

WSR 09-05-004
PERMANENT RULES
OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2008-23—Filed February 4, 2009,
 4:24 p.m., effective March 7, 2009]

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

Purpose: The federal Genetic Information Nondiscrimination Act (GINA) prohibits employers and insurers from using genetic information when making employment or coverage decisions. Section 104 of GINA prohibits denial, conditioning, or discrimination in the pricing of a medicare supplemental policy on the basis of genetic information and limits the ability of medicare supplement issuers to request or require genetic testing. It also prohibits the collection of genetic information for underwriting or other purposes prior to enrollment in medicare supplement insurance. These new rules implement prohibitions on the use of genetic information in medicare supplement.

Statutory Authority for Adoption: RCW 48.66.165.

Adopted under notice filed as WSR 09-01-146 on December 22, 2008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: February 4, 2009.

Mike Kreidler
 Insurance Commissioner

NEW SECTION

WAC 284-66-068 Prohibition against use of genetic information and requests for genetic testing. Effective May 21, 2009, except as provided in subsection (3) of this section:

(1) An issuer of a medicare supplement insurance policy or certificate must not deny or condition the issuance of effectiveness of the policy or certificate and must not discriminate in the pricing of the policy or certificate of an individual on the basis of the genetic information with respect to any individual. This includes the imposition of any exclusion of benefits under the policy based on a preexisting condition or adjustment of premium rates based on genetic information. This subsection shall not be construed to limit the ability of an issuer, to the extent otherwise permitted by law from:

(a) Denying or conditioning the issuance or effectiveness of the policy or certificate or increasing the premium based

on the manifestation of a disease or disorder of the insured or applicant; or

(b) Increasing the premium for any policy issued to an individual based on the manifestation of a disease or disorder of an individual who is covered under the policy. The manifestation of a disease or disorder in one individual must not be used as genetic information about other group members or to increase the premium for the group.

(2) An issuer of a medicare supplement insurance policy or certificate must not request or require an individual or a family member of the individual to undergo a genetic test. This subsection shall not be construed to preclude an issuer from obtaining and using the results of a genetic test in making a determination regarding payment consistent with subsection (1) of this section. For purposes of this section, "payment" has the meaning set forth in Part C of Title XI and Section 264 of the Health Insurance Portability and Accountability Act of 1996, as may be revised from time to time. An issuer may request only the minimum information necessary to accomplish the intended purpose.

(3) An issuer may request, but must not require, that an individual or a family member of the individual undergo a genetic test only if all of the following conditions are met:

(a) The request is made for research that complies with Part 46 of Title 45, Code of Federal Regulations, or its equivalent, or any other applicable state or local law or rule for the protection of human subjects in research;

(b) The issuer clearly indicates to each individual, or in the case of a minor child, to the legal guardian of the child, to whom the request is made that:

(i) Compliance with the request is voluntary; and

(ii) Noncompliance will have no effect on enrollment status or premium or contribution amounts;

(c) Genetic information collected or acquired under this subsection must not be used for underwriting, determination of eligibility to enroll or maintain enrollment status, premium rates, or the issuance, renewal, or replacement of a policy or certificate;

(d) The issuer notifies the secretary of the United States Department of Health and Human Services in writing that the issuer is conducting activities pursuant to the exception provided for under this subsection, including a description of the activities conducted;

(e) The issuer complies with all other conditions required by regulation by the secretary of the United States Department of Health and Human Services for activities conducted under this subsection;

(4) An issuer must not request, require, or purchase genetic information for underwriting purposes;

(5) An issuer shall not request, require, or purchase genetic information with respect to any individual prior to such individual's enrollment under the policy in connection with such enrollment; and

(6) If an issuer obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning any individual, the request, requirement, or purchase will not be considered a violation of subsection (5) of this section only if the request, requirement, or purchase is not in violation of subsection (4) of this section.

(7) For purposes of this section:

(a) "Issuer" has the meaning set forth in WAC 284-66-030(4) and includes any third-party administrator or other person acting for or on behalf of the issuer.

(b) "Family member" means any individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of the individual.

(c) "Genetic information" means information about the individual's genetic tests, the genetic tests of family members of the individual, and the manifestation of a disease or disorder in family members. The term includes any requests for or receipt of genetic services or participation in clinical research which includes genetic services by the individual or a family member. Any reference to genetic information concerning an individual or family member who is a pregnant woman includes genetic information of any fetus carried by the pregnant woman, or with respect to an individual or family member utilizing reproductive technology, includes genetic information of any embryo legally held by an individual or family member. Genetic information does not include information about the gender or age of any individual.

(d) "Genetic services" means a genetic test, genetic counseling (including obtaining, interpreting, or assessing genetic information), or genetic education.

(e) "Genetic test" means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detect genotypes, mutations, or chromosomal changes. The term genetic test does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes or an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

(f) "Underwriting purposes" means:

(i) Rules for, or determination of, eligibility (including enrollment and continued eligibility) for benefits under the policy;

(ii) The computation of premium or contribution amounts under the policy;

(iii) The application of any preexisting condition exclusion under the policy; and

(iv) Other activities related to the creation, renewal, or replacement of a policy of health insurance or health benefits.

WSR 09-05-007

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed February 5, 2009, 1:31 p.m., effective March 8, 2009]

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

Purpose: The purpose of the proposed amendment is to clarify that the department does not cover over-the-counter drugs, vitamins, and minerals except when determined by the department to be the least costly therapeutic alternative for a medically accepted indication.

Citation of Existing Rules Affected by this Order:
Amending WAC 388-530-1000, 388-530-2000, and 388-530-2100.

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

Adopted under notice filed as WSR 08-24-078 on December 1, 2008.

Changes Other than Editing from Proposed to Adopted Version: **Text additions are indicated by underlining and deletions are indicated by ~~Strikeouts~~.**

WAC 388-530-2000 (1)(g), (h):

(g) Over-the-counter (OTC) drugs, without a prescription, to promote smoking cessation only for clients who are eighteen years of age or older and participating in a department-approved smoking cessation program ~~providing sufficient funds are appropriated by the state legislature~~. Limitation extensions as described in WAC 388-501-0169 are prohibited for the age and counseling requirements in this section.

(h) Prescription drugs to promote smoking cessation only for clients who are eighteen years of age or older and participating in a department approved smoking cessation program ~~providing sufficient funds are appropriated by the state legislature~~. Limitation extensions as described in WAC 388-501-0169 are prohibited for the age and counseling requirements in this section.

WAC 388-530-2100 (2),(3):

~~(2) A client can request an exception to rule (ETR) as described in WAC 388-501-0160. If a noncovered drug is prescribed through the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) process, an authorization request may be submitted indicating that the request is EPSDT related, and the request will be evaluated according to the process in WAC 388-501-0165. (See WAC 388-534-0100 for EPSDT rules).~~

~~(3) A client can request an exception to rule (ETR) as described in WAC 388-501-0160.~~

A final cost-benefit analysis is available by contacting Jonell O. Blatt, P.O. Box 45504, Olympia, WA 98504-5504, phone (360) 725-1571, fax (360) 586-9727, e-mail blattjo@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 3, Repealed 0.

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

Date Adopted: February 5, 2009.

Stan Marshburn
Interim Secretary

AMENDATORY SECTION (Amending WSR 08-21-107, filed 10/16/08, effective 11/16/08)

WAC 388-530-1000 Outpatient drug program—

General. (1) The purpose of the outpatient drug program is to reimburse providers for outpatient drugs, vitamins, minerals, devices, and drug-related supplies according to department rules and subject to the limitations and requirements in this chapter.

(2) The department reimburses for outpatient drugs, vitamins, minerals, devices, and pharmaceutical supplies that are:

(a) Covered. Refer to WAC 388-530-2000 for covered drugs, vitamins, minerals, devices, and drug-related supplies and to WAC 388-530-2100 for noncovered drugs and drug-related supplies;

(b) Prescribed by a provider with prescriptive authority (see exceptions for family planning and emergency contraception for women eighteen years of age and older in WAC 388-530-2000 (1)(b), and over-the-counter (OTC) drugs to promote smoking cessation in WAC 388-530-2000 (1)(~~+~~)(~~+~~)(g));

(c) Within the scope of an eligible client's medical assistance program;

(d) Medically necessary as defined in WAC 388-500-0005 and determined according to the process found in WAC 388-501-0165; and

(e) Authorized, as required within this chapter;

(f) Billed according to WAC 388-502-0150 and 388-502-0160; and

(g) Billed according to the requirements of this chapter.

(3) Coverage determinations for the department are made by the department's pharmacists or medical consultants in accordance with applicable federal law. The department's determination may include consultation with the drug use review (DUR) board.

(4) The department may not reimburse for prescriptions written by healthcare practitioners whose application for a core provider agreement (CPA) has been denied, or whose CPA has been terminated.

(5) The department may not reimburse for prescriptions written by non-CPA healthcare practitioners who do not have a current core provider agreement with the department when the department determines there is a potential danger to the client's health and/or safety.

AMENDATORY SECTION (Amending WSR 08-21-107, filed 10/16/08, effective 11/16/08)

WAC 388-530-2000 Covered—Outpatient drugs, devices, and drug-related supplies. (1) The department covers:

(a) Outpatient drugs, including over-the-counter drugs, as defined in WAC 388-530-1050, subject to the limitations and requirements in this chapter, when:

(i) The drug is approved by the Food and Drug Administration (FDA);

(ii) The drug is for a medically accepted indication as defined in WAC 388-530-1050;

(iii) The drug is not excluded from coverage under WAC 388-530-2100;

(iv) The manufacturer has a signed drug rebate agreement with the federal Department of Health and Human Services (DHHS). Exceptions to the drug rebate requirement are described in WAC 388-530-7500 which describes the drug rebate program; and

(v) Prescribed by a provider with prescriptive authority (see exceptions for family planning and emergency contraception for women eighteen years of age and older in WAC 388-530-2000 (1)(b), and over-the-counter (OTC) drugs to promote smoking cessation in WAC 388-530-2000 (1)(g)).

(b) Family planning drugs, devices, and drug-related supplies per chapter 388-532 WAC and as follows:

(i) Over-the-counter (OTC) family planning drugs, devices, and drug-related supplies without a prescription when the department determines it necessary for client access and safety.

(ii) Family planning drugs that do not meet the federal drug rebate requirement in WAC 388-530-7500 on a case-by-case basis; and

(iii) Contraceptive patches, contraceptive rings, and oral contraceptives, only when dispensed in at least a three-month supply, unless otherwise directed by the prescriber. There is no required minimum for how many cycles of emergency contraception may be dispensed.

(c) Prescription vitamins and mineral products, only as follows:

(i) When prescribed for clinically documented deficiencies;

(ii) Prenatal vitamins, when prescribed and dispensed to pregnant women; or

(iii) Fluoride prescribed for clients under the age of twenty-one.

(d) OTC drugs, vitamins, and minerals when determined by the department to be the least costly therapeutic alternative for a medically accepted indication.

(e) Drug-related devices and drug-related supplies as an outpatient pharmacy benefit when:

(i) Prescribed by a provider with prescribing authority;

(ii) Essential for the administration of a covered drug;

(iii) Not excluded from coverage under WAC 388-530-2100; and

(iv) Determined by the department, that a product covered under chapter 388-543 WAC Durable medical equipment and supplies should be available at retail pharmacies.

(~~+~~) (f) Preservatives, flavoring and/or coloring agents, only when used as a suspending agent in a compound.

(~~+~~) (g) Over-the-counter (OTC) drugs, without a prescription, to promote smoking cessation only for clients who are eighteen years of age or older and participating in a department-approved smoking cessation program. Limitation extensions as described in WAC 388-501-0169 are prohibited for the age and counseling requirements in this section.

(~~+~~) (h) Prescription drugs to promote smoking cessation only for clients who are eighteen years of age or older

and participating in a department-approved smoking cessation program. Limitation extensions as described in WAC 388-501-0169 are prohibited for the age and counseling requirements in this section.

(2) The department does not reimburse for any drug, device, or drug-related supply not meeting the coverage requirements under this section.

AMENDATORY SECTION (Amending 08-21-107, filed 10/16/08, effective 11/16/08)

WAC 388-530-2100 Noncovered—Outpatient drugs and pharmaceutical supplies. (1) The department does not cover:

- (a) A drug that is:
 - (i) Not approved by the Food and Drug Administration (FDA); or
 - (ii) Prescribed for a nonmedically accepted indication, including diagnosis, dose, or dosage schedule that is not evidenced-based.
 - (b) A drug prescribed:
 - (i) For weight loss or gain;
 - (ii) For infertility, frigidity, impotency;
 - (iii) For sexual or erectile dysfunction; or
 - (iv) For cosmetic purposes or hair growth.
 - (c) Drugs used to treat sexual or erectile dysfunction, in accordance with section 1927 (d)(2)(K) of the Social Security Act, unless such drugs are used to treat a condition other than sexual or erectile dysfunction, and these uses have been approved by the Food and Drug Administration.
 - (d) Drugs listed in the federal register as "less-than-effective" ("DESI" drugs) or which are identical, similar, or related to such drugs.
 - (e) Outpatient drugs for which the manufacturer requires as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or manufacturer's designee.
 - (f) A product:
 - (i) With an obsolete national drug code (NDC) for more than two years;
 - (ii) With a terminated NDC;
 - (iii) Whose shelf life has expired; or
 - (iv) Which does not have an eleven-digit NDC.
 - (g) Over-the-counter (OTC) drugs, vitamins, and minerals, except when determined by the department to be the least costly therapeutic alternative for a medically accepted indication.
 - (h) Any drug regularly supplied by other public agencies as an integral part of program activity (e.g., immunization vaccines for children).
 - ~~((h))~~ (i) Free pharmaceutical samples.
 - ~~((h))~~ (j) Over-the-counter or prescription drugs to promote smoking cessation unless the client is eighteen years old or older and participating in a department-approved cessation program.
- (2) If a noncovered drug is prescribed through the early and periodic screening, diagnosis, and treatment (EPSDT) process, an authorization request may be submitted indicating that the request is EPSDT related, and the request will be

evaluated according to the process in WAC 388-501-0165. (See WAC 388-534-0100 for EPSDT rules).

(3) A client can request an exception to rule (ETR) as described in WAC 388-501-0160.

WSR 09-05-008

PERMANENT RULES

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed February 5, 2009, 1:39 p.m., effective March 8, 2009]

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

Purpose: The department is removing the requirement for durable medical equipment (DME) providers under WAC 388-543-1200 (1)(b) which states "Have appropriately trained, qualified staff." The department is also changing all references to "MAA" within this section to "the department." This requirement sets up an expectation that the department will monitor the training the provider's staff receive and determine if they are "qualified." This is currently not the case. There are no standards for defining what is "qualified" for DME staff, nor is there a certification process, nor does the department have a system that monitors whether vendors are complying with this requirement.

Citation of Existing Rules Affected by this Order: Amending WAC 388-543-1200.

Statutory Authority for Adoption: RCW 74.08.090.

Adopted under notice filed as WSR 09-01-174 on December 23, 2008.

A final cost-benefit analysis is available by contacting Erin Mayo, DME Program Manager, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1729, fax (360) 586-9727, e-mail mayoe@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; **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; **Other Alternative Rule Making:** New 0, Amended 1, Repealed 0.

Date Adopted: February 5, 2009.

Stan Marshburn
Secretary

AMENDATORY SECTION (Amending WSR 01-01-078, filed 12/13/00, effective 1/13/01)

WAC 388-543-1200 Providers who are eligible to provide services. (1) ~~((MAA))~~ The department requires a provider who supplies DME and related supplies, prosthetics, orthotics, medical supplies and related services to ~~((an MAA))~~ a client to meet all of the following. The provider must:

(a) Have the proper business license; and
 (b) ~~((Have appropriately trained qualified staff, and~~
 (e))) Be certified, licensed and/or bonded if required, to perform the services billed to the department. Out-of-state prosthetic and orthotics providers must meet their state regulatory requirements.

(2) ~~((MAA))~~ The department may reimburse qualified providers for DME and related supplies, prosthetics, orthotics, medical supplies, repairs, and related services on a fee-for-service (FFS) basis as follows:

(a) DME providers for DME and related repair services;
 (b) Medical equipment dealers, pharmacies, and home health agencies under their medical vendor provider number for medical supplies, subject to the limitations in this section;
 (c) Licensed prosthetics and orthotics providers who are licensed by the Washington state department of health in prosthetics and orthotics. This does not apply to medical equipment dealers and pharmacies that do not require licensure to provide selected prosthetics and orthotics;

(d) Physicians who provide medical equipment and supplies in the physician's office. ~~((MAA))~~ The department may pay separately for medical supplies, subject to the provisions in ~~((MAA's))~~ the department's resource based relative value scale (RBRVS) fee schedule; and

(e) Out-of-state orthotics and prosthetics providers who meet their state regulations.

(3) ~~((MAA))~~ The department terminates from medicaid participation any provider who violates program regulations and policies, as described in WAC 388-502-0020.

WSR 09-05-011

PERMANENT RULES

DEPARTMENT OF

RETIREMENT SYSTEMS

[Filed February 6, 2009, 8:15 a.m., effective March 9, 2009]

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

Purpose: The purpose of this rule-making order is to adopt changes to WAC 415-104-225 Am I a LEOFF member? and 415-104-475 How does a fire fighter who provides emergency medical services transfer PERS service credit to LEOFF Plan 2?, to implement recent legislation. SHB 1936 (2005) added "emergency medical technician" to the definition of "fire fighter" for the law enforcement officers' and fire fighters' retirement system. HB 1680 (2007) related to the transfer of service credit of EMTs who are currently LEOFF Plan 2 members but have previous service as EMTs in the public employees' retirement system (PERS). HB 1680 allowed for the automatic transfer of service credit for

LEOFF Plan 2 EMTs who die or retire for disability prior to completing the transfer requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 415-104-225 and 415-104-475.

Statutory Authority for Adoption: RCW 41.50.050(5).
 Other Authority: For WAC 415-104-225 is RCW 41.26.030; and for WAC 415-104-475 is RCW 41.26.547.

Adopted under notice filed as WSR 09-01-149 on December 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 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 2, Repealed 0.

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

Date Adopted: February 6, 2009.

Sandra J. Matheson
 Director

AMENDATORY SECTION (Amending WSR 02-18-046, filed 8/28/02, effective 9/30/02)

WAC 415-104-225 Am I a LEOFF member? If you are employed by an employer as a full-time, fully compensated law enforcement officer or fire fighter, you are required to be a LEOFF member.

(1) **Law enforcement officers.**

(a) You are a law enforcement officer only if you are commissioned and employed on a full-time, fully compensated basis as a:

- (i) City police officer;
- (ii) Town marshal or deputy marshal;
- (iii) County sheriff;
- (iv) Deputy sheriff, if you passed a civil service exam for deputy sheriff and you possess all of the powers, and may perform any of the duties, prescribed by law to be performed by the sheriff;

(b) Effective January 1, 1994, "law enforcement officer" also includes commissioned persons employed on a full-time, fully compensated basis as a:

(i) General authority Washington peace officer under RCW 10.93.020(3);

(ii) Port district general authority law enforcement officer and you are commissioned and employed by a port district general authority law enforcement agency;

(iii) State university or college general authority law enforcement officer; or

(c) Effective January 1, 1993, "law enforcement officer" also includes commissioned persons employed on a full-time, fully compensated basis as a public safety officer or director

of public safety of a city or town if, at the time you first became employed in this position, the population of the city or town did not exceed ten thousand. See RCW 41.26.030(3).

(d) If you meet the requirements of (a), (b) or (c) of this subsection, you qualify as a law enforcement officer regardless of your rank or status as a probationary or permanent employee.

(e) You are not a law enforcement officer if you are employed in either:

(i) A position that is clerical or secretarial in nature and you are not commissioned; or

(ii) A corrections officer position and the only training required by the Washington criminal justice training commission for your position is basic corrections training under WAC 139-10-210.

(2) Fire fighters.

(a) You are a fire fighter if you are employed in a uniformed fire fighter position by an employer on a full-time, fully compensated basis, and as a consequence of your employment, you have the legal authority and responsibility to direct or perform fire protection activities that are required for and directly concerned with preventing, controlling and extinguishing fires.

~~((a))~~ (i) "Fire protection activities" may include incidental functions such as housekeeping, equipment maintenance, grounds maintenance, fire safety inspections, lecturing, performing community fire drills and inspecting homes and schools for fire hazards. These activities qualify as fire protection activities only if the primary duty of your position is preventing, controlling and extinguishing fires.

~~((b))~~ (ii) You are a fire fighter if you qualify as supervisory fire fighter personnel.

~~((c))~~ (iii) If your employer requires fire fighters to pass a civil service examination, you must be actively employed in a position that requires passing such an examination in order to qualify as a fire fighter unless you qualify as supervisory fire fighter personnel.

~~((d))~~ (iv) You are a fire fighter if you meet the requirements of this section regardless of your rank or status as a probationary or permanent employee or your particular specialty or job title.

~~((e))~~ (v) You do not qualify for membership as a fire fighter if you are a volunteer fire fighter or resident volunteer fire fighter.

(b) You are a fire fighter if you are employed on a full-time, fully compensated basis by an employer as an emergency medical technician (EMT). To be an "emergency medical technician" you must:

(i) Be certified by the department of health to perform emergency medical services at the level of care of an EMT; and

(ii) Complete the requirements of your employer, if any, to perform the job duties of an EMT.

(3) Defined terms used. Definitions for the following terms used in this section may be found in the sections listed.

(a) "Commissioned" - WAC 415-104-011.

(b) "Director of public safety" - WAC 415-104-011.

(c) "Employer" - RCW 41.26.030.

(d) "Fire fighter" - RCW 41.26.030.

(e) "Full time" - WAC 415-104-011.

(f) "Fully compensated" - WAC 415-104-011.

(g) "Law enforcement officer" - RCW 41.26.030.

(h) "Member" - RCW 41.26.030.

(i) "Public safety officer" - WAC 415-104-011.

(j) "Uniformed fire fighter position" - WAC 415-104-011.

AMENDATORY SECTION (Amending WSR 04-04-039, filed 1/29/04, effective 3/1/04)

WAC 415-104-475 How does a fire fighter who provides emergency medical services transfer PERS service credit to LEOFF Plan 2? (1) Who may use this section? You may use this section if you are:

~~(a) ((Are currently employed in a law enforcement officers' and fire fighters' (LEOFF) Plan 2 covered position working for a fire department;~~

~~(b) Were formerly employed in a position providing emergency medical services and the position was covered under PERS Plan 1 or 2; and~~

~~(c) Worked for an employer that **relocated** your position to a fire department.)) A member of PERS Plan 1 or Plan 2 eligible for membership in LEOFF Plan 2 as an EMT under RCW 41.26.030;~~

(b) Currently a LEOFF Plan 2 member who chose LEOFF membership after separating from service as an EMT in a PERS Plan 1 or Plan 2 eligible position; or

(c) Currently a LEOFF Plan 2 member and were formerly employed providing emergency medical services in a PERS Plan 1 or Plan 2 eligible position which was relocated by your employer to a fire department.

(2) How do I know if my job providing emergency medical services was "relocated" to a fire department? To be considered "relocated":

(a) The duties of the position must have required providing emergency medical services and the position must have been covered under PERS Plan 1 or Plan 2;

(b) The employer must have been a city, town, county, or district that transferred the position to a fire department; and

(c) The fire department must have ~~((covered))~~ determined the transferred position ~~((under))~~ was eligible for LEOFF Plan 2.

(3) ~~((I worked as an emergency medical technician/paramedic (EMT) and I am now enrolled in LEOFF Plan 2. Can I transfer my EMT service into LEOFF Plan 2? Yes. You may transfer your EMT service into LEOFF Plan 2 if:~~

~~(a) You provided emergency medical services as an EMT; and~~

~~(b) You are in a LEOFF Plan 2 position with the fire department as a result of your employer relocating your position as described in subsection (2) of this section.~~

(4)) Who determines whether or not my job providing emergency medical services was "relocated" to a fire department? ~~((The department of retirement systems (DRS))~~ (DRS)) will determine whether or not your job was relocated based on the criteria described in subsection (2) of this section. To do so, DRS will contact your former employer ~~((that covered your job providing emergency medical ser-~~

where you provided emergency medical services in a PERS eligible position and verify:

(a) That your position was relocated to a fire department; and

(b) The number of months you worked in that position.

~~((5))~~ (4) I formerly worked as an EMT for a PERS employer that relocated ~~((my))~~ the job to a fire department. I was not working in the job at the time it was relocated ~~((, but am now working for the fire department in the same job))~~. I am now in a LEOFF Plan 2 eligible position. Can I transfer my PERS Plan 1 or Plan 2 EMT service to LEOFF Plan 2? Yes ~~((- Even though))~~, whether or not you were ~~((not))~~ working in the job at the time it was relocated, you can transfer your PERS Plan 1 or Plan 2 EMT service as long as you are employed ~~((with the fire department covered under))~~ as a fire fighter in a LEOFF Plan 2 eligible position at the time you request the transfer.

~~((6))~~ Can I transfer PERS EMT service into LEOFF Plan 2 if I worked for an employer that did not "relocate" the position to a fire department? No. To transfer PERS EMT service to LEOFF Plan 2, you must have worked in a position that was relocated as described in subsections (1) and (2) of this section.

~~((7))~~ (5) What do I need to do if I have PERS Plan 1 or Plan 2 EMT service that can be transferred to LEOFF Plan 2? If you have PERS Plan 1 or Plan 2 EMT service that you want to transfer to LEOFF Plan 2, then you must do the following:

(a) Contact the LEOFF unit at DRS. Once DRS verifies you meet the criteria to transfer as described in subsection

~~((s))~~ (1) ~~((and (2)))~~ of this section, DRS will provide you an EMT Transfer Packet that includes an "EMT transfer cost estimate ~~((and benefit comparison." DRS will also provide you))~~" and an "EMT Request for Transfer" form. ~~((2))~~ You may also request a benefit comparison. You must complete, sign, and return the form to the LEOFF unit to choose to transfer the service credit.

(b) You must pay the difference in the member contribution rates between the PERS rate and the LEOFF rate, plus interest, for each month of EMT service that you transfer. This bill must be paid in full within five years of your election to transfer your EMT service.

~~((8))~~ How is the interest calculated? Interest is calculated at eight percent annually, compounded monthly, and is based on the difference between the required PERS contribution amount and the required LEOFF Plan 2 contribution amount for each month you transfer. DRS calculates the interest for the rate difference for each month being transferred, beginning with the oldest month, then totals each month's interest calculation for the "interest" portion of the bill.

Example: DRS creates a bill in October 2003 to transfer the months of June and July 2002. The member contribution rate difference for each month is \$35.00. The interest for June would be \$4.18, and for July \$3.92. The total interest charge for these two months is \$8.10; the total bill is \$78.10 (\$35.00 x 2 + \$8.10). The interest calculated for June 2002 is more because it includes one more month of interest than the month of July 2002. The chart below shows how the interest is calculated:

Month/Year of Interest Calculation		Interest for June 2002 @ .00667 [†]		Interest for July 2002 @ .00667	
June	2002	\$35.00	.23		
July	2002	\$35.23	.23	\$35.00	.23
August	2002	\$35.46	.24	\$35.23	.23
September	2002	\$35.70	.24	\$35.46	.24
October	2002	\$35.94	.24	\$35.70	.24
November	2002	\$36.18	.24	\$35.94	.24
December	2002	\$36.42	.24	\$36.18	.24
January	2003	\$36.66	.24	\$36.42	.24
February	2003	\$36.90	.25	\$36.66	.24
March	2003	\$37.15	.25	\$36.90	.25
April	2003	\$37.40	.25	\$37.15	.25
May	2003	\$37.65	.25	\$37.40	.25
June	2003	\$37.90	.25	\$37.65	.25
July	2003	\$38.15	.25	\$37.90	.25
August	2003	\$38.40	.26	\$38.15	.25
September	2003	\$38.66	.26	\$38.40	.26
October	2003	\$38.92	.26	\$38.66	.26
Total					
October	2003		\$4.18		\$3.92

(9) Do I have to pay the bill in a lump sum? No. You may make installment payments. Interest will be recalculated each month against the unpaid balance.

(10) What is the time frame for transferring? You must make the decision to transfer no later than June 30, 2008. You must complete the transfer by June 30, 2013.

~~((11))~~ **(6) Do I have to pay the bill in a lump sum?** No, you do not have to pay the bill in a lump sum, you may make installment payments. Interest on the unpaid balance will accrue monthly, at a rate of eight percent annually.

(7) Is there a deadline for requesting to transfer? Yes, you must submit a completed "EMT Request to Transfer" form to the department no later than June 30, 2013.

(8) When will the EMT service be transferred into my LEOFF Plan 2 account? The EMT service will be transferred after:

(a) The bill is paid in full~~((;))~~ and

~~((b))~~ five years have passed after DRS receives your request to transfer; or

(b) You meet one of the conditions described in subsection (15) of this section.

~~((12))~~ **(9) What if I ~~((decide))~~ choose not to transfer my PERS EMT service into LEOFF Plan 2?** ~~((Your EMT service will remain in PERS and))~~ If you do not choose to transfer your PERS Plan 1 or Plan 2 EMT service, it will remain in PERS. You may either withdraw it or begin receiving a PERS retirement benefit when you are eligible. If you do not withdraw or retire from PERS, you will be a dual member of PERS and LEOFF Plan 2 under the provisions of chapter 41.54 RCW.

~~((13))~~ **(10) Can I retire before the transfer of my PERS EMT service is completed?** Yes~~((:~~

~~((a))~~ you may retire from LEOFF Plan 2 once you are eligible, but your retirement benefit will be calculated using only your LEOFF Plan 2 service.

~~((b))~~ After Once the conditions described in subsection ~~((11))~~ (8) of this section have been met, the PERS Plan 1 or Plan 2 EMT service will be transferred into your LEOFF Plan 2 account and your retirement benefit will be recalculated and increased to include the transferred service. The increase will be prospective only from the day following the five-year waiting period.

For example, if you requested the transfer on September 15, ~~((2003))~~ 2006, made the required payment, and you retired on August 1, 2007, your retirement benefit would be increased on September 16, ~~((2008))~~ 2011.

~~((14))~~ **(11) What if I request to transfer my PERS Plan 1 or Plan 2 EMT service but change my mind before the transfer is completed?** If you decide ~~((to))~~ not to transfer your PERS Plan 1 or Plan 2 EMT service into LEOFF Plan 2, you must notify the LEOFF unit at DRS within five years from the date you requested the transfer. LEOFF staff will cancel your request and refund any money you have paid on the transfer bill.

~~((15))~~ **(12) Can I transfer non-EMT PERS service into LEOFF Plan 2?** No, you may not transfer non-EMT PERS service into LEOFF Plan 2. Only the PERS Plan 1 or Plan 2 service credit you earned working as an EMT ~~((for an employer that relocated your EMT position to a fire department))~~ can be transferred into LEOFF Plan 2.

~~((16))~~ **(13) Can I transfer my PERS Plan 1 or Plan 2 EMT service into LEOFF Plan 2 and withdraw my non-EMT PERS service?** Yes, you may transfer your PERS Plan 1 or Plan 2 EMT service into LEOFF Plan 2 and withdraw your non-EMT PERS service. You can withdraw your non-EMT PERS service as soon as the PERS EMT service is

fully transferred to LEOFF Plan 2. To be fully transferred, the conditions described in subsection ~~((11))~~ (8) of this section must be met.

~~((17))~~ **(14) Can I transfer my PERS EMT service into LEOFF Plan 1?** No, you may not transfer your PERS EMT service into LEOFF Plan 1. If you reentered LEOFF Plan 1 membership after your position was relocated to a fire department, you may choose to remain in PERS or return to LEOFF Plan 1 membership, but you may not transfer the PERS EMT service into LEOFF Plan 1.

~~((18))~~ **(15) What happens if I die or retire for disability before the PERS EMT service is transferred into my LEOFF Plan 2 account?**

~~((a))~~ If your bill **is not** paid in full at the time of your death, the transfer will be canceled and any payments made will be refunded to your designated beneficiary.

~~((b))~~ If the bill **is** paid in full at the time of your death, but the five-year waiting period has not expired, then the following rules will apply:

~~((i))~~ If you die with less than ten years of service, or you have at least ten years of service but you don't have an eligible surviving spouse or minor children, the contributions in your LEOFF 2 account, including any payments made on the EMT optional service bill, will be refunded to your designated beneficiary.

~~((ii))~~ If you die with at least ten years of service and have an eligible surviving spouse or minor children and if your spouse or children choose a monthly benefit payment instead of a lump sum payment, the monthly benefit will be increased the day following the end of the five-year waiting period.

~~((iii))~~ If you die after retirement and chose a survivor option, your survivor's benefit will be increased the first day following the expiration of the five-year waiting period.

~~((19))~~ If you elect to transfer your PERS Plan 1 or Plan 2 EMT service to LEOFF Plan 2 but die or retire for disability before the transfer is complete, then one of the following will occur:

~~((a))~~ If your EMT bill **is** paid in full but the five-year waiting period has not expired, and you are approved for disability or you die, then DRS will transfer your applicable service credit, accumulated contributions, and interest to your LEOFF Plan 2 account immediately. The transferred service credit, accumulated contributions, and interest will be used to calculate your benefit or, in the case of your death, the benefit your spouse or minor children will receive.

~~((b))~~ If your EMT bill **is not** paid in full and you **retire for disability**, DRS will transfer your applicable service credit, accumulated contributions, and interest into your LEOFF Plan 2 account and use them to calculate your benefit. You will then have the following options:

~~((i))~~ Pay the bill in full;

~~((ii))~~ Choose to have your monthly benefit actuarially reduced to reflect the unpaid amount of the bill; or

~~((iii))~~ Continue to make payments against the remaining amount of the bill. You must pay the bill in full no later than five years from your original election date.

~~((c))~~ If the EMT bill **is not** paid in full and you **die**, DRS will transfer your applicable service credit, accumulated contributions, and interest into your LEOFF Plan 2 account and use them to calculate the benefit for your spouse or minor

children. Your spouse or minor children will have the following options:

- (i) Pay the bill in full;
- (ii) Choose to have their monthly benefit actuarially reduced to reflect the unpaid amount of the bill; or
- (iii) Continue to make payments against the remaining amount of the bill. Your spouse or minor children must pay the bill in full no later than five years from your original election date.

Note: If the EMT bill is not paid in full within the five-year period, the monthly benefit will be actuarially reduced to reflect the unpaid amount of the bill.

(16) Terms used:

- (a) DRS - Department of retirement systems.
- (b) EMT - Emergency medical technician or paramedic who provides emergency (~~medical~~) medical services (~~and is covered under LEOFF Plan 2 working for a fire department~~).
- (c) LEOFF - Law enforcement officers' and fire fighters' retirement system.
- (d) PERS - Public employees' retirement system.

WSR 09-05-032
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Management Services Administration)

[Filed February 11, 2009, 7:08 a.m., effective March 14, 2009]

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

Purpose: The department is amending WAC 388-02-0025(2) to update the address for the Seattle Office of Administrative Hearings and to remove the outdated reference to the Everett office. The two offices have been consolidated and moved to a new location. Updating the rule will help clients locate the office of administrative hearings offices and help clients submit timely requests for fair hearings.

Citation of Existing Rules Affected by this Order: Amending WAC 388-02-0025(2).

Statutory Authority for Adoption: RCW 34.05.353.

Adopted under notice filed as WSR 08-16-101 on August 5, 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 1, Repealed 0.

Date Adopted: February 10, 2009.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-22-076, filed 10/31/05, effective 12/1/05)

WAC 388-02-0025 Where is the office of administrative hearings located? (1)(a) The office of administrative hearings (OAH) headquarters location is:

Office of Administrative Hearings
2420 Bristol Court SW, 1st Floor
P.O. Box 42488
Olympia WA 98504-2488
(360) 664-8717
(360) 664-8721 (fax)

(b) The headquarters office is open from 8:00 am to 5:00 p.m. Mondays through Friday, except legal holidays.

(2) OAH field offices are at the following locations:

Olympia

Office of Administrative Hearings
2420 Bristol Court SW, 3rd Floor
P.O. Box 42489
Olympia, WA 98504-2489
(360) 753-2531
1-800-583-8271
fax: (360) 586-6563

Seattle

Office of Administrative Hearings
~~((1904 3rd Ave., Suite 722
Seattle, WA 98101-1100
(206) 464-6322
1-800-583-8270
fax: (206) 587-5136))~~
One Union Square
600 University Street, Suite 1500
Mailstop: TS-07
Seattle, WA 98101-1129
(206) 389-3400
1-800-845-8830
fax: (206) 587-5135

~~**Everett**~~

~~Office of Administrative Hearings
2722 Colby, Suite 610
Everett, WA 98201-3571
(425) 339-1921
1-800-583-8261
fax: (425) 339-3907))~~

Vancouver

Office of Administrative Hearings
5300 MacArthur Blvd., Suite 100
Vancouver, WA 98661
(360) 690-7189
1-800-243-3451
fax: (360) 696-6255

Spokane

Office of Administrative Hearings
 Old City Hall Building, 5th Floor
 221 N. Wall Street, Suite 540
 Spokane, WA 99201
 (509) 456-3975
 1-800-366-0955
 fax: (509) 456-3997

Yakima

Office of Administrative Hearings
 32 N 3rd Street, Suite 320
 Yakima, WA 98901-2730
 (509) 575-2147
 1-800-843-3491
 fax (509) 454-7281

(3) You should contact the Olympia field office, under subsection (2), if you do not know the correct field office.

(4) You can obtain further hearing information at the OAH web site: www.oah.wa.gov

WSR 09-05-034
PERMANENT RULES
DEPARTMENT OF
NATURAL RESOURCES

[Filed February 11, 2009, 9:32 a.m., effective March 14, 2009]

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Approval by the board of natural resources adopted on February 3, 2009.

Purpose: The purpose of chapter 332-52 WAC is to set standards for public use on lands managed by the department of natural resources (DNR). The objective of these rules is to promote safety and protect DNR-managed lands, property, and resources (pursuant [to] RCW 43.12.065 in accordance with chapter 34.05 RCW).

Citation of Existing Rules Affected by this Order: Repealing 14 [WAC 332-52-020, 332-52-030, 332-52-040, 332-52-050, 332-52-055, 332-52-060, 332-52-065, 332-52-066, 332-52-067, 332-52-068, 332-52-069, 332-52-070, 332-52-080 and 332-52-090]; and amending 1 [WAC 332-52-010].

Statutory Authority for Adoption: Chapter 43.30 RCW.
 Other Authority: RCW 43.12.065.

Adopted under notice filed as WSR 08-20-114 on September 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 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 27, Amended 1, Repealed 14.

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

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

Date Adopted: February 3, 2008 [2009].

Bonnie Bunning
 Deputy Supervisor
 of Agency Resources

INTRODUCTION, PURPOSE AND DEFINITIONS
((AND APPLICABILITY))

AMENDATORY SECTION (Amending Order 516, filed 8/27/87)

WAC 332-52-010 Definitions. ((The following definitions shall apply throughout this chapter:

(1) "~~Developed recreation sites~~" means all improved observation, swimming, boating, camping and picnic sites.

(2) "~~Camping equipment~~" includes tent or vehicle used to accommodate the camper, the vehicles used for transport, and the associated camping paraphernalia.

(3) "~~Department~~" means the department of natural resources.

(4) "~~Vehicle~~" means any motorized device capable of being moved upon a road and in, upon, or by which any persons or property is or may be transported or drawn upon a road. It shall include, but not be limited to automobiles, trucks, motorcycles, motor bikes, motor scooters and snowmobiles, whether or not they can legally be operated on the public highways.

(5) "~~Organized event~~" means any event involving more than fifty participants which is advertised in advance, sponsored by any recognized club(s), and conducted at a predetermined time and place.

(6)) When used in this chapter, the following terms are defined as follows:

"Applicant" means a person who applies for a permit, reservation, or other written authorization from the department.

"Authorized" means written approval given by the department.

"Business hours" means 8:00 a.m. until 4:30 p.m. Pacific Time, Monday through Friday, except holidays.

"Campfire" means any open flame using wood as a fuel source as well as fuel made from materials such as manufactured fireplace logs.

"Campground" means a developed area consisting of more than one campsite used for the purposes of camping.

"Camping" means erecting a tent or shelter or arranging bedding, or both, or parking a vehicle for the purpose of remaining overnight on land.

"Camping party" means an individual or a group of two or more people who are equipped and capable of camping activity.

"Commissioner" means the commissioner of public lands.

"Contact" means via telephone, e-mail, mail, in person, fax, or other electronic methods as allowed by the department unless otherwise noted.

"Corridor" means that portion of the Milwaukee Road Corridor under the jurisdiction of the department.

"Day-use" means use during the period of one-half hour before sunrise until one-half hour after sunset.

"Day-use areas and facilities" means any department-managed lands, trailhead, picnic area, viewpoint, and designated parking areas for vehicles, boat launch or other facility that is designated for day-use only.

"Department" or "DNR" means the Washington state department of natural resources.

"Department-managed lands" means lands of the state of Washington administered by the department including but not limited to state lands, state forest lands, state-owned aquatic lands, natural area preserves, natural resources conservation areas, other city, county, state and federal lands under department management and department-managed roads.

"Department-managed roads" or "roads" when used in the context of department-managed roads means all roads designated as such and under DNR jurisdiction and all access roads across private lands through which the department has acquired the right of public use.

"Designated" means any facility, trail, or location that has been approved by the department for public use.

"Developed recreation facility" means any designated site or location built or improved for recreation on department-managed land such as a trailhead, vista, parking area, boat launch, picnic area, campground, or water trail site.

"Dispersed recreation" means recreation that occurs on department-managed lands outside of a developed recreation facility.

"Firearm" means a loaded or unloaded pistol, rifle, shotgun, or other weapon that is designed to, or may be readily converted to, expel a bullet or pellets by the ignition of a propellant.

"Livestock" means any animal used for agriculture, riding, pulling, or packing purposes.

"Motor vehicle or motorized vehicle" means any device that is moved or propelled by an internal combustion engine or electrically powered motor. It shall include, but not be limited to automobiles, trucks, motorcycles, all-terrain vehicles, motor bikes, motor-scooters and off-road vehicles, whether or not they can be licensed to operate on public roads. The term does not include vessels or personal mobility assistive devices, such as wheelchairs.

"Nonmotorized vehicles" means any device that is moved or propelled by means other than an internal combustion engine or electrically powered motor, including but not limited to bicycles, roller blades, mountain boards, animal drawn carriages or conveyances, excluding vessels and personal mobility assistive devices, such as wheelchairs.

"Off-road vehicle (ORV)" or "off-highway vehicle (OHV)" means any street or nonstreet licensed vehicle when used for recreational purposes on nonhighway roads, trails, or a variety of other natural terrain. Such vehicles include, but are not limited to, all-terrain vehicles, motorcycles, four-wheel drive vehicles, and dune buggies.

"Organized event" means: (a) Any planned activity on department-managed lands involving more than twenty-five people, unless otherwise posted; (b) conducted at an agreed upon date and place, such as events advertised to the general public or as a nonprofit club or group event; and (c) sponsored by any person. An organized event does not include informal small groups who use facilities and/or trails for their ordinary intended use.

"Parking" means the standing of a vehicle, whether occupied or not, other than temporarily for the purpose of and while actually engaged in loading or unloading property or passengers.

"Person" means all individuals, firms, partnerships, public or private corporations, limited liability companies, clubs, and all associations or combinations of persons when acting for themselves, by an agent, servant or employee.

"Pet" means a dog, cat, or any animal that has been domesticated; livestock and service animals are specifically excluded from this definition.

"Posted" means information displayed on any signs, information boards, kiosks, web sites, maps, or other medium that either allows or prohibits access or specific activities on department-managed lands.

"Public trust doctrine" means the legal principle as recognized by Washington courts under which navigable waters are subject.

"Recreation permit" means a nontransferable, revocable written document, which the department issues to allow a person to engage in activities specifically authorized at such times and in such locations as identified in the document, such as a land use license.

"Refuse or waste" means discarded material from any person, trailer, camper, automobile, other motorized vehicle, or vessel, including but not limited to bottles, broken glass, spent ammunition casings, ashes, waste paper, cans, garbage, or human bodily waste.

"Region" means a geographical administrative unit of the department of natural resources.

"Reservation" means setting aside department-managed recreation facilities or lands for a specific use at a defined location(s) for a specified time period.

"Service animal" means an animal that is trained for the purposes of assisting or accommodating a disabled person's sensory, mental, or physical disability.

"Snowmobile" means any self-propelled vehicle capable of traveling over snow or ice, which utilizes as its means of propulsion an endless belt tread, or cleats, or any combination of these or other similar means of contact with the surface upon which it is operated, and which is steered wholly or in part by skis or sled type runners, and which is not otherwise registered as, or subject to the motor vehicle excise tax in the state of Washington.

"Trail" means a route on department-managed land, other than a road that is suitable for travel by motorized or nonmotorized means.

"Vessel" means every description of watercraft used or capable of being used as a means of transportation on the water, other than a seaplane. However, it does not include inner tubes, air mattresses, and small rafts or flotation devices or toys customarily used by swimmers.

GENERAL RULES

NEW SECTION

WAC 332-52-100 Managing recreation and public use. (1) Can DNR limit recreational activities and public use on department-managed land?

(a) The department may limit any recreation activity or public use on department-managed lands to:

(i) Protect public safety, natural resources, or other property.

(ii) Execute its management and administrative obligations if any recreation activities or public use unreasonably interferes with the department's ability to carry out those obligations.

(b) All persons shall comply with any department-posted restrictions that limit recreational activities.

(2) Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 332-52-105 Capacity. (1) Can the department limit the number of individuals and/or motorized or nonmotorized vehicles at developed recreation facilities on department-managed land?

(a) The department may establish or limit the number of individuals and vehicles allowed in any given developed recreation facility on department-managed lands at any given time or period for the reasons set forth in WAC 332-52-100. The capacity of developed trailheads and campgrounds will be determined by the number of parking spaces or campsites designated for such purposes.

(b) Persons shall not enter any developed recreation facility or bring in any motorized or nonmotorized vehicle, which would exceed the established capacity set by the department for the maximum number of individuals or vehicles.

(2) Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 332-52-110 Destruction of property. (1) May property or resources be removed, defaced, damaged or destroyed on department-managed lands?

(a) Absent normal wear and tear from an authorized use, a person shall not damage, remove, or destroy department-managed resources, or property to include but not be limited to locks, gates, traffic barriers, earthen berms, notices, signs, markers, facilities, or equipment.

(b) Absent normal wear and tear from an authorized use, a person shall not damage a trail or road, including boardwalks, bridges, water bars, or any other related improvements.

(2) Any violation of this section is a misdemeanor.

NEW SECTION

WAC 332-52-115 Removal of plants, soils, rocks, and other valuable materials. (1) Can soil, plants, rocks, or

other valuable materials be removed on department-managed lands?

(a) A person shall not remove soil, rocks, plants, natural features, or valuable materials on department-managed lands without written authorization from the department except when already authorized by law.

(b) Information about what written authorization is required for the removal of soil, rocks, plants, natural features, or valuable materials may be obtained by contacting a region office during business hours.

(2) Any violation of this section is a misdemeanor.

NEW SECTION

WAC 332-52-120 Sanitation. (1) How and where can refuse or waste be disposed on department-managed lands?

(a) Where toilet or sewage facilities are provided, no person shall dispose of human waste except in those facilities.

(b) Persons shall not deposit an individual's solid human waste within two hundred feet of any campsite, trail, or body of water. An individual's solid human waste shall be disposed of by burying to a depth of at least six inches.

(c) Where the department has provided receptacles, persons shall deposit bottles, cans, waste paper, garbage and other appropriate refuse in designated receptacles. If no receptacle is provided, persons shall take such refuse with them for disposal off-site.

(d) Persons shall not use department-provided receptacles for the disposal of personal or commercial refuse, garbage, debris or waste not associated with recreational activities on department-managed lands.

(e) Persons shall not leave or burn refuse or waste of any kind on department-managed lands, nor pollute or contaminate department-managed lands, including but not limited to any stream, river, lake, marine waters, or other body of water running in, through, or adjacent to department-managed lands, except as authorized by these rules.

(f) DNR may establish controlled discharge areas in order to prohibit discharge of waste from vessels in designated water recreation facilities as referred to in WAC 332-52-305(1). Refuse or waste from vessels does not include the discharge of grey water.

(2) Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 332-52-125 Posting. (1) Can the public post advertisements, signs, or posters on department-managed lands?

(a) Persons shall not erect bills, notices, posters, signs, markers, advertising devices or matter of any kind on department-managed lands without advance written authorization from the department.

(b) A person must contact the region office during business hours to obtain advance written authorization prior to posting advertisements, signs, or posters on department-managed land.

(2) Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 332-52-130 Peace and quiet. (1) What is unacceptable behavior on department-managed lands?

(a) Persons shall not engage in disorderly conduct on department-managed lands.

(b) For the purposes of this subsection, "disorderly conduct" means conduct that unreasonably disturbs the repose of other persons using department-managed lands; or is of a loud, threatening, insulting, boisterous, or abusive nature towards other persons, creating a risk of assault, fight, or riot; or by its indifference to or disregard for public safety, warrants alarm for the safety or well-being of others.

(2) When are quiet hours on department-managed land? Quiet hours are the hours after 10:00 p.m. and before 7:00 a.m. every day of the week.

(3) What is prohibited during quiet hours?

(a) Persons shall not:

(i) Unreasonably disturb any person during quiet hours.

(ii) Operate engine-driven electrical generators in designated campgrounds during quiet hours (except when medically required).

(b) A person accompanied by children or pets must ensure that children and pets maintain reasonable quiet during quiet hours.

(4) What types of noise or sounds are prohibited at any time on department-managed land? A person shall not engage in loud and boisterous conduct or the playing of radios, musical instruments, sound, or music systems, or the activation of sound producing electronic or mechanical devices such as generators, in such a manner, and at such times, so as to unreasonably disturb other persons. Any such sound that can be heard at a volume that unreasonably disturbs other recreational users is prohibited.

(5) Any violation of this section is an infraction under chapter 7.84 RCW except violation of subsection (1) of this section is a misdemeanor.

NEW SECTION

WAC 332-52-135 Campfires. (1) Where are recreational campfires permitted?

(a) Within department-designated campgrounds or day-use facilities, persons may have campfires only in the department-provided campfire enclosures.

(b) On department-managed lands outside of designated campgrounds or day-use facilities, campfires are not allowed without advance written authorization from the department unless otherwise posted.

(2) Can the department impose additional restrictions for fires? The department may impose or post additional restrictions related to the use of fire on department-managed lands for the protection of people, public resources, and other property.

(3) What are the responsibilities of the person constructing, igniting, maintaining or utilizing the campfire where campfires are permitted? The person responsible for the campfire shall ensure that:

(a) All of the requirements in subsection (1) of this section are met;

(b) All flammable material shall be cleared for a sufficient distance adequate to prevent the escape of fires;

(c) The campfire is made only from a pile of natural untreated wood materials, including manufactured fire logs, no larger than four feet in diameter with flames kept at a safe height for the circumstances;

(d) The campfire is not prohibited in the particular location or at the time of ignition as determined by the department or other authority;

(e) A person capable of extinguishing the campfire must attend the campfire at all times;

(f) The fire is burning only during periods of calm to very light winds when wind will not scatter loose flammable materials, such as dry leaves and clippings; and

(g) The fire is completely extinguished before leaving it unattended.

(4) Can firewood from department-managed lands be gathered and used for a campfire?

(a) Yes. Persons may gather firewood for their personal use while camping or using department-managed lands, except where posted or otherwise prohibited in these rules.

(b) No person shall gather firewood within the boundaries of any developed recreation facility.

(c) Firewood shall be collected only from dead and down material that is twelve inches or less in diameter at its largest point.

(d) No standing trees, living or dead, may be felled for use as firewood.

(e) Persons shall not remove firewood for their personal use from department-managed lands without a valid firewood permit.

(f) Persons shall not gather or use any live, dead, or downed wood or vegetation from streams or rivers.

(5) Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 332-52-140 Pets, service animals, and livestock. (1) Where are pets and service animals allowed on department-managed lands?

(a) Pets are allowed on department-managed lands, except in areas that are closed to pets or animals for the protection of wildlife, sensitive natural systems, special cultural areas, or for other purposes.

(b) Persons may bring service animals to assist or accommodate persons with disabilities on all department-managed land.

(2) Must pets be on a leash when on department-managed lands? In all developed recreation facilities and in other areas posted by the department, persons shall keep pets on leashes no longer than eight feet or otherwise restrained from free movement and under physical control at all times. Pets accompanying livestock with riders may be under voice control.

(3) What are the requirements of the person responsible for the pet?

(a) The person responsible for the pet shall not allow the pet to:

(i) Dig or otherwise disturb or damage the natural or cultural features of department-managed lands.

(ii) Bite or unreasonably interfere with or annoy persons or animals.

(iii) Bark in a manner that disturbs the peace and tranquility of others.

(iv) Disturb or harass wildlife.

(v) Be in an area where pets are not allowed.

(b) The person responsible for the pet shall:

(i) Pick up the animal's feces in developed recreation facilities, along designated recreation trails, and where posted by the department.

(ii) Dispose of feces into a designated receptacle or take feces with them for disposal off-site.

(4) Where are livestock allowed in developed recreation facilities?

(a) In recreation facilities designated for such use.

(b) Persons with livestock may travel through developed recreation facilities, but shall not stay overnight with livestock unless the facility has been built to accommodate such animals.

(5) What are the requirements of the person responsible for livestock? In developed recreation facilities, persons shall pick up and either dispose of the livestock's feces in a designated receptacle or off-site.

(6) Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 332-52-145 Firearms and target shooting. (1)

What is recreational target shooting? Recreational target shooting is the use of a firearm or bow and arrow on targets and the sighting in of rifles or other firearms on department-managed lands. The department regulates and enforces target shooting on department-managed lands.

(a) The department may restrict target shooting for the reasons set forth in WAC 332-52-100.

(b) Persons shall not target shoot carelessly, recklessly, or without regard for the safety of any person, or in a manner that endangers, or is likely to endanger, any person, pet, livestock, wildlife or property.

(c) Persons shall not discharge tracer or incendiary ammunition or projectile devices on department-managed lands. For purposes of this subsection, "incendiary" means causing or designed to cause fires, such as certain substances or bombs. "Tracer ammunition" means a bullet, projectile, or shell that traces its own course in the air with a trail of smoke, chemical incandescence, or fire, so as to facilitate adjustment of the aim.

(2) Does recreational target shooting include hunting? No. This section does not apply to hunting activities, which are subject to the rules and regulations administered by the Washington state department of fish and wildlife.

(3) Where is target shooting permitted?

(a) Persons may target shoot in:

(i) Developed recreation facilities specifically designed for target shooting; or

(ii) Areas with an unobstructed, earthen backstop capable of stopping all projectiles and debris in a safe manner.

Persons shall not target shoot in any other location.

(b) Persons shall not shoot within, from, along, across, or down roads or trails.

(c) Persons shall not shoot on, at, across, along, down, from, or within five hundred feet, of:

(i) Recreational facilities that are not specifically designed for target shooting;

(ii) Residences;

(iii) Businesses;

(iv) Structures;

(v) Other areas as restricted;

(vi) Areas designated or posted as no shooting.

(4) What may be used as a target?

(a) Items that are commercially manufactured for the specific purpose of target shooting or similar targets privately manufactured by the person(s) engaging in target shooting that are consistent with this section.

(b) Unauthorized targets include but are not limited to:

(i) Natural features, except earthen berms or banks used as backstops for target shooting;

(ii) Vegetation;

(iii) Structures;

(iv) Gates;

(v) Vehicles;

(vi) Signs;

(vii) Other department improvements;

(viii) Appliances;

(ix) Furniture;

(x) Glass;

(xi) Privately owned or occupied structures;

(xii) Pets, service animals or livestock;

(xiii) Wildlife;

(xiv) Explosive and incendiary items;

(xv) Garbage of any kind.

Persons shall not target shoot at unauthorized targets.

(5) When is target shooting permitted? Unless otherwise posted, persons shall not target shoot one-half hour after sunset to one-half hour before sunrise.

(6) Is possession of a loaded firearm in or on a motor vehicle permitted on department-managed lands? Persons shall not possess a loaded firearm in or on a motor vehicle, except as provided by state law.

(7) Who is responsible for disposing of spent items resulting from target shooting? Persons who target shoot shall dispose of spent items and remove all shell casings, targets, ammunition packaging, or target fragments resulting from their activity, with the exception of biodegradable clay targets. Failure to remove any such debris is prohibited.

(8) Any violation of this section is a misdemeanor except a violation of subsection (7) of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 332-52-150 Fireworks. May fireworks be used on department-managed lands? No. Except for legal firearms, persons shall not discharge or possess fireworks, model rockets, or other devices containing any explosive or flammable compounds on or into any department-managed lands. For purposes of this section, "fireworks" means any composi-

tion or device designed to produce a visible or audible effect by combustion, deflagration, or detonation, and which meets the definition of pyrotechnic articles or consumer fireworks or display fireworks.

Any violation of this section is a misdemeanor.

NEW SECTION

WAC 332-52-155 Anchorage. (1) What is the length of time that a vessel may be moored or anchored on state-owned aquatic lands? Persons shall not moor or anchor a vessel in the same area on state-owned aquatic lands for periods longer than thirty consecutive days or for more than a total of ninety days in any three hundred sixty-five day period. For purposes of WAC 332-52-155, "in the same area" means within a radius of five miles of any location where the vessel was previously moored or anchored.

(2) Are there places where the time limit does not apply? Subsection (1) of this section does not apply where the federal government, a county, a city, a state agency, including DNR, a port, or any other public entity with authority has posted, enacted, or adopted different anchorage or moorage restrictions. Persons shall observe restrictions specific to the locality. Additionally, persons may exceed this time limit if:

(a) Granted express consent by either DNR or the lessee of the state-owned aquatic lands where the vessel is moored or anchored; and

(b) Anchorage or moorage does not violate any other law or rule.

(3) Any violation of this section is an infraction under chapter 7.84 RCW.

RESERVATIONS AND PERMITS

NEW SECTION

WAC 332-52-200 Reservations. (1) Are reservations required for developed recreation facilities on department-managed lands? No. Except where posted by the department, persons do not need reservations to use developed recreation facilities.

(2) If required, how do I make a reservation? Persons must contact the region office during business hours at least seventy-two hours prior to the use of the recreational facility.

(3) How will reservation requests be processed?

(a) The region will process reservation requests in the order of their arrival.

(b) The region will contact the requestor of the approval or denial of the reservation request prior to the desired reservation date.

(4) How do I cancel a reservation? Persons must notify the region in person, via phone, or e-mail during business hours at least twenty-four hours prior to the scheduled use of the facility to cancel the reservation.

(5) Can the department revoke a reservation? The department may revoke the rights of a reservation holder, and remove any or all persons from the site, at any time, if:

(a) The person is in violation of these rules or any other applicable state law.

(b) The person's behavior is detrimental to the health and safety of any person.

(c) The person's behavior unreasonably interferes with the recreational enjoyment of any other person.

(d) The department's management activities conflict with the purpose of the reservation.

(6) Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 332-52-205 Recreation permits. (1) Are recreation permits required for organized events on department-managed lands? Persons are required to obtain recreation permits for organized events and as otherwise indicated in this chapter.

(2) May I charge a fee at an organized event? Yes. A person shall obtain a recreation permit if a fee is charged at an organized event on department-managed lands.

(3) May I use department-managed lands for commercial purposes? A person who uses department-managed lands for commercial purposes shall obtain a contract, lease, permit or other written authorization from the department.

For the purposes of this subsection and in the context of public use, "commercial purposes" means charging a fee of any type for access to department-managed lands or any use or activity on department-managed lands where the primary purpose is the sale or barter of a good or service, regardless of whether the use or activity is intended to produce a profit.

(4) How do I obtain a recreation permit? Persons must contact the region office during business hours prior to the proposed organized event use to request a recreation permit application. The completed recreation permit application must be submitted via fax, e-mail, mail, or in person to the region office during business hours at least sixty days prior to the proposed organized event.

(5) How are recreation permit applications processed? The region will process recreation permit applications in order of their arrival.

(6) Is the department required to issue a recreation permit?

(a) The region may approve or deny the application for a recreation permit for the reasons set forth in WAC 332-52-100.

(b) The region will notify the applicant if the permit application is denied.

(7) If the permit application is approved, when will the permit be issued? If approved, the region will issue the permit within thirty days of receipt of the permit application.

(8) How do I cancel a permit? Persons must notify the region office of the cancellation at least seventy-two hours prior to the scheduled organized event.

(9) Can the department revoke a permit? The department may revoke a permit, and remove any or all persons from the site, if:

(a) The person is in violation of these rules or any other applicable state law.

(b) The person's behavior is detrimental to the health and safety of any person.

(c) The person's behavior unreasonably interferes with the recreational enjoyment of any other person.

(d) The department's management activities conflict with either the purpose or the conditions of the permit.

(10) Any violation of this section is an infraction under chapter 7.84 RCW.

CAMPGROUNDS, CAMPSITES, AND DAY-USE FACILITIES

NEW SECTION

WAC 332-52-300 Campground and campsite use and occupancy. (1) Do these rules apply to all department-managed lands?

(a) These rules apply to all persons using department-managed lands for overnight use which includes:

- (i) Campgrounds and individual campsites;
- (ii) Group campgrounds and group campsites (for the purposes of this subsection, "group campgrounds and group campsites" means any designated areas with an established capacity for camping use by groups);
- (iii) Water trail camping facilities and sites (for purposes of this subsection, "water trail camping sites or facilities" means specially designated camping facilities identified with signs that are near water ways); and
- (iv) Developed, designated or dispersed campsites.

(b) The department may approve exceptions to these rules on a case-by-case basis.

(2) Are reservations required for campgrounds or campsites? No. Except where posted by the department, persons do not need reservations to use campgrounds or campsites. All campgrounds and campsites for which the department does not require reservations are on a first-come, first-served basis.

(3) What is the maximum total length of stay while camping on department-managed lands? The department may determine the maximum length of stay for camping.

(a) If the department has posted the maximum length of stay, persons shall not stay longer than the maximum length of stay posted.

(b) If the department has not posted the maximum length of stay, persons shall not stay longer than ten days in a thirty-day time period on any or all department-managed lands. The ten and thirty-day count begins on the date of the first night's camping and applies to the total overnight stays on all department-managed lands during that thirty-day time period.

(c) Persons shall vacate campsites by removing all personal property from the campsite no later than 1:00 p.m. on the day the time limit for occupancy expires.

(4) May a campsite in a campground be held for another party for current or future camping dates? Persons shall not hold or attempt to hold campsite(s) for another camping party.

(5) When may persons occupy a campsite in a campground? Persons may occupy a campsite when persons:

- (a) Find the campsite unoccupied and not already posted as reserved; or
- (b) Hold a reservation for the campsite for the period of occupation.

Persons shall not occupy a campsite under any other circumstances.

(6) How many people are permitted to stay in a campsite in a campground? The department may determine the number of occupants per campsite. A group exceeding the predetermined capacity of the campsite shall not use the site overnight.

(a) If the department posts the maximum number of occupants per campsite, the number of persons shall not exceed the maximum number per campsite per night as posted.

(b) If the department has not posted the maximum campsite capacity, a maximum of eight people are permitted to camp overnight.

(7) How many tents are allowed in each campsite in a campground? The department may determine the number of tents allowed in each campsite.

(a) If the department posts the maximum number of tents per campsite, the number of tents shall not exceed the maximum number posted.

(b) In developed campsites, the number of tents is limited to the number that will fit entirely on the tent pad.

(c) Persons shall not expand a tent pad, or clear or alter the vegetation in the vicinity around the tent pad.

(8) How many passenger vehicles are allowed at each campsite in a campground? The department may determine the number of passenger vehicles allowed at each campsite. Camping parties of one or more persons shall not occupy a campsite with more than two passenger vehicles unless otherwise posted.

(9) May personal property be left unattended overnight in a campground, campsite, or lands managed by the department?

(a) Persons must not leave personal property unattended overnight without permission from the department.

(b) The department will presume unattended personal property has been abandoned and may remove and dispose of the property as authorized in chapter 63.21 RCW or as otherwise determined by the department.

(10) May a person occupy a residence camp on department-managed lands?

(a) Persons shall not occupy a residence camp on department-managed lands without the written authorization of the department. A residence camp is an encampment, occupancy, or presence on department-managed lands that is the principal place of residence for the person or occupant.

(b) A residence camp on department-managed lands is declared to be a public nuisance and may be abated by the department without prior notice or process.

(11) May firearms be discharged in a campground? Persons shall not discharge a firearm in, adjacent to, from, or within five hundred feet of campgrounds.

(12) Are campfires permitted in campgrounds or campsites? Persons may have campfires in campgrounds and campsites as authorized in WAC 332-52-135.

(13) Are pets allowed in campgrounds? Persons may bring pets into campgrounds as authorized in WAC 332-52-140.

(14) Is camping permitted outside of developed recreation facilities? Yes, except persons shall not camp:

(a) In a manner that requires more than incidental removal or damage to vegetation.

(b) In a manner that unreasonably removes or disturbs soil.

(c) Where camping is restricted to designated campsites only.

(d) Within five hundred feet of a developed recreation facility.

(e) In areas designated or posted day-use only.

(15) How do I know when the campgrounds are open or closed? Information about seasonal or temporary closures may be obtained by contacting the region office, on-line and/or may be posted on-site. If the department has closed and locked the gates or posted the campground as closed, persons shall not use the campground.

(16) Can campsites be designated for specific recreational activity?

(a) The department may designate campgrounds or individual campsites for a specific recreational activity, e.g., horses, hike in only, four-wheel vehicle use, ORV use.

(b) Persons shall comply with the posted recreational use in campgrounds and individual campsites.

(17) Any violation of this section is an infraction under chapter 7.84 RCW except violations of subsections (3), (10), and (11) of this section are misdemeanors.

NEW SECTION

WAC 332-52-305 Water recreation facilities. (1) What are water recreation facilities? Water recreation facilities include recreational floats, piers, mooring buoys, docks, pilings, linear moorage facilities, and other similar structures managed by the department for recreational use.

(2) Are reservations required for moorage at water recreation facilities?

(a) Moorage at water recreation facilities is on a first-come, first-served basis.

(b) Persons are not required to reserve moorage at water recreation facilities, unless otherwise posted. Any required reservations must be made in accordance with WAC 332-52-200.

(3) What is the maximum length of stay at a water recreation facility? The department may determine the maximum length of stay at each moorage facility.

(a) Unless posted otherwise, continuous moorage by the same vessel is limited to three consecutive nights, after which time the vessel must vacate the water recreation facility for twenty-four hours. The three-night count begins on the date of the first night's moorage.

(b) Persons must vacate water recreation facilities by removing their vessel and all personal property from the moorage facility no later than 1:00 p.m. on the day the time limit for occupancy expires.

(4) May a water recreation facility be held with a floating marker or other method for current or future moorage dates? A person shall not hold a water recreation facility with a floating marker such as a buoy or dinghy or by any other method other than occupying the facility with the vessel to be moored.

(5) May water recreation facilities be used by commercial recreation providers?

(a) Water recreation facilities may be used by commercial recreation providers only to:

(i) Unload and load passengers transported for recreation purposes.

(ii) Moor overnight as authorized by the department.

(b) Except as stated above, use of water recreation facilities by commercial recreation providers is prohibited.

(6) What size vessel may I moor at water recreation facilities? The maximum length of a vessel moored at a water recreation facility shall not exceed thirty-two feet unless otherwise posted.

(7) May I raft vessels at water recreation facilities? Rafting of vessels is prohibited unless otherwise posted.

(8) Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 332-52-310 Day-use areas and facilities. (1) Is overnight camping permitted on or in day-use areas and facilities? No. Persons shall not camp on or in day-use areas and facilities.

(2) What types of activities are permitted on or in day-use areas or facilities? The department determines which types of activities are permitted on or in day-use areas and facilities. Only designated activities are permitted on or in day-use areas and facilities. Information about day-use areas and facilities may be obtained by contacting the region office, on-line and/or may be posted on-site.

(3) Are campfires permitted on or in day-use areas and facilities? Persons may have campfires on or in day-use areas and facilities as authorized in WAC 332-52-135.

(4) Are pets allowed on or in day-use areas and facilities? Persons may bring pets onto or into day-use areas and facilities, as authorized in WAC 332-52-140.

(5) Are reservations required for day-use facilities? Persons do not need reservations to use developed day-use facilities except where posted.

(6) Are permits required to use day-use areas or facilities? Persons must obtain a permit as described in WAC 332-52-205 for organized events.

(7) How do I know when day-use areas or facilities are open or closed? Information about seasonal or temporary closures may be obtained by contacting the region office, on-line and/or may be posted on-site. If the department has closed and locked the gates or posted the day-use area or facility as closed, persons shall not use the day-use area or facility.

(8) Any violation of this section is an infraction under chapter 7.84 RCW.

ROADS AND TRAILS

NEW SECTION

WAC 332-52-400 Managing road and trail use. (1) Who manages road and trail use on department-managed lands? The department manages road and trail use on department-managed lands. The department, or lessee of state land

in consultation with the department, may close all of, or portions of, a road or trail for the reasons set forth in WAC 332-52-100.

(2) What types of recreation uses are permitted on roads or trails?

(a) The department may designate road and trail use by specific recreation activity, e.g., hiking, horseback riding, mountain biking, all-terrain vehicle, off-road vehicle, four-wheel vehicle, snowmobile, or other over-the-snow vehicles.

(b) Persons shall comply with the posted designated recreational use on roads and trails.

(3) What types of traffic control measures does the department use on a road or trail? The department may, at any time:

(a) Establish one-way traffic flow on any road or trail.

(b) Establish use hours and/or seasonal use on any road or trail.

(c) Restrict or prohibit use of a road or trail for the reasons set forth in WAC 332-52-100.

(d) Persons shall comply with the posted traffic control measures on roads and trails.

(4) What methods does the department use to indicate if a road or trail is closed to motorized vehicle use? In addition to posted traffic control measures, such as signs, the department uses a variety of barriers including but not limited to gates, large berms or trenches, concrete barriers, and large rock or stump piles or other similar large barriers. Motorized vehicular use on or beyond one or more of these barriers is prohibited unless otherwise posted.

(5) When is operating an off-road vehicle permitted beyond a closed gate? A person may operate an off-road vehicle beyond a closed gate when there is a department-managed road or trail on the other side of or around the gate that is posted open for off-road vehicle use.

(6) Where are motorized and nonmotorized vehicles permitted off of a road or trail? Persons shall only operate motorized or nonmotorized vehicles off of a road or trail on lands posted or otherwise designated by the department as open for the designated recreational use. All other off-road or off-trail vehicular use is prohibited.

(7) How do I find out if a road or trail is open or closed? The department will use the following methods to notify the public if a road or trail is open or closed to recreation use: Information displayed on any signs, information boards, kiosks, web sites, maps, or other written form of notice that either allows or prohibits access or specific activities on department-managed lands.

(8) How do vehicle operators enter or leave a developed recreation facility? Motorized or nonmotorized vehicles shall enter or leave a developed recreation facility only on posted roads or trails.

(9) Any violation of this section is an infraction under chapter 7.84 RCW with the exception of subsection (7) of this section which is neither an infraction nor a misdemeanor.

NEW SECTION

WAC 332-52-405 Construction and maintenance of trails and structures. (1) May a person construct, modify, repair or maintain a new or existing recreation trail, structure,

or other facility or improvement or cause such activities to occur on department-managed lands? No. With the exceptions noted in subsections (2) and (3) of this section, a person shall not construct, modify, repair or maintain a recreation trail, structure, or other facility or improvement, or cause such activities to occur on department-managed lands, without written authorization from the department.

(2) May a person perform routine maintenance of recreational trails or facilities on department-managed lands? Yes. With an approved department of natural resources volunteer agreement, individuals may conduct routine maintenance of recreational trails or facilities.

(3) May a person perform emergency maintenance of recreational trails without written authorization from the department? Yes. A person may perform emergency maintenance on recreational trails. Emergency maintenance for purposes of this subsection means the reasonable mitigation of immediate safety hazards, and brushing, weeding, windfall removal, clearing drain ditches or culverts, or tread repair to prevent immediate resource damage.

(4) Any violation of this section is an infraction under chapter 7.84 RCW except violation of subsection (1) of this section is a misdemeanor.

NEW SECTION

WAC 332-52-410 Traffic rules. (1) What is the speed limit for a motorized or nonmotorized vehicle on department-managed roads? The speed limit for persons operating a motorized or nonmotorized vehicle is the basic speed rule on department-managed roads. The basic speed rule means no person shall drive a motorized or nonmotorized vehicle on a road at a speed greater than is reasonable and prudent under the conditions and having regard for the actual and potential hazards.

(2) What are the responsibilities of persons operating motorized or nonmotorized vehicles on department-managed roads and trails?

(a) Persons operating motorized or nonmotorized vehicles shall:

(i) Use due care and control speed to avoid colliding with any person, animal, motorized or nonmotorized vehicle or other conveyance on or entering the roadway;

(ii) Follow the basic speed rule; and

(iii) Turn on headlights when visibility is less than two hundred feet due to terrain, darkness, dust, smoke, fog or other weather or atmospheric conditions.

(b) Persons operating a motorized or nonmotorized vehicle shall not:

(i) Exceed the basic speed rule.

(ii) Obstruct or hinder the flow of traffic on any road.

(iii) Endanger persons or property or act in a reckless, careless, or negligent manner.

(3) While operating a motorized or nonmotorized vehicle, who has the right of way?

(a) Emergency vehicles. Persons operating a motorized or nonmotorized vehicle shall yield the right of way to all emergency vehicles making use of audible or visual signals.

(b) Log hauling or gravel vehicles. Persons operating a motorized or nonmotorized vehicle, except emergency vehi-

cle operators, must yield the right of way to log hauling, gravel, or other commercial vehicles conducting authorized department business.

(c) Pedestrians.

(i) Persons operating a motorized or nonmotorized vehicle shall yield the right of way to pedestrians.

(ii) Pedestrians must leave the road as soon as possible to allow the vehicle to pass.

(d) Animal-drawn vehicles and/or persons riding animals.

(i) Persons operating a motorized or nonmotorized vehicle shall yield the right of way to animal-drawn vehicles and to persons riding animals.

(ii) Persons operating a motorized or nonmotorized vehicle must make every reasonable effort to avoid frightening or startling such animals.

(iii) Persons in control of an animal or animal-drawn vehicle must remove the animal or animal-drawn vehicle from the road as soon as possible to allow the vehicle to pass.

(e) Livestock. Persons operating a motorized or nonmotorized vehicle who encounter a herd of livestock, where a person is in control of the herd, shall not move through the herd until directed to do so by the person in control of the herd.

(4) What traffic laws govern traffic on department-managed land? In addition to the traffic rules in this section and WAC 332-52-415, all applicable Washington traffic laws in Title 46 RCW apply on any department-managed road unless inconsistent with or superseded by these rules. Violations of those exceptions identified in RCW 46.63.020 are criminal offenses.

(5) Any violation of this section is a traffic infraction under chapter 46.63 RCW except a violation of subsection (2)(b)(iii) of this section is a misdemeanor.

NEW SECTION

WAC 332-52-415 Parking. (1) Where is a person prohibited from parking a vehicle on department-managed lands?

(a) Persons shall not park on department-managed lands if the vehicle:

(i) Blocks or impedes the passage of normal traffic or commercial activity.

(ii) Blocks, interferes with or obstructs a gate, road, trail, path or other access.

(iii) Is parked in a developed recreation facility unless the area is designed for such use.

(b) Persons shall not park vehicles on department-managed roads and lands where posted as no parking.

(c) Subsections (a) and (b) above do not apply to persons operating:

(i) Emergency vehicles;

(ii) Department vehicles;

(iii) Logging or other commercial vehicles (for industrial operations) or other commercial vehicles used in connection with activities performed pursuant to department contracts; and

(iv) As otherwise authorized by the department.

(2) How long may a person park or leave a vehicle on department-managed lands? Persons shall not park or leave a vehicle unattended for more than seventy-two hours on department-managed lands with the exceptions noted in subsection (1)(c)(i) through (iv) of this section or when persons are in designated campgrounds or in trailheads with posted long-term parking.

(3) If a vehicle is found parked in violation of subsection (1) or (2) of this section, may the vehicle be towed? Yes. Any motorized vehicle found parked in violation of subsection (1) or (2) of this section may be impounded by the department at the owner's or operator's expense.

(4) If an infraction is issued under this section, who is responsible for the infraction? In any infraction involving a violation of this section, proof that the particular vehicle described in the notice of infraction was parking in violation of any such provision of this section, together with proof that the person named in the notice of infraction was at the time of the violation the registered owner of the vehicle, shall constitute a prima facie presumption to prove that the registered owner of the vehicle was the person who parked the vehicle at the point where, and for the time during which, the violation occurred.

(5) Any violation of this section is a traffic infraction under chapter 46.63 RCW.

NEW SECTION

WAC 332-52-420 Snowmobiles. (1) Where are snowmobiles permitted to travel on department-managed land?

(a) Persons may operate snowmobiles on department managed lands only when there is adequate snow cover to prevent resource damage.

(b) Persons operating snowmobiles may only travel over the snow:

(i) On roads, cut banks, fill slopes, ditches, and trails.

(ii) On designated roads that are part of a groomed snowmobile trail.

(iii) Off of designated roads and trails unless the area is designated or posted closed to snowmobile use.

(c) Persons shall not operate snowmobiles on department-managed lands under any other conditions or in any other locations.

(d) No other motorized vehicle is allowed on a groomed snowmobile trail without prior written authorization from the department.

(2) Any violation of this section is an infraction under chapter 7.84 RCW.

MILWAUKEE ROAD CORRIDOR

NEW SECTION

WAC 332-52-500 Specific rules for Milwaukee Road Corridor only. (1) What is the purpose of these rules? The purpose of this section is to set site-specific standards for public use on the Milwaukee Road Corridor managed by the department. These rules promote public safety and protect department-managed lands, property, and resources. Unless otherwise inconsistent with the site-specific rules listed in this section, all other rules of chapter 332-52 WAC apply.

(2) What portions of the Milwaukee Road Corridor do these rules apply to? These rules apply to those portions of Milwaukee Road Corridor of the state of Washington administered by the department from the west bank of the Columbia River east to the westernmost crossing of Highway 21 and the corridor near the town of Lind, Washington.

(3) Are recreation permits required for activities on the corridor? Persons are required to obtain and possess recreation permits for all activities on the corridor.

(4) How do I obtain a recreation permit? Persons must contact the department's southeast region office in Ellensburg during business hours prior to the proposed activity to request a recreation permit application. The completed recreation permit application must be submitted via fax, e-mail, mail, or in person to the region office during business hours at least fifteen days prior to the proposed activity.

(5) How are recreation permit applications processed? The region will process recreation permit applications in order of their arrival.

(6) Is the department required to issue a recreation permit?

(a) The region may approve or deny the application for a recreation permit.

(b) The region will notify the applicant in writing if the permit application is approved or denied.

(7) If the permit application is approved, when will the permit be issued? If approved, the region will issue the permit within five days of receipt of the permit application.

(8) How do I cancel a permit? Persons must notify the region office of the cancellation within seventy-two hours prior to the activity.

(9) How long will the permit be valid? The permit will be valid for not more than one calendar year over the approved route identified in the recreation permit.

(10) Will there be a fee for the permit? A fee may be required based on the costs of processing the application including contacting adjacent landowners when required.

(11) When is the corridor open for use? The corridor is open for use year-round. The corridor may be temporarily closed to reduce fire danger or protect public safety.

(12) Can I have campfires on the corridor? No. Persons shall not ignite fires of any type on the corridor.

(13) When using the corridor, what are my responsibilities to adjacent property owners?

(a) Persons, or their animals, shall not enter onto adjoining property from the corridor without permission of the landowner.

(b) Persons shall leave gates in the condition in which they are found.

(14) Are firearms permitted on the corridor? Persons shall not possess shotguns or rifles on the corridor. Other firearms must be stowed and not loaded while on the corridor.

(15) Where is hunting or target shooting allowed on the corridor? Persons shall not hunt, discharge firearms, tracer or incendiary ammunition or projectile devices, target shoot, or discharge any device capable of killing any animal or person, or damaging or destroying public or private property within, from, along, across, or down the corridor managed by the department, except where portions of the corridor are leased

by or covered by an agreement with another public agency which owns or controls adjoining property.

(16) Will adjacent landowners be notified of permits issued for use of the corridor adjacent to their property?

(a) If requested by adjacent landowners, the department will notify them of permits issued for use of the corridor adjacent to their property.

(b) For portions of the corridor where abutting landowners have not asked to be notified about permits and no gates have been built, the department may issue a day-use permit without the fifteen-day advance application requirement. The day-use must be confined to the portions of the corridor described in this subsection. Maps of these day-use areas are available at the southeast region office in Ellensburg.

(17) Any violation of this section is an infraction under chapter 7.84 RCW except a violation of subsection (15) of this section is a misdemeanor.

NOTICE AND SIGNS

NEW SECTION

WAC 332-52-600 Notice of rules. Where can I find the public access and recreation rules? The department will make public access and recreation rules available to the public through such means as:

- (1) Posted on-site on kiosks or signboards;
- (2) Published on the department's internet site;
- (3) Published in a site-specific or programmatic management plan;
- (4) In the office of the commissioner of public lands in Olympia; or
- (5) In any of the department's region offices.

Notices of permitted or prohibited activities will be posted in such locations as will reasonably bring them to the attention of the public.

NEW SECTION

WAC 332-52-605 Compliance with signs. What is the penalty for not complying with posted restrictions? Persons failing to abide by posted restrictions on department-managed lands are subject to the applicable penalty that governs the restricted activity.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 332-52-020	Applicability and scope.
WAC 332-52-030	General rules.
WAC 332-52-040	Public behavior—Recreation sites.
WAC 332-52-050	Vehicles.
WAC 332-52-055	Capital forest—Organized events—Prohibited without prior written approval.

WAC 332-52-060	Use of fire.	(a) State lands, state forest lands, and state-owned aquatic lands.
WAC 332-52-065	Milwaukee Road Corridor— Recreational use.	(b) Natural area preserves as defined in chapter 79.70 RCW or natural resources conservation areas as defined in chapter 79.71 RCW.
WAC 332-52-066	Milwaukee Road Corridor— Permits.	(c) Lands leased from DNR by another public agency when the agency has no public use rules or the agency requests the department rules apply.
WAC 332-52-067	Milwaukee Road Corridor— Restrictions on use.	(d) Other city, county, state and federal lands under DNR management.
WAC 332-52-068	Milwaukee Road Corridor— Protection of adjoining property.	(3) To whom do these rules apply?
WAC 332-52-069	Milwaukee Road Corridor— Penalties.	(a) These rules apply to any person using department-managed lands with the exceptions noted below.
WAC 332-52-070	Penalties.	(b) These rules do not apply to any person engaged in commercial or other activities conducted under sale, lease, permit or other authority from the department if such rules are inconsistent with the department's legal obligations to the person engaged in the authorized activity.
WAC 332-52-080	Enforcement.	(c) These rules do not apply to any person using the waters above state-owned aquatic lands for navigation and other uses associated with the right of navigation under the Public Trust Doctrine, except to the extent that the rules control anchorage. The right of navigation is subject to rules and regulations administered by other public agencies including, but not limited to, the U.S. Coast Guard, counties, and cities.
WAC 332-52-090	Effective dates.	(4) Who is responsible for knowing and following these rules? All persons who use department-managed land must know and follow the department's rules.

NEW SECTION

WAC 332-52-001 Introduction. The department of natural resources recognizes recreation on department-managed lands as an important component of the quality of life in Washington state. The department must balance the public interest in recreation with its trust and other land management obligations consistent with its habitat conservation plans and the multiple use statutes. Good stewardship of department-managed land, water and natural resources is essential for the benefit of future generations. The department's primary recreation focus is to provide a primitive experience in a natural setting through trails, water access, trailhead facilities and rustic camping facilities. The department currently manages campgrounds and day-use facilities such as picnic areas, boat launches and interpretive areas. In addition to water access, trails and developed recreation sites, the department also manages forest roads primarily designed and maintained for forest management purposes that provide considerable access for dispersed recreation activities such as hunting, fishing, bird watching, and sightseeing. It is the practice of the department of natural resources to encourage responsible public use of roads and trails, land and water under its jurisdiction consistent with its obligations as a trust manager and other land management responsibilities. Therefore, the following rules shall apply to all department-managed lands and roads.

NEW SECTION

WAC 332-52-002 Purpose. (1) What is the purpose of these rules? The purpose of this chapter is to set standards for public use on lands managed by the department of natural resources (DNR). These rules promote public health and safety and protect department-managed lands, property, and resources.

(2) Do these rules apply to all department-managed lands? These rules apply to all lands of the state of Washington administered by the department of natural resources. These lands include but are not limited to:

- (a) State lands, state forest lands, and state-owned aquatic lands.
 - (b) Natural area preserves as defined in chapter 79.70 RCW or natural resources conservation areas as defined in chapter 79.71 RCW.
 - (c) Lands leased from DNR by another public agency when the agency has no public use rules or the agency requests the department rules apply.
 - (d) Other city, county, state and federal lands under DNR management.
- (3) To whom do these rules apply?
- (a) These rules apply to any person using department-managed lands with the exceptions noted below.
 - (b) These rules do not apply to any person engaged in commercial or other activities conducted under sale, lease, permit or other authority from the department if such rules are inconsistent with the department's legal obligations to the person engaged in the authorized activity.
 - (c) These rules do not apply to any person using the waters above state-owned aquatic lands for navigation and other uses associated with the right of navigation under the Public Trust Doctrine, except to the extent that the rules control anchorage. The right of navigation is subject to rules and regulations administered by other public agencies including, but not limited to, the U.S. Coast Guard, counties, and cities.
 - (4) Who is responsible for knowing and following these rules? All persons who use department-managed land must know and follow the department's rules.
 - (5) What happens if one of these rules is held invalid? If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter or the application of the provision to other persons or circumstances is not affected.
 - (6) What types of activities will the department allow on department-managed lands? The department may allow activities on department-managed lands that meet all of the following criteria:
 - (a) Consistent with this chapter and other state laws and regulations.
 - (b) Consistent with land management objectives.
 - (c) Consistent with trust obligations on applicable trust lands.
 - (d) Authorized or permitted by the department.

WSR 09-05-065

PERMANENT RULES

HORSE RACING COMMISSION

[Filed February 13, 2009, 8:34 a.m., effective March 16, 2009]

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

Purpose: To amend WAC 260-40-100 Performance records and to establish new section WAC 260-40-155 The effects of wins on eligibility.

Citation of Existing Rules Affected by this Order: Amending WAC 260-40-100.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 09-01-020 on December 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 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 1, Amended 1, 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.

Date Adopted: February 12, 2009.

R. J. Lopez
Executive Secretary

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

WAC 260-40-100 Performance records. (1) ~~((The owner and/or trainer of any horse which has started at a track not reported in the daily racing form or equibase since its last start at a recognized track must furnish the racing secretary, prior to the entry of such horse in a race in this state, performance records of said horse's races during the past year or their last two starts, including published races, showing date, distance, finishing position and time. If such records are not provided, the horse will be ineligible to start.~~

~~(2) For thoroughbreds, a horse which wins a race at a Class C track within the state, with the exception of its maiden win, will not be penalized for such winnings in races run at any other race meet other than a Class C track. The maiden classification will be lost by winning a race at any track whose results are published in the daily racing form or equibase. A horse, which wins a race at a track with results not reported in the daily racing form or equibase, outside this state, will not be penalized for such winnings except at Class C tracks. All winnings in races conducted outside the state of Washington and under the authority of a recognized racing jurisdiction will count with regards to a horse's eligibility. For other breeds, all wins, including the maiden wins, will be counted in considering eligibility at all racing association meets in the state of Washington if the win is recognized by the Arabian Jockey Club, the American Quarter Horse Association, the Appaloosa Horse Club, or other breed registry recognized by the commission.~~

~~(3) Performance records for races which are not reported in the daily racing form and/or equibase will be published in the official program of the racing association or posted and announced.~~

~~(4) All wins will be considered in eligibility requirements of horses running at Class C racing association meets.)~~ The owner or trainer of any horse which has started at a recognized race meet not reported in the daily racing form or equibase since its last recorded start must provide the horse's performance records to the racing secretary prior to

entering or nominating the horse in a race in this state. These performance records must include the name of the track, date of the race, distance of the race, finish position, and running time of the race, and include all starts since competing at a recorded recognized race meet. If these records are not provided, the horse may not start in a race.

(2) Performance records for races not reported in the daily racing form or equibase will be published in the official program of the racing association and/or posted and announced to the public.

NEW SECTION

WAC 260-40-155 The effect of wins on eligibility. (1)

For thoroughbreds, all wins at a Class C race meet in the state or a fair meet in the state of Oregon will not be considered in determining any eligibility at a Class A or B race meet, with the only exception that any horse which has won a race at a recognized race meet may not compete in a maiden race.

(2) All wins at any recognized race meet will be considered in eligibility requirements of horses running at Class C race meets.

(3) For other breeds, all wins, including maiden wins, will count in eligibility at all race meets, if the win is recognized by the breed registry association listed in WAC 260-16-050(2).

WSR 09-05-066

PERMANENT RULES

HORSE RACING COMMISSION

[Filed February 13, 2009, 8:34 a.m., effective March 16, 2009]

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

Purpose: To amend WAC 260-84-060 and 260-84-065 to make changes to the penalty matrixes and penalties for human drug and alcohol violations.

Citation of Existing Rules Affected by this Order: Amending WAC 260-84-060 and 260-84-065.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 09-02-028 on December 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 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: February 12, 2009.

R. J. Lopez
Executive Secretary

AMENDATORY SECTION (Amending WSR 08-05-086, filed 2/15/08, effective 3/17/08)

WAC 260-84-060 Penalty matrixes. (1) The imposition of reprimands, fines and suspensions will be based on the following penalty matrixes:

Class A and B Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Disturbing the peace WAC 260-80-140	Warning to \$200 and/or suspension	Warning to \$500 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010	\$100	\$200	\$300
Unlicensed or improperly licensed personnel WAC 260-28-230, <u>260-36-150, and 260-28-295</u>	\$100	\$200	\$300
Violation of any claiming rule in chapter 260-60 WAC	\$200 to \$500 plus possible suspension		
Failure of jockey agent to honor riding engagements (call) WAC 260-32-400	\$75	\$100	\$200
Failure of jockey to report correct weight WAC 260-32-150	\$100	\$200	\$300
Failure of jockey to appear for films WAC 260-24-510	\$50	\$100	\$200
Failure of jockey to fulfill riding engagement WAC 260-32-080	\$100	\$150	\$200
Jockey easing mount without cause WAC 260-52-040	\$250 and/or suspension	\$500 and/or suspension	\$1000 and/or suspension
Jockey failing to maintain straight course or careless riding with no disqualification (jockey at fault) WAC 260-52-040	Warning to \$750 and/or suspension (riding days)		
Jockey failing to maintain straight course or careless riding resulting in a disqualification (jockey at fault) WAC 260-52-040	Suspension (riding days) and possible fine		
((Jockey's)) Rider's misuse of whip WAC 260-52-040	Warning to \$2500		
Entering ineligible horse or unauthorized late scratch chapter 260-40 WAC ((260-40-140)) and WAC 260-80-030	((250)) \$200	((500)) \$200 to \$300	((1000)) \$200 to \$500
((Unauthorized late scratch (WAC-260-40-010))	\$200	\$300	\$400))
Arriving late to the paddock or receiving barn WAC 260-28-200	Warning to \$50	\$50 to \$100	\$100 to \$200

Class A and B Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Failure to deliver furosemide treatment form to official veterinarian by appointed time WAC 260-70-650	Warning to \$50	<u>\$50 to \$100</u>	<u>\$100 to \$200</u>
((Failure to have registration papers on file – resulting in a scratch WAC 260-40-090	\$200	\$300	\$400))
Failure to obtain permission for equipment changes WAC 260-44-010	\$50	\$100	\$200
Failure to report performance records WAC 260-40-100	Warning to \$50	\$100	\$150
Failure to submit gelding report WAC 260-28-295	\$100	\$200	\$300
((Insufficient workouts – resulting in scratch WAC 260-40-100	\$200	\$300	\$400))

Class C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Disturbing the peace WAC 260-80-140	Warning to \$100 and/or suspension	\$250 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010	\$50	\$100	\$150
Unlicensed or improperly licensed personnel WAC 260-28-230, <u>260-36-150, and 260-28-295</u>	\$50	\$100	\$200
Violation of any claiming rule in chapter 260-60 WAC	\$100 to \$250 plus possible suspension		
Failure of <u>jockey agent</u> to honor riding engagements (call)(agents) WAC 260-32-400	\$25	\$50	\$100
((Reporting incorrect)) Failure of <u>jockey</u> to report correct weight(jockeys) WAC 260-32-150	\$25	\$50	\$100
Failure of <u>jockey</u> to appear for films(jockeys) WAC 260-24-510	\$25	\$50	\$100
Failure of <u>jockey</u> to fulfill riding engagement WAC 260-32-080	\$50	\$100	\$200
<u>Jockey</u> easing mount without cause WAC 260-52-040	\$100	\$200 and/or suspension	\$400 and/or suspension
Jockey failing to maintain straight course or careless riding <u>with no disqualification</u> (jockey at fault) WAC 260-52-040	Warning to \$750 and/or suspension (riding days)		

Class C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
<u>Jockey failing to maintain straight course or careless riding resulting in a disqualification (jockey at fault) WAC 260-52-040</u>	<u>Suspension (riding days) and possible fine</u>		
((Jockey's)) <u>Rider's misuse of whip WAC 260-52-040</u>	Warning to \$2500		
<u>Entering ineligible horse or unauthorized late scratch chapter 260-40 WAC ((260-40-140)) and WAC 260-80-030</u>	\$100	<u>\$100 to \$200</u>	<u>\$200 to \$300</u>
((Unauthorized late scratch WAC 260-40-010	\$100	\$200	\$300))
<u>Arriving late to the paddock WAC 260-28-200</u>	Warning to \$25	\$50	\$100
<u>Failure to deliver furosemide treatment form to official veterinarian by appointed time WAC 260-70-650</u>	Warning to \$25	\$50	\$100
((Failure to have registration papers on file - resulting in a scratch WAC 260-40-090	\$50	\$100	\$100))
<u>Failure to obtain permission for equipment change WAC 260-44-010</u>	<u>\$25</u>	<u>\$50</u>	<u>\$100</u>
<u>Failure to report performance records WAC 260-40-100</u>	<u>Warning to \$25</u>	<u>\$50</u>	<u>\$100</u>
<u>Failure to submit gelding report WAC 260-28-295</u>	\$50	\$100	\$200
((Failure to obtain permission for equipment changes WAC 260-44-010	\$25	\$50	\$100))

Class A, B and C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
<u>Smoking in restricted areas WAC 260-20-030</u>	\$50	\$100	\$250 and/or suspension
<u>Tampering with a fire protection, prevention or suppression system or device WAC 260-20-030</u>	\$200	\$500	\$1000 and/or suspension
<u>Failure to post problem gambling signs WAC 260-12-250</u>	Warning to \$50	\$100	\$200
<u>Issuing a check to the commission with not sufficient funds WAC 260-28-030</u>	\$50	\$100	\$200
<u>Failure to ((follow instructions of the outrider)) ride in a safe or prudent manner WAC ((260-24-690)) 260-80-145</u>	\$50	\$100	\$200

Class A, B and C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Use of improper, profane, or indecent language WAC 260-80-130	<u>Warning to \$200</u>	<u>\$200 to \$300</u>	<u>\$300 to \$500</u>
Failure to complete (provisional) <u>temporary</u> license application within fourteen days WAC 260-36-200	\$100 and suspension of license	\$250 and suspension of license	\$500 and suspension of license
Failure to register employees with the commission (trainers responsibility) WAC 260-28-230	Warning to \$50	\$100	\$200
Failure to furnish fingerprints WAC 260-36-100	\$100 and suspension of license	\$250 and suspension of license	\$500 and suspension of license
Nonparticipation - licensing WAC 260-36-080	License canceled		
False application WAC (260-36-100 and 260-36-120) <u>260-36-050</u>	\$50 to \$250 and/or possible denial, suspension or revocation of license		
Failure to divulge a misdemeanor or gross misdemeanor WAC (260-36-120) <u>260-36-050</u>	Warning to \$100		
Failure to divulge a felony WAC (260-36-120) <u>260-36-050</u>	\$100 to \$250 and/or denial, suspension, or revocation of license		
Failure to provide full disclosure, refusal to respond to questions, or responding falsely to stewards or commission investigators WAC 260-24-510	\$500 fine and/or denial, suspension or revocation of license		
Failure to pay proper industrial insurance premium(s) (chapter 260-220) WAC 260-36-220 and (WAC) 260-36-230	In addition to being required to pay the full industrial insurance premium, the trainer will be assessed a fine equal to fifty percent of the premium due		
Failure to pay L&I payment agreement (WAC 260-28-235) (<u>per contract</u>)	Immediate suspension until premium paid and \$50 fine for each quarter payment is late		
(Unlicensed person on the backside WAC 260-20-040)	<u>Report violation to the racing association</u>)		
Financial responsibility WAC 260-28-030	Resolution with mutual agreement between the parties - failure to comply with the agreement will result in immediate suspension		
Failure to appear for a ruling conference WAC 260-24-510	Suspension (conference may be held in individual's absence)		
Failure to pay fine within 7 days of ruling conference (no extension granted or no request for hearing filed) WAC 260-24-510	Suspension until fine paid		
Possession or use of a stimulating device (may include batteries) WAC 260-52-040 and 260-80-100	<u>Immediate ejection from the grounds</u> , 1 year suspension (plus), <u>and</u> mandatory referral to commission for revocation		
Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010	<u>Immediate ejection from the grounds</u> , 1 year suspension (plus), <u>and</u> mandatory referral to commission for revocation		

Class A, B and C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Failure to wear proper safety equipment WAC 260-12-180 and 260-32-105	\$50	\$100	\$200
Horses shod with improper toe grabs WAC 260-44-150	Horse scratched and \$250 fine to trainer and plater	Horse scratched and \$500 fine to trainer and plater	Horse scratched and \$1000 fine to trainer and plater
Failure to display or possess license badge when in restricted area WAC 260-36-110	\$25	\$50	\$100

(2) In determining whether an offense is a first, second, third or subsequent offense, the commission, or designee will include violations which occurred in Washington as well as any other recognized racing jurisdiction. If a penalty is not listed under second or third/subsequent offense columns, the penalty listed in the "first offense" column will apply to each violation.

(3) Except as otherwise provided in this chapter, for any other violation not specifically listed above, the stewards have discretion to impose the penalties as provided in WAC 260-24-510 (3)(a). For violations considered minor, the fine can be up to \$500 and/or suspension for up to sixty days. Fines for violations considered major can be up to \$2,500 and/or suspension up to one year, or revocation.

(4) Circumstances which may be considered for the purpose of mitigation or aggravation of any penalty will include, but are not limited to, the following:

- (a) The past record of the licensee or applicant;
- (b) The impact of the offense on the integrity of the parimutuel industry;
- (c) The danger to human and/or equine safety;
- (d) The number of prior violations of these rules of racing or violations of racing rules in other jurisdictions; and/or
- (e) The deterrent effect of the penalty imposed.

(5) For violations covered by chapter 260-70 WAC, Medication, the stewards will follow the penalty guidelines as set forth in WAC 260-84-090, 260-84-100, 260-84-110, 260-84-120, and 260-84-130.

(6) The executive secretary or stewards may refer any matter to the commission and may include recommendations for disposition. The absence of a (~~stewards'~~) referral will not preclude commission action in any matter. (~~(A)~~) An executive secretary's or stewards' ruling will not prevent the commission from imposing a more severe penalty.

AMENDATORY SECTION (Amending WSR 07-03-066, filed 1/16/07, effective 2/16/07)

WAC 260-84-065 Licensees—Drug and alcohol penalties. (1) Engaging in the illegal sale or distribution of alcohol in violation of WAC 260-34-020(2).

- (a) First offense - thirty-day suspension; and
- (b) Second or subsequent offense - one-year suspension and referral to the commission for revocation.

(2) Possessing 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, other than marijuana in violation of WAC 260-34-020(5); or possessing or having within their body while on the grounds of a licensed race meet any illegal controlled substance, in violation of WAC 260-34-020 (1) or (4).

- (a) First offense - thirty-day suspension; and
- (b) Second offense - one-year suspension and referral to the commission for revocation.

(3) Possessing any equipment, products or materials of any kind, which are used or intended for use in ingesting, inhaling or otherwise introducing into the human body marijuana, in violation of WAC 260-34-020(5); or possessing or having within their body marijuana, an illegal controlled substance, while on the grounds of any licensed race meet, in violation of WAC 260-34-020(1).

- (a) First offense - three-day suspension;
- (b) Second offense - thirty-day suspension; and
- (c) Third or subsequent offenses - one-year suspension and referral to commission for revocation.

(4) Being under the influence of or affected by intoxicating liquor and/or drugs in violation of WAC 260-34-020(1), excluding persons on horseback.

- (a) First offense - warning to one-day suspension;
- (b) Second offense - three-day suspension;
- (c) Third offense - thirty-day suspension; and
- (d) Subsequent offenses - one-year suspension and referral to commission for revocation.

(5) Being under the influence of or affected by intoxicating liquor and/or drugs, and being on horseback in violation of WAC 260-34-020(1).

- (a) First offense - warning to three-day suspension;
- (b) Second offense - up to a thirty-day suspension; and
- (c) Third offense - up to a one-year suspension and referral to commission for revocation.

(6) Refusing to submit to a drug or alcohol test, in violation of WAC 260-34-020(6) will result in a penalty of a one-year suspension plus referral to the commission for revocation.

(~~(6)~~) (7) Possessing any equipment or material used to manufacture or distribute any controlled substance, or engaging in the sale, manufacturing or distribution of any illegal controlled substance or possessing an illegal controlled substance with intent to deliver on the grounds of any licensed race meet in violation of WAC 260-34-020 (3) or (5), imme-

diate ejection from the grounds, a one-year suspension plus referral to the commission for revocation.

~~((7))~~ (8)(a) For violations of WAC 260-34-020 (1) and (4), the board of stewards may stay a suspension if the licensee or applicant shows proof of participation in a drug rehabilitation or alcohol treatment program approved or certified by the department of social and health services. Individuals will only be allowed a stay of a suspension under this subsection once in a five-year period. If during the period of the stay a licensee or applicant violates the provisions of chapter 260-34 WAC, the violation for which the stay of suspension was entered will be considered as a prior violation for penalty purposes. Before being granted a stay of the suspension, the licensee or applicant must also agree to comply with the following conditions during the duration of the treatment program:

(i) Remain in compliance with the rehabilitation and/or treatment program.

(ii) Submit to random drug or alcohol testing at the discretion of the board of stewards or commission security investigators.

(iii) Have no violations of chapter 260-34 WAC.

Upon completion of the rehabilitation or treatment program, the licensee or applicant must provide documentation of completion to the board of stewards. Upon making a determination that the licensee or applicant successfully completed the rehabilitation or treatment program, the board of stewards may direct that the final disposition of the violation will be that the licensee or applicant completed a treatment program in lieu of suspension.

(b) If the board of stewards, after a conference, finds that the licensee or applicant failed to comply with the conditions required in (a)(iii) of this subsection, the board of stewards has discretion to impose the original suspension authorized by this rule. If the failure to comply with the conditions of the stay is a violation of chapter 260-34 WAC, the board of stewards may also hold a ruling conference for that rule violation and impose such penalty as is provided for that violation.

~~((8))~~ (9) Any licensee or applicant who tests positive (presumptive or confirmatory) for the presence of an illegal controlled substance is prohibited from performing any duties for which a license is required until the licensee does not test positive (presumptive or confirmatory) for the presence of any illegal controlled substance.

~~((9))~~ (10) Any licensee or applicant who is affected by intoxicating liquor or who has an alcohol concentration of 0.08 percent or higher is prohibited from performing any duties for which a license is required until the licensee is not affected by intoxicating liquor and his/her alcohol concentration is below 0.08 percent.

(11) Any licensee or applicant who has an alcohol concentration of 0.02 percent or higher while on horseback is prohibited from being on horseback until his/her alcohol concentration is below 0.02 percent.

WSR 09-05-067
PERMANENT RULES
ENERGY FACILITY SITE
EVALUATION COUNCIL

[Filed February 13, 2009, 10:03 a.m., effective March 16, 2009]

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

Purpose: Chapters 463-10 and 463-43 WAC are each amended to reflect statute changes. Chapter 463-58 WAC is amended to clarify fee language, update to include required monetary charges for electrical transmission facilities, clarify responsibility for financial services, and correct a citation. Chapter 463-60 WAC is amended to add existing requirements for carbon dioxide plan submittal, meeting greenhouse gas performance standards, and meeting electrical transmission facilities rules. Chapter 463-62 WAC is amended to correct a citation.

Citation of Existing Rules Affected by this Order: Amending chapters 463-10, 463-43, 463-58, 463-60, and 463-62 WAC.

Statutory Authority for Adoption: Chapter 80.50 RCW.

Other Authority: RCW 80.50.040.

Adopted under notice filed as WSR 09-01-050 on December 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 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 18, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 8, Repealed 0.

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

Date Adopted: February 10, 2009.

Allen J. Fiksdal
Manager

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-10-010 Definitions. Except where otherwise indicated in the following chapters, the following terms have the meaning shown:

(1) "Council" means the energy facility site evaluation council created pursuant to chapter 80.50 RCW and, where appropriate, to the staff of the council.

(2) "Applicant" means the person or entity making application for a certification or permit covered by this title.

(3) "Adjudicative proceeding" means a proceeding conducted pursuant to RCW 80.50.090(3) and the state Administrative Procedure Act.

(4) "Certificate holder" means a person or entity who is signatory to a site certification agreement, which has been signed by the governor, and who is bound by its terms.

(5) "Chair" means the person appointed by the governor pursuant to RCW 80.50.030.

(6) "Council manager" means the individual who handles day-to-day administration for the council, administers the decisions of the council, and directs the staff that supports the council.

(7) "Energy facility" includes electrical transmission facilities under RCW 80.50.020(8) and alternative energy resources under RCW 80.50.020(18).

(8) "Site certification agreement (SCA)" means the agreement between the state of Washington and the applicant that prescribes the conditions required for construction and operation of an energy facility.

~~((8))~~ (9) "Rule" as used herein, includes the terms "agency order," "directive" or "regulation" in accordance with RCW 34.05.010(16).

NEW SECTION

WAC 463-43-025 Environmental checklist required.

An applicant seeking expedited processing shall submit a completed SEPA environmental checklist with an application for site certification unless the council finds the proposal is categorically exempt.

AMENDATORY SECTION (Amending Order 78-2, filed 4/26/78)

WAC 463-43-030 Eligible proposals. An application may be expedited when the council finds ~~((that the following are not significant enough to warrant a full review of the application for certification under the provisions of chapter 80.50 RCW))~~:

(1) The environmental impact of the proposed energy facility ~~((;))~~ will be mitigated to a nonsignificant level under the State Environmental Policy Act; and

(2) The ~~((area potentially affected;~~

~~((3) The cost and magnitude of the proposed energy facility; and~~

~~((4) The degree to which the proposed energy facility represents a change in use of the proposed site))~~ project is found to be consistent and in compliance with city, county, or regional land use plans.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-43-040 Prior to making a determination of eligibility for expedited processing. The council prior to making a determination of eligibility for expedited processing shall:

(1) Conduct a public informational meeting in the county of the proposed site within sixty days of receipt of an application to provide information to the public concerning the nature and purpose of the energy facility and the review process to be undertaken by the council and to provide an opportunity for the public to present its views;

(2) Determine at a public hearing within sixty days of receipt of an application if the proposed site is consistent and in compliance with city, county or regional land use plans and zoning ordinances;

(3) Review the application pursuant to WAC 463-43-030; in making its review the council may engage pursuant to RCW 80.50.071 (1)(a) an independent consultant to provide an assessment of the application and environmental checklist and to conduct any special study deemed necessary by the council; and

(4) If applicable, initiate processing of ((the applicant's)):

(a) A NPDES application((, if required,)) in accordance with chapter 463-76 WAC;

(b) An air emissions or PSD permit application in accordance with 463-78 WAC;

(c) Other such authorizations or permits as may be required by law or rule and necessary for construction and operation of the project.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-43-050 Expedited processing determination. Following the review of an application, environmental checklist, and land use hearing and within one hundred twenty days of receipt of an application or such later time as is mutually agreed by the applicant and the council, the council by order will grant expedited processing for an application when it has found that:

(1) The proposed site is consistent and in compliance with city, county or regional land use plans ~~((and))~~, zoning ordinances; and

(2) The environmental impacts ~~((, area potentially affected, cost and magnitude, and degree of change in use caused by the proposed energy facility))~~ are not significant ~~((enough to warrant a full review of an application for certification under the provisions of chapter 80.50 RCW))~~ or may be mitigated to nonsignificant level under RCW 43.21C.031.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-43-060 Effect of expedited processing. For an application granted expedited processing under WAC 463-43-050 the council shall not:

(1) Conduct any further review of an application by an independent consultant; however, at the direction of the council an independent consultant may prepare air or water discharge permits or other ancillary permits or studies that may be needed as part of a recommendation to the governor;

(2) Hold an adjudicative proceeding under chapter 34.05 RCW; and

(3) Continue an adjudicative proceeding that has commenced.

Chapter 463-58 WAC

~~((FEES OR))~~ CHARGES FOR INDEPENDENT CONSULTANT STUDY, REGULAR AND EXPEDITED APPLICATION PROCESSING, ELECTRICAL

TRANSMISSION PREAPPLICATIONS, DETERMINING COMPLIANCE AND POTENTIAL SITE STUDY

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-58-010 Purpose. This chapter sets ~~((forth))~~ rules relating to ~~((fees or))~~ costs or charges for independent consultant studies, regular and expedited application processing, electrical transmission facility preapplication, determining compliance and potential site studies. The department of community, trade, and economic development will provide all fiscal services for the council. For the purposes of this chapter "department" shall mean the department of community, trade, and economic development.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-58-020 ((Fees)) Costs for the independent consultant studies. Pursuant to RCW 80.50.071, a ~~((fee))~~ deposit of twenty-five thousand dollars for each proposed site shall accompany the application for an energy facility site certification. This ~~((fee))~~ charge shall be applied toward the total cost of the independent consultant study authorized by RCW 80.50.071. The determination of the total ~~((fees))~~ costs required for the study shall generally be as follows:

(1) The council may determine that the initial ~~((fee))~~ charge of twenty-five thousand dollars is insufficient to adequately fund the study. If so, the council shall so advise the applicant and shall furnish an estimate of the supplemental ~~((fees))~~ costs needed to complete the study and shall direct the applicant to increase the funds on deposit to cover the anticipated costs. In no event shall the study be allowed to continue if the applicant has not agreed to pay the cost thereof and has not deposited the agreed upon funds;

(2) Should the applicant file amendments or supplements to the application or should the council find that additional study of the application is required, additional cost estimates will be prepared by the consultant and provided to the council. Upon approval of the estimate by the council, the applicant shall be advised of the additional study costs;

(3) The council shall authorize the independent consultant to initiate evaluation of the application materials or subsequently filed amendatory or supplementary materials when the applicant has paid the required costs.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-58-030 ((Fees)) Costs for regular application processing. Pursuant to RCW 80.50.071 each applicant for energy facility site certification shall at the time of application submission deposit twenty thousand dollars for costs related to processing of the application. Such processing costs shall consist of those determined by the council to be reasonable and necessary including:

(1) A hearing examiner(s) who may be retained by the council for the duration of the application processing period or for such portion of the processing period as the council may consider necessary;

(2) A court reporter(s) for the recording and preparation of transcripts of an adjudicative proceeding, council meetings or public sessions which the council shall consider necessary;

(3) Additional staff salaries for those persons employed on the council staff for the duration of the application processing period; and

(4) Such overhead and support costs including wages and employee benefits, goods and services, travel expenses within the state and miscellaneous expenses as arise directly from application processing;

(5) The council may determine that the initial ~~((fee))~~ charge of twenty thousand dollars is insufficient to fund the council costs. If so, the council shall so advise the applicant and shall request the applicant to increase the funds on deposit to cover the anticipated costs. In no event shall the processing of the application continue if the applicant has not agreed to pay the cost thereof and has not deposited the agreed upon funds.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-58-040 ((Fees)) Costs for expedited application processing. Applicants filing applications for expedited processing under RCW 80.50.075 shall provide ~~((fees))~~ funding in accordance with WAC 463-58-020 and 463-58-030.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-58-050 ((Fees)) Costs for determining compliance. Pursuant to RCW 80.50.071 (1)(c) each certificate holder shall pay such reasonable costs as are actually and necessarily incurred by the council for inspection and determination of compliance by the certificate holder with the terms and conditions of the certificate. The amount of funds required to be placed on deposit by the certificate holder shall be determined by the council and deposited by the applicant within thirty days of the governor's signing the site certification agreement.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-58-060 ((Fees)) Costs for potential site studies. ~~((A fee of))~~ Ten thousand dollars shall accompany the study request and be a condition precedent to any action by the council. In the event that the council determines that the initial fee of ten thousand dollars is insufficient to adequately fund the potential site study, the council shall so advise the potential applicant and shall furnish an estimate of the supplemental ~~((fees))~~ funds needed to complete the study. In no event shall the study be allowed to continue if the potential applicant has not agreed to pay the cost ~~((thereof))~~.

NEW SECTION

WAC 463-58-065 Costs for preapplication process for electrical transmission facilities. Pursuant to RCW 80.50.340, ten thousand dollars shall accompany any preap-

plication request. If the council determines that the initial ten thousand dollars is insufficient to adequately fund the preapplication process, the council shall so advise the potential applicant and shall provide an estimate of the supplemental cost needed to complete the study. In no event shall the study be allowed to continue if the potential applicant has not agreed to pay the cost of the study. Any unexpended funds shall be returned to the preapplicant.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-58-070 Failure to provide necessary ((fees)) costs. Failure to comply with WAC 463-58-020 through 463-58-060 shall result, in the case of an applicant, in suspension of all application processing activities or, in the case of a certificate holder, in the council's initiation of enforcement action pursuant to WAC ((463-54-070)) 463-70-070. The council will require any delinquent applicant or certificate holder to show cause why the council should not suspend application processing. Following deposit of all required ((fees)) funds the council shall in the case of application processing, consider reinstatement of application processing, or in the case of a certificate holder, reconsider enforcement action.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-58-080 Payment, reporting and auditing procedures. (1) The department provides all financial services for the council and will provide each applicant or certificate holder a statement of expenditures actually made during the preceding calendar quarter; the statement will be in sufficient detail to explain expenditures made against the deposited funds. Within thirty days of the receipt of the ((council's)) department's statement the applicant or certificate holder will pay an amount necessary to restore the total amount on deposit to the level established pursuant to WAC 463-58-020 through 463-58-060.

(2) Any funds remaining unexpended shall be refunded to the certificate holder, or in the case of an applicant to the applicant or, at the applicant's option, credited against required deposits of a certificate holder.

(3) All payments shall be ((made by a cashier's check)) payable to the state treasurer ((and delivered to the council office)). The method of payment shall be prearranged with the department prior to submission. The ((council)) department will establish and maintain separate accounts for each application and certificate. All funds will be subject to state auditing procedures. The ((council)) department will provide copies of such audits to the affected applicants and certificate holders as they are completed by the state auditor.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-010 Purpose. This chapter sets forth guidelines for preparation of applications for energy facility site certification pursuant to chapter 80.50 RCW. Applications for siting energy facilities must contain information

regarding the standards required by chapter 463-62 WAC. Applications for fossil-fueled thermal and/or baseload electric generation facilities shall contain information required by chapters 463-80 and 463-85 WAC.

The application shall provide the council with information regarding the applicant, the proposed project design and features, the natural environment, and the built environment. This information shall be in such detail as determined by the council to enable the council to go forward with its application review.

The council encourages applicants to consult with appropriate agencies for guidance in gathering sufficient detailed information, and development of comprehensive mitigation plans, for inclusion in their application.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-035 General—((Fee)) Application review costs and funding. The statutory ((fee)) initial charges shall accompany an application and shall be a condition precedent to any action by the council. The initial costs and any additional funds needed for the review of an application, including the method of payment, shall be ((by a cashier's check payable to the state treasurer)) in accordance with chapter 463-58 WAC.

AMENDATORY SECTION (Amending WSR04-23-003, filed 11/4/04, effective 11/11/04)

WAC 463-60-117 General—Applications for expedited processing. (1) Request for expedited processing. Requests for expedited processing shall be accompanied by a completed environmental checklist delineated in WAC 197-11-960. The request for expedited processing shall also address the reasons for which the following are not significant enough to warrant a full review of the application for certification under the provisions of chapter 80.50 RCW:

- (a) The environmental impact of the proposed energy facility;
- (b) The area potentially affected;
- (c) The cost and magnitude of the proposed energy facility; and
- (d) The degree to which the proposed energy facility represents a change in use of the proposed site.

(2) Contents. Applications for expediting processing submitted to the council in accordance with the requirements of chapter 463-43 WAC must address all sections of chapters 463-60 and 463-62 WAC.

(3) ((Fees)) Funds. The applicant shall submit those ((fees)) funds and costs for independent consultant review and application processing pursuant to RCW 80.50.071 (1)(a) and (b) and chapter 463-58 WAC with the understanding that any unexpended portions shall be returned to the applicant at the completion of application processing.

NEW SECTION

WAC 463-60-160 Proposal—Electrical transmission facilities. (1) Prior to submitting an application for site certification for an electric transmission facility under RCW

80.50.060(3) an applicant shall follow the procedure as set in chapter 463-61 WAC.

(2) An application for an electric transmission facility shall include the information required by this chapter unless the requirement may not be applicable to such a facility.

(3) An application for an electrical transmission facility shall include the results of any preapplication negotiations including any agreements between the applicant and cities, towns, or counties where the electrical transmission facility is proposed to be located.

NEW SECTION

WAC 463-60-230 Proposal—Carbon dioxide mitigation. For thermal electric energy facilities, the application shall include a carbon dioxide mitigation plan and information required by chapter 463-80 WAC.

NEW SECTION

WAC 463-60-232 Proposal—Greenhouse gases emissions performance standards. For baseload electric generating facilities, the application shall provide information required by, and describe how the requirements of chapter 463-85 WAC will be met.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-312 Natural environment—Air. The application shall provide detailed descriptions of the affected environment, project impacts, and mitigation measures for the following:

(1) Air quality. The application shall identify all pertinent air pollution control standards. The application shall contain adequate data showing air quality and meteorological conditions at the site. Meteorological data shall include, at least, adequate information about wind direction patterns, air stability, wind velocity patterns, precipitation, humidity, and temperature. The applicant shall describe the means to be utilized to assure compliance with applicable local, state, and federal air quality and emission standards.

(2) Odor. The application shall describe for the area affected all odors caused by construction or operation of the facility, and shall describe how these are to be minimized or eliminated.

(3) Climate. The application shall describe the extent to which facility operations may cause visible plumes, fogging, misting, icing, or impairment of visibility, and changes in ambient levels caused by all emitted pollutants.

(4) Climate change. The application shall describe impacts caused by greenhouse gases emissions and the mitigation measures proposed.

(5) Dust. The application shall describe for any area affected all dust sources created by construction or operation of the facility, and shall describe how these are to be minimized or eliminated.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-62-010 Purpose. (1) The purpose of this chapter is to implement the policy and intent of RCW 80.50.010. This chapter sets forth performance standards and mitigation requirements specific to seismicity, noise limits, fish and wildlife, wetlands, water quality, and air quality, associated with site certification for construction and operation of energy facilities under the jurisdiction of the council. The council shall apply these rules to site certification agreements issued in connection with applications filed after the effective date of this chapter. Except for the provisions in chapter ((463-36)) 463-66 WAC, these regulations shall not apply to energy facilities for which site certification agreements have been issued before the effective date of this chapter.

(2) The provisions of this chapter shall apply to the construction and operation of energy facilities, pursuant to chapter 80.50 RCW.

(3) Compliance with the standards within this chapter shall satisfy, in their respective subject areas, the requirements for issuance of a site certificate for construction and operation of energy facilities specified in subsection (2) of this section provided, however, that the council may require additional mitigation in the event that documents prepared pursuant to 43.21 RCW (State Environmental Policy Act), demonstrate that the project poses a probable significant adverse impact that is not mitigated by the provisions of this chapter.

WSR 09-05-071

PERMANENT RULES

DEPARTMENT OF LABOR AND INDUSTRIES

[Filed February 17, 2009, 7:33 a.m., effective April 1, 2009]

Effective Date of Rule: April 1, 2008.

Purpose: The occupational safety and health administration (OSHA) has recently revised several of their rules to clarify the fact that personal protective equipment (PPE) for employees is to be paid for by the employer. The department is adopting the same changes to our rules to remain as effective as OSHA as mandated by statute.

Citation of Existing Rules Affected by this Order: Amending chapter 296-32 WAC, Safety standards for telecommunications; chapter 296-45 WAC, Safety standards for electrical workers; chapter 296-54 WAC, Safety standards—Logging operations; chapter 296-56 WAC, Safety standards—Longshore, stevedore and related waterfront operations; chapter 296-59 WAC, Safety standards for ski area facilities and operations; chapter 296-78 WAC, Safety standards for sawmills and woodworking operations; chapter 296-155 WAC, Safety standards for construction work; chapter 296-800 WAC, Safety and health core rules; chapter 296-809 WAC, Confined spaces; chapter 296-818 WAC, Abrasive blasting; chapter 296-824 WAC, Emergency response; chapter 296-826 WAC, Anhydrous ammonia; chapter 296-

843 WAC, Hazardous waste operations; and chapter 296-848 WAC, Arsenic.

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

Adopted under notice filed as WSR 08-23-086 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 15, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: February 17, 2009.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 02-12-098, filed 6/5/02, effective 8/1/02)

WAC 296-32-250 Tools and personal protective equipment—General. (1) Personal protective equipment (PPE), protective devices and special tools needed for the work of employees shall be provided and the employer shall ensure that they are used by employees.

(a) Before each day's use the employer shall ensure that these personal protective devices, tools, and equipment are carefully inspected by a competent person to ascertain that they are in good condition.

(b) Tools found to be defective shall be taken out of service.

(c) PPE shall be provided at no cost to the employee.

(2) Head protection. Head protection meeting the requirements of ANSI Z89.2-1971, "Safety Requirements for Industrial Protective Helmets for Electrical Workers, Class B", must be provided whenever there is possible exposure to high voltage electrical contact. Employers must make sure that employees use the head protection.

(3) Eye protection. Protective eye and face equipment shall be required where there is a possibility of injury that can be prevented by such equipment. In such cases, employers shall make conveniently available a type of protector suitable for the work to be performed, and employees shall use such protectors.

Note: See WAC 296-800-160 for additional personal protective equipment requirements.

(4) Tent heaters, torches and open flame. Open flames shall not be used within ground tents or on platforms within aerial tents unless:

(a) The tent covers are constructed of fire resistant materials, and

(b) Ventilation is provided to maintain safe oxygen levels and avoid harmful buildup of combustion products and combustible gases.

(5) Portable power equipment.

(a) All portable power equipment used in the telecommunications industry shall be grounded.

(b) Nominal 120V, or less, portable generators used for providing power at work locations do not require grounding if the output circuit is completely isolated from the frame of the unit.

(c) Grounding shall be omitted when using soldering irons, guns or wire-wrap tools on telecommunication circuits.

(6) Vehicle-mounted utility generators. Vehicle-mounted utility generators used for providing nominal 240V AC or less for powering portable tools and equipment need not be grounded to earth if all of the following conditions are met:

(a) One side of the voltage source is solidly strapped to the metallic structure of the vehicle;

(b) Grounding-type outlets are used, with a "grounding" conductor between the outlet grounding terminal and the side of the voltage source that is strapped to the vehicle;

(c) All metallic encased tools and equipment that are powered from this system are equipped with three-wire cords and grounding-type attachment plugs, except as designated in subsection (7) of this section.

(7) Portable lights, tools and appliances. When operated from commercial power such metal parts of these devices shall be grounded, unless these tools or appliances are protected by a system of double insulation, or its equivalent. Where such a system is employed, the equipment shall be distinctively marked to indicate double insulation.

(8) Lead work. When operated from commercial power the metal housing of electric solder pots shall be grounded. Electric solder pots may be used with the power equipment described in this subsection, without a grounding conductor.

The employer shall ensure that wiping gloves or cloths and eye protection are used in lead wiping operations. A drip pan to catch hot lead drippings shall also be provided and used.

(9) Fire extinguishers.

(a) Fire extinguishers shall be provided for the protection of both the building structure and the occupancy hazards contained therein.

(b) Employees shall be familiar with the location and operation of fire extinguishers.

(c) Any fire extinguishers showing defects shall be removed from service.

(d) Fire extinguishers shall be thoroughly examined and/or recharged or repaired to insure operability and safety once every year.

(e) Each fire extinguisher shall have a durable tag securely attached to show the maintenance or recharge date and the initials or signature of the person performing this service.

Note: For additional requirements relating to portable fire extinguishers see WAC 296-800-300.

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

WAC 296-45-25505 Personal protective equipment.

(1) General. Personal protective equipment (PPE) shall meet the requirements of chapter 296-24 WAC, Part L and (~~WAC 296-800-150~~) the PPE requirements in chapter 296-800 WAC. PPE required by these chapters or a hazard assessment will be provided by the employer at no cost to the employee.

(2) All protective hats shall be in accordance with the specifications of ANSI Z89.2-1971 Edition Industrial Protective Helmets for Electrical Workers, Class B, and shall be worn at the job site by employees who are exposed to overhead or electrical hazards.

(3) Wearing apparel. Goggles, hearing protection, respirators, rubber gloves, and other such personal protective devices shall not be interchanged among employees unless they have been sanitized.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-511 Personal protective equipment

(PPE). (1) Protective equipment, including personal protective equipment for eyes, face, head, hearing and extremities, protective clothing, respiratory devices and protective shields and barriers, must be used, and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.

(2) Personal protective equipment, including any personal protective equipment provided by an employee, must be maintained in a serviceable condition.

(3) Design. All personal protective equipment must be of safe design and construction for the work to be performed. All safety belts and attachments must meet the requirements of section 3 of ANSI A10.14-1975.

(4) Personal protective equipment, including any personal protective equipment provided by an employee, must be inspected before initial use during each workshift. Defects or damage must be repaired or the unserviceable personal protective equipment must be replaced before work is commenced.

(5) Personal protective equipment required by this standard shall be provided at no cost to the employee.

NEW SECTION

WAC 296-56-60116 Payment for protective equipment. (1) Except as provided by subsections (2) through (6) of this section, the protective equipment, including personal protective equipment (PPE), used to comply with this part, shall be provided by the employer at no cost to employees.

(2) The employer is not required to pay for nonspecialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) and nonspecialty prescription safety eyewear,

provided that the employer permits such items to be worn off the job site.

(3) When the employer provides metatarsal guards and allows the employee, at his or her request, to use shoes or boots with built-in metatarsal protection, the employer is not required to reimburse the employee for the shoes or boots.

(4) The employer is not required to pay for:

(a) Everyday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots; or

(b) Ordinary clothing, skin creams, or other items, used solely for protection from the weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, ordinary sunglasses, and sunscreen.

(5) The employer must pay for replacement PPE, except when the employee has lost or intentionally damaged the PPE.

(6) Where an employee provides adequate protective equipment he or she owns, the employer may allow the employee to use it and is not required to reimburse the employee for that equipment. The employer shall not require an employee to provide or pay for his or her own PPE, unless the PPE is excepted by subsections (2) through (6) of this section.

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

WAC 296-59-050 Personal protective equipment, general requirements. (1) Application.

(a) Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided at no cost to the employee, used, and maintained in a sanitary and reliable condition wherever it is indicated by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation, or physical contact.

(b) Employee-owned equipment. Where employees provide their own protective equipment, the employer shall be responsible to assure its adequacy, including proper maintenance, and sanitation of such equipment.

(c) Design, construction, testing, and use of personal protective equipment shall comply with the requirements of the safety and health core rules, WAC 296-800-160; the Occupational health standards—Safety standards for carcinogens, chapter 296-62 WAC; or the currently applicable ANSI standard.

(2) Eye and face protection. Eye and face protective equipment shall be provided and worn where there is exposure in the work process or environment to hazard of injury, which can be prevented by such equipment.

(3) Occupational head protection. Employees working in areas where there is a possible danger of head injury from impact, or from falling or flying objects, or from electrical shock and burns, shall be protected by protective helmets, i.e., a lift operator would not be required to use a hardhat while operating the lift. However, if that same person is assisting with maintenance operations and is working under a

tower where overhead work is being done, that operator would now be required to wear an approved helmet.

(a) Helmets for the protection of employees against impact and/or penetration of falling and flying objects shall meet the specifications contained in American National Standards Institute, Z89.1-1986, Safety Requirements for Industrial Head Protection.

(b) Helmets for the head protection of employees exposed to high voltage electrical shock and burns shall meet the specifications contained in American National Standards Institute, Z89.2-1971, Safety Requirements for Industrial Protective Helmets for Electrical Workers, Class B.

(c) Approved head protection shall be worn by operators of snowmobiles and other mobile oversnow equipment which is not equipped with a rigid metal operator's cab.

(4) Occupational foot protection.

(a) Substantial footwear appropriate for the work conditions encountered shall be worn by all employees.

(b) Where the job assignment includes exposure to slipping hazards, soles and heels of footwear shall be of such material and design as to reduce the hazard of slipping.

(5) Safety belts, lifelines, lanyards, and nets.

(a) Safety belts, lifelines, and lanyards which meet the requirements of ANSI A10.14 shall be provided and used whenever employees are working in locations which expose them to a fall of more than ten feet. The particular work location and application shall dictate which type of belt or harness and length of lanyard is used.

(b) Lifelines shall be secured to an anchorage or structural member capable of supporting a minimum dead weight of five thousand four hundred pounds.

(c) Lifelines used on rock scaling applications or in areas where the lifeline may be subjected to cutting or abrasion shall be a minimum of seven-eighths inch wire core manila rope or equivalent. For all other lifeline applications, three-fourths inch manila rope or equivalent with a minimum break strength of five thousand four hundred pounds may be used.

(d) Each safety belt lanyard shall be a minimum of one-half inch nylon, or equivalent, with a minimum of five thousand four hundred pounds breaking strength.

(e) Employees will not be required to wear a safety belt and lanyard while riding on a standard lift chair while seated in the normal riding position.

(f) Safety nets meeting the requirements of ANSI A10.11 shall be used when other acceptable forms of fall protection are not useable. When used, safety nets shall extend a minimum of eight feet beyond the edge offering exposure, shall be hung with sufficient clearance to prevent user's contact with surfaces or objects below, and shall not be more than twenty-five feet below the fall exposure edge.

AMENDATORY SECTION (Amending WSR 08-05-012, filed 2/8/08, effective 4/1/08)

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

(a) A safe and healthful working environment.

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

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

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

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

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

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

(5) Reporting of fatality or hospitalization incidents.

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

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

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

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

(b) Equipment involved in an incident resulting in an immediate or probable fatality or in the in-patient hospitalization of any employee, shall not be moved, until a representa-

tive of the department investigates the incident and releases such equipment, except where removal is essential to prevent further incident. Where necessary to remove the victim, such equipment may be moved only to the extent of making possible such removal.

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

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

- Note: Recordable cases include:
- (a) Every occupational death.
 - (b) Every industrial illness.
 - (c) Every occupational injury that involves one of the following:
 - (i) Unconsciousness.
 - (ii) Inability to perform all phases of regular job.
 - (iii) Inability to work full time on regular job.
 - (iv) Temporary assignment to another job.
 - (v) Medical treatment beyond first aid.

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

(7) Personal protective equipment required by this standard shall be provided at no cost to employees.

AMENDATORY SECTION (Amending WSR 04-24-089, filed 12/1/04, effective 1/1/05)

WAC 296-155-200 General requirements for personal protective equipment (PPE). (1) Supplying personal protective equipment

(a) Personal protective equipment (PPE) must be used wherever physical contact, absorption, or inhalation of a hazard could cause any injury or impairment to the function of any part of the body.

These hazards include:

- Hazardous processes;
- Environmental hazards;
- Chemical hazards;
- Radiological hazards;

OR

- Mechanical irritants.

- Note: PPE includes:
- Protective equipment for eyes, face, head, hearing, and extremities;
 - Protective clothing;
 - Respiratory devices;
- AND**
- Protective shields and barriers.

(b) PPE must be maintained in a sanitary and reliable condition.

- Reference:** For requirements on maintaining specific personal protective equipment (PPE), see the following rules.
- Chapter 296-842 WAC, Respirators;
- AND**
- Chapter 296-817 WAC, Hearing loss prevention.

(c) If employees provide their own protective equipment, then the employer is responsible to make sure the PPE is:

- Adequate;
- Properly maintained;

AND

- Sanitary.

(d) All personal protective equipment must be of safe design and construction for the work to be performed.

(2) Minimum clothing requirements.

(a) Employers must ensure that employees wear at least:

- A short-sleeved shirt;
- Long pants;

AND

• Shoes that meet the requirements of WAC 296-155-212, Foot protection.

Definition:

A *short-sleeved shirt* covers the top of the shoulder and has material extending down the arm. If a short-sleeved shirt has a seam at the end of the shoulder, the material must extend down the arm from the seam.

Long pants have legs that extend past the knee when the wearer stands and leaves no exposed skin on the lower leg.

(b) Where there is a danger of contact with moving parts of machinery, or the work process is such that a hazard exists:

- The clothing of employees must fit closely about the body.
- Dangling neck wear, bracelets, wristwatches, rings, or similar articles must not be worn by employees.

Note: For additional related requirements see WAC 296-155-205, Head protection.

(3) The employer must require employees to wear appropriate PPE in all operations where:

- There is an exposure to hazardous conditions;

OR

• WAC 296-155-200, General requirements for personal protective equipment (PPE), indicates a need for using such equipment to reduce the hazards to the employees.

(4) Employees must comply with job safety practices and procedures and PPE requirements that are relevant to the job site.

(5) High visibility garments.

(a) During daylight hours, when employees' duties are performed in close proximity to moving vehicles, employers must make sure that employees wear a high-visibility safety vest, shirt, or jacket that is fluorescent yellow-green, fluorescent orange-red, or fluorescent red in color. This garment must always be worn as an outer garment.

Definition:

For the purpose of this rule, *hours of darkness* means from one-half hour before sunset to one-half hour after sunrise.

(b) During hours of darkness, when employees' duties are performed in close proximity to moving vehicles, the employer must make sure that employees wear, at a minimum, a high-visibility safety vest, shirt, or jacket:

- Designed according to ANSI/ISEA 107-1999 Class 2 specifications;
- Worn as an outer garment;

AND

- Worn to provide three hundred sixty degrees of visibility around the employee.

Note: A high-visibility garment meets Class 2 specifications if the garment:

- Has an ANSI "Class 2" label;

OR

- Has at least seven hundred seventy-five square inches of background material and two hundred one square inches of retroreflective material that encircles the torso and is placed to provide three hundred sixty degrees of visibility around the employee.

Note: • Fading and soiling may degrade the high-visibility characteristics of the garments.

- ANSI/ISEA 107-1999 is available by:
 - Purchasing copies of ANSI/ISEA 107-1999 by writing:
 - American National Standards Institute
 - 11 West 42nd Street
 - New York, NY 10036

OR

- Contacting the ANSI web site at <http://web.ansi.org/>.

OR

- Reading a copy of ANSI/ISEA 107-1999 at any Washington state library.

(6) Payment for PPE. Except as provided in (a) through (e) of this subsection, the protective equipment, including PPE, used to comply with this chapter shall be provided by the employer at no cost to employees.

(a) The employer is not required to pay for nonspecialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) and nonspecialty prescription safety eyewear, provided that the employer permits such items to be worn off the job site.

(b) When the employer provides metatarsal guards and allows the employee, at his or her request, to use shoes or boots with built-in metatarsal protection, the employer is not required to reimburse the employee for the shoes or boots.

(c) The employer is not required to pay for:

• Everyday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots;

• Ordinary clothing, skin creams, or other items used solely for protection from weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, ordinary sunglasses, and sunscreen.

(d) The employer must pay for replacement PPE, except when the employee has lost or intentionally damaged the PPE.

(e) Where an employee provides adequate protective equipment he or she owns to meet the requirements of this chapter, the employer may allow the employee to use it and is not required to reimburse the employee for that equipment. The employer shall not require an employee to provide or pay for his or her own PPE, unless the PPE is excepted in (a) through (d) of this subsection.

AMENDATORY SECTION (Amending WSR 01-04-015, filed 1/26/01, effective 2/28/01)

WAC 296-155-205 Head protection. (1) All employees on any construction site shall be provided an individual hard hat which meets all requirements of (a) and (b) of this subsection. ~~((Employers shall provide individual hard hats at no cost to the employees.))~~

(a) Hard hats for the protection of employees against impact and/or penetration of falling and flying objects shall meet the specifications contained in American National Standards Institute, Z89.1-1969, Safety Requirements for Industrial Head Protection.

(b) Hard hats for the head protection of employees exposed to high voltage electrical shock and burns shall meet the specifications contained in American National Standards Institute, Z89.2-1971.

(2) All employees must have their individual hard hats on site and readily available at all times.

(3) All employees shall wear a hard hat on any construction site whenever there is a potential exposure to danger of flying or falling objects to persons working or occupying the area.

Note: The hard hat may be removed whenever there is no potential exposure to a hazard.

(4)(a) Employees working on asphalt paving crews exposed to extreme temperatures from hot mix and not exposed to falling objects do not have to wear protective hard hats.

(b) Flaggers working with asphalt paving operations must comply with the requirements of WAC 296-155-305.

(5) Caps with metal buttons or metal visors shall not be worn around electrical hazards.

(6) Employees working near moving machinery or in locations which present a hair-catching or fire hazard shall wear caps, nets or other head and face protection that will completely contain the hair.

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

WAC 296-800-16020 Provide PPE to your employees. You must provide PPE at no cost to employees if the PPE is:

~~((Provide PPE wherever hazards exist from:))~~

• The type that would not reasonably or normally be worn away from the workplace, such as single use or disposable PPE.

• Required to comply with a safety and health standard to protect employees wherever hazards exist from:

– Processes ~~((or the environment))~~

– ~~((Chemical))~~ Environmental hazards

– Physical, chemical, or radiological hazards or

– Mechanical irritants that could cause injury or impairment to the function of any body part through absorption, inhalation, or physical contact.

~~((Provide necessary PPE to employees at no cost to the employee if the PPE:~~

– Will be used to protect against hazardous materials

– Is the type that would not reasonably or normally be worn away from the workplace, such as single use or disposable PPE.

Note: Examples of PPE that the employer **must** provide are:

• Boots or gloves that could become contaminated with hazardous materials in the workplace.

• Safety glasses, goggles, and nonprescription protective eye wear.

• Goggles that fit over prescription eye wear.

• Hard hats.

- Full body harnesses and lanyards.
 - Single use or disposable PPE such as plastic type gloves used in the food service or medical industries.
- Examples of PPE that the employer may **not** have to provide are:
- Coats to protect against inclement weather.
 - Leather boots, with or without steel toes, that will not become contaminated on the job.
 - Prescription protective eye wear (except as part of a full face piece or hooded respirator:))

<u>Table-X: Employer Responsibility for Providing PPE</u>		
<u>*This table provides examples only and is not all-inclusive.</u>		
<u>Part of Body</u>	<u>PPE employers are required to provide at no cost to employees.</u>	<u>Items in which employer payment is not required.</u>
<u>Head</u>	Bump caps. Hard hat. Nonconductive head protection.	=
<u>Eye and Face</u>	Face shields. Goggles. Laser safety goggles. Nonprescription eye protection. Prescription eyewear inserts/lenses for full-face respirators. Welding and diving helmets.	Nonspecialty prescription safety eye-wear.
<u>Ear</u>	Hearing protection.	=
<u>Hand/ Arm</u>	Aluminized gloves. Barrier creams (unless used solely for weather-related protection). Chemical resistant gloves/aprons/clothing. Mesh cut proof gloves. Mesh or leather aprons. Nonspecialty gloves if required to protect from dermatitis, severe cuts, or abrasions. Rubber insulating gloves. Rubber sleeves.	Hand protection used only for keeping clean or for cold weather with no safety or health consideration.
<u>Foot</u>	Metatarsal foot protection. Rubber boots with steel toes. Shoe covers - toe caps and metatarsal guards. Special boots for long-shoremen working logs.	Nonspecialty safety-toe protective footwear such as steel-toe shoes or boots. Sturdy work shoes. Lineman's boots. Logging boots required under chapter 296-54 WAC.

<u>Part of Body</u>	<u>PPE employers are required to provide at no cost to employees.</u>	<u>Items in which employer payment is not required.</u>
<u>Other</u>	<p>Atmosphere-supplying respirators (escape only). Climbing ensembles used by linemen such as belts and climbing hooks.</p> <p>Level A - fully encapsulated chemical protective suits. Level B - chemical protective clothing. Personal fall arrest systems. Personal fall restraint systems. Fire fighting PPE (helmet, gloves, boots, proximity suits, full gear). Ladder safety device belts. Personal floatation devices (life jackets). Class II or III high visibility garments that meet ANSI 107-2004 specifications. Respiratory protection. SCBA (self-contained breathing apparatus). Welding PPE. Window cleaner's safety straps. Items such as aprons, lab coats, goggles, disposable gloves, shoe covers, etc., used in medical/laboratory settings to protect from exposure to infectious agents.</p>	<p>Long sleeve shirts. Long pants. Ordinary cold weather gear (coats, parkas, cold weather gloves, winter boots). Ordinary rain gear. Dust mask/respirators used under the voluntary use provisions in chapter 296-842 WAC. Back belts. Sunglasses. Sunscreen.</p>

AMENDATORY SECTION (Amending WSR 04-03-081, filed 1/20/04, effective 5/1/04)

WAC 296-809-50014 Make sure you have adequate rescue and emergency services available.

You must:

(1) Make sure you have adequate rescue and emergency services available during your permit-required confined space entry operations.

- Evaluate and select rescue teams or services who can:

- Respond to a rescue call in a timely manner. Timeliness is based on the identified hazards. Rescuers must have the capability to reach potential victims within an appropriate time frame based on the identified permit space hazards.

- Proficiently rescue employees from a permit-required confined space in your workplace. Rescuers must have the appropriate equipment for the type of rescue.

- Make sure that at least one member of the rescue team or service holds a current certification in first aid and cardiopulmonary resuscitation (CPR).

- Inform each rescue team or service about the hazards they may confront when called to perform rescue.

- Provide the rescue team or service with access to all permit spaces from which rescue may be necessary.

- This will allow them to develop appropriate rescue plans and to practice rescue operations.

Note: What will be considered timely will vary according to the specific hazards involved in each entry. For example, chapter 296-842 WAC, Respirators, requires that employers provide a standby person or persons capable of immediate action to rescue employee(s) for work areas considered to contain an IDLH atmosphere.

~~((You must:))~~

(2) ~~((Provide))~~ Employees(;) assigned to provide permit-required confined space rescue and emergency services must be provided, at no cost to the employee, with:

- Personal protective equipment (PPE) needed for safe entry.

- Other equipment required to conduct rescues safely.

- Training so they are:

- Proficient in the use of the PPE and other equipment.

- Proficient as an entrant of permit-required confined spaces.

- Able to safely perform assigned rescue and emergency duties.

- Knowledgeable in basic first aid and cardiopulmonary resuscitation (CPR).

- Practice sessions for permit-required confined space rescues **at least** once every twelve months where dummies, manikins, or actual persons are removed from either:

- The actual permit spaces; or

- Representative permit spaces that simulate the opening size, configuration, and accessibility, of permit spaces where rescue will be performed.

(3) Establish procedures for:

- Contacting rescue and emergency services.

- Rescuing entrants from permit-required confined spaces.

- Providing necessary emergency services to rescued entrants.

- Preventing unauthorized persons from attempting a rescue.

AMENDATORY SECTION (Amending WSR 06-12-074, filed 6/6/06, effective 9/1/06)

WAC 296-818-20010 Personal protective equipment (PPE).

You must:

- ~~((Supply))~~ Provide, at no cost to the employee, and make sure personal protective equipment is worn.

- Follow the requirements in Table-1, Personal Protective Equipment (PPE).

Table-1: Personal Protective Equipment (PPE)

PROVIDE	WHEN
Abrasive Blasting Respirators	Operators work in any of the following situations: <ul style="list-style-type: none"> - Inside blast cleaning rooms - Where silica sand is used in manual blasting operations - Where concentrations of toxic dust exceed the permissible exposure limits found in a separate chapter: <ul style="list-style-type: none"> ■ Respiratory hazards, WAC 296-841-20020, Table-3 "Exposure Limits for Air Contaminants" <p>Exemption:</p> <ul style="list-style-type: none"> • An abrasive respirator does not need to be worn if the operator is physically separated from the nozzle and blast by an exhaust ventilated enclosure. <p>Definition:</p> <p>Abrasive-blasting respirator A supplied air or a continuous flow respirator constructed to cover and protect the operator's head, neck and shoulders from rebounding abrasive.</p>
Eye and Face protection to both of the following: <ul style="list-style-type: none"> - Blasting operators - Personnel working near blasting operations 	Respirators worn during blasting operations do not provide eye and face protection
Gloves and Aprons made of heavy canvas or leather; OR Equivalent protection	Operators are exposed to the impact of rebounding abrasives

Notes:

- Use only respirators certified by NIOSH in 42 C.F.R. Part 84 for protecting employees from dusts, and other hazards produced during abrasive blasting operations, like:
 - Using a garnet sand to blast a concrete surface, resulting in crystalline silica dust
- A filtering face piece may be used only for short, intermittent, or occasional dust exposures for any of the following tasks:
 - To protect the operator during abrasive blasting operations performed outside the enclosure or outdoors where nonsilica abrasives are used on materials with low toxicity
 - Clean-up
 - Dumping dust collectors

– Unloading shipments of sand at receiving areas when the following controls are not feasible:

- Enclosures
 - Exhaust ventilation
- OR
- Other means

Reference: For additional requirements to help you fully protect employees, go to the following separate chapters:

- The Safety and health core rules, chapter 296-800 WAC:
- Personal protective equipment (PPE), WAC 296-800-160
- Respiratory hazards, chapter 296-841 WAC
- Respirators, chapter 296-842 WAC:
- Respirator program, WAC 296-842-120
- Specifications for air quality, WAC 296-842-200

AMENDATORY SECTION (Amending WSR 05-03-093, filed 1/18/05, effective 3/1/05)

WAC 296-824-60005 Personal protective equipment.

Use appropriate personal protective equipment (PPE).

- Note:**
- Only properly trained employees should select PPE. Hazardous materials technicians and hazardous materials specialists can select PPE within the competencies specified in Table 4.
 - Selection requirements in other PPE rules also apply, including:
 - WAC 296-800-160, Personal protective equipment.
 - Chapter 296-842 WAC, Respirators.

- WAC 296-24-58505, Fire brigades.
- Chapter 296-305 WAC, Safety standards for fire fighting.

You must:

- Provide ((employees with)) appropriate PPE at no cost to the employees and make sure it is used if hazards could be present.
 - Select PPE (such as respirators, gloves, protective suits and other PPE) based on:
 - ◆ An evaluation of the performance characteristics (such as breakthrough time and hazardous substance-specificity of the material or item) relevant to the requirements and limitations of the site.
 - ◆ Task-specific conditions and durations.
 - ◆ The hazards and potential hazards of the site (see Table 9, Selecting PPE for Specific Hazards).
 - Select totally encapsulating chemical protective (TECP) suits, as specified in Table 9, that:
 - ◆ Maintain positive air pressure.
 - ◆ Prevent inward test gas leakage of more than 0.5 percent.

Note: Follow the manufacturer's recommended procedure for testing a TECP suit's ability to maintain positive air pressure and prevent inward gas leakage. Other established test protocols for these suits, for example NFPA 1991 and ASTM F1052-97, may also be used.

Table 9 Selecting PPE for Specific Hazards	
If:	Then:
<ul style="list-style-type: none"> • Inhalation hazards could be present. 	<ul style="list-style-type: none"> • Positive-pressure (pressure-demand) self-contained breathing apparatus (SCBA) <p>OR</p> <ul style="list-style-type: none"> • A decreased level of respiratory protection only when the incident commander determines, from air monitoring results, that employees will be adequately protected.
Chemical exposure levels will create a substantial possibility of: <ul style="list-style-type: none"> • Immediate death. • Immediate serious illness or injury. • Reduced ability to escape. 	Either positive-pressure (pressure-demand): <ul style="list-style-type: none"> • SCBA • Air-line respirators equipped with an escape air supply.
Skin absorption of a hazardous substance may result in a substantial possibility of: <ul style="list-style-type: none"> • Immediate death. • Immediate serious illness or injury. • Reduced ability to escape. 	Protection equivalent to Level A including a totally encapsulating chemical protective (TECP) suit.

AMENDATORY SECTION (Amending WSR 06-10-067, filed 5/2/06, effective 9/1/06)

WAC 296-826-20005 Personal protective equipment (PPE).

You must:

- Provide the following PPE, at no cost to employees, at all stationary storage installations:
 - Two respirators in readily accessible locations as required by WAC 296-842, Respirators
 - One pair of protective gloves, boots, pants, a protective slicker, and a jacket made of:

- Rubber;
- OR
- Other material that can not be penetrated by ammonia.
 - Tight fitting vented goggles and one full face shield.
 - An easily accessible shower or fifty gallons of clean water in an open top container.
 - Equip tank motor vehicles with all of the following equipment for emergency purposes:
 - At least five gallons of water to flush liquid ammonia from skin or eyes.

- Respiratory equipment suitable for anhydrous ammonia as required by chapter 296-842 WAC, Respirators
- A pair of protective gloves made of neoprene rubber or other material that cannot be penetrated by ammonia.
- Tight fitting goggles and a full face shield

Note: Additional safety equipment is recommended when more than one employee is present.

AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

WAC 296-843-19005 Provide and use appropriate PPE.

Reference: See WAC 296-843-110, Evaluations and inspections, found in this chapter, for more information about how to identify hazards and complete your preliminary site evaluation.

You must:

(1) Make sure the PPE you provide and use for initial entry protects employees from known or suspected safety and health hazards identified during the preliminary site evaluation as follows:

If	Then
The need for atmosphere supplying respirators and chemical protective clothing has NOT been eliminated	Provide atmosphere supplying respirators and protective clothing
Employees use respiratory protection other than a positive-pressure SCBA for initial entry	Include an escape self-contained breathing apparatus (SCBA) with enough air to reach a safe location and always at least five minutes of air

- Use Table 2, Selecting PPE in Various Exposure Situations, to determine the level of PPE to provide during initial entry:

You must:

(2) Make sure the PPE you select provides employee protection based on:

- Actual and potential hazards identified during the site characterization and analysis (see WAC 296-843-110, Evaluations and inspections).

- Hazards likely to be encountered.
- Required tasks and their duration.
- Site requirements and limitations.

- Use Table 2 to identify the type of PPE that is required for various exposure situations.

**Table 2
Selecting PPE in Various Exposure Situations**

If	Then
Changing site conditions indicate a change in employee exposure	Review and adjust the level of protection as appropriate

If	Then
	<p>Note: You may decrease the level of protection when information indicates this will not increase employee exposure to safety or health hazards</p>
<p>There is a substantial possibility that skin absorption or contact with a hazardous substance may:</p> <ul style="list-style-type: none"> • Impair an employee's ability to escape • Cause immediate serious illness or injury • Is an IDLH or immediate death hazard 	<p>Use totally encapsulating chemical protective (TECP) suits and make sure they will protect employees from the hazards</p> <ul style="list-style-type: none"> • Use, decontaminate, inspect, and remove TECP suits from service according to the manufacturer's recommendations • Perform any TECP integrity tests recommended by the manufacturer and make sure all TECP suits are capable of: <ul style="list-style-type: none"> - Maintaining positive air pressure - Preventing inward test gas leakage of more than 0.5% <p>Note: Follow the manufacturer's recommended procedures for testing a TECP suit's ability to maintain positive air pressure and prevent inward gas leakage. Other established test protocols for these suits, for example, NFPA 1991 and ASTM F1052-97, may also be used</p>
<p>There is a substantial possibility that employee exposure to hazardous substances will either:</p> <ul style="list-style-type: none"> • Immediately cause death, serious illness, or serious injury <p>OR</p> <ul style="list-style-type: none"> • Impair an employee's ability to escape 	<p>Use a positive-pressure SCBA or an airline respirator with an escape SCBA</p> <ul style="list-style-type: none"> • Protect air supply from contamination and the entire respirator system from physical damage

Note: If there is not a permissible exposure limit (PEL) or other published exposure level for a hazardous substance, you may use published studies and information as a guide for selecting appropriate PPE.

(3) PPE required by this standard is to be provided at no cost to the employees.

AMENDATORY SECTION (Amending WSR 05-01-173, filed 12/21/04, effective 5/1/05)

WAC 296-848-40040 Personal protective equipment (PPE).

You must:

• Provide at no cost to employees, make sure employees use, and maintain PPE as follows:

– Provide clean and dry protective clothing to employees who could experience eye or skin irritation from exposure to inorganic arsenic or who work in exposure control areas.

– Provide impervious protective clothing to employees exposed to arsenic trichloride.

Note:

- Arsenic trichloride is corrosive and can be rapidly absorbed through skin.
- Examples of protective clothing appropriate for inorganic arsenic exposures include:
 - Coveralls or similar full-body work clothing.
 - Gloves, and shoes or coverlets.
 - Face shields or vented goggles when necessary to prevent eye irritation.

You must:

– Make sure employees do not remove inorganic arsenic from PPE by blowing or shaking.

– Make sure protective clothing is removed:

■ In change rooms;

AND

■ At the end of the work shift.

– Make sure contaminated protective clothing that will be cleaned, laundered, or disposed of, is placed in a closed container located in the change room.

■ Make sure the container prevents the release of inorganic arsenic.

– Launder protective clothing:

■ At least weekly if employees work in areas where exposure monitoring results of inorganic arsenic are below an eight-hour time-weighted average concentration of 100 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$);

OR

■ Daily if employees work in areas where either exposure monitoring results of inorganic arsenic are above an eight-hour time-weighted average concentration of 100 $\mu\text{g}/\text{m}^3$ or when more frequent washing is needed to prevent skin irritation.

– Maintain the effectiveness of PPE by repairing or replacing it, as needed:

■ Dispose of protective clothing if it will not be repaired.

• Inform individuals who clean or launder protective clothing about the possible health effects associated with inorganic arsenic, including carcinogenic effects, by doing the following:

– Provide the information in writing;

AND

– Label containers of contaminated PPE with the following warning:

CAUTION:

Clothing contaminated with inorganic arsenic
Do not remove dust by blowing or shaking
Dispose of inorganic arsenic contaminated wash water as applicable local, state, or federal regulations require

Reference: To see additional Personal protective equipment requirements go to the Safety and health core rules, chapter 296-800 WAC, and find the section titled, PPE, WAC 296-800-160.

WSR 09-05-077

PERMANENT RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2008-21—Filed February 17, 2009, 9:59 a.m., effective March 20, 2009]

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

Purpose: These new rules define the things of value that a title company is permitted to give to any person in a position to refer or influence the referral of title insurance business, as required by RCW 48.29.005(5).

Citation of Existing Rules Affected by this Order: Repealing WAC 284-30-800.

Statutory Authority for Adoption: RCW 48.02.060, 48.29.005.

Other Authority: RCW 48.29.210.

Adopted under notice filed as WSR 08-24-106 on December 3, 2008.

Changes Other than Editing from Proposed to Adopted Version: A new subsection was added to WAC 284-29-005 defining commercial property.

In the third line of WAC 284-29-230 [(1)](c) "in a single day" was amended to "during a single event."

WAC 284-29-260(10) was amended to distinguish between the time limits for commercial property as to the presumption of when a title commitment has cancelled.

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 14, Amended 0, Repealed 1.

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 14, Amended 0, Repealed 1.

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

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

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 14, Amended 0, Repealed 1.

Date Adopted: February 17, 2009.

Mike Kreidler
Insurance Commissioner

Chapter 284-29 WAC

TITLE INSURANCE

NEW SECTION

WAC 284-29-200 Scope and purpose. (1) RCW 48.29.210(2) states: "A title insurer, title insurance agent, or employee, agent, or other representative of a title insurer or title insurance agent shall not, directly or indirectly, give anything of value to any person in a position to refer or influence the referral of title insurance business to either the title insurance company or title insurance agent, or both, except as permitted under rules adopted by the commissioner." WAC 284-29-200 through 284-29-265 establishes standards for acceptable giving of things of value by a title company to any person in a position to refer or influence the referral of title insurance business to the title company. If the thing of value is not clearly and specifically included in WAC 284-29-200 through 284-29-265 as a thing of value that a title company may give to a person, its giving is prohibited.

(2) RCW 48.29.210 not only applies to title insurance producers or associates of producers, but to every person in position, directly or indirectly, to refer or influence the referral of title insurance business.

(3) No title company is required to give to any person any of the things of value that are permitted by WAC 284-29-200 through 284-29-265 and a person is not entitled to receive any of the permitted things of value from a title company.

(4) Adoption of WAC 284-29-200 through 284-29-265 must not be construed to mean that the commissioner encourages title companies to give anything of value to any person in a position to refer or influence the referral of title insurance business.

(5) Nothing contained in WAC 284-29-200 through 284-29-265 prohibits the payment by a title insurer or title insurance agent to a producer of a return on ownership interest in the title insurer or title insurance agent as set forth in RCW 48.29.213.

(6) Title companies must not enter into any agreement, arrangement, scheme, or understanding or in any other manner pursue any course of conduct, designed to avoid RCW 48.29.210 and WAC 284-29-200 through 284-29-265.

NEW SECTION

WAC 284-29-205 Definitions. For purposes of WAC 284-29-200 through 284-29-265:

(1) "Advertising" or "advertisement" means a representation about any product, service, equipment, facility, or activity or any person who makes, distributes, sells, rents, leases, or otherwise makes available such a product, service, equipment, facility, or activity, when the representation:

(a) Is communicated to a person that, to any extent, by content or context, informs the recipient about such product, service, equipment, facility, or activity;

(b) Recognizes, honors, or otherwise promotes such a product, service, equipment, facility, or activity; or

(c) Invites, advises, recommends, or otherwise solicits a person to participate in, inquire about, purchase, lease, rent, or use such a product, service, equipment, facility, or activity.

(2) "Associates of producers" has the same meaning as set forth in RCW 48.29.010 (3)(f).

(3) "Bona fide employee of a title company" means an individual who devotes substantially all of his or her time to performing services on behalf of a title company and whose compensation for these services is in the form of salary or its equivalent by the title company.

(4) "Commercial real estate" means a fee title interest or possessory estate in real property located in this state, except an interest in real property which is:

(a) Improved with one-single family residential unit or multifamily structure with four or less residential units;

(b) Unimproved and the maximum permitted development is one to four residential units or structures under the county or city zoning ordinances or comprehensive plan applicable to that real estate;

(c) Classified as farm and agricultural land or timber land for assessment purposes under chapter 84.34 RCW; or

(d) Improved with single-family residential units such as condominiums, townhouses, timeshares, or stand-alone houses in a subdivision that may be legally sold, leased, or otherwise disposed of on a unit-by-unit basis.

(5) "Give" means to transfer to another person, or cause another person to receive, retain, use or otherwise benefit from a thing of value whether or not the title company receives compensation in return. It also means the transfer to a third person of anything of value that in any manner benefits a person in a position to refer or influence the referral of title insurance business.

(6) "Market rate" means the price at which a seller, under no obligation or duress to sell, is willing to accept and a buyer, under no obligation or duress to buy, is willing to pay in an arms-length transaction. The market rate is determined by comparing the items or services purchased or sold to similar items or services that have been recently purchased by others or sold to others, including others not in the title insurance business.

(7) "Person" has the meaning set forth in RCW 48.01-070.

(8) "Producers of title insurance business" or "producer" has the meaning set forth in RCW 48.29.010 (3)(e); this term includes associates of producers and any person in a position to refer or influence the referral of title business to the title company.

(9) "Representative of a title company" means any person acting directly or indirectly on behalf of the title company.

(10) "Restrictive covenants" means private agreements that restrict the use or occupancy of real property generally by specifying lot sizes, building lines, occupancy, architectural styles, and the use to which the property may be put.

Restrictive covenants do not include matters such as easements and road maintenance agreements.

(11) "Self-promotional" means an advertisement or promotional function which is conducted by a single title company solely for the benefit of the title company or a promotional item intended for distribution by a single title company and only on behalf of the title company.

(12) "Thing of value" means anything that has a monetary value. It includes but is not limited to cash or its equivalent, tangible objects, services, use of facilities, monetary advances, extensions of lines of credit, creation of compensating balances, title company employee time, advertisements, discounts, salaries, commissions, services at special prices or rates, sales or rentals at special prices or rates, and any other form of consideration, reward or compensation.

(13) "Title company" means either a title insurance company authorized to conduct title insurance business in this state under chapter 48.05 RCW or a title insurance agent defined in RCW 48.17.010(15), or both. The term includes employees, representatives, and agents of title insurance companies and title insurance agents.

(14) "Trade association" means an association of persons, a majority of whom are producers or persons whose primary activity involves real property. Trade association does not include an association of persons, a majority of whom are title insurance companies and title insurance agents.

NEW SECTION

WAC 284-29-210 Real property information. (1) A title company may give to a producer without charge information about a specific parcel of real property located in any county, commonly referred to as a "listing package," which consists of information relating to the ownership and status of title to real property. The listing package must be limited to a single copy of one or more of the following six items of information:

- (a) The last deed appearing of record;
- (b) Deeds of trust, mortgages, and real estate contracts which appear to be in full force and effect;
- (c) A map of the property which may show the property's location or dimensions, or both;
- (d) Applicable restrictive covenants;
- (e) Tax information; and
- (f) Property characteristics such as number of rooms, square footage and year built.

(2) A listing package must not include any other real property information such as market value information, demographics, or additions, addenda, or attachments which may be construed as conclusions reached by the title company regarding matters of marketable ownership or encumbrances.

(3) A generic cover letter printed on the standard letterhead of the title company may be attached to the listing package.

(a) The cover letter may include a brief statement identifying by name only, any of the six permitted items included in subsection (1) of this section that may be attached to the cover letter;

(b) The cover letter may contain a disclaimer as to conclusions of marketable ownership or encumbrances; and

(c) The content of the cover letter or listing package is strictly limited to the items listed in this section and must not include any advertising or marketing for the benefit of the recipient.

(4) A title company may give, without charge, to a producer a single copy of a document affecting title to a specific parcel of real property only if:

(a) The cost to the title company of giving the copy of the document, including but not limited to labor and materials, is ten dollars or less; and

(b) The document is not in any manner given to the producer in conjunction with or in association with the giving of other documents related to property in the general locale for which the single document is being given.

(5) A title company must not give a producer reports containing publicly recorded information, comparable sale information, appraisals, estimates, or income production potential, information kits or similar packages containing information about one or more parcels of real property, except as permitted by this section, without charging and actually receiving payment for the actual cost of the work performed and the material provided (for example, costs related to providing farm packages, labels, lot book reports, home books, and tax information).

(6) A title company may give, at no charge, to the proposed insured or insured, copies of any documents set forth as exceptions in a commitment or policy.

(7) If a title company owns or leases and maintains a complete set of tract indexes in a particular county in which the county government does not make copies of recorded documents available on the county's web site, then the title company may make copies of the recorded documents available at no charge to the general public on the title company's web site.

NEW SECTION

WAC 284-29-215 Advertising. (1) A title company may advertise in a trade association publication only if all of the following conditions are met:

(a) The publication is an official publication of the trade association;

(b) The publication must be nonexclusive so that any title company has an equal opportunity to advertise in the publication;

(c) The title company must pay no more than the standard rate for the advertisement applicable to members of the trade association;

(d) The title company's advertisement must be solely self-promotional; and

(e) The payment for the advertisement must be included as an expenditure for the purposes of the limits in WAC 284-29-220(5).

(2) Except as provided in subsection (1) of this section, a title company must not directly, indirectly, by payment to a third-party or otherwise, use any means of communication or media to advertise on behalf of, for, or with a producer, including but not limited to:

(a) Advertising real property for sale or lease unless the property is owned by the title company;

(b) Advertising or promoting the listings of real property for sale by real estate licensees; or

(c) Advertising in connection with the promotion, sale, or encumbrance of real property.

(3) No advertisement may be placed in a publication that is published or distributed by or on behalf of a producer of title business, including but not limited to, web sites, flyers, postcards, for sale signs, flyer boxes, or any other means of communication or any other media.

(4) Title companies may pay for a self-promotional advertisement in the publications or broadcasts of the following persons:

(a) Newspapers;

(b) Telephone directories;

(c) Internet web sites, subject to the limits of subsection (3) of this section;

(d) Television stations;

(e) Radio stations; and

(f) Real estate licensees who do not represent buyers and sellers or who do not function as agents as defined in RCW 18.86.010(2) provided that the publication must be nonexclusive so that any title company has an equal opportunity to advertise in the publication.

NEW SECTION

WAC 284-29-220 Trade associations. (1) A title company may donate the time of its employees to serve on a trade association committee.

(2) A title company may donate to, contribute to or otherwise sponsor a trade association event only if all of the following conditions are met:

(a) The event is a recognized association event that generally benefits all members and affiliated members of the association in an equal manner;

(b) The donation must not benefit a selected producer member of the association unless through a random process; and

(c) Solicitation for the donation must be made of all association members and affiliated members in an equal manner and amount.

(3) A title company may pay for its employees and a single guest of each employee to attend trade association events only if all of the following conditions are met:

(a) The title company pays a fee equal to fees paid by producer members of the association in the events;

(b) The title company employees and their guest(s) actually attend the event (except when attendance is prevented by an emergency); and

(c) The guest of the title company employee is not a producer (except where the guest is related to the title company employee by blood or marriage or their domestic partner).

(4) For purposes of this section, trade association events include, but are not limited to, conventions, award banquets, symposiums, educational seminars, breakfasts, lunches, dinners, receptions, cocktail parties, open houses, sporting activities and other similar activities.

(5) A title company may:

(a)(i) Donate to, contribute to, or otherwise sponsor a trade association event under subsection (2) of this section;

(ii) Advertise in a trade association publication under WAC 284-29-215(1); and

(iii) Sponsor a trade association educational seminar under WAC 284-29-235(3);

(b) Give a thing of value listed under (a) of this subsection to a trade association only if all of the following requirements are met:

(i) The thing of value is limited to one thousand dollars per event, advertisement, or sponsorship of an educational seminar;

(ii) The title company must not give a thing of value to all trade associations more than three times in a calendar year;

(iii) The title company must not combine any of these permitted expenditures into one expenditure; and

(iv) The title company must not accumulate or carry forward left over or unused expenditures from one of these permitted expenditures to a subsequent expenditure.

(6) If a title company owns or leases and maintains a complete set of tract indexes in more than one county:

(a) The limits set forth in subsection (5) of this section apply on a county by county basis for donations, contributions, sponsorships, payments for events, advertisements, or sponsorship of educational seminars of trade associations a majority of whose members are located in that county;

(b) A donation, contribution, sponsorship, payment for an event, advertisement, or sponsorship of an educational seminar to a statewide trade association shall constitute one of its expenditures for each and every county in which the title company is authorized to issue title insurance policies; and

(c) The title company must not combine or accumulate unused expenditures of these permitted expenditures from one county to another county nor to a statewide trade association.

(7) If a title company that is under common ownership makes a donation, contribution, sponsorship, payment for an event, advertisement, or sponsorship of an educational seminar to a statewide trade association, the expenditure shall constitute an expenditure as one of the expenditures for each and every one of the title companies that are under common control.

NEW SECTION

WAC 284-29-225 Self-promotional items. A title company may give a thing of value with its preprinted company logo, except money or gift cards, to a producer if the cost to the title company is five dollars or less per thing of value and only if the thing of value does not contain the name or logo of the producer or any reference to the producer.

NEW SECTION

WAC 284-29-230 Permitted business entertainment. (1) A title company may make expenditures for business meals on behalf of any individual, only if the expenditure meets all the following criteria:

(a) An individual representing the title company is present during the business meal;

(b) There is a substantial and substantive title insurance business discussion directly before, during or after the business meal;

(c) No more than four individuals that are employed by or are independent contractors of the same producer are provided a business meal during a single event (spouses and guests of the producer must be included in the count for purposes of determining the four-person maximum); and

(d) The title company does not expend more than one hundred dollars per individual throughout any calendar year for all business meals.

(2) The business meals permitted in subsection (1) of this section must not include open houses of producers wherever located, including but not limited to, at the producers premises or facilities or homes of property for sale.

(3) For purposes of this section, "meals" includes, but is not limited to, breakfast, brunch, lunch, dinner, receptions, or cocktails and other beverages, whether the meals occur on or off the title company's premises.

(4) For purposes of determining the maximum permitted expenditure under subsection (1) of this section, all of the following requirements must be met:

(a) All costs associated with a meal must be included in the calculation of expenses. When calculating the cost of a meal, the title company must include all costs paid by the title company for travel, transportation, hotel, equipment or facility rental, food, cocktails and other beverages, refreshments, and registration or entry fees, except those fees incurred solely by the title company and that do not benefit the producer.

(b) Attendance at or an invitation to a meal must not be based on or be given as compensation for forwarding or directing title business to the title company.

(c) For accounting purposes, the expenditures by a title company for a meal may be prorated among all attendees, including the title company employees.

(5) A title company may host no more than two self-promotional functions per year, only if all of the following requirements are met:

(a) Any self-promotional function must be at the title company's owned or occupied facility at which the title company conducts its regular business. The self-promotional function must be nonexclusive and open to all producers.

(b) A title company must not spend more than fifteen dollars per guest reasonably expected to attend at any one self-promotional function.

(c) A title company must not combine permitted expenditures for two self-promotional functions into a single self-promotional function.

(d) A title company must not accumulate or carry forward left over or unused expenditures from one self-promotional function to a subsequent self-promotional function.

(e) If a title company owns or leases and maintains a complete set of tract indexes in more than one county, then the limits set forth in this subsection apply on a county by county basis.

(i) The self-promotional functions must be at the title company's owned or occupied facility at which the title com-

pany conducts its regular business in the county for which it owns or leases and maintains a complete set of tract indexes.

(ii) The title company must not combine permitted expenditures for a self-promotional function from one county to another county.

(6) The limits contained in subsections (1) and (5) of this section are separate limits and an expenditure made for an activity under one of these subsections is not applied to the limit under the other subsection.

NEW SECTION

WAC 284-29-235 Educational seminars. (1) A title company may conduct educational programs at no charge only if the content of the program consists solely of education regarding title insurance, title to real property, and escrow topics.

(a) A title company must spend no more than ten dollars per person for refreshments at any one educational program.

(b) Any materials that the title company provides to attendees must be directly related to the topic of the seminar or are self-promotional advertising of the title company.

(2) A title company may provide a speaker at no charge for an educational program conducted or presented by other persons, only if the following conditions are met:

(a) The speaker is an employee of the title company;

(b) If a title insurance agent is providing the speaker, the speaker may be an employee of the title insurer for whom the title insurance agent has been properly appointed;

(c) The topic of the presentation by the employee is solely related to title insurance, escrow, or real property law; and

(d) Any materials that the speaker provides to attendees are directly related to the topic of the speaker or are self-promotional advertising of the title company of the employee.

(3) A title company may sponsor an educational seminar of a trade association subject to the limits in WAC 284-29-220.

(4) A title company may sponsor an educational program on topics other than title insurance, title to real property, and escrow only if:

(a) The educational program is open to all producers; and

(b) The attendees actually pay to attend the program the greater of:

(i) All expenses and costs associated with the delivery of the educational program by the title company; or

(ii) What the attendee would pay to attend a similar seminar sponsored by entities other than title companies on the open market.

The calculation by the title company of the expenses and costs associated with the delivery of the education program must include, but not be limited to, all travel, refreshments, speaker fees or wages of the speaker, facility rental, preparation of materials distributed at the program, parking, advertisement, and wages of arranging and planning for the program.

NEW SECTION

WAC 284-29-240 Political action committees. Title companies and their employees may donate to registered political action committees.

NEW SECTION

WAC 284-29-245 Locale of title company employees. A title company and its employees must not lease or rent a workspace location owned or leased by a producer unless all of the following conditions are met:

- (1) The space is secured by a bona fide written lease or rental agreement;
- (2) The rent paid for the workspace is consistent with the prevailing rent charged for similar space in the market area of the workspace;
- (3) Renting the space is not contingent upon the volume of title company business and is paid only in cash and not by trade or barter;
- (4) There is no sharing of employees unless the title company only pays for its reasonably proportionate share;
- (5) There is no common usage of equipment between the title company and the producer unless the title company only pays for its proportionate share; and
- (6) The workspace is occupied by a bona fide employee of the title company a minimum thirty hours per week, except for holidays and bona fide emergencies, and is open to the public during regular business hours. However, if for appropriate business reasons the title company ceases conducting business at the locale and there is a remaining term on the lease or rental agreement, the title company may continue to pay the rent until the expiration of the lease or rental agreement or the next renewal date of the lease or rental agreement, whichever is earlier.

NEW SECTION

WAC 284-29-250 Memorial gifts and charitable contributions—Limitations. (1) A title company may provide no more than two hundred dollars in value of food, floral bouquets, or memorial donations for the death of a producer or a producer's immediate family member. This includes contributions to medical funds for a producer or a producer's seriously injured or seriously ill immediate family member.

- (2) A title company may contribute to a charity only if:
 - (a) The contribution by the title company is made payable directly to the charity; and
 - (b) The solicitation for the contribution and the contribution are not, directly or indirectly, in exchange for the referral of title insurance business.
- (3) Title company employees may attend and volunteer their time at events hosted by charities.

NEW SECTION

WAC 284-29-255 Other things of value that title companies are permitted to give to producers. (1) A title company must not give, offer to give, provide, or offer to provide nontitle services (for example: Computerized book-keeping, forms management, computer programming, trust

accounting for trust accounts not held in the name of the title company, short sale consultants, or transaction coordination) or any similar benefit to a producer, without charging and actually receiving a fee equal to the value of the services provided and in an amount at not less than what the producer would pay if the services were purchased on the open market or the title company's cost to provide the service, whichever is greater.

(2) A title company must not allow the use of any part of its premises (for example, its conference rooms or meeting rooms) to a producer without receiving a fair rental charge equal to the average rental for similar premises in the area.

(3) A title company may allow the use of a part of its premises (for example, its conference rooms or meeting rooms) for no charge to a meeting of a trade association for no more than four meetings in a calendar year.

(4) Title company employees may attend activities and business meetings of producers if all of the following standards are met:

(a) There is no cost to the employee or title company other than the employee's own entry fees, registration fees, meals, or other costs associated with the activity or business meeting;

(b) The fees paid by the title company are no greater than those charged to producer attendees; and

(c) If the title company pays a fee for an employee to attend the activity or business meeting, the title company employee must actually attend the activity or business meeting, unless an emergency prevents attendance.

(5) A title company may advance the recording fees for transactions for which the title company is either issuing the title insurance or conducting the escrow, or both, provided the title company is promptly reimbursed for the recording fees that it advanced.

NEW SECTION

WAC 284-29-260 Examples of prohibited matters. The following is a partial, nonexclusive list of things of value that a title company must not give to a producer. Even though a thing of value is not included on this list a title company must not give any other things of value to a producer unless clearly and specifically permitted by WAC 284-29-200 through 284-29-255.

(1) Except as permitted in WAC 284-29-200 through 284-29-255:

(a) A title company must not cosponsor, subsidize, or contribute fees, prizes, gifts, or give things of value for a promotional function or activity off the title company's premises whether the function is self-promotional or not.

(b) Examples of off-premises functions or activities include, but are not limited to:

- (i) Meetings;
- (ii) Meals, including breakfasts, luncheons, dinners or cocktail parties;
- (iii) Conventions, installation ceremonies, celebrations, hospitality rooms or similar functions;
- (iv) Outings such as boat trips, fishing trips, motor vehicle rallies, sporting events of any kind, gambling trips, hunt-

ing trips, ski trips, shopping trips, golf tournaments, trips to or events at recreational or entertainment areas;

(v) Open house celebrations, or open houses at homes or property for sale;

(vi) Dances; or

(vii) Artistic performances.

(2) A title company must not sponsor, subsidize, supply prizes or labor, or otherwise give things of value for promotional activities of producers.

(3) A title company must not give or offer to give, either directly or indirectly, a compensating balance or deposit in a lending institution for the express or implied purpose of influencing the extension of credit by the lending institution to any producer.

(4) A title company must not disburse or offer to disburse on behalf of any person escrow funds held by the title company before the conditions of the escrow applicable to the disbursements are met.

(5) A title company must not advance, pay or offer to advance or pay money on behalf of any person into escrow to facilitate a closing unless:

(a) The property that is the subject of the escrow is owned by or being purchased by the title company;

(b) The payment is made in compliance with a court order requiring the title company to make the payment; or

(c) In settlement of a bona fide dispute for which the title company may be liable.

(6) A title company must not give, pay or offer to pay, either directly or indirectly, or make payment to a third party for the benefit of any producer for:

(a) The services of a title company employee or representative or an outside professional whose services are required by any producer to complete or structure a particular transaction;

(b) The salary or any part of compensation of an employee of a producer;

(c) The salary or any part of the salary, commission, or any other form of compensation to any employee of the title company who is at the same time actively engaged as a producer;

(d) A fee for making an inspection or appraisal of property, whether or not the fee bears a reasonable relationship to the services performed;

(e) Services required to be performed by any producer in his or her professional capacity;

(f) Any evidence of title or copy of the contents of a document which is not produced or issued by the title company;

(g) The rent for all or any part of any space occupied by any producer, except as provided in WAC 284-29-245;

(h) Money, prizes, or other things of value in any kind of a contest or promotional activity;

(i) Any advertisement published in the name of, for, or on behalf of any producer;

(j) A business form of any producer which is provided for the convenience and benefit of the producer, except a form regularly used in the conduct of the title company's business;

(k) Any earnest money purchase agreements or purchase and sale agreements;

(l) Flyer boxes and stands, for sale signs and posts, or services for the placement of any of them;

(m) Postcards, stamps, flyers, newsletters, folders, invitations, copying, cutting or services related to preparing any of these items;

(n) Car washes or coupons for car washes;

(o) Pictures of producers;

(p) Gift cards of in any amount;

(q) Massages;

(r) Discount certificates; or

(s) The cost of or reimbursement for advisory fees.

(7) A title company must not provide, or offer to provide, all or any part of the time or productive effort of any employee of the title company to any producer. For example, title company employees must not be used by or loaned out to a producer for the self-promotional interests of the producer except as part of the title company's day-to-day business with producers.

(8) A title company must not give or offer to give, pay for, or offer to pay for, furniture; office supplies, including but not limited to, file folders, telephones, computers or other equipment; or automobiles to any producer. A title company must not pay for, or offer to pay for, any portion of the cost of renting, leasing, operating, or maintaining any of these items.

(9) Delivery services between a title company and a producer must be performed by the title company's messenger service or employees and must consist only of delivering items directly related to the title company's title insurance or escrow business from the title company to a producer or from a producer to the title company.

(10) In accordance with its title insurance rates filed with the commissioner, a title company must not provide a title insurance commitment without actually receiving payment for the cancellation fee:

(a) For commitments on noncommercial property, within the earlier of the following:

(i) One hundred eighty days of the first issuance of the commitment; or

(ii) Sixty days of:

(A) The cancellation of the commitment;

(B) When the title company reasonably should know that the commitment has been canceled; or

(C) When the title company reasonably should know that the transaction for which the commitment was issued has been insured by another title company.

(b) For commitments on commercial property, within sixty days of the earlier of the following:

(i) The cancellation of the commitment;

(ii) When the title company reasonably should know that the commitment has been canceled; or

(iii) When the title company reasonably should know that the transaction for which the commitment was issued has been insured by another title company.

(11) A title company must not pay a producer member of its board of directors fees in excess of those paid to nonproducer directors.

(12) A title company must not enter into, agree to, or pay anything of value to a producer under any marketing agreement, access agreement, advertising agreement or any similar agreement.

(13) A title company must not make a donation to any charity in any manner that can reasonably be associated with a producer in exchange for the referral of title insurance business or obtaining customer service information from the title company.

(14) A title company must not pay any fee or consideration to any producer that is in any manner based in whole or in part on the number of transactions between the title company and the producer, regardless of the service being provided.

(15) A title company must not provide escrow, closing, or settlement services for a charge (independent of the rate charged for involved title insurance) that is less than the title company's actual cost either for:

- (a) The cost of all parties to the escrow; or
- (b) One party's proportionate share of the cost of the escrow.

NEW SECTION

WAC 284-29-265 Recordkeeping. (1) A title company must keep and maintain complete, accurate, and sufficient records to demonstrate compliance with WAC 284-29-200 through this section and keep them for a period of five years after the end of the year during which any thing of value was given to a producer.

(2) All records of a title company kept in order to meet the terms of WAC 284-29-200 through this section must be made available to the commissioner or the commissioner's representative during regular business hours.

(3) Failure of the title company to keep the records required by WAC 284-29-200 through this section is a violation of RCW 48.29.210.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 284-30-800	Unfair practices applicable to title insurers and their agents.
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WSR 09-05-084

PERMANENT RULES

GAMBLING COMMISSION

[Order 641—Filed February 17, 2009, 2:33 p.m., effective March 20, 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 submitted a petition for rule change which was filed at the October 2008 commission meeting requesting a new rule that would require, upon

the request of any party, the presiding officer or the commissioners consider a list of fourteen aggravating and mitigating factors (included in the rule) when determining whether to modify a penalty sought by commission staff. As worded, the commissioners would have to take evidence of the fourteen factors, if requested by the licensee/applicant, even if they had not raised these factors at the administrative law judge hearing. At their January 2009 meeting, the commission discussed an amended version of the rule submitted by the petitioner. The petitioner submitted a second amended version for discussion at the February 2009 meeting. Staff also created an amended version for discussion in February. Just before the February meeting, the petitioner and staff reached a joint agreement for rule language. This joint option #4 was adopted at the February 2009 meeting.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 08-22-079 on November 4, 2008, and published on 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 1, 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 1, Amended 0, Repealed 0.

Date Adopted: February 13, 2009.

Susan Arland
Rules Coordinator

NEW SECTION

WAC 230-17-137 Guidelines for imposing penalties in disciplinary actions. (1) Without in any manner limiting the authority granted to the commission under chapter 9.46 RCW or other applicable law to impose the level and type of discipline it may deem appropriate, at the request of any party, the presiding officer may consider the following factors, along with such others as he or she deems relevant, in determining the administrative penalty to be assessed for the violation of a statute or rule:

(a) The risk posed to the public health, safety, or welfare by the violation;

(b) Whether there are special policy implications relating to the violation, for example, those regarding underage gambling;

(c) Whether, and how, the violations impacted players, for example, failure to pay a player, and player-supported jackpot violations;

(d) Whether the applicant, licensee, or permittee:

(i) Knew, or reasonably should have known, the action complained of was a violation of any law, regulation, or condition of their license;

(ii) Previously received a verbal warning, written warning, notice of infraction, notice of violation and settlement (NOVAS), or administrative charges from the commission for similar violations;

(iii) Made, or attempted to make, a financial gain from the violation;

(iv) Had an existing compliance program related to the violation; or

(v) Has subsequently initiated remedial measures to prevent similar violations from reoccurring;

(e) Whether the violations were intentional, willful, or grossly negligent;

(f) Whether requiring the applicant, licensee or permittee to implement a written self-enforcement and compliance program would assist in ensuring future compliance with relevant laws, regulations, and license conditions;

(g) If the violation was caused by an officer or employee of the applicant, licensee, or permittee:

(i) Whether the individual who caused the violation acted within the scope of authority granted to him or her by the applicant, licensee or permittee; or

(ii) Whether the individual violated company policies, procedures, or other standards;

(h) The adequacy of any relevant training programs the applicant, licensee or permittee previously offered or made available to its employees;

(i) Whether and the extent to which the applicant, licensee or permittee cooperated with the commission during the investigation of the violation;

(j) The penalties imposed on other applicants, licensees or permittees for similar violations;

(k) Whether the applicant, licensee, or permittee reasonably relied upon professional advice from an accountant or other recognized professional, which was relevant to the conduct or action resulting in the violation; or

(l) Any other aggravating or mitigating circumstances the commissioners deem relevant.

(2) A party intending to rely on any aggravating or mitigating factors must raise them at the initial hearing before the presiding officer in order to preserve them for any subsequent hearings before a reviewing officer.

(3) In the spring of 2011, staff will report to the commission on the impacts of this rule, if any.