WSR 08-05-001
PERMANENT RULES
WASHINGTON STATE UNIVERSITY

[Filed February 6, 2008, 2:41 p.m., effective March 8, 2008]

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

Purpose: Miscellaneous amendments to academic integrity procedures to clarify how the university intends to address conduct violations.

Citation of Existing Rules Affected by this Order: Amending chapter 504-26 WAC.

Statutory Authority for Adoption: RCW 28B.30.150.

Adopted under notice filed as WSR 07-18-047 on August 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 16, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 16, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 1, Amended 16, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 1, 2008.

Ralph T. Jenks, Director
Procedures, Records, and Forms
and University Rules Coordinator

NEW SECTION

WAC 504-26-005 Good standing. The award of a degree is conditioned upon the student's good standing in the university and satisfaction of all university graduation requirements. "Good standing" means the student has resolved any unpaid fees or acts of academic or behavioral misconduct and complied with all sanctions imposed as a result of any misconduct. The university shall deny award of a degree if the student is dismissed from the university based on his or her misconduct. (See also rule 45 in the university general catalog.)

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-200 Jurisdiction of the university standards of conduct for students. The university standards of conduct for students shall apply to conduct that occurs on university premises, at university sponsored activities, and to off-campus conduct that adversely affects the university community and/or the pursuit of its objectives. Each student is responsible for his/her conduct from the time of application for admission through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from school while a disciplinary matter is pending. The university has sole discretion to determine what conduct occurring off campus adversely impacts the university community and/or the pursuit of ((~~its~~)) university objectives.

AMENDATORY SECTION (Amending WSR 07-11-030, filed 5/8/07, effective 6/8/07)

WAC 504-26-201 Misconduct—Rules and regulations. Any ((~~individual~~)) student or student organization found to have committed, assisted, conspired, or attempted to commit the following misconduct (WAC 504-26-202 through 504-26-226) is subject to the disciplinary sanctions outlined in WAC 504-26-405.

AMENDATORY SECTION (Amending WSR 07-11-030, filed 5/8/07, effective 6/8/07)

WAC 504-26-202 Acts of dishonesty. Acts of dishonesty, include but are not limited to ((~~the following~~)) those listed in this chapter:

(1) Academic integrity violations including, but not limited to, cheating as defined in WAC 504-26-010.

(2) Knowingly furnishing false information to any university official, faculty member, or office.

(3) Forgery, alteration, or misuse of any university document or record, or instrument of identification whether issued by the university or other state or federal agency.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-207 Failure to comply with university officials or law enforcement officers. Failure to comply with lawful directions of university officials and/or law enforcement officers acting in performance of their duties and/or failure to identify oneself to these persons when requested to do so.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-208 Unauthorized keys or unauthorized entry. Unauthorized possession, duplication, or use of keys, including cards or alphanumeric pass-codes, to any university premises or unauthorized entry to or use of university premises.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-213 Firearms and dangerous weapons. No student may carry, possess, or use any firearm, explosive (including fireworks), dangerous chemical, or any dangerous weapon on university property or in university-approved housing. Airsoft guns and other items that shoot projectiles are not permitted in university-approved housing. Students wishing to maintain a firearm on campus for hunting or sport-

ing activities must store the firearm with the Washington State University department of public safety.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-218 Computer abuses or theft. Theft or other abuse of computer facilities and resources, including but not limited to:

(1) Unauthorized entry into a file, to use, read, or change the contents, or for any other purpose.

(2) Unauthorized transfer of a file.

(3) Unauthorized use of computer hardware.

(4) Use of another individual's identification and/or password.

(((~~(4)~~))) (5) Use of computing facilities and resources to interfere with the work of another student, faculty member, or university official.

(((~~(5)~~))) (6) Use of computing facilities and resources to send obscene, harassing, or threatening messages.

(((~~(6)~~))) (7) Use of computing facilities and resources to interfere with normal operation of the university computing system.

(((~~(7)~~))) (8) Use of computing facilities and resources in violation of any law, including copyright laws.

(((~~(8)~~))) (9) Any violation of the university computer use policy found at http://www.wsu.edu/~forms/HTML/EPM/EP4_Electronic_Publishing_Policy.htm

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-219 Abuse of the student conduct system. Abuse of the student conduct system, including but not limited to:

(1) Failure to obey ((~~the~~)) any notice from a university conduct board or other university official to appear for a meeting or hearing as part of the student conduct system.

(2) Willful falsification, distortion, or misrepresentation of information before a ((~~student~~)) university conduct ((~~board~~)) proceeding.

(3) Disruption or interference with the orderly conduct of a ((~~student~~)) university conduct board proceeding.

(4) Filing fraudulent charges or initiating a ((~~student~~)) university conduct ((~~code~~)) proceeding in bad faith.

(5) Attempting to discourage an individual's proper participation in, or use of, the student conduct system.

(6) Attempting to influence the impartiality of a member of ((~~a~~)) the university conduct ((~~board~~)) system prior to, and/or during the course of, ((~~the student~~)) any university conduct board proceeding.

(7) Harassment (verbal or physical) and/or intimidation of a member of a university conduct board prior to, during, and/or after ((~~a student~~)) any university conduct ((~~code~~)) proceeding.

(8) Failure to comply with the sanction(s) imposed under the standards of conduct for students.

(9) Influencing or attempting to influence another person to commit an abuse of the ((~~student~~)) university conduct ((~~code~~)) system.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-225 Trespassing. Knowingly entering or remaining unlawfully in or on university premises or any portion thereof. Any person who has been given ((~~written~~)) notice by a university official of the university's decision to exclude him or her from all or a portion of university property is not licensed, invited, or otherwise privileged to enter or remain on the identified portion of university property, unless given prior explicit written permission by university administration.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-304 Group conduct. Sororities, fraternities, and recognized groups ((~~are expected to~~)) shall comply with the standards of conduct for students and with university policies. When a member or members of a student organization violates the standards of conduct for students, the student organization or individual members may be subject to appropriate sanctions authorized by these standards.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-401 Complaints and student conduct process. (1) Any member of the university community may file a complaint against a student for violations of the standards of conduct for students. A complaint is prepared in writing and directed to a student conduct officer. Any complaint is to be submitted as soon as possible after the event takes place, preferably within thirty days.

(2) A student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the code of conduct. If a conduct officer determines that a complaint appears to state a violation of the student code of conduct, she or he considers whether the matter might be resolved through agreement with the accused or through alternative dispute resolution proceedings involving the complainant and the accused. The complainant and the accused are informed of university options for alternative dispute resolution and may request that the matter be addressed using alternative dispute resolution techniques. Generally, the accused and complainant must agree to the use of alternative dispute resolution techniques. If the accused and the student conduct officer reach an agreed resolution of the complaint, the disposition is final; there is no right to appeal from an agreed disposition.

(3) If the conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or alternative dispute resolution, the matter is handled through either a conduct officer hearing or as a university conduct board hearing.

(a) When the allegation involves ((~~a student/university community complainant~~)) harm or threat of harm to any person or person's property and the accused disputes the facts and/or denies responsibility, the matter ((~~is~~)) may be referred to the university conduct board for resolution.

(b) If the possible or recommended sanction is expulsion or suspension, ((~~except for suspensions resulting from violations of the alcohol or drug provisions of this code,~~)) the matter is referred to the university conduct board.

(c) Matters other than those listed in (a) and (b) of this subsection are heard by a conduct officer, unless the conduct officer exercises his or her discretion to refer the matter to a conduct board at any time before a decision is issued. A student may request that a conduct board hear the case, but the final decision ((~~on the matter~~)) to refer the matter to the university conduct board for hearing is made by the university conduct officer and such decision is not subject to appeal.

(4) The student conduct officer provides complainants who have been targets of alleged misconduct or who feel victimized thereby with names of university and community advocates or resources who may be able to help the complainant address his or her concerns about the behaviors and provide support to the complainant throughout the conduct process. Due to federal privacy law, the university may not disclose to the complainant any sanctions taken against the accused student, unless the complainant was the victim of a violent crime for which the accused was found responsible as defined under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g; 34 CFR Part 99), or the accused student consents to such disclosure.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-402 Conduct officer actions. (1) Any student charged by a conduct officer with a violation of any provision of standards of conduct for students is ((~~informed~~)) notified of the ((~~bases~~)) basis for ((~~those~~)) the charge or charges and of the time, date, and place of a conference between the student and the conduct officer through one of the following procedures.

(a) The conduct officer provides notice by personal delivery or by regular United States mail addressed to the student or student organization at his, her, or its last known address. Duplicate notice may be provided by electronic mail.

(b) If the student is no longer enrolled at the time notice is sent, the notice is sent to the student's permanent address recorded in the registrar's files. The student or student organization is responsible for maintaining an updated mailing address on file with the registrar.

(c) Any request to ((~~continue~~)) extend the time and/or date of the conduct officer conference/hearing should be addressed to the conduct officer.

(2) In order that any informality in disciplinary proceedings not mislead a student as to the seriousness of the matter under consideration, the student is informed of the potential sanctions involved at the initial conference or hearing.

(3) After a review of the evidence and interviewing the student(s) involved in the case, the conduct officer may take any of the following actions:

(a) Terminate the proceeding exonerating the student or students;

(b) Dismiss the case;

(c) Impose ((~~verbal warning to the student directly, not~~)) appropriate sanctions as provided in WAC 504-26-405. Such sanctions are subject to the student's right of appeal as provided in this code; or

(d) ((~~Impose additional sanctions of reprimand, probation, or, for violations of alcohol or drug policies, suspension. Such sanctions are subject to the student's right of appeal as provided in this code; or~~

~~(e)~~)) Refer the matter to the ((~~student~~)) university conduct board pursuant to WAC 504-26-401(3).

(4) The conduct officer may consider the student's past contacts with the office of student conduct in determining an appropriate sanction and/or deciding whether to refer the case for a university conduct board hearing.

(5) The student is notified in writing of the determination made by the conduct officer within ten business days of the proceeding. The ((~~student is also notified of his or her~~)) notice includes information regarding the student's right to appeal pursuant to WAC 504-26-407.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-403 Conduct board proceedings. (1) Any student charged by a conduct officer with a violation of any provision of standards of conduct for students that is to be heard by a conduct board is provided notice by personal delivery or by regular United States mail addressed to the student or student organization at her, his, or its last known address.

(a) If the student is no longer enrolled at the time notice is sent, the notice is sent to the student's permanent address recorded in the registrar's files.

(b) The student or student organization is responsible for keeping an updated mailing address on file with the registrar.

(2) The written notice shall be completed by the conduct officer and shall include:

(a) The specific complaint, including the university policy or regulation allegedly violated;

(b) The approximate time and place of the alleged act that forms the factual basis for the charge of violation;

(c) The time, date, and place of the hearing;

(d) A list of the witnesses who may be called to testify, to the extent known;

(e) A description of all documentary and real evidence to be used at the hearing, to the extent known, including a statement that the student shall have the right to inspect his or her student conduct file.

(3) Time for hearings.

(a) The conduct board hearing is scheduled not less than seven days after the student has been sent notice of the hearing, except in the case of interim suspensions as set forth in WAC 504-26-406. Ordinarily, the hearing occurs within fifteen days of notice.

(b) Requests to ((~~continue~~)) extend the time and/or date for hearing ((~~date~~)) must be addressed to the chair of the university conduct board. Requests made by an accused student must be copied to the office of student conduct; requests made by the office of student conduct must be copied to the

accused student. A ((~~continuance~~)) request for extension of time is granted only upon a showing of good cause.

(4) University conduct board hearings are conducted by a university conduct board according to the following guidelines, except as provided by subsection (6) of this section:

(a) Procedures:

(i) University conduct board hearings are conducted in private.

(ii) The complainant, accused student, and his or her advisor, if any, are allowed to attend the entire portion of the university conduct board hearing at which information is received (excluding deliberations). Admission of any other person to the university conduct board hearing is at the discretion of the university conduct board chair and/or the student conduct officer.

(iii) In university conduct board hearings involving more than one accused student, the student conduct officer, at his or her discretion, may permit joint or separate hearings.

(iv) In university conduct board hearings involving graduate students, board memberships are comprised to include graduate students and graduate teaching faculty to the extent possible.

(v) The complainant and the accused student have the right to be assisted by an advisor they choose, at their own expense. The complainant and/or the accused student is responsible for presenting his or her own information, and therefore, during the hearing, advisors are not permitted to ((~~speak or~~)) address the board, witnesses, conduct officers or any party or representatives invited by the parties to the hearing, or to participate directly in any university conduct hearing. An advisor may communicate with the accused and recesses may be allowed for ((~~privacy~~)) this purpose. A student should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the university conduct board hearing because delays are not normally allowed due to the scheduling conflicts of an advisor.

(vi) The complainant, the accused student, and the student conduct officer may arrange for witnesses to present pertinent information to the university conduct board. The conduct officer tries to arrange the attendance of possible witnesses who are identified by the complainant. Complainant witnesses must provide written statements to the conduct officer at least two weekdays prior to the hearing. Witnesses identified by the accused student must provide written statements to the conduct officer at least two weekdays prior to the conduct hearing. The accused student is responsible for informing his or her witnesses of the time and place of the hearing. Witnesses provide information to and answer questions from the university conduct board. Questions may be suggested by the accused student and/or complainant to be answered by each other or by other witnesses. Written questions are directed to the conduct board chair, rather than to the witness directly. This method is used to preserve the educational tone of the hearing and to avoid creation of an unduly adversarial environment, and to allow the board chair to determine the relevancy of questions. Questions concerning whether potential information may be received are resolved at the discretion of the chair of the university conduct board.

(vii) Pertinent records, exhibits, and written statements (including student impact statements) may be accepted as information for consideration by a university conduct board at the discretion of the chair.

(viii) Questions related to the order of the proceedings are subject to the final decision of the chair of the university conduct board.

(ix) After the portion of the university conduct board hearing concludes in which all pertinent information is received, the student conduct board shall determine (by majority vote) whether the accused student has violated each section of the standards of conduct for students as charged.

(x) The university conduct board's determination is made on the basis of a "preponderance of the evidence," that is, whether it is more likely than not that the accused student violated the standards of conduct for students.

(xi) Formal rules of process, procedure, and/or technical rules of evidence, such as are applied in criminal or civil court, are not used in conduct proceedings. Relevant evidence, including hearsay, is admissible if it is the type of evidence that reasonable members of the university community would rely upon in the conduct of their affairs. ((~~Additionally, rules of privilege and relevancy apply.~~)) The chair of the student conduct board shall have the discretion to determine admissibility of evidence.

(b) If the accused student is found responsible for any of the charges brought against the accused, the board may, at that time, consider the student's past contacts with the office of student conduct in determining an appropriate sanction.

(c) The accused student or student organization is notified of the conduct board's decision within ten calendar days from the date the matter is heard. The accused student or organization shall receive written notice of the decision, the reasons for the decision (both the factual basis therefore and the conclusions as to how those facts apply to the conduct code), the sanction, notice that the order will become final unless internal appeal is filed within twenty-one days of the date the letter was personally delivered or deposited in the U.S. mail, and a statement of how to file an appeal.

(i) The conduct board's written decision is sent by regular mail or personal delivery, and may also be sent by electronic mail to the accused student's or the president of the student organization's last known address, as set forth in the registrar's files.

(ii) The written decision is the university's initial order.

(iii) If the student or organization does not appeal the conduct board's decision within twenty-one calendar days from the date of the decision letter, it becomes the university's final order.

(5) There is a single verbatim record, such as a tape recording, of all university conduct board hearings (not including deliberations). Deliberations are not recorded. The record is the property of the university.

(6) If an accused student ((~~who has been provided~~)) to whom notice of the hearing has been sent (in the manner provided above) does not appear before a university conduct board hearing, the information in support of the complaint is presented and considered in his or her absence, and the board may issue a decision based upon that information.

(7) The university conduct board may for convenience or to accommodate concerns for the personal safety, well-being, and/or fears of confrontation of the complainant, accused stu-

dent, and/or other witnesses during the hearing by providing separate facilities, and/or by permitting participation by telephone, audio tape, written statement, or other means, as determined in the sole judgment of the vice-president for student affairs or designee to be appropriate.

AMENDATORY SECTION (Amending WSR 07-11-030, filed 5/8/07, effective 6/8/07)

WAC 504-26-404 Procedure for academic integrity violations. (1) Initial hearing.

(a) When a responsible instructor finds that a violation of academic integrity has occurred, the instructor shall assemble the evidence and, upon reasonable notice to the student of the date, time, and nature of the allegations, meet with the student suspected of violating academic integrity policies. If the student admits violating academic integrity policies, the instructor assigns an outcome in keeping with published course policies and notifies the office of student conduct in writing ((~~of the~~)), including the allegations, the student's admission, and the sanctions imposed.

(b) If the instructor is unable to meet with the student or if the accused student disputes the allegation(s) and/or the outcome proposed by the instructor, the instructor shall make a determination as to whether the student did or did not violate the academic integrity policy. If the instructor finds that the student was in violation, the instructor shall provide the student and the office of student conduct with a written determination, the evidence relied upon, and the sanctions imposed.

(c)The student has twenty-one days from the date of the decision letter to request review of the instructor's determination and/or sanction(s) imposed to the academic integrity hearing board.

(2) Review.

(a) Upon timely request for review by a student who has been found by his or her instructor to have violated the academic integrity policy, the academic integrity hearing board shall make a separate and independent determination of whether or not the student is responsible for violating the academic integrity policy and/or whether ((~~or not~~)) the outcome proposed by the instructor is in keeping with the instructor's published course policies.

(b) The academic integrity hearing board is empowered to provide an appropriate remedy for a student including arranging a withdrawal from the course, having the student's work evaluated, or changing a grade where it finds that:

(i) The student is not responsible for violating academic integrity policies; or

(ii) The outcome imposed by the instructor violates the instructor's published policies.

(c) Students who appear before the academic integrity board shall have the same rights to notice and to conduct a defense as enumerated in WAC 504-26-403 except:

(i) Notice of hearing and written orders shall be sent to the address provided by the student in the student's request for review (unless an address is not provided therein); and

(ii) The written decision of the academic integrity hearing board is the university's final order. There is no appeal from findings of responsibility or outcomes assigned by university or college academic integrity hearing boards.

(3) If the reported violation is the student's first offense, the office of student conduct ordinarily requires the student to attend a workshop separate from, and in addition to, any academic outcomes imposed by the instructor. A hold is placed on the student's record preventing registration or graduation until completion of the workshop.

(4) If the reported violation is the student's second offense, the student is ordinarily required to appear before a university conduct board with a recommendation that the student be dismissed from the university.

(5) If the instructor or academic integrity hearing board determines that the act of academic dishonesty for which the student is found responsible is particularly egregious in light of all attendant circumstances, the instructor or academic integrity hearing board may direct that the student's case be heard by the university conduct board with a recommendation for dismissal from the university even if it is the student's first offense.

(6) Because instructors and departments have a legitimate educational interest in the outcomes, reports of academic integrity hearing board and/or conduct board hearings shall be reported to the responsible instructor and the chair or dean.

AMENDATORY SECTION (Amending WSR 07-11-030, filed 5/8/07, effective 6/8/07)

WAC 504-26-405 Sanctions. (1) The following sanctions may be imposed upon any student found to have violated the standards of conduct for students:

(a) Warning. A notice in writing to the student that the student is violating or has violated institutional regulations.

(b) Probation. Formal action placing conditions upon the student's continued attendance at the university. Probation is for a designated period of time and warns the student that suspension or expulsion may be imposed if the student is found to violate any institutional regulation(s) or fails to complete his or her conditions of probation during the probationary period. A student on probation is not eligible to run for or hold an office in any student group or organization; she or he is not eligible for certain jobs on campus, including but not limited to resident advisor or orientation counselor, and she or he is not eligible to serve on the university conduct board.

(c) Loss of privileges. Denial of specified privileges for a designated period of time.

(d) Restitution. Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement.

(e) Education. The university may require the student to successfully complete an educational project designed to create an awareness of the student's misconduct.

(f) Community service. Imposition of service hours (not to exceed eighty hours per student or per member of an organization).

(g) Residence hall suspension. Separation of the student from the residence halls for a definite period of time, after which the student ((~~is~~)) may be eligible to return. Conditions for readmission may be specified.

(h) Residence hall expulsion. Permanent separation of the student from the residence halls.

(i) University suspension. Separation of the student from the university for a definite period of time, after which the student is eligible to ((~~return~~)) request readmission. Conditions for readmission may be specified. ((~~More than two violations of the standards of conduct for students involving alcohol or drugs may result in a suspension of one or more semesters.~~))

(j) University expulsion. Permanent separation of the student from the university.

(k) Revocation of admission and/or degree. Admission to or a degree awarded from the university may be revoked for fraud, misrepresentation, or other violation of law or university standards in obtaining the degree, or for other serious violations committed by a student prior to graduation.

(l) Withholding degree. The university may withhold awarding a degree otherwise earned until the completion of the process set forth in this student conduct code, including the completion of all sanctions imposed, if any.

(m) Trespass. A student may be restricted from any or all university ((~~property~~)) premises based on his or her misconduct.

(n) Loss of recognition. A student organization's recognition may be withheld permanently or for a specific period of time. A fraternity or sorority may be prohibited from housing freshmen. Loss of recognition is defined as withholding university services, privileges or administrative approval from a student organization. Services, privileges and approval to be withdrawn include, but are not limited to, intramural sports (although individual members may participate), information technology services, university facility use and rental, campus involvement office organizational activities, and office of Greek life advising.

(o) Hold on transcript and/or registration. ((~~This is a temporary measure restricting~~)) A hold restricts release of a student's transcript or access to registration until satisfactory completion of conditions or sanctions imposed by a student conduct officer or university conduct board. Upon proof of satisfactory completion of the conditions ((~~of the~~)) or sanctions, the hold is released.

(p) No contact order. A prohibition of direct or indirect physical, verbal, and/or written contact with another individual or group.

(2) More than one of the sanctions listed above may be imposed for any single violation.

(3) In determining an appropriate sanction for a violation of the student conduct code, a student's or student organization's past contacts with the office of student conduct may be considered.

(4) Other than university expulsion or revocation or withholding of a degree, disciplinary sanctions are not made part of the student's permanent academic record, but shall become part of the student's disciplinary record.

((~~(4)~~)) (5) In cases heard by university conduct boards, sanctions are determined by that board. The student conduct officer has the authority to assign sanctions in any conduct officer hearing((~~s or cases in which the accused student takes responsibility for violations of the standards of conduct for students~~)).

((~~(5)~~)) (6) Academic integrity violations.

((~~(a)~~)) No credit need be given for work that is not a student's own. Thus, in academic integrity violations, the responsible instructor has the authority to assign a grade and/or educational sanction in accordance with the expectations set forth in the relevant course syllabus. The instructor's choices may include, but are not limited to, assigning a grade of "F" for the assignment and/or assigning an educational sanction such as extra or replacement assignments, quizzes, or tests, or assigning a grade of "F" for the course.

((~~(b) Instructors do not have authority to suspend or dismiss a student from the university.~~))

AMENDATORY SECTION (Amending WSR 07-11-030, filed 5/8/07, effective 6/8/07)

WAC 504-26-407 Review of decision. (1) A decision reached by the university conduct board or a sanction imposed by the student conduct officer may be appealed by the accused student(s) ((~~to an appellate board~~)) in the manner prescribed in the decision letter containing the university's decision and sanctions. Such appeal must be made within twenty-one days of the date of the decision letter.

(a) The university president or designee, of his or her own initiative, may direct that an appeals board be convened to review a conduct board decision without notice to the parties. However, the appeals board may not take any action less favorable to the accused student(s), unless notice and an opportunity to explain the matter is first given to the accused student(s).

(b) If the accused and/or the office of student conduct ((~~may~~)) wish to explain their views of the matter to the appeals board they shall do so in writing.

(c) The appeals board shall make any inquiries necessary to ascertain whether the proceeding must be converted to a formal adjudicative hearing under the Administrative Procedure Act (chapter 34.05 RCW).

(2) Except as required to explain the basis of new information, an appeal is limited to a review of the verbatim record of the university conduct board hearing and supporting documents for one or more of the following purposes:

(a) To determine whether the university conduct board hearing was conducted fairly in light of the charges and information presented, and in conformity with prescribed procedures giving the complaining party a reasonable opportunity to prepare and to present information that the standards of conduct for students were violated, and giving the accused student a reasonable opportunity to prepare and to present a response to those allegations. Deviations from designated procedures are not a basis for sustaining an appeal unless significant prejudice results.

(b) To determine whether the decision reached regarding the accused student was based on substantial information, that is, whether there were facts in the case that, if believed by the fact finder, were sufficient to establish that a violation of the standards of conduct for students occurred.

(c) To determine whether the sanction(s) imposed were appropriate for the violation of the standards of conduct for students which the student was found to have committed.

(d) To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original hearing, because such information and/or facts were not known to the person appealing at the time of the original student conduct board hearing.

(3) The university appeals board shall review the record and ((~~any briefing filed~~)) all information provided by the parties and make ((~~one of the~~)) determinations based on the following ((~~determinations~~)):

(a) Affirm, reverse or modify the conduct board's decision;

(b) Affirm, reverse, or modify the sanctions imposed by the conduct board.

(4) The appeal board's decision ((~~is entered within twenty calendar days from the date of the appeal letter. By the close of the next business day following entry of the order, the decision is provided to the accused student(s) by personal delivery or deposited into the United States mail addressed to~~)) shall be personally delivered or mailed via U.S. mail to the student. Such decision shall be delivered or mailed to the last known address of the accused student(s). It is the student's responsibility to maintain a correct and updated address with the registrar. The university appeal board's decision letter is the final order and shall advise the student or student organization that judicial review may be available. If the appeal board does not provide the student with a response within twenty days after the request for appeal is received, the request for appeal is deemed denied.

(5) The appeals board decision is effective as soon as the order is signed. A petition to delay the date that the order becomes effective (a "petition for stay") may be directed to the chair of the appeals board within ten days of the date the order was personally delivered to the student or placed in the U.S. mail. The chair shall have authority to decide whether to grant or deny the request.

(6) There is no further review beyond that of the findings of responsibility or outcomes assigned by university or college academic integrity hearing boards.

WSR 08-05-003
PERMANENT RULES
DEPARTMENT OF FINANCIAL INSTITUTIONS

[Filed February 6, 2008, 3:53 p.m., effective March 8, 2008]

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: No rule may be made unless the director of the department of financial institutions finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of chapter 21.20 RCW. The director hereby makes such a finding with respect to this proposal.

Purpose: The Washington securities division uses guidelines and policies created by the North American Securities Administrators Association (NASAA) as the basis for regulating certain offerings and licensees. These guidelines and policies are periodically updated and occasionally new guidelines and policies are adopted. This amendment would update Washington's regulations to reflect the latest versions of all previously adopted guidelines. It would also adopt NASAA's Statement of Policy Regarding Church Extension Fund Securities and Uniform Disclosure Guidelines for Cover Legends for the first time. This will facilitate greater uniformity with the many other states that rely on NASAA guidelines and policies.

Citation of Existing Rules Affected by this Order: Amending WAC 460-16A-205.

Statutory Authority for Adoption: RCW 21.20.450.

Adopted under notice filed as WSR 08-01-127 on December 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: February 6, 2008.

Scott Jarvis
Director

AMENDATORY SECTION (Amending WSR 02-22-106, filed 11/6/02, effective 12/7/02)

WAC 460-16A-205 Adoption of NASAA statements of policy. (1) In order to promote uniform regulation, the administrator adopts the following North American Securities Administrators Association (NASAA) statements of policy for offerings registering pursuant to RCW 21.20.180 or 21.20.210:

(a) Registration of publicly offered cattle feeding programs, as adopted September 17, 1980;

(b) Registration of commodity pool programs, as adopted with amendments through ((~~August 30, 1990~~)) May 7, 2007;

(c) Equipment programs, as adopted with amendments through ((~~October 24, 1991~~)) May 7, 2007;

(d) Registration of oil and gas programs, as adopted with amendments through ((~~October 24, 1991~~)) May 7, 2007;

(e) Real estate investment trusts, as adopted with amendments through ((~~September 29, 1993~~)) May 7, 2007;

(f) Real estate programs, as adopted with amendments through ((~~September 29, 1993~~)) May 7, 2007;

(g) Loans and other material affiliated transactions, as adopted with amendments through November 18, 1997;

(h) Options and warrants, as adopted with amendments through September 28, 1999;

(i) Registration of direct participation programs - omnibus guidelines, as adopted ((~~March 29, 1992~~)) with amendments through May 7, 2007;

(j) Mortgage program guidelines, as adopted ((~~September 10, 1996~~)) with amendments through May 7, 2007;

(k) Church bonds, as adopted April 14, 2002;

(l) Health care facility offerings, pertaining to the offering of nonprofit health care facility bonds, as adopted April 5, 1985;

(m) Corporate securities definitions, as adopted September 28, 1999;

(n) Impoundment of proceeds, as adopted with amendments through September 28, 1999;

(o) Preferred stock, as adopted with amendments through April 27, 1997;

(p) Promotional shares, as adopted September 28, 1999, except that the term promotional shares shall be limited to those equity securities which were issued within the last three years and that all promotional shares in excess of twenty-five percent of the shares to be outstanding upon completion of the offering may be required to be deposited in escrow absent adequate justification that escrow of such shares is not in the public interest and not necessary for the protection of investors;

(q) Registration of asset-backed securities, as adopted ((~~October 25, 1995~~)) with amendments through May 7, 2007, except for offerings registering or required to register pursuant to chapter 460-33A WAC or RCW 21.20.705 through 21.20.855;

(r) Promoters' equity investment, as adopted with amendments through April 27, 1997;

(s) Specificity in use of proceeds, as adopted September 28, 1999;

(t) Underwriting expenses, underwriter's warrants, selling expenses, and selling security holders, as adopted with amendments through September 28, 1999;

(u) Unsound financial condition, as adopted September 28, 1999;

(v) Unequal voting rights, as adopted October 24, 1991;

(w) Guidelines for general obligation financing by religious denominations, as adopted April 17, 1994; ((~~and~~))

(x) Risk disclosure guidelines, as adopted September 9, 2001;

(y) Church extension fund securities, as adopted with amendments through April 18, 2004; and

(z) Guidelines for cover legends, as adopted October 2, 2004.

(2) An offering registering pursuant to RCW 21.20.180 or 21.20.210 that falls within one or more of the statements of policy listed in subsection (1) of this section must comply with the requirements of said statement of policy or policies.

(3) The statements of policy referred to in subsection (1) of this section are found in *CCH NASAA Reports* published by Commerce Clearing House. Copies are also available at the office of the securities administrator.

WSR 08-05-007

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed February 7, 2008, 1:46 p.m., effective March 9, 2008]

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

Purpose: This rule-making order amends chapter 16-662 WAC, Weights and measures—National handbooks, by adopting the National Institute of Standards and Technology (NIST) handbooks as follows:

(1) The 2008 edition of NIST Handbook 44 (Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices) as required by RCW 19.94.195; and

(2) The 2008 edition of NIST Handbook 130 (Uniform Laws and Regulations in the areas of legal metrology and engine fuel quality).

The adopted version of NIST Handbook 133 (Checking the Net Contents of Packaged Goods) remains the most current.

Citation of Existing Rules Affected by this Order: Amending WAC 16-662-105.

Statutory Authority for Adoption: Chapters 19.94 and 34.05 RCW.

Adopted under notice filed as WSR 07-24-079 on December 5, 2007.

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

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

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

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

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

Date Adopted: February 7, 2008.

Valoria H. Loveland

Director

AMENDATORY SECTION (Amending WSR 07-05-083, filed 2/21/07, effective 3/24/07)

WAC 16-662-105 What national weights and measures standards are adopted by the Washington state department of agriculture (WSDA)? The WSDA adopts the following national standards:

National standard for:	Contained in the:
(1) The specifications, tolerances, and other technical requirements for the design, manufacture, installation, performance test, and use of weighing and measuring equipment	((~~2007~~)) 2008 Edition of *NIST Handbook 44 - Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*
(2) The procedures for checking the accuracy of the net contents of packaged goods	Fourth Edition (January 2005) of *NIST Handbook 133 - Checking the Net Contents of Packaged Goods*
(3) The requirements for packaging and labeling, method of sale of commodities, examination procedures for price verification, and engine fuels, petroleum products and automotive lubricants	((~~2006~~)) 2008 Edition of *NIST Handbook 130 - Uniform Laws and Regulations in the areas of legal metrology and engine fuel quality*, specifically:
(a) Weights and measures requirements for all food and nonfood commodities in package form	*Uniform Packaging and Labeling Regulation*as adopted by the National Conference on Weights and Measures and published in *NIST Handbook 130*, ((~~2006~~)) 2008 Edition
(b) Weights and measures requirements for the method of sale of food and nonfood commodities	*Uniform Regulation for the Method of Sale of Commodities* as adopted by the National Conference on Weights and Measures and published in *NIST Handbook 130*, ((~~2006~~)) 2008 Edition
(c) Weights and measures requirements for price verification	*Examination Procedure for Price Verification* as adopted by the National Conference on Weights and Measures and published in *NIST Handbook 130*, ((~~2006~~)) 2008 Edition
(d) Definitions and requirements for standard fuel specifications; classification and method of sale of petroleum products; retail storage tanks; condemned products; product registration; and test methods and reproducibility limits	*Uniform Engine Fuels, Petroleum Products, and Automotive Lubricants Regulation* as adopted by the National Conference on Weights and Measures and published in *NIST Handbook 130*, ((~~2006~~)) 2008 Edition

WSR 08-05-009

PERMANENT RULES

PARKS AND RECREATION COMMISSION

[Filed February 7, 2008, 2:14 p.m., effective March 9, 2008]

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

Purpose: To comply with an amendment to RCW 79A.05.165 (1)(b), September 2007, which provides that the Washington state parks and recreation commission may: "Kills, or pursues with intent to kill, any bird or animal in any park or parkway *except in accordance with a research pass, permit, or other approval issued by the commission, pursuant to rule, for scientific research purposes.*" (Italics added to highlight change to RCW.) In addition, changes over time in the commission's stewardship practices lead to the commission desiring to redefine and reestablish limits and procedures for the utilization and management of natural resources, including trees, nontree vegetation, and fungi on state park lands.

Citation of Existing Rules Affected by this Order: Amending WAC 352-28-005 - 352-28-050.

Statutory Authority for Adoption: RCW 79A.05.030, 79A.05.035, 79A.05.055, 79A.05.070, 79A.05.075, and 79A.05.165.

Adopted under notice filed as WSR 07-24-098 on December 5, 2007.

Changes Other than Editing from Proposed to Adopted Version: The commission formally amended chapter 352-28 WAC with two modifications to WAC 352-28-020:

a. Renumber subsections (1) through (11) to read (1) through (12), thereby correcting the duplicate use of the number (2); and

b. Revise the language in new subsection (10) in the two sentences where it is stated "… approved sale, lease or donation shall …" to read "… approved sale or lease shall …."

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 2, Amended 4, 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 2, Amended 4, Repealed 0.

Date Adopted: January 18, 2008.

J. M. French, Administrator

Statewide Recreation Programs

Chapter 352-28 WAC

((~~TREE, PLANT AND FUNGI CUTTING, REMOVAL AND/OR DISPOSAL~~)) PROTECTION AND CONSERVATION OF STATE PARK NATURAL RESOURCES

AMENDATORY SECTION (Amending WSR 96-01-078, filed 12/18/95, effective 1/18/96)

WAC 352-28-005 Definitions. When used in this chapter the following words and phrases shall have the meanings designated in this section unless a different meaning is expressly provided or unless the context clearly indicates otherwise.

(1) "Catastrophic forest event" means a natural or accidental devastation of major proportions that results in drastic alteration of the natural environment by, but not limited to, wind, fire, insect infestation, forest disease, flooding, or landslide.

(2) "Commission" means the Washington state parks and recreation commission.

(3) "Conservation" means the professional management of the agency's natural resources to ensure their long-term presence, function and enjoyment by the public.

(4) "Director" means the director of the Washington state parks and recreation commission.

(((~~(4)~~))) (5) "Endangered species" means each plant, fungus and lichen species identified as endangered on the list of such species prepared by the department of natural resources Washington natural heritage program and each wildlife species identified as endangered by the Washington department of fish and wildlife in WAC 232-12-014.

(((~~(5)~~))) (6) "Sensitive species" means each plant, fungus and lichen species identified as sensitive on the list of such species prepared by the department of natural resources Washington natural heritage program and each wildlife species identified as sensitive on the list of such species prepared by the Washington department of fish and wildlife.

(((~~(6)~~))) (7) "Threatened species" means each plant, fungus and lichen species identified as threatened on the list of such species prepared by the department of natural resources Washington natural heritage program and each wildlife species identified as threatened on the list of such species prepared by the Washington department of fish and wildlife.

AMENDATORY SECTION (Amending WSR 05-17-105, filed 8/16/05, effective 9/16/05)

WAC 352-28-010 Cutting, collection and removal ((~~criteria~~)) of natural resources. (1) **((~~Significant~~)) Trees:**

(a) **Significant trees:** Significant trees means living and dead standing trees > 10 inches in diameter at breast height (4.5 feet above the ground). Significant trees in any area under the jurisdiction and/or management of the commission shall((~~, except in fire~~)) be removed only after they have been evaluated, rated and marked by a professional forester, certified arborist, or staff member trained in agency-approved tree risk rating and abatement techniques. In addition, except where deemed an emergency tree, or in the event of wildfire, weather, or other natural emergencies, significant trees can be cut or removed only after compliance with (d) of this subsection and subsection (4) of this section, agency review through the tree activity worksheet process and upon the written approval of the director or the ((~~assistant directors of the operations and resources development divisions when so designated by the director. Except in emergencies and when feasible, significant trees shall be removed only after they have been marked or appraised by a professional forester. Significant trees include all old-growth trees, mature trees, and all other younger trees of ten inches or greater in diameter at four and one-half feet in height. In case of fire, weather, or other natural emergencies, the director or the designee of the director may declare that an emergency exists and thereby authorize the cutting or removal of damaged or down significant trees that are an imminent threat to persons and/or property.~~

(~~b) The cutting or removal of any significant trees in a natural area, natural forest area or a natural area preserve shall, except in emergencies as defined in subsection (1)(a) of this section, be approved only by the director and only after consultation with the Washington department of fish and wildlife and the department of natural resources Washington natural heritage program, the preparation of a mitigation plan for affected resources, and a public hearing on each such proposed cutting or removal conducted in the county/counties in which the cutting or removal is to take place as determined by the director. Prior notice of a hearing shall be published in a newspaper of general circulation in the county/counties in which the park is located. Any person who requests notification of such proposed cutting or removal shall be sent prior notice of a hearing by mail. A summary of the testimony presented at a hearing or received in writing shall be presented to~~)) designee of the director.

(((~~(2) **Protected species**: The cutting or removal of trees, other plants, or dead organic matter in any area known to be inhabited by endangered, threatened, or sensitive species shall, except in emergencies as defined in subsection (1)(a) of this section, follow requirements of the department of fish and wildlife for animals and of the department of natural resources for plants and be approved only by the director after consultation with those agencies, and the preparation of a mitigation plan for affected species.~~

(~~3) **Land classification criteria**: Trees or other plants~~))

(b) **Emergency trees:** Emergency trees means any tree that has already failed (cracked, tipped, diseased, failed or standing dead) or in the judgment of a professional forester, certified arborist, or staff member trained in tree risk rating and abatement techniques approved by the agency, and which due to its location, poses an imminent threat to a target. Imminent means likely to occur at any moment, and target means a structure, facility, or person that has the potential to be hit or impacted by a falling tree or tree part. The park manager or designee trained in tree risk rating and abatement techniques as prescribed by the agency forester or arboriculture manager is authorized to immediately close the target area, and where the target cannot be relocated, cut or remove the emergency tree.

(c) The cutting or removal of any significant trees in landscapes classified recreation, heritage, or resource recreation by the commission shall, except in the case of emer-

gency trees as defined in (b) of this subsection, occur only after agency review through the tree activity worksheet process and the written approval of the director or the designee of the director.

(d) The cutting or removal of any significant trees in a natural area, natural forest area or natural area preserve shall, except in emergencies as defined in (b) of this subsection, be approved only by the director and only after consultation with the Washington department of fish and wildlife and the department of natural resources Washington natural heritage program, the preparation of a mitigation plan for affected resources, and a public hearing on each such proposed cutting or removal conducted in the county/counties in which the cutting or removal is to take place as determined by the director. Prior notice of a hearing shall be published in a newspaper of general circulation in such county. Any person who requests notification of such proposed cutting or removal shall be sent prior notice of a hearing. A summary of the testimony presented at a hearing or received in writing shall be presented to the director.

(e) The cutting and/or removal of significant and emergency trees shall be done by park personnel, unless the personnel lack necessary expertise or resources. Trees identified as emergencies will be scheduled for immediate treatment. All emergency and significant trees requiring treatment, when feasible and justifiable, should be considered for pruning, crown reduction, target relocation, or similar practices in an effort to avoid tree cutting or removal. If trees are cut or removed by a contractor, park personnel shall provide on-site supervision to ensure that work and safety standards are met to prevent harm or damage to persons, trees, nontree vegetation, soils, organic matter and other park resources. When feasible, equipment shall be kept on existing roads and parking areas. Areas damaged during cutting or removal shall be restored.

(2) **Nontimber plants, fungi, and dead organic matter:** The cutting or removal of any native plant, fungi, or dead organic matter, other than those specified in WAC 352-32-350, 352-28-030 and 352-28-040, will only occur as a part of a resource conservation plan approved by the director or the designee of the director.

(3) **Protected species:** Natural resources may be cut and/or removed from areas supporting protected species, or for the purposes of enhancing habitat for protected species, under the following conditions:

(a) The cutting or removal of trees, other plants, fungi, or dead organic matter in any area known to be inhabited by endangered, threatened, or sensitive species shall, except in emergencies as defined in subsection (1)(b) of this section, follow requirements of the department of fish and wildlife and of the department of natural resources Washington natural heritage program and be approved only by the director after consultation with those agencies, and the preparation of a mitigation plan for affected species.

(b) The cutting or removal of trees, other plants, fungi, or dead organic matter to enhance the habitat of a sensitive, threatened, or endangered species as defined in WAC 352-28-005 (5) through (7), on lands managed by the commission or on other state lands, will only occur as a part of an interagency agreement or resource conservation plan that involves consultation with the Washington department of fish and wildlife, department of natural resources Washington natural heritage program, and as appropriate, other agencies and groups with expertise with these species, and is approved by the director or the designee of the director.

(4) **Land classification (chapter 352-16 WAC) criteria:** Natural resources may be cut and/or removed from the areas listed below for the following reasons only:

(a) Natural area preserves:

(i) Maintenance or construction of service roads, boundary fences, or trails, or modification of conditions only as may be required ((~~to~~)), and only where absolutely necessary, to meet park management goals and mitigated in a resource conservation plan that involves consultation with the department of natural resources Washington natural heritage program, and as appropriate other agencies and is approved by the director or the designee of the director.

(ii) Maintain or restore a native plant community, species population, or ecological process as specified in a natural area preserve management plan prepared in consultation with the department of natural resources Washington natural heritage program.

((~~(ii)~~)) (iii) Correction of conditions hazardous to persons, properties, and/or facilities on or adjacent to park land.

((~~(iii)~~)) (iv) Control of ((~~forest~~)) diseases and insect infestations where adjacent ((~~forests~~)) lands are severely jeopardized or where a drastic alteration of the natural environment is expected to occur, after consultation with the department of natural resources Washington natural heritage program and other agencies and groups with expertise in ((~~forest~~)) ecosystem health as deemed appropriate by the director.

((~~(iv)~~)) (v) Prevent the deterioration or loss of historical/cultural resources.

((~~(v)~~)) (vi) Maintenance or construction of fire lanes for abatement of fires.

(vii) Collection of specimens as specified in WAC 352-28-040, including consultation with the department of natural resources Washington natural heritage program.

(b) Natural areas and natural forest areas:

(i) Maintenance or construction of trails, trail structures, trail head facilities, interpretive sites, utility easements, or service roads only as may be required, and only where absolutely necessary to meet park management goals and mitigated in a resource conservation plan that involves consultation with the department of natural resources Washington natural heritage program, and as appropriate other agencies and is approved by the director or the designee of the director.

(ii) Maintain or restore a native plant community, species population, or ecological process as specified in a natural resource conservation plan prepared in consultation with the department of natural resources Washington natural heritage program, and as appropriate other agencies.

(iii) Correction of conditions hazardous to persons, properties, and/or facilities on or adjacent to park land.

((~~(iii)~~)) (iv) Control of ((~~forest~~)) diseases and insect infestations where adjacent ((~~forests~~)) lands are severely jeopardized or where a drastic alteration of the natural environment is expected to occur, after consultation with the department of natural resources Washington natural heritage

program and other agencies and groups with expertise in ((~~forest~~)) ecosystem health as deemed appropriate by the director or the designee of the director.

(((~~iv~~))) (v) Prevent the deterioration or loss of historical/cultural resources.

(((~~v~~))) (vi) Maintenance or construction of service roads for abatement of fires.

(((~~(vi) Modification of conditions only as may be required to maintain or restore a native plant community, species population, or ecological process.~~))) (vii) Collection of edibles as specified in WAC 352-28-030 or specimens as specified in WAC 352-28-040.

(c) Recreation areas, resource recreation areas, and heritage areas:

(i) Area clearing necessary for park maintenance, and/or park development projects for day use and overnight recreation facilities, road and utility easements, and administrative facilities.

(ii) Correction of conditions hazardous to persons, properties, and/or facilities on or adjacent to park land.

(iii) Cleanup of trees fallen, tipped, or damaged by the weather, fire, or other natural causes where they directly interfere with park management activities.

(iv) Creation of ((~~diversity of tree~~)) diverse native trees and other plants, coarse woody debris, and fungi sizes, ages, and species to achieve visual aspects that resemble a formal landscape, natural or historical setting, or to improve wildlife habitat.

(v) ((~~Daylighting as appropriate to the site.~~

~~(vi)~~))) Maintenance or creation of a regenerating natural environment that will sustain low ground cover, shrubs, and understory and overstory trees to provide screening, wind, and sun protection.

(((~~vii~~))) (vi) Control of ((~~forest~~)) diseases and insect infestations where adjacent ((~~forests~~)) lands are severely jeopardized or where a drastic alteration of the natural environment is expected to occur.

(((~~viii~~))) (vii) Prevent the deterioration or loss of historical/cultural resources.

(((~~ix~~))) (viii) Maintenance or construction of service roads for abatement of fires.

(((~~x~~))) (ix) Modification of conditions to maintain or restore a desired plant community, species population, or ecological process.

(((~~xi~~))) (x) Grazing, hay removal, or other similar activities when performed under authority of a permit from the commission or director.

(((~~(4) **Hazard tree review:** At least two persons, one being a qualified professional in forestry or arboriculture, shall examine potentially hazardous trees and rate such trees in accordance with department of natural resources, report number 42, detection and correction of hazard trees in Washington's recreation areas. The rating of each tree examined shall be recorded on a hazard tree form by each of the two persons who examine such trees. For trees identified as hazardous and when feasible, action such as, but not limited to, pruning, topping, crown reduction, and relocation of a target facility, shall be taken prior to tree cutting or removal.~~

~~(5) **Tree cutting and removal operations:** Tree cutting or removal shall be done by park personnel, unless the personnel lack necessary expertise. If tree cutting or removal work is done by a contractor, park personnel shall provide daily on-site supervision to ensure that work and safety standards are met to prevent harm or damage to persons, trees, shrubbery, soils, and other park resources. When feasible, trees shall be felled in sections with the tops and limbs lowered first by guy wires and ropes in order to protect adjacent old-growth trees and the integrity of the remaining stand. Only skid trails premarked by park personnel may be used and equipment shall be kept on existing roads and parking areas to the fullest extent possible. When feasible, all trees damaged during cutting or removal shall be repaired.~~

~~(6)~~))) (xi) Collection of edibles as specified in WAC 352-28-030 or specimens as specified in WAC 352-28-040.

(5) **Use of fallen trees:** Except where they may create safety hazards and/or interfere with the normal operation of a park, fallen trees shall be left on the ground when deemed environmentally beneficial or used for park purposes such as, but not limited to, approved building projects, trail mulching, and firewood. In natural area preserves, natural forest areas ((~~and~~)), natural areas, and resource recreation areas first consideration shall be given to leaving trees on the ground for natural purposes.

AMENDATORY SECTION (Amending Resolution No. 76, filed 3/27/84)

WAC 352-28-020 ((~~Timber~~)) Resource sales and leases. (((~~(1) **Qualification for sale of timber:**~~

~~Only timber which qualifies for cutting and removal under RCW 43.51.045(2), WAC 352-28-010, and which is surplus to the needs of the park may be sold and such timber may be sold only because of the presence of one or more of the following conditions:~~

~~(a) The timber significantly hinders the public use or operation of a park and is of such a quantity that park personnel cannot dispose of it in a timely manner.~~

~~(b) The timber is cut or removed as part of a park maintenance or development project, or conservation practice.~~

~~(c) The timber is cut or removed as part of a road or utility easement.~~

~~(d) The timber is blown down, burned, or damaged by a catastrophic forest event.~~

~~(2) **Procedures and general provisions:**~~

~~(a) A public meeting on each proposed sale shall be conducted in the county in which the sale is to take place. Prior notice of a meeting shall be published in a newspaper of general circulation in such county. Any person who requests notification of proposed sales shall be sent prior notice of a meeting by mail. A summary of the testimony presented at a meeting or received in writing shall be presented to the commission. All sales shall require approval by a majority of the commission.~~

~~(b) Sales shall be conducted through an agreement with the department of natural resources pursuant to RCW 43.30.260 or by the director or the designee of the director in accordance with (c) through (j) of this subsection.~~

~~(c) Prior to requesting bids, park personnel shall record the height and diameter at four and one-half feet in height of each standing tree identified for sale. Park personnel shall~~

~~conduct a cruise of all timber identified for sale, appraise the value of such timber, and establish a minimum acceptable bid: Provided, That a cruise of downed timber may be based upon ten percent of such timber. Complete records of the assumptions used to make these appraisals and estimated minimum acceptable bids shall be maintained.~~

~~(d) Sales shall be granted on the basis of competitive, sealed bids or public auction made by responsible qualified bidders. At least three qualified bidders shall be invited to bid and an advertisement for bids shall be published in a newspaper of general circulation in the county in which the sale is to take place. Reasonable efforts shall be made to invite bids from prospective contractors operating or living in or near the general location of the sale.~~

~~(e) All sales shall be granted on the basis of the highest bid from a responsible qualified bidder. No timber shall be sold for less than the minimum acceptable bid established by park personnel. Any bid shall be rejected if the prospective contractor is deemed unqualified. To qualify for bidding, a contractor must be of good character and reputation with demonstrated abilities and capacities sufficient to perform the contract and must not have failed to perform satisfactorily on any current or previous forest products sale contract with the state.~~

~~(f) All timber sold shall be measured, graded, and counted by a scaling bureau: Provided, That when a scaling bureau is not located in the vicinity of a log buyer, such measuring, grading, and counting shall be performed according to standard log grading practices by a log buyer agreed to by a contractor and the director or the designee of the director.~~

~~(g) All sales shall require sufficient liability and property damage insurance and also sufficient surety bonding by the contractors to insure protection of the state and satisfactory contract compliance and completion.~~

~~(h) All sales shall require contract validation by the director or the designee of the director. The number of additional trees which may be added to a sale approved by the commission shall be no more than four percent of the board feet of the trees included in an approved sale. The addition of trees to a sale approved by the commission may occur only upon the approval of the director or the designee of the director.~~

~~(i) All sales shall require authorization by the state of Washington, department of general administration, division of purchasing as provided in RCW 43.19.1919; also, all sales shall be granted, subject to approval of any governing agency as may be required by legal condition of land title and/or timber ownership and/or by state or federal statute.~~

~~(j) All contracts shall be of a form approved by the attorney general with special provisions to tailor a contract to the particular needs of a park site.~~)) The following qualifications, procedures, and general provisions pertain to the sale of, or leasing of lands containing, tree, plant or fungi resources from commission owned or managed lands:

(1) The sale of natural resources associated with commission owned or managed lands, or the lease of lands containing natural resources to be sold, will be undertaken only where they advance a commission approved capital development, are part of a resource conservation plan or interagency agreement approved by the director or the designee of the director, or are deemed by the director or the designee of the director to advance agency stewardship goals. Sales of natural resources from lands owned, leased or managed by the commission, are limited to lands classified as resource recreation, recreation, or heritage as defined in chapter 352-16 WAC, and must be consistent with criteria specified in WAC 352-28-010. Resources from other land classes must meet the criteria specified in WAC 352-28-010 prior to their consideration for sale.

(2) Prior to resource sales from lands owned, leased or managed by the commission, qualified park personnel or their designated agent shall conduct an inventory or cruise of the materials, appraise the value of such materials, and establish a minimum acceptable bid.

(a) Where trees are to be sold, the following qualifications must be met:

(i) Only timber which qualifies for cutting and removal under RCW 79A.05.035(2), WAC 352-28-010, and which is surplus to the needs of the park may be sold.

(ii) The timber significantly hinders the public use or operation of a park and is of such a quantity that park personnel cannot dispose of it in a timely manner.

(iii) The timber is cut or removed as part of a commission approved park maintenance or development project, or road or utility easement; a plan to address blown-down, burned, or damaged trees resulting from a catastrophic forest event; part of a resource conservation plan to maintain or restore a native plant community, species population, or ecological processes; or an agency approved maintenance or development project that contains a resource conservation plan.

(iv) Timber shall be appraised using methods consistent with those applied by the Washington department of natural resources. Complete records of the methods and assumptions used to make the timber appraisal and estimated minimum acceptable bids shall be maintained.

(b) Where nontimber resources are to be sold from lands owned, leased or managed by the commission, the following qualifications must be met:

(i) The removal of natural resources from commission owned or managed lands will only occur where the sale is part of a resource conservation plan to maintain or restore a native plant community, species population, or ecological processes.

(ii) The commission cannot achieve its stewardship goals without selling the resources or leasing the lands designated in the conservation plan noted in WAC 352-28-020(2).

(3) A public meeting on each proposed sale or lease shall be conducted in the county in which the sale or lease is to take place. Prior notice of a hearing shall be published in a newspaper of general circulation in such county. Any person who requests notification of proposed sale or lease shall be sent prior notice of a meeting by mail. A summary of the testimony presented at a meeting or received in writing shall be presented to the director.

(4) Sales or leases where the appraised value of the materials is in excess of twenty-five thousand dollars in appraised value or the value specified for direct sales in RCW 79.15.-050, whichever is larger, shall require approval by a majority of the commission. Public testimony related to the sale or

lease will be presented to the commission. Sales or leases where the appraised value of the materials is less than or equal to twenty-five thousand dollars, or the direct sale value specified in RCW 79.15.050, shall require approval by the director. Public testimony related to the sale or lease will be presented to the director.

(5) Sales or leases shall be conducted through an agreement with the department of natural resources pursuant to RCW 43.30.530 or by the director or the designee of the director in accordance with subsections (6) through (11) of this section. Director approved sales may use a direct sales approach as specified in RCW 79.15.050.

(6) Sales or leases shall be granted on the basis of competitive, sealed bids or public auction made by responsible qualified bidders. At least three qualified bidders shall be invited to bid and an advertisement for bids shall be published in a newspaper of general circulation in the county in which the sale or lease is to take place. Reasonable efforts shall be made to invite bids from prospective contractors operating or living in or near the general location of the sale.

(7) All sales or leases shall be granted on the basis of the highest bid from a responsible qualified bidder. No materials shall be sold for less than the minimum acceptable bid established by park personnel. Any bid shall be rejected if the prospective contractor is deemed unqualified. To qualify for bidding, a contractor must be of good character and reputation with demonstrated abilities and capacities sufficient to perform the contract and must not have failed to perform satisfactorily on any current or previous products sale contract with the state.

(8) All timber sold shall be measured, graded, and counted by a scaling bureau. When a scaling bureau is not located in the vicinity of a log buyer, such measuring, grading, and counting shall be performed according to standard log grading practices by a log buyer agreed to by a contractor and the director or the designee of the director.

(9) All sales or leases shall require sufficient liability and property damage insurance and also sufficient security bonding by the contractors to ensure protection of the state and satisfactory contract compliance and completion.

(10) All sales or leases shall require contract validation by the director or the designee of the director. The quantity of material which may be added to an approved sale or lease shall be no more than four percent of the total material included in an approved sale or lease. The addition of materials to an approved sale or lease may occur only upon the approval of the director or the designee of the director.

(11) All sales shall require authorization by the state of Washington, department of general administration, division of purchasing as provided in RCW 43.19.1919; also, all sales or leases shall be granted, subject to approval of any governing agency as may be required by legal condition of land title and/or timber ownership and/or by state or federal statute.

(12) All contracts shall be of a form approved by the attorney general with special provisions to tailor a contract to the particular needs of a park site.

AMENDATORY SECTION (Amending WSR 05-17-105, filed 8/16/05, effective 9/16/05)

WAC 352-28-030 Harvest of edibles. Nonmarine edible plants and edible fruiting bodies, including mushrooms, shall be managed by the agency in accordance with WAC 352-28-010. The commercial harvest of edibles is not allowed on park lands. The harvest of edibles for personal consumption, or scientific or educational projects, is subject to the following conditions:

(1) Personal consumption: The recreational harvest, possession, or transport of edible plants and edible fruiting bodies including, but not limited to, mushrooms, berries, and nuts, is allowed up to an amount of two gallons per person per day, unless otherwise posted at the park. The harvest amount may be comprised of one or more species. The harvest may occur within the following park classification areas: Recreation, resource recreation, natural, natural forest, heritage, or in parks not yet classified. No harvest of edible plants or edible fruiting bodies, including mushrooms, is allowed within a natural area preserve. This rule is not intended to limit federally reserved tribal rights, including treaty rights.

(2) Scientific or educational projects: The harvest of edible plants and/or edible fruiting bodies, including mushrooms, for scientific or educational projects is subject to ((~~the prior written approval of the director or designee~~)) an approved agency research permit as described in WAC 352-28-040. The approval shall specify a harvest amount not to exceed the minimum quantity necessary for the purposes of the project. The harvest may occur within all park classification areas.

(3) Harvest techniques that involve raking or other techniques that have the potential to degrade park natural or cultural resources are prohibited.

(4) The director or the designee of the director may close, temporarily close, or condition public access to certain park areas for recreational harvesting of edibles upon finding that the activity degrades or threatens to degrade the park's natural or cultural resources, or to protect public health, safety, and welfare. Such closure shall be posted at the entrance to the park area affected and at the park office.

NEW SECTION

WAC 352-28-040 Research permits and research collections. Fauna, flora, fungi, and organic and inorganic materials may be removed from parklands for research purposes in accordance with RCW 79A.05.165. Removal for scientific or educational purposes is subject to the approval of an agency approved research permit signed by the director or the designee of the director. Collections involving fauna will require an approved collection permit from the Washington department of fish and wildlife. Collections involving endangered, threatened, or sensitive species will require approval from the Washington department of fish and wildlife and the department of natural resources Washington natural heritage program.

NEW SECTION

WAC 352-28-050 Protecting and restoring degraded natural resources. The state park system contains a diverse array of natural resources. Select resources, of high biological significance, may warrant a high-level of protection from human impacts to preserve them. In addition, efforts to rehabilitate or restore these resources may require little or no human impacts during the recovery period. Hence, public access to park lands may be limited or prohibited for short or long periods of time by the director, or the designee of the director, where the following criteria are met:

(1) A significant resource is deemed at risk of degradation from human activities;

(2) A conservation plan, involving consultation with the department of natural resources Washington natural heritage program and other agencies and groups with expertise in ecosystem health as deemed appropriate by the director or the designee of the director, has been developed to protect, restore, or rehabilitate the significant resources; and

(3) A public meeting on all closures destined to exceed one year is conducted in the county in which the affected park lands occur. Prior notice of a hearing shall be published in a newspaper of general circulation in such county. Any person who requests notification of the proposed closure shall be sent prior notice of the meeting by mail. A summary of the testimony presented at a meeting or received in writing shall be presented to the director.

WSR 08-05-010
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)

[Filed February 7, 2008, 4:17 p.m., effective March 9, 2008]

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

Purpose: The rule is being amended to: (1) Change program name to patient review and coordination program (PRC), (2) expand program definitions, (3) clarify restrictions, (4) add a requirement that the PRC clients remain enrolled in the managed care plans for one year, and (5) clarify client dispute resolution process.

Citation of Existing Rules Affected by this Order: Amending WAC 388-501-0135.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: 42 C.F.R. 431.51, 431.54(e) and 456.1; 42 U.S.C. 1396n.

Adopted under notice filed as WSR 08-01-085 on December 17, 2007.

Changes Other than Editing from Proposed to Adopted Version:

- In subsection (6)(c): Replaced "in the previous twelve months" with "in a period of ninety consecutive days in the previous twelve months."
- In subsection (6)(d): Replaced "within a one-year period" with "in a period of ninety consecutive days in the previous twelve moths [months].["]

A final cost-benefit analysis is available by contacting Trang Kuss, P.O. Box 45532, Olympia, WA 98504, phone (360) 725-1391, fax (360) 725-1969. The preliminary cost-benefit analysis (CBA) stands as the final CBA.

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

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

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

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

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

Date Adopted: February 7, 2008.

Robin Arnold-Williams
Secretary

AMENDATORY SECTION (Amending WSR 06-14-062, filed 6/30/06, effective 7/31/06)

WAC 388-501-0135 Patient review and ((~~restriction (PRR)~~)) coordination (PRC). (1) **Patient review and ((~~restriction (PRR)~~))** ((~~is a health and safety program for medical assistance fee-for-service clients and managed care organization (MCO) enrollees needing help with using medical services appropriately. PRR is authorized under federal Medicaid law by 42 USC 1396n (a)(2) and 42 CFR 431.54~~)) **coordination (PRC)** program, formerly known as the patient review and restriction (PRR) program, coordinates care and ensures that clients selected for enrollment in PRC use services appropriately and in accordance with department rules and policies.

(a) PRC applies to medical assistance fee-for-service and managed care clients. PRC does not apply to clients eligible for the family planning only program.

(b) PRC is authorized under federal Medicaid law by 42 USC 1396n (a)(2) and 42 CFR 431.54.

(2) **Definitions.** The following definitions apply to this section only:

"Appropriate use" ((~~means~~)) - Use of ((~~health care~~)) healthcare services that are adapted to or appropriate for a client's ((~~or enrollee's medical~~)) healthcare needs.

"Assigned provider" ((~~means~~)) - A department-enrolled healthcare provider or one participating with a department contracted managed care organization (MCO) ((~~contracted medical provider~~)) who agrees to be assigned as a primary provider and coordinator of services for a ((~~medical assistance~~)) fee-for-service or managed care client ((~~or MCO enrollee~~)) in the ((~~PRR~~)) PRC program. Assigned providers can include a primary care provider (PCP), a pharmacy, a ((~~narcotic~~)) controlled substances prescriber, and((~~,~~)) a hospital for ((~~nonemergency medical~~)) nonemergent hospital services((~~, a hospital~~)).

"At-risk" ((~~means a medical history that may include~~)) - A term used to describe one or more of the following:

(a) A client with a medical history of:

• ((~~Indicators~~)) Indications of forging or altering prescriptions;

• Seeking and/or obtaining ((~~medical~~)) healthcare services at a frequency or amount that is not medically necessary;

• ((~~Indicators of potentially~~)) Potential life-threatening events or life-threatening conditions that required or may require medical intervention((~~;~~

~~• A client's or enrollee's medical assistance identification card reportedly used by an unauthorized person(s) or for an unauthorized purpose(s); or~~

~~•~~)).

(b) ((~~Other~~)) Behaviors or practices that could jeopardize a client's ((~~or enrollee's~~)) medical treatment or health including, but not limited to:

• Referrals from social services personnel about inappropriate behaviors or practices that places the client at risk;

• Noncompliance with treatment;

• Paying cash for controlled substances;

• Positive urine drug screen for illicit street drugs or nonprescribed controlled substances; or

• Unauthorized use of a client's medical assistance identification card or for an unauthorized purpose.

"Care management" - Services provided to clients with multiple health, behavioral, and social needs in order to improve care coordination, client education, and client self-management skills.

"Client" - A person enrolled in a department healthcare program and receiving service from fee-for-service provider(s) or a managed care organization (MCO), contracted with the department.

"Conflicting" ((~~means~~)) - Drugs and/or ((~~health care~~)) healthcare services that are incompatible and/or unsuitable for use together because of undesirable chemical or physiological effects.

"Contraindicated" ((~~means~~)) - To indicate or show ((~~that~~)) a medical treatment or procedure is inadvisable or not recommended or warranted.

"Controlled substances prescriber" - Any of the following healthcare professionals who, within their scope of professional practice, are licensed to prescribe and administer controlled substances (see chapter 69.50 RCW, uniform controlled substance act) for a legitimate medical purpose:

• A physician under chapter 18.71 RCW;

• A physician assistant under chapter 18.71A RCW;

• An osteopathic physician under chapter 18.57 RCW;

• An osteopathic physician assistant under chapter 18.57A RCW; and

• An advanced registered nurse practitioner under chapter 18.79 RCW.

"Duplicative" - Applies to the use of the same or similar drugs and ((~~health care~~)) healthcare services without due justification. Example: A client ((~~(or MCO enrollee)~~)) receives ((~~health care~~)) healthcare services from two or more providers for the same or similar condition(s) in an overlapping time frame, or the client receives two or more similarly acting drugs in an overlapping time frame, which could result in a harmful drug interaction or an adverse reaction.

"Just cause" - A legitimate reason to justify the action taken, including but not limited to, protecting the health and safety of the client.

"Managed care organization" or **"MCO"** ((~~means~~)) - An organization having a certificate of authority or certificate of registration from the office of insurance commissioner, that contracts with the department under a comprehensive risk contract to provide prepaid ((~~health care~~)) healthcare services to eligible medical assistance clients under the department's managed care programs.

"((~~MCO enrollee~~)) Managed care client" ((~~means~~)) - A medical assistance client enrolled in, and receiving ((~~medical~~)) healthcare services from, a department-contracted managed care organization (MCO).

((~~**"Narcotic prescriber"** means any of the following health care professionals who, within their scope of professional practice, are licensed to prescribe and administer controlled substances (see chapter 69.50 RCW, Uniform Controlled Substance Act) for a legitimate medical purpose:

• A physician under chapter 18.71 RCW;

• A physician assistant under chapter 18.71A RCW;

• An osteopathic physician under chapter 18.57 RCW;

• An osteopathic physician assistant under chapter 18.57A RCW; and

• An advanced registered nurse practitioner under chapter 18.79 RCW.~~))

"Primary care provider" or **"PCP"** ((~~means~~)) - A person licensed or certified under title 18 RCW including, but not limited to, a physician, an advanced registered nurse practitioner (ARNP), or a physician assistant who supervises, coordinates, and provides ((~~health care~~)) healthcare services to a client ((~~or an MCO enrollee~~)), initiates referrals for specialty and ancillary care, and maintains the client's ((~~or enrollee's~~)) continuity of care.

(3) ((~~Restrictions under the PRR program:~~

~~(a) Do not apply to a client eligible for a family planning only program; and~~

~~(b) Do apply to a fee-for-service client or an MCO enrollee currently assigned to the PRR program~~)) **Clients selected for PRC review.** The department or MCO selects a client for PRC review when either or both of the following occur:

(a) A utilization review report indicates the client has not utilized healthcare services appropriately; or

(b) Medical providers, social service agencies, or other concerned parties have provided direct referrals to the department or MCO.

(4) **When a fee-for-service client is selected for PRC review** the prior authorization process ((~~described in WAC 388-530-1250~~)) as defined in chapter 388-530 WAC may be required ((~~for a fee-for-service client~~)):

(a) Prior to or during a ((~~PRR~~)) PRC review; or

(b) When currently ((~~placed~~)) in the ((~~PRR~~)) PRC program.

(5) ((~~**Clients selected for PRR review.** The department or MCO selects a fee-for-service client or MCO enrollee for PRR review when either or both of the following occur:~~

~~(a) A utilization review report indicates the client or enrollee has utilized health care services as described in subsection (6) of this section; or~~

~~(b) Medical providers, social service agencies, or other concerned parties have provided direct referrals to the department or MCO.~~

~~(6)~~)) **((~~PRR~~)) Review for placement in the ((~~PRR~~)) PRC program.** When the department or MCO selects a client ((~~or enrollee~~)) for ((~~PRR~~)) PRC review, the department or MCO staff, with clinical oversight, reviews a client's ((~~or enrollee's~~)) medical and/or billing history to determine if the client ((~~or enrollee~~)) has utilized ((~~medical~~)) healthcare services at a frequency or amount that is not medically necessary (42 CFR 431.54(e)). ((~~The utilization guidelines in subsection (7) of this section establish that a client or enrollee has utilized medical services at a frequency or amount that is not medically necessary when:~~

~~(a) There is a history of medical services that are duplicative, excessive, or contraindicated;~~

~~(b) There is a history of conflicting health care services, drugs, or supplies that are not within acceptable medical practice; or~~

~~(c) The medical history shows indicators of "at-risk" utilization patterns.~~

~~(7)~~)) (6) **Utilization guidelines for ((~~PRR~~)) PRC placement.** Department ((~~and~~)) or MCO staff use the following utilization guidelines to determine ((~~PRR~~)) PRC placement ((~~and~~)). A client may be placed ((~~a client or enrollee~~)) in the ((~~PRR~~)) PRC program when medical and/or billing histories document any of the following:

(a) Any two or more of the following conditions occurred in a period of ninety consecutive calendar days in the previous twelve months. The client ((~~or enrollee~~)):

(i) Received services from four or more different providers, including physicians, advanced registered nurse practitioners (ARNPs), and physician assistants (PAs);

(ii) Had prescriptions filled by four or more different pharmacies;

(iii) Received ten or more prescriptions;

(iv) Had prescriptions written by four or more different prescribers;

(v) Received similar services from two or more providers in the same day; or

(vi) Had ten or more office visits.

(b) Any one of the following occurred within a period of ninety consecutive calendar days in the previous twelve months. The client ((~~or enrollee has~~)):

(i) Made two or more emergency department visits;

(ii) Has a medical history that indicates "at-risk" utilization patterns;

(iii) Made repeated and documented efforts to seek ((~~health care~~)) healthcare services that are not medically necessary; or

(iv) Has been counseled at least once by a health care provider, or a department or MCO staff member, with clinical oversight, about the appropriate use of ((~~health care~~)) healthcare services.

(c) The client ((~~or enrollee~~)) received prescriptions for controlled substances from two or more different prescribers in any one month in a period of ninety consecutive days in the previous twelve months.

(d) The client's medical and/or billing history demonstrates a pattern of the following at any time in the previous twelve months:

(i) The client has a history of using healthcare services in a manner that is duplicative, excessive, or contraindicated; or

(ii) The client has a history of receiving conflicting healthcare services, drugs, or supplies that are not within acceptable medical practice.

((~~(8)~~)) (7) **((~~PRR~~)) PRC review ((~~outcomes~~)) results.** As a result of the ((~~PRR~~)) PRC review, the department or MCO staff may take any of the following steps:

(a) Determine that no action is needed and close the client's ((~~or enrollee's~~)) file;

(b) Send the client ((~~or enrollee~~)) and, if applicable, the client's ((~~or enrollee's~~)) authorized representative, a letter of concern with information on specific findings and notice of potential placement in the ((~~PRR~~)) PRC program; or

(c) Determine that the utilization guidelines for ((~~PRR~~)) PRC placement establish that the client ((~~or enrollee~~)) has utilized ((~~medical~~)) healthcare services at an amount or frequency that is not medically necessary ((~~and~~)), in which case the department or MCO will take one or more of the following actions((~~. The department or MCO staff~~)):

(i) Refer((~~s~~)) the client ((~~or enrollee~~)) for education on appropriate use of ((~~health care~~)) healthcare services;

(ii) Refer((~~s~~)) the client ((~~or enrollee~~)) to other support services or agencies; or

(iii) Place((~~s~~)) the client ((~~or enrollee~~)) into the ((~~PRR~~)) PRC program for an initial ((~~restriction~~)) placement period of twenty-four months.

((~~(9)~~)) (8) **((~~PRR~~)) Initial placement in the PRC program ((~~placement~~)).** When a ((~~fee-for-service~~)) client ((~~or MCO enrollee~~)) is initially placed in the ((~~PRR~~)) PRC program((~~, the department or the MCO sends the client or enrollee and, if applicable, the client's or enrollee's authorized representative, a written notice of the PRR placement that:~~

~~(a) Informs the client or the enrollee of the reason for the PRR program placement.~~

~~(b) Restricts~~)):

(a) The department or MCO places the client ((~~or enrollee~~)) for twenty-four months ((~~to~~)) with one or more of the following types of ((~~providers when obtaining health care services~~)) healthcare providers:

(i) Primary care ((~~physician~~)) provider (PCP) (as defined in subsection (2) of this section);

(ii) Pharmacy;

(iii) ((~~Narcotic~~)) Controlled substances prescriber;

(iv) Hospital (for ((~~nonemergency medical~~)) nonemergent hospital services); or

(v) Another qualified ((~~provider type~~)) provider type, as determined by department or MCO program staff on a case-by-case basis.

((~~(c) Directs the client or enrollee to respond to the department or the MCO within ten days of the date of the written notice:~~

~~(i) To select providers, subject to department or MCO approval;~~

~~(ii) To submit additional medical information, justifying the client's or enrollee's use of medical services; or~~

~~(iii) To request assistance, if needed, from the department or MCO program staff.~~

~~(d) Informs the client or enrollee of hearing rights (see subsection (14) of this section).~~

~~(e) Informs the client or enrollee that if a response is not received within ten days of the date of the notice, the client or enrollee will be assigned providers.~~

~~(f) Informs the client or enrollee of the rules that support the decision~~)) (b) The managed care client will remain in the same MCO for no less than twelve months unless:

(i) The client moves to a residence outside the MCO's service area and the MCO is not available in the new location; or

(ii) The client's assigned provider no longer participates with the MCO and is available in another MCO, and the client wishes to remain with the current provider.

(c) A managed care client placed in the PRC program must remain in the PRC program for the initial twenty-four month period regardless of whether the client changes MCOs or becomes a fee-for-service client.

(d) A care management program may be offered to a client.

(9) **Notifying the client about placement in the PRC program.** When the client is initially placed in the PRC program, the department or the MCO sends the client and, if applicable, the client's authorized representative, a written notice containing at least the following components:

(a) Informs the client of the reason for the PRC program placement;

(b) Directs the client to respond to the department or MCO within ten business days of the date of the written notice about taking the following actions:

(i) Select providers, subject to department or MCO approval;

(ii) Submit additional healthcare information, justifying the client's use of healthcare services; or

(iii) Request assistance, if needed, from the department or MCO program staff.

(c) Informs the client of hearing or appeal rights (see subsection (14) of this section).

(d) Informs the client that if a response is not received within ten days of the date of the notice, the client will be assigned a provider(s) by the department or MCO.

(10) **Selection and role of assigned provider.** A ((~~fee-for-service~~)) client ((~~and an MCO enrollee~~)) may be afforded a limited choice of providers ((~~for the types of services that are to be restricted (see subsection (9)(a) of this section for a list of provider-types that the department may assign~~))).

(a) The following providers are not available:

(i) A provider who is being reviewed by the department or licensing authority regarding quality of care;

(ii) A provider who has been suspended or disqualified from participating as a department-enrolled or MCO-contracted provider; or

(iii) A provider whose business license is suspended or revoked by the licensing authority.

(b) For a ((~~fee-for-service~~)) client placed in the ((~~PRR~~)) PRC program, the assigned:

(i) Provider(s) must be located in the client's local geographic area, in the client's selected MCO, and/or be reasonably accessible to the client.

(ii) ((~~Department-enrolled~~)) Primary care provider (PCP) supervises and coordinates ((~~health care~~)) healthcare services for the client, including ((~~providing~~)) continuity of care and referrals to specialists when necessary. The PCP must be one of the following:

(A) A physician who meets the criteria ((~~under WAC 388-502-0020 and 388-502-0030~~)) as defined in chapter 388-502 WAC;

(B) An advanced registered nurse practitioner (ARNP) who meets the criteria ((~~under WAC 388-502-0020 and 388-502-0030~~)) as defined in chapter 388-502 WAC; or

(C) A licensed physician assistant (PA), practicing with a ((~~sponsored~~)) supervising physician.

(iii) ((~~Narcotic~~)) Controlled substances prescriber prescribes all controlled substances for the client.

(iv) Pharmacy fills all prescriptions for the client.

(v) Hospital provides all ((~~nonemergency and outpatient hospital care for the client~~)) nonemergent hospital services.

(((~~(b) For an MCO enrollee placed in the PRR program, the assigned PCP, narcotic prescriber, pharmacy, and hospital must be:~~

~~(i) Available within the enrollee's selected MCO; and~~

~~(ii) Located in the enrollee's local geographic area and/or reasonably accessible to the enrollee.~~))

(c) A client ((~~or enrollee~~)) placed in the ((~~PRR~~)) PRC program cannot change assigned providers for twelve months after the assignments are made, unless:

(i) The client ((~~or enrollee~~)) moves to a residence outside the provider's geographic area;

(ii) The provider moves out of the client's ((~~or enrollee's~~)) local geographic area and is no longer reasonably accessible to the client ((~~or enrollee~~));

(iii) The provider refuses to continue to serve the client ((~~or enrollee~~));

(iv) The client ((~~or enrollee~~)) did not select the provider. The client ((~~or enrollee~~)) may request to change an assigned provider once within thirty calendar days of the initial assignment;

(v) The ((~~enrollee's~~)) client's assigned provider no longer participates with the MCO. In this case, the ((~~enrollee~~)) client may select a new provider from the list of available providers in the MCO or ((~~transfer enrollment of all family members to the new department-contracted MCO that the established provider has joined;~~

~~(vi) The provider has been suspended or disqualified from participating as a department-enrolled or MCO-contracted provider; or~~

~~(vii) The provider's business license has been suspended or revoked by the licensing authority;~~)) follow the assigned provider to the new MCO.

(d) When an assigned prescribing provider no longer contracts with the department:

(i) All prescriptions from the provider are invalid thirty calendar days following the date the contract ends; and

(ii) All prescriptions from the provider are subject to applicable ((~~pharmacy~~)) prescription drugs (outpatient) rules in chapter 388-530 WAC or appropriate MCO rules((~~; and~~)).

(iii) The client ((~~or enrollee~~)) must choose or be assigned another provider according to the requirements in this section.

(11) **((~~PRR restriction~~)) PRC placement periods.** The length of time for a ((~~fee-for-service~~)) client's ((~~or MCO enrollee's~~)) PRC placement includes:

(a) The initial ((~~restriction~~)) period of ((~~PRR~~)) PRC placement, which is((~~:~~

~~(i) A minimum of twenty-four consecutive months; or~~

~~(ii) If the client or enrollee is not eligible for a medical assistance program for any month(s) during the span of the twenty-four consecutive months of PRR placement, the restriction period is for the duration of the client's or enrollee's medical assistance program eligibility plus any subsequent period of eligibility up to but not exceeding twenty-four months;~~)) a minimum of twenty-four consecutive months.

(b) The second ((~~restriction~~)) period of ((~~PRR~~)) PRC placement, which is((~~:~~

~~(i) An additional thirty-six consecutive months; or~~

~~(ii) If the client or enrollee is not eligible for a medical assistance program for any month(s) during the span of the thirty-six consecutive months, the restriction period is for the duration of the client's or enrollee's eligibility for a medical assistance program plus any subsequent period of eligibility up to but not exceeding thirty-six months; and~~)) an additional thirty-six consecutive months.

(c) The third ((~~restriction~~)) period and each subsequent period of ((~~PRR~~)) PRC placement, which is((~~:~~

~~(i) An additional seventy-two consecutive months; or~~

~~(ii) If the client or enrollee is not eligible for a medical assistance program for any month(s) during the span of the seventy-two consecutive months, the restriction period is for the duration of the client's or enrollee's eligibility for a medical assistance program plus any subsequent period of eligibility up to but not exceeding each seventy-two month placement~~)) an additional seventy-two months.

(12) **Department review of a ((~~PRR restriction~~)) PRC placement period ((~~assignment~~)).** The department or MCO reviews a ((~~fee-for-service~~)) client's ((~~or MCO enrollee's~~)) use of ((~~health care~~)) healthcare services prior to the end of each ((~~assigned PRR restriction~~)) PRC placement period described in subsection (11) of this section using the utilization guidelines in subsection (((~~(7)~~))) (6) of this section.

(a) The department or MCO assigns the next ((~~PRR restriction~~)) PRC placement period if the utilization guidelines for ((~~PRR~~)) PRC placement in subsection (((~~(7)~~))) (6) apply to the client ((~~or enrollee~~)).

(b) When the department or MCO assigns a subsequent ((~~PRR restriction~~)) PRC placement period, the department or MCO sends the client ((~~or enrollee~~)) and, if applicable, the client's ((~~or enrollee's~~)) authorized representative, a written notice ((~~that informs~~)) informing the client ((~~or enrollee~~)):

(i) ((~~Of~~)) The reason for the subsequent ((~~PRR~~)) PRC program placement;

(ii) ((~~Of~~)) The ((~~period of time~~)) length of the subsequent ((~~PRR~~)) PRC placement;

(iii) That the current providers assigned to the client ((~~or enrollee~~)) continue to be assigned to the client during the subsequent ((~~PRR restriction~~)) PRC placement period;

(iv) That all ((~~PRR~~)) PRC program rules continue to apply; and

(v) Of hearing or appeal rights (see subsection (14) of this section); ((~~and~~))

(vi) Of the rules that support the decision.

(c) The department may ((~~lift any assigned PRR restriction period~~)) remove a client from PRC placement if the client ((~~or enrollee~~)):

(i) Successfully completes a treatment program that is provided by a chemical dependency service provider certified by the department under chapter 388-805 WAC;

(ii) Submits documentation of completion of the approved treatment program to the department; and

(iii) Maintains appropriate use of ((~~health care~~)) healthcare services within the utilization guidelines described in subsection (((~~(7)~~))) (6) for six months after the date the treatment ends.

(d) ((~~A client or enrollee who is placed in the PRR program after being removed from any PRR restriction period will be placed at the next PRR restriction period described in subsections (11)(b) and (c) of this section~~)) The department or MCO determines the appropriate placement period for a client who has been placed back into the program.

(e) A client ((~~or enrollee~~)) will remain placed in the ((~~PRR~~)) PRC program regardless of change in eligibility program type or change in address.

(13) **Client financial responsibility.** ((~~This subsection takes precedence over WAC 388-502-0160.~~)) A ((~~fee-for-service~~)) client ((~~or MCO enrollee~~)) placed in the ((~~PRR~~)) PRC program may be billed by a provider and held financially responsible for ((~~health care~~)) healthcare services when the client ((~~or enrollee~~)) obtains ((~~nonemergency~~)) nonemergent services and the provider who renders the services is not assigned or referred under the ((~~PRR~~)) PRC program.

(14) **Right to hearing or appeal.**

(a) A fee-for-service client ((~~or MCO enrollee~~)) who believes the department ((~~or MCO~~)) has taken an invalid action ((~~erroneously~~)) pursuant to this section may request a hearing.

(b) A managed care client who believes the MCO has taken an invalid action pursuant to this section or chapter 388-538 WAC must exhaust the MCO's internal appeal process set forth in WAC 388-538-110 prior to requesting a hearing. Managed care clients can not change MCOs until the appeal or hearing is resolved and there is a final ruling.

(((~~(a)~~))) (c) A client ((~~or enrollee~~)) must request the hearing or appeal within ninety calendar days after the client ((~~or enrollee~~)) receives the written notice of ((~~restriction~~)) placement in the PRC program. ((~~Chapter 388-538 WAC does not apply to the department's or MCO's decision to place an enrollee in the PRR program.~~

~~(b)~~)) (d) The department conducts a hearing according to chapter 388-02 WAC. Definitions for the terms "hearing," "initial order," and "final order" used in this subsection are found in WAC 388-02-0010.

(((~~(c)~~))) (e) A client ((~~or enrollee~~)) who requests a hearing or appeal within ten calendar days from the date of the written notice of an initial ((~~restriction~~)) PRC placement period ((~~of PRR placement~~)) under subsection (11)(a) of this section will not be placed in the ((~~PRR~~)) PRC program until the date

an initial order is issued that supports the client's ((~~or enrollee's~~)) placement in the ((~~PRR~~)) PRC program or otherwise ordered by an administrative law judge (ALJ).

(((~~d~~))) (f) A client ((~~or enrollee~~)) who requests a hearing ((~~after~~)) or appeal more than ten calendar days from the date of the written notice under subsection (((~~(11)(a)~~))) (9) of this section will remain placed in the ((~~PRR~~)) PRC program unless a final administrative order is entered that orders ((~~their~~)) the client's removal from ((~~restriction~~)) the program.

(((~~e~~))) (g) A client ((~~or enrollee~~)) who requests a hearing or appeal within ninety days from the date of receiving the written notice under subsection (((~~(11)(b) or (c) or~~))) (9) of this section and who has already been assigned providers will remain placed in the ((~~PRR~~)) PRC program unless a final administrative order is entered that orders the client's ((~~or enrollee's~~)) removal from ((~~restriction~~)) the program.

(((~~f~~))) (h) An administrative law judge (ALJ) may rule that the client ((~~or enrollee~~)) be placed in the ((~~PRR~~)) PRC program prior to the date the record is closed and prior to the date the initial order is issued based on a showing of just cause (((~~a showing of just cause means it has been demonstrated that there is a legitimate cause to justify the action taken) to protect the health and safety of the client or enrollee~~)).

(i) The client who requests a hearing challenging placement into the PRC program has the burden of proving the department's or MCO's action was invalid. For standard of proof, see WAC 388-02-0485.

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 08-05-011
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)

[Filed February 7, 2008, 4:19 p.m., effective March 9, 2008]

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

Purpose: The purpose of new chapter 388-549 WAC, Rural health clinics (RHCs), is to implement the federal payment methodology for RHCs under Section 702 of the Benefit Improvement and Protection Act (BIPA) of 2000. The act replaced cost-based reimbursement methodology with Medicaid RHC prospective payment system (PPS).

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: RCW 74.09.510, 74.09.522, 42 C.F.R. 405.2472, 42 C.F.R. 491.

Adopted under notice filed as WSR 08-01-090 on December 17, 2007.

A final cost-benefit analysis is available by contacting Kevin Collins, P.O. Box 45510, Olympia, WA 98504-5510, phone (360) 725-2104, fax (360) 586-9727, e-mail collikm@dshs.wa.gov.

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

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

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

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

Date Adopted: February 7, 2008.

Robin Arnold-Williams
Secretary

Chapter 388-549 WAC

RURAL HEALTH CLINICS

NEW SECTION

WAC 388-549-1000 Rural health clinics—Purpose. This chapter establishes the department's reimbursement methodology for rural health clinic (RHC) services. RHC conditions for certification are found in 42 CFR part 491.

NEW SECTION

WAC 388-549-1100 Rural health clinics—Definitions. This section contains definitions of words and phrases that apply to this chapter. Unless defined in this chapter or WAC 388-500-0005, the definitions found in the Webster's New World Dictionary apply.

"Base year" - The year that is used as the benchmark in measuring a clinic's total reasonable costs for establishing base encounter rates.

"Change in scope of service" - A change in the type, intensity, duration, or amount of service.

"Encounter" - A face-to-face visit between a client and a qualified rural health clinic (RHC) provider (e.g., a physician, physician's assistant, or advanced registered nurse practitioner) who exercises independent judgment when providing services that qualify for an encounter rate.

"Encounter rate" - A cost-based, facility-specific rate for covered RHC services, paid to a rural health clinic for each valid encounter it bills.

"Enhancements" (also called healthy options (HO) enhancement) - A monthly amount paid to RHCs for each client enrolled with a managed care organization (MCO). Plans may contract with RHCs to provide services under healthy options. RHCs receive enhancements from the department in addition to the negotiated payments they receive from the MCOs for services provided to enrollees.

"Fee-for-service" - A payment method the department uses to pay providers for covered medical services provided to medical assistance clients, except those services provided under the department's prepaid managed care organizations or those services that qualify for an encounter rate.

"Interim rate" - The rate established by the department to pay a rural health clinic for covered RHC services prior to the establishment of a prospective payment system (PPS) rate for that facility.

"Medicare cost report" - The cost report is a statement of costs and provider utilization that occurred during the time period covered by the cost report. RHCs must complete and submit a report annually to Medicare.

"Mobile unit" - The objects, equipment, and supplies necessary for provision of the services furnished directly by the RHC are housed in a mobile structure.

"Permanent unit" - The objects, equipment and supplies necessary for the provision of the services furnished directly by the clinic are housed in a permanent structure.

"Rural area" - An area that is not delineated as an urbanized area by the Bureau of the Consensus.

"Rural health clinic (RHC)" - A clinic, as defined in 42 CFR 405.2401(b), that is primarily engaged in providing RHC services and is:

• Located in a rural area designated as a shortage area as defined under 42 CFR 491.2;

• Certified by Medicare as a RHC in accordance with applicable federal requirements; and

• Not a rehabilitation agency or a facility primarily for the care and treatment of mental diseases.

"Rural health clinic (RHC) services" - Outpatient or ambulatory care of the nature typically provided in a physician's office or outpatient clinic and the like, including specified types of diagnostic examination, laboratory services, and emergency treatments. The specific list of services which must be made available by the clinic can be found under 42 CFR part 491.9.

NEW SECTION

WAC 388-549-1200 Rural health clinics—Enrollment. (1) To participate in the Title XIX (Medicaid) program and receive payment for services, a rural health clinic (RHC) must:

(a) Receive RHC certification for participation in the Title XVIII (Medicare) program according to 42 CFR 491;

(b) Sign a core provider agreement;

(c) Comply with the clinical laboratory improvement amendments (CLIA) of 1988 testing for all laboratory sites per 42 CFR part 493; and

(d) Operate in accordance with applicable federal, state, and local laws.

(2) An RHC may be a permanent or mobile unit. If an entity owns clinics in multiple locations, each individual site must be certified by the department in order to receive reimbursement from the department as an RHC.

(3) The department uses one of two timeliness standards for determining the effective date of a Medicaid-certified RHC.

(a) The department uses Medicare's effective date if the RHC returns a properly completed core provider agreement and RHC enrollment packet within sixty days from the date of Medicare's letter notifying the clinic of the Medicare certification.

(b) The department uses the date the signed core provider agreement is received if the RHC returns the properly completed core provider agreement and RHC enrollment packet after sixty days of the date of Medicare's letter notifying the clinic of the Medicare certification.

NEW SECTION

WAC 388-549-1300 Rural health clinics—Services. (1) Rural health clinic (RHC) services are defined under 42 CFR 440.20(b).

(2) The department pays for RHC services when they are:

(a) Within the scope of an eligible client's medical assistance program. Refer to WAC 388-501-0060; and

(b) Medically necessary as defined in WAC 388-500-0005.

(3) RHC services may be provided by any of the following individuals in accordance with 42 CFR 405.2401:

(a) Physicians;

(b) Physician assistants (PA);

(c) Nurse practitioners (NP);

(d) Nurse midwives or other specialized nurse practitioners;

(e) Certified nurse midwives;

(f) Registered nurses or licensed practical nurses; and

(g) Psychologists or clinical social workers.

NEW SECTION

WAC 388-549-1400 Rural health clinics—Reimbursement and limitations. (1) For rural health clinics (RHC) certified by Medicare on and after January 1, 2001, the department pays RHCs an encounter rate per client, per day using a prospective payment system (PPS) as required by 42 USC 1396a(bb) for RHC services.

(a) The department calculates the RHC's encounter rate for RHC core services as follows:

(i) Until the RHC's first audited Medicare cost report is available, the department pays an average encounter rate of other similar RHCs (such as hospital-based or free-standing) within the state, otherwise known as an interim rate.

(ii) Upon availability of the RHC's audited Medicare cost report, the department sets the clinic's encounter rate at one hundred percent of its costs as defined in the cost report. The RHC will receive this rate for the remainder of the calendar year during which the audited cost report became available. The encounter rate is then inflated each January 1 by the Medicare economic index (MEI) for primary services.

(2) For RHCs in existence during calendar years 1999 and 2000, the department sets the payment prospectively using a weighted average of one hundred percent of the clinic's total reasonable costs for calendar years 1999 and 2000 and adjusted for any increase or decrease in the scope of services furnished during the calendar year 2001 to establish a base encounter rate.

(a) The department adjusts a PPS base encounter rate to account for an increase or decrease in the scope of services provided during calendar year 2001 in accordance with WAC 388-549-1500.

(b) The PPS base encounter rates are determined using Medicare's audited cost reports and each year's rate is weighted by the total reported encounters. The department does not apply a capped amount to these base encounter rates. The formula used to calculate the base encounter rate is as follows:

$$\text{Base Encounter Rate} = \frac{(1999\ \text{Rate} \times 1999\ \text{Encounters}) + (2000\ \text{Rate} \times 2000\ \text{Encounters})}{(1999\ \text{Encounters} + 2000\ \text{Encounters})}$$

(c) Beginning in calendar year 2002 and any year thereafter, the encounter rate is increased by the MEI and adjusted for any increase or decrease in the clinic's scope of services.

(3) The department pays for one encounter, per client, per day except in the following circumstances:

(a) The visits occur with different doctors with different specialties; or

(b) There are separate visits with unrelated diagnoses.

(4) RHC services and supplies incidental to the provider's services are included in the encounter rate payment.

(5) Services other than RHC services that are provided in an RHC are not included in the RHC encounter rate. Payments for nonRHC services provided in an RHC are made on a fee-for-service basis using the department's published fee schedules. NonRHC services are subject to the coverage guidelines and limitations listed in chapters 388-500 through 557 WAC.

(6) For clients enrolled with a managed care organization, covered RHC services are paid for by that plan.

(7) The department does not pay the encounter rate or the enhancements for clients in state-only programs. Services provided to clients in state-only programs are considered fee-for-service, regardless of the type of service performed.

NEW SECTION

WAC 388-549-1500 Rural health clinics—Change in scope of service. (1) The department considers a rural health clinic's (RHC) change in scope of service to be a change in the type, intensity, duration, and/or amount of services provided by the RHC. Changes in scope of service apply only to covered Medicaid services.

(2) When the department determines that a change in scope of service has occurred after the base year, the department will adjust the RHC's perspective payment system (PPS) rate to reflect the change.

(3) RHCs must:

(a) Notify the department's RHC program manager in writing, at the address published in the department's rural health clinic billing instructions, of any changes in scope of service no later than sixty days after the effective date of the change; and

(b) Provide the department with all relevant and requested documentation pertaining to the change in scope of service.

(4) The department adjusts the PPS rate to reflect the change in scope of service using one or more of the following:

(a) A Medicaid comprehensive desk review of the RHC's cost report;

(b) Review of a Medicare audit of the RHC's cost report; or

(c) Other documentation relevant to the change in scope of service.

(5) The adjusted encounter rate will be effective on the date the change of scope of service is effective.

WSR 08-05-012
PERMANENT RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed February 8, 2008, 10:57 a.m., effective April 1, 2008]

Effective Date of Rule: April 1, 2008.

Purpose: These rules are being amended to rectify inconsistencies in reporting requirements for different industries and to provide equal protection to all employees.

Citation of Existing Rules Affected by this Order: WAC 296-27-00103 Partial exemption for employers with ten or fewer employees, 296-27-00105 Partial exemption for private employers in certain industries, 296-37-575 Recordkeeping requirements, 296-78-515 Management's responsibility, 296-305-01501 Injury and illness reports for fire fighters, 296-800-320 Summary, 296-800-32005 Report the death, probable death of any employee, or the in-patient hospitalization of 2 or more employees within 8 hours, 296-800-32010 Make sure that any equipment involved in an accident is not moved, and 296-800-32015 Assign people to assist the department of labor and industries.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Adopted under notice filed as WSR 07-24-058 on December 4, 2007.

A final cost-benefit analysis is available by contacting Beverly Clark, P.O. Box 44620, Olympia, WA 98507-4620, phone (360) 902-5516, fax (360) 902-5619, e-mail rhok235 @lni.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 9, 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 9, Repealed 0.

Date Adopted: February 8, 2008.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 07-03-163, filed 1/24/07, effective 4/1/07)

WAC 296-27-00103 Partial exemption for employers with ten or fewer employees. (1) Basic requirement.

(a) If your company had ten or fewer employees at all times during the last calendar year, you do not need to keep injury and illness records unless WISHA, OSHA, or the BLS informs you in writing that you must keep records under this section. However, as required by WAC 296-27-031, all employers covered by the WISH Act must report any workplace incident that results in a fatality or the hospitalization of ((~~two or more~~)) any employee((~~s~~)).

(b) If your company had more than ten employees at any time during the last calendar year, you must keep injury and illness records unless your establishment is classified as a partially exempt industry under WAC 296-27-00105.

(2) Implementation.

(a) **Is the partial exemption for size based on the size of my entire company or on the size of an individual business establishment?** The partial exemption for size is based on the number of employees in the entire company.

(b) **How do I determine the size of my company to find out if I qualify for the partial exemption for size?** To determine if you are exempt because of size, you need to determine your company's peak employment during the last calendar year. If you had no more than ten employees at any time in the last calendar year, your company qualifies for the partial exemption for size.

AMENDATORY SECTION (Amending WSR 02-01-064, filed 12/14/01, effective 1/1/02)

WAC 296-27-00105 Partial exemption for private employers in certain industries. (1) Basic requirement.

(a) If your private business establishment is classified in a specific low hazard retail, service, finance, insurance or real estate industry listed in Table 1 you do not need to keep injury and illness records unless WISHA, OSHA, or the BLS asks you to keep the records under WAC 296-27-03105 or 296-27-03107. (Public employers are not included in this exemption, except as indicated in (b) of this subsection.) However, all employers must report to WISHA any workplace incident that results in a fatality or the hospitalization of ((~~two or more~~)) any employee((~~s~~)) (see WAC 296-800-32005).

(b) If you are a public employer in SIC 821 (elementary and secondary schools) and 823 (libraries), you do not need to keep injury and illness records unless WISHA, OSHA or the BLS asks you to keep the records under WAC 296-27-03105 or 296-27-03107. However, all employers must report to WISHA any workplace incident that results in a fatality or the hospitalization of two or more employees (see WAC 296-800-32005).

(c) If one or more of your company's establishments are classified in a nonexempt industry, you must keep injury and illness records for all of such establishments unless your company is partially exempted because of size under WAC 296-27-00103.

(2) Implementation.

(a) **Does the partial industry classification exemption apply only to business establishments in the retail, services, finance, insurance or real estate industries (SICs 52-89)?** Yes, business establishments classified in agriculture; mining; construction; manufacturing; transportation; communication, electric, gas and sanitary services; or wholesale trade are not eligible for the partial industry classification exemption.

(b) **Is the partial industry classification exemption based on the industry classification of my entire company or on the classification of individual business establishments operated by my company?** The partial industry classification exemption applies to individual business establishments. If a company has several business establishments engaged in different classes of business activities, some of the company's establishments may be required to keep records, while others may be exempt.

(c) **How do I determine the Standard Industrial Classification code for my company or for individual establishments?** You determine your Standard Industrial Classification (SIC) code by using the Standard Industrial Classification manual, *Executive Office of the President, Office of Management and Budget*. You may contact your local L&I office for help in determining your SIC or visit Department of Revenue's web site, http://dor.wa.gov/reports/Qbrsearch/sic_list.htm.

AMENDATORY SECTION (Amending WSR 07-03-163, filed 1/24/07, effective 4/1/07)

WAC 296-37-575 Recordkeeping requirements. (1) Recording and reporting.

(a) The employer shall comply with the requirements of chapters 296-27, 296-800, and 296-900 WAC.

(b) The employer shall record the occurrence of any diving-related injury or illness which requires any dive team member to be hospitalized ((~~for 24 hours or more~~)), specifying the circumstances of the incident and the extent of any injuries or illnesses.

(2) Availability of records.

(a) Upon the request of the director of the department of labor and industries or his duly authorized designees, the employer shall make available for inspection and copying any record or document required by this standard.

(b) Records and documents required by this standard shall be provided upon request to employees, designated representatives, and the assistant director in accordance with chapter 296-802 WAC. Safe practices manuals (WAC 296-37-530), depth-time profiles (WAC 296-37-540), recording of dives (WAC 296-37-545), decompression procedure assessment evaluations (WAC 296-37-545), and records of hospitalizations (WAC 296-37-575) shall be provided in the same manner as employee exposure records or analyses using exposure or medical records. Equipment inspections and testing records which pertain to employees (WAC 296-37-570) shall also be provided upon request to employees and their designated representatives.

(c) Records and documents required by this standard shall be retained by the employer for the following period:

(i) Dive team member medical records (physician's reports) (WAC 296-37-525) - five years;

(ii) Safe practices manual (WAC 296-37-530) - current document only;

(iii) Depth-time profile (WAC 296-37-540) - until completion of the recording of dive, or until completion of decompression procedure assessment where there has been an incident of decompression sickness;

(iv) Recording dive (WAC 296-37-545) one year, except five years where there has been an incident of decompression sickness;

(v) Decompression procedure assessment evaluations (WAC 296-37-545) - five years;

(vi) Equipment inspections and testing records (WAC 296-37-570) - current entry or tag, or until equipment is withdrawn from service;

(vii) Records of hospitalizations (WAC 296-37-575) - five years.

(d) After the expiration of the retention period of any record required to be kept for five years, the employer shall forward such records to the National Institute for Occupational Safety and Health, Department of Health and Human Services. The employer shall also comply with any additional requirements set forth in chapter 296-802 WAC.

(e) In the event the employer ceases to do business:

(i) The successor employer shall receive and retain all dive and employee medical records required by this standard; or

(ii) If there is no successor employer, dive and employee medical records shall be forwarded to the National Institute for Occupational Safety and Health, Department of Health and Human Services.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-78-515 Management's responsibility. (1) It shall be the responsibility of management to establish, supervise, and enforce, in a manner which is effective in practice:

(a) A safe and healthful working environment.

(b) An accident prevention program as required by these standards.

(c) Training programs to improve the skill and competency of all employees in the field of occupational safety and health. Such training shall include the on-the-job instructions on the safe use of powered materials handling equipment, machine tool operations, use of toxic materials and operation of utility systems prior to assignments to jobs involving such exposures.

(2) The employer shall develop and maintain a chemical hazard communication program as required by WAC 296-800-170, which will provide information to all employees relative to hazardous chemicals or substances to which they are exposed, or may become exposed, in the course of their employment.

(3) Management shall not assign mechanics, millwrights, or other persons to work on equipment by themselves when there is a probability that the person could fall from elevated work locations or equipment or that a person could be pinned down by heavy parts or equipment so that they could not call for or obtain assistance if the need arises.

Note: This subsection does not apply to operators of motor vehicles, watchperson or certain other jobs which, by their nature, are singular employee assignments. However, a definite procedure for checking the welfare of all employees during their working hours shall be instituted and all employees so advised.

(4) After the emergency actions following accidents that cause serious injuries that have immediate symptoms, a preliminary investigation of the cause of the accident shall be conducted. The investigation shall be conducted by a person designated by the employer, the immediate supervisor of the injured employee, witnesses, employee representative if available and any other person with the special expertise required to evaluate the facts relating to the cause of the accident. The findings of the investigation shall be documented by the employer for reference at any following formal investigation.

(5) Reporting of fatality or ((~~multiple~~)) hospitalization incidents.

(a) Within eight hours after the fatality or probable fatality of any employee from a work-related incident or the inpatient hospitalization of ((~~two or more~~)) any employee((~~s~~)) as a result of a work-related incident, the employer of any employees so affected shall report the fatality/((~~multiple~~)) hospitalization by telephone or in person, to the nearest office of the department or by using the OSHA toll-free central telephone number, 1-800-321-6742.

(i) This requirement applies to each such fatality or hospitalization ((~~of two or more employees~~)) which occurs within thirty days of the incident.

(ii) Exception: If any employer does not learn of a reportable incident at the time it occurs and the incident would otherwise be reportable under this subsection, the employer shall make a report within eight hours of the time the incident is reported to any agent or employee of the employer.

(iii) Each report required by this subsection shall relate the following information: Establishment name, location of the incident, time of the incident, number of fatalities or hospitalized employees, contact person, phone number, and a brief description of the incident.

(b) Equipment involved in an incident resulting in an immediate or probable fatality or in the in-patient hospitalization of ((~~two or more~~)) any employee((~~s~~)), shall not be moved, until a representative of the department investigates the incident and releases such equipment, except where removal is essential to prevent further incident. Where necessary to remove the victim, such equipment may be moved only to the extent of making possible such removal.

(c) Upon arrival of a department investigator, employer shall assign to assist the investigator, the immediate supervisor and all employees who were witnesses to the incident, or whoever the investigator deems necessary to complete the investigation.

(6) A system for maintaining records of occupational injuries and illnesses as prescribed by chapter 296-27 WAC.

Note: Recordable cases include:
(a) Every occupational death.
(b) Every industrial illness.

(c) Every occupational injury that involves one of the following:
(i) Unconsciousness.
(ii) Inability to perform all phases of regular job.
(iii) Inability to work full time on regular job.
(iv) Temporary assignment to another job.
(v) Medical treatment beyond first aid.

All employers with eleven or more employees shall record occupational injury and illness information on forms OSHA 101 - supplementary record occupational injuries and illnesses and OSHA 200 - log and summary. Forms other than OSHA 101 may be substituted for the supplementary record of occupational injuries and illnesses if they contain the same items.

AMENDATORY SECTION (Amending WSR 96-11-067, filed 5/10/96, effective 1/1/97)

WAC 296-305-01501 Injury and illness reports for fire fighters. (1) Notice of injury or illness.

(a) Whenever an occupational accident causes injury or illness to a fire fighter or other employee, or whenever a fire fighter or other employee becomes aware of an illness apparently caused by occupational exposure, it shall be the duty of such a fire fighter or other employee, or someone on his/her behalf, to report the injury or illness to the employer before the end of his/her duty period but not later than twenty-four hours after the incident.

(b) Exception: In the event that symptoms of an occupational injury or illness are not apparent at the time of the incident, the employee shall report the symptoms to his/her employer within forty-eight hours after becoming aware of the injury or illness.

(c) Within eight hours after the fatality or probable fatality of any fire fighter or employee from a work-related incident or the inpatient hospitalization of ((~~two or more~~)) any employee((~~s~~)) as a result of a work-related incident, the employer of any employees so affected, shall orally report the fatality/((~~multiple~~)) hospitalization by telephone or in person, to the nearest office of the department or by using the OSHA toll-free central telephone number, 1-800-321-6742.

(i) This requirement applies to each such fatality or hospitalization ((~~of two or more employees~~)) which occurs within thirty days of the incident.

(ii) Exception: If any employer does not learn of a reportable incident at the time it occurs and the incident would otherwise be reportable under this subsection, the employer shall make a report within eight hours of the time the incident is reported to any agent or employee of the employer.

(iii) Each report required by this subsection shall relate the following information: Establishment name, location of the incident, time of the incident, number of fatalities or hospitalized employees, contact person, phone number, and a brief description of the incident.

(2) Recordkeeping - written reports; all fire service employers shall maintain records of occupational injuries and illnesses. Reportable cases include every occupational death, every occupational illness, or each injury that involves one of the following: Unconsciousness, inability to perform all phases of regular duty-related assignment, inability to work full time on duty, temporary assignment, or medical treatment beyond first aid.

(3) All fire departments shall record occupational injury and illnesses on forms OSHA 101-Supplementary Record Occupational Injuries and Illnesses and OSHA 200-Log summary. Forms other than OSHA 101 may be substituted for the Supplementary Record of Occupational Injuries and Illnesses if they contain the same items.

(4) Each employer shall post an annual summary of occupational injuries and illnesses for each establishment. This summary shall consist of a copy of the year's totals from the Form OSHA No. 200 and the following information from that form: Calendar year covered, company name, establishment name, establishment address, certification signature, title, and date. A Form OSHA No. 200 shall be used in presenting the summary. If no injuries or illnesses occurred in the year, zeros must be entered on the totals line, and the form must be posted. The summary shall be completed by February 1 each calendar year. The summary covering the previous calendar year shall be posted no later than February 1, and shall remain in place until March 1.

AMENDATORY SECTION (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

WAC 296-800-320 Summary. Your responsibility:

To report and conduct an investigation of certain types of accidents.

You must:

Report the death, or probable death, of any employee, or the in-patient hospitalization of ((~~2 or more~~)) any employee((~~s~~)) within 8 hours

WAC 296-800-32005

Make sure that any equipment involved in an accident is not moved.

WAC 296-800-32010

Assign people to assist the department of labor and industries

WAC 296-800-32015

Conduct a preliminary investigation for all serious injuries

WAC 296-800-32020

Document the investigation findings

WAC 296-800-32025

Note: Call the nearest office of the department of labor and industries at 1-800-4BE SAFE or call Occupational Safety and Health Administration (OSHA) at 1-800-321-6742, to report the death, probable death of any employee or the in-patient hospitalization of 2 or more employees within 8 hours, after handling medical emergencies.

AMENDATORY SECTION (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

WAC 296-800-32005 Report the death, probable death of any employee, or the in-patient hospitalization of ((~~2 or more~~)) any employee((~~s~~)) within 8 hours. ((~~You must:~~

~~• Contact the nearest office of the department of labor and industries in person or by phone at 1-800-4BE SAFE to report within 8 hours of the work-related incident or accident,~~

~~– A death~~
~~– A probable death~~
~~– 2 or more employees are admitted to the hospital, or~~
~~– Contact the Occupational Safety and Health Administration (OSHA) by calling its central number at 1-800-321-6742.~~
~~• Provide the following information within 30 days concerning any accident involving a fatality or hospitalization of 2 or more employees:~~
~~– Name of the work place~~
~~– Location of the incident~~
~~– Time and date of the incident~~
~~– Number of fatalities or hospitalized employees~~
~~– Contact person~~
~~– Phone number~~
~~– Brief description of the incident~~
~~Note: If you do not learn about the incident at the time it occurs, you must report the incident within 8 hours of the time it was reported to you, your agent, or employee.~~))

(1) You must report to us within eight hours of an incident that:
• Causes a fatal or possibly fatal injury
• Causes injury requiring in-patient hospitalization of any employee
To report, contact your nearest labor and industries office by phone or in person, or call the OSHA toll-free hotline, 1-800-321-6742.

EXCEPTION: If you do not learn of a reportable incident when it happens, you must report it within eight hours of learning about the incident.

(2) Your report must include:
• Establishment name
• Location of the incident
• Time of the incident
• Number of fatalities, hospitalized employees, or pesticide exposures
• Contact person
• Phone number
• Brief description of the incident
(3) Fatalities or hospitalizations that occur within thirty days of an incident must also be reported.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-800-32010 Make sure that any equipment involved in an accident is not moved. You must:
• Not move equipment involved in a work or work related accident or incident if any of the following results:
– A death
– A probable death
– ((~~2 or more employees are sent to the hospital~~)) An employee's hospitalization
• Not move the equipment until a representative of the department of labor and industries investigates the incident and releases the equipment unless:
– Moving the equipment is necessary to:
- Remove any victims
- Prevent further incidents and injuries

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-800-32015 Assign people to assist the department of labor and industries. You must:
• Assign witnesses and other employees to assist department of labor and industries personnel who arrive at the scene to investigate the incident involving:
– A death
– Probable death
– ((~~2 or more employees are sent to the hospital.~~)) An employee's hospitalization
Include:
– The immediate supervisor
– Employees who were witnesses to the incident
– Other employees the investigator feels are necessary to complete the investigation

WSR 08-05-014
PERMANENT RULES
SPOKANE REGIONAL CLEAN AIR AGENCY

[Filed February 11, 2008, 11:32 a.m., effective March 13, 2008]

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

Purpose: New section in Regulation I, Article II, to establish notification, performance, and reporting requirements for source tests performed in SRCAA's jurisdiction.

Citation of Existing Rules Affected by this Order: Amending SRCAA Regulation I, Article II, addition of new section (Section 2.09).

Statutory Authority for Adoption: RCW 70.94.141.

Adopted under notice filed as WSR 08-02-005 on December 19, 2007.

Changes Other than Editing from Proposed to Adopted Version: Two changes were made based on comments received at public hearing:

(1) Paragraph E had the following sentence added immediately after the end of the first sentence: *This notification requirement does not relieve the source from any other notification requirements under State or Federal law*.

(2) Paragraph K, had the following text added to the end of section 4.d: *or parametric conditions which correlate to load (e.g. fuel feed rate)*.

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

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

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

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

Date Adopted: February 7, 2008.

Joe R. Southwell
Environmental Engineer

NEW SECTION

REGULATION I, ARTICLE II, SECTION 2.09

ARTICLE II

SECTION 2.09 SOURCE TESTS

A. Purpose. This Section establishes notification, performance, and reporting requirements for all source tests and combustion tests performed to determine compliance with applicable air quality regulations and/or emission standards.

B. Applicability. This Section applies to any source test performed on sources established or operated in Spokane County that will be submitted to the Agency for regulatory purposes. Tests performed on gasoline dispensing facilities are exempt from the requirements of this section, unless otherwise required by the Agency.

Combustion tests performed on fuel burning equipment shall meet the requirements of Section 2.09.K.

C. Definitions. In addition to the definitions given in SRCAA Regulation I, Article I, Section 1.04, and unless a different meaning is clearly required by context, words and phrases used in this Section shall have the following meaning:

1. Combustion test means a test performed on fuel burning equipment, using a combustion analyzer, for purposes of analyzing the combustion products produced by the equipment.

2. Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or improper operation are not malfunctions.

3. Regulated pollutant means any air contaminant regulated under the Federal Clean Air Act, the Washington Clean Air Act, Washington Administrative Code, and/or SRCAA regulations.

4. Regulatory purposes means to determine compliance with an applicable air quality regulation or emission standard or as otherwise required by the Agency.

5. Representative operating conditions means the range of combined process, production, and control measure conditions under which the source normally operates or will normally operate (regardless of the frequency of the conditions). Operations during startup, shutdown, and malfunctions do not constitute representative operating conditions.

6. Source test means any testing performed at a source that measures i) the amount or concentration of a regulated pollutant, pollutants, or surrogates being emitted; ii) the capture efficiency of a capture system; and/or iii) the destruction or removal efficiency of a control device used to reduce emissions. Combustion tests and data accuracy assessments of continuous emission monitoring systems (i.e., relative accuracy tests, cylinder gas audits, etc.) are not considered source tests.

D. Test Methods. Testing of sources for regulatory purposes shall be performed in accordance with U.S. Environmental Protection Agency (EPA) approved methods as found in 40 CFR Parts 51, 60, 61, and 63, as in effect on the date identified in SRCAA Regulation I, Article II, Section 2.13. Alternative methods may be used, provided the method(s) has been approved by the Agency and/or EPA prior to performing the test.

E. Test Notifications and Plans. At least 15 calendar days prior to performing the source test, a test notification and plan shall be submitted to the Agency for review and approval. This notification requirement does not relieve the source from any other notification requirements under State or Federal law. Test notifications and plans shall be submitted in writing by either hard copy, facsimile, or e-mail. The 15-day submittal requirement may be waived upon receipt of written Agency approval. The test plan shall include, unless otherwise specified in writing by the Agency, the following information:

1. Facility name, mailing address, and source location;

2. Facility contact name(s) and telephone number(s);

3. Source testing company name, company contact name(s), and telephone number;

4. Source testing schedule and date(s);

5. Source description including a description of the pollution control device and sample locations;

6. Pollutant(s) to be measured;

7. Test methods;

8. Number of test runs and length of each individual test run;

9. A description of what constitutes representative process and control conditions for the source to be tested (i.e., production rate, etc.). This shall include the expected process and control conditions (including production rate) during testing;

10. Applicable process and/or production information to be collected during the source test;

11. Control device operating parameters to be monitored during the source test;

12. Fuel and/or raw material samples (if applicable), type of analysis, how the samples will be collected, and who will collect the samples;

13. Timeline for submittal of the final test report to SRCAA;

14. Any other testing information required by the Agency.

Once approved, the source test plan shall be followed. Changes to approved plans may be implemented upon receipt of Agency approval prior to completion of the source test. Test plan modification requests may be submitted in writing by either hard copy, facsimile, or e-mail. SRCAA may require a new series of tests for test plan modifications submitted after initiation of the tests and prior to completion of the tests.

F. Test Procedures.

1. The source test shall consist of a minimum of three (3) individual runs, unless otherwise required in the test method or written Agency approval is given for an alternative testing scenario prior to performing the source test.

2. The individual pollutant test runs for any source test shall be performed consecutively, with no overlap of any test runs for the same pollutant. Test runs may overlap provided the overlapping test runs are not for testing the same pollutant or are not being performed using the same test method. Each consecutive test run shall be initiated as soon as practicable after completion of the previous test run, unless Agency approval is given for an alternative testing scenario prior to performing the source test.

3. During each source test, the source to be tested shall be operated as described in the approved source test plan, unless an alternative operating scenario is approved by the Agency prior to performing the source test. Upon acceptance of the source test, the source will be limited to no more than 110% of the average production rate that the source operated during that source test, unless otherwise allowed by regulation or Agency issued Order.

G. Stoppages.

1. A source test may be stopped only because of safety reasons or testing and/or process equipment malfunction. The testing shall be resumed as soon as practicable. A source test may not be stopped solely due to the expected or known failure of one or more test runs to meet applicable standards.

2. The Agency shall be notified of any test stoppage as soon as practicable, but no later than the next working day (i.e., Monday through Friday, excluding legal holidays observed by the Agency).

3. The reason for the test stoppage shall be documented and included in the source test report. All test data collected during a stopped test shall be included in the source test report. The Agency will evaluate the reason for the stoppage and determine if it meets the stoppage provisions in Section 2.09.G.1.

H. Invalidation of Test Results. For any test results that are found or considered to be invalid, due to stoppages, sampling or analysis problems or errors, or other reasons, the invalid data must be included in the test report. The reason that the test results were invalidated shall be documented and included in the test report. The Agency will evaluate the reason for the test results invalidation and determine whether to accept or reject the source test results.

I. Postponements/Rescheduling. A source test shall not be postponed and/or rescheduled without prior Agency notification. Postponement notifications for a scheduled source test shall include the reason(s) for the requested postponement and the date of the rescheduled source test. Postponement and/or rescheduling notifications shall be made by telephone or submitted in writing by either hard copy, facsimile, or e-mail. Within two working days after a telephone notification is made, a written notification must be submitted by either hard copy, facsimile, or e-mail.

J. Test Reports.

1. Reports of all source tests performed under this section shall be submitted to the Agency regardless of the source test results (i.e., failure to meet an emission limit or standard, test stoppage, equipment malfunction, test data invalidation, etc.).

2. Source test reports shall be submitted to the Agency as described in the approved test plan, unless an alternative test report submittal timeline has received written Agency approval.

3. The source test report shall, at a minimum, include the following information:

a) Source testing company name, company contact name(s), and phone number;

b) Facility name, mailing address, and source location;

c) Facility contact name(s) and telephone number(s);

d) Description of the source and the sampling locations;

e) Date(s) of the source test;

f) Summary of results, reported in units and averaging periods consistent with the applicable emission standard.

g) Length, in minutes, of each individual test run, including start and end times for each individual test run;

h) Description of any test stoppages and re-starts, and the reasons for each test stoppage;

i) Description of any deviations from the approved source test plan and the reason for the deviation;

j) Description of the test methods and quality assurance procedures employed;

k) Operating parameters and production data for the source and control equipment during the test, as specified in the approved test plan under Section 2.09E.10-12;

l) Company name, contact name, and telephone number of the laboratory processing any samples;

m) All field data collected and example calculations;

n) Any reasons for considering a test run(s) to be invalid;

o) Any reasons for objection of use of a test run(s) for regulatory purposes;

p) A statement signed by the responsible official of the testing company certifying the validity of the source test report; and

q) Any other information specified and/or required by the Agency in the approved test plan.

K. Combustion Tests. Unless otherwise required by the Agency, combustion tests performed on fuel burning equipment for regulatory purposes shall meet all of the following requirements:

1. The Agency shall be notified at least two working days prior to performing the combustion test, unless an alternative notification timeline is approved the Agency.

2. The fuel burning equipment shall be operated at high fire during the combustion test. The combustion test shall be performed under representative operating conditions for the equipment.

3. The combustion test equipment shall be capable of analyzing for the pollutant to be measured.

4. Immediately prior to the test, the combustion analyzer shall be calibrated using the analyzer manufacturer's recommended calibration procedures. During each combustion test, the following operational parameters shall be measured and recorded:

a) Concentration (ppmv) of the measured pollutant in the exhaust gases;

b) Exhaust gas temperature;

c) Percent oxygen for each pollutant concentration reading; and

d) Average load for the fuel burning equipment tested or parametric conditions which correlate to load (e.g. fuel feed rate).

5. A report documenting the results of each combustion test shall be submitted to SRCAA within 30 calendar days of each test, unless an alternative test report submittal timeline has been approved the Agency. The report shall include:

a) Calibration report for the combustion analyzer, including the calibration method and type and concentration of each gas used to calibrate the combustion analyzer;

b) Summary of the measured pollutant emissions given in ppmv and corrected to 3% oxygen, unless a different correction is required by regulation or Agency issued Order;

c) Parameters listed under Section 2.09.K.5 above; and

d) Copies of actual data sheets.

Reviser's note: The unnecessary underscoring 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.

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

WSR 08-05-018
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)

[Filed February 12, 2008, 8:34 a.m., effective March 14, 2008]

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

Purpose: The department is amending rules to comply with the provisions of chapter 5, Laws of 2007 (2SSB 5093) which authorize medical assistance coverage for all children living in households with income at or below 250% of the federal poverty level (FPL). An emergency rule has been in effect since July 22, 2007, while HRSA completed the permanent rule-making process. When effective, this rule replaces the emergency rule filed [as] WSR 07-23-057.

Citation of Existing Rules Affected by this Order: Amending WAC 388-416-0015, 388-418-0025, 388-450-0210, 388-478-0075, 388-505-0210, 388-505-0211, 388-542-0010, 388-542-0020, 388-542-0050, and 388-542-0300.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, and 74.09.700.

Other Authority: Chapter 5, Laws of 2007 (2SSB 5093).

Adopted under notice filed as WSR 07-22-038 on October 30, 2007.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-505-0210 (2)(d), family income is at or below 200% federal poverty level (FPL), as described in WAC 388-478-0075 at each application or review; or

WAC 388-505-0210 (10)(c), they have income that exceeds children's healthcare program standards; or

(d) They are disqualified from receiving premium based children's healthcare coverage as described in subsection (4) of this section because of creditable coverage or nonpayment of premiums.

WAC 388-450-0210(3), unless modified by subsection (4) or (6) of this section,

WAC 388-450-0210 (4)(h), for nonrecurring lump sum payments see chapter 388-455 WAC; and WAC 388-475-0300(4). (Subsections (i) and (ii) removed.)

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 10, 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 10, Repealed 0.

Date Adopted: February 7, 2008.

Stephanie E. Schiller
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 08-06 issue of the Register.

WSR 08-05-026
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed February 12, 2008, 9:06 a.m., effective March 14, 2008]

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

Purpose: This rule making amends guidelines pertaining to the administration of sterile procedures to more clearly articulate who can and cannot perform certain services.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0020.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 08-01-089 on December 17, 2007.

Changes Other than Editing from Proposed to Adopted Version: The proposed language was amended as follows:

(2) Individual providers must not provide: (a) Sterile procedures unless the provider is a family member or the client self directs the procedure.

(3) Agency providers, including family members who provide care while working as an agency provider:

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

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

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

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

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

Date Adopted: February 6, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0020 Under the MPC, COPES, MNRW, MNIW, and chore programs, what services are not covered? The following types of services are not covered under MPC, COPES, MNRW, MNIW, and chore:

(1) Child care.

(2) Individual providers ((~~and agency providers must not provide sterile procedures, administration of medications, or other tasks requiring a licensed health professional unless these tasks are provided through nursing delegation, self-directed care or provided by a family member~~)) must not provide:

(a) Sterile procedures unless the provider is a family member or the client self directs the procedure;

(b) Administration of medications or other tasks requiring a licensed health professional unless these tasks are provided through nurse delegation, self-directed care, or the provider is a family member.

(3) Agency providers, including family members who provide care while working as an agency provider, must not provide:

(a) Sterile procedures;

(b) Self-directed care;

(c) Administration of medications or other tasks requiring a licensed health care professional unless these tasks are provided through nurse delegation.

(4) Services provided over the telephone.

(((~~4~~))) (5) Services to assist other household members not eligible for services.

(((~~5~~))) (6) Development of social, behavioral, recreational, communication, or other types of community living skills.

(((~~6~~))) (7) Nursing care.

(((~~7~~))) (8) Pet care.

(((~~8~~))) (9) Assistance with managing finances.

(((~~9~~))) (10) Respite.

(((~~10~~))) (11) Yard care.

WSR 08-05-029
PERMANENT RULES
STATE TOXICOLOGIST

[Filed February 12, 2008, 10:17 a.m., effective March 14, 2008]

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

Purpose: The purpose of this amendment is to add the Alcosensor FST to the list of approved breath alcohol screening devices; to clarify the purposes for which the screening devices are to be used; and the steps that must be followed to ensure a valid test.

Citation of Existing Rules Affected by this Order: Amending chapter 448-15 WAC.

Statutory Authority for Adoption: RCW 46.61.506.

Adopted under notice filed as WSR 07-22-110 on November 6, 2007.

Changes Other than Editing from Proposed to Adopted Version: There are two changes to adopted rule based on comment received during the comment period.

1. WAC 448-15-020 Use of test results, in the proposed language a reference is made to "the language described below." In the section adopted, the language is specifically identified as WAC 448-15-030.

2. WAC 448-15-030 Test protocol, in the proposed version, the language regarding the advisement to the subject of the voluntary nature of the test was deleted. Based on comment received and considered, this language is reinserted to the adopted rule.

3. WAC 448-15-040 Certification, in the proposed version the language regarding the frequency of certification was changed from requiring certification every six months to requiring annual certification. Based on consideration of the manufacturer's recommendations, the certification frequency will not change to annually, and will remain at six months.

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

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

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

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

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

Date Adopted: February 12, 2008.

Barry K. Logan, PhD
State Toxicologist

AMENDATORY SECTION (Amending WSR 99-06-047, filed 3/1/99, effective 4/1/99)

WAC 448-15-010 Approval of devices. The following preliminary breath test (PBT) instruments are approved for use in the state of Washington as breath alcohol screening devices, subject to the requirements outlined in the following sections:

Alcosensor III (Intoximeters, St. Louis, MO).

Alcosensor FST (Intoximeters, St. Louis, MO).

Any other instruments ((~~on~~)) approved by the National Highway Traffic Safety Administration (NHTSA) ((~~approved products list~~)) will be considered for approval in Washington state on application to the state toxicologist, providing that a suitable program for maintenance, certification and operator training is also established and approved.

AMENDATORY SECTION (Amending WSR 99-06-047, filed 3/1/99, effective 4/1/99)

WAC 448-15-020 Use of test results. The devices described in WAC 448-15-010 are approved for use in ((~~aiding police officers to form~~)) establishing probable cause that a subject has ((~~committed an offense involving the consumption of~~)) consumed alcohol. ((~~The test results, when~~)) For purposes of this section, valid results are considered those obtained from following the approved protocol, by a trained operator using an approved device which has been ((~~maintained and~~)) certified according to the rules described ((~~below, and carried out according to the approved test protocol,~~)) in WAC 448-15-030. Valid results will show to a reasonable degree of scientific certainty, the test subject's breath alcohol concentration. ((~~The~~)) Valid results are ((~~therefore~~)) suitable to ((~~show whether an officer has~~)) assist in establishing probable cause to place a person under arrest for alcohol related offenses. These results may not be used on their own for determining, beyond a reasonable doubt, that a person's breath alcohol concentration exceeds a proscribed level such as anticipated under the 'per se' statutes for intoxication.

This preliminary breath test is voluntary, and participation in it does not constitute compliance with the implied consent statute (RCW 46.20.308).

AMENDATORY SECTION (Amending WSR 99-06-047, filed 3/1/99, effective 4/1/99)

WAC 448-15-030 Test protocol. ((~~After advising the subject that this is a voluntary test, and that it is not an alternative to an evidential breath alcohol test as described in chapter 448-13 WAC, the operator shall determine by observation or inquiry, that the subject has not consumed any alcohol in the fifteen minutes prior to administering the test. If the subject has consumed alcohol during that period, the officer should not administer the screening test for probable cause purposes until fifteen minutes have passed. If the subject responds that they have not consumed any alcohol in the last fifteen minutes, the officer may offer the subject the opportunity to provide a breath sample into the PBT. If the subject consents, the operator will check the temperature of the device to ensure that it is within the normal operating range.~~)) The operator must perform the test according to the policies and procedures approved by the state toxicologist. The operator will ((~~then press the "read" button to obtain a sample of ambient air, and ensure that this results in a reading of 0.003 or less. The subject will be asked to exhale into the device. The device will be activated towards the end of the subject's exhalation, to capture a portion of end expiratory breath for analysis~~)) perform the following test protocol:

(1) The operator shall advise the subject that this is a voluntary test, and that it is not an alternative to any evidential breath alcohol test.

(2) The operator shall determine by observation or inquiry, that the subject has not consumed any alcohol in the fifteen minutes prior to administering the test. If the subject has consumed alcohol during that period, the officer should not administer the screening test for probable cause purposes until fifteen minutes have passed. If the subject responds that they have not consumed any alcohol in the last fifteen minutes, the officer may offer the subject the opportunity to provide a breath sample into the PBT.

(3) Ensure a blank test result is obtained.

(4) Have the subject exhale into the mouthpiece with a full and continuous exhalation.

(5) Observe the results.

AMENDATORY SECTION (Amending WSR 99-06-047, filed 3/1/99, effective 4/1/99)

WAC 448-15-040 Certification. Any PBT used as described in the preceding sections, must be certified at least every six months. In order to certify a PBT as accurate, the ((~~testing shall include at a minimum, a blank test of room air which must give a result of less than 0.005g/210L, and a test of a certified dry gas alcohol standard. The instrument must accurately measure the reference value within ± 0.010g/210L. A record of certification must be kept by the person responsible for calibration~~)) certifying agency must follow a protocol approved by the state toxicologist. Certification of PBTs can be performed by persons certified by the state toxicologist as PBT technicians, or by factory authorized representatives, provided that the protocol for certification approved by the state toxicologist is followed.

AMENDATORY SECTION (Amending WSR 99-06-047, filed 3/1/99, effective 4/1/99)

WAC 448-15-050 PBT operators. Persons certified as ((~~DataMaster~~)) evidential breath test instrument operators as described in chapter 448-16 WAC ((~~448-13-150, who received their certification or recertification after September 1, 1998,~~)) shall be trained and authorized to perform the tests described herein on the PBT, for the purposes outlined in this section.

AMENDATORY SECTION (Amending WSR 99-06-047, filed 3/1/99, effective 4/1/99)

WAC 448-15-060 PBT technicians. Persons trained according to ((~~approved~~)) outlines ((~~prepared~~)) approved by the state toxicologist, in the proper procedures for certifying PBT((~~s~~)) instruments shall be certified as PBT technicians. Their responsibilities will include performing periodic certification and maintaining records on such certification. Wallet sized permits shall be issued to persons so qualified. The certification received on successful completion of the training must be renewed every three years. Persons certified as ((~~DataMaster~~)) evidential breath test instrument technicians as described in chapter 448-16 WAC ((~~448-13-170~~)) are also certified to perform all the duties of PBT technicians.

WSR 08-05-039
PERMANENT RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 08-23—Filed February 13, 2008, 2:28 p.m., effective January 1, 2009]

Effective Date of Rule: January 1, 2009.

Purpose: Amend sturgeon sportfishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-282 (Amending Order 07-22, filed 2/16/07, effective 3/19/07).

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 07-19-135 on September 19, 2007.

Changes Other than Editing from Proposed to Adopted Version: Subsection (1)(a) - Minimum size changed from 42 to 43 inches.

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

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

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

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

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

Date Adopted: February 1, 2008.

Susan Yeager
for Jerry Gutzwiler, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 07-22, filed 2/16/07, effective 3/19/07)

WAC 220-56-282 Sturgeon—Areas, seasons, limits and unlawful acts. (1) It is unlawful to retain green sturgeon.

(2) It is lawful to fish for white sturgeon the entire year in saltwater, but open in freshwater only concurrent with a salmon or gamefish opening unless otherwise provided.

(3) The daily limit is one white sturgeon, with the following size restrictions:

(a) Minimum size ((~~48~~)) 43 inches ((~~in~~)) fork length in the Columbia River and tributaries upstream from The Dalles Dam.

(b) Minimum size ((~~42~~)) 38 inches ((~~in~~)) fork length in all other state waters.

(c) Maximum size ((~~60~~)) 54 inches ((~~in~~)) fork length.

Once the daily limit has been retained, it is lawful to continue to fish for sturgeon in the mainstem of the Columbia River downstream from where the river forms the boundary between Oregon and Washington, provided that all subsequent sturgeon are released immediately.

(4) The possession limit is two daily limits of fresh, frozen or processed white sturgeon.

(5) There is an annual personal-use limit of five white sturgeon from April 1 through March 31, regardless of where the sturgeon were taken. After the annual limit of sturgeon has been taken, it is lawful to continue to fish for white sturgeon in the mainstem Columbia River downstream from where the river forms the common boundary between Oregon and Washington, provided that all subsequent sturgeon are released immediately.

(6) It is unlawful to fish for sturgeon with terminal gear other than bait and one single barbless hook. It is lawful to use artificial scent with bait when fishing for white sturgeon. Violation of this subsection is an infraction, punishable under RCW 77.15.160. It is unlawful to possess sturgeon taken with gear in violation of the provisions of this section. Possession of sturgeon while using gear in violation of the provisions of this section is a rebuttable presumption that the sturgeon were taken with such gear. Possession of such sturgeon is punishable under RCW 77.15.380 Unlawful recreational fishing in the second degree—Penalty, unless the sturgeon are taken in the amounts or manner to constitute a violation of RCW 77.15.370 Unlawful recreational fishing in the first degree—Penalty.

(7) It is unlawful to fish for or possess sturgeon taken for personal use from freshwater, except the Chehalis River, from one hour after official sunset to one hour before official sunrise.

(8) It is unlawful to possess in the field sturgeon eggs without having retained the intact carcass of the fish from which the eggs have been removed.

(9) It is unlawful to use a gaff or other fish landing aid that penetrates the fish while restraining, handling or landing a sturgeon.

(10) It is unlawful to fail to immediately return to the water any undersize sturgeon.

WSR 08-05-086
PERMANENT RULES
HORSE RACING COMMISSION

[Filed February 15, 2008, 8:24 a.m., effective March 17, 2008]

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

Purpose: To amend sections in chapter 260-84 WAC, Penalties.

Citation of Existing Rules Affected by this Order: Repealing WAC 260-84-050 and 260-84-070; and amending WAC 260-84-060, 260-84-090, 260-84-100, 260-84-110, 260-84-120, and 260-84-130.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 08-02-069 on December 28, 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 6, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, Repealed 2.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 6, Repealed 2; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 14, 2008.

R. J. Lopez

Deputy Secretary

AMENDATORY SECTION (Amending WSR 07-03-066, filed 1/16/07, effective 2/16/07)

WAC 260-84-060 Penalty matrixes. (1) The imposition of reprimands, fines and suspensions ((~~shall~~)) will be based on the following penalty matrixes:

Class A and B Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
((~~Smoking in restricted areas WAC 260-20-030~~	~~$25~~	~~$50~~	~~$100~~))
Disturbing the peace WAC 260-80-140	Warning to $200 and/or suspension	Warning to $500 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010	$((~~50~~)) 100	$((~~100~~)) 200	$((~~150~~)) 300
Unlicensed or improperly licensed personnel WAC 260-28-230	$100	$200	$300
((~~Unlicensed or improperly licensed personnel or failure to report correct stall or registration paper count for L&I purposes (trainer's responsibility) WAC 260-28-230 and 260-36-220~~	~~Required to pay full labor and industries premium and assessed a fine equal to 50% of the premium due~~		
~~Licensing - failure to divulge a felony WAC 260-36-120~~	~~$100 or possible denial of license~~		
~~Licensing - failure to divulge a gross misdemeanor or misdemeanor WAC 260-36-120~~	~~Warning to $50~~		
~~Licensing - providing false information on application WAC 260-36-120~~	~~$50 to $250 or possible denial of license~~		
~~Licensing - nonparticipation WAC 260-36-080~~	~~License canceled~~))		
Violation of any claiming rule in chapter 260-60 WAC	$200 to $500 plus possible suspension		
((~~Use of improper, profane or indecent language to a racing official WAC 260-80-130~~	~~$50~~	~~$100~~	~~$250~~
~~Unsafe vehicle operation WAC 260-20-020~~	~~Warning to $50~~	~~$100 and recommend racing association revoke vehicle pass~~	
~~Financial responsibility WAC 260-28-030~~	~~Resolve within 30 days or before the end of the meet (whichever is sooner) or suspension~~		
~~Failure to appear - for ruling conference WAC 260-24-510~~	~~Suspension~~))		
Failure of jockey agent to honor riding engagements (call)((~~agents~~)) WAC 260-32-400	$75	$100	$200

Class A and B Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
((~~Reporting incorrect weight - jockeys~~)) Failure of jockey to report correct weight WAC 260-32-150	$((~~50~~)) 100	$((~~100~~)) 200	$((~~200~~)) 300
Failure of jockey to appear for films((~~- jockeys~~)) WAC 260-24-510	$50	$100	$200
Failure of jockey to fulfill riding engagement WAC 260-32-080	$100	$150	$200
Jockey easing mount without cause WAC 260-52-040	$250 and/or suspension	$((~~250~~)) 500 and/or suspension	$((~~500~~)) 1000 and/or suspension
Jockey failing to maintain straight course or careless riding with no disqualification (jockey at fault) WAC 260-52-040	Warning to $750 and/or suspension (riding days)		
Jockey failing to maintain straight course or careless riding resulting in a disqualification (jockey at fault) WAC 260-52-040	Suspension (riding days) and possible fine		
Jockey's misuse of whip WAC 260-52-040	Warning to $2500		
((~~Use of stimulating device (may include batteries) WAC 260-52-040~~	~~1 year suspension plus mandatory referral to commission for revocation~~		
~~Possession of stimulating device (may include batteries) WAC 260-52-040 and 260-80-100~~	~~1 year suspension plus mandatory referral to commission for revocation~~		
~~Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010 and 260-80-020~~	~~1 year suspension plus mandatory referral to commission for revocation~~))		
Entering ineligible horse WAC 260-40-140 and 260-80-030	$((~~50~~)) 250	$((~~100~~)) 500	$((~~100~~)) 1000
Unauthorized late scratch (WAC 260-40-010)	$200	$300	$400
Arriving late to the paddock or receiving barn WAC 260-28-200	Warning to $50	((~~Warning to~~)) $50 to $100	((~~$50 to~~)) $100 to $200
Failure to deliver furosemide treatment form to official veterinarian by appointed time WAC 260-70-650	Warning to $50	$100	$200
Failure to have registration papers on file - resulting in a scratch WAC 260-40-090	$((~~50 to $100~~)) 200	$((~~100~~)) 300	$((~~100~~)) 400
Failure to obtain permission for equipment changes WAC 260-44-010	((~~Warning to~~)) $50	$100	$((~~100~~)) 200
Failure to report performance records WAC 260-40-100	Warning to $50	$100	$150
Failure to submit gelding report WAC 260-28-295	$100	$200	$300

Class A and B Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Insufficient workouts - resulting in scratch WAC 260-40-100	$((~~50 to $100~~)) 200	$((~~100~~)) 300	$((~~100~~)) 400

Class C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
((~~Smoking in restricted areas WAC 260-20-030~~	~~$25~~	~~$50~~	~~$100~~))
Disturbing the peace WAC 260-80-140	Warning to $100 and/or suspension	$250 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010	$50	$100	$150
Unlicensed or improperly licensed personnel WAC 260-28-230	$50	$100	$200
((~~Unlicensed or improperly licensed personnel or failure to report correct stall or registration paper count for L&I purposes (trainer's responsibility) WAC 260-28-230 and 260-36-220~~	~~Required to pay full labor and industries premium and assessed a fine equal to 50% of the premium due~~		
~~Licensing - failure to divulge a felony WAC 260-36-120~~	~~$100 or possible denial of license~~		
~~Licensing failure to divulge a misdemeanor or gross misdemeanor WAC 260-36-120~~	~~Warning to $25~~		
~~Licensing - providing false information on application WAC 260-36-120~~	~~$50 to $250 or possible denial of license~~		
~~Licensing - nonparticipation WAC 260-36-080~~	~~License canceled~~))		
Violation of any claiming rule in chapter 260-60 WAC	$100 to $250 plus possible suspension		
((~~Use of improper, profane or indecent language to a racing official WAC 260-80-130~~	~~$50~~	~~$100~~	~~$250~~
~~Unsafe vehicle operation WAC 260-20-020~~	~~Warning to $50~~		
~~Financial responsibility WAC 260-28-030~~	~~Resolve 30 days or before the end of the fall meet (whichever is sooner) to resolve or suspension~~		
~~Failure to appear for ruling conference WAC 260-24-510~~	~~Suspension~~))		
Failure to honor riding engagements (call) - agents WAC 260-32-400	$25	$50	$100
Reporting incorrect weight - jockeys WAC 260-32-150	$25	$50	$100
Failure to appear for films - jockeys WAC 260-24-510	$25	$50	$100

Class C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Failure to fulfill riding engagement WAC 260-32-080	$50	$100	$200
Easing mount without cause WAC 260-52-040	$100	$200 and/or suspension	$400 and/or suspension
Jockey failing to maintain straight course or careless riding WAC 260-52-040	Warning to $750 and/or suspension (riding days)		
Jockey's misuse of whip WAC 260-52-040	Warning to $2500		
((~~Use of stimulating device (may include batteries) WAC 260-52-040~~	~~1 year suspension plus mandatory referral to commission for revocation~~		
~~Possession of stimulating device (may include batteries) WAC 260-52-040 and 260-80-100~~	~~1 year suspension plus mandatory referral to commission for revocation~~		
~~Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010 and 260-80-020~~	~~1 year suspension plus mandatory referral to commission for revocation~~))		
Entering ineligible horse WAC 260-40-140 and 260-80-030	$((~~25~~)) 100	$((~~50~~)) 200	$((~~50~~)) 300
Unauthorized late scratch WAC 260-40-010	$100	$200	$300
Arriving late to the paddock WAC 260-28-200	Warning to $25	$50	$((~~50~~)) 100
Failure to deliver furosemide treatment form WAC 260-70-650	Warning to $25	$50	$100
Failure to have registration papers on file - resulting in a scratch WAC 260-40-090	$50	$100	$100
Failure to submit gelding report WAC 260-28-295	$50	$100	$200
Failure to obtain permission for equipment changes WAC 260-44-010	((~~Warning to $50~~)) $25	$50	$((~~50~~)) 100

Class A, B and C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Smoking in restricted areas WAC 260-20-030	$50	$100	$250 and/or suspension
Tampering with a fire protection, prevention or suppression system or device WAC 260-20-030	$((~~50~~)) 200	$((~~100~~)) 500	$((~~250 plus possible~~)) 1000 and/or suspension
Failure to post problem gambling signs WAC 260-12-250	Warning to $50	$100	$200
Issuing a check to the commission with not sufficient funds WAC 260-28-030	$((~~25~~)) 50	$((~~50~~)) 100	$((~~100~~)) 200

Class A, B and C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Failure to follow instructions of the outrider WAC 260-24-690	$50	$100	$200
Use of improper, profane, or indecent language WAC 260-80-130	$200	$300	$500
Failure to complete provisional license application within fourteen days WAC 260-36-200	((~~Warning to~~)) $100 and ((~~denial~~)) suspension of license	$250 and ((~~denial~~)) suspension of license	$500 and ((~~denial~~)) suspension of license
Failure to register employees with the commission (trainers responsibility) WAC 260-28-230	Warning to $50	$100	$200
Failure to furnish fingerprints WAC 260-36-100	$100 and suspension of license	$250 and suspension of license	$500 and suspension of license
Nonparticipation - licensing WAC 260-36-080	License canceled		
False application WAC 260-36-100 and 260-36-120	$50 to $250 and/or possible denial, suspension or revocation of license		
Failure to divulge a misdemeanor or gross misdemeanor WAC 260-36-120	Warning to $100		
Failure to divulge a felony WAC 260-36-120	$100 to $250 and/or denial, suspension, or revocation of license		
Failure to provide full disclosure, refusal to respond to questions, or responding falsely to stewards or commission investigators WAC 260-24-510	$500 fine and/or denial, suspension or revocation of license		
Failure to pay proper industrial insurance premium(s) chapter 260-220 WAC and WAC 260-36-230	In addition to being required to pay the full industrial insurance premium, the trainer will be assessed a fine equal to fifty percent of the premium due		
Failure to pay ((~~or default on~~)) L&I payment agreement WAC 260-28-235	((~~Per L&I premium payment agreement,~~)) Immediate suspension until premium paid ((~~plus $25~~)) and $50 fine for each quarter payment is late		
((~~Failure to register employees with the commission (trainer's responsibility) WAC 260-28-230~~	~~Warning to $50~~))		
Unlicensed person on the backside WAC 260-20-040 ((~~and 260-20-090~~))	Report violation to the racing association		
Financial responsibility WAC 260-28-030	Resolution with mutual agreement between the parties - failure to comply with the agreement will result in immediate suspension		
Failure to appear for a ruling conference WAC 260-24-510	Suspension (conference may be held in individual's absence)		
Failure to pay fine within 7 days of ruling conference (no extension granted or no request for hearing filed) WAC 260-24-510	Suspension until fine paid		
Possession or use of a stimulating device (may include batteries) WAC 260-52-040 and 260-80-100	1 year suspension plus mandatory referral to commission for revocation		

Class A, B and C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010	1 year suspension plus mandatory referral to commission for revocation		
Failure to wear proper safety equipment WAC 260-12-180	$50	$100	$200
Horses shod with improper toe grabs WAC 260-44-150	Horse scratched and $250 fine to trainer and plater	Horse scratched and $500 fine to trainer and plater	Horse scratched and $1000 fine to trainer and plater
Failure to display or possess license badge when in restricted area WAC 260-36-110	$25	$50	$100

(2) In determining whether an offense is a first, second, third or subsequent offense, the commission, or designee ((~~shall~~)) will include violations((~~,~~)) which occurred in Washington as well as any other recognized racing jurisdiction. If a penalty is not listed under second or third/subsequent offense columns, the penalty listed in the "first offense" column ((~~shall~~)) will apply to each violation.

(3) Except as otherwise provided in this chapter, for any other violation not specifically listed above, the stewards have discretion to impose the penalties as provided in WAC 260-24-510 (3)(a). For violations considered minor, the fine can be up to $500 and/or suspension for up to sixty days. Fines for violations considered major can be up to $2,500 and/or suspension up to one year, or revocation.

(4) Circumstances which may be considered for the purpose of mitigation or aggravation of any penalty ((~~shall~~)) will include, but are not limited to, the following:

(a) The past record of the licensee or applicant;

(b) The impact of the offense on the integrity of the parimutuel industry;

(c) The danger to human and/or equine safety;

(d) The number of prior violations of these rules of racing or violations of racing rules in other jurisdictions; and/or

(e) The deterrent effect of the penalty imposed.

(5) For violations covered by chapter 260-70 WAC, Medication, the stewards ((~~shall~~)) will follow the penalty guidelines as set forth in WAC 260-84-090.

(6) The stewards may refer any matter to the commission and may include recommendations for disposition. The absence of a stewards' referral ((~~shall~~)) will not preclude commission action in any matter. A stewards' ruling ((~~shall~~)) will not prevent the commission from imposing a more severe penalty.

AMENDATORY SECTION (Amending WSR 06-07-058, filed 3/10/06, effective 4/10/06)

WAC 260-84-090 Equine medication and prohibited substances—Penalties—Guidelines. (1) Upon a finding of a violation of the medication and prohibited substances rules in chapter 260-70 WAC, the stewards ((~~shall~~)) will consider the classification level of the medication, drug or substance prior to imposing a penalty. The stewards ((~~shall~~)) will also consult with an official veterinarian to determine the nature and seriousness of the laboratory finding or the medication violation and whether the violation was a result of the administration of a therapeutic medication as documented in a veterinarian's report received per WAC 260-70-540.

(2) A lesser penalty than that established in WAC 260-84-110 may be imposed if a majority of the stewards determine that mitigating circumstances warrant a lesser penalty. If a majority of the stewards determine a greater penalty is appropriate or that a penalty in excess of the authority granted them is appropriate, they may impose the maximum penalty authorized and refer the matter to the commission with specific recommendations for further action. In determining if there are mitigating circumstances surrounding a medication violation for substances referred to in chapter 260-70 WAC, at least the following ((~~shall~~)) will be considered:

(a) The past record of the trainer and/or veterinarian in medication/drug cases;

(b) The potential of the medication/drug to influence a horse's racing performance;

(c) The availability of the medication/drug;

(d) Whether there is reason to believe the responsible party knew of the administration of the medication/drug used;

(e) The steps taken by the trainer to safeguard the horse;

(f) The probability of environmental contamination or inadvertent exposure due to human drug use;

(g) The purse of the race;

(h) Whether the medication found was one for which the horse was receiving a treatment as determined by the veterinarian report(s);

(i) Whether there was any suspicious betting pattern in the race; and

(j) Whether the presence of the medication/drug in urine was confirmed in serum or plasma.

(3) If a majority of the stewards determine a penalty greater than established in these rules is appropriate, they may impose the maximum penalty authorized and refer the matter to the commission with specific recommendations for further action.

(4) If the penalty is not otherwise established for a violation of chapter 260-70 WAC, the penalty ((~~shall~~)) will be determined by the board of stewards.

AMENDATORY SECTION (Amending WSR 05-07-064, filed 3/11/05, effective 4/11/05)

WAC 260-84-100 Furosemide penalties. (1) Penalties ((~~shall~~)) will be assessed against any person found to be responsible or party to the improper administration of furosemide or failure to administer furosemide when required, in chapter 260-70 WAC as follows:

Fine not to exceed three hundred dollars. Multiple violations by an individual within a three hundred sixty-five day period may be referred to the commission for further action, which may include an additional fine or suspension.

(2) Equine medication violations from Washington and all recognized racing jurisdictions, ((~~shall~~)) will be considered when assessing penalties.

AMENDATORY SECTION (Amending WSR 05-07-064, filed 3/11/05, effective 4/11/05)

WAC 260-84-110 Penalties for uniform classifications. (1) Penalties ((~~shall~~)) will be assessed against any person found to be responsible or party to the improper administration of a drug or the intentional administration of a drug resulting in a positive test. In assessing penalties under this section, violations in the last three hundred sixty-five days from Washington and all recognized racing jurisdictions ((~~shall~~)) will be considered.

(a) Class 1 - One to five year suspension and at least $5,000 fine and loss of purse.

(b) Class 2 - Six months to one year suspension and $1,500 to $2,500 fine and loss of purse.

(c) Class 3 - Sixty days to six months suspension and up to $1,500 fine and possible loss of purse.

(d) Class 4 - Zero to sixty days suspension and up to $1,000 fine and possible loss of purse.

(e) Class 5 - Warning to fifteen days suspension with a possible loss of purse and/or fine.

(2) A lesser penalty may be imposed if a majority of the stewards determine that mitigating circumstances, as outlined in WAC ((~~260-70-090~~)) 260-84-090 exist.

AMENDATORY SECTION (Amending WSR 05-07-064, filed 3/11/05, effective 4/11/05)

WAC 260-84-120 Penalties relating to permitted medication. (1) Should the laboratory analysis of serum or plasma taken from a horse show the presence of more than one approved nonsteroidal anti-inflammatory drug (NSAID) in violation of these rules the following penalties ((~~shall~~)) will be assessed:

(a) For a first offense within a three hundred sixty-five day period - Fine not to exceed $300;

(b) For a second offense within a three hundred sixty-five day period - Fine not to exceed $750;

(c) For a third offense within a three hundred sixty-five day period - Fine not to exceed $1,000.

(2) Should the laboratory analysis of serum or plasma taken from a horse show the presence of phenylbutazone in excess of the quantities authorized by this rule, the following penalties ((~~shall~~)) will be assessed:

Concentration	1st offense within 365 days	2nd offense within 365 days	3rd and subsequent offenses within 365 days
> 5.0 but < 6.5 mcg/ml	Warning	Fine not to exceed $300	Fine not to exceed $500
((≥)) ≥ 6.5 but < 10.0 mcg/ml	Fine not to exceed $300	Fine not to exceed $500	Fine not to exceed $1000
((≥)) ≥ 10.0 mcg/ml	Fine not to exceed $500	Fine not to exceed $1000	Fine not to exceed $2500 and possible suspension

(3) Detection of any unreported permitted medication, drug, or substance by the primary testing laboratory may be grounds for disciplinary action.

(4) As reported by the primary testing laboratory, failure of any test sample to show the presence of a permitted medication, drug or substance when such permitted medication, drug or substance was required to be administered may be grounds for disciplinary action, which may include a fine not to exceed three hundred dollars. Multiple violations by an individual within a three hundred sixty-five day period may be referred to the commission for further action, which may include an additional fine and/or suspension or revocation.

(5) In assessing penalties for equine medication, prior offenses will count regardless of whether the violation(s) ((~~from~~)) occurred in Washington ((~~and all~~)) or another recognized racing jurisdiction((~~s shall be considered~~)), and regardless of the prior concentration level.

AMENDATORY SECTION (Amending WSR 05-07-064, filed 3/11/05, effective 4/11/05)

WAC 260-84-130 Penalties for prohibited practices. For a person or persons found to be responsible for ((~~or party to~~)) violation of WAC 260-70-545, including the treating veterinarian, the following penalties ((~~shall~~)) will be assessed:

(1) For violations of WAC 260-70-545, except WAC 260-70-545 (4)(b);

(a) For first offense - Thirty day suspension and $1,000 fine;

(b) For second offense - Sixty day suspension and $2,000 fine;

(c) For third offense - One year suspension, $2,500 fine and a mandatory referral to the commission.

(2) For violations of WAC 260-70-545 (4)(((~~b~~))), the person or persons found to be responsible for ((~~or party to~~)) the violation, including the treating veterinarian ((~~shall~~)) will be suspended for one year, ((~~shall~~)) pay a $2,500 fine and ((~~there shall be a mandatory referral~~)) referred to the commission.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 260-84-050	Suspensions—Computation of time.
WAC 260-84-070	Ejectment from grounds—Permission to reenter.

WSR 08-05-087
PERMANENT RULES
HORSE RACING COMMISSION

[Filed February 15, 2008, 8:24 a.m., effective March 17, 2008]

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

Purpose: To amend sections in chapter 260-36 WAC that include the authority of the stewards and appropriate penalties for failing to complete the application/licensing process, and clarify section regarding industrial insurance premiums for exercise riders.

Citation of Existing Rules Affected by this Order: Amending WAC 260-36-085, 260-36-100, 260-36-200, 260-36-220, and 260-36-230.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 08-02-016 on December 21, 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 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, Repealed 0.

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

Date Adopted: February 14, 2008.

R. J. Lopez
Deputy Secretary

AMENDATORY SECTION (Amending WSR 07-21-059, filed 10/12/07, effective 11/12/07)

WAC 260-36-085 License and fingerprint fees. The following are the license fees for any person actively participating in racing activities:

Apprentice jockey	$76.00
Assistant trainer	$36.00
Association employee—management	$25.00
Association employee—hourly/seasonal	$15.00
Association volunteer nonpaid	No fee
Authorized agent	$25.00
Clocker	$25.00
Exercise rider	$76.00
Groom	$25.00
Honorary licensee	$15.00
Jockey agent	$76.00
Jockey	$76.00
Other	$25.00
Owner	$76.00
Pony rider	$76.00
Service employee	$25.00
Spouse groom	$25.00
Stable license	$47.00
Trainer	$76.00
Vendor	$116.00
Veterinarian	$116.00

The license fee for multiple licenses may not exceed $116.00, except persons applying for owner, veterinarian or vendor license must pay the license fee established for each of these licenses.

The following are examples of how this section applies:

Example one - A person applies for the following licenses: Trainer ($76.00), exercise rider ($76.00), and pony rider ($76.00). The total license fee for these multiple licenses would only be $116.00.

Example two - A person applies for the following licenses: Owner ($76.00), trainer ($76.00) and exercise rider ($76.00). The total cost of the trainer and exercise rider license would be $116.00. The cost of the owner license ($76.00) would be added to the maximum cost of multiple licenses ($116.00) for a total license fee of $192.00.

Example three - A person applies for the following licenses: Owner ($76.00), vendor ($116.00), and exercise rider ($76.00). The license fees for owner ($76.00) and vendor ($116.00) are both added to the license fee for exercise rider ($76.00) for a total license fee of $268.00.

In addition to the above fees, except for association volunteers (nonpaid) at Class C race meets, a $10.00 fee will be added to cover the costs of conducting a fingerprint-based background check. The background check fee will be assessed only once annually per person regardless of whether the person applies for more than one type of license in that year.

The commission will review license and fingerprint fees annually to determine if they need to be adjusted to comply with RCW 67.16.020.

AMENDATORY SECTION (Amending WSR 07-01-052, filed 12/14/06, effective 1/14/07)

WAC 260-36-100 Fingerprints. Every person applying for a license must furnish the commission his or her fingerprints upon making an initial application for a license and at

least once every three years thereafter. However, the commission, executive secretary, stewards, or security investigators, in their discretion, may require fingerprints from any applicant or licensee at any time. If an applicant fails to furnish fingerprints, the stewards may suspend the license or deny, and/or assess a fine.

AMENDATORY SECTION (Amending WSR 07-01-052, filed 12/14/06, effective 1/14/07)

WAC 260-36-200 Application for owner's license by trainer or other licensee. (1) A trainer, or other licensee approved by the stewards, may submit an application for an owner's license on behalf of an owner. Upon submitting such application, the ((~~trainer~~)) licensee must pay all license fees and required labor and industries premiums.

(2) Within fourteen days of the ((~~trainer's~~)) licensee's submission of a license application on behalf of an owner, the owner must complete the license application process by providing fingerprints, a photograph, and any other information required by the commission. If the owner fails to complete the application process within ((~~the~~)) fourteen days, the board of stewards may ((~~revoke~~)) suspend the owner's license and/or assess a fine to the licensee found responsible.

(3) No horse may start in a race if the horse is owned in whole or in part by an owner who has failed to complete the owner's application.

AMENDATORY SECTION (Amending WSR 07-01-051, filed 12/14/06, effective 1/14/07)

WAC 260-36-220 Industrial insurance premiums—Additional premiums for stalls and horses started. (1) At the time of licensing, a trainer must pay all the industrial insurance premiums established by labor and industries, unless exempted under WAC 260-36-240.

(2)(a) A trainer at a Class A or B track must pay ((~~an~~)) industrial insurance premiums ((~~for exercise riders~~)) based upon the number of stalls the trainer has both on and off the grounds of a racing association. ((~~The registration papers filed in the race office may be used to determine the number of stalls the trainer has on the grounds.~~)) All trainers at a Class A or B track are required to pay at least one stall premium at the time of licensing. As to stalls off the grounds of a racing association, a trainer must count all stalls that are used for horses subject to being ridden by licensed exercise riders employed by the trainer, ((~~where those~~)) if the exercise riders are ((~~subject~~)) to be covered by Washington labor and industries industrial insurance ((~~coverage~~)) under the horse industry account.

(b) ((~~In the event the number of stalls a trainer has on the grounds or the registration papers in the race office are unavailable, the number of industrial insurance premiums for exercise riders~~)) The calculations for number of stalls will be based upon ((~~the number of~~)) stalls ((~~or papers in the race office from the previous year~~)) allotted by the racing association.

(c) The number of ((~~exercise riders for which~~)) stall premiums that a trainer is required to pay ((~~industrial insurance premiums~~)) will be determined as follows:

(i) For zero to twelve stalls a trainer must pay ((~~an industrial insurance~~)) for one stall premium ((~~for one exercise rider~~));

(ii) For thirteen to twenty-four stalls a trainer must pay ((~~an industrial insurance~~)) for two stall premiums ((~~for two exercise riders~~));

(iii) For twenty-five to thirty-six stalls a trainer must pay ((~~an industrial insurance~~)) for three stall premiums ((~~for three exercise riders~~)); and

(iv) For thirty-seven or more stalls a trainer must pay ((~~an industrial insurance~~)) for four stall premiums ((~~for four exercise riders~~)).

(d) If any trainer increases the number of stalls, on or off the grounds, during the license year, the trainer is responsible to pay the additional stall premiums owed as provided in this section.

(3) ((~~The calculation of exercise rider industrial insurance premiums for trainers at Class C racetracks is the total number of horses listed under that trainer at all the Class C racetracks.~~)) (a) A trainer at a Class C track must pay industrial insurance horse-start premiums based upon the number of different horses the trainer starts at the Class C tracks during the calendar year. All trainers at a Class C track are required to pay at least one horse-start premium.

(b) The number of ((~~exercise riders for which~~)) horse-start premiums a trainer is required to pay ((~~industrial insurance premiums~~)) will be determined as follows:

(((~~a~~))) (i) For zero to twelve different horses ((~~listed~~)) started, a trainer must pay ((~~an industrial insurance~~)) for one horse-start premium ((~~for one exercise rider~~));

(((~~b~~))) (ii) For thirteen to twenty-four different horses ((~~listed~~)) started, a trainer must pay ((~~an industrial insurance~~)) for two horse-start premiums ((~~for two exercise riders~~));

(((~~c~~))) (iii) For twenty-five to thirty-six different horses ((~~listed~~)) started, a trainer must pay ((~~an industrial insurance~~)) for three horse-start premiums ((~~for three exercise riders~~)); and

(((~~d~~))) (iv) For thirty-seven or more different horses ((~~listed~~)) started, a trainer must pay ((~~an industrial insurance~~)) for four horse-start premiums ((~~for four exercise riders~~)).

(((~~4) If any trainer increases the number of horses listed or the number of stalls on or off the grounds during the license year, the trainer must pay an additional exercise rider industrial insurance premium owed as provided in this section.~~)) (c) If, during the calendar year, a horse is started by more than one trainer, that horse will count as a different horse for each trainer for the purpose of calculating the number of horse-start premiums required.

(d) The trainer is responsible to maintain their records of the number of different horses started, and to pay the additional horse-start premiums owed, when they increase the number of different horses started in a race as described in this section.

AMENDATORY SECTION (Amending WSR 07-01-051, filed 12/14/06, effective 1/14/07)

WAC 260-36-230 Short duration industrial insurance coverage. (1) Trainers entering horses to run in Wash-

ington races will be allowed to obtain short duration industrial insurance coverage under the following conditions:

(a) Trainers who ship in to Class A or B race meets may purchase short duration industrial insurance coverage for seven consecutive calendar days. The trainer must pay twenty percent of the trainer base premium, and twenty percent for each groom slot obtained, assistant trainer hired, and each ((~~exercise rider~~)) industrial insurance stall premium as required in WAC 260-36-220 (all rounded to the next whole dollar). The base premium used for this calculation will be the industrial insurance premiums for Class A or B race meets. A trainer may only purchase Class A or B race meet short duration coverage for three seven-day periods per calendar year.

(b) Trainers who ship in to Class C race meets may purchase short duration industrial insurance coverage for seven consecutive calendar days. The trainer must pay twenty percent of the trainer base premium, and twenty percent of each groom slot obtained, assistant trainer hired, and each ((~~exercise rider~~)) industrial insurance horse-start premium as required in WAC 260-36-220 (all rounded to the next whole dollar). The base premium used for this calculation will be the industrial insurance premiums for Class C race meets. A trainer may only purchase Class C race meet short duration coverage for three seven-day periods per calendar year. Class C race meet short duration industrial insurance coverage is not transferable to a Class A or B race meet.

(2) Before short duration coverage will be allowed, a trainer must obtain a license and pay all applicable license and fingerprint fees required in WAC 260-36-085. The trainer is also required to ensure that each groom, assistant trainer, pony rider, and exercise rider hired by the trainer has a proper license. A trainer may only employ persons on the grounds of the racing association who are properly licensed by the commission.

WSR 08-05-088
PERMANENT RULES
HORSE RACING COMMISSION
[Filed February 15, 2008, 8:24 a.m., effective March 17, 2008]

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

Purpose: To amend chapters in Title 260 WAC as part of the agency's regulatory reform effort, to match the model rules whenever possible, and to amend section[s] in clear and concise language (plain talk).

Citation of Existing Rules Affected by this Order: Repealing WAC 260-52-050, 260-56-020, 260-56-070, 260-64-030, 260-64-060, 260-76-010 and 260-76-020; and amending WAC 260-24-030, 260-24-500, 260-24-510, 260-24-520, 260-24-530, 260-24-540, 260-24-550, 260-24-560, 260-24-570, 260-24-580, 260-24-590, 260-24-600, 260-24-610, 260-24-620, 260-24-630, 260-24-640, 260-24-650, 260-24-660, 260-24-670, 260-24-680, 260-24-690, 260-24-700, 260-52-010, 260-52-020, 260-52-030, 260-52-040, 260-52-060, 260-52-070, 260-52-080, 260-52-090, 260-56-010, 260-56-040, 260-56-060, 260-60-300, 260-60-310, 260-60-330, 260-60-340, 260-60-350, 260-60-360, 260-60-380, 260-60-400, 260-60-410, 260-60-420, 260-60-440, 260-60-450, 260-60-460, 260-60-470, 260-64-010, 260-64-020, 260-64-040, 260-64-050, 260-66-010, 260-66-020, and 260-66-030.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 08-02-045 on December 27, 2007.

Changes Other than Editing from Proposed to Adopted Version: Minor change to WAC 260-24-580 to include a responsibility of the starter to ensure that all horses are gate-qualified before being able to start in a race.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 55, Repealed 7.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 55, Repealed 7.

Number of Sections Adopted Using Negotiated Rule Making: New 3, Amended 55, Repealed 7; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 14, 2008.

R. J. Lopez
Deputy Secretary

AMENDATORY SECTION (Amending Rule 232, filed 1/30/67)

WAC 260-24-030 ((~~Submittal of roster to commission—Approval—Substitutions.~~)) Commission approval of racing officials. ((~~At least ten days prior to the first day of a race meeting the association shall submit in writing to the commission the names of all association racing officials engaged for the meeting, and no association racing official shall be qualified to act until he shall have been approved by the commission. In the event of incapacitation of any such approved association official the association may, with the approval of the commission, appoint a substitute.~~)) (1) At least ten days prior to the first day of an approved race meet, the association must submit to the commission, in writing, the names of all racing officials for the race meet.

(2) At least ten days prior to the first day of an approved race meet, the executive secretary must submit to the commission, in writing, the names of all commission employees who will be serving as racing officials for the race meet.

(3) Both the association and the executive secretary may use substitutions as necessary. All substitutions must be reported to the commission, in writing, at the next regular scheduled meeting of the commission.

AMENDATORY SECTION (Amending WSR 05-07-065, filed 3/11/05, effective 4/11/05)

WAC 260-24-500 Racing officials. (1) Officials at a race meet include the following:

(a) Stewards;
(b) Racing secretary;
(c) Horsemen's bookkeeper;
(d) Mutuel manager;
(e) Official veterinarian(s);
(f) Horse identifier;
(g) Paddock judge;
(h) Starter;
(i) Security director, association;
(j) Commission ((~~security inspector(s)~~)) investigator(s);
(k) Commission auditor;
(l) Clerk of scales;
(m) Jockey room supervisor;
(n) Film analyst;
(o) Clocker(s);
(p) Race timer;
(q) Paddock plater;
(r) Mutuel inspector;
(s) Outrider(s);
(t) Any other person designated by the commission.

(2) ((~~The commission officials of a race meet shall be designated prior to each race meet and those commission officials shall be compensated by the commission.~~))

The association officials of a race meet ((~~shall~~)) will include but are not limited to: Racing secretary, mutuel manager, starter, horsemen's bookkeeper, association security director, jockey room supervisor and outrider(s).

(3) Eligibility:

(a) To qualify as a racing official, the appointee ((~~shall~~)) must be;

(i) Of good character and reputation;

(ii) Familiar with the duties of the position and with the commission's rules of racing;

(iii) Mentally and physically able to perform the duties of the job; and

(iv) In good standing and not under suspension or ineligible in any recognized racing jurisdiction.

(b) To qualify for appointment as a steward the appointee ((~~shall~~)) must be an Association of Racing Commissioners International-accredited steward, unless the appointee has been appointed as a substitute steward as provided in WAC 260-24-510, and be in good standing with all Association of Racing Commissioners International member jurisdictions((~~, unless the appointee has been appointed as a substitute steward as provided in WAC 260-24-510~~)). The commission may waive this accreditation requirement for Class C race ((~~meetings~~)) meets.

(4) The commission, in its sole discretion, may determine the eligibility of a racing official and, in its sole discretion, may approve or disapprove any such official for licensing.

(5) While serving in an official capacity, racing officials and their assistants ((~~shall~~)) may not:

(a) Participate in the sale ((~~or~~)), purchase, or ownership of any horse racing at the meet; unless disclosed in advance and approved by the board of stewards;

(b) Sell or solicit horse insurance on any horse racing at the meet;

(c) Be licensed in any other capacity without permission of the ((~~commission~~)) executive secretary, or in case of an emergency, the permission of the stewards;

(d) Make a wager on the outcome of any horse race ((~~for which parimutuel wagering is conducted~~)) at a race meet under the jurisdiction of the commission; or

(e) Consume or be under the influence of alcohol and/or ((~~any prohibited substances~~)) drugs while performing official duties.

(6) Racing officials and their assistants ((~~shall~~)) must immediately report to the stewards every observed violation of these rules.

(7) Complaints against officials:

(a) ((~~Complaints against any steward shall be made in writing to the commission and signed by the complainant;~~

~~(b)~~)) Any complaint against ((~~a~~)) an association racing official other than a steward ((~~shall~~)) will be made to the board of stewards in writing and signed by the complainant. ((~~All such complaints shall be reported to the commission by the stewards, together with a report of the action taken or the recommendation of the stewards;~~

~~(c) A racing official may be held responsible by the stewards or the commission for the actions of their assistants;~~

~~(8) Appointment:~~

~~(a) A person shall not be appointed to more than one racing official position at a meet unless specifically approved by the commission;~~

~~(b) The commission shall appoint or approve its officials for each race meet, the officials shall perform the duties as outlined herein and such other duties as are necessary as determined by the commission or its executive secretary.~~

~~(9) Where an emergency vacancy exists among racing officials, the executive secretary or the association, shall fill the vacancy immediately. Such appointment shall be reported to the commission and shall be effective until the vacancy is filled in accordance with these rules.~~

~~(10)~~)) The presiding steward will report to the executive secretary the action taken or recommended by the board of stewards. The executive secretary will determine whether the matter will be referred to the commission. The board of stewards will notify the complainant, in writing, of the action taken or recommended;

(b) Any complaint against a commission racing official, including an association steward, will be made to the executive secretary. The executive secretary will, if able, notify the complainant in writing of the action taken;

(8) Should any steward be absent at race time, and no approved alternate steward be available, the remaining stewards ((~~shall~~)) may appoint a substitute for the absent steward. If a substitute steward is appointed, the ((~~commission~~)) presiding steward will notify the executive secretary and the association ((~~shall be notified by the stewards~~)).

AMENDATORY SECTION (Amending WSR 07-03-067, filed 1/16/07, effective 2/16/07)

WAC 260-24-510 Stewards. (1) General authority:

(a) The stewards for each race meet are responsible to the executive secretary for the conduct of the race meet and the

initial agency determination of alleged rule violations in accordance with these rules;

(b) The stewards will enforce the rules of racing in chapters 260-12 through 260-84 WAC, excluding chapters 260-49 and 260-75 WAC. The stewards will take notice of alleged misconduct or rule violations and initiate investigations into such matters;

(c) The stewards' authority includes regulation of all racing officials, track management, licensed personnel, other persons responsible for the conduct of racing, and patrons, as necessary to insure compliance with these rules;

(d) All nominations, entries, ((~~declarations~~)) and scratches will be monitored by a steward;

(e) The stewards have authority to resolve conflicts or disputes related to violations of the rules of racing and to discipline violators in accordance with the provisions of these rules;

(f) The stewards have the authority to interpret the rules and to decide all questions of racing. The stewards of the race meet are hereby given authority to exercise their full power, recommending to the commission the imposition of more severe penalties if necessary.

(2) The stewards' period of authority will commence and terminate at the direction of the executive secretary. One steward will be designated as the presiding steward by the executive secretary.

(3) Stewards ruling conference regarding violations of rules of racing:

(a) The stewards have authority to charge any licensee or other person with a violation of these rules, to make rulings and to impose penalties including the following:

(i) Issue a reprimand;

(ii) Assess a fine not to exceed $2,500.00, except as provided in chapter 260-84 WAC ((~~260-84-060 and 260-84-110~~));

(iii) Require forfeiture or redistribution of purse or award, when specified by applicable rules;

(iv) Place a licensee on probation;

(v) Suspend a license or racing privileges for not more than one year per violation;

(vi) Revoke a license; or

(vii) Exclude from ((~~grounds~~)) facilities under the jurisdiction of the commission.

(b) The stewards' imposition of reprimands, fines and suspensions will be based on the penalties in chapter 260-84 WAC.

For any violation not specifically listed in chapter 260-84 WAC, the stewards have discretion to impose the penalties as provided in (a) of this subsection.

(c) The stewards may direct a jockey to meet with the film analyst whenever a jockey is involved in questionable, unsafe or potentially dangerous riding. Jockeys referred to the film analyst must appear when directed. Failure to appear when directed will be considered a violation of the rules of racing for which penalties may be imposed.

(d) The stewards have the authority to conduct a ruling conference, and the authority to:

(i) Direct the attendance of witnesses and commission employees;

(ii) Direct the submission of documents, reports or other potential evidence;

(iii) Inspect license documents, registration papers and other documents related to racing or the rule violation;

(iv) Question witnesses; and

(v) Consider all relevant evidence.

(e) The stewards must serve notice of a conference to person(s) alleged to have committed a violation, which must contain the following information:

(i) A statement of the time and place the conference will be held;

(ii) A reference to the particular sections of the WAC involved;

(iii) A short and plain statement of the alleged violation; and

(iv) A statement that if the person does not appear, the ruling will be made in his/her absence, and that failure to appear will be considered a separate violation of the rules of racing.

(f) Failure to appear for a ruling conference will be considered a violation of the rules of racing for which penalties may be imposed.

(g) It is the duty and obligation of every licensee to make full disclosure to the board of stewards and commission investigators conducting an investigation into any alleged violation of these rules, of any knowledge he/she possesses of a violation of any rule of racing. No person may refuse to respond to questions before the stewards or commission investigators on any relevant matter within the authority of the stewards or commission, except in the proper exercise of a legal privilege, nor may any person respond falsely before the stewards or to commission investigators.

(h) At the ruling conference, the stewards will allow the person alleged to have committed a violation to make a statement regarding the alleged violation.

(i) All ruling conferences will be recorded.

(j) Every ruling by the stewards from a ruling conference must be served in writing on the person(s) or parties found in violation within five days and must include:

(i) Time and place the ruling was made;

(ii) Statement of rules violated;

(iii) Details of the violation;

(iv) Penalties to be imposed;

(v) Procedure for requesting a hearing before the commission to challenge the ruling; and

(vi) Plain statement of the options of the person found in violation, which must include:

(A) Accepting the penalty imposed by the stewards; or

(B) Requesting a hearing before the commission challenging the stewards' ruling within seven days of service of the ruling.

(k) ((~~Any penalty~~)) Penalties imposed by the stewards, except for those penalties in (l), (m), and (q) of this subsection, will be stayed if a request for hearing before the commission is filed within the seven days of service of the ruling.

(l) If the stewards determine that a person's actions constitute an immediate((~~,~~)) and/or substantial danger to human and/or equine health, safety, or welfare, and a request for hearing before the commission is filed within seven days of service of the ruling, no stay will be granted except by a hear-

ing before the commission. The hearing before the commission will occur within thirty days of filing the request for hearing before the commission.

(m) If the stewards deny an application for license or suspend or revoke an existing license for any reasons listed in WAC 260-36-120(2), and a request for hearing before the commission is filed within seven days of service of the ruling, no stay will be granted except by a hearing before the commission. A hearing before the commission over whether or not to grant a stay will occur at the discretion of the commission.

(n) The stewards' ruling will be posted and a copy provided to the racing association.

((~~(n)~~)) (o) If a person does not file a request for hearing before the commission within seven days or in the format required by chapter 260-08 WAC, then the person is deemed to have waived his or her right to a hearing before the commission. After seven days, if a request for hearing before the commission has not been filed, the stewards' penalty will be imposed.

((~~(o)~~)) (p) "Service" of the notice of ruling conference or a stewards' ruling may be by either personal service to the person or by depositing the notice of ruling conference or stewards' ruling into the mail to the person's last known address in which case service is complete upon deposit in the U.S. mail.

((~~(p)~~)) (q) If the stewards determine that a person's actions constitute an immediate, substantial danger to human and/or equine health, safety, or welfare, the stewards may enter a ruling summarily suspending the license and/or ejecting the person from the grounds pending a ruling conference before the board of stewards. A summary suspension takes effect immediately on issuance of the ruling. If the stewards suspend a license under this subsection, the licensee is entitled to a ruling conference before the board of stewards, not later than five days after the license was summarily suspended. The licensee may waive his/her right to a ruling conference before the board of stewards on the summary suspension.

(4) Protests, objections and complaints. The stewards will ensure that an investigation is conducted and a decision is rendered in every protest, objection and complaint made to them. ((~~The stewards are vested with the power to determine the extent of disqualification in case of fouls. They may place the offending horse behind such horses as in their judgment it interfered with, or they may place it last.~~))

(5) Stewards' presence:

(a) On each racing day at least one steward will be on duty at the track beginning three hours prior to first race post time.

(b) Three stewards must be present in the stewards' stand during the running of each race. ((~~In case of emergency, the executive secretary may appoint a substitute steward.~~))

(6) Order of finish for parimutuel wagering:

(a) The stewards will determine the official order of finish for each race in accordance with these rules of racing;

(b) The decision of the stewards as to the official order of finish, including the disqualification of a horse or horses as a result of any event occurring during the running of the race, is final for purposes of distribution of the parimutuel wagering pool.

(7) The stewards have the authority to cancel wagering on an individual betting interest or on an entire race and also have the authority to cancel a parimutuel pool for a race or races, if such action is necessary to protect the integrity of parimutuel wagering.

(8) Records and reports:

(a) The stewards will prepare a weekly report of their regulatory activities. The report will contain the name of the racetrack, the date, the weather and track conditions, claims, inquiries, protests, objections, complaints and conferences. The report will be filed with and approved by the executive secretary;

(b) Not later than seven days after the last day of a race ((~~meeting~~)) meet, unless approved by the executive secretary, the presiding steward will submit a written report regarding the race ((~~meeting~~)) meet to the executive secretary. The report will contain:

(i) The stewards' observations and comments regarding the conduct of the race ((~~meeting~~)) meet, the overall conditions of the association grounds during the race ((~~meeting~~)) meet; and

(ii) Any recommendations for improvement by the association or action by the commission.

(9) Stewards' list:

(a) The stewards will maintain a stewards' list of the horses which are ineligible to be entered in a race because of poor or inconsistent performance or behavior on the racetrack that may endanger the health or safety of other participants in racing;

(b) The stewards may place a horse on the stewards' list when there exists a question as to the exact identification or ownership of said horse;

(c) A horse which has been placed on the stewards' list because of inconsistent performance or behavior, may be removed from the stewards' list when, in the opinion of the stewards, the horse can satisfactorily perform competitively in a race without endangering the health or safety of other participants in racing;

(d) A horse which has been placed on the stewards' list because of questions as to the exact identification or ownership of ((~~said~~)) the horse, may be removed from the stewards' list when, in the opinion of the stewards, proof of exact identification and/or ownership has been established.

(e) An owner or trainer who disagrees with the stewards' decision of placing or maintaining a horse on the stewards' list may request and be granted a stewards' ruling conference to challenge the decision of the stewards.

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

WAC 260-24-520 Racing secretary. ((~~(1) The racing secretary shall be responsible for the programming of races during the race meeting, compiling and publishing condition books, assigning weights for handicap races, and shall receive all entries, subscriptions, declarations and scratches. The racing secretary may employ one or more assistants who may assist in performing the following duties. An assistant~~

~~racing secretary shall assume the duties of the racing secretary in that person's absence.~~

~~(2) Foal, health and other eligibility certificates:~~

~~(a) The racing secretary shall be responsible for receiving, inspecting and safeguarding the foal and health certificates, Equine Infectious Anemia (EIA) test certificates and other documents of eligibility for all horses competing at the track or stabled on the grounds;~~

~~(b) The racing secretary shall record the alteration of the sex of a horse on the horse's foal certificate and report such to the appropriate breed registry and past performance services;~~

~~(c) The racing secretary shall record on a horse's registration certificate when a posterior digital neurectomy (heel nerving) is performed on that horse.~~

~~(3) The racing secretary shall maintain a list of nerved horses which are on association grounds and shall make the list available for inspection by other licensees participating in the race meeting.~~

~~(4) The racing secretary shall maintain a list of all fillies or mares on association grounds who have been covered by a stallion. The list shall also contain the name of the stallion to which each filly or mare was bred and shall be made available for inspection by other licensees participating in the race meeting.~~

~~(5) It shall be the duty of the racing secretary to assign to applicants such stabling as he may deem proper to be occupied by horses in preparation for racing. He/she shall determine all conflicting claims of stable privileges and maintain a record of arrivals and departures of all horses stabled on association grounds.~~

~~(6) Conditions and eligibility:~~

~~(a) The racing secretary shall establish the conditions and eligibility for entering races and cause them to be published to owners, trainers and the commission and be posted in the racing secretary's office:~~

~~(b) For the purpose of establishing conditions, winnings shall be considered to include all moneys and prizes won up to the time of the start of a race;~~

~~(c) Winnings during the year shall be calculated by the racing secretary from the preceding January 1.~~

~~(7) Listing of horses, the racing secretary shall:~~

~~(a) Examine all entry blanks to verify information as set forth therein; and~~

~~(b) Select the horses to start and the also eligible horses from those entries received in accordance with these rules.~~

~~(8) Upon completion of the draw each day, the racing secretary shall post a list of entries in a conspicuous location in his/her office and make the list available.~~

~~(9) The racing secretary shall publish the official daily program, ensuring the accuracy therein of the following information:~~

~~(a) Sequence of races to be run and post time for the first race;~~

~~(b) Purse, conditions and distance for each race, and current track record for such distance;~~

~~(c) The name of licensed owners of each horse, indicated as leased, if applicable, and description of racing colors to be carried;~~

~~(d) The name of the trainer and the name of the jockey named for each horse together with the weight to be carried;~~

~~(e) The post position and saddle cloth number or designation for each horse if there is a variance with the saddle cloth designation;~~

~~(f) Identification of each horse by name, color, sex, age, sire and dam; and~~

~~(g) Such other information as may be requested by the association or the commission.~~

~~(10) The racing secretary shall examine nominations received for early closing events, late closing events and stakes events to verify the eligibility of all such nominations and compile lists thereof for publication.~~

~~(11) The racing secretary shall be caretaker of the permanent records of all stakes and shall verify that all entrance moneys due are paid prior to entry for races conducted at the meeting.~~)) The racing secretary is responsible for the following duties:

(1) Programming of races during the race meet;

(2) Compiling and publishing condition books;

(3) Assigning weights for handicap races;

(4) Receiving all entries, nominations, and scratches;

(5) Supervising the racing office employees, including the assistant racing secretary;

(6) Receiving, inspecting, and safeguarding all required foal and health certificates, Equine Infectious Anemia (EIA) test certificates, and other documents of eligibility for all horses competing at the track or stabled on the grounds;

(7) Recording the alteration of the sex of a horse on the horse's foal papers and reporting such to the appropriate breed registry and past performance services;

(8) Recording on a horse's registration certificate when a posterior digital neurectomy (heel nerving) is performed on that horse;

(9) Maintaining a list of heel nerved horses on association grounds and making the list available for inspection by persons participating in the race meet;

(10) Maintaining a list of all fillies or mares on association grounds that have been covered by a stallion, and making this list available for inspection by persons participating in the race meet. This list will include the name of the stallion;

(11) Assigning stalls to be occupied by horses in preparation for racing;

(12) Determining conflicting claims of stable privileges and maintaining a record of arrivals and departures of all horses arriving and departing the association grounds;

(13) Establishing the conditions and eligibility for entering races and publishing the conditions and eligibility to owners, trainers, and the commission. Conditions and eligibility will also be posted in the racing secretary's office.

(a) For the purpose of establishing conditions, winnings will be considered to include all moneys won up to the time of the start of the race;

(b) Winnings during the calendar year will be calculated by the racing secretary from the preceding January 1st;

(14) Entries of horses, which will include:

(a) Examining all entry blanks to verify correct information; and

(b) Selecting the horses to start and the "also eligible" horses, if any, from those entries received in accordance with WAC 260-52-020;

(15) Upon completion of the draw each day, posting a list of entries in a conspicuous location in the race office and making the lists available upon request;

(16) Publishing the official daily program and ensuring the accuracy of the following information:

(a) Sequence of races to be run and post time for the first race;

(b) Purse, conditions and distance for each race, and current track record for each distance;

(c) The name of licensed owners of each horse (indicate as leased, if applicable), and the description of racing colors to be carried;

(d) The name of the trainer and the name of the jockey for each horse together with the weight to be carried;

(e) The post position and the saddlecloth number or designation for each horse if there is a variance with the saddlecloth designation;

(f) Identification of each horse by name, color, sex, age, sire and dam; and

(g) Any other information that may be requested by the association or commission;

(17) Update the foal certificates on all winners to reflect type of race won and amount of purse money awarded;

(18) Accurately record on the foal certificates any transfer of ownership of horses, by either claim or bill of sale, to reflect true ownership of horse;

(19) Examining nominations received for early closing events, late closing events, and stakes events to verify the eligibility of all nominations and compile lists for publication;

(20) Maintaining the permanent records of all stakes and verifying that all entrance moneys due are paid prior to entry for races conducted at the race meet.

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

WAC 260-24-530 Horsemen's bookkeeper. The horsemen's bookkeeper ((~~shall maintain the records and accounts and perform the duties described herein and maintain such other records and accounts and perform such other duties as the association and commission may prescribe~~)) is responsible to maintain the records, moneys and funds on account, and the payment of all purses.

(1) Records: (((~~a~~))) The records ((~~shall~~)) will include the name, mailing address, social security number or federal tax identification number, and the state or country of residence of ((~~each~~)) all horse owners, trainers or jockeys participating at the race ((~~meeting~~)) meet who ((~~has~~)) have funds due or on deposit in the horsemen's account;

(((~~b) The records shall include a file of all required statements: Of partnerships, syndicates, corporations, assignments of interest, lease agreements and registrations of authorized agents;~~

~~(c) All records of the horsemen's bookkeeper shall be kept separate and apart from the records of the association;~~

~~(d) All records of the horsemen's bookkeeper including records of accounts and moneys and funds kept on deposit are subject to inspection by the commission at any time;~~

~~(e) The association licensee is subject to disciplinary action by the commission for any violations of or noncompliance with the provisions of this rule.~~))

(2) All records, moneys, and funds on account((~~:~~

~~(a) All moneys and funds on account with the horsemen's bookkeeper shall~~)) will be maintained((~~;~~

~~(i) Separate and apart~~)) separate from moneys and funds of the association((~~;~~

~~(ii)~~)) in an account designated as Horsemen's Account((~~; and~~

~~(iii)~~)) and in an account insured by the Federal Deposit and Insurance Corporation. The records are subject to inspection by the commission or the commission's designee at any time.

(((~~(b) The horsemen's bookkeeper shall be bonded in accordance with commission stipulations;~~

~~(c) The amount of purse money earned is credited in the currency of the jurisdiction in which the race was run. There shall be no appeal for any exchange rate loss at the time of transfer of funds from another jurisdiction.~~))

(3) Payment of purses:

(a) The horsemen's bookkeeper ((~~shall~~)) will receive, maintain and disburse the purses of each race and all stakes, entrance money, jockey fees, purchase money in claiming races, along with all applicable taxes and other moneys that properly come into ((~~his/her~~)) the bookkeeper's possession in accordance with the provisions of ((~~commission~~)) these rules;

(b) The horsemen's bookkeeper may accept moneys due belonging to other organizations or recognized ((~~meetings~~)) race meets, provided ((~~prompt return is made~~)) the moneys are promptly returned to the organization to which the money is due;

(c) ((~~The fact that purse money has been distributed prior to the issuance of a laboratory report shall not be deemed a finding that no chemical substance has been administered, in violation of these rules, to the horse earning such purse money;~~

~~(d)~~)) The horsemen's bookkeeper ((~~shall~~)) will disburse the purse of each race and all stakes, entrance money, jockey fees and purchase money in claiming races, along with all applicable taxes, upon request, within ((~~48~~)) forty-eight hours of receipt of notification that all tests with respect to such races have cleared the drug testing;

(((~~(c)~~))) (d) Absent a prior request, the horsemen's bookkeeper ((~~shall~~)) will disburse moneys to the persons entitled to receive the same within ((~~15~~)) fifteen days after the last race day of the race ((~~meeting, including~~)) meet. This includes purses for official races, provided ((~~that~~)) all tests ((~~with respect to such~~)) on horses in races have cleared the drug testing laboratory and ((~~provided further~~)) that no protest or appeal has been filed with the stewards or the commission;

(e) The amount of purse money earned will be credited in the currency of the jurisdiction in which the race was run. There is no right to a hearing under WAC 260-08-675 for any exchange rate loss at the time of transfer of funds to or from another jurisdiction;

(f) In the event a protest or appeal has been filed with the stewards or the commission, the horsemen's bookkeeper ((~~shall~~)) will disburse the purse within ((~~48~~)) forty-eight

hours of receipt of dismissal or a final nonappealable order disposing of ((~~such~~)) the protest or appeal.

(4) The association license is subject to disciplinary action by the commission for any violation of or noncompliance with the provisions of this section.

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

WAC 260-24-540 Mutuel manager. ((~~The mutuel manager is responsible for the operation of the parimutuel department and shall:~~

~~(1) Be responsible for the correctness of all pay-off prices;~~

~~(2) Maintain records of all wagers and provide information regarding betting patterns;~~

~~(3) Employ licensed individuals to aid in the operation of the parimutuel department;~~

~~(4) Make emergency decisions regarding the operation of the parimutuel department; and~~

~~(5) Be responsible for the enforcement of the association policy and procedures relating to the mutuel department.~~)) The mutuel manager is responsible for the following:

(1) The overall operation of the parimutuel department;

(2) The correctness of all pay-off prices;

(3) To maintain records of all wagers;

(4) To provide information regarding betting patterns to the commission, or its designee(s);

(5) To supervise all association employees who work in the parimutuel department;

(6) To make decisions regarding the operation of the parimutuel department; and

(7) The enforcement of the association's policy and procedures relating to the parimutuel department.

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

WAC 260-24-550 Official veterinarian(s). The official veterinarian(s) ((~~shall:~~

~~(1)~~)) will be employed by the commission((~~;~~

~~(2)~~)), and be a graduate veterinarian ((~~and be~~)), licensed to practice veterinary medicine in ((~~this jurisdiction;~~

~~(3)~~)) the state of Washington. The official veterinarian(s) will perform the following duties:

(1) Recommend to the board of stewards any horse ((~~deemed~~)) the official veterinarian believes is unsafe to be raced, or a horse that it would be inhumane to allow to race;

(((~~4~~))) (2) Place and remove horses ((~~on the veterinarian's list and remove horses~~)) from the veterinarian's list;

(((~~5~~))) (3) Place and remove horses ((~~on the bleeder list and remove horses~~)) from the bleeder list;

(((~~6~~))) (4) Supervise ((~~and control~~)) the test barn;

(((~~7~~))) (5) Supervise the ((~~taking~~)) collection of all specimens for testing ((~~according to procedures approved by the commission~~));

(((~~8~~))) (6) Provide proper safeguards in the handling of all ((~~laboratory~~)) collected specimens to prevent tampering, confusion or contamination;

(((~~9~~))) (7) Provide the stewards ((~~with~~)) a written ((~~statement~~)) report regarding the nature ((~~and~~)), seriousness ((~~of~~)), and meaning of concentration levels, if any, for all laboratory reports of prohibited substances in equine samples;

(((~~10~~))) (8) Have jurisdiction over ((~~the practicing~~)) all licensed veterinarians ((~~within the enclosure~~)) on the grounds for the purpose of these rules;

(((~~11~~))) (9) Report to the commission the names of all horses humanely destroyed or ((~~which otherwise expire~~)) that die on the grounds at the ((~~meeting and the reasons therefore~~)) race meet. This report will include the reason a horse was destroyed;

(((~~12~~))) (10) Maintain ((~~all required~~)) records of post-mortem examinations performed on horses ((~~which~~)) that have died on association grounds;

(((~~13~~))) (11) Be available to the stewards prior to scratch time each ((~~racing~~)) race day ((~~at a time designated by the stewards~~)) to inspect any horses and report on their condition ((~~as may be requested by the stewards~~));

(((~~14~~))) (12) Be present in the paddock during saddling, on the racetrack during the post parade and at the starting gate until the horses are dispatched from the gate for the race;

(((~~15~~))) (13) Inspect any horse when there is a question as to ((~~the~~)) its physical condition ((~~of such horse~~)) or soundness;

(((~~16~~))) (14) Recommend ((~~scratching a horse~~)) to the stewards a horse be scratched if((~~, in his/her opinion~~)) the horse is physically incapable of exerting its best effort to win;

(((~~17~~))) (15) Inspect any horse ((~~which~~)) that appears in physical distress during the race or at the finish of the race((~~,~~)) and ((~~shall~~)) report ((~~such horse together with his/her opinion as to the cause of the distress~~)) their findings to the stewards;

(((~~18) Refuse employment or payment, directly or indirectly, from any horse owner or trainer of a horse racing or intending to race in this jurisdiction while employed as the official veterinarian for the commission;~~

~~(19) Review and consult with the applicants and the stewards regarding commission license applications of practicing veterinarians;~~

~~(20) Cooperate~~)) (16) Work with practicing veterinarians and other regulatory agencies to take measures to control communicable and/or reportable equine diseases;

(((~~21~~))) (17) Periodically review ((~~all~~)) horse ((~~papers under the jurisdiction of the commission~~)) registration certificates to ensure that all required test and health certificates are current and properly filed in accordance with these rules; and

(((~~22) Be authorized to~~)) (18) Humanely destroy any horse ((~~deemed to be~~)) so seriously injured that it is in the best interests of ((~~racing~~)) the horse to ((~~so~~)) act.

AMENDATORY SECTION (Amending WSR 99-05-048, filed 2/12/99, effective 3/15/99)

WAC 260-24-560 Horse identifier. ((~~The horse identifier shall:~~

~~(1) When required, ensure the safekeeping of registration certificates and racing permits for horses stabled and/or racing on association grounds;~~

~~(2) Inspect documents of ownership, eligibility, registration or breeding necessary to ensure the proper identification of each horse scheduled to compete at a race meeting;~~

~~(3) Examine every starter in the paddock, or other designated location approved by the commission, for sex, color, markings and lip tattoo or other identification method approved by the appropriate breed registry and the commission for comparison with its registration certificate to verify the horse's identity; and~~

~~(4) Supervise the tattooing, branding or other method of identification approved by the appropriate breed registry and the commission for identification of any horse located on association grounds.~~

~~(5) The horse identifier shall report to the stewards any horse not properly identified or whose registration certificate is not in conformity with these rules.~~)) The horse identifier is responsible for performing the following duties:

(1) Inspect the certificate of registration or each horse scheduled to compete at the race meet to ensure the proper identification;

(2) Examine every starter in the receiving barn or paddock for lip tattoo, sex, color, and markings or other identification method approved by the appropriate breed registry and the commission for comparison with its registration certificate to verify the horse's identity;

(3) Approve each horse to enter and race by determining that they are properly tattooed and match their breed specific foal certificate; and

(4) Report to the board of stewards any horse not properly identified or whose registration certificate is not in compliance with these rules.

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

WAC 260-24-570 Paddock judge. ((~~(1) The paddock judge shall:~~

~~(a) Supervise the assembly of horses in the paddock no later than fifteen (15) minutes before the scheduled post time for each race;~~

~~(b) Maintain a written record of all equipment, inspect all equipment of each horse saddled and report any change thereof to the stewards;~~

~~(c) Prohibit any change of equipment without the approval of the stewards;~~

~~(d) Ensure that the saddling of all horses is orderly, open to public view, free from public interference, and that horses are generally mounted at the same time, and leave the paddock for the post in proper sequence;~~

~~(e) Supervise paddock schooling of all horses approved for such by the stewards;~~

~~(f) Report to the stewards any observed cruelty to a horse;~~

~~(g) Ensure that only properly authorized persons are permitted in the paddock; and~~

~~(h) Report to the stewards any unusual or illegal activities.~~

~~(2) Paddock judge's list:~~

~~(a) The paddock judge shall maintain a list of horses which shall not be entered in a race because of poor or inconsistent behavior in the paddock that endangers the health or safety of other participants in racing;~~

~~(b) At the end of each race day, the paddock judge shall provide a copy of the list to the stewards;~~

~~(c) To be removed from the paddock judge's list, a horse must be schooled in the paddock and demonstrate to the satisfaction of the paddock judge and the stewards that the horse is capable of performing safely in the paddock.~~)) The paddock judge is responsible for performing the following duties:

(1) Supervise the horses in the paddock and saddling enclosure;

(2) Inspect all equipment of each horse to ensure safety;

(3) Monitor any equipment as requested by the board of stewards;

(4) Prohibit any change of equipment listed in WAC 260-44-010 without approval of the board of stewards;

(5) Ensure that all horses are generally mounted at the same time, and all horses leave the paddock for the post parade in the proper sequence;

(6) Supervise paddock schooling of all horses approved for schooling;

(7) Place and remove horses on the paddock list for poor or unruly behavior in the paddock. Horses placed on the paddock list will be refused entry until the horse has been satisfactorily schooled in the paddock. Schooling will be under the direct supervision of the paddock judge or his/her designee;

(8) Ensure that only properly authorized persons are permitted in the paddock; and

(9) Report to the stewards any unusual activities in violation of these rules.

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

WAC 260-24-580 Starter and assistant starters. ((~~(1) The starter shall:~~

~~(a) Have complete jurisdiction over the starting gate, the starting of horses and the authority to give orders not in conflict with the rules as may be required to ensure all participants an equal opportunity to a fair start;~~

~~(b) Appoint and supervise assistant starters who have demonstrated they are adequately trained to safely handle horses in the starting gate. In emergency situations, the starter may appoint qualified individuals to act as substitute assistant starters;~~

~~(c) Ensure that a sufficient number of assistant starters are available for each race;~~

~~(d) Assign the starting gate stall positions to assistant starters and notify the assistant starters of their respective stall positions more than 10 minutes before post time for the race;~~

~~(e) Assess the ability of each person applying for a jockey's license in breaking from the starting gate and working a horse in the company of other horses, and shall make said assessment known to the stewards; and~~

~~(f) Load horses into the gate in any order deemed necessary to ensure a safe and fair start.~~

~~(2) Assistant starters, with respect to an official race, shall not:~~

~~(a) Handle or take charge of any horse in the starting gate without the expressed permission of the starter;~~

~~(b) Impede the start of a race;~~

~~(c) Apply a whip or other device, with the exception of steward-approved twitches, to assist in loading a horse into the starting gate;~~

~~(d) Slap, boot or otherwise dispatch a horse from the starting gate;~~

~~(e) Strike or use abusive language to a jockey; or~~

~~(f) Accept or solicit any gratuity or payment other than his/her regular salary, directly or indirectly, for services in starting a race.~~

~~(3) No horse shall be permitted to start in a race unless approval is given by the starter. The starter shall maintain a starter's list of all horses which are ineligible to be entered in any race because of poor or inconsistent behavior or performance in the starting gate. Such horse shall be refused entry until it has demonstrated to the starter that it has been satisfactorily schooled in the gate and can be removed from the starter's list. Schooling shall be under the direct supervision of the starter.~~

~~(4) The starter and assistant starter shall report all unauthorized activities to the stewards.~~)) (1) The starter is responsible for the following duties:

(a) Approve all horses which have never started to ensure that the horse is familiar with, and capable of, breaking from the starting gate.

(b) Ensure all participants have an equal opportunity to a fair start;

(c) Supervise the assistant starters;

(d) Provide a sufficient number of assistant starters for each race;

(e) Assign the starting gate stall positions to assistant starters and notify the assistant starters of their respective stall positions, or assign a foreman to act in his behalf, before post time for each race;

(f) Assess and make recommendations to the board of stewards on the ability of each person applying for an initial jockey license in breaking from the gate and working a horse in the company of other horses;

(g) Load horses into the gate in any order necessary to ensure a safe and fair start.

(2) The starter will place and remove horses on the starter's list for poor or unruly behavior in the starting gate. Horses placed on the starter's list will be refused entry until the horse has been satisfactorily schooled in the starting gate. Schooling will be under the direct supervision of the starter or his designee.

(3) The starter has complete authority over the starting gate, the starting of horses, and the authority to give orders, which are not in conflict with these rules.

(4) The starter will appoint all assistant starters. Assistant starters must first demonstrate they are adequately trained to safely handle horses in the starting gate. In emergencies the starter may appoint qualified individuals to act as substitute assistant starters.

(5) Assistant starters may not:

(a) Handle or take charge of any horse in the starting gate without the expressed permission of the starter;

(b) Impede the start of a race;

(c) Strike a horse with a whip;

(d) Use a device, unless approved by the stewards, to assist in the loading of a horse into the starting gate;

(e) Slap, boot or otherwise dispatch a horse from the starting gate;

(f) Strike or use abusive language to a jockey; or

(g) Accept or solicit any gratuity or payment other than his/her regular salary, directly or indirectly, for services in starting a race.

(6) The starter and assistant starters will report all unauthorized activities to the stewards.

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

WAC 260-24-590 Security director, association. ((~~The security director shall be employed by the association and shall be directly responsible for maintaining the security and safety of the racing association's grounds. He/she shall issue daily reports to the commission security inspector outlining staffing and any incidents or occurrences which may constitute a violation of the "rules of racing." The security director will work closely with the board of stewards and commission security inspector(s) to facilitate the licensing, regulation and supervision of licensees and the racing association grounds. The security director may be requested to perform such other specific duties as are mutually agreed upon between the board of stewards and the racing association.~~)) The security director will be employed by the association and will be responsible for maintaining the security and safety of the association's grounds. The security director will provide daily reports to the commission investigators related to any incidents or occurrences on the association grounds, which may constitute a violation of the rules in Title 260 WAC. The security director will work with the board of stewards and commission investigators in all matters related to licensing and regulation of all applicants and licensees on association grounds.

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

WAC 260-24-600 Commission ((~~security inspector(s)~~)) investigator(s). ((~~The commission security inspector(s) shall be employed by the commission and report to the commission executive secretary and the stewards. His/her duties shall include investigation of allegations of wrongdoing and violations of the "rules of racing," presentation of cases before the stewards and other duties as set forth by the commission or the stewards.~~)) The commission investigator(s) report to the executive secretary or designee. The investigator(s) are responsible to investigate allegations of wrongdoing and violations of Title 260 WAC. The investigator(s) will present cases before the board of stewards, the commission, and perform any other duties as determined by the executive secretary or stewards.

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

WAC 260-24-610 Commission auditor. ((~~The commission auditor shall be responsible for:~~

~~(1) Verifying the calculations of the parimutuel department;~~

~~(2) Calculating and/or verify the monetary commissions due;~~

~~(3) Maintaining the Washington bred owners bonus fund (including filing of tax information); and~~

~~(4) Various accounting and auditing services as requested by the commission or the stewards.~~)) The commission auditor is responsible for the following duties:

(1) Reviewing annually the financial statements of the racing association.

(2) Verifying the monetary commissions due to each entity as required by law, rule or agreement.

(3) Verifying Washington-bred eligibility and the accounting for the Washington-bred owners' bonus fund.

(4) Verifying payoffs on betting pools as requested by the commission or designee.

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

WAC 260-24-620 Clerk of scales. ((~~The clerk of scales shall:~~

~~(1) Verify the presence of all jockeys in the jockeys' room at the appointed time;~~

~~(2) Verify that all such jockeys have a current jockey's license issued by the commission;~~

~~(3) Verify the correct weight of each jockey at the time of weighing out and weighing in and report any discrepancies to the stewards immediately;~~

~~(4) Oversee the security of the jockeys' room including the conduct of the jockeys and their attendants;~~

~~(5) Promptly report to the stewards any infraction of the rules with respect to weight, weighing, riding equipment or conduct;~~

~~(6) Record all required data on the scale sheet and submit that data to the horsemen's bookkeeper at the end of each race day;~~

~~(7) Maintain the record of applicable winning races on all apprentice certificates at the meeting;~~

~~(8) Release apprentice jockey certificates, upon the jockey's departure or upon the conclusion of the race meet; and~~

~~(9) Assume the duties of the jockey room supervisor in the absence of such employee.~~)) The clerk of scales is responsible for the following duties:

(1) Verifying the presence of all jockeys in the jockey's room at the time required by rule;

(2) Verifying all jockeys are properly licensed;

(3) Verifying the correct weight of each jockey at the time of weighting out and weighing in;

(4) Overseeing the security of the jockey's room, including the conduct of the jockeys and their attendants;

(5) Recording all required data on the scale sheet and submitting the completed scale sheet to the horseman's bookkeeper at the end of each race day;

(6) Maintaining the records of applicable winning races on all apprentice certificates at the race meet;

(7) Releasing the apprentice jockey certificates when either the jockey departs or at the conclusion of the race meet;

(8) Reporting immediately to the board of stewards any violations of the rules of racing.

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

WAC 260-24-630 Jockey room supervisor. ((~~The jockey room supervisor shall:~~

~~(1) Supervise the conduct of the jockeys and their attendants while they are in the jockey room;~~

~~(2) Keep the jockey room clean and safe for all jockeys;~~

~~(3) Ensure all jockeys are in the correct colors before leaving the jockey room to prepare for mounting their horses;~~

~~(4) Keep a daily video list as dictated by the stewards and have it displayed in plain view for all jockeys;~~

~~(5) Keep a daily program displayed in plain view for the jockeys so they may have ready access to mounts that may become available;~~

~~(6) Keep unauthorized persons out of the jockey room; and~~

~~(7) Report to the stewards any unusual occurrences in the jockey room.~~)) The jockey room supervisor is responsible for the following duties:

(1) Supervising the conduct of the jockeys and their attendants while they are in the jockeys' room;

(2) Keeping the jockeys' room clean and safe for all participants;

(3) Ensuring all jockeys are in the correct colors before leaving the jockeys' room to mount their horses;

(4) Keeping a daily program available for the jockeys so they have ready access to mounts that may come available;

(5) Keeping unauthorized persons out of the jockeys' room;

(6) Assisting the clerk of scales in the weighing in or out of jockeys when authorized by the stewards or clerk of scales; and

(7) Reporting to the clerk of scales or stewards any unusual occurrences in the jockeys' room.

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

WAC 260-24-640 Film analyst. ((~~The film analyst, when utilized, shall be responsible for assisting the stewards and other commission officials in the interpretation of video coverage of each race. The analyst shall perform such other duties as are designated by the board of stewards.~~)) The film analyst, when utilized, is responsible for the following duties:

(1) Keeping a daily video list as directed by the stewards and have it displayed in plain view for all jockeys;

(2) Reviewing with all apprentice jockeys the video record of all their rides;

(3) Reviewing with jockeys the video record of their rides as directed by the board of stewards;

(4) Assisting the board of stewards by reviewing all races and reporting to the board of stewards any unsafe or potentially dangerous occurrences detected;

(5) Performing any other duties as assigned by the board of stewards.

AMENDATORY SECTION (Amending WSR 04-07-074, filed 3/15/04, effective 4/15/04)

WAC 260-24-650 Clocker(((s))). (((1) The clocker(s) shall be present during training hours at each track on association grounds, which is open for training, to identify each horse working out and to accurately record the distances and times of each horse's workout.

(2) Each day, the clocker(s) shall prepare a list of workouts that describes the name of each horse which worked, along with the distance and time of each horse's workout.

(3) At the conclusion of training hours, the clocker shall deliver a copy of the list of workouts to the stewards and the racing secretary.

(4) The clocker(s) and his/her representative shall report the time and distance of the horse that best represents the workout which is in the best interest of the public.

(5) Whenever training occurs at other than a racing association within its scheduled race meet and training dates, only individuals licensed by the commission may clock workouts. Off-season clocking can only be performed at approved training centers, in the method prescribed by the commission, and in compliance with WAC 260-40-100. Prior to conducting off-season clocking, all clockers must be approved and licensed by the commission. Approval shall be based on the clockers' knowledge of and proficiency in performing clocking activities.)) (1) The clocker is responsible for the following duties:

(a) Be present during training hours at each association to record the time and distance of each horse's official workout. (A clocker is not required to be present for any other workouts);

(b) Prepare a daily record of all official workouts, which must include:

(i) The name of each horse;

(ii) The name of the track and training center where the official workout occurred; and

(iii) The time and distance of each horse's official workout;

(c) Deliver the daily record of all official workouts occurring on association grounds to the racing secretary at the end of each day's training.

(2) The clocker recording official workouts off the association grounds, during the association's scheduled race meet and training dates, will deliver the daily record of all official workouts to the racing secretary within twenty-four hours.

(3) Approval for a clocker's license will be based on the individual's knowledge of and proficiency in performing clocking activities.

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

WAC 260-24-660 Race timer. (((1) The timer shall accurately record the time elapsed between the start and finish of each race.

(2) The time shall be recorded from the instant that the first horse leaves the point from which the distance is measured until the first horse reaches the finish line.

(3) At the end of a race, the timer shall post the official running time on the infield totalisator board.

(4) At a racetrack equipped with an appropriate infield totalisator board, the timer shall post the quarter times (splits) for races in fractions as a race is being run. For quarter horse races, the timer shall post the official times in hundredths of a second.

(5) For back-up purposes, the timer shall also use a stopwatch to time all races. In time trials, the timer shall ensure that at least three stopwatches are used by the stewards or their designees.

(6) The timer shall maintain a written record of fractional and finish times of each race and have same available for inspection by the stewards or the commission on request.)) The race timer is responsible for the following duties:

(1) Recording accurately the time elapsed between the start and finish of each race. The time will be recorded from the instant the race begins until the first horse reaches the finish line. (As a backup to the electronic timer, the race timer will also use a stopwatch to time all races. In time trials, the race timer will ensure that the board of stewards approves three designees to use at least three stopwatches.)

(2) Posting the official running time on the infield totalisator board at the end of each race. (At a racetrack equipped with an appropriate infield totalisator board, the timer will post the split times for races in fractions as a race is being run. For quarter horse races, the timer will post the official times in hundredths of a second.)

(3) Maintaining a record of fractional and finish times of each race. The record will be available for inspection by the board of stewards.

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

WAC 260-24-670 Paddock plater. ((The paddock plater shall be available during racing hours to perform emergency shoeing repairs on horses in either the receiving barn, the paddock or during the parade to post. When directed by the board of stewards, the paddock plater shall report horses which are wearing caulks and on which feet. With permission of the stewards the paddock plater may assume other duties as requested by the association.)) The paddock plater is responsible for the following duties:

(1) Be available during race hours to perform emergency shoeing repairs on horses in the receiving barn, paddock, or during post parade;

(2) When directed by the board of stewards, inspect the height of toe grabs, or type of shoes on all horses, either in the receiving barn or paddock.

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

WAC 260-24-680 Mutuel inspector. ((The mutuel inspector shall oversee parimutuel wagering activity, including but not limited to, testing of the totalisator system, working with the board of stewards, commission auditor and

~~mutuel manager as related to chapter 260-48 WAC and shall perform other duties as directed by the commission.~~)) The mutuel inspector is responsible to oversee the parimutuel wagering activity during the race meet. This will include, but is not limited to, testing of the totalisator system, reviewing unusual wagering patterns, providing information to the board of stewards, assisting the commission auditor and association mutuel manager, reviewing association simulcast contracts, and performing other duties as directed by the board of stewards.

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

WAC 260-24-690 Outrider(s). ((~~The duty of the outrider(s) shall be to maintain safety on the racetrack during training hours insuring that all persons entering onto the racetrack have the proper safety equipment. During racing hours, prior to each race, the outrider(s) shall be responsible for maintaining order during the post parade and insuring that the horses arrive at the starting gate at post time. The outrider(s) shall inform the stewards of any questionable conduct and shall perform other duties as directed by the stewards.~~)) The outrider(s) is responsible for the following duties:

(1) During training hours:

(a) Maintaining safety on the racetrack;

(b) Ensuring all persons on horseback ride in a safe and prudent manner;

(c) Ensuring all persons on horseback have the proper safety equipment;

(d) Promptly reporting to the commission investigators any questionable conduct, and all injuries occurring on the track; and

(e) Reporting to the commission investigators, or stewards, unsafe riding, any persons on horseback who may be under the influence of alcohol and/or drugs.

(2) During racing hours:

(a) Maintaining order during post parade;

(b) Ensuring all persons on horseback have the proper safety equipment;

(c) Ensuring that the horses arrive at the starting gate at post time; and

(d) Reporting to the stewards any questionable conduct, and unsafe riding.

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

WAC 260-24-700 ((~~Any other person designated by the commission.~~)) Other racing official designated by the commission. ((~~The commission may create additional racing official positions, as needed. Persons selected for these positions shall be considered racing officials and shall be subject to the general eligibility requirements outlined in this chapter.~~)) The commission may create additional racing official positions. Persons selected to these positions will be considered racing officials and subject to the same eligibility requirements outlined in this chapter. Persons selected will be responsible to perform duties assigned to them.

AMENDATORY SECTION (Amending WSR 00-06-069, filed 3/1/00, effective 4/1/00)

WAC 260-52-010 Paddock to post. (1) Permission must be obtained from a steward to exercise a horse between races.

(2) In a race, each horse ((~~shall~~)) must carry a conspicuous saddlecloth number and a head number, corresponding to ((~~his~~)) its number on the official program. In the case of an entry each horse making up the entry ((~~shall~~)) must carry the same number (head and saddlecloth) with a distinguishing letter. For example, 1-1A, 1X. In the case of a field the horses comprising the field ((~~shall~~)) must carry an individual number; i.e., 12, 13, 14, 15, and so on.

(3) After the horses enter the track, and before the start of the race, no jockey ((~~shall~~)) may dismount and no horse ((~~shall be entitled to the care of an attendant~~)) may be handled by anyone other than the jockey, the starter, the starter's assistants, the outrider, the pony rider, or the official veterinarian without ((~~consent~~)) permission of the stewards or the starter((~~, and the horse must be free of all hands other than those of the jockey or assistant starter before the starter releases the barrier~~)).

(4) In the case of ((~~accident~~)) injury to a jockey, his/her mount, or damage to equipment, the stewards or the starter may permit the jockey to dismount and the horse to be cared for during the delay((~~, and may~~)). The stewards may permit all jockeys to dismount ((~~and all horses to be attended~~)) during the delay.

(5) All horses ((~~shall~~)) must participate in the post parade, which includes passing the steward's stand and, ((~~under penalty of disqualification, shall~~)) all horses must carry their weight from the paddock ((~~to the starting post, such parade to pass the steward's stand~~)) until the finish of the race unless approved by the stewards.

(6) ((~~After entering the track not more than 12 minutes shall be consumed in the parade of the horses to the post except in cases of unavoidable delay. After passing the stand once, horses will be allowed to break formation and canter, warm up or go as they please to the post.~~)) The post parade may not exceed twelve minutes unless approved by the stewards. When horses have reached the post, they ((~~shall~~)) will be started without unnecessary delay.

(7) If the jockey is ((~~so~~)) injured on the way to the post ((~~as to require another jockey~~)), the horse ((~~shall~~)) will be taken to the paddock and another jockey obtained, if available.

(8) No person ((~~shall~~)) may wilfully delay the arrival of a horse at the post.

(9) No person other than the rider, starter, or assistant starter ((~~shall be permitted to~~)) may strike a horse, or attempt((~~, by shouting or otherwise~~)) to assist ((~~it in getting a start~~)) the horse in starting.

(10) ((~~In all races~~)) A jockey is not required to carry a whip. However, in any race in which a jockey will not ride with a whip, ((~~an announcement of that fact shall be made over the public address system~~)) the public will be notified prior to the race.

AMENDATORY SECTION (Amending WSR 00-20-028, filed 9/27/00, effective 10/28/00)

WAC 260-52-020 Post position. Post position ((~~shall~~)) will be determined publicly by lot in the presence of the racing secretary or his/her deputy, a steward or steward designee. ((~~After a regular carded horse or horses have been excused from a race~~)) In the event of a scratch at a designated time, and if "also-eligible" horses are listed, all horses ((~~shall~~)) will move up in post position order; except in the case of a race on the straightaway, in which case the also-eligible ((~~shall~~)) must take the ((~~stall~~)) starting position of the horse ((~~declared out or~~)) scratched. The above rule ((~~shall~~)) will apply unless the association specifically states otherwise in its stakes or condition book.

AMENDATORY SECTION (Amending WSR 00-06-069, filed 3/1/00, effective 4/1/00)

WAC 260-52-030 Starting the race. (1) The starter is responsible for assuring that each participant receives a fair start.

(2) If, when the starter dispatches the field, any door at the front of the starting gate stalls ((~~should~~)) does not open properly ((~~due to a mechanical failure or malfunction~~)) or ((~~should any~~)) if the action by any starting gate personnel directly cause a horse to receive an unfair start, the stewards may declare such a horse a nonstarter.

(3) Should a horse((~~, not scratched prior to the start,~~)) not be in the starting gate stall ((~~thereby causing it to be left when the field is dispatched by the starter,~~)) at the time the starting gates are opened, the horse ((~~shall~~)) will be declared a nonstarter by the stewards.

(4) Should an accident or malfunction of the starting gate, or other unforeseeable event occur during the running of the race, which compromises the fairness of the race or the safety of ((~~race~~)) the participants, the stewards may declare individual horses to be nonstarters, exclude individual horses from one or more parimutuel pools or declare a "no contest" and refund all wagers except as otherwise provided in the rules involving multirace wagers.

AMENDATORY SECTION (Amending WSR 00-06-069, filed 3/1/00, effective 4/1/00)

WAC 260-52-040 Post to finish. (1) All horses ((~~shall~~)) must be ridden out in every race. A jockey ((~~shall~~)) may not ease up or coast to the finish, without reasonable cause, even if the horse has no apparent chance to win prize money. A jockey ((~~shall~~)) must always give ((~~a~~)) his/her best effort during a race((~~, and~~)). Each horse ((~~shall~~)) must be ridden to win. No jockey ((~~shall unnecessarily~~)) may cause his/her horse to shorten its stride so as to give the appearance of having suffered a foul.

(2) If a jockey strikes or touches another jockey or another jockey's horse or equipment, his/her mount may be disqualified.

(3) When clear in a race a horse may be ridden to any part of the course((~~, but~~)). If any horse swerves, or is ridden to either side, so as to interfere with, impede, or intimidate any other horse, ((~~it~~)) the horse may be disqualified((~~;~~)).

(4) ((~~A horse which interferes with another and thereby causes any other horse to lose ground or position or causes any other horse to break stride, when such other horse is not at fault and when such interference occurs in a part of the race where the horse interfered with loses the opportunity to place where it might, in the opinion of the stewards be reasonably be expected to finish, may be disqualified;~~)) A horse may not interfere with another horse and thereby cause the other horse to lose ground or position, or cause the other horse to break stride. When this interference occurs in the part of the race where the other horse loses the opportunity to place where it might reasonably be expected to finish, the stewards may disqualify the interfering horse.

(5) If the stewards determine the foul was intentional, or due to careless riding, the jockey may be held responsible((~~;~~)).

(6) In a straightaway race, every horse must maintain position as nearly as possible in the lane in which it starts. If a horse is ridden, drifts or swerves out of its lane ((~~in such a manner that it~~)) and interferes ((~~with~~)), impedes, or intimidates another horse, it ((~~is~~)) may be considered a foul and may result in the disqualification of the offending horse.

(7) ((~~When the stewards determine that a horse shall be disqualified, they may place the offending horse behind such horses as in their judgment it interfered with, or they may place it last;~~)) When a horse is disqualified, the stewards may place the offending horse behind the horse(s) it interfered with, place it last, or declare it unplaced and ineligible for any purse money and/or time trial qualification. In the case of multiple disqualifications, under no circumstance may a horse regain its finishing position once it has been disqualified.

(8) If a horse is disqualified, any ((~~horse or~~)) horses ((~~with which~~)) it is coupled ((~~as an entry~~)) with may also be disqualified((~~;~~)).

(9) When a horse is disqualified in a time trial race, for the purposes of qualifying only, it ((~~shall~~)) must receive the time of the horse it is placed behind plus one-hundredth of a second penalty or more exact measurement if photo finish equipment permits, and ((~~shall be~~)) remain eligible to qualify for the finals or consolations of the race on the basis of the assigned time((~~;~~)).

(10) In time trials, horses must qualify on the basis of time and order of finish. Times are determined by the official timer. If the automatic timer malfunctions, averages of a minimum of three hand times must be used for that individual race. In the instance of horses competing in the same race receiving identical times, order of finish must determine qualifiers. In the event two or more horses receive identical times for the final qualifying position, a draw by lot conducted by the stewards will determine the final qualifying positions.

(11) If a horse that qualified for the finals should be unable to enter due to racing soundness or scratched for any other reason other than a positive test or rule violation, the owner will receive last place purse money. If more than one horse is scratched from the final, then those purse moneys will be added together and distributed equally among those owners.

(12) If a qualifier for a final or consolation is disqualified for ineligibility or a rule violation after the time trials are declared official, but prior to entry for the final or consolation, the nonqualifier with the next fastest time must replace the disqualified horse. If a qualifier is disqualified after entry for the final or consolation for any reason other than unsoundness, illness or death, the purse will be redistributed among the remaining qualifiers.

(13) Possession of any electrical or mechanical stimulating or shocking device by a jockey, horse owner, trainer or other person ((~~authorized to handle or attend to a horse shall~~)) will be considered prima facie evidence of a violation of these rules and is sufficient grounds for the stewards to scratch or disqualify ((~~the~~)) any horse((~~,~~)) involved, and summarily suspend the individual in possession of the device.

(((~~(11) The stewards may determine that a horse shall be unplaced for the purpose of purse distribution and time trial qualification.~~

~~(12) No~~)) (14) Any jockey carrying a whip during a race ((~~shall fail to~~)) must use the whip in a manner consistent with using his/her best efforts to win.

(((~~(13)~~))) (15) Any jockey who uses a whip during the running of a race is prohibited from whipping a horse:

(a) In an excessive or brutal manner;

(b) On the head, flanks, or on any part of its body other then the shoulders or hind quarters;

(c) During the post parade except when necessary to control the horse;

(d) When the horse is clearly out of the race;

(e) Steadily, even though the horse is showing no response to the whip.

AMENDATORY SECTION (Amending WSR 00-07-041, filed 3/6/00, effective 4/6/00)

WAC 260-52-060 Camera ((~~and photographs~~)) malfunctions and determining finish positions. (1) ((~~On all tracks proper~~)) The photo finish cameras ((~~shall be installed as~~)) will be used as an aid to the stewards, ((~~placing and patrol judges,~~)) however, in ((~~all cases, the cameras are merely an aid and~~)) the event of a malfunction of the camera, the decision((~~s of~~)) by the stewards ((~~are to be final. The photograph or video image of each finish shall be posted in at least one conspicuous place as promptly as possible after each race where a photo finish occurs~~)) of the order of finish is final.

(2) ((~~The association shall keep on file for the duration of the meeting each plate or film or tape of each race for reference or reproduction upon request of the commission.~~)) In placing the horses at the finish, the position of the horses' noses only will be considered and not any other part of the body.

AMENDATORY SECTION (Amending WSR 99-05-047, filed 2/12/99, effective 3/15/99)

WAC 260-52-070 Declaring race "official." (1) The clerk of the scales ((~~shall~~)) will weigh in ((~~all~~)) at least the first four placing jockeys after each race, and after weighing, ((~~shall~~)) will notify the stewards if the weights are correct. The stewards may then declare the race official. However, the commission may authorize a racing association to employ a "((~~fast~~)) quick official" method of declaring a race official when a written request is received from the racing association at least 45 days prior to the opening of the race meeting. When using the "((~~fast~~)) quick official," jockeys ((~~shall~~)) must claim foul immediately following the running of the race, while still mounted on the race track. The association will be responsible for having an outrider or other individual situated on the race track and equipped with a communication device for relaying any objections to the stewards. Owners and trainers must claim foul directly to the stewards via telephones assigned by the association for that purpose and situated throughout the facility. No claim of foul will be considered by the stewards after a race has been declared official.

(2) Nothing in these rules ((~~shall be construed to prevent the placing judges, with the approval of~~)) will prevent the stewards((~~,~~)) from correcting an error before the display of the sign "official" or from recalling the sign, "official" in case ((~~it has been displayed through~~)) of an error.

AMENDATORY SECTION (Amending WSR 00-20-027, filed 9/27/00, effective 10/28/00)

WAC 260-52-080 Official time of the race. ((~~That~~)) The time recorded for the first horse to cross the finish line ((~~shall~~)) will be the official time of the race. (Except as provided by WAC 260-70-710((~~, namely, that if a horse establishes a track record and it later develops in the chemical analysis of the sample that there is the presence of a drug, then such track record shall be null and void~~)).)

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

WAC 260-52-090 Dead heats. ((~~See WAC 260-64-060.~~)) (1) In a dead heat for first place, each horse will be declared a winner and the actual earning the horse receives will be used to determine future eligibilities.

(2) When a dead heat occurs for first place, all purses or prizes to which the first and second place horses would have been entitled to will be divided equally among them. This will apply in dividing all purses or prizes, whatever number of horses are involved in the dead heat, and for whatever places the dead heat is run.

(3) When a dead heat is run for second place and an objection or inquiry is made against the winner of the race, and the winner is disqualified, the horses that finished in the dead heat for place will both be declared winners. This will apply when determining the official placing, whatever number of horses is involved in the dead heat, and for whatever places the dead heat is run.

(4) If the owners involved in a dead heat cannot agree as to which of them is to receive a trophy, plaque, or other prize that cannot be divided, the decision will be determined by lot by the stewards or their designee.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 260-52-050	Placing judges—Duties.

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

WAC 260-56-010 ((~~Who may file.~~)) Objections (claim of foul). (1) ((~~A protest~~)) An objection involving the running of a race, ((~~except a protest involving fraud,~~)) may be filed ((~~only~~)) by the owner ((~~(or)~~)), his/her authorized agent((~~)~~)), trainer, or jockey of a horse ((~~engaged~~)) in the race ((~~over which the protest is made~~)), or by a racing official of the meeting.

(2) ((~~A protest involving fraud may be made by any person.~~)) An objection may be received by the clerk of scales, stewards, or their designees.

(3) An objection must be filed before the race is declared official, including whenever the "quick official" method is used.

(4) The stewards will rule on all objections and determine the extent of disqualification, if any, of a horse in the race. The stewards' decision is final and cannot be challenged under WAC 260-08-675.

NEW SECTION

WAC 260-56-031 Prerace protests. (1) All prerace protests to the participation of a horse entered in any race must be made in writing to the board of stewards, signed by the person making the protest, and submitted no later than fifteen minutes prior to post time for the race in question. The protest must contain the specific reason or grounds for the protest.

(2) A protest to a horse which is entered in a race may be made on, but not limited to, the following:

(a) An error or omission in the entry of a horse;

(b) The horse entered to run is not the horse it is represented to be at the time of entry;

(c) The horse is not qualified to enter under the conditions specified for the race, the weight allowances are improperly claimed, or the weight to be carried is incorrect according to the conditions of the race; or

(d) The horse is owned in whole or in part, or leased or trained by a person ineligible to participate in racing or otherwise ineligible to own a race horse as provided in these rules.

(3) The decision of a prerace protest by the board of stewards is final and may not be appealed.

NEW SECTION

WAC 260-56-035 Post-race protests. (1) A protest against any horse which has started in a race must be made in writing to the board of stewards, signed by the person making the protest, and submitted within seventy-two hours of the race (excluding nonrace days). If the incident for which the protest is made occurs within the last two days of the meeting, the protest must be filed within seventy-two hours of the closing day.

(2) A protest may be made on any of the following grounds:

(a) The order of finish as officially determined by the stewards was incorrect due to an oversight or errors in the number of the horses which started the race;

(b) The weight carried by a horse was improper, due to fraud or willful misconduct; or

(c) An unfair advantage was gained by violation of the rules.

(3) The time limitation on the filing of protests will not apply in any case in which fraud or willful misconduct is involved.

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

WAC 260-56-040 Disposition of moneys, prizes, pending outcome. (1) Pending the determination of a protest, any money or prize won by a protested horse, or any other money affected by the outcome of the protest ((~~shall~~)) will be held by the racing association until the protest is ((~~determined~~)) decided.

(2) If a protest is upheld by the board of stewards, any purse moneys or prizes previously distributed must be returned for redistribution.

(3) Any person who fails to return any purse moneys or other prizes for redistribution may be subject to disciplinary action by the stewards.

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

WAC 260-56-060 Frivolous protests or objections. No person ((~~shall~~)) may make frivolous protests or objections.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 260-56-020	Requisites—Time for filing.
WAC 260-56-070	Records and reports.

AMENDATORY SECTION (Amending WSR 05-07-063, filed 3/11/05, effective 4/11/05)

WAC 260-60-300 Who may claim. (1) In claiming races, any horse is subject to be claimed for its entered price by any owner licensed by the commission, including a prospective owner who has been issued a claiming certificate, or by a licensed authorized agent for the account of such owner.

(2) In order to claim a horse as a prospective owner, a person ((~~shall~~)) will submit to the stewards a completed application for a prospective owner's license and the name of a licensed trainer who will assume the care and responsibility for any horse claimed. The stewards ((~~shall~~)) may issue a claiming certificate to the applicant upon satisfactory evidence that the applicant is eligible for an owner's license. Once the prospective owner has successfully claimed a horse

and made payment of labor and industry fees due, he/she ((~~shall~~)) will be considered an owner. At that time the owner should contact a commission office for a new identification badge.

(3) The names of licensed prospective owners who have been issued a claiming certificate ((~~shall~~)) must be prominently displayed in the offices of the commission and the racing secretary.

(4) A claiming certificate ((~~shall~~)) will expire ((~~with~~)) forty-five days from the date of issue, but may be extended with approval of the stewards; at the conclusion of the race meet at which it was issued, upon the claim of a horse, or upon issuance or denial of an owner's license, whichever comes first.

(5) No owner or prospective owner ((~~shall~~)) may claim more than one horse in any one race.

(6) An authorized agent may claim up to two horses, if each horse is claimed on behalf of ((~~a~~)) entirely different ((~~owner~~)) ownerships, ((~~as long as~~)) and the ((~~owners~~)) ownerships do not have a common interest in both claims. An authorized agent ((~~shall~~)) may not make a claim on the same horse for different owners.

(7) ((~~When a training stable consists of horses owned by more than one person, not~~)) No more than two claims may be entered ((~~on behalf of such training stable in~~)) with the same trainer listed in any one race.

(8) ((~~In claiming races not more than two horses in the same interest or under the control of the same trainer can start.~~)) No trainer may enter or start more than two horses for a claiming price in one race.

AMENDATORY SECTION (Amending WSR 96-12-008, filed 5/23/96, effective 6/23/96)

WAC 260-60-310 Entering in a claiming race—Debts and leased horse. A person entering a horse in a claiming race ((~~warrants that the title to said horse is free and clear of any existing claim or lien, either as security interest mortgage, bill of sale, or lien of any kind; unless before entering such horse, the written consent of the holder of the claim or lien has been filed with the stewards and the racing secretary and its entry approved by the stewards~~)) must remain responsible for any existing debts associated with the horse. A transfer of ownership ((~~arising from a recognized claiming race~~)) following an approved claim will terminate any existing prior lease for that horse.

AMENDATORY SECTION (Amending WSR 96-12-008, filed 5/23/96, effective 6/23/96)

WAC 260-60-330 Claims to be in amount printed on program. The claiming price of each horse in a claiming race ((~~shall~~)) will be printed on the program((~~, and all claims for said horse shall be the amount so designated~~)). Except as ordered by the stewards, no claiming price may be changed after a horse has been entered for a race.

AMENDATORY SECTION (Amending WSR 96-12-008, filed 5/23/96, effective 6/23/96)

WAC 260-60-340 Disposition by lot. Should more than one claim be filed for the same horse, the claim of the horse ((~~shall~~)) will be determined by lot under the direction of one or more of the stewards, or their representative.

AMENDATORY SECTION (Amending WSR 04-05-093, filed 2/18/04, effective 3/20/04)

WAC 260-60-350 Requirements for a claim. (1) Claims must be made in writing and signed by an owner, a licensed prospective owner, or an authorized agent; and

(2) ((~~Shall~~)) Be made on forms and in envelopes furnished by the association and approved by the commission. Both forms and envelopes must be filled out completely, and must be sufficiently accurate to identify the claim.

(3) In the case of joint ownership only one owner needs to sign.

(4) No money ((~~shall~~)) will accompany the claim. Each person desiring to make a claim, must first establish an account with the racing association and have on deposit with the association the whole amount of the claim (including any applicable taxes). The deposit ((~~shall~~)) must be in cash, or in the discretion of the association, a certified or bank cashier check.

(5) Claims ((~~shall~~)) must be deposited in the claiming box at least fifteen minutes before the established post time of the race for which the claim is filed. When a claim has been filed it is irrevocable and at the risk of claimant.

(6) When a claiming certificate is to be used, that certificate must accompany the claim, or the claim may be declared void.

AMENDATORY SECTION (Amending WSR 04-05-093, filed 2/18/04, effective 3/20/04)

WAC 260-60-360 Stewards to act on claims. After deposit of the claim the stewards or their authorized representative, ((~~shall~~)) will review the claim. Unless approved at such time, the claim ((~~shall~~)) will be deemed void. A ruling deeming a claim to be void ((~~shall~~)) will be final in all respects.

AMENDATORY SECTION (Amending WSR 96-12-008, filed 5/23/96, effective 6/23/96)

WAC 260-60-380 Prohibited actions. (1) No official or other employee of any association ((~~shall~~)) may give any information as to the filing of claims until after the race has been run.

(2) ((~~No~~)) A person ((~~shall offer~~)) is prohibited from offering, or ((~~enter~~)) entering into an agreement, to claim or not to claim, or ((~~attempt~~)) attempting to prevent another person from claiming, any horse in a claiming race.

(3) ((~~No~~)) A person ((~~shall attempt~~)) is prohibited from attempting, by intimidation, to prevent any one from running a horse in any race for which it is entered.

(4) ((~~No~~)) An owner or trainer, starting a horse in any claiming race, ((~~shall make~~)) is prohibited from making any

agreement for the protection of each other's horses from being claimed by a third party.

(5) A person ((~~shall not~~)) is prohibited from participating in any claim for a horse in which he/she has a financial or beneficial interest ((~~as an owner or trainer~~)).

(6) A person ((~~shall~~)) must not cause another person to claim a horse for the purpose of obtaining or retaining an undisclosed financial or beneficial interest in the horse.

(7) A person ((~~shall~~)) must not claim a horse, or enter into any agreement to have a horse claimed, on behalf of an ineligible or undisclosed person.

AMENDATORY SECTION (Amending WSR 96-12-008, filed 5/23/96, effective 6/23/96)

WAC 260-60-400 Entry of a filly or mare in foal. ((~~No~~)) A person ((~~shall enter~~)) is prohibited from entering a filly or mare in a race when ((~~such~~)) the filly or mare is pregnant, unless prior to the time of entry the owner ((~~shall have~~)) has deposited with the racing secretary a signed agreement providing that the owner will at the time of entry provide for the successful claimant of such mare, without cost, protest, or fee of any kind, a valid stallion service certificate covering the breeding of the filly or mare. A successful claimant of a filly or mare may file with the commission a ((~~petition~~)) protest for ((~~recision~~)) cancellation of the claim if it is determined the claimed mare is pregnant and the agreement concerning the stallion service certificate was not deposited as required by this section. An in-foal filly or mare ((~~shall~~)) will be eligible to be entered into a claiming race only if the following conditions are fulfilled:

(1) Full disclosure ((~~of such fact~~)) that the filly or mare is in foal is on file with the racing secretary and ((~~such~~)) the information is posted in his/her office;

(2) The stallion service certificate has been deposited with the racing secretary's office and attached to the horse's foal registration certificate;

(3) All payments due for the service in question and for any live progeny resulting from that service are paid in full.

(4) No filly or mare in foal may race, in a claiming race, after the fifth month of pregnancy.

AMENDATORY SECTION (Amending WSR 96-12-008, filed 5/23/96, effective 6/23/96)

WAC 260-60-410 Claimed horse—In whose interest run—Delivery and passage of title. ((~~Every horse claimed shall run in the interest and for the account of the owner who entered it in the race, but title to~~)) Any purse moneys and prizes earned by a claimed horse will be awarded to the owner that entered the horse. All claims are valid and ownership of the claimed horse ((~~shall be vested in the successful claimant~~)) is official from the time ((~~said~~)) the claimed horse becomes a "starter." ((~~Henceforth,~~)) The successful claimant ((~~shall~~)) becomes the owner of the horse, whether it be alive or dead, sound or unsound, or injured during the race or after it. Transfer of possession of a claimed horse ((~~shall~~)) will take place immediately after the race has been run unless otherwise directed by the stewards. If the horse is required to be taken to the test barn for post-race testing, the successful claimant or his/her representative ((~~shall~~)) must maintain physical custody of the claimed horse. However, the original owner, trainer or his/her representative ((~~shall~~)) will accompany the horse, observe the testing procedure and sign the test sample tag.

AMENDATORY SECTION (Amending WSR 96-12-008, filed 5/23/96, effective 6/23/96)

WAC 260-60-420 Claimed horse—Refusal to deliver. No person ((~~shall~~)) may refuse to deliver to the person legally entitled ((~~thereto~~)) to a horse claimed out of a claiming race((~~, and furthermore, the horse in question shall be disqualified until delivery is made~~)). Refusal to complete the transfer of a claimed horse will result in the suspension of the individual's license and the horse is ineligible to enter until the transfer is complete.

AMENDATORY SECTION (Amending WSR 96-12-008, filed 5/23/96, effective 6/23/96)

WAC 260-60-440 Claimed horse—Subsequent sale or transfer—Retention by owner. If a horse is claimed it ((~~shall~~)) may not be sold or transferred to anyone wholly or in part, except in a claiming race, for a period of 30 days from date of claim((~~, nor shall it, unless reclaimed,~~)). No horse that has been claimed may return to or remain in the same stable or under the control or management of its former owner or trainer for a ((~~like~~)) period of thirty days from the date of the claim.

AMENDATORY SECTION (Amending WSR 96-12-008, filed 5/23/96, effective 6/23/96)

WAC 260-60-450 Claimed horse—((~~Title recognized according to rules of meeting~~)) Restrictions. When a horse is claimed at a recognized meeting under rules which ((~~are at variance with these rules, title to such horse shall~~)) conflict with chapter 260-60 WAC, any restrictions concerning the claimed horse will be recognized in Washington to follow the rules of the meeting under which the claim was made.

AMENDATORY SECTION (Amending WSR 96-12-008, filed 5/23/96, effective 6/23/96)

WAC 260-60-460 Cancellation of claims. If within thirty days from the running of the race, in which a horse is claimed, the stewards find that a claim was made in violation of the rules of racing the stewards may disallow and cancel any such claim and order the return of the horse and order the return and refund the claim ((~~payment~~)) amount. In deciding whether to cancel a claim the stewards ((~~shall~~)) will consider which party was at fault, the status of the horse at the time the claiming violation is discovered, and such other factors as appropriate. Should the stewards cancel a claim, they may order, as appropriate, payment for the care and maintenance of the horse involved. The stewards may refer to the commission for further action any case involving a violation of the rules of racing with respect to a claim regardless of whether the stewards deem it appropriate to order the cancellation of the claim.

AMENDATORY SECTION (Amending WSR 96-12-008, filed 5/23/96, effective 6/23/96)

WAC 260-60-470 Rules apply to all races. These rules ((~~shall~~)) apply to all races under the jurisdiction of the commission.

AMENDATORY SECTION (Amending Order 74.2, filed 10/30/74, effective 1/1/75)

WAC 260-64-010 ((~~What embraced in~~)) Winnings—"Winner of a certain sum." Winnings ((~~shall~~)) must include all ((~~prizes~~)) purse moneys won for placing first in any race up to ((~~the time appointed for the start~~)) post time of the race entered, and ((~~shall~~)) will apply to all races in any country((~~, and embrace walking over or receiving forfeit, but not second or third money, or the value of any prize not of money or not paid in money~~)). Winnings during the year ((~~shall~~)) will be ((~~reckoned~~)) determined from January 1st ((~~preceding~~)) of the corresponding year.

Winner of a certain sum ((~~shall~~)) means the winner of a single race of that value unless otherwise expressed in the conditions.

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

WAC 260-64-020 Winnings in stake race. The winnings of a horse in a stake race ((~~shall~~)) will be computed on the value of the gross earnings ((~~on and after January 1, 1961~~)), including any added moneys.

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

WAC 260-64-040 Foreign winnings. Foreign winnings ((~~shall~~)) will be estimated on the basis of the ((~~normal~~)) rate of exchange prevailing on the day of the winnings.

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

WAC 260-64-050 Entrance money, starting and ((~~subscription~~)) nomination fees. The entrance money, starting and ((~~subscription~~)) nomination fees, in every race, ((~~shall~~)) will go to the winner unless otherwise provided in its conditions((~~, but when from any cause~~)). If a race is not run, all stakes or entrance money((~~, if any paid, shall~~)) must be returned.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 260-64-030	Extra amount won in series of races.
WAC 260-64-060	Dead heats.

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

WAC 260-66-010 Walking over. If, at ((~~the time for saddling~~)) post time, only one horse ((~~shall have weighed out~~)) remains eligible to race, that horse ((~~shall~~)) must be ridden past the judge's stand, ((~~go to the post, and then move over the course~~)) break from the starting gate, and complete the listed distance of the race. ((~~He shall~~)) The horse will then be ((~~deemed~~)) declared the winner.

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

WAC 260-66-020 ((~~Awards.~~)) Purse money. (((~~1~~))) In case of a walkover, the horse walking over ((~~shall~~)) will receive:

(((~~a~~))) (1) In overnight races, ((~~one-half of~~)) the winner's rightful share of first money.

(((~~b~~))) (2) In stake races, ((~~one-half of~~)) the winner's rightful share of the added money and all nomination and entrance fees.

(((~~(2) In case of a walkover, any money or prize which by the condition of the race would have been awarded to a horse placed second, or lower in the race, shall, if contributed by the owners, be paid to the winner. If a donation from any other source, it shall not be awarded.~~)))

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

WAC 260-66-030 Entry of two or more horses. In case of a walkover involving ((~~an~~)) a coupled entry of two or more horses ((~~and the~~)) all horses ((~~move over the course, these rules apply as to the division of the purse~~)) involved must participate as stated in WAC 260-66-010.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 260-76-010	Hand books and foreign books prohibited.
WAC 260-76-020	Bookmakers, vagrants, fugitives, undesirable persons, not permitted at track.

NEW SECTION

WAC 260-80-170 Bookmaking is prohibited. No person may make, solicit for, or bet with a handbook or a foreign book on the grounds of any licensed race track or satellite location. No person who is or reputed to be a bookmaker, may enter or remain on the grounds of any racing association or satellite location in this state.

WSR 08-05-089
PERMANENT RULES
HORSE RACING COMMISSION
[Filed February 15, 2008, 8:24 a.m., effective March 17, 2008]

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

Purpose: To amend WAC 260-28-200 to also require trainers to arrive at the receiving barn at the appointed time.

Citation of Existing Rules Affected by this Order: Amending WAC 260-28-200.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 08-02-013 on December 21, 2007.

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

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

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

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

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

Date Adopted: February 14, 2008.

R. J. Lopez
Deputy Secretary

AMENDATORY SECTION (Amending WSR 07-07-007, filed 3/8/07, effective 4/8/07)

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

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

WSR 08-05-090
PERMANENT RULES
HORSE RACING COMMISSION
[Filed February 15, 2008, 8:24 a.m., effective March 17, 2008]

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

Purpose: To amend WAC 260-28-295 to require the trainer to file a report with the Jockey Club anytime a horse is gelded, and ensure all employees are properly licensed for the duties the employee(s) performs.

Citation of Existing Rules Affected by this Order: Amending WAC 260-28-295.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 08-02-014 on December 21, 2007.

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

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

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

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

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

Date Adopted: February 14, 2008.

R. J. Lopez
Deputy Secretary

AMENDATORY SECTION (Amending WSR 07-03-065, filed 1/16/07, effective 2/16/07)

WAC 260-28-295 Trainer responsibility. The purpose of this section is to identify the minimum responsibilities of the trainer that pertain specifically to the health and well-being of horses in his/her care.

(1) The trainer is responsible for and is the absolute insurer of the condition of the horses entered regardless of the acts of third parties.

(2) The trainer is responsible for the condition of horses in his/her care.

(3) The trainer is responsible for the presence of any prohibited drug, medication, or other prohibited substance, including permitted medication in excess of the maximum allowable concentration, in horses in his/her care. A positive test for a prohibited drug, medication or substance, including permitted medication in excess of the maximum allowable concentration, as reported by a commission-approved laboratory, is prima facie evidence of a violation of this rule. In the absence of substantial evidence to the contrary, the trainer will be held responsible.

(4) A trainer will prevent the administration of any drug or medication or other prohibited substance that may cause a violation of these rules.

(5) A trainer whose horse has been claimed remains responsible for violation of any rules regarding that horse's participation in the race in which the horse is claimed.

(6) The trainer is responsible for:

(a) Maintaining the assigned stable area in a clean, neat and sanitary condition at all times;

(b) Using the services of those veterinarians licensed by the commission to attend to horses that are on association grounds;

(c) The proper identity, custody, care, health, condition and safety of horses in his/her care;

(d) Immediately reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;

(e) Promptly reporting to the racing secretary and an official veterinarian when a posterior digital neurectomy (heel nerving) is performed on a horse in his/her care and ensuring that such fact is designated on its certificate of registration;

(f) Promptly report to the racing secretary, when mares who have been entered to race, have been bred;

(g) If a colt or horse has been gelded, promptly submit a completed gelding report to The Jockey Club Office, or report the fact to the racing secretary;

(h) Promptly reporting the serious injury and/or death of any horse at locations under the jurisdiction of the commission to the stewards and the official veterinarian and compliance with the rules in this chapter governing postmortem examinations;

(((~~(h)~~)) (i) Maintaining knowledge of the medication record and medication status of horses in his/her care;

(((~~(i)~~)) (j) Immediately reporting to the stewards and the official veterinarian knowledge or reason to believe, that there has been any administration of a prohibited medication, drug or substance;

(((~~(j)~~)) (k) Ensuring the fitness to perform creditably at the distance entered;

(((~~(k)~~)) (l) Ensuring that every horse he/she has entered to race is present at its assigned stall for a prerace soundness inspection as prescribed in chapter 260-70 WAC;

(((~~(l)~~)) (m) Ensuring proper bandages, equipment and shoes; ((~~and~~

~~(m)~~)) (n) Attending the collection of a urine or blood sample or delegating a licensed employee or the owner to do so; and

(o) Ensuring that any person employed by him/her is properly licensed to perform the duties assigned.

WSR 08-05-091
PERMANENT RULES
HORSE RACING COMMISSION

[Filed February 15, 2008, 8:25 a.m., effective June 1, 2008]

Effective Date of Rule: June 1, 2008.

Purpose: To amend WAC 260-70-630 to adopt concentration levels for specific androgenic-anabolic steroids.

Citation of Existing Rules Affected by this Order: Amending WAC 260-70-630.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 08-02-071 on December 28, 2007.

Changes Other than Editing from Proposed to Adopted Version: The version that was adopted removed the provisions that (1) required a horse treated with an androgenic-anabolic steroid to go on the vet's list; and (2) required the lab be notify [notified] if the sample came from an intact male.

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

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

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

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

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

Date Adopted: February 14, 2008.

R. J. Lopez
Deputy Secretary

AMENDATORY SECTION (Amending WSR 06-09-009, filed 4/10/06, effective 5/11/06)

WAC 260-70-630 Threshold levels. (((~~(1) The following quantitative medication levels are permissible in test samples up to the stated quantitative levels:~~

~~Procaine~~	~~25 ng/ml urine~~
~~Benzocaine~~	~~50 ng/ml urine~~
~~Mepivacaine~~	~~10 ng/ml urine~~
~~Lidocaine~~	~~50 ng/ml urine~~
~~Bupivacaine~~	~~5 ng/ml urine~~
~~Clenbuterol~~	~~25 pg/ml serum or plasma~~
~~Acepromazine~~	~~25 ng/ml urine~~
~~Promazine~~	~~25 ng/ml urine~~
~~Salicylates~~	~~750,000 ng/ml urine~~
~~Albuterol~~	~~1 ng/ml urine~~
~~Pyrilamine~~	~~50 ng/ml urine~~
~~Theobromine~~	~~2000 ng/ml urine~~

~~The official urine test sample may not contain more than one of the above drug substances, including their metabolites or analogs, in an amount exceeding the specified level. Official blood test samples must not contain any of the drug substances listed above, including their metabolites or analogs, except for the threshold amount established in this rule.~~

~~(2) Certain substances can be considered environmental contaminants in that they are endogenous to the horse or that they can arise from plants traditionally grazed or harvested as equine feed or are present in equine feed because of contamination during the cultivation, processing, treatment, storage or transportation phases.~~

~~(3) Certain drugs are recognized as substances of human use and addiction and which could be found in a horse. The following are permissible in test samples up to the stated quantitative levels:~~

~~Caffeine~~	~~100 ng/ml serum or plasma~~
~~Benzoylecgonine~~	~~50 ng/ml urine~~
~~Morphine Glucuronides~~	~~50 ng/ml urine~~

~~(4) If the preponderance of evidence presented in a stewards ruling conference shows that a positive test is the result~~

~~of environmental contamination or inadvertent exposure due to human drug use, that evidence should be considered as a mitigating factor in any disciplinary action taken against the trainer.~~))

(1) Permitted medications.

(a) The following quantitative medications are permissible in test samples up to the stated concentrations:

Procaine - 25 ng/ml urine

Benzocaine - 50 ng/ml urine

Mepivacaine - 10 ng/ml urine

Lidocaine - 50 ng/ml urine

Bupivacaine - 5 ng/ml urine

Clenbuterol - 25 pg/ml serum or plasma

Acepromazine - 25 ng/ml urine

Promazine - 25 ng/ml urine

Salicylates - 750,000 ng/ml urine

Albuterol - 1 ng/ml urine

Pyrilamine - 50 ng/ml urine

Theobromine - 2000 ng/ml urine

(b) The official urine or blood test sample may not contain more than one of the above substances, including their metabolites or analogs, and may not exceed the concentrations established in this rule.

(2) Environmental substances.

(a) Certain substances can be considered "environmental" in that they are endogenous to the horse or that they can arise from plants traditionally grazed or harvested as equine feed or are present in equine feed because of contamination or exposure during the cultivation, processing, treatment, storage, or transportation phases. Certain drugs are recognized as substances of human use and could therefore be found in a horse. The following substances are permissible in test samples up to the stated concentrations:

Caffeine - 100 ng/ml serum or plasma

Benzoylecgonine - 50 ng/ml urine

Morphine Glucuronides - 50 ng/ml urine

(b) If a preponderance of evidence presented shows that a positive test is the result of environmental substance or inadvertent exposure due to human drug use, that evidence should be considered as a mitigating factor in any disciplinary action taken against the trainer.

(3) Androgenic-anabolic steroids.

(a) The following androgenic-anabolic steroids are permissible in test samples up to the stated concentrations:

Stanozolol (Winstrol) - 1 ng/ml urine in all horses regardless of sex.

Boldenone (Equipoise) - 15 ng/ml urine in intact males. No level is permitted in geldings, fillies or mares.

Nandrolone (Durabolin) - 1 ng/ml urine in geldings, fillies, and mares, and 45 ng/ml urine in intact males.

Testosterone - 20 ng/ml urine in geldings. 55 ng/ml urine in fillies and mares. Samples from intact males will not be tested for the presence of testosterone.

(b) All other androgenic-anabolic steroids are prohibited in race horses.

WSR 08-05-092

PERMANENT RULES

HORSE RACING COMMISSION

[Filed February 15, 2008, 8:25 a.m., effective March 17, 2008]

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

Purpose: To amend WAC 260-44-080 to allow jockeys at Class C (nonprofit) race meets to ride up to one hundred thirty-five pounds.

Citation of Existing Rules Affected by this Order: Amending WAC 260-44-080.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 08-02-015 on December 21, 2007.

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

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

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

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

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

Date Adopted: February 14, 2008.

R. J. Lopez

Deputy Secretary

AMENDATORY SECTION (Amending WSR 07-07-035, filed 3/12/07, effective 4/12/07)

WAC 260-44-080 Weighing out—Overweight((—~~Declarations—Posting—Maximum~~)). (1) If a jockey intends to carry overweight, he/she must declare the amount at the time of weighing out.

(2) If a jockey reports an overweight exceeding two pounds, the owner or trainer has the option to replace the jockey without being assessed a double-jock mount fee. Failure on the part of a jockey to comply with this rule will be reported to the stewards by the clerk of scales.

(3) At Class A or B race meets a horse may not carry more than seven pounds overweight((~~, except as provided in subsection (4) of this section~~)).

(4) Horses ((~~running~~)) at Class C race meets may carry more than seven pounds overweight ((~~with the permission of the stewards~~)), up to a maximum weight of one hundred thirty-five pounds((~~, except in handicap races or races where the conditions of the race expressly state to the contrary~~)).

WSR 08-05-093
PERMANENT RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed February 15, 2008, 9:03 a.m., effective March 22, 2008]

Effective Date of Rule: March 22, 2008.

Purpose: The changes will amend the below mentioned WAC to make the change identified in this section. The proposed revision will add language to the current rule regarding the current linear analog hearing aid replacement policy that became effective September 17, 2007. The purpose of this rule making is to ensure uniform compliance with the current linear analog hearing aid replacement policy.

Citation of Existing Rules Affected by this Order: Amending industrial insurance, WAC 296-20-1101 Hearing aids and masking devices.

Statutory Authority for Adoption: RCW 51.04.020, 51.36.080, 7.68.030, 7.68.080.

Adopted under notice filed as WSR 07-22-093 on November 6, 2007.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 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: February 15, 2008.

Judy Schurke
Director

AMENDATORY SECTION (Amending Order 80-29, filed 12/23/80, effective 3/1/81)

WAC 296-20-1101 Hearing aids and masking devices. The department or self-insurer is responsible for replacement or repair of hearing aids damaged or lost due to an industrial accident only to the extent of restoring the damaged item to its condition at time of the accident. If the hearing aid is repairable and the worker determines he prefers replacement, the department or self-insurer is responsible only to the extent of the cost to repair the original and the worker is responsible for the difference between repair and replacement costs.

When the department or self-insurer has accepted a hearing loss condition either as a result of industrial injury or occupational exposure, the department or self-insurer will furnish a hearing aid (hearing aids when bilateral loss is present) when prescribed or recommended by a physician.

The department or self-insurer will bear the cost of repairs or replacement due to normal wear and the cost of battery replacement for the life of the hearing aid.

If the worker has been issued a linear analog hearing aid and it becomes inoperable or if the worker is unable to hear, the department or self-insurer will replace the linear analog hearing aid with a nonlinear digital or nonlinear analog hearing aid in accordance with existing medical aid rules and fee schedules and at no cost to the worker even if the linear analog hearing aid is repairable.

In cases of accepted tinnitus, the department or self-insurer may provide masking devices under the same provisions as outlined for hearing aids due to hearing loss.

Provision of masking devices and hearing aids require prior authorization.

WSR 08-05-098
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed February 15, 2008, 2:35 p.m., effective March 17, 2008]

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

Purpose: The adopted rule adds sections to chapter 388-76 WAC regarding due process rights for persons alleged to have abandoned, abused, neglected, exploited or financially exploited adult family home residents/resident protection program (RPP).

Statutory Authority for Adoption: RCW 70.128.040.

Other Authority: Chapters 70.128 and 74.34 RCW.

Adopted under notice filed as WSR 07-14-082 on June 29, 2007, and WSR 07-21-139 on October 24, 2007.

Changes Other than Editing from Proposed to Adopted Version: **WAC 388-76-11010 Resident protection program—Reporting preliminary finding.**

(1) In a manner consistent with confidentiality requirements concerning the resident, witnesses, and reporter, the department may provide notification of a preliminary finding to:

(a) ~~The federal or state department or agency list of individuals found to have abandoned, abused, neglected, exploited, or financially exploited a vulnerable adult;~~

~~(b)~~ Other divisions within the department;

(b~~e~~) The agency or program identified under RCW 74.34.068 with which the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident is associated as an employee;

(c~~d~~) The employer or program that is currently associated with the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident, if known;

(d~~e~~) Law enforcement; and

(e~~f~~) Other investigative authorities consistent with chapter 74.34 RCW.

(2) The notification will identify the finding as a preliminary finding.

WAC 388-76-11020 Resident protection program—Hearing procedures to dispute preliminary finding.

(1) Chapters 34.05 and 74.34 RCW, chapter 388-02 WAC, and the provisions of this chapter govern any appeal regarding a preliminary finding.

(2) If a conflict exists between the provisions of this chapter and chapter 388-02 WAC, the provisions of this chapter prevail.

(3) If an administrative law judge within the office of administrative hearings determines that a preponderance of the evidence supports the preliminary finding that the individual ~~alleged to have~~ abandoned, abused, neglected, exploited, or financially exploited a resident, then the administrative law judge will issue an initial order.

WAC 388-76-11025 Resident protection program—Finalizing a preliminary finding.

(1) A preliminary finding becomes a final finding when:

(a) The department notifies the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident there is a preliminary finding pursuant to WAC 388-76-11005; and

(b) The individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident does not ask for an administrative hearing; or

(c) The administrative law judge:

(i) Dismisses the hearing following withdrawal of the appeal or default; or

(ii) Issues an initial order upholding the finding and the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident fails to appeal the initial order to the department's board of appeals; or

(d) The board of appeals issues a final order upholding the finding.

(2) A final finding is permanent.

(3) A final finding will only be removed from the department or agency list of individuals found to have abandoned, abused, neglected, exploited, or financially exploited a vulnerable adult if~~:(a) I~~it is rescinded following judicial review~~.~~; ~~or~~

(~~4~~b) The department may ~~decides to~~ remove a single finding of neglect from its records based upon a written petition by the individual found to have ~~abandoned, abused,~~ neglected~~, exploited, or financially exploited~~ a resident provided that at least one calendar year must have passed between the date a request was made to remove the finding of neglect and the date the final finding was finalized and recorded.

The changes were made because:

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
WAC 388-76-11010 Reporting preliminary finding. Delete subsection (1)(a) because the finding is a preliminary finding.	**WAC 388-76-11010 Reporting preliminary finding.** **A clarifying change was made in response to this comment.** Subsection (1)(a) was deleted in the adopted rule because the finding is preliminary.
WAC 388-76-11020 Hearing procedures to dispute preliminary finding. Suggestion to enhance clarity of subsection (3).	**WAC 388-76-11020 Hearing procedures to dispute preliminary finding.** **A clarifying change was made in response to this comment.**
WAC 388-76-11025 Finalizing a preliminary finding. **(1)** The department should not include in CR-102 draft language (WAC 388-76-11025(4), that the department may remove a person's name from a department or agency list, upon petition of the person, if there is only one finding of neglect and at least one year has passed. This seems to conflict with keeping adult family home residents safe.	**WAC 388-76-11025 Finalizing a preliminary finding.** **(1) No change was made in response to this comment.** The department chose to retain its decision-making authority and discretion in WAC 388-76-11025 Finalizing a preliminary finding about removal of someone, with a single finding of neglect, from a department or agency list. Retaining this authority allows the department to consider individual cases that may merit review.
(2) Subsection (3) published should be a stand-alone subsection.	**(2) A clarifying change was made in response to this comment.** Subsection (3) was revised. A new subsection (4) was created.
(3) Subsection (3)(b) is confusing with all the allegations listed. Only list neglect.	**(3) A clarifying change was made in response to this comment.** Subsection (3) was revised. A new subsection (4) was also created. References to other allegations were deleted.

A final cost-benefit analysis is available by contacting Roger Woodside, Mailstop 45600, Department of Social and Health Services, P.O. Box 45600, Olympia, WA 98513, phone (360) 725-3204, fax (360) 438-7903, e-mail woodsr@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 10, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 10, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 12, 2008.

Robin Arnold-Williams
Secretary

NEW SECTION

WAC 388-76-10673 Abuse and neglect reporting—Mandated reporting to department—Required. (1) In

accordance with chapter 74.34 RCW, all adult family home providers, entity representatives, resident managers, owners, caregivers, staff, and students that provide care and services to residents, are mandated reporters and must report to the department when there is:

(a) A reasonable cause to believe that a vulnerable adult has been abandoned, abused, neglected, exploited or financially exploited; or

(b) Suspected abandonment, abuse, neglect, exploitation, or financial exploitation of a vulnerable adult.

(2) Reports must be made to:

(a) The centralized toll free telephone number provided by the department; and

(b) Law enforcement agencies, as required under chapter 74.34 RCW.

NEW SECTION

WAC 388-76-11000 Resident protection program—Investigation of reports. (1) The department may investigate allegations of abandonment, abuse, neglect, exploitation, and financial exploitation of a resident.

(2) A department investigation may include an investigation of allegations about one or more of the following:

(a) A provider;

(b) Employee of the adult family home;

(c) Entity representative;

(d) Anyone affiliated with a provider; and

(e) Caregiver.

NEW SECTION

WAC 388-76-11005 Resident protection program—Notice of preliminary finding. (1) The department will notify the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident in writing within ten working days of making a preliminary finding of abandonment, abuse, neglect, exploitation, or financial exploitation of a resident. The written notice:

(a) Will not include the identities of the alleged victim, reporter and witnesses; and

(b) Will include the necessary information for the individual to ask for an administrative hearing to challenge the preliminary finding.

(2) The department must make a reasonable, good faith effort to find the last known address of the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident.

(3) The department may extend the time frame for notification beyond ten working days for good cause.

(4) The department will serve notice of the preliminary finding as provided in chapter 388-02 WAC.

NEW SECTION

WAC 388-76-11010 Resident protection program—Reporting preliminary finding. (1) In a manner consistent with confidentiality requirements concerning the resident, witnesses, and reporter, the department may provide notification of a preliminary finding to:

(a) Other divisions within the department;

(b) The agency or program identified under RCW 74.34.068 with which the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident is associated as an employee;

(c) The employer or program that is currently associated with the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident, if known;

(d) Law enforcement; and

(e) Other investigative authorities consistent with chapter 74.34 RCW.

(2) The notification will identify the finding as a preliminary finding.

NEW SECTION

WAC 388-76-11015 Resident protection program—Disputing a preliminary finding. (1) The individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident may request an administrative hearing to challenge a preliminary finding made by the department.

(2) The request must be made in writing to the office of administrative hearings.

(3) The office of administrative hearings must receive the individual's written request for an administrative hearing within thirty calendar days of the date written on the notice of the preliminary finding.

(4) The written request for a hearing must include:

(a) The individual's full legal name, current mailing address and telephone number;

(b) A brief explanation of why the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident disagrees with the preliminary finding;

(c) A description of any assistance needed in the administrative appeal process by the individual, including a foreign or sign language interpreter or any reasonable accommodation for a disability; and

(d) The individual's signature.

NEW SECTION

WAC 388-76-11020 Resident protection program—Hearing procedures to dispute preliminary finding. (1) Chapters 34.05 and 74.34 RCW, chapter 388-02 WAC, and the provisions of this chapter govern any appeal regarding a preliminary finding.

(2) If a conflict exists between the provisions of this chapter and chapter 388-02 WAC, the provisions of this chapter prevail.

(3) If an administrative law judge within the office of administrative hearings determines that a preponderance of the evidence supports the preliminary finding that the individual abandoned, abused, neglected, exploited, or financially exploited a resident, then the administrative law judge will issue an initial order.

NEW SECTION

WAC 388-76-11025 Resident protection program—Finalizing a preliminary finding. (1) A preliminary finding becomes a final finding when:

(a) The department notifies the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident there is a preliminary finding pursuant to WAC 388-76-11005; and

(b) The individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident does not ask for an administrative hearing; or

(c) The administrative law judge:

(i) Dismisses the hearing following withdrawal of the appeal or default; or

(ii) Issues an initial order upholding the finding and the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident fails to appeal the initial order to the department's board of appeals; or

(d) The board of appeals issues a final order upholding the finding.

(2) A final finding is permanent.

(3) A final finding will only be removed from the department or agency list of individuals found to have abandoned, abused, neglected, exploited, or financially exploited a vulnerable adult if it is rescinded following judicial review.

(4) The department may remove a single finding of neglect from its records based upon a written petition by the individual found to have neglected a resident provided that at least one calendar year must have passed between the date a request was made to remove the finding of neglect and the date the final finding was finalized and recorded.

NEW SECTION

WAC 388-76-11030 Resident protection program—Appeal of administrative law judge's initial order or finding. (1) If the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident or the department disagrees with the administrative law judge's decision, either party may challenge this decision by filing a petition for review with the department's board of appeals under chapter 34.05 RCW, Administrative Procedures Act, and chapter 388-02 WAC.

(2) If the department appeals the administrative law judge's decision, the department will not change the finding in the department's records until a final hearing decision is issued.

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

NEW SECTION

WAC 388-76-11035 Resident protection program—Reporting final findings. The department will report a final finding of abandonment, abuse, neglect, exploitation, and financial exploitation within ten working days to the following:

(1) The individual found to have abandoned, abused, neglected, exploited, or financially exploited a resident and for whom there is a final finding;

(2) The provider or entity representative that was associated with the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident during the time of the incident;

(3) The adult family home or program that is currently associated with the individual, if known;

(4) The appropriate licensing, certification or registration authority;

(5) The federal or state department or agency list of individuals found to have abandoned, abused, neglected, exploited, or financially exploited a vulnerable adult; and

(6) The findings may be disclosed to the public upon request subject to applicable public disclosure laws.

NEW SECTION

WAC 388-76-11040 Resident protection program—Disclosure of investigative and finding information. (1) Confidential information about residents and mandated reporters received from the department may only be used by the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident to challenge findings through the appeals process.

(2) Confidential information such as the name and other personal identifying information of the reporter, witnesses, or the resident will be redacted from documents unless release of that information is consistent with chapter 74.34 RCW and other applicable state and federal laws.

WSR 08-05-099
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed February 15, 2008, 2:36 p.m., effective March 17, 2008]

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

Purpose: The adopted rule adds sections to chapter 388-78A WAC regarding due process rights for persons alleged to have abandoned, abused, neglected, exploited, or financially exploited boarding home residents/resident protection program (RPP). The adopted rule clarifies and defines terms in WAC 388-78A-2020 Definitions and amends WAC 388-78A-2470 Criminal history, for clarity. WAC 388-78A-2600 Policies and procedures, is amended to clarify training requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 388-78A-2020, 388-78A-2470, and 388-78A-2600.

Statutory Authority for Adoption: RCW 18.20.090.

Other Authority: Chapters 18.20 and 74.34 RCW.

Adopted under notice filed as WSR 07-21-140 on October 24, 2007.

Changes Other than Editing from Proposed to Adopted Version: See Reviser's note below.

A final cost-benefit analysis is available by contacting Todd Henry, Mailstop 45600, Department of Social and Health Services, P.O. Box 45600, Olympia, WA 98513,

phone (360) 725-2580, fax (360) 438-7903, e-mail henryte@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 9, Amended 3, 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 9, Amended 3, Repealed 0.

Date Adopted: February 12, 2008.

Robin Arnold-Williams
Secretary

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 08-06 issue of the Register.

WSR 08-05-120
PERMANENT RULES
SECRETARY OF STATE
(Elections Division)

[Filed February 19, 2008, 4:06 p.m., effective March 21, 2008]

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

Purpose: The Cycle 5 Rules of 2007 address issues such as forwarding ballots, redistricting, the voters' pamphlet, the HAVA complaint process, and logic and accuracy tests.

Citation of Existing Rules Affected by this Order: Repealing WAC 434-335-080, 434-335-340, 434-335-350, 434-335-360, 434-335-370, 434-335-460, 434-335-470, 434-335-480, 434-335-500, 434-335-530, 434-335-570, 434-335-580, 434-335-590 and 434-369-080; and amending WAC 434-250-070, 434-250-100, 434-253-025, 434-262-015, 434-262-017, 434-262-200, 434-263-040, 434-263-050, 434-263-060, 434-263-080, 434-263-090, 434-335-070, 434-335-270, 434-335-300, 434-335-310, 434-335-320, 434-335-330, 434-335-430, 434-335-440, 434-335-445, 434-335-450, 434-335-490, 434-335-510, 434-335-520, 434-335-540, 434-335-550, 434-335-560, 434-369-005, 434-369-010, 434-369-020, 434-369-030, 434-369-040, 434-369-050, 434-369-060, 434-369-070, 434-381-120, and 434-381-160.

Statutory Authority for Adoption: RCW 29A.04.611.

Adopted under notice filed as WSR 08-02-072 on December 28, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, 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 1, Amended 35, Repealed 14.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 37, Repealed 14.

Number of Sections Adopted Using Negotiated Rule Making: New 1, Amended 37, Repealed 14; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 19, 2008.

Steve Excell
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

WAC 434-250-070 Forwarding ballots. (1) If the county auditor chooses ((~~not~~)) to forward ballots, ((~~the envelope must clearly indicate the ballot is not to be forwarded.~~

~~(2) If the county auditor chooses to forward absentee ballots, as authorized by RCW 29A.40.091, the county auditor must include with the ballot an explanation of qualifications necessary to vote and~~)) as authorized by RCW 29A.40.091, the county auditor must utilize postal service endorsements that allow the ballots to be forwarded, allow the county auditor to receive the updated address information, and allow the return of ballots not capable of being forwarded. A voter may only vote a ballot specific to the address where he or she is registered to vote, rather than a ballot specific to a new address. The county auditor must include instructions substantially similar to the following:

If you have changed your permanent residence address, please contact your county auditor to ensure the ballot you receive in future elections contains the races and issues for your residential address. If you have any questions about your eligibility to vote in this election, please contact your county auditor.

((~~The above instructions and the explanation required by RCW 29A.40.091 may be provided on the ballot envelope, on an enclosed insert, or on the ballot itself. Auditors must begin to provide the above instruction to voters no later than January 1, 2008. The county auditor must utilize postal service endorsements that allow:~~

~~(a) The ballots to be forwarded;~~

~~(b) The county auditor to receive from the post office the addresses to which ballots were forwarded; and~~

~~(c) The return of ballots that were not capable of being forwarded.~~)) (2) If the county auditor does not forward ballots, the envelope must clearly indicate the ballot is not to be forwarded. If the county auditor receives updated address information from the post office, the county auditor may send the voter a ballot specific to the address where the voter is registered to vote.

(3) If a ballot is returned or forwarded, the county auditor must, following certification of the election, either:

(a) Transfer the voter registration and send the voter an acknowledgment notice, if the updated address is within the county; or

(b) Place the voter on inactive status and send the voter a confirmation notice to all known addresses, if no updated

address information was received or the updated address is outside the county.

AMENDATORY SECTION (Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

WAC 434-250-100 Ballot deposit sites and voting centers. (1) If a location only receives ballots and does not issue any ballots, it is considered a ballot deposit site. Ballot deposit sites may be staffed or unstaffed.

(a) If a ballot deposit site is staffed, it must be staffed by at least two people. Deposit site staff may be employees of the county auditor's office or persons appointed by the auditor. If ((~~two or more~~)) a deposit site ((~~staff are~~)) is staffed by two or more persons appointed by the county auditor, the appointees shall be representatives of different major political parties whenever possible. Deposit site staff shall subscribe to an oath regarding the discharge of their duties. Staffed deposit sites open on election day must be open from 7:00 a.m. until 8:00 p.m. Staffed deposit sites may be open prior to the election according to dates and times established by the county auditor. Staffed deposit sites must have a secure ballot box that is constructed in a manner to allow return envelopes, once deposited, to only be removed by the county auditor or by the deposit site staff. If a ballot envelope is returned after 8:00 p.m. on election day, deposit site staff must note the time and place of deposit on the ballot envelope, and such ballots must be referred to the canvassing board.

(b) Unstaffed ballot deposit sites consist of secured ballot boxes that allow return envelopes, once deposited, to only be removed by authorized staff. Ballot boxes located outdoors must be constructed of durable material able to withstand inclement weather, and be sufficiently secured to the ground or another structure to prevent their removal. From eighteen days prior to election day until 8:00 p.m. on election day, two people who are either employees of or appointed by the county auditor must empty each ballot box with sufficient frequency to prevent damage and unauthorized access to the ballots.

(2) If a location offers replacement ballots, provisional ballots, or voting on a direct recording electronic device, it is considered a voting center. The requirements for staffed ballot deposit sites apply to voting centers. Each voting center must:

(a) Be posted according to standard public notice procedures;

(b) Be an accessible location consistent with chapters 29A.16 RCW and 434-257 WAC;

(c) Be marked with signage outside the building indicating the location as a place for voting;

(d) Offer disability access voting;

(e) Offer provisional ballots, which may be sample ballots that meet provisional ballot requirements;

(f) Record the name, signature and other relevant information for each voter who votes on a direct recording electronic voting device in such a manner that the ballot cannot be traced back to the voter;

(g) Request identification, consistent with RCW 29A.44.205 and WAC 434-253-024, from each voter voting on a direct recording electronic voting device or voting a provisional ballot;

(h) Issue a provisional ballot to each voter who is unable to provide identification in accordance with (g) of this subsection;

(i) Have electronic or telephonic access to the voter registration system consistent with WAC 434-250-095 if voters are voting on a direct recording electronic voting device;

(j) Provide either a voters' pamphlet or sample ballots;

(k) Provide voter registration forms;

(l) Display a HAVA voter information poster;

(m) Display the date of that election;

(n) Provide instructions on how to properly mark the ballot;

(o) Provide election materials in alternative languages if required by the Voting Rights Act; and

(p) Use an accountability form to account for all ballots issued.

(3) Ballot boxes must be locked and sealed at all times, with seal logs that document each time the box is opened((~~,~~)) and by whom((~~, and the number of ballots removed~~)). Ballots must be placed into sealed transport carriers and returned to the county auditor's office or another designated location. At exactly 8:00 p.m. on election day, all ballot boxes must be emptied or sealed to prevent the deposit of additional ballots.

AMENDATORY SECTION (Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

WAC 434-253-025 Polling place—Items to be posted. The following items must be posted or displayed at each polling place while it is open:

(1) United States flag;

(2) HAVA voter information poster;

(3) A sign listing the date of the election and the hours of voting on election day;

(4) Voting instructions printed in at least 16 point bold type;

(5) Either sample ballots or voters' pamphlets;

(6) Voter registration forms;

(7) Election materials in alternative languages, if so required by the ((~~National Voter Registration Act of 1993~~)) Voting Rights Act (42 U.S.C. 1973((~~gg~~)) aa et seq.); and

(8) Any other items the county auditor deems necessary.

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

WAC 434-262-015 Canvassing board—Delegation of authority. The county auditor, prosecuting attorney, and chair of the county legislative authority, or designees as per chapter 29A.60 RCW, shall be responsible for the performance of all duties of the county canvassing board, as set forth in chapters 29A.40 and 29A.60 RCW, and the rules on canvassing adopted by the secretary of state. These duties shall be performed by the members of the board, or they may delegate in writing representatives to perform these duties. This written delegation of authority shall be filed with the county auditor prior to any person undertaking any action on behalf of the board. In no instance may the members of the county canvassing board delegate the responsibility of certi-

fying the returns of any primary or election, of determining the validity of any challenged ballots, or of rejecting ballots. When considering the validity or rejection of ballots, the canvassing board may review the ballots individually, in batches, or as part of a report of ballots presented to the board. In the event the canvassing board ((~~determines that the signature on an absentee or provisional ballot was not made by the voter to whom the ballot was issued or that a voter attempted to vote more than once, the board must direct the county auditor to~~)) concludes that criminal activity may have occurred, the county auditor must refer the ballot and any relevant material to the county sheriff or county prosecuting attorney.

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

WAC 434-262-017 Calculating validation figures and results for bonds and levies. (1) For bonds and levies other than school district levies, before determining a jurisdiction's validation figures, the number of votes cast in the jurisdiction in the last general election must be determined. For levies, the state Constitution states, "…the number of persons voting "yes" on the proposition shall constitute three-fifths of a number equal to forty per centum of the total votes cast in such taxing district at the last preceding general election…" For example:

10,000 votes cast in the jurisdiction in the last general election x 40% = 4,000 votes x 3/5 = 2,400 votes

These numbers should be calculated based on the number of voters credited for voting in each jurisdiction, before adding, deleting, or transferring voters following the general election.

(2) When determining the results of a specific bond or levy, county auditors must not include overvotes or undervotes in the calculation. Rounding must not be used to reach ((~~sixty percent~~)) the percentage of "yes" votes required for a bond or levy to pass. ((~~For example:~~

~~2,980 "yes" votes ÷ 5,000 total votes cast = 59.6%, so the levy would not pass.~~))

AMENDATORY SECTION (Amending WSR 97-21-045, filed 10/13/97, effective 11/13/97)

WAC 434-262-200 Retention of records. All records and materials are to be maintained for a period of sixty days after certification of each election. Where the election involves federal offices the records and material must be kept for ((~~the appropriate time frame as set forth in federal statutes~~)) twenty-two months from the date of the election.

AMENDATORY SECTION (Amending WSR 04-16-037, filed 7/27/04, effective 8/27/04)

WAC 434-263-040 Processing of complaint. (1) The secretary may process the complaint in any of the following ways:

(a) The secretary may dismiss the complaint, and issue a final determination, if it:

(i) Does not comply with WAC 434-263-020 ((~~or if it~~));

(ii) Does not, on its face, allege a violation of Title III ((~~with regard to an election~~)); or

(iii) Alleges a claim for which relief cannot be granted, or for which a remedy is not available;

(b) The secretary may, with the agreement of the parties, resolve the matter informally, and issue a determination without formal proceedings; ((~~or~~))

(c) The secretary may resolve the matter informally by agreeing to implement a remedy or corrective action; or

(d) The secretary may schedule the matter for a brief adjudicative proceeding. The secretary shall do so if the complaint is not dismissed pursuant to (a) of this subsection and a party so requests.

(2) The secretary must respond within thirty days of the filing of the complaint to acknowledge receipt and explain how the complaint will be processed consistent with subsection (1) of this section.

(3) The secretary may consolidate complaints if they relate to the same actions or events, or if they raise common questions of law or fact.

AMENDATORY SECTION (Amending WSR 04-16-037, filed 7/27/04, effective 8/27/04)

WAC 434-263-050 Brief adjudicative proceeding. (1) The secretary shall designate ((~~one or more people~~)) a person to act as a presiding officer(((~~s~~))) of a brief adjudicative hearing. A presiding officer may be:

(a) The assistant or deputy secretary;

(b) The director of elections;

(c) ((~~The deputy~~)) An assistant director of the elections division;

(d) Any county auditor; or

(e) An administrative law judge.

The ((~~designee~~)) presiding officer shall not be from an office named in the complaint.

(2) Before issuing a determination on the complaint, the presiding officer shall give each party an opportunity to explain the party's view of the matter, including an opportunity to be informed of the secretary's view of the matter if applicable. A determination may be based upon written submissions and documents, unless a party or the presiding officer requests a hearing on the record within ten days after the filing of the complaint.

(3) The presiding officer may schedule a hearing on the record:

(a) In person at a convenient location;

(b) By conference telephone call; or

(c) By such other method that permits the parties to hear and participate in the proceeding simultaneously.

Witnesses at a hearing shall be sworn upon oath. A party who requests a hearing but fails to make himself or herself available for hearing within the time available for initial determination shall be deemed to have waived the hearing.

(4) The presiding officer may permit or solicit the submission of written materials or oral presentations by persons who are not parties if the presiding officer determines that such submissions would be helpful in evaluating the complaint.

(5) The secretary shall establish and maintain the record of the proceedings as required by RCW 34.05.494. If a hearing on the record is conducted, the record shall include a transcript or audio recording of the hearing.

AMENDATORY SECTION (Amending WSR 04-16-037, filed 7/27/04, effective 8/27/04)

WAC 434-263-060 Initial determination and remedies. (1) The presiding officer shall render a written initial decision within ((~~forty-five~~)) seventy days after the complaint is filed, unless the complainant consents to a longer period. The determination shall include a statement as to whether, based upon a preponderance of the evidence, a violation of Title III has been established with regard to an election. If the presiding officer determines that a violation has occurred, the determination shall specify the appropriate remedy, if one exists. If the presiding officer determines that no violation has been established, the complaint shall be dismissed.

(2) The remedy awarded under this section shall be directed to the improvement of processes or procedures governed by Title III and must be consistent with state law. Remedies may include written findings that a violation of Title III has occurred and strategies for insuring that the violation does not occur again, as well as any other remedy available to the secretary under law. The remedy may not include any award of monetary damages, costs, penalties or attorney fees, and may not include the invalidation of any vote((,)) or ballot, or the invalidation, cancellation, or delay of any primary or election. Remedies addressing the validity of any primary or election or of any ballot or vote may be obtained only as otherwise provided by law.

(3) The initial determination shall include a summary of the process for obtaining an administrative review and shall include notice that judicial review may be available.

AMENDATORY SECTION (Amending WSR 04-16-037, filed 7/27/04, effective 8/27/04)

WAC 434-263-080 Alternative dispute resolution. (1) If a final determination is not rendered within ((~~forty-five~~)) ninety days after the filing of the complaint, or within such additional time to which the complainant may consent, then the complaint shall be transferred to a board of arbitration, which must resolve the complaint within sixty additional days, which may not be extended. The board of arbitration shall be composed of three members, designated by the secretary, at least two of whom must be county auditors or election managers. No two members of the panel may be employed by the same office, agency or other employer.

(2) The arbitrators shall review the record compiled in proceedings prior to the transfer, including the tape or transcript of any hearing, but may not conduct any further hearing or receive any additional testimony, evidence, or other submissions. The arbitrators shall determine the appropriate resolution of the complaint by majority vote. No further administrative review is available, but the arbitrator's final determination shall include notice that judicial review may be available.

AMENDATORY SECTION (Amending WSR 04-16-037, filed 7/27/04, effective 8/27/04)

WAC 434-263-090 Publication. All final determinations pursuant to WAC 434-263-070 shall be posted on the secretary's web site((~~, lodged with the state library or state archives, and distributed to others upon request and upon payment of copying costs. Copies shall be provided to the parties at no cost~~)) for at least ninety days.

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

WAC 434-335-070 Additional information and equipment required. The vendor shall provide a working model of the equipment under review for the duration of the examination. ((~~The secretary of state may, at the expense of the applicant, contract with independent testing authorities or laboratories, or experts in mechanical engineering, electrical engineering, or data processing to assist in the examination of the equipment.~~))

NEW SECTION

WAC 434-335-090 Voting systems review board evaluation. The voting systems review board evaluation must include, but is not limited to:

(1) A review of statutory requirements;

(2) A review of applicable federal standards;

(3) A review of the approved qualification test results released directly to the secretary of state by the federally approved independent testing authority;

(4) If applicable, a review of reports or other materials from prior hearings on the proposed system, procedure, or modification, either in whole or in part;

(5) A review of the report produced by the secretary of state upon completion of the examination of the voting system;

(6) If applicable, a review of any procedures manuals, guidelines, or other materials issued for use with the system;

(7) A review of any effect the application will have on the security of the voting system;

(8) A review of any effect the application will have on the accuracy of the voting system;

(9) A review of any effect the application will have on the ease and convenience with which voters use the system;

(10) A review of any effect the application will have on the timeliness of vote reporting; and

(11) A review of any effect the application will have on the overall efficiency of the voting system.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-335-080	Deposit for examination expenses.

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

WAC 434-335-270 Definition of official logic and accuracy test. As used in this chapter, "official logic and accuracy test" means the test performed in accordance with RCW 29A.12.130 for all voting systems used.

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

WAC 434-335-300 Logic and accuracy testing of voting systems and equipment((~~—State primary and general election~~)). (1) At least three days before each state primary or general election, the office of the secretary of state must test the programming of the vote tabulating system to be used at that primary or election. The test must verify that the system will correctly count the votes cast for all candidates and all measures appearing on the ballot. The test must also verify that the machines are functioning to specifications.

(2) County auditors must conduct the test in the same manner as subsection (1) of this section for special elections not held in conjunction with a state primary or general election. The secretary of state is not represented at the tests for special elections.

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

WAC 434-335-310 Procedure for conduct of ((~~delayed~~)) primary or general election emergency logic and accuracy test. If the official logic and accuracy test cannot be completed at the scheduled time and place, an emergency test must be scheduled by the county auditor. The emergency test must be conducted and properly completed prior to the processing of any official ballots through the tabulating system. If no representative of the office of the secretary of state is able to attend the emergency test, the county auditor and another member of the county canvassing board or their designated representative must observe the test and certify the results. Observers and notification must be provided pursuant to WAC 434-335-290 and 434-335-320.

AMENDATORY SECTION (Amending WSR 06-14-048, filed 6/28/06, effective 7/29/06)

WAC 434-335-320 Logic and accuracy test scheduling and preparation—State primary and general election. Prior to each state primary and general election, the office of the secretary of state must prepare a schedule of logic and accuracy tests. The office of the secretary of state must ((~~notify~~)) contact each county ((~~of the date and time of~~)) auditor at least thirty days before the primary or general election to schedule the test ((~~at least thirty days before the primary or election~~)). The county auditor must notify the parties, press, public, and candidates of the date and time of the test.

AMENDATORY SECTION (Amending WSR 06-14-048, filed 6/28/06, effective 7/29/06)

WAC 434-335-330 Logic and accuracy test certification((~~—State primary and general election~~)). (1) The county auditor or deputy, the secretary of state representative, and any political party observers must certify that the test of voting systems that will be used in the primary or general election was conducted in accordance with RCW 29A.12.130. This certification must include verification that the version numbers for all software, firmware, and hardware of the voting system used have not changed from the certified versions. Copies of this certification must be retained by the secretary of state and the county auditor and may be posted by electronic media. All ((~~programming materials,~~)) test results, ((~~and~~)) test ballots, and a copy of the tabulation programming or the actual tabulation equipment must be kept in secure storage employing the use of numbered seals and logs or other security measures that will detect any inappropriate access to the materials until the day of the primary or election. These items may be sealed and stored separately.

(2) For special elections not held in conjunction with a state primary or general election, the secretary of state is not represented and does not retain a copy of the certification. The county auditor or deputy and any political party observers must certify that the test of voting systems that will be used in the special election was conducted in accordance with RCW 29A.12.130. This certification must include verification that the version numbers for all software, firmware, and hardware of the voting system used have not changed from the certified versions. Copies of this certification must be retained by the county auditor and may be posted by electronic media. All test results, test ballots, and a copy of the tabulation programming must be kept in secure storage, employing the use of numbered seals and logs or other security measures that will detect any inappropriate access to the materials until the day of the primary or election. These items may be sealed and stored separately.

(3) If, for any reason, any changes are made to the ballot counting programming after the official logic and accuracy test, an emergency logic and accuracy test must be conducted pursuant to WAC 434-335-310.

OPTICAL AND DIGITAL SCAN SYSTEMS

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

WAC 434-335-430 Definition((~~s~~)). ((~~For optical scan voting systems:~~

~~(1) "Voting response area~~)) "Target area" means the area on the ballot for optical and digital scan voting systems, as specified in the instructions, in which the voter may place a mark to indicate a vote.

(~~(2) "Scanning area" means the portions of the ballot that the system scans in order to read the vote marks made by voters.~~

~~(3) "Ballot marking code" means the coded patterns printed on the ballot intended to identify the ballot style to the ballot counting system.~~))

AMENDATORY SECTION (Amending WSR 06-14-048, filed 6/28/06, effective 7/29/06)

WAC 434-335-440 Logic and accuracy ((~~test deck preparation~~)) pretest—State primary and general election—Optical and digital scan systems. The county is responsible for preparing and testing the vote tabulating system prior to the official logic and accuracy test. This pretesting must be completed prior to the official logic and accuracy test and prior to using the equipment to process ballots. ((~~Information describing the candidates, offices, ballot styles, number of appearances of each office, method used to mark the test deck, a copy of the anticipated results, and all other information required to create the test decks must be sent to the office of the secretary of state by the 20th day prior to the primary or election. If a county is delayed, the county must advise the office of the secretary of state before the 20th day prior to the primary or election.~~))

AMENDATORY SECTION (Amending WSR 06-14-048, filed 6/28/06, effective 7/29/06)

WAC 434-335-445 The preparation of logic and accuracy test decks. (1) Each county shall produce a test deck of ballots to be used in ((~~the pretest and~~)) the official logic and accuracy test to verify that the vote tabulating system is programmed to correctly count the ballots.

((~~When a race has five or fewer candidates, the~~)) (2) The pattern to mark the test deck shall begin by giving the first candidate in each race one vote, the second candidate in each race two votes, the third candidate in each race three votes, etc. ((~~When a race has more than five candidates the pattern may be repeated.~~)) Once the pattern is completed for each race and issue, each remaining precinct or ballot style must be tested by using ((~~at least~~)) a minimum of one ballot that has a first choice marked for each race and issue. Additional votes may be added to ensure all responses for a race or issue have unique results. Another pattern may be used if it meets the requirements outlined in this section and is approved by the secretary prior to marking the test deck.

(3) The test deck must also test that the vote tabulating system is programmed to accurately count write-in votes, overvotes((~~, undervotes,~~)) and blank ballots. ((~~In addition, if ballot on demand systems will be used during the election,~~)) The test deck must also include a sampling of all ballots ((~~printed from the ballot on demand system~~)) that will be used during the election, including ballot on demand, alternative language ballots, and ballots marked with an electronic ballot marker.

(4) In a partisan primary:

(a) When a consolidated ballot is used, the test deck must test that the partisan and nonpartisan votes are counted properly for situations where just one party is selected, no party is selected, and both parties are selected; and

(b) When separate ballots are used, a test deck for each party must be prepared in addition to a test deck for nonpartisan races.

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

WAC 434-335-450 Optical and digital scan test ballot selection—State primary and general elections. A matrix of a county's test deck and a sample ballot must be sent to the office of the secretary of state by the fourteenth day prior to the official logic and accuracy test. Prior to the ((~~official logic and accuracy~~)) test, the office of the secretary of state must review the provided ((~~election materials with the county and select a representative sample of ballot styles sufficient to cover all offices and issues appearing in the election. If the office of the secretary of state prepares the test deck, the county auditor must send to the secretary of state blank ballots of the selected ballot styles as soon as the ballots are available. The representative sample constitutes the official logic and accuracy test, unless conditions warrant the office of the secretary of state to conduct a complete test of every precinct~~)) matrix to determine if it is prepared in accordance with WAC 434-335-445 and if the representative ballot sample of ballot styles is sufficient to cover all offices and issues appearing in the election.

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

WAC 434-335-490 Poll site-based optical scan ballot counter preparation and testing. (1) The logic and accuracy test of a poll site-based optical scan ballot counter must be performed by the county during preparation of the counter prior to distribution. ((~~As the ballot counter is programmed and prepared for distribution, a test of the ballot counter and the ballot styles must be performed.~~)) This test must establish that the ballot counter is functioning within system standards. All ballot styles programmed for the ballot counter must be processed by the ballot counter in order to ((~~insure~~)) ensure that it is correctly counting and accumulating every office. The test must also establish that the ((~~printed voter response~~)) target areas on the ballot are correctly aligned with the ((~~scanning~~)) scanned target area. After all tests are performed and the ballot counter is ready for distribution, the ballot counter must be sealed and the seal number recorded. These tests serve as the official logic and accuracy test of poll site-based optical scan ballot counters.

(2) A log must be created during the testing of a poll-site based optical scan ballot counter. The log must record the time of each test, the precinct numbers, the seal number, the machine number of each ballot counter, and the initials of each person testing the system. The log must be included in the official logic and accuracy test materials. This process is open to observation and subject to all notices and observers pursuant to WAC 434-335-290 and 434-335-320.

((~~DIRECT RECORDING~~)) ELECTRONIC VOTING SYSTEMS

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

WAC 434-335-510 Definitions. ((~~For direct recording electronic voting systems:~~

~~"Access device" is the device that is used by the voter to access the ballot at a direct recording electronic voting device. It may be a card or other media.~~))

"Calibration" is the touch screen setting on a ((~~direct recording electronic voting system~~)) disability access unit with touch screen capability that controls the ((~~voter response~~)) target area.

((~~"Controller" is a component of a direct recording electronic voting system that allows the poll worker to add information to an access device to allow a voter to access the correct ballot style.~~

~~"Parallel monitoring" is a process designed to detect the potential presence of malicious code in the software of a voting machine. It requires a specific number of voting machines to be removed from random poll sites before voting begins. These machines are then test-voted throughout election day.~~

~~"Response~~)) "Direct recording electronic device" is a device that records a voter's responses electronically.

"Electronic ballot marker" is a device that marks a voter's responses on a preprinted paper ballot.

"Target area" is the area on the ballot face that records the voter's choice.

"Touch screen" is a type of computer interface on a voting device that allows the voter to select a choice by touching the screen.

((~~"Voter verified paper record" is a paper record of a voter's choices. The paper record may be verified by the voter before the vote is cast.~~))

AMENDATORY SECTION (Amending WSR 06-14-048, filed 6/28/06, effective 7/29/06)

WAC 434-335-520 Logic and accuracy test plan preparation—((~~State primary and general election—~~))Disability access units. (1) The test plan used for the official logic and accuracy test ((~~prior to a state primary or election~~)) for disability access units must be prepared by the county in the same manner as for optical and digital scan ballots. The official testing must be completed before a ((~~direct recording device~~)) disability access unit may be used for marking or casting ballots. Counties must complete the testing to have in-person disability access voting available starting twenty days before the day of a primary or election. ((~~Information describing the candidates, offices, ballot formats, ballot styles, number of appearances of each office, and all other information required to create the test plan must be sent to the office of the secretary of state by the 20th day prior to the primary or election. If a county is delayed, the county auditor must advise the office of the secretary of state before the 20th day prior to the primary or election.~~))

(2) This test serves as the official logic and accuracy test of poll site-based optical scan ballot counters. A log must be created during the test, recording the time of each test, the precinct numbers, the seal number, the machine number, and the initials of each person testing the system. The log must be included in the official logic and accuracy test materials. This process is open to observation and subject to all notices and observers pursuant to WAC 434-335-290 and 434-335-320.

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

WAC 434-335-540 ((~~Direct recording electronic~~)) Touch screen calibration adjustment standards and tests. Prior to each state primary and election, the calibration settings of each ((~~direct recording electronic~~)) device using touch screen technology must be tested to ((~~insure~~)) ensure that the ((~~response~~)) target areas are functioning within system standards.

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

WAC 434-335-550 Direct recording electronic ((~~voting response~~)) target area tests. ((~~Prior to the official logic and accuracy test, and prior to the programming of the poll site direct recording electronic devices,~~)) Each county employing a direct recording electronic balloting system must conduct a test to confirm that the ((~~voting response~~)) target area indicated on each ballot face is programmed correctly. The county must test all ballot styles on at least one device to ((~~insure~~)) ensure that the programming is correctly counting and accumulating every office, measure, and ((~~candidate~~)) selection by the voter.

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

WAC 434-335-560 ((~~Direct recording electronic ballot marking code program~~)) Electronic ballot marker test. ((~~Prior to the official logic and accuracy test, each county employing a direct recording electronic balloting system to confirm that the voting response areas indicated on all ballot faces are programmed correctly. The county must test all ballot styles on at least one device to insure that the programming is correctly counting and accumulating every office and candidate.~~)) Each county employing an electronic ballot marker must conduct a test to confirm the target area indicated on each ballot face is programmed correctly. The county must test all ballot styles on at least one device to ensure the programming is correctly marking the target area for every office, measure, and selection by the voter.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-335-340	Logic and accuracy testing of voting systems and equipment—Special elections.
WAC 434-335-350	Logic and accuracy test deck preparation—Special elections.
WAC 434-335-360	Logic and accuracy test scheduling and preparation—Special election.
WAC 434-335-370	Logic and accuracy test certification—Special election.

WAC 434-335-460	Optical scan read head adjustment standards and tests.
WAC 434-335-470	Optical scan test ballot scan area alignment tests.
WAC 434-335-480	Optical scan ballot marking code program test.
WAC 434-335-500	Poll site-based optical scan ballot counter test notices, observers, and log of process.
WAC 434-335-530	Direct recording electronic test ballot selection—State primary and general election.
WAC 434-335-570	Direct recording electronic system logic and accuracy test notices, and observers.
WAC 434-335-580	Poll site-based direct recording electronic voting device preparation and testing.
WAC 434-335-590	Poll site-based direct recording electronic device test notices, observers, and log of process.

AMENDATORY SECTION (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

WAC 434-369-005 Authority and purpose. These rules are adopted under authority of RCW 29A.04.611 to implement RCW 29A.76.040 ((~~pursuant to chapter 34.05 RCW to establish and govern the procedures in~~)), the census mapping project administered by the secretary of state for the U.S. Census Bureau.

AMENDATORY SECTION (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

WAC 434-369-010 Definitions. As used in ((~~these regulations~~)) this chapter:

(1) "Census mapping project" includes all functions performed by the secretary of state and each county auditor in the preparation, maintenance, distribution, and filing of precinct maps, detail maps, and census correspondence listings pursuant to RCW 29A.76.040.

(2) "Secretary of state" includes the secretary of state, assistant secretary of state, deputy secretary of state, or any other person authorized by the secretary of state to act in his or her behalf in the census mapping project.

(3) "County auditor" includes each county auditor, county elections official, or any other person authorized by the county auditor to act in his or her behalf in the census mapping project.

(4) "Census maps" refers to the maps provided by the U.S. Census Bureau which indicate census unit boundaries and numeric identification of such census units.

(5) "Census units" refers to the census geographic area designations for which the population count will be reported including census tracts, block groups, blocks, enumeration districts, and county census divisions.

(6) "Precinct maps" refers to the maps prepared by each county auditor pursuant to RCW 29A.76.040 which indicate the boundaries and numeric identification of each precinct in that county.

(7) "Precinct lists" refers to the lists prepared by each county auditor pursuant to RCW 29A.16.050(3) which indicate the names and consecutively assigned numbers of each precinct in that county.

(8) "Base maps" refers to the ((~~sets of mylar~~)) maps of each county which are provided by the secretary of state on which final detail maps will be prepared.

(9) "Census overlay maps" refers to the ((~~mylar~~)) overlay maps prepared by the secretary of state which indicate census unit boundaries and numeric identification for the area covered by each base map.

(10) "Precinct overlay maps" refers to the ((~~mylar~~)) overlay maps prepared by each county auditor which indicate precinct boundaries and numeric identification for the area covered by each base map.

(11) "Detail map" refers to the sets of maps produced by the combination of the base maps with the corresponding census and precinct overlay maps for each county.

(12) "Census correspondence listings" refers to the lists prepared by each county auditor pursuant to RCW 29A.76.040 which indicate the census units or portions of census units contained in each precinct in that county.

AMENDATORY SECTION (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

WAC 434-369-020 Precinct maps—((~~Availability and~~)) Distribution. (1) ((~~Pursuant to the provisions of RCW 29A.76.040, on or before July 1, 1980, each county auditor shall prepare for public inspection and use~~)) Each county auditor shall maintain precinct maps of that county.

(2) ((~~On or before July 18, 1980~~)) Upon request, each county auditor shall transmit to the secretary of state one complete set of precinct maps of that county.

((~~(3) Each county auditor shall also send one copy of the precinct maps of each city or town in that county to the clerk of that city or town.~~))

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-369-030 Precinct lists—Preparation and filing. ((~~On or before July 18, 1980~~)) Upon request, each county auditor shall prepare and transmit to the secretary of state a precinct list of that county. Precinct names shall be listed in alphabetical order ((~~and shall also be~~)) or numbered consecutively.

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-369-040 Base maps, census overlay maps, and related information—Duties of the secretary of state. ((~~On or before September 15, 1980,~~)) The secretary of state

shall prepare and transmit to each county auditor the following:

(1) A set of base maps of that county;

(2) A set of census overlay maps for each base map of that county; and

(3) A sequential census unit listing, provided by the U.S. Census Bureau, which indicates all census units delineated on the census and base maps of that county.

AMENDATORY SECTION (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

WAC 434-369-050 Precinct overlay maps—Preparation. Pursuant to the provisions of RCW 29A.76.040, each county auditor shall prepare precinct overlay maps for each base map of the county and each city and town within that county ((~~according to the following procedures:~~

~~(1) Precinct overlay maps shall be prepared on the reproducible mylar overlays provided by the secretary of state; (2) each county auditor shall transfer all precinct boundaries and numeric identification in red ink onto the mylar overlay for each base map of that county; and (3) each overlay map shall include the following identification in the lower left hand corner: (a) The name of the area covered by the map; (b) an arrow indicating north; and (c) the preparation date of the precinct overlay map~~)).

AMENDATORY SECTION (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

WAC 434-369-060 Census correspondence listings—Preparation. Pursuant to the provisions of RCW 29A.76.040, each county auditor shall prepare a census correspondence listing according to the following procedures:

(1) Record the census tracts or county census divisions (CCD) and the smallest census units in each area for which population counts are to be reported from the sequential census unit listing supplied by the U.S. Census Bureau. ((~~(~~))The order of census information on the census correspondence listing shall be identical to the sequential census unit listing.((~~)~~))

(2) Record the number or numbers, as assigned pursuant to RCW 29A.16.050(3), of each precinct ((~~which~~)) that is wholly or partially coextensive with the census unit((~~;~~)).

(3) ((~~wherever~~)) Where census unit or precinct boundaries are not coincident, estimate for each portion of a split census unit, the proportion of the total number of registered voters residing in each precinct containing a portion of the split census unit. ((~~(~~))Each county auditor shall refer to current voter registration lists and other available information to determine such estimated proportion of registered voters. Such estimates shall be expressed to at least the nearest 10 percent of the total number of registered voters within the precinct.((~~)~~

~~The census correspondence listings shall be prepared in substantially the following form:~~

((~~STRICKEN GRAPHIC~~

County_____ Map sheets_____

Census Tract CCD	Block ED	Precinct Number	% of Registered Voters

~~STRICKEN GRAPHIC~~))

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-369-070 Detail maps and census correspondence listings—Maintenance, distribution, and filing. (1) ((~~On or before November 1, 1980~~)) Upon request, each county auditor shall send to the secretary of state the complete set of ((~~mylar~~)) detail maps and census correspondence listings for that county;

(2) The secretary of state shall maintain the original sets of ((~~mylar~~)) detail maps of each county;

(3) The secretary of state shall reproduce and distribute copies of detail maps to each county auditor for the actual cost of reproduction; and

(4) Each county auditor shall maintain copies of precinct maps, detail maps, and census correspondence listings of the county. Such maps shall be available for public inspection during normal office hours. Copies shall be made available to the public ((~~for a fee necessary to cover the cost of reproduction under such rules as the county auditor has adopted pursuant to RCW 42.17.260~~)) at actual reproduction cost.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-369-080	Compensation to county auditors for direct expenses.

Chapter 434-381 WAC

STATE VOTERS' PAMPHLET

AMENDATORY SECTION (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

WAC 434-381-120 Deadlines. (1) Candidate statements and photographs shall be submitted to the secretary of state:

(a) For candidates who filed during the regular filing period, within ((~~three business~~)) seven calendar days after filing their declaration of candidacy;

(b) For candidates who filed during a special filing period, or were selected by a political party pursuant to either RCW 29A.52.010 or 29A.24.140, within ((~~three business~~)) seven calendar days after the close of the special filing period or selection by the party.

(2) For ballot measures, including initiatives, referendums, alternatives to initiatives to the legislature, and constitutional amendments, the following documents shall be filed with the secretary of state on or before the following deadlines:

(a) Appointments of the initial two members of committees to prepare arguments for and against measures:

(i) For an initiative to the people or referendum measure: Within ten business days after the submission of signed petitions to the secretary of state;

(ii) For an initiative to the legislature, with or without an alternative, constitutional amendment or referendum bill, within ten business days after the adjournment of the regular or special session at which the legislature approved or referred the measure to the ballot:

(b) Appointment of additional members of committees to prepare arguments for and against ballot measures, not later than the date the committee submits its initial argument to the secretary of state;

(c) Arguments for or against a ballot measure, no later than twenty calendar days following appointment of the initial committee members;

(d) Rebuttals of arguments for or against a ballot measure, by no later than fourteen calendar days following the transmittal of the final statement to the committees by the secretary. The secretary shall not transmit arguments to opposing committees for the purpose of rebuttals until both arguments are complete.

(3) If a ballot measure is the product of a special session of the legislature and the secretary of state determines that the deadlines set forth in subsection (2) of this section are impractical due to the timing of that special session, then the secretary of state may establish a schedule of deadlines unique to that measure.

(4) The deadlines stated in this rule are intended to promote the timely publication of the voters pamphlet. Nothing in this rule shall preclude the secretary of state from accepting a late filing when, in the secretary's judgment, it is reasonable to do so.

AMENDATORY SECTION (Amending WSR 02-02-067, filed 12/28/01, effective 1/28/02)

WAC 434-381-160 Listing committee names and contact information. Committee names and contact information shall be submitted to the secretary of state.

(1) Names for publication in the voters pamphlet shall be listed in the order submitted by the committee;

(2) Each committee member may use up to eight words as a title or identification. ((~~"Title or identification" means a formal or informal description of the present or past occupation, role within an organization, educational qualification, or office of an individual, but does not include any expression of opinion or motivation;~~)) No words that are obscene or otherwise prohibited for distribution through the mail may be used;

(3) The secretary will make every effort to maintain consistency in form and style for publications;

(4) State legislators will be identified in the following manner: State representative or state senator, with each title constituting two words;

(5) State elected officials will be identified as follows: Governor, lieutenant governor, secretary of state, treasurer, auditor, attorney general, superintendent of public instruction, commissioner of public lands and insurance commissioner, with each title counting as many words as in that title;

(6) Additional titles or descriptions may be added to reach the maximum title length; and

(7) Each committee may submit contact information for inclusion in the voters pamphlet consisting of: A telephone number, an e-mail, and an internet address which will not count toward the maximum word allowance.

WSR 08-05-126
PERMANENT RULES
DEPARTMENT OF FINANCIAL INSTITUTIONS

[Filed February 20, 2008, 9:20 a.m., effective March 22, 2008]

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

Purpose: Amending the rules in chapter 208-660 WAC implementing the Mortgage Broker Practices Act, chapter 19.146 RCW.

Citation of Existing Rules Affected by this Order: Amending WAC 208-660-006 Definitions, 208-660-007 Good standing, 208-660-008 Exemption from licensing, 208-660-163 Mortgage brokers—Licensing, 208-660-180 Mortgage brokers—Main office, 208-660-195 Mortgage brokers—Branch offices, 208-660-250 Designated brokers—General, 208-660-260 Designated brokers—Testing, 208-660-300 Loan originators—General, 208-660-350 Loan originators—Licensing, 208-660-370 Loan originators—Continuing education, 208-660-400 Reporting requirements and notices to the department, 208-660-430 Disclosure requirements, 208-660-440 Advertising, 208-660-500 Prohibited practices, 208-660-530 Director and department powers—Enforcement authority, 208-660-550 Department fees and costs, and 208-660-600 Administration and facilitation of continuing education.

Statutory Authority for Adoption: RCW 43.320.040, 19.146.223.

Adopted under notice filed as WSR 08-01-038 on January 2, 2008 [December 10, 2007].

Changes Other than Editing from Proposed to Adopted Version: WAC 208-660-250 Designated brokers—General.

At subsection (1)(b), the designated broker appointee must have two years additional experience instead of three years.

At subsection (1)(e)(ii)(C), a corporate officer may sign corporate tax returns.

At subsection (1)(g), you may not be eligible to become a designated broker if you have a history of unpaid debts.

WAC 208-660-300 Loan originators—Licensing.

At subsection (8)(a), the mortgage broker demand must authorize the loan originator to receive payment at closing.

At subsection (8)(b), the loan originator must provide a copy of the settlement statement to the mortgage broker within 24 hours of receiving funds from closing.

At subsection (2)(d), a loan originator is not eligible to receive a loan originator license if they have a certain amount of tax lien debt. A loan originator may not be eligible to receive a loan originator license if their financial history shows unpaid debt.

WAC 208-660-400 Reporting requirements and notices to the department.

At subsection (13), the mortgage broker must give notice of a sale of the business to borrowers whose loans are in process, and to third party service providers who have or will provider services for loans in process, and third parties the mortgage broker owes money to.

WAC 208-660-430 Disclosure requirements.

At subsection (5)(a), the YSP should be disclosed in the 800 series of lines on the GFE.

At subsection (5)(b), the mortgage broker must direct the settlement service provider how to disclose the YSP.

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 18, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 18, Repealed 0.

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

Date Adopted: February 20, 2008.

Deborah Bortner, Director
Division of Consumer Services

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

WAC 208-660-006 Definitions. What definitions are applicable to these rules? Unless the context clearly requires otherwise, the definitions in this section apply throughout these rules.

"Act" means the Mortgage Broker Practices Act, chapter 19.146 RCW.

"Advertising material" means any form of sales or promotional materials ((~~to be~~)) used in connection with the mortgage broker business. Advertising material includes, but is not limited to, newspapers, magazines, leaflets, flyers, direct mail, indoor or outdoor signs or displays, point-of-sale literature or educational materials, other printed materials; radio, television, public address system, or other audio broadcasts; or internet pages.

"Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

"Application" means the same as in Regulation X, Real Estate Settlement Procedures, 24 C.F.R. Sec. 3500 as of the effective date of these rules, which is the submission, whether written or computer-generated, of a borrower's financial information in anticipation of a credit decision relating to a residential mortgage loan. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a residential mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a residential mortgage loan.

For a refinance or purchase application that is not a prequalification, the credit report may be enough to constitute an application. The credit report date determines when the mortgage broker, or loan originator on behalf of the mortgage broker, has gathered sufficient information to make a credit decision. This may be a trigger for early disclosures when the property address is known.

"Appraisal" means the act or process of developing an opinion of value, the act pertaining to an appraisal-related function, or any verbal or written opinion of value offered by an appraiser. The opinion of value by the appraiser includes any communication that is offered as a single point, a value range, a possible value range, exclusion of a value, or a minimum value.

"Borrower" means any person who consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.

"Branch office" means a fixed physical location such as an office, separate from the principal place of business of the licensee, where the licensee holds itself out as a mortgage broker.

"Branch office license" means a branch office license issued by the director allowing the licensee to conduct a mortgage broker business at the location indicated on the license.

"Certificate of passing an approved examination" means a certificate signed by the testing administrator verifying that the individual performed with a satisfactory score or higher.

"Certificate of satisfactory completion of an approved continuing education course" means a certificate signed by the course provider verifying that the individual has attended an approved continuing education course.

"Compensation or gain" means remuneration, benefits, or an increase in something having monetary value, including, but not limited to, moneys, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing moneys that may be paid at a future date, the opportunity to participate in a money-making

program, retained or increased earnings, increased equity in a parent or subsidiary entity, special or unusual bank or financing terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payments of another person's expenses, or reduction in credit against an existing obligation. "Compensation or gain" is not evaluated solely on a loan by loan basis.

For example, a realtor advertising that buyers using their services will receive free loan origination assistance is doing so in the anticipation of "compensation or gain" through increased real estate business.

"Computer loan information systems" or "CLI system" means a real estate mortgage financing information system that facilitates the provision of information to consumers by a mortgage broker, loan originator, lender, real estate agent, or other person regarding interest rates and other loan terms available from different lenders.

For purposes of this definition, the CLI system includes computer hardware or software, an internet-based system, or any combination of these, which provides information to consumers about residential mortgage interest rates and other loan terms which are available from another person.

"Computer loan information system provider" or "CLI provider" is any person who provides a computer loan information service, either directly, or as an owner-operator of a CLI system, or both.

"Consumer Protection Act" means chapter 19.86 RCW.

"Control" including the terms "controls," "is controlled by," or "is under common control" means the power, directly or indirectly, to direct or cause the direction of the management or policies of a person, whether through ownership of the business, by contract, or otherwise. A person is presumed to control another person if such person is:

• A general partner, officer, director, or employer of another person;

• Directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interests of another person; or

• Has similar status or function in the business as a person in this definition.

"Convicted of a crime," irrespective of the pronouncement or suspension of sentence, means a person:

• Has been convicted of the crime in any jurisdiction;

• Has been convicted of a crime which, if committed within this state would constitute a crime under the laws of this state;

• Has plead guilty or no contest or nolo contendere or stipulated to facts that are sufficient to justify a finding of guilt to such a charge before a court or federal magistrate; or

• Has been found guilty of a crime by the decision or judgment of a state or federal judge or magistrate, or by the verdict of a jury.

"Department" means the department of financial institutions.

"Designated broker" means a natural person designated as the person responsible for activities of the licensed mortgage broker in conducting the business of a mortgage broker under this chapter and who meets the experience and examination requirements set forth in RCW 19.146.210 (1)(e).

"Director" means the director of financial institutions.

"Discount points" or "points" mean a fee paid by a borrower to a lender to reduce the interest rate of a residential mortgage loan. Pursuant to Regulation X, discount points are to be reflected on line 802 of the good faith estimate and settlement statement as a percentage of the loan amount.

"Division of consumer services" means the division of consumer services within the department of financial institutions, or such other division within the department delegated by the director to oversee implementation of the act and these rules.

"Employee" means an individual who has an employment relationship with a mortgage broker, and the individual is treated as an employee by the mortgage broker for purposes of compliance with federal income tax laws.

"Examination" or "compliance examination" means the examination performed by the division of consumer services, or such other division within the department delegated by the director to oversee implementation of the act and these rules to determine whether the licensee is in compliance with applicable laws and regulations.

Federal statutes and regulations used in these rules are:

• "Alternative Mortgage Transaction Parity Act" means the Alternative Mortgage Transaction Parity Act (AMTPA), 12 U.S.C. Sec. 3801 et seq.

• "Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. Sec. 1691 et seq., Regulation B, 12 C.F.R. Part 202.

• "Fair Credit Reporting Act" means the Fair Credit Reporting Act (FCRA), 15 U.S.C. Sec. 1681 et seq.

• "Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. Sec. 45(a).

• "Gramm-Leach-Bliley Act (GLBA)" means the ((~~Gramm-Leach-Bliley Act (GLBA)~~)) Financial Modernization Act of 1999, ((~~at~~)) 15 U.S.C. Sec. 6801-6809, and the GLBA-mandated Federal Trade Commission (FTC) privacy rules, at 16 C.F.R. Parts 313-314.

• "Home Equity Loan Consumer Protection Act" means the Home Equity Loan Consumer Protection Act, 15 U.S.C. Sec. 1637 and 1647.

• "Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. Sec. 2801-2810, Regulation C, 12 C.F.R. Part 203.

• "Home Ownership and Equity Protection Act" means the Home Ownership and Equity Protection Act (HOEPA), 15 U.S.C. Sec. 1639.

• "Homeowners Protection Act" means the Homeowners Protection Act of 1998 (HPA), 12 U.S.C. Sec. 4901 et seq.

• "Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Sec. 2601 et seq., Regulation X, 24 C.F.R. Part 3500 et seq.

• "Telemarketing and Consumer Fraud and Abuse Prevention Act" means the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. Sec. 6101-6108, Telephone Sales Rule, 16 C.F.R. Part 310.

• "Truth in Lending Act" means the Truth in Lending Act (TILA), 15 U.S.C. Sec. 1601 et seq., Regulation Z, 12 C.F.R. Part 226 et seq.

"Federally insured financial institution" means a savings bank, savings and loan association, or credit union, whether state or federally chartered, or a federally insured bank, authorized to conduct business in this state.

"Financial misconduct," for the purposes of the act, means a criminal conviction for any of the following:

• Any conduct prohibited by the act;

• Any conduct prohibited by statutes governing mortgage brokers in other states, or the United States, if such conduct would constitute a violation of the act;

• Any conduct prohibited by statutes governing other segments of the financial services industry, including but not limited to the Consumer Protection Act, statutes governing the conduct of securities broker dealers, financial advisers, escrow officers, title insurance companies, limited practice officers, trust companies, and other licensed or chartered financial service providers; or

• Any conduct commonly known as white collar crime, including, but not limited to, embezzlement, identity theft, mail or wire fraud, insider trading, money laundering, check fraud, or similar crimes.

"Independent contractor" means any person that expressly or impliedly contracts to perform mortgage brokering services for another and that with respect to its manner or means of performing the services is not subject to the other's right of control, and that is not treated as an employee by the other for purposes of compliance with federal income tax laws.

The following factors may be considered to determine if a person is an independent contractor:

Is the person instructed about when, where and how to work?

Is the person guaranteed a regular wage?

Is the person reimbursed for business expenses?

Does the person maintain a separate business?

Is the person exposed to potential profits and losses?

Is the person provided employee benefits such as insurance, a pension plan, or vacation or sick pay?

"Licensee" means:

• A mortgage broker licensed by the director; or

• The principal(s) or designated broker of a mortgage broker; or

• A loan originator licensed by the director; or

• Any person subject to licensing under RCW 19.146.200; or

• Any person acting as a mortgage broker or loan originator subject to any provisions of the act.

"License application fee" means immediately available funds paid to the department for each mortgage broker, loan originator, or mortgage broker branch office license application.

"Loan application" means the same as "application," in this section.

"Loan originator" means a natural person who:

• Takes a residential mortgage loan application for a mortgage broker; or

• Offers or negotiates terms of a mortgage loan, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain. "Loan originator" also includes a person who holds themselves out to the public as able to perform any of these activities. "Loan originator" does not mean persons performing purely administrative or clerical tasks for a mortgage broker. For the purposes of this subsection, "administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a borrower to obtain information necessary for the processing of a loan. A person who holds himself or herself out to the public as able to obtain a loan is not performing administrative or clerical tasks.

For purposes of further defining "loan originator," "taking a residential mortgage loan application" includes soliciting, accepting, or offering to accept an application for a residential mortgage loan or assisting a borrower or offering to assist a borrower in the preparation of a residential mortgage loan application.

For purposes of this definition, a person "holds themselves out" by advertising or otherwise informing the public that the person engages in any of the activities of a mortgage broker or loan originator, including the use of business cards, stationery, brochures, rate lists or other promotional items.

"Loan originator licensee" means a natural person who is licensed as a loan originator or is subject to licensing under RCW 19.146.200 or who is acting as a loan originator subject to any provisions of the act.

"Loan processor" means a natural person who performs clerical or support duties at the direction of and subject to the supervision and instruction of a licensed or exempt mortgage broker. The job responsibilities may include the receipt, collection and distribution of information common for the processing of a loan. The loan processor may also communicate with a borrower to obtain the information necessary for the processing of a loan, provided that such communication does not include offering or negotiating loan rates or terms, or counseling borrowers about loan rates or terms.

"Lock-in agreement" means an agreement with a borrower made by a mortgage broker or loan originator, in which the mortgage broker or loan originator agrees that, for a period of time, a specific interest rate or other financing terms will be the rate or terms at which it will make a loan available to that borrower.

"Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain:

• Makes a residential mortgage loan or assists a person in obtaining or applying to obtain a residential mortgage loan; or

• Holds himself or herself out as being able to make a residential mortgage loan or assist a person in obtaining or applying to obtain a residential mortgage loan.

For purposes of this definition, a person "makes" a loan if: The loan is closed in their name, or they advance, offer to advance or make a commitment to advance funds to a borrower for a loan.

For purposes of this definition, a person "assists a person in obtaining or applying to obtain a residential mortgage loan" by, among other things, counseling on loan terms (rates, fees, other costs), preparing loan packages, or collecting enough information on behalf of the consumer to anticipate a credit decision under Regulation X, 24 C.F.R. Part 3500, Sec. 3500.2(b).

For purposes of this definition, a person "holds themselves out" by advertising or otherwise informing the public that they engage in any of the activities of a mortgage broker or loan originator, including the use of business cards, stationery, brochures, rate lists, or other promotional items.

"Mortgage broker licensee" means a person that is licensed as a mortgage broker or is subject to licensing under RCW 19.146.200 or is acting as a mortgage broker subject to any provisions of the act.

"Mortgage Broker Practices Act" means chapter 19.146 RCW.

"Out-of-state applicant or licensee" means a person subject to licensing that maintains an office outside of this state.

"Person" means a natural person, corporation, company, limited liability corporation, partnership, or association.

"Prepaid escrowed costs of ownership," as used in RCW 19.146.030(4), means any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and similar items in regard to the property used as security for the loan.

"Principal" means any person who controls, directly or indirectly through one or more intermediaries, or alone or in concert with others, a ten percent or greater interest in a partnership, company, association, or corporation, and the owner of a sole proprietorship.

"Registered agent" means a person located in Washington appointed to accept service of process for a licensee.

"Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage or deed of trust on residential real estate upon which is constructed or intended to be constructed a single family dwelling or multiple family dwelling of four or less units.

For purposes of this definition, a loan "primarily for personal, family, or household use" includes loan applications for a finance or refinance of a primary residence for any purpose, loan applications on second homes, and loan applications on nonowner occupied residential real estate provided the licensee has knowledge that proceeds of the loan are intended to be used primarily for personal, family or household use.

"Residential real estate" is real property upon which is constructed or intended to be constructed, a single family dwelling or multiple family dwelling of four or less units.

• Residential real estate includes, but is not limited to:

– A single family home;

– A duplex;

– A triplex;

– A fourplex;

– A single condominium in a condominium complex;

– A single unit within a cooperative;

– A manufactured home when the home and real property together will secure the residential mortgage loan; or

– A fractile, fee simple interest in any of the above.

• Residential real estate does not include:

– An apartment building or dwelling of five or more units;

– A single piece of real estate with five or more single family dwellings unless each dwelling is capable of being financed independently of the other dwellings; or

– Any dwelling on leased or rented land or space, such as dwellings in a manufactured home park unless the mortgage broker treats such property as residential real estate.

"Table-funding" means a settlement at which a mortgage loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds. The mortgage broker originates the loan and closes the loan in its own name with funds provided contemporaneously by a lender to whom the closed loan is assigned.

"Third-party provider" means any person other than a mortgage broker or lender who provides goods or services to the mortgage broker in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

A lender is considered a third party only when the lender provides lock-in arrangements to the mortgage broker in connection with the preparation of a borrower's loan.

"Underwriting" means a lender's detailed credit analysis preceding the offering or making of a loan. The analysis may be based on information furnished by the borrower (employment history, salary, financial statements), the borrower's credit history from a credit report, the lender's evaluation of the borrower's credit needs and ability to pay, and an assessment of the collateral for the loan. While mortgage brokers may have access to various automated underwriting systems to facilitate an evaluation of the borrower's qualifications, the mortgage broker who qualifies or approves a borrower in this manner is not the underwriter of the loan and cannot charge a fee for underwriting the loan. Third-party charges the mortgage broker incurs in using or accessing an automated system to qualify or approve a borrower may, like other third-party expenses, be passed on to the borrower.

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

WAC 208-660-007 Good standing. (1) **What does good standing mean?** For the purposes of the act and these rules, good standing means that the applicant, licensee, or other person subject to the act demonstrates financial responsibility, character, and general fitness sufficient to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the purposes of the act and these rules. In determining good standing the director will consider the following factors, and any other evidence relevant to good standing as defined in this rule:

(a) Whether the applicant or licensee has paid all fees due to the director.

(b) Whether the licensee has filed their mortgage broker annual report.

(c) Whether the licensee has filed and maintained the required surety bond or had its surety bond canceled or revoked for cause.

(d) Whether the licensee has maintained a designated broker in compliance with the act and these rules.

(e) Whether the applicant, licensee, or other person subject to the act has had any license, or any authorization or ability to do business under any similar statute of this or any

other state, suspended, revoked, or restricted within the prior five years.

(f) Whether the applicant, licensee, or other person subject to the act has been convicted of a ((~~felony, or a~~)) gross misdemeanor involving dishonesty or financial misconduct, or a felony, within the prior seven years.

(g) Whether the licensee or other person subject to the act, is, or has been subject to a cease and desist order or an injunction issued pursuant to the act, or the Consumer Protection Act, or has been found through an administrative, civil, or criminal proceeding to have violated the provisions of the act or rules, or the Consumer Protection Act, chapter 19.86 RCW.

(h) Whether the director has filed a statement of charges, or there is an outstanding order by the director to cease and desist against the licensee or other person subject to the act.

(i) Whether there is documented evidence of serious or significant complaints filed against the licensee, or other person subject to the act, and the licensee or other person subject to the act has been notified of the complaints and been given the opportunity to respond.

(j) Whether the licensee has allowed the licensed mortgage broker business to deteriorate into a condition that would result in denial of a new application for a license.

(k) Whether the licensee, or other person subject to the act has failed to comply with an order, directive, subpoena, or requirement of the director or director's designee, or with an assurance of discontinuance entered into with the director or director's designee.

(l) Whether the licensee or other person subject to the act has interfered with an investigation or disciplinary proceeding by willful misrepresentation of facts before the director or director's designee, or by the use of threats or harassment against a client, witness, employee of the licensee, or representative of the director for the purpose of preventing them from discovering evidence for, or providing evidence in, any disciplinary proceeding or other legal action.

(2) **Under what circumstances may the department conduct a good standing review of an applicant, mortgage broker licensee, designated broker, or exempt mortgage broker?** The department may conduct a good standing review when:

(a) Processing an application for a new mortgage broker branch office license.

(b) Processing an application for appointment of a different designated broker (both the licensed mortgage broker, including those individuals to whom the license was granted, and the proposed designated broker must meet good standing).

(c) Processing a request for recognition as an exempt mortgage broker under RCW 19.146.020(4).

(3) **When will an applicant, licensee, or other person subject to the act receive notice from the department of their failure to meet a determination of good standing?** The department will notify the applicant, licensee, or other person subject to the act that they have failed to meet the department's good standing requirement within ten business days of the department's receipt of any application or request that requires a determination of good standing. See subsection (2) of this section.

(4) **What recourse does an applicant, licensee, or other person subject to the act have when the department has determined that they are not in good standing?** The applicant, licensee, or other person subject to the act may request a brief adjudicative proceeding under the Administrative Procedure Act, chapter 34.05 RCW, to challenge the department's determination.

(5) **What department determinations may be challenged through a brief adjudicative proceeding?** Subsection (1)(a) through (l) of this section may be challenged through a brief adjudicative process.

(6) **What specific sections of the Administrative Procedure Act are adopted by the director to administer brief adjudicative proceedings?** The director adopts RCW 34.05.482 through 34.05.494 to administer brief adjudicative proceedings requested by an applicant or licensee, or conducted at the director's discretion.

(7) **Who conducts the brief adjudicative proceeding?** Brief adjudicative proceedings are conducted by a presiding officer designated by the director. The presiding officer must have department expertise in the subject matter, but must not have personally participated in the department's determination of good standing, or work in the department's division of consumer services, or such other division within the department delegated by the director to oversee implementation of the act and these rules.

(8) **When and how will the presiding officer issue a decision?** Within ten business days of the final date for submission of materials, or oral argument, if any, the presiding officer must make a written initial order.

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

WAC 208-660-008 Exemption from licensing. (1) **If I am licensed as an insurance agent under RCW 48.17.060, must I have a separate license to act as a loan originator or mortgage broker?** Yes. You will need a separate license as a loan originator or mortgage broker if you are a licensed insurance agent and you do any of the following:

(a) Take a residential mortgage loan application for a mortgage broker;

(b) Offer or negotiate terms of a mortgage loan for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain;

(c) Make a residential mortgage loan, or assist a person in obtaining or applying to obtain a residential mortgage loan, for compensation or gain; or

(d) Hold yourself out as being able to perform any of the above services.

(2) **Are insurance companies exempt from the Mortgage Broker Practices Act?** Yes. Insurance companies authorized to transact the business of insurance in this state by the Washington state office of the insurance commissioner are exempt from the Mortgage Broker Practices Act.

(3) **If I make residential mortgage loans under the Consumer Loan Act, chapter 31.04 RCW, am I exempt from the Mortgage Broker Practices Act?** If you are licensed under the Consumer Loan Act, ((~~any loans covered by that act~~)) only residential mortgage loans are exempt from

the Mortgage Broker Practices Act. Complying with the Consumer Loan Act includes abiding by the requirements and restrictions of that act and counting all loans originated and made under that act for purposes of your annual assessment.

(4) **If I make residential mortgage loans under the Consumer Loan Act, chapter 31.04 RCW, are my loan originators exempt from the Mortgage Broker Practices Act?** Your loan originator employees are also exempt from the Mortgage Broker Practices Act for their loan originator activities on residential mortgage loans.

Your independent contractor loan originators are not exempt from the Mortgage Broker Practices Act for their residential mortgage loan originator activities.

(5) **If I am an exempt mortgage broker because my business has been approved by and is subject to audit by Fannie Mae or Freddie Mac, am I subject to licensing or any other sections of the act?** You are not required to have a license to make loans that you sell to Fannie Mae or Freddie Mac, but you are subject to RCW 19.146.0201 through 19.146.080, and the rules associated with those sections of the act. Those sections include prohibited practices, certain required disclosures, the requirement of a writing for agreements, trust fund requirements, books and records requirements, limitations on fees or compensation, and the requirement to provide the consumer with certain information they have paid for. You are also subject to the investigation and enforcement authority of the director.

Stated another way, if your mortgage business does not make and then sell all loans to Fannie Mae or Freddie Mac, you must have a license to broker or make the residential mortgage loans not sold to Fannie Mae or Freddie Mac.

(((~~5~~))) (6) **If I am an exempt mortgage broker because my business has been approved by and is subject to audit by Fannie Mae or Freddie Mac, are my loan originators subject to licensing or any other sections of the act?** Your loan originator employees are not required to have a license to conduct loan originator activities on loans made and then sold to Fannie Mae or Freddie Mac, but they are subject to RCW 19.146.0201 through 19.146.080, and the rules associated with those sections of the act. Those sections include prohibited practices, certain required disclosures, the requirement of a writing for agreements, trust fund requirements, books and records requirements, limitations on fees or compensation, and the requirement to provide the consumer with certain information they have paid for. Your loan originator employees are also subject to the investigation and enforcement authority of the director.

Your loan originators must be licensed to act as loan originators on residential mortgage loans not made and then sold to Fannie Mae or Freddie Mac.

Your independent contractor loan originators are not exempt under this section.

(((~~6~~))) (7) **Am I exempt from the Mortgage Broker Practices Act if I make or acquire residential mortgage loans solely with my own funds for my own investment without intending to resell the residential mortgage loans?** You are exempt from the licensing requirements, but you are subject to RCW 19.146.0201 through 19.146.080, and the rules associated with those sections of the act. Those sections include prohibited practices, certain required disclosures, the requirement of a writing for agreements, trust fund requirements, books and records requirements, limitations on fees or compensation, and the requirement to provide the consumer with certain information they have paid for. You are also subject to the investigation and enforcement authority of the director.

For purposes of this section, intent to resell residential mortgage loans is determined by your ability and willingness to hold the residential mortgage loans, indicated by, but not limited to, such measures as whether you have sold loans in the past, whether the loans conform to established secondary market standards for the sale of loans, and whether your financial condition would reasonably allow you to hold the residential mortgage loans.

(((~~7~~))) (8) **If I am an exempt mortgage broker because I am making or acquiring residential mortgage loans solely with my own funds for my own investment without intending to resell the residential mortgage loans, are my loan originators subject to licensing or any other sections of the act?** Your loan originator employees are not required to have a license, but they are subject to RCW 19.146.0201 through 19.146.080, and the rules associated with those sections of the act. Those sections include prohibited practices, certain required disclosures, the requirement of a writing for agreements, trust fund requirements, books and records requirements, limitations on fees or compensation, and the requirement to provide the consumer with certain information they have paid for. Your loan originator employees are also subject to the investigation and enforcement authority of the director.

Your independent contractor loan originators are not exempt under this section.

(((~~8~~))) (9) **As an attorney, must I have a mortgage broker or loan originator license to assist a person in obtaining or applying to obtain a residential mortgage loan in the course of my practice?**

(a) If you are an attorney licensed in Washington and if the mortgage broker activities are incidental to your professional duties as an attorney, you are exempt from the Mortgage Broker Practices Act under RCW 19.146.020 (1)(c).

(b) Whether an exemption is available to you depends on the facts and circumstances of your particular situation. For example, if you hold yourself out publicly as being able to perform the services of a mortgage broker or loan originator, or if your fee structure for those services is different from the customary fee structure for your professional legal services, the department will consider you to be principally engaged in the mortgage broker business and you will need a mortgage broker or loan originator license before performing those services. A "customary" fee structure for the professional legal service does not include the receipt of compensation or gain associated with obtaining a residential mortgage loan on the property.

(((~~9~~))) (10) **As a licensed real estate broker or salesperson, must I have a mortgage broker or loan originator license when I assist the purchaser in obtaining financing for a residential mortgage loan involving a bona fide sale of real estate?** You are exempt from the act under RCW 19.146.020 (1)(g) if you only receive the customary real estate commission in connection with the transaction. A "cus-

tomary" real estate commission does not include receipt of compensation or gain associated with the financing of the property. A "customary" real estate commission only includes the agreed upon commission designated in the listing or purchase and sale agreement for the bona fide sale of the subject property.

(((~~(10)~~))) (11) **Under what circumstances will the director approve an exemption under RCW 19.146.020(4) for the exclusive agents working as loan originators of an affiliate of a bank that is wholly owned by the bank holding company that owns that bank?**

(a) The director will provide a written exemption from loan originator licensing for the exclusive agents of an affiliate of a bank that is wholly owned by the bank holding company that owns the bank if the director finds that the affiliate is licensed and is in "good standing" with the department and the affiliate has procedures in place, as evidenced by a written "plan of business," to reasonably assure the department that:

(i) The exclusive agents of the affiliate of a bank operate exclusively as loan originators for the affiliate and not for other mortgage brokers;

(ii) The affiliate of the bank requires continuing education for the exclusive agents that meets the same or similar requirements approved by the director for licensed loan originators;

(iii) The affiliate of the bank will notify the department if the affiliate terminates an exclusive agent because the exclusive agent:

(A) Has had any license, or any authorization to do business under any similar statute of this or any other state, suspended, revoked, or restricted within the prior five years; or

(B) Has been convicted of a felony, or a gross misdemeanor involving dishonesty or financial misconduct, within the prior seven years; or

(C) Has been subject to a cease and desist order or an injunction issued pursuant to the act, or the Consumer Protection Act, or has been found through an administrative, civil, or criminal proceeding to have violated the provisions of the act or rules, or the Consumer Protection Act, chapter 19.86 RCW.

(b) To qualify for this exemption, the affiliate must make a written request to the department and submit a "plan of business" with the request. After receipt of this request, the department will notify the affiliate in writing within ten business days whether the affiliate's exclusive agents qualify for the exemption, or if the department will conduct additional review of the affiliate and the "plan of business." The affiliates must receive the department's notice of qualification for exemption before the affiliate's exclusive agents take any action that would subject them to licensing under the act.

(c) The exemption granted by the director remains valid as long as the affiliate complies in all material respects with its "plan of business" and the affiliate remains in good standing with the department.

(((~~(11)~~))) (12) **What are the responsibilities of a mortgage broker that is exempt from the licensing provisions of the act?** The owners of companies exempt from licensing under RCW 19.146.020 (1)(e), (g), or (4), are responsible for:

(a) Complying with RCW 19.146.0201 through 19.146.080, and 19.146.235;

(b) Ensuring compliance with the act by all persons representing the exempt mortgage broker; and

(c) Notifying the director of any change affecting the mortgage broker's exempt status under the act.

(((~~(12)~~))) (13) **Are the independent contractors of a mortgage broker exempt under RCW 19.146.020 (1)(b), (c), (e), and (g) themselves exempt?** No. After January 1, 2007, an independent contractor working as a loan originator for a mortgage broker exempt under RCW 19.146.020 (1)(b), (c), (e), and (g) must hold a loan originator license.

(((~~(13)~~))) (14) **What other persons or entities are exempt from the Mortgage Broker Practices Act?**

(a) Any person doing any act under order of any court except for a person subject to an injunction to comply with any provision of the act or any order of the director issued under the act.

(b) The United States of America, the state of Washington, any other state, and any Washington city, county, or other political subdivision, and any agency, division, or corporate instrumentality of any of the entities in this subsection (b).

(((~~(14)~~))) (15) **When is a CLI provider exempt from the licensing requirements of the act?** A CLI provider is exempt from the licensing requirements of the act:

(a) When the CLI provider meets the general statutory requirements under RCW 19.146.020 (1)(a), (c), (d), (e), (g), or (h); or

(b) When a real estate broker or salesperson licensed in Washington, acting as a CLI provider and a real estate agent, obtains financing for a real estate transaction involving a bona fide sale of real estate and does not receive either:

(i) A separate fee for the CLI service; or

(ii) A sales commission greater than that which would be otherwise customary in connection with the sales transaction; or

(c) When a person, acting as a CLI provider:

(i) Provides only information regarding rates, terms, and lenders;

(ii) Complies with all requirements of subsection (16) of this section;

(iii) Does not represent or imply to a borrower that they are able to obtain a residential mortgage loan from a mortgage broker or lender;

(iv) Does not accept a loan application, assist in the completion of a loan application, or submit a loan application to a mortgage broker or lender on behalf of a borrower;

(v) Does not accept any deposit for third-party provider services or any loan fees from a borrower in connection with a loan, regardless of when the fees are paid;

(vi) Does not negotiate interest rates or terms of a loan with a mortgage broker or lender on behalf of a borrower; and

(vii) Does not provide to the borrower a good faith estimate or other disclosure(s) required of mortgage brokers or lender(s) by state or federal law.

(d) If the CLI provider is not exempt under (a), (b), or (c) of this subsection, the CLI provider is not required to have a mortgage broker license if the CLI provider does not receive

any fee or other compensation or gain, directly or indirectly, for performing or facilitating the CLI service.

(((~~(15)~~))) (16) **When is a CLI provider required to have a mortgage broker license?**

(a) If a CLI provider, who is not otherwise exempt from the licensing requirements of the act, performs any act that would otherwise require that they be licensed, including accepting a loan application, or submitting a loan application to a mortgage broker or lender, the CLI provider must obtain a mortgage broker license.

(b) Example - License required: A CLI provider uses an internet-based CLI system in which an abbreviated application is available for online completion by borrower. Once the borrower presses "submit," the information collected in the abbreviated application is forwarded to lender. The information contains the borrower's name, Social Security number, contact information, purpose of the loan sought (e.g., purchase, refinance, home equity, second mortgage), size of loan requested, annual salary, and a self-declaration of total unsecured debt. The electronic entries made by the borrower are then used by lender to electronically populate "form fields" and to initiate lender's loan application. A loan originator for the lender then follows up with borrower to complete the loan application. On or after closing, CLI provider receives a CLI service fee.

(c) Example - License not required: A CLI provider uses an internet-based CLI system in which various interactive informational tools are present, including an online "prequalification" tool. Based upon borrower's self-declared data input, borrower receives an indication of borrower's "maximum affordable loan amount," based upon standard norms of debt-to-income ratio and loan-to-value ratio, and also subject to verification of information, availability and suitability of loan products, and independent underwriting by any lender. The borrower indicates a desire for follow-up from one or more lenders by inputting personal contact information and pressing "submit." A number of lenders receive only the personal identity information of borrower and not any financial information. However, the CLI system has been programmed (and may be continuously reprogrammed) to route personal contact information to certain lenders based upon borrower's "prequalification" data input and the lending criteria of each of the lenders for whom CLI provider has a relationship. None of borrower's self-declared financial information is actually submitted to any of the lenders whose criteria match borrower's profile. Loan originators from lender A and lender B initiate contact with borrower based solely on borrower's contact information. Lender A and lender B, through their assigned loan originators, contact borrower with the object of beginning and hopefully completing a loan application. In this example, CLI provider has not taken a loan application.

(((~~(16)~~))) (17) **Must the CLI provider provide any disclosures?**

(a) Yes. If a borrower using or accessing the CLI services pays for the CLI service, either directly or indirectly, the CLI provider must give the following disclosure:

(i) The amount of the fee the CLI provider charges the borrower for the service;

(ii) That the use of the CLI system is not required to obtain a residential mortgage loan; and

(iii) That the full range of loans available may not be listed on the CLI system, and different terms and conditions, including lower rates, may be available from others not listed on the system.

(b) Each CLI provider must give the borrower a copy of the disclosure form when the first CLI service is provided to the borrower. The form must be signed and dated by the borrower and a copy maintained as part of the CLI provider's books and records for at least two years.

(((~~(17)~~))) (18) **Are CLI system providers subject to enforcement under the act?** Yes. CLI system providers are responsible for any violations of the act and will be subject to any applicable fines or penalties.

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

WAC 208-660-163 Mortgage brokers—Licensing. (1) **How do I apply for a mortgage broker license?**

(a) **Appoint a designated broker.** You must appoint a designated broker who meets the requirements of WAC 208-660-250.

(b) **Submit an application.** You must fill out an application in a form prescribed by the director. Submit the application with the appropriate attachments to the department for review.

(c) **Pay the application and license fees.** You will have to pay an application fee to cover the department's cost of processing and reviewing application. You must also pay a separate annual license fee. See WAC 208-660-550, Department fees and costs.

(d) **Prove your identity.** You must provide information about the identity of owners, principals, officers, and the designated broker, including fingerprints.

(e) **Provide a surety bond.** Mortgage brokers must have a surety bond of twenty to sixty thousand dollars depending on the average number of loan originators representing the mortgage broker. See WAC 208-660-175 (1)(e).

(2) **What information will the department consider when deciding whether to approve a mortgage broker license application?** The department considers the financial responsibility, character, and general fitness of the applicant, principals, and the designated broker.

(3) **Why does the department consider financial responsibility, character, and general fitness before issuing a mortgage broker license?** One of the purposes of the act is to ensure that mortgage brokers and loan originators deal honestly and fairly with the public. Applicants, principals, and designated brokers who have demonstrated their financial responsibility, character, and general fitness to operate their businesses honestly, fairly, and efficiently are more likely to deal honestly and fairly with the public.

(4) **What specific information will the department consider to determine if the mortgage broker business will be operated honestly, fairly, and in compliance with applicable law?**

(a) Whether the applicant, licensee, or other person subject to the act has had any license, or any authorization to do business under any similar statute of this or any other state, suspended, revoked, or restricted within the prior five years.

(b) Whether the applicant, licensee or other person subject to the act has been convicted of a ((~~felony, or a~~)) gross misdemeanor involving dishonesty or financial misconduct, or a felony, within the prior seven years.

(c) Whether the licensee or other person subject to the act is, or has been, subject to a cease and desist order or an injunction issued pursuant to the act, or the Consumer Protection Act, or has been found through an administrative, civil, or criminal proceeding to have violated the provisions of the act or rules, or the Consumer Protection Act, chapter 19.86 RCW.

(d) Whether the director has filed a statement of charges, or there is an outstanding order by the director to cease and desist against the licensee or other person subject to the act.

(e) Whether there is documented evidence of serious or significant complaints filed against the licensee, or other person subject to the act, and the licensee or other person subject to the act has been notified of the complaints and been given the opportunity to respond.

(f) Whether the licensee has allowed the licensed mortgage broker business to deteriorate into a condition that would result in denial of a new application for a license.

(g) Whether the licensee or other person subject to the act has failed to comply with an order, directive, subpoena, or requirement of the director or director's designee, or with an assurance of discontinuance entered into with the director or director's designee.

(h) Whether the licensee or other person subject to the act has interfered with an investigation, or disciplinary proceeding by willful misrepresentation of facts before the director or director's designee, or by the use of threats or harassment against a client, witness, employee of the licensee, or representative of the director for the purpose of preventing them from discovering evidence for, or providing evidence in, any disciplinary proceeding or other legal action.

(5) **What will happen if my mortgage broker license application is incomplete?** The department will reject and return the entire application package to you with a notice identifying the incomplete, missing, or inaccurate information. You must follow the department's directions to correct the problems. You can then resubmit the application package.

(6) **How do I withdraw my application for a mortgage broker license?** Send the department a written request, in a form prescribed by the department, to withdraw your mortgage broker license application.

(7) **When will the department consider my mortgage broker license application package abandoned?** If you do not respond to the department within ten business days from the date of the department's second request for information, your application is considered abandoned. You may reapply by submitting a new application per subsection (1) of this section.

(8) **What are my rights if the director denies my application for a mortgage broker license?** You have the right to request an administrative hearing pursuant to the Administrative Procedure Act, chapter 34.05 RCW. To request a hearing, you must notify the department within twenty days from the date of the director's notice to you that your license application has been denied, that you wish to have a hearing.

Upon denial of your mortgage broker license application, and provided the department finds no unlicensed activity, the department will return your surety bond, and refund the license fee and any unused portion of the application fee.

(9) **What Washington law protects my rights when my application for a mortgage broker license is denied, or my mortgage broker license is suspended or revoked?** The Administrative Procedure Act, chapter 34.05 RCW, governs the proceedings for license application denials, cease and desist orders, license suspension or revocation, the imposition of civil penalties or other remedies ordered by the department, and any appeals or reviews of those actions.

(10) **May I advertise my business while I am waiting for my mortgage broker license application to be processed?** No. It is a violation of the act for nonlicensed, nonexempt mortgage brokers or loan originators to hold themselves out as mortgage brokers or loan originators in Washington.

(11) **May I originate Washington residential mortgage loans while waiting for my mortgage broker license application to be processed?** No. You may not originate loans prior to receiving your mortgage broker license.

(12) **How do I change information on my mortgage broker license?** You must file a license amendment application with the department, in a form prescribed by the department. You must file the amendment application within thirty days of the change occurring.

(13) **When does a mortgage broker license expire?** The mortgage broker license expires annually. The expiration date is shown on the license. If the license is an interim license, it may expire in less than one year.

(14) **When may the department issue interim mortgage broker licenses?** To prevent an undue delay, the director may issue interim mortgage broker licenses, including branch office licenses, with a fixed expiration date. The license applicant must have substantially met the initial licensing requirements, as determined by the director, to receive an interim license.

For purposes of this section, undue delay includes the adjustment of license expiration or renewal dates to coincide with the implementation of systems designed to assist in licensing uniformity and provide data repositories of licensing information.

One example of having substantially met the initial licensing requirements is: Submitting a complete application, paying all application fees, and the department having received and reviewed the result of the applicant's background check.

(15) **May the department issue replacement licenses with an expiration date?** Yes. In order to create and maintain a licensing system with expiration or renewal dates that are uniform, the department may issue new licenses with expiration dates to existing license holders. The new licenses will expire annually.

(16) **How do I renew my mortgage broker license?**

(a) Before the license expiration date you must:

(i) File the mortgage broker annual report, and any other required notices, with the director. See WAC 208-660-400, Reporting requirements.

(ii) Show evidence that your designated broker completed the required annual continuing education.

(iii) Verify the surety bond is adequate for the average number of loan originators, including all locations.

(iv) Pay the annual license assessment fee.

(b) The renewed license is valid for the term listed on the license or until surrendered, suspended, or revoked.

(17) **If I let my mortgage broker license expire must I apply to get a new license?** If you complete all the requirements for renewal within forty-five days of the expiration date, you may renew an expired license. However, if you renew your license during this forty-five day period, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection (16) of this section for the license renewal requirements.

During this forty-five day period, your license is expired and you must not conduct any business under the act that requires a license until your license has been renewed.

Any renewal requirements received by the department must be evidenced by either a United States Postal Service postmark or a department "date received" stamp within the forty-five days. If you fail to comply with the renewal request requirements within forty-five days, you must apply for a new license.

(18) **May I still conduct my mortgage broker business if my mortgage broker license has expired?** No. If your mortgage broker license expires, you must not conduct any business under the act that requires a license until you renew your license.

(19) **What should I do if I wish to close my mortgage broker business?** You may surrender the mortgage broker license by notifying the department, in a form prescribed by the department, of your intention to stop doing mortgage loan business in Washington. Surrendering your license does not change your civil or criminal liability, or your liability for any administrative actions arising from any acts or omissions occurring before you surrender your license. Contact the Washington department of revenue to find out how to handle any unclaimed funds in your trust account.

(20) **May I transfer, sell, trade, assign, loan, share, or give my mortgage broker license to another person or company?** No. A mortgage broker license authorizes only the person named on the license to conduct the business at the location listed on the license. See also WAC 208-660-155(2).

(21) **Must I display my mortgage broker license?** Yes. Your mortgage broker license must be prominently displayed at the licensed location.

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

WAC 208-660-180 Mortgage brokers—Main office. (1) **Must a licensed mortgage broker have a designated broker?** Yes. Licensed mortgage broker companies must have an approved designated broker at all times.

(2) **How many designated brokers may a mortgage broker have?** The mortgage broker must have a qualified designated broker at all times. The mortgage broker may appoint only one individual to be the designated broker at any given time. The designated broker need not be a principal of the licensee.

It is a prudent business practice to have more than one qualified individual working for the licensee who could be appointed as the designated broker.

(3) **If my designated broker leaves, may I continue to operate my mortgage broker business?** Yes. You may continue to operate your mortgage broker business. However, you must notify the department within five business days of the loss of or change of your designated broker. You must then replace the designated broker within thirty days. If you need more than thirty days to replace the designated broker, you must seek approval from the department. Failure to replace your designated broker, or receive approval from the director for an extension, may result in an enforcement action against you.

(4) **What must I do to replace my designated broker?** You must apply, in a form prescribed by the department, for approval of the new designated broker. The new designated broker must meet the requirements of WAC 208-660-250(1) and the new designated broker and the licensee including those individuals to whom the license was granted, must meet the good standing requirements of WAC 208-660-007.

(5) **What must I do if I sell all or part of my mortgage broker company?** See WAC 208-660-400(13).

(6) **After my mortgage broker license is approved, may I change my business structure?** Yes. You must follow the notification requirements of WAC 208-660-400(12).

(7) **May a licensed mortgage broker share an office with a licensed real estate broker?** Yes. A licensed mortgage broker may share an office with a licensed real estate broker. The mortgage broker location must be licensed as a main or branch mortgage broker office.

(8) **If a licensed mortgage broker shares an office with a licensed real estate broker, what must the mortgage broker do to notify the public that the office is shared?** The licensed mortgage broker must clearly identify the mortgage broker business as separate from the real estate business to the public on any signage, advertising, or other material identifying the businesses.

(9) **May I add a trade name (or "DBA") to my mortgage broker license?** Yes. You may add a trade or "DBA" name to the mortgage broker license if you first apply to the department, in a form prescribed by the department, and receive department approval. When the department has approved the trade name, you must conduct business under that trade name in at least one of the two following ways:

(a) Use your license name together with the trade name; or

(b) Use your mortgage broker license number together with the trade name.

(10) **May the department deny an application for a proposed DBA name because it is similar to an existing licensee name?** Yes. The director may deny an application for a proposed DBA name if the proposed DBA name is similar to a currently existing licensee name.

(11) **May I conduct my mortgage broker business from more than one location?** Yes. You may establish one or more branch offices under your license. See WAC 208-660-195 for information on licensing branch offices.

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

WAC 208-660-195 Mortgage brokers—Branch offices. (1) **May I open branch offices under my mortgage broker license?** Yes. A licensed mortgage broker may submit license application(s) to the department to establish branch office(s) under the existing mortgage broker license. Each branch office must be licensed and must pay an annual license fee. See WAC 208-660-550, Department fees and costs.

(2) **If my branch offices are under separate ownership, does that limit my liability for their activities?** No. Licensed mortgage brokers are responsible for the activity and violations at their branch offices regardless of the structure or label given the branch offices. Licensure of a branch office creates a direct line of responsibility from the main office to the branch.

(3) **If my branch offices are under separate ownership, what level of supervision must I maintain?** Because branch offices, regardless of their business structure, are not independent from your license and surety bond, you are responsible for the conduct of anyone conducting business under your license. You must have a written supervisory plan. The details of the plan, and how you implement the plan for your branch offices, must take into account the number of branch offices, their location, and the number of individuals working at the branch offices. You must maintain your written supervisory plan as part of your business books and records.

(4) **How do I apply for a mortgage broker branch office license?** As the licensed mortgage broker, you must apply to the department for a branch office license and receive a branch office license before operating from any location other than your licensed location. The application for a mortgage broker branch office license must be in a form prescribed by the director. The licensed mortgage broker must be in good standing, and may need to increase the amount of the surety bond. You will have to pay application and annual assessment fees. See WAC 208-660-550, Department fees and costs.

((~~(4)~~)) (5) **What does the department consider when reviewing an application for a branch office license?** The department considers:

(a) Whether the mortgage broker is in good standing. See WAC 208-660-007.

(b) Whether the amount of the mortgage broker's surety bond is sufficient to cover the loan originators that will be working from the branch office.

(c) Whether the physical address listed in the application can be verified as a branch office location.

((~~(5)~~)) (6) **Must I display my branch office license?** Yes. Your mortgage broker branch office license must be prominently displayed in the branch office.

((~~(6)~~)) (7) **If I am an internet company, how do I display my license?** You must display your license information, as it appears on your license, including any or all business names, and the license number, on your web site. The information must also include a list of the states in which you are licensed.

((~~(7)~~)) (8) **How do I change information on my mortgage broker branch office license?** You must file a license amendment application with the department, in a form prescribed by the department. You must file the application within thirty days of the change occurring.

((~~(8)~~)) (9) **Does my branch office license expire?** The license expires annually. The expiration date is shown on the license. If the license is an interim license, it may expire in less than one year.

((~~(9)~~)) (10) **How do I renew my mortgage broker branch office license?**

(a) Before the expiration date, the licensed mortgage broker must:

(i) Verify the surety bond is adequate for the licensee's average number of loan originators.

(ii) Pay the branch office annual assessment fee.

(b) The renewed mortgage broker branch office license is valid for the term listed on the license or until surrendered, suspended, or revoked.

((~~(10)~~)) (11) **If my mortgage broker branch office license expires, must I apply for a new license?** If you complete all the requirements for renewal within forty-five days of the expiration date you may renew an existing license. However, if you renew your license during this forty-five day period, in addition to paying the annual assessment on your branch office license, you must pay an additional fifty percent of your annual assessment for that branch. See subsection ((~~(9)~~)) (10) of this section for the license renewal requirements.

During this forty-five day period, your license is expired and you must not conduct any business under the act that requires a license until your license has been renewed.

Any renewal requirements received by the department must be evidenced by either a postmark or "date received" stamp within the forty-five days. If you fail to comply with the renewal request requirements within forty-five days, you must apply for a new license.

((~~(11)~~)) (12) **If my mortgage broker branch office license has expired, may I still conduct my mortgage broker business from that location?** No. Once the mortgage broker branch office license has expired, you must not conduct any business under the act that requires a license until you renew your license.

((~~(12)~~)) (13) **If my mortgage broker main office license expires, may I still conduct my mortgage broker business from a branch office?** No. Once the mortgage broker main office license expires, you must not conduct any business under the act that requires a license from any location until you renew the main office license.

((~~(13)~~)) (14) **May I add a trade name (or "DBA") to my mortgage broker branch office license?** Yes. You may add a trade name, or "DBA" name, to the mortgage broker branch office license if you first apply to the department, in a form prescribed by the director, and receive department approval. The branch office trade name must at all times be identified as connected with the mortgage broker's license name as it appears on the mortgage broker license. When the department has approved the trade name, you must conduct business under that trade name in at least one of the two following ways:

(a) Use your license name together with the branch office trade name; or

(b) Use the branch office trade name and mortgage broker branch office license number together.

(c) See WAC 208-660-180(10).

(((~~(14)~~))) (15) **How must I identify my mortgage broker branch office(s)?** The branch office must be prominently identified as a branch or division of the licensed mortgage broker so as not to appear to be an independent enterprise.

(((~~(15)~~))) (16) **Does my branch office have to be a physical location?** Yes. The physical location may be at a commercial or residential address but does not have to be in Washington. See WAC 208-660-420, Out-of-state mortgage brokers and loan originators.

(((~~(16)~~))) (17) **Must I have a branch manager?** No. Although you may appoint one, the act does not require a branch manager. The licensee and designated broker are responsible for the business conducted at all locations.

(((~~(17)~~))) (18) **Must I have a designated broker at each branch?** No. The licensed mortgage broker may have only one designated broker who is responsible for the mortgage broker business at all locations.

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

WAC 208-660-250 Designated brokers—General. (1) **How do I become a designated broker?**

(a) Be eighteen years or older.

(b) Have a high school diploma, an equivalent to a high school diploma, or two years experience in the industry in addition to the experience required in (e) of this subsection. The experience must meet the criteria in (e) of this subsection.

(c) You must pass the designated broker test. See WAC 208-660-260, Designated brokers—Testing.

(((~~(b)~~))) (d) You must be appointed to the designated broker position by the licensed mortgage broker through an application and approval process with the department.

(((~~(c)~~))) (e) You must have a minimum of two years((~~:~~)) experience lending or originating residential mortgage loans.

(i) The work experience must be in one or more of the following, within the last five years:

(A) As a mortgage broker or designated broker of a mortgage broker for a minimum of two years; or

(B) As a mortgage banker, responsible individual, or manager of a mortgage banking business; or

(C) As a loan originator with responsibility primarily for originating loans secured by a lien on residential real estate; or

(D) As a branch manager of a lender with responsibility primarily for loans secured by a lien on residential real estate; or

(E) As a manager or supervisor of mortgage loan originators; or

(F) As a mortgage processor, underwriter, or quality control professional; or

(G) As a regulator, examiner, investigator, compliance expert, or auditor, whose primary function is the review of mortgage companies and their compliance processes, and the department determines your background is sufficient.

(ii) The work experience must be evidenced by a detailed work history and:

(A) W-2 Federal Income Tax Reporting Forms in the designated broker appointee's name; or

(B) 1099 Federal Income Tax Reporting Forms in the designated broker appointee's name; or

(C) Corporate tax returns signed by the designated broker appointee or corporate officer for a licensed or exempt residential mortgage company((~~.~~)); or

(((~~(d)~~))) (f) In addition to supplying the application information, both you and the licensed mortgage broker must be in good standing with the department.

(g) **Financial background.**

(i) You are not eligible to become a designated broker if you have one hundred thousand dollars or more of tax liens against you at the time of appointment by a licensed mortgage broker.

(ii) You may not be eligible to become a designated broker if your financial background during the two years prior to the appointment application shows a history of unpaid debts.

(2) **May I work as the designated broker for more than one company?** Yes. You may be the designated broker for more than one licensee.

(3) **Must the designated broker also hold a loan originator's license?** A designated broker approved by the department will be given a loan originator license if they do not already have one. If the designated broker already has a loan originator license, that license will be added to the licensed mortgage broker's list of loan originators.

(4) **May I work as the designated broker for one licensee and a licensed loan originator for another licensee?** Yes. If you want to originate loans for a mortgage broker different from the mortgage broker for whom you are the designated broker, you must apply to the department for an additional loan originator license.

(5) **May a designated broker hire employees or independent contractors apart from the employees or independent contractors working for the mortgage broker licensee?** No. Only the mortgage broker licensee can have employees or independent contractors. This prohibition against a designated broker having employees or independent contractors includes clerical or administrative personnel whose work is related to the mortgage broker licensee's activities, and loan processors.

(6) **As a designated broker, what reporting requirements must I comply with?** See WAC 208-660-400, Reporting requirements.

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

WAC 208-660-260 Designated brokers—Testing. (1) **Must I pass a test prior to becoming a designated broker?** Yes. You must take and pass a test prior to becoming a designated broker. See WAC 208-660-250(1) if you have never been a designated broker.

(2) ((~~**After passing the designated broker test, will I have to take it again?** You must retake the designated bro-~~

~~ker test if you have not been approved by the department and have not worked as a designated broker within the past five years.~~

~~(3) **After passing the designated broker test, will I have to take the loan originator test to get a loan originator license?** If you passed the designated broker test, and have worked as an approved designated broker in the past five years, you will be given a loan originator license without taking the loan originator test.~~)) **I am currently a designated broker, will I have to take the test again?** You will only have to take the designated broker test again if you stop working as a designated broker for five years or longer.

(3) **I am currently a designated broker that originates loans. Will I have to take the loan originator test and obtain a loan originator license?** No. The department will provide you with a loan originator license automatically because you are a designated broker. Your loan originator license will renew in conjunction with the renewal of the mortgage broker main office you work with. If you stop acting as a designated broker, your loan originator license will become inactive. See WAC 208-660-350(12). You can reactivate the license by becoming affiliated with the same or another licensed mortgage broker as a loan originator. If you do not renew your license as provided in WAC 208-660-350(19), the license will expire.

(4) **Where can I get information about the designated broker test?** The department will publish the names and contact information of approved testing providers on the department web site.

(5) **What topics may be covered in the designated broker test?** The department will publish a list of designated broker test topics on the department's web site.

(6) **How soon after failing the designated broker test may I take it again?** After failing the test three consecutive times you must wait at least fourteen days before taking the test again.

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

WAC 208-660-300 Loan originators—General. (1) **May I work as a loan originator for more than one mortgage broker?** Yes.

(2) **How do I obtain approval to work for more than one mortgage broker?** Use the form prescribed by the director to get approval to add mortgage broker relationships to your license. The department will notify you if the relationship is not approved. The department will notify you and others associated with your license upon approval of your request. The application must include a fee for the additional relationship. See WAC 208-660-550.

(3) **If I work as a loan originator for more than one mortgage broker, may I take an application from a borrower without identifying one specific mortgage broker?** No. You may take an application for only one mortgage broker at a time in any one transaction. Prior to presenting yourself to a specific borrower as licensed to originate mortgage loans, you must state who you represent. You must clearly identify the mortgage broker by name and address on the application, on all disclosures, authorization forms, and other material provided to the borrower. There must be no confusion by the borrower as to which mortgage broker you are representing at any given time.

((~~(2)~~)) (4) **May a loan originator transfer loan files to a mortgage broker other than the mortgage broker the loan originator is associated with?** No. Only the borrower may submit a written request to the licensed mortgage broker to transmit the borrower's selected information to another mortgage broker or lender. Loan files are the property of the mortgage broker named on the loan application and the mortgage broker must keep the original files and documents. The licensed mortgage broker must transmit the information within five business days after receiving the borrower's written request.

((~~(3)~~)) (5) **May I act as a loan originator and a real estate agent in the same transaction or for the same borrower in different transactions?** Yes, you may be both the loan originator and real estate broker or salesperson in the same transaction, or for the same borrower in different transactions. When either of these occur, you must provide to the borrower the following written disclosure:

"THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LOAN ORIGINATOR AND WOULD LIKE TO PROVIDE MORTGAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY.

YOU ARE NOT REQUIRED TO USE ME AS A LOAN ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP WITH OTHER MORTGAGE BROKERS, AND LENDERS, AND TO SELECT ANY MORTGAGE BROKER, OR LENDER OF YOUR CHOOSING."

((~~(4)~~)) (6) **As a loan originator, may I be paid directly by the borrower for my services?** No. As a loan originator, you may not be paid any compensation or fees directly by the borrower.

((~~(5)~~)) (7) **May a loan originator charge the borrower a fee, commission, or other compensation for preparing, negotiating, or brokering a loan for the borrower?** No. A loan originator may not charge the borrower a fee, commission, or compensation of any kind in connection with the preparation, negotiation, and brokering of a residential mortgage loan.

(8) **As a loan originator, may I be paid my portion of the mortgage broker fee directly from the loan closing?**

(a) Yes. If authorized in the mortgage broker's demand, the settlement service provider may pay your portion of the mortgage broker fee directly to you; provided however, that the HUD-1 or equivalent settlement statement has the following information:

(i) Your name as it appears on your loan originator license;

(ii) Your loan originator license number; and

(iii) The amount to be paid to you by the settlement service provider.

(b) You must provide a copy of the HUD-1 or equivalent settlement statement to the licensed mortgage broker within twenty-four hours of your receipt of funds from closing.

(((~~6~~))) (9) **May a loan originator bring a lawsuit against a borrower for the collection of compensation?** No. Only licensed mortgage brokers, or exempt mortgage brokers, may bring collection actions against borrowers to collect compensation.

(((~~7~~))) (10) **May I work as a licensed loan originator for a mortgage broker located out of the state?** Yes. You may originate loans for any mortgage broker you are affiliated with who is licensed under Washington law.

(((~~8~~))) (11) **May a licensed loan originator hire employees or independent contractors to assist in the mortgage broker licensee's activities?** No. Only the mortgage broker licensee can have employees or independent contractors. This prohibition against loan originators hiring employees or independent contractors includes clerical or administrative personnel whose work is related to the mortgage broker licensee's activities, and loan processors.

(((~~9~~))) (12) **Do loan processors have to be licensed as loan originators?** No. Loan processors are not required to have a loan originator license provided they work under the supervision and instruction of a licensed or exempt mortgage broker and do not hold themselves out as able to conduct the activities of a mortgage broker or loan originator. However, a loan processor may not work as an independent contractor unless licensed as a mortgage broker, mortgage broker branch office, or loan originator.

AMENDATORY SECTION (Amending WSR 07-13-079, filed 6/18/07, effective 7/19/07)

WAC 208-660-350 Loan originators—Licensing. (1) **How do I apply for a loan originator license?**

(a) **Be eighteen years or older.**

(b) **Have a high school diploma, an equivalent to a high school diploma, or three years experience in the industry. The experience must meet the criteria in WAC 208-660-250 (1)(e)(i) and (ii).**

(c) **Pass a licensing test.** You must take and pass a test that assesses your knowledge of the mortgage business and related regulations. See WAC 208-660-360, Loan originators—Testing.

(((~~b~~))) (d) **Submit an application.** The application form will be prescribed by the director.

(((~~c~~))) (e) **Prove your identity.** You must provide information to prove your identity.

(((~~d~~))) (f) **Pay the application fee.** You must pay an application fee to cover the department's cost of processing and reviewing applications. See WAC 208-660-550, Department fees and costs.

(2) **In addition to reviewing my application, what else will the department consider to determine if I qualify for a loan originator license?**

(a) **General fitness and prior compliance actions.** The department will investigate your background to see that you demonstrate the experience, character, and general fitness that commands the confidence of the community and creates a belief that you will conduct business honestly and fairly within the purposes of the act. This investigation may include a review of the number and severity of complaints filed against you, or any person you were responsible for, and a review of any investigation or enforcement activity taken against you, or any person you were responsible for, in this state, or any jurisdiction.

(b) **License suspensions or revocations.** You are not eligible for a loan originator license if you have been found to be in violation of the act or the rules, or have had a license issued under the act or any similar state statute suspended or revoked within five years of the filing of the present application.

(c) **Criminal history.** You are not eligible for a loan originator license if you have been convicted of a gross misdemeanor involving dishonesty or financial misconduct, or a felony, within seven years of the filing of the present application.

(d) **Financial background.**

(i) You are not eligible to receive a loan originator license if you have one hundred thousand dollars or more of tax liens against you at the time of appointment by a licensed mortgage broker.

(ii) You may not be eligible to receive a loan originator license if your financial background during the two years prior to the appointment application shows a history of unpaid debts.

(3) **May I originate residential mortgage loans in Washington without a loan originator license?** Persons conducting the business of a loan originator without an active loan originator license must fall under one of the following categories of exemption from loan originator licensing:

(a) Persons conducting residential mortgage loan business exclusively for any exempt person under RCW 19.146.020 (1)(a)(i); or

(b) The exclusive agents conducting residential mortgage loan business for any exempt person under RCW 19.146.020 (1)(a)(ii); or

(c) The bona fide employees conducting residential mortgage loan business exclusively for any exempt person under RCW 19.146.020 (1)(b), (e), (g) or (h); or

(d) Those persons exempt under RCW 19.146.020 (1)(c) or (d).

(4) **What will happen if my loan originator license application is incomplete?** The department will reject and return the entire application package to you with a notice identifying the incomplete, missing, or inaccurate information. You must follow the department's directions to correct the problems. You may then resubmit the application package.

(5) **How do I withdraw my application for a loan originator license?** Provide the department with a written request to withdraw your application in a form prescribed by the director.

(6) **When will the department consider my loan originator license application to be abandoned?** If you do not respond within ten business days to the department's second request for information, your loan originator license application is considered abandoned. Failure to provide the requested information will not affect new applications filed

after the abandonment. You may reapply by submitting a new application package.

(7) **What happens if the department denies my application for a loan originator license, and what are my rights if the license is denied?**

(a) The department will notify you if your application is denied. You will receive a refund of any unused portion of the application fee.

(b) If your license application lists any mortgage brokers, the department will also notify the mortgage brokers of the license denial.

(c) Under the Administrative Procedure Act, chapter 34.05 RCW, you have the right to request brief adjudicative proceeding. To request a hearing, notify the department, in writing, within twenty days from the date of the director's notice to you notifying you your license application has been denied.

(i) Brief Adjudicative Proceeding Adopted. The director adopts RCW 34.05.482 through 34.05.494 to administer brief adjudicative proceedings under WAC 208-660-350.

(ii) Presiding Officer. Brief adjudicative proceedings are conducted by a presiding officer designated by the director. The presiding officer must have department expertise in the subject matter, but must not have personally participated in the department's licensing application denial, or work in the department's division of consumer services, or such other division within the department delegated by the director to oversee implementation of the act and these rules.

(iii) Preliminary Records. The preliminary record for the brief adjudicative proceeding consists of the application and all associated documents including all documents relied upon by the department to deny the application and all correspondence between the applicant and the department regarding the application.

(iv) Notice of Hearing. The department will set the date, time, and place of the hearing, giving at least seven business days notice to the applicant.

(v) Written Documents. The applicant or their representatives may present written documentation. The presiding officer must designate the date for submission of written documents.

(vi) Oral Argument. The presiding officer may exercise discretion in allowing oral argument.

(vii) Witnesses. Witnesses will not be allowed to testify.

(viii) Agency Expertise Considered. The presiding officer may rely upon agency expertise in addition to the written record as a basis for a decision.

(ix) Initial Order. The presiding officer must make a written initial order within ten business days of the final date for submission of materials, or oral argument, if any. The initial order will become final twenty-one days after service on the applicant unless the applicant requests an administrative review or the department decides to review the matter.

(8) **How will the department provide me with my loan originator license?** The department may use any of the following methods to provide you with your loan originator license:

(a) A printed paper license sent to you by regular mail.

(b) A license sent to you electronically that you may print.

(c) A license verification available on the department's web site and accessible for viewing by the public.

(9) **May I transfer, sell, trade, assign, loan, share, or give my loan originator license to someone else?** No. A loan originator license authorizes only the individual named on the license to conduct the business at the location listed on the license.

(10) **How do I change information on my loan originator license?** You must file a license amendment application with the department, in a form prescribed by the ((~~department~~)) director within thirty days of the change occurring.

(11) **If I am ((~~employed by a bank or other exempt entity~~)) not required to have a loan originator license to do my job, may I apply for and receive a loan originator license?** Yes, you may apply for a license at any time. However, if you are not ((~~working for a licensed mortgage broker~~)) required to hold the license to conduct the activities of your job, your license will be considered inactive.

(12) **What is an inactive loan originator's license?** If an individual holds a loan originator license ((~~but is not working with a licensed mortgage broker~~)) when they are not required to under the act, they hold an inactive license. A person holding an inactive license may not hold themselves out as a licensed loan originator.

(13) **When my loan originator's license is inactive, am I subject to the director's enforcement authority?** Yes. Your license is granted under specific authority of the director and under certain situations you may be subject to the director's authority even if you are not doing any activity covered by the act.

(14) **When my loan originator license is inactive, must I continue to pay annual fees, and complete continuing education for that year?** Yes. You must comply with all the annual licensing requirements or you will be unable to renew your inactive loan originator license.

(15) **May I originate loans from a web site when my license is inactive?** You may not originate loans, or engage in any activity that requires a license under the act, while your license is inactive, except as allowed in subsection (3) of this section.

(16) **How do I activate my loan originator license?** When the department receives a notice, in a form prescribed by the department, from a licensed or exempt mortgage broker establishing a working relationship with you, your loan originator license will become active. The department will notify you and all mortgage brokers you are working with of the new working relationship established by the licensed mortgage broker.

(17) **When may the department issue interim loan originator licenses?** To prevent an undue delay, the director may issue interim loan originator licenses with a fixed expiration date. The license applicant must have substantially met the initial licensing requirements, as determined by the director, to receive an interim license.

For purposes of this section, undue delay includes the adjustment of license expiration or renewal dates to coincide with the implementation of systems designed to assist in uniformity and provide data repositories of licensing information.

One example of having substantially met the initial licensing requirements is: Submitting a complete application, paying all application fees, and the department having received and reviewed the results of the applicant's background check.

(18) **When does my loan originator license expire?** The loan originator license expires annually. The expiration date is shown on the license. If the license is an interim license, it may expire in less than one year.

(19) **How do I renew my loan originator license?**

(a) Before the license expiration date you must:

(i) Pay the annual assessment fee; and

(ii) Meet the continuing education requirement.

(b) The renewed license is valid until it expires, or is surrendered, suspended or revoked.

(20) **If I let my loan originator license expire, must I apply to get a new license?** If you complete all the requirements for renewal within forty-five days of the expiration date you may renew an existing license. However, if you renew your license during this forty-five day period, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection (19) of this section for the license renewal requirements.

During this forty-five day period, your license is expired and you must not conduct any business under the act that requires a license.

Any renewal requirements received by the department must be evidenced by either a United States Postal Service postmark or department "date received" stamp within the forty-five days. If you fail to comply with the renewal request requirements within forty-five days, you must apply for a new license.

(21) **If I let my loan originator license expire and then apply for a new loan originator license within one year of the expiration, must I comply with the continuing education requirements from the prior license period?** Yes. Before the department will consider your new loan originator application complete, you must provide proof of satisfying the continuing education requirements from the prior license period.

(22) **May I still originate loans if my loan originator license has expired?** No. Once your license has expired you may no longer conduct the business of a loan originator as defined in the act and these rules.

(((~~(22)~~))) (23) **What happens to the loan applications I originated before my loan originator license expired?** Existing loan applications must be processed by the licensed mortgage broker or another licensed loan originator working for the mortgage broker.

(((~~(23)~~))) (24) **May I surrender my loan originator's license?** Yes. You may surrender your license before the license expires by notifying the department, in a form prescribed by the department.

Surrender of your loan originator license does not change your civil or criminal liability, or your liability for any administrative actions arising from acts or omission occurring before the license surrender.

(((~~(24)~~))) (25) **Must I display my loan originator license where I work as a loan originator?** No. Neither you nor the mortgage broker company is required to display your loan originator license. However, evidence that you are licensed as a loan originator must be made available to anyone who requests it.

(((~~(25)~~))) (26) **If I operate as a loan originator on the internet, must I display my license number on my web site?** Yes. You must display your license number, and the license number and name as it appears on the license of the licensed mortgage broker you represent, on the web site.

(((~~(26)~~))) (27) **Must I include my loan originator license number on any documents?** You must include your license number immediately following your name on solicitations, including business cards, advertisements, and residential mortgage loan applications.

(((~~(27)~~))) (28) **When must I disclose my loan originator license number?** In the following situations you must disclose your loan originator license number and the name and license number of the mortgage broker you are associated with:

(a) When asked by any party to a loan transaction, including third party providers;

(b) When asked by any person you have solicited for business, even if the solicitation is not directly related to a mortgage transaction;

(c) When asked by any person who contacts you about a residential mortgage loan;

(d) When taking a residential mortgage loan application.

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

WAC 208-660-370 Loan originators—Continuing education. (1) **Where may I get information about continuing education for loan originators?** The department will publish a list of the approved professional organizations that provide continuing education, and approved individual courses on the department's web site. The professional organizations will have detailed information about the continuing education courses they offer.

(2) **How many clock hours of loan originator continuing education must I have each year?** The continuing education requirement will be in the form of approved courses. While the individual clock hours may vary, you must complete two courses, of no less than three hours each, annually. Alternatively, you may attend three mortgage broker commission meetings instead of completing one continuing education course.

(3) **As a loan originator, may I take the same approved course multiple times to meet my annual continuing education requirement?** No. You may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(4) **If I teach an approved continuing education course may I use my course as credit toward my annual loan originator continuing education requirement?** Yes. As an instructor of an approved continuing education course, you may receive credit for your annually required loan originator continuing education courses from the course(s) you teach. You will receive credit at the rate of one course taught equaling two continuing education course credits.

(5) **How do I receive credit toward my continuing education requirement when I teach an approved continuing education course?** When you renew your license and seek to get credit for continuing education, submit to the department documentation evidencing approval of the continuing course you taught. The department will credit you with completing two continuing education courses for each one approved course you teach.

(6) **Is ethics a required continuing education course for loan originators?** Yes. You must take an ethics continuing education course in your first year of holding a loan originator license. However, if you teach an approved continuing education course on ethics during your first year of holding a loan originator license, that will satisfy your ethics continuing education requirement for that year.

(7) **If I take a loan originator continuing education course approved for multiple jurisdictions, will the department accept it as part of my continuing education requirement?** If any state has continuing education requirements or standards at least as stringent as Washington's, their continuing education courses may be approved by the department as meeting the continuing education requirements under the act and these rules.

(8) **If I accumulate more than the required loan originator continuing education course credits during a year, may I carry-over the excess credit to the next year?** No. Continuing education credits only apply to the year in which they are taken.

(9) **If I fail to complete the required continuing education, what happens to my loan originator license?** When your license expires, the department will not renew it, and you cannot continue conducting any business under the act. See WAC 208-660-350(20) to renew your license within forty-five days of it expiring. See also, WAC 208-660-350(21).

(10) **How will I know which courses and providers satisfy the continuing education requirement?** The department will approve continuing education courses offered by course providers and will approve professional organizations offering courses. The providers, courses, and contact information will be listed on the department's web site.

(11) **How do I provide the department with proof of the continuing education courses I have completed?** You must provide the department with proof of your satisfactory completion of the course, in a form prescribed by the department.

(12) **If the department reissues my license and the new expiration date does not coincide with the prior annual assessment period, will the department still give me credit for the continuing education courses I have taken in preparation for meeting the prior annual assessment date?** Yes. The department will give you credit for the continuing education courses you have taken. You will not lose any credits due to the department's license expiration date adjustment.

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

WAC 208-660-400 Reporting requirements and notices to the department. (1) **As a licensed mortgage broker, what annual report must I provide to the department?** You must file a mortgage broker annual report, in a form prescribed by the director. The report must include:

(a) The total number of residential mortgage loans secured by Washington real estate that you originated and closed in the prior calendar year; and

(b) The total dollar volume (principal loan amounts) of the residential mortgage loans secured by Washington real estate that you originated and closed in the prior calendar year.

(2) **When must I provide the mortgage broker annual report to the department?** You must provide the completed report to the department by ((~~May 1st~~)) March 31st of each year ((~~beginning in 2007~~)). The first annual report, for activity occurring in 2007, must be received by the department before or on March 31, 2008.

(3) **What period of time must the mortgage broker annual report cover?** The mortgage broker annual report must cover the prior calendar year from January 1st to December 31st.

(4) **What action will the department take if I fail to file my mortgage broker annual report ((~~by May 1st of each year~~))?**

(a) When the report is over thirty days late, the department may begin an enforcement action against you.

(b) When your license is due for renewal, the department will not renew it if you have not filed your annual report.

(5) **How do I notify the department when I want to change information on my mortgage broker or loan originator license?** You must file a license amendment application with the department, in a form prescribed by the department within thirty days of the change occurring.

(6) **As a designated broker or loan originator, must I notify the department if I change my residential address or telephone number?** Yes. Whether your license is active or inactive, you must notify the department in a form prescribed by the department within thirty days of a change in your residential address and telephone number.

(7) **As a designated broker or loan originator must I notify the department if I change my name?** Yes. Whether your license is active or inactive, you must notify the department in a form prescribed by the department within thirty days of a name change.

(8) **Must I notify the department of the physical address of my mortgage broker books and records?** Yes. You must provide the physical address of your mortgage broker books and records in your initial license application. If the location of your books and records changes, you must provide the department, in a form prescribed by the department, with the new physical address within five business days of the change.

(9) **Must I notify the department if my designated broker leaves, or is no longer my designated broker?** Yes. You must notify the department, in a form prescribed by the department, within five business days of the loss of or change

of status of your designated broker. See WAC 208-660-180(3).

(10) **When and how do I change the information about my registered agent?** Within five business days of the change, you must file a statement of change with the department, in a form prescribed by the department.

(11) **If I am a registered agent under the act, must I notify the department if I resign?** Yes. You must provide the department with your statement of resignation letter at least thirty-one days prior to the intended effective date. You must also provide a copy of the resignation letter to the licensed mortgage broker. The department will terminate your appointment thirty-one days after receiving your resignation letter.

(12) **Must I notify the department if I change the business structure of my company? When must I notify the department?** If the change to your business adds officers, directors, or principal stockholders owning ten percent or more of the company, you must notify the department, in a form prescribed by the department, at least thirty days prior to the change. The department will consider the qualifications of the new people and notify you whether or not the proposed change is acceptable.

(13) **What are my responsibilities when I sell my business?**

(a) At least thirty days prior to the effective date of sale, you must notify the department of the pending sale, in a form prescribed by the director.

(b) You must surrender your license and complete the year's annual report.

(c) You must give written notice to borrowers whose applications or loans are in process, ((~~and to anyone who has applied for a loan,~~)) advising them of the change in ownership.

(d) You must give written notice to third party providers ((~~advising them of the change in ownership and~~)) that have or will provide services on loans in process, and all third-party providers you owe money to, bringing accounts payable current.

(e) You must maintain your records as required under the act and these rules.

(f) You must reconcile the trust account and return any funds to the borrowers or others to whom they belong, or transfer funds into a new trust account at the borrower's direction. If excess funds still remain and are unclaimed, follow the procedures provided by the department of revenue's unclaimed property division.

(14) **Must I notify the department if I cease doing business in this state?** You must notify the department within twenty days after you cease doing business in the state by filing a Mortgage Broker Closure Form and the annual report.

(15) **Must I notify the department of changes to my trust account?** Yes. You must notify the department within five business days of any change in the status, location, account number, or other particulars of your trust account, made by you or the federally insured financial institution where the trust account is maintained. A change in your trust account includes the addition of a trust account.

(16) **Must I notify the department of changes to my Washington master business license?** Yes. You must notify the department within five business days of any changes to your Washington master business license made by you or the agency issuing the license.

(17) **Must I notify the department of changes to my standing with the Washington secretary of state?** Yes. You must notify the department within five business days of any changes to your standing with the Washington secretary of state made by you or the secretary of state.

(18) **What must I do if my licensed mortgage broker company files for bankruptcy?**

(a) Chapter 7 bankruptcy. If you are a licensed mortgage broker that files for a Chapter 7 bankruptcy, you must:

(i) Notify the director and surrender your mortgage broker license within ten business days of filing the bankruptcy.

(ii) Provide the department with a mortgage broker annual report for the calendar year preceding the filing within ten business days of filing the bankruptcy.

(b) Chapter 11 bankruptcy. If your licensed mortgage broker company files for a Chapter 11 bankruptcy, you must notify the director within ten business days of filing the bankruptcy.

(c) Chapter 13 bankruptcy. If your licensed mortgage broker company files for a Chapter 13 bankruptcy, you must:

(i) Notify the director and surrender your mortgage broker license within ten business days of filing the bankruptcy.

(ii) Provide the department with a mortgage broker annual report for the calendar year preceding the filing within ten business days of filing the bankruptcy.

(19) **If I am a designated broker and file for personal bankruptcy, what are my reporting responsibilities?** A designated broker must notify the department in writing within ten business days of filing for bankruptcy protection.

(20) **If I am a designated broker and file for personal bankruptcy, what action may the department take?** The director may require the licensed mortgage broker to replace you with another designated broker.

(21) **If I am a loan originator and file for personal bankruptcy, what are my reporting responsibilities?** A licensed loan originator must notify the director in writing within ten business days of filing for bankruptcy protection.

(22) **If I am a loan originator and file for personal bankruptcy, what action may the department take?** Depending on the circumstances, the director may revoke or condition your license.

(23) **When may I apply for a license after surrendering one due to my personal bankruptcy filing?** If you surrendered your license, you may apply for a license at any time. However, the department may deny your license application for three years after the bankruptcy has been discharged provided that no new bankruptcies have occurred or are in progress.

(24) **When may I apply for a license after the department has revoked my license due to my personal bankruptcy filing?** The director will not issue a license to any person who has had their license revoked within five years of applying. While you may apply at any time, the application will be denied until the five years have elapsed. For this rea-

son it is important for you to consider a surrender of your license rather than allowing it to be revoked.

(25) **Who in the mortgage broker company must notify the department if they are charged with or convicted of a crime?** Licensees, whether on active or inactive license status, must notify the department in writing within ten business days of being:

(a) Charged by indictment or information with any felony, or a gross misdemeanor involving dishonesty or financial misconduct in any jurisdiction.

(b) Convicted of any felony, or any gross misdemeanor involving dishonesty or financial misconduct in any jurisdiction.

(c) Convicted outside of Washington for any crime that if charged in Washington would constitute a felony, or gross misdemeanor for dishonesty or financial misconduct.

(26) **Who in the mortgage broker company must notify the department if they are the subject of an administrative enforcement action?** Licensees, whether holding active or inactive licenses, must notify the department in writing within ten business days of the occurrence if:

(a) Charged with any violations by an administrative authority in any jurisdiction; or

(b) The subject of any administrative action, including a license revocation action, in any jurisdiction.

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

WAC 208-660-430 Disclosure requirements. (1) **What disclosures must I make to borrowers and when?** Within three business days of receiving a borrower's loan application, or receiving money from a borrower for third-party provider services, you, as a mortgage broker or loan originator on behalf of a mortgage broker, must make all disclosures required by RCW 19.146.030 (1), (2), and (3). The disclosures must be in a form acceptable to the director.

(2) **What is the disclosure required under RCW 19.146.030(1)?** A full written disclosure containing an itemization and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a residential mortgage loan, and specifying the fee or fees which inure to the benefit of the mortgage broker. A good faith estimate of a fee or cost must be provided if the exact amount of the fee or cost is not determinable. This subsection does not require disclosure of the distribution or breakdown of loan fees, discount, or points between the mortgage broker and any lender or investor.

The specific content of the disclosure required under RCW 19.146.030(1) is identified in RCW 19.146.030(2).

(3) **What is the disclosure required under RCW 19.146.030(2)?** Mortgage brokers must disclose the following content:

(a) The annual percentage rate, finance charge, amount financed, total amount of all payments, number of payments, amount of each payment, amount of points or prepaid interest and the conditions and terms under which any loan terms may change between the time of disclosure and closing of the loan; and if a variable rate, the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase, and an example of the payment terms resulting from an increase.

Disclosure in compliance with the requirements of the Truth-in-Lending Act and Regulation Z, as now or hereafter amended, is considered compliance with the disclosure content requirements of this subsection; however, RCW 19.146.030(1) governs the delivery requirement of these disclosures;

(b) The itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, escrow fee, property tax, insurance, structural or pest inspection, and any other third-party provider's costs associated with the residential mortgage loan. Disclosure through good faith estimates of settlement services and special information booklets in compliance with the requirements of RESPA and Regulation X, as now or hereafter amended, is considered compliance with the disclosure content requirements of this subsection; however, RCW 19.146.030(1) governs the delivery requirement of these disclosures;

(c) If applicable, the cost, terms, duration, and conditions of a lock-in agreement and whether a lock-in agreement has been entered, and whether the lock-in agreement is guaranteed by the mortgage broker or lender, and if a lock-in agreement has not been entered, disclosure in a form acceptable to the director that the disclosed interest rate and terms are subject to change;

(d) A statement that if the borrower is unable to obtain a loan for any reason, the mortgage broker must, within five days of a written request by the borrower, give copies of any appraisal, title report, or credit report paid for by the borrower, to the borrower, and transmit the appraisal, title report, or credit report to any other mortgage broker or lender to whom the borrower directs the documents to be sent;

(e) Whether and under what conditions any lock-in fees are refundable to the borrower; and

(f) A statement providing that moneys paid by the borrower to the mortgage broker for third-party provider services are held in a trust account and any moneys remaining after payment to third-party providers will be refunded.

(4) **How do I disclose my mortgage broker fees on the good faith estimate and settlement statement?** You must disclose or direct the disclosure of your fees on lines 808 through 811 of the good faith estimate and HUD-1/1A settlement statement or similar document.

(5) **How do I disclose my yield spread premium (YSP) from the lender?**

(a) You should disclose the YSP in the 800 series of lines on the GFE. The YSP must be listed using the words "yield spread premium" and expressed as a dollar amount or dollar amount range.

(b) You must direct the settlement service provider to disclose the YSP in the 800 series of lines on the HUD-1 or equivalent settlement statement. The YSP must be listed using the words "yield spread premium" and expressed as a dollar amount or dollar amount range.

(6) **Are there additional disclosure requirements related to interest rate lock-ins?** Yes. Pursuant to RCW 19.146.030(3), if subsequent to the written disclosure being provided under this section, a mortgage broker or loan originator enters into a lock-in agreement with a borrower or rep-

resents to the borrower that the borrower has entered into a lock-in agreement, then ((~~no less than three business days thereafter including Saturdays,~~)) within three business days the mortgage broker or loan originator must deliver or send by first-class mail to the borrower a written confirmation of the terms of the lock-in agreement, which must include a copy of the disclosure made under subsection (3)(c) of this section.

(((~~6~~))) (7) **What must I disclose to the borrower if they do not choose to enter into a lock-in agreement?** If a lock-in agreement has not been entered into, you must disclose to the borrower that the disclosed interest rate and terms are subject to change.

(((~~7~~))) (8) **Will a lock-in agreement always guarantee the interest rate and terms?** No. A lock-in agreement may or may not be guaranteed by the mortgage broker or lender. The lock-in agreement must clearly state whether the lock-in agreement is guaranteed by the mortgage broker or lender.

(((~~8~~))) (9) **Must a mortgage broker enter into a lock-in agreement with a borrower?** No. The statute does not require a mortgage broker to enter into a lock-in agreement with a borrower.

(((~~9~~))) (10) **Are there any model forms that suffice for the disclosure content under RCW 19.146.030(2)?** Yes. The following model forms are acceptable forms of disclosure:

(a) For RCW 19.146.030 (2)(a), mortgage brokers are encouraged to use the federal truth-in-lending disclosure form for mortgage loan transactions provided under the Truth-in-Lending Act and Regulation Z, as now or hereafter amended. However, the federal truth-in-lending disclosure only suffices for the content of disclosures under RCW 19.146.030 (2)(a). The delivery of disclosures is governed by RCW 19.146.030(1).

(b) For RCW 19.146.030 (2)(b), mortgage brokers are encouraged to use the federal good faith estimate disclosure form provided under the Real Estate Settlement Procedures Act and Regulation X, as now or hereafter amended. However, the federal good faith estimate disclosure only suffices for the content of disclosures under RCW 19.146.030 (2)(b). The delivery of disclosures is governed by RCW 19.146.030(1).

(c) For RCW 19.146.030 (2)(c), (d), (e), (f) and (3), the department encourages mortgage brokers to use the department published model disclosure forms that can be found on the department's web site.

(((~~10~~))) (11) **May my mortgage broker fees increase following the disclosures required under RCW 19.146.-030(1)?** Pursuant to RCW 19.146.030(4), a mortgage broker must not charge any fee that inures to the benefit of the mortgage broker if it exceeds the fee disclosed on the initial written good faith estimate disclosure required in RCW 19.146.-030 (1) and (2)(b), unless:

(a) The need to charge the fee was not reasonably foreseeable at the time the written disclosure was provided; and

(b) The mortgage broker has provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed.

(((~~11~~))) (12) **Are there any situations in which fees that benefit the mortgage broker can increase without additional disclosure?** Yes, there are two possible situations where an increase in the fees benefiting the mortgage broker may increase without the requirement to provide additional disclosures. These situations are:

(a) The additional disclosure is not required if the borrower's closing costs, excluding prepaid escrowed costs of ownership, on the final settlement statement do not exceed the total closing costs, excluding prepaid escrowed costs of ownership, in the most recent good faith estimate provided to the borrower. For purposes of this section "prepaid escrowed costs of ownership" mean any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and similar items in regard to the property used as security for the loan; or

(b) The fee or set of fees that benefit the mortgage broker are disclosed as a percentage of the loan amount and the increase in fees results from an increase in the loan amount, provided that:

(i) The increase in loan amount is requested by the borrower; and

(ii) The fee or set of fees that are calculated as a percentage of the loan amount have been disclosed on the initial written disclosure as both a percentage of the loan amount and as a dollar amount based upon the assumed loan amount used in the initial written disclosure; and

(iii) The total aggregate increase in the fee or set of fees that benefit the mortgage broker as a result of the increase in loan amount is less than seven hundred fifty dollars.

(((~~12~~))) (13) **What action may the department take if I disclose my mortgage broker fees on the good faith estimate and HUD-1/1A statement on lines other than 808 through 811?** If you fail to disclose your mortgage broker fees as required, the department may request, direct, or order you to refund those fees to the borrower. For example, if you disclose your mortgage broker fees as loan origination fees or discount points, the department may find that this is a deceptive practice and take action against you as indicated.

(((~~13~~))) (14) **May the department take action against a mortgage broker when mortgage broker fees are disclosed incorrectly on the HUD-1/1A and the incorrect disclosure was made by an independent escrow agent, title company, or lender?** If the mortgage broker can show the department that they disclosed their fees correctly on the good faith estimate, and have instructed the independent escrow agent, title company, or lender to disclose the fees correctly on the HUD-1/1A, and the independent escrow agent, title company, or lender has not followed the instructions, the department may not take action against the mortgage broker.

(((~~14~~))) (15) **What action may the department take if I fail to provide additional disclosures as required under RCW 19.146.030(4)?** Generally, the department ((~~will~~)) may request, direct, or order you to ((~~pay restitution to borrowers that have paid~~)) refund fees ((~~to you in excess of the amounts initially disclosed~~)).

(((~~15~~))) (16) **How will the department determine whether ((~~borrowers have paid fees to me in excess of the amounts initially disclosed for which the department~~**

~~might~~)) to request, direct or order ((~~restitution~~)) me to refund fees to the borrowers? Generally, the department will make its determination by answering the following questions:

(a) Has an initial good faith estimate disclosure of costs been provided to the borrower in accordance with RCW 19.146.030 (1) and (2)(b)?

(b) Were any subsequent good faith estimate disclosures of costs provided to the borrower no less than three business days prior to the signing of the loan closing documents? Additionally, was the subsequent disclosure accompanied by a clear written explanation of the change?

(c) How were the costs disclosed in each good faith estimate (e.g., dollar amount, percentage, or both)?

(d) Did the total costs, excluding prepaid escrowed costs of ownership, on the final settlement statement exceed the total closing costs, excluding prepaid escrowed costs of ownership, in the most recent good faith estimate provided to the borrower no less than three business days prior to the signing of the loan closing documents?

(e) If the costs at closing did exceed the most recent disclosure of costs was the need to charge the fee reasonably foreseeable at the time the written disclosure was provided?

(f) If the costs at closing did exceed the most recent disclosure of costs did the mortgage broker provide a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed, no less than three business days prior to the signing of the loan closing documents?

(((~~16~~))) (17) **If I failed to provide the initial good faith estimate or TILA disclosure under RCW 19.146.030 (1) and (2)(a) and (b) what action may the department take?** If you have not provided the initial good faith estimate or TILA disclosure as required, including both delivery and content requirements, the department may request, direct or order you to ((~~pay restitution~~)) refund to the borrower ((~~in the amount of all~~)) fees that inured to your benefit.

(((~~17~~))) (18) **If I received trust funds from a borrower, but failed to provide the disclosures as required in RCW 19.146.030 (1) and (2), what action may the department take?** If you did not provide the disclosures as required, including both delivery and content requirements, the department may request, direct, or order you to refund to the borrower any trust funds they have paid regardless of whether you have already expended those trust funds on third-party providers.

(((~~18~~))) (19) **Under what circumstances must I redisclose the initial disclosures required under the act?** Generally, any loan terms or conditions that change must be redisclosed no less than three business days, prior to closing, to the borrower. Some examples are:

(a) Adjustable rate loan terms, including index, margin, and any changes to the fixed period.

(b) The initial fixed period.

(c) Any balloon payment requirements.

(d) Interest only options and any changes to the options.

(e) Lien position of the loan.

(f) Terms and the number of months or years for amortization purposes.

(g) Prepayment penalty terms and conditions.

(h) Any other term or condition that may be specific to a certain loan product.

(((~~19~~))) (20) **Must I provide the written disclosures required under RCW 19.146.030 if all I do is obtain a credit report on a consumer who has identified a specific property for a purchase and sales agreement or contract, or a refinance loan?** Yes. At that point, you have collected enough information on behalf of the consumer for you to anticipate a credit decision under RESPA's Regulation X, 24 ((~~CFR~~)) C.F.R. Sections 3500 et seq. and you must provide the consumer with all required disclosures. See the definition of "application" in these rules.

(((~~20~~))) (21) **If a loan application is canceled within three days of application must I provide the disclosures required under RCW 19.146.030?** If you have not used any borrower trust funds and those funds have been returned to the borrower in conformance with these rules, the disclosures pursuant to RCW 19.146.030 are not required.

(((~~21~~))) (22) **Is a mortgage broker that table funds a loan exempt from disclosures?** No. A mortgage broker must provide all disclosures required by the act, and disclose all fees as required by Regulation X, regardless of the funding mechanism used in the transaction.

(((~~22~~))) (23) **What must I disclose to a potential borrower when I advertise my business or services to them using information about their current loan?** You must disclose the source from which you obtained the information about the borrower's current loan when the information was not obtained by soliciting, making a residential loan, or assisting that potential borrower in obtaining or applying to obtain a residential mortgage loan. If the information was provided by a company that searched public records and provided you the information, the "source" is the company that provided the records, not "public records."

(((~~23~~))) (24) **What must I provide to the borrower if I am unable to complete a loan for them and they have paid for services from third-party providers?** If you are unable to complete a loan for the borrower for any reason, and if the borrower has paid you for third-party provider services, and the borrower makes a written request to you, you must provide the borrower with copies of the product from any third-party provider, including, but not limited to, an appraisal, title report, or credit report. You must provide the copies within five business days of the borrower's request.

The borrower may also request that you provide the originals of the documents to another mortgage broker or lender of the borrower's choice. By furnishing the originals to another mortgage broker or lender, you are conveying the right to use the documents to the other broker or lender. You must, upon request by the other broker or lender, provide written evidence of the conveyance. You must provide the originals to the mortgage broker or lender within five business days of the borrower's request.

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

WAC 208-660-440 Advertising. (1) **Am I responsible for ensuring that my advertising material is accurate, reliable, and in compliance with the act?** Yes. Each mort-

gage broker is responsible for ensuring the accuracy and reliability of the advertising material.

(2) **A licensee is prohibited from advertising with envelopes or stationery that contain an official-looking emblem designed to resemble a government mailing or that suggest an affiliation that does not exist. What are some examples of emblems or government-like names, language, or nonexistent affiliations that will violate the state and federal advertising laws?** Some examples include, but are not limited to:

(a) An official-looking emblem such as an eagle, the Statue of Liberty, or a crest or seal that resembles one used by any state or federal government agency.

(b) Envelopes designed to resemble official government mailings, such as IRS or U.S. Treasury envelopes, or other government mailers.

(c) Warnings or notices citing government codes or form numbers not required by the U.S. Postmaster to be shown on the mailing.

(d) The use of the term "official business," or similar language implying official or government business, without also including the name of the sender.

(e) Any suggestion or representation that the solicitor is affiliated with any agency, bank, or other entity that it does not actually represent.

(3) **When I am advertising interest rates, the act requires me to conspicuously disclose the annual percentage rate (APR) implied by the rate of interest. What does it mean to "conspicuously" disclose the APR?** The ((~~type size~~)) required disclosures in your advertisements must be reasonably understandable. Consumers must be able to read or hear, and understand the information. Many factors, including the size, duration, and location of the required disclosures, and the background or other information in the advertisement, can affect whether the information is clear and conspicuous. The disclosure of the APR must be ((~~the same size or larger than~~)) as prominent or more prominent than any other rates ((~~stated~~)) disclosed in the advertisement, regardless of the form of the advertisement.

(4) **The act prohibits me from advertising an interest rate unless that rate is actually available at the time of the advertisement. How may I establish that an advertised interest rate was "actually available" at the time it was advertised?** Whenever a specific interest rate is advertised, the mortgage broker must retain a copy of the lender's "rate sheet," or other supporting rate information, and the APR calculation for the advertised interest rate.

(5) **Must I quote the annual percentage rate when discussing rates with a borrower?** Yes. You must quote the annual percentage rate and other terms of the loan if you give an oral quote of an interest rate to the borrower. TILA's Regulation Z, 12 ((~~CFR~~)) C.F.R., part 226.26 provides guidance for using the annual percentage rate in oral disclosures.

(6) **May a mortgage broker or loan originator advertise rates or fees as the "lowest" or "best"?** No. Rates described as "lowest," "best," or other similar words cannot be proven to be actually available at the time they are advertised. Therefore, they are a false or deceptive statement or representation prohibited by RCW 19.146.0201(7).

(7) **When I advertise, or present a business card to a potential borrower, must I make the disclosures required under the act and these rules?** No. You are not required to make disclosures until you accept a residential mortgage loan application, or until you assist a borrower in preparing an application.

(8) **May I solicit using advertising that suggests or represents that I am affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, when I am not; or that I am an entity other than who I am?** No. It is an unfair and deceptive act or practice and a violation of the act for you to suggest or represent that you are affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, or other entity you do not actually represent; or to suggest or represent that you are any entity other than who you are.

(9) **If I advertise using a borrower's current loan information, what must I disclose about that information?** When an advertisement includes information about a borrower's current loan that you did not obtain from a solicitation, application, or loan, you must provide the borrower with:

(a) The name of the source of the information;

(b) A statement that you are not affiliated with the borrower's lender; and

(c) The information disclosed in (a) and (b) of this subsection must be in the same size type font as the rest of the information in the advertisement.

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

WAC 208-660-500 Prohibited practices. (1) **What may I request of an appraiser?** You may request an area or market survey. While there are no strict definitions of these terms, generally they refer to general information regarding a region, area, or plat. The information usually includes the high, low and average sales price, numbers of properties available for sale or that have been sold within a set period, marketing times, days on market, absorption rate or the mixture of different property types in the specified area, among other possible components. An area survey does not contain sufficient information or is not so defining as to allow an appraiser or reader to determine the value of a specified property or property type.

(2) **How may I discuss property values with an appraiser, prior to the appraisal, without the discussion constituting improperly influencing the appraiser?** You may inform the appraiser of your opinion of value, the borrower's opinion of value, or the list or sales price of the property. You are prohibited from telling the appraiser the value you need or that is required for your loan to be successful.

(3) **What business practices are prohibited?** The following business practices are prohibited:

(a) Directly or indirectly employing any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person.

(b) Engaging in any unfair or deceptive practice toward any person.

(c) Obtaining property by fraud or misrepresentation.

(d) Soliciting or entering into a contract with a borrower that provides in substance that the mortgage broker may earn a fee or commission through the mortgage broker's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower.

(e) Charging discount points on a loan which does not result in a reduction of the interest rate. Some examples of discount point misrepresentations are:

(i) A mortgage broker or lender charging discount points on the good faith estimate or settlement statement payable to the mortgage broker or any party that is not the actual lender on the resident mortgage loan.

(ii) Charging loan fees or mortgage broker fees that are represented to the borrower as discount points when such fees do not actually reduce the rate on the loan, or reflecting loan origination fees or mortgage broker fees as discount points.

(iii) Charging discount points that are not mathematically determinable as the same direct reduction of the rate available to any two borrowers with the same program and underwriting characteristics on the same date of disclosure.

(f) Failing to clearly and conspicuously disclose ((~~to a borrower~~)) whether ((~~the~~)) a payment advertised or offered for a residential mortgage loan includes amounts for taxes, insurance, or other products sold to the borrower. This prohibition includes the practice of misrepresenting, either orally ((~~or~~)), in writing, or in any advertising materials, a loan payment that includes only principal and interest as a loan payment that includes principal, interest, tax, and insurance.

(g) Failing to provide the exact pay-off amount of a loan you own or service as of a certain date five or fewer business days after being requested in writing to do so by a borrower of record or their authorized representative.

(h) Failing to record a borrower's payment, on a loan you own or service, as received on the day it is delivered to any of the licensee's locations during its regular working hours.

(i) Negligently making any false statement or willfully making any omission of material fact in connection with any application or any information filed by a licensee in connection with any application, examination or investigation conducted by the department.

(j) Purchasing insurance on an asset secured by a loan without first attempting to contact the borrower by mailing one or more notices to the last known address of the borrower in order to verify that the asset is not otherwise insured.

(k) Willfully filing a lien on property without a legal basis to do so.

(l) Coercing, intimidating, or threatening borrowers in any way with the intent of forcing them to complete a loan transaction.

(m) Failing to reconvey title to collateral, if any, within thirty days when the loan is paid in full unless conditions exist that make compliance unreasonable.

(n) Failing to make disclosures to loan applicants and noninstitutional investors as required by RCW 19.146.030 and any other applicable state or federal law.

(o) Making, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan ((~~or~~)).

(p) Engage in bait and switch advertising ((~~or other deceptive advertising practices~~)).

Bait and switch means a deceptive practice of soliciting or promising a loan at favorable terms, but later "switching" or providing a loan at less favorable terms. While bait and switch will be determined by the facts of a case, the following examples, alone or in combination, may exhibit a bait and switch practice:

(i) A deceptive change of loan program from fixed to variable rate.

(ii) A deceptive increase in interest rate.

(iii) The misrepresentation of discount points. This may include discount points that have a different rate buydown effect than promised, or origination fees that a borrower has been led to believe are discount points affecting the rate.

(iv) A deceptive increase in fees or other costs.

(v) A deceptive disclosure of monthly payment amount. This practice may involve soliciting a loan with payments that do not include monthly amounts for taxes and insurance or other reserved items, while leading the borrower to believe that such amounts are included.

(vi) Additional undisclosed terms such as prepayment penalties or balloon payments, or deceiving borrowers about the effect of disclosed terms.

(vii) Additional layers of financing not previously disclosed that serve to increase the overall cost to the borrower. This practice may involve the surprise combination of first and second mortgages to achieve the originally promised loan amount.

(viii) Leading borrowers to believe that subsequent events will be possible or practical when in fact it is known that the events will not be possible or practical.

(ix) Advertising or offering rates, programs, or terms that are not actually available at the time. See WAC 208-660-440(4).

(q) Engage in unfair or deceptive advertising practices. Unfair advertising may include advertising that offends public policy, or causes substantial injury to consumers or to competition in the marketplace.

((~~(p)~~)) (r) Negligently making any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed by a mortgage broker or in connection with any investigation conducted by the department.

((~~(q)~~)) (s) Making any payment, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.

((~~(r)~~)) (t) Advertising a rate of interest without clearly and conspicuously disclosing the annual percentage rate implied by the rate of interest.

((~~(s)~~)) (u) Failing to comply with the federal statutes and regulations in RCW 19.146.0201(11).

((~~(t)~~)) (v) Failing to pay third-party providers within the applicable ((~~time lines~~)) timelines.

(((~~u~~))) (w) Collecting or charging, or attempting to collect or charge, or use or propose any agreement purporting to collect or charge any fees prohibited by the act.

(((~~v~~))) (x) Acting as a loan originator and real estate broker or salesperson, or acting as a loan originator in a manner that violates RCW 19.146.0201(14).

(((~~w~~))) (y) Failing to comply with any provision of RCW 19.146.030 through 19.146.080 or any rule adopted under those sections.

(4) **What federal guidance has the director adopted for use by the department in determining if a violation under subsection (3)(b) of this section has occurred?** The director has adopted the following documents:

(a) The Conference of State Bank Supervisors and American Association of Residential Mortgage Regulators "Guidance on Nontraditional Mortgage Product Risks" (released November 14, 2006); and

(b) The Conference of State Bank Supervisors, American Association of Residential Mortgage Regulators, and National Association of Consumer Credit Administrators "Statement on Subprime Mortgage Lending," effective July 10, 2007 (published in the Federal Register at Vol. 72, No. 131).

(5) **May I charge a loan origination fee or discount points when I originate but do not make a loan?** No. You may not charge a loan origination fee or discount points as described in Regulation X, Part 3500, Appendix A.

(((~~5~~))) (6) **What mortgage broker fees may I charge?** You may charge a mortgage broker fee that was agreed upon between you and the borrower as stated on a good faith estimate disclosure form or similar document provided that such fee is disclosed in compliance with the act and these rules.

(((~~6~~))) (7) **How do I disclose my mortgage broker fees on the good faith estimate and settlement statement?** You must disclose or direct the disclosure of your fees on lines 808 through 811 of the good faith estimate and HUD-1/1A Settlement Statement or similar document.

(((~~7~~))) (8) **May I charge the borrower a fee that exceeds the fee I initially disclosed to the borrower?** Pursuant to RCW 19.146.030(4), you may not charge any fee that benefits you if it exceeds the fee you initially disclosed unless:

(a) The need to charge the fee was not reasonably foreseeable at the time the initial disclosure was provided; and

(b) You have provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed. See WAC 208-660-430 for specific details, disclosures, and exceptions implementing RCW 19.146.030(4).

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

WAC 208-660-530 Director and department powers—Enforcement authority. (1) **What is a directive?** A directive is a formal request for information from the director. A directive may request the recipient to appear in person to testify or present specific documents or items. A directive may be entitled "directive" or "subpoena."

(2) **What is an administrative enforcement action?** An administrative enforcement action is a formal action, generally initiated by a statement of charges filed by the department against persons who allegedly violated the act. Enforcement actions seek various sanctions, including, but not limited to, license revocation or suspension, business practice prohibition, or fines; and may include ordering restitution for ((~~consumers~~)) borrowers, recovery of the department's investigation costs, or all of the above.

(3) **What other types of enforcement action may the department pursue against me or my license?** The department may pursue criminal or civil referrals to the attorney general, prosecuting attorneys, or federal authorities, and may initiate civil actions in superior court.

(4) **What does it mean to be found in violation of the act and rules?** For the purposes of evaluating the licensing qualifications of an applicant, any of its principals, or the designated broker, "found in violation of the act and rules" means at least one of the following orders has been issued:

(a) A superior court order stating the applicant, any of its principals, or the designated broker violated any of the provisions of the act or rules; or

(b) A final administrative order after the completion of an administrative hearing and the filing of an initial decision of an administrative law judge stating the applicant, any of its principals, or the designated broker violated any of the provisions of the act or rules; or

(c) An administrative order stating the applicant, any of its principals, or the designated broker violated any of the provisions of the act or rules.

The order containing the finding described above must not have been entered within five years of the filing of the present application. However, if the violation resulted in a conviction of a gross misdemeanor involving dishonesty or financial misconduct, or a felony, the finding must not have been entered within seven years of the filing of the present application.

(5) **May the department sanction me for committing violations in another jurisdiction?** The department may seek sanctions against you for committing a violation in another jurisdiction if the violation could be a basis for the department to seek sanctions under the act or rules. Possible sanctions include those found in RCW 19.146.220.

(6) **May I be subject to a daily fine for violating the act?** Yes. Each licensed mortgage broker and each of its principals, officers, designated brokers, loan originators, employees, independent contractors, and agents must comply with the applicable provisions of the act. Each violation of any applicable provision of the act, or of any order, directive, or requirement of the director may, at the discretion of the director, subject the violator to a fine of up to one hundred dollars for each offense. Each day's continuance of the violation is a separate and distinct offense. In addition, the director may exercise discretion and by order assess other penalties for a violation of the act.

(7) **Under what circumstances will the department hold a designated broker, principal, or owner who has supervisory authority responsible for the actions of others that violate the act?** A designated broker, principal, or owner with supervisory authority is responsible for any con-

duct violating the act by a licensee, employee, or independent contractor if they:

(a) Directed or instructed the conduct that was in violation of the act, or had knowledge of the specific conduct, and approved or allowed the conduct; or

(b) Knew, or by the exercise of reasonable care and inquiry should have known, of the conduct in time to prevent it, or minimize the consequences, and did not.

(8) **When conduct violating the act has occurred, what may the department consider when assessing the responsibility of the designated broker, principal, and owner with supervisory authority?** The department may consider the following in an effort to determine who is responsible when a violation of the act has occurred. The following list is not limiting or exhaustive of the factors the department may consider:

(a) The adequacy of any background and experience investigation conducted prior to hiring or contracting with any person;

(b) The adoption of policies and procedures for:

(i) Supervision and training;

(ii) Regularly reviewing work performed;

(iii) Training in the requirements of the act and rules;

(iv) Monitoring continuing education requirements and compliance under the act;

(v) Acting on reports of alleged misconduct;

(c) Adopting a system of review for implementation and compliance with the policies and procedures;

(d) Providing copies of the act and rules; and

(e) The frequency and completeness of review conducted on work performed by any person subject to the act.

The items listed in (a) through (e) of this subsection must be in writing, or compliance with them must be documented in writing, and all documents must be retained as part of the mortgage broker business records. See WAC 208-660-450.

(9) **Do I have the right to have an attorney represent me at an adjudicative hearing and in any superior court proceeding?** Yes. You may have an attorney represent you at your own expense, or you may represent yourself.

(10) **Are there any criminal penalties related to violations of the act?** Yes. Violations of RCW 19.146.050 are class C felonies with a maximum penalty of five years in prison or a fine of ten thousand dollars, or both. Violations of RCW 19.146.235(9) are class B felonies with a maximum penalty of ten years in prison or a fine of twenty thousand dollars, or both. All other violations of the act are misdemeanors with a maximum penalty of ninety days in jail or a fine of not more than one thousand dollars, or both.

(11) **Under the act, is it a crime for any person subject to examination or investigation to knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information?** Yes. Knowingly withholding, abstracting, removing, mutilating, destroying, or secreting books, records, computer records, or other information is a class B felony punishable under RCW 9A.20.021 (1)(b).

(12) **Is a mortgage broker responsible for the payment of third-party providers even if the borrower has agreed to pay the fee?** Yes. If a mortgage broker or loan originator orders the third-party provider service, then the mortgage broker is responsible for paying for the service. However, the mortgage broker or loan originator is not responsible for paying the fee if the third-party provider agrees in writing to accept the fee from the borrower.

(13) **When must third-party providers be paid?** Third-party providers must be paid no later than thirty days after the related loan closing documents are filed, or within ninety days of the service, whichever is sooner, unless:

(a) The third-party provider agrees in writing to a different payment arrangement; or

(b) The third-party provider has been notified in writing that a bona fide dispute exists regarding the performance or quality of the third-party provider service.

(14) **What is a "bona fide" dispute between a mortgage broker and third-party provider?** A dispute related to the performance or quality of the third-party provider service that has been reported in writing to the third-party provider. The report must specify the disputed areas of performance or quality.

(15) **When must a dispute regarding the performance or quality of a third-party provider be reported?** The report of a dispute regarding the performance or quality of the third-party provider service must be made in writing and provided to the third-party provider before the payment for the services becomes due; that is, no later than thirty days after the related loan closing documents are filed, or within ninety days of the service, whichever is sooner.

(16) **What is a temporary cease and desist order issued by the department?** A temporary cease and desist order is an administrative enforcement action by the director, or designee, ordering a mortgage broker or loan originator to stop conducting business, or to stop doing some specific act.

(17) **When does the department use temporary cease and desist orders?** A temporary cease and desist order may be used when the department determines that a mortgage broker or loan originator is violating the act in a manner that is likely to cause substantial injury to the public.

(18) **What happens to my mortgage broker or loan originator license if the department of social and health services (DSHS) certifies me as out of compliance with a support order under RCW 74.20A.320?**

(a) The director will immediately suspend your license without the opportunity for a hearing if the department receives notice from DSHS that you are out of compliance with their support order regulations.

(b) The director will send you a document entitled "Notice of Suspension for Noncompliance with Child Support Order." Your license is suspended from the date of the notice. The suspension of your license remains in effect until the director is notified by DSHS of your compliance with their order. You must not perform any services under the act that require licensing while your license is suspended.

(19) **If the director suspends my license after notice from DSHS that I am not in compliance with a support order, may my license be reinstated?**

(a) The director will reinstate your license when the department has received written notice from DSHS of your compliance, and verified that you meet all licensing requirements under the act.

(b) The department will send you a notice entitled "Notice of Cancellation of Suspension for Noncompliance with Child Support Order." Your license is reinstated from the date of the notice.

(20) **Who may I contact if I have questions about how DSHS determines I am out of compliance with a support order?** Contact DSHS if you have questions about a DSHS certification of your noncompliance with a support order. Reference their case number when you contact them.

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

WAC 208-660-550 Department fees and costs. (1) The department intends to increase its fees and costs each year for several bienniums. The department intends to initiate rule making each biennium for this purpose. This rule provides for an automatic annual increase in the rate of fees and costs each fiscal year during the 2007-2009 biennium.

(a) On July 1, 2007, and July 1, 2008, these fees and costs, as increased in the prior fiscal year, will increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in RCW 43.135.025.

(b) The director may round off a rate increase under subsection (1) of this section. However, no rate increase may exceed the applicable fiscal growth factor.

(c) By June 1 of each year, the director will make available a chart of the new rates that will take effect on the immediately following July 1.

(2) **Mortgage broker licenses.**

Mortgage broker - license application fee	$((~~370.00~~)) 371.00
Mortgage broker - annual assessment (due upon initial licensing, then an annual renewal fee, per location)	$530.00
Mortgage broker late renewal assessment (fifty percent of annual assessment)	$265.00
Mortgage broker branch office - license application fee	$185.00
Mortgage broker branch office - annual assessment (annual renewal fee, per location)	$530.00
Mortgage broker - license amendment	No fee
Mortgage broker - change of designated broker	$25.00

(3) **Loan originator licenses.**

Loan originator - license application fee	$125.00
Loan originator - annual assessment (not due until first renewal; then an annual renewal fee((~~, per license~~)))	$125.00
Loan originator late renewal assessment (fifty percent of annual assessment)	$62.50
((~~Loan originator - additional assessment (charged for each association with additional mortgage brokers)~~	~~$75.00~~
~~Loan originator - annual assessment (renewal fee of additional licenses)~~	~~$75.00~~))
Loan originator - cancel association with any mortgage broker	No fee
Loan originator - license amendment - add a mortgage broker relationship	$50.00
Loan originator - license amendment - other	No fee

When the realignment of license expiration or renewal dates results in a partial year of licensing, the department will impose a proportionate fee structure to accommodate that realignment.

(4) **Examinations.**

(a) In Washington. The department does not charge a licensee located in Washington for the costs of an examination.

(b) Outside of Washington. The department will charge the licensee for travel costs.

(c) If the department hires professionals, specialists, or both to examine an out-of-state licensee, the professional, specialist, or both will be considered examiners for the purpose of billing the licensee for travel costs.

(5) **Investigations.**

(a) The department will charge forty-eight dollars per hour for an examiner's time devoted to an investigation.

(b) The department will bill the licensee for the costs of services from attorneys, accountants, or other professionals or specialists retained by the director to aid in the investigation.

(6) **Travel costs.** If the mortgage business is out-of-state, the department will charge the business the travel costs associated with an examination or investigation. Travel costs include, but are not limited to, transportation costs (airfare, rental cars), meals, and lodging.

(7) **How is the annual assessment calculated?** The assessment is a flat rate per license.

(8) **How does the department use license application fees?** The fees collected by the department are used to pay the costs of administering the act.

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

WAC 208-660-600 Administration and facilitation of continuing education. (1) **Who may offer continuing education courses to principals, designated mortgage brokers, and loan originators?** Continuing education may be offered by:

(a) Course providers with courses of education approved by the director; or

(b) Course providers with courses of education approved by professional organizations approved by the director.

(2) **What does it mean to offer and administer a course of education?** Offering and administering a course of education is the creation of a curriculum and the administrative processes to operate and maintain the curriculum. See the department's approval standards in subsections (7) and (((~~(13)~~))) (14) of this section.

(3) **What is a "course of education" under the act?** A course of education is formal training that satisfies all or part of the continuing education requirements of the act and these rules.

(4) **What is a "course provider" under the act?** A course provider is a person or organization that provides continuing education. Course providers may provide education that meets the requirements of the act and these rules by applying for and receiving approval from the department for a specific course of education.

(5) **What is a "professional organization" under the act?** A professional organization is an organization with at least ten members created for the primary purpose of furthering the professional interests of its members, protecting the public interest, or both. Education must be an essential element of the professional organization's purpose. A professional organization must have the director's approval to offer and administer courses of education.

(6) **If I am a course provider not affiliated with a professional organization, how do I obtain approval for my courses of education?** You must apply to the department for course approval. If the department approves the course, you will be issued a certificate of approval that will be effective for two years from the date of issuance.

(7) **What standard is required and what will the department review when considering approval of continuing education provided by course providers not affiliated with professional organizations?** Continuing education courses must provide the course taker with a working knowledge of, and competency in, the subject matter. To ensure this standard, the department will review the following when considering approval of education courses:

(a) The instructor's experience and qualifications;

(b) Whether the instructor or proposed course of education has been approved, denied, or rescinded by the department in the past; and

(c) The course materials and lesson plans for the proposed courses. Each course must run a minimum of three hours; the materials and lesson plans must have the content to support a presentation of this length.

(8) **If I am a course provider with courses of education approved by a professional organization, may I also offer courses of education unaffiliated with the professional organization?** Yes. However, your courses of education unaffiliated with the professional organization must be approved by the department.

(9) **May the department rescind approval of a course provider's course of education?** Yes. The department may rescind approval of a course of education:

(a) Upon a determination that the course of education does not meet the standards in subsection (7) of this section; or

(b) If the course provider does not provide the required quarterly reports described in subsection (13) of this section.

(10) **What action must a course provider take if notified by the department that its course of education has been rescinded?** The course provider must immediately:

(a) Cease advertising or soliciting for the course of education;

(b) Inform registered course takers of the department's rescission of course approval, and cancel the course of education; and

(c) Refund any fees paid by course takers for the course.

(11) **May a course provider appeal the department's decision to deny or rescind course approval?** Yes. A course provider may appeal the department's decision to deny or rescind a course. The course provider must appeal the decision to the department within twenty days of being notified by the department of the decision.

(12) **If a course provider has appealed the department's denial or rescission of a course of education, must it still take the immediate action in subsection (10) of this section?** Yes. A course provider appealing a department decision about a course of education must comply with subsection (10) of this section.

(13) **I am a course provider who provides approved continuing education courses directly to licensees, or I provide courses with the approval of a professional organization. What reports must I provide to the department?** You must provide quarterly reports to the department, in a form prescribed by the director. The reports must be received by the department no later than April 10, July 10, October 10, and January 10 of each year. The reports must contain the following information:

(a) The course taker's name;

(b) The course taker's license number, or Social Security number;

(c) The name of the course;

(d) The date the course was taken; and

(e) Whether the course taker received a certificate of satisfactory completion.

If you provide the reports electronically, the data must be encrypted as prescribed by the director.

(14) **What standards will the department review when considering approving professional organizations to offer and administer courses of education under the act and rules?** The department will review the following:

(a) A description of the course of education curriculum that satisfies the content of continuing education under subsection (((~~(20)~~))) (22) of this section;

(b) Whether the professional organization has sufficient procedures and guidelines to:

(i) Establish a course(s) of education and approve a course provider(s);

(ii) Audit and evaluate an approved course(s) of education and course provider(s);

(iii) Remove courses and providers from the professional organization's curriculum;

(iv) Provide board reconsideration of denial or removal of a course of education or a course provider;

(v) Ascertain the identity of course of education takers;

(vi) Issue certificates of satisfactory completion, that include, at a minimum, the course taker's name, the course provider's name, the course title, and the date of course completion;

(vii) Collect, hold, disburse and refund course of education fees;

(c) Whether the professional organization requires members to adhere to an established code of conduct or ethics.

((~~(14)~~)) (15) **Is the department liable for a professional organization's decision to approve, deny, or revoke authorization for a course provider to offer courses of education?** No. The department is not liable for a professional organization's decision to approve, deny, or revoke a course provider's authorization to provide courses of education for the professional organization.

((~~(15)~~)) (16) **Is the department liable for a course provider's contractual relationship with a professional organization?** No. Course providers independently contract with professional organizations and the department is not liable for the consequences of that relationship.

((~~(16)~~)) (17) **May the department remove a professional organization's authorization to offer and administer courses of education?** Yes. The department may rescind a professional organization's authorization to offer and administer courses of education:

(a) Upon a determination that the professional organization fails to meet subsection ((~~(13)~~)) (14) of this section; or

(b) If the professional organization fails to provide the required quarterly reports described in subsection (21) of this section.

((~~(17)~~)) (18) **What action must a professional organization take if notified by the department that its authorization has been rescinded?** The professional organization must immediately:

(a) Cease advertising or soliciting for all courses of education;

(b) Inform registered course takers of the department's rescission of approval, and cancel the courses of education; and

(c) Refund any fees paid by course takers for the courses.

((~~(18)~~)) (19) **May a professional organization appeal the department's decision to deny or rescind authorization?** Yes. A professional organization may appeal the department's decision to deny or rescind the professional organization's authorization to approve course providers. The professional organization must appeal the decision to the department within twenty days of being notified by the department of the decision.

((~~(19)~~)) (20) **If a professional organization has appealed the department's denial or rescission of authorization, must it still take the immediate action in subsection ((~~(17)~~)) (18) of this section?** Yes. A professional organization appealing a department decision about a course provider or course of education must comply with subsection ((~~(17)~~)) (18) of this section.

((~~(20)~~)) (21) **When a professional organization is approved by the department to offer continuing education courses to licensees, and does so, what reports must the professional organization provide to the department?** The professional organization must provide quarterly reports to the department, in a form prescribed by the director. The reports must be received by the department no later than April 10, July 10, October 10, and January 10 of each year. The reports must contain the following information:

(a) The course taker's name;

(b) The course taker's license number, or Social Security number if not currently licensed;

(c) The name of the course;

(d) The date the course was taken; and

(e) Whether the course taker received a certificate of satisfactory completion.

If you provide the reports electronically, the data must be encrypted as prescribed by the director.

(22) **How long does department approval for a professional organization to offer continuing education courses last, and may the approval be renewed?** Approval of a continuing education course is valid for two years. Approval may be renewed by applying to the director forty-five days prior to expiration of a current approval and providing detailed information about the course(s) and instructor(s) if they are to be changed.

((~~(21)~~)) (23) **What topics must be included as continuing education courses?** Continuing education courses must include some or all of the topics listed below. Courses may be designed to cover a range of topics or they may focus in detail on a single topic.

(a) **General.** Ethics in the mortgage industry.

The responsibilities and liabilities of the profession.

Arithmetical computations common to mortgage lending including without limitation, the computation of annual percentage rate, finance charge, amount financed, payment and amortization.

(b) **Compliance and internal audit standards.**

Proper use and application of the department's published standards and guidelines for examinations.

Internal audit and compliance practices, standards, methods and procedures.

Developing policies and procedures for regulatory compliance.

Responding to regulatory inquiries, directives, subpoenas and enforcement orders.

Training and supervision of mortgage professionals.

Establishing, managing, reconciling and reviewing a trust account (trust account compliance under the act and these rules).

(c) **Washington law and associated regulations.**

The Mortgage Broker Practices Act.

The Consumer Protection Act.

The Escrow Agent Registration Act.

The Usury Act.

Unfair practices with respect to real estate transactions (RCW 49.60.222).

Mortgage, deed of trust, and real estate contract statutes set forth in Title 61 RCW.

Real estate and appraisal law, including without limitation, the provisions of chapters 18.85 and 18.140 RCW.

Washington principal and agent law.

Any subsequent act or regulation applying to mortgage brokers.

(d) **Federal law and associated regulations.**

The Real Estate Settlement Procedures Act.

Truth in Lending Act.

Equal Credit Opportunity Act.

Fair Credit Reporting Act.

Fair Housing Act.

Home Mortgage Disclosure Act.

Community Reinvestment Act.

Gramm-Leach Bliley Act.

Home Ownership Protection Act.

Bank Secrecy Act.

Appraisal regulations.

Underwriting.

Any subsequent act or regulation applying to mortgage brokers.

(e) **Mortgage services and products.**

Conventional.

Reverse mortgages.

FHA mortgages.

VA mortgages.

Nonprime mortgages.

Other products or services deemed relevant to continuing education by the department.

(((~~(22)~~))) (24) **May the department audit or review a course of education?** Yes. The department may audit or review any continuing education course by registering for the course or attending the course of education unannounced by presenting the course provider with official identification prior to the start of the course. The department will not be charged any fee for official audit or review of the course of education.