

**WSR 07-11-132**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Disability Services Administration)

[Filed May 22, 2007, 9:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-07-086.

Title of Rule and Other Identifying Information: New chapter 388-829C WAC, Companion home residential services program.

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

Date of Intended Adoption: Not earlier than July 11, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail [schilse@dshs.wa.gov](mailto:schilse@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m. on July 10, 2007.

Assistance for Persons with Disabilities: Contact DSHS by July 3, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at [schilse@dshs.wa.gov](mailto:schilse@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the new companion home residential services chapter is to consolidate information governing the operation of companion home residential services for ease of reference by the user.

The division of developmental disabilities (DDD) is proposing to consolidate standards that were existing rule in chapters 388-825, 388-845, and 388-101 WAC. DDD is also putting existing requirements found in policy and contract into the proposed rule. This will consolidate the companion home residential services program into one chapter for easier reference.

There is a new requirement for companion home providers to keep property records for the companion home client.

This rule was originally proposed as chapter 388-821 WAC and included rules for alternative living services. This rule has been separated from the rules for alternative living services and is now chapter 388-829C WAC. These changes will make finding companion home residential services rules easier for the user.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: Title 71A RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Debbie Roberts, 640 Woodland Square Loop S.E., Lacey, WA 98504, (360) 725-3400; Implementation and Enforce-

ment: Don Clintsman, 640 Woodland Square Loop S.E., Lacey, WA 98504, (360) 725-3426.

No small business economic impact statement has been prepared under chapter 19.85 RCW. DDD has determined for this set of rules that alternative living providers are all small businesses and there will be no disproportionate impact. DDD has analyzed these proposed rules and concludes that costs to alternative living providers will be minor, if there are any costs at all.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Debbie Roberts, 640 Woodland Square Loop S.E., Lacey, WA 98504, phone (360) 725-3400, fax (360) 404-0955, e-mail [roberdx@dshs.wa.gov](mailto:roberdx@dshs.wa.gov).

May 15, 2007

Stephanie E. Schiller  
Rules Coordinator

### Chapter 388-829C WAC

#### Companion Homes

#### PURPOSE

##### NEW SECTION

**WAC 388-829C-005 What is the purpose of this chapter?** This chapter establishes rules governing the division of developmental disabilities (DDD) companion home residential services program per chapter 71A.12 RCW for eligible clients of the division.

#### DEFINITIONS

##### NEW SECTION

**WAC 388-829C-010 What definitions apply to this chapter?** The following definitions apply to this chapter:

"ADSA" means the aging and disability services administration within DSHS and its employees and authorized agents.

"Adult Protective Services" or "APS" means the investigative body designated by ADSA to investigate suspected cases of abandonment, abuse, financial exploitation and neglect as defined in 74.34 RCW.

"Calendar year" means the twelve month period that runs from January 1 through December 31.

"Case Manager" means the DDD case resource manager or social worker assigned to a client.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(3) who also has been determined eligible to receive services by the division under chapter 71A.16 RCW.

"Competence" means the capacity to do what one needs and wants to do. There are two ways to be competent. A person may be self-reliant and able to do things for themselves or may have the power to identify and obtain the help needed from others.

"DDD" or "the division" means the division of developmental disabilities, a division within the DSHS aging and dis-

abilities services administration, of the department of social and health services.

"DDD Specialty Training" means department approved curriculum to provide information and instruction to meet the special needs of people with developmental disabilities.

"DSHS" or "the department" means the state of Washington department of social and health services and its employees and authorized agents.

"Health and Safety" means clients should live safely in environments common to other citizens with reasonable supports offered to simultaneously protect their health and safety while promoting community inclusion

"Individual Support Plan" or "ISP" is a document that authorizes and identifies the DDD paid services that meet a client's assessed needs.

"Integration" means clients being present and actively participating in the community using the same resources and doing the same activities as other citizens.

"Mandatory Reporter" means any person working with vulnerable adults required by law to report incidents of abandonment, abuse, neglect, financial exploitation, etc., per chapter 74.34 RCW.

"NA-R" means nursing assistant-registered under chapter 18.88A RCW.

"NA-C" means nursing assistant-certified under chapter 18.88A RCW.

"Positive recognition by self and others" means a client being offered assistance in ways which promote the client's status and creditability. Providers offer assistance in ways that are appropriate to the age of the client, typical to other members of the community and contribute to the client's feelings of self worth and positive regard by others.

"Positive Relationships" means clients having friends and family that offer essential support and protection. Friends and family lend continuity and meaning through life and open the way to new opportunities and experiences.

"Power and Choice" means clients experiencing power, control and ownership of personal affairs. Expression of personal power and choice are essential elements in the lives of people. Such expressions help people gain autonomy, become self-governing and pursue their own interests and goals.

"Registered Nurse Delegation" means the process by which a registered nurse transfers the performance of selected nursing tasks to a registered or certified nursing assistant in selected situations. (For detailed information, please refer to chapter 18.79 RCW and WAC 388-840-910 through 388-840-970.)

"Regulation" means any federal, state, or local law, rule, ordinance or policy.

"Respite" means care that is intended to provide short-term intermittent relief for persons providing care for Companion Home clients.

"RCW" means the Revised Code of Washington, which contains all laws governing the state of Washington.

"Service Episode Record" or "SER" means documentation by DDD of all client related contacts including contacts during the assessment, service plan, coordination and monitoring of care and termination of services.

"Unusual Incidents" means a change in circumstances or events that concern a client's safety or well being. Examples include, an increased frequency, intensity, or duration of any medical conditions, adverse reactions to medication, hospitalization, death, severe behavioral incidents, severe injury, running away, physical or verbal abuse to themselves or others.

"WAC" means the Washington Administrative Code, which contains the rules for administering the state laws (RCW).

## COMPANION HOME SERVICES

### NEW SECTION

**WAC 388-829C-020 What are companion home residential services?** (1) A companion home is a DDD residential service offered in the provider's home to no more than one client.

(2) Companion home residential services provide twenty-four hour instruction and support services.

(3) Companion home residential services are based on the client's ISP.

(4) Companion home residential services are provided by an independent contractor.

### NEW SECTION

**WAC 388-829C-030 Who may receive companion home residential services?** Clients who may receive companion home residential services must:

(1) Be at least eighteen years old;

(2) Have an assessed need for companion home services; and

(3) Meet one of the following conditions:

(a) Be authorized by DDD to receive companion home residential services, as outlined in this chapter; or

(b) Have a written agreement with the provider to purchase companion home residential services using the client's own personal financial resources.

### NEW SECTION

**WAC 388-829C-040 Who is eligible to contract with DDD to provide companion home residential services?** To be eligible to contract with DDD to provide companion home residential services, a person must:

(1) Be twenty-one years of age or older;

(2) Have a high school diploma or GED;

(3) Clear a background check conducted by DSHS as required by RCW 43.20A710;

(4) Have an FBI fingerprint-based background check as required by RCW 43.20A.710, if the person has not lived in the state continuously for the previous three years;

(5) Have a business ID number, as an independent contractor; and

(6) Meet the minimum skills and abilities described in WAC 388-829C-080.

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

NEW SECTION

**WAC 388-829C-050 Who may not provide companion home residential services?** DDD may not contract with any of the following to provide companion home residential services:

- (1) The client's spouse.
- (2) The client's natural, step, or adoptive parents.
- (3) The client's court-appointed legal representative.
- (4) Any person providing department paid services to any other DSHS client.

NEW SECTION

**WAC 388-829C-060 Where are companion home residential services provided?** (1) Companion home residential services are offered to clients living in the provider's home.

(2) The provider's home must be approved by DDD, to assure client health, safety, and well-being consistent with the requirements in this chapter.

### PROVIDER QUALIFICATIONS AND RESPONSIBILITIES

NEW SECTION

**WAC 388-829C-070 Who must have a background check in the companion home?** (1) All individuals living in the household, except the client, must have a current DSHS background check if they:

- (a) Are at least sixteen years old; and
- (b) Reside in the companion home.

(2) Household residents who have not lived in Washington continuously for the previous three years must also have an FBI fingerprint-based background check as required by RCW 43.20A.710.

(3) Background checks must be completed every two years or more frequently when requested by the department.

NEW SECTION

**WAC 388-829C-080 What minimum skills and abilities must companion home providers demonstrate?** Companion Home providers must:

- (1) Be able to read, understand, and provide services outlined in the ISP;
- (2) Participate in the development of the ISP;
- (3) Communicate in the language of the client served;
- (4) Accommodate the client's individual preferences;
- (5) Know the community resources, such as: medical facilities, emergency resources, and recreational opportunities;
- (6) Enable the client to keep in touch with family and friends in a way preferred by the client;
- (7) Protect the client's financial interests;
- (8) Fulfill reporting requirements as required in this chapter and the companion home contract;
- (9) Know how and when to contact the client's representative and the client's case manager;

(10) Successfully complete the training required in this chapter;

(11) Maintain all necessary license, registration and certification required under this chapter, (see WAC 388-829C-110, 388-829C-130, 388-829C-190, and 388-829C-260); and

(12) Comply with all applicable laws, regulations and contract requirements.

NEW SECTION

**WAC 388-829C-090 What values must companion home providers focus on when implementing the ISP?** The companion home provider must focus on the following values when implementing the individual support plan (ISP):

- (1) Health and safety;
- (2) Personal power and choice;
- (3) Competence and self-reliance;
- (4) Positive recognition by self and others;
- (5) Positive relationships; and
- (6) Integration in the physical and social life of the community.

NEW SECTION

**WAC 388-829C-100 What rights do clients of DDD have?** Clients of DDD have:

(1) The same legal rights and responsibilities guaranteed to all other individuals by the United States Constitution and federal and state law;

(2) The right to be free from discrimination because of race, color, national origin, gender, age, religion, creed, marital status, disabled or veteran status, use of a trained service animal or the presence of any physical, mental or sensory handicap;

(3) The right to treatment and habilitation services to foster developmental potential and protect personal liberty in the least restrictive environment;

(4) The right to dignity, privacy, and humane care;

(5) The right to participate in an appropriate program of publicly supported education;

(6) The right to prompt medical care and treatment;

(7) The right to social interaction and participation in community activities;

(8) The right to physical exercise and recreational opportunities;

(9) The right to work and be paid for the work one does;

(10) The right to be free from harm, including unnecessary physical restraint, isolation, excessive medication, abuse, neglect, or financial exploitation;

(11) The right to be free from hazardous or experimental procedures;

(12) The right to freedom of expression and to make decisions about one's life;

(13) The right to complain, disagree with, and appeal decisions made by the provider or DDD; and

(14) The right to be informed of these rights in a language that he or she understands.

**PROVIDER TRAINING**NEW SECTION

**WAC 388-829C-110 What training must a person have before becoming a contracted companion home provider?** Before DDD may issue a companion home contract, the prospective provider must:

- (1) Obtain CPR and first aid certification;
- (2) Successfully complete Blood-Borne Pathogens training with HIV/AIDS information; and
- (3) Receive contract orientation and client specific training from DDD.

NEW SECTION

**WAC 388-829C-120 What training must a companion home provider complete within the first ninety days of serving the client?** The companion home provider must successfully complete the DDD specialty training within the first ninety days of serving the client. (See WAC 388-112-0120.)

NEW SECTION

**WAC 388-829C-130 What training must a companion home provider complete after the first year of service?** After the first year of service, the companion home provider must:

- (1) Maintain current CPR and First Aid Certification;
- (2) Receive Blood Borne Pathogens training with HIV/AIDS information at least annually and within one year of the previous training; and
- (3) Complete at least ten hours of continuing education each calendar year after the calendar year in which they successfully complete DDD approved specialty training.
  - (a) The continuing education must be on topics that will directly benefit the client being served.
  - (b) One hour of completed classroom instruction or other form of training (such as a video or on-line course) equals one hour of continuing education.
- (4) Documentation of training attendance must be kept in the provider's files and submitted to DDD upon completion of the training.

**ABUSE AND NEGLECT REPORTING**NEW SECTION

**WAC 388-829C-140 Are companion home providers mandatory reporters?** (1) Companion home providers are mandatory reporters. They must report all instances of suspected abandonment, abuse, financial exploitation or neglect of vulnerable adults as defined in chapter 74.34 RCW.

(2) Companion home providers must comply with DDD's residential reporting requirements specified in the companion home contract.

(3) Providers must retain a signed copy of the DDD policy on residential reporting requirements specified in the companion home contract and submit a signed copy of the policy to DDD.

NEW SECTION

**WAC 388-829C-150 How must companion home providers report abuse and neglect?** Companion home providers must immediately report suspected abandonment, abuse, financial exploitation or neglect of vulnerable adults to:

- (1) Adult protective services using the DSHS toll free telephone number, provided by the department. 1-866-END-HARM or 1-866-363-4276;
- (2) DDD in compliance with the DDD residential reporting requirements as specified in the companion home contract; and
- (3) Law enforcement agencies, as required under chapter 74.34 RCW, including when there is reason to suspect sexual or physical abuse.

**HEALTH CARE AND MEDICATIONS**NEW SECTION

**WAC 388-829C-160 What health care assistance must a companion home provide a client?** The companion home provider must provide the client necessary health care assistance by:

- (1) Arranging appointments and accessing health, mental health, and dental services;
- (2) Ensuring the client receives an annual physical and dental examination, unless the physician or dentist gives a written exemption. For client refusal of services, see WAC 388-829C-310;
- (3) Observing the client for changes(s) in health, taking appropriate action and responding to emergencies;
- (4) Managing medication assistance per chapter 246-888 WAC and administration per WAC 246-840-910 to 970 and per the DDD residential medication management requirements specified in the companion home contract;
- (5) Maintaining health records (see WAC 388-829C-280);
- (6) Assisting client with any medical treatment prescribed by health professionals that does not require registered nurse delegation or professionally licensed services;
- (7) Communicating directly with health professionals when needed; and
- (8) Providing a balanced, nutritional diet.

NEW SECTION

**WAC 388-829C-170 How may a companion home provider assist a client with medications?** (1) A companion home provider may provide medication assistance per chapter 246-888 WAC, if the client:

- (a) Is able to put the medication into his or her mouth or apply or instill the medication; and
  - (b) Is aware that they are receiving medication.
- (2) Some tasks that may be provided under the Medication Assistance, chapter 246-888 WAC, are listed in the following chart. Medication assistance may only be provided if the client meets both criteria in (a) and (b) of this section.

Medication Assistance Task	May a companion home provider complete this task if the client meets both criteria in (a) and (b) of this section?
Remind or coach the client to take their medication.	Yes
Open the medication container.	Yes
Hand client the medication container.	Yes
Place medication in the client's hand;	Yes
Transfer medication from a container to another for the purpose of an individual dose (e.g., pouring liquid medication from a container to a calibrated spoon, medication cup or adaptive device).	Yes
Alter a medication by crushing, mixing, etc.	Yes, if the client is aware that the medication is being altered or added to food or beverage. A pharmacist or other qualified practitioner must determine it is safe to alter a medication and this must be documented on the prescription container or in the client's record.
Handing the client a pre-filled insulin syringe.	Yes, but the client must be able to inject the insulin by him or herself.
Guide or assist client to apply or instill skin, nose, eye and ear preparations.	Yes, but hand-over-hand administration is not allowed.
Assistance with injectable or IV medications.	No, this is not allowed.
Hand-over-hand assistance with medication.	No, may only be done under registered nurse delegation.
Assistance with medication beyond the examples provided above.	No, may only be done under registered nurse delegation.

NEW SECTION

**WAC 388-829C-180 What is required for a companion home provider to administer medications and provide delegated nursing tasks?** Companion home providers must meet the following requirements before administering medications and providing nursing tasks for their clients. The companion home provider must either:

- (1) Be a registered nurse (RN) or licensed practical nurse (LPN); or
- (2) Be delegated to perform nursing care tasks by a registered nurse as described in WAC 388-829C-190.

NEW SECTION

**WAC 388-829C-190 What is required for a companion home provider to perform nursing tasks under the registered nurse delegation program?** In order to be delegated to perform nursing tasks, a companion home provider must:

- (1) Verify with the delegating registered nurse that they have complied with chapter 18.79 RCW and 18.88 RCW and WAC 246-840-910 through 246-840-990 by presenting:
  - (a) A current NA-R or NA-C registration without restriction;
  - (b) Certification showing completion of the "Nurse Delegation for Nursing Assistants" class; and
  - (c) Certification showing completion of "Fundamentals of Caregiving" if the Companion Home provider is an NA-R.
- (2) Receive client-specific training from the delegating registered nurse; and
- (3) Renew nursing assistant registration/certification annually.

NEW SECTION

**WAC 388-829C-200 When must a companion home provider become delegated to perform nursing tasks?** (1) If a client needs registered nurse delegation, the companion home provider must comply with the requirements necessary to perform delegated nursing tasks before offering services to the client. (Note: A companion home provider may not offer support to a client whose needs they are unable to meet.)

(2) If the companion home provider is not eligible to perform nursing tasks, the task must be provided by a person legally authorized to do so such as an RN or LPN.

(3) The companion home provider must become eligible to perform nursing tasks within thirty days of the client being assessed to need medication administration.

NEW SECTION

**WAC 388-829C-210 What records must the companion home provider keep regarding registered nurse delegation?** (1) The companion home provider must keep the following records when participating in registered nurse delegation:

- (a) Written instructions for performing the delegated task from the delegating RN;
- (b) The most recent six months of documentation showing that the task was performed; and
- (c) Validation of their current nursing assistant registration or certification.

(2) These records must be kept in the companion home and be accessible to the delegating nurse at all times.

## INDIVIDUAL SUPPORT PLAN

NEW SECTION

**WAC 388-829C-220 What is an individual support plan (ISP)?** (1) The individual support plan (ISP) is the primary tool DDD uses to:

- (a) Determine and document the client's needs; and
- (b) Identify the services to meet those needs.
- (2) The existing plan of care (POC) for the client remains in effect until a new ISP is developed.
- (3) The ISP must include (see chapter 388-828 WAC):
  - (a) The client's identified health and welfare needs;
  - (b) Both paid and unpaid services approved to meet the identified health and welfare needs;
  - (c) How often the client will receive each service;
  - (d) How long the client will need each service; and
  - (e) Who will provide each service.

## RESPIRE

NEW SECTION

**WAC 388-829C-230 Are companion home clients eligible to receive respite?** Companion home clients are eligible to receive respite care to provide intermittent relief to the companion home provider. The level of respite available to the companion home must be identified in the companion home contract.

NEW SECTION

**WAC 388-829C-240 Where may respite care be provided?** Respite care may be provided in the following location(s):

- (1) The companion home where the client resides;
- (2) Other places as designated in WAC 388-845-1610.

## TRANSPORTATION

NEW SECTION

**WAC 388-829C-250 Are companion home providers responsible to transport a client?** The companion home provider must ensure that all of the client's transportation needs are met, as identified in the client's ISP.

NEW SECTION

**WAC 388-829C-260 What requirements must be met before a companion home provider transports a client?** Before transporting a client, companion home providers must:

- (1) Carry automobile insurance per chapters 46.29 and 46.30 RCW; and
- (2) Have a valid driver's license per chapter 46.20 RCW.

## MANAGEMENT OF CLIENT FUNDS

NEW SECTION

**WAC 388-829C-270 May a companion home provider manage a client's funds?** A companion home provider may manage, disperse, and limit access to a client's funds if:

- (1) There is written consent from the client, when the client has no court appointed legal representative; or
- (2) There is written consent from the client's court appointed legal representative for making financial decisions for the client; or
- (3) The companion home provider is the designated payee for the client's earned and unearned income.

NEW SECTION

**WAC 388-829C-280 What are the companion home provider's responsibilities when managing client funds?** When managing the client's funds, the companion home provider must:

- (1) Keep the client's accounts current by maintaining a running balance;
- (2) Reconcile the client's accounts, including cash accounts, on a monthly basis;
- (3) Prevent the client's account from becoming overdrawn;
- (4) Keep receipts for purchases over twenty-five dollars;
- (5) Assist the client with any checks, if applicable;
- (6) Protect the client's financial interests; and
- (7) Ensure that the client is informed regarding how his or her money is being spent and that the client participates to the maximum extent possible in the decision making regarding his or her funds, consistent with responsible management of funds.

NEW SECTION

**WAC 388-829C-290 What happens if a companion home provider mismanages a client's funds?** (1) The companion home provider must reimburse the client, when responsible for mismanagement of client funds. The reimbursement includes any fees incurred as a result of the mismanagement, such as fees due to late payments.

- (2) DDD may terminate the companion home contract if the provider has mismanaged client funds.
- (3) Suspected exploitation of client finances must be reported to law enforcement and adult protective services.

NEW SECTION

**WAC 388-829C-300 What documents must companion home providers keep to protect a client's financial interests?** To protect the client's financial interests, companion home providers must keep documents for the funds they manage for clients.

- (1) All accounts must include the following documents:
  - (a) Monthly bank statements and reconciliations initialed by the provider;
  - (b) Checkbook registers and bankbooks;
  - (c) Deposit receipts; and

(d) Receipts for purchases over twenty-five dollars.

(2) If the companion home provider manages the client's funds or is the payee, they must notify DDD when they are aware that the client's funds reach one-thousand seven hundred dollars.

#### NEW SECTION

**WAC 388-829C-310 Must clients pay for room and board in the companion home?** (1) Clients who receive companion home residential services must pay monthly room and board directly to the companion home provider from their personal financial resources.

(2) The monthly room and board the client pays to the provider is specified in a room and board agreement and includes rent, utilities, and food.

(3) The room and board agreement must be:

(a) Developed by the client and the provider before the client moves into the companion home;

(b) Signed by the client, the client's legal representative and the provider; and

(c) Submitted to DDD for approval.

(4) Changes to the room and board agreement must be submitted to DDD for approval.

#### **SAFETY**

#### NEW SECTION

**WAC 388-829C-320 What physical and safety requirements exist for companion homes?** (1) Companion Home providers must ensure that the following physical and safety requirements are met for the client:

(a) A safe and healthy environment;

(b) A separate bedroom;

(c) Accessible telephone equipment with local 911 access;

(d) A list of emergency contact numbers accessible to the client;

(e) An evacuation plan developed, posted, and practiced monthly with the client;

(f) An entrance and/or exit that does not rely solely upon windows, ladders, folding stairs, or trap doors;

(g) A safe storage area for flammable and combustible materials;

(h) Unblocked exits;

(i) Working smoke detectors which are located close to the client's room and meet the specific needs of the client;

(j) A flashlight or other non electrical light source in working condition;

(k) Fire extinguisher meeting the fire department standards; and

(l) Basic first-aid supplies.

(2) The companion home must be accessible to meet the client's needs.

#### NEW SECTION

**WAC 388-829C-330 How must companion home providers regulate the water temperature at their resi-**

**dence?** Companion home providers must regulate the water temperature at their residence.

(1) The water temperature in the household must be kept between 105 degrees and 120 degrees Fahrenheit.

(2) The provider must check the water temperature when the client first moves into the household and at least every six months from then on. (Note: The water temperature is best measured two hours after substantial hot water usage.)

(3) The companion home provider must document compliance with this requirement.

#### **PROVIDER RECORDS**

#### NEW SECTION

**WAC 388-829C-340 What information must companion home providers keep in their records?** Companion home providers must keep the following information in their records:

(1) Client information:

(a) The client's name, address, and social security number;

(b) The name, address, and telephone number of the client's legal representative and any of the client's relatives that the client chooses to include;

(c) Client health records, including:

(i) The name, address, and telephone number of the client's physician, dentist, mental health service provider, and any other health care service provider;

(ii) Instructions from health care service providers about necessary health care, including appointment dates;

(iii) Written documentation that the instructions from health care service providers have been followed;

(iv) Medication, health, and surgery records; and

(v) A record of known surgeries and major health events;

(d) Copies of legal guardianship papers;

(e) A copy of the client's most recent ISP;

(f) Copies of any positive behavior support plan or cross systems crisis plan, if applicable;

(g) Financial records, if managing client funds (see WAC 388-829C-300);

(h) Client property records (see WAC 388-829C-380);

(i) Signed release of information forms; and

(j) Burial plans and wills.

(2) Provider information:

(a) Water temperature monitoring records (see WAC 388-829C-330);

(b) Provider training records (see WAC 388-829C-110 through 388-829C-130);

(c) Evacuation plan and practice records;

(d) Emergency response plan (see WAC 388-829C-410);

(e) All written reports submitted to DDD (see WAC 388-829C-350);

(f) Signed DDD policy on residential reporting requirements (see WAC 388-829C-140);

(g) Nurse delegation records (see WAC 388-829C-210);

and

(h) Payment records.

NEW SECTION

**WAC 388-829C-350 What written reports must be submitted to DDD?** The companion home provider must submit the following written reports to DDD:

(a) Reports that describe the instruction and support activities performed as identified in the ISP. These reports must be submitted every six months or more frequently upon request of DDD.

(b) Reports on unusual incidents and emergencies as required in the DDD residential reporting requirements specified in the companion home contract.

(c) Reports on client refusal of services as described in this chapter (WAC 388-829C-370).

NEW SECTION

**WAC 388-829C-360 What are the requirements for record entries?** (1) The companion home provider must

(a) Note all record entries in ink or electronically;

(b) Make entries at the time of or immediately following the occurrence of the event recorded;

(c) Make entries in legible writing; and

(d) Initial and date entries in ink.

(2) If a provider makes a mistake on the record, the provider must show both the original and corrected entries.

NEW SECTION

**WAC 388-829C-370 Must a companion home provider document a client's refusal to participate in services?** (1) A companion home provider must document a client's refusal to participate in:

(a) Physical and safety requirements as outlined in WAC 388-829C-320; and

(b) Health services as outlined in WAC 388-829C-160.

(2) When a client refuses to participate in these services, companion home providers must:

(a) Record a description of events relating to the client's refusal to participate in these services;

(b) Inform the client of the benefits of these services; and

(c) Provide the client or the client's legal representative and DDD with:

(i) A description of the service provider's efforts to give the services to the client; and

(ii) Any health or safety concerns that the refusal may pose.

(3) Companion home providers must submit this information to DDD in a written report as soon as possible following the client's refusal.

NEW SECTION

**WAC 388-829C-380 Must companion home providers keep client's property records?** The companion home provider must assist clients in maintaining current, written property records. The record must include:

(1) A list of items including a description, and serial numbers of items that are valued at seventy-five dollars or over; and were owned by the client when moving into the program.

(2) A list of items including a description, date of purchase and cost of items that are valued at seventy-five dollars or over and have been acquired by the client while living with the companion home provider.

(3) The record must contain dates and reasons for all items removed from the client's property record.

NEW SECTION

**WAC 388-829C-390 Are clients' records considered confidential?** The companion home provider must consider all client record information privileged and confidential.

(1) Any transfer or inspection of records, to parties other than DSHS, must be authorized by a release of information form that:

(a) Specifically gives information about the transfer or inspection; and

(b) Is signed by the client or the client's legal representative.

(2) A signed release of information is valid for up to one year and must be renewed annually from the signature date.

NEW SECTION

**WAC 388-829C-400 How long must a companion home provider keep client records?** A companion home provider must keep a client's records for a period of six years.

**EMERGENCY PLANNING**NEW SECTION

**WAC 388-829C-410 What must companion home providers do when emergencies occur?** (1) The companion home provider must develop an emergency response plan to address natural and other disasters and practice it with the client.

(2) In an emergency, the companion home provider must:

(a) Immediately call 911, in a life threatening emergency;

(b) Provide emergency services, then notify:

(i) The client's legal representative; and

(ii) The division of developmental disabilities.

(c) Submit a written report to DDD, as required by the DDD residential reporting requirements specified in the companion home contract.

**EVALUATION OF COMPANION HOMES**NEW SECTION

**WAC 388-829C-420 How must DDD monitor and provide oversight for companion home services?** DDD must provide oversight and monitoring of the companion home provider through an annual review and evaluation, to ensure that the client's needs are being met. The evaluation will be conducted in the home where the client and provider live.



NEW SECTION

**WAC 388-829C-430 How often must the companion home be evaluated?** (1) An initial evaluation must be completed with the first ninety days after the companion home provider begins serving the client.

(2) Following the initial evaluation, the companion home provider must be evaluated at least every twelve months.

(3) DDD may conduct additional reviews at its discretion.

NEW SECTION

**WAC 388-829C-440 How must the companion home provider participate in the evaluation process?** The companion home provider must participate in the evaluation process by:

(1) Allowing scheduled and unscheduled home visits by DDD staff and the DDD contracted evaluators;

(2) Providing information and documentation as requested by the DDD and the DDD contracted evaluators; and

(3) Cooperating in setting up appointments with DDD and the DDD contracted evaluators.

NEW SECTION

**WAC 388-829C-445 What occurs during the review and evaluation process?** During the review and evaluation process, DDD contracted evaluators will review compliance with this chapter, and the DDD companion home contract.

NEW SECTION

**WAC 388-829C-450 What happens if the companion home provider is found to be out of compliance?** If an evaluation finds the companion home provider out of compliance with any part of this chapter or the DDD contract, the provider and DDD must develop a corrective action plan.

(1) The corrective action plan must:

(a) Outline methods for the provider to comply with the required corrections; and

(b) Provide a time-frame for the provider to complete the corrective actions.

### TERMINATION AND DENIAL OF A COMPANION HOME CONTRACT

NEW SECTION

**WAC 388-829C-460 When may DDD stop the authorization for payment or terminate a contract for companion home services?** DDD may stop the authorization for payment or terminate a contract for the services of a companion home provider, when that provider:

(1) Is no longer the client's choice of provider.

(2) Demonstrates inadequate performance or inability to deliver quality care which is jeopardizing the client's health, safety, or well-being. DDD may terminate the contract based on a reasonable, good faith belief that the client's health, safety, or well-being is in imminent jeopardy.

(3) Is unable to clear a background check or other individuals living in the companion home are unable to clear a background check required by RCW 43.20A.710.

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

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

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

(7) Does not successfully complete the training requirements within the time limits required in this chapter.

(8) Does not complete the corrective actions within the agreed upon time frame.

(9) Fails to comply with the requirements of this chapter or the companion home contract.

NEW SECTION

**WAC 388-829C-470 When may DDD deny the client's choice of a companion home provider?** DDD must deny a client's request to have a certain provider and must not enter into a contract with the person when any of the following exist:

(1) The person is the client's spouse, under 42 C.F.R. 441.360(g).

(2) The person is the client's natural/step/adoptive parent.

(3) The person is the client's court-appointed legal representative, unless the provider was contracted and paid to provide companion home services before February 2005.

(4) DDD has a reasonable, good faith belief that the provider will be unable to meet the client's needs. Examples of a provider's inability to meet the client's needs may include:

(a) Evidence of alcohol or drug abuse;

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

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

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

(e) A reported history of mismanagement of client funds or DSHS contract violations.

NEW SECTION

**WAC 388-829C-480 What if the companion home provider no longer wants to provide services to a client?**

(1) When a companion home provider no longer wants to provide services to a client, they must:

(a) Give at least thirty days written notice to:

(i) The client;

(ii) The client's legal representative; and

(iii) DDD.

(2) If an emergency occurs and services must be terminated immediately, the provider must give immediate notice to DDD, the client, and the client's representative.

(3) The companion home provider will be expected to continue working for thirty days unless otherwise determined by DDD.

### APPEAL RIGHTS

#### NEW SECTION

**WAC 388-829C-490 What are the client's appeal rights if DDD denies, or terminates a companion home services contract?** If DDD denies, or terminates a companion home services contract, the client has the right to an administrative hearing to appeal the decision, per chapter 388-02 WAC and WAC 388-825-120.

#### NEW SECTION

**WAC 388-829C-500 Does the provider of companion home services have a right to an administrative hearing?** The provider of companion home services does not have a right to an administrative hearing.

**WSR 07-11-133**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Disability Services Administration)  
[Filed May 22, 2007, 9:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-07-086.

Title of Rule and Other Identifying Information: New chapter 388-829A WAC, Alternative living services.

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

Date of Intended Adoption: Not earlier than July 11, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail [schilse@dshs.wa.gov](mailto:schilse@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m. on July 10, 2007.

Assistance for Persons with Disabilities: Contact DSHS by July 3, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at [schilse@dshs.wa.gov](mailto:schilse@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the new alternative living chapter is to consolidate information governing the operation of alternative living services for ease of reference by the user.

The division of developmental disabilities (DDD) is proposing to consolidate standards that were existing rule in chapters 388-825, 388-845, and 388-101 WAC. DDD is also putting existing requirements found in policy and contract

into the proposed rule. This will consolidate the alternative living services program into one chapter for easier reference.

There is a new requirement for providers to attend DDD specialty training within ninety days of serving a client.

This rule was originally proposed as chapter 388-821 WAC and included rules for companion home residential services. This rule has been separated from the rules for companion home residential services rules and is now chapter 388-829A WAC. These changes will make finding alternative living rules easier for the user.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: Title 71A RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Debbie Roberts, 640 Woodland Square Loop S.E., Lacey, WA 98504, (360) 725-3400; Implementation and Enforcement: Don Clintsman, 640 Woodland Square Loop S.E., Lacey, WA 98504, (360) 725-3426.

No small business economic impact statement has been prepared under chapter 19.85 RCW. DDD has determined for this set of rules that alternative living providers are all small businesses and there will be no disproportionate impact. DDD has analyzed these proposed rules and concludes that costs to alternative living providers will be minor, if there are any costs at all.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Debbie Roberts, 640 Woodland Square Loop S.E., Lacey, WA 98504, phone (360) 725-3400, fax (360) 404-0955, e-mail [roberdx@dshs.wa.gov](mailto:roberdx@dshs.wa.gov).

May 15, 2007

Stephanie E. Schiller  
Rules Coordinator

## Chapter 388-829A WAC

### Alternative Living

#### PURPOSE

#### NEW SECTION

**WAC 388-829A-005 What is the purpose of this chapter?** This chapter establishes rules governing the division of developmental disabilities alternative living services program per chapter 71A.12 RCW for eligible clients of the division.

#### DEFINITIONS

#### NEW SECTION

**WAC 388-829A-010 What definitions apply to this chapter?** The following definitions apply to this chapter:

"ADSA" means the aging and disability services administration within DSHS and its employees and authorized agents.

"Adult Protective Services" or "APS" means the investigative body designated by ADSA to investigate suspected cases of abandonment, abuse, financial exploitation and neglect as defined in 74.34 RCW.

"Alternative Living provider" means an independent contractor with a current contract with the division of developmental disabilities to provide alternative living services.

"Assistance" means help provided to a client for the purpose of training the client in the performance of tasks the task being trained. Assistance does not include personal care as defined in chapter 388-106 WAC or protective supervision.

"Calendar year" means the twelve month period that runs from January 1 through December 31.

"Case Manager" means the division of developmental disabilities case resource manager or social worker assigned to a client.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(3) who also has been determined eligible to receive services by the division under chapter 71A.16 RCW.

"Competence" means the capacity to do what one needs and wants to do. There are two ways to be competent. A person may be self-reliant and able to do things for themselves or may have the power to identify and obtain the help needed from others.

"DDD" or "the division" means the division of developmental disabilities (DDD) within the DSHS aging and disabilities services administration of the department of social and health services.

"DDD Specialty Training" means department approved curriculum to provide information and instruction to meet the special needs of people with developmental disabilities.

"DSHS" or "the department" means the state of Washington department of social and health services and its employees and authorized agents.

"Health and Safety" means clients living safely in environments common to other citizens with reasonable supports offered to simultaneously protect their health and safety while promoting community inclusion.

"Individual Support Plan" or "ISP" is a document that authorizes and identifies the DDD Paid services to meet a client's assessed needs.

"Integration" means clients being present and actively participating in the community using the same resources and doing the same activities as other citizens.

"Mandatory reporter" means any person working with vulnerable adults required by law to report incidents of abandonment, abuse, neglect, financial exploitation, etc per chapter 74.34 RCW.

"Positive recognition by self and others" means a client being offered assistance in ways which promote the client's status and creditability. Providers offer assistance in ways that are appropriate to the age of the client, typical to other members of the community and contribute to the client's feelings of self worth and positive regard by others.

"Positive Relationships" means clients having friends and family that offer essential support and protection.

Friends and family lend continuity and meaning through life and open the way to new opportunities and experiences.

"Power and Choice" means clients experiencing power, control, and ownership of their personal affairs. Expression of personal power and choice are essential elements in the lives of people. Such expressions help people gain autonomy, become self-governing and pursue their own interests and goals.

"Regulation" means any federal, state, or local law, rule, ordinance or policy.

"RCW" means the Revised Code of Washington, which contains all laws governing the state of Washington.

"Service Episode Record" or "SER" means documentation by DDD of all client related contacts including contacts during the assessment, service plan, coordination and monitoring of care and termination of services.

"Support" means provider activities done on the client's behalf such as balancing the checkbook.

"Unusual Incidents" means a change in circumstances or events that concern a client's safety or well being. Examples may include, an increased frequency, intensity, or duration of any medical conditions; adverse reactions to medication, hospitalization, death, severe behavioral incidents that are unlike the client's ordinary behavior, severe injury, running away, physical or verbal abuse to themselves or others, etc

"WAC" means the Washington Administrative Code, which are the rules for administering the state laws (RCW).

## ALTERNATIVE LIVING SERVICES

### NEW SECTION

**WAC 388-829A-020 What are alternative living services?** Alternative living services provide community-based, individualized client training, assistance, and support. These services enable a client to live as independently as possible.

### NEW SECTION

**WAC 388-829A-030 What type of training and support may the alternative living service provider offer?** The alternative living service provider may provide training, assistance, and/or support in the following areas, as identified in the client's individual support plan (ISP):

- (1) Establishing a residence.
- (2) Home living including:
  - (a) Personal hygiene;
  - (b) Food and nutrition; and
  - (c) Home management.
- (3) Community living including:
  - (a) Accessing public and private community services;
  - (b) Essential shopping; and
  - (c) Transportation.
- (4) Health and safety including:
  - (a) Understanding personal safety and emergency procedures;
  - (b) Physical, mental and dental health; and
  - (c) Developing and practicing an emergency response plan to address natural and other disasters.
- (5) Social activities including:
  - (a) Community integration; and

- (b) Building relationships.
- (6) Protection and advocacy including:
  - (a) Money management and budgeting;
  - (b) Protecting self from exploitation;
  - (c) Making choices and decisions; and
  - (d) Asserting rights and finding advocacy.
- (7) Other training and support to assist a client to live independently.

NEW SECTION

**WAC 388-829A-040 Who is eligible to receive alternative living services?** Clients who receive alternative living services must:

- (1) Be at least eighteen years of age;
- (2) Live outside of their parent's home or plan to move out of their parent's home in the next six months;
- (3) Have an assessed need for alternative living services;
- (4) Be authorized by DDD to receive alternative living services; and
- (5) Be able to afford and maintain their own home with their personal financial resources.

NEW SECTION

**WAC 388-829A-050 Who is eligible to contract with DDD to provide alternative living services?** Before DDD may issue an alternative living contract, the prospective provider must:

- (1) Be twenty-one years of age or older;
- (2) Have a high school diploma or GED;
- (3) Clear a background check conducted by DSHS, as required by RCW 43.20A.710;
- (4) Have an FBI fingerprint-based background check as required by RCW 43.20A.710, if the person has not lived in the state continuously for the previous three years;
- (5) Have a business ID number, as an independent contractor; and
- (6) Meet the minimum skills and abilities described in WAC 388-829A-110.

NEW SECTION

**WAC 388-829A-060 Who may not be contracted to provide alternative living services?** DDD may not contract with the following to provide alternative living services:

- (1) The client's spouse.
- (2) The client's natural, stepparent or adoptive parents.
- (3) The court-appointed legal representative.

NEW SECTION

**WAC 388-829A-070 Where must alternative living services be provided?** (1) Alternative living services must be provided in a community setting.

(2) Clients receiving alternative living services must live independently in a home that is owned, rented or leased by the client or the client's legal representative.

(3) Alternative living services may be provided in the parent's home for no more than six months, to support a cli-

ent's transition from the parent's home into the client's own home.

(4) Alternative living services may not be offered in the provider's home.

NEW SECTION

**WAC 388-829A-080 How many hours of alternative living services may a client receive?** Alternative living services may be authorized up to forty hours per month.

NEW SECTION

**WAC 388-829A-090 May an alternative living provider claim reimbursement for more than one client at a time?** An alternative living provider must not claim reimbursement for more than one client per service hour.

NEW SECTION

**WAC 388-829A-100 May an alternative living provider offer personal care or respite services?** An alternative living provider must not offer personal care or respite under their alternative living contract. The alternative living provider must have a separate contract to provide respite and/or personal care services.

## PROVIDER QUALIFICATIONS AND RESPONSIBILITIES

NEW SECTION

**WAC 388-829A-110 What minimum skills and abilities must alternative living providers demonstrate?** Alternative living providers must:

- (1) Be able to read, understand, and provide services as outlined in the ISP;
- (2) Participate in the development of the client's ISP;
- (3) Communicate in a language of the client served;
- (4) Accommodate the client's individual preferences;
- (5) Know the community resources such as medical facilities, emergency resources, recreational opportunities;
- (6) Protect the client's financial interests;
- (7) Fulfill reporting requirements as required in this chapter and the alternative living contract;
- (8) Know how and when to contact the client's representative and the client's case manager;
- (9) Maintain all necessary license, and certification as required by law. (see WAC 388-829A-140, WAC 388-829A-160, and WAC 388-829A-270);
- (10) Successfully complete the training required in this chapter; and
- (11) Comply with all applicable laws, regulations, policy, and contract requirements.

NEW SECTION

**WAC 388-829A-120 What values must alternative living providers focus on when implementing the ISP?** The alternative living provider must focus on the following values when implementing the ISP:

- (1) Health and safety;
- (2) Personal power and choice;
- (3) Competence and self-reliance;
- (4) Positive recognition by self and others;
- (5) Positive relationships; and
- (6) Integration in the physical and social life of the community.

#### NEW SECTION

#### **WAC 388-829A-130 What rights do clients of DDD have?** Clients of DDD have:

- (1) The same legal rights and responsibilities guaranteed to all other individuals by the United States Constitution and federal and state law;
- (2) The right to be free from discrimination because of race, color, national origin, gender, age, religion, creed, marital status, disabled or veteran status, use of a trained service animal or the presence of any physical, mental or sensory handicap.
- (3) The right to treatment and habilitation services to foster developmental potential and protect personal liberty in the least restrictive environment;
- (4) The right to dignity, privacy, and humane care;
- (5) The right to participate in an appropriate program of publicly supported education;
- (6) The right to prompt medical care and treatment;
- (7) The right to social interaction and participation in community activities;
- (8) The right to physical exercise and recreational opportunities;
- (9) The right to work and be paid for the work one does;
- (10) The right to be free from harm, including unnecessary physical restraint, isolation, excessive medication, abuse, neglect, or financial exploitation;
- (11) The right to be free from hazardous or experimental procedures;
- (12) The right to freedom of expression and to make decisions about one's life;
- (13) The right to complain, disagree with, and appeal decisions made by the provider or DDD; and
- (14) The right to be informed of these rights in a language that he or she understands.

#### **PROVIDER TRAINING**

#### NEW SECTION

#### **WAC 388-829A-140 What training must be completed before becoming an alternative living provider?** Before DDD may issue an alternative living contract, the prospective provider must:

- (1) Obtain CPR/first aid certification;
- (2) Successfully complete Blood-Borne Pathogens training with HIV/Aids information; and
- (3) Receive contract orientation and client specific training from DDD.

#### NEW SECTION

**WAC 388-829A-150 What training must an alternative living provider complete within the first ninety days of serving the client?** The alternative living provider must successfully complete the approved DDD specialty training within the first ninety days of serving the client (see WAC 388-112-0120). (Note: DDD will reimburse the provider for training time for DDD specialty training only when the provider is currently offering alternative living services to a client.)

#### NEW SECTION

**WAC 388-829A-160 What training must an alternative living provider complete after the first year of service?** (1) After the first year of service, the alternative living provider must:

- (a) Maintain current CPR/first aid certification;
  - (b) Receive Blood Borne Pathogens training with HIV/Aids information at least annually and within one year of the previous training; and
  - (c) Complete at least ten hours of continuing education each calendar year after the calendar year in which they successfully complete DDD approved specialty training.
    - (i) The continuing education must be on topics relevant to supporting individuals with developmental disabilities.
    - (ii) One hour of completed classroom instruction or other form of training (such as a video or on-line course) equals one hour of continuing education.
- (2) Documentation of training attendance must be kept in the provider's files and submitted to DDD upon completion of the training.

#### **PROVIDER RECORDS**

#### NEW SECTION

**WAC 388-829A-170 What information must alternative living providers keep in their records?** Alternative living providers must keep the following information in their records:

- (1) Client information:
  - (a) The client's name, address, and telephone number;
  - (b) The name, address, and telephone number of the client's legal representative, health care provider and any of the client's relatives that the client chooses to include;
  - (c) A copy of the client's most recent ISP;
  - (d) Copies of any positive behavior support plan or cross systems crisis plan, if applicable; and
  - (e) A copy of the current plan for alternative living services.
- (2) Provider Information:
  - (a) Provider training records (see WAC 388-829A-140 through WAC 388-829A-160);
  - (b) All written reports submitted to DDD (see WAC 388-829A-180);
  - (c) Copies of the department approved service verification records, as specified in the provider's alternative living contract;

- (d) Signed DDD policy on residential reporting requirements as specified in the alternative living contract; and
- (e) Payment records.

NEW SECTION

**WAC 388-829A-180 What written reports must be submitted to DDD?** The alternative living provider must submit the following written reports to DDD:

- (1) Reports on unusual incidents and emergencies as specified in the alternative living contract; and
- (2) Quarterly reports providing information about the type and extent of services performed as identified in the ISP.
  - (a) The information in the reports must reflect the reporting period.
  - (b) These reports must be submitted at least quarterly or more often as required by the ISP and alternative living plan; and
  - (3) Service verification records at least quarterly or more often if required by DDD.

NEW SECTION

**WAC 388-829A-190 What are the requirements for entries in the client record maintained by the alternative living provider?** (1) When making entries to the client record, the alternative living provider must:

- (a) Note all record entries in ink or electronically;
  - (b) Make entries at the time of or immediately following the occurrence of the event recorded;
  - (c) Make entries in legible writing; and
  - (d) Sign and date entries in ink.
- (2) If a provider makes a mistake on the record, they must keep both the original and corrected entries.

NEW SECTION

**WAC 388-829A-200 How long must an alternative living provider keep client records?** An alternative living provider must keep a client's records for a period of six years.

NEW SECTION

**WAC 388-829A-210 Are clients' records considered confidential?** Alternative living providers must consider all client record information privileged and confidential.

- (1) Any transfer or inspection of records, to anyone but DDD, must be authorized by a release of information form that:
  - (a) Specifically gives information about the transfer or inspection; and
  - (b) Is signed by the client or legal representative.
- (2) A signed release of information is valid for up to one year and must be renewed annually from the signature date.

**ABUSE AND NEGLECT**NEW SECTION

**WAC 388-829A-220 Are alternative living providers mandatory reporters?** (1) Alternative living providers are

mandatory reporters. They must report instances of suspected abandonment, abuse, neglect, or financial exploitation of vulnerable adults as defined in chapter 74.34 RCW.

(2) Each alternative living provider must comply with DDD residential reporting requirements as specified in their alternative living contract.

(3) Providers must retain a signed copy of the DDD policy on residential reporting requirements specified in the alternative living contract and submit a signed copy of the policy to DDD.

NEW SECTION

**WAC 388-829A-230 How must alternative living providers report abuse and neglect?** Alternative living providers must immediately report suspected abandonment, abuse, neglect or financial exploitation of vulnerable adults to:

- (1) Adult protective services using the DSHS toll free telephone number, provided by the department. 1-866-END-HARM or 1-866-363-4276.
- (2) DDD in compliance with the DDD residential reporting requirements specified in their alternative living contract; and
- (3) Law enforcement agencies, as required under chapter 74.34 RCW, including when there is reason to suspect sexual or physical abuse.

**EMERGENCY PLANNING**NEW SECTION

**WAC 388-829A-240 What must alternative living providers do in an emergency?** In an emergency, the alternative living provider must:

- (1) Immediately call 911, in a life threatening emergency;
- (2) Provide emergency services, then notify:
  - (a) The client's legal representative; and
  - (b) The division of developmental disabilities.
- (3) Submit a written report to DDD, as required by DDD residential reporting requirements specified in the alternative living contract.

**INDIVIDUAL SUPPORT PLAN**NEW SECTION

**WAC 388-829A-250 What is an individual support plan (ISP)?** (1) The individual support plan (ISP) is the primary tool DDD uses to:

- (a) Determine and document the client's needs; and
  - (b) Identify the services to meet those needs.
- (2) The existing plan of care (POC) for the client remains in effect until a new ISP is developed.
- (3) The ISP must include (see chapter 388-828 WAC):
    - (a) The client's identified health and welfare needs;
    - (b) Both paid and unpaid services approved to meet the identified health and welfare needs;
    - (c) How often the client will receive each service;
    - (d) How long the client will need each service; and

- (e) Who will provide each service.

### TRANSPORTATION

#### NEW SECTION

**WAC 388-829A-260 Are alternative living providers responsible to transport a client?** Alternative living providers may provide transportation if specified in the client's ISP.

#### NEW SECTION

**WAC 388-829A-270 What requirements must be met before an alternative living provider transports a client?** Before transporting a client, alternative living providers must:

- (1) Carry auto insurance as required by chapters 46.29 and 46.30 RCW; and
- (2) Have a valid driver's license as required by chapter 46.20 RCW.

### OVERSIGHT AND MONITORING OF ALTERNATIVE LIVING SERVICES

#### NEW SECTION

**WAC 388-829A-280 How will DDD monitor alternative living services?** (1) DDD must use the following monitoring process to oversee alternative living services and providers:

- (a) Conduct an in-home visit every twelve months;
  - (b) Review all written reports from the provider for compliance with the instruction and support goals specified in the client's ISP; and
  - (c) Initial and file all written reports submitted by the provider and document in the service episode record.
- (2) DDD must conduct an annual evaluation of the alternative living program with a sample of alternative living providers and clients who receive services. If the evaluation indicates concerns, a corrective action plan will be developed. The corrective action plan will:
- (a) Outline methods for the provider to comply with the requirements; and
  - (b) Provide a time-frame for completion of the corrective actions.
- (3) DDD may stop the authorization for payment or terminate the contract if the corrective actions are not completed with the specified timeline.

### TERMINATION AND DENIAL OF AN ALTERNATIVE LIVING CONTRACT

#### NEW SECTION

**WAC 388-829A-290 When may DDD not authorize payment or terminate a contract for alternative living services?** DDD may not authorize payment or may terminate a contract for the services of an alternative living provider, when that provider:

- (1) Is no longer the client's choice of provider.

(2) Demonstrates inadequate performance or inability to deliver quality care which is jeopardizing the client's health, safety, or well-being. DDD may terminate the contract based on a reasonable, good faith belief that the client's health, safety, or well-being is in imminent jeopardy.

(3) Is unable to clear a background check required by RCW 43.20A.710.

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

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

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

(7) Does not successfully complete the training requirements within the time limits required in this chapter.

(8) Does not complete the corrective action within the agreed upon time frame.

(9) Fails to comply with the requirements of this chapter, or the DDD alternative living contract.

#### NEW SECTION

**WAC 388-829A-300 When must DDD deny the client's choice of an alternative living provider?** DDD must deny a client's request to have a certain provider and must not enter into a contract with the person when any of the following exist:

- (1) The person is the client's spouse, under 42 CFR 441.360(g).
- (2) The person is the client's natural/step/adoptive parent.
- (3) The person is the client's court-appointed legal representative.
- (4) DDD has a reasonable, good faith belief that the provider will be unable to meet the client's needs. Examples of a provider's inability to meet the client's needs may include:
  - (a) Evidence of alcohol or drug abuse;
  - (b) A reported history of domestic violence, no-contact orders, or criminal conduct (whether or not the conduct is disqualifying under RCW 43.43.830 and 43.43.842);
  - (c) A report from the client's health care provider or another knowledgeable person that the requested provider lacks the ability or willingness to provide adequate support;
  - (d) Other employment or responsibilities that prevent or interfere with the provision of required services;
  - (e) A reported history of mismanagement of client funds or DSHS contract violations; or
  - (f) Excessive commuting distance that would make it impractical to provide services as they are needed and outlined in the client's ISP.

#### NEW SECTION

**WAC 388-829A-310 What if the alternative living provider no longer wants to provide services to a client?** When an alternative living provider no longer wants to provide services to a client, the provider must:

- (1) Give at least two weeks notice to:

- (a) The client;
- (b) The client's legal representative; and
- (c) DDD.

(2) If an emergency occurs and services must be terminated immediately, the provider must give immediate notice to DDD, the client and the client's representative.

### APPEAL RIGHTS

#### NEW SECTION

**WAC 388-829A-320 What are the client's rights if DDD denies, or terminates an alternative living services contract?** If DDD denies, or terminates an alternative living services contract, the client has the right to an administrative hearing to appeal the decision, per chapter 388-02 WAC and WAC 388-825-120.

#### NEW SECTION

**WAC 388-829A-330 Does the provider of alternative living services have a right to an administrative hearing?** The alternative living provider does not have a right to an administrative hearing.

### WSR 07-11-155

#### PROPOSED RULES

#### WHATCOM COMMUNITY COLLEGE

[Filed May 22, 2007, 5:48 p.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 07-06-087 and 07-08-111.

Title of Rule and Other Identifying Information: Student rights and responsibilities, chapter 132U-120 WAC; and Complaints—Discrimination and/or harassment/intimidation, chapter 132U-300 WAC.

Hearing Location(s): Whatcom Community College, Laidlaw Center Boardroom, 237 West Kellogg Road, Bellingham, WA 98226, on Tuesday, July 10, 2007, at 10:00 a.m.

Date of Intended Adoption: September 12, 2007.

Submit Written Comments to: Keri Parriera, 237 West Kellogg Road, e-mail kparrier@whatcom.ctc.edu, fax (360) 676-2171, by July 3, 2007.

Assistance for Persons with Disabilities: Contact Bill Culwell, disabilities support director, by July 3, 2007, TTY (360) 647-3279 or (360) 676-2170 ext. 3320.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To add definition of dean of instruction; change term lengths and requirements of student rights and responsibilities committee; add dismissal from a selective admissions program as a result of academic evaluations; amend policies, procedures and definitions for discrimination and/or harassment/intimidation complaints.

Reasons Supporting Proposal: The structure of the student rights and responsibilities committee has changed and term lengths etc. need to be amended, and discrimination

requirements have changed, requiring amendments to the WACs.

Statutory Authority for Adoption: RCW 28B.50.130 and [28B.50.]140 and chapter 49.60 RCW.

Rule is necessary because of state court decision, ESHB 2661.

Name of Proponent: Whatcom Community College, governmental.

Name of Agency Personnel Responsible for Drafting: Keri Parriera, 237 West Kellogg Road, Bellingham, WA 98226, (360) 676-2170 ext. 3202; Implementation and Enforcement: Patricia Onion, 237 West Kellogg Road, Bellingham, WA 98226, (360) 676-2170 ext. 3276.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No monetary implications are attached to this policy. No costs imposed on small business through adoption of these rule amendments.

A cost-benefit analysis is not required under RCW 34.05.328. No economic impact. Rules relate to internal college operations.

May 22, 2007

Patricia Onion

Vice-President for  
Educational Services

AMENDATORY SECTION (Amending WSR 03-01-072, filed 12/12/02, effective 1/12/03)

**WAC 132U-120-020 Definitions.** As used in this chapter, the following words and phrases shall be defined as follows:

"Academic dishonesty" shall mean plagiarism, cheating on examinations, fraudulent representation of student work product or other similar acts of dishonesty.

"Alcoholic beverages" shall mean the definition of liquor as contained within RCW 66.04.010(15) as now law or hereafter amended.

"Assembly" shall mean any overt activity engaged in by two or more persons, the object of which is to gain publicity, advocate a view, petition for a cause, or disseminate information to any person, persons or group of persons.

"Associated students" shall mean the student body and such authorized groups organized under the provisions of the constitution and bylaws of the associated students of the college.

"ASWCC" shall mean the associated students of Whatcom Community College as defined in the constitution of that body.

"Board" shall mean the board of trustees of Community College District No. 21, state of Washington.

"Code of conduct" refers to the Whatcom Community College code of student rights and responsibilities.

"College" shall mean Whatcom Community College, and any other community college centers or facilities established within Community College District No. 21.

"College community" shall mean trustees, students, employees, and guests on college-owned or controlled facilities, including distance learning environments.

"College facilities" shall mean and include any and all personal property and real property that the college owns,



uses, or controls including all buildings and appurtenances affixed thereon or attached thereto district-wide. College facilities extend to affiliated websites, distance learning classroom environments, and agencies or institutions that have educational agreements with Whatcom Community College.

"College official" shall mean any person who is employed by the college or authorized to act as an agent of the college in performing assigned administrative or professional responsibilities.

"Controlled substance" shall mean and include any drug or substance as defined in chapter 69.50 RCW as now law or hereafter amended.

"Dean of students" shall mean the chief student affairs officer who is the administrator responsible for student services or designee.

"Dean of instruction" shall mean the chief officer who is the administrator responsible for instruction or designee.

"Demonstrations" shall mean any overt activity engaged in by one or more persons, the object of which is to gain publicity, advocate a view, petition for a cause or disseminate information to any person, persons, or group of persons.

"Director of student programs" shall mean the administrator responsible for student programs and activities or designee.

"Disciplinary sanctions" shall mean and include a warning, reprimand, probation, suspension, or dismissal of any student by a dean, or designee, or the president issued pursuant to this chapter where that student has violated any designated rule or regulation of the rules of conduct for which a student is subject to disciplinary action.

"Distance learning" shall mean various methods of instructional delivery that include, but are not limited to, online courses, telecourses, and interactive video courses.

"Faculty" or "instructor" shall mean any full-time or part-time academic employee of the college or an affiliated institution whose assignment is one of a combination of instruction, counseling or library services.

"Free speech area" shall be designated by the college president and can be reserved by student groups and organizations through the office of student programs and activities.

"Instructional day" shall mean any regularly scheduled day of instruction designated in the academic year calendar, including summer quarter, as a day when classes are held. Saturdays and Sundays are not regularly scheduled instructional days.

"President" shall mean the president of Whatcom Community College and president of Community College District No. 21, state of Washington.

"Rules of conduct" shall mean those rules contained within this chapter as now exist or which may be hereafter amended, the violation of which subjects a student to disciplinary action.

"Student," unless otherwise qualified, shall mean and include any person who is enrolled for classes at the college, including any person enrolled in distance learning courses.

"Student rights and responsibilities committee" shall mean the judicial body provided in this chapter.

"Trespass" shall mean the definition of trespass as contained within chapter 9A.52 RCW, as now law or hereafter amended.

AMENDATORY SECTION (Amending WSR 03-01-072, filed 12/12/02, effective 1/12/03)

**WAC 132U-120-110 Structure of the student rights and responsibilities committee.** (1) The student rights and responsibilities committee shall be composed of a chairperson and four members. For the appeal of disciplinary sanctions, the chairperson shall be the dean (~~(for)~~) of instruction, or designee, and the members shall be chosen as follows:

(a) Two students in good academic standing appointed by the ASWCC president; (~~for a one-year term;~~) and

(b) One faculty member appointed by the president of the college (~~for a three-year term;~~) and

(c) One administrator appointed by the president (~~for a two-year term;~~)

(d) Members of the student rights and responsibilities committee shall be (~~chosen by no later than October 30 of each academic year;~~) selected as needed when a written appeal has met the required conditions.

(~~(e) Student rights and responsibilities committee members shall serve during their term of office as set forth above and until their successors are appointed or elected.~~)

(2) If any member of the student rights and responsibilities committee is unable to consider a particular disciplinary proceeding for any reason (including but not limited to conflict of interest, matters of conscience or related reasons), such members shall abstain from considering the issues. If the chairperson abstains for any of the above reasons, the president shall appoint a temporary chairperson who will preside over the committee.

(3) A quorum for all proceedings of the student rights and responsibilities committee shall consist of a chairperson and at least three members; provided, that one student, one faculty member and one administrator are present.

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

AMENDATORY SECTION (Amending WSR 03-01-072, filed 12/12/02, effective 1/12/03)

**WAC 132U-120-270 Complaints excluded.** (1) Students may not use this procedure for filing a complaint based on the outcome of summary suspension or other disciplinary proceedings.

(2) Federal and state laws, rules, and regulations, in addition to policies, regulations and procedures adopted by the college or the board of trustees, and/or the state board for community and technical colleges are not grievable matters.

(3) Different procedures are required for complaints regarding sexual harassment or illegal discrimination. These procedures are available from the dean for educational services and the personnel director.

(4) Dismissal from a selective entry program as a result of academic evaluations. This entails an alternative procedure. This procedure is available from the Office of Instruction.

AMENDATORY SECTION (Amending WSR 03-01-072, filed 12/12/02, effective 1/12/03)

**WAC 132U-120-285 Time limits.** (1) The student must file a complaint within **one academic quarter** after the action that gives rise to the complaint. For this purpose, fall quarter is considered to be the academic quarter following both spring and summer quarters. The appropriate dean may modify the time limit due to exceptional circumstances such as extended illness.

(2) Every effort will be made by the appropriate dean to investigate and resolve the complaint as soon as possible. When the instructor or staff member concerned is unavailable during a quarter break, sabbatical leave, or other extenuating circumstances, the dean will outline for the student a timeline for the process.

(3) When the instructor or staff member concerned is no longer employed by the college and does not expect to return, the appropriate dean shall confer with appropriate parties and make a decision.

**(a) Step 1 informal resolution.**

(i) Students who believe a college faculty or staff member has unfairly treated them shall first discuss their concerns directly with that person. If the complaint involves a grade, the student should first discuss the grade, including the reason the student believes the grade has been awarded improperly or in an arbitrary or capricious manner, with the course instructor. The purpose of this discussion should be to clarify the perceived problem and request specific action. **Most misunderstandings related to grades can be resolved at this level.**

(ii) If the complaint is not resolved or if the student is apprehensive about talking directly with the staff or faculty member involved, the student may request an appointment with the department chair or appropriate associate dean/dean. The department chair, supervisor, or associate dean/dean may act as a mediator to resolve the complaint in a prompt and fair manner.

**(b) Step 2 formal letter.**

(i) In the unlikely event that an informal resolution is not achieved, the student may initiate a formal complaint by writing a **letter to the faculty or staff member and the appropriate dean** within one academic quarter after the incident that gave rise to the complaint. The formal complaint letter must include a:

- Description of the situation including dates and times;
- Summary of the actions taken by the student to resolve the complaint up to that point; and
- Proposed solution.

In a grade dispute, the student should submit specific information on performance scores, attendance, and any syllabus or written material on course grading criteria that the instructor provided to the student.

(ii) The dean shall attempt to resolve the problem by:

(A) Serving as an intermediary between the student and the faculty or staff member and bringing about a resolution that is satisfactory to all concerned; or

(B) Reviewing the facts of the situation and making a decision. The dean shall investigate the student's written complaint. The investigation may include a written response from the instructor including the course syllabus, the grade

reported for the student, the evaluation criteria for the course, and the performance scores and attendance data achieved by the student in that course.

(iii) The dean shall conclude this step with a written decision that is mailed to the student's last known address.

**(c) Step 3 appeal to the student rights and responsibilities committee.**

(i) If the complaint is not satisfactorily resolved in Step 2, the student may request a hearing to be conducted by the student rights and responsibilities committee by submitting a written request to the dean within ten instructional days of the postmark on the written decision of the dean. The written appeal by the student must clearly state errors in fact or matters in extenuation or mitigation that justify the appeal.

(ii) If the student asks a representative to assist during the hearing, the student shall submit in writing along with the hearing request, the name, address, and telephone number of the representative. The instructor or staff member may also have a representative assist during the hearing and must provide contact information to the chairperson.

(iii) All written documents concerning the complaint shall be forwarded to the chairperson of the student rights and responsibilities committee by the dean upon receiving the student's hearing request. Copies of these documents shall be made available to the committee members, the student, and the faculty or staff member to whom the complaint is directed three instructional days prior to the hearing.

(iv) The student rights and responsibilities committee shall be composed of a chairperson and four members. For a student complaint formal appeal, the chairperson shall be the dean who did not handle the initial formal complaint and the members shall be selected as follows:

(A) Two students in good academic standing appointed by the ASWCC president (~~for a one-year term~~);

(B) One faculty member appointed by the president of the college (~~for a three-year term~~);

(C) One administrator appointed by the president of the college (~~for a two-year term~~);

(D) Members of the committee shall be selected (~~no later than October 30 of each academic year~~;) as needed when a written appeal has met the required conditions.

(E) An appropriate substitute member shall be appointed if a member of the hearing committee is unable to consider the formal complaint for any reason (including, but not limited to, conflict of interest, matters of conscience, or related reasons);

(F) A quorum shall consist of a chairperson and at least three members; provided, that one student, one faculty member, and one administrator are present.

(v) The hearing before the committee shall be conducted within twenty instructional days of receiving the written appeal. Notice of the hearing date and time shall be given to all parties involved five instructional days prior to the hearing.

(vi) A student-initiated complaint hearing shall be an informal and closed hearing. The administrative assistant to the chairperson shall electronically record the hearing and take written notes.

(vii) Both the student and the instructor shall be invited to present oral arguments that shall be restricted to issues

related to the complaint. Members of the committee may question both the student and instructor.

(viii) At the conclusion of the hearing, the committee shall deliberate and:

- Request additional information to be considered at a future hearing;
- Recommend that the dean's decision be upheld; or
- Find that there are sufficient reasons to modify or overrule the dean's decision and recommend alternatives to the president.

(ix) Within five instructional days after concluding the hearing, the committee shall make a written recommendation to the president.

(x) The president, after reviewing the record of the case prepared by the chairperson of the student rights and responsibilities committee and any appeal statement filed by any party to the grievance, shall issue either a written acceptance of the recommendations of the committee or written directions regarding alternative courses of action. The written findings of the president are final.

(xi) All written statements and testimony considered during the complaint process and a copy of the final decision by the president shall be retained on file by the chairperson of the student rights and responsibilities committee for one year following the complaint.

**Chapter 132U-300 WAC**

**COMPLAINTS**

**((GRIEVANCES—DISCRIMINATION))**

- 132U-300-010 Statement of P(~~o~~)l~~i~~c~~y~~: Complaints—Discrimination And/Or Harassment/Intimidation
- 132U-300-020 ~~((Grievance))~~ Complaint ((p))Procedure—((Sexual harassment, sex discrimination, handicapped discrimination)) Discrimination And/Or Harassment/Intimidation

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 88-15-005, filed 7/8/88)

**WAC 132U-300-010 Statement of policy.** (1) Whatcom Community College is covered by Title IX of the Education Amendments of 1972 prohibiting ~~((sex))~~ gender discrimination in education and Section 504 of the Rehabilitation Act of 1973 prohibiting discrimination on the basis of ~~((handicap))~~ disability. It is the policy of Whatcom Community College to ensure equal opportunity without regard to ~~((sex))~~ gender or ~~((handicap))~~ disability status in all areas of admission, education, application for employment, and employment. Whatcom Community College's Policy 4010, Affirmative Action/Fair Employment Practices, expands the College's obligation to include no discrimination on the basis of race, color, national origin, gender, disability, sexual orientation, religion, age (except when gender or age is a bona fide occupational qualification) or veteran status which includes Vietnam Era and/or disabled veterans in its programs, recruitments, hiring, training, retention, promotion and all other personnel actions of qualified persons. The Washington Law Against Discrimination (WLAD) RCW 49.60; Chapter

2.60.00 in the SBCTC's (State Board for Community and Technical College) Policy Manual, ADA, Title VI and VII of the Civil Rights Act of 1964, ESHB 2661 and all law and regulations affecting state employees, shall apply to employees at Whatcom Community College.

(a) It is ~~((also))~~ the policy of Whatcom Community College to provide an environment in which members of the college community can work or study free from ~~((sexual))~~ harassment or ~~((sexual))~~ intimidation. ~~((Sexual harassment))~~ Harassment/Intimidation is a form of ~~((sex))~~ discrimination. As such ~~((it))~~ harassment/intimidation is a violation of the 1964 Civil Rights Act and Title IX of the 1972 Education Amendments.

(b) Discrimination and/or harassment/intimidation directed to any individual or group on the basis of race, color, gender, religion, creed, age, marital status, national origin, sexual orientation, disability and veteran status, or any behavior or action, either physical or verbal, which is sexual in nature and unwelcome, unwanted or uninvited, is a violation of the mission and purpose of Whatcom Community College as an institution of higher education and shall not be tolerated, and, pursuant to board policy and this procedure, shall be prohibited.

~~((Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct when))~~

~~((1) Submission to the conduct is either explicitly or implicitly made a term or condition of an individual's academic or career advancement; and/or~~

~~(2) Submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting that individual; and/or~~

~~(3) Such conduct has the effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive environment.))~~

A complaint ((grievance)) procedure is required by Title IX of the Education Amendments of 1972 and Section 504 of the Rehabilitation Act of 1973.

(2) Definitions

(a) Prohibited Discrimination: Prohibited discrimination is an action taken on the basis of an individual's membership in, association with or presumption of membership or association with the following: race, color, gender, religion, creed, age, marital status, national origin, sexual orientation, disability and veteran status, such action resulting in a tangible loss in any area of admission, education, programs, hiring, training, retention, promotion and all other personnel actions of qualified persons.

(b) Prohibited Harassment and/or Intimidation: Prohibited harassment and/or intimidation shall include, but will not be limited to verbal and written comments, slurs, jokes, innuendoes, cartoons, pranks and any and all other physical or non-physical conduct or activity that can be construed as derogatory, intimidating, hostile or offensive and which is directed at the victim because of his/her membership in, association with or presumption of membership or association with the following: race, color, gender, religion, creed, age, marital status, national origin, sexual orientation, disability, political affiliation and veteran status; or any behavior or action, either physical or verbal, which is sexual in nature and

unwelcome, unwanted or uninvited. Discrimination and/or harassment/intimidation actions are herein defined as unwelcome sexual advances, requests for sexual favors, or other related verbal or physical conduct when:

(i) Submission to the conduct is either explicitly or implicitly made a term or condition of an individual's academic or career advancement; and/or

(ii) Submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting that individual; and/or

(iii) Such conduct has the effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive environment.

(c) Board Policy: Board policy is based on the principle that all forms of discrimination and/or harassment/intimidation are unacceptable and will be dealt with promptly and effectively. The purpose of the development of a procedure is to establish the methods by which Whatcom Community College will show reasonable care in the prevention of harassment and discrimination. This may include, but will not be limited to the following:

(i) Have in place an effective discrimination and harassment prevention procedure that supports Board policy;

(ii) Offer and communicate existence of flexible, accessible, and non-intimidating complaint procedures;

(iii) Protect confidentiality to the extent possible under the law;

Develop an investigative protocol aimed at prompt fact gathering without bias or subjectivity;

(iv) Provide a disciplinary mechanism that is reasonably calculated to end harassing or discriminatory behavior and correct inappropriate behavior;

(v) Provide mandatory training programs on harassment for supervisors and separate training for non-supervisory employees.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 88-15-005, filed 7/8/88)

**WAC 132U-300-020 ((Grievance)) Complaint procedure—((Sexual harassment, sex discrimination, handicapped discrimination)) Discrimination and/or harassment/intimidation. (((1) Any applicant for admission, enrolled student, applicant for employment or employee of Whatcom Community College who believes he/she has been discriminated against on the basis of sex or on the basis of a handicap may lodge a formal institutional grievance according to the following procedures:**

(a) Step 1: Informal meeting. The complainant may request an informal meeting with the individual believed to have committed the discriminatory act in an attempt to informally resolve the concern.

(b) Step 2: Official hearing. If not satisfied by the results of the informal meeting, or if he or she has waived rights to an informal meeting, the complainant may request a meeting with the college designated grievance officer.

(i) The request for an official hearing must be made in writing and must stipulate the specific grievance(s) the complainant wishes to raise.

(ii) Within thirty calendar days of receiving the written request, the college designated grievance officer shall arrange a meeting to hear the complaint. It shall be at the discretion of the complainant to determine whether the officer will meet with the complainant and the person to whom the complaint has been directed separately or in a single meeting. If the complainant requests a single meeting, the meeting shall be attended by the complainant, the person to whom the complaint is directed, and the college officer, who will chair the meeting.

(iii) Following the hearing and within thirty calendar days of receiving the written request, the college officer will report his/her findings in writing to both the complainant and the person to whom the complaint has been directed.

(e) Step 3: Presidential appeal. If the complaint is not resolved as a result of the hearing conducted by the college designated grievance officer, either the complainant or the person to whom the complaint is directed may request an appeal to the college president.

(i) The request must be made in writing within ten days after receipt of the written results of the official hearing.

(ii) Within fifteen days after receiving the request, the college president or the president's designee will conduct the presidential appeal hearing and report the findings in writing to both the complainant and the person to whom the complaint is directed.

(iii) Attendance at the presidential appeal hearing shall be limited to the college president or designee, the designated grievance officer, the complainant, and the person to whom the complaint is directed unless otherwise mutually agreed by the parties. The college president or presidential designee shall preside.

(iv) Either the complainant or the person to whom the complaint is directed may call witnesses at the discretion of the person presiding.

(v) The written findings of the presidential appeal will be considered final. No further intra-institutional appeal exists.

(2) If desired, inquiries or appeals beyond the institutional level may be directed to:

(a) Regional Director, Office of Civil Rights, Department of Education, HEW, 2901 3rd Avenue, M.S. 106, Seattle, Washington 98101.

(b) The Equal Opportunity Commission, 1321 2nd Avenue, 7th Floor, Arcade Plaza, Seattle, Washington 98101.

(c) The Human Rights Commission, 402 Evergreen Plaza Building, Mailstop FJ 41, 711 S. Capitol Way, Olympia, Washington 98502.)

(1) Purpose

(a) Those employees of Whatcom Community College who believe that they have been harassed/intimidated and/or discriminated against in employment or the employment application process, or any applicants for admission or students/members of the public who believe that they have been harassed/intimidated by or discriminated against by an employee or a student of the Whatcom Community College, are encouraged to report that belief to Whatcom Community

College under this procedure's Complaint Process which follows.

(2) Definitions

(a) Designated Officer. Designated officer means an individual who is primarily responsible for conducting an initial inquiry, determining whether to proceed with an investigation under this procedure, and investigating or coordinating the investigation of reports and complaints of discrimination/harassment in accordance with this procedure.

(i) The human resources director is the designated officer for all issues except as follows: a) student-to-student complaints, for which the vice president for educational services is the designated officer; b) complaints against the human resources director for which the president is the designated officer.

(ii) A report/complaint against the president of the college shall be filed with the chair of the board of trustees. However, complaints against a president shall be processed by the college if the president's role in the alleged incident was limited to a decision on a recommendation made by another administrator, such as tenure, promotion or non-renewal, and the president had no other substantial involvement in the matter.

(b) Decision Maker. Decision maker means a high level administrator who reviews the investigative reports, to make findings whether board policy (132U-300-10.2.3.) has been violated based upon the investigation, and to determine the appropriate action for the institution to take based upon the findings.

(i) The appropriate vice president with whom the complainant jurisdiction is the decision maker.

(ii) The president is the decision maker when the accused is an administrator.

(iii) The chair of board of trustees is the decision maker if the accused is the president.

(3) Complaint process

(a) Incident Notification Form: Whatcom Community College has developed an *Incident Notification Form* on which any person may report complaints of discrimination and/or harassment/intimidation, regardless of the complainant's basis. The form which includes directions on how to complete and route it properly is widely available and can be readily obtained from the human resources director. The form also identifies the limits of confidentiality and the Whatcom Community College's non-retaliation policy. Any supervisor or administrator is authorized to accept and forward the form, or it may be submitted directly to the human resources director for all issues except student-to-student complaints, which shall be forwarded to the vice president for educational services.

(b) Filing a Complaint/Officers Designated to Receive Complaints: Any employee/student or member of the public who believes he/she has been subject to harassment/intimidation and/or discrimination has the right to file a complaint. This complaint should be filed in a timely manner, but no later than one hundred eighty (180) calendar days from the most recent incident of the alleged behavior or action. Any supervisor or administrator is authorized to accept or take a complaint. If the complainant does not feel comfortable with filing a written complaint, the complaint may be verbally

made, and the supervisor/administrator the supervisor/administrator will then document the verbal complaint on the *Incident Notification Form* which the complainant shall sign. If the employee or student believes he/she is being harassed or discriminated against by a supervisor, administrator or employee, he/she should notify the human resources director directly. All complaints, regardless of the perceived merit or basis, are to be forwarded for review and processing, without exception, directly to the human resources director for all issues except student-to-student complaints, which shall be forwarded to the vice president for educational services. In the event that the human resources director's conduct is the subject of the complaint, the president or his/her designee shall be the designated officer to receive such complaint.

(c) Complaint Consideration: Although isolated incidents of harassment/intimidation and/or discrimination may not violate federal or state law, such incidents may nevertheless create a knowing and willful course of conduct which seriously alarms, annoys, harasses or is detrimental to that person or the work environment, serves no legitimate or lawful purpose, or is in direct violation of board values or the college's *Affirmation of Inclusion* (WCC Policy 1023) regarding mutual respect. Such complaints will be taken seriously and considered under this procedure.

(d) Addressing Complaints: The administration of the college has an affirmative duty to take timely and appropriate action to stop behavior, conduct investigations and take appropriate action to prevent recurring misconduct. The human resources director, as the designated officer, is authorized to consider complaints of harassment and discrimination and to assess and/or investigate them for all of Whatcom Community College, with the exception of student-to-student complaints, which are under the jurisdiction of the vice president for educational services, or his/her designee. All complaints, regardless of the perceived merit or basis, are to be forwarded to the appropriate office for review and processing, without exception. The designated officer shall determine whether the report/complaint is one which should be mediated or processed through another designated officer; if appropriate, the designated officer shall direct the complainant to that area as soon as possible.

(e) Assessment: The designated officer will, within 30 working days of receipt of the *Incident Notification Form*, (a) assess the written complaint; (b) determine the appropriate process necessary to ensure all relevant evidence is obtained and all critical elements are addressed; and (c) notify the appropriate vice president with whom the complainant jurisdiction resides when the accused is a faculty or classified staff; the president when the accused is an administrator; and the chair of board of trustees if the accused is the president.

(i) This normally begins with an initial interview with the complainant. The goal is to obtain sufficient information to determine the next steps, which may include, but is not limited to obtaining clarification, providing mediation and/or consultation services, making referrals for mediation and/or consultation services, and/or initiating a formal fact-finding investigation.

(ii) If a formal investigation is undertaken, the complainant and the accused will be alerted to the existence of a formal

complaint and that an investigation of the complaint is underway.

(iii) This formal investigation may take up to sixty (60) calendar days after the receipt of the *Incident Notification Form*, unless extended by mutual agreement in writing between the complainant and the designated officer.

(iv) Under appropriate circumstances, the administration may, in consultation with system legal counsel and labor relations committee, reassign or place an employee on administrative leave at any point in time during the report/complaint/investigation process. In determining whether to place an employee on administrative leave or reassignment, consideration shall be given to the nature of the alleged behavior, the relationships between the parties, the context in which the alleged incidents occurred and other relevant factors. Any action taken must be consistent with the applicable collective bargaining agreements.

(v) Employees, as a condition of employment, are required to be truthful and to fully cooperate in the investigation process.

(f) Other Complaints: Conduct covered by this policy and procedure are those discriminatory and/or harassment/intimidation actions that occur as delineated in WAC 132U-300-010, 2.3. Complaints alleging conduct not covered by this policy and procedure will be remanded to the appropriate vice president/administrative officer for consideration and investigation as a performance-based issue.

(i) Harassment/intimidation and/or discrimination allegations based upon union activities are not included in this procedure, but covered by the various collective bargaining agreements between the Board of Trustees and its recognized faculty and employee representatives.

(g) Records: Copies of all complaints of harassment/intimidation and/or discrimination, and records related to a subsequent formal investigation conducted pursuant to that complaint, if any, shall be maintained confidentially to the extent allowed by law for an indeterminate period of time in the Human Resources Office.

(h) Confidentiality and Non-retaliation

(i) Confidentiality: To the extent possible, proceedings will be conducted in a discreet and sensitive manner. Anonymity and complete confidentiality cannot be guaranteed once a complaint is made or unlawful behavior is alleged. Files pertaining to the complaints will be maintained in confidence to the fullest extent of the law. Whatcom Community College cannot guarantee complete confidentiality.

(ii) Non-Retaliation: Retaliation by, for or against any participant (accused, accuser or witness) is expressly prohibited. Retaliatory action of any kind taken against individuals as a result of seeking redress under the applicable procedures or serving as a witness in a subsequent investigation dealing with harassment/intimidation and/or discrimination is prohibited. Any person who thinks he/she has been the victim of retaliation should contact the Human Resources Director immediately.

(i) Rights of Accused — Notice of Complaint: If a formal investigation is undertaken, the accused will be alerted to the existence of a formal complaint and that an investigation of the complaint is underway. During the investigative pro-

cess, the accused will be informed of his/her right to representation during any investigatory meeting.

(j) Findings Report: Within 60 calendar days of the commencement of a formal investigation, to the extent appropriate, a Findings Report will be submitted to the appropriate vice president with whom the complainant jurisdiction resides and the president. This Findings Report will include the complaint and a synopsis of the investigation. The reporter is not precluded from providing specific recommendations in the Findings Report as to disciplinary actions or other actions to be done (i.e. training for everyone in a department where sexual jokes have gotten out of hand, etc.). The complainant and the accused will be informed of the results of the investigation in summary form.

(k) Corrective Action: The decision maker (the appropriate vice president with whom the complainant jurisdiction resides when the accused is a faculty or classified staff, the president when the accused is an administrator, or the chair of board of trustees if the accused is the president), will take appropriate corrective and/or disciplinary action in situations where it is proven or is reasonable to believe that harassment/intimidation and/or discrimination took place. Any action taken will follow the due process provisions of applicable contracts or state law and regulations and will be reasonably calculated to end harassing/intimidation and/or discriminatory behavior and correct inappropriate behavior.

(4) Appeal process

(a) Any corrective and/or disciplinary action in situations where it is proven or is reasonable to believe that harassment/intimidation and/or discrimination took place on any level, except decisions by the board of trustees, may be appealed in writing to the president within fifteen (15) working days of the corrective and/or disciplinary action by either the complainant or the accused. The appeal must state specific reasons why the complainant or accused believes the decision was improper. Within fifteen (15) working days of the appeal, the president shall:

(i) Take actions recommended by the decision maker (vice president);

(ii) Reject the recommendations;

(iii) Modify the recommendations; or

(iv) Remand the recommendations to the decision maker (vice president) for further consideration; and

(v) Report in writing to the complainant, accused and vice president

(b) The decision of the chair of the board of trustees as to any complaint against the president may be reviewed by filing a complaint with the appropriate tribunal listed in section (5) Non-College Options, provided all time periods applicable to the tribunal are met.

(c) The actions of the president or, if applicable, the chair of the board of trustees, shall constitute final Whatcom Community College disposition of the matter. Upon action of the president, the complainant and accused shall have exhausted their administrative remedies within the College.

(d) However, in the event disciplinary action is undertaken against faculty member, the appeal process will be conducted in accordance with the standing faculty negotiated agreement.

(5) Non-College Options

(a) At any point during these proceedings, the complainant may choose to file with the Washington State Human Rights Commission, the Equal Opportunity Commission, and/or the U.S. Department of Education, Title IX.

(i) For anyone (employees, students, public): The Washington State Human Rights Commission, 711 S. Capitol Way, Suite 402, P O Box 42490, Olympia, WA 98504-2409; (360) 753-6770 or 1-800-233-3247; TTY 1-800-300-7525; website: [www.hum.wa.gov](http://www.hum.wa.gov)

(ii) For employees: The United States Equal Opportunity Commission, Federal Office Building, 909 First Avenue, Suite 400, Seattle, WA 98104-1061; (206) 220-6883 or 1-800-669-4000; TTY 1-800-669-6820; website: [www.eeoc.gov/seattle](http://www.eeoc.gov/seattle)

(iii) For students: Office for Civil Rights, U.S. Department of Education, 915 2nd Avenue, Room 3310, Seattle, Washington 98174-1000; (206) 220-7900; TTY (206) 220-7907; website: [www.ed.gov](http://www.ed.gov)

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

**Reviser's note:** The 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.

Statutory Authority for Adoption: RCW 28A.410.210 and 28A.410.010.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Nasue Nishida, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nasue Nishida, P.O. Box 47236, [Olympia, WA 98504-7236], phone (360) 725-6238, fax (360) 586-4548, e-mail [nasue.nishida@k12.wa.us](mailto:nasue.nishida@k12.wa.us).

May 24, 2007

Nasue Nishida

Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 07-04-004, filed 1/24/07, effective 2/24/07)

**WAC 181-78A-525 Approval standard—Accountability.** The following evidence shall be evaluated to determine whether each professional certificate program is in compliance with the program approval standards of WAC 181-78A-515(2). Each college, university or educational service district shall:

(1) Submit for initial approval to the professional educator standards board a performance-based professional certificate program for teachers which shall include the five program components specified in WAC 181-78A-535(4).

(2) Provide documentation that the respective professional education advisory board has participated in the development of and has approved the proposal.

(3) Identify the professional certificate administrator who shall be responsible for the administration of the professional certificate program.

(4) Delegate to the professional certificate administrator responsibility for reviewing or overseeing the following: Application for the professional certificate program; advising candidates once accepted; developing and implementing the individualized professional growth plan, the instruction and assistance components, and the assessment seminar; maintaining current records on the status of all candidates accepted into the professional certificate program; and serving as the liaison with the superintendent of public instruction certification office to facilitate the issuance of the professional certificates when candidates have met the required standards.

(5) Establish the admission criteria that candidates for the professional certificate shall meet to be accepted into the professional certificate program.

(6) Describe the procedures that the approved program will use to determine that a candidate has successfully dem-

**WSR 07-12-007**

**PROPOSED RULES**

**PROFESSIONAL EDUCATOR  
STANDARDS BOARD**

[Filed May 24, 2007, 2:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-23-143.

Title of Rule and Other Identifying Information: WAC 181-78A-525 Approval standard—Accountability.

Hearing Location(s): Red Lion Hotel, 2300 Evergreen Park Drive, Olympia, WA 98502, on July 11, 2007, at 8:30 a.m.

Date of Intended Adoption: July 11, 2007.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236, Olympia, 98504, e-mail [nasue.nishida@k12.wa.us](mailto:nasue.nishida@k12.wa.us), fax (360) 586-4548, by July 5, 2007.

Assistance for Persons with Disabilities: Contact Nasue Nishida by July 5, 2007, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Comply with ESSB 5983 passed by the legislature which calls for a "less intensive evaluation cycle every three years once a program received full approval." The teacher professional certificate program annual reporting will be the process used for the less intensive evaluation of programs.

Reasons Supporting Proposal: This process is already in place and is more efficient and cost effective for OSPI and institutions.

onstrated the standards and criteria for the professional certificate set forth in WAC 181-78A-540.

(7) Prepare an annual summary of the status of all candidates in the program and submit the summary to the respective professional education advisory board.

(8) Submit any additional information required to the respective professional education advisory board that it requests.

(9) Submit an annual ((evaluations of the professional certificate program until the program receives full approval and participate in a)) report to the professional educator standards board as part of a less intensive evaluation cycle ((every three years thereafter)) which will include the following:

(a) A summary of course work requirements for the pre-assessment and culminating seminars, linkages of the program to individual teacher professional growth plans, linkages to school district and school improvement plans, and, to the extent possible, linkages to school district professional development programs where such programs are in place in school districts.

(b) A summary of program design, assessment procedures and program revisions in the previous year.

(c) The number of candidates completing the program during the period between September 1 and August 31.

(d) The number of candidates enrolled in the program.

(e) Other information related to the professional certificate program requested by the professional educator standards board.

(10) Facilitate an on-site review of the program when requested by the professional educator standards board to ensure that the program meets the state's program approval standards and to provide assessment data relative to the performance standards.

Provided, That the on-site reviews shall be scheduled on a five-year cycle unless the professional educator standards board approves a variation in the schedule.

Provided further, That colleges and universities seeking National Council for the Accreditation of Teacher Education (NCATE) accreditation may request from the professional educator standards board approval for concurrent site visits which shall utilize the same documentation whenever possible.

#### WSR 07-12-046

#### PROPOSED RULES

#### DEPARTMENT OF REVENUE

[Filed May 31, 2007, 4:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-18-090.

Title of Rule and Other Identifying Information: WAC 458-20-258 Travel agents and tour operators, this rule provides information on the tax obligations of persons engaging in business as a travel agent or tour operator.

Hearing Location(s): Capital Plaza Building, 1025 Union Avenue S.E., Olympia, WA 98504, on July 24, 2007, at 9:30 a.m.

Date of Intended Adoption: September 1, 2007.

Submit Written Comments to: Kate M. Adams, Interpretations and Technical Advice, P.O. Box 47453, Olympia, WA 98504-7453, e-mail katea@dor.wa.gov, phone (360) 570-6115, fax (360) 586-5543.

Assistance for Persons with Disabilities: Contact Sandy Davis at (360) 725-7499, no later than ten days before the hearing date. Deaf and hard of hearing individuals may call 1-800-451-7985 (TTY users).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule will clarify the rate applicable to tour operators based on 1996 legislation; permit both travel agent and tour operator income to be apportioned in the same manner as under WAC 458-20-194; provide additional information and examples on pass-throughs; and clarify the application of lodging taxes in the travel industry.

Reasons Supporting Proposal: The revisions are necessary to provide current and accurate tax-reporting guidance, particularly with respect to income apportionment, pass-through treatment, and the application of lodging taxes in the travel industry.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: RCW 82.04.260(5) and other tax statutes relative to the travel industry.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Kate M. Adams, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6115; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The revised rule, as proposed, does not impose new performance requirements or administrative burdens on any small business not required by statute or the state and/or federal constitution.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is not a significant legislative rule as defined by RCW 34.05.328.

May 31, 2007

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 90-17-003, filed 8/2/90, effective 9/2/90)

**WAC 458-20-258 Travel agents and tour operators.**  
(1) **Introduction.** This section ~~((describes the business and occupation (B&O) taxation of travel agents and tour operators. Travel agents are taxed at the special travel agent rate under RCW 82.04.260(10). Tour operators are generally taxed under the service or other business classification under RCW 82.04.290. However, the business activities of tour operators may sometimes include activities like those of a~~



travel agent. This section recognizes the overlap of activities and taxes them consistently.

**(2) Definitions:**

(a) "Commission" means the fee or percentage of the charge or their equivalent, received in the ordinary course of business as compensation for arranging the service. The customer or receiver of the service, not the person receiving the commission, is always responsible for payment of the charge.

(b) "Pass-through expense" means a charge to a tour operator business where the tour operator is acting as an agent of the customer and the customer, not the tour operator, is liable for the charge. The tour operator cannot be primarily or secondarily liable for the charge other than as agent for the customer. See: WAC 458-20-111 Advances and reimbursements.

(c) "Tour operator business" means a business activity of providing directly or through third party providers, transportation, lodging, meals, and other associated services where the tour operator purchases or itself provides any or all of the services offered, and is itself liable for the services purchased.

(d) "Travel agent business" means the business activity of arranging transportation, lodging, meals, or other similar services which are purchased by the customer and where the travel agent or agency merely receives a commission for arranging the service.

**(3) Travel agents:**

(a) The gross income of a travel agent or a travel agent business is the gross commissions received without any deduction for the cost of materials used, labor costs, interest, discount, delivery cost, taxes, losses, or any other expense. It is taxed at the special travel agent rate.

(b) Gross receipts, other than commissions, from other business activities of a travel agent, including activities as a tour operator, are taxed in the appropriate B&O classification, service, retailing, etc., as the case may be.

**(4) Tour operators:**

(a) The gross income of a tour operator or a tour operator business is the gross commissions received when the activity is that of a travel agent business:

(i) When a tour operator receives commissions from a third party service provider for all or a part of the tour or tour package, the gross income of the business for that travel agent activity is the commissions received.

(b) However, if the activity is that of a tour operator business, receipts are B&O taxable in the service classification without any deduction for the cost of materials used, labor costs, interest, discount, delivery cost, taxes, losses, or any other expense; **except**, receipts attributable to pass-through expenses are not included as part of the gross income of the business.

**(5) Examples:**

(a) A travel agent issues an airplane ticket to a customer. The cost of the ticket is \$250 which is paid by the customer. The travel agent receives \$25 from the airline for providing the service.

(i) The gross income of the business for the travel agent is the \$25 commission received.

(ii) The gross income of the business is taxed at the special travel agent rate.

(b) A tour operator offers a tour costing \$1,500 per person. The tour cost consists of \$800 airfare, \$500 lodging and meals, and \$200 bus transportation. The tour operator has an arrangement with each of the service providers to receive a 10% commission for each service of the tour, which in this case is \$150 (\$80 + \$50 + \$20). The tour operator issues tickets, etc, only when paid by the customer and is not liable for any services reserved but not provided.

(i) The tour operator is engaged in a travel agent activity and the gross income of the business is commissions received, \$150.

(ii) The gross income of the business, \$150, is taxed at the special travel agent rate.

(c) The same facts as in example (b) except that the tour operator has a policy of requiring 10% or \$150 as a down payment with the remaining \$1,350 payable 20 days prior to departure with 95% refundable up to 10 days prior to departure and nothing refunded after 10 days prior to departure. The customer cancels 15 days prior to departure and is refunded \$1,425 with the tour operator retaining \$75.

(i) The gross income of the tour operator business is the \$75 retained. No amount is attributable to pass-through expense since the tour operator was not obligated to the service provider in the event of cancellation and the tour operator was not acting as the agent of the customer.

(ii) The gross income of the business, \$75, is taxed in the service B&O tax classification.

(d) A tour operator offers a package tour for the Superbowl costing \$800 per person. The tour operator purchases noncancelable rooms in a hotel for \$300 per room for 2 nights, and game tickets which cost \$100 each. The package includes airfare which costs \$200 per person for which the tour operator receives the normal commission of \$20. As an extra feature, the tour operator offers to provide, for an extra cost, special event tickets, if available, at his cost of \$50 each. The tour operator is B&O taxable as follows:

(i) The gross income of the tour operator business is \$600 (\$800 less \$200 airfare). Because the tour operator purchased the rooms and the game tickets in its own name and is liable for the rooms or tickets if not resold, the tour operator is not operating as a travel agent business and is B&O taxable in the service classification. If the tour operator receives a commission on the rooms sold to itself, the activity remains taxable as a tour operator business under the service classification and the commission received is treated as a cost discount, not included in the gross income of the business.

(ii) The \$50 received for the special event ticket is attributable to a pass-through expense and is not included in the gross income of the tour operator business. The special event ticket receipt is attributable to a pass-through expense because the tour operator is acting as an agent for the customer.

(iii) The \$20 received as commission from the sale of the airfare is a travel agent business activity and is included as gross income of a travel agent and taxed at the special travel agent rate)) provides information on the tax obligations of persons engaging in business as a travel agent or tour operator. Engaging in business as a travel agent means arranging transportation, lodging, meals, or other similar services which are purchased by the customer and for which the travel

agent or agency merely receives compensation, such as a commission, for arranging the service. Engaging in business as a tour operator means providing transportation, lodging, meals, and other associated services which the tour operator purchases from third party service providers or which the tour operator itself provides.

*Drafter's note: Formerly, income from travel agent business activities was taxed under a different reporting classification than income from tour operator business activities. Because travel agents and tour operators now report under the same classification, the current version of this section treats income from the business activities of both travel agents and tour operators in the same manner. The current version of this section is organized by tax type.*

**(2) What other sections might apply?** The following sections may contain additional relevant information:

- WAC 458-20-111 (Advances and reimbursements);
- WAC 458-20-118 (Sale or rental of real estate, license to use real estate);
- WAC 458-20-12401 (Special stadium sales and use tax);
- WAC 458-20-166 (Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc.);
- WAC 458-20-175 (Persons engaged in the business of operating as a private or common carrier by air, rail or water in interstate or foreign commerce);
- WAC 458-20-179 (Public utility tax);
- WAC 458-20-183 (Amusement, recreation, and physical fitness services); and
- WAC 458-20-194 (Doing business inside and outside the state).

**(3) Business and occupation tax.** Persons engaging in business as a travel agent or tour operator must pay business and occupation (B&O) tax on gross income. Gross income means the value proceeding or accruing by reason of the business engaged in, including gross proceeds of sales, commissions, and compensation for the rendition of services, all without any deductions for costs or losses.

**(a) Exclusion: Advances and reimbursements.** Persons purchasing transportation, lodging, meals, or other similar or associated services solely as an agent on behalf of a principal may exclude from gross income amounts received as an advance or reimbursement from the principal only if all elements of WAC 458-20-111 are met, including:

**(i)** The advance or reimbursement is received for the purchase of services in accordance with the regular and usual custom of the agent's profession;

**(ii)** The principal alone is liable to pay the seller of the services. The agent may not have any primary or secondary liability to pay for the services; and

**(iii)** The agent does not or cannot render or provide the services, and has no liability to provide the services or otherwise with respect to the services.

For example, ABC Travel, a travel agency, is hired to book airline tickets for a customer. After locating a flight the customer wants, ABC Travel purchases the ticket in the name of the customer. The airline agrees that ABC Travel has no liability to pay for the flight and that the customer alone is solely liable to pay for the flight. The customer agrees that ABC Travel has no liability for providing the purchased ser-

vice, and the customer will not be entitled to a refund from ABC Travel if the flight is canceled. In these circumstances, ABC Travel may exclude an advance or reimbursement received from its customer as repayment for the purchase of airline tickets from its gross income. However, if ABC Travel provided the airline with a guarantee of payment, then ABC Travel would have a secondary liability to pay for the tickets, and would not be entitled to exclude the advance or reimbursement from gross income.

In either case, ABC Travel must include all commission income received from the airline and all service or other fees it collects from the customer for travel agency services.

**(b) Exclusion: Funds collected on behalf of a principal.** Persons selling transportation, lodging, meals, or other similar or associated services solely as an agent may exclude from gross income funds collected on behalf of the principal only if there is an agency relationship under which:

**(i)** The purchasing customer alone is liable to pay the principal for the services. The agent may not have any primary or secondary liability to pay for the services;

**(ii)** The agent does not or cannot render or provide the services, and has no liability to provide the services or otherwise with respect to the services;

**(iii)** The agent has no right to the funds collected from the purchasing customer, except as agent for the principal; and

**(iv)** The service provider is directly obligated to the purchasing customer, not to the agent, to provide the services. For example, The Excurzion Company (EC) sells sightseeing tours provided by a local harbor tour company. EC acts as the agent for the tour company, promoting offered tours and selling tickets to the tours over the telephone and at a small retail establishment located on the waterfront. When a customer purchases an offered tour, EC forwards to the tour company the purchase price for the tour, less a commission promised by the tour company. The customer is unaware of the commission, which is built into the lump sum price of the tour ticket. The tour company agrees that EC has no liability to pay for the purchased tour, only to collect and remit the customer's payment. Only the tour company has the right to the funds paid by the customer, and EC has no right to those funds, except as agent for the tour company. EC has no liability for ensuring the customer receives the purchased services and the customer is not entitled to a refund from EC if the tour is canceled.

In these circumstances, EC may exclude income it receives on behalf of the tour company from customers purchasing offered tours. EC must, however, report all of its commission income. The tour company must report the total amount paid by the customer, including the amount of commission income retained by EC, because the tour company rather than the purchaser has agreed to pay EC the commission.

**(c) Business and occupation tax reporting classifications.**

**(i) Retailing.** Persons engaging in business as a travel agent or tour operator must report gross income from retail sales of transportation, lodging, meals, and other travel or related services under the "retailing" classification. (See RCW 82.04.250.) Retail sales are those sales defined under RCW 82.04.050 and include the sale of or charges made for

day trips for the purpose of sightseeing, fishing charters, "bareboat" charters, and the furnishing of lodging for periods of less than thirty days. "Sightseeing" means the act of viewing places or things for recreation, amusement, pleasure, or education.

(ii) Travel agent/tour operator. Gross income from engaging in business as a travel agent or tour operator is reported under the "travel agent/tour operator" classification, unless the activity is subject to tax under any other classification in chapter 82.04 RCW, such as retailing (RCW 82.04-.250), or the motor or urban transportation public utility tax.

(d) Apportionment. Persons engaging in business as a travel agent or tour operator who are doing business in Washington and in other states may apportion gross income reportable under the "travel agent/tour operator" classification in the same manner as under WAC 458-20-194.

*Drafter's note: The department requested public comments on possible apportionment approaches in the original CR-101 version of this rule. Because no comments were received, the department proposes to use the same apportionment approach as in WAC 458-20-194. Taxpayers wishing to provide comments on this proposed approach should contact the department as soon as possible. In the event a significant number of comments are received, the department will file a second CR-102 for additional public comment.*

(4) Retail sales tax. Persons engaging in business as a travel agent or tour operator must collect and remit retail sales tax on sales of transportation, lodging, meals, and other travel or related services that are defined as retail sales under RCW 82.04.050 (see subsection (3)(c)(i) of this section). Retail sales include the sale of or charges made for day trips for sightseeing (for pleasure, education, etc.), fishing charters and bareboat charters. Retail sales tax does not apply to trips or tours lasting longer than one day or charters not defined as retail sales under RCW 82.04.050. Retail sales also include the furnishing of lodging for periods of less than thirty days. See WAC 458-20-118: Sale or rental of real estate, license to use real estate for more information on the furnishing of lodging for thirty days or more. Persons engaging in business as a travel agent or tour operator must collect and remit the retail sales tax on the entire retail sales price, even if the travel agent or tour operator is acting solely as the agent of a principal in selling travel or tours to purchasers.

(a) Retail sales price. The retail sales price upon which sales tax must be collected is the entire amount paid by the customer to purchase the travel services. However, commission income received directly from the customer for travel agency services is not subject to retail sales tax. For example, ABC Travel is hired to book a hotel room for a customer. The customer pays ABC Travel for the cost of the hotel room. The cost of the room includes retail sales tax charged and collected by the hotel. The customer also pays ABC Travel a fee for its services as a travel agent. Because the sale of travel agent services is not a retail sale, the fee received by ABC Travel for its services is not subject to retail sales tax. In contrast, The Excursion Company (EC) acts as a sales agent for a local tour company. When a customer purchases an offered tour, EC forwards the purchase price to the tour company, less the commission amount the tour company promised to pay EC. EC must charge and collect retail sales tax on the

entire purchase price the customer pays for the tour, including the portion retained by EC as its commission. This is because the commission income is paid to EC by the tour operator, not directly by the customer.

(b) Exemption: Certain sales of interstate passenger transportation. Sales of interstate transportation of passengers by motor carrier are exempt from the retail sales tax. (See 49 U.S.C. 14505.)

(5) Lodging tax. Persons engaging in business as a travel agent or tour operator are required to collect and remit any lodging tax levied by a county or city on the sale of or charge made for the furnishing of lodging. (See RCW 35.101.050, 67.28.180, and 67.40.090.) Lodging taxes do not apply to commissions or fees received directly from a customer for the provision of lodging-related travel services such as offering information about the availability of lodging to a customer and/or facilitating the reservation of lodging for that customer, where the travel agent or tour operator does not itself furnish the lodging. A travel agent or tour operator is not furnishing lodging if it has no right to use, possess, sublease, or sublicense the rooms.

For example, a hotel (located in a jurisdiction with a lodging tax) agrees to provide hotel rooms to customers of ABC Travel. The hotel agrees to charge ABC Travel a rate of \$100 per night per room, with the understanding that ABC Travel will charge its customers a higher rate for the rooms. Customers of ABC Travel obtain the right to possession and use of the room and other facilities directly from the hotel and recognize they will pay a commission or fee to ABC Travel for its services. ABC Travel does not obtain a lease of or license for the rooms, or any other right of possession or use. No liability for the rooms, other than as agent, attaches to ABC Travel. ABC Travel charges its customers \$125 per night for the rooms, retaining \$25 and remitting \$100 to the hotel.

In these circumstances, ABC Travel is not furnishing lodging to its customers. The hotel is furnishing lodging and must collect and remit any applicable lodging tax on the charge made for that service: \$100. The additional \$25 paid by the customer is a fee or commission paid to ABC Travel for its travel services, not part of the sale of or charge made for the furnishing of lodging. ABC Travel must pay B&O tax on the \$25 at the travel agent/tour operator rate. (See subsection (3)(c)(ii) of this section.)

**WSR 07-12-052**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**

[Filed June 1, 2007, 11:18 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-282-990 Sanitary control of shellfish—Fees.

Hearing Location(s): Washington State Department of Health, Town Center 2, Room 158, 111 Israel Road, Tumwater, WA 98501, on July 19, 2007, at 11:00 a.m.

Date of Intended Adoption: August 20, 2007.

Submit Written Comments to: Jan Jacobs, e-mail jan.jacobs@doh.wa.gov, Office of Shellfish and Water Protection, P.O. Box 47824, Olympia, WA 98502-7824, web site http://www3.doh.wa.gov/policyreview/, fax (360) 236-2257, by July 18, 2007.

Assistance for Persons with Disabilities: Contact Jan Jacobs by July 2, 2007, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule will equitably assess the costs associated with commercial geoduck PSP testing. This testing is essential to public health as it is the only means available to determine if dangerous levels of PSP exist in commercial geoduck, and ensures toxic shellfish do not reach consumers. This fee will cover commercial geoduck PSP testing costs.

Reasons Supporting Proposal: Geoduck PSP fees are based on the total cost of service, the number of tests done for each entity, and the total number of tests performed in the prior year. The current geoduck PSP fees listed in WAC are based on 2005 data, i.e., the entities that submitted geoduck tests in 2005 and the total number of tests performed. This proposed revision seeks to redistribute the geoduck PSP fees based on 2006 data. It also allows the inclusion of companies that submitted samples in 2006 but not in 2005, and removes companies that submitted samples in 2005 but not in 2006.

Statutory Authority for Adoption: RCW 43.70.250.

Statute Being Implemented: RCW 43.70.250.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The revision is revenue neutral, but does increase fees for some commercial shellfish operators over I-601 (fiscal growth factor) limits. Authority to exceed I-601 limits was established in appropriations bill SHB 1128 passed in the 2007 legislative session.

Name of Proponent: Washington state department of health, office of shellfish and water protection, governmental.

Name of Agency Personnel Responsible for Drafting: Jan Jacobs, 111 Israel Road S.E., Tumwater, WA, (360) 236-3316; Implementation and Enforcement: Maryanne Guichard, 111 Israel Road S.E., Tumwater, WA, (360) 236-3391.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3), rules that set or adjust fees pursuant to legislative standards are exempt from the requirement to prepare a small business [economic] impact statement. This rule proposes to revise a fee necessary to defray the costs of administering the commercial shellfish license program. The department is directed under RCW 43.70.250 to set fees so that the cost of a business license program is fully borne by members of that business. During the 2007 legislative session, the legislature authorized the department to increase fees beyond the fiscal growth factor under SHB 1128, Laws of 2007.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b)(vi), rules that set or

adjust fees pursuant to legislative standards are exempt from the requirement to prepare a cost-benefit analysis.

June 1, 2007

M. C. Selecky

Secretary of Health

**AMENDATORY SECTION** (Amending WSR 06-15-131, filed 7/19/06, effective 8/19/06)

**WAC 246-282-990 Fees.** (1) Annual shellfish operation license fees are:

Type of Operation	Annual Fee
Harvester	\$250
Shellstock Shipper	
0 - 49 Acres	\$282
50 or greater Acres	\$452
Scallop Shellstock Shipper	\$282
Shucker-Packer	
Plants with floor space < 2000 sq. ft.	\$514
Plants with floor space 2000 sq. ft. to 5000 sq. ft.	\$622
Plants with floor space > 5000 sq. ft.	\$1,147

(2) The fee for each export certificate is \$10.30.

(3) Annual PSP testing fees for companies harvesting species other than geoduck intertidally (between the extremes of high and low tide) are as follows:

**Fee Category**

Type of Operation	Number of Harvest Sites	Fee
Harvester	≤ 2	\$173
Harvester	3 or more	\$259
Shellstock Shipper	≤ 2	\$195
0 - 49 acres		
Shellstock Shipper	3 or more	\$292
0 - 49 acres		
Shellstock Shipper	N/A	\$468
50 or greater acres		
Shucker-Packer	≤ 2	\$354
(plants < 2000 ft <sup>2</sup> )		
Shucker-Packer	3 or more	\$533
(plants < 2000 ft <sup>2</sup> )		
Shucker-Packer	≤ 2	\$429
(plants 2000 - 5000 ft <sup>2</sup> )		
Shucker-Packer	3 or more	\$644
(plants 2000 - 5000 ft <sup>2</sup> )		
Shucker-Packer	N/A	\$1,189
(plants > 5000 ft <sup>2</sup> )		

(a) The number of harvest sites will be the total number of harvest sites on the licensed company's harvest site certificate:

- (i) At the time of first licensure; or
- (ii) January 1 of each year for companies licensed as harvesters; or
- (iii) July 1 of each year for companies licensed as shell-stock shippers and shucker packers.
- (b) Two or more contiguous parcels with a total acreage of one acre or less is considered one harvest site.
- (4) Annual PSP testing fees for companies harvesting geoduck are as follows:

Harvester	Fee
Department of natural resources (quota tracts harvested by DNR contract holders)	<del>\$(40,132)</del> <u>13,201</u>
Jamestown S'Klallam Tribe	<del>\$(4,193)</del> <u>3,030</u>
Lower Elwah Klallam Tribe	<del>\$(5,241)</del> <u>7,358</u>
<u>Lummi Nation</u>	<del>\$(3,494)</del> <u>\$216</u>
Nisqually Indian Tribe	<del>\$(6,639)</del> <u>3,463</u>
Port Gamble S'Klallam Tribe	<del>\$(5,940)</del> <u>4,978</u>
Puyallup Tribe of Indians	<del>\$(524)</del> <u>5,194</u>
Skokomish Indian Tribe	<del>\$(5,416)</del> <u>6,276</u>
Squaxin Island Tribe	<del>\$(11,880)</del> <u>10,604</u>
Suquamish Tribe	<del>\$(873)</del> <u>1,299</u>
Swinomish Tribe	<del>\$(2,620)</del> <u>1,299</u>
Tulalip Tribe	<del>\$(1,048)</del> <u>1,082</u>
Discovery Bay Shellfish	<u>1,082</u>

(5) PSP fees must be paid in full to department of health before a commercial shellfish license is issued or renewed.

(6) Refunds for PSP fees will be given only if the applicant withdraws a new or renewal license application prior to the effective date of the new or renewed license.

**WSR 07-12-053**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**

[Filed June 1, 2007, 11:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-01-017.

Title of Rule and Other Identifying Information: Consumer access to vision care, WAC 246-852-005 Definitions, 246-852-010 Duties of practitioners (pursuant to chapter 106, Laws of 1994), 246-852-020 Prescription for corrective lenses, 246-852-030 Transmittal of patient information and

records, and 246-852-040 Retention of patient contact lens records.

Hearing Location(s): Washington State Department of Health, Point Plaza East, 310 Israel Road S.E., Conference Room 153, Tumwater, WA 98501, on July 23, 2007, at 10:00 a.m.

Date of Intended Adoption: August 20, 2007.

Submit Written Comments to: Judy Haenke, Program Manager, P.O. Box 47870, Olympia, WA 98504-7870, (360) 236-4947, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 586-4359, by July 16, 2007.

Assistance for Persons with Disabilities: Contact Judy Haenke, program manager, by July 16, 2007, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Federal Trade Commission Contact Lens Rule, 16 C.F.R. 315.1 through 315.11, relating to practitioner requirements for verification of prescriptions to sellers and release of the contact lens prescription took effect on August 2, 2004. The purpose of the proposed amendments is to bring together the federal regulations relating to contact lenses and the existing consumer access to vision care rules. These amendments will allow practitioners to be better informed about state and federal regulations related to contact lens prescribing and filling of current contact lens prescriptions.

Reasons Supporting Proposal: By combining pertinent federal and state regulations relating to contact lens prescribing, licensed vision care practitioners have a clearer and more complete understanding of the information they need for the initial prescription and contact lens fitting and when responding to requests for verification of contact lens prescriptions. This assures that the public is being provided timely and accurate information related to contact lens prescriptions, and refills.

Statutory Authority for Adoption: RCW 18.195.050.

Statute Being Implemented: RCW 18.195.050.

Rule is necessary because of federal law, 16 C.F.R. 315.1 through 315.11.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Judy Haenke, P.O. Box 47870, Olympia, WA 98504-7870, (360) 236-4947.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is exempt from a small business economic impact statement under RCW 19.85.025 and 34.05.310 (4)(c) because the rule incorporates federal regulations without material change.

A cost-benefit analysis is not required under RCW 34.05.328. The rule is exempt from the cost-benefit analysis requirements under RCW 34.05.328 (5)(b) because the rule incorporates federal regulations without material change.

June 1, 2007

M. C. Selecky  
Secretary

NEW SECTION

**WAC 246-852-005 Definitions.** For the purposes of this chapter, the following definitions apply:

(1) "Contact lens" means any contact lens for which state or federal law requires a prescription including noncorrective or plano contact lenses.

(2) "Initial prescription" means a written directive from a prescriber for corrective lenses and consists of the refractive powers.

(3) "Fitting" means the performance of mechanical procedures and measurements necessary to adapt and fit eyeglasses or contact lenses from an initial written prescription containing the information in WAC 246-852-020. In the case of contact lenses, where a patient requests that the fitting be performed by an optician licensed under chapter 18.34 RCW, the initial prescription from a prescriber must be in writing and fitting includes the selection of physical characteristics of the lenses including conversion of the spectacle power to contact lens equivalents, lens design, material and manufacturer of the lenses, and supervision of the trial wearing of the lenses which may require incidental revisions during the fitting period. The revisions may not alter the effect of the written prescription. The fitting and follow-up evaluation must be completed within six months of the eye examination.

(4) "Finalized contact lens prescription" means a contact lens prescription consisting of the contact lens specifications approved by a prescriber at the conclusion of the follow-up evaluation.

(5) "Contact lens prescription" means a postevaluation finalized prescription, issued by a prescriber in accordance with state and federal law, that contains sufficient information for the complete and accurate filling of a prescription for contact lenses that includes the following:

- (a) Name of the patient.
- (b) Date of original examination.
- (c) Issue date of the finalized contact lens prescription and expiration date of that prescription.
- (d) The name, postal address, telephone number and facsimile number of the evaluating prescriber.
- (e) Dioptric power.
- (f) Lens material, brand name and/or manufacturer.
- (g) In the case of a private label contact lens, the name of the manufacturer, trade name of the private label brand, and, if applicable, trade name of an equivalent brand name.
- (h) Base curve (inside radius of curvature), or appropriate designation.
- (i) Diameter.
- (j) Color (when applicable).
- (k) Thickness (when applicable).
- (l) Secondary/peripheral curves (when applicable).
- (m) Special features equivalent to variable curves, fenestration or coating.
- (n) Suggested wearing schedule and care regimen.
- (o) Signature of the evaluating prescriber.

(6) "Contact lens prescription issue date" means the date on which the patient receives a copy of the finalized contact lens prescription at the completion of the fitting and follow-up evaluation.

(7) "Ophthalmic goods" means eyeglasses or a component or components of eyeglasses, and contact lenses.

(8) "Ophthalmic services" means the measuring, fitting, adjusting, and fabricating of ophthalmic goods subsequent to an eye examination.

(9) "Prescriber" means an ophthalmologist or optometrist who performs eye examinations under chapter 18.53, 18.57, or 18.71 RCW.

(10) "Private label contact lenses" means contact lenses that are sold under the label of a seller where the contact lenses are identical to lenses made by the same manufacturer but sold under other labels.

AMENDATORY SECTION (Amending WSR 94-17-101, filed 8/17/94, effective 9/17/94)

**WAC 246-852-010 Duties of practitioners (~~pursuant to chapter 106, Laws of 1994~~).** (1) Prescribers, including ophthalmologists and optometrists, under chapters 18.53, 18.57, or 18.71 RCW:

(a) When performing an eye examination including the determination of the refractive condition of the eye, shall provide the patient a copy of the initial prescription at the conclusion of the eye examination. A prescriber may refuse to give the patient a copy of the patient's prescription until the patient has paid for the eye examination or fitting and follow-up evaluation, but only if that prescriber would have required immediate payment from that patient had the examination revealed that no ophthalmic goods were required. Verification of insurance coverage for a service shall be deemed a payment.

(b) Shall, if requested by the patient, at the time of the eye examination, also determine the appropriateness of contact lenses wear and include a notation of "OK for Contacts" or similar language on the prescription if the prescriber would have fitted the patient him or herself, if the patient has no contraindications for contact lenses.

(c) Shall inform the patient that failure to complete the initial fitting and obtain a follow-up evaluation by a prescriber within six months of the initial exam will void the "OK for Contacts" portion of the prescription.

(d) Shall provide a verbal explanation to the patient if the prescriber determines the ocular health of the eye presents a contraindication for contact lenses. Documentation of contraindication will also be maintained in the patient's record.

(e) May exclude categories of contact lenses where clinically indicated.

(f) Shall not expire prescriptions in less than two years, unless a shorter time period is warranted by the ocular health of the eye. If a prescription is to expire in less than two years, an explanatory notation must be made by the prescriber in the patient's record and a verbal explanation given to the patient at the time of the eye examination.

(g) Shall comply with WAC 246-852-020.

(2) When conducting a follow-up evaluation for contact lenses fitted and dispensed by another practitioner, the prescriber:

(a) Shall indicate on the written prescription, "follow-up completed" or similar language, and include his or her name and date of the follow-up;

(b) May charge a reasonable fee at the time the follow-up evaluation is performed;

(c) Shall provide the patient a copy of the finalized contact lens prescription, whether or not the patient requested it.

(d) When directed by any person designated to act on behalf of the patient, the prescriber shall provide or verify the contact lens prescription by electronic or other means.

(3) Opticians under chapter 18.34 RCW:

(a) May perform mechanical procedures and measurements necessary to adapt and fit contact lenses from a written prescription consisting of the refractive powers and a notation of "OK for Contacts" or similar language within six months of the initial eye examination date.

(b) Shall notify patients in writing that a prescriber is to evaluate the initial set of contact lenses on the eye within six months of the eye examination or the "OK for Contacts" portion of the prescription is void and replacement contact lenses will not be dispensed. The patient shall be requested to sign the written notification. The signed or unsigned notification will then be dated and placed in the patient's records.

(4) If the patient is fitted by a practitioner other than the initial prescriber, the contact lens specifications shall be provided to the patient and to a prescriber performing the follow-up evaluation.

(5) When the follow-up evaluation is completed by a prescriber, the approved contact lens specifications shall become a valid contact lens prescription ((with the signature of the evaluating prescriber)). The patient shall be provided a copy of the finalized contact lens prescription as specified in subsection (2)(c) of this section, whether or not the patient requested it. The patient shall be able to obtain replacement contact lenses, from this finalized prescription, for the remainder of the prescription period.

(6) All fitters and dispensers shall distribute safety pamphlets to all contact lens patients designed to inform the patient of consumer and health-related decisions.

AMENDATORY SECTION (Amending WSR 94-17-101, filed 8/17/94, effective 9/17/94)

**WAC 246-852-020 Initial prescription for corrective lenses.** (1) ((A)) An initial prescription from a prescriber for corrective lenses shall at a minimum include:

- (a) Patient name.
- (b) Prescriber's name, address, professional license number, phone number and/or facsimile number.
- (c) Spectacle prescription.
- (d) Prescription expiration date.
- (e) Date of eye exam.
- (f) Signature of prescriber.

(2) If, at the time of the initial eye examination, the patient requests contact lenses ((and has received an eye examination for contact lenses)), the prescriber shall determine the appropriateness of contact lens wear. If the prescriber would have fitted the patient him or herself, and if the patient has no contraindications for contact lenses, the prescriber shall include a notation of "OK for Contacts" or similar language on the prescription. The initial prescription shall also include:

(a) ((The notation "OK for Contacts" or similar language indicating there are no contraindications for contacts.

(b)) Exclusion of categories of contact lenses, if any.

((e)) (b) Notation that the "OK for Contacts" portion of the prescription becomes void if the patient fails to complete the initial fitting and obtain the follow-up evaluation by a prescriber within the six-month time period.

(3) When the follow-up evaluation is completed, the approved contact lens specifications shall become a valid prescription ((with the signature of the evaluating prescriber)). The patient shall be able to obtain replacement lenses, from this finalized prescription, for the remainder of the prescription period.

AMENDATORY SECTION (Amending WSR 94-17-101, filed 8/17/94, effective 9/17/94)

**WAC 246-852-030 Transmittal of patient information ((and)), records, and contact lens prescriptions. (1) The practitioner who performs the contact lens fitting shall provide the contact lens specifications to a prescriber designated by the patient for the purpose of the follow up and final evaluation. The contact lens specification shall be transmitted to the designated practitioner by telephone, facsimile, mail or by electronic means.**

(2) The finalized contact lens prescription ((of the contact lens specifications)) shall be ((available)) provided to the patient ((or)) and, if requested, to the patient's designated practitioner for replacement lenses and ((may)) shall be transmitted by telephone, facsimile or mail or ((provided directly to the patient in writing. The initial prescriber may request and receive the finalized contact lens specifications, if the initial prescriber does not perform the fitting and follow-up evaluation)) by electronic means.

AMENDATORY SECTION (Amending WSR 94-17-101, filed 8/17/94, effective 9/17/94)

**WAC 246-852-040 Retention of patient contact lens records.** (1) Practitioners shall maintain patient records for a minimum of five years. The records shall include the following which adequately reflects the level of care provided by the practitioners:

- (a) The initial written prescription.
- (b) Dioptic power.
- (c) Lens material, brand name and/or manufacturer.
- (d) Base curve (inside radius of curvature), or appropriate designation.
- (e) Diameter.
- (f) Color (when applicable).
- (g) Thickness (when applicable).
- (h) Secondary/peripheral curves (when applicable).
- (i) Special features equivalent to variable curves, fenestration or coating.
- (j) Suggested wearing schedule and care regimen.
- (k) In the case of a private label contact lens, the name of the manufacturer, trade name of the private label brand, and, if applicable, trade name of an equivalent brand name.

(2) Opticians' records shall additionally include the following if fitting contact lenses:

((a)) Documentation of written advisement to the patient of the need to obtain a follow-up evaluation by a prescriber.

(3) Prescribers' records shall additionally include the following:

(a) Documentation of contraindications which would prohibit contact lens wear and documentation that contraindications were explained to the patient by the prescriber.

(b) Explanatory notation of the reasons why a prescription has an expiration date of less than two years, and documentation that the reasons were explained to the patient at the time of the eye examination.

**WSR 07-12-056**  
**PROPOSED RULES**  
**OFFICE OF**

**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2007-02—Filed June 4, 2007, 8:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-09-101.

Title of Rule and Other Identifying Information: Market conduct oversight.

Hearing Location(s): Insurance Commissioner's Office, 5000 Capitol Boulevard, Room 221, Tumwater, WA 98504, on July 10, 2007, at 11:00 p.m.

Date of Intended Adoption: July 17, 2007.

Submit Written Comments to: Kacy Scott, P.O. Box 40260, Olympia, WA 98604-0260 [98504-0260], e-mail kacys@oic.wa.gov, fax (360) 586-3535, by July 9, 2007.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by July 9, 2007, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules individually and as a whole are expected to provide uniformity and consistency. The expected uniformity and consistency will be not only in Washington specific market conduct oversight activity, but also between Washington and other states.

Reasons Supporting Proposal: Section 7(4) of ESSB 5717 requires the adoption by rule of procedures manuals and data call formats to be used in the market conduct oversight process.

Section 6(3) of ESSB 5717 identifies general classes of information to be used in the market conduct oversight process. This proposed rule will provide more specific identification of documents and information most likely to be accessed in the market conduct oversight process.

Section 6(2) of ESSB 5717 requires regulated entities to file market conduct annual statements with the commissioner. This proposed rule identifies the form and instructions to be used to make those annual statement filings.

Section 6 (3)(c) of ESSB 5717 requires the adoption by rule of a process for insurer complaint verification before complaint data can be uploaded to NAIC or used in market conduct oversight activities after July 1, 2007.

Section 14(3) of ESSB 5717 requires the adoption of a rule establishing a mediation process to resolve insurer disputes arising from market conduct oversight activities.

Statutory Authority for Adoption: RCW 48.02.060, chapter 82, Laws of 2007.

Statute Being Implemented: Chapter 82, Laws of 2007.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Melodie Bankers, P.O. Box 40260, Olympia, WA 98604-0260 [98504-0260], (360) 725-7039; Implementation: Jim Odiorne, P.O. Box 40255, Olympia, WA 98604-0255 [98504-0255], (360) 725-7214; and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98604-0255 [98504-0255], (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Chapter 19.85 RCW requires state agencies to prepare a small business economic impact statement for proposed rules in certain circumstances. However, RCW 19.85.025(3) states: "This chapter does not apply to the adoption of a rule described in RCW 34.05.310 (4)." RCW 34.05.310(4) states: "This section does not apply to: ... (iii) Rules adopting or incorporating by reference without material changes... Washington state statutes... (v) Rules the content of which is explicitly and specifically dictated by statute..." Therefore, the office of insurance commissioner is not required to prepare a small business economic impact statement for the proposed rules to implement chapter 82, Laws of 2007.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal is not a significant legislative rule for the purposes of RCW 34.05.328.

June 4, 2007

Mike Kreidler

Insurance Commissioner

**Chapter 284-37 WAC**

**MARKET CONDUCT OVERSIGHT PROGRAM**

NEW SECTION

**WAC 284-37-010 Definitions.** The following definitions apply throughout this chapter unless the context requires otherwise:

(1) "Insurer" shall have the same meaning as set forth in chapter 82, section 5(4), Laws of 2007, and specifically includes health care service contractors, health maintenance organizations, fraternal benefit societies, and self-funded multiple employer welfare arrangements.

(2) "Insurance" shall have the same meaning as set forth in RCW 48.01.040, and includes all policies and contracts offered by any insurer, as defined in subsection (1) of this section.

(3) "Complaint" means any written or documented oral communication primarily expressing a grievance, meaning an expression of dissatisfaction.

(4) "NAIC" means the National Association of Insurance Commissioners, and has the same meaning as in RCW 48.02.140.



(5) "Records" means any information from data available to the commissioner, surveys, required reports, information collected by the NAIC and other sources in both public and private sectors, and information from within and outside the insurance industry.

#### NEW SECTION

**WAC 284-37-020 Procedures manuals.** To foster nationwide consistency in market conduct oversight, and as authorized by chapter 82, sections 6, 7 and 8, Laws of 2007 the commissioner adopts the following procedures and handbooks published by the NAIC and in effect on July 31, 2007, or as later amended:

(1) *The NAIC Market Regulation Handbook* for all market conduct oversight activities, as defined at chapter 82, section 5(9), Laws of 2007.

(2) *The NAIC Market Conduct Uniform Examination Procedures* for all market conduct examinations, as defined at chapter 82, section 5(10), Laws of 2007.

(3) *The NAIC Standard Data Request* for all requests to insurers for market data, as defined at chapter 82, section 5(11), Laws of 2007.

#### NEW SECTION

**WAC 284-37-030 Access to records.** During the market analysis process, the commissioner may require access to identifiable records in the possession of the insurer. This section sets forth the process that the commissioner will follow when requesting records.

(1) The commissioner will contact the insurer in writing listing the records to be reviewed.

(a) The list will specify the records required by the market conduct oversight personnel and will set forth the preferred method for transmission of records to the market conduct oversight team.

(b) The request will include the reason for the request and summarize how the records are intended to be used.

(2) All requested records must be sent to the commissioner within fifteen working days after the date the request is sent to the insurer.

(3)(a) If the insurer is not able to produce the requested records within the allotted time, the insurer must contact the commissioner before expiration of the allotted time and propose an alternative due date. The request must provide information about its reason for requesting a later due date.

(b) If the insurer is not able to produce the requested records in the format or manner requested by the market conduct oversight team, the insurer must contact the commissioner before expiration of the allotted time and propose an alternative delivery format.

(4) The commissioner will contact the insurer within five working days after receipt of any request for a later due date or alternative delivery format to discuss the proposed alternatives.

#### NEW SECTION

**WAC 284-37-040 Market conduct annual statement.**

(1) Every insurer shall file with the commissioner its market

conduct annual statement, as required by chapter 82, section 6, Laws of 2007, in accordance with filing instructions published by the NAIC.

(2) For purposes of this chapter, the market conduct annual statement filing is not complete until it has been received by the commissioner, in either hard copy or electronic form, as designated by the commissioner.

#### NEW SECTION

**WAC 284-37-050 Complaint verification.** If a complaint is filed against an insurer, the commissioner will notify the insurer following this process. Whenever possible and appropriate, the commissioner will provide the notices detailed below to the insurer electronically.

(1) Initial notice to the insurer. The commissioner will send an initial notice to the insurer that identifies the name of the insurer against whom the complaint was filed using the insurer's name and NAIC number, and any other available identifying information as provided to the commissioner by the complainant.

(a) If the insurer disagrees with the name of the insurer as identified in the complaint, it must file an objection in writing no later than fifteen business days after the date the commissioner sends the notice to the insurer and attach appropriate supporting information or documentation.

(b) Failure of the insurer to object to the legal name and NAIC number provided in the initial notice of the complaint within the allotted time, will be considered to be the insurer's verification that the proper insurer is identified in the complaint and that the coding is correct.

(c) No extension of time to respond to the initial notice will be permitted except for good cause shown.

(2) Complaint closure notice. The commissioner will send a copy of the proposed complaint closure notice that will be reported to the NAIC to the insurer at the time the complaint is closed. The complaint closure notice will identify both the type of coverage and reason for complaint.

(a) If the insurer wishes to object to the coding to be reported to the NAIC, an objection must be filed with the commissioner within fifteen business days after the date that the complaint closure notice is sent to the insurer. The objection must contain a concise description of the nature of the objection to the proposed coding and must include appropriate supporting information or documentation.

(b) Upon receipt of the insurer's objection, the commissioner will take reasonable and necessary steps to prevent reporting of that complaint to the NAIC until the insurer's objection is resolved.

(c) Failure of the insurer to object to the proposed coding set forth in the complaint closure notice will be considered verification that the complaint closure notice uses the correct codes and the notice will be reported to the NAIC.

(3) Opportunity to object to coding to be reported to the NAIC.

(a) Within ten business days after the commissioner receives an objection to proposed coding from the insurer, the commissioner will consider the information or documentation provided by the insurer and will advise the insurer that the original proposed coding has been affirmed or modified.

(b) The final complaint coding will be reported to the NAIC no sooner than five business days after resolution of an objection.

#### NEW SECTION

**WAC 284-37-060 Dispute resolution.** As required at chapter 82, section 14(3), Laws of 2007, after the deputy insurance commissioner responsible for market conduct oversight has responded to an insurer's issues, the insurer may request mediation of the issues. The following process governs mediation of insurer market conduct oversight issues.

(1) A request for mediation of the issues must be made within five business days after the date a final decision on any issue is sent to the insurer.

(2) The commissioner will maintain a list of approved mediators to mediate disputed issues. All approved mediators will be qualified by training and experience.

(a) The commissioner will publish a copy of the current resume and fee schedule of each panel mediator on the commissioner's web site ([www.insurance.wa.gov](http://www.insurance.wa.gov)).

(b) At the start of a market analysis process or the start of a market conduct examination, the insurer must select a mediator and alternate mediator from the approved list.

(c) The party requesting mediation is required to pay the costs of the mediator.

(3) As provided at chapter 82, section 14(4), Laws of 2007, at any point in the mediation, the insurer may commence an adjudicative proceeding under chapters 48.04 and 34.05 RCW.

**WSR 07-12-058  
PROPOSED RULES  
GAMBLING COMMISSION**

[Filed June 4, 2007, 10:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-04-059.

Title of Rule and Other Identifying Information: New chapter 230-14 WAC, Punch boards and pull-tabs.

Hearing Location(s): Hilton, 301 West 6th Street, Vancouver, WA 98660, (360) 993-4500, on August 10, 2007, at 9:30 a.m.

Date of Intended Adoption: August 10, 2007.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail [Susan2@wsgc.wa.gov](mailto:Susan2@wsgc.wa.gov), fax (360) 486-3625, by August 1, 2007.

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The gambling commission is rewriting its rules manual using plain English techniques. We anticipate the project will be completed by January 1, 2008. The rules manual is being broken into sections and rewritten a section at a time. This filing is to provide notification that rules regarding the operation of punch

boards and pull-tabs are under review and are now being rewritten in plain English.

#### **SUBSTANTIVE RULE CHANGES:**

#### **Post-1/1/2008 WAC 230-14-001 Defining "licensee," "licensees," "operator," and "operators."**

We added a definition of "licensee," "licensees," "operator," and "operators" to the post-1/1/2008 chapter because the terms were used in the pre-1/1/2008 rules without being clearly defined.

We are defining these terms in the post-1/1/2008 rules to make it clear that anyone operating the gambling activity - sometimes the licensee, sometimes a bartender or tavern worker - has to understand the gambling activity and has to obey the operating rules. For instance, if a tavern worker knows that a pull-tab game has an incorrect number of pull-tabs, we don't want him or her putting it out for play. We also want all persons operating the gambling activity to keep the required records and follow the correct procedures.

This post-1/1/2008 definition makes it clear that those who are operating punch boards and pull-tabs, even if they are not licensed, must meet the requirements of this chapter.

#### **Post-1/1/2008 WAC 230-14-005 Defining "punch board." Pre-1/1/2008 WAC 230-02-270 Punch board defined.**

We removed the term "device" from the post-1/1/2008 rule so that readers would not confuse it with "gambling device" which is defined in RCW 9.46.0241.

The statute defines "gambling device." In other post-1/1/2008 chapters, when discussing the various pieces of equipment which make gambling activity possible, we have used "gambling equipment" as defined in WAC rule (pre-1/1/2008 WAC 230-02-412 and post-1/1/2008 WAC 230-03-200 Defining gambling equipment).

The change adds consistency with the rules in other post-1/1/2008 chapters where we have removed the word "device" when referring to gambling equipment.

#### **Post-1/1/2008 WAC 230-14-025 Punch boards, pull-tabs, and pull-tab dispensers must meet all requirements.**

#### **Pre-1/1/2008 WAC 230-30-090 All devices must comply with rules.**

We added "chapter 9.46 RCW" to the post-1/1/2008 requirements that punch boards, pull-tabs, and pull-tab dispensers must meet. This requirement has always been implied, but here we are making it explicit in the post-1/1/2008 rules.

The change adds consistency with the rules in other post-1/1/2008 chapters where we've added compliance with chapter 9.46 RCW as an explicit requirement.

#### **NEW DEFINITION**

#### **Post-1/1/2008 WAC 230-14-035 Defining "pull-tab series."**

We added a definition of "pull-tab series" to the post-1/1/2008 chapter because the term is used in the pre-1/1/2008 rules without being clearly defined. We wanted to have a clear definition in the post-1/1/2008 rules.

**Post-1/1/2008 WAC 230-14-050 Operating restrictions for punch boards and pull-tabs.****Pre-1/1/2008 WAC 230-30-050 Punch board and pull-tab operating restrictions and dispensing limitations.**

The pre-1/1/2008 rule states that operators must ensure that "no unauthorized person is allowed to play or sell" punch boards or pull-tabs. We added "buys" to the post-1/1/2008 restrictions on owners because we don't want unauthorized persons - underage persons or intoxicated players, for example - to be able to buy the punch board or pull-tabs, either.

These changes clarify requirements licensees already had to meet.

**Post-1/1/2008 WAC 230-14-055 Selling pull-tabs.****Pre-1/1/2008 WAC 230-30-050 Punch board and pull-tab operating restrictions and dispensing limitations.**

We removed the phrase "Failing to mix pull-tabs may result in a minimum five-day suspension of their license for each series not mixed" from the post-1/1/2008 rule language. We feel that the named penalty in the pre-1/1/2008 rule restricts our ability to enforce the restriction given different facts. For example, a five-day suspension might be too high for an unintentional first time violation, but too lenient for a repeated, intentional violation.

Further, the requirement to mix pull-tab series is repeated several times in the pre-1/1/2008 rules, but we have removed the redundancies and made one post-1/1/2008 rule about mixing pull-tabs.

We also added an example to the section on the use of spindle pull-tabs in the post-1/1/2008 rule. This clarifies what a "nearby surface" means in the pre-1/1/2008 rule language.

The rule changes eliminate a redundancy, give more flexibility for enforcement, and clarify meaning in the post-1/1/2008 rule.

**Post-1/1/2008 WAC 230-14-060 Defining "flare."**

We added a definition of "flare" to the post-1/1/2008 chapter because the term is used throughout the pre-1/1/2008 rules without being clearly defined.

We wanted to have a clear definition in the post-1/1/2008 rules.

**Post-1/1/2008 WAC 230-14-070 Displaying flares.****Pre-1/1/2008 WAC 230-30-106 Punch board and pull-tab flares restrictions—Standards—Substitute flares.**

The pre-1/1/2008 rule has a requirement about the use of substitute flares with pull-tab series, but we separated flare and substitute flare requirements into two rules.

Punch boards use only substitute flares because punch boards come with an attached flare (also known as a "face sheet"). Therefore, any flare used with a punch board would be a substitute flare. The differences between flares and face sheets are clear to most manufacturers and agents, but could be confusing to new operators or manufacturers.

This change adds clarity and consistency to the post-1/1/2008 chapter.

**Post-1/1/2008 WAC 230-14-100 Removing prizes from flares.****Pre-1/1/2008 WAC 230-30-070 Control of prizes—Restrictions—Bonus prizes—Displaying—Procedures for awarding.**

The operator is required to delete all references to the prize from the flare, and from any other list, sign, or notice. The pre-1/1/2008 rule adds, "...in such a manner that all future customers will know the prize is no longer available." We propose removing this phrase in the post-1/1/2008 because we feel that "permanently and conspicuously" deleting is more than enough to meet the requirement.

We also recommend removing the language in the pre-1/1/2008 about the director initiating action for a violation of RCW 9.46.190. Since the violation would fall under the RCW, we are removing a redundancy between the WAC and the RCW.

The changes remove excess verbiage and redundancies in the pre-1/1/2008 rules that don't add anything to the real requirements.

**Post-1/1/2008 WAC 230-14-115 Defacing winning punches or pull-tabs.****Pre-1/1/2008 WAC 230-30-070 Control of prizes—Restrictions—Bonus prizes—Displaying—Procedures for awarding.**

We propose changing the pre-1/1/2008 requirement for destruction of winning punches or pull-tabs to "permanently defacing." This phrase covers both marking and perforating as stated in the pre-1/1/2008 rule and makes the post-1/1/2008 rule consistent with other rules on defacing parts of the boards or series. This change increases clarity of the requirement in the rule.

**Post-1/1/2008 WAC 230-14-150 Awarding seal card pull-tab winners.****Pre-1/1/2008 WAC 230-30-034 Seal card pull-tab series—Definitions—Restrictions.**

The pre-1/1/2008 rule is ambiguous about what happens if the winner of a seal card pull-tab cannot be located within fourteen days to receive the prize. It states that operators must make rules for their procedures, including how they will select a second winner, but it doesn't say that the prize must be awarded.

We felt that this ambiguity needed to be addressed and clarified, so in the post-1/1/2008 rule we added that the operator must select a second winner to receive the prize. This change removes an ambiguity which has existed in the rule since it was originally passed.

**Post-1/1/2008 WAC 230-14-180 Paying out prizes and defacing tabs in progressive jackpot pull-tab series.****Pre-1/1/2008 WAC 230-30-025 Progressive jackpot pull-tab series—Definitions—Restrictions—Operating procedures.**

We removed the pre-1/1/2008 rule requirement that operators record a winner's full name, address, and social security number for jackpot prizes six hundred dollars or greater for federal income tax purposes. One reason for this change is that we no longer seek to enforce federal requirements on operators and licensees. The other reason is that identify [identity] theft potential rises when operators have

access to winners' social security numbers and other personal information. By requiring them to keep it, we put them at risk for accusations of abetting identity theft.

Our second change to the pre-1/1/2008 rule was to remove the prohibition against winners cashing their pay out checks on the licensed premises. In player supported jackpots (PSJs) in the card game rules, winners are allowed to cash their pay out checks on the licensed premises. It seems that prohibiting punch board or pull-tab winners from doing the same would be an inconsistency in enforcement.

**Post-1/1/2008 WAC 230-14-185 Additional recordkeeping for progressive jackpot pull-tab series.**

**Pre-1/1/2008 WAC 230-30-025 Progressive jackpot pull-tab series—Definitions—Restrictions—Operating procedures.**

We revised the pre-1/1/2008 rule to remove the so-called "laundry list" of requirements that are already printed on the form we require licensees to complete. This change would match other instances in the post-1/1/2008 rules where we have indicated that forms must be completed "in the format we require." It adds consistency to the post-1/1/2008 rules as a whole.

**Post-1/1/2008 WAC 230-14-190 Defining "event pull-tabs" and "event round."**

**Pre-1/1/2008 WAC 230-30-033 Event pull-tab series—Definitions—Restrictions.**

We removed the phrase "secondary element of chance" from the post-1/1/2008 rule because it conflicts with post-1/1/2008 bingo WAC 230-10-280 about which types of games constitute a second element of chance in a bingo game.

**Post-1/1/2008 WAC 230-14-200 Defining "bonus pull-tab series."**

We included a definition of "bonus pull-tab series" to the post-1/1/2008 rules chapter because this particular type of pull-tab series has not been defined before. The pre-1/1/2008 rule about bonus pull-tab series was passed in 1997 and amended in 1999, but it did not include a definition of the series.

**Post-1/1/2008 WAC 230-14-205 Operating requirements for bonus pull-tab series.**

**Pre-1/1/2008 WAC 230-30-040 Bonus pull-tab series—Definitions—Restrictions.**

We made a small change to the post-1/1/2008 rule to correct something that was overlooked when the pre-1/1/2008 rule was originally drafted in 1997.

In subsection (3) of the post-1/1/2008 rule, we changed the "and" between the requirements for the bonus pull-tab series to an "or" because we do not want operators of bonus pull-tab series to allow any of the three components listed in subsection (3) to be a part of the pull-tab series.

Using "and" implies to some readers that they only have to avoid using a series that has all three of the components, not each component individually.

It's unlikely that a bonus pull-tab series would have all three components, so operators have been complying with the requirement despite the error.

**Post-1/1/2008 WAC 230-14-230 Transferring a carry-over jackpot to another game.**

**Pre-1/1/2008 WAC 230-30-045 Carry-over jackpot pull-tab series—Definitions—Requirements.**

We removed the reference in the pre-1/1/2008 rule to the limit on accrued contribution amounts from series (two thousand dollars) because the limit for accrued contribution amounts is already in post-1/1/2008 WAC 230-14-195 "Prize limits for carry-over jackpot pull-tab series."

The change removes a redundancy in the pre-1/1/2008.

**Post-1/1/2008 WAC 230-14-240 Distributing carry-over pull-tab jackpots.**

**Pre-1/1/2008 WAC 230-30-045 Carry-over jackpot pull-tab series—Definitions—Requirements.**

The pre-1/1/2008 rule states that if "a licensee" ceases to operate gambling activities the carry-over jackpot must be distributed in one of four ways. We changed that pre-1/1/2008 rule language to identify the entity ceasing operations as a "business" in the post-1/1/2008 rule rather than a licensee. Once they've stopped operating, the entity is no longer qualified to hold a commercial stimulant license because they no longer have the underlying food and drink business.

We also removed the list of reasons in the pre-1/1/2008 rule for ceasing operation ("due to a sale, closure, or failure to maintain a valid gambling license") because the reasons have little bearing on the business' status as a nonlicensee.

We also changed the transfer language in pre-1/1/2008 rule to refer to "the new owners who bought the business" rather than "the licensee, which has a valid gambling license." The new business has to undergo a separate licensure process and we want the business ceasing operation to understand that it simply doesn't transfer the carry-over jackpot to the new owner unless and until that business owner has been licensed.

If it's not closing because of a sale, the business ceasing operation must choose one of the other methods of distribution for the carry-over jackpot.

These changes clarify the role of the business distributing the carry-over jackpot and to whom that entity can distribute the jackpot.

**Pre-1/1/2008 WAC 230-30-045(9) Carry-over jackpot pull-tab series—Definitions—Requirements.**

We removed the pre-1/1/2008 rule requirement that operators record a winner's full name, address, and social security number for carry-over jackpot prizes six hundred dollars or greater for federal income tax purposes. One reason for this recommendation is that we no longer seek to enforce federal requirements on operators and licensees.

The other reason is that identify [identity] theft potential rises when operators have access to winners' social security numbers and other personal information. By requiring them to keep it, we put them at risk for accusations of abetting identity theft.

Operators already provide jackpot winners with the federal form to complete for tax obligations, so the tax consequences are already explained to the players.

**Post-1/1/2008 WAC 230-14-250 Recording carry-over jackpots on cash basis.****Pre-1/1/2008 WAC 230-30-045 Carry-over jackpot pull-tab series—Definitions—Requirements.**

We removed the pre-1/1/2008 rule requirement that Class F and above bingo licensees have to receive special approval from the director to account for their punch board and pull-tab prizes because licensees in Class F and above bingo are already using the accrual method to account for bingo prizes. It would be a simple thing for them to account for their punch board and pull-tab prizes in a similar manner.

We also propose adding a definition of recording on a "cash basis" to the post-1/1/2008 rule for operators who may not be familiar with that term.

The changes make the post-1/1/2008 rule less restrictive to licensees and clarify an accounting term.

**Post-1/1/2008 WAC 230-14-255 Net income and cash flow requirements when operating punch boards or pull-tabs.****Pre-1/1/2008 WAC 230-30-052 Punch boards and pull-tabs operated by charitable or nonprofit organizations—Net income required.**

The pre-1/1/2008 rule warns charitable and nonprofit licensees of their responsibility under RCW 9.46.010 to conduct gambling only for "the raising of funds for the promotion of" their organization. Therefore, their net income from punch boards and pull-tabs "shall not be less than zero when measured over the annual license period."

We changed the post-1/1/2008 rule to remove the reference to the RCW because the rule merely restates the RCW and we, instead, provided charitable or nonprofit licensees with formulas with which to calculate their compliance with the requirement of RCW 9.46.010.

The post-1/1/2008 rule change provides a consistent way to measure for the net income and cash flow requirement.

**Post-1/1/2008 WAC 230-14-270 Additional retention requirements for some commercial stimulant licensees.****Pre-1/1/2008 WAC 230-30-072 Inventory control for punch boards and pull-tabs—Retention requirements—Audit adjustments.**

We changed a "director approval" in the pre-1/1/2008 rule to a "staff approval" as we have done in other post-1/1/2008 rules. The pre-1/1/2008 rule required that the director enforce penalties on commercial stimulant licensees who fail to comply with all record-keeping requirements or who misstate gross gambling receipts by more than 1% during any calendar quarter. The director has reviewed this change and is comfortable with staff taking over enforcement of this requirement.

We have delegated many minor duties to staff in other sections of the post-1/1/2008 rules.

**Post-1/1/2008 WAC 230-14-280 Records review of gross gambling receipts.****Pre-1/1/2008 WAC 230-30-072 Inventory control for punch boards and pull-tabs—Retention requirements—Audit adjustments.**

We removed from the pre-1/1/2008 rule the exact number of randomly selected punch boards or pull-tab series we may select during a records review of gross gambling receipts.

We feel that naming the number in the WAC restricts our ability to enforce the post-1/1/2008 rule given different facts. For example, five boards or series might be too high for some inspections - such as the usual inspection module which special agents routinely perform - but the number might be too low for other situations in records review. We may need more than five to find a pattern of misstatements or recording errors.

**Post-1/1/2008 WAC 230-14-290 Calculating cash over and cash short on the punch board and pull-tab monthly income summary.****Pre-1/1/2008 WAC 230-30-072 Inventory control for punch boards and pull-tabs—Retention requirements—Audit adjustments.**

We added a definition of "reconcile" to the post-1/1/2008 rule because the term is used throughout the rules and we wish to be consistent in our meaning. This definition was also added to post-1/1/2008 rules in chapter 230-15 WAC, Card game rules and chapter 230-10 WAC, Bingo rules. It ensures that licensees and operators know what we mean when we require a reconciliation. We have had disagreements about the term in the past and want to avoid any in the future. It adds clarity and consistency with the post-1/1/2008 rules in all chapters.

**Post-1/1/2008 WAC 230-14-295 Electronic facsimiles of Washington state identification stamps.****Pre-1/1/2008 WAC 230-08-010 Monthly records.**

We corrected two small errors that had crept into the pre-1/1/2008 rule during the amendment and codification process:

1. The licensee does not have to put database information into the system by "scanning the stamp with a barcode reader." The data may be input using a keyboard and special type fonts.

2. The "interleaved two of five" barcode symbology we require is also not called "(USS-12/5)." The pre-1/1/2008 WAC incorrectly spells the barcode citation. In actuality, this high-density numeric-only barcode type is "(USS-ITF-2/5)." This barcode is used by the automatic identification and data capture (AIDC) industry, and the symbology is approved by the American National Standards Institute (ANSI) and the Association for Automatic Identification and Mobility (AIM).

To further clarify which barcoding system we require to create facsimiles of I.D. stamps, we also included in the post-1/1/2008 rule an example of what the barcode should look like.

Operators have been meeting the requirements using the correct software. The corrections will help future operators.

Reasons Supporting Proposal: To make our rules manual more user friendly. To make rules easier to find and understand.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Name of Proponent: Washington state gambling commission, governmental.

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

3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

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

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

June 4, 2007  
Susan Arland  
Rules Coordinator

## Chapter 230-14 WAC

### PUNCH BOARD AND PULL-TAB RULES

#### PUNCH BOARDS AND PULL-TABS

##### NEW SECTION

**WAC 230-14-001 Defining "licensee," "licensees," "operator," and "operators."** (1) In this chapter, "licensee" and "licensees" mean the business holding the punch board and pull-tab license.

(2) "Operator" and "operators" mean licensees and those operating the gambling activity for the licensees, for example, those selling pull-tabs to players or putting out games for play.

##### NEW SECTION

**WAC 230-14-005 Defining "punch board."** A "punch board" means:

(1) A board with a number of openings of uniform size in which the manufacturer placed, at random, slips of paper or other substances (punches) imprinted with numbers or symbols; and

(2) A flare (face sheet) covers the openings and sets out the winning numbers or symbols and which prizes players may win. The punches have specific serial numbers assigned and printed on them; and

(3) After buying a punch, a player may select and remove the punch from the opening of the punch board, and, if the number on the selected punch matches the flare, the specified prize is awarded to the player.

##### NEW SECTION

**WAC 230-14-010 Defining "pull-tab."** A "pull-tab" means:

(1) A single folded tab that conceals number(s) or symbol(s) from view; or

(2) A banded tab that conceals number(s) or symbol(s) from view; or

(3) A card with the face covered by perforated window(s) or otherwise hidden to conceal number(s) or symbol(s) from view.

(4) Some of the number(s) in each series of pull-tabs have been selected in advance and at random as prize winners.

(5) After buying a pull-tab, a player opens the pull-tab and, if the numbers or symbols on the pull-tab match the flare, the player wins the prize.

##### NEW SECTION

**WAC 230-14-015 Rules apply to both punch boards and pull-tabs.** Commission rules that apply to operators of both punch boards and pull-tabs also apply to operators of only one of these activities.

##### NEW SECTION

**WAC 230-14-020 Washington state identification and inspection stamps to be called "I.D. stamps."** Because the agents, manufacturers, and other licensees have long referred to Washington state identification and inspection stamps as "I.D. stamps," we will use this abbreviated name for the stamps throughout the rules.

##### NEW SECTION

**WAC 230-14-025 Punch boards, pull-tabs, and pull-tab dispensers must meet all requirements.** Operators must not display or put out for play any punch board, pull-tab series, or pull-tab dispenser that does not comply with chapter 9.46 RCW and Title 230 WAC.

##### NEW SECTION

**WAC 230-14-030 Determining winners or location of winners in advance prohibited.** Manufacturers, distributors, operators, and representatives must not possess, display, sell, or otherwise furnish a pull-tab series when they know, or reasonably should have known, that:

(1) The location, or approximate location, of any of the winning pull-tabs can be determined in advance of opening by:

(a) Any pattern in the manufacture, assembly, or packaging of the tabs; or

(b) Any markings on the tabs or container; or

(c) The use of a light; or

(2) The winning tabs have not been distributed and mixed among all other tabs in the series.

##### NEW SECTION

**WAC 230-14-035 Defining "pull-tab series."** A "pull-tab series" means all the pull-tabs in a group produced by a manufacturer that offer a single set of prizes specified on the manufacturer's accompanying flare.

##### NEW SECTION

**WAC 230-14-040 Maximum number of pull-tabs in a series.** The maximum number of pull-tabs must be no more than:

(1) Ten thousand in a series; or

- (2) Six thousand in a carry-over jackpot series; or
- (3) Fifty thousand in progressive jackpot series.

NEW SECTION**WAC 230-14-045 Authorized pull-tab dispensers.** (1)

Authorized pull-tab dispensers must:

- (a) Be made by a licensed manufacturer; and
  - (b) Conspicuously display a stamp, seal, or label identifying the manufacturer, city, and state where manufactured; and
  - (c) Be stamped with a serial number on the case.
- (2) Perforated window type pull-tab dispensers must:
- (a) Have a resettable counter visible to the customer indicating the number of pull-tabs left in the dispenser; or
  - (b) Be made so that players can:
    - (i) Clearly see each pull-tab in the dispenser, except for that area at the bottom, not more than one inch in height, covered for security or mechanical reasons; and
    - (ii) Estimate how many pull-tabs remain within the dispenser using permanent markings which divide the pull-tabs remaining into divisions of approximately twenty-five tabs.
  - (3) "Jar" or "banded" type pull-tab dispensers must:
    - (a) Have a resettable counter visible to the player indicating the number of jar or banded tabs left in the dispenser; or
    - (b) Be made so that players can clearly see all jar or banded tabs or jar tab bundles within the dispenser.
  - (4) Dispensers with bill acceptors or similar mechanisms must inform the player if they do not return change.

NEW SECTION**WAC 230-14-050 Operating restrictions for punch boards and pull-tabs.** (1) Punch board and pull-tab operators must ensure no unauthorized person buys, plays, or sells punch boards or pull-tab series; and

- (2) Licensees must:
  - (a) Not display or operate any punch board or pull-tab series which may have been marked, defaced, or tampered with in any way that could affect the chances of winning; and
  - (b) Not change a flare, except to:
    - (i) Delete prizes won; or
    - (ii) Correct inadvertently deleted prizes; or
    - (iii) Add a substitute flare; and
  - (c) Keep all records, reports, and receipts relating to punch boards or pull-tab series in play on the licensed premises as long as they are in play. They must make all records, reports, and receipts available on demand to law enforcement officers and us; and
  - (d) Not place out for further play any punch board or pull-tab series that they have permanently removed from play.

NEW SECTION

**WAC 230-14-055 Selling pull-tabs.** (1) No one may add pull-tabs to a series after the manufacturer has shipped that series.

- (2) Pull-tab operators must:
  - (a) Thoroughly mix all pull-tabs in a series before placing them in a dispenser or clear container and offering them

for sale. Operators may assemble pull-tabs into bundles with a sales price of up to twenty dollars as long as they thoroughly mix the bundles before they sell them; and

(b) Sell all pull-tabs from a dispenser we approved or a clear container. Pull-tabs sold from a container must be visible to players so players are able to estimate the number of chances remaining in the series; and

(c) Put out the entire pull-tab series for play. If using a spindle series, licensees may set the spindle on a nearby surface, for example, on the counter; and

(d) Not put a new pull-tab series in a dispenser or a clear container until they completely play out or permanently remove from play the series currently in the dispenser or container. If using a multiple-series dispenser, operators must offer each series independently.

(3) Once put out for play, operators must not remove pull-tabs from the dispenser or container until they are:

- (a) Sold; or
- (b) Permanently removed from play; or
- (c) Removed by us or other law enforcement agencies inspecting the dispenser; or
- (d) Temporarily removed during necessary repair or maintenance; or
- (e) Removed to be held permanently for a player.

NEW SECTION

**WAC 230-14-060 Defining "flare."** A "flare" (also known as a "face sheet" for punch boards) means an advertising poster or card listing all the prizes, costs to play, number of pull-tabs, and required manufacturer information for pull-tab series.

NEW SECTION

**WAC 230-14-065 One flare per punch board or pull-tab series.** Punch board and pull-tab licensees must have in public view only one flare per punch board or pull-tab series. Flares must have a Washington state identification stamp number and series number on their face.

NEW SECTION

**WAC 230-14-070 Displaying flares.** (1) Punch board or pull-tab operators must place flares in plain view and in the vicinity of the pull-tab container or dispenser.

(2) If operators do not attach the flare directly to the container or dispenser, they must include a numerical or alphabetical reference directly on the flare and on the container or dispenser indicating which flare corresponds to which series.

NEW SECTION

**WAC 230-14-075 Substitute flares.** Manufacturers must make all flares. Operators or distributors must not alter flares, except that substitute flares are allowed if:

- (1) The manufacturer, distributor, or operator who changes the original flare and attaches the substitute flare is responsible for ensuring that the substitute flare meets all other requirements for flares; and

(2) Manufacturers, distributors, or operators must permanently deface the original manufacturer's flare and attach the substitute flare to the original.

(3) Distributors or operators may apply manufacturer-produced substitute flares to punch boards and pull-tab series; and

(4) Distributors or operators must place substitute flares only on the upper face or the top of the punch board; and

(5) If distributors or operators convert flares from cash-only prizes to combined merchandise and cash prizes, they must offer at least fifty percent of the total value of the prizes in merchandise; and

(6) Distributors or operators may use substitute flares on punch boards and pull-tab series which offer merchandise or combination merchandise-cash prizes. These flares must use numbers, not symbols, to denote winners. Distributors or operators making substitute flares must:

(a) Select winning numbers from the manufacturer's original flare, or from the manufacturer's designated winning numbers on the punch board; and

(b) Assign the highest valued prize(s) to the lowest available winning number(s); and

(c) Assign the second highest valued prize(s) to the next lowest available winning number(s) and repeat that pattern until they have assigned all prizes based on their value to winning numbers. Licensed distributors may select winning numbers consecutively from the manufacturer's original flare; and

(7) Substitute flares must have the I.D. stamp number and series number permanently recorded in ink on its face.

#### NEW SECTION

**WAC 230-14-080 Prize limits and percentage of winners required.** Punch board or pull-tab operators must not possess, display, put out for play, sell, or otherwise transfer punch boards or pull-tab series that:

(1) Have a total payout of less than sixty percent of the total gross gambling receipts of the board or series; or

(2) Offer boards or series, except for progressive series or carry-over jackpots, with a single cash prize that is more than:

(a) Five hundred dollars in cash for pull-tabs under a dollar; or

(b) If we have approved it before, seven hundred fifty dollars for one dollar pull-tabs; or

(3) Offer a single merchandise prize that is more than seven hundred fifty dollars including markup; or

(4) Have a single pull-tab or punch with multiple winning combinations that are more than the prize limit; or

(5) Offer prizes for purchasing the last pull-tab or last punch (last sale) that are more than:

(a) One hundred dollars cash; or

(b) Merchandise that costs the licensee more than one hundred dollars; or

(c) The highest prize offered, whichever is less; or

(6) Series that have a key to any winning numbers or symbols.

#### NEW SECTION

**WAC 230-14-085 Calculating markup for merchandise prizes.** To calculate sixty percent of total gross for merchandise prizes, operators take the amount actually paid for the prize and add to it no more than fifty percent of that cost as markup. The total cost to the operator for the purchase of a prize must not exceed seven hundred fifty dollars.

#### NEW SECTION

**WAC 230-14-090 Controlling prizes.** Punch board and pull-tab operators must:

(1) Protect players from fraud and game manipulation.

(2) Award all prizes won.

(3) Not offer to pay cash instead of merchandise prizes.

(4) Not award additional punches or tabs as a prize.

Prizes, however, may involve the opportunity to advance and win a larger prize on the same punch board or pull-tab series. Operators must award an immediate additional opportunity to advance called a bonus prize when offered in a bonus pull-tab series or a step-up prize when offered on a punch board.

#### NEW SECTION

**WAC 230-14-095 Displaying prizes.** Punch board and pull-tab operators must:

(1) Clearly represent cash prizes on the prize flare; and

(2) Display merchandise prizes:

(a) In plain view and in the immediate vicinity of the punch board or pull-tab series. However, operators may wrap merchandise prizes for games that offer "surprise" prizes so players are unable to identify the prize until opened; or

(b) Elsewhere on the premises if size or space constraints do not allow it to be displayed in the immediate vicinity, as long as operators note a specific reference to the prize on the flare; or

(c) Use an accurate description or photograph of the prize in plain view on, or immediately adjacent to, the flare if operators cannot display the prize merchandise on the premises; and

(3) Meet all the requirements of subsections (1) and (2) of this section for combination cash and merchandise prizes.

#### NEW SECTION

**WAC 230-14-100 Removing prizes from flares.** (1) After receiving a winning punch or pull-tab for more than twenty dollars or merchandise with a retail value of more than twenty dollars, operators must immediately permanently and conspicuously delete all reference to the prize from the flare and from any other list, sign, or notice. Operators then must pay or deliver the prize to the winner.

(2) On step-up punch boards and bonus pull-tab games, once all chances to win in a section of the flare are won, operators must delete all references to prizes.

(3) Operators may correct an inadvertently deleted prize by noting on the flare that such prize is still available. When they actually award the prize, operators must permanently and conspicuously delete the reference.



(4) If operators elect to delete prizes of less than twenty dollars from flares, they must continue to do so until they remove the games from play.

#### NEW SECTION

**WAC 230-14-105 Paying prizes not deleted from flares.** When a player buys out a punch board or pull-tab series, operators must award the player all prizes not deleted from the flare that were required to be deleted, even if the operator failed to delete the prize from the flare when originally won.

#### NEW SECTION

**WAC 230-14-110 Recording winners.** When punch board or pull-tab players win more than twenty dollars or merchandise prizes with a retail value over twenty dollars, operators must make a record by:

(1) Having winners print their name and date of birth, in ink, on the side of the winning punch or tab opposite the winning symbol(s) and verifying the winner's identity and recording the current date and initialing the winning punch or tab; or

(2) Recording the required information on a sheet of paper at least three inches by five inches and stapling the winning tab or punch to the paper if the pull-tab or punch is constructed or printed so that recording the information required in a legible manner is not possible.

#### NEW SECTION

**WAC 230-14-115 Defacing winning punches or pull-tabs.** Within twenty-four hours after a winning punch or pull-tab over twenty dollars is presented for payment, licensees must permanently deface the pull-tab or punch so that it cannot be presented again for payment.

#### NEW SECTION

**WAC 230-14-120 Permanently removing punch boards or pull-tab series.** Operators may permanently reserve a series for a player who leaves the premises, but intends to return and play the game. The operator must:

(1) Prominently post house rules that are clear in meaning and with criteria for reserving a series and the length of time players may reserve a series; and

(2) Ensure that the player meets the criteria in the house rules; and

(3) Contain all of the reserved series in a secure manner, clearly identifying it as permanently reserved, and store it in the immediate vicinity of the pull-tab area; and

(4) Not reserve a board or series for a player without play for more than seven days and not be more than a total reserve time of fourteen days; and

(5) Not have more than twenty-five boards or series permanently reserved for players at one time; and

(6) Maintain adequate accounting records showing the status of all reserved boards or series; and

(7) Not place reserved boards or series out for public play after the reserving player finishes playing them.

#### NEW SECTION

**WAC 230-14-125 Temporarily removing punch boards or pull-tab series from play.** Operators may temporarily remove punch boards or pull-tab series from play and return them to play later. Operators must clearly identify the punch board or pull-tab series as reserved and prominently post house rules regarding hours of play or other conditions affecting play. Operators may temporarily remove punch boards or pull-tab series if they are:

(1) Reserving a board or series for a player, as long as the operator ensures that the player meets the criteria in the house rules; or

(2) Repairing or maintaining the pull-tab dispenser or container; or

(3) Reserving a punch board or pull-tab series for play during certain hours of operation, for example, a "happy hour" game; or

(4) Complying with the game removal requirements of WAC 230-14-050.

#### NEW SECTION

**WAC 230-14-130 Defining "happy hour punch board or pull-tab games."** (1) A "happy hour punch board or pull-tab game" means a series where licensees offer additional prizes to winners during a selected period.

(2) Licensees may increase advertised prizes or add cash or merchandise prizes to punch board or pull-tab series if licensees:

(a) Do not change the manufacturer's flare; and

(b) Disclose to players by permanently attaching an additional sign or notice to the manufacturer's flare:

(i) The requirements to qualify for prizes; and

(ii) The prizes offered; and

(c) Add the increased or additional prizes to every prize within a tier or section of the flare; and

(d) Staple or otherwise permanently attach documentation about all additional prizes to the winning punch or pull-tab. Minimum documentation must include a description of the prize and the name of the winner.

(3) Charitable or nonprofit licensees must only offer one happy hour punch board or pull-tab series at any one time.

#### NEW SECTION

**WAC 230-14-135 Operating spindle, banded, or "jar" type pull-tabs which award only merchandise prizes.** (1) Pull-tab series which award only merchandise prizes valued at no more than twenty dollars may use formats with predesignated pull-tabs where:

(a) Some pull-tabs are free; or

(b) Players are reimbursed for the cost of the pull-tabs.

(2) Flares for spindle-type pull-tab series must indicate the total number of pull-tabs and the total number of pull-tabs designated as free or reimbursable.

(3) Free or reimbursable pull-tabs do not constitute prizes. Operators must not include as revenue money collected and later reimbursed when determining gross gambling receipts.

## SEAL CARD PULL-TAB SERIES

NEW SECTION

**WAC 230-14-140 Defining "seal card pull-tab series."** "Seal card pull-tab series" means a pull-tab series that includes a predetermined number of pull-tabs which allow players to advance to the "seal card round."

NEW SECTION

**WAC 230-14-145 Defining "seal card round."** (1) "Seal card round" means a secondary element of chance game linked with the pull-tab series.

(2) Seals on the pull-tab flare conceal prizes for the secondary element of chance game.

(3) Winners who advance to the seal card round place their names on the list that matches the winning pull-tab number or symbol.

(4) Players win the prizes behind the seals when the seal card round ends and the operator opens all the seals.

NEW SECTION

**WAC 230-14-150 Awarding seal card pull-tab winners.** (1) Pull-tab operators using seal card pull-tabs series must:

(a) Award seal card round prizes for all seal card pull-tab series placed out for play; and

(b) Establish and fully disclose the method of selecting alternate winners before placing a game out for play.

(2) When players buy pull-tabs that allow them to enter the seal card round, the operator must:

(a) Enter, or allow the winners to enter, their names on the flare where indicated by the number or symbol on the pull-tab. Players must then turn in their pull-tabs to the operator; and

(b) Gather player contact information and keep it with the records of the series during the record retention period; and

(c) Wait until the series plays out before removing it from play, unless the operator elects to award the seal card round prizes without all pull-tabs being purchased.

(3) After the series is played out, or when they begin to award prizes, operators must:

(a) Contact the seal card round winner within two business days of the end of the series; and

(b) Allow the winner fourteen days after being contacted to redeem their prize; and

(c) Keep all series on premises and available for public inspection for a period of fourteen days after they pull them from play; and

(d) Keep the series until they name a winner for the game if they do not locate the seal card round winner within fourteen days.

(4) If seal card round winners do not redeem their prizes within fourteen days, licensees must select alternate winners.

(5) Licensees must not use substitute flares, bonus pull-tab series, or carry-over jackpots with seal card pull-tab series.

## PROGRESSIVE JACKPOT PULL-TAB SERIES

NEW SECTION

**WAC 230-14-155 Definitions for "progressive jackpot pull-tab series."** (1) "Progressive jackpot pull-tab series" means a pull-tab series in which operators award a progressive jackpot prize to the player who presents the winning pull-tab.

(2) The "progressive jackpot" means the starting jackpot prize, the accrued jackpot prize for that specific series, plus any accrued jackpot prize carried over from previous series.

(3) "Starting jackpot prize" means the base or minimum amount of the progressive jackpot for each series before the operator adds any money based on the jackpot accrual rate.

(4) "Accrued jackpot prize" means the amount of all additions to the progressive jackpot before the progressive jackpot is won or the operator removes the series from play.

(5) "Jackpot accrual rate" means the rate at which a progressive jackpot increases for each pull-tab sold. The rate may be a percentage of gross gambling receipts or a dollar value based on the price of a single pull-tab.

(6) "Instant winners" means all prizes available from a progressive jackpot pull-tab series, except for the progressive jackpot.

(7) "Bank system" means a network of pull-tab dispensers offering progressive jackpot pull-tab series connected by a computer. The computer determines the total gross gambling receipts all the dispensers on the network receive and calculates the amount of the progressive jackpot on the networked dispensers.

NEW SECTION

**WAC 230-14-160 Progressive jackpot dispensers with a bank system.** (1) Operators may have more than one pull-tab dispenser for a series operating at one time.

(2) Operators may have more than one bank system operating at one time, but one bank system must not have more than ten pull-tab dispensers.

(3) In a bank system, progressive jackpot pull-tab dispensers must be:

(a) Located in close physical proximity on the business premises, so that players may observe all remaining pull-tabs in a series; and

(b) Linked to a computer system which records all sales and the accrual of the progressive jackpot.

NEW SECTION

**WAC 230-14-165 Additional operating requirements for progressive jackpot pull-tab series.** Operators must conduct progressive jackpot pull-tab series in the same way as other pull-tab series and must follow these requirements:

(1) An owner or licensed commercial or charitable or nonprofit gambling manager must be on the premises at all times when progressive jackpot pull-tab series are operated; and

(2) Only owners and licensed individuals may have access to progressive jackpot pull-tab series and they must store the series in secured locations; and

(3) Licensees must have sufficient funds available to pay all prizes on redemption of winning tabs. Failure to have sufficient funds available is prima facie evidence of defrauding the public; and

(4) The current progressive jackpot total must be clearly displayed near the bank of machines at all times during the sale of progressive pull-tabs; and

(5) Operators must prominently display one flare near the bank of machines; and

(6) Operators must not use:

(a) Substitute flares; or

(b) Merchandise prizes; or

(c) Last sale prizes; and

(7) Operators must disclose the rules for playing out a series or carrying over accrued prizes.

#### NEW SECTION

**WAC 230-14-170 Prizes in progressive jackpot pull-tab series.** Manufacturers and operators must offer prizes for progressive jackpot pull-tab series that follow these requirements:

(1) Instant winners must be at least forty percent of total gross gambling receipts available from the series; and

(2) The starting jackpot must, at least, equal the value of the highest instant winner; and

(3) Operators must set the minimum jackpot accrual rate to generate an accrued jackpot prize of at least sixty percent of the total gross gambling receipts available from the series when added to the starting jackpot prize and instant winners; and

(4) The manufacturer must determine the starting jackpot prize and corresponding jackpot accrual rate needed to meet the sixty percent payout requirement. Manufacturers must include this information in the package with each series; and

(5) The maximum contribution to a progressive jackpot for each individual progressive pull-tab series must be five thousand dollars. The contribution amount excludes portions carried over from previous series.

#### NEW SECTION

**WAC 230-14-175 Removing progressive jackpot pull-tab series from play.** Operators must not remove a progressive jackpot pull-tab series from play before the progressive jackpot is won. However, operators may remove a series from play if they:

(1) Remove the series before the beginning or at the end of any business day; and

(2) Carry over the accrued jackpot prize from the series and any previously carried over accrued jackpot prize to a new series within twenty-four hours; and

(3) Add the accrued jackpot prize to the starting jackpot amount for the new series when they place it out for play. The amount of the jackpot must not be decreased.

#### NEW SECTION

**WAC 230-14-180 Paying out prizes and defacing tabs in progressive jackpot pull-tab series.** Operators must

pay out progressive jackpot pull-tab prizes in the same way required for all other pull-tabs and must follow these requirements:

(1) Operators must pay at least the starting jackpot portion of the progressive jackpot with a check. They must record the check number along with all the information required in WAC 230-14-065; and

(2) Operators must immediately deface all jackpot winning tabs when received instead of within twenty-four hours.

#### NEW SECTION

**WAC 230-14-185 Additional recordkeeping for progressive jackpot pull-tab series.** In addition to other pull-tab recordkeeping requirements, operators must:

(1) Record progressive jackpot series on a separate monthly record in the format we require; and

(2) Retain progressive jackpot winning tabs, winner information, and the flares for one year from the date they removed the series from play.

#### **EVENT PULL-TAB SERIES**

#### NEW SECTION

**WAC 230-14-190 Defining "event pull-tab series" and "event round."** Only charitable or nonprofit bingo operators may use event pull-tab series:

(1) "Event pull-tab series" means a pull-tab series that includes a predetermined number of pull-tabs which allow a player to advance to the event round.

(2) "Event round" means a game where the numbers drawn in a bingo game must match pull-tab numbers to determine winners. The winning numbers must be between numbers 1 through 75.

#### NEW SECTION

**WAC 230-14-195 Operating requirements for event pull-tabs.** When using event pull-tab series, charitable or nonprofit bingo operators must:

(1) Offer and complete event pull-tabs within one bingo session; and

(2) Disclose when the event round will take place before putting an event pull-tab series into play; and

(3) Offer event pull-tabs for sale until immediately before the event round unless the series sells out; and

(4) Have a licensed manager present at all times an event pull-tab series is in play, including sales of tabs and selection of winners; and

(5) Allow floor workers to sell event pull-tabs (for example, from aprons). Only event pull-tabs may be sold in this way; and

(6) Maintain accounting records in the format we require to track the event pull-tabs issued to each floor worker; and

(7) Meet all the requirements for carry-over jackpots if the event pull-tab series offer a carry-over jackpot; and

(8) Not use substitute flares or bonus pull-tab series with event pull-tab series.

**BONUS PULL-TAB SERIES**NEW SECTION

**WAC 230-14-200 Defining "bonus pull-tab series."** "Bonus pull-tab series" means pull-tab series that include a predetermined number of pull-tabs that allow players the opportunity to advance to a bonus section to determine the prize.

NEW SECTION

**WAC 230-14-205 Operating requirements for bonus pull-tab series.** Operators of bonus pull-tab series must ensure that:

(1) In addition to all other information required for flares, each flare clearly states:

(a) The number of chances available to advance and win a larger prize; and

(b) The number of winning tabs at each prize level; and

(2) The series uses only guaranteed or minimum prizes in calculating the sixty percent payout required; and

(3) The series does not use:

(a) Substitute flares; or

(b) Merchandise prizes; or

(c) Last sale prizes.

NEW SECTION

**WAC 230-14-210 Flares for bonus and step-up prizes.** Flares for punch boards or pull-tab series offering bonus or step-up prizes must clearly indicate how players may win bonus or step-up prizes, including the amount of the prizes. Bonus or step-up prizes must not be less than the prize for the initial winning punch or pull-tab.

**CARRY-OVER JACKPOT PULL-TAB SERIES**NEW SECTION

**WAC 230-14-215 Defining "carry-over jackpot pull-tab series" and "contribution amount."** (1) "Carry-over jackpot" means a prize pool of added contributions from carry-over pull-tab series which pass (carry-over) to another carry-over pull-tab series if not won.

(2) "Contribution amount" means the amount from each series added to the carry-over jackpot.

NEW SECTION

**WAC 230-14-220 Prize limits for carry-over jackpot pull-tab series.** Operators may use pull-tab series which include carry-over jackpots. Operators must use the following calculations for prizes and prize payouts for carry-over jackpots:

(1) Guaranteed prizes must be sixty percent or more of gross gambling receipts available from the pull-tab series. "Guaranteed prizes" means all prizes available, excluding the contribution amount or carry-over jackpot; and

(2) The manufacturer determines the contribution amount and the method of play and discloses both on the flare; and

(3) The contribution amount for each series must not be more than five hundred dollars; and

(4) An accumulated carry-over jackpot must not be more than two thousand dollars; and

(5) If the carry-over jackpot is awarded, the sum of the advance-level prize and the carry-over jackpot prize combined must not be more than two thousand dollars; and

(6) If the operator carries over the jackpot to a new series, the total of the advance-level prize and the consolation prize must not be more than five hundred dollars.

NEW SECTION

**WAC 230-14-225 Sufficient funds for carry-over jackpot pull-tab prizes.** We consider it prima facie evidence of defrauding players if the licensee:

(1) Fails to have sufficient funds available to pay a carry-over jackpot; or

(2) Attempts to use carry-over jackpots for any purpose other than paying winners.

NEW SECTION

**WAC 230-14-230 Transferring a carry-over jackpot to another game.** (1) If a licensee wants to remove a series from play and the carry-over jackpot has not been won, the operator must carry over the jackpot to a new series within one business day.

(2) Operators must maintain a separate record creating an audit trail for carry-over jackpots in the format we require.

NEW SECTION

**WAC 230-14-235 Replacing played out carry-over jackpot series.** If no tabs remain to win the carry-over jackpot but tabs to win other prizes still remain, operators must remove the series from play and replace it with a new series within seven business days.

NEW SECTION

**WAC 230-14-240 Distributing carry-over pull-tab jackpots.** If businesses stop conducting gambling activities, they must:

(1) Transfer the carry-over jackpot to the new owners who bought the business and who have a gambling license. The new licensee must operate the carry-over jackpot game until they award the prize; or

(2) Award the carry-over jackpot to a player by playing out the game before closing; or

(3) Give the carry-over jackpot to the Washington state council on problem gambling; or

(4) Give the carry-over jackpot to a charitable or non-profit organization we license.

NEW SECTION

**WAC 230-14-245 Retaining carry-over jackpot pull-tab series.** Operators offering carry-over jackpots must keep all pull-tab series that were used for a specific carry-over jackpot together.

NEW SECTION

**WAC 230-14-250 Recording carry-over jackpots on a cash basis.** (1) Operators must record carry-over jackpots on a cash basis. "Cash basis" means operators do not record carry-over jackpot contributions until the prize is awarded.

(2) However, punch board and pull-tab licensees who also hold a Class F or above bingo license may record carry-over jackpot contributions on their monthly records if they:

(a) Record contribution amounts, up to the jackpot maximum, as prizes paid on the monthly records; and

(b) When the jackpot is awarded, record only amounts not previously accrued as prizes paid; and

(c) Play no more than five carry-over jackpot series at once; and

(d) Maintain a proper audit trail and adequate security over the funds if the licensee does not deposit the contributions with the net receipts.

#### **CHARITABLE OR NONPROFIT ORGANIZATIONS OPERATING PUNCH BOARDS AND PULL-TABS**

NEW SECTION

**WAC 230-14-255 Net income and cash flow requirements when operating punch boards and pull-tabs.** Charitable or nonprofit punch board and pull-tab licensees must:

(1) When not licensed to operate bingo, ensure that they do not pay excessive expenses and that net income from punch boards and pull-tabs is more than zero when measured over the annual license period; or

(2) When licensed to operate bingo, meet the cash flow requirements.

#### **RECORDKEEPING FOR PUNCH BOARDS AND PULL-TABS**

NEW SECTION

**WAC 230-14-260 Inventory control.** (1) Punch board and pull-tab operators must control and account for each punch board and pull-tab series they obtain. Operators must:

(a) Enter the Washington state (I.D. stamp) stamp numbers for the series in all records; and

(b) Record each pull-tab dispenser they purchase.

(2) Distributors must record every purchase of punch boards or pull-tabs on an invoice. Operators must use this record to account for each series between the time they purchase it and the time they remove it from play. Invoices must include space for the operator to attach:

(a) The I.D. stamp numbers for each board or series; and

(b) The date they placed the punch board or pull-tab series out for play.

(3) When operators receive punch boards or pull-tab series, they must ensure that the manufacturer or distributor recorded all required data by comparing the Washington state identification stamp number attached to each punch board and pull-tab series to the number recorded on the purchase invoice.

(4) Operators may use a separate computerized inventory record as long as they:

(a) Use an I.D. stamp or print a computer generated facsimile of the stamp number on the inventory record; and

(b) Record all other required information.

NEW SECTION

**WAC 230-14-265 Retention requirements for punch boards and pull-tab series.** (1) Punch board and pull-tab operators must keep all punch boards or pull-tab series removed from play, including, at least:

(a) All prize flares; and

(b) All unplayed tabs; and

(c) All winning punches or tabs.

(2) Operators must make the items in subsection (1) of this section available on the licensed premises for us, local law enforcement, or local tax agencies to inspect.

(3) If stored off premises, operators must produce the game for inspection on demand.

(4) Operators must retain punch board or pull-tab series removed from play for:

(a) **Charitable or nonprofit operators** - Four months following the last day of the month in which the board or series was removed from play; and

(b) **Commercial operators** -

(i) Two months following the last day of the month in which they removed the board or series from play; and

(ii) Three months following the day they removed the board or series from play for winning punches or pull-tabs over twenty dollars. Operators must also retain the flare for these games; and

(c) **Carry-over jackpot series** - For four months after the last day of the month in which the carry-over jackpot was won; and

(d) **Progressive pull-tab series** - For one year. After the retention period, operators must destroy unsold progressive pull-tab series tabs in such a way that no one may find and use unopened winning tabs later.

NEW SECTION

**WAC 230-14-270 Additional retention requirements for some commercial stimulant licensees.** (1) Punch board and pull-tab licensees who fail to comply with all record-keeping requirements or who misstate gross gambling receipts by more than one percent during any calendar quarter will receive a letter from us requiring them to comply with additional record retention limits.

(2) Licensees receiving the letter must retain all punch boards and pull-tab series for at least four months following the last day of the month during which they were removed from play. Specially authorized games like carry-over jackpots and progressive pull-tab series may require longer retention periods.

(3) After one year, licensees may petition us to remove the increased retention requirement. The petition must include documentation of the steps taken to correct record-keeping errors or misstatements.

(4) To compute gross gambling receipts to determine compliance with recording accuracy requirements, see WAC 230-14-255.

NEW SECTION

**WAC 230-14-275 Returning punch boards and pull-tab series to the distributor or manufacturer.** (1) If punch board and pull-tab operators return a punch board or pull-tab series for any reason, they must write the date, the invoice or credit memo number, and "returned" on the original purchase invoice or inventory record.

(2) Operators must record each punch board or pull-tab series returned on their monthly record and keep a copy of the quality control report for the retention period required by WAC 230-14-240.

NEW SECTION

**WAC 230-14-280 Records review of gross gambling receipts.** To meet the gross gambling receipts and license class requirements, punch boards and pull-tab licensees must adjust gross gambling receipts from the operation to comply with commission records review findings.

Licensees must perform the following calculations:

(1) **For unrecorded punch boards and pull-tab series**

$$\begin{array}{r}
 \text{Unadjusted gross gambling receipts} \\
 + \\
 \text{Unrecorded punch boards or pull-tab series} \\
 \text{(total number of chances multiplied by price)} \\
 \hline
 \text{Adjusted gross gambling receipts*}
 \end{array}$$

To account for any unrecorded punch boards and pull-tab series, licensees add the unrecorded punch board or pull-tab series to the unadjusted gross gambling receipts. To get the total of unrecorded punch boards or pull-tab series, licensees multiply the total number of chances available by the price of a single chance to determine the maximum amount that could be generated from the punch board or pull-tab series.

\* Licensees must apply this figure to the records for the month in which they purchased the punch board or pull-tab series.

(2) **For recording errors -**

$$\begin{array}{r}
 \text{Unadjusted gross gambling receipts} \\
 +/ - \\
 \text{Adjustment factor} \\
 \text{(amount of sample group divided by recorded} \\
 \text{amount for the licensee)} \\
 \hline
 \text{Adjusted gross gambling receipts for the quarter and} \\
 \text{the three quarters preceding**}
 \end{array}$$

To adjust gross gambling receipts for the results of our records review, licensees divide the amount we determined

for a randomly selected sample of punch boards or pull-tab series by the recorded amount for them.

\*\* Licensees apply this figure to the total recorded gross gambling receipts for the calendar quarter from which we took the sample and to the three quarters immediately before.

NEW SECTION

**WAC 230-14-285 Monthly income summary.** (1) Punch board and pull-tab licensees must prepare a detailed monthly income summary for punch board and pull-tab series removed from play in the format we require either manually or electronically.

(2) Licensees may store punch board and pull-tab monthly records electronically if they:

(a) Retain all original input control documents supporting the electronic record; and

(b) Generate a monthly paper income summary that organizes the electronic record into the format we require.

(c) Ensure that the income summary:

(i) Does not hinder our review of records; and

(ii) Is available for review no later than thirty days following the end of the month; and

(iii) Is available within three days of a request by us, local law enforcement, or local tax agencies.

NEW SECTION

**WAC 230-14-290 Calculating cash over and cash short on the punch board and pull-tab monthly income summary.** (1) When preparing their monthly income summary, operators must determine cash over or cash short by:

(a) Subtracting actual cash from net gambling receipts for punch boards and pull-tabs which award cash prizes; and

(b) Subtracting actual cash from gross gambling receipts for punch boards and pull-tabs which award merchandise prizes.

(2) When operators sell more than one series of pull-tabs from a single dispenser and the dispenser has meters to record the number of tabs dispensed from each series, operators may compute the actual cash using the meter readings. If operators use this method, they must:

(a) Play out all series in each dispenser at least once each calendar quarter; and

(b) Reconcile the total cash removed from the dispenser to the total tabs sold from that dispenser to calculate the combined cash over or cash short for all series played from each dispenser during the period. "Reconcile" means the operator must compare the two balances, resolve any differences, and document the comparison and the differences in writing.

NEW SECTION

**WAC 230-14-295 Electronic facsimiles of I.D. stamps.** Punch board and pull-tab licensees may use a printer interfaced with a computer to create an electronic facsimile of the I.D. stamps, as long as licensees:

(1) Input the I.D. stamp number into the computer; and

(2) Print records on white paper. Facsimiles of the I.D. stamp must be at least one-quarter inch in height with a "quiet

zone" of at least one-quarter inch on each side of the bar code; and

(3) Code "interleaved two of five" (USS-ITF-2/5) bar code facsimiles. This is a high-density numeric-only barcode type used in the Automatic Identification and Data Capture industry. It is also called American National Standards Institute/Association for Automatic Identification and Mobility (ANSI/AIM) ITF 2/5. The bar code must have a readability rate of at least ninety-nine percent with a maximum of three passes with our bar code reading equipment. An example is below:



(4) Licensees are responsible for the accuracy of print-outs and that bar codes are electronically readable.

**WSR 07-12-070**  
**WITHDRAWAL OF PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**  
(By the Code Reviser's Office)  
[Filed June 5, 2007, 8:07 a.m.]

WAC 392-107-201, proposed by the superintendent of public instruction in WSR 06-23-068 appearing in issue 06-23 of the State Register, which was distributed on December 6, 2006, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

**WSR 07-12-071**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF ECOLOGY**  
(By the Code Reviser's Office)  
[Filed June 5, 2007, 8:07 a.m.]

WAC 173-455-080 and 173-455-090, proposed by the department of ecology in WSR 06-23-076 appearing in issue 06-23 of the State Register, which was distributed on December 6, 2006, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

**WSR 07-12-072**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
(By the Code Reviser's Office)  
[Filed June 5, 2007, 8:07 a.m.]

WAC 296-848-50010, 296-848-50020, 296-848-50030, 296-849-500, 296-849-50010 and 296-849-50020, proposed by the department of labor and industries in WSR 06-23-126 appearing in issue 06-23 of the State Register, which was distributed on December 6, 2006, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

**WSR 07-12-081**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**  
[Filed June 5, 2007, 11:37 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information:

Licensing Program	Title of Rule and Other Identifying Information	Statutory Authority for Adoption	Statute Being Implemented
Auctioneers	WAC 308-11-030 Auctioneer fees	RCW 18.11.200 and 43.24.086	RCW 18.11.200
Court reporters	WAC 308-14-200 Court reporter fees	RCW 18.145.050 and 43.24.086	RCW 18.145.050
Sellers of travel	WAC 308-129-210 Seller of travel registration fees	RCW 19.138.170 and 43.24.086	RCW 19.138.170

Hearing Location(s): Department of Licensing, Business and Professions Division, Building 2, Conference Room 209, 405 Black Lake Boulevard S.W., Olympia, WA 98507, on July 10, 2007, at 1:00 p.m.

Date of Intended Adoption: July 11, 2007.

Submit Written Comments to: Sandra Gonzales, Department of Licensing, Business and Professions Division, P.O. Box 9026, Olympia, WA 98507, e-mail sgonzales@dol.wa.gov, fax (360) 664-2550, by July 6, 2007.

Assistance for Persons with Disabilities: Contact Sandra Gonzales by July 6, 2007, TTY (360) 664-8885 or (360) 664-6649.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to increase fees. Increasing the fees will allow the programs to cover administration costs and maintain a reasonable fund balance.

Reasons Supporting Proposal: The current level of revenue collection in these programs is insufficient to cover administration costs.

In summary, RCW 43.24.086 requires each professional, occupational, or business licensing program be fully borne by the members of that profession, occupation, or business. Fees are to be set for each program at a sufficient level to cover the costs of administering that program. In addition, pursuant to RCW 43.135.055, during the 2007-09 fiscal biennium, the department may increase fees in excess of the fiscal growth factor if the increases are necessary to fully fund the costs of the licensing programs.

Statutory Authority for Adoption: See chart above.

Statute Being Implemented: See chart above.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: It is anticipated the fees will become effective on September 1, 2007.

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Trudie Touchette, 405 Black Lake Boulevard S.W., (360) 664-6649; and Enforcement: Susan Colard, 405 Black Lake Boulevard S.W., (360) 664-6649.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will have minor impact to businesses in the industry.

RCW 43.24.086 requires that licensing programs raise sufficient revenue to be self-supporting.

Pursuant to RCW 43.135.055, during the 2007-09 fiscal biennium, the department may increase fees in excess of the fiscal growth factor if the increases are necessary to fully fund the costs of the licensing programs.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to rules that set or adjust fees or rates pursuant to legislative standards.

June 4, 2007  
Ralph Osgood  
Assistant Director

AMENDATORY SECTION (Amending WSR 04-17-074, filed 8/13/04, effective 10/1/04)

**WAC 308-11-030 Auctioneer fees.** The following fees shall be charged by the business and professions division of the department of licensing:

Title of Fee	Fee
Auctioneer:	
Initial application	\$ <del>((100.00))</del> <u>155.00</u>
Renewal	<del>((85.00))</del> <u>155.00</u>
Late renewal penalty	<del>((75.00))</del> <u>100.00</u>
Duplicate license	15.00
Certification	25.00
Auction company:	
Initial application	<del>((200.00))</del> <u>255.00</u>
Renewal	<del>((175.00))</del> <u>255.00</u>
Late renewal penalty	100.00
Duplicate license	15.00

AMENDATORY SECTION (Amending WSR 04-17-073, filed 8/13/04, effective 10/1/04)

**WAC 308-14-200 Court reporter fees.** The following fees shall be charged by the business and professions division, department of licensing:

Title of Fee	Fee
Certification	
Application	\$ <del>((95.00))</del> <u>116.00</u>
Renewal	<del>((40.00))</del> <u>61.00</u>
Late renewal penalty	80.00
Verification	25.00
Duplicate	15.00

AMENDATORY SECTION (Amending WSR 04-19-039, filed 9/13/04, effective 11/1/04)

**WAC 308-129-110 Seller of travel registration fees.** The following fees shall be charged by the business and professions division of the department of licensing:

Title of Fee	Fee
Original registration fee	\$ <del>((145.00))</del> <u>202.00</u>
Registration renewal	<del>((145.00))</del> <u>202.00</u>
Service of process fee	20.00

Branch offices are subject to a duplicate registration fee. The duplicate registration fee for each branch office shall be an amount equal to the original registration fee.



**WSR 07-12-082**  
**PROPOSED RULES**  
**ATTORNEY GENERAL'S OFFICE**

[Filed June 5, 2007, 2:51 p.m.]

Continuance of WSR 07-09-074.

Preproposal statement of inquiry was filed as WSR 06-13-025.

Title of Rule and Other Identifying Information: Model rules for providing electronic records under the Public Records Act, and housecleaning of WAC 44-14-04004 (4)(b)(i) and (ii).

Date of Intended Adoption: June 15, 2007.

Submit Written Comments to: Greg Overstreet, P.O. Box 40100, Olympia, WA 98504-0100, e-mail grego@atg.wa.gov, fax (360) 664-0228, by June 11, 2007.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: **BACKGROUND:** RCW 42.56.570(2), amended in 2005, requires the office of the attorney general to adopt by rule an advisory model rule for state and local agencies, as defined in RCW 42.17.020, addressing the following subjects:

- (a) Providing fullest assistance to requestors;
- (b) Fulfilling large requests in the most efficient manner;
- (c) Fulfilling requests for electronic records; and
- (d) Any other issues pertaining to public disclosure as determined by the attorney general.

On January 31, 2006, the attorney general adopted such an advisory model rule. Chapter 44-14 WAC; WSR 06-04-079. However, as we explained, because of the controversy over the proposed rules relating to electronic rules, those provisions were not included in the final rule. Instead, we commenced a new rule-making proceeding seeking further comments on a rule relating to electronic records, WSR 06-04-078 (January 31, 2006). The attorney general's office renoticed this preproposal statement of inquiry, WSR 06-13-025 (June 13, 2006).

In response to these notices, the attorney general received over two hundred pages of written comments and held several meetings with interested parties. We now publish this notice of proposed rule making pursuant to RCW 34.05.320 (CR-102) and propose this draft for comment.

**SCOPE AND INTENT OF PROPOSED RULE:** As stated in the preproposal statement of inquiry filed to commence the proceeding that led to the adoption of the initial set of model rules in January 2006, these rules "will collect and describe best practices on public records processing to aid requestors and agencies" WSR 05-16-120.

The application of the 1972 Public Records Act to 2007 technology is difficult. Though the act recognizes that electronically stored records fall within the scope of the act (see RCW 42.17.020(41)), the technological advances since 1972 certainly have surpassed anything envisioned by the drafters. Except for some modest recognition of the need for agencies to provide records online (see RCW 43.105.250), the legislature has not provided much clarification on how to apply the act to some electronic records issues.

Nevertheless, the legislature has tasked the attorney general with providing guidance on the topic of requests for electronic records to the state and local agencies. Because some of the statutory ambiguities have not been resolved, locating

and describing a precise legal line between what the act requires state and local agencies to provide and what the act does not require is difficult. This proposed model rule relating to electronic records need not, and does not, attempt to define that line with precision. Rather, this proposed model rule is intended to provide state and local agencies with a standard of practice that would fulfill the agencies' obligations to adopt "reasonable rules and regulations" that would both implement the policies of the Public Records Act and "provide for the fullest assistance to inquirers and the most timely possible action on requests for information." RCW 42.56.100. In our view, agencies that provide such "fullest assistance" in conformance with this model rule will comply with both the letter and the spirit of the Public Records Act.

This model rule also does not purport to provide detailed guidance to state or local agencies on the possible interplay between access to electronic records under the Public Records Act and access to such records under the civil rules for superior court. The federal rules of civil procedure were recently amended to provide guidance to parties in litigation on their respective obligations to provide access to, or produce, "electronically stored information." The obligations under those federal rules (and under any state-imposed rules or procedures that adopt the federal rules) may be different than those required under the Public Records Act. It may be desirable, in the future, to revisit some aspects of this model rule to accommodate lessons learned from implementation of the federal rules. Though this model rule does not address all litigation-related issues, it does provide, in a comment section, caution to agencies to take care that, if they anticipate that records are being requested in anticipation of litigation, accurate copies are made so there can be no question later of what was and what was not produced in response to the request in the event that electronic records, or records derived from them, become issues in court.

**ANTICIPATED EFFECT:** The anticipated effect of the model rules for electronic records is to streamline compliance, standardize best practices throughout the state, and reduce litigation.

**Reasons Supporting Proposal:** The legislature directed the attorney general to adopt the Public Records Act model rules on a number of topics, including special issues involving requests for and disclosure of electronic records.

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

June 5, 2007  
 Rob McKenna

**WSR 07-12-087**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed June 6, 2007, 8:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-12-010.

Title of Rule and Other Identifying Information: WAC 308-61-135 Miscellaneous provisions.

Hearing Location(s): Department of Licensing, Conference Room 108, 1125 Washington Street S.E., Olympia, WA 98507, on July 10, 2007, at 10:00 a.m.

Date of Intended Adoption: August 7, 2007.

Submit Written Comments to: Dale R. Brown, P.O. Box 2957, Mailstop 48205, 1125 Washington Street S.E., Olympia, WA 98507-2957, e-mail dbrown@dol.wa.gov, fax (360) 902-7821 or 902-7822.

Assistance for Persons with Disabilities: Contact Dale R. Brown, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule making may be required to clarify reporting requirements through the abandoned vehicle online reporting system. The department was mandated to create a system enabling the tow truck industry to file the abandoned vehicle affidavit of sale documents electronically. The department enhanced that reporting system with inquiry capabilities. Many tow truck companies who have requested access to utilize this online function are only using it to complete the inquiry portion but not to submit the affidavit of sale. This rule seeks to clarify that tow truck companies who have requested access to the online system must also file the affidavit of sale reports through the online system.

Statutory Authority for Adoption: RCW 46.55.190.

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

Name of Proponent: None.

Name of Agency Personnel Responsible for Drafting: Dale R. Brown, 1125 Washington Street S.E., Olympia, WA, (360) 902-4020; Implementation and Enforcement: Sheila Hadden, 1125 Washington Street S.E., Olympia, WA, (360) 902-3673.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose more than a minor cost on businesses in the industry.

A cost-benefit analysis is not required under RCW 34.05.328. The contents of the proposed rules are explicitly and specifically dictated by statute.

June 4, 2007

Julie Knittle

Assistant Director

Vehicle Services

AMENDATORY SECTION (Amending WSR 07-03-117, filed 1/22/07, effective 2/22/07)

**WAC 308-61-135 Miscellaneous provisions.** (1) The properly executed written authority to tow or other evidence of lawful possession (~~(shall suffice in lieu)~~) may take the place of current license plates or trip permits for unauthorized or abandoned vehicles.

(2) Billing invoices must indicate the time of day when an unauthorized or abandoned vehicle arrived at the secure storage area.

(3) A seller's report of sale properly filed with the department on a form prescribed by the department (~~(shall)~~) relieves a registered owner from liability for costs incurred in

the removal and storage of an unauthorized(~~(/)~~) or abandoned vehicle, in addition to relieving that person from other liability (~~(pursuant to)~~) under RCW 46.12.101, unless the transferee on the seller's report had no knowledge of the filing.

(4) The junk vehicle affidavit of sale (~~(as)~~) described in RCW 46.55.230 may be used to sell a vehicle to a licensed hulk hauler, scrap processor, vehicle wrecking yard or it may be used as a supporting document for issuance of a title.

(5) A stored vehicle may be redeemed any time before the start of auctioning of that particular vehicle.

(6) The notification of impound is to be sent by first-class mail within twenty-four hours after (~~(the)~~) impound and must be sent to (~~(any lessor or lessee, as well as to)~~) the:

(a) Last known registered and legal owner (lien holder) of the vehicle; or

(b) Person or business shown to be in possession of the vehicle as listed on:

(i) A report of sale; or

(ii) Wrecker report; or

(iii) Other approved documentation by the department;

or

(c) Lessor and lessee.

(7) The written notice of the right of redemption and opportunity for a hearing to contest the validity of an impoundment, to be sent with the twenty-four hour impoundment notice on an unauthorized vehicle impoundment, must be separate and in addition to the notice of opportunity for a hearing given to those who redeem vehicles.

(8) As the record required in RCW (~~(46.05.150)~~) 46.55.150(2) the registered tow truck operator must keep a copy of its twenty-four-hour impound notice to law enforcement.

(9) Information contained in the master log must include:

(a) The dates of impound and release of vehicles;

(b) Storage lot used if multiple lots;

(c) If impound was from public or from private property and the location where the vehicle was impounded;

(d) Identity of vehicle by year, make, model, license number, and vehicle identification number;

(e) Dates of all required notices to law enforcement and to vehicle owners;

(f) Date of auction advertisement and of auction;

(g) Amount of towing and storage lien;

(h) Amount of auction proceeds;

(i) Amount of surplus funds.

Entries on the master log must be made within seventy-two hours following the activity being logged.

(10) In compliance with the requirements of RCW 46.55.100 as it relates to the reporting of abandoned vehicles after being auctioned by a registered tow truck operator, any tow truck company who has established an account with the department to use the abandoned vehicle report-affidavit of sale through the on-line system. Any report sent to the department by fax or mail will be returned to the appropriate tow truck company to be filed on line.

Tow truck companies that have not established an account with the department to use the abandoned vehicle on-line system are encouraged to do so; however, they may continue to file the abandoned vehicle report of sale reports via fax or through the mail.

Any report received by the department that is incomplete or illegible will be returned to the appropriate tow truck company for corrections.

**WSR 07-12-089**  
**PROPOSED RULES**  
**STATE BOARD OF HEALTH**

[Filed June 6, 2007, 10:01 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-282-005 Sanitary control of shellfish—Minimum performance standards, this proposed rule revision will amend the section to update the reference to the national consensus code for commercial shellfish operations. The reference will change from the 2003 National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish (guide) to the 2005 NSSP guide. The state board of health delegated this rule-making activity to the department of health at their meeting on December 13, 2006.

Hearing Location(s): Department of Health, Town Center Two, 111 Israel Road S.E., Room 158, Tumwater, WA, on July 19, 2007, at 11:00 a.m.

Date of Intended Adoption: September 20, 2007.

Submit Written Comments to: Jan Jacobs, Office of Shellfish and Water Protection, P.O. Box 47824, Olympia, WA 98504-7824, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2257, by July 18, 2007.

Assistance for Persons with Disabilities: Contact Jan Jacobs by July 2, 2007, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Currently, WAC 246-282-005 references the United States Food and Drug Administration's (FDA) 2003 NSSP guide, which all shellfish-producing states are required to follow in order to place molluscan shellfish into interstate commerce. FDA has now adopted a 2005 version of the NSSP guide, leaving the current rules out of date. This rule making will amend the section to update the reference to the current code. The document below lists differences between the 2003 and 2005 version of the NSSP guide.

Reasons Supporting Proposal: The FDA oversees a cooperative program between the shellfish-producing states and the shellfish industry for the production and processing of shellfish in a manner specified by the NSSP. The FDA evaluates each state's shellfish sanitation control program to ensure compliance with the NSSP. Therefore, an update to WAC 246-282-005 is needed to assure that Washington state remains compliant with the NSSP, and that molluscan shellfish products from the state can continue to be placed into interstate commerce.

Statutory Authority for Adoption: RCW 69.30.030.

Statute Being Implemented: RCW 69.30.030.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Jan Jacobs, 111 Israel Road S.E., Tumwater, WA, (360) 236-3316; Implementation and Enforcement: Maryanne Guichard, 111 Israel Road S.E., Tumwater, WA, (360) 236-3391.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3) and 19.85.061, this proposed rule is exempt from the requirements of chapter 19.85 RCW because it adopts national consensus code without material change. The FDA requires shellfish-producing states to follow the NSSP guide in order to place molluscan shellfish into interstate commerce.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b)(viii), this proposed rule is exempt from the requirements of RCW 34.05.328 because it adopts a national consensus code without material change. The FDA requires shellfish-producing states to follow the NSSP guide in order to place molluscan shellfish into interstate commerce.

June 5, 2007

M. C. Selecky

Secretary of Health

AMENDATORY SECTION (Amending WSR 06-01-055, filed 12/16/05, effective 1/16/06)

**WAC 246-282-005 Minimum performance standards.** (1) Any person engaged in a shellfish operation or possessing a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must comply with and is subject to:

(a) The requirements of the (~~2003~~) 2005 National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish, published by the United States Department of Health and Human Services, Public Health Service, Food and Drug Administration (copies available through the U.S. Food and Drug Administration, Shellfish Sanitation Branch, and the Washington state department of health, office of food safety and shellfish programs);

(b) The provisions of 21 Code of Federal Regulations (CFR), Part 123 - Fish and Fishery Products, adopted December 18, 1995, by the United States Food and Drug Administration, regarding Hazard Analysis Critical Control Point (HACCP) plans (copies available through the U.S. Food and Drug Administration, Office of Seafood, and the Washington state department of health, office of food safety and shellfish programs); and

(c) All other provisions of this chapter.

(2) If a requirement of the NSSP Guide for the Control of Molluscan Shellfish or a provision of 21 CFR, Part 123, is inconsistent with a provision otherwise established under this chapter or other state law or rule, then the more stringent provision, as determined by the department, will apply.

**WSR 07-12-096**  
**PROPOSED RULES**  
**PUBLIC DISCLOSURE COMMISSION**

[Filed June 6, 2007, 11:10 a.m.]

Continuance of WSR 07-11-024.

Preproposal statement of inquiry was filed as WSR 06-23-163.

Title of Rule and Other Identifying Information: Amend (1) WAC 390-28-020 Definition—Applicant, to remove reference to the out-of-date subsection; (2) WAC 390-28-070 Hearing to modify reporting—By affidavit or sworn statement, to correct a grammatical error; and (3) WAC 390-28-080 Hearing to modify reporting—Evidence, record, adverse decisions, to comply with a provision of the Administrative Procedure Act, RCW 34.05.449(5), and identify those rare circumstances that would give rise to the commission deciding to hear all or a portion of the details related to a reporting modification request in closed session.

Hearing Location(s): Commission Hearing Room, 711 Capitol Way, Room 206, Olympia, WA 98504, on June 28, 2007, at 10:30 a.m.

Date of Intended Adoption: June 28, 2007.

Submit Written Comments to: Doug Ellis, Public Disclosure Commission (PDC), P.O. Box 40908, Olympia, WA 98504-0908, e-mail dellis@pdc.wa.gov, fax (360) 753-1112, by June 25, 2007.

Assistance for Persons with Disabilities: Contact Kami Madsen by phone (360) 586-0544.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To change the time of the public hearing from 9:30 a.m. to 10:30 a.m.

Statutory Authority for Adoption: RCW 42.17.370.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The rule amendments are designed to conform to provisions of the Administrative Procedure Act, corrects grammatical errors and removes out-of-date references.

Name of Proponent: Public disclosure commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Doug Ellis, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2735; and Enforcement: Phil Stutzman, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-8853.

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

A cost-benefit analysis is not required under RCW 34.05.328. The PDC is not an agency listed in subsection (5)(a)(i) of section 201. Further, the PDC does not voluntarily make section 201 applicable to the adoption of these rules pursuant to subsection (5)(a)(i) of section 201, and, to date, JARRC has not made section 201 application [applicable] to the adoption of these rules.

June 6, 2007  
 Douglas Ellis  
 Assistant Director

**WSR 07-12-097**  
**WITHDRAWAL OF PROPOSED RULES**  
**HORSE RACING COMMISSION**

[Filed June 6, 2007, 11:20 a.m.]

The Washington horse racing commission would like to withdraw our notice of proposed rule making regarding WAC 260-84-090, 260-84-100, 260-84-110, 260-84-120, and 260-84-130 filed with your office under WSR 06-24-060.

The agency is no longer contemplating rule making regarding these sections.

R. J. Lopez  
 Deputy Secretary