

WSR 09-02-059
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Division of Child Support)

[Filed January 5, 2009, 11:12 a.m., effective January 27, 2009]

Effective Date of Rule: January 27, 2009.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The division of child support (DCS) adopted emergency rules under WSR 08-20-082, with an effective date of October 1, 2008. The emergency filing will expire on January 27, 2009. Waiting at least thirty-one days after the filing of the CR-103, Rule-making order, will mean that a second emergency filing would be necessary so that there is no lapse in rules. DCS must have these rules in effect under RCW 26.23.035 and 74.20.330 (which implement the federal Deficit Reduction Act of 2005) in order to remain in compliance with its state plan under Title IV-D of the federal Social Security Act or risk loss of federal funding for noncompliance. It would be duplicative and wasteful of resources to adopt a second emergency rule for a period of less than ten days when grounds exist to shorten the time for the rule-making order.

Purpose: The department is adding new sections and/or making amendments to chapter 388-14A WAC: DCS is adopting new and amended sections to implement state legislation which implements the federal Deficit Reduction Act of 2005. The state law was signed by the governor on April 20, 2007, as chapter 143, Laws of 2007, with an effective date of July 22, 2007. The changes to the public assistance assignment and to the distribution of child support collections with which these new and revised rules are concerned were effective October 1, 2008. Emergency rules with an effective date of October 1, 2008, were filed in order to keep the DCS in compliance with the state plan pending enactment of the permanent rules.

Amending WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement?, 388-14A-2036 What does assigning my rights to support mean?, 388-14A-2037 What are permanently assigned arrears?, 388-14A-2038 What are temporarily assigned arrears?, 388-14A-5000 (~~How does the division of child support distribute support payments?~~) What is the difference between distribution and disbursement of child support collections?, 388-14A-5001 What procedures does DCS follow to distribute support (~~payments~~) collections?, 388-14A-5002 How does DCS distribute support (~~money~~) collections in a nonassistance case?, 388-14A-5003 How does DCS distribute (~~money~~) support collections in an assistance case?, 388-14A-5004 How does DCS distribute (~~money~~) support collections in a former assistance case?, 388-14A-5005 How does DCS distribute (~~intercepted~~) federal (~~income~~) tax refund(~~s~~) offset collections?, 388-14A-5006 How does DCS distribute support (~~money~~) collections when the paying parent has more than one case?, 388-14A-5010 How does the division of child support (~~handle~~) distribute (~~intercepted~~) federal (~~income~~) tax refund(~~s~~) offset collections from (~~a~~) joint returns? and 388-14A-5100 (~~What kind of distribution notice does the division of child support send?~~) How does the

division of child support notify the custodial parent about support collections?; and new sections WAC 388-14A-2039 What are conditionally assigned arrears? and 388-14A-5015 What is a pass-through payment?

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-1020, 388-14A-2036, 388-14A-2037, 388-14A-2038, 388-14A-5000, 388-14A-5001, 388-14A-5002, 388-14A-5003, 388-14A-5004, 388-14A-5005, 388-14A-5006, 388-14A-5010, and 388-14A-5100.

Statutory Authority for Adoption: RCW 26.18.170, 26.23.035, 26.23.050, [26.23.]110, 74.20.040, 74.20A.030, [74.20A.]055, [74.20A.]056.

Other Authority: RCW 74.20A.310.

Adopted under notice filed as WSR 08-22-028 on October 28, 2008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 2, Amended 13, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 13, Repealed 0.

Date Adopted: December 31, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement? For purposes of this chapter, the following definitions apply:

"Absence of a court order" means that there is no court order setting a support obligation for the noncustodial parent (NCP), or specifically relieving the NCP of a support obligation, for a particular child.

"Absent parent" is a term used for a noncustodial parent.

"Accessible coverage" means health insurance coverage which provides primary care services to the children with reasonable effort by the custodian.

"Accrued debt" means past-due child support which has not been paid.

"Administrative order" means a determination, finding, decree or order for support issued under RCW 74.20A.-055, 74.20A.056, or 74.20A.059 or by another state's agency under an administrative process, establishing the existence of a support obligation (including medical support) and ordering the payment of a set or determinable amount of money for current support and/or a support debt. Administrative orders include:

(1) An order entered under chapter 34.05 RCW;

(2) An agreed settlement or consent order entered under WAC 388-14A-3600; and

(3) A support establishment notice which has become final by operation of law.

"Agency" means the Title IV-D provider of a state. In Washington, this is DCS.

"Agreed settlement" is an administrative order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. An agreed settlement does not require the approval of an administrative law judge.

"Aid" or **"public assistance"** means cash assistance under the temporary assistance for needy families (TANF) program, the aid ((~~for~~) to) families with dependent children (AFDC) program, federally-funded or state-funded foster care, and includes day care benefits and medical benefits provided to families as an alternative or supplement to TANF.

"Alternate recipient" means a child of the employee or retiree named within a support order as being entitled to coverage under an employer's group health plan.

"Annual fee" means the twenty-five dollar annual fee charged between October 1 and September 30 each year, required by the federal deficit reduction act of 2005 and RCW 74.20.040.

"Applicant/custodian" means a person who applies for nonassistance support enforcement services on behalf of a child or children residing in their household.

"Applicant/recipient," "applicant," and **"recipient"** means a person who receives public assistance on behalf of a child or children residing in their household.

"Arrears" means the debt amount owed for a period of time before the current month.

"Assistance" means cash assistance under the state program funded under Title IV-A of the federal Social Security Act.

"Assistance unit" means a cash assistance unit as defined in WAC 388-408-0005. An assistance unit is the group of people who live together and whose income or resources the department counts to decide eligibility for benefits and the amount of benefits.

"Birth costs" means medical expenses incurred by the custodial parent or the state for the birth of a child.

"Conditionally assigned arrears" means those temporarily assigned arrears remaining on a case after the period of public assistance ends.

"Conference board" means a method used by the division of child support for resolving complaints regarding DCS cases and for granting exceptional or extraordinary relief from debt.

"Consent order" means a support order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. A consent order requires the approval of an administrative law judge.

"Court order" means a judgment, decree or order of a Washington state superior court, another state's court of comparable jurisdiction, or a tribal court.

"Current support" or **"current and future support"** means the amount of child support which is owed for each month.

"Custodial parent or CP" means the person, whether a parent or not, with whom a dependent child resides the majority of the time period for which the division of child support seeks to establish or enforce a support obligation.

"Date the state assumes responsibility for the support of a dependent child on whose behalf support is sought" means the date that the TANF or AFDC program grant is effective. For purposes of this chapter, the state remains responsible for the support of a dependent child until public assistance terminates, or support enforcement services end, whichever occurs later.

"Delinquency" means failure to pay current child support when due.

"Department" means the Washington state department of social and health services (DSHS).

"Dependent child" means a person:

(1) Seventeen years of age or younger who is not self-supporting, married, or a member of the United States armed forces;

(2) Eighteen years of age or older for whom a court order requires support payments past age eighteen;

(3) Eighteen years of age or older, but under nineteen years of age, for whom an administrative support order exists if the child is participating full-time in a secondary school program or the same level of vocational or technical training.

"Disbursement" means the amount of child support distributed to a case that is paid to the family, state, other child support enforcement agency in another state or foreign country, Indian tribe, or person or entity making the payment.

"Disposable earnings" means the amount of earnings remaining after the deduction of amounts required by law to be withheld.

"Distribution" means how a collection is allocated or split within a case or among multiple cases.

"Earnings" means compensation paid or payable for personal service. Earnings include:

(1) Wages or salary;

(2) Commissions and bonuses;

(3) Periodic payments under pension plans, retirement programs, and insurance policies of any type;

(4) Disability payments under Title 51 RCW;

(5) Unemployment compensation under RCW 50.40-020, 50.40.050 and Title 74 RCW;

(6) Gains from capital, labor, or a combination of the two; and

(7) The fair value of nonmonetary compensation received in exchange for personal services.

"Employee" means a person to whom an employer is paying, owes, or anticipates paying earnings in exchange for services performed for the employer.

"Employer" means any person or organization having an employment relationship with any person. This includes:

(1) Partnerships and associations;

(2) Trusts and estates;

(3) Joint stock companies and insurance companies;

(4) Domestic and foreign corporations;

(5) The receiver or trustee in bankruptcy; and

(6) The trustee or legal representative of a deceased person.

"Employment" means personal services of whatever nature, including service in interstate commerce, performed for earnings or under any contract for personal services. Such a contract may be written or oral, express or implied.

"Family" means the person or persons on whose behalf support is sought, which may include a custodial parent and one or more children, or a child or children in foster care placement. The family is sometimes called the assistance unit.

"Family arrears" means the amount of past-due support owed to the family, which has not been conditionally, temporarily or permanently assigned to a state. Also called "nonassistance arrears."

"Family member" means the caretaker relative, the child(ren), and any other person whose needs are considered in determining eligibility for assistance.

"Foreign order" means a court or administrative order entered by a tribunal other than one in the state of Washington.

"Foster care case" means a case referred to the Title IV-D agency by the Title IV-E agency, which is the state division of child and family services (DCFS).

"Fraud," for the purposes of vacating an agreed settlement or consent order, means:

- (1) The representation of the existence or the nonexistence of a fact;
- (2) The representation's materiality;
- (3) The representation's falsity;
- (4) The speaker's knowledge that the representation is false;
- (5) The speaker's intent that the representation should be acted on by the person to whom it is made;
- (6) Ignorance of the falsity on the part of the person to whom it is made;
- (7) The latter's:
 - (a) Reliance on the truth of the representation;
 - (b) Right to rely on it; and
 - (c) Subsequent damage.

"Full support enforcement services" means the entire range of services available in a Title IV-D case.

"Good cause" for the purposes of late hearing requests and petitions to vacate orders on default means a substantial reason or legal justification for delay, including but not limited to the grounds listed in civil rule 60. The time periods used in civil rule 60 apply to good cause determinations in this chapter.

"Head of household" means the parent or parents with whom the dependent child or children were residing at the time of placement in foster care.

"Health insurance" means insurance coverage for all medical services related to an individual's general health and well being. These services include, but are not limited to: Medical/surgical (inpatient, outpatient, physician) care, medical equipment (crutches, wheel chairs, prosthesis, etc.), pharmacy products, optometric care, dental care, orthodontic care, preventive care, mental health care, and physical therapy.

"Hearing" means an adjudicative proceeding authorized by this chapter, or chapters 26.23, 74.20 and 74.20A

RCW, conducted under chapter 388-02 WAC and chapter 34.05 RCW.

"I/me" means the person asking the question which appears as the title of a rule.

"Income" includes:

- (1) All gains in real or personal property;
- (2) Net proceeds from the sale or exchange of real or personal property;
- (3) Earnings;
- (4) Interest and dividends;
- (5) Proceeds of insurance policies;
- (6) Other periodic entitlement to money from any source; and
- (7) Any other property subject to withholding for support under the laws of this state.

"Income withholding action" includes all withholding actions which DCS is authorized to take, and includes but is not limited to the following actions:

- (1) Asserting liens under RCW 74.20A.060;
- (2) Serving and enforcing liens under chapter 74.20A RCW;
- (3) Issuing orders to withhold and deliver under chapter 74.20A RCW;
- (4) Issuing notices of payroll deduction under chapter 26.23 RCW; and
- (5) Obtaining wage assignment orders under RCW 26.18.080.

"Locate" can mean efforts to obtain service of a support establishment notice in the manner prescribed by WAC 388-14A-3105.

"Medical assistance" means medical benefits under Title XIX of the federal Social Security Act provided to families as an alternative or supplement to TANF.

"Medical expenses" for the purpose of establishing support obligations under RCW 74.20A.055 and 74.20A.056, or for the purpose of enforcement action under chapters 26.23, 74.20 and 74.20A RCW, including the notice of support debt and the notice of support owed, means:

- Medical costs incurred on behalf of a child, which include:
 - Medical services related to an individual's general health and well-being, including but not limited to, medical/surgical care, preventive care, mental health care and physical therapy; and
 - Prescribed medical equipment and prescribed pharmacy products;
 - Health care coverage, such as coverage under a health insurance plan, including the cost of premiums for coverage of a child;
 - Dental and optometrical costs incurred on behalf of a child; and
 - Copayments and/or deductibles incurred on behalf of a child.

Medical expenses are sometimes also called health care costs or medical costs.

"Medical support" means either or both:

- (1) Medical expenses; and
- (2) Health insurance coverage for a dependent child.

"National Medical Support Notice" or "NMSN" is a federally-mandated form that DCS uses to enforce a health

insurance support obligation; the NMSN is a notice of enrollment as described in RCW 26.18.170.

"Noncustodial parent or NCP" means the natural parent, adoptive parent, responsible stepparent or person who signed and filed an affidavit acknowledging paternity, from whom the state seeks support for a dependent child. A parent is considered to be an NCP when for the majority of the time during the period for which support is sought, the dependent child resided somewhere other than with that parent.

"Obligated parent" means a parent who is required under a child support order to provide health insurance coverage or to reimburse the other parent for his or her share of medical expenses for a dependent child. The obligated parent could be either the NCP or the CP.

"Other ordinary expense" means an expense incurred by a parent which:

- (1) Directly benefits the dependent child; and
- (2) Relates to the parent's residential time or visitation with the child.

"Participant" means an employee or retiree who is eligible for coverage under an employer group health plan.

"Pass-through" means the portion of a support collection distributed to assigned support that the state pays to a family currently receiving TANF.

"Past support" means support arrearages.

"Paternity testing" means blood testing or genetic tests of blood, tissue or bodily fluids. This is also called genetic testing.

"Payment services only" or "PSO" means a case on which the division of child support's activities are limited to recording and distributing child support payments, and maintaining case records. A PSO case is not a IV-D case.

"Permanently assigned ((arrearages)) arrearages" means those arrearages which the state may collect and retain up to the amount of unreimbursed assistance.

"Physical custodian" means custodial parent (CP).

"Plan administrator" means the person or entity which performs those duties specified under 29 USC 1002 (16)(A) for a health plan. If no plan administrator is specifically so designated by the plan's organizational documents, the plan's sponsor is the administrator of the plan. Sometimes an employer acts as its own plan administrator.

"Putative father" includes all men who may possibly be the father of the child or children on whose behalf the application for assistance or support enforcement services is made.

"Reasonable efforts to locate" means any of the following actions performed by the division of child support:

- (1) Mailing a support establishment notice to the noncustodial parent in the manner described in WAC 388-14A-3105;
- (2) Referral to a sheriff or other server of process, or to a locate service or department employee for locate activities;
- (3) Tracing activity such as:
 - (a) Checking local telephone directories and attempts by telephone or mail to contact the custodial parent, relatives of the noncustodial parent, past or present employers, or the post office;
 - (b) Contacting state agencies, unions, financial institutions or fraternal organizations;

(c) Searching periodically for identification information recorded by other state agencies, federal agencies, credit bureaus, or other record-keeping agencies or entities; or

(d) Maintaining a case in the division of child support's automated locate program, which is a continuous search process.

(4) Referral to the state or federal parent locator service;

(5) Referral to the attorney general, prosecuting attorney, the IV-D agency of another state, or the Department of the Treasury for specific legal or collection action;

(6) Attempting to confirm the existence of and to obtain a copy of a paternity acknowledgment; or

(7) Conducting other actions reasonably calculated to produce information regarding the NCP's whereabouts.

"Required support obligation for the current month" means the amount set by a superior court order, tribal court order, or administrative order for support which is due in the month in question.

"Resident" means a person physically present in the state of Washington who intends to make their home in this state. A temporary absence from the state does not destroy residency once it is established.

"Residential care" means foster care, either state or federally funded.

"Residential parent" means the custodial parent (CP), or the person with whom the child resides that majority of the time.

"Responsible parent" is a term sometimes used for a noncustodial parent.

"Responsible stepparent" means a stepparent who has established an in loco parentis relationship with the dependent child.

"Retained support" means a debt owed to the division of child support by anyone other than a noncustodial parent.

"Satisfaction of judgment" means payment in full of a court-ordered support obligation, or a determination that such an obligation is no longer enforceable.

"Secretary" means the secretary of the department of social and health services or the secretary's designee.

"State" means a state or political subdivision, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a federally recognized Indian tribe or a foreign country.

"Superior court order" means a judgment, decree or order of a Washington state superior court, or of another state's court of comparable jurisdiction.

"Support debt" means support which was due under a support order but has not been paid. This includes:

- (1) Delinquent support;
- (2) A debt for the payment of expenses for the reasonable or necessary care, support and maintenance including medical expenses, birth costs, child care costs, and special child rearing expenses of a dependent child or other person;
- (3) A debt under RCW 74.20A.100 or 74.20A.270; or
- (4) Accrued interest, fees, or penalties charged on a support debt, and attorney's fees and other litigation costs awarded in an action under Title IV-D to establish or enforce a support obligation.

"Support enforcement services" means all actions the Title IV-D agency is required to perform under Title IV-D of the Social Security Act and state law.

"Support establishment notice" means a notice and finding of financial responsibility under WAC 388-14A-3115, a notice and finding of parental responsibility under WAC 388-14A-3120, or a notice and finding of medical responsibility under WAC 388-14A-3125.

"Support money" means money paid to satisfy a support obligation, whether it is called child support, spousal support, alimony, maintenance, enforcement of medical expenses, health insurance, or birth costs.

"Support obligation" means the obligation to provide for the necessary care, support and maintenance of a dependent child or other person as required by law, including health insurance coverage, medical expenses, birth costs, and child care or special child rearing expenses.

~~("TANF" means the temporary assistance for needy families (TANF) program.)~~

"Temporarily assigned (~~arrears~~) arrears" means those arrears which accrue prior to the family receiving assistance, for assistance applications dated on or after October 1, 1997, but before October 1, 2008. After the family terminates assistance, temporarily assigned arrears become conditionally assigned arrears.

"Temporary assistance for needy families," or "TANF" means cash assistance under the temporary assistance for needy families (TANF) program under Title IV-A of the Social Security Act.

"Title IV-A" means Title IV-A of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 USC.

"Title IV-A agency" means the part of the department of social and health services which carries out the state's responsibilities under the temporary assistance for needy families (TANF) program (and the aid for dependent children (AFDC) program when it existed).

"Title IV-D" means Title IV-D of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 USC.

"Title IV-D agency" or **"IV-D agency"** means the division of child support, which is the agency responsible for carrying out the Title IV-D plan in the state of Washington. Also refers to the Washington state support registry (WSSR).

"Title IV-D case" is a case in which the division of child support provides services which qualifies for funding under the Title IV-D plan.

"Title IV-D plan" means the plan established under the conditions of Title IV-D and approved by the secretary, Department of Health and Human Services.

"Title IV-E" means Title IV-E of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 U.S.C.

"Title IV-E case" means a foster care case.

"Tribal TANF" means a temporary assistance for needy families (TANF) program run by a tribe.

"Tribunal" means a state court, tribal court, administrative agency, or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage.

"Uninsured medical expenses":

(1) For the purpose of enforcing support obligations under RCW 26.23.110, means

(a) Medical expenses not paid by insurance for medical, dental, prescription and optometrical costs incurred on behalf of a child; and

(b) Copayments, or deductibles incurred on behalf of a child; and

(2) Includes health insurance premiums that represent the only health insurance covering a dependent child when either:

(a) Health insurance for the child is not required by a support order or cannot be enforced by the division of child support (DCS); or

(b) The premium for covering the child exceeds the maximum limit provided in the support order.

"Unreimbursed assistance" means the cumulative amount of assistance which was paid to the family and which has not been reimbursed by assigned support collections.

"Unreimbursed medical expenses" means any amounts paid by one parent for uninsured medical expenses, which that parent claims the obligated parent owes under a child support order, which percentage share is stated in the child support order itself, not just in the worksheets.

"We" means the division of child support, part of the department of social and health services of the state of Washington.

"WSSR" is the Washington state support registry.

"You" means the reader of the rules, a member of the public, or a recipient of support enforcement services.

AMENDATORY SECTION (Amending WSR 06-03-120, filed 1/17/06, effective 2/17/06)

WAC 388-14A-2036 What does assigning my rights to support mean? (1) As a condition of eligibility for assistance, a family member must assign to the state the right to collect and keep, subject to the limitation in WAC 388-14A-2035(3)(c):

(a) Any support owing to the family member or to any other person for whom the family member has applied for or is receiving assistance if the family applied for cash public assistance before October 1, 2008.

(b) Support owing to the family member, or to any other person for whom the family member has applied for or is receiving cash public assistance, for any month during which the family receives assistance.

(2) While your family receives assistance, ~~((all support collected is retained by the state to reimburse the total amount of assistance which has been paid to your family))~~ support is distributed and disbursed in accordance with WAC 388-14A-5000 through 388-14A-5015.

(3) After your family terminates from assistance, certain accrued arrears remain assigned to the state in accordance with the following rules:

(a) For assistance applications dated prior to October 1, 1997, you permanently assigned to the state all rights to support which accrued before the application date ~~((and which will accrue prior to))~~ until the date your family ~~((terminates))~~ terminated from assistance.

(b) For assistance applications dated on or after October 1, 1997, and before October 1, 2000:

(i) You permanently assigned to the state all rights to support which accrued while your family receives assistance; and

(ii) You temporarily assigned to the state all rights to support which accrued before the application date, until October 1, 2000, or when your family ~~((terminates)) terminated~~ from assistance, whichever date is later. ~~((After this date, if any remaining arrears are collected by federal income tax refund offset, the state retains such amounts, up to the amount of unreimbursed assistance.))~~

(c) For assistance applications dated on or after October 1, 2000, and before October 1, 2008:

(i) You permanently assigned to the state all rights to support which accrued while the family ~~((receives)) received~~ assistance; and

(ii) You temporarily assigned to the state all rights to support which accrued before the application date, until the date your family ~~((terminates)) terminated~~ from assistance. ~~((After this date, if any remaining arrears are collected by federal income tax refund offset, the state retains such amounts, up to the amount of unreimbursed assistance.))~~

(d) For assistance applications dated on or after October 1, 2008, you permanently assign to the state all rights to support which accrue while the family receives assistance.

(4) When you assign your medical support rights to the state, you authorize the state on behalf of yourself and the children in your care to enforce the noncustodial parent's full duty to provide medical support.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2037 What are permanently assigned arrears? Permanently assigned arrears accrue only under the following conditions:

(1) For those periods prior to the family receiving assistance, for assistance applications dated ~~((on or)) before ((September 30, 1997)) October 1, 1997;~~ and

(2) For those periods while a family receives assistance, for assistance applications dated at any time.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2038 What are temporarily assigned arrears? (1) Temporarily assigned arrears are(=

(1) Not permanently assigned to the state;

(2) Collected and retained by the state up to the amount of unreimbursed assistance, if these arrears are collected by federal income tax refund offset at any time; and

(3) Collected and kept by the state, up to the cumulative amount of unreimbursed assistance:

(a) Until October 1, 2000 or until the date the family terminates from assistance, whichever date is later; or

(b) Only while the family receives assistance, for assistance periods beginning October 1, 2000 or later)) arrears owed to the family at the time TANF started, for TANF periods beginning before October 1, 2008. These arrears remain temporarily assigned during the assistance period.

(2) Temporarily assigned arrears convert to conditionally assigned arrears when the TANF period ends. See WAC 388-14A-2039 for a description of conditionally assigned arrears.

(3) If any support collections are distributed to temporarily assigned arrears, those collections are retained by the state, up to the amount of unreimbursed assistance.

NEW SECTION

WAC 388-14A-2039 What are conditionally assigned arrears? (1) Conditionally assigned arrears are any temporarily assigned arrears that remain on a case after the family stops receiving TANF.

(2) These arrears remain conditionally assigned during TANF periods beginning on or after October 1, 2008.

(3) If federal tax refund offset collections are distributed to conditionally assigned arrears, those collections are retained by the state, up to the amount of unreimbursed assistance.

(4) If support collections other than federal tax refund offset collections are distributed to conditionally assigned arrears, those collections are disbursed to the family.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-5000 ((How does the division of child support distribute support payments)) What is the difference between distribution and disbursement of child support collections? (1) ~~((Under state and federal law, the division of child support (DCS) distributes support money it collects or receives to the:~~

(a) Department when the department provides or has provided public assistance payments for the support of the family;

(b) Payee under the order, or to the custodial parent (CP) of the child according to WAC 388-14A-5050;

(c) Child support enforcement agency in another state or foreign country which submitted a request for support enforcement services;

(d) Indian tribe which has a TANF program, child support program and/or a cooperative agreement regarding the delivery of child support services;

(e) Person or entity making the payment when DCS is unable to identify the person to whom the support money is payable after making reasonable efforts to obtain identification information)) Distribution of child support collections refers to how the division of child support (DCS) applies or allocates collections within a child support case or between child support cases.

(2) ~~((DCS distributes support based on the date of collection. DCS considers the date of collection to be the date that DCS receives the payment, no matter when the payment was withheld from the noncustodial parent (NCP))~~ Disbursement of child support collections refers to DCS sending out or paying support collections to the appropriate recipient.

(3) ~~((If DCS is unable to distribute support money because the location of the family or person is unknown, it must exercise reasonable efforts to locate the family or person. When the family or person cannot be located, DCS han-~~

dles the money in accordance with chapter 63.29 RCW, the Uniform Unclaimed Property Act)) WAC 388-14A-5001 through 388-14A-5015 explain how DCS distributes and disburses child support collections.

~~((4) WAC 388-14A-5000 and sections WAC 388-14A-5001 through 388-14A-5008 contain the rules for distribution of support money by DCS.~~

~~(5) DCS changes the distribution rules based on changes in federal statutes and regulations.~~

~~(6) DCS uses the fee retained under WAC 388-14A-2200 to offset the fee amount charged by the federal government for IV-D cases that meet the fee criteria in WAC 388-14A-2200(1-).))~~

AMENDATORY SECTION (Amending WSR 05-06-014, filed 2/22/05, effective 3/25/05)

WAC 388-14A-5001 What procedures does DCS follow to distribute support ((payments)) collections? (1) When distributing support ((money)) collections, the division of child support (DCS) ~~((does the following:~~

~~(1) Records payments)) records collections in exact amounts of dollars and cents((:)).~~

~~(2) DCS distributes support ((money)) collections within two days of the date DCS receives the ((money)) collection, unless DCS is unable to distribute the ((payment)) collection for one or more of the following reasons:~~

~~(a) The location of the payee is unknown;~~

~~(b) DCS does not have sufficient information to identify the accounts against which or to which it should ((apply)) distribute the money;~~

~~(c) An action is pending before a court or agency which has jurisdiction over the issue to determine whether child support ((money)) is owed or how DCS should distribute the ((money)) collection.~~

~~(d) DCS receives prepaid child support ((money)) and is holding it for distribution in future months under subsection (2)(e) of this section;~~

~~(e) DCS mails a notice of intent to distribute support money to the custodial parent (CP) under WAC 388-14A-5050;~~

~~(f) DCS may hold funds and not issue a check to the family for amounts under one dollar. DCS must give credit for the ((payment)) collection, but may delay disbursement of that amount until a future ((payment)) collection is received which increases the amount of the ((payment)) disbursement to the family to at least one dollar. If no future ((payments)) collections are received which increase the ((payment)) disbursement to the family ((of)) to at least one dollar, DCS transfers the amount to the department of revenue under RCW 63.29.130. This subsection does not apply to disbursements which can be made by electronic funds transfer (EFT), or to refunds of ((intercepted)) federal ((income)) tax refund((s)) offset collections; or~~

~~(g) Other circumstances exist which make a proper and timely distribution of the ((money)) collection impossible through no fault or lack of diligence of DCS.~~

~~(3) ((Distribute)) DCS distributes support ((money)) collections based on the date DCS receives the ((money)) collection, except as provided under WAC 388-14A-5005. DCS~~

distributes support collections based on the date of collection. DCS considers the date of collection to be the date that DCS receives the ((payment)) support collection, no matter when the ((payment)) money was withheld from the noncustodial parent (NCP).

(4) Under state and federal law, the division of child support (DCS) disburses support collections to the:

(a) Department when the department provides or has provided public assistance payments for the support of the family;

(b) Payee under the order, or to the custodial parent (CP) of the child according to WAC 388-14A-5050;

(c) Child support enforcement agency in another state or foreign country which submitted a request for support enforcement services;

(d) Indian tribe which has a TANF program, child support program and/or a cooperative agreement regarding the delivery of child support services;

(e) Persons or entity making the payment when DCS is unable to identify the person to whom the support is payable after making reasonable efforts to obtain identification information.

(5) If DCS is unable to disburse a support collection because the location of the family or person is unknown, it must exercise reasonable efforts to locate the family or person. When the family or person cannot be located, DCS handles the collection in accordance with chapter 63.29 RCW, the uniform unclaimed property act.

(6) WAC 388-14A-5000 through 388-14A-5015 contain the rules for the distribution of support collections by DCS.

(7) DCS changes the distribution rules based on changes in federal statutes and regulations.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-5002 How does DCS distribute support ((money)) collections in a nonassistance case? (1) A nonassistance case is one where the family has never received a cash public assistance grant.

~~(2) The division of child support (DCS) applies support ((money)) collections within each Title IV-D nonassistance case:~~

~~(a) First, to satisfy the current support obligation for the month DCS received the ((money)) collection;~~

~~(b) Second, to the noncustodial parent's support debts owed to the family;~~

~~(c) Third, to prepaid support as provided for under WAC 388-14A-5008.~~

~~(3) ((After DCS disburses at least five hundred dollars to the family on a case in a federal fiscal year, DCS may retain a twenty-five dollar annual fee for that case from a custodial parent who has never received AFDC, TANF or Tribal TANF. DCS gives the noncustodial parent credit against the child support debt for the amount retained for the fee)) DCS uses the fee retained under WAC 388-14A-2200 to offset the fee amount charged by the federal government for IV-D cases that meet the fee criteria in WAC 388-14A-2200(1).~~

AMENDATORY SECTION (Amending WSR 01-24-078, filed 12/3/01, effective 1/3/02)

WAC 388-14A-5003 How does DCS distribute ~~((money))~~ support collections in an assistance case? (1) An assistance case is one where the family is currently receiving a ~~((cash public assistance))~~ TANF grant.

(2) The division of child support (DCS) ~~((applies))~~ distributes support ~~((money))~~ collections within each Title IV-D assistance case:

(a) First, to satisfy the current support obligation for the month DCS received the ~~((money (this money is kept by the state under WAC 388-14A-2035)))~~ collection;

(b) Second, to satisfy support debts which are permanently assigned to the department to reimburse the cumulative amount of assistance which has been paid to the family ~~((this money is kept by the state under WAC 388-14A-2035)))~~;

(c) Third~~((:))~~;

(i) To satisfy support debts which are temporarily assigned to the department to reimburse the cumulative amount of assistance paid to the family ~~((this money is kept by the state under WAC 388-14A-2035)))~~; or

(ii) To satisfy support debts which are conditionally assigned to the department. Support collections distributed to conditionally assigned arrears are disbursed according to WAC 388-14A-2039.

(d) Fourth, to satisfy support debts ~~((which exceed the cumulative amount of unreimbursed assistance which has been paid to the family (this money goes to the family)))~~ owed to the family;

(e) Fifth, to prepaid support as provided for under WAC 388-14A-5008.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-5004 How does DCS distribute ~~((money))~~ support collections in a former assistance case?

(1) A former assistance case is one where the family is not currently receiving a ~~((cash public assistance))~~ TANF grant, but has at some time in the past.

(2) Subject to the exceptions provided under WAC 388-14A-5005, the division of child support (DCS) ~~((applies))~~ distributes support ~~((money))~~ collections within each Title IV-D former-assistance case:

(a) First, to satisfy the current support obligation for the month DCS received the ~~((money))~~ collection;

(b) Second, to satisfy support debts ~~((which accrued after the family's most recent period of assistance))~~ owed to the family;

(c) Third, to satisfy support debts which are ~~((temporarily))~~ conditionally assigned to the department ~~((to reimburse the cumulative amount of assistance which has been paid to the family))~~. These collections are disbursed according to WAC 388-14A-2039;

(d) Fourth, to satisfy support debts which are permanently assigned to the department to reimburse the cumulative amount of assistance which has been paid to the family; and

~~((e))~~ Fifth, to ~~((satisfy support debts which exceed the cumulative amount of unreimbursed assistance which has been paid to the family; and~~

~~((f))~~ Sixth, ~~((to))~~ prepaid support as provided for under WAC 388-14A-5008.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-5005 How does DCS distribute ~~((intercepted))~~ federal ~~((income))~~ tax refund~~((s))~~ offset collections? ~~((+))~~ The division of child support (DCS) ~~((applies intercepted))~~ distributes federal ~~((income))~~ tax refund~~((s))~~ offset collections in accordance with 42 U.S.C. Sec. 657, as follows:

~~((a))~~ (1) First, ~~((to support debts which are permanently assigned to the department to reimburse public assistance payments; and~~

~~((b))~~ Second, ~~((to support debts which are temporarily assigned to the department to reimburse public assistance payments; and~~

~~((c))~~ Third, ~~((to support debts that are not assigned to the department; and~~

~~((d))~~ To support debts only, not to current and future support obligations. DCS must refund any excess to the noncustodial parent (NCP) ~~((to satisfy the current support obligation for the month in which DCS received the collection.~~

(2) Second, DCS distributes any amounts over current support depending on the type of case to which the collection is distributed:

(a) In a never assistance case, all remaining amounts are distributed to family arrears, meaning those arrears which have never been assigned.

(b) In a former assistance case, all remaining amounts are distributed first to family arrears, then to permanently assigned arrears, then to conditionally assigned arrears.

(c) In a current assistance case, all remaining amounts are distributed first to permanently assigned arrears, then to temporarily assigned arrears (if they exist), then to conditionally assigned arrears, and then to family arrears.

~~((2))~~ (3) Federal tax refund offset collections distributed to assigned support are retained by the state to reimburse the cumulative amount of assistance which has been paid to the family.

(4) DCS may distribute federal tax refund offset collections only to certified support debts and to current support obligations on cases with certified debts. DCS must refund any excess to the noncustodial parent (NCP).

(5) DCS may retain the twenty-five dollar annual fee required under the federal deficit reduction act of 2005 and RCW 74.20.040 from federal ~~((income))~~ tax refund~~((s applied))~~ offset collections distributed to nonassistance ~~((support debts))~~ cases.

~~((3))~~ (6) When the Secretary of the Treasury, through the federal Office of Child Support Enforcement (OCSE), notifies DCS that a ~~((payment on behalf of an NCP is from an intercepted))~~ collection from a federal tax refund offset is from a tax refund based on a joint return, DCS follows the procedures set forth in WAC 388-14A-5010.

AMENDATORY SECTION (Amending WSR 01-24-078, filed 12/3/01, effective 1/3/02)

WAC 388-14A-5006 How does DCS distribute support ((money)) collections when the paying parent has more than one case? ((Except as provided in WAC 388-14A-5005,)) When the NCP has more than one Title IV-D case, the division of child support (DCS) distributes support ((money)) collections:

(1) First, to the current support obligation on each Title IV-D case, in proportion to the amount of the current support order on each case; and

(2) Second, to the total of the support debts whether owed to the family or to the department for the reimbursement of public assistance on each Title IV-D case, in proportion to the amount of support debt owed by the NCP on each case; and

(3) Third, within each Title IV-D case according to WAC 388-14A-5002 ((or)), 388-14A-5003, or 388-14A-5004.

AMENDATORY SECTION (Amending WSR 05-06-014, filed 2/22/05, effective 3/25/05)

WAC 388-14A-5010 How does the division of child support ((handle intercepted)) distribute federal ((income)) tax refund((s)) offset collections from ((a)) joint returns? (1) The division of child support (DCS) collects child support ((arrear)) through the interception of federal ((income)) tax refunds. This section deals with the issues that arise when the Secretary of the Treasury intercepts a tax refund based on a joint tax return filed by a noncustodial parent (NCP) and the NCP's spouse who does not owe child support.

(2) When the Secretary of the Treasury, through the federal Office of Child Support Enforcement (OCSE), notifies DCS that a ((payment)) collection on behalf of an NCP is from an intercepted tax refund based on a joint return, DCS may ((delay distribution of)) distribute fifty percent of that ((payment)) collection and hold the remainder for up to six months in case the NCP's spouse is entitled to a share of the federal ((income)) tax refund.

(3) DCS distributes fifty percent of the ((payment)) collection according to WAC 388-14A-5005.

(4) DCS holds the other fifty percent of the ((payment)) collection in suspense until the earlier of the following:

(a) DCS is notified by OCSE or the Secretary of the Treasury whether DCS must pay back the unobligated spouse's portion of the refund; or

(b) For a period not to exceed six months from notification of the offset.

(5) ((When)) After DCS holds part of a ((payment)) collection under subsection (4) of this section, DCS ((applies)) distributes the remainder of the ((payment)) collection to the NCP's ((back)) support obligations if DCS is not required to return the unobligated spouse's portion of the refund. The CP may:

(a) Request that DCS ((apply)) distribute the payment to the NCP's ((back)) support obligation sooner upon a showing of hardship to the CP; and

(b) Request a conference board if the CP disagrees with DCS' denial of a hardship claim.

NEW SECTION

WAC 388-14A-5015 What is a pass-through payment? (1) A pass-through payment is the portion of a support collection applied to assigned support that the state elects to pay to a family currently receiving TANF. The pass-through payment is paid in the following amounts:

(a) Up to one hundred dollars per month to a family with one child in the assistance unit.

(b) Up to two hundred dollars per month to a family with two or more children in the assistance unit.

(2) The pass-through is paid from collections which are distributed to either current support or assigned arrears.

(3) The pass-through amount can never exceed the amount collected in the month.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-5100 ((What kind of distribution notice does the division of child support send)) How does the division of child support notify the custodial parent about support collections? (1) The division of child support (DCS) mails a distribution ((notice)) and disbursement statement once each month((, or more often,)) to the last known address of a person for whom it received a support collection during the month, except as provided under subsection (6) of this section.

(2) DCS includes the following information in the ((notice)) distribution and disbursement statement:

(a) The amount of support ((money)) collections DCS received and the date of collection;

(b) A description of how DCS ((allocated the)) distributed each support ((money)) collection between current support and the support debt and any fees required by state or federal law; ((and))

(c) The amount DCS claims as reimbursement for public assistance paid, if applicable;

(d) The amount kept by the state to repay public assistance paid to the family;

(e) The amount disbursed to the family as a pass-through payment under WAC 388-14A-5015;

(f) The amount disbursed to the family as a payment on support owed to the family;

(g) The amount kept by the state to pay the twenty-five dollar annual fee, if applicable; and

(h) The amount kept by the state to repay child support paid to the family in error.

(3) The person to whom a distribution ((notice)) and disbursement statement is sent may file a request for a hearing under subsection (4) of this section within ninety days of the date of the ((notice)) statement to contest how DCS distributed the support ((money)) collections, and must make specific objections to the ((distribution notice)) statement. The effective date of a hearing request is the date DCS receives the request.

(4) A hearing under this section is for the limited purpose of determining if DCS correctly distributed the support money described in the contested ~~((notice))~~ statement.

(a) There is no hearing right regarding fees that have been charged on a case.

(b) If a custodial parent (CP) wants to request a hardship waiver of the fee, the CP may request a conference board under WAC 388-14A-6400.

(5) A person who requests a late hearing must show good cause for being late.

(6) This section does not require DCS to send a ~~((notice))~~ distribution and disbursement statement to a recipient of payment services only.

WSR 09-03-003

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Management Services Administration)

[Filed January 8, 2009, 8:59 a.m., effective February 8, 2009]

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

Purpose: DSHS is proposing these rules to comply with RCW 43.43.832 and make permanent the emergency rules originally filed on July 20, 2007. These rules describe the requirements related to background checks for DSHS employees and applicants.

RCW 43.43.832 requires DSHS to adopt employee background check rules and standards. Chapter 387, Laws of 2007 (ESSB 5774) repealed the department of personnel (DOP) statute which required DOP to adopt DSHS employee background check rules. DOP repealed DSHS employee rules effective July 22, 2007.

Citation of Existing Rules Affected by this Order: Amending WAC 388-06-0010.

Statutory Authority for Adoption: RCW 43.43.832, 43.20A.710.

Other Authority: Chapter 387, Laws of 2007 (ESSB 5774).

Adopted under notice filed as WSR 08-22-039 on October 30, 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 9, 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 9, Amended 1, Repealed 0.

Date Adopted: January 7, 2009.

Stephanie E. Schiller

Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-18-025, filed 8/27/01, effective 10/1/01)

WAC 388-06-0010 What is the purpose of this chapter? (1) The purpose of this chapter is to establish rules for background checks conducted by children's administration (CA), and the division of developmental disabilities (DDD) at the department of social and health services (DSHS). The department does background checks on individuals who are licensed, certified, contracted, or authorized to care for or have unsupervised access to children and to individuals with a developmental disability. Background checks are conducted to find and evaluate any history of criminal convictions and child abuse or neglect.

(2) This chapter also defines when the one hundred twenty-day provisional hire is allowed by DSHS. WAC 388-06-0500 through 388-06-0540 apply to all DSHS administrations

(3) WAC 388-06-0600 through 388-06-0640 of this chapter includes the background check requirements for DSHS employees and applicants seeking, working or serving in a covered position.

NEW SECTION

WAC 388-06-0600 Must the DSHS secretary or designee conduct background checks on all employees in covered positions and applicants under consideration for a covered position? (1) The secretary of the department of social and health services (DSHS) or designee must conduct a background check, which may include fingerprinting as authorized by statute, on all employees in covered positions and applicants under final consideration for a covered position.

(2) The requirement to conduct a background check must include the following:

(a) Any employee seeking a covered position because of a layoff, reallocation, transfer, promotion or demotion or otherwise requesting a move to a covered position.

(b) Any applicant prior to appointment to a covered position, except when the appointment is made on a conditional basis in accordance with agency procedures authorized by WAC 388-06-0635.

(3) Applicant means any person who has applied for work or serves in a covered position, including current employees requesting transfer, promotion, demotion, or otherwise requesting a move to a covered position.

NEW SECTION

WAC 388-06-0605 What is a covered position? A covered position is one in which a person will or may have unsupervised access to vulnerable adults, juveniles or children.

NEW SECTION

WAC 388-06-0610 Who are vulnerable adults, juveniles or children? (1) Vulnerable adult means a person who is a client of DSHS and/or is:

- (a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself;
- (b) Found incapacitated under chapter 11.88 RCW;
- (c) Developmental disabled as defined under RCW 71A.10.020;
- (d) Admitted to any facility that is operated by DSHS;
- (e) Receiving services from a DSHS contracted, authorized, certified, licensed or individual provider, including those certified under chapter 70.96A RCW;
- (f) Receiving services through home health, hospice, or home care agencies required to be licensed under chapter 70.127 RCW; or
- (g) Admitted to detoxification in a certified chemical dependency treatment facility in accordance with chapter 70.96A RCW.

(2) Juvenile means a person under the age of twenty-one under the juvenile rehabilitation administration's (JRA) jurisdiction, or under the department of corrections's jurisdiction while placed in a JRA facility.

(3) Child or children means any person under eighteen years of age.

NEW SECTION

WAC 388-06-0615 What is unsupervised access? Unsupervised access means a DSHS employee, volunteer or student intern who:

- (1) Works or serves in a setting, such as an institution, that provides residential services to vulnerable adults, juveniles and children;
- (2) Works or serves in a position where, during the course of his or her employment, the employee may transport, or visit the residence of, a vulnerable adult, juvenile or child; or
- (3) Works or serves in a position, other than one described in (1) and (2) above, where the employee may be left alone with a vulnerable adult, juvenile or child. "Left alone" does not include the possibility of a public encounter, or public interaction.

NEW SECTION

WAC 388-06-0620 What information is considered in a background check conducted by DSHS and what are the results of the background check used for? (1) The background check information considered by the DSHS secretary will include but is not limited to conviction records, pending charges, and civil adjudications as defined in RCW 43.43.830.

(2) The background information must be used by DSHS to determine the character, competence, and suitability of the applicant and/or employee to have unsupervised access to vulnerable adults, juveniles and children.

NEW SECTION

WAC 388-06-0625 Must an employee and/or applicant authorize the secretary of the department of social and health services or designee to conduct a background check and what happens if the employee or applicant does not provide authorization? (1) An employee and/or applicant applying for or being considered for retention in a covered position must authorize the secretary of DSHS or designee to conduct a background check which may include fingerprinting.

(2) Failure to authorize the DSHS secretary or designee to conduct a background check disqualifies an employee or applicant from consideration for any covered position including their current covered position.

NEW SECTION

WAC 388-06-0630 What happens when a permanent DSHS employee is disqualified because of a background check or failure to authorize a background check? (1) A DSHS employee who fails to authorize a background check or who is disqualified based on a background check and character, competence, and suitability assessment will be denied unsupervised access to vulnerable adults, juveniles and children.

(2) A permanent employee with a background check disqualification or who fails to authorize a background check may be subject to any of the following actions in no specific order:

- (a) Denial of a transfer, promotion, demotion, or elevation;
- (b) Job restructuring;
- (c) Job reassignment or transfer to a noncovered position;
- (d) Nondisciplinary separation;
- (e) Disciplinary action;
- (f) Voluntary demotion to a noncovered position;
- (g) Voluntary resignation from employment.

(3) An appointing authority may use the following interim measures or any combination while deciding which action to take. Use of these interim measures will generally not exceed thirty calendar days except in the case of ongoing investigations or pending charges:

- (a) Voluntary use of accrued vacation, exchange, and/or compensatory time;
- (b) Authorized leave without pay, if there is no paid leave available, or if the employee chooses not to use paid leave; or
- (c) Reassignment to another work location to prevent unsupervised access.

(d) When considering the above actions, the agency will consider the least restrictive means necessary to prevent unsupervised access.

(4) Before an appointing authority implements the non-disciplinary separation of a permanent employee, a search for a noncovered position that is vacant, funded and for which the employee meets the skills and abilities will occur for a period of thirty calendar days. The search will be conducted in accordance with the layoff requirements listed in applica-

ble collective bargaining agreements and DSHS administrative policies.

NEW SECTION

WAC 388-06-0635 What are the DSHS secretary's responsibilities in carrying out the requirements to conduct background checks? (1) The DSHS secretary or designee will:

(a) Notify employees and applicants that a background check is required for covered positions;

(b) Develop procedures specifying when employees and applicants may be hired on a conditional basis pending the results of a background check; and

(c) Develop policies and procedures pertaining to background checks.

(d) Use information contained in a background check for the purpose of determining the character, competence, and suitability of the applicant and/or employee to have unsupervised access to vulnerable adults, juveniles and children.

(2) The DSHS secretary or designee will not further disseminate background check information unless authorized or required by law to do so. In addition, results of a background check may be discoverable pursuant to the rules of civil discovery, or subject to disclosure pursuant to a public records request.

NEW SECTION

WAC 388-06-0640 Does a DSHS permanent employee who is disqualified from a covered position as a result of a background check have the right to request a review of the disqualification? A DSHS permanent employee who is disqualified from a covered position as a result of a background check has the right to present the DSHS secretary or designee evidence that may mitigate the disqualifying background information identified by the department. The permanent employee may present additional information for consideration that includes, but is not limited to:

(1) The employee's background check authorization and disclosure form;

(2) The employee's age at the time of conviction, charge, or disciplinary board final decision;

(3) The nature and severity of the conviction, charge, or disciplinary board final decision;

(4) The length of time since the conviction, charge, or disciplinary board final decision;

(5) The nature and number of previous offenses;

(6) Vulnerability of the child, vulnerable adult, or individual with mental illness or developmental disabilities to which the employee will or may have unsupervised access; and

(7) The relationship between the potentially disqualifying event and the duties of the employee.

WSR 09-03-008

PERMANENT RULES

HORSE RACING COMMISSION

[Filed January 8, 2009, 1:25 p.m., effective February 8, 2009]

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

Purpose: To amend WAC 260-24-580 Starter and assistant starters to grant the starter the authority to recommend certain horses be scratched.

Citation of Existing Rules Affected by this Order: Amending WAC 260-24-580 Starter and assistant starters.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 08-23-048 on November 14, 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 1, Repealed 0.

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

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

Date Adopted: January 8, 2009.

R. J. Lopez

Executive Secretary

AMENDATORY SECTION (Amending WSR 08-05-088, filed 2/15/08, effective 3/17/08)

WAC 260-24-580 Starter and assistant starters. (1)

The starter is responsible for the following duties:

(a) Approve all horses which have never started to ensure that the horse is familiar with, and capable of, breaking from the starting gate.

(b) Ensure all participants have an equal opportunity to a fair start;

(c) Supervise the assistant starters;

(d) Provide a sufficient number of assistant starters for each race;

(e) Assign the starting gate stall positions to assistant starters and notify the assistant starters of their respective stall positions, or assign a foreman to act in his behalf, before post time for each race;

(f) Assess and make recommendations to the board of stewards on the ability of each person applying for an initial jockey license in breaking from the gate and working a horse in the company of other horses;

(g) Load horses into the gate in any order necessary to ensure a safe and fair start;

(h) Recommend to the stewards horses that should be scratched because a horse at the starting gate is refusing to load or is unruly.

(2) The starter will place and remove horses on the starter's list for poor or unruly behavior in the starting gate. Horses placed on the starter's list will be refused entry until the horse has been satisfactorily schooled in the starting gate. Schooling will be under the direct supervision of the starter or his designee.

(3) The starter has complete authority over the starting gate, the starting of horses, and the authority to give orders, which are not in conflict with these rules.

(4) The starter will appoint all assistant starters. Assistant starters must first demonstrate they are adequately trained to safely handle horses in the starting gate. In emergencies the starter may appoint qualified individuals to act as substitute assistant starters.

(5) Assistant starters may not:

(a) Handle or take charge of any horse in the starting gate without the expressed permission of the starter;

(b) Impede the start of a race;

(c) Strike a horse with a whip;

(d) Use a device, unless approved by the stewards, to assist in the loading of a horse into the starting gate;

(e) Slap, boot or otherwise dispatch a horse from the starting gate;

(f) Strike or use abusive language to a jockey; or

(g) Accept or solicit any gratuity or payment other than his/her regular salary, directly or indirectly, for services in starting a race.

(6) The starter and assistant starters will report all unauthorized activities to the stewards.

WSR 09-03-009

PERMANENT RULES

HORSE RACING COMMISSION

[Filed January 8, 2009, 1:26 p.m., effective February 8, 2009]

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

Purpose: To amend WAC 260-34-020 to lower to allow alcohol concentration for persons on horseback from 0.08 to 0.02%.

Citation of Existing Rules Affected by this Order: Amending WAC 260-34-020.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 08-23-049 on November 14, 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 1, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 8, 2009.

R. J. Lopez

Executive Secretary

AMENDATORY SECTION (Amending WSR 07-07-008, filed 3/8/07, effective 4/8/07)

WAC 260-34-020 Drug and alcohol violations. No licensee or applicant, while acting in an official capacity or participating directly in horse racing, ~~((shall))~~ will commit any of the following violations:

(1) Be under the influence of or affected by intoxicating liquor and/or drugs, have an alcohol concentration of 0.08 percent or higher, or have within their body any illegal controlled substance while on the grounds of any licensed race meet;

The alcohol concentration for persons on horseback may not be 0.02 percent or higher.

(2) Engage in the illegal sale or distribution of alcohol;

(3) Engage in the illegal sale or distribution of a controlled substance or possess an illegal controlled substance with intent to deliver;

(4) Possess an illegal controlled substance;

(5) Possess on the grounds of any licensed race meet any equipment, products or materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, or concealing an illegal controlled substance, or any equipment, products or materials of any kind, which are used or intended for use in injecting, ingesting, inhaling or otherwise introducing into the human body an illegal controlled substance; or

(6) Refuse to submit to blood, breath and/or urine testing, when notified that such testing is conducted pursuant to the conditions of WAC 260-34-030.

Failure to provide a blood, breath and/or urine sample when directed or intentional contamination of the sample by any person tested for the purpose of preventing accurate analysis of the sample, or other actions with intent to subvert the test, ~~((shall))~~ will be considered a refusal to submit to a test.

"Controlled substance" or "drug" as used in this chapter means any substance listed in chapter 69.50 RCW or legend drug as defined in chapter 69.41 RCW. The presence of a controlled substance or drug in any quantity measured by the testing instrument establishes the presence of that substance for the purpose of this section. The fact that a licensee or applicant is or has been entitled to use a drug under the laws of the state of Washington ~~((shall))~~ will not constitute a defense against a violation for being under the influence of or affected by intoxicating liquor and/or any drug.

WSR 09-03-010

PERMANENT RULES

HORSE RACING COMMISSION

[Filed January 8, 2009, 1:27 p.m., effective February 8, 2009]

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

Purpose: To amend WAC 260-40-040 to incorporate language previously contained in a policy/interpretive statement and to allow the racing secretary to accept entries and nominations from electronic methods.

Citation of Existing Rules Affected by this Order: Amending WAC 260-40-040 Making entries and nominations.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 08-23-050 on November 14, 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 1, Repealed 0.

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

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

Date Adopted: January 8, 2008 [2009].

R. J. Lopez

Executive Secretary

AMENDATORY SECTION (Amending WSR 07-07-010, filed 3/8/07, effective 4/8/07)

WAC 260-40-040 Making entries and nominations.

(1) Entries and nominations must be ~~((made))~~ submitted in writing on the forms provided by the association and signed by the owner, trainer or ~~((designee))~~ if designated, the jockey agent. ~~((Each association will provide blank forms on which entries and declarations are made.))~~ The racing secretary may accept entries and nominations by telephone, facsimile or other electronic method deemed acceptable by the association. A telephone or electronic entry or nomination will be confirmed promptly in writing if requested by the stewards or the racing secretary.

(2) ~~((Entries may be made by telephone but must be confirmed in writing prior to the closing of entries.))~~ Persons entering or nominating a horse are responsible for the accuracy of the information provided at the time of entry or nomination.

WSR 09-03-011

PERMANENT RULES

HORSE RACING COMMISSION

[Filed January 8, 2009, 1:32 p.m., effective February 8, 2009]

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

Purpose: To amend WAC 260-44-150 to lower the maximum height of toe grabs from 4 millimeters (mm) to 2 mm.

Citation of Existing Rules Affected by this Order: Amending WAC 260-44-150 Horseshoes.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 08-23-051 on November 14, 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 1, 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 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 8, 2009.

R. J. Lopez

Executive Secretary

AMENDATORY SECTION (Amending WSR 08-01-053, filed 12/13/07, effective 1/13/08)

WAC 260-44-150 Horseshoes. (1) A horse starting in a race must be fully shod with racing plates.

(2) During off-track conditions the trainer is required to report any additional traction devices to the board of stewards or designee.

(3) For turf racing, horses must be shod with racing plates approved by the association.

(4) Toe grabs with a height greater than ~~((four))~~ two millimeters, worn on the front shoes of thoroughbred horses while racing or training on any surface or conditions are prohibited.

WSR 09-03-012

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed January 9, 2009, 9:11 a.m., effective February 13, 2009]

Effective Date of Rule: February 13, 2009.

Purpose: The proposed changes are housekeeping in nature.

Citation of Existing Rules Affected by this Order: Amending WAC 357-31-165.

Statutory Authority for Adoption: Chapter 41.06 RCW.
Adopted under notice filed as WSR 08-24-108 on December 3, 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: January 8, 2009.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-21-059, filed 10/13/05, effective 11/15/05)

WAC 357-31-165 At what rate do employees accrue vacation leave? (1) Full-time employees accrue vacation leave at the following rates:

(a) During the first year of continuous state employment - twelve days (eight hours per month);

(b) During the second year of continuous state employment - thirteen days (eight hours, forty minutes per month);

(c) During the third and fourth years of continuous state employment - fourteen days (nine hours, twenty minutes per month);

(d) During the fifth, sixth, and seventh years of total state employment - fifteen days (ten hours per month);

(e) During the eighth, ninth, and tenth years of total state employment - sixteen days (ten hours, forty minutes per month);

(f) During the eleventh year of total state employment - seventeen days (eleven hours, twenty minutes per month).

(g) During the twelfth year of total state employment - eighteen days (twelve hours per month).

(h) During the thirteenth year of total state employment - nineteen days (twelve hours, forty minutes per month).

(i) During the fourteenth year of total state employment - twenty days (thirteen hours, twenty minutes per month).

(j) During the fifteenth year of total state employment - twenty-one days (fourteen hours per month).

(k) During the sixteenth and succeeding years of total state employment - twenty-two days (fourteen hours, forty minutes per month).

(2) Higher education employers may establish accrual rates that exceed the rates listed in subsection (1) of this section. This does not apply to individual positions.

(3) As provided in WAC 357-58-175, an employer may authorize a lump-sum accrual of vacation leave or accelerate the vacation leave accrual rate to support the recruitment

and/or retention of a candidate or incumbent for a WMS position. Vacation leave accrual rates may only be accelerated using the rates established in subsection (1) of this section and must not exceed the maximum listed in subsection (1)(k) of this section.

(4) The following applies for purposes of computing the rate of vacation leave accrual:

(a) Employment in the legislative and/or the judicial branch except for time spent as an elected official or in a judicial appointment is credited.

(b) Employment exempt by the provisions of WAC 357-04-040, 357-04-045, 357-04-050, 357-04-055 is not credited.

(c) Each contract year, or equivalent, of full-time faculty and/or administrative exempt employment with a higher education employer is credited as one year of qualifying service.

(d) Exempt employment with a general government employer is credited, other than that specified in WAC 357-04-055 which is excluded.

WSR 09-03-013

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed January 9, 2009, 9:12 a.m., effective February 13, 2009]

Effective Date of Rule: February 13, 2009.

Purpose: The proposed changes are housekeeping in nature.

Citation of Existing Rules Affected by this Order: Amending WAC 357-01-172, 357-31-070, 357-31-100, 357-31-130, 357-31-200, 357-31-230, 357-31-567, 357-31-730, 357-31-010, and 357-58-205.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 08-24-109 on December 3, 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 10, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 10, Repealed 0.

Date Adopted: January 8, 2009.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

WAC 357-01-172 Family members. Individuals considered to be members of the family are parent, step-parent,

sister, brother, parent-in-law, spouse, grandparent, grandchild, minor/dependent child, and child. For the purpose of (~~WAC 357-31-730(2))~~ domestic violence, sexual assault, or stalking provisions within Title 357 WAC family member also includes a domestic partner as defined in RCW 26.60-020 or a person with whom the employee has a dating relationship as defined in RCW 26.50.010.

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

WAC 357-31-070 When is an employer required to approve an employee's request to use a personal holiday?

(1) An employer must approve the use of a personal holiday as long as:

(a) The employee is entitled to a personal holiday in accordance with RCW 1.16.050 and WAC 357-31-055;

(b) The employee has requested the personal holiday in accordance with the employer's leave procedures; and

(c) The employee's absence does not interfere with the operational needs of the employer.

(2) At any time, an employer must allow an employee to use part or all of the personal holiday for any of the following reasons:

(a) To care for a minor/dependent child with a health condition that requires treatment or supervision;

(b) To care for a spouse, parent, parent-in-law or grandparent of the employee who has a serious health condition or an emergency health condition;

(c) If the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking as defined in (~~section 2, chapter 286, Laws [of] 2008~~;) RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730; or

(d) In accordance with WAC 357-31-373, for an employee to be with a spouse who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse has been notified of an impending call or order to active duty, before deployment, or when the military spouse is on leave from deployment.

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

WAC 357-31-100 Must an employer have a policy for requesting and approving leave? Each employer must develop a leave policy which specifies the procedure for requesting and approving all leave, as provided in the civil service rules. The employer's policy must:

(1) Allow an employee to use vacation leave without advance approval when the employee is requesting to use vacation leave to respond to family care emergencies, or for an emergency health condition as provided in WAC 357-31-200(2);

(2) Allow an employee to use a reasonable amount of accrued leave or unpaid leave when the employee is a victim, or has a family member, as defined in chapter 357-01 WAC, who is a victim of domestic violence, sexual assault, or stalking as defined in (~~section 2, chapter 286, Laws [of] 2008~~;) RCW 49.76.020; and

(3) Address advance notice from the employee when the employee is seeking leave under subsection (2) of this section. When advance notice cannot be given because of an emergency or unforeseen circumstances due to domestic violence, sexual assault, or stalking, the employee or the employee's designee must give notice to the employer no later than the end of the first day that the employee takes such leave.

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

WAC 357-31-130 When can an employee use accrued sick leave? The employer may require medical verification or certification of the reason for sick leave use in accordance with the employer's leave policy.

(1) Employers **must** allow the use of accrued sick leave under the following conditions:

(a) Because of and during illness, disability, or injury that has incapacitated the employee from performing required duties.

(b) By reason of exposure of the employee to a contagious disease when the employee's presence at work would jeopardize the health of others.

(c) To care for a minor/dependent child with a health condition requiring treatment or supervision.

(d) To care for a spouse, parent, parent-in-law, or grandparent of the employee who has a serious health condition or emergency health condition.

(e) For family care emergencies per WAC 357-31-290, 357-31-295, 357-31-300, and 357-31-305.

(f) For personal health care appointments.

(g) For family members' health care appointments when the presence of the employee is required if arranged in advance with the employing official or designee.

(h) When an employee is required to be absent from work to care for members of the employee's household or relatives of the employee/employee's spouse who experience an illness or injury, not including situations covered by subsection (1)(d) of this section.

(i) The employer must approve up to five days of accumulated sick leave each occurrence. Employers may approve more than five days.

(ii) For purposes of this subsection, "relatives" is limited to spouse, child, grandchild, grandparent or parent.

(i) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in (~~section 2, chapter 286, Laws [of] 2008~~;) RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(j) In accordance with WAC 357-31-373, for an employee to be with a spouse who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse has been notified of an impending call or order to active duty, before deployment, or when the military spouse is on leave from deployment.

(2) Employers **may** allow the use of accrued sick leave under the following conditions:

(a) For condolence or bereavement.

(b) When an employee is unable to report to work due to inclement weather in accordance with the employer's policy on inclement weather as described in WAC 357-31-255.

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

WAC 357-31-200 When must an employer grant the use of vacation leave? (1) An employee's request to use vacation leave must be approved under the following conditions:

(a) As a result of the employee's serious health condition.

(b) To care for a spouse, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition.

(c) To care for a minor/dependent child with a health condition that requires treatment or supervision.

(d) For parental leave as provided in WAC 357-31-460.

(e) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in ~~((section 2, chapter 286, Laws [of] 2008-))~~ RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(f) In accordance with WAC 357-31-373, for an employee to be with a spouse who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse has been notified of an impending call or order to active duty, before deployment, or when the military spouse is on leave from deployment.

(2) In accordance with the employer's leave policy, approval for the reasons listed in (1)(a) through (f) above may be subject to verification that the condition or circumstance exists.

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

WAC 357-31-230 When can an employee use accrued compensatory time? (1) Employees must request to use accrued compensatory time in accordance with the employer's leave policy. When considering employees' requests, employers must consider the work requirements of the department and the wishes of the employee.

(2) An employee must be granted the use of accrued compensatory time to care for a spouse, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition, or to care for a minor/dependent child with a health condition that requires treatment or supervision. In accordance with the employer's leave policy, approval of the employee's request to use accrued compensatory time ~~((maybe))~~ may be subject to verification that the condition exists.

(3) An employee must be granted the use of accrued compensatory time if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in ~~((section 2, chapter 286, Laws [of] 2008-))~~ RCW 49.76.020. An employer may require the request for leave under this sec-

tion be supported by verification in accordance with WAC 357-31-730.

(4) In accordance with WAC 357-31-373, an employee must be granted the use of accrued compensatory time to be with a spouse who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse has been notified of an impending call or order to active duty, before deployment, or when the military spouse is on leave from deployment.

(5) Compensatory time off may be scheduled by the employer during the final sixty days of a biennium.

(6) Employers may require that accumulated compensatory time be used before vacation leave is approved, except in those instances where this requirement would result in loss of accumulated vacation leave.

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

WAC 357-31-567 When must an employer grant the use of recognition leave? (1) An employee's request to use recognition leave must be approved under the following conditions:

(a) An employee must be granted the use of recognition leave if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in ~~((section 2, chapter 286, Laws of 2008-))~~ RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730; and

(b) In accordance with WAC 357-31-373, an employee must be granted the use of recognition leave to be with a spouse who is a member of the Armed Forces of the United States, National Guard, or Reserves after the military spouse has been notified of an impending call or order to active duty, before deployment, or when the military spouse is on leave from deployment.

(2) In accordance with the employer's leave policy, approval for the reasons listed in (1)(a) and (b) above may be subject to verification that the condition or circumstance exists.

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

WAC 357-31-730 When an employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking and the employee is seeking to use accrued leave or unpaid leave what documentation may the employee be required to submit? (1) When an employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking, as defined in ~~((section 2, chapter 286, Laws of 2008))~~ RCW 49.76.020, and the employee is seeking to use their accrued leave or take leave without pay the employer may require that the request be supported by verification. An employee may satisfy the verification requirement by providing the employer with one or more of the following:

(a) A police report indicating that the employee or the employee's family member was a victim of domestic violence, sexual assault, or stalking;

(b) A court order protecting or separating the employee or employee's family member from the perpetrator of the act of domestic violence, sexual assault, or stalking;

(c) Evidence from the court or prosecuting attorney that the employee or the employee's family member appeared, or is scheduled to appear, in court in connection with an incident of domestic violence, sexual assault, or stalking;

(d) An employee's written statement that the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking; or

(e) Documentation that the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking, from any of the following persons from whom the employee or employee's family member sought assistance in addressing the domestic violence, sexual assault, or stalking: An advocate for victims of domestic violence, sexual assault, or stalking; an attorney; a member of the clergy; or a medical or other professional.

(2) If the victim of domestic violence, assault, or stalking is the employee's family member, as defined in chapter 357-01 WAC, verification of the familial relationship between the employee and the victim may include but is not limited to: A statement from the employee; a birth certificate; a court document; or other similar documentation.

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

AMENDATORY SECTION (Amending WSR 06-11-049, filed 5/11/06, effective 6/12/06)

WAC 357-31-010 Which employees qualify for holiday compensation? (1) Full-time general government employees (~~and cyclic year position employees~~) who work full monthly schedules qualify for holiday compensation if they are employed before the holiday and are in pay status:

(a) For at least eighty nonovertime hours during the month of the holiday; or

(b) For the entire work shift preceding the holiday.

(2) Full-time higher education employees and cyclic year position employees who work full monthly schedules qualify for holiday compensation if they are in pay status for the entire work shift preceding the holiday.

(3) Cyclic year position employees scheduled to work less than full monthly schedules throughout their work year qualify for holiday compensation if they work or are in pay status on their last regularly scheduled working day before the holiday(s) in that month.

(4) Part-time general government employees who are in pay status during the month of the holiday qualify for holiday pay on a pro rata basis in accordance with WAC 357-31-020, except that part-time employees hired during the month of the holiday will not receive compensation for holidays that occur prior to their hire date.

(5) Part-time higher education employees who satisfy the requirements of subsection (1) of this section are entitled

to the number of paid hours on a holiday that their monthly schedule bears to a full-time schedule.

AMENDATORY SECTION (Amending WSR 05-12-069, filed 5/27/05, effective 7/1/05)

WAC 357-58-205 Under what conditions may an employer reassign a WMS employee? At any time, an agency may reassign an employee or a position and ~~((it's its))~~ its incumbent to meet client or organizational needs. If the new location is within a reasonable commute, as defined by the agency, the employee must accept the reassignment.

If the reassignment is beyond a reasonable commute and the employee does not agree to the reassignment, the employee has layoff rights in accordance with this chapter.

WSR 09-03-014

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed January 9, 2009, 9:13 a.m., effective February 13, 2009]

Effective Date of Rule: February 13, 2009.

Purpose: The proposed changes are to clarify WAC 357-31-325 and 357-31-326 when an employer must grant leave with pay and when an employer may grant leave with pay. Changes to WAC 357-31-327, and 357-31-330 are housekeeping in nature.

Citation of Existing Rules Affected by this Order: Amending WAC 357-31-325, 357-31-327 and 357-31-330; and new section WAC 357-31-326.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 08-24-110 on December 3, 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 4, Repealed 0.

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

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

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

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

Date Adopted: January 8, 2009.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 08-07-062, filed 3/17/08, effective 4/18/08)

WAC 357-31-325 Must an employer grant leave with pay for other miscellaneous reasons such as to take a state

examination? ~~((H))~~ Leave with pay **must** be granted to an employee:

~~((A))~~ (1) To allow an employee to receive assessment from the employee assistance program; or

~~((B))~~ (2) When an employee is scheduled to take an examination or participate in an interview for a position with a state employer during scheduled work hours.

~~((I))~~ (a) Employers may limit the number of occurrences or the total amount of paid leave that will be granted to an employee to participate in an interview or take an examination during scheduled work hours.

~~((II))~~ (b) Employers may deny an employee's request to participate in an interview or take an examination during scheduled work hours based upon operational necessity.

~~((2) An employer may grant leave with pay for an employee to perform civil duties as a volunteer including but not limited to fire fighting, search and rescue efforts, or donating blood.)~~

~~((3) In the department of natural resources, leave with pay equivalent to one regular workshift may be allowed for the purpose of rest and recuperation after ten consecutive calendar days performing emergency work under an incident command system, defined in RCW 38.52.010.)~~

NEW SECTION

WAC 357-31-326 When may an employer grant leave with pay? (1) An employer **may** grant leave with pay for an employee to perform civil duties as a volunteer including but not limited to fire fighting, search and rescue efforts, or donating blood.

(2) In the department of natural resources, leave with pay equivalent to one regular workshift **may** be allowed for the purpose of rest and recuperation after ten consecutive calendar days performing emergency work under an incident command system, defined in RCW 38.52.010.

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

WAC 357-31-327 When ~~((M))~~ must an employer grant leave without pay ~~((for other miscellaneous reasons))~~? An employer must grant leave without pay under the following conditions:

(1) When an employee who is a volunteer fire fighter is called to duty to respond to a fire, natural disaster, or medical emergency;

(2) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in ~~((section 2, chapter 286, Laws [of] 2008-))~~ RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730; or

(3) In accordance with WAC 357-31-373, for an employee to be with a spouse who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse has been notified of an impending call or order to active duty, before deployment, or when the military spouse is on leave from deployment.

AMENDATORY SECTION (Amending WSR 05-08-138, filed 4/6/05, effective 7/1/05)

WAC 357-31-330 For what reasons may an employer ~~((authorize))~~ grant leave without pay? Leave without pay may be allowed for any of the following reasons in accordance with the employer's leave policy:

(1) For any reason leave with pay may be granted, as long as the conditions for leave with pay are met;

(2) Educational leave;

(3) Leave for government service in the public interest;

(4) Military leave of absence as required by WAC 357-31-370;

(5) Parental leave as required by WAC 357-31-460;

(6) Family care emergencies as required by WAC 357-31-295;

(7) Bereavement or condolence;

(8) Absence due to inclement weather as provided in WAC 357-31-255;

(9) To accommodate annual work schedules of employees occupying cyclic year positions as specified in WAC 357-19-295;

(10) Serious health condition of an eligible employee's child, spouse, or parent as required by WAC 357-31-525;

(11) Leave taken voluntarily to reduce the effect of an employer's layoff;

(12) Leave that is authorized in advance by the appointing authority as part of a plan to reasonably accommodate a person of disability; or

(13) Employees receiving time loss compensation.

WSR 09-03-018

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed January 9, 2009, 12:48 p.m., effective February 9, 2009]

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

Purpose: Amendments were made to chapter 16-30 WAC to remove exceptions for certain cattle movement from restricted feedlots. Washington state has seen an increase in tuberculosis cases from cattle importing into the state and entering our feedlot industry. The amendments that were made will confine these untested animals to the feedlot to avoid potential infection of our state's breeding herds.

Citation of Existing Rules Affected by this Order: Amending WAC 16-30-030.

Statutory Authority for Adoption: Chapter 16.36 RCW.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 08-23-074 on November 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 0, Repealed 0.

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

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

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

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

Date Adopted: January 9, 2009.

Robert W. Gore
Acting Director

AMENDATORY SECTION (Amending WSR 08-01-095, filed 12/17/07, effective 1/17/08)

WAC 16-30-030 Conditions of permit to operate a restricted feedlot. The operator of a restricted feedlot must abide by the following conditions:

(1) There ~~((may))~~ shall be no contact between animals not also similarly restricted.

(2)~~((a))~~ No cattle ~~(; except for brucellosis vaccinated females, may))~~ shall be removed from the restricted feedlot except to a federally inspected slaughter plant, a slaughter plant of like status, or a restricted feedlot of like status ~~((or to a licensed public livestock market where they will be marketed for immediate slaughter.~~

~~(b) Cattle that move from a restricted feedlot to a public livestock market must be identified with an "F" brand and remain in the slaughter channels.~~

~~(c) Female cattle that are calfhooed vaccinated may be removed from the restricted feedlot for breeding purposes only and by permit from the director. Calfhooed vaccinated female cattle that are test eligible must also test negative for brucellosis and tuberculosis before removal from the restricted feedlot for breeding purposes.~~

~~(d) Bulls under six months of age may be removed from the restricted feedlot for breeding purposes only).~~

(3) The restricted feedlot will be maintained in a ~~((sanitary))~~ condition that follows common industry practices to mitigate disease risk.

(4) The department will be notified immediately of any outbreak of any infectious or contagious disease.

(5) The disposal of dead livestock will be in accordance with the laws relating to the disposal of dead livestock and in accordance with chapter 16-25 WAC.

(6) Accurate records will be kept for six years accounting for all cattle entering and leaving the restricted feedlot.

(7) Proper facilities shall be provided for inspection of brands, branding, and identification of cattle.

WSR 09-03-019

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed January 9, 2009, 12:53 p.m., effective February 9, 2009]

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

Purpose: Washington state has seen an increase in tuberculosis cases from cattle imported into this state. The United States Department of Agriculture's Tuberculosis Uniform Methods and Rules now have standards for tuberculosis

responder detection rates for private veterinarians performing caudal fold testing. This rule making requires training for private veterinarians who perform tuberculosis testing. These changes are necessary to assure proper tuberculosis testing measures are in place to protect the industry.

Citation of Existing Rules Affected by this Order: Amending WAC 16-86-005.

Statutory Authority for Adoption: Chapter 16.36 RCW.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 08-23-075 on November 18, 2008.

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

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

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

Date Adopted: January 9, 2009.

Robert W. Gore
Acting Director

AMENDATORY SECTION (Amending WSR 08-01-094, filed 12/17/07, effective 1/17/08)

WAC 16-86-005 Definitions. In addition to the definitions found in RCW 16.36.005, the following definitions apply to this chapter:

"Accredited veterinarian" means a veterinarian licensed to practice veterinary medicine, surgery, and dentistry in the state of Washington and approved by the United States Department of Agriculture (USDA) Veterinary Services to participate in state-federal cooperative programs.

"Breed registry tattoo" means individual registry tattoos issued by breed associations.

"Brucellosis vaccine" means only those *Brucella abortus* products that are approved by and produced under license of the USDA for injection into cattle to enhance their resistance to brucellosis.

"Department" means the Washington state department of agriculture (WSDA).

"Director" means the director of WSDA or the director's authorized representative.

"Official calfhooed vaccinate" means female cattle between four and twelve months of age that are vaccinated with brucellosis vaccine at a calfhooed dose (2cc subcutaneously).

"Official identification" means identifying an animal or group of animals using devices or methods approved by the director, including, but not limited to, official tags, unique breed registry tattoos, and registered brands when accompa-

nied by a certificate of inspection from a brand inspection authority who is recognized by the director.

"Official Washington mature vaccinate" means female cattle over the age of twelve months that are native to Washington state, or originate from other class free states or countries to be determined on a case-by-case investigation by the director, and vaccinated with a reduced dose of brucellosis vaccine (0.25cc subcutaneously) under directions issued by the director.

"Premises" means a location or physical address.

"Timed events" means competitive events that take place where time elapsed is the factor that determines the placing of individuals competing in the event.

"USDA" means the United States Department of Agriculture.

"Vaccination tattoo" means a tattoo in the right ear bearing the United States registered shield and V preceded by a number indicating the quarter of the year and followed by a number corresponding to the last digit of the year in which the animal was vaccinated with strain 19 *Brucella* vaccine. For strain RB-51 calfhood vaccination, an R precedes the shield and V. In the case of strain RB-51 mature vaccination, an M precedes the shield and V. For strain RB-51 vaccinates, the last number of the tattoo corresponds to the last digit of the year in which vaccine was administered.

NEW SECTION

WAC 16-86-125 Duties of accredited veterinarians—Training requirement for veterinarians performing tuberculosis testing in cattle and bison. (1) All testing of cattle or bison in Washington state for tuberculosis shall be performed by a veterinarian accredited by the United State Department of Agriculture, Animal and Plant Health Inspection Service (USDA APHIS). In addition, all accredited veterinarians testing cattle or bison in Washington state for tuberculosis are required to successfully complete training in tuberculosis testing procedures provided by USDA or the department. Accredited veterinarians who have not successfully completed the training by April 30, 2010, may not perform official tuberculosis testing of cattle or bison in Washington state. A schedule of training opportunities is available by contacting the department at:

Washington State Department of Agriculture
Animal Services Division
1111 Washington Street S.E.
P.O. Box 42577
Olympia, Washington 98504-2577
360-902-1878.

(2) The department may review the testing results and other records associated with tuberculosis testing of cattle or bison by accredited veterinarians in Washington state. In the event that the response rates reported by an accredited veterinarian do not meet the response rates standards established in Appendix C of the *Bovine Tuberculosis Eradication Uniform Methods and Rules*, effective January 1, 2005 (adopted in WAC 16-86-120), the director may require additional training or may refuse to accept the testing of cattle or bison for tuberculosis performed by that veterinarian.

WSR 09-03-020

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed January 9, 2009, 12:57 p.m., effective February 9, 2009]

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

Purpose: Develop a new chapter within Title 16 WAC that describes the department's process in assessing penalties, the types of violations, and the monetary amount per violation for violations of chapter 16.36 RCW and rules adopted under the chapter.

Statutory Authority for Adoption: Chapter 16.36 RCW.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 08-23-076 on November 18, 2008.

Changes Other than Editing from Proposed to Adopted Version: A typographical error in WAC 16-90-030(6) was changed from "hard" to "harm."

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 5, 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: January 9, 2009.

Robert W. Gore
Acting Director

Chapter 16-90 WAC

PENALTY SCHEDULE

NEW SECTION

WAC 16-90-005 Purpose. The purpose of this chapter is to provide for fair and uniform determination of penalties issued under RCW 16.36.113 and to provide for fair and uniform actions taken in relation to permits or licenses issued by the department as a result of violations of chapter 16.36 RCW and the rules adopted under that statute.

NEW SECTION

WAC 16-90-010 Penalty outline. (1) In accordance with RCW 16.36.113, any person who violates chapter 16.36 RCW or the rules adopted under that statute may be subject to a civil penalty in an amount of not more than one thousand dollars for each violation.

(2) Each violation is a separate and distinct offense. Penalties may be assessed per violation or per head when pertaining to animals, depending on the unique circumstances of the

violation(s). Every person who, through an act of commission or omission, procures, aids, or abets in the violation is in violation and may be subject to a civil penalty. When a person has committed multiple violations, the violations are cumulative for purposes of calculating the appropriate penalty. Penalties will be added together.

(3) Moneys collected from civil penalty payments will be deposited in the state general fund.

(4) Nothing in this chapter shall prevent the department from:

(a) Choosing not to pursue a civil penalty, permit or license denial, suspension, or revocation;

(b) Issuing a notice of correction in lieu of pursuing a civil penalty, permit or license denial, suspension, or revocation;

(c) Negotiating settlement(s) of cases on such terms and for reasons as it deems appropriate.

(5) A prior violation covered by a settlement agreement may be used by the department for the purpose of determining the appropriate penalty for future violations, if not prohibited by the agreement.

(6) A violation committed during a period when an individual's permit or license is suspended or revoked may be subject to the maximum civil penalty of one thousand dollars or revocation of the permit or license for a period of up to five years. A violation committed by an unlicensed or unpermitted person is subject to the provisions of this chapter.

(7) The department may also choose to refer a violation to any federal, state or county authority with jurisdiction over the activities in question.

NEW SECTION

WAC 16-90-015 Revoking, suspending, or denying a permit or license. (1) The department retains the sole discretion to determine when a permit or license should be revoked or suspended. In circumstances where the department determines revocation to be appropriate, the period of revocation shall be determined at the discretion of the department, but in no instance shall the revocation exceed five years.

(2) The department may deny an applicant a permit or license when the applicant has committed a violation of chapter 16.36 RCW or the rules adopted under the chapter. In circumstances where the department determines denial to be appropriate, the period of denial shall not exceed five years.

(3) Nothing shall prevent the department from denying an applicant a permit or license when the applicant has an outstanding civil penalty owed to the department from a previous violation of any statute or rule under the jurisdiction of the department.

(4) The department may, at its discretion, suspend a permit or license without also seeking a civil penalty. Such circumstances include, but are not limited to, those incidents where a civil penalty is not available as an appropriate penalty pursuant to RCW 43.05.110.

NEW SECTION

WAC 16-90-020 Issuance of a civil penalty without first issuing a notice of correction. (1) Pursuant to RCW 43.05.100, a notice of correction may be issued by the department

when they become aware of conditions and/or conduct that are not in compliance with the applicable laws and rules enforced by the department.

(2) The department may assess a civil penalty without first issuing a notice of correction in accordance with RCW 43.05.110.

NEW SECTION

WAC 16-90-030 Penalty schedule. (1) The following penalty schedule will be used for violations of Washington state animal health laws and rules, including chapter 16.36 RCW and the rules adopted under that statute. The level of civil penalty is determined by the number of prior civil penalties the person has received in the past ten years excluding notices of correction.

Violation	Procedural Violations	Disease Violations
First	\$150.00	\$250.00
Second	\$350.00	\$650.00
Third and subsequent	\$1,000.00	\$1,000.00

(2) Procedural violations: A "procedural violation" is a violation of the administrative functions associated with state import regulations where the violation did not cause a threat to Washington state's livestock industry. Procedural violations include but are not limited to violations of the following statutes and rules:

WAC 16-54-030 Certificate of veterinary inspection, and entry permit requirements.

WAC 16-54-032 Certificate of veterinary inspection—Required information.

WAC 16-54-068 Restrictions.

WAC 16-54-082 Domestic bovine animals—Importation requirements.

WAC 16-54-088 Temporary grazing permits.

WAC 16-54-105 Llamas and alpacas.

WAC 16-54-160 Birds other than poultry—Importation and testing requirements.

WAC 16-54-180 Wild and exotic animals and birds—Importation and testing requirements.

Chapter 16-74 WAC Livestock testing—Duties of owners.

WAC 16-80-045 Identification of swine.

WAC 16-86-017 Grazing permits.

(3) Disease violations: A "disease violation" is a violation of animal health statute and rules that cause a threat to Washington state's livestock industry and include the failure to obtain required testing and vaccinations prior to entry into Washington state. Disease violations include, but are not limited to, violations of the following statutes and rules:

RCW 16.36.105 Swine, garbage feeding, license—Application—Fee—Inspection.

Chapter 16-25 WAC Disposal of dead livestock.

Chapter 16-42 WAC Biological products.

WAC 16-54-025 Transporting livestock—Sanitary requirements.

WAC 16-54-028 Testing procedure requirements.

WAC 16-54-065 Prohibited entries.

WAC 16-54-068(4) - proof of current rabies vaccination.

WAC 16-54-071 Domestic equine and equine reproductive products—Importation requirements.

WAC 16-54-083 Domestic and foreign bovine brucellosis requirements.

WAC 16-54-085 Domestic bovine tuberculosis requirements.

WAC 16-54-086 Bovine trichomoniasis requirements.

WAC 16-54-090 Goats—Importation and testing requirements.

WAC 16-54-101 Sheep—Importation and testing requirements.

WAC 16-54-111 Swine—Importation and testing requirements.

WAC 16-54-145 Poultry and game birds, including ratites—Importation and testing requirements.

Chapter 16-59 WAC Avian diseases in Washington state.

Chapter 16-70 WAC Animal disease—Reporting.

Chapter 16-71 WAC Equine infectious anemia.

WAC 16-80-025 Disinfecting premises.

WAC 16-80-030 Disinfecting vehicles.

WAC 16-86-015 Change of ownership requirements for cattle and bison in Washington.

WAC 16-86-026 Brucellosis testing requirements for raw milk dairies.

WAC 16-86-110 Q fever testing requirements for raw milk dairies.

WAC 16-86-130 Cattle used in rodeo or timed events.

WAC 16-86-140 Tuberculosis testing requirements for raw milk dairies.

WAC 16-89-022 Scrapie identification of sheep and goats.

WAC 16-89-090 Destruction and disposal of scrapie infected animals or flocks.

WAC 16-89-120 Concealing the disease.

WAC 16-89-150 Brucellosis testing for sheep and goat dairies.

WAC 16-89-170 Q fever testing requirements for sheep and goat dairies.

WAC 16-89-180 Tuberculosis testing for goat dairies.

(4) A one thousand dollar civil penalty will be issued regardless of the number of prior violations for a violation of the following:

(a) Chapter 16-30 WAC Restricted feedlots and restricted holding facilities;

(b) WAC 16-54-071 (13) and (14) - piroplasmosis;

(c) WAC 16-54-111 Swine—Importation and testing requirements;

(d) WAC 16-54-180 Wild and exotic animals and birds—Importation and testing requirements;

(e) WAC 16-80-015 Sale of quarantined animals;

(f) WAC 16-80-040 Vaccination;

(g) WAC 16-80-047 Mandatory reporting of suspected pseudorabies;

(h) Importation of a foreign animal disease or "transboundary" diseased animal. A transboundary animal disease is a disease that has been eradicated within the borders of the

United States that would cause an economic loss if detected; and

(i) All quarantine and hold order violations under chapter 16.36 RCW. The department may assess a civil penalty for these violations without first issuing a notice of correction in accordance with RCW 43.05.110.

(5) Mitigating factors: The department reserves the right to decrease the civil penalty assessed for a violation by up to one hundred dollars in circumstances that include, but are not limited to, voluntary disclosure of a violation, or voluntary taking of remedial measures that would result in increased public protection and a decreased likelihood that the violation will be repeated.

(6) Aggravating factors: The department reserves the right to increase the civil penalty assessed for a violation by up to five hundred dollars, not to exceed one thousand dollars per violation. Circumstances may include, but are not limited to, situations where the violator knowingly commits a violation, where the civil penalty assessed is not substantially equivalent to the violator's economic benefit derived from the violation, the high magnitude of the harm, or potential harm to humans, animals, or property caused by the violation, the similarity of the current alleged violation to previous violations committed within the past ten years, or the extent to which the alleged violation is part of a pattern of the same or substantially similar conduct.

WSR 09-03-022

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed January 9, 2009, 2:43 p.m., effective February 9, 2009]

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

Purpose: During the 2008 legislative session, the Washington state department of agriculture (WSDA) was given authority to establish fees by rule for certain requested services; (1) establishment and inspection of animal holding facilities; (2) inspection and monitoring of animals in animal holding facilities; and (3) special inspections of animals or facilities at the request of the owner. The department developed a new chapter within Title 16 WAC that describes the department's process in assessing fees for such requested services.

Statutory Authority for Adoption: Chapter 16.36 RCW.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 08-23-078 on November 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 7, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 7, 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 7, Amended 0, Repealed 0.

Date Adopted: January 9, 2009.

Robert W. Gore
Acting Director

Chapter 16-91 WAC

REQUESTED ANIMAL SERVICES AND HOLDING FACILITIES—FEES

NEW SECTION

WAC 16-91-005 Purpose of rule. The purpose of this rule is to establish a schedule as authorized in RCW 16.36.023 for fees charged to animal owners or other interested persons when requesting:

- (1) The establishment and inspection of restricted holding facilities (also known as animal holding facilities) authorized under this chapter and chapter 16-30 WAC;
- (2) The inspection and monitoring of animals in authorized restricted holding facilities; and
- (3) Special inspections of animals or animal facilities that the director may provide.

As provided by RCW 16.36.023, the fees in this chapter, as closely as practicable, cover the cost of the service provided.

NEW SECTION

WAC 16-91-010 Services provided under this chapter. The following services may be provided under this chapter:

- (1) Inspections related to establishment and monitoring of restricted holding facilities under chapter 16-30 WAC.

An inspection of the premises is required upon application for license to establish a restricted holding facility and with annual renewal of that license. The inspection may include, but is not limited to, the evaluation of compliance capabilities with isolation requirements, biosecurity protocols, sanitation practices, recordkeeping, and overall health of animals in quarantine.

- (2) Inspections related to the monitoring of animals held in a licensed restricted holding facility. Inspections may include, but are not limited to, follow-up activities or investigations related to confirmatory disease testing, mortality review, recordkeeping compliance (hold order, test chart submission, etc.), and overall health of the animals.

(3) Special inspections of animals or animal facilities at the request of the animal owner or interested persons. Special inspections may include, but are not limited to, visual inspections of biosecurity and sanitation conditions, rodent control, and overall animal health. Time may also be spent safely handling and sampling animals for disease testing.

- (4) Other special inspections may be provided upon request and at the discretion of the director.

NEW SECTION

WAC 16-91-020 Restricted holding facility license.

(1) An initial application fee of two hundred dollars is established for licensure of a restricted holding facility. The fee for the initial inspection is at the rates set in WAC 16-91-040. There is a renewal fee of one hundred dollars for the license and the applicable fee for the annual inspection of the facility. To implement the rule, the first expiration date of the license will be June 30, 2010, and June 30 every year after.

(2) Information about the application process and the standards for issuing a license to a restricted holding facility are found in chapter 16-30 WAC.

NEW SECTION

WAC 16-91-030 Requesting services from the department. Inspections for services under this chapter are provided at the discretion of the department based on availability of staff and priorities. The department is not obligated to provide an inspection in response to a request. An applicant must place a service request in order to ensure staffing.

(1) Service requests must be received by the state veterinarian's office two business days prior to the date of the requested service.

(a) The notification requirement allows the department to secure adequate staffing to supply the requested service and to accommodate leave or adjust staffing for anticipated workloads.

(b) The notification requirement applies even if there is permanent staffing at the location.

(c) Failure to meet the notification requirement may result in denial of service.

(2) Service requests beyond the office's usual scope or volume will be provided only if adequate numbers of qualified employees are available.

(3) The department reserves the right to determine the number of personnel necessary to provide the requested service.

NEW SECTION

WAC 16-91-040 Fee schedule for inspection services provided.

(1) Requested services during normal business hours are provided at the hourly rate per inspector of eighty-five dollars per hour. In addition, the current mileage and per diem rates as established by the Washington state office of financial management (OFM) will be charged for travel.

(2) The hourly charge is assessed in one-half hour increments. The charges are incurred starting when staff leave their official work station and ending on return to their official work station.

(3) The hourly rate will be one hundred dollars for services provided during nonbusiness hours. Nonbusiness hourly rates apply for services provided before 8:00 a.m. or after 5:00 p.m. during the weekday and for services provided on Saturday, Sunday, or recognized state government holidays listed in RCW 1.16.050.

(4) Persons requesting service with less than two business days notice may be subject to a charge of two additional hours at the applicable hourly rate.

(5) If staff must provide service at multiple locations, the final billings will be prorated accordingly.

(6) The department will recoup at cost, from the person requesting the service, expenses for unforeseen items necessary to complete the inspection service.

NEW SECTION

WAC 16-91-050 Testing fees. The cost of any testing of animals is a separate expense that is the responsibility of the animal owner and is not included in the charge for services under this chapter.

NEW SECTION

WAC 16-91-060 Billing and payment process. (1) The department will bill the parties requesting services for services rendered.

(2) The fees are due and payable upon billing.

(3) A late fee of one percent per month on the unpaid balance will be assessed against persons more than thirty days in arrears.

(4) In addition to other penalties, the director may refuse to perform any inspection or services provided under this chapter for any person in arrears unless the person makes payment in full prior to such inspection or certification service.

(5) Accounts that become ninety or more days in arrears twice within a five-year period may be subject to a permanent requirement for payment in full at the time service is provided.

WSR 09-03-023

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed January 9, 2009, 4:20 p.m., effective February 9, 2009]

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

Purpose: **Correcting WSR 09-03-022. The language filed in WSR 09-03-022 was not the language adopted by the Washington state department of agriculture (WSDA). The language below is the correct language as adopted.**

During the 2008 legislative session, the WSDA was given authority to establish fees by rule for certain requested services; (1) establishment and inspection of animal holding facilities; (2) inspection and monitoring of animals in animal holding facilities; and (3) special inspections of animals or facilities at the request of the owner. The department developed a new chapter within Title 16 WAC that describes the department's process in assessing fees for such requested services.

Statutory Authority for Adoption: Chapter 16.36 RCW.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 08-23-078 on November 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 7, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 7, 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 7, Amended 0, Repealed 0.

Date Adopted: January 9, 2009.

Robert W. Gore

Acting Director

Chapter 16-91 WAC

REQUESTED ANIMAL SERVICES AND HOLDING FACILITIES—FEES

NEW SECTION

WAC 16-91-005 Purpose of rule. The purpose of this rule is to establish a schedule as authorized in RCW 16.36.023 for fees charged to animal owners or other authorized persons when requesting:

(1) The establishment and inspection of restricted holding facilities (also known as animal holding facilities) authorized under this chapter and chapter 16-30 WAC;

(2) The inspection and monitoring of animals in authorized restricted holding facilities; and

(3) Special inspections of animals or animal facilities that the director may provide.

As provided by RCW 16.36.023, the fees in this chapter, as closely as practicable, cover the cost of the service provided.

NEW SECTION

WAC 16-91-010 Services provided under this chapter. The following services may be provided under this chapter:

(1) Inspections related to establishment and monitoring of restricted holding facilities under chapter 16-30 WAC.

An inspection of the property is required upon application for license to establish a restricted holding facility and with annual renewal of that license. The inspection may include, but is not limited to, the evaluation of compliance capabilities with isolation requirements, biosecurity protocols, sanitation practices, recordkeeping, and overall health of animals in quarantine.

(2) Inspections related to the monitoring of animals held in a licensed restricted holding facility. Inspections may include, but are not limited to, follow-up activities or investigations related to confirmatory disease testing, mortality review, recordkeeping compliance (hold order, test chart submission, etc.), and overall health of the animals.

(3) Special inspections of animals or animal facilities at the request of the animal owner or authorized persons. Special inspections may include, but are not limited to, visual inspections of biosecurity and sanitation conditions, rodent control, and overall animal health. Time may also be spent safely handling and sampling animals for disease testing.

(4) Other special inspections may be provided upon request and at the discretion of the director.

NEW SECTION

WAC 16-91-020 Restricted holding facility license.

(1) An initial application fee of two hundred dollars is established for licensure of a restricted holding facility. The fee for the initial inspection is at the rates set in WAC 16-91-040. There is a renewal fee of one hundred dollars for the license and the applicable fee for the annual inspection of the facility. To implement the rule, the first expiration date of the license will be June 30, 2010, and June 30 every year after.

(2) Information about the application process and the standards for issuing a license to a restricted holding facility are found in chapter 16-30 WAC.

NEW SECTION

WAC 16-91-030 Requesting services from the department. Inspections for services under this chapter are provided at the discretion of the department based on availability of staff and priorities. The department is not obligated to provide an inspection in response to a request. An applicant must place a service request in order to ensure staffing.

(1) Service requests must be received by the state veterinarian's office two business days prior to the date of the requested service.

(a) The notification requirement allows the department to secure adequate staffing to supply the requested service and to accommodate leave or adjust staffing for anticipated workloads.

(b) The notification requirement applies even if there is permanent staffing at the location.

(c) Failure to meet the notification requirement may result in denial of service.

(2) Service requests beyond the office's usual scope or volume will be provided only if adequate numbers of qualified employees are available.

(3) The department reserves the right to determine the number of personnel necessary to provide the requested service.

NEW SECTION

WAC 16-91-040 Fee schedule for inspection services provided. (1) Requested services during normal business hours are provided at the hourly rate per inspector of eighty-five dollars per hour. In addition, the current mileage and per diem rates as established by the Washington state office of financial management (OFM) will be charged for travel.

(2) The hourly charge is assessed in one-half hour increments. The charges are incurred starting when staff leave their official work station and ending on return to their official work station.

(3) The hourly rate will be one hundred dollars for services provided during nonbusiness hours. Nonbusiness hourly rates apply for services provided before 8:00 a.m. or after 5:00 p.m. during the weekday and for services provided on Saturday, Sunday, or recognized state government holidays listed in RCW 1.16.050.

(4) Persons requesting service with less than two business days notice may be subject to a charge of two additional hours at the applicable hourly rate.

(5) If staff must provide service at multiple locations, the final billings will be prorated accordingly.

(6) The department will recoup at cost, from the person requesting the service, expenses for unforeseen items necessary to complete the inspection service.

NEW SECTION

WAC 16-91-050 Testing fees. The cost of any testing of animals is a separate expense that is the responsibility of the animal owner and is not included in the charge for services under this chapter.

NEW SECTION

WAC 16-91-060 Billing and payment process. (1) The department will bill the parties requesting services for services rendered.

(2) The fees are due and payable upon billing.

(3) A late fee of one percent per month on the unpaid balance will be assessed against persons more than thirty days in arrears.

(4) In addition to other penalties, the director may refuse to perform any inspection or services provided under this chapter for any person in arrears unless the person makes payment in full prior to such inspection or certification service.

(5) Accounts that become ninety or more days in arrears twice within a five-year period may be subject to a permanent requirement for payment in full at the time service is provided.

WSR 09-03-024

PERMANENT RULES

GAMBLING COMMISSION

[Order 640—Filed January 9, 2009, 4:43 p.m., effective February 9, 2009]

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

Purpose: The Recreational Gaming Association is requesting that:

- Cash in the cage, in addition to the safe and vault, be counted towards the minimum cash on hand requirement for house-banked card rooms. Currently, these funds must be in the cage; and
- Licensees meet this requirement within three hours of opening. Currently, they must meet the cash on hand requirement when they open. This change will accommodate at least one licensee.

At their September 2008 meeting, the commission approved a wager increase for house-banked games from

\$200 to \$300. Because of this, we needed to adjust our minimum bankroll requirements in this rule. Therefore, at the November meeting, the commission filed an alternative to remove the \$20,000 cap for the largest single prize available. This alternative was adopted at the January 2009 commission meeting.

Citation of Existing Rules Affected by this Order: Amending WAC 230-15-050.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 08-23-081 on November 18, 2008, and published December 3, 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 1, 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: January 9, 2009.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 620, filed 11/20/07, effective 1/1/08)

WAC 230-15-050 Minimum cash on hand requirements. (1) Card game licensees must have sufficient cash on hand to redeem all chips issued for play and pay out all prizes.

(2) (~~Before~~) Within three hours of opening for the business day, at a time included in the internal controls, house-banked card game licensees must have at least the following minimum amount of cash on premises in their cage, safe, and vault combined:

(a) One thousand dollars for each house-banked table on the gambling floor; plus

(b) The amount of the largest single prize available (~~or not more than twenty thousand dollars~~) excluding jackpot prizes when WAC rules require a deposit into a separate bank account (for example, player-supported jackpots and progressive jackpots).

For example: If a house-banked card room has fifteen house-banked tables and a largest single prize of twenty-three thousand dollars, before opening, the cage must have at least (~~thirty-five~~) thirty-eight thousand dollars on hand: 15 tables x \$1,000 = \$15,000 + largest single prize (~~or \$20,000 = \$35,000~~) of \$23,000 = \$38,000.

(3) Except for the restrictions on player-supported jackpot pay outs in WAC 230-15-405 and progressive jackpot pay outs in WAC 230-15-690, licensees may pay prizes by check if sufficient funds are available on deposit.

(4) Failure to keep funds to cash in chips, pay prizes, or redeem gambling related checks is prima facie evidence of fraud. Meeting the minimum cage cash amount does not relieve the licensee from the requirement to have sufficient funds available to redeem all chips and pay out all prizes.

WSR 09-03-025

PERMANENT RULES

GAMBLING COMMISSION

[Order 639—Filed January 9, 2009, 4:48 p.m., effective February 9, 2009]

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

Purpose: The Coalition for Responsible Gaming and Regulation ("coalition") is a group that includes manufacturers, distributors, charitable/nonprofit organizations, and commercial operators. Beginning in the fall of 2006, staff had several meetings with the coalition. During these meetings, the parties discussed the coalition's concerns about some aspects of the administrative case process and worked on a rules proposal. However, an agreement satisfactory to both parties was not reached. The coalition proposes adding language to clarify that the "presiding officer" (which would be the administrative law judge (ALJ) or the commissioners if hearing a case on appeal) has the authority to modify sanctions sought by commission staff. Some coalition members previously told staff that they believe the ALJs are hesitant to impose penalties that are different than those recommended by staff. Although staff does not share this perception, this addition makes it clear that the presiding officer can impose the penalty they feel is appropriate. The coalition's request was approved at the January 2009 commission meeting.

Citation of Existing Rules Affected by this Order: Amending WAC 230-17-025.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 08-22-079 on November 4, 2008, and published November 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 1, 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: January 9, 2009.

Susan Arland
Rules Coordinator

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

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

(a) The commissioners, by their own order, declare their intent to preside at a specific proceeding; or

(b) The proceeding is an appeal of an initial order issued by an ALJ.

(2) All hearings must be conducted in compliance with Title 230 WAC and chapter 34.05 RCW.

(3) The presiding officer is authorized to modify an administrative penalty sought by commission staff against the applicant, licensee, or permittee.

WSR 09-03-028

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed January 12, 2009, 8:48 a.m., effective February 12, 2009]

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

Purpose: The purpose of the rule amendment is to clarify requirements and make grammatical correction.

Citation of Existing Rules Affected by this Order: Amending WAC 388-76-10120, 388-76-10125, 388-76-10955, and 388-76-10960.

Statutory Authority for Adoption: RCW 70.128.040.

Adopted under notice filed as WSR 08-22-103 on November 5, 2008.

A final cost-benefit analysis is available by contacting Maureen Lally, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-3204, fax (360) 438-7903, e-mail lallyma@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 0, Amended 4, Repealed 0.

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

Date Adopted: January 12, 2009.

Stan Marshburn
Interim 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 09-04 issue of the Register.

WSR 09-03-029

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed January 12, 2009, 8:58 a.m., effective February 12, 2009]

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

Purpose: The purpose of the proposed rule is to clarify requirements and make grammatical correction.

Citation of Existing Rules Affected by this Order: Amending WAC 388-76-10000, 388-76-10230, 388-76-10235, 388-76-10330, 388-76-10355, 388-76-10650, 388-76-10720, 388-76-10725, 388-76-10775, 388-76-10840, 388-76-10845, 388-76-10870, 388-76-10930, and 388-76-10995.

Statutory Authority for Adoption: RCW 70.128.040.

Adopted under notice filed as WSR 08-21-036 on October 8, 2008.

Changes Other than Editing from Proposed to Adopted Version: For WAC 388-76-10930 Plan of correction—Required, added subsection (3), "The adult family home must complete an attestation of correction for any inspection report as the department requires."

For WAC 388-76-10235 Guardianship, the following effective date language was added:

"Effective February 1, 2009, the adult family home ((may be)) must ensure that no provider, entity representative, resident manager, or staff becomes any resident's guardian.

(2) Provider, entity representative, resident manager or staff who is a resident's guardian before February 1, 2009 may continue to be that resident's guardian."

The changes were made because residential care services seeks consistency in rule-making language to the extent possible in all settings, nursing homes, boarding homes and adult family homes.

A final cost-benefit analysis is available by contacting Maureen Lally, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-3204, fax (360) 438-7903, e-mail lallyma@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 0, Amended 14, 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 14, Repealed 0.

Date Adopted: January 12, 2009.

Stan Marshburn
Interim 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 09-04 issue of the Register.

WSR 09-03-030

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed January 12, 2009, 9:04 a.m., effective February 12, 2009]

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

Purpose: The purpose of the proposed rule is to clarify requirements and make grammatical correction.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-76-10785; and amending WAC 388-76-10040, 388-76-10080, 388-76-10105, 388-76-10170, 388-76-10335, 388-76-10645, and 388-76-11015.

Statutory Authority for Adoption: RCW 70.128.040.

Adopted under notice filed as WSR 08-22-104 on November 5, 2008.

Changes Other than Editing from Proposed to Adopted Version: Delete the wording "except that" in subsection (2) of WAC 388-76-10040 License requirements—Qualified person must live-in or be on-site.

A final cost-benefit analysis is available by contacting Maureen Lally, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-3204, fax (360) 438-7903, e-mail lallyma@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 5, Amended 7, 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 5, Amended 7, Repealed 1.

Date Adopted: January 12, 2009.

Stan Marshburn
Interim Secretary

NEW SECTION

WAC 388-76-10036 License requirements—Multiple adult family home management. When there is more than

one home licensed to a provider or entity the adult family home must ensure that:

- (1) Each home has one person responsible for managing the overall delivery of care to all residents in the home;
- (2) The designated responsible person is the provider, entity representative or a qualified resident manager; and
- (3) Each responsible person is designated to manage only one adult family home at a given time.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10040 License requirements—(~~Provider or entity representative residence~~) Qualified person must live-in or be on-site. (1) The adult family home provider or entity representative must:

- (a) Live in the home; or
- (b) Employ or contract with a qualified resident manager who lives in the home and is responsible for the care and services of each resident at all times(~~or~~ ~~(c) Provide twenty-four hour staffing~~).
- (2) (~~Ensure that~~) The provider, entity representative, or qualified resident manager is exempt from the requirement to live in the home if:

- (a) The home has twenty-four hour staffing coverage; and
- (b) A qualified staff person who can make needed decisions is always present in the home.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10080 Application—Co-provider. Couples considered legally married or domestic partners under Washington state law:

- (1) May not apply for separate licenses (~~for each spouse~~); and
- (2) May apply jointly as co-providers.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10105 Application—Change of ownership. (1) A change of ownership of an adult family home requires both a new license application and a new license.

(2) A change of ownership occurs when there is a change in:

- (a) The provider or entity (~~representative ultimately responsible for the daily operational decisions of the home~~) provider; or
- (b) Control of an entity provider.
- (3) Events which constitute a change of ownership include, but are not limited to:
 - (a) The form of legal organization of the provider is changed, such as when a provider forms:
 - (i) A partnership;
 - (ii) A corporation;
 - (iii) An association; or
 - (iv) A dissolution or merger of a licensed entity with another legal organization.

(b) The provider or entity (~~(representative)~~) provider transfers business operations and management responsibility to another party, whether there is a partial or whole transfer of adult family home real property and/or personal property assets.

(c) Two people are both licensed as a married couple or domestic partners to operate an adult family home and an event, such as a separation, divorce, or death results in only one person operating the home.

(d) An event dissolves the partnership, if the provider or entity (~~(representative)~~) provider is in a business partnership.

(e) If the provider or entity (~~(representative)~~) provider is a corporation and the corporation:

(i) Is dissolved;

(ii) Merges with another corporation which is the survivor; or

(iii) Consolidates with one or more corporations to form a new corporation;

(iv) Whether by a single transaction or multiple transactions within a continuous twenty-four month period, transfers fifty percent or more of the stock to one or more:

(A) New or former stockholders; or

(B) Present stockholders each having less than five percent of the stock before the initial transaction.

(f) Any other event or combination of events which results in a substitution of or control of the provider or entity (~~(representative)~~) provider.

(4) The new owner:

(a) Must correct all deficiencies that exist at the time of the ownership change;

(b) Is subject to the provisions of chapters 70.128, 70.129, 74.34 RCW, this chapter and other applicable laws and regulations;

(c) Must obtain a new license from the department before the transfer of ownership; and

(d) Must not begin operation of the adult family home as the new owner, provider or entity (~~(representative)~~) provider until the department has granted the license.

(5) The home must notify each resident, in writing at least thirty days before the effective date of the ownership change.

(6) If a currently licensed provider or entity (~~(representative)~~) provider seeking to change ownership wants the department to give priority to processing an application to minimize or prevent disruption of residents that live in the existing home, the applicant must:

(a) Make the request to the department in writing, including the reason for changing the (~~(location)~~) ownership of the home; and

(b) Explain how or why the reason for the change is beyond the control of the home.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10170 Criminal history background check—Information—Confidentiality—Use restricted. The adult family home must:

(1) Establish and implement procedures that ensure:

(a) All disclosure statements, background inquiry applications, responses, related information, and all copies are kept in a confidential and secure manner;

(b) All background inquiry results and disclosure statements are used for employment purposes only;

(c) Background inquiry results and disclosure statements are not disclosed to any person except:

(i) The person about whom the home made the disclosure or background inquiry;

(ii) Licensed facilities, an employer of an authorized program, or an in-home services agency employer identified in WAC 388-76-10173;

(iii) Authorized state and federal employees; and

(~~(iii)~~) (iv) The Washington state patrol auditor.

(2) Keep a record of inquiry results for eighteen months after the date an employee either quits or is terminated.

NEW SECTION

WAC 388-76-10173 Disclosure of employee information—Employer immunity—Rebuttable presumption. (1) A provider of the following, who discloses information about a former or current employee to the prospective employer of the following, is presumed to act in good faith and is immune from civil and criminal liability for such disclosure or its consequences:

(a) Boarding homes licensed under chapter 18.20 RCW;

(b) Nursing homes licensed under chapter 18.51 RCW;

(c) Adult family homes licensed under chapter 70.128 RCW;

(d) An employer of a program authorized under RCW 71A.12.040(10); or

(e) An in-home services agency employer of a program licensed under chapter 70.127 RCW.

(2) The immunity provided in this section only applies if the disclosure relates to:

(a) The employee's ability to perform his or her job;

(b) The diligence, skill or reliability with which the employee carried out the duties of his or her job; or

(c) Any illegal or wrongful act committed by the employee when related to his or her ability to care for a vulnerable adult.

(3) For the purposes of this section:

(a) The presumption of good faith may only be rebutted by a showing of clear and convincing evidence that the information disclosed by the provider was knowingly false or made with reckless disregard for the truth of the information disclosed.

(b) Should the employee successfully rebut the presumption of good faith standard in court, the employee shall be entitled to recover reasonable attorneys' fees against the employer.

NEW SECTION

WAC 388-76-10174 Background checks—Disclosure of information—Sharing of criminal background information by health care facilities. In accordance with RCW 43.43.832 a health care facility may share criminal background information with other health care facilities. For the purposes of this section health care facility means a nursing

home licensed under chapter 18.51 RCW, a boarding home licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW.

(1) A health care facility may, upon request from another health care facility, share copies of completed criminal background inquiry information.

(2) A health care facility may share completed criminal background inquiry information only if:

(a) The health care facility sharing the criminal background inquiry information is reasonably known to be the person's most recent employer;

(b) No more than twelve months has elapsed from the date the person was last employed at a licensed health care facility to the date of their current employment application; and

(c) The criminal background information is no more than two years old.

(3) If criminal background inquiry information is shared, the health care facility employing the subject of the inquiry must require the applicant to sign a disclosure statement indicating that there has been no conviction or finding as described in RCW 43.43.842 since the completion date of the most recent criminal background inquiry.

(4) Any health care facility that knows or has reason to believe that an applicant has or may have a disqualifying conviction or finding as described in RCW 43.43.842, after the completion date of their most recent criminal background inquiry:

(a) Cannot rely on the applicant's previous employer's criminal background inquiry information; and

(b) Must request a new criminal background inquiry pursuant to RCW 43.43.830 through 43.43.842.

(5) Health care facilities that share criminal background inquiry information shall be immune from any claim of defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of this information in accordance with this section.

(6) Health care facilities must send and receive the criminal background inquiry information in a manner that reasonably protects the subject's rights to privacy and confidentiality.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10335 Resident assessment topics. ~~((+)) For the purposes of this section, "body care" means:~~

~~(a) How the resident performs with passive range of motion, applications of dressings and ointments or lotions to the body and pedicure to trim toenails and apply lotion to feet; and~~

~~(b) Dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC.~~

~~(2) Body care includes:~~

~~(a) Foot care if the resident is diabetic or has poor circulation; or~~

~~(b) Changing bandages or dressings when sterile procedures are required.~~

~~(3))~~ The adult family home must ensure that each resident's assessment includes the following minimum information:

~~((+)) (1)~~ Recent medical history;

~~((+)) (2)~~ Current prescribed medications, and contraindicated medications, including but not limited to, medications known to cause adverse reactions or allergies;

~~((+)) (3)~~ Medical diagnosis reported by the resident, the resident representative, family member, or by a licensed medical professional;

~~((+)) (4)~~ Medication management:

~~((+)) (a)~~ The ability of the resident to be independent in managing medications;

~~((+)) (b)~~ The amount of medication assistance needed;

~~((+)) (c)~~ If medication administration is required; or

~~((+)) (d)~~ If a combination of the elements in ~~((+)) (a)~~ through ~~((+)) (c)~~ above is required.

~~((+)) (5)~~ Food allergies or sensitivities;

~~((+)) (6)~~ Significant known behaviors or symptoms that may cause concern or require special care, including:

~~((+)) (a)~~ The need for and use of medical devices;

~~((+)) (b)~~ The refusal of care or treatment; and

~~((+)) (c)~~ Any mood or behavior symptoms that the resident has had within the last five years.

~~((+)) (7)~~ Cognitive status, including an evaluation of disorientation, memory impairment, and impaired judgment;

~~((+)) (8)~~ History of depression and anxiety;

~~((+)) (9)~~ History of mental illness, if applicable;

~~((+)) (10)~~ Social, physical, and emotional strengths and needs;

~~((+)) (11)~~ Functional abilities in relationship to activities of daily living including:

~~((+)) (a)~~ Eating;

~~((+)) (b)~~ Toileting;

~~((+)) (c)~~ Walking;

~~((+)) (d)~~ Transferring;

~~((+)) (e)~~ Positioning;

~~((vi)) Specialized body care;~~

~~((vii)) (f)~~ Personal hygiene;

~~((viii)) (g)~~ Dressing; and

~~((ix)) (h)~~ Bathing.

~~((+)) (12)~~ Preferences and choices about daily life that are important to the resident, including but not limited to:

~~((+)) (a)~~ The food that the resident enjoys;

~~((+)) (b)~~ Meal times; and

~~((+)) (c)~~ Sleeping and nap times.

~~((m)) (13)~~ ~~((Preferences for))~~ Activities ~~((= and~~

~~((n)) A preliminary service plan)).~~

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10645 Resident rights—Quality of life—Reasonable accommodation. The adult family home must ensure each resident:

(1) Receives reasonable accommodation to meet the needs and preferences of the resident, except when the reasonable accommodation endangers the health or safety of the individual or other residents; and

(2) Has the ability to share a double room with his or her spouse or domestic partner when both spouses or domestic partners consent to the arrangement.

NEW SECTION

WAC 388-76-10783 Water hazards and bodies of water—Resident safety. The adult family home must protect each resident:

- (1) From risks associated with water hazards or bodies of water of any depth at the home; and
- (2) When accompanying or escorting the resident at other locations where there are water hazards or bodies of water of any depth.

NEW SECTION

WAC 388-76-10784 Water hazards—Fences, gates and alarms. For any adult family home newly licensed after July 1, 2007 or any currently licensed adult family home that adds or modifies a new or existing water hazard after July 1, 2007 must:

- (1) Comply with this section and the requirements of the:
 - (a) International Residential Code (IRC); and
 - (b) Washington state amendments to the International Residential Code (IRC).
- (2) Enclose water hazards over twenty four inches deep with:
 - (a) Fences and gates at least forty-eight inches high; and
 - (b) Audible alarms when doors, screens, and gates that directly lead to or surround the water hazard, are opened.

AMENDATORY SECTION (Amending WSR 08-05-098, filed 2/15/08, effective 3/17/08)

WAC 388-76-11015 Resident protection program—Disputing a preliminary finding. (1) The individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident may request an administrative hearing to challenge a preliminary finding made by the department.

(2) The request must be made in writing to the office of administrative hearings.

(3) The office of administrative hearings must receive the individual's written request for an administrative hearing within thirty calendar days of the date written on the notice of the preliminary finding.

(4) The written request for a hearing must include(~~(=~~ ~~(a))~~) the individual's full legal name(~~(=)~~) and current mailing address and should include:

- (a) The individual's telephone number;
- (b) A brief explanation of why the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident disagrees with the preliminary finding;
- (c) A description of any assistance needed in the administrative appeal process by the individual, including a foreign or sign language interpreter or any reasonable accommodation for a disability; and
- (d) The individual's signature.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-76-10785 Water hazards—Enclosures and safety devices.

WSR 09-03-032

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed January 12, 2009, 1:29 p.m., effective February 12, 2009]

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

Purpose: In accordance with the Public Records Act, the department of agriculture maintains a procedural rule that describes its organizational structure and outlines the process to follow when persons are interested in accessing public records held by the department. These amendments update this procedural rule and include new rules regarding the disclosure of certain information relating to dairies, animal feeding operations and concentrated animal feeding operations.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-06-170, 16-06-175, 16-06-195, 16-06-215, 16-06-230 and 16-06-235; and amending WAC 16-06-150, 16-06-155, 16-06-160, 16-06-165, 16-06-180, 16-06-185, 16-06-190, 16-06-200, 16-06-205, 16-06-210, 16-06-220, and 16-06-225.

Statutory Authority for Adoption: For WAC 16-06-155 is chapters 34.05, 42.17, 42.56, and 43.23 RCW; all other sections is chapters 34.05, 42.56, and 43.23 RCW.

Adopted under notice filed as WSR 08-24-062 on November 26, 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 1, Amended 12, Repealed 6.

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 12, Repealed 6.

Date Adopted: January 12, 2009.

John Daly
Acting Deputy Director

AMENDATORY SECTION (Amending WSR 96-14-086, filed 7/2/96, effective 8/2/96)

WAC 16-06-150 The ~~((reason for))~~ purpose of the rule. The ~~((reason for))~~ purpose of this chapter is to ~~((ensure compliance by))~~ establish the procedures the Washington

state department of agriculture (~~(with)~~) will follow to provide full access to public records, and to implement the provisions of the Public Records (~~(Disclosure)~~) Act, chapter 42.56 RCW (~~(42.17.250 through 42.17.340, and RCW 34.05.220 through 34.05.240 and RCW 34.05.330)~~). These rules provide information to persons requesting access to the department's public records and establish procedures for both requestors and department staff.

AMENDATORY SECTION (Amending WSR 96-14-086, filed 7/2/96, effective 8/2/96)

WAC 16-06-155 Definitions. (~~((1))~~) "Denial of disclosure" denotes any exempting from disclosure of any public record.

~~((2))~~) "Department" means the Washington state department of agriculture.

~~((3))~~) "Disclosure" means inspection (~~(and)~~) or copying.

~~((4))~~) "Public records" include any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by the department regardless of physical form or characteristics.

~~((5))~~) "Writing" means handwriting, typewriting, printing, photostating, telefaxing, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents, including existing data compilations from which information may be obtained or translated.

AMENDATORY SECTION (Amending WSR 96-14-086, filed 7/2/96, effective 8/2/96)

WAC 16-06-160 Description of (~~(agency)~~) department organization, address and telephone number of Olympia administrative offices. The administrative offices of the Washington state department of agriculture are located in the Natural Resources Building, 1111 Washington Street SE, P.O. Box 42560, Olympia, Washington 98504-2560. The information telephone number is (360) 902-1800. The department is organized into (~~(six))~~ seven divisions:

(1) (~~(Agency operations))~~ Director's office;

(2) Administrative services division;

~~((2))~~) (3) Animal services division;

(4) Commodity inspection division;

~~((3))~~ Consumer and producer protection division;

~~(4)~~ Food safety and animal health division;

(5) (~~(Laboratory services division; and)~~) Food safety and consumer services division;

(6) Pesticide management division; and

(7) Plant protection division.

The department maintains service locations or major field offices around the state. Several of these offices are headed by a supervisor or chief. The administrative offices located in Olympia (~~(will))~~ can assist persons in ((determining)) locating office locations around the state. ((An)) The

department's organization chart (~~(of the department))~~) is available upon request from the Public Records Officer and the Human Resources Office, Washington State Department of Agriculture, P.O. Box 42560, Olympia, Washington 98504-2560.

AMENDATORY SECTION (Amending WSR 96-14-086, filed 7/2/96, effective 8/2/96)

WAC 16-06-165 (~~(Agency)) Department organization description by division and program.~~ An organizational description by division and program is as follows:

Director's office:

- ~~((~~ Legislative affairs
- Policy development and review))
- The director's office covers legislative affairs, internal program review, domestic and international marketing, policy development and review, bioenergy coordination, agency communications, and quality and performance.

(~~(Agency operations)) Administrative services division:~~

- ~~((~~) • The administrative services division includes accounting, budget, payroll, forms and records, adjudicative proceedings, public disclosure, Washington administrative code filings, personnel office, ((data processing)) information technology services, ((information office, international marketing and commodity commission and fairs commission activities)) safety and risk management, commodity commission activities, and the fairs commission program.

Animal services division:

- The animal health program conducts programs to monitor, diagnose, manage and eradicate specific animal diseases such as tuberculosis, scrapie, and poultry diseases, and conducts programs to prevent the introduction of foreign animal diseases. The program manages animal health emergencies and responds to certain animal welfare issues.
- The livestock brand inspection program registers brands and inspects livestock when animal ownership changes or animals leave the state. This program provides services to cattle and horse owners in an effort to prevent theft of the animals and licenses feedlots and sales facilities. The establishment and licensure of livestock markets is also implemented within this program.
- The animal identification program implements the voluntary national animal identification system in Washington state to facilitate the tracking of animals and managing animal disease outbreaks.

Commodity inspection division:

- ~~((~~ Fruit and vegetable inspection program for quality, grade, condition, size and pack
- Conducts statewide grain inspection

~~Consumer and producer protection division:~~

- ~~Commission merchants program~~

- Livestock identification, brand registration and inspection
- Establishment of livestock markets
- Grain warehouse audit
- Weights and measures program
- Seed program regulates the quality and labeling of various crop seeds in Washington

Food safety and animal health division:

- Dairy inspection program
- Food processing program
- Organic food program
- Egg inspection program
- Animal health program

Laboratory services division:

- Performs chemical and micro-biological analyses in support of the food safety and pesticide management programs
- Administers hop inspection and analyses
- Pest management program is responsible for nonnative insect detection and control, and plant pest and disease identification; develops and enforces plant quarantines
- Apiary program provides education and registration over Washington apiarists
- Nursery program certifies nursery stock and issues phytosanitary certificates for materials moving out of state)
- The fruit and vegetable inspection program provides phytosanitary certification, shipping point inspection, third-party grading of raw product for processing and export certification, and licenses controlled atmosphere storage facilities.
- The grain inspection program provides inspection, analytical, and weighing services to ensure orderly commerce for grain, dry peas, lentils, rapeseed, and similar commodities produced in Washington state or shipped through Washington ports from other states.
- The grain warehouse audit program licenses, bonds, and audits public grain storage warehouses and grain dealers who buy covered commodities from producers. Auditing procedures include verification of grain records and purchase contracts with producers, and a physical inventory of stored commodities at warehouses.
- The seed program inspects fields for insects and disease; inspects and tests seed for purity and germination; provides phytosanitary certification for export; and issues labeling permits. The program areas of responsibility are seed certification, seed testing, phytosanitary inspection and testing, and seed law enforcement.

Food safety and consumer services division:

- The food safety program inspects and licenses dairy and food processing facilities and provides services aimed to protect the public from injury and illness caused by food, dairy, and egg products that are con-

taminated, adulterated or otherwise unfit for consumption.

- The livestock nutrient management program inspects dairy farms; provides assistance; and enforces laws that include state and federal water quality laws and rules regarding animal feeding operations.
- The microbiology laboratory supports the food safety program by testing food and dairy products for quality measures and for food poisoning organisms, and by examining food products for contamination by insects, rodents or filth. The laboratory also supports animal health programs by testing animal blood and tissue for disease to aid in disease eradication programs and to allow animals to move interstate or internationally.
- The organic food program inspects and licenses organic producers and processors. The program provides services to consumers and supports the organic food industry by ensuring that all food products making organic claims meet standards for organic production and labeling.

Pesticide management division:

- ((-)) • The pesticide management division administers the ((regulations of)) laws and rules related to pesticides, animal feed((s)) and fertilizer ((laws)), and administers the pesticide waste disposal program ((broken down into three units of the division)).
- ((-)) • The compliance ((unit)) program enforces state and federal pesticide laws, animal feed laws and fertilizer laws; and investigates complaints of pesticide misuse.
- ((-)) • The registration ((unit)) program registers pesticides, fertilizers and animal feeds sold and used in the state of Washington.
- ((-)) • The ((program development and)) certification ((unit)) and training program conducts ((the)) waste pesticide disposal ((program)) activities; provides interagency coordination on pesticide-related issues; provides safety training on the use of pesticides, ((which includes)) including public outreach and new program development; licenses pesticide application equipment, pesticide dealers, structural pest inspectors, and commercial, public, and private pesticide applicators, operators and consultants; approves recertification courses; and tracks educational credits on pesticide and inspector licensees.

Plant protection division:

- The chemistry and hop program supports several department programs by analyzing samples taken in investigations of alleged pesticide misuse; monitors food for pesticide residues; analyzes commercial feed and fertilizer samples to determine if they meet label guarantees; grades hops for seed, stem and leaf content; and analyzes hops for brewing value.
- The commission merchants program licenses commission merchants, dealers, brokers, and cash buyers, which includes administering required bonds and the investigation of complaints.

- The pest program provides services aimed to prevent the establishment of high-risk and exotic insects, plant diseases, weeds and other pest species through surveys, inspections, quarantines, and eradication projects.
- Plant services program provides regulatory inspection of nurseries in an effort to provide consumers and the nursery industry with healthy, pest-free and disease-free plant materials; enforces quarantines to prevent pest introductions; and provides testing and inspection services to assure pest-free planting stock.
- The weights and measures program checks prepackaged items to verify quantity of contents; inspects and tests commercial weighing and measuring devices; licenses public weighmasters and weighers; responds to consumer complaints; surveys labeling and advertising of products packaged or sold by weight, measure, or count; and develops standards and conducts compliance activities related to motor fuels and biofuels.

AMENDATORY SECTION (Amending WSR 96-14-086, filed 7/2/96, effective 8/2/96)

WAC 16-06-180 ~~((The agency's))~~ **Public records officer** ~~((is available for assistance, appeals of denial of disclosure and information about the agency's index)).~~ (1) ~~((The department shall designate one public records officer, located in the agency operations division who shall:~~

(a) ~~Be responsible for implementing the department's process regarding disclosure of public records;~~

(b) ~~Coordinate departmental staff in this regard, generally ensuring the compliance of the staff with public records disclosure requirements;~~

(c) ~~Make the final decision if a records request has been denied and a petition for review is filed under the procedures in WAC 16-06-220;~~

(d) ~~Have the option of waiving the requirement that a records request be in written form;~~

(e) ~~Maintain the agency's index as required under chapter 42-17 RCW.)~~ Any person wishing to request access to the department's public records, or seeking assistance in making a public records request, should contact the public records officer.

(2) ~~((The address of))~~ You may contact the public records officer ~~((is:))~~ by mail at Washington State Department of Agriculture, 1111 Washington Street SE, P.O. Box 42560, Olympia, Washington 98504-2560 ~~((; or call the Olympia administrative office)),~~ by telephone at ~~((6360(9))-902-1809,~~ by fax at 360-902-2092, or by e-mail at: publicdisclosure@agr.wa.gov.

(3) The name of the department's current public records officer is also on file with the office of the code reviser in accordance with RCW 42.56.580 and is published in the *Washington State Register*.

(4) The public records officer will oversee compliance with the Public Records Act, but a designee of the public records officer may process the request or otherwise fulfill

the duties of the public records officer. The public records officer will provide the fullest assistance to requestors.

AMENDATORY SECTION (Amending WSR 96-14-086, filed 7/2/96, effective 8/2/96)

WAC 16-06-185 Availability of public records. (1) All the department's public records ~~((of the department))~~ are available for disclosure except as otherwise provided by chapter 42.56 RCW or any other law. ~~((Requests for public record may be initiated at any department office during customary business hours, Monday through Friday, excluding legal holidays.))~~ Many records are available on the department's web site at: <http://agr.wa.gov>. Requestors are encouraged to view the records available on the web site prior to submitting a records request.

(2) The department ~~((shall))~~ will respond promptly to requests for disclosure. E-mail requests will be handled in the same manner as other types of mail received by the department. Public records requests received by e-mail after regular business hours will be considered received on the next business day. Within five business days of receiving a public records request, the department ~~((shall))~~ will respond by doing one or more of the following:

(a) ~~((Providing the record))~~ Make the records available for inspection or copying;

(b) ~~((Acknowledging the department has received the request and providing a reasonable estimate of the time the department will require to respond to the request))~~ Send the copies to the requestor if copies are requested and payment of a deposit for the copies is made or terms of payment have been agreed upon; ~~((or))~~

(c) ~~((Deny))~~ Provide a reasonable estimate of when records will be available;

(d) Request clarification from the requestor if the request is unclear or does not sufficiently identify the requested records. Clarification may be requested and provided by telephone; or

(e) Deny the public records request.

(3) ~~((Additional time for the department to respond to a request may be based on the need to:~~

(a) ~~Clarify the intent of the request;~~

(b) ~~Locate and assemble the information requested;~~

(c) ~~Notify third persons or agencies affected by the request; or~~

(d) ~~Determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.~~

(4) ~~In acknowledging receipt of a public record request that is unclear, the department may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the department need not respond to it.~~

(5) ~~If the department does not respond in writing within five business days of receipt of the request for disclosure, the person seeking disclosure shall be entitled to:~~

(a) ~~Consider the request denied; and~~

(b) ~~Petition the public records officer under WAC 16-06-180.)~~ The public records officer may revise the estimate of when records will be available when it is necessary to clarify

the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt from disclosure.

(4)(a) Some records are exempt from disclosure, in whole or in part. If the department believes that a record is exempt from disclosure and should be withheld, the department will provide a written statement of the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld.

(b) If only a portion of a record is exempt from disclosure, the department will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the records are being redacted.

(5) In the event the requested records name a specific person or pertain to a specific person and may be exempt from disclosure, the department may, prior to providing the records, give notice to others whose rights may be affected by the disclosure. Sufficient notice will be given to allow affected persons to seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(6)(a) The public records officer may provide access for inspection and copying of records in installments when the request is for a large number of records.

(b) The public records officer may stop searching for the remaining records and close the request if within thirty days the requestor fails to claim or inspect records in one or more of the installments.

(c) The department has the discretion to determine the order in which it responds to requests for public records based on staff and resource availability, the size of the request, and the ease in locating or duplicating the records requested.

(7) The public records officer will close the request and indicate to the requestor that the department has closed the request when the requestor:

(a) Withdraws the request;

(b) Fails to provide clarification when requested by the department;

(c) Fails to fulfill obligations to inspect the records; or

(d) Fails to pay the deposit or pay the final payment for the requested copies.

(8) If, after the department has informed the requestor that it has provided all available records, the department becomes aware of additional responsive records existing at the time of the request, it will promptly inform the requestor of the additional records and provide them on an expedited basis.

AMENDATORY SECTION (Amending WSR 96-14-086, filed 7/2/96, effective 8/2/96)

WAC 16-06-190 ((Request)) Public records ((in writing using a department issued form or the format provided in this rule)) requests. (1) ~~((All requests for the disclosure of a public record shall be in writing on a department of agriculture disclosure form as prescribed by WAC 16-06-235, or a format which substantially complies with WAC 16-06-235, and identifies the record being sought with reason-~~

~~able certainty. The written request shall include but is not limited to:)) A person wishing to inspect or copy the department's public records may make the request in writing on the department's public records request form or in writing by first class mail, e-mail, or fax. Requests for public records may be initiated at any department office during customary business hours, Monday through Friday, excluding legal holidays. Requests must include the following information:~~

~~(a) The name, address and telephone number or other contact information of the person requesting the records;~~

~~(b) The ((calendar)) date on which the request is made; and~~

~~(c) Sufficient information to readily identify ((documents)) records being requested.~~

~~(2) ((A request for disclosure shall be made during customary office hours.~~

~~(3) In all cases in which a member of the public is making the request, it shall be the obligation of department staff to assist the member of the public to appropriately identify the public record being requested.~~

~~(4) A form for requesting department documents can be obtained from any administrative office of the department or a person can format a request in a similar format as prescribed in WAC 16-06-235-)) (a) The request should be submitted to the public records officer at: Washington State Department of Agriculture, P.O. Box 42560, Olympia, Washington 98504-2560.~~

~~(b) The request may also be submitted by fax to 360-902-2092 or by e-mail at: publicdisclosure@agr.wa.gov.~~

~~(3) If a requestor cannot submit a request for public records in writing and desires to make an oral request either in person or by telephone, the public records officer or designee receiving the request will summarize the request in writing and then verify in writing with the requestor that the summary correctly memorializes the request.~~

AMENDATORY SECTION (Amending WSR 96-14-086, filed 7/2/96, effective 8/2/96)

WAC 16-06-200 Costs of disclosure. (1) No fee ~~((shall))~~ will be charged for the inspection of public records.

(2) The department ~~((shall))~~ charges a fee of fifteen cents per page of copy when copy charges exceed ten dollars for providing copies of public records. The department may also charge actual costs of mailing, including the cost of the shipping container. This charge is the amount necessary to reimburse the department for ~~((its))~~ copying costs incident to ~~((such copying and shall be payable at the time copies are furnished))~~ the disclosure request.

(3) The department may charge the actual cost involved for the duplication of tape recordings, video tapes, photographs, slides, postage, or delivery~~((;))~~ if these costs exceed ten dollars.

(4) The public records officer ~~((or the public records coordinator))~~ may waive ~~((any of the foregoing costs))~~ the fee when the expenses of processing payment exceeds the costs of providing copies.

(5) Electronic records: The department may charge the actual costs incurred for providing recordings in electronic format, such as the cost of scanning records or the cost of pro-

viding records on a CD-ROM. There will be no charge for e-mailing electronic records to a requestor unless another cost applies.

AMENDATORY SECTION (Amending WSR 96-14-086, filed 7/2/96, effective 8/2/96)

WAC 16-06-205 Protection of public records. In order to adequately protect the department's public records (~~(of the department)~~), the following will apply:

(1) ~~((No))~~ Public records ~~((shall))~~ made available for inspection may not be removed from the ~~((department's premises))~~ area the department makes available for inspection. The department has the discretion to designate the means and the location for the inspection of records.

(2) Inspection of any public record ~~((shall))~~ will be conducted in the presence of a designated department employee.

(3) ~~((No))~~ Public records may not be marked or altered in any manner during inspection.

(4) After inspection is complete, the public records officer or designee will make requested copies or arrange for copying.

(5) Public records that are maintained in a file or jacket, or in chronological order, may not be dismantled except by a designated department employee for purposes of copying.

~~((5))~~ Upon request of a member of the public to examine ~~((6))~~ Whenever a public records request involves an entire file ~~((or))~~, a group of ~~((documents))~~ records, ~~((as distinguished from a request to examine certain individual documents))~~ or a large number of records, the department ~~((shall be))~~ is allowed a reasonable time to ~~((inspect))~~ review the ~~((file))~~ records to determine whether information ~~((protected))~~ is exempt from disclosure ~~((by))~~ under chapter ~~((42.17))~~ 42.56 RCW ~~((is contained therein))~~ or other law.

~~((6))~~ When copying public documents, the copy machine will be operated by staff persons of the department only.)

AMENDATORY SECTION (Amending WSR 96-14-086, filed 7/2/96, effective 8/2/96)

WAC 16-06-210 Exemptions. ~~((The department reserves the right to determine if a requested public record is exempt or nondisclosable under RCW 42.17.250 et seq. Nondisclosable records include, but are not limited to:~~

(1) Personal information in any files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy pursuant to RCW 42.17.310 (1)(b);

(2) Investigative material pursuant to RCW 42.17.310 (1)(d) and (e);

(3) Test questions, scoring keys and other examination data used to administer a license, pursuant to RCW 42.17.310 (1)(f);

(4) Preliminary drafts, notes, recommendations, and intra-agency memoranda in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with action (RCW 42.17.310 (1)(i));

(5) Records which are relevant to a controversy to which an agency is a party but which records would not be available

to another party under the rules of pretrial discovery for causes pending in the superior courts.

(6) Lists of individuals requested for commercial purposes. The department shall not disclose such records unless specifically authorized or directed to do so by law. Provided, That lists of applicants for professional licenses and of professional licensees shall be made available to those professional associations or educational organizations recognized by their professional licensing or examination board, upon payment of a reasonable charge therefor. Provided further, That such recognition may be refused only for a good cause pursuant to a hearing under the provisions of chapter 34.05 RCW.

(7) Information on commercial fertilizer distribution, pursuant to RCW 42.17.317.

(8) Information on commercial feed pursuant to RCW 15.53.9018.

(9) Confidential information regarding individual company operations or production found in the Washington State Seed Act, RCW 15.49.370(8).

(10) Business related information obtained under the Organic Food Products Act concerning an entity certified under that act or an applicant for such certification, which is found under RCW 15.86.110.

(11) Privileged or confidential information or data required under the Washington Pesticide Control Act which contains trade secrets, commercial or financial information, which is found under RCW 15.58.065.

(12) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects pursuant to RCW 43.23.035.

(13) Pursuant to chapter 43.23 RCW, except for release of statistical information not descriptive of any readily identifiable person or persons, all financial and commercial information and records supplied by persons to the department with respect to export market development projects shall be kept confidential unless confidentiality is waived by the party supplying the information. For purposes of this section, persons include any natural person, joint venture, firm, partnership or association, private or public corporation, or governmental entity.

(14) The following agricultural business and commodity commission records are exempt from the disclosure requirements of chapter 42.17 RCW:

(a) Production or sales records required to determine assessment levels and actual assessment payments to commodity commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88 and 16.67 RCW or required by the department of agriculture under RCW 15.13.310(4) or 15.49.370(6);

(b) Consignment information contained on phytosanitary certificates issued by the department of agriculture under chapters 15.13, 15.49 and 15.17 RCW or federal phytosanitary certificates issued under 7 C.F.R. 353 through cooperative agreements with the animal and plant health inspection service, United States Department of Agriculture or on applications for phytosanitary certification required by the department of agriculture; and

~~(e) Financial and commercial information and records supplied by persons to commodity commissions formed under chapters 15.24, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88 and 16.67 RCW with respect to domestic or export marketing activities or individual producer's production information.)~~ The Public Records Act provides that a number of types of information or records are exempt from public inspection and copying. In addition, records are exempt from disclosure if any other statute exempts or prohibits disclosure. Requestors should be aware of the following exemptions to public disclosure specific to department records. This list is not exhaustive and other exemptions may apply:

(1) Personal information in any files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy (reference RCW 42.56.230(2)).

(2) Investigative records (reference RCW 42.56.240).

(3) Test questions, scoring keys, and other examination data used to administer a license (reference RCW 42.56.250(1)).

(4) Records that are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts (reference RCW 42.56.290).

(5) Lists of individuals requested for commercial purposes (reference RCW 42.56.070(9)).

(6) Social Security numbers are confidential and not subject to disclosure except when expressly required by or governed by other law (reference RCW 41.56.250; for full text, see subsection (9) of this section).

(7) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required or governed by other law (reference RCW 42.56.230(4)).

(8) Applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to the applicant (reference RCW 42.56.250(2)).

(9) Residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, Social Security numbers and emergency contact information of employees or volunteers of a public agency, and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, Social Security numbers, and emergency contact information of dependents of employees or volunteers of a public agency that are held by any agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency (reference RCW 42.56.250(3)).

(10) Information provided for the semi-annual report for fertilizers, minerals and limes that would reveal the business operation of the person making the report (reference RCW 15.54.362(5) and 42.56.380(2)).

(11) The semiannual report required in the Commercial Feed Act is not a public record, and any information given in such report which would reveal the business operation of the person making the report is exempt from disclosure, and

information obtained by the department from other governmental agencies or other sources that is used to verify information received in the report is exempt from public disclosure (reference RCW 15.53.9018).

(12) The department has the authority to publish reports of official seed inspections, seed certifications, laboratory statistics, verified violations of this chapter, and other seed branch activities which do not reveal confidential information regarding individual company operations or production (reference RCW 15.49.370(8)).

(13) Business related information obtained under the Organic Food Products Act concerning an entity certified under that act or an applicant for certification under RCW 15.86.110, and records whose disclosure is prohibited by the federal Organic Certification Act, 7 U.S.C. Sec. 6515(g) and the rules adopted under that act (reference RCW 42.56.380(1)).

(14) Consignment information contained on phytosanitary certificates issued by the department under chapters 15.13, 15.17, and 15.49 RCW or federal phytosanitary certificates issued under 7 C.F.R. 353 through cooperative agreements with the animal and plant health inspection service, United States Department of Agriculture, or on applications for phytosanitary certification required by the department (reference RCW 42.56.380(4)).

(15) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by the former chapter 15.110 RCW or chapter 43.325 RCW (the energy freedom loan program) (reference RCW 42.56.270(4)).

(16) Information obtained under RCW 15.19.080 regarding the purchases, sales, or production of an individual American ginseng grower or dealer (reference RCW 42.56.380(6)).

(17) Financial statement information required to determine whether or not an applicant for a license to operate a warehouse under chapter 22.09 RCW, agriculture commodities, meets minimum net worth requirements (reference RCW 22.09.040(9)).

(18) All financial statement information to determine whether or not an applicant for a license to be a grain dealer under chapter 22.09 RCW meets the minimum net worth requirements (reference RCW 22.09.045(7)).

(19) Information submitted by an individual or business for the purpose of participating in a state or national animal identification system. Disclosure to local, state, and federal officials is not public disclosure. This exemption does not affect the disclosure of information used in reportable animal health investigations under chapter 16.36 RCW once they are complete (reference RCW 42.56.380(9)).

(20) Results of testing for animal diseases not required to be reported under chapter 16.36 RCW that is done at the request of the animal owner or the owner's designee and that can be identified to a particular business or individual is exempt from disclosure (reference RCW 42.56.380(10)).

(21) Information that can be identified to a particular business and that is collected under chapter 15.17 RCW, standards of grades and packs, and specifically RCW 15.17.140(2) and 15.17.143 for certificates of compliance (reference RCW 42.56.380(7)).

(22) Financial statement information provided under RCW 16.65.030 (1)(d), public livestock markets, is confidential information and not subject to public disclosure (reference RCW 16.65.030 (1)(d) and 42.56.380(8)).

(23) Privileged or confidential information or data that contains trade secrets, commercial, or financial information and is required and submitted under the Washington Pesticide Control Act (reference RCW 15.58.060 (1)(c) and 15.58.065).

(24) Except for release of statistical information not descriptive of any readily identifiable person or persons, all financial and commercial information and records supplied by persons to the department with respect to export market development projects (reference RCW 43.23.270 and 42.56.-270(3)).

(25) Information submitted by an applicant under chapter 17.24 RCW that is privileged or confidential because it contains trade secrets or commercial or financial information (reference RCW 17.24.061).

(26) Production or sales records required to determine assessment levels and actual assessment payments to commodity boards and commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.89, 15.100, and 16.67 RCW, or required by the department to administer these chapters or the department's programs (reference RCW 42.56.380(3)).

(27) Financial and commercial information and records supplied by persons:

(a) To the department for the purpose of conducting a referendum for the potential establishment of a commodity board or commission; or

(b) To the department or commodity boards or commissions formed under chapters 15.24, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.89, 15.100, or 16.67 RCW, with respect to domestic or export marketing activities or individual producer's production information (reference RCW 42.56.380(5)).

(28) Farm plans developed by conservation districts, unless the farm plan is used for the application or issuance of a permit (reference RCW 42.56.270(17)).

(29) Under RCW 42.56.610 and 90.64.190, information identifying the number of animals; volume of livestock nutrients generated; number of acres covered by the plan or used for land application of livestock nutrients; livestock nutrients transferred to other persons; and crop yields in plans, records, and reports obtained by state and local agencies from dairies, animal feeding operations, and concentrated animal feeding operations not required to apply for a National Pollutant Discharge Elimination System permit is disclosable in the following ranges:

(a) Number of animals: Beef cattle

- 1 to 19
- 20 to 159
- 160 to 299
- 300 to 999
- 1,000 to 5,999
- 6,000 to 10,999
- 11,000 to 15,999
- 16,000 to 20,999
- 21,000 to 25,999

- 26,000 to 31,199
- 31,200 to 37,439
- 37,440 to 44,999
- 45,000 and above

(b) Number of animals: Mature dairy cattle

- 1 to 37
- 38 to 199
- 200 to 699
- 700 to 1,699
- 1,700 to 2,699
- 2,700 to 3,699
- 3,700 to 4,699
- 4,700 to 5,699
- 5,700 to 6,839
- 6,840 and above

(c) Number of animals: Dairy heifers

- 1 to 49
- 50 to 149
- 150 to 299
- 300 to 999
- 1,000 to 1,999
- 2,000 to 2,999
- 3,000 to 3,999
- 4,000 and above

(d) Number of animals: Swine (fifty-five pounds or greater)

- 1 to 19
- 20 to 159
- 160 to 399
- 400 to 749
- 750 to 2,499
- 2,500 to 4,249
- 4,250 to 5,999
- 6,000 to 7,749
- 7,750 and above

(e) Number of animals: Swine (less than fifty-five pounds)

- 1 to 99
- 100 to 499
- 500 to 1,099
- 1,100 to 1,999
- 2,000 to 2,999
- 3,000 to 9,999
- 10,000 to 16,999
- 17,000 to 23,999
- 24,000 to 30,999
- 31,000 and above

(f) Number of animals: Layers (all ages)

- 1 to 199
- 200 to 999
- 1,000 to 10,999
- 11,000 to 24,999
- 25,000 to 81,999
- 82,000 to 138,999
- 139,000 to 195,999
- 196,000 to 252,999
- 253,000 to 309,999
- 310,000 to 371,999
- 372,000 to 446,399
- 446,400 to 535,679

535,680 to 642,815
642,816 to 771,379
771,380 to 925,655
925,656 to 1,110,787
1,110,788 to 1,332,945
1,332,946 and above

(g) Number of animals: Broilers (all ages)

1 to 199
200 to 999
1,000 to 17,999
18,000 to 37,499
37,500 to 124,999
125,000 to 212,499
212,500 to 299,999
300,000 and above

(h) Number of animals: Horses

1 to 19
20 to 79
80 to 149
150 to 499
500 to 849
850 to 1,199
1,200 to 1,549
1,550 and above

(i) Livestock nutrients generated or exported by volume

(ft³/day)

1 to 74
75 to 134
135 to 299
300 to 449
450 to 749
750 to 1,499
1,500 to 2,499
2,500 to 4,999
5,000 to 8,499
8,500 to 11,999
12,000 to 15,999
16,000 and above

(j) Livestock nutrients generated or exported by weight

(tons/year)

1 to 5,256
5,257 to 10,512
10,513 to 21,024
21,025 to 42,048
42,049 to 84,096
84,097 to 164,184
164,185 to 262,734
262,735 to 394,200
394,201 to 558,384
558,385 to 722,634
722,635 to 919,734
919,735 to 1,051,134
1,051,135 and above

(k) Number of acres covered by the plan or used for land application of livestock nutrients

0 to 25
26 to 65
66 to 120
121 to 300
301 to 550

551 to 900
901 to 1,300
1,301 to 1,800
1,801 to 2,500
2,501 to 3,200
3,201 to 4,000
4,001 to 6,000
6,001 to 9,000
9,001 to 11,500
11,501 to 14,000
14,001 and above

(l) Crop yields - tons/acre

0 to 1
1.1 to 2
2.1 to 3.5
3.6 to 5
5.1 to 7
7.1 to 9
9.1 to 12
12.1 to 14.5
14.6 to 17
17.1 to 19.5
19.6 to 22
22.1 to 26
26.1 and above

AMENDATORY SECTION (Amending WSR 96-14-086, filed 7/2/96, effective 8/2/96)

WAC 16-06-220 Review of denial of request for inspection (~~(for)~~) or copying of public records. (1) Any person who objects to the initial denial of a records request (~~((for a public record may petition for prompt review of such decision by submitting a written request for review to the department's public records officer located in the Olympia administrative office. The written request shall specifically refer to the written statement that constituted or accompanied the denial of disclosure))~~) may petition in writing to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the department denying the request.

(2) (~~(Immediately after receiving a petition for review of a decision denying a public record, the public records designee or public records coordinator denying the request shall refer it to the public records officer. The public records officer shall review decisions denying disclosure in the most prompt fashion possible, and such review shall be deemed completed at the end of the second business day following receipt by the department of the petition for review. This shall constitute final agency action for the purposes of judicial review, pursuant to RCW 42.17.320. If the public records officer neither approves nor disapproves the denial of the request before the end of the second business day following the denial of inspection, the denial of inspection shall be deemed approved by the department, and constitutes a final agency action pursuant to RCW 42.17.320.))~~) The public records officer will immediately consider the petition and either affirm or reverse the denial within two business days following the department's receipt of the petition, or within

such other time as the department and the requestor mutually agree to.

(3) Under RCW 42.56.530, if the department denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) Any person may obtain court review of a denial of a public records request under RCW 42.56.550 at the conclusion of two business days after the initial denial, regardless of any internal administrative appeal.

AMENDATORY SECTION (Amending WSR 96-14-086, filed 7/2/96, effective 8/2/96)

WAC 16-06-225 Records index. (1) The department's public records officer (~~(of the department)~~), located in the Olympia administrative office, (~~(shall)~~) will develop and maintain an agency index of (~~(= (1)(a) Records issued prior to July 1, 1990, by relying on agency)~~) the following records:

- (a) Department records retention schedules;
- (b) Final orders;
- (c) Declaratory orders entered after June 30, 1990;
- (d) Interpretative statements;
- (e) Policy statements; and
- (f) (~~(Agency)~~) Department rule docket (~~(= and~~
- (g) ~~Other agency information as required.~~

The schedule for revising and/or updating the index will occur annually on June 30 of each year).

(2) Information on obtaining or viewing the department's index (~~(should be directed to)~~) can be obtained from the public records officer at the department's headquarters office located at: Department of Agriculture, 1111 Washington Street, SE, P.O. Box 42560, Olympia, Washington 98504-2560.

NEW SECTION

WAC 16-06-250 Processing of public records requests—Electronic records. (1) Requesting electronic records: The process for requesting electronic public records is the same as for requesting paper public records.

(2) Providing electronic records:

(a) The department has the discretion to determine whether to provide records electronically or in paper form.

(b) When a requestor requests records in an electronic format, the public records officer will endeavor to provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the department and is generally commercially available, or in a format that is reasonably translatable from the format in which the department keeps the record.

(c) When electronic records require redaction, or are contained in a proprietary data base, or otherwise cannot be reasonably provided in an electronic format, the department will provide paper copies of the records to the requestor.

(3) Customized access to data bases: With the consent of the requestor, the department may provide customized access under RCW 43.105.280 if the record is not reasonably locatable or not reasonably translatable into the format requested.

The department may charge a fee consistent with RCW 43.105.280 for customized access.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 16-06-170	For assistance with disclosure of agency documents, you may contact a public records designee.
WAC 16-06-175	You may also contact an agency public records coordinator for assistance.
WAC 16-06-195	Disclosure procedure.
WAC 16-06-215	Qualifications on nondisclosure.
WAC 16-06-230	Interagency disclosure.
WAC 16-06-235	Request for public records disclosure form.

WSR 09-03-033

PERMANENT RULES

DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT

[Filed January 12, 2009, 2:17 p.m., effective February 12, 2009]

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

Purpose: During the 2008 legislative session, the legislature passed SSB 6423 (chapter 85, Laws of 2008) which made changes to the motion picture competitiveness program. Some of the statutory changes require an update to chapter 130-20 WAC. Additionally, the program has been under way for twenty months and the department has proposed some rule updates based on nearly two years' of program experience.

Statutory Authority for Adoption: RCW 43.365.020.

Adopted under notice filed as WSR 08-22-088 on November 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 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: January 12, 2009.

Marie Sullivan
Director of
Government Relations

AMENDATORY SECTION (Amending WSR 07-03-015, filed 1/4/07, effective 2/4/07)

WAC 130-20-010 Definitions. The following definitions apply to this chapter, unless the context clearly requires otherwise:

(1) "Applicant" means a television, film or commercial production company intending to produce a qualified production in Washington state.

(2) "Motion picture competitiveness program" means an approved program that is a 501 (c)(6) nonprofit organization with the sole purpose of revitalizing the state's standing in the film production marketplace through recommending and awarding financial assistance to qualified productions.

(3) "Costs" mean actual expenses of preproduction, production and postproduction expended in Washington state for the production of motion pictures, including but not limited to payments made for salaries, wages, and health insurance and retirement benefits, the rental/lease costs of machinery, equipment and facilities, and the purchase of food, property, lodging, and permits for work conducted in Washington state.

(4) "Department" means the department of community, trade, and economic development.

(5) "State film office" means a program within the department with the responsibility of promoting Washington state as a premier location for film and video production and assisting production needs within the state.

(6) "Motion picture" means a recorded audio-visual production intended for distribution to theaters, DVD, video, or the internet, or television, or one or more episodes of a single television series, television pilot or television commercials. Motion picture does not mean production of a television commercial that spends less ~~((then two))~~ than one hundred fifty thousand dollars in the state of Washington or one or more segments of a newscast or sporting event.

(7) "Funding assistance" means financial assistance from a motion picture competitiveness program.

(8) "Person" means the same as defined in RCW 82.04.-030.

(9) "Qualified production" is a production that has been certified by the motion picture competitiveness program as fully meeting the requirements for funding assistance.

(10) "Qualified expenditures" include production costs for wages and benefits provided to residents of Washington state for services performed in Washington state, goods and services purchased, leased or employed from a legal resident of this state, or a vendor or supplier who is located and doing business in this state for one year. Qualified expenditures do not include wages, salaries or other compensation for services of nonresident production personnel.

(11) "Motion picture competitiveness board" means a board appointed by the governor that administers the motion picture competitiveness program. The board evaluates and

awards funding assistance to motion picture projects pursuant to the guidelines of this chapter.

AMENDATORY SECTION (Amending WSR 07-03-015, filed 1/4/07, effective 2/4/07)

WAC 130-20-020 Eligibility criteria and guidelines.

(1) To qualify for funding assistance, the applicant must:

(a) Certify that it is not engaged, to any extent, in the production of erotic material, as defined in RCW 9.68.050.

(b) The end credits of a film production must acknowledge that the production was filmed in Washington state. The type and style of acknowledgment shall be negotiated between the motion picture competitiveness board and the production company.

(c) Agree to pay all obligations the film production company incurs in Washington state.

(d) Complete a survey as required in WAC 130-20-060 and file it with the state film office following the completion of the part of the project covered by the contract with the competitiveness board and before distribution of the funding assistance.

(e) Make every effort to maximize the hiring of local cast, crew and support services.

(f) Make industry standard payments for health insurance and a retirement plan for those positions typically covered by a collective bargaining agreement; and

(g) Enter into a contract with the motion picture competitiveness program accepting the terms above.

(2) The following activities are considered, but not limited to, qualified expenditures, provided the expenditure occurs in Washington state:

(a) Production costs include costs for preproduction, production and postproduction.

(b) Salaries of Washington state residents who are cast and crew, ~~((not to exceed two hundred fifty thousand dollars for any one employee,))~~ including wages and payments for health insurance and retirement plans, or fees of Washington state residents to include talent, management and labor.

(c) Cost of set construction and operations, wardrobe, make-up, accessories, location fees and related services.

(d) Costs associated with photography, sound synchronization, lighting and related services and materials.

(e) Renting or leasing vehicles, equipment or facilities.

(f) In-state food ~~((and)), lodging ((or a per diem for in-state employees, not to exceed the IRS rate or rate negotiated with the production company)), and per diems.~~

(g) Agency fees for insurance coverage and bonding if purchased from Washington state-based insurance agent.

(h) Postproduction expenditures directly attributable to the production of a motion picture or commercial for services including, but not limited to: Editing and related services, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects, animation services, and music.

(i) Legal and accounting fees and expenses related to the production's activities in Washington state, provided such services are performed by Washington state licensed attorneys or accountants.

(j) "Preproduction" means costs for standard activities directly related to the production, which are incurred prior to the first day of principal photography for a motion picture.

(k) Other direct or indirect costs of producing a film in accordance with the generally accepted entertainment industry practices if expenditures occurred in the state of Washington.

(l) Other costs the competitiveness program believes add economic benefit to the state of Washington.

(3) The board is encouraged to consider the following when considering certifying a production for funding assistance:

(a) The additional income and tax revenue to be retained in the state for general purposes.

(b) Creation and retention of family wage jobs that provide health insurance and payments into a retirement plan.

(c) The impact of projects to maximize in-state labor and use of in-state film production and film postproduction companies.

(d) The impact on the local economy and the state economy as a whole.

AMENDATORY SECTION (Amending WSR 07-03-015, filed 1/4/07, effective 2/4/07)

WAC 130-20-030 Funding assistance limits. (1) Maximum funding assistance from a motion picture competitiveness program is (~~capped at one million dollars per production and~~) subject to the following limitations:

(a) No more than twenty percent of a total actual expenditure in the state of at least five hundred thousand dollars for a single feature film produced in Washington state.

(b) No more than twenty percent of a total actual expenditure in the state of at least three hundred thousand dollars per television episode produced in Washington state (e.g., television series, pilot, movie of the week).

(c) No more than twenty percent of a total actual expenditure in the state of at least ~~(two)~~ one hundred fifty thousand dollars for an infomercial or television commercial produced in Washington state.

(2) Funding assistance is subject to the amount available in the account managed by the motion picture competitiveness program.

AMENDATORY SECTION (Amending WSR 07-03-015, filed 1/4/07, effective 2/4/07)

WAC 130-20-060 Survey requirement. In order to recognize the accountability and effectiveness of tax policy, the legislature requires that each production receiving funding assistance from the motion picture competitiveness program shall report information to the state film office through a survey.

(1) The motion picture competitiveness program shall ensure that no funds are disbursed until an applicant submits answers to a survey developed by the state film office.

(2) The state film office will make available on its web site a survey template.

(3) The motion picture competitiveness program may extend the due date for timely filing of the survey if failure to

file was the result of circumstances beyond the control of the motion picture production receiving the funding assistance.

(4) Surveys shall include the following information:

(a) The amount of funding assistance requested.

(b) The total amount of preproduction, production and postproduction spending made in the state.

(c) The number of total employment positions.

(d) The number of full-time and part-time/temporary employment positions as a percent of total employment.

(i) Full-time employment is ~~(sixty)~~ forty hours or more per week, or positions held for the full shooting schedule;

(ii) Part-time/temporary employment is for positions held for less than the full shooting schedule.

(e) The number of jobs at the wage bands of less than thirty thousand dollars, thirty thousand to sixty thousand dollars, and sixty thousand dollars and greater per production.

(f) The number of jobs that have employer-provided health insurance and payments into a retirement plan by each wage band.

(g) Additional information as requested by the department or state film office.

(5) The state film office will continue to track total production spending of projects, monitor the state's competitiveness in the national marketplace, and continue to build partnerships that streamline the delivery of production services statewide.

(6) The department shall submit a summary of descriptive statistics based on information from the survey each year by September 1.

(7) The department shall provide the complete surveys to the joint legislative audit and review committee each year by September 1.

WSR 09-03-052

PERMANENT RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed January 13, 2009, 11:27 a.m., effective February 13, 2009]

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

Purpose: Currently the WAC directs school districts to divide student hours by 900 to derive the annual average full-time equivalent (AAFTE) for the nonstandard school year reporting and the ancillary services reporting. An AAFTE for the normal school year is 720 hours for grades K-3 and 900 hours for grades 4-12. The changes to the WAC will instruct districts to divide by 720 for grades K-3 and 900 for grades 4-12.

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-133.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 08-22-024 on October 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 0, Repealed 0.

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

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

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

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

Date Adopted: January 13, 2009.

Dr. Terry Bergeson
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending Order 97-06, filed 10/27/97, effective 11/27/97)

WAC 392-121-133 Definition—Annual average full-time equivalent students. As used in this chapter, "annual average full-time equivalent students" means the sum of the following:

(1) The annual total of full-time equivalent students enrolled on the nine enrollment count dates of the school year and reported to the superintendent of public instruction pursuant to WAC 392-121-122 divided by nine;

(2) Annual hours of ancillary service to part-time, private school, and home-based students reported pursuant to WAC 392-121-107 divided by 720 for grades kindergarten through third and 900 for grades fourth through twelfth; and

(3) Annual hours of eligible enrollment in nonstandard school year programs pursuant to WAC 392-121-123 divided by 720 for grades kindergarten through third and 900 for grades fourth through twelfth.

WSR 09-03-053

PERMANENT RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed January 13, 2009, 11:31 a.m., effective February 13, 2009]

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

Purpose: Repeal and modify sections of chapter 392-340 WAC to comply with 2008 legislation. The legislation made several changes to the chapter:

- Changed the process for selecting regional committee members from an election process to an appointment by the educational service district board.
- Modified the process for school district boundary changes that are initiated by school districts.

Because of the large amount of repealed and amended sections, we [are] utilizing the emergency rule process to make the changes quickly so that accurate and updated WACs could be provided in a timely manner. A condition of using the emergency rule process is that after adoption the full rule process must be followed, to include a public hearing.

Statutory Authority for Adoption: RCW 28A.525.020.

Adopted under notice filed as WSR 08-23-033 on November 10, 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 19.

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

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

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

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

Date Adopted: January 13, 2009.

Terry Bergeson
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 06-17-038, filed 8/8/06, effective 9/8/06)

WAC 392-340-003 Authority. The general authority for this chapter is RCW ~~((28A.305.130(10)))~~ 28A.315.005, 28A.315.015 (2)(e), 28A.315.175, 28A.315.195(4), and 28A.315.205(3).

AMENDATORY SECTION (Amending WSR 06-17-038, filed 8/8/06, effective 9/8/06)

WAC 392-340-007 Purpose and policy of chapter. ~~((+))~~ The purpose of this chapter is the same as set forth under RCW 28A.315.015~~((+))~~.

~~((2)) It is the policy of the state that decisions on changes in school district boundaries should be made by the affected districts whenever possible. When this is not possible the decision shall be made by the appropriate regional committee on school district organization consistent with the following policies:~~

~~(a) A balance of local petition requests and the needs of the statewide community at large in a manner that advances the best interest of public education (see RCW 28A.315.015 (2)(a) for full text);~~

~~(b) Contributing to logical service boundaries (see RCW 28A.315.015 (2)(b) for full text);~~

~~(c) Enhancing the educational opportunities of pupils (see RCW 28A.315.015 (2)(c) for full text); and~~

~~(d) Promoting a wiser use of public funds (see RCW 28A.315.015 (2)(d) for full text).)~~

AMENDATORY SECTION (Amending WSR 06-17-038, filed 8/8/06, effective 9/8/06)

WAC 392-340-00701 Regional committee ~~((decision-making criteria))~~ decision making. (1) The regional com-

mittee shall give consideration to all of the ~~((following))~~ criteria in RCW 28A.315.015 (2)(a) through (d) and 28A.315.205 (4)(a) through (e) when reviewing the proposed transfer of territory:

~~((a) Student educational opportunities (see RCW 28A.315.205 (4)(a) for full text);~~

~~(b) Safety and welfare of pupils (see RCW 28A.315.205 (4)(b) for full text);~~

~~(c) History and relationship of the property affected to the students and communities affected (see RCW 28A.315.205 (4)(c) for full text). "Communities affected" includes all citizens living within the territory proposed to be transferred, all other citizens residing within the school district from which the proposed territory will be transferred, all citizens living within the immediate locale/neighborhood of which the proposed territory will become part, and all citizens residing within the school district to which the proposed territory will be transferred;~~

~~(d) Geographic accessibility (see RCW 28A.315.205 (4)(d) for full text);~~

~~(e) Disparities in per pupil valuation, economies of operation and transportation costs (see RCW 28A.315.205 (4)(e) for full text); and~~

~~(f) Other criteria or considerations as may be established in rule by the superintendent of public instruction. (RCW 28A.315.015 (2)(e).))~~

(2) The boundaries of the school districts affected by a proposed change in school district organization shall be contiguous to one another.

(3) When considering student educational opportunities under RCW 28A.315.205 (4)(a), the regional committee shall not consider one set of test scores alone as a sufficient basis to make a judgment about student educational opportunities. Test scores in the district affected by the proposed transfer of territory shall be looked at in context, including over time and by disaggregating the scores by student subgroups.

(4) "Communities affected" under RCW 28A.315.205 (4)(c), include all citizens living within the territory proposed to be transferred, all other citizens residing within the school district from which the proposed territory will be transferred, all citizens residing within the school district to which the proposed territory will be transferred.

(5) When considering "geographic accessibility" under RCW 28A.315.205 (4)(d), ((~~"geographic accessibility" includes, but is not limited to, consideration of~~)) the regional committee shall consider, but is not limited to the following factors:

(a) Mountains, hills, valleys, wasteland, and related geographic and man-made features, which either enhance or impede travel.

(b) Rivers, lakes, canals, and other natural or man-made waterways and bodies of water, which either enhance or impede travel.

(c) The extent and nature of roads, highways, ferries, and traffic patterns.

(d) Climatic conditions.

(e) Time required to travel to and from school.

~~((4) In considering student educational opportunities under subsection (1)(a) of this section, the regional committee shall not consider one set of test scores, alone, as a suffi-~~

~~cient basis to make a judgment about student educational opportunities. Test scores in the districts affected by the proposed transfer of territory shall be looked at in context, including over time and by disaggregating the scores by student subgroups.~~

~~(5) In)) (6) After considering ((~~geographic accessibility under subsection (1)(d) of this section~~)) all factors, the regional committee shall make one judgment on geographic accessibility, regardless of how many individual components may apply to the particular transfer of territory petition.~~

~~((6)) (7) Each regional committee shall use the same criterion checklist included in the ((~~Lay Person's~~)) Guide to Changing School District Boundaries and published on the superintendent of public instruction web site.~~

~~((7)) (8) If a regional committee needs to continue a public hearing or schedule more than one additional hearing on a proposed transfer of territory, each such hearing is subject to public notice requirements.~~

~~((8)) (9) Regional committees shall use the decision format (motion) included in the ((~~Lay Person's~~)) Guide to Changing School District Boundaries and published on the superintendent of public instruction web site.~~

AMENDATORY SECTION (Amending WSR 06-17-038, filed 8/8/06, effective 9/8/06)

WAC 392-340-207 Transfer of territory—Other district requirements. (1) At least one member of each school board whose district is affected by a proposed transfer of territory must be part of the respective district's negotiating team.

(2)(a) Upon reaching a decision recommendation through the district-to-district negotiation process on a proposed transfer of territory, the negotiating parties shall produce, at a minimum, a written summary of the recommendation, including rationale for the recommendation, and submit to the respective affected school district boards of directors.

(b) Each school board of directors shall adopt at a public meeting of the board a written resolution indicating whether the board approves or disapproves the recommendation on the proposed transfer of territory. The resolution format included in the ((~~Lay Person's~~)) Guide to Changing School District Boundaries and published on the superintendent of public instruction web site shall be used.

AMENDATORY SECTION (Amending WSR 06-17-038, filed 8/8/06, effective 9/8/06)

WAC 392-340-209 Transfer of territory—Sufficiency of written record for appeal to the superintendent of public instruction—Referral of case back to regional committee. (1) For purposes of review by the superintendent of public instruction, the record of regional committee proceedings must be sufficient to allow the superintendent of public instruction to determine what facts the regional committee relied on in applying the required statutory and regulatory criteria. Evidence of facts relied on may be contained in the written findings required in RCW 28A.315.205(2) or in a written verbatim transcript of the proceedings, or elsewhere in the record.

(2) When referring a transfer of territory case back to the originating regional committee, the superintendent of public instruction will make every effort to submit the written referral ~~((within fourteen days of a decision))~~ as expeditiously as possible.

AMENDATORY SECTION (Amending WSR 06-17-038, filed 8/8/06, effective 9/8/06)

WAC 392-340-210 Adjustment of assets and liabilities—Time considerations. ~~((1) In determining an equitable adjustment of assets and liabilities, the negotiating school districts and the regional committees shall consider the factors under RCW 28A.315.245.~~

~~(2))~~ A regional committee is authorized to phase in the adjustment of assets and liabilities over a period not less than two years nor more than eight years. This authorization is subject to the annual March 1 deadline for taxing districts to establish the taxing boundaries and rates for the ensuing tax collection year.

AMENDATORY SECTION (Amending WSR 06-17-038, filed 8/8/06, effective 9/8/06)

WAC 392-340-225 Frequency of petitions—Limitation. ~~((1) The authority for this section is RCW 28A.315.195(4) which authorizes the superintendent of public instruction to establish rules limiting the frequency of petitions that may be filed pertaining to territory included in whole or in part in a previous petition.~~

~~(2))~~ An educational service district superintendent may not accept a petition to transfer territory if any portion of such territory was included in a previous petition brought before the regional committee, unless five years have expired since the date of final disposition of the previous petition.

NEW SECTION

WAC 392-340-336 Regional committee members—Position numbers—Appointments—Terms of office. (1) Regional committee members shall be appointed by the educational service district boards of directors in accordance with RCW 28A.315.105.

(2) Regional committee member position numbers shall be assigned by the educational service district superintendent. Regional committee member positions one, three, seven, and nine shall serve terms staggered with positions two, four, six, and eight. Each position shall correspond to an educational service district director districts determined pursuant to chapter 28A.310 RCW.

(3) Regular appointments of regional committee members shall be made in even-numbered years for four-year terms.

(4) Appointments to fill vacancies occurring during a term shall be made as soon as possible and shall be for the remainder of the original term.

(5) Each committee member must reside in the director district for which the appointment is made.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-340-009	Constitutional and statutory framework.
WAC 392-340-105	Election of regional committee members—Applicable provisions.
WAC 392-340-110	Election of regional committee members—Election officer.
WAC 392-340-115	Election of regional committee members—Dissolution—Position numbers—Initial elections—Regular elections—Terms of office.
WAC 392-340-120	Election of regional committee members—Tentative certification of electors.
WAC 392-340-125	Election of regional committee members—Call for election—Regional committee members.
WAC 392-340-130	Election of regional committee members—Candidates—Eligibility—Filing.
WAC 392-340-135	Election of regional committee members—Declaration and affidavit of candidacy form.
WAC 392-340-140	Election of regional committee members—Biographical data form.
WAC 392-340-145	Election of regional committee members—Withdrawal of candidacy.
WAC 392-340-150	Election of regional committee members—Ballots—Contents.
WAC 392-340-155	Election of regional committee members—Ballots and envelopes—Mailing to voters.
WAC 392-340-160	Election of regional committee members—Voting—Marking and return of ballots.
WAC 392-340-165	Election of regional committee members—Election board—Appointment and composition.

WAC 392-340-170	Election of regional committee members—Receipt of ballots and count of votes.
WAC 392-340-175	Election of regional committee members—Ineligible votes.
WAC 392-340-180	Election of regional committee members—Recount of votes cast—Automatic or by request.
WAC 392-340-185	Election of regional committee members—Certification of election.
WAC 392-340-190	Election of regional committee members—Run-off elections.
WAC 392-340-205	Transfer of territory—Procedures and timelines.
WAC 392-340-335	Election of regional committee members—Certification of electors.

WSR 09-03-066**PERMANENT RULES
DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed January 14, 2009, 3:06 p.m., effective February 14, 2009]

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

Purpose: Chapter 146, Laws of 2008 (ESSHB [E2SHB] 2668) requires that all nursing assistants who will be delegated the task of insulin injections complete a specialized diabetes nurse delegation training. The new language in chapters 388-71 and 388-112 WAC add this requirement. The purpose of new rules in WAC 388-112-02605 through 388-112-02630 is to add content requirements for the existing HIV/AIDS training requirement. New language in WAC 388-112-0250 clarifies that the existing CPR training requirement must include skills demonstration tests. WAC 388-112-0180 is amended to correct a WAC reference.

Citation of Existing Rules Affected by this Order: Amending WAC 388-112-0175, 388-112-0180, 388-112-0250, 388-71-0520, 388-71-05810, and 388-71-05895.

Statutory Authority for Adoption: Chapter 146, Laws of 2008 (ESSHB [E2SHB] 2668), RCW 18.20.090, 74.08.090, chapter 70.128 RCW.

Adopted under notice filed as WSR 08-22-053 on November 3, 2008.

Changes Other than Editing from Proposed to Adopted Version: **WAC 388-112-02610 What is HIV/AIDS training?** HIV/AIDS training is training that meets the department of health standards. It is recommended that the HIV/AIDS training be taught in classroom style by an expe-

rienced and knowledgeable instructor who can answer technical questions.

WAC 388-112-02630 Who is required to complete HIV/AIDS training, and when? Adult family home and boarding home staff who have potential exposure to bodily fluids must complete HIV/AIDS training.

(1) Licensed, certified or registered staff must meet the HIV/AIDS training requirements for their specific department of health license, certification or registration prior to initially obtaining a health care credential.

(2) All other adult family home and boarding home staff must complete the HIV/AIDS training, as defined in WAC 388-112-02610 within thirty days of employment.

Changes were made in response to stakeholder comments.

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 12, Amended 5, 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 5, 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 17, Amended 6, Repealed 0.

Date Adopted: January 14, 2009.

Stan Marshburn
Interim Secretary

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

WAC 388-71-0520 Are there training requirements for an individual provider or a home care agency provider of an adult client? An individual provider or a home care agency provider for an adult client must meet the training requirements in WAC 388-71-05665 through 388-71-05865 and WAC 388-71-0801 through 388-71-0826.

AMENDATORY SECTION (Amending WSR 04-02-001, filed 12/24/03, effective 1/24/04)

WAC 388-71-05810 What knowledge and skills must nurse delegation core training include? Only the ~~((curricula))~~ curriculum developed by DSHS ~~((may be used))~~, "Nurse Delegation for Nursing Assistants", meets the training requirement for nurse delegation core training.

AMENDATORY SECTION (Amending WSR 04-02-001, filed 12/24/03, effective 1/24/04)

WAC 388-71-05895 What additional qualifications are required for instructors of nurse delegation core training and specialized diabetes nurse delegation training? An instructor for nurse delegation core training and spe-

cialized diabetes nurse delegation training must have a current RN license in good standing.

NEW SECTION

WAC 388-71-0801 What is specialized diabetes nurse delegation training? Specialized diabetes nurse delegation training is the required training for nursing assistants, certified or registered, who will be delegated the task of insulin injections. DSHS approves the instructors for the specialized diabetes nurse delegation training.

NEW SECTION

WAC 388-71-0806 What knowledge and skills must specialized diabetes nurse delegation training include? Specialized diabetes nurse delegation training consists of three modules on diabetes, insulin, and injections. Only the curriculum developed by DSHS, "Nurse Delegation for Nursing Assistants: Special Focus on Diabetes", may be used for the specialized diabetes nurse delegation training.

NEW SECTION

WAC 388-71-0811 Is competency testing required for the specialized diabetes nurse delegation training? Passing the DSHS competency test is required for successful completion of specialized diabetes nurse delegation training, as provided under WAC 388-71-05835 through 388-71-05865.

NEW SECTION

WAC 388-71-0816 Is there a challenge test for specialized diabetes nurse delegation training? There is no challenge test for specialized diabetes nurse delegation training.

NEW SECTION

WAC 388-71-0821 What documentation is required for successful completion of specialized diabetes nurse delegation training? (1) Specialized diabetes nurse delegation training must be documented by a certificate of successful completion of training, issued by the instructor or training entity, that includes:

- (a) The name of the trainee;
 - (b) The name of the training;
 - (c) The name of the training entity giving the training;
 - (d) The instructor's name and signature; and
 - (e) The date(s) of training.
- (2) The trainee must be given an original certificate.

NEW SECTION

WAC 388-71-0826 Who is required to complete the specialized diabetes nurse delegation training, and when? Specialized diabetes nurse delegation training is required before a nursing assistant, certified or registered, who meets the qualifications in WAC 388-71-05830, may be delegated the task of insulin injections.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0175 What knowledge and skills must nurse delegation core training include? Only the curriculum developed by DSHS (~~may be used~~), "Nurse Delegation for Nursing Assistants", meets the training requirement for nurse delegation core training.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0180 Is competency testing required for nurse delegation core training? Passing the DSHS competency test is required for successful completion of nurse delegation core training, as provided under WAC (~~388-112-0265~~) 388-112-0290 through (~~388-112-0295~~) 388-112-0315.

NEW SECTION

WAC 388-112-0196 What is specialized diabetes nurse delegation training? Specialized diabetes nurse delegation training is the required training for nursing assistants, certified or registered, who will be delegated the task of insulin injections. DSHS approves the instructors for specialized diabetes nurse delegation training.

NEW SECTION

WAC 388-112-01961 What knowledge and skills must specialized diabetes nurse delegation training include? Specialized diabetes nurse delegation training consists of three modules on diabetes, insulin, and injections. Only the curriculum developed by DSHS, "Nurse Delegation for Nursing Assistants: Special Focus on Diabetes", may be used for the specialized diabetes nurse delegation training.

NEW SECTION

WAC 388-112-01962 Is competency testing required for the specialized diabetes nurse delegation training? Passing the DSHS competency test is required for successful completion of the specialized diabetes nurse delegation training, as provided under WAC 388-112-0290 through 388-112-0315.

NEW SECTION

WAC 388-112-01963 Is there a challenge test for specialized diabetes nurse delegation training? There is no challenge test for specialized diabetes nurse delegation training.

NEW SECTION

WAC 388-112-01964 What documentation is required for successful completion of specialized diabetes nurse delegation training? (1) Specialized diabetes nurse delegation training must be documented by a certificate of successful completion of training, issued by the instructor or training entity, that includes:

- (a) The name of the trainee;
- (b) The name of the training;
- (c) The name of the training entity giving the training;
- (d) The instructor's name and signature; and
- (e) The date(s) of training.

(2) The trainee must be given an original certificate. Adult family homes and boarding homes must keep a copy of the certificate on file.

NEW SECTION

WAC 388-112-01965 Who is required to complete the specialized diabetes nurse delegation training, and when? Specialized diabetes nurse delegation training is required before a nursing assistant, certified or registered, who meets the qualifications in WAC 388-112-0195, may be delegated the task of insulin injections.

AMENDATORY SECTION (Amending WSR 06-16-072, filed 7/28/06, effective 8/28/06)

WAC 388-112-0250 What is CPR training? Cardiopulmonary resuscitation (CPR) training is training provided by an authorized CPR instructor. Trainees must successfully complete the written and skills demonstrations tests.

NEW SECTION

WAC 388-112-02610 What is HIV/AIDS training? It is recommended that the HIV/AIDS training be taught in classroom style by an experienced and knowledgeable instructor who can answer technical questions. The Washington state department of health's "KNOW HIV Prevention Education for Health Care Facility Employees" manual is the state model, designed as a complete training. HIV/AIDS training must be based on this curriculum, be a minimum of two to three hours, and include the following topics:

- (1) Causes of HIV and how it is spread, including:
 - (a) Reported cases in the United States and Washington state; and
 - (b) Risk groups and risky behaviors.
- (2) Transmission and infection control, including:
 - (a) Infection control precautions;
 - (b) Factors affecting the risk for transmission; and
 - (c) Risks for transmission to health care workers.
- (3) Legal and ethical issues, including:
 - (a) Confidentiality;
 - (b) Informed consent;
 - (c) Legal reporting requirements;
 - (d) Ethical issues; and
 - (e) Civil rights.
- (4) Psychosocial issues, including:
 - (a) Personal impact of HIV continuum;
 - (b) The human response to death and dying;
 - (c) Issues for care providers;
 - (d) Family issues; and
 - (e) Special populations.

NEW SECTION

WAC 388-112-02615 Is competency testing required for HIV/AIDS training? No competency testing is required for HIV/AIDS training.

NEW SECTION

WAC 388-112-02620 Is there a challenge test for HIV/AIDS training? There is no challenge test for HIV/AIDS training.

NEW SECTION

WAC 388-112-02625 What documentation is required for completion of HIV/AIDS training? HIV/AIDS training must be documented by:

- (1) Proof of registration, certification or licensure from the department of health; or
- (2) A certificate of completion of the state developed twenty-eight hour revised fundamentals of caregiving, completed after December 19, 2003; or
- (3) A certificate of completion of HIV/AIDS training issued by the instructor or training entity that includes:
 - (a) The name of the trainee;
 - (b) The name of the training curriculum;
 - (c) The name of the home or training entity giving the training;
 - (d) The instructor's name and signature; and
 - (e) The date(s) of the training session(s).
- (4) The trainee must be given an original certificate. The facility or entity must keep a copy of the certificate on file.

NEW SECTION

WAC 388-112-02630 Who is required to complete HIV/AIDS training, and when? Adult family home and boarding home staff who have potential exposure to bodily fluids must complete HIV/AIDS training.

- (1) Licensed, certified or registered staff must meet the HIV/AIDS training requirements for their specific department of health license, certification or registration prior to obtaining a health care credential.
- (2) All other adult family home and boarding home staff must complete the HIV/AIDS training, as defined in WAC 388-112-02610 within thirty days of employment.

WSR 09-03-077

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 08-16—Filed January 15, 2009, 2:53 a.m., effective February 15, 2009]

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

Purpose: The purpose of this rule making is to adopt updates to chapter 173-423 WAC, Low emission vehicles, to accomplish two things: (1) Incorporate by reference (IBR) recent changes to California Clean Car regulations to maintain consistency with the California motor vehicle emission standards, and (2) incorporate by reference California's Envi-

ronmental Performance (EP) label requirement which provides global warming and smog emissions scores for new automobiles.

Citation of Existing Rules Affected by this Order: Amending chapter 173-423 WAC, Low emission vehicles.

Statutory Authority for Adoption: RCW 70.120A.010 and 70.120A.050.

Adopted under notice filed as WSR 08-21-132 on October 20, 2008.

Changes Other than Editing from Proposed to Adopted Version: In: WAC 173-423-070 Emission standards, warranty, recall and other California provisions adopted by reference.

Change: 1. Table 070(1) California Code of Regulations (CCR) Title 13 Provisions Incorporated by Reference Effective in Washington January ~~14~~, ((2006)) 2009.

Reason: Effective date for Table 070(1) was updated to match the rule adoption date.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 3, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

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

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

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

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

Date Adopted: January 15, 2009.

Jay J. Manning
Director

AMENDATORY SECTION (Amending WSR 05-24-044, filed 11/30/05, effective 12/31/05)

WAC 173-423-070 Emission standards, warranty, recall and other California provisions adopted by reference. Each manufacturer and each new 2009 and subsequent model year passenger car, light duty truck and medium duty passenger vehicle subject to this chapter shall comply with each applicable standard set forth in Table 070(1) and incorporated by reference:

**Table 070(1)
California Code of Regulations (CCR)
Title 13
Provisions Incorporated by Reference
Effective in Washington January ((1, 2006)) 14, 2009**

Title 13 CCR Division 3 Air Resources Board	Title	California Effective Date
Chapter 1 Motor Vehicle Pollution Control Devices		

Title 13 CCR Division 3 Air Resources Board	Title	California Effective Date
Article 1 General Provisions		
Section 1900	Definitions	1/01/06
((Article 2 Approval of Motor Vehicle Pollution Control Devices (New Vehicles)))		
Section 1956.8 (g) and (h)	Exhaust Emission Standards and Test Procedures - 1985 and Subsequent Model Heavy Duty Engines and Vehicles	((1/31/05)) 10/11/07
Section 1960.1	Exhaust Emission Standards and Test Procedures - 1981 and through 2006 Model Passenger Cars, Light-Duty and Medium-Duty Vehicles	3/26/04
Section 1961	Exhaust Emission Standards and Test Procedures - 2004 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	((1/01/06)) 6/16/08
Section 1961.1	Greenhouse Gas Exhaust Emission Standards and Test Procedures - 2009 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	1/01/06
Section 1965	Emission Control ((and)) , Smog Index, and Environmental Performance Labels - 1979 and Subsequent Model-Year Motor Vehicles	((12/04/03)) 6/16/08
Section 1968.2	Malfunction and Diagnostic System Requirements - 2004 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles <u>and Engines</u>	((12/21/03)) 11/09/07

Title 13 CCR Division 3 Air Resources Board	Title	California Effective Date
Section 1968.5	Enforcement of Malfunction and Diagnostic System Requirements for 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines	((4/21/03)) 11/09/07
Section 1976	Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions	((11/27/99)) 1/04/08
Section 1978	Standards and Test Procedures for Vehicle Refueling Emissions	((12/04/03)) 1/04/08
Article 6 Emission Control System Warranty		
Section 2035	Purpose, Applicability and Definitions	((12/26/90)) 11/09/07
Section 2036	<u>Defects Warranty Requirements for 1979 Through 1989 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles; 1979 and Subsequent Model Motorcycles and Heavy-Duty Vehicles; and Motor Vehicle Engines Used in Such Vehicles</u>	5/15/99
Section 2037	Defects Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	((11/27/99)) 11/09/07
Section 2038	Performance Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	((11/27/99)) 11/09/07
Section 2039	Emission Control System Warranty Statement	12/26/90

Title 13 CCR Division 3 Air Resources Board	Title	California Effective Date
Section 2040	Vehicle Owner Obligations	12/26/90
Section 2046	Defective Catalyst	((11/6/79)) 2/15/79
Chapter 2 Enforcement of Vehicle Emission Standards and Enforcement Testing		
Article 2 Enforcement of New and In-Use Vehicle Standards		
Section 2109	New Vehicle Recall Provisions	((11/30/83)) 12/30/83
Article 2.1 Procedures for In-Use Vehicle Voluntary and Influenced Recalls		
Section 2111	Applicability	((8/21/02)) 1/04/08
Section 2112	Definitions	((11/15/03)) 8/15/07
	Appendix A to Article 2.1	((11/15/03)) 8/15/07
Section 2113	Initiation and Approval of Voluntary and Influenced <u>Emission-Related</u> Recalls	1/26/95
Section 2114	Voluntary and Influenced Recall Plans	11/27/99
Section 2115	Eligibility for Repair	1/26/95
Section 2116	Repair Label	1/26/95
Section 2117	Proof of Correction Certificate	1/26/95
Section 2118	Notification	1/26/95
Section 2119	Recordkeeping and Reporting Requirements	11/27/99
Section 2120	Other Requirements Not Waived	1/26/95
Article 2.2 Procedures for In-Use Vehicle Ordered Recalls		
Section 2122	General Provisions	((1/26/95)) 1/04/08
Section 2123	Initiation and Notification of Ordered Emission-Related Recalls	1/26/95
Section 2124	Availability of Public Hearing	1/26/95
Section 2125	Ordered Recall Plan	1/26/95
Section 2126	Approval and Implementation of Recall Plan	1/26/95
Section 2127	Notification of Owners	1/26/95
Section 2128	Repair Label	1/26/95

Title 13 CCR Division 3 Air Resources Board	Title	California Effective Date
Section 2129	Proof of Correction Certificate	1/26/95
Section 2130	Capture Rates and Alternative Measures	11/27/99
Section 2131	Preliminary Tests	1/26/95
Section 2132	Communication with Repair Personnel	1/26/95
Section 2133	Recordkeeping and Reporting Requirements	1/26/95
Section 2135	Extension of Time	1/26/95
Article 2.4 Procedures for Reporting Failure of Emission-Related Components		
Section 2141	General Provisions	((12/28/00)) 1/04/08
Section 2142	Alternative Procedures	2/23/90
Section 2143	Failure Levels Triggering Recall	11/27/99
Section 2144	Emission Warranty Information Report	11/27/99
Section 2145	Field Information Report	11/27/99
Section 2146	Emissions Information Report	11/27/99
Section 2147	Demonstration of Compliance with Emission Standards	8/21/02
Section 2148	Evaluation of Need for Recall	11/27/99
Section 2149	Notification ((ø£)) and Subsequent Action	2/23/90
Article 5 Procedures for Reporting Failures of Emission-Related Equipment and Required Corrective Action		
Section 2166	General Provisions	1/04/08
Section 2166.1	Definitions	1/04/08
Section 2167	Emission Warranty Information Report	1/04/08
Section 2168	Supplemental Emissions Warranty Information Report	1/04/08
Section 2169	Recall and Corrective Action for Failures of Exhaust After-Treatment Devices	1/04/08

Title 13 CCR Division 3 Air Resources Board	Title	California Effective Date
<u>Section 2170</u>	<u>Recall and Corrective Action for Other Emission-Related Component Failures (On-Board Diagnostic-Equipped Vehicles and Engines)</u>	<u>1/04/08</u>
<u>Section 2171</u>	<u>Recall and Corrective Action for Vehicles Without On-Board Diagnostic Systems, Vehicles with Noncompliant On-Board Diagnostic Systems, or Vehicles with On-Board Computer Malfunction</u>	<u>1/04/08</u>
<u>Section 2172</u>	<u>Notification of Required Recall or Corrective Action by the Executive Officer</u>	<u>1/04/08</u>
<u>Section 2172.1</u>	<u>Ordered or Voluntary Corrective Action Plan</u>	<u>1/04/08</u>
<u>Section 2172.2</u>	<u>Approval and Implementation of Corrective Action Plan</u>	<u>1/04/08</u>
<u>Section 2172.3</u>	<u>Notification of Owners</u>	<u>1/04/08</u>
<u>Section 2172.4</u>	<u>Repair Label</u>	<u>1/04/08</u>
<u>Section 2172.5</u>	<u>Proof of Correction Certificate</u>	<u>1/04/08</u>
<u>Section 2172.6</u>	<u>Preliminary Tests</u>	<u>1/04/08</u>
<u>Section 2172.7</u>	<u>Communication with Repair Personnel</u>	<u>1/04/08</u>
<u>Section 2172.8</u>	<u>Recordkeeping and Reporting Requirements</u>	<u>1/04/08</u>
<u>Section 2172.9</u>	<u>Extension of Time</u>	<u>1/04/08</u>
<u>Section 2173</u>	<u>Penalties</u>	<u>1/04/08</u>
<u>Section 2174</u>	<u>Availability of Public Hearing</u>	<u>1/04/08</u>
Chapter 4.4 Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks		
Section 2235	Requirements	9/17/91

AMENDATORY SECTION (Amending WSR 05-24-044, filed 11/30/05, effective 12/31/05)

WAC 173-423-110 Warranty requirements. (1) For all 2009 and subsequent model year vehicles subject to the provisions of this chapter, each manufacturer shall provide, to the ultimate purchaser and each subsequent purchaser, a warranty that complies with the requirements set forth in the California Code of Regulations, Title 13, sections 2035 through 2038, 2040, and 2046.

(2) For all 2009 and subsequent model year vehicles subject to the provisions of this chapter, each manufacturer shall include the emission control system warranty statement that complies with the requirements in the California Code of Regulations, Title 13, section 2039. Manufacturers may modify this statement as necessary to inform Washington vehicle owners of the applicability of the warranty. The manufacturer shall provide a telephone number appropriate for Washington residents.

(3) All manufacturers shall submit to the department of ecology Failure of Emission-Related Components reports as defined in the California Code of Regulations, Title 13, section 2144 for vehicles subject to this regulation. For purposes of compliance with this requirement, manufacturers may submit copies of the Failure of Emission-Related Components reports that are submitted to the California Air Resources Board, in lieu of submitting reports for vehicles subject to this chapter. Manufacturers may discontinue submitting these reports if so notified by the department of ecology.

(4) Upon request, all manufacturers shall submit to the department of ecology Emission Warranty Information Reports (EWIRs) and Supplemental Emission Warranty Information Reports (SEWIRs) as defined in the California Code of Regulations, Title 13, sections 2167 and 2168 for vehicles subject to this regulation. For purposes of compliance with this requirement, manufacturers may submit copies of the EWIRs and SEWIRs that are submitted to the California Air Resources Board, in lieu of submitting reports for vehicles subject to this chapter.

AMENDATORY SECTION (Amending WSR 05-24-044, filed 11/30/05, effective 12/31/05)

WAC 173-423-120 Recalls. (1) Any order or enforcement action taken by the California Air Resources Board to correct noncompliance with any section of Title 13, which results in the recall and/or corrective action of any vehicle pursuant to the California Code of Regulations, Title 13, sections 2109 through 2135 or sections 2166 through 2172.9, shall be applicable to vehicles registered in the state of Washington. If the manufacturer can demonstrate to the department of ecology's satisfaction that the action is not applicable to vehicles registered in Washington, the action shall not apply in Washington.

(2) Any voluntary or influenced emission-related recall campaign or corrective action initiated by any manufacturer pursuant to the California Code of Regulations, Title 13, sections 2113 through 2121 or sections 2166 through 2172.9, shall extend to all applicable vehicles registered in Washington. If the manufacturer can demonstrate to the department of ecology's satisfaction that said campaign is not applicable to vehicles registered in Washington, the campaign shall not apply in Washington.

(3) For vehicles subject to an action pursuant to subsection (1) or (2) of this section, each manufacturer shall send to owners of vehicles registered in the state of Washington a notice that complies with the requirements in the California Code of Regulations, Title 13, sections 2118 ((~~or~~)), 2127, or 2172.3. Such notice shall contain a telephone number appropriate for Washington residents.

WSR 09-03-084
PERMANENT RULES
DEPARTMENT OF
NATURAL RESOURCES

[Filed January 20, 2009, 10:39 a.m., effective July 1, 2009]

Effective Date of Rule: July 1, 2009.

Purpose: The proposal creates WAC 332-130-110 Redundancy standards and amends WAC 332-130-020 Definitions.

Citation of Existing Rules Affected by this Order: Amending WAC 332-130-020.

Statutory Authority for Adoption: RCW 58.24.030, 58.24.040, 58.09.050, and 58.17.160.

Adopted under notice filed as WSR 08-19-064 on September 15, 2008.

A final cost-benefit analysis is available by contacting Gwen Roy, PLS, 1111 Washington Street S.E., P.O. Box 47030, Olympia, WA 98504-7030, phone (360) 902-1181, fax (360) 902-1191, e-mail sab@dnr.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 1, Amended 1, 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 1, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Craig Partridge, Acting
 for Bonnie B. Bunning
 Deputy Supervisor of
 Policy and Administration

AMENDATORY SECTION (Amending WSR 05-13-104, filed 6/17/05, effective 7/18/05)

WAC 332-130-020 Definitions. The following definitions shall apply to this chapter:

(1) **Local geodetic control surveys:** Surveys for the specific purpose of establishing control points for extending the National Geodetic Survey horizontal and vertical control nets, also known as the National Spatial Reference System (NSRS), but not submitted to the National Geodetic Survey for inclusion in the NSRS.

(2) **GLO and BLM:** The General Land Office and its successor, the Bureau of Land Management.

(3) **Land boundary surveys:** All surveys, whether made by individuals, entities or public bodies of whatever nature, for the specific purpose of establishing, reestablishing, laying out, subdividing, defining, locating and/or monumenting the vertical or horizontal boundary of any easement,

right of way, lot, tract, or parcel of real property or which reestablishes or restores General Land Office or Bureau of Land Management survey corners.

(4) **Land corner record:** The record of corner information form as prescribed by the department of natural resources in WAC 332-130-025.

(5) **Land description:** A description of real property or of rights associated with real property.

(6) **Land surveyor:** Any person authorized to practice the profession of land surveying under the provisions of chapter 18.43 RCW.

(7) **Measurement redundancy:** To perform sufficient measurements to reduce or isolate blunders and statistically improve measurement accuracy.

(8) **NAD83:** North American Datum of 1983 as designated by chapter 58.20 RCW.

~~((8))~~ (9) **Parcel:** A part or portion of real property including but not limited to GLO and BLM segregations, easements, rights of way, aliquot parts of sections or tracts.

~~((9))~~ (10) **Survey Recording Act:** The law as established and designated in chapter 58.09 RCW.

~~((10))~~ (11) **Washington coordinate system:** The system of plane coordinates as established and designated by chapter 58.20 RCW.

NEW SECTION

WAC 332-130-110 Closure and redundancy. The following standards shall apply to geodetic surveys and land boundary surveys.

All land surveys shall contain procedures, measurement redundancy, and closure checks sufficient to detect errors and blunders and to ensure that the survey standards, chapter 332-130 WAC have been met.

WSR 09-03-086
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed January 20, 2009, 11:16 a.m., effective February 20, 2009]

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

Purpose: To amend the language to reflect requirements adopted by the 2008 legislative session. The changes include the addition of language requiring public school district TSE programs to incorporate "driving safely among pedestrians and bicyclists" curriculum materials, approved by the director of licensing, into their local curriculum. This change is in response to HB 2564 and the resulting changes made to chapter 28A.220 RCW. In addition, there is a change made to the language in the WAC regarding the process for obtaining a TSE conditional certificate to clarify that process and remove ambiguity in the training requirement.

Citation of Existing Rules Affected by this Order: Amending WAC 392-153-021 and 392-153-032.

Statutory Authority for Adoption: Chapter 28A.220 RCW and RCW 46.20.100.

Adopted under notice filed as WSR 08-22-045 on October 31, 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 0.

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

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

Date Adopted: January 20, 2009.

Randy I. Dorn
State Superintendent

AMENDATORY SECTION (Amending WSR 06-08-043, filed 3/30/06, effective 4/30/06)

WAC 392-153-021 Conditional traffic safety education certificates—Behind the wheel or classroom. (1) ~~((If you are not a certificated teacher,))~~ You may be issued a behind the wheel conditional certificate by the superintendent of public instruction to teach the laboratory phase, provided you meet the following requirements:

(a) Complete a behind the wheel conditional certificate course, consisting of at least sixty clock hours of instruction, approved by the superintendent of public instruction that includes supervised practice in instructing and demonstration of instructional competencies within two years prior to application. You must also pass practical and knowledge examinations administered by an agent approved by the office of the superintendent of public instruction.

(b) Possess a valid Washington state driver's license (or a valid license from another state provided you are a resident of that state).

(c) Hold a high school diploma or its equivalent.

(d) Have at least five years of licensed driving experience.

(e) Provide a current satisfactory driving record to the employing school district on an annual basis.

(f) ~~((Verify completion of at least sixty hours of course work within the previous two years.~~

~~((g))~~ Provide verification to the office of the superintendent of public instruction that the employing school district has determined that you comply with all of the requirements set forth in this chapter.

~~((h))~~ (g) To teach using a simulator or on a multiple car driving range, you must provide evidence of having completed an additional thirty hours of course work which includes supervised practice in instructing using the designated method.

(2) ~~((If you are not a certificated teacher,))~~ You may be issued a classroom conditional certificate by the superintendent of public instruction to teach the classroom phase, provided you meet the following requirements:

(a) Possess a valid Washington state driver's license (or a valid license from another state provided you are a resident of that state).

(b) Provide a current satisfactory driving record to the employing school district on an annual basis.

(c) Complete at least one thousand hours of behind the wheel teaching experience within the last five years.

(d) Complete an eighty clock hour classroom instructor training course approved by the superintendent of public instruction.

(e) Provide verification to the office of the superintendent of public instruction that the employing school district has determined that you comply with all of the requirements set forth in this chapter.

(3) A behind the wheel or classroom conditional certificate is valid for two years or less. The superintendent of public instruction may reissue the conditional certificate if you provide verification that you continue to meet all requirements of this chapter, including having completed sixty hours of course work within the previous two years. However, for the purpose of reissue, the employing school district superintendent (or designee) may approve up to forty-eight of the sixty hours, including approving credit for professional development courses or traffic safety education related projects.

(4) Conditional certificates are subject to suspension and revocation under the provisions of 180-79A WAC.

AMENDATORY SECTION (Amending WSR 06-08-043, filed 3/30/06, effective 4/30/06)

WAC 392-153-032 Curriculum guide and course requirements. (1) Each school district curriculum guide shall include:

(a) The minimum concepts to be taught, which are: Introduction to highway transportation system; preparing and controlling the vehicle; maneuvering in limited space; signs, signals, and pavement markings; vehicle characteristics; human functions used in driving; roadway variations; intersections, which shall include highway-rail grade crossings; management of time and space; lane changes; passing; non-motorized traffic; internal factors affecting driving performance, which shall include emotional and behavior issues; physical factors affecting driving performance, which shall include seatbelt usage and its benefits; alcohol and drugs; vehicle maintenance; planning for travel; limited visibility; reduced traction; special driving conditions; vehicle malfunctioning; avoiding and minimizing impact; post-crash responsibilities; legal responsibilities; highway transportation system improvement; fuel conservation; and motorcycle awareness; and driving safely among bicyclists and pedestrians using materials approved by the director of the department of licensing.

(b) The methods of instruction used by the teacher in presenting the material.

(c) The student performance objectives and evaluation criteria.

(d) The activities that will enable a student to accomplish the objectives (while allowing for individual differences) and the required level of competency for each objective.

(e) Information on the fifty hours of adult guided practice and the driving restrictions required by the intermediate driver license.

(f) A flow chart that indicates how the classroom and laboratory lessons are sequenced and integrated.

(g) Classroom and laboratory lesson plans, including driving routes for laboratory experience.

(2) Each traffic safety education course shall include comprehensive written and driving exams.

WSR 09-03-089

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed January 20, 2009, 1:40 p.m., effective February 20, 2009]

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

Purpose: Chapters 246-10 and 246-11 WAC, amending procedures for adjudicative proceedings to implement the show cause hearing process established by RCW 18.130.135 for summary actions against licensed health care providers. The rules eliminate the current prompt hearing process for those cases. The rules also make technical corrections.

Citation of Existing Rules Affected by this Order: Amending WAC 246-10-102, 246-10-304, 246-10-305, 246-11-010, 246-11-330, and 246-11-340.

Statutory Authority for Adoption: RCW 18.130.135, 43.70.040.

Adopted under notice filed as WSR 08-21-043 on October 8, 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 1, 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 0, Repealed 0.

Date Adopted: January 20, 2009.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 97-12-089, filed 6/4/97, effective 7/5/97)

WAC 246-10-102 Definitions. As used in these rules of practice and procedure, the following terms shall have the meaning set forth in this section unless the context clearly indicates otherwise. Other terms shall have their ordinary meaning unless defined elsewhere in this chapter.

"Adjudicative clerk office" shall mean the unit with responsibility for: Docketing; service of orders; and main-

taining custody of the adjudicative proceeding record, whose address is:

Department of Health
 Adjudicative Clerk Office
 ((2413 Pacific Avenue))
 310 Israel Rd. S.E.
 P.O. Box 47879
 Olympia, WA 98504-7879

"Adjudicative proceeding" or "hearing" shall mean a proceeding required by statute or constitutional right and conducted under the rules of this chapter, which provides an opportunity to be heard by the department prior to the entry of a final order under this chapter.

"Brief adjudicative proceeding" shall mean an adjudicative proceeding or hearing, the scope or conduct of which is limited as provided in this chapter.

"Department" shall mean the Washington state department of health and, where appropriate, the secretary of the Washington state department of health or the secretary's designee.

"Docket" or "docketing" shall mean the list or calendar of causes set to be heard at a specified time, prepared by the adjudicative clerk office for the use of the department.

"Filing" shall mean receipt by the adjudicative clerk office.

"Initiating document" shall mean a written agency document which initiates action against a license holder or applicant for license or recipient of benefits and which creates the right to an adjudicative proceeding. It may be entitled a statement of charges, notice of intent to deny, order, or by any other designation indicating the action or proposed action to be taken.

"License" shall have the meaning set forth in RCW 34.05.010, and includes any license, certification, registration, permit, approval, or any similar form of authorization required by law to be obtained from the department.

"Office of professional standards" shall mean the unit responsible for conducting adjudicative proceedings.

"Presiding officer" shall mean the person who is assigned to conduct an adjudicative proceeding. The presiding officer may be an employee of the department who is authorized to issue a final decision as designee of the secretary, or an administrative law judge employed by the office of administrative hearings.

"Presiding officer for brief adjudicative proceedings" shall mean an employee of the department who is authorized to conduct brief adjudicative proceedings.

"Program" shall mean the administrative unit within the department responsible for implementation of a particular statute or rule.

"Prompt adjudicative proceeding" or "prompt hearing" shall mean a hearing conducted at the request of the ~~((license holder or applicant for license))~~ respondent following summary action taken in accord with this chapter ~~((against the license holder or applicant)).~~

"Protective order" shall mean an order issued under this chapter which limits the use of, access to, or disclosure of information or evidence.

"Recipient of benefits" shall mean an individual who has qualified for benefits administered by the department.

"Respondent" shall mean a person eligible to request an adjudicative proceeding in a program under the jurisdiction of the department who is named in an initiating document.

"Secretary" shall mean the secretary of the department of health or his/her designee.

"Summary action" shall mean an agency action to address an immediate danger to the public health, safety, or welfare and shall include, but not be limited to, a cease and desist order, an order of summary suspension, and an order of summary restriction of a license.

AMENDATORY SECTION (Amending WSR 94-04-079, filed 1/31/94, effective 3/3/94)

WAC 246-10-304 Adjudicative proceedings upon summary action. ~~((Following summary action taken by the department, the respondent may:))~~

(1) Except as identified in subsection (2) of this section, following a summary action taken by the department, the respondent may:

(a) Request a prompt adjudicative proceeding conducted in accordance with this chapter; or

~~((2))~~ (b) Waive the prompt adjudicative proceeding and request a regularly scheduled adjudicative proceeding conducted in accordance with this chapter; or

~~((3))~~ (c) Waive the right to an adjudicative proceeding and submit a written statement to be considered prior to the entry of the final order; or

~~((4))~~ (d) Waive the opportunity to be heard.

(2) For summary actions to suspend, restrict or limit the practice of a license holder of a secretary profession, the respondent may:

(a) Request a hearing as provided in RCW 18.130.090 and request a show cause hearing conducted in accordance with RCW 18.130.135 and WAC 246-10-307; or

(b) Request a regularly scheduled adjudicative proceeding conducted in accordance with this chapter; or

(c) Waive the right to an adjudicative proceeding and submit a written statement to be considered prior to the entry of the final order; or

(d) Waive the opportunity to be heard.

(3) In this section, "secretary profession" means a health care profession for which the secretary of health is the disciplining authority under RCW 18.130.040 (2)(a).

AMENDATORY SECTION (Amending WSR 94-04-079, filed 1/31/94, effective 3/3/94)

WAC 246-10-305 Opportunity for prompt adjudicative proceeding. ~~((+))~~ Except as provided in WAC 246-10-304(2), any respondent affected by a summary action shall be provided the opportunity to request a prompt adjudicative proceeding.

(1) Notice of the opportunity shall be provided in the notice of opportunity to defend against the allegations that are the basis for the summary action. The form for requesting an adjudicative proceeding shall include the option of requesting a prompt adjudicative proceeding.

(2) Any respondent affected by a summary action may request a prompt adjudicative proceeding, may elect a regularly scheduled adjudicative proceeding instead of a prompt adjudicative proceeding, or may waive the opportunity for adjudicative proceeding in accordance with WAC 246-10-203.

(3) Any request for a prompt adjudicative proceeding must be filed within ten days of the service of the summary action.

(4) If requested by the respondent, a prompt adjudicative proceeding shall be conducted within twenty days of service of a summary action.

(5) Regardless of whether a prompt adjudicative proceeding is requested, the matter shall be resolved as quickly as feasible in accordance with all other applicable rules.

NEW SECTION

WAC 246-10-307 Show cause hearing. (1) A license holder's request for a show cause hearing must be filed within twenty days of the service of the summary action. A license holder must also respond to the statement of charges by requesting a hearing or an extension of time as provided in RCW 18.130.090.

(2) The show cause hearing will be conducted within fourteen days of the license holder filing the show cause hearing request.

(3) By noon on the fourth calendar day after filing the show cause hearing request, the license holder must file, and deliver a copy to the department's attorney, any documents or written testimony to be admitted into evidence at the show cause hearing.

(4) By noon on the eighth calendar day after the date the show cause hearing request was filed, but no less than the close of business two business days before the show cause hearing, the department must file, and deliver a copy to the license holder's attorney or to the license holder if not represented by counsel, any rebuttal documents or written testimony to be admitted into evidence at the show cause hearing.

(5) In reviewing the order of summary action, the presiding officer will consider the statement of charges, the motions and documents supporting the request for summary action, the license holder's answer to the statement of charges, any documentary evidence or written testimony presented by the license holder and department in rebuttal, and unless waived, the parties will be given an opportunity for oral argument.

(6) At the show cause hearing, the department has the burden of proving it is more probable than not that the license holder poses an immediate threat to the public health and safety.

(7) The presiding officer will issue an order and may overturn, uphold, or amend the summary suspension or restriction.

(8) Within forty-five days of a determination by the secretary to sustain the summary suspension or place restrictions on the license, the license holder may request a full hearing on the merits of the disciplining authority's decision to suspend or restrict the license. A full hearing must be provided within forty-five days of receipt of the request for a hearing, unless stipulated otherwise.

AMENDATORY SECTION (Amending WSR 97-13-015, filed 6/6/97, effective 7/7/97)

WAC 246-11-010 Definitions. As used in these rules of practice and procedure, the following terms shall have the meaning set forth in this section unless the context clearly indicates otherwise. Other terms shall have their ordinary meaning unless defined elsewhere in this chapter.

"Adjudicative clerk office" shall mean the unit with responsibility for: Docketing; service of orders; and maintaining custody of the adjudicative proceeding record, whose address is:

Department of Health
Adjudicative Clerk Office
(~~2413 Pacific Avenue~~)
310 Israel Rd. S.E.
P.O. Box 47879
Olympia, WA 98504-7879

"Adjudicative proceeding" or "hearing" shall mean a proceeding required by statute or constitutional right and conducted under the rules of this chapter, which provides an opportunity to be heard by the board prior to the entry of a final order under this chapter.

"Board" shall mean a disciplining authority under RCW 18.130.040 (2)(b) and (3).

"Brief adjudicative proceeding" shall mean an adjudicative proceeding or hearing, the scope or conduct of which is limited as provided in this chapter.

"Department" shall mean the Washington state department of health and, where appropriate, the secretary of the Washington state department of health or the secretary's designee.

"Docket" or "docketing" shall mean the list or calendar of causes set to be heard at a specified time, prepared by the adjudicative clerk office for the use of the department.

"Filing" shall mean receipt by the adjudicative clerk office.

"Initiating document" shall mean a written agency document which initiates action against a license holder or applicant for license and which creates the right to an adjudicative proceeding. It may be entitled a statement of charges, notice of intent to deny, or by any other designation indicating the action or proposed action to be taken.

"License" shall have the meaning set forth in RCW 34.05.010 and includes license to practice the profession for which the board is the disciplining authority and any approval of school or curriculum required by law or rule to be obtained from the board.

"Presiding officer" shall mean the person who is assigned to conduct an adjudicative proceeding and who may either be a member of the board, an individual appointed pursuant to RCW 18.130.095(3), or an administrative law judge employed by the office of administrative hearings.

"Presiding officer for brief adjudicative proceedings" shall mean an employee of the department authorized by the board to conduct brief adjudicative proceedings.

"Program" shall mean the administrative unit within the department responsible for implementation of that chapter of Title 18 RCW establishing the board or its powers and responsibilities.

(("Prompt adjudicative proceeding" or "prompt hearing" shall mean a hearing conducted at the request of the license holder or applicant for license following summary action taken in accord with this chapter against that license holder or applicant.))

"Protective order" shall mean an order issued under this chapter which limits the use of, access to, or disclosure of information or evidence.

"Respondent" shall mean a license holder or applicant for license under the jurisdiction of the board who is named in an initiating document.

"Secretary" shall mean the secretary of the department of health or his/her designee.

"Summary action" shall mean an agency action to address an immediate danger to the public health, safety, or welfare and shall include, but not be limited to, ~~((a cease and desist order,))~~ an order of summary suspension, and an order of summary restriction of a license.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-330 Adjudicative proceedings upon summary action. Following summary action taken by the board, the respondent may:

(1) Request a ~~((prompt adjudicative proceeding conducted in accordance with this chapter))~~ hearing as provided in RCW 18.130.090 and request a show cause hearing conducted in accordance with RCW 18.130.135 and WAC 246-11-340; or

(2) ~~((Waive the prompt adjudicative proceeding and))~~ Request a regularly scheduled adjudicative proceeding conducted in accordance with this chapter; or

(3) Waive the right to an adjudicative proceeding and submit a written statement to be considered prior to the entry of the final order; or

(4) Waive the opportunity to be heard.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-340 Opportunity for ~~((prompt adjudicative proceeding))~~ show cause hearing. ~~((1) Any respondent affected by a summary action shall be provided the opportunity to request a prompt adjudicative proceeding. Notice of the opportunity shall be provided in the notice of opportunity to defend against the allegations that are the basis for the summary action. The form for requesting an adjudicative proceeding shall include the option of requesting a prompt adjudicative proceeding.~~

~~((2) Any respondent affected by a summary action may request an prompt adjudicative proceeding, may elect a regularly scheduled adjudicative proceeding instead of a prompt adjudicative proceeding, or may waive the opportunity for adjudicative proceeding in accord with WAC 246-11-270.~~

~~((3) Any request for a prompt adjudicative proceeding must be filed within ten days of the service of the summary action.~~

~~((4) If requested by the respondent, a prompt adjudicative proceeding shall be conducted within twenty days of service of a summary action.~~

~~((5) Regardless whether a prompt adjudicative proceeding is requested, the matter shall be resolved as quickly as feasible in accordance with all other applicable rules.))~~ (1) A license holder's request for a show cause hearing must be filed within twenty days of the service of the summary action. A license holder must also respond to the statement of charges by requesting a hearing or an extension of time as provided in RCW 18.130.090.

(2) The show cause hearing will be conducted by a panel of the board within fourteen days of the license holder filing the show cause hearing request.

(3) By noon on the fourth calendar day after filing the show cause hearing request, the license holder must file, and deliver a copy to the department's attorney, any documents or written testimony to be admitted into evidence at the show cause hearing.

(4) By noon on the eighth calendar day after the date the show cause hearing request was filed, but no less than the close of business two business days before the show cause hearing, the department must file, and deliver a copy to the license holder's attorney or to the license holder if not represented by counsel, any rebuttal documents or written testimony to be admitted into evidence at the show cause hearing.

(5) In reviewing the order of summary action, the show cause hearing panel will consider the statement of charges, the motions and documents supporting the request for summary action, the license holder's answer to the statement of charges, any documentary evidence or written testimony presented by the license holder and department in rebuttal, and unless waived, the parties will be given an opportunity for oral argument.

(6) At the show cause hearing, the department has the burden of proving it is more probable than not that the license holder poses an immediate threat to the public health and safety.

(7) The show cause panel will issue an order and may overturn, uphold or amend the summary suspension or restriction.

(8) Within forty-five days of a determination by the panel of the board to sustain the summary suspension or place restrictions on the license, the license holder may request a full hearing on the merits of the disciplining authority's decision to suspend or restrict the license. A full hearing must be provided within forty-five days of receipt of the request for a hearing, unless stipulated otherwise.

WSR 09-03-102

PERMANENT RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2008-26—Filed January 21, 2009, 8:10 a.m., effective February 21, 2009]

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

Purpose: These new rules set forth the requirements and procedures for a domestic insurer to obtain the Insurance commissioner's approval to use a permitted accounting practice in filing its annual and quarterly financial statements with the commissioner.

Statutory Authority for Adoption: RCW 48.02.060, 48.44.050, 48.46.200.

Adopted under notice filed as WSR 08-21-159 on October 22, 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 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 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 21, 2009.

Mike Kreidler
Insurance Commissioner

PERMITTED ACCOUNTING PRACTICES

NEW SECTION

WAC 284-07-500 Definitions. For purposes of this rule:

(1) A "permitted accounting practice" is an accounting practice that departs from the National Association of Insurance Commissioners (NAIC) *Accounting Practices and Procedures Manual* or state prescribed accounting practices, and has been approved in writing by the commissioner.

(2) "State prescribed accounting practices" are those accounting practices that are incorporated directly or by reference by Titles 48 RCW and 284 WAC applicable to domestic insurers.

(3) A "domestic insurer" includes an entity organized under the laws of this state as an insurer authorized under chapter 48.05 RCW, a fraternal benefit society licensed under chapter 48.36A RCW, a health care service contractor registered under chapter 48.44 RCW, a health maintenance organization registered under chapter 48.46 RCW, a self-funded multiple employer welfare arrangement authorized under chapter 48.125 RCW, or other entity regulated under Title 48 RCW and required to comply with the NAIC *Accounting Practices and Procedures Manual* and state prescribed accounting practices.

NEW SECTION

WAC 284-07-510 Prior approval required for a domestic insurer to use permitted accounting practice. (1) If a domestic insurer wishes to use a permitted accounting practice, the domestic insurer must obtain prior written approval of the permitted accounting practice from the commissioner.

(2) An insurer must submit its request for a permitted accounting practice to the commissioner in writing.

(3) A request for a permitted accounting practice must be received by the commissioner more than thirty days prior to its proposed effective date and may not be used until thirty days after the commissioner has approved the practice in writing. For good cause shown, the commissioner may reduce either time period.

(4) Instructions as to how and where a domestic insurer must send its request for a permitted accounting practice to the commissioner may be found on the commissioner's web site at www.insurance.wa.gov.

(5) The insurer may not implement any permitted practice prior to written approval by the commissioner.

(6) An insurer may use only those permitted accounting practices which have been specifically approved for that insurer and only for the time period permitted by the commissioner.

NEW SECTION

WAC 284-07-520 Information to be included in a permitted accounting practice request. A request for a permitted accounting practice must contain, at a minimum, all of the following information:

(1) The proposed effective date and the date of the first filed financial statement in which the proposed permitted accounting practice will be reported;

(2) A detailed description of the permitted accounting practice being requested, including specific citation to the NAIC *Accounting Practices and Procedures Manual* or state prescribed accounting practices from which the proposed permitted accounting practice will depart;

(3) The periods, if any, in which the proposed permitted accounting practice was previously in effect;

(4) The period in which the proposed permitted accounting practice will be effective (e.g., specific beginning and ending dates);

(5) Specific identification of each financial statement line item and its respective impact from the proposed permitted accounting practice. The respective impact must compare the financial statements prepared in accordance with RCW 48.05.073, 48.36A.263, 48.43.097, or 48.125.090(2) and financial statements incorporating the permitted accounting practices;

(6) The total financial impact on the capital and surplus of the proposed permitted accounting practice and any other previously granted permitted accounting practices. The total impact must compare the financial statements prepared in accordance with RCW 48.05.073, 48.36A.263, 48.43.097, or 48.125.090(2) and financial statements incorporating the permitted accounting practice; and

(7) The capital and surplus effect of the proposed permitted accounting practice, on a legal entity basis, on the domestic insurer, its ultimate and intermediate parents and all affiliated United States insurers. The capital and surplus effect must compare the financial statements prepared in accordance with RCW 48.05.073, 48.36A.263, 48.43.097, or 48.125.090(2) and financial statements incorporating the permitted accounting practice on a legal entity basis on the

domestic insurer, its ultimate and intermediate parents and all affiliated United States insurers.

NEW SECTION

WAC 284-07-530 Expiration of a permitted accounting practice. The commissioner may only approve a request to use a permitted accounting practice for up to one calendar year. All permitted practices will expire no later than December 31. An insurer wishing to continue the permitted practice must file a new permitted practice request with the commissioner. Permitted accounting practices that were previously approved by the commissioner that remain in effect as of the effective date of this rule which do not have a specific termination date will expire upon any change of control of the insurer or December 31, 2010, whichever occurs first.

WSR 09-03-104

PERMANENT RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2007-09—Filed January 21, 2009, 8:13 a.m., effective February 21, 2009]

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

Purpose: These new rules establish requirements for underwriting standards that prevent fraudulent or speculative purchase of juvenile life insurance policies and contracts.

Statutory Authority for Adoption: RCW 48.02.060 and 48.23.345.

Adopted under notice filed as WSR 08-24-107 on December 3, 2008.

A final cost-benefit analysis is available by contacting Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7041, fax (360) 586-3109, e-mail kacys@oic.wa.gov.

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 0, Repealed 0.

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

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

Date Adopted: January 21, 2009.

Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-23-800 Purpose and scope. The purpose of these rules is to prevent the purchase of juvenile life insurance for speculative or fraudulent reasons, by ensuring that insurance underwriting practices consider such risk, and by setting forth the minimum practices required to insure the life of a juvenile. These rules apply to any insurance issued in Washington state on the life of a juvenile.

NEW SECTION

WAC 284-23-803 Definitions. For the purpose of this rule, the following definitions apply, unless the context clearly requires otherwise:

(1) "Insurable interest" means a relationship to the insured at the time of application congruent with the continuance of the life of the insured, and as further defined in RCW 48.18.030 and 48.18.060(2).

(2) "Juvenile" means a person younger than eighteen years of age.

(3) "Juvenile Life Insurance Contract" means a life insurance contract issued on the life of a juvenile.

(4) "Parent or legal guardian" means a natural parent, an adoptive parent whose status is documented in a final court order of adoption or a court appointed legal guardian for the juvenile. Step-parents who have not legally adopted the juvenile, foster parents, noncustodial parents or relatives acting in loco parentis are not considered parents or legal guardians of the juvenile for purposes of this rule.

NEW SECTION

WAC 284-23-806 Required procedures and standards for sale of juvenile life insurance policies. Beginning July 1, 2009, an insurer must comply with the following procedures and standards when selling juvenile life insurance policies:

(1) An insurer may refuse an applicant's request for life insurance when the combined life insurance-in-force exceeds the issuing insurer's maximum for juveniles.

(2) Life insurance upon a juvenile may not be made or take effect unless at the time the contract is made, the applicant is a person having an insurable interest in the life of a minor or is a person upon whom the minor is dependent for support and maintenance. The insurer must obtain and keep documentation sufficient to demonstrate that the person applying for the policy has an insurable interest in the life of the insured.

(3) In addition to the signature of the applicant, the following consent as evidenced by signature must be obtained before submitting the application for underwriting:

(a) The parent or legal guardian with whom the juvenile resides must sign the application if the applicant is not a parent or legal guardian.

(b) Any juvenile age fifteen or older must sign the initial application for insurance on the juvenile's life.

(4) An insurer must have justification for selling a life insurance policy on the life of a juvenile in excess of reasonably anticipated costs associated with the juvenile's funeral, other death expenses or costs of mental health treatment for

family members or loss of income to the family. The insurer must provide the insurance commissioner with documentation from its records and files to support the justification upon request. The justification must contain the following elements:

(a) The justification must conform to the insurer's established standards and practices for juvenile life insurance or explain any variance.

(b) Identify the amount, if any, of other life insurance contracts on the life of the juvenile which are in force at the time of application.

(c) Whether and to what extent the beneficiary or applicant is dependent on the juvenile for income or other support.

(d) The value of life insurance or accidental death benefits issued for other siblings or immediate family members, and if not grossly proportional to the underwritten policy benefit or individually equivalent to coverage on other family members, why proportionality or equivalency was not required.

(e) Whether the overall amount of insurance on the juvenile exceeds the annual household income, and if so, why such an amount was approved.

(5) For each application for juvenile life insurance rejected by an insurer, each insurer must maintain at its home or principal office a complete file containing the original signed application, underwriting analysis, correspondence with the applicant and any other documents pertinent to the decision to reject the applicant as an insured, for a period of not less than ten years from the date the application was signed by the applicant. Such file shall be subject to inspection by the insurance commissioner.

WSR 09-03-110

PERMANENT RULES SECRETARY OF STATE (Elections Division)

[Filed January 21, 2009, 11:30 a.m., effective February 21, 2009]

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

Purpose: These rules move procedures for protected records voters into election-related WAC chapters, clarify which government documents a voter may use to prove his or her identity, repeal antiquated references, clarify the appointment of members of the voting systems review board, change terminology from "independent testing authority" to "voting system test laboratory," repeal references to telephonic transmission since that technology is antiquated and obsolete, clarify the process for testing voting systems during certification testing, repeal the requirement that initiative and referendum sponsors have the affidavit notarized, and create one standard deadline for statements submitted by candidates for the voters' pamphlet.

Citation of Existing Rules Affected by this Order: Repealing WAC 434-261-107, 434-262-140, and 434-335-200; and amending WAC 434-250-040, 434-250-045, 434-250-050, 434-253-045, 434-261-005, 434-261-045, 434-264-020, 434-324-045, 434-335-020, 434-335-030, 434-335-040, 434-335-060, 434-335-090, 434-335-100, 434-335-110, 434-

335-140, 434-335-160, 434-335-170, 434-335-210, 434-335-212, 434-335-214, 434-335-250, 434-335-605, 434-379-005, and 434-381-120.

Statutory Authority for Adoption: RCW 29A.04.611.

Adopted under notice filed as WSR 08-23-004 on November 5, 2008.

Changes Other than Editing from Proposed to Adopted Version: A change was made to proposed WAC 434-335-020, limiting terms to only two years and limiting board members to five. This change was necessary because staggered two and four year terms and not listing a limit to board members was problematic in past years.

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 25, Repealed 3.

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

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

Date Adopted: January 21, 2009.

Steve Excell

Assistant Secretary of State

NEW SECTION

WAC 434-250-035 Protected records voters. (1) At least twenty days before every special, primary, or general election, authorized personnel shall review all protected records voter files and forward the appropriate absentee ballot for each protected records voter via the substitute mailing address.

(2) The ballot, ballot security envelope, and return envelope must be placed in an envelope addressed to the substitute address. The return envelope shall be printed in a manner that ensures that the returned ballot will be segregated and routed to the authorized personnel for processing.

(3) The voted absentee ballot for a protected records voter shall be processed by county authorized personnel. The authorized personnel shall maintain a record of ballots sent to protected records voters and a record of ballots returned. This record shall be maintained in accordance with WAC 434-324-034.

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

WAC 434-250-040 Instructions to voters. (1) Instructions that accompany an absentee ballot must include:

(a) How to cancel a vote by drawing a line through the text of the candidate's name or ballot measure response;

(b) Notice that, unless specifically allowed by law, more than one vote for an office or ballot measure will be an over-vote and no votes for that office or ballot measure will be counted;

(c) Notice that, if a voter has signed or otherwise identified himself or herself on a ballot, the ballot will not be counted;

(d) An explanation of how to complete and sign the affidavit on the return envelope;

(e) An explanation of how to make a mark, witnessed by two other people, if unable to sign the affidavit;

(f) An explanation of how to place the ballot in the security envelope and place the security envelope in the return envelope;

(g) An explanation of how to obtain a replacement ballot if the original ballot is destroyed, spoiled, or lost;

(h) Notice that postage is required, if applicable;

(i) Notice that, in order for the ballot to be counted, it must be either postmarked or deposited at a designated deposit site no later than election day;

(j) An explanation of how to learn about the locations, hours, and services of voting centers and ballot deposit sites, including the availability of accessible voting equipment;

~~((County auditors may use existing stock of instructions appearing on absentee ballot envelopes until December 1, 2008.))~~

(k) For a primary election that includes a partisan office, a notice on a separate insert printed on colored paper explaining:

"Washington has a new primary. You do not have to pick a party. In each race, you may vote for any candidate listed. The two candidates who receive the most votes in the August primary will advance to the November general election.

Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(l)(i) For a general election that includes a partisan office, the following explanation:

"Washington has a new election system. In each race for partisan office, the two candidates who receive the most

Dear Voter:

[date]

Based on your recent registration, federal law requires that you provide identification with your ballot. **If you fail to provide identification, your ballot will not be counted.**

Please provide a copy of one of the following:

- Valid photo identification;
- A valid enrollment card of a federally recognized tribe in Washington;
- A current utility bill;
- A current bank statement;
- A current government check;
- A current paycheck; or
- A government document, other than a voter registration card, that shows both your name and address.

votes in the August primary advance to the November general election.

Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(ii) In a year that president and vice-president appear on the general election ballot, the following must be added to the statement required by (l)(i) of this subsection:

"The election for president and vice-president is different. Candidates for president and vice-president are the official nominees of their political party."

(m) Any other information the county auditor deems necessary.

(2) Instructions that accompany a special absentee ballot must also include:

(a) A listing of all offices and measures that will appear upon the ballot, together with a listing of all persons who have filed for office or who have indicated their intention to file for office; and

(b) Notice that the voter may request and subsequently vote a regular absentee ballot, and that if the regular absentee ballot is received by the county auditor prior to certification of the election, it will be tabulated and the special absentee ballot will be voided.

AMENDATORY SECTION (Amending WSR 07-02-100, filed 1/3/07, effective 2/3/07)

WAC 434-250-045 Voters requiring verification of identity. (1) If the voter registration record of an absentee voter is flagged as requiring verification of identity, a notice must be sent at the time of the election explaining that a photocopy of identification must be provided in order for the ballot to be counted, and listing what forms of identification are acceptable. The county auditor may provide an inner envelope separate from the security envelope for return of the photocopy of the identification.

(2) The notice to the absentee voter must be in substantially the following form:

You may return the photocopy with your ballot but, in order to protect the secrecy of your ballot, do not place the photocopy inside the security envelope.

If you do not provide a copy of your identification, your ballot will not be counted.

If you have any questions, please feel free to contact the _____ County Auditor’s Office at _____.

(3) If the voter provides one of the acceptable forms of identification no later than the day before certification of the election, the flag on the voter registration record must be removed and the ballot must be counted.

(4) If the voter fails to provide one of the acceptable forms of identification by the day prior to certification of the election, the ballot ~~((may))~~ shall not be counted. If the voter provides one of the acceptable forms of identification at a later date, the ballot cast in that election ~~((may))~~ shall not be counted but the flag on the voter registration record must be removed.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

WAC 434-250-050 Envelopes. Absentee ballots must be accompanied by the following:

(1) A security envelope, which may not identify the voter and must have a hole punched in a manner that will reveal whether a ballot is inside;

(2) A return envelope, which must be addressed to the county auditor and have a hole punched in a manner that will reveal whether the security envelope is inside. The return envelope must display the official election materials notice required by the United States Postal Service, the words "POSTAGE REQUIRED" or "POSTAGE PAID" in the upper right-hand corner, and the following oath with a place for the voter to sign, date, and write his or her daytime phone number:

I do solemnly swear or affirm under penalty of perjury that:
I am a citizen of the United States;
I am a legal resident of the state of Washington;
I will be at least 18 years old on or before election day;
I am not presently denied my voting rights as a result of being convicted of a felony;
I have not been judicially declared mentally incompetent;
I have not already voted in this election; and
I understand it is illegal to cast a ballot or sign a ballot envelope on behalf of another voter.

Attempting to vote when not qualified, attempting to vote more than once, or falsely signing this oath is a felony punishable by a maximum imprisonment of five years, a maximum fine of \$10,000, or both.

Signature _____ Date _____

The return envelope must include space for witnesses to sign.

The return envelope must conform to postal department regulations.

~~((County auditors may use existing stock of absentee envelopes until December 1, 2008.))~~

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

WAC 434-253-045 Provisional ballots—Required information. A provisional ballot may only be voted on a direct recording electronic voting device if the voting system has been certified by the secretary of state for provisional voting and the county auditor has submitted approved procedures to the secretary of state.

At a minimum, the following information is required to be printed on the outer ballot envelope:

- (1) Name of voter.
- (2) Voter's registered address both present and former if applicable.
- (3) Voter's date of birth.
- (4) Reason for the provisional ballot.
- (5) Polling place and precinct number, if applicable, at which voter voted.
- (6) Sufficient space to list disposition of the ballot after review by the county auditor.
- (7) The following affidavit with a place for the voter to sign and date:

I do solemnly swear or affirm under penalty of perjury that:
I am a citizen of the United States;
I am a legal resident of the state of Washington;
I will be at least 18 years old on or before election day;
I am not presently denied my voting rights as a result of being convicted of a felony;
I have not been judicially declared mentally incompetent;
I have not already voted in this election;
and
I understand it is illegal to cast a ballot or sign a ballot envelope on behalf of another voter.

Attempting to vote when not qualified, attempting to vote more than once, or falsely signing this oath is a felony punishable by a maximum imprisonment of five years, a maximum fine of \$10,000, or both.

Signature _____ Date _____

~~((County auditors may use existing stock of absentee envelopes until December 1, 2008.))~~

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

WAC 434-261-005 Definitions. (1) "Manual inspection" is the process of inspecting each voter response position on each voted ballot. Inspection is performed on an absentee ballot as part of the initial processing, and on a poll ballot after breaking the seals and opening the ballot containers from the precincts or, in the case of precinct counting systems, prior to the certification of the election;

(2) "Duplicating ballots" is the process of making a true copy of valid votes from ballots that may not be properly counted by the vote tallying system. Ballots may be duplicated on blank ballots or by making changes on an electronic image of the ballot. The original ballot may not be altered in any way;

(3) "Readable ballot" is any ballot that the certified vote tallying system can accept and read as the voter intended without alteration, and that meets the standards of the county canvassing board subject to the provisions contained in this title;

(4) "Unreadable ballot" is any ballot that cannot be read by the vote tallying system as the voter intended without alteration. Unreadable ballots may include, but not be limited to, ballots with damage, write-in votes, incorrect or incomplete marks, and questions of vote intent. Unreadable ballots may subsequently be counted as provided by these administrative rules;

(5) "Valid signature" on a ballot envelope for a registered voter eligible to vote in the election is:

(a) A signature verified against the signature in the voter registration file; or

(b) ~~((On an absentee ballot envelope,))~~ Δ mark ~~((with))~~ witnessed by two ((witnesses)) people.

AMENDATORY SECTION (Amending WSR 06-11-042, filed 5/10/06, effective 6/10/06)

WAC 434-261-045 Secure storage. Received ballots and ballot images must be maintained in secure storage except during processing, duplication, inspection by the canvassing board, or tabulation. Secure storage must employ the use of numbered seals and logs, or other security measures that will detect any inappropriate access to the secured materials. Ballots and ballot images may only be accessed in accordance with RCW 29A.60.110 and 29A.60.125.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-261-107 Daily canvassing.

NEW SECTION

WAC 434-262-036 Canvassing procedure for ballot of a protected records voter. If the ballot of a protected records voter must be presented to the county canvassing board, the canvassing board must review the ballot in private

executive session or take other necessary steps to ensure the privacy of the protected records voter.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-262-140 Microfilm copies of election returns.

AMENDATORY SECTION (Amending WSR 07-12-032, filed 5/30/07, effective 6/30/07)

WAC 434-264-020 Recount—Restrictions. All questions of voter registration, voter qualification, and voter intent previously considered during the original count shall not be reconsidered during a recount of the original ballots.

However, if any ballots or votes are discovered during the recount process that were not originally counted, the ballots shall be presented to the county canvassing board in accordance with RCW ~~((29A.60.024))~~ 29A.60.050, and the county canvassing board shall determine whether such ballots are to be included in the recount.

Nothing in this section shall preclude the county canvassing board from canvassing a ballot or a vote not canvassed during the original or previous count.

NEW SECTION

WAC 434-324-034 Confidentiality of protected records voter information. All records pertaining to a protected records voter shall be maintained in a manner that ensures that the records are accessible only to authorized personnel. Information for a protected records voter shall not be maintained on any voter registration data base and shall not be publicly accessible, except as provided by chapter 40.24 RCW.

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

WAC 434-324-045 Verification of applicant's identity. (1) If the applicant is provisionally registered pursuant to WAC 434-324-040(5), the county auditor must verify the applicant's identity before counting the applicant's ballot. The county auditor may use other government resources and public records to confirm the applicant's driver's license or state identification card number or the last four digits of the applicant's Social Security number. The county auditor may also attempt to contact the applicant by phone, e-mail or other means to obtain identification information.

(2) If the county auditor is still unable to verify the applicant's identity, the county auditor must send the applicant an identity verification notice that includes a postage prepaid, preaddressed form by which the applicant may verify or send information. The identity verification notice must be in substantially the following form:

Dear Voter:

[date]

Thank you for submitting a voter registration application. Because we were unable to verify your identity based on the information you provided, you are now provisionally registered to vote.

Federal law requires that you provide identification either before or when you vote. **If you fail to provide identification, your ballot will not be counted.**

Please provide one of the following:

- The number on your Washington driver's license or state ID card: _____
Your name and date of birth as it appears on your driver's license or state ID card:

_____	_____	_____	_____
First	M.I.	Last	date of birth

- The last four digits of your Social Security number: _____
Your name and date of birth as maintained by the Social Security Administration:

_____	_____	_____	_____
First	M.I.	Last	date of birth

- A copy of one of the following:
 - Valid photo identification;
 - A valid enrollment card of a federally recognized tribe in Washington;
 - A current utility bill;
 - A current bank statement;
 - A current government check;
 - A current paycheck; or
 - A government document, other than a voter registration card, that shows both your name and address.

Please provide this documentation as soon possible. **If it is not provided, your ballot will not be counted.**

If you have any questions, please feel free to contact the _____ County Auditor's Office at _____.

(3) If the applicant responds with updated driver's license, state ID card, or Social Security information, or with a copy of one of the alternative forms of identification, the flag on the voter registration record must be removed, allowing the applicant's ballot to otherwise be counted the first time he or she votes after registering.

(4) If the applicant fails to respond with adequate documentation to verify his or her identity, the applicant's voter registration record must remain flagged. If the applicant votes absentee, he or she must be notified that the ballot will not be counted unless he or she provides adequate verification of identity.

(5) A provisional registration must remain on the official list of registered voters for at least two general elections for federal office. If, after two general elections for federal office, the voter still has not verified his or her identity, the provisional registration (~~(may)~~) shall be canceled.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-020 Voting systems review board. The voting systems review board may review voting systems for certification and make recommendations to the secretary of state based upon those reviews. The voting systems review board consists of five members, and may include((s)) independent experts in computer science or information technology, recognized experts in election administration, and representatives of the public at large. Members of the voting systems review board are appointed ((to a two-year term by the secretary of state)) by the secretary of state to staggered two year terms. Appointees may be reappointed to serve more than one term. The secretary of state may appoint a new member to fill any vacancy on the board for the remainder of the unexpired term. The duties of the voting systems review board include(~~, but are not limited to,~~) reviewing an application for certification, as provided in WAC 434-335-090, conducting a public hearing on the application, as provided in WAC 434-335-100, and making recommendations on the application to the secretary of state, as provided in WAC 434-335-110.

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

WAC 434-335-030 Initial application for certification. Any person or corporation (applicant) owning or representing a voting system or a vote tabulating system, part of a system, equipment, materials or procedure may apply in writing to the secretary of state for certification December 1st and ending June 30th the following year. Certification examinations and hearings are only conducted between December 1st and September 15th of each year.

(1) The application must include, but is not limited to, the following information:

(a) Description of the applicant, business address, customer references, and list of election products.

(b) Description of the equipment under review, version numbers, release numbers, operating and maintenance manuals, training materials, and technical and operational specifications.

(c) Documentation of all other states that have tested, certified and used the equipment in a binding election, and the length of time used in that state. The information for each state must include the version numbers of the operating system, software, and firmware, the dates and jurisdictions, and any reports compiled by state or local governments concerning the performance of the system.

(d) ~~((A monetary deposit as described in WAC 434-335-080.~~

~~((e))~~ A copy of a letter from the applicant to each ~~((independent testing authority (ITA)))~~ voting system test laboratory which:

(i) Directs the ~~((ITA))~~ voting system test laboratory to send a copy of the completed ~~((ITA))~~ voting system test laboratory qualification report to the secretary of state;

(ii) Authorizes the ~~((ITA))~~ voting system test laboratory to discuss testing procedures and findings with the secretary of state; and

(iii) Authorizes the ~~((ITA))~~ voting system test laboratory to allow the secretary of state to review all records of any qualification testing conducted on the equipment.

~~((f))~~ ~~((e))~~ A technical data package ~~((TDP))~~ conforming to the 2002 ~~((FEC Federal))~~ Voting Systems Standards ~~((FVSS))~~ VSS, Vol. II, Sec. 2 standards that includes:

(i) Identification of all COTS hardware and software products and communications services used in the operation of the voting system (ref. ~~((FVSS))~~ VSS, 2.2.1.e);

(ii) A system functionality description (ref. ~~((FVSS))~~ VSS, 2.3);

(iii) A system security specification (ref. ~~((FVSS))~~ VSS, 2.6);

(iv) System operations procedures (ref. ~~((FVSS))~~ VSS, 2.8);

(v) System maintenance procedures (ref. ~~((FVSS))~~ VSS, 2.9);

(vi) Personnel deployment and training requirements (ref. ~~((FVSS))~~ VSS, 2.10);

(vii) Configuration management plan (ref. ~~((FVSS))~~ VSS, 2.11);

(viii) System change notes (if applicable, ref. ~~((FVSS))~~ VSS, 2.13);

(ix) A system change list, if any, of modifications currently in development;

(x) A system usability testing report; and

(xi) A set of procedures for county personnel on how the operating system, equipment, and application software should be optimally configured and used in a secure environment.

(2) The vendor must either file the system executables for the certified system with the National Software Reference Library (NSRL) or place the source code of an electronic voting system in escrow, which must be accessible by the secretary of state under prescribed conditions.

(3) All documents, or portions of documents, containing proprietary information are not subject to public disclosure. The secretary of state must agree to use proprietary information solely for the purpose of analyzing and testing the system, and to the extent permitted by law, may not use the proprietary information or disclose it to any other person or agency without the prior written consent of the applicant.

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

WAC 434-335-040 Voting system requirements. (1)

No voting device or its component software may be certified by the secretary of state unless it:

(a) Secures to the voter secrecy in the act of voting;

(b) Permits the voter to vote for any person for any office and upon any measure that he or she has the right to vote for;

(c) Correctly registers all votes cast for any and all persons and for or against any and all measures;

(d) Provides that a vote for more than one candidate cannot be cast by one single operation of the voting device or vote tally system except when voting for President and Vice-President of the United States;

(e) Produces a machine countable and human readable paper record for each vote that may be accepted or rejected by the voter before finalizing his or her vote. The paper record of an electronic vote may not be removed from the device by the voter. If the voting device is programmed to display the ballot in multiple languages, the paper record produced must be printed in the language used by the voter; and

(f) Has been tested and approved by the appropriate ~~((independent testing authority))~~ voting system test laboratory approved by the United States election assistance commission.

(2) No vote tabulating system may be certified by the secretary of state unless it:

(a) Correctly counts votes on ballots on which the proper number of votes have been marked for any office or issue;

(b) Ignores votes marked for any office or issue where more than the allowable number of votes have been marked, but correctly counts the properly voted portions of the ballot;

(c) Accumulates a count of the specific number of ballots tallied for each precinct, total votes by candidate for each office, and total votes for and against each ballot measure on the ballot in that precinct;

(d) Produces precinct and cumulative totals in printed form; and

(e) Produces legislative and congressional district totals for statewide races and issues in electronic and printed form.

(3) A vote tabulating system must:

(a) Be capable of being secured with lock and seal when not in use;

(b) Be secured physically and electronically against unauthorized access;

(c) Not be connected to, or operated on, any electronic network including, but not limited to, internal office networks, the internet, or the world wide web. A network may be used as an internal, integral part of the vote tabulating system but that network must not be connected to any other network, the internet, or the world wide web; and

(d) Not use wireless communications in any way.

(4) ~~((Transfer of information from a remote tabulating system may be made by telephonic transmission only after the creation of a disk, paper tape, or other physical means of recording ballot results.~~

~~(5))~~ The source code of electronic voting system software that has been placed in escrow must be identical to the source code of software that has been tested and certified by the federal ~~((independent testing authority))~~ voting system test laboratory and installed in the county. The applicant must place in escrow both the human-readable source code and the working or compiled version. In lieu of placing them in escrow, the source code and the working or compiled version may be deposited with the national software reference library. The software may be verified by matching the system's digital software signatures with the digital signatures the elections assistance commission has on file, when available.

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

WAC 434-335-060 Examination of equipment. Secretary of state staff will initiate an examination of the applicant's equipment after receiving a completed application and a working model of the equipment, documentation, and software to be reviewed. The examination consists of a series of functional application tests designed to insure that the system or equipment meets all applicable federal guidelines, and state law and rules. The examination may include an additional ~~((independent testing authority))~~ voting system test laboratory test at the discretion of the secretary of state. The examination shall include the set-up and conduct of two mock elections and a machine recount. ~~((The applicant shall provide ballot materials after the secretary of state has set up the programming to create these elections.))~~ The ~~((independent testing authority will))~~ voting system test laboratory shall provide to the secretary of state the voting system software they tested ((directly to the secretary of state)) and, if requested, the hash codes of the software they tested.

(1) The first election must replicate an even year general election.

(2) The second election must replicate ~~((an odd year))~~ a primary, and include the use of split precincts and precinct ~~((election))~~ committee officer contests.

Both elections must feature at least ten precincts, with at least ten ballots in each precinct. The tests must include bal-

lots of various ballot codes, including multiple candidates, cumulative reports, precinct reports, and canvass reports, as detailed in the test plan provided by the secretary of state.

AMENDATORY SECTION (Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

WAC 434-335-090 Voting systems review board evaluation. The voting systems review board evaluation must include, but is not limited to:

(1) A review of statutory requirements;

(2) A review of applicable federal standards;

(3) A review of the approved qualification test results released directly to the secretary of state by the federally approved ~~((independent testing authority))~~ voting system test laboratory;

(4) If applicable, a review of reports or other materials from prior hearings on the proposed system, procedure, or modification, either in whole or in part;

(5) A review of the report produced by the secretary of state upon completion of the examination of the voting system;

(6) If applicable, a review of any procedures manuals, guidelines, or other materials issued for use with the system;

(7) A review of any effect the application will have on the security of the voting system;

(8) A review of any effect the application will have on the accuracy of the voting system;

(9) A review of any effect the application will have on the ease and convenience with which voters use the system;

(10) A review of any effect the application will have on the timeliness of vote reporting; and

(11) A review of any effect the application will have on the overall efficiency of the voting system.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-100 Public hearing. The voting systems review board must conduct a public hearing, scheduled at the convenience of the secretary of state and voting systems review board. At the public hearing, the applicant ~~((must))~~ may demonstrate the equipment and explain its function. The applicant must be available to answer questions from the voting systems review board and the public. The applicant may be asked to submit answers in writing if the voting systems review board is not satisfied with the completeness of answers given at the hearing.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-110 Voting systems review board report. Following the review and public hearing, the voting systems review board ~~((must issue a report to the secretary of state. The voting systems review board))~~ may recommend for or against certification of the voting system under review. The board may also recommend that certification be contingent upon fulfillment of specific conditions or procedures with the purchase or use of the voting system in this state.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-140 Failure to meet certification requirements. If the secretary of state determines that the voting system fails to meet any of the requirements for certification, the applicant must be notified and allowed thirty days to submit another version of the voting system ~~((of the new voting system must be conducted as if never before performed by the office of the secretary of state))~~ for examination and testing ~~((of the new voting system must be conducted as if never before performed by the office of the secretary of state))~~.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-160 Modification of certified equipment, guidelines for administrative approval. The secretary of state may approve an application for modification of certified equipment administratively if the ~~((application))~~ modification does not:

- (1) Materially affect the lawful conduct, accuracy, efficiency, capacity or security of elections;
- (2) Materially and adversely affect the convenience to the voter of the elections process; or
- (3) Otherwise result in significant modification to existing procedures used in Washington by extending the equipment's functionality.

~~((An application))~~ A modification approved administratively does not require examination or review by the voting systems review board.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-170 Application for administrative approval of modified voting systems or devices. The application for review of a modification of an existing certified system must include, but is not limited to, the following information:

- (1) Description of the applicant.
- (2) Description of the equipment under review, the modification, and all version numbers and release numbers.
- (3) All changes to the operating and maintenance manuals, training materials, and technical and operational specifications required by the modification.
- (4) All certification documents from all other states that have certified the equipment with the modification.
- (5) Reports for all tests conducted on the modification by ~~((an independent testing authority))~~ a voting system test laboratory. The ~~((independent authority))~~ voting system test laboratory must meet the criteria established by the election assistance commission for such agents.
- (6) Documentation that the modification meets all applicable federal voting equipment guidelines.
- (7) A complete description, in operational and technical detail, of all differences between the previously certified equipment or system and the modified equipment or system, prepared by the applicant.

~~((8) A monetary deposit as described in WAC 434-335-080.))~~

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-210 Application information for emergency approval. ~~((During the restricted period.))~~ A county auditor may apply in writing to the secretary of state for emergency approval of a modification of an existing certified system. The application must include a complete description of the modification that is required and an explanation of why failure to modify the system materially affects the lawful conduct, efficiency, accuracy, or security of the upcoming election. The application must also explain why the emergency cannot be adequately remedied with procedural processes.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-212 ~~((Temporary approval of))~~ Emergency ~~((modification))~~ approval. Emergency approval for a modification of an existing voting or vote tabulating system or equipment may be obtained from the secretary of state if failure to modify the system could materially affect the lawful conduct, efficiency, accuracy, or security of an upcoming election.

If, after reviewing the application, the secretary of state determines that an emergency exists, the examination and testing of the proposed modification is expedited to meet the needs of the upcoming election. The secretary of state develops a test plan and audit procedures to ensure the modified system does not adversely affect the lawful conduct, efficiency, accuracy, or security of the upcoming elections. The secretary of state may consult with the voting systems review board. The requirement that the modification be certified by ~~((an independent testing authority))~~ a voting system test laboratory is waived for an emergency approval. An emergency approval of a modification must state the time period it is ~~((effective))~~ in effect.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-214 Public notice of emergency approval. The secretary of state must notify all county auditors of the emergency approval within five days of ~~((approval))~~ approving the application. Such notice shall also be posted to a public forum such as the secretary of state's web site.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-250 Inclusion of the Federal Election Commission standards for voting equipment. The 2002 Federal Election ~~((assistance))~~ Commission standards concerning voting systems and software escrow are hereby included by reference, except where otherwise modified by these rules and the Revised Code of Washington. After January 1, 2006, in order for a modification of a system that was previously certified according to the 1990 Federal Election Commission voting system standards to be administratively

approved, the entire voting system must be tested and approved according to the 2002 standards.

AMENDATORY SECTION (Amending WSR 07-12-032, filed 5/30/07, effective 6/30/07)

WAC 434-335-605 Initial application for approval.

Any vendor requesting approval of an ~~((automatic))~~ auto-~~mated~~ signature verification system for use with a specific election management system must complete and submit an application to the secretary of state. The secretary of state shall coordinate its review of the system with the vendor and the participating county.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-335-200 Emergency approval.

AMENDATORY SECTION (Amending WSR 06-23-094, filed 11/15/06, effective 12/16/06)

WAC 434-379-005 Filing of an initiative or referendum—Fee—Required documents. A person desiring to file with the secretary of state a ~~((petition to enact a proposed measure to the legislature or submit a proposed initiative measure to the people, or order that a referendum of all or part of any act, bill, or law, passed by the legislature be submitted to the people;))~~ proposed initiative to the people, initiative to the legislature, or referendum measure may do so by filing the following documents:

(1) A legible copy of the measure proposed, or the act or part of such act on which a referendum is desired;

(2) ~~((A notarized))~~ An affidavit ~~((that the sponsor is a legal voter and is submitting the proposed measure for filing;))~~ declaring under penalty of perjury:

(a) That the person submitting the proposed measure is over eighteen years of age and competent to testify;

(b) That the person submitting the proposed measure is a registered voter in the state of Washington;

(c) Whether the proposed measure is an initiative to the people, initiative to the legislature, or referendum; and

(d) The subject of the initiative, or the bill number of the legislation being referred; and

(3) A filing fee of five dollars for each measure submitted.

The proposed measure is not considered filed with the secretary of state until all documents and fees are filed, including any original versions required.

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

WAC 434-381-120 Deadlines. (1) Candidate statements and photographs shall be submitted to the secretary of state ~~((within seven calendar days after filing their declaration of candidacy))~~ no later than the Friday following the last day of the filing period.

(2) For ballot measures, including initiatives, referenda, alternatives to initiatives to the legislature, and constitutional amendments, the following documents shall be filed with the secretary of state on or before the following deadlines:

(a) Appointments of the initial two members of committees to prepare arguments for and against measures:

(i) For an initiative to the people or referendum measure: Within ten business days after the submission of signed petitions to the secretary of state;

(ii) For an initiative to the legislature, with or without an alternative, constitutional amendment or referendum bill, within ten business days after the adjournment of the regular or special session at which the legislature approved or referred the measure to the ballot:

(b) Appointment of additional members of committees to prepare arguments for and against ballot measures, not later than the date the committee submits its initial argument to the secretary of state;

(c) Arguments for or against a ballot measure, no later than twenty calendar days following appointment of the initial committee members;

(d) Rebuttals of arguments for or against a ballot measure, by no later than fourteen calendar days following the transmittal of the final statement to the committees by the secretary. The secretary shall not transmit arguments to opposing committees for the purpose of rebuttals until both arguments are complete.

(3) If a ballot measure is the product of a special session of the legislature and the secretary of state determines that the deadlines set forth in subsection (2) of this section are impractical due to the timing of that special session, then the secretary of state may establish a schedule of deadlines unique to that measure.

(4) The deadlines stated in this rule are intended to promote the timely publication of the voters pamphlet. Nothing in this rule shall preclude the secretary of state from accepting a late filing when, in the secretary's judgment, it is reasonable to do so.