

WSR 07-19-003**PERMANENT RULES****SPOKANE REGIONAL CLEAN AIR AGENCY**

[Filed September 6, 2007, 12:19 p.m., effective October 7, 2007]

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

Purpose: This rule change will set levels for curtailment of solid fuel burning devices for Spokane County. Changes in RCW 70.94.473 by SHB 2261 allow Spokane County to set its own curtailment trigger levels until June 30, 2009. The changes to the regulation will set a stage 1 impaired air quality level at 20 micrograms of particulate matter 2.5 micrometers or small per cubic meter of air and stage 2 at 30.

Citation of Existing Rules Affected by this Order: Amending Spokane Regional Clean Air Agency Regulation I, Article VIII, Solid Fuel Burning Device Standards.

Statutory Authority for Adoption: RCW 70.94.141.

Adopted under notice filed as WSR 07-16-014 on July 19, 2007.

Changes Other than Editing from Proposed to Adopted Version: In Section 8.07A 2 b "or" replaced the period and in Section 8.07 A 5 c and d "or" replaced the periods.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 7, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 6, 2007.

Ronald J. Edgar
Chief of Technical Services

ARTICLE VIII**SOLID FUEL BURNING DEVICE STANDARDS**

ADOPTED: APRIL 7, 1988

REVISED:

EFFECTIVE:

SECTION 8.01 PURPOSE

This article establishes emission standards, certification standards and procedures, curtailment rules, and fuel restrictions for solid fuel burning devices in order to attain the National Ambient Air Quality Standards for fine particulate matter (PM_{2.5}) and to further the policy of the ~~(Authority)~~ Agency as stated in Article I, Section 1.01 of this Regulation.

SECTION 8.02 APPLICABILITY

The provisions of this article apply to solid fuel burning devices in all areas of Spokane County.

SECTION 8.03 DEFINITIONS

Unless a different meaning is clearly required by context, words and phrases used in this article shall have the following meaning:

A. Adequate Source of Heat means a permanently installed furnace or heating system, connected or disconnected from its energy source, designed to heat utilizing oil, natural gas, electricity, or propane and to maintain seventy degrees Fahrenheit at a point three feet above the floor in all normally inhabited areas of a residence or commercial establishment.

B. Certified means:

~~((1. A solid fuel burning device, other than a fireplace, has received certification or an exemption certificate from the United States Environmental Protection Agency pursuant to Title 40, Part 60, Subpart AAA of the Code of Federal Regulations, "Standards of Performance for New Residential Wood Heaters"; or))~~

~~((2.))~~ A solid fuel burning device has been determined by Ecology to meet emission performance standards, pursuant to RCW 70.94.457 and WAC 173-433-100.

C. Coal stove means an enclosed, coal burning appliance capable of and intended for residential space heating, domestic water heating or indoor cooking, which has substantially all the following characteristics:

1. An opening for loading coal which is located near the top or side of the appliance;
2. An opening for emptying ash which is located near the bottom or the side of the appliance;
3. A system which admits air primarily up and through the fuel bed;
4. A grate or other similar device for shaking or disturbing the fuel bed; and
5. Listing by a nationally recognized safety testing laboratory for use of coal only, except for coal ignition purposes.

D. Cook stove means an appliance designed with the primary function of cooking food and containing an integrally built in oven, with an internal temperature indicator and oven rack, around which the fire is vented, as well as a shaker grate ash pan and an ash cleanout below the firebox. Any device with a fan or heat channels used to dissipate heat into the room shall not be considered a cook stove.

E. Ecology means the Washington State Department of Ecology.

F. EPA means the United States Environmental Protection Agency or the Administrator of the United States Environmental Protection Agency or his/her designated representative.

G. Fireplace means a permanently installed masonry fireplace; or a factory-built solid fuel burning device designed to be used with an air-to-fuel ratio greater than or equal to thirty-five to one and without features to control the inlet air-to-fuel ratio other than doors or windows such as may be incorporated into the fireplace design for reasons of safety, building code requirements, or aesthetics.

H. Furnace means a device which is designed and installed to heat an entire multiple room structure by forcing heated air through permanently installed ducts or by forcing heated water or steam through pipes which result in convective or direct radiation of heat into the rooms.

I. Reasonable Further Progress has the same meaning as in Section 171(1) of the Federal Clean Air Act (42 USC 7501).

J. Seasoned Wood means wood of any species that has been sufficiently dried so as to contain twenty percent or less moisture by weight.

K. Solid Fuel Burning Device (same as solid fuel heating device) means a device that is designed to burn wood, coal, or any other nongaseous or nonliquid fuels, and includes woodstoves, coal stoves, cook stoves and fireplaces, or any similar device burning any solid fuel used for aesthetic or space-heating purposes in a private residence or commercial establishment, which has a heat input less than one million British thermal units per hour.

L. Smoke Control Zone means the geographic area, impacted by solid fuel combustion smoke, surrounding the Spokane/Spokane Valley Metropolitan area and, after consideration of the contribution of noncertified solid fuel burning devices, population density and urbanization, and impact to the public health (RCW 70.94.477 (2)(a), (b) and (c)), is defined as follows:

Sections 1 through 6, Township 24 N, Range 42 E; Townships 25 and 26 N, Range 42 E; Sections 1 through 24, Township 24 N, Range 43 N; Townships 25, 26 and 27 N, Range 43 E; Sections 19 through 36, Township 28 N, Range 43 E; Sections 1 through 24, Township 24 N, Range 44 E; Township 25 N, Range 44 E; Sections 19 through 36, Township 26 N, Range 44 E; Township 25 N, Range 45 E; Sections 1 through 4, 9 through 16 and 19 through 36, Township 26 N, Range 45 E; Sections 33 through 36, Township 27 N, Range 45 E; Sections 6, 7, 18, 19, 30, and 31, Township 25 N, Range 46 E; Sections 6, 7, 18, 19, 30 and 31, Township 26 N, Range 46 E; Section 31, Township 27 N, Range 46 E.

M. Substantially Remodeled means any alteration or restoration of a building exceeding sixty percent of the appraised value of such building within a twelve-month period (RCW 70.94.455).

N. Treated Wood means wood of any species that has been chemically impregnated, painted, or similarly modified to improve resistance to insects, fungus or weathering.

O. Woodstove means a wood fueled appliance other than a cook stove with a closed fire chamber which maintains an air-to-fuel ratio of less than thirty-five to one during the burning of ninety percent or more of the fuel mass consumed at the minimum burn rate achievable. Any combination of parts, typically consisting of but not limited to, doors, legs, flue pipe collars, brackets, bolts and other hardware, when manufactured for the purpose of being assembled, with or without additional owner supplied parts, into a woodstove, is considered a woodstove.

SECTION 8.04 EMISSION PERFORMANCE STANDARDS

The ~~((Authority))~~ Agency adopts section WAC 173-433-100 "Emission Performance Standards" and Title 40, Part 60, Subpart AAA of the Code of Federal Regulations "Standards of Performance for New Residential Wood Heaters" by reference.

SECTION 8.05 OPACITY STANDARDS

A. A person shall not cause or allow emission of a smoke plume from any solid fuel burning device to exceed an aver-

age of twenty percent opacity for six consecutive minutes in any one-hour period.

B. Test method and procedures. EPA reference method 9 - Visual Determination of Opacity of Emissions from Stationary Sources - shall be used to determine compliance with Section 8.05.A.

C. Enforcement. Smoke visible from a chimney, flue or exhaust duct in excess of the opacity standard shall constitute prima facie evidence of unlawful operation of an applicable solid fuel burning device. This presumption may be refuted by demonstration that the smoke was not caused by an applicable solid fuel burning device. The provisions of this requirement shall not apply during the starting of a new fire for a period not to exceed twenty minutes in any four-hour period.

SECTION 8.06 PROHIBITED FUEL TYPES

A person shall not cause or allow any of the following materials to be burned in a solid fuel burning device:

- A. Garbage;
- B. Treated wood;
- C. Plastic products;
- D. Rubber products;
- E. Animals;
- F. Asphaltic products;
- G. Waste petroleum products;
- H. Paints;

I. Any substance, other than properly seasoned fuel wood, or coal with sulfur content less than 1.0% by weight burned in a coal stove, which normally emits dense smoke or obnoxious odors;

J. Paper, other than an amount of non-colored paper necessary to start a fire.

SECTION 8.07 CURTAILMENT

A. Except as provided in Section 8.08, no person shall operate a solid fuel burning device within a defined geographical area under any of the following conditions:

1. Whenever Ecology has declared curtailment under an air pollution episode for the geographical area pursuant to chapter 173-435 WAC and RCW 70.94.715.

2. Whenever ~~((Ecology or))~~ the ~~((Authority))~~ Agency has declared curtailment under a first stage of impaired air quality for the Smoke Control Zone or other geographical area ~~((and))~~ unless the solid fuel burning device is ~~((not a certified device))~~ one of the following:

- a. A nonaffected pellet stove; or
- b. A solid fuel burning device has been determined by Ecology to meet emission performance standards, pursuant to RCW 70.94.457 and WAC 173-433-100; or
- c. A woodstove certified and labeled by EPA under "40 SFR 60 Subpart AAA - Standards of Performance for Residential Wood Heaters"; or
- d. A woodstove meeting the "Oregon Department of Environmental Quality Phase 2" emissions standards contained in Subsection (1) and (2) of Section 340-340-262-0110, and certified in accordance with "Oregon Administrative Rules, Chapter 340, Division 262 - Woodstove Certification" Dated November 1999.

In Spokane County until June 30, 2009 as allowed by RCW 70.94.473 §1(2) (Effective July 22, 2007) ((A)) a first

stage of impaired air quality is reached and curtailment may be declared when particulates ~~((ten))~~ two and one half microns and smaller in diameter (PM~~((40))~~2.5) are measured at any location inside Spokane County at an ambient level of ~~((seventy five))~~ twenty micrograms per cubic meter of air by a method which has been determined, by Ecology or the ~~((Authority))~~ Agency, to have a reliable correlation to the federal reference method, CFR Title 40 Part 50 Appendix ~~((J))~~ L, or equivalent.

3. Whenever ~~((Ecology or))~~ the ~~((Authority))~~ Agency has declared curtailment under a second stage of impaired air quality for the Smoke Control Zone or other geographical area. In Spokane County until June 30, 2009 as allowed by RCW 70.94.473 §1(2) (Effective July 22, 2007) ((A)) a second stage of impaired air quality is reached and curtailment may be declared when particulates ~~((ten))~~ two and one half microns and smaller in diameter (PM~~((40))~~2.5) are measured at any location inside Spokane County at an ambient level of ~~((one hundred five))~~ thirty micrograms per cubic meter of air by a method which has been determined by Ecology or the ~~((Authority))~~ Agency, to have a reliable correlation to the federal reference method, CFR Title 40 Part 50 Appendix ~~((J))~~ L, or equivalent.

4. After July 1, 1995, if the limitation in RCW 70.94.477(2) is exercised, following the procedure in Section 8.09, and ~~((Ecology or))~~ the ~~((Authority))~~ Agency has declared curtailment under a single stage of impaired air quality for the Smoke Control Zone or other geographical area. A single stage of impaired air quality is reached and curtailment may be declared when particulates ~~((ten))~~ two and one half microns and smaller in diameter (PM~~((40))~~2.5) are measured at any location inside Spokane County at an ambient level of ~~((ninety))~~ twenty five micrograms per cubic meter of air by a method which has been determined, by Ecology or the ~~((Authority))~~ Agency, to have a reliable correlation to the federal reference method, CFR Title 40 Part 50 Appendix ~~((J))~~ L, or equivalent.

5. After July 1, 1995, if the limitation in RCW 70.94.477(2) is exercised, following the procedure in Section 8.09, and the solid fuel burning device is not ~~((a certified device or a fireplace.))~~ one of the following:

- a. A fireplace
- b. A nonaffected pellet stove; or
- c. A solid fuel burning device has been determined by Ecology to meet emission performance standards, pursuant to RCW 70.94.457 and WAC 173-433-100; or
- d. A woodstove certified and labeled by EPA under "40 SFR 60 Subpart AAA - Standards of Performance for Residential Wood Heaters"; or
- e. A woodstove meeting the "Oregon Department of Environmental Quality Phase 2" emissions standards contained in Subsection (1) and (2) of Section 340-340-262-0110, and certified in accordance with "Oregon Administrative Rules, Chapter 340, Division 262 - Woodstove Certification" Dated November 1999.

B. In consideration of declaring curtailment under a stage of impaired air quality, the ~~((Authority))~~ Agency shall consider the anticipated beneficial effect on ambient levels of particulates ~~((ten))~~ two and one half microns and smaller in diameter (PM~~((40))~~2.5), taking into account meteorological

factors, the contribution of emission sources other than solid fuel burning devices, and any other factors deemed to have an impact.

C. Any person responsible for a solid fuel burning device which is subject to curtailment and is already in operation at the time curtailment is declared under an episode, or a stage of impaired air quality shall extinguish that device by withholding new solid fuel for the duration of the episode or impaired air quality. Smoke visible from a chimney, flue or exhaust duct after a time period of three hours has elapsed from the time of declaration of curtailment under an episode or a stage of impaired air quality shall constitute prima facie evidence of unlawful operation of an applicable solid fuel burning device. This presumption may be refuted by demonstration that smoke was not caused by an applicable solid fuel burning device.

D. The ~~((Authority))~~ Agency, Ecology, Spokane County Health District, fire departments, fire districts, Spokane County Sheriff's Department, or local police having jurisdiction in the area may enforce compliance with solid fuel burning device curtailment after a time period of three hours has elapsed from the time of declaration of curtailment under an episode or a stage of impaired air quality.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

SECTION 8.08 EXEMPTIONS

A. The provisions of Section 8.07 shall not apply to any person who possesses a valid written exemption, issued by the ~~((Authority))~~ Agency. The ~~((Authority))~~ Agency may issue written exemptions to any person who demonstrates any of the following to the satisfaction of the ~~((Authority))~~ Agency:

1. An economic need to burn solid fuel for residential space heating purposes by qualifying for energy assistance according to economic guidelines established by the U.S. Office of Management and Budget under the low income energy assistance program (L.I.E.A.P.).

2. That his/her heating system, other than a solid fuel heating device, is inoperable for reasons other than his/her own actions.

3. That there is no adequate source of heat and the structure was constructed or substantially remodeled prior to July 1, 1992.

4. That there is no adequate source of heat and the structure was constructed or substantially remodeled after July 1, 1992 and is outside an urban growth area, as defined in RCW 36.70A~~((, and is outside an area designated nonattainment for particulates ten microns and smaller in diameter (PM10) in accordance with CFR Title 40, Part 50.6)).~~

B. Written exemptions shall be valid for a period determined by the ~~((Authority))~~ Agency, which shall not exceed one (1) year from the date of issuance. Exemptions may be renewed, provided the applicant meets the applicable requirements at the time of exemption renewal.

C. The provisions of Section 8.07 and the requirement in Section 8.08.A. to obtain a written exemption shall not apply to any person who operates a furnace that is designed to burn wood, coal, or any other nongaseous or nonliquid fuels.

SECTION 8.09 PROCEDURE TO GEOGRAPHICALLY LIMIT SOLID FUEL BURNING DEVICES

A. After July 1, 1995, if the EPA finds that the Spokane PM10 Nonattainment Area, as defined in CFR Title 40, Part 81, has either:

1. ~~((#))~~Failed to make Reasonable Further Progress, or
2. ~~((#))~~Failed to timely attain a National Ambient Air Quality Standard for particulates ten microns and smaller in diameter (PM10), as defined in CFR title 40, Part 50.6, or
3. ~~((*)~~)Violated a National Ambient Air Quality Standard for PM10 after redesignation as an attainment area, and emissions from solid fuel burning devices are determined by the EPA, in consultation with Ecology and the ~~((Authority))~~ Agency, to be a contributing factor to such failure or violation, then one year after such determination, the use of solid fuel burning devices not meeting the standards set forth in RCW 70.94.457, is restricted to areas outside the Smoke Control Zone.

B. Within 30 days of the determination pursuant to Section 8.09.A., the ~~((Authority))~~ Agency shall publish a public notice in a newspaper of general circulation, informing the public of such determination and of the date by which such restriction on the use of solid fuel burning devices becomes effective.

C. Nothing in Section 8.09 shall apply to the use of fireplaces or to persons who have obtained an exemption pursuant to Section 8.08.A.1.

SECTION 8.10 RESTRICTIONS ON INSTALLATION OF SOLID FUEL BURNING DEVICES

A. After July 1, 1992, no person shall install a solid fuel burning device that is not a certified device in any new or existing building or structure unless the device is a cook stove, a fireplace, ~~((a furnace))~~, or a device which has been rendered permanently inoperable.

B. After July 1, 1992, no person shall sell, offer for sale, advertise for sale, or otherwise transfer a solid fuel burning device, that is not a certified device to another person unless the device is a cook stove, a fireplace, ~~((a furnace))~~, or a device which has been rendered permanently inoperable.

C. After January 1, 1997, no person shall sell, offer for sale, advertise for sale, or otherwise transfer a fireplace to another person, except masonry fireplaces, unless such fireplace meets the 1990 United States environmental protection agency standards for wood stoves or equivalent standard that may be established by the state building code council by rule (RCW 70.94.457 (1)(b)).

D. After January 1, 1997, no person shall build, sell, offer for sale, advertise for sale, or otherwise transfer a masonry fireplace, unless such fireplace meets Washington State building code design standards as established by the state building code council by rule (RCW 70.94.457 (1)(c)).

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

SECTION 8.11 REGULATORY ACTIONS AND PENALTIES

A person in violation of this article may be subject to the provisions of Article II, Section 2.11, Penalties.

WSR 07-19-005
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 07-10—Filed September 6, 2007, 1:54 p.m., effective October 7, 2007]

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

Purpose: The purpose of this expedited rule making is to clean up all of the rules involved with creating chapter 173-455 WAC, the air quality fee rule. For this rule making, we will strike out language related to fees and add in language pointing readers to chapter 173-455 WAC for fee information.

Citation of Existing Rules Affected by this Order: Amending WAC 173-400-035, 173-400-045, 173-400-104, 173-400-116, 173-400-180, 173-407-040, 173-433-170, 173-491-030, 173-495-060, 173-495-065, and 173-495-070.

Statutory Authority for Adoption: RCW 70.94.181, [70.94.]152, [70.94.]331, [70.94.]650, [70.94.]745, [70.94.]892, [70.94.]011.

Adopted under notice filed as WSR 07-13-078 on June 18, 2007.

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

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

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

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

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

Date Adopted: September 6, 2007.

Jay J. Manning
Director

AMENDATORY SECTION (Amending Order 99-06, filed 8/15/01, effective 9/15/01)

WAC 173-400-035 Portable and temporary sources. (1) For portable sources which locate temporarily at particular sites, the owner(s) or operator(s) shall be allowed to operate at the temporary location providing that the owner(s) or operator(s) notifies **ecology** or the **authority** of intent to operate at the new location at least thirty days prior to starting the operation, and supplies sufficient information to enable **ecology** or the **authority** to determine that the operation will comply with the **emission standards** for a **new source**, and will not cause a violation of applicable **ambient air quality standards** and, if in a **nonattainment area**, will not interfere with scheduled attainment of **ambient standards**. The permission to operate shall be for a limited period of time (one year or less) and **ecology** or the **authority** may set specific conditions for operation during that period. A temporary source shall be required to comply with all applicable **emis-**

sion standards. A temporary or portable source that is considered a **major stationary source** within the meaning of WAC 173-400-113 must also comply with the requirements in WAC 173-400-141.

(2) This section applies statewide except where an authority has its own rule regulating such sources.

(3) Fees relating to this section can be found in chapter 173-455 WAC.

AMENDATORY SECTION (Amending Order 94-35, filed 9/13/96, effective 10/14/96)

WAC 173-400-045 Control technology fees. ((+) General.

Ecology may assess and collect a fee as authorized in RCW 70.94.154 and described in subsections (2) through (5) of this section.

(2) Fee schedule for source-specific determinations where RACT analysis and determination are performed by ecology:

(a) Basic RACT analysis and determination fee:

(i) Low complexity (the analysis addresses one type of emission unit) — one thousand five hundred dollars;

(ii) Moderate complexity (the analysis addresses two to five types of emissions units) — seven thousand five hundred dollars;

(iii) High complexity (the analysis addresses more than five types of emission units) — fifteen thousand dollars.

(b) Additional charges based on criteria pollutant emissions: In addition to those fees required under (a) of this subsection, a fee will be required for a RACT analysis and determination for an emission unit or multiple emission units of uniform design that, individually or in the aggregate, emit one hundred tons per year or more of any criteria pollutant — two thousand dollars.

(c) Additional charges based on toxic air pollutant emissions: In addition to those fees required under (a) and (b) of this subsection, the following fees will be required as applicable:

(i) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, individually or in the aggregate, emit more than two tons per year but not more than ten tons per year of any toxic air pollutant — one thousand dollars; or

(ii) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, individually or in the aggregate, emit more than ten tons per year of any toxic air pollutant — two thousand dollars.

(3) Fee schedule for source-specific determinations where RACT analysis is performed by the source and review and determination conducted by ecology:

(a) Basic RACT review and determination fees:

(i) Low complexity (the analysis addresses one type of emission unit) — one thousand dollars;

(ii) Moderate complexity (the analysis addresses two to five types of emissions units) — five thousand dollars;

(iii) High complexity (the analysis addresses more than five types of emission units) — ten thousand dollars.

(b) Additional charges based on criteria pollutant emissions: In addition to those fees required under (a) of this subsection, a fee will be required for a RACT analysis and deter-

mination for an emission unit or multiple emissions units of uniform design that, individually or in the aggregate, emit one hundred tons per year or more of any criteria pollutant — one thousand dollars.

(c) Additional charges based on toxic air pollutant emissions: In addition to those fees required under (a) and (b) of this subsection, the following fees will be required as applicable:

(i) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, individually or in the aggregate, emit more than two tons per year but not more than ten tons per year of any toxic air pollutant — five hundred dollars; or

(ii) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, individually or in the aggregate, emit more than ten tons per year of any toxic air pollutant — one thousand dollars.

(4) Fee schedule for reviews authorized under RCW 70.94.153 for the replacement or substantial alteration of control technology:

(a) Notice of construction application. Review and approval of notice of construction application (NOCA) for replacement or substantial alteration of control technology — three hundred fifty dollars.

(b) RACT analysis and determination. Review and approval of a RACT analysis and determination for affected emission unit — five hundred dollars.

(5) Fee schedule for categorical RACT determinations: Fees for categorical RACT determinations (for categories with more than three sources) shall be assessed as shown below. The fees described in (a) of this subsection shall be based on the most complex source within a category. Except as provided in (b) and (d) of this subsection, fees for individual sources in the category will be determined by dividing the total source category fee by the number of sources within the category.

(a) RACT analysis and determination (RACT analysis performed by ecology with assistance from sources):

(i) Low complexity source category (average source emissions of individual criteria pollutants are all less than twenty tons per year, average source emissions of individual toxic air pollutants are all less than two tons per year, or the analysis addresses one type of emission unit) — twenty-five thousand dollars;

(ii) Moderate complexity source category (average source emissions of one or more individual criteria pollutants are greater than twenty tons/year and less than one hundred tons per year, average source emissions of one or more individual toxic air pollutants are greater than two tons per year and less than ten tons per year, or the analysis addresses two to five types of emissions units) — fifty thousand dollars; or

(iii) High complexity source category (average source emissions of one or more individual criteria pollutants exceed one hundred tons per year, average source emissions of one or more individual toxic air pollutants exceed ten tons per year, or the analysis addresses more than five types of emission units) — one hundred thousand dollars.

(b) If an emission unit is being evaluated for more than one categorical RACT determination within a five-year period, ecology will charge the owner or operator of that

emission unit one fee and the fee will reflect the higher complexity categorical RACT determination.

(e) Ecology may adjust the fee to reflect workload savings from source involvement in source category RACT determination.

(d) Ecology may approve alternate methods for allocating the fee among sources within the source category.

(6) Small business fee reduction. The RACT analysis and determination fee identified in subsections (2) through (5) of this section may be reduced for a small business.

(a) To qualify for the small business RACT fee reduction, a business must meet the requirements of "small business" as defined in RCW 43.31.025.

(b) To receive a fee reduction, the owner or operator of a small business must include information in an application demonstrating that the conditions of (a) of this subsection have been met. The application must be signed:

(i) By an authorized corporate officer in the case of a corporation;

(ii) By an authorized partner in the case of a limited or general partnership; or

(iii) By the proprietor in the case of a sole proprietorship.

(c) Ecology may verify the application information and if the owner or operator has made false statements, deny the fee reduction request and revoke previously granted fee reductions.

(d) For small businesses determined to be eligible under (a) of this subsection, the RACT analysis and determination fee shall be reduced to the greater of:

(i) Fifty percent of the RACT analysis and determination fee; or

(ii) Two hundred fifty dollars.

(e) If due to special economic circumstances, the fee reduction determined under (d) of this subsection imposes an extreme hardship on a small business, the small business may request an extreme hardship fee reduction. The owner or operator must provide sufficient evidence to support a claim of an extreme hardship. The factors which ecology may consider in determining whether an owner or operator has special economic circumstances and in setting the extreme hardship fee include: Annual sales; labor force size; market conditions which affect the owner's or operator's ability to pass the cost of the RACT analysis and determination fees through to customers; and average annual profits. In no case will a RACT analysis and determination fee be reduced below one hundred dollars.

(7) Fee reductions for pollution prevention initiatives. Ecology may reduce RACT analysis and determination fees for an individual source if that source is using approved pollution prevention measures.

(8) Fee payments. Fees specified in subsection (4)(a) of this section shall be paid at the time a notice of construction applications is submitted to the department. Other fees specified in subsections (2) through (7) of this section shall be paid no later than thirty days after receipt of an ecology billing statement. For fees specified in subsection (5) of this section, a billing for one-half of the payment from each source will be mailed when the source category rule-making effort is commenced as noted by publication of the CR101 form in the *Washington State Register*. A billing for the second half of

the payment will be mailed when the proposed rule is published in the *Washington State Register*. No order of approval or other action approving or identifying a source to be at RACT will be issued by the department until all fees have been paid by the source. All fees collected under this regulation shall be made payable to the Washington department of ecology.

(9) Dedicated account. All control technology fees collected by the department from permit program sources shall be deposited in the air operating permit account created under RCW 70.94.015. All control technology fees collected by the department from nonpermit program sources shall be deposited in the air pollution control account.

(10) Tracking revenues, time, and expenditures. Ecology shall track revenues on a source-specific basis. For purposes of source-specific determinations under subsections (2) through (4) of this section, Ecology shall track time and expenditures on the basis of source complexity categories. For purposes of categorical determinations under subsection (5) of this section, ecology shall track time and expenditures on a source category basis.

(11) Periodic review. Ecology shall review and, as appropriate, update this section at least once every two years.)) Fees can be found in chapter 173-455 WAC.

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

WAC 173-400-104 Registration fees. ((1) Registration fee determination. In counties without an active local air pollution control authority, ecology shall establish registration fees based on workload using the process outlined below. The fees collected shall be sufficient to cover the direct and indirect costs of administering the registration program within ecology's jurisdiction.

(2) Budget preparation. Ecology shall conduct a workload analysis projecting resource requirements for administering the registration program. Workload estimates shall be prepared on a biennial basis and shall estimate the resources required to perform registration program activities listed in WAC 173-400-099(2). Ecology shall prepare a budget for administering the registration program using workload estimates identified in the workload analysis for the biennium.

(3) Registration fee schedule. Ecology's registration program budget shall be distributed to sources located in its jurisdiction according to the following:

(a) Sources requiring periodic registration and inspections shall pay an annual registration fee of four hundred dollars.

(b) Sources requiring annual registration and inspections shall pay a registration fee comprised of the following three components:

(i) Flat component. This portion of a source's fee shall be calculated by the equal division of thirty-five percent of the budget amount allocated to annual registration sources by the total number of sources requiring annual registration.

(ii) Complexity component. Each source is assigned a complexity rating of 1, 3, or 5 which is based on the estimated amount of time needed to review and inspect the source. This portion of the fee is calculated by dividing forty percent of

the budget amount allocated to annually registered sources by the total complexity of sources located in ecology's jurisdiction. The quotient is then multiplied by an individual source's complexity rating to determine that source's complexity portion of the fee.

(iii) Emissions component. This portion of a source's fee is calculated by dividing twenty-five percent of the budget amount allocated to annually registered sources by the total billable emissions from those sources. The quotient is then multiplied by an individual source's billable emissions to determine that source's emissions portion of the fee. Billable emissions include all air pollutants except carbon monoxide and total suspended particulate.

(4) Regulatory orders. Owners or operators registering a source as a synthetic minor must obtain a regulatory order which limits the source's emissions. The owner will be required to pay a fee based on the amount of time required to research and write the order multiplied by an hourly rate of sixty dollars.

(5) Fee reductions for pollution prevention initiatives. Ecology may reduce registration fees for an individual source if that source demonstrates the use of approved pollution prevention measures or best management practices beyond those required of the source.

(6) Fee reductions for economic hardships. If a small business owner believes the registration fee results in an extreme economic hardship, the small business owner may request an extreme hardship fee reduction. The owner or operator must provide sufficient evidence to support a claim of an extreme hardship. The factors which ecology may consider in determining whether an owner or operator has special economic circumstances and in setting the extreme hardship fee include: Annual sales; labor force size; market conditions which affect the owner's or operator's ability to pass the cost of the registration fee through to customers; average annual profits, and cumulative effects of multiple site ownership. In no case will a registration fee be reduced below two hundred dollars.

(7) Fee payments. Fees specified in this section shall be paid within thirty days of receipt of ecology's billing statement. All fees collected under this regulation shall be made payable to the Washington department of ecology. A late fee surcharge of fifty dollars or ten percent of the fee, whichever is more, may be assessed for any fee not received after the thirty-day period.

(8) Dedicated account. All registration fees collected by ecology shall be deposited in the air pollution control account.

(9) Tracking revenues, time, and expenditures. Ecology shall track revenues collected under this subsection on a source specific basis. Ecology shall track time and expenditures on the basis of ecology budget functions.

(10) Additional registration fee for fossil fueled electric generating facilities. A fossil fueled electric generating facility subject to the provisions of chapter 80.70 RCW and RCW 70.94.892, is subject to additional fees pursuant to that chapter.) Fees can be found in chapter 173-455 WAC.

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

WAC 173-400-116 New source review fees. ((+)) **Applicability.** Every person required to submit a notice of construction application to the department of ecology as authorized in RCW 70.94.152 for establishment of any proposed new source or emissions unit(s) shall pay fees as set forth in subsections (2) and (3) of this section. Persons required to submit a notice of construction application to a local air authority may be required to pay a fee as required by the local permitting authority. Persons required to submit a notice of construction application to a local air authority may be required to pay a fee to ecology to cover the costs of review pursuant to WAC 173-400-720, second tier analysis pursuant to WAC 173-460-090, and risk management decisions pursuant to WAC 173-460-100 as set forth in subsection (3) of this section. Fees assessed under this section shall apply without regard to whether an order of approval is issued or denied.

(2) **Basic review fees.** All owners or operators of proposed new sources are required to pay a basic review fee. The basic review fee covers the costs associated with preapplication assistance, completeness determination, BACT determination, technical review, public involvement and approval/denial orders. Complexity determination shall be based on the project described in the notice of construction application. The basic review fees are either (a) or (b) below:

(a) Basic new source review fees:

Source type	Clarifying criteria	Fee
Basic Review Fees		
Low complexity source	Emissions increase of individual pollutants are all less than one-half of the levels established in the definition of "emission threshold" in WAC 173-400-030, or emissions increase of individual toxic air pollutants are all less than 2.0 tons/year	\$1250
Moderate complexity	Emissions increase of one or more individual pollutants are greater than one-half of, and less than the levels established in the definition of "emission threshold" in WAC 173-400-030, or emissions increase of one or more toxic air pollutants are greater than 2.0 tons/year and less than ten tons/year	\$8000

Source type	Clarifying criteria	Fee
High complexity	Emissions increase of one or more pollutants are greater than the levels established in the definition of "emission threshold" in WAC 173-400-030, or emissions increase of one or more toxic air pollutants are greater than ten tons/year	\$18,000

(b) New source review fees for specific source categories:

Source type	Clarifying criteria	Fee
Dry cleaners		\$250
Gasoline stations		\$250
Storage tanks		
	<20,000 gallons	\$250
	20,000 -- 100,000 gallons	\$650
	>100,000 gallons	\$900
Chromic acid plating and anodizing identified in WAC 173-460-060		\$250
Solvent metal cleaners identified in WAC 173-460-060		\$250
Abrasive blasting identified in WAC 173-460-060		\$250
New emission units or activities that qualify as insignificant emission units under WAC 173-401-530 whether located at a chapter 173-401 WAC source or nonchapter 173-401 WAC source		\$250
Application for coverage under a general order of approval	WAC 173-400-560 and criteria included in a specific general order of approval	\$500
Nonroad engines		
Less than a total of 500 installed horsepower		\$500

Source type	Clarifying criteria	Fee
More than 500 horsepower and less than a total of 2000 installed horsepower		\$900
More than 2000 horsepower and less than a total of 5000 installed horsepower		\$2000
More than 5000 horsepower and less than a total of 10,000 installed horsepower		\$4000
More than a total of 10,000 installed horsepower		\$7500

(e) Additional units. An owner or operator proposing to build more than one identical emission unit shall be charged a fee for the additional units equal to one-third the basic review fee of the first unit.

(3) **Additional charges.** In addition to those fees required under subsection (2)(a) through (e) of this section, the following fees will be required as applicable:

(a) Major NSR actions under WAC 173-400-720 and 173-400-112:

Activity	Clarifying criteria	Fee
Prevention of significant deterioration review or increase in a PAL limitation	WAC 173-400-720	\$15,000
Establishing LAER and offset requirements	WAC 173-400-112	\$10,000
Establishing or renewal of clean unit status	Per 40 CFR 52.21(y)	\$1500
Pollution control project approval	Per 40 CFR 52.21(z)	\$1500
Establishment of a PAL	Per 40 CFR 52.21(aa)	\$4000
Renewal of a PAL	Per 40 CFR 52.21(aa)	\$4000
Expiration of a PAL	Per 40 CFR 52.21(aa)	\$12,000
PSD permit revisions		
All except administrative	WAC 173-400-750	\$10,000
Administrative revisions	WAC 173-400-750	\$1500

(b) Other actions:

Activity		Fee
Tier II toxic air pollutant impact review		\$10,000
Tier III toxic air pollutant impact review		\$10,000
Case-by-case MACT determinations		\$12,500
Fossil fueled electric generating unit	Applicability criteria found in chapter 80.70 RCW	Fees listed in rule implementing RCW 70.94.892 and chapter 80.70-RCW
Changes to existing orders of approval, Tier I review, Tier II review, or other action identified above.		
Activity		Fee
Modification to order of approval		50% of the fee charged in WAC 173-400-116(2)(a)
Modification of Tier II approval		50% of the fee charged in WAC 173-400-116(2)(b)

(4) ~~Small business fee reduction.~~ The new source review fee identified in subsections (2) and (3) of this section may be reduced for a small business.

(a) To qualify for the small business new source review fee reduction, a business must meet the requirements of "small business" as defined in RCW 19.85.020. In RCW 19.85.020, "small business" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, that has the purpose of making a profit, and that has fifty or fewer employees.

(b) To receive a fee reduction, the owner or operator of a small business must include information in the application demonstrating that the conditions of (a) of this subsection have been met. The application must be signed:

- (i) By an authorized corporate officer in the case of a corporation;
- (ii) By an authorized partner in the case of a limited or general partnership; or
- (iii) By the proprietor in the case of a sole proprietorship.

(c) Ecology may verify the application information and if the owner or operator has made false statements, deny the fee reduction request and revoke previously granted fee reductions.

(d) For small businesses determined to be eligible under (a) of this subsection, the new source review fee shall be reduced to the greater of:

- (i) Fifty percent of the new source review fee; or
- (ii) Two hundred fifty dollars.

(e) If due to special economic circumstances, the fee reduction determined under (d) of this subsection imposes an extreme hardship on a small business, the small business may request an extreme hardship fee reduction. The owner or operator must provide sufficient evidence to support a claim of an extreme hardship. The factors which ecology may consider in determining whether an owner or operator has special economic circumstances and in setting the extreme hardship fee include: Annual sales; labor force size; market conditions which affect the owner's or operator's ability to pass the cost of the new source review fees through to customers; and average annual profits. In no case will a new source review fee be reduced below one hundred dollars.

(5) Fee reductions for pollution prevention initiatives. Ecology may reduce the fees defined in subsections (2) and (3) of this section where the owner or operator of the proposed source demonstrates that approved pollution prevention measures will be used.

(6) Fee payments. Fees specified in subsections (2) through (5) of this section shall be paid at the time a notice of construction application is submitted to the department. A notice of construction application is considered incomplete until ecology has received the appropriate new source review payment. Additional charges assessed pursuant to subsection (3) of this section shall be due thirty days after receipt of an ecology billing statement. All fees collected under this regulation shall be made payable to the Washington department of ecology.

(7) Dedicated account. All new source review fees collected by the department shall be deposited in the air pollution control account.

(8) Tracking revenues, time, and expenditures. Ecology shall track revenues collected under this subsection on a source-specific basis. Ecology shall track time and expenditures on the basis of complexity categories.

(9) Periodic review. Ecology shall review and, as appropriate, update this section at least once every two years.)) Fees can be found in chapter 173-455 WAC.

AMENDATORY SECTION (Amending Order 93-03, filed 8/20/93, effective 9/20/93)

WAC 173-400-180 Variance. Any person who owns or is in control of a plant, building, structure, establishment, process, or equipment may apply to ecology for a variance from provisions of this chapter governing the quality, nature, duration, or extent of discharges of air contaminants in accordance with the provisions of RCW 70.94.181.

(1) **Jurisdiction.** Sources in any area over which a local air pollution control authority has jurisdiction shall make application to that authority rather than ecology. Variances to state rules shall require ecology's approval prior to being issued by an authority. Ecology or the authority may grant such variance, but only after public involvement per WAC 173-400-171.

(2) **Full faith and credit.** Variances granted in compliance with state and federal laws by an authority for sources under their jurisdiction will be accepted as variances to this regulation.

(3) **EPA concurrence.** No variance or renewal shall be construed to set aside or delay any requirements of the Federal Clean Air Act except with the approval and written concurrence of the USEPA.

(4) Fees relating to this section can be found in chapter 173-455 WAC.

AMENDATORY SECTION (Amending Order 03-09, filed 12/22/04, effective 1/22/05)

WAC 173-407-040 Carbon dioxide mitigation program fees. ~~((1) **Statutory authorization.** RCW 70.94.892 authorizes the department to determine, assess, and collect fees sufficient to cover costs to review and approve or deny the carbon dioxide mitigation plan components of an order of approval. The order of approval will specify costs to monitor conformance related to the carbon dioxide mitigation plan.~~

(2) **Fees.** The fees for the carbon dioxide mitigation program are described in this section and listed in the table below. The fees listed are added to the fees established in chapters 173-400 and 173-401 WAC, when the carbon dioxide mitigation plan requirements are triggered.

Activity	Fee
a. Application Review	\$65.00/hr ¹ not to exceed \$500.00
b. Mitigation Plan approval	
i. Payment to third party	\$100 ²
ii. Purchase of CO ₂ credits	\$65.00/hr ³
iii. Direct investment	\$65.00/hr ⁴
c. Routine Compliance Monitoring	
i. Payment to third party	\$100 ⁵ annually until full amount paid
ii. Purchase of CO ₂ credits	\$65.00/hr ⁶
iii. Applicant Controlled Project	\$65.00/hr ⁷

¹Estimated using an EE3 per hour rate with a cap.
²Small fee primarily to check math and that the source is using an EFSEC approved qualified organization.
³Estimated EE3 per hour rate to check that the credits purchased will be verifiable and from a reputable trading or marketing organization.
⁴Estimated using an EE3 per hour rate.
⁵Same as rationale for ² above.
⁶Verify and confirm credits with the trading or marketing organization.

(3) ~~The department or authority may use RCW 70.94.085 to structure a cost-reimbursement agreement with the applicant.)~~ Fees can be found in chapter 173-455 WAC.

AMENDATORY SECTION (Amending Order 91-55, filed 2/3/93, effective 3/6/93)

WAC 173-433-170 Retail sales fee. ~~((1) A person selling a solid fuel burning device at retail shall collect a fee from the buyer, pursuant to RCW 70.94.483.~~

(2) The fee shall be:

(a) Set at a minimum of thirty dollars on January 1, 1992. Thereafter, ecology may annually adjust the fee to account for inflation as determined by the office of the state economic and revenue forecast council. Adjustments in the fee should be rounded down to the nearest dollar.

(b) ~~Applicable to all new and used solid fuel burning devices:~~

(e) ~~Procedures for masonry fireplaces. Generally, contractors will collect, pay, and report the fee to the department of revenue on the combined excise tax return for the tax reporting period during which the retail sales tax is billed to the customer for the construction of the masonry fireplace. (See WAC 458-20-170 for a detailed explanation.) Collection and payment of the fee by contractors shall be in accordance with the following:~~

(i) ~~A masonry contractor or other subcontractor who builds a masonry fireplace. The retail sale occurs at the time the general or prime contractor or customer is billed for the work. The masonry contractor or other subcontractor must collect the fee and pay it to the department of revenue, unless the masonry contractor or other subcontractor has received a resale certificate from the general or prime contractor. The fee shall be reported on the combined excise tax return.~~

(ii) ~~A general or prime contractor building a custom building. The retail sale occurs at the time the customer is billed for the construction. The fee is charged and reported with the first progress payment after the masonry fireplace has been substantially completed. If a general or prime contractor subcontracts the work on a custom building to a masonry or other contractor, the general or prime contractor may give the masonry or other subcontractor a resale certificate. The general or prime contractor is responsible to collect the fee and pay it to the department of revenue. The fee is reported on the combined excise tax return.~~

(iii) ~~A general or prime contractor building a speculation building. The fee is required to be paid at the time the fireplace is complete. The fee must be reported to the department of revenue on a combined excise tax return and paid to the department of revenue. If the prime or general contractor subcontracts the building of the masonry fireplace to a masonry contractor or other subcontractor, the general or prime contractor may not give a resale certificate to the masonry or other subcontractor. The masonry or other subcontractor must collect and pay the fee to the department of revenue as provided in (e)(i) of this subsection.~~

(d) ~~Procedures for all other solid fuel burning devices. Collected by the retailer at the time of sale and remitted to the department of revenue in conjunction with the retail sales tax under chapter 82.08 RCW.~~

(3) ~~If the retailer or contractor fails to collect and remit the fee to the department of revenue as prescribed in chapter 82.08 RCW, the retailer or contractor shall be personally liable to the state for the amount of the fee, with subsequent actions taken in accordance with the collection provisions of chapter 82.32 RCW.~~

(4) ~~Beginning July 1, 1990, and each calendar quarter thereafter, the funds collected under RCW 70.94.483 shall be used solely for the purposes of public education and enforcement of the solid fuel burning device program. The depart-~~

ment shall distribute the funds from the woodstove education and enforcement account as follows:

~~(a) Sixty six percent of the funds shall be distributed to those local air authorities with enforcement programs, based upon the fraction of the total state population residing in the counties within their respective jurisdictions. Population figures used to establish this fraction shall be determined by the office of financial management. Where an activated local air authority does not exist or does not implement an enforcement program, or elects not to receive the funds, ecology shall retain the funds that would otherwise be distributed under this subsection; and~~

~~(b) Thirty four percent of the funds shall be distributed to ecology for the purposes of enforcement and educating the public about:~~

~~(i) The effects of solid fuel burning device emissions upon health and air quality; and~~

~~(ii) Methods of achieving better efficiency and emission performance from solid fuel burning devices.) Fees can be found in chapter 173-455 WAC.~~

AMENDATORY SECTION (Amending Order 90-63, filed 7/2/91, effective 8/2/91)

WAC 173-491-030 Registration. (1) The owner or operator of a gasoline loading terminal, bulk gasoline plant, or gasoline dispensing facility subject to the provisions of WAC 173-491-040 (2) through (5) shall register annually the facility with ecology or local air authority. Annual registration shall be made by the owner or operator on a form provided by ecology or local air authority within sixty days of receipt of the form. Such registration form shall require information relevant to determining whether the facility is in compliance with the requirements of this chapter and be accompanied by ~~((the following fee: Gasoline loading terminals five hundred dollars, bulk gasoline plants two hundred dollars, gasoline dispensing facilities one hundred dollars, or a greater amount duly adopted by a local air pollution authority. The amount of the fees collected shall only be used to administer the registration program for facilities subject to this chapter))~~ fees outlined in chapter 173-455 WAC.

(2) Administration of the registration program shall include:

(a) Initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration.

(b) On-site inspections necessary to verify compliance with registration requirements.

(c) Data storage and retrieval systems necessary for support of the registration program.

(d) Emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration.

(e) Staff review, including engineering analysis for accuracy and currentness, of information provided by sources pursuant to registration program requirements.

(f) Clerical and other office support provided in direct furtherance of the registration program.

(g) Administrative support provided in directly carrying out the registration program.

(3) Ecology or local air authority will provide a written verification of registration to owners or operators of facilities subject to the provisions of WAC 173-491-040 (2) through (5). Such verification shall be available for inspection by ecology or local air authority personnel during normal business hours.

(4) The owner or operator of a gasoline loading terminal or a gasoline dispensing facility shall maintain total annual gasoline throughput records for the most recent two calendar years. Such records shall be available for inspection by ecology or local air authority personnel during normal business hours.

AMENDATORY SECTION (Amending Order 99-14, filed 12/3/99, effective 1/3/00)

WAC 173-495-060 Procedures for issuing license. (1)

Any person or organization desiring to obtain a license or restricted license shall apply to ecology on the form prescribed, listing name, business address, etc.

(2) Ecology may require additional information of the applicant to determine competency in the field of meteorology. The additional information must be requested of the applicant by certified mail, and must be submitted in writing.

(3) Before issuing any license, the applicant shall pay a fee ~~((of one hundred dollars to the state of Washington))~~ as outlined in chapter 173-455 WAC.

(4) The application shall be deemed received by ecology when received at the Headquarters Offices, Air Quality Program, Department of Ecology, P.O. Box 47600, Olympia, Washington, 98504-7600.

AMENDATORY SECTION (Amending Order 99-14, filed 12/3/99, effective 1/3/00)

WAC 173-495-065 Period of license. (1) Licenses issued under chapter 43.37 RCW and these regulations are effective for a period of one year, and will terminate at the end of the calendar year of issuance.

(2) The licensee may request a renewal of the license no later than December 1st. Ecology shall review the license renewal request after receiving a renewal fee ~~((of one hundred dollars made payable to the state of Washington))~~ outlined in chapter 173-455 WAC.

(3) In the determination of whether or not to grant a license renewal, ecology shall consider information provided by the applicant on the facts and circumstances used to issue the original permit that were changed or altered. If ecology determines that the licensee no longer meets the requirements of competency in the field of meteorology, ecology may refuse to renew the license.

AMENDATORY SECTION (Amending Order 99-14, filed 12/3/99, effective 1/3/00)

WAC 173-495-070 Permit requirements. (1) Each weather modification operation not specifically exempted by statute or these regulations requires a permit. A separate permit must be issued for each operation.

(2) A license holder desiring to conduct a weather modification operation shall submit an application for a permit to ecology.

(3) The permit applicant must hold a valid weather modification license from the state of Washington.

(4) The applicant shall publish a notice of intention at least once a week for three consecutive weeks in a newspaper that has general circulation within the county in which the operation is to be conducted or affected.

(5) The licensee shall file proof of publication of the notice of intention with ecology within fifteen days from the date of last publication of the notice.

(6) The notice of intention must contain at least the following:

(a) The name and address of the licensee;

(b) The nature and object of the intended operation and the person or organization on whose behalf it is to be conducted;

(c) The area in which and the appropriate time during which the operation will be conducted;

(d) The area intended to be affected by the operation; and

(e) The materials and methods to be used in conducting the operation.

(7) The applicant shall furnish proof of financial responsibility, as described in WAC 173-495-120 of this chapter.

(8) The applicant shall pay a permit fee ~~((of one and one-half percent of the estimated cost of the operation. The estimated cost will be computed by ecology from available data))~~ outlined in chapter 173-455 WAC.

(9) Before issuing a permit, ecology shall state, in writing, that the weather modification and control activities proposed have been determined to be for the general welfare and public good.

(10) Ecology shall hold a public hearing before any weather modification permit is issued.

WSR 07-19-012

PERMANENT RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed September 7, 2007, 11:33 a.m., effective October 8, 2007]

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

Purpose: These changes are being made as required under SB 5382, which amended RCW 28A.400.303 and 28A.400.305.

Citation of Existing Rules Affected by this Order: Amending chapter 392-300 WAC.

Statutory Authority for Adoption: RCW 28A.400.303, 28A.410.090.

Adopted under notice filed as WSR 07-16-032 on July 23, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

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

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

Date Adopted: September 6, 2007.

Dr. Terry Bergeson
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 02-06-044, filed 2/27/02, effective 3/30/02)

WAC 392-300-015 Definition—District employee. As used in this chapter, "district employee" shall mean any individual currently employed by or being considered for employment by a school district, a school district contractor, the state school for the deaf, the state school for the blind, an educational service district, ~~((or an))~~ educational service district contractor, or a Bureau of Indian Affairs funded school.

AMENDATORY SECTION (Amending WSR 02-06-044, filed 2/27/02, effective 3/30/02)

WAC 392-300-050 Access to record check data base. School districts, the state school for the deaf, the state school for the blind, educational service districts, Bureau of Indian Affairs funded schools, colleges and universities shall establish written policies or procedures to determine which employees are authorized to access the data base. Access to the superintendent of public instruction's record check data base shall be limited to:

(1) Employees of the superintendent of public instruction processing record check information including employees within the fingerprint records section, the office of professional practices, the legal services section, the certification section or their equivalents in case of future agency reorganization.

(2) Authorized employees of school districts.

(3) Authorized employees of educational service districts.

(4) Authorized employees of college or universities with state board of education approved certification programs.

(5) Authorized employees of the state school for the deaf.

(6) Authorized employees of the state school for the blind.

(7) Authorized employees of Bureau of Indian Affairs funded schools.

(8) Other authorized individuals as determined by the superintendent of public instruction or designee.

Access to the data base will be controlled by a confidential password issued by the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 02-06-044, filed 2/27/02, effective 3/30/02)

WAC 392-300-055 Prohibition of redissemination of fingerprint record information by educational service districts, the state school for the deaf, the state school for the blind, school districts, Bureau of Indian Affairs funded schools. Fingerprint record information is highly confidential and shall not be redisseminated to any organization or individual by any educational service district, state school for the deaf, state school for the blind, ~~((or))~~ school district, or Bureau of Indian Affairs funded school.

AMENDATORY SECTION (Amending WSR 02-06-044, filed 2/27/02, effective 3/30/02)

WAC 392-300-060 Protection of fingerprint record information by educational service districts, state school for the deaf, state school for the blind, ~~((and))~~ school districts, and Bureau of Indian Affairs funded schools. Educational service districts, state school for the deaf, state school for the blind, ~~((and))~~ school districts, and Bureau of Indian Affairs funded schools shall have policies and procedures to:

(1) Protect the confidentiality of fingerprint record information, including the secure location of RAP sheets;

(2) Limit access to authorized personnel processing or requiring fingerprint record information to make employment decisions; and

(3) Prevent the unlawful redissemination of fingerprint record information.

Noncompliance with these provisions may allow for the recovery of civil damages under applicable federal and state statutes.

WSR 07-19-031

PERMANENT RULES

HEALTH CARE AUTHORITY

[Order 07-03—Filed September 12, 2007, 9:38 a.m., effective October 13, 2007]

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

Purpose: To revise WAC 182-50-005(9) and 182-50-200 (1)(b) to include "the refill of a immunomodulator/antiviral treatment for hepatitis C for which an established, fixed duration of therapy is prescribed for at least twenty-four weeks but no more than forty-eight weeks" as a basis for exemption from preferred drug substitution as required by RCW 69.41.180. This proposal is to incorporate amendments to RCW 69.41.180 created by SSB 5838 (chapter 233, Laws of 2006).

Citation of Existing Rules Affected by this Order: Amending WAC 182-50-005(9) and 182-50-200 (1)(b).

Statutory Authority for Adoption: RCW 41.05.160.

Other Authority: RCW 69.41.180.

Adopted under notice filed as WSR 07-14-037 on June 26, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

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

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

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

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

Date Adopted: September 12, 2007.

Jason Siems

Rules Coordinator

AMENDATORY SECTION (Amending Order 03-02, filed 2/23/04, effective 3/25/04)

WAC 182-50-005 Definitions. When used in this chapter:

(1) "Appointing authority" shall mean the following persons acting jointly: The administrator of the health care authority, the secretary of the department of social and health services, and the director of the department of labor and industries.

(2) "Committee" means the independent Washington state pharmacy and therapeutics committee created by RCW 41.05.021 (1)(a)(iii) and 70.14.050. At the election of the department of social and health services, the committee may serve as the drug use review board provided for in WAC 388-530-1850.

(3) "Drug" means the term as it is defined in RCW 69.41.010 (9) and (12).

(4) "Endorsing practitioner" means a practitioner who has reviewed the preferred drug list and has notified the health care authority that he or she has agreed to allow therapeutic interchange of a preferred drug for any nonpreferred drug in a given therapeutic class.

(5) "Practitioner" means a health care provider, except a veterinarian, as defined at RCW 18.64.011(9).

(6) "Preferred drug" means a drug selected by the appointing authority for inclusion in the preferred drug list used by applicable state agencies for state purchased health care programs.

(7) "Preferred drug list" or "PDL" means the list of drugs selected by the appointing authority to be used by applicable state agencies as the basis for the purchase of drugs in state purchased health care programs.

(8) "Prescription" has the meaning set forth in RCW 18.64.011(8).

(9) "Refill" means the continuation of therapy with the same drug (including the renewal of a previous prescription or adjustments in dosage) when a prescription is for an antipsychotic, antidepressant, chemotherapy, antiretroviral, or immunosuppressive drug, or for the refill of a immunomodulator/antiviral treatment for hepatitis C for which an estab-

lished, fixed duration of therapy is prescribed for at least twenty-four weeks but no more than forty-eight weeks.

(10) "State purchased health care" has the meaning set forth in RCW 41.05.011(2).

(11) "Therapeutic alternatives" are drug products of different chemical structure within the same pharmacologic or therapeutic class and that are expected to have similar therapeutic effects and safety profiles when administered in therapeutically equivalent doses.

(12) "Therapeutic interchange" means to dispense, with the endorsing practitioner's authorization, a therapeutic alternative to the prescribed drug.

AMENDATORY SECTION (Amending Order 03-02, filed 2/23/04, effective 3/25/04)

WAC 182-50-200 Endorsing practitioner therapeutic interchange program; effect of practitioner's endorsing status; dispense as written instructions. (1) When filling prescriptions for participating state purchased health care programs, pharmacists shall dispense a preferred drug in place of a drug not included in the preferred drug list in a given therapeutic class whenever pharmacists receive a prescription from an endorsing practitioner except:

(a) If the endorsing practitioner determines the nonpreferred drug is medically necessary by indicating "dispense as written" on the prescription; or

(b) If the prescription is a refill of an antipsychotic, antidepressant, chemotherapy, antiretroviral, or immunosuppressive drug, or for the refill of a immunomodulator/antiviral treatment for hepatitis C for which an established, fixed duration of therapy is prescribed for at least twenty-four weeks but no more than forty-eight weeks.

(2) When a therapeutic interchange is made, the pharmacist shall notify the endorsing practitioner of the specific drug and dose dispensed.

(3) When a nonendorsing practitioner issues a prescription for a drug not included in the preferred drug list, the pharmacist shall dispense the prescribed drug in accordance with the requirements of RCW 69.41.100 through 69.41.180.

WSR 07-19-038

PERMANENT RULES

WHATCOM COMMUNITY COLLEGE

[Filed September 13, 2007, 7:38 a.m., effective October 14, 2007]

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

Purpose: To amend sections of Title 132U WAC: WAC 132U-120-020, add definition of dean of instruction; WAC 132U-120-110, change term lengths and requirements of student rights and responsibilities committee; WAC 132U-120-270 and 132U-120-285, add dismissal from a selective admissions program as a result of academic evaluations; and WAC 132U-300-010 and 132U-300-020, amend policies, procedures and definitions for discrimination and/or harassment/intimidation complaints.

Citation of Existing Rules Affected by this Order: Amending x [WAC 132U-120-020, 132U-120-110, 132U-

120-270, 132U-120-285, 132U-300-010, and 132U-300-020].

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

Adopted under notice filed as WSR 07-11-155 on May 22, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

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

Date Adopted: September 12, 2007.

Patricia Onion
Vice-President for
Educational Services

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 07-20 issue of the Register.

WSR 07-19-056

PERMANENT RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed September 14, 2007, 1:09 p.m., effective October 15, 2007]

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

Purpose: ESAs are the final certificated educational group making the transition to the residency/professional system. This requires rule changes to allow for full implementation of the ESA professional certificate programs.

Citation of Existing Rules Affected by this Order: Amending WAC 181-78A-010, 181-78A-509, and 181-78A-535.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 07-16-049 on July 25, 2007.

A final cost-benefit analysis is available by contacting Nasue Nishida, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

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

Date Adopted: September 12, 2007.

Nasue Nishida
Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-78A-010 Definition of terms. The following definitions shall be used in this chapter:

(1) "College or university" means any regionally accredited baccalaureate degree granting Washington institution of higher learning or cooperative group of such institutions which has or develops programs of preparation in education which are submitted to the professional educator standards board for approval.

(2) "Endorsement" means a specification placed on a certificate to indicate the subject area, grade level, and/or specialization for which the individual is prepared to teach.

(3) "Interstate compact" means the contractual agreement among several states authorized by RCW 28A.690.010 and 28A.690.020 which facilitates interstate reciprocity.

(4) "Program approval" means the approval by the professional educator standards board of an educator preparation program within Washington state.

(5) "Field experience" means a sequence of learning experiences which occur in actual school settings or clinical or laboratory settings. Such learning experiences are related to specific program outcomes and are designed to integrate educational theory, knowledge, and skills in actual practice under the direction of a qualified supervisor.

(6) "Regionally accredited institution of higher education" means a community college, college, or university which is a candidate for accreditation or is accredited by one of the following regional accrediting bodies:

- (a) Middle States, Association of Colleges and Schools;
- (b) New England Association of Schools and Colleges;
- (c) North Central Association of Colleges and Schools;
- (d) Northwest Association of Schools and of Colleges and Universities;
- (e) Southern Association of Colleges and Schools;
- (f) Western Association of Schools and Colleges: Accrediting Commission for Junior and Senior Colleges.

(7) "An approved performance-based educator preparation program" means a program that requires the candidate to demonstrate in multiple ways, over time, specific professional educator standards board required standards, criteria, knowledge and skills, including, where appropriate, evidence related to positive impact on student learning.

(8) "A positive impact on student learning" means that a teacher through instruction and assessment has been able to document students' increased knowledge and/or demonstra-

tion of a skill or skills related to the state goals and/or essential academic learning requirements: Provided, That teachers employed by private schools who are candidates for the professional teaching certificate shall document students' increased knowledge and/or demonstration of a skill or skills related to either:

(a) The state goals or essential academic learning requirements; or

(b) Such alternative learning goals as the private school has established.

(9) "Collaboration" (as used in WAC 181-78A-500 through 181-78A-540) means ongoing communication among the professional growth team members using a variety of formats (e.g., conferences, electronic mail, conference calls, etc.) to reach consensus regarding the content - course work, experiences, competencies, knowledges and skills - of the candidate's professional growth plan.

(10) "Professional growth team."

(a) Teacher "professional growth team" means a team comprised of the candidate for professional certification, a colleague specified by the candidate, a college or university advisor appointed by the college or university, and a representative from the school district in which the candidate teaches.

(b) Principal/program administrator "professional growth team," for the purpose of professional certification, means a team comprised of the candidate for the professional certificate, a district representative or designee, a professional association representative, and a college or university advisor. "Professional growth team," for the purpose of renewal of the professional certificate, means a team comprised of the individual renewing the certificate and the superintendent, or superintendent designee or appointed representative.

(c) School counselor, school psychologist, and school social worker "professional growth team" for the purpose of professional certification, means a team comprised of the candidate for the professional certificate, a college/university ((representative)) program administrator/designee, and a colleague/peer from the same professional role specified by the candidate. A district representative is also required to serve on the professional growth team. Provided that, a candidate may petition the university to have membership of a district representative waived.

(11) "Individual professional growth plan" means the document which identifies the specific competencies, knowledges, skills and experiences needed to meet the standards set forth in WAC 181-78A-540. The individual professional growth plan shall meet requirements set forth in WAC 181-78A-535 (4)(a).

(12) "Preassessment seminar" means that component of the approved professional certificate program in which the candidate for a professional certificate, in collaboration with members of his/her professional growth team, identifies specific competencies, knowledges, skills and/or experiences needed to meet standards for the certificate as required by WAC 181-78A-540. The preassessment seminar shall meet requirements set forth in WAC 181-78A-535 (4)(a).

(13) "Culminating seminar" means that component of the approved professional certificate program in which the

candidate for a professional certificate presents his/her final documentation and evidence of professional certificate level knowledge, skill and performance, and positive impact on student learning. The culminating seminar shall meet requirements set forth in WAC 181-78A-535 (4)(e).

AMENDATORY SECTION (Amending WSR 07-04-005, filed 1/24/07, effective 2/24/07)

WAC 181-78A-509 Overview—Educational staff associate—School counselor/school psychologist/school social worker professional certificate programs. By September 1, 2008, all colleges and universities offering ESA professional certificate programs must be in compliance with the new program standards. To obtain a professional ESA certificate, individuals will need to hold a valid ESA residency certificate, be employed in his/her ESA role in a public school district, professional educator standards board-approved private school or state agency providing educational services for students, and complete a professional educator standards board-approved professional ESA certificate program in his/her ESA role.

(1) The professional certificate requires successful demonstration of the ESA role standards at the professional certificate benchmark levels, or above, and the candidate will need to provide evidence that he/she has had a positive impact on student learning.

(2) The candidate shall develop an individual professional growth plan to be ~~((reviewed and agreed upon after input from and consultation with his/her professional growth team))~~ approved by the professional education advisory board (PEAB) or the professional growth team (PGT). The individual growth plan shall be based on an assessment of the candidate's ability to demonstrate standards at the professional benchmark level and evidence of a positive impact on student learning.

AMENDATORY SECTION (Amending WSR 07-08-050, filed 3/28/07, effective 4/28/07)

WAC 181-78A-535 Approval standard—Program design. The following requirements shall govern the design of the professional certificate program:

(1) **Teacher.**

(a) To be eligible to apply for admission to a professional certificate program, a candidate shall hold a contract as a teacher in a public or a professional educator standards board-approved private school or state agency providing educational services for students and shall have completed provisional status with a school district under RCW 28A.405.220 or the equivalent with a professional educator standards board-approved private school or state agency providing educational services for students or the candidate provides to the program a letter from the candidate's employing district, professional educator standards board-approved private school, or state agency providing educational services for students, documenting the employer's support for the candidate's full admission to the professional certificate program: Provided, That a candidate for the professional teacher's certificate may enroll in and complete the preassessment seminar described

in subsection (4)(a) of this section prior to admission to a professional certificate program.

(b) The professional certificate program must be available to all qualified candidates. ~~((An expedited professional certificate process shall be available for out-of-state teachers who have five or more years of successful teaching experience to demonstrate skills and impact on student learning.))~~

(c) Using the descriptions of practice related to the criteria for the professional certificate, as approved by the professional educator standards board and published by the office of the superintendent of public instruction, which may not be changed without prior professional educator standards board approval, the professional certificate program shall be developed by a college ~~((for))~~, university ~~((for educational service district))~~ and its professional education advisory board. Additional agencies may participate in the development of the program if the college ~~((for))~~, university ~~((for educational service district))~~ and professional education advisory board so choose.

(d) Each program shall consist of:

(i) A preassessment seminar which considers input from the candidate's "professional growth team" (WAC 181-78A-505), the candidate's past experience, the context in which he/she teaches, information from past annual evaluations if the individual chooses, the candidate's personal and professional goals, his/her self-evaluation, and evidences of the candidate's impact on student learning.

The seminar will culminate in preparation and approval of the candidate's individual professional growth plan designed to provide the candidate with the knowledge and skills needed to demonstrate successfully the standards and criteria required by WAC 181-78A-540.

A representative of the college/university and the candidate shall develop the professional growth plan to be reviewed and agreed upon after input from and consultation and "collaboration" (WAC 181-78A-010(9)) with his/her "professional growth team" (WAC 181-78A-010(10)).

The individual professional growth plan shall be based on:

(A) An analysis of the instructional context and teaching assignment(s) to determine strategies which the teacher should use to achieve a positive impact on student learning.

(B) An assessment of the candidate's ability to demonstrate successfully the professional certificate standards and criteria.

(C) Specifications of assistance and instructional components needed and any required course work.

(ii) Course work, past and current experience, inservice, continuing education and other activities directed at developing and verifying that the candidate has achieved acceptable knowledge, skill and performance on all criteria required statewide as essential to "effective teaching" as defined in WAC 181-78A-540(1).

(iii) Course work, past and current experience, inservice, continuing education and other activities directed at developing and verifying that the candidate has achieved acceptable knowledge, skill and performance on all criteria required statewide as essential to "professional development" as defined in WAC 181-78A-540(2).

(iv) Course work, past and current experience, inservice, continuing education and other activities directed at developing and verifying that the candidate has achieved acceptable knowledge, skill and performance on all criteria required statewide as essential to professional contributions as defined in WAC 181-78A-540(3).

(v) A culminating seminar in which the candidate presents his/her final documentation and evidence of professional certificate level knowledge, skill and performance; positive impact on student learning; identification of future goals and professional/career interests; and specification of areas for continuing education and development. The candidate must provide multiple forms of evidence which shall include, but are not limited to, the descriptions of practice related to the criteria for the professional certificate as approved by the professional educator standards board and published by the office of the superintendent of public instruction, which may not be changed without prior professional educator standards board approval.

(vi) Candidates who do not successfully complete a culminating seminar shall receive an individualized analysis of strengths and weaknesses and a plan for appropriate assistance and instruction.

(vii) No limits shall be placed on the number of times a candidate with a valid residency certificate may participate in the culminating seminar.

(2) Principal/program administrator.

(a) To be eligible to apply for enrollment in a professional certificate program, a candidate shall hold a contract as a principal, assistant principal, or program administrator in a public school or professional educator standards board-approved private school.

(b) The professional certificate program must be available to all qualified candidates.

(c) Using the six knowledge and skills standards, and the standards-based benchmarks as approved by the professional educator standards board and published by the office of the superintendent of public instruction, which may not be changed without professional educator standards board approval, the professional certificate program shall be developed by a college or university and its professional education advisory board. Additional agencies may participate in the development of the program if the college or university and professional education advisory board so choose.

(d) Each program shall consist of:

(i) An entry seminar during which the professional growth plan shall be developed. The plan shall be based on an assessment of the candidate's ability to demonstrate six standards at the professional certificate benchmark level (WAC 181-78A-270 (2)(b)), performance evaluation data, and an analysis of the administrative context and assignment.

(ii) Formalized learning opportunities, past and current experience, professional development opportunities, and other activities directed at developing and verifying that the candidate has achieved acceptable knowledge, skill, and performance at the professional certificate benchmark level, or above, on all standards as defined in WAC 181-78A-270 (2)(b).

(iii) A final presentation to a panel that includes experienced administrators, during which the candidate provides

evidence of professional certificate level knowledge, skill and performance; positive impact on student learning; and a professional growth plan that includes the identification of future goals and professional/career interests as well as a five-year plan for professional development designed to meet the requirements for certificate renewal.

(e) Candidates who do not successfully complete a final presentation shall receive an individualized analysis of strengths and weaknesses and a plan for assistance, and shall be allowed additional opportunities to present evidence pertaining to benchmarks not previously met.

(3) Educational staff associate (ESA) - school counselor, school psychologist, school social worker.

(a) To be eligible for enrollment in a professional certificate program, a candidate shall be employed in his/her ESA role in a public school, a professional educator standards board-approved private school, or state agency providing educational services for students.

(b) The professional certificate must be available to all qualified candidates.

(c) Using the knowledge and skills standards in WAC 181-78A-270 (5), (7), and (9), and the standards-based benchmarks as approved by the professional educator standards board and published by the office of the superintendent of public instruction, which may not be changed without professional educator standards board approval, the professional certificate program shall be developed by a college or university and its professional education advisory board. Additional agencies may participate in the development of the program if the college or university and professional education advisory board so choose.

(d) Each program shall consist of:

(i) ~~((A preassessment))~~ An entry seminar during which the professional growth plan shall be developed. The plan will be agreed upon after input from and consultation with the ESA candidate's professional growth team (WAC 181-78A-010 (10)(c)) or the professional education advisory board (PEAB). The individual's professional growth plan shall be based on an assessment of the candidate's ability to demonstrate the standards at the professional certificate benchmark level in the specific ESA role pursuant to WAC 181-78A-270 (5), (7), or (9).

(ii) Formalized learning opportunities, and other activities directed at developing and verifying that the candidate has achieved acceptable knowledge, skill, and performance at the professional certificate benchmark level, or above, on all standards in the specific ESA role as defined in WAC 181-78A-270 (5), (7), or (9).

(iii) A culminating seminar in which the candidate presents his/her final documentation and evidence of professional certificate level knowledge, skill, and performance; positive impact on student learning; and specification of areas for continuing education and development.

(e) The candidate will present his/her portfolio to the professional education advisory board (PEAB) or the professional growth team (PGT) who will make a recommendation to the university program administrator/designee regarding the extent to which the candidate meets the professional certificate standards.

(f) Candidates who demonstrate they meet all standards and certification requirements pursuant to WAC 181-79A-150 will be recommended by the university program administrator/designee for the professional certificate.

(g) Candidates who do not successfully complete a culminating seminar shall receive an individualized analysis of strengths and weaknesses and a plan for assistance.

~~((f))~~ (h) No limit shall be placed on the number of times a candidate with a valid residency certificate may enroll in the culminating seminar.

WSR 07-19-057
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed September 14, 2007, 1:09 p.m., effective October 15, 2007]

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

Purpose: Specifies the process for the professional educator standards board reapproval of educator program based on the newly approved endorsement competencies.

Citation of Existing Rules Affected by this Order: Amending WAC 181-82A-206 and 181-82A-215.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 07-16-051 on July 25, 2007.

A final cost-benefit analysis is available by contacting Nasue Nishida, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: September 13, 2007.

Nasue Nishida
Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 06-24-083, filed 12/5/06, effective 1/5/07)

WAC 181-82A-206 Endorsement program approval.

(1) The professional educator standards board shall approve endorsement programs at Washington colleges and universities pursuant to the requirements of this chapter. Only colleges and universities with professional educator standards

board-approved residency certificate teacher preparation programs are eligible to apply for approval to offer endorsement programs.

(2) The professional educator standards board will establish performance/competency criteria for obtaining an endorsement. Revision in adopted endorsement competencies may occur only as approved by the professional educator standards board. Each college or university desiring to seek reapproval of an endorsement program for which the competencies have been revised and adopted by the professional educator standards board shall ~~((submit a proposal to the board that includes the following information:))~~ apply for approval per WAC 181-82A-215.

(a) A narrative statement that describes changes to the endorsement program based on the revised competencies; and

(b) A description of assessment strategies that will be used to assess candidates' capacity/performance related to the revised competencies.

(3) The professional educator standards board shall reapprove programs, based upon revised competencies, for a length of time to coincide with the date of the next regularly scheduled site visit/program review.

(4) The superintendent of public instruction will publish, and make available, competencies for all endorsement areas identified in chapter 181-82A WAC.

(5) Each college or university desiring to establish a new endorsement program shall submit a proposal to the professional educator standards board that includes the following information:

(a) Identification of strategies that will be used to assess candidates' capacity/performance related to the competencies;

(b) A description of evidences that candidates will provide to document their positive impact on student learning in the endorsement area; and

(c) A description of the assessment system by which candidate performance, relative to the competencies, will be aggregated, analyzed, and used for program improvement.

(6) The professional educator standards board shall approve new endorsement programs for a length of time to coincide with the date of the next regularly scheduled site visit/program review.

(7) The professional educator standards board shall determine the schedule and process for endorsement program reviews.

(a) Each institution shall submit endorsement programs for review when requested by the professional educator standards board to ensure that the endorsement programs meet the competencies and to provide assessment data relative to candidate performance.

(b) The professional educator standards board shall approve endorsement programs, based upon program review, for a maximum of five to seven years.

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-82A-215 Implementation policies. (1) ~~((# order to offer an endorsement program after August 31, 2003,~~

~~the timeline by which the colleges and universities will be in full compliance with the approval standards in this chapter shall be reviewed and approved. In order to offer an endorsement program after August 31, 2004, the endorsement program shall be reviewed and approved under the approval standards of this chapter. All teachers who obtain endorsements after September 1, 2003, shall meet the requirements in this chapter. Provided, that colleges and universities may permit an individual enrolled in programs in Washington state to obtain endorsements under the requirements in chapter 181-82 WAC, if the individual completes the endorsement program on, or before August 31, 2005, and the college or university verifies endorsement program completion on or before December 31, 2005. Provided further, that the professional educator standards board or its designee may waive this requirement on a case-by-case basis.~~

~~(2)) In order to maintain an endorsement for which revised competencies have been adopted by the professional educator standards board after January 1, 2007, each college or university shall seek reapproval per WAC 181-82A-206(2) according to the timeline adopted and published by the professional educator standards board.~~

~~(2) All individuals seeking to obtain endorsements after September 1, 2009, shall meet the requirements adopted by the professional educator standards board after January 1, 2007. Prior to September 1, 2009, individuals shall meet endorsement and testing requirements identified on the timeline adopted and published by the professional educator standards board.~~

~~(3) Teachers shall be required to obtain a minimum of one endorsement.~~

WSR 07-19-058
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed September 14, 2007, 2:01 p.m., effective October 15, 2007]

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

Purpose: Changes the middle level math/science endorsement into two separate endorsements - middle level math and middle level science.

Citation of Existing Rules Affected by this Order: Amending WAC 181-82A-202.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 07-16-050 on July 25, 2007.

A final cost-benefit analysis is available by contacting Nasue Nishida, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

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

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

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

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

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

Date Adopted: September 12, 2007.

Nasue Nishida
Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 07-08-030, filed 3/27/07, effective 4/27/07)

WAC 181-82A-202 Certificate endorsements.
Teacher certificates shall be endorsed as follows:

(1) **All levels:**

- (a) Bilingual education.
- (b) Designated arts: Dance.
- (c) Designated arts: Theatre arts.
- (d) Designated arts: Music: Choral, instrumental or general.

(e) Designated arts, visual arts.

(f) Designated world languages.

(g) English as a second language.

(h) Health/fitness.

(i) Library media.

(j) Reading.

(k) Special education.

(2) **Early childhood:**

(a) Early childhood education.

(b) Early childhood special education.

(3) **Elementary education.**

(4) **Middle level:**

(a) Middle level—Humanities.

(b) Middle level—~~((Math/science))~~ Mathematics.

(c) Middle level—Science.

(5) **Secondary level:**

(a) Designated science: Biology.

(b) Designated science: Chemistry.

(c) Designated science: Earth and space science.

(d) Designated science: Physics.

(e) Designated career and technical education: Agriculture education, business education, family and consumer sciences education, marketing education, and technology education.

(f) English language arts.

(g) History.

(h) Mathematics.

(i) Science.

(j) Social studies.

(k) Traffic safety.

WSR 07-19-059
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed September 14, 2007, 2:02 p.m., effective October 15, 2007]

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

Purpose: Individuals who hold a master's degree in social work, but have not completed a school social work certification program, will need to complete 300 hours of volunteer experience in school social work in a K-12 setting under the guidance of a certified school social worker.

Citation of Existing Rules Affected by this Order: Amending WAC 181-78A-319.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 07-16-053 on July 25, 2007.

A final cost-benefit analysis is available by contacting Nasue Nishida, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

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

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

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

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

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

Date Adopted: September 13, 2007.

Nasue Nishida
 Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

WAC 181-78A-319 Program approval requirement—Field experience for school social workers. Approved school social worker preparation programs shall require all candidates to complete a supervised, advanced level internship that is in compliance with the most current accreditation standards of the Council of Social Work Education, with a minimum of 300 hours in a school setting, providing on-the-job professional service. Supervision shall be provided by a site supervisor or faculty field supervisor who holds current Washington state certification as a school social worker and has a minimum of three years of professional experience in this role. Supervision, which may include on-site visits, will be provided for a minimum of one hour per week until the internship is completed.

If an individual has not completed an approved school social worker program, the individual must hold a master's degree in social work from a regionally accredited university

which has a council on social work education (CSWE) accredited program and complete 300 hours of experience with a certified school social worker in a P-12 school setting. When the individual has obtained verification of that experience signed by a school district administrator, the individual shall complete the required course in social work and school law through a regionally accredited university approved to offer a school social work certification program. Upon completion of all requirements, the individual may be recommended by the university for certification.

WSR 07-19-069
PERMANENT RULES
GAMBLING COMMISSION

[Order 615—Filed September 17, 2007, 1:30 p.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: The gambling commission is rewriting its rules manual using plain English techniques. 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. Any substantive changes made to rules related to manufacturers, distributors and gambling service suppliers are identified below which outlines the changes. This new chapter incorporates rules that relate to manufacturers, distributors and gambling service suppliers.

**Overview of chapter 230-16 WAC,
 Manufacturer, distributor, and gambling
 service supplier rules changed**

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" 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 manufacturers, 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.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 07-16-088 filed on July 30, 2007, and published August 15, 2007.

Changes Other than Editing from Proposed to Adopted Version: Small streamlining/housekeeping change made to WAC 230-16-220 since the CR-102 was filed.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 55, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 55, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 55, Amended 0, Repealed 0.

Date Adopted: September 17, 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 REQUIREMENTSNEW 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 distributor 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 SERIES

NEW 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 SERIES

NEW 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 SERIES

NEW 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 JACKPOTS

NEW 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 SERIES

NEW 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 FACSIMILES

NEW 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. STAMPS

NEW 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.

RECORDKEEPINGNEW 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 document 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 for any period of time their license was valid, even if they had no activity or did not renew.

WSR 07-19-070

PERMANENT RULES

GAMBLING COMMISSION

[Order 616—Filed September 17, 2007, 1:30 p.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: The gambling commission is rewriting its rules manual using plain English techniques. 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. Any substantive changes made to rules related to public disclosure are identified below which outlines the changes. This new chapter incorporates rules that relate to public disclosure.

Overview of chapter 230-21 WAC, Public disclosure rules changed

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 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 in 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 and policy statement, because the information it covers is in the Administrative Procedure Act, RCW 34.05.230.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 07-16-087 filed on July 30, 2007, and published August 15, 2007.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 55[6], Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 55[6], Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 55[6], Amended 0, Repealed 0.

Date Adopted: September 14, 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.

WSR 07-19-074
PERMANENT RULES
DEPARTMENT OF
GENERAL ADMINISTRATION

[Filed September 17, 2007, 2:17 p.m., effective October 18, 2007]

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

Purpose: General administration proposes to raise parking fees on the capitol campus beginning in January 2008. Revision of this rule will allow the department of general administration to adjust rental parking rates on the state capitol campus at the director's discretion as the market and business needs dictate. The effect of revising this rule will be that general administration will not need to go through rule making every time the director determines a need to adjust parking rates.

Citation of Existing Rules Affected by this Order: Amending WAC 236-12-290.

Statutory Authority for Adoption: RCW 43.19.011 (2)(d), 46.08.150, 46.08.172.

Adopted under notice filed as WSR 07-13-104 on June 20, 2007.

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

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

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

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

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

Date Adopted: September 17, 2007.

Linda Villegas Bremer
 Director

AMENDATORY SECTION (Amending WSR 04-18-064, filed 8/30/04, effective 7/1/05)

WAC 236-12-290 Parking fees. (1) The fees for rental parking shall be ~~((as follows:))~~ set by the director of the department of general administration.

(a) Adjustments to the fees may be made at the discretion of the director of the department of general administration.

((PARKING USES	PARKING FEES
(a) Agency assigned uses (visitor, off-campus staff, state cars, etc.)	\$ 30.00
(b) Employee uses	\$ 20.00
(i) General, "zoned"	\$ 25.00
(ii) Leased/reserved areas and/or stalls	\$ 15.00
(iii) Disabled employees	\$ 10.00

((PARKING USES	PARKING FEES
(e) Motorecycle, motor-driven eye/moped uses	\$ 10.00
(d) Nonstate personnel uses (concession-vendors, lobbyists, day care providers, press corps, etc.)	\$ 30.00
(e) Disabled visitor use	no charge
(f) Metered parking for visitor use	\$.50 per hour

~~(g) No charge for carpools/vanpools to which permits have been issued in accordance with WAC 236-12-295.~~

~~(h) In addition to the permits issued under (a), (b), (c), (d), (e), (f), and (g) of this subsection, the department may issue other permits including but not limited to agency pre-paid monthly, service/delivery and temporary/daily permits; the department will establish a fee schedule for such permits other than permits issued under (a), (b), (c), (d), (e), (f), and (g) of this subsection, and will keep such fee schedule on file at 218 General Administration Building, P.O. Box 41000, Olympia, Washington 98504-1000 and will make it available to any person upon request.~~

~~(i) The director has authority to create reserved parking spaces/areas and to determine the rates for such parking;))~~

~~(b) The director will establish a fee schedule for ((reserved)) parking spaces/areas and will keep such fee schedule on file ((at 218 General Administration Building)) in the director's office of the Department of General Administration, P.O. Box 41000, Olympia, Washington 98504-1000 and will make it available to any person upon request.~~

(2) In determining whether to adjust rental parking fees, the director will consider one or more of the following factors:

- (a) Parking facility costs;
- (b) Available commuting alternatives;
- (c) Change in the demand for parking facilities;
- (d) Transportation demand management requirements;
- (e) Market rates of comparable privately owned or leased property; and
- (f) Other circumstances as determined by the director, whereby a change in parking fees is necessary.

(3) The director shall provide notice to state agency stakeholders and capitol campus parkers no later than sixty days prior to any proposed rental parking fees adjustment and provide a thirty-day comment period about the proposed parking fee increases. The director shall consider the comments in adopting adjustments to the rental parking fees.

WSR 07-19-086
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed September 18, 2007, 9:48 a.m., effective October 19, 2007]

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

Purpose: The purpose of this rule making is to correct an error that occurred when adopting the annual fee increase. A fee for electrical plan review was accidentally decreased; this

rule making will correct the error. The fee will reflect the 3.38% fee increase, which is the office of financial management's maximum allowable fiscal growth rate factor for fiscal year 2007.

Citation of Existing Rules Affected by this Order: Amending WAC 296-150C-3000.

Statutory Authority for Adoption: Chapter 43.22 RCW.

Adopted under notice filed as WSR 07-15-066 on July 17, 2007.

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

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

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

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

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

Date Adopted: September 18, 2007.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 07-11-128, filed 5/22/07, effective 6/30/07)

WAC 296-150C-3000 Commercial coach fees.

INITIAL FILING FEE	\$34.30
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN	\$236.70
INITIAL FEE - ONE YEAR DESIGN	\$96.80
RENEWAL FEE	\$40.90
RESUBMIT FEE	\$69.10
ADDENDUM (Approval expires on same date as original plan)	\$69.10
ELECTRONIC PLAN SUBMITTAL FEE \$5.00 per page for the first set of plans and \$0.30 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
ELECTRICAL PLAN REVIEW (Plan review for educational, institutional or health care facilities and other buildings)	
Electrical Plan submission fee	\$69.10
Service/feeder Ampacity:	
0 - 100	\$((27.20)) 30.60
101 - 200	\$38.10
201 - 400	\$71.60
401 - 600	\$84.40
601 - 800	\$108.80
801 - 1000	\$133.20
Over 1000	\$144.60
Over 600 volts surcharge	\$22.80
Thermostats:	
First	\$13.40
Each additional	\$3.10
Low voltage fire alarm and burglar alarm:	
Each control panel and up to four circuits or zones	\$12.30
Each additional circuit or zone	\$2.00
Generators, refer to appropriate service/feeder ampacity fees	
<i>Note: Altered services or feeders shall be charged the above rate per the service/feeder ampacity fees.</i>	
Supplemental submissions of plans (resubmittals, addendums, renewals, code updates, etc.) shall be charged per hour or fraction of an hour*	\$81.80

ELECTRICAL COMMERCIAL/INDUSTRIAL		
Electrical Service/feeders 200 Amperage plus		
Service/feeder		\$201.60
Additional Feeder		\$38.20
ELECTRICAL MULTIFAMILY RESIDENTIAL		
Electrical Service/feeders 200 Amperage plus		
Service/feeder		\$106.90
Additional Feeder		\$27.20
MEDICAL GAS PLAN REVIEW:		
SUBMISSION FEE		\$66.20
FIRST STATION		\$66.20
EACH ADDITIONAL STATION		\$24.10
RECIPROCAL PLAN REVIEW:		
INITIAL FEE - MASTER DESIGN		\$105.50
INITIAL FEE - ONE YEAR DESIGN		\$63.70
RENEWAL FEE		\$63.70
ADDENDUM		\$63.70
PLANS APPROVED BY PROFESSIONALS		\$48.00
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS		\$12.90
DEPARTMENT INSPECTION FEES		
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)		\$69.10
TRAVEL (Per hour)		\$69.10
PER DIEM**		
HOTEL***		
MILEAGE**		
RENTAL CAR***		
PARKING***		
AIRFARE***		
DEPARTMENT AUDIT FEES:		
AUDIT (Per hour*)		\$69.10
TRAVEL (Per hour*)		\$69.10
PER DIEM**		
HOTEL***		
MILEAGE**		
RENTAL CAR***		
PARKING***		
AIRFARE***		
ALTERATION INSPECTION (One hour plus insignia alteration fee)		\$103.40
INSIGNIA FEES:		
FIRST SECTION/ALTERATION		\$20.80
EACH ADDITIONAL SECTION		\$12.90
REISSUED-LOST/DAMAGED		\$12.90
OTHER FEES:		
FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)		\$69.10
PUBLICATION PRINTING AND DISTRIBUTION OF RCW'S AND WAC'S (One free copy per year upon request)		\$12.90
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments		
** Per state guidelines		
*** Actual charges incurred		

WSR 07-19-091
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed September 18, 2007, 11:17 a.m., effective November 1, 2007.]

Effective Date of Rule: November 1, 2007.

Purpose: The purpose of the rule making is to update the effective date in WAC 296-46B-905, of the electrical fees. Last year, the electrical program was able to decrease fees due to an increasing fund balance. The rule making will extend the fee decrease until December 31, 2008.

Citation of Existing Rules Affected by this Order: Amending WAC 296-46B-905.

Statutory Authority for Adoption: Chapter 19.28 RCW.

Adopted under notice filed as WSR 07-13-089 on June 19, 2007.

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

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

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

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

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

Date Adopted: September 18, 2007.

Judy Schurke
 Director

AMENDATORY SECTION (Amending WSR 06-24-041, filed 11/30/06, effective 12/31/06)

WAC 296-46B-905 Temporary fees—Inspection fees. Valid from January 1, 2007, through December 31, ((2007)) 2008, or until modified in rule, whichever comes first. To calculate inspection fees, the amperage is based on the conductor ampacity or the overcurrent device rating. The total fee must not be less than the number of progress inspection (one-half hour) units times the progress inspection fee rate from subsection (8) of this section, PROGRESS INSPECTIONS.

The amount of the fee due is calculated based on the fee effective at the date of a department assessed fee (e.g., plan review or fee due) or when the electrical permit is purchased.

(1) Residential.

(a) Single- and two-family residential (New Construction).

Notes:

(1) Square footage is the area included within the surrounding exterior walls of a building exclusive of any interior courts. (This includes any floor area in an attached garage, basement, or unfinished living space.)

(2) "Inspected with the service" means that a separate service inspection fee is included on the same electrical work permit.

(3) "Inspected at the same time" means all wiring is to be ready for inspection during the initial inspection trip.

(4) An "outbuilding" is a structure that serves a direct accessory function to the residence, such as a pump house or storage building. Outbuilding does not include buildings used for commercial type occupancies or additional dwelling occupancies.

- (i) First 1300 sq. ft. \$69.00
 - Each additional 500 sq. ft. or portion of \$22.00
 - (ii) Each outbuilding or detached garage - inspected at the same time as a dwelling unit on the property \$29.00
 - (iii) Each outbuilding or detached garage - inspected separately \$46.00
 - (iv) Each swimming pool - inspected with the service \$46.00
 - (v) Each swimming pool - inspected separately \$69.00
 - (vi) Each hot tub, spa, or sauna - inspected with the service \$29.50
 - (vii) Each hot tub, spa, or sauna - inspected separately \$46.00
 - (viii) Each septic pumping system - inspected with the service \$29.50
 - (ix) Each septic pumping system - inspected separately \$46.00
- (b) Multifamily residential and miscellaneous residential structures, services/feeders (New Construction).**

Each service/feeder

Ampacity	Service/Feeder	Additional Feeder
0 to 200	\$75.00	\$22.00
201 to 400	\$91.00	\$46.00
401 to 600	\$128.00	\$64.00
601 to 800	\$164.00	\$87.00
801 and over	\$233.00	\$175.00

(c) Single or multifamily altered services/feeders including circuits.

(i) Each altered service/altered feeder

Ampacity	Service or Feeder
0 to 200	\$64.00
201 to 600	\$91.00
601 and over	\$140.00

(ii) Maintenance or repair of a meter or mast (no alterations to the service or feeder) \$34.00

(d) Single or multifamily residential circuits only (no service inspection).

Note:

Altered or added circuit fees are calculated per panelboard. Total cost of the alterations in an individual panel should not exceed the cost of a complete altered service or feeder of the same rating, as shown in subsection (1) RESIDENTIAL (c) (table) of this section.

- (1) RESIDENTIAL (c) (table) of this section.
- (i) 1 to 4 circuits (see note above) \$46.00
- (ii) Each additional circuit (see note above) \$5.00

(e) Mobile homes, modular homes, mobile home parks, and RV parks.

- (i) Mobile home or modular home service or feeder only \$46.00
- (ii) Mobile home service and feeder \$75.00

(f) Mobile home park sites and RV park sites.

Note:

For master service installations, see subsection (2) COMMERCIAL/INDUSTRIAL of this section.

- (i) First site service or site feeder \$46.00
- (ii) Each additional site service; or additional site feeder inspected at the same time as the first service or feeder \$29.00

(2) Commercial/industrial.

(a) **New service/feeder, and additional new feeders inspected at the same time (includes circuits).**

Note:

For large COMMERCIAL/INDUSTRIAL projects that include multiple feeders, "inspected at the same time" can be interpreted to include additional inspection trips for a single project. The additional inspections must be for electrical work specified on the permit at the time of purchase. The permit fee for such projects must be calculated from (2)(a)(i)(table) of this section. However, the total fee must not be less than the number of progress inspection (one-half hour) units times the progress inspection fee rate from subsection (8) PROGRESS INSPECTIONS of this section.

Service/feeders

Ampacity	Service/Feeder	Additional Feeder
0 to 100	\$75.00	\$46.00
101 to 200	\$91.00	\$58.00
201 to 400	\$175.00	\$69.00
401 to 600	\$204.00	\$82.00
601 to 800	\$264.00	\$111.00
801 to 1000	\$322.00	\$134.00
1001 and over	\$351.00	\$187.00

(b) **Altered services or feeders (no circuits).**

(i) Service/feeders

Ampacity	Service/Feeder
0 to 200	\$75.00
201 to 600	\$175.00
601 to 1000	\$264.00
1001 and over	\$239.00

(ii) Maintenance or repair of a meter or mast (no alterations to the service or feeder) \$64.00

(c) **Circuits only.**

Note:

Altered/added circuit fees are calculated per panelboard. Total cost of the alterations in a panel (or panels) should not exceed the cost of a new feeder (or feeders) of the same rating, as shown in subsection (2) COMMERCIAL/INDUSTRIAL (2)(a)(i)(table) above.

- (i) First 5 circuits per branch circuit panel \$58.00
- (ii) Each additional circuit per branch circuit panel \$5.00
- (d) **Over 600 volts surcharge per permit.** \$58.00

(3) **Temporary service(s).**

Note:

- (1) See WAC 296-46B-527 for information about temporary installations.
- (2) Temporary stage or concert inspections requested outside of normal business hours will be subject to the portal-to-portal hourly fees in subsection (11) OTHER INSPECTIONS. The fee for such after hours inspections shall be the greater of the fee from this subsection or the portal-to-portal fee.

Temporary services, temporary stage or concert productions.

Ampacity	Service/Feeder	Additional Feeder
0 to 60	\$40.00	\$21.00
61 to 100	\$46.00	\$22.00
101 to 200	\$58.00	\$29.00
201 to 400	\$69.00	\$35.00
401 to 600	\$93.00	\$46.00
601 and over	\$105.00	\$53.00

(4) **Irrigation machines, pumps, and equipment.**

Irrigation machines.

- (a) Each tower - when inspected at the same time as a service and feeder from (2) COMMERCIAL/INDUSTRIAL \$5.00

- (b) Towers - when not inspected at the same time as a service and feeders - 1 to 6 towers \$69.00
- (c) Each additional tower \$5.00

(5) **Miscellaneous - commercial/industrial and residential.**

(a) **A Class 2 low-voltage thermostat** and its associated cable controlling a single piece of utilization equipment or a single furnace and air conditioner combination.

- (i) First thermostat \$35.00
- (ii) Each additional thermostat inspected at the same time as the first \$11.00

(b) **Class 2 or 3 low-voltage systems and telecommunications systems.** Includes all telecommunications installations, fire alarm, nurse call, energy management control systems, industrial and automation control systems, lighting control systems, and similar Class 2 or 3 low-energy circuits and equipment not included in WAC 296-46B-900 for Class B work.

- (i) First 2500 sq. ft. or less \$40.00
- (ii) Each additional 2500 sq. ft. or portion thereof \$11.00

(c) **Signs and outline lighting.**

- (i) First sign (no service included) \$35.00
- (ii) Each additional sign inspected at the same time on the same building or structure \$16.00

(d) **Berth at a marina or dock.**

Note:

Five berths or more shall be permitted to have the inspection fees based on appropriate service and feeder fees from section (2) COMMERCIAL/INDUSTRIAL (a) (i) above.

- (i) Berth at a marina or dock \$46.00
- (ii) Each additional berth inspected at the same time \$29.00

(e) Yard pole, pedestal, or other meter loops only.

- (i) Yard pole, pedestal, or other meter loops only \$46.00
- (ii) Meters installed remote from the service equipment and inspected at the same time as a service, temporary service or other installations \$11.00

(f) **Emergency inspections requested outside of normal working hours.**

Regular fee plus surcharge of: \$87.00

(g) **Generators.**

Note:

Permanently installed generators: Refer to the appropriate residential or commercial new/altered service or feeder section.

Portable generators: Permanently installed transfer equipment for portable generators \$64.00

(h) **Electrical - annual permit fee.**

Note:

See WAC 296-46B-900(14).

For commercial/industrial location employing full-time electrical maintenance staff or having a yearly maintenance contract with a licensed electrical contractor. Note, all yearly maintenance contracts must detail the number of contractor electricians necessary to complete the work required under the contract. This number will be used as a basis for calculating the appropriate fee. Each inspection is based on a 2-hour maximum.

	Inspections	Fee
1 to 3 plant electricians	12	\$1,677.00
4 to 6 plant electricians	24	\$3,356.00
7 to 12 plant electricians	36	\$5,034.00
13 to 25 plant electricians	52	\$6,713.00
More than 25 plant electricians	52	\$8,392.00

(i) **Telecommunications - annual permit fee.**

Note:

(1) See WAC 296-46B-900(13).

(2) Annual inspection time required may be estimated by the purchaser at the rate for "OTHER INSPECTIONS" in this section, charged portal-to-portal per hour.

For commercial/industrial location employing full-time telecommunications maintenance staff or having a yearly maintenance contract with a licensed electrical/telecommunications contractor.

2-hour minimum \$139.00

Each additional hour, or portion thereof, of portal-to-portal inspection time \$69.00

(j) Permit requiring ditch cover inspection only.

Each 1/2 hour, or portion thereof \$35.00

(k) Cover inspection for elevator/conveyance installation. This item is only available to a licensed/registered elevator contractor. \$58.00

(6) Carnival inspections.

(a) First carnival field inspection each calendar year.

(i) Each ride and generator truck \$16.00

(ii) Each remote distribution equipment, concession, or gaming show \$5.00

(iii) If the calculated fee for first carnival field inspection above is less than \$89.00, the minimum inspection fee shall be: \$87.00

(b) Subsequent carnival inspections.

(i) First ten rides, concessions, generators, remote distribution equipment, or gaming show \$87.00

(ii) Each additional ride, concession, generator, remote distribution equipment, or gaming show \$5.00

(c) Concession(s) or ride(s) not part of a carnival.

(i) First field inspection each year of a single concession or ride, not part of a carnival \$69.00

(ii) Subsequent inspection of a single concession or ride, not part of a carnival \$46.00

(7) Trip fees.

(a) Requests by property owners to inspect existing installations. (This fee includes a maximum of one hour of inspection time. All inspection time exceeding one hour will be charged at the rate for progressive inspections.) \$69.00

(b) Submitter notifies the department that work is ready for inspection when it is not ready. \$35.00

(c) Additional inspection required because submitter has provided the wrong address or incomplete, improper or illegible directions for the site of the inspection. \$35.00

(d) More than one additional inspection required to inspect corrections; or for repeated neglect, carelessness, or improperly installed electrical work. \$35.00

(e) Each trip necessary to remove a noncompliance notice. \$35.00

(f) Corrections that have not been made in the prescribed time, unless an exception has been requested and granted. \$35.00

(g) Installations that are covered or concealed before inspection. \$35.00

(8) Progress inspections.

Note:

The fees calculated in subsections (1) through (6) of this section will apply to all electrical work. This section will be applied to a permit where the permit holder has requested additional inspections beyond the number supported by the permit fee calculated at the rate in subsections (1) through (6) of this section.

On partial or progress inspections, each 1/2 hour. \$35.00

(9) Plan review.

Fee is thirty-five percent of the electrical work permit fee as determined by WAC 296-46B-905, plus a plan review submission and shipping/handling fee of: \$58.00

(a) Supplemental submissions of plans per hour or fraction of an hour of review time. \$69.00

(b) Plan review shipping and handling fee. \$16.00

(10) Out-of-state inspections.

(a) Permit fees will be charged according to the fees listed in this section.

(b) Travel expenses:

All travel expenses and per diem for out-of-state inspections are billed following completion of each inspection(s). These expenses can include, but are not limited to: Inspector's travel time, travel cost and per diem at the state rate. Travel time is hourly based on the rate in subsection (11) of this section.

(11) Other inspections.

Inspections not covered by above inspection fees must be charged portal-to-portal per hour: \$69.00

(12) Refund processing fee.

All requests for permit fee refunds will be assessed a processing fee. (Refund processing fees will not be charged for electrical contractors, using the contractor deposit system, who request less than twenty-four refunds during a rolling calendar year.) \$11.00

(13) Variance request processing fee.

Variance request processing fee. This fee is nonrefundable once the transaction has been validated. \$69.00

(14) Marking of industrial utilization equipment.

(a) Standard(s) letter review (per hour of review time). \$69.00

(b) Equipment marking - charged portal-to-portal per hour: \$69.00

(c) All travel expenses and per diem for in/out-of-state review and/or equipment marking are billed following completion of each inspection(s). These expenses can include, but are not limited to: Inspector's travel time, travel cost and per diem at the state rate. Travel time is hourly based on the rate in (b) of this subsection.

(15) Class B basic electrical work labels.

(a) Block of twenty Class B basic electrical work labels (not refundable). \$200.00

(b) Reinspection of Class B basic electrical work to assure that corrections have been made (per 1/2 hour timed from leaving the previous inspection until the reinspection is completed). See WAC 296-46B-900. \$36.40

(c) Reinspection of Class B basic electrical work because of a failed inspection of another Class B label (per 1/2 hour from previous inspection until the reinspection is completed). See WAC 296-46B-900. \$36.40

(16) Provisional electrical work permit labels.

(a) Block of twenty provisional electrical work permit labels. \$200.00

WSR 07-19-100

PERMANENT RULES

STATE BOARD FOR COMMUNITY AND TECHNICAL COLLEGES

[Filed September 18, 2007, 4:59 p.m., effective October 19, 2007]

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

Purpose: Realigning the standard score for minimum proficiency in Washington state with federal guidelines set by GED testing service.

Citation of Existing Rules Affected by this Order:
Amending WAC 131-48-050.

Statutory Authority for Adoption: RCW 28B.50.536.

Adopted under notice filed as WSR 07-14-029 on June 26, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: September 18, 2007.

DelRae Oderman
Executive Assistant
Agency Rules Coordinator

AMENDATORY SECTION (Amending WSR 93-22-006, filed 10/21/93, effective 11/21/93)

WAC 131-48-050 Minimum proficiency level—Definition. (~~As used in this chapter, the term "~~Minimum proficiency level(~~" means a standard score of at least forty on each of the five portions of the general educational development test, and an average standard score of at least forty five on the entire test~~)) in Washington state is that set by GED Testing Service, part of the American Council on Education.

**WSR 07-19-101
PERMANENT RULES**

**STATE BOARD FOR COMMUNITY
AND TECHNICAL COLLEGES**

[Filed September 18, 2007, 4:59 p.m., effective October 19, 2007]

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

Purpose: Update address to new office location.

Citation of Existing Rules Affected by this Order:
Amending WAC 131-08-005.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

Adopted under notice filed as WSR 07-14-028 on June 26, 2007.

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

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

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

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

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

Date Adopted: September 18, 2007.

DelRae Oderman
Executive Assistant
Agency Rules Coordinator

AMENDATORY SECTION (Amending WSR 98-15-002, filed 7/2/98, effective 8/2/98)

WAC 131-08-005 General description of state board organization and operations. (1) The state board for community and technical colleges consists of nine members appointed by the governor. Members serve for terms of four years; or until a successor is named.

(2) The executive officer and secretary of the board is the executive director of the state system of community and technical colleges. The executive director is in charge of the offices of the board and responsible to the board for the preparation of reports and the collection and dissemination of data and other public information relating to the state system of community and technical colleges. The executive director exercises, in the name of the board, all powers and duties delegated by the board and at the direction of the board executes, together with the chair of the board, all contracts entered into by the board.

(3) It is the board's duty to exercise general supervision and control over the state system of community and technical colleges consistent with the specific powers and duties set forth in the Community and Technical College Act of 1991, chapter 28B.50 RCW.

(4) The board's office is located in Olympia, Washington, (~~(319 Seventh Avenue)~~) 1300 Quince Street S.E., 98504.

(5) Information about specific meeting places and times may be obtained at the board office. Formal submission or requests to the state board should be addressed to the executive director at the Olympia office.

WSR 07-19-106

PERMANENT RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2007-07—Filed September 19, 2007, 8:49 a.m., effective October 20, 2007]

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

Purpose: These amendments eliminate a conflict between WAC 284-30-500, adopted in 1987, and RCW 48.22.095, enacted during the 2003 legislative session. Each sets a different minimum standard for personal injury protection (PIP) coverage.

Citation of Existing Rules Affected by this Order:
Amending WAC 284-30-500.

Statutory Authority for Adoption: RCW 48.02.060.

Adopted under notice filed as WSR 07-14-109 on July 2, 2007.

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

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

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

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

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

Date Adopted: September 19, 2007.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Order R 87-5, filed 4/21/87)

WAC 284-30-500 Unfair practices with respect to vehicle insurance. (1) ~~((Beginning July 1, 1985,))~~ The following practices by any insurer with respect to every vehicle liability insurance policy applicable to private passenger automobiles registered or principally garaged in this state are unfair and prohibited:

(a) Failing to provide, to any insured under such policy, liability limits at least as great as those required by RCW 46.29.090, as measured at the effective date of the ~~((pertinent))~~ applicable policy or its renewal;

(b) Denying or limiting liability coverage in such policy to less than the limits required by RCW 46.29.090, solely because the injured person is related to the insured by blood or marriage, as, for example, through use of so-called "family" or "household" exclusions;

(c) Denying or limiting liability coverage in such policy, with respect to injuries sustained by motorcycle passengers, to an amount below the bodily injury liability limits required by RCW 46.29.090, if the policy provides liability coverage for an insured's ownership, operation, or use of a motorcycle.

(2) ~~((Beginning July 1, 1985, the following practices by any insurer, with respect to vehicle insurance policies applicable to private passenger vehicles registered or principally garaged in this state, are unfair and prohibited:~~

~~(a) Failing to provide a named insured under such policy an itemization of the premium costs for the coverages under the policy as to which there are identifiable separate premium charges. Such itemization shall be given no later than the time of delivery of a policy and with each offer to renew thereafter;~~

~~(b) Failing, except with respect to a motorcycle policy, to provide, to any named insured who so requests and pays the~~

~~premium therefor, first party automobile benefits such as those in medical payments coverage or personal injury protection, on approved forms commonly used by the insurer in the state of Washington, with maximum benefit limits, as appropriate to the particular form, of at least:~~

~~(i) \$35,000 for medical and hospital benefits incurred within three years of the accident;~~

~~(ii) \$35,000 for one year's income continuation benefits, subject to a limit of the lesser of \$700 per week or eighty five percent of the weekly income; and~~

~~(iii) \$40 per day for loss of services benefits, for at least a year.)~~ With respect to vehicle insurance policies applicable to private passenger vehicles registered or principally garaged in this state, failing to provide a named insured an itemization of the premium costs for the coverages under the policy if there are identifiable separate premium charges for the coverages is unfair and prohibited. The required itemization must be given to a named insured no later than at the time of delivery of a policy and must accompany each offer to renew thereafter.

(3) ~~((Beginning July 1, 1987, it shall be))~~ It is an unfair practice for any insurer to consider traffic violations or accidents which occurred more than three years in the past, with respect to the acceptance, rejection, cancellation or nonrenewal of any insured under a private passenger automobile insurance policy, unless, because of the individual's violations, accidents or driving record during the three years immediately past, the earlier violations or accidents are significantly relevant to the individual's qualifications for insurance.

(4) For purposes of this section, the definition of a "private passenger automobile" is that set forth in RCW 48.18.-297, and includes a motorcycle except as otherwise specifically provided in this section.

WSR 07-19-122

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed September 19, 2007, 11:12 a.m., effective October 20, 2007]

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

Purpose: This rule-making order provides an exemption to the quarantine for seed that was in a company's inventory prior to the quarantine taking effect. In lieu of tagging small containers, there will be an allowance for alternative wording to be placed on an invoice or other documents that communicate quarantine compliance. Clarifying language has been added to make it clear that even though certain seed lots are exempt from parts of the quarantine rule, they must be free from regulated diseases.

Citation of Existing Rules Affected by this Order:
Amending WAC 16-301-525 and 16-301-530.

Statutory Authority for Adoption: Chapters 15.49 and 17.24 RCW.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 07-15-091 on July 18, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 2, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: September 18, 2007.

Valoria H. Loveland
Director

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

WAC 16-301-525 What are the exemptions to the crucifer seed quarantine that apply within the regulated area? This crucifer quarantine does not apply to:

(1) Experiments or trial grounds of the United States Department of Agriculture;

(2) Experiments or trial grounds of a university such as but not limited to the University of Idaho or Washington State University research stations; or

(3) Trial grounds of any person, firm or corporation that are approved by the director and established in accordance with WAC 16-301-550.

(4) Shipments, movements, or transportation of:

(a) Prepackaged crucifer seed in packages of 1/2 ounce or less if the seeds are free of regulated diseases as required in WAC 16-301-530; or

(b) Vegetable seedlings offered for sale for home garden use in the regulated area if the seedlings are free of regulated diseases as required in WAC 16-301-530.

(5) Research, variety development, variety maintenance or other crucifer production where the entire crop cycle is confined within a building or greenhouse.

(6) Seed lots with a maximum weight of five pounds that were in inventory prior to January 1, 2007.

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

WAC 16-301-530 What requirements apply to planting crucifer seed in the regulated area? (1)(a) It is a violation of this chapter to plant or establish crucifer seed that is infected with any regulated disease in the regulated area.

(b) Any seed of a *Brassica* or *Sinapis* species planted or established in the regulated area whose primary use is for any nonvegetable use must be tested for the presence of dormant seed as required by WAC 16-301-510.

(2) Any person who plans to ship, move, or transport any crucifer seed intended for planting purposes into or within the regulated area must file a Notice of Intent/Quarantine Com-

pliance form with the seed program before planting or offering the seed for sale.

(3) The Notice of Intent/Quarantine Compliance form filed with the seed program must be accompanied by a copy of the:

(a) Laboratory analysis or some other proof (such as a phytosanitary certificate based upon laboratory testing issued from the state or country of production) demonstrating that the lot is free of regulated diseases; and

(b) Seed analysis certificate(s) showing that the lot is free from dormant seed, if required under WAC 16-301-510.

(4) It is a violation of this chapter for any crucifer seed intended for seed production, oil production, commercial vegetable production or cover crop use to be offered for sale within or into the regulated area unless ~~((each seed container bears a label issued by the seed program indicating that the seed is in compliance with the requirements of this chapter))~~ accompanied by documentation verifying quarantine compliance.

(a) For small packages such as heat sealed envelopes and tins, quarantine compliance may be placed on a sales invoice or other documentation that is provided to the purchaser of seed. Language must be approved by the seed program.

(b) Larger containers must bear a label issued by the seed program indicating that the seed is in compliance with this chapter.

WSR 07-19-126

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed September 19, 2007, 11:28 a.m., effective October 20, 2007]

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

Purpose: The department is amending WAC 388-513-1380 Determining a client's financial participation in the cost of care for long-term care (LTC) services:

- Changing the community spouse income and family allocation to \$1,712 effective July 1, 2007, due to a federal standard change.
- Changing the community spouse excess shelter standard to \$514 effective July 1, 2007, due to a federal standard change.
- Increasing the personal needs allowance (PNA) for nongeneral assistance clients in medical institutions due to a state legislative budget increase of 3.3%.
- Making changes to the language and clarifying the rules.
- Clarifying that an unanticipated lump sum is not considered income in the month of receipt.
- Clarifying excess resources are reduced in an amount equal to necessary medical care recognized by state law.
- Clarifying the computation for the community spouse allowance.
- Clarifying the medical institution income exemption (MIIE) is allowed for residents of medical institu-

tions only.

When effective, these permanent rules supersede emergency rules filed as WSR 07-14-079.

Citation of Existing Rules Affected by this Order: Amending WAC 388-513-1380.

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

Other Authority: 2005-07 omnibus operating budget (2006 supplement) DSHS (chapter 372, Laws of 2006).

Adopted under notice filed as WSR 07-16-092 on July 30, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: September 19, 2007.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-01-072, filed 12/18/06, effective 1/18/07)

WAC 388-513-1380 Determining a client's financial participation in the cost of care for long-term care (LTC) services. This rule describes how the department allocates income and excess resources when determining participation in the cost of care ((~~the~~) the post-eligibility process). The department applies rules described in WAC 388-513-1315 to define which income and resources must be used in this process.

(1) For a client receiving institutional or hospice services in a medical institution, the department applies all subsections of this rule.

(2) For a client receiving waiver services at home or in an alternate living facility, the department applies only those subsections of this rule that are cited in the rules for those programs.

(3) For a client receiving hospice services at home, or in an alternate living facility, the department applies rules used for the community options program entry system (COPES) for hospice applicants with income under the Medicaid special income level (SIL) (300% of the federal benefit rate (FBR)), if the client is not otherwise eligible for another non-institutional categorically needy Medicaid program. (Note: For hospice applicants with income over the Medicaid SIL, medically needy Medicaid rules apply.)

(4) (~~Excess resources are reduced in an amount equal to medical expenses incurred by the institutional client for def-~~

~~inition see WAC 388-519-0110(10)) that are not subject to third-party payment and for which the client is liable, including:~~

~~(a) Health insurance and Medicare premiums, deductions, and co-insurance charges of the institutional client;~~

~~(b) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan with the exception of the deduction for medical and remedial care expenses that were incurred during a transfer of asset penalty established per WAC 388-513-1363, 388-513-1364 or 388-513-1365; and~~

~~(c) The amount of excess resources is limited to the following amounts:~~

~~(i) For LTC services provided under the categorically needy (CN) program, the amount described in WAC 388-513-1315(3); or~~

~~(ii) For LTC services provided under the medically needy (MN) program, the amount described in WAC 388-513-1395(2)(a) or (b).~~

~~(5))~~ The department allocates nonexcluded income in the following order and the combined total of ~~((5))~~ (4)(a), (b), (c), and (d) cannot exceed the medically needy income level (MNIL):

(a) A personal needs allowance (PNA) of:

(i) One hundred sixty dollars for a client living in a state veterans' home;

(ii) Ninety dollars for a veteran or a veteran's surviving spouse, who receives the ninety dollar VA improved pension and does not live in a state veterans' home; or

(iii) Forty-one dollars and sixty-two cents for all clients in a medical institution receiving general assistance.

(iv) Effective July 1, ~~((2006))~~ 2007, ~~((fifty-three))~~ fifty-five dollars and ~~((sixty-eight))~~ forty-five cents for all other clients in a medical institution.

(b) Mandatory federal, state, or local income taxes owed by the client.

(c) Wages for a client who:

(i) Is related to the supplemental security income (SSI) program as described in WAC 388-503-0510(1); and

(ii) Receives the wages as part of a department-approved training or rehabilitative program designed to prepare the client for a less restrictive placement. When determining this deduction employment expenses are not deducted.

(d) Guardianship fees and administrative costs including any attorney fees paid by the guardian, after June 15, 1998, only as allowed by chapter 388-79 WAC.

~~((6))~~ (5) The department allocates nonexcluded income after deducting amounts described in subsection ~~((5))~~ (4) in the following order:

(a) Income ~~((garnished))~~ garnished for child support or withheld according to a child support order in the month of garnishment (for current and back support):

(i) For the time period covered by the PNA; and

(ii) ~~((Not deducted under another provision in the post-eligibility process))~~ Is not counted as the dependent member's income when determining the family allocation amount.

(b) A monthly maintenance needs allowance for the community spouse not to exceed, effective January 1, 2007, two thousand five hundred forty-one dollars, unless a greater amount is allocated as described in subsection ~~((8))~~ (7) of

this section. The community spouse maintenance allowance is increased each January based on the consumer price index increase (from September to September, <http://www.bls.gov/cpi/>). The monthly maintenance needs allowance:

(i) Consists of a combined total of both:

(A) ~~((An amount added to the community spouse's gross income to provide a total of one thousand six hundred fifty dollars. This standard is based on))~~ One hundred fifty percent of the two person federal poverty level ((and)). This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>); and

(B) Excess shelter expenses as described under subsection ~~((7))~~ (6) of this section~~(; and)~~.

(ii) Is reduced by the community spouse's gross countable income; and

~~((ii))~~ (iii) Is allowed only to the extent the client's income is made available to the community spouse.

(c) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of the community spouse or institutionalized person who:

(i) Resides with the community spouse:

(A) ~~In an amount equal to one-third of ((one thousand six hundred fifty dollars))~~ one hundred fifty percent of the two person federal poverty level less the dependent family member's income. This standard ((is based on one hundred fifty percent of the two person federal poverty level and)) increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>).

(ii) Does not reside with the community spouse or institutionalized person, in an amount equal to the MNIL for the number of dependent family members in the home less the dependent family member's income.

(iii) Child support received from a noncustodial parent is the child's income.

(d) ~~((Incurred medical expenses described in subsections (4)(a) and (b) not used to reduce excess resources with the following exceptions:~~

~~(i) Private health insurance premiums for Medicare/Medicaid integration project (MMIP);~~

~~(ii) Managed care health insurance premiums for program of all inclusive care for the elderly (PACE); and~~

~~(iii) The deduction for medical and remedial care expenses that were incurred during a transfer of asset penalty per WAC 388-513-1363, 388-513-1364 or 388-513-1365))~~ Medical expenses incurred by the institutional client and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC 388-513-1350.

(e) Maintenance of the home of a single institutionalized client or institutionalized couple:

(i) Up to one hundred percent of the one-person federal poverty level per month;

(ii) Limited to a six-month period;

(iii) When a physician has certified that the client is likely to return to the home within the six-month period; and

(iv) When social services staff documents ~~((initial))~~ the need for the income exemption.

~~((7))~~ (6) For the purposes of this section, "excess shelter expenses" means the actual expenses under subsection

~~((7))~~ (6)(b) less the standard shelter allocation under subsection ~~((7))~~ (6)(a). For the purposes of this rule:

(a) The standard shelter allocation ~~((is four hundred ninety five dollars. This standard))~~ is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>); and

(b) Shelter expenses are the actual required maintenance expenses for the community spouse's principal residence for:

(i) Rent;

(ii) Mortgage;

(iii) Taxes and insurance;

(iv) Any maintenance care for a condominium or cooperative; and

(v) The food stamp standard utility allowance for four persons, provided the utilities are not included in the maintenance charges for a condominium or cooperative.

~~((8))~~ (7) The amount allocated to the community spouse may be greater than the amount in subsection (6)(b) only when:

(a) A court enters an order against the client for the support of the community spouse; or

(b) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

~~((9))~~ (8) A client who is admitted to a medical facility for ninety days or less and continues to receive full SSI benefits is not required to use the SSI income in the cost of care for medical services. Income allocations are allowed as described in this section from non-SSI income.

WSR 07-19-127

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed September 19, 2007, 11:29 a.m., effective October 20, 2007]

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

Purpose: The department is amending WAC 388-515-1505 Financial eligibility requirements for long-term care services under COPEs, New Freedom, PACE, MMIP, and WMIP:

- Increasing the personal needs allowance (PNA) 3.3% for clients residing in alternate living facilities. This change is due to the Washington state 2007-09 operating budget (SHB 1128).
- Making changes to the language, clarifying rules, and updating WAC references.
- Clarifying the community spouse allowance computation.
- Clarifying excess nonexcluded resources above the standard are reduced in an amount equal to necessary medical care and not incurred by a transfer penalty.
- Clarifying the allowances for a General assistance—Expedited medicaid (GA-X) client receiving

earned income in an alternate living facility (ALF) on the home and community services (HCS) waiver.

- Clarifying and adding hospice service eligibility for clients not in a medical institution with gross income at or below the special income level (SIL – 300% of the federal benefit rate) and not eligible for another categorically needy (CN) or medically needy (MN) medicaid program.
- Clarifying that clients deemed "SSI eligible" do not participate in the cost of personal care, but may pay up to the room and board amount of the federal benefit rate (FBR) minus \$60.78 if residing in an alternate living facility (ALF).

When effective, these permanent rules supersede emergency rules filed as WSR 07-14-077.

Citation of Existing Rules Affected by this Order: Amending WAC 388-515-1505.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.575, 74.09.500, and 74.09.530.

Other Authority: Chapter 522, Laws of 2007 (SHB 1128).

Adopted under notice filed as WSR 07-16-094 on July 30, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

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

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

Date Adopted: September 19, 2007.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-18-058, filed 8/31/06, effective 10/1/06)

WAC 388-515-1505 Financial eligibility requirements for long-term care services under COPEs, New Freedom, PACE, MMIP, and WMIP. (1) This section describes the financial eligibility requirements and the rules used to determine a client's participation in the total cost of care for home or community-based long-term care (LTC) services provided under the following programs:

- (a) Community options program entry system (COPEs);
- (b) Program of all-inclusive care for the elderly (PACE);
- (c) Medicare/Medicaid integration project (MMIP);
- (d) Washington Medicaid integration partnership (WMIP); ~~((and))~~
- (e) New Freedom consumer directed services (New Freedom); and

(f) Hospice services for clients not in a medical institution with gross income at or below the SIL and not eligible for another CN or MN medicaid program.

(2) To be eligible, a client must:

(a) Meet the program and age requirements for the specific program, as follows:

- (i) COPEs, per WAC 388-106-0310;
- (ii) PACE, per WAC 388-106-0705;
- (iii) MMIP waiver services, per WAC 388-106-0725;
- (iv) WMIP waiver services, per WAC 388-106-0750;

~~((or))~~

(v) New Freedom, per WAC 388-106-1410; or

(vi) Hospice, per chapter 388-551 WAC.

(b) Meet the aged, blind or disability criteria of the Supplemental Security Income (SSI) program as described in WAC ~~((388-511-1105(1)))~~ 388-475-0050(1);

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

(d) Be residing in a medical facility as defined in WAC 388-500-0005, or likely to be placed in one within the next thirty days in the absence of home or community-based LTC services provided under one of the programs listed in subsection (1) of this section;

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

(f) Be determined in need of home or community-based LTC services and be approved for a plan of care as described in subsection (2)(a)~~((i), (ii), or (iii)))~~;

(g) Be able to live at home with community support services and choose to remain at home, or live in a department-contracted:

- (i) Enhanced adult residential care (EARC) facility;
- (ii) Licensed adult family home (AFH); or
- (iii) Assisted living (AL) facility.

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

(i) Meet the resource and income requirements described in subsections (3), (4), and (5) or be an SSI beneficiary not subject to a penalty period as described in subsection (2)(h).

(3) Refer to WAC 388-513-1315 for rules used to determine ~~((nonexcluded))~~ countable resources ~~((and))~~ income and eligibility standards.

(4) ~~((Nonexcluded resources above the standard described in WAC 388-513-1350(1))~~;

~~((a) Are allowed during the month of an application or eligibility review, when the combined total of excess resources and nonexcluded income does not exceed the special income level (SIL).~~

~~((b) Are reduced by medical expenses incurred by the client (for definition, see WAC 388-519-0110(10)) that are not subject to third-party payment and for which the client is liable, including:~~

- ~~((i) Health insurance and Medicare premiums, deductions, and co-insurance charges; and~~
- ~~((ii) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan.~~

~~((e) Not allocated to participation must be at or below the resource standard. If excess resources are not allocated to participation, then the client is ineligible))~~ Excess resources

are reduced in an amount equal to medical expenses incurred by the institutional client as described in WAC 388-513-1350 and:

(a) Must result in countable resources being at or below the resource standard in WAC 388-513-1350(1).

(b) If remaining resources are over the standard, the client is ineligible.

(5) Nonexcluded income must be at or below the SIL (300% of the federal benefit rate (FBR)) and is allocated in the following order:

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

(b) Maintenance and personal needs allowances as described in subsection (7), (8), ~~((and))~~ (9), (10, and (11) of this section;

(c) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed by chapter 388-79 WAC;

(d) Income ~~((garnisheed))~~ garnished for child support or withheld according to a child support order in the month of the garnishment (for current and back support):

(i) For the time period covered by the ~~((maintenance amount))~~ PNA; and

(ii) ~~((Not deducted under another provision in the post-eligibility process))~~ Is not counted as the child's income when determining the family allocation amount.

(e) Monthly maintenance needs allowance for the community spouse not to exceed that in WAC 388-513-1380 ~~((6))~~ (5)(b) unless a greater amount is allocated as described in subsection (6) of this section. This amount:

(i) Is allowed only to the extent that the client's income is made available to the community spouse; and

(ii) Consists of a combined total of both:

(A) ~~((An amount added to the community spouse's gross income to provide the amount described in WAC 388-513-1380-6(b)(i)(A)))~~ One hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>); and

(B) Excess shelter expenses. For the purposes of this section, excess shelter expenses are the actual required maintenance expenses for the community spouse's principal residence. These expenses are:

(I) Rent;

(II) Mortgage;

(III) Taxes and insurance;

(IV) Any maintenance care for a condominium or cooperative; and

(V) The food assistance standard utility allowance (for LTC services this is set at the standard utility allowance (SUA) for a four-person household), provided the utilities are not included in the maintenance charges for a condominium or cooperative;

(VI) LESS the standard shelter allocation ~~((listed in WAC 388-513-1380-7(a)))~~. This standard is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>); and

(VII) Is reduced by the community spouse's gross countable income.

(f) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of the community or institutionalized spouse based on the living arrangement of the dependent. If the dependent:

(i) Resides with the community spouse, the amount is equal to one-third of the community spouse income allocation as described in WAC 388-513-1380 ~~((6))~~ (5)(b)(i)(A) that exceeds the dependent family member's income;

(ii) Does not reside with the community spouse, the amount is equal to the MNIL for the number of dependent family members in the home less the income of the dependent family members.

(iii) Child support received from ~~((an absent))~~ a noncustodial parent is the child's income;

(g) ~~((Incurred medical expenses described in subsection (4)(b) not used to reduce excess resources, with the following exceptions:~~

Private health insurance premiums for PACE, MMIP, or WMIP) Medical expenses incurred by the client and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC 388-513-1350.

(6) The amount allocated to the community spouse may be greater than the amount in subsection (5)(e) only when:

(a) A court enters an order against the client for the support of the community spouse; or

(b) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(7) A client who receives SSI, and lives at home as defined in WAC 388-106-0010 does not use income to participate in the cost of personal care ~~((, but does use SSI income to participate in paying costs of board and room. When such a client lives:~~

(a) At home, the SSI client does not participate in the cost of personal care;

(b) In an enhanced adult residential center (EARC), adult family home (AFH), or assisted living (AL), the SSI client:

(i) Retains a personal needs allowance (PNA) of fifty-eight dollars and eighty-four cents;

(ii) Pays the facility for the cost of board and room. Board and room is the SSI federal benefit rate (FBR) minus fifty-eight dollars and eighty-four cents; and

(iii) Does not participate in the cost of personal care if any income remains).

(8) A client who receives SSI and lives in an enhanced adult residential center (EARC), adult family home (AFH) or assisted living (AL) does not use income to participate in the cost of personal care and:

(a) Retains a personal needs allowance (PNA) of sixty dollars and seventy-eight cents; and

(b) Uses income to pay the facility for the cost of room and board.

(c) Room and board is the SSI FBR minus sixty dollars and seventy-eight cents.

(9) A client who is eligible to receive CN-P medicaid described in WAC 388-475-0100 (2)(a) and (b) and lives at home, defined in WAC 388-106-0010, does not use income to participate in the cost of personal care.

(10) A client who is eligible to receive CN-P medicaid described in WAC 388-475-0100 (2)(a) and (b) and lives in an EARC, AFH or AL does not use income to participate in the cost of personal care and:

(a) Retains a personal needs allowance (PNA) of sixty dollars and seventy-eight cents; and

(b) Uses income to pay the facility for the cost of room and board.

(c) Room and board is the SSI FBR minus sixty dollars and seventy-eight cents.

~~((8))~~ (11) An institutionalized SSI-related client living:

(a) At home, retains a maintenance needs amount equal to the following:

(i) Up to one hundred percent of the one-person FPL, if the client is:

(A) Single; or

(B) Married, and is:

(I) Not living with the community spouse; or

(II) Whose spouse is receiving long-term care (LTC) services outside of the home.

(ii) Up to one hundred percent of the one-person FPL for each client, if both spouses are receiving COPEs, New Freedom, PACE, MMIP, or WMIP services;

(iii) Up to the one-person medically needy income level (MNIL) for a married client who is living with a community spouse who is not receiving COPEs, New Freedom, PACE, MMIP, or WMIP.

(b) In an EARC, AFH, or AL, retains a maintenance needs amount equal to the SSI FBR and:

(i) Retains a personal needs allowance (PNA) of ~~((fifty-eight dollars and eighty-four))~~ sixty dollars and seventy-eight cents from the maintenance needs; and

(ii) Pays the remainder of the maintenance needs to the facility for the cost of ~~((board and))~~ room and board. (Refer to subsection ~~((H))~~ (14) in this section for allocation of the balance of income remaining over maintenance needs.)

~~((9))~~ (12) A client who is eligible for the general assistance expedited Medicaid disability (GAX) program does not participate in the cost of personal care. When such a client lives:

(a) At home, the client retains the cash grant amount authorized under the general assistance program;

(b) In an AFH, the client retains a PNA of thirty-eight dollars and eighty-four cents, and pays remaining income and GAX grant to the facility for the cost of board and room; or

(c) In an EARC or AL, the client only receives a PNA of thirty-eight dollars and eighty-four cents and retains it.

~~((10))~~ (13) The total of the following amounts cannot exceed the SIL:

(a) Maintenance and personal needs allowances as described in subsections (7), (8), ~~((and))~~ (9), (10), (11), and (12)(c).

(b) Earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income in subsection (5)(a); and

(c) Guardianship fees and administrative costs in subsection (5)(c).

~~((H))~~ (14) The client's remaining income after the allocations described in subsections (5) through ~~((9))~~ (12) is the

client's ~~((participation))~~ responsibility in the ~~((total))~~ cost of care.

WSR 07-19-128

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed September 19, 2007, 11:30 a.m., effective October 20, 2007]

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

Purpose: The department is amending WAC 388-513-1350 Defining the resource standard and determining resource eligibility for long-term care (LTC) services:

- Increasing the spousal resource maximum from \$41,943 to \$45,104 effective July 1, 2007.
- Making changes to the language, clarifying the rules and updating the spousal resource standard.
- Clarifying the reduction of excess resources by medical expenditures.
- Clarifying the reference to a sponsored immigrant receiving long-term care - how to treat resources of a sponsor.

When effective, these permanent rules supersede emergency rules filed as [WSR] 07-14-076.

Citation of Existing Rules Affected by this Order: Amending WAC 388-513-1350.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.575, 74.09.500, and 74.09.530.

Adopted under notice filed as WSR 07-16-097 on July 30, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

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

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

Date Adopted: September 17, 2007.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-01-073, filed 12/18/06, effective 1/18/07)

WAC 388-513-1350 Defining the resource standard and determining resource eligibility for long-term care (LTC) services. This section describes how the department defines the resource standard and ~~((available))~~ countable or

excluded resources when determining a client's eligibility for LTC services. The department uses the term "resource standard" to describe the maximum amount of resources a client can have and still be resource eligible for program benefits.

(1) The resource standard used to determine eligibility for LTC services equals:

(a) Two thousand dollars for:

(i) A single client; or

(ii) A legally married client with a community spouse, subject to the provisions described in subsections (8) through (11) of this section; or

(b) Three thousand dollars for a legally married couple, unless subsection (3) of this section applies.

(2) When both spouses apply for LTC services the department considers the resources of both spouses as available to each other through the month in which the spouses stopped living together.

(3) When both spouses are institutionalized, the department will determine the eligibility of each spouse as a single client the month following the month of separation.

(4) If the department has already established eligibility and authorized services for one spouse, and the community spouse needs LTC services in the same month, (but after eligibility has been established and services authorized for the institutional spouse), then the department applies the standard described in subsection (1)(a) of this section to each spouse. If doing this would make one of the spouses ineligible, then the department applies ~~((a)(b))~~ (1)(b) of this section for a couple.

(5) When a single institutionalized individual marries, the department will redetermine eligibility applying the rules for a legally married couple.

(6) The department applies the following rules when determining available resources for LTC services:

(a) WAC 388-475-0300, Resource eligibility;

(b) WAC 388-475-0250, How to determine who owns a resource; and

(c) WAC 388-470-0060(6), Resources of an alien's sponsor.

(7) For LTC services the department determines a client's ~~(nonexcluded)~~ countable resources as follows:

(a) The department determines ~~((available))~~ countable resources for SSI-related clients as described in WAC 388-475-0350 through 388-475-0550 and resources excluded by federal law with the exception of:

(i) WAC 388-475-0550(16);

(ii) WAC 388-475-0350 (1)(b) clients who have submitted an application for LTC services on or after May 1, 2006 and have an equity interest greater than five hundred thousand dollars in their primary residence are ineligible for LTC services. This exception does not apply if a spouse or blind, disabled or dependent child under age twenty-one is lawfully residing in the primary residence. Clients denied or terminated LTC services due to excess home equity may apply for an undue hardship waiver.

(b) For an SSI-related client one automobile per household is excluded regardless of value if it is used for transportation of the eligible individual/couple.

(i) For an SSI-related client with a community spouse, the value of one automobile is excluded regardless of its use or value.

(ii) Vehicles not meeting the definition of automobile is a vehicle that has been junked or a vehicle that is used only as a recreational vehicle.

(c) For a SSI-related client, the department adds together the ~~((available))~~ countable resources of both spouses if subsections (2), (5)~~((6), (7))~~ and (8)(a) or (b) apply, but not if subsection (3) or (4) apply.

(d) For an SSI-related client, excess resources are reduced ~~((in an amount equal to medical expenses incurred by the client (for definition see WAC 388-519-0110(10)) that are not subject to third-party payment and for which the client is liable, including:~~

(i) ~~Health insurance and Medicare premiums, deductions, and co-insurance charges;~~

(ii) ~~Necessary medical care recognized under state law, but not covered under the state's Medicaid plan with the exception of the deduction for medical and remedial care expenses that were incurred during a transfer of asset penalty established per WAC 388-513-1363, 388-513-1364 or 388-515-1365; and~~

~~((iii));~~

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

(A) Premiums, deductibles, and co-insurance/co-payment charges for health insurance and medicare;

(B) Necessary medical care recognized under state law, but not covered under the state's medicaid plan;

(C) Necessary medical care covered under the state's medicaid plan incurred prior to medicaid eligibility.

(ii) As long as the incurred medical expenses:

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

(B) Have not been used to satisfy a previous spend down liability;

(C) Have not previously been used to reduce excess resources;

(D) Have not been used to reduce client responsibility toward cost of care;

(E) Were not incurred during a transfer of asset penalty described in WAC 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366; and

(F) Are amounts for which the client remains liable.

(e) Expenses not allowed to reduce excess resources or participation in personal care:

(i) Unpaid expense(s) prior to waiver eligibility to an adult family home (AFH) or boarding home is not a medical expense.

(ii) Personal care cost in excess of approved hours determined by the CARE assessment described in chapter 388-106 WAC is not a medical expense.

(f) The amount of excess resources is limited to the following amounts:

~~((A))~~ (i) For LTC services provided under the categorically needy (CN) program~~((the amount described in WAC 388-513-1315(3); or))~~;

(A) Gross income must be at or below the special income level (SIL), 300% of the FBR.

(B) In a medical institution, excess resources and income must be under the state medicaid rate.

(C) For CN waiver eligibility, incurred medical expenses must reduce resources within allowable resource limits for CN-waiver eligibility. The cost of care for the waiver services cannot be allowed as a projected expense.

~~((B))~~ (ii) For LTC services provided under the medically needy (MN) program(, the amount described in WAC 388-513-1395 (2)(a) or (b)) when excess resources are added to nonexcluded income, the combined total is less than the:

(A) Private medical institution rate plus the amount of recurring medical expenses for institutional services; or

(B) Private hospice rate plus the amount of recurring medical expenses, for hospice services in a medical institution.

(C) For MN waiver eligibility, incurred medical expenses must reduce resources within allowable resource limits for MN-waiver eligibility. The cost of care for the waiver services cannot be allowed as a projected expense.

~~((e))~~ (g) For a client not related to SSI, the department applies the resource rules of the program used to relate the client to medical eligibility.

(8) For legally married clients when only one spouse meets institutional status, the following rules apply. If the client's current period of institutional status began:

(a) Before October 1, 1989, the department adds together one-half the total amount of (~~nonexcluded~~) countable resources held in the name of:

- (i) The institutionalized spouse; or
- (ii) Both spouses.

(b) On or after October 1, 1989, the department adds together the total amount of nonexcluded resources held in the name of:

- (i) Either spouse; or
- (ii) Both spouses.

(9) If subsection (8)(b) of this section applies, the department determines the amount of resources that are allocated to the community spouse before determining (~~nonexcluded~~) countable resources used to establish eligibility for the institutionalized spouse, as follows:

(a) If the client's current period of institutional status began on or after October 1, 1989 and before August 1, 2003, the department allocates the maximum amount of resources ordinarily allowed by law. The maximum allocation amount is ninety-nine thousand five hundred forty dollars effective January 1, 2006. Effective January 1, 2007, the maximum allocation is one hundred and one thousand six hundred and forty dollars. (This standard increases annually on January 1st based on the consumer price index); or

(b) If the client's current period of institutional status began on or after August 1, 2003, the department allocates the greater of:

(i) A spousal share equal to one-half of the couple's combined (~~nonexcluded~~) countable resources as of the beginning of the current period of institutional status, up to the amount described in subsection (9)(a) of this section; or

(ii) The state spousal resource standard of (~~forty-one~~) forty-five thousand (~~nine~~) one hundred (~~forty-three~~) four dollars effective July 1, (~~2005~~) 2007 (this standard

increases every odd year on July 1st). This increase is based on the consumer price index published by the federal bureau of labor statistics.

(10) The amount of the spousal share described in (9)(b)(i) can be determined anytime between the date that the current period of institutional status began and the date that eligibility for LTC services is determined. The following rules apply to the determination of the spousal share:

(a) Prior to an application for LTC services, the couple's combined countable resources are evaluated from the date of the current period of institutional status at the request of either member of the couple. The determination of the spousal share is completed when necessary documentation and/or verification is provided; or

(b) The determination of the spousal share is completed as part of the application for LTC services if the client was institutionalized prior to the month of application, and declares the spousal share exceeds the state spousal resource standard. The client is required to provide verification of the couple's combined countable resources held at the beginning of the current period of institutional status.

(11) The amount of allocated resources described in subsection (9) of this section can be increased, only if:

(a) A court transfers additional resources to the community spouse; or

(b) An administrative law judge establishes in a fair hearing described in chapter 388-02 WAC, that the amount is inadequate to provide a minimum monthly maintenance needs amount for the community spouse.

(12) The department considers resources of the community spouse unavailable to the institutionalized spouse the month after eligibility for LTC services is established, unless subsection (5) or (13)(a), (b), or (c) of this section applies.

(13) A redetermination of the couple's resources as described in subsections (7) is required, if:

(a) The institutionalized spouse has a break of at least thirty consecutive days in a period of institutional status;

(b) The institutionalized spouse's (~~nonexcluded~~) countable resources exceed the standard described in subsection (1)(a), if subsection (8)(b) applies; or

(c) The institutionalized spouse does not transfer the amount described in subsections (9) or (11) to the community spouse or to another person for the sole benefit of the community spouse as described in WAC 388-513-1365(4) by either:

- (i) The first regularly scheduled eligibility review; or
- (ii) The reasonable amount of additional time necessary to obtain a court order for the support of the community spouse.

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

WSR 07-19-129
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed September 19, 2007, 11:30 a.m., effective October 20, 2007]

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

Purpose: The department is amending WAC 388-513-1315 Eligibility for long-term care (institutional, waiver, and hospice) services and 388-513-1395 Determining eligibility for institutional or hospice services and for facility care only under the medically needy (MN) program

- Updating and clarifying language regarding when long-term care (LTC) rules are used and needed for the hospice program.
- Adding language to WAC 388-513-1395 indicating LTC medically needy rules apply to clients residing in medical institutions, including hospice elections in medical institutions.
- Clarifying language that hospice is paid as a service under noninstitutional categorically needy and medically needy programs when client is residing in a home or residential setting. Institutional Medicaid rules are not used for hospice elections in noninstitutional settings unless beneficial to the client under WAC 388-515-1505. (Those with income over the medically needy income level (MNIL) and under 300% of the federal benefit rate (FBR), or with a community spouse.)
- Amending language to be consistent with WAC 388-438-0110 regarding alien emergency medical (AEM); indicating nursing facility and hospice services under AEM must be preapproved, for clarification purposes.
- Adding language limiting medical and remedial care expenses to zero if such expenses were incurred during a transfer of asset penalty, described in WAC 388-513-1363 through 388-513-1366.
- Updating WAC references and clarifying language.

Citation of Existing Rules Affected by this Order:
Amending WAC 388-513-1315 and 388-513-1395.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, 74.39.010.

Adopted under notice filed as WSR 07-16-096 on July 30, 2007.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

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

Date Adopted: September 18, 2007.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-07-077, filed 3/13/06, effective 4/13/06)

WAC 388-513-1315 Eligibility for long-term care (institutional, waiver, and hospice) services. This section describes how the department determines a client's eligibility for institutional, waiver, or hospice services under the categorically needy (CN) program and institutional or hospice services in a medical institution under the medically needy (MN) program. Also described are the eligibility requirements for these services under the general assistance (GA) program in subsection ~~((4+))~~ (12) and the alien emergency medical programs described in subsection ~~((s-(10) and (12)))~~ (11).

(1) To be eligible for long-term care (LTC) services described in this section, a client must:

(a) Meet the general eligibility requirements for medical programs described in WAC 388-503-0505 (2) and (3)(a) through (f);

(b) Attain institutional status as described in WAC 388-513-1320; ~~((and))~~

(c) Meet functional eligibility described in chapter 388-106 WAC for waiver and nursing facility coverage; and

(d) Not be subject to a penalty period of ineligibility as described in WAC ~~((388-513-1364 through))~~ 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366.

(2) To be eligible for institutional, waiver, or hospice services under the CN program, a client must either:

(a) Be related to the Supplemental Security Income (SSI) program as described in WAC 388-475-0050(1), (2) and (3) ~~((or be approved for the general assistance expedited Medicaid disability (GA-X) program;))~~ and

~~((b))~~ meet the following financial requirements, by having:

(i) ~~((7))~~ (8)(a) that does not exceed the special income level (SIL); and

(ii) ~~((Nonexcluded))~~ Countable resources described in subsection ~~((6))~~ (7) that do not exceed the resource standard described in WAC 388-513-1350(1), unless subsection ~~((3))~~ (4) applies; or

(b) Be approved and receiving the general assistance expedited Medicaid disability (GA-X) described in WAC 388-505-0110(6); or

(c) Be eligible for the CN children's medical program as described in WAC ~~((388-505-0210))~~ 388-505-0230; or

(d) Be eligible for the temporary assistance for needy families (TANF) program ~~((or state family assistance (SFA) program))~~ as described in WAC 388-505-0220.

(3) The department allows a client to have ~~((nonexcluded))~~ countable resources in excess of the standard described in WAC ~~((388-513-1350(1) during the month of either an application or eligibility review if, when excess resources are added to nonexcluded income, the combined~~

~~total does not exceed the SILE)) 388-513-1350 when meeting the conditions of reducing excess resources described in WAC 388-513-1350.~~

(4) To be eligible for waiver (~~or hospice~~) services, a client must also meet the program requirements described in:

(a) WAC 388-515-1505 for COPEs, New Freedom, Pace, MMIP and WMIP services; or

(b) WAC 388-515-1510 for DDD waivers (~~and OBRA services~~); or

(c) (~~Chapter 388-551 WAC for hospice services~~) WAC 388-515-1540 for the medically needy residential waiver (MNRW); or

(d) WAC 388-515-1550 for the medically needy in-home waiver (MNIW).

(5) To be eligible for (~~institutional or~~) hospice services under the (~~MN~~) CN program, a client must (~~be~~):

(a) (~~Eligible for the MN children's medical program as described in WAC 388-505-0210; or~~) Meet the program requirements described in chapter 388-551 WAC; and

(b) (~~Related to the SSI program as described in WAC 388-475-0050(1) and meet all requirements described in WAC 388-513-1395~~) Be eligible for a noninstitutional categorically needy program (CN-P) if not residing in a medical institution thirty days or more; or

(c) Reside at home and benefit by using home and community based waiver rules described in WAC 388-515-1505 (SSI related clients with income over the MNIL and at or below the 300 percent of the FBR or clients with a community spouse); or

(d) Receive home and community waiver (HCS) or DDD waiver services in addition to hospice services. The client's responsibility to pay toward the cost of care (participation) is applied to the waiver service provider first; or

(e) Reside in a state contracted and licensed alternate living facility and not on waiver services and receives medical assistance described in WAC 388-513-1305 as they are paying the facility privately.

(f) Be eligible for institutional CN if residing in a medical institution thirty days or more (use institutional rules for eligibility when in a medical institution thirty days or more).

(6) To be eligible for institutional or hospice services under the MN program, a client must be:

(a) Eligible for MN children's medical program described in WAC 388-505-0230; or

(b) Related to the SSI program as described in WAC 388-478-0050(1) and meet all requirements described in WAC 388-513-1395; or

(c) Eligible for the MN SSI related program described in WAC 388-475-0150 for hospice clients residing in a home setting; or

(d) Eligible for the MN SSI related program described in WAC 388-513-1305 for hospice clients not on a medically needy waiver and residing in an alternate living facility.

(e) Be eligible for institutional MN if residing in a medical institution thirty days or more (use institutional rules for eligibility when in a medical institution thirty days or more).

(7) To determine resource eligibility for an SSI-related client under the CN or MN program, the department:

(a) Considers resource(~~s available as~~) eligibility and standards described in WAC 388-513-1350; and

(b) (~~Excludes resources described in WAC 388-513-1360 and 388-513-1364 through~~) Evaluates the transfer of assets as described in WAC 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366(~~and~~

~~(c) Compares the nonexcluded resources to the standard described in WAC 388-513-1350(1)).~~

~~((7))~~ (8) To determine income eligibility for an SSI-related client under the CN or MN program, the department:

(a) Considers income available as described in WAC 388-513-1325 and 388-513-1330;

(b) Excludes income for CN and MN programs as described in WAC 388-513-1340;

(c) Disregards income for the MN program as described in WAC 388-513-1345; and

(d) Follows program rules for the MN program as described in WAC 388-513-1395.

~~((8))~~ (9) A client who meets the requirements of the CN program is approved for a period of up to twelve months for:

(a) Institutional services in a medical facility;

(b) Waiver services at home or in an alternate living facility; or

(c) Hospice services at home or in a medical facility.

~~((9))~~ (10) A client who meets the requirements of the MN program is approved for a period of months described in WAC 388-513-1395 (~~(5)(a)(ii))~~ (6) for:

(a) Institutional services in a medical facility; or

(b) Hospice services (~~at home or~~) in a medical facility.

~~((10))~~ (11) The department determines eligibility for (~~LTC~~) nursing facility and hospice services under the alien emergency medical (AEM) program described in WAC 388-438-0110 for a client who meets all other requirements for such services but does not meet citizenship requirements. Nursing facility and hospice services under the AEM program must be pre-approved by the department's medical consultant.

~~((11))~~ (12) The department determines eligibility for institutional services under the GA program described in WAC 388-448-0001 for a client who meets all other requirements for such services but is not eligible for programs described in subsections (~~((8))~~) (9) through (~~((10))~~) (11).

~~((12))~~ (13) A client is eligible for Medicaid as a resident in a psychiatric facility, if the client:

(a) Has attained institutional status as described in WAC 388-513-1320; and

(b) Is less than twenty-one years old (~~or is at least sixty-five years old~~) at application and approval; or

(c) Is receiving active psychiatric treatment just prior to their twenty-first birthday and the services extend beyond this date and the client has not yet reached age twenty-two; or

(d) Is at least sixty-five years old.

~~((13))~~ (14) The department determines a client's eligibility as it does for a single person when the client's spouse has already been determined eligible for LTC services.

~~((14))~~ (15) The department considers the parents' income and resources available for a minor who is less than eighteen years old and is receiving or is expected to receive inpatient chemical dependency and/or inpatient mental health treatment.

~~((15))~~ (16) The department considers the parents' income and resources available only as contributed for a client who is less than twenty-one years old and has attained institutional status as described in WAC 388-513-1320.

~~((16))~~ (17) The department determines a client's participation in the cost of care for LTC services as described in WAC 388-513-1380 and WAC 388-515-1505 for long-term care services under COPEs, New Freedom, PACE, MMIP and WMIP or WAC 388-515-1510 for DDD waivers.

(18) Clients not living in a medical institution who are considered to be receiving SSI benefits for the purposes of Medicaid do not pay service participation toward their cost of care. Clients living in a residential setting do pay room and board as described in WAC 388-515-1505. Groups deemed to be receiving SSI and for Medicaid purposes are eligible to receive CN-P Medicaid. These groups are described in WAC 388-475-0880.

AMENDATORY SECTION (Amending WSR 00-01-051, filed 12/8/99, effective 1/8/00)

WAC 388-513-1395 Determining eligibility for institutional or hospice services ~~((and))~~ for ~~((facility care only))~~ individuals living in a medical institution under the medically needy (MN) program. This section describes how the department determines a client's eligibility for institutional or hospice services in a medical institution and for facility care only under the MN program. In addition, this section describes rules used by the department to determine whether a client approved for these benefits is also eligible for noninstitutional medical assistance in a medical institution under the MN program.

(1) To be eligible for institutional or hospice services under the MN program for individuals living in a medical institution, a client must meet the financial requirements described in subsection (5)~~((a))~~. In addition, a client must meet program requirements described in WAC 388-513-1315; and

(a) Be an SSI-related client with ~~((nonexcluded))~~ countable income as described in subsection (4)(a) that is more than the special income level (SIL); or

(b) Be a child not described in subsection (1)(a) with ~~((nonexcluded))~~ countable income as described in subsection (4)(b) that exceeds the categorically needy (CN) standard for the children's medical program.

(2) ~~((The department allows a client to have nonexcluded resources in excess of the standard described in WAC 388-513-1350(1) during the month of either an application or eligibility review if, when excess resources are added to nonexcluded income, the combined total is less than the:~~

~~((a) Private facility rate plus the amount of recurring medical expenses, for institutional services; or~~

~~((b) Private hospice rate plus the amount of recurring medical expenses, for hospice services received at home))~~ For an SSI-related client, excess resources can be reduced by medical expenses as described in WAC 388-513-1350.

(3) The department determines a client's ~~((nonexcluded))~~ countable resources for institutional and hospice services under the MN programs ~~((in the following way))~~ as follows:

(a) For an SSI-related client, the department ~~((reduces available resources described in))~~ determines countable resources per WAC 388-513-1350 ~~((by excluding resources described in WAC 388-513-1360;)).~~

(b) For a child not described in subsection (3)(a), no determination of resource eligibility is required.

(4) The department determines a client's ~~((nonexcluded))~~ countable income for institutional and hospice services under the MN program ~~((in the following way))~~ as follows:

(a) For an SSI-related client, the department reduces available income as described in WAC 388-513-1325 and 388-513-1330 by:

(i) Excluding income described in WAC 388-513-1340;

(ii) Disregarding income described in WAC 388-513-1345; and

(iii) Subtracting previously incurred medical expenses ~~((that:~~

~~((A) Are not subject to third-party payment;~~

~~((B) Have not been used to satisfy a previous spenddown liability; and~~

~~((C) Are amounts for which the client remains liable))~~ incurred by the client and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC 388-513-1350.

(b) For a child not described in subsection (4)(a), the department:

(i) Follows the income rules described in WAC 388-505-0210 for the children's medical program; and

(ii) Subtracts the medical expenses described in subsection (4)~~((a)(iii))~~.

(5) If the combined total of a client's ~~((nonexcluded))~~ countable income, ~~((which))~~ when added to ~~((nonexcluded))~~ countable resources in excess of the standard described in WAC 388-513-1350(1), is less than the department-contracted rate plus the amount of recurring medical expenses, the client:

~~((Less than the department-contracted rate plus the amount of recurring medical expenses, the client:~~

~~((i) Is eligible for institutional and hospice services and noninstitutional medical assistance;~~

~~((ii)) Is eligible for institutional or hospice services in a medical institution, and noninstitutional medical assistance;~~

~~((b) Is approved for ((a choice of three or six months as described in chapter 388-416 WAC)) twelve months; and~~

~~((iii)) (c) Participates in the cost of care as described in WAC 388-513-1380((;)).~~

~~((b) Less than the private facility rate plus the amount of recurring medical expenses, but more than the department-contracted rate, the client:~~

~~((i))~~ (6) If the combined total of a client's countable income, which when added to countable resources in excess of the standard described in WAC 388-513-1350(1) is less than the private nursing facility rate plus the amount of recurring medical expenses, but more than the department contracted rate, the client:

(a) Is eligible for nursing facility care only ~~((that))~~ and is approved for a ~~((choice of))~~ three or six month~~((s))~~ base period as described in chapter ~~((388-416))~~ 388-519 WAC; and

(i) Pays the nursing home at the current state rate;

(ii) Participates in the cost of care as described in WAC 388-513-1380; and

(iii) Is not eligible for medical assistance or hospice services unless the requirements in (6)(b) or (c) are met.

(b) Is approved for (~~noninstitutional~~) medical assistance for a (~~choice of~~) three or six month(~~s~~) base period as described in chapter(~~s 388-416 and~~) 388-519 WAC, if:

(i) No income and resources remain(~~ing after allocations~~) after the post eligibility treatment of income process described in WAC 388-513-1380 (~~are used to satisfy any spenddown liability~~).

(ii) Medicaid certification is approved beginning with the first day of the base period.

(c) Is approved for medical assistance for up to three or six months when they incur additional medical expenses that are equal to or more than excess income and resources remaining after the post eligibility treatment of income process described in WAC 388-513-1380.

(i) This process is known as spenddown and is described in WAC 388-519-0100.

(ii) Medicaid certification is approved on the day the spenddown is met.

(7) If the combined total of a client's nonexcluded income, which when added to nonexcluded resources is above the facility monthly private rate:

(a) The client is ineligible using institutional rules.

(b) Eligibility is considered under a noninstitutional medical assistance program described in chapter 388-416 and 388-519 WAC.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 4, Repealed 1.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 4, Repealed 1.

Date Adopted: September 14, 2007.

Willard B. Nelson, DVM, Chair
Veterinary Board of Governors

AMENDATORY SECTION (Amending Order 108B, filed 12/28/90, effective 1/31/91)

WAC 246-933-401 Citation and purpose. These rules may be cited (~~and referred to~~) as the "Veterinary continuing education rules." The purpose of these rules is to (~~require licensed veterinarians to continue their professional education as a condition of maintaining a license to practice veterinary medicine in this state~~) establish standards of continuing veterinary medical education. The rules provide for qualifying training methods, designating approved continuing veterinary medical education providers and setting minimum continuing veterinary medical education credit requirements.

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-933-420 Basic requirement—Amount. Continuing veterinary medical education consists of programs of learning which contribute directly to the advancement or enhancement of skills in the practice of veterinary medicine, surgery and dentistry. Licensed veterinarians must complete thirty hours of continuing veterinary medical education every three years as required in chapter 246-12 WAC, Part 7. No more than ten hours can be earned in practice management courses in any three-year reporting period.

AMENDATORY SECTION (Amending Order 221B, filed 12/4/91, effective 1/4/92)

WAC 246-933-440 Exceptions. (~~The following are exceptions from the continuing education requirements:~~

~~Upon a showing of good cause by a licensee to the board,)) The board may (~~exempt such licensee from any, all, or part of the continuing education requirement. Good cause includes, but is not limited to:~~~~

(1) Illness;

(2) Hardship to practice)) excuse from or grant an extension of continuing veterinary medical education requirements to a licensee due to illness or other extenuating circumstances.

WSR 07-19-130

PERMANENT RULES

DEPARTMENT OF HEALTH

(Veterinary Board of Governors)

[Filed September 19, 2007, 11:41 a.m., effective October 20, 2007]

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

Purpose: WAC 246-933-401, 246-933-420, 246-933-440, 246-933-450, 246-933-465 and 246-933-466, the rules expand the methods that veterinarians may use to obtain continuing education but do not increase the existing requirements. The rules allow self-study courses earned electronically, reports on professional journals, or completion of practice management courses. Practice management courses and self-study courses are each limited to ten credits for any three-year reporting period.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-933-450; amending WAC 246-933-401, 246-933-420, 246-933-440, and 246-933-460; and new section WAC 246-933-465.

Statutory Authority for Adoption: RCW 18.92.030.

Adopted under notice filed as WSR 07-10-122 on May 2, 2007.

A final cost-benefit analysis is available by contacting Judy Haenke, Program Manager, P.O. Box 47868, Olympia, WA 98504-7868, phone (360) 236-4947, fax (360) 586-4359, e-mail judy.haenke@doh.wa.gov.

Licensees seeking an extension must petition the board in writing, at least forty-five days prior to the end of the reporting period.

AMENDATORY SECTION (Amending Order 108B, filed 12/28/90, effective 1/31/91)

WAC 246-933-460 ((Programs)) Courses approved by the veterinary board. ~~((Completion of the following are deemed to qualify an individual for continuing education credit: Attendance at a recognized local, state, national, or international continuing education program having a featured speaker.))~~ Courses offered by the following organizations are presumed to qualify as continuing veterinary medical education courses without specific prior approval of the board.

(1) The American Association of Veterinary State Boards (AAVSB).

(2) The American Veterinary Medical Association (AVMA).

(3) The Washington State Veterinary Medical Association.

(4) Any board approved college or school of veterinary medicine.

(5) Any state or regional veterinary association which is recognized by the licensing authority of its state as a qualified professional association or educational organization.

(6) The American Animal Hospital Association.

(7) Veterinary specialty boards recognized by the American Veterinary Medical Association.

(8) Regional veterinary conferences and allied organizations recognized by AAVSB.

(9) The Registry of Approved Continuing Education (RACE)

(10) Other courses as approved by the board.

NEW SECTION

WAC 246-933-465 Self-study continuing veterinary medical education activities. The board may grant continuing veterinary medical education credit for participation in self-study educational activities. The board may grant a licensee a total of ten credit hours under this section for any three-year reporting period. Self-study educational activities may include:

(1) Credit for reports. The board may grant continuing education credit for reports on professional veterinary literature. Licensees must submit requests for credit at least sixty days prior to the end of the reporting period. The request must include a copy of the article, including publication source, date and author. The report must be typewritten and include at least ten descriptive statements about the article.

(a) Professional literature approved for these reports are peer reviewed veterinary medical journals.

(b) Each report qualifies for one credit hour. The board may grant a licensee up to five credit hours of continuing veterinary medical education under this subsection if the combined total of ten hours for all types of self-study continuing veterinary medical education is not exceeded.

(2) Credit for preprogrammed educational materials. The board may grant a licensee continuing veterinary medical education credit for viewing and participating in board-

approved formal preprogrammed veterinary educational materials. The preprogrammed materials must be approved by an organization listed in WAC 246-933-460, and must require successful completion of an examination. Preprogrammed educational materials include, but are not limited to:

- (a) Correspondence courses offered through magazines or other sources;
- (b) Cassettes;
- (c) Videotapes;
- (d) CD-ROM;
- (e) Internet.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-933-450 Qualification of program for continuing education credit.

WSR 07-19-131

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed September 19, 2007, 11:41 a.m., effective October 20, 2007]

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

Purpose: The adopted changes to WAC 246-840-740 clarify that the current sexual misconduct rules for nurses also apply to nursing technicians. This will help avoid any confusion about the scope of the rule. It will also assure that nursing technicians are held to the same standards as all other nurses, and make it clear that nursing technicians are subject to the same disciplinary action for violating the sexual misconduct rules.

Citation of Existing Rules Affected by this Order: Amending WAC 246-840-740.

Statutory Authority for Adoption: RCW 18.130.050 and 18.79.110.

Adopted under notice filed as WSR 07-08-104 on April 4, 2007.

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

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

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

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

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

Date Adopted: September 19, 2007.

Judith D. Personett, EdD, RN, Chair
Nursing Care Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 99-04-051, filed 1/28/99, effective 2/28/99)

WAC 246-840-740 Sexual misconduct prohibited. (1) What is the nursing commission's intent in prohibiting this type of misconduct?

Sexual or romantic conduct with a client or the client's family is serious misconduct because it harms the nurse/client relationship and interferes with the safe and effective delivery of nursing services. A nurse or nursing technician does not need to be "assigned" to the client in order for the nurse/client relationship to exist. The role of the nurse or nursing technician in the nurse/client relationship places the nurse or nursing technician in the more powerful position and the nurse or nursing technician must not abuse this power. Under certain circumstances, the nurse/client relationship continues beyond the termination of nursing services. Not only does sexual or romantic misconduct violate the trust and confidence held by health care clients towards nursing staff, but it also undermines public confidence in nursing. Nurses and nursing technicians can take measures to avoid allegations of such misconduct by establishing and maintaining professional boundaries in dealing with their clients.

(2) What conduct is prohibited?

Nurses and nursing technicians shall never engage, or attempt to engage, in sexual or romantic conduct with clients, or a client's immediate family members or significant others. Such conduct does not have to involve sexual contact. It includes behaviors or expressions of a sexual or intimately romantic nature. Sexual or romantic conduct is prohibited whether or not the client, family member or significant other initiates or consents to the conduct. Such conduct is also prohibited between a nursing educator and student.

Regardless of the existence of a nurse/client relationship, nurses and nursing technicians shall never use patient information derived through their role as a health care provider to attempt to contact a patient in pursuit of a nurse's own sexual or romantic interests or for any other purpose other than legitimate health care.

(3) What should a nurse or nursing technician do to avoid allegations of sexual or romantic misconduct?

Establishing and maintaining professional boundaries is critical to avoiding even the appearance of sexual or romantic misconduct. Nurses and nursing technicians can take certain preventative steps to make sure safeguards are in place at all times, such as:

- (a) Setting appropriate boundaries with patients, physically and verbally, at the outset of professional relationships, and documenting such actions and the basis for such actions;
- (b) Consulting with supervisors regarding difficulties in establishing and maintaining professional boundaries with a given client; and/or
- (c) Seeking reassignment to avoid incurring a violation of these rules.

(4) What about former clients?

A nurse or nursing technician shall not engage or attempt to engage a former client, or former client's immediate family member or significant other, in sexual or romantic conduct if such conduct would constitute abuse of the nurse/client relationship. The nurse/client relationship is abused when a nurse or nursing technician uses and/or benefits from the nurse's professional status and the vulnerability of the client due to the client's condition or status as a patient.

(a) Due to the unique vulnerability of mental health and chemical dependency clients, nurses and nursing technicians are prohibited from engaging in or attempting to engage in sexual or romantic conduct with such former clients, or their immediate family or significant other, for a period of at least two years after termination of nursing services. After two years, sexual or romantic conduct may be permitted with a former mental health or chemical dependency client, but only if the conduct would not constitute abuse of the nurse/client relationship.

(b) Factors which the commission may consider in determining whether there was abuse of the nurse/client relationship include, but are not limited to:

- (i) The amount of time that has passed since nursing services were terminated;
- (ii) The nature and duration of the nurse/client relationship, the extent to which there exists an ongoing nurse/client relationship following the termination of services, and whether the client is reasonably anticipated to become a client of the nurse in the future;
- (iii) The circumstances of the cessation or termination of the nurse/client relationship;
- (iv) The former client's personal history;
- (v) The former client's current or past mental status, and whether the client has been the recipient of mental health services;
- (vi) The likelihood of an adverse impact on the former client and others;
- (vii) Any statements or actions made by the nurse during the course of treatment suggesting or inviting the possibility of sexual or romantic conduct;
- (viii) Where the conduct is with a client's immediate family member or significant other, whether such a person is vulnerable to being induced into such relationship due to the condition or treatment of the client or the overall circumstances.

(5) Are there situations where these rules do not apply?

These rules do not prohibit:

- (a) The provision of nursing services on an urgent, unforeseen basis where circumstances will not allow a nurse or nursing technician to obtain reassignment or make an appropriate referral;
- (b) The provision of nursing services to a spouse, or family member, or any other person who is in a preexisting, established relationship with the nurse or nursing technician where no evidence of abuse of the nurse/client relationship exists.