

WSR 07-17-011
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed August 3, 2007, 11:49 a.m.]

The Washington department of fish and wildlife is withdrawing the CR-102 filed as WSR 07-15-098, filed on July 18, 2007. The department filed the CR-102 after we received an objection on June 11, 2007, to the CR-105 filed as WSR 07-11-167. However, the party who made the objection withdrew the objection on July 24, 2007. Sufficient time has passed between the filing of the CR-105 and today, to enable us to file a CR-103.

Loreva M. Preuss
 Criminal Justice Liaison and
 Administrative Regulations Coordinator
 Enforcement Program

WSR 07-17-016
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed August 6, 2007, 11:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-13-042.

Title of Rule and Other Identifying Information: WAC 392-121-259 and 392-121-264, Finance—General apportionment—Certificated instructional staff.

Hearing Location(s): Old Capitol Building, 600 South Washington Street, P.O. Box 47200, Olympia, WA 98504-7200, on September 27, 2007, at 9:00 a.m.

Date of Intended Adoption: September 28, 2007.

Submit Written Comments to: Legal Services, Office of Superintendent of Public Instruction, P.O. Box 47200, Olympia, WA 98504-7200, fax (360) 753-4201.

Assistance for Persons with Disabilities: Contact Clarice Nnanubu, TTY (360) 664-3631 or (360) 725-6271.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rule revisions clarify guidance on when to start counting education and experience for nondegreed vocational/career and technical education (CTE) instructors, and what may and may not, count as nondegree credits.

Major rule revisions:

- (1) Clarifies that, for nondegreed vocational/CTE instructors, occupational experience may count as nondegree credits after the instructor has met the minimum vocational/CTE certification requirement of three years (6,000 hours) of occupational experience. (2) Clarifies that, for nondegreed vocational/CTE instructors, management experience may count as certificated years of experience also after the instructor has met the minimum vocational/CTE certification requirement of three years (6,000 hours) of occupational experience. (3) Continues

the policy that, for nondegreed vocational/CTE instructors, clock hours of vocational/CTE educator training may count as nondegree credits after the instructor has completed the minimum vocational/CTE certification program/training requirements; but clarifies that all three of the above may count when the minimum requirements for the initial vocational/CTE certificate are met, regardless of when the initial certificate is issued.

- Clarifies that experience determined per WAC 392-121-264 Definition—Certificated years of experience, may not "double count" as nondegree credits per WAC 392-121-259 (3)(a).

Statutory Authority for Adoption: RCW 28A.150.-290(1).

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

Name of Proponent: Office of superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Charlie Schreck, Office of Superintendent of Public Instruction, (360) 725-6136; Implementation: Ross Bunda, Office of Superintendent of Public Instruction, (360) 725-6308; and Enforcement: Jennifer Priddy, Office of Superintendent of Public Instruction, (360) 725-6292.

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

A cost-benefit analysis is not required under RCW 34.05.328. The superintendent of public instruction is not subject to RCW 34.05.328 per subsection (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

August 6, 2007

Terry Bergeson

AMENDATORY SECTION (Amending WSR 06-19-045, filed 9/15/06, effective 10/16/06)

WAC 392-121-259 Definition—Nondegree credits. As used in this chapter, "nondegree credits" means credits recognized for nondegreed certificated instructional employees as follows:

(1) Zero credits shall be recognized for persons holding a valid certificate other than a certificate included in subsection (2) or (3) of this section.

(2) Thirty credits shall be recognized for persons holding a valid continuing or standard school nurse certificate.

(3) Persons holding valid vocational/career and technical education certificates as provided for in chapter 181-77 WAC shall accumulate recognized credits as follows:

(a) One credit for each one hundred clock hours of occupational experience as defined in WAC 181-77-003(7) (~~such that each calendar year is limited to a maximum of twenty credits~~), subject to the following conditions and limitations:

(i) Clock hours of occupational experience used in determining nondegree credits must be earned after meeting the minimum vocational/career and technical education certification requirements of three years (six thousand hours) as

established in WAC 181-77-041 (1)(a)(i), regardless of when the initial certificate is issued.

(ii) Nondegree credits based on occupational experience shall be limited to a maximum of twenty credits per calendar year.

(iii) Nondegree credits based on occupational experience shall exclude experience determined pursuant to WAC 392-121-264 (1)(a) through (d).

(b) One credit for each ten clock hours of vocational/career and technical education educator training meeting the requirements of WAC 181-77-003 (2), (9), or (12). Clock hours of vocational/career and technical education educator training used in determining nondegree credits must be earned after meeting the minimum vocational/career and technical education certification requirements as established in WAC 181-77-041 (1)(b) and (c), regardless of when the initial certificate is issued.

(4) Credits earned after September 1, 1995, must satisfy the additional requirements of WAC 392-121-262.

(5) Accumulate credits rounded to one decimal place.

AMENDATORY SECTION (Amending WSR 06-19-045, filed 9/15/06, effective 10/16/06)

WAC 392-121-264 Definition—Certificated years of experience. Regardless of the experience factors used by a school district for the purposes of its salary schedule(s), as used in this chapter, the term "certificated years of experience" means the number of years of accumulated full-time and part-time professional education employment prior to the current reporting school year in the state of Washington, out-of-state, and a foreign country. School districts shall report all certificated years of experience including those beyond the experience limit of the school district's salary schedule.

(1) Professional education employment shall be limited to the following:

(a) Employment in public or private preschools or elementary and secondary schools in positions which require certification where:

(i) Schools include the Centrum education program, the Pacific Science Center education program, and educational centers authorized under chapter 28A.205 RCW;

(ii) Certification means the concurrent public professional education licensing requirements established in the state, province, country, or other governmental unit in which employment occurred and which, for the state of Washington, refers to the certificates authorized by WAC 181-79A-140 and temporary permits authorized by WAC 181-79A-128;

(b) Employment in public or private vocational-technical schools, technical colleges, community/junior colleges, colleges, and universities in positions comparable to those which require certification in Washington school districts;

(c) Employment in a governmental educational agency with regional administrative responsibilities for preschool, elementary, and/or secondary education including but not limited to an educational service district, office of the superintendent of public instruction, or United States department of education in any professional position including but not limited to C.P.A., architect, business manager, or physician;

(d) Experience in the following areas:

(i) Military, Peace Corps, or Vista service which interrupted professional education employment included in (a), (b), or (c) of this subsection; and

(ii) Sabbatical leave.

(e) For nondegree vocational/career and technical education instructors, up to a maximum of six years of management experience as defined in WAC 181-77-003 acquired after the instructor meets the minimum vocational/career and technical education certification requirements of three years (six thousand hours) established in WAC 181-77-041 (1)(a)(i), regardless of when the initial certificate is issued. If a degree is obtained while employed in the state of Washington as a nondegree vocational/career and technical education instructor, the eligible years of management experience pursuant to this subsection reported on Report S-275 prior to the awarding of the degree shall continue to be reported but shall not increase.

(2) Years of full-time and part-time professional education employment prior to the current reporting school year are accumulated as follows:

(a) For each professional education employment which is not employment as a casual substitute pursuant to subsection (1)(a) of this section;

(i) Determine the total number of hours per year for an employee working full-time with each employer;

(ii) Determine the number of hours per year with each employer excluding unpaid leave;

(iii) Calculate the quotient of the hours determined in (a)(ii) of this subsection divided by the hours in (a)(i) of this subsection rounded to two decimal places for each year.

(b) For professional education employment as a casual substitute pursuant to subsection (1)(a) of this section:

(i) Determine the total number of full-time equivalent substitute days per year;

(ii) Calculate the quotient of full-time equivalent days determined in (b)(i) of this subsection divided by 180 rounded to two decimal places for each year.

(c) No more than 1.0 year may be accumulated in any traditional nine-month academic year or any twelve-month period.

(i) Accumulate, for each year, professional education employment calculated in (a)(iii) and (b)(ii) of this subsection.

(ii) Determine the smaller of the result in (c)(i) of this subsection or 1.00 for each year.

(d) Determine certificated years of experience as the accumulation of all years of professional education employment calculated in (c)(ii) of this subsection and report such years rounded to one decimal place.

WSR 07-17-022

**WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE**

(By the Code Reviser's Office)

[Filed August 7, 2007, 8:34 a.m.]

WAC 220-32-055, proposed by the department of fish and wildlife in WSR 07-03-115 appearing in issue 07-03 of the State Register, which was distributed on February 7, 2007, 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 07-17-023

**WITHDRAWAL OF PROPOSED RULES
HORSE RACING COMMISSION**

(By the Code Reviser's Office)

[Filed August 7, 2007, 8:34 a.m.]

WAC 260-44-160, proposed by the horse racing commission in WSR 07-03-130 appearing in issue 07-03 of the State Register, which was distributed on February 7, 2007, 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 07-17-024

**WITHDRAWAL OF PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

(By the Code Reviser's Office)

[Filed August 7, 2007, 8:34 a.m.]

WAC 392-501-501, 392-501-503 and 392-501-603, proposed by the superintendent of public instruction in WSR 07-03-131 appearing in issue 07-03 of the State Register, which was distributed on February 7, 2007, 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 07-17-025

**WITHDRAWAL OF PROPOSED RULES
COUNTY ROAD
ADMINISTRATION BOARD**

[Filed August 7, 2007, 9:21 a.m.]

The county road administration board would like to withdraw WSR 07-11-118 filed with the code reviser on May 21, 2007. We plan to refile these WAC changes at a later date.

Please contact Karen Pendleton at (360) 753-5989 if you have questions.

Karen Pendleton
Executive Assistant

WSR 07-17-041

**PROPOSED RULES
DEPARTMENT OF LICENSING**

[Filed August 9, 2007, 8:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-13-080.

Title of Rule and Other Identifying Information: Chapter 308-96A WAC, Vehicle licenses, specifically WAC 308-96A-099 Use class descriptions.

Hearing Location(s): Department of Licensing, Conference Room 108, 1125 Washington Street S.E., Olympia, WA 98507, on October 11, 2007, at 1:30 p.m.

Date of Intended Adoption: November 6, 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, by October 10, 2007.

Assistance for Persons with Disabilities: Contact Dale R. Brown by October 10, 2007, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule making is required to streamline and make the rules more understandable.

Reasons Supporting Proposal: To make the rule more understanding and clear to the users.

Statutory Authority for Adoption: RCW 46.01.110.

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

Name of Agency Personnel Responsible for Drafting: Dale R. Brown, 1125 Washington Street S.E., Olympia, WA, (360) 902-4020; Implementation and Enforcement: Gary VanCamp, 1125 Washington Street S.E., Olympia, WA, (360) 902-0122.

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.

August 9, 2007
 Julie Knittle
 Assistant Director
 Vehicle Services

AMENDATORY SECTION (Amending WSR 01-12-099, filed 6/6/01, effective 7/7/01)

WAC 308-96A-099 Use class descriptions. (1) Why does the department assign use classes to vehicles?

The department assigns use classes to:

- (a) ~~((Assess))~~ Change the proper license fees and taxes for vehicles;
- (b) Assign special brands on subsequent owner's certificate of ownership;
- (c) Apply certain restrictions on the use of the vehicles, which prints on the vehicle registrations;
- (d) Assign the proper license plates.

(2) Under what authority does the department assign use classes to vehicles?

The department assigns use classes under the authority of RCW 46.16.040.

(3) What use classes does the department assign and when do they apply?

The use classes the department assigns are described below:

ABBREVIATION	TRANSLATION	DESCRIPTION
CAB	TAXI CAB	<u>Motor vehicle</u> ((is)) used for carrying passengers between two points for compensation for an on-demand trip rather than a scheduled route. A vehicle with this use class may not carry any luggage or commodities that do not belong to a passenger being carried at the same time. In other words, the vehicle cannot just carry cargo between two points.
C/G	CONVERTER GEAR	Vehicle is an axle that is used to convert a semi-trailer to a full trailer. ((A)) <u>Converter gear</u> ((may be)) is titled but ((may)) not ((be)) licensed.
CMB	COMBINATION	Vehicle is either (1) a power unit with a declared gross weight of 42,000 pounds or more and ((towing)) <u>tows</u> a trailer; or (2) a trailing unit with permanent plates. The trailer may be towed only by a power unit with a CMB ((use class)), or FCB ((depending on what is being hauled)) <u>use class</u> .
CMP	CAMPER	((Vehicle)) <u>Is</u> a slide-in pickup camper (not a canopy) as defined in RCW 46.04.085. Even if the owner has chosen to permanently attach the camper to the pickup, the units need to be titled and licensed separately.
COM	COMMERCIAL	<u>Motor vehicle</u> ((is)) either (1) a power unit that does not pull a trailer or that pulls a trailer but the <u>declared</u> gross weight for the truck and trailer does not exceed 40,000 pounds; or (2) a trailing unit that is titled in a business name (including the name of a farm). A commercial trailer may be towed by a vehicle with PAS, TRK, COM, CMB, FAR or FCB use classes. If the trailer is being towed by a vehicle with FAR or FCB use class, the use of the trailer (items carried, etc.,) must meet the farm use class requirements.
CYC	MOTORCYCLE	((Vehicle)) <u>Is</u> a motorcycle, motor driven cycle or scooter. A moped does not qualify to be licensed as a motorcycle as defined in RCW 46.04.330 and 46.04.332.
EX	EXEMPT	((Vehicle)) <u>Can</u> be any type of vehicle, which is owned by a city, county or state government agency or federally recognized Indian tribe located in the state of Washington. This includes school buses, which are owned or leased by school districts. If the school district contracts a company to provide total bus service, such as the bus, the driver and the maintenance, and the vehicle is registered in the name of the school district as registered owner, the vehicle qualifies for exempt license plates.
FAR	FARM	<u>Motor vehicle</u> is a truck (or tractor) used to transport the farmer's own farm, orchard or dairy products as defined in RCW 46.16.090, or aquatic products as defined in RCW 15.85.020, from point of production to market or warehouse. The vehicle may also be used to transport the farmer's own farm supplies.
FCB	FARM COMBINATION	<u>Motor vehicle</u> is (1) a power unit (not a trailer) with a declared gross weight of 42,000 pounds or more and towing a trailer; and (2) meets the criteria of FAR use class above.
FED	FEDERAL	Vehicle is owned by the federal government of the United States. Like exempt vehicles, this could be any type of vehicle. This does not include vehicles displaying license plates issued by the federal government.

ABBREVIATION	TRANSLATION	DESCRIPTION
FEX	FARM EXEMPT	<u>Any motor vehicle ((is)) used exclusively in agricultural pursuits on farms as defined in RCW 46.16.010(3) and 46.04.181. ((The vehicle is usually a truck, but it could also be a bus, a motorcycle or off-road cycle.))</u>
FIX	FIXED LOAD	<u>Motor vehicle as defined in RCW 46.16.070(1). These vehicles have a unique use class because they are exempt from the law((, which requires)) requiring vehicles with a scale weight of more than six thousand pounds to have a declared gross weight of at least 150 percent of the scale weight. The basic license fee is based on the declared gross weight((, or the next two thousand pound increment above the scale weight, or the next two thousand pound increment above the legal maximum gross weight as determined by the Washington state patrol or department of transportation)) for these vehicles and should be equal to the scale weight, or the next higher gross weight increment. If the scale weight exceeds the maximum legal limit for that vehicle, the declared gross weight needs to be equal to or just lower than the legal limit. Fixed load vehicles! ((are the only ones whose gross weight)) maximum legal limit may actually be less than their scale weight((, depending on their legal maximum gross weight)). An oversize permit is required in addition to the registration in these cases.</u>
F/H	FOR HIRE	<u>Motor vehicle is used to transport people and/or commodities for compensation as defined in RCW 46.72.010. A for hire permit from business and professions division (BPD) is required.</u>
H/C	HORSELESS CARRIAGE	<u>Motor vehicle ((is a motorized vehicle over)) 40 years old or older with limited used as defined in RCW 46.16.307. ((The vehicle may not be used for normal transportation to and from work, to go to the store and pick up groceries, and so on.))</u>
H/D	HOUSE DOLLY	<u>Vehicle constructed and used exclusively to move buildings or homes.</u>
LOG	LOGGING	<u>Vehicle is a truck or trailer used exclusively for hauling logs.</u>
MH	MOTOR HOME	<u>Motorized vehicle designed for human habitation and defined in RCW 46.04.305</u>
MOB	MOBILE HOME	<u>Vehicle is a manufactured home as defined in RCW 46.04.302. Mobile homes are titled but generally not registered because of their size. Manufactured homes are taxed by the county, either as personal property or real property. <u>Mobil home use class does not include park model trailers.</u></u>
ORV	OFF-ROAD VEHICLE	<u>Vehicle is used off-road. A vehicle licensed only as an ORV may not be operated on public roadways or <u>including</u> ocean beaches.</u>
PAS	PASSENGER	<u>Motor vehicle ((is)) used to transport passengers as defined in RCW 46.04.382. Typically passenger cars, utility or multipurpose vehicles, passenger vans, and private ((buses)) buses are licensed as passenger vehicles.</u>
PED	MOPED	<u>Motor vehicle as defined in RCW 46.04.304 and subject to the restrictions in RCW 46.61.710.</u>
((PER	PERSONAL	<u>Vehicle is a personal use trailer as defined in RCW 46.16.065. Trailers owned by businesses or used for commercial purposes do not qualify for this use class.))</u>
RES	RESTORED	<u>Motor vehicles ((is a motorized collector vehicle)) over 30 years old with limited use as defined in RCW 46.16.307. ((The vehicle may display either a collector vehicle license plate provided by the department or a license plate, which must have been first issued, for use the year the vehicle was manufactured. The vehicle must be currently registered in order to be assigned this use class and receive a special collector license plate or authority to use a restored license plate.)) Vehicles with this use class may display license plates described in WAC 308-96A-074.</u>
SCH	SCHOOL	<u>Motor vehicle ((is)) owned and operated by a private school meeting the accreditation requirements of RCW 28A.195.010. The vehicle is used to transport children to and from school or in connection with school activities.</u>
SNO	SNOWMOBILE	<u>Vehicle is a snowmobile as defined in RCW 46.10.020(2).</u>
SNX	EXEMPT SNOWMOBILE	<u>Vehicle is a snowmobile as defined in RCW 46.10.010(2) and owned by a city, county or state agency.</u>

ABBREVIATION	TRANSLATION	DESCRIPTION
STA	STAGE	Motor vehicle ((is)) used as an auto stage as defined in RCW 46.04.050.
TLR	TRAILER	Vehicle is a personal use trailer as defined in RCW 46.04.620 ((but does not meet the size criteria for a PER use class)). Trailers used by businesses or others for commercial purposes do not qualify for this use class.
TOW	TOW	Motor vehicle ((is a tow truck)) as defined in RCW 46.16.079 and 46.55.010(8). If the vehicle carries other vehicles, it does not qualify for the TOW use class and must be licensed as COM.
TRK	TRUCK	Motor vehicle is a personal use((-light duty)) truck, with a declared gross weight of twelve thousand pounds or less. Trucks used for business or commercial purposes do not qualify for the TRK use class.
TVL	TRAVEL TRAILER	Vehicle is a travel trailer as defined in RCW 46.04.623, which includes park models ((of four hundred square feet or less)) and camp/tent trailers. ((It is designed and manufactured for temporary habitation.))

~~(4) (What use classes may the department assign to specific types of vehicles?)~~
 Use classes are assigned as listed below:

VEHICLE TYPE	USE CLASS	SPECIAL REQUIREMENTS
PASSENGER CARS	CAB, COM, EX, FED, F/H, H/C, PAS, RES, ORV, FEX, STA	COM Scale weight seating capacity required for F/H and STA Scale weight, if more than six seats
LIGHT DUTY TRUCKS (INCLUDING SMALL VANS)	COM, EX, FAR, FED, FEX, H/C, RES, STA, TOW, TRK, FIX, F/H, ORV	F/H and STA Number of seats All use classes Scale weight
MEDIUM/HEAVY DUTY TRUCKS (INCLUDING BUSES)	CMB, COM, EX, FAR, FCB, FEX, FIX, LOG, SCH, TOW, TRK, FED, H/C, RES, F/H	F/H and STA Number of seats All use classes Scale weight
TRAILERS	C/G, CMB, COM, EX, FEX, LOG, PER, TLR, FED	PER Number of wheels All use classes Scale weight
CYCLES		
MOTORCYCLES	CYC, EX, FED, FEX, H/C, ORV, RES	
MOPEDS	EX, FED, FEX, ORV, PED	
SNOWMOBILES	SNO, SNX	
UTILITY/MULTIPURPOSE VEHICLES	CAB, COM, EX, FED, F/H, PAS, STA, TRK, FAR, FEX, H/C, ORV, RES, SCH	COM, F/H, STA, TRK, FAR and FEX Scale weight F/H and STA Number of seats
RECREATION VEHICLES		
TRAVEL TRAILERS (INCLUDING CAMP AND TENT TRAILERS)	EX, FED, TVL	
CAMPERS	CMP, EX, FED	
MOTOR HOMES	EX, FED, MH	
NOTE: Gross weight and seat requirements per RCW 46.16.040.		

~~(5))~~ **Do all powered three-wheeled vehicles need to be licensed as motorcycles?**

No. If the vehicle qualifies as a motorcycle as defined in RCW 46.04.330 or 46.04.332, it will be licensed as a motorcycle for street use. However, if the vehicle has a bench seat and a steering wheel as defined in RCW 46.04.330 or 46.04.332, it will be licensed as a passenger vehicle or truck.

~~((6))~~ **(5) What license plates and use class will be assigned to my for hire vehicle?**

The license plates and use class assigned to your for hire vehicle depends upon how you use your vehicle. All for hire vehicles transport passengers and commodities for compensation. For hire vehicles include cabulances, limousines, taxi

cabs, and ~~((busses))~~ buses hauling passengers for compensation in addition to transporting school children. There are two use classes and license plate combinations assigned to for hire vehicles:

(a) CAB use class vehicles are assigned passenger license plates. These vehicles are used exclusively for transporting passengers and their possessions; and

(b) F/H use class vehicles are assigned truck license plates. These vehicles not only transport passengers for compensation, but also transport commodities, without passengers, for compensation.

~~((7))~~ **(6) When may truck license plates be assigned to my passenger vehicle?**

Truck license plates may be assigned to your passenger vehicle whenever the vehicle is used to transport commodities, produce, freight or animals for commercial purposes. The use class would be COM instead of PAS. This would require a title application, a scale weight slip and a certified/notarized statement of use describing how the vehicle will be used commercially.

~~((8))~~ **When may passenger license plates be assigned to my pick-up truck?**

~~Passenger license plates may only be assigned to your pick-up truck if it has been modified to qualify as a passenger vehicle. The department requires confirmation from the Washington state patrol that the vehicle has been modified to qualify for passenger use.~~

~~(9))~~ **(7) What use classes and license plates will be assigned to school buses?**

(a) EX use class and county exempt license plates will be assigned to a school bus owned or leased by an exempt agency (school district);

(b) SCH use class and passenger license plates will be assigned to a school bus owned or leased by an accredited private school; ~~((e))~~

(c) F/H use class and truck license plates will be assigned to school buses used for transporting passengers for compensation and not used exclusively for transporting school children to and from school or school related activities;

(d) (PAS) passenger; or

(e) (COM) commercial.

~~((10))~~ **(8) May I license my motorcycle or any other motor vehicle for both road and off road use?**

Yes, you may license your motorcycle or any other motor vehicle for both uses as long as the vehicle qualifies for road use. You will receive two registration certificates showing the vehicle is licensed for both uses. However, the certificate of ownership will show the use class associated with the road use.

~~((11))~~ **May I license my amphibious vehicle as a vehicle and a vessel?**

~~Yes, you may license your amphibious vehicle for both uses as long as it qualifies for both uses. You will receive two registration certificates showing the vehicle is licensed for both uses. However, the certificate of ownership will show the use class associated with the road use.~~

~~(12))~~ **(9) May I license my truck, truck tractor or tractor as a motor home?**

Yes, you may license your truck, truck tractor or tractor as a motor home if:

(a) The vehicle meets the definition of a motor home in RCW 46.04.305; and

~~(b) ((You provide a Washington state patrol inspection confirming your vehicle may be licensed as a motor home; and~~

~~(e))~~ You certify the vehicle qualifies as M/H and will be used exclusively as a motor home for personal use and ~~((is))~~ not ~~((used))~~ for commercial use.

~~((13))~~ **(10) Is my truck, truck tractor or tractor which I use exclusively for towing my travel trailer licensed differently than any other like truck?**

No. Your truck, truck tractor or tractor used exclusively for towing your travel trailer must be licensed in accordance

with RCW 46.16.070. Depending on scale weight the use class will be TRK or COM.

WSR 07-17-042

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed August 9, 2007, 8:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-13-025.

Title of Rule and Other Identifying Information: Chapter 308-96A WAC, Vehicle licenses; to include WAC 308-96A-057 Purple Heart license plates.

Hearing Location(s): Department of Licensing, Conference Room 108, 1125 Washington Street S.E., Olympia, WA 98507, on September 25, 2007, at 10:30 a.m.

Date of Intended Adoption: October 23, 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, by September 24, 2007.

Assistance for Persons with Disabilities: Contact Dale R. Brown by September 24, 2007, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule making is required to allow spouses of deceased recipients of the Purple Heart medal to purchase and retain Purple Heart license plates.

Reasons Supporting Proposal: Amendments were requested by spouses of Purple Heart recipients.

Statutory Authority for Adoption: RCW 46.01.110, 46.12.070, and 46.16.276.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: 1125 Washington Street S.E., Olympia, WA.

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.

August 9, 2004 [2007]

Julie Knittle

Assistant Director

Vehicle Services

AMENDATORY SECTION (Amending WSR 02-16-071, filed 8/6/02, effective 9/6/02)

WAC 308-96A-057 Purple Heart license plates. (1) Under what authority does the department issue Purple Heart license plates? The department issues Purple Heart license plates, under the authority of RCW 46.16.305 as writ-

ten prior to 1990. Washington state law allowed the department to issue special license plate series denoting the age or type of vehicle or denoting special activities or interest, status, or contribution or sacrifice for the United States, the state of Washington, or citizens of the state of Washington, of a registered owner of that vehicle. The Washington legislature amended the law in 1990 allowing the department to continue issuing special license plates authorized under the law as it was before it was amended.

(2) **Who may receive Purple Heart license plates?** Any Washington resident who:

(a) Has been awarded a Purple Heart medal by any branch of the United States Armed Forces, including the Merchant Marines and the Women's Air Forces Service Pilots or spouse if the recipient is deceased;

(b) Was wounded or is the spouse of a person during one of this nation's wars or conflicts identified in RCW 41.04.-005; and

(c) Is an owner, co-owner, lessee, or co-lessee of a vehicle requiring two license plates; or

(d) The spouse of a deceased recipient of a Purple Heart medal.

(3) **What documentation does a Purple Heart recipient or spouse of a deceased recipient need to submit to obtain Purple Heart license plates?** Purple Heart recipients or spouse of a deceased recipient applying for these license plates must submit:

(a) An application for Purple Heart license plates; and

(b) A copy of the armed forces document showing the recipient was awarded the Purple Heart medal.

(c) The surviving spouse of a deceased Purple Heart medal recipient may be issued a special Purple Heart license plate. In addition to confirm eligibility, the surviving spouse must submit the following:

(i) A copy of the death certificate of the deceased Purple Heart medal recipient; and

(ii) An affidavit that the applicant is not currently married.

(4) **May the spouse of a deceased Purple Heart recipient keep the Purple Heart license plates?** Yes. To keep the Purple Heart license plates the surviving spouse must provide:

(a) A copy of the Purple Heart recipient's death certificate; and

(b) An affidavit that the spouse has not remarried; and

(c) If the surviving spouse remarries, the Purple Heart special license plate is invalid and must be removed from the vehicle.

(5) **When I am required to replace my Purple Heart license plate, will I receive the same license plate number((#)) and letter combination?** Yes. Upon request you will receive replacement Purple Heart license plates with the same number/letter combination as shown on the vehicle computer record.

WSR 07-17-059

PROPOSED RULES

PUBLIC DISCLOSURE COMMISSION

[Filed August 10, 2007, 4:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-23-164.

Title of Rule and Other Identifying Information: Amend WAC 390-17-400 Time limit to solicit or accept contributions.

Hearing Location(s): Commission Hearing Room, 711 Capitol Way, Room 206, Olympia, WA 98504, on September 27, 2007, at 9:30 a.m.

Date of Intended Adoption: December 6, 2007.

Submit Written Comments to: Doug Ellis, Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908, e-mail dellis@pdc.wa.gov, fax (360) 753-1112, by September 24, 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: The rule amendment is designed to conform to 2006 legislative changes impacting RCW 42.17.710.

Reasons Supporting Proposal: To provide guidance and clarification to the general public and persons subject to the disclosure law.

Statutory Authority for Adoption: RCW 42.17.370.

Statute Being Implemented: Chapter 42.17 RCW.

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 amendment is designed to conform with 2006 legislative changes and provides guidance and clarification to persons subject to the disclosure law.

Name of Proponent: [Public disclosure commission (PDC)], 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. The implementation of this rule amendment has no impact on small businesses.

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.

August 10, 2007

Vicki Rippie

Executive Director

AMENDATORY SECTION (Amending WSR 98-23-016, filed 11/6/98, effective 12/7/98)

WAC 390-17-400 Time limit to solicit or accept contributions. The purpose of this rule is to clarify and implement RCW 42.17.710.

(1) **"Campaign debt,"** as used in RCW 42.17.710 and this rule, means any debt incurred by a candidate seeking election to a nonfederal public office, including campaigns for state, county, city, town, school district, special district or other state political subdivision elective office.

(2) **"Known candidates"** means individuals who are, or who become, candidates for state or local office during a legislative session freeze period.

(3) **"Legislative session freeze period"** means the period of time in RCW 42.17.710 within which contributions shall not be solicited or accepted by a state official or a person employed by or acting on behalf of a state official.

(a) The freeze period begins at 12:01 a.m. on the thirtieth day before the start of the regular legislative session and ends at 11:59 p.m. on the ~~((thirtieth day following))~~ day of adjournment of the regular legislative session.

(b) If a special session is held immediately following the end of the regular legislative session, the freeze period ends on the day the special session adjourns ~~((or at 11:59 p.m. on the thirtieth day following adjournment of the regular legislative session, whichever is later))~~.

(c) If a special session is held other than within ~~((30))~~ thirty days before ~~((or after))~~ a regular legislative session, the freeze period begins at 12:01 a.m. on the first day of the special session and ends at 11:59 p.m. on the final day of the special session.

(4) A successful candidate for state office who does not already hold a state office is not required to comply with RCW 42.17.710 until sworn into office.

(5) A state official must comply with RCW 42.17.710 until he or she no longer holds state office.

(6) **"Person employed by or acting on behalf of a state official"** includes a caucus political committee or any political committee financed or controlled by a legislative caucus as a whole or by one or more officers of a caucus political committee.

(7) **State officials may do the following.** During a legislative session freeze period, the activities in which state officials may engage include, but are not limited to:

(a) Soliciting or accepting contributions to assist his or her own campaign for federal office;

(b) Accepting gifts or other items permitted under chapter 42.52 RCW, so long as the gift or other item is not

- A contribution to an incumbent state official or known candidate,
- A contribution to a public office fund,
- Used to pay a nonreimbursed public office related expense, or
- Used to retire a campaign debt;

(c) Attending and speaking at a fund raising event held by or on behalf of a bona fide political party, so long as the contributions raised are not earmarked or otherwise designated for any incumbent state official or known candidate;

(d) Transferring their own personal funds, as defined in WAC 390-17-305, or their own surplus funds, as defined in RCW 42.17.020, to their own campaign account, so long as the funds are properly reported;

(e) Soliciting or accepting contributions on behalf of a nonprofit charity; or

(f) Soliciting or accepting contributions on behalf of any political committee, including a caucus political committee, a bona fide political party or a ballot measure committee, so long as the political committee does not spend the contributions for the benefit of incumbent state officials or known candidates.

(8) **State officials may not do the following.** During a legislative session freeze period, a state official, or a person employed by or acting on behalf of a state official, may not solicit or accept contributions that:

- (a) Go to an incumbent state official or known candidate;
- (b) Go to a public office fund;
- (c) Are used to pay a nonreimbursed public office related expense;

(d) Are used to retire a campaign debt;

(e) Go to a caucus political committee if the committee spends the contributions for the benefit of incumbent state officials or known candidates; or

(f) Go to a bona fide political party or a political committee if the political party or committee spends the contributions for the benefit of incumbent state officials or known candidates.

(9) **Caucus political committees.** During a legislative session freeze period, a caucus political committee

(a) May solicit or accept contributions from caucus members if the members make the contributions with their own personal funds, as defined in WAC 390-17-305, or with their own surplus funds, as defined in RCW 42.17.020;

(b) May not solicit or accept contributions for any of the purposes specified in subsection (8) of this rule.

(10) **Persons acting on behalf of state officials.** During a legislative session freeze period, a person employed by or acting on behalf of a state official may not solicit or accept contributions for any of the purposes specified in subsection (8) of this rule.

(11) **Bona fide political parties.** During a legislative session freeze period, a bona fide political party may not solicit or accept contributions that are

- Used for a public office fund,
- Used for a state official's nonreimbursed public office related expenses,
- Used for retiring a state official's campaign debt, or
- Earmarked contributions to specific incumbent state officials or known candidates.

However, a bona fide political party may solicit or accept contributions for its own fund raising purposes.

(12) **Segregating session freeze funds.** During a legislative session freeze period, if a state official, a caucus political committee, or another person employed by or acting on behalf of a state official solicits or accepts contributions to

- A caucus political committee,
- A bona fide political party, or
- Any political committee that supports or opposes state or local office candidates, the contributions are

presumed to violate RCW 42.17.710, unless the contributions are

- Deposited into a separate bank account and
- Not spent for the benefit of incumbent state officials or known candidates.

However, nothing in this subsection authorizes a state official, a caucus political committee or any person employed by or acting on behalf of a state official to take any of the actions prohibited by subsections (8) or (9)(b) of this rule.

(13) **Session freeze solicitations.** If a person is solicited for a contribution during the legislative session freeze period

- By a state official, a caucus political committee, or another person employed by or acting on behalf of a state official, and
- The contribution is to a caucus political committee, a bona fide political party, or a political committee that supports or opposes candidates for state or local office, and
- The person makes a contribution during or after the freeze period in response to this solicitation, the contribution is subject RCW 42.17.710 and subsection (12) of this rule.

(14) **Spending contributions to benefit incumbents or known candidates.** For purposes of complying with subsections (7)(f), (8)(e) and (f), and (12) of this rule, contributions are considered spent for the benefit of incumbent state officials or known candidates if the contributions are used at any time for one or more of the following purposes.

(a) Contributions to incumbent state officials or known candidates.

(b) Independent expenditures supporting incumbent state officials or known candidates, or opposing their opponents, whether or not the opponents are themselves known candidates during a legislative session freeze period.

(c) Payments to staff, consultants or advisors for performing activities that directly assist or promote the election of incumbent state officials or known candidates.

(d) Polls or surveys that relate to incumbent state officials, known candidates or their districts, or to general voter attitudes or preferences, unless

- A poll or survey is produced, conducted, tabulated and analyzed according to the terms of a written confidentiality agreement and, if the agreement is breached, all reasonable steps are taken to enforce it, and
- The results of a poll or survey are not provided by the spender, or with the spender's permission or prior knowledge, to incumbent state officials, known candidates or their agents.

However, candidate recruitment poll or survey results may be provided to an individual who later becomes a known candidate without the expenditure being considered as benefiting a known candidate so long as the poll or survey does not constitute a contribution to the individual or does not otherwise support or promote his or her election to state or local office. For purposes of this subsection, a "candidate recruitment poll or survey" is a poll or survey that is conducted for the sole purpose of recruiting candidates to run for public office and only determines

- The respondent's party preference,
- The level of support the incumbent currently has and how strong that support is, but not why he or she has that support,
- Whether respondents recognize the names of individuals who may decide to seek that elective office,
- Whether respondents currently hold a favorable opinion about these individuals, their abilities or fitness for elective office, but not why such opinions are held,
- Whether respondents would likely vote for one or more of these individuals were they to seek office, but not why respondents would vote in the manner they indicated or whether they could be persuaded to change their vote, and
- The validity of the poll or survey results.

(e) Any other expenditure that directly benefits or promotes the election to state or local office of incumbent state officials or known candidates.

WSR 07-17-060

WITHDRAWAL OF PROPOSED RULES PUBLIC DISCLOSURE COMMISSION

[Filed August 10, 2007, 4:35 p.m.]

Please withdraw our notice of proposed rule making regarding WAC 390-17-400, filed under WSR 07-04-083 and distributed in the 07-04 state register.

Please do not hesitate to contact Suemary Trobaugh at (360) 753-1985, or by e-mail to strobaugh@pdc.wa.gov if you have any questions.

Suemary Trobaugh

WSR 07-17-063

PROPOSED RULES DEPARTMENT OF LICENSING

[Filed August 13, 2007, 11:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-12-077.

Title of Rule and Other Identifying Information: Chapter 308-18 WAC, Private security guard companies and private security guards.

Hearing Location(s): Department of Licensing, Business and Professions Division, 405 Black Lake Boulevard, Room 2209, Olympia, WA 98502, on September 25, 2007, at 1:00 p.m.

Date of Intended Adoption: October 1, 2007.

Submit Written Comments to: Department of Licensing, Security Guard Program, P.O. Box 9649, Olympia, WA 98507, e-mail Security@dol.wa.gov, fax (360) 570-7888, by September 21, 2007.

Assistance for Persons with Disabilities: Contact (360) 664-6611, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In the 2007 legis-

lative session, the security guard industry asked for the legislature's approval to change the security guard training requirements. The change request affected the preassignment and postassignment training and added a new annual training requirement. The legislature approved of these changes and now the rules must meet the new requirements.

Reasons Supporting Proposal: The intended goal when creating a new rule is to make it easy for people to understand the requirements. Some of the existing requirements are no longer valid and must be taken out of the rule. New instructions are entered into the rule that apply to the sections of the law that have been revised.

Statutory Authority for Adoption: Chapter 18.170 RCW.

Statute Being Implemented: Chapter 18.170 RCW.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mary Haglund, Olympia, (360) 664-6658.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Department of licensing is exempt from this requirement.

A cost-benefit analysis is not required under RCW 34.05.328. Department of licensing is exempt from this requirement.

Ralph Osgood
Assistant Director

AMENDATORY SECTION (Amending WSR 05-09-036, filed 4/14/05, effective 7/1/05)

WAC 308-18-240 Required records. The minimum records the principal of a private security guard company shall be required to keep are:

(1) Preassignment (~~and~~), postassignment, and annual refresher training and testing records for each private security guard.

(2) Private security guard temporary registration card ledger showing the department-supplied registration number, applicant's name, date of issue, date of expiration and date card was forwarded to the director.

(3) The company principal shall maintain proof of annual shooting requirements for each armed security guard employed by the security guard company in the armed security guard's training files or employee's files.

These records shall be retained and available for inspection by the director or the director's authorized representative for a minimum of three years.

AMENDATORY SECTION (Amending WSR 05-09-036, filed 4/14/05, effective 7/1/05)

WAC 308-18-300 Minimum preassignment training and testing requirements. ~~((1) Except as provided under RCW 18.170.100 (1)(b)(ii), beginning July 1, 2005, all security guards licensed on or after July 1, 2005, must complete at least eight hours of preassignment training. Four hours of the~~

~~preassignment training classroom and/or on-the-job training shall be in subjects determined by the security guard company principal developed to fit the specific type of duty required by the post. The additional four hours of the preassignment training classroom instruction shall be in the following listed subjects and shall be the contents of the preassignment exam developed by the department:))~~ Preassignment training must consist of eight hours of training.

(1) At least four hours of the training must take place in an organized and formal setting. The remaining four hours of training can be continued in the organized and formal setting or it can be individual instruction.

(2) The preassignment organized and formal training must be from the following listed subjects. These training topics are the source of the questions in the preassignment examination issued by the department.

(a) **Basic principles.**

(i) Basic role of the security guard;

(ii) Washington state licensing laws;

(iii) Observation;

(iv) Proper actions, reactions;

(v) Homeland security - terrorism and surveillance.

(b) **Legal powers and limitations.**

(i) Citizens arrest;

(ii) Authority to detain, question, or search a private citizen;

(iii) Authority to search or seize private property;

(iv) Use of force;

(v) Avoiding liability.

(c) **Emergency response.**

(i) How to define what is or is not an emergency situation;

(ii) Response to fires;

(iii) Response to medical emergencies;

(iv) Response to criminal acts;

(v) Bomb threats.

(d) **Safety and accident prevention.**

(i) Hazardous materials including MSDS;

(ii) Accident reporting.

(e) **Report writing.**

Elements and characteristics of a report.

~~((2))~~ (3) All private security guard applicants, after receiving preassignment training and prior to receiving their license or temporary registration card, must successfully complete an exam designed and provided by the department to demonstrate understanding and retention of the information learned in the training course on the subjects listed in WAC 308-18-300. The exam shall consist of multiple choice questions. All applicants must answer all questions correctly on the preassignment training exam or questions incorrectly answered must be reviewed to ensure the applicant's understanding and then initialed by both the applicant and the trainer verifying knowledge of the correct answer(s).

AMENDATORY SECTION (Amending WSR 05-09-036, filed 4/14/05, effective 7/1/05)

WAC 308-18-305 Minimum postassignment (~~and on-the-job~~) training requirements and training topics. ~~((1) Beginning July 1, 2005, all security guards must com-~~

plete at least eight hours of postassignment or on-the-job training-

(a) Security guards licensed on or after July 1, 2005, are required to complete four hours of postassignment training within the first six months of employment and the remaining four hours completed within the following six months.

(b) Security guards licensed prior to July 1, 2005, are required to complete four hours of postassignment training by December 31, 2005, and the remaining four hours must be completed by July 1, 2006.

(c) Beginning January 1, 2006, the number of required postassignment training hours must be increased by one hour every year until January 1, 2012. The number of postassignment training hours required of a security guard is the number required on the date the security guard is initially licensed by the department. The additional hours of training must be completed within eighteen months after the date a security guard is hired.) Postassignment training must consist of eight hours of training in any topics contained in this section. These topics may also be used in the annual refresher training. Training requirements are described in chapter 18.170 RCW.

((2)) (1) The topic areas that must be used for postassignment training are as follows and may also include the subject topics listed under WAC 308-18-300:

(a) **Basic role of private security guards.**

(i) Security awareness;
(ii) Private security guards and the criminal justice system;

(iii) Information sharing;

(iv) Crime and loss prevention.

(b) **Legal aspects of private security.**

(i) Evidence and evidence handling;
(ii) Use of force;
(iii) Court testimony;
(iv) Incident scene preservation;
(v) Equal employment opportunity (EEO) and diversity;
(vi) State and local laws.

(c) **Security officer conduct.**

(i) Ethics;
(ii) Honesty;
(iii) Professional image.
(d) **Observation and incident reporting.**

(i) Observation techniques;

(ii) Note taking;

(iii) Report writing.

(e) **Principles of communications.**

(i) Interpersonal skills;
(ii) Verbal communication skills;
(iii) Building relationships with law enforcement;
(iv) Customer services and public relations;
(v) Workplace violence.

(f) **Principles of access control.**

(i) Enter and exit control procedures;
(ii) Electronic security systems.

(g) **Principles of safeguarding information.**

Proprietary and confidential.

(h) **Emergency response procedures.**

Critical incident response (e.g., natural disasters, accidents, human caused events).

(i) **Evacuation processes.**

(j) **Life safety awareness.**

(i) Safety hazards in the workplace/surroundings;

(ii) Emergency equipment placement;

(iii) Fire prevention skills;

(iv) Hazardous materials;

(v) Occupational safety and health requirements (e.g., OSHA related training, bloodborne pathogens, etc.).

(k) **Job assignment and postorders.**

(i) Assignments and tasks;

(ii) Patrol.

((2)) (2) The required postassignment training records must be attested to by a licensed certified trainer and retained by the company. The postassignment training records must include the following information:

(a) Security guard name and signature;

(b) Training topics covered;

(c) Number of training hours received;

(d) Date training was completed;

(e) Certified trainer attesting to the training.

((4)) (3) Electronic records and signatures are permitted. The postassignment training records are not required to be submitted to the department, but must be available upon request from the company for three years.

(4) Security guard companies are required to maintain complete detailed training records. The training records must include the name and signature of the department certified trainer attesting to the training provided.

Transferring security guards may provide a copy of their training records to another security guard company. Security guard companies may accept the records as proof that the security guards have completed the required postassignment training and not repeat postassignment training.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-18-145

Comments by chief law enforcement officers and employers.

WSR 07-17-069

PROPOSED RULES

GAMBLING COMMISSION

[Filed August 13, 2007, 2:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-03-166.

Title of Rule and Other Identifying Information: New chapter 230-17 WAC.

Hearing Location(s): Red Lion Hotel, 303 West North River Drive, Spokane, WA 98901, (509) 326-8000, on October 12, 2007, at 9:30 a.m.

Date of Intended Adoption: October 12, 2007.

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

Assistance for Persons with Disabilities: Contact Gail Grate, Executive Assistant, by October 1, 2007, TTY (360) 486-3637 or (360) 486-3453.

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 hearings are under review. Staff propose repealing some of the rules in chapter 230-50 WAC and not include a "plain English" rule on this particular rule in chapter 230-17 WAC.

SUBSTANTIVE RULE CHANGES

Post-1/1/2008 WAC 230-17-005 Issuing notice of administrative charges.

Pre-1/1/2008 WAC 230-50-030 Adjudicated proceedings—Hearings—Interpreter—Timing.

We added the language "short and plain statement" to subsection (1) of this rule at the request of stakeholders. Our administrative charges already contain a "short and plain" statement of the case. We have also removed a great deal of language that is redundant with chapter 34.05 RCW, the Administrative Procedure Act. One of our goals in the rule simplification project has been to not repeat statutes.

Post-1/1/2008 WAC 230-17-010 Requesting and scheduling a hearing.

Pre-1/1/2008 WAC 230-50-010 Adjudicative proceedings—Hearings.

We propose removing the phrase "or a facsimile thereof" from the language of the rule because we send a copy of the form we require as required by chapter 34.05 RCW.

We've changed the time requirements in subsection (2)(a) from twenty days to twenty three days because the court rules call for a twenty-three day time limit for response by mail.

We also changed subsection (4)(b) to allow for agreements between parties to extend the ninety-day limit for sending out the notice of hearing. This change makes clear that if parties agree, put it in writing, and make it part of the permanent record of the proceeding, they may extend the ninety-day period.

NEW Post-1/1/2008 WAC 230-17-015 Settlements encouraged.

We already try to settle as many cases as possible when the agency's needs can be met. This new rule encourages parties to settle cases without the need for an adjudicative hearing.

Post-1/1/2008 WAC 230-17-020 Prehearing conferences.

Pre-1/1/2008 WAC 230-50-610 Adjudicated proceedings settlement conferences and prehearing conferences.

The subject matter experts requested that we add in new language concerning discovery deadlines and scheduling a settlement conference or hearing to the list of what should be done at a prehearing conference. We also struck the word

"expert" from our description of the witnesses which is consistent with the model rules.

Post-1/1/2008 WAC 230-17-025 Appointment of administrative law judge or "presiding officer."

Pre-1/1/2008 WAC 230-50-020 Adjudicated proceedings—Appointment of administrative law judge.

We removed language about the model rules from this rule. The former language stated that model [rules] were to be followed "as applicable." This implied that we **must** apply model rules when, in actuality, chapter 34.05 RCW states that agencies should use the model rules, but may choose which ones to use at their discretion.

Post-1/1/2008 WAC 230-17-030 Methods of service in adjudicative proceedings.

Pre-1/1/2008 WAC 230-50-190 Adjudicated proceedings—Service of process—Method of service.

We struck language concerning service by telegraph, since this type of service has fallen out of use. We also added service by fax to the commission's "legal division" with same-day mailing of copies. These changes seem to look forward to the future methods of service that are most likely to continue.

Post-1/1/2008 WAC 230-17-035 When service of notices, orders, and documents is complete.

Pre-1/1/2008 WAC 230-50-200 Adjudicated proceedings—Service of process—When service complete.

We struck the language concerning service by telegraph, since this type of service has fallen out of use. We also added service by fax to the commission "legal division" with same-day mailing of copies. These changes seem to look forward to the future methods of service that are most likely to continue.

Post-1/1/2008 WAC 230-17-040 Filing documents for adjudicative proceedings.

Pre-1/1/2008 WAC 230-50-210 Adjudicated proceedings—Service of process—Filing with agency.

We designated where to send process per RCW 34.05.010(6). We also changed the wording of the rule to highlight that we only accept service at our administrative offices in Lacey.

Post-1/1/2008 WAC 230-17-045 Who can appear in a representative capacity at hearings.

Pre-1/1/2008 WAC 230-50-060 Adjudicated proceedings—Appearance and practice before the commission—Who may appear.

We added to this rule because the requirements about appearance at hearings covered in RCW 34.05.428 are somewhat vague. We also added the presiding officer into the list so they can also decide whether someone can appear at a hearing.

Post-1/1/2008 WAC 230-17-050 Standards of ethical conduct.

We added to this rule because the requirements about appearance at hearings covered in RCW 34.05.428 are somewhat vague.

Post-1/1/2008 WAC 230-17-055 Issuing, quashing, and responding to subpoenas.

Pre-1/1/2008 WAC 230-50-225 Adjudicated proceedings—Discovery.

Pre-1/1/2008 WAC 230-50-230 Adjudicated proceedings—Subpoenas, issuance, service, fees, quashing and enforcement.

Pre-1/1/2008 WAC 230-50-700 Continuances.

We changed two portions of the current rule:

1. The length of time parties have to issue subpoenas; and
2. The proof of process service.

For issuing subpoenas, we lengthened the time to issue to ten days. For proof of service, we added that servers must either sign an affidavit or a declaration under penalty of perjury; this follows the model rules of chapter 10-08 WAC.

We discovered while researching this rule that we don't have the statutory authority to allow *pro se*s to issue subpoenas, so we built in a way for the *pro se* to request a subpoena from the presiding officer if it is needed.

We also moved a subsection of **WAC 230-50-700 Continuances** concerning hearings continued for the introduction of further evidence into this rule because it dealt with the issuing of subpoenas.

Post-1/1/2008 WAC 230-17-060 Official notice.

Pre-1/1/2008 WAC 230-50-500 Official notice—Matters of law.

We made several changes to this rule. The first of those is to remove the phrase "practitioners before its bar" from subsection (4). This phrase doesn't seem to add any clear duty or explicit order to what will be given official notice. In its place, we added language suggested by the subject matter experts about recognizing the "contents of licenses and certifications."

We also added a separate subsection (5) mentioning the state-tribal compact system: "A Washington tribe's compact with the state of Washington and any appendices or amendments to it."

Post-1/1/2008 WAC 230-17-065 Depositions and interrogatories.

Pre-1/1/2008 WAC 230-50-300 Adjudicated proceedings—Depositions and interrogatories—Right to take.

Pre-1/1/2008 WAC 230-50-310 Depositions and interrogatories in contested cases—Scope.

Pre-1/1/2008 WAC 230-50-320 Depositions and interrogatories in contested cases—Officer before whom taken.

We removed the language from the current rule that states, "Depositions shall be taken only in accordance with this rule and the rules on subpoenas" because it contradicts other deposition rules and statutes.

Post-1/1/2008 WAC 230-17-070 Notice and length of depositions.

Pre-1/1/2008 WAC 230-50-330 Adjudicated proceedings—Depositions and interrogatories—Notice.

We added the records custodian as an example to subsection (2)(c): "If the name is not known, a general description sufficient to identify the person or the particular class or group to which he or she belongs (for example, "records cus-

todian")." This clarifies what we mean by a "general description" in the rule.

Post-1/1/2008 WAC 230-17-075 Protective orders.

Pre-1/1/2008 WAC 230-50-340 Depositions and interrogatories in contested cases—Protection of parties and deponents.

We removed the majority of this rule. It is dense and confusing to the reader. The rewritten form of the rule allows for a very broad range of protective orders to be issued by the presiding officer in an administrative hearing.

Post-1/1/2008 WAC 230-17-080 Stipulations.

Pre-1/1/2008 WAC 230-50-530 Stipulations and admissions of record.

We added a definition of stipulation to the rule. The subject matter experts recommended the definition to make the legal language more clear to readers who are not trained in legal matters.

Post-1/1/2008 WAC 230-17-085 Initial orders.

Pre-1/1/2008 WAC 230-50-550 Adjudicated proceedings—Initial or final order.

We propose removing large portions of the old rule because RCW 34.05.461 covers the requirements for entering initial orders.

Post-1/1/2008 WAC 230-17-115 Expert witnesses.

Pre-1/1/2008 WAC 230-50-650 Expert or opinion testimony and testimony based on economic and statistical data—Number and qualifications of witnesses.

Pre-1/1/2008 WAC 230-50-670 Expert or opinion testimony and testimony based on economic and statistical data—Supporting data.

We reworded the rule because the old rule was not consistent with the restrictions in RCW 42.52.080.

Post-1/1/2008 WAC 230-17-130 Settlement conferences.

Pre-1/1/2008 WAC 230-50-610 Adjudicated proceedings settlement conferences and prehearing conferences.

We made two changes to this rule:

1. We removed language allotting who can attend settlement conferences because it didn't match actual practice during these conferences.

2. We changed subsection (7) to state that the results of the settlement conference only have to be recorded if a settlement is reached.

Post-1/1/2008 WAC 230-17-135 Continuances.

Pre-1/1/2008 WAC 230-50-700 Continuances.

We added in a definition of what a "continuance" was at the suggestion of the subject matter experts.

Post-1/1/2008 WAC 230-17-140 Petitions for reconsideration of a final order.

Pre-1/1/2008 WAC 230-50-562 Final orders—When and how to file a petition for reconsideration of a final order.

We added subsection (2) to this rule so that a party may file a response to a petition for reconsideration. Parties don't usually do this, but it gives them the option. The subject matter experts suggested it.

Post-1/1/2008 WAC 230-17-150 Use of brief adjudicative proceedings (BAPs).**Pre-1/1/2008 WAC 230-50-010 Adjudicative proceedings—Hearings.**

We removed language about when brief adjudicative proceedings (BAPs) may be held for several reasons:

BAPs were intended to cover relatively simple cases, so, for instance, we added language to subsection (1)(d) that BAPs would be used "where that is the only alleged violation in the administrative charges" because failure to pay taxes is not usually a "stand-alone" charge, and so would need to be handled in a regular administrative hearing, not a BAP.

We removed some language because the information, like that for withdrawal of [an] approved card game covered in card game rules chapter 230-15 WAC, is now covered in other chapters.

Further, we removed language about stipulations in subsection (6)(e) because when parties stipulate to facts and charges, these cases are often settled in the settlement conference without the need for a hearing at all.

Also we removed the language that discussed processes that we don't have anymore, for instance we no longer deny applications for higher bingo license classes as explained in subsection (6)(f).

Post-1/1/2008 WAC 230-17-165 Summary suspensions.**Pre-1/1/2008 WAC 230-50-012 Summary suspensions.**

We propose adding a definition of summary suspension to the rule. We have also changed some of the language in the rule to more closely mirror the vocabulary used in RCW 9.46.075 and 9.46.158.

Post-1/1/2008 WAC 230-17-170 Petition and hearing for stay of the summary suspension.**Pre-1/1/2008 WAC 230-50-015 Stay of summary suspension.**

We removed the phrase "upon service" in subsection (6) of the current rule because we intend to leave some flexibility for the administrative law judge to make an oral ruling and follow it with a written ruling.

Post-1/1/2008 WAC 230-17-175 Review of initial orders to stay a summary suspension.**Pre-1/1/2008 WAC 230-50-018 Review of orders on stay.**

We changed the time to request a review of initial orders to stay a summary suspension from "twenty-one days" to "twenty days." Elsewhere in the chapter, we have used "ten days" and "twenty days" to maintain some consistency in the periods for responses or filings.

Post-1/1/2008 WAC 230-17-190 Information required on a petition.**Pre-1/1/2008 WAC 230-50-800 Petitions for rule making, amendments, or repeal.****Information required on a petition.**

We removed the list in subsection (3) of the current rule because the information about what should be discussed in the rule petition is set out in RCW 34.05.330 (4)(a)-(i).

Post-1/1/2008 WAC 230-17-195 Locating petition for rule-making form.**Pre-1/1/2008 WAC 230-50-800 Petitions for rule making, amendments, or repeal.**

We added the web site address for the commission as another location from which petitioners may get a copy of the petition for rule-making form.

Post-1/1/2008 WAC 230-17-200 Submitting a petition.**Pre-1/1/2008 WAC 230-50-800 Petitions for rule making, amendments, or repeal.**

We added e-mailing the rules coordinator as another way a person may submit a petition for rule making.

REPEALERS

The following sections of the Washington Administrative Code are repealed because they are duplicative of RCW requirements: WAC 230-50-080 Solicitation of business unethical, 230-50-100 Appearance by former employee of commission or former member of attorney general's staff, 230-50-160 Adjudicated proceedings—Service of process—By whom served, 230-50-170 Service of process—Upon whom served, 230-50-180 Service of process—Service upon parties, 230-50-350 Depositions and interrogatories in contested cases—Oral examination and cross-examination, 230-50-360 Depositions and interrogatories in contested cases—Recordation, 230-50-370 Depositions and interrogatories in contested cases—Signing attestation and return, 230-50-380 Depositions and interrogatories in contested cases—Use and effect, 230-50-390 Adjudicated proceedings—Depositions and interrogatories—Fees of deponents—Costs of deposition, 230-50-400 Depositions upon interrogatories—Submission of interrogatories, 230-50-410 Depositions upon interrogatories—Interrogation, 230-50-420 Depositions upon interrogatories—Attestation and return, 230-50-520 Presumptions, 230-50-580 Adjudicated proceedings—Hearings—Forms, and 230-50-800 Petitions for rule making, amendments, or repeal.

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.

August 13, 2007

Susan Arland

Rules Coordinator

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 230-50-080	Solicitation of business unethical.
WAC 230-50-100	Appearance by former employee of commission or former member of attorney general's staff.
WAC 230-50-160	Adjudicated proceedings—Service of process—By whom served.
WAC 230-50-170	Service of process—Upon whom served.
WAC 230-50-180	Service of process—Service upon parties.
WAC 230-50-350	Depositions and interrogatories in contested cases—Oral examination and cross-examination.
WAC 230-50-360	Depositions and interrogatories in contested cases—Recordation.
WAC 230-50-370	Depositions and interrogatories in contested cases—Signing attestation and return.
WAC 230-50-380	Depositions and interrogatories in contested cases—Use and effect.
WAC 230-50-390	Adjudicated proceedings—Depositions and interrogatories—Fees of deponents—Costs of deposition.
WAC 230-50-400	Depositions upon interrogatories—Submission of interrogatories.
WAC 230-50-410	Depositions upon interrogatories—Interrogation.
WAC 230-50-420	Depositions upon interrogatories—Attestation and return.
WAC 230-50-520	Presumptions.
WAC 230-50-580	Adjudicated proceedings—Hearings—Forms.
WAC 230-50-800	Petitions for rule making, amendments, or repeal.

Chapter 230-17 WAC**HEARING RULES****ADJUDICATIVE PROCEEDINGS**NEW SECTION

WAC 230-17-001 Administrative charges and adjudicative proceedings. If we bring administrative charges against anyone, we give an opportunity for an adjudicative proceeding (hearing). We give the opportunity for a hearing to:

- (1) Applicants to determine whether to deny the application; and
- (2) Licensees to determine whether to suspend or revoke the license if they held a license at the time we issued charges against them; and
- (3) Applicants for approval of pull-tab dispensers to determine whether to deny approval of the dispenser.

NEW SECTION

WAC 230-17-005 Issuing notice of administrative charges. The director or director's designee issues a notice of administrative charges. We serve the applicant, licensee, or permittee with the notice. The notice must include:

- (1) A short and plain statement of the matters the agency asserts; and
- (2) A request for hearing form; and
- (3) A form to request an interpreter at the hearing for persons with limited English skills or hearing impairment; and
- (4) The maximum penalty.

NEW SECTION

WAC 230-17-010 Requesting and scheduling a hearing. (1) Applicants, licensees, or permittees may request a hearing using the form we provide.

- (2) We must receive the request from the applicant, licensee, or permittee at our administrative office within:
 - (a) Twenty-three days after we mail by regular mail the notice of administrative charges; or
 - (b) Twenty days after they receive by certified mail the notice of administrative charges; or
 - (c) Twenty days after we personally serve the notice of administrative charges.

(3) If applicants, licensees, or permittees do not file requests in the time required, then they waive their right to a hearing. They are in default, as defined in RCW 34.05.440, and the commissioners may take action against them up to the maximum penalty stated in the notice of administrative charges.

(4) The director, director's designee, or the presiding officer of the hearing must issue a notice of hearing which meets the requirements of RCW 34.05.434(2).

(a) The notice must be issued within ninety days from the date on which we receive the request from the licensee, applicant, or permittee, unless all parties agree to or the presiding officer orders an extension beyond the ninety days.

(b) Any change of the ninety-day requirement must be:

- (i) In writing; and
- (ii) Made a part of the permanent record of the proceeding.

NEW SECTION

WAC 230-17-015 Settlements encouraged. After charges have been issued, we encourage parties' efforts to settle without the need for an adjudicative hearing.

NEW SECTION

WAC 230-17-020 Prehearing conferences. The presiding officer, on his or her own motion or on the motion of one of the parties, may direct the parties to appear at a specified time and place for a prehearing conference to consider:

- (1) Identifying and simplifying the issues; and
- (2) Amending pleadings, if necessary; and
- (3) Obtaining stipulations of facts and of documents; and
- (4) Limiting the number of witnesses; and
- (5) Setting discovery deadlines or resolving discovery disputes; and
- (6) Scheduling a settlement conference before an administrative law judge; and
- (7) Scheduling the hearing date; and
- (8) Resolving any other matter that may aid in the outcome of the proceeding.

NEW SECTION

WAC 230-17-025 Appointment of administrative law judge or "presiding officer." (1) The commissioners hereby appoint the office of administrative hearings to assign an administrative law judge (ALJ), called the "presiding officer," to preside at all hearings which result from administrative charges, unless:

- (a) The commissioners, by their own order, declare their intent to preside at a specific proceeding; or
 - (b) The proceeding is an appeal of an initial order issued by an ALJ.
- (2) All hearings must be conducted in compliance with Title 230 WAC and chapter 34.05 RCW.

NEW SECTION

WAC 230-17-030 Methods of service in adjudicative proceedings. Parties must serve all orders, notices, and other documents by:

- (1) Personal service; or
- (2) First class, registered, or certified mail; or
- (3) Telefacsimile (fax) to the commission's legal division, and same-day mailing of a copy of the faxed document; or
- (4) Commercial parcel delivery service.

NEW SECTION

WAC 230-17-035 When service of notices, orders, and documents is complete. Service of notices and other documents is complete when served by:

(1) **Personal service** - which means actual, physical delivery to:

- (a) The person; or
- (b) The designated agent of the person; or
- (c) Anyone over the age of eighteen residing at the residence of:

- (i) The person; or
- (ii) A corporate officer; or
- (d) If represented, the attorney representing the person.

(2) **Mail** - which means deposit in the United States mail with proper postage and properly addressed; service is complete on the third day after mailing, excluding the date of mailing; or

(3) **Telefacsimile (fax)** - which means faxing to the commission's legal division, with confirmation of the transmission, and the same day deposit of a copy of the faxed document in the United States mail, with proper postage and properly addressed; service is complete on the third day after mailing, excluding the date of mailing; or

(4) **Commercial parcel delivery service** - which means delivery to the parcel delivery service, when properly addressed and all charges are paid.

NEW SECTION

WAC 230-17-040 Filing documents for adjudicative proceedings. (1) We consider required documents "filed" on receipt of the documents at our administrative office accompanied by proof of service on all parties required to be served.

(2) Delivery to our administrative office when we are not present to receive the documents in person does not constitute lawful service of documents for any matter under our jurisdiction.

(3) When a party is filing a document with the commission, the attorney general's office must also be served.

NEW SECTION

WAC 230-17-045 Who can appear in a representative capacity at hearings. The following persons may appear in a representative capacity at hearings or other legal proceedings:

- (1) Individuals representing themselves or their business (*pro se*); and
- (2) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington; and
- (3) Attorneys entitled to practice before the highest court of record of any other state, if Washington attorneys are permitted to appear before administrative agencies of the other state, and if not otherwise prohibited by our state law; and
- (4) Interpreters for persons with a limited understanding of the English language or hearing impaired persons; and
- (5) Other persons the commissioners may allow, if a party shows a necessity or a hardship that would make it unduly burdensome to have one of the representatives set out above.

NEW SECTION

WAC 230-17-050 Standards of ethical conduct. (1) Anyone appearing in proceedings before the commission in a

representative capacity must conform to the standards of ethical conduct the courts of Washington require of attorneys.

(2) If the person does not conform to these standards, the commission may decline to allow that person to appear before them.

NEW SECTION

WAC 230-17-055 Issuing, quashing, and responding to subpoenas. (1) The commission and the attorney for a party may issue subpoenas according to the requirements of RCW 34.05.446. Unrepresented (*pro se*) parties may request the presiding officer to issue for them such subpoenas as are necessary to enable them to fairly present their case. Every subpoena must:

(a) State the name of the commission; and
 (b) State the title of the adjudicative proceeding; and
 (c) Command the persons to whom they are addressed to attend and give testimony, produce books, records, documents, or things under their control at a specified time and place.

(2) All parties must serve their subpoenas on all other parties at least ten days before the specified time for appearance or document production.

(3) Any person eighteen years of age or older may serve subpoenas by showing and reading the subpoenas to witnesses, or by giving them a copy of the subpoena, or by leaving a copy at their residence.

(4) When anyone other than an officer authorized to serve process performs service, the server must make proof of service by affidavit or a declaration under penalty of perjury.

(5) If a party makes a motion at or before the time stated for compliance in the subpoena, the presiding officer may:

(a) Quash or modify an unreasonable and oppressive subpoena; or

(b) Order the person who issued the subpoena to pay the reasonable cost of producing the books, papers, documents, or tangible things.

(6) Parties may seek judicial enforcement of subpoenas under RCW 34.05.588.

(7) Witnesses must attend and provide requested testimony or documents at the specified time and place.

(8) During a hearing, if it appears in the public interest or in the interest of justice that further testimony or argument should be received, the presiding officer may at his or her discretion continue the hearing and:

(a) Set the hearing ahead to a certain date; and

(b) Subpoena, or allow a party to subpoena, additional argument or evidence.

NEW SECTION

WAC 230-17-060 Official notice. The commission or the presiding officer may officially notice, on request made before or during a hearing or on its own motion, at least:

(1) **Federal law.** The Constitution; congressional acts, resolutions, records, journals and committee reports, decisions of federal courts and administrative agencies; executive orders and proclamations; and all rules, orders and notices published in the federal register; and

(2) **State law.** The Constitution of the state of Washington, acts of the legislature, resolutions, records, journals and committee reports; decisions of administrative agencies of the state of Washington, executive orders and proclamations by the governor; and all rules, orders and notices filed with the code reviser; and

(3) **Governmental organization.** Organization, territorial limitations, officers, departments, and general administration of the government of the state of Washington, the United States, the several states and foreign nations; and

(4) **Agency organization.** The commission's administration, officers, personnel, official publications, and contents of licenses and certifications; and

(5) **Tribal compact.** A Washington tribe's compact with the state of Washington for Class III gaming and any appendices or amendments to it.

NEW SECTION

WAC 230-17-065 Depositions and interrogatories.

(1) Parties may take testimony by deposition on oral examination (deposition) or written questions (interrogatories) for use as evidence in the administrative hearing.

(2) Parties must depose persons in the same manner, and before the same officers, authorized by the Washington civil rules for superior court, unless otherwise agreed in writing by the parties.

(3) Witnesses may be subpoenaed to attend a deposition or produce documents.

(4) Parties may only depose a commissioner, the director, deputy director, or an assistant director if they apply to the presiding officer and show good cause that circumstances prevent the statements or depositions of other staff members from revealing the information, evidence, or details needed.

(5) Unless otherwise ordered, the person being deposed may be examined about any matter to the same extent that the Washington civil rules for superior court allow.

NEW SECTION

WAC 230-17-070 Notice and length of depositions.

(1) Parties wishing to depose someone must give notice of at least seven days in writing to all parties.

(2) The notice for the deposition must state:

(a) Time and place of the deposition; and

(b) The name and address of each person to be deposed, if known; or

(c) If the name is not known, a general description sufficient to identify the person or the particular class or group to which he or she belongs (for example: "Records custodian").

(3) If a party makes a motion, the presiding officer may lengthen or shorten the time for notice of the deposition.

(4) If the parties agree in writing, depositions may be taken before any person, at any time or place, on any notice, and in any manner, and may be used as otherwise allowed by these rules.

NEW SECTION

WAC 230-17-075 Protective orders. If a party requests it in writing, the presiding officer may issue appropriate protective orders as authorized in RCW 34.05.446.

NEW SECTION

WAC 230-17-080 Stipulations. A "stipulation" means an agreement among parties intended to establish one or more operative facts in a proceeding.

(1) Parties may stipulate to all or any portion of the facts of the case.

(2) Parties may file the stipulation in writing or enter it orally into the record.

(3) A stipulation, if the presiding officer accepts it, is binding on the stipulating parties. The parties may present the stipulation as evidence at the hearing.

(4) The presiding officer may reject the stipulation or require proof of the stipulated facts, despite the parties' agreement to the stipulation.

NEW SECTION

WAC 230-17-085 Initial orders. (1) Initial orders must be entered in accordance with RCW 34.05.461(3).

(2) An initial order becomes the final order unless a party files a petition for review of the initial order as explained in WAC 230-17-560.

NEW SECTION

WAC 230-17-090 Petitions for review and cross appeals of initial orders. (1) RCW 34.05.464 governs the review of initial orders.

(2) Any party to an adjudicative proceeding may file a petition for review of an initial order. Parties must file the petition for review with us within twenty days of the date of service of the initial order unless otherwise stated. Parties must serve copies of the petition to all other parties or their representatives at the time the petition for review is filed.

(3) Petitions must specify the portions of the initial order the parties disagree with and refer to the evidence in the record on which they rely to support their petition.

(4) Any party to an adjudicative proceeding may file a reply to a petition for review of an initial order. Parties must file the reply with us within thirty days of the date of service of the petition and must serve copies of the reply to all other parties or their representatives at the time the reply is filed.

(5) Any party may file a cross appeal. Parties must file cross appeals with us within ten days of the date the petition for review was filed with us.

(6) Copies of the petition or the cross appeal must be served on all other parties or their representatives at the time the petition or appeal is filed.

(7) After we receive the petition or appeal, the commissioners review it at a regularly scheduled commission meeting within one hundred twenty days and make a final order.

NEW SECTION**WAC 230-17-095 Admissibility criteria for evidence.**

(1) Subject to the other provisions of these rules, all relevant evidence is admissible which, in the opinion of the presiding officer, is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness.

(2) If not allowing evidence to be admitted, the presiding officer must give consideration to, but is not bound to follow, the rules of evidence governing civil proceedings, in matters not involving trial by jury in the superior courts of the state of Washington.

NEW SECTION

WAC 230-17-100 Tentative admission, exclusion, discontinuance, and objections to evidence. (1) When an objection is made to the admissibility of evidence, the evidence may be received subject to a later ruling.

(2) The presiding officer may, in his or her discretion, with or without objection, exclude inadmissible evidence or order cumulative evidence discontinued.

(3) Parties objecting to the introduction of evidence must state the precise grounds of such objection at the time such evidence is offered.

NEW SECTION

WAC 230-17-105 Excerpts from documentary evidence. (1) When parties rely only on portions of a document, the offering party must:

(a) Prepare the pertinent excerpts; and

(b) Adequately identify them; and

(c) Supply copies to the presiding officer and the other parties, with a statement indicating the purpose for which the excerpts will be offered.

(2) The offering party must make the whole original document available for examination and for use by all parties. However, only the excerpts must be received in the record.

NEW SECTION

WAC 230-17-110 Documentary evidence. (1) When requested for cause, the presiding officer may:

(a) Require that parties submit all documentary evidence to the other parties sufficiently in advance so that they may study and prepare cross-examination and rebuttal evidence.

(b) Reject documentary evidence not submitted in advance if the party offering it cannot show that there was good cause for failing to submit it sooner.

(2) Unless a party files a written objection before the hearing, the authenticity of all documents submitted in advance is accepted. Parties may later file a challenge of authenticity if they show good cause for failing to file a written objection.

NEW SECTION

WAC 230-17-115 Expert witnesses. (1) The presiding officer, where practicable, must encourage all parties to agree

on the identity and number of witnesses who are to give expert testimony by:

- (a) Selecting one or more to speak for all parties; or
- (b) Limiting the number for each party.

(2) If the parties cannot agree, the presiding officer must require them to submit written statements to all parties with the names, addresses, and qualifications of their respective expert witnesses on a date determined by the presiding officer sufficiently in advance of the hearing to allow the other parties to investigate the witness' qualifications.

(3) The presiding officer must require parties to submit the underlying data for statements and exhibits they provide sufficiently in advance of the hearing to allow the other parties to cross examine the expert witness(es) at the hearing. However, the presiding officer must restrict to a minimum placing the data in the record.

(4) No former employees of our agency may appear, except with the director's or director's designee's permission, as expert witnesses on behalf of other parties in a proceeding involving a matter that was under consideration by the agency when the former employee was employed by the commission.

NEW SECTION

WAC 230-17-120 Written sworn statements by expert witnesses. The presiding officer must encourage all parties to agree that:

(1) For expert testimony, and all testimony based on economic or statistical data, all parties will submit written sworn statements in advance of the hearing by a date the presiding officer sets; and

(2) A party may object to the written statements on any grounds, except that the testimony is not presented orally; and

(3) A party may cross examine witnesses if the party makes a request sufficiently in advance of the hearing to allow the witness(es) to be present.

NEW SECTION

WAC 230-17-125 Noncompliance with rules on expert witnesses or written statements. If expert witnesses or written statements on economic or statistical data do not meet the requirements of WAC 230-17-650 or 230-17-660, the presiding officer may receive them as evidence only if the party can clearly show good cause.

NEW SECTION

WAC 230-17-130 Settlement conferences. (1) Any party to an adjudicative proceeding may request a settlement conference, with or without an administrative law judge (ALJ), to discuss a possible settlement of the case.

(2) If a settlement is reached, it must be a written order to be signed by all parties and the presiding officer.

NEW SECTION

WAC 230-17-135 Continuances. (1) "Continuance" means a postponement or an extension of time after a notice of hearing or commission review has been issued.

(2) Parties may agree to a continuance.

(3) If the parties do not agree to a continuance, the person requesting the continuance must:

(a) Notify the presiding officer and the other party why a continuance is needed; and

(b) Present this request as soon as the person:

(i) Receives the notice of the hearing or commission review; or

(ii) Knows the reasons requiring the continuance.

(4) The presiding officer will consider whether the request was made promptly and may grant a continuance for good cause shown, or on his or her own motion.

(5) During a hearing, if it appears consistent with the public interest or in the interests of justice that further testimony or argument should be considered, the presiding officer may continue the hearing and set the date to introduce additional argument or evidence. This oral ruling is final notice of a continued hearing.

NEW SECTION

WAC 230-17-140 Petitions for reconsideration of a final order. (1) A party may file a petition for reconsideration of a final order. The presiding officer administers petitions for reconsideration according to RCW 34.05.470.

(2) A party may file a response to the petition for reconsideration. Parties must file responses with us within ten days of the date the petition was filed with us.

(3) If the petition is received at least fifteen business days before the next regularly scheduled commission meeting, we schedule the petition to be heard at that next meeting.

(4) If the petition is received less than fifteen business days before that next meeting, we schedule the petition at the following regularly scheduled meeting.

NEW SECTION

WAC 230-17-145 Stays of final orders. (1) Any party may petition the commission for a stay of a final order in accordance with RCW 34.05.467.

(2) For purposes of this rule, the commission hereby delegates to the director the authority to deny a stay or issue a temporary stay until the reviewing court can rule on a permanent stay. The decision of the director denying a stay is not subject to judicial review.

BRIEF ADJUDICATIVE PROCEEDINGS (BAPs)

NEW SECTION

WAC 230-17-150 Use of brief adjudicative proceedings (BAPs). (1) Presiding officers must use brief adjudicative proceedings (BAPs) for:

(a) Stays of summary suspension; and

(b) Denying or revoking extended operating hours for:

(i) Card games; and

- (ii) Bingo; and
 - (c) Charitable or nonprofit licensee appealing a denial of a request for waiver of significant progress requirements; and
 - (d) Failure to pay required gambling taxes, where that is the only alleged violation in the administrative charges; and
 - (e) When the penalty we are requesting is a suspension of seven days or less; and
 - (f) When the parties stipulate to using a BAP.
- (2) If we conduct a BAP, we may conduct them telephonically and, therefore, the notice of hearing will not set a place of the hearing.
- (3) Any party to the BAP may request to appear in person and, in those cases, a place will be set and all parties notified.

NEW SECTION

WAC 230-17-155 Discovery limitations in brief adjudicative proceedings. (1) In all brief adjudicative proceedings, discovery must be limited to requests for written reports and supporting documents relevant to the charges.

- (2) Interrogatories and depositions are not allowed.

SEIZURE HEARINGS

NEW SECTION

WAC 230-17-160 Hearings when gambling devices are seized. (1) We follow the processes explained in RCW 9.46.231 when we seize gambling devices.

- (2) The item seized is forfeited to the state unless a claimant is able to prove the device is:
 - (a) Not a gambling device; or
 - (b) An antique gambling device as defined by RCW 9.46.235.

SUMMARY SUSPENSION HEARINGS

NEW SECTION

WAC 230-17-165 Summary suspensions. (1) "Summary suspension" means immediately taking a license or permit from a person or organization which prevents them from operating or conducting gambling activities.

(2) The commission delegates its authority to the director to issue an order to summarily suspend any license or permit if the director determines that a licensee or permittee has performed one or more of the actions identified in RCW 9.46.-075 as posing a threat to public health, safety, or welfare.

(3) The commission deems the following actions of a licensee or permittee constitute an immediate danger to the public safety and welfare:

- (a) Failing or refusing to comply with the provisions, requirements, conditions, limitations, or duties imposed by chapter 9.46 RCW or any rules adopted by the commission; or
- (b) Knowingly causing, aiding, abetting, or conspiring with another to cause any person to violate any of the laws of this state or the rules of the commission; or
- (c) Obtaining a license or permit by fraud, misrepresentation, concealment, or through inadvertence or mistake; or

(d) Being convicted of, or forfeiting of a bond on a charge of, or having pled guilty to:

- (i) Forgery; or
- (ii) Larceny; or
- (iii) Extortion; or
- (iv) Conspiracy to defraud; or
- (v) Willful failure to make required payments or reports to a governmental agency at any level, or filing false reports therewith, or of any similar offense or offenses; or
- (vi) Bribing or otherwise unlawfully influencing a public official or employee of any state or the United States; or
- (vii) Any crime, whether a felony or misdemeanor involving any gambling activity or physical harm to individuals or involving moral turpitude; or

(e) Allowing any person who has been convicted of, or forfeited bond on, any of the offenses included under (d) of this subsection, to participate in the management or operation of any activity regulated by the commission without written approval ahead of time from the commission or its director; or

(f) Being subject to current prosecution or pending charges, or appealing a conviction, for any of the offenses included under (d) of this subsection; or

(g) Denying the commission or its authorized representatives, including authorized local law enforcement agencies, access to any place where a licensed activity is conducted or failure to promptly produce for inspection or audit any book, record, document, or item required by law or commission rule; or

(h) Making a misrepresentation of, or failure to disclose, a material fact to the commission; or

(i) Having pursued or pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates probable cause to believe that the participation of such person in gambling or related activities would be inimical to the proper operation of an authorized gambling or related activity in this state. For the purposes of this section, occupational manner or context shall be defined as the systematic planning, administration, management, or execution of an activity for financial gain; or

(j) Being a career offender or a member of a career offender cartel or an associate of a career offender or career offender cartel in such a manner which creates probable cause to believe that the association is of such a nature as to be inimical to the policy of chapter 9.46 RCW or to the proper operation of the authorized gambling or related activities in this state. For the purposes of this section, career offender is defined as any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain utilizing such methods as are deemed criminal violations of the public policy of this state. A career offender cartel is defined as any group of persons who operate together as career offenders; or

(k) If a charitable or nonprofit organization, being deemed to be operating bingo primarily for gambling purposes and continuing to use program funds to subsidize the operation of gambling activities.

(4) An order of summary suspension takes effect immediately on service unless stated otherwise in the order of summary suspension.

NEW SECTION

WAC 230-17-170 Petition and hearing for stay of the summary suspension. (1) When the director summarily suspends a license or permit, the affected licensee or permittee may petition for a "stay of suspension" as explained in RCW 34.05.467 and 34.05.550(1).

(2) We must receive the petition in writing within fifteen days of service of the summary suspension.

(3) Within seven days of receipt of the petition, the presiding officer holds a hearing. If an administrative law judge is not available, the chairperson of the commission designates a commissioner to be the presiding officer. If the parties agree, they may have a continuance of the seven-day period.

(4) At the hearing, the only issues are whether the presiding officer:

- (a) Should grant a stay; or
- (b) Modify the terms of the suspension.

(5) Our argument at the hearing consists of the information we used to issue the summary suspension and we may add any information we find after we order the suspension.

(6) At the hearing, the licensee or permittee has the burden of demonstrating by clear and convincing evidence all of the following:

(a) The licensee or permittee is likely to prevail upon the merits of the evidence at hearing; and

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

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

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

(7) The initial stay of the summary suspension order whether given orally or in writing takes effect immediately unless stated otherwise.

NEW SECTION

WAC 230-17-175 Review of initial orders to stay a summary suspension. (1) Any party may petition the commissioners for review of an initial order to stay a summary suspension. The commissioners must receive the request for review in writing within twenty days of service of the order. If no party requests a hearing review within twenty days of service, the order becomes final for purposes of RCW 34.05.467.

(2) If we receive a timely petition for review, the commissioners will consider the petition at the next regularly scheduled meeting of the commission.

(a) The matters considered on review are limited to the record of the stay hearing; and

(b) A commissioner who acted as presiding officer is not disqualified from considering the petition for review, unless a

party demonstrates grounds for disqualification under the conditions set out in RCW 34.05.425; and

(c) The commissioners' decision is effective immediately, unless otherwise stated, and is final as set out in RCW 34.05.467.

(3) The outcome of the petition for review does not affect any future administrative hearing about their license or permit.

PETITIONS FOR DECLARATORY ORDERS

NEW SECTION

WAC 230-17-180 Petitions for declaratory orders.

(1) Any person may petition the commission for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the agency. The petition must set forth facts and reasons on which the petitioner relies to show:

(a) That uncertainty necessitating resolution exists; and

(b) That there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory option; and

(c) That the uncertainty adversely affects the petitioner; and

(d) That the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested.

(2) Within fifteen days after receipt of a petition for a declaratory order, the commission must give notice of the petition to all persons to whom notice is required by law, and may give notice to any other person it deems desirable.

(3) Within thirty days after receipt of a petition for a declaratory order, the commission, in writing, must do one of the following:

(a) Enter an order declaring the applicability of the statute, rule, or order in question to the specified circumstances; or

(b) Set the matter for specified proceedings to be held no more than ninety days after receipt of the petition and give reasonable notification to the person(s) of the time and place for such hearing and of the issues involved; or

(c) Set a specified time no more than ninety days after receipt of the petition by which it will enter a declaratory order; or

(d) Decline to enter a declaratory order, stating the reasons for its action.

(4) The time limits of subsection (3)(b) and (c) of this section may be extended by the commission for good cause.

(5) The commission may not enter a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

(6) A declaratory order has the same status as any other order entered by the commission in an adjudicative proceeding. Each declaratory order must contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusions.

(7) Any person petitioning the commission for a declaratory order pursuant to RCW 34.05.240 must generally adhere to the following form for such purpose.

(a) At the top of the page must appear the wording "before the Washington state gambling commission." On the left side of the page below the foregoing, the following caption must be set out: "In the matter of the petition of (name of petitioning party) for a declaratory order." Opposite the foregoing caption must appear the word "petition."

(b) The body of the petition must be set out in numbered paragraphs. The first paragraph must state the name and address of the petitioning party. The second paragraph must state all rules or statutes that may be brought into issue by the petition. Succeeding paragraphs must set out the state of facts relied upon in form similar to that applicable to complaints in civil actions before the superior courts of this state. The concluding paragraphs must contain the prayer of the petitioner. The petition must be subscribed and verified in the manner prescribed for verification of complaints in the superior courts of this state.

(c) The original must be filed with the commission. Petitions must be on white paper, either 8-1/2" x 11" or 8-1/2" x 13" in size.

RULE-MAKING PROCEDURES

NEW SECTION

WAC 230-17-185 Petitions for rule making. (1) Any person may petition the commission to adopt, change, or repeal a rule in Title 230 WAC. The petition must contain enough information so the commissioners and the public can understand the proposal.

(2) All persons must follow the requirements explained in RCW 34.05.330 for petitions for rule making.

NEW SECTION

WAC 230-17-190 Information required on a petition.

(1) If not submitted on standard forms, petitions for rule making must follow the requirements of RCW 34.05.330(4) and include:

(a) Commission name; and

(b) The reasons for:

(i) Adopting a new rule; or

(ii) Amending an existing rule; or

(iii) Repealing an existing rule.

(2) When someone is:

(a) Proposing a new rule, the petition should include:

(i) The text of the proposed rule; and

(ii) A description of the new rule requirements; and

(iii) A description of the effects of the new rule.

(b) Amending a rule, the petition should include:

(i) Title and number of the rule, for example, "WAC 230-03-040 Signing the application"; and

(ii) The text of your proposed rule change; and

(iii) A description of the effects of changing the rule.

(c) Requesting repeal of a rule, your petition should include:

(i) Title and number of the rule; and

(ii) A description of the effects of repealing the rule.

NEW SECTION

WAC 230-17-195 Locating petition for rule-making form. Petitioners may get a "petition for rule-making form" from:

(1) The office of financial management; or

(2) Our administrative office during regular business hours; or

(3) Our web site at www.wsgc.wa.gov.

NEW SECTION

WAC 230-17-200 Submitting a petition. (1) Petitioners must fax, e-mail, or mail petitions for rule change to the rules coordinator at our administrative office.

(2) We consider a petition submitted when we receive it at our administrative office.

WSR 07-17-070

PROPOSED RULES

PUBLIC EMPLOYMENT RELATIONS COMMISSION

[Filed August 13, 2007, 3:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-13-039.

Title of Rule and Other Identifying Information: Amendments to chapters 391-08, 391-25, 391-35, 391-45, 391-55, 391-65, and 391-95 WAC.

The following existing rules are being repealed: WAC 391-25-076, 391-35-026, 391-45-056, and 391-55-071.

The following existing rules are being amended: WAC 391-08-640, 391-08-650, 391-08-820, 391-25-051, 391-25-140, 391-25-430, 391-25-650, 391-25-660, 391-35-010, 391-35-190, 391-35-210, 391-45-110, 391-45-260, 391-45-310, 391-45-350, 391-55-070, 391-55-200, 391-55-255, 391-55-300, 391-55-310, 391-55-315, 391-55-320, 391-55-325, 391-55-330, 391-55-335, 391-55-340, 391-55-345, 391-55-350, 391-55-355, 391-65-110, 391-65-150, 391-95-010, 391-95-030, 391-95-050, 391-95-070, 391-95-130, 391-95-250, and 391-95-270.

The following new rules are being proposed: WAC 391-08-190, 391-08-905, 391-08-915, 391-08-925, 391-08-935, 391-08-940, 391-08-950, 391-08-960, 391-08-970, 391-25-071, (adopted as an emergency rule in May 2006), 391-25-436, and 391-95-220.

Hearing Location(s): Kirkland Large Conference Room, 9757 Juanita Drive N.E., Suite 201, Kirkland, WA 98034, on September 26, 2007, at 10:00.

Date of Intended Adoption: December 11, 2007.

Submit Written Comments to: Kenneth J. Latsch, Rules Coordinator, P.O. Box 40919, Olympia, WA 98504, e-mail KLatsch@perc.wa.gov, fax (360) 570-7334, by September 7, 2007.

Assistance for Persons with Disabilities: Contact Jim Lohr by September 21, 2007, (360) 570-7310.

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

agency practices and procedures, including updating rules to reflect administrative changes in agency functions, update certain rules adopted under the Personnel System Reform Act of 2002 to reflect a greater integration into standard agency practice, repeal certain rules adopted under the Personnel System Reform Act of 2002 that are no longer necessary, and amending certain rules to recommendations by clientele and agency staff to make certain changes in agency practice and procedure. Examples of housekeeping amendments and changes to chapter 391-08 WAC, and all areas of practice and procedure, include adopting rules pertaining to public records requests and placing a page limit upon briefs filed with the agency during proceedings under the Administrative Procedure Act, and clarifying when a decision is ripe for appeal before the full commission. Housekeeping amendments and changes in representation rules, chapter 391-25 WAC, include changes to lifespan of showing of interest cards, changes regarding an employer's obligation to maintain the status quo during the pendency of a representation election, and clarifying the cut-off date for employee eligibility to vote in representation elections. Housekeeping amendments and changes in unit clarification rules, chapter 391-35 WAC, include bargaining unit configurations under chapter 184, Laws of 2007 and RCW 41.56.060(2). Housekeeping amendments and changes in unfair labor practice rules, chapter 391-45 WAC, include clarifying the preliminary ruling process and adopting settlements conference rules. Housekeeping rules to impasse resolution rules, chapter 391-55 WAC, include clarifying that the code of professional conduct for labor mediators applies to agency mediators, clarification of interest arbitration processes, and clarifying that the fact-finding rules apply to state civil service employees under chapter 41.80 RCW. Housekeeping amendments and changes to grievance arbitration rules, chapter 391-65 WAC, including a clarification that the agency does not pay for expenses. Housekeeping amendments and changes to union security dispute rules, chapter 391-95 WAC, include clarifying union's obligation under chapter 41.80 RCW.

Reasons Supporting Proposal: In late 2005, commission staff convened a focus group to examine agency processes and procedures. This group included representatives from both labor and management. The focus group examined all of the commission's rules, and is [has] forwarded the following recommendation for rule amendments to the commission for adoption.

Statutory Authority for Adoption: For WAC 391-08-190, 391-08-640, 391-08-650 and 391-08-820 is RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060; for WAC 391-08-905, 391-08-915, 391-08-925, 391-08-935, 391-08-940, 391-08-950, 391-08-960 and 391-08-970 is RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 42.56.040; for WAC 391-25-051 and 391-25-071 is RCW 41.56.090, 41.59.050; for WAC 391-25-140, 391-25-430, 391-25-650 and 391-25-660 is RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060; for WAC 391-25-436 is RCW 41.58.050, 41.80.080; for WAC 391-35-010, 391-35-190 and 391-35-210 is RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060; for WAC 391-45-110, 391-45-260, 391-45-310 and 391-45-350 is RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060; for WAC 391-

55-070, 391-55-200, 391-55-255, 391-55-300, 391-55-310, 391-55-315, 391-55-320, 391-55-325, 391-55-330, 391-55-335, 391-55-340, 391-55-345, 391-55-350 and 391-55-355 is RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.090; for WAC 391-65-110 and 391-65-150 is RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060; and for WAC 391-95-010, 391-95-030, 391-95-050, 391-95-070, 391-95-130, 391-95-220, 391-95-250 and 391-95-270 is RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The agency is proposing that these rule changes be adopted.

Name of Agency Personnel Responsible for Drafting: Dario de la Rosa, 112 Henry Street, Suite 300, Olympia, WA 98504, (360) 570-7328; **Implementation and Enforcement:** Kenneth J. Latsch, 112 Henry Street, Suite 300, Olympia, WA 98504, (360) 570-7320.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Agency rules only obligate public employers, public employees, and unions representing public employees, and do not impose costs on profit-making businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Agency rules are excepted by RCW 34.05.328 (5)(a)(i).

August 13, 2007
Kenneth J. Latsch
Rules Coordinator

NEW SECTION

WAC 391-08-190 Prefiling of collective bargaining agreements. The agency shall make available a procedure for parties to proceedings before the agency to prefile collective bargaining agreements with the agency in accordance with this section, and to thereafter incorporate prefiled contracts into other filings, by reference. The prefiled copy will then take the place of filing copies otherwise required by rules in Title 391 WAC.

(1) An employer and exclusive bargaining representative who request prefiling of their collective bargaining agreement under this section must jointly file a written request with the agency.

(a) The requesting parties shall use the form prescribed by the executive director.

(b) The requesting parties shall attach or enclose a complete electronic copy of the collective bargaining agreement (in Adobe Acrobat, WordPerfect, or Microsoft Word format).

(c) The requesting parties shall attach photocopies of certain pages of the original collective bargaining agreement, as follows:

(i) The front cover or first page(s) showing the names of the parties and the identification of the bargaining unit(s) covered;

(ii) The page(s) containing the effective date and termination dates of the collective bargaining agreement; and

(iii) The page(s) containing the signatures of the parties' representatives.

(2) Upon the filing of a request conforming to subsection (1) of this section, the agency shall put the prefiled collective bargaining agreement into an electronic data base.

(a) The collective bargaining agreements contained in the electronic data base shall be open to public inspection and copying.

(b) The agency shall issue the parties a confirmation code unique to that collective bargaining agreement.

(3) After issuance of a confirmation code under subsection (2)(b) of this section, the parties are authorized to incorporate that prefiled collective bargaining agreement into any paper subsequently filed with the agency under Title 391 WAC, by referring to the confirmation code in the subsequent document.

(4) The authorization in subsection (3) of this section shall terminate on the expiration date originally stated in the prefiled collective bargaining agreement.

(5) The authorization in subsection (3) of this section shall terminate if there is any amendment or change to the prefiled collective bargaining agreement. If the parties submit their amended agreement under subsection (1) of this section, a new confirmation code shall be issued under subsection (2) of this section.

AMENDATORY SECTION (Amending WSR 98-14-112, filed 7/1/98, effective 8/1/98)

WAC 391-08-640 Adjudicative proceedings—

Appeals. Actions by the executive director and other agency staff members in adjudicative proceedings under the Administrative Procedure Act (cases under chapters 391-25, 391-35, 391-45 and 391-95 WAC) are taken under authority delegated by the commission.

(1) The parties shall have the right to appeal to the commission, as follows:

(a) Under chapter 391-25 WAC, a direction of election or direction of cross-check and other rulings in the proceedings up to the issuance of a tally are interim orders, and may only be appealed to the commission by objections under WAC 391-25-590 after the election or cross-check.

(b) Under chapter 391-25 WAC, an order issued under WAC 391-25-390 or 391-25-510 and any rulings in the proceedings up to the issuance of the order, as well as rulings that the employer or employees are subject to the jurisdiction of the commission, may be appealed to the commission under WAC 391-25-660.

(c) Under chapter 391-35 WAC, an order issued under WAC 391-35-190 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission under WAC 391-35-210.

(d) Under chapter 391-45 WAC, an order issued under WAC 391-45-110(1) or 391-45-310 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission under WAC 391-45-350.

(e) Under chapter 391-95 WAC, an order issued under WAC 391-95-150(1) or 391-95-250 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission under WAC 391-95-270.

(2) The commission will only consider amicus (friend of the forum) briefs filed in conformity with this subsection.

(a) The person or organization desiring to file an amicus brief must:

(i) Obtain a copy of the decision on appeal, the notice of appeal, and the brief of the party whose position they intend to support;

(ii) Limit any amicus brief to particular issues already raised by the notice of appeal;

(iii) Limit any legal analysis to arguments that differ from those advanced by the party it supports;

(iv) Exclude restatement or reargument of the facts, except as necessary to legal arguments under (a)(iii) of this subsection;

(v) Limit any amicus brief to twenty-five pages in total length (double-spaced, 12-point type); and

(vi) File the amicus brief with the commission within fourteen days following filing and service of the brief of the party whose position it supports, and must serve copies of any such brief on each of the original parties in the case.

(b) The original parties to the case may, within fourteen days following the filing and service of an amicus brief, file and serve written responses to the amicus brief.

(c) A person or organization that files an amicus brief does not thereby acquire any right to reply to the responses filed by the original parties to the case.

(d) A person or organization that files an amicus brief does not thereby become a party to the case for purposes of any further proceedings or appeal.

(3) The commission may, on its own motion, review any order which is subject to appeal under subsection (1) of this section, by giving written notice to all parties within thirty days following the issuance of the order.

AMENDATORY SECTION (Amending WSR 96-07-105, filed 3/20/96, effective 4/20/96)

WAC 391-08-650 ((Case)) Docketing and numbering. The agency maintains a computerized ((ease)) docketing system which is used to track and manage all requests for the ((dispute resolution)) services provided by the agency.

(1) Each case processed or activity provided by the agency is identified by a unique number consisting of four components.

(a) The first component ~~((consisting of))~~ is a ((five-digit)) number, ~~((indicates))~~ indicating the sequential number of cases or activities docketed since the agency commenced operations on January 1, 1976.

(b) The second component ~~((consisting of one))~~ is an alphabetic code, ~~((indicates))~~ indicating the type of ((dispute being processed)) case or activity, as follows:

"A" indicates a grievance arbitration ((proceeding)) under chapter 391-65 WAC, ~~((wherein))~~ in which an agency staff member is to interpret or apply an existing collective bargaining agreement.

"B" indicates a grievance arbitration under chapter 41.06 RCW, in which an agency staff member assists the Washington personnel resources board under an interagency agreement per RCW 41.80.902.

"C" indicates a unit clarification ((proceeding)) under chapter 391-35 WAC.

"D" indicates a ~~((declaratory ruling or))~~ declaratory order ~~((proceeding))~~ under the Administrative Procedure Act ~~((, and formerly included proceedings under chapter 391-95 WAC concerning assertion of the right of nonassociation by employees subject to union security obligations))~~.

"E" indicates a question concerning representation ~~((proceeding))~~ under chapter 391-25 WAC.

"F" indicates a fact-finding ~~((proceeding))~~ under chapter 391-55 WAC, to recommend the terms of a collective bargaining agreement.

"G" indicates a grievance mediation ~~((proceeding))~~ under chapter 391-55 WAC ~~((after January 1, 1996))~~, concerning the interpretation or application of an existing collective bargaining agreement.

"H" indicates a grievance mediation conducted under chapter 41.06 RCW, in which agency staff assists the Washington department of personnel under an interagency agreement per RCW 41.80.902.

"I" indicates an interest arbitration ~~((proceeding))~~ under chapter 391-55 WAC, to establish the terms of a collective bargaining agreement.

"M" indicates a mediation ~~((proceeding))~~ under chapter 391-55 WAC, ~~((limited after January 1, 1996, to disputes))~~ concerning the terms of a collective bargaining agreement.

"N" indicates ~~((a proceeding))~~ nonassociation under chapter 391-95 WAC ~~((after January 1, 1996))~~, concerning ~~((assertion of the right of nonassociation by employees))~~ an employee subject to union security obligations.

"P" indicates a request for a list of arbitrators from the commission's dispute resolution panel for grievance arbitration ~~((proceedings))~~ under chapter 391-65 WAC.

"S" indicates a settlement conference conducted under WAC 391-45-260 or 391-95-220.

"T" indicates a training activity provided under chapter 41.58 RCW or WAC 391-08-003.

"U" indicates an unfair labor practice ~~((proceeding))~~ under chapter 391-45 WAC.

(c) The third component ~~((, consisting of))~~ is a two-digit number, ~~((indicates))~~ indicating the calendar year in which the case is docketed.

(d) The fourth component ~~((, consisting of))~~ is a ~~((five-digit))~~ number, ~~((indicates))~~ indicating the sequential number of the case within the type ~~((of dispute))~~ identified in the second component, since the agency commenced operations on January 1, 1976.

(2) Cases and activities involving various departments or divisions of an employer entity are docketed under the name of the employer entity, except that state general government agencies are identified by "state" supplemented by words or an acronym identifying the agency from which the case or activity arises.

(3) Cases and activities filed by an employee organization or labor organization on behalf of one or more individual employees are docketed under the name of the organization, even if employees represented by that organization are named ~~((individually))~~ in the pleadings or are affected by the outcome of the proceedings.

(4) Cases filed by ~~((two or more))~~ individual employees are docketed separately for each employee.

(5) Cases filed by an individual employee involving multiple respondents are docketed separately for each respondent.

AMENDATORY SECTION (Amending WSR 96-07-105, filed 3/20/96, effective 4/20/96)

WAC 391-08-820 Agency offices. (1) The agency maintains its principal office in the city of Olympia, Washington.

(a) The street address of the Olympia office is:

Public Employment Relations Commission
~~((603 Evergreen Plaza
711 Capitol Way))~~ 112 Henry Street N.E., Suite 300
Olympia, Washington 98504-0919.

(b) The mailing address of the Olympia office is:

Public Employment Relations Commission
P.O. Box 40919
Olympia, Washington 98504-0919.

(2) The agency maintains a branch office at:

Public Employment Relations Commission
Suite ~~((450))~~ 201
9757 Juanita Drive NE
Kirkland, Washington 98034.

NEW SECTION

WAC 391-08-905 Public records—Authority and purpose. (1) RCW 42.56.070(1) requires each agency to make nonexempt "public records" available for inspection and copying under published rules. The term "public records" includes documents containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by the agency, including electronic records.

(2) The purpose of the rules in this series is to implement RCW 42.56.070(1) for records of the public employment relations commission. These rules provide information to persons wishing to request access to public records of the agency, and establish expectations both of requestors and of agency staff who are to assist members of the public in obtaining such access.

NEW SECTION

WAC 391-08-915 Records exempt from disclosure. While the purpose of chapter 42.56 RCW is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government, and while chapter 42.56 RCW and these rules are generally interpreted in favor of disclosure, provisions in chapter 42.56 RCW and other laws exempt or prohibit disclosure of some records.

(1) RCW 42.56.070(2) requires each agency to set forth "for informational purposes" any law outside of chapter 42.56 RCW that exempts or prohibits the disclosure of cer-

tain records. The following preclude inspection and copying of some agency documents:

(a) RCW 34.05.446(4) authorizes the issuance of protective orders in adjudicatory proceedings, and materials subject to a protective order are thereby excluded from public disclosure.

(b) RCW 41.59.120(3) gives the parties to a dispute involving school district certificated employees a right to consider fact-finder recommendations privately for a period of seven calendar days after they are issued, and precludes public disclosure of those findings and recommendations if the parties reach an agreement within that period.

(c) RCW 41.80.090 gives the parties to a dispute involving state civil service employees a right to consider fact-finder recommendations privately for a period of fourteen calendar days after they are issued, and precludes public disclosure of those findings and recommendations if the parties reach an agreement within that period.

(2) The agency shall not disclose documents that are exempted from public inspection and copying outlined in chapter 41.56 RCW.

(3) The agency shall not disclose lists of individuals requested for commercial purposes.

NEW SECTION

WAC 391-08-925 Agency contact information—Public records officer. (1) Any person wishing to request access to public records of the agency, or seeking assistance in making such a request, should direct their inquiry to "public records officer" at the Olympia office of the agency.

(2) The public records officer and the agency will provide the "fullest assistance" to requestors in making requests for identifiable public records. The public records officer shall:

(a) Oversee compliance with chapter 42.56 RCW, but can assign another agency staff member to process any request;

(b) Oversee maintenance of searchable indexes of agency decisions and agency documents;

(c) Ensure that public records of the agency are protected from damage or disorganization; and

(d) Prevent fulfilling public records requests from causing excessive interference with essential functions of the agency.

NEW SECTION

WAC 391-08-935 Availability of public records. (1) Public records are available for inspection during normal business hours at the Olympia office of the agency: 8:00 a.m. to 5:00 p.m. on Mondays through Fridays, excluding legal holidays.

(2) A searchable data base of decisions and orders issued by or on behalf of the agency in adjudicative proceedings under the state Administrative Procedure Act, chapter 34.05 RCW, is available for use by the agency staff and members of the public, without charge, on the agency's web site: www.perc.wa.gov.

(3) A variety of additional documents are available, without charge, on the agency web site: www.perc.wa.gov.

Requestors are encouraged to view the documents available on the web site prior to submitting a records request to the agency.

(4) Requests for copies of public records must be addressed to the public records officer in the agency's Olympia office.

NEW SECTION

WAC 391-08-940 Requests for public records—Processing of public records requests. (1) Any person wishing to inspect or copy public records of the agency is encouraged to submit the request to the agency public records officer in writing, using a form provided by the agency, a letter, a fax, or electronic mail. The request should include the following information:

(a) The name of requestor;

(b) The address of requestor;

(c) Other contact information for the requestor, including telephone numbers, fax numbers, and e-mail addresses;

(d) Identification of the public records being requested, in terms adequate for the public records officer to locate the records.

If the request is to have copies of the records sent, the requestor shall clearly indicate that inspection is not requested.

(2) When the public records officer accepts a request made in-person or by telephone, the public records officer shall provide the requestor a written confirmation of the request listing the exact records that are understood to have been requested.

(3) The agency staff shall affix the agency date stamp or otherwise clearly indicate the date when a public records request is received by the agency.

(4) The public records officer shall exercise discretion to process public records requests in the order received, or in an order that will allow the most requests to be processed in the most efficient manner.

(5) Within five business days after receipt of a request, the public records officer shall do one or more of the following:

(a) Make the records available for inspection;

(b) Send requested copies of the records, and if necessary, upon payment of a deposit or the full charge for copying of the records;

(c) Provide a reasonable estimate of when the requested records will be available;

(d) Request clarification from the requestor, if the request is unclear or does not sufficiently identify the requested records:

(i) Clarification may be requested by telephone; and

(ii) The public records officer may revise the estimate of when records will be available; or

(e) Deny a request for records excluded from disclosure as described in WAC 391-08-810 or 391-08-915, with a brief explanation of why the requested record is being withheld. If only a portion of a record is exempt from disclosure, the public records officer shall redact the exempt portions, provide the remaining portions, and explain to the requestor why portions of the record are being redacted;

(f) To protect the rights of others, the public records officer may:

(i) Provide notice to others whose rights may be affected by a public records request; and

(ii) Withhold the requested records for a time sufficient for the person(s) whose rights may be affected to contact the requestor about the matter or seek an order from a court to prevent or limit the disclosure.

(6) If the public records officer does not respond within five business days after receipt of a request for public disclosure, the requestor should contact the public records officer to determine the reason for the lack of a response.

(7) The agency shall provide space in its Olympia office where requestors can inspect public records.

(a) The agency makes an effort to maintain its records in a reasonably organized manner, and to protect its records from damage and disorganization, but files concerning pending cases may be taken apart from time to time for business purposes of the agency.

(b) A person inspecting agency records shall not disassemble or alter any file or document.

(c) A person inspecting agency records shall not take any records from the agency office.

(d) When a request is for a large number of records, the public records officer may exercise discretion to provide access for inspection in installments, if it would be practical to provide the records in that way.

(e) Requestors must review assembled records within thirty days after the agency notifies them that the records (or an installment of the records) are available for inspection. If the requestor or a representative of the requestor fails to make arrangements to review the records within that period, the agency may discontinue searching for additional installments, may close the request, and may refile the assembled records. A subsequent request for the same or similar records shall be processed as a new request.

(f) The agency shall provide staff assistance to make any copies requested by persons inspecting public records. Requestors shall inform the agency staff as to which documents they wish to have copied.

(g) When the inspection of the requested records is complete, when a requestor withdraws the request, or when a requestor fails to inspect the records in a timely manner, the public records officer shall close the request and indicate to the requestor that the agency has completed a diligent search for the requested records.

(8) If the agency becomes aware of additional relevant documents after informing a requestor that the agency has provided all available records, the agency shall promptly notify the requestor of the additional documents and provide a written explanation as to why they were not previously located and provided.

NEW SECTION

WAC 391-08-950 Reserved.

NEW SECTION

WAC 391-08-960 Costs for copies of public records.

(1) There is no fee for inspecting public records.

(2) A requestor may obtain standard black and white photocopies for fifteen cents per page.

(3) The cost of electronic copies of existing records on a floppy disk is actual cost per disk.

(4) The cost of electronic copies of existing records on a CD-ROM disc is actual cost per disk.

(5) The public records officer may also charge actual costs of mailing.

(6) The copies of public records provided under chapter 42.17 RCW are exempt from state sales tax under RCW 82.12.02525.

(7) Before beginning to make requested copies, the public records officer may require payment from the requestor, as follows:

(a) A deposit of up to ten percent of the estimated costs of copying and postage for all of the records selected by a requestor who has made no previous requests to the agency and/or who has paid in a timely manner for all records previously provided by the agency;

(b) Prepayment of the full estimated costs of copying and postage for all of the records selected by a requestor who has not paid, or was late in paying, for records previously provided by the agency;

(c) Prepayment of the full estimated costs of customized access to electronic records approved under WAC 391-08-950.

(8) The public records officer may require payment in full from a party that has made a deposit under subsection (a) of this section before providing all of the requested records, or may require payment in full for an installment of a body of requested records that is being provided in two or more installments, before moving ahead with the production of additional installments.

(9) Costs for records shall be payable in cash or by checks made out to "public employment relations commission."

NEW SECTION

WAC 391-08-970 Review of denials of public records. (1) Any person who objects to a denial or partial denial of a records request by the agency public records officer may appeal to the executive director by filing in writing as provided in WAC 391-08-120. The appeal shall specifically identify the records requested and the written reason(s) given for the denial of the request.

(2) The executive director shall consider the appeal and shall issue a written decision within two business days, either affirming or reversing the denial of the request.

(3) Parties dissatisfied with a written affirmation of a denial of a public records request may have a right to further review under RCW 42.56.530. The attorney general has adopted rules on such requests in WAC 44-06-160.

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

WAC 391-25-051 Special provision—Individual providers ~~((under))~~ of home care ~~((quality authority))~~ under RCW 74.39A.270 and 74.39A.300. This rule consolidates special rules applicable to individual providers under ~~((chap-~~

~~ter 3, Laws of 2002, Initiative Measure No. 775 (I-775) passed by Washington voters in November of 2001. I-775 extended)) RCW 74.39A.270 and 74.39A.300, which extend the coverage of chapter 41.56 RCW to "individual providers" defined as a person, including a personal aide, who has contracted with the department of social and health services to provide personal care or respite care services to functionally disabled persons under the Medicaid personal care, community options program entry system, chore services program, or respite care program, or to provide respite care or residential services and support to persons with developmental disabilities under chapter 71A.12 RCW, or to provide respite care as defined in RCW 74.13.270.~~

(1) The showing of interest requirement in WAC 391-25-110 is modified for the bargaining unit affected by ~~((I-775))~~ RCW 74.39A.270 and 74.39A.300, to require a ten percent showing of interest for either a petitioner or an intervenor.

(2) The posting of notice requirement in WAC 391-25-140 is inapplicable to the bargaining unit affected by ~~((I-775))~~ RCW 74.39A.270 and 74.39A.300.

(3) The description of bargaining unit requirement of WAC 391-25-190 is limited to a single, statewide unit of individual providers under ~~((I-775))~~ RCW 74.39A.270 and 74.39A.300.

(4) The description of bargaining unit requirement of WAC 391-25-210(2) is limited to a single, statewide unit of individual providers under ~~((I-775))~~ RCW 74.39A.270 and 74.39A.300.

(5) The provisions of WAC 391-25-210(3) relating to alternative units or mergers of units are inapplicable to the bargaining unit affected by ~~((I-775))~~ RCW 74.39A.270 and 74.39A.300.

(6) The posting requirement in WAC 391-25-220(2), relating to investigation statements, is inapplicable to the bargaining unit affected by ~~((I-775))~~ RCW 74.39A.270 and 74.39A.300.

(7) The posting requirement in WAC 391-25-230(2), relating to election agreements, is inapplicable to the bargaining unit affected by ~~((I-775))~~ RCW 74.39A.270 and 74.39A.300.

(8) The cross-check procedures in WAC 391-25-250, 391-25-391, and 391-25-410 are inapplicable to the bargaining unit affected by ~~((I-775))~~ RCW 74.39A.270 and 74.39A.300.

(9) The unit determination election procedures in WAC 391-25-420 are inapplicable to the bargaining unit affected by ~~((I-775))~~ RCW 74.39A.270 and 74.39A.300.

(10) The requirements of WAC 391-25-430, relating to posting of election notices on the employer's premises, is inapplicable to the bargaining unit affected by ~~((I-775))~~ RCW 74.39A.270 and 74.39A.300.

(11) Any representation election for the bargaining unit affected by ~~((I-775))~~ RCW 74.39A.270 and 74.39A.300 shall be conducted by mail ballot under WAC 391-25-470, with the following modifications:

(a) Together with the procedures for casting ballots, the notice supplied to individual providers may describe the collective bargaining rights established by ~~((I-775))~~ RCW 74.39A.270 and 74.39A.300 and agreements reached by a

petitioning union and the employer concerning the election process;

(b) The notice and ballot materials supplied to individual providers shall be set forth in English and Spanish;

(c) The ballot materials supplied to individual providers shall include a card return-addressed to the commission, by which ~~((individual providers))~~ eligible voters can individually request ballot materials in ~~((Cambodian, Korean, Mandarin, Russian, Tagalog, Ukrainian, or Vietnamese))~~ languages other than English which have been specified by one or more of the parties in an investigation conference conducted under WAC 391-25-220. Upon receipt of a request ~~((from an individual provider))~~ card, the agency shall supply ballot materials to the ~~((individual provider))~~ eligible voter in the requested language.

(d) At least ~~((twenty-four))~~ twenty-eight days shall be provided between the date on which ballot materials are mailed to individual providers and the deadline for return of cast ballots to the commission.

(e) The executive director shall have discretion to vary tally arrangements and procedures from those customarily used, because of the large size of the bargaining unit involved.

(f) The reference in ~~((WAC 391-25-470 to))~~ WAC 391-25-140 through 391-25-470 shall be interpreted in light of subsection (2) of this section.

(12) The procedure for on-site elections in WAC 391-25-490 is inapplicable to the bargaining unit affected by ~~((I-775))~~ RCW 74.39A.270 and 74.39A.300.

NEW SECTION

WAC 391-25-071 Special provision—Family child care providers. (1) This emergency rule consolidates special procedures applicable to family child care providers under the Access to Quality Family Child Care Act (FCCA), chapter 54, Laws of 2006, which became effective March 15, 2006, upon signature by the governor. The FCCA extended the coverage of chapter 41.56 RCW to any "family child care provider" defined as a person who:

(a) Provides regularly scheduled care for a child or children in the home of the provider or in the home of the child or children for periods of less than twenty-four hours or, if necessary due to the nature of the parent's work, for periods equal to or greater than twenty-four hours;

(b) Receives child care subsidies; and

(c) Is either licensed by the state under RCW 74.15.030 or is exempt from licensing under chapter 74.15 RCW.

(2) The posting of notice requirement in WAC 391-25-140 is inapplicable to the bargaining unit affected by the FCCA.

(3) The description of bargaining unit requirement of WAC 391-25-190 is limited to a single, statewide unit of family child care providers under the FCCA.

(4) The description of bargaining unit requirement of WAC 391-25-210(2) is limited to a single, statewide unit of family child care providers under the FCCA.

(5) The provisions of WAC 391-25-210(3) relating to alternative units or mergers of units are inapplicable to the bargaining unit affected by the FCCA.

(6) The posting requirement in WAC 391-25-220(2), relating to investigation statements, is inapplicable to the bargaining unit affected by the FCCA.

(7) The posting requirement in WAC 391-25-230(2), relating to election agreements, is inapplicable to the bargaining unit affected by the FCCA.

(8) The cross-check procedures in WAC 391-25-250, 391-25-391, and 391-25-410 are inapplicable to the bargaining unit affected by the FCCA.

(9) The unit determination election procedures in WAC 391-25-420 are inapplicable to the bargaining unit affected by the FCCA.

(10) The requirements of WAC 391-25-430, relating to posting of election notices on the employer's premises, is inapplicable to the bargaining unit affected by the FCCA.

(11) Any representation election for the bargaining unit affected by the FCCA shall be conducted by mail ballot under WAC 391-25-470, with the following modifications:

(a) Together with the procedures for casting ballots, the notice supplied to family child care providers may describe the collective bargaining rights established by the FCCA and agreements reached by the parties to the proceedings concerning the election process;

(b) The notice and ballot materials supplied to all family child care providers shall be set forth in English and Spanish;

(c) The ballot materials supplied to family child care providers shall include a card return-addressed to the commission, by which eligible voters can individually request ballot materials in languages other than English which have been specified by one or more of the parties in an investigation conference conducted under WAC 391-25-220. Upon receipt of a request card, the agency shall supply ballot materials to the eligible voter in the requested language.

(d) At least twenty-eight days shall be provided between the date on which ballot materials are mailed to family child care providers and the deadline for return of cast ballots to the commission.

(e) The executive director shall have discretion to vary tally arrangements and procedures from those customarily used, because of the large size of the bargaining unit involved, so long as the principles of secret balloting are preserved.

(f) The reference in WAC 391-25-140 through 391-25-470 shall be interpreted in light of subsection (2) of this section.

(12) The procedure for on-site elections in WAC 391-25-490 is inapplicable to the bargaining unit affected by the FCCA.

(13) The procedure in WAC 391-25-531 is inapplicable to the bargaining unit affected by the FCCA, and the need for a runoff election shall be determined under WAC 391-25-530(2).

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-140 Notice to employees—Limitations on employer actions. (1) The employer shall post a copy of the petition and a notice, in the form specified by the commission, to inform employees of the existence of proceedings

under this chapter. The agency shall furnish the employer with copies of the petition and notice, and the employer shall post them in conspicuous places on its premises where notices to affected employees are usually posted. The petition and notice shall remain posted until a certification or interim certification is issued in the proceeding.

(2) Changes of the status quo concerning wages, hours or other terms and conditions of employment of employees in the bargaining unit are prohibited during the period that a petition is pending before the commission under this chapter.

(3) The employer shall not express or otherwise indicate any preference between competing organizations, where two or more employee organizations are seeking to represent its employees.

(4) Where a petition filed under this chapter involves employees who are represented for the purposes of collective bargaining, the employer shall suspend negotiations with the incumbent exclusive bargaining representative on a successor collective bargaining agreement involving employees affected by the petition. The employer and incumbent union may proceed with negotiations covering employees not affected by the petition(~~(, and)~~).

(5) Except as provided in subsection (6) of this section, if the petition is dismissed under WAC 391-25-390 and is timely appealed under WAC 391-25-660, subsections (1) through (4) of this section shall remain in effect until the commission issues a final decision under WAC 391-25-670.

(6) The employer and incumbent union may petition the commission to suspend application of subsections (2) through (4) of this section upon a showing of good cause, such as that the suspension of negotiations will risk irreparable harm for which legal remedies are unavailable.

(7) The employer and incumbent union shall resume negotiations on a successor agreement covering the affected employees after the question concerning representation is resolved, if the incumbent exclusive bargaining representative retains its status.

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-430 Notice of election. When an election is to be conducted, the agency shall furnish the employer with appropriate notices, and the employer shall post them in conspicuous places on its premises where notices to affected employees are usually posted. The notice shall contain:

(1) The description of the bargaining unit or voting group(s) in which the election is to be conducted.

(2) The deadline for return of mail ballots or the date(s), hours and polling place(s) for an on-site election.

(3) The cut-off date, if any, or other criteria to be applied in establishing eligibility to vote in the election, including that the eligible employees are limited to those who continue to be employed within the bargaining unit (~~(on the day of the tally)~~) when they cast a ballot in an on-site election or at the deadline for return of mail ballots.

(4) A statement of the purpose of the election and the question to be voted upon or a sample ballot.

Notices of the election shall be posted for at least seven days, and shall remain posted until a tally of ballots has been

issued. The day of posting shall be counted, but the day on which the polls are opened for an on-site election shall not be counted.

NEW SECTION

WAC 391-25-436 Special provision—State civil service employees. Separate and apart from commission precedents on campaign rights, this special rule is adopted as required by RCW 41.80.080. During the period a notice is posted under WAC 391-25-430, employees in a bargaining unit under chapter 41.80 RCW and representatives of employee organizations named on the ballot shall have the right to conduct campaign activities on the employer's premises during working hours, so long as the work of the employees and the operations of the employer are not disturbed.

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-650 Briefs and written arguments on objections. (1) The due date for any appeal brief which the party filing an objection desires to have considered by the commission shall be fourteen days following the later of:

(a) The issuance of a transcript of a hearing held under WAC 391-25-630(2); or

(b) The filing of objections under WAC 391-25-590 (1)(b).

Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(2) The due date for any responsive brief which other parties desire to have considered by the commission shall be fourteen days following the date on which that party is served with an appeal brief. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(3) The executive director or designee may extend the due date for an appeal brief or responsive brief. Such requests shall only be considered if made on or before the date the brief is due, and in compliance with WAC 391-08-180. Extensions of time shall not be routine or automatic.

(4) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief in order to address novel or complex issues raised by the objections; and

(b) The commission grants such a motion for good cause shown.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-25-660 Appeals from orders and jurisdictional rulings. An order issued under WAC 391-25-390 or 391-25-510 and any rulings in the proceedings up to the issuance of the order, as well as rulings that the employer or

employees are subject to the jurisdiction of the commission, may be appealed to the commission as follows:

(1) The due date for a notice of appeal shall be twenty days following the date of issuance of the order being appealed. The time for filing a notice of appeal cannot be extended.

(2) Where an order has been appealed, the due date for a notice of cross-appeal by other parties shall be seven days after the last date on which a notice of appeal could be timely. The time for filing a notice of cross-appeal cannot be extended.

(3) A notice of appeal or notice of cross-appeal shall identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error.

(4) A party which desires to cite or reassert a document previously filed in the matter shall do so by reference to the document already on file, and shall not file or attach another copy of the document to papers filed regarding an appeal.

(5) A notice of appeal or notice of cross-appeal shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(6) The due date for any appeal brief which the party filing an appeal or cross-appeal desires to have considered by the commission shall be fourteen days following the filing of its notice of appeal or notice of cross-appeal. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(7) The due date for any responsive brief which a party desires to have considered by the commission shall be fourteen days following the date on which that party is served with an appeal brief. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(8) The executive director or designee may extend the due date for an appeal brief or responsive brief. Such requests shall only be considered if made on or before the date the brief is due, and in compliance with WAC 391-08-180. Extensions of time shall not be routine or automatic.

(9) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief in order to address novel or complex issues raised by the appeal; and

(b) The commission grants such a motion for good cause shown.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 391-25-076

Special provision—State civil service employees.

AMENDATORY SECTION (Amending WSR 96-07-105, filed 3/20/96, effective 4/20/96)

WAC 391-35-010 Petition for clarification of an existing bargaining unit—Who may file. (1) A petition for clarification of an existing bargaining unit may be filed by the employer, the exclusive representative, or their agents, or by the parties jointly.

(2) The commission will not accept a petition for unit clarification regarding positions that are vacant.

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-35-190 Proceedings before the executive director. (1) The executive director may proceed upon the record, after submission of briefs or after hearing, as may be appropriate. The executive director shall determine the status of each position, classification or group of employees over which there is a disagreement and issue an order clarifying bargaining unit, dismiss the petition or make other disposition of the matter.

(2) Where the executive director determines that employee eligibility issues exist, the executive director may delegate authority to the hearing officer to decide those issues.

(3) Rulings in the proceedings up to the issuance of an order under this section are interim orders, and may only be appealed to the commission by a notice of appeal filed after the issuance of an order under this section.

(4) Unless appealed to the commission under WAC 391-35-210, a decision issued under this section shall be the final order of the agency, with the same force and effect as if issued by the commission.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-35-210 Appeals. An order issued under WAC 391-35-190 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission as follows:

(1) The due date for a notice of appeal shall be twenty days following the date of issuance of the order being appealed. The time for filing a notice of appeal cannot be extended.

(2) Where an order has been appealed, the due date for a notice of cross-appeal by other parties shall be seven days after the last date on which a notice of appeal could be timely. The time for filing a notice of cross-appeal cannot be extended.

(3) A notice of appeal or notice of cross-appeal shall identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error.

(4) A party which desires to cite or reassert a document previously filed in the matter shall do so by reference to the document already on file, and shall not file or attach another copy of the document to papers filed regarding an appeal.

(5) A notice of appeal or notice of cross-appeal shall be filed at the commission's Olympia office as required by WAC

391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(6) The due date for any appeal brief which the party filing an appeal or cross-appeal desires to have considered by the commission shall be fourteen days following the filing of its notice of appeal or notice of cross-appeal. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(7) The due date for any responsive brief which a party desires to have considered by the commission shall be fourteen days following the date on which that party is served with an appeal brief. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(8) The executive director or designee may extend the due date for an appeal brief or responsive brief. Such requests shall only be considered if made on or before the date the brief is due, and in compliance with WAC 391-08-180. Extensions of time shall not be routine or automatic.

(9) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief in order to address novel or complex issues raised by the appeal; and

(b) The commission grants such a motion for good cause shown.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 391-35-026

Special provision—State civil service employees.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-110 Deficiency notice—Preliminary ruling—Deferral to arbitration. The executive director or a designated staff member shall determine whether the facts alleged in the complaint may constitute an unfair labor practice within the meaning of the applicable statute.

(1) If the facts alleged do not, as a matter of law, constitute a violation, a deficiency notice shall be issued and served on all parties, identifying the defects and specifying a due date for the filing and service of an amended complaint. If the defects are not cured in a timely manner, an order shall be issued and served, dismissing the defective allegation(s) and stating the reasons for that action. Unless appealed to the commission under WAC 391-45-350, an order of dismissal issued under this subsection shall be the final order of the agency on the defective allegation(s), with the same force and effect as if issued by the commission.

(2) If one or more allegations state a cause of action for unfair labor practice proceedings before the commission, a preliminary ruling summarizing the allegation(s) shall be issued and served on all parties.

~~((The))~~ (a) A preliminary ruling forwarding a case for further proceedings is an interim order which may only be appealed to the commission by a notice of appeal filed after issuance of an examiner decision under WAC 391-45-310.

(b) The preliminary ruling limits the scope of proceedings before an examiner and the commission. A complainant who claims that the preliminary ruling failed to address one or more causes of action it sought to advance in the complaint must, prior to the issuance of a notice of hearing, seek clarification from the person that issued the preliminary ruling.

(c) The preliminary ruling shall establish the due date for the respondent to file its answer.

(3) The agency may defer the processing of allegations which state a cause of action under subsection (2) of this section, pending the outcome of related contractual dispute resolution procedures, but shall retain jurisdiction over those allegations.

(a) Deferral to arbitration may be ordered where:

(i) Employer conduct alleged to constitute an unlawful unilateral change of employee wages, hours or working conditions is arguably protected or prohibited by a collective bargaining agreement in effect between the parties at the time of the alleged unilateral change;

(ii) The parties' collective bargaining agreement provides for final and binding arbitration of grievances concerning its interpretation or application; and

(iii) There are no procedural impediments to a determination on the merits of the contractual issue through proceedings under the contractual dispute resolution procedure.

(b) Processing of the unfair labor practice allegation under this chapter shall be resumed following issuance of an arbitration award or resolution of the grievance, and the contract interpretation made in the contractual proceedings shall be considered binding, except where:

(i) The contractual procedures were not conducted in a fair and orderly manner; or

(ii) The contractual procedures have reached a result which is repugnant to the purposes and policies of the applicable collective bargaining statute.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-260 Settlement conference. Separate from any prehearing conference concerning procedural matters held by the examiner under WAC 10-08-130, a settlement conference concerning substantive issues may be held under WAC 10-08-200(15)(~~on the examiner's own motion or at the request of any party to the proceeding~~).

(1) A separate case number shall be assigned, and all files and papers for the settlement conference shall be kept separate from the files and papers for the unfair labor practice proceeding.

(2) A commission staff member other than the assigned examiner shall be assigned to mediate between the parties on the substantive issues.

(3) Any settlement conference shall be held in advance of the scheduled hearing date on the underlying unfair labor practice proceedings.

(4) During a settlement conference, the parties will be encouraged, on factual and legal grounds including precedent on the particular subject, to resolve the unfair labor practice dispute. Participation in a settlement conference is voluntary~~(-)~~ and refusal by a party to participate in a settlement shall not prejudice that party in any manner. Conversations had and offers made in a settlement mediation shall not be admissible in evidence at a hearing.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-310 Examiner decision. After the close of the hearing and the filing of all briefs, the examiner shall issue a decision containing findings of fact, conclusions of law, and an order. Interim orders and rulings by the examiner may only be appealed to the commission by a notice of appeal filed after issuance of a decision under this section. Unless appealed to the commission under WAC 391-45-350, a decision issued under this section shall be the final order of the agency, with the same force and effect as if issued by the commission.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-350 Appeals. An order issued under WAC 391-45-110(1) or 391-45-310 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission as follows:

(1) The due date for a notice of appeal shall be twenty days following the date of issuance of the order being appealed. The time for filing a notice of appeal cannot be extended.

(2) Where an order has been appealed, the due date for a notice of cross-appeal by other parties shall be seven days after the last date on which a notice of appeal could be timely. The time for filing a notice of cross-appeal cannot be extended.

(3) A notice of appeal or notice of cross-appeal shall identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error.

(4) A party which desires to cite or reassert a document previously filed in the matter shall do so by reference to the document already on file, and shall not file or attach another copy of the document to papers filed regarding an appeal.

(5) A notice of appeal or notice of cross-appeal shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(6) The due date for any appeal brief which the party filing an appeal or cross-appeal desires to have considered by the commission shall be fourteen days following the filing of its notice of appeal or notice of cross-appeal. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(7) The due date for any responsive brief which a party desires to have considered by the commission shall be fourteen days following the date on which that party is served

with an appeal brief. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(8) The executive director or designee may extend the due date for an appeal brief or responsive brief. Such requests shall only be considered if made on or before the date the brief is due, and in compliance with WAC 391-08-180. Extensions of time shall not be routine or automatic.

(9) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief in order to address novel or complex issues raised by the appeal; and

(b) The commission grants such a motion for good cause shown.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 391-45-056	Special provision—State civil service employees.
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Chapter 391-55 WAC

IMPASSE RESOLUTION CASE RULES

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-070 Function of mediator. The mediator shall meet with the parties or their representatives, or both, either jointly or separately, and shall take any steps that the mediator deems appropriate to assist the parties in voluntarily resolving their differences and effecting an agreement. All persons providing mediation services under this chapter shall maintain compliance with the "Code of Professional Conduct for Labor Mediators" adopted jointly by the Federal Mediation and Conciliation Service of the United States and the several state agencies represented by the Association of Labor Relations Agencies.

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

WAC 391-55-200 Interest arbitration—Certification of issues. (1) If a dispute involving a bargaining unit eligible for interest arbitration under RCW 41.56.030(7), 41.56.475, 41.56.492, 41.56...., or 74.39A.270 (2)(c) has not been settled after a reasonable period of mediation, and the mediator is of the opinion that his or her further efforts will not result in an agreement, the following procedure shall be implemented:

(a) The mediator shall notify the parties of his or her intention to recommend that the remaining issues in dispute be submitted to interest arbitration.

(b) Within seven days after being notified by the mediator, each party shall submit to the mediator and serve on the

other party a written list (including article and section references to parties' latest collective bargaining agreement, if any) of the issues that the party believes should be advanced to interest arbitration.

(2) The mediator shall review the lists of issues submitted by the parties.

(a) The mediator shall exclude from certification any issues that have not been mediated.

(b) The mediator shall exclude from certification any issues resolved by the parties in bilateral negotiations or mediation, ~~((and))~~ which the parties may present ~~((those agreements))~~ as "stipulations" in interest arbitration under RCW 41.56.465 (1)(b), 41.56.475 (2)(b), 41.56...., or 41.56.492 (2)(b).

(c) The mediator may convene further mediation sessions and take other steps to resolve the dispute.

(3) If the dispute remains unresolved after the completion of the procedures in subsections (1) and (2) of this section, interest arbitration shall be initiated by a certification of issues describing the disputed portions of articles or sections, as follows:

(a) Except as provided in (b) of this subsection, the mediator shall forward his or her recommendation and a list of unresolved issues to the executive director, who shall consider the recommendation of the mediator. The executive director may remand the matter for further mediation. If the executive director finds that the parties remain at impasse, the executive director shall certify the unresolved issues for interest arbitration.

(b) For a bargaining unit covered by RCW 41.56.492, the mediator shall certify the unresolved issues for interest arbitration.

(4) A certification for interest arbitration under subsection (3) of this section implements authority conferred by the legislature directly upon the mediator or executive director, and may not be appealed to the commission.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-255 Interest arbitration—Expenses of arbitration. Each party shall pay the expenses of presenting its own case and the expenses and fees of its member of the arbitration panel. The expenses of witnesses shall be paid by the party producing them. The fees and traveling expense of a neutral chairperson appointed ~~((pursuant to))~~ under WAC 391-55-210 (1) or (3), along with any costs for lists of arbitrators and for a ~~((tape))~~ recording of the proceedings, shall be shared equally between the parties. The fees and traveling expense of a neutral chairperson appointed ~~((by the commission pursuant to))~~ under WAC 391-55-210(2), along with the costs of tapes for a tape recording of the proceedings but not a transcription or the services of a court reporter, shall be paid by the commission.

AMENDATORY SECTION (Amending Order 80-8, filed 9/30/80, effective 11/1/80)

WAC 391-55-300 ~~((Educational employees—))~~ Fact-finding. If a dispute ~~((involving educational employees within the meaning of RCW 41.59.020(4) has not been set~~

~~led after ten days of mediation))~~ has not been settled after bilateral negotiations and mediation, either party may request the appointment of a fact finder by giving written notice to the commission, the mediator, and the opposite party.

(1) For disputes involving educational employees under chapter 41.59 RCW, a period of ten days of mediation must have elapsed. The parties may, by agreement made at any time prior to the appointment of a fact finder, extend the period for mediation or place in the hands of the mediator the determination of when mediation has been exhausted so as to warrant the initiation of fact-finding.

(2) For disputes involving state civil service employees under chapter 41.80 RCW, fact-finding shall be initiated if resolution is not reached through mediation by one hundred days beyond the expiration date of a contract previously negotiated under that chapter or one hundred days from the initiation of mediation if no such contract exists.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-310 (~~(Educational employees—)~~)Selection of fact finder.**** (1) Upon the submission of a timely request for fact-finding, the executive director shall ~~((invite the parties to exercise their right under RCW 41.59.120(5)).~~

~~((a) The executive director shall))~~ furnish a list of members of the dispute resolution panel, and the parties shall meet within seven days following receipt of the list, to attempt to select a fact finder. Names shall be referred and any fact finder shall be selected under WAC 391-55-120.

~~((a) The~~ parties may agree to designate the mediator as fact finder.

(b) If the parties agree on a fact finder, they shall obtain a commitment to serve and shall notify the executive director of the identity of the fact finder.

(c) If the parties are unable to agree on a fact finder ~~((under RCW 41.59.120(5)))~~, they shall notify the executive director.

(d) For disputes under chapter 41.59 RCW, the process described in this subsection implements the right of the parties under RCW 41.59.120(5).

(2) In the absence of an agreement of the parties under subsection (1) of this section, the executive director shall designate a fact finder ~~((from))~~.

(a) For disputes under chapter 41.59 RCW, the fact finder shall be a member of the commission staff other than the person who was the mediator in the dispute. The parties are not entitled to influence the designation of a fact finder and shall not, either in writing or by other communication, attempt to indicate any preference for or against any person as the fact finder to be appointed by the commission.

(b) For disputes under chapter 41.80 RCW, the fact finder shall be a member of the dispute resolution panel established in WAC 391-55-120.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-315 (~~(Educational employees—)~~)Conduct of fact-finding proceedings—Waiver of objections.**** Proceedings shall be conducted as provided in WAC 391-55-

300 through 391-55-355. The fact finder shall interpret and apply all rules relating to the powers and duties of the fact finder. Any party who proceeds with fact-finding after knowledge that any provision or requirement of these rules has not been complied with and who fails to state its objection in writing, shall be deemed to have waived its right to object.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-320 (~~(Educational employees—)~~)Submission of proposals for fact-finding.**** At least seven days before the date of the fact-finding hearing, each party shall submit to the fact finder and to the other party written proposals on all of the issues it intends to submit to fact-finding. Parties shall not be entitled to submit issues which were not among the issues mediated under WAC 391-55-070.

AMENDATORY SECTION (Amending Order 80-8, filed 9/30/80, effective 11/1/80)

WAC 391-55-325 (~~(Educational employees—)~~)Fact-finding hearing.**** The fact finder shall establish a date, time and place for a hearing. The fact-finding hearing shall be open to the public unless otherwise agreed by the parties. For good cause shown, the fact finder may adjourn the hearing upon the request of a party or upon his or her own initiative. The parties may waive oral hearing by written agreement.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-330 (~~(Educational employees—)~~)Order of proceedings and evidence.**** The order of presentation at the fact-finding hearing shall be as agreed by the parties or as determined by the fact finder. The fact finder shall be the judge of the relevancy of the evidence. All evidence shall be taken in the presence of all parties, unless a party is absent in default or has waived its right to be present. Each documentary exhibit shall be submitted to the fact finder and copies shall be provided to the other parties. The exhibits shall be retained by the fact finder until an agreement has been signed, after which they may be disposed of as agreed by the parties or as ordered by the fact finder.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-335 (~~(Educational employees—)~~)Fact-finding in the absence of a party.**** The fact finder may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. Fact finders shall treat any subject on which one party has taken a position that it is not a mandatory subject for bargaining in accordance with this rule. Findings of fact and recommendations shall not be made solely on the default of a party, and the fact finder shall require the participating party to submit evidence as may be required for making of the findings of fact and recommendations.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-340 (~~Education employees~~) Closing of fact-finding hearings. The fact finder shall declare the hearing closed after the parties have completed presenting their testimony and/or exhibits and submission of briefs within agreed time limits.

AMENDATORY SECTION (Amending WSR 98-14-112, filed 7/1/98, effective 8/1/98)

WAC 391-55-345 (~~Education employees~~) Findings of fact and recommendations. ~~((The))~~ Within thirty days after his or her appointment, the fact finder shall provide the parties and the executive director with written findings of fact and recommendations. The findings and recommendations of the fact finder shall not be subject to appeal to the commission ~~((, but the fact finder shall submit a copy of his or her written recommendations to the executive director))~~. Fact finders shall rule only on the reasonability of the proposals advanced in the context of the whole of the negotiations between the parties, and shall not rule on whether ~~((or not))~~ a subject or proposal in dispute is a mandatory subject for collective bargaining.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-55-350 (~~Education employees~~) Responsibility of parties after fact-finding. The parties are entitled to consider the fact finder's recommendations privately, before they are made public.

(1) For cases under chapter 41.59 RCW, within seven calendar days after the findings and recommendations have been issued, the parties shall notify the commission and each other whether they accept the recommendations of the fact finder.

(2) For cases under chapter 41.80 RCW, within fourteen calendar days after the findings and recommendations have been issued, the parties shall notify the commission and each other whether they accept the recommendations of the fact finder.

(3) If the recommendations of the fact finder are rejected by one or both parties and their further efforts do not result in an agreement, either party may ~~((request mediation pursuant to))~~ ask the agency to provide further mediation under chapter 41.58 RCW and, upon the concurrence of the other party, the agency shall assign a mediator.

AMENDATORY SECTION (Amending Order 83-05, filed 12/1/83, effective 1/1/84)

WAC 391-55-355 (~~Education employees~~) Expenses of fact-finding. Each party shall pay the expenses of presenting its own case. The expenses of witnesses shall be paid by the party producing them. The fees and ~~((traveling))~~ expenses of a fact finder shall be paid as follows:

(1) A fact finder appointed by the commission from the commission staff under WAC 391-55-310 (2)(a) shall be paid by the commission.

(2) A fact finder selected from the dispute resolution panel or some other source shall be paid by the parties, in equal shares.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 391-55-071 Special provision—State patrol personnel.

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

WAC 391-65-110 Grievance arbitration—Conduct of proceedings. The arbitrator assigned or selected shall conduct the arbitration proceedings in the manner provided in the collective bargaining agreement under which the dispute arises, subject to the following:

(1) Arbitration cases handled by members of the agency staff shall be kept in the public files of the agency.

(2) The services of a member of the commission staff as arbitrator shall be subject to interruption for reassignment of the staff member to other functions of the agency having a higher priority.

(3) Except as provided in subsections (1) and (2) of this section, all arbitrators shall maintain compliance with the "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes" as last amended with approval of the Federal Mediation and Conciliation Service.

(4) Rulings, actions, and decisions issued by arbitrators under this chapter shall not be subject to appeal to the commission.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-65-150 Grievance arbitration—Expenses. Each party shall pay the expenses of presenting its own case and the expenses and fees of its member, if any, of an arbitration panel. The expenses of witnesses shall be paid by the party producing them. ~~((The costs for recording and/or transcription of proceedings shall be paid by the parties under the terms of their collective bargaining agreement or as agreed by the parties.))~~ The commission shall pay the salary and ~~((traveling))~~ expenses of a staff member assigned under WAC 391-65-070, but ~~((no))~~ the commission shall not pay any costs for recording and/or transcription of proceedings, or any other expenses of the proceedings. The parties shall pay the fees and expenses of a dispute resolution panel member selected under WAC 391-65-090, as provided in WAC 391-55-120.

Chapter 391-95 WAC

~~((UNION SECURITY DISPUTE))~~ NONASSOCIATION CASE RULES

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

WAC 391-95-010 Notice of union security obligation.

(1) ~~((Whenever))~~ Before union security obligations of a collective bargaining agreement negotiated under ((the provisions of)) chapter 28B.52, 41.56, 41.59, 41.76, or 41.80 RCW ((contains a union security provision)) can be enforced on an employee, the employer and/or exclusive bargaining representative ((shall)) must provide ((each)) the affected employee with a copy of the collective bargaining agreement, and ((shall)) must specifically advise ((each employee of his or her obligations under that agreement, including informing)) the employee of the amount owed, the method used to compute that amount, when such payments are to be made, and the effects of a failure to pay.

(2) ~~((Disputes concerning whether an employee is within the bargaining unit covered by a union security provision shall be resolved through unit clarification proceedings under chapter 391-35 WAC, and shall not be a subject of proceedings under this chapter.~~

(3) ~~Disputes concerning interpretation or application of a union security provision shall be resolved through grievance arbitration or other procedures for interpretation or application of the collective bargaining agreement, and shall not be a subject of proceedings under this chapter.)~~ Failure to give the notice required by this section shall prevent enforcement of union security obligations for any period prior to the date notice is given, but shall not void the union security obligation for periods after the date notice is given.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-95-030 Assertion of right of nonassociation. An employee who ~~((claims))~~ desires to assert a right of nonassociation based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member shall provide written notice of that claim to the exclusive bargaining representative ~~((and shall)).~~

(1) An employee asserting the right of nonassociation under chapter 28B.52, 41.56, 41.59, or 41.76 RCW shall, at the same time, provide the exclusive bargaining representative with the name(s) and address(es) of one or more nonreligious charitable organizations to which the employee is prepared to make alternative payments in lieu of the payments required by the union security provision.

(2) An employee asserting the right of nonassociation under chapter 41.80 RCW may provide the exclusive bargaining representative with his or her choice to receive funds paid under the union security provision, if the employee organization has previously issued a list of union programs and/or charities eligible to receive such funds.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-95-050 Response by exclusive bargaining representative. Within sixty days after it is served with written notice of a claimed right of nonassociation under WAC 391-95-030, the exclusive bargaining representative shall provide a written response to the employee, setting forth the position of the exclusive bargaining representative ~~((as to both:))~~ on the matter.

(1) For employees asserting the right of nonassociation under chapter 28B.52, 41.56, 41.59, or 41.76 RCW, the response of the exclusive bargaining representative shall address:

(a) The eligibility of the employee to make alternative payments; and

~~((2))~~ (b) Acceptance or rejection of the charitable organization(s) suggested by the employee under WAC 391-95-030(a).

(2) For employees asserting the right of nonassociation under chapter 41.80 RCW, the response of the exclusive bargaining representative shall address:

(a) The eligibility of the employee to make alternative payments; and either:

(b) Acceptance or rejection of the program or charitable organization designated by the employee under WAC 391-95-030(b); or

(c) The program(s) of the employee organization and/or the charitable organization(s) designated by the employee organization to receive funds paid under the nonassociation provision. Within sixty days after being presented with a list under this subsection (c), the employee asserting a right of nonassociation shall provide the employee organization with written notice of his or her designation of the purpose or purposes on that list, if any, that are in harmony with his or her individual conscience.

(3) The requirements of this section are procedural only, and shall not be a basis to void or negate obligations under the union security provisions of a collective bargaining agreement.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-95-070 Disputes resolved by commission. ~~((If the exclusive bargaining representative:))~~

(1) Either the employee or the exclusive bargaining representative may file a petition to obtain a ruling from the commission if:

(a) The exclusive bargaining representative disputes the eligibility of the employee to ((make alternative payments)) assert the right of nonassociation; or

~~((2))~~ (b) The exclusive bargaining representative disputes the program or charitable organization which ((is to receive such)) the employee desires to be the recipient of alternative payments; or

~~((3))~~ (c) The exclusive bargaining representative fails to make a timely response under WAC 391-95-050((either the employee or the exclusive bargaining representative may obtain a ruling from the commission)); or

(d) The employee claiming nonassociation fails to name a charitable organization or union program to receive alternative payments.

(2) Disputes concerning whether an employee is within the bargaining unit covered by a union security provision shall not be a subject of proceedings under this chapter.

(3) Disputes concerning interpretation or application of the collective bargaining agreement containing the union security provision shall not be a subject of proceedings under this chapter.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-95-130 Escrow of disputed funds ((by employer)). Funds at issue in a nonassociation proceeding under this chapter shall be kept separate while the case remains pending before the commission.

(1) Upon being served with a copy of a petition filed under WAC 391-95-070 concerning an employee asserting the right of nonassociation under chapter 28B.52, 41.56, 41.59, or 41.76 RCW, the employer shall preserve the status quo by withholding and retaining the disputed dues for periods during the pendency of the proceedings before the commission. Funds held in escrow shall draw interest at the rate provided by commercial banks for regular passbook savings accounts. While the proceedings remain pending before the commission, the employer shall not honor or otherwise act upon any request for discharge or other action against the affected employee based on the employee's union security obligations. This section shall be applicable to employees covered by chapter 41.56 RCW only upon the employee submitting to the employer a signed authorization for the deduction and escrow of disputed funds.

(2) Upon being served with a copy of a petition filed under WAC 391-95-070 concerning an employee asserting the right of nonassociation under chapter 41.80 RCW, the employee organization shall preserve the status quo by holding the disputed funds in a separate account, and shall not request the discharge or other action against the affected employee based on the employee's union security obligations, until the proceedings under this chapter are concluded.

NEW SECTION

WAC 391-95-220 Settlement conference. Separate from any prehearing conference concerning procedural matters held by the examiner under WAC 10-08-130, a settlement conference concerning substantive issues may be held under WAC 10-08-200(15).

(1) A separate case number shall be assigned, and all files and papers for the settlement conference shall be kept separate from the files and papers for the nonassociation proceeding.

(2) A commission staff member other than the assigned examiner shall be assigned to mediate between the parties on the substantive issues.

(3) Any settlement conference shall be held in advance of the scheduled hearing date on the underlying nonassociation proceedings.

(4) During a settlement conference, the parties will be encouraged, on factual and legal grounds including precedent on the particular subject, to resolve the nonassociation dispute. Participation in a settlement conference is voluntary and refusal by a party to participate in a settlement shall not prejudice that party in any manner. Conversations had and offers made in a settlement mediation shall not be admissible in evidence at a hearing.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-95-250 Examiner decision. After the close of the hearing and the filing of all briefs, the examiner shall issue a decision containing findings of fact, conclusions of law, and an order. Interim orders and rulings by the examiner may only be appealed to the commission by a notice of appeal filed after issuance of a decision under this section. Unless appealed to the commission under WAC 391-95-270, a decision issued under this section shall be the final order of the agency, with the same force and effect as if issued by the commission.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-95-270 Appeals. An order issued under WAC 391-95-150(1) or 391-95-250 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission as follows:

(1) The due date for a notice of appeal shall be twenty days following the date of issuance of the order being appealed. The time for filing a notice of appeal cannot be extended.

(2) Where an order has been appealed, the due date for a notice of cross-appeal by other parties shall be seven days after the last date on which a notice of appeal could be timely. The time for filing a notice of cross-appeal cannot be extended.

(3) A notice of appeal or notice of cross-appeal shall identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error.

(4) A party which desires to cite or reassert a document previously filed in the matter shall do so by reference to the document already on file, and shall not file or attach another copy of the document to papers filed regarding an appeal.

(5) A notice of appeal or notice of cross-appeal shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(6) The due date for any appeal brief which the party filing an appeal or cross-appeal desires to have considered by the commission shall be fourteen days following the filing of its notice of appeal or notice of cross-appeal. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(7) The due date for any responsive brief which a party desires to have considered by the commission shall be fourteen days following the date on which that party is served

with an appeal brief. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(8) The executive director or designee may extend the due date for an appeal brief or responsive brief. Such requests shall only be considered if made on or before the date the brief is due, and in compliance with WAC 391-08-180. Extensions of time shall not be routine or automatic.

(9) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief to address novel or complex issues raised by the appeal; and

(b) The commission grants such a motion for good cause shown.

WSR 07-17-071
PROPOSED RULES
GAMBLING COMMISSION

[Filed August 13, 2007, 3:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-04-058.

Title of Rule and Other Identifying Information: New chapter 230-16 WAC, Manufacturers, distributors and gambling service suppliers.

Hearing Location(s): Red Lion Hotel at the Part [Park], 303 West North River Drive, Spokane, WA 99201, (509) 326-8000, on October 12, 2007, at 9:30 a.m.

Date of Intended Adoption: October 12, 2007.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan2@wsgc.wa.gov, fax (360) 486-3625, by October 12, 2007.

Assistance for Persons with Disabilities: Contact Gail Grate, Executive Assistant, by October 12, 2007, TTY (360) 486-3637 or (360) 486-3453.

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 manufacturers, distributors and gambling service suppliers are under review and are now being rewritten in plain English.

SUBSTANTIVE RULE CHANGES:

Post-1/1/2008 WAC Manufacturers, distributors, and gambling service suppliers must comply with all requirements.

Pre-1/1/2008 WAC 230-30-090 All devices must comply with rules.

We changed this requirement for manufacturers and distributors to include gambling service suppliers as well. We also recommend expanding the requirement from "devices" to all equipment and services which the licensees offer.

REPEALER

Pre-1/1/2008 WAC 230-12-210 Prices charged by manufacturers, distributors and operators for goods and services not to be fixed by agreement.

REPEALER

Pre-1/1/2008 WAC 230-12-225 Repair or service not to be conditioned upon exclusive supply arrangement.

REPEALER

Pre-1/1/2008 WAC 230-12-230 Agreements restricting freedom to buy and sell—Prohibited.

Pre-1/1/2008 WAC 230-12-250 No division of territories allowed.

We repealed these rules because we have removed many of the other restraints on credit and sales relationships between manufacturers and distributors. We believe that we overlooked these rules during that previous rules package we repealed during the budget streamlining process.

Post-1/1/2008 WAC 230-16-050 Punch board and pull-tab quality control program.

Pre-1/1/2008 WAC 230-30-030 Punch board and pull-tab quality control program—Special inspections, defective devices, reimbursements, and fees.

We have removed the penalty stated in the current rule of "up to one hundred dollars." We believe that the amount of the penalty could be less or more depending on given circumstances. This change makes the new rule consistent with others where we have removed penalties to allow more discretion in the enforcement of the rule.

Post-1/1/2008 WAC 230-16-065 Approvals needed before offering progressive jackpot pull-tab series.

Pre-1/1/2008 WAC 230-30-025 Progressive jackpot pull-tab series—Definitions—Restrictions—Operating procedures.

We recommend placing the requirement explicitly in the rule. It's always been implied that manufacturers and distributors requesting our review have to pay ahead, but, for the sake of clarity, we want it stated outright.

Post-1/1/2008 WAC 230-16-100 Seal card pull-tab series.

Pre-1/1/2008 WAC 230-30-034 Seal card pull-tab series—Definitions—Restrictions.

The post 1/1/2008 rule on bonus and step-up flares - WAC 230-16-060 - already sets out the requirements for what information must be included on a bonus flare, so we removed the cross reference with that rule and the requirement from this rule.

Post-1/1/2008 WAC 230-16-105 Disposable bingo cards.

Pre-1/1/2008 WAC 230-20-192 Standards for disposable bingo cards—Requirements and definitions.

We propose removing the phrase "shall be manufactured and controlled using processes and procedures that ensure integrity of the activity and facilitates regulation by the commission" from this rule. If manufacturers follow all of our rules in the construction of disposable bingo cards, that ensures integrity; whereas, in other manufacturer processes, such as those for chips, we don't lay out as many rules and manufacturers must make their own arrangements for ensuring integrity and facilitating regulation.

Post-1/1/2008 WAC 230-16-110 Duplicate bingo cards.
Pre-1/1/2008 WAC 230-20-192 Standards for disposable bingo cards—Requirements and definitions.

We propose removing the "immediately" restriction from subsection (3)(d) and (e) of the current rule. Manufacturers cannot "immediately" do reimburse operators and us if they must wait until we validate the claim for damage caused by duplicate bingo cards.

Post-1/1/2008 WAC 230-16-120 Bingo card manufacturing control system.
Pre-1/1/2008 WAC 230-20-192 Standards for disposable bingo cards—Requirements and definitions.

In this rule, we changed the wording that is used. We refer in the current rule to "audit systems" which preserve the integrity of the cards produced. We recommend changing this phrase to "control systems" to eliminate the potential confusion that the accounting meanings of the word "audit" might bring.

A second change is also necessary in this rule: All references to keno bingo are removed since we no longer authorize keno bingo.

Post-1/1/2008 WAC 230-16-125 Disposable bingo card packing slip and package label.
Pre-1/1/2008 WAC 230-20-192 Standards for disposable bingo cards—Requirements and definitions.

We have changed the provision for one percent error of margin in each shipping unit to a more positive statement that we "prohibit shipping of marketing units with a margin of error greater than one percent." The restatement makes the restriction much more easily read.

Post-1/1/2008 WAC 230-16-130 Disposable bingo card sales.
Pre-1/1/2008 WAC 230-20-192 Standards for disposable bingo cards—Requirements and definitions.

In the new rule, we recommend moving the citation of RCW 9.46.0356 into the statutory authority of the rule. RCW 9.46.356 discusses bingo played without a license.

We also recommend removing the language about Class A, B, and unlicensed bingo games from the rule. We don't restrict sales of partial containers to these classes of licensees and therefore we think it's confusing to mention them here.

Post-1/1/2008 WAC 230-16-150 Control system for electronically generated bingo cards.
Pre-1/1/2008 WAC 230-20-106 Electronically generated bingo card method of receipting bingo income.

In this rule, we propose changing the wording that is used. We refer in the current rule to "audit systems" which preserve the integrity of the cards produced. We recommend changing this phrase to "control systems" to eliminate the potential confusion that the accounting meanings of the word "audit" might bring.

Post-1/1/2008 WAC 230-16-155 Electronic card facsimiles.
Pre-1/1/2008 WAC 230-40-070 Licensee to furnish all cards, chips and other services.

We recommend moving the requirements for manufacturers of electronic card facsimiles into the new manufactur-

ers, distributors, and gambling service suppliers chapter. This change places the rule in a more logical spot in the overall Title 230 WAC and prevents manufacturers from having to find these requirements in another chapter.

We also recommend including language about independent certification and WSGC certification in the rule. Once again, this places the information in a more logical location and it aligns the rule with current enforcement practice.

Post-1/1/2008 WAC 230-16-165 Purchasing I.D. stamps.
Pre-1/1/2008 WAC 230-08-017 Control of gambling equipment—Use of identification and inspection services stamps.

We recommend removing the phrase "Or commission staff may attach" from the I.D. Stamp rule for two reasons:

1. It seems obvious; and
2. Because we don't tell ourselves what we can do.

We also recommend removing "They must submit the appropriate fee" from the rule language. The word "purchase" implies a fee must be paid and, thus, we reduce redundancy.

Post-1/1/2008 WAC 230-16-155 Electronic card facsimiles.

Pre-1/1/2008 WAC 230-08-017 Control of gambling equipment—Use of identification and inspection services stamps.

In the post 1/1/2008 rule we added amusement games and electronic bingo card daubers to the list of items requiring I.D. Stamps. This change will eliminate duplication of requirements in other rules and places the responsibility for placing I.D. Stamps appropriately on the manufacturers which is where we enforce it.

Post-1/1/2008 WAC 230-16-185 Accounting records for manufacturers and distributors.

Pre-1/1/2008 WAC 230-08-025 Accounting records to be maintained by distributors and manufacturers.

As we have done in several other rules, we recommend adding the definition of "reconcile" to the rule in subsection (3)(d) to mean that the manufacturer or distributor must compare the two balances, resolve any differences, and document the comparison and the differences in writing.

Generally accepted accounting principles (GAAP) already requires them to record all cash receipts in an original book of entry, for example, a sales journal, a check register, or a separate cash receipts journal. However, we are spelling out explicitly how they must maintain these records.

Post-1/1/2008 WAC 230-16-190 Sales invoices for manufacturers and distributors.

Pre-1/1/2008 WAC 230-08-025 Accounting records to be maintained by distributors and manufacturers.

We removed the stated penalty from this rule as we did earlier in WAC 230-16-015. The current rule states, "we may assess a fee of up to fifty dollars per incomplete invoice." However, our enforcement experience tells us that the amount could be more or less, given the circumstances of the infraction.

We also propose getting rid of the commission approval for sales invoices. We explicitly tell them what is required in

the sales invoice, there seems to be no need for us to recheck the format and issue an approval.

Post-1/1/2008 WAC 230-16-200 Sales journals for manufacturers and distributors.

Pre-1/1/2008 WAC 230-08-025 Accounting records to be maintained by distributors and manufacturers.

We removed language about "Sales and leases of general purpose equipment and supplies indirectly related to gambling activities" from the rule. This information is already a part of the accounting records manufacturers and distributors must keep and eliminating it here reduces redundancy within the rules.

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.

August 13, 2007

Susan Arland

Rules Coordinator

Chapter 230-16 WAC

MANUFACTURER, DISTRIBUTOR, AND GAMBLING SERVICE SUPPLIER RULES

GENERAL RULES FOR MANUFACTURERS, DISTRIBUTORS, AND GAMBLING SERVICE SUPPLIERS

NEW SECTION

WAC 230-16-001 Manufacturers, distributors, and gambling service suppliers must comply with all requirements. Manufacturers, distributors, and gambling service suppliers and their licensed representatives must ensure that their business operations, services, and the gambling equipment they manufacture, distribute, or sell comply with chapter 9.46 RCW and Title 230 WAC.

NEW SECTION

WAC 230-16-005 Transporting, displaying, and selling gambling equipment at trade shows and conventions. Licensed manufacturers and distributors selling gambling equipment authorized by state or federal law may transport, display, and accept orders for the sale or lease of their products at trade shows and conventions as long as:

(1) They notify us in writing of the nature, date, and location ten days before the trade show or convention; and

(2) Their target audience of the trade show or convention are operators of authorized gambling activities in Washington; and

(3) They deliver all gambling equipment purchased or leased at the trade show or convention to the operator's authorized location.

PUNCH BOARD AND PULL-TAB REQUIREMENTS

NEW SECTION

WAC 230-16-010 Manufacturers, distributors, and gambling service suppliers must comply with punch board and pull-tab rules. Manufacturers, distributors, and gambling service suppliers and their representatives must comply with WAC 230-14-030, 230-14-080, and 230-14-085.

NEW SECTION

WAC 230-16-015 Punch board and pull-tab sales restrictions. (1) Manufacturers, distributors, and manufacturer and distributor representatives must sell or distribute punch boards, pull-tabs, pull-tab dispensers, or related equipment only to other distributor, distributor representative, or punch board and pull-tab licensees.

(2) Distributor and distributor representatives must buy punch boards, pull-tabs, pull-tab dispensers, or related equipment only from other manufacturer, distributor, or distributor representatives.

(3) Manufacturers must not sell any punch board or pull-tab series unless the winning punches or pull-tabs are randomly distributed and mixed among all other punches or pull-tabs in that board or series.

(4) Sales promotion statements, demonstrations, or implications must not imply:

(a) One portion of a pull-tab series contains more winners than other portions; or

(b) Some series sell more pull-tabs before winning pull-tabs are reached in the distribution.

NEW SECTION

WAC 230-16-020 Sales to Indian tribes. Licensed manufacturers, distributors, and gambling service suppliers may sell to Indian tribes operating Class II activities that are legal under federal law.

NEW SECTION

WAC 230-16-025 Punch board construction. Manufacturers must design, construct, and manufacture punch boards to eliminate any patterns between punch boards or portions of punch boards from which someone could determine the location or approximate location of winning punches.

(1) Manufacturers must randomly distribute and mix winning punches among all other punches in the punch board. To ensure no patterns exist, manufacturers must:

(a) Mix the form or permanent number sheets before cutting; and

(b) Thoroughly mix all strips after the strips have been crimped and before inserting them into the punch boards; and

(c) When filling punch boards, change the process for filling each separate set to prevent any pattern between sets of punch boards; and

(d) Include no more than eight punch boards from one set of boards in any case shipped to Washington.

(2) Manufacturers must make serial numbers on punch boards nonsequential to ensure no pattern exists which would allow someone to track the boards through serial numbers.

(3) Manufacturers must:

(a) Guarantee that all numbers or symbols listed as winners on the flare are present in the board; and

(b) Seal all punch boards to prevent anyone from using any method, including light or markings, to discover the number or symbol on a punch before punching it out of the board; and

(c) Not allow punch boards with taped sides, corners, or edges.

(4) Manufacturers may place stickers on the back of the punch boards naming additional numbers or symbols they guarantee to be in the board. The additional numbers or symbols must not exceed five percent of the total punches in the board, unless the manufacturer receives written permission from us.

(5) Punch boards are exempt from secondary verification code requirements.

NEW SECTION

WAC 230-16-030 Step up punch board construction. Manufacturers of step up boards must:

(1) Completely seal all cards, strips, or punches to prevent winner identification before the punch is removed from the board; and

(2) Thoroughly mix all cards, strips, or punches that contain the winners to ensure that no pattern of winners exists; and

(3) Have at least twenty-five different face sheets for use on boards with seals covering the winners; and

(4) Randomly distribute face sheets during the manufacturing process.

NEW SECTION

WAC 230-16-035 Pull-tab construction. Manufacturers must:

(1) File their label or trademark with us before printing pull-tabs; and

(2) Construct, glue, seal, or band pull-tabs to prevent the discovery of the winning numbers, symbols, or set of symbols, or game protection before the pull-tab is dispensed or opened by use of:

(a) Markings; or

(b) Difference in size; or

(c) Paper fiber; or

(d) Color; or

(e) Printing; or

(f) Any other method; and

(3) Construct all pull-tabs so that, when offered for sale to the public, they are virtually opaque and free of security defects detectable by:

(a) High intensity lights; or

(b) Peeking; or

(c) Any other method; and

(4) Construct all pull-tabs, except banded and latex covered pull-tabs, using a two or three ply paper stock construction; and

(5) Make winning and losing sheets for each game using the same paper stock; and

(6) For all progressive pull-tab series, make winning and losing sheets for each game using the same paper stock at the same time as the series; and

(7) Conspicuously print the series number and their name, label, or trademark on the pull-tab so both are readily visible before opening the pull-tab; and

(8) Perforate or clean-cut the openings centered over the symbols or numbers to allow players to easily open pull-tabs while preventing pull-tabs from opening prematurely in normal handling. Perforate on both horizontal lines of the opening and either perforate or clean-cut the vertical or elliptical line where players grasp the tab for opening after bending the edge of a ticket down. Manufacturers may include information to show players how to open the pull-tab or remove the latex to determine the symbols or numbers; and

(9) Not repeat series numbers used on that same manufacturer's form number within a three-year period.

NEW SECTION

WAC 230-16-040 Winner protection and secondary verification codes. (1) Each manufacturer must create methods of winner protection for each punch board and pull-tab series, except spindle-type pull-tab series. This protection must allow operators, us, and other law enforcement personnel to distinguish opened winning pull-tabs from nonwinning, altered, or forged pull-tabs, or pull-tabs from another series. Manufacturers must:

(a) Establish a primary winner protection for each pull-tab series; and

(b) Use special numbers, colors, designs, ink, or any combination of these to create the primary winner protection; and

(c) Completely hide the protection from view and ensure it is undetectable before players open the pull-tabs; and

(d) Provide a written explanation of each winner protection method to us. The written explanation must include

details and pictures, diagrams, or samples necessary to thoroughly explain the method; and

(e) Notify us in writing of any changes to protection schemes; and

(f) Use winner protection to identify winning pull-tabs after they have been purchased and opened and distinguish them from nonwinning pull-tabs.

(2) Pull-tabs that award prizes greater than twenty dollars must use a secondary verification code to prevent counterfeiting. We must approve all secondary verification methods before manufacturers use them within the state.

NEW SECTION

WAC 230-16-045 Defective punch boards, pull-tabs, or pull-tab dispensers. (1) If we determine that punch boards, pull-tabs, or pull-tab dispensers do not meet our requirements, the director may order manufacturer(s) to recall all defective products and all similarly constructed or printed products.

(2) If the director orders a recall, we immediately notify the manufacturer of the:

- (a) Product to be recalled; and
- (b) Reason for the recall; and
- (c) Effective date of the recall; and
- (d) Any other specific requirements.

(3) We follow verbal notice with a written notification.

(4) Immediately upon receiving oral notification, manufacturers must cease shipping affected product in the state and initiate actions to ensure complete compliance with the recall.

(5) Manufacturers must notify all distributors within seventy-two hours of:

- (a) The items recalled; and
- (b) The effective date of recall; and
- (c) The arrangement for the prompt return of the defective items.

(6) Once they've been notified, distributors must immediately stop sales and delivery of the product. We notify each licensed distributor, in writing, of:

- (a) The recall; and
- (b) The effective dates; and
- (c) The products involved; and
- (d) Any special instructions.

(7) Before any reintroduction of any recalled or similar item, the manufacturer must first submit the revised or reworked item to us for review, evaluation, and approval. We notify the manufacturer, in writing, of the approval or disapproval.

(8) The manufacturer must send a copy of the approval letter to distributors with the next five shipments of the reworked item.

(9) Manufacturers must reimburse distributors the actual cost the distributor paid for each punch board, pull-tab series, or pull-tab dispenser the director orders recalled. Manufacturers of recalled punch boards, pull-tab series, or pull-tab dispensers must compensate distributors for time and expenses incurred during a recall. Compensation must not exceed fifty cents per punch board or pull-tab series the dis-

tributor actually returned to the manufacturer or twenty-five dollars per pull-tab dispenser.

NEW SECTION

WAC 230-16-050 Punch board and pull-tab quality control program. To ensure the integrity of punch boards and pull-tab series, we maintain a quality control program. This program includes a level of inspection and evaluation we deem necessary to ensure punch boards and pull-tabs meet the standards of chapter 9.46 RCW and Title 230 WAC. Manufacturers must pay for administering this program. The program includes at least:

(1) **Special inspections** - We may select any punch board or pull-tab series to examine in any manner for quality or integrity, including punching out or pulling all chances remaining on the board or series. Manufacturers must reimburse distributors or operators for unused games we select for quality control testing purposes. We determine the reimbursement process. We may bill manufacturers for the cost of quality control investigations which exceed forty hours of our staff time.

(2) **Defective punch boards or pull-tab series** - When a punch board or pull-tab series is defective, operators must:

(a) Remove the board or series from play and notify us. We complete a quality control report which operators must use to return the board or series to the distributor or manufacturer; and

(b) Return punch boards or pull-tab series which have been opened, prepared for play, or placed out for play to the manufacturer or distributor; and

(c) Return defective or recalled boards or series which are unopened to the distributor or manufacturer without a quality control report.

(3) **Credits or reimbursements for defective punch boards or pull-tab series:**

(a) Manufacturers must reimburse distributors or operators for the cost of a replacement board or series which are returned under subsection (2) of this section; and

(b) Manufacturers may, at their discretion, reimburse operators for only actual net losses resulting from the play of a board or series because of its defect; and

(c) For credits and reimbursements for defective punch boards or pull-tab series, manufacturers or distributors:

(i) Must properly record all boards or series returned on a credit memo. WAC 230-16-190 explains requirements for credit memos; and

(ii) May reimburse operators for actual net losses. Manufacturers must keep adequate supporting documentation for all reimbursements.

(4) **Our fees to recover costs for defective punch boards or pull-tab series** - We may assess a fee for each defective punch board or pull-tab series sold to operators for which we complete a quality control report. We do not assess this fee beyond the fifth series of a particular form number with the same defect.

NEW SECTION

WAC 230-16-055 Bonus or step up flares. In addition to other flare requirements, manufacturers of step up punch board and bonus pull-tab flares must:

- (1) Develop and use at least twenty-five randomly distributed versions of flares for each form number of a bonus series; and
- (2) Construct flares which contain prizes determined after players receive the corresponding winning chance so that it is impossible to determine the prizes before removing the prize covering; and
- (3) Label the middle or advance level with "Advance Section" in at least one-quarter inch lettering; and
- (4) Label the top tier level with "Bonus Section" in at least one-quarter inch lettering; and
- (5) Clearly state on the flare the number of winners which could be awarded in the top tier level in at least three-eighths inch lettering. In addition, clearly display the number of winners and the number of advances in each advance level; and
- (6) Clearly display all prizes for each advance and bonus level so that only the winners within the possible combinations are shown. Where applicable, use the word "OR" to show the possible combinations for winning the bonus prizes; and
- (7) Not show duplicate references to prizes on the flare.

NEW SECTION

WAC 230-16-060 Assembly and packaging of pull-tab series. When assembling and packaging a pull-tab series, manufacturers must:

- (1) Place each pull-tab series in one packaging container; and
- (2) Not assemble the winning and losing pull-tabs in a way that would allow prize manipulation; and
- (3) Mix pull-tabs before placing them in their final container to ensure pull-tabs are separated from their original collated row position and dispersed among all rows in the container; and
- (4) Place a packing slip inside the container with the name of manufacturer, series number, date of packaging, and the name or identification of the person who packaged the series. Manufacturers may print this information on the flare or the outside of the container. Manufacturers must have this information readily available if we request it; and
- (5) Print on the outside of the container a message stating that operators must remove the pull-tabs from the container and thoroughly mix them before putting them out for play. Manufacturers must:
 - (a) Print the information on:
 - (i) A crack-and-peel sticker and place it on the outside of the packaging container; or
 - (ii) A packing slip placed inside the container; or
 - (b) Request our approval to exempt packages of jar tickets from this requirement.

PROGRESSIVE JACKPOT PULL-TAB SERIESNEW SECTION

WAC 230-16-065 Approvals needed before offering progressive jackpot pull-tab series. (1) For progressive jackpot series, the director approves:

- (a) All gambling equipment for use in the series; and
- (b) The process used to manufacture the series; and
- (c) The secondary win code.
- (2) Gambling related software must, at least:
 - (a) Prevent all persons other than the manufacturer representative from changing data once it is entered; and
 - (b) Retain in memory a record of transactions for a game until the operator totals, prints, and clears the transactions, even if the unit's primary power source is disrupted.
 - (3) Those requesting approval must pay all costs related to our review.

NEW SECTION

WAC 230-16-070 Prizes in progressive jackpot pull-tab series. Prizes for progressive jackpot pull-tab series must meet the following requirements:

- (1) Manufacturers 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
- (2) The minimum jackpot accrual rate must 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
- (3) Instant winners must be at least forty percent of total gross gambling receipts available from the series; and
- (4) The starting jackpot must, at least, equal the value of the highest instant winner; and
- (5) Maximum contribution to a progressive jackpot for each individual progressive pull-tab series must be five thousand dollars. The contribution amount specifically excludes portions carried over from previous series.

NEW SECTION

WAC 230-16-075 Assembly and packaging of progressive pull-tab series. (1) Manufacturers must include the packing slip and flare with the first box of a series.

- (2) Manufacturers may package progressive jackpot pull-tab series in more than one container if they:
 - (a) Shrink wrap all boxes and seal them with a manufacturer sticker or seal; and
 - (b) Identically label each box with a referencing system that identifies, at least:
 - (i) Series number; and
 - (ii) Individual box and total boxes per series (for example, "seven of nine"); and
 - (iii) I.D. stamp numbers; and
 - (c) Mark cases to identify the contents during shipping, including:
 - (i) Series number; and
 - (ii) Case reference and total cases per set; and
 - (d) Package and ship each box or case together.

EVENT PULL-TAB SERIESNEW SECTION

WAC 230-16-080 Event pull-tab series. (1) Manufacturers must ensure that event pull-tab series meet all standards of construction for other pull-tab series; and

(2) Manufacturers must ensure the flare for event pull-tab series meets requirements for flares and substitute flares and explain:

(a) The number of chances available to advance to the event round; and

(b) How the event round winner is determined; and

(c) The number of instant winner pull-tabs, if available; and

(d) The number of winning event round pull-tabs at each level.

BONUS PULL-TAB SERIESNEW SECTION

WAC 230-16-085 Bonus pull-tab series with carry-over jackpots. Bonus pull-tab series with carry-over jackpots must:

(1) Have not less than one winner out of ten, so the chance of winning the carry-over jackpot is ten percent or higher; and

(2) Have only one advance level on the flare; and

(3) Have at least one guaranteed chance to win the carry-over jackpot; and

(4) Have all chances included on the flare covered to prevent determining the concealed numbers or symbols before the player opens the chance. If perforated windows are used, manufacturers must cover the numbers or symbols with latex, foil, or other approved means; and

(5) Meet all standards for bonus pull-tab flares.

CARRY-OVER JACKPOTSNEW SECTION

WAC 230-16-090 Secondary win codes for carry-over jackpots. Manufacturers must ensure that secondary win codes on pull-tab series with carry-over jackpots are not repeated within any three-year period.

NEW SECTION

WAC 230-16-095 Prizes in carry-over jackpot pull-tab series. Manufacturers must:

(1) Determine the contribution amount and the method of play and disclose both on the flare; and

(2) Ensure guaranteed prizes are sixty percent or more of gross receipts available from the pull-tab series. "Guaranteed prizes" means all prizes available, excluding the contribution amount or carry-over jackpot; and

(3) Ensure the contribution amount for each series does not exceed five hundred dollars. "Contribution amount" means the amount from each series that is added to the carry-over jackpot.

SEAL CARD PULL-TAB SERIESNEW SECTION

WAC 230-16-100 Seal card pull-tab series. (1) Manufacturers of seal card pull-tab series must meet all standards of pull-tab construction, including the seals on the flare; and

(2) The seal card pull-tab series must include forms to attach to the pull-tabs. The forms must list enough information to contact the winners of the seal card round; and

(3) Manufacturers must meet all requirements for flares and substitute flares. The flare may include up to two seals. The second seal may be offered as an additional prize, not as an alternative to the original seal prize; and

(4) The flare must clearly state:

(a) The number of tabs available to advance to the seal card round; and

(b) How the seal card round winner is determined; and

(c) The number of instant winner tabs; and

(d) The number of winning seal card round tabs; and

(5) If using perforated windows for the seal on the flare, manufacturers must cover the numbers or symbols to prevent detection of the winner before opening.

BINGO CARDSNEW SECTION

WAC 230-16-105 Disposable bingo cards. (1) Manufacturers of disposable bingo cards must:

(a) Create quality control methods to ensure manufacturing processes, including collating of bingo cards into packets, meet our requirements; and

(b) Document these methods; and

(c) Provide the documentation to us on request.

(2) Manufacturers must collate packets of cards so that each page:

(a) Is from a different set of cards; and

(b) Has consistent skips throughout the entire collation; and

(c) Contains cards that are different when compared to other cards in the packet; and

(d) Has a different color or border pattern.

(3) Manufacturers must prepare and make available a master verification system for each type or product line of bingo cards they make to provide operators and us the ability to verify winning cards. Master verification systems must:

(a) Provide a facsimile of each card within a set of cards by the card number; and

(b) Display the exact numbers and the location or configuration of numbers or symbols on the card.

NEW SECTION

WAC 230-16-110 Duplicate bingo cards. (1) We prohibit duplicate cards within a specific product line. Manufacturers must:

(a) Imprint each card in a specific product line with a unique set of numbers and unique configurations of numbers; and

(b) Ensure that there are no duplicate cards in a set or collation sold to distributors or operators.

(2) Manufacturers may collate duplicate cards into packets if they:

(a) Locate the duplicates at different page levels in the packets; and

(b) Indicate to the buyer that they intend those cards for use only during separate games within a session, including "on-the-way" games.

(3) If manufacturers discover duplicate cards, or we or another licensee notify them of duplicate cards, they must immediately:

(a) Stop marketing the product line containing duplicate cards; and

(b) Recall all sets and collations of packets or books containing duplicate cards at the same page level; and

(c) Take steps to correct manufacturing or collating processes to ensure they do not sell duplicate cards to operators, and inform us in writing about the steps taken; and

(4) When we validate claims, manufacturers must reimburse:

(a) Operators who submit claims for prizes paid because of duplicate cards; and

(b) Us for all of our costs incurred investigating duplicate card complaints.

NEW SECTION

WAC 230-16-120 Bingo card manufacturing control system. (1) In each set of bingo cards, manufacturers must include a control system that:

(a) Identifies each card by a card number printed on the face of the card. However, we exempt "player selection" game cards from this requirement; and

(b) Consecutively numbers each sheet of cards within a set. However, if manufacturers have alternative controls and they disclose those to operators, they do not have to number the sheets; and

(c) Assigns each set of cards manufactured as a specific product line, using the same color and border pattern, and a unique serial number. Manufacturers must print the serial number on each card; and

(d) Identifies that specific set and each specific card within that set; and

(e) Tracks the transfer of cards from the point of manufacture to operators; and

(f) Facilitates sale by the operator to the player.

(2) We approve all new control systems.

NEW SECTION

WAC 230-16-125 Disposable bingo card packing slip and package label. Manufacturers of disposable bingo cards must establish marketing units that are complete and contain the correct number of cards or packets they have chosen. Manufacturers must complete a packing slip for each set of cards or collation of packets and either enclose it inside the shipping container or in an envelope attached to the container. Additionally:

(1) Manufacturers must label each marketing unit in a way that allows the contents to be determined without opening. The label must include, at least:

(a) The I.D. stamp numbers; and

(b) Serial number or, if packets, serial number of the top page; and

(c) Color and border pattern or, if packets, color and border pattern of the top page; and

(d) Number of the carton and the total number of cartons included in the marketing unit.

(2) If the marketing unit contains more than one container, manufacturers must include the packing slip in or attach it to the first container. The packing slip must include:

(a) The manufacturer's name; and

(b) Descriptions of the product, including the "series," "on," "cut," and "up"; and

(c) The records entry label that matches the I.D. stamp; and

(d) The serial number or, if packets, the serial number of the top page; and

(e) The color and border pattern or, if packets, colors and border patterns of all sets and the collation sequence; and

(f) A record of any skips (missing cards, sheets of cards, or packets); and

(g) The number of the carton and the total number of cartons included in the marketing unit.

(3) Manufacturers must mark the specific cards or packets on the marketing unit packing slip. Manufacturers may have a margin of error up to one percent, as long as they document all missing cards, sheets, or packets on the packing slip enclosed in the first container of the marketing unit. We prohibit shipping of marketing units with a margin of error greater than one percent.

NEW SECTION

WAC 230-16-130 Disposable bingo card sales. (1) Manufacturers of disposable bingo cards must sell each set or collation as a single unit.

(2) We allow distributors to open containers for Class E and below operators and operators of authorized unlicensed activities:

(a) At an operator's request to change the "on," "up," and "cut." When a modification is made, the distributor must reseal the carton and note all changes on the packing label; or

(b) To provide cards to individuals for recreational activities; or

(c) To provide cards for "promotional contests of chance."

(3) Subsets must have at least one container, except distributors may open the container and sell cards in smaller quantities described in subsection (2) of this section.

NEW SECTION

WAC 230-16-135 "Player selection" bingo cards. Manufacturers and distributors of "player selection" bingo cards must:

(1) Meet all requirements for disposable bingo cards; and

(2) Print cards on two-part, self-duplicating paper that provides an original and duplicate copy.

NEW SECTION

WAC 230-16-140 "Hidden face" bingo cards. Manufacturers and distributors of "hidden face" bingo cards must:

- (1) Meet all requirements for disposable bingo cards; and
- (2) Print, fold, and seal each card or sheet of cards so that no one may determine the numbers or configurations of numbers on the card, or the card number until opened; and
- (3) Have a separate numbering system for each card or sheet that randomly distributes numbers that is not connected with the card number printed in the "free" space; and
- (4) Mix cards or sheets so that:
 - (a) No relationship exists between the card numbers and separate numbering system within a set or subset; and
 - (b) No patterns or consistent relationships of location exist between specific card numbers in subsets from different sets; and
- (5) Imprint the serial number and the card or sheet number from subsection (3) of this section on the outside of the cards or sheets of cards so that it is visible for recording without opening; and
- (6) Make sets of cards that contain at least six thousand unique faces or patterns of numbers. Subsets of "hidden face" bingo cards must contain at least one thousand cards or sheets of cards.

NEW SECTION

WAC 230-16-145 Electronically generated bingo card computer systems. Manufacturers of electronically generated bingo cards for electronic bingo daubers must use a computer to store the bingo cards and interface with a printer. The computer must:

- (1) Retain in memory a record of transactions for a session until the operator totals, prints, and clears the transactions, even if the unit's primary power source is disrupted; and
- (2) Compute a total of all transactions occurring during the current session and print out the total on request; and
- (3) Maintain and control the time and date of sale and transaction number in a manner that prohibits change or resetting except by the manufacturer or qualified service personnel. Operators must retain a detailed record, supported by service documents for each service call involving a change of the time, date, or transaction number; and
- (4) Secure the electronically stored bingo cards in a way that prevents an operator or player from modifying them. The system must not allow operators to exchange, transfer, refund, or modify the price of cards issued to a player in any way after the sale is made. The system must store cards on "erasable programmable read only memory" (EPROM), "compact disc read only memory" (CDROM), "write once read many" disc drives (WORM), or other systems we approve.

NEW SECTION

WAC 230-16-150 Control system for electronically generated bingo cards. Manufacturers of electronically generated bingo cards for electronic bingo daubers must imprint their cards with a control system that includes at least:

- (1) A card number; and
- (2) A consecutive transaction number for each sheet of cards that does not repeat in less than 999,999 transactions; and
- (3) The name of the licensee operating the activity; and
- (4) The time and date of the transaction; and
- (5) The game number; and
- (6) The amount paid for the opportunity to play each game. If the operator uses the combination receipting method, they may substitute the customer receipt number; and
- (7) The total amount paid; and
- (8) The face number and the card number the manufacturer assigned or, if used in "player selection games," the face numbers the player selected.

ELECTRONIC CARD FACSIMILESNEW SECTION

WAC 230-16-155 Electronic card facsimiles. (1) Manufacturers of electronic card facsimiles must ensure their system:

- (a) Produces accurate facsimiles of one or more standard deck(s) of cards; and
 - (b) Randomly shuffles cards before each round of play or shoe loading; and
 - (c) Contains a backup system that records and displays at least five previous rounds of play; and
 - (d) Contains security protocols which prevent unauthorized access; and
 - (e) Is operated by card room personnel and does not allow players to play solely against the equipment; and
 - (f) Allows testing of the computer software; and
 - (g) Operates only under card room internal controls specific to each system.
- (2) Manufacturers must have a licensed game testing laboratory test and certify that the system complies with subsection (1) of this section.
- (3) Manufacturers must also submit their system to us for testing, as explained in WAC 230-06-050, with the certification from the independent laboratory and receive our approval before operating the system.

I.D. STAMPSNEW SECTION

WAC 230-16-160 I.D. stamps for gambling equipment. (1) If gambling equipment requires our approval, manufacturers and distributors must not attach I.D. stamps to the equipment until we approve it.

- (2) Manufacturers must permanently and prominently attach our I.D. stamps to their gambling equipment. Once attached, no one may remove or tamper with the I.D. stamps. Manufacturers must attach I.D. stamps to:
- (a) Punch boards; and
 - (b) Pull-tab flares; and
 - (c) Pull-tab dispensers; and
 - (d) Disposable bingo card packing slips; and

- (e) Coin or token activated amusement games operated at locations with a Class A license; and
- (f) Electronic bingo card daubers; and
- (g) Electronic card facsimile tables; and
- (h) Other items specified by the director.

NEW SECTION

WAC 230-16-165 Purchasing I.D. stamps. (1) Manufacturers must purchase I.D. stamps from us and attach them to the equipment specified in this chapter.

(2) Any manufacturer may return damaged stamps to us with a detailed listing of the damaged stamps and must pay a service charge. We will then replace the I.D. stamps.

(3) Owners of gambling equipment which require annual I.D. stamps must purchase I.D. stamps from us and attach them to their gambling equipment. Annual I.D. stamps expire on December 31 each year, even if the equipment was placed out for play mid-year.

(4) Owners of pull-tab dispensers must purchase I.D. stamps to replace worn I.D. stamps on pull-tab dispensers. The owner must send us:

- (a) A copy of the invoice for the purchase of the dispenser from the manufacturer, distributor, or operator; or
- (b) A complete description of the pull-tab dispenser, serial number, manufacturer, and the previous I.D. stamp number, if known.

NEW SECTION

WAC 230-16-170 I.D. stamps must be visible. (1) I.D. stamps on gambling equipment must be visible to allow inspection.

(2) If equipment is packaged within protective materials, the I.D. stamps must be visible for inspection without removing any of the packaging (for example, shrink wrap).

(3) If more than one piece of gambling equipment is packed in a container, manufacturers must list the I.D. stamp numbers on the outside of the container.

NEW SECTION

WAC 230-16-175 Placing I.D. stamps and records entry labels. (1) Manufacturers must attach I.D. stamps and records entry labels to approved gambling equipment in the following way:

(a) **Punch boards** - On the reverse side of the board in an area that will not obstruct removal of punches. If sufficient space is not available on the reverse side, licensees may wrap the records entry labels around or partially attach them to the edge of the punch board as long as this does not obstruct display of prizes available or other information we require.

(b) **Pull tabs** - On the face or reverse side of the flare. If placed on the face, the I.D. stamps and records entry labels must not obstruct prizes available or other information we require.

(c) **Disposable bingo cards** - On the packing label on the outside of the shipping carton. Manufacturers must attach records entry labels to the packing slip. When they pack a set or collation of cards in more than one shipping container, manufacturers may attach the I.D. stamp to the first container

and print the I.D. stamp number on all remaining shipping containers.

(2) **Electronic pull-tab dispensers, electronic bingo card daubers, and electronic facsimile card tables** - Manufacturers or owners must attach I.D. stamps on the outside of the main body, in an area that is not normally removed and replaced, and in a way that does not obstruct the view of the pull-tabs available for play, the bingo cards, or the card facsimiles.

(3) **Electromechanical and mechanical pull-tab dispensers** - Manufacturers or owners must attach I.D. stamps on the outside of the main body, in an area that is not normally removed and replaced, and in a way that does not obstruct the view of the pull-tabs available for play or the card facsimiles. Licensees may discard records entry labels.

(4) **Amusement games** - Owners must attach I.D. stamps on the outside of the main body, in an area that is not normally removed and replaced, and in a way that does not obstruct the view of the amusement game prizes.

NEW SECTION

WAC 230-16-180 Record retention for I.D. stamp records. Manufacturers must keep records that provide an accountability trail for all I.D. stamps purchased.

(1) For I.D. stamps attached to gambling equipment and sold, manufacturers must keep the I.D. stamps records for at least three years and include, at least:

- (a) The name of the purchaser;
- (b) The date of the sale; and
- (c) The invoice number recording the sale.

(2) For all unused or damaged I.D. stamps, manufacturers must indefinitely retain the I.D. stamps or provide records that include enough detail to allow us to account for all I.D. stamps.

RECORDKEEPING

NEW SECTION

WAC 230-16-185 Accounting records for manufacturers and distributors. Manufacturers and distributors must keep and maintain a complete set of records for their licensed activity. They must, at least:

(1) Use the double entry accounting method, update these records at least once a month and provide a monthly balance for each account; and

(2) Maintain their records in accordance with generally accepted accounting principles and ensure the records can be reconciled to the licensee's federal income tax return; and

(3) Keep:

(a) **Cash disbursements book (check register)** - Manufacturers and distributors must document all expenses, both gambling and nongambling related, with invoices or other appropriate supporting documents. They must enter information monthly and include, at least:

- (i) The date the check was issued or payment made;
- (ii) The number of the check; and
- (iii) The name of the payee; and
- (iv) Type of expense; and

(b) **Cash receipts** - Manufacturers and distributors must keep a record of cash sales and cash received from all sources. They must enter information for each payment received monthly and include, at least, the:

- (i) Date; and
- (ii) Name of the person paying; and
- (iii) Amount; and

(c) **General ledger** - Manufacturers and distributors whose gambling related sales are greater than five hundred thousand dollars per year must have a general ledger which contains, in addition to all other accounts by month, a separate sales account for each type of sale; and

(d) **Bank reconciliation** - Manufacturers and distributors must reconcile their accounts each month. "Reconcile" means the manufacturer or distributor must compare the two balances, resolve any differences, and document the comparison and the differences in writing; and

(e) **Copies of all financial data** - Manufacturers and distributors must keep copies of all financial data that supports tax reports to governmental agencies; and

(4) Maintain copies of all agreements regarding sales or leasing of gambling equipment and supplies that fully disclose all terms.

NEW SECTION

WAC 230-16-190 Sales invoices for manufacturers and distributors. Manufacturers and distributors must document each sale of equipment or services, any return or refund, or any other type of transfer of punch boards, pull-tabs, pull-tab dispensers, or bingo equipment, including bingo cards, with a standard sales invoice.

Sales invoices and credit memos - These invoices and credit memos must:

(1) Be prenumbered sequentially at the time of purchase, using not less than four digits. Manufacturers and distributors may use computer generated numbering systems if:

(a) The system numbers the invoices and credit memos sequentially; and

(b) The manufacturers and distributors use the same system for all sales; and

(c) The manufacturers and distributors must not use a manual override function; and

(2) Record:

(a) The date of sale. Distributors must also enter the date of delivery if different from the date of sale; and

(b) The customer's name and complete business address; and

(c) A full description of each item sold or service provided, including the I.D. stamp number for each item, if attached; and

(d) The quantity and price of each item, including each merchandise prize for punch boards or pull-tabs; and

(e) The gross amount of each sale, including all discount terms and the total dollar amount of any discount; and

(3) Have three parts including, at least:

(a) The original, which must be given to the customer; and

(b) One which must be filed by customer name; and

(c) One which must be filed by invoice number or in an electronic sales journal, if we approve it.

NEW SECTION

WAC 230-16-195 Additional requirements for sales invoices. (1) In addition to the requirements of WAC 230-16-310, manufacturers and distributors must complete sales invoices that include:

(a) For distributors, a separate line for each I.D. stamp number; and

(b) Space for the operator to either attach a records entry label or enter the I.D. stamp number and the date they placed the equipment out for play, adjacent to the written entry the distributor makes; and

(c) For each punch board or pull-tab, at least:

(i) Trade name of the game; and

(ii) Type of gambling equipment; and

(iii) Form number or other manufacturer-assigned method to specifically identify a board or series, including the size or number of chances; and

(iv) I.D. stamp number; and

(d) For each pull-tab dispenser, at least:

(i) Trade name of the dispenser; and

(ii) Type of dispenser; and

(iii) I.D. stamp number; and

(e) For each set of cards or collation of packets of disposable bingo cards, at least:

(i) Type of product, including product line; and

(ii) Description of product, including the number of cartons, "series," "on," "cut," and "up"; and

(iii) I.D. stamp number; and

(iv) Serial number or, if packets, serial number of the top page; and

(v) Color and border pattern or, if packets, color and border pattern of the top page; and

(vi) The unit or package number when a series or collation has been divided; and

(vii) For disposable bingo cards to be sold for linked bingo prize games the beginning and ending sheet numbers sold to or returned from the operator; and

(f) For merchandise prizes, at least:

(i) The date of purchase; and

(ii) The company's name and complete business address;

and

(iii) A full description of each item purchased; and

(iv) The quantity of items purchased; and

(v) The cost per individual items purchased; and

(g) For sequentially prenumbered card game recordkeeping forms, at least:

(i) Type of form; and

(ii) Beginning and ending serial numbers; and

(iii) Quantity of forms; and

(h) For all other gambling equipment, at least:

(i) Trade name of device; and

(ii) Type of device; and

(iii) Serial number or other identification numbers or characteristics; and

(2) Manufacturers and distributors must record and maintain information documenting the sales of progressive

jackpot pull-tabs in a separate filing system. They may use a computerized system to separately track this information and provide immediate reports.

NEW SECTION

WAC 230-16-200 Sales journals for manufacturers and distributors. Manufacturers and distributors must keep a monthly sales journal containing, at least:

- (1) Each date of sale; and
- (2) Each sale invoice number; and
- (3) The name of the person paying; and
- (4) Sales by category, including:
 - (a) Punch boards that pay out:
 - (i) Cash; and
 - (ii) Merchandise prizes; and
 - (b) Pull-tab series that pay out:
 - (i) Cash; and
 - (ii) Merchandise prizes; and
 - (c) Pull-tab dispensers; and
 - (d) Merchandise intended for punch boards or pull-tab series prizes; and
 - (e) Bingo equipment; and
 - (f) Sales directly related to gambling activities, including pull-tab dispensers, equipment leases, or sales and supplies; and
- (5) The total amount of each invoice.

NEW SECTION

WAC 230-16-205 Record retention for manufacturers and distributors. Manufacturers and distributors must retain the following for at least three years after the end of their fiscal year:

- (1) All required accounting records; and
- (2) Monthly records; and
- (3) Sales invoices; and
- (4) Sales receipts; and
- (5) Sales journals; and
- (6) Credit memos.

NEW SECTION

WAC 230-16-210 Alternative formats for record-keeping. Manufacturers and distributors must receive advanced written approval from us for any alternative format of recording, such as:

- (1) Sales invoice numbers explained in WAC 230-16-190 (1)(a); or
- (2) Invoice files by customer name and invoice number; or
- (3) Tracking progressive jackpot pull-tab series; or
- (4) Sales journals; or
- (5) Cash disbursements book (check register).

NEW SECTION

WAC 230-16-215 Accounting records and record retention for gambling service suppliers. Gambling service suppliers (service suppliers) must maintain records that doc-

ument services they provide and receipts of payments for those services.

(1) Service suppliers must maintain an accounting system that includes, at least:

(a) **Sales invoices** - Sales invoices or detailed monthly billing statements issued to each customer. Service suppliers must maintain copies of these invoices or billing statements on their premises; and

(b) **Sales journal** - The sales journal must contain, at least, the following by month:

- (i) Date of sale; and
- (ii) The invoice number; and
- (iii) The name of the person paying; and
- (iv) Category of each service provided; and
- (v) Payment amount; and

(c) **Cash receipts** - Service suppliers must record all cash receipts in an original book of entry like a sales journal, a check register, or a separate cash receipts journal. This record must include cash sales and cash received from all sources and, at least the following, by month:

- (i) Date the payment was received; and
- (ii) Name of the person paying; and
- (iii) Payment amount; and

(d) **Bank statements** - Service suppliers must maintain copies of all deposits, deposit slips, and receipts; and

(e) **General ledger** - Service suppliers whose gambling related activities are greater than five hundred thousand dollars per year must have a general ledger which contains, in addition to all other accounts by month, a separate sales account for each type of activity; and

(f) **Copies of all financial data** - Service suppliers must maintain copies of all financial data that supports tax reports to governmental agencies.

(2) Service suppliers must:

(a) Maintain copies of all contracts they enter into with their customers which fully disclose all terms; and

(b) Keep and maintain required records for three years following the end of their fiscal year.

NEW SECTION

WAC 230-16-220 Activity reports by manufacturers and distributors. Manufacturers and distributors must submit activity reports to us twice a year for sales and services related to gambling activities. The activity reports must be in the format we require and must:

(1) Cover the periods:

- (a) January 1 through June 30; and
- (b) July 1 through December 31; and

(2) Be received at our administrative office or post-marked no later than thirty days following the end of the reporting period; and

(3) Be signed by the licensee's highest ranking executive officer or a designee. If someone other than the manufacturer or distributor or its employee prepares the report, then it must provide the preparer's name and business telephone number; and

(4) Be submitted regardless of the level of activity. If no activity was conducted during the period, a report stating "no activity" must be submitted; and

(5) Be filed even if they do not renew their license. They must file a report for the period between the previous report filed and the expiration date of the license.

WSR 07-17-072
PROPOSED RULES
GAMBLING COMMISSION

[Filed August 13, 2007, 3:29 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-11-008.

Title of Rule and Other Identifying Information: New chapter 230-21 WAC, Public disclosure.

Hearing Location(s): Red Lion at the Park, 303 West North River Drive, Spokane, WA 99201, (509) 326-8000, on October 12, 2007, at 9:30 a.m.

Date of Intended Adoption: October 12, 2007.

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

Assistance for Persons with Disabilities: Contact Gail Grate, Executive Assistant, by October 1, 2007, TTY (360) 486-3637 or (360) 486-3453.

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 public disclosure are under review and are now being rewritten in plain English. Staff propose repealing some of the rules in chapter 230-60 WAC and not include a "plain English" rule on this particular rule in chapter 230-21 WAC.

SUBSTANTIVE RULE CHANGES:

Post-1/1/2008 WAC 230-21-005 Purpose.

Pre-1/1/2008 WAC 230-60-001 Purpose.

This rule was amended to change the RCW reference number. When the RCW was recodified the number our rule referred to was no longer in use.

REPEALER

Pre-1/1/2008 WAC 230-60-010 Definitions.

This rule was repealed to reflect the current Public Records Act, chapter 42.56 RCW.

Post-1/1/2008 WAC 230-21-005 Types of public records, location, and times available.

Pre-1/1/2008 WAC 230-60-025 Public records available—Location—Time available.

The rule needed to be updated to reflect the current version of the Public Records Act. References to chapter 42.17 RCW and chapter 230-60 WAC are removed and replaced by references to chapter 42.56 RCW. Also, the reference to non-disclosure of "investigative procedures," is eliminated. Availability of records is clarified.

Post-1/1/2008 WAC 230-21-015 Public records officers.

Pre-1/1/2008 WAC 230-60-030 Public records officers.

The only change to the rule is to update a citation to the Public Records Act.

REPEALER

Pre-1/1/2008 WAC 230-60-035 Office hours.

The current rule is repetitive and needs to be repealed. The agency's normal office hours are stated in WAC 230-21-005.

Post-1/1/2008 WAC 230-21-020 Requests for public records.

Pre-1/1/2008 WAC 230-60-040 Requests for public records.

The rule is updated to reflect compliance with the current Public Records Act, chapter 42.56 RCW. Requests for public disclosure no longer require the requestor to refer to the "current commission record index," so that subpart has been eliminated from the rule.

Post-1/1/2008 WAC 230-21-015 Public records officers.

Pre-1/1/2008 WAC 230-60-030 Public records officers.

The only change to the rule is to update a citation to the Public Records Act.

REPEALER

Pre-1/1/2008 WAC 230-60-045 Copying.

We are repealing WAC 230-60-045, rule governing fee for copying public records because it is covered under the Public Records Act, RCW 42.56.120.

REPEALER

Pre-1/1/2008 WAC 230-60-050 Exemptions.

Staff is proposing to repeal WAC 230-60-050 (1) and (2), sections covering exemptions for public records and the agency requirements for denying requests based on exemptions because they are established in the Public Records Act, RCW 42.56.070.

REPEALER

Pre-1/1/2008 WAC 230-60-065 Records index.

Staff is proposing to repeal WAC 230-60-065, which reiterates the agency's requirement to maintain a system of indexing for the dissemination of public records because it is covered in the Public Records Act, RCW 42.56.070(5).

REPEALER

Pre-1/1/2008 WAC 230-60-100 Interpretive and policy statements.

Staff repealed WAC 230-60-100, interpretative policy and policy statement, because the information it covers is in the Administrative Procedure Act, RCW 34.05.230.

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.

August 13, 2007
Susan Arland
Rules Coordinator

Chapter 230-21 WAC

PUBLIC DISCLOSURE

NEW SECTION

WAC 230-21-001 Purpose. The purpose of this chapter is to ensure the Washington state gambling commission complies with the Public Records Act, chapter 42.56 RCW.

NEW SECTION

WAC 230-21-005 Types of public records, location, and times available. All public records of the commission are available for public inspection and copying unless the law provides otherwise. The location of the records and times they are available are:

- (1) **Location of public records** - All public records of the commission are located at our administrative office in Lacey.
- (2) **Times available** - All public records are available for inspection and copying during normal office hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays. Unless someone makes in advance a written request to view them, public records may not be available during the period 12:00 noon to 1:00 p.m.

NEW SECTION

WAC 230-21-010 Public records officers. The director designates the public records officers in charge of our public records. These persons must be located in our main administrative offices. Public records officers are responsible for:

- (1) Implementing our rules regarding the release of public records;
- (2) Coordinating the staff of the commission in this regard;
- (3) Maintaining, keeping current, and publishing an index of all agency records as chapter 42.56 RCW requires; and
- (4) Generally insuring staff complies with chapter 42.56 RCW.

NEW SECTION

WAC 230-21-015 Requests for public records. According to chapter 42.56 RCW, members of the public may inspect, copy, or get copies of public records if they comply with the following procedures:

- (1) Make a request in writing on the form we require and have available at our administrative office; and
- (2) Present the form at our administrative office during normal office hours to commission staff designated to receive requests, or send it by mail; and
- (3) Commission staff must assist the public in identifying the appropriate public record requested; and
- (4) If a person is not specifically authorized by law to obtain lists of names of individuals from public records, that person must complete a statement agreeing not to release or use the public record information for commercial purposes.

NEW SECTION

WAC 230-21-020 Denying public disclosure requests. With all denials of requests for public records, we provide a written statement explaining the reason for the denial. The statement includes:

- (1) The specific exemption that authorizes us to withhold the record; and
- (2) A brief explanation of how the exemption applies to the record we withheld.

NEW SECTION

WAC 230-21-025 Protection of public records. We are a law enforcement and regulatory agency and a licensing agency.

- (1) Individuals may inspect the public records at the administrative offices where we file and maintain the records. An authorized member of our staff must accompany and observe the inspection.
- (2) We will deny inspection and withdraw the records if the individual inspecting the records:
 - (a) Is damaging, altering, or substantially disorganizing them; or
 - (b) Attempts to remove them; or
 - (c) Is excessively interfering or will unduly interfere with our other essential functions.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 230-60-005	Purpose.
WAC 230-60-010	Definitions.
WAC 230-60-025	Public records available— Location—Time available.
WAC 230-60-030	Public records officers.
WAC 230-60-035	Office hours.
WAC 230-60-040	Requests for public records.
WAC 230-60-045	Copying.

WAC 230-60-050	Exemptions.
WAC 230-60-055	Review of denials of public records requests.
WAC 230-60-060	Protection of public records.
WAC 230-60-065	Records index.
WAC 230-60-100	Interpretive and policy statements.

WSR 07-17-073
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed August 13, 2007, 4:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-06-045.

Title of Rule and Other Identifying Information: Chapter 16-305 WAC, Seed assessment, fees for seed services and seed certification.

Hearing Location(s): Washington State Department of Agriculture (WSDA), Room 238, 21 North 1st Avenue, Yakima, WA 98902, on September 25, 2007, at 11:00 a.m.

Date of Intended Adoption: October 12, 2007.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail tnorman@agr.wa.gov, fax (360) 902-2085, by 5 p.m. on September 26, 2007.

Assistance for Persons with Disabilities: Contact the agency receptionist by calling TTY (360) 902-1996 or (360) 902-1976.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal is intended to provide a comprehensive review of the seed program's fee structure. This review ensures that the fees being charged for services provided by the seed program are in correlation to the amount of time needed to render that service and ensure cost recovery for the program. This review resulted in the recommendation to raise some fees and to lower some fees, and suggests the creation of fees for services that the program now offers, but for which no fee exists. The seed program worked in consultation with the seed program advisory committee and industry to develop the current

(1)

proposal to ensure that revenues collected by the program are sufficient to ensure financial solvency of the seed program.

Reasons Supporting Proposal: At the direction of the seed program advisory committee, a special committee was formed to review the seed program fee schedule. The committee was comprised of industry members representing all seed industry groups. These include representatives from each major seed crop group, as well as lab, certification, and phytosanitary customers. This committee met and participated in a complete review of the fee schedule. There was unanimous consensus from this committee on each proposed modification to the fee schedule.

Statutory Authority for Adoption: Chapters 15.49, 34.05 RCW.

Statute Being Implemented: Chapter 15.49 RCW.

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

Name of Proponent: Members of the special seed program fee committee - A consortium of seed industry representatives, private.

Name of Agency Personnel Responsible for Drafting and Implementation: Victor Shaul, Operations Manager, Yakima, (509) 225-2630; and Enforcement: Fawad Shah, Program Manager, Yakima, (509) 225-2636.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Even though WSDA has an exemption to Initiative 601, which limits the rate of increase of fees, the proposed increase in the fees charged by the WSDA for seed testing and certification services does not exceed the OFM fiscal growth rate factor of 5.53% for the fiscal year 2008. WSDA concludes that this fee increase does not impose "more than a minor" cost upon the seed industry and therefore a small business economic impact statement is not required according to RCW 19.85.030 (1)(a).

A cost-benefit analysis is not required under RCW 34.05.328. The WSDA is not a listed agency in RCW 34.05-328 (5)(a)(i).

Dennis Hannapel
 Assistant Director

AMENDATORY SECTION (Amending WSR 05-12-053, filed 5/26/05, effective 6/26/05)

WAC 16-303-200 Seed program testing fees. Seed testing fees are as follows:

Category	Crop kind	PURITY	GERM/1	TZ	Additional Crops in each Category/2
1	Agricultural Grasses	37.00	22.60	41.83	Alkaligrass, Bermudagrass, Canarygrass, Foxtail, Switchgrass, Timothy, Zoysia
2	Alfalfa & Clover	28.78	24.66	41.83	Alfalfa, Black Medic, Clover, Lupine, Milkvetch, Sainfoin, Trefoil
3	Beans	26.72	24.66	41.83	Beans
4	Beets	39.06	43.16	41.83	Beets, Swiss chard, Spinach
5	Bentgrass, redtop	65.78	34.94	41.83	Bentgrass, Redtop

Category	Crop kind	PURITY	GERM/1	TZ	Additional Crops in each Category/2
6	Bluegrass	45.22	30.82	41.83	Bluegrass, all types
7	Brassica ((sp.) <u>Species</u>)	69.88	34.94	41.83	Brassica Species
8	Brome	47.28	24.66	41.83	Brome: Mountain, Smooth, Meadow
9	Fescue	37.00	24.66	41.83	Fescue: Tall and Meadow
10	Fescue, all others	45.22	24.66	41.83	Fescue: Arizona, Blue, Blue Hard, <u>C</u> hewings, <u>C</u> reeping, Hard, Idaho, Red, Sheep
11	Flax	28.78	24.66	41.83	Lewis flax
12	Orchardgrass	51.38	26.72	41.83	Orchardgrass
13	Peas and other large seeded legumes	28.78	24.66	41.83	Peas, Chickpeas, Lentil, <u>V</u> etch
14	Primrose	28.78	24.66	41.83	Primrose
15	Ryegrass	45.22	22.60	41.83	Ryegrass, (Perennial or Annual)
16	Small burnet	28.78	24.66	41.83	Small burnet
17	Sudangrass	28.78	24.66	41.83	Sudangrass
18	Vegetables	28.78	24.66	45.00	Vegetables: <u>A</u> rugula, Asparagus, Cantaloupe, Carrot, Celery, Corn, Coriander, Cucumber, Dill, Eggplant, Endive, Leek, Lettuce, Okra, Onion, Parsley, Parsnip, Pepper, Pumpkin, Radish, Squash, Tomato, Watermelon
19	Grains ((and Pulses))	28.78	24.66	41.83	Wheat, Triticale, Sunflower, Sorghum, Safflower, Rye, Rice, Millet, Buckwheat, Barley, Oats, ((Vetch)) <u>E</u> mmmer, <u>S</u> pelt
20	Wheatgrass, Wildrye, other native ((sp.) <u>species Group A</u>)	78.12	30.82	41.83	((Wheatgrass: Beardless, Bluebunch, Crested, Intermediate, Pubescent, R/S, Slender, Siberian, Tall, Thickspike, Western Wildrye)) <u>B</u> luestem, <u>B</u> uffalograss, <u>L</u> ovegrass, <u>P</u> enstemon, <u>S</u> and dropseed, <u>S</u> ideoats, <u>S</u> quirreltail; <u>I</u> ntermediate, <u>P</u> ubescent, <u>T</u> all, <u>T</u> hickspike, <u>S</u> lender, and <u>W</u> estern wheatgrasses; <u>S</u> mall-seeded wildrye
	<u>Wheatgrass, Wildrye, other native species and flowers Group B</u>	<u>69.00</u>	<u>30.82</u>	<u>41.83</u>	((Other Native Species: Echinacea, Green needlegrass, Indian ricegrass, Junegrass, Little bluestem, Needle and Thread, Squirreltail, Kochia, Penstemon, Oatgrass, Prairie sandreed, Sand dropseed, Sand Lovegrass, Sideotsgrama)) <u>B</u> itterbrush, <u>E</u> chinacea, <u>I</u> ndian ricegrass, <u>J</u> unegrass, <u>K</u> ochia, <u>O</u> atgrass, <u>I</u> ndian ricegrass, <u>B</u> lue and other large-seeded wildrye, <u>C</u> rested and <u>S</u> iberian wheatgrasses
	<u>Wheatgrass, Wildrye, other native species and flowers Group C</u>	<u>69.00</u>	<u>114.48*</u>	<u>41.83</u>	<u>G</u> reen needlegrass, <u>N</u> eedle & <u>T</u> hread, <u>P</u> enstemon *(Germination requires 400 seed TZ according to AOSA Rules)

/1 Standard 400 seed germination test.

(2) Crops not listed in the above table will be charged by the category that they fit into.

AMENDATORY SECTION (Amending WSR 05-12-053, filed 5/26/05, effective 6/26/05)

WAC 16-303-210 Fees for special seed tests.

Test	Fee	Additional Information
(1) All states noxious weed examination	\$ 33.38	
(2) Dormant Seed Test	\$ 41.83	
(a) For crops requiring a 400 seed TZ as required in the AOSA rules	\$ 83.66	
(b) This fee also applies to paired tests when required by AOSA rules		
(3) (Brassica seed chemical identification)	\$ 20.94	
(4) Cold (vigor) test for wheat	\$ 65.00	
(5) (4) Crop or weed exam		Standard noxious amount from AOSA rules
(a) Turf-type and other small seeded grasses	\$ 38.00	Kentucky bluegrass, timothy, alkaligrass, fine-leaved fescues
(b) Small seeded legumes and medium seeded crops	\$ 44.00	Brassicas, ryegrass, tall fescue
(c) Wheatgrass and native species	\$ 50.00	
(d) Grains and (pulses) <u>large seeded legumes</u>	\$ 22.00	
(6) <u>(5) Fescue seed ammonia test</u>	\$ 30.82	<u>Required on all certified Blue, Hard, and Sheep fescues</u>
(7) <u>(6) Fluorescence test (400 seed test)</u>	\$ 26.72	<u>Required on all Perennial and Annual ryegrass samples</u>
(8) <u>(7) Miscellaneous services, samples requiring extra time, field run samples, etc.</u>	(\$ 30.00) <u>35.00</u> /hour	
(9) <u>(8) Pest and disease (phyto exam) and/or soil exam</u>	\$ 34.94	
(10) <u>(9) Quarantine tests on seed</u>		
Bluegrass and Bentgrass	\$ 18.04/5 grams	
Other grasses	\$ 18.04/10 grams	
(11) <u>(10) Rules test—Canadian</u>	PURITY	GERMINATION
Alfalfa, clover, peas, lentils	\$ 32.37	\$ 24.66
Kentucky bluegrass	\$ 49.34	\$ 30.82
Bentgrass	\$ 72.47	\$ 34.94
(12) <u>(11) Rules test—I.S.T.A.</u>	PURITY	GERMINATION
Alfalfa, clover, peas, lentils	\$ 32.37	\$ 30.82
Kentucky bluegrass	\$ 49.34	\$ 30.82
(13) <u>(12) Moisture test</u>	\$ 30.00	
(14) <u>(13) Seed Count</u>	(\$ 21.84)	
(15) <u>(a) Large seed</u>	<u>\$ 9.25</u>	
(15) <u>(b) Small seed</u>	<u>\$ 12.30</u>	
(16) <u>Out-sourcing charge</u>	\$ 15.00	
(17) <u>(15) Sod seed analysis</u>	Bluegrass \$ 75.00 Fescue \$ 52.00 Ryegrass \$ 42.00	
(18) <u>(16) Sodium Hydroxide test for presence of red and/or white wheat</u>	\$ 20.54	
(19) <u>(17) Undesirable grass species test (includes an all states noxious test) examination (UGS test)</u>	\$ 70.37	

Test	Fee	Additional Information
<u>(18) Germination test in soil</u>	<u>\$ 50.00</u>	
<u>(19) Wheat bioassay test</u>	<u>\$ 50.00</u>	
<u>(20) Germination on mixtures</u> <u>Germination requiring embryo excision</u>	<u>\$ 35.00 per hour for separation of kinds or preparation time</u>	<u>This is in addition to the established germination fee</u>

AMENDATORY SECTION (Amending WSR 03-18-071, filed 8/29/03, effective 9/29/03)

WAC 16-303-230 Official seed sampling or similar service. Fees for official sampling are in addition to travel time and mileage.

Crop	Fee	Minimum charge
Peas, beans, small grains or seeds of similar size	<u>Standard sampling \$((0-05)) 0.07 Per cwt.</u> <u>I.S.T.A. sampling \$ 0.09 Per cwt. plus \$ 7.50 Per lot</u>	<u>\$ ((30-00)) 35.00</u> <u>\$ 35.00 plus \$ 7.50 Per lot</u>
For all other kinds	<u>Standard sampling \$((0-15)) 0.018 Per cwt.</u> <u>I.S.T.A. sampling \$ 0.22 Per cwt. plus \$ 7.50 Per lot</u>	<u>\$ ((30-00)) 35.00</u> <u>\$ 35.00 plus \$ 7.50 Per lot</u>

AMENDATORY SECTION (Amending WSR 03-18-071, filed 8/29/03, effective 9/29/03)

WAC 16-303-240 Fees for blending seed. Blending fee is not applicable to salvage blends.

Grass option B*	Washington origin seed	\$ 1.02 per cwt.
Grass option B*	Out-of-state origin	\$ 0.61 per cwt.
Grass option A and all other blends of other crops		<u>\$ ((0-05)) 0.07 per cwt.</u>

*See WAC 16-303-320, footnote 6 for information on option A and option B.

Service	Fee
Additional mailing of report	\$ 5.12 each destination
Additional copies of reports	<u>\$ ((5-12)) 2.50</u> minimum fee
Revised reports	\$ 10.26 minimum (hourly fee when applicable)
Fee for special shipping and handling service, for example Federal Express, Air Parcel or air freight	\$ 3.70 plus exact shipping cost
Fee for facsimile transmission of documents	\$ 1.00 per document
Mileage - additional or special requested trips	As established by the Washington State Office of Financial Management

AMENDATORY SECTION (Amending WSR 05-12-053, filed 5/26/05, effective 6/26/05)

WAC 16-303-250 Miscellaneous charges for seed services. Fees for miscellaneous department seed services are as follows:

Service	Fee
Rush samples (including phone or FAX report if requested at time sample is submitted)	\$ 15.00
High priority sample - purity result completed before the end of the next business day. (Special circumstances only. Call ahead for availability.)	\$ 150.00
Phone reports on test result, per call	\$ 7.18
Preliminary report on germination	<u>\$ ((20-00)) 5.00</u>

Stand-by time - or travel time	<u>\$ ((30-00)) 35.00/hour</u>	Travel time to be charged when special trip is requested. Customer will be charged the exact cost of the envelopes.)
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AMENDATORY SECTION (Amending WSR 03-18-071, filed 8/29/03, effective 9/29/03)

WAC 16-303-300 Phyto-sanitary certification of seed—Fees.

Service	Fee	Additional Information
Federal Phytosanitary certificate	\$(30.00) <u>35.00</u>	
State Phytosanitary certificate	<u>\$ 40.00</u>	
Field inspection—All seed except wheat seed (for each required inspection)	\$ 5.30 per acre, per required inspection	\$ 50.00 minimum fee, per inspection
Field inspection—Wheat seed only	\$ 2.12 per acre or fraction thereof	\$ 50.00 minimum fee, per inspection
Area inspection ((((billed at time certificate is issued)))	\$.05 per cwt.) <u>\$ 0.53/acre</u>	(((\$ 50.00 minimum fee per certificate \$ 159.25 maximum fee per certificate)))
Late fee - per application	\$ 41.00	

AMENDATORY SECTION (Amending WSR 05-12-053, filed 5/26/05, effective 6/26/05)

WAC 16-303-310 Organization for economic cooperation and development scheme for varietal certification (O.E.C.D.) fees. In addition to fees required by applicable Washington certification rules, the following fees shall apply to all seed tagged O.E.C.D. and is payable by the person requesting O.E.C.D. certificate. The certifying agency may require fees paid in advance:

Service	Fee	Additional Information
O.E.C.D. certificate	\$ 15.41 each	
O.E.C.D. grow out test	\$ 65.72 each entry	No charge for control entry
O.E.C.D. assessment	cost to program	<u>This is a pass through fee to USDA</u>
O.E.C.D. tagging fee	\$ 0.84/cwt.	All grasses except tall fescue

Service	Fee	Additional Information
	\$ 0.51/cwt.	Tall fescue
	\$ 0.53/cwt.	all other crops

AMENDATORY SECTION (Amending WSR 03-18-071, filed 8/29/03, effective 9/29/03)

WAC 16-303-315 Service fee for sod quality seed tags and tagging. Service fee for sod quality seed tags and tagging shall be ~~\$(0.12)~~ 0.22 per cwt.

AMENDATORY SECTION (Amending WSR 03-18-071, filed 8/29/03, effective 9/29/03)

WAC 16-303-317 Annual and rough bluegrass quarantine fees. Fees for sampling and analysis for the presence of annual or rough bluegrass are those fees established in this chapter and:

- (1) Annual bluegrass and rough bluegrass - inspection fee for nursery plantings for the presence of annual bluegrass is \$ 59.10 per acre or portion thereof. The tagging fee is \$ 0.53 cwt. with a minimum fee of \$ 23.12.
- (2) Quarantine inspection of grass seed fields found to be in violation of the quarantine requirements will be charged at the rate of ~~\$(150.00)~~ 200.00 per field inspection.

AMENDATORY SECTION (Amending WSR 05-12-053, filed 5/26/05, effective 6/26/05)

WAC 16-303-320 Certification fees for seed certified by the department. (1) Fees apply to both new and renewal applications.

The seed processor is responsible for seed certification fees including sampling, testing, production and final certification fees, and may accept responsibility for any other additional fees associated with certification. Fees for services such as O.E.C.D. and sod quality, etc., are in addition to the fees listed in this section.

Seed	Application Fee 1/	Seedling field inspection fee	Seedling producing or field inspection Fee 2/	Late Application Penalty Fee	Reinspection Fee (other than isolation)	Production Fee (includes tagging) 7/	Seed shipped Out-of-State (uncleaned)
Alfalfa, Red clover, White clover and Trefoil	\$ 30.00 per variety per grower	\$ 50.00/field	\$ 1.85/acre	\$ 41.00	\$ 53.44 ea. field	\$ 0.53/cwt. 5/	\$ 0.20/cwt.
Bean	\$ 30.00 per variety per grower	N/A	\$ 1.85/acre 3/ (one inspection) \$ 3.70/acre 4/ (two inspections)	\$ 41.00	\$ 53.44 ea. field	\$ 0.53/cwt.	\$ 0.20/cwt.
Turnip, Rutabaga, Kale	\$ 30.00 per field	N/A	\$ 3.70/acre (two inspections)	\$ 41.00	\$ 53.44 each field	\$ 0.53/cwt.	\$ 0.20
Perennial Grasses 6/	\$ 30.00 per field	\$ 50.00/field	\$ 50.00 per field	\$ 41.00	\$ 53.44 each field	Option A \$ 0.84/cwt. for all grass except tall fescue \$ 0.51/cwt. tall fescue Option B \$ 1.17/cwt. (min. \$ 11.66)	\$ 0.31

Seed	Application Fee 1/	Seedling field inspection fee	Seedling producing or field inspection Fee 2/	Late Application Penalty Fee	Reinspection Fee (other than isolation)	Production Fee (includes tagging) 7/	Seed shipped Out-of-State (uncleaned)
Corn	\$ 30.00 ((for each separate combination/ or isolation)) Per field	N/A	\$ 50.00 first acre \$ 10.99 ea. additional acre except hybrid corn \$ 4.85 ea. additional acre	((41.00)) \$ 41.00	---	((0.11)) \$ 0.11 per tag issued or minimum fee of \$10.00 per lot	((3.00)) \$ 3.00 per document
Annual grasses	\$ 30.00 per field	N/A	\$ 1.85/acre	\$ 41.00 per field	((53.44)) \$ 53.44 each field	\$ 0.42/cwt.	\$ 0.20
Rapeseed, Canola, and Mustard	\$ 30.00 per variety per grower	N/A	\$ 1.85/acre (one inspection)	\$ 41.00 per grower	\$ 53.44 ea. field	\$ 0.53/cwt.	\$ 0.20

- 1/ Seed certification application due dates can be found in WAC 16-302-050.
- 2/ Seedling producing or field inspection fees are refundable if the acreage is withdrawn before the inspection is completed. In the case of bean seed, fees are required of seedling fields to be harvested for certification the year of planting.
- 3/ One inspection is required for Great Northern Red Mexican, pinto, pink, and small white bean.
- 4/ Includes windrow inspection which is required for certification of snap beans, kidney beans, and eligibility for shipment into the state of Idaho.
- 5/ Production fees are billed at completion of laboratory analysis tests. If no seed is tagged, \$ 0.10 of the \$ 0.53 per cwt. production fee is refundable.
- 6/ Option A: Inspection and final certification fees are based on pounds sampled and billed upon completion of required laboratory tests.
Option B: Inspection and final certification fees are based on pounds tagged after required laboratory tests are completed. Those dealers requesting sampling and tagging privileges and/or participation in Option B must sign a memorandum of agreement that shall expire on June 30 of each year. The memorandum may be terminated by the director if the conditioner violates certification standards or requirements of memorandum.
- 7/ Does not include shipping and handling charge for tags.
- 8/ Service inspection of seed fields
Service inspection will be charged the established hourly rate inclusive of travel time and inspection time. This excludes the seedling inspection which is charged according to the above chart.
Service inspections will be charged a mileage fee based upon the OFM mileage rate.
- 9/ Hybrid inspections (pollen counts)
All crops except corn:
(a) \$ 45.00 per inspection if done at the time of the certification inspection.
(b) \$ 125 per inspection if not conducted at the time of the certification inspection.

(2) Other fees associated with grass seed certification:
Out-of-state origin seed tagged with interagency certification tags.

- Grass Option A: \$ 0.31 per cwt.
- Grass Option B: \$ 0.68 per cwt.
- Reissuance of cert. tags: \$ 0.11 per tag or minimum fee of \$ 11.66

AMENDATORY SECTION (Amending WSR 06-11-066, filed 5/12/06, effective 6/12/06)

WAC 16-303-340 Seed certification fees for buckwheat, chickpea, field pea, lentil, millet, soybean, sorghum and small grains. (1) Seed certification fees for buckwheat, chickpea, field pea, lentil, millet, soybean, sorghum and small grains are as follows:

(a) Application fee per variety per grower	\$(21.88) 22.97
(b) Field inspection fee per acre except millet and hybrid sorghum	\$(3.02) 3.11
(c) Millet - first acre	\$32.55
- each additional acre	\$6.48
(d) Hybrid sorghum - first acre	\$32.55
- each additional acre	\$13.00
(e) Special field inspection fee per acre	\$2.58
(f) Late application fee	\$(20.50) 30.75
(g) Reinspection fee	\$(41.05) 43.10

minimum for each field which did not pass field inspection plus \$(~~0.44~~) 0.46 for each acre over twenty-five. The reinspection fee for isolation requirements only for a field of any size is \$(~~41.05~~) 43.10.

(h) Final certification fee	\$0.25
per cwt. of clean seed sampled, which is charged to conditioning plant, or production fee	\$0.105

per cwt. of production from fields inspected which is utilized for seed, which is charged to the grower or the final seller prior to brokerage, retail sale, sale to plant not approved for conditioning certified seed, or transshipment out-of-state.

(i) Sampling fee \$0.105

per cwt. of clean seed sampled, with minimum charge of \$10.30 per sample, which is charged to conditioning plant in lieu of mechanical sampling.

(2) A field may be withdrawn upon notification by the applicant to the certifying agency's office before field inspection. In such case, the field inspection fee is refunded upon request until June 30 of the year following harvest.

(3) Harvest before field inspection causes forfeitures of both the application and field inspection fees, and completion of certification.

WSR 07-17-083
WITHDRAWAL OF PROPOSED RULES
GAMBLING COMMISSION
[Filed August 14, 2007, 4:48 p.m.]

We are withdrawing the repeal of chapter 230-60 WAC that was filed with WSR 07-17-072. We will refile the repeal of chapter 230-60 WAC at a later date.

Susan Arland
Rules Coordinator

WSR 07-17-084
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
[Filed August 15, 2007, 11:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-11-085.

Title of Rule and Other Identifying Information: The department is amending WAC 388-503-0505 General eligibility requirements for medical programs.

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) 664-6094), on September 25, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than September 26, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.

wa.gov, fax (360) 664-6185, by 5:00 p.m. on September 25, 2007.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by September 18, 2007, TTY (360) 664-6178, or (360) 664-6097 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To make state rules consistent with federal regulations by requiring medicare recipients eligible for medicare benefits to apply for and enroll in medicare Part A, Part B and Part D when the state can pay medicare cost sharing as described in chapter 388-517 WAC.

Reasons Supporting Proposal: The federal Centers for Medicare and Medicaid mandate that state plans include the requirement to apply for and enroll in medicare programs when the state can pay medicare cost sharing as described in chapter 388-517 WAC.

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

Statute Being Implemented: 42 U.S.C., Section 1396a.

Rule is necessary because of federal court decision, *US Supreme Court NY State DSS v. Dublino* 413 U.S. (1973).

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Carole McRae, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1250.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule-making action does not affect small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Per RCW 34.05.328 (5)(vii), client eligibility rules for medical assistance programs are exempt from the cost-benefit analysis requirement of RCW 34.05.328.

August 7, 2007
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-07-141, filed 3/22/04, effective 4/22/04)

WAC 388-503-0505 General eligibility requirements for medical programs. (1) Persons applying for benefits under the medical coverage programs established under chapter 74.09 RCW must meet the eligibility criteria established by the department in chapters 388-400 through 388-555 WAC.

(2) Persons applying for medical coverage are considered first for federally funded or federally matched programs. State-funded programs are considered after federally funded programs are not available to the client except for brief periods when the state-funded programs offer a broad scope of care which meet a specific client need.

(3) Unless otherwise specified in program specific WAC, the eligibility criteria for each medical program is as follows:

(a) Verification of age and identity (chapters 388-404, 388-406, and 388-490 WAC); and

(b) Residence in Washington state (chapter 388-468 WAC); and

(c) Citizenship or immigration status in the United States (chapter 388-424 WAC); and

(d) Possession of a valid Social Security Account Number (chapter 388-476 WAC); and

(e) Assignment of medical support rights to the state of Washington (WAC 388-505-0540); and

(f) Cooperation in securing medical support (chapter 388-422 WAC); and

(g) Application for Medicare and enrollment into Medicare's prescription drug program if:

(i) It is likely that the individual is entitled to Medicare; and

(ii) The state has authority to pay Medicare cost sharing as described in chapter 388-517 WAC.

(h) Countable resources within program limits (chapters 388-470 and 388-478 WAC); and

~~((h))~~ (i) Countable income within program limits (chapters 388-450 and 388-478 WAC).

(4) In addition to the general eligibility requirements in subsection (3) of this section, each program has specific eligibility requirements as described in applicable WAC.

(5) Persons living in a public institution, including a correctional facility, are not eligible for the department's medical coverage programs. For a person under age twenty or over age sixty-five who is a patient in an institution for mental disease see WAC 388-513-1315(13) for exception.

(6) Persons terminated from SSI or TANF cash grants and those who lose eligibility for categorically needy (CN) medical coverage have their CN coverage continued while their eligibility for other medical programs is redetermined. This continuation of medical coverage is described in chapter 388-434 WAC.

WSR 07-17-088

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed August 15, 2007, 11:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-10-026.

Title of Rule and Other Identifying Information: WAC 392-139-310 Finance—Maintenance and operations levies—Determination of excess levy base.

Hearing Location(s): Old Capitol Building, 600 South Washington, Olympia, WA 98504-7200, on September 27, 2007, at 10:00 a.m.

Date of Intended Adoption: September 28, 2007.

Submit Written Comments to: Rules Coordinator, Legal Services, Office of Superintendent of Public Instruction, P.O. Box 47200, Olympia, WA 98504-7200, e-mail Penny.coker@k12.wa.us, fax (360) 753-4201.

Assistance for Persons with Disabilities: Contact Clarice Nnanabu, TTY (360) 664-3631 or (360) 725-6271.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rules are updated to reflect changes in the state and federal revenues in the levy base due to the addition of revenue codes in the school district accounting manual.

Reasons Supporting Proposal: Revisions are required to implement accounting manual changes in revenue codes.

Statutory Authority for Adoption: RCW 28A.150.290.

Statute Being Implemented: None.

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

Name of Proponent: Office of superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Shish, Office of Superintendent of Public Instruction; Implementation: Calvin W. Brodie, Office of Superintendent of Public Instruction; and Enforcement: Jennifer Priddy, Office of Superintendent of Public Instruction.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is not applicable to nongovernmental agencies.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not applicable to nongovernmental agencies.

August 15, 2007

Dr. Terry Bergeson
State Superintendent

AMENDATORY SECTION (Amending WSR 06-17-142, filed 8/22/06, effective 9/22/06)

WAC 392-139-310 Determination of excess levy base.

The superintendent of public instruction shall calculate each school district's excess levy base as provided in this section.

(1) Sum the following state and federal allocations from the prior school year(s) as determined in subsections (4) and (5) of this section:

(a) The basic education allocation as defined in WAC 392-139-115 and as reported on the August Report 1191;

(b) The state and federal categorical allocations for the following:

(i) Pupil transportation. Allocations for pupil transportation include allocations for the following accounts:

4199 Transportation - operations; ~~((and))~~

4399 Transportation - operations;

4499 Transportation - depreciation;

6199 Transportation - operations;

6299 Transportation - operations; and

6399 Transportation - operations.

(ii) Special education. Allocations for special education include allocations for the following accounts:

4121 Special education; ~~((and))~~

4321 Special education;

6124 Special education supplemental;

6224 Special education supplemental; and

6324 Special education supplemental.

(iii) Education of highly capable students. Allocations for education of highly capable students include allocations identified by account 4174 Highly capable.

(iv) Compensatory education. Allocations for compensatory education include allocations identified by the following accounts:

3100 Barrier reduction;
 4155 Learning assistance;
 4165 Transitional bilingual;
 4163 Promoting academic success;
 4166 Student achievement;
4365 Transitional bilingual;
 6151 Disadvantaged;
 6153 Migrant;
 6164 Limited English proficiency;
6251 Disadvantaged;
6253 Migrant;
 6264 (~~(Bilingual (direct);)~~) Limited English proficiency;
 6267 Indian education - JOB;
 6268 Indian education - ED; (~~and~~)
6351 Disadvantaged;
6353 Migrant;
6364 Limited English proficiency;
 6367 Indian education - JOM; and
6368 Indian education - ED.

(v) Food services. Allocations for food services include allocations identified by the following accounts:

4198 School food services (state);
4398 School food services;
 6198 School food services (federal);
6298 School food services;
6398 School food services; and
 6998 USDA commodities.

(vi) Statewide block grant programs. Allocations for statewide block grant programs include allocations identified by the following accounts:

6176 Targeted assistance;
6276 Targeted assistance; and
6376 Targeted assistance.

(c) General federal programs. Allocations for general federal programs identified by the following accounts:

5200 General purpose direct federal grants - unassigned;
 6100 Special purpose - OSPI - unassigned;
 6121 Special education - Medicaid reimbursement;
 6138 Secondary vocational education;
 6146 Skills center;
 6152 School improvement;
 6154 Reading first;
6162 Math and science - professional development;
 6200 Direct special purpose grants; (~~and~~)
6221 Special education - Medicaid reimbursement;
6238 Secondary vocational education;
6246 Skills center;
6252 School improvement;
6254 Reading first;
6262 Math and science - professional development;
 6300 Federal grants through other agencies - unassigned;
 6310 Medicaid administrative match; (~~and~~)
6321 Special education - Medicaid reimbursement;
6338 Secondary vocational education;
6346 Skills center;
 6352 School improvement;
6354 Reading first; and

6362 Math and science - professional development.

(2) Increase the result obtained in subsection (1) of this section by the percentage increase per full-time equivalent student in the state basic education appropriation between the prior school year and the current school year as stated in the state Operating Appropriations Act divided by 0.55.

(3) Revenue accounts referenced in this section are defined in the accounting manual for public school districts in the state of Washington.

(4) The dollar amount of revenues for state and federal categorical allocations identified in this section shall come from the following sources:

(a) The following state and federal categorical allocations are taken from the Report 1197 Column A (Annual Allotment Due):

3100 Barrier reduction;
 4121 Special education;
 4155 Learning assistance;
 4163 Promoting academic success;
 4165 Transitional bilingual;
 4166 Student achievement;
 4174 Highly capable;
 4198 School food services (state);
 4199 Transportation - operations;
 4499 Transportation - depreciation;
 6121 Special education - Medicaid reimbursements;
 6124 Special education - supplemental;
 6138 Secondary vocational education;
 6146 Skills center;
 6151 Disadvantaged;
 6152 School improvement;
 6153 Migrant;
 6154 Reading first;
6162 Math and science - professional development;
 6164 Limited English proficiency;
 6176 Targeted assistance; (~~and~~)
 6198 School food services (federal); and
6199 Transportation - operations.

(b) For the 2004 calendar year, the following state and federal allocations are taken from the F-195 budget including budget extensions.

For the 2005 calendar year and thereafter, the following federal allocations shall be taken from the school district's second prior year F-196 annual financial report:

4321 Special education;
4365 Transitional bilingual;
4398 School food services;
4399 Transportation - operations;
 5200 General purpose direct federal grants - unassigned;
 6100 Special purpose - OSPI - unassigned;
 6200 Direct special purpose grants;
6221 Special education - Medicaid reimbursement;
6224 Special education supplemental;
6238 Secondary vocational education;
6246 Skills center;
6251 Disadvantaged;
6252 School improvement;
6253 Migrant;
6254 Reading first;
6262 Math and science - professional development;

6264 (~~Bilingual (direct);~~) Limited English proficiency;
 6267 Indian education - JOM;
 6268 Indian education - ED;
 6276 Targeted assistance;
 6298 School food services;
 6299 Transportation - operations;
 6300 Federal grants through other agencies - unassigned;
 6310 Medicaid administrative match;
 6321 Special education - Medicaid reimbursement;
 6324 Special education supplemental;
 6338 Secondary vocational education;
 6346 Skills center;
 6351 Disadvantaged;
 6352 School improvement;
 6353 Migrant;
 6354 Reading first;
 6362 Math and science - professional development;
 6364 Limited English proficiency;
 6367 Indian education - JOM;
 6368 Indian education - ED;
 6376 Targeted assistance;
 6398 School food services;
 6399 Transportation - operations; and
 6998 USDA commodities.

(5) Effective for levy authority and local effort assistance calculations for the 2005 calendar year and thereafter:

(a) District revenues determined in subsection (4) of this section shall be reduced for revenues received as a fiscal agent. School districts shall report fiscal agent revenues pursuant to instructions provided by the superintendent of public instruction.

(b) The amount determined in subsection (4)(b) of this section, after adjustment for fiscal agent moneys, shall be inflated for one year using the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the Bureau of Economic Analysis of the Federal Department of Commerce.

(6) State and federal moneys generated by a school district's students and redirected by the superintendent of public instruction to an educational service district at the request of the school district shall be included in the district's levy base.

(7) State basic education moneys generated by a school district's students and allocated directly to a technical college shall be included in the district's levy base.

WSR 07-17-095
PROPOSED RULES
HEALTH CARE AUTHORITY
 (Basic Health)

[Order 07-04—Filed August 16, 2007, 11:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-14-012.

Title of Rule and Other Identifying Information: Chapter 182-25 WAC, Basic Health (BH) rules related to subsidi-

dized enrollment eligibility and premium calculation for foster parents licensed under chapter 74.15 RCW.

Hearing Location(s): Health Care Authority, 676 Woodland Square Loop S.E., The Sue Crystal Center, Olympia, WA, on September 25, 2007, at 10:00 a.m.

Date of Intended Adoption: September 28, 2007.

Submit Written Comments to: Bob Longhorn, Basic Health, P.O. Box 42686, Olympia, WA 98504-2686, e-mail robert.longhorn@hca.wa.gov, fax (360) 923-2605, by September 25, 2007.

Assistance for Persons with Disabilities: Contact Nikki Johnson by September 21, 2007, TTY (888) 923-5622 or (360) 923-2805.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 259, Laws of 2007, adds foster parents licensed under chapter 74.15 RCW with incomes up to 300% of the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, to the definition of "subsidized enrollee" for purposes of Basic Health eligibility.

Premiums due for foster parents with gross family income up to 200% of the federal poverty level shall be set at the minimum premium amount charged to enrollees with income below 65% of the federal poverty level. Premiums due for foster parents with gross family income between 200% and 300% of the federal poverty level shall not exceed one hundred dollars per month.

Basic Health must revise its rules consistent with these requirements.

Statutory Authority for Adoption: RCW 70.47.050.

Statute Being Implemented: Chapter 259, Laws of 2007.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Bob Longhorn, 676 Woodland Square Loop, Lacey, WA, (360) 412-4327; and Enforcement: Loly Reyes-Gonzalez, 676 Woodland Square Loop, Lacey, WA, (360) 923-2781.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative rules review committee has not requested the filing of a small business economic impact statement, and there will be no costs to small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the health care authority rules unless requested by the joint administrative rules [review] committee or applied voluntarily.

August 16, 2007

Jason Siems

Rules Coordinator

AMENDATORY SECTION (Amending Order 05-06, filed 5/24/06, effective 7/1/06)

WAC 182-25-010 Definitions. The following definitions apply throughout these rules.

(1) "Administrator" means the administrator of the Washington state health care authority (HCA) or designee.

(2) "Appeal procedure" means a formal written procedure for resolution of problems or concerns raised by enrollees which cannot be resolved in an informal manner to the enrollee's satisfaction.

(3) "Basic health plan" (or "BHP") means the system of enrollment and payment for basic health care services administered by the administrator through managed health care systems.

(4) "BHP Plus" means the program of expanded benefits available to children through coordination between the department of social and health services (DSHS) and basic health plan. Eligibility for BHP Plus is determined by the department of social and health services, based on Medicaid eligibility criteria. To be eligible for the program children must be under age nineteen, with a family income at or below two hundred percent of federal poverty level, as defined by the United States Department of Health and Human Services. They must be Washington state residents, not eligible for Medicare, and may be required to meet additional DSHS eligibility requirements.

(5) "Co-payment" means a payment indicated in the schedule of benefits which is made by an enrollee to a health care provider or to the MHCS.

(6) "Covered services" means those services and benefits in the BHP schedule of benefits (as outlined in the member handbook issued to the enrollee, or to a subscriber on behalf of the enrollee), which an enrollee shall be entitled to receive from a managed health care system in exchange for payment of premium and applicable co-payments, coinsurance and deductible.

(7) "Disenrollment" means the termination of coverage for a BHP enrollee.

(8) "Effective date of enrollment" means the first date, as established by BHP, on which an enrollee is entitled to receive covered services from the enrollee's respective managed health care system.

(9) "Dependent," as it applies to the subsidized or non-subsidized programs, means:

(a) The subscriber's lawful spouse, not legally separated, who resides with the subscriber; or

(b) The unmarried child of the subscriber or the subscriber's dependent spouse, whether by birth, adoption, legal guardianship, or placement pending adoption, who is:

(i) Younger than age nineteen, and who has not been relinquished for adoption by the subscriber or the subscriber's dependent spouse; or

(ii) Younger than age twenty-three, and a registered student at an accredited secondary school, college, university, technical college, or school of nursing, attending full time, other than during holidays, summer and scheduled breaks; or

(c) A person of any age who is incapable of self-support due to disability, and who is the unmarried child of the subscriber or the subscriber's dependent spouse, whether by birth, adoption, or legal guardianship; or

(d) An unmarried child younger than age nineteen who is residing with the subscriber under an informal guardianship agreement. For a child to be considered a dependent of the subscriber under this provision:

(i) The guardianship agreement must be signed by the child's parent;

(ii) The guardianship agreement must authorize the subscriber to obtain medical care for the child;

(iii) The subscriber must be providing at least fifty percent of the child's support; and

(iv) The child must be on the account for BHP coverage.

(10) "Eligible full-time employee" means an employee who meets all eligibility requirements in WAC 182-25-030 and who is regularly scheduled to work thirty or more hours per week for an employer. The term includes a self-employed individual (including a sole proprietor or a partner of a partnership, and may include an independent contractor) if the individual:

(a) Is regularly scheduled to work thirty hours or more per week; and

(b) Derives at least seventy-five percent of his or her income from a trade or business that is licensed to do business in Washington.

Persons covered under a health benefit plan pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1986 shall not be considered eligible employees for purposes of minimum participation requirements.

(11) "Eligible part-time employee" means an employee who meets all the criteria in subsection (10) of this section, but who is regularly scheduled to work fewer than thirty hours per week for an employer.

(12) "Employee" means one who is in the employment of an employer, as defined by RCW 50.04.080.

(13) "Employer" means an enterprise licensed to do business in Washington state, as defined by RCW 50.04.080, with employees in addition to the employer, whose wages or salaries are paid by the employer.

(14) "Enrollee" means a person who meets all applicable eligibility requirements, who is enrolled in BHP, and for whom applicable premium payments have been made.

(15) "Family" means an individual or an individual and eligible spouse and dependents. For purposes of eligibility determination and enrollment in BHP, an individual cannot be a member of more than one family.

(16) "Financial sponsor" means a person, organization or other entity, approved by the administrator, that is responsible for payment of all or a designated portion of the monthly premiums on behalf of a subscriber and any dependents.

(17) "Gross family income" means total cash receipts, as defined in (a) of this subsection, before taxes, from all sources, for subscriber and dependents whether or not they are enrolled in BHP, with the exceptions noted in (b) of this subsection. An average of documented income received over a period of several months will be used for purposes of eligibility determination, unless documentation submitted confirms a change in circumstances so that an average would not be an accurate reflection of current income. A twelve-month average will be used when calculating gambling income, lump-sum payments, and income from capital gains. A twelve-month history of receipts and expenses will be required for calculating self-employment or rental income unless the applicant or enrollee has not owned the business for at least twelve months.

(a) Income includes:

(i) Wages, tips and salaries before any deductions;

(ii) Net receipts from nonfarm self-employment (receipts from a person's own business, professional enterprise, or partnership, after deductions for business expenses). A net loss from self-employment will not be used to offset other income sources. In calculating net self-employment income, deductions will not be allowed for noncash-flow items such as depreciation, amortization, or business use of home, except that:

(A) A deduction for business use of the home may be allowed in cases where the enrollee has documented that more than fifty percent of their home is used for the business for the majority of the year; or

(B) A deduction for business use of the home may be allowed in cases where the enrollee has documented that they maintain a separate building located on the same property as their home that is used exclusively for the business;

(iii) Net receipts from farm self-employment (receipts from a farm which one operates as an owner, renter, or share-cropper, after deductions for farm operating expenses). In calculating net self-employment income, deductions will not be allowed for noncash-flow items such as depreciation, amortization, or business use of home, and a net loss from self-employment will not be used to offset other income sources;

(iv) Periodic payments from Social Security, railroad retirement, military pension or retirement pay, military disability pensions, military disability payments, government employee pensions, private pensions, unemployment compensation, workers' compensation, and strike benefits from union funds;

(v) Payments for punitive damages;

(vi) Public assistance, alimony, child support, and military family allotments;

(vii) Work study, assistantships, or training stipends;

(viii) Dividends and interest accessible to the enrollee without a penalty for early withdrawal;

(ix) Net rental income, net royalties, and net gambling or lottery winnings;

(x) Lump sum inheritances and periodic receipts from estates or trusts; and

(xi) Short-term capital gains, such as from the sale of stock or real estate.

(b) Income does not include the following types of money received:

(i) Any assets drawn down as withdrawals from a bank, the sale of property, a house or a car;

(ii) Tax refunds, gifts, loans, one-time insurance payments, other than for punitive damages, and one-time payments or winnings received more than one month prior to application;

(iii) Noncash receipts, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied nonfarm or farm housing, goods or services received due to payments a trust makes to a third party, and such noncash benefit programs as Medicare, Medicaid, food stamps, school lunches, state supplementary payment income that is specifically dedicated to reimburse for services received, and housing assistance;

(iv) Income earned by dependent children with the exception of distributions from a corporation, partnership, or business;

(v) Income of a family member who resides in another household when such income is not available to the subscriber or dependents seeking enrollment in BHP;

(vi) College or university scholarships, grants, and fellowships;

(vii) Payments from the department of social and health services adoption support program authorized under RCW 26.33.320 and 74.13.100 through 74.13.145;

(viii) Long-term capital gains;

(ix) Crime victims' compensation;

(x) Documented child care expenses for the care of a dependent child of a subscriber may be deducted (at a rate set by the administrator and consistent with Internal Revenue Service requirements) when calculating gross family income. To qualify for this deduction:

(A) The subscriber and the spouse listed as a dependent on the account, if any, must be employed or attending school full-time during the time the child care expenses were paid; and

(B) Payment may not be paid to a parent or stepparent of the child or to a dependent child of the subscriber or his/her spouse.

(18) "Home care agency" means a private or public agency or organization that administers or provides home care services directly or through a contract arrangement to ill, disabled, or infirm persons in places of temporary or permanent residence, and is licensed by the department of social and health services (DSHS) as a home care agency. In order to qualify, the agency must be under contract with one of the following DSHS programs: Chore, Medicaid Personal Care, Community Options Program Entry System (COPES) or Respite Care (up to level three).

(19) "Institution" means a federal, state, county, city or other government correctional or detention facility or government-funded facility where health care historically has been provided and funded through the budget of the operating agency, and includes, but is not limited to: Washington state department of corrections institutions; federal, county and municipal government jail and detention institutions; Washington state department of veterans affairs soldiers' and veterans' homes; department of social and health services state hospitals and facilities and juvenile rehabilitation institutions and group homes. An institution does not include: Educational institutions; government-funded acute health care or mental health facilities except as provided above; chemical dependency facilities; and nursing homes.

(20) "Institutionalized" means to be confined, voluntarily or involuntarily, by court order or health status, in an institution, as defined in subsection (19) of this section. This does not include persons on work release or who are residents of higher education institutions, acute health care facilities, alcohol and chemical dependency facilities, or nursing homes.

(21) "Insurance broker" or "agent" means a person who is currently licensed as a disability insurance broker or agent, according to the laws administered by the office of the insurance commissioner under chapter 48.17 RCW.

(22) "Managed health care system" (or "MHCS") means:

(a) Any health care organization (including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof) which has entered into a contract with the HCA to provide basic health care services; or

(b) A self-funded or self-insured method of providing insurance coverage to subsidized enrollees provided under RCW 41.05.140 and subject to the limitations under RCW 70.47.100(7).

(23) "Maternity benefits through medical assistance," also known as S-Medical, means the coordinated program between BHP and DSHS for eligible pregnant women. This program includes all Medicaid benefits, including maternity coverage. Eligible members must be at or below one hundred eighty-five percent of the federal poverty level. Eligibility for this program is determined by DSHS, based on Medicaid eligibility criteria.

(24) "Medicaid" means the Title XIX Medicaid program administered by the department of social and health services, and includes the medical care programs provided to the "categorically needy" and the "medically needy" as defined in chapter 388-503 WAC.

(25) "Medicare" means programs established by Title XVIII of Public Law 89-97, as amended, "Health Insurance for the Aged and Disabled."

(26) "Nonsubsidized enrollee" or "full premium enrollee" means an individual who enrolls in BHP, as the subscriber or dependent, and who pays or on whose behalf is paid the full costs for participation in BHP, without subsidy from the HCA.

(27) "Open enrollment" means a time period designated by the administrator during which enrollees may enroll additional dependents or apply to transfer their enrollment from one managed health care system to another.

(28) "Participating employee" means an employee of a participating employer or home care agency who has met all the eligibility requirements and has been enrolled for coverage under BHP.

(29) "Participating employer" means an employer who has been approved for enrollment in BHP as an employer group.

(30) "Preexisting condition" means any illness, injury or condition for which, in the six months immediately preceding an enrollee's effective date of enrollment in BHP:

(a) Treatment, consultation or a diagnostic test was recommended for or received by the enrollee; or

(b) Medication was prescribed or recommended for the enrollee; or

(c) Symptoms existed which would ordinarily cause a reasonably prudent individual to seek medical diagnosis, care or treatment.

(31) "Premium" means a periodic payment, determined under RCW 70.47.060(2), which an individual, an employer, a financial sponsor, or other entity makes to BHP for enrollment in BHP.

(32) "Program" means subsidized BHP, nonsubsidized BHP, BHP Plus, maternity benefits through medical assistance, or other such category of enrollment specified within this chapter.

(33) "Provider" or "health care provider" means a health care professional or institution duly licensed and accredited to provide covered services in the state of Washington.

(34) "Rate" means the amount, including administrative charges and any applicable premium and prepayment tax imposed under RCW 48.14.0201, negotiated by the administrator with and paid to a managed health care system, to provide BHP health care benefits to enrollees.

(35) "Schedule of benefits" means the basic health care services adopted and from time to time amended by the administrator, which an enrollee shall be entitled to receive from a managed health care system in exchange for payment of premium and applicable co-payments, as described in the member handbook.

(36) "Service area" means the geographic area served by a managed health care system as defined in its contract with HCA.

(37) "Subscriber" is a person who applies to BHP on his/her own behalf or on behalf of his/her dependents, if any, who is responsible for payment of premiums and to whom BHP sends notices and communications. The subscriber may be a BHP enrollee or the spouse, parent, or guardian of an enrolled dependent and may or may not be enrolled for coverage. Notices to a subscriber and, if applicable, a financial sponsor or employer shall be considered notice to the subscriber and his/her enrolled dependents.

(38) "Subsidized enrollee" or "reduced premium enrollee" means an individual who ~~((enrolls in BHP, either as the subscriber or an eligible dependent, whose current gross family income does not exceed twice the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA. Full-time students who have received a temporary visa to study in the United States are not eligible to enroll as subsidized enrollees. To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match, "subsidized enrollee" also means an individual who enrolls in BHP, either as the subscriber or an eligible dependent, whose current gross family income is more than two hundred percent, but less than two hundred fifty one percent, of the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA)) is not a full-time student who has received a temporary visa to study in the United States and who otherwise meets the criteria in (a), (b), or (c) of this subsection.~~

(a) An individual who enrolls in BHP, either as the subscriber or an eligible dependent, whose current gross family income does not exceed twice the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA.

(b) An individual who enrolls in BHP, either as the subscriber or an eligible dependent, and who is a foster parent licensed under chapter 74.15 RCW and whose current gross family income does not exceed three hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and

Human Services, and who receives a premium subsidy from the HCA.

(c) To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match, "subsidized enrollee" also means an individual who enrolls in BHP, either as the subscriber or an eligible dependent, whose current gross family income is more than two hundred percent, but less than two hundred fifty-one percent, of the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA.

(39) "Subsidy" means the difference between the amount of periodic payment the HCA makes to a managed health care system on behalf of a subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

(40) "Washington state resident" or "resident," for purposes of this chapter, means a person who physically resides and maintains a residence in the state of Washington.

(a) To be considered a Washington resident, enrollees who are temporarily out of Washington state for any reason:

(i) May be required to demonstrate their intent to return to Washington state; and

(ii) May not be out of Washington state for more than three consecutive calendar months.

(b) Dependent children who meet the requirements of subsection (9)(b)(ii) of this section and are attending school out-of-state may be considered to be residents if they are out-of-state during the school year, provided their primary residence is in Washington state and they return to Washington state during breaks. Dependent children attending school out-of-state may also be required to provide proof that they pay out-of-state tuition, vote in Washington state and file their federal income taxes using a Washington state address.

(c) "Residence" may include, but is not limited to:

(i) A home the person owns or is purchasing or renting;

(ii) A shelter or other physical location where the person is staying in lieu of a home; or

(iii) Another person's home.

AMENDATORY SECTION (Amending Order 04-03, filed 11/5/04, effective 1/1/05)

WAC 182-25-080 Premiums and co-payments. (1)

Subscribers or their employer or financial sponsor shall be responsible for paying the full monthly premium to BHP, on behalf of the subscriber and all enrolled dependents, according to the most current premium schedule. A third party may, with the approval of the administrator, become a financial sponsor and pay all or a designated portion of the premium on behalf of a subscriber and dependents, if any.

(2) The amount of premium due from or on behalf of a subsidized enrollee will be based upon the subscriber's gross family income, the managed health care system selected by the subscriber, rates payable to managed health care systems, and the number and ages of individuals in the subscriber's family.

(3) Once BHP has determined that an applicant and his/her dependents (if any) are eligible for enrollment, the

applicant or employer or financial sponsor will be informed of the amount of the first month's premium for the applicant and his/her enrolled dependents. New enrollees will not be eligible to receive covered services on the effective date of enrollment specified by BHP unless the premium has been paid by the due date given. Thereafter, BHP will bill each subscriber or employer or financial sponsor monthly.

(4) Full payment for premiums due must be received by BHP by the date specified on the premium statement. If BHP does not receive full payment of a premium by the date specified on the premium statement, BHP shall issue a notice of delinquency to the subscriber, at the subscriber's last address on file with BHP or, in the case of group or financial sponsor coverage, to the employer or financial sponsor. If full payment is not received by the date specified in the delinquency notice, the subscriber and enrolled family members will be suspended from coverage for one month. If payment is not received by the due date on the notice of suspension, the subscriber and enrolled family members will be disenrolled effective the date of the initial suspension. If an enrollee's coverage is suspended more than two times in a twelve-month period, the enrollee will be disenrolled for nonpayment under the provisions of WAC 182-25-090(2). Partial payment of premiums due, payment which for any reason cannot be applied to the correct BHP enrollee's account, or payment by check which is not signed, cannot be processed, or is returned due to nonsufficient funds will be regarded as nonpayment.

(5) Enrollees shall be responsible for paying any required co-payment, coinsurance, or deductible directly to the provider of a covered service or directly to the MHCS. Repeated failure to pay co-payments, coinsurance, or other cost-sharing in full on a timely basis may result in disenrollment, as provided in WAC 182-25-090(2).

(6) Monthly premiums due for foster parents with gross family income up to two hundred percent of the federal poverty level will be set at the minimum premium amount charged to enrollees with income below sixty-five percent of the federal poverty level. Monthly premiums due for foster parents with gross family income between two hundred percent and three hundred percent of the federal poverty level will not exceed one hundred dollars per month.

WSR 07-17-096

PROPOSED RULES

HEALTH CARE AUTHORITY

(Public Employees Benefits Board)

[Order 07-01—Filed August 16, 2007, 1:37 p.m.]

Supplemental Notice to WSR 07-14-135.

Preproposal statement of inquiry was filed as WSR 07-09-034.

Title of Rule and Other Identifying Information: PEBB rules related to enrollment in chapter 182-08 WAC; eligibility in chapter 182-12 WAC; and appeals in chapter 182-16 WAC.

Hearing Location(s): Health Care Authority, 676 Woodland Square Loop S.E., The Sue Crystal Center, Olympia, WA, on September 25, 2007, at 3:30 p.m.

Date of Intended Adoption: September 28, 2007.

Submit Written Comments to: Barbara Scott or Ashley DeMoss, PEBB Benefits Services Program, P.O. Box 42684, Olympia, WA 98504-2684, e-mail Barbara.scott@hca.wa.gov, fax (360) 923-2606, by September 25, 2007.

Assistance for Persons with Disabilities: Contact Nikki Johnson by September 21, 2007, TTY (888) 923-5622 or (360) 923-2805.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The health care authority is proposing additional clarifying amendments to the following rules:

WAC 182-08-180, proposed language will clarify when premium payments begin for insurance coverage for retirees, COBRA beneficiaries or individuals continuing coverage under PEBB extension of coverage rules.

WAC 182-12-171, proposed language will clarify PEBB retiree eligibility criteria by stating that eligible employees must meet their retirement plan's age and years of service requirement when their employer paid or COBRA coverage ends. Proposed language corrects the placement of language allowing certain eligible employees who are not a member of the Washington state-sponsored public employee's retirement system (PERS) to qualify based on the age and years of service requirements under PERS Plan 1 or Plan 2. Proposed language restores eligibility language for employees who are permanently and totally disabled, correcting an administrative error from an earlier rule making.

WAC 182-16-030, proposed language will create additional appeal rights for employees who meet their retirement plan age requirement within sixty days of their employer paid or COBRA coverage ending.

Statutory Authority for Adoption: Chapter 41.05 RCW.

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

Name of Agency Personnel Responsible for Drafting: Barbara Scott, 676 Woodland Square Loop, Lacey, WA, (360) 923-2642; Implementation: Ashley DeMoss, 676 Woodland Square Loop, Lacey, WA, (360) 923-2644; and Enforcement: Mary Fliss, 676 Woodland Square Loop, Lacey, WA, (360) 923-2640.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative rules review committee has not requested the filing of a small business economic impact statement, and there will be no costs to small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the health care authority rules unless requested by the joint administrative rules review committee or applied voluntarily.

August 16, 2007

Jason Siems

Rules Coordinator

AMENDATORY SECTION (Amending WSR 96-08-042, filed 3/29/96, effective 4/29/96)

WAC 182-08-010 Declaration of purpose. The general purpose of this chapter is to establish a set of rules ~~((used by))~~ to administer the health care authority's (HCA) public employees benefits board (PEBB) ((for designing)) employee and retiree eligibility and ~~((insurance))~~ PEBB benefits ((and for administration of these insurance plans by the Washington State Health Care Authority (HCA))).

AMENDATORY SECTION (Amending Order 06-09, filed 11/22/06, effective 12/23/06)

WAC 182-08-015 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates other meaning:

"Administrator" means the administrator of the health care authority (HCA) or designee.

"Board" means the public employees(?!?) benefits board established under provisions of RCW 41.05.055.

"Comprehensive employer sponsored medical" includes insurance coverage continued by the employee or their dependent under COBRA.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in PEBB ~~((sponsored))~~ medical insurance by a retiree or ~~((surviving dependent))~~ eligible survivor.

"Dependent" means a person who meets eligibility requirements ~~((set forth))~~ in WAC 182-12-260.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

~~((("Effective date of enrollment" means the first date on which an enrollee is entitled to receive covered benefits.~~

~~"Extended dependent" means a dependent child who is not the child of an enrollee through birth, adoption, marriage, or a qualified same sex domestic partnership. Some examples of extended dependents include, but are not limited to, a grandchild or a niece or nephew for whom the enrollee is the legal guardian or the enrollee has legal custody.~~

~~"Health carrier" has the meaning set forth at RCW 48.43.005(18) for purposes of administering this Title 182 WAC only, it includes the uniform medical plan and uniform dental plan.))~~

"Health plan" or "plan" means a medical ((and)) or dental ((coverage)) plan developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Insurance coverage" means any health plan, life ((or)) insurance, long-term care insurance, long-term disability insurance ((plan)), or property and casualty insurance administered as a PEBB benefit.

"LTD insurance" includes basic long-term disability insurance paid for by the employer and long-term disability insurance offered to employees on an optional basis.

"Life insurance" includes basic life insurance paid for by the employer ~~((and))~~, life insurance offered to employees on an optional basis, and retiree life insurance.

"Open enrollment" means a time period designated by the administrator ~~((during which enrollees))~~ when subscribers may apply to transfer their enrollment from one health ~~((carrier))~~ plan to another, enroll in medical ~~((coverage))~~ if the ~~((enrollee))~~ subscriber had previously waived such insurance coverage, or add dependents.

~~("PEBB plan" or)~~ "PEBB" means the public employees benefits board.

"PEBB benefits" means one or more insurance coverage ~~((s approved))~~ or other employee benefit administered by the ~~((public employees' benefits board for eligible enrollees and their dependents))~~ PEBB benefit services program within the HCA.

"PEBB benefits services program" means the program within the health care authority which administers insurance and other benefits to eligible employees of the state (as defined in WAC 182-12-115), eligible retired and disabled employees of the state (as defined in WAC 182-12-171), and others as defined in RCW 41.05.011.

"Subscriber" or "insured" means the employee, retiree, COBRA beneficiary or ~~((surviving dependent))~~ eligible survivor who has been designated by the HCA as the individual to whom the HCA and the health ~~((carrier))~~ plan will issue all notices, information, requests and premium bills on behalf of ~~((enrolled dependents))~~ enrollees.

"Waive" means to interrupt enrollment or postpone enrollment in a PEBB ~~((sponsored))~~ health plan by an employee (as defined in WAC 182-12-115) or a dependent who meets eligibility requirements ~~((set forth))~~ in WAC 182-12-260.

AMENDATORY SECTION (Amending Order 02-07, filed 8/14/03, effective 9/14/03)

WAC 182-08-120 Employer contribution. The employers' contribution must be used to provide insurance coverage for the basic life insurance benefit, a basic long-term disability benefit, medical ~~((coverage))~~, and dental ~~((coverage))~~, and to establish a reserve for any remaining balance. There is no employer contribution available for any other insurance coverage~~(s)~~.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-08-180 Premium payments and refunds. PEBB premium payments for retiree, COBRA or an extension of PEBB insurance coverage begin to accrue the first of the month after other insurance ends. The effective date of health plan enrollment will be retroactive to the loss of other coverage.

Premium is due for the entire month of insurance coverage and will not be prorated during the month of death or loss of eligibility of the enrollee except when eligible for life insurance conversion.

PEBB premiums will be refunded using the following method:

(1) When a PEBB subscriber submits an enrollment change affecting eligibility, such as for example: Death, divorce, or when no longer a dependent as defined at WAC 182-12-260 no more than three months of accounting adjustments and any excess premium paid will be refunded to any individual or agency except as ~~((provided))~~ indicated in WAC 182-12-148(3).

(2) Notwithstanding subsection (1) of this section, the PEBB assistant administrator or designee may approve a refund which does not exceed twelve months of premium ~~((provided))~~ if both of the following occur:

(a) The PEBB subscriber or a dependent or beneficiary of a subscriber submits a written appeal to the HCA; and

(b) Proof is provided that extraordinary circumstances beyond the control of the subscriber, dependent or beneficiary made it virtually impossible to submit the necessary information to accomplish an enrollment change within sixty days after the event that created a change of premium.

(3) Errors resulting in an underpayment to HCA must be reimbursed by the employer or subscriber to the HCA. Upon request of an employer, subscriber, or beneficiary, as appropriate, the HCA will develop a repayment plan designed not to create undue hardship on the employer or subscriber.

(4) HCA errors will be adjusted by returning the excess premium paid, if any, to the employer, subscriber, or beneficiary, as appropriate.

~~((5 Premium is due for the entire month of coverage and will not be prorated during the month of death or loss of eligibility of the enrollee except when eligible for life insurance conversion.))~~

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-08-190 The employer contribution ~~((shall be))~~ is set by the HCA and paid to the HCA for all eligible employees. Every department, division, or agency of state government, and such county, municipal or other political subdivision, K-12 school district or educational service district that are covered under PEBB insurance coverage, ~~((shall))~~ must pay premium contributions to the HCA for insurance coverage for all eligible employees and their dependents.

(1) Employer contributions ~~((shall be))~~ are set by the HCA and are subject to the approval of the governor.

(2) Employer contributions ~~((shall))~~ must include an amount determined by the HCA to pay administrative costs to administer insurance coverage for employees of these groups.

(3) Each eligible employee in pay status eight or more hours during a calendar month or each eligible employee on leave under the federal Family and Medical Leave Act (FMLA) ~~((shall be))~~ are eligible for the employer contribution. The entire employer contribution is due and payable to HCA even if medical ~~((coverage))~~ is waived.

(4) PEBB insurance coverage for any county, municipality or other political subdivision or any K-12 school district or educational service district may be ~~((terminated))~~ canceled

by HCA if the premium contributions are delinquent more than ninety days.

(5) Washington state patrol officers disabled while performing their duties as determined by the chief of the Washington state patrol are eligible for the employer contribution for PEBB benefits as authorized in RCW 43.43.040. No other retiree or disabled employee is eligible for the employer contribution for PEBB benefits unless they are an eligible employee as defined in WAC 182-12-115.

AMENDATORY SECTION (Amending Order 05-01, filed 7/27/05, effective 8/27/05)

WAC 182-08-196 What happens if my health (~~carrier~~) plan becomes unavailable? Employees and retirees for whom the chosen health (~~carrier~~) plan becomes unavailable due to a change in service area, the health (~~carrier~~) plan no longer contracting with HCA, or the retiree's entitlement to Medicare must select a new health plan within sixty days after notification by the PEBB benefit services program.

(1) Employees (~~that~~) who fail to select a new (~~health~~) medical or dental plan within the prescribed time period will be enrolled in the health (~~carrier's~~) plan's successor plan if one is available or will be enrolled in the Uniform Medical Plan (~~and~~) Preferred Provider Organization or the Uniform Dental Plan with existing dependent enrollment (~~by default~~).

(2) Retirees and (~~surviving dependents~~) survivors eligible under WAC 182-12-250 or 182-12-265 (~~that~~) who fail to select a new health plan within the prescribed time period will be enrolled in the health (~~carrier's~~) plan's successor plan if one is available or will be enrolled in the Uniform Medical Plan Preferred Provider Organization and the Uniform Dental Plan (~~except that~~). However, retirees enrolled in Medicare Parts A and B, and who enroll in Medicare Part D may be (~~defaulted~~) assigned to a PEBB (~~sponsored~~) Medicare plan that does not include a pharmacy benefit.

Any (~~employee or retiree defaulted to a carrier's successor plan, the Uniform Medical Plan or the Uniform Dental Plan~~) subscriber assigned to a health plan as described in this rule may not change health plans until the next open enrollment except as (~~set forth~~) allowed in WAC 182-08-198.

(3) Enrollees continuing PEBB health plan (~~coverage as provided in~~) under WAC 182-12-133, 182-12-148 or 182-12-270 (2) or (3) must select a new health plan no later than sixty days after notification by the PEBB benefit services program or their health plan (~~coverage~~) enrollment will (~~terminate~~) end as of the last day of the month in which the plan is no longer available.

AMENDATORY SECTION (Amending Order 06-02, filed 5/24/06, effective 6/24/06)

WAC 182-08-197 (~~Newly eligible~~) Employees must select insurance coverages within thirty-one days of the date they become eligible (~~to apply for coverage~~) for PEBB benefits. (1) Employees who are newly eligible (~~employees~~) for PEBB benefits must (~~select a medical and dental plan (if dental is available based on employer participation in PEBB insurance coverages)~~) complete an enrollment form indicating their health plan choice and return it to

their employing agency no later than thirty-one days after they become eligible to apply for (~~coverage~~) PEBB benefits, as stated in WAC 182-12-115. Newly eligible employees who do not (~~select a~~) return an enrollment form to their employing agency indicating their medical and dental (~~plan~~) choice within thirty-one days will be (~~defaulted to Uniform Medical Plan Preferred Provider Organization and Uniform Dental Plan~~) enrolled in a health plan as follows:

(a) Medical enrollment will be Uniform Medical Plan Preferred Provider Organization; and

(b) Dental enrollment (if the employing agency participates in PEBB dental) will be Uniform Dental Plan.

(2) Newly eligible employees may enroll in optional insurance coverage (except for employees of agencies that do not participate in life insurance or long-term disability insurance).

(a) To enroll in the amounts of optional life insurance available without health underwriting, employees must return a completed life insurance enrollment form to their agency no later than sixty days after becoming eligible for PEBB benefits.

(b) To enroll in optional long-term disability insurance without health underwriting, employees must return a completed long-term disability enrollment form to their agency no later than thirty-one days after becoming eligible for PEBB benefits.

(c) To enroll in long-term care insurance with limited health underwriting, employees must return a completed long-term care enrollment form to the contracted vendor no later than thirty-one days after becoming eligible for PEBB benefits.

(d) Employees may apply for optional life, long-term disability, and long-term care insurance at any time by providing evidence of insurability and receiving approval from the contracted vendor.

(3) When an employee's employment ends, insurance coverage ends (WAC 182-12-131). Employees who are later reemployed and become eligible for PEBB benefits enroll as described in subsections (1) and (2) of this section, with the following exceptions in which insurance coverage elections stay the same:

(a) When an employee transfers from one agency to another agency without a break in state service. This includes movement of employees between any agencies described as eligible groups in WAC 182-12-111 and participating in PEBB benefits.

(b) When employees have a break in state service that does not interrupt their employer contribution-based enrollment in PEBB insurance coverage.

(c) When employees continue insurance coverage under WAC 182-12-133 (1) or (2) and are reemployed into a benefits eligible position before the end of the maximum number of months allowed for continuing PEBB health plan enrollment. Employees who are eligible to continue optional life or optional long-term disability but discontinue that insurance coverage are subject to the insurance underwriting requirements if they apply for the insurance when they return to employment.

AMENDATORY SECTION (Amending Order 06-09, filed 11/22/06, effective 12/23/06)

WAC 182-08-198 ~~When may ((an enrollee)) a subscriber change health plans?~~ (1) ~~((Enrollees))~~ Subscribers may change health plans during the annual open enrollment. The enrollee must request the health plan change no later than the end of the open enrollment period. Enrollment in the new health plan((s coverage)) will begin the first day of January after open enrollment.

(2) ~~((Enrollees))~~ Subscribers may change health plans outside of the annual open enrollment period under ~~((some))~~ the circumstances indicated below. To make a health plan change, the ~~((enrollee))~~ subscriber must send a completed enrollment form (and a completed disenrollment form, if required) to the PEBB benefits services program no later than sixty days after the event occurs. Enrollment in the new health plan((s coverage)) will begin the first day of the month after the PEBB benefits services program receives the form(s). These are the circumstances:

(a) Enrollees ~~((may change health plans if they))~~ move and their current health plan is not available in their new location. If the ~~((enrollee))~~ subscriber does not select a new health plan, the PEBB benefits services program ~~((will automatically))~~ may enroll them in the Uniform Medical Plan Preferred Provider Organization or Uniform Dental Plan.

(b) Enrollees ~~((may change health plans if they))~~ move and a health plan that was not available to them before is available to them in the new location. The ~~((enrollee))~~ subscriber may only choose a newly available health plan.

(c) ~~((Enrollees))~~ Subscribers may change health plans if a court order requires the ~~((enrollee))~~ subscriber to provide insurance coverage for an eligible spouse, ~~((same sex))~~ qualified domestic partner, or child and the ~~((enrollee))~~ subscriber adds the dependent to their insurance coverage.

(d) Seasonal employees whose off-season is during the annual open enrollment period may select a new health plan upon their return to work.

(e) ~~((Employees))~~ Subscribers may change health plans when they enroll in PEBB retiree insurance coverage.

(f) ~~((Enrollees))~~ Subscribers may change health plans when they or an eligible dependent becomes entitled to Medicare or enrolls in a Medicare Part D plan.

(g) ~~((Enrollees))~~ Subscribers may change health plans if they or their enrolled dependent reaches their medical plan's lifetime maximum.

(h) Subscribers may not change their health plan if their or an enrolled dependent's physician stops participation with the ~~((enrollee's))~~ subscriber's health plan unless the PEBB appeals manager determines that a continuity of care issue exists. However, if the employee is having premiums taken from payroll on a pretax basis a plan change will not be approved if it would conflict with provisions of the benefits contribution plan authorized under RCW 41.05.300. The PEBB appeals manager will use criteria that include but are not limited to the following in determining if a continuity of care issue exists:

- (i) Active cancer treatment; or
- (ii) Recent transplant (within the last twelve months); or
- (iii) Scheduled surgery within the next sixty days; or
- (iv) Major surgery within the previous sixty days; or

(v) Third trimester of pregnancy; or

(vi) Language barrier.

~~((h) Enrollees may change health plans if they reach their medical plan's lifetime maximum.))~~

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-08-200 Which employing agency is responsible to pay the employer contribution for eligible employees changing agency employment? When an eligible employee's employment ceases with an employing agency at any time ~~((prior to))~~ before the end of the month for which a premium contribution is due and that employee transfers to another agency, the losing agency is responsible for the payment of the contribution for that employee for that month. The receiving agency would not be liable for any employer contribution for that eligible employee until the month following the transfer.

AMENDATORY SECTION (Amending Order 02-07, filed 8/14/03, effective 9/14/03)

WAC 182-08-220 Advertising or promotion of PEBB ((sponsored)) benefit plans. (1) In order to assure equal and unbiased representation of PEBB ~~((plans, any promotion of these plans shall))~~ benefits, contracted vendors must comply with all of the following:

(a) All materials describing PEBB ~~((plan))~~ benefits ~~((shall))~~ must be prepared by or approved by the HCA ~~((prior to))~~ before use.

(b) Distribution or mailing of all ~~((plan))~~ benefit descriptions ~~((shall))~~ must be performed by or under the direction of the HCA.

(c) All media announcements or advertising by a ~~((carrier))~~ contracted vendor which include any mention of the "public employees benefits board," "health care authority" or any reference to ~~((coverage))~~ benefits for "state employees or retirees" or any group of employees covered by PEBB ~~((plans))~~ benefits, must receive the advance written approval of the HCA.

(2) Failure to comply with any or all of these requirements by a PEBB contracted ~~((carrier))~~ vendor or subcontractor may result in contract termination by the HCA, refusal to continue or renew a contract with the noncomplying party, or both.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-08-230 Participation in PEBB benefits by employer groups, K-12 school districts and educational service districts. This section applies to all employer groups, K-12 school districts and educational service districts participating in PEBB insurance coverage((s)).

(1) For purposes of this section, "employer group" means those employee organizations representing state civil service employees, blind vendors, county, municipality, and political subdivisions that meet the participation requirements of WAC 182-12-111 (2), (3) and (4) and that participate in PEBB insurance coverage((s)).

(2)(a) Each employer group (~~(shall)~~) must determine an employee's eligibility for PEBB insurance coverage in accordance with the applicable sections of chapter 182-12 WAC, RCW 41.04.205, and chapter 41.05 RCW.

(b) Each employer group, K-12 school district and educational service district applying for participation in PEBB insurance coverage (~~(shall)~~) must submit required documentation and meet all participation requirements (~~(set forth)~~) in the then-current *Introduction to PEBB Coverage K-12 and Employer Groups* booklet(s).

(3)(a) Each employer group, K-12 school district or educational service district applying for participation in PEBB insurance coverage (~~(shall)~~) must sign an interlocal agreement with the HCA.

(b) Each interlocal agreement (~~(shall)~~) must be renewed no less frequently than once in every two-year period.

(4) At least twenty days (~~(prior to)~~) before the premium due date, the HCA (~~(shall)~~) will cause each employer group, K-12 school district or educational service district to be sent a monthly billing statement. The statement of premium due will be based upon the enrollment information provided by the employer group, K-12 school district or educational service district.

(a) Changes in enrollment status (~~(shall)~~) must be submitted to the HCA (~~(prior to)~~) before the twentieth day of the month (~~(during which)~~) when the change occurs. Changes submitted after the twentieth day of each month may not be reflected on the billing statement until the following month.

(b) Changes submitted more than one month late (~~(shall)~~) must be accompanied by a full explanation of the circumstances of the late notification.

(5) An employer group, K-12 school district or educational service district (~~(shall)~~) must remit the monthly premium as billed or as reconciled by it.

(a) If an employer group, K-12 school district or educational service district determines that the invoiced amount requires one or more changes, they may adjust the remittance only if an insurance eligibility adjustment form detailing the adjustment accompanies the remittance. The proper form for reporting adjustments will be attached to the interlocal agreement as Exhibit A.

(b) Each employer group, K-12 school district or educational service district is solely responsible for the accuracy of the amount remitted and the completeness and accuracy of the insurance eligibility adjustment form.

(6) Each employer group, K-12 school district or educational service district (~~(shall)~~) must remit the entire monthly premium due including the employee share, if any. The employer group, K-12 school district or educational service district is solely responsible for the collection of any employee share of the premium. The employer (~~(shall)~~) must not withhold portions of the monthly premium due because it has failed to collect the entire employee share.

(7) Nonpayment of the full premium when due will subject the employer group, K-12 school district or educational service district to disenrollment and termination of each employee of the group.

(a) (~~(Prior to)~~) Before termination for nonpayment of premium, the HCA (~~(shall cause)~~) will send a notice of overdue premium (~~(to be sent)~~) to the employer group, K-12

school district or educational service district which notice will provide a one-month grace period for payment of all overdue premium.

(b) An employer group, K-12 school district or educational service district that does not remit the entirety of its overdue premium no later than the last day of the grace period will be disenrolled effective the last day of the last month for which premium has been paid in full.

(c) Upon disenrollment, notification will be sent to both the employer group, K-12 school district or educational service district and each affected employee.

(d) Employer groups, K-12 school districts or educational service districts disenrolled due to nonpayment of premium (~~(shall)~~) have the right to a dispute resolution hearing in accordance with the terms of the interlocal agreement.

(e) Employees (~~(terminated)~~) canceled due to the nonpayment of premium by the employer group, K-12 school district or educational service district are not eligible for continuation of group health plan coverage according to the terms of the Consolidated Omnibus Budget Reconciliation Act (COBRA). (~~(Terminated)~~) Employees (~~(shall)~~) whose coverage is canceled have conversion rights to an individual insurance policy as provided for by the employer group, K-12 school district or educational service district.

(f) Claims incurred by (~~(terminated)~~) employees of a disenrolled group after the effective date of disenrollment will not be covered.

(g) The employer group, K-12 school district or educational service district is solely responsible for refunding any employee share paid by the employee to the employer group, K-12 school district or educational service district and not remitted to the HCA.

(8) A disenrolled employer group, K-12 school district or educational service district may apply for reinstatement in PEBB insurance coverage(~~(s)~~) under the following conditions:

(a) Reinstatement must be requested and all delinquent premium paid in full no later than ninety days after the date the delinquent premium was first due, as well as a reinstatement fee of one thousand dollars.

(b) Reinstatement requested more than ninety days after the effective date of disenrollment will be denied.

(c) Employer groups, K-12 school districts or educational service districts may be reinstated only once in any two-year period and will be subject to immediate disenrollment if, after the effective date of any such reinstatement, subsequent premiums become more than thirty days delinquent.

(9) Upon written petition by the employer group, K-12 school district or educational service district disenrollment of an employer group, K-12 school district or educational service district or denial of reinstatement may be waived by the administrator upon a showing of good cause.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-108 Purpose. The purpose of this chapter is to establish eligibility criteria for and effective date of

enrollment in the public employees(~~(l)~~) benefits board (PEBB) approved benefits.

AMENDATORY SECTION (Amending Order 06-09, filed 11/22/06, effective 12/23/06)

WAC 182-12-109 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Administrator" means the administrator of the HCA or designee.

"Board" means the public employees(~~(l)~~) benefits board established under provisions of RCW 41.05.055.

"Comprehensive employer sponsored medical" includes insurance coverage continued by the employee or their dependent under COBRA.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in PEBB (~~(sponsored)~~) medical (~~(coverage)~~) insurance by a retiree or (~~(surviving dependent)~~) eligible survivor.

"Dependent" means a person who meets eligibility requirements (~~(set forth)~~) in WAC 182-12-260.

"Effective date of enrollment" means the first date (~~(on which)~~) when an enrollee is entitled to receive covered benefits.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

~~("Extended dependent" means a dependent child who is not the child of an enrollee through birth, adoption, marriage, or a qualified same sex domestic partnership. Some examples of extended dependents include, but are not limited to, a grandchild or a niece or nephew for whom the enrollee is the legal guardian or the enrollee has legal custody.~~

~~"Health carrier" has the meaning set forth at RCW 43.43.005(18) for purposes of administering this Title 182 WAC only, it includes the uniform medical plan and the uniform dental plan.)~~

"Health plan" or "plan" means a medical (~~(and dental coverages)~~) or dental plan developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Insurance coverage" means any health plan, life insurance, (~~(or)~~) long-term care insurance, long-term disability insurance (~~(plan)~~), or property and casualty insurance administered as a PEBB benefit.

"LTD insurance" includes basic long-term disability insurance paid for by the employer and long-term disability insurance offered to employees on an optional basis.

"Life insurance" includes basic life insurance paid for by the employer (~~(and)~~), life insurance offered to employees on an optional basis, and retiree life insurance.

"Open enrollment" means a time period designated by the administrator (~~(during which enrollees)~~) when subscribers may apply to transfer their enrollment from one health

(~~(carrier)~~) plan to another, enroll in medical (~~(coverage)~~) if the enrollee had previously waived such insurance coverage or add dependents.

~~("PEBB plan" or)~~ "PEBB" means the public employees benefits board.

"PEBB benefits" means one or more insurance coverage(~~(s approved)~~) or other employee benefit administered by the (~~(public employees' benefits board for eligible enrollees and their dependents)~~) PEBB benefits services program within HCA.

"PEBB benefits services program" means the program within the health care authority which administers insurance and other benefits to eligible employees of the state (as defined in WAC 182-12-115), eligible retired and disabled employees of the state (as defined in WAC 182-12-171), and other as defined in RCW 41.05.011.

"Subscriber" or "insured" means the employee, retiree, COBRA beneficiary or (~~(surviving dependent)~~) eligible survivor who has been designated by the HCA as the individual to whom the HCA and the health (~~(carrier)~~) plan will issue all notices, information, requests and premium bills on behalf of (~~(enrolled dependents)~~) enrollees.

"Waive" means to interrupt enrollment or postpone enrollment in a PEBB (~~(sponsored)~~) health plan by an employee (as (~~(set forth)~~) defined in WAC 182-12-115) or a dependent who meets eligibility requirements (~~(set forth)~~) in WAC 182-12-260.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-111 Eligible entities and individuals.

The following entities and individuals shall be eligible (~~(to participate in)~~) for PEBB insurance coverage(~~(s)~~) subject to the terms and conditions set forth below:

(1) State agencies. Every department, division, or separate agency of state government, including all state higher education institutions, the higher education coordinating board, and the state board for community and technical colleges is required to participate in all PEBB (~~(approved insurance coverage)~~) benefits. Insurance and health care contributions for ferry employees shall be governed by RCW 47.64.-270.

(a) Employees of technical colleges previously enrolled in a benefits trust may (~~(terminate)~~) end PEBB (~~(insurance coverage)~~) benefits by January 1, 1996, or the expiration of the current collective bargaining agreements, whichever is later. Employees electing to (~~(terminate)~~) end PEBB (~~(coverage)~~) benefits have a one-time reenrollment option after a five year wait. Employees of a bargaining unit may (~~(terminate)~~) end PEBB benefit participation only as an entire bargaining unit. All administrative or managerial employees may (~~(terminate)~~) end PEBB participation only as an entire unit.

(b) Community and technical colleges with employees enrolled in a benefits trust shall remit to the HCA a retiree remittance as specified in the omnibus appropriations act, for each full-time employee equivalent. The remittance may be prorated for employees receiving a prorated portion of benefits.

(2) Employee organizations. Employee organizations representing state civil service employees and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for ~~((the purpose of))~~ purchasing insurance benefits, may participate in PEBB ~~((sponsored))~~ insurance coverages at the option of each employee organization provided all of the following requirements are met:

(a) All eligible employees of the entity must transfer to PEBB insurance coverage as a unit. If the group meets the minimum size standards established by HCA, bargaining units may elect to participate separately from the whole group, and the nonrepresented employees may elect to participate separately from the whole group provided all nonrepresented employees join as a group.

(b) ~~((The))~~ PEBB health plans must be the only employer sponsored health plans available to eligible employees.

(c) The legislative authority or the board of directors of the entity must submit to the HCA an application together with employee census data and, if available, prior claims experience of the entity. The application ~~((to participate in))~~ for PEBB insurance coverage is subject to the approval of the HCA.

(d) The legislative authority or the board of directors must maintain its PEBB ~~((plan))~~ insurance coverage participation ~~((for a minimum of))~~ at least one full year, and may ~~((terminate))~~ end participation only at the end of a plan year.

(e) The terms and conditions for the payment of the insurance premiums ~~((shall))~~ must be ~~((set forth))~~ in the provisions of the bargaining agreement or terms of employment and shall comply with the employer contribution requirements specified in the appropriate governing statute. These provisions, including eligibility, shall be subject to review and approval by the HCA at the time of application for participation. Any substantive changes must be submitted to HCA.

(f) The eligibility requirements for dependents must be the same as the requirements for dependents of the state employees and retirees as ~~((set forth))~~ in WAC 182-12-260.

(g) The legislative authority or the board of directors ~~((shall provide))~~ must give the HCA ~~((with))~~ written notice of its intent to ~~((terminate))~~ end PEBB ~~((plan))~~ insurance coverage participation ~~((no fewer than))~~ at least thirty days ~~((prior to))~~ before the effective date of termination. If the employee organization ~~((terminates coverage in))~~ ends PEBB insurance coverage, retired and disabled employees who began participating after September 15, 1991, are not eligible ~~((to participate in))~~ for PEBB insurance coverage beyond the mandatory extension requirements specified in WAC 182-12-146.

(3) Blind vendors means a "licensee" as defined in RCW 74.18.200: Vendors actively operating a business enterprise program facility in the state of Washington and deemed eligible by the department of services for the blind may voluntarily participate in PEBB insurance coverage.

(a) Vendors that do not enroll when first eligible may enroll only during the annual open enrollment period offered by the HCA or the first day of the month following loss of other insurance coverage.

(b) Department of services for the blind will notify eligible vendors of their eligibility in advance of the date that they

are eligible to apply for enrollment in PEBB insurance coverage.

(c) The eligibility requirements for dependents of blind vendors shall be the same as the requirements for dependents of the state employees and retirees ~~((as set forth))~~ in WAC 182-12-260.

(4) Local governments: Employees of a county, municipality, or other political subdivision of the state may participate in PEBB insurance coverage provided all of the following requirements are met:

(a) All eligible employees of the entity must transfer to PEBB insurance coverage as a unit. If the group meets the minimum size standards established by HCA, bargaining units may elect to participate separately from the whole group, and the nonrepresented employees may elect to participate separately from the whole group provided all nonrepresented employees join as a group.

(b) The PEBB health plans must be the only employer sponsored health plans available to eligible employees.

(c) The legislative authority or the board of directors of the entity must submit to the HCA an application together with employee census data and, if available, prior claims experience of the entity. The application ~~((to participate in))~~ for PEBB insurance coverage is subject to the approval of the HCA.

(d) The legislative authority or the board of directors must maintain its PEBB ~~((plan))~~ insurance coverage participation ~~((for a minimum of))~~ at least one full year, and may terminate participation only at the end of the plan year.

(e) The terms and conditions for the payment of the insurance premiums must be ~~((set forth))~~ in the provisions of the bargaining agreement or terms of employment and shall comply with the employer contribution requirements specified in the appropriate governing statute. These provisions, including eligibility, shall be subject to review and approval by the HCA at the time of application for participation. Any substantive changes must be submitted to HCA.

(f) The eligibility requirements for dependents of local government employees must be the same as the requirements for dependents of state employees and retirees ~~((as set forth))~~ in WAC 182-12-260.

(g) The legislative authority or the board of directors ~~((shall provide))~~ must give the HCA ~~((with))~~ written notice of its intent to ~~((terminate))~~ end PEBB ~~((plan))~~ insurance coverage participation ~~((no fewer than))~~ at least thirty days ~~((prior to))~~ before the effective date of termination. If a county, municipality, or political subdivision ~~((terminates))~~ ends coverage in PEBB insurance coverage, retired and disabled employees who began participating after September 15, 1991, are not eligible ~~((to participate in))~~ for PEBB insurance coverage beyond the mandatory extension requirements specified in WAC 182-12-146.

(5) K-12 school districts and educational service districts: Employees of school districts or educational service districts may participate in PEBB insurance ~~((programs))~~ coverage provided all of the following requirements are met:

(a) All eligible employees of the entity must transfer to PEBB insurance coverage as a unit. If the K-12 school district or educational service district meets the minimum size standards established by HCA, bargaining units may elect to

participate separately from the whole group. For ~~((the purpose of))~~ enrolling by bargaining unit, all nonrepresented employees will be considered a single bargaining unit.

(b) The school district or educational service district must submit an application together with employee census data and, if available, prior claims experience of the entity to the HCA. The application ~~((to participate in))~~ for the PEBB insurance coverage is subject to the approval of the HCA.

(c) The school district or educational service district must agree to participate in all PEBB insurance coverage. The PEBB health plans must be the only employer sponsored health plans available to eligible employees.

(d) The school district or educational service district must maintain its PEBB ~~((plan))~~ insurance coverage participation ~~((for a minimum of))~~ at least one full year, and may ~~((terminate))~~ end participation only at the end of the plan year.

(e) Beginning September 1, 2003, the HCA will collect an amount equal to the composite rate charged to state agencies plus an amount equal to the employee premium by health ~~((earlier))~~ plan and family size as would be charged to state employees for each participating school district or educational service district. Each participating school district or educational service district must agree to collect an employee premium by health ~~((earlier))~~ plan and family size that is not less than that paid by state employees. The eligibility requirements for employees will be the same as those for state employees as defined in WAC 182-12-115.

(f) The eligibility requirements for dependents of K-12 school district and educational service district employees must be the same as the requirements for dependents of the state employees and retirees ~~((as set forth))~~ in WAC 182-12-260.

(g) The school district or educational service district must ~~((provide))~~ give the HCA ~~((with))~~ written notice of its intent to ~~((terminate))~~ end PEBB ~~((plan))~~ insurance coverage participation ~~((no fewer than))~~ at least thirty days ~~((prior to))~~ before the effective date of termination, and may ~~((terminate))~~ end participation only at the end of a plan year.

(6) Eligible nonemployees:

(a) Dislocated forest products workers enrolled in the employment and career orientation program pursuant to chapter 50.70 RCW shall be eligible for PEBB health plans ~~((coverage))~~ while enrolled in that program.

(b) School board members or students eligible to participate under RCW 28A.400.350 may participate in PEBB insurance coverage as long as they remain eligible under that section.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-112 Insurance eligibility for higher education. For ~~((the purpose of))~~ insurance eligibility, the HCA considers the higher education personnel board, the council for postsecondary education, and the state board for community colleges to be higher education agencies.

AMENDATORY SECTION (Amending Order 06-01, filed 5/25/06, effective 6/25/06)

WAC 182-12-115 Eligible employees. The following employees of state government, higher education, participating K-12 school districts, educational service districts, political subdivisions and employee organizations representing state civil service workers are eligible for PEBB insurance coverage.

A person whose employment situation can be described by more than one of the eligibility categories in subsections (1) through (7) of this section shall have his or her eligibility determined solely by the criteria of the one category that most closely describes his or her employment situation.

(1) "Permanent employees." Those who work at least half-time per month and are expected to be employed for more than six months. These employees are eligible for benefits on their date of employment. Insurance coverage begins on the first day of the month following the date of employment. If the date of employment is the first working day of a month, insurance coverage begins on the date of employment.

(2) "Nonpermanent employees." Those who work at least half-time and are expected to be employed for no more than six months. These employees are eligible for benefits on the first day of the seventh month of half-time or more employment. Insurance coverage begins on the first day of the seventh month following the date of employment.

(3) "Career seasonal employees." Those who work at least half-time per month during a designated season for a minimum of three months but less than twelve months per year and who have an understanding of continued employment season after season. These employees are eligible for benefits on their date of employment. Insurance coverage begins on the first day of the month following the date of employment. If the date of employment is the first working day of a month, insurance coverage begins on the date of employment. Career seasonal employees who work at least half-time per month for a season that extends for nine or more months are eligible for the employer contribution during the break between seasons of employment. However, career seasonal employees who work at least half-time per month for less than nine months in a season are not eligible for the employer contribution during the break between seasons of employment but may be eligible to continue insurance coverage by self-paying premiums.

(4) "Instructional year employees." Employees who work half-time or more on an instructional year (school year) or equivalent nine-month basis. These employees are eligible for benefits on their date of employment. Insurance coverage begins on the first day of the month following the date of employment. If the date of employment is the first working day of the month, insurance coverage begins on the date of employment. These employees are eligible to receive the employer contribution for insurance coverage during the off-season following each instructional year period of employment. The provisions of this subsection do not apply to persons employed on a quarter-to-quarter or semester-to-semester contract basis.

(5)(a) "Part-time faculty" and "part-time academic employees." Employees who are employed on a quarter/

semester to quarter/semester basis are eligible for insurance coverage (~~(beginning with)~~ starting the second consecutive quarter/semester of half-time or more employment at one or more state institutions of higher education including one or more college districts. These employees are eligible for benefits the first day of the second consecutive quarter/semester of half-time or more employment. Insurance coverage begins on the first day of the month following the beginning of the second quarter/semester of half-time or more employment. If the first day of the second consecutive quarter/semester is the first working day of the month, insurance coverage begins at the beginning of the second consecutive quarter/semester.

~~(For the purpose of determining)~~ To determine eligibility for part-time faculty and part-time academic employees, employers must:

(i) Consider spring and fall as consecutive quarters/semesters when first establishing eligibility; and

(ii) Determine "half-time or more employment" based on each institution's definition of "full-time"; and

(iii) At the beginning of each quarter/semester notify, in writing, all current and newly hired part-time faculty and part-time academic employees of their potential right to benefits under this subsection; and

(iv) Where concurrent employment at more than one state higher education institution is used to determine total employment of half-time or more, the employing institutions will arrange to prorate the cost of the employer insurance contribution based on the employment at each institution. However, if the employee would be eligible by virtue of employment at one institution, that institution will pay the entire cost of the employer contribution regardless of other higher education employment. In cases where the cost of the contribution is prorated between institutions, one institution will forward the entire contribution monthly to HCA.

Part-time faculty and part-time academic employees employed at more than one state institution of higher education are responsible for notifying each employer quarterly, in writing, of the employee's multiple employment. In no case will retroactive insurance coverage be permitted or employer contribution paid to HCA if an employee (~~(fails to)~~ does not inform all of his(~~+~~) or her employing institutions about employment at all institutions within the current quarter.

Once enrolled, if a part-time faculty or part-time academic employee does not work at least a total of half-time in one or more state institutions of higher education, eligibility for the employer contribution ceases.

(b) Part-time academic employees of community and technical colleges who have a reasonable expectation of continued employment at one or more college districts shall be eligible for the employer contribution for benefits during the period between the end of the spring quarter and the beginning of the fall quarter, or other quarter break period, if they meet the following conditions of this subsection (5)(b).

Part-time academic employees who work half-time or more in each instructional year quarter of an academic year, or equivalent nine-month season, in a single college district or multiple college districts, as determined from the payroll records of the employing community or technical college district(s), are eligible for the employer contribution for health benefits during the quarter or off season period immediately

following the end of one academic year or equivalent nine-month season.

For (~~the purposes of~~) this subsection (5)(b):

(i) "Academic employee" (~~(has the meaning set forth)~~) is defined in RCW 28B.50.489(3).

(ii) "Academic year" means fall, winter, and spring quarters in a community or technical college, as determined from the payroll records of the employing college district or college districts.

(iii) "Equivalent nine-month seasonal basis" means a nine consecutive month period of employment at half-time or more by a single college district or multiple college districts, as determined from the payroll records of the employing college district(s).

(iv) "Health benefits" means the particular medical and/or dental coverage in place at the end of the academic year or equivalent nine-month season. Changes to health benefits may be made only as (~~set forth~~) allowed in chapter 182-08 WAC or during an annual open enrollment period.

(c) Part-time academic employees who have established eligibility, as determined from the payroll records of the employing community or technical college districts, for employer contributions for benefits and who have worked an average of half-time or more in each of the two preceding academic years, through employment at one or more community or technical college districts, are eligible for continuation of employer contributions for the subsequent summer period between the end of the spring quarter and the beginning of the fall quarter.

(d) Once a part-time academic employee meets the criteria in (c) of this subsection, the employee shall continue to receive uninterrupted employer contributions for benefits if the employee works at least (~~three of the four~~) two quarters of the academic year with an average academic year workload of half-time or more for three quarters of the academic year. Benefits provided under this subsection (5)(d) cease (~~at the end of the academic year~~) if this criteria is not met. Continuous benefits shall be reinstated once the employee reestablishes eligibility under (c) of this subsection.

(e) As used in (c) and (d) of this subsection, "academic year" means the summer, fall, winter, and spring quarters. As used in this subsection, "academic employees" has the meaning provided in RCW 28B.50.489.

(f) To be eligible for maintenance of benefits through averaging pursuant to (c) and (d) of this subsection, part-time academic employees must notify their employers of their potential eligibility.

(6) "Appointed and elected officials." Legislators are eligible (~~(to apply for coverage)~~) for benefits on the date their term begins. All other elected and full-time appointed officials of the legislative and executive branches of state government are eligible (~~(to apply for coverage)~~) for benefits on the date their term begins or they take the oath of office, whichever occurs first. Insurance coverage for legislators begins on the first day of the month following the date their term begins. If the term begins on the first working day of the month, insurance coverage begins on the first day of their term. Insurance coverage begins for all other elected and full-time appointed officials of the legislative and executive branches of state government on the first day of the month

following the date their term begins, or the first day of the month following the date they take the oath of office, whichever occurs first. If the term begins, or oath of office is taken, on the first working day of the month, insurance coverage begins on the date the term begins, or the oath of office is taken.

(7) "Judges." Justices of the supreme court and judges of courts of appeals and the superior courts become eligible ~~((to apply for coverage))~~ for benefits on the date they take the oath of office. Insurance coverage begins on the first day of the month following the date their term begins, or the first day of the month following the date they take oath of office, whichever occurs first. If the term begins, or oath of office is taken, on the first working day of a month, insurance coverage begins on the date the term begins, or the oath of office is taken.

AMENDATORY SECTION (Amending Order 06-02, filed 5/24/06, effective 6/24/06)

WAC 182-12-116 Who is eligible ~~((to participate in))~~ for the PEBB flexible spending account plan? Beginning January 1, 2006, all employees of public four-year institutions of higher education, of the state community and technical colleges and of the state board for community and technical colleges who are eligible for PEBB ~~((insurance))~~ benefits, as defined in WAC 182-12-115, are eligible ~~((to participate in))~~ for the PEBB medical flexible spending account plan. Beginning July 1, 2006, all employees of state agencies who are eligible for PEBB ~~((insurance))~~ benefits, are eligible ~~((to participate in))~~ for the PEBB medical flexible spending account plan.

If an employee terminates employment after becoming a plan participant and later on in the same plan year is hired into a new position that is eligible for PEBB ~~((insurance))~~ benefits, the employee may not resume participation in the PEBB medical flexible spending account until the beginning of the next plan year.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-123 Dual ~~((eligibility))~~ enrollment is prohibited. PEBB health plan coverage is limited to a single enrollment per individual.

(1) Effective January 1, 2002, individuals ~~((that))~~ who have more than one source of eligibility for enrollment in PEBB health plan coverage (called "dual eligibility") are limited to one enrollment.

(2) ~~((One insurance-))~~ An eligible employee may waive medical ~~((coverage for himself or herself))~~ and enroll as a ~~((spouse or))~~ dependent on the coverage of his or her eligible spouse or qualified domestic partner as stated in WAC 182-12-128. ~~((This waiver option is not available for other insurance coverages.))~~

(3) ~~((The following examples describe typical situations of dual eligibility. These are not the only situations where dual eligibility may arise. These examples are provided as illustrations only.~~

(a) A husband and wife who are both insurance-eligible and employed by PEBB-participating employers, such as

~~state agencies, may enroll only in a health plan as an employee but not also as a dependent. That is, the husband may enroll only under his employing agency and the wife may enroll only under her employing agency but not also as dependents of each other. In the alternative, one spouse may waive medical coverage as an employee and enroll as a dependent on the medical coverage of the other spouse.~~

~~((b) A dependent child that is))~~ Children eligible for ~~((coverage))~~ medical and dental under two or more parents or stepparents, who are employed by PEBB-participating employers, may be enrolled as a dependent under the health plan ~~((coverage))~~ of one parent or stepparent, but not more than one.

~~((e))~~ (4) An employee employed in ~~((an insurance-))~~ a benefits eligible position by more than one PEBB-participating employer may enroll only under one employer. The employee may choose to enroll in ~~((a health plan))~~ PEBB benefits under the employer that:

~~((i))~~ (a) Offers the most favorable cost-sharing arrangement; or

~~((ii))~~ (b) Employed the employee for the longer period of time.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-128 When may an employee waive ~~((enrollment in PEBB insurance coverage))~~ health plan enrollment for their self or their eligible dependent? (1) ~~((Employees eligible for PEBB insurance coverage have the option of waiving health plan coverage if they are covered by other health plan coverage. If an employee waives health plan coverage, such coverage is automatically waived for all eligible dependents. An employee may choose to enroll only himself or herself, and waive either the medical or dental portion of the health plan coverage, or both, for any or all dependents. In order to waive enrollment, the employee must complete an enrollment form and list all enrollees for whom coverage is being waived.))~~ Employees may waive medical if they have other comprehensive group medical coverage. To waive medical, the employee must complete an enrollment/change form. If an employee waives medical, then medical is automatically waived for all eligible dependents.

(2) An employee may only waive ~~((the))~~ medical ~~((portion of health plan coverage))~~. The employee must remain enrolled in ~~((the))~~ dental, life and ~~((LTD insurance coverages))~~ long-term disability.

(3) ~~((If the medical portion of the health plan coverage is waived, an otherwise eligible enrollee may not reseed the waiver and reenroll in the medical portion of the health plan coverage except during the following times:~~

(a) The next open enrollment period; or

(b) Within sixty days of loss of other medical coverage if proof of enrollment in other comprehensive group medical coverage is submitted and demonstrates that:

(i) Enrollment in other medical coverage was continuous from the most recent open enrollment period for which PEBB medical coverage was waived; and

(ii) The period between loss of the other medical coverage and application for PEBB medical coverage is sixty days

~~or less-)) An employee may waive medical or dental, or both, for any or all eligible dependents.~~

~~(4) ((If the dental portion of the health plan coverage is waived, an otherwise eligible dependent may not enroll in PEBB dental coverage except)) Once health plan enrollment is waived, enrollment is only allowed during the following times:~~

~~(a) The next open enrollment period; or~~

~~(b) ((Within sixty days after loss of other dental coverage if proof of enrollment in other dental coverage is submitted and demonstrates that:)) After losing other health insurance. The employee must provide evidence:~~

~~(i) ((Enrollment in the other dental coverage was continuous from the most recent open enrollment period for which dental was waived; and)) Other health insurance was comprehensive group coverage;~~

~~(ii) ((The period between loss of the other dental and application for PEBB dental coverage is sixty days or less:)) Enrollment was continuous from the most recent PEBB open enrollment period; and~~

~~(iii) The date coverage was lost.~~

~~Application to enroll in a PEBB health plan must be made no later than sixty days after the date the other health insurance was lost.~~

~~((5) The employee and eligible dependents may have an additional opportunity to reenroll only as a result of addition of a new dependent due to marriage, birth, adoption, or placement for adoption, provided that advice of such enrollment is provided to HCA within thirty one days after the marriage or within sixty days after the)) (c) After acquiring a new dependent. Application for enrollment must be made no later than sixty days after acquiring the new dependent through marriage, establishment of a qualified domestic partnership, birth, adoption or placement for adoption ((of a child)).~~

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-131 When does employer paid insurance coverage end? PEBB medical, dental and life insurance ~~((coverages))~~ for a terminated employee, spouse, qualified ~~((same sex))~~ domestic partner or ~~((dependent))~~ child ceases at 12:00 midnight, the last day of the month in which the ~~((employee or dependent))~~ enrollee is eligible. Basic long-term disability ~~((coverage))~~ insurance ceases at 12:00 midnight the date employment ~~((terminates))~~ ends or immediately upon the death of the employee.

AMENDATORY SECTION (Amending Order 06-02, filed 5/24/06, effective 6/24/06)

WAC 182-12-133 What options for continuing coverage are available to employees when they are no longer eligible for PEBB insurance coverage paid for by their employer? Eligible employees covered by PEBB insurance coverage have options for providing continued coverage for themselves and their dependents during temporary or permanent loss of eligibility. Except in the case of approved family and medical leave, and except as otherwise provided, only employees in pay status eight or more hours per month are eligible to receive the employer contribution.

(1) When an employee is on leave without pay due to an event described in (a) through (f) of this subsection, insurance coverage may be continued at the group rate by self-paying premiums. Employees may self-pay for a maximum of twenty-nine months. The number of months that an employee self-pays premium during a period of leave without pay will count toward the total months of continuation coverage allowed under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA). Employees may continue any combination of medical, dental and life insurance; however, only employees on approved educational leave may continue long-term disability insurance. The following types of leave qualify to continue coverage under this provision:

(a) The employee is on authorized leave without pay;

(b) The employee is laid off because of a reduction in force (RIF);

(c) The employee is receiving time-loss benefits under workers' compensation;

(d) The employee is applying for disability retirement;

(e) The employee is called to active duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA); ~~((however, self-payment of life insurance is limited to twelve months from the date the employee is called to active duty:))~~ or

(f) The employee is on approved educational leave.

(2) Part-time faculty and part-time academic employees may self-pay premium at the group rate between periods of eligibility for a maximum of eighteen months. ~~((Part-time faculty))~~ These employees may continue any combination of medical, dental and life insurance.

(3) The federal Consolidated Omnibus Budget Reconciliation Act (COBRA) gives enrollees the right to continue ~~((group))~~ medical and dental ~~((coverage))~~ for a period of eighteen to ~~((thirty-six))~~ twenty-nine months when they lose eligibility due to one of the following qualifying events.

(a) Termination of employment.

(b) The employee's hours are reduced to the extent of losing eligibility.

(4) Employees who are approved for leave under the federal Family and Medical Leave Act (FMLA) are eligible to receive the employer contribution toward premium for up to twelve weeks, as provided in WAC 182-12-138.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-136 May an employee on approved educational leave waive PEBB health plan coverage? In order to avoid duplication of group health plan coverage, the following shall apply to employees during any period of approved educational leave. Employees eligible for coverage provided in WAC 182-12-133 who obtain comprehensive health plan coverage under another group plan may waive continuance of such coverage for each full calendar month in which they maintain coverage under the other comprehensive group health plan. These employees have the right to reenroll in a PEBB health plan ~~((coverage))~~ effective the first day of the month after the date the other comprehensive group health plan coverage ~~((terminates))~~ ends, provided ~~((proof))~~

evidence of such other comprehensive group health plan coverage is provided to the ((HCA)) PEBB benefits services program upon application for reenrollment.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-138 If an employee is approved for family and medical leave, what ((PEBB)) insurance coverage may be continued? Employees on leave under the federal Family and Medical Leave Act (FMLA) may continue to receive up to twelve weeks of employer-paid ((group)) medical, dental, basic life, and basic long-term disability insurance while on family and medical leave and may also continue current optional life and long-term disability. All employee premium amounts associated with insurance coverage must be paid monthly as they become due. If premiums are more than sixty days delinquent, insurance coverage will ((be terminated)) end as of the last day of the month of fully paid coverage.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-141 If I revert from an eligible position to an ineligible position what happens to my insurance coverage? Employees who revert to a position that is ineligible for employer contribution toward insurance coverage may continue enrollment in a PEBB health plan ((coverage)) by self-paying premium for up to eighteen months (and in some cases up to twenty-nine months) under the same terms as an employee who is granted leave without pay.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-146 ((PEBB)) Continuing health plan coverage under COBRA. Enrollees and eligible dependents who become ineligible for ((health plan)) coverage and who qualify for continued coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA) may continue their ((plan coverage)) medical and dental by self-payment of health plan premiums in accordance with COBRA statutes and regulations.

AMENDATORY SECTION (Amending Order 05-01, filed 7/27/05, effective 8/27/05)

WAC 182-12-148 May an employee continue PEBB insurance coverage during their appeal of dismissal? (1) Employees awaiting hearing of a dismissal action before any of the following may continue their insurance coverage by self-payment of premium on the same terms as an employee who is granted leave without pay.

(a) For an appeal filed on or before June 30, 2005, the personnel appeals board or any court.

(b) For an appeal filed on or after July 1, 2005, the personnel resources board, an arbitrator, a grievance or appeals committee established under a collective bargaining agreement for union represented employees.

(2) If the dismissal is upheld, all insurance coverage ((shall terminate)) will end at the end of the month in which the decision is entered, or the date to which premiums have been paid, whichever is earlier.

(3)(a) If the board, arbitrator, committee, or court sustains the employee in the appeal and directs reinstatement of employer paid insurance coverage retroactively, the employer must forward to HCA the full employer contribution for the period directed by the board, arbitrator, committee, or court and collect from the employee the employee's share of premiums due, if any.

(b) HCA will refund to the employee any premiums the employee paid that may be provided for as a result of the reinstatement of the employer contribution only if the employee makes retroactive payment of any employee contribution amounts associated with the insurance coverage. In the alternative, at the request of the employee, HCA may deduct the employee's contribution from the refund of any premiums self-paid by the employee during the appeal period.

(c) All optional life and long-term disability insurance which was in force at the time of dismissal shall be reinstated retroactively only if the employee makes retroactive payment of premium for any such optional coverage which was not continued by self-payment during the appeal process. If the employee chooses not to pay the retroactive premium, evidence of insurability will be required to restore such optional coverage.

AMENDATORY SECTION (Amending Order 06-02, filed 5/24/06, effective 6/24/06)

WAC 182-12-171 ((Eligible retirees.)) When are retiring employees eligible to enroll in retiree insurance? (1) ((Eligible)) Procedural requirements. Retiring employees ((who terminate public employment after becoming vested in a Washington state sponsored retirement system are eligible to continue PEBB sponsored insurance coverage as a retiree provided the following requirements in (a) and (b) of this subsection as well as one of (c) through (g) of this subsection are met:)) must meet these procedural requirements, as well as have substantive eligibility under subsection (2) or (3) of this section.

(a) ((If the retiree or enrolled dependent(s) is entitled to Medicare and the retiree retired after July 1, 1991, the Medicare entitled retiree or Medicare entitled dependent must enroll in both Medicare Parts A and B; and)) The employee must submit an election form to enroll or defer insurance coverage within sixty days after their employer paid or COBRA coverage ends. The effective date of health plan enrollment will be the first of the month following the loss of other coverage. Employees who cancel PEBB health plan coverage or do not enroll in a PEBB health plan at retirement are only eligible to enroll if they have deferred enrollment and maintained comprehensive coverage as defined in WAC 182-12-200 or 182-12-205.

(b) The ((retiring employee must submit an election form to enroll or defer health plan coverage within sixty days after their employer paid or continuous Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage ends and is

eligible for retiree benefits under one or more of the programs described in (c), (d), (e), (f), or (g) of this subsection;

(e) Except as provided in (e)(vii) of this subsection, the person immediately upon termination begins receiving a monthly retirement income benefit from one or more of the following retirement systems:

(i) Law enforcement officers' and fire fighters' retirement system Plan 1 or 2;

(ii) Public employees' retirement system Plan 1 or 2;

(iii) Public safety employees' retirement system;

(iv) School employees' retirement system Plan 2;

(v) State judges/judicial retirement system;

(vi) Teachers' retirement system Plan 1 or 2; or

(vii) Washington state patrol retirement system.

(viii) Provided, however, that a lump-sum payment may be received in lieu of a monthly retiree income benefit payment under RCW 41.26.425(1), 41.32.762(1), 41.32.870(1), 41.35.410(1), 41.35.670(1), 41.37.200(1), 41.40.625(1) or 41.40.815(1).

(d) The person is at least fifty five years of age with at least ten years of state of Washington service credit and a member of one of the following retirement systems:

(i) Public employees' retirement system Plan 3;

(ii) School employees' retirement system Plan 3; or

(iii) Teachers' retirement system Plan 3.

(e) The person is a member of a state of Washington higher education retirement plan, and is:

(i) At least fifty five years of age with at least ten years service; or

(ii) At least sixty two years of age; or

(iii) Immediately begins receiving a monthly retirement income benefit.

(f) If not retiring under the public employees' retirement system, the person would have been eligible for a monthly retirement income benefit because of age and years of service had the person been employed under the provisions of public employees' retirement system Plan 1 or Plan 2 for the same period of employment.

(g) The person is an elected official as defined under WAC 182-12-115(6) who has voluntarily or involuntarily left a public office, whether or not the person receives a benefit from a state retirement system)) employee and enrolled dependents who are entitled to Medicare must enroll and maintain enrollment in both Medicare parts A and B if the employee retired after July 1, 1991. If the employee or an enrolled dependent becomes entitled to Medicare after enrollment in PEBB retiree insurance, they must enroll and maintain enrollment in Medicare.

(2) **Eligibility requirements.** Eligible employees ((who participate in PEBB sponsored life insurance as an active employee and meet qualifications for retiree insurance coverage as provided in subsection (1) of this section are eligible for PEBB sponsored retiree life insurance if they submit an election form no later than sixty days after the date their PEBB employee life insurance terminates, providing their employee life insurance premium is not being waived by the life insurance carrier at the time they elect retiree life insurance)) (as defined in WAC 182-12-115) who end public employment after becoming vested in a Washington state-sponsored retirement plan (as defined in subsection (4) of this

section) are eligible to continue PEBB insurance coverage as a retiree if they meet procedural and eligibility requirements. To be eligible to continue PEBB insurance coverage as a retiree the employee must be eligible to retire under a Washington state-sponsored retirement plan when their employer paid or COBRA coverage ends.

Employees who do not meet their Washington state-sponsored retirement plan's age requirements when their employer paid or COBRA coverage ends, but who meet the age requirement within sixty days of coverage ending, may request that their eligibility be reviewed by the health care authority's appeals committee to determine eligibility (see WAC 182-16-030). Employees must meet other retiree insurance election procedural requirements.

• Employees must immediately begin to receive a monthly retirement plan payment, with exceptions described below.

• Employees who receive a lump-sum payment instead of a monthly retirement plan payment are only eligible if this is required by department of retirement systems because their monthly retirement plan payment is below the minimum payment that can be paid.

• Employees who are members of a Plan 3 retirement, also called separated employees (defined in RCW 41.05.011 (13)), are eligible if they meet their retirement plan's age requirement and length of service when PEBB employee insurance coverage ends. They do not have to receive a retirement plan payment.

• Employees who are members of a Washington higher education retirement plan are eligible if they immediately begin to receive a monthly retirement plan payment, or meet their plan's age requirement, or are at least age fifty-five with ten years of state service.

• Employees who are permanently and totally disabled are eligible if they start receiving or defer a monthly disability retirement plan payment.

• Employees not retiring under the public employees' retirement system must meet the same age and years of service had the person been employed as a member of either public employees retirement system Plan 1 or Plan 2 for the same period of employment.

• Employees who retire from a local government that participates in PEBB insurance coverage for their employees are eligible to continue PEBB insurance coverage as a retiree.

(a) **Local government employees.** If the local government ends participation in PEBB insurance coverage, employees who enrolled after September 15, 1991, are no longer eligible for PEBB retiree insurance. These employees may continue PEBB health plan enrollment under COBRA (see WAC 182-12-146).

(b) **Washington state K-12 school district and educational service district employees for districts that do not participate in PEBB benefits.** Employees of Washington state K-12 school districts and educational service districts who separate from employment after becoming vested in a Washington state-sponsored retirement system are eligible to enroll in PEBB health plans when retired or permanently and totally disabled.

Except for employees who are members of a retirement Plan 3, employees who separate on or after October 1, 1993,

must immediately begin to receive a monthly retirement plan payment from a Washington state-sponsored retirement system. Employees who receive a lump-sum payment instead of a monthly retirement plan payment are only eligible if department of retirement systems requires this because their monthly retirement plan payment is below the minimum payment that can be paid or they enrolled before 1995.

Employees who are members of a Plan 3 retirement, also called separated employees (defined in RCW 41.05.011(13)), are eligible if they meet their retirement plan's age requirement and length of service when employer paid or COBRA coverage ends.

Employees who separate from employment due to total and permanent disability who are eligible for a deferred retirement allowance under a Washington state-sponsored retirement system (as defined in chapter 41.32, 41.35 or 41.40 RCW) are eligible if they enrolled before 1995 or within sixty days following retirement.

Employees who retired as of September 30, 1993, and began receiving a retirement allowance from a state-sponsored retirement system (as defined in chapter 41.32, 41.35 or 41.40 RCW) are eligible if they enrolled in a PEBB health plan not later than the HCA's open enrollment period for the year beginning January 1, 1995.

(3) ~~((The following retired and disabled school district and educational service district employees are eligible to participate in health plan coverage only, provided they meet all of the enrollment criteria stated below and, if they are entitled to Medicare, are also enrolled in both Medicare Parts A and B:~~

~~(a) Persons receiving a retirement allowance under chapter 41.32, 41.35 or 41.40 RCW as of September 30, 1993, and who enroll in PEBB health plan coverage not later than the end of the open enrollment period established by the authority for the plan year beginning January 1, 1995;~~

~~(b) Persons who separate from employment with a school district or educational service district due to a total and permanent disability and are eligible to receive a deferred retirement allowance under chapter 41.32, 41.35 or 41.40 RCW. Such persons must enroll in PEBB health plan coverage not later than the end of the open enrollment period established by the HCA for the plan year beginning January 1, 1995, or sixty days following retirement, whichever is later.)~~

Elected state officials. Employees who are elected state officials (as defined under WAC 182-12-115(6)) who voluntarily or involuntarily leave public office are eligible to continue PEBB insurance coverage as a retiree if they meet procedural and eligibility requirements. They do not have to receive a retirement plan payment from a state-sponsored retirement system.

(4) ~~((With the exception of the Washington state patrol, retirees and disabled employees are not eligible for an employer premium contribution.))~~ **Washington state-sponsored retirement systems include:**

- Higher education retirement plans;
- Law enforcement officers' and fire fighters' retirement system;
- Public employees' retirement system;
- Public safety employees' retirement system;
- School employees' retirement system;

- State judges/judicial retirement system;
- Teacher's retirement system; and
- State patrol retirement system.

~~((5))~~ The two federal retirement systems, Civil Service Retirement System and Federal Employees' Retirement System, ~~((shall be))~~ are considered a Washington state-sponsored retirement system for Washington State University Extension employees ~~((who are))~~ covered under the PEBB insurance coverage at the time of retirement or disability.

~~((6) Employees who do not elect enrollment in PEBB retiree insurance coverage no later than sixty days immediately after termination of employment for retirement, or immediately after continuous Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage ends, or who terminate PEBB retiree coverage no later than sixty days after retirement, or who terminate PEBB retiree coverage after retirement, are not eligible to reenroll in PEBB retiree insurance coverage unless they retired and deferred PEBB retiree coverage pursuant to WAC 182-12-205 or retired and deferred PEBB retiree coverage pursuant to WAC 182-12-200.~~

(7)(a) If a retiree's insurance coverage terminates for any reason, coverage will not be reinstated at a later date. Examples of termination include, but are not limited to, any one or more of the following:

- (i) Failure to continue to meet eligibility requirements;
- (ii) Fraud, intentional misrepresentation or withholding of information the enrollee knew or should have known was material or necessary to accurately determine eligibility or the correct premium;
- (iii) Failure to provide information requested by the due date or knowingly providing false information;
- (iv) Abusive or offensive conduct repeatedly directed to an HCA employee, a health plan or other HCA contractor providing coverage on behalf of the PEBB program, its employees, or other persons; or
- (v) Intentional misconduct.

(b) If a retiree fails to pay the premium when due or an underpayment of premium is made, PEBB-sponsored insurance coverage will terminate on the last day of the month for which the last full premium was received.

(c) Notwithstanding (a) of this subsection, the PEBB assistant administrator or designee may approve reinstatement of insurance coverage if the retiree or their dependent or beneficiary submits a written appeal and provides proof that extraordinary circumstances made it virtually impossible to make the payment and the retiree agrees to make payment in accordance with the terms of an agreement with the HCA. No insurance coverage will be reinstated more than three times.

(8) Enrollees may not enroll in retiree dental coverage unless they also enroll in retiree medical coverage.

(9) In order to continue retiree term life insurance, an election must be made within sixty days after retirement and premiums must be paid whether or not the retiree is otherwise employed. Election of retiree term life insurance may not be waived or deferred during periods of other coverage or otherwise.)

AMENDATORY SECTION (Amending Order 05-01, filed 7/27/05, effective 8/27/05)

WAC 182-12-175 May a local government entity applying for participation in PEBB insurance coverage include their retirees in the transfer unit? Local government entities applying for participation in PEBB insurance coverage under WAC 182-12-111(4), may request inclusion of retired employees who are covered under their retiree health plan at the time of application. The PEBB benefits services program will use the following criteria for approval of these requests for inclusion of retirees.

(1) The local government retiree health plan must have existed ~~((for a minimum of))~~ at least three years ~~((prior to))~~ before the date of application for participation in PEBB health plans.

(2) Eligibility for coverage under the local government's retiree health plan must have required immediate enrollment in retiree health plan coverage upon termination of employee coverage.

(3) The retiree must have maintained continuous enrollment in their local government retiree health plan.

(4) To protect the integrity of the risk pool, if total local government retiree enrollment exceeds ten percent of the total PEBB retiree population, the PEBB benefits services program may:

(a) Stop approving inclusion of retirees with local government unit transfers; or

(b) May adopt a new rating methodology reflective of the cost of covering local government retirees.

(5) Retirees and dependents included in the transfer unit are subject to the enrollment and eligibility rules outlined in chapters 182-08, 182-12 and 182-16 WAC.

(6) Employees eligible for retirement subsequent to the local government transferring to PEBB health plan coverage must meet retiree eligibility as outlined in chapter 182-12 WAC.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-200 May a retiree who is enrolled as a dependent in a PEBB ~~((sponsored))~~ health plan or a Washington state K-12 school district sponsored health plan ~~((coverage))~~ defer enrollment in a PEBB retiree health plan ~~((s))~~? ~~((A retiree, whose spouse is enrolled as an eligible employee in a PEBB or Washington state school district sponsored health plan,))~~ Retirees who are enrolled in a PEBB health plan or Washington state K-12 school district sponsored health plan as a dependent may defer enrollment in a PEBB retiree health plan ~~((coverage and enroll in the spouse's PEBB or school district sponsored health plan coverage. If a retiree))~~. Retirees who defer ~~((s))~~ enrollment in ~~((PEBB retiree))~~ medical ~~((coverage, enrollment must also be deferred for dental coverage))~~ cannot remain enrolled in dental. ~~((The retiree and eligible dependents))~~ Retirees who defer may ~~((subsequently))~~ later enroll themselves and their dependents in PEBB retiree medical ~~((coverage)), or medical and dental ~~((coverage)), if ~~((the retiree was continuously enrolled under the spouse's))~~ they provide evidence of continuous enrollment in a PEBB or K-12 school district sponsored~~~~

health plan ~~((coverage))~~. Continuous enrollment must be from the date the retiree was initially eligible for retiree insurance ~~((coverage))~~. Retirees may enroll.

(1) During any PEBB open enrollment period ~~((determined by the HCA))~~ (Enrollment in the PEBB health plan will begin the first day of January after the open enrollment period.); or

(2) ~~((Within))~~ No later than sixty days after enrollment in the ~~((date the spouse ceases to be enrolled in a))~~ PEBB or K-12 school district sponsored health plan ~~((as an eligible employee; or~~

~~((3) Within sixty days of the date after the retiree's loss of eligibility as a dependent under the spouse's PEBB or school district sponsored health plan coverage.))~~ ends. (Enrollment in the PEBB health plan will begin the first day of the month after the PEBB or K-12 school district health plan ends.)

AMENDATORY SECTION (Amending Order 06-09, filed 11/22/06, effective 12/23/06)

WAC 182-12-205 ~~((Retirees))~~ May a retiree defer enrollment in a PEBB health plan ~~((coverage))~~ at or after retirement ~~((s))~~? Except as stated in subsection (1)(c) of this section, if a retiree defers enrollment in a PEBB health plan ~~((coverage))~~, ~~((PEBB))~~ they also ~~((waives coverage))~~ defer enrollment for all eligible dependents. Retirees may not defer their retiree term life insurance, even if they have other ~~((coverage))~~ life insurance.

(1) Retirees may defer enrollment in a PEBB health plan ~~((coverage))~~ at or after retirement if continuously enrolled in other comprehensive medical ~~((coverage))~~ as ~~((stated))~~ identified below:

(a) Beginning January 1, 2001, retirees may defer ~~((their PEBB health plan coverage))~~ enrollment if they are enrolled in comprehensive employer-sponsored medical ~~((coverage))~~ as an employee or the ~~((spouse or same-sex domestic partner))~~ dependent of an employee.

(b) Beginning January 1, 2001, retirees may defer ~~((their PEBB health plan coverage))~~ enrollment if they are enrolled in medical ~~((coverage))~~ as a retiree or the ~~((spouse or same-sex domestic partner))~~ dependent of a retiree enrolled in a federal retiree plan.

(c) Beginning January 1, 2006, retirees may defer ~~((their PEBB health plan coverage))~~ enrollment if they are enrolled in Medicare Parts A and B and a Medicaid program that provides creditable coverage as defined in this chapter. The retiree's dependents may continue their PEBB ~~((coverage))~~ health plan enrollment if they meet PEBB eligibility criteria and are not eligible for creditable coverage under a Medicaid program.

(2) To defer health plan ~~((coverage))~~ enrollment, the retiree must send a completed ~~((enrollment))~~ election form to the PEBB benefits services program requesting to defer ~~((coverage))~~. The PEBB benefits services program must receive the form before ~~((coverage))~~ health plan enrollment is deferred or no later than sixty days after the date the retiree becomes eligible to apply for PEBB retiree ~~((benefits))~~ insurance coverage.

(3) Retirees who defer ~~((PEBB coverage))~~ may enroll in a PEBB ~~((coverage))~~ health plan as follows:

(a) Retirees who defer (~~(PEBB health plan coverage)~~) while enrolled in employer-sponsored medical (~~(coverage)~~) may enroll in a PEBB health plan (~~(coverage)~~) by sending a completed (~~(enrollment)~~) election form and (~~(proof)~~) evidence of continuous enrollment in comprehensive employer-sponsored (~~(coverage)~~) medical to the PEBB benefits services program:

(i) During (~~(an annual)~~) open enrollment (~~(period)~~) (Enrollment in the PEBB (~~(coverage)~~) health plan will begin the first day of January after the open enrollment period.); or

(ii) No later than sixty days after their employer-sponsored (~~(coverage)~~) medical ends. (Enrollment in the PEBB (~~(coverage)~~) health plan will begin the first day of the month after the employer-sponsored (~~(coverage)~~) medical ends.)

(b) Retirees who defer (~~(PEBB health plan coverage)~~) enrollment while enrolled as a retiree or dependent of a retiree in a federal retiree medical plan will have a one-time opportunity to (~~(reenroll)~~) enroll in a PEBB health plan (~~(coverage)~~) by sending a completed (~~(enrollment)~~) election form and (~~(proof)~~) evidence of continuous enrollment in a federal retiree medical plan to the PEBB benefits services program:

(i) During (~~(an annual)~~) open enrollment (~~(period)~~) (Enrollment in the PEBB (~~(coverage)~~) health plan will begin the first day of January after the open enrollment period.); or

(ii) No later than sixty days after the federal retiree (~~(coverage)~~) medical ends. (Enrollment in the PEBB (~~(coverage)~~) health plan will begin the first day of the month after the federal retiree (~~(coverage)~~) medical ends.)

(c) Retirees who defer (~~(PEBB health plan coverage)~~) enrollment while enrolled in Medicare Parts A and B and Medicaid may enroll in a PEBB health plan (~~(coverage)~~) by sending a completed (~~(enrollment)~~) election form and (~~(proof)~~) evidence of continuous enrollment in creditable coverage to the PEBB benefits services program:

(i) During (~~(the annual)~~) open enrollment (~~(period)~~) (Enrollment in the PEBB (~~(coverage)~~) health plan will begin the first day of January after the open enrollment period.); or

(ii) No later than sixty days after their Medicaid coverage ends (Enrollment in the PEBB (~~(coverage)~~) health plan will begin the first day of the month after the Medicaid coverage ends.); or

(iii) No later than the end of the calendar year (~~(during which)~~) when their Medicaid coverage ends if the retiree was also determined eligible under 42 USC § 1395w-114 and subsequently enrolled in a Medicare Part D plan. (Enrollment in the PEBB (~~(coverage)~~) health plan will begin the first day of January following the end of the calendar year (~~(during which)~~) when the Medicaid coverage ends.)

NEW SECTION

WAC 182-12-207 When can a retiree or eligible dependent's insurance coverage be canceled by HCA? (1) Failure to provide information requested by the due date or knowingly providing false information.

(2) Failure to pay the premium when due or an underpayment of premium.

(3) If a retiree's insurance coverage is canceled for misconduct, insurance coverage will not be reinstated at a later

date. Examples of such termination include, but are not limited to the following:

(a) Fraud, intentional misrepresentation or withholding of information the subscriber knew or should have known was material or necessary to accurately determine eligibility or the correct premium;

(b) Abusive or threatening conduct repeatedly directed to an HCA employee, a health plan or other HCA contracted vendor providing insurance coverage on behalf of the HCA, its employees, or other persons.

NEW SECTION

WAC 182-12-208 May a retiree enroll only in dental?

If an enrollee is enrolled in retiree insurance coverage, they may not enroll in dental unless they also enroll in medical.

NEW SECTION

WAC 182-12-209 Who is eligible for retiree life insurance?

Eligible employees who participate in PEBB life insurance as an employee and meet qualifications for retiree insurance coverage as provided in WAC 182-12-171 are eligible for PEBB retiree life insurance. They must submit an election form to the PEBB benefits services program no later than sixty days after the date their PEBB employee life insurance ends. However, employees whose life insurance premiums are being waived under the terms of the life insurance contract are not eligible for retiree term life insurance until their waiver of premium benefit ends. Retirees may not defer enrollment in retiree term life insurance.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-211 If department of retirement systems makes a formal determination of retroactive eligibility, may the retiree enroll in PEBB (~~(sponsored)~~) retiree insurance coverage? (1) When the Washington state department of retirement systems (DRS) makes a formal determination that a person is retroactively eligible for pension benefits(-) that person may apply for enrollment in a PEBB (~~(retiree)~~) health plan (~~(coverage)~~) only if application is made within sixty days after the date of notice from DRS.

(2) All premiums due from the date of eligibility established by DRS or the date of the DRS decision letter, at the option of the retiree, must be sent with the application to (~~(HCA)~~) the PEBB benefits services program.

(3) The administrator may make an exception to the date PEBB retiree (~~(benefits)~~) insurance coverage commences or payment of premiums; however, such requests must demonstrate extraordinary circumstances beyond the control of the retiree.

AMENDATORY SECTION (Amending Order 06-08, filed 10/3/06, effective 11/3/06)

WAC 182-12-250 Insurance coverage eligibility for (~~(surviving dependents)~~) survivors of emergency service personnel killed in the line of duty. Surviving (~~(dependents)~~) spouses and dependent children of emergency service

personnel who are killed in the line of duty are eligible ~~((for))~~ to enroll in health plans ((coverage)) administered by the PEBB benefits services program within HCA.

(1) This section applies to the ~~((dependents))~~ surviving spouse and dependent children of emergency service personnel "killed in the line of duty" as determined by the Washington state department of labor and industries.

(2) "Emergency service personnel" means law enforcement officers and fire fighters as defined in RCW 41.26.030, members of the Washington state patrol retirement fund as defined in RCW 43.43.120, and reserve officers and fire fighters as defined in RCW 41.24.010.

(3) "Surviving ~~((dependent))~~ spouse and children" means:

(a) A lawful spouse;

(b) An ex-spouse as defined in RCW 41.26.162;

(c) ~~((Dependent))~~ Children. The term "children" includes the following unmarried children of the emergency service worker who are: Under the age of twenty or under the age of twenty-four if he or she is a dependent student attending high school or registered at an accredited secondary school, college, university, vocational school, or school of nursing. ~~((Disabled dependents))~~ Children with disabilities as defined in RCW 41.26.030(7) are eligible at any age. "Children" are defined as:

(i) Biological children (including the emergency service worker's posthumous children);

(ii) Stepchildren; and

(iii) Legally adopted children.

(4) Surviving ~~((dependents))~~ spouses and children who are entitled to Medicare must enroll in both parts A and B of Medicare.

(5) The ~~((surviving dependent))~~ survivor (or agent acting on their behalf) must send a completed ~~((enrollment))~~ election form (to either enroll or defer ~~((public employees' benefits board))~~ enrollment in a PEBB ((coverage)) health plan) to PEBB benefits services ~~((department))~~ program no later than one hundred eighty days after the latter of:

(a) The death of the emergency service worker;

(b) The date on the letter from the department of retirement systems or the board for volunteer fire fighters and reserve officers that informs the survivor that he or she is determined to be an eligible survivor;

(c) The last day the surviving ~~((dependent))~~ spouse or child was covered under any health plan through the emergency service worker's employer; or

(d) The last day the surviving ~~((dependent))~~ spouse or child was covered under the Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage from the emergency service worker's employer.

(6) Survivors ~~((that))~~ who do not choose to defer enrollment in a PEBB ((coverage)) health plan may choose among the following options for when their enrollment in a PEBB ((coverage)) health plan will begin:

(a) June 1, 2006, for survivors whose ~~((enrollment))~~ election form is received by the PEBB benefits services program no later than September 1, 2006;

(b) The first of the month that is no more than sixty days before the date that the PEBB benefits services program receives the ~~((enrollment))~~ election form (for example, if the

PEBB benefits services program receives the ~~((enrollment))~~ election form on August 29, the survivor may request ~~((coverage))~~ health plan enrollment to begin on July 1); or

(c) The first of the month after the date that the PEBB benefits services program receives the ~~((enrollment))~~ election form.

For surviving ~~((dependents))~~ spouses and children who enroll, monthly health plan premiums ~~((for PEBB health plan coverage))~~ must be paid by the survivor except as provided in RCW 41.26.510(5) and 43.43.285 (2)(b).

(7) ~~((Surviving dependents))~~ Survivors must choose one of the following two options to maintain eligibility for PEBB ~~((health plan))~~ insurance coverage:

(a) Enroll in a PEBB health plan ~~((coverage))~~:

(i) Enroll in medical ~~((coverage))~~; or

(ii) Enroll in medical and dental ~~((coverage))~~.

~~((The dependent))~~ Survivors enrolling in dental must stay enrolled in dental ~~((coverage))~~ for at least two years before dental ~~((coverage))~~ can be dropped.

(iv) Dental only ~~((coverage))~~ is not an option.

(b) Defer enrollment:

(i) ~~((Surviving dependents))~~ Survivors may defer enrollment in a PEBB health plan ~~((coverage))~~ if ~~((they are))~~ enrolled in comprehensive medical coverage through an employer.

(ii) ~~((Surviving dependents))~~ Survivors may enroll in a PEBB health plan ~~((coverage))~~ when they lose employer medical coverage. ~~((Dependents))~~ Survivors will need to ~~((prove))~~ provide evidence that they were continuously enrolled in comprehensive coverage through an employer when applying for a PEBB ~~((coverage))~~ health plan, and apply within sixty days after the date their other coverage ended.

(iii) PEBB health plan ~~((coverage))~~ enrollment and premiums will begin the first day of the month following the day that the other coverage ended for ~~((dependents that reenroll))~~ eligible spouses and children who enroll.

(8) ~~((Surviving dependents))~~ Survivors may change their health plan during open enrollment. In addition to open enrollment, ~~((they))~~ survivors may change health plans ~~((if they move out of their health plan's service area or into a service area where a health plan that was not previously offered is now available))~~ as described in WAC 182-08-198.

(9) ~~((Surviving dependents))~~ Survivors may not add new dependents acquired through birth, marriage, or establishment of a qualified ~~((same-sex))~~ domestic partnership.

(10) ~~((Surviving dependents))~~ Survivors will lose their right to enroll in a PEBB health plan ~~((coverage))~~ if they:

(a) Do not apply to enroll or defer PEBB health plan ~~((coverage))~~ enrollment within the timelines stated in subsection (5) of this section; or

(b) Do not maintain continuous enrollment in comprehensive medical coverage through an employer during the deferral period, as provided in subsection (7)(b)(i) of this section.

AMENDATORY SECTION (Amending Order 05-01, filed 7/27/05, effective 8/27/05)

WAC 182-12-260 Who are eligible dependents ~~((defined))~~? The following are eligible as dependents under the PEBB eligibility rules:

(1) Lawful spouse.
 (2) ~~((A same sex))~~ Domestic partner qualified ~~((through))~~ by the PEBB declaration ~~((certificate issued by PEBB))~~ of domestic partnership that meets all of the following criteria:

(a) Partners have a close personal relationship in lieu of a lawful marriage:

(b) Partners are not married to anyone;

(c) Partners are each other's sole domestic partner and are responsible for each other's common welfare;

(d) Partners are not related by blood as close as would bar marriage; and

(e) Partners are barred from a lawful marriage.

(3) Domestic partner qualified by the certificate of state registered domestic partnership or registration card issued by the Washington secretary of state for a same-sex partnership.

~~((3-Dependent))~~ (4) Children through age nineteen. ~~((The term "children" includes))~~ Children include:

(a) The subscriber's biological children, stepchildren, legally adopted children, children for whom the subscriber has assumed a legal obligation for total or partial support of a child in anticipation of adoption of the child, children of the subscriber's qualified ~~((same sex))~~ domestic partner, or children specified in a court order or divorce decree((-);

(b) Married children who qualify as dependents of the subscriber under the Internal Revenue Code((-and as));

(c) Extended dependents ~~((approved by PEBB are included. To qualify for PEBB approval, the subscriber must demonstrate))~~ in the legal custody ~~((for the child with))~~ or legal guardianship of the subscriber, their spouse, or qualified domestic partner. The legal responsibility is demonstrated by a valid court order((-) and the child's((-

(a) Must be living with the subscriber in a parent-child relationship; and

(b) Must not be a) official residence with the custodian or guardian. This does not include foster ~~((child))~~ children for whom support payments are made to the subscriber through the state department of social and health services ~~((DSHS))~~ foster care program((-);

~~((4-Dependent))~~ (d) Children age twenty through age twenty-three ~~((and))~~ who are attending high school or registered students at an accredited secondary school, college, university, vocational school, or school of nursing.

~~((a-Dependent))~~ (i) Student ~~((coverage))~~ health plan enrollment begins the first day of the month ~~((in which))~~ of the quarter~~((/))~~ or semester for which the ~~((dependent))~~ child is registered begins ~~((and))~~. Health plan enrollment ends the last day of the month in which the ~~((dependent))~~ student stops attending or in which the quarter~~((/))~~ or semester ends, whichever is first, except that dependent student eligibility continues year-round for those who attend three of the four school quarters or two semesters.

~~((b-Dependent))~~ (ii) Student ~~((coverage))~~ eligibility for enrollment in a PEBB health plan continues during the three month period following graduation provided the subscriber is

covered, ~~((at the same time,))~~ the ~~((dependent))~~ child has not reached age twenty-four, and ~~((the dependent))~~ meets all other eligibility requirements.

(iii) Student recertification occurs annually.

(e) Children as defined in (a) through (d) of this subsection who have disabilities are eligible by subsection (5) of this section.

(5) ~~((Dependent))~~ Children of any age with disabilities, developmental disabilities, mental illness or mental retardation who are incapable of self-support, provided such condition occurs ~~((prior to))~~ before age twenty or during the time the dependent was eligible as a student under subsection (4) of this section.

(a) The subscriber must provide ~~((proof))~~ evidence that such disability occurred ~~((prior to))~~ as stated below:

(i) For children enrolled in PEBB insurance coverage, the subscriber must provide evidence of the disability before the ~~((dependent's))~~ child's attainment of age twenty ~~((or during the time))~~.

(ii) For children enrolled in PEBB insurance coverage as a student under subsection (4)(d) of this section, the subscriber must provide evidence of the disability within sixty days after the student is no longer eligible under subsection (4)(d) of this section.

(iii) To enroll a dependent child with disabilities, age twenty or older, the subscriber must provide evidence that the condition occurred before the child reached age twenty or evidence that when the condition occurred the ~~((dependent satisfies))~~ child would have satisfied eligibility for student coverage under subsection (4) of this section~~((-and as))~~. The PEBB benefits services program will request evidence of the child's disability periodically ~~((requested))~~ thereafter ~~((by the PEBB program))~~.

~~((a))~~ (b) The subscriber must notify the PEBB benefits services program, in writing, no later than sixty days after the date that a ~~((dependent))~~ child age twenty or older no longer qualifies under this subsection.

(i) For example, children who become self-supporting are not eligible under this rule as of the last day of the month in which they become capable of self-support. The ~~((dependent))~~ child may be eligible to continue enrollment in a PEBB ~~((coverage))~~ health plan under provisions of WAC 182-12-270.

(ii) Children age twenty and older ~~((that))~~ who become capable of self-support do not regain eligibility under subsection (5) of this section if they later become incapable of self-support.

(c) Disability recertification occurs periodically.

(6) ~~((Dependent))~~ Parents.

(a) ~~((Dependent))~~ Parents covered under ~~((a))~~ PEBB medical ~~((plan))~~ before July 1, 1990, may continue enrollment on a self-pay basis as long as:

(i) The parent maintains continuous ~~((coverage))~~ enrollment in PEBB ~~((sponsored))~~ medical ~~((coverage))~~;

(ii) The parent qualifies under the Internal Revenue Code as a dependent of ~~((an eligible))~~ the subscriber;

(iii) The subscriber ~~((who claimed the parent as a dependent))~~ continues enrollment in PEBB insurance coverage; and

(iv) The parent is not covered by any other group medical (~~coverage~~).

(b) (~~Dependent~~) Parents (~~that are~~) eligible under (~~(a)~~ ~~of~~) this subsection may be enrolled with a different health (~~carrier~~) plan than that selected by the (~~eligible~~) subscriber (~~;- however, dependent~~). Parents may not add additional dependents to their insurance coverage.

(7) The enrollee (~~or the subscriber on their behalf~~) must notify the PEBB benefits services program, in writing, no later than sixty days after the date (~~that a dependent~~) they are no longer (~~qualifies~~) eligible under (~~(subsection (1), (2), (3), (4) or (6) of)~~) this section. (~~The subscriber must notify the PEBB program in writing no later than sixty days after the date a dependent no longer qualifies under subsection (5) of this section.~~) A PEBB continuation of coverage election notice and continued health plan enrollment will only be available if the PEBB benefits services program is notified in writing within the sixty-day period.

AMENDATORY SECTION (Amending Order 06-09, filed 11/22/06, effective 12/23/06)

WAC 182-12-265 What options for continuing health plan (~~coverage~~) enrollment are available to widows, widowers and dependent children if the employee or retiree dies? The surviving dependent of an eligible employee or retiree who meets the eligibility criteria in subsection (1), (2), or (3) of this section is eligible to enroll in public employees(⁽²⁾) benefits board (PEBB) retiree insurance coverage as a surviving dependent. An eligible surviving (~~dependent~~) spouse, qualified domestic partner, or child must enroll in or defer enrollment in a PEBB health plan (~~coverage~~) no later than sixty days after the date of the employee(^(s)) or retiree's death.

(1) Dependents (~~that~~) who lose eligibility due to the death of an eligible employee may continue enrollment in a PEBB health plan (~~coverage~~) as a survivor under (~~(a)~~) retiree (~~plan~~) insurance coverage provided they immediately begin receiving a monthly retirement benefit from any state of Washington sponsored retirement system.

(a) The employee's spouse or qualified (~~same-sex~~) domestic partner may continue (~~coverage~~) health plan enrollment until death.

(b) (~~Other dependents~~) Children may continue (~~coverage~~) health plan enrollment until they lose eligibility under PEBB rules.

(c) If a surviving (~~dependent~~) spouse, qualified domestic partner, or child of an eligible employee is not eligible for a monthly retirement benefit (or a lump-sum payment because the monthly pension payment would be less than the minimum amount established by the department of retirement systems) the dependent is not eligible (~~to participate in~~) for PEBB retiree (~~coverage~~) insurance as a survivor. However, the dependent may continue health plan (~~coverage~~) enrollment under provisions of the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) or WAC 182-12-270.

(d) The two federal retirement systems, Civil Service Retirement System and Federal Employees Retirement System, shall be considered a Washington sponsored retirement

system for Washington State University extension service employees who were covered under PEBB insurance coverage at the time of death.

(2) Dependents (~~that~~) who lose eligibility due to the death of a PEBB eligible retiree may continue health plan (~~coverage~~) enrollment under (~~(a)~~) retiree (~~plan~~) insurance.

(a) The retiree's spouse or qualified (~~same-sex~~) domestic partner may continue (~~coverage~~) health plan enrollment until death.

(b) (~~Other dependents~~) Children may continue (~~coverage~~) health plan enrollment until they lose eligibility under PEBB rules.

(c) Dependents (~~that~~) who are waiving enrollment in a PEBB health plan (~~coverage~~) at the time of the retiree's death are eligible to enroll or defer enrollment in PEBB retiree (~~coverage~~) insurance. A form to enroll or defer PEBB health plan (~~coverage~~) enrollment must be hand-delivered or mailed to the PEBB benefits services program no later than sixty days after the retiree's death. To enroll in a PEBB health plan (~~coverage~~), the dependent must provide satisfactory evidence (~~that~~) of continuous enrollment in other health plan coverage (~~was continuous~~) from the most recent open enrollment (~~period~~) for which PEBB coverage was waived.

(3) Surviving spouses or eligible (~~dependent~~) children of a deceased school district or educational service district employee who were not enrolled in PEBB insurance coverage at the time of the subscriber's death may enroll in a PEBB (~~sponsored~~) health plan (~~coverage~~) provided the employee died on or after October 1, 1993, and the dependent(s) immediately began receiving a retirement benefit allowance under chapter 41.32, 41.35 or 41.40 RCW.

(a) The employee's spouse or qualified (~~same-sex~~) domestic partner may continue health plan (~~coverage~~) enrollment until death.

(b) (~~Other dependents~~) Children may continue (~~coverage~~) health plan enrollment until they lose eligibility under PEBB rules.

(4) Surviving dependents must notify the PEBB benefits services program of their decision to enroll or defer enrollment in a PEBB health plan (~~coverage~~) no later than sixty days after the date of death of the employee or retiree. If PEBB (~~coverage~~) health plan enrollment ended due to the death of the employee or retiree, PEBB will reinstate health plan (~~coverage~~) enrollment without a gap subject to payment of premium. In order to avoid duplication of group medical coverage, surviving dependents may defer enrollment in a PEBB health plan (~~coverage~~) under WAC 182-12-200 and 182-12-205. To notify the PEBB benefits services program of their intent to enroll or defer enrollment in a PEBB health plan (~~coverage~~) the surviving dependent must send a completed (~~enrollment~~) election form to the PEBB benefits services program no later than sixty days after the date of death of the employee or retiree.

AMENDATORY SECTION (Amending Order 05-01, filed 7/27/05, effective 8/27/05)

WAC 182-12-270 What options are available to dependents (~~that~~) who cease to meet the (~~definition of~~

~~dependent~~) eligibility criteria in WAC 182-12-260? If eligible, dependents may continue health plan enrollment (~~(# PEBB health plan coverage)~~) under one of the continuation options in subsection (1), (2), or (3) of this section by self-paying premiums following their loss of eligibility. The PEBB benefits services program must receive a timely election form as outlined in the *PEBB Initial Notice of COBRA and Continuation Coverage Rights*. Options for continuing (~~(coverage)~~) health plan enrollment are based on the reason that eligibility was lost.

(1) (~~Dependents that~~) Spouses, qualified domestic partners, or children who lose eligibility due to the death of an employee or retiree may be eligible to continue (~~(coverage)~~) health plan enrollment under provisions of WAC 182-12-250 or 182-12-265.

(2) Dependents of a lawful marriage (~~(that)~~) who lose eligibility because they no longer meet the (~~(definition of dependent as defined)~~) eligibility criteria in WAC 182-12-260 are eligible to continue (~~(coverage)~~) health plan enrollment under provisions of the federal Consolidated Omnibus Budget Reconciliation Act (COBRA); or

(3) Dependents of a qualified (~~(same sex)~~) domestic partnership (~~(that)~~) who lose eligibility because they no longer meet the (~~(definition of dependent as defined)~~) eligibility criteria in WAC 182-12-260 may continue health plan enrollment under an extension of PEBB insurance coverage for a maximum of thirty-six months.

No extension of PEBB coverage will be offered unless the PEBB benefits services program is notified through hand-delivery or United States Postal Service mail of a completed notice of qualifying event as outlined in the *PEBB Initial Notice of COBRA and Continuation Coverage Rights*.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-12-190	May a retiree change health carriers at retirement?
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AMENDATORY SECTION (Amending WSR 91-14-025, filed 6/25/91, effective 7/26/91)

WAC 182-16-020 Definitions. As used in this chapter the term:

((1)) "Administrator" (~~(shall)~~) means the administrator of the health care authority (HCA) or designee;

((2)) "Agency" (~~(shall)~~) means the health care authority;

((3)) "Agent" (~~(shall)~~) means a person, association, or corporation acting on behalf of the health care authority pursuant to a contract between the health care authority and the person, association, or corporation.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Health plan" or "plan" means a medical or dental plan developed by the public employees benefits board and pro-

vided by a contracted vendor or self-insured plans administered by the HCA.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, long-term disability insurance, or property and casualty insurance administered as a PEBB benefit.

"PEBB" means the public employees benefits board.

"PEBB benefits services program" means the program within the health care authority which administers insurance and other benefits to eligible employees of the state (as defined in WAC 182-12-115), eligible retired and disabled employees of the state (as defined in WAC 182-12-171), and others as defined in RCW 41.05.011.

AMENDATORY SECTION (Amending WSR 97-21-128, filed 10/21/97, effective 11/21/97)

WAC 182-16-030 Appeals (~~(from)~~) of decisions of the agency (~~(decisions)~~) or its agent—Applicability. (~~(Any enrollee of the health care authority's administered insurance plans (the self-insured plans) aggrieved by a decision of the agency or its agent concerning any matter related to scope of coverage, denials of claims, determinations of eligibility, or cancellations or nonrenewals of coverage may obtain administrative review of such decision by filing a notice of appeal with the health care authority's appeals committee. Review of decisions made by HMOs or similar health care contractors will be pursuant to the grievance/arbitration provisions of those plans and are not subject to these rules. Except that decisions concerning eligibility determinations are reviewable only by the health care authority.)~~) Except as provided by RCW 48.43.530 and 48.43.535, any person aggrieved by a decision of the health care authority or its agent may appeal that decision.

(1) Eligibility appeals. Decisions concerning eligibility determinations are reviewable by the health care authority. The PEBB appeals manager must receive the appeal within ninety days from the date of the denial notice.

(2) Noneligibility appeals. Appeals of decisions made by the agency's self-insured medical plans, managed health care plans, and other agency contractors are governed by the appeal provisions of those plans. Those appeals are not subject to this chapter, except for eligibility determinations.

(3) Dental plan appeals. Any enrollee of the health care authority's self-administered dental plan aggrieved by a decision of the agency or its agent may appeal to the PEBB appeals manager. The PEBB appeals manager must receive the appeal within ninety days from the date of the denial notice.

(4) Retirement plan age appeals. Employees who do not meet their Washington state-sponsored retirement plan's age requirements when their employer paid or COBRA coverage ends, but who meet the age requirement within sixty days of coverage ending, may appeal the denial of their retiree insurance eligibility. The PEBB appeals manager must receive the appeal within ninety days from the date of the denial notice. Employees must meet other retiree insurance election procedural requirements. Eligibility denials caused by these circumstances may be reversed:

(a) Misleading or incorrect written information provided by employees of the health care authority or employers;

(b) Loss of COBRA coverage due to Medicare eligibility;

(c) Other related miscalculations of the duration of COBRA coverage; or

(d) Administrative errors or delays attributable to the state that have material impact on eligibility.

(5) Limited retiree insurance coverage reinstatement. Reinstatement of a retiree's insurance coverage may be approved when coverage was terminated because of late payment or late paperwork, or in extraordinary circumstances such as the retiree's impaired decision-making which adversely affects eligibility. No retiree's insurance coverage may be reinstated more than three times. Reinstatement may be approved only if:

(a) The retiree or a representative acting on their behalf submits a written appeal within sixty days after the notice of termination was mailed; and

(b) The retiree agrees to make payment in accordance with the terms of an agreement with the HCA.

AMENDATORY SECTION (Amending Order 05-01, filed 7/27/05, effective 8/27/05)

WAC 182-16-040 Appeals—Notice of appeal contents. Except as provided by RCW 48.43.530 and 48.43.535 and WAC 182-16-030(2), any person aggrieved by a decision of the health care authority(~~'s PEBB program~~) or its agent may appeal that decision by filing a notice of appeal with the PEBB (~~(program's)~~) appeals manager. The notice of appeal must contain:

(1) The name and mailing address of the enrollee;

(2) The name and mailing address of the appealing party;

(3) The name and mailing address of the appealing party's representative, if any;

(4) A statement identifying the specific portion of the decision being appealed making it clear what ~~((it is that))~~ is believed to be unlawful or unjust;

(5) A clear and concise statement of facts in support of appealing party's position;

(6) Any ~~((and all))~~ information or documentation that the ~~((aggrieved person))~~ appealing party would like considered and ~~((feels))~~ substantiates why the decision should be reversed ~~((t))~~. Information or documentation submitted at a later date, unless specifically requested by the PEBB appeals manager, may not be considered in the appeal decision~~((t))~~;

(7) A copy of the ~~((PEBB program's))~~ health care authority's or ~~((health carrier's))~~ its agent's response to the issue the ~~((appellant))~~ appealing party has raised;

(8) The type of relief sought;

(9) A statement that the appealing party has read the notice of appeal and believes the contents to be true~~((followed by his or her))~~;

(10) The appealing party's signature and the signature of his or her representative, if any;

~~((t))~~ (11) The appealing party shall file the original notice of appeal with the PEBB benefits services program using hand delivery, electronic mail or United States Postal Service mail. The notice of appeal must be received by the

PEBB benefits services program within ~~((sixty))~~ ninety days after the decision of the PEBB staff was mailed to the appealing party. The PEBB appeals manager shall acknowledge receipt of the copies filed with the PEBB benefits services program;

~~((t))~~ (12) The health care authority's appeals ((officer)) committee will render a written decision within thirty working days after receipt of the complete notice of appeal.

AMENDATORY SECTION (Amending Order 05-01, filed 7/27/05, effective 8/27/05)

WAC 182-16-050 Appeals—Hearings. (1) If the appealing party is not satisfied with the decision of the health care authority's appeals ~~((officer upholds the original denial))~~ committee, the ~~((enrollee))~~ appealing party may request an administrative hearing. The request must be made in writing to the PEBB ~~((program's))~~ appeals manager. The appeal is not effective unless the PEBB ((benefit services must)) appeals manager receives the written request for a hearing within ~~((fifteen))~~ thirty days of the date the appeals decision was mailed to the ~~((appellant))~~ appealing party.

(2) The agency shall set the time and place of the hearing and give not less than ~~((seven))~~ twenty days notice to all parties and persons who have filed written petitions to intervene.

(3) The administrator or his or her designee shall preside at all hearings resulting from the filings of appeals under this chapter.

(4) All hearings ~~((shall))~~ must be conducted in compliance with these rules, chapter 34.05 RCW and chapter 10-08 WAC as applicable.

(5) Within ninety days ~~((of))~~ after the hearing record is closed, the administrator or his or her designee shall render a decision which shall be the final decision of the agency. A copy of that decision accompanied by a written statement of the reasons for the decision shall be served on all parties and persons who have intervened.

WSR 07-17-104

PROPOSED RULES

PUGET SOUND

CLEAN AIR AGENCY

[Filed August 17, 2007, 10:36 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Amend Regulation I: Section 3.02 (Meetings of the Board of Directors); Section 3.11 (Civil Penalties); and Section 3.25 (Federal Regulation Reference Date).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on September 27, 2007, at 9:15 a.m.

Date of Intended Adoption: September 27, 2007.

Submit Written Comments to: Lynn Sykes, Puget Sound Clean Air Agency, 1904 3rd Avenue, #105, Seattle, WA

98101, e-mail lynns@psc Clean Air, fax (206) 343-7522, by September 26, 2007.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by September 20, 2007, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To update the agency's address and board of directors meeting day to reflect changes.

To adjust the maximum civil penalty amount for inflation.

To update the federal regulation reference date in order to remain current.

Reasons Supporting Proposal: The agency's address has changed as well as the board of directors meeting day.

Without the adjustment for inflation, the maximum civil penalty amount would effectively decrease each year.

The federal regulation reference date needs to be kept current.

Statutory Authority for Adoption: Chapter 70.94 RCW. Statute Being Implemented: RCW 70.94.141.

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 state implementation plan will be updated to reflect the amendments to Sections 3.11 (for information purposes) and 3.25.

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Lynn Sykes, 1904 3rd Avenue, #105, Seattle, WA 98101, (206) 689-4067; Implementation and Enforcement: Jim Nolan, 1904 3rd Avenue, #105, Seattle, WA 98101, (206) 689-4053.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

August 16, 2007

James Nolan

Director - Compliance

AMENDATORY SECTION

REGULATION I SECTION 3.02 MEETINGS OF THE BOARD OF DIRECTORS

(a) **Regular Meetings.** The Agency Board of Directors shall meet at least ten (10) times per year. All Board of Director meetings are open to the public. Regular meetings of the Board (~~shall be~~) are usually held on the ((second)) fourth Thursday of each month at the Agency's offices. The Agency's offices are located at (~~(110 Union Street, Suite 500, Seattle, WA 98101-2038))~~ 1904 3rd Avenue, Suite 105, Seattle, WA 98101-3317. The Agency may be reached by telephone at (206) 343-8800 or 1-800-552-3565, or by facsimile at (206) 343-7522.

Notice of the meetings shall be published in the State Register, as well as in the local newspapers of general circulation of the largest city within each member county. The notices shall state the time, date, and place of each meeting. Notice shall be provided at least ten (10) days prior to each meeting. The agenda for any meeting may be obtained from the Agency's website or by contacting the Agency directly.

During any meeting, the Board may retire to Executive Session, at which time all members of the public shall be excluded from the meeting.

Written communications to the Board or individual Board members may be made by contacting the Agency at the above address and facsimile number.

(b) **Special Meetings.** The Chair or majority of the members of the Board may call a special meeting at any time. Notice of such meetings shall be provided as required by the Open Public Meetings Act, chapter 42.30 RCW.

(c) **Public Records.** All minutes and records of all regular and special Board meetings, including written communications provided to the Board, shall be available for public inspection and copying as provided in the Public Disclosure Law, chapter 42.17 RCW. Any person wishing to review or copy such records should contact the Agency's records administrator.

AMENDATORY SECTION

REGULATION I SECTION 3.11 CIVIL PENALTIES

(a) Any person who violates any of the provisions of chapter 70.94 RCW or any of the rules or regulations in force pursuant thereto, may incur a civil penalty in an amount not to exceed (~~(\$15,127.00))~~ \$15,717.00 per day for each violation.

(b) Any person who fails to take action as specified by an order issued pursuant to chapter 70.94 RCW or Regulations I, II, and III of the Puget Sound Clean Air Agency shall be liable for a civil penalty of not more than (~~(\$15,127.00))~~ \$15,717.00 for each day of continued noncompliance.

(c) Within 30 days of the date of receipt of a Notice and Order of Civil Penalty, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. To be considered timely, a mitigation request must be actually received by the Agency, during regular office hours, within 30 days of the date of receipt of a Notice and Order of Civil Penalty. This time period shall be calculated by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal holiday, and then it is excluded and the next succeeding day that is not a Saturday, Sunday, or legal holiday is included. The date stamped by the Agency on the mitigation request is prima facie evidence of the date the Agency received the request.

(d) A mitigation request must contain the following:

(1) The name, mailing address, telephone number, and telefacsimile number (if available) of the party requesting mitigation;

(2) A copy of the Notice and Order of Civil Penalty involved;

(3) A short and plain statement showing the grounds upon which the party requesting mitigation considers such order to be unjust or unlawful;

(4) A clear and concise statement of facts upon which the party requesting mitigation relies to sustain his or her grounds for mitigation;

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

(6) A statement that the party requesting mitigation has read the mitigation request and believes the contents to be true, followed by the party's signature.

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

(e) Any civil penalty may also be appealed to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC. An appeal must be filed with the Hearings Board and served on the Agency within 30 days of the date of receipt of the Notice and Order of Civil Penalty or the notice of disposition on the application for relief from penalty.

(f) A civil penalty shall become due and payable on the later of:

(1) 30 days after receipt of the notice imposing the penalty;

(2) 30 days after receipt of the notice of disposition on application for relief from penalty, if such application is made; or

(3) 30 days after receipt of the notice of decision of the Hearings Board if the penalty is appealed.

(g) If the amount of the civil penalty is not paid to the Agency within 30 days after it becomes due and payable, the Agency may bring action to recover the penalty in King County Superior Court or in the superior court of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(h) Civil penalties incurred but not paid shall accrue interest beginning on the 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the 31st day following final resolution of the appeal.

(i) To secure the penalty incurred under this section, the Agency shall have a lien on any vessel used or operated in violation of Regulations I, II, and III which shall be enforced as provided in RCW 60.36.050.

AMENDATORY SECTION

REGULATION I SECTION 3.25 FEDERAL REGULATION REFERENCE DATE

Whenever federal regulations are referenced in Regulation I, II, or III, the effective date shall be July 1, (~~2006~~) 2007.

WSR 07-17-105

PROPOSED RULES

PUGET SOUND

CLEAN AIR AGENCY

[Filed August 17, 2007, 10:39 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Amend Regulation I, Section 6.01 (Components of New Source Review Program).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on September 27, 2007, at 9:15 a.m.

Date of Intended Adoption: September 27, 2007.

Submit Written Comments to: Lynn Sykes, Puget Sound Clean Air Agency, 1904 3rd Avenue, #105, Seattle, WA 98101, e-mail lynns@psccleanair.org, fax (206) 343-7522, by September 26, 2007.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by September 20, 2007, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To update the new WAC reference dates for certain sections that ecology has changed, to keep them consistent with the current ecology regulations.

Reasons Supporting Proposal: To minimize inconsistencies between regulations.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

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 state implementation plan will be updated to reflect these amendments.

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Lynn Sykes, 1904 3rd Avenue, #105, Seattle, WA 98101, (206) 689-4067; Implementation and Enforcement: Jim Nolan, 1904 3rd Avenue, #105, Seattle, WA 98101, (206) 689-4053.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

August 16, 2007

Steve M. Van Slyke
Supervisory Engineer

AMENDATORY SECTION**REGULATION I SECTION 6.01 COMPONENTS OF NEW SOURCE REVIEW PROGRAM**

(a) In addition to the provisions of this regulation, the Agency adopts by reference and enforces the following provisions of the new source review program established by the Washington State Department of Ecology:

WAC 173-400-030 Definitions. (effective ~~((2/10/05))~~ 6/08/07)

WAC 173-400-081 Startup and shutdown. (effective 9/20/93)

WAC 173-400-110 (3) and (6)-(10) New source review (NSR). (effective ~~((2/10/05))~~ 6/08/07)

WAC 173-400-112 Requirements for new sources in nonattainment areas. (effective 2/10/05)

WAC 173-400-113 Requirements for new sources in attainment or unclassifiable areas. (effective 2/10/05)

WAC 173-400-114 Requirements for replacement or substantial alteration of emission control technology at an existing stationary source. (effective 9/15/01)

WAC 173-400-117 Special protection requirements for federal Class I areas. (effective 2/10/05)

WAC 173-400-171 Public involvement. - excluding references to chapter 173-460 WAC (effective ~~((2/10/05))~~ 6/08/07)

WAC 173-400-200 Creditable stack height and dispersion techniques. (effective 2/10/05)

WAC 173-400-560 General order of approval. (effective 2/10/05)

WAC 173-400-700 Review of major stationary sources of air pollution. (effective 2/10/05)

WAC 173-400-710 Definitions. (effective ~~((2/10/05))~~ 6/08/07)

WAC 173-400-720 Prevention of significant deterioration (PSD). (effective ~~((2/10/05))~~ 6/08/07)

WAC 173-400-730 Prevention of significant deterioration application processing procedures. (effective 2/10/05)

WAC 173-400-740 PSD permitting public involvement requirements. (effective 2/10/05)

WAC 173-400-750 Revisions to PSD permits. (effective 2/10/05)

WAC 173-460-020 Definitions. (effective 2/14/94)

WAC 173-460-040 (3)-(10) New source review. (effective 2/14/94)

WAC 173-460-050 Requirement to quantify emissions. (effective 2/14/94)

WAC 173-460-060 Control technology requirements. (effective 8/21/98)

WAC 173-460-070 Ambient impact requirement. (effective 9/18/91)

WAC 173-460-080 Demonstrating ambient impact compliance. (effective 2/14/94)

WAC 173-460-090 Second tier analysis. (effective 2/14/94)

(b) The Washington State Department of Ecology is the permitting agency for the Prevention of Significant Deterioration (PSD) program under WAC 173-400-700 through WAC 173-400-750 (as delegated by agreement with the US Environmental Protection Agency, Region 10), and for pri-

mary aluminum smelters, kraft pulp mills, and sulfite pulp mills.

(c) The Washington State Department of Health is the permitting agency for radionuclides under chapter 246-247 WAC.

(d) The Energy Facility Site Evaluation Council (EFSEC) is the permitting agency for large natural gas and oil pipelines, electric power plants above 350 megawatts, new oil refineries or large expansions of existing facilities, and underground natural gas storage fields under chapter 463-78 WAC.

WSR 07-17-106**PROPOSED RULES****PUGET SOUND****CLEAN AIR AGENCY**

[Filed August 17, 2007, 10:41 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Amend Regulation II, Section 2.07 (Gasoline Dispensing Facilities).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on September 27, 2007, at 9:15 a.m.

Date of Intended Adoption: September 27, 2007.

Submit Written Comments to: Lynn Sykes, Puget Sound Clean Air Agency, 1904 3rd Avenue, #105, Seattle, WA 98101, e-mail lynns@psccleanair.org, fax (206) 343-7522, by September 26, 2007.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by September 20, 2007, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify that (1) equipment defects are evidence that equipment is not operated or maintained in accordance with requirements.

(2) A repair following a failed compliance test is not complete without a retest that demonstrates compliance.

To update Table 2(a), by replacing a specific list of nozzles with a more generic description so that it's not out of date as new equipment becomes available.

Table 3, by adding a footnote that equivalent test procedures are acceptable if they have been approved by the California Air Resources Board.

Reasons Supporting Proposal: To clarify the language, which will help prevent misunderstandings. To help eliminate a need for future rule making solely because the specific equipment described is out of date.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

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 state implementation plan will be updated to reflect these amendments.

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Mario Pedroza, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4023; Implementation and Enforcement: Jim Nolan, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4053.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

August 16, 2007
 Mario Pedroza
 Supervising Inspector

AMENDATORY SECTION
REGULATION II SECTION 2.07 GASOLINE DISPENSING FACILITIES

(a) Applicability

This section applies to any facility that dispenses gasoline from a stationary storage tank with a rated capacity of more than 1,000 gallons into a motor vehicle fuel tank. The provisions of this rule do not apply to any Stage 1 or Stage 2 vapor recovery system that is not required by this rule. This rule does not require the installation of any In Station Diagnostics (ISD) system.

(b) Definitions

(1) **CARB-CERTIFIED** means a Stage 1 or Stage 2 vapor recovery system, equipment, or any component thereof, for which the California Air Resources Board (CARB) has evaluated its performance and issued an Executive Order (including any subsequent approval letters). However, any ISD system specified in a CARB executive order is not required.

(2) **OWNER OR OPERATOR** means a person who owns, leases, supervises, or operates a facility subject to this regulation.

(c) Stage 1 Vapor Recovery Requirements

(1) Installation Requirements

(A) Owners or operators must install a CARB-certified Stage 1 vapor recovery system on any gasoline storage tank with a rated capacity of more than 1,000 gallons that is either located at a facility where the current annual gasoline throughput is greater than 200,000 gallons or installed after January 1, 1979.

(B) Any person installing a CARB-certified Stage 1 vapor recovery system must install the system in accordance with the CARB executive order in effect on the date of installation.

(2) Maintenance Requirements

(A) All Stage 1 vapor recovery systems shall be installed, operated, and maintained in accordance with the CARB executive order in effect on the date of installation. Defects listed in Table 1(a) or 1(b) are evidence that the installed equipment is not operated or maintained in accordance with this requirement.

(B) After June 1, 2005, all dual-point Stage 1 vapor recovery systems located at a facility required to be equipped with Stage 2 vapor recovery systems must be equipped with swivel adapters.

(3) Self-Inspection Requirements

Owners or operators must inspect each Stage 1 vapor recovery system between gasoline deliveries for the defects listed in Table 1(a) or 1(b), depending on the type of system installed, using the inspection procedures listed in the tables. However, if the facility receives more than one delivery to a tank in a day, the inspection is only required once per day.

Table 1(a)
 Dual-Point Stage 1 Defects

Equipment	Inspection Procedures	Defects
Dust Cap (tank cap on top of adapter)	<ul style="list-style-type: none"> • Visually inspect the dust cap on both the fill and vapor risers. • Try to turn the dust cap on both the fill and vapor risers by hand. 	<ul style="list-style-type: none"> • Cap gasket is missing or damaged. • Cap is missing or damaged. • Cap turns with hand pressure.
Adapter Vapor Riser (brass fitting on tank riser)	Slowly depress poppet and check gasket and poppet alignment.	Poppet is inoperative, not aligned properly, or the gasket is damaged.
Adapter (brass fitting on tank riser) <i>(Not required for swivel adapters.)</i>	Try to turn the adapters on both the fill and vapor risers by hand.	Adapter turns with hand pressure.
Fill Tube (from adapter to bottom of tank)	Visually inspect the fill tube gasket, if clearly visible after removal of dust cap.	Fill tube gasket is damaged or missing.
	<i>(Some fill tube assemblies may not allow observation of the fill tube gasket except by a service technician.)</i>	
Spill Bucket	Visually inspect the liquid level in the spill bucket and the condition of the drain valve.	<ul style="list-style-type: none"> • Liquid level is more than 1 inch. • Drain valve is open or leaking vapors.

Table 1(b)
Coaxial Stage 1 Defects

Equipment	Inspection Procedures	Defects
Dust Cap (tank cap on top of adapter)	<ul style="list-style-type: none"> • Visually inspect the dust cap on the fill riser. • Try to turn the dust cap on the fill riser by hand. 	<ul style="list-style-type: none"> • Cap gasket is missing or damaged. • Cap is missing or damaged. • Cap turns with hand pressure.
Adapter (brass fitting on tank riser)	Slowly depress the coaxial drop tube, check poppet gasket and poppet alignment.	Poppet is inoperative or out of alignment, poppet gasket is damaged, or spring is broken.
Adapter (brass fitting on tank riser)	Try to turn the adapter by hand.	Adapter turns with hand pressure.
Spill Bucket	Visually inspect the liquid level in the spill bucket and the condition of the drain valve.	<ul style="list-style-type: none"> • Liquid level is more than 1 inch. • Drain valve is open or leaking vapors.

(4) Corrective Action Requirements for Stage 1 Defects

(A) Whenever a Stage 1 defect as described in Table 1(a) or 1(b) is discovered during a self-inspection, the owner or operator must repair it as soon as possible after the defect is discovered, but no later than the end of the next business day.

(B) If the defect cannot be repaired by the end of the next business day after discovery, the owner or operator must not receive any gasoline deliveries to the tank where the defect is located until the defect is repaired.

(5) Recordkeeping Requirements

(A) Owners or operators must keep a log of the results of each self-inspection, which must include the following:

- date of inspection,
- name of person conducting inspection,
- description of all defects found during the inspection, and
- date and time of repair of the defects.

(B) The log must be kept on-site at the facility and available for inspection for at least 2 years after the date the record was made.

(d) Stage 2 Vapor Recovery Requirements

(1) Installation Requirements

(A) Owners or operators must install a CARB-certified Stage 2 vapor recovery system on:

(i) any existing gasoline tank located at a facility where the annual gasoline throughput is greater than 600,000 gallons for facilities located in King, Pierce, or Snohomish counties and greater than 840,000 gallons for facilities located in Kitsap County; or

(ii) on any gasoline tank with a rated capacity of more than 1,000 gallons installed after August 2, 1991 at a facility

where the current annual gasoline throughput is greater than 200,000 gallons.

(B) Any person installing a CARB-certified Stage 2 vapor recovery system must install the system in accordance with the CARB executive order in effect on the date of installation.

(2) Maintenance Requirements

(A) All Stage 2 vapor recovery systems installed after April 1, 2003 must be Onboard Refueling Vapor Recovery (ORVR) compatible and must be installed, operated, and maintained in accordance with the CARB executive order in effect on the date of installation. However, ISD system installation is not required. Defects listed in Table 2(a) or 2(b) are evidence that the installed equipment is not operated or maintained in accordance with this requirement.

(B) All Stage 2 vapor recovery systems installed prior to April 1, 2003 shall be installed, operated, and maintained in accordance with the CARB executive order in effect as of April 1, 2003, even if CARB later decertifies the system. In such a case, the installation of equipment determined by the manufacturer to be interchangeable with the original approved equipment is permitted. Defects listed in Table 2(a) or 2(b) are evidence that the installed equipment is not operated or maintained in accordance with this requirement.

(3) Self-Inspection Requirements

Owners or operators must inspect Stage 2 vapor recovery systems every day the facility is open for business for the defects listed in either Table 2(a) or 2(b), depending on the type of system installed, using the inspection procedures listed in the tables.

Table 2(a)
Vapor-Balance Stage 2 Defects

Equipment	Inspection Procedures	Defects
Nozzle Spout	Pull back the boot to ensure the latch ring is on the spout.	Latch ring is missing.
Nozzle	Visually inspect the boot (bellows) for holes or slits.	No boot hole shall be more than 1/4 inch diameter. No slit shall exceed 1/2 inch in length.
Nozzle	Visually inspect for leaking gasoline.	Visible gasoline leaks.
Nozzle	Visually inspect faceplate for missing or damaged surface area.	1/4 or more of the circumference of the bellows faceplate is damaged or missing.

Equipment	Inspection Procedures	Defects
Nozzle((Emco A3005 bellows A3007 bellows A4000 bellows A4001 bellows A4003 bellows A4005 bellows A4007 bellows A4015 bellows Husky V bellows OPW 111V flow 211V bellows)) (equipped with insertion interlock mechanism)	Compress the boot and note the tension on the trigger. Release the boot and note the tension on the trigger.	If the trigger is loose when the boot is compressed or the trigger is firm when the boot is released, the insertion interlock is defective.
Hose (from dispenser to nozzle) including Whip Hose	Visually inspect the hose for physical condition.	Hose has cuts, holes, is flattened, or kinked, or the fuel flow direction is incorrect (if marked on the hose).

Table 2(b)
Vacuum-Assist Stage 2 Defects

Equipment	Inspection Procedures	Defects
Nozzle Spout Latch Coil	Visually inspect each nozzle for missing latch coils.	Latch coil is missing.
Nozzle	Visually inspect the mini-boot (bellows) for holes or slits.	More than 1/8 of the outer edge of the mini-boot is missing, or a slit is greater than 1 1/2 inches long.
Nozzle	Visually inspect for leaking gasoline.	Visible gasoline leaks.
Hose (from dispenser to nozzle)	Visually inspect the hose.	Hose has cuts, holes, is flattened, or kinked, or the fuel flow direction is incorrect (if marked on the hose).

(4) Corrective Action Requirements for Stage 2 Defects
 (A) Whenever a Stage 2 defect as described in Tables 2(a) or 2(b) is discovered during a self-inspection, the owner or operator must repair it as soon as possible.

(B) If the defect cannot be repaired within one hour after discovery, the defective equipment must be removed from service until the defect is repaired.

(5) Recordkeeping Requirements

(A) Owners or operators must keep a log of the results of each self-inspection, which must include the following:

- time and date of the inspection,
- person conducting the inspection,
- a description of all defects found during the inspection, and
- time and date of repair of any defects.

(B) The log must be kept on-site at the facility and available for inspection for at least 2 years after the date the record was made.

(e) Self-Inspection Training Requirements

(1) Owners or operators of facilities with Stage 2 vapor recovery systems must provide training for all employees who are responsible for performing self-inspections of the Stage 1 and Stage 2 vapor recovery equipment within 30 days of hire and provide on-site refresher training for those employees at least once every calendar year.

(2) The self-inspection training must include all of the following:

- (A) The location, function, and operation of vapor recovery equipment.
- (B) Why vapor recovery equipment must be inspected and maintained.
- (C) How to inspect vapor recovery equipment.
- (D) How to recognize a defect.
- (E) Appropriate corrective actions when defects are discovered.

(F) How to keep the necessary records.

(G) The penalties for noncompliance.

(3) The person providing the training must conduct the training in accordance with this section.

(4) After conducting the training required by this section, the owner or operator must prepare a written training report that includes:

- name and address of person conducting the training,
- date of the training, and
- names of the persons trained.

Owners or operators must keep a copy of the training report on-site at the facility and available for inspection for at least 2 years after the date the report was prepared.

(f) Stage 2 Testing Requirements

(1) Testing Requirements

(A) Owners or operators must obtain compliance tests of vacuum-assist Stage 2 vapor recovery systems at least once every 12 months, and tests of vapor-balance Stage 2 vapor recovery systems at least once every 24 months.

(B) Each time a test is conducted, the test shall also include a review of the on-site records required by this rule including: training, self-inspections, gasoline throughput, and testing.

(C) The person performing the tests must conduct the following compliance tests for each Stage 2 vapor recovery system:

Table 3
Required Stage 2 Compliance Tests

Stage 2 Vapor Recovery Systems	CARB Tests Required	CARB Test Procedures ¹	Date of Adoption
All Vapor-Balance	Static Pressure Decay	TP-201.3	March 17, 1999
	Dynamic Back Pressure	TP-201.4	July 3, 2002
	Tank-Tie Test ²	TP-201.3C	March 17, 1999
All Vacuum-Assist	Static Pressure Decay	TP-201.3	March 17, 1999
	Dynamic Back Pressure	TP-201.4	July 3, 2002
	Air-to-Liquid Ratio	TP-201.5	February 1, 2001
	Tank-Tie Test ²	TP-201.3C	March 17, 1999
Healy 600 G-70-165	Static Pressure Decay	TP-201.3	March 17, 1999
	Vapor Line Vacuum ((Return)) Integrity Test	G-70-165 Exhibit 4	April 20, 1995
	Tank-Tie Test ²	TP-201.3C	March 17, 1999
Healy 400 ORVR G-70-186	Static Pressure Decay	TP-201.3	March 17, 1999
	Fill Neck Pressure Test	G-70-186 Exhibit 5	October 26, 1998
	Vapor Line Vacuum Integrity Test	G-70-186 Exhibit 4	October 26, 1998
	Tank-Tie Test ²	TP-201.3C	March 17, 1999
Hirt System G-70-177-AA	Static Pressure Decay	TP-201.3	March 17, 1999
	Air-to-Liquid Ratio	TP-201.5	February 1, 2001
	Tank-Tie Test ²	TP-201.3C	March 17, 1999

¹Or test procedures that have been approved, by CARB, as equivalent to CARB procedures.

~~(Note)~~ ²Tank-tie test must be conducted at least once, or after any tank configuration changes to show the tanks are manifolded. The tank-tie test records must always be kept on-site to verify compliance.

(2) Testing Procedures

(A) The person performing the tests must conduct the testing in accordance with the CARB test procedures contained in Table 3. Once each calendar year and before conducting any tests under this rule, a person performing CARB compliance tests must submit a written summary of their training and qualifications to perform the test to the Agency.

(B) The tests listed in Table 3 are exempt from the requirements of Section 3.07 of Regulation I, however persons performing such tests must notify the Agency in writing at least 72 hours prior to conducting a test to provide the Agency an opportunity to observe the test.

(3) Failed Compliance Tests

Owners or operators must notify the Agency within 24 hours of any failed compliance tests, if the defective equipment cannot be repaired or replaced by the person conducting the test on the day of the test. If the defective equipment cannot be repaired by the close of the next business day following the failed compliance test, the owner or operator must stop receiving and/or dispensing gasoline from the defective

equipment until it is repaired and retested, and passes all required compliance tests. This does not include any operation of the equipment necessary to conduct a retest.

(4) Test Reports

(A) After the testing required by this section has been conducted, the owner or operator must obtain a written test report.

(B) The written report must include:

- name and address of the tester,
- date of the testing,
- equipment tested,
- test procedures used,
- results of the tests,
- any repairs or corrective actions necessary to pass the tests, and
- results of the records review, including whether the on-site records comply with the requirements of this rule.

(5) Recordkeeping Requirements for Owners and Operators

Owners or operators must keep a copy of the test report on-site at the facility and available for inspection for at least 2 years after the date the report was prepared.

WSR 07-17-108
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed August 17, 2007, 10:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-12-059.

Title of Rule and Other Identifying Information: The department is amending WAC 388-444-0025 Food stamp employment and training—Payments for FS E&T related expenses.

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) 664-6094), on September 25, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than September 26, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on September 25, 2007.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by September 18, 2007, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing the amendment of WAC 388-444-0025 Food stamp employment and training—Payments for FS E&T related expenses to allow participants in FS E&T programs to be eligible for dependent care payments for dependent children zero to six years of age as allowed under Title 7 C.F.R. 273.7 (d)(4)(i). Under the current rule, only participants with a dependent child age six to twelve qualify for dependent care payments.

Reasons Supporting Proposal: The amendment will allow participants in food stamp employment and training programs to have their dependent care costs paid by the department for children up to six years of age. Without this change, participants with children under age six would not be able to receive child care support services for participation. This would prevent them from meeting their participation requirements and place the entire family in imminent danger of being unable to seek employment and achieve self-sufficiency. This change will encourage participation in food stamp employment and training programs with the goal of helping families achieve self-sufficiency.

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

Statute Being Implemented: RCW 74.04.050, 74.04.-055, 74.04.500, 74.04.510, 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nick Espinosa, 1009 College Street S.E., Lacey, WA 98507, (360) 725-4620.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses; it only affects DSHS clients by defining eligible FS E&T households for child care while participating in the FS E&T program.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

August 6, 2007

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-444-0025 Payments for FS E&T related expenses. (1) Some of a client's actual expenses needed to participate in the FS E&T program may be paid by the department. Allowable expenses are:

- (a) Transportation related costs; and
 - (b) Dependent care costs for each dependent (~~((six))~~) through twelve years of age.
- (2) Dependent care payments are not paid if:
- (a) The child is thirteen years of age or older unless the child is:
 - (i) Physically and/or mentally incapable of self-care; or
 - (ii) Under court order requiring adult supervision; or
 - (b) Any member in the food assistance unit provides the dependent care.

(3) Dependent care payments paid by the department cannot be claimed as an expense and used in calculating the dependent care deduction as provided in WAC 388-450-0185.

WSR 07-17-115
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION
[Filed August 17, 2007, 11:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-08-080.

Title of Rule and Other Identifying Information: Chapter 392-141 WAC, Transportation—State allocation for operations.

Hearing Location(s): OSPI, Old Capitol Building, 2nd Floor Conference Room, 600 South Washington Street, Olympia, WA 98504, on October 2, 2007, at 9:00.

Date of Intended Adoption: October 3, 2007.

Submit Written Comments to: Allan J. Jones, Director, P.O. Box 47200, Olympia, WA 98504, e-mail allan.jones@k12.wa.us, fax (360) 586-6124, by September 24, 2007.

Assistance for Persons with Disabilities: Contact Penny Coker by September 24, 2007, TTY (360) 664-3631 or (360) 725-6142.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed revision is required to clarify school district reporting requirements for the number of basic students allowed on a combined transportation route (basic and special needs students).

Statutory Authority for Adoption: RCW 28A.150.150.

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

Name of Proponent: [Superintendent of public instruction], governmental.

Name of Agency Personnel Responsible for Drafting: Charlie Schreck, Office of Superintendent of Public Instruction, (360) 725-6136; Implementation: Martin Mueller, Office of Superintendent of Public Instruction, (360) 725-5175; and Enforcement: Allan J. Jones, Office of Superintendent of Public Instruction, (360) 725-6120.

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.

Dr. Terry Bergeson
State Superintendent

AMENDATORY SECTION (Amending Order 98-08, filed 8/7/98, effective 9/7/98)

WAC 392-141-152 Definition—Combined transportation route. As used in this chapter, "combined transportation route" means a special transportation route as defined in WAC 392-141-148 on which a student or students, who would otherwise qualify for basic transportation as defined in WAC 392-141-146, are allowed to ride. The number of basic transportation students allowed on a designated combined route shall not exceed ~~((thirty percent of the actual number of seating positions on a type A school bus, twenty percent of the actual number of seating positions on a type B school bus, or ten percent of the actual number of seating positions on a type C or D school bus used on the combined route. If the total number of seating positions multiplied by the appropriate percentage results in a fractional number of students, the result shall be rounded to the next highest whole number))~~ ten students.

WSR 07-17-118
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS

[Filed August 17, 2007, 2:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-14-138.

Title of Rule and Other Identifying Information: Amending the rules in chapters 208-680B, 208-680C, and 208-680E WAC, implementing the Escrow Agent Registration Act, chapter 18.44 RCW.

Hearing Location(s): Highline Community College, South 240th Street and Pacific Highway South, Des Moines, WA 98198, on October 2, 2007, at 1:00 p.m. to 3:00 p.m.

Date of Intended Adoption: October 25, 2007.

Submit Written Comments to: Jeannette Terry, P.O. Box 41200, 150 Israel Road, Olympia, WA 98504-1200, e-mail jterry@dfi.wa.gov, fax (360) 586-5068, by October 15, 2007.

Assistance for Persons with Disabilities: Contact Jeannette Terry by September 21, 2007, TTY (360) 664-8126 or (360) 902-8786.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The existing rule on fees, quarterly reports, and the reporting of significant events that impact the escrow business must be amended for clarity and consistency in implementing chapter 18.44 RCW and to reflect current industry practices.

Statutory Authority for Adoption: RCW 43.320.040, 18.44.410.

Statute Being Implemented: Chapter 18.44 RCW.

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

Name of Proponent: Department of financial institutions, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Cindy Fazio, 150 Israel Road, Olympia, WA, (360) 902-8800.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule amendments will not impose more than minor costs on the businesses impacted by the proposed rules.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable to the proposed rules.

August 17, 2007
Deborah Bortner, Director
Division of Consumer Services

AMENDATORY SECTION (Amending WSR 01-12-029, filed 5/29/01, effective 7/1/01)

WAC 208-680B-081 Fee increase. ~~((The division intends to increase its fee and assessment rates each year for several bienniums. The division intends to initiate a rule making for this purpose each biennium. This rule provides for an automatic annual increase in the rate of fees and assessments each fiscal year during the 2001-03 biennium.))~~

(1) On ~~((July))~~ January 1, ((2002)) 2008, the fee and assessment rates under WAC 208-680B-080~~((, as increased in the prior fiscal year,))~~ will increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in RCW 43.135.025.

(2) The director may round off a rate increase under subsection (1) of this section. However, no rate increase may exceed the applicable fiscal growth factor.

~~((3) By June 1 of each year, the director will make available a chart of the new rates that will take effect on the immediately following July 1.))~~

NEW SECTION

WAC 208-680C-060 Reporting significant events. (1) Ten days prior notification required. An escrow agent must notify the director in writing ten days prior to a change of the escrow agent's:

(a) Location or mailing address of the escrow agent office or branch office. See RCW 18.44.061 and WAC 208-680C-040;

(b) Form of business organization or place of organization (for example, from sole proprietor to corporation);

(c) Name and mailing address of the out-of-state escrow agent's registered agent; or

(d) Legal or trade name.

(2) **Ten days post notification required.** An escrow agent must notify the director in writing within ten days after an occurrence of any of the following:

(a) The cancellation or expiration of its Washington state master business license;

(b) A change in its standing with the state of Washington secretary of state, including the resignation or change of the registered agent;

(c) The licensed escrow agent filing for bankruptcy;

(d) The personal bankruptcy of a principal officer or controlling person; or

(e) The licensed escrow officer or designated escrow officer filing for personal bankruptcy.

(3) **Other notification requirements.**

(a) In the event of an escrow office closure, see WAC 208-680C-045.

(b) For a transfer involving all or substantially all of its assets, the escrow agent must comply with WAC 208-680B-015(3).

(c) For a change in principal officer or controlling person of a licensed escrow agent, the escrow agent must comply with WAC 208-680B-015(4) and 208-680B-020(4).

(d) For changes in designated escrow officer or branch designated escrow officer, see WAC 208-680D-010.

(e) For termination of a licensed escrow officer, the escrow agent must notify the department within three business days that the escrow officer no longer represents the escrow agent. If the escrow officer was terminated for dishonesty or financial misconduct involving the business, the escrow agent must provide the department with that information. Within ten business days of the termination, the escrow agent must deliver the escrow officer's license to the department. See RCW 18.44.101.

(f) For the filing of quarterly reports, see WAC 208-680E-025.

(g) For suit or complaint notification, see WAC 208-680D-070.

(h) Any changes to the escrow agent's bonds, or the bonds of the escrow agent's licensed escrow officers, as

required under RCW 18.44.201, must be reported to the department within five days.

(i) Within five business days of the escrow agent's license being revoked, surrendered, suspended, or the license expiring, the escrow agent shall notify the principals of pre-existing escrows of the action. The contents of the notification must comply with RCW 18.44.465.

AMENDATORY SECTION (Amending WSR 05-03-038, filed 1/10/05, effective 2/10/05)

WAC 208-680E-025 Quarterly reports. (1) For purposes of determining compliance with chapter 18.44 RCW and chapter 208-680 WAC, each escrow agent shall file with the director, within thirty days following the end of each fiscal quarter, the following:

(a) A report concerning its operations ((and));

(b) A report concerning the trust account administration; and ((reconciliation. The report shall be on a form provided by the director and shall include exhibits as specified therein))

(c) A one page summary of the three way reconciliation from the last month of the quarter.

All reports must be in a form prescribed by the director.

(2) As to trust account matters, the designated escrow officer of the escrow agent shall certify under penalty of perjury, in a manner consistent with RCW 9A.72.085, that he or she has reviewed the report and any exhibits filed with it and that the information contained in the report and in any exhibits is true and correct. The chief executive officer or chief financial officer of the escrow agent, or other knowledgeable person acceptable to the director, may certify the information on the report not related to trust account matters.

(3) Failure to file the report within the time period specified in this rule shall be considered a violation of RCW 18.44.430.

WSR 07-17-131

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed August 20, 2007, 10:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-14-026.

Title of Rule and Other Identifying Information: Chapter 308-56A WAC, Certificate of title—Motor vehicles, etc., specifically WAC 308-56A-030 Owner name and address—Recorded on the vehicle record registration—Application for certificate of ownership.

Hearing Location(s): Department of Licensing, Conference Room 108, 1125 Washington Street S.E., Olympia, WA 98507, on October 1, 2007, at 10:00 a.m.

Date of Intended Adoption: October 23, 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, by September 28, 2007.

Assistance for Persons with Disabilities: Contact Dale R. Brown by September 28, 2007, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule change required for WAC 308-56A-030 to remove references to the requirement to present an unexpired driver's license when applying for [the] title. RCW 46.16.010 requires presentation of an unexpired driver's license only for initial and renewal registration.

Reasons Supporting Proposal: WAC 308-96A-096 administers the requirement of the law.

Statutory Authority for Adoption: RCW 46.16.010.

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

Name of Agency Personnel Responsible for Drafting: Dale R. Brown, 1125 Washington Street S.E., Olympia, WA, (360) 902-4020; Implementation and Enforcement: Gary Van Camp, 1125 Washington Street S.E., Olympia, WA, (360) 902-0122.

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.

August 20, 2007

Julie Knittle

Assistant Director

Vehicle Services

AMENDATORY SECTION (Amending WSR 05-23-135, filed 11/22/05, effective 1/3/06)

WAC 308-56A-030 Owner name and address—Recorded on the vehicle record(~~—Registration~~)—Application for certificate of ownership. (1) What registered owner and lien holder or secured party information is required on the vehicle record - registration - application for certificate of ownership (title)?

The vehicle record(~~(—registration)~~) and application for certificate of ownership (title) must include:

(a) The name of each registered owner (natural person or business) of the vehicle and, if the vehicle is subject to a lien or other security interest, the name of each secured party;

(b) The registered owner's primary residence street address (at the choice of the registered owner, a mailing address if different from the residence address can also be given); and

(c) The primary secured party's mailing address.

(2) (~~Is there other information I am required to provide before I can obtain a certificate of ownership (title) or registration?~~)

~~Yes. Before the department can issue a certificate of ownership (title) or registration, one of the following, in addition to the requirement listed in subsection (1) of this section, must be provided for each registered owner that is a natural person:~~

~~(a) Presentation of an unexpired Washington state driver's license; or~~

~~(b) Certification that he or she is:~~

~~(i) A Washington resident who is a natural person and does not operate a motor vehicle on public roads; or~~

~~(ii) Exempt from the requirement to obtain a Washington state driver's license under RCW 46.20.025.~~

(3)) What does primary residence mean for a registered owner who is a natural person or a business?

(a) In the case of a natural person, it means the person's true, fixed and permanent home in Washington. This does not include secondary or vacation homes where a vehicle is garaged or used. The department will presume that a registered owner's primary residence is the same as the address used in driver's license records or voter registration records.

(b) In the case of a business, it means the principal place in Washington from which the licensed trade or business of the registered owner is directed, managed, or conducted. Businesses with multiple Washington licensed business locations should use the licensed business location where the service vehicles owned and operated by the business are directed, managed, garaged, stored or maintained.

((4)) (3) Do the addresses for the application for certificate of ownership, and vehicle record (~~and registration~~) need to conform to United States Postal Service (USPS) standards?

Yes. USPS address standards must be used on all vehicle records, (~~registrations;~~) and certificates of ownership.

((5)) (4) Are there exceptions to the requirement to provide a primary residence street address?

Yes. Exceptions will be made for:

(a) Persons who are exempt by law from paying motor vehicle excise tax or fees.

(b) Vehicles (~~(that are)~~) exempt by law from motor vehicle excise tax or fees.

(c) Natural persons who are homeless; defined as someone with no housing.

(d) Other exceptions may apply as determined appropriately by the director or his or her designee.

((6) Will the department renew a vehicle registration if the registered owner does not provide a primary residence street address?

~~No. The registered owner's primary residence street address is required for vehicle registration renewals unless an exception specified in this section is met.~~

(7)) (5) What will the department do if presented with documentation or other information to indicate there may be an error in the primary residence street address provided?

The department will flag the vehicle record and the registered owner will be required, prior to the time of next renewal, to:

(a) Show a residential utility bill, driver license or other documentation that verifies the primary residence street address; and

(b) Complete and sign a declaration under penalty of perjury on a form developed by the department.

((8)) (6) Can more than one address be shown on the vehicle record or application if there are multiple registered owners with different addresses?

No. The department can store the primary residence address and separate mailing address (if applicable) for only one of the registered owner(s).

~~((9))~~ **(7) Can more than one address be shown on the vehicle record or application if there is more than one secured party?**

No. Only one address for the primary secured party will be shown on the vehicle record.

~~((10))~~ **(8) Is the applicant or registered owner required to certify the truth of the address information contained in the application for certificate of ownership or vehicle renewal?**

No. The applicant or registered owner will only be required to complete and sign a declaration under penalty of perjury on a form developed by the department when the department has been presented with documentation or other information to indicate there may be an error in the address information provided and the vehicle record has been flagged.

~~((11))~~ **(9) What is the penalty if the applicant or registered owner provides false address information?**

A person providing false residency information is guilty of a gross misdemeanor punishable by a fine of five hundred twenty-nine dollars.

~~((12))~~ **(10) Is my residence address subject to public disclosure?**

Where both a mailing address and a residence address are recorded on the vehicle record and are different, only a mailing address will be disclosed. Both addresses will be disclosed in response to requests from courts, law enforcement agencies, or government entities with enforcement, investigative, or taxing authority and only for use in the normal course of conducting their business.

WSR 07-17-137

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF PERSONNEL

[Filed August 20, 2007, 4:17 p.m.]

The department of personnel is requesting to withdraw the proposed rule modification WSR 07-14-121 filed on July 3, 2007.

If you have any questions, please contact Kristie Wilson at (360) 664-6408.

Eva Santos
Director

WSR 07-17-138

PROPOSED RULES SECRETARY OF STATE

(Elections Division)

[Filed August 20, 2007, 4:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-12-033.

Title of Rule and Other Identifying Information: Cycle 3 Rules of 2007 will implement legislation passed by the 2007 legislature and address a variety of other topics, including voting centers, service and overseas voters, manual recounts, and local multicounty races and measures.

Hearing Location(s): Conference Room, 520 Union Avenue S.E., Olympia, WA 98501, on September 26, 2007, at 1:30 p.m.

Date of Intended Adoption: September 27, 2007.

Submit Written Comments to: Tami Neilson, P.O. Box 40220, Olympia, WA 98504-0220, e-mail tneilson@sec-state.wa.gov, fax (360) 586-5629, by September 26, 2007.

Assistance for Persons with Disabilities: Contact TTY (800) 422-8683.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules are intended to permanently adopt the emergency rules previously filed to implement legislation passed by the 2007 legislature and to consolidate and implement standard procedures statewide. Rules will also address a variety of topics, including service and overseas voters, voting centers, manual recounts of audits of DREs, and local multicounty races and measures.

Reasons Supporting Proposal: Rules must reflect current law and are necessary for uniformity.

Statutory Authority for Adoption: RCW 29A.04.611.

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

Name of Agency Personnel Responsible for Drafting: Tami Neilson, Legislative Building, (360) 902-4182; Implementation and Enforcement: Katie Blinn, Legislative Building, (360) 902-4168.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Changes do not appear to have an impact on small business.

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

August 20, 2007

Steve Excell

Assistant Secretary of State

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

WAC 434-220-020 Definitions. As used in this chapter:

(1) "Checkbox" means a voter response position on a consolidated ballot that allows a voter (~~who desires to vote in a partisan primary~~) to affiliate with a major political party.

(2) "Consolidated ballot" is a single ballot that includes party checkboxes and lists the major political party candidates for partisan office of all major political parties, the candidates for nonpartisan office, and the ballot measures. The candidates for partisan office are listed by party, and each party is separated from the other parties. The candidates for nonpartisan office and the ballot measures are listed at the end of the ballot, after the partisan offices. (~~In the case of a direct recording electronic device, a consolidated ballot must have a beginning screen which contains a checkbox for the major political parties. After the voter has affiliated with a major party by marking a checkbox, only the party ballot~~

checked by the voter and the nonpartisan ballot shall appear to the voter.)

(3) "Nonpartisan ballot" means a ballot that includes nonpartisan offices listed in RCW 29A.52.231, and ballot measures.

(4) "Party affiliation" means:

(a) For a voter:

(i) On a consolidated ballot, ~~((a voter's selection of a major political party in a manner consistent with the type of voting system used))~~ selecting a party checkbox or voting in the partisan races for candidates of only one political party;

(ii) On physically separate ballots, voting ~~((a major))~~ one political party's ballot;

(b) For a write-in candidate for partisan office, filing as a write-in candidate as a member of a major political party.

(5) "Physically separate ballots" include party ballots for each major political party, and a nonpartisan ballot. Each party ballot lists the candidates for partisan office that have listed that party on the declaration of candidacy, as well as all candidates for the nonpartisan offices and the ballot measures.

(6) "Spot color" means coloring a portion of the ballot.

(7) "Void," when applied to unvoted ballots, means keeping the unvoted ballots in the sealed container in which they were deposited on election day.

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

WAC 434-220-030 Ballot layout and color—Consolidated ballots. A county may choose to use a combination of both consolidated and physically separate ballots (~~for poll-site, absentee, and vote by mail ballots~~). County auditors may use spot coloring, shading, or colored printing to assist the voter in distinguishing between party sections. If color is used, blue must be used for the democratic party (~~ballot~~), and red must be used for the republican party (~~ballot~~). In addition to other requirements listed in state law and administrative rule, the following provisions apply to the layout of consolidated ballots:

(1) The party checkboxes must be listed before all offices and ballot measures, pursuant to RCW 29A.36.106. The checkboxes must be labeled "democratic party" and "republican party."

(2) Ballots must list partisan office candidates in columns or sections labeled "democratic party" and "republican party." The political party abbreviation after each candidate's name may be eliminated if the ballot layout clearly identifies the candidate's political party. If a party section spans multiple columns, the next party section must begin where the last party section ended, and there must be a well-defined division between the party sections. If all parties cannot be listed on the same side of the ballot, there must be a conspicuous explanation that additional parties are listed on the other side of the ballot.

(3) Ballots must list the nonpartisan offices and ballot measures separately in a column or section labeled "nonpartisan offices and measures."

(4) Ballot instructions must be printed on the ballot and include:

(a) Instructions on how to mark the ballot, including write-in votes; and

(b) Instructions, as required by RCW 29A.36.106 and 29A.36.161, printed in substantially the following form:

"This ballot contains ~~((major political party candidates for the))~~ partisan offices, ~~((candidates for the))~~ nonpartisan offices, and ballot measures. For the partisan offices, you may only vote for candidates of ~~((only))~~ one political party. ~~((Regardless of whether you vote for partisan offices, you may vote for the nonpartisan offices and the ballot measures.))~~

1. ~~((Select one political party. If you do not select a party or if you select more than one party, your votes for partisan offices will not be counted. No record will be made of the party you select.))~~ If you want to vote for democratic candidates, (fill in the box, fill in the oval, connect the arrow, check the box) for the democratic party and vote the democratic section of the ballot. If you want to vote for republican candidates, (fill in the box, fill in the oval, connect the arrow, check the box) for the republican party and vote the republican section of the ballot. There will be no record of which party you select. You may not select both parties or vote for candidates of both parties.

2. ~~((Vote only for candidates of that party. Votes for another party's candidates will not be counted.~~

3.)) Vote for nonpartisan offices and ballot measures. These votes will be counted, even if you do not select a political party."

(5) Ballot instructions may be printed on the ballot itself or on the ballot stub. An instruction page may be considered a separate page of the ballot, in which case page one of the ballot must be the instruction page and the candidates and ballot measures must begin on page two.

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

WAC 434-220-040 Ballot layout and color—Physically separate ballots. A county may choose to use a combination of both consolidated and physically separate ballots (~~for poll-site, absentee, and vote by mail ballots~~). County auditors may use colored ballot stock, spot coloring, shading, or colored printing to assist the voter in distinguishing between the ballots. If colored ballot stock is used, blue must be used for the democratic party ballot, and red must be used for the republican party ballot. In addition to other requirements listed in state law and administrative rule, the following provisions apply to the layout of physically separate ballots:

(1) A separate ballot must be produced for ~~((each major political party and for all nonpartisan races. The political party abbreviation after each candidate's name may be eliminated if the ballot layout clearly identifies the candidate's political party))~~;

(a) The democratic party;

(b) The republican party; and

(c) The nonpartisan offices and ballot measures.

(2) Each physically separate ballot must have "democratic party," "republican party," or "nonpartisan offices and measures" printed on the ballot. In addition to the require-

ments of RCW 29A.36.121, each party ballot must list partisan offices first, then all nonpartisan offices and ballot measures. The political party abbreviation after each candidate's name may be eliminated if the ballot layout clearly identifies the candidate's political party. All ballots must be issued to each voter, both at the poll-site and to voters voting by mail or absentee. ~~((Voters must be instructed to vote and return only one ballot.))~~

(3) Ballot instructions must be printed on the ballot and must include:

(a) Instructions on how to mark the ballot, including write-in votes; and

(b) Instructions, as required by RCW 29A.36.106 and 29A.36.161, printed in substantially the following form:

~~((Separate ballots for each political party have been provided, in addition to))~~ You have been provided a democratic party ballot, a republican party ballot, and a third ballot ~~((for))~~ that only lists the nonpartisan offices and ballot measures. Each party ballot lists the candidates of that ~~((political))~~ party running for partisan office, as well as the candidates running for nonpartisan office and the ballot measures. ~~The~~ ~~((ballot labeled))~~ "nonpartisan offices and measures" ballot only lists the ~~((candidates running for))~~ nonpartisan offices and ~~((the))~~ ballot measures, ~~((but))~~ and does **not** list any partisan offices.

~~You may only vote one ballot. ((Your affiliation with a political party is inferred by choosing that party's ballot, but no record will be made of your choice. If you cast more than one party ballot, none of your votes for partisan office will count. If you vote for the nonpartisan offices and ballot measures on a party ballot, return the party ballot only and not the separate nonpartisan ballot. Votes for the nonpartisan offices and ballot measures will not be affected by your choice of party ballot.))~~ There will be no record of which ballot you return.

If you want to vote for democratic candidates, vote the democratic ballot. If you want to vote for republican candidates, vote the republican ballot. If you do not want to affiliate with a political party, vote the "nonpartisan offices and measures" ballot."

(4) Ballot instructions may be printed on the ballot itself or on the ballot stub. An instruction page may be considered a separate page of the ballot, in which case page one of the ballot must be the instruction page and the candidates and ballot measures must begin on page two.

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

WAC 434-220-060 Ballot programming—Consolidated ballots. (1) Before a county may use a consolidated ballot format, the ballot counting program must achieve the following:

(a) If a voter marks a party checkbox ~~((for a major political party, only)),~~ partisan office votes for candidates of that party only may be counted, in addition to votes for the nonpartisan offices and ballot measures; ~~((and))~~

(b) If a voter marks a party checkbox, partisan office votes for candidates of the other party may not be counted;

~~(c) If a voter does not mark a party checkbox ((for a major political party, no votes for a partisan office)) but votes in the partisan races for candidates of only one party, the partisan office votes may be counted, in addition to the nonpartisan offices and ballot measures;~~ ~~((and~~

~~((e)))~~ (d) If a voter does not mark a party checkbox and votes in the partisan races for candidates of both political parties, no votes for partisan office may be counted but votes for nonpartisan office and ballot measures may be counted;

(e) If a voter marks ((two or more)) both party checkboxes, no votes for ((a)) partisan office may be counted but votes for nonpartisan office and ballot measures may be counted; and

~~((f))~~ (f) In the case of direct recording electronic devices, the voter must be allowed to select one ((ballot)) party on the first screen, and have only the ballot for the party selected appear to the voter.

(2) If an optical scan ballot counting program cannot use the checkbox to eliminate invalid votes for each of the situations listed in this section, all ballots must be inspected for those marks that cannot be read correctly. Improperly marked ballots must be duplicated to ensure invalid votes are not counted. In the case of precinct ballot counters, ballots must be inspected after they have been returned from the polls. As part of the canvassing process, the county auditor must take appropriate steps to amend the unofficial precinct count totals to reflect the correct count.

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

WAC 434-220-070 Polling place procedures—Physically separate ballots. (1) In ~~((the case of optical scan))~~ a county using physically separate ballots, poll workers must give each voter a party ballot for each major political party and a nonpartisan ballot. The county auditor must number the ballot stubs in a manner so that it cannot be determined which ballot was cast by the voter. The poll workers must instruct the voter to choose one ballot to vote. The remaining two ballots must be deposited into an "unvoted ballots" container secured with a numbered seal. The voter may select a single ballot and deposit the other ballots in the "unvoted ballots" container prior to entering the voting booth, or may deposit the unvoted ballots after leaving the voting booth. Regardless of when the ballot selection is made, the poll workers must ensure that only one ballot is deposited in the ballot box and the remaining ballots are deposited into the "unvoted ballots" container. The privacy of the ballot selection by the voter must be maintained. The ballot stub must be removed and placed into the ballot stub envelope before the voted ballot is deposited into the ballot box.

(2) The "unvoted ballots" container must remain sealed and be returned to the county auditor with the supplies and voting materials.

(3) If a voter spoils a ballot and wishes to correct the error, the ballot must be returned to the poll worker and placed into the spoiled ballot envelope. The poll worker must issue a new set of ballots, consisting of each major political party's ballot and the nonpartisan ballot. The ballot stub number must be recorded in the poll book.

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

WAC 434-220-080 No ~~((records made at poll sites))~~ record of political party affiliation. Pursuant to RCW 29A.44.231, no record of the political party ~~((ballot))~~ selected by the voter may be made. This prohibition includes poll workers, political observers and any other person who may be present while voting or ballot processing is taking place. The use of devices such as telephones, cameras, or recording devices to report, track, or monitor ~~((the ballot))~~ a voter's party selection ~~((by voters))~~ is prohibited.

AMENDATORY SECTION (Amending WSR 07-09-036, filed 4/11/07, effective 5/12/07)

WAC 434-230-170 Ballot form. Each office on the ballot shall be identified, along with a statement designating how many candidates ~~((are to))~~ may be voted on for such office ~~((e.g., vote for . . . , with the words, "one," "two," or a spelled number))~~. The office term shall be included on the ballot if such term is other than a full term (e.g., short/full term, two-year unexpired term, etc.). Each office shall be listed on the ballot in the manner prescribed by law or administrative rule. Following the office designation the names of all candidates for that position shall be listed together with political party designation or abbreviation as certified by the secretary of state as provided in RCW 29A.36.011 or the word "nonpartisan," or "NP" as applicable. When choosing to use abbreviations, the county auditor must provide a legend on each ballot defining all abbreviations. In a partisan primary, candidates shall be listed by political party as provided in chapter 434-220 WAC. Each office listed on the ballot shall be separated by a bold line. In a year in which a President of the United States is to be elected, the names of all candidates for President and Vice-President for each party shall be grouped together with one vote response position for each party, where the voter may indicate his or her choice.

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

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

Chapter 434-235 WAC

SERVICE AND OVERSEAS VOTERS

NEW SECTION

WAC 434-235-010 Scope. (1) This chapter implements the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Sec. 1973ff, and the provisions for service and overseas voters in Title 29A RCW.

(2) Uniformed service voter is defined in 42 U.S.C. Sec. 1973ff-6(1) as:

(a) A member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(b) A member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; or

(c) A spouse or dependent who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.

(3) Service voter is defined in RCW 29A.04.163 as any elector of the state of Washington who:

(a) Is a member of the armed forces under 42 U.S.C. Sec. 1973ff-6 while in active service;

(b) Is a student or member of the faculty at a United States military academy;

(c) Is a member of the merchant marine of the United States;

(d) Is a program participant as defined in RCW 40.24.020; or

(e) Is a member of a religious group or welfare agency officially attached to and serving with the armed forces of the United States.

(4) Overseas voter is defined in 42 U.S.C. Sec. 1973ff-6(5) as:

(a) An absent uniformed services voter who, by reason of active duty or service is absent from the United States on the date of the election involved;

(b) A person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(c) A person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.

(5) Overseas voter is defined in RCW 29A.04.109 as any elector of the state of Washington outside the territorial limits of the United States or the District of Columbia.

NEW SECTION

WAC 434-235-020 Voter registration. (1) A uniformed, service, or overseas voter may register to vote by providing:

(a) A voter registration application issued by the state of Washington;

(b) A federal post card application issued by the federal voting assistance program;

(c) A federal write-in absentee ballot issued by the federal voting assistance program;

(d) A national mail voter registration form issued by the election assistance commission; or

(e) An absentee ballot with a valid signature on the return envelope oath.

(2) Pursuant to RCW 29A.40.010, a uniformed, service, or overseas voter does not have to be registered in order to request an absentee ballot. Consequently, a uniformed, service, or overseas voter may request a ballot and be registered

after the registration deadlines of RCW 29A.08.140, 29A.08.145, and WAC 434-324-075 have passed.

(a) If the voter is not previously registered, the county auditor must register the voter immediately. The voter must be flagged in the voter registration system accordingly.

(b) A voter who registers to vote by signing the return envelope of the absentee ballot is not required to provide a driver's license number, Social Security number or other form of identification as outlined in RCW 29A.08.113.

(c) If the county auditor is unable to precinct the voter due to an incomplete residential address on the application, the county auditor must attempt to contact the voter to clarify the application. If, in the judgment of the county auditor, there is insufficient time to correct the application before the next election or primary, the county auditor must issue the absentee ballot as if the voter had listed the county auditor's office as his or her residence. A special precinct for this purpose may be created. Upon its return, the ballot must be referred to the county canvassing board. Only the following offices and issues may be tabulated:

- (i) Those common to the entire county; and
- (ii) A congressional race based on the precinct encompassing the auditor's office.

NEW SECTION

WAC 434-235-030 Absentee voting. (1) A uniformed, service, or overseas voter may request or return an absentee ballot by:

- (a) Any manner authorized by WAC 434-250-030;
- (b) A federal post card application issued by the federal voting assistance program; or
- (c) A federal write-in absentee ballot issued by the federal voting assistance program.

(2) Pursuant to RCW 29A.40.070, absentee ballots issued to registered uniformed, service, or overseas voters must be mailed at least thirty days prior to the election or primary. Requests for absentee ballots received after that day must be processed immediately.

(3) The county auditor may issue an absentee ballot by mail, e-mail, fax, or other means as specifically requested by the voter.

(4) If a voters' pamphlet for that primary or election is available, the county auditor must include a voters' pamphlet with the absentee ballot.

(5) If the county auditor is unable to issue an absentee ballot due to insufficient information, the county auditor must attempt to contact the voter to clarify the request. If the county auditor is unable to obtain sufficient information to issue the absentee ballot, the county auditor must attempt to notify the voter of the reason that the ballot was not issued.

(6) Pursuant to RCW 29A.40.150, the secretary of state must furnish envelopes and instructions for absentee ballots issued to uniformed, overseas and service voters. Absentee ballots issued to voters in these categories must be mailed postage-free, and return envelopes must be marked to indicate that they may be returned postage-free. For purposes of RCW 29A.40.150, service voters do not include participants of the address confidentiality program established in chapter 40.24 RCW.

NEW SECTION

WAC 434-235-040 Processing absentee ballots. (1) Any abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be disregarded in determining the validity of a federal write-in absentee ballot or a special absentee ballot if the intention of the voter can be ascertained.

(2) The absentee ballots referred to in this section must be received prior to certification of the election or primary. The date on the envelope associated with the voter's signature, rather than the postmark on the envelope, determines the validity of the ballot. The signature on the oath must be dated no later than election day. An absentee ballot returned electronically is invalid until the original is received.

(3) The county auditor must provide statistics on voting by uniformed, service and overseas voters in the certification report required by RCW 29A.60.235 and in response to requests by the federal election assistance commission.

AMENDATORY SECTION (Amending WSR 07-09-036, filed 4/11/07, effective 5/12/07)

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

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

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

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

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

(3) As authorized by RCW 29A.40.050, requests for a special absentee ballot must be made in writing and each county auditor must provide the applications. In addition to the requirements for a single absentee ballot, as provided in subsection (2) of this section, the form must include:

- (a) A space for an overseas or service voter not registered to vote in Washington to indicate his or her last residential address in Washington; and
- (b) A checkbox requesting that a single absentee ballot be forwarded as soon as possible.

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

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

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

AMENDATORY SECTION (Amending WSR 07-12-032, filed 5/30/07, effective 6/30/07)

WAC 434-250-070 Forwarding ballots. (1) If the county auditor chooses not to forward ballots, the ~~((return))~~ envelope must clearly indicate the ballot is not to be forwarded ~~((and return postage is guaranteed)).~~

(2) If the county auditor chooses to forward absentee ballots, as authorized by RCW 29A.40.091, the county auditor must include with the ballot an explanation of qualifications necessary to vote and instructions substantially similar to the following:

If you have changed your permanent residence address, please contact your county auditor to ensure the ballot you receive in future elections contains the races and issues for your residential address. If you have any questions about your eligibility to vote in this election, please contact your county auditor.

The above instructions and the explanation required by RCW 29A.40.091 may be provided on the ballot envelope, on an enclosed insert, or on the ballot itself. Auditors must begin to provide the above instruction to voters no later than January 1, 2008. The county auditor must utilize postal service endorsements that allow:

- (a) The ballots to be forwarded;
- (b) The county auditor to receive from the post office the addresses to which ballots were forwarded; and
- (c) The return of ballots that were not capable of being forwarded.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-250-060 Service and overseas voters.

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

WAC 434-250-100 ~~((Depositing of ballots.))~~ Ballot deposit sites and voting centers. ~~((Ballots may be deposited in the auditor's office during normal business hours prior to the day of the election, and from 7:00 a.m. to 8:00 p.m. on the day of the election. Places of deposit))~~ (1) If a location only receives ballots and does not issue any ballots, it is considered a ballot deposit site. Ballot deposit sites may be staffed or unstaffed.

~~((1))~~(a) ~~((Staffed sites))~~ If a ballot deposit site is staffed, it must be staffed by at least two people. Deposit site staff may be employees of the county auditor's office or persons appointed by the auditor. If two or more deposit site staff are persons appointed by the county auditor, the appointees shall be representatives of different major political parties whenever possible. Deposit site staff shall subscribe to an oath regarding the discharge of ~~((the))~~ their duties. ~~((b) Staffed deposit sites))~~ Staffed deposit sites open on election day must be open from 7:00 a.m. until 8:00 p.m. ~~((on the day of the election and))~~ Staffed deposit sites may be open prior to the election ~~((on))~~ according to dates and times established by the county auditor. Staffed deposit sites must have a secure ballot box that is constructed in a manner to allow return envelopes, once deposited, to only be removed by the county auditor or by the deposit site staff. If a ballot envelope is returned after 8:00 p.m. on election day, deposit site staff must note the time and place of deposit on the ballot envelope, and such ballots must be referred to the canvassing board ~~((for consideration of whether special circumstances warrant consideration, as documented by the deposit site staff)).~~

~~((c) A staffed deposit site that only receives ballots is not considered a polling place. A staffed deposit site that both receives and issues ballots is considered a polling place.~~

~~(2) Unstaffed sites may be used if the ballot drop box is either:~~

~~(a) Constructed and secured according to the same requirements as United States Postal Service postal drop boxes; or~~

~~(b) Secured and located indoors))~~ (b) Unstaffed ballot deposit sites consist of secured ballot boxes that allow return envelopes, once deposited, to only be removed by authorized staff. Ballot boxes located outdoors must be constructed of durable material able to withstand inclement weather, and be sufficiently secured to the ground or another structure to prevent their removal. From eighteen days prior to election day until 8:00 p.m. on election day, two people who are either employees of or appointed by the county auditor must empty each ballot box with sufficient frequency to prevent damage and unauthorized access to the ballots.

(2) If a location offers replacement ballots, provisional ballots, or disability access voting, it is considered a voting

center. The requirements for staffed ballot deposit sites apply to voting centers. Each voting center must:

(a) Be posted according to standard public notice procedures;

(b) Be an accessible location consistent with chapters 29A.16 RCW and 434-257 WAC;

(c) Be marked with signage outside the building indicating the location as a place for voting;

(d) Offer disability access voting;

(e) Offer provisional ballots, which may be sample ballots;

(f) Record the name, signature and other relevant information for each voter who votes on a direct recording electronic voting device in such a manner that the ballot cannot be traced back to the voter;

(g) Request identification, consistent with RCW 29A.44.205 and WAC 434-253-024, from each voter voting on a direct recording electronic voting device or voting a provisional ballot;

(h) Issue a provisional ballot to each voter who is unable to provide identification in accordance with (g) of this subsection;

(i) Have electronic or telephonic access to the voter registration system consistent with WAC 434-250-095 if voters are voting on a direct recording electronic voting device;

(j) Provide either a voters' pamphlet or sample ballots;

(k) Provide voter registration forms;

(l) Display a HAVA voter information poster;

(m) Display the date of that election;

(n) Provide instructions on how to properly mark the ballot;

(o) Provide election materials in alternative languages if required by the Voting Rights Act; and

(p) Use an accountability form to account for all ballots issued.

(3) Ballot boxes must be locked and sealed at all times, with seal logs that document each time the box is opened, by whom, and the number of ballots removed. ~~((From eighteen days prior to election day until 8:00 p.m. on election day, two people who are either employees of or appointed by the county auditor must empty each ballot drop box with sufficient frequency to prevent damage or unauthorized access to the ballots.))~~ Ballots must be placed into sealed transport carriers and returned to the county auditor's office or another designated location. At exactly 8:00 p.m. on election day, all ballot ~~((drop))~~ boxes must be emptied or sealed to prevent the deposit of additional ballots.

AMENDATORY SECTION (Amending WSR 07-12-032, filed 5/30/07, effective 6/30/07)

WAC 434-250-310 Notice of elections by mail. (1) A jurisdiction requesting that a special election be conducted entirely by mail, as authorized by RCW 29A.48.020, may include the request in the resolution calling for the special election, or may make the request by a separate resolution. Not less than forty-seven days prior to the date for which a mail ballot special election has been requested, the county auditor shall inform the requesting jurisdiction, in writing,

whether the request is granted and, if not granted, the reasons why.

(2) In the event that a primary is to be conducted by mail, the auditor must notify the jurisdiction involved not later than seventy-nine days before the primary date.

(3) In addition to the information required in the notice of election published pursuant to RCW 29A.52.351 and 29A.52.311, a county auditor conducting an election by mail, including a county auditor that conducts every election by mail, must also state:

(a) The election will be conducted by mail and regular polling places will not be open;

(b) The precincts that are voting by mail if it is only specific precincts rather than the entire county;

(c) The location where voters may obtain replacement ballots;

(d) Return postage is required;

(e) The dates, times and locations of designated deposit sites and ~~((sites for voting devices that are accessible to the visually impaired, including the county auditor's office as a polling place))~~ voting centers.

AMENDATORY SECTION (Amending WSR 06-14-047, filed 6/28/06, effective 7/29/06)

WAC 434-250-320 ~~((Deposit sites))~~ Ballot deposit sites and voting centers in mail elections. A county auditor conducting a county-wide election entirely by mail must provide at least two ~~((sites for the deposit of ballots. One of the deposit sites))~~ locations to deposit ballots. These locations may be either a ballot deposit site or a voting center, as defined in WAC 434-250-100. At least one location may be at the county auditor's office. All other deposit sites must be at geographical locations that are different from the county auditor's office. ~~((All deposit sites must meet the requirements of WAC 434-250-100.))~~

AMENDATORY SECTION (Amending WSR 07-12-032, filed 5/30/07, effective 6/30/07)

WAC 434-250-330 County auditor's office as a ~~((polling place))~~ voting center. (1) For elections conducted entirely by mail, ~~((services that would have been provided at the polling place must, at a minimum, be provided at the county auditor's office, including provisional ballots. Such services must be provided))~~ the county auditor's office must operate as a voting center beginning the ~~((date))~~ day that ballots are mailed to voters, excluding Saturdays, Sundays, and legal holidays. ~~((Identification must be provided in compliance with RCW 29A.44.205 and WAC 434-253-024, except in the case of replacement ballots as authorized by RCW 29A.48.040. If the county auditor does not maintain poll books at the county auditor's office, the voter must sign a record that includes the same information that would have appeared in a poll book. To maintain the secrecy of each voter's ballot, the voter's information must not be recorded in the same order that his or her ballot was cast.))~~

(2) If the persons providing services at the county auditor's office are not employees of the county auditor's office but are persons appointed by the county auditor, the appointees must be representatives of different major political par-

ties and must subscribe to an oath regarding the discharge of duties.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-250-340 Manual count of selected precincts.

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

WAC 434-253-020 Polling place—Election supplies.

Polling places shall be provided, at a minimum, with the following supplies at every election:

- (1) Precinct list of registered voters or a poll book, which shall include suitable means to record the signature and address of the voter;
- (2) Inspector's poll book;
- (3) Required oaths/certificates for inspectors and judges;
- (4) Sufficient number of ballots as determined by election officer;
- (5) Ballot containers;
- (6) United States flag;
- (7) Voting instruction signs;
- (8) Challenge and provisional ballots and envelopes;
- (9) Cancellation cards due to death;
- (10) Voting equipment instructions;
- (11) Procedure guidelines for inspectors and judges and/or precinct election officer guidebooks;
- (12) Keys and/or extra seals;
- (13) Pay voucher;
- (14) Ballots stub envelope;
- (15) Emergency plan of action;
- (16) Either sample ballots or voters' pamphlets;
- (17) HAVA voter information poster;
- (18) A sign listing the date of the election and the hours of voting on election day;
- (19) Voter registration forms; and
- ~~((19))~~ (20) For partisan primaries in counties using physically separate ballots, ~~(and)~~ an "unvoted ballots" container with a numbered seal.

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

WAC 434-253-025 Polling place—Items to be posted.

The following items must be posted or displayed at each polling place while it is open:

- (1) United States flag;
- (2) HAVA voter information poster;
- (3) A sign listing the date of the election and the hours of voting on election day;
- (4) Voting instructions printed in at least 16 point bold type;
- ~~((4))~~ (5) Either sample ballots or voters' pamphlets;
- ~~((5))~~ (6) Voter registration forms;

~~((6))~~ (7) Election materials in alternative languages if so required by the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.); and

~~((7))~~ (8) Any other items the county auditor deems necessary.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-261-060 Vote tallying system—A manual count of random precincts.

AMENDATORY SECTION (Amending WSR 07-02-100, filed 1/3/07, effective 2/3/07)

WAC 434-262-031 Rejection of ballots or parts of ballots. (1) The disposition of provisional ballots is governed by WAC 434-253-047. The county canvassing board must reject any ballot cast by a voter who was not qualified to vote, or for other reasons required by law or administrative rule. A log must be kept of all voted ballots rejected, and must be included in the minutes of each county canvassing board meeting.

(2) Ballots or parts of ballots shall be rejected by the canvassing board in the following instances:

~~((+))~~ (a) Where two ballots are found folded together, or where a voter has voted more than one ballot;

~~((2))~~ (b) Where two voted ballots are contained within a returned mail ballot envelope containing only one valid signature under the affidavit, unless both ballots are voted identically, in which case one ballot will be counted. If there are two valid signatures under the affidavit, both ballots must be counted;

~~((3))~~ (c) Where a ballot or parts of a ballot are marked in such a way that it is not possible to determine the voter's intent consistent with WAC 434-261-086;

~~((4))~~ (d) Where the voter has voted for candidates or issues for whom he or she is not entitled to vote;

~~((5))~~ (e) Where the voter has voted for more candidates for an office than are permissible;

~~((6))~~ ~~Where the voter has incorrectly attempted to correct a vote on the ballot contrary to the instructions provided pursuant to WAC 434-250-040 unless the voter provides written instructions directing how the vote should be counted;~~

(7) (f) In the case of a partisan primary ~~(=~~ ~~(=))~~, where the voter has voted for a write-in candidate for partisan office who has not filed a write-in declaration of candidacy, thereby affiliating with a major party.

(3) For physically separate ballots in a partisan primary: ~~((i) A log must be kept of all voted ballots rejected and included as part of the county canvassing board minutes.)~~

(a) If more than one ballot is returned but only one ballot is voted, the voted ballot must be counted.

~~((+))~~ (b) When a voted nonpartisan ballot and a voted party ballot are both returned, and the nonpartisan section of the party ballot was not voted, the votes from both ballots must be duplicated onto a blank party ballot ~~(of the same party the voter originally voted for)~~ and counted.

~~((iii)) (c) When a ((party ballot and nonpartisan ballot both have been returned with the nonpartisan offices and ballot measures)) voted nonpartisan ballot and a voted party ballot are both returned, and nonpartisan races and ballot measures were voted on both ballots, the nonpartisan and ballot measure votes that are the same on each ballot and the ((party)) partisan votes ~~((shall))~~ must be duplicated onto a blank party ballot and counted.~~

~~((iv) Write in votes for a partisan candidate on a nonpartisan ballot must not be counted in the final write in tally.~~

~~(v) Write in votes for a partisan candidate who has not filed a write in declaration of candidacy, thereby affiliating with a major party, must not be counted in the final write in tally.~~

~~(vi) If physically separate ballots are used and a voter returns more than one voted partisan ballot, no votes cast for candidates for partisan office shall be counted. If votes are cast for nonpartisan offices and/or ballot measures on only one of the partisan ballots, the nonpartisan votes must be counted. If votes are cast for nonpartisan offices and/or ballot measures on more than one party ballot, only those votes which are the same on each ballot shall be duplicated onto a nonpartisan ballot and counted.~~

~~(vii) If more than one ballot is returned but only one ballot is voted, the voted ballot must be counted.~~

~~(b) For consolidated ballots:~~

~~(i) When voting a consolidated ballot, if the voter does not mark the party checkbox, votes cast for candidates for partisan office must not be counted but votes cast on the nonpartisan portion of the ballot shall be counted.~~

~~(ii) Write in votes for a partisan candidate in a partisan office on the nonpartisan section of the ballot must not be counted in the final write in tally.~~

~~(iii) Write in votes for a partisan candidate who has not filed a write in declaration of candidacy shall not be counted in the final write in tally.~~

~~(iv) If the voter marks one party checkbox, only those votes for candidates of that party shall count. Votes cast for candidates of other political parties must not be counted and do not cause over-votes.~~

~~Additionally, the canvassing board shall reject any ballot cast by a voter not qualified to vote, and shall reject absentee ballots where such rejection is required by law or administrative rule. The disposition of provisional ballots is governed by WAC 434-253-047.)~~

~~(d) When more than one voted party ballot is returned, the partisan votes may not be counted but the nonpartisan and ballot measure votes that are the same on both ballots must be duplicated onto a blank nonpartisan ballot and counted.~~

AMENDATORY SECTION (Amending WSR 07-09-036, filed 4/11/07, effective 5/12/07)

WAC 434-262-105 Audit of results of votes cast on direct recording electronic device. In an audit, the county auditor must compare the paper records with the electronic results cast on the direct recording electronic devices.

(1) The audits required by RCW 29A.60.185 must use the same three races or issues, randomly selected by lot, for every direct recording electronic device subject to the audit

and utilized in the election. If there are not three countywide races or issues on the ballot, the county must select the maximum number of contests available but no more than three contests from each of the devices randomly selected for the audit.

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

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

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

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

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

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

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

(iii) If the paper records are incomplete, the ballot images stored on the direct recording electronic device must be printed and then compared to the electronic results recorded on the direct recording electronic device.

~~(5) ((The county auditor must compare the paper records with the electronic records. The county auditor may))~~ If there is a discrepancy between the electronic results and the paper record results, the canvassing board must take ((any)) necessary actions to investigate and resolve ((discrepancies)) the discrepancy. The canvassing board must prepare a public report that outlines the discrepancy and how it was resolved. The results as determined by the canvassing board must replace the electronic results in the official certification.

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

~~(7) Procedures to resolve audit discrepancies must be promulgated by each county canvassing board in accordance with discrepancy guidelines published by the secretary of state.)~~ If there is a discrepancy that cannot be resolved:

(a) The secretary of state must be notified immediately; and

(b) The vendor must be notified and required to provide a satisfactory explanation for the discrepancy within thirty days.

~~((8))~~ (7) The aggregate total of paper records counted manually is subject to public disclosure.

NEW SECTION

WAC 434-262-132 Election results for multicounty candidate races. In a candidate race in a multicounty jurisdiction, with the exception of certificates of election issued in accordance with RCW 29A.52.360 and 29A.52.370, the filing officer must collect and combine the certified results from the county canvassing boards in order to issue a certificate of election.

NEW SECTION

WAC 434-262-133 Election results for multicounty local ballot measures. In a local ballot measure election for a multicounty jurisdiction, the county auditor who received the filing resolution must combine the final results for that ballot measure from all relevant counties.

AMENDATORY SECTION (Amending WSR 07-12-032, filed 5/30/07, effective 6/30/07)

WAC 434-264-070 Manual recount of votes cast on direct recording electronic devices. In a manual recount, the county auditor must compare the paper records with the electronic results cast on direct recording electronic devices.

(1) Written procedures to perform manual recounts of direct recording electronic devices must be promulgated by the county auditor. The procedures for manually tabulating results must be conducted using a process that includes the following elements:

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

(b) If a paper record indicates a ballot has been canceled, the ballot must be exempt from the recount; and

(c) If the paper records are incomplete, the ballot images stored on the direct recording electronic device must be printed and then compared to the electronic results recorded on the direct recording electronic device.

(2) (~~The county auditor must compare the hand recount results with the original results. The county auditor may take any necessary actions to investigate and resolve discrepancies.~~) If there is a discrepancy between the electronic results and the paper record results, the canvassing board must take necessary action to investigate and resolve the discrepancy. The canvassing board must prepare a public report that outlines the discrepancy and how it was resolved. The results as determined by the canvassing board must replace the electronic results in the official certification.

(3) If there is a discrepancy that cannot be resolved:

(a) The secretary of state must be notified immediately; and

(b) The vendor must be notified and required to provide a satisfactory explanation for the discrepancy within thirty days.

AMENDATORY SECTION (Amending WSR 07-12-032, filed 5/30/07, effective 6/30/07)

WAC 434-264-100 Manual recount—Counting boards. Each county auditor shall establish the number of

counting boards to conduct the recount. Each board shall be comprised of no less than (~~three~~) two members, made up of:

(1) One representative from each of the two major political parties (~~and one observer or staff person~~); or

(2) Two staff persons (~~and one observer; or~~
(3) ~~Three staff persons~~).

AMENDATORY SECTION (Amending WSR 07-09-035, filed 4/11/07, effective 5/12/07)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(x) A system usability testing report.

(2) The vendor must either file the system executables for the certified system with the National Software Reference Library (NSRL) or place the source code of an electronic voting system (~~((must be placed))~~) in escrow (~~((and))~~), which must be accessible by the secretary of state under prescribed conditions (~~((allowing source code review for system verification))~~).

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

AMENDATORY SECTION (Amending WSR 07-09-035, filed 4/11/07, effective 5/12/07)

WAC 434-335-190 Restricted period. No modification, change, or other alteration to voting or vote tabulating system, equipment, or component may be installed in a county between June 15th and November 30th of the same year without permission from the secretary of state. Such permission must be specific to the change and to the county making the change.

WSR 07-17-146

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed August 21, 2007, 8:33 a.m.]

Supplemental Notice to WSR 07-16-093.

Preproposal statement of inquiry was filed as WSR 07-12-066.

Title of Rule and Other Identifying Information: The department is amending WAC 388-106-0225 How do I pay for MPC?

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 September 25, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than September 26, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, fax (360) 664-6185, by 5:00 p.m. on September 25, 2007.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by September 18, 2007, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 388-106-0225 as follows:

- Increasing the personal needs allowance (PNA) 3.3% due to the Washington state 2007-09 operating budget (SHB 1128).
- Clarifying a supplemental security income (SSI) related client determined medicaid eligible pays available income to an alternate living facility after allowing a PNA of \$60.12.

This supplemental proposal corrects a mathematical error the department made in calculating the personal needs allowance in the previous proposed rule filed as WSR 07-16-093.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: Chapter 522, Laws of 2007 (SHB 1128).

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kristi Knudsen, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-3213.

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

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

August 16, 2007

Stephanie E. Schiller

Rules Coordinator

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

WAC 388-106-0225 How do I pay for MPC? (1) If you live in your own home, you do not participate toward the cost of your personal care services.

(2) If you live in a residential facility and are:

(a) An SSI beneficiary who receives only SSI income, you only pay for board and room. You are allowed to keep a personal needs allowance of (~~((at least thirty-eight))~~) forty dollars and ((eighty-four)) twelve cents per month;

(b) An SSI beneficiary who receives SSI and SSA benefits, you only pay for board and room. You are allowed to keep a personal needs allowance of (~~((at least fifty-eight dollars and eighty-four cents per month))~~) forty dollars and twelve cents. You keep an additional twenty dollar disregard from non-SSI income;

(c) An SSI-related person under WAC 388-511-1105, you may be required to participate towards the cost of your personal care services in addition to your board and room if your financial eligibility is based on the facility's state contracted rate described in WAC 388-513-1305. You (~~((with receive))~~) are allowed to keep a personal needs allowance of

~~((fifty-eight))~~ forty dollars and ~~((eighty-four))~~ twelve cents. You keep an additional twenty dollar disregard from non-SSI income; or

(d) A GA-X client in a residential care facility, you are allowed to keep a personal allowance of only thirty-eight dollars and eighty-four cents per month. The remainder of your grant must be paid to the facility.

(3) The department pays the residential care facility from the first day of service through the:

(a) Last day of service when the Medicaid resident dies in the facility; or

(b) Day of service before the day the Medicaid resident is discharged.

WSR 07-17-154

PROPOSED RULES

UTILITIES AND TRANSPORTATION

COMMISSION

[Docket UE-061895—Filed August 21, 2007, 1:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-03-171.

Title of Rule and Other Identifying Information: Chapter 480-109 WAC, Electric companies—Acquisition of minimum quantities of conservation and renewable energy as required by the Energy Independence Act (chapter 19.285 RCW).

On November 7, 2006, Washington voters approved Initiative Measure No. 1-937, now codified as chapter 19.285 RCW. This new chapter requires large utilities to acquire all cost-effective energy conservation beginning in 2010 and to serve a minimum portion of their electricity load with renewable resources beginning in 2012. The rules proposed here establish the procedures investor-owned utilities must follow to demonstrate compliance with these statutory requirements (or with alternative compliance mechanisms). These regulations also establish penalty provisions, as well as reporting and public notification requirements.

Hearing Location(s): Commission Hearing Room 206, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, on October 24, 2007, at 1:30 p.m.

Date of Intended Adoption: October 24, 2007.

Submit Written Comments to: Washington Utilities and Transportation Commission (UTC), 1300 South Evergreen Park Drive S.W., P.O. Box 47250, Olympia, WA 98504-7250, e-mail records@utc.wa.gov, fax (360) 586-1150, by September 21, 2007. Please include "Docket UE-061895" in your comments.

Assistance for Persons with Disabilities: Contact Mary De Young by October 22, 2007, TTY (360) 586-8203 or (360) 664-1133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Energy Independence Act provides that the UTC "may adopt rules to ensure the proper implementation and enforcement of this chapter as it applies to investor-owned utilities" (RCW

19.285.080). The commission initiated an inquiry to determine whether new regulations were needed to ensure that the new renewable resource and conservation requirements were properly implemented and enforced and whether new rules would further the objectives of the act: Promote energy independence in the state and the Pacific Northwest region; stabilize electricity prices for Washington residents; provide economic benefits for Washington counties and farmers; create high-quality jobs in Washington, provided opportunities for training apprentice workers in the renewable energy field, protect clean air and water, and position Washington state as a national leader in clean energy technologies.

The UTC's preproposal [statement of] inquiry revealed that new rules would be beneficial and in the public interest because they would facilitate implementation of the act. The proposed rules clarify the dates by which the utilities must acquire the requisite renewable resources as well as the content of reports needed to demonstrate compliance. The proposed regulations also provide guidance on how utilities may implement the conservation mandate.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 80.01.040, 80.04.160, and chapter 19.285 RCW.

Statute Being Implemented: Chapter 19.285 RCW.

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

Name of Proponent: Washington utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Nicolas Garcia, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1346; Implementation and Enforcement: Carole J. Washburn, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1174.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules require investor-owned utilities, none of which qualify as a small business, to acquire certain minimum amounts of renewable resources and all cost-effective, reliable and available conservation. Because the proposed rules will not increase costs to small businesses, an SBEIS is not required under RCW 19.85.030(1).

A cost-benefit analysis is not required under RCW 34.05.328. The commission is not an agency to which RCW 34.05.328 applies. The proposed rules are not significant legislative rules of the sort referenced in RCW 34.05.328(5).

August 21, 2007

Ann E. Rendahl

for Carole J. Washburn

Executive Secretary

Chapter 480-109 WAC

ELECTRIC COMPANIES—ACQUISITION OF MINIMUM QUANTITIES OF CONSERVATION AND RENEWABLE ENERGY AS REQUIRED BY THE

**ENERGY INDEPENDENCE ACT (CHAPTER 19.285
RCW)**

NEW SECTION

WAC 480-109-001 Purpose and scope. The purpose of this chapter is to establish rules that electric utilities will use to comply with the requirements of the Energy Independence Act, chapter 19.285 RCW.

NEW SECTION

WAC 480-109-002 Application of rules. (1) The rules in this chapter apply to any electric utility that is subject to the commission's jurisdiction under RCW 80.04.010 and chapter 80.28 RCW.

(2) Any affected person may ask the commission to review the interpretation of these rules by a utility by making an informal complaint under WAC 480-07-910, Informal complaints, or by filing a formal complaint under WAC 480-07-370, Pleadings—General.

(3) No exception from the provisions of any rule in this chapter is permitted without prior written authorization by the commission. Such exceptions may be granted only if consistent with the public interest, the purposes underlying regulation, and applicable law. Any deviation from the provisions of any rule in this chapter without prior commission authorization will be subject to penalties as provided by law.

NEW SECTION

WAC 480-109-003 Exemptions from rules in chapter 480-109 WAC. The commission may grant an exemption from the provisions of any rule in this chapter in the same manner and consistent with the standards and according to the procedures set forth in WAC 480-07-110 (Exemptions from and modifications to commission rules; conflicts involving rules).

NEW SECTION

WAC 480-109-004 Additional requirements. (1) These rules do not relieve any utility from any of its duties and obligations under the laws of the state of Washington.

(2) The commission retains its authority to impose additional or different requirements on any utility in appropriate circumstances, consistent with the requirements of law.

NEW SECTION

WAC 480-109-006 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

NEW SECTION

WAC 480-109-007 Definitions. (1) "Annual retail revenue requirement" means the total revenue the commission authorizes a utility an opportunity to recover in Washington

rates pursuant to a general rate proceeding or other general rate revision.

(2) "Commission" means the Washington utilities and transportation commission.

(3) "Conservation" means any reduction in electric power consumption resulting from increases in the efficiency of energy use, production, or distribution.

(4) "Conservation council" means the Pacific Northwest electric power and conservation council.

(5) "Cost-effective" has the same meaning as defined in RCW 80.52.030.

(6) "Customer" means a person or entity that purchases electricity for ultimate consumption and not for resale.

(7) "Department" means the department of community, trade, and economic development or its successor.

(8) "Distributed generation" means an eligible renewable resource where the generation facility or any integrated cluster of such facilities has a generating capacity of not more than five megawatts.

(9) "Eligible renewable resource" means:

(a) Electricity from a generation facility powered by a renewable resource other than fresh water that commences operation after March 31, 1999, where:

(i) The facility is located in the Pacific Northwest; or

(ii) The electricity from the facility is delivered into Washington state on a real-time basis without shaping, storage, or integration services; or

(b) Incremental electricity produced as a result of efficiency improvements completed after March 31, 1999, to hydroelectric generation projects owned by a qualifying utility and located in the Pacific Northwest or to hydroelectric generation in irrigation pipes and canals located in the Pacific Northwest, where the additional generation in either case does not result in new water diversions or impoundments.

(10) "High-efficiency cogeneration" means a cogeneration facility with a useful thermal output of no less than thirty-three percent of the total energy output, under normal operating conditions. Electrical output will be calculated as the kWh output of the facility over a period of time, converted to BTUs using the conversion factor of 3413 BTUs/kWh. Total energy output must be calculated by summing all useful energy outputs of the cogeneration facility over the same period of time expressed in BTU units.

(11) "Integrated resource plan" or "IRP" means the filing made every two years by an electric utility in accordance with WAC 480-100-238, Integrated resource planning.

(12) "Load" means the amount of kilowatt-hours of electricity delivered in the most recently completed year by a qualifying utility to its Washington retail customers. Load does not include off-system sales or electricity delivered to transmission-only customers.

(13) "Nonpower attributes" means all environmentally related characteristics, exclusive of energy, capacity reliability, and other electrical power service attributes, that are associated with the generation of electricity from a renewable resource, including but not limited to the facility's fuel type, geographic location, vintage, qualification as an eligible renewable resource, and avoided emissions of pollutants to the air, soil, or water, and avoided emissions of carbon dioxide and other greenhouse gases.

(14) "Pro rata" means the calculation used to establish a minimum level for a conservation target based on a utility's projected ten year conservation potential.

(15) "Pacific Northwest" has the same meaning as defined for the Bonneville power administration in section 3 of the Pacific Northwest Electric Power Planning and Conservation Act (94 Stat. 2698; 16 U.S.C. Sec. 839a).

(16) "Request for proposal" or "RFP" means the documents describing an electric utility's solicitation of bids for delivering electric capacity, energy, or capacity and energy, or conservation.

(17) "Renewable energy credit" means a tradable certificate of proof of at least one megawatt-hour of an eligible renewable resource where the generation facility is not powered by fresh water, the certificate includes all of the non-power attributes associated with that one megawatt-hour of electricity, and the certificate is verified by a renewable energy credit tracking system selected by the department.

(18) "Renewable resource" means:

- (a) Water;
- (b) Wind;
- (c) Solar energy;
- (d) Geothermal energy;
- (e) Landfill gas;
- (f) Wave, ocean, or tidal power;
- (g) Gas from sewage treatment facilities;
- (h) Biodiesel fuel as defined in RCW 82.29A.135 that is not derived from crops raised on land cleared from old growth or first-growth forests where the clearing occurred after December 7, 2006; and

(i) Biomass energy based on animal waste or solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include:

- (i) Wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic;
- (ii) Black liquor by-product from paper production;
- (iii) Wood from old growth forests; or
- (iv) Municipal solid waste.

(19) "Utility" means an electrical company that is subject to the commission's jurisdiction under RCW 80.04.010 and chapter 80.28 RCW.

(20) "Year" means the twelve-month period commencing January 1st and ending December 31st.

NEW SECTION

WAC 480-109-010 Conservation resources. (1) By January 1, 2010, and every two years thereafter, each utility must project its cumulative ten-year conservation potential.

(a) This projection need only consider conservation resources that are cost-effective, reliable and feasible.

(b) This projection must be derived from and reasonably consistent with one of two sources:

(i) The utility's most recent IRP, including any information learned in its subsequent resource acquisition process, or the utility must document the reasons for any differences. When developing this projection, utilities must use methodologies that are consistent with those used by the conservation council in its most recent regional power plan. A utility

may, with full documentation on the rationale for any modification, alter the conservation council's methodologies to better fit the attributes and characteristics of its service territory.

(ii) The utility's proportionate share, developed as a percentage of its retail sales, of the conservation council's current power plan targets for the state of Washington.

(2) Beginning January 2010, and every two years thereafter, each utility must establish a biennial conservation target.

(a) The biennial conservation target must identify all achievable conservation opportunities.

(b) The biennial conservation target must be no lower than a pro rata share of the utility's ten-year cumulative achievable conservation potential. Each utility must fully document how it prorated its ten-year cumulative conservation potential to determine the minimum level for its biennial conservation target.

(c) The biennial conservation target may be a range rather than a point target.

(3) On or before January 31, 2010, and every two years thereafter, each utility must file with the commission a report identifying its ten-year achievable conservation potential and its biennial conservation target.

(a) Participation by the commission staff and the public in the development of the ten-year conservation potential and the two-year conservation target is essential. The report must outline the extent of public and commission staff participation in the development of these conservation metrics.

(b) This report must identify whether the conservation council's plan or the utility's IRP and acquisition process were the source of its ten-year conservation potential. The report must also clearly state how the utility prorated this ten-year projection to create its two-year conservation target.

(c) If the utility uses its integrated resource plan and related information to determine its ten-year conservation potential, the report must describe the technologies, data collection, processes, procedures and assumptions the utility used to develop these figures. This report must describe and support any changes in assumptions or methodologies used in the utility's most recent IRP or the conservation council's power plan.

(4) Commission staff and other interested parties may file written comments regarding a utility's ten-year achievable conservation potential or its biennial conservation target within thirty days of the utility's filing.

(a) After reviewing any written comments, the commission will decide whether to hear oral comments regarding the utility's filing at a subsequent open public meeting.

(b) The commission, considering any written or oral comments, may determine that additional scrutiny is warranted of a utility's ten-year achievable conservation potential or biennial conservation target. If the commission determines that additional review is needed, the commission will establish an adjudicative proceeding or other process to fully consider appropriate revisions.

(c) Upon conclusion of the commission review, the commission will determine whether to approve, approve with conditions, or reject the utility's ten-year achievable conservation potential and biennial conservation target.

NEW SECTION

WAC 480-109-020 Renewable resources. (1) Each utility must meet the following annual targets.

(a) By January 1 of each year beginning in 2012 and continuing through 2015, each utility must acquire sufficient eligible renewable resources, equivalent renewable energy credits, or a combination of both, to supply at least three percent of its load for the remainder of each year.

(b) By January 1 of each year beginning in 2016 and continuing through 2019, each utility must acquire sufficient eligible renewable resources, equivalent renewable energy credits, or a combination of both, to supply at least nine percent of its load for the remainder of each year.

(c) By January 1 of each year beginning in 2020 and continuing each year thereafter, each utility must acquire sufficient eligible renewable resources, equivalent renewable energy credits, or a combination of both, to supply at least fifteen percent of its load for the remainder of each year.

(2) Renewable energy credits produced during the target year, the preceding year or the subsequent year may be used to comply with this annual renewable resource requirement provided that they were acquired by January 1 of the target year.

(3) In meeting the annual targets of this subsection, a utility must calculate its annual load based on the average of the utility's load for the previous two years.

(4) A renewable resource within the Pacific Northwest may receive integration, shaping, storage or other services from sources outside of the Pacific Northwest and remain eligible to count towards a utility's renewable resource target.

NEW SECTION

WAC 480-109-030 Alternatives to the renewable resource requirement. Instead of meeting its annual renewable resource target in WAC 480-109-020, a utility may make one of three demonstrations.

(1) A utility may invest at least four percent of its total annual retail revenue requirement on the incremental costs of eligible renewable resources, renewable energy credits, or a combination of both. The incremental cost of an eligible renewable resource is the difference between the levelized delivered portfolio cost of the eligible renewable resource and the levelized delivered cost of an equivalent amount of reasonably available nonrenewable resource. The portfolio analysis used will be reasonably consistent with principles used in the utility's resource planning and acquisition analyses.

(2) A utility may demonstrate that events beyond its reasonable control that could not have been reasonably anticipated or ameliorated prevented it from meeting the renewable energy target. Such events may include weather-related damage, mechanical failure, strikes, lockouts, or actions of a governmental authority that adversely affect the generation, transmission, or distribution of an eligible renewable resource owned by or under contract to a qualifying utility.

(3) A utility may demonstrate all of the following:

(a) Its weather-adjusted load for the previous three years on average did not increase.

(b) All new or renewed ownership or purchases of electricity from nonrenewable resources other than daily spot purchases were offset by equivalent renewable energy credits.

(c) It invested at least one percent of its total annual retail revenue requirement that year on eligible renewable resources, renewable energy credits, or a combination of both.

NEW SECTION

WAC 480-109-040 Annual reporting requirements.

(1) On or before June 1, 2012, and annually thereafter, each utility must file a report with the commission and the department regarding its progress in meeting its conservation and renewable resource targets during the preceding year.

(a) The report must include the conservation target for that year, the expected and actual electricity savings from conservation, and all expenditures made to acquire conservation.

The report may count electricity savings from new high-efficiency cogeneration facilities operating within the utility's service area towards the utility's conservation target during the biennium when the cogeneration facility commences operation. The electricity savings reported for each high-efficiency cogeneration facility is the amount of energy consumption avoided by the sequential production of electricity and useful thermal energy from a common fuel source.

(b) The report must include the utility's annual load for the prior two years, the total number of megawatt-hours from eligible renewable resources and/or renewable resource credits the utility needed to meet its annual renewable energy target by January 1 of the target year, the amount (in megawatt-hours) and cost of each type of eligible renewable resource used, the amount (in megawatt-hours) and cost of renewable energy credits acquired, the type and cost (per megawatt-hour) of the least-cost substitute resources available to the utility that do not qualify as eligible renewable resources, the incremental cost of eligible renewable resources and renewable energy credits, and the ratio of this investment relative to the utility's total annual retail revenue requirement.

(c) The report must state if the utility is relying upon one of the alternative compliance mechanisms provided in WAC 480-109-030 instead of meeting its renewable resource target. A utility using an alternative compliance mechanism must include sufficient data, documentation and other information in its report to demonstrate that it qualifies to use that alternative mechanism.

(d) The report must describe the steps the utility is taking to meet the renewable resource requirements for the current year. This description should indicate whether the utility plans to use or acquire its own renewable resources, plans to or has acquired contracted renewable resources, or plans to use an alternative compliance mechanism.

(2) Commission staff and other interested parties may file written comments regarding a utility's report within thirty days of the utility's filing.

(a) After reviewing any written comments, the commission will decide whether to hear oral comments regarding the utility's filing at a subsequent open meeting.

(b) The commission, considering any written or oral comments, may determine that additional scrutiny of the report is warranted. If the commission determines that additional review is needed, the commission will establish an adjudicative proceeding or other process to fully consider appropriate revisions.

(c) Upon conclusion of the commission review of the utility's report, the commission will issue a decision determining whether the utility complied with its conservation and renewable resource targets. If the utility is not in compliance, the commission will determine the amount in megawatt-hours by which the utility was deficient in meeting those targets.

(3) If a utility revises its report as a result of the commission review, the utility must submit the revised final report to the department.

(4) All current and historical reports required in subsection (1) of this section must be posted on the utility's web site and a copy of any report must be provided to any person upon request.

(5) Each utility must provide a summary of this report to its customers by bill insert or other suitable method. This summary must be provided within ninety days of final action by the commission on this report.

NEW SECTION

WAC 480-109-050 Administrative penalties. (1) A utility that fails to achieve either its conservation target or its renewable resource target must pay an administrative penalty for each megawatt-hour of shortfall in the amount of fifty dollars adjusted annually, beginning in 2007, to reflect changes in the gross domestic product-implicit price deflator, as published by the Bureau of Economic Analysis of the United States Department of Commerce or its successor.

(2) Administrative penalties are due within fifteen days of a commission determination, pursuant to WAC 480-109-040(2), that a utility failed to achieve its conservation or renewable resource target.

(3) A utility that pays an administrative penalty under subsection (2) of this section, must notify its retail electric customers within three months of incurring a penalty stating the size of the penalty, the reason it was incurred and whether the utility expects to seek recovery of the penalty amounts in rates. The utility must provide this notification in a bill insert, a written publication mailed to all retail electricity customers, or another approach approved by the commission.

(4) A utility may request an accounting order from the commission authorizing the deferral of the cost of any administrative penalty assessed under this section. The approval of an accounting order to defer penalties does not constitute approval of recovery of penalties in rates. A utility may seek to recover deferred administrative penalties in a general rate case or power cost only type rate proceeding. If a utility seeks to recover deferred administrative penalties in rates, the utility must demonstrate the prudence of its decisions and actions when it failed to meet the renewable resource targets or one of the compliance alternatives provided in WAC 480-109-030, or the energy conservation targets. When assessing a request for recovery of deferred administrative penalties,

the commission will consider the intent of the Energy Independence Act, other laws governing commission actions, policies and precedents of the commission, and the commission's responsibility to act in the public interest.

WSR 07-17-157

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed August 21, 2007, 2:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-10-015.

Title of Rule and Other Identifying Information: Enhanced driver's license and identicard, establishes the requirements, fees, standards, and procedures for the application, issuance, and denial of enhanced driver's licenses and identicards that may be used for purposes of facilitating the crossing of the border between Washington state and British Columbia.

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA (check in at counter on first floor), on September 25, 2007, at 3:00 p.m.

Date of Intended Adoption: September 26, 2007.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98507-9030, e-mail cholloway@dol.wa.gov, fax (360) 586-8351, by September 24, 2007.

Assistance for Persons with Disabilities: Contact Clark J. Holloway by September 24, 2007, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Creates a new chapter in Title 308 WAC, chapter 308-105 WAC, pertaining to enhanced driver's licenses and identicards. Creates a new section in chapter 308-105 WAC to define unique terms. Creates a new section in chapter 308-105 WAC to specify requirements for application for an enhanced driver's license or identicard. Creates a new section in chapter 308-105 WAC to provide for due process in the event an application for an enhanced driver's license or identicard is denied. Creates a new section in chapter 308-105 WAC to specify the fee for an enhanced driver's license or identicard. Amends WAC 308-104-018 to permit a license or identicard applicant's address of record to be updated from information filed by a contractor who verifies or supplies correct addresses obtained from a public official or governmental agency. Amends WAC 308-104-019 to specify that an enhanced driver's license or identicard is not eligible for renewal by electronic commerce.

Reasons Supporting Proposal: Rules necessary to implement section 1, chapter 7, Laws of 2007.

Statutory Authority for Adoption: RCW 46.01.110 and section 1, chapter 7, Laws of 2007.

Statute Being Implemented: Section 1, chapter 7, Laws of 2007.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Clark J. Holloway, Highways-Licenses Building, Olympia, Washington, (360) 902-3846; Implementation and Enforcement: Becky Loomis, Highways-Licenses Building, Olympia, Washington, (360) 902-4088.

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 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

August 21, 2007

Becky Loomis
Assistant Director

Chapter 308-105 WAC

ENHANCED DRIVER'S LICENSE AND IDENTICARD

NEW SECTION

WAC 308-105-010 Definitions. As used in this chapter, unless the context requires otherwise, the term:

(1) "Enhanced driver's license" means a driver's license that is issued under RCW 46.20.____ (Section 1, Chapter 7, Laws of 2007).

(2) "Enhanced identicard" means an identicard that is issued under RCW 46.20.____ (Section 1, Chapter 7, Laws of 2007).

NEW SECTION

WAC 308-105-020 Application for enhanced driver's license or identicard. (1) An applicant for an enhanced driver's license must be eligible for a standard driver's license under chapter 46.20 RCW, provide the information required by RCW 46.20.091 and WAC 308-104-014, and establish his or her identity as provided by RCW 46.20.035 and WAC 308-104-040.

(2) An applicant for an enhanced identicard must be eligible for a standard identicard under chapter 46.20 RCW, provide the information required by RCW 46.20.117 and WAC 308-104-014, and establish his or her identity as provided by RCW 46.20.035 and WAC 308-104-040.

(3) An applicant for an enhanced driver's license or identicard must sign a declaration acknowledging that his or her photograph will be used as a facial recognition biometric identifier, and that he or she understands that the biometric identifier will be used in a one-to-many biometric matching system for purposes of verifying the identity of the applicant.

(4) An applicant for an enhanced driver's license or identicard must sign a declaration acknowledging that he or she has been notified that the enhanced driver's license or identicard contains a radio frequency identification chip, that he or she has been given an opportunity to receive information on the type of information the chip contains and how it may be used, and that tampering with or deactivating the chip will invalidate the enhanced driver's license or identicard for purposes of border crossing.

(5) An applicant for an enhanced driver's license or identicard must provide the department with satisfactory proof of United States citizenship. United States citizenship may be established by providing at least one of the following pieces of documentation:

(a) A United States passport that is valid or has been expired for no more than five years;

(b) Certified state birth certificate;

(c) Certificate of naturalization;

(d) Certificate of citizenship; or

(e) Department of state consular report of birth abroad.

(6) An applicant for an enhanced driver's license or identicard must provide the department with satisfactory proof of residency in the state of Washington.

(7) An enhanced driver's license or identicard will not be issued to an applicant who is unable to provide the department with satisfactory proof required under this section.

NEW SECTION

WAC 308-105-030 Enhanced driver's license or identicard denial—Hearing. (1) Within twenty days of the date of notification by the department that an application for an enhanced driver's license or identicard has been denied under WAC 308-105-020(7), the aggrieved person may submit a written request for a formal hearing to contest the department's decision.

(2) Within twenty days of receipt of a request for a formal hearing, the department shall notify the requester in writing of the time and location of the hearing.

(3) The hearing shall be conducted by a hearing officer appointed by the director. The director may delegate the authority to render final decisions to the hearing officer.

(4) The scope of the hearing shall be limited to the following issues:

(a) Has the applicant provided the necessary documentation and information;

(b) Has the applicant established his or her identity;

(c) Has the applicant established that he or she is a United States citizen; and

(d) Has the applicant established that he or she maintains permanent residency in the state of Washington?

(5) The person shall have the burden of proving that he or she has established the requirements listed in subsection (4) of this section.

(6) Upon conclusion of the hearing, the hearing officer shall make written findings on the matter under consideration and shall sustain, modify, or reverse the department's denial of the application for an enhanced driver's license or identicard. The department shall notify the person of the hearing officer's decision and of the person's right to request an appeal in the superior court in the county of his or her residence in writing either by personal service or by first class mail sent to the last address of record.

(7) A person denied an enhanced driver's license or identicard under subsection (6) of this section shall have the right within thirty days after receiving notice of the decision following a formal hearing to file a notice of appeal in the superior court in the county of his residence. The hearing on the appeal hereunder shall be de novo.

(8) If the person does not request a formal hearing within the time specified in subsection (1) of this section, or fails to appear for the hearing, said person shall have waived his or her right to any further administrative remedies, including the right to appeal, and the case shall be remanded to the department and the department's previous decision denying the enhanced driver's license or identicard shall be affirmed.

NEW SECTION

WAC 308-105-100 Fee. The fee for an enhanced driver's license or enhanced identicard is fifteen dollars. This fee is in addition to the regular drivers' license or identicard fees.

AMENDATORY SECTION (Amending WSR 96-20-089, filed 10/1/96, effective 11/1/96)

WAC 308-104-018 Changing the address of record.

(1) In addition to the form identified in RCW 46.20.205, the department may change a driver's or identicard holder's address of record upon:

(a) The verbal request of the driver or identicard holder, where the department has satisfied itself as to the identity of the person making the request; or

(b) Receipt of written documentation or electronic communication concerning the driver or identicard holder, where such documentation or communication includes an address that differs from the one maintained by department and is:

(i) Signed by the driver or identicard holder;

(ii) Filed at the request of the driver or identicard holder;

((~~or~~))

(iii) Filed by a public official or governmental agency; or

(iv) Filed by a contractor who verifies or supplies correct addresses obtained from a public official or governmental agency.

(2) This section shall not be construed as relieving the driver or identicard holder of the responsibility to notify the department of a change of address as required by RCW 46.20.205. Failure by the department to change a driver's or identicard holder's address of record, where the driver or identicard holder has not notified the department of the change of address with the form identified in RCW 46.20.-205, shall not limit the effectiveness of any notice mailed to the driver or identicard holder at the address of record as previously established by the department.

AMENDATORY SECTION (Amending WSR 04-20-012, filed 9/24/04, effective 10/25/04)

WAC 308-104-019 Renewal of driver's license or identicard by electronic commerce—Eligibility. An applicant for a driver's license renewal or identicard renewal may apply by electronic commerce if he or she has received an authorization notice from the department.

(1) The department may send an authorization notice to a person whose valid driver's license is about to expire if the person:

(a) Is eligible to renew his or her driver's license by electronic commerce under the provisions of RCW 46.20.120 (3)(b) or (4)(b);

(b) Has previously been issued a digital driver's license;

(c) Is at least twenty-four and not more than sixty-five years of age;

(d) Has a valid Social Security number on file with the department;

(e) Has a valid mailing address on his or her driving record as maintained by the department;

(f) Does not have a commercial driver's license, enhanced driver's license or identicard, instruction permit, or agricultural permit;

(g) Has not paid a fee owed to the department with a check that has been dishonored;

(h) Has not failed to appear, respond, or comply with the terms of or in response to a traffic citation or notice of traffic infraction; and

(i) Does not have any actions pending against his or her driver's license or driving privileges.

(2) A person applying for driver's license renewal by electronic commerce must:

(a) Certify that within the last six months he or she has not had a loss of consciousness or control that could impair his or her ability to operate a motor vehicle safely;

(b) Make the necessary certification under WAC 308-104-010(2); and

(c) Complete the required application and pay all applicable fees.

(3) The department may send an authorization notice to a person whose valid identicard is about to expire if the person:

(a) Is eligible to renew his or her identicard by electronic commerce under the provisions of RCW 46.20.117 (3)(b);

(b) Is at least twenty-four years of age; and

(c) Has previously been issued a digital identicard.

(4) A person applying for identicard renewal by electronic commerce must complete the required application and pay all applicable fees.

(5) The department may specify the means and establish procedures by which a person may make an application under this section.

WSR 07-17-161

PROPOSED RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2007-05—Filed August 22, 2007, 7:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-11-156.

Title of Rule and Other Identifying Information: Disclosure form to be used by insurers marketing individual and group fixed-payment insurance, as required by recently enacted SHB 1233 (chapter 296, Laws of 2007).

Hearing Location(s): Insurance Commissioner's Office, 5000 Capitol Boulevard, Room TR-120, Tumwater, WA 98504-0255, on September 25, 2007, at 10:00 a.m.

Date of Intended Adoption: October 1, 2007.

Submit Written Comments to: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, e-mail KacyS@oic.wa.gov, fax (360)586-3109, by September 24, 2007.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by September 24, 2007, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 296, Laws of 2007, requires the commissioner to adopt rules that set forth the content of the standard disclosure form that must be used by insurers marketing individual and group fixed payment insurance products. These proposed rules set forth the content of the form.

Reasons Supporting Proposal: These rules are necessary to satisfy the legislative directive to the commissioner. Thorough disclosure of policy benefits, exclusions, and limitations will provide consumers an opportunity to make better informed decisions prior to purchasing coverage.

Statutory Authority for Adoption: RCW 48.02.060, chapter 296, Laws of 2007.

Statute Being Implemented: Chapter 296, 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: Janis LaFlash, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7040; Implementation: Beth Berendt, P.O. Box 40258, Olympia, WA 98504-0255, (360) 725-7117; and Enforcement: Carol Sureau, P.O. Box 40258, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required of rules where the content is explicitly and specifically dictated by statute.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required of rules where the content is explicitly and specifically dictated by statute.

August 22, 2007

Mike Kreidler

Insurance Commissioner

CAUTION: If you are also covered under a High Deductible Health Plan (HDHP) and are contributing to a Health Savings Account (HSA), before you purchase this policy you should check with your tax advisor to be sure that you will continue to be eligible to contribute to the HSA if you purchase this coverage.

The benefits under this policy are summarized below.

- Type of coverage:
- Benefit amount:
- Benefit trigger (identify any periods of no coverage such as eligibility or waiting periods):
- Duration of coverage:
- Renewability of coverage:

Policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify

NEW SECTION

WAC 284-50-440 Standard disclosure form for individual policies—Illness-triggered fixed payment insurance, hospital confinement fixed payment insurance, or other fixed payment insurance. (1) All disability insurers offering individual policies that provide benefits in the form of illness-triggered fixed payments, hospital confinement fixed payments or other fixed payment insurance, must issue a disclosure form in substantially the format and content outlined below. The disclosure form must be provided to all applicants at the time of solicitation and completion of the application form for coverage. Every insurer must have a mechanism in place to verify delivery of the disclosure to the applicant.

(2) The type size and font of the disclosure form must be easily read and be no smaller than 10 point.

(3) The insurer's disclosure form must be filed **for approval** with the commissioner prior to use.

(4) The standard disclosure form replaces any outline of coverage that would otherwise be required for fixed payment policies and must include, at a minimum, the following information:

(Insurer's name and address)

**IMPORTANT INFORMATION ABOUT THE
COVERAGE YOU ARE BEING OFFERED**

Save this statement! It may be important to you in the future. The Washington State Insurance Commissioner requires that we give you the following information about fixed payment benefits.

This coverage is not comprehensive health care insurance and will not cover the cost of most hospital and other medical services.

This disclosure document provides a very brief description of the important features of the coverage you are considering. It is not an insurance contract and only the actual policy provisions will control. The policy itself will include in detail the rights and obligations of both you and (insurer's name).

This coverage is designed to pay you a fixed dollar amount regardless of the amount that the provider charges. Payments are not based on a percentage of the provider's charge and are paid in addition to any other health plan coverage you may have.

payment of the benefits described above include the following:

(List all exclusions including those that relate to limitations for pre-existing conditions.)

NEW SECTION

WAC 284-96-550 Standard disclosure form for group coverage—Illness-triggered fixed payment insurance, hospital confinement fixed payment insurance, or

other fixed payment insurance. (1) All disability insurers offering group policies that provide benefits in the form of illness-triggered fixed payments, hospital confinement fixed payments or other fixed payment insurance, must issue a disclosure form in substantially the format and content outlined below. The disclosure form must be provided to the master policyholder at the time of solicitation and completion of the application form and to all enrollees at the time of enrollment. Every insurer must have a mechanism in place to verify delivery of the disclosure to the master policyholder and to every enrollee.

(2) The type size and font of the disclosure form must be easily read and be no smaller than 10 point.

(3) The insurer's disclosure form must be filed **for approval** with the commissioner prior to use.

(4) The standard disclosure form replaces any outline of coverage that would otherwise be required for fixed payment policies and must include, at a minimum, the following information:

(Insurer's name and address)

**IMPORTANT INFORMATION ABOUT THE
COVERAGE YOU ARE BEING OFFERED**

CAUTION: If you are also covered under a High Deductible Health Plan (HDHP) and are contributing to a Health Savings Account (HSA), you should check with your tax advisor or benefit advisor prior to purchasing this coverage to be sure that you will continue to be eligible to contribute to the HSA if this coverage is purchased.

The benefits under this policy are summarized below.

- Type of coverage:
- Benefit amount:
- Benefit trigger (identify any periods of no coverage such as eligibility or waiting periods):
- Duration of coverage:
- Renewability of coverage:

Policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described above include the following:

(List all exclusions including those that relate to limitations for pre-existing conditions.)

**WSR 07-17-164
PROPOSED RULES
OFFICE OF
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2006-10—Filed August 22, 2007,
7:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-21-123.

Title of Rule and Other Identifying Information: Actuarial opinion and memorandum regulation.

Hearing Location(s): Insurance Commissioner's Office, Room TR-120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on September 25, 2007, at 11:00 a.m.

Date of Intended Adoption: October 1, 2007.

Save this statement! It may be important to you in the future. The Washington State Insurance Commissioner requires that we give you the following information about fixed payment benefits.

This coverage is not comprehensive health care insurance and will not cover the cost of most hospital and other medical services.

This disclosure provides a very brief description of the important features of the coverage being considered. It is not an insurance contract and only the actual policy provisions will control. The policy itself will include in detail the rights and obligations of both the master policyholder and (insurer's name).

This coverage is designed to pay you a fixed dollar amount regardless of the amount that the provider charges. Payments are not based on a percentage of the provider's charge and are paid in addition to any other health plan coverage you may have.

Submit Written Comments to: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, e-mail KacyS@oic.wa.gov, fax (360) 586-3109, by September 24, 2007.

Assistance for Persons with Disabilities: Contact Lorie Villaflora by September 24, 2007, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These proposed rules amend several sections of the actuarial opinion and memorandum regulation (WAC 284-07-310 through 284-07-400) to bring them in line with the model regulation of accreditation part A standards of the National Association of Insurance Commissioners.

Reasons Supporting Proposal: Actuarial opinions and memoranda must meet certain specified standards to be considered appropriate to protect the insurance-buying public. Amendment of the existing regulation is required to meet NAIC accreditation standards. All life companies must perform an asset adequacy analysis and file a regulatory asset adequacy issues summary. These requirements are being added to the existing regulation. Portions of the regulation have been revised for clarity of language.

Statutory Authority for Adoption: RCW 48.02.060, 48.74.025, 48.36A.250, 48.36A.260.

Statute Being Implemented: RCW 48.74.025, 48.36A.-250, 48.36A.260.

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: Roy Olson, P.O. Box 40255, Olympia, WA 98504-0255,

(360) 725-7136; Implementation: Beth Berendt, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117; and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement
(required by Regulatory Fairness Act (chapter 19.85 RCW)
and RCW 34.05.310)

The following small business economic impact statement is prepared in the absence of George Xu, economist. In summary: The proposed amendments are required by the NAIC for continuing accreditation; the rules are based on an NAIC model regulation and were developed and considered by insurers and states in a nationwide process that provided an opportunity for participation by insurers and regulators; the rules will affect all insurers equally (whether large or small, whether domiciled in Washington or elsewhere); and the costs to insurers to comply with requirements that differ in Washington from other states where the NAIC model regulation has been adopted would be greater than the cost of compliance with these amendments.

These proposed amendments, chapter 284-07 WAC, the actuarial opinion and memorandum rules, would apply to all life insurance companies, fraternal benefit societies, and to all disability insurers (#6311 and #6321) that file annual statements on the "life and accident health blank."

- Some proposed amendments are to current rules and are necessary to meet recent changes to the NAIC Actuarial Opinion and Memorandum model regulation.
- Several existing requirements are proposed to be amended for ease of understanding and are not intended to change the meaning of the rules.

The proposed amended actuarial opinion and memorandum rules will require additional certifications and information to be included in a company's annual statement by both company and consulting actuaries, and this is likely to somewhat increase costs related to preparation of filing of annual statements.

All life insurers, fraternal benefit societies, and disability insurers that file their annual statements on the life and accident health blank will be equally affected by these proposed amendments.

This state is required to adopt these proposed amendments by the National Association of Insurance Commissioners (NAIC) as a condition of retaining Washington's accreditation by that organization.

- These amendments are based on NAIC model regulations developed after nationwide discussions that involved state regulators and insurers. The concerns of both insurers and states were considered during the development of the NAIC's model regulations.
- Edits to the NAIC model regulations were made to make these proposed rules easier to understand.
 - The proposed edits are not intended to change the meaning of the NAIC's model regulations.
 - Other edits have been made to existing rules to make the rules easier to understand.

These proposed amendments would apply equally to small and large insurers.

Affected insurers will be developing actuarial opinions and memoranda to file in other states whose rules are also based on the NAIC model regulation.

- Standardization among states of requirements for actuarial opinions and memoranda will result in a savings to insurers; that savings is likely to offset any additional compliance costs that would be incurred if insurers were required to complete unique opinions and memoranda for Washington.
- Standardization of filing requirements based on the NAIC model regulation is the least burdensome alternative to both insurers and this state.

These amendments to chapter 284-07 WAC are not required by federal law or federal regulation and are not the product of "pilot rule making." Insurers are not subject to any conflicting state or federal rule on this same topic. The amendments, however, are required by the NAIC in order for Washington to maintain its NAIC accreditation.

A copy of the statement may be obtained by contacting Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7041, fax (360) 586-3109, e-mail Kacys@oic.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7041, fax (360) 586-3109, e-mail Kacys@oic.wa.gov.

August 22, 2007
Mike Kreidler
Insurance Commissioner

ACTUARIAL OPINION AND MEMORANDUM REGULATION

AMENDATORY SECTION (Amending Order R 94-26, filed 12/30/94, effective 1/30/95)

WAC 284-07-310 Purpose. The purpose of this regulation, WAC 284-07-310 through and including WAC 284-07-400, called the actuarial opinion and memorandum regulation, is to prescribe:

(1) Guidelines and standards for statements of actuarial opinion (~~that are to be~~) submitted in accordance with the requirements of RCW 48.74.025, 48.36A.250, 48.36A.260, and for supporting memoranda (in support thereof);

(2) ~~((Guidelines and standards for statements of actuarial opinion which are to be submitted when a company is exempt from RCW 48.74.025(2); and~~

~~(3)))~~ Rules applicable to the appointment of an appointed actuary; and

(3) Guidelines and standards relating to "adequacy of reserves."

AMENDATORY SECTION (Amending Order R 94-26, filed 12/30/94, effective 1/30/95)

WAC 284-07-330 Scope. (1) This regulation applies to all life insurance companies and fraternal benefit societies

doing business in this state, to all life insurance companies and fraternal benefit societies which are authorized to reinsure life insurance, annuities, or disability insurance business in this state; and to all disability insurers that file annual statements on the life and accident and health blank. This regulation requires the appointed actuary to use his or her professional judgment in performing the required asset analysis and developing the actuarial opinion and supporting memoranda consistent with relevant actuarial standards of practice. The commissioner may specify specific methods of actuarial analysis and actuarial assumptions when, in the commissioner's opinion, such specifications are necessary.

(2) This regulation applies to all annual statements filed with the commissioner on and after ~~((the effective date of this regulation))~~ December 31, 2007. ~~((Except with respect to companies which are exempted pursuant to WAC 284-07-360, a statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with WAC 284-07-380, and a memorandum in support thereof in accordance with WAC 284-07-390, shall be required each year. Any company so exempted must file a statement of actuarial opinion pursuant to WAC 284-07-370.~~

~~(3) Notwithstanding the foregoing, the commissioner may require any company otherwise exempt pursuant to this regulation to submit a statement of actuarial opinion and to prepare a memorandum in support thereof in accordance with WAC 284-07-380 and 284-07-390 if, in the opinion of the commissioner, an asset adequacy analysis is necessary with respect to the company-))~~

AMENDATORY SECTION (Amending Order R 94-26, filed 12/30/94, effective 1/30/95)

WAC 284-07-340 Definitions. The following definitions apply throughout this regulation:

(1) "Actuarial opinion" means(~~(:~~

~~(a) With respect to WAC 284-07-380, 284-07-390, or 284-07-400,))~~ the opinion of an appointed actuary regarding the adequacy of the reserves and related actuarial items based on an asset adequacy ~~((test))~~ analysis set forth ~~((in accordance with))~~ WAC 284-07-380 and ~~((with presently accepted))~~ on applicable actuarial standards(~~(:~~

~~(b) With respect to WAC 284-07-370, the opinion of an appointed actuary regarding the calculation of reserves and related items, in accordance with WAC 284-07-370 and with those presently accepted actuarial standards which specifically relate to this opinion))~~ of practice.

(2) "Actuarial Standards Board" means the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

(3) "Annual statement" means that statement required by RCW 48.05.250 to be filed annually by the company with the commissioner.

(4) "Appointed actuary" means any individual who is appointed or retained in accordance with the requirements set forth in WAC 284-07-350(3) to provide the actuarial opinion and supporting memorandum as required by RCW 48.74.-025.

(5) "Asset adequacy analysis" means an analysis that meets the standards and other requirements ~~((referred to))~~ set forth in WAC 284-07-350(4)~~(; it may take many forms, including, but not limited to, cash flow testing, sensitivity testing, or applications of risk theory).~~

(6) "Company" means an insurance company, fraternal benefit society, or reinsurer subject to this regulation.

(7) ~~((("Noninvestment grade bonds" means those bonds designated as classes 3, 4, 5, or 6 by the National Association of Insurance Commissioners (NAIC) Securities Valuation Office (SVO).~~

~~(8))~~ "Qualified actuary" means an individual who meets the requirements set forth in WAC 284-07-350(2).

AMENDATORY SECTION (Amending Order R 94-26, filed 12/30/94, effective 1/30/95)

WAC 284-07-350 General requirements. The statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with WAC 284-07-380, and a memorandum in support thereof in accordance with WAC 284-07-390, are required each year.

~~((1) Submission of))~~ Statement of actuarial opinion~~(-):~~

~~((a) There is to be included on or attached to page 1 of the annual statement for each year beginning with the annual statement for 1994, the statement of an appointed actuary, entitled "statement of actuarial opinion," setting forth an opinion relating to reserves and related actuarial items held in support of policies and contracts, in accordance with WAC 284-07-380. Provided, however, That any company exempted pursuant to WAC 284-07-360 from submitting a statement of actuarial opinion in accordance with WAC 280-07-380 shall include on or attach to page 1 of the annual statement a statement of actuarial opinion rendered by an appointed actuary in accordance with WAC 284-07-370.~~

~~(b) If in the previous year a company provided a statement of actuarial opinion in accordance with WAC 284-07-370, and in the current year fails the exemption criteria of WAC 284-07-360 (3)(a), (b), or (c) to again provide an actuarial opinion in accordance with WAC 284-07-370, the statement of actuarial opinion in accordance with WAC 284-07-380 shall not be required until August 1 following the date of the annual statement. In this instance, the company shall provide a statement of actuarial opinion in accordance with WAC 284-07-370 with appropriate qualification noting the intent to subsequently provide a statement of actuarial opinion in accordance with WAC 284-07-380.~~

~~(c) In the case of a statement of actuarial opinion required to be submitted by a foreign or alien company, the commissioner may accept the statement of actuarial opinion filed by such company with the insurance supervisory regulator of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.~~

~~(d) Upon written request by the company, the commissioner may grant an extension of the date for submission of the statement of actuarial opinion.~~

~~(2))~~ (1) "Qualified actuary" means an individual who:

(a) Is a member in good standing of the American Academy of Actuaries; and

(b) Is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements or equivalent standards acceptable to the commissioner; and

(c) Is familiar with the valuation requirements applicable to life and health insurance companies; and

(d) Has not been found by the commissioner (or if so found has subsequently been reinstated as a qualified actuary), following appropriate notice to have:

(i) Violated any provision of, or any obligation imposed by, Title 48 RCW or other law or any applicable regulation or order of the commissioner in the course of his or her dealings as a qualified actuary;

(ii) Been found guilty of fraudulent or dishonest practices;

(iii) Demonstrated his or her ~~((incompetency))~~ incompetence, lack of cooperation, or untrustworthiness to act as a qualified actuary;

(iv) Submitted to the commissioner during the past five years, an actuarial opinion or memorandum that the commissioner rejected because it did not meet the provisions of this regulation or standards set by the Actuarial Standards Board; or

(v) Resigned or been removed as an actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards; and

(e) Has not failed to notify the commissioner of any action taken by any commissioner of any other state similar to that under (d) of this subsection.

(f) The commissioner may accept equivalent qualifications in place of those in (a) and (b) of this subsection if the individual has otherwise demonstrated his or her actuarial competence to the satisfaction of the commissioner, and meets the qualifications in (c), (d), and (e) of this subsection.

~~((3))~~ (2) "Appointed actuary" means a qualified actuary who is appointed or retained to prepare the statement of actuarial opinion required by this regulation; either directly by, or by the authority of, the board of directors through an executive officer of the company.

(a) The company shall give the commissioner timely written notice of the following: The name, title (and, in the case of a consulting actuary, the name of the firm), and manner of appointment or retention of each person appointed or retained by the company as an appointed actuary ~~((and shall))~~.

(b) The company must state in ~~((such))~~ its notice that the ~~((person))~~ appointed actuary meets the requirements set forth in subsection (2) of this section.

~~((One))~~ (c) After the company furnishes the notice ~~((is furnished))~~, no further notice is required with respect to this person, ~~((provided that))~~ except the following, if applicable:

(i) The company ~~((shall))~~ must give the commissioner timely written notice ~~((in the event))~~ if the actuary ceases to be appointed or retained as an appointed actuary ~~((or))~~; and

(ii) The company must give the commissioner timely written notice if the actuary fails to meet the requirements set forth in subsection (2) of this section.

(d) If any person appointed or retained as an appointed actuary replaces a previously appointed actuary, the notice ~~((shall so state))~~ must include that information and give the reasons for replacement.

~~((4))~~ (3) Standards for asset adequacy analysis: ~~((Except to the extent))~~ Unless the commissioner approves equivalents in advance, the asset adequacy analysis required by this regulation:

(a) ~~((Shall))~~ Must conform to the standards of practice as promulgated from time to time by the Actuarial Standards Board and to any additional standards under this regulation, ~~((which standards are to))~~ and must form the basis of the statement of actuarial opinion in accordance with ~~((WAC 284-07-380))~~ this regulation; and

(b) ~~((Shall))~~ Must be based on methods of analysis ~~((as))~~ that are deemed appropriate for such purposes by the Actuarial Standards Board.

~~((5))~~ (4) Liabilities to be covered~~((:))~~:

(a) ~~((Under authority of))~~ As required by RCW 48.74.025, the statement of actuarial opinion ~~((shall apply))~~ applies to all in force business on the statement date regardless of when or where issued, ~~((e.g.,))~~ including reserves of Exhibits ~~((8, 9, and 10))~~ 5, 6, and 7, and claim liabilities in Exhibit ~~((11))~~ 8, Part 1 and equivalent items in the separate account statement or statements.

(b) If the appointed actuary determines as the result of asset adequacy analysis that a reserve should be held in addition to the aggregate reserve held by the company ~~((and))~~ calculated in accordance with methods set forth in RCW 48.74.040, 48.74.070, 48.74.080, and 48.74.090, the company ~~((shall))~~ must establish ~~((such))~~ the appropriate additional reserve.

(c) ~~((For years ending prior to December 31, 1995, the company may, in lieu of establishing the full amount of the additional reserve in the annual statement for that year, set up an additional reserve in an amount not less than two times the additional reserve divided by three.~~

~~((4))~~ Additional reserves established under (b) ~~((or (e)))~~ of this subsection and deemed not necessary in subsequent years may be released. Any amounts released must be disclosed in the actuarial opinion for the applicable year. The release of ~~((such))~~ these reserves ~~((would))~~ will not be deemed an adoption of a lower standard of valuation.

AMENDATORY SECTION (Amending Matter No. R 2006-04, filed 6/6/06, effective 7/7/06)

WAC 284-07-380 Statement of actuarial opinion based on an asset adequacy analysis. (1) General description: The statement of actuarial opinion ~~((submitted in accordance with this section shall consist of))~~ must include the following:

(a) A paragraph identifying the appointed actuary and his or her qualifications (see subsection (2)(a) of this section);

(b) A scope paragraph identifying the subjects on which an opinion is to be expressed and describing the scope of the appointed actuary's work, including a tabulation delineating

the reserves and related actuarial items which have been analyzed for asset adequacy and the method of analysis, (see subsection (2)(b) of this section) and identifying the reserves and related actuarial items covered by the opinion which have not been so analyzed;

(c) A reliance paragraph describing those areas, if any, where the appointed actuary has deferred to other experts in developing data, procedures or assumptions, e.g., anticipated cash flows from currently owned assets, including variation in cash flows according to economic scenarios (see subsection (2)(c) of this section), supported by a statement of each ~~((such))~~ expert relied on in the form prescribed by subsection (5) of this section; and

(d) An opinion paragraph expressing the appointed actuary's opinion ~~((with respect to))~~ concerning the adequacy of the supporting assets to mature the liabilities (see subsection (2)(f) of this section).

(e) One or more ~~((additional))~~ of the following paragraphs ~~((may be appropriate))~~ will be needed in individual company cases, as follows:

(i) If the appointed actuary considers it necessary to state a qualification of his or her opinion;

(ii) If the appointed actuary must disclose the method of aggregation for reserves of different products or lines of business for asset adequacy analysis;

~~((iii))~~ ~~((If the appointed actuary must disclose reliance upon any portion of the assets supporting the asset valuation reserve (AVR), interest maintenance reserve (IMR), or other mandatory or voluntary statement of reserves for asset adequacy analysis;~~

~~((iv))~~ If the appointed actuary must disclose an inconsistency in the method of analysis or basis of asset allocation used at the prior opinion date with that used for this opinion;

~~((v))~~ (iv) If the appointed actuary must disclose whether additional reserves of the prior opinion date are released as of this opinion date, and the extent of the release; or

~~((vi))~~ (v) If the appointed actuary chooses to add a paragraph briefly describing the assumptions which form the basis for the actuarial opinion.

(2) Recommended language: The following paragraphs ~~((are to))~~ must be included in the statement of actuarial opinion in accordance with this section. Language is that which in typical circumstances shall be included in a statement of

actuarial opinion. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary ~~((shall use language which))~~ must clearly express~~(es)~~ his or her professional judgment. ~~((However,))~~ In any event, the opinion ~~((shall retain))~~ must include all pertinent aspects of the language provided in this section.

(a) The opening paragraph ~~((shall))~~ must generally ~~((indicate))~~ state the appointed actuary's relationship to the company and his or her qualifications to sign the opinion.

(i) For a company actuary, the opening paragraph of the actuarial opinion ~~((shall))~~ must read substantially as follows:

"I, [name], am [title] of [insurance company name] and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of that ~~((insurer))~~ company to render this opinion as stated in the letter to the Commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and disability insurance companies."

(ii) For a consulting actuary, the opening paragraph ~~((shall))~~ must contain a statement substantially similar to the following:

"I, [name], a member of the American Academy of Actuaries, am associated with the firm of [name of consulting firm]. I have been appointed by, or by the authority of, the Board of Directors of [name of company] to render this opinion as stated in the letter to the Commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and disability insurance companies."

(b) The scope paragraph ~~((shall))~~ must include a statement substantially similar to the following:

"I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, 20[]. Tabulated below are those reserves and related actuarial items which have been subjected to asset adequacy analysis.

Asset Adequacy Tested Amounts				Reserves and Liabilities	
Statement Item	Formula Reserves (1)	Additional Actuarial Reserves (a) (2)	Analysis Method (b)	Other Amount (3)	Total Amount (1) + (2) + (3) (4)
Exhibit ((8)) <u>5</u>					
A Life Insurance					
B Annuities					
C Supplementary Contracts ((Involving)) <u>With</u> Life Contingencies					
D Accidental Death Benefit					

Asset Adequacy Tested Amounts				Reserves and Liabilities	
Statement Item	Formula Reserves (1)	Additional Actuarial Reserves (a) (2)	Analysis Method (b)	Other Amount (3)	Total Amount (1) + (2) + (3) (4)
E Disability - Active					
F Disability - Disabled					
G Miscellaneous					
Total (Exhibit ((8)) 5 Item 1, Page 3)					
Exhibit ((9)) 6					
A Active Life Reserve					
B Claim Reserve					
Total (Exhibit ((9)) 6 Item 2, Page 3)					
Exhibit ((10)) 7					
((1)) Premiums and Other Deposit Funds (Column 6, Line 14)					
((1.1) Policyholder Premiums (Page 3, Line 10.1)					
1.2)) Guaranteed Interest Contracts (((Page 3, Line 10.2))) (Column 2, Line 14)					
((1.3) Other Contract Deposit Funds (Page 3, Line 10.3)) Annuities Certain (Column 3, Line 14)					
((2) Supplementary) Supplemental Contracts ((Not Involving Life Contingencies (Page 3, Line 3)) (Column 4, Line 14)					
((3)) Dividend ((and Coupon)) Accumulations or Refunds (((Page 3, Line 5)) Column 5, Line 14)					
Total (Exhibit ((10)) 7, Item 3, Page 3)					
Exhibit ((11)) 8 Part 1					
1 Life (Page 3, Line 4.1)					
2 Health (Page 3, ((Life)) Line 4.2)					
Total Exhibit ((11)) 8, Part 1					

Asset Adequacy Tested Amounts			Reserves and Liabilities		
Statement Item	Formula Reserves (1)	Additional Actuarial Reserves (a) (2)	Analysis Method (b)	Other Amount (3)	Total Amount (1) + (2) + (3) (4)
Separate Accounts (Page 3(Line 27) of the Annual Statement of the Separate Accounts, Lines 1 and 2)					
TOTAL RESERVES					

IMR (General Account, Page 3, Line (11.4) 9.4)	
IMR (Separate Accounts, Page 3, Line 3)	
AVR (Page 3, Line 24.1)	(c)
Net Deferred and Uncollected Premium	

Notes to table of reserves and related actuarial items:

Page and line numbers refer to the (~~1992~~) 2005 blank. Corresponding entries from blanks from later years (~~shall~~) are to be substituted as appropriate.

- (a) The additional actuarial reserves are the reserves established under WAC 284-07-350 (5)(b) (~~or (e)~~).
- (b) The appointed actuary (~~shall indicate~~) must state the method of analysis, determined in accordance with the standards for asset adequacy analysis referred to in WAC 284-07-350(4), by means of symbols which shall be defined in footnotes to the table.
- (c) Allocated amount of Asset Valuation Reserve (AVR)."

(c) If the appointed actuary has relied on other experts to develop (~~certain~~) any portion(~~s~~) of the analysis, the reliance paragraph (~~shall~~) must include a statement substantially similar to (~~one of~~) the following:

- ((i)) "I have relied on [name], [title] for [e.g., anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios] (~~and~~), or certain critical aspects of the analysis performed in conjunction with forming my opinion] as certified in the attached statement(~~s~~). I have reviewed the information relied upon for reasonableness."
- ((ii)) "~~I have relied on personnel as cited in the supporting memorandum for certain critical aspects of the analysis in reference to the accompanying statement.~~"

A statement of reliance on other experts (~~should~~) must be accompanied by a statement by each (~~of such experts of~~) expert in the form prescribed by subsection (5) of this section.

(d) If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph (~~shall~~) must also include substantially the following statement:

"My examination included (~~such~~) a review of the actuarial assumptions (~~and~~), actuarial methods (~~and of~~), the underlying basic asset and liability records, and (~~such~~) other tests of the actuarial calculations (~~as~~) I considered necessary. I also reconciled the underlying basic asset and liability records to [exhibits and schedules listed as applicable] of the company's current annual statement."

(e) If the appointed actuary has not examined the underlying records, but has relied upon listings (~~and~~) or summaries of policies in force, or asset records, or both prepared by the company (~~or a third party~~), the reliance paragraph (~~shall~~) must include a statement substantially similar to (~~one of~~) the following:

- ((i)) "In forming my opinion on [specify types of reserves] I (~~have~~) relied upon (~~listings and summaries [of policies and contracts, of asset records]~~) data prepared by [name and title of company officer certifying in-force records or other data] as certified in the attached statements. I evaluated that data for reasonableness and consistency. I also reconciled that data to [exhibits and schedules to be listed as applicable] of the company's current annual statement. In other respects my examination included (~~such~~) review of the actuarial assumptions and actuarial methods used and (~~such~~) tests of the actuarial calculations (~~as~~) I considered necessary."
- ((ii)) "~~I have relied upon [name of accounting firm] for the substantial accuracy of the in-force records inventory and information concerning other liabilities, as certified in the attached statement. In other respects my examination included review of the actuarial assumptions and actuarial methods and tests of the actuarial calculations as I considered necessary.~~"

~~Such a section shall~~) The paragraph must be accompanied by a signed statement by each person relied upon based on the form (~~prescribed by~~) set forth in subsection (5) of this section.

(f) The opinion paragraph (~~shall~~) must include a statement substantially similar to the following:

"In my opinion the reserves and related actuarial values concerning the statement items identified above:

- (i) Are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;
- (ii) Are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;
- (iii) Meet the requirements of the insurance laws and regulations of the state of [state of domicile] and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed;
- (iv) Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end (with any exceptions noted below);
- (v) Include provision for all actuarial reserves and related statement items which ought to be established.

The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on ~~((such))~~ the assets, and the considerations anticipated to be received and retained under ~~((such))~~ the policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company.

The actuarial methods, considerations, and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion.

This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which should be considered in reviewing this opinion.

or

The following material change(s) which occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion: (Describe the change or changes.)

The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis.

Signature of Appointed Actuary

Address of Appointed Actuary

Telephone Number of Appointed Actuary(☎)

Date"

(3) Assumptions for new issues: The adoption for new issues or new claims or other new liabilities of an actuarial assumption which differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this section.

(4) Adverse opinions: If the appointed actuary is unable to form an opinion, then he or she ~~((shall))~~ must refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, then he or she ~~((shall))~~ must issue an adverse or qualified actuarial opinion explicitly stating the reason(s) for ~~((such))~~ the adverse opinion. This statement ~~((should))~~ must follow the scope paragraph and precede the opinion paragraph.

(5) Reliance on data furnished by other persons(☺): If the appointed actuary does not express an opinion as to the accuracy and completeness of the listings and summaries of policies in force or ~~((asset-oriented information, there shall))~~ if the actuary relies on the certification of others on matters concerning the accuracy or completeness of any data underlying the actuarial opinion, or the appropriateness of any other information used by the appointed actuary in forming the actuarial opinion, the actuarial opinion must include the names of the persons the actuary is relying upon and a precise identification of the items subject to reliance. In addition, the persons on whom the appointed actuary relies must provide a certification that precisely identifies the items on which the person is providing information and a statement as to the accuracy, completeness or reasonableness of the items, as applicable. This certification must include the signature, title, company's legal name, address and telephone number of the person providing the certification, and the date on which it is signed. This certification must include the reporting date, the name of the appointed actuary, and must be attached to the opinion ((the statement of a company officer or accounting firm who prepared such underlying data)), in a form substantially similar to ((either or both of)) the following, as appropriate:

~~((#))~~ "I [name of officer], [title], of [name of company ~~((or accounting firm))~~], hereby affirm that the listings and summaries of policies and contracts in force as of December 31, 20[], and other liabilities prepared for and submitted to [name of appointed actuary] were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.

Signature of the Officer of the Company
(~~(or Accounting Firm)~~)

Address of the Officer of the Company
(~~(or Accounting Firm)~~)

Telephone Number of the Officer of the
Company (~~(or Accounting Firm)~~)

Date"
((b) "I, [name of officer], [title] of [name of company, accounting firm, or security analyst], hereby affirm that the listings, summaries, and analyses relating to data prepared for and submitted to [name of appointed actuary] in support of the asset-oriented aspects of the opinion were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.

Signature of the Officer of the Company,
Accounting Firm or the Security Analyst

Address of the Officer of the Company,
Accounting Firm or the Security Analyst

Telephone Number of the Officer of the
Company, Accounting Firm or
the Security Analyst")

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

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 Order R 94-26, filed 12/30/94, effective 1/30/95)

WAC 284-07-390 Description of actuarial memorandum including an asset adequacy analysis and regulatory asset adequacy issues summary. (1)(a) In accordance with RCW 48.74.025, the appointed actuary (~~(shall)~~) must prepare a memorandum to the company describing the analysis done in support of his or her opinion regarding the reserves (~~(under a WAC 284-07-380 opinion)~~). The memorandum (~~(shall)~~) must be made available for examination by the commissioner upon his or her request but (~~(shall)~~) will be returned to the company after (~~(such)~~) the examination and (~~(shall)~~) will not be considered a record of the commissioner or subject to automatic filing with the commissioner.

(b) In preparing the memorandum, the appointed actuary may rely on, and include as a part of his or her own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of WAC 284-07-350(2), with respect to the areas covered in such memoranda, and

(~~(shall so state)~~) must include a statement to that effect in their memoranda.

(c) If the commissioner requests a memorandum and an adequate memorandum is not provided within ten days (~~(of)~~) after the request, or, if the commissioner finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of this regulation, the commissioner may designate a qualified actuary to review the opinion and prepare the supporting memorandum required for review. All reasonable and necessary expenses of the independent review (~~(shall)~~) must be paid by the company but all expenses (~~(connected therewith shall)~~) related to the review will be directed and controlled by the commissioner.

(d)(i) The reviewing actuary (~~(shall)~~) must have the same status as an examiner for purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary (~~(shall)~~) must be retained by the commissioner (~~(: Provided, however, That any)~~). Information provided by the company to the reviewing actuary and included in the work papers (~~(shall)~~) will be considered material provided by the company to the commissioner and (~~(shall)~~) will be kept confidential to the same extent as prescribed by law with respect to other material provided by the company to the commissioner (~~(pursuant to the statute governing this regulation)~~).

(ii) The reviewing actuary (~~(shall)~~) must not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the (~~(insurer pursuant to this regulation)~~) company for the current year or any one of the preceding three years.

(e) In accordance with RCW 48.74.025, the appointed actuary must prepare a regulatory asset adequacy issues summary according to the requirements set forth in subsection (3) of this section. The regulatory asset adequacy issues summary must be submitted no later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required. Except for a domestic life insurance company, the regulatory asset adequacy issues summary must be submitted only upon request of the commissioner. The regulatory asset adequacy issues summary has the standing of a memorandum in support of the actuarial opinion, and will be kept confidential to the extent and under the conditions provided for in RCW 48.74.025(4).

(2) When an actuarial opinion (~~(under WAC 284-07-380)~~) is provided, the memorandum (~~(shall)~~) must demonstrate that the analysis has been completed in accordance with the standards for asset adequacy (~~(referred to)~~) set forth in WAC 284-07-350(4) and any additional standards required by the commissioner. The memorandum (~~(shall specify)~~) must include the following:

- (a) For reserves:
 - (i) Product descriptions including market description, underwriting and other aspects of a risk profile, and the specific risks the appointed actuary deems significant;
 - (ii) Sources of liabilities in force;
 - (iii) Reserve methods and bases;
 - (iv) Investment reserves;
 - (v) Reinsurance arrangements;

(vi) Identification of any explicit or implied guarantees made by the general account in support of benefits provided through a separate account or under a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis;

(vii) Documentation of assumptions, including comparisons with experience, to test reserves for the following:

(A) Lapse rates, both base and excess;

(B) Interest crediting rate strategy;

(C) Mortality;

(D) Policyholder dividend strategy;

(E) Competitor or market interest rate;

(F) Annuitization rates;

(G) Commissions and expenses; and

(H) Morbidity.

The documentation of the assumptions must allow an actuary reviewing the actuarial memorandum to form a conclusion regarding the reasonableness of the assumptions.

(b) For assets:

(i) Portfolio descriptions, including a risk profile disclosing the quality, distribution, and types of assets;

(ii) Investment and disinvestment assumptions;

(iii) Sources of asset data;

(iv) Asset valuation bases;

(v) Documentation of assumptions made for:

(A) Default costs;

(B) Bond call function;

(C) Mortgage prepayment function;

(D) Determining market value for assets sold due to disinvestment strategy; and

(E) Determining yield on assets acquired through the investment strategy.

The documentation of the assumptions must allow an actuary reviewing the actuarial memorandum to form a conclusion regarding the reasonableness of the assumptions.

(c) Analysis basis:

(i) Methodology;

(ii) Rationale for inclusion or exclusion of different blocks of business and how pertinent risks were analyzed;

(iii) Rationale for degree of rigor in analyzing different blocks of business, including the level of "materiality" that was used in determining how rigorously to analyze different blocks of business;

(iv) Criteria for determining asset adequacy, including the precise basis for determining if assets are adequate to cover reserves under "moderately adverse conditions" or other conditions, as specified in relevant actuarial standards of practice;

(v) ((Effect)) Consideration of the impact of federal income taxes(, reinsurance, and other relevant factors.

(d) Assumptions:

(i) Lapse rates, including a comparison of assumed lapse rates with actual lapse rates, if lapse experience studies have been performed;

(ii) Interest crediting rate strategy;

(iii) Mortality rates, either specified directly or stated with reference to nonproprietary, published tables;

(iv) Dividend strategy;

(v) Competitor or market interest rate;

(vi) Annuitization rates;

(vii) Commissions and expenses, including a comparison of assumptions with recent actual commissions and expenses;

(viii) Asset default costs;

(ix) Bond call function;

(x) Mortgage prepayment function;

(xi) Determination of market value for assets sold due to disinvestment strategy;

(xii) Anticipated yield on assets acquired through the investment strategy.

(e)); and

(vi) The method of treating reinsurance in the asset adequacy analysis.

(d) Sensitivity testing: Impact of changes in assumptions used in asset adequacy analysis, based on sensitivity tests performed.

(e) Material changes: Summary of material changes in methods, procedures, or assumptions from prior year's asset adequacy analysis.

(f) Results:

(i) Schedules under each required scenario showing the cash flows by each of the major items of income, benefits, and expenses, statutory gains or losses, and statutory balance sheet, as modeled, for each year in the projection period(= Provided however, That for 1994, abbreviated schedules, appropriate in the judgment of the appointed actuary, are acceptable.); and

(ii) Summary of results.

(g) Conclusion(s).

(3) The regulatory asset adequacy issues summary must contain the name of the company for which the regulatory asset adequacy issues summary is being supplied and must be signed and dated by the appointed actuary providing the actuarial opinion. The regulatory asset adequacy issues summary must include all of the following:

(a) Descriptions of the scenarios tested, including whether those scenarios are stochastic or deterministic, and the sensitivity testing performed relative to those scenarios.

(i) If certain tests produce negative ending surplus in the aggregate, the actuary must describe those tests and state the amount of additional reserve as of the valuation date that, if held, would eliminate the negative aggregate surplus values.

(ii) The actuary must determine ending surplus values by either:

(A) Extending the projection period until the in force and associated assets and liabilities at the end of the projection period are immaterial; or

(B) Adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force.

(b) An explanation of the extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are materially different from the assumptions used in the previous asset adequacy analysis.

(c) A description of the amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion.

(d) Comments on any interim results that may be of significant concern to the appointed actuary.

(e) The methods used by the actuary to recognize the impact of reinsurance on the company's cash flows, including both assets and liabilities, under each of the scenarios tested.

(f) A paragraph explaining whether the actuary is satisfied that all options whether explicit or embedded, in any asset or liability (including but not limited to those affecting cash flows embedded in fixed income securities) and equity-like features in any investments have been appropriately considered in the asset adequacy analysis.

(4) The memorandum (~~shall~~) must include a statement substantially similar to the following:

"Actuarial methods, considerations, and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum."

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 284-07-360 Required opinions.
- WAC 284-07-370 Statement of actuarial opinion not including an asset adequacy analysis.

**WSR 07-17-165
PROPOSED RULES**

**OFFICE OF
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2005-04—Filed August 22, 2007, 7:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-22-113.

Title of Rule and Other Identifying Information: Substitution of providers (a/k/a "locum tenens") rules.

Hearing Location(s): Insurance Commissioner's Office, 5000 Capitol Boulevard, Room TR-120, Tumwater, WA 98504-0255, on September 26, 2007, at 1:00 p.m.

Date of Intended Adoption: October 3, 2007.

Submit Written Comments to: Kacy Scott, P.O. Box 40255, Olympia, WA 98504-0258, e-mail Kacys@oic.wa.gov, fax (360) 586-3109, by September 25, 2007.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by September 25, 2007, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On January 10, 2007, the office of insurance commissioner (OIC) held a rule-making hearing on a prior version of these substitution of providers rules. After careful consideration of the testimony and written comments received, these rules are proposed.

Proposed WAC 284-43-260 would require health carriers to permit a contracted provider to select another provider who will serve as a substitute in the absence of the contracted provider. The substitute provider is not required to be a member of the carrier's network. The applicable categories of providers are doctors of medicine, osteopathy, dental surgery, chiropractic, podiatry or surgical chiropody, optometry, naturopathic medicine and advanced registered nurse practitioners.

In proposed WAC 384-43-262, providers returning to civilian practice after a period of active duty military service would be allowed to request reinstatement to the carrier's network, and the carrier would have to reinstate the provider, if the provider timely applies for reinstatement and meets the carrier's then-current credentialing standards, even if the carrier's network is "closed." This rule would apply to all providers covered by RCW 48.43.045, the "every category of provider" statute.

Reasons Supporting Proposal: The Washington State Chiropractic Association petitioned the insurance commissioner for adoption of a rule to require carriers to include a "locum tenens" provision in contracts with chiropractors. After careful consideration the commissioner decided to include all provider types in proposed regulations. The resulting rule will affect all provider types who have a state license to "diagnose and treat human disease, ailment, or pain." This includes, but is not limited to, chiropractors.

Statutory Authority for Adoption: RCW 48.02.060 and 48.43.515.

Statute Being Implemented: RCW 48.43.515.

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

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

Name of Agency Personnel Responsible for Drafting: Melodie Bankers, P.O. Box 40258, (360) 725-7039; Implementation: Beth Berendt, P.O. Box 40255, (360) 725-7117; and Enforcement: Carol Sureau, P.O. Box 40255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The cost of compliance with this proposed rule for small businesses regulated by the OIC would be minor or negligible.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7041, fax (360) 586-3109, e-mail Kacys@oic.wa.gov.

August 22, 2007
Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-43-260 Standards for temporary substitution of contracted network providers—"Locum tenens" providers. It is a longstanding and widespread practice for contracted network providers to retain substitute providers to take over their professional practices when the contracted network providers are absent for reasons such as illness,

pregnancy, vacation, or continuing medical education, and for the contracted network provider to bill and receive payment for the substitute providers' services as though they were provided by the contracted network provider. The contracted network provider generally pays the substitute provider based on an agreement between the contracted network provider and the substitute provider, and the substitute provider has the status of an independent contractor rather than an employee of the contracted network provider. These substitute providers are commonly called "locum tenens" providers. The following are minimum standards for temporary provider substitution and do not prevent a carrier from entering into other agreed arrangements with its contracted network providers for terms that are less restrictive or more favorable to providers.

Carriers must permit the following categories of contracted network provider to arrange for temporary substitution by a substitute provider: Doctor of medicine, osteopathic physician or surgeon, doctor of dental surgery or dental medicine, doctor of chiropractic, podiatric physician and surgeon, doctor of optometry, doctor of naturopathic medicine and advanced registered nurse practitioners.

(1) At the time of substitution, the substitute provider:

(a) Must have a current Washington license and be legally authorized to practice in this state;

(b) Must provide services under the same scope of practice as the contracted network provider;

(c) Must not be suspended or excluded from any state or federal health care program; and

(d) Must have professional liability insurance coverage.

(2)(a) Carriers must allow substitution for at least sixty days during any calendar year.

(b) A carrier must grant an extension if a contracted network provider demonstrates that exceptional circumstances require additional time away from his or her practice.

NEW SECTION

WAC 284-43-262 Rule concerning contracted network providers called to active duty. In lieu of substitution of a provider during a period of active duty military service longer than sixty continuous days, carriers must provide contracted network providers with the opportunity to return to the carrier's network after the provider's active duty military service is completed.

(1) A carrier may not terminate the contract of a network provider for the sole reason that he or she has been called to active duty military service.

(2)(a) A carrier must allow the provider a period of at least one hundred twenty days to request a return to contracted network provider status after the provider returns to civilian status.

(b) The one hundred twenty-day period must begin no earlier than the date the provider's period of active duty ends.

(3)(a) As a condition for return to the carrier's network, the carrier may require that the provider provide evidence that he or she meets the carrier's then-current standards for credentialing.

(b) If the provider meets or exceeds the credentialing standards of the carrier and timely requests a return to con-

tracted network provider status, the carrier must grant the request whether or not the carrier's network is otherwise closed.

WSR 07-17-166

PROPOSED RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2004-03—Filed August 22, 2007, 7:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-13-153.

Title of Rule and Other Identifying Information: Corporate-owned life insurance in Washington state.

Hearing Location(s): Insurance Commissioner's Office, Room TR-120, 5000 Capitol Boulevard, Olympia, WA 98504, on September 26, 2007, at 2:30 p.m.

Date of Intended Adoption: October 1, 2007.

Submit Written Comments to: Kacy Scott, P.O. Box 40255, Olympia, WA 98504-0258, e-mail Kacys@oic.wa.gov, fax (360) 586-3109, by September 25, 2007.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by September 25, 2007, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESB 5196 was enacted during the 2005 legislative session. This law directed the commissioner to adopt rules to implement RCW 48.18.010, 48.18.030, 48.18.060, 48.18.580, and 48.18.583. These proposed rules will require that an employee be a key person and the employer must obtain and keep evidence that the employer has an "insurable interest" in the life of the employee.

Reasons Supporting Proposal: In the past, despite the existence of a strict insurable interest requirement for group life insurance, corporations have purchased policies on employees in whom there exists no clear insurable interest. In the past, despite the existence of a strict insurable interest requirement for group life insurance, corporations have purchased policies on employees in whom there exists no clear insurable interest. The purpose of this rule making is to provide standards that insurers must meet in order to ensure that insured employees are, in fact, key persons and the employer has an "insurable interest" in the lives of the insured employees.

Statutory Authority for Adoption: RCW 48.02.060 and 48.18.586.

Statute Being Implemented: RCW 48.18.010, 48.18.030 [48.18.030], 48.18.060, 48.18.580, and 48.18.583.

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

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

Name of Agency Personnel Responsible for Drafting: Melodie Bankers, P.O. Box 40258, Olympia, WA 98504-0255, (360) 725-7039; Implementation: Beth Berendt, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117; and

Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule will have negligible or minor impact on small businesses regulated by the office of insurance commissioner. The proposed rule is required by RCW 48.18.586.

A cost-benefit analysis is not required under RCW 34.05.328. This proposed rule is an interpretive rule as defined by RCW 34.05.328(5). The proposed rule is required by RCW 48.18.586.

August 22, 2007

Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-23-580 Insurer must obtain and keep evidence that insured is a key person—Definition of "key person." (1) If a business entity seeks to be the owner and beneficiary of a contract of life insurance on an employee, the insurer must obtain and keep evidence that the business entity had an "insurable interest" in the life of the insured as required by RCW 48.18.030(3) and was a "key person" at the time the contract was made.

(2) An insurer issuing employer-owned key person life insurance to a business entity shall establish and apply appropriate underwriting guidelines to ensure that the employees or other persons on whose lives key person life insurance policies are written are actually key persons.

(3) An insurer issuing employer-owned life insurance policies or certificates must keep evidence that it has complied with applicable legal requirements, including but not limited to the requirement that the insured has applied for or consented to the contract in writing. These requirements include RCW 48.18.030, 48.18.060, and 48.18.580.

(4) If a contract of insurance is entered into pursuant to an exchange under Section 1035 of the Internal Revenue Code, an insurer is not required to obtain a new consent by the insured employee (as required at RCW 48.18.580(2)) only if the insurer to be replaced provides the replacing insurer with a copy of the original signed consent.

(5) The term "key person" means a "highly compensated individual" where, during the year the contract was made, the employee:

(a) Was one of the five highest paid officers of the employer;

(b) Was a shareholder who owned more than ten percent in value of the stock of the employer;

(c) Was among the highest paid thirty-five percent of all employees; or

(d) Had compensation from the employer in excess of ninety-five thousand dollars (or greater amount set forth in the Internal Revenue Code) during the year the contract was made or during the immediately preceding calendar year.

WSR 07-17-175

PROPOSED RULES

DEPARTMENT OF HEALTH

(Board of Psychology)

[Filed August 22, 2007, 9:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-17-130.

Title of Rule and Other Identifying Information: Repeal WAC 246-924-040 Psychologists—Education prerequisite to licensing and 246-924-060 Psychologists—Experience prerequisite prior to licensing; and new sections WAC 246-924-043 Education and experience requirements for licensure, 246-924-046 Doctoral degree program, 246-924-049 Practicum, 246-924-053 Preinternship, 246-924-056 Internship, and 246-924-059 Post-doctoral supervision experience.

The original CR-101 under WSR 04-17-130 also opened the following rules that will be addressed in a separate rule proposal: WAC 246-924-070 Psychologists, 246-924-090 Psychologists—Oral examination, 246-924-095 Failure of oral examination, 246-924-100 Qualifications for granting license by endorsement, 246-924-150 Certificates of qualification-procedure for additional areas of function, 246-924-160 Continued supervision of persons receiving certificates of qualifications, 246-924-480 Temporary permits, and 246-924-080 Psychology examination—Application submittal date, was repealed from the chapter on April 12, 2006.

Hearing Location(s): Department of Health, 310 Israel Road S.E., Point Plaza East Room 152/153, Tumwater, WA 98501, on October 5, 2007, at 9:00 a.m.

Date of Intended Adoption: October 5, 2007.

Submit Written Comments to: Betty Moe, Department of Health, P.O. Box 47869, Olympia, WA 98504-7869, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4909, by September 28, 2007.

Assistance for Persons with Disabilities: Contact Betty Moe by September 28, 2007, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESSB 6554 (chapter 292, Laws of 2004), also known as the "Barrier Bill" eliminated the requirement that one year of supervised experience be obtained after the completion of the doctoral degree. The elimination of the post-doctoral experience requirement made it necessary for the board to develop additional avenues for students to gain no fewer than two years of supervised experience. The examining board of psychology saw ESSB 6554 as part of a larger effort to update the WACs.

Rules are needed to clearly define licensing requirements.

Reasons Supporting Proposal: The proposed rules: 1. Identify the minimum educational curriculum requirements; 2. identify the requirements of the preinternship period; 3. identify the requirements of the post-doctoral experience if educational program did not provide the preinternship experience; and 4. identify approved supervisors.

Statutory Authority for Adoption: RCW 18.83.050.

Statute Being Implemented: RCW 18.83.050 and 18.83.070.

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

Name of Proponent: Department of health, examining board of psychology, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Betty Moe, 310 Israel Road, Tumwater, WA, (360) 236-4912.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The examining board of psychology reviewed the proposal and determined no small business economic impact statement is required because the proposed rules do not impose more than minor costs on businesses within the industry, in accordance with RCW 19.85-.030.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Betty Moe, P.O. Box 47869, Olympia, WA 98504-7869, phone (360) 236-4912, fax (360) 236-4940, e-mail Betty.Moe@doh.wa.gov.

August 13, 2007
Raymond L. Harry
Chair

NEW SECTION

WAC 246-924-043 Education and experience requirements for licensure. (1) To obtain a license, applicants must complete:

(a) A doctoral degree program as described in WAC 246-924-046.

(b) A practicum of at least 300 hours as described in WAC 246-924-049; and

(c) An experience requirement consisting of no fewer than two years supervised experience totaling 3000 hours that includes:

(i) A minimum of 1500 hours of supervised experience that must be completed as an internship experience as outlined in WAC 246-924-056.

(ii) The remaining 1500 supervised hours may be obtained through:

(A) A preinternship as described in WAC 246-924-053;

(B) A postdoctoral experience as described in WAC 246-924-059; or

(C) A combination of preinternship and postdoctoral experience.

(2) The order of supervised experience must be graduated from more intensive to less intensive supervision.

NEW SECTION

WAC 246-924-046 Doctoral degree program. To meet the education requirements of RCW 18.83.070, an applicant must possess a doctoral degree from a regionally accredited institution. Regional accreditation is awarded to an institution by one of the regional accrediting agencies, each of which covers a specified portion of the United States and its territories, or equivalent accreditation in another country, upon approval by the board.

(1) The doctoral degree program must include:

(a) At least forty semester hours, or sixty quarter hours, of graduate courses in curriculum areas described in subsection (2) of this section. Courses must be clearly identified by

title and course content as being part of an integrated psychology program.

(b) One year in residency as described in subsection (4) of this section;

(c) Submission of an original dissertation which is psychological in nature and endorsed by the program; and

(d) An organized, sequential and coordinated practicum and internship experience as described in WAC 246-924-049 and 246-924-056.

(2) The curriculum requirements: The doctoral degree program must encompass a minimum of three academic years of full-time graduate study or the equivalent. The applicant must complete courses in:

(a) History and systems;

(b) Research design and methodology; and

(c) Statistics and psychometrics.

(3) The applicant must complete three or more semester hours, or five or more quarter hours, of core study in each of the following content areas:

(a) Biological bases of behavior (physiological psychology, comparative psychology, neural bases of behavior, sensation and perception, and biological bases of development);

(b) Cognitive-affective bases of behavior (learning, thinking, motivation, emotion, and cognitive development);

(c) Social bases of behavior (social psychology, organizational theory, community psychology, and social development);

(d) Individual differences (personality theory and psychopathology);

(e) Scientific and professional ethics;

(f) History and systems of psychology;

(g) Statistics and psychometrics;

(h) Research design and methodology;

(i) Techniques of data analysis;

(j) Human development (developmental psychology, child development, adult development and aging);

(k) Cultural and individual differences and diversity;

(l) Psychopathology and dysfunctional behaviors;

(m) Theories and methods of assessment and diagnosis—minimum of two courses;

(n) Effective psychological intervention and evaluation of the efficacy of interventions—minimum of three courses; and

(o) Psychopharmacology.

Doctoral degree programs accredited by the American Psychological Association or the Canadian Psychological Association are recognized as having met the minimum education requirements.

(4) Residency requirement:

(a) The doctoral degree program must involve at least one continuous year of full-time residency at the institution which grants the degree or a minimum of 750 hours of student-faculty contact involving face-to-face individual or group educational meetings.

(b) Educational meetings:

(i) Must include both faculty-student and student-student interaction;

(ii) Be conducted by the psychology faculty of the institution at least seventy-five percent of the time;

(iii) Be fully documented by the institution and the applicant; and

(iv) Relate substantially to the program components specified.

NEW SECTION

WAC 246-924-049 Practicum. Applied experience: The doctoral degree program required in WAC 246-924-046 must include a practicum of at least two semesters or three quarters and at least 300 hours of direct experience, 100 hours of which must be in supervision. Supervision must include the following:

- (1) Discussion of services provided by the student;
- (2) Selection of service plan for and review of each case or work unit of the student;
- (3) Discussion of and instruction in theoretical concepts underlying the work;
- (4) Discussion of the management of professional practice and other administrative or business issues;
- (5) Evaluation of the supervisory process by the student and the supervisor;
- (6) Discussion of coordination of services among the professionals involved in the particular cases or work units;
- (7) Discussion of relevant state laws and rules;
- (8) Discussion of ethical principles including principles applicable to the work;
- (9) Review of standards for providers of psychological services; and
- (10) Discussion of reading materials relevant to cases, ethical issues and the supervisory process.

NEW SECTION

WAC 246-924-053 Preinternship. A preinternship experience occurs between the practicum required by WAC 246-924-049 and internship required by WAC 246-924-056. A preinternship can include up to 1500 hours of supervised experience, but is not required. If preinternship experience is used to satisfy the experience requirement of WAC 246-924-043 (1)(c), it must meet the following requirements:

- (1) Every 20 hours of preinternship experience must include the following:
 - (a) At least 2 hours of regularly scheduled, formal, face-to-face individual supervision that addresses the direct psychological services provided by the student; and
 - (b) At least 2 hours of other learning activities such as case conferences, seminars on applied issues, conducting cotherapy with a staff person including discussion of the case, and group supervision.
- (2) At least sixty percent of the preinternship experience must be direct client contact providing assessment and intervention services.
- (3) The preinternship experience must be supervised by the person(s) responsible for the assigned casework.
 - (a) At least seventy-five percent of the supervision must be by a licensed psychologist with two years post-licensure experience.
 - (b) Up to twenty-five percent of the supervision may be completed by the following:

(i) A psychiatrist(s) with three years experience beyond residency;

(ii) A licensed mental health counselor(s) with five years post-licensure experience;

(iii) A licensed marriage and family therapist(s) with at least five years post-licensure experience;

(iv) A licensed advanced social worker(s) or licensed independent clinical social worker(s) with five years post-licensure experience; or

(v) A doctoral level psychologist(s) with three years post-doctoral experience who qualifies or would qualify as exempt from licensure under RCW 18.83.200 (1), (2), (3) or (4).

(c) Supervision of the preinternship experience must include the following:

- (i) Discussion of services provided by the student;
- (ii) Selection of service plan for and review of each case or work unit of the student;
- (iii) Discussion of and instruction in theoretical concepts underlying the work;
- (iv) Discussion of the management of professional practice and other administrative or business issues;
- (v) Evaluation of the supervisory process by the student and the supervisor;
- (vi) Discussion of coordination of services among the professionals involved in the particular cases or work units;
- (vii) Discussion of relevant state laws and rules;
- (viii) Discussion of ethical principles including principles applicable to the work;
- (ix) Review of standards for providers of psychological services; and
- (x) Discussion of reading materials relevant to cases, ethical issues and the supervisory process.

NEW SECTION

WAC 246-924-056 Internship. Applicants must successfully complete an organized internship as part of the doctoral degree program described in WAC 246-924-046.

(1) The internship must include at least 1500 hours of supervised experience and be completed within twenty-four months.

(2) The internship program must:

- (a) Be accredited by the American Psychological Association;
- (b) Be a member program of the Association of Psychology Postdoctoral and Internship Centers; or
- (c) Meet the following requirements:
 - (i) Organization of the internship program.
 - (A) The internship must have a written statement or brochure describing the goals and content of the internship, stating clear expectations and quality of student work, and made available to prospective interns.
 - (B) A psychologist licensed by the appropriate state or provincial licensing authority must be clearly designated as responsible for the integrity and quality of the internship program.
 - (C) Interns must use titles indicating their training status, such as "intern," "resident," or "fellow."
 - (ii) Content of the internship program.

(A) The internship must be designed to provide a planned sequence of training experiences focusing on breadth and quality of training. Supervision and training related to ethics must be ongoing.

(B) At least twenty-five percent of the internship experience must be in direct client contact providing assessment and intervention services.

(C) For every 40 hours of internship experience, the student must receive:

(I) At least 2 hours of regularly scheduled, formal, face-to-face individual supervision that addresses the direct psychological services provided by the intern; and

(II) At least 2 hours of other learning activities such as case conferences, seminars on applied issues, conducting cotherapy with a staff person including discussion of the case, and group supervision.

(iii) Supervision of the internship experience.

(A) The internship setting must have a psychologist available as a supervisor.

(B) The internship experience must be supervised by the person(s) responsible for the assigned casework.

(I) At least seventy-five percent of the supervision must be by a licensed psychologist with two years post-licensure experience.

(II) Up to twenty-five percent of the supervision may be completed by the following:

- A psychiatrist(s) with three years experience beyond residency;

- A licensed mental health counselor(s) with five years post-license experience;

- A licensed marriage and family therapist(s) with at least five years post-license experience;

- A licensed advanced social worker(s) or licensed independent clinical social worker(s) with five years post-license experience; or

- A doctoral level psychologist(s) with three years post-doctoral experience who qualifies or would qualify exempt from licensure under RCW 18.83.200 (1), (2), (3) or (4).

(iv) Supervision of the preinternship experience must meet the requirements of WAC 246-924-053.

NEW SECTION

WAC 246-924-059 Post-doctoral supervised experience. If 3000 hours of supervised experience has not been completed at the end of the doctoral degree program, then up to 1500 hours of supervised post-doctoral experience can be used to satisfy the total requirement. Post-doctoral supervised experience must be completed only if an applicant does not already have 3000 hours of supervised experience.

(1) Organization of the post-doctoral supervised experience.

(a) The supervisor is ethically and legally responsible for all supervisee work covered by the supervision agreement. Therefore, the supervisor has authority to alter service plans and direct the course of psychological work.

(b) Supervisees must use titles indicating their training status, such as "psychological resident," "psychological intern," or "psychological supervisee."

(c) Clients must be informed of the identity and responsibilities of the supervisor and how they can speak directly to the supervisor.

(d) Services rendered by the supervisee must not be represented to third parties as having been rendered by the supervisor. Insurance forms must be filled out indicating the nature of the supervisory relationship.

(2) The supervisor and supervisee must have a written agreement for supervision, including:

(a) The area(s) of professional activity in which supervision will occur;

(b) Hours of supervision and/or ratio of supervision to professional activity;

(c) Fees for supervision, if any;

(d) Processes for supervision including mode(s) of supervision, expectations for recordkeeping, evaluation, and feedback;

(e) Relevant business arrangements;

(f) How the supervisee will represent himself or herself; and

(g) How disagreements will be handled.

(3) Mode of supervision.

(a) The preferred mode of supervision is face-to-face discussion between the supervisor and the supervisee.

(b) The nature of the supervision may depend on the following:

(i) The theoretical orientation of the supervisor;

(ii) The training and experience of the supervisee; and

(iii) The duration of the supervisory relationship.

(4) Some direct observation of the supervisee's work is required and the supervisor may utilize the following:

(a) Detailed process notes and progress reports;

(b) Audio and/or videotapes;

(c) Client supplied information such as behavioral ratings;

(d) One-way mirror observation;

(e) Content of the post-doctoral supervised experience;

(f) Supervised experience must be appropriate to the area(s) of professional activity the person intends to practice;

(g) There must be at least one hour of individual supervision for every twenty hours of psychological work;

(h) The supervisor and the supervisee must keep records of experience and supervision hours;

(i) At the end of the supervision period, the supervisor must prepare and forward to the board a written evaluation, including the number of successfully completed supervised hours of psychological work and any hours not successfully completed; and

(j) If any hours were not successfully completed, the board may require additional hours of supervision.

(5) Supervision of the post-doctoral supervised experience.

(a) At least fifty percent of the post-doctoral supervision must be provided by a licensed psychologist.

(b) Up to fifty percent of the supervision may be provided by the following:

(i) A licensed psychologist with two years post-licensure experience;

(ii) A psychiatrist with three years of experience beyond residency;

(iii) A licensed mental health counselor, a licensed marriage and family counselor, a licensed advanced social worker, or a licensed independent clinical social worker, if the counselor has five years post-licensure experience;

(iv) A doctoral level psychologist with three years post-doctoral experience who qualifies or would qualify exempt from licensure under RCW 18.83.200 (1), (2), (3) or (4), if the supervision occurs in the exempt setting.

(6) Supervision must include the following:

(a) Discussion of services provided by the student;

(b) Selection, service plan, and review of each case or work unit of the student;

(c) Discussion of and instruction in theoretical concepts underlying the work;

(d) Discussion of the management of professional practice and other administrative or business issues;

(e) Evaluation of the supervisory process by the student and the supervisor;

(f) Discussion of coordination of services among the professionals involved in the particular cases or work units;

(g) Discussion of relevant Washington laws and rules;

(h) Discussion of ethical principles including principles applicable to the work;

(i) Review of standards for providers of psychological services; and

(j) Discussion of reading materials relevant to cases, ethical issues and the supervisory process.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-924-040 Psychologists—Education prerequisite to licensing.

WAC 246-924-060 Psychologists—Experience prerequisite to licensing.

**WSR 07-17-176
PROPOSED RULES
DEPARTMENT OF HEALTH**

(Board of Psychology)

[Filed August 22, 2007, 9:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-07-062.

Title of Rule and Other Identifying Information: WAC 246-924-358 Sexual misconduct, the board of psychology is amending its rules to establish clear, consistent, and enforceable definitions for sexual misconduct by psychologists. The proposed rules will help psychologists avoid inappropriate behaviors and educate the public on what to expect from their psychologist.

Hearing Location(s): Department of Health, 310 Israel Road S.E., Room 152/153, Tumwater, WA 98503 [98501], on October 5, 2007, at 11:00 a.m.

Date of Intended Adoption: October 5, 2007.

Submit Written Comments to: Betty Moe, Department of Health, P.O. Box 47869, Olympia, WA 98504-7869, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4909, by September 28, 2007.

Assistance for Persons with Disabilities: Contact Betty Moe by September 28, 2007, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules set standards similar to rules adopted by the department of health. The proposed rules are anticipated to help psychologists avoid sexual misconduct and to educate consumers about what they should expect from their psychologist.

Reasons Supporting Proposal: The proposed rules will establish clear and consistent definitions for sexual misconduct and the expectations for a psychologist's conduct in a practitioner/patient relationship. The proposal responds to the Governor's Executive Order 06-03 to promote patient safety and awareness.

Statutory Authority for Adoption: RCW 18.83.050 and 18.130.050.

Statute Being Implemented: RCW 18.83.050.

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

Name of Proponent: Department of health, examining board of psychology, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Betty Moe, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4912.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Betty Moe, Department of Health, P.O. Box 47869, Olympia, WA 98504-7869, phone (360) 236-4912, fax (360) 236-4909, e-mail Betty.Moe@doh.wa.gov.

August 13, 2007
Raymond L. Harry
Chair

AMENDATORY SECTION (Amending Order 337B, filed 3/10/93, effective 4/10/93)

WAC 246-924-358 Sexual misconduct. (1) The following definitions apply to this section:

(a) "Health care information" means any information, whether oral or recorded in any form or medium that identifies or can readily be associated with the identity of, and relates to the health care of, a patient or client.

(b) "Key party" means immediate family members and others who would be reasonably expected to play a significant role in the health care decisions of the patient or client and includes, but is not limited to, the spouse, domestic partner, sibling, parent, child, guardian and person authorized to make health care decisions of the patient or client.

(c) "Legitimate health care purpose" means activities for examination, diagnosis, treatment, and personal care of patients or clients, including palliative care, as consistent

with community standards of practice for the profession. The activity must be within the scope of practice of psychology.

(d) "Patient" or "client" means an individual who receives psychological services from a psychologist.

((The)) (2) A psychologist shall never engage, or attempt to engage, in sexual ((contact or sexual activity with current clients-

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

(3) The psychologist shall never engage in sexual contact or sexual activity with former clients if such contact or activity involves the abuse of the psychologist-client relationship. Factors which the board may consider in evaluating if the psychologist-client relationship has been abusive includes but is not limited to:

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

(b) The nature and duration of the therapy;

(c) The circumstances of cessation or termination;

(d) The former client's personal history;

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

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

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

(4) The psychologist shall never engage in sexually harassing or demeaning behavior with current or former clients.

(5) Psychologists do not accept as therapy patients or clients, persons with whom they have engaged in sexual contact or activity)) misconduct with a current patient, client, or key party, inside or outside the health care setting. Sexual misconduct shall constitute grounds for disciplinary action. Sexual misconduct includes, but is not limited to:

(a) Sexual intercourse;

(b) Touching the breasts, genitals, anus or any sexualized body part;

(c) Rubbing against a patient or client or key party for sexual gratification;

(d) Kissing;

(e) Hugging, touching, fondling or caressing of a romantic or sexual nature;

(f) Dressing or undressing in the presence of the patient, client or key party;

(g) Removing patient or client's clothing or gown or draping without emergent medical necessity;

(h) Encouraging masturbation or other sex act in the presence of the psychologist;

(i) Masturbation or other sex act by the psychologist in the presence of the patient, client or key party;

(j) Suggesting or discussing the possibility of a dating, sexual or romantic relationship after the professional relationship ends;

(k) Terminating a professional relationship for the purpose of dating or pursuing a romantic or sexual relationship;

(l) Soliciting a date with a patient, client or key party;

(m) Discussing the sexual history, preferences or fantasies of the psychologist;

(n) Any behavior, gestures, or expressions that may reasonably be interpreted as seductive or sexual;

(o) Making statements regarding the patient, client or key party's body, appearance, sexual history, or sexual orientation other than for psychological service purposes;

(p) Sexually demeaning behavior including any verbal or physical contact which may reasonably be interpreted as demeaning, humiliating, embarrassing, threatening or harming a patient, client or key party;

(q) Photographing or filming the body or any body part or pose of a patient, client, or key party, other than for psychological service purposes; and

(r) Showing a patient, client or key party sexually explicit photographs, other than for psychological service purposes.

(3) A psychologist shall not:

(a) Offer to provide psychological services in exchange for sexual favors;

(b) Use health care information to contact the patient, client or key party for the purpose of engaging in sexual misconduct;

(c) Use health care information or access to health care information to meet or attempt to meet the psychologist's sexual needs.

(4) After the termination of the psychology services, the psychologist shall not engage, or attempt to engage, in the activities listed in subsection (2) of this section with a patient or client for five years or with a key party for two years.

(5) After the period of time described in subsection (4) of this section, a psychologist shall not engage, or attempt to engage, in the activities listed in subsection (2) of this section if:

(a) There is a significant likelihood that the patient, client or key party will seek or require additional services from the psychologist; or

(b) There is an imbalance of power, influence, opportunity and/or special knowledge of the professional relationship.

(6) When evaluating whether a psychologist is prohibited from engaging, or attempting to engage, in sexual misconduct, the board will consider factors, including but not limited to:

(a) Documentation of a formal termination and the circumstances of termination of the psychological services;

(b) Transfer of care to another health care provider;

(c) Duration of the psychological services;

(d) Amount of time that has passed since the last psychological services were provided to the patient or client;

(e) Communication between the psychologist and the patient or client between the last psychological services rendered and commencement of the personal relationship;

(f) Extent to which the patient's or client's personal or private information was shared with the psychologist;

(g) Nature of the patient or client's mental health condition during and since the professional relationship; and

(h) The patient or client's emotional dependence and vulnerability.

(7) Initiation or consent by patient, client or key party does not excuse or negate the psychologist's responsibility.

(8) These rules do not prohibit providing psychological services in case of emergency where the services cannot or will not be provided by another psychologist.

(9) Psychologists must not accept as therapy patients or clients, persons with whom they have engaged in sexual contact or activity.

WSR 07-17-177

PROPOSED RULES

SECRETARY OF STATE

[Filed August 22, 2007, 10:19 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: State registered domestic partnerships, this rule sets fees and internal agency procedures for the registration of domestic partnerships under chapter 156, Laws of 2007.

Hearing Location(s): James Dolliver Building, Room 205, 801 Capitol Way South, Olympia, WA 98501, on September 25, 2007, at 1:00 p.m.

Date of Intended Adoption: September 28, 2007.

Submit Written Comments to: William Kellington, 801 Capitol Way South, Olympia, WA 98501, e-mail bkellington@secstate.wa.gov, fax (360) 586-4989, by September 25, 2007.

Assistance for Persons with Disabilities: Contact William Kellington by e-mail, TTY (360) 753-1485.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Establishes fees and internal agency procedures for registration of state registered domestic partnerships under chapter 156, Laws of 2007.

Adds a nonsubstantive provision to our list of services provided noting that the corporations division acts as agent for service of process in some cases involving motor vehicle theft under chapter 393, Laws of 2007.

Repeals WAC 434-110-060 and 434-110-075. These two sections were duplicated in WAC revisions adopted January 23, 2004, and should have been repealed at that time. The content of the repealed rules is duplicated in WAC 434-112-080 and 434-112-090.

Statutory Authority for Adoption: Chapter 156, Laws of 2007.

Statute Being Implemented: Chapter 156, Laws of 2007, State registered domestic partnerships.

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

Name of Proponent: Office of the secretary of state, corporations division, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: William Kellington, 801 Capitol Way South, Olympia, WA 98501, (360) 753-2524.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The new and amendatory sections of this regulation do not impose any fees, requirements or penalties [on] businesses. The regulation

establishes fees and processes related to registration of domestic partnerships, under chapter 156, Laws of 2007. The repealed sections were duplicated in an earlier rule adoption. Repealing these sections makes no substantive change in fees, requirements, processes or services.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not subject to RCW 34.05.328 because it establishes fees and rates pursuant to legislative standards; and relates to internal government operations not subject to violation by a nongovernment party. The repealed sections are repealed to clarify language and eliminate duplication.

August 21, 2007

Steve Excell

Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

WAC 434-112-010 Services provided by the corporations division and charities program. (1) The corporations division includes the corporations program and the charities program.

(2) The corporations program provides the following services:

(a) Business filings under chapters 18.100, 23.78, 23.86, 23.90 RCW, and Titles 23B and 25 RCW;

(b) Nonprofit organization filings under Title 24 RCW;

(c) Trademark registration under chapter 19.77 RCW;

(d) Certification authority licensing under chapter 19.34 RCW, the Electronic Authentication Act;

(e) Registration of international student exchange programs under chapter 19.166 RCW;

(f) Registration under the Immigration Assistant Practices Act, chapter 19.154 RCW;

(g) Apostilles under RCW 42.44.180;

(h) Agent for service of process on motorists under RCW 46.64.040;

(i) Agent for service of process on defendants in actions for recovery of damages for motor vehicle theft, as authorized by chapter 393, Laws of 2007.

(j) Agent for service of process for those entities and under those circumstances listed in ~~((subsection (2)))~~(a), (b), and (c) of this ~~((section))~~ subsection.

(k) Registration of state registered domestic partnerships under chapter 156, Laws of 2007.

(3) The charities program provides the following services:

(a) Registrations under the Charitable Solicitations Act, chapter 19.09 RCW including:

(i) Charitable organizations;

(ii) Commercial fund-raisers; and

(iii) Fund-raising contracts;

(b) Registration of charitable trusts under chapter 11.110 RCW;

(c) Publication of the trust directory; and

(d) Agent for service of process for those entities and under those circumstances listed in ~~((subsection (3)))~~(a) and (b) of this ~~((section))~~ subsection.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

WAC 434-112-085 Fees and penalties. (1) For Washington registered profit domestic and foreign corporations, including profit cooperative associations, employee cooperative associations, limited liability companies, limited partnerships, Massachusetts trusts and limited liability partnerships, fees and penalties are as follows:

(a) Articles of incorporation, certificates of formation, partnership agreements and other original filings, one hundred seventy-five dollars;

(b) Articles of amendment, restatement, correction, or revocation of dissolution, thirty dollars;

(c) License renewal with required annual report filed after due date and before administrative dissolution, penalty fee of twenty-five dollars, plus the statutory fee of fifty dollars and the department of licensing handling fee of nine dollars;

(d) Reinstatement, one hundred dollars plus all delinquent license or annual fees and a twenty-five percent penalty computed on the total amount;

(e) Articles of merger or exchange, twenty dollars for each listed company;

(f) Resignation of registered agent, twenty dollars;

(g) Resignation of officer or director, an initial report or amended annual report, and the appointment or change of registered agent or change of registered address, ten dollars;

(h) Registration, reservation, or transfer of name, thirty dollars;

(i) Articles of dissolution, certificate of withdrawal, dissolution by judicial decree, or revocation of certificate of authority by either failure to renew or judicial decree, no fee;

(j) Agent's consent to act as agent, agent's resignation if appointed without consent, or annual report when filed concurrently with annual license fee, no fee; and

(k) Other statement or report filed, ten dollars.

(2) For Washington registered domestic and foreign non-profit corporations, nonprofit miscellaneous and mutual corporations, building corporations, and other associations and corporations under Title 24 RCW, fees and penalties are as follows:

(a) Articles of incorporation and other original filings, thirty dollars;

(b) Articles of amendment, restatement, or correction, twenty dollars;

(c) Articles of dissolution or certificate of withdrawal, no fee;

(d) Revocation of dissolution, twenty dollars;

(e) Reinstatement following administrative dissolution, thirty dollars plus all delinquent annual fees and a five-dollar penalty;

(f) Articles of merger or exchange, twenty dollars for each listed corporation;

(g) Resignation of officer or director, an initial report or amended annual report, the appointment or change of registered agent, or change of registered address, ten dollars;

(h) Resignation of registered agent, twenty dollars;

(i) Registration, reservation, or transfer of reservation of name, twenty dollars;

(j) Certificate of election adopting provisions of chapter 24.03 RCW as described in RCW 24.03.017, thirty dollars; and

(k) Other statement or report filed, ten dollars.

(3) For registering trademarks for use within the state, the fees are as follows:

(a) For a five-year registration or renewal, fifty dollars for each class in which the trademark is registered;

(b) For recording the assignment of a trademark and its registration or application for registration, ten dollars;

(c) For a new certificate with the name of the new assignee, five dollars;

(d) For reservation of a trademark for one hundred eighty days, thirty dollars for each class in which the trademark is reserved;

(e) For amendment of a trademark to add new classes of goods or services, fifty dollars for each class added by the amendment;

(f) Cancellation of trademark, no fee; and

(g) Other statement or report filed, ten dollars.

(4) For registration of a declaration of state registered domestic partnership, or registration of a notice of termination of state registered domestic partnership, fifty dollars each.

(5) Under special circumstances, the filing party may petition the secretary in writing to request a waiver of emergency or penalty fees.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

WAC 434-112-090 Miscellaneous fees. (1) For photocopies, fees are as follows:

(a) Each annual report, five dollars;

(b) ((Application for registration)) Initial articles of incorporation, initial certificate of formation, other initial organizing document or any single document, ten dollars;

(c) ((Application and amended notices)) Articles of incorporation, certificate of formation, other organizing documents including all subsequent amendments and restatements, twenty dollars;

(d) Copy of ((annual notice)) any filing related to a state registered domestic partnership, five dollars;

(e) Surcharge for files exceeding one hundred pages of copy, thirteen dollars for each fifty-page increment (number of pages determined by weight of copies);

(2) For certificates of existence fees are as follows:

(a) With complete historical data, under embossed seal, thirty dollars;

(b) Computer generated twenty dollars;

(c) Duplicate certificate twenty dollars.

(3) For additional certificates of registration or termination of a state registered domestic partnership, five dollars. For an additional or replacement state registered domestic partnership wallet card, ten dollars.

(4) For verifying the signature of a notary or public official for an apostille or certification authenticating a sworn document, the fee is fifteen dollars. This includes:

(a) A ten-dollar fee for verifying the signature of a notary or public official; and

(b) A five-dollar fee for providing a certificate under seal pursuant to RCW 47.03.120 (1)(b).

~~((4))~~ (5) For each certified copy of any document the fee is ten dollars plus a ten-dollar copy fee per document.

~~((5))~~ (6) For any service of process the fee is fifty dollars.

~~((6))~~ (7) Dishonored checks. If a person, corporation or other submitting entity has attempted to pay any fee due to the secretary of state by means of a check, and the check is dishonored by the financial institution when presented, the secretary of state will impose a twenty-five-dollar penalty, payable to the secretary of state.

In the event a valid replacement check and dishonor charge is not received in the office of the secretary of state within the time prescribed by its accounting division, the transaction covered by the dishonored check will be canceled and all other late filing fees and penalties will be instituted.

NEW SECTION

WAC 434-112-100 State registered domestic partnerships. (1) State registered domestic partnerships will be registered by the corporations program, in the corporations division of the office of the secretary of state.

(2) Declarations of state registered domestic partnerships, and notices of termination of state registered domestic partnerships may be submitted to the corporations division by mail, or in person. See WAC 434-112-020 for the corporations division address and hours of service.

(3) The document standards in WAC 434-112-040(5) apply to declarations of state registered domestic partnerships and to notices of termination of state registered domestic partnerships.

(4) At the time of registration of a declaration of state registered domestic partnership or of filing of a notice of termination of state registered domestic partnership the corporations division will provide to each state registered domestic partner:

(a) One original certificate of registration or termination. Further certificates or additional certificates requested after registration are available subject to the fees set forth in WAC 434-112-090.

(b) One wallet sized card documenting registration of the state registered domestic partnership.

(5) Registrations of state registered domestic partnerships are public records and all documents related to the registration are subject to public disclosure.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-110-060	In-person or expedited service—Special fees.
WAC 434-110-075	Miscellaneous fees.

WSR 07-17-184

PROPOSED RULES

OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES

[Filed August 22, 2007, 11:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-14-153.

Title of Rule and Other Identifying Information: Linked deposit program implementation. A new chapter is added to Title 326 WAC and chapters 326-02 and 326-20 WAC are amended.

Hearing Location(s): Office of Minority and Women's Business Enterprises, 406 South Water Street, Olympia, WA, on September 25, 2007, at 6:00 p.m. - 8:00 p.m.; and at the United States Small Business Administration, 801 West Riverside Avenue, Spokane, WA, on September 27, 2007, at 2:00 p.m. - 4:00 p.m. The public is also invited to attend information sessions to be scheduled in Olympia, Tacoma, Seattle, Federal Way, Bellevue, Mt. Vernon, Bellingham, Yakima, Spokane, Pasco, and Vancouver. Please contact OWMBE's rules coordinator or check OWMBE's web site (www.omwbe.wa.gov) for specific dates, times, and locations.

Date of Intended Adoption: October 23, 2007.

Submit Written Comments to: Juan Huey-Ray, 406 South Water Street, Olympia, WA 98504, e-mail jhuey-ray@omwbe.wa.gov, fax (360) 586-7079, by September 27, 2007.

Assistance for Persons with Disabilities: Contact Tammi Hazlitt by September 11, 2007, (360) 753-9691.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the program is to facilitate access to capital for minority and women's business enterprises certified under chapter 39.19 RCW. The intent of the new section is to increase the number of minority and women's business enterprises participating in the program and to decrease the waiting period between application approval and funding. The intent of the amendments are [is] to include the program under the WAC title and to connect certification to the program as required by RCW 43.86A.060 (sections 1 and 2, chapter 500, Laws of 2007).

Statutory Authority for Adoption: RCW 39.19.030 and 43.86A.060 (sections 1 and 2, chapter 500, Laws of 2007).

Statute Being Implemented: RCW 43.86A.060 (sections 1 and 2, chapter 500, Laws of 2007).

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

Name of Proponent: Office of minority and women's business enterprises, governmental.

Name of Agency Personnel Responsible for Drafting: Juan Huey-Ray, 406 South Water Street, Olympia, WA 98504, (360) 704-1197; Implementation and Enforcement: Cynthia Cooper, 406 South Water Street, Olympia, WA 98504, (360) 753-9693.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules do not impose more than a minor cost on businesses it impacts.

A cost-benefit analysis is not required under RCW 34.05.328. There are no costs imposed by the rules.

August 22, 2007
Cynthia Cooper
Director

NEW SECTION

WAC 326-70-010 Linked deposit program—Purpose and intent. The purpose of this program is to facilitate access to capital for minority and women's business enterprises certified under chapter 39.19 RCW. The intent of these rules is to increase the number of minority and women business owners participating in the program and decrease the wait period between application approval and funding.

[NEW SECTION]

WAC 326-70-020 Definitions. The following words and terms have specific meaning as used in this chapter which may be different from their meaning elsewhere in this title.

(1) "Application" means the Loan Enrollment Form submitted by qualified public depositories and processed by the office.

(2) "Business" means an entity that is certified under chapter 39.19 RCW.

(3) "Office" means the Washington State Office of Minority and Women's Business Enterprises (OMWBE).

(4) "Owner" means any person(s) holding an ownership interest in a business certified under chapter 39.19 RCW.

(5) "Person" means one or more individuals, partnerships, associations, organizations, corporations, cooperatives, limited liability companies, legal representatives, trustees and receivers, or any group of persons.

(6) "Program" means the Linked Deposit Program authorized under RCW 43.86A.060.

(7) "Treasurer" means the Office of the State Treasurer.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[NEW SECTION]

WAC 326-70-035 Loan limits. To increase the number of businesses gaining access to capital through participation in the program, the following limits shall apply:

(1) The total principal amount of a single qualified loan shall not exceed one million dollars.

(2) The total principal amount of qualified loans under the program that any one business may receive over the lifetime of the business shall not exceed \$5,000,000.00.

(3) The total principal amount of qualified loans under the program that an owner of one or more businesses may receive during her/his lifetime shall not exceed \$10,000,000.00.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[NEW SECTION]

WAC 326-70-040 Funding eligibility. All minority and women business enterprises certified under chapter 39.19 RCW desiring to participate in the Linked Deposit Program and the related qualified public depository shall complete and submit an application to the office for approval. The office shall review all applications received by the 25th day of each calendar month and forward a list of approved applications to the Treasurer by the fifth working day of the following month.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[NEW SECTION]

WAC 326-70-050 Funding priority—Established. Funding shall occur on a monthly basis as funds are available. First-time applications must be first to receive funding in the month they are approved. If available funds are insufficient to cover the remaining applications in a given month, the unfunded applications must be first to receive funding in the subsequent month. First-time applications in that month will be funded following the funding of holdovers from the previous month(s). See example below.

Loan Application		Funded?			
Loan ID	First Loan?	Dec. 07	Jan. 08	Feb. 08	Mar. 08
D-1	Y	Y			
D-2	Y	Y			
D-3	N	Y			
D-4	N	N	Y		
D-5	N	N	N	Y	
D-6	N	N	N	N	Y
J-1	Y	—	N	N	Y
J-2	N	—	N	N	N
J-3	N	—	N	N	N
F-1	Y	—	—	N	Y
F-2	Y	—	—	N	Y
F-3	N	—	—	N	N
F-4	N	—	—	N	N
M-1	Y	—	—	—	N
M-2	N	—	—	—	N

Note: In the Loan ID column, the alpha character identifies the month in which the application was received. After three months on the list, unfunded applications (other than first-timers) will be funded in alternating order with first-time applications. First-timers that are unfunded after six months will be given priority and not subjected to alternating. (See WAC 326-70-060)

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[NEW SECTION]

WAC 326-70-060 Funding priority—Adjusted. (a) Approved but unfunded applications on the effective date of these rules shall be funded prior to applications received after the effective date of these rules.

(b) The Treasurer shall review and update the funding list each month in a manner that maintains the priority of first-time applications for the current month while providing funding for other applicants that have been unfunded for at least three months.

(c) First-time applications that are unfunded after six months shall not be subject to alternating with other applications that have been unfunded for three months.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[NEW SECTION]

WAC 326-70-065 Accountability. Qualified public depositaries shall report current loan balances each month on all loans to the Treasurer.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[NEW SECTION]

WAC 326-70-070 Applicability of rules. This chapter shall apply to all applications to the Linked Deposit Program: PROVIDED, That sections 326-70-050 and 326-70-060 shall apply only to applications received after the effective date of the rules' adoption. Applications approved prior to the effective date of the rule shall be funded in the order received, subject to availability of funds.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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 04-08-093 [92-11-007], filed 4/6/04 [5/11/92], effective 5/7/04 [6/11/92])

WAC 326-02-020 Applicability. Title 326 WAC applies to all applications for certification, to the Linked Deposit Program, and to all public works and procurement by state agencies and educational institutions: Provided, That this title does not apply where it is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state. In such a case, the conflicting portions of this chapter are inoperative solely to the extent of the conflict and with respect to the agencies directly affected.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 92-11-007 [04-08-093], filed 5/11/92 [4/6/04], effective 6/11/92 [5/7/04])

WAC 326-20-180 Effect of certification. Certification by OMWBE under the state program shall have the following effects:

(3) Certification as a minority or women's business enterprise satisfies the threshold requirement for a qualifying loan under RCW 43.86A.060 (2)(c).

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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.