

WSR 11-19-011
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed September 7, 2011, 5:01 p.m., effective October 8, 2011]

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

Purpose: WAC 246-282-012 and 246-282-990, the purpose of this rule is to change the annual shellfish operation license renewal date for shellstock shippers and shucker packers from October 1 to July 1 of each year, and to prorate the 2011 fee amount for the transition to the new date. The rule also equitably assesses the costs of commercial geoduck PSP testing following the redistribution formula and increases the export certificate fee per legislative approval in HB 1087.

Citation of Existing Rules Affected by this Order: Amending WAC 246-282-012 and 246-282-990.

Statutory Authority for Adoption: RCW 69.30.030 and 43.20.030.

Adopted under notice filed as WSR 11-13-122 on June 21, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: September 7, 2011.

Mary C. Selecky
 Secretary

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-012 Certificates of approval—Operation licenses, harvest site certificates. (1) The department issues two types of certificates of approval to persons who conduct shellfish operations. They are shellfish operation licenses and harvest site certificates.

(2) Any person who possesses a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must possess, or act on behalf of a person who possesses, a valid shellfish operation license. To obtain a shellfish operation license, a person must:

(a) Submit to the department a completed application on a form developed by the department;

(b) Submit to the department an acceptable written plan of operations that completely describes the shellfish operation;

(c) Pass a preoperational inspection demonstrating compliance with chapter 69.30 RCW, this chapter, and the NSSP Model Ordinance; and

(d) Pay the department any shellfish operation license fee required by this chapter.

(3) Any person who harvests a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must possess, or act on behalf of a person who possesses, a valid harvest site certificate. In order for a person to obtain a harvest site certificate, all of the following requirements must be met.

(a) The person possesses a valid shellfish operation license.

(b) The person submits to the department a completed application that describes the following characteristics of the site:

(i) Geographic location;

(ii) Map showing legal boundaries;

(iii) Unique government identification number, such as county parcel number, department of fish and wildlife tract number, department of fish and wildlife catch area number, or tribal identification number; and

(iv) Documentation of legal ownership or lease for shellfish harvesting.

(c) The harvest site is in a growing area that meets the requirements of chapter 69.30 RCW, this chapter, and the NSSP Model Ordinance for a commercial shellfish growing area.

(d) The harvest site is not impacted by any actual or potential sources of pollution.

(e) The harvest site passes a pollution assessment inspection conducted by the department if necessary to determine if the site is impacted by any actual or potential sources of pollution.

(f) The person signs the current conditionally approved area management plan, if applicable.

(g) The person pays the department any harvest site application fee required by this chapter.

(4) All shellfish operation licenses and harvest site certificates for shellfish dealers expire on the thirtieth day of ~~((September))~~ June each year. All shellfish operation licenses and harvest site certificates for harvesters expire on the thirty-first day of March each year ~~(, beginning in 2002)~~.

AMENDATORY SECTION (Amending WSR 10-19-034, filed 9/9/10, effective 10/10/10)

WAC 246-282-990 Fees. (1) The required annual shellfish operation license fees for shellstock shippers and shucker-packers due October 1, 2011, shall be reduced by twenty-five percent of the annual shellfish operation license fees in subsection (2) of this section. Beginning July 1, 2012, and for every subsequent year, the full annual shellfish operation license fees in subsection (2) of this section shall be assessed.

(2) Annual shellfish operation license fees are:

Type of Operation	Annual Fee
Harvester	\$263
Shellstock Shipper	

Type of Operation	Annual Fee
0 - 49 Acres	\$297
50 or greater Acres	\$476
Scallop Shellstock Shipper	\$297
Shucker-Packer	
Plants with floor space < 2000 sq. ft.	\$542
Plants with floor space 2000 sq. ft. to 5000 sq. ft.	\$656
Plants with floor space > 5000 sq. ft.	\$1,210
((2)) (3) The fee for each export certificate is \$((10.30)) 20.00.	

((3)) (4) Annual PSP testing fees for companies harvesting species other than geoduck intertidally (between the extremes of high and low tide) are as follows:

Type of Operation	Number of Harvest Sites	Fee
Harvester	≤ 2	\$173
Harvester	3 or more	\$259
Shellstock Shipper	≤ 2	\$195
0 - 49 acres		
Shellstock Shipper	3 or more	\$292
0 - 49 acres		
Shellstock Shipper	N/A	\$468
50 or greater acres		
Shucker-Packer	≤ 2	\$354
(plants < 2000 ft ²)		
Shucker-Packer	3 or more	\$533
(plants < 2000 ft ²)		
Shucker-Packer	≤ 2	\$429
(plants 2000 - 5000 ft ²)		
Shucker-Packer	3 or more	\$644
(plants 2000 - 5000 ft ²)		
Shucker-Packer	N/A	\$1,189
(plants > 5000 ft ²)		

(a) The number of harvest sites will be the total number of harvest sites on the licensed company's harvest site certificate:

- (i) At the time of first licensure; or
- (ii) January 1 of each year for companies licensed as harvesters; or
- (iii) July 1 of each year for companies licensed as shellstock shippers and shucker packers.

(b) Two or more contiguous parcels with a total acreage of one acre or less is considered one harvest site.

((4)) (5) Annual PSP testing fees for companies harvesting geoduck are as follows:

Harvester	Fee
(Discovery Bay Shellfish	\$464)

Harvester	Fee
Department of natural resources (quota tracts harvested by DNR contract holders)	\$((8,507)) 9,616
Jamestown S'Klallam Tribe	\$((1,237)) 1,221
Lower Elwha Klallam Tribe	\$((4,485)) 4,274
(Lummi Nation	\$155)
Nisqually Indian Tribe	\$((2,014)) 3,968
Port Gamble S'Klallam Tribe	\$((4,024)) 3,053
Puyallup Tribe of Indians	\$((8,974)) 6,868
(Skokomish Indian Tribe	\$155)
<u>Seattle Shellfish</u>	<u>\$1,374</u>
Squaxin Island Tribe	\$((618)) 3,968
Suquamish Tribe	\$((21,189)) 16,026
Swinomish Tribe	\$((619)) 458
<u>SYS Enterprises</u>	<u>\$611</u>
<u>Taylor Shellfish</u>	<u>\$2,900</u>
Tulalip Tribe	\$((5,568)) 3,663

((5)) (6) PSP fees must be paid in full to department of health before a commercial shellfish license is issued or renewed.

((6)) (7) Refunds for PSP fees will be given only if the applicant withdraws a new or renewal license application prior to the effective date of the new or renewed license.

**WSR 11-19-013
PERMANENT RULES
DEPARTMENT OF HEALTH**

[Filed September 7, 2011, 5:04 p.m., effective October 8, 2011]

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

Purpose: Chapter 246-225A WAC, this rule establishes criteria for the use of hand-held dental X-ray equipment. It amends existing requirements for quality assurance testing, safelights, and film and screen use. It includes editorial changes for clarification and consistency with existing requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 246-225A-010, 246-225A-020, 246-225A-025, 246-225A-050, 246-225A-060, 246-225A-070, 246-225A-080, 246-225A-090, and 246-225A-110.

Statutory Authority for Adoption: RCW 70.98.050 and 70.98.080.

Adopted under notice filed as WSR 11-12-026 on May 24, 2011.

A final cost-benefit analysis is available by contacting Phyllis Barney, Department of Health, Office of Radiation Protection, P.O. Box 47827, Olympia, WA 98504-7827, phone (360) 236-3239, fax (360) 236-2255, e-mail phyllis.barney@doh.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 9, 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 9, Repealed 0.

Date Adopted: September 7, 2011.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 08-14-074, filed 6/26/08, effective 7/27/08)

WAC 246-225A-010 Definitions. ~~((As used in this chapter, the following definitions apply.))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Artifact" means an undesirable optical density or blemish on a radiographic image that detracts from the diagnostic information.

(2) "Barrier" (see "protective barrier").

(3) "Beam" (see "X ray").

(4) "Beam-limiting device," sometimes called a collimator or cone, means a device that controls the size of the X-ray field.

(5) "Cephalometric" means X-ray imaging specific to the human head and jaw.

(6) "Control panel" means the part of the X-ray system where the switches, knobs, pushbuttons, and other hardware necessary to operate the X-ray system are located.

(7) "CR (computed radiography ~~((CR)))" means creating an X-ray image using plates consisting of a special phosphor that when exposed to radiation and then processed by a scanner, provides the information to a computer for display and manipulation.~~

(8) "CT (computed tomography ~~((CT)))" means creating a cross-sectional X-ray image generated by an X-ray source and detector moving around the patient's body.~~

~~("Control panel" means the part of the X-ray system where the switches, knobs, pushbuttons, and other hardware necessary to operate the X-ray system are located.)~~

(9) "Dead-man ~~((switch or))~~ button" means ~~((a switch))~~ an X-ray exposure button designed so that it can only be operated by continuous pressure on the ~~((switch))~~ button by

the operator, and when released before the preset exposure time will stop the exposure.

(10) "Department" means the department of health, which is the state radiation control agency under chapter 70.98 RCW.

(11) "Detector" means a device capable of receiving and recording an X-ray image.

(12) "Diagnostic source assembly" means the combination of the tube housing assembly and the collimator.

(13) "Direct scattered radiation" means radiation discharged in a straight line from the object being radiographed.

(14) "DR (direct digital radiography ~~((DR)))" means creating an X-ray image by sending signals directly from a solid state detector to a computer for display and manipulation.~~

~~("Diagnostic source assembly" means the combination of the tube housing assembly and the collimator.~~

~~"Direct scattered radiation" means radiation discharged in a straight line from the object being radiographed.)~~

(15) "Exposure," as the context implies, means:

(a) The number of electrons, measured in coulombs per kilogram of air, released through the ionization of air molecules by electromagnetic radiation; ~~((and))~~ or

(b) An occupational worker or patient being subjected to radiation either directly or indirectly.

(16) "Extra-oral radiography" means creating a film or digital X-ray image on an image receptor placed outside the mouth. Examples include panoramic and cephalometric X rays.

(17) "Filter" means material, such as copper or aluminum, placed in the useful beam of the X ray to block selected energies, and in a safelight to block light that could fog the X-ray film.

(18) "Floor plan" means a drawing of the X-ray room, along with its dimensions, identification of adjacent areas and occupiable space above and below.

(19) "Focal spot" means the area on the anode end of the X-ray tube bombarded by the electrons accelerated from the cathode and from which the useful X-ray beam begins.

(20) "Grid" means a device placed between the patient and the image receptor in extra-oral radiography that reduces scattered radiation that would decrease the quality of the image being created.

~~("Half value layer (HVL)" means the thickness of material that reduces the intensity of radiation to one-half of its original value.)~~ (21) "Hand-held" (see "X-ray system").

(22) "Healing arts screening" means using X-ray equipment without an order by a licensed practitioner on an individual who does not have a known or diagnosed disease or symptom to learn if the individual may have an indication of ill health.

(23) "HVL (half-value layer)" means the thickness of material that reduces the intensity of radiation to one-half of its original value.

(24) "Image receptor" means a device that ~~((transforms))~~ captures an X-ray beam ~~((into a visible film or digital))~~ for image processing.

(25) "Intra-oral radiography" means creating a film or digital X-ray image on an image receptor placed inside the mouth.

(26) "kV (kilovolt ((kV)))" means the unit used to measure electrical energy.

(27) "kVp (kilovolts peak ((kVp)))" means the highest possible voltage across the X-ray tube during an exposure (see also "peak tube potential").

(28) "Leakage radiation" means radiation coming from the X-ray tube, other than the ~~((main))~~ useful X-ray beam.

(29) "Leakage technique factors" means the technique factors associated with the tube housing assembly that are used to measure leakage radiation. They are defined as the maximum rated peak tube potential and the maximum rated continuous tube current at the maximum peak tube potential.

(30) "Licensed practitioner" means an individual ~~((who holds a license))~~ licensed to practice dentistry under chapter 18.32 RCW.

(31) "mA (milliampere ((mA)))" means the unit used to measure electrical current in an X-ray tube.

(32) "mAs (milliampere second ((mAs)))" means the product of the electrical current in the X-ray tube in ~~((milliamperes))~~ mA and the time of exposure in seconds.

(33) "Mobile ((equipment))" (see "X-ray system").

(34) "Operator" means a person working under the direction of a licensed practitioner to operate X-ray equipment and who has been properly trained according to WAC 246-225A-020.

(35) "Operator" means a room in which dental health care procedures are performed.

(36) "Peak tube potential" means the maximum voltage in the X-ray tube during an exposure.

(37) "Portable ((equipment))" (see "X-ray ((equipment)) system").

(38) "Position-indicating device" means a device on X-ray equipment that shows where the X-ray beam will be directed and establishes the distance from the X-ray tube to the patient's body. The device may or may not incorporate or serve as a beam-limiting device.

(39) "Primary beam" (see "useful beam").

(40) "Primary protective barrier" means the material placed in the useful beam, beyond the patient and image receptor, to reduce remnant primary beam exposure.

(41) "Protected area" means a space for X-ray equipment operators that is shielded so that X-ray exposures are reduced enough to meet the exposure limits of WAC 246-221-010 (Occupational dose limits for adults) and WAC 246-220-007 (Statement of philosophy). In addition, the space must have no exposure to direct scattered radiation.

(42) "Protective apron" means a garment made of radiation absorbing materials used to reduce a person's radiation exposure.

(43) "Protective barrier" means a structure made of radiation absorbing material used to reduce radiation exposure.

(44) "Quality assurance" means a program designed to produce high quality X-ray images at minimal cost and with minimal patient exposure to radiation.

~~((Quality control means the regular testing of X-ray equipment and associated equipment, such as processors, to verify that the equipment is working properly. Controls include performing routine tests of the diagnostic X-ray imaging system such as X-ray beam output, viewing X-ray test images, and continually adjusting the performance of the~~

~~X-ray equipment and processor to an optimal and consistent level))~~ (45) "Quick developer" means small-volume chemistry designed to process dental intra-oral film in less than a minute.

(46) "Radiation safety" means ways to protect patients and staff from unnecessary radiation exposure. Safety measures may include patient exposure reduction, image quality improvement, diagnostic imaging system quality assurance, radiation measurements, dose evaluations, compliance with state and federal regulations, and related issues.

(47) "Radiographic" means the production of an image created when an X-ray pattern exits an X-rayed object.

(48) "Radiography" means a way of creating a permanent film or digital image using X rays.

(49) "Recording" means creating a permanent image, on film or in a computer, from an X-ray exposure.

(50) "Registrant" means the owner or controller of the radiation equipment who is responsible for the safe operation of the radiation equipment in accordance with this chapter and chapter 70.98 RCW.

(51) "Registration" means providing required information and continuing contact with the department by any person possessing a radiation machine in accordance with chapter 246-224 WAC, Radiation protection—Radiation machine assembly and registration.

(52) "Remnant primary beam" means the part of the useful beam that completely passes through the patient and image receptor.

(53) "Ring-detector type CT" means computed tomography performed with a fan-shaped beam that generates image slices of anatomy rather than using a cone-shaped beam creating a volumetric picture.

(54) "Safelight" means a lamp with a filter that is used in an X-ray darkroom to provide enough light to see, but not enough to ~~((over-expose))~~ fog the film.

(55) "Scattered radiation" means radiation that has changed direction, or generated other radiation as it impacts or passes through matter ~~((see also "direct scattered radiation"))~~.

(56) "Scram button" means a large, prominently displayed button, mounted in an X-ray operator's area to allow quick termination of an X-ray exposure in case of an emergency.

(57) "Secondary protective barrier" means an object or material sufficient to reduce stray radiation to the required degree as stated in chapter 246-221 WAC (Radiation protection standards).

(58) "SID (source-to-image-receptor distance ((SID)))" means the distance from the focal spot in the X-ray tube to the center of the surface of the image receptor.

(59) "Source" means the focal spot of the X-ray tube.

(60) "SSD (source-to-skin distance ((SSD)))" means the distance between the focal spot of the X-ray tube and the nearest point on the patient's skin where the primary beam enters.

(61) "Stationary ((equipment))" (see "X-ray system").

(62) "Stray radiation" means the sum of leakage and scattered radiation.

(63) "Technique chart" means a written instruction or guide that X-ray equipment operators use to determine which

radiation technique factors to select for each type of radiographic examination.

(64) "Technique factors" means the X-ray system settings selected for a given radiographic examination. They are specified as the peak tube potential in ~~((kilovolts))~~ kVp and either:

(a) Tube current measured in ~~((milliamperes))~~ mA and exposure time in seconds or pulses; or

(b) The product of tube current and exposure time expressed in ~~((milliamperere seconds))~~ mAs.

(65) "Tube" means a glass tube that produces an X ray when high-voltage electricity is passed between the cathode at one end and the anode at the other.

(66) "Tube housing assembly" means the X-ray tube and its housing. It includes high-voltage ~~((and/))~~ or filament transformers and other appropriate elements when they are contained within the tube housing.

(67) "Tube housing port" means the portion of the tube housing assembly that the X rays pass through.

(68) "Useful beam" means the radiation that passes through the tube housing port and the opening of the beam-limiting device.

(69) "Variance" means a department-authorized alternative to a requirement of this chapter.

(70) "X ray" means a beam of ionizing radiation produced by a machine.

(71) "X-ray control" means a device that controls how much electricity enters the X-ray high-voltage generator ~~((and/))~~ or the X-ray tube. It includes equipment that controls the technique factors for an exposure.

(72) "X-ray equipment" means the entire X-ray system or parts of the system.

(73) "X-ray exposure ~~((switch or))~~ button" means the part of the X-ray system that when engaged generates the production of an X ray. ~~((See also "dead-man switch or button."))~~

(74) "X-ray high-voltage generator" means a device that supplies electrical energy to the X-ray tube to create an X-ray beam.

(75) "X-ray system" means all of the components of a machine used for the controlled production of X rays. It includes minimally an X-ray high-voltage generator, an X-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components which function with the system, such as the image receptor, are considered integral parts of the system. Types of X-ray systems are:

(a) "Hand-held" means a self-contained X-ray system designed to be held in one or two hands to perform intra-oral radiography. Hand-held X-ray systems used on a tripod or stand are considered to be "portable" systems.

(b) "Mobile" means an X-ray ~~((equipment))~~ system mounted on a permanent base with wheels ~~((and/))~~ or casters for moving the X-ray ~~((equipment))~~ system fully assembled. It is intended to be taken from one geographical location to another or from one room to another.

~~((b))~~ (c) "Portable" means an X-ray ~~((equipment))~~ system designed to be hand-carried, but not hand-held during use.

~~((e))~~ (d) "Stationary" means an X-ray ~~((equipment))~~ system that is installed in a fixed location, such as bolted to a floor or wall.

(76) "X-ray tube" means any electron tube which is designed to be used primarily for the production of X rays.

AMENDATORY SECTION (Amending WSR 08-14-074, filed 6/26/08, effective 7/27/08)

WAC 246-225A-020 General requirements and administrative controls. The registrant is responsible for directing the operation of the X-ray system and assuring the provisions of ~~((WAC))~~ chapter 246-222 WAC (Radiation protection—Worker rights) are met. In addition, the registrant shall:

(1) Verify that any operator of the X-ray equipment is trained and able to show that he or she can correctly and safely operate the X-ray equipment used by the registrant. The department may determine compliance by observation, interview, ~~((and/))~~ or testing in these subject areas:

(a) Knowledge of the X-ray system controls and their function;

(b) Knowledge of radiation safety and shielding methods for both operators and patients;

(c) Proper image processing.

(2) Post a technique chart at each X-ray system's control panel that specifies the following information for the examinations being performed by that system:

(a) Patient's teeth, jaw, or head anatomy versus technique factors to be used;

(b) If applicable, settings for automatic exposure devices; and

(c) The type and size of screen-film combination or other imaging system to be used.

(3) Require that all individuals, other than the patient being examined:

(a) Be positioned so that no part of the body, including the extremities, will be struck by the useful beam;

(b) Be protected from stray radiation by wearing protective aprons or by being positioned behind protective barriers of not less than 0.25 millimeters lead equivalent; and

(c) Not be present in the room during the X-ray exposure, except:

(i) As described in subsection (4)(b) of this section; or

(ii) When a hand-held, portable, or mobile X-ray system is used.

(4) Use mechanical holding devices when a patient, film, or image receptor needs to be supported during an X-ray exposure when the technique permits.

(a) ~~((No))~~ An individual ~~((shall))~~ may not be allowed to routinely hold a patient, film, or image receptor; and

(b) Holding a patient, film, or image receptor ~~((shall))~~ must only be allowed in very unusual and rare situations. In these cases the patient's name, the date, and the name of the person holding the patient must be recorded in writing and maintained by the registrant for at least five years.

(5) Comply with the occupational exposure limits and the requirements for the determination of prior occupational dose stated under WAC 246-221-020 (Determination of prior occupational dose) for all individuals associated with the

operation of the registrant's X-ray system. In addition, when protective clothing or devices are worn on portions of the body and a dosimeter is required, at least one dosimeter ~~((shall))~~ must be used and documented as follows:

(a) When an apron is worn, the dosimeter ~~((shall))~~ must be worn at the collar outside the apron;

(b) The dose to the whole body based on the maximum dose attributed to the most critical organ must be recorded on the reports required under WAC 246-221-230 (Records important to radiation safety). If more than one dosimeter is worn, each dose must be identified with the area where the dosimeter was worn on the body.

(6) Require personnel dosimetry ~~((monitoring))~~ of an operator when:

(a) Mobile ~~((or))~~, portable, or hand-held X-ray systems are used, i.e., when X-ray exposure buttons or X-ray exposure ~~((switch))~~ button cords are used that allow the operator to stand in an unprotected area during exposures; ~~((or))~~ and

(b) Measurements by the department show ten percent of the exposure limits as specified under WAC 246-221-010 (Occupational dose limits for adults) are exceeded.

(7) Use only X-ray equipment, and the accessories used in connection with making X rays, that meet the requirements of this chapter.

(8) Not allow anyone in the dental office to operate X-ray equipment for diagnostic purposes when the X-ray equipment:

(a) Does not meet the provisions of this chapter; or

(b) Is malfunctioning or threatens the health or safety of a patient, dental employee, or the public.

(9) Not allow patients to be exposed to the useful X-ray beam except for healing arts purposes. Only a licensed practitioner may authorize an exposure to the useful beam. Deliberate exposure of an individual for the following purposes is prohibited:

(a) Training, demonstration, or other purposes unless there are also healing arts requirements and proper prescription provided; or

(b) Except for exposure required under medicare provisions, any exposure for which the sole purpose is satisfying a third party's prerequisite for reimbursement under any health care plan.

(10) Submit shielding specifications designed by a qualified expert as defined in chapter 246-220 WAC and floor plans to the department for review if the registrant proposes to use ring-detector type CT or medical X-ray systems for dental imaging. The submittal must:

(a) Meet the requirements of WAC 246-225A-050; and

(b) Be based on the criteria and methods found in National Council on Radiation Protection and Measurements (NCRP) report #147, *Structural Shielding Design for Medical X-Ray Imaging Facilities*, issued November 19, 2004.

AMENDATORY SECTION (Amending WSR 08-14-074, filed 6/26/08, effective 7/27/08)

WAC 246-225A-025 X-ray system radiation safety procedure. ~~((If required by the department, the registrant shall adopt a written X-ray system radiation safety procedure.))~~ (1) The department may require ~~((or))~~ the registrant to

adopt a written X-ray system radiation safety procedure if there is reason to believe the registrant needs increased attention because of:

(a) ~~((Poor))~~ Inadequate operator ~~((staff))~~ training;

(b) Extremely high workload;

(c) Increased risk of exposure due to staff supporting patients during radiography;

(d) Increased risk of exposure to scattered radiation;

(e) Unnecessarily high patient exposure values; or

(f) Other similar conditions.

(2) The X-ray system radiation safety procedures ~~((shall))~~ must:

(a) Address patient and occupationally exposed personnel safety; and

(b) Define any restrictions of the operating technique required for safe operation of the X-ray system.

AMENDATORY SECTION (Amending WSR 08-14-074, filed 6/26/08, effective 7/27/08)

WAC 246-225A-050 Dental X-ray facility design.

~~((All registrants proposing to use X-ray equipment designed to produce computed tomography images using a "ring detector" type CT, or where medical X-ray systems are used for dental imaging, shall submit shielding and floor plans to the department for review. The submittal shall be based on the criteria and methods found in National Council on Radiation Protection and Measurements (NCRP) report #147, issued November 19, 2004. The intent of this requirement is to assure protection of patients, dental employees, and the public. A copy of this report is available for review at Department of Health, Office of Radiation Protection, 111 Israel Road S.E., Tumwater, Washington. Shielding and floor plans shall meet the following requirements:))~~

(1) Each X-ray exposure ~~((switch or))~~ button ~~((shall))~~ must be located to meet the following criteria:

(a) For stationary X-ray systems, the X-ray exposure ~~((switch or))~~ button ~~((shall))~~ must be permanently mounted in a protected area ~~((such as a corridor outside the room))~~ so that the operator can make an exposure only from the protected area; and

(b) Mobile X-ray systems ~~((shall))~~ must have an X-ray exposure ~~((switch or))~~ button located at the end of a cord at least twelve feet (3.7 meters) long.

(2) Shielding for cephalometric X ray ~~((shall))~~ must meet the following criteria:

(a) Be at least one foot (30.5 centimeters) larger, in both the horizontal and vertical directions, than the area of the primary beam where it strikes the nearest wall; and

(b) Shielding between the nearest wall struck by the primary beam and the next occupied area ~~((shall))~~ must have two-pound lead or equivalent installed in the wall ~~((based on 20 films per week))~~. Exterior walls or concrete block walls need no additional shielding.

(3) Acceptable shielding materials for dental X-ray facilities are as follows:

(a) The minimum shielding for intra-oral stray radiation protection is standard gypsum wallboard/sheetrock construction (two layers each of five-eighths inch thickness).

(b) Where windows are provided to observe patients during radiography, the windows are at least one-half inch plate glass, or equivalent ability to reduce exposure.

(c) All other materials used for shielding between operatories and for operator protection areas are equivalent to 0.2 millimeters of lead.

(4) Barriers (~~((between))~~ surrounding) dental X-ray rooms and dental operatories where intra-oral X-ray equipment is installed (~~((shall))~~ must) meet the following criteria:

(a) Be at least six feet (1.83 meters) high and composed of materials capable of reducing scattered radiation as required under subsection (3) of this section;

(b) There (~~((shall))~~ must) be no line of sight between workers or patients in one operatory and the X-ray tube housing assembly in the next operatory when that X-ray tube housing assembly is in its operating position;

(c) X-ray tube housing assemblies (~~((shall))~~ must) not be mounted between operatories on top of barriers less than six feet (1.83 meters) high, unless those barriers are at the foot end of the patient (~~((couches))~~ chairs), and there is no line of sight between adjacent operatories.

AMENDATORY SECTION (Amending WSR 08-14-074, filed 6/26/08, effective 7/27/08)

WAC 246-225A-060 General requirements for all dental X-ray systems. Registrants shall use only dental X-ray systems and medical X-ray systems for dental imaging that meet the following requirements:

(1) The leakage radiation from the tube housing assembly, measured at a distance of one meter in any direction from the source, (~~((shall))~~ must) not exceed 100 milliroentgens in one hour when the X-ray tube is operated at its leakage technique factors. The department will determine compliance by measuring leakage averaged over an area of 100 square centimeters with no dimension of that area greater than 20 centimeters.

(2) The (~~((half-value layer))~~ HVL) of the useful beam for a given X-ray tube potential (~~((shall))~~ must) not be less than the values shown in Table 1 of this section. To determine (~~((@ half-value layer))~~ the HVL) at an X-ray tube potential which is not listed in Table 1 of this section, linear interpolation or extrapolation may be made.

Table 1

Design operating range (((kilovolts-peak)) <u>kVp</u>)	Measured potential (((kilovolts-peak)) <u>kVp</u>)	(((Half value-layer)) <u>HVL</u>) (millimeters of aluminum equivalent)
70 and below	70 and below	1.5
Above 70	71	2.1
	80	2.3
	90	2.5
	100	2.7

(3) If two or more X-ray tubes are controlled by one X-ray exposure (~~((switch-or))~~ button), the tube or tubes in operation (~~((shall))~~ must) be clearly marked before an exposure, on

both the X-ray control panel and near or on the selected tube housing assembly.

(4) The tube housing assembly supports (~~((shall))~~ of a stationary, portable, or mobile X-ray system must) be adjusted so that the tube housing assembly remains stable and does not drift during an exposure unless the tube housing movement during exposure is a designed function of the X-ray system. (~~((The))~~ Except for X-ray systems specifically designed to be hand-held, an X-ray system ((and/)) or tube housing assembly ((shall)) must) not be hand-held by anyone during the exposure.

(5) Except for CT X-ray systems that have a scram button, each X-ray control ((shall)) must have a dead-man (~~((switch-or))~~ button).

(6) Technique indicators (~~((shall))~~ must) be set as follows:

(a) All exposure technique factors (~~((shall))~~ must) be set on the control panel before the exposure begins, except when automatic exposure controls are used. When automatic exposure controls are used, any preselected settings for each exposure (~~((shall))~~ must) be indicated.

(b) On equipment having fixed technique factors, the requirement in (a) of this subsection may be met by permanent markings or labels.

(7) Linearity (~~((shall))~~ must) be measured and met as follows:

(a) The difference between the ratio of milliroentgens (mR) exposure to (~~((milliamperere-second(-))~~ mAs((+))) at one (~~((milliamperere(-))~~ mA((+))) or mAs setting and the ratio of mR exposure to (~~((milliamperere-second(-))~~ mAs((+))) at another (~~((milliamperere(-))~~ mA((+))) or mAs setting must not exceed 0.1 times the sum of the ratios. This is written as:

$$X1 - X2 \leq 0.10 (X1 + X2)$$

Where X1 and X2 are the ratios (mR/mAs) for each mA or mAs setting.

(b) The measurement (~~((shall))~~ must) be performed at any selection of mA or mAs without regard to focal spot size, provided neither focal spot size is less than 0.45 millimeters.

(8) When four exposures are made at identical operating settings, the difference between the maximum exposure (E_{max}) and the minimum exposure (E_{min}) must be less than or equal to ten percent of the average exposure (E). This is written as:

$$(E_{max} - E_{min}) \leq 0.1E$$

(9) The difference between the kVp indicated on an X-ray system and the measured kVp (~~((shall))~~ must) not be greater than ten percent of the indicated kVp.

(10) Timers (~~((shall))~~ must) be able to:

(a) Stop the exposure at a preset time interval, a preset product of current and time, a preset number of pulses, or a preset radiation exposure to the image receptor; and

(b) Reset automatically to the initial setting or to zero when the exposure is stopped.

(11) X-ray equipment (~~((shall))~~ must) not be (~~((operated))~~ capable of making an exposure) when the timer is set to the zero or off position if either position is provided.

(12) Each X-ray control (~~((shall))~~ must) have a visual indicator (such as a light) or audible signal so that the operator

knows that X rays are being produced or the exposure is occurring or has ended.

(13) Registrants shall not use dental fluoroscopy without electronic amplification.

AMENDATORY SECTION (Amending WSR 08-14-074, filed 6/26/08, effective 7/27/08)

WAC 246-225A-070 Special requirements for dental extra-oral radiography. Registrants shall use X-ray systems for extra-oral radiography that meet the following requirements for:

(1) Beam limitation.

(a) X-ray equipment designed for only one image receptor size at a fixed ~~((source-to-image-receptor distance))~~ SID ~~((shall))~~ must be able to limit the size of the beam at the plane of the image receptor to no larger than the image receptor, and to align the center of the X-ray beam with the center of the image receptor to within two percent of the SID. In the case of extra-oral imaging systems where the image receptor can be turned vertically or horizontally, the beam-limiting device must also be able to be turned so that the dimensions of the beam match the image receptor dimensions at the image receptor plane.

(b) Intra-oral radiography systems used to perform cephalometric projections, including trans-cranial exams, must be equipped with a stable means to:

~~((Set the source-to-skin distance;~~

~~((i)))~~ Comply with the beam size dimensions in subsection (1)(a) of this section; and

~~((ii)))~~ (ii) Center the beam to the image receptor as required in subsection (1)(a) of this section.

(c) General purpose medical X-ray equipment used to perform ~~((cephalometric exams))~~ dental radiography must:

(i) Have stepless adjustment of the dimensions of the X-ray beam so that the width and height of the X-ray beam are independently adjustable. The minimum beam size at ~~((a))~~ an SID of 100 centimeters must be equal to or less than 10 by 10 centimeters.

(ii) Have a means for operators to visually set the width and height of the X-ray beam. The misalignment of the edges of the visually set light field with the respective edges of the X-ray beam along either the length or width of the visually set light field must not be more than two percent of the distance from the source to the center of the visually defined light field when the surface upon which it appears is perpendicular (at a 90 degree angle) to the central axis of the X-ray beam.

(iii) Have a ~~((way))~~ means to indicate on the X-ray equipment when the axis of the X-ray beam is perpendicular to the plane of the image receptor and to align the center of the X-ray beam to the center of the image receptor to within two percent of the SID (five percent for equipment manufactured before August 1974). Dental lateral jaw examinations are excluded from this requirement.

(iv) Have a beam-limiting device that ~~((shows))~~ indicates the X-ray beam size in centimeters or inches at the plane of the image receptor to which the beam-limiting device is adjusted.

~~((v))~~ Have ~~((beam size dimension settings that are able to produce X-ray beam dimensions at the plane of the image receptor to within two percent of the SID when the beam axis is perpendicular to the plane of the image receptor.~~

~~((vi))~~ Have SID displayed in inches and/or centimeters.) an actual beam size at the plane of the image receptor that matches the indicated size to within two percent of the SID.

(2) ~~((Source-to-skin distance))~~ SSD and SID.

(a) Dental extra-oral radiography systems must have a durable, securely fastened means to limit the ~~((source-to-skin distance))~~ SSD to not less than 23 centimeters. The requirement may be met when the beam-limiting device provides the required limits.

(b) Dental extra-oral radiography systems in which the SID is not fixed (such as an intra-oral system used for cephalometrics) must have a device or reference that will indicate the actual SID ~~((distance))~~ to within two percent of the indicated SID.

(3) Viewing device.

Dental extra-oral radiography installations must provide a viewing device (mirror, video camera, or glass window ~~((or video))~~) designed to reduce exposure so that operators of the X-ray equipment may observe the ~~((patient))~~ patient's head and neck area during the exposure without being exposed to the primary beam or stray radiation.

(4) Scattered radiation suppressing grids. When using scattered radiation suppressing grids, the grids ~~((shall))~~ must be:

(a) Clearly labeled with the SID for which the grids are designed to be used; and

(b) Used at the proper SID.

(5) X-ray film and screen requirements.

(a) X-ray film used for extra-oral imaging must be used before the expiration date specified by the manufacturer.

(b) The spectral sensitivity of the X-ray film used must be matched by the appropriate spectral output of the intensifying screens used in the cassettes as recommended by the film and screen manufacturers.

(c) Screens must be free of dirt, abrasions, and discoloration that would cause artifacts on the image.

AMENDATORY SECTION (Amending WSR 08-14-074, filed 6/26/08, effective 7/27/08)

WAC 246-225A-080 Special requirements for dental intra-oral radiography. (1) Registrants using an X-ray system designed for use with an intra-oral image receptor shall use equipment that:

(a) Limits the ~~((source-to-skin distance))~~ SSD to not less than 18 centimeters;

(b) Limits the X-ray beam so that the beam diameter at the minimum SSD is no greater than 7 centimeters in diameter;

(c) Has an open-ended position-indicating device; and

(d) Has shielding included in the beam-limiting device or position-indicating device equivalent to that required for the diagnostic source assembly under WAC 246-225A-060(1).

(2) ~~((After January 1, 2010,))~~ Registrants shall not use diagnostic dental X-ray systems with a fixed, nominal ~~((kilo-volts peak))~~ kVp of less than 55.

NEW SECTION

WAC 246-225A-085 Hand-held X-ray system. The following requirements apply to hand-held X-ray systems:

- (1) Registrants using hand-held X-ray systems must provide for security and safe storage while not in use.
- (2) The image receptor used with hand-held dental X-ray systems must either be:
 - (a) A speed class of intra-oral film designated as "F," "E/F" or faster; or
 - (b) A digitally acquired image (CR or DR).

(3) The hand-held X-ray system must be equipped with a backscatter shield of not less than 0.25 mm lead equivalent and 15.2 cm (6 inches) in diameter that can be positioned to within 1 cm of the end of the position indicating device. The hand-held X-ray system must always be used with the backscatter shield in place.

(4) Conditions and restrictions using the predicted whole body dose rate (effective dose) to the operator and shallow dose to the fingers:

If the predicted whole body dose rate (effective dose) is:	And the shallow dose rate to the fingers is:	The operator:
<100 mrem/yr	<1 rem/yr	Can operate equipment with no additional requirements
>100 mrem/yr	<1 rem/yr	Shall wear a leaded apron of 0.25 mm lead equivalent
>100 mrem/yr	>1 rem/yr	<ul style="list-style-type: none"> • Shall wear a leaded apron of 0.25 mm lead equivalent; and • Shall use equipment for special needs patients outside of routine dental office settings only

AMENDATORY SECTION (Amending WSR 08-14-074, filed 6/26/08, effective 7/27/08)

WAC 246-225A-090 X-ray image processing requirements. Standards in this section are designed to assure that optimal X-ray image quality and diagnostic information are produced so that fewer retakes are needed, and associated patient and operator exposure (~~are minimal~~) is minimized.

(1) When performing manual film processing(~~(:)~~) (also known as hand tank processing(~~(:)~~)) registrants or an operator working under the registrant's direction shall:

- (a) Use appropriate chemicals for manual film processing as indicated in chemical and film manufacturer's labels and recommendations.
- (b) Mix chemicals in accordance with the chemical manufacturer's recommendations.
- (c) Periodically add film developer/fixer replenisher based on the recommendations of the chemical or film manufacturer. Solution may be removed from the tank to permit the addition of an adequate volume of replenisher.
- (d) Completely replace all manual processing chemicals at least every two months, or follow the manufacturer's recommendations for periodic chemistry replenishment and maintenance, whichever is shorter.
- (e) Except when quick developer chemistry is used, post and keep for department inspection, the most recent twelve months of a log that shows when each chemistry change was done and by whom (~~for department inspection~~).
- (f) Process film to achieve the best image quality by either:
 - (i) Following the film manufacturer's published temperature and time recommendations for X-ray film development; or
 - (ii) Developing film according to the temperature-time chart in (g) of this subsection.
- (g) For standard developer solution, follow the X-ray film developing time specified for the appropriate developer solution temperature in Table 1 of this section:

Table 1

THERMOMETER READINGS (DEGREES)		MINIMUM DEVELOPING TIMES (MINUTES)
C	F	
27	80	2
	79	2
	78	2 1/2
	77	2 1/2
24	76	3
	75	3
	74	3 1/2
	73	3 1/2
22	72	4
	71	4
	70	4 1/2
	69	4 1/2
20	68	5
	67	5 1/2
	66	5 1/2
	65	6
18	64	6 1/2
	63	7
	62	8
	61	8 1/2
16	60	9 1/2

- (h) Use X-ray film developing devices that give:
 - (i) The actual temperature of the developer solution;
 - (ii) The developing time in minutes and seconds; and
 - (iii) An audible or visible signal when developing is complete.

(2) When performing automatic film processing, registrants or an operator working under the registrant's direction shall:

(a) Set up and maintain automatic film processors so that X-ray image density and contrast are optimal;

(b) Follow the film manufacturer's published specifications for time and temperature, and the processor manufacturer's recommendations for type of developer chemistry used. If manufacturer's specifications are not available, the film must be developed using the developer temperatures and immersion times specified in Table 2 of this section:

Table 2

DEVELOPER TEMPERATURE		PROCESSOR DEVELOPER IMMERSION TIME*
°C	°F	Seconds
35	95	20
34.5	94	21
34	93	22
33.5	92	23
33	91	24
32	90	25
31.5	89	26
31	88	27
30.5	87	28
30	86	29
29.5	85	30

*Immersion time only, no cross-over time included.

(c) Replenish the developer chemistry to create optimal X-ray images by:

(i) Replacing all automatic processor chemicals at least every month, or follow the manufacturer's recommendations for periodic chemistry replenishment and maintenance, whichever is shorter.

(ii) Posting and maintaining a log that shows when each chemistry change was performed and by whom. The most recent twelve months of the log (~~shall~~) must be kept for department inspection.

(iii) Verifying that the processor delivers an adequate rate of developer replenishment; and

(iv) Verifying that standby replenishment, flood replenishment, or prefixed film processing (~~is~~) are done (~~periodically~~) as necessary for facilities with a low X-ray workload.

(3) When developing film, registrants or an operator working under the registrant's direction shall:

(a) Set up darkrooms and daylight film loaders so that film being processed, handled, or stored will be exposed only to light passed through a safelight filter. The filter must be of the type specified by the film manufacturer and must not cause excess fog (~~(evidence of light exposure)~~) on X-ray-exposed film. Fog greater than 0.1 optical density is considered unacceptable.

(b) (~~Use bulbs in the darkroom's safelight of fifteen watts or less.~~)

~~(c) Mount the safelight in the darkroom at least four feet (1.2 meters) above work areas.~~

~~(d)) Use daylight loaders in darkened areas or where light is dimmed so that the fog standard in (a) of this subsection is met.~~

(4) When processing digital images, registrants or an operator working under the registrant's direction shall:

(a) Follow the (~~computed radiography (CR)~~) and (~~direct digital radiography (DR)~~) sensor or detector manufacturer's recommendations to achieve adequate diagnostic image quality for the least possible patient exposure.

(b) Process CR phosphor plates using the longest processing time recommended by the manufacturer of the plate processor.

(5) The department may make X-ray film development and darkroom tests as necessary to determine compliance with this section.

AMENDATORY SECTION (Amending WSR 08-14-074, filed 6/26/08, effective 7/27/08)

WAC 246-225A-110 (~~Image~~) Film processing quality assurance. (~~Beginning January 1, 2010,~~) Registrants (~~(making images on film)~~) found in violation of WAC 246-225A-090 (1)(f) or (2) shall comply with the following quality assurance requirements for (~~X-ray image processing~~) a minimum of three months:

(1) Conduct an acceptable quality assurance program that includes weekly tests of (~~manual and automatic~~) film processing to include:

(a) Density (~~and contrast on~~) of test films; and

(b) Action taken when test film density (~~or contrast~~) falls below 15 percent of initial reference levels.

(2) Keep a written or computer log of all periodic quality assurance testing covered in subsection (1) of this section, including the weekly test films (~~(, from the preceding twelve months for inspection by the department)~~).

WSR 11-19-014

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed September 8, 2011, 7:48 a.m., effective October 9, 2011]

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

Purpose: The amended rule updates the telephone number for the department's seed program.

Citation of Existing Rules Affected by this Order: Amending WAC 16-301-015.

Statutory Authority for Adoption: RCW 15.49.310.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 11-14-030 on June 27, 2011.

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

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

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

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

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

Date Adopted: September 8, 2011.

Dan Newhouse
Director

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-301-015 Seed labeling requirements for agricultural, vegetable, and flower seeds. (1) Each container of agricultural, vegetable or flower seeds, that is sold, offered or exposed for sale, or transported within this state for sowing purposes, must bear or have attached to the container a plainly written or printed label or tag in the English language; and

(a) The label provides information required in WAC 16-301-060 through 16-301-085 on treated seeds in addition to the information required in subsection (2) of this section; and

(b) The label is placed in a conspicuous manner on the seed container; and

(c) The printed label or tag is not modified or denied in the labeling or on any label attached to the seed container.

(2) Each container of agricultural, vegetable or flower seeds, that is sold, offered or exposed for sale, or transported within this state for sowing purposes must bear "*Requirement for arbitration - The Washington State Seed Act, chapter 15.49 RCW, requires mandatory arbitration of disputes involving allegedly defective seed. See chapter 16-301 WAC or contact the Washington State Department of Agriculture, Seed Program, ((509) 225-2630) 509-249-6950,*" on:

(a) The analysis tag; or

(b) A separate tag or label attached securely to each container; or

(c) Printed in a conspicuous manner on the side of each container; or

(d) Alternate wording may be approved in writing by the department to meet the needs of the industry.

(3) Except for grass seed mixtures, and hybrids that contain less than ninety-five percent hybrid seed, the label for agricultural seeds must contain the following information:

(a) The name of the kind and variety of each agricultural seed present in excess of five percent of the whole and the percentage by weight of each or if the variety is not listed with the certifying agency, the name of the kind and the words, "*variety not stated.*" Hybrids must be labeled as hybrids; and

(b) The lot number or other lot identification; and

(c) The origin state or foreign country, if known. If the origin is not known, that fact shall be stated on the label; and

(d) The percentage, by weight, of all weed seeds present. The maximum weed seed content may not exceed two percent by weight; and

(e) The name and rate of occurrence in seeds per pound of each kind of restricted noxious weed seed present; and

(f) The percentage by weight of agricultural seeds, which may be designated as "crop seeds," other than those required to be named on the label; and

(g) The percentage by weight of inert matter; and

(h) The percentage of seed germination, exclusive of hard seed, and the percentage of hard seed, if present, or "total germination and hard seed" as a single percentage; and

(i) The calendar month and year the seed germination test was completed to determine such percentages; and

(j) The name and address of the person who labels, sells, offers, or exposes for sale seed within this state.

(4) For seed that is coated the label must also contain the following:

(a) The percentage of pure seed with coating material removed;

(b) The percentage of coating material shown as a separate item in close association with the percentage of inert material;

(c) The percentage of germination as determined on four hundred coated seed pellets, with or without seeds.

WSR 11-19-015
PERMANENT RULES
PARKS AND RECREATION
COMMISSION

[Filed September 8, 2011, 9:13 a.m., effective October 9, 2011]

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

Purpose: Amend chapter 352-37 WAC to define and regulate small-scale mineral prospecting and placer mining in the Seashore Conservation Area. This rule change results from a two-year, legislatively mandated pilot program to examine the impacts of small-scale mineral prospecting on coastal areas.

Citation of Existing Rules Affected by this Order: Amending chapter 352-37 WAC.

Statutory Authority for Adoption: RCW 79A.05.030.

Other Authority: RCW 79A.05.165 and 79A.05.615.

Adopted under notice filed as WSR 11-14-106 on July 5, 2011.

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

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

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

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

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

Date Adopted: September 8, 2011.

Valeria Evans
Management Analyst

AMENDATORY SECTION (Amending WSR 07-03-121, filed 1/22/07, effective 2/22/07)

WAC 352-37-020 Definitions. Whenever used in this chapter the following terms shall have the meanings herein defined unless the context clearly indicates otherwise:

"Aggregate" shall mean a mixture of minerals separable by mechanical or physical means.

"Aircraft" shall mean any machine designed to travel through the air, whether heavier or lighter than air; airplane, dirigible, balloon, helicopter, etc. The term aircraft shall not include paraglider or remote controlled aircraft.

"Campfires" shall mean any open flame from a wood source.

"Camping" shall mean erecting a tent or shelter or arranging bedding, or both, or parking a recreation vehicle or other vehicle for the purpose of remaining overnight.

"Commission" shall mean the Washington state parks and recreation commission.

"Concentrate" shall mean the valuable mineral content separated from aggregate.

"Concentrator" shall mean a device used to physically or mechanically separate the valuable mineral content from aggregate.

"Director" shall mean the director of the Washington state parks and recreation commission or the director's designee.

"Driveable beach" shall mean that area of the ocean beaches lying between the upper or landward limit of the hard sand area and the clam beds.

"Dry sand area" shall mean that area lying above and to the landward side of the hard sand area as defined in this section.

"Excavation site" shall mean the pit, furrow, or hole from which aggregate is removed to process and recover minerals or into which wastewater is discharged to settle out sediments.

"Fire" shall mean any open flame from any source or device including, but not limited to, campfires, stoves, candles, torches, barbecues and charcoal.

"Ganged equipment" shall mean two or more pieces of mineral prospecting equipment coupled together to increase efficiency. An example is adding a second sluice to a high-banker.

"Geocache" means geocaches, letterboxes, and related activities. Geocaching is an outdoor treasure hunting game in which participants (called geocachers) use a Global Positioning System receiver or other navigational techniques to hide and seek containers (called "geocaches" or "caches").

"Hand-held mineral prospecting tools" shall mean tools that are held by hand and are not powered by internal combustion, hydraulic, or pneumatics. Examples include metal detectors, shovels, picks, trowels, hammers, pry bars, hand-operated winches, and battery-operated pumps specific to prospecting; and vac-pacs.

"Hard sand area" shall mean that area over which the tide ebbs and flows on a daily basis; and which is sufficiently hard or firm to support the weight of, and to provide unhindered traction for, an ordinary passenger vehicle.

"High-banker" shall mean a stationary concentrator that can be operated outside the wetted perimeter of the body of water from which the water is removed, using water supplied by hand or by pumping. A high-banker consists of a sluice box, hopper, and water supply. Aggregate is supplied to the high-banker by means other than suction dredging. This definition excludes rocker boxes.

"Hovercraft" shall mean a powered vehicle supported by a cushion of air capable of transporting persons.

"Intimidate" means to engage in conduct which would make a reasonable person fearful.

"Long Beach Peninsula" shall mean that area of the ocean beaches as defined in this section lying between Cape Disappointment on the south and Leadbetter Point on the north.

"Mineral prospecting equipment" shall mean any natural or manufactured device, implement, or animal (other than the human body) that can be used in any aspect of prospecting for or recovering minerals.

"Motor vehicle" shall mean every vehicle that is self-propelled. For the purposes of this chapter, a motor vehicle must be approved for highway use in accordance with Title 46 RCW.

"North Beach" shall mean that area of the ocean beaches as defined in this section lying between Damon Point on the south and Cape Flattery on the north.

"Obstruct pedestrian or vehicular traffic" means to walk, stand, sit, lie, or place an object in such a manner as to block passage by another person or a vehicle, or to require another person or a driver of a vehicle to take evasive action to avoid physical contact. Acts authorized as an exercise of one's constitutional right to picket or to legally protest, and acts authorized by a permit issued pursuant to WAC 352-32-165 shall not constitute obstruction of pedestrian or vehicular traffic.

"Ocean beaches" shall mean all lands fronting on the Pacific Ocean between Cape Disappointment and Leadbetter Point; between Toke Point and the south jetty on Point Chehalis; and between Damon Point and the Makah Indian Reservation, and occupying the area between the line of ordinary high tide and the line of extreme low tide, as these lines now are or may hereafter be located, and, where applicable, between the Seashore Conservation Line, as established by survey of the commission and the line of extreme low tide, as these lines now are or may hereafter be located, or as defined in RCW 79A.05.605, provided, that the ocean beaches shall not include any lands within the established boundaries of any Indian reservation.

"Pan" shall mean an open metal or plastic dish that can be operated by hand to separate gold or other minerals from aggregate by washing the aggregate.

"Parasail" shall mean a parachute-type device attached to a rope pulled by a motor vehicle, resulting in the participant being lifted from the ground by the force of the wind.

"Person" shall mean all natural persons, firms, partnerships, corporations, clubs, and all associations or combina-

tions of persons whenever acting for themselves or by an agent, servant, or employee.

"Placer" shall mean a glacial or alluvial deposit of gravel or sand containing eroded particles of minerals.

"Power sluice" shall mean high-banker.

"Power sluice/suction dredge combination" shall mean a machine that can be used as a power sluice, or with minor modifications as a suction dredge.

"Prospecting" shall mean the exploration for minerals and mineral deposits.

"Riffle" shall mean the bottom of a concentrator containing a series of interstices or grooves to catch and retain a mineral such as gold.

"Rocker box" shall mean a nonmotorized concentrator consisting of a hopper attached to a cradle and a sluice box that can be operated with a rocking motion.

"Seashore conservation area" shall mean all lands now or hereafter under state ownership or control as defined in RCW 79A.05.605.

"Sluice" shall mean a trough equipped with riffles across its bottom which can be used to recover gold and other minerals with the use of flowing water.

"South Beach" shall mean that area of the ocean beaches as defined in this section lying between Toke Point on the south and the south jetty on Point Chehalis on the north.

"Spiral wheel" shall mean a hand-operated or battery-powered rotating pan that is used to recover gold and minerals with the use of water.

"Suction dredge" shall mean a machine that is used to move submerged aggregate via hydraulic suction. Aggregate is processed through an attached sluice box for the recovery of gold and other minerals.

"Wetted perimeter" shall mean the areas of a watercourse covered with flowing or nonflowing water.

"Wind/sand sailer" shall mean a wheeled, wind-driven recreational conveyance.

NEW SECTION

WAC 352-37-340 Small-scale beach prospecting and placer mining. (1) Small-scale beach prospecting and placer mining is allowed year-round in the seashore conservation area, except within fifty feet on either side of designated ocean beach access roads.

(2) The director may close specific areas to beach prospecting or placer mining when deemed necessary for wildlife protection or public safety.

(3) Only hand-held mineral prospecting tools and the following mineral prospecting equipment may be used in the seashore conservation area:

(a) Pans;

(b) Spiral wheels;

(c) Sluices, concentrators, rocker boxes, and high-bankers with riffle areas totaling ten square feet or less, including ganged equipment;

(d) Suction dredges that have suction intake nozzles with inside diameters that should be five inches or less, but shall be no greater than five and one-quarter inches to account for manufacturing tolerances and possible deformation of the nozzle. The inside diameter of the dredge hose attached to

the nozzle may be no greater than one inch larger than the suction intake nozzle size;

(e) Power sluice/suction dredge combinations that have riffle areas totaling ten square feet or less, including ganged equipment, suction intake nozzles with inside diameters that should be five inches or less, but shall be no greater than five and one-quarter inches to account for manufacturing tolerances and possible deformation of the nozzle, and pump intake hoses with inside diameters of four inches or less. The inside diameter of the dredge hose attached to the suction intake nozzle may be no greater than one inch larger than the suction intake nozzle size; and

(f) High-bankers and power sluices that have riffle areas totaling ten square feet or less, including ganged equipment, and pump intake hoses with inside diameters of four inches or less.

(4) Upon request, other mineral prospecting equipment may be considered by the commission on a pilot basis.

(5) All trenches, depressions, or holes created in the beach during mining activities must be back-filled before working another excavation site.

(6) Setting up or using mining equipment or conducting mining activities in a manner and/or location that subjects people, personal property, or park resources to injury or damage or impedes traffic on the driveable portion of the beach is prohibited.

(7) A person may possess or transport up to ten gallons of concentrate per day.

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

WSR 11-19-018

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Pharmacy)

[Filed September 8, 2011, 11:51 a.m., effective October 15, 2011]

Effective Date of Rule: October 15, 2011.

Purpose: Chapter 246-889 WAC establishes requirements to implement a real-time electronic system to track and monitor sales of nonprescription products containing ephedrine, pseudoephedrine or phenylpropanolamine. The rules establish reporting requirements for pharmacies, shopkeepers, and itinerant vendors that sell restricted products; identify a process to request an exemption from electronic reporting; and provide record retention and security standards.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-889-075, 246-889-080, 246-889-100 and 246-889-105; and amending WAC 246-889-070, 246-889-085, 246-889-090, 246-889-095, and 246-889-110.

Statutory Authority for Adoption: RCW 69.43.165.

Other Authority: RCW 18.64.005.

Adopted under notice filed as WSR 11-14-048 on June 28, 2011.

Changes Other than Editing from Proposed to Adopted Version: WAC 246-889-120 was amended to make the language consistent with other sections in the rule by changing "dispenser" to "retailer" when referring to entities that must

comply with the rule. In addition, the last word of this section was changed from "purchase" to "incident" to make clear that reporting the incident to law enforcement is to fully disclose the threat not just the override.

A final cost-benefit analysis is available by contacting Doreen Beebe, Washington State Board of Pharmacy, P.O. Box 47863, Olympia, WA 98504-7863, phone (360) 236-4834, fax (360) 236-2901, e-mail doreen.beebe@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 5, Repealed 4.

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 3, Amended 5, Repealed 4.

Date Adopted: August 12, 2011.

A. J. Linggi
Board Chair

NEW SECTION

WAC 246-889-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the Washington state board of pharmacy.

(2) "Electronic reporting" means detailed reporting obligations of a pharmacy, shopkeeper, or itinerant vendor to submit to the real-time methamphetamine precursor tracking system the retail purchase or attempted purchase of any non-prescription products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts or isomers, or salts of isomers.

(3) "Law enforcement" means any general or limited authority Washington peace officer or federal law enforcement officer.

(4) "Methamphetamine precursor tracking system" means the real-time electronic sales tracking system established by RCW 69.43.110 used to capture the retail purchase or attempted purchase of any nonprescription products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts or isomers, or salts of isomers.

(5) "Purchaser" means an individual who purchases or attempts to purchase a restricted product.

(6) "Restricted product" means any nonprescription product containing any detectable quantity of ephedrine, pseudoephedrine, and phenylpropanolamine or their salts or isomers, or salts of isomers.

(7) "Retailer" means a pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of

health under chapter 18.64 RCW that sells, dispenses, or otherwise provides restricted products to purchasers.

(8) "Sale" means the transfer, selling, or otherwise furnishing of any restricted product to any person.

AMENDATORY SECTION (Amending WSR 06-02-010, filed 12/22/05, effective 1/1/06)

WAC 246-889-070 Retail sales (~~logs for~~) of nonprescription ephedrine, pseudoephedrine, and phenylpropanolamine products. Purpose.

The legislature has recognized that restricting access to ephedrine, pseudoephedrine, and phenylpropanolamine products, or their salts or isomers, ~~or salts of isomers~~, is a valid method to reduce the availability of these products for the (~~illegal~~) manufacture of methamphetamine. To reduce the (~~illegal~~) use of these products in the manufacture of methamphetamine, while continuing access for legitimate purposes, the legislature directed the board to adopt rules to implement a statewide methamphetamine precursor tracking system for the (~~recording of retail~~) nonprescription sales (~~(involving)~~) of products containing ephedrine, pseudoephedrine or phenylpropanolamine (~~(products)~~) or their salts or isomers, or salts of isomers. (~~The record of sales must be collected and maintained in a written or electronic log or other alternative means. Data from this log will be used to determine if the log is an effective law enforcement tool and if the information received is an effective deterrent to criminal activity. The following rules~~) This chapter describes the requirements for the (~~(transaction logs)~~) retail sales of restricted products.

AMENDATORY SECTION (Amending WSR 06-02-010, filed 12/22/05, effective 1/1/06)

WAC 246-889-085 Requirements for the sale of (~~an ephedrine, pseudoephedrine, or phenylpropanolamine~~) restricted product. Unless exempted in (~~(WAC 246-889-080)~~) RCW 69.43.110, a retailer must:

(1) (~~(Review)~~) Verify the purchaser's (~~(photo)~~) identity by means of acceptable identification as defined in this chapter. (~~(The photo identification must include the date of birth of the purchaser. The)~~)

(2) Ensure that the purchaser (~~(must be)~~) is at least eighteen years of age (~~(or older)~~).

(~~(2)~~) (3) Record all of the information (~~(detailed)~~) required in WAC 246-889-095 (~~(for)~~) in the record of transaction before completing the sale.

AMENDATORY SECTION (Amending WSR 06-02-010, filed 12/22/05, effective 1/1/06)

WAC 246-889-090 Acceptable forms of photo identification. (~~(To be an)~~) Acceptable forms of identification (~~(the identification must be issued by a government agency and)~~) are defined as current foreign, federal, state, or tribal government-issued identification which include the person's photograph, name, (~~(address,)~~) date of birth, (~~(and)~~) signature, and physical description. (~~(The following are acceptable forms of identification:)~~) Acceptable forms of identification include, but are not limited to:

(1) A valid driver's license or instruction permit issued by any U.S. state or ((province of Canada)) foreign government. If the ((customer's)) purchaser's driver's license has expired, he((/s)) or she must also show a valid temporary driver's license with the expired card.

(2) A United States armed forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents.

(3) A merchant marine identification card issued by the United States Coast Guard.

~~(4) ((A state liquor control identification card. An official age identification card issued by the liquor control authority of any U.S. state or Canadian province.~~

~~((5) A state)) An identification card issued by any ((U.S.)) foreign, federal, or state ((or province of Canada)) government.~~

~~((6)) (5) An official U.S. passport ((issued by any nation)) or an unexpired foreign passport that contains a temporary I-551 stamp.~~

~~((7)) (6) An enrollment card issued by the governing authority of a federally recognized Indian tribe located in Washington state, if the enrollment card incorporates security features comparable to those implemented by the department of licensing for Washington state drivers' licenses ((and are recognized by the liquor control board)).~~

AMENDATORY SECTION (Amending WSR 06-02-010, filed 12/22/05, effective 1/1/06)

WAC 246-889-095 Record of sales—Electronic methamphetamine precursor tracking. ~~((Information required. The retailer must record:))~~

(1) Unless granted an exemption under RCW 69.43.110 upon the sale or attempted sale of a restricted product, each retailer must enter and electronically transmit the following information to the methamphetamine precursor tracking system prior to completion of the transaction:

(a) Sale transaction information including:

(i) Date and time of the intended purchase;

~~((2) Name of the purchaser;~~

~~((3)) (ii) Product description;~~

(iii) Quantity of product to be sold including:

(A) Total grams of restricted product per box;

(B) Number of boxes per transaction; and

(b) Purchaser's information including:

(i) Full name as it appears on the acceptable identification;

(ii) Date of birth ((of the purchaser));

~~((4) Type)) (iii) The address as it appears on the photo identification or the current address if the form of photo identification used does not contain the purchaser's address. The address information must include the house number, street, city, state, and zip code;~~

(iv) Form of photo identification ((agency issuing the identification)) presented by the purchaser, including the issuing agency of the acceptable identification, and the identification number ((if applicable)) appearing on the identification; and

~~((5) Number of packages and the number of tablets per package.) (v) Purchaser's signature. If the retailer is not able~~

to secure an electronic signature, the retailer shall maintain a hard copy of a signature logbook consisting of each purchaser's signature and the transaction number provided by the methamphetamine precursor tracking system.

(c) The full name or initials of the individual conducting the transaction.

(d) Other information as required by the methamphetamine precursor tracking system data base.

(2) If a transaction occurs during a time when the methamphetamine precursor tracking system is temporarily unavailable due to power outage or other technical difficulties, the retailer shall record the information required in this section in a written logbook for entry into the methamphetamine precursor tracking system within seventy-two hours of the system becoming operational.

AMENDATORY SECTION (Amending WSR 06-02-010, filed 12/22/05, effective 1/1/06)

WAC 246-889-110 Maintenance of and access to retail sales records of ((sales)) restricted products.

~~((Records of)) (1) The retail sales records required under WAC 246-889-095 are confidential and ((are only open to inspection)) accessible by the board of pharmacy and law enforcement agencies. ~~((The retailer does not have to transmit records to law enforcement or the board of pharmacy. Law enforcement and/or the board of pharmacy will request and obtain records if they are needed. Retailers shall also produce the records in a court whenever lawfully required to do so.))~~ Law enforcement may access the retail sales records for criminal investigations when, at a minimum, there is an articulated individualized suspicion of criminal activity.~~

(2) Each law enforcement agency's administrator, chief, sheriff, or other chief executive officer shall ensure:

(a) Only authorized employees have access to the data bases;

(b) Each employee use his or her unique password or access code to access the data bases;

(c) Each employee adheres to all state and federal laws regarding confidentiality; and

(d) As employees change, new passwords or access codes are assigned to new employees and passwords of ex-employees or transferred employees are removed.

(3) Retail sales records of restricted products, electronic or written, must be kept for a minimum of two years.

(4) Retail sales records must be destroyed in a manner that leaves the record unidentifiable and nonretrievable.

NEW SECTION

WAC 246-889-115 Exemptions from electronic reporting.

(1) Pharmacies are exempt from entering purchase information into the methamphetamine precursor tracking system when the sale of products containing ephedrine, pseudoephedrine, or phenylpropanolamine or their salts or isomers, or salts of isomers is sold pursuant to a prescription written by an authorized practitioner.

(2) A retailer must demonstrate "good cause" to qualify for an exemption from electronic reporting requirements. "Good cause" includes, but is not limited to, situations where the installation of the necessary equipment to access the

methamphetamine precursor tracking system is unavailable or cost prohibitive to the retailer.

(a) A retailer must submit a written request on a form provided by the board, which shall include the following information:

- (i) The reason for the exemption; and
- (ii) The anticipated duration needed for the exemption.

(b) An exemption from electronic reporting may not exceed one hundred eighty days.

(c) A retailer may request additional exemptions by submitting a form defined in this subsection at least thirty days before the current exemption expires. The retailer must show that compliance will cause the business significant hardship.

(d) For all sales transactions involving the sale or attempted sale of a restricted product occurring during the period of an exemption, the retailer shall record into a written logbook, at the time of the sale or attempted sale, the information required under WAC 246-889-095(1).

(e) The written logbook of each sale or attempted sale shall be available for inspection by any law enforcement officer or board inspector during normal business hours.

NEW SECTION

WAC 246-889-120 Denial of sale—Override. (1) The retailer must deny the sale of restricted product to purchasers who are not able to produce acceptable identification or if the sale would violate RCW 69.43.110 or federal law.

(2) In the event that the retailer perceives that refusal of the purchase may place him or her in imminent physical harm, the retailer may use the data base safety override function to proceed with the sale, provided that when the threat is no longer perceived, the retailer must immediately contact local law enforcement to report the incident.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-889-075 Definitions.
- WAC 246-889-080 Records of sale.
- WAC 246-889-100 Methods for collecting, recording, and storing records of sales data.
- WAC 246-889-105 Record retention and destruction.

WSR 11-19-024

PERMANENT RULES

WASHINGTON CITIZENS' COMMISSION ON SALARIES FOR ELECTED OFFICIALS

[Filed September 9, 2011, 10:21 a.m., effective October 10, 2011]

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

Purpose: Revise chapters 183-01, 183-05, and 183-07 WAC to better inform the public about the commission's

operating policies and procedures and revise chapter 183-08 WAC to reflect changes made to RCW 43.03.305 by the 2011 legislature.

Citation of Existing Rules Affected by this Order: Amending chapters 183-01, 183-05, 183-07, and 183-08 WAC.

Statutory Authority for Adoption: RCW 43.03.305 through [43.03].310.

Adopted under notice filed as WSR 11-15-056 on July 18, 2011.

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

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

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

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

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

Date Adopted: September 1, 2011.

Teri Wright
Director

AMENDATORY SECTION (Amending WSR 09-19-112, filed 9/22/09, effective 10/23/09)

WAC 183-01-020 Authority and duties. The ~~((commission's authority and duties are described))~~ commission has sole authority for setting the salaries of the elected officials in the executive, legislative, and judicial branches of Washington state government as described in Article 28, section 1 of the state Constitution and in RCW 43.03.310.

NEW SECTION

WAC 183-01-030 Schedule of salaries adopted by the commission. The biennial salaries adopted by the commission can be found on the commission's web site at www.salaries.wa.gov or in RCW 43.03.011 (executive branch), 43.03.012 (judicial branch), and 43.03.013 (legislative branch).

AMENDATORY SECTION (Amending WSR 09-12-077, filed 6/1/09, effective 7/2/09)

WAC 183-05-010 Purpose. The purpose of this chapter is to:

(1) Implement the public records provisions of chapter 42.56 RCW.

(2) Establish processes and procedures for both requestors and commission staff to follow that will assist members of the public to obtain full access to the commission's public records.

AMENDATORY SECTION (Amending WSR 09-12-077, filed 6/1/09, effective 7/2/09)

WAC 183-07-010 Meetings. The commission conducts its meetings in compliance with the Open Public Meetings Act, chapter 42.30 RCW.

(1) Other than executive sessions, the commission's regular meetings, special meetings, and emergency meetings are open to the general public.

(2) Regular meetings. In conformance with the requirement of RCW 43.03.310(6) that the commission schedule at least four public hearings to take public testimony on its proposed salary schedule, the commission shall schedule such hearings by majority vote. The public hearings so scheduled shall be "regular meetings" as defined by RCW 42.30.075. The commission shall fix the time and place of these public hearings and publish a schedule in the *Washington State Register*, in accordance with chapter 42.30 RCW, the Open Public Meetings Act.

(3) Special meetings. The chair, presiding officer, or a majority of commission members may call a special meeting at any time in accordance with RCW 42.30.080. In addition, the time and place of special meetings that are scheduled at the same time that the regular meetings described in subsection (1) of this section are scheduled will also be published in the *Washington State Register*.

(4) Regular meetings and special meetings may be adjourned prior to the published end time if all business has been conducted.

(5) Executive sessions. The chair, presiding officer, or a majority of commission members may call an executive session at any time in accordance with RCW 42.30.110. Executive sessions are not open to the public. Commission staff will attend any executive sessions called except the chair or presiding officer will excuse staff when the purpose of the executive session is to discuss personnel matters.

(6) The presence of at least one-half of the members of the commission shall constitute a quorum.

(7) The affirmative vote of at least nine members of the commission is required to set a schedule of salaries as defined in RCW 43.03.310(4).

(8) The commission shall maintain records of meeting proceedings as minutes; duly recorded, and maintained at the commission's office.

AMENDATORY SECTION (Amending WSR 09-12-077, filed 6/1/09, effective 7/2/09)

WAC 183-07-020 Conduct of meetings and order of business. (1) All commission meeting business shall be transacted by motion. Motions may be made by any commission member and shall require a second.

(2) Voting on all motions shall be by voice vote unless a record of the vote is called for in which case the executive director shall call the roll in alphabetical order and record the vote of each member present, "yea" or "nay."

(3) The chair and vice-chair are voting members of the commission.

(4) The order of commission meeting business shall be conducted as prescribed by the agenda.

(5) The executive director shall prepare each meeting's agenda in consultation with the chair.

(6) The commission shall approve the minutes of the preceding meeting as the first act of each meeting.

(7) The chair or ~~((any commission member))~~ presiding officer may modify ~~((a meeting's))~~ the agenda ~~((by motion))~~ of a meeting if deemed necessary or beneficial.

Chapter 183-08 WAC

COMMISSION MEMBERSHIP, APPOINTMENTS, AND VACANCIES

AMENDATORY SECTION (Amending WSR 09-12-077, filed 6/1/09, effective 7/2/09)

WAC 183-08-010 Membership. Membership on the commission is as defined in RCW 43.03.305.

(1) One member from each congressional district is selected randomly by the secretary of state from the rolls of registered voters.

(2) Seven commissioners are selected jointly by the speaker of the house of representatives and the president of the senate. Of these seven members, one is selected from each of the following five sectors: Private institutions of higher education, business, professional personnel management, legal profession, and organized labor. Of the remaining two members, one is recommended to the speaker of the house of representatives and the president of the senate by the chair of the Washington personnel resources board and one is recommended by majority vote of the presidents of the state's four-year institutions of higher education.

NEW SECTION

WAC 183-08-015 Eligibility criteria. (1) No state official, lobbyist, or public employee, or immediate family member of the state official, lobbyist, or public employee is eligible for membership on the commission.

Definitions:

(a) "Immediate family" means:

(i) The parents, spouse or domestic partner, siblings, children, or dependent relative of the state official or lobbyist whether or not they live in the home of the state official or lobbyist;

(ii) The parents, spouse or domestic partner, siblings, children, or dependent relative of the public employee who live in the home of the employee; and

(iii) Any person who is dependent, in whole or in part, for his or her support upon the earnings of a state employee.

(b) "Lobbyist" means any person required to be registered as a lobbyist in the state of Washington under the provisions of chapters 42.17 and 42.17A RCW.

(c) "Public employee" means any person who, at the time of selection, is an officer or employee of any governmental body or political subdivision located in the state of Washington including, but not limited to, the agencies of the federal, state, or county government or any other municipal corporation operating under federal or state law or local ordinance.

Generally, this means any person whose salary is paid by public or tax dollars.

(d) "State official" means the elected officials in the executive, legislative, and judicial branches of Washington state government.

(2) Any person selected from a congressional district must be a registered voter and, at the time of selection, be eligible to vote in the congressional district from which he or she was selected.

(3) Any person selected jointly by the speaker of the house of representatives and the president of the senate must be a resident of Washington and have had experience in personnel management.

AMENDATORY SECTION (Amending WSR 09-12-077, filed 6/1/09, effective 7/2/09)

WAC 183-08-020 Appointments. ~~((The secretary of state and the speaker of the house of representatives and the president of the senate shall forward the names of the persons selected as described in RCW 43.03.305(3) and WAC 434-209-080 to the governor for appointment.))~~ (1) The secretary of state will forward the names of the persons selected as described in WAC 183-08-010(1) and chapter 434-209 WAC to the governor for appointment not later than the first day of July, every two years.

(2) The speaker of the house of representatives and the president of the senate will forward the names of the persons jointly selected by them as described in WAC 183-08-010(2) to the governor for appointment not later than the first day of July, every two years.

(3) The governor will appoint to the commission those persons whose names have been submitted by the secretary of state and the speaker of the house of representatives and the president of the senate.

AMENDATORY SECTION (Amending WSR 09-12-077, filed 6/1/09, effective 7/2/09)

WAC 183-08-030 Term of office. (1) The governor shall appoint the individuals selected ~~((under RCW 43.03.305 to the commission for a four-year term.))~~ by the secretary of state and the speaker of the house of representatives and the president of the senate to the commission for a four-year term that begins on July 1st and ends on June 30th.

(2) No person may serve more than two terms.

(3) When an individual is appointed to fill an unexpired term, that term constitutes his or her first term. The term of office is from the date of appointment until the end of the unexpired term of the position being vacated.

AMENDATORY SECTION (Amending WSR 09-12-077, filed 6/1/09, effective 7/2/09)

WAC 183-08-040 ~~((Vacancy))~~ Vacancies. (1) Upon a vacancy in any position on the commission, ~~((a successor shall be selected and appointed to fill the unexpired term of the previous member in accordance with RCW 43.03.305(6) and WAC 434-209-090 if the vacancy is in a congressional district.))~~ due to a resignation or the member becoming ineligible to serve, a successor will be selected and appointed to

fill the unexpired term of the previous member within thirty days of the date the position became vacant. The selection must be done in the same manner as the original appointment.

(a) The selection and appointment to fill a vacancy in a congressional district will be conducted in accordance with WAC 183-08-010(1), 183-08-020 (1) and (3), and 434-209-090.

(b) The selection and appointment to fill a vacancy in a position recommended jointly by the speaker of the house of representatives and the president of the senate shall be conducted in accordance with WAC 183-08-010(2) and 183-08-020 (2) and (3).

(2) Upon a vacancy in any position on the commission due to a commissioner having two unexcused absences as defined in RCW 43.03.305(4), the executive director will send a letter to that commissioner informing him or her of the relinquishment of his or her position on the commission. The ~~((selection and appointment to fill the vacancy shall be conducted in accordance with RCW 43.03.305(6) and WAC 434-209-090 if the vacancy is in a congressional district.))~~ position will be filled under the provisions of WAC 183-08-040(1).

(3) The initial member from a newly created congressional district will be selected and appointed within ninety days of the creation of the district and in the manner described in WAC 183-08-010(1) and 183-08-020(3).

NEW SECTION

WAC 183-08-050 Removal of a member for cause.

(1) No member of the commission may be removed by the governor during his or her term of office unless for cause of incapacity, incompetence, neglect of duty, malfeasance in office, or for a disqualifying change of residence.

(2) A disqualifying change of residence would occur if:

- (a) A member moves out of the state of Washington; or
- (b) A member selected from a congressional district moves out of the boundaries of his or her district.

WSR 11-19-032

PERMANENT RULES

GAMBLING COMMISSION

[Order 676—Filed September 9, 2011, 3:21 p.m., effective October 10, 2011]

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

Purpose: The gambling commission received a petition for rule change from Mr. Bearden, representing various charitable and nonprofit organizations, some of which have a gambling license and others do not. The petitioners requested that the number of bingo cards allowed for play in electronic bingo daubers be increased from sixty-six to one hundred forty-four. The petition was filed for discussion at the July 2011, commission meeting and approved at the September commission meeting.

Reasons: See above.

Citation of Existing Rules Affected by this Order: Amending WAC 230-10-185.

Statutory Authority for Adoption: RCW 9.46.070 and 9.46.0205.

Adopted under notice filed as WSR 11-15-103 on July 20, 2011.

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

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

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

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

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

Date Adopted: September 9, 2011.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 610, filed 4/24/07, effective 1/1/08)

WAC 230-10-185 Electronic bingo card daubers restrictions. (1) Electronic bingo card daubers must not allow a player to play more than (~~sixty-six~~) one hundred forty-four cards on the dauber at one time; and

(2) Players must:

(a) Input each number the operator calls into the memory of the dauber separately. Automatic or global marking of numbers is prohibited; and

(b) Call the bingo without using the dauber or the associated system; and

(c) Identify the winning card and display the card to the operator; and

(d) Not play more than one dauber at any point in time. However, a player may play one dauber and an unlimited number of bingo cards at the same time.

WSR 11-19-038

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed September 12, 2011, 4:13 p.m., effective October 13, 2011]

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

Purpose: Part I of chapter 23, Laws of 2010 1st sp. sess. (2ESSB 6143) changed the apportionment and nexus requirements for apportionable activities, effective June 1, 2010. The department has adopted emergency rules to explain how this legislation applies while it engaged in rule making for permanent rules.

The department is at this time adopting WAC 458-20-19401 (Rule 19401) Minimum nexus thresholds for apportionable activities. Rule making continues for WAC 458-20-19402 Single factor sales receipts apportionment—Gener-

ally, 458-20-19403 Single factor sales receipts apportionment—Royalties, and 458-20-19404 Financial institutions—Income apportionment.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 11-13-051 on June 10, 2011.

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

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

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

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

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

Date Adopted: September 12, 2011.

Alan R. Lynn
Rules Coordinator

NEW SECTION

WAC 458-20-19401 Minimum nexus thresholds for apportionable activities. (1) Introduction.

(a) This rule only applies to periods after May 31, 2010.

(b) The state of Washington imposes business and occupation (B&O) tax on apportionable activities measured by the gross income of the business. B&O tax may only be imposed if a person has a "substantial nexus" with this state. For the purposes of apportionable activities, substantial nexus does not require a person to have physical presence in this state.

(c) The following rules may also be helpful:

(i) WAC 458-20-19402, Single factor receipts apportionment—Generally. This rule describes the general application of single factor receipts apportionment and applies only to tax liability incurred after May 31, 2010.

(ii) WAC 458-20-19403, Single factor receipts apportionment—Royalties. This rule describes the application of single factor receipts apportionment to gross income from royalties and applies only to tax liability incurred after May 31, 2010.

(iii) WAC 458-20-19404, Financial institutions—Income apportionment. This rule describes the application of single factor receipts apportionment to certain income of financial institutions and applies only to tax liability incurred after May 31, 2010.

(iv) WAC 458-20-193, Inbound and outbound interstate sales of tangible personal property.

(v) WAC 458-20-194, Doing business inside and outside the state. This rule describes separate accounting and cost apportionment and applies only to tax liability incurred from January 1, 2006 through May 31, 2010.

(d) Examples included in this rule identify a number of facts and then state a conclusion; they should be used only as a general guide. The tax results of all situations must be determined after a review of all the facts and circumstances. For the examples in this rule, gross income received by the taxpayer is from engaging in apportionable activities. Also, unless otherwise stated, the examples do not apply to tax liability prior to June 1, 2010.

(2) **Definitions.** Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this rule.

(a) **"Apportionable activities"** includes only those activities subject to B&O tax under the following classifications:

- (i) Service and other activities;
- (ii) Royalties;
- (iii) Travel agents and tour operators;
- (iv) International steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent;
- (v) Stevedoring and associated activities;
- (vi) Disposing of low-level waste;
- (vii) Title insurance producers, title insurance agents, or surplus line brokers;
- (viii) Public or nonprofit hospitals;
- (ix) Real estate brokers;
- (x) Research and development performed by nonprofit corporations or associations;
- (xi) Inspecting, testing, labeling, and storing canned salmon owned by another person;
- (xii) Representing and performing services for fire or casualty insurance companies as an independent resident managing general agent licensed under the provisions of chapter 48.17 RCW;
- (xiii) Contests of chance;
- (xiv) Horse races;
- (xv) International investment management services;
- (xvi) Room and domiciliary care to residents of a boarding home;
- (xvii) Aerospace product development;
- (xviii) Printing or publishing a newspaper (but only with respect to advertising income);
- (xix) Printing materials other than newspapers and publishing periodicals or magazines (but only with respect to advertising income); and
- (xx) Cleaning up radioactive waste and other by-products of weapons production and nuclear research and development, but only with respect to activities that would be taxable as an "apportionable activity" under any of the tax classifications listed in (a)(i) through (xix) of this subsection if this special tax classification did not exist.

(b) **"Credit card"** means a card or device existing for the purpose of obtaining money, property, labor, or services on credit.

(c) **"Gross income of the business"** means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebted-

ness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses. The term gross receipts means gross income from apportionable activities.

(d) **"Loan"** means any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such extension of credit from another. Loan includes participations, syndications, and leases treated as loans for federal income tax purposes. Loan does not include: Futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; noninterest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a real estate mortgage investment conduit (REMIC) or other mortgage-backed or asset-backed security; and other similar items.

(e) **"Net annual rental rate"** means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(f) The terms **"nexus"** and **"substantial nexus"** are used interchangeably in this rule.

(g) **"Property"** means tangible, intangible, and real property owned or rented and used in this state during the calendar year, except property does not include ownership of or rights in computer software, including computer software used in providing a digital automated service; master copies of software; and digital goods or digital codes residing on servers located in this state. Refer to RCW 82.04.192 and 82.04.215 for definitions of the terms computer software, digital automated services, digital goods, digital codes, and master copies.

(h) **"State"** means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

(i) **"Securities"** includes any intangible property defined as a security under section 2(a)(1) of the Securities Act of 1933 including, but not limited to, negotiable certificates of deposit and municipal bonds.

(3) **Substantial nexus.**

(a) Substantial nexus exists where a person is:

- (i) An individual and is a resident or domiciliary of this state during the calendar year;
- (ii) A business entity and is organized or commercially domiciled in this state during the calendar year; or
- (iii) A nonresident individual or a business entity that is organized or commercially domiciled outside this state, and in any calendar year the person has:

(A) More than fifty thousand dollars of property in this state;

(B) More than fifty thousand dollars of payroll in this state;

(C) More than two hundred fifty thousand dollars of receipts from this state; or

(D) At least twenty-five percent of the person's total property, total payroll, or total receipts in this state.

Example 1. Company commercially domiciled in Washington. Company C is commercially domiciled in Washington and has one employee in Washington who earns \$30,000 per year. Company C has substantial nexus with Washington because it is commercially domiciled in Washington. The minimum nexus thresholds for property, payroll, and receipts do not apply to a business entity commercially domiciled in this state.

(b) The department will adjust the amounts listed in (a) of this subsection based on changes in the consumer price index as required by RCW 82.04.067.

(c) The minimum nexus thresholds are determined on a tax year basis. Generally, a tax year is the same as a calendar year. See RCW 82.32.270. For the purposes of this rule, tax years will be referred to as calendar years. This means that if a person meets the minimum nexus thresholds in a calendar year, that person is subject to B&O taxes for the entire calendar year.

Example 2. Company Q is organized and domiciled outside of Washington. Company Q maintains an office in Washington which houses a single employee. Company Q has \$40,000 in property located in Washington, the employee receives \$45,000 in compensation, and has \$200,000 in apportionable receipts attributed to Washington. Company Q's total property is valued at \$200,000, total payroll compensation is \$400,000, and total apportionable receipts is \$5,000,000. Although Company Q has physical presence in Washington, it does not have substantial nexus with Washington because: (a) It is not organized or domiciled in Washington; and (b) does not have sufficient property, payroll, or receipts to meet the minimum nexus thresholds identified in subsection (2)(a) of this rule.

(4) Property threshold.

(a) Location of property.

(i) Real property - Real property owned or rented is in this state if the real property is located in this state.

(ii) Tangible personal property - Tangible personal property is in this state if it is physically located in this state.

(iii) Intangible property - Intangible property is in this state based on the following:

A loan is located in this state if:

(A) More than fifty percent of the fair market value of the real and/or personal property securing the loan is in this state. An automobile loan is in this state if the vehicle is properly registered in this state. Other than for property that is subject to registered ownership, the determination of whether the real or personal property securing a loan is in this state must be made as of the time the original agreement was made, and any and all subsequent substitutions of collateral must be disregarded; or

(B) If (a)(iii)(A) of this subsection does not apply and the borrower is located in this state.

(iv) A borrower located in this state if:

(A) The borrower is engaged in business and the borrower's commercial domicile is located in this state; or

(B) The borrower is not engaged in business and the borrower's billing address is located in this state.

(v) A credit card receivable is in this state if the billing address of the card holder is located in this state.

(vi) A nonnegotiable certificate of deposit is property in this state if the issuing bank is in this state.

(vii) Securities:

(A) A negotiable certificate of deposit is property in this state if the owner is located in this state.

(B) A municipal bond is property in this state if the owner is located in this state.

(b) Value of property.

(i) Property the taxpayer owns and uses in this state, other than loans and credit card receivables, is valued at its original cost basis.

Example 3. In January 2008, ABC Corp. bought Machinery for \$65,000 for use in State X. On January 1, 2011, ABC Corp. brought that Machinery into Washington for the remainder of the year. ABC Corp. has nexus with Washington based on Machinery's original cost basis value of \$65,000. The value is \$65,000 even though the property has depreciated prior to entering the state.

(ii) Property the taxpayer rents and uses in this state is valued at eight times the net annual rental rate.

Example 4. Out-of-state Business X rents office space in Washington for \$6,000 per year and has \$5,000 of office furniture and equipment in Washington. Business X has nexus with Washington because the value of the rented office space (\$6,000 multiplied by eight, which is \$48,000) plus the value of office furniture and equipment exceeds the \$50,000 property threshold.

(iii) Loans and credit card receivables owned by the taxpayer are valued at their outstanding principal balance, without regard to any reserve for bad debts. However, if a loan or credit card receivable is actually charged off as a bad debt in whole or in part for federal income tax purposes (see 26 U.S.C. 166), the portion of the loan or credit card receivable charged off is deducted from the outstanding principal balance.

(c) **Calculating property value.** To determine whether the \$50,000 property threshold has been met, average the value of property in this state on the first and last day of the calendar year. The department may require the averaging of monthly values during the calendar year if reasonably required to properly reflect the average value of the taxpayer's property in this state throughout the taxable period.

Example 5. Company Y has property in Washington valued at \$90,000 on January 1st and \$20,000 on December 31st of the same year. The value of property in Washington is \$55,000 $((90,000 + 20,000)/2)$. Company Y has substantial nexus with Washington.

Example 6. Company A has no property located in Washington on January 1st and on December 31st of a calendar year. However, it brought \$100,000 in property into Washington on January 15th and removed it from Washington on November 15th of that calendar year. The department may compute the value of Company A's property on a monthly basis in this situation because it is required to properly reflect the average value of Company A's property in Washington $(\$100,000 \text{ multiplied by ten (months) divided by 12 (months), which is } \$83,333)$. Company A has nexus with

Washington based on the value of the property averaged over the calendar year.

Example 7. Company B has no property located in Washington on January 1st and on December 31st of a calendar year. However, it brought \$100,000 in property into Washington on January 15th and removed it from Washington on February 15th of that calendar year. The department may compute the value of Company A's property on a monthly basis in this situation because it is required to properly reflect the average value of Company B's property in Washington (\$100,000 multiplied by one (month) divided by 12 (months), which is \$8,333.) Company B does not have nexus with Washington based on the value of the property averaged over the calendar year, unless this amount exceeds 25% of Company B's total property value.

Example 8. IT Co. is domiciled in State X with Employee located in Washington who works from a home office. IT Co. provided to Employee \$5,000 of office supplies and \$15,000 of equipment owned by IT Co. IT Co. does not have nexus with Washington based on the value of the property in this State (\$20,000) because it does not exceed \$50,000, unless this amount exceeds 25% of IT Co.'s total property value. This example does not address the payroll threshold.

(5) **Payroll threshold.** "Payroll" is the total compensation defined as gross income under 26 U.S.C. Sec. 61 (section 61 of the Internal Revenue Code of 1986), as of June 1, 2010, paid during the calendar year to employees and to third-party representatives who represent the taxpayer in interactions with the taxpayer's clients and includes sales commissions.

(a) Payroll compensation is received in this state if it is properly reportable in this state for unemployment compensation tax purposes, regardless of whether it was actually reported to this state.

Example 9. Company D is commercially domiciled in State X and has a single Employee whose payroll of \$80,000 is properly reportable in Washington for unemployment compensation purposes. Company D has substantial nexus with Washington during the calendar year based on compensation paid Employee.

Example 10. Assume the same facts as Example 9 except only 50% of Employee's payroll is properly reportable in Washington for unemployment compensation purposes for the calendar year. Employee's Washington compensation of \$40,000 does not meet the payroll threshold to establish substantial nexus with Washington, unless this amount exceeds 25% of total payroll compensation.

(b) Third-party representatives receive payroll compensation in this state if the service(s) performed occurs entirely or primarily within this state.

(6) **Receipts threshold.** The receipts threshold is met if a taxpayer receives more than \$250,000 from apportionable activities that is attributed to Washington.

(a) All receipts from all apportionable activities are accumulated to determine if the receipts threshold is satisfied. Receipts from activities that are not subject to apportionment (e.g., retailing, wholesaling, and extracting) are not used to determine if the receipts threshold has been satisfied.

(b) Receipts are attributed to Washington per WAC 458-20-19402 (general attribution), 458-20-19403 (royalties), and 458-20-19404 (financial institutions).

Example 11. Company E is commercially domiciled in State X. In a calendar year it has \$150,000 in royalty receipts attributed to Washington per WAC 458-20-19403 and \$150,000 in gross receipts from other apportionable activities attributed to Washington per WAC 458-20-19402. Company E has substantial nexus with Washington because it has a total of \$300,000 in receipts from apportionable activities attributed to Washington in a calendar year. It does not matter that the receipts were from apportionable activities that are subject to tax under different B&O tax classifications. The receipts threshold is determined by the totality of the taxpayer's apportionable activities in Washington.

Example 12. Calculation of minimum nexus thresholds during the 2010 transition year. Company F receives \$200,000 in gross receipts attributed to Washington on March 15, 2010; \$100,000 on July 12, 2010; and \$100,000 on November 1, 2010. Company F has substantial nexus with Washington for the period June 1, 2010, through December 31, 2010, because it received \$400,000 in gross receipts during 2010.

(7) **Application of 25% threshold.** If at least twenty-five percent of an out-of-state taxpayer's property, payroll, or receipts from apportionable activities is in Washington, then the taxpayer has substantial nexus with Washington. The twenty-five percent threshold is determined by dividing:

(a) The value of property located in Washington by the total value of taxpayer's property;

(b) Payroll located in Washington by taxpayer's total payroll; or

(c) Receipts attributed to Washington by total receipts.

Example 13. Company G is organized and commercially domiciled in State X. In a calendar year it has \$45,000 in property, \$45,000 in payroll, and \$240,000 in gross receipts attributed to Washington. Its total property is valued at \$200,000; its world-wide payroll is \$150,000; and its total gross receipts are \$2,000,000. Company G has twenty-two and a half percent of its property, thirty percent of its payroll, and twelve percent of its receipts attributed to Washington. Company G has substantial nexus with Washington because more than twenty-five percent of its payroll is located in Washington.

(8) **Application to local gross receipts business and occupations taxes.** This rule does not apply to the nexus requirements for local gross receipts business and occupation taxes.

(9) **Continuing substantial nexus.** Pursuant to RCW 82.04.220, if a person meets any of the minimum nexus thresholds in subsection (2) of this section in a calendar year, the person has nexus for the following calendar year and will owe B&O tax on its gross receipts attributable to Washington for that additional year.

Example 14. Assume Corporation J earns receipts attributable to Washington that do not exceed the minimum threshold from apportionable activities in any year, and whose physical presence in Washington ends on July 20, 2008. Corporation J's B&O tax reporting obligation for any

gross receipts earned in Washington ends on December 31, 2010.

Example 15. Assume Corporation K earns receipts attributable to Washington from July 1, 2008 through March 1, 2010 and exceeds the minimum threshold from apportionable activities in 2010. Assuming Corporation K does not exceed any of the minimum nexus thresholds in 2011, the taxpayer's B&O tax reporting obligation for any gross receipts attributable to Washington ends on December 31, 2011.

Example 16. Assume Corporation L exceeded Washington's minimum nexus thresholds for apportionable income from 2010 through 2012, but does not meet them in 2013. Corporation L's B&O tax reporting obligation for any gross receipts earned in Washington ends on December 31, 2013.

WSR 11-19-040

PERMANENT RULES

OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2011-12—Filed September 13, 2011, 8:08 a.m., effective October 14, 2011]

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

Purpose: This rule making makes technical corrections to chapter 284-17 WAC to ensure that these sections are correct for ease in use for consumers, individuals and entities regulated by the insurance commissioner.

Citation of Existing Rules Affected by this Order: Repealing WAC 284-17-258 and 284-17-260; and amending WAC 284-17-001, 284-17-009, and 284-17-011.

Statutory Authority for Adoption: RCW 48.02.060 (3)(a) and 48.17.005.

Adopted under notice filed as WSR 11-14-114 on July 6, 2011.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 2.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 2.

Date Adopted: September 13, 2011.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2010-07, filed 1/28/11, effective 2/28/11)

WAC 284-17-001 Definitions. For purposes of this chapter, unless the context requires otherwise:

(1) "Affiliation" is a type of appointment whereby a business entity authorizes an individual insurance producer or surplus line broker to represent it when conducting insurance business.

(2) "Business entity" has the meaning set forth in RCW 48.17.010(2) and includes a sole proprietorship having associated licensees authorized to act on its behalf in the business or trade name of the sole proprietorship.

(3) "Days" means calendar days including Saturday and Sunday and holidays, unless otherwise specified.

(4) "Electronic submission" or "submitted electronically" means submission of a licensing process by an applicant, licensee, insurer, or education provider by means of the commissioner's web site or a third-party licensing provider.

(5) "File" means a record in any retrievable format, and unless otherwise specified, includes paper and electronic formats.

(6) "Home state" has the meaning set forth in RCW 48.17.010(~~((3))~~) (4).

(7) "Insurer" has the meaning set forth in RCW 48.17.010(~~((6))~~) (7).

(8) "Licensee" means a person licensed by the commissioner under Title 48 RCW to sell, solicit or negotiate insurance and includes adjusters and surplus line brokers.

(9) "Line of authority" means a license issued in one or more lines of insurance listed in RCW 48.17.170.

(10) "NAIC" means the National Association of Insurance Commissioners.

(11) "Third-party licensing provider" is designated on the commissioner's web site at: www.insurance.wa.gov.

(12) "Reinstatement" means the reissuance by the commissioner of a license that was not renewed more than sixty days but fewer than twelve months after its expiration date.

(13) "Resident" means a person who has elected to make Washington his or her home state, or, in the case of a business entity, has a place of business in this state.

(14) "Sending written notice" or "sending a copy of the written notice" means transmitting the required information in writing and, where required, on forms designated by the commissioner for that purpose, via first class mail, commercial parcel delivery company, telefacsimile, or electronic transmission, unless a specific method of transmission is specified.

(15) "Surety" means that limited line of authority of insurance or bond that covers obligations to pay the debts of, or answer for the default of another, including faithlessness in a position of public or private trust.

(16) "Travel insurance" means that limited line of authority of insurance coverage for trip cancellation, trip interruption, baggage, life, sickness and accident, disability, and personal effects when limited to a specific trip and sold in connection with transportation provided by a common carrier.

(17) "Written" or "in writing" means any retrievable method of recording an agreement or document, and, unless otherwise specified, includes paper and electronic formats.

AMENDATORY SECTION (Amending Matter No. R 2008-06, filed 1/6/09, effective 7/1/09)

WAC 284-17-009 Limited line credit insurance. Limited line credit insurance is defined at RCW 48.17.010(~~((8))~~) (9).

(1) Insurers must ensure that their licensed and appointed insurance producers who transact the limited line credit insurance are qualified by education or experience to offer their credit insurance products.

(2) The requirements of this chapter for prelicensing and continuing insurance education do not apply to insurance producers that transact only the limited line credit insurance.

AMENDATORY SECTION (Amending Matter No. R 2008-06, filed 1/6/09, effective 7/1/09)

WAC 284-17-011 Limited line of travel insurance. Travel insurance is a limited line of authority and is defined in WAC 284-17-001(~~((14))~~) (16).

(1) Insurers must ensure that their licensed and appointed insurance producers who transact the limited line of travel insurance are qualified by education or experience to offer their travel insurance products.

(2) The requirements of this chapter for passing an insurance producer examination and for prelicensing and continuing insurance education do not apply to insurance producers that transact only the limited line of travel insurance.

~~((LONG TERM CARE (LTC) SPECIAL EDUCATION))~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 284-17-258	Long-term care education requirement.
WAC 284-17-260	Resident and nonresident agents required to complete the long-term care education requirement.

**WSR 11-19-042
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed September 13, 2011, 9:50 a.m., effective October 14, 2011]

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

Purpose: The purpose of this change in rule is to remove the reference to student learning plans. Student learning plans are only required at the eighth grade level due to a change in law during the 2010 legislative session (ESSB 6604).

The change in rule eliminates the reference in WAC 392-501-201 and 392-501-310.

Citation of Existing Rules Affected by this Order: Amending WAC 392-501-201 and 392-501-310.

Statutory Authority for Adoption: RCW 28A.300.040.

Other Authority: ESSB 6604.

Adopted under notice filed as WSR 11-16-094 on August 2, 2011.

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

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

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

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

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

Date Adopted: September 6, 2011.

Randy Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 07-13-035, filed 6/13/07, effective 7/22/07)

WAC 392-501-201 Eligibility. A student is eligible for the (~~((WASL/grades))~~) GPA comparison option if the student meets the following conditions:

(1) The student has taken the applicable component of the (~~((Washington))~~) state high school assessment (~~((of student learning (WASL)))~~) at least once and has not met the standard for which the student is applying to use this option. To meet these criteria, a student must have sat for and generated a valid scale score during the administration of the (~~((WASL))~~) state high school assessment.

(2) (~~((The student has met any applicable attendance and remediation or supplemental instruction requirements contained in the student's student learning plan developed under RCW 28A.655.061. The principal of the student's school may waive the attendance and/or remediation criteria for special, unavoidable circumstances.~~)

(3) ~~The student is in the twelfth grade.~~

(4) ~~The student has a cumulative grade point average of 3.2 or higher when the application is filed.~~) The student is in the twelfth grade.

(3) The student has a cumulative grade point average of 3.2 or higher when the application is filed.

AMENDATORY SECTION (Amending WSR 08-10-015, filed 4/25/08, effective 5/26/08)

WAC 392-501-310 Eligibility. A student who has taken the (~~((Washington assessment of student learning (WASL)))~~) state high school assessment at least once and has not met standard in one or more of the content areas is eligible to submit a collection for each content area in which they have not met standard as an alternative assessment (~~((to the WASL))~~) if:

~~((H))~~ The student has sat for and generated a valid scale score during the administration of the ~~((WASL-~~

~~(2) The student has met any applicable attendance and remediation or supplemental instruction requirements contained in the student's student learning plan developed under RCW 28A.655.061, unless such attendance and/or remediation criteria have been waived by a school district representative for special unavoidable circumstances)) state high school assessment.~~

WSR 11-19-047
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed September 13, 2011, 12:26 p.m., effective October 14, 2011]

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

Purpose: The department is amending WAC 388-412-0005, 388-412-0015, 388-412-0040, 388-446-0001, 388-446-0015, 388-446-0020, and 388-472-0005; and creating a new rule WAC 388-412-0046 What is the purpose of DSHS cash and food assistance benefits and how can I use my benefits?

These amendments are needed to incorporate federal regulations regarding the allowable use of supplemental nutrition assistance program benefits. These amendments provide definitions of trafficking, appropriate and legal use of food assistance benefits, and adopt federal regulations related to fraud, use of food assistance benefits, and penalties for trafficking of food assistance benefits.

These amendments also incorporate department standards for use of DSHS cash assistance benefits consistent with restrictions regarding the use of electronic benefit transfer (EBT) food and cash assistance by amending RCW 74.08.580 during the 2011 legislative session. These changes are necessary to carry out the purposes of DSHS cash and food assistance programs.

Citation of Existing Rules Affected by this Order: Amending WAC 388-412-0005, 388-412-0015, 388-412-0040, 388-446-0001, 388-446-0015, 388-446-0020 and 388-472-0005; and new section WAC 388-412-0046.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, 74.04.770, 74.12.260, 74.08.580, 9.91.142, 7 C.F.R. 273.16, the Food and Nutrition Act of 2008 as amended and 42 U.S.C. 601a; and ESSB 5921.

Other Authority: 7 C.F.R. 273.16, the Food and Nutrition Act of 2008 as amended and 42 U.S.C. 601a; and ESSB 5921 which was signed into law on June 15, 2011.

Adopted under notice filed as WSR 11-14-082 on July 1, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 8, 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 8, Repealed 0.

Date Adopted: September 9, 2011.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 11-20 issue of the Register.

WSR 11-19-064
PERMANENT RULES
OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2011-06—Filed September 15, 2011, 11:48 a.m., effective October 16, 2011]

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

Purpose: The change to the definition of "allowable expense" in WAC 284-51-195 will reduce health plan and health provider administrative costs related to COB situations and will reduce the administrative burden of complying with new HIPAA claims transaction standards (Version 5010). Many consumers/patients in COB situations will have reduced costs under the change.

Citation of Existing Rules Affected by this Order: Amending WAC 284-51-195.

Statutory Authority for Adoption: RCW 48.02.060, 48.21.200, 48.44.050, and 48.46.200.

Adopted under notice filed as WSR 11-15-081 on July 20, 2011.

Changes Other than Editing from Proposed to Adopted Version:

- Secondary plans are required to pay an amount, which combined with the payment made by the primary plan, is not less than the amount it would have paid if it had been the primary plan. The sentence was edited to clarify that it is permissible for the secondary plan to pay more, i.e. to the primary plan's allowable expense, if higher.
- The sentence dealing with situations where medicare (Part A, B, C or D) is primary is edited to clarify that medicare's allowable expense shall be used as the allowable expense.

The first edit adds flexibility without any detriment to carriers, providers, or consumers. The second edit is solely a clarification.

A final cost-benefit analysis is available by contacting Pete Cutler, P.O. Box 40258, Olympia, WA 98504-0258,

phone (360) 725-9651, fax (360) 586-3109, e-mail petec@oic.wa.gov.

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

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

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

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

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

Date Adopted: September 15, 2011.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2008-20, filed 7/30/09, effective 9/1/09)

WAC 284-51-195 Definitions. As used in this chapter, these words and terms have the following meanings, unless the context clearly indicates otherwise:

(1) "Allowable expense," except as outlined below means any health care expense, including coinsurance or copayments and without reduction for any applicable deductible, that is covered in full or in part by any of the plans covering the person. When coordinating benefits, any secondary plans must pay an amount which, together with the payment made by the primary plan, ~~((totals))~~ cannot be less than the ((higher of the)) same allowable expense(s) as the secondary plan would have paid if it was the primary plan. In no event will a secondary plan be required to pay an amount in excess of its maximum benefit plus accrued savings. When medicare, Part A ~~((and))~~, Part B ~~((or))~~, Part C ~~((are))~~, or Part D is primary, medicare's allowable amount is the ~~((highest))~~ allowable expense.

(a) If an issuer is advised by a covered person that all plans covering the person are high-deductible health plans and the person intends to contribute to a health savings account established according to Section 223 of the Internal Revenue Code of 1986, the primary high-deductible health plan's deductible is not an allowable expense, except for any health care expense incurred that may not be subject to the deductible as described in Section 223 (c)(2)(C) of the Internal Revenue Code of 1986.

(b) An expense or a portion of an expense that is not covered by any of the plans is not an allowable expense.

(c) The following are examples of expenses that are not allowable expenses:

(i) If a person is confined in a private hospital room, the difference between the cost of a semiprivate room in the hospital and the private room is not an allowable expense, unless one of the plans provides coverage for private hospital room expenses.

(ii) If a person is covered by two or more plans that compute their benefit payments on the basis of usual and customary fees or relative value schedule reimbursement or other similar reimbursement method, any amount charged by the provider in excess of the highest reimbursement amount for a specified benefit is not an allowable expense.

(iii) If a person is covered by two or more plans that provide benefits or services on the basis of negotiated fees, any amount in excess of the highest of the negotiated fees is not an allowable expense.

(d) The definition of "allowable expense" may exclude certain types of coverage or benefits such as dental care, vision care, prescription drugs or hearing aids. A plan that limits the application of COB to certain coverages or benefits may limit the definition of allowable expense in its contract to expenses that are similar to the expenses that it provides. When COB is restricted to specific coverages or benefits in a contract, the definition of allowable expense must include similar expenses to which COB applies.

(e) When a plan provides benefits in the form of services, the reasonable cash value of each service will be considered an allowable expense and a benefit paid.

(f) If a secondary plan has been informed of the payment made by the primary plan but has not been informed of the amount of the primary plan's allowable expense within the period set forth in WAC 284-51-215 (2)(c), the secondary plan may use its allowable expense as the highest allowable expense.

(2) "Birthday" refers only to the month and day in a calendar year and does not include the year in which the individual is born.

(3) "Claim" means a request that benefits of a plan be provided or paid. The benefits claimed may be in the form of:

(a) Services (including supplies);

(b) Payment for all or a portion of the expenses incurred;

(c) A combination of (a) and (b) of this subsection; or

(d) An indemnification.

(4) "Claim determination period" means calendar year.

(5) "Closed panel plan" means a plan that provides health benefits to covered persons in the form of services primarily through a panel of providers that are employed by the plan, and that excludes benefits for services provided by other providers, except in cases of emergency or referral by a panel member.

(6) "Consolidated Omnibus Budget Reconciliation Act of 1985" or "COBRA" means coverage provided under a right of continuation according to federal law.

(7) "Coordination of benefits" or "COB" means a provision establishing the order that plans pay their claims, and permitting secondary plans to reduce their benefits so that the combined benefits of all plans do not exceed total allowable expenses.

(8) "Custodial parent" means:

(a) The parent awarded custody of a child by a court decree; or

(b) In the absence of a court decree, the parent with whom the child resides more than one-half of the calendar year without regard to any temporary visitation; or

(c) In cases where a court decree awards more than half of the calendar year's residential time to one parent without

the use of "custodial" terminology, the parent to whom the greater residential time is awarded.

(9) "High-deductible health plan" has the meaning given the term under Section 223 of the Internal Revenue Code of 1986, as amended by the Medicare Prescription Drug, Improvement and Modernization Act of 2003.

(10)(a) "Hospital indemnity benefits" or "hospital fixed payment plan" means benefits not related to expenses incurred.

(b) "Hospital indemnity benefits" or "hospital fixed payment plan" does not include reimbursement-type benefits even if they are designed or administered to give the insured the right to elect indemnity-type benefits at the time of claim.

(11) "Issuer" means a disability carrier, health care service contractor, health maintenance organization, and any other entity issuing a plan as defined in this chapter.

(12) "Plan" means a form of coverage with which coordination is allowed. Separate parts of a plan for members of a group that are provided through alternative contracts that are intended to be part of a coordinated package of benefits are considered one plan and there is no COB among the separate parts of the plan.

(a) If a plan coordinates benefits, its contract must state the types of coverage that will be considered in applying the COB provision of that contract. Whether the contract uses the term "plan" or some other term such as "program," the contractual definition may be no broader than the definition of "plan" in this subsection.

(b) "Plan" includes:

(i) Group, individual or blanket disability insurance contracts, and group or individual contracts marketed by issuers as defined in this chapter;

(ii) Closed panel plans or other forms of group or individual coverage;

(iii) The medical care components of long-term care contracts, such as skilled nursing care; and

(iv) Medicare or other governmental benefits, as permitted by law, except as provided in (c)(vii) of this subsection. That part of the definition of plan may be limited to the hospital, medical and surgical benefits of the governmental program.

(c) "Plan" does not include:

(i) Hospital indemnity or fixed payment coverage benefits or other fixed indemnity or payment coverage;

(ii) Accident only coverage;

(iii) Specified disease or specified accident coverage;

(iv) Limited benefit health coverage, as defined in WAC 284-50-370;

(v) School accident and similar coverages that cover students for accidents only, including athletic injuries, either on a twenty-four-hour basis or on a "to and from school" basis;

(vi) Benefits provided in long-term care insurance policies for nonmedical services, for example, personal care, adult day care, homemaker services, assistance with activities of daily living, respite care and custodial care or for contracts that pay a fixed daily benefit without regard to expenses incurred or the receipt of services;

(vii) Medicare supplement policies;

(viii) A state plan under medicaid;

(ix) A governmental plan, which, by law, provides benefits that are in excess of those of any private insurance plan or other nongovernmental plan;

(x) Automobile insurance policies required by statute to provide medical benefits;

(xi) Benefits provided as part of a direct agreement with a direct patient-provider primary care practice as defined at section 3, chapter 267, Laws of 2007.

(13) "Policyholder" means the primary insured named in a nongroup insurance policy.

(14) "Primary plan" means a plan whose benefits for a person's health care coverage must be determined without taking the existence of any other plan into consideration. A plan subject to this chapter is a primary plan if:

(a) The plan either has no order of benefit determination rules, or its rules differ from those permitted by this chapter; or

(b) All plans that cover the person use the order of benefit determination rules required by this chapter, and under those rules the plan determines its benefits first.

(15) "Secondary plan" means a plan that is not a primary plan.

WSR 11-19-065

PERMANENT RULES

STATE BOARD FOR COMMUNITY AND TECHNICAL COLLEGES

[Filed September 15, 2011, 2:14 p.m., effective October 16, 2011]

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

Purpose: The rule changes are required to comply with state law revisions resulting from the 2011 legislature's adoption of ESHB 1981. The rule eliminates supplemental benefits for participants establishing plan eligibility on or after July 1, 2011; prohibits retirees of plans administered by DRS from participating in the state board retirement plan; and provides eligible employees with retirement plan options thirty days to make their election.

Citation of Existing Rules Affected by this Order: Amending WAC 131-16-010 through 131-16-066.

Statutory Authority for Adoption: RCW 28B.10.400.

Adopted under notice filed as WSR 11-15-050 on July 15, 2011.

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

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

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

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

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

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

Date Adopted: September 14, 2011.

DelRae Oderman
Executive Assistant

AMENDATORY SECTION (Amending WSR 10-22-073, filed 10/29/10, effective 11/29/10)

WAC 131-16-011 Definitions. For the purpose of WAC 131-16-010 through 131-16-066, the following definitions shall apply:

(1) "Participant" means any employee who is eligible to participate in the plan (~~(and who, as a condition of employment, on and after January 1, 1997, shall participate in the plan upon initial eligibility)~~).

(2) "Supplemental retirement benefit" means payments, as calculated in accordance with WAC 131-16-061, to an eligible retired participant in the plan prior to July 1, 2011, or designated beneficiary whose retirement benefits provided by the plan do not attain the level of the retirement benefit goal established by WAC 131-16-015.

(3) "Year of full-time service" means retirement credit based on full-time employment or the equivalent thereof based on part-time employment in an eligible position for a period of not less than five months in any fiscal year during which contributions to TIAA-CREF were made by both the participant and a participating employer or a Washington public higher education institution or any year or fractional year of prior service in a Washington public retirement system while employed at a participating employer or a Washington public higher education institution: Provided, That the participant will receive a pension benefit from such other retirement system and that not more than one year of full-time service will be credited for service in any one fiscal year.

(4) "Fiscal year" means the period beginning on July 1 of any calendar year and ending on June 30 of the succeeding calendar year.

(5) "Average annual salary" means the amount derived when the salary received during the two consecutive highest salaried fiscal years of full-time service for which contributions to TIAA-CREF were made by both the participant and a participating employer or a Washington public higher education institution is divided by two.

(6) "Plan retirement benefit" means the amount of annual retirement income derived from a participant's accumulated balances including dividends at the time of retirement: Provided, That solely for the purpose of calculating a potential supplemental retirement benefit, such amount shall be adjusted to meet the assumptions set forth in WAC 131-16-061(2).

(7) "Salary" means all remuneration received by the participant from the participating employer, including summer quarter compensation, extra duty pay, leave stipends, and grants made by or through the participating employer; but not including any severance pay, early retirement incentive payment, remuneration for unused sick or personal leave, or remuneration for unused annual or vacation leave in excess of the amount payable for thirty days or two hundred forty hours of service.

(8) "Designated beneficiary" means the surviving spouse of the retiree or, with the consent of such spouse, if any, such other person or persons as shall have an insurable interest in the retiree's life and shall have been nominated by written designation duly executed and filed with the retiree's participating employer.

(9) "State board" means the state board for community and technical colleges as created in RCW 28B.50.050.

(10) "Appointing authority" means a participating employer's governing board or the designees of such boards.

(11) "Plan" means the retirement plan sponsored by the state board and funded by TIAA-CREF.

(12) "Participating employer" means an educational organization or agency operated by the state of Washington which is the employer of one or more eligible employees or former eligible employees and which is an employing entity designated by the state board to participate in the plan. The participating employers are listed in Appendix A of the plan document.

AMENDATORY SECTION (Amending WSR 05-24-051, filed 12/1/05, effective 1/1/06)

WAC 131-16-015 Retirement benefit goal established. A retirement benefit goal is established for use in calculating eligibility for a supplemental benefit. Subject to the provisions of WAC 131-16-061, the retirement benefit goal for participants in the plan prior to July 1, 2011, is to provide participants at age sixty-five having twenty-five years of full-time service a minimum annual retirement income, exclusive of Federal Old Age Survivors Insurance benefits, equivalent to fifty percent of their average annual salary.

AMENDATORY SECTION (Amending WSR 10-22-073, filed 10/29/10, effective 11/29/10)

WAC 131-16-021 Employees eligible to participate in the retirement plan. (1) Eligibility to participate in the plan is limited to persons who hold appointments to participating employer staff positions as full-time or part-time faculty members, administrators or professional staff exempt from the provisions of chapter 41.06 RCW and, effective July 1, 1999, are assigned a cumulative total of at least fifty percent of a full-time workload as defined by the collective bargaining agreement and/or the appointing authority at one or more participating employers for at least two consecutive college quarters or its equivalent. (Part-time faculty workload is calculated in accordance with RCW 28B.50.489 and 28B.50.-4891.) Effective July 1, 2011, otherwise eligible employees who have retired or are eligible to retire from a public employees' retirement system listed in RCW 41.50.030 are prohibited from participation in the plan.

(2) Participation in the plan is also permitted for current and former employees of participating employers who are on leave of absence or who have terminated employment by reason of permanent disability and who are receiving a salary continuation insurance benefit through a plan made available by the state of Washington: Provided, That such noncontributory participation shall not be creditable toward the number of years of full-time service utilized in calculating eligibility

for supplemental retirement benefits pursuant to WAC 131-16-061.

(3) Optional participation in tax-deferred annuities other than this qualified plan as offered by participating employers is permitted consistent with the Internal Revenue Code: Provided, That the provisions of WAC 131-16-015, 131-16-050, and 131-16-061 shall not apply in such cases. Optional tax-deferred annuities are provided through a salary reduction agreement between the employee and employer. There is no employer contribution for optional tax-deferred annuities.

(4) An employee who moves from an ineligible to an eligible position for the same appointing authority may become a participant by so electing in writing within ~~((six months))~~ thirty days following such move.

(5) A participant who moves from an eligible position to a classified position for the same appointing authority may continue to be a participant by so electing within ~~((six months))~~ thirty days following such move.

(6) As specified in RCW 28B.10.400, participation in the plan by employees of the higher education coordinating board is limited to eligible employees who have contributed premiums to a similar qualified plan and who are not receiving or accruing a retirement allowance under Title 41 RCW or chapter 43.43 RCW.

(7) Participants shall continue participation regardless of the proportion of full-time duties assigned, except as otherwise provided in this section, as long as continuously employed by a participating employer. The participating employer shall notify, in writing, all newly hired employees of their potential right to participate. A participating employee, who changes employers without a break in service, shall have the responsibility to notify in writing the new participating employer of his or her eligibility. In no case will there be a requirement for retroactive contributions if an employee fails to inform his or her participating employer about eligibility previously established with another participating employer. For the purposes of determining eligibility, spring and fall quarters shall be considered as consecutive periods of employment.

~~((8) As a condition of employment, all employees who become eligible on and after January 1, 1997, shall participate in this plan upon initial eligibility. Notwithstanding this provision, all eligible new employees who at the time of employment are members of the Washington state teachers retirement system or the Washington public employees retirement system may participate as provided in WAC 131-16-031.))~~

AMENDATORY SECTION (Amending WSR 10-22-073, filed 10/29/10, effective 11/29/10)

WAC 131-16-031 Participation in the plan. (1) Except as provided in this chapter, participation in the plan is required of all otherwise eligible new employees ~~((= Provided, That))~~, provided that:

(a) Any such new employee, who at the time of employment is a member of the Washington state teachers retirement system (TRS) or the Washington public employees retirement system (PERS), and whose employment meets the requirements of an "eligible position" as defined by such

plan, may irrevocably elect to retain such membership ~~((or, if not vested in that system, retain membership until vesting occurs and then irrevocably elect to participate in the plan))~~ within thirty days of meeting the plans eligibility criteria. Failure to make an election after thirty days will result in such new employee being placed into the state board retirement plan.

(b) Any such new employee, not already a member of TRS or PERS, may irrevocably elect to establish membership in TRS Plan 3 or PERS Plan 3 provided the employee's position meets the requirements of an "eligible position" as defined by such plan. Failure to make an election after thirty days will result in such new employee being placed into the state board retirement plan.

(2) Employees who establish plan eligibility in accordance with WAC 131-16-021 and who, through concurrent employment with another employer, are active Washington public employee retirement system (PERS) members are required to so advise the participating employer and shall be given the following options:

(a) To participate in the state board retirement plan in accordance with chapter 131-16 WAC, forgoing active PERS membership (contributions and service credit) with their other employer; or

(b) To continue active participation in PERS based upon their employment with the other public employer; forgoing participation in the state board retirement plan.

Failure to make an election within thirty days of notification results in the employee being placed in the plan. The participating employer is required to advise the department of retirement systems (DRS) of a PERS member's participation in the plan, whether through election or default. It shall be the employee's responsibility to notify the other employer if he or she elects to participate in the plan. The employee will notify his or her participating employer should the employee cease to be an active PERS member. This irrevocable election remains in effect as long as the employee is actively participating in a PERS plan and is required because RCW 41.40.023(4) prohibits PERS members from simultaneously participating in two state retirement plans.

(3) Any current active participant of the plan who becomes an active member of PERS based on employment with another PERS employer is required to notify his or her participating employer. The employee will be provided the options listed in subsection (2) of this section and the participating employer will follow through accordingly.

AMENDATORY SECTION (Amending WSR 10-22-073, filed 10/29/10, effective 11/29/10)

WAC 131-16-061 Supplemental retirement benefits.

(1) A participant is eligible to receive supplemental retirement benefit payments, provided the amount of the supplemental retirement benefit as calculated in accordance with this section is a positive amount, if at the time of retirement the participant ~~((is))~~:

(a) Participated in the plan prior to July 1, 2011; and

(b) Is at least age sixty-two; and

(c) Has ten years of full-time service in the plan at a Washington public institution of higher education~~((= Pro-~~

vided, That the amount of the supplemental retirement benefit, as calculated in accordance with the provisions of this section, is a positive amount).

(2) Subject to the provisions of subdivisions (c), (d), and (e) of this subsection, the annual amount of supplemental retirement benefit payable to a participant upon retirement is the excess, if any, when the value determined in subdivision (b) is subtracted from the value determined in subdivision (a), as follows:

(a) The lesser of fifty percent of the participant's average annual salary or two percent of the average annual salary multiplied by the number of years of full-time service; provided that if the participant did not elect to contribute ten percent of salary beginning July 1, 1974, or if later, after attainment of age fifty, service for such periods shall be calculated at the rate of one and one-half percent instead of two percent.

(b) The combined retirement benefit from the TIAA-CREF annuity and any other Washington state sponsored retirement plan that the participant would receive in the first month of retirement multiplied by twelve: Provided, That the state board retirement plan benefit shall be calculated on the following assumptions:

(i) After July 1, 1974, fifty percent of the combined contributions were made to the TIAA traditional annuity and fifty percent to the CREF stock account during each year of full-time service: Provided, That benefit calculations related to contributions made prior to July 1, 1974, shall be computed on the basis of actual allocations between TIAA and CREF; and

(ii) The full TIAA-CREF annuity accumulations, including all dividends payable by TIAA Traditional Annuity and further including the amounts, if any, paid in a single sum under the retirement transition benefit option, were fully settled on a joint and two-thirds survivorship option with a ten-year guarantee, using actual ages of retiree and spouse, but not exceeding a five-year difference; except that for unmarried participants the TIAA Traditional Annuity accumulations, including dividends, were settled on an installment refund option and the CREF Stock Account accumulations were settled on a life annuity with ten-year guarantee option, all to be based on TIAA-CREF estimates at the time of retirement; and

(iii) Annuity benefits purchased by premiums paid other than as a participant in a Washington public institution of higher education retirement plan shall be excluded.

(iv) For the purposes of this calculation, the assumptions applied to the plan accumulation settlement shall also apply to settlement of the benefit from any other retirement plan.

(c) The amount of supplemental retirement benefit for a participant who has not attained age sixty-five at retirement is the amount calculated in subsection (2) of this section reduced by one-half of one percent for each calendar month remaining until age sixty-five: Provided, That the supplemental retirement benefit for an otherwise qualified participant retired for reason of health or permanent disability shall not be so reduced.

(d) Any portion of participant's plan accumulation paid to a participant's spouse upon dissolution of a marriage shall be included in any subsequent calculation of supplemental

retirement benefits just as if these funds had remained in the participant's plan account.

(e) The selection of a retirement option other than the joint and two-thirds survivorship with ten-year guarantee shall not alter the method of calculating the supplemental retirement benefit; however, if the participant's combined plan retirement benefit and calculated supplemental retirement benefit exceeds fifty percent of the participant's average annual salary, the supplemental retirement benefit shall be reduced so that the total combined benefits do not exceed fifty percent of average annual salary.

(3) The payment of supplemental retirement benefits shall be consistent with the following provisions:

(a) Supplemental retirement benefits shall be paid in equal monthly installments, except that if such monthly installments should be less than ten dollars, such benefit payments may be paid at longer intervals as determined by the state board.

(b) Supplemental retirement benefit payments will continue for the lifetime of the retired participant; however, prior to retirement, a participant may choose to provide for the continuation of supplemental retirement benefit payments, on an actuarially equivalent reduced basis, to his or her spouse or designated beneficiary after the retiree's death. Notification of such choice shall be filed in writing with the state board and shall be irrevocable after retirement. If such option is chosen, the supplemental retirement benefit payments shall be in the same proportion as any plan survivor annuity option potentially payable to and elected by the participant. If a designation of a survivor's option is not made and the participant dies after attaining age sixty-two but prior to retirement, any supplemental benefit payable shall be based on the two-thirds benefit to survivor option.

(c) Prior to making any supplemental benefit payments, the state board shall obtain a document signed by the participant and spouse, if any, or designated beneficiary acknowledging the supplemental retirement benefit option chosen by the participant.

(4) A retired participant who is reemployed shall continue to be eligible to receive retirement income benefits, except that the supplemental retirement benefit shall not continue during periods of employment for more than forty percent of full-time or seventy hours per month or five months duration in any fiscal year. Retirement contributions shall not be made from the salary for such employment, unless the individual once again becomes eligible to participate under the provisions of WAC 131-16-021.

WSR 11-19-070

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

[Filed September 15, 2011, 4:12 p.m., effective October 16, 2011]

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

Purpose: The legislature passed ESHB 1086, which authorized the department of social and health services to place long-term care clients residing in nursing homes and

paid for with state-only funds into less restrictive community care settings while continuing to meet the client's care needs.

Citation of Existing Rules Affected by this Order: Amending WAC 388-438-0125.

Statutory Authority for Adoption: Chapter 5, Laws of 2011, ESHB 1086.

Other Authority: RCW 74.04.057, 74.08.090, and 74.-09.510.

Adopted under notice filed as WSR 11-16-101 on August 3, 2011.

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

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

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

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

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

Date Adopted: September 15, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-19-085, filed 9/17/10, effective 10/18/10)

WAC 388-438-0125 ((~~Alien nursing facility~~)) State-funded long-term care services program ((~~state-funded~~)). (1) The state-funded ((~~alien nursing facility~~)) long-term care services program is subject to caseload limits determined by legislative funding. Services cannot be authorized for eligible persons prior to a determination by the aging and disability services administration (ADSA) that caseload limits will not be exceeded as a result of the authorization.

(2) Long-term care services are defined in this section as services provided in one of the following settings:

(a) In a person's own home, as described in WAC 388-106-0010;

(b) Nursing facility, as defined in WAC 388-97-0001;

(c) Adult family home, as defined in RCW 70.128.010;

(d) Assisted living facility, as described in WAC 388-513-1301;

(e) Enhanced adult residential care facility, as described in WAC 388-513-1301;

(f) Adult residential care facility, as described in WAC 388-513-1301.

(3) Long-term care services will be provided in one of the facilities listed in subsection (2)(b) through (2)(f) of this section unless nursing facility care is required to sustain life.

(4) To be eligible for the state-funded ((~~alien nursing facility~~)) long-term care services program described in this

section, an adult nineteen years of age or older must meet all of the following conditions:

(a) Meet the general eligibility requirements for medical programs described in WAC 388-503-0505 (2) and (3)(a), (3)(b), (3)(e), and (3)(f);

(b) Reside in ((~~a nursing facility as defined in WAC 388-97-0001~~)) one of the settings described in subsection (2) of this section;

(c) Attain institutional status as described in WAC 388-513-1320;

(d) Meet the functional eligibility described in WAC 388-106-0355 for nursing facility level of care;

(e) Not have a penalty period due to a transfer of assets as described in WAC 388-513-1363, 388-513-1364, 388-513-1365, and 388-513-1366;

(f) Not have equity interest in a primary residence ((~~of~~)) more than ((~~five hundred thousand dollars as~~)) the amount described in WAC 388-513-1350 (7)(a)(ii); and

(g) Any annuities owned by the adult or spouse must meet the requirements described in chapter 388-561 WAC.

((~~5~~)) (5) An adult who is related to the supplemental security income (SSI) program as described in WAC 388-475-0050 (1), (2), and (3) must meet the financial requirements described in WAC 388-513-1325, 388-513-1330, and 388-513-1350.

((~~4~~)) (6) An adult who does not meet the SSI-related criteria in subsection (2) of this section may be eligible under the family institutional medical program rules described in WAC 388-505-0250 or 388-505-0255.

((~~5~~)) (7) An adult who is not eligible for the state-funded ((~~alien nursing facility~~)) long-term care services program under categorically needy (CN) rules may qualify under medically needy (MN) rules described in:

(a) WAC 388-513-1395 for adults related to SSI; or

(b) WAC 388-505-0255 for adults related to family institutional medical.

((~~6~~)) (8) All adults qualifying for the state-funded ((~~alien nursing facility~~)) long-term care services program will receive CN scope of medical coverage described in WAC 388-501-0060.

((~~7~~)) (9) The department determines how much an individual is required to pay toward the cost of care using the following rules:

(a) For an SSI-related individual residing in a nursing home, see rules described in WAC 388-513-1380.

(b) For an SSI-related individual residing in one of the other settings described in subsection (2) of this section, see rules described in WAC 388-515-1505.

(c) For an individual eligible under the family institutional program, see WAC 388-505-0265.

((~~8~~)) (10) A person is not eligible for state-funded ((~~nursing facility~~)) long-term care services if that person entered the state specifically to obtain medical care.

((~~9~~)) (11) A person eligible for the state-funded ((~~alien nursing facility~~)) long-term care services program is certified for a twelve month period.

WSR 11-19-074
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed September 16, 2011, 10:44 a.m., effective October 17, 2011]

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

WAC 232-12-243 Cougar management removals.

Beginning in 2001, RCW 77.15.245 authorized the fish and wildlife commission to adopt rules for the use of dogs to hunt cougar in selected areas within a game management unit (GMU) to address a public safety need presented by one or more cougar. At that time, conditions that were identified as warranting the use of dogs within a game management unit included, but were not limited to, confirmed cougar/human safety incidents, confirmed cougar/livestock and cougar/pet depredations, and the number of cougar-capture attempts and relocations.

2001 also marked the peak in confirmed cougar complaints by the department. With the authority in RCW 77.15.245 and the level of complaints at the time, the fish and wildlife commission adopted WAC 232-28-272, which authorized the removal of cougars with dogs in GMUs with four or more confirmed human-cougar safety incidents or livestock/pet depredations per year and seven or more confirmed cougar sightings or nuisance activities per year. The criteria was later revised to eleven confirmed human-cougar interactions per year, of which at least four had to be confirmed human-cougar safety incidents or livestock/pet depredations. The criteria remained unchanged since that revision, though there were other WAC amendments to sections on bag limits, participation, etc.

From 2004-2010, SSB 6118, ESHB 1756, and ESHB 2438 authorized more liberal use of dogs to hunt cougar under what has been called the "pilot cougar program with the aid of dogs." The pilot program implemented hound hunting in Pend Oreille, Stevens, Ferry, Okanogan, Chelan, and Klickitat (under ESHB 2438 only) counties. These counties were therefore excluded from cougar removals under RCW 77.15.245. The pilot cougar program with the aid of dogs ended in March 2011.

Since 2001, all cougar hunting with the use of dogs (via RCW 77.15.245, SSB 6118, ESHB 1756, and ESHB 2438) has been implemented to address the goal of enhancing public safety and protection of personal property from threats by cougar. To achieve this goal, dog hunting seasons were implemented under two phases or objectives: (1) Potential benefits to public safety and personal property from using dog hunts to manage for a reduced cougar population, followed by (2) potential benefits to public safety and personal property from using dog hunts to manage for a stable cougar population at the lower level. The department implemented the use of dogs to achieve objective (1) from 2003-2008 and objective (2) from 2009 to current.

The merits of using dogs to hunt cougars to address either of these objectives have been widely debated and are contentious issues. There is no scientific literature that either supports or refutes either concept. So it is unknown if reported human-cougar conflicts will increase with the dis-

continuation of the pilot cougar program in the six counties. Confirmed cougar complaints have a human-dimensions component, and involve both the real event plus how an individual perceives the event as a threat or not a threat. How the department manages cougar, the types of seasons, the hunting method, etc. may therefore have implications to even confirmed complaint levels due to changes in an individual's perceptions.

The department wants to be responsive to any increases in confirmed cougar complaints. At the same time, the department doesn't want to be viewed as liberalizing season authorities under RCW 77.15.245 just because the pilot program ended. As such, individual amendments and the justification for the change are outlined in Changes Other Than Editing... below.

WAC 232-28-272 2009 Black bear and 2009-2010, 2010-2011, and 2011-2012 cougar hunting seasons and regulations.

These WAC amendments establish the 2011-2012 cougar hunting seasons for hunting without the aid of dogs and prescribe a technique for achieving the female harvest guideline as redefined in recent technical workshops.

WAC 232-28-287 2009-2010, 2010-2011, and 2011-2012 Cougar permit seasons and regulations.

These WAC amendments establish the 2011-2012 cougar hunting seasons for hunting without the aid of dogs and prescribe a technique for achieving the female harvest guideline as redefined in recent technical workshops.

Citation of Existing Rules Affected by this Order: Amending WAC 232-12-243, 232-28-272, and 232-28-287.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, and 77.15.245.

Other Authority: ESHB 1756.

Adopted under notice filed as WSR 11-13-089 on June 17, 2011.

Changes Other than Editing from Proposed to Adopted Version:

Changes, if any, from the text of the proposed rule and reasons for difference:

WAC 232-12-243 Cougar management removals.

- Replace the term "public safety" with "management," so the name of the removal changes from "public safety cougar removal" to "cougar management removal." The amendment is only a name change and has no substantive changes to time, place, or manner of cougar removals. The reason for the change is because the department doesn't want a title of a rule to tie together the concepts of "public safety" with "cougar removal." There is no scientific literature supporting or refuting a cause-and-effect relationship between cougar removals and public safety.
- Delete the definition of "marginal cougar habitat" and "preferred cougar habitat." The reason for the change is because research suggests the cougar density is very similar in various habitats and location in eastern and western Washington.
- Change the definition of sighting from "means a direct observation of one or more cougar, in urban or rural

settings, near individuals or residences; typically more than chance observations" to "means a confirmed direct observation of one or more cougar, in urban or rural settings, near individuals or residences; typically more than chance observations." The purpose of the change is to clarify that only confirmed sightings are used.

- Change the definition of human-cougar interaction from "means a human-cougar safety incident, livestock or pet depredation, cougar nuisance activity, or cougar sighting event" to "means a confirmed human-cougar safety incident, confirmed livestock or pet depredation, confirmed cougar nuisance activity, or confirmed cougar sighting event." The purpose of the change is to clarify that only confirmed events are used to identify a human-cougar interaction.
- Change the threshold for a cougar management removal from "eleven confirmed human-cougar interactions per year, of which at least four must be confirmed human-cougar safety incidents or livestock/pet depredations" to "annual or seasonal increase in confirmed human-cougar interactions above the 2005-2010 level." The reason for the change is the status quo language is based on an analysis when complaint levels were at recorded highs. From 2008-2010 complaint levels have been at record lows. The department doesn't want to be in a situation where complaint levels would have to increase back to all-time highs before responding with management tools that are available. As such, the department recommended responding with removals when the confirmed complaint level exceeds the 2005-2010 level. The department's rationale was the five-year average incorporates more natural variability in complaint levels, while still being a good representation for the time period with overall low complaint levels.
- Change the removal rate from "The commission authorizes the director to remove one cougar per one three hundred twenty square kilometers of complaint area in preferred cougar habitat, and one cougar per four hundred thirty square kilometers of complaint area in marginal cougar habitat" to "The commission authorizes the director to remove one cougar per three hundred square kilometers of complaint area." The reason for the change is to set the harvest level at approximately fourteen percent of the population.
- Change the deadline for individuals requesting inclusion in the cougar management removal process from October 1 to October 15. The reason for the change is to allow for enough time to notify the public about potential cougar removals and how to request inclusion.
- Under subsection [(5)](a), add "This is a management removal administered by a WDFW designated coordinator. Permit holders will be contacted on an as-needed basis to conduct removals in portions of GMUs. Not all permit hunters will be contacted in a given year." The reason is for consistency between cougar management removals and damage hunts for other big game species, where areas are identified as potential removal areas as data is collected, but only if thresholds are exceeded or if the damage is not addressed by other means does an

actual removal occur. For example with cougar, an area might be identified for a potential management removal because between January and July of a calendar year, complaint levels are beyond the five-year trend. However, if during the department's response to individual problem cougar incidents, the offending animal is captured, a cougar removal would likely not occur. If, on the other hand, complaint levels continued to increase and most attempts of capturing the offending animal failed, a cougar removal might occur.

- Delete subsection (c). The reason for the change is permit hunter will be able to harvest one cougar while participating in a cougar management removal.
- Delete the last four sentences for subsection [(6)](a). The reason for the change is a permit hunter will be able to harvest one cougar while participating in a cougar management removal.

WAC 232-28-272 2009 Black bear and 2009-2010, 2010-2011, and 2011-2012 cougar hunting seasons and regulations and 232-28-287 2009-2010, 2010-2011, and 2011-2012 Cougar permit seasons and regulations.

Changes, if any, from the text of the proposed rule and reasons for difference:

- None.
- Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 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: August 19, 2011.

Miranda Wecker, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 08-197, filed 8/13/08, effective 9/13/08)

WAC 232-12-243 (~~Public safety~~) Cougar management removals. (1) Definitions:

As used in this section and in the context of (~~public safety~~) cougar management removals, the following definitions apply:

(a) "Confirmed" means qualified department staff is led to believe a cougar(s) was at the scene of the incident by interview of the complainant or observation of evidence at the scene.

(b) "Human-cougar safety incident" means aggressive or unusual behavior by a cougar which presents an actual or perceived threat to an individual.

(c) "Livestock or pet depredation" means incidents where livestock and/or pets are killed and/or injured by cougar.

~~(d) ("Marginal cougar habitat" means those areas usually dominated by urban/suburban, developed lands with relatively high human densities.~~

~~(e))~~ (e) "Nuisance activity" means incidents associated with property disturbance, property damage, or livestock/pet harassment.

~~((f))~~ (f) "Preferred cougar habitat" means those areas usually dominated by rural, undeveloped lands with relatively low human densities.

~~(g))~~ (e) "Public safety need" means there exists a reasonable threat to human safety or property by one or more cougar, as indicated by the level of confirmed human-cougar safety incidents or livestock/pet depredations, and confirmed cougar sightings or nuisance activities.

~~((h))~~ (f) "Removal" means the act of killing one or more cougar with the aid of dogs.

~~((i))~~ (g) "Sighting" means a confirmed direct observation of one or more cougar, in urban or rural settings, near individuals or residences; typically more than chance observations.

~~((j))~~ (h) "Human-cougar interaction" means a confirmed human-cougar safety incident, confirmed livestock or pet depredation, confirmed cougar nuisance activity, or confirmed cougar sighting event.

~~((k))~~ (i) "Dog hunter" means a person that owns and hunts with dogs that are capable of detecting, tracking and treeing a cougar.

(2) ~~((Public safety))~~ Cougar management removal authorization: The commission authorizes the director to issue ~~((public safety))~~ cougar management removal permits consistent with this rule. Prior to issuing ~~((public safety))~~ cougar management removal permits, the department shall use other practical alternatives to address a public safety need, including livestock or pet depredations. Other practical alternatives may include, but are not limited to, general cougar hunting seasons, general public information, educational programs, information to recreational hunters, cougar depredation/kill permits, and department capture and relocation/euthanasia of specific cougars.

(3) ~~((Public safety))~~ Cougar management removal criteria:

(a) The commission determines that when the above practical alternatives have been utilized within a game management unit, ~~((eleven confirmed human-cougar interactions per year, of which at least four must be confirmed human-cougar safety incidents or livestock/pet depredations))~~ an annual or seasonal increase in confirmed human-cougar interactions above the 2005-2010 level, therein ~~((demonstrating))~~ demonstrates that the practical alternatives have been inadequate to address the public safety need. The director then is authorized by the commission to remove one or more cougar, with the aid of dogs, in a selected area of that game management unit or nearby geographic area suitable for the use of dogs. The commission authorizes the director to remove one cougar per ~~((one))~~ three hundred ~~((twenty))~~ square kilometers of complaint area ~~((in preferred cougar~~

~~habitat, and one cougar per four hundred thirty square kilometers of complaint area in marginal cougar habitat))~~.

(b) If warranted by conditions of this rule, ~~((public safety))~~ cougar management removal(s) will be conducted annually between December 1st and March ~~((15th))~~ 31st in selected areas of game management units designated by the director to address a public safety need presented by one or more cougar ~~((, except in game management units in counties where cougars will be removed to address public safety and protection of property with pilot cougar hunting seasons with the aid of dogs authorized under WAC 232-28-285))~~.

(c) The department shall not target more than one hundred nine cougar during a ~~((public safety))~~ cougar management removal period unless otherwise authorized by the commission.

(4) ~~((Public safety))~~ Cougar management removal permit issuance procedure.

(a) To participate in a ~~((public safety))~~ cougar management removal, individuals must request that his/her name be placed on a list of available participants (participant list) by mailing their request to Washington Department of Fish and Wildlife, Enforcement Program - ~~((Public Safety))~~ Cougar Management Removal, 600 Capitol Way North, Olympia, WA 98501-1091. The request must include the individual's name, address, phone number, and game management units being applied for. Individuals may apply for no more than four game management units. An individual's request to be placed on a participant list for a removal period must be post-marked no later than October ~~((+))~~ 15, or be received at the department's Olympia office no later than 5:00 p.m. on October ~~((+))~~ 15, during the year the removal period begins.

(b) To be eligible for a ~~((public safety))~~ cougar management removal permit (permit), the participant must be a Washington resident dog hunter who, at the time of application for a permit, possesses a valid big game license with cougar as a species option. The permit holder must use dogs while participating in a ~~((public safety))~~ cougar management removal.

(c) Individuals eligible for participation in a ~~((public safety))~~ cougar management removal will be randomly selected from the participant list. The department will issue a permit to the person whose name is selected from the participant list. Individuals selected will be notified by telephone or mail. Individuals selected must contact the department's enforcement program in Olympia and accept the ~~((public safety))~~ cougar management removal permit within fifteen days of being notified. Failure to contact the department will result in forfeit of the permit and the individual will be placed on the participant list for later selections. Permits may not be sold or reassigned.

(d) Permit holders and all individuals who will accompany the permit holder must complete the department's ~~((public safety))~~ cougar management removal education course prior to participating in a ~~((public safety))~~ cougar management removal.

(5) ~~((Public safety))~~ Cougar management removals: Quota system and participation in cougar removal.

(a) ~~((Public safety cougar))~~ This is a management removal administrated by a WDFW designated coordinator. Permit holders will be contacted on an as-needed basis to

conduct removals in portions of GMUs. Not all permit hunters will be contacted in a given year.

(b) Cougar removals will be based on a quota system, where permit holders may hunt cougar until the allotted numbers of cougar have been killed from each game management unit or March ((15)) 31, whichever is first.

~~((b) Permit holders who harvest a cougar before January 15 may continue hunting for a second cougar with dogs. The permit holder must purchase an additional cougar transport tag to hunt and harvest one additional cougar and the permit holder will be issued a second permit. Permit holders who harvest a cougar after January 15 are not eligible to harvest a second cougar with dogs.))~~

(c) To verify if the cougar removal season is open or closed in each game management unit, the permit holders shall notify the department's enforcement program in Olympia within twenty-four hours prior to exercising a ((public safety)) cougar management removal permit.

(d) No more than four total individuals may participate per ((public safety)) cougar management removal, including the permit holder(s). Only the permit holder, whose name appears on the permit, may take a cougar.

(e) Hunters killing a cougar during a ((public safety)) cougar management removal must notify the department's enforcement program in Olympia within twenty-four hours after harvesting the cougar.

(f) The department reserves the right to accompany permit holders while participating in a ((public safety)) cougar management removal.

(6) ((Public safety)) Cougar management removal general requirements.

~~((a) A valid big game hunting license which includes cougar as a species option is required to hunt cougar. ((One cougar transport tag is included with a big game license that has cougar as a species option. A second cougar transport tag must be purchased to take a second cougar. Individuals may participate in multiple public safety cougar removals, but must purchase a cougar transport tag for each cougar removed. Purchases in excess of two cougar transport tags must be made at department offices.))~~

(b) It is unlawful to kill or possess spotted cougar kittens or adult cougars accompanied by spotted kittens. Individuals selected for a ((public safety)) cougar management removal permit may take one cougar per permit.

(c) Hunters may use any lawful big game modern firearm, archery, or muzzleloader equipment for hunting cougar. The use of dogs to hunt cougar is prohibited except during a ((public safety)) cougar management removal.

(d) Any person who takes a cougar must notify the department within twenty-four hours of kill (excluding legal state holidays) and provide the hunter's name, date and location of kill, and sex of animal. The raw pelt of a cougar must be sealed by an authorized department employee within seventy-two hours of the notification of kill. Any person who takes a cougar must present the cougar skull, in such a manner that teeth and biological samples can be extracted, to an authorized department employee at the time of sealing.

(e) The ((public safety)) cougar management removal permit (permit) belongs to the state of Washington. The permit holder may be required to return to or turn over to the

department the permit when, in the judgment of the department, the permit holder violates any conditions of the permit, violates trespass laws while acting under this permit, or violates any other criminal law or hunting regulation of the state while acting under this permit. If the permit holder is required to return to or turn over to the department the permit, the permit holder may request an appeal of that action in accordance with chapter 34.05 RCW. Appeal request shall be filed in writing and returned within twenty days of the date of action and be addressed to WDFW Legal Services Office, 600 Capitol Way North, Olympia, Washington 98501-1091.

AMENDATORY SECTION (Amending Order 09-53, filed 4/15/09, effective 5/16/09)

WAC 232-28-272 2009 Black bear and 2009-2010, 2010-2011, and 2011-2012 cougar hunting seasons and regulations.

2009 Fall Black Bear Seasons:

Black Bear Management Unit	Season	Hunt Area
Coastal	Aug. 1 - Nov. 15	GMUs 501, 504, 506, 530, 601, 602, 603, 607-621, 636-651, 658-663, 672-684
Puget Sound	Aug. 1 - Nov. 15	GMUs 407, 410, 454, 624, 627, 633, 652, 666, 667
North Cascades	Aug. 1 - Nov. 15	GMUs 418-450, 460
South Cascades	Aug. 1 - Nov. 15	GMUs 466, 485, 503, 505, 510-520, 524, 550-574, 653, 654
Okanogan	Aug. 1 - Nov. 15	GMUs 203, 209-243
East Cascades	Aug. 1 - Nov. 15	GMUs 244-247, 249-251, 328, 329-368, 382, 388, 578
Northeastern A	Sept. 1 - Nov. 15	GMUs 101-121, 204
Northeastern B	Aug. 1 - Nov. 15	GMUs 124-130
Blue Mountains	Sept. 1 - Nov. 15	GMUs 145-154, 162-186
Columbia Basin	Aug. 1 - Nov. 15	GMUs 133, 136, 139, 142, 248, 254, 260-290, 371-381
Long Island	Sept. 1 - Nov. 15	GMU 699

Bag Limit: Two (2) black bear per annual hunting season only one of which may be taken in Eastern Washington.

Area Restriction: Special deer permit required to hunt black bear in GMU 485.

License Required: A valid big game hunting license, which includes black bear as a species option, is required to hunt black bear. One black bear transport tag is included with a big game hunting license that has black bear as a species option.

A second black bear transport tag must be purchased to take a second bear.

Hunting Method: Hunters may use any lawful big game modern firearm, archery, or muzzleloader equipment for

hunting black bear. The use of hounds and bait to hunt black bear is prohibited statewide.

Submitting Bear Teeth: Successful bear hunters must submit the black bear premolar tooth located behind the canine tooth of the upper jaw.

2009-2010 Cougar Seasons:

Hunt Name	Hunt Area	Season	Special Restrictions
Coastal Puget Sound North Cascades Columbia Basin	GMUs 136-142, 248, 254-290, 371-381, 418, 426, 437, 448, 450, 460, 466, 485, 501, 504, 506, 530, 601-621, 636-651, 658-663, 672-684, 699, 407, 410, 454, 624-633, 652, 666	Sept. 1-25	Archery only
		Sept. 26 - Oct. 16	Muzzleloader only
		Oct. 17 - Mar. 31	Any weapon
South Cascades Blue Mountains Kittitas-Yakima Spokane	GMUs 124-133, 145-154, 162-186, 328-368, 503, 505, 510-520, 524, 550-574, 653, 654, 667	Sept. 1-25	Archery only
		Sept. 26 - Oct. 16	Muzzleloader only
		Oct. 17 - Dec. 31	Any weapon
Chelan Okanogan Okanogan-Ferry Stevens-Pend Oreille Klickitat	GMUs 101, 105, 108-121, 203, 204, 209-242, 243-247, 249-251, 382, 388, 578 within Chelan, Ferry, Klickitat, Okanogan, Stevens, or Pend Oreille counties	Sept. 1-25	Archery only
		Sept. 26 - Oct. 16	Muzzleloader only
		Oct. 31 - Nov. 30	Any weapon

2010-2011 Cougar Seasons:

Hunt Name	Hunt Area	Season	Special Restrictions
Coastal Puget Sound North Cascades Columbia Basin	GMUs 136-142, 248, 254-290, 371-381, 418, 426, 437, 448, 450, 460, 466, 485, 501, 504, 506, 530, 601-621, 636-651, 658-663, 672-684, 699, 407, 410, 454, 624-633, 652, 666	Sept. 1-24	Archery only
		Sept. 25 - Oct. 15	Muzzleloader only
		Oct. 16 - Mar. 31	Any weapon
South Cascades Blue Mountains Kittitas-Yakima Spokane	GMUs 124-133, 145-154, 162-186, 328-368, 503, 505, 510-520, 524, 550-574, 653, 654, 667	Sept. 1-24	Archery only
		Sept. 25 - Oct. 15	Muzzleloader only
		Oct. 16 - Dec. 31	Any weapon
Chelan Okanogan Okanogan-Ferry Stevens-Pend Oreille Klickitat	GMUs 101, 105, 108-121, 203, 204, 209-242, 243-247, 249-251, 382, 388, 578 within Chelan, Ferry, Klickitat, Okanogan, Stevens, or Pend Oreille counties	Sept. 1-24	Archery only
		Sept. 25 - Oct. 15	Muzzleloader only
		Oct. 31 - Nov. 30	Any weapon

2011-2012 Cougar Seasons:

Hunt Name	Hunt Area	Season	Special Restrictions
Coastal Puget Sound North Cascades Columbia Basin	GMUs 136-142, 248, 254-290, 371-381, 418, 426, 437, 448, 450, 460, 466, 485, 501, 504, 506, 530, 601-621, 636-651, 658-663, 672-684, 699, 407, 410, 454, 624-633, 652, 666	Sept. 1-23	Archery only
		Sept. 24 - Oct. 14	Muzzleloader only
		Oct. 15 - Mar. 31	Any weapon

Hunt Name	Hunt Area	Season	Special Restrictions
South Cascades Blue Mountains Kittitas-Yakima Spokane	GMUs 124-133, 145-154, 162-186, 328-368, 503, 505, 510-520, 524, 550-574, 653, 654, 667	Sept. 1-23	Archery only
		Sept. 24 - Oct. 14	Muzzleloader only
		Oct. 15 - Dec. 31	Any weapon
Chelan Okanogan Okanogan-Ferry Stevens-Pend Oreille Klickitat	GMUs 101, 105, 108-121, 203, 204, 209-242, 243-247, 249-251, 382, 388, 578 within Chelan, Ferry, Klickitat, Okanogan, Stevens, or Pend Oreille counties	Sept. 1-23	Archery only
		Sept. 24 - Oct. 14	Muzzleloader only
		Oct. (29 - Nov. 30) <u>15 - Dec. 31</u>	Any weapon

Requirements for Cougar Seasons:

License Required: A valid big game hunting license which includes cougar as a species option is required to hunt cougar.

Bag Limit: One (1) cougar per license year excluding public safety cougar removals. It is unlawful to kill or possess spotted cougar kittens or adult cougars accompanied by spotted kittens.

Area Restriction: Special deer permit required to hunt cougar in GMU 485.

Tag Information: One cougar transport tag is included with a big game license that has cougar as a species option.

Hunting Method: The use of dogs to hunt cougar is prohibited except by a (~~public safety cougar removal permit (WAC 232-12-243) or~~) commission authorized (~~hound~~) permit (WAC (~~232-28-285~~) 232-12-243).

Cougar Pelt Sealing: Any person who takes a cougar must comply with the sealing requirements in WAC 232-12-024.

AMENDATORY SECTION (Amending Orders 10-94 and 10-94A, filed 4/30/10 and 12/30/10, effective 5/31/10 and 1/30/11)

WAC 232-28-287 2009-2010, 2010-2011, and 2011-2012 Cougar permit seasons and regulations. It is unlawful to fail to comply with the provisions below. Violators may be punished under RCW 77.15.410, 77.15.245, and 77.15.280 (1)(c).

Who may apply: Anyone with a valid Washington big game license, which includes cougar as a species option.

Hunt areas, permit levels, and season dates for each license year:

Hunt Name	Hunt Area	Permits	Season Dates ^a
South Cascades	GMUs 503, 505, 510-520, 524, 550-574, 653, 654, 667	40	Jan. 1 - Mar. 31
Blue Mountains	GMUs 145-154, 162-186	100	Jan. 1 - Mar. 31
Kittitas-Yakima	GMUs 328-368	30	Jan. 1 - Mar. 31
Spokane	GMUs 124-133	30	Jan. 1 - Mar. 31
<u>Chelan</u>	<u>GMUs 243-247, 249-251</u>	<u>40</u>	<u>Jan. 1 - Mar. 31</u>
<u>Okanogan</u>	<u>GMUs 203, 209-242</u>	<u>40</u>	<u>Jan. 1 - Mar. 31</u>
<u>Okanogan-Ferry</u>	<u>GMUs 101, 105, 204</u>	<u>20</u>	<u>Jan. 1 - Mar. 31</u>
<u>Stevens-Pend Oreille</u>	<u>GMUs 108-121</u>	<u>30</u>	<u>Jan. 1 - Mar. 31</u>
<u>Klickitat</u>	<u>GMUs 382, 388, 578</u>	<u>20</u>	<u>Jan. 1 - Mar. 31</u>
^a Permits are valid for the license year they are issued.			

Requirements for Cougar Seasons:

Bag limit: One (1) cougar per license year, excluding public safety cougar removals. It is unlawful to kill or possess spotted cougar kittens or adult cougars accompanied by spotted kittens.

License required: A valid big game hunting license, which includes cougar as a species option, is required to hunt cougar.

Tag information: One cougar transport tag is included with a big game license that has cougar as a species option.

Hunting method: The use of dogs to hunt cougar is prohibited except by a (~~public safety cougar removal permit (WAC 232-12-243) or~~) commission authorized (~~hound~~) permit (WAC (~~232-28-285~~) 232-12-243).

Cougar pelt sealing: Any person who takes a cougar must comply with the sealing requirements in WAC 232-12-024.

WSR 11-19-083
PERMANENT RULES
LAKE WASHINGTON
INSTITUTE OF TECHNOLOGY

[Filed September 20, 2011, 8:12 a.m., effective October 21, 2011]

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

Purpose: These amendments are necessary to reflect the agency's new name under RCW 28B.50.1401, section 1, chapter 118, Laws of 2011.

Citation of Existing Rules Affected by this Order: Amending WAC 495D-280-010, 495D-280-015, 495D-280-020, 495D-280-040, 495D-280-050, 495D-133-020, 495D-134-010, 495D-130-010, 495D-130-015, 495D-130-020, 495D-140-010, 495D-140-100, 495D-144-010, 495D-144-030, 495D-144-040, 495D-168-010, 495D-168-020, 495D-168-040, 495D-276-030, 495D-276-040, 495D-300-010, 495D-300-015, 495D-104-010, 495D-108-040, 495D-116-030, 495D-121-010, 495D-121-020, 495D-121-150, 495D-121-160, 495D-121-170, 495D-131-010, 495D-135-040, 495D-148-010, and 495D-325-010.

Statutory Authority for Adoption: RCW 28B.50-140(13).

Adopted under notice filed as WSR 11-13-049 on June 10, 2011.

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 34, Repealed 0.

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

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

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

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

Date Adopted: September 12, 2011, at regular board of trustees meeting.

David Woodall
President

AMENDATORY SECTION (Amending WSR 98-09-031, filed 4/10/98, effective 5/11/98)

WAC 495D-104-010 Time and place of board meetings. The board of trustees shall hold one regular meeting each month and such special meetings as may be requested by the chair of the board or by a majority of the members of the board. All regular and special meetings of the board of trustees shall be announced in accordance with law. All regular and special meetings of the board of trustees shall be held at Lake Washington (~~Technical College~~) Institute of Technology, unless scheduled elsewhere, and are open to the general public, except for lawful executive sessions. No official business may be conducted by the board of trustees except during a regular or special meeting.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-108-040 Application for adjudicative proceeding. An application for adjudicative proceeding shall be in writing. Application forms are available at the following address: Lake Washington (~~Technical College~~) Institute of Technology, Affirmative Action Officer, 11605 132nd Avenue Northeast, Kirkland, Washington, 98034-5608.

Written application for an adjudicative proceeding must be submitted to the above address within twenty days of the agency action giving rise to the application, unless provided for otherwise by statute or rule.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-116-030 Definitions. The definitions set forth in this section apply throughout this chapter 495D-116 WAC.

(1) "Annual permits" mean permits that are valid from the date of issue until the first day of the following academic year.

(2) "Board" means the board of trustees of College District 26.

(3) "Campus" means all lands and buildings devoted to, operated by, or maintained by College District 26.

(4) "Campus security officer" means an employee of the college designated by and who is responsible to the vice-president of administration.

(5) "College" means Lake Washington (~~Technical College~~) Institute of Technology.

(6) "Continuing permits" mean permits issued to full-time employees for an indefinite period of time.

(7) "Employee" means an individual appointed to the faculty, staff, or administration of the college.

(8) "Guests or visitors" mean persons who come upon the campus as guests or persons who lawfully visit the campus.

(9) "Safety and security supervisor" means the college's safety and security supervisor as designated by and responsible to the vice-president of administration.

(10) "Temporary permits" mean permits that are valid for a specific period designated on the permit.

(11) "Vehicle" means an automobile, truck, motor-driven cycle, scooter, or any vehicle powered by a motor.

AMENDATORY SECTION (Amending WSR 04-16-003, filed 7/22/04, effective 8/22/04)

WAC 495D-121-010 Student conduct code—Statement of purpose. (1) Lake Washington (~~Technical College~~) Institute of Technology is operated by the state of Washington to provide programs of instruction in higher education and related community services. Like any other institution having its own special purposes, the college must maintain conditions conducive to the effective performance of its functions. Consequently, it has special expectations regarding the conduct of the various participants in the college community.

(2) Admission to the college carries with it the prescription that the student will conduct himself or herself as a responsible member of the college community. This includes an expectation that the student will obey appropriate laws, will comply with the rules of the college and its departments, and will maintain a high standard of integrity and honesty.

(3) Violations of college rules or conduct that interfere with the operation of college affairs will be dealt with by the college, and the college may impose sanctions independently of any action taken by civil or criminal authorities. Provisions of this code are subject to change. Misconduct of students under the age of eighteen who attend the Lake Washington Technical Academy will be reported to the student's parents. The college and the academy may report misconduct to any parent who claims the student as a dependant or as otherwise provided by the Family Educational Rights and Privacy Act of 1972, as amended.

AMENDATORY SECTION (Amending WSR 04-16-003, filed 7/22/04, effective 8/22/04)

WAC 495D-121-020 Student conduct code—Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Board" means the board of trustees of College District 26.

(2) "College" means Lake Washington (~~Technical College~~) Institute of Technology.

(3) "Liquor" means the definition of liquor as contained within RCW 66.04.010.

(4) "Drugs" means a narcotic drug as defined in RCW 69.50.101, a controlled substance as defined in RCW 69.50.201 through 69.50.212, or a legend drug as defined in RCW 69.41.010.

(5) "College facilities" means the real property controlled or operated by the college and includes all buildings and appurtenances affixed thereon or attached thereto, including various distance learning environments not limited to online courses, telecourses, Washington Online, and interactive video.

(6) "President" means the chief executive officer of the college appointed by the board of trustees.

(7) "Disciplinary official" means the instructor or administrator who takes disciplinary action as authorized in this chapter.

(8) "Student" means a person who is enrolled at the college, including enrollment in distance learning courses.

(9) "Disciplinary action" means one or more of the sanctions described in WAC 495D-121-170.

(10) "Good standing" means that the student is currently enrolled in the college, has no restrictions on the use of college facilities and/or services, is eligible to participate in college activities, and is not under any current disciplinary or academic sanctions.

AMENDATORY SECTION (Amending WSR 04-16-003, filed 7/22/04, effective 8/22/04)

WAC 495D-121-150 Student conduct code—Hazing prohibited. (1) Hazing is prohibited.

(2) Hazing means any method of initiation into a student organization or living group or any pastime or amusement engaged in with respect to such an organization or living group that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending any institution of higher education or postsecondary institution.

(3) Penalties.

(a) Any student organization, association or club that knowingly permits hazing shall:

(i) Be liable for harm caused to persons or property resulting from hazing; and

(ii) Be denied recognition by Lake Washington (~~Technical College~~) Institute of Technology as an official organization, association, or club on this campus. If the organization, association, or club is a corporation, whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.

(b) A person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of one year.

(c) Forfeiture of state-funded grants, scholarships, or awards may include permanent forfeiture, based upon the seriousness of the violations.

(d) The student conduct code may be applicable to hazing violations.

(e) Hazing violations are also misdemeanors punishable under state criminal law according to RCW 9A.20.021.

(4) Sanctions for impermissible conduct not amounting to hazing.

(a) Impermissible conduct associated with initiation into a student organization or club or any pastime or amusement engaged in, with respect to the organization or club, will not be tolerated.

(b) Impermissible conduct, which does not amount to hazing, may include conduct that causes embarrassment, sleep deprivation or personal humiliation, or may include ridicule or unprotected speech amounting to verbal abuse.

(c) Impermissible conduct not amounting to hazing is subject to any sanctions available under the student conduct code, depending upon the seriousness of the violation.

AMENDATORY SECTION (Amending WSR 04-16-003, filed 7/22/04, effective 8/22/04)

WAC 495D-121-160 Student conduct code—Student misconduct. Disciplinary action may be taken for a violation of any provision of this student code, for a violation of other college rules, which may from time to time be properly adopted, or for any of the following types of misconduct:

(1) Academic dishonesty, including cheating, plagiarism, or knowingly furnishing false information to the college;

(2) Attempting, aiding, abetting, conspiring, hiring or being an accessory to any act prohibited by this code shall be considered to be the same extent as completed violations.

(3) Breaching campus safety or security, to include, but not be limited to:

(a) Unauthorized access to college facilities; intentionally damaging door locks; unauthorized possession of college

keys or access cards; duplicating college keys or access cards; or propping open of exterior doors;

(b) Tampering with fire safety equipment such as fire extinguishers, smoke detectors, alarm pull stations or emergency exits;

(c) Placement of equipment or vehicles (including bicycles) so as to obstruct the means of access to/from college buildings;

(d) Illegal entry. Entering or remaining in any closed college facility or entering after the closing time of the college facility without permission of a college official;

(4) Disorderly conduct. Conduct that is disorderly, lewd, indecent or a breach of peace on college premises or at college-sponsored activities;

(5) Disruptive activity. Participation in promoting disruptive activity that would interfere with teaching, research, disciplinary proceedings or other college activities. Such activity may include, but is not limited to:

Classroom behavior that seriously interferes with either:

(a) The instructor's ability to conduct the class; or

(b) The ability of other students to profit from the instructional program;

(6) Failure to appear for a college disciplinary proceeding to respond to allegations or to testify as a witness when reasonably notified to do so;

(7) Failure to comply with college attendance policy as published in the current edition of the *Student Handbook* or course syllabi;

(8) Failure to comply with a college rule or policy, as set forth in the *Lake Washington ((Technical College)) Institute of Technology Policies and Procedures Manual* (a copy of which may be found in the Lake Washington Technical College library);

(9) Failure to comply with the direction of college officials acting in the legitimate performance of their duties;

(10) False statements. The intentional making of false statements or filing of false charges against the college, its employees, and members of the college community;

(11) Forgery, alteration, or misuse of college documents, records, funds, or instruments of identification with the intent to defraud;

(12) Harassment, including conduct (physical, verbal, graphic, written, or electronic) that is sufficiently severe, pervasive or persistent so as to threaten an individual or limit the ability of an individual to work, study or participate in the activities of the college;

(13) Illegal use of alcoholic beverages. The possession, use, sale, or distribution of any alcoholic beverage or illegal drugs on the college campus except as specifically provided for by board policy. The use of illegal drugs by any student attending a college-sponsored event is also prohibited, even though the event does not take place at the college. The use of alcohol by any student attending such events on noncollege property shall conform to state law;

(14) Illegal use or possession of weapons. The unauthorized use, possession, display, or storage of any weapons, fireworks or explosives on college premises or at any college-sponsored activity. The term weapon means any object or substance designed to inflict a wound, cause injury, or incapacitate. Weapons may include, but are not limited to, all

firearms (whether lawfully or unlawfully possessed), pellet guns, slingshots, martial arts devices, switchblade knives and clubs. Legal defense sprays possessed or used for the purpose of self-defense are exempt from this section;

(15) Imminent danger. Where the student presents an imminent danger to college property or to himself or herself or other students or persons in college facilities on or off campus, or to the education processes of the college;

(16) Interference with the discipline code. Action or conduct that hinders, obstructs or otherwise interferes with the implementation of this discipline code;

(17) Interruption of instructional programs (see policy (6. P.39));

(18) Misuses of information technology. Failure to comply with laws, license agreements, and contracts governing network, software and hardware use. Abuse of communal resources. Use of computing resources for unauthorized commercial purposes or personal gain. Failure to protect passwords or use of computer accounts. Breach of computer security, unauthorized access to computer system networks, college or agent's web sites, codes and data, or computer back-end systems. Harmful access or invasion of privacy; use of another's password or identity, or use of anonymous or fictitious e-mail addresses, internet domains or name servers.

(19) Physical abuse, including attempting or causing injury to an individual. Causing or threatening physical contact with another when the person knows or should reasonably believe that the other will regard the contact or threat as offensive or provocative;

(20) Inciting others. Intentionally encouraging, preparing, or compelling others to engage in prohibited conduct.

(21) Ethical violation. The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

(22) Sexual assault/rape, including the oral, anal, or vaginal penetration by a sexual organ of another or anal/vaginal penetration by any means against the victim's will or without his/her consent. An individual who is mentally incapacitated, unconscious, or unaware that the sexual assault is occurring is considered unable to give consent. The type of force employed may involve physical forces, coercion, and intentional impairment of an individual's ability to appraise the situation through the administering of any substance or threat of harm to the victim;

Sexual abuse, including attempting or making sexual contact including, but not limited to, inappropriate touching or fondling against the person's will, or in circumstances where the person is physically, mentally or legally unable to give consent;

(23) Smoking. Smoking in all enclosed college facilities and other areas so posted by college officials;

(24) Stalking, including any repeated conduct directed specifically at another person that causes that person (or a member of that person's family or household) to fear for his/her safety. Such conduct includes following another person and acts that threaten or intimidate another person through fear of bodily injury or death of self or members of

that person's family or household or an offense being committed against that person's property;

(25) Theft and damage. Theft from or damage to college premises or property, or theft of or damage to property of a member of the college community or college premises;

(26) Unacceptable use of college facilities and equipment;

(27) Violation of laws. Violation of any law of the United States, laws of the state of Washington, or applicable municipal or county ordinance;

(28) Witness retaliation. Retaliation upon witnesses or accusers under this chapter.

AMENDATORY SECTION (Amending WSR 04-16-003, filed 7/22/04, effective 8/22/04)

WAC 495D-121-170 Student conduct code—Student conduct sanctions. Student conduct sanctions are categorized as primary and secondary. More than one primary sanction or any combination of primary sanctions and secondary sanctions may be imposed for any single violation. Once a student has been finally assessed a disciplinary sanction, however, no more severe primary sanctions may be assessed against him or her by any higher college authority.

(1) Primary sanctions (in order of severity):

(a) *Expulsion*: Separation of the student from the college whereby the student is not eligible for reenrollment or readmission to the college.

(b) *Dismissal*: Separation of the student from the college for an indefinite period of time. Readmission to the college may be possible in the future, but no specific time for a decision is established.

(c) *Suspension*: Separation of the student from the college for a period of time with a review of the disciplinary action prior to readmission. The student is not guaranteed readmission at the end of such period of time, but is guaranteed a review of the case and a decision regarding eligibility for readmission.

(d) *Deferred suspension*: The sanction of suspension may be placed in deferred status. If the student is found in violation of any college rule during the time of deferred suspension, the suspension takes effect immediately without further review. Additional student conduct sanctions appropriate to the new violation also may be taken. A student who has been issued a deferred suspension sanction is deemed "not in good standing" with the college. A student who is not in good standing is subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(iii) May have additional restrictions or conditions also may be imposed, depending on the nature and seriousness of the misconduct.

(e) *Conduct probation*: An official warning that the student's conduct is in violation of Lake Washington (~~Technical College~~) Institute of Technology student conduct code, but is

not sufficiently serious to warrant expulsion, dismissal or suspension. A student on conduct probation is deemed "not in good standing" with the college.

(f) *Letter of enrollment block*: A letter stating that the student may not reenter Lake Washington (~~Technical College~~) Institute of Technology without prior approval by the office of the vice-president for student services if enrollment has been blocked for a previous student conduct problem or for medical reasons.

(g) *Letter of reprimand*: A letter that makes a matter of record any incident that reflects unfavorably on the student or the college.

(h) *Warning*: Admonition of a student for actions unbecoming to the college community.

(2) Secondary sanctions (no order of severity is established for secondary sanctions):

(a) *Community/college service*: A student may be offered an opportunity to complete a specified number of hours of community/college service in lieu of other sanctions. The type of community/college service must be approved by the hearing officer.

(b) *Educational requirements*: A provision to complete a specific educational requirement directly related to the violation committed. The provision will be clearly defined. Such educational requirements may include, but are not limited to, completion of an alcohol education workshop, a diversity awareness workshop, an anger management class, essays, or reports.

(c) *Restrictions*: The withdrawal of specified privileges for a definite period of time, but without the additional stipulations contained in the imposition of conduct probation. The restrictions involved will be clearly defined.

(d) *Restitution*: A payment for financial injury to an innocent party in cases involving theft, destruction of property or deception. The assessed costs to be paid may be in addition to receipt of any of the above sanctions.

(e) *Loss of parking privileges on campus*: Revocation of parking privileges.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-130-010 Tuition and fee schedules. Chapter 28B.15 RCW and RCW 28B.50.327 set the parameters for tuition and fee levels at state community and technical colleges. Based on this legislation, the specific amounts to be charged are recommended by the administration and adopted by the board of trustees of Lake Washington (~~Technical College~~) Institute of Technology.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-130-015 Tuition and fee waivers. Chapter 28B.15 RCW and RCW 28B.50.327 set the parameters for tuition and fee waivers at state community and technical colleges. Based on this legislation, the specific types of tuition and fee waivers are established by the administration and adopted by the board of trustees of Lake Washington (~~Technical College~~) Institute of Technology.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-130-020 Location of schedules. Additional and detailed information and specific amounts to be charged for each category of students and courses will be found in the college catalog, schedule of courses, and in the following locations on the Lake Washington (~~Technical College~~) Institute of Technology campus:

- (1) The office of admissions;
- (2) The registration office;
- (3) The office of the administrator of financial services;
- (4) The financial aid office; and
- (5) The college relations office.

AMENDATORY SECTION (Amending WSR 00-20-007, filed 9/22/00, effective 10/23/00)

WAC 495D-131-010 Scholarships. Detailed information concerning the criteria, eligibility, procedures for application, and other information regarding scholarships at Lake Washington (~~Technical College~~) Institute of Technology is located in the financial aid office on the Lake Washington (~~Technical College~~) Institute of Technology campus.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-133-020 Organization—Operation—Information. (1) Organization. Lake Washington (~~Technical College~~) Institute of Technology is established in Title 28B RCW as a public institution of higher education. The college is governed by a five-member board of trustees, appointed by the governor. The board employs a president, who acts as the chief executive officer of the college. The president establishes the structure of the administration.

(2) Operation. The administrative office is located at the following address:

11605 132nd Avenue Northeast
Kirkland, WA 98034-8506

The office hours are 7:30 a.m. to 4:30 p.m., Monday through Friday, except legal holidays. Educational operations are also located at the following address:

(~~Marymoor Annex~~)
6505 176th Avenue Northeast
Redmond, WA 98052-4943

(3) Information. Additional and detailed information concerning the educational offerings of the college may be obtained from the catalog, copies of which are available at the following address:

11605 132nd Avenue Northeast
Kirkland, WA 98034-8506

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-134-010 Rules coordinator. The rules coordinator for Lake Washington (~~Technical College as des-~~

~~ignated by~~) Institute of Technology is the president (~~is~~) or his or her designee.

(~~Vice President
Administrative Services~~)

Lake Washington (~~Technical College~~) Institute of Technology
11605 132nd Avenue Northeast
Kirkland, WA 98034-8506

AMENDATORY SECTION (Amending WSR 03-13-080, filed 6/16/03, effective 7/17/03)

WAC 495D-135-040 Tuition and special course/program connected fees refund policy. It shall be the policy of Lake Washington (~~Technical College~~) Institute of Technology that students shall receive refunds of tuition and fees in a fair and equitable manner in accordance with policy expressed in state law. Further, all applicable federal laws and regulations will be observed and implemented when doing so is necessary to maintain eligibility for federal funding of programs, as allowed by state law.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-140-010 Use of college facilities. Lake Washington (~~Technical College~~) Institute of Technology serves King and Snohomish counties by providing continued educational opportunity for its citizens. In keeping with this general purpose, and consistent with RCW 28B.50.140(7) and 28B.50.140(9), the board of trustees believes that facilities should be available for a variety of uses which are of benefit to the general public if such general uses substantially relate to and do not interfere with the educational mission of the college. However, a state agency is under no obligation to make its public facilities available to the community for private purposes.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-140-100 Application procedures. (1) At least ten days prior to date of intended use of any college facility, or such lesser period as is approved by the vice-president of administrative services, an authorized representative of the requesting organization must submit proper and complete written application for use of college facilities which may be obtained through the college's inservice coordinator. A single application may be sufficient for a series of meetings by an organization unless those meetings vary significantly in some substantive way; if so, separate applications will be required.

(2) An authorized representative of the using organization shall sign the application, which upon approval by the vice-president of administrative services or designee shall serve as an agreement. By affixing a signature as representing the using organization, the signatory certifies that he or she has authority to enter into agreement on behalf of the organization and if the organization fails to pay the amount due, the signatory becomes responsible for all charges. These charges

may include interest on overdue accounts, as specified on the facility use form but not less than one percent per month.

(3) For large events, events requiring expenditures on the part of the college, or events where significant areas are blocked out for the user, up to fifty percent advance deposit may be required at the time of application.

(4) The college reserves the right to make pricing changes without prior written notice, except that such price changes shall not apply to facility use agreements already approved by the administration.

(5) Use of a facility is limited to the facility specified on the agreement.

(6) The priorities for facility use place primary emphasis on regular college events and activities. The college reserves the right to cancel any agreement and refund any payments for use of college facilities and equipment when he or she deems such action advisable and in the college's best interests.

(7) In the event of a cancellation of a facility use permit by the applicant, that applicant and organization are liable for all college costs and expenses in preparing the facility for its use.

(8) Any admission charge is to be specified by the applicant and approved by the college in advance.

(9) Organizations using Lake Washington (~~Technical College's~~) Institute of Technology's facilities shall conduct all activities in accordance with applicable local, state, and federal laws including all policies adopted by the board of directors of College District 26.

AMENDATORY SECTION (Amending WSR 93-01-084, filed 12/15/92, effective 1/15/93)

WAC 495D-144-010 Lake Washington (~~Technical College~~) Institute of Technology bookstore operating policy. (1) Lake Washington (~~Technical College~~) Institute of Technology bookstore is operated for the special convenience, support, and use by students and staff of Lake Washington (~~Technical College~~) Institute of Technology. The bookstore's goods, services, and facilities are directly and substantially related to the educational mission of the college. Prices and fees will take into account all direct and indirect college costs, including overhead. Specific operating policies and procedures will be established by the president or his or her designee to promote the effective and efficient operation of the bookstore and to implement the provisions of this chapter.

(2) The bookstore will sell goods on the same basis to other persons as well. There is no similarly situated private bookstore available to meet all the demands of college visitors.

AMENDATORY SECTION (Amending WSR 93-01-084, filed 12/15/92, effective 1/15/93)

WAC 495D-144-030 Lake Washington (~~Technical College~~) Institute of Technology bookstore credit policies. The Lake Washington (~~Technical College~~) Institute of Technology bookstore will not establish personal charge accounts or extend personal credit.

AMENDATORY SECTION (Amending WSR 93-01-084, filed 12/15/92, effective 1/15/93)

WAC 495D-144-040 Lake Washington (~~Technical College~~) Institute of Technology bookstore pricing policies. (1) The bookstore will supply books and supplies at an established retail rate.

(2) Complimentary copies of books will not be furnished to faculty.

(3) No discounts will be given to specific individuals.

(4) Discounts applied at the discretion of the administration to categories or groupings of merchandise, and available to all customers, may be offered in order to clear aging or promotional merchandise. Detailed records will be kept of such discount activities.

AMENDATORY SECTION (Amending WSR 93-01-084, filed 12/15/92, effective 1/15/93)

WAC 495D-148-010 Equal employment opportunity/affirmative action policy. (1) Lake Washington (~~Technical College~~) Institute of Technology is an equal opportunity employer committed to providing equal opportunity and nondiscrimination to employment applicants and employees without regard to race or ethnicity, creed, color, national origin, sex, marital status, sexual orientation, age, religion, the presence of any sensory, mental, or physical disability, or whether a disabled veteran or Vietnam era veteran (hereinafter, protected group status). The college is equally committed to take affirmative action to increase the numbers of protected group members such as Asians, Blacks, Hispanics, Native Americans, women, persons between the ages of forty and seventy, persons of disability, disabled veterans and Vietnam era veterans in positions where it is determined they are under-represented. The college will make every effort to eliminate barriers to equal employment opportunity encountered by these protected group members and to improve employment opportunities available to under-represented groups.

(2) The college will recruit, hire, train, and promote individuals in all job classifications solely upon their qualifications and ability or potential ability to do the job, and shall consider protected group status only when such is a bona fide occupational qualification.

(3) All other personnel actions such as compensation, benefits, layoffs, return from layoffs, terminations, college-sponsored training, education, tuition assistance, and social and recreational programs will be administered without regard to protected group status.

(4) Numerical goals will be set in areas where protected classes are determined to be under-represented based upon the district's demographics. The college will make every effort to meet such goals within the timetables established for such goals.

(5) The president is charged with the overall responsibility for assuring that the equal employment opportunity/affirmative action policy is administered effectively, and is granted the authority to exercise that responsibility. It is incumbent upon each member of the Lake Washington (~~Technical College~~) Institute of Technology faculty, administration, and staff to make a good faith effort in the execution

of this policy. Failure to do so may be grounds for disciplinary action.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-168-010 Title. WAC 495D-168-010 through 495D-168-040 will be known as the library-media center code of Lake Washington (~~(Technical College)~~) Institute of Technology.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-168-020 Loans. Materials from the college library media center are checked out only to the following groups:

- (1) All currently registered students of the college;
- (2) All current faculty and administrative staff members;
- (3) All persons currently employed in classified staff positions;
- (4) All holders of currently valid courtesy cards. This latter group includes members of the board of trustees, community educators whose work might necessitate usage of library-media materials, and other individuals who show a particular need for specialized items in the library-media collections which are not available elsewhere;
- (5) Students from other institutions with which the college library-media center has a reciprocal lending agreement through a "shared use plan." This group may use materials on a loan basis at the discretion of the circulation supervisor who will determine lending priorities based upon the current usage of individual items by Lake Washington (~~(Technical College)~~) Institute of Technology students;
- (6) Persons in charge of groups using college facilities under the terms of the facility use agreement; and
- (7) Lake Washington School District No. 414 staff under terms of interlibrary loan agreements as may be approved by the college president or his or her designee.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-168-040 Student handbook. Additional administrative policy and procedure governing the operation of the library-media center and the rules for loaning books, other print materials and nonprint materials may be developed by the administration and published in the college policy and procedure manual and in the student handbook of Lake Washington (~~(Technical College)~~) Institute of Technology.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-276-030 Description of central and field organization of College District 26. (1) College District 26 is a state agency established and organized under the authority of chapter 28B.50 RCW for the purpose of implementing the educational goals established by the legislature in RCW 28B.50.020. The administrative office of the district is

located on the Lake Washington (~~(Technical College)~~) Institute of Technology campus within the city of Kirkland, Washington. The Lake Washington (~~(Technical College)~~) Institute of Technology campus likewise comprises the central headquarters for all operations of the district.

(2) The district is operated under the supervision and control of a board of trustees. The board of trustees consists of five members appointed by the governor. The board of trustees normally meets at least once each month, as provided in WAC 495D-104-010. The board of trustees employs a president, an administrative staff, members of the faculty, and other employees. The board of trustees takes such actions and promulgates such rules and policies in harmony with the rules established by the state board for community and technical colleges, as are necessary to the administration and operation of the district.

(3) The president of the district is responsible to the board of trustees for the operation and administration of the district. A detailed description of the administrative organization of the district is contained within the policies and procedures manual for Lake Washington (~~(Technical College)~~) Institute of Technology, a current copy of which is available for inspection at the administrative office of the district.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-276-040 Operations and procedures. (1) Formal decision-making procedures are established by the board of trustees through rules promulgated in accordance with the requirements of chapter 34.05 RCW, the Administrative Procedure Act.

(2) Informal decision-making procedures at the college, as established by the board of trustees, are set forth in the policies and procedures manual of Lake Washington (~~(Technical College)~~) Institute of Technology, a current copy of which is available for inspection at the administrative office of the district.

AMENDATORY SECTION (Amending WSR 00-20-007, filed 9/22/00, effective 10/23/00)

WAC 495D-280-010 Family Educational Rights and Privacy Act—General policy. Lake Washington (~~(Technical College)~~) Institute of Technology implements the policy contained in this chapter in compliance with the Family Educational Rights and Privacy Act (20 U.S.C. §1232g) and its implementing regulation (34 C.F.R. § 99). Briefly, Lake Washington (~~(Technical College)~~) Institute of Technology is required to provide students with access to their own education records, to permit students to challenge their records on the grounds that they are inaccurate, misleading, or otherwise in violation of the student's privacy or other right, to obtain written consent before releasing certain information and to notify students of these rights.

AMENDATORY SECTION (Amending WSR 00-20-007, filed 9/22/00, effective 10/23/00)

WAC 495D-280-015 Family Educational Rights and Privacy Act—Definitions. For the purposes of this policy, the following definitions apply:

(1) "Student" means any individual who is or has been in attendance at Lake Washington (~~(Technical College)~~) Institute of Technology and for whom the college maintains education records. A person no longer in attendance at the college is no longer a current student, but his or her educational records remain covered by the Family Educational Rights and Privacy Act.

(2) "Education records" are those records, files, and documents (in handwriting, print, tapes, film, microfiche, or other medium) maintained by the college that contain information directly related to the individual student. Education records include only the following:

(a) Records pertaining to admission, advisement, registration, grading, and progress toward a certificate or degree that are maintained by the registrar.

(b) Testing information used for advisement purposes by the counseling center.

(c) Information concerning payment of fees as maintained by the registrar.

(d) Financial aid information as collected by the financial aid office.

(e) Information regarding students' participating in student government that is maintained by the student government office.

(f) Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.

(3) "Personally identifiable" means the following information about students or family members:

(a) Student information:

(i) Name;

(ii) Address;

(iii) Telephone numbers;

(iv) E-mail address;

(v) Date and place of birth;

(vi) Level of education;

(vii) Academic major;

(viii) Degrees, certificates, and awards received;

(ix) Eligibility for and participation in officially recognized college activities and organizations;

(x) Dates of attendance;

(xi) Educational institution in which the student most recently was enrolled;

(xii) Full-time or part-time status;

(xiii) Grades;

(xiv) Test scores;

(xv) Medical records;

(xvi) Specific dates and places of classes in which enrolled;

(xvii) Personal identifiers such as Social Security number or college student identification numbers;

(xviii) Other personally identifying characteristics which would make the student's identity easily traceable;

(xix) Photograph.

(b) Family information:

(i) Names of parents or other family members;

(ii) Parents or other family members' addresses.

(4) "Directory information" includes the following student information:

(a) Name;

(b) Academic major;

(c) Degrees, certificates, and awards received;

(d) Eligibility for and participation in official activities and organizations;

(e) Dates of attendance;

(f) Full-time or part-time status.

(5) "Solomon amendment" information is student information provided to military recruiters for recruitment purposes in accordance with federal statute, and includes the following:

(a) Name;

(b) Address;

(c) Telephone numbers;

(d) Date and place of birth;

(e) Level of education;

(f) Academic major;

(g) Degrees, certificates, and awards received;

(h) Educational institution in which the student most recently was enrolled.

(6) "Written consent" means a written authorization for disclosure of student education records which is signed by the student (or parent if the student is under the age of eighteen and is attending (~~Otterson High School~~) Lake Washington Technical Academy), dated, specifying the records to be disclosed, and specifies to whom disclosure is authorized.

AMENDATORY SECTION (Amending WSR 00-20-007, filed 9/22/00, effective 10/23/00)

WAC 495D-280-020 Family Educational Rights and Privacy Act—Annual notification of rights. Lake Washington (~~(Technical College)~~) Institute of Technology will notify students of their rights under the Family Educational Rights and Privacy Act of 1974 by publication in the college catalog and quarterly schedule of courses. The college shall make available upon request a copy of the policy governing release of student records. In addition, the college shall post at conspicuous places on the campus information regarding the existence of this policy and of the availability of copies.

AMENDATORY SECTION (Amending WSR 00-20-007, filed 9/22/00, effective 10/23/00)

WAC 495D-280-040 Family Educational Rights and Privacy Act—Disclosure of education records. (1) The college may, at its discretion, make disclosures from education records of students to the following listed parties:

(a) College officials including college administrative and clerical staff, faculty, and students officially elected or appointed to the associated student government of Lake Washington (~~(Technical College)~~) Institute of Technology or employed by the college, including contractors such as the National Student Loan Clearinghouse;

(b) To officials of another school in which the student seeks or intends to enroll;

(c) To authorized federal, state, or local officials as required by law;

(d) In connection with financial aid for which the student has applied or received;

(e) To appropriate parties in a health or safety emergency;

(f) To accrediting organizations to carry out their functions;

(g) The disclosure is to parents, as defined in Section 99.3, of a dependent student, as defined in Section 152 of the Internal Revenue Code of 1986.

(h) To parents of an eligible student who claim the student as a dependent for income tax purposes;

(i) To comply with a judicial order or a lawfully issued subpoena;

(j) To military recruiters authorized to obtain specific information under the Solomon Amendment;

(k) To a victim of an alleged perpetrator of a crime of violence or a nonforcible sex offense.

(2) The college shall not permit access to or the release of education records or personally identifiable information contained therein, other than "directory information," without the written consent of the student, to any party other than those listed in subsection (1) of this section.

(3) "Directory information" may be disclosed at the discretion of the college and without the consent of the student, unless he or she elects to prevent disclosure. Students who wish to prevent disclosure will file a written request with the registrar. The request continues in effect according to its terms unless revoked in writing by the student.

(4) "Solomon Amendment" information, as defined in 7.P.23, may be released to military recruiters authorized to obtain specific information for recruitment purposes. Release of this information applies to students seventeen years and older and does not apply to students with previous military experience or to students who have filed a request to prevent disclosure of "directory information."

(5) "Personally identifiable" information, other than that defined as "releasable," "directory information," or "Solomon Amendment" information shall not be released, except as specifically requested by the student (or parents in the case of ~~((Otteson High School))~~ Lake Washington Technical Academy students under the age of eighteen).

AMENDATORY SECTION (Amending WSR 00-20-007, filed 9/22/00, effective 10/23/00)

WAC 495D-280-050 Family Educational Rights and Privacy Act—Limits on rights to review and inspect and obtain copies of education records. (1) When a record contains information about more than one student, the student may inspect and review only the records which relate to him or her.

(2) Lake Washington (~~((Technical College))~~) Institute of Technology reserves the right to refuse to permit a student to inspect the following records:

(a) The financial statement of the student's parents;

(b) Letters and statements of recommendation for which the student has waived his or her right of access, or which were placed in file before January 1, 1975;

(c) Records connected with an application to attend Lake Washington (~~((Technical College))~~) Institute of Technology if that application was denied; and

(d) Those records which are excluded from the Federal Rights and Privacy Act definition of education records, and not otherwise available for inspection under the Washington Public Records Act, chapter 42.17 RCW.

(3) Lake Washington (~~((Technical College))~~) Institute of Technology reserves the right to deny transcripts or copies of records not required to be made available by the Federal Educational Rights and Privacy Act in any of the following situations:

(a) The student has an unpaid financial obligation to the college;

(b) There is an unresolved disciplinary action against the student.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-300-010 Preamble. Lake Washington (~~((Technical College))~~) Institute of Technology is covered by the Age Discrimination in Employment Act, Titles VII and IX of the Civil Rights Act of 1964, by section 504 of the Rehabilitation Act of 1974, chapter 49.60 RCW, and the Americans With Disabilities Act. The college prohibits discrimination on the basis of race, color, religion, marital status, age, handicap/disability, national origin, sex, sexual orientation, sexual harassment, or any other unlawful basis. Any applicant for admission, enrolled student, applicant for employment, or employee of Lake Washington (~~((Technical College))~~) Institute of Technology who believes she/he has been discriminated against may lodge an institutional grievance by following the procedures below.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-300-015 Policy statement on disabilities. Students with documented disabilities as defined in PL 101-336 who meet admission qualifications will be provided reasonable accommodation. Accommodations may be made in the style of instructional delivery, method of evaluation, or curricular aides. The college will not lower the standard measurement of competency for the certificate of merit or the standards for a degree.

Specific support services and auxiliary aids will be determined prior to registration. State vocational rehabilitation agencies or common school districts charged with providing support to handicapped students will retain primacy of responsibility for necessary auxiliary aids.

Lake Washington (~~((Technical College))~~) Institute of Technology encourages all students to achieve the highest level of skill development possible, as well as to achieve the ability to function independently in the workplace. Therefore, accommodations will be provided on a decreasing basis to the extent that the student's reasonable requirements diminish as the student becomes increasingly successful in training and nears job placement.

AMENDATORY SECTION (Amending WSR 03-01-070, filed 12/12/02, effective 1/12/03)

WAC 495D-325-010 Implementation of State Environmental Policy Act. (1) It shall be the policy of Lake Washington (~~Technical College~~) Institute of Technology District 26 that all actions taken by the district shall comply with the provisions of chapter 43.21C RCW (the State Environmental Policy Act), chapters 197-11 and 131-24 WAC.

(2) The president of the district or his or her designee shall be responsible for administering and implementing this policy.

WSR 11-19-091

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed September 20, 2011, 10:52 a.m., effective October 24, 2011]

Effective Date of Rule: October 24, 2011.

Purpose: These changes are a result of the passage of ESSB 5860. This bill requires that during the 2011-13 biennium, base salaries are reduced three percent for all state employees except for elected officials whose salaries are established by the commission on salaries for elected officials; employees at state institutions of higher education; certificated employees of the state School for the Blind and the Center for Childhood Deafness and Hearing Loss; commissioned officers of the state patrol; represented ferry workers of the department of transportation; and employees whose monthly full-time equivalent salary is less than \$2,500 per month. Employees subject to the salary reduction accrue additional temporary salary reduction (TSR) leave of up to 5.2 hours per month. Per language in the bill, amounts paid during the 2011-13 fiscal biennium to state employees who cash-out annual or sick leave at the time of retirement or sick leave in excess of sixty days at any time are not reduced by temporary compensation reductions.

There are provisions in the bill which require us to make changes and additions to the current rules in order to implement the temporary salary reduction and TSR leave as described in the bill.

Citation of Existing Rules Affected by this Order: Amending WAC 357-31-225, 357-31-150, 357-31-245, 357-31-255, 357-28-260, 357-31-265, 357-31-390, 357-31-530, and 357-28-285.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 11-16-063 on July 29, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 9, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 9, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 9, Repealed 0.

Date Adopted: September 20, 2011.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

WAC 357-28-260 At what rate must overtime be compensated? Overtime worked by an overtime eligible employee must be compensated at a rate of one and one-half times the employee's regular rate. Compensation for overtime worked between July 1, 2011, and June 29, 2013, will not be subject to the three percent temporary salary reduction under chapter 39, Laws of 2011.

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

WAC 357-28-285 When must compensatory time be paid in cash? (1) The accumulation of unused compensatory time of any amount that exceeds two hundred forty hours, or four hundred eighty hours for employees engaged in public safety or emergency response activity, must be paid in cash at the regular rate earned by the employee at the time the employee receives such payment. Payments made between July 1, 2011, and June 29, 2013, will not be subject to the three percent temporary salary reduction under chapter 39, Laws of 2011.

(2) Upon termination of employment, an employee must be paid for unused compensatory time in accordance with applicable state and federal law. Payments made between July 1, 2011, and June 29, 2013, will not be subject to the three percent temporary salary reduction under chapter 39, Laws of 2011.

AMENDATORY SECTION (Amending WSR 09-11-068, filed 5/14/09, effective 6/16/09)

WAC 357-31-150 Can an employee be paid for accrued sick leave? In accordance with the attendance incentive program established by RCW 41.04.340, employees are eligible to be paid for accrued sick leave as follows:

(1) In January of each year, an employee whose sick leave balance at the end of the previous year exceeds four hundred eighty hours may elect to convert the sick leave hours earned in the previous calendar year, minus those hours used during the year, to monetary compensation.

(a) No sick leave hours may be converted which would reduce the calendar year-end balance below four hundred eighty hours.

(b) Monetary compensation for converted hours is paid at the rate of twenty-five percent and is based on the employee's current salary. Monetary compensation for con-

verted hours which is paid between July 1, 2011, and June 29, 2013, will not be subject to a temporary salary reduction.

(c) All converted hours are deducted from the employee's sick leave balance.

(d) Hours which are accrued, donated and returned from the shared leave program in the same calendar year may be included in the converted hours for monetary compensation.

(e) For the purpose of this section, hours which are contributed to a sick leave pool per WAC 357-31-570 are considered hours used.

(2) Employees who separate from state service because of retirement or death must be compensated for their total unused sick leave accumulation at the rate of twenty-five percent. The employer may deposit equivalent funds for a retiring employee in a medical expense plan as provided in WAC 357-31-375. Compensation must be based on the employee's salary at the time of separation. Compensation for unused sick leave which is paid between July 1, 2011, and June 29, 2013, will not be subject to a temporary salary reduction. For the purpose of this subsection, retirement does not include "vested out-of-service" employees who leave funds on deposit with the department of retirement systems (DRS).

(3) No contributions are to be made to the department of retirement systems (DRS) for payments under subsection (1) or (2) of this section, nor are such payments reported to DRS as compensation.

AMENDATORY SECTION (Amending WSR 05-08-137, filed 4/6/05, effective 7/1/05)

WAC 357-31-225 When employees separate from state service, are they entitled to a lump sum payment of unused vacation leave? (1) When an employee who has completed six continuous months of employment separates from service by reason of resignation with adequate notice, layoff, trial service reversion, separation, dismissal, retirement, or death, the employee is entitled to a lump sum payment of unused vacation leave. The payment is computed by using the formula published by the office of financial management. Payments made between July 1, 2011, and June 29, 2013, will not be subject to a temporary salary reduction. No contributions are to be made to the department of retirement systems (DRS) for lump sum payment of excess vacation leave accumulated under the provisions of WAC 357-31-215(2), nor shall such payment be reported to the DRS as compensation.

(2) General government permanent employees may defer the payment of accumulated vacation leave to which they are entitled for a period of thirty calendar days in any of these circumstances:

(a) If the separation resulted from a layoff, trial service reversion, or conclusion of a project or nonpermanent appointment and there is a reasonable probability of reemployment((-)); or

(b) If the separation resulted from an employee returning to a classified position from an exempt position under the provision of RCW 41.06.070.

AMENDATORY SECTION (Amending WSR 09-17-062, filed 8/13/09, effective 9/16/09)

WAC 357-31-245 What happens if an employee uses accrued vacation leave, accrued sick leave, accrued compensatory time, recognition leave, accrued temporary salary reduction leave, or receives holiday pay during a period when he/she is receiving time loss compensation?

An employee who uses accrued vacation leave, accrued sick leave, accrued compensatory time, recognition leave, accrued temporary salary reduction leave, or receives holiday pay during a period when he/she is receiving time loss compensation is entitled to time-loss compensation and full pay for vacation leave, sick leave, compensatory time, recognition leave, temporary salary reduction leave, and holiday pay.

AMENDATORY SECTION (Amending WSR 07-11-093, filed 5/16/07, effective 7/1/07)

WAC 357-31-255 What types of leave may an employee use when absent from work or arriving late to work because of inclement weather? When the employer determines inclement weather conditions exist, the employer's leave policy governs the order in which accrued leave and compensatory time may be used to account for the time an employee is absent from work due to the inclement weather. The employer's policy must allow the use of accrued vacation leave, accrued sick leave up to a maximum of three days in any calendar year, accrued temporary salary reduction leave, and the use of leave without pay in lieu of paid leave at the request of the employee. The employer's policy may allow leave with pay when an employee is absent due to inclement weather.

AMENDATORY SECTION (Amending WSR 07-11-096, filed 5/16/07, effective 7/1/07)

WAC 357-31-265 What is the effect of suspended operations on employees who are not required to work during the closure? At a minimum, employees not required to work during suspended operations must be allowed to use their personal holiday ((~~or~~)), accrued vacation leave, or accrued temporary salary reduction leave. Overtime eligible employees must also be allowed to use accrued compensatory time to account for the time lost due to the closure. Overtime eligible employees may be allowed to use leave without pay and given an opportunity to make up work time lost (as a result of suspended operations) within the work week. For overtime eligible employees, compensation for making up lost work time must be in accordance with WAC 357-28-255, 357-28-260, and 357-28-265 if it causes the employee to work in excess of forty hours in the workweek, and must be part of the employer's suspended operations procedures. The amount of compensation earned under this section must not exceed the amount of salary lost by the employee due to suspended operation.

If the employer's suspended operations procedure allows, employees may be released without a loss in pay.

AMENDATORY SECTION (Amending WSR 10-23-120, filed 11/17/10, effective 12/18/10)

WAC 357-31-390 What criteria does an employee have to meet to be eligible to receive shared leave? An employee may be eligible to receive shared leave if the agency head or higher education institution president has determined the employee meets the following criteria:

(1) The employee:

(a) Suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature;

(b) The employee has been called to service in the uniformed services;

(c) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has the needed skills to assist in responding to the emergency or its aftermath and volunteers their services to either a governmental agency or to a non-profit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services;

(d) The employee is a victim of domestic violence, sexual assault, or stalking as defined in RCW 41.04.655; or

(e) During the 2009-2011 fiscal biennium only, an employee whose monthly full-time equivalent base salary is two thousand five hundred dollars or less is eligible to use shared leave in lieu of temporary layoff as described in chapter 32, Laws of 2010.

(2) The illness, injury, impairment, condition, call to service, emergency volunteer service, consequence of domestic violence, sexual assault, or stalking, or temporary layoff under chapter 32, Laws of 2010, has caused, or is likely to cause, the employee to:

(a) Go on leave without pay status; or

(b) Terminate state employment.

(3) The employee's absence and the use of shared leave are justified.

(4) The employee has depleted or will shortly deplete their:

(a) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, accrued temporary salary reduction leave, and accrued sick leave if the employee qualifies under subsection (1)(a) of this section; or

(b) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, accrued temporary salary reduction leave, and paid military leave allowed under RCW 38.40.060 if the employee qualifies under subsection (1)(b) of this section; or

(c) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued temporary salary reduction leave, and accrued vacation leave if the employee qualifies under (1)(c) or (d) of this section; or

(d) Compensatory time, recognition leave as described in WAC 357-31-565, accrued temporary salary reduction leave, and accrued vacation leave if the employee qualifies under subsection (1)(e) of this section.

(5) The employee has abided by employer rules regarding:

(a) Sick leave use if the employee qualifies under subsection (1)(a) of this section; or

(b) Military leave if the employee qualifies under subsection (1)(b) of this section.

(6) If the illness or injury is work-related and the employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW if the employee qualifies under subsection (1)(a) of this section.

AMENDATORY SECTION (Amending WSR 05-21-061, filed 10/13/05, effective 11/15/05)

WAC 357-31-530 Under the Family and Medical Leave Act of 1993, how is an eligible employee defined? In accordance with 29 CFR Part 825, an eligible employee is an employee who has worked for the state for at least twelve months and for at least one thousand two hundred fifty hours during the previous twelve-month period. Vacation leave, sick leave, temporary salary reduction leave, the personal holiday, compensatory time off, or shared leave is not counted towards the one thousand two hundred and fifty hour eligibility requirement.

NEW SECTION

WAC 357-31-740 What is temporary salary reduction (TSR) leave and which employees are eligible to earn TSR leave? Temporary salary reduction (TSR) leave is paid leave prescribed under chapter 39, Laws of 2011. Employees who are subject to the three percent temporary salary reduction under chapter 39, Laws of 2011 may be credited up to a maximum of 5.2 hours of TSR leave per month.

NEW SECTION

WAC 357-31-745 What provisions apply to temporary salary reduction (TSR) leave? (1) Full-time employees whose pay has been reduced in accordance with chapter 39, Laws of 2011 and who have been in pay status for 80 non-overtime hours in a month will accrue 5.2 hours of TSR leave. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(2) Part-time employees earn TSR leave on a pro rata basis in accordance with WAC 357-31-125.

(3) Employees may use TSR leave as soon as it is accrued.

(4) Employers must identify how employees will request the use of TSR leave.

(5) There is no requirement for TSR leave to be used prior to sick leave or vacation leave unless the employer specifies otherwise.

(6) An employee's request to use TSR leave must be approved under the following conditions:

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

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

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

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

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

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

(7) In accordance with the employer's leave policy, approval for the reasons listed in (6)(a) through (f) above may be subject to verification that the condition or circumstance exists.

(8) TSR leave has no cash value and balances must be used by July 1, 2013; however, employees may carry forward up to 16 hours of TSR leave that must be used prior to September 1, 2013.

(9) TSR leave may not be donated as shared leave.

(10) TSR leave may be approved for any reason vacation leave and sick leave may be approved.

(11) Unused TSR leave transfers with an employee when the employee changes state employers, without a break in service, and moves to a position which earns TSR leave.

(12) Time spent on temporary layoff as provided in WAC 357-46-063 will not impact an employees TSR leave accrual.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 11-19-098
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed September 20, 2011, 3:46 p.m., effective January 1, 2012]

Effective Date of Rule: January 1, 2012.

Purpose: WAC 246-809-990 and 246-834-990, the adopted rules establish the HEAL-WA fee required under SSB 5071 (chapter 35, Laws of 2011) for midwives and marriage [marriage] and family therapists. The fee is assessed on initial [initial] licensure and renewals and provides for these professions to access the HEAL-WA on-line resources. The adopted rules also amend the existing HEAL-WA fee name for mental health counselors and social workers, and make general housekeeping edits.

Citation of Existing Rules Affected by this Order: Amending WAC 246-809-990 and 246-834-990.

Statutory Authority for Adoption: RCW 43.70.110, 43.70.112.

Adopted under notice filed as WSR 11-16-077 on August 1, 2011.

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

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

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

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

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

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

Date Adopted: September 9, 2011.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 10-19-071, filed 9/16/10, effective 10/15/10)

WAC 246-809-990 Licensed counselor, and associate—Fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) Associate licenses are valid for one year and must be renewed every year on the date of issuance. The associate license may be renewed no more than four times.

Title	Fee
(3) The following nonrefundable fees will be charged for licensed marriage and family therapist:	
Application	\$150.00
Initial license	75.00
Renewal	140.00
Late renewal penalty	70.00
Expired license reissuance	85.00
Duplicate license	10.00
Certification of license	10.00
<u>UW on-line access fee (HEAL-WA)</u>	<u>25.00</u>
(4) The following nonrefundable fees will be charged for licensed mental health counselor:	
Application	140.00
Initial license	125.00
Renewal	138.00
Late renewal penalty	60.00
Expired license reissuance	65.00
Duplicate license	10.00
Certification of license	10.00
UW (Library) on-line access fee	25.00
<u>(HEAL-WA)</u>	
(5) The following nonrefundable fees will be charged for licensed advanced social worker and licensed independent clinical social worker:	
Application	125.00

Title	Fee
Initial license	125.00
Renewal	126.00
Late renewal penalty	63.00
Expired license reissuance	72.50
Duplicate license	10.00
Certification of license	10.00
UW ((library)) <u>on-line</u> access fee <u>(HEAL-WA)</u>	25.00
(6) The following nonrefundable fees will be charged for licensed marriage and family therapy associates:	
Application	50.00
Renewal	40.00
Late renewal penalty	40.00
Expired license reissuance	40.00
Duplicate license	15.00
Certification of license	15.00
(7) The following nonrefundable fees will be charged for licensed mental health counselor associates:	
Application	50.00
Renewal	40.00
Late renewal penalty	40.00
Expired license reissuance	40.00
Duplicate license	15.00
Certification of license	15.00
(8) The following nonrefundable fees will be charged for licensed advanced social worker associates and licensed independent clinical social worker associates:	
Application	50.00
Renewal	40.00
Late renewal penalty	40.00
Expired license reissuance	40.00
Duplicate license	15.00
Certification of license	15.00

AMENDATORY SECTION (Amending WSR 10-19-071, filed 9/16/10, effective 10/15/10)

WAC 246-834-990 Midwifery fees and renewal cycle.

(1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. ~~(The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required pay-~~

~~ment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.)~~

(2) The following fees are nonrefundable:

Title of Fee	Fee
Initial application	\$500.00
National examination administration (initial/retake)	103.00
State examination (initial/retake)	155.00
Renewal	500.00
Late renewal penalty	250.00
Duplicate license	25.00
Certification of license	25.00
Application fee—Midwife-in-training program	978.75
Expired license reissuance	300.00
<u>UW on-line access fee (HEAL-WA)</u>	<u>25.00</u>

**WSR 11-19-103
PERMANENT RULES
DEPARTMENT OF LICENSING**

[Filed September 21, 2011, 8:51 a.m., effective October 22, 2011]

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

Purpose: To amend/repeal rules to comply with the appraiser qualifications board's real property qualifications criteria and to simplify the national registry fee requirement.

Citation of Existing Rules Affected by this Order: Repealing WAC 308-125-060 Alternate to classroom hours, requirement preexamination; and amending WAC 308-125-050 Educational courses—Preexamination and 308-125-120 Fees and charges.

Statutory Authority for Adoption: RCW 18.140.030 (1), (7), (8) and (15).

Adopted under notice filed as WSR 11-15-044 on July 14, 2011.

Changes Other than Editing from Proposed to Adopted Version: WAC 308-125-050 (2)(a)(iii), change two references from "appraisal qualifications board" to "appraiser qualifications board."

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

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

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

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

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

Date Adopted: September 21, 2011.

Ben T. Shomshor
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-09-025, filed 4/13/10, effective 5/14/10)

WAC 308-125-050 Educational courses—Preexamination. (1) To be accepted under WAC 308-125-030(1), 308-125-040(1), and 308-125-045(1), courses must:

- (a) Be a minimum of fifteen classroom hours in length;
- (b) Include an examination;
- (c) Be directly related to real estate appraising; and
- (d) Be approved by the director as identified in the appraiser program's publication *Approved Courses, Real Estate Appraisers*; or
- (e) Be approved by the appraiser qualifications board and approved by the director.

(2) The following limitations may apply to course work submitted to the department for approval:

(a) ~~((A correspondence course))~~ Distance education may be acceptable to meet classroom hour requirements only if each course meets the following conditions:

(i) The course ~~((has been presented by an accredited college or university which offers correspondence courses in other disciplines))~~ provides interaction. Interaction is a reciprocal environment where the student has verbal or written communication with the instructor;

(ii) An individual successfully completes a closed-book written examination administered at a location by an official approved by the college or university; ~~((or))~~ and

~~((The content and length of the course meet the requirements for real estate appraisal related courses established by the appraiser qualifications board and approved by the director.~~

~~((b) Video and remote television educational courses may be used to meet the classroom hour requirements only if each course meets the following conditions:~~

~~((i) The course has been presented by an accredited college or university which offers similar courses in other disciplines;~~

~~((ii) An individual successfully completes a written examination administered at a location by an official approved by the college or university; or~~

~~((iii) The content and length of the course meet the requirements for real estate appraisal related courses established by the appraiser))~~ Content and course delivery mechanism approvals are obtained from the appraisal qualifications board or an accredited college, community college, or university that offers distance education programs and is approved or accredited by the commission on colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the United States Secretary of Education. Nonacademic credit college courses provided by a college shall be approved by the appraisal qualifications board and approved by the director.

~~((e))~~ (b) An applicant shall not receive "dual credit" for courses that have the same or very similar content and are deemed comparable by the department, even if an applicant completes the courses through different course providers.

(3) Copies of official transcript of college records or certificates of course completion will be considered as satisfactory evidence for education requirements.

(4) Preexamination review seminars or examination preparation seminars will not be approved for clock hour credit.

(5) An application shall be submitted for approval not less than ninety days preceding the course start date. Course approval expiration shall be three years from the date of approval, except for the Uniform Standards of Professional Appraisal Practice courses or seminars having a definite date.

(6) All courses approved by the appraiser qualifications board will continue to be accepted by the department as approved courses until the expiration date.

(7) Appraisal course providers who have received the appraiser qualifications board's course approval are not required to submit course material or content materials to the department for approval. The course provider shall submit a secondary provider course content approval application to the department.

AMENDATORY SECTION (Amending WSR 09-24-037, filed 11/23/09, effective 1/1/10)

WAC 308-125-120 Fees and charges. The following fees shall be paid under the provisions of chapter 18.140 RCW:

Title of Fee	Fee
(1) Application for examination	\$370.00
(2) Examination	120.00**
(3) Reexamination	120.00**
(4) Original certification	250.00*
(5) Certification renewal	530.00*
(6) Late renewal penalty	38.00
(7) Duplicate certificate	30.00
(8) Certification history record	30.00
(9) Application for reciprocity	370.00
(10) Original certification via reciprocity	250.00*
(11) Temporary practice	150.00
(12) Trainee registration	200.00
(13) Trainee registration renewal	200.00

* ~~((Proposed))~~ Fees for these categories marked with an asterisk include ~~((an estimated \$50.00))~~ a national registry fee in an amount determined by the appraisal subcommittee to be submitted by the state ~~((to Federal Government))~~. Title XI, SEC. 1109 requires each state to submit a roster listing of state licensed and certified appraisers to the Appraiser Subcommittee ~~((no less than annually." The state is also required to collect from such individuals who perform appraisals in federally related transactions, an annual registry fee of "not more than \$25," such fees to be transmitted by the state to the federal government on an annual basis))~~.

** Charges for categories marked with a double asterisk are determined by contract with an outside testing service.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-125-060	Alternate to classroom hours, requirement preexamination.
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