

WSR 07-08-055
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Division of Child Support)

[Filed March 29, 2007, 9:15 a.m., effective April 29, 2007]

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

Purpose: The Washington state legislature has adopted the updated Uniform Interstate Family Support Act (UIFSA) as chapter 26.21A RCW, effective January 1, 2007. The division of child support (DCS) is adopting new and amended rules [that] will be required in order to allow the Washington child support program to comply with UIFSA under our state plan under Title IV-D of the federal Social Security Act. There are eleven new rules and nine amended rules in this filing.

Amended Rules: WAC 388-14A-2105 Basic confidentiality rules for the division of child support, 388-14A-3304 The division of child support may serve((s)) a notice of support debt and demand for payment when it is enforcing a support order issued in Washington state, a foreign court order or a foreign administrative order for support, 388-14A-3925 Who can ask to modify an administrative support order?, 388-14A-5300 How does the division of child support recover a support payment which has already been distributed?, 388-14A-6100 The division of child support accepts oral requests for hearing or conference board, 388-14A-7100 The division of child support may register an ((An)) order from another state ((may be registered in Washington)) for enforcement or modification, 388-14A-7110 The division of child support may assess and collect interest on amounts owed under support orders entered or established in a jurisdiction other than Washington state, and 388-14A-7200 DCS can serve notices in other states under the Uniform Interstate Family Support Act.

Newly Adopted Rules: WAC 388-14A-3305 What can I do if I disagree with a notice of support debt and demand for payment?, 388-14A-3306 Does a notice of support debt and demand for payment result in a final determination of support arrears?, 388-14A-3307 How does the division of child support proceed when there are multiple child support orders for the same obligor and children?, 388-14A-7125 What happens at a hearing on a notice of support debt and registration?, 388-14A-7135 What is the effect of confirmation of a registered order on the finality of the support debt calculation?, 388-14A-7305 How do I ask DCS to do a determination of controlling order?, 388-14A-7315 When might DCS deny a request for a determination of controlling order?, 388-14A-7325 How does DCS notify the parties of its determination of the controlling order?, 388-14A-7335 What happens if someone objects to DCS' proposed determination of controlling order?, 388-14A-7345 What is the effect of a determination of controlling order on the finality of the debt calculation?, 388-14A-7400 What can I do if I want to contest an interstate order to withhold income served on my employer?, and 388-14A-7500 What can I do if I am concerned about the release of my personal information in an interstate referral?

Note: The DSHS DCS has adopted emergency rules under WSR 07-02-070, effective January 1, 2007, so that we

would have rules in effect while going through the regular rule-making process.

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-2105, 388-14A-3304, 388-14A-3305, 388-14A-3925, 388-14A-5300, 388-14A-6100, 388-14A-7100, 388-14A-7110, and 388-14A-7200.

Statutory Authority for Adoption: RCW 34.05.220(2), 43.20A.550, 74.04.055, 74.08.090, 74.20.040, 74.20A.310.

Adopted under notice filed as WSR 07-04-066 on February 1, 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 11, Amended 9, 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 11, Amended 9, Repealed 0.

Date Adopted: March 28, 2007.

Jim Schnellman, Chief
Office of Administrative Resources

AMENDATORY SECTION (Amending WSR 02-07-091, filed 3/19/02, effective 4/19/02)

WAC 388-14A-2105 Basic confidentiality rules for the division of child support. (1) Under RCW 26.23.120, all information and records, concerning persons who owe a support obligation or for whom the division of child support (DCS) provides support enforcement services, are private and confidential.

(2) DCS discloses information and records only to a person or entity listed in this section or in RCW 26.23.120, and only for a specific purpose allowed by state or federal law. See WAC 388-14A-7500 regarding disclosure of personal information in the context of referrals under the Uniform Interstate Family Support Act (UIFSA).

(3) DCS may disclose information to:

(a) The person who is the subject of the information or records, unless the information or records are exempt under RCW 42.17.310;

(b) Local, state, and federal government agencies for support enforcement and related purposes;

(c) A party to a judicial proceeding or a hearing under chapter 34.05 RCW, if the superior court judge or administrative law judge (ALJ) enters an order to disclose. The judge or presiding officer must base the order on a written finding that the need for the information outweighs any reason for maintaining privacy and confidentiality;

(d) A party under contract with DCS, including a federally recognized Indian tribe, if disclosure is for support enforcement and related purposes;

(e) A person or entity, including a federally recognized Indian tribe, when disclosure is necessary to the administration of the child support program or the performance of DCS functions and duties under state and federal law;

(f) A person, representative, or entity if the person who is the subject of the information and records consents, in writing, to disclosure;

(g) The office of administrative hearings or the office of appeals for administration of the hearing process under chapter 34.05 RCW. The ALJ or review judge must:

(i) Not include the address of either party in an administrative order, or disclose a party's address to the other party;

(ii) State in support orders that the address is known by the Washington state support registry; and

(iii) Inform the parties they may obtain the address by submitting a request for disclosure to DCS under WAC 388-14A-2110(2).

(4) DCS may publish information about a noncustodial parent (NCP) for locate and enforcement purposes.

(5) WAC 388-14A-2114(1) sets out the rules for disclosure of address, employment or other information regarding the custodial parent (CP) or the children in response to a public disclosure request.

(6) WAC 388-14A-2114(2) sets out the rules for disclosure of address, employment or other information regarding the NCP in response to a public disclosure request.

(7) DCS may disclose the Social Security Number of a dependent child to the noncustodial parent (NCP) to enable the NCP to claim the dependency exemption as authorized by the Internal Revenue Service.

(8) DCS may disclose financial records of an individual obtained from a financial institution only for the purpose of, and to the extent necessary, to establish, modify, or enforce a child support obligation of that individual.

(9) Except as provided elsewhere in chapter 388-14A WAC, chapter 388-01 WAC governs the process of requesting and disclosing information and records.

(10) DCS must take timely action on requests for disclosure. DCS must respond in writing within five working days of receipt of the request.

(11) If a child is receiving foster care services, the parent(s) must contact their local community services office for disclosure of the child's address information.

(12) The rules of confidentiality and penalties for misuse of information and reports that apply to a IV-D agency employee, also apply to a person who receives information under this section.

(13) Nothing in these rules:

(a) Prevents DCS from disclosing information and records when such disclosure is necessary to the performance of its duties and functions as provided by state and federal law;

(b) Requires DCS to disclose information and records obtained from a confidential source.

(14) DCS cannot provide copies of the confidential information form contained in court orders. You must go to court to get access to the confidential information form. DCS may disclose information contained within the confidential information form if disclosure is authorized under RCW 26.23.120, chapter 388-01 WAC, or chapter 388-14A WAC.

(15) DCS may provide a Support Order Summary to the parties to an administrative support order under WAC 388-14A-2116.

AMENDATORY SECTION (Amending WSR 05-07-059, filed 3/11/05, effective 4/11/05)

WAC 388-14A-3304 The division of child support may serve((s)) a notice of support debt and demand for payment when it is enforcing a support order issued in Washington state, a foreign court order or a foreign administrative order for support. (1) The division of child support (DCS) may serve a notice of support debt and demand for payment on a noncustodial parent (NCP) under RCW 74.20A.040 to provide notice that DCS is enforcing a support order entered in Washington state, a foreign court order or a foreign administrative order for support.

(a) A "foreign" order is one entered in a jurisdiction other than a Washington state court or administrative forum.

(b) DCS uses the notice of support debt and demand for payment when there is only one current child support order for the NCP and the children in the case.

(c) When there are multiple current support orders for the same obligor and children, DCS determines which order to enforce as provided under WAC 388-14A-3307.

(2) DCS serves a notice of support debt and demand for payment like a summons in a civil action or by certified mail, return receipt requested.

(3) In a notice of support debt and demand for payment, DCS includes the information required by RCW 74.20A.040, the amount of current and future support, accrued support debt, interest (if interest is being assessed under WAC 388-14A-7110), any health insurance coverage obligation, and any day care costs under the court or administrative order.

(4) After service of a notice of support debt and demand for payment, the NCP must make all support payments to the Washington state support registry. DCS does not credit payments made to any other party after service of a notice of support debt and demand for payment except as provided in WAC 388-14A-3375.

(5) A notice of support debt and demand for payment becomes final and subject to immediate wage withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW, subject to the terms of the order, unless, within twenty days of service of the notice in Washington, the NCP:

(a) Files a request with DCS for a conference board under WAC 388-14A-6400. The effective date of a conference board request is the date DCS receives the request;

(b) Obtains a stay from the superior court; or

(c) Objects to either the validity of the foreign support order or the administrative enforcement of the foreign support order, in which case DCS proceeds with registration of the foreign support order under WAC 388-14A-7100.

(6) A notice of support debt and demand for payment served in another state becomes final according to WAC 388-14A-7200.

(7) Enforcement of the following are not stayed by a request for a conference board or hearing under this section or WAC 388-14A-6400:

(a) Current and future support stated in the order; and
 (b) Any portion of the support debt that the NCP and custodial parent (CP) fail to claim is not owed.

(8) Following service of the notice of support debt and demand for payment on the NCP, DCS mails to the last known address of the CP and/or the payee under the order:

(a) A copy of the notice of support debt and demand for payment; and

(b) A notice to payee under WAC 388-14A-3315 regarding the payee's rights to contest the notice of support debt. The CP who is not the payee under the order has the same rights to contest the notice of support debt and demand for payment.

(9) If the NCP requests a conference board under subsection (5)(a) of this section, DCS mails a copy of the notice of conference board to the CP informing the CP of the CP's right to:

(a) Participate in the conference board; or

(b) Request a hearing under WAC 388-14A-3321 within twenty days of the date of a notice of conference board that was mailed to a Washington address. If the notice of conference board was mailed to an out-of-state address, the CP may request a hearing within sixty days of the date of the notice of conference board. The effective date of a hearing request is the date DCS receives the request.

(10) If the CP requests a hearing under subsection (9) of this section, DCS must:

(a) Stay enforcement of the notice of support debt and demand for payment except as required under subsection (6) of this section; and

(b) Notify the NCP of the hearing.

(11) If a CP requests a late hearing under subsection (8) of this section, the CP must show good cause for filing the late request.

(12) The NCP is limited to a conference board to contest the notice and may not request a hearing on a notice of support debt and demand for payment. However, if the CP requests a hearing, the NCP may participate in the hearing.

(13) A notice of support debt and demand for payment must fully and fairly inform the NCP of the rights and responsibilities in this section.

~~((14) A notice of support debt that does not include interest does not relieve the NCP of any interest that may have accrued or may accrue under the support order covered by the notice.~~

~~(15) A notice of support debt that does include interest deals only the amount of debt, including interest, that is due and owing for the indicated time periods. Such a notice does not relieve the NCP of any interest that may have accrued or may accrue for any other time periods.))~~

NEW SECTION

WAC 388-14A-3305 What can I do if I disagree with a notice of support debt and demand for payment? Once the division of child support has served a notice of support debt and demand for payment, either party may disagree with the notice.

(1) If either party objects to the enforcement of a non-Washington support order, that party may request that DCS

register that order under Chapter 26.21A RCW. DCS then serves a notice of support debt and registration as provided in WAC 388-14A-7110.

(2) If the noncustodial parent (NCP) objects to the amount of current support or the amount of support debt stated in the notice, the NCP may request a conference board under WAC 388-14A-6400.

(a) The custodial parent (CP) may participate in the conference board under this section.

(b) The CP may choose to convert the proceeding to an administrative hearing. The NCP may participate in a hearing held under this section.

(3) If the custodial parent objects to the amount of current support or the amount of support debt stated in the notice, the CP may request an administrative hearing. The NCP may participate in a hearing held under this section.

(4) See WAC 388-14A-3304 for a more full description of the hearing process on the notice of support debt and demand for payment.

NEW SECTION

WAC 388-14A-3306 Does a notice of support debt and demand for payment result in a final determination of support arrears? (1) After service of a notice of support debt and demand for payment as provided in WAC 388-14A-3304, the final administrative order determines the support debt as of the date of the order, and:

(a) The debt determination is not a final determination under the Uniform Interstate Family Support Act (UIFSA), chapter 26.21A RCW.

(b) Any party may request that a tribunal determine any amounts owed as interest on the support debt.

(2) The final administrative order comes about by:

(a) Operation of law if nobody objects to the notice;

(b) Agreed settlement or consent order under WAC 388-14A-3600;

(c) Final conference board decision under WAC 388-14A-6400;

(d) Final administrative order entered after hearing or a party's failure to appear for hearing.

NEW SECTION

WAC 388-14A-3307 How does the division of child support proceed when there are multiple child support orders for the same obligor and children? When more than one current child support order exists for the same obligor and children, the division of child support (DCS) may proceed as follows:

(1) Using the criteria listed in RCW 26.21A.130, DCS decides which child support order it should enforce and serves a notice of support debt and demand for payment under WAC 388-14A-3304.

(2) If DCS decides that a determination of controlling order under chapter 26.21A RCW is required, DCS serves a notice of support debt and registration as provided in WAC 388-14A-7100.

(3) Upon request, DCS may do a determination of controlling order (DCO).

(a) See WAC 388-14A-7305 for how you can ask for a DCO.

(b) See WAC 388-14A-7315 for how DCS decides whether or not to do a DCO.

(4) If DCS does a DCO and decides that a Washington order is the controlling order, DCS refers the case to superior court.

(5) If DCS does a DCO and decides that a non-Washington order is the controlling order, DCS serves a notice of support debt and registration as provided in WAC 388-14A-7325.

AMENDATORY SECTION (Amending WSR 02-06-098, filed 3/4/02, effective 4/4/02)

WAC 388-14A-3925 Who can ask to modify an administrative support order? (1) The division of child support (DCS), the custodial parent (CP) or the noncustodial parent (NCP) may request a hearing to prospectively modify the NCP's obligation under a support establishment notice. The request must be in writing and must state:

- (a) Any circumstances that have changed; and
- (b) The proposed new support amount.

(2) The petitioning party must file the request for modification with DCS.

(3) DCS serves a copy of the request for modification and notice of hearing on all other parties by first class mail at their address last (~~known~~) known to DCS.

(4) DCS, the administrative law judge (ALJ), or the department review judge:

(a) Prospectively modifies orders according to the terms of chapter 26.19 RCW and RCW 74.20A.059; and

(b) May only modify an order issued by a tribunal in another state according to the terms of (~~RCW 26.21.580~~) RCW 26.21A.550.

(5) If the nonpetitioning party fails to appear at the hearing, the ALJ issues a default order based on the Washington state child support schedule and the worksheets submitted by the parties, considering the terms set out in the request for modification.

(6) If the petitioning party fails to appear at the hearing, the ALJ enters an order dismissing the petition for modification.

(7) If the petition for modification does not comply with the requirements of subsection (1)(a) and (b) of this section, the ALJ may:

- (a) Dismiss the petition; or
- (b) Continue the hearing to give the petitioning party time to amend according to WAC 388-14A-3275 or to complete the petition.

(8) The ALJ may set the effective date of modification as the date the order is issued, the date the request was made, or any time in between. If an effective date is not set in the order, the effective date is the date the modification order is entered.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-5300 How does the division of child support recover a support payment which has already

been distributed? (1) The division of child support (DCS) may serve a notice to recover a support payment on the person who received the payment when DCS:

(a) Distributed the money in error;

(b) Distributed the money based on a check that is later dishonored;

(c) Is required to refund or return the money to the person or entity that made the payment; or

(d) Distributed money under a support order that was later modified so as to create an overpayment.

(2) DCS serves a notice to recover a support payment like a summons in a civil action or by certified mail, return receipt requested.

(3) In the notice, DCS must identify the support payment DCS seeks to recover.

(4) DCS may take action to enforce the notice to recover a support payment without further notice once the notice becomes final.

(a) A notice to recover a support payment becomes final unless the person who received the payment requests a hearing under subsection (5) of this section within twenty days of service of the notice to recover a support payment in Washington. The effective date of a hearing request is the date DCS receives the request.

(b) A notice to recover a support payment may be served in another state to recover a payment disbursed by DCS under (~~RCW 26.21.385~~) RCW 26.21A.290. A notice to recover a support payment served in another state becomes final according to WAC 388-14A-7200.

(5) A hearing on a notice to recover a support payment is for the limited purpose of resolving the existence and amount of the debt DCS is entitled to recover.

(6) A person who files a late request for a hearing on a notice to recover a support payment must show good cause for being late.

(7) In nonassistance cases and payment services only cases, DCS may recover a support payment under a final administrative order on a notice to recover a support payment by retaining ten percent of current support and one hundred percent of amounts collected on arrears in addition to any other remedy authorized by law.

(8) If a public assistance recipient receives a support payment directly from a noncustodial parent (NCP) and fails to remit it to DCS as required, DCS recovers the money as retained support under WAC 388-14A-5500.

(9) DCS may enforce the notice to recover a support payment as provided in subsection (7), or may act according to RCW 74.20A.270 as deemed appropriate.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-6100 The division of child support accepts oral requests for hearing or conference board. (1) Except for the instances listed in subsections (8) and (9), the division of child support (DCS) accepts either a written or an oral request for hearing or conference board, even though other sections of this chapter or the relevant statutes may provide that objections and hearing requests should be in writing.

(2) The subject matter of the objection determines whether the matter is set as a conference board or hearing, unless there is a specific request for an administrative hearing under chapter 34.05 RCW.

(3) DCS processes oral and written requests for hearing in the same manner.

(4) An oral request for hearing is complete if it contains enough information to identify the person making the request, the DCS action, and the case or cases involved in the hearing request.

(5) The effective date of an oral request for hearing is the date that someone makes a complete oral request for hearing, to any DCS representative in person or by leaving a message on the automated voice mail system of any DCS field office.

(6) When making an oral request, you do not need to specify whether you want a hearing under chapter 34.05 RCW or a conference board under WAC 388-14A-6400.

(7) You can make an oral request for hearing or conference board on behalf of another person, if you have written authorization to act on their behalf. The effective date of an oral request for hearing or conference board made on behalf of another person is the later of the date of the complete oral request for hearing or the date that DCS receives the written authorization.

(8) There are two types of hearing requests which must be in writing:

(a) A petition for prospective modification under WAC 388-14A-3925; and

(b) A petition for reimbursement for day care expenses under WAC 388-14A-4300.

(9) You must also make the following requests in writing:

(a) A request for a determination of controlling order under the Uniform Interstate Family Support Act (UIFSA), chapter 26.21A RCW, as described in WAC 388-14A-7305; and

(b) An objection to the determination of controlling order contained in a notice of support debt and registration issued by DCS under WAC 388-14A-7325. WAC 388-14A-7335 describes how to make this objection.

AMENDATORY SECTION (Amending WSR 05-07-059, filed 3/11/05, effective 4/11/05)

WAC 388-14A-7100 ((An)) The division of child support may register an order from another state ((may be registered in Washington)) for enforcement or modification.

(1) A support enforcement agency, or a party to a child support order or an income-withholding order for support issued by a tribunal of another state, may register the order in this state for enforcement pursuant to chapter 26.21A RCW.

(a) At the option of the division of child support (DCS), the support order or income-withholding order may be registered with the superior court pursuant to RCW ~~((26.21.490))~~ 26.21A.505 or it may be registered with the administrative tribunal according to subsection (2) of this section. Either method of registration is valid.

(b) A support order or income-withholding order issued in another state is registered when the order is filed with the registering tribunal of this state.

(c) DCS may enforce a registered order issued in another state in the same manner and subject to the same procedures as an order issued by a tribunal of this state.

(d) DCS may assess and collect interest on amounts owed under support orders entered or established in a jurisdiction other than the state of Washington as provided in WAC 388-14A-7110.

(e) DCS may notify the parties that it is enforcing a non-Washington support order using the notice of support debt and demand for payment under WAC 388-14A-3304 or using the notice of support debt and registration as provided in this section and in WAC 388-14A-7110. Either method of notice is valid.

(2) DCS must give notice to the nonregistering party when it administratively registers a support order or income-withholding order issued in another state. DCS gives this notice with the Notice of Support Debt and Registration (NOSDR).

(a) The notice must inform the nonregistering party:

(i) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(ii) That if a party wants a hearing to contest the validity or enforcement of the registered order, the party must request a hearing within twenty days after service of the notice on the nonregistering party within Washington state. If the nonregistering party was served with the notice outside of Washington state, the party has sixty days after service of the notice to request a hearing to contest the validity or enforcement of the registered order;

(iii) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; ~~((and))~~

(iv) Of the amount of any alleged arrearages, including interest, if interest is being assessed under WAC 388-14A-7110; and

(v) Whether DCS has made a determination of controlling order under chapter 26.21A RCW, as described in WAC 388-14A-7325.

(b) The notice must be:

(i) Served on the non-registering party by certified or registered mail or by any means of personal service authorized by the laws of the state of Washington; and

(ii) Served on the registering party by first class mail at the last known address; and

(iii) Accompanied by a copy of the registered order and any documents and relevant information accompanying the order submitted by the registering party.

(c) The effective date of a request for hearing to contest the validity or enforcement of the registered order is the date DCS receives the request.

~~(3) ((A hearing under this section is for the limited purpose of determining if the nonregistering party can prove one or more of the defenses listed in RCW 26.21.540(1)).~~

~~(a) If the contesting party presents evidence establishing a full or partial defense under RCW 26.21.540(1), the presiding officer may:~~

- (i) Stay enforcement of the registered order;
- (ii) Continue the proceeding to allow the parties to gather additional relevant evidence; or
- (iii) Issue other appropriate orders.

(b) DCS may enforce an uncontested portion of the registered order by all remedies available under the law of this state.

(c) If the contesting party does not establish a defense under RCW 26.21.540(1) to the validity or enforcement of the order, the presiding officer must issue an order confirming the registered order.

(d) The custodial parent (CP) or payee of the order may participate as a party to any hearing under this section.

(4) Except as provided below in subsections (5) and (6) of this section, confirmation of a registered order precludes further contest of the order with respect to any matter that could have been asserted at the time of registration. Confirmation may occur:

(a) By operation of law upon failure to contest registration; or

(b) By order of the administrative law judge (ALJ).

(5) Confirmation of a registered order that does not include interest does not relieve the NCP of any interest that may have accrued or may accrue under the confirmed order.

(a) If interest is later assessed, the NCP or CP may not dispute the confirmed amount of the support debt.

(b) The NCP or CP may dispute the amount of interest due and owing on that confirmed amount by requesting a conference board under WAC 388-14A-6400.

(6) Confirmation of a registered order that does include interest confirms only the amount of debt, including interest, that is due and owing for the indicated time periods. Such confirmation does not relieve the NCP of any interest that may have accrued or may accrue for any other time period.

(7)) A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state may register the order in this state according to RCW ((26.21.560)) 26.21A.540 through ((26.21.580)) 26.21A.550.

(a) The order must be registered as provided in subsection (1)(a) if the order has not yet been registered.

(b) A petition for modification may be filed at the same time as a request for registration, or later. The petition must specify the grounds for modification.

(c) DCS may enforce a child support order of another state registered for purposes of modification, as if a tribunal of this state had issued the order, but the registered order may be modified only if the requirements of RCW ((26.21.580)) 26.21A.550 are met.

((8)) (4) Interpretation of the registered order is governed by RCW ((26.21.540)) 26.21A.515.

AMENDATORY SECTION (Amending WSR 05-07-059, filed 3/11/05, effective 4/11/05)

WAC 388-14A-7110 The division of child support may assess and collect interest on amounts owed under support orders entered or established in a jurisdiction other than Washington state. (1) The division of child sup-

port (DCS) may accept an interstate request to assess and collect interest when:

(a) The request is from:

(i) Another state's IV-D agency;

(ii) An Indian tribe;

(iii) A foreign country which has entered into a reciprocal agreement with the United States of America or with the state of Washington; or

(iv) A custodial parent (CP) or noncustodial parent (NCP) who resides outside of Washington state who has filed a petition under the Uniform Interstate Family Support Act (UIFSA), chapter ((26.21)) 26.21A RCW.

(b) The party requesting that DCS assess and collect interest provides a calculation of the interest claimed which has been certified by a IV-D agency or a certified public accountant (CPA); and

(c) The support order was entered or established in a jurisdiction other than Washington state.

(2) When a foreign support order has been submitted for enforcement under UIFSA, DCS may, at its option, either:

(a) Use the notice of support debt and demand for payment to assess and collect interest on an out-of-state support order. See WAC 388-14A-3304 for the rules regarding the notice of support debt and demand for payment; or

(b) Use a notice of support debt and registration to assess and collect interest on the foreign order. See WAC 388-14A-7100 for the rules regarding registration of a foreign order.

(3) When an out of state order has been submitted for registration for enforcement and modification under UIFSA, DCS uses a notice of support debt and registration to assess and collect interest on the out of state order. See WAC 388-14A-7100 for the rules regarding registration of a foreign support order.

(4) Any hearing held on a notice of support debt and registration which includes a claim for interest is conducted in accordance with WAC ((388-14A-7100(3))) 388-14A-7125 and 388-14A-7115.

(a) WAC ((388-14A-7100(4))) 388-14A-7135 describes the procedures for confirmation of the registered order.

(b) WAC ((388-14A-7100(4))) 388-14A-7135 describes the effect of confirmation of the registered order.

(5) At any time after the notice of support debt and registration becomes a final administrative order, DCS may update the amount of interest as provided in WAC 388-14A-7120.

NEW SECTION

WAC 388-14A-7125 What happens at a hearing on a notice of support debt and registration? A hearing under this section is for the limited purpose of determining if the nonregistering party can prove one or more of the defenses listed in RCW 26.21A.530(1).

(1) If the contesting party presents evidence establishing a full or partial defense under RCW 26.21A.530(1), the presiding officer may:

(a) Stay enforcement of the registered order;

(b) Continue the proceeding to allow the parties to gather additional relevant evidence; or

(c) Issue other appropriate orders.

(2) DCS may enforce an uncontested portion of the registered order by all remedies available under the law of this state.

(3) If the contesting party does not establish a defense under RCW 26.21A.530(1) to the validity or enforcement of the order, the presiding officer must issue an order confirming the registered order.

(4) The custodial parent (CP) or payee of the order may participate as a party to any hearing under this section.

NEW SECTION

WAC 388-14A-7135 What is the effect of confirmation of a registered order on the finality of the support debt calculation? (1) Except as provided below in subsections (2) and (3) of this section, confirmation of a registered order precludes further contest of the order with respect to any matter that could have been asserted at the time of registration. Confirmation may occur:

(a) By operation of law upon failure to contest registration; or

(b) By order of the administrative law judge (ALJ).

(2) Confirmation of a registered order that does not include interest does not relieve the noncustodial parent (NCP) of any interest that may have accrued or may accrue under the confirmed order.

(a) If interest is later assessed, the NCP or the custodial parent (CP) may not dispute the confirmed amount of the support debt.

(b) The NCP or CP may dispute the amount of interest due and owing on that confirmed amount by requesting a conference board under WAC 388-14A-6400.

(3) Confirmation of a registered order that does include interest confirms only the amount of debt, including interest, that is due and owing for the indicated time periods. Such confirmation does not relieve the NCP of any interest that may have accrued or may accrue for any other time period.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-7200 DCS can serve notices in other states under the Uniform Interstate Family Support Act.

(1) Except as specified in WAC 388-14A-3105, where grounds for personal jurisdiction exist under (~~RCW 26.21-075~~) RCW 26.21A.100 or other Washington law, the division of child support (DCS) may serve the following legal actions in another state by certified mail, return receipt requested or by personal service, under chapter (~~26.21~~) 26.21A RCW:

(a) A notice and finding of financial responsibility under WAC 388-14A-3115; and

(b) A notice and finding of parental responsibility under WAC 388-14A-3120;

(c) A notice of paternity test costs under WAC 388-14A-8300; or

(d) An affidavit of birth costs under WAC 388-14A-3555.

(2) A notice and finding of financial responsibility, a notice of paternity test costs, or an affidavit of birth costs becomes final and subject to immediate wage withholding

and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW unless the noncustodial parent (NCP), within sixty days of service in another state:

(a) Contacts DCS and signs an agreed settlement or consent order; or

(b) Files a written request for a hearing under:

(i) WAC 388-14A-3115 for a notice and finding of financial responsibility;

(ii) WAC 388-14A-3555 for an affidavit of birth costs; or

(iii) WAC 388-14A-8300 for a notice of paternity test costs.

(3) The effective date of a hearing request is the date DCS receives the hearing request.

(4) A notice and finding of parental responsibility becomes final and subject to immediate wage withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW unless the NCP, within sixty days of service in another state:

(a) Contacts DCS and signs an agreed settlement or consent order;

(b) Files a written request for a hearing under WAC 388-14A-3120 with DCS; or

(c) Files a written request for paternity testing under WAC 388-14A-8300 to determine if he is the natural father of the dependent child named in the notice and cooperates in the testing. A request for a hearing or paternity testing is filed on the date the request is received by DCS.

(5) If the results of paternity tests requested under subsection (4) of this section do not exclude the NCP as the natural father of the dependent child, the notice and finding of parental responsibility becomes final and subject to immediate wage withholding without further notice under chapters 26.18, 26.23, and 74.20A RCW unless the NCP, within sixty days of service of the paternity test costs in another state:

(a) Contacts DCS and signs an agreed settlement or consent order; or

(b) Files a written request for a hearing under WAC 388-14A-3120.

(6) Administrative law judges and parties must conduct administrative hearings on notices served in another state under this section under the special rules of evidence and procedure in chapter 26.21A RCW and according to chapter 34.05 RCW.

NEW SECTION

WAC 388-14A-7305 How do I ask DCS to do a determination of controlling order? (1) When there are multiple current support orders covering the same obligor and the same children, a party to a support order may request that the division of child support (DCS) make a determination of controlling order under the Uniform Interstate Family Support Act, chapter 26.21A RCW.

(2) A request for a determination of controlling order may be made at any time, unless there has already been a determination of controlling order for the same obligor and children.

(3) DCS can provide a form which contains all the required elements for a request for determination of controlling order. A request for a determination of controlling order:

- (a) Must be in writing;
 - (b) Must contain copies of any child support orders known to the requesting party. DCS waives this requirement if DCS has a true copy of the order on file; and
 - (c) State the reason the requesting party thinks DCS is enforcing the wrong order.
- (4) A request for determination of controlling order does not constitute a petition for modification of a support order.

NEW SECTION

WAC 388-14A-7315 When might DCS deny a request for a determination of controlling order? (1) The division of child support (DCS) may deny a request for determination of controlling order made by a party to a child support order or another state's IV-D agency for the following reasons:

- (a) There is only one support order for the obligor and the children;
 - (b) There is no current support owing under any existing support order for the obligor and the children; or
 - (c) There has already been a determination of controlling order performed for the obligor and the children.
- (2) The denial of a request for determination of controlling order does not:
- (a) Stop the party or other state's IV-D agency from bringing an action in superior court.
 - (b) Give rise to a right to administrative hearing.

NEW SECTION

WAC 388-14A-7325 How does DCS notify the parties of its determination of the controlling order? (1) When the division of child support (DCS) decides that a determination of controlling order is required, DCS reviews the multiple child support orders for the same obligor and children to determine which order should be enforced.

(a) If DCS decides that the order that should be enforced is a Washington order, we immediately refer the matter to the superior court for a determination of controlling order proceeding under chapter 26.21A RCW.

(b) If we decide that the order that should be enforced is an order which was not entered in the state of Washington, DCS follows the procedures set out in subsections (2) through (4) of this section.

(2) DCS serves a notice of support debt and registration (NOSDR) as provided in WAC 388-14A-7100. DCS serves the NOSDR on the obligor, the obligee, and on all identified interested parties. The NOSDR includes a determination of controlling order.

(3) DCS serves the notice on the non-requesting party by certified mail, return receipt requested, or by personal service.

(4) DCS serves the notice on the requesting party and other interested parties by first class mail to the last known address.

NEW SECTION

WAC 388-14A-7335 What happens if someone objects to DCS' proposed determination of controlling order?

(1) If any party objects to the proposed determination of controlling order issued under WAC 388-14A-7325, that objection must be in writing and signed under penalty of perjury. The division of child support (DCS) provides an objection form with the notice. The objection must contain:

(a) The reason the party objects to the determination of controlling order. Examples of reasons to object include, but are not limited to:

- (i) There is another order that was not considered in making the determination;
- (ii) The alleged controlling order has been vacated, suspended or modified by a later order, which is attached to the objection;
- (iii) The issuing tribunal lacked personal jurisdiction over the non-petitioning party;
- (iv) The order was obtained by fraud; or
- (v) Any other legal defense available under chapter 26.21A RCW.

(b) A copy of the order which the party believes should be the controlling order, if that order was not included with the notice.

(c) A statement of facts in support of the party's objection.

(2) DCS refers the objection to the prosecuting attorney or attorney general to bring an action for determination of controlling order under RCW 26.21A.130 in the superior court.

NEW SECTION

WAC 388-14A-7345 What is the effect of a determination of controlling order on the finality of the debt calculation?

As provided in RCW 26.21A.130, the final order in a proceeding for determination of controlling order operates as a final determination of the total amount of consolidated arrears and accrued interest, if any, under all of the support orders.

NEW SECTION

WAC 388-14A-7400 What can I do if I want to contest an interstate Order to Withhold Income served on my employer?

(1) RCW 26.21A.425 provides that a noncustodial parent (NCP) may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state.

(2) Acting as an administrative tribunal under chapter 26.21A RCW, the division of child support (DCS) does not have the authority to quash income-withholding orders.

(3) An NCP who seeks to contest an income-withholding order as described in subsection (1) must seek relief in the superior court under RCW 26.18.140.

NEW SECTION

WAC 388-14A-7500 What can I do if I am concerned about the release of my personal information in an interstate referral? (1) When the division of child support (DCS) refers a case to another state, DCS must provide personal information regarding the parties to that other state. DCS notifies the party residing in Washington that we are preparing to refer your case and that we must release your personal information.

(2) If you believe that it would be dangerous for DCS to release your personal information to the other state, you may make a request for nondisclosure of your personal information under RCW 26.21A.255.

(3) The way DCS handles your request for nondisclosure depends on what version of the Uniform Interstate Family Support Act (UIFSA) has been adopted by the state where DCS is referring your case.

(a) The state may have enacted a version of UIFSA which is similar to the version enacted by the state of Washington as chapter 26.21A RCW (known as "UIFSA 2001"); or

(b) The state may have enacted a version of UIFSA which is similar to the version which was formerly enacted by the state of Washington as chapter 26.21 RCW (known as "UIFSA 1996").

(4) If DCS is making a referral to another state which has enacted UIFSA 2001:

(a) DCS must disclose your personal information to the other state.

(b) DCS sends to the other state a declaration for non-disclosure of information which you have signed under penalty of perjury.

(c) The other state must seal your personal information and may not disclose that information to the other party or to the public unless a tribunal orders disclosure of the information in the interest of justice, after a hearing in which the tribunal considers your (or your child's) health, safety and liberty.

(5) If DCS is making a referral to another state which has enacted UIFSA 1996:

(a) DCS holds a conference board under WAC 388-14A-6400.

(b) If the conference board finds that your (or your child's) health, safety or liberty would be unreasonably put at risk by the disclosure of the information, the conference board issues a non-disclosure finding.

(c) DCS does not disclose your personal information to the other state, and instead provides the other state with the non-disclosure finding.

WSR 07-09-001
PERMANENT RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Docket PL-061026, General Order R-541—Filed April 4, 2007, 1:21 p.m., effective May 5, 2007]

In the matter of amending and adopting rules in chapter 480-75 WAC, relating to Hazardous liquid, gas, oil and petroleum pipeline companies—Safety.

1 STATUTORY OR OTHER AUTHORITY: The Washington utilities and transportation commission takes this action under CR-101 Notice No. WSR 06-15-123, filed with the code reviser on July 19, 2006, and CR-102 Notice No. WSR 06-24-128, filed with the code reviser on December 6, 2006. The commission brings this proceeding pursuant to RCW 80.01.040, 81.01.010, 81.88.060.

2 STATEMENT OF COMPLIANCE: This proceeding complies with the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 DATE OF ADOPTION: The commission adopts these rules on the date that this order is entered.

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

5 In this docket, to avoid unnecessary duplication, the commission designates the discussion in this order, including appendices, as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda preceding the filing of the CR-102 proposal and the adoption hearing. Together, the documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.

6 REFERENCE TO AFFECTED RULES: This order amends and adopts the following sections of the Washington Administrative Code: Adopt WAC 480-75-270 Damage prevention; and amend WAC 480-75-300 Leak detection, 480-75-450 Construction specifications, 480-75-630 Incident reporting, and 480-75-650 Annual reports.

7 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER: The commission filed a preproposal statement of inquiry (CR-101) on July 19, 2006, at WSR 06-15-123.

8 The statement advised interested persons that the commission was considering entering a rule making to address possible corrections and clarifications to selected sections of chapter 480-75 WAC, Hazardous liquid, gas, oil and petroleum pipeline companies—Safety, specifically rules governing hazardous liquid operators. In addition, the statement advised interested persons that the commission was consider-

ing a new rule to address compliance with the damage prevention requirements of chapter 19.22 RCW.

9 The commission also informed persons of the inquiry into this matter by providing notice of the subject and the CR-101 to all persons on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3), to all gas companies, to the commission's lists of persons interested in intrastate and interstate pipeline issues, pipeline safety, rule makings generally, rule makings related to gas companies, pipeline companies and pipeline safety, and to the commission's lists of regulatory attorneys. Pursuant to the notice, the commission requested comments on the rule making. Two companies, McChord Pipeline Company (McChord) and Puget Sound Energy, Inc. (PSE), filed comments notifying the commission of their interest in the rule making.

10 **NOTICE OF PROPOSED RULE MAKING:** The commission filed a notice of proposed rule making (CR-102) on December 6, 2006, at WSR 06-24-128. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 06-24-128 at 1:30 p.m. on February 7, 2007, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice provided interested persons the opportunity to submit written comments to the commission.

11 **WRITTEN COMMENTS:** The commission received written comments from BP Pipelines N.A. (BP) and McChord. A summary of written comments and commission responses are presented below.

12 **RULE-MAKING HEARING:** The commission considered the proposed rules for adoption at a rule-making hearing on February 7, 2007, before Chairman Mark H. Sidran, Commissioner Patrick J. Oshie, and Commissioner Philip B. Jones. No other interested person made oral comments.

13 **SUGGESTIONS FOR CHANGE THAT ARE ACCEPTED:** The written comments suggested changes to the proposed rules. BP suggested that the commission modify the proposed language in WAC 480-75-450, which governs construction specifications. BP suggested the proposed rule be modified to exempt companies from the requirement to locate seams on the upper half of the pipe when constructing pipelines using boring or directional drilling techniques. The company asserted it would be nearly impossible to control the orientation of the pipe seams while using these construction techniques. BP also requested a change to proposed language in WAC 480-75-650, which governs annual reports. BP later withdrew its request. BP's suggestion for change to WAC 480-75-450 is appropriate and the proposed rule should be modified to reflect the suggested change.

14 McChord suggested changes to the annual reporting requirement in proposed WAC 480-75-650(2). McChord asserted that the rule should require operators to continue to complete a standardized form provided annually by the commission that includes all of the information listed in the rule. McChord asserted that, as worded, the proposed rule leaves open to interpretation the definition of a "report" and the amount of detail required. McChord proposed alternative language for WAC 480-75-650(2): "A report form titled, "Hazardous Liquid Annual Report Form" which can be obtained from the pipeline safety section of the commission.

The annual report must include ..." McChord's suggestion for change to WAC 480-75-650(2) is appropriate and the proposed rule should be modified to reflect the suggested change.

15 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the commission finds and concludes that it should amend and adopt the rules as proposed in the CR-102 at WSR 06-24-128 with the changes described below.

16 **CHANGES FROM PROPOSAL:** The commission adopts the proposal with the following changes from the text noticed at WSR 06-24-128.

17 We recognize the difficulty operators would face under proposed WAC 480-75-450 in controlling the orientation of pipe seams during construction using boring or directional drilling techniques. Therefore, we amend the proposed rule to require orientation of pipe seams only when the pipe is laid in an open trench, as follows:

Operators must assure that new pipeline construction conforms to the requirements of ASME B31.4. Information about the ASME edition adopted and where to obtain it are set out in WAC 480-75-999 Adoption by reference. The longitudinal seams of connecting pipe joints must be offset by at least two inches. In addition, the longitudinal seams must be located on the upper half of the pipe when laid in an open trench.

18 We find McChord's proposal for the commission to prepare a standardized annual report form appropriate. Using a standardized form will eliminate confusion about what operators must include in a report and will provide the commission more useable information. Proposed WAC 480-75-650(2) is amended as follows:

(2) A report titled, "Hazardous Liquid Annual Report Form" which can be obtained from the Pipeline Safety Section of the commission. The annual report must include in detail the following information:

(a) Interstate and intrastate pipeline mileage in Washington state; and

(b) List of reportable and nonreportable safety related conditions as defined in 49 C.F.R. 195.55.

19 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the commission determines that WAC 480-75-270 should be adopted, and WAC 480-75-300, 480-75-450, 480-75-630, and 480-75-650 should be amended to read as set forth in Appendix A, as rules of the Washington utilities and transportation commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 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.

ORDER

20 THE COMMISSION ORDERS:

21 The commission adopts WAC 480-75-270, and amends WAC 480-75-300, 480-75-450, 480-75-630, and 480-75-650 to read as set forth in Appendix A, as rules of the Washington utilities and transportation commission, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

22 This order and the rule set out below, after being recorded in the register of the Washington utilities and transportation commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01, 34.05 RCW and 1-21 WAC.

DATED at Olympia, Washington, April 2, 2007.

Washington Utilities and Transportation Commission
Mark H. Sidran, Chairman
Patrick J. Oshie, Commissioner
Philip B. Jones, Commissioner

NEW SECTION

WAC 480-75-270 Damage prevention. Each operator must comply with the provisions of chapter 19.122 RCW, to the extent those provisions apply to the operator. A failure to comply with any of the provisions of chapter 19.122 RCW is a violation of this rule. Each day a violation persists is a separate violation of this rule. In determining whether an operator has complied with the provisions of chapter 19.122 RCW, the definitions contained in that chapter will apply. The definitions in chapter 480-75 WAC (other than the definition of "operator") do not apply.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-300 Leak detection. (1) Companies must rapidly locate leaks from their pipeline. Companies must provide leak detection (~~(for)~~) under flow and no flow conditions.

(2) Leak detection systems must be capable of detecting an eight percent of maximum flow leak within fifteen minutes or less.

(3) Companies must have a leak detection procedure and a procedure for responding to alarms. The operator must maintain leak detection maintenance and alarm records.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-450 Construction specifications. Operators must assure that new pipeline construction (~~((must))~~) conforms to the requirements of ASME B31.4. Information about the ASME edition adopted and where to obtain it are set out in WAC 480-75-999, Adoption by reference. The longitudinal seams of connecting pipe joints must be offset by at

least two inches. In addition, the longitudinal seams must be located on the upper half of the pipe when laid in ~~((the))~~ an open trench. ~~((Seamless pipe is exempted from the requirements of the longitudinal seam orientation.))~~

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-630 Incident reporting. (1) Every company must give prompt telephonic notice to the commission within two hours of discovery of an incident such as a release of a hazardous liquid resulting in:

- (a) A fatality;
- (b) Personal injury requiring hospitalization;
- (c) Fire or explosion not intentionally set by the operator;
- ~~(d) Spills of five gallons or more of product ((the commission request voluntary compliance with 49 CFR, Part 195.50 (b). If the Washington state legislature adopts this change, then notice of the five gallon spill will be mandatory));~~

~~((+))~~ (e) Damage to the property of the company and others of a combined total cost exceeding twenty-five thousand dollars (automobile collisions and other equipment accidents not involving hazardous liquid or hazardous-liquid-handling equipment need not be reported under this rule);

~~((+))~~ (f) A significant occurrence in the judgment of the company, even though it does not meet the criteria of (a) through ~~((+))~~ (e) of this subsection;

~~((+))~~ (g) The news media reports the occurrence, even though it does not meet the criteria of (a) through ~~((+))~~ (f) of this subsection.

(2) A written report must be sent to the commission within one month of the incident. The report must include the following:

- (a) Name(s) and address(es) of any person or persons injured or killed or whose property was damaged;
- (b) The extent of injuries and damage;
- (c) A description of the incident including date, time, and place;
- (d) A description and maximum operating pressure of the hazardous liquid facilities implicated in the incident and the system operating pressure at the time of the incident;
- (e) The date and time the hazardous liquid facility returns to safe operations; and
- (f) The date, time, and type of any temporary or permanent repair.

(3) An operator must give the commission telephonic notification within twenty-four hours of emergency situations including emergency shutdowns, material defects, or physical damage that impairs the serviceability of the pipeline.

AMENDATORY SECTION (Amending Docket No. TO-000712, General Order No. R-500, filed 8/26/02, effective 9/26/02)

WAC 480-75-650 Annual reports. ~~((1))~~ The annual report form No. 6 promulgated by the Federal Energy Regulatory Commission (FERC) is hereby adopted for hazardous liquid pipeline companies. At the close of each calendar year,

hazardous liquid pipeline companies must secure from the FERC two copies of the annual report forms. The annual report must be completed for the calendar year's operations. One completed copy of the annual report must be submitted to the commission no later than April 1 of the succeeding year. The second completed copy must be retained by the company.

(2) For those companies not required to file form No. 6 the commission requires those companies to file annual report form 224-225 prescribed by the commission. The annual report will be mailed to each company by February 15 of each year. Companies must submit an annual report to the commission no later than April 1 of the succeeding year. Operators must file the following annual reports with the commission no later than April 1 for the preceding calendar year:

(1) A copy of Pipeline and Hazardous Materials Safety Administration (PHMSA) F-7000.1-1 annual report required by the PHMSA, Office of Pipeline Safety.

(2) A report titled, "Hazardous Liquid Annual Report Form" which can be obtained from the Pipeline Safety Section of the commission. The annual report must include in detail the following information:

(a) Interstate and intrastate pipeline mileage in Washington state; and

(b) List of reportable and nonreportable safety-related conditions as defined in 49 CFR 195.55.

WSR 07-09-005

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed April 4, 2007, 4:12 p.m., effective May 5, 2007]

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

Purpose: This rule-making order modifies the due date for phyto-sanitary field inspection applications from various calendar dates to twenty-one days after planting. This better aligns the timing of the field inspection with the crop maturity, thus allowing for inspections to occur at a time when disease symptoms are most evident.

Citation of Existing Rules Affected by this Order: Amending WAC 16-301-220.

Statutory Authority for Adoption: RCW 15.49.310.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 07-04-107 on February 7, 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 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: April 3, 2007.

Valoria Loveland

Director

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-301-220 Apply for a phyto-sanitary field inspection. (1) On an application provided by the department seed program, a person requesting a phyto-sanitary field inspection must provide a list of the disease or diseases for which inspection is requested. Only one kind of crop is permitted on each application. Applications must be submitted to the department seed program before the due date (~~along with the required fees~~). Refer to chapter 16-303 WAC for the appropriate fees.

(2) Due dates for phyto-sanitary applications for field inspections are as follows:

- (a) **Western Washington**
 - (i) Fall plantings April 15
 - (ii) Spring plantings June 1
- (b) **Eastern Washington**
 - Fall plantings April 15
 - (i) ~~((Peas in Columbia Basin))~~ ~~((May 15))~~
Spring planted annual crops (21 days
except corn after plant-
ing)
 - (ii) ~~((Peas East Highway 395 (Palouse)))~~ June ~~((15))~~
Corn and all perennial crops 1
 - ~~((iii))~~ ~~Beans~~ ~~July 1~~
 - ~~(iv)~~ ~~All other crops~~ ~~June 1~~)

(3) Phyto sanitary applications for crops requiring a fall inspection are due 30 days prior to inspection time and not later than September 15.

(4) To be eligible for *Pseudomonas pisi*, phyto-sanitary field inspection for peas or other diseases based on area surveillance, the applicant must file a report with the department seed program listing acreage and general location (such as block and unit if possible) prior to May 1.

(5) Applications received after the due date are assessed a late fee. Acceptance of a late application is at the discretion of the certifying agency.

(6) Each applicant must submit applications and/or required reports stating diseases for which inspection is to be made and the number of inspections required and/or requested.

WSR 07-09-013
PERMANENT RULES
SPOKANE COUNTY AIR
POLLUTION CONTROL AUTHORITY

[Filed April 6, 2007, 11:44 a.m., effective May 7, 2007]

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

Purpose: Revise SCAPCA Regulation I, Article VI, Section 6.17 - Standards for Municipal Solid Waste Combustors, to implement revised federal emission guidelines for municipal solid waste combustors as established in 40 C.F.R. 60, Subpart Cb.

Citation of Existing Rules Affected by this Order: Amending SCAPCA Regulation I, Article VI, Section 6.17 - Standards for Municipal Solid Waste Combustors.

Statutory Authority for Adoption: RCW 70.94.141 and 70.94.380(2).

Adopted under notice filed as WSR 07-05-075 on February 20, 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 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: April 5, 2007.

April L. Westby
Environmental Engineer

AMENDATORY SECTION

REGULATION I, ARTICLE VI, SECTION 6.17

SECTION 6.17 STANDARDS FOR MUNICIPAL SOLID WASTE COMBUSTORS

A. Purpose. This section implements the emission guidelines promulgated by the United States Environmental Protection Agency (EPA) in 40 CFR Part 60, Subpart Cb, establishing standards for the control of certain pollutants emitted from municipal solid waste combustors.

B. Definitions. The definitions in 40 CFR §60.31b, as in effect on ~~((September 1, 1998))~~ December 1, 2006, are adopted by reference except:

1. The references to §60.52b(c) in the definitions of maximum demonstrated municipal waste combustor unit load and maximum demonstrated particulate matter control device temperature are hereby changed to §60.33b (c)(1). ~~((i) and (ii).))~~

2. In sections 60.53b, 60.58b, and 60.59b, Administrator means both the administrator of EPA and the Spokane County Air Pollution Control Authority.

C. Applicability. Section 6.17 applies to all facilities within Spokane County that are designated facilities as established in 40 CFR §60.32b, as in effect on ~~((September 1, 1998))~~ December 1, 2006.

D. Emission Standards. The following emission standards are adopted by reference. ~~((All facilities (i.e., each municipal solid waste combustor unit) designated in C. of this section shall comply with these standards in accordance with the compliance schedule given in J. below.))~~

1. Particulate matter emissions shall not exceed the emission limit in 40 CFR §60.33b (a)(1)(i), as in effect on ~~((September 1, 1998))~~ December 1, 2006.

2. Opacity shall not exceed the emission limit in 40 CFR §60.33b (a)(1)(iii), as in effect on ~~((September 1, 1998))~~ December 1, 2006.

3. Cadmium emissions shall not exceed the emission limit in 40 CFR §60.33b (a)(2)(i), as in effect on ~~((September 1, 1998))~~ December 1, 2006.

4. Lead emissions shall not exceed the emission limit in 40 CFR §60.33b (a)(4), as in effect on ~~((September 1, 1998))~~ December 1, 2006.

5. Mercury emissions shall not exceed the emission limit in 40 CFR §60.33b (a)(3), as in effect on ~~((September 1, 1998))~~ December 1, 2006.

6. Sulfur dioxide emissions shall not exceed the emission limit in 40 CFR §60.33b (b)(3)(i), as in effect on ~~((September 1, 1998))~~ December 1, 2006.

7. Hydrogen chloride emissions shall not exceed the emission limit in 40 CFR §60.33b (b)(3)(ii), as in effect on ~~((September 1, 1998))~~ December 1, 2006.

8. Dioxins/furans emissions shall not exceed the emission limit in 40 CFR §60.33b (c)(1) ~~(i) or (ii)~~, as in effect on ~~((September 1, 1998))~~ December 1, 2006.

9. Nitrogen oxide emissions shall not exceed the emission limits in Table 1 of 40 CFR §60.33b(d) (24-hour daily arithmetic average), as in effect on ~~((September 1, 1998))~~ December 1, 2006.

10. Carbon monoxide emissions shall not exceed the emission levels specified in Table 3 of 40 CFR §60.34b(a), as in effect on ~~((September 1, 1998))~~ December 1, 2006.

E. Operating Practices. The operating practices of 40 CFR §60.53b (b) and (c), as in effect on ~~((September 1, 1998))~~ December 1, 2006, are adopted by reference. ~~((All facilities designated in C. of this section shall comply with these practices in accordance with the compliance schedule given in J. below.))~~

F. Operator Training and Certification. The operator training and certification requirements of 40 CFR §60.54b, as in effect on ~~((September 1, 1998))~~ December 1, 2006, are adopted by reference with the following change:

1. A State certification program may only be used to meet the certification requirements if it has been demonstrated to EPA's satisfaction that the State program is equivalent to the American Society of Mechanical Engineers certification program.

~~((All facilities designated in C. of this section shall comply with these requirements in accordance with the compliance schedule given in J. below.))~~

G. Fugitive Ash Emissions. The fugitive ash emission requirements of 40 CFR §60.55b, as in effect on ~~((September 1, 1998))~~ December 1, 2006.

~~1, 1998))~~ December 1, 2006, are adopted by reference. ((All facilities designated in C. of this section shall comply with these requirements in accordance with the compliance schedule given in J. below.))

H. Compliance and Performance Testing. The compliance and performance testing requirements in 40 CFR §60.58b, as in effect on ~~((September 1, 1998))~~ December 1, 2006, are adopted by reference with the following changes:

1. In §60.58b (a)(1)(iii), the references to §60.53b(a) are hereby changed to Table 3 of §60.34b(a).

2. In §60.58b(c), the reference to §60.52b (a)(1) and (a)(2) is hereby changed to §60.33b (a)(1)(i) and (iii).

3. In §60.58b(d), the reference to §60.52b(a) is hereby changed to §60.33b (a)(2), (a)(3), and (a)(4).

4. In §60.58b (d)(1), the reference to §60.52b (a)(3) and (4) is hereby changed to §60.33b (a)(2) and (a)(4).

5. All references to §60.52b (a)(5) in §60.58b are hereby changed to §60.33b (a)(3).

6. In §60.58b(e), the reference to §60.52b (b)(1) is hereby changed to §60.33b (b)(3)(i).

7. In §60.58b(f), the reference to §60.52b (b)(2) is hereby changed to §60.33b (b)(3)(ii).

8. All references to §60.52b(c) in §60.58b are hereby changed to §60.33b (c)(1). ~~((~~(i) and (ii)~~))~~

9. In §60.58b (g)(5)(iii), the alternate testing schedule for dioxins/furans, as applicable, shall be available to facilities that achieve a dioxin/furan emission level less than or equal to 15 nanograms per dry standard cubic meter total mass, corrected to 7 percent oxygen.

10. In §60.58b(h), the references to §60.52b(d) are hereby changed to Table 1 of §60.33b(d).

11. In §60.58b(i), the reference to §60.53b is hereby changed to Table 3 of §60.34b(a) and §60.53b (b) and (c).

12. In §60.58b(i), the references to §60.53b(a) are hereby changed to Table 3 of §60.34b(a).

1. In §60.58b(c), the reference to §60.52b (a)(1) and (a)(2) is hereby changed to §60.33b (a)(1)(i) and (iii).

2. In §60.58b(d), the reference to §60.52b(a) is hereby changed to §60.33b (a)(2), (a)(3), and (a)(4).

3. In §60.58b (d)(1), the reference to §60.52b (a)(3) and (4) is hereby changed to §60.33b (a)(2) and (a)(4).

4. All references to §60.52b (a)(5) in §60.58b are hereby changed to §60.33b (a)(3).

5. In §60.58b(e), the reference to §60.52b (b)(1) is hereby changed to §60.33b (b)(3)(i).

6. In §60.58b(f), the reference to §60.52b (b)(2) is hereby changed to §60.33b (b)(3)(ii).

7. All references to §60.52b(c) in §60.58b are hereby changed to §60.33b (c)(1) and (ii).

8. In §60.58b (g)(5)(iii), the alternate testing schedule for dioxins/furans, as applicable, shall be available to facilities that achieve a dioxin/furan emission level less than or equal to 15 nanograms per dry standard cubic meter total mass, corrected to 7 percent oxygen.

9. In §60.58b(h), the references to §60.52b(d) are hereby changed to Table 1 of §60.33b(d).

10. In §60.58b(i), the reference to §60.53b is hereby changed to Table 3 of §60.34b(a) and §60.53b (b) and (c).

11. In §60.58b(i), the references to §60.53b(a) are hereby changed to Table 3 of §60.34b(a).

~~((All facilities designated in C. of this section shall comply with the compliance and performance testing requirements of this subsection in accordance with the compliance schedule given in J. below.))~~

I. Reporting and Recordkeeping. The reporting and recordkeeping requirements in 40 CFR §60.59b, as in effect on December 1, 2006, are adopted by reference with the following changes:

1. §60.59b (a), (b)(5), and (d)(11) are hereby deleted.

2. In §60.59b(d), the reference to §60.52b is hereby changed to §60.33b.

3. In §60.59b(d), the reference to §60.53b is hereby changed to Table 3 of §60.34b(a) and §60.53b (b) and (c).

~~((All facilities designated in C. of this section shall comply with the recordkeeping and reporting requirements of this subsection in accordance with the compliance schedule given in J. below.))~~

J. Compliance Schedule. All designated facilities, as determined in B. above, shall comply with the requirements of Section 6.17 as of the effective date of this regulation ~~((December 1, 1999))~~ except for the following:

1. The requirement specified in §60.54b(d) does not apply to chief facility operators, shift supervisors, and control room operators who have obtained full certification from the American Society of Mechanical Engineers or a state certification plan on or before December 1, 1999.

2. The owner or operator may request that the EPA Administrator waive the requirement specified in §60.54b(d) for chief facility operators, shift supervisors, and control room operators who have obtained provisional certification from the American Society of Mechanical Engineers or a state certification plan on or before December 1, 1999.

~~((3. The initial training requirements specified in §60.54b (f)(1) shall be completed no later than 12 months after December 1, 1999, or the date prior to the day when the person assumes responsibilities affecting municipal waste combustor unit operation whichever is later.~~

~~4. The initial performance evaluation/test, required in H. above, shall be completed no later than 180 days after December 1, 1999.))~~

Reviser's note: The typographical error in the above material occurred in the copy filed by the Spokane County Air Pollution Control Authority and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 07-09-024

PERMANENT RULES

COMMISSION ON

JUDICIAL CONDUCT

[Filed April 9, 2007, 10:01 a.m., effective May 10, 2007]

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

Purpose: To clarify in existing Rule 11 that confidentiality also applies to former commission members, disciplinary counsel, investigative counsel and staff.

Citation of Existing Rules Affected by this Order: Amending CJCRP 11.

Statutory Authority for Adoption: Washington Const. Art. IV. Sec. 31.

Other Authority: Chapter 2.64 RCW.

Adopted under notice filed as WSR 07-05-038 on February 14, 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 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: April 6, 2007.

Gregory R. Dallaire
Commission Chair

AMENDATORY SECTION (Amending 99-04, filed 12/1/00)

RULE 11. CONFIDENTIALITY

(a) Investigative and initial proceedings.

(1) Before the commission files a statement of charges alleging misconduct by or incapacity of a judge, all proceedings, including commission deliberations, investigative files, records, papers and matters submitted to the commission, shall be held confidential by the commission, disciplinary counsel, investigative officers, and staff except as follows:

(A) With the approval of the commission, the investigative officer may notify respondent that a complaint has been received and may disclose the name of the person making the complaint to respondent pursuant to Rule 17(e).

(B) The commission may inform a complainant or potential witness of the date when respondent is first notified that a complaint alleging misconduct or incapacity has been filed with the commission. The name of the respondent, in the discretion of the commission, may not be used in written communications to the complainant.

(C) The commission may disclose information upon a waiver in writing by respondent when:

(I) Public statements that charges are pending before the commission are substantially unfair to respondent; or

(ii) Respondent is publicly accused or alleged to have engaged in misconduct or with having a disability, and the commission, after a preliminary investigation, has determined that no basis exists to warrant further proceedings or a recommendation of discipline or retirement.

(D) The commission has determined that there is a need to notify another person or agency in order to protect the public or the administration of justice.

(2) The fact that a complaint has been made, or that a statement has been given to the commission, shall be confidential during the investigation and initial proceeding except as provided under Rule 11.

(3) No person providing information to the commission shall disclose information they have obtained from the commission concerning the investigation, including the fact that an investigation is being conducted, until the commission files a statement of charges, dismisses the complaint, or otherwise concludes the investigation or initial proceeding.

(b) Hearings on statement of charges.

(1) After the filing of a statement of charges, all subsequent proceedings shall be public, except as may be provided by protective order.

(2) The statement of charges alleging misconduct or incapacity shall be available for public inspection. Investigative files and records shall not be disclosed unless they formed the basis for probable cause. Those records of the initial proceeding that were the basis of a finding of probable cause shall become public as of the date of the fact-finding hearing.

(3) Disciplinary counsel's work product shall be confidential.

(c) Commission deliberations. All deliberations of the commission in reaching a decision on the statement of charges shall be confidential.

(d) General Exceptions.

(1) A complainant may inform any third party, or the public generally, of the factual basis of his or her complaint.

(2) Any person, other than a complainant, who gives a statement to the commission, may inform any third party, or the public generally, of the factual basis of such statement.

(e) General Applicability.

(1) No person shall disclose information obtained from commission proceedings or papers filed with the commission, except that information obtained from documents disclosed to the public by the commission pursuant to Rule 11 and all information disclosed at public hearings conducted by the commission are not deemed confidential under Rule 11.

(2) Any person violating Rule 11 may be subject to a proceeding for contempt in superior court.

(3) A judge shall not intimidate, coerce, or otherwise attempt to induce any person to disclose, conceal or alter records, papers, or information in violation of Rule 11. Violation of Rule 11 (e)(3) may be charged as a separate violation of the Code of Judicial Conduct.

(4) If the commission or its staff initiates a complaint under Rule 17 (b)(1), then Rule 11 (a)(1) as it applies to the commission, rather than those applicable to complainants, shall govern the commission and its staff.

(5) These confidentiality rules also apply to former commission members, disciplinary counsel, investigative counsel and staff with regard to information they had access to while serving the commission.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Commission on Judicial Conduct and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 07-09-026
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed April 9, 2007, 12:31 p.m., effective May 10, 2007]

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

Purpose: To comply with E2SHB 3098 (section 804) which shifted rule-making authority and governance for the excellence in teacher preparation award from the state board of education to the professional educator standards board (PESB). Specifically, the changes replace the phrases "the state board of education" with "the professional educator standards board" and references for "180" to "181" to align with the PESB's set of WACs.

Citation of Existing Rules Affected by this Order: Repealing [decodifying] WAC 180-97-003, 180-97-010, 180-97-040, 180-97-060, and 180-97-080.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 06-20-064 on September 29, 2006.

A final cost-benefit analysis is available by contacting Nasue Nishida, P.O. Box 47236, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

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 5.

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 5.

Date Adopted: April 9, 2007.

Nasue Nishida
 Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 02-18-061, filed 8/29/02, effective 9/29/02)

WAC 180-97-010 Definitions. (1) The term "teacher educator" means: A person employed by a college or university with a ~~((state board of education))~~ professional educator standards board approved teacher preparation program who serves as a faculty member or administrator in the approved teacher education program.

(2) The term "professional education advisory board" means: One of the professional education advisory boards approved by the ~~((state board of education))~~ professional educator standards board as defined in WAC ~~((180-78A-075))~~ 181-78A-075(1) (Professional education advisory board for teacher preparation programs).

(3) The term "educational grant" means an amount not exceeding two thousand five hundred dollars for a profes-

sional education advisory board which shall be awarded by the ~~((state board of education))~~ professional educator standards board upon receipt of a grant application identifying the educational purpose for which the grant will be used, submitted pursuant to WAC ~~((480-97-100))~~ 181-97-080. The professional education advisory board shall use the educational grant funds to enhance the recipient's competencies.

AMENDATORY SECTION (Amending WSR 02-18-061, filed 8/29/02, effective 9/29/02)

WAC 180-97-060 Selection of recipients—Review committee. (1) The ~~((president of the state board of education))~~ chair of the professional educator standards board shall appoint annually a committee to review and select the recipient for the Washington award for excellence in teacher preparation. The committee shall include:

(a) The chair or other member of the ~~((state board's professional development and certification committee))~~ professional educator standards board;

(b) Two members representing higher education teacher preparation programs;

(c) Two teachers; and

(d) The chairs of the legislative education and higher education committees.

(2) No person who represents a higher education teacher education institution from which a nomination has been received, or is a member of that college or university's professional education advisory board, shall be allowed to vote on that individual's nomination.

(3) In making the selection, the committee may give consideration to the nominees' recent contributions to the field and shall be guided by the criteria under WAC ~~((480-97-040))~~ 181-97-040.

AMENDATORY SECTION (Amending WSR 02-18-061, filed 8/29/02, effective 9/29/02)

WAC 180-97-080 Award. The Washington award for excellence in teacher preparation shall include:

(1) A certificate presented by the governor, the ~~((president of the state board of education))~~ chair of the professional educator standards board, and the superintendent of public instruction at a public ceremony; and

(2)(a) A grant which shall not exceed two thousand five hundred dollars to the professional education advisory board of the institution from which the teacher educator is selected.

(b) The professional education advisory board must submit the grant application within one year after the award is received by the recognized recipient. The grant application shall identify the educational purpose toward which the grant will be used and shall be awarded by the superintendent of public instruction after the ~~((state board of education))~~ professional educator standards board has approved the application.

NEW SECTION

The following chapter of the Washington Administrative Code is decodified as follows:

Old WAC Number	New WAC Number
180-97-003	181-97-003
180-97-010	181-97-010
180-97-040	181-97-040
180-97-060	181-97-060
180-97-080	181-97-080

WSR 07-09-032
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed April 10, 2007, 12:10 p.m., effective May 11, 2007]

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

Purpose: This rule is intended as a companion rule to current WAC 415-104-480, governing benefits payable to LEOFF Plan 2 members who become disabled in the line of duty. This new rule explains who is eligible to apply for nonduty disability benefits, how the application process works, how the application will be evaluated, how disability benefits are paid, how a nonduty disability benefit may affect a service retirement benefit, and how a nonduty disability retirement benefit can be impacted by subsequent medical examination, death, or return to LEOFF service.

Statutory Authority for Adoption: RCW 41.50.050(5).

Adopted under notice filed as WSR 07-03-098 on January 19, 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 0, Repealed 0.

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

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

Date Adopted: April 10, 2007.

Sandra J. Matheson
Director

NEW SECTION

WAC 415-104-485 LEOFF nonduty disability benefits. This section applies to you if you are a LEOFF Plan 2 member who incurs a disability not in the line of duty. If your

disability or injury was incurred in the line of duty, see WAC 415-104-480.

(1) **Who is entitled to nonduty disability benefits?** Any member of LEOFF Plan 2 who the department determines has:

(a) Incurred a physical or mental disability while not in the line of duty;

(b) Become totally incapacitated for continued employment in a LEOFF eligible position; and

(c) Separated from a LEOFF-eligible position due to the disability.

(2) **How is "line of duty" defined?** Line of duty means any action or activity occurring in conjunction with your employment or your status as a law enforcement officer or fire fighter and required or authorized by law, rule, regulations, or condition of employment or service.

(3) **How do I apply for nonduty disability benefits?** The department must receive:

(a) A completed three-part disability retirement application on the form provided by the department.

(i) Part 1: Disability retirement application. You, or a person with legal authority to apply on your behalf, must complete and sign the application. If you are married, your spouse must sign consenting to the retirement payment option you choose. Your signature(s) must be notarized.

(ii) Part 2: Employer's statement and report. Your employer must complete, sign and return it directly to the department.

(iii) Part 3: Medical report. You must complete Section 1. The remainder must be completed and signed by a person licensed according to Washington state law to practice medicine and surgery, osteopathic medicine and surgery, chiropractic, clinical psychology, podiatry, dentistry, or optometry;

(b) Additional information requested by the department; and

(c) Any other material you want the department to consider.

(4) **Is there a time limit for filing an application for nonduty disability benefits?** No. There is no time limit for applying for benefits. However, if you have separated from employment, your application must be based on your condition at the time of separation.

(5) **What evidence will the department use to determine whether I am entitled to benefits under this section?** The department will consider any relevant information submitted by you or your employer, or otherwise available to the department, including:

(a) Information and determinations by the department of labor and industries (L&I) or a self-insurer;

(b) Medical, vocational, and other information about your disability;

(c) Your job description;

(d) Your membership records, maintained by the department; and

(e) Any other relevant evidence.

(6) **What would disqualify me for nonduty disability benefits?** You are not eligible for nonduty disability benefits if any of the following apply:

(a) Your application does not provide adequate proof that you are totally incapacitated for continued employment in a LEOFF-eligible position;

(b) Your disability is the result of your criminal conduct committed after April 21, 1997. See RCW 41.26.061.

(7) **Who decides if I meet the requirements for benefits under this section?** The LEOFF plan administrator.

(8) **May I petition a decision made by the LEOFF plan administrator?** Yes. If the LEOFF plan administrator denies your request for a disability benefit under this section, you may petition for review under chapter 415-04 WAC.

(9) **What are the nonduty disability retirement benefits?** As a nonduty disability retiree, your retirement benefit is a monthly allowance equal to:

(a) Two percent times your final average salary times your service credit years. This allowance will be actuarially reduced to reflect the difference in age at the time of disability retirement and age 53. If you qualify for alternative early retirement per RCW 41.26.430(3), your reduction will be three percent per year before age 53.

(b) If you choose a benefit option with a survivor feature as described in WAC 415-104-215, your monthly allowance will be actuarially reduced to offset the cost. The factors used to determine the amount of reduction are in WAC 415-104-380.

Example: Tom incurs a nonduty disability at age 42 after twenty years of service. His final average salary is \$5,000 per month. Tom's wife is also age 42. He chooses Benefit Option Two so that, after his death, his wife will receive a monthly allowance equal to the gross monthly allowance he was receiving. See WAC 415-104-215 (2)(b).

Tom's nonduty disability allowance is:

Nonduty disability allowance $\$5,000 \times 2\% \times 20$ years = \$2,000

Allowance after the actuarial reduction for early retirement $\$2,000 \times 0.39 = \780

Allowance after the actuarial reduction for Option Two (survivor feature) $\$780 \times .87 = \679

(10) **Are my nonduty disability benefits taxable?** The department reports disability benefits to the Internal Revenue Service as required by federal law. Based on current federal law, your benefit may be taxable. You should consult with your own tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any payments you receive from the department.

The department does not:

(a) Guarantee that payments are exempt from federal income tax;

(b) Guarantee that it was correct in withholding or not withholding taxes from benefit payments to you;

(c) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its determination; or

(d) Assume any liability for your compliance with the Internal Revenue Code.

(11) **If I previously retired for service under the alternative early retirement provisions of RCW 41.26.430(3), but I qualified for a disability retirement, can I apply for duty or nonduty disability benefits?** Yes. If you retired under the alternative early retirement provisions of RCW 41.26.430(3) on or before January 1, 2001, you can apply to retire under the disability provisions of RCW 41.26.470. Your benefit will be reduced by three percent per year before age 53 instead of actuarially reduced by the early retirement factors in WAC 415-02-320.

(12) **If I previously retired for disability but was otherwise qualified for a service retirement under the alternative early retirement provisions of RCW 41.26.430(3), can I have my benefit recalculated to reflect a three percent reduction instead of being actuarially reduced by the early retirement reduction factors in WAC 415-102-320?** Yes. If you retired on or after January 1, 2001, and met the requirements of RCW 41.26.430(3), you can have your disability benefit recalculated under those provisions.

(13) **When does a nonduty disability retirement benefit end?** The department may require comprehensive medical examinations to reevaluate your eligibility for continued disability benefits according to the provisions of RCW 41.26.470(2). Your nonduty disability benefit will cease if:

(a) You return to work in a LEOFF-eligible position; or

(b) Medical examination reveals that you are no longer totally incapacitated for employment in a LEOFF-eligible position and you are no longer entitled to workers' compensation benefits under Title 51 RCW.

(14) **If I retire for a nonduty disability and die, will my survivor beneficiary receive a monthly allowance?** If you choose a benefit option with a survivor feature under WAC 415-104-215(2) at the time of retirement, your survivor beneficiary will receive a monthly allowance after your death.

(15) **What happens if I return to a LEOFF-eligible position?** If you return to a LEOFF-eligible position, your monthly allowance will stop.

(16) **If I return to a LEOFF-eligible position, how will my future retirement benefit be affected?** When you reretire, your monthly allowance will be calculated pursuant to RCW 41.26.500 and WAC 415-104-111.

WSR 07-09-033

PERMANENT RULES

GAMBLING COMMISSION

[Order 608—Filed April 10, 2007, 12:28 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 and implemented January 1, 2008. The rules manual is being broken into sections and rewritten a section at a time. Any substantive changes made to current card room rules are identified below (see Reviser's Note below). This new chapter incorporates rules that relate to card rooms.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 06-24-052 on December 1, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 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 140, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 140, 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 140, Amended 0, Repealed 0.

Date Adopted: April 10, 2007.

Susan Arland
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 07-10 issue of the Register.

WSR 07-09-035
PERMANENT RULES
SECRETARY OF STATE

[Filed April 11, 2007, 8:33 a.m., effective May 12, 2007]

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

Purpose: The changes made to these rules amend to dates in current rules to correspond with chapter 344, Laws of 2006, legislation changing the date of the primary and other election deadlines.

Citation of Existing Rules Affected by this Order: Amending 6 [WAC 434-215-005, 434-215-020, 434-260-030, 434-260-040, 434-335-030, and 434-335-190.]

Statutory Authority for Adoption: RCW 29A.04.611, chapter 344, Laws of 2006.

Adopted under notice filed as WSR 07-04-001 on January 24, 2007.

Changes Other than Editing from Proposed to Adopted Version: Removed the repeal of WAC 434-326-900 because it will be removed in later rule making.

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 6, 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 6, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 6, Repealed 0; Pilot Rule Mak-

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

Date Adopted: April 11, 2007.

Steve Excell
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 06-14-049, filed 6/28/06, effective 7/29/06)

WAC 434-215-005 Filing information—Questionnaire—Compiling and dissemination. Prior to ~~((April))~~ March 1 of each year, the county auditor shall send a questionnaire to the administrative authority of each local jurisdiction for which the auditor is the candidate filing officer subject to the provisions of RCW ~~((29A.04.320))~~ 29A.04.321 and 29A.04.330. The purpose of the questionnaire shall be to confirm information which the auditor may disseminate to the public regarding the filing for elective offices. The questionnaire should request, as a minimum, confirmation of offices to be filled at the general election that year, the name of the incumbent, and the annual salary for the position at the time of the filing period. Responses should be received prior to ~~((May))~~ April 1 of that year so that the filing information can be compiled and disseminated to the public at least two weeks prior to the candidate filing period.

AMENDATORY SECTION (Amending WSR 06-14-049, filed 6/28/06, effective 7/29/06)

WAC 434-215-020 Declaration of candidacy—Precinct committee officer. Declarations of candidacy for the office of precinct committee officer, shall be filed in substantially the following form:

((STRICKEN GRAPHIC _____))

Filing Data For Office Use Only

Date _____	Fee Paid \$ _____	Filing No. _____	Precinct # _____
Paid By (check one)			
<input type="checkbox"/> Check	<input type="checkbox"/> Cash	<input type="checkbox"/> Other	
Clerk/Cashier Initials _____		Voter Registration # _____	

**DECLARATION OF CANDIDACY
PRECINCT COMMITTEE OFFICER**

I, _____, declare that I am a registered voter residing at:
(PRINT NAME AS YOU ARE REGISTERED TO VOTE)

(STREET ADDRESS OR RURAL ROUTE) (CITY) (COUNTY) WA (ZIP CODE)

(MAILING ADDRESS) (CITY) (COUNTY) WA (ZIP CODE)

(TELEPHONE NUMBER) (EMAIL ADDRESS)

that, at the time of filing this declaration, I am a registered voter in _____ precinct and that I am legally qualified to assume office if elected; that I hereby declare myself a candidate for the office of Precinct Committee Officer to be elected at the Primary Election to be held on the _____ day of September, 2006, and hereby request that my name be printed upon the official Primary Election ballot as a candidate of the _____ party, and:

I am submitting the sum of one dollar, the fee required by RCW 29A.24.091.

Please print my name on the ballot **exactly** as follows: _____

Further, I declare, under penalty of perjury, that I will support the Constitution and laws of the United States and the Constitution and laws of the State of Washington.

X _____
(SIGNATURE OF CANDIDATE) (DATE)

_____ STRICKEN GRAPHIC))

Filing Data For Office Use Only

Date _____	Fee Paid \$ _____	Filing No. _____	Precinct # _____
Paid By (check one)			
<input type="checkbox"/> Check	<input type="checkbox"/> Cash	<input type="checkbox"/> Other	Clerk/Cashier Initials _____ Voter Registration # _____

DECLARATION OF CANDIDACY
PRECINCT COMMITTEE OFFICER

I, _____, declare that I am a registered voter residing at:
(PRINT NAME AS YOU ARE REGISTERED TO VOTE)

(STREET ADDRESS OR RURAL ROUTE) (CITY) (COUNTY) WA (ZIP CODE)

(MAILING ADDRESS) (CITY) (COUNTY) WA (ZIP CODE)

(TELEPHONE NUMBER) (EMAIL ADDRESS)

that, at the time of filing this declaration, I am a registered voter in _____ precinct and that I am legally qualified to assume office if elected; that I hereby declare myself a candidate for the office of Precinct Committee Officer to be elected at the Primary Election, and hereby request that my name be printed upon the official Primary Election ballot as a candidate of the _____ party, and:

I am submitting the sum of one dollar, the fee required by RCW 29A.24.091.

Please print my name on the ballot **exactly** as follows: _____

Further, I declare, under penalty of perjury, that I will support the Constitution and laws of the United States and the Constitution and laws of the State of Washington.

X _____
(SIGNATURE OF CANDIDATE) (DATE)

The forms shall measure eight and one-half inches by eleven inches and be printed on paper stock of good quality. The form may also contain space for recording the date and time of filing, a receipt number, if applicable, and a sequential filing number. County auditors may design and use a declaration of candidacy different in form and style from that specified by this rule as long as it contains all of the information required by this rule.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-260-030 Scheduled reviews—Auditor request. Not later than (~~June~~) May 1, any county auditor may request that the secretary of state designate his or her county for an election review. The secretary of state shall, whenever practical, honor that request.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-260-040 Election reviews—Secretary of state to designate. Not later than (~~June~~) May 15 the secretary of state shall notify, in writing, the counties selected for an election review and the chairs of the state committees of any major political party. The notification shall include the date and time the review is scheduled to begin. Whenever possible, election reviews shall be conducted on dates that are mutually agreeable to the secretary and to the county auditor, except that those parts of the review process dealing with the actual conduct and canvassing of the election itself must be conducted between election day and the certification of the election returns. In designating counties to be reviewed, the secretary shall take into consideration any complaints filed with his or her office pursuant to the provisions of RCW 29A.04.570 (1)(b).

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-030 Initial application for certification. Any person or corporation (applicant) owning or representing a voting system or a vote tabulating system, part of a system, equipment, materials or procedure may apply in writing to the secretary of state for certification December 1st and ending (~~May~~) June 30th the following year. Certification examinations and hearings are only conducted between January 1st and (~~July~~) September 15th of each year.

(1) The application must include, but is not limited to, the following information:

(a) Description of the applicant, business address, customer references, and list of election products.

(b) Description of the equipment under review, version numbers, release numbers, operating and maintenance manuals, training materials, and technical and operational specifications.

(c) Documentation of all other states that have tested, certified and used the equipment in a binding election, and the length of time used in that state. The information for each state must include the version numbers of the operating system, software, and firmware, the dates and jurisdictions, and any reports compiled by state or local governments concerning the performance of the system.

(d) A monetary deposit as described in WAC 434-335-080.

(e) A copy of a letter from the applicant to each independent testing authority (ITA) which:

(i) Directs the ITA to send a copy of the completed ITA qualification report to the secretary of state;

(ii) Authorizes the ITA to discuss testing procedures and findings with the secretary of state; and

(iii) Authorizes the ITA to allow the secretary of state to review all records of any qualification testing conducted on the equipment.

(f) A technical data package (TDP) conforming to the 2002 *FEC Federal Voting Systems Standards (FVSS)*, Vol. II, Sec. 2 standards that includes:

(i) Identification of all COTS hardware and software products and communications services used in the operation of the voting system (ref. FVSS, 2.2.1.e);

(ii) A system functionality description (ref. FVSS, 2.3);

(iii) A system security specification (ref. FVSS, 2.6);

(iv) System operations procedures (ref. FVSS, 2.8);

(v) System maintenance procedures (ref. FVSS, 2.9);

(vi) Personnel deployment and training requirements (ref. FVSS, 2.10);

(vii) Configuration management plan (ref. FVSS, 2.11);

(viii) System change notes (if applicable, ref. FVSS, 2.13);

(ix) A system change list, if any, of modifications currently in development; and

(x) A system usability testing report.

(2) The source code of an electronic voting system must be placed in escrow and be accessible by the secretary of state under prescribed conditions allowing source code review for system verification.

(3) All documents, or portions of documents, containing proprietary information are not subject to public disclosure. The secretary of state must agree to use proprietary information solely for the purpose of analyzing and testing the system, and to the extent permitted by law, may not use the proprietary information or disclose it to any other person or agency without the prior written consent of the applicant.

AMENDATORY SECTION (Amending WSR 06-11-042, filed 5/10/06, effective 6/10/06)

WAC 434-335-190 Restricted period. No modification, change, or other alteration to voting or vote tabulating system, equipment, or component may be installed in a county between (~~July~~) June 15th and November 30th of the same year.

WSR 07-09-036

PERMANENT RULES SECRETARY OF STATE

(Elections Division)

[Filed April 11, 2007, 8:34 a.m., effective May 12, 2007]

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

Purpose: The purpose of these changes is to clarify who is eligible to sign a candidate's filing fee petition, outline procedures for protecting voters' privacy during audits of direct recording electronic devices, clarify the procedure when using abbreviations on ballots, eliminate the requirement to include a voter guide with each protected records ballot since voter guides are no longer used, and make other technical changes.

Citation of Existing Rules Affected by this Order: Repealing WAC 434-230-180; and amending WAC 434-230-170, 434-250-030, 434-250-040, 434-250-050, 434-261-005, 434-262-105, 434-262-020, and 434-840-340.

Statutory Authority for Adoption: RCW 29A.04.611.

Adopted under notice filed as WSR 07-04-109 on February 7, 2007.

Changes Other than Editing from Proposed to Adopted Version: WAC 434-250-030 (3)(a), removed "out-of-state."

WAC 434-250-050:

- Removed, "except as otherwise provided by law" from the oath. Washington has no exceptions provided by law.
- Provided an allowance for county auditors to use existing stock of absentee envelopes until January 1, 2008.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 7, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 8, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 1, Amended 8, Repealed 1; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 11, 2007.

Steve Excell
Assistant Secretary of State

NEW SECTION

WAC 434-215-025 Declaration of candidacy—Filing fee petitions. When a candidate submits a filing fee petition in lieu of his or her filing fee, as authorized by RCW 29A.24-091, voters eligible to vote on the office in the general election are eligible to sign the candidate's filing fee petition.

AMENDATORY SECTION (Amending WSR 06-14-049, filed 6/28/06, effective 7/29/06)

WAC 434-230-170 Ballot form. Each office on the ballot shall be identified, along with a statement designating how many candidates are to be voted on for such office (e.g., vote for, with the words, "one," "two," or a spelled number). The office term shall be included on the ballot if such term is other than a full term (e.g., short/full term, two-year unexpired term, etc.). Each office shall be listed on the ballot in the manner prescribed by law or administrative rule. Following the office designation the names of all candidates for that position shall be listed together with political party designation or abbreviation as certified by the secretary of state as provided in RCW 29A.36.011 or the word "nonpartisan," or "NP" as applicable. When choosing to use abbreviations, the county auditor must provide a legend on each ballot

defining all abbreviations. Each office listed on the ballot shall be separated by a bold line. In a year in which a President of the United States is to be elected, the names of all candidates for President and Vice-President for each party shall be grouped together with one vote response position for each party, where the voter may indicate his or her choice.

Candidate names shall be printed in a type style and point size which is easily read. If a candidate's name exceeds the space provided, the election official shall take whatever steps necessary to place the name on the ballot in a manner which is readable. These steps may include using a smaller point size, a different type style, or setting the name in upper/lower case letters, rather than upper case, if appropriate.

Each position, with the candidates running for that office, shall be clearly delineated from the following one by a bold line. Following each listing of candidates shall be a blank space for writing in the name of any candidate.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-230-180	Paper ballots and ballot cards—Numbering.
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AMENDATORY SECTION (Amending WSR 06-14-047, filed 6/28/06, effective 7/29/06)

WAC 434-250-030 Applications. (1) As authorized by RCW 29A.40.040, requests for status as an ongoing absentee voter must be made in writing. With the exception of county auditors who conduct primaries and elections entirely by mail, each county auditor must provide applications for requests made in writing. The form must include, but not be limited to, the following:

- (a) A space for the voter to print his or her name and the address at which he or she is registered to vote;
- (b) The address to which the ballot is to be mailed; and
- (c) A space for the voter to sign and date the application.

A voter may request status as an ongoing absentee voter by indicating such on a standard voter registration form.

(2) As authorized by RCW 29A.40.020 and 29A.40.030, requests for a single absentee ballot may be made in person, by telephone, electronically, or in writing, and may be made by a family member. With the exception of county auditors who conduct primaries and elections entirely by mail, each county auditor must provide applications for requests made in writing. The form must include, but not be limited to, the following:

- (a) A space for the voter to print his or her name and the address at which he or she is registered to vote;
- (b) The address to which the ballot is to be mailed;
- (c) A space for the voter to indicate for which election or elections the application is made; and
- (d) A space for the voter to sign and date the application.

(3) As authorized by RCW 29A.40.050, requests for a special absentee ballot must be made in writing and each county auditor must provide the applications. In addition to

the requirements for a single absentee ballot, as provided in subsection (2) of this section, the form must include:

(a) A space for an ~~((out of state,))~~ overseas~~(;)~~ or service voter not registered to vote in Washington to indicate his or her last residential address in Washington; and

(b) A checkbox requesting that a single absentee ballot be forwarded as soon as possible~~(; and~~

~~(c) The declaration required in WAC 434-250-050).~~

The county auditor shall honor any application for a special absentee ballot that is in substantial compliance with the provisions of this section. Any application for a special absentee ballot received more than ninety days prior to a primary or general election may be either returned to the applicant with the explanation that the request is premature or held by the auditor until the appropriate time and then processed.

(4) As authorized by RCW 29A.40.080, requests for an absentee ballot may be made by a resident of a health care facility, as defined by RCW 70.37.020(3). Each county shall provide an application form for such a registered voter to apply for a single absentee ballot by messenger on election day. The messenger may pick up the voter's absentee ballot and deliver it to the voter and return it to the county auditor's office.

(5) If an application for an absentee ballot is received from a military or overseas voter who is not already registered, and the application does not contain sufficient address information to enable the auditor to issue the correct absentee ballot, the auditor shall ~~((notify))~~ contact the person ~~((and explain why the application is not accepted. If, in the judgment of the county auditor, enough time exists to correct the application, the county auditor must request the proper information from the voter in order to facilitate))~~ to clarify the application. If, in the judgment of the county auditor, insufficient time exists to correct the application, the auditor must issue the absentee ballot as if the voter had listed the county auditor's office as his or her residence. Upon its return, the ballot must be referred to the county canvassing board, and the only offices or issues that may be tabulated are those common to the entire county ~~((and those for which it can be conclusively determined the voter is qualified to vote)).~~

AMENDATORY SECTION (Amending WSR 06-23-094, filed 11/15/06, effective 12/16/06)

WAC 434-250-040 Instructions to voters. (1) In addition to the instructions required by chapters 29A.36 and 29A.40 RCW, instructions for properly voting and returning an absentee ballot must also include:

(a) How to correct a ballot by crossing out the incorrect vote and voting the correct choice;

(b) Notice that, unless specifically allowed by law, more than one vote for an office or ballot measure will be an over-vote and no votes for that office or ballot measure will be counted;

(c) Notice that, if a voter has signed or otherwise identified himself or herself on a ballot, the ballot will not be counted;

(d) How to complete and sign the affidavit on the return envelope;

~~((d))~~ (e) How to make a mark, witnessed by two other people, if unable to sign the affidavit;

~~((e))~~ (f) How to place the ballot in the security envelope and place the security envelope in the return envelope;

~~((f))~~ (g) How to obtain a replacement ballot if the original ballot is destroyed, spoiled, or lost;

~~((g))~~ (h) Notice that postage is required, if applicable; and

~~((h))~~ (i) Notice that, in order for the ballot to be counted, it must be either postmarked or deposited at a designated place no later than election day, and providing the location, dates, and times for depositing the ballot as an alternative to mailing the ballot.

County auditors may use existing stock of absentee ballot instructions until January 1, 2008.

(2) Instructions that accompany a special absentee ballot must also include:

(a) A listing of all offices and measures that will appear upon the ballot, together with a listing of all persons who have filed for office or who have indicated their intention to file for office; and

(b) Notice that the voter may request and subsequently vote a regular absentee ballot, and that if the regular absentee ballot is received by the county auditor prior to certification of the election, it will be tabulated and the special absentee ballot will be voided.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-250-050 Ballot materials. In addition to the instructions and in addition to materials required by chapters 29A.36 and 29A.40 RCW, each absentee ballot must be accompanied by the following:

(1) A security envelope, which may not identify the voter and must have a hole punched in a manner that will reveal whether a ballot is inside;

(2) A return envelope, which must be addressed to the county auditor and have a hole punched in a manner that will reveal whether the security envelope is inside. The return envelope must display the ~~((words "OFFICIAL BALLOT - DO NOT DELAY" prominently on the front))~~ official election materials notice required by the United States Postal Service, the words "POSTAGE REQUIRED" or "POSTAGE PAID" in the upper right-hand corner, and the following oath with a place for the voter to sign, date, and write his or her daytime phone number:

I do solemnly swear or affirm under penalty of perjury that:

I am a legal resident of the state of Washington;

I am entitled to vote in this election;

I have not already voted in this election;

It is illegal to vote if I am not a United States citizen;

It is illegal to vote if I have been convicted of a felony and have not had my voting rights restored;

It is illegal to cast a ballot or sign an absentee envelope on behalf of another voter~~((, except as otherwise provided by law));~~ and

Attempting to vote when not entitled, attempting to vote more than once, or falsely signing this oath is a felony punishable by a maximum imprisonment of five years, a maximum fine of \$10,000, or both.

Signature _____ Date _____

The return envelope must conform to postal department regulations.

County auditors may use existing stock of absentee envelopes until January 1, ~~((2006))~~ 2008.

AMENDATORY SECTION (Amending WSR 06-23-094, filed 11/15/06, effective 12/16/06)

WAC 434-261-005 Definitions. (1) "Manual inspection" is the process of inspecting each voter response position on each voted ballot. Inspection is performed on an absentee ballot as part of the initial processing, and on a poll ballot after breaking the seals and opening the ballot containers from the precincts or, in the case of precinct counting systems, prior to the certification of the election;

(2) "Duplicating ballots" is the process of making a true copy of valid votes from ballots that may not be properly counted by the vote tallying system. Ballots may be duplicated on blank ballots or by making changes on an electronic image of the ballot. The original ballot may not be altered in any way;

(3) "Readable ballot" is any ballot that the certified vote tallying system can accept and read as the voter intended without alteration, and that meets the standards of the county canvassing board subject to the provisions contained in this title;

(4) "Unreadable ballot" is any ballot that cannot be read by the vote tallying system as the voter intended without alteration. Unreadable ballots may include, but not be limited to, ballots with damage, write-in votes, incorrect or incomplete marks, and questions of vote intent. Unreadable ballots may subsequently be counted as provided by these administrative rules;

(5) "Valid signature" for a registered voter eligible to vote in the election is ~~((the))~~;

~~((of a registered voter eligible to vote in the election as))~~ verified against the signature in the voter registration file~~((s-))~~; or

~~((is a valid signature))~~.

AMENDATORY SECTION (Amending WSR 06-14-046, filed 6/28/06, effective 7/29/06)

WAC 434-262-020 Preliminary abstract of votes. Following the election and prior to the official canvass, the county auditor shall prepare a preliminary abstract of votes, listing the number of registered voters and votes cast. Provisional ballot results must be combined with precinct results.

(1) The preliminary abstract of votes must list separately for each precinct:

~~((+))~~ (a) Votes cast by absentee or mail ballot and votes cast at the polls;

~~((2))~~ (b) Votes cast for and against measures;

~~((3))~~ (c) Votes cast for candidates; and

~~((4))~~ (d) Overvotes and undervotes.

(2) Pursuant to RCW 29A.60.230, the county auditor may aggregate results or take other necessary steps to maintain the secrecy of ballots.

(3) The county auditor shall inspect the preliminary abstract of votes for errors or anomalies that may affect the results of the election. Correction of any errors or anomalies discovered must be made prior to the official canvass.

AMENDATORY SECTION (Amending WSR 05-24-040, filed 11/30/05, effective 12/31/05)

WAC 434-262-105 Audit of results of votes cast on direct recording electronic device. (1) The audits required by RCW 29A.60.185 must use the same three races or issues, randomly selected by lot, for every direct recording electronic device subject to the audit and utilized in the election. If there are not three countywide races or issues on the ballot, the county must select the maximum number of contests available but no more than three contests from each of the devices randomly selected for the audit.

(2) Only races and issues with more than ten votes cast on all direct recording electronic devices in the county may be selected for the audit. If the county does not have such a contest, it must not conduct the audit of paper records required by RCW 29A.60.185.

(3) Counties that utilized more than one direct recording electronic device in the primary or election must randomly select the devices until the aggregate total of votes cast in each selected contest is greater than ten. The devices must also be aggregated until the number of devices selected meets the minimum required by RCW 29A.60.185.

(4) Written procedures to perform audits of direct recording electronic devices as outlined in RCW 29A.60.185 must be promulgated by the county auditor.

(a) The procedures must provide for a process of randomly selecting by lot the direct recording electronic devices that will be audited.

(b) The procedures for manually tabulating results must be conducted using a process that includes the following elements:

(i) A continuous paper record must be utilized in the audit; the paper record must not be cut into separate individual records; and

(ii) If a paper record indicates a ballot has been canceled, that ballot must be exempt from the audit~~((s))~~.

~~((3))~~ (5) The county auditor must compare the paper records with the electronic records. The county auditor may take any necessary actions to investigate and resolve discrepancies.

~~((4))~~ (6) Prior to certification, and in time to resolve any discrepancies, the county auditor must alert the county canvassing board of discrepancies identified during the audit.

(7) Procedures to resolve audit discrepancies must be promulgated by each county canvassing board in accordance with discrepancy guidelines published by the secretary of state.

(8) The aggregate total of paper records counted manually is subject to public disclosure.

AMENDATORY SECTION (Amending WSR 98-19-063, filed 9/16/98, effective 10/17/98)

WAC 434-840-340 Processing protected records voter ballot. (1) The ongoing absentee ballot for a protected records voter shall be prepared by county authorized personnel in the following manner:

(a) The ballot ~~((and corresponding voter's guide, shall be placed with))~~, ballot security envelope, and return envelope with oath must be placed in an envelope addressed to the substitute address;

(b) The voter's name, and authorization code shall be entered onto the return envelope to ensure that the returned ballot will be segregated and routed to authorized personnel for processing;

(2) The voted absentee ballot for a protected records voter shall be processed by county authorized personnel in the following manner:

(a) The authorized personnel shall compare the signature on the returned ballot envelope with the signature on the address confidentiality program ~~((ongoing absentee ballot))~~ voter registration application;

(b) If the signature does not correspond to the signature on file, indication of this discrepancy shall be entered onto the return envelope; and county authorized personnel shall notify the address confidentiality program.

(c) The address confidentiality program shall, upon receipt of a notice pursuant to (b) of this subsection attempt to determine the cause of the discrepancy, and notify the appropriate county authorized personnel of any relevant information, that should be considered by the county canvassing board.

~~((4))~~ (3) If the protected records voter neglects to sign the affidavit on the return envelope, the county authorized personnel shall notify the protected records voter by first class mail of that fact. The authorized personnel may provide the voter with a copy of the return envelope affidavit and require the voter to sign the copy of the affidavit and mail it back to the auditor so that it arrives not later than the day before the certification of the primary or election. Authorized personnel shall keep a record of the date on which the notice was mailed to the protected records voter as well as the date on which the voter signed the return envelope or the copy of the return envelope affidavit.

WSR 07-09-042
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 07-59—Filed April 11, 2007, 2:46 p.m., effective May 12, 2007]

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

Purpose: Amend fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-56-175.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 07-03-018 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 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: April 6, 2007.

Susan Yeager
for Jerry Gutzwiler, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 06-262, filed 10/9/06, effective 11/9/06)

WAC 220-56-175 Catch record cards. It is unlawful for any person to fail to comply with the catch record requirements as provided for in this section:

(1) In order to fish for or possess for personal use any crab in Catch Record Card Area 4 east of the Bonilla-Tatoosh Line and in Catch Record Card Areas 5-13, anadromous salmon, sturgeon, halibut, or steelhead, an angler must obtain and have in personal possession a valid appropriate catch record card as described in WAC 220-69-236 except for commercially caught salmon retained for personal use as provided for in WAC 220-20-016 and commercially caught sturgeon retained for personal use as provided for in WAC 220-20-021. Notwithstanding the provisions of this subsection, a catch record card is not required for landlocked steelhead or for salmon in waters designated as "landlocked salmon rules apply" in WAC 232-28-619.

(2) Any angler, after obtaining a catch record card shall validate the catch record card by completely, accurately, and legibly completing all personal identification information in ink on the catch record card prior to detaching the catch record card from the underlying copy of the catch record card or, for automated licenses, affixing the appropriate validation sticker to the catch record card. A catch record card remains valid so long as there are one or more unfilled spaces available for the species being fished for, except:

(a) In the mainstem Columbia River downstream from where the river forms the common boundary between Oregon and Washington for sturgeon a catch record card remains valid when the sturgeon portion of the catch record card is filled. A person may not retain sturgeon after the sturgeon portion of the catch record card is filled.

(b) A second or subsequent catch record card is invalid for retention of sturgeon.

(3) Immediately upon catching and possessing a salmon, steelhead, sturgeon or halibut, the angler shall enter in ink in the appropriate space the place, date of catch, species (catch type), for sturgeon, length, for halibut, vessel type and for salmon, whether or not the fish was marked.

(4) Immediately upon retaining a Dungeness crab aboard a vessel or on the shore, the fisher must enter in ink in the appropriate space the place and date of catch, fishery type and enter a tally mark for each Dungeness crab retained from each catch record card area fished. At the end of the fishing day, the fisher shall enter the total number of crab tally marks for each fishery type.

(5) Every person (~~possessing~~) issued a catch record card shall by April 30 of the year following the year printed on the catch record card return such card to the department of fish and wildlife except as follows: Every person issued a Puget Sound crab catch record card shall return such catch record card to the department of fish and wildlife no later than the required return date printed on the catch record card or report their catch record card information on the internet site designated on the catch record card by the same date.

(6) Any person possessing a catch record card shall, upon demand of any law enforcement officer or authorized department employee, exhibit said card to such officer or employee for inspection.

(7) A catch record card shall not be transferred, borrowed, altered, or loaned to another person.

WSR 07-09-051

PERMANENT RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed April 12, 2007, 3:00 p.m., effective September 1, 2007]

Effective Date of Rule: September 1, 2007.

Purpose: In response to a recommendation of the joint transportation committee's teen driving study, the traffic safety education behind-the-wheel (BTW) requirement has been increased from four to six hours. This will align the BTW requirement for the public school system with the department of licensing's requirement for the commercial driving schools, with an effective date of September 1, 2007.

Citation of Existing Rules Affected by this Order: Amending WAC 392-153-035.

Statutory Authority for Adoption: Chapter 28A.220 RCW and RCW 46.20.100.

Adopted under notice filed as WSR 07-05-056 on February 20, 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: April 6, 2007.

Dr. Terry Bergeson
State Superintendent

AMENDATORY SECTION (Amending WSR 06-08-043, filed 3/30/06, effective 4/30/06)

WAC 392-153-035 Course scheduling requirements.

(1) Any portion of a traffic safety education course may be taught after regular school hours or on Saturdays, as well as on regular school days or as a summer school course.

(2) Students shall not have more than two hours of classroom and one hour laboratory instruction in any twenty-four hour period. Where simulation and/or off-street multiple car driving ranges are utilized, up to one additional hour per day is allowed.

(3) The minimum course of instruction is thirty hours of classroom instruction, (~~four~~) six hours of driving experience and four hours of driving observation time. Break time shall not be included in clock hours. Four hours of simulation instruction may be substituted for up to one hour driving experience. Two hours of multiple car off-street driving range time may be substituted for up to one hour of driving experience.

WSR 07-09-055

PERMANENT RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 07-60—Filed April 12, 2007, 3:05 p.m., effective May 13, 2007]

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

Purpose: Amend fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-16-095, 220-22-010, 220-33-005, and 220-33-010.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 07-03-115 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 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 4, Repealed 0.

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

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

Date Adopted: April 6, 2007.

Susan Yeager
for Jerry Gutzwiler, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 810, filed 4/17/69)

WAC 220-16-095 Definitions—Set net. "Set net" shall be defined as a gill net which is anchored, tied, staked, laid in part on shore or whose lead line is so heavily weighted that it cannot drift; except that set net does not mean a nondrifting gill net operated in the Deep River, Blind Slough/Knappa Slough or South Channel Select Areas in accordance with an open fishery season and associated gear rules.

AMENDATORY SECTION (Amending Order 79-42, filed 6/22/79)

WAC 220-22-010 Columbia River Salmon Management and Catch Reporting Areas. (1) **Area 1A** shall include those waters of the Columbia River easterly of a line projected from the inshore end of the north jetty in the state of Washington to the knuckle of the south jetty in the state of Oregon, and westerly of a line projected from Grays Point in Washington to Tongue Point in Oregon.

(2) **Area 1B** shall include those waters of the Columbia River easterly of a line projected from Grays Point in the state of Washington to the flashing 4-second lighted red buoy #44 off the easterly tip of Tongue Point in the state of Oregon, and westerly of a line projected ((true north from the water storage tank at the Beaver Munitions Storage)) from the 4-second flashing green lighted marker #81 on the Washington bank to a boundary marker on the easterly end of the Beaver Terminal Pier in Oregon, including all waters of Grays Bay, those waters of Deep River downstream of the Highway 4 Bridge, all waters of Seal Slough, those waters of Grays River downstream of a line projected between fishing boundary markers on both banks at the Leo Reisticka farm, and those waters of Elokomin Slough and Elokomin River downstream of the Highway 4 Bridge.

(3) **Area 1C** shall include those waters of the Columbia River easterly of a line projected ((true north from the water storage tank at the Beaver Munitions Storage Terminal in the state of Oregon, and downstream)) from the 4-second flashing green lighted marker #81 on the Washington bank to a boundary marker on the easterly end of the Beaver Terminal Pier in Oregon, and westerly of a line projected true west from the east or upstream bank of the Lewis River mouth in Washington.

(4) **Area 1D** shall include those waters of the Columbia River upstream of a line projected true west from the east or upstream bank of the Lewis River mouth in Washington state and westerly of a line projected true north from Rooster Rock in Oregon, and those waters of Camas Slough downstream of

the westernmost powerline crossing at the ((Crown Zellerbach)) James River mill.

(5) **Area 1E** shall include those waters of the Columbia River easterly of a line projected true north from Rooster Rock in the state of Oregon, and ((downstream of a line projected between fishing boundary markers located 4 miles downstream from Bonneville Dam)) westerly of a line projected from a deadline marker on the Oregon bank (approximately four miles downstream from Bonneville Dam Powerhouse #1) in a straight line through the western tip of Pierce Island, to a deadline marker on the Washington bank at Beacon Rock.

(6) **Area 1F** (Bonneville Pool) shall include those waters of the Columbia River upstream from the Bridge of the Gods, located approximately 2.3 miles above Bonneville Dam, and downstream of a line projected from the west end of the Port of The Dalles Dock across the Columbia River to a Washington department of ((fisheries)) fish and wildlife boundary marker on the Washington shore.

(7) **Area 1G** (The Dalles Pool) shall include those waters of the Columbia River upstream from a line projected from an Oregon department of fish and wildlife deadline marker on the Oregon shore to the 5-mile-lock light (6 seconds red) on an island near the Oregon shore, to an island near the Washington shore to a Washington department of ((fisheries)) fish and wildlife fishing boundary marker on the Washington shore at the southwest corner of Horsethief Lake, SP&S Railroad fill and downstream of a line projected across the thread of the Columbia River at the grain elevator at Rufus, Oregon, to a deadline marker on the Washington shore.

(8) **Area 1H** (John Day Pool) shall include those waters of the Columbia River upstream from a line projected across the thread of the Columbia River from a fishing boundary marker approximately 1/2-mile above the John Day River, Oregon, to a fishing boundary marker on the Washington shore and downstream of a line projected across the thread of the Columbia River from the upstream bank of the Umatilla River.

(9) Select areas:

(a) **Blind Slough Select Area.** Blind Slough fishing area includes all waters from markers at the mouth of Gnat Creek located approximately 0.5 mile upstream of the county road bridge downstream to markers at the mouth of Blind Slough.

(b) **Knappa Slough Select Area.** Knappa Slough fishing area includes all waters bounded by a line from the north marker at the mouth of Blind Slough, westerly to a marker on Karlson Island, downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore.

(c) **Tongue Point Select Area.** Tongue Point fishing area includes all waters bounded by a line from a marker midway between the red USCG navigation light #2 at the tip of Tongue Point and the downstream (northernmost) pier (#8) at the Tongue Point Job Corps facility, to the flashing green USCG navigation light #3 on the rock jetty at the west end of Mott Island, a line from a marker at the southeast end of Mott Island northeasterly to a marker on the northwest tip of Lois

Island, and a line from a marker on the southwest end of Lois Island westerly to a marker on the Oregon shore.

(d) **South Channel Select Area.** South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island upstream to an upper boundary line from a marker on Settler Point northwesterly to the flashing red USCG marker #10, northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

(e) **Deep River Select Area.** Deep River fishing area includes all waters downstream of the town of Deep River to the mouth defined by a line from USCG navigation marker #16 southwest to a marker on the Washington shore.

AMENDATORY SECTION (Amending Order 89-21, filed 4/18/89)

WAC 220-33-005 Definitions—River mouth sanctuaries. As used in this chapter and emergency rules of the director, unless the context clearly requires otherwise:

Grays Bay

(1) "Grays Bay sanctuary" means those waters of the Columbia River and Grays Bay northerly of a line projected from Rocky Point Light (flashing green 4-second) easterly to Harrington Point.

Elokomin

(2) "Elokomin-A sanctuary" means those waters of Elokomin Slough and the Columbia River lying northerly and easterly of a straight line from light "37" on the Washington shore to light "39" on Hunting Island.

(3) "Elokomin-B sanctuary" means those waters of Elokomin Slough, Steamboat Slough and the Columbia River lying inside, northerly and easterly of a straight line from light "35" (group flashing green) located on Price Island to light "39" (flashing green) on Hunting Island and northerly and easterly of a line between flashing light "33" on Price Island and quick flashing green light "31" on the Washington shore.

Abernathy

(4) "Abernathy sanctuary" means those waters of the Columbia River near the mouth of Abernathy Creek from a point 1,300 yards downstream from Abernathy Creek at light "81" (flashing green 4-second) to a point one-half mile upstream and extending to the mid shipping channel of the Columbia River.

Cowlitz

(5) "Cowlitz sanctuary" means those waters of the Columbia River and Carrolls Channel lying inside the center of the shipping channel between a fishing boundary marker at the junction of the Port of Longview docks and international paper docks on the Washington shore approximately one mile downstream from the Cowlitz River mouth and flashing green light "29A" on Cottonwood Island and also those waters of Carrolls Channel downstream of a line between a fishing boundary marker approximately 3000 feet upstream

of the Cowlitz River mouth and a fishing boundary marker on Cottonwood Island.

Kalama

(6) "Kalama-A sanctuary" means those waters of the Columbia River between a fishing boundary marker on the Washington shore approximately one mile downstream and a point one-half mile upstream of the mouth of the Kalama River and lying within one-quarter mile of the Washington shore.

(7) "Kalama-B sanctuary" means those waters of the Columbia River between a fishing boundary marker on the Washington shore approximately one mile downstream and a point one-half mile upstream of the mouth of the Kalama River and extending completely across the Columbia River, excepting those waters west of a line projected from Coffin Rock Light "42" in Oregon to the Kalama Range Light "47A" on the Washington shore.

Lewis

(8) "Lewis-A sanctuary" means those waters of the Columbia River between a point one mile downstream and a point one-half mile upstream of the mouth of the Lewis River and lying within one-quarter mile of the Washington shore.

(9) "Lewis-B sanctuary" means those waters of the Columbia River near the mouth of the Lewis River lying easterly of lines projected from light "79" (flashing green) to the Red Buoy No. 4 thence to a fishing boundary marker on Bachelor Island.

Washougal

(10) "Washougal sanctuary" means those waters of Camas Slough lying upstream from a line projected true north from the most western tip of Lady Island to the Washington shore and inside of the State Highway 14 Bridge.

Oregon

(11) "Big Creek sanctuary" means those waters of the Columbia River at the mouth of Big Creek from the Oregon shore across Knappa Slough to Karlson Island about one-quarter mile upstream of the east bank of Big Creek, at the Gnat Creek deadline downstream to the east end of Minaker Island which is about three-quarters mile downstream from the west bank at the mouth of Big Creek.

~~(12) ("Gnat Creek sanctuary" means those waters of the Columbia River between a point one mile downstream and a point at the upper easterly bank at the mouth of Gnat Creek and lying within one-quarter mile of the Oregon shore.~~

~~(13)) "Sandy River sanctuary" means those waters of the Columbia River ((between a point one mile downstream and a point at the upper easterly bank at the mouth of the Sandy River and lying within one-quarter mile of the Oregon shore))~~ within an area at the mouth of the Sandy River which is one-quarter mile in width extending out into the Columbia River from the Oregon bank at a right angle to the thread of the river between a point one mile below and a point at the upper easterly bank at the mouth of the Sandy River.

AMENDATORY SECTION (Amending Order 00-146, filed 8/17/00, effective 9/17/00)

WAC 220-33-010 Salmon. It is unlawful to fish for salmon in the lower Columbia River for commercial purposes or to possess salmon taken from those waters for commercial purposes, except as provided in this section:

Gear

(1) ~~It is unlawful to use a gill net ((gear may be used)) to fish for salmon if ((it does not)) the net exceeds 1,500 feet in length along the cork line((, it is not constructed of monofilament webbing, its mesh size does not exceed 9 3/4 inches, and it does not have a lead line weighing more than two pounds per fathom of net as measured on the cork line)).~~

(2) It is ~~((lawful to have))~~ unlawful to use a gill net ~~((with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through the Tongue Point Select Area))~~ to fish for salmon with mesh size larger than 9 3/4 inches.

(3) It is unlawful to use a gill net to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line, provided that it is lawful to have a gill net with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through the Tongue Point Select Area, and it is also lawful to have additional weights and anchors attached directly to the lead line in the Deep River, Blind Slough, Knappa Slough and South Channel Select Areas.

(4) From December 1 through March 31 it is lawful for salmon fishers to have smelt or sturgeon gill nets aboard while fishing for salmon.

Fishing periods

~~((4))~~ (5) The lower Columbia River is closed to commercial salmon fishing, except as provided by emergency rule of the director.

General

~~((5))~~ (6) Unless otherwise specified by emergency rule of the director, the following areas of the lower Columbia River remain closed during open salmon fishing periods:

- (a) All tributaries flowing into the lower Columbia River.
- (b) Grays Bay sanctuary.
- (c) Elokommin-A sanctuary.
- (d) Cowlitz sanctuary.
- (e) Kalama-A sanctuary.
- (f) Lewis-A sanctuary.
- (g) Washougal sanctuary.
- (h) Big Creek sanctuary.
- (i) ~~((Gnat Creek sanctuary.~~
- ~~((j))~~ Sandy River sanctuary.

WSR 07-09-058

PERMANENT RULES PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed April 12, 2007, 4:15 p.m., effective May 13, 2007]

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

Purpose: Clean up language to make chapter consistent throughout.

Citation of Existing Rules Affected by this Order: Amending WAC 181-01-001 and 181-01-004.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 07-04-007 on January 24, 2007.

A final cost-benefit analysis is available by contacting Nasue Nishida, P.O. Box 47236, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

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 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: April 10, 2007.

Nasue Nishida

Policy and Research Analyst

Chapter 181-01 WAC

WEST-B ~~((EXEMPTION))~~ ASSESSMENT PROGRAM

AMENDATORY SECTION (Amending WSR 06-24-084, filed 12/5/06, effective 1/5/07)

WAC 181-01-001 WEST-B ~~((exemption))~~ extension.

Candidates who are prepared and/or certified out-of-state applying for a Washington state residency teaching certificate under WAC 181-79A-257 (1)(b) or 181-79A-260 have up to one calendar year from issuance of temporary permit to pass the WEST-B basic skills test, provided that they have completed all other requirements for residency certification other than passage of the WEST-B and are thus eligible for a temporary permit under WAC 181-79A-128.

AMENDATORY SECTION (Amending WSR 05-04-024, filed 1/25/05, effective 2/25/05)

WAC 181-01-004 Appeals process. The Washington professional educator standards board may permit exceptions from the assessment requirements under RCW 28A.410.220 (1) and (2) on a case-by-case basis. Consistent with the dis-

cretion accorded to the professional educator standards board in RCW 28A.410.220(3), the exemptions and extensions provided for in WAC 181-01-001 (~~through 181-01-003~~), 181-01-002, 181-02-001 and 181-02-002, shall be the sole exceptions to the WEST-B and WEST-E assessment requirements.

WSR 07-09-060
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 07-38—Filed April 13, 2007, 4:33 p.m., effective May 14, 2007]

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

Purpose: Amend WAC 232-28-266 Landowner damage hunts and 232-12-025 Hunts authorized pursuant to RCW 77.12.240.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-266 and 232-12-025.

Statutory Authority for Adoption: RCW 77.12.015 and 77.12.240.

Adopted under notice filed as WSR 07-01-116 on December 20, 2006.

Changes Other than Editing from Proposed to Adopted Version: Change GMU 381 to 379 in the Hanford Area. This change was made to accurately reflect the GMU adjacent to Hanford.

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

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

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

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

Date Adopted: March 9, 2007.

Susan Yeager
for Jerry Gutzwiler, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 241, filed 2/1/85)

WAC 232-12-025 Hunts authorized pursuant to RCW 77.12.240. Anyone participating in a director-authorized hunt must conduct themselves in accordance with the following rules:

(1) Black bear

(a) No dogs are permitted out of the vehicle, including on a strikeboard, outside of the designated hunting area. If the bear is started inside a permit area, it may be pursued and killed outside the permit boundaries.

(b) When a bear is taken, the permittee shall skin the entire bear, including head, leaving claws attached, and deliver the hide, together with the first tooth behind the canine tooth on the lower jaw, to the regional office. All bear hides taken pursuant to a black bear damage permit shall be disposed of as prescribed in RCW 77.12.240.

(c) Within 5 days after expiration of a black bear permit, the permittee shall return to the respective region a bear hunting report and the windshield identification cards. Failure to comply with this provision shall constitute ineligibility for the next year's black bear damage permit drawings.

(d) The permittee shall abide by all conditions as set forth on the black bear damage permit. Failure to comply with these hunting conditions shall constitute a violation of RCW 77.16.020(1) (Hunting bear during closed season).

(2) Deer and elk.

(a) Only persons with a damage permit (hot-spot hunt, kill permit, or landowner preference permit) are allowed to hunt and take one deer or one elk as designated on their damage control permit.

(b) Hunters must have valid, unused general deer/elk tags to hunt and kill a legal animal during the prescribed damage permit hunt. If a hunter takes an animal of the same species during an earlier hunt, that person will be ineligible for a damage hunt permit.

(c) Deer and elk damage control hunts will be antlerless only, unless (~~specified~~), the damage permit specifies either sex (~~on the damage permit~~).

(d) The April 1 to June 30 time period will be excluded from damage control hunts.

(e) Permittees may hunt only within the prescribed area and season dates as specified on their permit. If a deer or elk is wounded inside the damage hunt area, it may be pursued and taken outside permit boundaries.

(f) Within five days after expiration of a deer or elk permit, the permittee shall return to the respective region a deer/elk hunting report. (~~If an animal is taken, the permittee shall skin the entire animal and deliver the hide together with an incisor tooth to a regional game department office. All deer or elk hides taken pursuant to a damage permit shall be disposed of as prescribed in RCW 77.12.240.~~) Failure to comply with this provision shall constitute ineligibility for the next year's damage permit drawings.

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

WAC 232-28-266 (~~Landowner~~) Damage prevention permit hunts.

(~~LANDOWNER~~) DAMAGE PREVENTION PERMIT HUNTS

Pursuant to RCW 77.12.150 and 77.12.240, a landowner with deer/elk damage (~~will~~) may enter into a Cooperative Agreement (contract) with WDFW and establish a boundary, season dates, and number of animals to be removed, as described

below, for deer/elk hunts(~~(season dates within the framework and number of animals to be removed)~~). Landowner agrees not to claim damage payments, except Elk Areas 3721 and 3722, and will allow access to hunters during the general hunting seasons. Landowner selects hunters. A (~~landowner~~) damage prevention access permit provided by the landowner will authorize the hunter to use an unused general deer/elk tag to hunt and kill a legal animal during the prescribed damage hunt season.

Deer:

Tag Required: Deer hunter must have a current valid, unaltered, unnotched deer tag on his/her person.

Hunting Method: Any legal weapon(-)

Season Framework: August 1 - March 31

Location: Statewide

Legal Deer: Antlerless Only

Kill Quota: 300 Per license year

Location: Region One

Legal Deer: Antlerless Only

Kill Quota: 300 Per license year

Location: GMUs 105-124

Legal Deer: Whitetail Antlerless Only

Kill Quota: 300 Per license year

Elk:

Tag Required: Elk hunter must have a current valid, unaltered, unnotched elk tag on his/her person.

Hunting Method: Any legal weapon

Season Framework: August 1 - March 31

Location: Statewide

Legal Elk: Antlerless Only

Kill Quota: 200 Per license year

Location: Hanford Area - GMUs 372 and 379

~~((Elk Area 3722))~~

Kill Quota: ~~((40 any elk, 12 spike bull or antlerless;))~~ 60 antlerless only((;)), per license year

Elk Area 3721

Kill Quota: 50 spike or antlerless during Aug. 1 - March 31; 30 bulls only during May 15 - July 31, except spike only July 1-31((;)), per license year.

Special Note: Access in Elk Area 3721 may not be sold as a condition of use of these permits. The director may consider damage claims from landowners in Elk Areas 3721 and 3722 who accept these permits and do not charge for access. ~~((Landowners in Elk Area 3722 who receive bull permits will not be considered for damage claims.))~~

WSR 07-09-064
PERMANENT RULES
OLYMPIC REGION
CLEAN AIR AGENCY

[Filed April 16, 2007, 2:31 p.m., effective May 17, 2007]

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

Purpose: This change will enable the agency to collect additional revenue for the registration and notice of construction programs. The additional revenue is needed to more fully fund these programs.

Citation of Existing Rules Affected by this Order: Amending Olympic Region Clean Air Agency Regulations, Rules 3.1 and 3.3.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 07-05-071 on February 20, 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 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: April 11, 2007.

Richard A. Stedman
 Executive Director

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 07-10 issue of the Register.

WSR 07-09-081
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)

[Filed April 17, 2007, 3:56 p.m., effective June 1, 2007]

Effective Date of Rule: June 1, 2007.

Purpose: The department is amending WAC 388-310-1600 WorkFirst—Sanctions, to prevent the closure of TANF cases where a dependent teen is the only person in sanction status.

Citation of Existing Rules Affected by this Order: Amending WAC 388-310-1600.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.500, 74.04.510, 74.08.090.

Adopted under notice filed as WSR 07-06-071 on March 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 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: April 16, 2007.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-10-035, filed 4/27/06, effective 6/1/06)

WAC 388-310-1600 WorkFirst—Sanctions. (1) What WorkFirst requirements do I have to meet?

You must do the following when you are a mandatory WorkFirst participant:

(a) Give the department the information we need to develop your individual responsibility plan (IRP) (see WAC 388-310-0500);

(b) Show that you are participating fully to meet all of the requirements listed on your individual responsibility plan;

(c) Go to scheduled appointments listed in your individual responsibility plan;

(d) Follow the participation and attendance rules of the people who provide your assigned WorkFirst services or activities; and

(e) Accept available paid employment when it meets the criteria in WAC 388-310-1500.

(2) What happens if I don't meet WorkFirst requirements?

(a) If you do not meet WorkFirst requirements, we will send you a letter telling you what you did not do.

(b) You will have ten days to contact us so we can talk with you about the situation. You can contact us in writing, by phone, by going to the appointment described in the letter, or by asking for an individual appointment.

(c) If you do not contact us within ten days, we will make sure you have been screened for family violence and other barriers to participation. We will use existing information to decide whether:

(i) You were unable to do what was required; or

(ii) You were able, but refused, to do what was required.

(d) If you had a good reason not to do a required activity we will work with you and may change the requirements in your individual responsibility plan if a different WorkFirst activity would help you move towards independence and employment sooner. If you have been unable to meet your WorkFirst requirements because of family violence, you and

your case manager will develop an IRP to help you with your situation, including referrals to appropriate services.

(e) Before you are placed in sanction:

(i) We will have a case staffing which is a meeting with you, your case manager and other people involved in your case to review your situation and make plans. At your case staffing, we will ensure you were offered the opportunity to participate, discuss what happens if you stay in sanction, discuss how participation helps you and your family and discuss how to end your sanction. You will be notified when your case staffing is going to happen so you can attend. You can invite anyone you want to come with you to your case staffing.

(ii) Effective September 1, 2006, supervisory staff will review your case and must approve the sanction.

(f) If you are sanctioned, we will actively attempt to contact you another way so we can talk to you about the benefits of participation and how to end your sanction.

(3) What is considered a good reason for not being able to do what WorkFirst requires?

You have a good reason if it was not possible to do what WorkFirst requires (or get an excused absence, described in WAC 388-310-0500(5)) due to a significant problem or event outside your control. Some examples of good reasons include, but are not limited to:

(a) You had an emergent or severe physical, mental or emotional condition, confirmed by a licensed health care professional that interfered with your ability to participate;

(b) You were threatened with or subjected to family violence;

(c) You could not locate child care for your children under thirteen years that was:

(i) Affordable (did not cost you more than your co-payment would under the working connections child care program in chapter 388-290 WAC);

(ii) Appropriate (licensed, certified or approved under federal, state or tribal law and regulations for the type of care you use and you were able to choose, within locally available options, who would provide it); and

(iii) Within a reasonable distance (within reach without traveling farther than is normally expected in your community).

(iv) You could not locate other care services for an incapacitated person who lives with you and your children.

(d) You had an immediate legal problem, such as an eviction notice; or

(e) You are a person who gets necessary supplemental accommodation (NSA) services under chapter 388-472 WAC and your limitation kept you from participating. If you have a good reason because you need NSA services, we will review your accommodation plan.

(4) What if we decide that you did not have a good reason for failing to meet WorkFirst requirements?

If we decide that you did not have a good reason for failing to meet WorkFirst requirements, we will send you a letter that tells you:

(a) What you failed to do;

(b) That you are in sanction status;

(c) Penalties that will be applied to your grant;

(d) When the penalties will be applied;

(e) How to request a fair hearing if you disagree with this decision; and

(f) How to end the penalties and get out of sanction status.

(5) What is sanction status?

When you are a mandatory WorkFirst participant, you must follow WorkFirst requirements to qualify for your full grant. If you or someone else on your grant doesn't comply and you can't prove that you had a good reason, you do not qualify for your full grant. This is called being in WorkFirst sanction status.

(6) Are there penalties when you or someone in my household goes into sanction status?

(a) When someone in your household is in sanction status, we impose penalties. The penalties last until you or the household member meet WorkFirst requirements.

(b) Your grant is reduced by the person(s) share or forty percent, whichever is more.

(7) How do I end the penalties and get out of sanction status?

To stop the penalties and get out of sanction status:

(a) You must provide the information we requested to develop your individual responsibility plan; and/or

(b) Start and continue to do your required WorkFirst activities for four weeks in a row (that is, twenty-eight calendar days).

(c) When you leave sanction status, your grant will be restored to the level for which you are eligible beginning the first of the month following your four weeks of participation. For example, if you finished your four weeks of participation on June 15, your grant would be restored on July 1.

(8) What if I reapply for TANF or SFA and I was in sanction status when my case closed?

(a) If your case closes while you are in sanction status and is reopened in six months or less, you will start out in sanction.

(b) Effective September 1, 2006, if you come back in sanction, you will start out where you left off in sanction. (That is, if you left off in month three of sanction, you will come back on in month four of sanction.)

(c) If your case has been closed for more than six months, you will not be in sanction status if your case is reopened.

(9) What happens effective September 1, 2006 if I stay in sanction status? Effective September 1, 2006, if you stay in sanction status:

(a) Unless you are a dependent child age sixteen or older, your case manager will review your record after you have been in sanction for at least three months in a row to make sure:

(i) You knew what was required;

(ii) You were told how to end your sanction;

(iii) We tried to talk to you and to encourage you to participate; and

(iv) You were given a chance to tell us if you were unable to do what we required.

(b) Your case manager will invite you to a non-compliance sanction case staffing.

(i) You will be notified when your non-compliance sanction case staffing is going to happen so you can attend.

(ii) Your case manager will also invite other people who are working with your family to your non-compliance sanction case staffing, like representatives from tribes, community or technical colleges, employment security, the Children's Administration or Limited-English Proficient (LEP) Pathway providers.

(iii) You can invite anyone you want to come with you to your case staffing.

(c) At your non-compliance sanction case staffing, we will discuss with you:

(i) How you and your family benefit when you participate in WorkFirst activities;

(ii) How you can participate, and get out of sanction;

(iii) That if you continue to refuse to participate, without good cause, a sanction review panel may review your case, and decide to close your case after you have been in sanction status for six months in a row.

(iv) How you plan to care for and support your children if a sanction review panel closes your case. We will also discuss the safety of your family, as needed, using the guidelines under RCW 26.44.030; and

(v) How to reapply if a sanction review panel closes your case.

(d) If you do not come to your non-compliance sanction case staffing, we will make a decision based on the information we have. We will also attempt to visit you at your home so you have another chance to talk to us about the benefits of participation and how to end your sanction.

(e) If we decide you are refusing to participate without a good reason:

(i) We will send you information about resources you may need if a sanction review panel closes your case;

(ii) We will send information to a sanction review panel with a recommendation to close your case. We will only do this after a Community Services Office Administrator reviews your case to make sure the sanction is appropriate and we tried to re-engage you in the program; and

(iii) The sanction review panel will review your case and make the final decision.

(10) What is a sanction review panel?

(a) The sanction review panel is a small group of people who are independent of your local community services office and do a thorough, objective review of your sanction.

(b) The sanction review panel makes the final decision about whether to close your case after receiving a recommendation from your case manager and reviewing your case to make sure the original sanction was appropriate and we made attempts to re-engage you in the program.

(11) What happens when a sanction review panel decides to close my case?

When a sanction review panel decides to close your case, we will send you a letter to tell you:

(a) What you failed to do;

(b) When your case will be closed;

(c) How to request a fair hearing if you disagree with this decision;

(d) How to end your penalties and keep your case open (if you are able to participate for four weeks in a row before we close your case); and

(e) How your participation before your case is closed can be used to meet the participation requirement in subsection (12).

(12) What if I reapply for TANF or SFA after a sanction review panel closed my case?

(a) If a sanction review panel closes your case and you apply within six months, you must participate for four weeks in a row before you can receive cash. Once you have met your four week participation requirement, your cash benefits will start, going back to the date we had all the other information we needed to make an eligibility decision.

(b) You will not be required to participate for four weeks in a row before you receive cash if you apply after your case has been closed for six months or longer.

(13) What if my TANF or SFA is closed by a sanction review panel, reopened and I go into sanction again?

(a) When a sanction review panel closes your case, and we reopen your case, we will follow all steps in subsection (9) of this section (like the case review and the non-compliance case staffing) during your second month of sanction.

(b) The sanction review panel may close your case after you are in sanction status for three months in a row.

(c) If ~~(you)~~ your case is closed, and you reapply, we will follow the rules in subsection (12) of this section to reopen your case.

Reviser's note: The typographical errors in 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.

**WSR 07-09-085
PERMANENT RULES
OFFICE OF**

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2006-12—Filed April 17, 2007,
4:45 p.m., effective May 18, 2007]

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

Purpose: This permanent rule corrects the definition of motor vehicle service contract reimbursement insurance in the regulation providing for suspension of filing requirements for large commercial accounts to match a law passed in 2006.

Citation of Existing Rules Affected by this Order:
Amending WAC 284-24-120.

Statutory Authority for Adoption: RCW 48.02.060 and 48.19.080.

Adopted under notice filed as WSR 07-04-103 on February 7, 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 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: April 16, 2007.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2003-04, filed 12/23/03, effective 1/23/04)

WAC 284-24-120 Suspension of rate filing requirements—Large commercial accounts. (1) Under RCW 48.19.080, the rate filing requirements in chapter 48.19 RCW are suspended with respect to large commercial property casualty accounts.

(2) For purposes of this section, "large commercial property casualty account" means insurance coverage that:

(a) Involves the lines of property and casualty insurance defined in RCW 48.11.040, 48.11.050, 48.11.060, 48.11.070, and/or 48.11.080; and

(b) Is purchased by a business, not-for-profit organization, or public entity with enough insurance buying experience to negotiate with insurers in a largely unregulated environment and that meets any two of the following criteria:

(i) Annual premiums of one hundred thousand dollars or more, excluding workers compensation insurance issued by the department of labor and industries and types of insurance listed in subsection (6) of this section;

(ii) Net revenues or sales in excess of one hundred million dollars;

(iii) More than two hundred employees;

(iv) Net worth over fifty million dollars;

(v) Is a not-for-profit organization or public entity with an annual budget or assets of at least forty-five million dollars;

(vi) Is a municipality with a population over fifty thousand.

(3) Before an insurer issues coverage in reliance on this section, the insurer or its agent shall notify the insured in writing that the rates have not been and will not be filed for the commissioner's approval.

(4) Property rates used on large commercial property casualty accounts will not be audited by the Washington Insurance Examining Bureau under WAC 284-20-006.

(5) The commissioner retains the right and ability to examine the rates used on large commercial property casualty accounts to ascertain whether they meet the requirements of RCW 48.19.020 and other statutes. The insurer shall maintain records supporting the rating and premium determination of each policy issued in reliance on this section. These records shall be retained by the insurer for a minimum of three years and made available at all reasonable times for the commissioner's examination.

(6) Subsection (1) of this section does not apply to:

(a) Professional liability insurance, including medical malpractice insurance;

(b) Directors' and officers' liability insurance purchased by individuals;

(c) ~~((Motor vehicle service contract reimbursement insurance, as defined in RCW 48.96.010(4); and)) Reimbursement insurance policies that reimburse service contract providers or protection product guarantee providers for contractual obligations assumed under a service contract or protection product guarantee; and~~

(d) Master policies under which certificates of coverage are issued to individual consumers, households, businesses, or other organizations.

WSR 07-09-091
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed April 18, 2007, 10:30 a.m., effective May 23, 2007]

Effective Date of Rule: May 23, 2007.

Purpose: Revising chapter 246-455 WAC, Hospital inpatient discharge information reporting, also known as the comprehensive hospital abstract reporting system (CHARS).

This rule is a response to the pending revision to the federal Uniform Billing Form (UB-04)/Centers for Medicare and Medicaid Services (CMS) in the spring of 2007. CHARS utilizes this billing document as the source of information and the rule needs to reflect the federal changes. The list of data elements collected from hospitals will increase to provide more complete data.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-455-030; and amending WAC 246-455-001, 246-455-010, 246-455-020, 246-455-040, 246-455-050, 246-455-080, and 246-455-090.

Statutory Authority for Adoption: RCW 43.70.040 and 43.70.052.

Adopted under notice filed as WSR 06-24-049 on December 1, 2006.

Changes Other than Editing from Proposed to Adopted Version: WAC 246-455-090(3), the term "confidential elements" will be deleted from this section since it is both duplicative and not defined in WAC 246-455-010. The draft WAC had the term "direct identifiers" and was defined in WAC 246-455-010(11). However, we also used language relating to "individually identifiable health information." Since the phrase "individually identifiable health information" is more appropriate we incorporated the definition of "direct identifiers" into "individually identifiable health information" and changed the term "direct identifiers" to "individually identifiable health information" in the rest of the WAC. The changes are in WAC 246-455-010(10), (11) and (12), 246-455-090(2) and 246-455-090 (3)(a).

The payer identification item was clarified by adding the parenthetical (up to three) and the words payer identification number per the CHARS procedure manual identifying each payer group from which the hospital may expect some payment of the bill.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, 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 7, Repealed 1.

Date Adopted: April 16, 2007.

Mary C. Selecky
Secretary

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

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

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

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

- (1) "Department" means department of health.
- (2) "Diagnosis-related groups" is a classification system that groups hospital patients according to principal and secondary diagnosis, presence or absence of a surgical procedure, age, presence or absence of significant comorbidities or complications, and other relevant criteria.
- (3) "Hospital" means any health care institution which is required to qualify for a license under RCW 70.41.020(2); or as a psychiatric hospital under chapter 71.12 RCW.
- (4) ~~((Uniform Billing "UB-92/UB-02 data set" means the data element specifications developed by the National Uniform Billing Committee which can be found at www.NUBC.org.~~
- (5) ~~"Patient discharge" means the termination of an inpatient admission or stay, including an admission as a result of a birth, in a Washington hospital.~~
- (6) ~~"HMO" means a health maintenance organization.~~
- (7) ~~"SNF" means a skilled nursing facility.~~
- (8) ~~"HCF" means a health care facility.~~
- (9) ~~"HHA" means a home health agency.~~
- (10) ~~"IV" means intravenous.~~
- (11) ~~"UPIN" means unique physician identification number.~~
- (12) "CHARS" means comprehensive hospital abstract reporting system.
- (5) "CHARS Procedure Manual" means the written instructions for reporting hospital discharge data to the department.

(6) "CHARS 837 Companion Guide" means the written technical guidelines for creating the ASC X12 837 Health Care Claim file for CHARS.

(7) Uniform Billing "UB-92/UB-04 data set" means the data element specifications developed by the National Uniform Billing Committee which can be found at www.NUBC.org. The UB-92 specifications will be used until they are replaced by the UB-04 of the National Uniform Billing Committee. Data elements are completely defined in the CHARS Procedure Manual which may be obtained on the department's web site or by contacting the department.

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

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

(10) "Individually identifiable health information" means any health information that can be linked or traced to an individual or family. It includes but is not limited to: Past, present and future health care; billings or payments for health care; physical or mental health conditions; and physical or mental health diagnosis. This includes names and parts of names, Social Security numbers and parts of Social Security numbers, date of birth, admission date, exact discharge date, procedure date, nine-digit zip code and identifiers and patient control numbers assigned by a hospital for record retrieval.

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

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

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

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

(a) Patient control number

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

(b) Type of bill

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

Digit #1 must be "1" to indicate a hospital.

Digit #2 must be a "1," a "2" or an "8" to indicate an inpatient.

Digit #3 must be a "1" to indicate admit through discharge claim-))

(c) Medicare provider number

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

(d) Patient ((identifier

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

(e) ((ZIP Code

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

(f) Birthdate

The patient's date of birth in MMDDYYYY format.

(g) Sex

Patient's sex in M/F format.

(h) Admission date

Admission date in MMDDYY format.

(i) Type of admission

This field is filled with one of the following codes:

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

(j) Source of admission

This field is completed with one of the following codes:

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

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

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

(k) Patient status

Patient discharge disposition in one of the following codes:

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

(l) Statement covers period

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

(m) Revenue code

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

(n) Units of service

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

(o) Total charges by revenue code category

Total charges pertaining to the related revenue code.

(p) Payer identification #1

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

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

(q) Payer identification #2

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

(r) Principal diagnosis code

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

(s) Other diagnoses codes

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

(t) Principal procedure code

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

(u) Other procedure codes

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

(v) Attending physician identification

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

(w) Other physician identification

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

(f) Patient middle initial

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

(h) Patient zip code (U.S.A.)**(i) Patient country code (outside U.S.A.)****(j) Patient's date of birth****(k) Sex****(l) Admission date****(m) Type of admission****(n) Source of admission****(o) Patient discharge status****(p) Statement covers period (from - through)****(q) Revenue code****(r) Units of service****(s) Total charges**

(t) Payer identification (up to three): Payer identification number per the CHARS procedure manual identifying each payer group from which the hospital may expect some payment of the bill

(u) Principal diagnosis code**(v) Other diagnosis codes****(w) External cause of injury (ECI) code****(x) Principal procedure code****(y) Other procedure code**

(z) Attending provider identifier (legacy ID for UB-92): National Provider Identifier or legacy for UB-04 according to Centers for Medicare and Medicaid Services (CMS) schedule

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

(bb) Other provider identifiers (legacy ID for UB-92): National Provider Identifier or legacy for UB-04 according to CMS schedule, as applicable

(cc) Admission hour

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

(ee) Ethnicity - per minimum OMB standards

(ff) Discharge hour

(gg) Procedure date

(hh) Present on admission status

(ii) Health care provider taxonomy code

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

(kk) Service date

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

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

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

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

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

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

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

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

~~Records containing confidential data elements may be disclosed for research purposes after approval from the Washington state institutional review board in accordance with RCW 42.48.020.)~~ (2) The department shall institute security and system safeguards to prevent and detect unau-

thorized access, modification, or manipulation of individually identifiable health information. Accordingly, the safeguards will include:

(a) Documented formal procedures for handling the information;

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

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

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

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

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

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

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

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

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

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

(2) Individually identifiable health information will not be released to the public.

(3) Confidential data sets may contain all or portions of the individually identifiable health information. Confidential data sets will be released under the following conditions:

(a) Data sets containing any of the individually identifiable health information will be constructed by applying the standard of inclusion of the minimum elements necessary for the recipient's project requirements.

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

(c) Projects of state, local and federal agencies directly related to quality assurance or quality improvement of the

data activities, hospitalization payment rate setting, program evaluation or public health surveillance may receive these data sets through a signed contract that includes a data use agreement.

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

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

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

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

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

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

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

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

(g) Contains penalties for violation of the agreement;

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

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

WSR 07-09-092 PERMANENT RULES DEPARTMENT OF HEALTH

[Filed April 18, 2007, 10:34 a.m., effective May 19, 2007]

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

Purpose: The sex offender treatment provider (SOTP) rule amendments are in response to 2004 legislation and will amend and clarify definitions, professional experience requirements, and add additional time for completion of the requirements. The amendments will also clarify and amend the educational, and affiliate supervision requirements, and the standards for assessment, evaluation and treatment. Reference to court-ordered clients is removed to allow experience credit for all clients.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-930-050 and 246-930-060; and amending WAC 246-930-010, 246-930-030, 246-930-040, 246-930-075, 246-930-320, and 246-930-330.

Statutory Authority for Adoption: RCW 18.155.040.

Adopted under notice filed as WSR 07-02-099 on January 3, 2007.

A final cost-benefit analysis is available by contacting Karen Kelley, Sex Offender Treatment Provider, P.O. Box

47869, Olympia, WA 98504-7869, phone (360) 236-4950, fax (360) 236-4918, e-mail karen.kelley@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 6, Amended 6, Repealed 2.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 6, Amended 6, Repealed 2.

Date Adopted: April 16, 2007.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 94-13-179, filed 6/21/94, effective 7/22/94)

WAC 246-930-010 General definitions. In these rules, the following terms shall have the definition described below, unless another definition is stated:

(1) "Affiliate sex offender treatment provider" or "affiliate" means an individual who has satisfactorily passed the examination, met the education requirements, and has been issued a certificate to evaluate and treat sex offenders under chapter 18.155 RCW, and under the supervision of a certified sex offender treatment provider in accordance with the supervision requirements set forth in WAC 246-930-075.

(2) "Certified sex offender treatment provider" or "provider" means an individual who has satisfactorily passed the examination, met the education and experience requirements, and has been issued a certificate by the department to evaluate and treat sex offenders under chapter 18.155 RCW.

(3) "Client" means a person who has been investigated by law enforcement or child protective services for committing or allegedly committing a sex offense, or who has been convicted of a sex offense.

(4) "Committee" means the sex offender treatment providers advisory committee.

(5) "Community protection contract" means the document specifying the treatment rules and requirements the client has agreed to follow in order to maximize community safety.

(6) "Co-therapy hours" means the actual number of hours the applicant spent facilitating a group session.

(7) "Credentialed" or its derivative means the process of licensing, registration, certification or the equivalent through which a person is legally recognized by a state agency as lawfully authorized to practice a health profession.

(8) "Department" means the department of health.

((2)) (9) "Evaluation" means a comprehensive assessment or examination of a client conducted by a provider or affiliate that examines the client's offending behavior. Eval-

uation results must be detailed in a written report. Examples of evaluations include forensic, SSOSA, and SSODA evaluations. Standards for assessment and evaluation reports, and evaluation experience credit are located in WAC 246-930-320 and 246-930-340.

(10) "Parties" means the defendant, the prosecuting attorney, and the supervising officer.

(11) "Secretary" means the secretary of the department of health, or designee.

~~((3) "Provider" means a certified sex offender treatment provider.~~

~~(4) "Affiliate" means affiliate sex offender treatment provider.~~

~~(5) "Committee" means the sex offender treatment providers advisory committee.~~

~~(6) "Credential" or its derivative means the process of licensing, registration, certification or the equivalent through which a person is legally recognized by a state agency as lawfully authorized to practice a health profession.~~

~~(7) "Evaluation."~~

~~(a) For purposes of determining eligibility for certification, evaluation is defined as the direct provision of comprehensive evaluation and assessment services to persons who have been investigated by law enforcement or child protective services for commission of a sex offense, or who have been adjudicated or convicted of a sex offense. Such evaluation shall be related to a client's offending behavior. Such services shall have resulted in preparation of a formal written report. To qualify, the individual shall have had primary responsibility for interviewing the offender and shall have completed the written report. Only hours in face to face contact with a client may be counted for evaluation credit. Evaluation hours performed by affiliate providers under the supervision of fully certified providers count toward certification under this definition. Note that limited assessments for the purpose of institution classification, treatment monitoring, and reporting do not qualify for evaluation credit under this definition.~~

~~(b) Standards for evaluations of clients by certified providers as defined in RCW 9.94A.120(7)(a) and 13.40.160 are set forth in WAC 246-930-320.~~

(8) "Treatment" for purposes of determining eligibility for certification, treatment is defined as the provision of face-to-face individual, group, or family therapy with persons who have been investigated by law enforcement or child protective services for commission of a sex offense, or who have been adjudicated or convicted of a sex offense. The professional seeking certification has formal responsibility for providing primary treatment services, and such services shall have had direct relevance to a client's offending behavior. Face-to-face treatment hours performed by affiliate providers under the supervision of certified providers count toward certification under this definition. "Cotherapy hours" are defined as the actual number of hours the applicant spent facilitating a group session. Cotherapy may each claim credit for therapy hours as long as both persons have formal responsibility for the group sessions. Time spent in maintaining collateral contacts and written case/progress notes are not counted under this definition.

~~(9) A "certified sex offender treatment provider" is an applicant who has met the educational, experience and training requirements as specified for full certification, has satisfactorily passed the examination, and has been issued a certificate by the department to evaluate and treat sex offenders pursuant to chapter 18.155 RCW.~~

~~(10) An "affiliate sex offender treatment provider" is an applicant who has met the educational, experience and training requirements as specified for affiliate certification applicants, and has satisfactorily passed the examination. An affiliate sex offender treatment provider evaluates and treats sex offenders pursuant to chapter 18.155 RCW under the supervision of a certified sex offender treatment provider in accordance with the supervision requirements set forth in WAC 246-930-075.~~

~~(11) "SSOSA" is special sex offender sentencing alternative as defined in RCW 9.94A.120(7)(a:))~~

~~(12) "SSODA" ((is)) means special sex offender disposition alternative ((as defined in)), authorized under RCW 13.40.160.~~

~~(13) "SSOSA" means special sex offender sentencing alternative, authorized under RCW 9.94A.670.~~

~~(14) "Supervising officer" ((means)) is the designated representative of the agency having oversight responsibility for a client sentenced under SSOSA or SSODA, ((under the sentence or disposition order:)) for example, a community corrections officer((:)) or a juvenile probation officer.~~

~~((14)) (15) "Treatment" means face-to-face individual, group, or family therapy, provided by an affiliate or provider, to a client. Treatment is focused on the client's offending behavior.~~

~~(16) "Treatment plan" means ((the plan set forth in the evaluation detailing how the treatment needs of the client will be met while the community is protected)) a written statement of intended care and services as documented in the evaluation that details how the client's treatment needs will be met while protecting the community during the course of treatment.~~

~~((15) "Community protection contract" means the document specifying the treatment rules and requirements the client has agreed to follow in order to maximize community safety.~~

~~(16) "Parties" means the defendant, the prosecuting attorney, the community corrections officer and the juvenile probation officer:))~~

AMENDATORY SECTION (Amending WSR 94-13-179, filed 6/21/94, effective 7/22/94)

WAC 246-930-030 Education required prior to ((examination)) certification as an affiliate or a provider.

(1) An applicant ((for full certification)) shall have completed:

(a) A master's or doctoral degree in social work, psychology, counseling, or educational psychology from a regionally accredited institution of higher education; or

(b) A medical doctor or doctor of osteopathy degree if the individual is a board certified/eligible psychiatrist; or

(c) A master's or doctoral degree in an equivalent field from a regionally accredited institution of higher education

~~((with))~~ and documentation of thirty graduate semester hours or forty-five graduate quarter hours in approved subject content listed in subsection (2) of this section.

~~(2)~~ Approved subject content includes at least five graduate semester hours or seven graduate quarter hours in ~~((e)(i) and (ii) of this subsection))~~ counseling, psychotherapy, and personality theory, and five graduate semester hours or seven graduate quarter hours in at least two ~~((additional content areas from (e)(i) through (viii) of this subsection))~~ of the following content areas:

~~((i))~~ (a) Counseling and psychotherapy~~(-);~~

~~((ii))~~ (b) Personality theory~~(-);~~

~~((iii))~~ (c) Behavioral science and research~~(-);~~

~~((iv))~~ (d) Psychopathology/personality disorders~~(-);~~

~~((v))~~ (e) Assessment/tests and measurement~~(-);~~

~~((vi))~~ (f) Group therapy/family therapy~~(-);~~

~~((vii))~~ (g) Human growth and development/sexuality~~(-); and~~

~~((viii))~~ (h) Corrections/criminal justice.

~~((d))~~ The applicant is responsible for submitting proof that the hours used to meet this requirement are in fact, equivalent.

~~(2))~~ (3) Transcripts of all ~~((graduate work shall))~~ education required under this section must be submitted ~~((directly))~~ to the department from the institution where the credits were earned.

AMENDATORY SECTION (Amending WSR 94-13-179, filed 6/21/94, effective 7/22/94)

WAC 246-930-040 ((Professional)) Experience required prior to ((examination)) certification as a provider. (1) ~~((To qualify for examination;))~~ An applicant for certification must complete at least two thousand hours of treatment and evaluation experience, as ~~((defined))~~ required in WAC ~~((246-930-040))~~ 246-930-350. These two thousand hours shall include at least two hundred fifty hours of evaluation experience and ~~((at least))~~ two hundred fifty hours of treatment experience.

(2) All of the ~~((prerequisite))~~ claimed treatment and evaluation experience shall have been within the ~~((seven-year))~~ ten-year period preceding application for certification ~~((as a provider)).~~

NEW SECTION

WAC 246-930-065 Requirements for certification.

(1) An applicant for certification must:

(a) Be credentialed as a health professional as provided in WAC 246-930-020. The credential must be in good standing without pending disciplinary action;

(b) Successfully complete an education program as required in WAC 246-930-030;

(c) Successfully complete an examination;

(d) Be able to practice with reasonable skill and safety; and

(e) Have no sex offense convictions, as defined in RCW 9.94A.030 or convictions in any other jurisdiction of an offense that under Washington law would be classified as a sex offense as defined in RCW 9.94A.030.

(2) An applicant for certification as a provider must also complete treatment and evaluation experience required in WAC 246-930-040.

AMENDATORY SECTION (Amending WSR 94-13-179, filed 6/21/94, effective 7/22/94)

WAC 246-930-075 ((Description of)) Supervision of affiliates. Supervision of affiliates is considerably different than consultation with other professionals. Consultation is solely advisory; consultants do not assume responsibility for those individuals ~~((to))~~ with whom they consult. Supervision of affiliates requires that the provider take full ethical and legal responsibility for the quality of work of the affiliate. ~~((The following rules apply to providers and affiliates when service is being provided to SSOSA and SSODA clients:~~

~~(1) Whether providing training, consultation, or supervision, sex offender treatment providers shall avoid presenting themselves as having qualifications in areas where they do not have expertise.~~

~~(2) The supervisor shall provide sufficient training and supervision to the affiliate to insure the health and safety of the client and community. The supervisor shall have the expertise and knowledge to directly supervise the work of the affiliate.~~

~~(3) The supervisor shall insure that any person he or she supervises has sufficient education, background, and preparation for the work they will be doing.~~

~~(4) Supervision of an affiliate shall require that the supervisor and supervisee enter into a formal written contract defining the parameters of the professional relationship. This supervision contract shall be submitted to the department for approval and shall be renewed on a yearly basis. The contract shall include, but is not limited to:~~

~~(a) Supervised areas of professional activity;~~

~~(b) Amount of supervision time and the frequency of supervisory meetings. This information may be presented as a ratio of supervisory time to clinical work conducted by the affiliate;~~

~~(c) Supervisory fees and business arrangements, when applicable;~~

~~(d) Nature of the supervisory relationship and the anticipated process of supervision;~~

~~(e) Selected and review of clinical cases;~~

~~(f) Methodology for recordkeeping, evaluation of the affiliate, and feedback; and~~

~~(g) How the affiliate is represented to the public.~~

~~(5) Supervision of affiliates shall involve regular, direct, face-to-face supervision. Based on the affiliate's skill and experience levels, supervision shall include a reasonable degree of direct observation of the affiliates by means of the supervisor sitting in sessions, audio tape recording, videotape, etc. In some cases, special flexible supervision arrangements which deviate from the standard are permitted, for example, due to geography or disability; special flexible supervision contracts shall be submitted to the department for approval.~~

~~(6) The level of supervision shall insure that the affiliate is prepared to conduct professional work and provide adequate oversight. There shall be a minimum of one hour of~~

supervision time for every ten hours of supervised professional work. Supervision meetings shall regularly occur at least every other week.

(7) ~~A certified sex offender treatment provider shall undertake no contract which exceeds the provider's ability to comply with supervision standards. A supervisor shall not supervise more than thirty hours of SSOSA and SSODA case clinical work each week.~~

(8) Generally, a supervisor shall not provide supervision for more than two affiliates. However, the special needs of certain locales, particularly rural areas, are recognized. Where appropriate, deviation from the standards in subsections (4)(b), (6) and (7) of this section are permitted subject to department approval, if quality of supervision can be maintained. Special supervisory arrangements shall be submitted for approval with the supervision contract to the department. A supervisor may adjust a supervision plan, as necessary, but shall notify the department of the amendment to the contract within thirty days.

(9) The status of the affiliate's relationship to the supervisor is to be accurately communicated to the public, other professionals, and to all clients served.

(10) An affiliate sex offender treatment provider may represent himself or herself as an affiliate only when doing clinical work supervised by the contracted sex offender treatment provider. If the affiliate is providing unsupervised clinical services to clients who are not SSOSA or SSODA cases, the individual shall not utilize the title "affiliate". This is not intended to prohibit an affiliate from describing their experience and qualifications to potential referral sources.

(11) All written reports and correspondence by the affiliate acting under SSOSA or SSODA shall be cosigned by the supervisor, indicating the supervisory relationship. The work shall be represented as conducted by the affiliate with oversight provided by the supervisor.

(12) All work relating to SSOSA and SSODA clients conducted by the affiliate is the responsibility of the supervisor. The supervisor shall have authority to direct the practice of the affiliate involving SSOSA and SSODA clients.

(13) Supervision includes, but is not limited to the following:

- (a) Discussion of services provided by the affiliate;
- (b) Case selection, service plan, and review of each case or work unit of the affiliate;
- (c) Discussions regarding theory and practice of the work being conducted;
- (d) Review of Washington statutes, rules, and criminal justice procedures relevant to the work being conducted;
- (e) Discussion of the standards of practice for providers as adopted by the department and the ethical issues involved in providing professional services for sex offenders;
- (f) Discussion regarding coordination of work with other professionals;
- (g) Discussion of relevant professional literature and research; and
- (h) Periodic review of the supervision itself.

(14) Both the supervisor and affiliate shall maintain full documentation of the work done and supervision provided.

(15) The supervisor will evaluate the affiliate's work and professional progress on an ongoing basis.

(16) It is the responsibility of the supervisor to remedy the problems or terminate the supervision contract. If the work of the supervisee does not meet sufficient standards to protect the best interests of the clients and the community. The supervisor shall notify the department and provide the department with a letter of explanation, if a supervision contract is terminated.

(17) Supervision is a power relationship and the supervisee-supervisor relationship is not to be exploited. This standard in no way precludes reasonable compensation for supervisory services.

(18) It is the responsibility of the supervisor to provide, on request, accurate and objective letters of reference and work documentation regarding the affiliate, when requested by affiliate.

(19) If a supervisee is in the employ of a provider it is the responsibility of the supervisor to provide:

- (a) Appropriate working conditions;
- (b) Opportunities to further the supervisee's skills and professional development; and
- (c) Consultation in all areas of professional practice appropriate to the supervisee's employment.

(20) All records of both affiliate and supervisor are subject to audit to determine compliance with appropriate statutes and rules.) A provider may not supervise more than two affiliates.

- (1) Supervision includes, but is not limited to:
 - (a) Discussion of services provided by the affiliate;
 - (b) Case selection, treatment plan, and review of each case or work unit of the affiliate;
 - (c) Discussions regarding theory and practice of the work being conducted;
 - (d) Review of Washington laws, rules, and criminal justice procedures relevant to the work being conducted;
 - (e) Discussion of the standards of practice for providers and affiliates as adopted by the department and the ethical issues involved in providing professional services for sex offenders;
 - (f) Discussion regarding coordination of work with other professionals and parties;
 - (g) Discussion of relevant professional literature and research; and
 - (h) Periodic review of the contract.

(2) The provider shall:

- (a) Avoid presenting himself or herself as having qualifications in areas that he or she does not have qualifications.
- (b) Provide sufficient training and supervision to the affiliate to assure the health and safety of the client and community.
- (c) Have expertise and knowledge to directly supervise affiliate work.
- (d) Assure that the affiliate being supervised has sufficient and appropriate education, background, and preparation for the work he or she will be doing.

(3) The provider and affiliate must enter into a formal written contract that defines the parameters of the professional relationship. The contract must be submitted to the department for approval and shall include:

- (a) Supervised areas of professional activity;

(b) Amount of supervision time and the frequency of supervisory meetings. This information may be presented as a ratio of supervisory time to clinical work conducted by the affiliate;

(c) Supervisory fees and business arrangements, when applicable;

(d) Nature of the supervisory relationship and the anticipated process of supervision;

(e) Selection and review of clinical cases;

(f) Methodology for recordkeeping, evaluation of the affiliate, and feedback; and

(g) How the affiliate will be represented to the public and the parties.

(4) Supervision of affiliates shall involve regular, direct, face-to-face supervision.

(a) Depending on the affiliate's skill and experience levels, the provider's supervision shall include direct observation of the affiliate by:

(i) Sitting in sessions;

(ii) Audio tape recording;

(iii) Videotaping, etc.

(b) In some cases, such as geographic location or disability, more flexible supervision arrangements may be allowed. The provider must submit requests for more flexible supervision arrangements to the department for approval.

(5) The supervisor must assure that the affiliate is prepared to conduct professional work, and must assure adequate supervision of the affiliate. The provider shall meet face-to-face with the affiliate a minimum of one hour for every ten hours of supervised professional work. Supervision meetings shall regularly occur at least every other week.

(6) A provider may not undertake a contract that exceeds the provider's ability to comply with supervision standards.

(7) The department recognizes the needs of certain locales, particularly rural areas, and may allow a variance from the standards in subsections (3)(b) and (5) of this section. The supervisor must submit any variance request to the department for approval with the supervision contract. Variances will be granted or denied in writing within thirty days.

(8) The nature of the affiliate-provider relationship must be communicated to the public, other professionals, and all clients served.

(9) An affiliate may represent himself or herself as an affiliate only when performing clinical work supervised by the contracted provider.

(10) The provider must cosign all written reports and correspondence prepared by the affiliate. The written reports and correspondence must include a statement that indicates the work has been conducted by the affiliate acting under the provider's supervision.

(11) Both the provider and affiliate shall maintain full documentation of the work done and supervision provided. The department may audit the provider's and affiliate's records to assure compliance with laws and rules.

(12) All work conducted by the affiliate is the responsibility of the provider. The provider shall have authority to direct the practice of the affiliate.

(13) It is the provider's responsibility to correct problems or end the supervision contract if the affiliate's work does not protect the interests of the clients and community. If the pro-

vider ends the contract, he or she must notify the department in writing within thirty days of ending the contract. A provider may only change or adjust a supervision contract after receiving written approval from the department.

(14) Supervision is a power relationship. The provider must not use his or her position to take advantage of the affiliate. This subsection is not intended to prevent a provider from seeking reasonable compensation for supervisory services.

(15) A provider must provide accurate and objective letters of reference and documentation of the affiliate's work at the affiliate's request.

(16) The provider shall ensure that the affiliate has completed at least one thousand hours of supervised evaluation and treatment experience before the affiliate is authorized to evaluate and treat Level III sex offenders. The provider will submit to the department documentation that the affiliate has completed a minimum of one thousand hours within thirty days of completion of the experience.

AMENDATORY SECTION (Amending WSR 94-13-179, filed 6/21/94, effective 7/22/94)

WAC 246-930-320 Standards for ((SSOSA and SSODA)) assessment and evaluation reports. (1) General considerations in evaluating clients. Providers and affiliates shall:

(a) Be knowledgeable of current assessment procedures used;

(b) Be aware of the strengths and limitations of self-report and make reasonable efforts to verify information provided by the ((~~offender~~)) client;

(c) Be knowledgeable of the client's legal status including any court orders applicable.

(d) Have a full understanding of the SSOSA and SSODA process, if applicable, and be knowledgeable of relevant criminal and legal considerations;

((~~(d)~~)) (e) Be impartial;

(f) Provide an objective and accurate base of data; and

((~~(e)~~)) (g) Avoid addressing or responding to referral questions which exceed the present level of knowledge in the field or the expertise of the evaluator.

(2) ((~~Scope of assessment data:~~

~~Comprehensive evaluations under SSOSA and SSODA shall include a compilation of data from as many sources as reasonable, appropriate, and available. These sources may include but are not limited to:~~

~~(a) Collateral information (i.e., police reports, child protective services information, criminal correctional history and victim statements);~~

~~(b) Interviews with the offender;~~

~~(c) Interviews with significant others;~~

~~(d) Previous assessments of the offender conducted (i.e., medical, substance abuse, psychological and sexual deviancy);~~

~~(e) Psychological/physiological tests;~~

~~(f) If a report fails to include information specified in (a) through (e) of this subsection, the evaluation should indicate the information not included and cite the reason the information is not included; and~~

(g) Second evaluations shall state whether other evaluations were considered. The decision regarding use of other evaluations prior to conducting the second evaluation is within the professional discretion of the provider. The second evaluation need not repeat all assessment or data compilation measures if it reasonably relies on existing current information. The second evaluation must address all issues outlined in subsection (3) of this section, and include conclusions, recommendations and a treatment plan if one is recommended.

(3) Evaluation reports:

(a) Written reports shall be accurate, comprehensive and address all of the issues required for court disposition as provided in the statutes governing SSOSA and SSODA;

(b) Written reports shall present all knowledge relevant to the matters at hand in a clear and organized manner;

(c) Written reports shall include the referral sources, the conditions surrounding the referral and the referral questions addressed; and

(d) Written reports shall state the sources of information utilized in the evaluation. The evaluation and written report shall address, at a minimum, the following issues:

(i) A description of the current offense(s) including, but not limited to, the evaluator's conclusion about the reasons for any discrepancy between the official and offender's versions of the offenses;

(ii) A sexual history, sexual offense history and patterns of sexual arousal/preference/interest;

(iii) Prior attempts to remediate and control offense behavior including prior treatment;

(iv) Perceptions of significant others, when appropriate, including their ability and/or willingness to support treatment efforts;

(v) Potentiators of offending behavior to include alcohol and drug abuse, stress, mood, sexual patterns, use of pornography, and social and environmental influences;

(vi) A personal history to include medical, marital/relationships, employment, education and military;

(vii) A family history;

(viii) History of violence and/or criminal behavior;

(ix) Mental health functioning to include coping abilities, adaptational styles, intellectual functioning and personality attributes; and

(x) The overall findings of psychological/physiological/medical assessment when such assessments have been conducted.

(e) Conclusions and recommendations shall be supported by the data presented in the body of the report and include:

(i) The evaluator's conclusions regarding the appropriateness of community treatment;

(ii) A summary of the clinician's diagnostic impressions;

(iii) A specific assessment of relative risk factors, including the extent of the offender's dangerousness in the community at large;

(iv) The client's amenability to outpatient treatment and conditions of treatment necessary to maintain a safe treatment environment.

(f) Proposed treatment plan shall be described in detail and clarity and include:

(i) Anticipated length of treatment, frequency and type of contact with providers, and supplemental or adjunctive treatment;

(ii) The specific issues to be addressed in treatment and a description of planned treatment interventions including involvement of significant others in treatment and ancillary treatment activities;

(iii) Recommendations for specific behavioral prohibitions, requirements and restrictions on living conditions, lifestyle requirements, and monitoring by family members and others that are necessary to the treatment process and community safety;

(iv) Proposed methods for monitoring and verifying compliance with the conditions and prohibitions of the treatment program; and

(v) If the evaluator will not be providing treatment, a specific certified provider should be identified to the court. The provider shall adopt the proposed treatment plan or submit an alternative treatment plan for approval by the court, including each of the elements in WAC 246-930-330 (5)(a) through (d).

(4) The provider shall submit to the court and the parties a statement that the provider is either adopting the proposed treatment plan or submitting an alternate plan. The plan and the statement shall be provided to the court before sentencing.) Providers and affiliates must complete written evaluation reports. These reports must:

(a) Be accurate, comprehensive and address all of the issues required for court or other disposition;

(b) Present all knowledge relevant to the matters at hand in a clear and organized manner;

(c) Include the referral sources, the conditions surrounding the referral and the referral questions addressed;

(d) Include a compilation of data from as many sources as reasonable, appropriate, and available. These sources may include but are not limited to:

(i) Collateral information including:

(A) Police reports;

(B) Child protective services information; and

(C) Criminal correctional history;

(ii) Interviews with the client;

(iii) Interviews with significant others;

(iv) Previous assessments of the client such as:

(A) Medical;

(B) Substance abuse; and

(C) Psychological and sexual deviancy;

(v) Psychological/physiological tests;

(e) Address, at a minimum, the following issues:

(i) A description of the current offense(s) or allegation(s) including, but not limited to, the evaluator's conclusion about the reasons for any discrepancy between the official and client's versions of the offenses or allegations;

(ii) A sexual history, sexual offense history and patterns of sexual arousal/preference/interest;

(iii) Prior attempts to remediate and control offensive behavior including prior treatment;

(iv) Perceptions of significant others, when appropriate, including their ability and/or willingness to support treatment efforts;

(v) Risk factors for offending behavior including:

- (A) Alcohol and drug abuse;
- (B) Stress;
- (C) Mood;
- (D) Sexual patterns;
- (E) Use of pornography; and
- (F) Social and environmental influences;
- (vi) A personal history including:
 - (A) Medical;
 - (B) Marital/relationships;
 - (C) Employment;
 - (D) Education; and
 - (E) Military;
- (vii) A family history;
- (viii) History of violence and/or criminal behavior;
- (ix) Mental health functioning including coping abilities, adaptation style, intellectual functioning and personality attributes; and
- (x) The overall findings of psychological/physiological/medical assessment if these assessments have been conducted;
- (f) Include conclusions and recommendations. The conclusions and recommendations shall be supported by the data presented in the report and include:
 - (i) The evaluator's conclusions regarding the appropriateness of community treatment;
 - (ii) A summary of the evaluator's diagnostic impressions;
 - (iii) A specific assessment of relative risk factors, including the extent of the client's dangerousness in the community at large; and
 - (iv) The client's willingness for outpatient treatment and conditions of treatment necessary to maintain a safe treatment environment.
- (g) Include a proposed treatment plan which is clear and describes in detail:
 - (i) Anticipated length of treatment, frequency and type of contact with providers or affiliates, and supplemental or adjunctive treatment;
 - (ii) The specific issues to be addressed in treatment and a description of planned treatment interventions including involvement of significant others in treatment and ancillary treatment activities;
 - (iii) Recommendations for specific behavioral prohibitions, requirements and restrictions on living conditions, lifestyle requirements, and monitoring by family members and others that are necessary to the treatment process and community safety; and
 - (iv) Proposed methods for monitoring and verifying compliance with the conditions and prohibitions of the treatment program.
- (3) If a report fails to include information specified in (a) through (e) of this subsection, the evaluation should indicate the information not included and cite the reason the information is not included.
- (4) Second evaluations shall state whether prior evaluations were considered. The decision regarding use of other evaluations prior to conducting the second evaluation is within the professional discretion of the provider or affiliate. The second evaluation need not repeat all assessment or data compilation measures if it reasonably relies on existing cur-

rent information. The second evaluation must address all issues outlined in subsection (2) of this section, and include conclusions, recommendations and a treatment plan if one is recommended.

(5) The provider or affiliate who provides treatment shall submit to the court and the parties a statement that the provider or affiliate is either adopting the proposed treatment plan or submitting an alternate plan. Any alternate plan and the statement shall be provided to the court before sentencing. Any alternate plan must include the treatment methods described in WAC 246-930-332(1).

AMENDATORY SECTION (Amending WSR 94-13-179, filed 6/21/94, effective 7/22/94)

WAC 246-930-330 Standards ~~((for))~~ and documentation of treatment. ~~((Introduction SSOSA/SSODA offender treatment: It is recognized that))~~ Effective sexual deviancy treatment ~~((will))~~ involves a broad set of planned therapeutic experiences and interventions designed to ultimately reduce the client's risk of ~~((a client))~~ engaging in criminal sexual behavior. ~~((Such))~~ Treatment ~~((shall))~~ must be consistent with current professional literature and ~~((shall))~~ emphasize community safety.

~~((+))~~ **General considerations.**

~~((a))~~ (1) In most cases ~~((clients shall be seen by a certified or affiliate treatment provider a minimum of))~~ a provider or affiliate treats clients at least once per week for at least forty-five minutes for an individual or ninety minutes for a group.

~~((b))~~ (2) Changes in client circumstances or ~~((treatment))~~ provider/affiliate schedule may require ~~((a reduction in frequency or duration of contacts appropriate, provided that:~~

(i) Such changes are made on a case-by-case basis;

(ii) Any changes that constitute a permanent change in the treatment plan or that reduce community safety shall be communicated to the supervising officer, the prosecutor and the court prior to the implementation of the change; and

(iii) Other short term, temporary changes in the treatment plan due to illness, vacation, etc., should be reported in the regular progress report.

(e) Any reduction in frequency or duration of contacts which constitutes a deviation from the treatment plan shall be reported to the supervising officer, the prosecutor, and the court; and

(d) The treatment methods employed by the provider shall:

(i) Reflect concern for the well-being of clients, victims and the safety of potential victims;

(ii) Take into account the legal/civil rights of clients, including the right to refuse therapy and return to court for review; and

(iii) Be individualized to meet the unique needs of each client.

(2) ~~Planning and interventions.~~ The treatment plan and the interventions used by the provider to achieve the goals of the plan shall:

(a) Address the sexual deviancy treatment needs identified;

(b) Include provisions for the protection of victims and potential victims;

(c) Give priority to those treatment interventions most likely to avoid sexual reoffense; and

(d) Take reasonable care to not cause victims to have unsafe, or unwanted contact with their offenders.

~~(3) **Community protection contract.** The provider shall present a contract to the client within ninety days of the start of treatment which:~~

~~(a) Details the treatment rules and requirements which the client must follow in order to preserve community safety;~~

~~(b) Outlines the client's responsibility to adhere to the contract and the provider's responsibility to report any violations;~~

~~(c) Is a separate document from any other evaluation or treatment agreements between the client and the provider; and~~

~~(d) Is signed by both client and provider, sent to the supervising officer after sentencing, and updated when conditions change throughout the course of treatment.~~

~~(4) **Treatment methods.** The methods used by the provider shall:~~

~~(a) Address clients' deviant sexual urges and recurrent deviant sexual fantasies;~~

~~(b) Educate clients and the individuals who are part of their support systems about the potential for reoffense, and risk factors;~~

~~(c) Teach clients to use self-control methods to avoid sexual reoffense;~~

~~(d) Consider the effects of trauma and past victimization as factors in reoffense potential where applicable;~~

~~(e) Address clients' thought processes which facilitate sexual reoffense and other victimizing or assaultive behaviors;~~

~~(f) Modify client thinking errors and cognitive distortions;~~

~~(g) Enhance clients appropriate adaptive/legal sexual functioning;~~

~~(h) Insure that clients have accurate knowledge about the effect of sexual offending upon victims, their families, and the community;~~

~~(i) Help clients develop a sensitivity to the effects of sexual abuse upon victims;~~

~~(j) Address clients' personality traits and personality deficits which are related to increased reoffense potential;~~

~~(k) Address clients' deficits in coping skills;~~

~~(l) Include and integrate clients' families, guardians, and residential program staff into the treatment process when appropriate; and~~

~~(m) To maintain communication with other significant persons in the client's support system, when deemed appropriate by the provider.~~

~~(5) **Monitoring of treatment requirements.** The monitoring of the client's compliance with treatment requirements by the provider shall:~~

~~(a) Recognize the reoffense potential of the sex offender client, the damage that may be caused by sexual reoffense or attempted reoffense, and the limits of self-report by the sex offender client;~~

~~(b) Consider multiple sources of input regarding the client's out of office behavior;~~

~~(c) As a general principle, increase monitoring during those times of increased risk and notify the supervising officer;~~

~~(i) When a client is in crisis;~~

~~(ii) When visits with victims or potential victims are authorized; and~~

~~(iii) When clients are in high risk environments.~~

~~(d) Work in collaboration with the supervising officer to verify that the client is following the treatment plan by reducing the frequency of those behaviors that are most closely related to sexual reoffense and that the client's living, work and social environments have sufficient safeguards and protection for victims and potential victims; and~~

~~(e) The provider and the supervising officer should discuss the verification methods used so that each can more fully collaborate to protect community safety and assist the client in successfully completing treatment.~~

~~(6) **Contacts with victims/vulnerable persons for SSOSA clients.** When authorizing SSOSA clients to have contact with victims or children, the provider shall recognize that supervision during contact with children is critical for those offenders who have had crimes against children, or have the potential to abuse children. Providers shall:~~

~~(a) Consider victim's wishes about contact and reasonably ensure that all contact is safe and in accordance with court directives;~~

~~(b) Restrict, as necessary, offender decision-making authority over victims and vulnerable children;~~

~~(c) Prior to offender contact with children, collaborate with other relevant professionals regarding contact with victims, rather than make isolated decisions;~~

~~(d) Consult with the victim's parents, custodial parents, or guardians prior to authorizing any contact between offenders and children;~~

~~(e) Include educational experiences for chaperones/supervisors of SSOSA clients; and~~

~~(f) Devise a plan/protocol for reuniting or returning SSOSA clients to homes where children reside. Such plan/protocol should emphasize child safety, and provide for some monitoring of the impact on the victim and other children.~~

~~(7) **Contacts with victims/vulnerable persons for SSODA clients.** While the rationale behind the standards for SSOSA clients in subsection (6)(a) through (f) of this section is equally relevant for juvenile SSODA clients, there are some substantial differences that warrant specific standards. The prohibitions on contact with children are not intended to prohibit reasonable peer-age social or educational contacts for juvenile SSODA clients. It is further understood that providers working with juvenile SSODA clients have limited authority over their clients, and that they have limited authority to govern the decisions or supervision of a juvenile client's parents. Reasonable and practical supervision plans/strategies for juvenile SSODA clients require the cooperation and involvement of parents, foster parents, group home staff, and the supervising officer. Providers shall work in collaboration with the supervising officer to meet the following standards:~~

~~(a) Establish reasonable guidelines for contacts with victims or vulnerable children commensurate with the offender's offending history, treatment progress, and the current disposition order.~~

~~(b) Make reasonable efforts to advise, inform, and educate adults who will be in contact with and responsible for the offender's behavior around victims or vulnerable children.~~

~~(c) Restrict, as necessary, offender decision-making authority over victims and vulnerable children.~~

~~(d) Devise plans/protocols for reuniting or returning SSODA clients to homes where the victim or other children reside, specifically considering the victim's wishes and victim impact of reunification.~~

~~(e) Closely scrutinize victim requests for offender contact to ensure the request is free of emotional strain and is in the victim's best interests.~~

~~(8) **Documentation of treatment.** Providers shall maintain and safeguard client files in accordance with the professional standards of their individual disciplines and with Washington state law regarding health care records. Providers shall insure that the client files reflect the content of professional contact, treatment progress, sessions attended and treatment plan change information necessary for completion of the required SSOSA/SSODA reports; and~~

~~(9) **Completion of court ordered treatment.** In fulfilling the SSOSA requirements for the end of court ordered treatment hearing, the treatment provider shall:~~

~~(a) Assess and document how the goals of the treatment plan have been met, what changes in the client's reoffense potential have been accomplished, and what risk factors remain;~~

~~(b) Report to the court in a timely manner regarding the client's compliance with treatment and monitoring requirements and make a recommendation regarding modification of conditions of community supervision, and either termination of treatment or extension of treatment for up to the remaining period of community supervision.~~

~~(10) **Completion of treatment for SSODA.** Sex offender treatment providers who are treating juvenile offenders shall comply with subsection (9) of this section)) less frequent or shorter sessions. Changes to the number or duration of sessions may be made on a case-by-case basis, and must be reported to the department. A provider or affiliate must:~~

~~(a) Communicate permanent changes in the treatment plan or changes that may reduce community safety to the supervising officer, the prosecutor and the court before the changes may be implemented;~~

~~(b) Report other short term, temporary changes in the treatment plan due to illness, vacation, etc., in the regular progress report; and~~

~~(c) Report any reduction in frequency or duration of contacts that constitutes a variance from the treatment plan to the supervising officer, the prosecutor, and the court.~~

~~(3) The treatment methods employed by the provider or affiliate shall:~~

~~(a) Reflect concern for the well-being of clients, victims and the safety of potential victims;~~

~~(b) Take into account the legal/civil rights of clients, including the right to refuse therapy and return to court for review; and~~

~~(c) Be individualized to meet the unique needs of each client.~~

~~(4) Providers and affiliates shall maintain and safeguard client files consistent with the professional standards and with Washington state law regarding health care records. Providers and affiliates shall ensure that the client files include the following information for completion of required reports:~~

~~(a) Content of professional contact;~~

~~(b) Treatment progress;~~

~~(c) Sessions attended; and~~

~~(d) Any treatment plan changes.~~

NEW SECTION

WAC 246-930-332 Treatment methods and monitoring. (1) The treatment methods used by the provider or affiliate shall:

(a) Address the client's deviant sexual urges and recurrent deviant sexual fantasies;

(b) Educate the client and the individuals who are part of the client's support system about the potential for reoffense, and risk factors;

(c) Teach the client to use self-control methods to avoid sexual reoffense;

(d) Consider the effects of trauma and past victimization as factors in reoffense potential where applicable;

(e) Address the client's thought processes which facilitate sexual reoffense and other victimizing or assaultive behaviors;

(f) Modify client thinking errors and cognitive distortions;

(g) Enhance the client's appropriate adaptive/legal sexual functioning;

(h) Assure that the client has accurate knowledge about the effect of sexual offending upon victims, their families, and the community;

(i) Help the client develop sensitivity to the effects of sexual abuse upon victims;

(j) Address the client's personality traits and personality deficits which are related to increased reoffense potential;

(k) Address the client's deficits in coping skills;

(l) Include and integrate the client's family, guardian, and residential program staff into the treatment process when appropriate; and

(m) Maintain communication with other significant persons in the client's support system, when deemed appropriate by the provider.

(2) The provider or affiliate shall monitor compliance with treatment requirements by:

(a) Recognizing the reoffense potential of the client, the damage that may be caused by sexual reoffense or attempted reoffense, and the limits of self report by the client;

(b) Considering multiple sources of input regarding the client's out-of-office behavior;

(c) Increasing monitoring during those times of increased risk and notifying the supervising officer when:

- (i) A client is in crisis;
 - (ii) Visits with victims or potential victims are authorized; and
 - (iii) A client is in high-risk environments.
- (d) Working in collaboration with the supervising officer, when applicable, to verify that the client is following the treatment plan by reducing the frequency of those behaviors that are most closely related to sexual reoffense and that the client's living, work and social environments have sufficient safeguards and protection for victims and potential victims; and
- (e) Discussing with the supervising officer the verification methods used so that each can fully collaborate to protect community safety and assist the client in successfully completing treatment.

NEW SECTION

WAC 246-930-334 Planning and interventions. (1) The treatment plan and the interventions used by the provider or affiliate to achieve the goals of the plan shall:

- (a) Address the sexual deviancy treatment needs identified;
 - (b) Include provisions for the protection of victims and potential victims;
 - (c) Give priority to those treatment interventions most likely to avoid sexual reoffense; and
 - (d) Take reasonable care not to cause victims to have unsafe, unauthorized, or unwanted contact with their offenders.
- (2) The community protection contract shall be presented to the client within ninety days of the start of treatment by the provider or affiliate that:
- (a) Details the treatment rules and requirements that the client must follow in order to preserve community safety;
 - (b) Outlines the client's responsibility to adhere to the contract, and the provider's responsibility to report any violations;
 - (c) Is a separate document from any other evaluation or treatment agreements between the client and the provider;
 - (d) Is signed by both client and provider;
 - (e) Is sent to the supervising officer after sentencing; and
 - (f) Is updated when conditions change throughout the course of treatment.

NEW SECTION

WAC 246-930-336 Contacts with victims and children by clients. (1) The provider or affiliate shall recognize that supervision during contact with children is critical for those clients who have had crimes against children, or have the potential to abuse children. When authorizing clients to have contact with victims or children, the provider or affiliate shall:

- (a) Consider the victim's wishes about contact and reasonably ensure that all contact is safe and in accordance with court directives;
- (b) Restrict, as necessary, client decision-making authority over victims and children;

(c) Collaborate with other relevant professionals about contact with victims prior to authorizing client contact with children, rather than making isolated decisions;

(d) Consult with the victim's parents, custodial parents, or guardians prior to authorizing any contact between clients and children;

(e) Include educational experiences for chaperones/supervisors of clients; and

(f) Devise a plan/protocol for reuniting or returning clients to homes where children reside. This plan/protocol must emphasize child safety, and provide for some monitoring of the impact to the victim and other children.

(2) While the rationale behind the standards for clients in subsection (1)(a) through (f) of this section is equally relevant for juvenile clients, there are some substantial differences that warrant specific standards. The prohibitions on contact with children are not intended to prohibit reasonable peer-age social or educational contacts for juvenile clients. Providers or affiliates working with juvenile clients have limited authority over their clients, in that they have limited authority to govern the decisions or supervision of a juvenile client's parents. Reasonable and practical supervision plans/strategies for juvenile clients require the cooperation and involvement of parents, foster parents, group home staff, and the supervising officer. Providers and affiliates shall work in collaboration with the supervising officer to:

(a) Establish reasonable guidelines for contacts with victims or children commensurate with the client's offending history, treatment progress, and the current disposition order;

(b) Make reasonable efforts to advise, inform, and educate adults who will be in contact with and responsible for the client's behavior around victims or children;

(c) Restrict, as necessary, client decision-making authority over victims and children;

(d) Devise plans/protocols for reuniting or returning clients to homes where the victim or other children reside, specifically considering the victim's wishes and victim impact of reunification;

(e) Closely scrutinize victim requests for client contact to ensure the request is free of emotional strain and is in the victim's best interests; and

(f) Follow court ordered no contact provisions, or seek modification of court ordered restrictions if appropriate.

NEW SECTION

WAC 246-930-338 Completion of court ordered treatment. In fulfilling requirements for the end of court ordered treatment hearing, if applicable, the provider or affiliate shall:

(1) Assess and document how the treatment plan goals have been met, what changes in the client's reoffense potential have been accomplished, and what risk factors remain; and

(2) Report to the court in a timely manner regarding the client's compliance with treatment and monitoring requirements, and make a recommendation regarding modification of conditions of community supervision, and either termination of treatment or extension of treatment for up to the remaining period of community supervision.

NEW SECTION

WAC 246-930-350 Evaluation and treatment experience credit. (1) Evaluation experience credit. The following can be counted for evaluation experience credit:

- (a) Preparation of a written SSOSA, SSODA, self-referral or forensic evaluation;
- (b) Primary or secondary responsibility for interviewing the client;
- (c) Preparation of the written evaluation report;
- (d) All contact with clients; and
- (e) Preparation of limited assessments for the purpose of:
 - (i) Institution classification;
 - (ii) Treatment monitoring; and
 - (iii) Reporting.

(2) Treatment experience credit. The following can be counted for treatment experience credit:

- (a) Face-to-face treatment hours performed by affiliates under the supervision of certified providers;
- (b) Time spent as a co-therapist. Both therapists must have formal responsibility for the group session; and
- (c) Time spent maintaining collateral contacts and written case/progress notes.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-930-050 Education required for affiliate prior to examination.
- WAC 246-930-060 Professional experience required for affiliate prior to examination.

WSR 07-09-093

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Hearing and Speech)

[Filed April 18, 2007, 10:37 a.m., effective May 19, 2007]

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

Purpose: WAC 246-828-620 Definitions—Sexual misconduct and 246-828-625 Sexual misconduct.

This rule responds to the Governor's Executive Order 06-03 that was issued on May 4, 2006, directing health professions boards and commissions, and the department, to adopt comprehensive definitions of sexual misconduct by regulated health care providers.

The board of hearing and speech (board) did not have any sexual misconduct rules in place when the executive order was issued. The board adopted sexual misconduct rules to further enhance public protection. This rule was drafted using the department of health, secretary profession model rules and then tailored to describe unprofessional conduct by those license holders under the board's jurisdiction.

Statutory Authority for Adoption: RCW 18.35.161 and 18.130.050.

Adopted under notice filed as WSR 06-21-104 on October 17, 2006.

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) 236-4915, 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 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 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 2, Amended 0, Repealed 0.

Date Adopted: April 18, 2007.

Karen Kelley
for Robert Nicoloff
Executive Director

NEW SECTION

WAC 246-828-620 Definitions—Sexual misconduct.

The following definitions are applicable to the sexual misconduct rule, WAC 246-828-625:

(1) "Health care information" means any information, whether oral or recorded in any form or medium that identifies or can readily be associated with the identity of, and relates to the health care of, a patient or client.

(2) "Health care provider" means an individual applying for a credential or credentialed in a profession listed in chapter 18.35 RCW: Hearing instrument fitter/dispensers, audiologists, and speech-language pathologists.

(3) "Key party" means immediate family members and others who would be reasonably expected to play a significant role in the health care decisions of the patient or client and includes, but is not limited to, the spouse, domestic partner, sibling, parent, child, guardian and person authorized to make health care decisions of the patient or client.

(4) "Legitimate health care purpose" means activities for examination, diagnosis, treatment, and personal care of patients or clients, including palliative care, as consistent with community standards of practice for the profession. The activity must be within the scope of practice of the health care provider.

(5) "Patient" or "client" means an individual who receives health care from a health care provider.

SEXUAL MISCONDUCT

NEW SECTION

WAC 246-828-625 Sexual misconduct. (1) A health care provider shall not engage, or attempt to engage, in sexual misconduct with a current patient, client, or with a key party of a current client or patient, inside or outside the health care setting. Sexual misconduct shall constitute grounds for disciplinary action. Sexual misconduct includes but is not limited to:

- (a) Sexual intercourse;
- (b) Touching the breasts, genitals, anus or any sexualized body part except as consistent with accepted community standards of practice for examination, diagnosis and treatment and within the health care practitioner's scope of practice;
- (c) Rubbing against a patient or client or key party for sexual gratification;
- (d) Kissing;
- (e) Hugging, touching, fondling or caressing of a romantic or sexual nature;
- (f) Not allowing a patient or client privacy to dress or undress except as may be necessary in emergencies or custodial situations;
- (g) Not providing the patient or client a gown or draping except as may be necessary in emergencies;
- (h) Dressing or undressing in the presence of the patient, client or key party;
- (i) Removing patient or client's clothing or gown or draping without consent, emergent medical necessity or being in a custodial setting;
- (j) Encouraging masturbation or other sex act in the presence of the health care provider;
- (k) Masturbation or other sex act by the health care provider in the presence of the patient, client or key party;
- (l) Dating or beginning a sexual or romantic relationship before the professional relationship ends;
- (m) Discussing the sexual history, preferences or fantasies of the health care provider;
- (n) Any behavior, gestures, or expressions that may reasonably be interpreted as seductive or sexual;
- (o) Making statements regarding the patient, client or key party's body, appearance, sexual history, or sexual orientation other than for legitimate health care purposes;
- (p) Sexually demeaning behavior including any verbal or physical contact which may reasonably be interpreted as demeaning, humiliating, embarrassing, threatening or harming a patient, client or key party;
- (q) Photographing or filming the body or any body part or pose' of a patient, client, or key party, other than for legitimate health care purposes; and
- (r) Showing a patient, client or key party sexually explicit photographs, other than for legitimate health care purposes.

(2) A health care provider shall not:

- (a) Offer to provide health care services in exchange for sexual favors;

- (b) Use health care information to contact the patient, client or key party for the purpose of engaging in sexual misconduct;

- (c) Use health care information or access to health care information to meet or attempt to meet the health care provider's sexual needs.

(3) After a health care provider has terminated providing services to the client or patient, a health care provider shall not engage, or attempt to engage, in dating or beginning a sexual or romantic relationship with a former client or patient or key party of a former client or patient if:

- (a) There is a significant likelihood that the former patient, client or key party will seek or require additional services from the health care provider; or

- (b) There is an imbalance of power, influence, opportunity and/or special knowledge held or acquired by the health care provider related to the professional relationship.

(4) When evaluating whether a health care provider is prohibited from engaging, or attempting to engage, in sexual misconduct, the board of hearing and speech will consider factors, including but not limited to:

- (a) Documentation of a formal termination and the circumstances of termination of the provider-patient relationship;

- (b) Transfer of care to another health care provider;

- (c) Duration of the provider-patient relationship;

- (d) Amount of time that has passed since the last health care services to the patient or client;

- (e) Communication between the health care provider and the patient or client between the last health care services rendered and commencement of the personal relationship;

- (f) Extent to which the patient's or the client's personal or private information was shared with the health care provider;

- (g) Nature of the patient or client's health condition during and since the professional relationship;

- (h) The patient or client's emotional dependence and vulnerability;

- (i) Normal revisit cycle for the profession and service; and

- (j) Patient, client or key party initiation or consent does not excuse or negate the health care provider's responsibility.

(5) These rules do not prohibit:

- (a) Providing health care services in case of emergency where the services cannot or will not be provided by another health care provider;

- (b) Contact that is necessary for a legitimate health care purpose and that meets the standard of care appropriate to that profession; or

- (c) Providing health care services for a legitimate health care purpose to a person who is in a preexisting established personal relationship with the health care provider where there is no evidence of, or potential for, exploiting the patient or client.