

WSR 08-11-008
PERMANENT RULES
DEPARTMENT OF PERSONNEL

[Filed May 9, 2008, 1:19 p.m., effective June 10, 2008]

Effective Date of Rule: June 10, 2008.

Purpose: On January 28, 2008, President Bush signed into law amendments to the Family and Medical Leave Act which grant additional leave to employees who have family members in the military. Two new types of leave were added. The first is "exigency leave" which allows a fifth qualifying reason for the leave entitlement of twelve weeks of family medical leave due to a qualifying exigency arising from the fact that a spouse, child, or parent of an employee is on active duty or has been notified of pending call to active duty in the armed forces in support of a contingency operation. This provision is not effective until the federal Department of Labor (DOL) issues regulations. The second type is "service member leave." This addition allows up to twenty-six weeks of leave for an eligible employee who is the spouse, child, parent, or next of kin of a covered service member. This leave is used to care for a covered service member who is suffering from a serious illness or injury arising from injuries incurred in the line of duty. The amendment to WAC 357-31-525 (1)(c) is a housekeeping change. The other amendments to WAC 357-31-525 and 357-31-545 address service member leave. Once the DOL issues the regulations for the exigency leave, further amendments will be made.

Citation of Existing Rules Affected by this Order:
 Amending WAC 357-31-525 and 357-31-545.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 08-08-059 on March 28, 2008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: May 8, 2008.

Eva N. Santos
 Director

AMENDATORY SECTION (Amending WSR 05-12-086, filed 5/27/05, effective 7/1/05)

WAC 357-31-525 What is an employee entitled to under the Family and Medical Leave Act of 1993? (1) The Family and Medical Leave Act of 1993 (29 USC 2601 et seq) and its implementing rules, 29 CFR Part 825, provide that an

eligible employee must be granted, during a twelve-month period, a total of twelve work weeks of absence:

- (a) As a result of the employee's serious health condition;
- (b) To care for an employee's parent, spouse, or minor/dependent child who has a serious health condition; and/or
- (c) ~~((Fø))~~ For the birth of and to provide care to an employee's newborn, adopted or foster child as provided in WAC 357-31-460.

(2) An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member shall be entitled to a total of twenty-six work weeks of leave during a twelve-month period to care for the service member who is suffering from a serious illness or injury arising from injuries incurred in the line of duty. The leave described in this paragraph shall only be available during a single twelve-month period.

(a) For purposes of this section, "next of kin" with respect to an individual means the nearest blood relative of that individual.

(b) For purposes of this section, "covered service member" is a member of the Armed Forces, including the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on a temporary disability retired list for a serious illness or injury.

(c) For purposes of this section, "serious illness or injury" means an injury or illness incurred by the covered service member in the line of duty while on active duty in the Armed Forces that may render the service member medically unfit to perform the duties of the service member's office, grade, rank, or rating.

(3) During the twelve-month period described in subsection (2) above, an eligible employee shall be entitled to a combined total of twenty-six work weeks of leave under subsections (1) and (2) above. Nothing in this section shall be construed to limit the availability of leave under subsection (1) during any other twelve-month period.

~~((2))~~ (4) For general government employers, the twelve-month period in subsections (1) and (2) above is measured forward from the date the requesting employee begins leave under the Family and Medical Leave Act of 1993. The employee's next twelve-month period would begin the first time leave under the Family and Medical Leave Act is taken after completion of the previous twelve-month period. Higher education employers must define within their family and medical leave policy how the twelve months are measured.

AMENDATORY SECTION (Amending WSR 05-08-140, filed 4/6/05, effective 7/1/05)

WAC 357-31-545 Under the Family and Medical Leave Act, can an employee request an intermittent or reduced schedule? Employee absence granted for the purpose of WAC 357-31-525 (1)(a) and (b) must be granted on an intermittent or reduced schedule at the employee's request when medically necessary. Employee absence granted for the purpose of WAC 357-31-525(2) must also be granted on an intermittent or reduced schedule at the employee's request.

WSR 08-11-019
PERMANENT RULES
DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)
 [Filed May 12, 2008, 11:10 a.m., effective June 12, 2008]

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

Purpose: The rules define and clarify the requirements that nurses must meet in order to be licensed in Washington state. Changes remove outdated requirements and barriers to licensure, allowing easier access for qualified applicants. These rules assure that only appropriately trained nurses are licensed. Changes are also made to clarify the definitions of client advocate, delegation, supervision, substance abuse monitoring and nursing program approval rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-840-040, 246-840-070, 246-840-080 and 246-840-299; and amending WAC 246-840-010, 246-840-020, 246-840-030, 246-840-050, 246-840-060, 246-840-090, and 246-840-760.

Statutory Authority for Adoption: RCW 18.79.110.

Adopted under notice filed as WSR 08-02-088 on January 2, 2008.

Changes Other than Editing from Proposed to Adopted Version: Changes were made to the definition of delegation. Under WAC 246-840-010, a sentence was moved from subsection (7)(a) up to the introductory paragraph in subsection (7). The other change added "licensed practical nurse" to subsection (7)(c) so that it would be consistent with the introductory paragraph in subsection (7).

A final cost-benefit analysis is available by contacting Kendra Pitzler, P.O. Box 47864, Olympia, WA 98504-7864, phone (360) 236-4723, fax (360) 236-4738, e-mail kendra.pitzler@doh.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 7, Repealed 4.

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 3, Amended 7, Repealed 4.

Date Adopted: February 5, 2008.

Judith Personett, EdD, RN, Chair
 Nursing Care Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 04-13-053, filed 6/11/04, effective 6/11/04)

WAC 246-840-010 Definitions. (1) (~~"Auxiliary services" are all nursing services provided to patients by persons other than the licensed practical nurse, the registered nurse and the nursing student.~~

(2) ~~"Beginning practitioner" means a newly licensed nurse beginning to function in the nurse role.~~

(3) ~~"Behavioral objectives" means the measurable outcomes of specific content.~~

(4) ~~"Client" means the person who receives the services of the practical nurse or registered nurse.~~

~~(5))~~ An "advanced registered nurse practitioner (ARNP)" is a registered nurse who has had formal graduate education and has achieved national specialty certification for the nurse practitioner, nurse anesthetist, or nurse midwife role. A nurse with this preparation may qualify as an ARNP as described in WAC 246-840-300.

(2) "Advanced nursing practice" is the delivery of nursing care by registered nurses who have acquired experience and formal education that prepares them for independent practice.

(3) "Client advocate" means ((a supporter of client rights and choices)) a licensed registered nurse or practical nurse who actively supports client's rights and choices, including the client's right to receive safe, high quality care, and who facilitates the client's ability to exercise those rights and/or choices by providing the client has adequate information about their care and options.

~~((6))~~ (4) "Commission" means the Washington state nursing care quality assurance commission.

~~((7) "Competencies" means the tasks necessary to perform the standards.~~

~~(8) "Conceptual framework" means the theoretical base around which the curriculum is developed.~~

~~(9))~~ (5) "Competency" means demonstrated knowledge, skill and ability in the practice of nursing.

(6) "Conditional approval" of a school of nursing is the approval given a school of nursing that has ((failed to meet)) not met the requirements of the law and the rules and regulations of the commission((, and it specifies)) conditions are specified that must be met within a designated time to rectify the ((failure)) deficiency.

~~((10))~~ (7) "Delegation" means the licensed practical nurse or registered nurse transfers the performance of selected nursing tasks to competent individuals in selected situations. The licensed practical nurse or registered nurse delegating the task retains the responsibility and accountability for the nursing care of the client. The licensed practical nurse or registered nurse delegating the task supervises the performance of the unlicensed person((;)). Delegation in community and in-home care settings is defined by WAC 246-840-910 through 246-840-970.

(a) Nursing acts delegated by the licensed practical nurse or registered nurse shall:

(i) Be within the area of responsibility of the licensed practical nurse or registered nurse delegating the act;

(ii) Be such that, in the opinion of the licensed practical nurse or registered nurse, it can be properly and safely performed by the unlicensed person without jeopardizing the patient welfare;

(iii) Be acts that a reasonable and prudent licensed practical nurse or registered nurse would find are within the scope of sound nursing judgment.

(b) Nursing acts delegated by the licensed practical nurse or registered nurse shall not require the unlicensed person to

exercise nursing judgment nor perform acts which must only be performed by a licensed practical nurse or registered nurse, except in an emergency situation (RCW 18.79.240 (1)(b) and (2)(b)).

(c) When delegating a nursing act to an unlicensed person it is the licensed practical nurse or the registered nurse who shall:

(i) Make an assessment of the patient's nursing care need before delegating the task;

(ii) Instruct the unlicensed person in the delegated task or verify competency to perform or be assured that the person is competent to perform the nursing task as a result of the systems in place by the health care agency;

(iii) Recognize that some nursing interventions require nursing knowledge, judgment, and skill and therefore may not lawfully be delegated to unlicensed persons.

~~((11))~~ Direction and Supervision:

~~(a) "Supervision" of licensed or unlicensed nursing personnel means the provision of guidance and evaluation for the accomplishment of a nursing task or activity with the initial direction of the task or activity; periodic inspection of the actual act of accomplishing the task or activity; and the authority to require corrective action.~~

~~(b) "Consulting capacity" means the recommendations to a professional entity, employed at that facility, which may be accepted, rejected, or modified. These recommendations shall not be held out as providing nursing services by the consulting nurse to the patient or public.~~

~~(c) "Direct supervision" means the licensed registered nurse is on the premises, is quickly and easily available and the patient has been assessed by the licensed registered nurse prior to the delegation of the duties to any caregiver.~~

~~(d) "Immediate supervision" means the registered nurse is on the premises and is within audible and visual range of the patient and the patient has been assessed by the registered nurse prior to the delegation of duties to any caregiver.~~

~~(e) "Indirect supervision" means the registered nurse is not on the premises but has given either written or oral instructions for the care and treatment of the patient and the patient has been assessed by the registered nurse prior to the delegation of duties to any caregiver.~~

~~(12) "Extended learning sites" refers to any area external to the parent organization selected by faculty for student learning experiences.~~

~~((13))~~ (8) "Faculty" means persons who are responsible for the educational ((program of the school of)) nursing program and who hold faculty appointment in the school.

~~((14))~~ (9) "Full approval" of a school of nursing is the approval ((given)) signifying that a ((school of)) nursing ((that)) program meets the requirements of the law and the rules and regulations of the commission.

~~((15))~~ (10) "Good cause" as used in WAC ((246-840-990)) 246-840-860 for extension of a nurse technician registration means that the nurse technician has had undue hardship such as difficulty scheduling the examination through no fault of their own, receipt of the examination results after thirty days after the nurse technician's date of graduation, or an unexpected family crisis which caused him or her to delay sitting for the examination. Failure of the examination is not "good cause."

~~((16))~~ (11) "Good standing" as applied to a nursing technician, means the nursing technician is enrolled in a registered nursing program approved by the commission and is successfully meeting all program requirements.

~~((17))~~ (12) "Immediately available" as applied to nursing technicians, means that a registered nurse who has agreed to act as supervisor is on the premises and is within audible range and available for immediate response as needed. This may include the use of two-way communication devices which allow conversation between the nursing technician and a registered nurse who has agreed to act as supervisor.

(a) In a hospital setting, a registered nurse who has agreed to act as supervisor is on the same patient care unit as the nursing technician and the patient has been assessed by the registered nurse prior to the delegation of duties to the nursing technician.

(b) In a nursing home setting, a registered nurse who has agreed to act as supervisor is in the same building and on the same floor as the nursing technician and the patient has been assessed by the registered nurse prior to the delegation of duties to the nursing technician.

~~((18)) "Minor nursing services." The techniques and procedures used by the nursing profession are extremely difficult to categorize as major or minor nursing services. The important factor with which this law is concerned is the determination of which nursing person and at what level of preparation that person may perform said technique or procedure in relation to the condition of a given patient, and this kind of determination rests with the registered nurse.~~

~~((19))~~ (13) "Initial approval" of nursing programs is the approval given a new nursing program based on its proposal prior to the graduation of its first class.

(14) "Limited educational authorization" is an authorization to perform clinical training through a commission approved refresher course. This authorization does not permit practice for employment. A limited educational authorization may be issued to:

(a) A person whose Washington state license has been expired or inactive for three years or more and who applies for reinstatement and enrolls in a refresher course; or

(b) An applicant endorsing from another state or territory if the applicant's license from that jurisdiction is on inactive or expired status. The applicant must be enrolled in a refresher course.

(15) "Minimum standards of competency" means the ((functions)) knowledge, skills and abilities that are expected of the beginning ((level nurse)) practitioner.

~~((20))~~ (16) "Nontraditional program of nursing" means a school that has a curriculum which does not include a faculty supervised teaching/learning component in clinical settings.

(17) "Nurse administrator" is an individual who meets the qualifications contained in WAC 246-840-555 and who has been designated as the person primarily responsible for the direction of the program in nursing. Titles for this position may include, among others, dean, director, coordinator or chairperson.

~~((21))~~ (18) "Nursing technician" means a nursing student preparing for registered nurse licensure who is

employed in a hospital licensed under chapter 70.41 RCW or a nursing home licensed under chapter 18.51 RCW, and who:

(a) Is currently enrolled in good standing and attending a nursing program approved by the commission and has not graduated; or

(b) Is a graduate of a nursing program approved by the commission who graduated:

(i) Within the past thirty days; or

(ii) Within the past sixty days and has received a determination that there is good cause to continue the registration period.

(c) Approved schools for nursing technicians include the list of registered nursing programs (schools) approved by state boards of nursing as preparation for the NCLEX registered nurse examination, and listed in the NCLEX bulletin as meeting minimum standards. Approved schools do not include nontraditional schools as defined in ((WAC 246-840-030(3))) subsection (16) of this section.

((22)) (19) "Philosophy" means the beliefs and principles upon which the curriculum is based.

((23)) (20) "Program" means a division or department within a state supported educational institution, or other institution of higher learning charged with the responsibility of preparing persons to qualify for the licensing examination.

((24) "Provisional approval" of schools of nursing is the approval given a new school of nursing based on its proposed program prior to the admission of its first class.

((25)) (21) "Registered nurse" as used in these rules shall mean a nurse as defined by RCW 18.79.030(1).

((26) "School" means an educational unit charged with the responsibility of preparing persons to practice as practical nurses or registered nurses. Three types of basic schools of nursing are distinguished by the certificate awarded to the graduate. Schools of nursing within colleges and universities award the associate degree or baccalaureate degree. Schools of nursing sponsored by a hospital award a diploma.

(27) "Standards" means the overall behavior which is the desired outcome.

(28) "Terminal objectives" means the statements of goals which reflect the philosophy and are the measurable outcomes of the total curriculum.

(29) An "unapproved school of nursing" is a school of nursing that has been removed from the list of approved schools for failure to meet the requirements of the law and the rules and regulations of the commission or a school that has never been approved by the commission.)) (22) "Supervision" of licensed or unlicensed nursing personnel means the provision of guidance and evaluation for the accomplishment of a nursing task or activity with the initial direction of the task or activity; periodic inspection of the actual act of accomplishing the task or activity; and the authority to require corrective action.

(a) "Direct supervision" means the licensed registered nurse who provides guidance to nursing personnel and evaluation of nursing tasks is on the premises, is quickly and easily available, and has assessed the patient prior to the delegation of the duties.

(b) "Immediate supervision" means the licensed registered nurse who provides guidance to nursing personnel and evaluation of nursing tasks is on the premises, is within audi-

ble and visual range of the patient, and has assessed the patient prior to the delegation of duties.

(c) "Indirect supervision" means the licensed registered nurse who provides guidance to nursing personnel and evaluation of nursing tasks is not on the premises but has given either written or oral instructions for the care and treatment of the patient and the patient has been assessed by the registered nurse prior to the delegation of duties.

(23) "Traditional program of nursing" means a program that has a curriculum which includes a faculty supervised teaching/learning component in clinical settings.

AMENDATORY SECTION (Amending WSR 99-10-079, filed 5/4/99, effective 6/4/99)

WAC 246-840-020 Documents issued to nurses in Washington. The following ~~((documents are the only documents))~~ credentials are issued to nurses in Washington.

(1) Active status license. A license is issued upon completion of all requirements for licensure ~~((confers the right to))~~. The license holder may use the title licensed practical nurse or ~~((licensed))~~ registered nurse and the use of its abbreviation, ~~((L.P.N. or R.N., and to))~~ LPN or RN. The license allows practice as a licensed practical nurse or registered nurse in the state of Washington.

A student who has graduated from a basic professional nursing course and who is pursuing a baccalaureate degree in nursing, an advanced degree in nursing or an advanced certification in nursing ~~((shall))~~ must hold an active Washington RN license before participating in the practice of nursing as required to fulfill the learning objectives in a clinical course.

~~((Exception to this requirement may be granted by the commission on an individual basis upon a petition submitted by the dean or director of a school of nursing, on a case-by-case basis.~~

~~((a) The exception allows the student to practice in a clinical setting only under the direct supervision of an RN faculty member. The commission requires that any RN faculty member supervising these students meet the requirements of direct supervision as defined in WAC 246-840-010 (13)(c)(ii) and, in addition, that supervising faculty document that all clients under the care of the student be assessed by the RN faculty each clinical day.~~

~~((b) The dean or director of the school of nursing shall ensure that each faculty member who supervises these students be provided a copy of these rules and be assigned in a manner that allows for direct supervision.~~

~~((c) Nursing students who participate in clinical courses under this section are not eligible for the nursing technician role.))~~

(2) Inactive status license. A license issued to a person previously holding an active license in this state, is in good standing, and does not practice in Washington state. Refer to chapter 246-12 WAC, Part 4.

~~((3) ((Limited educational license. A limited educational license may be issued to a person who has been on inactive or lapsed status for three years or more and who wishes to return to active status. A limited educational license does not authorize practice for employment.~~

~~(4)) Advanced registered nurse practitioner (ARNP) ((recognition document)) license. An ARNP ((recognition document)) license may be issued to any person who meets the requirements of the commission as contained in WAC 246-840-300 through 246-840-365. Only persons holding this ((recognition document shall)) license have the right to use the title "advanced registered nurse practitioner" or the abbreviation "ARNP" or any title or abbreviation which ((may)) indicates that the person is entitled to practice at an advanced and specialized ((level)) role as a nurse practitioner, ((a specialized nurse practitioner,)) a nurse midwife, or a nurse anesthetist. ((This document authorizes)) The ARNP ((to)) may engage in the scope ((of practice)) allowed for his or her ((specialty)) area ((and)) of national certification as approved by the commission. The license is valid only with a current registered nurse license. The ARNP's scope of practice is defined by national certification standards and approved by the commission.~~

~~((5) ARNP interim permit. An interim permit may be issued following satisfactory completion of an advanced formal education program, registration for the first certification examination of an approved program following completion of the education and filing of an application, fee and requested documentation. If the applicant passes the examination the department shall grant advanced registered nurse practitioner status. If the applicant fails the examination, the interim permit shall expire upon notification and is not renewable.~~

~~(6) ARNP prescriptive authorization. A notation of prescriptive authorization may be placed on the ARNP recognition document issued to any person who meets the requirements of the commission as contained in WAC 246 840 410. This authorizes the ARNP to prescribe drugs within his or her scope of practice and is valid only with a current registered nurse license.))~~

NEW SECTION

WAC 246-840-025 Initial licensure for registered nurses and practical nurses—Commission approved Washington state nursing education program. Registered nursing and practical nursing applicants' educated in a commission approved Washington state nursing education program and applying for initial licensure must:

(1) Successfully complete a commission approved nursing education program. For applicants from a commission approved registered nurse program who are applying for a practical nurse license:

(a) Complete all course work required of commission approved practical nurse programs as listed in WAC 246-840-575(2). Required courses not included in the registered nurse program may be accepted if the courses were obtained through a commission approved program.

(b) Be deemed as capable to safely practice within the scope of practice of a practical nurse by the nurse administrator of the candidate's program.

(2) Complete seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

(3) Successfully pass the commission approved licensure examination as provided in WAC 246-840-050. Testing may

be allowed upon receipt of a certificate of completion from the administrator of the nursing education program.

(4) Submit the following documents:

(a) A completed licensure application with the required fee as defined in WAC 246-840-990.

(b) An official transcript sent directly from the applicant's nursing education program to the commission. The transcript must include course names and credits accepted from other programs. Transcripts must be received within ninety days of the applicant's first taking of the examination. The transcript must show:

(i) The applicant has graduated from an approved nursing program or has successfully completed the prelicensure portion of an approved graduate-entry registered nursing program; or

(ii) That the applicant has completed all course work required in a commission approved practical nurse program as listed in WAC 246-840-575(2).

(c) Applicants from a commission approved registered nurse program who are applying for a practical nurse license must also submit an attestation sent from the nurse administrator of the candidate's nursing education program indicating that the applicant is capable to safely practice within the scope of practice of a practical nurse.

AMENDATORY SECTION (Amending WSR 99-01-098, filed 12/17/98, effective 1/17/99)

WAC 246-840-030 ((Examination and licensure.)) Initial licensure for registered nurses and practical nurses—Out-of-state traditional nursing education program approved by another United States nursing board.

~~((1) Graduates from Washington state board approved schools of nursing holding a degree/diploma from such a school shall be eligible to write the examination provided all other requirements are met.~~

~~(2) Graduates from a nursing school approved by a board of nursing in another U.S. jurisdiction shall be eligible to take the examination provided that:~~

~~(a) The nursing school meets the minimum standards approved for state board school of nursing in Washington at the time of the applicant's graduation;~~

~~(b) Graduate has completed all institutional requirements for the degree/diploma in nursing education per attestation from the administrator of the approved nursing education program;~~

~~(c) All other requirements of the statute and regulations shall be met.~~

~~(3) Graduates of a nontraditional school of nursing which meet the requirements of subsection (2)(a), (b) and (c) of this section, are eligible to take the registered nurse examination provided that the following conditions are met: (For purposes of this section, nontraditional schools of nursing are defined as schools that have curricula which do not include a faculty supervised teaching/learning component in clinical settings.)~~

~~(a) The candidate is a licensed practical nurse in Washington state; and~~

~~(b) There is documentation of at least two hundred hours of supervised clinical experience (preceptorship) in the role~~

of a registered nurse. The required elements of a preceptorship are as follows:

(i) Acceptable clinical sites—Acceptable clinical sites include acute care or subacute care settings or skilled nursing facilities. Other sites must be approved by the commission.

(ii) Qualifications of preceptor (instructor)—The preceptor must be a licensed registered nurse in Washington state with at least two years experience in a practice setting and have no history of disciplinary actions. The candidate must provide documentation that the preceptor meets these requirements when he/she applies for licensure and must also provide a written agreement between the candidate and the preceptor (or facility) that preceptorship supervision will occur.

(iii) Experiences in the preceptorship—Experiences must include delegation and supervision, decision making and critical thinking, patient assessment as part of the nursing process and evaluation of care. A checklist, provided by the commission, must be completed by the preceptor which indicates the candidate's satisfactory completion of the identified skills. This checklist must be submitted with the candidate's application for licensure; and

(e) The candidate receives a satisfactory evaluation from their preceptor meeting commission requirements as previously identified ((b)(iii) of this subsection); and

(d) All other requirements of the nursing statute and regulations are met.

(4) In order to be eligible for licensure by examination the applicant shall have satisfactorily completed an approved practical nursing program, fulfilling all the basic course content as stated in WAC 246-840-575, or its equivalent as determined by the board. Every applicant must have satisfactorily completed an approved practical nursing program within two years of the date of the first examination taken or the applicant must meet other requirements of the board to determine current theoretical and clinical knowledge of practical nursing practice.

(5) An applicant who has not completed an approved practical nursing program must establish evidence of successful completion of nursing and related courses at an approved school preparing persons for licensure as registered nurses, which courses include personal and vocational relationships of the practical nurse, basic science and psychosocial concepts, theory and clinical practice in medications and the nursing process, and theory and clinical practice in medical, surgical, geriatric, pediatric, obstetric and mental health nursing. These courses must be equivalent to those same courses in a practical nursing program approved by the board.

(6) A notice of eligibility for admission to the licensing examination may be issued to all new graduates from board approved practical nursing programs after the filing of a completed application, payment of the application fee, and official notification from the program certifying that the individual has satisfactorily completed all requirements for the diploma/certification.

(7) All other requirements of the statute and regulations shall be met.) Registered nursing and practical nursing applicants educated in a traditional nursing education program approved by another United States nursing board and applying for initial licensure must:

(1) Successfully complete a board approved nursing education program. Applicants from a board approved registered nurse program who are applying for a practical nurse license:

(a) Complete all course work required of board approved practical nurse programs as listed in WAC 246-840-575(2). Required courses not included in the registered nurse program may be accepted if the courses were obtained through a commission approved program.

(b) Be deemed as capable to safely practice within the scope of practice of a practical nurse by the nurse administrator of the applicant's nursing education program.

(2) Complete seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

(3) Successfully pass the commission approved licensure examination as provided in WAC 246-840-050.

(4) Submit the following documents:

(a) A completed licensure application with the required fee as defined in WAC 246-840-990.

(b) An official transcript sent directly from the applicant's nursing education program to the commission. The transcript must include course names and credits accepted from other programs. The transcript must show:

(i) The applicant has graduated from an approved nursing program or has successfully completed the prelicensure portion of an approved graduate-entry registered nursing program; or

(ii) That the applicant has completed all course work required in a commission approved practical nurse program as listed in WAC 246-840-575(2).

(c) Applicants from a board approved registered nurse program who are applying for a practical nurse license must also submit an attestation sent from the nurse administrator of the applicant's nursing education program indicating that the applicant is capable to safely practice within the scope of practice of a practical nurse.

NEW SECTION

WAC 246-840-035 Initial licensure for registered nurses—Out-of-state nontraditional nursing education program approved by another United States nursing board as defined by WAC 246-840-010(16). Registered nursing applicants educated in a nontraditional nursing education program approved by a United States board of nursing and applying for initial licensure must:

(1) Successfully complete the board or commission approved practical nurse program which included multiple clinical experiences supervised by nursing faculty and possess a current Washington state practical nurse license which is in good standing. The commission may verify that this requirement is met through review of documents previously submitted to the commission.

(2) Successfully complete a board approved nontraditional registered nursing program.

(3) Complete at least two hundred hours of supervised clinical experience (preceptorship) in the role of a registered nurse. The preceptorship must be accomplished within six months following completion of the applicant's nursing education program. The required elements of a preceptorship are:

(a) Clinical sites may include acute care or subacute care settings or skilled nursing facilities. Other sites must be approved by the commission.

(b) The preceptor must be a licensed registered nurse with at least two years experience in a clinical practice setting that is the same type of practice setting where the preceptorship will occur.

(c) The preceptor shall not have a history of disciplinary actions.

(d) There must be a written agreement between the applicant and the preceptor (or facility) that preceptorship supervision will occur. The written agreement shall state that the registered nurse agrees to act as preceptor and understands that the practical nurse is practicing under the preceptor's registered nurse license. The written agreement must be signed before the preceptorship begins.

(e) A checklist, on a form provided by the commission, must be completed by the preceptor indicating satisfactory completion by the applicant of identified skills.

(f) Skills performed by the applicant within the role of a registered nurse, under the immediate supervision of the RN preceptor, must include: Delegation and supervision, decision making and critical thinking, patient assessment and evaluation of care and communication with health team members.

(4) Complete seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

(5) Successfully pass the commission approved registered nurse licensure examination.

(6) Submit the following documents:

(a) A completed licensure application with the required fee as described in WAC 246-840-990.

(b) An official transcript sent directly from the applicant's nursing education program to the commission. The transcript must contain adequate documentation to demonstrate that the applicant has graduated from an approved nursing program.

The transcripts shall include course names and credits accepted from other programs.

(c) Documentation of two hundred hours of supervised clinical experience that meet the requirements of subsection (3) of this section.

(d) Additional documentation as requested by the commission if the commission cannot verify the applicant's successful completion of a board or commission approved practical nurse program which included multiple clinical experiences supervised by nursing faculty.

NEW SECTION

WAC 246-840-045 Initial licensure for registered nurses and practical nurses who graduate from an international school of nursing. Registered nursing and practical nursing applicants educated in a jurisdiction which is not a member of the National Council of State Boards of Nursing and applying for initial licensure must:

(1) Successfully complete a basic nursing education program approved in that country.

(a) The nursing education program must be equivalent to the minimum standards prevailing for nursing education programs approved by the commission.

(b) Any deficiencies in the nursing program (theory and clinical practice in medical, psychiatric, obstetric, surgical and pediatric nursing) must be satisfactorily completed in a commission approved nursing program.

(2) Demonstrate English language proficiency by passing a commission approved English proficiency examination at a commission designated standard. Individuals from countries where English is the primary language and where nursing education (theory and clinical) is conducted in English will have this requirement waived.

(3) Complete seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

(4) Successfully pass the commission approved licensure examination as provided in WAC 246-840-050.

(5) Submit the following documents:

(a) A completed licensure application with the required fee as defined in WAC 246-840-990.

(b) LPNs must submit an:

(i) Official transcript directly from the nursing education program or licensure agency in country where the applicant was educated or previously licensed.

Transcript must be in English or accompanied by an official English translation. If the applicant's original documents (education and licensing) are on file in another state or with an approved credential evaluating agency, the applicant may request that the state board or approved credential evaluating agency send copies directly to the commission in lieu of the originals.

The transcript must:

(A) Include the applicant's date of graduation and credential conferred.

(B) Describe the course names and credit hours completed.

(C) Document equivalency to the minimum standards in Washington state.

(ii) Documentation from a commission approved nursing program showing that any deficiency in theory and clinical practice in medical, psychiatric, obstetric, surgical and pediatric nursing has been satisfactorily completed.

(iii) Documents must show the applicant has passed a commission approved English proficiency examination at a commission designated standard. This documentation will not be required from individuals from countries where English is the primary language and where nursing education (theory and clinical) is conducted in English.

(c) RNs must submit:

(i) A certificate or credential from a commission approved credential evaluating service verifying that the educational program completed by the applicant is equivalent to registered nursing education in Washington state. This documentation will not be required for individuals who have passed the national licensing examination and are licensed as a registered nurse by another United States nursing board.

(ii) Documents showing the applicant has passed a commission approved English proficiency examination at a commission designated standard. This documentation will not be required for individuals from countries where English is the

primary language or where nursing education, theory and clinical, is conducted in English.

AMENDATORY SECTION (Amending WSR 99-13-086, filed 6/14/99, effective 7/15/99)

WAC 246-840-050 Licensing examination. (1) The current series of the National Council of the State Boards of Nursing Registered Nurse (NCSBN) Registered Nurse or Practical Nurse Licensing Examination (NCLEX-RN® or NCLEX-PN®) (~~Computerized Adaptive Test (NCLEX-CAT))~~) shall be the official examinations for nurse licensure.

(2) In order to be licensed in this state, all nurse applicants shall take and pass the National Council Licensure Examination (NCLEX-RN® or NCLEX-PN®) (~~within four attempts and within two years of completion of the nursing program~~).

~~((2) The NCLEX will consist of a Computerized Adaptive Test that will be individualized with the score for the examination reported as either pass or fail. Specific parameters of the exam will be as prescribed by contract with National Council of State Boards of Nursing, Inc. (NCSBN).))~~

(3) ~~((Examinations shall be conducted throughout the year.))~~ Only applicants who complete the education, experience, and application requirements of WAC 246-840-025, 246-840-030, 246-840-035 or 246-840-045 will be eligible for the examination.

(4) The commission will notify applicants who have filed the required application documents and met all qualifications of their eligibility to take the examination.

(5) Applicants must file an examination application directly to the testing service, along with the testing service's required fee.

(6) The executive director of the commission shall negotiate with NCSBN for the use of the NCLEX® (~~CAT~~).

~~((5))~~ (7) The examination shall be administered in accord with the NCSBN security measures and contract. All appeals of examination procedures and results shall be managed in accord with policies in the NCSBN contract.

AMENDATORY SECTION (Amending WSR 97-13-100, filed 6/18/97, effective 7/19/97)

WAC 246-840-060 ((Release of)) Results and retaking of examination. (1) ~~((Candidates shall be notified regarding))~~ The commission will notify applicants of the examination results by mail ((only)).

(2) ~~((Candidates who pass shall))~~ Applicants who pass receive a license to practice as a ((licensed)) practical nurse or registered nurse from the commission provided all other requirements are met.

(3) ~~((Candidates who fail shall))~~ Applicants who fail the examination will receive a letter of notification ((regarding their eligibility to rewrite)) from the commission, including information on retaking the examination. The applicant may retake the examination no sooner than forty-five days following the date of the last exam taken.

(4) The ~~((candidate's))~~ applicant's examination results will be maintained in his/her application file ~~((in the health~~

~~professions quality assurance division,))~~ with the department of health.

AMENDATORY SECTION (Amending WSR 99-13-086, filed 6/14/99, effective 7/15/99)

WAC 246-840-090 Licensure for nurses by interstate endorsement. ~~((A license to practice as a nurse in Washington may be issued without examination provided the applicant meets all of the following requirements:~~

FOR PRACTICAL NURSE PROGRAMS:

(1) ~~The applicant has graduated and holds a credential from:~~

(a) ~~A commission or state board approved program preparing candidates for licensure as a practical nurse; or~~

(b) ~~Its equivalent as determined by the commission, which program must fulfill the minimum requirement for commission or state board approved practical nursing programs in Washington at the time of graduation.~~

(2) ~~Applicants shall have passed a state board constructed test, the SBTPE (state board test pool examination), or NCLEX in their original state of licensure within four attempts and within two years of completion of the nursing program.~~

(3) ~~The applicant held or currently holds a license to practice as a practical nurse in another state or territory. If the license is lapsed or inactive for three years or more, the applicant must successfully complete a commission approved refresher course before an active Washington license is issued.~~

(4) ~~That grounds do not exist for denial under chapter 18.130 RCW.~~

(5) ~~The applicant shall:~~

(a) ~~Submit a completed application with the required fee.~~

(b) ~~Applicants must complete seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.~~

FOR REGISTERED NURSE PROGRAMS:

(6) ~~The applicant has graduated and holds a degree/diploma from a commission or state board approved school of nursing preparing candidates for licensure as a registered nurse provided such nursing program is equivalent to the minimum nursing educational standards prevailing for commission or state board approved schools of nursing in Washington at the time of the applicant's graduation.~~

(a) ~~Applicants who were licensed prior to January 1, 1953, must have scored at least seventy five percent on the commission or state board examination in the state of original licensure.~~

(i) ~~Applicants licensed after January 1, 1953, but before June 1, 1982, must have passed the state board test pool examination for registered nurse licensure with a minimum standard score of 350 in each test.~~

(ii) ~~Applicants licensed after July 1, 1982, must have passed with a minimum standard score as established by contract with the National Council of State Boards of Nursing.~~

(b) ~~The applicant holds a valid current license to practice as a registered nurse in another state or territory.~~

~~(c) Applicants must complete seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.~~

~~(d) The application must be completed and notarized, the fee must be filed with the application. A notarized copy of a valid current license shall be filed with the application.~~

~~(e) Verification of licensure by examination must be obtained from the state or territory of original licensure. Any fee for verification required by the state or territory of original licensure must be paid by the applicant.~~

~~(7) Applicants from countries outside the United States who were granted a license in another United States jurisdiction or territory prior to December 31, 1971, and who were not required to pass the state board test pool examination must meet the following requirements:~~

~~(a) The nursing education program must meet the minimum approved standards prevailing for schools of nursing in Washington at the time of the applicant's graduation.~~

~~(b) The applicant holds a valid current license to practice as a registered nurse in another United States jurisdiction or territory.~~

~~(c) The applicant must submit to the commission:~~

~~(i) A complete notarized application. The fee must be filed with the application.~~

~~(ii) Verification of original licensure obtained in the United States jurisdiction or territory.~~

~~(iii) Notarized copies of educational preparation and licensure by examination submitted directly from the country of original licensure or from the state commission or territory of original United States licensure.~~

~~(iv) Verification of current nursing practice for three years prior to application for Washington licensure.~~

~~(v) Applicants must complete seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.~~

~~(d) The applicant shall meet all requirements of chapter 18.79 RCW and regulations of the commission:)) Registered nursing and practical nursing applicants for interstate endorsement as a nurse may be issued a license without examination provided the applicant meets the following requirements:~~

~~(1) The applicant has graduated and holds a credential from:~~

~~(a) A commission or state board approved program preparing candidates for licensure as a nurse; or~~

~~(b) Its equivalent as determined by the commission, which program must fulfill the minimum requirements for commission or state board approved registered nursing programs in Washington at the time of graduation.~~

~~(2) The applicant was originally licensed to practice as a nurse in another state or territory after passing a state approved examination.~~

~~(3) The applicant possesses a current active nursing license without discipline in another state or territory, or, possess an inactive or expired license in another state or territory and successfully complete a commission approved refresher course.~~

~~(a) An applicant whose license was inactive or expired must be issued a limited education authorization by the commission to enroll in the clinical portion of the refresher course.~~

(b) The limited education authorization is valid only while working under the direct supervision of a preceptor and is not valid for employment as a registered nurse.

(4) For RNs: If the applicant is a graduate of a nontraditional program in nursing and:

(a) Was licensed as a practical/vocational nurse prior to licensure as a registered nurse, the applicant must document two hundred hours of preceptorship in the role of a registered nurse as defined in WAC 246-840-035 or at least one thousand hours of practice as a registered nurse without discipline of the registered nurse license by any other state or territory.

(b) Was not licensed as a practical/vocational nurse prior to licensure as a registered nurse, the applicant must document at least one thousand hours of practice as a registered nurse without discipline of the registered nurse license by any other state or territory.

(5) Complete seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

(6) Applicants must submit the following documents:

(a) A completed licensure application with the required fee as defined in WAC 246-840-990.

(b) An official transcript sent directly from the applicant's nursing education program to the commission.

(i) The transcript must contain adequate documentation to demonstrate that the applicant has graduated from an approved nursing program or has successfully completed the prelicensure portion of an approved graduate-entry registered nursing program.

(ii) The transcripts shall include course names and credits accepted from other programs.

(c) Verification of an original registered nurse license sent directly to the commission from the state or territory of original licensure. This document must include verification that the original licensure included passing a state examination or computerized verification from NurSYS®.

(d) Verification of a current active or expired nurse license in another state or territory sent directly to the commission from that state's or territory's licensure agency. Verification that the applicant has successfully completed a commission approved refresher course may be accepted if the applicant's out-of-state licensure is on inactive or expired status.

(e) For RNs: If the applicant is a graduate of a nontraditional program in nursing and:

(i) Was licensed as a practical/vocational nurse prior to licensure as a registered nurse, the applicant must submit documentation of two hundred hours of preceptorship in the role of a registered nurse as defined in WAC 246-840-035 or at least one thousand hours of practice as a registered nurse without discipline of the registered nurse license by any other state or territory.

(ii) Was not licensed as a practical/vocational nurse prior to licensure as a registered nurse, the applicant must submit documentation of at least one thousand hours of practice as a registered nurse without discipline of the registered nurse license by any other state or territory.

AMENDATORY SECTION (Amending WSR 97-13-100, filed 6/18/97, effective 7/19/97)

WAC 246-840-760 Definitions of terms used in WAC 246-840-750 through 246-840-780. (1) "Approved substance abuse monitoring program" or "approved monitoring program" is a program the commission has determined meets the requirements of the law and the criteria established by the commission in WAC 246-840-770 (~~which~~). The program enters into a contract with nurses who have substance abuse problems regarding the required components of the nurse's recovery activity and oversees the nurse's compliance with these requirements. Substance abuse monitoring programs do not provide evaluation or treatment to participating nurses.

(2) "Contract" is a comprehensive, structured agreement between the recovering nurse and the approved monitoring program wherein the nurse consents to comply with the monitoring program and its required components of the nurse's recovery activity.

(3) "Approved treatment facility" is a facility approved by the (~~bureau~~) division of alcohol and substance abuse, department of social and health services according to chapter 70.96A RCW or RCW 69.54.030 to provide concentrated alcoholism or drug treatment if located within Washington state. Drug and alcohol treatment programs located out-of-state must be equivalent to the standards required for approval under chapter 70.96A RCW or RCW 69.54.030.

(4) "Substance abuse" means the impairment(~~, as determined by the commission,~~) of a nurse's professional services by an addiction to, a dependency on, or the use of alcohol, legend drugs, or controlled substances.

(5) "Aftercare" is that period of time after intensive substance abuse treatment that provides the nurse and the nurse's family with group or individual counseling sessions, discussions with other families, ongoing contact and participation in self-help groups and ongoing continued support of treatment program staff.

(6) "Nurse support group" is a group of nurses meeting regularly to support the recovery of its members from substance abuse issues. The group provides a confidential setting with a trained and experienced nurse facilitator in which nurses may safely discuss drug diversion, licensure issues, return to work and other professional issues related to recovery.

(7) "Twelve-step groups" are groups such as alcoholics anonymous, narcotics anonymous, and related organizations based on a philosophy of anonymity, belief in a power outside of oneself, peer group association, and self-help.

(8) "Random drug screens" are laboratory tests to detect the presence of drugs of abuse in body fluids which are performed at irregular intervals not known in advance by the person to be tested.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-840-040	Filing of application for licensing examination.
-----------------	--

WAC 246-840-070	Failures—Repeat examination.
WAC 246-840-080	Licensure of graduates of foreign schools of nursing.
WAC 246-840-299	Definitions.

WSR 08-11-031

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed May 13, 2008, 9:59 a.m., effective June 13, 2008]

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

Purpose: The proposed changes are intended to describe the changes in program eligibility and scope of care. These rules:

- Add a definition for comprehensive family planning preventive medicine visit and delayed pelvic protocol;
- Change text throughout from "over-the-counter (OTC) birth control and supplies" to "over-the-counter (OTC) birth control drugs and supplies";
- Clearly identify who is eligible for family planning only and TAKE CHARGE;
- Add language under provider requirements in all sections (reproductive health, family planning only, and TAKE CHARGE) about "referring the client to available and affordable nonfamily planning primary care services, as needed."
- Strike the language under the covered section for "services for women" under reproductive health that said "cervical, vaginal, and breast cancer screening examination once per year as medically necessary" and expand the language to allow for an annual comprehensive family planning preventive medicine visit and a gynecological examination for any Medicaid client who is seeking and needing family planning. The department is also including the same language under the family planning only sections and TAKE CHARGE. Requirements for the comprehensive family planning preventive medicine visit is also included;
- Strike the following language under the covered section for services for men under reproductive health: "Prostate cancer screening for men, who are fifty years of age and older, once per year," and change it to read: "Prostate cancer screening for men, once per year, when medically necessary."
- Add screening and treatment for chlamydia and gonorrhea as part of the comprehensive family planning preventive medicine visit for women thirteen to twenty-five years of age under the covered section for family planning only and TAKE CHARGE;
- Update the definition for education, counseling and risk reduction intervention (ECRR) in the TAKE CHARGE section and remove the definition for intensive follow-up services.

- Include federal requirements for TAKE CHARGE eligibility which states that an applicant must provide proof of citizenship or qualified alien status and identity, must need family planning services, and must not be currently covered through another medical assistance program for family planning or have any health insurance that covers family planning.
- Change language under TAKE CHARGE program provider requirements that the "provider must document that each individual responsible for providing TAKE CHARGE services is trained on all aspects of the TAKE CHARGE program." The word "document" replaces the word "assure."
- Add "*within seven working days of receipt*" to the existing requirement for TAKE CHARGE providers to forward the client's medical ID card to them;
- Include language in the TAKE CHARGE section about "informing the client of their right to see any TAKE CHARGE provider within the state."
- Incorporate into rule current policy that abortions and other pregnancy-related services are not covered under the TAKE CHARGE program.
- Change the language under the TAKE CHARGE - good cause exemption section from TAKE CHARGE applicants who are either adolescents or young adults, to "eighteen years of age or younger" and change domestic violence victims to those "domestic violence victims who depend on their spouse's insurance...."
- Identify when TAKE CHARGE providers are *exempt* from billing third party [parties].

Citation of Existing Rules Affected by this Order: Amending WAC 388-532-050, 388-532-100, 388-532-110, 388-532-120, 388-532-520, 388-532-530, 388-532-700, 388-532-710, 388-532-720, 388-532-730, 388-532-740, 388-532-750, 388-532-760, 388-532-780, and 388-532-790.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.800.

Adopted under notice filed as WSR 08-05-095 on February 15, 2008.

A final cost-benefit analysis is available by contacting Maureen Considine, FP/TC Program Manager, P.O. Box 45530, Olympia, WA 98504-5530, phone (360) 725-1652, fax (360) 586-9727, e-mail consicm@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 1, Amended 15, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 15.

Date Adopted: May 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 08-12 issue of the Register.

WSR 08-11-036
PERMANENT RULES
GAMBLING COMMISSION

[Order 625—Filed May 14, 2008, 10:49 a.m., effective July 1, 2008]

Effective Date of Rule: July 1, 2008.

Purpose: Starfire Sports operates a multisports complex located in Tukwila and requested a rule change so their location would be authorized to operate amusement games. At their February 2008 meeting, the commission filed staff's alternative proposal which, in addition to the petitioner's request, added two locations (skating facilities and grocery stores) previously authorized by rule into WAC 230-13-150. WAC 230-13-080 and 230-13-135 also needed to be amended to include Mr. Englin's request. At their May 2008 meeting, the commission adopted staff's alternative to authorize the three additional locations to operate amusement games.

Citation of Existing Rules Affected by this Order: Amending WAC 230-13-150, 230-13-080, and 230-13-135.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 08-07-067 on March 17, 2008, and published April 2, 2008.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 3, 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 3, Repealed 0.

Date Adopted: May 14, 2008.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 617, filed 10/22/07, effective 1/1/08)

WAC 230-13-080 Operating coin or token activated amusement games. (1) Coin or token activated amusement games must have nonresetting coin-in meters, certified as accurate to within plus or minus one coin or token in one thousand plays, which stop play of the machine if the meter is removed or disconnected when operating at:

- (a) Amusement parks; or
- (b) Regional shopping malls; or
- (c) Movie theaters; or
- (d) Bowling alleys; ~~((and))~~ or
- (e) Miniature golf course facilities; ~~((and))~~ or
- (f) Skating facilities; ~~((and))~~ or
- (g) Commercially operated family sports complex, offering sports such as indoor and outdoor soccer, lacrosse, baseball, Frisbee, and lawn bowling; or
- (h) ~~Amusement centers~~~~(("Amusement center" means a permanent location whose primary source of income is from the operation of ten or more amusement games));~~ ~~((and))~~ or
- ~~((h))~~ (i) Restaurants; ~~((and))~~ or
- ~~((i))~~ (j) Grocery or department stores. A "department or grocery store" means a business that offers the retail sale of a full line of clothing, accessories, and household goods, or a full line of dry grocery, canned goods, or nonfood items plus some perishable items, or a combination of these. A department or grocery store must have more than ten thousand square feet of retail and support space, not including the parking areas; ~~((and))~~ or
- ~~((j))~~ (k) Any premises that a charitable or nonprofit organization currently licensed to operate punch boards, pull-tabs, or bingo controls or operates.

(2) All coin or token activated amusement games must have a coin acceptor capable of taking money for one play and may have an additional acceptor to include paper money.

(3) Operators using amusement games that do not return change must have a change-making bill acceptor or the ability to get change in the immediate vicinity of such games. All amusement games using paper money acceptors must either:

- (a) Return change; or
- (b) Clearly disclose to players before play that change is not returned and disclose to them where at the location they may get change.

AMENDATORY SECTION (Amending Order 612, filed 7/16/07, effective 1/1/08)

WAC 230-13-135 Maximum wagers and prize limitations at certain amusement game locations. The maximum wager is fifty cents and the maximum cost for a prize is two hundred fifty dollars if school-aged minors are allowed to play amusement games at the following locations:

- (1) Regional shopping centers; and
- (2) Movie theaters; and
- (3) Bowling alleys; and
- (4) Miniature golf course facilities; and
- (5) Skating facilities; and
- (6) Commercially operated family sports complex, offering sports such as indoor and outdoor soccer, lacrosse, baseball, Frisbee, and lawn bowling; and
- (7) Amusement centers; and
- ~~((7) Department or grocery stores within a regional shopping center as defined in WAC 230-13-090 (2)(b))~~ (8) Grocery or department stores. A "department or grocery store" means a business that offers the retail sale of a full line of clothing, accessories, and household goods, or a full line of dry grocery, canned goods, or nonfood items plus some perishable items, or a combination of these. A department or

grocery store must have more than ten thousand square feet of retail and support space, not including the parking areas; and

~~((8))~~ (9) Any business whose primary activity is to provide food service for on premises consumption.

AMENDATORY SECTION (Amending Order 612, filed 7/16/07, effective 1/1/08)

WAC 230-13-150 Amusement game locations. (1) Amusement game operators must obtain written permission to operate at any location from the person or organization owning the premises or sponsoring the event where the operator will hold the activity.

(2) Operators may only conduct commercial amusement games at:

- (a) Locations set out in RCW 9.46.0331; and
- (b) Commercially operated family sports complex, offering sports such as indoor and outdoor soccer, lacrosse, baseball, Frisbee, and lawn bowling; and
- (c) Skating facilities; and
- (d) Grocery or department stores. A "department or grocery store" means a business that offers the retail sale of a full line of clothing, accessories, and household goods, or a full line of dry grocery, canned goods, or nonfood items plus some perishable items, or a combination of these. A department or grocery store must have more than ten thousand square feet of retail and support space, not including the parking areas.

(3) Operators must conduct amusement games in conformance with local zoning, fire, health, and similar regulations.

WSR 08-11-037

PERMANENT RULES

GAMBLING COMMISSION

[Order 626—Filed May 14, 2008, 10:58 a.m., effective July 1, 2008]

Effective Date of Rule: July 1, 2008.

Purpose: Expedited adoption to fix incorrect citations to other rules and remove a rule that is duplicated.

Citation of Existing Rules Affected by this Order: Repealing WAC 230-10-455; and amending WAC 230-07-150 and 230-17-125.

Statutory Authority for Adoption: RCW 9.46.070 and 34.05.353.

Adopted under notice filed as WSR 08-06-036 on February 27, 2008, and published March 19, 2008.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 1.

Date Adopted: May 14, 2008.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 609, filed 4/24/07, effective 1/1/08)

WAC 230-07-150 Financial statements required for Groups III, IV, and V. (1) In addition to information required in WAC ((~~230-07-028~~) 230-07-145, charitable or nonprofit licensees in Groups III, IV, and V must also submit complete financial statements prepared in accordance with generally accepted accounting principles (GAAP).

(2) Licensees in Groups IV and V must have the financial statements prepared by an independent certified public accountant.

(3) The statements and all required disclosures or footnotes no later than one hundred twenty days following the end of the licensee's fiscal year.

(4) The financial statements must include:

(a) A statement of financial position;

(b) A statement of activities. This statement may be presented in a consolidated form if licensees provide the details of each component as supplemental information. Licensees must present revenue and expenses for each activity separately as follows:

(i) Each gambling activity; and

(ii) Retail sales conducted in conjunction with gambling activities;

(c) A statement of cash flows;

(d) A statement of functional expenses;

(e) In addition to all disclosures required by GAAP, the financial statements must disclose the following:

(i) Loans to or from officers, board members, and employees: We will not consider employee salary advances of five hundred dollars or less as loans. Details of all terms, including interest rates and payment schedules, must be disclosed;

(ii) All civil penalties, fines, bribes, or embezzlements incurred or discovered during the period; and

(iii) An explanation of any adjustments made to prior period capital accounts or net asset balances;

(f) An explanation of material differences between amounts reported on gambling activity reports and the financial statements.

(5) We may require additional information to ensure completeness of the information reported.

(6) We may grant an organization additional time to submit the information required if a written request is received before the due date. The president of the organization must sign any request for additional time and include a statement explaining the hardship causing the delay, and the expected date the required report(s) will be submitted.

AMENDATORY SECTION (Amending Order 615, filed 10/24/07, effective 1/1/08)

WAC 230-17-125 Noncompliance with rules on expert witnesses or written statements. If expert witnesses or written statements on economic or statistical data do not meet the requirements of WAC ((~~230-17-650~~) 230-17-115 or ((~~230-17-660~~) 230-17-120, the presiding officer may receive them as evidence only if the party can clearly show good cause.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-10-455 Operating linked bingo prize games.

WSR 08-11-043

PERMANENT RULES

WASHINGTON STATE LOTTERY

[Filed May 14, 2008, 2:15 p.m., effective June 14, 2008]

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

Purpose: In compliance with regulatory reform and rules review, the Washington's lottery commission has revised the language in chapters 315-06, 315-08, 315-10 WAC, repeal WAC 315-11A-156 Instant Game 156, \$2 Win for Life and 315-11A-183 Instant Game 183, \$2 Win for Life, as these describe lottery scratch games no longer offered, revise chapter 315-12 WAC, repeal chapter 315-36 WAC, Lucky for Life and chapter 315-37 WAC, Lotto Plus, as these describe lottery draw games no longer offered. These revisions reflect improved organization of the rules in the chapters and improve grammatical structure.

Citation of Existing Rules Affected by this Order: Repealing WAC 315-11A-156, 315-11A-183, chapters 315-36 and 315-37 WAC; and amending chapters 315-06, 315-08, 315-10, and 315-12 WAC.

Statutory Authority for Adoption: RCW 67.70.040.

Adopted under notice filed as WSR 08-07-021 on March 11, 2008.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 4, Repealed 4; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 8, 2008.

Jana L. Jones
Director of Legal Services

AMENDATORY SECTION (Amending Order 83, filed 12/16/85)

WAC 315-06-030 Lottery retailer's instructions. Each lottery retailer is to conform to the instructions and requirements established by the director for the delivery and return of tickets, the location and display of lottery materials, the conduct of a specific game, ~~((~~or~~))~~ and other lottery business.

AMENDATORY SECTION (Amending WSR 94-03-020, filed 1/7/94, effective 2/9/94)

WAC 315-06-035 Instant ticket purchase price and conditions. (1) The lottery retailer's purchase price for each pack of instant tickets shall be the retail price of the pack less the retailer discount authorized ~~((pursuant to WAC 315-04-190))~~ by the commission.

(2) Lottery retailers shall make payment to the lottery by electronic funds transfer (EFT).

(3) The director shall establish payment terms for purchase of instant tickets and shall issue instructions for such payments to lottery retailers.

AMENDATORY SECTION (Amending WSR 02-12-065, filed 5/31/02, effective 7/1/02)

WAC 315-06-040 Disclosure of probability of purchasing a winning ticket. (1) The estimated ~~((average))~~ probability of purchasing a winning ticket shall be conspicuously displayed on:

(a) The ~~((back-of))~~ tickets for a specific game;

(b) All printed promotional and advertising materials for a specific game, including but not limited to, brochures, posters, billboards, placards, and point-of-sale displays.

(2) The estimated ~~((average))~~ probability of purchasing a winning ticket shall be communicated in television and radio commercials for a specific game.

(3) The estimated ~~((average))~~ probability of purchasing a winning ticket for each category of prize in a specific game shall be conspicuously displayed as part of:

(a) The "how-to-play" brochure which explains the procedures for the lottery's ~~((on-line))~~ draw games; and

(b) The brochures of instructions to lottery retailers for the conduct of specific scratch games.

(4) The disclosure required by this section shall not apply to generic promotional and advertising materials publicizing the Washington state lottery which do not promote a specific ~~((on-line))~~ draw game or a specific scratch ticket theme.

AMENDATORY SECTION (Amending Order 83, filed 12/16/85)

WAC 315-06-050 Location of sale. Tickets may be sold by any person who is issued a license to act as a lottery retailer at the location specified on the license, subject to the

director's authority as set forth in ~~((sections 5 and 7, chapter 7, Laws of 1982 2nd ex. sess.))~~ chapter 67.70 RCW, and these rules.

No ~~((such))~~ sales of lottery tickets shall be made on premises used primarily for residential purposes, in or on the property of any ~~((school))~~ educational facility, or ~~((in or upon the property of any))~~ facility operated primarily for providing welfare services to the poor or infirmed, or ~~((in any facility))~~ maintained solely for religious worship.

AMENDATORY SECTION (Amending Order 5, filed 10/15/82)

WAC 315-06-070 Purchaser's obligations. In purchasing a ticket, the purchaser agrees to comply with chapter ~~((7, Laws of 1982 2nd ex. sess.))~~ 67.70 RCW, these rules, the final decisions of the director, and all procedures established by the director for the conduct of games.

AMENDATORY SECTION (Amending WSR 99-04-077, filed 2/2/99, effective 3/5/99)

WAC 315-06-075 Game sell-out ~~((prohibited))~~. No Washington state lottery retailer shall sell a ticket or combination of ~~((on-line))~~ draw game lottery tickets, which would guarantee the purchaser a jackpot or grand prize, and in accordance with chapter 315-30 WAC.

AMENDATORY SECTION (Amending WSR 90-11-040, filed 5/10/90, effective 6/10/90)

WAC 315-06-080 Certain purchases of tickets, acceptance of things of economic value, and winning of prizes prohibited. Certain purchases of tickets, acceptance of things of economic value and winning and sharing of prizes, are prohibited as follows:

(1) ~~((A ticket shall not be purchased by, and a prize shall not be paid to any member or employee of the commission or to [any] [a] spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of abode of any member or employee of the commission, or to any assistant attorney general assigned to advise the commission or director.~~

~~((2) A prize claimed by a holder of a winning ticket shall not be shared with any member or employee of the commission or any spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of abode of any member or employee of the commission.~~

~~((3))~~ Members of the commission and employees of the lottery, or any spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of abode of any member of the commission or employee of the lottery shall not purchase or share in any portion of or receive the prize winnings of any of Washington's lottery tickets.

(2) No things of economic value offered by ~~((the))~~ prize winners, vendors, contractors, or others conducting business with the lottery, may be accepted by lottery retailers or by any member ~~((or employee))~~ of the commission or any spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of abode of any member ~~((or employee))~~ of the commission.

~~((4))~~ (3) A ticket shall not be purchased by, and a prize shall not be paid to any CPA accounting firm, or its employees, retained by the director of financial management pursuant to ~~((sections 31 and 32, chapter 7, Laws of 1982 2nd ex. sess.))~~ RCW 67.70.310 and 67.70.320, or any employee of the director of financial management performing a management review or audit of the commission or director.

~~((5))~~ (4) A ticket shall not be sold to or purchased by any person under the age of eighteen. Nothing in this section shall prohibit the purchase of a ticket for the purpose of making a gift by a person eighteen years of age or older to a person less than that age.

~~((6))~~ (5) A ticket shall not be purchased with ~~((food stamps))~~ public assistance electronic benefit cards or coupons and a lottery retailer shall not accept these as consideration for a ticket ~~((food stamps or coupons))~~.

AMENDATORY SECTION (Amending Order 111, filed 8/11/88)

WAC 315-06-090 Video machines prohibited. Coin-operated, instant video games which pay out prizes, either by skill or chance, shall not be used in the conduct of games, pursuant to RCW 67.70.040 (1)(a).

AMENDATORY SECTION (Amending Order 118, filed 8/7/89, effective 9/7/89)

WAC 315-06-115 Overlapping ~~((on-line))~~ draw game sales in consecutive fiscal years. When the sales for ~~((an on-line))~~ a draw game jackpot overlap two fiscal years, any fiscal reporting discrepancy between the statutory requirement that payment of prizes not be less than forty-five percent of gross annual revenue and the preparation of an annual financial statement using generally accepted accounting principles shall be explained in a footnote to the financial statements.

AMENDATORY SECTION (Amending WSR 00-24-103, filed 12/6/00, effective 1/6/01)

WAC 315-06-120 Payment of prizes—General provisions. (1) The director may designate claim centers for the filing of prize claims, and the location of such centers shall be publicized from time to time by the director.

(2) A claim shall be entered in the name of one claimant, which shall be either a natural person, association, corporation, general or limited partnership, club, trust, estate, society, company, joint stock company, receiver, trustee, or another acting in a fiduciary or representative capacity whether appointed by a court or otherwise. A claim which includes one or more tickets with an address label or stamp on the back of the ticket shall be deemed to have been entered in the name of one claimant: Provided, That if the address label or stamp contains the name of more than one claimant, the prize payment will be made to the one who has signed the ticket and/or claim form or, if there is no signature, to the first claimant listed on the address label or stamp. If there are two or more claimant names written or signed on the ticket, lottery personnel shall return the ticket(s) to claimants and shall request that the claimants sign a notarized statement relinquishing ownership to one claimant. The claimant must sub-

mit his or her Social Security number (SSN) or the federal employer's identification number (FEIN) when claiming any prize exceeding six hundred dollars.

(3) A claim may be entered in the name of a claimant other than a natural person only if the claimant is a legal entity and possesses a federal employer's identification number (FEIN) as issued by the Internal Revenue Service, such number is shown on the claim form and the entity's terms comply with subsection (4) of this section. Groups, family units, organizations, clubs, or other organizations which are not a legal entity, or do not possess a federal employer's identification number, shall designate one natural person or one legal entity in whose name the claim is to be entered.

(4) The terms governing a claimant other than a natural person, i.e., articles of incorporation, trust terms, etc., shall be submitted to the director for approval. Terms not in compliance with lottery statutes or rules shall not be approved. Payment shall not be made to a claimant other than a natural person until the director has approved the terms.

All claimants other than natural persons shall have governing terms which:

(a) Prohibit deletion, amendment, or addition of terms without the director's approval;

(b) State the names of all natural persons who have a direct or indirect right or interest in the claimant, each of their percentage interests and their Social Security numbers;

(c) Acknowledge that the debt collection process mandated by RCW 67.70.255 and WAC 315-06-125 shall be applied to the natural persons who hold interests in the claimant through their Social Security numbers; and

(d) Provide that in the event the claimant ceases to exist prior to the full payout of the prize, the lottery will not make further payment without court order.

(5) The lottery shall not make payment to a claimant other than a natural person unless the terms governing the claimant include those enumerated in subsection (4) of this section.

(6) Unless otherwise provided in the rules for a specific type of game, a claimant shall sign the back of the ticket and/or complete and sign a claim form approved by the director. The claimant shall submit the claim form and/or claimant's ticket to the lottery in accordance with the director's instructions as stated in the ~~((players' manual))~~ game brochure and/or on the back of the ticket or submit a request for reconstruction of an alleged winning ticket and sufficient evidence to enable reconstruction and that the claimant had submitted a claim for the prize, if any, for that ticket. The claimant, by submitting the claim or request for reconstruction, agrees to the following provisions:

(a) The discharge of the state, its officials, officers, ~~((and))~~ employees, and the commission of all further liability upon payment of the prize; and

(b) The authorization to use the claimant's name and, upon written permission, photograph for publicity purposes by the lottery.

(7) A prize must be claimed within the time limits prescribed by the director in the instructions for the conduct of a specific game, but in no case shall a prize be claimed later than one hundred eighty days, except a shared game lottery, after the official end of that instant game or ~~((the on-line))~~

draw game drawing for which that ~~((on-line))~~ draw game ticket was purchased.

(8) The director may deny awarding a prize to a claimant if:

- (a) The ticket was not legally issued initially;
- (b) The ticket was stolen from the commission, director, its employees or retailers, or from a lottery retailer; or
- (c) The ticket has been altered or forged, or has otherwise been mutilated such that the authenticity of the ticket cannot be reasonably assured by the director.

(9) No natural person or legal entity entitled to a prize may assign the right to payment, except under the following limited circumstances:

- (a) That payment of a prize may be made to any court appointed legal representative, including, but not limited to, guardians, executors, administrators, receivers, or other court appointed assignees; and
- (b) When payment of all or part of the remainder of an annuity and the right to receive future annual prize payments has been voluntarily assigned to another person, pursuant to an appropriate judicial order that meets the requirements of RCW 67.70.100(2).

(10) In the event that there is a dispute or it appears that a dispute may occur relative to any prize, the director may refrain from making payment of the prize pending a final determination by the director or by a court of competent jurisdiction relative to the same.

(11) A ticket that has been legally issued by a lottery retailer is a bearer instrument until signed. The person who signs the ticket or has possession of an unsigned ticket is considered the bearer of the ticket. Payment of any prize may be made to the bearer, and all liability of the state, its officials, officers, and employees and of the commission, director and employees of the commission terminates upon payment.

(12) All prizes shall be paid within a reasonable time after the claims are validated by the director and a winner is determined. Provided, prizes paid for claims validated pursuant to WAC 315-10-070(2) shall not be paid prior to one hundred eighty-one days after the official end of that instant game.

(13) The date of the first installment payment of each prize to be paid in installment payments shall be the date the claim is validated, or the date the winner makes a choice of payment by annual payments or by single cash payment pursuant to WAC 315-34-057. Subsequent installment payments shall be made as follows:

- (a) If the prize was awarded as the result of a drawing conducted by the lottery, installment payments shall be made weekly, monthly, or annually from the date of the drawing in accordance with the type of prize awarded; however, at the director's discretion, the lottery may designate an alternate payment date for regular prize payment; or
- (b) If the prize was awarded in a manner other than a drawing conducted by the lottery, installment payments shall be made weekly, monthly, or annually from the date the claim is validated in accordance with the type of prize awarded. However, at the director's discretion, the lottery may designate an alternate payment date for regular prize payment.

~~((13))~~ (14) The director may, at any time, delay any payment in order to review a change of circumstances relative to the prize awarded, the payee, the claim or any other matter that may have come to his or her attention. All delayed payments shall be brought up to date immediately upon the director's confirmation and continue to be paid on each originally scheduled payment date thereafter.

~~((14))~~ (15) If any prize is payable for the life of the winner, only a natural person may claim such a prize. Such "win for life" type prizes shall cease upon the death of the winner or the end of a guaranteed payment period (if any), whichever is later. Win for life prizes may be assigned; and the following conditions apply to such assignments:

- (a) The original winner's actual life shall determine when prize payments cease; and
- (b) The assignee shall be responsible for notifying the lottery of the original winner's death.

~~((15))~~ (16) The director's decisions and judgments in respect to the determination of a winning ticket or of any other dispute arising from the payment or awarding of prizes shall be final and binding upon all participants in the lottery.

~~((16))~~ (17) Each lottery retailer shall pay all prizes authorized to be paid by the lottery retailer by these rules during its normal business hours at the location designated on its license.

~~((17))~~ (18) In the event a dispute between the director and the claimant occurs as to whether the ticket is a winning ticket, and if the ticket prize is not paid, the director may, solely at his or her option, replace the disputed ticket with an unplayed ticket (or tickets of equivalent sales price from any game). This shall be the sole and exclusive remedy of the claimant.

AMENDATORY SECTION (Amending WSR 98-15-114, filed 7/20/98, effective 8/20/98)

WAC 315-06-123 Voluntary assignment of prize pursuant to an appropriate judicial order. (1) In the case of a petition for an order or an amended order for the voluntary assignment of a prize, a copy of a petition shall be served on the director of the lottery or designee, in addition to service on the attorney general, no later than ten days before any hearing or entry of any order or amended order. After superior court entry of voluntary assignment of a right to a prize pursuant to an appropriate judicial order or amended order, the director shall make payment to the person designated by a certified copy of the order or amended order which has been served upon the director personally or by certified mail provided that the order contains, in addition to the requirements set forth in RCW 67.70.100(2), the following provisions:

- (a) The assignor's name. For an initial assignment, the winner's name as it appears on the prize claim form;
- (b) The assignee's name;
- (c) The citizenship or resident alien number of the assignee (if a natural person).

(2) The certified copy of the order must be served on the director at least twenty working days prior to the annual payment date to allow for a change in the payee. The director shall not be liable for failure to pay an annual payment to an assignee if service of the order and presentation of the

required information for tax withholding purposes described in subsection (3) of this section is not timely made.

Lifetime cash winners may assign nonguaranteed payments provided that the original winner has properly verified they are still eligible to receive their prize pursuant to WAC 315-36-110(5). The lottery's obligation to issue assigned payments shall terminate upon the death of the original winner.

(3) Payment shall be made payable to the name of the assignee designated in the judicial order and to no other name ~~((and))~~. Federal income tax withholding shall be deducted from each payment and reported to the Internal Revenue Service. The assignee shall provide its social security number, if a natural person, or tax identification number, if a legal entity, to the director at the time the judicial order is served for the purpose of reporting tax withholding to the Internal Revenue Service and for the purpose of applying the debt collection process as described in subsection (5) of this section.

(4) RCW 67.70.100 authorizes the director to charge actual costs for each assignment and deduct such costs from the initial annuity payment made to the assignee. In determining actual costs the director has considered the staff time required to determine the sufficiency of the judicial order or amended order and to process the initial payment; telegraphic and long distance telephone communications, photocopying, postage, and private delivery service; and legal services directly related to determining the sufficiency of the judicial order and processing of the initial payment, including legal services and costs associated with any legal proceeding in which the agency is represented by the office of the attorney general. The director has determined the following costs shall be deducted from the initial annuity payment made to each assignee, unless paid pursuant to subsection (e):

(a) Assignment of whole annuity payments (one or more years) resulting in payment only to the assignee during each year of the assignment: \$250; or

(b) Assignment of a portion/percentage of annuity payments resulting in annual payments to one or more assignees and/or the original prize winner: \$300 for the first year of the assignment, plus \$75 for each year thereafter;

(c) Assignment pursuant to an amended order of assignment, resulting in annual payments to the same number of assignees as in the original order: \$250;

(d) Assignment pursuant to an amended order of assignment, resulting in annual payments to one or more assignees in addition to the assignees in the original order of assignment: \$300 for the first year of the amended order of assignment, plus \$75 for each year thereafter;

(e) If payment of the total fees due for costs for processing an order or amended order is received by the Lottery together with and at the same time as the required certified copy of the order or amended order, the fees will not be deducted from annual payments;

(f) The director shall review these costs at least biennially from December 1, 1997, and shall recommend adjustments, if necessary, for commission consideration and approval.

(5) The debt collection process mandated by RCW 67.70.255 and WAC 315-06-125 shall be applied to all payments made to any person pursuant to a voluntary assign-

ment. The term person shall have the same meaning as the definition set forth in WAC 315-02-180.

AMENDATORY SECTION (Amending WSR 93-23-012, filed 11/5/93, effective 12/6/93)

WAC 315-06-125 Debts owed the state. (1) The terms used in RCW 67.70.255 and these regulations are defined as follows:

(a) Creditor - Any state agency or political subdivision of this state that maintains records of debts owed to the state or political subdivision, or that the state is authorized to enforce or collect.

(b) Debt - A judgment rendered by a court of competent jurisdiction or obligations established pursuant to RCW 50.20.190, 51.32.240, 51.48.140, 74.04.300, 74.20A.040, 74.20A.055 and 82.32.210 or administrative orders as defined in RCW 50.24.110, 51.32.240, 51.48.150, and 74.20A.020(6).

(c) State - The state of Washington.

(d) Two working days - Two days not to include Saturdays, Sundays, and holidays as defined in RCW 1.16.050 commencing the day following the date the claim was validated by the lottery.

(e) Verification - A facsimile or photo copy of a judgment or final order received by the lottery during the requisite two working day period.

(f) Individual - A natural person.

(2) Any creditor may submit, to the lottery, in a format specified by the director, ~~((data processing tapes containing))~~ debt information ~~((specified))~~ required by the ~~((director))~~ Revised Code of Washington. ~~((Tapes))~~ Debt information medium which do not contain the required information or are not in the proper format will be returned to the creditor. The creditor submitting debt information ~~((tapes))~~ shall provide replacement ~~((tapes))~~ debt information medium on a regular basis at intervals not to exceed one month or less than one week. The creditor shall be solely responsible for the accuracy of the information contained therein.

(3) Creditors submitting ~~((data processing tapes))~~ debt information medium in the proper format to the lottery shall also submit the name or names of designated contact persons.

(4) The lottery shall include the debt information submitted by the creditor in its validation and prize payment process. The lottery shall delay payment of a prize, exceeding six hundred dollars, for a period not to exceed two working days, to any individual prize winner or to any other prize winner which has an individual holding a direct or indirect interest in the prize winner, and who owes a debt to a creditor pursuant to the information submitted in subsection (2) of this section. The lottery shall make a reasonable attempt to contact the creditor's designated contact person(s) by phone, followed by written correspondence, including e-mail, to verify the debt. Three phone calls, excluding busy signals, shall constitute a reasonable attempt. The prize shall be paid to the prize winner if the debt is not verified by the submitting creditor within two working days. If the debt is verified, the prize shall be disbursed pursuant to subsection (9) of this section.

(5) It shall be the obligation of the prize winner to provide the lottery with the names, Social Security numbers, and

percentage interests of the individuals who collectively hold one hundred percent of the interest in the prize.

(6) Where an individual holds an interest in a prize claimed by another individual, the lottery must be informed of that interest, its percentage and the Social Security number (SSN) of the nonclaimant individual who holds the interest, prior to the validation and prize payment process described herein; otherwise, the Social Security number of the claimant individual and the full net amount of the prize will be used in completing the processing required under this section.

(7) Where the right to payment to an individual who holds an interest in a prize winner is discretionary with a third party or is contingent, the tax ID number of the prize winner shall be used in completing the processing required under this section, rather than the Social Security number of said individual.

(8) A creditor shall verify the debt by submitting to the lottery at lottery headquarters in Olympia, Washington within the requisite two working day period, a facsimile or photocopy of a judgment or final order which is the basis for the debt.

(9) Prior to disbursement, any verified debts owed to a creditor by the individual winner of any lottery prize exceeding six hundred dollars or by an individual holding more than a six hundred dollar interest in a prize winner shall be set off against the prize owing to the individual or against the proportionate interest of the individual in the prize winner. In the event a prize winner or an individual holding more than a six hundred dollar interest in a prize winner owes debts to more than one creditor, and the total prize to that winner or individual is insufficient to pay all debts, the set off shall be paid to the creditors on a pro rata basis based on the amount of debt owed to each creditor unless priority is established by statute.

AMENDATORY SECTION (Amending WSR 94-19-062, filed 9/20/94, effective 10/21/94)

WAC 315-06-130 Prizes payable after death or disability of individual winner. (1) All prizes or a portion thereof which remain unpaid at the time of an individual prize winner's death shall be payable to the court appointed representative of the prize winner's estate once satisfactory evidence of said representative appointment has been presented to the director, claim forms have been properly filled out, and the director is satisfied that such payment is lawful and proper: Provided, however, That where the prize winner and spouse had entered into any agreement valid under the law of this state or another state which establishes the prize as property to pass to the surviving spouse without probate upon the death of the prize winner, then the prize shall be made payable to the surviving spouse, without the probating of an estate of the deceased.

(2) Prize moneys will be paid according to the law of descent and distribution, chapter 11.04 RCW, of the state of Washington if the winner thereof dies intestate regardless of whether the prize winner was domiciled at the time of the prize winner's death in the state of Washington.

(3) The director may rely wholly on the presentment of certified copies of a court's appointment of an administrator or executor, guardian, conservator or on any other evidence

that a person is entitled to the payment of any prize winnings then due.

(4) The payment to the estate of the deceased winner of any prize winnings by the director shall absolve the director, the commission and employees of the ~~((commission))~~ lottery of any further liability for payment of said prize winnings. ~~((The director need not look to the payment of the prize winnings beyond the payee thereof.))~~

(5)(a) Where the party who claimed a prize from the lottery was an individual, and the individual has died, the estate of the deceased individual prize winner may petition the lottery director to have the payment of an installment prize accelerated and paid to the estate at the installment prize's present cash value in lieu of receiving continued payments. The director may grant the petition if, in the director's sole discretion, payment of the remaining installments in a single, present cash value payment is in the best interests of the state lottery.

(b) The estate of an individual which has a community property interest in a prize, may petition the lottery director to have the payment of its interest in an installment prize accelerated and paid to the estate at the installment prize's present cash value in lieu of receiving continued payments. The director may grant the petition if, in the director's sole discretion, payment of the remaining installments in a single, present cash value payment is in the best interests of the state lottery. Payment to the surviving spouse of the remaining community property interest shall continue in installments.

(6) The director may petition any court of competent jurisdiction to request a determination for the payments of any prize winnings which are or may become due the estate of a deceased winner or a winner under a disability because of, but not limited to, underage, mental deficiency, or physical or mental incapacity.

(7) If the legatee(s) or heir(s) of a deceased winner entitled to prize winnings obtains an order from a court of competent jurisdiction directing payments due and to become due from the director to be paid directly to said legatee(s) or heir(s) or otherwise directs the director to make payments to another in the event of a winner's disability or otherwise, the director shall pay the prize winnings accordingly after application of that process mandated by RCW 67.70.255 and WAC 315-06-125.

(8) A deceased winner's estate shall be considered to be a winner, and payments thereto shall be governed by WAC 315-06-120.

AMENDATORY SECTION (Amending Order 5, filed 10/15/82)

WAC 315-06-210 Law enforcement. (1) The director shall be the chief law enforcement officer, pursuant to ~~((section 33, chapter 7, Laws of 1982 [2nd ex. sess.])~~ chapter 67.70 RCW, for the purposes of enforcing such chapter, and the penal laws of this state relating to the conduct of or participation in lottery activities.

(2) The director shall appoint in accordance with the laws of the state of Washington a sufficient number of competent persons to act as Washington state lottery law enforce-

ment officers, may remove them from a law enforcement capacity without cause, and shall define their rank and duties.

(3) The director may appoint employees to serve as special deputies, with such restricted police authority as the director shall designate as being necessary and consistent with their assignment to duty.

(4) The director shall apply for certification as a criminal justice agency pursuant to WAC 446-20-050 and shall designate specific employees for the collection and dissemination of criminal history record information, and for undercover audit or investigative work or other security operations.

(5) The director ~~((shall))~~ may issue a badge and shall issue an identification card to each employee designated as a lottery law enforcement officer.

(6) The director shall develop cooperative arrangements with other criminal justice agencies in the state of Washington for enforcement of laws related to lottery activities.

(7) The director shall issue guidelines for the conduct of lottery law enforcement personnel.

AMENDATORY SECTION (Amending WSR 90-11-040, filed 5/10/90, effective 6/10/90)

WAC 315-08-010 Expenditure and transfer limits—State lottery account. (1) At the outset of fiscal year 1991, and at the outset of each biennium after fiscal year 1991, the commission shall determine by resolution the following:

(a) The total amount of moneys which may be transferred from the state lottery account to the state's general fund and to the lottery administrative account, pursuant to legislative appropriation; and

(b) The total amount of moneys which may be expended from the state lottery account for each of the following purposes:

- (i) Payment of retailer compensation;
- (ii) Payment of prizes (which shall not be less than 45 percent of gross annual revenue of the lottery);
- (iii) On-line vendor payments;
- (iv) On-line telecommunications payments;
- (v) Instant game vendor payments;
- (vi) Promotion/advertising; and
- (vii) Any other purposes required by law.

(2) The commission may amend by resolution the amounts determined under this section based on changes in the revenue stream and/or program requirements.

(3) The director may exceed approved totals when necessary for sales volume-related expenses provided that such expenditures are reported ~~((at))~~ in the next regularly scheduled financial report to the commission ~~((meeting))~~.

AMENDATORY SECTION (Amending WSR 05-11-049, filed 5/13/05, effective 6/13/05)

WAC 315-10-010 Instant games—Authorized—Director's authority. ~~((It is the commission's intent to provide the director broad authority in carrying out the following duties:))~~ The director shall:

(1) ~~((The commission hereby authorizes the director to))~~ Select, operate, and contract relating to and for the operation of instant games meeting the criteria set forth in this chapter.

(2) ~~((The director shall))~~ Establish final instant game specifications, including the determination of winning tickets, in executed working papers or software requirement specifications ~~((The director shall))~~; keep the portions of these documents that are subject to public disclosure available for one hundred eighty days after the end of each game for public review during normal business hours.

(3) ~~((The director or designee shall))~~ Inform commission members of instant game development.

AMENDATORY SECTION (Amending WSR 05-11-049, filed 5/13/05, effective 6/13/05)

WAC 315-10-022 ((What are the)) Essential elements of instant game tickets((?)). The director shall establish in executed working papers or software requirement specifications for each instant game the specific form and location in which the following essential elements shall appear on each instant game ticket:

(1) **Play field** is generally the area that may contain play symbols, play symbol captions, prize symbols, prize symbol captions, and validation numbers;

(2) **Play spots** are the specific areas where play symbols are located;

(3) **Play symbols** are symbols, letters, or numbers appearing in each play spot of a ticket;

(4) **Play symbol captions** are small printed characters generally associated with each play symbol which may appear on the play field and correspond with and verify that play symbol. These captions spell out, in full or abbreviated form, the play symbol. There is only one play symbol caption for each play symbol, and each play symbol caption is associated with the three-digit ticket number;

(5) **Prize symbols** may be numeric or symbolic representations, printed either in a display printed prize legend or on the play field, which indicate the amount of money a player may win;

(6) **Prize symbol captions** may be small printed characters generally associated with each prize symbol appearing on the play field which correspond to and verify that prize symbol. The prize symbol caption is a spelling out, in full or abbreviated form, of the prize symbol;

(7) **Validation number** is a unique multidigit number on the ticket;

(8) **Pack-ticket number** is a number that may include the game, pack and ticket identifier;

(9) **Retailer verification code** is the code on the ticket that the lottery retailer uses to verify instant winners; and

(10) **Odds of winning** shall always appear on the back of the ticket.

AMENDATORY SECTION (Amending WSR 05-11-049, filed 5/13/05, effective 6/13/05)

WAC 315-10-023 ((What are the)) Prizes available for instant games((?)). Prizes available are as set forth on the instant game ticket. Prizes may also include "Win for Life" prizes. "Win for Life" prizes will be paid in accordance with WAC 315-06-120 ~~((14))~~ (15) and may include prizes exceeding one million dollars.

AMENDATORY SECTION (Amending WSR 05-11-049, filed 5/13/05, effective 6/13/05)

WAC 315-10-024 (~~What are the~~) Methods of selecting winning tickets(?). (1) Methods for selecting winning tickets (~~shall~~) may be as set forth on the instant game ticket and in the executed working papers or software requirement specifications. Methods for selecting winning tickets may include:

(a) Higher number. Your (the player's) number is greater than their number.

(b) Match one or more. Match your play symbols to the winning play symbol(s).

(c) Bonus play. Find a bonus symbol to win a bonus prize instantly.

(d) Match two or more consecutive. Match two or more consecutive "Game Cards" within a game to the "Draw Cards" to win the corresponding amount shown on the ticket.

(e) Match two or more. Match two or more "Game Cards" within a game to the "Draw Cards" to win the corresponding amount shown on the legend on the ticket.

(f) Three like cards. Get three like cards with one hand to win the corresponding amount shown on the ticket.

(g) Grand prize drawing. Find a bonus symbol that qualifies you to enter a grand prize drawing or submit one or more nonwinning tickets to enter a grand prize drawing.

(h) Match symbols. Match a specified number of identical play symbols on a play area.

(i) Add up "yours." Add up the play symbols designated as "yours" and the total is greater than, less than or equal to the symbol or symbols designated as "theirs."

(j) Add up. Add up the play symbols and the amount is greater than or equal to the designated symbols on the ticket.

(k) Tic tac toe. Match three identical play symbols, in a row, column, or diagonal, on a grid in the play area.

(l) Sequence. Find the designated play symbols in the specified sequential order.

(m) Spellout. Find the play symbols to form the designated word or words.

(n) In between. Find the play symbol or symbols designated as "yours" with a value less than the play symbol or symbols designated as "their high value" and greater than the play symbol or symbols designated as "their low value."

(2) Each of the methods described in subsection (1) of this section may include a special variant such as "automatic win feature," "doubler," "wild card," or "free space" that provides added or alternative methods of winning.

AMENDATORY SECTION (Amending WSR 98-08-067, filed 3/30/98, effective 4/30/98)

WAC 315-10-025 (~~How much does it~~) Cost to purchase an instant game ticket(?). The price of an instant game ticket shall not be less than \$1.00 and not more than \$20.00, except for those tickets used in media promotions and retailer incentive programs authorized by the director.

AMENDATORY SECTION (Amending WSR 05-11-049, filed 5/13/05, effective 6/13/05)

WAC 315-10-030 Instant games criteria. (1) The total of all prizes available to be won in an instant game shall not be less than forty-five percent of the instant game's projected revenue.

(2) There is no required frequency of drawing or method of selection of a winner in an instant game.

(3) At the director's discretion, an instant game may include a grand prize or second chance drawing(s). The criteria for the grand prize or second chance drawing shall be as follows:

(a) Finalists for (~~a grand prize~~) such drawing(s) shall be selected in an elimination drawing(s) from tickets meeting the criteria stated on the ticket and in executed working papers or software requirement specifications or stated in lottery promotional materials, at the discretion of the director. Participation in the elimination drawing(s) shall be limited to such tickets that are actually received or ticket information is actually received and validated by the director on or before a date to be announced by the director. The director may reserve the right to place any semi-finalist whose entry was not entered in the elimination drawing(s) and who is subsequently determined to have been entitled to such entry into an elimination drawing of a subsequent instant game, and the determination of the director shall be final.

(b) The number of prizes and the amount of each prize in the (~~grand prize~~) drawing(s) shall be determined by the director to correspond with the size and length of the instant game and to comply with subsection (1) of this section.

(c) The dates and times as well as the procedures for conducting the (~~elimination drawing and grand prize~~) drawing(s) shall be determined by the director.

AMENDATORY SECTION (Amending WSR 05-11-049, filed 5/13/05, effective 6/13/05)

WAC 315-10-035 (~~How do I know if I have a~~) Winning an instant game ticket(?). Each instant ticket shall be printed with instructions clearly indicating what constitutes a winning ticket. In addition, written descriptions of winning play and prize symbol combinations shall be included in the executed working papers or software requirement specifications for the production of each game. The ticket bearer must submit the winning ticket to the lottery as specified by the director. The winning ticket must be validated by the lottery through use of the validation number or any other means as specified in (~~this chapter~~) WAC 315-10-070 or by the director.

AMENDATORY SECTION (Amending WSR 05-11-049, filed 5/13/05, effective 6/13/05)

WAC 315-10-055 (~~How much time does a player have to redeem winning and/or grand prize drawing instant game tickets~~) Redemption time. (1) A player may submit a winning ticket for prize payment up to one hundred eighty days after the official end of game or one hundred eighty days from date of purchase of a computer generated ticket.

(2) In order to participate in a grand prize drawing in which the entry is the submittal of one or more winning or nonwinning tickets, a player must redeem and submit such a ticket or tickets or ticket information within the time limits set forth in chapter 315-06 WAC governing the conduct of that specific game.

AMENDATORY SECTION (Amending WSR 97-04-047, filed 1/31/97, effective 3/3/97)

WAC 315-10-060 Official beginning and end of an instant ticket game ticket sales. The director shall announce the official start date and closing date of each instant ticket game in an official lottery publication via printed or electronic media, or both. Lottery retailers shall not sell any tickets prior to the start date of a game unless expressly authorized by the director.

A lottery retailer may continue to sell tickets for each instant game up to sixty days after the official end of that game.

AMENDATORY SECTION (Amending WSR 05-11-049, filed 5/13/05, effective 6/13/05)

WAC 315-10-075 ((How do I claim)) Claiming an instant game prize((?)). Procedures for claiming instant game prizes are as follows:

(1) To claim an instant game prize of \$600.00 or less the claimant may either present the apparent winning ticket to any lottery retailer regardless of where the ticket was purchased, or may present the apparent winning ticket to the lottery by mail or in person. When a retailer is presented with a claim under this section, the retailer shall verify the claim and, if acceptable, make payment of the amount due the claimant. The prizes shall be paid during all normal business hours of that retailer provided that claims can be validated on the lottery's terminal. The retailer shall not charge the claimant any fee for payment of the prize or for cashing a business check drawn on the retailer's account.

(2) In the event the retailer cannot verify the claim, the claimant shall present a claim to the lottery by mail or in person. If the claim is validated by the lottery, funds shall be forwarded to the claimant in payment of the amount due. In the event that the claim is not validated by the director, the claim shall be denied and the claimant shall be promptly notified.

(3) To claim an instant prize of more than \$600.00, the claimant shall complete a claim form, as provided in WAC 315-06-120, which is obtained from the lottery retailer or the lottery and mail or present in person the completed form together with the apparent winning ticket to the lottery. Upon validation by the director, funds shall be forwarded or presented to the claimant in payment of the amount due, less any applicable federal income tax withholding and deductions pursuant to RCW 67.70.255 and WAC 315-06-125. In the event that the claim is not validated by the director, the claim shall be denied and the claimant shall be promptly notified.

(4) To claim an instant prize pursuant to WAC 315-10-070(2), the claimant shall notify the lottery of the claim and request reconstruction of the ticket not later than one hundred eighty days after the official end of that instant game or one hundred eighty days from purchase of a computer generated

ticket. If the director authorizes reconstruction, the ticket shall not be validated nor the prize paid prior to one hundred eighty days following the official end of that instant game or one hundred eighty days from purchase of a computer generated ticket. A ticket(s) validated pursuant to WAC 315-10-070(2) shall not entitle the claimant entry into the grand prize drawing, if any, for that or any subsequent instant game.

(5) Any ticket not passing all the validation checks specified by the director is invalid and ineligible for any prize and shall not be paid. However, the director may, solely at his or her option, replace an invalid ticket with an unplayed ticket (or tickets of equivalent sales price from any other current game). In the event a defective ticket is purchased, the only responsibility or liability of the director shall be the replacement of the defective ticket with another unplayed ticket (or tickets of equivalent sale price from any other current game).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 315-10-062	May a lottery retailer continue to sell instant game tickets for a particular game after the official end of that game?
----------------	---

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 315-11A-156	Instant Game Number 156 ("2 Win For Life").
WAC 315-11A-183	Instant Game Number 183 ("2 Win For Life II").

AMENDATORY SECTION (Amending Order 23, filed 6/17/83)

WAC 315-12-010 Purpose. The purpose of this chapter shall be to ensure compliance by the Washington state lottery commission and the office of the director, Washington state lottery, with the provisions of RCW ((42.17.250—42.17.340)) 42.56.040 - 42.56.550, dealing with public records.

AMENDATORY SECTION (Amending WSR 97-15-122, filed 7/23/97, effective 8/23/97)

WAC 315-12-030 Description of central and field organization of the commission and the director. The administrative office of the commission and director is located at 814 - 4th Avenue, Olympia, WA 98506. Regional offices of the director located in other cities are as follows:

CITY	SERVICES
EVERETT REGION Casino Square Shopping Plaza 205 E. Casino Road Everett, WA 98204	(a) Sales Representative (b) Payout Center

CITY
 OLYMPIA REGION
 814 - 4th Avenue
 Olympia, WA 98506
 ((SEATTLE REGION
 Georgetown Center
 5963 Corson Ave. S., Suite 106
 Seattle, WA 98108-2611))
FEDERAL WAY REGION
 33701 9th Avenue S
 Federal Way, WA 98003-6762
 SPOKANE REGION
 East 10517 Sprague Avenue
 Spokane, WA 99206-3631
 VANCOUVER REGION
 El Camino Fountain Shopping Mall
 Suite 4
 1503 NE 78th Street
 Vancouver, WA 98665
 YAKIMA REGION
 9 South 5th
 Yakima, WA 98901

SERVICES
 (a) Sales Representative
 (b) Payout Center
 (c) Ticket Warehousing
 (a) Sales Representative
 (b) Payout Center
 (a) Sales Representative
 (b) Payout Center
 (a) Sales Representative
 (b) Payout Center
 (a) Sales Representative
 (b) Payout Center
 (a) Sales Representative
 (b) Payout Center

All records of the commission and director are maintained in the administrative office in Olympia.

AMENDATORY SECTION (Amending Order 23, filed 6/17/83)

WAC 315-12-050 Public records available. All public records of the lottery, its commission and director (~~as defined in WAC 315-12-020(2) are deemed to be~~) are available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW (~~42.17.260, 42.17.310, 42.17.330~~) 42.56.070, 42.56.210, 42.56.540, WAC 315-12-100, and other applicable laws.

AMENDATORY SECTION (Amending Order 23, filed 6/17/83)

WAC 315-12-060 Public records officers. The lottery, its commission(~~s~~) and director(~~s~~) public records shall be in the charge of the public records officer(s) as designated by the director. The person(s) so designated shall be located in the administrative office of the director. The public records officer(s) shall be responsible for the following: The implementation of the commission's rules regarding release of public records, coordinating the staff of the director in this regard, maintaining, keeping current, and publishing an index of all agency records as required by RCW (~~42.17.260~~) 42.56.070 and WAC 315-12-140, and generally ensuring compliance by the staff with the public records disclosure requirements of chapter (~~42.17~~) 42.56 RCW.

AMENDATORY SECTION (Amending WSR 97-07-063, filed 3/19/97, effective 4/19/97)

WAC 315-12-080 Requests for public records. In accordance with requirements of chapter (~~42.17~~) 42.56 RCW that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or cop-

ies of such records may be obtained, by members of the public, upon compliance with the following procedures:

(1) A request (~~shall~~) may be made in writing upon a form prescribed by the director which shall be available at its administrative office. The form (~~shall~~) may be presented to any member of the director's staff (~~designated by the responsible public records officer to receive requests~~) at the administrative office of the director during customary office hours. The request shall include the following information:

- (a) The name and address of the person requesting the record.
- (b) The time of day and calendar date on which the request was made.
- (c) (~~The nature of the request.~~)
~~(d))~~ A reference to the requested record as (~~it is described in the current record index~~) a specific existing identifiable public record.

((Note: If the material is not identifiable by reference to the current index, an accurate description of the record is requested.

~~(e))~~ (d) The purpose for which a list of individuals, if so requested, will be used.

~~((f))~~ (e) The signature of the requestor.

(2) In all cases in which a member of the public makes a request, it shall be the obligation of the staff member to whom the request is made to assist the member of the public in appropriately identifying the public record requested.

(3) Any persons authorized by law to obtain a list of individuals from public records will be required to complete a statement agreeing not to release or use the information for commercial purposes. One or more requests from the same or associated persons for information regarding individuals shall be treated as a request for a list of individuals.

AMENDATORY SECTION (Amending Order 23, filed 6/17/83)

WAC 315-12-150 Communications. All written communications with the commission or director pertaining to the administration or enforcement of chapter (~~42.17~~) 42.56 RCW and these rules shall be addressed as follows: Washington State Lottery, P.O. Box 9770, Olympia, WA 98504, Attn: Public Records Officer.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 315-12-040 Operations and procedures.
- WAC 315-12-100 Exemptions.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 315-36-010 What is Lucky for Life and how do I play?
- WAC 315-36-020 How much does a ticket cost?

WAC 315-36-030	What are the prizes for Lucky for Life?	WAC 315-37-070	Where can I buy or redeem Lotto Plus tickets?
WAC 315-36-040	Can I win more than once on one ticket?	WAC 315-37-080	What information is included on a Lotto Plus ticket and playslip?
WAC 315-36-050	How is the winning set of numbers selected?	WAC 315-37-090	How are prizes paid?
WAC 315-36-060	How often is the winning set of numbers chosen?	WAC 315-37-100	What happens to unclaimed Lotto Plus prizes?
WAC 315-36-070	Where can I buy or redeem Lucky for Life tickets?	WAC 315-37-110	Definitions for Lotto Plus.
WAC 315-36-080	What information is included on a Lucky for Life ticket and playslip?	WAC 315-37-120	Suspension or termination of Lotto Plus.
WAC 315-36-090	What are the odds of winning Lucky for Life?		
WAC 315-36-100	If more than one person per drawing wins the grand prize, does each person receive the entire prize of \$1,000 for life or is the prize split among the winners?		
WAC 315-36-110	How is the "Lifetime Cash" type grand prize paid?		
WAC 315-36-120	How are prizes, other than the "Lifetime Cash" type grand prize, paid?		
WAC 315-36-130	What happens to unclaimed Lucky for Life prizes?		
WAC 315-36-140	Definitions for Lucky for Life.		
WAC 315-36-150	Suspension or termination of Lucky for Life.		

WSR 08-11-044**PERMANENT RULES****GAMBLING COMMISSION**

[Order 628—Filed May 14, 2008, 2:25 p.m., effective July 1, 2008]

Effective Date of Rule: July 1, 2008.

Purpose: This rules package incorporates rule interpretations that existed since 2005 and 2006.

Citation of Existing Rules Affected by this Order: Amending WAC 230-03-005, 230-06-110, 230-14-085, and 230-15-460.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 08-07-069 on March 17, 2008, and published April 2, 2008.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 4, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 4, Repealed 0.

Date Adopted: May 14, 2008.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 457, filed 3/22/06, effective 1/1/08)

WAC 230-03-005 Permits for recreational gaming activities. A recreational gaming activity (RGA) is a non-gambling activity, using poker tables and gambling equipment authorized for use in fund-raising events((;)). A RGA is conducted no more than two times per calendar year, by, or on behalf of, a sponsoring organization, business, or associa-

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 315-37-010	What is Lotto Plus and how do I play?
WAC 315-37-020	How much does a Lotto Plus ticket cost?
WAC 315-37-030	What are the prizes for Lotto Plus and the odds of winning the prizes?
WAC 315-37-040	When will Lotto Plus start?
WAC 315-37-050	How are the winning sets of numbers selected?
WAC 315-37-060	How often are the winning sets of numbers chosen?

tion, or department of an organization, business, or association.

(1) An organization, business, or association, or department of an organization, business, or association, that holds or sponsors an RGA must either:

(a) Apply for and get a permit before the event; or

(b) Hire a licensed fund-raising equipment distributor to organize and conduct the activity.

(2) Only members and guests of the sponsoring organization, business, or association, or department of the sponsoring organization, business, or association, may participate in the RGA.

(3) Permit holders must:

(a) Rent the gambling equipment used in the RGA from:

(i) A licensed distributor of fund-raising event equipment; or

(ii) A licensee who has conducted a fund-raising event within the last twelve months; and

(b) Use scrip or chips which have no cash value; and

(c) Limit the RGA to eight hours.

(4) The permit holder may charge a fee to enter the premises if that fee pays for:

(a) An accompanying meal and entertainment associated with the RGA; or

(b) The costs of renting the equipment used in the RGA.

(5) All prizes must be donated to, or provided by, the permit holder.

(6) The permit holder may allow participants to:

(a) Redeem their scrip or chips for prizes; or

(b) Trade scrip or chips for tickets which are then drawn to determine the prize winners. ((All prizes must be donated to, or provided by, the permit holder.))

AMENDATORY SECTION (Amending Order 617, filed 10/22/07, effective 1/1/08)

WAC 230-06-110 Buying, selling, or transferring gambling equipment. (1) All licensees and persons authorized to possess gambling equipment must closely control the gambling equipment in their possession.

(2) Before selling gambling equipment, licensees must ensure that the buyer possesses a valid gambling license or can legally possess the equipment without a license.

(3) Before purchasing gambling equipment, licensees must ensure that the seller possesses a valid gambling license.

(4) Applicants for Class F or house-banked card room licenses may purchase and possess gambling equipment during the preclicensing process, but only after receiving written approval from us.

(5) Charitable and nonprofit organizations conducting unlicensed bingo games, as allowed by RCW 9.46.0321, may possess bingo equipment without a license.

(6) Licensees may transfer gambling equipment as a part of a sale of a business as long as a condition of the sale is that the buyer receives a gambling license before the sale is complete. Licensees must make a complete record of all gambling equipment transferred in this manner, including I.D. stamps. Licensees must report these transfers, including a copy of the inventory record, to us.

AMENDATORY SECTION (Amending Order 614, filed 8/10/07, effective 1/1/08)

WAC 230-14-085 Calculating markup for merchandise prizes. (1) To calculate sixty percent of total gross for merchandise prizes, operators take the amount actually paid for the prize and add to it no more than fifty percent of that cost as markup.

(2) Gift certificates from a licensee's own establishment may be used as merchandise prizes for pull-tab games but must not be included in the sixty percent payout calculation.

(3) The total cost to the operator for the purchase of a prize must not exceed ~~((seven hundred fifty))~~ twenty-five hundred dollars.

NEW SECTION

WAC 230-15-453 Using match play or similar coupons in gambling promotions. Match play coupons may be offered as gambling promotions with the following restrictions:

(1) The coupons have no value. Players cannot "double down" on the "match play" portion of the wager.

(2) Players may double down on the chip portion of the wager, not to exceed maximum wagering limits.

(3) A match play coupon is not considered part of the player's wager in determining the amount wagered. Match play coupons may be used by players who wager the maximum allowed.

(4) A match play coupon is itself a gambling promotion and cannot be awarded as a prize in a promotional contest of chance, as authorized in RCW 9.46.0356, or as a prize on a card game.

(5) Restrictions on the use of coupons must be disclosed on the coupon.

(6) Expiration dates must be included on the coupon.

(7) Match play and other similar type coupon promotions such as Lucky Bucks and Free Ace, etc., may be given to participants in a card tournament as long as they are given to all participants and are not awarded based on the outcome of the tournament.

AMENDATORY SECTION (Amending Order 608, filed 4/10/07, effective 1/1/08)

WAC 230-15-460 Supervision requirements for house-banked card rooms. (1) House-banked card game licensees must have at least one floor supervisor for each gambling area. Each supervisor may supervise up to seven tables. We must approve the arrangement of tables in the internal controls.

(2) Licensees must have two levels of supervision present on the business premises if more than ten tables are open. Poker tables operated in a separate gambling area are not included in the calculation of levels of supervision.

(3) A card room employee may act as a dealer and a supervisor during the same shift as long as he or she does not sign forms as both the dealer and the supervisor.

WSR 08-11-047
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
[Filed May 15, 2008, 8:18 a.m., effective June 15, 2008]

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

Purpose: Chapter 388-475 WAC incorporates language published in chapter 388-511 WAC for SSI-related eligibility requirements. The repeal of this WAC section is appropriate because the language is duplicated in chapter 388-475 WAC. The repeal of this WAC section provides the opportunity to consolidate and improve the usability of rules concerning the financial eligibility requirements for SSI within chapter 388-475 WAC.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-511-1105; and amending WAC 388-106-0225, 388-106-0310, 388-106-0410, 388-106-0510, 388-106-0705, 388-500-0005, 388-503-0510, 388-513-1363, 388-513-1364, 388-513-1365, 388-515-1540, 388-561-0100, and 388-561-0300.

Statutory Authority for Adoption: RCW 34.05.353 (2)(d) and 74.08.090.

Other Authority: Chapters 74.09, 74.04 RCW.

Adopted under notice filed as WSR 08-05-106 on February 19, 2008.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 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 13, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 13, Repealed 1.

Date Adopted: May 9, 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 08-12 issue of the Register.

WSR 08-11-051
PERMANENT RULES
STATE BOARD OF HEALTH
[Filed May 15, 2008, 3:21 p.m., effective May 19, 2008]

Effective Date of Rule: May 19, 2008.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: RCW 34.05.380 (3)(c) "The earlier effective date is necessary

because of imminent peril to the public health, safety, or welfare."

Purpose: The purpose of this rule is to protect public health by establishing a state-specific control plan to reduce the incidence of *Vibrio parahaemolyticus*-associated illness (vibriosis). The control plan consists of time-to-temperature controls, training, illness response, record-keeping requirements, and modified hazard analysis critical control point plans.

Statutory Authority for Adoption: Chapter 69.30 RCW.

Adopted under notice filed as WSR 08-08-087 on April 1, 2008.

A final cost-benefit analysis is available by contacting Jessie DeLoach, Office of Shellfish and Water Protection, P.O. Box 47824, Olympia, WA 98504-7824, phone (360) 236-3302, fax (360) 236-2257, e-mail jessie.deloach@doh.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 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 Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: May 14, 2008.

Craig McLaughlin
Executive Director

NEW SECTION

WAC 246-282-006 Washington state *Vibrio parahaemolyticus* control plan. (1) The Washington state *Vibrio parahaemolyticus* control plan, also known as the control plan, establishes harvest and transport requirements for oysters intended for raw consumption during the months of May through September. This section does not apply to shucked oyster meats labeled "for cooking only." The requirements of this section are in addition to Chapter VIII of the 2005 National Shellfish Sanitation Program Model Ordinance (NSSP), Requirements for Harvesters, .03 Shellfish Temperature, Control Option 2; and consists of:

- (a) Time-to-temperature controls based on the growing area and month of the year;
- (b) Harvest record requirements;
- (c) *Vibrio* illness response requirements;
- (d) Training requirements; and
- (e) Hazard Analysis Critical Control Point (HACCP) plan and harvest checklist requirements.

(2) All Puget Sound growing areas, including the Strait of Juan de Fuca, are subject to the requirements of this section. Growing areas in Grays Harbor and Willapa Bay where

oysters have been epidemiologically associated (linked) as the source of any *Vibrio parahaemolyticus*-associated illness are also subject to the requirements of this section.

(3) The department may grant an exemption to the control plan for Puget Sound growing areas, including the Strait of Juan de Fuca, where there has been no epidemiologically associated (linked) *Vibrio parahaemolyticus*-associated illness if the licensed harvester or dealer can demonstrate safe and effective harvest and transportation methods, as developed in a written agreement.

(4) Time-to-temperature controls are:

Table 1
Puget Sound Growing Areas
(including the Strait of Juan de Fuca):

Months of Control	Time-to-Temperature Control
May	Twelve hours
June and September	Five hours
July and August	Four hours

Table 2
Coastal Growing Areas:

Months of Control	Time-to-Temperature Control
July and August	Ten hours

(5) Licensed dealers and harvesters shall maintain harvest records showing the time of harvest to assure compliance with the control plan. The harvest times begin as follows:

(a) Intertidal (exposed) harvest - Time must begin after the first oysters to be harvested are exposed to the air by the receding tide.

(b) Submerged harvest - Time must begin after the first oysters harvested are exposed to the air and have been placed onto a conveyance, such as a barge or boat. Submerged harvest includes dredge harvesting or retrieval of harvest tubs, bags, baskets, or other containers of oysters previously filled which have been under water for a minimum of one hour for coastal areas and four hours for Puget Sound growing areas.

(6) In the event of two sporadic *Vibrio parahaemolyticus*-associated illnesses within thirty days where oysters from a single growing area are epidemiologically associated (linked) as the source, all licensed harvesters and dealers in the implicated growing area shall reduce the time-to-temperature control by one hour. The implicated growing area shall remain under the reduced time-to-temperature control throughout the control months for that area as defined in Table 1 or 2 of subsection (4) of this section.

(7) In the event of two additional sporadic *Vibrio parahaemolyticus*-associated illnesses within thirty days under the one hour reduced time-to-temperature control where oysters from a single growing area are epidemiologically associated (linked) as the source, the growing area shall be closed to harvest and shipment of oysters intended for raw consumption throughout the control months as defined in Table 1 or 2 of subsection (4) of this section. If the two additional *Vibrio*

parahaemolyticus-associated illnesses are attributed to the same licensed harvester or dealer as the first two illnesses, the department shall conduct an investigation in accordance with the requirements as stated in the 2005 NSSP, Chapter II, Risk Assessment and Risk Management, to determine if the illnesses resulted from dealer practices or the growing area.

(8) An exemption to closure identified in subsection (7) of this section may be granted if the licensed harvester or dealer can demonstrate to the department, as developed in a written agreement, that an additional one hour reduction in time-to-temperature controls can be successfully implemented. If approved, the licensed harvester or dealer shall remain under the reduced time-to-temperature control throughout the control months for that area as defined in Table 1 or 2 of subsection (4) of this section.

(9) If the required time-to-temperature control period is not met, the licensed harvester or dealer shall either:

(a) Destroy the oysters; or

(b) Remove all oysters from containers, disperse them within the original growing area, and allow a minimum of twenty-four hours for purging before reharvesting.

(10) In the event of a *Vibrio parahaemolyticus*-associated illness outbreak where oysters from a particular growing area are epidemiologically associated (linked) as the source, the requirements as stated in the 2005 NSSP, Chapter II, Risk Assessment and Risk Management, shall apply.

(11) All licensed harvesters and dealers shall complete department-approved training specific to the control plan prior to harvesting or shipping oysters intended for raw consumption during the months of May through September. Licensed harvesters and dealers who complete the training shall provide the training to those responsible for the on-site management of harvest activities for their operation.

(12) Following completion of the training required in subsection (11) of this section, all licensed harvesters intending to harvest oysters intended for raw consumption from May through September shall develop a harvest plan and checklist that defines the harvest protocols that will be employed to assure oysters are placed under temperature control as defined in Table 1 or 2 of subsection (4) of this section, and subsection (6) of this section. Licensed dealers (other than harvesters) shall amend their Hazard Analysis Critical Control Point (HACCP) plans to define what harvest protocols will be employed to assure oysters are placed under temperature control as defined in Table 1 or 2 of subsection (4) of this section, and subsection (6) of this section.

WSR 08-11-060
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed May 16, 2008, 2:07 p.m., effective July 1, 2008]

Effective Date of Rule: July 1, 2008.

Purpose: The purpose of adopting chapter 246-916 WAC is to establish licensing requirements for athletic trainers. The adopted rules define minimum education and examination requirements for licensure.

Statutory Authority for Adoption: RCW 18.250.020.

Adopted under notice filed as WSR 08-03-066 on January 14, 2008.

A final cost-benefit analysis is available by contacting Jennifer Bressi, P.O. Box 47867, Olympia, WA 98504-7867, phone (360) 236-4893, fax (360) 664-9077, e-mail jennifer.bressi@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 5, 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 5, Amended 0, Repealed 0.

Date Adopted: May 12, 2008.

Mary C. Selecky
Secretary

Chapter 246-916 WAC

LICENSURE REQUIREMENTS FOR ATHLETIC TRAINERS

NEW SECTION

WAC 246-916-010 Licensure requirements. To be eligible for licensure, applicants must provide evidence of:

(1) Completion of an approved educational program as determined in WAC 246-916-020; and

(2) Attaining a passing score on the examination administered by the board of certification for athletic trainers (BOC) or its predecessor or successor organization as approved by the secretary; and

(3) Completion of seven clock hours of AIDS education and training as required in chapter 246-12 WAC, Part 8; and

(4) Any other written declarations or documentation, as required by the secretary.

NEW SECTION

WAC 246-916-020 Approved educational programs. The secretary recognizes and approves these educational programs:

(1) Courses of instruction conducted by schools that have obtained accreditation of the program in athletic training from the commission on accreditation of athletic training education (CAATE) or its predecessor or successor organization as approved by the secretary; or

(2) Completion of a bachelors or advanced degree attained prior to January 1, 2004, including at a minimum:

(a) Course work in:

(i) Health, such as, nutrition, drugs/substance abuse, health education, personal health and wellness or a course in pathology or pathophysiology or pharmacology is considered an acceptable substitution;

(ii) Human anatomy;

(iii) Kinesiology/biomechanics;

(iv) Human physiology;

(v) Physiology of exercise;

(vi) Basic and advanced athletic training; and

(b) Completion of an internship with a minimum of 1,500 practical hours under direct supervision of a National Athletic Trainers' Association Board of Certification (NATABOC) certified athletic trainer.

NEW SECTION

WAC 246-916-030 Applicants currently licensed in other states. Before licensure may be issued to any individual currently licensed to practice as an athletic trainer in another state, as provided in chapter 18.250 RCW, applicants must provide evidence of:

(1) Having met the education requirements for licensure as defined in WAC 246-916-020; and

(2) Attaining a passing score on the examination as defined in WAC 246-916-010; and

(3) Verification of credential from any state; and

(4) Completion of seven clock hours of AIDS education and training as required in chapter 246-12 WAC, Part 8; and

(5) Any other written declarations or documentation, as required by the secretary.

NEW SECTION

WAC 246-916-040 Inactive license. A practitioner may obtain an inactive credential. Refer to the requirements of chapter 246-12 WAC, Part 4.

NEW SECTION

WAC 246-916-050 Expired license. If the license has expired, the practitioner must meet the requirements of chapter 246-12 WAC, Part 2.

WSR 08-11-072

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed May 19, 2008, 10:35 a.m., effective June 19, 2008]

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

Purpose: These amendments and new sections define and reorganize the rules governing the delivery of services to individuals with developmental disabilities.

See Reviser's Note below.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-825-025, 388-825-045, 388-825-050, 388-825-055, 388-825-065 and 388-825-080; and amending WAC 388-825-020.

Statutory Authority for Adoption: RCW 71A.10.015, 71A.12.020, and 71A.12.030.

Other Authority: Title 71A RCW.

Adopted under notice filed as WSR 08-07-103 on March 19, 2008.

Changes Other than Editing from Proposed to Adopted Version: The WAC cross reference in WAC 388-825-057(1) is corrected from WAC 388-825-061 through 388-825-066 to 388-823-0800 through 388-823-0850.

The changes were made because the WAC cross reference in the proposed rule was incorrect.

A final cost-benefit analysis is available by contacting Steve Brink, P.O. Box 45310, Olympia, WA 98507-5310, phone (360) 725-3416, fax (360) 404-0955, e-mail brinksc@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 30, Amended 1, Repealed 6.

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 30, Amended 1, Repealed 6.

Date Adopted: May 16, 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 08-12 issue of the Register.

- Post eligibility financial requirements if you are not eligible for medicaid under a categorically needy program listed in WAC;
- Instructions for community spouse income;
- Increases in the personal needs allowance to \$40.12 effective July 1, 2007, and \$41.44 effective July 1, 2008.

Citation of Existing Rules Affected by this Order: Amending WAC 388-515-1510.

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

Other Authority: Washington state 2007-09 operating budget (SHB 1128).

Adopted under notice filed as WSR 08-08-116 on April 2, 2008.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-515-1512 (1)(c) is amended as follows: SSI-related CN-P medicaid described in WAC 388-475-0100 (2)(a) and (b) or meets the requirements in WAC 388-475-0880 and ~~remains~~ is CN-P eligible after the income disregards have been applied.

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 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 2, 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 4, Amended 1, Repealed 0.

Date Adopted: May 9, 2008.

Stephanie E. Schiller
Rules Coordinator

WSR 08-11-083

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed May 20, 2008, 8:31 a.m., effective June 20, 2008]

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

Purpose: The department is amending WAC 388-515-1510 and adopting new rules to describe:

- General eligibility requirements under the four HCBS waivers;
- Financial requirements if you are eligible for medicaid under the noninstitutional categorically needy program (CN-P);
- Initial financial requirements if you are not eligible for medicaid under a categorically needy program (CN-P) listed in WAC;

AMENDATORY SECTION (Amending WSR 04-18-054, filed 8/27/04, effective 9/27/04)

WAC 388-515-1510 Division of developmental disabilities (DDD) home and community based services waivers ((and outward bound residential alternatives (OBRA))). ~~((This section describes the eligibility requirements for waiver services under the four DDD waivers and OBRA programs and the rules used to determine a client's participation in the cost of care.~~

(1) The four DDD waivers are:

(a) Basic;

(b) Basic Plus;

(c) Core; and

(d) Community protection.

(2) ~~The requirements for services for DDD waivers are contained in chapter 388-845 WAC. The department establishes eligibility for DDD waivers and OBRA services for a client who:~~

~~(a) Is both Medicaid eligible under the categorically needy (CN) program and meets the requirements for services provided by the division of developmental disabilities (DDD);~~

~~(b) Has attained institutional status as described in WAC 388-513-1320;~~

~~(c) Has been assessed as requiring the level of care provided in an intermediate care facility for the mentally retarded (ICF/MR);~~

~~(d) Has a department-approved plan of care that includes support services to be provided in the community;~~

~~(e) Is able to reside in the community according to the plan of care and chooses to do so;~~

~~(f) Meets the income and resource requirements described in subsection (3); and~~

~~(g) For the OBRA program only, the client must be a medical facility resident at the time of application.~~

~~(3) The department allows a client to have nonexcluded resources in excess of the standard described in WAC 388-513-1350(1) during the month of either an application or eligibility review if, when excess resources are added to nonexcluded income, the combined total does not exceed the special income level (SIL). Refer to WAC 388-513-1315 for rules used to determine nonexcluded income and resources. During other months, financial requirements include the following:~~

~~(a) Nonexcluded income must be at or below the SIL; and~~

~~(b) Nonexcluded resources not allocated to participation in a prior month must be at or below the resource standard.~~

~~(4) A client who is eligible for supplemental security income (SSI) does not participate in the cost of care for DDD waivers or OBRA services.~~

~~(5) An SSI-related client retains a maintenance needs amount of up to the SIL, who is:~~

~~(a) Living at home; or~~

~~(b) Living in an alternate living facility described in WAC 388-513-1305(1).~~

~~(6) A client described in subsection (5)(b) retains the greater of:~~

~~(a) The SSI grant standard; or~~

~~(b) An amount equal to a total of the following:~~

~~(i) A personal needs allowance (PNA) of thirty eight dollars and eighty four cents; plus~~

~~(ii) The facility's monthly rate for board and room, which the client pays to the facility; plus~~

~~(iii) The first twenty dollars of monthly earned or unearned income; and~~

~~(iv) The first sixty five dollars plus one-half of the remaining earned income not previously excluded.~~

~~(7) If a client has a spouse in the home who is not receiving DDD waivers or OBRA services, the department allocates the client's income in excess of the amounts described in subsections (5) and (6) as an additional maintenance needs amount in the following order:~~

~~(a) One for the spouse, as described in WAC 388-513-1380 (7)(b); and~~

~~(b) One for any other dependent family member in the home, as described in WAC 388-513-1380 (7)(c).~~

~~(8) A client's participation in the cost of care for DDD waivers or OBRA services is the client's income:~~

~~(a) That exceeds the amounts described in subsections (5), (6), and (7); and~~

~~(b) Remains after deductions for medical expenses not subject to third-party payment for which the client remains liable, included in the following:~~

~~(i) Medicare and other health insurance premiums; deductibles, or coinsurance charges; and~~

~~(ii) Necessary medical care recognized under state law but not covered by Medicaid.) The four sections that follow describe the general and financial eligibility requirements for the division of developmental disabilities (DDD) home and community based services (HCBS) waivers.~~

~~(1) WAC 388-515-1511 describes the general eligibility requirements under the four DDD HCBS waivers.~~

~~(2) WAC 388-515-1512 describes the financial requirements if you are eligible for Medicaid under the noninstitutional categorically needy program (CN-P).~~

~~(3) WAC 388-515-1513 describes the initial financial requirements if you are not eligible for Medicaid under a categorically needy program (CN-P) listed in WAC 388-515-1512(1).~~

~~(4) WAC 388-515-1514 describes the post eligibility financial requirements if you are not eligible for Medicaid under a categorically needy program (CN-P) listed in WAC 388-515-1512(1).~~

NEW SECTION

WAC 388-515-1511 What are the general eligibility requirements for waiver services under the four division of developmental disabilities (DDD) home and community based services (HCBS) waivers? This section describes the general eligibility requirements for waiver services under the four DDD home and community based services (HCBS) waivers.

(1) The four DDD HCBS waivers are:

(a) Basic;

(b) Basic plus;

(c) Core; and

(d) Community protection.

(2) The requirements for services for DDD HCBS waivers are described in chapter 388-845 WAC. The department establishes eligibility for DDD HCBS waivers. To be eligible, you must:

(a) Be an eligible client of the division of developmental disabilities (DDD);

(b) Meet the disability criteria for the supplemental security income (SSI) program as described in WAC 388-475-0050;

(c) Require the level of care provided in an intermediate care facility for the mentally retarded (ICF/MR);

(d) Have attained institutional status as described in WAC 388-513-1320;

(e) Be able to reside in the community and choose to do so as an alternative to living in an ICF/MR;

(f) Need waiver services as determined by your plan of care or individual support plan, and:

(i) Be able to live at home with waiver services; or

- (ii) Live in a department contracted facility, which includes:
- (A) A group home;
 - (B) Group training home;
 - (C) Child foster home, group home or staffed residential facility;
 - (D) Adult family home (AFH); or
 - (E) Adult residential care (ARC) facility.
- (iii) Live in your own home with supported living services from a certified residential provider; or
- (iv) Live in the home of a contracted companion home provider; and
- (g) Be both Medicaid eligible under the categorically needy program (CN-P) and be approved for services by the division of developmental disabilities.

NEW SECTION

WAC 388-515-1512 What are the financial requirements if I am eligible for medicaid under the noninstitutional categorically needy program (CN-P). (1) You automatically meet income and resource eligibility for DDD waiver services if you are eligible for Medicaid under a categorically needy program (CN-P) under one of the following programs:

- (a) Supplemental security income (SSI) eligibility described in WAC 388-474-0001. This includes SSI clients under 1619B status. These clients have Medicaid eligibility determined and maintained by the Social Security Administration;
- (b) Healthcare for workers with disabilities (HWD) described in WAC 388-475-1000 through 388-475-1250;
- (c) SSI-related CN-P Medicaid described in WAC 388-475-0100 (2)(a) and (b) or meets the requirements in WAC 388-475-0880 and is CN-P eligible after the income disregards have been applied;
- (d) CN-P Medicaid for a child as described in WAC 388-505-0210 (1), (2), (7) or (8); or
- (e) General assistance expedited Medicaid disability (GA-X) or general assistance based on aged/blind/disabled criteria described in WAC 388-505-0110(6).

(2) If you are eligible for a CN-P Medicaid program listed in subsection (1) above, you do not have to pay (participate) toward the cost of your personal care and/or habilitation services.

(3) If you are eligible for a CN-P Medicaid program listed in subsection (1) above, you do not need to meet the initial eligibility income test of gross income at or below the special income level (SIL), which is three hundred percent of the federal benefit rate (FBR).

(4) If you are eligible for a CN-P Medicaid program listed in subsection (1), you pay up to the ADSA room and board standard described in WAC 388-515-1505. Room and board and long-term care standards are located at <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(a) If you live in an ARC, AFH or DDD group home, you keep a personal needs allowance (PNA) and use your income to pay up to the ADSA room and board standard. The PNA from July 1, 2007 through June 30, 2008 is forty dollars and

twelve cents. Effective July 1, 2008 the PNA increases to forty-one dollars and forty-four cents.

(b) If you receive nonSSI income, you may keep up to an additional twenty dollars.

(5) If you are eligible for a premium based Medicaid program such as healthcare for workers with disabilities (HWD), you must continue to pay the Medicaid premium to remain eligible for that CN-P program.

NEW SECTION

WAC 388-515-1513 How does the department determine if I am financially eligible for medical coverage if I am not eligible for medicaid under a categorically needy program (CN-P) listed in WAC 388-515-1512(1)? If you are not eligible for Medicaid under a categorically needy program (CN-P) listed in WAC 388-515-1512(1), we must determine your eligibility using institutional Medicaid rules. This section explains how you may qualify under this program. You may be required to pay towards the cost of your care if you are eligible under this program. The rules explaining how much you have to pay are listed in WAC 388-515-1514. To qualify, you must meet both the resource and income requirements.

(1) If you have resources which are higher than the standard allowed under WAC 388-515-1350, we may reduce the amount we are required to count if you have unpaid medical expenses.

(a) We will reduce your resources in an amount equal to the unpaid medical expenses you verify. The anticipated cost of your waiver services cannot be used as a medical expense to qualify for this deduction.

(b) If your remaining resources, after the deduction in section (1)(a) are still over the standard, you are ineligible until your resources are below the standard.

(c) You are not subject to a transfer of asset penalty described in WAC 388-513-1363 through 388-513-1366.

(d) Equity in your home is five hundred thousand dollars or less as described in WAC 388-513-1350.

(2) Your gross nonexcluded income must be at or below the special income level (SIL) which is three hundred percent of the federal benefit level. The department follows the rules in WAC 388-515-1325, 388-513-1330 and 388-513-1340 to determine available income and income exclusions.

NEW SECTION

WAC 388-515-1514 How does the department determine how much of my income I must pay towards the cost of my care if I am not eligible for medicaid under a categorically needy program (CN-P) listed in WAC 388-515-1512(1)? If you are not eligible for Medicaid under a categorically needy program (CN-P) listed in WAC 388-515-1512 (1), the department determines how much you must pay based upon the following:

(1) If you are an SSI-related client living at home as defined in WAC 388-106-0010, you keep all your income up to the SIL (three hundred percent of the FBR) for your personal needs allowance (PNA).

(2) If you are an SSI-related client and you live in an ARC, AFH or DDD group home, you:

(a) Keep a personal needs allowance (PNA) from your gross nonexcluded income. The PNA from July 1, 2007 through June 30, 2008 is forty dollars and twelve cents. Effective July 1, 2008 the PNA increases to forty-one dollars and forty-four cents.

(b) May keep up to an additional twenty dollars from your nonSSI income; and

(c) Pay for your room and board up to the ADSA room and board rate described in <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(3) Income that remains after the allocation described in (2) above, is reduced by allowable deductions in the following order:

(a) If you are working, we allow an earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed by chapter 388-79 WAC;

(c) Current or back child support garnished from your income or withheld according to a child support order in the month of the garnishment if it is for the current month. If we allow this as deduction from your income, we will not count it as your child's income when determining the family allocation amount;

(d) A monthly maintenance needs allowance for your community spouse not to exceed that in WAC 388-513-1380 (5)(b) unless a greater amount is allocated as described in subsection (e) of this section. This amount:

(i) Is allowed only to the extent that your income is made available to your community spouse; and

(ii) Consists of a combined total of both:

(A) One hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>); and

(B) Excess shelter expenses. For the purposes of this section, excess shelter expenses are the actual required maintenance expenses for your community spouse's principal residence. These expenses are determined in the following manner:

(I) Rent, including space rent for mobile homes, plus;

(II) Mortgage, plus;

(III) Taxes and insurance, plus;

(IV) Any required payments for maintenance care for a condominium or cooperative minus;

(V) The food assistance standard utility allowance (for long term care services this is set at the standard utility allowance (SUA) for a four-person household), provided the utilities are not included in the maintenance charges for a condominium or cooperative, minus;

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

(VII) Is reduced by your community spouse's gross countable income.

(iii) May be greater than the amount in subsection (d)(ii) only when:

(A) There is a court order approving a higher amount for the support of your community spouse; or

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

(e) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of your community or institutionalized spouse. The amount we allow is based on the living arrangement of the dependent. If the dependent:

(i) Resides with your community spouse, the amount is equal to one-third of the community spouse allocation as described in WAC 388-513-1380 (5)(b)(i)(A) that exceeds the dependent family member's income (child support received from a noncustodial parent is considered the child's income);

(ii) Does not reside with the community spouse, the amount is equal to the MNIL based on the number of dependent family members in the home less their separate income (child support received from a noncustodial parent is considered the child's income).

(f) Your unpaid medical expenses which have not been used to reduce excess resources. Allowable medical expenses are described in WAC 388-513-1350.

(g) The total of the following deductions cannot exceed the SIL (three hundred percent of the FBR):

(i) Personal needs allowances in subsection (1) for in home or subsection (2)(a) in a residential setting; and

(ii) Earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income in subsection (3)(a); and

(iii) Guardianship fees and administrative costs in subsection (3)(b).

(4) If you are eligible for general assistance expedited Medicaid disability (GA-X) or general assistance based on aged/blind/disabled criteria described in WAC 388-505-0110 (6), you do not participate in the cost of personal care and you may keep the following:

(a) When you live at home, you keep the cash grant amount authorized under the general assistance program;

(b) When you live in an AFH, you keep a PNA of thirty-eight dollars and eighty-four cents, and pay any remaining income and general assistance grant to the facility for the cost of room and board up to the ADSA room and board standard described in <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>; or

(c) When you live in an ARC or DDD group home, you are only eligible to receive a cash grant of thirty-eight dollars and eighty-four cents which you keep for your PNA.

(5) The combination of the room and board amount and the cost of personal care and/or habilitation services (participation) after all allowable deductions have been considered is called your total responsibility. You pay this amount to the ARC, AFH or DDD group home provider.

WSR 08-11-098
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Health and Recovery Services Administration)
 [Filed May 20, 2008, 9:26 a.m., effective June 20, 2008]

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

Purpose: The department is adopting these rule amendments to comply with changes in federal standards effective January 1, 2007, and April 1, 2007. In addition, the health and recovery services administration has removed the dollar amounts from the payment standards to eliminate the necessity of amending the WAC every year. The current dollar amounts will be listed in the department's eligibility A-Z manual and the internet link to the manual is included in the WAC. When effective, these permanent rules supersede emergency rules filed as WSR 08-10-020.

Citation of Existing Rules Affected by this Order: Amending WAC 388-478-0070 and 388-478-0080.

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

Adopted under notice filed as WSR 08-06-075 on March 4, 2008.

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

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

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

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

Date Adopted: May 7, 2008.

Stephanie E. Schiller
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-06-013, filed 2/17/06, effective 3/20/06)

WAC 388-478-0070 Monthly income and countable resource standards for medically needy (MN). (1) ~~((Beginning January 1, 2006, the medically needy income level (MNIL) is:~~

- (a) One person \$603
- (b) Two persons \$603
- (c) Three persons \$667
- (d) Four persons \$742
- (e) Five persons \$858
- (f) Six persons \$975
- (g) Seven persons \$1,125

- (h) Eight persons \$1,242
- (i) Nine persons \$1,358
- (j) Ten persons and more \$1,483))

Changes to the medically needy income level (MNIL) occur on January 1st of each calendar year. Current income standards can be found at http://www1.dshs.wa.gov/pdf/esa/manual/Standards_C_MedAsst_Chart.pdf.

(2) ~~((The MNIL))~~ Medically needy standards for ((a)) persons who ((meets)) meet institutional status requirements ((is)) are in WAC ((388-513-1305(3))) 388-513-1395. The standard for a client who lives in an alternate living facility can be found in WAC 388-513-1305.

(3) Find the resource standards for institutional programs in WAC 388-513-1350. The institutional standard chart can be found at <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

~~((3))~~ (4) Countable resource standards for the MN program ((is)) are:

- (a) One person \$2,000
- (b) ~~((Two persons))~~ A legally married couple \$3,000
- (c) For each additional family member add \$50

AMENDATORY SECTION (Amending WSR 06-06-013, filed 2/17/06, effective 3/20/06)

WAC 388-478-0080 Supplemental security income (SSI) standards; SSI-related categorically needy income level (CNIL); and countable resource standards. (1) The SSI payment standards, also known as the federal benefit rate (FBR), ~~((beginning))~~ change each January 1, ((-2006 are:

~~(a) Living alone (in own home or alternate care, does not include nursing homes or medical situations)~~

- Individual \$603
- Individual with an ineligible spouse \$603
- Couple \$904

~~(b) Shared living (in the home of another)~~

- Individual \$402
- Individual with an ineligible spouse \$402
- Couple \$603

~~(c) Living in an institution~~

- Individual \$30))

(2) See WAC 388-478-0055 for the amount of the state supplemental payments (SSP) for SSI recipients.

(3) See WAC 388-513-1305 for standards of clients living in an alternate living facility.

(4) The SSI-related CNIL standards are the same as the SSI payment standards for single persons and couples. Those paying out shelter costs have a higher standard than people who have supplied shelter. ((-

- (a) Single person \$603
- (b) Married couple — both eligible 904
- (c) Supplied shelter — single person -402

(d) ~~Supplied shelter couple—both eligible~~ -603))

((4)) (5) The countable resource standards for SSI and SSI-related CN medical programs are:

- (a) One person \$2,000
- (b) A legally married couple \$3,000

WSR 08-11-099
PERMANENT RULES
DEPARTMENT OF HEALTH
(Veterinary Board of Governors)

[Filed May 20, 2008, 10:08 a.m., effective June 20, 2008]

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

Purpose: Chapter 246-935 WAC, HB 1331 changed the credential level of veterinary technicians from registration to licensure in law. Amendments to chapter 246-935 WAC as adopted will change all references to "registered" or "registration" to "licensed" or "licensure" in order to comply with the legislation. The amendments will not change the credentialing requirements for veterinary technicians.

Citation of Existing Rules Affected by this Order: Amending WAC 246-935-010, 246-935-020, 246-935-030, 246-935-050, 246-935-070, and 246-935-090.

Statutory Authority for Adoption: RCW 18.92.030 and HB 1331 (chapter 235, Laws of 2007).

Adopted under notice filed as WSR 08-02-089 on January 2, 2008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 6, Repealed 0.

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

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

Date Adopted: March 3, 2008.

William H. Keatts, DVM, Chair
Veterinary Board of Governors

AMENDATORY SECTION (Amending WSR 02-10-135, filed 5/1/02, effective 6/1/02)

WAC 246-935-010 Definitions. (1) "Veterinary technician" means any person who has met the requirements of RCW 18.92.015 and who is (~~registered~~) licensed as required by chapter 18.92 RCW.

(2) "Direct supervision" means the supervisor is on the premises, is quickly and easily available and the animal has

been examined by a veterinarian at such times as acceptable veterinary medical practice requires, consistent with the particular delegated animal health care task.

(3) "Emergency" means that the animal has been placed in a life-threatening condition where immediate treatment is necessary to sustain life.

(4) "Immediate supervision" means the supervisor is in audible and visual range of the animal patient and the person treating the patient.

(5) "Indirect supervision" means the supervisor is not on the premises, but has given either written or oral instructions for treatment of the animal patient and the animal has been examined by a veterinarian at such times as acceptable veterinary medical practice requires, consistent with the particular delegated animal health care task and the animal is not anesthetized.

(6) "Supervisor" means a veterinarian or, if a task so provides, a veterinary technician.

(7) "Unregistered assistant" means any individual who is not a veterinary technician or veterinarian.

(8) "Veterinarian" means a person authorized by chapter 18.92 RCW to practice veterinary medicine in the state of Washington.

(9) "Veterinary medical facility" is as defined by WAC 246-933-310.

AMENDATORY SECTION (Amending WSR 02-10-135, filed 5/1/02, effective 6/1/02)

WAC 246-935-020 Applications—Veterinary technicians. Applications for (~~registration~~) licensure as a veterinary technician shall be made on forms prepared by the secretary of the department of health and submitted to the department of health. Applications must be received at least sixty days prior to the scheduled examination. The application, in addition to the required fee, must be accompanied by satisfactory evidence of experience and/or official transcripts or other evidence of completion of educational courses approved by the board. The application shall be signed by the applicant. When the application and the accompanying evidence are found satisfactory, the secretary shall notify the applicant of eligibility to be scheduled for the veterinary technician examination.

AMENDATORY SECTION (Amending WSR 02-10-135, filed 5/1/02, effective 6/1/02)

WAC 246-935-030 Grounds for denial, suspension or revocation of (~~registration~~) licensure. The board may suspend, revoke or deny the issuance or renewal of (~~registration~~) license of any veterinary technician and file its decision in the secretary's office if the veterinary technician:

(1) Has employed fraud or misrepresentation in applying for or obtaining the (~~registration~~) license;

(2) Has within ten years prior to the date of application been found guilty of a criminal offense relating to the practice of veterinary medicine, surgery and dentistry, including, but not limited to:

(a) Any violation of the Uniform Controlled Substances Act or the Legend Drug Act;

(b) Chronic inebriety;

(c) Cruelty to animals;

(3) Has violated or attempted to violate any provision of chapter 18.92 RCW or any rule or regulation adopted pursuant to that chapter;

(4) Has assisted, abetted or conspired with another person to violate chapter 18.92 RCW, or any rule or regulation adopted under that chapter;

(5) Has performed any animal health care service not authorized by WAC 246-935-040 or 246-935-050.

AMENDATORY SECTION (Amending WSR 07-17-169, filed 8/22/07, effective 9/22/07)

WAC 246-935-050 Animal health care tasks. (1) Veterinary technicians.

No individual, other than a (~~registered~~) licensed veterinary technician, may advertise or offer her/his services in a manner calculated to lead others to believe that she/he is a trained or (~~registered~~) licensed veterinary technician.

Veterinary technicians are prohibited from performing the following activities: Surgery except as outlined below; diagnosis and prognosis; prescribing drugs, medication or appliances; initiation of treatment without prior instruction by a veterinarian except as outlined under emergency animal care.

(a) Immediate supervision. A veterinary technician may perform the following tasks only under the immediate supervision of a veterinarian:

- (i) Assist veterinarian in surgery by tissue handling;
- (ii) Assist veterinarian in surgery by instrument handling;
- (iii) Dental extractions.

(b) Direct supervision. A veterinary technician may perform the following tasks under the direct supervision of a veterinarian:

- (i) Endotracheal intubation;
- (ii) Blood administration;
- (iii) Fluid aspiration, including cystocentesis;
- (iv) Intraperitoneal injections;
- (v) Monitoring of vital signs of anesthetized patient;
- (vi) Application of splints;
- (vii) Induce anesthesia by intravenous, intramuscular, or subcutaneous injection or by inhalation;
- (viii) Administration of immunological agents including rabies vaccination;
- (ix) Catheterization of the unobstructed bladder;
- (x) Ophthalmological procedure including:
 - (A) Tear production testing
 - (B) Topical anesthetic application
 - (C) Fluorescein staining of the cornea
 - (D) Tonometry;
- (xi) Teeth cleaning, provided an oral examination of the anesthetized patient has been conducted by the veterinarian;
- (xii) Microchip implantation;
- (xiii) Floating teeth;
- (xiv) Removal of partially exposed foxtails and porcupine quills;
- (xv) Provide massage;
- (xvi) Suturing. The use of a needle, cutting or tapered, and suture material, staples, wound clips or tissue glue to

close a skin or gingival incision or prepared wound as directed by the attending licensed veterinarian under direct supervision. Suturing may include the use of needle holders, thumb forceps, tissue forceps, retractors and comparable instruments for gentle handling of the tissues to be repaired/closed by such suturing. Suturing does not include the use of cutting instruments such as scalpels, scissors, electrosurgical equipment or other instruments to remove skin or other tissues from the animal patient.

(c) Indirect supervision. A veterinary technician may perform the following tasks under the indirect supervision of a veterinarian. If the animal is anesthetized, these tasks require the direct supervision of a veterinarian:

- (i) Enema;
- (ii) Electrocardiography;
- (iii) Application of bandages;
- (iv) Gavage;
- (v) Ear flush;
- (vi) Radiology;
 - (A) Patient positioning;
 - (B) Operation of radiograph machines;
 - (C) Oral and rectal administration of radio-opaque materials;
- (vii) Placement and securing of an intravenous catheter;
- (viii) Injections of medications not otherwise prohibited:
 - (A) Intramuscular, excluding immunological agents
 - (B) Subcutaneous, excluding immunological agents
 - (C) Intravenous, including giving medication through an established intravenous catheter;
- (ix) Oral medications;
- (x) Topical medications;
- (xi) Laboratory (specimen collections):
 - (A) Collection of tissue during or after a veterinarian has performed a necropsy
 - (B) Urine, except cystocentesis
 - (C) Blood
 - (D) Parasitology
 - (E) Exfoliative cytology
 - (F) Microbiology
 - (G) Fecal material
- (xii) Laboratory (specimen testing):
 - (A) Urinalysis
 - (B) Hematology
 - (C) Serology
 - (D) Chemistries
 - (E) Endocrinology
 - (F) Parasitology
 - (G) Exfoliative cytology
 - (H) Microbiology
 - (I) Fecal analysis;
- (xiii) Administration of preanesthetic drugs;
- (xiv) Oxygen therapy;
- (xv) Euthanasia in all circumstances as otherwise allowed by law;
- (xvi) Removal of sutures;
- (xvii) Indirect blood pressure measurement;
- (xviii) Obtaining a general history from a client of a patient and the client's concerns regarding that patient;
- (xix) Preliminary physical examination including temperature, pulse and respiration;

- (xx) Behavioral consultation with clients;
- (xxi) Dietary consultation with clients.

(2) Unregistered assistants.

Induction of anesthesia by any method is prohibited.

(a) Immediate supervision by veterinarian. An unregistered assistant may perform the following tasks only under the immediate supervision of a veterinarian:

- (i) Assist veterinarian in surgery by tissue handling;
- (ii) Assist veterinarian in surgery by instrument handling.

(b) Immediate supervision by veterinarian or veterinary technician. An unregistered assistant may perform the following tasks only under the immediate supervision of either a veterinarian or veterinary technician:

- (i) Blood administration;
- (ii) Laboratory (specimen collections):
 - (A) Hematology
 - (B) Exfoliative cytology, including skin scraping
 - (C) Microbiology
 - (D) Serology;
- (iii) Placement and securing of an intravenous catheter.

(c) Direct supervision by veterinarian. An unregistered assistant may perform the following tasks only under the direct supervision of a veterinarian:

- (i) Monitor vital signs of anesthetized patient;
- (ii) Euthanasia in all circumstances as otherwise allowed by law;
- (iii) Removal of sutures;
- (iv) Teeth cleaning, provided an oral examination of the anesthetized patient has been conducted by the veterinarian;
- (v) Provide massage;
- (vi) Administration of immunological agents including rabies vaccination;
- (vii) Microchip implantation;
- (viii) Enema;
- (ix) Removal of partially exposed foxtails and porcupine quills from skin and feet.

(d) Direct supervision by veterinarian or veterinary technician. An unregistered assistant may perform the following tasks under direct supervision of either a veterinarian or veterinary technician. If the animal is anesthetized, these tasks require immediate supervision of a veterinarian or a veterinary technician:

- (i) Application of bandages;
- (ii) Ear flush;
- (iii) Electrocardiography;
- (iv) Intramuscular or subcutaneous injections of medications not otherwise prohibited;
- (v) Laboratory (test preparation, not evaluation):
 - (A) Parasitology
 - (B) Serology
 - (C) Urinalysis;
- (vi) Preliminary physical examination including temperature, pulse and respiration;
- (vii) Radiology:
 - (A) Patient positioning
 - (B) Operation of radiograph machines
 - (C) Rectal and oral administration of radio-opaque materials.

(e) Indirect supervision. An unregistered assistant may perform the following tasks under the indirect supervision of a veterinarian. If the animal is anesthetized, these tasks require the direct supervision of a veterinarian:

- (i) Oral medications;
- (ii) Topical medications;
- (iii) Laboratory (specimen collection):
 - Collecting of voided urine and fecal material;
- (iv) Oxygen therapy;
- (v) Obtaining a general history from a client of a patient and the client's concerns;
- (vi) Behavioral consultation with clients;
- (vii) Dietary consultation with clients.

(3) Emergency animal care.

(a) Under conditions of an emergency, a veterinary technician and unregistered assistant may render certain life saving aid to an animal. A veterinary technician may:

- (i) Apply tourniquets and/or pressure bandages to control hemorrhage;
- (ii) Administer pharmacologic agents to prevent or control shock. Placement of an intravenous catheter and administering parenteral fluids, must only be performed after direct communication with a veterinarian, and only if the veterinarian is either present or immediately en route to the location of the distressed animal;

- (iii) Administer resuscitative oxygen procedures;
- (iv) Establish open airways including the use of intubation appliances, but excluding surgery;
- (v) Administer external cardiac resuscitation;
- (vi) Apply temporary splints or bandages to prevent further injury to bones or soft tissues;
- (vii) Apply appropriate wound dressings and external supportive treatment in severe burn cases;
- (viii) Apply external supportive treatment to stabilize body temperature.

(b) An unregistered assistant may:

- (i) Apply tourniquets and/or pressure bandages to control hemorrhage;
- (ii) Administer resuscitative oxygen procedures;
- (iii) Establish open airways including intubation appliances, but excluding surgery;
- (iv) Apply external supportive treatment to stabilize body temperature.

AMENDATORY SECTION (Amending WSR 03-11-034, filed 5/15/03, effective 6/15/03)

WAC 246-935-070 Examination for ((~~registration~~) licensure as a veterinary technician. (1) All applicants shall be required to successfully complete the veterinary technician national examination as approved by the board, and the Washington state examination that consists of questions pertaining to the laws and rules regulating technicians.

(2) The passing criteria or score is:

(a) Criteria-referenced passing score on the national examination.

(b) Ninety percent on the Washington state examination.

AMENDATORY SECTION (Amending WSR 02-10-135, filed 5/1/02, effective 6/1/02)

WAC 246-935-090 Examination review procedures.

(1) Each individual who takes the examination for ~~((registration))~~ licensure as a veterinary technician and does not pass the examination may request review by the board of his or her examination results. This request must be in writing and shall be received by the board within thirty days of notification of the examination results. The request shall state the reason or reasons the applicant feels the results of the examination should be changed. The board shall not consider any challenges to examination scores unless the total revised score could result in the issuance of a ~~((registration))~~ license. The board shall consider the following to be adequate reasons for consideration for review and possible modification of examination results:

(a) A showing of a significant procedural error in the examination process;

(b) Evidence of bias, prejudice or discrimination in the examination process;

(c) Other significant errors which result in substantial disadvantage to the applicant.

(2) Any applicant who is not satisfied with the result of the examination review may appeal the board's decision and may request a formal hearing before the board under the Administrative Procedure Act. The hearing shall be requested within twenty days of receipt of the result of the board's review of the examination results.

WSR 08-11-100

PERMANENT RULES

**BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS**

[Filed May 20, 2008, 10:41 a.m., effective July 1, 2008]

Effective Date of Rule: July 1, 2008.

Purpose: Amendments to this chapter are necessary to provide guidance to applicants with regard to the experience, education, and application requirements to become licensed as a professional engineer. It also better organizes existing rules, and amend[s]/repeal[s] language that no longer applies to professional engineers.

Citation of Existing Rules Affected by this Order: Amending chapter 196-12 WAC.

Statutory Authority for Adoption: RCW 18.43.035.

Adopted under notice filed as WSR 08-08-121 on April 2, 2008.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 7, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 7, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 3, Amended 7, Repealed 1; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 7, 2008.

George A. Twiss
Executive Director

AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

**WAC 196-12-010 (~~Eligibility and applications.~~)
Registration requirements.** The ~~((law requires))~~ requirements to become licensed as a professional engineer are:

(1) ~~Eight years of experience in engineering work of a character satisfactory to the board ((and passing the fundamentals of engineering examination to be eligible for the second stage (PE) engineer examination.)):~~

(a) ~~These eight years must be of broad based, progressive experience to include gaining knowledge and comprehension of engineering subjects and applying engineering principles. ((The eight years of experience must be completed sixty days prior to the date of the examination.~~

~~A professional engineer (PE) applicant must have passed the first stage examination (the fundamentals of engineering (FE) examination) and be enrolled as an engineer in training (EIT), or qualify to waive the FE examination in accordance with WAC 196-12-050, before he or she can take the second stage (PE) examination. If the applicant has at least eight years of qualifying engineering experience, the PE examination may be applied for at the same time that he or she applies for the FE examination. The PE application may also be submitted before the results of the FE examination have been received, provided the application is submitted at least four months before the second stage examination date.~~

~~All applications must be completed on forms provided by the board and filed with the executive director at the board's address. The deadline for properly completed applications accompanied by the appropriate fee as listed in WAC 196-26A-025 is four months prior to the date of the examination. Late applications will be considered for a later examination. Supporting documents such as college transcripts and experience verification forms must be received by the board three months prior to the date of the examination in order for the board to determine eligibility prior to examination deadlines. Failure to have the supporting documents sent to the board by the defined deadline will result in the applicant being delayed until a later examination.~~

~~To reschedule the taking of an examination, a written request accompanied by the applicable fee as listed in WAC 196-26A-025 is required at least three months prior to the examination date. Once an application has been approved, no further application is required.)~~ (b) The eight years of experience may be a combination of education and practical work experience. Under selected circumstances a maximum of five years of education (baccalaureate and masters degrees) can be granted toward the eight-year requirement.

(2) Obtaining a passing score on the fundamentals-of-engineering (FE) examination or be granted a waiver of the examination.

The FE examination can be taken only after gaining an equivalent of four years of qualifying experience of a character satisfactory to the board or be certified by the university that the applicant has achieved senior standing in an approved engineering program:

(3) Obtaining a passing score on the principles and practice of engineering examination.

(4) Obtaining a passing score on the board's law and ethics examination.

(5) Be of good character and reputation; and

(6) Payment of applicable fees.

NEW SECTION

WAC 196-12-011 Application requirements. All applications for the professional engineer (PE) examinations must:

(1) Be received at the board's address with the applicable fee by:

- (a) January 15 for the April exam administrations;
- (b) July 31 for the October exam administrations.

(2) Be completed and submitted on forms provided by the department.

(3) Include the names and addresses of five references, three of which must be licensed engineers having personal knowledge of the applicant's character and reputation.

(4) Be supported by documents such as:

- (a) Official college transcripts, showing all grades and degrees;
- (b) Completed experience verifications; and
- (c) Any applicable verifications of licensing and/or examination records from other licensing jurisdictions.

NEW SECTION

WAC 196-12-012 Reexamination requirements. All applicants who fail to pass an examination or do not appear at the scheduled examination time may request, in writing, an opportunity for reexamination. The request must be received in the office of the board with applicable fee by January 15th for the April exam administrations or July 31st for the October exam administrations.

AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

WAC 196-12-020 Work experience records. ((The board shall evaluate all experience, which includes education, on a case-by-case basis and approve such experience as appropriate.)) The ((board will use the)) following criteria will be used in evaluating an applicant's experience record:

(1) ((Education experience will be based on transcripts. Therefore, any transcripts not previously sent to the board's office should be submitted for maximum experience credit. Education may be approved as experience based on the following:

(a) Graduation with a baccalaureate degree in engineering approved by the engineer accreditation commission

(EAC) of the accreditation board for engineering and technology (ABET, Inc.) shall be equivalent to four years of required experience. Satisfactory completion of each year of such an approved engineering curriculum is equivalent to one year of experience.

(b) Graduation with a baccalaureate degree in a program in engineering technology approved by the technology accreditation commission (TAC) of the accreditation board for engineering and technology (ABET, Inc.) is equivalent to three years of required experience. Satisfactory completion of each year of such an approved program is equivalent to three-fourths of one year of experience.

(c) Graduation in an approved four year non-ABET, Inc. accredited engineering curriculum will be given a maximum of three years of experience.

(d) A maximum of one year may be granted for post-graduate engineering courses approved by the board for those applicants having earned degrees in accordance with (a), (b) or (c) of this subsection.

(e) A nonengineering bachelor of science program can be given a maximum of two years of experience. If the degree is followed by a master of science in engineering from a school that has an ABET, Inc. accredited undergraduate program in the same discipline as the master's degree, a maximum of four years of experience may be granted for this combination of education.

(f) Graduation with an associate degree in engineering from an approved curriculum may be equivalent of up to two years of required experience.

(g) Education gained in a piecemeal fashion over time where no degree is conferred will be granted up to a maximum of two years of experience. For the purpose of this subsection, education in a "piecemeal fashion" means: One or two classes taken at a time, often at different schools; seminars; workshops; and classes taken through industry and the military. In order to determine the appropriate amount of experience, this type of education will be compared to college coursework in a baccalaureate of engineering technology degree program.

(h) The board may approve engineering degree programs from other countries.

(i) A number of foreign degree programs are included in mutual recognition agreements entered into by ABET, Inc. with other accrediting authorities. Applicants with a degree from one of these programs will be evaluated in accordance with (a) and (b) of this subsection. A list of those approved mutual recognition degree programs is maintained in the board office.

(ii) Applicants having engineering degrees from programs in countries that are not on the mutual recognition list will be required to have their transcripts evaluated by a transcript evaluation service approved by the board. This evaluation will be performed at the applicant's expense, and the applicant will be responsible for submitting all necessary information to the evaluation service. The board will use the evaluation to determine if the foreign degree is equivalent to an ABET, Inc. accredited degree. If the board determines that the degree is equivalent, experience will be granted in accordance with (a) or (b) of this subsection. If the board determines that the foreign degree is not equivalent to an ABET,

~~Ine. accredited degree, then a maximum of three years of experience may be granted in accordance with (c) of this subsection.~~

~~(iii) An applicant with an undergraduate foreign degree from a program that is not on the mutual recognition list, can waive the requirement for a degree evaluation if they have a master of science in engineering from a school that has an ABET, Inc. accredited undergraduate engineering degree program in the same discipline as the master's degree. A maximum of four years of experience can be granted for this combination of education.~~

~~(i) Any other education will be taken into account and evaluated on its merits.~~

~~(j) Work experience gained between semesters or quarters or during summers while enrolled in an approved curriculum will be considered as part of the educational process. The board grants one year of experience for a year of approved education including any associated work experience within that year.~~

~~((2)) Work experience will be approved based on a demonstration of competency and progressive responsibility in the analysis, synthesis and evaluation of engineering concepts and data, under the direct supervision of a person authorized by chapter 18.43 RCW or other applicable statute to practice engineering. Under the general guidance and direct supervision of an authorized professional, the applicant must be in a position of making independent judgments and decisions in the following experience areas:~~

- ~~(a) Formulating conclusions and recommendations;~~
- ~~(b) Identifying design and/or project objectives;~~
- ~~(c) Identifying possible alternative methods and concepts;~~
- ~~(d) Defining performance specifications and functional requirements;~~
- ~~(e) Solving engineering problems;~~
- ~~(f) Interacting with professionals from other areas of practice;~~
- ~~(g) Effectively communicating recommendations and conclusions;~~
- ~~(h) Demonstrating an understanding and concern for energy/environmental considerations, socioeconomic impact, and sustainability of resources.~~

~~((3)) (2) The branch of structural engineering requires specialized work experience to protect the public safety. To be eligible to take the structural license examination, an applicant must have at least two years of progressive responsibility in structural engineering experience. These two years of structural experience are in addition to the eight years of engineering experience required to be registered as a professional engineer and must be documented in the application in accordance with subsection ((2)) (1) of this section. The structural engineering experience must be supervised by a licensed professional engineer in the branch of structural engineering or a licensed professional engineer with ((significant)) substantial structural engineering work experience.~~

~~((4)) (3) Engineering teaching ((character)) may be considered satisfactory experience up to a maximum of two years.~~

~~((5)) (4) Applied research is considered satisfactory experience when it meets the following conditions:~~

(a) The research must be conducted under the guidance or supervision of a licensed engineer. For the purposes of this subsection, guidance or supervision means being cognizant of all applicable aspects of the work and a reviewer of all applicable reporting documentation.

(b) The ((principle)) principal result(s) of the research are in a published report or a recognized engineering journal article in which the applicant is the first author or the work is adequately documented and available to the board upon request.

~~((6)) (5) For military engineering experience to be considered acceptable, it should be similar to engineering experience that would be gained in a nonmilitary environment as defined in subsection ((2)) (1) of this section, and such experience must be verified.~~

~~((7)) (6) Any work experience gained without the supervision of a professional engineer authorized to practice under chapter 18.43 RCW or an individual authorized by another statute to practice engineering, or any work experience gained in any other situation which violates the provisions of chapters 18.43 and 18.235 RCW or Title 196 WAC will not be counted toward the statutory experience requirement.~~

NEW SECTION

WAC 196-12-021 Education experience records.

Official transcripts must be sent to the board's office for full education experience credit.

(1) A baccalaureate degree in engineering in a program approved by the engineering accreditation commission (EAC) of the accreditation board for engineering and technology (ABET, Inc.) is equivalent to four years of required experience. Satisfactory completion of each year of such an approved program is equivalent to one year of experience.

(2) A baccalaureate degree in an engineering technology program approved by the technology accreditation commission (TAC) of the ABET, Inc., is equivalent to three years of required experience. Satisfactory completion of each year of such an approved program is equivalent to three-fourths of one year of experience.

(3) An approved four years in an ABET, Inc., accredited engineering program will be given a maximum of three years of experience.

(4) No more than one year may be granted for postgraduate engineering courses for those applicants having earned degrees in accordance with subsections (1), (2), or (3) of this section.

(5) A baccalaureate degree in a nonengineering program will be given a maximum of two years of experience.

If the degree is followed by a graduate degree in engineering from a school that has an ABET, Inc., accredited undergraduate program in the same discipline as the graduate degree, a maximum of four years of experience may be granted for this combination of education.

(6) An associate degree in engineering from an approved program may be equivalent for up to two years of experience.

(7) Education gained over time where no degree is conferred will be granted no more than two years of experience. For the purpose of this subsection, education over time

means: One or two classes taken at a time, often at different schools; seminars; workshops; and classes taken through industry and the military. In order to determine the appropriate amount of experience, this type of education will be compared to college coursework in a baccalaureate of engineering technology degree program.

(8) The board may approve engineering degree programs from other countries.

(a) A number of foreign degree programs are included in mutual recognition agreements entered into by ABET, Inc., with other accrediting authorities. Applicants with a degree from one of these programs will be evaluated in accordance with subsections (1) and (2) of this section. A list of those approved mutual recognition degree programs is maintained in the board office.

(b) Applicants having engineering degrees from programs in countries that are not on the mutual recognition list will be required to have their transcripts evaluated by a transcript evaluation service approved by the board. This evaluation will be performed at the applicant's expense, and the applicant will be responsible for submitting all necessary information to the evaluation service. The board will use the evaluation to determine if the foreign degree is equivalent to an ABET, Inc., accredited degree. If the board determines that the degree is equivalent, experience will be granted in accordance with subsection (1) or (2) of this section. If the board determines that the foreign degree is not equivalent to an ABET, Inc., accredited degree, then a maximum of three years of experience will be granted in accordance with subsection (3) of this section.

(c) An applicant with an undergraduate degree from a foreign program that is not on the mutual recognition list, can waive the requirement for a degree evaluation if they have a graduate degree in engineering from a school that has an ABET, Inc., accredited undergraduate engineering degree program in the same discipline as the graduate degree. No more than four years of experience will be granted for this combination of education.

(9) Any other education will be taken into account and evaluated on its merits.

(10) Work experience gained between semesters or quarters or during summers while enrolled in an approved curriculum will be considered part of the educational process. No more than one year of experience will be granted for one calendar year.

AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

WAC 196-12-030 Examinations. ~~((1) Except as provided in WAC 196-12-050, to become licensed as a professional engineer the candidate must pass two stages of examination. The first stage is the fundamentals of engineering examination. The second stage examination consists of multiple parts including the principles and practice (branch) examination and law and ethics examination. The law and ethics exam is a take-home examination covering chapters 18.43 and 18.235 RCW and Title 196 WAC. The fundamentals of engineering examination must be passed, or waived in~~

~~accordance with WAC 196-12-050, before taking the second stage examination.~~

~~Examinations are given at times and places designated by the board. Refer to the respective internet websites of the National Council of Examiners for Engineering and Surveying (NCEES), and the board for future examination schedules and syllabi. Examinees will not be allowed to view any examination material prior to taking the examination other than syllabi available to the public or sample examination booklets published by the National Council of Examiners for Engineering and Surveying. If one examination part is failed, only that examination part must be retaken.~~

~~(2) If a professional engineer holding a current registration in the state of Washington wants to become licensed in multiple branches of engineering, an additional principle and practice examination must be taken in each branch.~~

~~(3) The branch of structural engineering requires a series of examinations, as determined by the board, to protect the public safety. To become licensed as a professional engineer in the branch of structural engineering, the candidate must pass: The stage 1 fundamentals of engineering examination; the stage 2 principles and practice of engineering (PE) and the take-home law and ethics examinations; and the stage 3 examination comprised of examinations in the principles and practice of structural engineering and structural engineering issues important to Washington state.) Examinations administered by the board, or on their behalf, will be written or oral or both to enable the board to evaluate an applicant's knowledge in the fundamentals of engineering; principles and practice of engineering; and law and ethics.~~

If a professional engineer holding a current registration in the state of Washington wants to become licensed in an additional branch of engineering, they must pass the principles and practice examination for each branch.

AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

WAC 196-12-045 Comity registration of applicants qualified in other jurisdictions. ~~((1))~~ Licenses will be issued by comity only in the branches of engineering offered by the board. Applicants for registration as a professional engineer by comity must ~~((meet the following criteria))~~:

~~((a) The applicant must))~~ (1) Complete an application on forms provided by the board and ((filed with the executive director at the board's address)) be accompanied by the appropriate fee ((pursuant to WAC 196-26A-035)).

~~((b) The applicant's qualifications must meet the requirements of chapter 18.43 RCW and this chapter.~~

~~((c) The applicant is in good standing with the licensing agency))~~ (2) Hold a currently valid license in a board recognized licensing jurisdiction in a state, territory, possession, district, or foreign country. ((Good standing shall be defined as a currently valid license in the jurisdiction of original registration or the jurisdiction of most recent practice if different from the jurisdiction of original registration.

~~((d) The applicant has))~~ (3) Have been qualified ((by written examinations)) to meet minimum requirements for licensure as determined by the board ((to)) that adequately ((test))

measures the fundamentals and principles and practice of engineering.

~~((2) The applicant will be required to pass the law and ethics examination and may be required to take and pass state specific examinations to demonstrate competency in issues specific to Washington.~~

~~(3) The original application for comity may be for multiple branches of engineering provided that the applicant has passed an examination in each branch equivalent to the examination given in the state of Washington. Licenses will be issued only in the branches of engineering offered by the board. Additional branches may be added at a later time; however, this will require submitting a new application and fee.)~~

AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

WAC 196-12-050 Waiving the fundamentals-of-engineering examination. ~~((An applicant who has at least twelve years of experience satisfactory to the board as identified in WAC 196-12-020(2) after obtaining a baccalaureate degree in an approved engineering curriculum as defined in WAC 196-12-020(1)(a), (c) and (h)(i) and (ii), may request that the stage 1 fundamentals of engineering (FE) examination be waived and that permission be granted to take the stage 2 examination (principles and practice and law and ethics) only. Provided, That the applicant has not failed the FE examination within the last ten years.~~

~~The opportunity to waive the stage 1 examination is based on the premise that the demonstration of a solid experience record is a better measure of engineering competency than the passage of the stage 1 examination at this point in the applicant's career. It is the board's discretion, based on information provided in the application, as to whether to grant a waiver.~~

~~Teaching experience is not limited to two years for the purposes of qualifying for this waiver.~~

~~The applicant should take note that a license granted based on waiving the fundamentals exam may not be accepted by other licensing jurisdictions.) Applicants requesting a waiver of the fundamentals of engineering examination must:~~

- ~~(1) Have a baccalaureate or masters degree in an approved engineering program;~~
- ~~(2) Have completed a minimum of twelve years of board approved engineering experience after graduation; and~~
- ~~(3) Not have failed the NCEES fundamentals of engineering examination within the last ten years.~~

~~Applicants with a PhD from a program approved by the board may request a waiver of the fundamentals of engineering exam.~~

AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

WAC 196-12-055 ~~Permit for temporary ((permits— information required of nonresidents intending to practice thirty days or less in a calendar year)) practice.~~ ~~((Every)) Any nonresident engineer who intends to ((conduct professional)) practice ((under the exemption of RCW~~

~~18.43.130(2), shall furnish)) engineering in the state of Washington must provide the board((, a minimum of three months prior to the commencement of such work with the following information)) with the following before starting any work:~~

~~(1) A ((properly)) completed application ((as prescribed by the board)) with applicable fees.~~

~~(2) ((Jurisdiction where currently registered.~~

~~(3) Imprint of professional seal.~~

~~(4)) Dates work is to be started ((and terminated in the state of Washington. If the time differential between the starting and terminating date is in excess of thirty days in any calendar year, applicant must specify the days (totaling no more than thirty) on which the practice of engineering is to be performed in Washington)).~~

~~((5)) (3) Name and address of client.~~

~~((6)) (4) Description and location (address) of project ((and regulating authority (if applicable))).~~

~~((7) Application fee as determined by the director of the department of licensing.~~

~~Upon approval of the information submitted, the board shall issue a permit to the nonresident engineer for the temporary practice of engineering in Washington.) (5) Name and contact information for local permitting authority.~~

~~Plans, specifications, and reports prepared by the nonresident engineer ((shall)) must be signed, dated, and stamped with their professional seal. A copy of the permit issued by this board shall be attached to the engineering documents submitted for approval or building permit.~~

~~((The exemption contained in RCW 18.43.130(2) shall only apply to individuals. Corporations and partnerships shall not practice in Washington unless authorized to do so under RCW 18.43.130(8) and (9).))~~

AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

WAC 196-12-065 Retired status ((~~certificate of registration~~)). ~~((In accordance with RCW 18.43.075, any individual who has been issued a certificate of registration, in accordance with chapter 18.43 RCW, as)) A professional engineer having reached ((at least)) the age of sixty-five and having discontinued active practice as ((~~an~~) a professional engineer may be eligible ((to obtain a "retired certificate of registration." If granted, further certificate of registration renewal fees are waived. For the purpose of this provision, "active)) for retired status. "Active practice" is defined as exercising direct supervision and control over ((the development and production of an engineering document as provided in RCW 18.43.070 and/or any related activities pertaining to the offer of and/or the providing of)) any professional engineering ((services)) activity as defined in RCW 18.43.020(5).~~

~~(1) ((Applications. Those persons wishing to obtain the status of a retired registration shall complete an application on a form as provided by the board. Applications shall be sent to the executive director at the address of the board. Upon receipt of said application and, if deemed eligible by the board, the retired status would become effective on the first scheduled renewal date of the certificate of registration that occurs on or after the applicant reaches the age of sixty-five.~~

It shall not be necessary that an expired certificate of registration be renewed to be eligible for this status. The board will not provide refund of renewal fees if the application for "retired" status is made and granted before the date of expiration of the certificate of registration. Request for retired status. Upon approval, a request for retired status will be granted effective the next scheduled renewal date.

(2) ~~((Privileges. In addition to the waiver of the renewal fee, a retired registrant is permitted to))~~ A licensee on retired status may:

(a) Retain the board issued wall certificate of registration;

(b) Use the title retired professional engineer ~~((PE, provided that it is supplemented by the term retired, or the abbreviation "ret"))~~;

(c) Work as an engineer in a volunteer capacity, provided that the retired ~~((registrant))~~ licensee does not create an engineering document ~~(, and does not))~~ or use their seal ~~(, except as provided for in (d) of this subsection))~~;

(d) Provide experience verifications and references for persons seeking registration ~~((under chapter 18.43 RCW. If using their professional seal the retired registrant may place the word "retired" in the space designated for the date of expiration))~~;

(e) Serve ~~((in))~~ as an ~~((instructional capacity on engineering topics))~~ instructor;

(f) Provide services as a technical expert before a court, or in preparation for pending litigation, on matters directly related to engineering work performed by the ~~((registrant before they were granted a retired registration))~~ licensee;

(g) Serve in a function that supports the principles of registration and/or promotes the profession of engineering, such as members of commissions, boards or committees;

(h) Serve in an engineering capacity as a "good samaritan" ~~((, "as set forth in"))~~. The state laws governing such activity are RCW 38.52.195 and 38.52.1951 ~~((, provided said work is otherwise performed in accordance with))~~ and chapter 18.43 RCW.

(3) ~~((Restrictions. A retired registrant is not permitted to))~~ A licensee on retired status must not:

(a) Perform any engineering activity, as provided for in RCW 18.43.020 ~~(5)~~, unless ~~((said))~~ the activity is under the direct supervision of a ~~((Washington state))~~ licensed professional engineer ~~((who has a valid))~~ with an active registration in ~~((the records of the board))~~ Washington;

(b) Act as the designated engineer ~~((or the engineer in responsible charge))~~ for a ~~((Washington engineering))~~ corporation or ~~((Washington engineering))~~ limited liability company;

(c) Apply their professional engineers seal ~~((, as provided for in RCW 18.43.070))~~ to any plan, specification, plat or report ~~((, except as provided for in subsection (2)(d) of this section))~~;

(4) Certificate of registration reinstatement. A retired ~~((registrant, upon written request to the board and payment of the current renewal fee,))~~ licensee may resume active engineering practice with payment of the current renewal fee. ~~((At that time the retired registrant shall be removed from retired status and placed on valid/active status in the records of the board. All rights and responsibilities of a valid/active~~

registration will be in effect. At the date of expiration of the reinstated certificate of registration, the registrant may elect to either continue active registration or may again apply for retired registration in accordance with the provisions of this chapter.))

(5) Exemptions. ~~((Under no circumstances shall a registrant be eligible for a retired registration if their certificate of registration has been revoked, surrendered or in any way permanently terminated by the board under RCW 18.43.110. Registrants who are suspended from practice and/or who are subject to terms of a board order at the time they reach age sixty-five shall not be eligible for a retired registration until such time that the board has removed the restricting conditions.~~

(6) Penalties for noncompliance. Any violations of this section shall be considered "misconduct and/or malpractice" as defined in RCW 18.43.105. Such violations are subject to penalties as provided for in RCW 18.235.110 and 18.43.120.)) A licensee is not eligible for retired status if their license to practice is under board ordered sanction. This exemption exists until the sanctions have been lifted or satisfied by the board.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 196-12-035

Examination review and request for rescore of examination questions.

WSR 08-11-101
PERMANENT RULES
BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS

[Filed May 20, 2008, 10:42 a.m., effective July 1, 2008]

Effective Date of Rule: July 1, 2008.

Purpose: SSB 5984, chapter 193, Laws of 2007, established that only structural engineers can perform engineering work on significant structures. The rules are needed to reflect the changes made to chapter 18.43 RCW that impact those professional engineers that perform structural work and establish a waiver of structural licensure for a limited period of time.

Citation of Existing Rules Affected by this Order:
Amending chapter 196-12 WAC.

Statutory Authority for Adoption: RCW 18.43.035.

Adopted under notice filed as WSR 08-08-120 on April 2, 2008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 4, 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 4, Amended 0, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 4, 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: May 7, 2008.

George A. Twiss
Executive Director

NEW SECTION

WAC 196-12-100 Limited waiver of the requirement for licensure in structural engineering to design "significant structures." The board may grant a waiver of the licensing requirement in structural engineering for qualified candidates. Said waiver is available July 1, 2008. All waivers issued by the board are not renewable and will expire 12:00 a.m. December 31, 2010. Individuals being issued the waiver are not permitted to represent themselves as being licensed in structural engineering or otherwise using any title or advertisement tending to convey the impression he or she is licensed in structural engineering.

NEW SECTION

WAC 196-12-103 Application requirements for waiver of structural license for designing "significant structures." The board will consider applications for a waiver to the requirement for licensure in structural engineering to design "significant structures" beginning May 1, 2008. Applicants must:

- (1) Be licensed as a professional engineer in Washington state as of January 1, 2007;
- (2) Submit an application for waiver that is postmarked on or before January 1, 2009. Said application to include:
 - (a) The names of at least three references who are licensed professional engineers with experience in seismic analysis and designs and who have direct knowledge and familiarity of the applicant's competency;
 - (b) Verification of at least six years of progressive structural engineering experience performing seismic analysis and design, since the date of original licensure as a PE; and
 - (c) Verification that qualifying experience was gained under the direct supervision of a professional engineer(s).

NEW SECTION

WAC 196-12-105 Ineligibility for licensing waiver. An applicant for a waiver of the structural engineering licensure requirement is not eligible if he or she has a record of disciplinary action against his or her professional engineer's license in any jurisdiction with findings of gross negligence or incompetence.

NEW SECTION

WAC 196-12-107 Board review of applications for structural licensing waiver. The board may use any one or more of the following procedures in determining if an applicant is eligible for the structural licensing waiver:

- (1) Detailed review and evaluation of application;
- (2) Interviews with named references;
- (3) Review of examples of candidate's work product;
- (4) Oral interview with candidate.

**WSR 08-11-102
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS**

[Filed May 20, 2008, 11:15 a.m., effective June 20, 2008]

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

Purpose: The purpose of this rule-making order is to implement SHB 1266, passed by the 2007 legislature. This bill amends under what circumstances a beneficiary of a member of the law enforcement officers' and fire fighters' retirement system (LEOFF), public employees' retirement system (PERS), public safety employees' retirement system (PSERS), school employees' retirement system (SERS), teachers' retirement system (TRS), or the Washington state patrol retirement system (WSPRS) may receive a \$150,000 death benefit. Previously, while beneficiaries of LEOFF, PERS, PSERS, SERS, TRS, and WSPRS could receive the benefit if a member died as a result of injuries sustained during the course of employment, only beneficiaries of a member of LEOFF Plan 2 could receive the benefit if the member died as a result of an occupational disease or infection that arose naturally and proximately out of employment. Now, beneficiaries of LEOFF Plan 1, PERS, PSERS, SERS, TRS, and WSPRS may also receive this benefit if the member dies as a result of an occupational disease or infection that arose naturally and proximately out of employment. The department of retirement systems rules need updating to accurately reflect these changes.

Citation of Existing Rules Affected by this Order:
Amending WAC 415-02-710.

Statutory Authority for Adoption: RCW 41.50.050(5).

Other Authority: RCW 41.04.017, 41.26.048, 41.32.-053, 41.35.115, 41.40.0931, 41.40.0932, 43.43.285.

Adopted under notice filed as WSR 08-08-021 on March 20, 2008.

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

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

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

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

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

Date Adopted: May 20, 2008.

Sandra J. Matheson
Director

AMENDATORY SECTION (Amending WSR 06-18-009, filed 8/24/06, effective 9/24/06)

WAC 415-02-710 What is the \$150,000 death benefit? (1) **What is the \$150,000 death benefit?** This is a benefit consistent with workers' compensation law, Title 51 RCW(~~(, for LEOFF, PERS, PSERS, SERS, TRS, and WSPRS beneficiaries where the member dies as a result of injuries³ sustained in the course of employment)~~). The benefit may be nontaxable under applicable federal law. It is payable to LEOFF, PERS, PSERS, SERS, TRS, and WSPRS beneficiaries if the member died as a result of:

(a) An injury sustained in the course of employment; or

(b) An occupational disease or infection that arose naturally and proximately out of employment.

(2) **Who is covered?** Deceased members of LEOFF, PERS, PSERS, SERS, TRS, and WSPRS. If the deceased was a member of another plan, please contact the department.

(3) **Who will determine eligibility for the benefit?** The Washington state department of labor and industries (L&I) will determine eligibility consistent with Title 51 RCW and applicable retirement statutes in chapter 41.26 RCW (LEOFF), chapter 41.40 RCW (PERS), chapter 41.37 RCW (PSERS), chapter 41.35 RCW (SERS), chapter 41.32 RCW (TRS), or chapter 43.43 RCW (WSPRS).

(4) **Who will receive the \$150,000 death benefit?**

(a) **LEOFF Plan 2, PERS, PSERS, SERS, TRS, and WSPRS Plan 2:** The person(s) the member designated as his or her beneficiary(ies) for his or her retirement plan will receive the benefit *unless* the member designated a *different* beneficiary(ies) for the \$150,000 death benefit. If the member did not designate a beneficiary for either the plan or death benefit, then the member's death benefit shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by written designation, or if there is no surviving spouse, then to the member's estate.

(b) **LEOFF Plan 1 and WSPRS Plan 1:** In these plans, the member's surviving spouse is automatically the beneficiary for the member's retirement plan. The member may designate a different person(s) for the \$150,000 death benefit. If the member did not designate a beneficiary for either the plan or death benefit, then the member's death benefit shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by written designation, or if there is no surviving spouse, then to the member's estate.

(5) **How do I apply for the benefit?** To apply:

(a) Obtain an application from the department.

(b) Submit a correctly completed application to the department. The department will submit the application to L&I.

(6) **How will I receive the benefit?** L&I will notify you and the department of approval or disapproval of eligibility.

If you are approved, you may choose to have the department send the (~~sump~~) lump sum payment directly to you or to your bank.

(7) **How will DRS treat the \$150,000 payment for tax purposes?**

(a) The department will treat the payment as nontaxable.

(b) The department does not guarantee that payments should or should not be designated as exempt from federal income tax.

(c) The department does not guarantee that it was correct in withholding or not withholding taxes from the death benefit payment.

(d) The department does not:

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

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

(e) You should consult with your own tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any payments you receive from the department.

~~((Footnote to section:~~

³ A LEOFF Plan 2 beneficiary is entitled to the \$150,000 death benefit if the member dies as a result of injuries sustained in the course of employment, or if the member dies from an occupational disease or infection that arises naturally and proximately out of employment under LEOFF Plan 2. See RCW 41.26.048.))

WSR 08-11-103
PERMANENT RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS

[Filed May 20, 2008, 12:12 p.m., effective June 20, 2008]

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

Purpose: The proposed rule amendments are necessary because of the passage of chapter 78, Laws of 2008.

Citation of Existing Rules Affected by this Order: Amending WAC 208-660-006 and 208-660-008 (5), (6), (7), (8).

Statutory Authority for Adoption: RCW 43.320.040, 19.146.223.

Adopted under notice filed as WSR 08-07-073 on March 18, 2008.

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

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

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

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

Date Adopted: May 20, 2008.

Deborah Bortner, Director
Division of Consumer Services

AMENDATORY SECTION (Amending WSR 08-05-126, filed 2/20/08, effective 3/22/08)

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 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 Financial Modernization Act of 1999, 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 08-05-126, filed 2/20/08, effective 3/22/08)

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, 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.~~

~~(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 Mae.~~

~~Your independent contractor loan originators are not exempt under this section.~~

~~(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.~~

~~(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.~~

~~(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 profes-

sional 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.

~~((10)) (6) **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 "customary" 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.~~

~~((11)) (7) **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.

~~((12))~~ **(8) 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.

~~((13))~~ **(9) 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.

~~((14))~~ **(10) 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).

~~((15))~~ **(11) 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 ~~((46))~~ **(12)** 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.

~~((16))~~ **(12) 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.

~~((17))~~ **(13) 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.

~~((18))~~ **(14) 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.

WSR 08-11-105
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed May 20, 2008, 1:53 p.m., effective July 1, 2008]

Effective Date of Rule: July 1, 2008.

Purpose: The department is amending WAC 388-455-0005 How lump sum payments affect benefits, 388-455-0010 How the department treats lump sum payments as a resource for cash assistance and TANF/SFA-related medical assistance, and 388-455-0015 How the department treats lump sum payments as income for cash assistance and TANF/SFA-related medical assistance.

These rules are being amended to correct a reference to another department rule and revise the text to make the rules more readily understood.

Citation of Existing Rules Affected by this Order: Amending WAC 388-455-0005, 388-455-0010, and 388-455-0015.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Adopted under notice filed as WSR 08-08-117 on April 2, 2008, and WSR 07-22-037 on October 30, 2007.

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

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

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

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

Date Adopted: May 19, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 99-24-008, filed 11/19/99, effective 1/1/00)

WAC 388-455-0005 How do lump sum payments affect benefits~~(s)~~? (1) ~~((For the purpose of determining benefits for cash assistance, temporary assistance for needy families (TANF)/state family assistance (SFA)-related medical assistance, and food assistance,))~~ A lump sum payment is money that ((the client)) someone receives but does not expect to receive on a continuing basis.

(2) For cash assistance and ~~((TANF/SFA-related))~~ family medical ((assistance)) programs, we count a lump sum payment:

(a) ~~((The department counts payments))~~ As a resource, under WAC 388-455-0010, if it was awarded for wrongful death, personal injury, damage, or loss of property ((as resources as described in WAC 388-455-0010)).

(b) ~~((We count all other lump sum payments as income as described in WAC 388-455-0015))~~ As income, under WAC 388-455-0015, if it was received for any other reason.

(3) ~~((For food assistance, all lump sum payments are counted as resources as described in WAC 388-470-0055))~~ For Basic Food, we count lump sum payments for a previous period as a resource under WAC 388-470-0055. We count any amount for current or future months as income to your assistance unit.

AMENDATORY SECTION (Amending WSR 99-24-008, filed 11/19/99, effective 1/1/00)

WAC 388-455-0010 ((How)) When and how does the department treat~~(s)~~ lump sum payments as a resource for cash assistance and ~~((TANF/SFA-related))~~ family medical ((assistance-)) programs? ~~((This section applies to cash assistance and TANF/SFA-related medical assistance.))~~

(1) ~~((In the month the payment is received, the department does not count any amount of a lump sum payment))~~ If you receive a lump sum payment, we count it as a resource if it was awarded for:

- (a) Wrongful death;
- (b) Personal injury;
- (c) Damage; or
- (d) Loss of property.

(2) ~~((In the month following the month of receipt, we count the entire amount as a resource except for the portion of the payment designated for:~~

~~(a) Repair or replacement of damaged or lost property; or
(b) Medical bills))~~ If some of your lump sum payment is designated for medical bills or to repair or replace damaged property, we do not count the designated amount as a resource for sixty days starting the month after you received the payment. After the sixty day period, we count all of the lump sum payment that remains as a resource.

(3) ~~((We do not count the portion described in subsection (2) of this section for sixty days following the month the payment is received. At the end of the sixty day period, we count any amount that remains as a resource))~~ For family medical programs, we do not count an increase in your resources if you are continuously eligible as described under WAC 388-470-0026 (1) and (2).

AMENDATORY SECTION (Amending WSR 99-24-008, filed 11/19/99, effective 1/1/00)

WAC 388-455-0015 ~~((How the department treats))~~ **When and how does the department treat lump sum payments as income for cash assistance and ((TANF/SFA-related)) family medical ((assistance)) programs.** ~~((For cash assistance and TANF/SFA-related medical assistance, lump sum payments not awarded for wrongful death, personal injury, damage, or loss of property are counted as income. They are budgeted against the client's benefits according to the effective dates in WAC 388-418-0020. The rules in this section describe what portion is countable and when the department counts it. For rules on how lump sum payments awarded for wrongful death, personal injury, damage, or loss of property affect benefits, see WAC 388-450-0010))~~ This section applies to cash and family medical programs.

(1) ~~((To identify what portion of the lump sum the department will count as income, we take the following steps:~~

~~(a) First, we subtract the value of your existing resources from the resource limit as described in WAC 388-470-0005;~~

~~(b) Then, we subtract the difference in (1)(a) from the total amount of the lump sum; and~~

~~(c) The amount left over is the countable amount of the lump sum))~~ If you receive a lump sum payment that is not awarded for wrongful death, personal injury, damage, or loss of property, we count this payment as income to your assistance unit. We budget this income according to effective date rules under WAC 388-418-0020.

(2) For cash assistance, ~~((the amount of the lump sum that is countable may change if any or all of the lump sum becomes unavailable for reasons beyond your control. See~~

~~WAC 388-450-0005. When the countable amount of the lump sum is:~~

~~(a) Less than your payment standard plus additional requirements, we consider it as income in the month it is received.~~

~~(b) More than one month's payment standard plus additional requirements but less than two months:~~

~~(i) We consider the portion equal to one month's payment standard plus additional requirements as income in the month it is received; and~~

~~(ii) We consider the remainder as income the following month.~~

~~(c) Equal to or greater than the total of the payment standard plus additional requirements for the month of receipt and the following month, we consider the payment as income for those months))~~ if you cannot access some or all of your lump sum payment for reasons beyond your control, we will adjust the amount we count as income to your assistance unit as described under WAC 388-450-0005.

(3) ~~((If you are ineligible or disqualified from receiving cash benefits and you receive a one-time lump sum payment))~~ To decide the amount of your lump sum we count as income, we take the following steps:

~~(a) ((We allocate the payment to meet your needs as specified in WAC 388-450-0105))~~ First, we subtract the value of your current resources from the resource limit under WAC 388-470-0005; ((and))

~~(b) ((The remainder is treated as a lump sum payment available to the eligible assistance unit members according to the rules of this section))~~ Then, we subtract the difference in (3)(a) from the total amount of the lump sum; and

~~(c) The amount left over is what we count as income, as specified in WAC 388-450-0025 and 388-450-0030.~~

(4) ~~((You can avoid having the lump sum budgeted against your benefits if you request termination of your cash assistance the month before you receive the lump sum))~~ When the countable amount of the lump sum payment is:

~~(a) Less than your payment standard plus additional requirements, we count it as income in the month it is received.~~

~~(b) More than one month's payment standard plus additional requirements but less than two months:~~

~~(i) We count the portion equal to one month's payment standard plus additional requirements as income in the month it is received; and~~

~~(ii) We count the remainder as income the following month.~~

~~(c) Equal to or greater than the total of the payment standard plus additional requirements for the month of receipt and the following month, we count the payment as income for those months.~~

(5) If you receive a one-time lump sum payment, and you are ineligible or disqualified from receiving cash benefits:

(a) We allocate the payment to meet your needs as described under WAC 388-450-0105; and

(b) Count the remainder as a lump sum payment available to eligible members of your assistance unit according to the rules of this section.

~~((5))~~ (6) For ~~((TANF/SFA-related))~~ family medical (assistance) programs:

(a) We ~~((consider))~~ count lump sum payments as income in the month ~~((of receipt))~~ you receive the payment.

(b) If you cannot access some or all of your lump sum payment for reasons beyond your control, will adjust the amount we count as income to your assistance unit as described under WAC 388-450-0005.

(c) We ~~((consider))~~ count any money that remains on the first of the next month as a resource except for recipients as described in WAC 388-470-0026 (1) and (2).

Date Adopted: May 21, 2008.

Dario de la Rosa
General Counsel

WSR 08-11-125
PERMANENT RULES
PUBLIC EMPLOYMENT
RELATIONS COMMISSION

[Filed May 21, 2008, 10:56 a.m., effective June 21, 2008]

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

Purpose: The proposed amendment to WAC 391-25-396 and the proposed repeal of WAC 391-25-397 corrects a typographical error. The agency intended the existing language in WAC 391-25-397 to amend and replace the existing language contained within WAC 391-25-396. This amendment merely corrects that typographical error, and does not change any of the rights, or language, contained within the recently adopted WAC 391-25-397.

The agency had originally proposed to repeal the existing language in WAC 391-55-071. However, stakeholders pointed out that a legislative change to RCW 41.56.473 necessitated the proposed amendment to the existing language in WAC 391-55-071, rather than a repeal of the rule. This amendment reflects an agreed upon change to the language in the rule.

Citation of Existing Rules Affected by this Order:
Repealing WAC 391-25-397; amending WAC 391-55-071.

Statutory Authority for Adoption: For WAC 391-25-396 is RCW 41.58.05 [41.58.050], 41.80.080; and for WAC 391-55-071 is RCW 41.58.050, 41.56.090.

Adopted under notice filed as WSR 08-07-074 on March 18, 2008.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 1.

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

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

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

WAC 391-25-396 Special provision—State civil service employees. ~~((WAC 391-25-391 and the practices and precedents applicable under chapter 41.56 RCW shall also be applicable to state civil service employees.))~~ (1) In addition to the cross-check of records permitted by WAC 391-25-391 and the procedures under WAC 391-25-410, where only one organization is seeking certification as the representative of unrepresented employees covered by chapters 41.06 and 41.80 RCW, the executive director may issue a direction of cross-check utilizing the procedures outlined in WAC 391-25-410 if the showing of interest submitted in support of the petition indicates that the petitioning organization has been authorized by a majority of the employees to act as their representative for the purposes of collective bargaining, provided:

The authorization cards submitted in support of a petition under this section must, at a minimum, contain the following:

(a) The employee's name typed or printed legibly, the employee's signature, and the date of the employee's signature;

(b) A statement that the employee designates the named labor organization as the employee's exclusive bargaining representative for purposes of collective bargaining;

(c) A statement that the showing of interest may be used for purposes of a cross-check election under this rule;

(d) A statement that the employee understands that the employee's signature on the card may be used to obtain certification of the named labor organization as the exclusive bargaining representative of the employee without a secret ballot election; and

(e) A statement that the employee has the right to ask the agency to revoke the employee's authorization card for purposes of cross-check of records. The agency shall notify the petitioner of the existence and number of any such revocation(s) prior to the commencement of the cross-check, but shall not disclose the identities of the employees involved.

(2) An authorization card that fails to comply with subsection (1) of this section shall be invalid for purposes of initiating a cross-check of records under this rule.

(3) A direction of cross-check and other rulings in the proceedings up to the issuance of a tally are interim orders, and may only be appealed to the commission by objections under WAC 391-25-590 after the cross-check. An exception is made for rulings on whether the employer or employees are subject to the jurisdiction of the commission, which may be appealed under WAC 391-25-660.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 391-25-397 Special provision—State employees.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-071 Special provision—State patrol personnel. In the case of mediation involving officers of the Washington state patrol appointed under RCW 43.43.020, the mediator shall not consider (~~rates of pay or wage levels and~~) any matters relating to retirement benefits or health care benefits or other employee insurance benefits.