse for the first time, ~~((a horse shall be identified by stating his))~~ the person making the entry must furnish the name, color, sex, and age of the horse, and the name of ~~((his))~~ its sire and dam, as ~~((registered))~~ shown on the registration certificate. This description must be repeated ~~((in))~~ on every entry until a description of the horse ~~((with his name))~~ has been published in the official program, or the list of entries of the association ~~((or in such other publication as the commission may designate)).~~ ~~((In))~~ On every entry after such publication, ~~((his))~~ the horse's name and age will be sufficient.

(2) ~~((That all horses be classified on a racing program by clear definitions.))~~ All horses must have their complete description and a corresponding program number listed in the official racing program.

(3) For racing (~~purposes~~) and programming purposes, horses (~~shall~~) will be designated as follows:

- (a) Male - horse, colt, gelding or ridgling(~~(-);~~) or
- (b) Female - filly or mare.

NEW SECTION

WAC 260-40-075 Required to declare weight, medication, and required equipment changes at the time of entry. (1) The owner, trainer, or authorized agent is responsible to declare any weight allowances, including apprentice jockey allowances, at the time of entry. The weight declared at time of entry cannot be reduced after the posting of entries.

(2) The person who enters the horse is responsible to list permitted medications and equipment changes at the time of entry.

AMENDATORY SECTION (Amending Order 3, filed 5/12/69)

WAC 260-40-090 ((Jockey club)) Registration certificate. No horse (~~shall~~) may be allowed to (~~enter or~~) start unless a Jockey Club registration certificate (~~or a~~) American Quarter Horse Association certificate of registration, or other applicable breed certificate of registration is on file in the office of the racing secretary, (~~with the exception~~) except that the stewards may (~~in their discretion, for good cause,~~) waive this requirement, if the horse is otherwise properly identified and the horse is not entered for a claiming prize.

AMENDATORY SECTION (Amending WSR 04-09-026, filed 4/13/04, effective 5/14/04)

WAC 260-40-100 Performance records. (~~It is the intent of the commission that the public be provided with all relevant information regarding a horse's recent racing and workout record. Therefore:~~)

(1) The owner(~~/~~)and/or trainer of any horse which has started at a track not reported in the daily racing form or equibase since its last start at a recognized track(~~/~~) must furnish the racing secretary, prior to the entry of such horse (~~to any~~) in a race in this state, performance records of said horse's races during the past year(~~/~~) or their last two starts, including published races, showing date, distance, finishing position and time. If such records are not provided, the horse will be ineligible to start.

(2) For thoroughbreds, a horse which wins a race at a Class C track within the state, (~~shall~~) with the exception of its maiden win, will not be penalized for such winnings in races run at any other (~~meeting~~) race meet other than a Class C track. The maiden classification will be lost by winning a race at any track whose results are published in the daily racing form or equibase. A horse, which wins a race at a track with results not reported in the daily racing form or equibase, outside this state, (~~shall~~) will not be penalized for such winnings except at Class C tracks. All winnings in races conducted outside the state of Washington and under the authority of a recognized racing jurisdiction will count with regards to a horse's eligibility. For other breeds, all wins, including the maiden wins, (~~shall~~) will be counted in con-

sidering eligibility at all racing association meets in the state of Washington if the win is recognized by the Arabian Jockey Club, the American Quarter Horse Association, the Appaloosa Horse Club, or other breed registry (~~as authorized~~) recognized by the commission.

(3) Performance records for races which are not reported in the daily racing form and/or equibase (~~shall~~) will be published in the official program of the racing association or posted and announced (~~no later than the time that wagering opens for that day's racing. No horse may be permitted to enter in a race whose recent workouts have not been properly recorded with the commission~~).

(4) All wins (~~shall~~) will be considered in eligibility requirements of horses running at Class C racing association meets.

~~((5) A horse shall not start unless it has participated in an official or recognized race or has a published or stewards approved workouts, which meet the following criteria:~~

~~(a) A horse that has not run in an official or recognized race must have two official workouts, and at least one such workout must be held thirty days prior to race day.~~

~~(b) A horse that has not started in an official or recognized race for a period of sixty days or more must have a published or steward approved workout held thirty days prior to race day.~~

~~(6) The workout must have occurred at a parimutuel or commission recognized facility.~~

~~The association may impose more stringent workout requirements.~~

~~The trainer or trainer's designee shall be required to identify horse's registered name, the distance the horse is to be worked and the point on the track where the workout will start.~~

~~A horse shall not be taken onto the track for training or a workout except during the hours designated by the association.)~~

NEW SECTION

WAC 260-40-105 Workouts and identification. (1) No horse may be permitted to enter or start in a race whose recent workouts have not been properly recorded with the commission.

(2) A horse, which has not started for a period of sixty days or more will be ineligible to race until the horse has completed a timed workout approved by the stewards prior to the day of the race in which the horse is entered and the workout must have occurred within thirty days of race day.

(a) A horse that has never started in a recognized race must have two official workouts, one of which must be recorded from the starting gate, and at least one workout must have occurred within thirty days of race day.

(b) The association may impose more stringent workout requirements prior to entries.

(3) The trainer or exercise rider must report the name, distance, and starting point, for each horse scheduled for a workout to the clocker immediately prior to working.

(4) A horse may not be taken onto the track for training or a workout except during the hours designated by the association. When association grounds are open for training, a

licensed clocker or commission clocker must be present for any workouts to be considered official. If no clocker is present, the horse may train, but the workout will not be accepted as an official workout.

(5) During a racing association's scheduled race meet and training dates, workouts occurring off the grounds will only be accepted for the purposes of that meet if recorded and submitted to the racing secretary and/or commission by a licensed clocker.

(6) The association must furnish to the public information on all official workouts not listed in the daily racing form prior to the start of the race for which the horse is entered.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-40-110 Horse must be in care of((;)) and saddled by((;)) a licensed trainer. ~~((No horse shall be permitted to enter or to start unless he is in the care of and is saddled by a licensed trainer.))~~ (1) No person may start a horse in a race unless the horse is under the care of a trainer licensed at the race meet.

(2) No horse may start in a race unless the licensed trainer saddles the horse. The stewards may approve a substitute trainer who may saddle the horse.

AMENDATORY SECTION (Amending Order 81-06, filed 7/10/81)

WAC 260-40-120 Identification prerequisite to start.

~~((shall be permitted to))~~ (1) No horse may start that has not been ((fully)) properly identified.

~~((shall))~~ (2) All horses must be properly tattooed by the thoroughbred racing protective bureau or an approved breeding association, or freeze marked in a manner ((which)) that meets the standards of the National Crime Information Center. ((Responsibility in the matter of establishing either the identity of a horse or its complete and actual ownership shall be as binding on the persons so identifying or undertaking to establish the identity of a horse as it is on the person having the horse requiring identification. The same penalty shall apply to any party engaging in fraud or attempt at fraud.))

(3) No horse may start unless ownership is first established.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-40-130 ((Stabling-)) Horses must be on the grounds prior to racing. ~~((No horse shall be permitted to enter or to start unless stabled on the grounds of the association, or in stabling approved by said commission.))~~ Any horse entered for racing must be present on the grounds as follows, except with the prior approval of the official veterinarian:

(1) A first time starter must be present on the grounds two hours prior to the first post time or five hours prior to the post time of the race the horse is entered for racing, whichever is earlier.

(2) A horse that has previously started must be present on the grounds five hours prior to the post time for the race the horse is entered for racing.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-40-140 Horse must be eligible to start at time of entry. All horses must be eligible to start at time of entry, as determined by conditions established by the racing secretary's published condition book or conditions for late extra races offered.

AMENDATORY SECTION (Amending Order 73.7, filed 12/3/73)

WAC 260-40-145 Prohibiting entry of certain horses.

~~((a) No horse shall be allowed to enter or start if the highest official regulatory racing body having jurisdiction of the offense previously has determined that the horse was knowingly entered or raced under a name other than its own by a person having lawful custody or control of the animal at the time it was so entered or raced.~~

~~((b) No horse shall be allowed to enter or start if it has been previously determined by the highest official regulatory racing body having jurisdiction of the offense that a person having lawful custody or control of the animal participated in or assisted in the entry of racing some other horse under the name of the horse in question.~~

~~((c) For the purposes of paragraphs (a) and (b) above, the "name" of the horse means the name reflected in the registration certificate or racing permit issued with respect to the horse in question by the jockey club.))~~ (1) No horse will be allowed to enter or start if it has been fraudulently entered or raced in any jurisdiction under a different name, with an altered registration certificate or altered lip tattoo or other identification method approved by the appropriate breed registry and the commission.

(2) No horse may be allowed to enter or start if its owner, lessor(s), or trainers have not been licensed as required by the commission.

AMENDATORY SECTION (Amending WSR 04-07-076, filed 3/15/04, effective 4/15/04)

WAC 260-40-160 Horse owned or managed by disqualified person. (1) A horse ~~((shall))~~ may not ((be qualified to)) be entered or ~~((to))~~ start in any race, if owned in whole or in part, or if under the management, directly or indirectly, of a disqualified person.

(2) ~~((If any))~~ An entry from ~~((any))~~ a disqualified person or for a disqualified horse ~~((is received, such entry shall))~~ must be deemed void and any ((money)) fees paid ((for such entry shall be returned if the disqualification is disclosed forty-five minutes before post time for the race. Otherwise, any such money shall)) must be paid to the winner.

(3) A horse is ineligible to start in a race when it is wholly or partially owned by the spouse of a disqualified person or a horse is under the direct or indirect management of the spouse of a disqualified person~~((;))~~. In such cases, it ((being)) is presumed that the disqualified person and spouse

constitute a single financial entity with respect to the horse(~~(which)~~). The presumption may be rebutted upon presenting satisfactory evidence to the board of stewards that the disqualified person has no financial interest in the horse, and is not involved in managing the horse.

(4) If a horse is sold to a disqualified person, the horse's racing engagements will be void effective the date of the sale.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-40-180 Horse on veterinarian's list. ~~((No))~~ A horse on the veterinarian's list ~~((shall be qualified to))~~ may not be entered, or ~~((to))~~ start in a race.

AMENDATORY SECTION (Amending Order 4, filed 12/24/69)

WAC 260-40-185 ~~((Entries))~~ Reporting alteration of sex. Any alteration in the sex of a horse must be reported ~~((and noted))~~ by the trainer to the racing secretary ~~((or horse identification office immediately, and that office must note the same on the foal certificate))~~ within seventy-two hours of the procedure. The racing secretary will note the alteration on the foal registration certificate and report the alteration to the Jockey Club.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-40-240 Entrance ~~((money))~~, nomination, and starting fees. (1) A horse ~~((shall))~~ may not ~~((become a starter for))~~ start in a race unless ~~((there has been duly paid any))~~ all stake~~((s))~~ or entrance ~~((money payable in respect to))~~ fees required for that race have been paid.

(2) Nomination and entrance ~~((money is))~~ fees may not be refunded ~~((to))~~ due to the death of a horse, or ~~((his))~~ a horse's failure to start.

(3) The ~~((nominator))~~ owner is liable for the nomination and/or entrance ~~((money or stake, and))~~ fees. The death of a horse or a mistake in its entry ~~((when eligible,))~~ does not release the ~~((subscriber or transferee))~~ owner from ~~((liability for stakes, and the entrance money to a purse that is run off shall not be returned on the death of a horse or its failure to start for any cause whatever))~~ having to pay these fees.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-40-250 Closing time for entries and nominations. (1) Entries ~~((shall))~~ and nominations will be closed at an advertised date and/or time, and no ~~((entry))~~ entries or nominations will be accepted thereafter. The racing secretary, however, with the consent of the stewards, may postpone closing of overnight races.

(2) ~~((In the absence of notice to the contrary entrance and declarations for sweepstakes, which close during or on the eve of a race meeting,))~~ Entries and nominations close at the office of the racing secretary~~((, who shall make provision therefor))~~. Closing ~~((at all other times for sweepstakes shall be))~~ for restricted breed association sponsored stake races

may close at the office of the association sponsoring the stake race if advertised in the conditions.

(3) When ~~((an hour))~~ a time for closing is designated, entries and ~~((declaration for sweepstakes cannot be received afterwards, but if an hour))~~ nominations will not be accepted thereafter. In the event that a time is not designated, they may be mailed or ~~((telegraphed))~~ faxed up to midnight of the day of closing, provided they are received in time for compliance with every other condition of the race.

(4) If ~~((a miscarriage of any))~~ an entry ~~((of declaration in a stake))~~ or nomination is alleged to be invalid, satisfactory proof that it was ~~((mailed or telegraphed))~~ entered, mailed, or faxed must be presented to the board of stewards within a reasonable time or ~~((it shall))~~ the complaint will not be ~~((received))~~ allowed.

(5) Entries ~~((which))~~ that have closed ~~((shall))~~ must be compiled without delay by the racing secretary and conspicuously posted.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-40-260 Number of entries and starters. (1) In a stake race ~~((the number of horses to compete will be limited only by the number of horses duly nominated))~~, all horses duly nominated may enter.

(2) ~~((If the number of entries to any purse race is in excess of the number of horses that may, because of track limitations, be permitted to start, the "starters" for the race and their post positions shall be determined by lot in the presence of those making the entries. The same methods shall be employed in determining the starters and post positions in split races.))~~ The maximum number of starters in any race shall be limited to the number of starting positions afforded by the association starting gate and its extensions. The number of starters may be further limited by the number of horses which, in the opinion of the stewards, can be afforded a safe, fair and equal start.

(3) A list of names not to exceed six may be drawn from the overflow entries in any purse race and listed as also eligible to start ~~((as))~~ if originally carded horses are withdrawn~~((, but))~~. The order in which such horses ~~((so))~~ are drawn ~~((shall become eligible))~~ will determine their eligibility to start ~~((and))~~. Their post position ~~((shall))~~ will be determined as provided by ~~((the provisions of))~~ WAC 260-52-020. Any owner, trainer, or ~~((his))~~ authorized agent having a horse so eligible and who does not wish to start, ~~((shall))~~ must file a scratch card not later than the scratch time designated for that day, or seek permission from the stewards to scratch as required by WAC 260-40-010.

AMENDATORY SECTION (Amending WSR 90-19-001, filed 9/6/90, effective 10/7/90)

WAC 260-40-280 Impaired horses. An owner or trainer ~~((shall))~~ may not enter or start a horse that:

(1) Is not in ~~((serviceably))~~ physically sound and competitive racing condition.

(2) Has been trachea-tubed.

(3) Has been nerved except as provided in (a) and (b) of this subsection.

(a) Horses that have had a digital neurectomy (heel nerves) may be permitted to race subject to the pre-race veterinary examination.

(b) Horses that have been nerved, blocked with alcohol or any other medical drug that desensitizes the nerves above the ankle will not be permitted to race.

(4) Has impaired eyesight in both eyes.

(5) Has been treated by extracorporeal shock wave therapy or radial pulse wave therapy other than allowed in WAC 260-70-545(4).

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 260-40-060	Joint subscriptions and entries.
WAC 260-40-080	Refusal of entries and transfers.
WAC 260-40-150	Compliance with partnership registration.
WAC 260-40-190	Sale to disqualified person voids engagements.
WAC 260-40-200	Double entries.

WSR 07-07-011

PERMANENT RULES

HORSE RACING COMMISSION

[Filed March 8, 2007, 4:56 p.m., effective April 8, 2007]

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

Purpose: Repeal WAC 260-48-540 Advance wagering.

Citation of Existing Rules Affected by this Order: Repealing WAC 260-48-540.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 07-03-011 on January 4, 2007.

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

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

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

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

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

Date Adopted: March 8, 2007.

R. J. Lopez
Deputy Secretary

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 260-48-540 Advance wagering.

WSR 07-07-012

PERMANENT RULES

HORSE RACING COMMISSION

[Filed March 8, 2007, 4:56 p.m., effective April 8, 2007]

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

Purpose: Amend WAC 260-70-680 Uniform classification guidelines.

Citation of Existing Rules Affected by this Order: Amending WAC 260-70-680.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 07-03-143 on January 23, 2007.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 11 [1], Repealed 0.

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

Date Adopted: March 9 [8], 2007.

R. J. Lopez
Deputy 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 medi-~~

real 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 cardiotoxic 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/medication/foreign substance, and where appropriate and/or available, its trade name. The penalties for violation of this section are in WAC 260-84-110.

(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.

<u>Drug</u>	<u>Trade Name</u>
<u>Alfentanil</u>	<u>Alfenta</u>
<u>Amphetamine</u>	
<u>Anileridine</u>	<u>Leritine</u>
<u>Apomorphine</u>	
<u>Benzylpiperazine (BZP)</u>	
<u>Carfentanil</u>	
<u>Cocaine</u>	

<u>Drug</u>	<u>Trade Name</u>
<u>Dextromoramide</u>	<u>Palfium, Narcolo</u>
<u>Diamorphine</u>	
<u>Endorphins</u>	
<u>Enkephalins</u>	
<u>Ethylmorphine</u>	<u>Dionin</u>
<u>Etorphine HCl</u>	<u>M99</u>
<u>Fentanyl</u>	<u>Sublimaze</u>
<u>Hydromorphone</u>	<u>Dilaudid</u>
<u>Hydroxyamphetamine</u>	<u>Paradrine</u>
<u>Levorphanol</u>	<u>Levo-Dremoran</u>
<u>Lofentaniol</u>	
<u>Mazindol</u>	<u>Sanorex</u>
<u>Meperidine</u>	<u>Demerol</u>
<u>Mephentermine</u>	
<u>Metaraminol</u>	<u>Aramine</u>
<u>Methadone</u>	<u>Dolophine</u>
<u>Methamphetamine</u>	<u>Desoxyn</u>
<u>Methaqualone</u>	<u>Quaalude</u>
<u>Methylphenidate</u>	<u>Ritalin</u>
<u>Metopon (methyldihydromorphinone)</u>	
<u>Morphine</u>	
<u>Nikethamide</u>	<u>Coramine</u>
<u>Oxycodone</u>	<u>Percodan</u>
<u>Oxymorphone</u>	<u>Numorphan</u>
<u>Pemoline</u>	<u>Cylert</u>
<u>Pentylentetrazol</u>	<u>Metrazol, Nioric</u>
<u>Phenazocine</u>	<u>Narphen</u>
<u>Phencyclidine (PCP)</u>	<u>Sernylan</u>
<u>Phendimetrazine</u>	<u>Bontril, etc.</u>
<u>Phenmetrazine</u>	<u>Preludin</u>
<u>Picrotoxin</u>	
<u>Piritramide</u>	
<u>Remifentaniol</u>	<u>Ultiva</u>
<u>Strychnine</u>	
<u>Sufentaniol</u>	<u>Sufenta</u>

(2) Class 2

Class 2 drugs are drugs/medication/foreign substances 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.

<u>Drug</u>	<u>Trade Name</u>
<u>Acecarbromal</u>	
<u>Acetophenazine</u>	<u>Tindal</u>
<u>Adinazolam</u>	
<u>Alcuronium</u>	<u>Alloferin</u>

<u>Drug</u>	<u>Trade Name</u>
<u>Alphaprodine</u>	<u>Nisentil</u>
<u>Alpidem</u>	<u>Anaxyl</u>
<u>Alprazolam</u>	<u>Xanax</u>
<u>Althesin</u>	<u>Saffan</u>
<u>Amisulpride</u>	<u>Solian</u>
<u>Amitriptyline</u>	<u>Elavil, Amitril, Endep</u>
<u>Amobarbital</u>	<u>Amytal</u>
<u>Amoxapine</u>	<u>Asendin</u>
<u>Amperozide</u>	
<u>Anilopam</u>	<u>Anisine</u>
<u>Aprobarbital</u>	<u>Alurate</u>
<u>Azacylonol</u>	<u>Frenque</u>
<u>Azaperone</u>	<u>Stresnil, Suicalm, Fentaz (with Fentanyl)</u>
<u>Barbital</u>	<u>Veronal</u>
<u>Barbiturates</u>	
<u>Bemegride</u>	<u>Megimide, Mikedimide</u>
<u>Benperidol</u>	
<u>Bentazepam</u>	<u>Tiadipona</u>
<u>Benzactizine</u>	<u>Deprol, Bronchodiletten</u>
<u>Benzocetamine</u>	
<u>Benzodiazepines</u>	
<u>Benzphetamine</u>	<u>Didrex</u>
<u>Benztropine</u>	<u>Cogentin</u>
<u>Biriperone</u>	
<u>Bromazepam</u>	<u>Lexotan, Lectopam</u>
<u>Bromisovalum</u>	<u>Diffucord, etc.</u>
<u>Bromocriptine</u>	<u>Parlodel</u>
<u>Bromperidol</u>	<u>Bromidol</u>
<u>Brotizolam</u>	<u>Brotocol</u>
<u>Bupivacaine</u>	<u>Marcaine</u>
<u>Buprenorphine</u>	<u>Temgesic</u>
<u>Buspirone</u>	<u>Buspar</u>
<u>Buspropion</u>	<u>Wellbutrin</u>
<u>Butabarbital (Secbutobarbitone)</u>	<u>Butacaps, Butasol, etc.</u>
<u>Butalbital (Talbutal)</u>	<u>Fiorinal</u>
<u>Butanilicaine</u>	<u>Hostacain</u>
<u>Butaperazine</u>	<u>Repoise</u>
<u>Butoctamide</u>	<u>Listomin</u>
<u>Caffeine</u>	
<u>Camazepam</u>	<u>Paxor</u>
<u>Captodiame</u>	<u>Covatine</u>
<u>Carbidopa + levodopa</u>	<u>Sinemet</u>
<u>Carbromol</u>	<u>Mifudorm</u>
<u>Carphenazine</u>	<u>Proketazine</u>
<u>Carpipramine</u>	<u>Prazinil</u>

<u>Drug</u>	<u>Trade Name</u>
<u>Chloralose (Alpha-Chloralose)</u>	
<u>Chloral betaine</u>	<u>Beta-Chlor</u>
<u>Chloral hydrate</u>	<u>Nactec, Oridrate, etc.</u>
<u>Chloraldehyde (chloral)</u>	
<u>Chlordiazepoxide</u>	<u>Librium</u>
<u>Chlormezanone</u>	<u>Trancopal</u>
<u>Chloroform</u>	
<u>Chlorhexidol</u>	
<u>Chlorprocaine</u>	<u>Nesacaine</u>
<u>Chlorproethazine</u>	<u>Newiplege</u>
<u>Chlorpromazine</u>	<u>Thorazine, Largactil</u>
<u>Chlorprothixene</u>	<u>Taractan</u>
<u>Citalopram</u>	<u>Celex</u>
<u>Clobazam</u>	<u>Urbanyl</u>
<u>Clocapramine</u>	
<u>Clomethiazole</u>	
<u>Clomipramine</u>	<u>Anafranil</u>
<u>Clonazepam</u>	<u>Klonopin</u>
<u>Clorazepate</u>	<u>Tranxene</u>
<u>Clothiapine</u>	<u>Entermin</u>
<u>Clotiazepam</u>	<u>Trecalmo, Rize</u>
<u>Cloxazolam</u>	<u>Enadel, Sepazon, Tolestan</u>
<u>Clozapine</u>	<u>Clozaril, Leponex</u>
<u>Codeine</u>	
<u>Conorphone</u>	
<u>Corticaine</u>	<u>Ultracain</u>
<u>Crotetamide</u>	
<u>Cyamemazine</u>	<u>Tercian</u>
<u>Cyclobarbitol</u>	<u>Phanodorm</u>
<u>Decamethonium</u>	<u>Syncurine</u>
<u>Demoxepam</u>	
<u>Desipramine</u>	<u>Norpromine, Pertofrane</u>
<u>Dezocine</u>	<u>Dalgan®</u>
<u>Diazepam</u>	<u>Valium</u>
<u>Dichloralphenazone</u>	<u>Febenol, Isocom</u>
<u>Diethylpropion</u>	<u>Tepanil, etc.</u>
<u>Diethylthiambutene</u>	<u>Themalon</u>
<u>Dihydrocodeine</u>	<u>Parcodin</u>
<u>Dilorazepam</u>	<u>Briantum</u>
<u>Diprenorphine</u>	<u>M50/50</u>
<u>Dixyrazine</u>	<u>Esucos</u>
<u>Dopamine</u>	<u>Intropin</u>
<u>Doxapram</u>	<u>Dopram</u>
<u>Doxefazepam</u>	<u>Doxans</u>
<u>Doxepin</u>	<u>Adapin, Sinequan</u>

<u>Drug</u>	<u>Trade Name</u>
<u>Droperidol</u>	<u>Inapsine, Droleptan, Innovar-Vet (with Fentanyl)</u>
<u>Enciprazine</u>	
<u>Ephedrine</u>	
<u>Epinephrine</u>	
<u>Erythropoietin (EPO)</u>	<u>Epogen, Procrit, etc.</u>
<u>Estazolam</u>	<u>Domnamid, Eurodin, Nutalon</u>
<u>Ethamivan</u>	
<u>Ethchlorvynol</u>	<u>Placidyl</u>
<u>Ethinamate</u>	<u>Valmid</u>
<u>Ethopropazine</u>	<u>Parsidol</u>
<u>Ethylisobutrazine</u>	<u>Diquel</u>
<u>Etidocaine</u>	<u>Duranest</u>
<u>Etifoxin</u>	<u>Stresam</u>
<u>Etizolam</u>	<u>Depas, Pasaden</u>
<u>Etodroxizine</u>	<u>Indunox</u>
<u>Etomidate</u>	
<u>Fenarbamate</u>	<u>Tymium</u>
<u>Fenfluramine</u>	<u>Pondimin</u>
<u>Fluanisone</u>	<u>Sedalande</u>
<u>Fludiazepam</u>	<u>Erispam</u>
<u>Flunitrazepam</u>	<u>Rohypnol, Narcozep, Darkene, Hypnodorm</u>
<u>Fluopromazine</u>	<u>Psyquil, Siquil</u>
<u>Fluoresone</u>	<u>Caducid</u>
<u>Fluoxetine</u>	<u>Prozac</u>
<u>Flupenthixol</u>	<u>Depixol, Fluanxol</u>
<u>Fluphenazine</u>	<u>Prolixin, Permitil, Anaten-sol</u>
<u>Flurazepam</u>	<u>Dalmane</u>
<u>Fluspirilene</u>	<u>Imap, Redeptin</u>
<u>Flutoprazepam</u>	<u>Restas</u>
<u>Fluvoxamine</u>	<u>Dumirox, Faverin, etc.</u>
<u>Gallamine</u>	<u>Flaxedil</u>
<u>Gepirone</u>	
<u>Glutethimide</u>	<u>Doriden</u>
<u>Halazepam</u>	<u>Paxipam</u>
<u>Haloperidol</u>	<u>Haldol</u>
<u>Haloxazolam</u>	<u>Somelin</u>
<u>Hemoglobin glutamers</u>	<u>Oxyglobin, Hemopure</u>
<u>Hexafluorenium</u>	<u>Myalexen</u>
<u>Hexobarbital</u>	<u>Evipal</u>
<u>Homophenazine</u>	<u>Pelvichthol</u>
<u>Hydrocodone (dihydrocodeinone)</u>	<u>Hycodan</u>
<u>Hydroxyzine</u>	<u>Atarax</u>
<u>Ibomal</u>	<u>Noctal</u>

<u>Drug</u>	<u>Trade Name</u>
<u>Imipramine</u>	<u>Imavate, Presamine, Tof-ranil</u>
<u>Isapirone</u>	
<u>Isocarboxazid</u>	<u>Marplan</u>
<u>Isomethadone</u>	
<u>Isoproterenol</u>	<u>Isoprel</u>
<u>Ketamine</u>	<u>Ketalar, Ketaset, Vetalar</u>
<u>Ketazolam</u>	<u>Anxon, Laftram, Solatran, Loftran</u>
<u>Lenperone</u>	<u>Elanone-V</u>
<u>Levomethorphan</u>	
<u>Lidocaine</u>	<u>Xylocaine</u>
<u>Lithium</u>	<u>Lithizine, Duralith, etc.</u>
<u>Lobeline</u>	
<u>Loflazepate, Ethyl</u>	<u>Victan</u>
<u>Loprazolam</u>	<u>Dormonort, Havlane</u>
<u>Lorazepam</u>	<u>Ativan</u>
<u>Lormetazepam</u>	<u>Noctamid</u>
<u>Loxapine</u>	<u>Laxitane</u>
<u>Maprotiline</u>	<u>Ludiomil</u>
<u>Mebutamate</u>	<u>Axiten, Dormate, Capla</u>
<u>Meclofenoxate</u>	<u>Lucidiril, etc.</u>
<u>Medazepam</u>	<u>Nobrium, etc.</u>
<u>Melperone</u>	<u>Eunerpan</u>
<u>Meparfynol</u>	<u>Oblivon</u>
<u>Mepazine</u>	<u>Pacatal</u>
<u>Mephenoaloxone</u>	<u>Control, etc.</u>
<u>Mephentyoin</u>	<u>Mesantoin</u>
<u>Mephobarbital (Methylphenobarbital)</u>	<u>Mebaral</u>
<u>Mepivacaine</u>	<u>Carbocaine</u>
<u>Meprobamate</u>	<u>Equanil, Miltown</u>
<u>Mesoridazine</u>	<u>Serentil</u>
<u>Metaclazepam</u>	<u>Talis</u>
<u>Metazocine</u>	
<u>Metharbital</u>	<u>Gemonil</u>
<u>Methohexital</u>	<u>Brevital</u>
<u>Methotrimeprazine</u>	<u>Levoprome, Neurocil, etc.</u>
<u>Methyprylon</u>	<u>Noludar</u>
<u>Metocurine</u>	<u>Metubine</u>
<u>Metomidate</u>	<u>Hypnodil</u>
<u>Mexazolam</u>	<u>Melex</u>
<u>Midazolam</u>	<u>Versed</u>
<u>Mirtazepine</u>	<u>Remeron</u>
<u>Modafinil</u>	<u>Provigil</u>
<u>Molindone</u>	<u>Moban</u>
<u>Moperone</u>	<u>Luvatren</u>

<u>Drug</u>	<u>Trade Name</u>
<u>Mosaprimine</u>	
<u>Nalbuphine</u>	<u>Nubain</u>
<u>Nalorphine</u>	<u>Nalline, Lethidrone</u>
<u>Nefazodone</u>	<u>Serzone</u>
<u>Nimetazepam</u>	<u>Erimin</u>
<u>Nitrazepam</u>	<u>Mogadon</u>
<u>Nordiazepam</u>	<u>Calmday, Nordaz, etc.</u>
<u>Norepinephrine</u>	
<u>Nortriptyline</u>	<u>Aventyl, Pamelor</u>
<u>Olanzapine</u>	<u>Zyprexa</u>
<u>Oxazepam</u>	<u>Serax</u>
<u>Oxazolam</u>	<u>Serenal</u>
<u>Oxyperitine</u>	<u>Forit, Integrin</u>
<u>Pancuronium</u>	<u>Pavulon</u>
<u>Paraldehyde</u>	<u>Paral</u>
<u>Paroxetine</u>	<u>Paxil, Seroxat</u>
<u>Penfluridol</u>	<u>Cyperon</u>
<u>Pentobarbital</u>	<u>Nembutal</u>
<u>Perazine</u>	<u>Taxilan</u>
<u>Periciazine</u>	<u>Alodept, etc.</u>
<u>Perlazine</u>	<u>Hypnodin</u>
<u>Perphenazine</u>	<u>Trilafon</u>
<u>Phenaglycodol</u>	<u>Acalo, Alcamid, etc.</u>
<u>Phenelzine</u>	<u>Nardelzine, Nardil</u>
<u>Phenobarbital</u>	<u>Luminal</u>
<u>Phentermine</u>	<u>Iomamin</u>
<u>Pimindodine</u>	<u>Alvodine, Cimadon</u>
<u>Pimozide</u>	<u>Orap</u>
<u>Pinazepam</u>	<u>Domar</u>
<u>Pipamperone</u>	<u>Dipiperon</u>
<u>Pipequaline</u>	
<u>Piperacetazine</u>	<u>Psymod, Quide</u>
<u>Piperocaine</u>	<u>Metycaine</u>
<u>Pipotiazine</u>	<u>Lonseren, Piportil</u>
<u>Pipradrol</u>	<u>Dataril, Gerondyl, etc.</u>
<u>Piquindone</u>	
<u>Prazepam</u>	<u>Verstran, Centrax</u>
<u>Prilocaine</u>	<u>Citanest</u>
<u>Prochlorperazine</u>	<u>Darbazine, Compazine</u>
<u>Propanidid</u>	
<u>Propiomazine</u>	<u>Largon</u>
<u>Propionylpromazine</u>	<u>Tranvet</u>
<u>Propiram</u>	
<u>Propofol</u>	<u>Diprivan, Disoprivan</u>
<u>Propoxycaine</u>	<u>Ravocaine</u>
<u>Prothipendyl</u>	<u>Dominal</u>
<u>Protriptyline</u>	<u>Concordin, Triptil</u>

<u>Drug</u>	<u>Trade Name</u>
<u>Proxibarbital</u>	<u>Axeen, Centralgol</u>
<u>Pyrrithyldione</u>	<u>Hybersulfan, Sonodor</u>
<u>Quazipam</u>	<u>Doral</u>
<u>Quetiapine</u>	<u>Seroquel</u>
<u>Racemethorphan</u>	
<u>Racemorphan</u>	
<u>Raclopride</u>	
<u>Remoxipride</u>	<u>Roxiam</u>
<u>Reserpine</u>	<u>Serpasil</u>
<u>Rilmazafone</u>	
<u>Risperidone</u>	
<u>Ritanserlin</u>	
<u>Rivastigmine</u>	<u>Exelon</u>
<u>Romifidine</u>	<u>Sedivet</u>
<u>Ropivacaine</u>	<u>Naropin</u>
<u>Secobarbital (Quinalbarbitone)</u>	<u>Seconal</u>
<u>Selegiline</u>	<u>Eldepryl, Jumex</u>
<u>Sertraline</u>	<u>Lustral, Zoloft</u>
<u>Snake Venoms</u>	
<u>Spiclomazine</u>	
<u>Spiperone</u>	
<u>Succinylcholine</u>	<u>Sucostrin, Quelin, etc.</u>
<u>Sulfondiethylmethane</u>	
<u>Sulfonmethane</u>	
<u>Sulforidazine</u>	<u>Inofal</u>
<u>Sulpiride</u>	<u>Aiglonyl, Sulpitil</u>
<u>Sultopride</u>	<u>Barnetil</u>
<u>Talbutal</u>	<u>Lotusate</u>
<u>Tandospirone</u>	
<u>Temazepam</u>	<u>Restoril</u>
<u>Tetrabenazine</u>	<u>Nitoman</u>
<u>Tetracaine</u>	<u>Pontocaine</u>
<u>Tetrazepam</u>	<u>Musaril, Myolastin</u>
<u>Thebaine</u>	
<u>Thialbarbital</u>	<u>Kemithal</u>
<u>Thiamylal</u>	<u>Surital</u>
<u>Thiethylperazine</u>	<u>Torecan</u>
<u>Thiopental</u>	<u>Pentothal</u>
<u>Thiopropazate</u>	<u>Dartal</u>
<u>Thiopropazine</u>	<u>Majeptil</u>
<u>Thioridazine</u>	<u>Mellaril</u>
<u>Thiothixene</u>	<u>Navane</u>
<u>Tiapride</u>	<u>Italprid, Luxoben, etc.</u>
<u>Tiletamine</u>	<u>Component of Telazol</u>
<u>Timiperone</u>	<u>Tolopelon</u>
<u>Tofisopam</u>	<u>Grandaxain, Seriel</u>

<u>Drug</u>	<u>Trade Name</u>
<u>Topiramate</u>	<u>Topamax</u>
<u>Tramadol</u>	<u>Ultram</u>
<u>Tranlycypromine</u>	<u>Parnate</u>
<u>Trazodone</u>	<u>Desyrel</u>
<u>Triazolam</u>	<u>Halcion</u>
<u>Tribromethanol</u>	
<u>Tricaine methanesulfonate</u>	<u>Finquel</u>
<u>Trichloroethanol</u>	
<u>Trichloethylene</u>	<u>Trilene, Trimar</u>
<u>Triclofos</u>	<u>Triclos</u>
<u>Trifluomeprazine</u>	<u>Nortran</u>
<u>Trifluoperazine</u>	<u>Stelazine</u>
<u>Trifluoperidol</u>	<u>Triperidol</u>
<u>Triflupromazine</u>	<u>Vetame, Vesprin</u>
<u>Trimipramine</u>	<u>Surmontil</u>
<u>Tubocurarine (Curare)</u>	<u>Metubin</u>
<u>Tybamate</u>	<u>Benvil, Nospan, etc.</u>
<u>Urethane</u>	
<u>Valnoctamide</u>	<u>Nirvanyl</u>
<u>Venlafaxine</u>	<u>Effexor</u>
<u>Veralipride</u>	<u>Accional, Veralipril</u>
<u>Vercuronium</u>	<u>Norcuron</u>
<u>Viloxazine</u>	<u>Catatrol, Vivalan, etc.</u>
<u>Vinbarbital</u>	<u>Delvinol</u>
<u>Vinylbital</u>	<u>Optanox, Speda</u>
<u>Yohimbine</u>	
<u>Zolazepam</u>	
<u>Zolpidem</u>	<u>Ambien, Stilnox</u>
<u>Zopiclone</u>	<u>Imovan</u>
<u>Zotepine</u>	<u>Lodopin</u>
<u>Zuclopenthixol</u>	<u>Ciatyl, Cesordinol</u>

(3) Class 3

Class 3 drugs are drugs/medication/foreign substances 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.

<u>Drug</u>	<u>Trade Name</u>
<u>Acebutolol</u>	<u>Sectral</u>
<u>Acepromazine</u>	<u>Atrovet, Notensil, Prom-Ace®</u>
<u>Albuterol (Salbutamol)</u>	<u>Proventil, Ventolin</u>
<u>Alprenolol</u>	
<u>Ambenonium</u>	<u>Mytelase, Myeuran</u>
<u>Aminophylline</u>	<u>Aminophyllin, etc.</u>
<u>Amlodipine</u>	<u>Norvasc</u>
<u>Amyl nitrite</u>	
<u>Arecoline</u>	

<u>Drug</u>	<u>Trade Name</u>
<u>Atenolol</u>	<u>Tenormin</u>
<u>Atropine</u>	
<u>Betaxolol</u>	<u>Kerlone</u>
<u>Bethanidine</u>	<u>Esbatal</u>
<u>Biperiden</u>	<u>Akineton</u>
<u>Bisoprolol</u>	<u>Zebeta, Bisobloc, etc.</u>
<u>Bitolterol</u>	<u>Effectin</u>
<u>Bretylium</u>	<u>Bretylol</u>
<u>Brimonidine</u>	<u>Alphagan</u>
<u>Bromfenac</u>	<u>Duract</u>
<u>Bromodiphenhydramine</u>	
<u>Bumetanide</u>	<u>Bumex</u>
<u>Butorphanol</u>	<u>Stadol, Torbugesic</u>
<u>Candesartan</u>	<u>Atacand</u>
<u>Captopril</u>	<u>Capolen</u>
<u>Carazolol</u>	<u>Carbacel, Conductor</u>
<u>Carbachol</u>	<u>Lentin, Doryl</u>
<u>Carbamezapine</u>	<u>Tegretol</u>
<u>Carbinoxamine</u>	<u>Clistin</u>
<u>Carteolol</u>	<u>Cartrol</u>
<u>Carvedilol</u>	<u>Coreg</u>
<u>Cimeterol</u>	
<u>Clenbuterol</u>	<u>Ventipulmin</u>
<u>Clonidine</u>	<u>Catapres</u>
<u>Cyclandelate</u>	<u>Cyclospasmol</u>
<u>Cycrimine</u>	<u>Pagitane</u>
<u>Detomidine</u>	<u>Dormosedan</u>
<u>Dextropropoxyphene</u>	<u>Darvon</u>
<u>Diazoxide</u>	<u>Proglycem</u>
<u>Dimeflin</u>	
<u>Diphenhydramine</u>	<u>Benadryl</u>
<u>Dipyridamole</u>	<u>Persantine</u>
<u>Dobutamine</u>	<u>Dobutrex</u>
<u>Doxylamine</u>	<u>Decapryn</u>
<u>Dyphylline</u>	
<u>Edrophonium</u>	<u>Tensilon</u>
<u>Enalapril (metabolite enalaprilat)</u>	<u>Vasotec</u>
<u>Erthrityl tetranitrate</u>	<u>Cardilate</u>
<u>Esmolol</u>	<u>Brevibloc</u>
<u>Etamiphylline</u>	
<u>Ethacrynic acid</u>	<u>Edecrin</u>
<u>Ethylnorepinephrine</u>	<u>Bronkephrine</u>
<u>Fenoldopam</u>	<u>Corlopam</u>
<u>Fenoterol</u>	<u>Berotec</u>
<u>Fenspiride</u>	<u>Respiride, Respan, etc.</u>
<u>Flupirtine</u>	<u>Katadolone</u>

<u>Drug</u>	<u>Trade Name</u>
<u>Formoterol</u>	<u>Altram</u>
<u>Gabapentin</u>	<u>Neurontin</u>
<u>Glycopyrrolate</u>	<u>Robinul</u>
<u>Guanadrel</u>	<u>Hylorel</u>
<u>Guanethidine</u>	<u>Ismelin</u>
<u>Guanabenz</u>	<u>Wytensin</u>
<u>Heptaminol</u>	<u>Corofundol</u>
<u>Homatropine</u>	<u>Homapin</u>
<u>Hydralazine</u>	<u>Apresoline</u>
<u>Ipratropium</u>	
<u>Irbesarten</u>	<u>Avapro</u>
<u>Isoetharine</u>	<u>Bronkosol</u>
<u>Isosorbide dinitrate</u>	<u>Isordil</u>
<u>Ketorolac</u>	<u>Toradol</u>
<u>Labetalol</u>	<u>Normodyne</u>
<u>Losartan</u>	<u>Hyzaar</u>
<u>Mabuterol</u>	
<u>Mecamylamine</u>	<u>Inversine</u>
<u>Medetomidine</u>	<u>Domitor</u>
<u>Metaproterenol</u>	<u>Alupent, Metaprel</u>
<u>Methacholine</u>	
<u>Methixene</u>	<u>Trest</u>
<u>Methoxamine</u>	<u>Vasoxyl</u>
<u>Methoxyphenamine</u>	<u>Orthoxide</u>
<u>Methylatropine</u>	
<u>Methyldopa</u>	<u>Aldomet</u>
<u>Metolazone</u>	
<u>Metoprolol</u>	<u>Lopressor</u>
<u>Mibefradil</u>	<u>Posicor</u>
<u>Midodrine</u>	<u>Pro-Amiline</u>
<u>Minoxidil</u>	<u>Loniten</u>
<u>Moexipril (metabolite moexiprilat)</u>	<u>Uniretic</u>
<u>Muscarine</u>	
<u>Nadol</u>	<u>Corgard</u>
<u>Naratriptan</u>	<u>Amerge</u>
<u>Nefopam</u>	
<u>Neostigmine</u>	<u>Prostigmine</u>
<u>Nitroglycerin</u>	
<u>Oxprenolol</u>	<u>Trasicor</u>
<u>Papaverine</u>	<u>Pavagen, etc.</u>
<u>Paramethadione</u>	<u>Paradione</u>
<u>Pargyline</u>	<u>Eutonyl</u>
<u>Penbutolol</u>	<u>Levatol</u>
<u>Pentaerythritol tetranitrate</u>	<u>Duotrate</u>
<u>Pentazocine</u>	<u>Talwin</u>
<u>Phenoxybenzamine</u>	<u>Dibenzyline</u>

<u>Drug</u>	<u>Trade Name</u>
<u>Phentolamine</u>	<u>Regitine</u>
<u>Phenylephrine</u>	<u>Isophrin, Neo-Syneph- rine</u>
<u>Phenylpropanolamine</u>	<u>Propadrine</u>
<u>Physostigmine</u>	<u>Eserine</u>
<u>Pindolol</u>	<u>Viskin</u>
<u>Pirbuterol</u>	<u>Maxair</u>
<u>Piretanide</u>	<u>Arelix, Tauliz</u>
<u>Prazosin</u>	<u>Minipress</u>
<u>Primidone</u>	<u>Mysoline</u>
<u>Procaine</u>	
<u>Procatamol</u>	<u>Pro Air</u>
<u>Procyclidine</u>	<u>Kemadrin</u>
<u>Promazine</u>	<u>Sparine</u>
<u>Promethazine</u>	<u>Phenergan</u>
<u>Propentophylline</u>	<u>Karsivan</u>
<u>Propranolol</u>	<u>Inderal</u>
<u>Protokylol</u>	<u>Ventaire</u>
<u>Pseudoephedrine</u>	<u>Cenafed, Novafed</u>
<u>Pyridostigmine</u>	<u>Mestinon, Regonol</u>
<u>Pyrilamine</u>	<u>Neoantergan, Equihist</u>
<u>Ractopamine</u>	<u>Raylean</u>
<u>Ritodrine</u>	<u>Yutopar</u>
<u>Rizatriptan</u>	<u>Maxalt</u>
<u>Salmeterol</u>	
<u>Scopolamine (Hyoscine)</u>	<u>Triptone</u>
<u>Sibutramine</u>	<u>Meridia</u>
<u>Sotalol</u>	<u>Betapace, Sotacor</u>
<u>Sumatriptan</u>	<u>Imitrex</u>
<u>Telmisartin</u>	<u>Micardis</u>
<u>Terbutaline</u>	<u>Brethine, Bricanyl</u>
<u>Testolactone</u>	<u>Teslac</u>
<u>Theophylline</u>	<u>Aqualphyllin, etc.</u>
<u>Timolol</u>	<u>Blocardrin</u>
<u>Tolazoline</u>	<u>Priscoline</u>
<u>Torsemide (Torasemide)</u>	<u>Demadex</u>
<u>Trandolapril (and metabolite, Trandolaprilat)</u>	<u>Tarka</u>
<u>Trihexylphenidyl</u>	<u>Artane</u>
<u>Trimethadione</u>	<u>Tridione</u>
<u>Trimethaphan</u>	<u>Arfonad</u>
<u>Tripelennamine</u>	<u>PBZ</u>
<u>Valsartan</u>	<u>Diovan</u>
<u>Xylazine</u>	<u>Rompun, Bay Va 1470</u>
<u>Zolmitriptan</u>	<u>Zomig</u>
<u>Zonisamide</u>	<u>Zonegran</u>

(4) Class 4

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

<u>Drug</u>	<u>Trade Name</u>
<u>Acetaminophen (Paracetamol)</u>	<u>Tylenol, Tempra, etc.</u>
<u>Acetanilid</u>	
<u>Acetazolamide</u>	<u>Diamox, Vetamox</u>
<u>Acetophenetidin (Phenacetin)</u>	
<u>Acetylsalicylic acid (Aspirin)</u>	
<u>Alclofenac</u>	
<u>Aclomethasone</u>	<u>Aclovate</u>
<u>Aldosterone</u>	<u>Aldocortin, Electro cortin</u>
<u>Ambroxol</u>	<u>Ambril, etc.</u>
<u>Amezinonide</u>	<u>Cyclocort</u>
<u>Aminocaproic acid</u>	<u>Amicar, Caprocid</u>
<u>Aminodarone</u>	
<u>2-Aminoheptaine</u>	<u>Tuamine</u>
<u>Aminopyrine</u>	
<u>Amisometradine</u>	<u>Rolictron</u>
<u>Amlopidine</u>	<u>Norvasc, Ammivin</u>
<u>Amrinone</u>	
<u>Anisotropine</u>	<u>Valpin</u>
<u>Antipyrine</u>	
<u>Apazone (Azapropazone)</u>	<u>Rheumox</u>
<u>Aprindine</u>	
<u>Baclofen</u>	<u>Lioresal</u>
<u>Beclomethasone</u>	<u>Propaderm</u>
<u>Benazepril</u>	<u>Lotrel</u>
<u>Bendroflumethiazide</u>	<u>Naturetin</u>
<u>Benoxaprofen</u>	
<u>Benoxinate</u>	<u>Dorsacaine</u>
<u>Benzocaine</u>	
<u>Benzthiazide</u>	
<u>Bepidil</u>	<u>Bepadin</u>
<u>Betamethasone</u>	<u>Betasone, etc.</u>
<u>Bethanechol</u>	<u>Urecholine, Duvoid</u>
<u>Boldenone</u>	<u>Equipoise</u>
<u>Bromhexine</u>	<u>Oletor, etc.</u>
<u>Brompheniramine</u>	<u>Dimetane, Disomer</u>
<u>Budesonide</u>	<u>Pulmacort, Rhinocort</u>
<u>Butacaine</u>	<u>Butyn</u>
<u>Butamben (butyl aminoben- zoate)</u>	<u>Butesin</u>
<u>Butoxycaine</u>	<u>Stadacain</u>
<u>Calusterone</u>	<u>Methosorb</u>
<u>Camphor</u>	
<u>Carisoprodol</u>	<u>Relo, Soma</u>

<u>Drug</u>	<u>Trade Name</u>
<u>Celecoxib</u>	<u>Celebrex</u>
<u>Chlormerodrin</u>	<u>Neohydrin</u>
<u>Chlorphenesin</u>	<u>Maolate</u>
<u>Chloroquine</u>	<u>Avloclor</u>
<u>Chlorothiazide</u>	<u>Diuril</u>
<u>Chlorpheniramine</u>	<u>Chlortriemton, etc.</u>
<u>Chlorthalidone</u>	<u>Hydroton</u>
<u>Chlorzoxazone</u>	<u>Paraflex</u>
<u>Cinchocaine</u>	<u>Nupercaine</u>
<u>Clibucaine</u>	<u>Batrax</u>
<u>Clidinium</u>	<u>Quarezan, Clindex, etc.</u>
<u>Clobetasol</u>	<u>Temovate</u>
<u>Clocortolone</u>	<u>Cloderm</u>
<u>Clofenamide</u>	
<u>Clormecaine</u>	<u>Placacid</u>
<u>Colchicine</u>	
<u>Cortisone</u>	<u>Cortone, etc.</u>
<u>Cyclizine</u>	<u>Merazine</u>
<u>Cyclobenzaprine</u>	<u>Flexeril</u>
<u>Cyclomethylcaine</u>	<u>Surfacaine</u>
<u>Cyclothiazide</u>	<u>Anhydron, Renazide</u>
<u>Cyproheptadine</u>	<u>Periactin</u>
<u>Danazol</u>	<u>Danocrine</u>
<u>Dantrolene</u>	<u>Dantrium</u>
<u>Dembroxol (Dembrexine)</u>	<u>Sputolysin</u>
<u>Deoxycorticosterone</u>	<u>Percortin, DOCA, Descotone, Dorcostrin</u>
<u>Desonite</u>	<u>Des Owen</u>
<u>Desoximetasone</u>	<u>Topicort</u>
<u>Dexamethasone</u>	<u>Azium, etc.</u>
<u>Dextromethorphan</u>	
<u>Dibucaine</u>	<u>Nupercainal, Cinchocaine</u>
<u>Dichlorphenamide</u>	<u>Daramide</u>
<u>Diclofenac</u>	<u>Voltaren, Voltarol</u>
<u>Diflorasone</u>	<u>Florone, Maxiflor</u>
<u>Diflucortolone</u>	<u>Flu-Cortinest, etc.</u>
<u>Diflunisal</u>	
<u>Digitoxin</u>	<u>Crystodigin</u>
<u>Digoxin</u>	<u>Lanoxin</u>
<u>Dihydroergotamine</u>	
<u>Diltiazem</u>	<u>Cardizem</u>
<u>Dimethisoquin</u>	<u>Quotane</u>
<u>Diphenoxylate</u>	<u>Difenoxin, Lomotil</u>
<u>Dipyrene</u>	<u>Novin, Methampyrone</u>
<u>Disopyramide</u>	<u>Norpace</u>
<u>Dromostanolone</u>	<u>Drolban</u>
<u>Dyclonine</u>	<u>Dyclone</u>

<u>Drug</u>	<u>Trade Name</u>
<u>Eltenac</u>	
<u>Ergonovine</u>	<u>Ergotrate</u>
<u>Ergotamine</u>	<u>Gynergen, Cafergot, etc.</u>
<u>Etanercept</u>	<u>Enbrel</u>
<u>Ethoheptazine</u>	<u>Zactane</u>
<u>Ethosuximide</u>	<u>Zarontin</u>
<u>Ethotoin</u>	<u>Peganone</u>
<u>Ethoxzolamide</u>	<u>Cardrase, Ethamide</u>
<u>Ethylaminobenzoate (Benzocaine)</u>	<u>Semets, etc.</u>
<u>Ethylestrenol</u>	<u>Maxibolin, Organon</u>
<u>Etodolac</u>	<u>Lodine</u>
<u>Felodipine</u>	<u>Plendil</u>
<u>Fenbufen</u>	<u>Cincopal</u>
<u>Fenclozic acid</u>	<u>Myalex</u>
<u>Fenoprofen</u>	<u>Nalfon</u>
<u>Fexofenadine</u>	<u>Allegra</u>
<u>Flecainide</u>	<u>Idalon</u>
<u>Floctafenine</u>	<u>Idalon, Idarac</u>
<u>Flucinolone</u>	<u>Synalar, etc.</u>
<u>Fludrocortisone</u>	<u>Alforone, etc.</u>
<u>Flufenamic acid</u>	
<u>Flumethasone</u>	<u>Flucort, etc.</u>
<u>Flumethiazide</u>	<u>Ademol</u>
<u>Flunarizine</u>	<u>Sibelium</u>
<u>Flunisolide</u>	<u>Bronilide, etc.</u>
<u>Flunixin</u>	<u>Banamine</u>
<u>Fluocinolone</u>	<u>Synalar</u>
<u>Fluocinonide</u>	<u>Licon, Lidex</u>
<u>Fluoroprednisolone</u>	<u>Predef-2X</u>
<u>Fluoxymesterone</u>	<u>Halotestin</u>
<u>Fluprednisolone</u>	<u>Alphadrol</u>
<u>Flurandrenolide</u>	<u>Cordran</u>
<u>Flurbiprofen</u>	<u>Froben</u>
<u>Fluticasone</u>	<u>Flixonase, Flutide</u>
<u>Guaifenesin (glycerol guaiacolate)</u>	<u>Gecolate</u>
<u>Halcinonide</u>	<u>Halog</u>
<u>Halobetasol</u>	<u>Ultravate</u>
<u>Hexocyclium</u>	<u>Tral</u>
<u>Hexylcaine</u>	<u>Cyclaine</u>
<u>Hydrochlorthiazide</u>	<u>Hydrodiuril</u>
<u>Hydrocortisone (Cortisol)</u>	<u>Cortef, etc.</u>
<u>Hydroflumethiazide</u>	<u>Saluron</u>
<u>Ibuprofen</u>	<u>Motrin, Advil, Nurpin, etc.</u>
<u>Indomethacin</u>	<u>Indocin</u>

<u>Drug</u>	<u>Trade Name</u>
<u>Infliximab</u>	<u>Remicade</u>
<u>Isoflupredone</u>	<u>Predef</u>
<u>Isometheptene</u>	<u>Octin, Octon</u>
<u>Isopropamide</u>	<u>Darbid</u>
<u>Isoxicam</u>	<u>Maxicam</u>
<u>Isoxsuprine</u>	<u>Vasodilan</u>
<u>Isradipine</u>	<u>DynaCirc</u>
<u>Ketoprofen</u>	<u>Orudis</u>
<u>Letosteine</u>	<u>Viscotiol, Visiotal</u>
<u>Loperamide</u>	<u>Imodium</u>
<u>Loratidine</u>	<u>Claritin</u>
<u>Meclizine</u>	<u>Antivert, Bonine</u>
<u>Meclofenamic acid</u>	<u>Arquel</u>
<u>Medrysone</u>	<u>Medriusar, etc.</u>
<u>Mefenamic acid</u>	<u>Ponstel</u>
<u>Meloxicam</u>	<u>Mobic</u>
<u>Mepenzolate</u>	<u>Cantil</u>
<u>Mephenesin</u>	<u>Tolserol</u>
<u>Meralluride</u>	<u>Merkuhydrin</u>
<u>Merbaphen</u>	<u>Novasural</u>
<u>Mercaptomerin</u>	<u>Thiomerin</u>
<u>Mercumalilin</u>	<u>Cumertilin</u>
<u>Mersalyl</u>	<u>Salyrgan</u>
<u>Metaxalone</u>	<u>Skelaxin</u>
<u>Methandriol</u>	<u>Probolic</u>
<u>Methandrostenolone</u>	<u>Dianabol</u>
<u>Methantheline</u>	<u>Banthine</u>
<u>Methapyrilene</u>	<u>Histadyl, etc.</u>
<u>Methazolamide</u>	<u>Naptazane</u>
<u>Methdilazine</u>	<u>Tacaryl</u>
<u>Methocarbamol</u>	<u>Robaxin</u>
<u>Methotrexate</u>	<u>Folex, Nexate, etc.</u>
<u>Methscopolamine</u>	<u>Pamine</u>
<u>Methsuximide</u>	<u>Celontin</u>
<u>Methylchlorthiazide</u>	<u>Enduron</u>
<u>Methandrostenolone</u>	<u>Dianabol</u>
<u>Methylergonovine</u>	<u>Methergine</u>
<u>Methylprednisolone</u>	<u>Medrol</u>
<u>Methyltestosterone</u>	<u>Metandren</u>
<u>Methysergide</u>	<u>Sansert</u>
<u>Metiamide</u>	
<u>Metoclopramide</u>	<u>Reglan</u>
<u>Mexilitine</u>	<u>Mexilil</u>
<u>Milrinone</u>	
<u>Mometasone</u>	<u>Elocon</u>
<u>Montelukast</u>	<u>Singulair</u>

<u>Drug</u>	<u>Trade Name</u>
<u>Nabumetone</u>	<u>Anthraxan, Relafen, Reliflex</u>
<u>Naepaine</u>	<u>Amylsine</u>
<u>Nandrolone</u>	<u>Nandrolin, Laurabolin, Durabolin</u>
<u>Naphazoline</u>	<u>Privine</u>
<u>Naproxen</u>	<u>Equiproxen, Naprosyn</u>
<u>Nicardipine</u>	<u>Cardine</u>
<u>Nifedipine</u>	<u>Procardia</u>
<u>Niflumic acid</u>	<u>Nifluril</u>
<u>Nimesulide</u>	
<u>Nimodipine</u>	<u>Nemotop</u>
<u>Norethandrone</u>	
<u>Nortestosterone</u>	<u>Nemotop</u>
<u>Orphenadrine</u>	<u>Norlfex</u>
<u>Oxandrolone</u>	<u>Anavar</u>
<u>Oxaprozin</u>	<u>Daypro, Deflam</u>
<u>Oxymetazoline</u>	<u>Afrin</u>
<u>Oxymetholone</u>	<u>Adroyd, Anadrol</u>
<u>Oxyphenbutazone</u>	<u>Tandearil</u>
<u>Oxyphenyclimine</u>	<u>Daricon</u>
<u>Oxyphenonium</u>	<u>Antrenyl</u>
<u>Paramethasone</u>	<u>Haldrone</u>
<u>Pentoxyfylline</u>	<u>Trental, Vazofirin</u>
<u>Phenacemide</u>	<u>Phenurone</u>
<u>Phensuximide</u>	<u>Milontin</u>
<u>Phenytoin</u>	<u>Dilantin</u>
<u>Piroxicam</u>	<u>Feldene</u>
<u>Polythiazide</u>	<u>Renese</u>
<u>Pramoxine</u>	<u>Tronothaine</u>
<u>Prednisolone</u>	<u>Delta-Cortef, etc.</u>
<u>Prednisone</u>	<u>Meticorten, etc.</u>
<u>Probenecid</u>	
<u>Procainamide</u>	<u>Pronestyl</u>
<u>Propafenone</u>	<u>Rythmol</u>
<u>Propantheline</u>	<u>Pro-Banthine</u>
<u>Proparacaine</u>	<u>Ophthaine</u>
<u>Propylhexedrine</u>	<u>Benzedrex</u>
<u>Quinidine</u>	<u>Quinidex, Quinocardine</u>
<u>Rofecoxib</u>	<u>Vioxx</u>
<u>Salicylamide</u>	
<u>Salicylate</u>	
<u>Spironalactone</u>	<u>Aldactone</u>
<u>Stanozolol</u>	<u>Winstrol-V</u>
<u>Sulfasalazine</u>	<u>Azulfidine, Azaline</u>
<u>Sulindac</u>	<u>Clinoril</u>
<u>Tenoxicam</u>	<u>Alganex, etc.</u>

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

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

<u>Drug</u>	<u>Trade Name</u>
<u>Phenindione</u>	<u>Hedulin</u>
<u>Phenprocoumon</u>	<u>Liquamar</u>
<u>Pirenzapine</u>	<u>Gastrozepin</u>
<u>Polyethylene glycol</u>	
<u>Ranitidine</u>	<u>Zantac</u>
<u>Warfarin</u>	<u>Coumadin, Coufarin</u>

(6) Nonclassified substances

Nonclassified substances are considered to have no effect on the physiology of a horse, except to improve nutrition or treat or prevent infections or parasite infestations. These substances normally include antimicrobials, antiparasitic drugs, and nutrients such as vitamins.

WSR 07-07-013

PERMANENT RULES

HORSE RACING COMMISSION

[Filed March 8, 2007, 4:56 p.m., effective April 8, 2007]

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

Purpose: Amend chapter 260-80 WAC, Prohibited practices.

Citation of Existing Rules Affected by this Order: Repealing WAC 260-80-020; and amending WAC 260-80-010, 260-80-030, 260-80-040, 260-80-050, 260-80-060, 260-80-070, 260-80-100, 260-80-110, 260-80-130, 260-80-140, and 260-80-150.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 07-03-132 on January 23, 2007.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 11, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 11, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 2, Amended 11, Repealed 1; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 8, 2007.

R. J. Lopez
Deputy Secretary

Chapter 260-80 WAC

~~((CORRUPT AND))~~ PROHIBITED PRACTICES

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-80-010 Offering or accepting a bribe. No person ~~((shall))~~ may give, offer, ~~((or))~~ promise, or accept, directly or indirectly, either in his/her own behalf or in behalf of another, ~~((to anyone,))~~ any bribe, gift or gratuity in any form, for the purpose of improperly influencing the result of a race, or which would tend to ~~((do so))~~ influence the result of a race.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-80-030 Entering ineligible horse. No person ~~((shall))~~ may willfully enter, or cause to be entered, or start a horse ~~((which))~~ that he/she knows or believes to be ineligible or disqualified.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-80-040 Offer or receipt of benefit for ~~((declaring))~~ scratching an entry. No person ~~((shall))~~ may offer or receive money or any other benefit for ~~((declaring))~~ withdrawing or scratching an entry from a race.

AMENDATORY SECTION (Amending WSR 06-07-059, filed 3/10/06, effective 4/10/06)

WAC 260-80-050 Corrupt or fraudulent practice and conspiracy. No person ~~((shall))~~ may commit any corrupt or fraudulent practice in relation to racing, nor may any person conspire with any other person for the commission of any corrupt or fraudulent practice in relation to racing ~~((nor shall he commit such an act on his own account)).~~

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-80-060 Betting for account of jockey. No person ~~((shall))~~ may make a bet for the account of any jockey except the owner or trainer of the horse the jockey is riding, and then the bet may only be placed on the horse being ridden by ~~((said))~~ that jockey to win or finish first in combinations with other horses in multiple wagers. Records of such wagers must be kept and made available upon request of the stewards.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-80-070 Offers, gifts, to jockey. No person ~~((shall))~~ may offer or give a jockey any money or other benefit in relation to a race ~~((unless said person is))~~ except the owner or trainer of the horse ridden in ~~((said))~~ that race by ~~((said))~~ the jockey.

AMENDATORY SECTION (Amending WSR 06-07-059, filed 3/10/06, effective 4/10/06)

WAC 260-80-100 Appliance to alter speed of horse. (1) No electrical or mechanical device or other appliance designed or intended to increase or decrease the speed of a horse, or that would tend to increase or decrease the speed of a horse, other than the ordinary whip ~~((shall))~~ may be possessed by anyone or applied by anyone to a horse, at any time on the grounds of an association, during a meeting whether in a race or otherwise.

(2) Any person aiding or abetting in the use or possession of, or soliciting or inducing the use or possession of such a device or appliance ~~((shall))~~ will be subject to the same penalties as the penalty for possession or use.

AMENDATORY SECTION (Amending WSR 06-07-059, filed 3/10/06, effective 4/10/06)

WAC 260-80-110 Tampering with horse. No person ~~((shall improperly))~~ may tamper or attempt to tamper with any horse in such a way as to affect ~~((his))~~ the horse's speed in a race, or in such a way as is intended to affect the horse's speed in a race, nor ~~((shall))~~ may any person counsel or in any way aid or abet any such tampering.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-80-130 Improper language. No person ~~((shall))~~ may use improper, profane or indecent language to a commissioner, racing official, or any employee ~~((or representative))~~ of the commission.

AMENDATORY SECTION (Amending WSR 06-15-092, filed 7/14/06, effective 8/14/06)

WAC 260-80-140 Disturbing the peace. A person may not unreasonably disturb the peace while on association grounds.

NEW SECTION

WAC 260-80-145 Safe practices while on horseback. All persons while on horseback must ride in a safe and prudent manner on the grounds of a racing association.

AMENDATORY SECTION (Amending WSR 06-07-059, filed 3/10/06, effective 4/10/06)

WAC 260-80-150 Mistreatment of horses. ~~((While on the association grounds))~~ No person ~~((shall))~~ may subject any horse to any form of cruelty, mistreatment, neglect, abuse, abandonment, injury, maiming or killing or administer any noxious substance to or deprive any horse of necessary care or sustenance, shelter or veterinary care. This section does not apply to treatment or euthanasia of a horse by a licensed veterinarian consistent with standard veterinary practices.

NEW SECTION**WAC 260-80-160 Engaging in criminal activity.**

While on association grounds no person may engage in any activity that would constitute a criminal act in the state of Washington.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 260-80-020 Accepting bribe.

WSR 07-07-018
PERMANENT RULES
GAMBLING COMMISSION

[Order 471—Filed March 9, 2007, 12:42 p.m., effective April 9, 2007]

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

Purpose: At the request of a poker player, poker wagering limits will be increased from \$25 to \$40.

Citation of Existing Rules Affected by this Order: Amending WAC 230-40-120.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 07-03-104 on January 22, 2007.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: March 9, 2007.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 453, filed 1/17/06, effective 2/17/06)

WAC 230-40-120 Limits on wagers in card games.

Social and public card room licensees shall not allow wagering limits set by the commission to be exceeded in any card game. The number and value of wagers in card games are limited as follows:

Nonhouse-banked card games.

(1) Poker:

(a) There shall be no more than five betting rounds in any one game;

(b) The maximum number of wagers in any betting round shall be four, comprised of an initial wager plus three raises; and

(c) The maximum amount of a single wager shall not exceed ~~((twenty-five))~~ forty dollars;

(2) Games based on achieving a specific number of points - each point shall not exceed five cents in value;

(3) An ante, except for panguingue (pan), shall not be more than the maximum wager allowed for the first betting round for any game. The ante may, by house rule, be made by one or more players, but the total ante may not exceed the maximum wager allowed for the first betting round. An ante, by house rule, may be used as part of a player's wager;

(4) Panguingue (pan) - the maximum value of a chip for a payoff shall not exceed ten dollars. An ante will not exceed one chip. Doubling of conditions is prohibited. Players going out may collect not more than two chips from each participating player;

House-banked card games.

(5) Licensees authorized to conduct house-banked card games shall not allow a single wager to exceed two hundred dollars;

(6) A single wager may be made for each decision made by the player before additional cards are dealt or revealed. In addition, for blackjack, an additional wager may be placed for doubling down or splitting pairs; and

(7) Bonus wagers for house-banked progressive jackpots shall not exceed one dollar. Bonus wagers with a predetermined prize amount based upon a separate element of chance within the same game shall not exceed the authorized maximum table limits as described in subsection (5) of this section.

WSR 07-07-023
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
[Filed March 9, 2007, 3:17 p.m., effective April 9, 2007]

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

Purpose: Current WAC describes certain groups of "qualified aliens" that are exempt from the five year ban on receipt of Medicaid, including conditional entrants. Newly arriving conditional entrants are not exempt from the five year ban.

Citation of Existing Rules Affected by this Order: Amending WAC 388-424-0006.

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

Adopted under notice filed as WSR 07-03-174 on January 24, 2007.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: March 6, 2007.

Jim Schnellman, Chief
Office of Administrative Resources

AMENDATORY SECTION (Amending WSR 05-16-055, filed 7/28/05, effective 8/28/05)

WAC 388-424-0006 Citizenship and alien status—

Date of entry. (1) A person who physically entered the U.S. prior to August 22, 1996 and who continuously resided in the U.S. prior to becoming a "qualified alien" (as defined in WAC 388-424-0001) is not subject to the five-year bar on TANF, nonemergency Medicaid, and SCHIP.

(2) A person who entered the U.S. prior to August 22, 1996 but became "qualified" on or after August 22, 1996, or who physically entered the U.S. on or after August 22, 1996 and who requires five years of residency to be eligible for federal Basic Food, can only count years of residence during which they were a "qualified alien."

(3) A person who physically entered the U.S. on or after August 22, 1996 is subject to the five-year bar on TANF, nonemergency Medicaid, and SCHIP unless exempt. The five-year bar starts on the date that "qualified" status is obtained.

(4) The following "qualified aliens," as defined in WAC 388-424-0001, are exempt from the five-year bar:

- (a) Amerasian lawful permanent residents;
- (b) Asylees;
- (c) ~~((Conditional entrants;~~
- ~~((H)) Cuban/Haitian entrants;~~
- ~~((E)) (d) Persons granted withholding of deportation or removal;~~
- ~~((F)) (e) Refugees;~~
- ~~((G)) (f) Victims of trafficking who have been certified or had their eligibility approved by the office of refugee resettlement (ORR); and~~
- ~~((H)) (g) Lawful permanent residents, parolees, or battered aliens, as defined in WAC 388-424-0001, who are also an armed services member or veteran as described in WAC 388-424-0007.~~

WSR 07-07-024

**PERMANENT RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed March 9, 2007, 3:18 p.m., effective April 9, 2007]

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

Purpose: The department is required to limit:

- Eligibility to individuals with a department-approved emergency medical condition; and
- Covered medical services to those necessary to treat the emergency medical condition for which the individual was found eligible.

Citation of Existing Rules Affected by this Order: Amending WAC 388-438-0110.

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

Adopted under notice filed as WSR 06-24-066 on December 4, 2006.

Changes Other than Editing from Proposed to Adopted Version: None, other than editing changes.

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

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

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

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

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

Date Adopted: March 6, 2007.

Jim Schnellman, Chief
Office of Administrative Resources

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.

~~((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))~~ that person entered the state specifically to obtain medical care.

gency reserve. During this time period, medical aid premiums will not be assessed for employers and workers and therefore it is anticipated that this will reduce the balance of the medical aid fund by \$315 million.

Citation of Existing Rules Affected by this Order: Amending 2, WAC 296-17-895 and 296-17-89502; and new rule adopted WAC 296-17-89504 Horse racing industry industrial insurance, medical aid, and supplemental pension by class.

Statutory Authority for Adoption: RCW 51.06.035, 51.08.010, 51.04.020.

Adopted under notice filed as WSR 06-22-108 on November 1, 2006.

Changes Other than Editing from Proposed to Adopted Version: Two paragraphs are added to the three amended sections that explain the process by which the medical aid reduction will occur.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 2, Repealed 0.

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

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

Date Adopted: March 12, 2007.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 05-23-162 [06-24-054], filed 11/22/05 [12/1/06], effective 1/1/06 [1/1/07])

WAC 296-17-895 Industrial insurance accident fund base rates and medical aid base rates by class of industry. Industrial insurance accident fund and medical aid fund base rates by class of industry shall be as set forth below.

Class	((Base Rates Effective January 1, 2006	
	Accident Fund	Medical Aid Fund
0101	1.6667	0.7139
0103	2.0294	0.9182
0104	1.1890	0.5209
0105	1.6273	0.8626
0107	1.5402	0.6622
0108	1.1890	0.5209
0112	0.9342	0.4573
0201	3.1182	1.1403

WSR 07-07-032

PERMANENT RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed March 12, 2007, 1:10 p.m., effective July 1, 2007]

Effective Date of Rule: July 1, 2007.

Purpose: Chapter 296-17 WAC, General reporting rules, audit and recordkeeping, rates and rating system for Washington workers' compensation insurance. This rule-making order will adopt a reduction in the medical aid premium base rates for work done during the six months beginning July 1, 2007, which will ultimately reduce the medical aid contin-

Class	Accident Fund	Medical Aid Fund	Class	Accident Fund	Medical Aid Fund
0202	3.7959	1.7571	1104	0.5551	0.4086
0210	1.5605	0.6115	1105	1.0710	0.5933
0212	1.6140	0.6799	1106	0.3395	0.2765
0214	1.6659	0.6528	1108	0.7077	0.4348
0217	1.3891	0.6051	1109	1.5600	0.9744
0219	1.0705	0.5971	1301	0.8487	0.3704
0301	0.6494	0.4089	1303	0.2469	0.1507
0302	2.4810	0.8697	1304	0.0306	0.0187
0303	2.4361	0.8739	1305	0.4485	0.2772
0306	1.3038	0.5123	1401	0.5165	0.3556
0307	1.1135	0.5331	1404	0.7903	0.5117
0308	0.5709	0.3927	1405	0.6079	0.3753
0403	1.9319	1.1305	1407	0.6990	0.4668
0502	1.9519	0.7404	1501	0.6613	0.3673
0504	1.6418	0.8019	1507	0.5901	0.3266
0507	3.4346	1.7575	1701	1.0877	0.5505
0508	2.5557	0.8931	1702	2.7163	0.9725
0509	1.9463	0.7589	1703	1.2060	0.3676
0510	1.8251	0.9186	1704	1.0877	0.5505
0511	2.0611	0.8811	1801	0.6202	0.3491
0512	1.8684	0.7535	1802	0.8298	0.4127
0513	1.0999	0.4801	2002	0.7620	0.5293
0514	2.2714	1.0608	2004	1.0344	0.6347
0516	2.0142	0.8931	2007	0.4941	0.3051
0517	2.0049	1.0194	2008	0.3583	0.2182
0518	1.9774	0.8082	2009	0.3974	0.3136
0519	2.7292	1.1580	2101	0.7442	0.4735
0521	0.6453	0.3491	2102	0.6095	0.4198
0601	0.7893	0.3779	2104	0.3415	0.2937
0602	0.9445	0.4256	2105	0.6561	0.4143
0603	1.3300	0.4828	2106	0.4611	0.3139
0604	1.0466	0.6733	2201	0.2725	0.1811
0606	0.5768	0.3671	2202	0.8065	0.4685
0607	0.5473	0.3210	2203	0.5048	0.3752
0608	0.4546	0.2440	2204	0.2725	0.1811
0701	2.8537	0.7345	2401	0.5503	0.3272
0803	0.5366	0.3250	2903	0.7091	0.4978
0901	1.9774	0.8082	2904	0.8083	0.5403
1002	1.0991	0.6519	2905	0.5751	0.4428
1003	0.9242	0.5153	2906	0.3735	0.2377
1004	0.6115	0.3001	2907	0.5634	0.4034
1005	10.0606	4.3933	2908	1.2207	0.6328
1007	0.4532	0.2273	2909	0.4155	0.2960
1101	0.7815	0.4640	3101	1.1844	0.5697
1102	1.6467	0.7382	3102	0.3060	0.2070
1103	1.3317	0.7833	3103	0.6309	0.3837

Class	Accident Fund	Medical Aid Fund	Class	Accident Fund	Medical Aid Fund
3104	0.6947	0.3585	4109	0.2331	0.1498
3105	0.8220	0.5389	4201	0.8508	0.3682
3303	0.4833	0.3067	4301	0.7154	0.5029
3304	0.4806	0.3905	4302	0.7207	0.4572
3309	0.4740	0.3056	4304	1.0793	0.7356
3402	0.5977	0.3631	4305	1.5167	0.6592
3403	0.2248	0.1408	4401	0.4228	0.2897
3404	0.5414	0.3628	4402	0.8686	0.6393
3405	0.3571	0.2217	4404	0.5823	0.4166
3406	0.2129	0.1716	4501	0.1970	0.1556
3407	0.7800	0.4469	4502	0.0415	0.0340
3408	0.1977	0.1193	4504	0.1056	0.1033
3409	0.1760	0.1425	4601	0.8062	0.5159
3410	0.2818	0.2192	4802	0.2995	0.2156
3411	0.5652	0.3113	4803	0.2554	0.2277
3412	0.7102	0.3337	4804	0.5866	0.3966
3414	0.6435	0.3556	4805	0.2944	0.2376
3415	0.8990	0.4995	4806	0.0589	0.0447
3501	1.1818	0.7067	4808	0.5288	0.3427
3503	0.2910	0.2762	4809	0.3928	0.2985
3506	1.4514	0.5401	4810	0.1413	0.1223
3509	0.4156	0.3285	4811	0.2620	0.2207
3510	0.4011	0.2721	4812	0.4157	0.3024
3511	0.8038	0.5052	4813	0.1615	0.1322
3512	0.3479	0.2775	4900	0.4203	0.1921
3513	0.4784	0.3590	4901	0.0918	0.0518
3602	0.1317	0.0959	4902	0.1100	0.0712
3603	0.5061	0.3332	4903	0.1710	0.1008
3604	0.8491	0.5972	4904	0.0327	0.0242
3605	0.6089	0.3368	4905	0.3334	0.2884
3701	0.3060	0.2070	4906	0.1089	0.0696
3702	0.4924	0.3347	4907	0.0532	0.0387
3708	0.7507	0.4214	4908	0.0871	0.1458
3802	0.1986	0.1380	4909	0.0402	0.0640
3808	0.5082	0.2679	4910	0.4994	0.3196
3901	0.1598	0.1472	5001	6.2800	2.4003
3902	0.5475	0.3830	5002	0.6881	0.3928
3903	1.0957	0.8900	5003	2.4567	0.9638
3905	0.1523	0.1408	5004	1.0147	0.6423
3906	0.5216	0.3715	5005	0.6985	0.3299
3909	0.2685	0.2180	5006	2.0512	0.8452
4002	1.7271	0.7695	5101	1.0291	0.6327
4101	0.3168	0.1947	5103	0.7765	0.5937
4103	0.4050	0.3712	5106	0.7765	0.5937
4107	0.1815	0.1226	5108	0.9811	0.6798
4108	0.1533	0.1091	5109	0.7020	0.4028

Class	Accident Fund	Medical Aid Fund	Class	Accident Fund	Medical Aid Fund
5201	0.4875	0.2933	6503	0.0935	0.0427
5204	1.0538	0.6174	6504	0.3848	0.3529
5206	0.4817	0.2459	6505	0.1001	0.0962
5207	0.1662	0.1577	6506	0.1040	0.0890
5208	0.9682	0.5996	6509	0.3704	0.3088
5209	0.8769	0.5024	6510	0.5882	0.2795
5301	0.0338	0.0261	6511	0.3178	0.2617
5302	0.0226	0.0160	6601	0.1971	0.1535
5305	0.0522	0.0465	6602	0.4588	0.3286
5306	0.0632	0.0500	6603	0.3750	0.2278
5307	0.5971	0.3322	6604	0.0873	0.0646
6103	0.0762	0.0752	6605	0.2871	0.2751
6104	0.3845	0.2969	6607	0.1886	0.1281
6105	0.3820	0.2308	6608	0.7260	0.2664
6107	0.1253	0.1285	6614	970*	759*
6108	0.4155	0.3619	6615	332*	278*
6109	0.1019	0.0671	6616	237*	167*
6110	0.6422	0.4177	6617	90*	64*
6201	0.3859	0.2058	6618	99*	50*
6202	0.6887	0.4884	6620	5.2052	3.1434
6203	0.0839	0.1007	6704	0.1870	0.1224
6204	0.1301	0.1093	6705	0.7436	0.8004
6205	0.2585	0.1960	6706	0.3189	0.2689
6206	0.2400	0.1717	6707	3.5422	2.7284
6207	0.9595	0.9400	6708	7.2474	7.7311
6208	0.2284	0.2140	6709	0.2805	0.2541
6209	0.3065	0.2502	6801	0.6933	0.3908
6301	0.1540	0.0733	6802	0.4493	0.3320
6302	0.1712	0.1291	6803	1.0793	0.4628
6303	0.0735	0.0513	6804	0.3197	0.1970
6304	0.3980	0.3448	6809	4.9672	3.9116
6305	0.0939	0.0882	6901	0.0000	0.0646
6306	0.3622	0.2446	6902	1.3737	0.4702
6308	0.0682	0.0465	6903	9.2654	4.0006
6309	0.1806	0.1456	6904	0.4954	0.2367
6402	0.2992	0.2395	6905	0.4448	0.2549
6403	0.1587	0.1366	6906	0.0000	0.2549
6404	0.2227	0.1714	6907	1.3407	0.8325
6405	0.6891	0.4046	6908	0.5268	0.3400
6406	0.1121	0.0943	6909	0.1194	0.0930
6407	0.2903	0.2129	7100	0.0343	0.0242
6408	0.4236	0.2778	7101	0.0267	0.0173
6409	1.0814	0.5343	7102	3.2317	4.2799
6410	0.3073	0.2082	7103	0.6939	0.3507
6501	0.1833	0.1293	7104	0.0325	0.0227
6502	0.0428	0.0320	7105	0.0320	0.0252

<u>Class</u>	<u>Accident Fund</u>	<u>Medical Aid Fund</u>	<u>Class</u>	<u>Accident Fund</u>	<u>Medical Aid Fund</u>
7106	0.1962	0.1576	0219	1.0310	0.5979
7107	0.2121	0.1954	0301	0.6338	0.4127
7108	0.1801	0.1781	0302	2.4031	0.8991
7109	0.1319	0.1071	0303	2.2735	0.8789
7110	0.4097	0.2124	0306	1.2097	0.5013
7111	0.4567	0.2412	0307	1.0909	0.5375
7112	0.6717	0.4732	0308	0.5462	0.3967
7113	0.3535	0.3104	0403	1.8151	1.0914
7114	0.5515	0.4804	0502	1.8533	0.7421
7115	0.5717	0.4762	0504	1.6756	0.8618
7116	0.7301	0.5178	0507	3.1395	1.7331
7117	1.6140	1.1401	0508	2.4004	0.8899
7118	1.3678	1.0116	0509	1.9140	0.7798
7119	1.4485	0.9175	0510	1.6923	0.9163
7120	6.7543	4.2809	0511	1.9177	0.8731
7121	6.3091	4.0293	0512	1.8329	0.7927
7122	0.5515	0.4804	0513	0.9923	0.4630
7201	1.5727	0.7553	0514	2.1735	1.0436
7202	0.0454	0.0232	0516	1.8907	0.8933
7203	0.1113	0.1192	0517	1.9313	1.0352
7204	0.0000	0.0000	0518	1.9005	0.8052
7301	0.5252	0.3714	0519	2.6218	1.1503
7302	1.0210	0.7168	0521	0.6073	0.3376
7307	0.5208	0.3937	0601	0.7416	0.3729
7308	0.2623	0.2718	0602	0.9248	0.4189
7309	0.2590	0.2375	0603	1.2551	0.4830
			0604	1.0086	0.6823
			0606	0.5608	0.3679
			0607	0.5428	0.3239
			0608	0.4330	0.2432
			0701	2.7040	0.7317
			0803	0.4986	0.3150
			0901	1.9005	0.8052
			1002	1.0349	0.6322
			1003	0.8552	0.5082
			1004	0.5814	0.3011
			1005	9.6730	4.4009
			1007	0.4244	0.2189
			1101	0.7541	0.4688
			1102	1.5286	0.7283
			1103	1.3045	0.7863
			1104	0.5311	0.4052
			1105	1.0005	0.5747
			1106	0.3267	0.2807
			1108	0.6894	0.4434
			1109	1.5396	0.9942

* These rates are calculated on a per license basis for parimutuel race tracks and are base rated.))

<u>Base Rates Effective</u>		
<u>January 1, 2007</u>		
<u>Class</u>	<u>Accident Fund</u>	<u>Medical Aid Fund</u>
0101	1.5102	0.7102
0103	1.9285	0.9063
0104	1.0954	0.5189
0105	1.4873	0.8554
0107	1.4779	0.6467
0108	1.0954	0.5189
0112	0.8855	0.4502
0201	2.9771	1.1228
0202	3.5865	1.7260
0210	1.4481	0.5946
0212	1.5741	0.6908
0214	1.5723	0.6391
0217	1.2903	0.6064

<u>Class</u>	<u>Accident Fund</u>	<u>Medical Aid Fund</u>	<u>Class</u>	<u>Accident Fund</u>	<u>Medical Aid Fund</u>
<u>1301</u>	<u>0.7669</u>	<u>0.3602</u>	<u>3402</u>	<u>0.5828</u>	<u>0.3664</u>
<u>1303</u>	<u>0.2400</u>	<u>0.1527</u>	<u>3403</u>	<u>0.2137</u>	<u>0.1418</u>
<u>1304</u>	<u>0.0296</u>	<u>0.0192</u>	<u>3404</u>	<u>0.5027</u>	<u>0.3517</u>
<u>1305</u>	<u>0.4356</u>	<u>0.2806</u>	<u>3405</u>	<u>0.3434</u>	<u>0.2232</u>
<u>1401</u>	<u>0.4876</u>	<u>0.3476</u>	<u>3406</u>	<u>0.1960</u>	<u>0.1695</u>
<u>1404</u>	<u>0.7669</u>	<u>0.5189</u>	<u>3407</u>	<u>0.7729</u>	<u>0.4525</u>
<u>1405</u>	<u>0.6008</u>	<u>0.3976</u>	<u>3408</u>	<u>0.1880</u>	<u>0.1246</u>
<u>1407</u>	<u>0.6165</u>	<u>0.4427</u>	<u>3409</u>	<u>0.1663</u>	<u>0.1403</u>
<u>1501</u>	<u>0.6346</u>	<u>0.3723</u>	<u>3410</u>	<u>0.2803</u>	<u>0.2240</u>
<u>1507</u>	<u>0.5820</u>	<u>0.3399</u>	<u>3411</u>	<u>0.5284</u>	<u>0.3058</u>
<u>1701</u>	<u>1.0239</u>	<u>0.5509</u>	<u>3412</u>	<u>0.6816</u>	<u>0.3328</u>
<u>1702</u>	<u>2.5949</u>	<u>0.9691</u>	<u>3414</u>	<u>0.6261</u>	<u>0.3601</u>
<u>1703</u>	<u>1.1204</u>	<u>0.3557</u>	<u>3415</u>	<u>0.8773</u>	<u>0.5152</u>
<u>1704</u>	<u>1.0239</u>	<u>0.5509</u>	<u>3501</u>	<u>1.1294</u>	<u>0.7094</u>
<u>1801</u>	<u>0.5826</u>	<u>0.3513</u>	<u>3503</u>	<u>0.2759</u>	<u>0.2748</u>
<u>1802</u>	<u>0.8068</u>	<u>0.4272</u>	<u>3506</u>	<u>1.3792</u>	<u>0.5391</u>
<u>2002</u>	<u>0.7386</u>	<u>0.5182</u>	<u>3509</u>	<u>0.3980</u>	<u>0.3263</u>
<u>2004</u>	<u>1.0135</u>	<u>0.6728</u>	<u>3510</u>	<u>0.3848</u>	<u>0.2760</u>
<u>2007</u>	<u>0.4854</u>	<u>0.3184</u>	<u>3511</u>	<u>0.7602</u>	<u>0.5032</u>
<u>2008</u>	<u>0.3401</u>	<u>0.2179</u>	<u>3512</u>	<u>0.3360</u>	<u>0.2880</u>
<u>2009</u>	<u>0.3930</u>	<u>0.3170</u>	<u>3513</u>	<u>0.4523</u>	<u>0.3564</u>
<u>2101</u>	<u>0.7007</u>	<u>0.4712</u>	<u>3602</u>	<u>0.1286</u>	<u>0.0963</u>
<u>2102</u>	<u>0.5642</u>	<u>0.4120</u>	<u>3603</u>	<u>0.4908</u>	<u>0.3451</u>
<u>2104</u>	<u>0.3307</u>	<u>0.2965</u>	<u>3604</u>	<u>0.8076</u>	<u>0.6067</u>
<u>2105</u>	<u>0.6213</u>	<u>0.4048</u>	<u>3605</u>	<u>0.5803</u>	<u>0.3382</u>
<u>2106</u>	<u>0.4365</u>	<u>0.3199</u>	<u>3701</u>	<u>0.2872</u>	<u>0.1983</u>
<u>2201</u>	<u>0.2530</u>	<u>0.1745</u>	<u>3702</u>	<u>0.4833</u>	<u>0.3360</u>
<u>2202</u>	<u>0.7733</u>	<u>0.4742</u>	<u>3708</u>	<u>0.7128</u>	<u>0.4106</u>
<u>2203</u>	<u>0.4765</u>	<u>0.3581</u>	<u>3802</u>	<u>0.1954</u>	<u>0.1415</u>
<u>2204</u>	<u>0.2530</u>	<u>0.1745</u>	<u>3808</u>	<u>0.4773</u>	<u>0.2627</u>
<u>2401</u>	<u>0.5360</u>	<u>0.3290</u>	<u>3901</u>	<u>0.1540</u>	<u>0.1481</u>
<u>2903</u>	<u>0.6629</u>	<u>0.4833</u>	<u>3902</u>	<u>0.5034</u>	<u>0.3777</u>
<u>2904</u>	<u>0.7700</u>	<u>0.5325</u>	<u>3903</u>	<u>1.0439</u>	<u>0.8858</u>
<u>2905</u>	<u>0.5443</u>	<u>0.4428</u>	<u>3905</u>	<u>0.1447</u>	<u>0.1398</u>
<u>2906</u>	<u>0.3483</u>	<u>0.2395</u>	<u>3906</u>	<u>0.4803</u>	<u>0.3556</u>
<u>2907</u>	<u>0.5409</u>	<u>0.3986</u>	<u>3909</u>	<u>0.2474</u>	<u>0.2162</u>
<u>2908</u>	<u>1.1619</u>	<u>0.6262</u>	<u>4002</u>	<u>1.6280</u>	<u>0.7618</u>
<u>2909</u>	<u>0.3916</u>	<u>0.2927</u>	<u>4101</u>	<u>0.3183</u>	<u>0.2031</u>
<u>3101</u>	<u>1.0863</u>	<u>0.5612</u>	<u>4103</u>	<u>0.4048</u>	<u>0.3771</u>
<u>3102</u>	<u>0.2872</u>	<u>0.1983</u>	<u>4107</u>	<u>0.1686</u>	<u>0.1219</u>
<u>3103</u>	<u>0.6003</u>	<u>0.3802</u>	<u>4108</u>	<u>0.1487</u>	<u>0.1119</u>
<u>3104</u>	<u>0.6744</u>	<u>0.3701</u>	<u>4109</u>	<u>0.2210</u>	<u>0.1513</u>
<u>3105</u>	<u>0.7886</u>	<u>0.5375</u>	<u>4201</u>	<u>0.8230</u>	<u>0.3679</u>
<u>3303</u>	<u>0.4653</u>	<u>0.3088</u>	<u>4301</u>	<u>0.6687</u>	<u>0.5001</u>
<u>3304</u>	<u>0.4574</u>	<u>0.3817</u>	<u>4302</u>	<u>0.6992</u>	<u>0.4650</u>
<u>3309</u>	<u>0.4556</u>	<u>0.3036</u>	<u>4304</u>	<u>1.0132</u>	<u>0.7360</u>

<u>Class</u>	<u>Accident Fund</u>	<u>Medical Aid Fund</u>	<u>Class</u>	<u>Accident Fund</u>	<u>Medical Aid Fund</u>
<u>4305</u>	<u>1.4391</u>	<u>0.6544</u>	<u>5208</u>	<u>0.8852</u>	<u>0.5790</u>
<u>4401</u>	<u>0.4070</u>	<u>0.2945</u>	<u>5209</u>	<u>0.8151</u>	<u>0.4940</u>
<u>4402</u>	<u>0.8309</u>	<u>0.6355</u>	<u>5300</u>	<u>0.1098</u>	<u>0.0738</u>
<u>4404</u>	<u>0.5665</u>	<u>0.4215</u>	<u>5301</u>	<u>0.0330</u>	<u>0.0267</u>
<u>4501</u>	<u>0.1849</u>	<u>0.1590</u>	<u>5302</u>	<u>0.0207</u>	<u>0.0154</u>
<u>4502</u>	<u>0.0399</u>	<u>0.0354</u>	<u>5305</u>	<u>0.0498</u>	<u>0.0464</u>
<u>4504</u>	<u>0.1011</u>	<u>0.1050</u>	<u>5306</u>	<u>0.0605</u>	<u>0.0494</u>
<u>4601</u>	<u>0.7733</u>	<u>0.5186</u>	<u>5307</u>	<u>0.5858</u>	<u>0.3420</u>
<u>4802</u>	<u>0.2979</u>	<u>0.2248</u>	<u>6103</u>	<u>0.0753</u>	<u>0.0755</u>
<u>4803</u>	<u>0.2438</u>	<u>0.2354</u>	<u>6104</u>	<u>0.3560</u>	<u>0.2884</u>
<u>4804</u>	<u>0.5360</u>	<u>0.3861</u>	<u>6105</u>	<u>0.3714</u>	<u>0.2395</u>
<u>4805</u>	<u>0.2812</u>	<u>0.2436</u>	<u>6107</u>	<u>0.1224</u>	<u>0.1320</u>
<u>4806</u>	<u>0.0566</u>	<u>0.0450</u>	<u>6108</u>	<u>0.4166</u>	<u>0.3694</u>
<u>4808</u>	<u>0.4945</u>	<u>0.3441</u>	<u>6109</u>	<u>0.0980</u>	<u>0.0688</u>
<u>4809</u>	<u>0.3766</u>	<u>0.3045</u>	<u>6110</u>	<u>0.6353</u>	<u>0.4328</u>
<u>4810</u>	<u>0.1332</u>	<u>0.1225</u>	<u>6120</u>	<u>0.2971</u>	<u>0.1916</u>
<u>4811</u>	<u>0.2506</u>	<u>0.2279</u>	<u>6121</u>	<u>0.3714</u>	<u>0.2395</u>
<u>4812</u>	<u>0.3967</u>	<u>0.3054</u>	<u>6201</u>	<u>0.3576</u>	<u>0.2052</u>
<u>4813</u>	<u>0.1493</u>	<u>0.1295</u>	<u>6202</u>	<u>0.6582</u>	<u>0.4908</u>
<u>4900</u>	<u>0.3884</u>	<u>0.1773</u>	<u>6203</u>	<u>0.0825</u>	<u>0.1050</u>
<u>4901</u>	<u>0.0867</u>	<u>0.0511</u>	<u>6204</u>	<u>0.1219</u>	<u>0.1102</u>
<u>4902</u>	<u>0.1098</u>	<u>0.0738</u>	<u>6205</u>	<u>0.2469</u>	<u>0.1932</u>
<u>4903</u>	<u>0.1675</u>	<u>0.1054</u>	<u>6206</u>	<u>0.2350</u>	<u>0.1773</u>
<u>4904</u>	<u>0.0304</u>	<u>0.0237</u>	<u>6207</u>	<u>0.9090</u>	<u>0.9446</u>
<u>4905</u>	<u>0.3208</u>	<u>0.2955</u>	<u>6208</u>	<u>0.2207</u>	<u>0.2133</u>
<u>4906</u>	<u>0.0986</u>	<u>0.0692</u>	<u>6209</u>	<u>0.3010</u>	<u>0.2576</u>
<u>4907</u>	<u>0.0513</u>	<u>0.0399</u>	<u>6301</u>	<u>0.1529</u>	<u>0.0747</u>
<u>4908</u>	<u>0.0799</u>	<u>0.1152</u>	<u>6302</u>	<u>0.1776</u>	<u>0.1483</u>
<u>4909</u>	<u>0.0381</u>	<u>0.0622</u>	<u>6303</u>	<u>0.0725</u>	<u>0.0510</u>
<u>4910</u>	<u>0.4829</u>	<u>0.3235</u>	<u>6304</u>	<u>0.3757</u>	<u>0.3458</u>
<u>4911</u>	<u>0.0697</u>	<u>0.0500</u>	<u>6305</u>	<u>0.0909</u>	<u>0.0884</u>
<u>5001</u>	<u>6.0252</u>	<u>2.4999</u>	<u>6306</u>	<u>0.3406</u>	<u>0.2448</u>
<u>5002</u>	<u>0.6557</u>	<u>0.3944</u>	<u>6308</u>	<u>0.0669</u>	<u>0.0483</u>
<u>5003</u>	<u>2.3613</u>	<u>0.9947</u>	<u>6309</u>	<u>0.1776</u>	<u>0.1483</u>
<u>5004</u>	<u>0.9584</u>	<u>0.6259</u>	<u>6402</u>	<u>0.2832</u>	<u>0.2378</u>
<u>5005</u>	<u>0.6550</u>	<u>0.3265</u>	<u>6403</u>	<u>0.1593</u>	<u>0.1422</u>
<u>5006</u>	<u>1.9073</u>	<u>0.8254</u>	<u>6404</u>	<u>0.2184</u>	<u>0.1745</u>
<u>5101</u>	<u>0.9648</u>	<u>0.6286</u>	<u>6405</u>	<u>0.6377</u>	<u>0.3937</u>
<u>5103</u>	<u>0.7356</u>	<u>0.5874</u>	<u>6406</u>	<u>0.1116</u>	<u>0.0981</u>
<u>5106</u>	<u>0.7356</u>	<u>0.5874</u>	<u>6407</u>	<u>0.2793</u>	<u>0.2110</u>
<u>5108</u>	<u>0.9177</u>	<u>0.6739</u>	<u>6408</u>	<u>0.4131</u>	<u>0.2828</u>
<u>5109</u>	<u>0.6542</u>	<u>0.3966</u>	<u>6409</u>	<u>0.9934</u>	<u>0.5215</u>
<u>5201</u>	<u>0.4666</u>	<u>0.2945</u>	<u>6410</u>	<u>0.2946</u>	<u>0.2151</u>
<u>5204</u>	<u>0.9946</u>	<u>0.6060</u>	<u>6501</u>	<u>0.1719</u>	<u>0.1293</u>
<u>5206</u>	<u>0.4708</u>	<u>0.2584</u>	<u>6502</u>	<u>0.0403</u>	<u>0.0313</u>
<u>5207</u>	<u>0.1551</u>	<u>0.1536</u>	<u>6503</u>	<u>0.0902</u>	<u>0.0447</u>

<u>Class</u>	<u>Accident Fund</u>	<u>Medical Aid Fund</u>	<u>Class</u>	<u>Accident Fund</u>	<u>Medical Aid Fund</u>
6504	0.3636	0.3535	7111	0.4265	0.2329
6505	0.0944	0.0974	7112	0.6466	0.4776
6506	0.0994	0.0899	7113	0.3368	0.3040
6509	0.3492	0.3076	7114	0.5211	0.4502
6510	0.5441	0.2700	7115	0.5380	0.4693
6511	0.3269	0.2768	7116	0.6929	0.5136
6512	0.2715	0.2105	7117	1.5938	1.2207
6601	0.1848	0.1493	7118	1.3242	1.0182
6602	0.4685	0.3511	7119	1.3808	0.9103
6603	0.3564	0.2275	7120	6.4082	4.2401
6604	0.0833	0.0656	7121	5.9556	3.9464
6605	0.2779	0.2818	7122	0.5236	0.4754
6607	0.1746	0.1260	7200	1.2338	0.6227
6608	0.6917	0.2648	7201	1.5423	0.7784
6620	4.8308	2.9905	7202	0.0414	0.0226
6704	0.1754	0.1209	7203	0.1053	0.1217
6705	0.6966	0.7926	7204	0.0000	0.0000
6706	0.3005	0.2637	7205	0.0000	0.0000
6707	3.4221	2.9240	7301	0.5041	0.3715
6708	6.9097	7.8371	7302	0.9770	0.7401
6709	0.2714	0.2477	7307	0.4868	0.3880
6801	0.6708	0.4154	7308	0.2678	0.2871
6802	0.4546	0.3395	7309	0.2410	0.2315
6803	1.0265	0.4432	7400	1.5423	0.7784
6804	0.2946	0.1943			
6809	4.7278	4.0617			
6901	0.0000	0.0584			
6902	1.2857	0.4644			
6903	8.6855	3.9709			
6904	0.4799	0.2432			
6905	0.4281	0.2567			
6906	0.0000	0.2567			
6907	1.3109	0.8611			
6908	0.4925	0.3340			
6909	0.1169	0.0963			
7100	0.0327	0.0243			
7101	0.0255	0.0175			
7102	3.0801	4.2970			
7103	0.6772	0.3641			
7104	0.0310	0.0234			
7105	0.0316	0.0254			
7106	0.1887	0.1614			
7107	0.2015	0.1987			
7108	0.1703	0.1730			
7109	0.1259	0.1085			
7110	0.3871	0.2062			

For work performed during the period July 1, 2007, through December 31, 2007, and reported and paid in full to the department no later than April 30, 2008, employers shall not be required to pay nor shall they be entitled to deduct from workers' pay, medical aid premium; such premiums shall be deemed to have been paid by the department out of the medical aid fund.

In calendar year 2008, the department will pay such dividends from the accident fund to employers not participating in the retrospective rating program during the period July 1, 2007, through December 31, 2007, as the department's actuaries determine to be necessary to equalize the proportion of losses funded between retro and nonretro employers.

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.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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

AMENDATORY SECTION (Amending WSR 05-23-162 [06-24-054], filed 11/22/05 [12/1/06], effective 1/1/06 [1/1/07])

WAC 296-17-89502 Industrial insurance accident fund, medical aid and supplemental pension rates by class of industry for nonhourly rated classifications. The base rates as set forth below are for classifications whose premium rates are based on units other than hours worked.

~~((Base Rates Effective
January 1, 2006~~

<u>Class</u>	<u>Accident Fund</u>	<u>Medical Aid Fund</u>	<u>Supplemental Pension Fund</u>
0540	0.0301	0.0115	0.0005
0541	0.0169	0.0061	0.0005
0550	0.0412	0.0128	0.0005
0551	0.0230	0.0073	0.0005

Base Rates Effective
January 1, 2007

<u>Class</u>	<u>Accident Fund</u>	<u>Medical Aid Fund</u>	<u>Supplemental Pension Fund</u>
<u>0540</u>	<u>0.0268</u>	<u>0.0111</u>	<u>0.0005</u>
<u>0541</u>	<u>0.0161</u>	<u>0.0062</u>	<u>0.0005</u>
<u>0550</u>	<u>0.0375</u>	<u>0.0124</u>	<u>0.0005</u>
<u>0551</u>	<u>0.0218</u>	<u>0.0073</u>	<u>0.0005</u>

For work performed during the period July 1, 2007, through December 31, 2007, and reported and paid in full to the department no later than April 30, 2008, employers shall not be required to pay nor shall they be entitled to deduct from workers' pay, medical aid premium; such premiums shall be deemed to have been paid by the department out of the medical aid fund.

In calendar year 2008, the department will pay such dividends from the accident fund to employers not participating in the retrospective rating program during the period July 1, 2007, through December 31, 2007, as the department's actuaries determine to be necessary to equalize the proportion of losses funded between retro and nonretro employers.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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

NEW SECTION

WAC 296-17-89504 Horse racing industry industrial insurance, medical aid, and supplemental pension by class.

Base Rates Effective
January 1, 2007

<u>Class</u>	<u>Accident Fund</u>	<u>Medical Aid Fund</u>	<u>Supplemental Pension Fund</u>
6614	44*	35*	1*
6615	309*	270*	1*
6616	14*	10*	1*
6617	103*	76*	1*
6618	99*	50*	1*
6622	565**	449**	1**
6623	207**	147**	1**

* These rates are calculated on a per license basis for parimutuel race tracks and are base rated.
** These rates are calculated on a per 12 horse stalls for parimutuel race tracks and are base rated.

**WSR 07-07-035
PERMANENT RULES
HORSE RACING COMMISSION**

[Filed March 12, 2007, 2:05 p.m., effective April 12, 2007]

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

Purpose: Amend chapter 260-44 WAC, Weights and equipment.

Citation of Existing Rules Affected by this Order: Amending WAC 260-44-010, 260-44-020, 260-44-030, 260-44-050, 260-44-080, 260-44-090, 260-44-110, 260-44-120 and 260-44-150.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 07-03-130 on January 23, 2007.

Changes Other than Editing from Proposed to Adopted Version: Changes to WAC 260-44-010 to address the type of material used for tongue-ties. In addition, the commission did not adopt the new section on safety reins.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 9, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 9, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 1, Amended 9, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 8, 2007.

R. J. Lopez
Deputy Secretary

AMENDATORY SECTION (Amending WSR 06-07-063, filed 3/10/06, effective 4/10/06)

WAC 260-44-010 Equipment changes. (1) ~~((The starter and the stewards must approve the addition or removal of blinkers. Approval by the starter must be obtained before the stewards will consider approving the change.~~

(2) ~~The stewards must approve the addition or removal of front leg wraps.))~~ Permission to change any equipment from that which a horse carried in its previous race must be obtained from the stewards.

(2) Permission for a horse to add or remove blinkers must be approved by the starter before being granted by the stewards.

(3) A trainer may tie down a horse's tongue~~((The stewards may monitor the use of tongue ties))~~ but only with materials that are not dangerous or likely to cause injury to the horse. An official veterinarian will decide any question about the appropriateness of the material used for a tongue-tie. The stewards may monitor the use of tongue-ties.

(4) Whips ~~((shall))~~ will be considered standard equipment in all horse races, unless declared at time of entry.

AMENDATORY SECTION (Amending WSR 06-07-063, filed 3/10/06, effective 4/10/06)

WAC 260-44-020 Weights for age. The following weights ~~((are))~~ will be carried when ((they)) weights are not ((stated in the)) a condition((s)) of the race:

SCALE OF WEIGHTS FOR AGE						
Distance	Age	June	July	Aug.	Sept.	
Half Mile	2 years . . . . .	...	...	105	108	
	3 years	123	125	126	127	
	4 years	130	130	130	130	
	5 & up	130	130	130	130	
Six Furlongs	2 years . . . . .	...	...	102	105	
	3 years	121	123	125	126	
	4 years	130	130	130	130	
	5 & up	130	130	130	130	
One Mile	2 years . . . . .	...	...	...	96	
	3 years	115	117	119	121	
	4 years	126	126	126	126	
	5 & up	126	126	126	126	
One Mile & a Quarter	2 years . . . . .	...	...	...	...
	3 years	113	116	118	120	
	4 years	126	126	126	126	
One & a Half Miles	5 & up	126	126	126	126	
	2 years . . . . .	...	...	...	...
	3 years	111	114	117	119	
Two Miles	4 years	126	126	126	126	
	5 & up	126	126	126	126	
	3 years	109	112	114	117	
	4 years	126	126	125	125	
	5 & up	126	126	125	125	

(1) In races of intermediate lengths not specified above, the weights for the shorter distance are carried.

(2) In all races, except handicap races and races where the conditions expressly state to the contrary, two-year-old fillies are allowed 3 lbs., and three-year-old and older fillies and mares are allowed 5 lbs., before the 1st of September, and 3 lbs., thereafter.

~~((3) In all overnight races the minimum weight shall be 112 pounds, subject to sex and apprentice allowance. This rule shall not apply to handicap races.))~~

AMENDATORY SECTION (Amending WSR 06-07-063, filed 3/10/06, effective 4/10/06)

WAC 260-44-030 Penalties and allowances. (1) ~~((No horse shall))~~ A horse may not carry extra weight((:)) or be barred from ((any)) a race for having run second or lower in a previous race.

(2) ~~((Penalties and))~~ Penalty weights and weight allowances ((of weight)) are not cumulative, unless provided by the conditions of the race.

~~((3) No horse shall receive allowance of weight, or be relieved from extra weight, for having been beaten in one or more races. This rule shall not prohibit maiden allowances, or allowances to horses that have not won within a specified time, or that have not won races of a specified value.))~~

AMENDATORY SECTION (Amending WSR 06-07-063, filed 3/10/06, effective 4/10/06)

WAC 260-44-050 Weighing out—Equipment included in jockey's weight. (1) The jockey's weight ~~((shall))~~ must also include ((his)) their clothing and boots, and the saddle and its attachments.

(2) The following items ~~((shall))~~ may not be included in a jockey's weight: Whip, head number, bridle, bit, reins, number cloth, blinker, protective helmet or safety vest.

(3) ~~((No bridle shall exceed two pounds in weight.~~

~~((4)) Whips ((shall)) must have closed poppers, with a maximum length of four inches and minimum width of one and one-quarter inches. Whips ((shall)) must have three rows of one-inch feathers made of leather or other material((s)) approved by the stewards. The maximum length of a whip ((shall)) may not exceed thirty-one inches (including popper). The maximum weight of a whip ((shall)) may not exceed one pound.~~

AMENDATORY SECTION (Amending WSR 06-07-063, filed 3/10/06, effective 4/10/06)

WAC 260-44-080 Weighing out—Overweight—Declarations—Posting—Maximum. (1) If a jockey intends to carry overweight, he/she must declare the amount at the time of weighing out. ~~((If the jockey is in doubt as to his/her proper weight, the jockey may declare the weight he will carry.))~~

(2) If a jockey reports an overweight exceeding two pounds, the owner or trainer has the option to replace the jockey without being assessed a double-jock mount fee. Failure on the part of a jockey to comply with this rule ~~((shall))~~ will be reported to the stewards by the clerk of scales.

(3) ~~((No))~~ A horse ~~((shall))~~ may not carry more than seven pounds overweight, except as provided in subsection (4) of this section.

(4) Horses running at Class C race meets may carry more than seven pounds overweight with the permission of the stewards up to a maximum weight of one hundred thirty-five pounds, except in handicap races or races where the conditions of the race expressly state to the contrary.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-44-090 Weighing out—Trainer responsible for weight. The trainer is responsible for the weight carried by his/her horse.

AMENDATORY SECTION (Amending WSR 06-07-063, filed 3/10/06, effective 4/10/06)

WAC 260-44-110 Weighing in—Procedure. (1) After a race has been run and after the jockey has pulled up the horse, the jockey ~~((shall))~~ must ride promptly to the designated unsaddling area and dismount. The jockey ~~((shall))~~ will proceed to the clerk of the scales to be weighed in. If a jockey is prevented from riding his/her mount to the designated unsaddling area because of an accident or of illness to either the jockey or the horse, the jockey may walk or be carried to the scales, or the stewards may excuse the jockey from weighing.

(2) Except by permission of the stewards, every jockey, upon arrival at the designated unsaddling area after a race, ~~((every jockey))~~ must unsaddle the horse he/she has ridden. No person ~~((shall))~~ may touch the jockey or the horse except by the horse's bridle, or cover the horse in any manner until the jockey has removed the equipment to be weighed.

(3) No person ~~((shall))~~ may assist a jockey in removing from his/her horse the equipment that is to be included in the jockey weight, except by permission of the stewards.

(4) Each jockey ~~((shall))~~ must carry over to the scales all pieces of equipment with which he/she weighed out.

AMENDATORY SECTION (Amending WSR 06-07-063, filed 3/10/06, effective 4/10/06)

WAC 260-44-120 Weighing in—Weigh in/weigh out—Tolerances—Penalties. (1) Each jockey ~~((shall))~~ will weigh in at the same weight ~~((as that at which))~~ he/she weighed out. If a jockey is short of the weigh out amount by more than two pounds, his/her mount ~~((shall))~~ will be disqualified. If a weight discrepancy arises after a race has been declared official, a change in the order of finish ~~((shall include a redistribution of purse moneys. The disqualification))~~ will not affect the parimutuel payoffs.

(2) ~~((It is a violation of these rules for a jockey to weigh in more than two pounds under the assigned weight. Either the jockey or the trainer, or both may be held responsible for this violation.~~

~~((3))~~ If any jockey weighs in at more than two pounds over his/her proper or declared weight, the clerk of scales will report the overweight to the stewards for possible disciplin-

ary action. In considering discipline~~((s))~~ the stewards ~~((shall))~~ will consider any excess weight caused by rain or mud.

AMENDATORY SECTION (Amending WSR 06-07-063, filed 3/10/06, effective 4/10/06)

WAC 260-44-150 Horseshoes. (1) A horse starting in a race ~~((shall))~~ must be fully shod with racing plates.

(2) ~~((Use of bar shoes must be declared at time of entry. (3)))~~ During off-track conditions the trainer is ~~((responsible))~~ required to report any additional traction devices to the board of stewards or designee.

~~((4))~~ (3) For turf racing, horses must be shod with racing plates approved by the association.

WSR 07-07-036

PERMANENT RULES

HORSE RACING COMMISSION

[Filed March 12, 2007, 2:08 p.m., effective April 12, 2007]

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

Purpose: Amend chapter 260-70 WAC, Equine medication program.

Citation of Existing Rules Affected by this Order: Repealing WAC 260-70-530; and amending WAC 260-70-500, 260-70-510, 260-70-540, 260-70-545, 260-70-550, 260-70-560, 260-70-570, 260-70-580, 260-70-590, 260-70-610, 260-70-640, 260-70-650, 260-70-660, 260-70-675, 260-70-720, and 260-70-730.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 07-03-009 on January 4, 2007.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 16, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 16, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 16, Repealed 1; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 8, 2007.

R. J. Lopez
Deputy Secretary

Chapter 260-70 WAC

~~((CONTROLLED))~~EQUINE MEDICATION PROGRAM

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

WAC 260-70-500 Definitions applicable to chapter 260-70 WAC. (1) "Interfering substance" or "interfere" means and refers to any medication which might mask or screen the presence of prohibited drugs or prevent testing procedures from detecting a prohibited drug.

(2) "Post time" means the time set for the arrival of the horses at the starting point in a race as specified in writing and posted by the board of stewards.

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

WAC 260-70-510 Equine health and safety. The purpose of this chapter is to protect the integrity of horse racing, to ensure the health and welfare of horses under the jurisdiction of the commission, and to safeguard the interests of the public and the participants in racing. ~~((With this in mind,))~~ The commission ((shall convene)) will hold an annual public meeting, ((open to all interested parties, for the)) to review ((of)) veterinarian practices, equine health and medication. ((Such)) This meeting ((shall)) will include:

(1) An annual report from an official veterinarian.

(2) Presentation of data regarding equine medication and treatment, including a review of the commission's quantitative medication levels and any recommendations for modifications.

(3) Public comment regarding equine health and safety, medication and veterinarian practices.

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

WAC 260-70-540 Veterinarians' reports. (1) Every veterinarian who treats a racehorse at any location under the jurisdiction of the commission ~~((shall, in writing)) must, on a form approved by the commission, ((provide a)) report all treatment ((report)) to an official veterinarian. The report ((shall)) must include the ((name of the horse treated, any medication, drug or substance or procedure administered or prescribed, the name of the trainer of the horse, the date and time of treatment and any other information requested)) following:~~

(a) The name of the horse treated;

(b) The name of any medication, drug, or substance administered or prescribed;

(c) The procedure administered;

(d) The name of the trainer;

(e) The date and time of treatment; and

(f) Any other information required by the official veterinarian.

(2) The practicing veterinarian must sign the report ((shall be signed by the practicing veterinarian,)) and ((filed)) file the report with ((the)) an official veterinarian no later

than post time of the race for which the horse is entered. If the horse is not entered to run in a race, the report must be filed with an official veterinarian within forty-eight hours of treatment.

(3) A timely and accurate treatment report may be ~~((used in the mitigation of the penalty))~~ considered by the stewards or the commission as a mitigating factor when determining the penalty for violation of these rules.

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

WAC 260-70-545 Prohibited practices. The following are prohibited practices:

(1) The possession or use of ~~((a)) any drug, substance, or medication ((, specified in subsection (3) of this section, on the premises of a facility under the jurisdiction of the commission; or the use of which may endanger the health and welfare of the horse or endanger the safety of the rider; or the use of which may adversely affect the integrity of racing))~~ if the use may endanger the health or welfare of the horse or endanger the safety of the rider, or which may adversely affect the integrity of racing; or

(2) The possession or use of a drug or medication on the premises of a facility under the jurisdiction of the commission that has not been approved by the United States Food and Drug Administration (FDA) for any use in human or animal, or any ~~((forbidden)) substance forbidden by an official veterinarian.~~

(3) The possession and/or use of blood doping agents, including, but not limited to, those listed below, on the premises of a facility under the jurisdiction of the commission:

(a) Erythropoietin

(b) Darbepoietin

(c) Oxyglobin

(d) Hemopure

(4) ~~((The use of)) Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy ((shall not be permitted)) unless the following conditions are met:~~

(a) Any treated horse ~~((shall not be permitted to))~~ may not race for a minimum of ten days following treatment;

(b) ~~((The use of)) Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy machines ((shall be limited to))~~ may only be used by veterinarians licensed by the commission;

(c) ~~((Prior to use, a report))~~ The practicing veterinarian has ((been)) filed a report with an official veterinarian ((advising)) notifying the commission that ((any)) an Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy machine is on ((the)) association grounds;

(d) All Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy treatments are reported to an official veterinarian on the prescribed form not later than ~~((the time prescribed by an official veterinarian))~~ twenty-four hours after treatment.

(5) The use of a nasogastric tube (a tube longer than six inches) for the administration of any substance within twenty-four hours prior to the post time of the race in which the horse is entered ~~((is prohibited))~~ and without the prior ((permission)) approval of an official veterinarian.

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

WAC 260-70-550 Medication labeling. (1) No person ~~((on association grounds)),~~ excluding licensed veterinarians, ~~((shall have in or upon association grounds, or in that person's personal property or effects or vehicle in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labeled in accordance with this subsection))~~ may possess any drug, medication, chemical, foreign substance or other substance unless the product is labeled as required by this rule.

(2) ~~((Any drug or medication which is used or kept on association grounds and which, by federal or state law, requires a prescription must have been validly prescribed by a duly licensed veterinarian, and in compliance with applicable state statutes.))~~ Only medications and drugs prescribed or dispensed by a veterinarian licensed to practice veterinary medicine in this jurisdiction may be on the grounds of a racing association during its licensed race meet or training periods. All ~~((such allowable))~~ medications must have a prescription label ~~((, which is securely))~~ attached ~~((and clearly ascribed to show))~~ with the following:

- (a) The name of the product;
- (b) The name, address and telephone number of the veterinarian prescribing or dispensing the product;
- (c) The name of each horse ~~((for whom))~~ (patient) the product is intended/prescribed;
- (d) The dose, dosage, duration of treatment and expiration date of the prescribed/dispensed product; and
- (e) The name of the trainer or owner to whom the product was dispensed.

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

WAC 260-70-560 Treatment restrictions. (1) Except as otherwise provided by this ~~((subsection))~~ section, no person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission may administer a prescription or controlled medication, drug, chemical or other substance (including any medication, drug, chemical or other substance by injection) to a horse at any location under the jurisdiction of the commission.

(2) ~~((Nonveterinarians))~~ Persons not licensed as veterinarians may administer the following substances, provided that, in post race testing the substances do not exceed approved quantitative levels, and the substances do not interfere with post race testing:

- (a) A recognized ~~((noninjectable))~~ nutritional supplement or other substance, except that any such supplements or substances that have been disapproved by an official veterinarian may not be administered;
- (b) A ~~((noninjectable))~~ substance ~~((on))~~ given at the direction of or by a prescription ~~((of))~~ issued by a licensed veterinarian; or
- (c) A ~~((noninjectable))~~ nonprescription medication or substance.

(3) No person ~~((shall)),~~ other than a licensed veterinarian, may possess a hypodermic needle, syringe or ~~((injectable~~

~~of any kind))~~ device used for intravenous or intramuscular injections on ~~((association premises))~~ the grounds, unless ~~((otherwise))~~ approved by the stewards. ~~((At any location))~~ On all grounds under the jurisdiction of the commission, veterinarians may use only onetime disposable needles, and shall dispose of them in a manner approved by the ~~((stewards))~~ department of health. ~~((If a person has a medical condition which makes it necessary to have a needle and syringe at any location under the jurisdiction of the commission, that person may request permission of the stewards in writing, furnish a letter from a licensed physician explaining why it is necessary for the person to possess a needle and syringe, and must comply with any conditions and restrictions on possession of a needle and syringe established by the stewards.))~~

(4) A person who has a medical condition requiring the use of a hypodermic needle, syringe or other device used for intravenous or intramuscular injections must possess a valid prescription issued by a physician licensed to practice medicine and prescribe medication. Such a person must control the storage and use of these devices and may be held accountable for any unauthorized use. Any person possessing a hypodermic needle or syringe without a valid prescription may be removed from the grounds.

(5) Veterinarians ~~((shall))~~ may not treat or administer medication or drugs to any ~~((entered))~~ horse on a race day ~~((, and))~~ before the post time for the race the horse is entered to run, except for the administration of furosemide under the guidelines set forth in WAC 260-70-650, unless first approved by ~~((the))~~ an official veterinarian.

~~((5))~~ Any horse entered for racing must be present on the grounds as follows, except with the prior approval of the official veterinarian:

(a) A first time starter must be present on the grounds two hours prior to the first post time or five hours prior to the post for the race the horse is entered for racing, whichever is earlier.

(b) A horse that has previously started must be present on the grounds five hours prior to the post time for the race the horse is entered for racing.)

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

WAC 260-70-570 ((Physical inspection of horses.)) All horses are subject to inspection. All horses at locations under the jurisdiction of the commission ~~((shall be))~~ are subject to inspections at the discretion of the stewards or an official veterinarian.

(1) ~~((Every horse entered to participate in an official race shall be subject to an inspection by an official veterinarian.~~

(2) ~~((The trainer of each horse or a representative of the trainer ((shall)) must present the horse for inspection as required by an official veterinarian.~~

~~((3))~~ (2) The assessment of a horse's racing condition ~~((shall))~~ will be based on the recommendations of the American Association of Equine Practitioners and ~~((shall))~~ may include:

(a) Proper identification of ~~((each))~~ the horse ~~((inspected));~~

(b) Observation of each horse in motion;

(c) Manual palpation when indicated;

(d) Close observation in the paddock and saddling area, during the parade to post and at the starting gate; and

(e) Any other inspection deemed necessary by an official veterinarian.

~~((4) Every horse shall be observed by an official veterinarian during and after the race.~~

~~(5) The~~ (3) An official veterinarian ~~((shall))~~ will maintain a continuing health and racing soundness record of each horse inspected.

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

WAC 260-70-580 Official veterinarian's list. (1) An official veterinarian ~~((shall))~~ will maintain a list of all horses ~~((which are))~~ determined by an official veterinarian to be unfit to compete in a race due to illness, physical distress, unsoundness, infirmity or other medical condition.

(2) A horse may be removed from the veterinarian's list when ~~((, in the opinion of the))~~ an official veterinarian ~~((;))~~ determines the horse is capable of competing in a race.

(a) Horses placed on the veterinarian's list will remain on the list for a minimum of ten days. (For purposes of counting days, the first day ~~((on the veterinarian's list))~~ is the day the horse is placed on the veterinarian's list.)

(b) ~~After the tenth day, an owner or trainer may request a horse ((may)) be removed from the veterinarian's list ((after the tenth day)).~~ Horses that must work to be removed from the veterinary list due to soreness, lameness, or certain injuries will be allowed to work no sooner than the eleventh day after being placed on the list.

(i) Works should be scheduled with ~~((the))~~ an official veterinarian twenty-four hours in advance.

(ii) Horses must work a minimum distance to be determined by ~~((the))~~ an official veterinarian in a time comparable for the track condition that day.

(iii) A blood test will be taken by an official veterinarian following the workout and medications levels may not exceed permitted post-race levels.

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

WAC 260-70-590 Reporting to the test barn. (1) The official winning horse and any other horse ordered by the stewards, official veterinarian or the commission ~~((shall))~~ must be taken to the test barn to have a blood and/or urine sample taken at the direction of an official veterinarian.

(2) Random or extra testing may be required by the stewards, ~~((the))~~ an official veterinarian, or the commission at any time on any horse on association grounds.

~~((Unless otherwise directed by the stewards or an official veterinarian.))~~ A horse ~~((that is))~~ selected for testing must be taken directly to the test barn, unless otherwise directed by the stewards or an official veterinarian.

~~((Access to the test barn shall be monitored and restricted. All persons who wish to enter the test barn must be currently licensed by the commission, display their commission identification badge and have a legitimate reason for being in the test barn area. No horse shall have more than~~

~~three representatives in the test barn at any one time.))~~ Only persons currently licensed by the commission may enter the test barn on a race day. Licensees must have a valid reason for being in the test barn, and may be required to display their license. When accompanying a horse to the test barn no more than three licensees will be permitted to enter the test barn.

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

WAC 260-70-610 Storage and shipment of split samples. (1) Split samples obtained in accordance with WAC 260-70-600 (2)(b) and (c) ~~((shall))~~ will be secured and made available for further testing in accordance with the following procedures:

(a) A split sample ~~((shall))~~ must be secured in the test barn ~~((under))~~ in the same manner as the ~~((portion of the specimen))~~ primary sample acquired for shipment to a primary laboratory. The split samples will be stored until ~~((such time as specimens))~~ the primary samples are packed and secured for shipment to the primary laboratory. Split samples ~~((shall))~~ will then be transferred to a freezer at a secure location approved by the ~~((commission))~~ executive secretary.

(b) A freezer ~~((for storage of))~~ used to store split samples ~~((shall))~~ will be ~~((equipped with a lock. The lock shall be))~~ closed and locked ~~((to prevent access to the freezer))~~ at all times except as specifically provided by these rules.

(c) A freezer for storage of split samples ~~((shall))~~ may only be opened ~~((only for depositing or removing))~~ to deposit or remove split samples, for inventory, or for checking the condition of samples.

~~((A))~~ An official veterinarian will maintain a split sample log ~~((shall be maintained by the official veterinarian))~~ that ~~((shall))~~ must be used each time a split sample freezer is opened ~~((to specify each person in attendance, the purpose for opening the freezer, identification of split samples deposited or removed, the date and time the freezer was opened, and the time the freezer was closed and to verify that the lock was secured prior to and after opening of the freezer)).~~ The log will record the following:

(i) The name of the person opening the split sample freezer;

(ii) The purpose for opening the freezer;

(iii) The split samples deposited or removed from the freezer;

(iv) The date and time the freezer was opened;

(v) The time the freezer was closed; and

(vi) A notation verifying that the lock was secured after the freezer was closed.

~~((Any evidence of a malfunction of a split sample freezer or samples that are not in a frozen condition during storage shall be documented in the log and immediately reported to an official veterinarian or a designated commission representative.))~~ If at any time it is discovered that the split sample freezer failed or samples were discovered not in a frozen condition, an official veterinarian must document this discovery on the split sample freezer log and immediately report this to the executive secretary.

(2) A trainer or owner of a horse having been notified that a written report from a primary laboratory states that a

substance has been found in a specimen obtained pursuant to these rules may request that a split sample corresponding to the portion of the specimen tested by the primary laboratory be sent to another laboratory approved by the commission. The request must be made in writing and delivered to the stewards not later than forty-eight hours after the trainer of the horse receives written notice of the findings of the primary laboratory. The split sample ~~((shall))~~ must be shipped within seventy-two hours of the delivery of the request for testing to the stewards.

(3) The owner or trainer requesting testing of a split sample ~~((shall be))~~ is responsible for the cost of shipping and testing. A split sample must be removed from the split sample freezer, and packaged for shipment by an official veterinarian or designee in the presence of the owner, trainer, or designee. Failure of the owner, trainer or designee to appear at the time and place designated by ~~((the))~~ an official veterinarian to package the split sample for shipping ~~((shall))~~ will constitute a waiver of all rights to split sample testing. Prior to shipment, the split sample laboratory's willingness to provide the testing requested and to send results to both the person requesting the testing and the commission, ~~((shall))~~ must be confirmed by an official veterinarian. Arrangements for payment satisfactory to the split sample laboratory ~~((shall))~~ must also be confirmed by the owner or trainer. A laboratory for the testing of a split sample must be approved by the commission. The commission ~~((shall))~~ will maintain a list of laboratories approved for testing of split samples.

(4) Prior to opening the split sample freezer, the commission ~~((shall))~~ must provide a split sample chain of custody verification form. The split sample chain of custody verification form ~~((shall))~~ must be completed and signed by the representatives of the commission and the owner, trainer or designee. A commission representative ~~((shall))~~ will keep the original and provide a copy ~~((for))~~ to the owner, trainer or designee.

The split sample chain of custody verification form ((requirements)) must include the following:

- (a) The date and time the sample is removed from the split sample freezer;
- (b) The sample number;
- (c) The address where the split sample is to be sent;
- (d) The name of the carrier and the address where the sample is to be taken for shipment;
- (e) Verification of retrieval of the split sample from the freezer;
- (f) Verification of each specific step of the split sample packaging in accordance with the recommended procedure;
- (g) Verification of the address of the split sample laboratory on the split sample package;
- (h) Verification of the condition of the split sample package immediately prior to transfer of custody to the carrier; and
- (i) The date and time custody of the sample is transferred to the carrier.

~~((5) A split sample shall be removed from the split sample freezer, and packaged for shipment by an official veterinarian or designee in the presence of the owner, trainer or designee.))~~

(j) The split sample chain of custody verification form ~~((shall))~~ must be signed by both the owner's representative and ~~((the))~~ an official veterinarian or designee to confirm the packaging of the split sample.

(5) The exterior of the package ~~((shall))~~ must be secured and identified with initialed tape, evidence tape or other means to prevent tampering with the package. The owner, trainer or designee may inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(6) The package containing the split sample ~~((shall))~~ will be transported to the location where custody is transferred to the delivery carrier charged with delivery of the package to the commission approved laboratory selected by the owner or trainer.

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

WAC 260-70-640 Permitted medication. Trainers using permitted medication in the care of their horses are subject to all rules governing such medications. Failure to administer permitted medication to a horse on a program of permitted medication ~~((shall be))~~ is a violation of these rules.

(1) The use of one of three approved nonsteroidal anti-inflammatory drugs (NSAIDs) ~~((shall be))~~ is permitted under the following conditions:

(a) The drug ~~((shall))~~ may not exceed the following permitted serum or plasma threshold concentrations, which are consistent with administration by a single intravenous injection at least twenty-four hours before the post time for the race in which the horse is entered:

- (i) Phenylbutazone - 5 micrograms per milliliter;
- (ii) Flunixin - 20 nanograms per milliliter;
- (iii) Ketoprofen - 10 nanograms per milliliter.

(b) No NSAID, including the approved NSAIDs listed in this rule, may be administered within the twenty-four hours before post time for the race in which the horse is entered.

(c) The presence of more than one of the three approved NSAIDs, with the exception of phenylbutazone in a concentration below 1 microgram per milliliter of serum or plasma or any unapproved NSAID in the post-race serum or plasma sample is not permitted. The use of all but one of the approved NSAIDs ~~((shall))~~ must be discontinued at least forty-eight hours before the post time for the race in which the horse is entered.

(2) Any horse to which a NSAID has been administered ~~((shall be))~~ is subject to having a blood and/or urine sample(s) taken at the direction of an official veterinarian to determine the quantitative NSAID level(s) and/or the presence of other drugs which may be present in the blood or urine sample(s).

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

WAC 260-70-650 Furosemide. (1) Furosemide may be administered intravenously to a horse which is entered to compete in a race. Except under the instructions of ~~((the))~~ an official veterinarian for the purpose of removing a horse from

the veterinarian's list or to facilitate the collection of a urine sample, furosemide ~~((shall))~~ will be permitted only after ~~((the))~~ an official veterinarian has placed the horse on the furosemide or bleeder list.

(2) The use of furosemide ~~((shall be))~~ is permitted under the following circumstances:

(a) Furosemide ~~((shall))~~ must be administered on the grounds of the association, by a single intravenous injection, prior to post time for the race for which the horse is entered.

(b) The furosemide dosage administered ~~((shall))~~ must not exceed 500 mg nor be less than 150 mg.

(c) The trainer of the treated horse ~~((shall cause to be delivered))~~ must deliver to an official veterinarian or his/her designee no later than one hour prior to post time for the race for which the horse is entered the following information under oath on a form provided by the commission:

(i) The name of the horse, the horse's tattoo number, racetrack name, the date and time the furosemide was administered to the entered horse;

(ii) The dosage amount of furosemide administered to the entered horse; and

(iii) The printed name and signature of the attending licensed veterinarian who administered the furosemide.

(iv) The signature of the trainer or his/her representative.

(d) Failure to administer furosemide in accordance with these rules may result in the horse being scratched from the race by the stewards.

(e) Test results must show a detectable concentration of the drug in the post-race serum, plasma or urine sample.

(i) The specific gravity of post-race urine samples may be measured to ensure that samples are sufficiently concentrated for proper chemical analysis. The specific gravity ~~((shall))~~ must not be below 1.010. If the specific gravity of the urine is found to be below 1.010 or if a urine sample is unavailable for testing, quantitation of furosemide in serum or plasma ~~((shall))~~ will be performed;

(ii) Quantitation of furosemide in serum or plasma ~~((shall))~~ must be performed when the specific gravity of the corresponding urine sample is not measured or if measured below 1.010. Concentrations may not exceed 100 nanograms of furosemide per milliliter of serum or plasma.

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

WAC 260-70-660 Furosemide and bleeder lists. The official veterinarians ~~((shall))~~ will maintain a furosemide list and a bleeder list of all horses eligible to race with furosemide. The list is a statewide list that applies to all licensed associations.

(1) Furosemide list.

(a) A horse is eligible to race with furosemide if the licensed trainer and/or veterinarian determine that it would be in the horse's best interests to race with furosemide. Notification using prescribed commission forms must be given to ~~((the))~~ an official veterinarian prior to the close of entries to ensure public notification.

(b) If ~~((the))~~ an official veterinarian so orders, a horse placed on the furosemide list ~~((shall))~~ will be placed in detention in its regularly assigned stall, no later than four hours

prior to the scheduled post time for any race in which it is entered to start, and with oral or written notification to the trainer may be watched by commission staff. Once placed in detention, a horse must remain in its barn or on its assigned hotwalker until it is taken to the receiving barn or to the paddock to be saddled for the race, except that the stewards may permit a horse to leave detention to engage in exercise blow-outs or warm-up heats.

(c) The confirmation of a horse eligible to race with furosemide must be certified in writing by an official veterinarian and entered on the furosemide list. Copies of the certification ~~((shall))~~ will be issued to the owner of the horse or the owner's designee upon request.

(d) Every horse eligible to race with furosemide, regardless of age, ~~((shall))~~ will be placed on the furosemide list.

(e) A horse placed on the official furosemide list must remain on that list unless the licensed trainer and/or veterinarian submit(s) a written request to remove the horse from the list. The request must be on commissioned-approved forms ~~((provided by the official veterinarian))~~ and must be submitted to ~~((the))~~ an official veterinarian no later than time of entry. After a horse has been removed from the furosemide list, the horse may not be placed back on the list for a period of sixty calendar days unless determined to be detrimental to the welfare of the horse, in consultation with an official veterinarian. If a horse is removed from the official furosemide list a second time in a three hundred sixty-five day period, the horse may not be placed back on the list for a period of ninety calendar days.

(2) Bleeder list.

(a) ~~((The))~~ An official veterinarian ~~((shall))~~ will maintain a bleeder list of all horses, which have demonstrated external evidence of exercise induced pulmonary hemorrhage from one or both nostrils during or after a race or workout as observed by ~~((the))~~ an official veterinarian.

(b) ~~((Every confirmed bleeder))~~ Following an incident of bleeding that is confirmed to be as a result of exercise induced pulmonary hemorrhage, the horse, regardless of age, ~~((shall))~~ must be placed on the bleeder list and ~~((be))~~ is ineligible to race for the following time periods:

(i) First incident - fourteen days;

(ii) Second incident within three hundred and sixty-five day period - thirty days;

(iii) Third incident within three hundred and sixty-five day period - one hundred and eighty days;

(iv) Fourth incident within three hundred and sixty-five day period - barred from racing for life.

(c) For the purposes of counting the number of days a horse is ineligible to run, the day the horse bled externally is the first day of the ~~((recovery))~~ ineligibility period.

(d) The voluntary administration of furosemide without an external bleeding incident ~~((shall))~~ will not subject the horse to the initial period of ineligibility as defined by this policy.

(e) Every horse that is confirmed a bleeder ~~((shall))~~ will have a notation affixed to the horse's certificate of registration.

(f) A horse may be removed from the bleeder list only upon the direction of ~~((the))~~ an official veterinarian.

(3) A horse which has been placed on a furosemide or bleeder list in another jurisdiction may be placed on the furosemide list in this jurisdiction.

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

WAC 260-70-675 Bicarbonate testing. No bicarbonate-containing substance or alkalizing substance that effectively alters the serum or plasma pH or concentration of bicarbonates or total carbon dioxide in a horse (~~(shall)~~) may be administered to a horse within twenty-four hours of post time of the race in which the horse is entered.

~~(The)~~ An official veterinarian, the board of stewards or the executive secretary acting on behalf of the commission may at their discretion and at any time order the collection of test samples from any horses either in the horse's stall or within the receiving or test barn to determine the serum or plasma pH or concentration of bicarbonate, total carbon dioxide, or electrolytes.

Test samples (~~(shall)~~) must not exceed 37.0 millimoles of total carbon dioxide concentration per liter of serum or plasma. A serum or plasma total carbon dioxide level exceeding this value (~~(shall constitute)~~) is a violation of this rule. Penalties (~~(shall)~~) will be assessed as a Class 4 violation as provided in WAC 260-84-110(6).

Split samples will be taken from all horses entered to run in a race when bicarbonate testing is to be done. When split samples are taken, they (~~(shall)~~) will be shipped as soon as practical to the commission-approved laboratories for total carbon dioxide split sample testing. The commission (~~(shall be)~~) is responsible for the cost of shipping and testing of split samples taken under this section.

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

WAC 260-70-720 Posterior digital neurectomy. (1) No person (~~(shall)~~) may bring onto the grounds of a racing association, or enter or cause to be entered in any race, or sell, offer for sale, or act as an agent in the sale of any horse on the grounds under the jurisdiction of the commission that has had a posterior digital neurectomy performed, or has had any nerve removed from the leg of such horse, except as provided in this chapter.

(2) A horse upon which a posterior digital neurectomy has been performed is eligible to race if the following conditions are met:

(a) Prior approval of an official veterinarian has been obtained before the horse was brought onto the grounds of the racing association;

(b) An official veterinarian is satisfied that the loss of sensation to the horse due to the posterior digital neurectomy will not endanger the safety of the public and the participants in racing and does not compromise the integrity of horse racing;

(c) The racing secretary is notified of the posterior digital neurectomy at the time the horse is admitted to the grounds of the racing association; and

(d) The horse's registration or eligibility certificate has been marked to indicate that a posterior digital neurectomy was performed.

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

WAC 260-70-730 Postmortem examination. (1) The commission may require a postmortem examination of any horse that is injured on the grounds of a racing association during its scheduled race meet and training periods, while the horse is in training or in competition and that subsequently expires or is destroyed, or any horse that expires while housed on the grounds. In proceeding with a postmortem examination the commission or its designee (~~(shall)~~) will coordinate with the trainer and/or owner to determine and address any insurance requirements.

(2) Trainers and owners (~~(shall be required to)~~) must cooperate with such action as a condition of licensure.

(3) ~~(The)~~ An official veterinarian may take possession of the horse upon death for postmortem examination. ~~(The)~~ An official veterinarian may submit blood, urine, other bodily fluid specimens or other tissue specimens collected during a postmortem examination for analysis. Upon completion of the postmortem examination, the remains may be returned to the owner or disposed of at the owner's option.

(4) The presence of a prohibited substance in a specimen collected during the postmortem examination may constitute a violation of these rules.

(5) The cost of commission-ordered postmortem examinations, testing and disposal (~~(shall)~~) will be borne by the commission.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 260-70-530

Veterinarians under authority of official veterinarian.

WSR 07-07-043 PERMANENT RULES PUGET SOUND CLEAN AIR AGENCY

[Filed March 13, 2007, 9:56 a.m., effective September 1, 2007]

Effective Date of Rule: September 1, 2007.

Purpose: To provide clarification regarding the differences between air quality requirements for mobile spray-coating operations and those for stationary auto-body repair work as it relates to motor vehicle coating.

Citation of Existing Rules Affected by this Order: Amending Regulation I, Section 9.16.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 07-02-048 on December 27, 2006.

Changes Other than Editing from Proposed to Adopted Version: In section 9.16(b), "Sections 9.16 (c) and (d)" was

changed to "Sections 9.16 (c), (d), and (e)"; in section 9.16(b)(4), "provided that persons claiming exemption from Section 9.16(e) of this regulation register with the agency in accordance with Article 5 of this regulation and provide a copy of the current agency registration document to each new customer before starting work at a site" *was added*; in section 9.16(e)(1)(B), "more than 3 consecutive days" *was changed to* "more than 5 consecutive days"; and in section 9.16(e)(5), "Do not apply more than 20 ounces of coatings (base coat and clear coat combined) at one site during any calendar day." *was deleted*.

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

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

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

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

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

Date Adopted: February 22, 2007.

Steve Van Slyke
Supervisory Engineer

AMENDATORY SECTION

REGULATION I SECTION 9.16 SPRAY-COATING OPERATIONS

(a) Applicability. This section applies to indoor and outdoor spray-coating operations ((at facilities subject to Article 5 (Registration) or Article 7 (Operating Permits) of this regulation, where)) when a coating that protects or beautifies a surface is applied with spray-coating equipment, except as exempted in Section 9.16(b) of this regulation. Mobile spray-coating operations for motor vehicles or motor vehicle components are subject to Section 9.16(e) of this regulation.

(b) Exemptions. The following activities are exempt from the provisions of Sections 9.16 (c), ~~(d), and (e)~~ ~~((and (d)))~~ of this regulation. Persons claiming any of the following ~~((spray-coating))~~ exemptions shall have the burden of demonstrating compliance with the claimed exemption.

(1) Application of architectural or maintenance coatings to stationary structures (e.g., bridges, water towers, buildings, stationary machinery, or similar structures);

(2) Aerospace coating operations subject to 40 CFR Part 63, Subpart GG. This includes all activities and materials listed in 40 CFR 63.741(f);

(3) Use of high-volume, low-pressure (HVLP) spray guns when:

(A) spray-coating operations do not involve motor vehicles or motor vehicle components;

(B) the gun cup capacity is 8 fluid ounces or less;

(C) the spray gun is used to spray-coat less than 9 square feet per day per facility;

(D) coatings are purchased in containers of 1 quart or less; and

(E) spray-coating is allowed by fire department, fire marshal, or other government agency requirements.

(4) Use of air-brush spray equipment with 0.5 to 2.0 CFM airflow and a maximum cup capacity of 2 fluid ounces, provided that persons claiming exemption from Section 9.16(e) of this regulation register with the Agency in accordance with Article 5 of this regulation and provide a copy of the current Agency registration document to each new customer before starting work at a site;

(5) Use of hand-held aerosol spray cans with a capacity of 1 quart or less; or

(6) Indoor application of automotive undercoating materials using organic solvents having a flash point in excess of 100°F.

(c) General Requirements for Indoor Spray-Coating Operations. It shall be unlawful for any person subject to the provisions of this section to cause or allow spray-coating inside a structure, or spray-coating of any motor vehicles or motor vehicle components, unless all of the following requirements are met:

(1) ~~((the-s))~~ Spray-coating is conducted inside an enclosed spray area; ~~((:))~~

(2) The enclosed spray area ~~((shall))~~ employs either properly seated paint arresters, or water-wash curtains with a continuous water curtain to control the overspray; and((.)

(3) All emissions from the spray-coating operation ~~((shall be))~~ are vented to the atmosphere through an unobstructed vertical exhaust vent.

(d) General Requirements for Outdoor Spray-Coating Operations. It shall be unlawful for any person subject to the provisions of this section to cause or allow spray-coating outside an enclosed structure unless reasonable precautions are employed to minimize the overspray. Reasonable precautions include, but are not limited to the use of:

(1) Enclosures and curtailment during high winds; and

(2) High-volume low-pressure (HVLP), low-volume low-pressure (LVLP), electrostatic, or air-assisted airless spray equipment. Airless spray equipment may be used where low viscosity and high solid coatings preclude the use of higher-transfer efficiency spray equipment.

(e) General Requirements for Mobile Spray-Coating Operations. It shall be unlawful for any person to cause or allow the spray-coating of any motor vehicle or motor vehicle component outside of a structure required by Section 9.16(c) of this regulation, unless all the following requirements are met:

(1) Conduct all spray-coating in a portable frame-and-fabric shelter consisting of a fabric roof and three fabric sides or similar portable shelter consisting of a roof and three sides.

(A) Disassemble and remove the portable shelter from the site at the end of each day.

(B) Do not conduct mobile spray-coating operations for more than 5 consecutive calendar days at any site and not more than 14 days during any calendar month at the same site.

(2) Do not apply more than 8 ounces of coating to any single vehicle.

(3) Do not apply coating to more than 9 square feet of any single vehicle.

(4) Do not prepare a surface area for spray-coating greater than 9 square feet per any single vehicle. The measured surface area prepared for spray-coating shall include, but is not limited to all areas that are filled, ground, sanded, or inside masking.

(5) Use only HVLP spray guns or spray equipment with equivalent transfer efficiency (greater than or equal to 65%).

(6) Minimize evaporative emissions by collecting all organic solvents used for cleanup of equipment in a closed-loop or contained system; keeping all containers of paints and organic solvents closed except when materials are being added, mixed, or removed; and storing solvent rags in closed containers.

(7) Post a sign that is visible to the public and shows the name of the company and current telephone contact information for complaints. Record information regarding complaints received and investigate complaints regarding odor, overspray, or nuisance as soon as possible, but no later than 1 hour after receipt of a complaint. As part of the investigation, determine the wind direction during the time of the complaint. If the cause of a valid complaint cannot be corrected within 2 hours of the time the complaint was received, shut down the operation until corrective action is completed.

(8) Complete the following records for each vehicle when finished with that vehicle:

(A) Customer identification, address where work was performed, date, time, and the name of the person completing the record;

(B) Identification of each vehicle and vehicle component repaired; and

(C) Quantity (in ounces) of each VOC-containing material used on each vehicle.

All records must be kept current, retained for at least 2 years, and made available to Agency representatives upon request.

(9) Provide a copy of the current Agency registration document to each customer prior to starting work at a site.

(f) ((e)) Compliance with Other Regulations. Compliance with this regulation does not exempt any person from compliance with Regulation I, Section 9.11 and all other applicable regulations including those of other agencies.

WSR 07-07-044

PERMANENT RULES

DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT

[Filed March 13, 2007, 10:14 a.m., effective April 13, 2007]

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

Purpose: To align the Washington lead-based paint regulations with those of the federal government, to simplify and clarify rule language and, to make administration of the rules more efficient.

Citation of Existing Rules Affected by this Order: Repealing WAC 365-230-110 and 365-230-140; and amending WAC 365-230-010, 365-230-016, 365-230-020, 365-230-030, 365-230-035, 365-230-040, 365-230-060, 365-230-070, 365-230-080, 365-230-090, 365-230-100, 365-230-130, 365-230-132, 365-230-134, 365-230-150, 365-230-160, 365-230-170, 365-230-200, 365-230-210, and 365-230-220.

Statutory Authority for Adoption: Chapter 70.103 RCW.

Adopted under notice filed as WSR 06-18-104 on September 6, 2006.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 20, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 20, Repealed 2.

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

Date Adopted: March 13, 2007.

Juli Wilkerson
Director

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

WAC 365-230-010 Authority, purpose and scope. (1) The authority for these regulations is chapter 70.103 RCW.

(2) Purpose.

(a) These regulations address Washington's need for a qualified and properly trained work force to perform inspection, risk assessment and abatement of hazards associated with lead-based paint, as defined in these rules, to safeguard the environment and protect human health, especially for children under six years of age and other high-risk groups from lead-based paint hazards.

(b) These regulations prescribe the accreditation requirements for training providers offering lead-based paint activities training courses to qualify individuals for lead-based paint certification and will require that all lead-based paint training courses be offered or provided only by accredited training providers.

(c) These regulations prescribe the certification requirements of individuals and firms engaged in lead-based paint activities in target housing and child occupied facilities.

(d) These regulations establish work practice standards for the performance of lead-based paint inspection, risk assessment, and abatement activities for individuals and firms and will require that only certified individuals and the certified firms employing such individuals perform these lead-based paint activities.

(3) Scope.

(a) These rules apply to all individuals and firms that are engaged in lead-based paint activities as defined in these regulations, (WAC 365-230-200) except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level.

(b) These rules establish the requirement that lead-based paint activities be performed only by certified individuals and the certified firms employing such individuals.

(c) These rules prescribe the requirements for, and the manner of, certifying competency of applicants for certification of lead-based paint inspector, risk assessor, supervisor, project designer, and worker, and of legally registered firms employing such individuals.

(d) These rules prescribe work practice standards for the abatement of lead-based paint hazards and for the performance of lead-based paint inspection and risk assessment, and those actions or circumstances that constitute failure to achieve or maintain competency, or that otherwise are contrary to the public interest, for which the department may deny, suspend, revoke, or modify certification.

(e) These rules establish application fees for certification and accreditation.

(f) These rules establish a procedure by which training providers may apply for and obtain accreditation to offer initial and refresher lead-based paint activity courses in any of the following disciplines: Inspector, risk assessor, supervisor, project designer, and abatement worker. ~~((A training program accredited in a discipline may also seek accreditation to offer refresher courses for the discipline.))~~

(g) These rules prescribe the requirements for training programs to provide, offer, or claim to provide accredited lead-based paint activities courses.

(h) These rules prescribe those actions or circumstances that constitute failure to achieve or maintain competency, or that otherwise are contrary to the public interest, for which the department may deny, suspend, revoke or modify accreditation.

(i) These rules describe the actions or failures to act that constitute violations of these rules and for which the department may issue fines.

(j) These rules establish a schedule of penalties for failure to comply with these rules.

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

WAC 365-230-016 Contact information for accreditation and certification matters. Application materials and information concerning lead-based paint accreditation and certification as described in these rules can be obtained from the lead-based paint program via the following contact information:

(1) Mailing address: Lead-Based Paint Program, P.O. Box 42525, Olympia, WA 98504-2525

(2) Telephone number: ~~((360-725-2949))~~ 360-586-LEAD (5323)

(3) Fax number: 360-586-5880

(4) Web site: www.cted.wa.gov/lead

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

WAC 365-230-020 Definitions. As used in these rules unless otherwise required by context:

(1) "Abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards including, but not limited to:

(a) The removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or covering of soil, when lead-based paint hazards are present in such paint, dust or soil; and

(b) All preparation, cleanup, disposal, and postabatement clearance testing activities associated with such measures.

Specifically, abatement includes, but is not limited to:

(i) Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or child-occupied facility that results in permanent elimination of lead-based paint hazards or designed to permanently eliminate lead-based paint hazards and described in (a) and (b) of this subsection.

(ii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by certified and licensed firms or individuals, unless such projects are covered under (c) of this subsection.

(iii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals who, through the their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities, unless such projects are covered under (c) of this subsection.

(iv) Projects resulting in the permanent elimination of lead-based paint hazards, that are conducted in response to state or local abatement orders.

(c) Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

(2) "Accreditation" means the process whereby the department has reviewed and approved a training provider's written application with associated materials for accreditation, and has conducted an on-site audit finding the training program is in compliance as specified in these rules.

(3) "Accredited training program" means a training program accredited by the department, either directly or through a reciprocity agreement with other jurisdictions, to provide

training for individuals engaged in lead-based paint activities.

(4) "Accredited training course" means either an initial or a refresher training course accredited by the department, either directly or through a reciprocity agreement with other jurisdictions, that provides training for individuals engaged in lead-based paint activities.

(5) "Accredited training provider" means an individual, corporation, partnership or other unincorporated association or public entity to which the department has approved accreditation to offer one or more lead-based paint courses.

~~(6) ("Adequate quality control" means a plan or design that ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or paint film samples. Adequate quality control also includes provisions for representative sampling.~~

~~(7) "Administrator" means the director of the department of community, trade and economic development, or the director's designee.~~

(8)) "Approved" means approved in writing by the department.

~~((9)) (7) "Arithmetic mean" means the algebraic sum of data values divided by the number of data values (e.g., the sum of the concentration of lead in several soil samples divided by the number of samples).~~

~~((10)) (8) "Business day" means Monday through Friday with the exception of legal Washington state holidays.~~

~~((11)) (9) "Certified" means issued a certificate by the department based on meeting requirements for the appropriate discipline. Those requirements include, but are not limited to, the following:~~

~~(a) Successful completion of a training program accredited by the department; and~~

~~(b) Receiving a passing score on a certification examination administered by the department; and~~

~~(c) Satisfaction of any other requirements for the appropriate discipline; and~~

~~(d) Submittal and approval of the appropriate application by the department for inspection, risk assessment or abatement activities in target housing and child-occupied facilities.~~

~~((12)) (10) "Certified firm" means a company, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities to which the department has issued a certificate under these rules.~~

~~((13) "Chewable surface" means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew. A chewable surface is the same as an "accessible surface" as defined in 42 U.S.C. 4851b(2). Hard metal substrates and other materials that cannot be dentured by the bite of a young child are not considered chewable.~~

(14)) (11) "Child-occupied facility" means a building, or a portion of a building, constructed prior to 1978, visited regularly by the same child, under the age of six, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least three hours and the combined weekly visit lasts at least six hours, and the combined annual visits last at least sixty hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms.

~~((15)) (12) "Clearance levels" are values that indicate the maximum amount of lead permitted in dust on a surface following completion of an abatement activity.~~

~~((16)) (13) "Clearance examination standards" means a maximum of 40 micrograms of lead in dust per square foot on floors, 250 micrograms of lead in dust per square foot on interior window sills, and 400 micrograms of lead in dust on window troughs.~~

~~((17)) (14) "Common area" means a portion of a building that is generally accessible to all occupants that may include, but that is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.~~

~~((18)) (15) "Common area group" means a group of common areas that are similar in design, construction, and function. Common area groups include, but are not limited to, hallways, stairwells, and laundry rooms.~~

~~((19)) (16) "Component or building component" means specific design or structural elements or fixtures of a building, residential dwelling, or child-occupied facility that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as: Ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners; and exterior components such as: Painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes and wells, and air conditioners.~~

~~((20)) (17) "Concentration" means the relative content of a specific substance contained within a larger mass, such as the amount of lead (in micrograms per gram or parts per million by weight) in a sample of dust or soil.~~

~~((21)) (18) "Containment" means a process to protect workers and the environment by controlling exposures to the lead-contaminated dust and debris created during an abatement.~~

~~((22)) (19) "Course agenda" means an outline of the key topics to be covered during a training course, including the time allotted to teach each topic.~~

~~((23)) (20) "Course test" means an evaluation of the overall effectiveness of the training which shall test the trainees' knowledge and retention of the topics covered during the course.~~

~~((24)) (21) "Course completion date" means the final date of classroom instruction and/or student examination of an accredited lead-based paint training course.~~

~~((25)) (22) "Course completion certificate" means documentation issued by an accredited training provider to an individual as proof of successful completion of a department-approved lead-based paint course or initial training course. All course completion certificates are valid for six months from the course completion date.~~

~~((26))~~ (23) "Course test (~~(blue print)~~) blueprint" means written documentation identifying the proportion of course test questions devoted to each major topic in the course curriculum.

~~((27))~~ (24) "Demonstration testing" means the observation and scoring of a student's job task and equipment use skills taught during an initial or refresher training course.

~~((28))~~ (25) "Department" means the Washington department of community, trade, and economic development.

~~((29))~~ (26) "Deteriorated paint" means any interior or exterior paint or other coating that is peeling, chipping, chalking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

~~((30))~~ (27) "Director" means the director of the Washington department of community, trade, and economic development.

(28) "Discipline" means one of the specific types or categories of lead-based paint activities identified in ~~((this subpart))~~ these rules for which individuals may receive training from accredited programs and become certified by the department. For example, "abatement worker" is a discipline.

~~((31))~~ (29) "Distinct painting history" means the application history, as indicated by the visual appearance or a record of application, over time, of paint or other surface coatings to a component or room.

~~((32))~~ (30) "Documented methodologies" are ~~((written methods or protocols used to sample for the presence of lead in paint, dust, and soil as recommended in U.S. Department of Housing and Urban Development "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing," revised, October, 1997; "Agency Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil," September, 1995; and "EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling," March 1995. These materials can be downloaded from the following web site: www.epa.gov/lead or www.hud.gov/lead/offices))~~ the methods or protocols used to sample for the presence of lead in paint, dust, and soil.

~~((33))~~ (31) "Dripline" means the area within three feet surrounding the perimeter of a building.

~~((34))~~ (32) "Dust-lead hazard" means surface dust in a residential dwelling or child-occupied facility that contains a mass-per-area concentration of lead equal to or exceeding 40 µg/ft² on floors or 250 µg/ft² on interior window sills based on wipe samples.

~~((35))~~ (33) "Elevated blood lead level (EBL)" means an excessive absorption of lead that is a confirmed concentration of lead in whole blood of 20 µg/dl (micrograms of lead per deciliter of whole blood) for a single venous test or of 15-19 µg/dl in two consecutive tests taken three to four months apart.

~~((36))~~ (34) "Encapsulant" means a substance that forms a barrier between lead-based paint and the environment using a liquid applied coating (with or without reinforcement materials) or an adhesively bonded covering material.

~~((37))~~ (35) "Encapsulation" means the application of an encapsulant.

~~((38))~~ (36) "Enclosure" means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

~~((39))~~ (37) "EPA" means the Environmental Protection Agency.

~~((40))~~ (38) "Firm" means a sole proprietorship, corporation, association, firm, partnership, or joint stock company legally registered with the Washington department of licensing to conduct business in the state of Washington.

~~((41))~~ (39) "Friction surface" means an interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

~~((42))~~ (40) "Guest instructor" means an individual designated by the training program manager or principal instructor to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

~~((43))~~ (41) "Hands-on training" means training during which students practice skills that they will be expected to perform at the worksite.

~~((44))~~ (42) "Hands-on skills assessment" means an evaluation which tests the trainees' ability to satisfactorily perform the work practices and procedures identified in WAC 365-230-200 as well as any other skill taught in a training course.

~~((45))~~ "Hazardous waste" means any waste as defined in ~~chapter 173-303 WAC.~~

~~((46))~~ (43) "Impact surface" means an interior or exterior surface that is subject to damage by repeated sudden force such as certain parts of door frames.

~~((47))~~ (44) "Initial training course" means a full, accredited lead-based paint training course required for certification. It is different than a refresher course.

~~((48))~~ (45) "Inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report, in writing, explaining the results of the investigation.

~~((49))~~ (46) "Inspector" means an individual who is certified by the department to conduct in target housing and child-occupied facilities a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report, in writing; and conduct clearance procedures in accordance with WAC 365-230-200. An inspector may also collect dust and soil samples and perform clearance testing. An inspector may cite the applicable standard for the medium being sampled, but may not evaluate the results or assess risk.

~~((50))~~ "~~Interactive/participatory teaching methods~~" mean instruction which consists of active participation of the students, such as brainstorming, hands-on training, demonstration and practice, small group problem solving, learning games, discussions, risk mapping, field visits, walk-throughs, problem posing, group work assignments, homework review sessions, question and answer periods, skits, or role-playing sessions. Lecture is not considered an interactive/participatory teaching method.

~~((51))~~ (47) "Interim controls" mean a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or

potential hazards, and the establishment and operation of management and resident education programs.

~~((52))~~ (48) "Interior window sill" means the portion of the horizontal window ledge that protrudes into the interior of the room.

~~((53))~~ "Job tasks" mean the specific activities performed in the context of work.

~~(54)~~ "Lead abatement professional" means an individual certified to conduct lead-based paint activities under WAC 365-230-200 as a worker, supervisor, project designer, inspector, or risk assessor.

~~((55))~~ (49) "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

~~((56))~~ (50) "Lead-based paint activities" mean, in the case of target housing and child-occupied facilities, inspection, risk assessment, and abatement, as defined in these rules.

~~((57))~~ (51) "Lead-based paint activities courses" mean training courses (worker, supervisor, inspector, risk assessor, project designer) provided by accredited training providers.

~~((58))~~ (52) "Lead-based paint hazard" means hazardous lead-based paint, dust-lead hazard or soil-lead hazard as identified in these rules.

~~((59))~~ (53) "Lead-hazard screen" is a limited risk assessment activity that involves limited paint and dust sampling as described in WAC 365-230-200.

~~((60))~~ "Lead hazard standard" means the amount of lead the department considers to be a hazard in target housing or child-occupied facilities. The standards are: Greater than 40 micrograms of lead in dust per square foot on floors, or greater than 250 micrograms of lead in dust per square foot on interior window sills, or 250 parts per million of lead in bare soil.

~~(61))~~ (54) "Licensed" means a person who has been certified by the department in one or more disciplines.

~~((62))~~ (55) "Living area" means any area of a residential dwelling used by one or more children under the age of six, including, but not limited to, living rooms, kitchen areas, dens, play rooms, and children's bedrooms.

~~((63))~~ (56) "Loading" means the quantity of specific substance present per unit of surface area, such as the amount of lead in micrograms contained in the dust collected from a certain surface area divided by the surface area in square feet or square meters.

~~((64))~~ (57) "Multifamily dwelling" means a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

~~((65))~~ (58) "Multifamily housing" means a housing property consisting of more than four dwelling units.

~~((66))~~ "Paint in poor condition" means more than ten square feet of deteriorated paint on exterior components with large surface areas; or more than two square feet of deteriorated paint on interior components with large surface areas (e.g., walls, ceilings, floors, doors); or more than ten percent of the total surface area of the component is deteriorated on interior or exterior components with small surface areas (window sills, baseboards, soffits, trim).

~~(67))~~ (59) "Paint-lead hazard" means any of the following:

(a) Any lead-based paint on a friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill, or floor) are equal to or greater than the dust-lead hazard levels identified in these rules.

(b) Any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame).

(c) Any chewable lead-based painted surface on which there is evidence of teeth marks.

(d) Any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

~~((68))~~ (60) "Permanent" means having an expected design life of twenty years.

~~((69))~~ "Permanently covered soil" means soil which has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement or concrete. Grass, mulch, and other landscaping materials are not considered permanent covering.

~~(70))~~ (61) "Person" means any natural or judicial person including any individual, corporation, partnership, or association; any Indian tribe, state, or political subdepartment thereof; any interstate body; and any department, agency, or instrumentality of the federal government.

~~((71))~~ (62) "Play area" means an area of frequent soil contact by children of less than six years of age as indicated by, but not limited to, such factors including the following: The presence of play equipment (e.g., sandboxes, swing sets, and sliding boards), toys, or other children's possessions, observations of play patterns, or information provided by parents, residents, care givers, or property owners.

~~((72))~~ (63) "Preliminary clearance" means clearance of interior living areas according to which an inspector or risk assessor determines that residual lead levels (as determined by laboratory analysis) do not exceed clearance levels.

~~((73))~~ (64) "Principal instructor" means the individual who has the primary responsibility for organizing and teaching a particular course.

~~((74))~~ (65) "Proficiency test" means any alternative to a conventional written examination that is used to measure a trainee's mastery of course content. An oral examination offered to a trainee with a manual disability is an example of a proficiency test.

~~((75))~~ (66) "Project designer" means an individual who is certified by the department to interpret lead inspection or risk assessment reports and to develop plans, specifications, and project procedures for large lead abatement projects in target housing and child-occupied facilities, including occupant notification and protection, cleanup and clearance, and abatement reports.

~~((76))~~ "Recognized laboratory" means an environmental laboratory recognized by EPA pursuant in accordance with the National Lead Laboratory Accreditation Program (NLLAP) as being capable of performing an analysis for lead compounds in paint, soil, and dust.

~~(77)~~ (67) "Refresher training course" means a minimum seven-hour training course (or four hours for project designer) accredited by the department to update an individual's knowledge and skills in the discipline in which training is offered.

~~((78))~~ (68) "Residential dwelling" means:

(a) A detached single-family dwelling unit, including attached structures such as porches and stoops; or

(b) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be occupied, in whole or in part, as the home or residence of one or more persons.

~~((79))~~ (69) "Risk assessment" means an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and the provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

~~((80))~~ (70) "Risk assessor" means an individual who is certified by the department to conduct in target housing and child-occupied facilities on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and to provide a report explaining the results of the investigation and options for reducing lead-based paint hazards; and who may conduct a lead-hazard screen, in accordance with WAC 365-230-200.

~~((81))~~ (71) "Room" means a separate part of the inside of a building, such as a bedroom, living room, dining room, kitchen, bathroom, laundry room, or utility room. To be considered a separate room, the room must be separated from adjoining rooms by built-in walls or archways that extend at least six inches from an intersecting wall. Half walls or bookcases count as room separators if built-in. Movable or collapsible partitions or partitions consisting solely of shelves or cabinets are not considered built-in walls. A screened-in porch that is used as a living area is a room.

~~((82))~~ (72) "Sample quality control" means a plan or design which ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or film samples. Sample quality control also includes provisions for representative sampling and control samples.

~~((83))~~ (73) "Scope of work" means a written description of all of the abatement activities to be conducted at a specific abatement project site.

~~((84))~~ (74) "Soil-lead hazard" means bare soil on residential real property or on the property of a child-occupied facility that contains total lead equal to or exceeding 250 parts per million (mg/g) based on soil samples.

~~((85))~~ (75) "Soil sample" means a sample collected in a representative location using ASTM E1727, "*Standard Practice for Field Collection of Soil Samples for Lead Determination by Atomic Spectrometry Techniques*," or equivalent method. ASTM standards can be obtained from ASTM International, P.O. Box C700, West Conshohocken, PA 19428-2929, via phone at 610-832-9525, or electronically at www.astm.org

~~((86))~~ (76) "Supervisor" means an individual who is certified by the department to either conduct or oversee and direct the work-site conduct of lead-based paint abatement and clearance activities in target housing and child-occupied

facilities, and to prepare occupant protection plans and abatement reports in accordance with WAC 365-230-200.

~~((87))~~ (77) "Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any one or more children under the age of six resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling.

~~((88))~~ (78) "These rules" means Washington Administrative Code (WAC) 365-230-010 through 365-230-270.

~~((89))~~ (79) "Train-the-trainer course" means a course that includes, but is not limited to, instruction in the planning and teaching of adult education, adult learning principles, designing training objectives, selecting and designing training activities, creating an effective learning environment, facilitating group involvement and discussions, and strategies for dealing with difficult training situations and difficult learners.

~~((90))~~ (80) "Training curriculum" means an established set of course topics for instruction in an accredited training program for a particular discipline designed to provide specialized knowledge and skills.

~~((91))~~ (81) "Training hour" means at least fifty minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and/or hands-on experience.

~~((92))~~ (82) "Training manager" means the individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

~~((93))~~ (83) "Training provider" means any business entity accredited under WAC 365-230-035 and 365-230-040 that offers lead-based paint activities courses.

~~((94))~~ (84) "Weighted arithmetic mean" means the arithmetic mean of sample results weighted by the number of subsamples in each sample. Its purpose is to give influence to a sample relative to the surface area it represents. A single surface sample is comprised of a single subsample. A composite sample may contain from two to four subsamples of the same area as each other and of each single surface sample in the composite. The weighted arithmetic mean is obtained by summing, for all samples, the product of the sample's result multiplied by the number of subsamples in the sample, and dividing the sum by the total number of subsamples contained in all samples. For example the weighted arithmetic mean of a single surface sample containing 60 $\mu\text{g}/\text{ft}^2$, a composite sample (three subsamples) containing 100 $\mu\text{g}/\text{ft}^2$, and a composite sample (four subsamples) containing 110 $\mu\text{g}/\text{ft}^2$ is 100 $\mu\text{g}/\text{ft}^2$. This result is based on the equation $[60+(3*100)+(4*110)]/(1+3+4)$.

~~((95))~~ (85) "Window trough" means for a typical double-hung window, the portion of the exterior window sill between the interior window sill (or stool) and the frame of the storm window. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered. The window trough is sometimes referred to as the window "well."

~~((96))~~ (86) "Wipe sample" means a sample collected by wiping a representative surface of known area, as determined by ASTM E1728, "*Standard Practice for Field Collection of*

Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques," or equivalent method, with an acceptable wipe material as defined in ASTM E 1792, "Standard Specification for Wipe Sampling Materials for Lead in Surface Dust." ASTM standards can be obtained from ASTM International, P.O. Box C700, West Conshohocken, PA 19428-2929, via phone at 610-832-9525, or electronically at www.astm.org

~~((97))~~ (87) "Worker" means an individual who is certified by the department and licensed by the construction contractors' board to conduct lead-based paint abatement activities in target housing and child-occupied facilities in accordance with WAC 365-230-200.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

WAC 365-230-030 Accreditation required. (1) No ~~((person))~~ firm, individual or other entity shall provide, offer, or claim to provide ~~((an))~~ a department-accredited lead-based paint ~~((activities))~~ training course ~~((unless the person has received))~~ without applying for and receiving accreditation from the department as required by these rules.

(2) A training ~~((courses))~~ provider may be accredited for the initial inspector, risk assessor, abatement worker, supervisor, and project designer training courses or for refresher training courses within the same disciplines.

(3) Only accredited training providers are eligible to offer initial and refresher lead-based paint training courses ~~((for lead-based paint discipline courses)).~~

(4) To qualify for and maintain accreditation, a training provider shall:

(a) Propose and offer at least one accredited ~~((or accredited))~~ lead-based paint training course.

(b) Conform to personnel, operational and curriculum requirements.

(c) Comply with accreditation application and procedural requirements.

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

WAC 365-230-035 Application process. The following are procedures a training program must follow to receive accreditation by the department to offer lead-based paint training courses:

(1) ~~((Submission of a completed application for course accreditation or renewal.))~~ A training program seeking accreditation shall submit a complete written application to the department. To be considered complete, the application must be on the appropriate departmental form and include all required documentation and attachments. Information that must be provided with the application is as follows:

(a) Name, address, and phone number of training provider and training program manager.

(b) List of course(s) for which accreditation is being applied.

(c) A statement signed by the training program manager certifying that the training program meets the requirements under WAC 365-230-040.

~~((A copy of the entire course instruction curriculum, including, but not limited to: Learning objectives; documentation of course agenda with time allocation for each course topic; the sequence of topics to be covered during the course(s); student and instructor manuals, or other materials to be used for the course.))~~ If a training program uses EPA-recommended model training materials, or training materials approved by an EPA-authorized state or Indian tribe, the training manager shall include a statement certifying that. If the training program makes any changes or additions to the model curriculum, the training shall submit a statement indicating the changes or additions and shall submit a copy of the new or changed curriculum. It is not necessary to submit unchanged model training curriculum materials.

If a training program does not use model training materials as described in (d) of this subsection, the training manager shall include: A copy of the entire course instruction curriculum, including, but not limited to: Learning objectives; documentation of course agenda with time allocation for each course topic; the sequence of topics to be covered during the course(s); student and instructor manuals, and any other materials to be used for the course.

(f) All applications for accreditation shall include:

(i) A copy of the test blueprint describing the portion of test questions devoted to each major course topic.

~~((f))~~ (ii) A description of the facilities and equipment to be used for lecture and hands-on training, respectively.

~~((g))~~ (iii) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course.

~~((h))~~ (iv) A copy of the quality control plan developed by the training manager. The plan shall be used to maintain and improve the training program and contain at least the following elements:

~~((i))~~ (A) Procedures for periodic revision of training materials and course test to be current with innovations in the field.

~~((j))~~ (B) Procedures for the training manager's annual review of principal instructor competency.

~~((k))~~ (v) Documentation of accreditation by other state or federal agencies, if applicable.

~~((l) Submit)~~ (vi) A check or money order made out to the department of community, trade, and economic development in the amount as described in WAC 365-230-120.

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

WAC 365-230-040 Requirements for the accreditation of training programs. For a training program to obtain accreditation from department to offer lead-based paint activities courses, the program shall meet the following requirements:

(1) The training program shall employ a training manager who has:

(a) At least two years of experience, education, or training in teaching workers or adults; or

(b) A bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, business administration or program management or a related field; or

(c) Two years of experience in managing a training program specializing in environmental hazards; and

(d) Demonstrated experience, education, or training in the construction industry including: Lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(2) The training manager shall designate a qualified principal instructor for each course who has:

(a) Demonstrated experience, education, or training in teaching workers or adults; and

(b) Successfully completed at least sixteen hours of any department-accredited, EPA-accredited or tribal-accredited lead-specific training; and

(c) Demonstrated experience, education, or training in lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(3) The principal instructor shall be responsible for the organization of the course and oversight of the teaching of all course material. The training manager may designate guest instructors as needed to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

(4) The following documents shall be recognized by the department as evidence that training managers and principal instructors have the education, work experience, training requirements or demonstrated experience, specifically listed in subsections (1), (2) and (3) of this section. This documentation need not be submitted with the accreditation application, but, if not submitted, shall be retained by the training program as required by WAC 365-230-090. Those documents include the following:

(a) Official academic transcripts or diploma as evidence of meeting education requirements.

(b) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.

(c) Certificates from train-the-trainer courses and lead-specific training courses, as evidence of meeting the training requirements.

(5) The training program shall ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed.

(6) To become accredited in the following disciplines, the training program shall provide training courses that meet the following training hour requirements:

(a) The inspector course shall last a minimum of twenty-four training hours, with a minimum of eight hours devoted to hands-on training activities. The minimum curriculum requirements for the inspector course are contained in WAC 365-230-050.

(b) The risk assessor course shall last a minimum of sixteen training hours, with a minimum of four hours devoted to

hands-on training activities. The minimum curriculum requirements for the risk assessor course are contained in WAC 365-230-050.

(c) The supervisor course shall last a minimum of thirty-two training hours, with a minimum of eight hours devoted to hands-on activities. The minimum curriculum requirements for the supervisor course are contained in WAC 365-230-050.

(d) The project designer course shall last a minimum of eight training hours. The minimum curriculum requirements for the project designer course are contained in WAC 365-230-050.

(e) The abatement worker course shall last a minimum of sixteen training hours, with a minimum of eight hours devoted to hands-on training activities. The minimum curriculum requirements for the abatement worker course are contained in WAC 365-230-050.

~~(7) (If a training program uses EPA-developed model training materials, or training materials approved by a state or Indian tribe that has been authorized by EPA under 40 CFR 745.324 to develop its initial training course materials, the training manager shall include a statement certifying that, as well:~~

~~(8) If the initial training course materials are not based on EPA-developed model training materials or training materials approved by an authorized state or Indian tribe, the training program's application for accreditation shall include:~~

~~(a) A copy of the student and instructor manuals to be used for each course.~~

~~(b) A copy of the course agenda for each course.~~

~~(9) All initial training courses shall include in their application for accreditation the following:~~

~~(a) A description of the facilities and equipment to be used for lecture and hands-on training.~~

~~(b) A copy of the course test blueprint for each course.~~

~~(c) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course (if applicable).~~

~~(d) A copy of the quality control plan as described in WAC 365-230-040.~~

~~(10) If a training program meets the requirements listed in this section, then the department shall approve the application for accreditation. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, the department may, at its discretion, work with the applicant to address inadequacies in the application for accreditation. The department may also request additional materials retained by the training provider described under WAC 365-230-090. If an initial training program's application is disapproved, the program may reapply for accreditation at any time.~~

~~(H)~~ For each course offered, the training program shall conduct either a course test at the completion of the course, and if applicable, a hands-on skills assessment, or in the alternative, a proficiency test for that discipline. Each individual must successfully complete the hands-on skills assessment and receive a passing score on the course test to pass any course, or successfully complete a proficiency test.

(a) The training manager is responsible for maintaining the validity and integrity of the hands-on skills assessment or

proficiency test to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics contained in WAC 365-230-050.

(b) The training manager is responsible for maintaining the validity and integrity of the course test to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics.

(c) The course test shall be developed in accordance with the test blueprint submitted with the training accreditation application.

~~((12))~~ (8) The training program shall issue unique course completion certificates to each individual who passes the training course. The course completion certificate shall include:

(a) The name, a unique identification number, and address of the individual.

(b) The name of the particular course that the individual completed.

(c) Dates of course completion/test passage.

(d) The name, address, and telephone number of the training program.

~~((13))~~ (9) The training manager shall develop and implement a quality control plan. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:

(a) Procedures for periodic revision of training materials and the course test to reflect innovations in the field.

(b) Procedures for the training manager's annual review of principal instructor competency.

~~((14))~~ (10) The training program shall offer courses that teach the work practice standards for conducting lead-based paint activities contained in WAC 365-230-200, and other standards developed by EPA pursuant to Title IV of TSCA. These standards shall be taught in the appropriate courses to provide trainees with the knowledge needed to perform the lead-based paint activities they are responsible for conducting.

~~((15))~~ (11) The training manager shall be responsible for ensuring that the training program complies at all times with all of the requirements in this section.

~~((16))~~ (12) A course audit shall include, but not be limited to, a review of: Instructional curriculum; examination design, administration and security procedures, and results, including those of demonstration testing; classroom instruction; audio-visual materials; course content; coverage; and teaching facilities.

~~((17))~~ (13) An accredited training provider may not implement changes in method or content that affect one half-hour or more of contact instruction without ten business days advance notice of the changes to department.

(14) The training provider is responsible for ensuring that the training manager and principal instructor comply with the requirements of this rule.

(15) Whenever there is a change in either the training manager or principal instructor for an accredited training course, the training provider shall notify the department of this change within thirty days, along with documentation

demonstrating the appropriate qualifications as described in this section.

(16) The training provider shall use a system for verifying the positive identification of all trainees. Trainees without proper identification may not take the course exam.

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

WAC 365-230-060 Requirements for the accreditation of refresher training courses. A training program may seek accreditation to offer refresher training courses in any of the following disciplines: Inspector, risk assessor, supervisor, project designer, and abatement worker. A training program may apply for accreditation of a refresher training course concurrently with its application for accreditation of an initial training course. All applications for accreditation of a refresher training course must follow the application process as described in WAC 365-230-035. To obtain department accreditation to offer refresher training, a training program must meet the requirements for accreditation of a training program as described in WAC 365-230-040, except for the minimum training-hour requirements in WAC 365-230-040 (6)(a) through (e). In addition, applicants for accreditation of a refresher training course must meet the following minimum requirements:

(1) Each refresher course shall review the curriculum topics of the full-length courses listed ~~((under))~~ in WAC 365-230-050, as appropriate. In addition, to become accredited to offer refresher training courses, training programs shall ensure that their courses of study include, at a minimum, the following:

(a) An overview of current safety practices relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

(b) Current laws and regulations relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

(c) Current technologies relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

(2) Each refresher course, except for the project designer course, shall last a minimum of eight training hours. The project designer refresher course shall last a minimum of four training hours.

(3) For each course offered, the training program shall conduct a hands-on assessment (if applicable), and at the completion of the course, a course test.

~~((4) A training program may apply for accreditation of a refresher course concurrently with its application for accreditation of the corresponding training course as described in WAC 365-230-035. If so, the department shall use the approval procedure described in WAC 365-230-035. In addition, the minimum requirements contained in WAC 365-230-040 (except for the training-hour requirements of refresher training courses). For these purposes, the hourly training requirements of WAC 365-230-060 shall also apply.~~

~~(5) A training program seeking accreditation to offer refresher training courses only shall submit a written application to the department containing the following information:~~

(a) ~~The refresher training program's name, address, and telephone number.~~

(b) ~~A list of courses for which it is applying for accreditation.~~

(c) ~~A statement signed by the training program manager certifying that the refresher training program meets the minimum requirements established in the WAC 365-230-040 except for the training hour requirements of refresher training courses. If a training program uses EPA-developed model training materials, or training materials approved by a state or Indian tribe that has been authorized by EPA under 40 CFR 745.324 to develop its refresher training course materials, the training manager shall include a statement certifying that, as well.~~

(d) ~~If the refresher training course materials are not based on EPA-developed model training materials or training materials approved by an authorized state or Indian tribe, the training program's application for accreditation shall include:~~

(i) ~~A copy of the student and instructor manuals to be used for each course.~~

(ii) ~~A copy of the course agenda for each course.~~

(e) ~~All refresher training programs shall include in their application for accreditation the following:~~

(i) ~~A description of the facilities and equipment to be used for lecture and hands-on training.~~

(ii) ~~A copy of the course test blueprint for each course.~~

(iii) ~~A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course (if applicable).~~

(iv) ~~A copy of the quality control plan as described in WAC 365-230-040.~~

(f) ~~The requirements of WAC 365-230-040 (1) through (5), and (7) through (12) apply to refresher training providers.~~

(g) ~~If a refresher training program meets the requirements listed in this paragraph, then the department shall approve the application for accreditation. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, the department may, at its discretion, work with the applicant to address inadequacies in the application for accreditation. The department may also request additional materials retained by the refresher training program described under WAC 365-230-090. If a refresher training program's application is disapproved, the program may reapply for accreditation at any time.)~~

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

WAC 365-230-070 Recreditation of training programs. (1) ~~((Unless reaccredited,))~~ A training program's accreditation for both initial and refresher training courses shall expire four years after the date of issuance of the course accreditation.

(2) A training provider seeking reaccreditation ~~((shall))~~ should submit an application to the department no later than one hundred eighty days before its accreditation expires. If a training program does not submit its application by that date,

the department cannot guarantee that the program will be reaccredited before the end of the accreditation period.

(3) The training program's application for reaccreditation shall contain:

(a) The training program's name, address, and telephone number.

(b) A list of courses for which it is applying for reaccreditation.

(c) A description of any changes to the training facility, equipment or course materials since its last application was approved that adversely affects the students' ability to learn or that affects more than thirty minutes of a training hour.

(d) A statement signed by the program manager stating:

(i) That the training program complies at all times with all the Requirements for the accreditation of training programs (WAC 365-230-040) and Requirements for the accreditation of refresher training programs (WAC 365-230-035), as applicable; and

(ii) The training program recordkeeping (WAC 365-230-090) and Notification requirements (WAC 365-230-100) shall be followed.

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

WAC 365-230-080 Approval/disapproval of application for accreditation or renewal of accreditation. Upon determining that a training provider has met the requirements for accreditation or reaccreditation as described in these rules, the department shall issue a certificate of accreditation for each training course. The department may disapprove an application for accreditation or renewal of an initial or refresher training course for any of the following reasons:

(1) Failure to complete application in accordance with these rules, or department policy or instructions.

(2) Failure to meet Training curriculum requirements (WAC 365-230-050) as set forth in these rules.

(3) Failure to meet Requirements for accreditation of training programs (WAC 365-230-040) as set forth in these rules.

(4) Failure to meet the Requirements for the accreditation of refresher training programs (WAC 365-230-060) as set forth in these rules.

(5) In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, the department may, at its discretion, work with the applicant to address inadequacies in the application for accreditation. The department may also request additional materials retained by the training provider described under the Training program recordkeeping requirements (WAC 365-230-090). If a training provider's application for accreditation of an initial or refresher training course is disapproved, the provider may reapply for accreditation at any time.

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

WAC 365-230-090 Training program recordkeeping requirements. (1) Accredited training programs shall main-

tain, and make available to the department if requested, the following records:

(a) All documents specified in the Requirements ~~((øf))~~ for the accreditation of training programs (WAC 365-230-040) as set forth in these rules that demonstrate the qualifications for training manager and principal instructors.

(b) Current curriculum, course materials and documents reflecting any changes made to these materials.

(c) The course test blueprint.

(d) Information regarding how the hands-on assessment is conducted including, but not limited to, who conducts the assessment, how skills are graded, what facilities are used, and the pass/fail rate.

(e) The quality control plan as described in the Requirements ~~((øf))~~ for the accreditation of training programs (WAC 365-230-040) as set forth in these rules.

(f) Results of student's hands-on skills assessments and course tests, and a copy of each student's course completion certificate.

(g) Any other material submitted as part of the program's application for accreditation.

(2) The training provider shall retain these records at the address specified on the training provider's accreditation application (or as modified as the result of notification of change of address) shall be retained a minimum of three years and six months.

(3) A training provider shall notify the department in writing within thirty days of changing the address specified on its training program accreditation, or transferring the records from that address.

(4) Accreditation is transferable in the case of acquisition of the accredited training provider by another entity. The new entity must notify the department within thirty days of the change of ownership and any other changes to information included in the original application.

(5) A training provider shall submit to the department the two notifications described in WAC 365-230-100.

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

WAC 365-230-100 Notification of lead-based paint training activity. (1) The training manager shall provide notification of lead-based paint activities courses offered.

(a) The training manager shall provide the department with notice of all lead-based paint activities courses offered. The original notice must be received by the department at least ten business days prior to offering any lead-based paint activities course.

(b) The training manager shall provide the department updated notice when lead-based paint activities courses will begin on a date other than the one specified in the original notification, as follows:

(i) For lead-based paint activities courses beginning prior to the original start date an updated notice must be received by the department at least ten business days before the revised start date.

(ii) For lead-based paint activities courses beginning after the original start date an updated notice must be

received by the department at least two business days before the original start date.

(c) The training manager shall update the department of any change in location of lead-based paint activities courses at least ten business days prior to the scheduled course start date.

(d) The training manager shall also update the department regarding any course cancellations, or any other change to the original notice. Updated notices must be received by the department at least two business days prior to the scheduled course start date.

(e) Each notice, including updates, shall include the following:

(i) Notification type (original, update, cancellation).

(ii) Training program name, department accreditation number, address, and phone number.

(iii) Course discipline, type (initial/refresher), and the language in which instruction will be given.

(iv) Date(s) and time(s) of training.

(v) Training location(s) phone number, and street address.

(vi) Principal instructor's name.

(vii) Training manager's name and signature.

(f) Notification shall be accomplished using any of the following methods: Written notice, or by e-mail. All notices submitted by e-mail must be followed with written notice within twenty-four hours of submission. Written notification of lead-based paint activities course schedules can be accomplished by using either the sample form titled "Lead-Based Paint Activities Training Course Schedule" or a similar form developed by the training program containing the required information. All written notices shall be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery. (Persons submitting notification by U.S. Postal Service are reminded that they should allow three additional business days for delivery in order to ensure that the department receives the notification by the required date.) Instructions and sample forms can be obtained from the department at ~~((360-725-2949))~~ 360-586-5323, or on the internet at <http://www.cted.wa.gov/lead>

(g) Lead-based paint activities courses shall not begin on a date, or at a location other than that specified in the original notice unless an updated notice identifying a new date or location is submitted, in which case the course must begin on the date and location specified in the updated notice.

(h) No training program shall provide lead-based paint activities courses without first notifying the agency of such activities in accordance with the requirements of this paragraph.

(2) The training manager shall provide notification following completion of lead-based paint activities courses.

(a) The training manager shall provide the department with notice after the completion of any lead-based paint activities course that shall be received by the department no later than twenty business days following course completion.

(b) The notice shall include the following:

(i) Training program name, department accreditation number, address, and phone number.

(ii) Course discipline and type (initial/refresher).

(iii) Date(s) of training.

(iv) The following information for each student who took the course:

- (A) Name.
- (B) Address.
- (C) ~~((Social Security number.~~
- ~~(D))~~ Course completion certificate number.
- ~~((E))~~ (D) Student test score.
- (v) Training manager's name and signature.

(c) Notification shall be accomplished using any of the following methods: Written notice, or by e-mail. All notices submitted by e-mail must be followed with written notice within twenty-four hours of submission. Written notification following lead-based paint activities training courses can be accomplished by using either the sample form titled "Lead-Based Paint Activities Training Course Follow-up" or a similar form developed by the training program containing the required information. All written notices shall be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery. (Persons submitting notification by U.S. Postal Service are reminded that they should allow three additional business days for delivery in order to ensure that the department receives the notification by the required date.) Instructions and sample forms can be obtained from department at ~~((360-725-2949))~~ 360-586-5323, or on the internet at <http://www.cted.gov/lead>

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

WAC 365-230-130 Certification of individuals. (1) No individual shall perform any lead-based paint activity as described in WAC 365-230-200 without first becoming certified by the department. Certified individuals may perform only specific lead-based paint activities for which they are certified. Individuals seeking certification by the department to engage in lead-based paint activities must ~~((either))~~:

(a) ~~Submit ((to the department an application demonstrating that they meet))~~ a complete application as described in WAC 365-230-170 and must provide documentation that the applicant has either:

(i) Met the certification requirements ((established in these rules)) as described in WAC 365-230-132 for the inspector, risk assessor, or supervisor(;) disciplines; or WAC 365-230-134 for the project designer or worker ((for the particular discipline for which certification is sought)) disciplines; or

~~((b) Submit to the department an application with a copy of a valid lead-based paint activities certification (or equivalent) from a state or tribal program that has been authorized by EPA pursuant to 40 CFR 745.324.~~

~~((i))~~ (ii) Holds a valid certification issued by EPA or by a state or tribal program that has been authorized by EPA according to 40 CFR 745.324.

(A) Applicants for certification based on certification from another state or tribal program must ((complete a refresher course in the discipline accredited by the department)) document to the department that they have read and understand the certification and work practice standards as described in these rules.

~~((ii))~~ (B) Certification((s from another state or tribe will be recognized if there is a written reciprocity agreement between the department and that state or tribe)) based on a valid lead-based paint certification issued by EPA or by an EPA-authorized state or tribal program shall be issued with an expiration date not to exceed the date of expiration listed on the EPA or EPA-authorized state or tribal certification.

(2) Individuals may first apply to the department for certification to engage in lead-based paint activities pursuant to this section on or after the effective date of these rules.

(3) Following the submission of an application demonstrating that all the requirements of this section have been met, the department shall certify an applicant as an inspector, risk assessor, supervisor, project designer, or abatement worker, as appropriate.

(4) Upon receiving the department certification, individuals conducting lead-based paint activities shall comply with the work practice standards for performing the appropriate lead-based paint activities as established in the Work practice standards section (WAC 365-230-200).

(5) It shall be a violation of these rules for an individual to conduct any of the lead-based paint activities described in the Work practice standards section (WAC 365-230-200) has not been certified by the department ~~((within one hundred twenty days of the effective date of these rules))~~.

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

WAC 365-230-132 Inspector, risk assessor, or supervisor. (1) To become certified by the department as an inspector, risk assessor, supervisor, pursuant to WAC 365-230-130, an individual must:

(a) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program.

(b) Pass the certification exam in the appropriate discipline offered by the department; and

(c) Meet or exceed the following experience and/or education requirements:

(i) Inspectors. No additional experience and/or education requirements.

(ii) Risk assessors.

(A) Successful completion of an accredited training course for inspectors; and

(B) Bachelor's degree and one year of experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction), or an associates degree and two years experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction); or

(C) Certification as an industrial hygienist, an engineer, a registered architect, certified safety professional, registered sanitarian, or registered environmental specialist; or

(D) A high school diploma (or equivalent), and at least three years of experience in a related field (e.g., lead, asbestos, environmental remediation work or construction).

(iii) Supervisor:

(A) One year of experience as a certified lead-based paint abatement worker; or

(B) At least two years of experience in a related field (e.g., lead, asbestos, or environmental remediation work) or in the building trades.

~~(2) ((The following documents shall be recognized by the department as evidence of meeting the experience or education requirements described in this section of these rules:~~

~~(a) Official academic transcripts or diploma, as evidence of meeting the education requirements.~~

~~(b) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.~~

~~(c) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.~~

~~(3))~~ In order to be eligible to take the certification examination for a particular discipline, an individual must:

(a) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program.

(b) Meet or exceed the education and~~((/or))~~ experience requirements described in this section.

~~((4))~~ After successfully completing the appropriate training courses and application requirements and meeting any other qualifications as described in inspector, risk assessor and supervisor section of these rules, an individual shall be certified by the department.

~~(5) To maintain certification, an individual must be recertified as described in WAC 365-230-160.~~

~~(6))~~ (c) Submit a completed application as described in WAC 365-230-150.

(3) An individual may take the certification exam no more than three times within six months of receiving a course completion certificate.

~~((7))~~ (4) If an individual does not pass the certification exam and receive a certificate within six months of receiving his/her course completion certificate, the individual must successfully complete the appropriate lead-based paint course from an accredited training program before reapplying for certification from the department.

~~((8))~~ (5) A passing score on third-party, qualifying examination administered by the department is seventy or above.

(6) After successfully completing the appropriate training and application requirements as described in these rules, an individual shall be certified by the department.

(7) To maintain certification, an individual must be recertified as described in WAC 365-230-170.

(8) Certification shall be nontransferable.

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

WAC 365-230-134 Abatement worker and project designers. (1) To become certified by the department as an abatement worker or project designer, pursuant to the certification of individuals section of these rules, an individual must:

(a) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program.

(b) Meet or exceed the following additional experience and/or education requirements:

(i) Abatement workers. No additional experience and/or education requirements.

(ii) Project designers.

(A) Successful completion of an accredited training course for supervisors; and

(B) Successful completion of an accredited training course for project designers; and

(C) Bachelor's degree in engineering, architecture, or a related profession, and one year of experience in building construction and design or a related field; or

~~(D) ((Three years of experience as an AHERA-certified project designer; or~~

~~(E))~~ Four years experience ~~((as an AHERA-certified supervisor or as a certified lead-based paint abatement supervisor; and~~

~~(F) Pass the supervisor or project designer examination administered by the department, the latter being required when available.~~

~~(2) The following documents shall be recognized by the department as evidence of meeting the requirements listed in this paragraph:~~

~~(a) Official academic transcripts or diploma, as evidence of meeting the education requirements.~~

~~(b) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.~~

~~(c) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements))~~ in building construction and design or a related field.

~~((3))~~ (2) After successfully completing the appropriate training ~~((courses))~~ and application requirements ~~((and meeting any other qualifications))~~ as described in ~~((abatement worker and project designer section of))~~ these rules, an individual shall be certified by the department.

~~((4))~~ (3) To maintain certification, an individual must be recertified as described in the recertification section of these rules.

~~((5) An individual may take the certification exam no more than three times within six months of receiving a course completion certificate.~~

~~(6) If an individual does not pass the certification exam and receive a certificate within six months of receiving his/her course completion certificate, the individual must successfully complete the appropriate lead-based paint course from an accredited training program before reapplying for certification from the department.~~

~~(7))~~ (4) Certification shall be nontransferable.

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

WAC 365-230-150 Application requirements for an individual. (1) Applications for an individual shall be submitted on forms prescribed by the department and shall be accompanied, as appropriate, by either:

(a) Documentation ~~((of))~~ that the applicant~~((s))~~ has met the required training, experience, and education ~~((including))~~

requirements as described in WAC 365-230-132 or 365-230-134. Acceptable documentation includes the following:

(i) As proof of meeting the training requirements, a valid lead-based paint training course completion certificate issued by a department-accredited training provider.

(ii) As proof of meeting the work experience requirements, documentation ((of experience)) must include name and address of employer, name and telephone number of supervisor; ((or indicate if self-employed. Documentation must also include)) employment dates, description of specific duties performed((, estimated percentage of time associated with conducting inspections and assessing health, safety or environmental hazards. This documentation must be signed by)). The supervisor or employer must sign the documentation verifying that the information is true and correct. A self-employed individual must ((submit a notarized affidavit attesting to the work experience claimed for the purposes of application)) provide the name, address and Uniform Business Identifier of business, dates of self-employment, and a description of specific duties. Documentation of work experience must be provided on the appropriate departmental form.

(iii) ~~((Evidence of completion of educational requirements under WAC 365-230-130, such as a))~~ As proof of meeting the educational requirements, documentation such as an official transcript or diploma((, if applicable-)); or

(b) Documentation that the applicant holds a valid certification in the appropriate discipline issued by EPA or by an EPA-authorized state or tribe.

(i) Applicants seeking certification based on an EPA or EPA-authorized state or tribal certification must document to the department that they have read and will comply with the certification and work practice standards of these rules.

(ii) Certification based on an EPA or EPA-authorized state or tribal certification shall be issued with an expiration date not to exceed the date of expiration listed on the EPA or EPA-authorized state or tribal certification.

(2) All applications for certification shall be accompanied by:

(a) Two current((:)) passport-size photos.

~~((e))~~ (b) Applicant's name, signature and date.

~~((2))~~ (c) A check or money order made out to the department of community, trade, and economic development in the amount as described in the certification fees section of these rules.

(3) Application materials can be obtained by mail from Department of Community, Trade, and Economic Development, Lead-Based Paint Program, P.O. Box 42525, Olympia, WA 98504-2525, by phone, 360-586-5323, or electronically at <http://www.cted.wa.gov/lead>.

~~((4))~~ The following documents shall be recognized by the department as evidence of meeting the application requirements listed in this section:

(a) Official academic transcripts or diploma, as evidence of meeting the education requirements.

(b) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.

~~(e) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.~~

~~(5) For the purposes of application, photocopies of original documents are acceptable.))~~

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

WAC 365-230-160 Recertification. (1) To maintain certification in a particular discipline, a certified individual shall apply to and be recertified by the department in that discipline either:

(a) Every three years after the original date of issue if the individual completed a training course with a course test and hands-on assessment; or

(b) Every five years if the individual completed a training course with a proficiency test.

(2) An individual shall be recertified if the individual:

(a) Successfully completes the appropriate accredited refresher training course; and

(b) Submits a valid copy of the appropriate refresher course completion certificate; and

(c) Complies with the following application requirements established by the department:

(i) Submit a complete and signed application; and

(ii) Submit two recent passport-size photographs; and

(iii) Submit a check or money order made out to the department of community, trade, and economic development in the amount as described in WAC 365-230-260.

(3) Application materials can be obtained by mail from Department of Community, Trade, and Economic Development, Lead-Based Paint Program, P.O. Box 42525, Olympia, WA 98504-2525, by phone, 360-586-5323, or electronically at <http://www.cted.wa.gov/lead>.

(4) An individual whose certification expires may obtain certification by completing the requirements described in WAC 365-230-150 and 365-230-130.

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

WAC 365-230-170 Certification of firms. (1) ~~((All firms which))~~ No firm shall perform or offer to perform any of the lead-based paint activities described in WAC 365-230-200 ((shall be certified by the department no later than one hundred twenty days after the date of self-certification of the state lead-based paint program)) without first being certified by the department. All certified firms shall employ only appropriately certified individuals to conduct lead-based paint activities. The firm is responsible for ensuring that its employees follow the work practice requirements described in WAC 365-230-200.

(2) A firm seeking certification shall submit to the department ~~((an))~~ a complete application ((provided by the department and a letter attesting that the firm shall only employ appropriately certified employees to conduct lead-based paint activities, and that the firm and its employees shall follow the work practice standards set forth in WAC 365-230-200 for conducting lead-based paint activities)) as described in this section.

~~(3) ((The application for a state-licensed contractor seeking certification shall include documentation that the firm))~~ A firm seeking certification must provide documentation that it either:

(a) Meets the current minimum requirements of the department of labor and industries regarding a surety bond and insurance(-); or

~~((4) The application of a firm that is not a state-licensed contractor shall include documentation that the firm))~~ (b) Has in force a business, e.g., liability, errors and omissions, insurance policy in the minimum amount of five hundred thousand dollars.

~~((5))~~ (4) A certified firm may not conduct lead-based paint activities, as described in WAC 365-230-200, if, at any time, it does not have in force the minimum bonding or insurance coverage described in this section.

~~((6))~~ (5) The firm shall maintain all records pursuant to WAC 365-230-200.

~~((7))~~ (6) Certification is transferable in the instance of acquisition of a certified firm by another entity. The acquiring firm must notify the department within thirty days of the change of ownership of any changes to information submitted on the original application.

(7) The certification period for firms is three years from the date certification is issued.

(8) To retain certification, a firm shall submit to the department an application and documentation as described above prior to the expiration date listed on the firm's certification.

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

WAC 365-230-200 Work practice standards. ~~(1) ((When performing any lead-based paint activity described by a certified and licensed individual as an inspection, lead hazard screen, risk assessment or abatement, a certified and licensed person must perform that activity in compliance with these rules, documented methodologies, procedures and work practice standards.~~

~~(2))~~ Only certified individuals and the certified firms employing such individuals shall perform or offer to perform lead-based paint activities.

(2) Documented methodologies that are appropriate for this section are found in the following: The U.S. Department of Housing and Urban Development (HUD) *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing* (Revised, October, 1997); the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil; the EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling (EPA report number 7474-R-95-001); regulations, guidance, methods or protocols issued by this department; any other equivalent methods and guidelines.

(3) Clearance levels appropriate for the purposes of this section may be found in subsection (8)(c)(v) of this section or other equivalent guidelines.

(4) Work practice requirements. Applicable certification, occupant protection, and clearance requirements and work practice standards are found in regulations described in

this section, and in regulations issued by the Department of Housing and Urban Development (HUD) at 24 CFR part 35, subpart R.

(a) The work practice standards in those regulations do not apply when treating paint-lead hazards of less than:

(i) Two square feet of deteriorated lead-based paint per room or equivalent;

(ii) Twenty square feet of deteriorated paint on the exterior building; or

(iii) Ten percent of the total surface area of deteriorated paint on an interior or exterior type of component with a small surface area.

(b) When performing any lead-based paint activity described as a lead-based paint inspection, lead hazard screen, risk assessment or abatement, a certified individual must perform that activity in compliance with these rules, documented methodologies, work practice requirements, and the work practice standards described in this section.

~~(5) Inspection. ((An inspection shall be conducted only by a person certified by the department as an inspector or risk assessor.))~~ Only a person certified by the department as an inspector or risk assessor may conduct an inspection.

(a) Locations shall be selected according to documented methodologies and tested for the presence of lead-based paint as follows:

(i) In target housing and child-occupied facilities, each interior and exterior component with a distinct painting history shall be tested for lead-based paint, except those components determined to have been replaced after 1978 or determined to not contain lead-based paint; and

(ii) In a multifamily dwelling or child-occupied facility, each component with a distinct painting history in every common area shall be tested, except those components determined to have been replaced after 1978 or determined to not contain lead-based paint.

(b) Paint shall be tested for the presence of lead using documented methodologies which incorporate sampling quality control procedures and all paint chip, dust, and soil samples shall be analyzed for detectable levels of lead by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP).

(c) Inspection reports shall be prepared and include at least:

(i) Inspection date;

(ii) Building address;

(iii) Date of construction;

(iv) Apartment identification (numbers, letters, names if applicable);

(v) Name, address and telephone number of owner or owners of each unit;

(vi) Name, signature, and certification number of each inspector ~~((and))~~ or risk assessor conducting testing;

(vii) Name, address and telephone number of the certified firm employing each inspector ~~((and))~~ or risk assessor;

(viii) Each testing method and device ~~((and))~~ or sampling procedure employed for paint analysis, including sample quality control data, and if used, the serial number of any X-ray fluorescence (XRF) device; and

(ix) Specific locations of each painted component tested and the results of the inspection expressed in appropriate units for the sampling method used.

~~((3))~~ (6) Lead hazard screen. A lead hazard screen shall be conducted only by a person certified by the department as a risk assessor and shall be conducted as follows:

(a) Background information shall be collected about the physical characteristics of the target housing or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age six years and under shall be collected.

(b) A visual inspection shall be conducted to determine the presence of any deteriorated paint and locate at least two dust sampling locations.

(c) If deteriorated paint is present, each deteriorated paint surface determined ~~((5))~~ using documented methodologies, ~~((to be in poor condition))~~ and to have a distinct painting history shall be tested for the presence of lead.

(d) In residential dwellings, two composite dust samples shall be collected, one from the floors and the other from the windows, in rooms, hallways or stairwells where one or more children age six or under are likely to come in contact with dust.

(e) In multifamily dwellings and child-occupied facilities, floor and window composite dust sampling shall be conducted as specified for conducting lead hazard screens in residential dwellings in the Work Practice Standard section of these rules. In addition, composite dust samples shall be collected in common areas where one or more children age six or under are likely to come in contact with dust.

(f) All dust samples shall be collected using documented methodologies that incorporate sample quality control procedures and analyzed by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP) to determine detectable lead.

(g) A lead hazard screen report shall be prepared by the risk assessor and include:

(i) Information in a risk assessment report as specified in subsection ~~((4))~~ (7) including (i)(i) through (xiv) and excluding (i)(xv) through (xviii). Additionally, any background information collected pursuant to the lead hazard screen shall be included.

(ii) Any recommendations for follow-up risk assessment and other further actions.

~~((4))~~ (7) Risk assessment. ~~((A risk assessment of target housing or child-occupied facility shall be conducted only by a person certified by the department.))~~ Only an individual certified by the department as a risk assessor may conduct a risk assessment of target housing or child-occupied facility. A risk assessment shall be conducted as follows:

(a) A visual inspection shall be conducted to locate the existence of deteriorated paint, assess the extent and cause of deterioration, and other potential lead-based hazards.

(b) Background information shall be collected regarding the physical characteristics and occupant use patterns that may cause lead-based paint exposure to one or more children age six years and under.

(c) The following surfaces which are determined, using documented methodologies, to have a distinct painting history, shall be tested for the presence of lead:

(i) Each friction surface or impact surface with visibly deteriorated paint.

(ii) All other surfaces with visibly deteriorated paint.

(d) In residential dwellings, dust samples (either composite or single-surface samples) from the interior window sill(s) and floor shall be collected and analyzed for lead concentration in all living areas where one or more children, age six and under, are most likely to come in contact with dust.

(e) For multifamily dwellings and child-occupied facilities, the samples required in "residential dwellings" as described in (b) of this subsection ~~((4) of this section))~~ shall be taken. In addition, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in the following locations:

(i) Common areas adjacent to sampled target house or child-occupied facility; and

(ii) Other common areas in the building where the risk assessor determines that one or more children, age six and under, are likely to come in contact with dust.

(f) For child-occupied facilities, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed in each room, hallway or stairwell utilized by one or more children, age six and under, and in other common areas in the child-occupied facility where the risk assessor determines one or more children, age six and under, are likely to come in contact with dust.

(g) Soil samples shall be collected and analyzed for lead concentrations from the following locations:

(i) Exterior play areas where bare soil is present; and

(ii) The rest of the yard (i.e., nonplay areas) where bare soil is present.

(h) Any paint, dust or soil sampling or testing shall be conducted using documented methodologies that incorporate sample quality control procedures and analyzed by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP) to determine detectable lead.

(i) The certified risk assessor shall prepare a risk assessment report which shall include as a minimum the following information:

(i) Assessment date.

(ii) Address of each building.

(iii) Date of construction of buildings.

(iv) Apartment identification (numbers, letters, names if applicable).

(v) Name, address and telephone number of each owner of each building.

(vi) Name, signature, and certification number of each risk assessor conducting the assessment.

(vii) Name, address and telephone number of the certified firm employing each risk assessor.

(viii) Name, address and telephone number of each laboratory conducting analysis of collected samples.

(ix) Results of the visual inspection.

(x) Testing method and sampling procedure employed for paint analysis.

(xi) Specific locations of each painted component tested for the presence of lead.

(xii) All data collected from on-site testing, including quality control data, and if used, the serial number of any X-ray fluorescence (XRF) device.

(xiii) All results of laboratory analysis on collected paint, soil, and dust samples.

(xiv) Any other sampling results.

(xv) Any background information collected pursuant to subsection background information portion of the risk assessment work practice standard of this section.

(xvi) To the extent used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint related hazards.

(xvii) A description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards.

(xviii) A description of interim controls and/or abatement options for each identified lead-based paint hazard and a recommended prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

~~((5))~~ (8) Abatement. An abatement project shall be conducted only by ~~((a person))~~ certified individuals and the certified ~~((by the department))~~ firms employing such individuals. Abatement shall be conducted as follows:

(a) A certified ~~((and licensed))~~ supervisor or project designer is required for each abatement project and shall be on-site during all worksite preparation and during postabatement cleanup of work areas. At all other times, the certified supervisor or project designer shall be on-site or available by telephone, pager, or answering service, and be able to be present at the worksite in no more than two hours.

~~((b))~~ ~~((A certified and licensed project designer is required for each abatement project that:~~

~~((i))~~ ~~Consists of ten or more target housing units built prior to 1960; or~~

~~((ii))~~ ~~Consists of twenty or more target housing units built during or after 1960; or~~

~~((iii))~~ ~~Consists of twenty five thousand square feet or more of target housing.~~

~~((e))~~ The certified ~~((and licensed))~~ supervisor or project designer, as well as the certified ~~((and licensed))~~ firm employing that ~~((supervisor))~~ individual shall ensure that all abatement activities are conducted according to the requirements of these rules and all federal, state and local requirements.

~~((d))~~ (c) A certified ~~((and licensed))~~ project designer may replace and assume the responsibilities of a certified ~~((and licensed))~~ supervisor required for an abatement project. If a certified ~~((and licensed))~~ project designer provides supervision on an abatement project, the project designer shall be responsible for preparing the occupant protection plan and the abatement report.

~~((e))~~ (d) A written occupant protection plan shall be developed prior to all abatement projects, be prepared by a certified ~~((and licensed))~~ supervisor or project designer, be unique to each target housing or child-occupied facility, describe the measures and management procedures that will be taken during the abatement to protect the building occu-

pants from exposure to any lead-based paint hazards. The written occupant protection plan shall be present at the project site and must be made available on demand for inspection.

~~((f))~~ (e) A scope of work for the abatement project shall be present at the project site and must be made available on demand for inspection.

~~((g))~~ (f) These work practices shall be restricted during abatement and paint removal:

(i) Open-flame burning or torching of lead-based paint is prohibited;

(ii) Uncontained hydro blasting or high-pressure washing of lead-based paint is prohibited;

(iii) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint is prohibited unless used with high efficiency particulate air (HEPA) exhaust control which removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency;

(iv) Dry scraping of lead-based paint is permitted only in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than two square feet in any room, hallway or stairwell or totaling no more than twenty square feet on exterior surfaces; and

(v) Operating a heat gun on lead-based paint is permitted only at temperatures below 1100°F.

~~((h))~~ (g) When soil abatement is conducted, if the soil is removed:

(i) The soil shall be replaced by soil with a lead concentration as close to local background as practicable, but no greater than 250 parts per million (ppm).

(ii) The soil that is removed shall not be used as top soil at another residential property or child-occupied facility.

(iii) If the soil is not removed, the soil shall be permanently covered ~~((as defined in these rules))~~ so as to be separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement, asphalt or concrete. Grass, mulch, shrubbery and other landscaping materials are not considered permanent covering.

~~((i))~~ (h) The following clearance procedures shall be performed only by a certified and licensed inspector or risk assessor and according to the following procedures:

(i) A visual inspection shall be performed to determine if deteriorated painted surfaces and/or visible amounts of dust, debris or residue are still present. If deteriorated painted surfaces or visible amounts of dust, debris or residue are present, these conditions must be eliminated prior to the continuation of the clearance procedures.

(ii) If exterior work on a project cannot be completed due to inclement weather or other factors, the project supervisor or designer may apply in writing to the department for authorization of a preliminary clearance. The application must include the following:

(A) The project address.

(B) The name and certification number of the abatement project supervisor or project designer.

(C) A description of the conditions that justify issuance of a waiver.

(D) A description of the abatement work that remains to be done on the project.

(E) A schedule for completion of the abatement work that remains to be done.

(F) A plan for monitoring and controlling potential lead-based paint contamination until work can be completed.

(G) At the conclusion of all work on a project for which preliminary clearance has been authorized, the project supervisor or designer shall present the department with documentation that clearance testing has been performed on exterior and interior areas according to these rules and that all clearance test results are below clearance levels.

(iii) Following the visual inspection and any postabatement cleanup required in subsection ~~((5))~~ (8)(i) of this section, clearance sampling for lead in dust shall be conducted. Clearance sampling may be conducted by employing single-surface sampling or composite sampling techniques.

(iv) Dust samples for clearance purposes shall be taken using documented methodologies that incorporate sample quality control procedures and shall be taken a minimum of one hour after completion of final cleanup activities.

(v) Postabatement clearance activities shall be conducted based upon the extent or manner of work activities conducted in or on the target housing or child-occupied facility as follows:

~~((4))~~ (i) After conducting an abatement with containment between containment and noncontainment areas, one dust sample shall be taken from one interior window sill and from one window trough (if present) and one dust sample shall be taken from the floors of no less than four rooms, hallways or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are fewer than four rooms, hallways or stairwells within the containment area, then all rooms, hallways or stairwells shall be sampled.

(i) After conducting an abatement with no containment, two dust samples shall be taken from no fewer than four rooms, hallways or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one interior window sill and from one window trough (if present) and one dust sample shall be taken from the floor of each room, hallway or stairwell selected. If there are fewer than four rooms, hallways or stairwells within the target housing or child-occupied facility then all rooms, hallways or stairwells shall be sampled.

(ii) Following exterior paint abatement, a visual inspection shall be conducted. All horizontal surfaces in the outdoor living area closest to the abated surfaces shall be found to be cleaned of visible dust and debris. The surfaces shall be recleaned when visible dust and debris is present. The visual inspection shall be conducted to determine the presence of paint chips on the dripline or next to the foundation below any exterior abated surface. Paint chips, if present, shall be removed from the site and disposed of according to federal, state and local requirements.

(iii) The rooms, hallways or stairwells selected for sampling shall be selected according to documented methodologies.

(iv) The certified and licensed inspector or risk assessor shall compare residual lead levels (as determined by laboratory analysis) from each single surface dust sample with clearance examination standards as defined in these rules for

lead in dust on floors and interior window sills, and window troughs, divided by half the number of subsamples in the composite sample. If the residual lead level in a single surface dust sample equals or exceeds the applicable clearance examination refresher or if the residual lead level in a composite dust sample equals or exceeds the applicable clearance examination refresher divided by half the number of subsamples in the composite sample, the components represented by the failed sample shall be recleaned and retested until clearance examination standards are met.

~~((4))~~ (v) The clearance levels for lead in dust are 40 $\mu\text{g}/\text{ft}^2$ for floors, 250 $\mu\text{g}/\text{ft}^2$ for interior window sills, and 400 $\mu\text{g}/\text{ft}^2$ for window troughs.

(j) In a multifamily dwelling with similarly constructed and maintained residential dwellings, random sampling for the purposes of clearance may be conducted provided:

(i) The certified individuals who work on or clean the residential dwellings do not know which residential dwelling will be selected for the random sample.

(ii) The randomly selected residential dwellings shall be sampled and evaluated for clearance according to subsection ~~((5))~~ (8)(i) of this section.

(iii) A sufficient number of residential dwellings are selected for dust sampling to provide a ninety-five percent level of confidence that no more than five percent or fifty of the residential dwellings (whichever is smaller) in the randomly sampled population exceeds the appropriate clearance examination standards.

~~((4))~~ (k) An abatement report shall be prepared by a certified and licensed supervisor or project designer and shall include as a minimum the following information:

(i) Start and completion dates of abatement.

(ii) The name, address and telephone number of each certified firm conducting the abatement and the name of each supervisor or project designer assigned to the abatement project.

(iii) The occupant protection plan.

(iv) The name, address and signature of each certified and licensed inspector or risk assessor conducting clearance sampling and the date(s) that clearance sampling was performed.

(v) The results of clearance sampling and all soil analyses and the name of each laboratory conducting analysis of collected samples.

(vi) A detailed written description of the abatement, including abatement methods, location of rooms and/or components where abatement occurred, reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulants or enclosures.

~~((4))~~ (l) A clearance report shall be prepared by a certified inspector or risk assessor. The clearance report shall include the following information:

(i) The property address where the clearance sampling occurred.

(ii) The abatement clean-up completion date and time.

(iii) The date and time of clearance sampling.

(iv) Name and certification number of each inspector or risk assessor conducting the clearance.

(v) The signature of the inspector or risk assessor conducting the clearance.

(vi) Name, address, telephone number, and certification number of the certified firm employing the inspector or risk assessor.

(vii) Results of the visual inspection.

(viii) Identification of containment or noncontainment applications.

(ix) Identification of location(s) where clearance samples were collected.

(x) Name, address, and telephone number of the laboratory analyzing the collected samples.

(xi) All results of laboratory analysis on collected samples, including quality control results.

(xii) Documented methodology used for sampling.

~~((6))~~ (9) Sampling. Any paint chip, dust, or soil samples collected pursuant to this section shall be collected by a certified ~~((and licensed))~~ inspector or risk assessor. Such sampling shall incorporate sample quality control procedures and the samples shall be analyzed by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP).

~~((7))~~ (10) Composite sample. Composite dust sampling may only be conducted when conducting a lead hazard screen, risk assessment, or postabatement activities. If conducted, the composite dust samples shall consist of at least two subsamples, every component that is being tested shall be included in the sampling, and shall not consist of subsamples from more than one type of component.

~~((8))~~ (11) Reports or plans. All lead-based paint activity reports or plans shall be maintained by the certified firms or individual who prepared the report for no fewer than three years and six months.

(a) The following reports must be submitted to the department as specified in WAC 365-230-100 and 365-230-220:

(i) Notification of lead-based paint activities course to take place.

(ii) Notification of lead-based paint activities course that has taken place.

(iii) Notice of abatement.

(b) All reports required by these rules may be submitted on forms available from the department. The exhibit referred to in this rule is not printed in this WAC. Copies are available as follows from department of community, trade, and economic development:

Lead-Based Paint Program, P.O. Box 42525, Olympia, WA 98504-2525

Telephone number: ~~((360-725-2949))~~ 360-586-5373

Fax number: 360-586-5880

Web site: www.cted.wa.gov/lead

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

WAC 365-230-210 Determinations of lead-based paint and lead-based paint hazards. (1) Lead-based paint is present:

(a) On any surface that is tested and found to contain lead equal to or in excess of 1.0 milligrams per square centimeter or equal to or in excess of 0.5~~((%))~~ percent by weight; and

(b) On any surface similar to a surface tested in the same room equivalent that has a similar painting history and is found to be lead-based paint.

(2) A paint-lead hazard is present:

(a) On any friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface (e.g., the window sill or floor) are equal to or greater than the dust hazard levels identified in the "clearance examination standards" definition of these rules;

(b) On any chewable lead-based paint surface on which there is evidence of teeth marks;

(c) Where there is any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against a door frame); and

(d) If there is any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(3) A dust lead-hazard is present in a residential dwelling or child-occupied facility:

(a) In a residential dwelling on floors and interior window sills when the weighted arithmetic mean lead loading for all single surface or composite samples of floors and interior window sills is equal to or greater than 40 µg/ft² for floors and 250 µg/ft² for interior window sills, respectively;

(b) On floors or interior window sills in an unsampled residential dwelling in a multifamily dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled residential unit on the property; and

(c) On floors or interior window sills in an unsampled common area in a multifamily dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively in at least one sampled common area in the same common area group on the property.

(4) A soil-lead hazard is present in a residential dwelling or child-occupied facility when the soil-lead concentration from a composite sample of bare soil is equal to or greater than 250 ~~((parts per million))~~ ppm.

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

WAC 365-230-220 Notice of abatement. A certified firm shall notify the department of lead-based paint abatement activities as follows:

(1) Except as provided in subsection (2) of this section, the department must be notified prior to conducting lead-based paint abatement activities. The original notice must be received by the department at least ~~((ten))~~ five business days before lead-based paint abatement activities begin.

(2) Notice for abatement activities required in response to an elevated blood lead level (EBL) determination, or federal, state, tribal, or local emergency abatement order must be received by the department as early as possible before, but not later than the day lead-based paint abatement activities begin. Documentation showing evidence of an EBL determination or a copy of the federal/state/tribal/local emergency

abatement order must be included in the notification to take advantage of this abbreviated notification period.

(3) Updated notice of a new start date must be provided to the department for lead-based paint abatement activities that will begin on a date other than the date specified in the original notification notice, as follows:

(a) For lead-based paint abatement activities beginning prior to the original start date, an updated notice must be received by the department at least ~~((ten))~~ five business days before the revised start date.

(b) For lead-based paint abatement activities beginning after the original start date, an updated notice must be received by the department ~~((at least two business days))~~ on or before the original start date.

(4) The certified firm shall update the department of any change in location of lead-based paint abatement activities at least ~~((ten))~~ five business days prior to the project start date.

(5) The certified firm shall also update the department regarding the cancellation of any lead-based paint abatement activities, or other significant changes including, but not limited to, when the square footage or acreage to be abated changes by at least twenty percent. This updated notice must be received by the department ~~((at least two business days prior to the project start date))~~ on or before the start date provided to the department, or if work has already begun, within twenty-four hours of the change.

(6) The following shall be included in each notice:

(a) Notification type (original, updated, cancellation).

(b) Date when lead-based paint abatement activities will commence.

(c) Date when lead-based paint abatement activities will end (approximation using best professional judgment).

(d) Firm's name, the department certification number, address, phone number.

(e) Type of building (e.g., single-family dwelling, multi-family dwelling, child-occupied facilities) on/in which abatement work will be performed.

(f) Property name (if applicable).

(g) Property address including apartment or unit number (if applicable) for abatement work.

(h) Documentation showing evidence of an EBL determination or a copy of the federal/state/tribal/local emergency abatement order, if applicable.

(i) Name~~(s)~~ and department certification number~~((and signature))~~ of the certified supervisor or project designer.

(j) Approximate square footage/acreage to be abated.

(k) Brief description of abatement activities to be performed.

(l) Name, title, and signature of the representative of the certified firm who prepared the notification.

(7) Notification shall be accomplished using any of the following methods: Written notice, or by e-mail. All notices submitted by e-mail must be followed by written notice within twenty-four hours of submission. Written notification can be accomplished using either the sample form titled "Notice of Abatement" or similar form. All written notices shall be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery. (Persons submitting notification by U.S. Postal Service are reminded that they should allow ~~((three additional business days))~~ sufficient time for

delivery ~~((in order))~~ to ensure that the department receives the notification by the required date.) Instructions and sample forms can be obtained from the department via phone ~~((360-725-2941))~~ 360-586-5323 or fax ~~((360-588-5966))~~ 360-588-5880, or on the internet at <http://www.cted.gov/lead>.

(8) In the event of changes to the information provided in the original notification, lead-based paint abatement activities shall not begin on a date, or at a location, other than that specified in either an original~~(s)~~ or updated notice~~(s, in the event of changes to the original notice))~~.

(9) No firm or individual shall engage in lead-based paint abatement activities, as defined in WAC 365-230-200 prior to notifying the department of such activities according to requirements of this section. No lead-based paint abatement activities described in the notice of abatement may begin until the notice has been approved by the department.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 365-230-110	Reciprocity.
WAC 365-230-140	Accreditation and certification based on prior licensing.

WSR 07-07-051

PERMANENT RULES

STATE BOARD OF EDUCATION

[Filed March 14, 2007, 10:50 a.m., effective April 14, 2007]

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

Purpose: Clarification of graduation requirements contained in chapter 180-51 WAC and any technical amendments necessitated by HB 3098.

Citation of Existing Rules Affected by this Order: Amending chapter 180-51 WAC.

Statutory Authority for Adoption: RCW 28A.230.090.

Adopted under notice filed as WSR 07-03-162 on March 13 [January 24], 2007.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

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

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

Date Adopted: March 13, 2007.

Edith W. Harding
Executive Director

AMENDATORY SECTION (Amending WSR 00-23-032, filed 11/8/00, effective 12/9/00)

WAC 180-51-003 Intent of graduation requirements.

(1) The state board of education is responsible for establishing minimum high school graduation requirements that appropriately balance:

(a) Statewide public expectations for all graduating students;

(b) High, meaningful, and fair requirements every student can meet;

(c) The unique characteristics of and differing resources among ~~((the two hundred ninety-six))~~ all school districts and ~~((over three hundred))~~ high schools in Washington; and

(d) Recognition that some students' educational plans may not include college or may include application for admission to a postsecondary institution one year or more after being granted a high school diploma.

(2) In order to support the continuing refinement of the standards and performance-based system of education, encourage and facilitate local innovation, and realize the vision under WAC 180-51-001, it is the intent of the state board of education to enact changes that will:

(a) Align the statewide minimum high school graduation requirements with the goal of the basic education act under RCW 28A.150.210 and the mission of the common school system under WAC ~~((180-40-210))~~ 392-400-210;

(b) Allow districts the optional discretion to define and award high school credit based on demonstrated performance that is not tied to a state minimum number of hours of instruction or instructional activities;

(c) Assure that the essential academic learning requirements developed under RCW ~~((28A.655.060(3)(a) and))~~ 28A.655.070(2) are taught in the high school curriculum;

(d) Assure that students are aware of the connection between their education and possible career opportunities as referenced in RCW 28A.150.210(4) and WAC ~~((180-57-090))~~ 392-415-090; and

(e) Assure that students are provided the opportunity to effectively prepare for the secondary Washington assessment of student learning and earn the certificate of ~~((mastery))~~ academic achievement required under RCW ~~((28A.655.060(3)(e),))~~ 28A.655.061(2) recognizing that the certificate of ~~((mastery))~~ academic achievement, along with other state and local requirements, represents attainment of the knowledge and skills that are necessary for high school graduation.

(3) It is the state board's view that the creative development and application of integrated curriculum within existing resources will significantly facilitate the implementation of the graduation requirements under WAC 180-51-061. The board strongly encourages districts to:

(a) Implement curriculum that includes courses that incorporate the best applied, theoretical, academic or vocational features as authorized under RCW 28A.230.010;

(b) Emphasize the integration of academic and vocational education in educational pathways as required under RCW 28A.655.060 (3)(c); and

(c) Consider using the model curriculum integrating vocational and academic education as it is developed by the superintendent of public instruction under RCW 28A.300.235.

AMENDATORY SECTION (Amending WSR 04-23-004, filed 11/4/04, effective 12/5/04)

WAC 180-51-061 Minimum requirements for high school graduation.

(1) The statewide minimum subject areas and credits required for high school graduation, beginning July 1, 2004, for students who enter the ninth grade or begin the equivalent of a four-year high school program, shall ~~((be))~~ total 19 as listed below.

(a) Three English credits (reading, writing, and communications) that at minimum align with grade level expectations for ninth and tenth grade, plus content that is determined by the district. Assessment shall include the 10th grade Washington assessment of student learning beginning 2008.

(b) Two mathematics credits that at minimum align with mathematics grade level expectations for ninth and tenth grade, plus content that is determined by the district. Assessment shall include the 10th grade Washington assessment of student learning beginning 2008.

(c) Two science credits (physical, life, and earth) that at minimum align with grade level expectations for ninth and tenth grade, plus content that is determined by the district. At least one credit in laboratory science is required which shall be defined locally. Assessment shall include the 10th grade Washington assessment of student learning beginning 2010.

(d) Two and one-half social studies credits that at minimum align with the state's essential academic learning requirements in civics, economics, geography, history, and social studies skills at grade ten and/or above plus content that is determined by the district. The assessment of achieved competence in this subject area is to be determined by the local district although state law requires districts to have "assessments or other strategies" in social studies at the high school level by 2008-09. In addition, districts shall require students to complete a classroom-based assessment in civics in the eleventh or twelfth grade also by 2008-09. The state superintendent's office has developed classroom-based assessment models for districts to use (RCW 28A.230.095). The social studies requirement shall consist of the following mandatory courses or equivalencies:

(i) One credit shall be required in United States history and government which shall include study of the Constitution of the United States. No other course content may be substituted as an equivalency for this requirement.

(ii) Under the provisions of RCW 28A.230.170 and 28A.230.090, one-half credit shall be required in Washington state history and government which shall include study of the Constitution of the state of Washington and is encouraged to include information on the culture, history, and government of the American Indian people who were the first inhabitants of the state.

(A) For purposes of the Washington state history and government requirement only, the term "secondary student" shall mean a student who is in one of the grades seven through twelve. If a district offers this course in the seventh or eighth grade, it can still count towards the state history and government graduation requirement. However, the course should only count as a high school credit if the academic level of the course exceeds the requirements for seventh and eighth grade classes and the course would qualify for high school credit, because the course is similar or equivalent to a course offered at a high school in the district as determined by the school district board of directors. (RCW 28A.230.090 (4).)

(B) The study of the United States and Washington state Constitutions shall not be waived, but may be fulfilled through an alternative learning experience approved by the local school principal under written district policy.

(C) Secondary school students who have completed and passed a state history and government course of study in another state may have the Washington state history and government requirement waived by their principal. The study of the United States and Washington state Constitutions required under RCW 28A.230.170 shall not be waived, but may be fulfilled through an alternative learning experience approved by the school principal under a written district policy.

(D) After completion of the tenth grade and prior to commencement of the eleventh grade, eleventh and twelfth grade students who transfer from another state, and who have or will have earned two credits in social studies at graduation, may have the Washington state history requirement waived by their principal if without such a waiver they will not be able to graduate with their class.

(iii) One credit shall be required in contemporary world history, geography, and problems. Courses in economics, sociology, civics, political science, international relations, or related courses with emphasis on current problems may be accepted as equivalencies.

(e) Two **health and fitness** credits that at minimum align with current essential academic learning requirements at grade ten and/or above plus content that is determined by the local school district. The assessment of achieved competence in this subject area is to be determined by the local district although state law requires districts to have "assessments or other strategies" in health and fitness at the high school level by 2008-09. The state superintendent's office has developed classroom-based assessment models for districts to use (RCW 28A.230.095).

(i) The fitness portion of the requirement shall be met by course work in fitness education. The content of fitness courses shall be determined locally under WAC 180-51-025. Suggested fitness course outlines shall be developed by the office of the superintendent of public instruction. Students may be excused from the physical portion of the fitness requirement under RCW 28A.230.050. Such excused students shall be required to substitute equivalency credits in accordance with policies of boards of directors of districts, including demonstration of the knowledge portion of the fitness requirement.

(ii) "Directed athletics" shall be interpreted to include community-based organized athletics.

(f) One **arts** credit that at minimum is aligned with current essential academic learning requirements at grade ten and/or above plus content that is determined by the local school district. The assessment of achieved competence in this subject area is to be determined by the local district although state law requires districts to have "assessments or other strategies" in arts at the high school level by 2008-09. The state superintendent's office has developed classroom-based assessment models for districts to use (RCW 28A.230.-095). The essential content in this subject area may be satisfied in the visual or performing arts.

(g) One credit in **occupational education**. "Occupational education" means credits resulting from a series of learning experiences designed to assist the student to acquire and demonstrate competency of skills under student learning goal four and which skills are required for success in current and emerging occupations. At a minimum, these competencies shall align with the definition of an exploratory course as proposed or adopted in the career and technical education program standards of the office of the superintendent of public instruction. The assessment of achieved competence in this subject area is determined at the local district level.

(h) Five and one-half electives: Study in a world language other than English or study in a world culture may satisfy any or all of the required electives. The assessment of achieved competence in these subject areas is determined at the local district level.

(i) Each student shall complete a culminating project for graduation. The project shall consist of the student demonstrating both their learning competencies and preparations related to learning goals three and four. Each district shall define the process to implement this graduation requirement, including assessment criteria, in written district policy.

(j) Each student shall attain a certificate of academic achievement or certificate of individual achievement. The 10th grade Washington assessment of student learning and Washington alternate assessment system shall determine attainment.

(2) State board of education approved private schools under RCW 28A.305.130(~~(6)~~) (5) may, but are not required to, align their curriculums with the state learning goals under RCW 28A.150.210 or the essential academic learning requirements under RCW (~~28A.665.060~~) 28A.655.070.

((Subject Area	Essential Content	Minimum State Credits[†]	Assessment Includes
<p>English</p> <ul style="list-style-type: none"> • Reading • Writing • Communications <p>(Student Learning Goal 1)</p>	<p>The Essential Academic Learning Requirements through benchmark three, plus content that is determined by the district to be beyond benchmark three-level content</p>	3	Secondary WASL (beginning 2008)
<p>Mathematics</p> <p>(Student Learning Goal 2)</p>	<p>The Essential Academic Learning Requirements through benchmark three, plus content that is determined by the district to be beyond benchmark three-level content</p>	2	Secondary WASL (beginning 2008)
<p>Science</p> <ul style="list-style-type: none"> • Physical • Life • Earth <p>(Student Learning Goal 2)</p>	<p>The Essential Academic Learning Requirements through benchmark three, plus content that is determined by the district to be beyond benchmark three-level content</p> <p>At least one credit in laboratory science, which shall be defined locally</p>	2	Secondary WASL (beginning 2010)
<p>Social Studies</p> <ul style="list-style-type: none"> • Civics • History • Geography <p>(Student Learning Goal 2)</p>	<p>The Essential Academic Learning Requirements through benchmark three, plus content that is determined by the district to be beyond benchmark three-level content</p> <p>U.S. history and government, Washington state history and government, and including study of the U.S. and Washington state Constitutions²</p> <p>Contemporary world history, geography, and problems²</p>	2.5	The assessment of achieved competence in this subject area remains at the local level ⁴
<p>Health and Fitness⁵</p> <p>(Student Learning Goal 2)</p>	<p>The Essential Academic Learning Requirements through benchmark three, plus content that is determined by the district to be beyond benchmark three-level content</p>	2	The assessment of achieved competence in this subject area remains at the local level ⁴

((Subject Area	Essential Content	Minimum State Credits¹	Assessment Includes
Arts (Student Learning Goal 2)	The Essential Academic Learning Requirements through benchmark three, plus content that is determined by the district to be beyond benchmark three-level content May be satisfied in the visual or performing arts	1	The assessment of achieved-competence in this subject-area remains at the local-level ⁴
Occupational Education	"Occupational education" means credits resulting from a series of learning experiences designed to assist the student to acquire and demonstrate competency of skills under student learning goal four and which skills are required for success in current and emerging occupations. At a minimum, these competencies shall align with the definition of an exploratory course as proposed or adopted in the career and technical education program standards of the superintendent of public instruction.	1	The assessment of achieved-competence in this subject-area remains at the local-level ⁴
Electives⁽⁶⁾	See footnote # (6)	5.5	The assessment of achieved-competence in this subject-area remains at the local-level ⁴
TOTAL		19	
Culminating Project⁷	See footnote # 7		The assessment of achieved-competence in this subject-area remains at the local-level ⁴
High School and Beyond Plan⁸	See footnote # 8		The assessment of achieved-competence in this subject-area remains at the local-level ⁴
Certificate of Academic Achievement or Certificate of Individual Achievement			Secondary WASL, Washington Alternate Assessment System (WAAS) (See RCW 28A.655.061)

¹ See WAC 180-51-050 for definition of high school credit.
² The study of Washington state history and government is encouraged to include information on the culture, history, and government of the American Indian people who were the first inhabitants of the state. The study of the U.S. and Washington state Constitutions shall not be waived, but may be fulfilled through an alternative learning experience approved by the school principal pursuant to written district policy. Secondary school students who have completed and passed a state history and government course of study in

another state may have the Washington state history and government requirement waived by their principal. For purposes of the Washington state history and government requirement only, the term "secondary school students" shall mean a student who is in one of the grades seven through twelve.
³ Courses in economics, sociology, civics, political science, international relations, or related courses with emphasis on current problems may be accepted as equivalencies.

- ⁴ Locally determined assessment means whatever assessment or assessments, if any, the district determines are necessary.
- ⁵ The fitness portion of the requirement shall be met by course work in fitness education. The content of fitness courses shall be determined locally pursuant to WAC 180-51-025. Suggested fitness course outlines shall be developed by the office of the superintendent of public instruction. Students may be excused from the physical portion of the fitness requirement pursuant to RCW 28A.230.050. Such excused students shall be required to substitute equivalency credits in accordance with policies of boards of directors of districts, including demonstration of the knowledge portion of the fitness requirement. "Directed athletics" shall be interpreted to include community-based organized athletics.
- ⁶ Study in a world language other than English or study in a world culture may satisfy any or all of the required electives.
- ⁷ Each student shall complete a culminating project for graduation. The project consists of the student demonstrating both their learning competencies and preparations related to learning goals three and four. Each district shall define the process to implement this graduation requirement, including assessment criteria, in written district policy.
- ⁸ Each student shall have an education plan for their high school experience, including what they expect to do the year following graduation.))

AMENDATORY SECTION (Amending WSR 00-19-108, filed 9/20/00, effective 10/21/00)

WAC 180-51-115 Procedures for granting high school graduation credits for students with special educational needs. (1) No student shall be denied the opportunity to earn a high school diploma solely because of limitations on the student's ability. The board of directors of districts granting high school diplomas shall adopt written policies, including procedures, for meeting the unique limitations of each student. Such procedures may provide for:

(a) The extension of time the student remains in school up to and including the school year in which such student reaches twenty-one years of age;

(b) A special education program in accordance with chapter 28A.155 RCW if the student is eligible; and

(c) Special accommodations for individual students, or in lieu thereof, exemption from any requirement in this chapter, if such requirement impedes the student's progress toward graduation and there is a direct relationship between the failure to meet the requirement and the student's limitation.

(2) Unless otherwise prohibited by federal or state special education laws, such procedures may not provide for exemption from the certificate of ~~((mastery))~~ academic achievement graduation requirement under RCW 28A.655.-060 (3)(c).

WSR 07-07-052

PERMANENT RULES

STATE BOARD OF EDUCATION

[Filed March 14, 2007, 11:48 a.m., effective April 14, 2007]

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

Purpose: Technical amendments necessitated to note updated WAC references.

Citation of Existing Rules Affected by this Order: Amending WAC 180-105-020 and 180-105-060.

Statutory Authority for Adoption: RCW 28A.305.130.

Adopted under notice filed as WSR 07-04-074 on March 13 [February 2], 2007.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: March 13, 2007.

Edith W. Harding
Executive Director

AMENDATORY SECTION (Amending WSR 05-15-036, filed 7/11/05, effective 7/11/05)

WAC 180-105-020 Reading and mathematics. (1) Each school district board of directors shall by December 15, 2003:

(a) Adopt district-wide performance improvement goals using the federal requirements to determine the increase in the percentage of students who meet or exceed the standard on the Washington assessment of student learning for reading and mathematics in grades four, seven, and ten; and

(b) Direct each school in the district that administers the Washington assessment of student learning for grade four, seven, or ten to adopt performance improvement goals using the federal requirements to determine the increase in the percentage of students meeting the standard for its fourth, seventh, or tenth grade students in reading and mathematics.

(2) School districts and schools shall establish separate district-wide and school reading and mathematics improvement goals using the federal requirements to determine the increase in requirements under subsection (1) of this section for each of the following groups of students:

- (a) All students;
- (b) Students of each major racial and ethnic group;
- (c) Economically disadvantaged students;
- (d) Students with disabilities; and
- (e) Students with limited English proficiency.

(3) School districts and schools are not required to publish numerical improvement goals in a grade level for reading and mathematics for 2004 or in any year thereafter for any student group identified in subsection (2) of this section in which there were fewer than ten students eligible to be assessed on the Washington assessment of student learning in

the prior year. However, this subsection shall not be construed to affect WAC 180-16-220 (2)(b) or any other requirements for school and school district improvement plans.

(4) Annual performance improvement goals for both school districts and schools shall be determined:

(a) By using the starting point and annual goals established using the federal requirements for determining starting points in the 2003 Washington State No Child Left Behind (NCLB) Accountability Plan.

(b) If the performance improvement goals established by using the federal requirements to determine the increase for assessments administered in the spring of 2003 and each year thereafter through and including assessments administered in the spring of 2013 are not met, but the other indicator is met [the other indicator for high schools is the graduation goal (WAC ((~~3-20-300~~)) 180-105-040(4)) and the other indicator for elementary and middle schools is the unexcused absences goal (Washington State Accountability System under NCLB 2001)] then a substitute calculation may be made. That substitute calculation representing satisfactory progress shall not be less than the sum of:

(i) The percentage of students meeting standard on the assessments administered in the spring of the preceding year for the relevant student group, grade level and subject; and

(ii) The percentage of students who did not meet standard on the assessments administered in the spring of the preceding year for the relevant student group, grade level and subject, multiplied by ten percent.

(c) The performance improvement goals for assessments administered in the spring of 2014 shall be that all students eligible to be assessed meet standard on the Washington assessment of student learning.

(5) School districts and schools shall be deemed to have met the performance improvement goals established pursuant to this chapter if the school district or school achieves the minimum improvement goal required under subsection (4) of this section, even if the school district or school does not achieve the performance improvement goals established by using the federal requirements to determine the increase.

(6) No performance improvement goal for a group in a subject and grade established pursuant to this section shall be used for state or federal accountability purposes if fewer than thirty students in the group for a subject and grade are eligible to be assessed on the Washington assessment of student learning.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 05-15-036, filed 7/11/05, effective 7/11/05)

WAC 180-105-060 High school graduation. (1) Each school district board of directors shall by December 15, 2005, revise district-wide graduation rate goals for 2006 and each year thereafter and shall direct each high school in the district to revise graduation rate goals for 2006 and each year thereafter, subject to approval by the board.

(2) The minimum graduation rate goals through 2013 shall be as follows for each of the nine groups of students listed in WAC ((~~3-20-200(2))~~) 180-105-040(4):

(a) Sixty-six percent in 2005, one percentage point above the previous year's goal from 2006 through 2009, and three percentage points above the previous year's goal in 2010 through 2013; or

(b) For any student group whose graduation rate falls below sixty-six percent in 2005, the minimum goal for 2005 is two percentage points above that group's graduation rate in 2004, an additional two percentage points per year above the previous year's goal in 2006 through 2009, and an additional four percentage points per year above the previous year's goal in 2010 through 2013, until the rate for that group meets or exceeds the goal described in (a) of this subsection.

(3) Graduation rate goals in 2014 and each year thereafter for each group of students listed in WAC ((~~3-20-200(2))~~) 180-105-040(4) shall be not less than eighty-five percent.

(4) School district boards of directors are authorized to adopt district-wide graduation rate goals and to approve high school graduation rate goals that exceed the minimum level required under this section. However, district-wide and high school graduation rate goals that exceed the minimum level required under this section shall not be used for federal or state accountability purposes.

WSR 07-07-053

PERMANENT RULES

STATE BOARD OF EDUCATION

[Filed March 14, 2007, 12:13 p.m., effective April 14, 2007]

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

Purpose: Technical amendments necessitated by HB 3098 to eliminate the reference to educational service districts.

Citation of Existing Rules Affected by this Order: Amending WAC 180-22-100.

Statutory Authority for Adoption: RCW 28A.310.020, 28A.210.080.

Adopted under notice filed as WSR 07-03-161 on March 13 [January 23], 2007.

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

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

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

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

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

Date Adopted: March 13, 2007.

Edith W. Harding
Executive Director

AMENDATORY SECTION (Amending WSR 06-19-033, filed 9/13/06, effective 9/13/06)

WAC 180-22-100 Purpose and authority. (1) The purpose of this chapter is to establish the procedures for making changes in the number and boundaries of educational service districts (~~(, and the procedures for electing the members of the boards of directors of the educational service districts)~~).

(2) The authority for this chapter is RCW 28A.310.020 (~~and 28A.310.080~~).

WSR 07-07-055

PERMANENT RULES

STATE BOARD OF EDUCATION

[Filed March 14, 2007, 12:28 p.m., effective April 14, 2007]

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

Purpose: HB 3098 directed the state board of education to repeal WAC 180-44-050, waiver from thirty minutes before and after school time.

Citation of Existing Rules Affected by this Order: Amending [repealing] WAC 180-44-050.

Statutory Authority for Adoption: RCW 28A.305.130.

Adopted under notice filed as WSR 07-03-141 on March 13 [January 23], 2007.

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

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

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

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

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

Date Adopted: March 13, 2007.

Edith W. Harding
Executive Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 180-44-050	Regulatory provisions relating to RCW 28A.305.130(6) and 28A.600.010—School day as related to the teacher.
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WSR 07-07-056

PERMANENT RULES

GAMBLING COMMISSION

[Order 607—Filed March 14, 2007, 12:42 p.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: The gambling commission is rewriting its rules manual using plain English techniques (rules simplification project). We anticipate the project will be completed by January 1, 2008. The rules manual is being broken into sections and rewritten a section at a time. When the rules relating to card rooms were rewritten and filed by the commission this rule was inadvertently not included. As such, it moved forward under a separate filing and was adopted at the March commission meeting.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 06-24-061 on December 4, 2006.

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

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

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

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

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

Date Adopted: March 14, 2007.

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 07-07-061
PERMANENT RULES
STATE BOARD OF EDUCATION

[Filed March 14, 2007, 2:33 p.m., effective April 14, 2007]

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

Purpose: This is a repeal of the entire chapter as the underlying authority has been repealed in E2SHB 3098.

Citation of Existing Rules Affected by this Order: Amending [repealing] chapter 180-37 WAC.

Statutory Authority for Adoption: RCW 28A.355.100.

Adopted under notice filed as WSR 06-24-100 on March 13, 2007 [December 5, 2006].

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2 [0], Repealed 0 [2].

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2 [0], Repealed 0 [2].

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

Date Adopted: March 13, 2007.

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 07-07-064
PERMANENT RULES
STATE BOARD OF EDUCATION

[Filed March 14, 2007, 5:28 p.m., effective April 14, 2007]

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

Purpose: Clarification of graduation requirements contained in chapter 180-51 WAC and any technical amendments necessitated by HB 3098.

Citation of Existing Rules Affected by this Order: Amending chapter 180-51 WAC.

Statutory Authority for Adoption: RCW 28A.230.090.

Adopted under notice filed as WSR 06-24-102 on March 13, 2007 [December 5, 2006].

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: March 13, 2007.

Edith W. Harding
 Executive Director

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 07-07-065
PERMANENT RULES
DEPARTMENT OF HEALTH

(Board of Hearing and Speech)

[Filed March 15, 2007, 8:01 a.m., effective April 15, 2007]

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

Purpose: WAC 246-828-510 Continuing education and repeal of WAC 246-828-500, 246-828-530, and 246-828-550.

In 2002 the legislature passed HB 2589, chapter 310, Laws of 2002, changing audiologists and speech language pathologists from certified to licensed and also mandated continuing education (CE) requirements before these professionals can renew their license.

Prior to the passage of this legislation, the law required ten hours of continuing education for hearing instrument fitter/dispensers before renewing their license. There was not CE requirements for audiologists and speech-language pathologists because they were certified and not licensed at that time. This law requires hearing instrument fitter/dispensers, speech-language pathologists, and audiologists to obtain thirty hours of continuing education in a three-year period prior to renewing their licenses. One CE hour must be on infection control and the remaining twenty-nine CE hours may be obtained through courses, seminars, workshops, and postgraduate programs offered by accredited educational institutions or profession-related organizations or industries, and may be obtained through the internet, self study, etc.

There are four different WACs addressing CE requirements for hearing instrument fitter/dispensers. WAC 246-828-510, combines all four WACs into one rule covering hearing instrument fitter/dispensers, audiologists, and speech-language pathologists. In addition, this rule will also repeal WAC 246-828-500, 246-828-530, and 246-828-550.

Overall, these proposed changes will improve and increase the ability of the hearing instrument fitter/dispenser, audiologist, and speech-language pathologist to deliver the highest possible quality of care.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-828-500, 246-828-530 and 246-828-550; and amending WAC 246-828-510.

Statutory Authority for Adoption: RCW 18.35.161.

Other Authority: RCW 18.35.090.

Adopted under notice filed as WSR 06-21-106 on October 17, 2006.

Changes Other than Editing from Proposed to Adopted Version: WAC 246-828-510 Continuing education and repeal of WAC 246-828-500, 246-828-530, and 246-828-550.

The adopted rule language removed the limit on how many CE hours a licensed hearing instrument fitter/dispenser, audiologist, and speech-language pathologist may obtain in specific categories.

The adopted rule has a minimum of one CE hour in infection control and the remaining twenty-nine hours may be obtained in any of the categories listed below. The CE categories remained the same, however, the CE hour limit was lifted in each category.

- At least one hour in infection control.
- Courses, seminars, workshops, and postgraduate programs offered by accredited educational institutions.
- Courses, seminars, and workshops offering CE units offered by profession-related organizations or industries.
- Attending or participating and speaking at a CE program having a featured speaker or panel which is sponsored or endorsed by a profession-related organization or industry.

In addition, the adopted rule also removed the phrase "board approved programs." This language was removed because it caused confusion to stakeholders.

A final cost-benefit analysis is available by contacting Leann Yount, P.O. Box 47869, Olympia, WA 98504-7869, phone (360) 236-4856, fax (360) 236-4918, e-mail leann.yount@doh.wa.gov.

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

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

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

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

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

Date Adopted: December 1, 2006.

Richard Gidner
Chair

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-828-510 Continuing education. ~~((+)) Licensed hearing instrument fitter/dispensers must complete ten hours of continuing education as required in chapter 246-12 WAC, Part 7.~~

~~(2) A maximum of two hours may be in the area of practice management. Practice management includes, but is not limited to, marketing, computer recordkeeping, and personnel issues.)~~ The ultimate aim of continuing education is to ensure the highest quality professional care. The objectives are to improve and increase the ability of the hearing instrument fitter/dispenser, audiologist and speech-language pathologist to deliver the highest possible quality professional care and keep the professional abreast of current developments.

Continuing education consists of educational activities designed to review existing concepts and techniques and to convey information and knowledge about advances in hearing instrument fitting/dispensing, audiology and speech-language pathology fields as applied to the work setting.

(1) Continuing education requirement. Licensees must complete a minimum of thirty hours of continuing education every three years in the following categories:

(a) At least one hour on infection control.

(b) Courses, seminars, workshops and postgraduate programs offered by accredited educational institutions. These educational activities shall be recorded on an official transcript or certificate stating the number of continuing education units completed.

(c) Courses, seminars and workshops offering continuing clock or continuing educational units offered by profession-related organizations or industries. These units shall be accepted with proof of completion.

(d) Attendance at a continuing education program having a featured speaker(s) or panel, which has been sponsored or endorsed by a profession-related organization or industry.

(e) Participation as a speaker or panel member in a continuing education program which has been sponsored or endorsed by a profession-related organization or industry. A maximum of eight hours, including preparation time, may be applied to the total three-year requirement.

(f) Completion of a written, video, internet, or audio continuing education program which has been sponsored or endorsed by a profession-related organization or industry. Only programs with tests that are independently graded shall be accepted.

(2) General information.

(a) The effective date of the continuing education requirement shall be three years after the licensee's 2007 renewal date.

(b) The board shall not grant credit for preparation time, except as provided in subsection (1)(e) of this section.

(3) The board may grant an exception for continuing education requirements under certain circumstances including, but not limited to, severe illness. The licensee must submit to the board for review, a written request for exception. The board will approve or deny the request.

(4) This section incorporates by reference the requirements of chapter 246-12 WAC, Part 7.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-828-500	Citation and purpose.
WAC 246-828-530	Exceptions for continuing education.
WAC 246-828-550	Programs approved by the board of hearing and speech.

WSR 07-07-066

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Physical Therapy)

[Filed March 15, 2007, 8:02 a.m., effective April 15, 2007]

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

Purpose: The rule establishes substantially equivalent education requirements for licensure of graduates from unapproved schools. The rule inserts the entire list of minimum coursework required for physical therapy education licensing requirements. This list replaces the current policy and outlines the general, professional and clinical coursework equivalent requirements and provides applicants a single place to retrieve the necessary information to determine if they qualify to apply for licensure.

Citation of Existing Rules Affected by this Order: Amending WAC 246-915-120 Applicants from unapproved schools.

Statutory Authority for Adoption: RCW 18.74.023.

Adopted under notice filed as WSR 06-24-136 on December 6, 2006.

A final cost-benefit analysis is available by contacting Kris Waidely, Department of Health, P.O. Box 47867, Olympia, WA 98504-7867, phone (360) 236-4847, fax (360) 664-9077, e-mail kris.waidely@doh.wa.gov.

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

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

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

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

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

Date Adopted: January 16, 2007.

Charles Martin, PT
Board Chair

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 07-07-075

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed March 16, 2007, 8:09 a.m., effective April 16, 2007]

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

Purpose: The rule amends chapter 246-329 WAC, Childbirth centers. These rules more accurately reflect the childbirth center standards of practice within Washington state and nationally. Provisions in this chapter are the minimum necessary to ensure safe and adequate treatment and medical and nursing care, and the sanitary, hygienic and safe condition of birthing center.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-329-035, 246-329-040, 246-329-050, 246-329-060, 246-329-070, 246-329-080, 246-329-090 and 246-329-100; and amending WAC 246-329-010, 246-329-020, and 246-329-030.

Statutory Authority for Adoption: Chapter 18.46 RCW.
Other Authority: RCW 43.70.040.

Adopted under notice filed as WSR 06-18-041 on August 30, 2006.

Changes Other than Editing from Proposed to Adopted Version: Under the definition "low-risk maternity client," the term "full-term gestation" was changed to "term gestation."

A final cost-benefit analysis is available by contacting Yvette Fox, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-2928, fax (360) 236-2901, e-mail yvette.fox@doh.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 16, Amended 3, Repealed 8.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 16, Amended 3, Repealed 8.

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

Date Adopted: March 15, 2007.

B. White
for M. C. Selecky
Secretary

NEW SECTION

WAC 246-329-005 Scope and purpose. (1) These rules implement chapter 18.46 RCW which requires the department of health to set minimum health and safety standards for childbirth centers.

(2) Applicants and licensees must meet the requirements of this chapter and other applicable state and local laws.

(3) This chapter does not apply to services provided by persons exempt from requirements of chapter 18.46 RCW.

(4) A childbirth center may not provide services unless the childbirth center is licensed under this chapter.

AMENDATORY SECTION (Amending Order 224, filed 12/23/91, effective 1/23/92)

WAC 246-329-010 Definitions. For purposes of this chapter, the following words and phrases will have the following meanings unless the context clearly indicates otherwise:

(1) "Administration of drugs" means an act in which a single dose of a prescribed drug or biological is given to a client by an authorized person in accordance with all laws and ~~((regulations))~~ rules governing ~~((such))~~ these acts. The complete act of administration entails removing an individual dose from a previously dispensed, properly labeled container, including a unit dose container, verifying it with the orders of a practitioner who is legally authorized to prescribe, giving

the individual dose to the proper client and properly recording the time and dose given.

(2) "Applicant" means a person seeking licensure as a childbirth center under this chapter.

(3) "Authenticated or authentication" means authorization of a written entry in a record by means of a signature which shall include, minimally, first initial, last name, and title or unique identifier verifying accuracy of information.

~~((3))~~ (4) "Bathing facility" means a bathtub or shower.

~~((4))~~ (5) "(Birth) Birthing center" or "childbirth center" or "birth center" means ((a type of maternity home which is a house, building, or equivalent organized to provide facilities and staff to support a birth service, provided that the birth service is limited to low-risk maternal clients during the intrapartum period)) any health facility, not part of a hospital or in a hospital, that provides facilities and clinical staff to support a birth service to low risk maternity clients. This chapter does not apply to any hospital approved by the American College of Surgeons, American Osteopathic Association, or its successor.

~~((5))~~ (6) "Birthing room" means a room designed, equipped, and arranged to provide for the care of a woman and newborn and to accommodate her support person or persons during the process of vaginal childbirth, (the three stages of labor and recovery of a woman and newborn).

~~((6))~~ (7) "Birth service" means the prenatal, intrapartum, and postpartum care provided for ((individuals with uncomplicated pregnancy, labor, and vaginal birth)) low-risk maternity clients, ((to include the)) including newborn care during transition and stabilization.

~~((7))~~ (8) "Client" means a woman, fetus, and newborn receiving care and services provided by a birth center during pregnancy and childbirth and recovery.

~~((8))~~ (9) "Clinical staff" means physicians and midwives, including contractors, appointed by the governing body to practice within the birth center and governed by rules and policies and procedures approved by the governing body.

~~((9))~~ (10) "Consultation" means the process used by the clinical staff of a childbirth center who maintain primary management responsibilities for the client's care to seek the opinion of a licensed physician on clinical issues that are client specific. The physician consulted must be qualified by training and experience in specific client need for which consultation is sought. Consultation, appropriate to client need, must be available during all times birth services are provided in a childbirth center.

(11) "Contractor" means an individual who has a written contract with a birth center licensee to provide birth services. The written contract must be approved by the governing body, including appointment of clinical privileges by the governing body. Birth services provided by contractors in licensed birth centers must meet requirements of this chapter, unless otherwise noted.

(12) "Department" means the Washington state department of health.

~~((10))~~ (13) "Emergency" means a medical emergency or injury requiring immediate medical or surgical intervention to prevent death or disability.

(14) "Emergency transfer" means the transfer of a maternal client or newborn in an emergent situation to a facility

that can manage obstetrical and neonatal emergencies, including the ability to perform cesarean delivery.

(15) "Governing body" means the person or persons responsible for establishing and approving the purposes and policies and procedures of the childbirth center.

~~((14))~~ (16) "Hospital" means any institution, place, building, or agency which provides accommodations, facilities, and services over a continuous period of twenty-four hours or more, for observation, diagnosis, or care, of two or more individuals not related to the operator or suffering from any other condition which obstetrical, medical, or surgical services would be appropriate for care or diagnosis. "Hospital" as used in this definition includes facilities licensed under chapter 70.41 RCW. "Hospital" as used in this definition does not include:

(a) Hotels, or similar places furnishing only food and lodging, or simply, domiciliary care; ~~((nor does it include))~~

(b) Clinics~~(s)~~ or physicians' offices where patients are not regularly kept as bed patients for twenty-four hours or more; ~~((nor does it include))~~

~~(c) Nursing homes, ((as defined and which comes) defined and licensed under ((the scope of)) chapter 18.51 RCW; ((nor does it include maternity homes, which come within the scope of))~~

(d) Childbirth centers licensed under this chapter and chapter 18.46 RCW; ~~((nor does it include))~~

(e) Psychiatric hospitals, ~~((which come))~~ licensed under ~~((the scope of))~~ chapter 71.12 RCW; ~~((nor))~~ or

(f) Any other hospital or institution specifically intended for use and the diagnosis and care of those suffering from mental illness, mental retardation, convulsive disorders, or other abnormal mental conditions. ~~((Furthermore,))~~ Nothing in this definition shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any hospital conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with creed or tenets of any well-recognized church or religious denomination.

~~((12))~~ (17) "Lavatory" means a plumbing fixture designed and equipped ~~((for handwashing purposes))~~ with a handwash device.

~~((13))~~ (18) "Low-risk maternal client" means an individual who:

(a) Is at term gestation, in general good health with uncomplicated prenatal course and participating in ongoing prenatal care, and prospects for a normal uncomplicated birth as defined by reasonable and generally accepted criteria of maternal and fetal health;

~~(b) ((Is participating in an appropriate childbirth and infant care education program;~~

~~(c) Has no major medical problems;~~

~~(d))~~ Has no previous major uterine wall surgery, ~~((cesarean))~~ cesarean section, or obstetrical complications likely to recur;

~~((e) Has parity under six unless a justification for a variation is documented by clinical staff;~~

~~(f) Is not a nullipara of greater than thirty-eight years of age unless a justification for a variation is documented by clinical staff;~~

~~(g) Is not less than sixteen years of age unless a justification for variation for ages fourteen through fifteen only is documented by clinical staff;~~

~~(h))~~ (c) Has no significant signs or symptoms of anemia, active herpes genitalia, placenta praevia, known noncephalic presentation during active labor, pregnancy-induced hypertension, persistent polyhydramnios or persistent oligohydramnios, abruptio placenta, chorioamnionitis, known multiple gestation, intrauterine growth ((retardation, meconium stained amniotic fluid)) restriction, ~~((fetal complications,))~~ or substance abuse;

~~((i) Demonstrates no significant signs or symptoms of anemia, active herpes genitalis, pregnancy-induced hypertension, placenta praevia, malpositioned fetus, or breech while in active labor;~~

~~(j))~~ (d) Is in progressive labor~~((, progressing normally));~~ and

~~((k) Is without prolonged ruptured membranes;~~

~~(l) Is not in preterm labor nor postterm gestation;~~

~~(m) Is appropriate for a setting where analgesia is limited; and~~

~~(n))~~ (e) Is appropriate for a setting where methods of anesthesia ((is used in)) are limited ((amounts and limited to local infiltration of the perineum or pudendal block)).

~~((14) "Maternity home" means any home, place, hospital, or institution in which facilities are maintained for the care of four or more women not related by blood or marriage to the operator during pregnancy or during or within ten days after delivery: Provided however, That this chapter shall not apply to any hospital licensed under chapter 70.41 RCW, "Hospital licensing and regulation."~~

~~(15))~~ (19) "Midwife" means ~~((an individual recognized by the Washington state board of nursing as a certified nurse midwife as provided in chapter 18.88 RCW, chapter 246-839 WAC, or an individual possessing a valid, current license to practice midwifery in the state of Washington as provided in))~~ a person licensed under chapter 18.79 RCW, or chapter 18.50 RCW, ~~((chapter 246-834 WAC))~~ Midwifery.

~~((16))~~ (20) "New construction" means any of the following:

(a) New buildings to be used as a birth center;

(b) Addition or additions to an existing building or buildings to be used as a childbirth center;

(c) Conversion of existing buildings or portions thereof for use as a childbirth center;

(d) Alterations or modifications other than minor alterations. "Minor alterations" means any structural or physical modification within an existing birth center which does not change the approved use of a room or an area. Minor alterations performed under this definition do not require prior review of the department; however, this does not constitute a release from other applicable requirements;

(e) Changes in the approved use of rooms or areas of the birth center.

~~((17))~~ (21) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

(22) "Personnel" means individuals employed by the birth center, contractors of the birth center, students and volunteers.

~~((18))~~ (23) "Physician" means ((an individual)) a person licensed under ((provisions of)) chapter 18.71 RCW, "Physicians," and rules adopted under chapter 246-919 WAC or chapter 18.57 RCW, "Osteopathy—Osteopathic medicine and surgery((-)," and rules adopted under chapter 246-853 WAC.

~~((19))~~ (24) "Referral" means the process by which the clinical staff of a childbirth center directs the client to a physician for management of a particular problem or aspect of the client's care.

(25) "Registered nurse" means ((an individual)) a person licensed under ((the provision of)) chapter ~~((18.88))~~ 18.79 RCW, ("Registered nurses," who is practicing in accordance with the)) and rules ((and regulations promulgated thereunder)) adopted under chapter 246-840 WAC.

~~((20))~~ (26) "Recovery" means that period or duration of time starting at birth and ending with discharge of a client from the birth center or the period of time between the birth and the time a client leaves the premises of the birth center.

~~((21))~~ (27) "Shall" means compliance is mandatory.

~~((22))~~ "Should" means a suggestion or recommendation, but not a requirement.

~~((23))~~ (28) "Support person" means the individual or individuals selected or chosen by a maternal client to provide emotional support and to assist her during the process of labor and childbirth.

~~((24))~~ (29) "Toilet" means a room containing at least one water closet.

~~((25))~~ (30) "Transfer of care" means the process by which the clinical staff of a childbirth center directs the client or newborn to a physician or other licensed health care provider for complete management of client's care. Transfer of care to an appropriate obstetrical department, patient care area or hospital, or physician(s) qualified in obstetrics or newborn/pediatric care respectively with admitting privileges to a hospital must be available twenty-four hours per day.

(31) "Volunteer" means an individual who is an unpaid worker in the birth center, other than a support person.

~~((26))~~ (32) "Water closet" means a plumbing fixture for defecation fitted with a seat and a device for flushing the bowl of the fixture with water.

AMENDATORY SECTION (Amending Order 224, filed 12/23/91, effective 1/23/92)

WAC 246-329-020 Licensure. ~~((1))~~ Application for license.

~~(a)~~ An application for a childbirth center license shall be submitted on forms furnished by the department. The application shall be signed by the legal representative of the governing body.

~~(b)~~ The applicant shall furnish to the department full and complete information and promptly report any changes which would affect the current accuracy of such information as to the identity of each officer and director of the corporation, if the birth center is operated by a legally incorporated entity, profit or nonprofit, and of each partner if the birth center is operated through a legal partnership.

~~(c)~~ Each application for license shall be accompanied by a license fee as established by the department under RCW

~~43.70.110: Provided, That no fee shall be required of charitable or nonprofit or government-operated birth centers. Upon receipt of the license fee, when required, the department shall issue a childbirth center license if the applicant and the birth center facilities meet the requirements of this chapter.)~~ A person must possess a current birth center license issued by the department before advertising, operating, managing, conducting, opening or maintaining a childbirth center unless exempt under chapter 18.46 RCW.

(1) Application for license. An applicant for initial licensure of a childbirth center must:

(a) Submit a completed application on forms provided by the department:

(b) Submit disclosure statements and criminal history background checks no older than three months preceding the application date for the administrator, owner and director of services in accordance with RCW 43.43.830 through 43.43.845:

(c) Submit the following information:

(i) Name of managing personnel, officers, administrator, director of clinical services or supervisor of clinical services, and partners or individuals owning ten percent or more of the applicant's voting stock;

(ii) A description of the organizational structure;

(iii) Name, address, and phone numbers of all office locations that provide services within the state;

(iv) A copy of the current business license(s);

(d) Submit evidence of completion of the department's construction review process;

(e) Submit evidence of compliance with local codes and ordinances;

(f) Submit evidence of approval of the state fire marshal as required per RCW 18.46.110;

(g) Submit evidence that a certificate of occupancy by the local building official has been approved and issued;

(h) Submit other information as required by the department:

(i) Submit fees as specified in WAC 246-329-990;

(j) Furnish to the department full and complete information and promptly report any changes which would affect the current accuracy of this information as to the identity of each officer and director of the corporation, if the birth center is operated by a legally incorporated entity, profit or nonprofit, and of each partner if the birth center is operated through a legal partnership;

(k) Develop and approve policies and procedures addressing the content of this chapter; and

(1) Meet the requirements of this chapter as determined by an initial survey conducted by the department.

(2) License renewal((—Limitations—Display)).

(a) A license, unless suspended or revoked, shall be renewed annually.

~~((i))~~ Applications for renewal ((shall)) must be on forms provided by the department and ((shall)) must be filed with the department not less than ((ten)) thirty days prior to expiration and must also include disclosure statements and criminal history background checks no older than three months preceding the renewal date for the administrator, owner and director of services when these individuals are

new to the birth center since initial licensure or last renewal, in accordance with RCW 43.43.830 through 43.43.845.

~~((ii)) (b) The department ((shall)) may inspect and investigate each childbirth center every twenty-four months or as needed ((and at least annually)) to determine compliance with ~~((standards herein (chapter 246-329 WAC) and applicable standards of))~~ these rules and chapter 18.46 RCW.~~

~~((b)) (c) Each license shall be issued only for the premises and persons named. Licenses shall be transferrable or assignable only with written approval by the department.~~

~~((e)) (d) Licenses ((shall)) must be posted in a conspicuous place on the licensed premises.~~

~~(3) ((Denial, suspension, modification, revocation of a license; notice; adjudicative proceeding.~~

~~(a) The department may, if the interests of the clients so demand, deny, suspend, or revoke a license when there has been failure or refusal to comply with the requirements of chapter 18.46 RCW and/or these rules. The department's notice of a denial, suspension, modification, or revocation of a license shall be consistent with RCW 43.70.115. An applicant or license holder has the right to an adjudicative proceeding to contest the decision.~~

~~(b) A license applicant or holder contesting a department license decision shall within twenty-eight days of receipt of the decision:~~

~~(i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Administrative Hearings Unit, Department of Health, 1300 Quince Street S.E., P.O. Box 47851, Olympia, WA 98504-7851; and~~

~~(ii) Include in or with the application:~~

~~(A) A specific statement of the issue or issues and law involved;~~

~~(B) The grounds for contesting the department decision; and~~

~~(C) A copy of the contested department decision.~~

~~(e) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 246-08 WAC. If a provision in this chapter conflicts with chapter 246-08 WAC, the provision in this chapter governs.~~

~~(4) New construction—Major alterations:~~

~~(a) When new construction or major alteration is contemplated, the following shall be submitted to the department for review:~~

~~(i) A written program containing, at a minimum, information concerning services to be provided and operational methods to be used which will affect the extent of facilities required by these regulations;~~

~~(ii) Duplicate sets of preliminary plans which are drawn to scale and include: A plot plan showing streets, driveways, water, and sewage disposal systems, grade and location of the building or buildings on the site; the plans for each floor of each building, existing and proposed, which designate the functions of each room and show all fixed equipment. The preliminary plans shall be accompanied by a statement as to the source of water supply and the method of sewage and garbage disposal and a general description of construction and materials, including interior finishes.~~

~~(b) Construction shall not be started until duplicate sets of final plans (drawn to scale) and specifications have been submitted to and approved by the department. Final plans and~~

~~specifications shall show complete details to be furnished to contractors for construction of buildings or major alterations in existing buildings. These shall include:~~

~~(i) Plot plans;~~

~~(ii) Plans for each floor of each building which designate the function of each room and show all fixed equipment and the planned location of beds and other furniture;~~

~~(iii) Interior and exterior elevations, building sections, and construction details;~~

~~(iv) Schedule of floors, wall, and ceiling finishes, and the types and sizes of doors and windows; plumbing, heating, ventilation, and electrical systems; and~~

~~(v) Specifications which fully describe workmanship and finishes.~~

~~(e) Adequate provisions shall be made for the safety and comfort of clients as construction work takes place in or near an occupied area.~~

~~(d) Construction shall take place in accordance with approved final plans and specifications. Only those changes which have been approved by the department may be incorporated into the construction project. Modified plans, additions, or changes incorporated into the construction project shall be submitted to the department for the department file on the project.~~

~~(5) Compliance with other regulations.~~

~~(a) Applicable rules and regulations adopted by the Washington state fire marshal.~~

~~(b) If there is no local plumbing code, the Uniform Plumbing Code of the National Association of Plumbing and Mechanical Officials shall be followed.~~

~~(e) Compliance with these regulations does not exempt birth centers from compliance with the local and state electrical codes or local fire, zoning, building, and plumbing codes.) Change of ownership. At least thirty days prior to changing ownership of a childbirth center:~~

~~(a) The licensee must submit in writing to the department:~~

~~(i) The full name, address and phone number of the current and prospective owner;~~

~~(ii) The name, address, and phone number of the currently licensed childbirth center and the name under which the prospective agency will operate;~~

~~(iii) Date of the proposed change of ownership; and~~

~~(iv) Any changes in the office location, if relevant;~~

~~(b) The prospective new owner must submit:~~

~~(i) Information listed in subsection (1)(b) through (c) of this section; and~~

~~(ii) The change of ownership fee specified in WAC 246-329-990.~~

NEW SECTION

WAC 246-329-025 Exemptions, alternative methods, and interpretations. The purpose of this section is to provide birth centers a mechanism to request an interpretation, exemption, or approval to use an alternative method. This chapter is not intended to prevent use of any systems, materials, alternate design, or methods of construction as alternatives to those prescribed by these rules.

(1) A birth center requesting exemption from this chapter must submit a written request to the department asking for an exemption. The request must specify the section or sections, explain the reason for the exemption and, when appropriate, include supporting documentation.

(2) A birth center requesting approval for use of alternative materials, design, and methods must submit a written request to the department asking for approval to use an alternative. The request must explain the reason(s) for the use of an alternative and must be supported by technical documentation.

(3) The department may:

(a) Exempt a birth center from complying with portions of this chapter when:

(i) The exemption is not contrary to the intent of chapter 18.46 RCW and the requirements of these rules.

(ii) After review and consideration, the department determines the exemption will not:

(A) Negate the purpose and intent of these rules;

(B) Place the safety or health of the patients in the birth center in jeopardy;

(C) Lessen any fire and life safety or infection control provision of other codes or regulations; and

(D) Affect any structural integrity of the building;

(b) Approve the use of alternative materials, designs, and methods when:

(i) The birth center complies with subsection (2) of this section; and

(ii) After review and consideration, such alternative:

(A) Meets the intent and purpose of these rules; and

(B) Is at least equivalent to the methods prescribed in these rules.

(4) A birth center requesting an interpretation of rule contained in this chapter must submit a written request to the department. The request must specify the section or sections for which an interpretation is needed and details of the circumstances to which the rule is being applied. The birth center must provide any other information the department deems necessary.

(5) The department will, in response to a written request, send a written interpretation of a rule or regulation within thirty calendar days after the department has received complete information relevant to the requested interpretation.

(6) The department and birth center will keep a copy of each exemption or alternative granted or interpretation issued under this section on file and available at all times.

AMENDATORY SECTION (Amending Order 224, filed 12/23/91, effective 1/23/92)

WAC 246-329-030 (~~Governing body and administration~~) **Governance.** The purpose of this section is to provide organizational guidance and oversight and to ensure resources and staff to support safe and adequate patient care.

(1) The birth center shall have a governing body.

(2) The governing body shall be responsible for (~~provision of~~) providing personnel, facilities, equipment, supplies, and special services (~~needed~~) to meet the needs of the clients.

(3) The governing body shall adopt policies for the care of clients within or on the premises of the birth center.

(4) The governing body shall appoint an administrator or director (~~who shall be~~) responsible for implementing the policies adopted by the governing body.

(5) The governing body shall establish and maintain a current written organizational plan which includes all positions and delineates responsibilities, authority, and relationship of positions within the birth center.

(6) The governing body shall have the authority and responsibility for appointments and reappointments of clinical staff, approval of written contracts and appointment of contractors, approval of clinical bylaws and to ensure that only members of the clinical staff (~~shall~~) admit clients to the birth center.

(a) Each birth center shall have (~~designated~~) access to physician (~~participation in~~) consultation and appropriate clinical services (~~and in the quality assurance program~~) as defined in WAC 246-329-095(2).

(b) (~~Each birth center shall have a written policy and program which shall stipulate the extent of physician participation in the services offered.~~

(~~e~~) Each physician and midwife, including contractors, appointed to the clinical staff shall provide evidence of current licensure in the state of Washington.

(~~c~~) Members of the clinical staff shall develop and adopt bylaws, (rules, and regulations) policies, and procedures subject to the approval of the governing body (~~which shall include~~) including requirements for clinical staff membership; delineation of clinical privileges and the organization of clinical staff.

(7) The governing body shall be responsible for assuring a quality (~~assurance audit on a regular basis to review cases, minimally to include ongoing compliance with rules in chapter 246-329-WAC~~) improvement program is implemented according to WAC 246-329-180.

(8) The governing body shall have responsibility for the legal and financial management of the birth center.

NEW SECTION

WAC 246-329-045 Applicant or licensee rights and responsibilities. This section describes the applicant or licensee's responsibilities in the fulfillment of the requirements of this chapter.

(1) An applicant or licensee must:

(a) Comply with chapter 18.46 RCW and this chapter;

(b) Establish, implement and periodically review all policies and procedures which address the contents of this chapter;

(c) Display the license issued by the department in an area accessible to the public;

(d) Notify the department in writing:

(i) Within thirty days of changes of an administrator, owner or the director of clinical services;

(ii) Thirty or more days before ceasing operations;

(e) Cooperate with the department during surveys which may include reviewing licensee and client records and conducting client interviews with client consent;

(f) Respond to a statement of deficiencies by submitting to the department:

(i) A written plan of correction, within ten working days of receipt. The applicant or licensee must complete all corrections within sixty days after the survey exit date, unless otherwise specified by the department; and

(ii) A progress report describing corrections made and ongoing monitoring actions, within ninety days after the survey exit date, unless the department specifies another date.

(2) An applicant or licensee may:

(a) Discuss findings observed during a survey with the surveyor; and

(b) Discuss the statement of deficiencies with the department's manager.

(3) As required by chapter 70.56 RCW, the licensed childbirth center shall notify the department if any of the following events have been confirmed to have occurred in the birth center:

(a) An infant abduction or discharge to the wrong family;

(b) Sexual assault or rape of a patient or staff member while in the birth center;

(c) Maternal death or serious disability with labor or delivery in a low-risk pregnancy while being cared for in a health care facility;

(d) Patient death or serious disability associated with:

(i) The use of contaminated drugs, devices, or biologics provided by the health care facility;

(ii) The use or function of a device in which the device is used or functions other than as intended;

(iii) Intravascular air embolism that occurs while being cared for in a health care facility;

(iv) A medication error (errors involving wrong drug, wrong dose, wrong patient, wrong time, wrong rate, wrong preparation or wrong route of administration);

(v) Hypoglycemia, the onset of which occurs while the patient is being cared for in a health care facility;

(vi) Failure to identify and treat hyperbilirubinemia in neonates;

(vii) An electric shock while being cared for in a health care facility; or

(viii) A burn incurred from any source while being cared for in a health care facility.

(e) Any incident in which a line designated for oxygen or other gas to be delivered to a patient contains the wrong gas or is contaminated by toxic substances;

(f) Patient suicide, or attempted suicide resulting in serious disability, that occurs while the patient is receiving care in a health care facility;

(g) Death or significant injury of a patient or staff member resulting from physical assault that occurs within or on the grounds of a health care facility;

(h) Any instance of care ordered by someone impersonating a physician, nurse, pharmacist or other licensed health care provider;

(i) Patient death associated with a fall while being cared for in a health care facility;

(j) Patient death or serious disability associated with the use of restraints or bedrails while being cared for in a health care facility; and

(k) Sexual assault on a patient within or on the grounds of a health care facility.

(4) The licensed childbirth center must also notify the department if either of the following events have been confirmed to have occurred in the birth center:

(a) An unanticipated death, stillbirth or major loss of function; or

(b) Any catastrophic incident, such as fire or flood, or any incident which may cause interruption or cessation of the delivery of services, or another interruption of services which would affect the health and safety of the client.

(5) The report required in subsection (3) and (4) of this section must be submitted in writing to the department as required by chapter 70.56 RCW. The birth center is encouraged to confirm these events through a review or assessment by the birth center's quality improvement or risk management process. Each notice to the department must include:

(a) The licensee's name;

(b) The name of the affected client, if applicable;

(c) The date the event occurred;

(d) A description of the event and a clinical summary if the event is client-related;

(e) Root cause analysis and corrective action plans as required by chapter 70.56 RCW.

(6) The report note in subsection (3) of this section:

(a) Will allow the department to be informed of events which in the interest of the public will be reviewed and reported as required by chapter 70.56 RCW;

(b) Will be confidentially maintained by the department in accordance with the protections of the Public Disclosure Act, chapter 42.17 RCW, and other applicable laws and reporting requirements; and

(c) Does not relieve a birth center from complying with other applicable reporting or notification requirements of this chapter or those requirements relating to law enforcement or professional regulatory agencies.

(7) An applicant or licensee has the right to respond to and contest a statement of charges according to the following provisions:

(a) RCW 43.70.115, department of health authority for license approval, denial, restriction, conditioning, modification, suspension and revocation;

(b) Chapter 34.05 RCW, the Administrative Procedure Act; and

(c) Chapter 246-10 WAC, Adjudicative proceedings.

NEW SECTION

WAC 246-329-055 Department responsibilities. This section describes the department's responsibilities in the fulfillment of the requirements of this chapter:

(1) The department may, in accordance with chapter 18.46 RCW:

(a) Issue an initial license for twelve months following submission of a completed application and appropriate fee, and following a survey that documents the applicant meets all the requirements of this chapter;

(b) Issue a renewal license for the twelve-month period following submission of a completed application and appropriate fee;

(c) Issue a license for change of ownership to the new license for the remainder of the current license period following submission of the required information and appropriate fee, under WAC 246-329-990.

(2) The department may:

(a) Conduct surveys and investigations every twenty-four months or as needed to determine compliance with chapter 18.46 RCW and this chapter. Surveys and investigations may be announced or unannounced;

(b) Investigate any person suspected of:

(i) Advertising, operating, managing, conducting, opening or maintaining a childbirth center without a license unless exempt from licensure under chapter 18.46 RCW; or

(ii) Survey a licensee at anytime if the department has reason to believe the licensee is providing unsafe, insufficient, inadequate or inappropriate care;

(c) Investigate allegations of noncompliance with RCW 43.43.830 through 43.43.845, when necessary, in consultation with law enforcement personnel;

(d) Require licensees to complete additional disclosure statements and background inquiries for an individual associated with the licensee or having direct contact with children under sixteen years of age, people with developmental disabilities, or vulnerable adults if the department has reason to believe that offenses specified under RCW 43.43.830 have occurred since completion of the previous disclosure statement and criminal background inquiry; and

(e) Issue a statement of deficiencies following a survey which identifies noncompliance with chapter 18.46 RCW and this chapter.

(3) The department may deny, suspend, or revoke a license if the applicant or licensee fails or refuses to comply with the requirements of chapter 18.46 RCW and/or these rules. The department's notice of denial, suspension, modification, or revocation of a license shall be consistent with RCW 43.70.115. An applicant or license holder has the right to an adjudicative proceeding to contest the decision.

(4) The department may prepare and serve upon the licensee or applicant at the earliest practical time a statement of charges following a survey which identifies noncompliance with chapter 18.46 RCW and this chapter. The statement of charges must include a notice that the licensee or applicant may request a hearing to contest the charges.

NEW SECTION

WAC 246-329-065 New construction—Major alterations. The purpose of this section is to provide minimum standards for a safe and efficient patient care environment consistent with other rules. The rules are intended to allow flexibility in achieving desired outcomes and enable birth centers to respond to changes in technologies and health care innovations.

(1) When a licensee or applicant is contemplating new construction or major alteration, the licensee or applicant shall:

(a) Under chapters 70.40 RCW and 246-329 WAC, submit an application and construction documents to the department's construction review services program for all new construction and major alterations, as defined in WAC 246-329-

010. In addition to the application and construction documents, the construction review services program may require documentation of approval from local zoning commissions, fire departments, and building departments, if applicable;

(b) Respond in writing when the department requests additional or corrected construction documents;

(c) Not begin construction until the construction documents are approved by the local jurisdictions and same local jurisdictions have issued any required permits;

(d) Complete construction consistent with the final "department approved" documents;

(e) Notify the department in writing when construction is completed; and

(f) Submit to the department a copy of the local jurisdictions' certificate of occupancy.

(2) A childbirth center applicant or licensee must, through its design, construction and necessary permits demonstrate compliance with the following codes and local jurisdiction standards:

(a) The state building code as adopted by the state building code council.

(b) *Accepted Procedure and Practice in Cross-contamination Control, Pacific Northwest Edition, 9th Edition, American Waterworks Association*; and

(c) If planning on caring for patients with mycobacterium tuberculosis, *Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Health Care Facilities, 1994. Morbidity and Mortality Weekly Report (MMWR), Volume 43, October 28, 1994.*

NEW SECTION

WAC 246-329-075 Criminal history, disclosure, and background inquiries. The purpose of this section is to ensure criminal history background inquiries are conducted for any employee or prospective employee who has or will have unsupervised access to children, vulnerable adults, and individuals with developmental disabilities.

(1) A childbirth center applicant or licensee must establish and implement policies and procedures regarding Washington state patrol criminal background inquiries and disclosure statements under RCW 43.43.830 through 43.43.845 for the administrator, owner, director of services and personnel, contractors, volunteers, students, and any other individual associated with the licensee having direct contact with children under sixteen years of age, individuals with developmental disabilities, or vulnerable adults.

(2) The department may require licensees to complete additional disclosure statements or background inquiries for a person associated with the licensed facility having direct contact with vulnerable adults if the department has reason to believe that offenses specified under RCW 43.43.830 have occurred since completion of the previous disclosure statement or background inquiry.

NEW SECTION

WAC 246-329-085 Client bill of rights. The purpose of this section is to help improve patient outcomes by respecting each client and conducting all relationships with clients and the public in an ethical manner.

The birth center at the time of registration, including clients of contractors, must provide each client with a written bill of rights, verified by client or representative signature, affirming each individual's rights to:

(1) A listing of the services provided by the birth center and a description of other levels of maternal/fetal services available in the community;

(2) Be informed of the policy and procedures for admission and discharge;

(3) Be informed of the definition of a low risk maternal client, the benefits and risks of out-of-hospital labor and birth and complete a written informed consent, prior to the onset of labor that shall include, but not be limited to, evidence of an explanation by personnel of the birth services offered and potential risks and emergency transfer and transport procedures;

(4) Be informed of what constitutes being ineligible for birth center services and the transfer policy and procedures of clients who, during the course of pregnancy or labor or recovery, are determined to be ineligible, including the birth center's plan for provisions of emergency and nonemergency care in the event of complications to mother and newborn;

(5) Be informed that unexpected neonatal emergencies requiring complex resuscitation are rare, but can occur. Be informed that the birth center staff is prepared to provide initial steps of newborn resuscitation (upper airway clearance with a bulb or mechanical suction) and provide bag-and-mask ventilation until emergency medical service providers arrive to provide complete resuscitation procedures if required;

(6) Participate in decisions relating to the plan for management of care and all changes in that plan once established including consultation, referral and transfer to other practitioners or other levels of care;

(7) Be informed of the policy and procedures for consultation, referral, transfer of care and transport of a newborn and maternal client to a hospital where appropriate care is available;

(8) Be informed of prenatal screening under chapter 70.54 RCW and chapter 246-680 WAC;

(9) Be informed of newborn screening requirements under chapter 70.83 RCW and chapter 246-650 WAC, including a provision of a copy of the parent information pamphlet "*Newborn Screening Tests and Your Baby*" which is available from the department's newborn screening program;

(10) Be informed that rapid HIV testing is available for all maternal clients without a documented history of HIV testing during prenatal care;

(11) Be informed of prophylactic treatment of the eyes of the newborn in accordance with WAC 246-100-206 (6)(b);

(12) Be informed that vitamin K administration for the newborn is available;

(13) Be informed that newborn hearing screening tests are offered in most hospitals;

(14) A description of the process for submitting and addressing complaints;

(15) Submit complaints without retaliation and to have the complaint addressed by the licensee;

(16) Be informed of the state complaint hotline number;

(17) Be treated with courtesy, dignity, respect, privacy, and freedom from abuse and discrimination;

(18) Refuse treatment or services;

(19) Privacy of personal information and confidentiality of health care records;

(20) Be cared for by properly trained personnel, contractors, students and volunteers and be informed of the qualifications of clinical staff, consultants and related services and institutions;

(21) Be informed of all diagnostic procedures and reports, recommendations and treatments;

(22) A fully itemized billing statement upon request, including the date of each service and the charge;

(23) Be informed about advanced directives and the licensee's responsibility to implement them;

(24) Be informed of the client's right with regards to participation in research or student education programs;

(25) Be informed of the liability insurance coverage of practitioners on request; and

(26) Be informed of child passenger restraint systems to be used when transporting children in motor vehicles, including information describing the risks of death or serious injury associated with the failure to use a child passenger restraint system.

NEW SECTION

WAC 246-329-095 Staffing. The purpose of the staffing section is to ensure the birth center provides competent staff consistent with the scope of services.

(1) The birth center shall have sufficient, qualified personnel and clinical staff to provide the services needed by clients and for safe maintenance and operation of the birth center.

(2) The birth center shall have written plans for consultation, referral, transfer of care, emergency transfer and transport of a newborn to a newborn nursery or neonatal intensive care nursery, and emergency transfer or transport of a maternal client to an appropriate obstetrical department, patient care area or hospital where appropriate care is available.

(3) The birth center shall:

(a) Employ, contract or use appropriately trained personnel and clinical staff; and

(b) Assure clinical staff or personnel have evidence of current training in neonatal and adult resuscitation.

(c) Assure a physician or midwife is present at each birth. A second person who is an employee, student or member of the clinical staff with evidence of current training in neonatal and adult resuscitation skills shall be immediately available in the birthing center during each birth.

(d) Ensure twenty-four hour coverage, including the provision that appropriate, qualified personnel and/or clinical staff shall be present in the birth center at all times when clients are present.

NEW SECTION

WAC 246-329-110 Personnel policy and procedures and records. The purpose of this section is to ensure the birth center provides direction and standards in the employment, contracting and recording of personnel procedures.

(1) A childbirth center applicant or licensee must establish and implement policy and procedures which include, but are not limited to:

(a) For those birth centers operated by an employer as defined by RCW 49.60.040(3), employment criteria consistent with chapter 49.60 RCW;

(b) Job descriptions for employees, contractor agreements, volunteer responsibility statements and agreements with students commensurate with responsibilities and consent with health care professional credentialing and scope of practice as defined in relevant practice acts and associated rules;

(c) Verification of clinical staff credentials;

(d) Orientation to current agency policies and procedures and verification of skills or training for all clinical staff;

(e) Current neonatal and adult cardiopulmonary resuscitation training consistent with agency policies and procedures and community standards for all clinical staff;

(f) Infection control practices for clinical staff including communicable disease testing, immunization, vaccination and universal precautions or equivalent method of preventing the transmission of infection according to current local health authorities and shall include the availability of equipment necessary to implement plans of care and infection control policies and procedures;

(i) Birth centers must establish and implement a TB screening program for personnel;

(ii) Birth centers must provide or offer to employees Hepatitis B vaccination according to WAC 296-62-08001; and

(iii) Birth centers must assure that all contractors have received or been offered Hepatitis B vaccination according to WAC 296-62-08001;

(g) Verification of appropriate education and training of all personnel, contractors, student and volunteers on the prevention, transmission, and treatment of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) consistent with RCW 70.24.310;

(h) Performance evaluations of all personnel, including evaluations of contractor and student agreements to be conducted per birth center's policy and procedure; and

(i) Washington state patrol criminal background inquiries and disclosure statements under RCW 43.43.830 through 43.43.845 for the administrator, owner, director of services and personnel, contractors, volunteers, students, and any other individual associated with the licensee who has direct contact with children under sixteen years of age, people with developmental disabilities or vulnerable adults.

(2) Each employee, contractor, student and volunteer shall have a current record maintained by the birth center which contains, but is not limited to, the following information:

(a) Documentation of the items stated above in subsection (1)(b) through (e) and (g) through (i) of this section.

(b) Evidence of communicable disease testing as required by local health authorities and per birth center policy and procedures and shall include, at a minimum, documented evidence of tuberculin (TB) screening as required in WAC 246-329-110 (1)(f) and documented evidence of Hepatitis B

vaccination being provided or offered according to WAC 296-62-08001.

NEW SECTION

WAC 246-329-120 Birth center policies and procedures. The purpose of this section is to ensure the birth center is able to provide safe and appropriate care to the clients of the birth center.

(1) An applicant or licensee must establish and implement policy and procedures which include, but are not limited to:

(a) Definition of a low-risk maternal client who is eligible for birth services offered by the birth center.

(b) Definition of a client who is ineligible for birth services at the birth center.

(c) Identification and transfer of clients who, during the course of pregnancy, are determined to be ineligible.

(d) Identification and transfer of clients who, during the course of labor or recovery, are determined to be ineligible for continued care in the birth center.

(e) Written plans for consultation, referral and transfer of care for maternal client and newborn. Written plans for emergency transfer and transport of a newborn to a newborn nursery or neonatal intensive care nursery, and emergency transfer and transport of a maternal client to an appropriate obstetrical department, patient care area, or hospital where appropriate care is available.

(f) Transfer and discharge of neonates to minimize risk of newborn abduction.

(g) Protocol for medications and laboratory testing during labor and recovery if the birth center plans to deliver HIV positive clients.

(h) Rapid HIV testing using the opt out approach for women who have undocumented HIV test results when presenting to the birth center in labor.

(i) Protocol for electronic fetal heart monitoring or intermittent auscultation to monitor fetal status during labor.

(j) Protocol for the provision of MMR vaccine to nonimmune postpartum women.

(k) Protocol for the provision of anti D immune globulin to postpartum women who are unsensitized D-Negative and who deliver a D positive or Du positive infant.

(2) The applicant or licensee shall assure that transfer of care shall be available twenty-four hours per day to an appropriate obstetrical department, patient care area, or hospital where appropriate care is available.

(3) Clients shall receive and sign written informed consent which shall be obtained prior to the onset of labor and shall include, but is not limited to:

(a) Evidence of an explanation by personnel of the birth services offered, limitation of services, and potential risks;

(b) Explanation of the definition of low-risk maternal client;

(c) Explanation of a client who is ineligible for childbirth center services;

(d) Explanation of the birth center policies and procedures for consultation, referral, transfer of care and emergency transfer and transport;

(e) Explanation of prophylactic treatment of the eyes of the newborn in accordance with WAC 246-100-206 (6)(b);

(f) Explanation of screening of newborns under chapter 70.83 RCW and chapter 246-650 WAC; and

(g) Explanation of why rapid HIV testing is available if documentation of an HIV test during prenatal care is not available;

(h) Explanation of the need for prophylactic administration of RhIG (immune globulin) within seventy-two hours of delivery for an Rh negative mother whose newborn(s) are Rh positive.

(4) The birth center shall provide or assure:

(a) Education of clients, family and support persons in childbirth and newborn care.

(b) Plans for immediate and long-term follow-up of clients after discharge from the birth center.

(c) Registration of birth and reporting of complications and anomalies, including sentinel birth defect reporting under chapter 70.58 RCW.

(d) Prophylactic treatment of the eyes of the newborn in accordance with WAC 246-100-206 (5)(b).

(e) Collection of a newborn screening blood specimen, or signed refusal, and submission to the department's newborn screening program under the requirements of WAC 246-650-020.

(f) Rapid HIV testing when documentation of an HIV test during prenatal care is not available, unless the client refuses to give consent and the refusal is documented.

(g) For HIV positive women, the antiretroviral medications during delivery and perform or arrange appropriate lab tests.

(h) Intrapartum intravenous antibiotics for Group B Strep positive women per the CDC protocol.

(i) For Hepatitis B positive women, HBIG and Hepatitis B immunization for the newborn.

(j) Infection control to housekeeping; cleaning, sterilization, sanitization, and storage of supplies and equipment, and health of personnel and clients.

(k) Actions to take when personnel, volunteers, contractors, or patients or clients exhibit or report symptoms of a communicable disease in an infectious stage in accordance with chapter 246-100 WAC, Communicable and certain other diseases and chapter 246-101 WAC, Notifiable conditions.

(l) Authorization and administration of medications, legend drugs and devices per appropriate health profession rules.

(m) Actions to address patient or client communication needs.

(n) Reporting of patient/client abuse and neglect according to chapter 74.34 RCW.

(o) Emergency care of client.

(p) Actions to be taken upon death of a client.

(q) Plans for service delivery when natural or man-made emergencies occur that prevent normal clinical operation.

(r) Waived laboratory tests, if applicable, including the procurement of a medical test site waiver under chapter 246-338 WAC.

NEW SECTION

WAC 246-329-130 Birth center equipment and supplies. The purpose of this section is to ensure the birth center provides safe and appropriate equipment and supplies necessary to the safe provision of care to the client of the birth center.

(1) The applicant or licensee shall assure the birth center has the adequate, appropriate size and type equipment and supplies maintained for the maternal client and the newborn to include:

(a) A bed suitable for labor, birth, and recovery;

(b) Separate oxygen with flow meters and masks or equivalent;

(c) Suction equipment for the maternal client and newborn to include suction apparatus, either operated from a wall outlet or portable equipment, and bulb suction as appropriate. These devices must be immediately available in the birth center;

(d) Resuscitation equipment to include adult and neonate resuscitation bags and term and preterm size face masks, and neonatal-sized oxygen bags for assisted ventilation. Newborn resuscitation equipment shall include method to deliver free flow oxygen;

(e) Firm surfaces suitable for resuscitation;

(f) Fetal monitoring equipment, minimally to include a fetoscope, doppler or electronic monitor;

(g) Equipment for monitoring and maintaining the optimum body temperature of the newborn. A heat source appropriate for use in warming newborns shall be available, and may include an incubator;

(h) A time keeping device;

(i) Sterile suturing equipment and supplies;

(j) Glucose meter appropriately calibrated to screen glucose level in newborn;

(k) Examination lighting device with a shatterproof bulb or protective shield;

(l) Containers for soiled linen and waste materials which shall be closed or covered.

(2) A telephone or equivalent communication device must be accessible in the client care area.

(3) The licensee must clean, sterilize, disinfect and store equipment according to manufacturer guidelines and department requirements, if applicable. Clean and soiled equipment and supplies must be stored in separate areas.

(4) The applicant licensee shall provide and maintain infection control equipment and supplies for clinical staff.

NEW SECTION

WAC 246-329-140 Client records. The purpose of this section is to assure the center obtains, manages, and uses information to improve patient outcomes and the performance of the birth center in patient care.

(1) The birth center shall have a defined client record system, policies and procedures which provide for identification, security, confidentiality, control, retrieval, and preservation of client care data and information.

(2) The childbirth center must maintain a health record for each maternal and newborn client in a legally acceptable, integrated and chronological document on the licensee's stan-

standardized forms consistent with chapter 70.02 RCW, Medical records—Health care information access and disclosure. Each record must include:

(a) Client's demographic information and client identification to include at a minimum client's name, birth date, age, and address;

(b) Client's informed consent for care, service, treatment and receipt of the client bill of rights;

(c) Signed and authenticated notes describing the newborn and maternal status during prenatal, labor, birth, and recovery including, but not limited to:

(i) Documentation that verifies the client's low-risk maternal client status; and

(ii) Labor summary;

(iii) Newborn status including Apgar scores, maternal newborn interaction; and

(iv) Physical assessment of the mother and newborn during recovery;

(d) Documentation that a newborn screening specimen was collected (or signed refusal on the back of the specimen form) and submitted to the department's newborn screening program under WAC 246-650-020;

(e) Documentation and authentication of orders by clinical staff and birth center personnel who administer drugs and treatments or make observations and assessments;

(f) Laboratory and diagnostic testing results;

(g) Consultation reports;

(h) Referral, transfer of care, emergency transfer and transport documentation;

(i) Prophylactic treatment of the eyes of the newborn in accordance with WAC 246-100-206 (6)(b);

(j) Prenatal screening under chapters 70.54 RCW and 246-680 WAC, including client's refusal;

(k) Documentation of refusal of rapid HIV testing if documentation of an HIV test during prenatal care is not available;

(l) For HIV positive women, the antiretroviral medications during delivery and recommended lab tests;

(m) Intrapartum antibiotics for Group B Strep positive women per the CDC protocol;

(n) For Hepatitis B positive women, HBIG and Hepatitis B immunization for newborn;

(o) Refusal of any recommended test or treatment;

(p) Documentation of birth registration per chapter 70.58 RCW.

(3) For clients managed by a contractor in a birth center, the licensee shall ensure that each client record is maintained by the birth center and must contain the information as stated in subsection (2)(a) through (p) of this section. Services provided by the contractor, prior to the client's admission to the birth center, shall be summarized or placed in the record in their entirety.

(4) Entries in the client record shall be typewritten, retrievable by electronic means or written legibly in ink.

(5) Documentation and record keeping shall include:

(a) Completion of a birth certificate and, if applicable, a sentinel birth defect report under chapters 70.58 RCW and 246-491 WAC.

(b) Documentation of orders for medical treatment and/or medication. Each order shall be specific to the client

and shall be authenticated, at the time the order is received, by an appropriate health care professional authorized to approve the order or medication.

(6) The licensee shall:

(a) Assure client records are kept confidential;

(b) Fasten client records together;

(c) Consider client records property of the birth center; and

(d) Provide a client access to their client record under the licensee's policy and procedure and applicable rules.

(7) When a client is transferred or discharged to another provider or facility, the birth center must provide a summary of care to the provider or facility to whom the client is transferred or discharged.

(8) The licensee shall maintain records for:

(a) Adults - three years following the date of termination of services; and

(b) Minors - three years after attaining age eighteen, or five years following discharge, whichever is longer.

(9) The licensee shall:

(a) Store records to prevent loss of information and to maintain the integrity of the record and protect against unauthorized use;

(b) Maintain or release records after a patient's or client's death according to chapter 70.02 RCW, Medical records—Health care information access and disclosure; and

(c) After ceasing operation, retain or dispose of records in a confidential manner according to the time frames in this subsection.

NEW SECTION

WAC 246-329-150 Pharmaceuticals. The purpose of this section is to assure that client pharmaceutical needs are met in a planned and organized manner.

(1) The licensee shall maintain written prescriptions or orders signed by a practitioner legally authorized to prescribe for all drugs administered to clients within the birth center.

(2) The licensee shall have written policies and procedures addressing the receiving, transcribing, and implementing of orders for administration of drugs.

(3) The licensee shall establish and implement written policies to address the type and intended use of any drug or device to be used by patients within the facility.

(4) The licensee shall assure that only local anesthetics are used.

(5) The licensee shall ensure:

(a) Drugs are only administered by personnel or clinical staff licensed to administer drugs;

(b) Drugs kept anywhere in the center are clearly labeled with drug name, strength, and expiration date;

(c) Expired drugs are removed from the storage units and destroyed properly;

(d) Drugs are stored and secured in specifically designated cabinets, closets, drawers, or storerooms and made accessible only to authorized persons;

(e) Drugs for external use must be stored apart from drugs for internal use;

(f) Poisonous or caustic medications and materials including housekeeping and personal grooming supplies

must show proper warning or poison labels and must be stored safely and separately from other medications and food supplies;

(g) Drugs requiring refrigeration must be kept in a separate refrigeration unit according to manufacturer's directions;

(h) Schedule II-IV controlled substances are:

(i) Kept in a separate locked storage unit; and

(ii) If heat sensitive, kept in a locked refrigeration unit;

(i) Schedule II-IV controlled substances no longer needed by the patient must be disposed of in compliance with chapter 246-865 WAC.

(6) If emergency drugs and intravenous fluids are maintained in the facility, these are considered an extension of the drug supply owned by the legally authorized prescribing practitioner; these drugs remain the responsibility of the legally authorized prescribing practitioner.

NEW SECTION

WAC 246-329-160 Birth center—Physical environment. The purpose of this section is to reduce and control environmental hazards and risks, prevent accidents and injuries, and maintain safe conditions and equipment for clients, visitors, and staff.

(1) The licensee shall provide and maintain a safe and clean environment. The licensee shall maintain the facility consistent with this chapter. Birthing centers built before the adoption of this chapter shall be maintained to the standards that were in place at the time the facility was licensed. If the licensee modifies or alters the facility, the altered areas must meet and be maintained consistent with this chapter and in accordance with the approved plans.

(2) The licensee shall provide at least one birthing room that is a minimum of three hundred square feet and has a minimum dimension of fifteen feet. The room shall be adequate and appropriate to provide for the equipment, staff, supplies, and emergency procedures required for the physical and emotional care of a maternal client, her support person or persons, and the newborn during birth, labor, and the recovery period.

(a) Additional birthing rooms shall have a gross floor space of one hundred fifty-six square feet or fourteen and one-half square meters and a minimum room dimension of eleven feet.

(b) The licensee shall locate birthing rooms to provide unimpeded, rapid access to an exit of the building which will accommodate emergency transportation vehicles.

(3) The licensee shall provide at least five square feet of fixed or portable work surface areas for use in the birthing room or rooms.

(4) The licensee shall provide and maintain toilet and bathing facilities.

(a) Toilet and lavatory shall be located in the vicinity of the birthing room or rooms.

(b) A bathing facility must be available for client use.

(c) The licensee shall keep clean and in good repair all floor surfaces, wall surfaces, water closets, lavatories, tubs, and showers.

(5) The licensee shall provide a space suitable for hanging full length garments and secure storage of clients' personal belongings and valuables.

(6) The licensee shall provide visual privacy for each maternal client and her support person or persons.

(7) The licensee shall assure hallways and doors providing access and entry into the birth center and birthing room or rooms are adequate width and conformation to accommodate maneuvering of ambulance stretchers and wheelchairs.

(8) Water supply. The licensee shall assure an adequate supply of hot and cold running water under pressure consistent with chapter 246-290 WAC, regarding public water supplies. The licensee shall provide and maintain equipment required to deliver hot water at point of use as follows:

(a) 120°F or less for handwash sinks and bathing fixtures;

(b) 160°F or more for laundry washers;

(c) 120°F or more for laundry washers using chemical sanitation;

(d) 120°F or more for mechanical dishwashers using chemical sanitation;

(e) 140°F or more for mechanical dishwashers using high temperature sanitation; and

(f) 180°F or more for sanitation cycle in high temperature mechanical dishwashers.

(9) The licensee shall provide heating and ventilation that:

(a) Provides a safe and adequate source of heat capable of maintaining a room temperature of at least 72°F.

(b) Provides ventilation sufficient to remove odors, excessive heat, and condensation.

(10) The licensee shall provide and maintain lighting and power and shall provide and maintain:

(a) Emergency lighting;

(b) General lighting and adequate examination lighting devices with shatterproof bulbs or protective shields, in the birthing room;

(c) Tamperproof electrical receptacles in birthing rooms, toilets, bathing facilities and family rooms and waiting areas; and

(d) Ground fault circuit interrupter (GFCI) receptacle when located within five feet of water source and above counters that contain sinks.

(11) The licensee shall assure linen and laundry service, and shall provide:

(a) Soiled linen/laundry storage and sorting areas physically separated from clean linen storage and handling areas, kitchen and eating facilities;

(b) Laundry services and shall include a commercial laundry service or the following equipment:

(i) Washing machine(s) providing hot water at a temperature of 160°F or 120°F for laundry washers using chemical sanitation;

(ii) Floor drains as required for equipment;

(iii) Dryer(s);

(iv) Dryer exhaust to the exterior; and

(v) A handwash sink.

(12) The licensee shall provide utility, housekeeping, garbage, and waste services and:

(a) Provide and maintain utility and storage facilities designed and equipped for washing, disinfecting, storing, and other handling of equipment and medical supplies in a manner which ensures physical segregation of clean and sterile supplies and equipment from those that are soiled and/or contaminated; and

(b) Assure all sewage, garbage, refuse, biomedical waste, human tissue, needles and sharps and liquid waste are collected and disposed of in a manner to prevent the creation of an unsafe or unsanitary condition.

(13) Medical gases. If oxygen is stored or used on the premises, the licensee shall, in addition to meeting other codes and regulations:

(a) Assure electrical equipment used in oxygen-enriched environments is designed for use with oxygen and is labeled for use with oxygen; and

(b) Post "no smoking" signs where oxygen is being administered.

(14) Food storage and/or preparation. The licensee shall not provide food preparation and service except when the birth center policy allows the preparation or storage of personal food brought in by the client or families of clients for consumption by that family. In this case, the licensee shall provide an electric or gas refrigerator capable of maintaining a temperature of 45°F or lower and if furnishing reusable utensils and dishes for client use, provide dishwashing facilities assuring hot water at a temperature of not less than 140°F or 120°F or more for mechanical dishwashers using chemical sanitation.

(15) The applicant may, as an alternate method for the design of new construction, use the 2006 edition of the *Guidelines for Design and Construction of Health Care Facilities* for the physical environment standards.

NEW SECTION

WAC 246-329-170 Emergency preparedness. The purpose of this section is to establish and implement a disaster plan designed to meet both internal and external disasters.

Each applicant or licensee shall:

(1) Develop and implement written policies and procedures governing emergency preparedness and fire protection;

(2) Develop an acceptable written plan, periodically rehearsed with personnel, contractors, and volunteers, to be followed in the event of an internal or external emergency, and for the care of casualties of the patient and family, personnel, contractors and volunteers arising from such emergencies; and

(3) Develop a fire protection plan to include:

(a) Instruction for all personnel, contractors or volunteers in use of alarms, fire fighting equipment, methods of fire containment, evacuation routes and procedures for calling the fire department and the assignment of specific tasks to all personnel, contractors and volunteers in response to an alarm; and

(b) Semiannual evacuation and fire drills for each shift of personnel.

NEW SECTION

WAC 246-329-180 Quality improvement. The purpose of this section is to ensure that performance improvement activities of clinical staff result in continuous improvement of client health outcomes.

Each childbirth center licensee must maintain a quality improvement program to assure the quality of care and services provided that includes, at a minimum:

(1) A complaint process that includes a procedure for the receipt, investigation, and disposition of complaints regarding services;

(2) A method to identify, monitor and evaluate:

(a) Services; and

(b) Referral, transfer, consultation, and transport experience and plans; and

(c) Complications of pregnancy, labor and postpartum; and

(d) Other aspects of services which affect quality care.

(3) A method to identify, evaluate, monitor and correct problems identified by clients, families, clinical staff, volunteers, students or consultants.

(4) A method to identify, evaluate, monitor and correct problems associated with events reported to the department in WAC 246-329-045 (3)(a) through (l) and (4)(a) and (b) as required by chapter 70.56 RCW.

(5) A method to monitor, evaluate and modify as needed corrective actions taken.

(6) A system to assess client satisfaction.

AMENDATORY SECTION (Amending WSR 06-21-108, filed 10/17/06, effective 11/17/06)

WAC 246-329-990 Fees. The purpose of the fees section is to describe the fees associated with licensing, renewal and other charges assessed by the department.

(1) Childbirth centers licensed under chapter 18.46 RCW shall submit an annual fee of five hundred ninety-nine dollars and ninety cents to the department unless a center is a charitable, nonprofit, or government-operated institution under RCW 18.46.030.

(2) A change of ownership fee of one hundred fifty dollars. A new license will be issued and valid for the remainder of the current license period.

(3) The department may charge and collect from a licensee a fee of seven hundred fifty dollars for:

(a) A second on-site visit resulting from failure of the licensee to adequately respond to a statement of deficiencies;

(b) A complete on-site survey resulting from a substantiated complaint; or

(c) A follow-up compliance survey.

(4) A licensee shall submit an additional late fee in the amount of twenty-five dollars per day, not to exceed five hundred dollars, from the renewal date (which is thirty days before the current license expiration date) until the date of mailing the fee, as evidenced by the postmark.

(5) Refunds. The department shall refund fees paid by the applicant for initial licensure as follows:

(a) If an application has been received but no on-site survey or technical assistance has been performed by the depart-

ment, two-thirds of the fees paid, less a fifty dollar processing fee((-); or

(b) If an application has been received and an on-site survey or technical assistance has been performed by the department, one-third of the fees paid, less a fifty dollar processing fee.

(c) ~~((No fees paid by the applicant will be refunded if any of the following applies:))~~ The department may not refund applicant fees if:

(i) The department has performed more than one on-site visit for any purpose ~~((has been performed by the department))~~;

(ii) One year has elapsed since an initial licensure application is received by the department, but no license is issued because applicant failed to complete requirements for licensure; or

(iii) The amount to be refunded as calculated by (a) or (b) of this subsection is ten dollars or less.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-329-035 Criminal history, disclosure, and background inquiries.
- WAC 246-329-040 Personnel, clinical staff, and volunteers who work directly with clients.
- WAC 246-329-050 HIV/AIDS education and training.
- WAC 246-329-060 Birth center policies and procedures.
- WAC 246-329-070 Birth center equipment and supplies.
- WAC 246-329-080 Records.
- WAC 246-329-090 Pharmaceuticals.
- WAC 246-329-100 Birth center—Physical environment.

**WSR 07-07-082
PERMANENT RULES
CRIMINAL JUSTICE
TRAINING COMMISSION**

[Filed March 16, 2007, 9:37 a.m., effective April 16, 2007]

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

Purpose: The proposal reflects the actual practices of the commission in the issuance of career level certification to law enforcement and corrections personnel, and removes the requirement for executive level certification. The requirements for executive level certification were the result of a rule by the commission for which no funding was obtained. Commission staff reduced the requirement for seventy-two hours of electives to forty hours. Lastly, a change in lan-

guage requiring twelve months of service in the position before receiving certification was added to both first level and middle management requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 139-25-110.

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 06-23-074 on November 13, 2006.

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

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

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

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

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

Date Adopted: March 15, 2007.

Cheryl A. Price
Accreditation/Performance
Analysis Manager

AMENDATORY SECTION (Amending WSR 00-17-017, filed 8/4/00, effective 9/4/00)

WAC 139-25-110 Career-level certification for law enforcement and corrections personnel. (1) For purposes herein:

(a) The term "first-level supervisory position" means a position above operational level for which commensurate pay is authorized and is occupied by an individual who, in the upward chain of command, principally is responsible for the direct supervision of nonsupervisory employees of an agency or is subject to assignment of such responsibilities;

(b) The term "middle-management position" means a position between a first-level supervisory position and an executive position and for which commensurate pay is authorized and is occupied by an individual who, in the upward chain of command, principally is responsible for the direct supervision of supervisory employees of an agency and/or command duties((-);

~~(c) The term "executive position" means the head of an agency or those individuals occupying positions designated as executive positions by the agency head).~~

(2) Any law enforcement officer or corrections employee successfully completing the training requirements specified hereinafter shall be eligible to apply to the Washington state criminal justice training commission for issuance of the certification for which such requirements are prescribed. Such certification is intended to acknowledge the recipient's accomplishment of training and experience responsive to the specific functions and responsibilities of a first-level supervisory((-); or middle management((-); or exee-

utive)) position. It is not intended to supplant an effective promotional or selection process or preclude consideration of a broad scope of qualifying factors within such process.

(3) The minimum requirements of supervisory certification are set forth as follows:

(a) Possession of a basic law enforcement or corrections certificate or basic equivalency certificate of the training commission or basic certificate of the Washington state patrol; and

~~(b) ((At least three years of regular and full-time law enforcement or corrections service in a patrol, line, or non-supervisory position; and~~

~~(c)) Satisfactory completion of ((a probationary period made applicable by the employing agency to a first-level supervisory position or, in the absence of such period, satisfactory performance throughout the initial six months of service in such position; and~~

~~(d)) twelve months of service as a first-level supervisor; and~~

~~(c) Successful completion of the first level ((or first and second-level)) supervision course ((of the)) provided by the training commission; and~~

~~((e)) (d) Successful completion of at least ((72)) 40 additional elective training hours intended or approved for the first-level supervisory position.~~

(4) The minimum requirements for middle management certification are set forth as follows:

(a) ~~((At least two years of full-time and regular service in a first-level supervisory position; and~~

~~(b)) Satisfactory completion of ((a probationary period made applicable by the employing agency to a middle management position or, in the absence of such period, satisfactory performance throughout the initial six months of service within such position; and~~

~~(c)) twelve months of service as a middle manager; and~~
 (b) Possession of the supervisory certificate of the training commission; and

~~((d)) (c) Successful completion of a middle management course ((of the)) provided by the training commission; and~~

~~((e)) (d) Successful completion of at least ((72)) 40 additional elective training hours intended or approved for the middle management position.~~

(5) ~~((The minimum requirements for executive certification are set forth as follows:~~

~~(a) At least two years of full-time and regular service in a middle management position; and~~

~~(b) Possession of the middle management certificate of the training commission; and~~

~~(c) Successful completion of the agency administration and executive management core courses of the training commission; and~~

~~(d) Successful completion of at least 72 additional elective training hours intended or approved for the executive position.~~

~~(6) Any application for certification provided herein shall be submitted in writing on an approved form to the executive director of the training commission or designee.~~

~~(7)) Education and training programs successfully completed by the applicant and not sponsored or otherwise approved by the training commission may be considered in~~

any determination of satisfaction of training requirements prescribed herein. Any such elective training must have been completed within four years of the date that application is made for certification. Such determinations and any other determinations relating to equivalent or alternative training shall be made by the executive director of the training commission or designee.

~~((8)) (6) Any requests for exception to or variance within any provision or requirements set forth herein may be submitted in writing by the individual seeking certification to the executive director or designee, who shall have dispositive authority in the matter.~~

WSR 07-07-103

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed March 19, 2007, 2:41 p.m., effective April 19, 2007]

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

Purpose: The department is amending WAC 388-436-0015 Consolidated emergency assistance program and 388-436-0030 Eligibility for CEAP depends on other possible cash benefits, in order to allow a one-time emergency benefit to families who have had their cash grant terminated under the noncompliance sanction policy. The emergency cash benefit would assist families with meeting their needs such as shelter, food and utilities. The department is repealing WAC 388-436-0025 Eligibility conditions for CEAP—Job refusal, because the policy has not produced the desired outcomes for the temporary assistance for needy families (TANF) program on a consistent basis.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-436-0025; and amending WAC 388-436-0015 and 388-436-0030.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

Adopted under notice filed as WSR 07-04-092 on February 6, 2007.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 1.

Date Adopted: March 19, 2007.

Jim Schnellman, Chief
Office of Administrative Resources

AMENDATORY SECTION (Amending WSR 04-05-013, filed 2/6/04, effective 3/8/04)

WAC 388-436-0015 Consolidated emergency assistance program (CEAP). (1) CEAP is available to the following persons:

(a) A pregnant woman in any stage of pregnancy; or
(b) Families with dependent children, including, within available funds, families who have stopped receiving their TANF grant within the last six months under WAC 388-310-1600.

(2) Applicants must be residents of Washington state as defined in WAC 388-468-0005.

(3) Applicants must demonstrate a financial need for emergency funds for one or more of the following basic requirements:

(a) Food;
(b) Shelter;
(c) Clothing;
(d) Minor medical care;
(e) Utilities;
(f) Household maintenance supplies;
(g) Necessary clothing or transportation costs to accept or retain a job; or

(h) Transportation for a minor, not in foster care, to a home where care will be provided by family members or approved caretakers.

(4) Payment under this program is limited to not more than thirty consecutive days within a period of twelve consecutive months.

AMENDATORY SECTION (Amending WSR 99-24-130, filed 12/1/99, effective 1/1/00)

WAC 388-436-0030 Eligibility for CEAP depends on other possible cash benefits. (1) Before the department approves CEAP benefits, we must determine that all household members are ineligible for benefits from any of the following programs:

(a) Temporary assistance for needy families (TANF) or state family assistance (SFA), unless the family has had its cash grant terminated under WAC 388-310-1600 within the last six months;

(b) ~~((State family assistance (SFA);~~
~~(e))~~ Refugee cash assistance (RCA);
~~((e))~~ (c) Diversion cash assistance (DCA).

(2) To receive CEAP, the applicant must take any required action to receive benefits from the following programs:

(a) TANF(~~(-)~~) or SFA, (and RCA) unless the family has had its case grant terminated under WAC 388-310-1600 within the last six months;

(b) RCA
(c) Supplemental security income (SSI);

~~((e))~~ (d) Medical assistance for those applicants requesting help for a medical need;

~~((e))~~ (e) Food assistance for those applicants requesting help for a food need;

~~((e))~~ (f) Housing assistance from any available source for those applicants requesting help for a housing need;

~~((e))~~ (g) Unemployment compensation, veteran's benefits, industrial insurance benefits, Social Security benefits, pension benefits, or any other source of financial benefits the applicant is potentially eligible to receive.

(3) The department may not authorize CEAP benefits to any household containing a member who is ~~((under a grant penalty))~~ receiving reduced cash benefits for failure to comply with program requirements of TANF/SFA(~~(-)~~) or RCA(~~(-)~~ or WorkFirst under chapter 388-310 WAC). This restriction does not apply to families who have stopped receiving TANF cash benefits under WAC 388-310-1600 within the last six months.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-436-0025 Eligibility conditions for CEAP—Job refusal.

WSR 07-07-121

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed March 20, 2007, 3:16 p.m., effective April 20, 2007]

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

Purpose: To address explicit acts of misconduct that pertain to the professional practice of engineers and/or land surveyors.

Citation of Existing Rules Affected by this Order: Amending chapter 196-27A WAC.

Statutory Authority for Adoption: RCW 18.43.035.

Adopted under notice filed as WSR 07-03-019 on January 5, 2007.

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

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

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

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

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

Date Adopted: March 20, 2007.

George A. Twiss
Executive Director

AMENDATORY SECTION (Amending WSR 02-23-027 [06-11-120], filed 11/12/02 [5/19/06])

WAC 196-27A-030 Explicit acts of misconduct. In addition to any failure to conform with the requirements of chapter 18.43 or 18.235 RCW, or this chapter, the following acts and any act or condition listed in RCW 18.235.130, are explicitly defined as misconduct in the practice of engineering and/or land surveying.

(1) Aiding or abetting the unsupervised practice of engineering or land surveying in the state by a person or firm that is not registered in accordance with chapter 18.43 RCW, or, aiding or abetting an unlicensed person to practice or operate a business or profession when a license is required.

(2) The practice of engineering or land surveying by a registrant when the registrant's license is retired (~~(((see WAC 196-25-100(6))))~~), expired, suspended or revoked.

(3) Failing to comply with the terms and conditions of an order issued by the board.

(4) Failing to provide relevant information on plans and surveys in a clear manner consistent with prudent practice.

(5) Failing to comply with the provisions of the Survey Recording Act, chapter 58.09 RCW and the survey standards, chapter 332-130 WAC.

(6) Failing to respond to inquiries from clients, or other professionals regarding conflicts with the registrant's work, opinions or procedures, in a manner that would be expected from a prudent practitioner.

(7) Failing to correct engineering or land surveying documents or drawings known to contain substantive errors.

(8) Failing to notify a client or employer that a project could not, or would not, be completed once that assessment is made.

(9) Modifying another licensee's work without notifying that licensee, and clearly delineating the modifications and sealing and signing the modifications made; EXCEPT where the plans, maps, or documents are modified by the owner to reflect changes over time for their own purposes and are not used for submittals or bid documents.

(10) Offering or accepting money, goods or other favors as inducement to receive favorable consideration for a professional assignment, or as an inducement to approve, authorize or influence the granting of a professional assignment.

(11) Soliciting or accepting gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with clients or employers in connection with work for which the registrant is responsible.

(12) Using privileged information coming to registrants in the course of their assignments as a means of making personal profit beyond their professional compensation.

(13) Requesting, proposing, or accepting professional commissions on a contingent basis under circumstances in which the registrant's integrity may be compromised.

(14) (~~Willfully attempting to interfere with a board investigation by falsifying records, making false statements and intimidating or influencing witnesses.~~) Any act, statement or behavior that harasses, intimidates or retaliates against anyone who has provided information, assistance or testimony in connection with any Board inquiry, investigation, hearing or other proceeding.

(15) Willfully attempting to suborn another person to violate the law or administrative code, public policy or their code of professional ethics.

(16) Willfully making false statements or submitting fraudulent documents when reporting the completion of continuing professional development requirements.

(17) Disorderly, discriminatory or abusive behavior or statements which are significantly disruptive to the normal activities of a place of business or public view, where such behavior would give anyone witnessing the act a reasonable belief to be concerned for their safety or well-being.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

WSR 07-07-129
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed March 21, 2007, 11:47 a.m., effective July 1, 2007]

I understand from discussions with my staff that the formatting of the rules text filed with the CR-103 the Department of Labor and Industries filed on March 12, 2007, as WSR 07-07-032 did not comply with the requirements of WAC 1-21-110(1). Enclosed for resubmission is an adoption order with the text of the rules formatted properly.

Sincerely,

Judy Schurke
Director

Effective Date of Rule: July 1, 2007.

Purpose: Chapter 296-17 WAC, General reporting rules, audit and recordkeeping, rates and rating system for Washington workers' compensation insurance. This rule-making order will adopt a reduction in the medical aid premium base rates for work done during the six months beginning July 1, 2007, which will ultimately reduce the medical aid contingency reserve. During this time period, medical aid premiums will not be assessed for employers and workers and therefore it is anticipated that this will reduce the balance of the medical aid fund by \$315 million.

Citation of Existing Rules Affected by this Order: Amending 2, WAC 296-17-895 and 296-17-89502; and new rule adopted WAC 296-17-89504 Horse racing industry industrial insurance, medical aid, and supplemental pension by class.

Statutory Authority for Adoption: RCW 51.06.035, 51.08.010, 51.04.020.

Adopted under notice filed as WSR 07-02-014 [07-03-014] on January 4, 2007.

Changes Other than Editing from Proposed to Adopted Version: Two paragraphs are added to the two amended sections that explain the process by which the medical aid reduction will occur. The retrospective rating plans standard premium size ranges (WAC 296-17-90492 Table I) were not amended.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 2, Repealed 0.

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

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

Date Adopted: March 21, 2007.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 06-24-054, filed 12/1/06, effective 1/1/07)

WAC 296-17-895 Industrial insurance accident fund base rates and medical aid base rates by class of industry. Industrial insurance accident fund and medical aid fund base rates by class of industry shall be as set forth below.

Base Rates Effective
January 1, 2007

Class	Accident Fund	Medical Aid Fund
0101	1.5102	0.7102
0103	1.9285	0.9063
0104	1.0954	0.5189
0105	1.4873	0.8554
0107	1.4779	0.6467
0108	1.0954	0.5189
0112	0.8855	0.4502
0201	2.9771	1.1228
0202	3.5865	1.7260
0210	1.4481	0.5946
0212	1.5741	0.6908
0214	1.5723	0.6391
0217	1.2903	0.6064
0219	1.0310	0.5979
0301	0.6338	0.4127
0302	2.4031	0.8991
0303	2.2735	0.8789
0306	1.2097	0.5013
0307	1.0909	0.5375
0308	0.5462	0.3967
0403	1.8151	1.0914

Class	Accident Fund	Medical Aid Fund
0502	1.8533	0.7421
0504	1.6756	0.8618
0507	3.1395	1.7331
0508	2.4004	0.8899
0509	1.9140	0.7798
0510	1.6923	0.9163
0511	1.9177	0.8731
0512	1.8329	0.7927
0513	0.9923	0.4630
0514	2.1735	1.0436
0516	1.8907	0.8933
0517	1.9313	1.0352
0518	1.9005	0.8052
0519	2.6218	1.1503
0521	0.6073	0.3376
0601	0.7416	0.3729
0602	0.9248	0.4189
0603	1.2551	0.4830
0604	1.0086	0.6823
0606	0.5608	0.3679
0607	0.5428	0.3239
0608	0.4330	0.2432
0701	2.7040	0.7317
0803	0.4986	0.3150
0901	1.9005	0.8052
1002	1.0349	0.6322
1003	0.8552	0.5082
1004	0.5814	0.3011
1005	9.6730	4.4009
1007	0.4244	0.2189
1101	0.7541	0.4688
1102	1.5286	0.7283
1103	1.3045	0.7863
1104	0.5311	0.4052
1105	1.0005	0.5747
1106	0.3267	0.2807
1108	0.6894	0.4434
1109	1.5396	0.9942
1301	0.7669	0.3602
1303	0.2400	0.1527
1304	0.0296	0.0192
1305	0.4356	0.2806
1401	0.4876	0.3476
1404	0.7669	0.5189
1405	0.6008	0.3976
1407	0.6165	0.4427

Class	Accident Fund	Medical Aid Fund	Class	Accident Fund	Medical Aid Fund
1501	0.6346	0.3723	3410	0.2803	0.2240
1507	0.5820	0.3399	3411	0.5284	0.3058
1701	1.0239	0.5509	3412	0.6816	0.3328
1702	2.5949	0.9691	3414	0.6261	0.3601
1703	1.1204	0.3557	3415	0.8773	0.5152
1704	1.0239	0.5509	3501	1.1294	0.7094
1801	0.5826	0.3513	3503	0.2759	0.2748
1802	0.8068	0.4272	3506	1.3792	0.5391
2002	0.7386	0.5182	3509	0.3980	0.3263
2004	1.0135	0.6728	3510	0.3848	0.2760
2007	0.4854	0.3184	3511	0.7602	0.5032
2008	0.3401	0.2179	3512	0.3360	0.2880
2009	0.3930	0.3170	3513	0.4523	0.3564
2101	0.7007	0.4712	3602	0.1286	0.0963
2102	0.5642	0.4120	3603	0.4908	0.3451
2104	0.3307	0.2965	3604	0.8076	0.6067
2105	0.6213	0.4048	3605	0.5803	0.3382
2106	0.4365	0.3199	3701	0.2872	0.1983
2201	0.2530	0.1745	3702	0.4833	0.3360
2202	0.7733	0.4742	3708	0.7128	0.4106
2203	0.4765	0.3581	3802	0.1954	0.1415
2204	0.2530	0.1745	3808	0.4773	0.2627
2401	0.5360	0.3290	3901	0.1540	0.1481
2903	0.6629	0.4833	3902	0.5034	0.3777
2904	0.7700	0.5325	3903	1.0439	0.8858
2905	0.5443	0.4428	3905	0.1447	0.1398
2906	0.3483	0.2395	3906	0.4803	0.3556
2907	0.5409	0.3986	3909	0.2474	0.2162
2908	1.1619	0.6262	4002	1.6280	0.7618
2909	0.3916	0.2927	4101	0.3183	0.2031
3101	1.0863	0.5612	4103	0.4048	0.3771
3102	0.2872	0.1983	4107	0.1686	0.1219
3103	0.6003	0.3802	4108	0.1487	0.1119
3104	0.6744	0.3701	4109	0.2210	0.1513
3105	0.7886	0.5375	4201	0.8230	0.3679
3303	0.4653	0.3088	4301	0.6687	0.5001
3304	0.4574	0.3817	4302	0.6992	0.4650
3309	0.4556	0.3036	4304	1.0132	0.7360
3402	0.5828	0.3664	4305	1.4391	0.6544
3403	0.2137	0.1418	4401	0.4070	0.2945
3404	0.5027	0.3517	4402	0.8309	0.6355
3405	0.3434	0.2232	4404	0.5665	0.4215
3406	0.1960	0.1695	4501	0.1849	0.1590
3407	0.7729	0.4525	4502	0.0399	0.0354
3408	0.1880	0.1246	4504	0.1011	0.1050
3409	0.1663	0.1403	4601	0.7733	0.5186

Class	Accident Fund	Medical Aid Fund	Class	Accident Fund	Medical Aid Fund
4802	0.2979	0.2248	6103	0.0753	0.0755
4803	0.2438	0.2354	6104	0.3560	0.2884
4804	0.5360	0.3861	6105	0.3714	0.2395
4805	0.2812	0.2436	6107	0.1224	0.1320
4806	0.0566	0.0450	6108	0.4166	0.3694
4808	0.4945	0.3441	6109	0.0980	0.0688
4809	0.3766	0.3045	6110	0.6353	0.4328
4810	0.1332	0.1225	6120	0.2971	0.1916
4811	0.2506	0.2279	6121	0.3714	0.2395
4812	0.3967	0.3054	6201	0.3576	0.2052
4813	0.1493	0.1295	6202	0.6582	0.4908
4900	0.3884	0.1773	6203	0.0825	0.1050
4901	0.0867	0.0511	6204	0.1219	0.1102
4902	0.1098	0.0738	6205	0.2469	0.1932
4903	0.1675	0.1054	6206	0.2350	0.1773
4904	0.0304	0.0237	6207	0.9090	0.9446
4905	0.3208	0.2955	6208	0.2207	0.2133
4906	0.0986	0.0692	6209	0.3010	0.2576
4907	0.0513	0.0399	6301	0.1529	0.0747
4908	0.0799	0.1152	6302	0.1776	0.1483
4909	0.0381	0.0622	6303	0.0725	0.0510
4910	0.4829	0.3235	6304	0.3757	0.3458
4911	0.0697	0.0500	6305	0.0909	0.0884
5001	6.0252	2.4999	6306	0.3406	0.2448
5002	0.6557	0.3944	6308	0.0669	0.0483
5003	2.3613	0.9947	6309	0.1776	0.1483
5004	0.9584	0.6259	6402	0.2832	0.2378
5005	0.6550	0.3265	6403	0.1593	0.1422
5006	1.9073	0.8254	6404	0.2184	0.1745
5101	0.9648	0.6286	6405	0.6377	0.3937
5103	0.7356	0.5874	6406	0.1116	0.0981
5106	0.7356	0.5874	6407	0.2793	0.2110
5108	0.9177	0.6739	6408	0.4131	0.2828
5109	0.6542	0.3966	6409	0.9934	0.5215
5201	0.4666	0.2945	6410	0.2946	0.2151
5204	0.9946	0.6060	6501	0.1719	0.1293
5206	0.4708	0.2584	6502	0.0403	0.0313
5207	0.1551	0.1536	6503	0.0902	0.0447
5208	0.8852	0.5790	6504	0.3636	0.3535
5209	0.8151	0.4940	6505	0.0944	0.0974
5300	0.1098	0.0738	6506	0.0994	0.0899
5301	0.0330	0.0267	6509	0.3492	0.3076
5302	0.0207	0.0154	6510	0.5441	0.2700
5305	0.0498	0.0464	6511	0.3269	0.2768
5306	0.0605	0.0494	6512	0.2715	0.2105
5307	0.5858	0.3420	6601	0.1848	0.1493

Class	Accident Fund	Medical Aid Fund	Class	Accident Fund	Medical Aid Fund
6602	0.4685	0.3511	7112	0.6466	0.4776
6603	0.3564	0.2275	7113	0.3368	0.3040
6604	0.0833	0.0656	7114	0.5211	0.4502
6605	0.2779	0.2818	7115	0.5380	0.4693
6607	0.1746	0.1260	7116	0.6929	0.5136
6608	0.6917	0.2648	7117	1.5938	1.2207
((6614	44*	35*	7118	1.3242	1.0182
6615	309*	270*	7119	1.3808	0.9103
6616	14*	10*	7120	6.4082	4.2401
6617	103*	76*	7121	5.9556	3.9464
6618	99*	50**))	7122	0.5236	0.4754
6620	4.8308	2.9905	7200	1.2338	0.6227
((6622	565*	449*	7201	1.5423	0.7784
6623	207*	147**))	7202	0.0414	0.0226
6704	0.1754	0.1209	7203	0.1053	0.1217
6705	0.6966	0.7926	7204	0.0000	0.0000
6706	0.3005	0.2637	7205	0.0000	0.0000
6707	3.4221	2.9240	7301	0.5041	0.3715
6708	6.9097	7.8371	7302	0.9770	0.7401
6709	0.2714	0.2477	7307	0.4868	0.3880
6801	0.6708	0.4154	7308	0.2678	0.2871
6802	0.4546	0.3395	7309	0.2410	0.2315
6803	1.0265	0.4432	7400	1.5423	0.7784
6804	0.2946	0.1943			
6809	4.7278	4.0617			
6901	0.0000	0.0584			
6902	1.2857	0.4644			
6903	8.6855	3.9709			
6904	0.4799	0.2432			
6905	0.4281	0.2567			
6906	0.0000	0.2567			
6907	1.3109	0.8611			
6908	0.4925	0.3340			
6909	0.1169	0.0963			
7100	0.0327	0.0243			
7101	0.0255	0.0175			
7102	3.0801	4.2970			
7103	0.6772	0.3641			
7104	0.0310	0.0234			
7105	0.0316	0.0254			
7106	0.1887	0.1614			
7107	0.2015	0.1987			
7108	0.1703	0.1730			
7109	0.1259	0.1085			
7110	0.3871	0.2062			
7111	0.4265	0.2329			

((* These rates are calculated on a per license basis for parimutuel race tracks and are base rated.))

For work performed during the period July 1, 2007, through December 31, 2007, and reported and paid in full to the department no later than April 30, 2008, employers shall not be required to pay nor shall they be entitled to deduct from workers' pay, medical aid premium; such premiums shall be deemed to have been paid by the department out of the medical aid fund.

In calendar year 2008, the department will pay such dividends from the accident fund to employers not participating in the retrospective rating program during the period July 1, 2007, through December 31, 2007, as the department's actuaries determine to be necessary to equalize the proportion of losses funded between retro and nonretro employers.

AMENDATORY SECTION (Amending WSR 06-24-054, filed 12/1/06, effective 1/1/07)

WAC 296-17-89502 Industrial insurance accident fund, medical aid and supplemental pension rates by class of industry for nonhourly rated classifications. The base rates as set forth below are for classifications whose premium rates are based on units other than hours worked.

Base Rates Effective
January 1, 2007

Class	Accident Fund	Medical Aid Fund	Supplemental Pension Fund
0540	0.0268	0.0111	0.0005
0541	0.0161	0.0062	0.0005
0550	0.0375	0.0124	0.0005
0551	0.0218	0.0073	0.0005

For work performed during the period July 1, 2007, through December 31, 2007, and reported and paid in full to the department no later than April 30, 2008, employers shall not be required to pay nor shall they be entitled to deduct from workers' pay, medical aid premium; such premiums shall be deemed to have been paid by the department out of the medical aid fund.
In calendar year 2008, the department will pay such dividends from the accident fund to employers not participating in the retrospective rating program during the period July 1, 2007, through December 31, 2007, as the department's actuaries determine to be necessary to equalize the proportion of losses funded between retro and nonretro employers.

NEW SECTION

WAC 296-17-89504 Horse racing industry industrial insurance, medical aid, and supplemental pension by class.

Base Rates Effective
January 1, 2007

Class	Accident Fund	Medical Aid Fund	Supplemental Pension Fund
6614	44*	35*	1*
6615	309*	270*	1*
6616	14*	10*	1*
6617	103*	76*	1*
6618	99*	50*	1*
6622	565**	449**	1**
6623	207**	147**	1**

* These rates are calculated on a per license basis for parimutuel race tracks and are base rated.
 ** These rates are calculated on a per 12 horse stalls for parimutuel race tracks and are base rated.