

WSR 13-07-005

PERMANENT RULES

LIQUOR CONTROL BOARD

[Filed March 6, 2013, 3:21 p.m., effective April 6, 2013]

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

Purpose: The Washington Wine Industry petitioned the board for rule making to remove the limit of twelve liter[s] of beer and/or wine for off-premises consumption to any one person at a special occasion licensed event. This change does not create a public safety concern.

Citation of Existing Rules Affected by this Order: Amending WAC 314-16-230.

Statutory Authority for Adoption: RCW 66.8.030 [66.08.030].

Adopted under notice filed as WSR 13-03-040 on January 9, 2013.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 6, 2013.

Sharon Foster
Chairman

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-16-230 Authorization for sale of beer and/or wine in unopened bottles for off-premises consumption under special occasion license. ~~((+))~~ Authorization for the sale of unopened bottles and original packages of beer and/or wine not to be consumed on the premises where sold, as authorized by RCW 66.24.380, must be applied for to the board at the time the society or organization makes application for the special occasion license, and the board's written approval is required before any such sales are made.

~~((2) Board approval for the sales authorized in subsection (1) of this section shall be granted by the board upon the condition that no more than twelve liters of beer and/or wine may be sold to any one purchaser under a single special occasion license.))~~

WSR 13-07-009

PERMANENT RULES

LIQUOR CONTROL BOARD

[Filed March 7, 2013, 2:08 p.m., effective April 7, 2013]

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

Purpose: This rule making is due to a stakeholder request to amend the current rule regarding what the holder of a spirits certificate of approval license is allowed to do. The amendments will allow any spirits certificate of approval licensee to obtain an endorsement to sell their spirits product to a spirits retailer in Washington state.

Citation of Existing Rules Affected by this Order: Amending WAC 314-23-030.

Statutory Authority for Adoption: RCW 66.24.640, 66.08.030.

Adopted under notice filed as WSR 13-03-150 on January 23, 2013.

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 0, Repealed 0.

Date Adopted: March 6, 2013.

Sharon Foster
Chairman

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

WAC 314-23-030 What does a spirits certificate of approval license allow? (1) A spirits certificate of approval licensee may not commence sales until March 1, 2012. A spirits certificate of approval license may be issued to spirits manufacturers located outside of the state of Washington but within the United States.

(2) There are three separate spirits certificate of approval licenses as follows:

(a) A holder of a spirits certificate of approval may act as a distributor of spirits they are entitled to import into the state by selling directly to spirits distributors or spirits importers licensed in Washington state. The fee for a certificate of approval is two hundred dollars per year.

(b) A holder of an authorized representative out-of-state spirits importer or brand owner for spirits produced in the United States but outside of Washington state may obtain a spirits authorized representative domestic certificate of approval license which entitles the holder to import spirits into the state by selling directly to spirits distributors, or spirits importers licensed in Washington state. The fee for an

authorized representative certificate of approval for spirits is two hundred dollars per year.

(c) A holder of an authorized representative out-of-state spirits importer or brand owner for spirits produced outside of the United States obtains a spirits authorized representative foreign certificate of approval which entitles the holder to import spirits into the state by selling directly to spirits distributors, or spirits importers licensed in Washington state. The fee for an authorized representative certificate of approval for foreign spirits is two hundred dollars per year.

(3) A spirits certificate of approval holder, a spirits authorized representative domestic certificate of approval holder, and/or a spirits authorized representative foreign certificate of approval holder must obtain an endorsement to the certificate of approval that allows the shipment of spirits the holder is entitled to import into the state directly to licensed liquor retailers. The fee for this endorsement is one hundred dollars per year and is in addition to the fee for the certificate of approval license. The holder of a certificate of approval license that sells directly to licensed liquor retailers must:

(a) Report to the board monthly, on forms provided by the board, the amount of all sales of spirits to licensed retailers.

(b) Pay to the board a fee of ten percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the first two years of licensure.

(c) Pay to the board five percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the third year of licensure and every year thereafter.

~~((4) An authorized representative out-of-state spirits importer or brand owner for spirits produced in the United States but outside of Washington state may obtain an authorized representative certificate of approval license which allows the holder to ship spirits to spirits distributors, or spirits importers located in Washington state. The fee for an authorized representative certificate of approval for spirits is two hundred dollars per year.~~

~~(5) An authorized representative out-of-state spirits importer or brand owner for spirits produced outside of the United States may ship spirits to licensed spirits distributors, or spirits importers located in Washington state. The fee for an authorized representative certificate of approval for foreign spirits is two hundred dollars per year.)~~

WSR 13-07-016
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-49—Filed March 11, 2013, 9:46 a.m., effective April 11, 2013]

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

Purpose: The purpose of this proposal is to develop rules defining the procedures that the Washington department of fish and wildlife (WDFW) biologists will use to review and provide concurrence determinations to the department of natural resources (DNR) on specific forest practices hydraulic

projects identified in 2ESSB 6406 (2012). The rules direct WDFW's internal procedures only and include guidelines for the manner in which WDFW biologists will work with DNR and applicants to help ensure that projects meet fish protection standards. The rules do not provide any legal requirements for outside entities.

Reasons Supporting Proposal: This rule adoption was mandated by 2ESSB 6406 (2012) and fulfills one of WDFW's obligations associated with integrating the agency's hydraulic code fish protection standards into DNR's forest practices rules.

Statutory Authority for Adoption: RCW 77.04.020 and 77.12.047.

Adopted under notice filed as WSR 13-03-120 on January 18, 2013.

Changes Other than Editing from Proposed to Adopted Version: None other than minor word changes for clarity.

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: March 5, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-110-085 Integration of hydraulic project approvals and forest practices applications. (1) Description. In 1999, the *Forests and Fish Report* and Engrossed Substitute House Bill 2091, which amended the Forest Practices Act, chapter 76.09 RCW, envisioned a more integrated approach to permitting hydraulic projects that also require forest practices applications (FPAs). In May 2001, the forest practices board adopted permanent forest practices rules in Title 222 WAC, which incorporated fish protection measures normally included in hydraulic project approvals (HPAs) for projects in nonfish-bearing waters.

In April 2012, the legislature, through Second Engrossed Substitute Senate Bill 6406, amended the Forest Practices Act in chapter 76.09 RCW and the hydraulic code statutes in chapter 77.55 RCW. The amendment requires integration of hydraulic code rule fish protection standards (Title 220 WAC) into the forest practices rules for hydraulic projects in fish-bearing waters on forest land. As codified in RCW 77.55.361 and 76.09.040, the requirements of the hydraulic code rules will no longer apply to any forest practices hydraulic project as soon as fish protection standards have been inte-

grated into the forest practices rules, and technical guidance has been developed and approved for inclusion in the *Forest Practices Board Manual*. Thereafter, forest practices hydraulic projects will be regulated under forest practices rules. The amended statutes also include a requirement that the department of fish and wildlife (department) adopt rules establishing the procedures for the concurrence review process. This process is outlined in subsection (3) of this section.

(2) General review and comment on forest practices hydraulic projects.

(a) The department may review and provide comments on any FPA.

(b) For FPAs that include a forest practices hydraulic project involving fish-bearing waters or shorelines of the state, the department must review the forest practices hydraulic projects and either provide comments to the department of natural resources (DNR), or document that the review has occurred without the need for comments. Prior to commenting, the department will strive to communicate with the applicant regarding any concerns relating to consistency with fish protection standards. The department will also strive to maintain communications with DNR as concerns arise and to inform DNR of communications with applicants.

(c) The department will encourage forest landowners to consult with department biologists, including site visits as needed, prior to submitting an FPA containing a hydraulic project. This will help ensure that project design plans and specifications meet fish protection standards. Preapplication collaboration with the department will result in more efficient and successful outcomes for forest landowners and their proposed hydraulic projects.

In addition to the general review and comment process for forest practices hydraulic projects described in this subsection, hydraulic projects meeting the criteria described in subsection (3)(a) of this section will follow the concurrence review process.

(3) Concurrence review process.

(a) The department must review forest practices hydraulic projects meeting the following criteria and provide written comments to DNR on the project's ability to meet fish protection standards:

(i) Culvert installation or replacement, and repair at or below the bankfull width, as that term is defined in WAC 222-16-010 on July 10, 2012, in fish-bearing rivers and streams that exceed five percent gradient;

(ii) Bridge construction or replacement, and repair at or below the bankfull width, of fish-bearing unconfined streams; or

(iii) Fill within the flood level - 100 year, as that term is defined in WAC 222-16-010 on July 10, 2012, of fish-bearing unconfined streams.

(b) After the department receives notification from DNR that a FPA includes one or more hydraulic projects meeting the criteria in (a) of this subsection, the department has thirty days to review the forest practices hydraulic project(s) for consistency with fish protection standards.

(c) Within five business days following notification from DNR, or as soon as possible thereafter, the department will determine whether all information, needed for assessing the

hydraulic project's consistency with fish protection standards, is included in the application.

(d) If information is missing, the department will immediately contact the applicant to request the missing information. The department will also provide written notification to DNR, indicating that specific information is missing and that the applicant has been notified. The department may issue a nonconcurrence on a proposed project if the applicant fails to provide missing information in a timely manner so that the department can complete its review within the required thirty-day time frame.

(e) If, during the thirty-day concurrence review period, the department determines that a forest practices hydraulic project may not be consistent with fish protection standards, the department will attempt to work with the applicant to modify the proposed project. The department will strive to include DNR participation on site visits with the applicant as needed.

(f) The department must provide written notification of concurrence or nonconcurrence to DNR within the thirty-day review period, stating whether or not the hydraulic project is consistent with fish protection standards. As part of the written notification to DNR, the department must provide information about the outcomes of any meetings with the applicant, including agreements or disagreements, any missing information requested, and any proposed changes needed to meet fish protection standards.

(g) The department will recommend that DNR deny the FPA when efforts described in (e) of this subsection have not resulted in a successful outcome, the project will result in direct or indirect harm to fish life, and adequate mitigation cannot be assured by modifying the hydraulic project proposal or by DNR's agreement to add appropriate provisions to the FPA.

WSR 13-07-020

**PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed March 12, 2013, 4:19 p.m., effective April 12, 2013]

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

Purpose: Chapter 392-170 WAC has been revised to reflect the state legislation changes to chapter 28A.185 RCW. Sections were changed to reflect that highly capable programs and services are for the education of K-12 students through a state appropriation as part of basic education. Technical corrections and formatting changes have been made to clarify definitions and to revise sections to comply with chapter 28A.185 RCW, and to repeal sections that are no longer applicable under chapter 28A.185 RCW.

Changes were made to reflect that highly capable programs and services are for highly capable students in kindergarten through twelfth grade, and that districts complete a highly capable program annual plan for the district's highly capable program to receive the funding appropriation. Sections were changed to clarify school district annual plan content, identification procedures, parent permission, and end-

of-year report content. A new section was added which requires an appeal process.

Citation of Existing Rules Affected by this Order: Repealing WAC 392-170-015, 392-170-037, 392-170-040, 392-170-050, 392-170-065 and 392-170-085 [392-170-085]; amending WAC 392-170-005, 392-170-010, 392-170-020, 392-170-025, 392-170-030, 392-170-035, 392-170-036, 392-170-038, 392-170-042, 392-170-045, 392-170-047, 392-170-055, 392-170-060, 392-170-070, 392-170-075, 392-170-078, 392-170-080 and 392-170-090; and new WAC 392-170-012 and 392-170-076.

Statutory Authority for Adoption: Chapter 28A.185 RCW, Highly capable students.

Adopted under notice filed as WSR 12-20-012 on September 24, 2012.

Changes Other than Editing from Proposed to Adopted Version: No significant changes were made based upon the hearing testimony and public comment. Three additions were made as they were in the original Washington Administrative Code and were inadvertently left out. Retaining the language does not change the intent of the proposed rule change. The three sections were WAC 392-170-055, 392-170-080, and 392-170-035.

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 18, Repealed 6.

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: November 28, 2012.

Randy Dorn
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending Order 18, filed 7/19/90, effective 8/19/90)

WAC 392-170-005 Authority. The authority for this chapter is ~~((chapter 28A.185))~~ RCW~~((—))~~ 28A.150.290, 28A.185.030, and 28A.185.050, which authorize~~((s))~~ the superintendent of public instruction to adopt rules and regulations for the administration of a program for highly capable students in kindergarten through twelfth grade, including the nomination, assessment, and selection of such students.

AMENDATORY SECTION (Amending Order 84-20, filed 6/28/84)

WAC 392-170-010 Purpose. The purpose of this chapter is to establish policies and procedures for administration

of ~~((#))~~ programs for the education of K-12 students who are highly capable.

NEW SECTION

WAC 392-170-012 Funds. For highly capable students, access to accelerated learning and enhanced instruction is access to a basic education. School districts may access basic education funds, in addition to highly capable categorical funds, to provide appropriate highly capable student programs.

AMENDATORY SECTION (Amending Order 84-20, filed 6/28/84)

WAC 392-170-020 District ~~((application))~~ plans for the district's highly capable program. Each district ~~((that seeks an allocation of state funds for a program for highly capable students))~~ shall submit an annual ~~((application))~~ plan for the district's highly capable program on forms provided by the superintendent of public instruction for approval.

AMENDATORY SECTION (Amending Order 84-20, filed 6/28/84)

WAC 392-170-025 Board approval. The district's ~~((annual application))~~ plan for students who are highly capable shall be annually approved by formal action of the district's board of directors.

AMENDATORY SECTION (Amending WSR 06-18-105, filed 9/6/06, effective 10/7/06)

WAC 392-170-030 Substance of annual school district ~~((application))~~ plan. The school district's annual ~~((application))~~ plan shall contain the following:

(1) A report of the number of K-12 students ~~((to be served))~~ who are highly capable that the district expects to serve by grade level;

(2) ~~((Brief))~~ A description of the district's plan to identify students;

(3) ~~((Program services))~~ A description of the highly capable program goals;

(4) A description of the services the highly capable program will offer;

(5) A description of the instructional program ~~((description))~~ the highly capable program will provide;

~~((5))~~ (6) A description of ongoing professional development for educators of students who are highly capable and general education staff;

~~((6))~~ (7) A description of how the highly capable program ~~((evaluation and))~~ will be evaluated that includes information on how the district's highly capable program goals and student achievement outcomes will be measured;

(8) A fiscal report; and

~~((7))~~ (9) Assurances signed by the school district's authorized representative that the district ~~((shall))~~ will comply with all applicable statutes and regulations.

AMENDATORY SECTION (Amending Order 98-07, filed 5/20/98, effective 6/20/98)

WAC 392-170-035 Definition—(~~Highly capable~~) Students who are highly capable. (~~As used in this chapter, the term highly capable student shall mean a student who has been assessed to have superior intellectual ability as demonstrated by one or more of the multiple criteria specified in WAC 392-170-040.~~)

~~These students exhibit high capability in intellectual and/or creative areas, possess an unusual leadership capacity, or excel in specific academic fields, thereby requiring services beyond the basic programs provided by schools. Outstanding abilities are present in students from all cultural groups, across all economic strata, and in all areas of human endeavor.)~~ As used in this chapter, highly capable students are students who perform or show potential for performing at significantly advanced academic levels when compared with others of their age, experiences, or environments. Outstanding abilities are seen within students' general intellectual aptitudes, specific academic abilities, and/or creative productivities within a specific domain. These students are present not only in the general populace, but are present within all protected classes according to chapters 28A.640 and 28A.642 RCW.

AMENDATORY SECTION (Amending Order 98-07, filed 5/20/98, effective 6/20/98)

WAC 392-170-036 Definition—(~~Unique needs~~) Learning characteristics. As used in this chapter, the term (~~unique needs shall~~) learning characteristics means that (~~identified~~) students who are highly capable (~~students generally~~) may possess, but are not limited to, these learning characteristics:

- (1) Capacity to learn with unusual depth of understanding, to retain what has been learned, and to transfer learning to new situations;
- (2) Capacity and willingness to deal with increasing levels of abstraction and complexity earlier than their chronological peers;
- (3) Creative ability to make unusual connections among ideas and concepts;
- (4) Ability to learn (~~very~~) quickly in their area(s) of intellectual strength; and
- (5) Capacity for intense concentration and/or focus.

AMENDATORY SECTION (Amending Order 98-07, filed 5/20/98, effective 6/20/98)

WAC 392-170-038 Definition—Special teacher. As used in this chapter, a special teacher is a teacher (~~with experience and/or training in the education of highly capable students~~) who has training, experience, advanced skills, and knowledge in the education of highly capable students. Areas of (~~training~~) competence should include knowledge of the following: Identification procedures, academic, social and emotional characteristics, program design and delivery, instructional practices, student assessment, and program evaluation.

AMENDATORY SECTION (Amending Order 98-07, filed 5/20/98, effective 6/20/98)

WAC 392-170-042 Annual notification. Annual public notification of parents and students (~~must~~) shall be made before any major identification activity. The notice (~~must~~) shall be published or announced in (~~school publications, newspapers, and/or other media~~) multiple ways in appropriate languages to each community in school and district publications or other media, with circulation adequate to notify parents and students throughout the district.

AMENDATORY SECTION (Amending Order 84-20, filed 6/28/84)

WAC 392-170-045 Nomination process for highly capable students. Each school district shall adopt procedures for the nomination of students to participate in programs for highly capable students. Such procedures shall permit (~~nominations from any source, including~~) referrals based on data or evidence from teachers, other staff, parents, students, and members of the community.

A district's nomination procedure for students who are highly capable may include screening procedures to eliminate students who, based on clear, current evidence, do not qualify for eligibility under WAC 392-170-055.

AMENDATORY SECTION (Amending Order 98-07, filed 5/20/98, effective 6/20/98)

WAC 392-170-047 Parental/legal guardian permission. Parental permission (~~must~~) shall be obtained in writing before:

- (1) Conducting assessment(s) to determine eligibility for participation in programs for highly capable students(~~-~~);
 - (2) (~~Providing initial~~) Placement in the district's highly capable program before any special services and programs (~~are~~) are started for an identified highly capable student(~~-~~);
- Parental permission notice shall include:
- (a) A full explanation of the procedures for identification (~~and program options~~) of a student for entrance into the highly capable program;
 - (b) An explanation of the (~~appeal~~) appeal's process;
 - (c) An explanation of the procedures to exit a student from the program; and
 - (d) Information on the district's program and the options that will be available to identified students.

AMENDATORY SECTION (Amending Order 84-20, filed 6/28/84)

WAC 392-170-055 Assessment process for selection as highly capable student. (1) Students nominated for selection as a highly capable student, unless eliminated through screening as provided in WAC (~~392-170-050~~) 392-170-045, shall be assessed by qualified district personnel (~~using a minimum of one measure for each of the multiple criteria in WAC 392-170-040. In order to be considered for final selection as among the most highly capable by the multidisciplinary selection committee following assessment, there shall~~)

exist evidence of one or more of the following characteristics:

(1) Evidence that the student scores in the top ten percent in cognitive ability as demonstrated by a standardized ability test;

(2) Evidence that the student scores in the top five percent in one or more specific academic achievement area; and/or

(3) Evidence that the student demonstrates behavioral characteristics for exceptional creativity);

(2) Districts shall use multiple objective criteria for identification of students who are among the most highly capable. There is no single prescribed method for identification of students among the most highly capable; and

(3) Districts shall have a clearly defined and written assessment process.

AMENDATORY SECTION (Amending Order 84-20, filed 6/28/84)

WAC 392-170-060 Nondiscrimination in the use of tests. All tests and other evaluation materials used in the assessment shall have been validated for the specific purpose for which they are used and shall accurately reflect whatever factors the tests purport to measure. If properly validated tests are not available, the professional judgment of the qualified district personnel shall determine eligibility of the student based upon (~~other~~) evidence of cognitive ability and/or academic achievement. This professional judgment shall be documented in writing.

AMENDATORY SECTION (Amending Order 84-20, filed 6/28/84)

WAC 392-170-070 Multidisciplinary selection committee. The multidisciplinary selection committee for the final selection of the most highly capable students for participation in the district's program for highly capable students shall consist of the following professionals:

(1) A (~~classroom~~) special teacher (~~with training and experience in teaching highly capable students~~): Provided, that if (~~such~~) a (~~classroom~~) special teacher is not available, a classroom teacher shall be appointed;

(2) A psychologist or other qualified practitioner with the training to interpret cognitive and achievement test results;

(3) A (~~district administrator~~) certificated coordinator/administrator with responsibility for the supervision of the district's program for highly capable students; and

(4) Such additional professionals, if any, the district deems desirable.

AMENDATORY SECTION (Amending Order 84-20, filed 6/28/84)

WAC 392-170-075 Selection of most highly capable. Each school district's board of directors shall adopt policies and procedures for the selection of the most highly capable students by the multidisciplinary selection committee. Such policies and selection procedures:

(1) Shall (~~be consistent with the state board of education's prohibition against unlawful discrimination as defined in WAC 180-40-215(1))~~ not violate federal and state civil rights laws including, without limitation, chapters 28A.640 and 28A.642 RCW;

(2) Shall be based on professional judgment as to which students will benefit the most from inclusion in the district's program(~~, including such additional factors as the student's desire to be included in the program options provided by the district~~); and

(3) Shall be based on a selection system that determines which students are the most highly capable (~~and which considers the multiple criteria in WAC 392-170-040, the assessment criteria in~~) as defined under WAC 392-170-055, and other data collected in the assessment process(~~— Provided, That for students whose cognitive ability score or achievement test results are not available for inclusion in the assessment because of the provision of WAC 392-170-060, the final selection ranking system shall provide an equal opportunity for such students to be included as most highly capable in spite of the fact that one or more of these scores were not available for inclusion in the assessment of such students~~)).

NEW SECTION

WAC 392-170-076 Process for appeal. Each district shall adopt a procedure for appealing the multidisciplinary selection committee's decision and disseminate this procedure to the public.

AMENDATORY SECTION (Amending WSR 06-18-105, filed 9/6/06, effective 10/7/06)

WAC 392-170-078 Program services. (~~Education program plans for each identified highly capable student or plans for a group of students with similar academic abilities shall be developed based on the results of the assessed academic need of that student or group of students.~~) Districts shall make a variety of appropriate program services (~~shall be made~~) available to students who participate in the district's program for highly capable students. Once services are started, a continuum of services shall be provided (~~and may include kindergarten through twelfth grade~~) to the student from K-12. Districts shall periodically review services for each student to ensure that the services are appropriate.

AMENDATORY SECTION (Amending Order 98-07, filed 5/20/98, effective 6/20/98)

WAC 392-170-080 Educational program for highly capable students. Each student identified as a highly capable student shall be provided educational opportunities which take into account such (~~students'~~) student's unique needs and capabilities. Such program shall recognize the limits of the resources provided by the state and the program options available to the district, including programs in adjoining districts and public institutions of higher education. Districts shall keep on file a description of the educational programs provided for (~~each~~) students selected.

AMENDATORY SECTION (Amending Order 98-07, filed 5/20/98, effective 6/20/98)

WAC 392-170-090 End of year report. Districts shall submit to the superintendent of public instruction at the close of each fiscal year an end of the year report on forms provided by the superintendent of public instruction which includes:

(1) Number of students served by grade level, the ethnicity and gender of such students, and program(s) provided for these students)) (K-12);

(2) Student demographic information;

(3) Data to determine if students who are highly capable met the goals set and if the programs provided met the academic needs of these students;

(4) Number and content of professional development activities provided for special teachers and general education staff;

(5) Program evaluation data and, if needed, program changes that will be made based upon this information; and

(6) Final fiscal report that reports on activities and staff funded by this program.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 392-170-015 Local option.
- WAC 392-170-037 Definition—Program options.
- WAC 392-170-040 Multiple criteria for determination of superior intellectual ability—Definitions.
- WAC 392-170-050 Screening of nominees.
- WAC 392-170-065 Nondiscrimination in the review of testing results.
- WAC 392-170-085 Notification of parents.

**WSR 13-07-029
PERMANENT RULES
HEALTH CARE AUTHORITY**

(Medicaid Program)

[Filed March 13, 2013, 11:45 a.m., effective April 13, 2013]

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

Purpose: As a result of a health technology assessment, the medicaid agency is amending centers of excellence (COE) criteria to include nonhospital-owned and operated facilities in the medicaid agency-approved sleep study list. This will improve access to care.

Citation of Existing Rules Affected by this Order: Repealing WAC 182-550-6350; and amending WAC 182-531-1500 and 182-550-1800.

Statutory Authority for Adoption: RCW 41.05.021.

Adopted under notice filed as WSR 13-04-080 on February 5, 2013.

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 2, Repealed 1.

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 1.

Date Adopted: March 13, 2013.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-531-1500 Sleep studies. ~~((1) The department covers sleep studies only when all of the following apply:~~

~~(a) The study is done to establish a diagnosis of narcolepsy or of sleep apnea;~~

~~(b) The study is done only at a department approved sleep study center that meets the standards and conditions in subsections (2), (3), and (4) of this section; and~~

~~(c) An ENT consultation has been done for a client under ten years of age.~~

~~(2) In order to become a department approved sleep study center, a sleep lab must send to the department verification of both of the following:~~

~~(a) Sleep lab accreditation by the American Academy of Sleep Medicine; and~~

~~(b) Physician's Board Certification by the American Board of Sleep Medicine.~~

~~(3) Registered polysomnograph technicians (PSGT) must meet the accreditation standards of the American Academy of Sleep Medicine.~~

~~(4) When a sleep lab changes directors, the department requires the provider to submit accreditation for the new director. If an accredited director moves to a facility that the department has not approved, the provider must submit certification for the facility.)~~ (1) Purpose. For the purposes of this section, sleep studies include polysomnography (PSG) and multiple sleep latency testing (MSLT). The medicaid agency covers attended, full-channel, PSG and MSLT when:

(a) Ordered by the client's physician;
(b) Performed in an agency-designated center of excellence (COE) that is an independent diagnostic testing facility, sleep laboratory, or outpatient hospital; and

(c) Results are used to:
(i) Establish a diagnosis of narcolepsy or sleep apnea; or
(ii) Evaluate a client's response to therapy, such as continuous positive airway pressure (CPAP).

(2) Definitions. The following definitions, those found in chapter 182-500 WAC, and definitions found in other sections of this chapter, apply to this section:

(a) "American Academy of Sleep Medicine" or "AASM" - The only professional society dedicated exclusively to the medical subspecialty of sleep medicine. AASM sets standards and promotes excellence in health care, education, and research. Members specialize in studying, diagnosing, and treating disorders of sleep and daytime alertness such as insomnia, narcolepsy, and obstructive sleep apnea.

(b) "Continuous positive airway pressure" or "CPAP" - See WAC 182-552-0005.

(c) "Core provider agreement" or "CPA" - The basic contract the agency holds with providers serving medical assistance clients.

(d) "Multiple sleep latency test" or "MSLT" - A sleep disorder diagnostic tool used to measure the time elapsed from the start of a daytime nap period to the first signs of sleep, called sleep latency. The MSLT is used extensively to test for narcolepsy, to distinguish between physical tiredness and true excessive daytime sleepiness, or to assess whether treatments for breathing disorders are working.

(e) "Obstructive sleep apnea" or "OSA" - See WAC 182-552-0005.

(f) "Polysomnogram" - The test results from a polysomnography.

(g) "Polysomnography" - A multiparametric test that electronically transmits and records specific physical activities while a person sleeps. The recordings become data that are analyzed by a qualified sleep specialist to determine whether or not a person has a sleep disorder.

(h) "PSG" - The abbreviation for both "polysomnography" and "polysomnogram."

(i) "Registered polysomnographic technologist" or "RPSGT" - A sleep technologist credentialed by the board of registered polysomnographic technologists to assist sleep specialists in the clinical assessment, physiological monitoring and testing, diagnosis, management, and prevention of sleep-related disorders with the use of various diagnostic and therapeutic tools. These tools include, but are not limited to, polysomnograph, positive airway pressure devices, oximeter, capnograph, actigraph, nocturnal oxygen, screening devices, and questionnaires. To become certified as a registered polysomnographic technologist, a sleep technologist must have the necessary clinical experience, hold CPR certification or its equivalent, adhere to the board of registered polysomnographic technologists standards of conduct, and pass the registered polysomnographic technologist examination for polysomnographic technologists.

(3) Client eligibility. Clients in the following agency programs are eligible to receive sleep studies as described in this section:

(a) Categorically needy (CN);

(b) Apple health for kids and other children's medical assistance programs as defined in WAC 182-505-0210;

(c) Medical care services as described in WAC 182-508-0005 (within Washington state or border areas only);

(d) Alcoholism and Drug Addiction Treatment and Support Act (ADATSA) (within Washington state or border areas only); and

(e) Medically needy (MN) only when the client is either:

(i) Twenty years of age or younger and referred by a screening provider under the early and periodic screening, diagnosis, and treatment program as described in chapter 182-534 WAC; or

(ii) Receiving home health care services as described in chapter 182-551 WAC, subchapter II.

(4) Provider requirements. To be paid for providing sleep studies as described in this section to eligible clients, the facility must:

(a) Be a sleep study COE. Refer to subsection (5) of this section for information on becoming an agency-approved sleep study COE;

(b) Be currently accredited by AASM and continuously meet the accreditation standards of AASM;

(c) Have at least one physician on staff who is board certified in sleep medicine; and

(d) Have at least one registered polysomnographic technologist (RPSGT) in the sleep lab when studies are being performed.

(5) Documentation.

(a) To become an agency-approved COE, a sleep center must send the following documentation to the Health Care Authority, c/o Provider Enrollment, P.O. Box 45510, Olympia, WA 98504-5510:

(i) A completed CPA; and

(ii) Copies of the following:

(A) The sleep center's current accreditation certificate by AASM;

(B) Either of the following certifications for at least one physician on staff:

(I) Current certification in sleep medicine by the American Board of Sleep Medicine (ABSM); or

(II) Current subspecialty certification in sleep medicine by a member of the American Board of Medical Specialties (ABMS); and

(C) The certification of an RPSGT who is employed by the sleep center.

(b) Sleep centers must request reaccreditation from AASM in time to avoid expiration of COE status with the agency.

(c) At least one physician on staff at the sleep center must be board certified in sleep medicine. If the only physician on staff who is board certified in sleep medicine resigns, the sleep center must ensure another physician on staff at the sleep center obtains board certification or another board-certified physician is hired. The sleep center must then send provider enrollment a copy of the physician's board certification.

(d) If a certified medical director leaves a COE, the COE status does not transfer with the medical director to another sleep center.

(e) The COE must maintain a record of the physician's order for the sleep study.

(6) Coverage.

(a) The agency covers only medically necessary sleep studies. The need for the sleep study must be confirmed by medical evidence (e.g., physician examination and laboratory tests).

(b) For clients twenty-one years of age and older, the agency covers:

(i) Full-night, in-laboratory PSG for either of the following:

(A) Confirmation of obstructive sleep apnea (OSA) in an individual with signs or symptoms consistent with OSA (e.g., loud snoring, awakening with gasping or choking, excessive daytime sleepiness, observed cessation of breathing during sleep, etc.); or

(B) Titration of positive airway pressure therapy when initial PSG confirms the diagnosis of OSA, and positive airway pressure is ordered; or

(ii) Split-night, in-laboratory PSG in which the initial diagnostic portion of the PSG is followed by positive airway pressure titration when the PSG meets either of the following criteria:

(A) The apnea-hypopnea index (AHI) or respiratory disturbance index (RDI) is greater than or equal to fifteen events per hour with a minimum of thirty events; or

(B) The AHI or RDI is greater than or equal to five and less than or equal to fourteen events per hour with a minimum of ten events with documentation of either of the following:

(I) Excessive daytime sleepiness, impaired cognition, mood disorders, or insomnia; or

(II) Hypertension, ischemic heart disease, or history of stroke.

(c) For clients younger than twenty-one years of age, the agency considers any of the following indications as medically necessary criteria for a sleep study:

(i) OSA suspected based on clinical assessment;

(ii) Obesity, Trisomy 21, craniofacial abnormalities, neuromuscular disorders, sickle cell disease, or mucopolysaccharidosis (MPS), prior to adenotonsillectomy in a child;

(iii) Residual symptoms of OSA following mild preoperative OSA;

(iv) Residual symptoms of OSA in a child with preoperative evidence of moderate to severe OSA, obesity, craniofacial anomalies that obstruct the upper airway, or neurologic disorder following adenotonsillectomy;

(v) Titration of positive airway pressure in a child with OSA;

(vi) Suspected congenital central alveolar hypoventilation syndrome or sleep related hypoventilation due to neuromuscular disorder or chest wall deformities;

(vii) Primary apnea of infancy;

(viii) Evidence of a sleep-related breathing disorder in an infant who has experienced an apparent life threatening event;

(ix) Child being considered for adenotonsillectomy to treat OSA; or

(x) Clinical suspicion of an accompanying sleep-related breathing disorder in a child with chronic asthma, cystic fibrosis, pulmonary hypertension, bronchopulmonary dysplasia, or chest wall abnormality.

(7) Noncoverage. The agency does not cover sleep studies:

(a) When the sleep study is an unattended home study;

(b) When documentation for a repeat study does not indicate medical necessity (e.g., no new clinical documentation indicating the need for a repeat study); or

(c) For the following indications, except when an underlying physiology exists (e.g., loud snoring, awakening with

gasping or choking, excessive daytime sleepiness, observed cessation of breathing during sleep, etc.);

(i) Chronic insomnia; and

(ii) Snoring.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-550-1800 Hospital specialty services not requiring prior authorization. The ((department)) medicaid agency pays for certain specialty services without requiring prior authorization when such services are provided consistent with ((department)) agency medical necessity and utilization review standards. These services include, but are not limited to, the following:

(1) All transplant procedures specified in WAC ((388-550-1900)) 182-550-1900(2) under the conditions established in WAC ((388-550-1900)) 182-550-1900;

(2) Chronic pain management services, including outpatient evaluation and inpatient treatment, as described under WAC ((388-550-2400)) 182-550-2400;

(3) Polysomnograms and multiple sleep latency tests ((for clients one year of age and older (allowed only in outpatient hospital settings))), as described under WAC ((388-550-6350)) 182-531-1500;

(4) Diabetes education (allowed only in outpatient hospital setting), as described under WAC ((388-550-6400)) 182-550-6400; and

(5) Weight loss program (allowed only in outpatient hospital setting), as described under WAC ((388-550-6450)) 182-550-6450.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-550-6350 Outpatient sleep apnea/sleep study programs.

WSR 13-07-030

PERMANENT RULES

DEPARTMENT OF HEALTH

(Chiropractic Quality Assurance Commission)

[Filed March 13, 2013, 12:03 p.m., effective April 13, 2013]

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

Purpose: WAC 246-808-180, the rule identifies the requirements to reinstate a chiropractor's expired license. Specific requirements depend on how long the license has been expired. Submission of completed continuing education documentation, the passage of a jurisprudence exam, and the passage of the National Board of Chiropractic Examiners Special Purposes Examination of Chiropractic (SPEC) are included in the requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 246-808-180.

Statutory Authority for Adoption: RCW 18.25.0171.

Other Authority: RCW 18.130.050.

Adopted under notice filed as WSR 12-21-121 on October 23, 2012.

A final cost-benefit analysis is available by contacting Leann Yount, Department of Health, Chiropractic Program, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4856, fax (360) 236-2901, e-mail leann.yount@doh.wa.gov.

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

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

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

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

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

Date Adopted: December 13, 2012.

Harold Rasmussen, DC
Chair

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-808-180 Expired licenses—Requirements for ~~(reinstating)~~ reactivating a chiropractic license. If a chiropractor's license is expired, to return to active status the chiropractor must meet the requirements of WAC 246-12-040 and comply with the following:

(1) If the license has expired for ~~((three years or))~~ less ~~((; the practitioner must meet the requirements of chapter 246-12 WAC, Part 2.~~

~~(2) If the license has expired for more than three years and the practitioner can submit proof of continuing education, the practitioner must:~~

~~(a) Successfully complete the jurisprudence examination given by the department;~~

~~(b) Meet the requirements of chapter 246-12 WAC, Part 2.~~

~~(3))~~ than one year, the chiropractor must submit to the department a written attestation of completing at least twenty-five hours of continuing education in any of the categories under WAC 246-808-150.

(2) If the chiropractor does not have an active license to practice chiropractic under the laws of any other state, territory of the United States, the District of Columbia, Puerto Rico, or province of Canada and:

(a) If the license has expired for one year or more but less than three years ~~((and)), the ~~((practitioner cannot submit proof of continuing education courses during the time the license was expired, the practitioner))~~ chiropractor must:~~

~~((a) Successfully))~~ (i) Complete at least fifty hours of continuing education in any of the categories listed under

WAC 246-808-150 and submit to the department the appropriate documentation of course completion for approval; and

(ii) Pass the jurisprudence examination as ~~((provided in RCW 18.25.040 and 18.25.070(2);~~

~~(b) Meet the requirements of chapter 246-12 WAC, Part 2))~~ specified in WAC 246-808-115.

(b) If the license has been expired for three years or more, the chiropractor must:

(i) Complete at least fifty hours of continuing education in any of the categories listed under WAC 246-808-150 and submit to the department the appropriate documentation of course completion for approval;

(ii) Pass the jurisprudence examination as specified in WAC 246-808-115; and

(iii) Pass the National Board of Chiropractic Examiners Special Purposes Examination of Chiropractic and submit to the department the appropriate documentation verifying a passing score.

(3) If the license has expired for one year or more, and the chiropractor has an active license to practice chiropractic under the laws of any other state, territory of the United States, the District of Columbia, Puerto Rico, or province of Canada, the chiropractor must:

(a) Meet the requirements of WAC 246-808-135 for licensure by endorsement; or

(b) Meet the requirements of subsection (2)(a) or (b) of this section depending on the length of time the license has been expired.

WSR 13-07-037

PERMANENT RULES

DEPARTMENT OF TRANSPORTATION

[Filed March 14, 2013, 7:11 a.m., effective April 14, 2013]

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

Purpose: Grant assurances are a means to protect the public's investment in the aviation system by requiring airport sponsors to maintain and operate their facilities safely, efficiently and in accordance with specific conditions. These grant assurances are a new rule.

Statutory Authority for Adoption: RCW 47.68.090.

Adopted under notice filed as WSR 13-04-088 on February 6, 2013.

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 2, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 0, Repealed 0.

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

Date Adopted: March 13, 2013.

Stephen T. Reinmuth
Chief of Staff

Chapter 468-260 WAC

AIRPORT AID PROGRAM GRANT ASSURANCES

NEW SECTION

WAC 468-260-010 General. (1) Airport sponsors shall comply with these assurances pursuant to and for the purpose of carrying out the provisions of the state of Washington airport aid program grant agreements.

(2) Airport sponsors will submit these assurances as part of the project application requesting funds under the provisions of RCW 47.68.090. As used herein, the term "public agency sponsor" means any municipality or municipalities acting jointly or any Indian tribe recognized by the federal government or such tribes acting jointly in the planning, acquisition, construction, improvement, maintenance, or operation of an airport, owned or controlled, or to be owned or controlled by such municipality or municipalities or Indian tribe or tribes, to be held available for the general use of the public; the term "private sponsor" means any person or persons acting jointly in the planning, acquisition, construction, improvement, maintenance, or operation of an airport, owned or controlled, or to be owned or controlled by such person or persons, to be held available for the general use of the public; and the term "sponsor" includes both public agency sponsors and private sponsors.

(3) Upon a sponsor's acceptance of a grant offer by the department, these assurances are incorporated in and become part of the grant agreement.

NEW SECTION

WAC 468-260-020 Duration and applicability. (1) **Washington airport aid program projects undertaken by a sponsor.** The terms, conditions, and assurances of this grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport project, not to exceed twenty years from the date of acceptance of a grant offer of state funds for the project. However, there shall be no limit on the duration of the assurances regarding exclusive rights and airport revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with state funds.

(2) **Airport planning undertaken by a sponsor.** Unless otherwise specified in this grant agreement, only Assurances C:1, 2, 3, 4, 6, 7, 8, 13, 20, 33, 34, and 35 apply to planning projects. The terms, conditions, and assurances of this grant agreement shall remain in full force and effect during the life of the project.

NEW SECTION

WAC 468-260-030 Sponsor certification. The sponsor certifies, with respect to this grant that:

(1) **General state requirements.** It will comply with all applicable Washington state laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of state funds for this project including, but not limited to, the following:

- (a) State legislation:
- Chapter 8.26 RCW (Relocation assistance—Real property acquisition policy)
 - Chapter 27.34 RCW (State historical societies—Historic preservation)
 - Chapter 27.44 RCW (Indian graves and records)
 - Chapter 27.48 RCW (Preservation of historical materials)
 - RCW 29A.84.620 (Hindering or bribing voter)
 - Chapter 36.70A RCW (Growth management—Planning by selected counties and cities)
 - Title 37 RCW (Federal areas—Indians)
 - Chapter 39.12 RCW (Prevailing wages on public works)
 - RCW 47.29.200 (Prevailing wages)
 - RCW 47.68.280 (Investigations, hearings, etc.—Subpoenas—Compelling attendance)
 - RCW 47.68.310 (Enforcement of aeronautics laws)
 - Title 49 RCW (Labor regulations)
 - Title 64 RCW (Real property and conveyances)
 - Chapter 70.94 RCW (Washington Clean Air Act)
 - Title 86 RCW (Flood control)
 - Title 91 RCW (Waterways)
 - Title 12 WAC (Transportation, department of (aeronautics commission))
 - Title 18 WAC (Air pollution)
 - Title 25 WAC (Archaeology and historic preservation, department of)
 - WAC 330-01-050 (dispositions, metropolitan municipal corporations)
 - Title 167 WAC (Drug abuse prevention office)
 - Title 197 WAC (Ecology, department of (environmental policy, council on))
 - Title 198 WAC (Environmental and land use hearings office)
 - Title 199 WAC (Environmental hearings office (environmental and land use hearings board))
 - Title 254 WAC (Historic preservation, advisory council on)
 - Title 326 WAC (Minority and women's business enterprises, office of)
 - Chapter 330-01 WAC (Procedures for corridor and design public hearings under RCW 35.58.273)
 - Chapter 468-100 WAC (Uniform relocation assistance and real property acquisition)
 - WAC 468-100-008 (Compliance with other laws and regulations)
 - Title 357 WAC (Financial management, office of—State human resources director)
 - Title 508 WAC (Ecology, department of (water resources))
- (b) Executive orders:
- Governor's Executive Order 92-01 (Establishing Governor's Policy on a Drug-Free Work Place)

- Governor's Executive Order 96-04, Implementing the Americans with Disabilities Act and superseding Executive Order 93-03

- Governor's Executive Order 05-05 (Archaeological and Cultural Resources) Governor's Executive Order 11-01, superseding Executive Order 09-04, Amending Washington Council on Aerospace

- Governor's Executive Order 12-02 (Workforce Diversity and Inclusion)

(2) **General legal requirements.** It will comply with all applicable laws and ordinances, orders, guidelines, policies, directives, rules and regulations of municipal, county, and federal governmental authorities or regulatory agencies.

(3) **Responsibility and authority of the sponsor.**

(a) **Public agency sponsor:** It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

(b) **Private sponsor:** It has legal authority to apply for this grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

(4) **Sponsor fund availability.** It has sufficient funds available for the portion of the project which is not paid by the state of Washington. It has sufficient funds available to assure operation and maintenance of items funded under this grant agreement which it will own or control.

(5) **Good title.** It holds good title, satisfactory to the department, to the areas of the airport or site thereof necessary for aircraft takeoff and landing as well as those necessary for the movement of aircraft to and from the landing and takeoff areas, or gives assurances satisfactory to the department that good title will be acquired prior to accepting grant funds.

(6) **Preserving rights and powers.**

(a) It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the department, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the department.

(b) It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property associated with this application or that portion of the property upon which state funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the department. If the trans-

feree is found by the department to be eligible to assume the obligations of this grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.

(c) If the sponsor is a private sponsor, it will, to the department's satisfaction, ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.

(d) If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will, to the department's satisfaction, reserve and document in arrangements with said party sufficient rights and authority to ensure that the airport will be operated and maintained in accordance with the regulations and the terms, conditions, and assurances in this grant agreement and shall ensure that such arrangement also requires compliance therewith.

(e) Sponsors of commercial service airports will not permit or enter into any arrangement that allows an owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport.

(f) Sponsors of general aviation airports entering into any arrangement that allows an owner of residential real property adjacent to or near the airport must comply with the requirements set forth in Section 136 of Public Law 112-95.

(7) **Consistency with local plans.** Certify, to the department's satisfaction, that the project is consistent with plans (existing at the time of submission of this application) of public agencies that are authorized to plan for the development of the area surrounding the airport.

(8) **Consideration of local interest.** Certify, to the department's satisfaction, that it considered the interest of communities in or near where the project is located.

(9) **Consultation with users.** Certify to the department's satisfaction that when it made a decision to undertake any project, that it consulted with affected parties using the airport.

(10) **Public hearings.** In projects involving the location of an airport, an airport runway, or a major runway extension, it held public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the department, submit a copy of the transcript of such hearings to the department. Further, for such projects, its management board contain(s/ed) either voting representation from the communities where the project is located or it advised communities that they have the right to petition the department concerning a proposed project.

(11) **Air and water quality standards.** In projects involving airport location, a major runway extension, or runway location, it will provide the department appropriate written certification that the project will be located, designed, constructed, and operated so as to comply with applicable federal, state, and local air and water quality standards. In any case where such standards have not been approved and

where applicable air and water quality standards have been promulgated by the administrator of the Environmental Protection Agency, or the secretary of the Department of Ecology, certification shall be obtained. Notice of certification or refusal to certify shall be provided within sixty days after the project application has been received by the department.

(12) **Pavement preventive maintenance.** With respect to a project for the replacement or reconstruction of airport pavement, it assures or certifies to the department's satisfaction that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with state financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the department determines may be useful.

(13) **Accounting system, audit, and recordkeeping requirements.**

(a) It shall keep all project accounts and records which fully disclose the amount and disposition of the proceeds of this grant, the total cost of the project in connection with which this grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with RCW 43.09.200 and the Washington state budgetary, accounting, and reporting system (BARS) manuals and financial reporting packages.

(b) It shall make available to the department and the Washington state auditor's office, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this grant. The department may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this grant was given or used, it shall file a certified copy of such audit with the department not later than six months following the close of the fiscal year for which the audit was made.

(14) **Wage rates.** It shall include in all contracts in excess of two thousand five hundred dollars, or as outlined in WAC 296-127-050, for work on any projects funded under this grant agreement which involve labor, provisions establishing minimum rates of wages under the Washington State Prevailing Wages on Public Works Act, chapter 39.12 RCW, which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work. This shall be documented by a statement of intent to pay prevailing wages and an affidavit of wages paid.

(15) **Nondiscrimination requirements.** It shall prohibit discrimination in all phases of contracted employment, contracting activities and training pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Justice System Improvement Act of 1979, the Americans with Disabilities Act of 1990, the Civil Rights Restoration Act of

1987, 49 C.F.R. Part 21, chapter 49.60 RCW and other related laws and statutes.

(16) **Equal employment opportunity (EEO) responsibilities.** It shall comply with regulations relative to nondiscrimination in state-assisted programs of the department, which are herein incorporated by reference and made a part of this project. With regard to the work performed during the project, it shall not discriminate on the grounds of race, color, gender, creed, national origin, age, sexual orientation, gender identity, marital status, disability or veteran status in the selection and retention of contractors, consultants and service providers, including procurement of materials and leases of equipment.

(17) **Veteran's preference.** It shall include in all contracts for work on any project funded under this grant agreement which involve labor, such provisions as are necessary to ensure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to honorably discharged military personnel who are veterans of any war of the United States, or of any military campaign for which a campaign ribbon shall have been awarded, and their widows or widowers, shall be preferred for appointment and employment. Age, loss of limb, or other physical impairment, which does not in fact incapacitate, shall not be deemed to disqualify them, provided they possess the capacity necessary to discharge the duties of the position involved as defined in RCW 73.16.010. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

(18) **Conformity to plans and specifications.** It will execute the project subject to plans, specifications, and schedules approved by the department. Such plans, specifications, and schedules shall be submitted to the department prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the department, shall be incorporated into this grant agreement. Any modification to the approved plans, specifications, and schedules shall also be subject to approval of the department, and incorporated into this grant agreement.

(19) **Construction inspection and approval.** It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the department for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the department and such work shall be in accordance with regulations and procedures prescribed by the department. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the department shall deem necessary.

(20) **Planning projects.** In carrying out planning projects:

(a) It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved by the department.

(b) It will furnish the department with reports pertaining to the planning project and planning work activities, as designated by the department.

(c) It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the state of Washington.

(d) It will make all material prepared in connection with this grant available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.

(e) It will give the department unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.

(f) It will grant the department the right to disapprove the sponsor's selection of specific consultants and their subcontractors to do all or any part of projects funded by this grant as well as the right to disapprove the proposed scope and cost of professional services.

(g) It will grant the department the right to disapprove the use of the sponsor's employees to do all or any part of the project.

(h) It understands and agrees that the department's approval of this project grant or the department's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the department to approve any pending or future application for an airport aid grant.

(21) **Operation and maintenance.** The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States or the state of Washington, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable federal, state, and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for nonaeronautical purposes must first be approved by the department. In furtherance of this assurance, the sponsor will have in effect arrangements for:

(a) Operating the airport's aeronautical facilities whenever required;

(b) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and

(c) Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood, or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

(22) **Hazard removal and mitigation.** It assures that such terminal airspace under the appropriate category of Federal Air Regulation Part 77, 14 C.F.R. 77, as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards. Where hazards are on land owned by others, the sponsor will make every effort to coordinate with owners to mitigate airport hazards.

(23) **Compatible land use.** It shall, either by the acquisition and retention of property interest, in fee or easement, or by seeking enforcement of local zoning action, prevent the construction of any object which may constitute an incompatible land use such as residential encroachment, wildlife attractants, uses that emit smoke, steam, glare, or electromagnetic interference, and height hazards. Sponsor will take proactive measures to discourage incompatible land uses adjacent to the airport, to include a formal consultation with local jurisdictions on land use issues, and support and/or recommend land use regulations consistent with WSDOT best management practices found in WSDOT's *Airports and Compatible Land Use Guidebook*.

(24) **Economic nondiscrimination.**

(a) It will make the airport available as an airport for public use and without discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

(b) In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to:

(i) Furnish said services on a reasonable, nondiscriminatory, basis to all users thereof; and

(ii) Charge reasonable, and nondiscriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

(c) Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.

(d) Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.

(e) Each air carrier using such airport (whether as a tenant, nontenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifica-

tions such as tenants or nontenants and signatory carriers and nonsignatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.

(f) It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees (including, but not limited to, maintenance, repair, and fueling) that it may choose to perform. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.

(g) The sponsor may establish such reasonable, and non-discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

(25) **Exclusive rights.** It will not grant exclusive right for the use of the airport to any person(s) providing, or intending to provide, aeronautical services to the public. For purposes of this subsection, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if the following apply:

(a) It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services;

(b) If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities including, but not limited to, charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity existing at such an airport before the grant of any assistance under RCW 47.68.090; and

(c) It has received approval from the department.

(26) **Fee and rental structure.** It will maintain a competitive fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account factors such as the volume of traffic and economy of collection. No part of the state share of an airport development or airport planning project for which a grant is made under RCW 47.68.090 shall be included in

the rate basis in establishing fees, rates, and charges for users of that airport.

(27) **Airport revenues.** All revenues generated by the airport and any local taxes established after December 30, 1987, on aviation fuel, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this subsection:

(a) If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

(b) If the department approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a twenty-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.

(c) When requested by the department, the sponsor will obtain an audit that will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes, and indicate whether funds paid or transferred to the owner or operator were paid or transferred in a manner consistent with state law and any other applicable provision of law, including any regulation promulgated by the secretary. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with state law.

(28) **Reports and inspections.** It will:

(a) Submit to the department such annual or special financial and operations reports as the department may request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the department; for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the department upon request;

(b) In a format and time prescribed by the department, provide to the department and make available to the public following each of its fiscal years, an annual report listing in detail:

(i) All amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and

(ii) All services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

(29) Use by government aircraft. It will not charge the state or its agencies (except for those under contract), for limited but reasonable, nonroutine, search and rescue, law enforcement or public safety use of public landing and aircraft parking facilities. The sponsor may require written verification of an entity's official government business status, and notification prior to use of facilities.

(30) Land for state facilities. It will furnish without cost to the state of Washington for use in connection with any air traffic control or air navigation activities, or weather reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or for these same purposes, rights in buildings of the sponsor as the department considers necessary for construction, operation, and maintenance at state expense of space or facilities. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the department.

(31) Airport layout plan.

(a) It will provide airport layout plans (ALPs) as prescribed in WSDOT's *Aviation Grant Procedures Manual*. It will keep up-to-date at all times an airport layout plan of the airport showing:

(i) Boundaries of the airport and all proposed additions thereto, together with the boundaries of all off-site areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;

(ii) The location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars, and roads), including all proposed extensions and reductions of existing airport facilities;

(iii) The location of all existing and proposed nonaviation areas and of all existing improvements thereon; and

(iv) All proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the department which approval shall be evidenced by the signature of a duly authorized representative of the department on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations to the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the department and which might, in the opinion of the department, adversely affect the safety, utility, or efficiency of the airport.

(b) If a change or alteration in the airport or the facilities is made which the department determines adversely affects the safety, utility, or efficiency of any state-owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the department, the owner or operator will, if requested, by the department.

(i) Eliminate such adverse effect in a manner approved by the department; or

(ii) Bear all costs of relocating such property (or replacement thereof) to a site acceptable to the department and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the department's design standards beyond the control of the airport sponsor.

(32) Disposal of land.

(a) For land purchased under a grant for airport development purposes, it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the department an amount equal to the states' proportionate share of the fair market value of the land. The portion of the proceeds proportionate to the states' share of the cost of acquisition of such land will, upon application to the department, be reinvested or transferred to another eligible airport as prescribed by the department. The department shall give preference to the following, in descending order:

(i) Payment to the state of Washington for deposit in the aeronautics account; or

(ii) Reinvestment in an approved project that is eligible for grant funding under RCW 47.68.090.

(b) Land shall be considered to be needed for airport purposes under this assurance if:

(i) It may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land; and

(ii) The revenue from interim uses of such land contributes to the financial self-sufficiency of the airport.

(c) Disposition of such land will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

(33) Engineering and design services. It will award each contract, or subcontract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under WSDOT *Consultant Services Manual M-27-50.02* or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

(34) Foreign market restrictions. It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States trade representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction. Sponsors are encouraged to "Buy American" whenever feasible and appropriate.

(35) Policies, standards, and specifications. It will carry out the project in accordance with policies, standards, and specifications approved by the department and included

in this grant, and in accordance with applicable state policies, standards, and specifications.

(36) **Relocation and real property acquisition.** It will be guided in acquiring real property, to the greatest extent practicable under state law, by the land acquisition policies in RCW 8.26.180.

(37) **Disadvantaged business enterprises.** The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any department-assisted contract or in the administration of its DBE program or the requirements of Governor's Executive Order 12-02.

(38) **Hangar construction.** If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long-term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose. For the purpose of this section, a long-term lease is defined as not to exceed fifty years.

WSR 13-07-039
PERMANENT RULES
NORTHWEST CLEAN
AIR AGENCY

[Filed March 14, 2013, 2:51 p.m., effective April 14, 2013]

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

Purpose: The goal of this rule making is three-fold. First is to more clearly address the reasonably available control technology (RACT) program and describe how the RACT program is implemented. Second is to clarify the existing requirements and to better reflect the requirements in the RCW regarding orders, including issuance, fee assessment, appeals, and relation to enforcement. Third is to adopt by reference one new national source performance standard (NSPS) and six new national emissions standards for hazardous air pollutants (NESHAPs) and to also update the effectiveness dates under NWCAA 104 to ensure the most recent versions of the referenced regulations are adopted.

Reasons Supporting Proposal: See above.

Citation of Existing Rules Affected by this Order: Amending Sections 104, 121, 122, 123, 131, 200, 309, 324, and 350 of the Regulation of the NWCAA.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 13-04-086 on February 20 [5], 2013.

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

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

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

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

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

Date Adopted: March 14, 2013.

Mark Buford
Assistant Director

AMENDATORY SECTION

Section 104 - ADOPTION OF STATE AND FEDERAL LAWS AND RULES

104.1 All provisions of State Law that are in effect as of February 20, 2013 (~~July 18, 2012~~), which are pertinent to the operation of the NWCAA, are hereby adopted by reference and made part of the Regulation of the NWCAA. Specifically, there is adopted by reference the portions pertinent to the operation of the NWCAA of the Washington State Clean Air Act (chapter 70.94 RCW), the Administrative Procedure((s)) Act (chapter 34.05 RCW) and chapters 43.21A and 43.21B RCW and the following state rules: chapter 173-400 WAC, (except - -035, -036, ~~-040(1)~~, ~~((070(8)))~~) -075, -099, -100, -101, -102, -103, -104, -105 ~~((8))~~ (7), -110, -114, -115, -116, -171, -930), chapter 173-401 WAC, chapter 173-407 WAC, chapter 173-420 WAC, chapter 173-425 WAC, chapter 173-430 WAC, chapter 173-433 WAC, chapter 173-434 WAC, chapter 173-435 WAC, chapter 173-441 WAC, chapter 173-450 WAC, chapter 173-460 WAC, chapter 173-470 WAC, chapter 173-474 WAC, chapter 173-475 WAC, chapter 173-481 WAC, chapter 173-490 WAC, chapter 173-491 WAC, chapter 173-492 WAC, and chapter 173-495 WAC.

104.2 All provisions of the following federal rules that are in effect as of February 20, 2013 (~~July 18, 2012~~) are hereby adopted by reference and made part of the Regulation of the NWCAA: 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans) Appendix M; 40 CFR Part 60 (Standards of Performance For New Stationary Sources) subparts A, D, Da, Db, Dc, E, Ea, Eb, Ec, F, G, H, I, J, Ja, K, Ka, Kb, L, M, N, Na, O, P, Q, R, T, U, V, W, X, Y, Z, AA, AAa, CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, VVa, WW, XX, AAA, BBB, DDD, FFF, GGG, GGGa, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW, AAAA, CCCC, EEEE, IIII, JJJJ, KKKK, LLLL, and Appendix A - I; and 40 CFR Part 61 (National Emission Standards For Hazardous Air Pollutants) Subparts A, C, D, E, F, J, L, M, N, O, P, V, Y, BB, FF and 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) Subparts A, B, C, D, F, G, H, I, L, M, N, O, Q, R, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, TTT, UUU, VVV, XXX, AAAA, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, JJJJ, KKKK, MMMM, NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY,

ZZZZ, AAAAA, BBBB, CCCCC, DDDDD, EEEEE, FFFFF, GGGGG, HHHHH, IIIII, LLLLL, MMMMM, NNNNN, PPPPP, QQQQQ, RRRRR, SSSSS, TTTTT, WWWWW, YYYYY, ZZZZZ, CCCCC, EEEEE, FFFFFF, GGGGG, MMMMM, NNNNN, OOOOO, SSSSS, TTTTT, VVVVV, ZZZZZ, AAAAA, DDDDDD; and 40 CFR 72, 73, 74, 75, 76, 77 and 78 (Acid Rain Program).

PASSED: July 8, 1970 AMENDED: April 14, 1993, September 8, 1993, December 8, 1993, October 13, 1994, May 11, 1995, February 8, 1996, May 9, 1996, March 13, 1997, May 14, 1998, November 12, 1998, November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, June 10, 2010, June 9, 2011, November 17, 2011, August 9, 2012, March 14, 2013

AMENDATORY SECTION

Section 121 - ORDERS

121.1 The NWCAA may issue such orders as may be necessary to effectuate and enforce the purposes of chapter 70.94 RCW or the rules adopted thereunder. ((If the Board or Control Officer has reason to believe that any provision of this Regulation has been violated, the Board or Control Officer, may, in addition to any other remedy of law, issue an order, or orders, that the necessary corrective action be taken within a reasonable time. Such order or orders may advise methods for the prevention, abatement or control of the emission involved for taking of such other corrective actions as may be appropriate. Any order or orders issued as a part of a notice or independently may prescribe the date or dates by which the violation or violations shall cease and may prescribe time schedules for necessary action in preventing, abating or controlling the emissions, and shall be reported to the Board at its next regular meeting.))

121.2 If the NWCAA has reason to believe that any provision of chapter 70.94 RCW or the rules adopted thereunder has been violated, the NWCAA may, in addition to any other remedy of law, issue an order that requires corrective action be taken within a reasonable time. Such compliance orders may include dates by which the violation or violations shall cease and may set time schedules for necessary action in preventing, abating, or controlling the emissions. ((In lieu of an order the Board may hold a hearing to determine if a violation has occurred or is occurring and if a finding is made that a violation has occurred may issue an order under Section 121.1 of this Regulation.))

121.3 Orders of approval related to the establishment of a source are addressed under NWCAA 300, in lieu of the requirements in this section. ((In lieu of an order the Board or Control Officer may require that the alleged violator or violators appear before the NWCAA Board pursuant to state law.))

121.4 General Orders of Approval are issued under WAC 173-400-560, as adopted in NWCAA 104.1, in lieu of the requirements in this section. ((Any orders issued by the Board or Control Officer are subject to appeal under Section 122 of this Regulation and RCW 43.21.B.))

121.5 Any order issued under this section that includes an action listed in NWCAA 305.2(A) is subject to the public involvement provisions of NWCAA 305.

121.6 For regulatory orders related to a RACT determination, a fee shall be assessed in accordance with NWCAA 309.7. For all other orders issued under NWCAA 121, the NWCAA shall assess a fee as specified in NWCAA 324.7 to cover the costs of processing and issuing such order.

121.7 When an applicant requests a regulatory order to limit the potential to emit of any air contaminant or contaminants pursuant to WAC 173-400-091, as adopted in NWCAA 104.1, or requests a modification to such an order, the NWCAA shall issue such order consistent with the requirements of WAC 173-400-091 as adopted in NWCAA 104.1 in addition to the requirements of this Regulation.

PASSED: January 8, 1969 AMENDED: July 8, 1970, February 14, 1973, November 8, 2007, March 14, 2013

AMENDATORY SECTION

Section 122 - ~~(RESERVED)~~ ~~((APPEALS FROM ORDERS OR FORMAL ENFORCEMENT ACTION))~~

~~((122.1 Any order issued by the Board or Control Officer shall become final unless, no later than thirty (30) days after the date that the order is served, the person aggrieved by the order appeals to the Pollution Control Hearings Board as provided by state law.~~

~~122.2 The final decision and order of the Pollution Control Hearings Board after a hearing shall become final unless no later than thirty (30) days after the issuance of such order, a petition requesting judicial review is filed in Superior Court in accordance with RCW 34.05.~~

~~PASSED: January 8, 1969 AMENDED: July 8, 1970, July 10, 2003, November 8, 2007))~~

AMENDATORY SECTION

Section 123 - ~~((STATUS OF ORDERS ON APPEAL))~~ APPEAL OF ORDERS

123.1 Any order issued by the NWCAA shall become final unless, no later than thirty (30) days after the date that the order is served, any person appeals the order to the Pollution Control Hearings Board as provided by chapter 43.21B RCW. This is the exclusive means of appeal of such an order. ((Any order issued by the Board or Control Officer under the NWCAA Regulation Section 121 may be appealed.))

123.2 Any order issued by the NWCAA ((Board or Control Officer,)) under appeal in accordance with chapter ((RCW)) 43.21B RCW shall remain in effect during the pendency of such appeal unless the ((Board or)) Control Officer, at his/her ((their)) discretion, issues a ((S))stay of the original order. At any time during the pendency of an appeal of such an order to the Pollution Control Hearings Board, the appellant may apply to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW to stay or vacate the order.

~~((123.3 The appellant may also apply to the Pollution Control Hearings Board at any time for a stay of such order per RCW 43.21B.320.))~~

~~((123.4 Such notice of appeal to the Pollution Control Hearings Board must contain the following information:~~

- (a) The appellant's name and address;
 - (b) The date and number of the order or permit that is subject to the appeal;
 - (c) Description of the substance of the order or permit that is the subject of the appeal;
 - (d) A clear, separate, and concise statement of each error alleged to have been committed;
 - (e) A clear, separate and concise statement of facts upon which the appellant relies to sustain the statements of error; and
 - (f) A statement setting forth the relief sought.)
- ((123.5 The Board or Control Officer may request the attorney for the NWCAA to bring action in Superior Court to obtain any such relief as is necessary to insure compliance with said order, including injunctive relief.

No bond shall be required from the NWCAA as a condition of granting any restraining order or temporary injunction.)

PASSED: January 8, 1969 AMENDED: July 8, 1970, February 14, 1973, November 15, 1988, November 8, 2007, March 14, 2013

AMENDATORY SECTION

SECTION 131 - NOTICE TO VIOLATORS

131.1 At least 30 days prior to the commencement of any formal enforcement action under RCW 70.94.430 or 70.94.431, or NWCAA 132 or 133, ((If the Board or Control Officer has reason to believe that a violation of this Regulation has occurred or is occurring,)) the ((Board, Control Officer, or duly authorized representative)) NWCAA shall ((may)) cause written notice of violation to be served upon the alleged violator. The notice shall specify the provisions of chapter 70.94 RCW or the orders, rules, or regulations adopted pursuant thereto alleged to be violated, and ((summarize)) the facts alleged to constitute a violation thereof, and may include an order pursuant to NWCAA 121 directing that necessary corrective action be taken within a reasonable time. In lieu of an order, the Control Officer may require that the alleged violator appear before the Board for a hearing pursuant to NWCAA 120. Every notice of violation shall offer to the alleged violator an opportunity to meet with the NWCAA prior to the commencement of enforcement action. ((Written notice shall be served at least thirty days prior to the commencement of the imposition of a penalty under RCW 70.94.430 and 70.94.431.))

((131.2 The Board, Control Officer, or duly authorized representative upon issuance of notice of violation may do any or all of the following:

131.21 Require that the alleged violator respond in writing or in person within thirty (30) days of the notice and specify the corrective action being taken.

131.22 Issue an order pursuant to Section 121 of this Regulation.

131.23 Initiate action pursuant to Sections 132, 133, 134 and 135 of this Regulation.

131.24 Hold a hearing pursuant to Section 120 of this Regulation.

131.25 Require the alleged violator or violators appear before the Board.

~~131.26 Avail itself of any other remedy provided by law.))~~

131.2((3)) The NWCAA, upon issuance of notice of violation, may require the alleged violator to respond in writing or in person within thirty (30) days of the notice and specify the corrective action being taken. Failure to respond ((as required in Section 131.21)) shall constitute a prima facie violation of this Regulation and the NWCAA ((Board or Control Officer)) may initiate action pursuant to Sections 132, 133, 134, 135 of this Regulation.

~~PASSED: January 8, 1969 AMENDED: February 14, 1973, ((April 14, 1993,)) March 13, 1997, July 14, 2005, November 8, 2007, March 14, 2013~~

AMENDATORY SECTION

Section 200 - DEFINITIONS

...

COMPLIANCE ORDER - An order issued by the NWCAA pursuant to the authority of RCW 70.94.332 and 70.94.141 (3) that addresses or resolves a compliance issue regarding any requirement of chapter 70.94 RCW or the rules adopted thereunder. Compliance orders may include, but are not limited to, time schedules and/or necessary actions for preventing, abating, or controlling emissions.

...

ORDER - Any order issued by the NWCAA pursuant to chapter 70.94 RCW, including, but not limited to RCW 70.94.332, 70.94.152, 70.94.153, and 70.94.141(3), and includes, where used in the generic sense, the terms order, ((corrective action)) compliance order, order of approval, and regulatory order.

...

REGULATORY ORDER - An order issued by ((an Authority)) the NWCAA to an air contaminant source or sources pursuant to chapter 70.94 RCW including, but not limited to, RCW 70.94.141(3). A regulatory order includes an order which applies to that source((s)) or sources any applicable provision of chapter 70.94 RCW((s)) or the rules adopted thereunder((, or the NWCAA Regulation)).

...

~~PASSED: January 8, 1969 AMENDED: October 31, 1969, September 3, 1971, June 14, 1972, July 11, 1973, February 14, 1973, January 9, 1974, October 13, 1982, November 14, 1984, April 14, 1993, October 13, 1994, February 8, 1996, May 9, 1996, March 13, 1997, November 12, 1998, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, November 17, 2011, March 14, 2013~~

NEW SECTION

SECTION 309 - REASONABLY AVAILABLE CONTROL TECHNOLOGY

309.1 Reasonably Available Control Technology (RACT) is required for all existing sources except as otherwise provided in RCW 70.94.331(9).

309.2 Where current controls are determined by the NWCAA to be less than RACT, the NWCAA shall define

RACT for that source or source category and issue a rule or an order under NWCAA 121 requiring the installation of RACT.

309.3 RACT for each source category containing three or more sources shall be determined by rule, except as provided in NWCAA 309.4.

309.4 Source-specific RACT determinations may be performed under any of the following circumstances:

(A) For replacement or substantial alteration of existing control equipment under NWCAA 300.13;

(B) When required by the federal Clean Air Act;

(C) For sources in source categories containing fewer than three sources;

(D) When an air quality problem, for which the source is a contributor, justifies a source-specific RACT determination prior to development of a categorical RACT rule; or

(E) When a source-specific RACT determination is needed to address either specific air quality problems, for which the source is a significant contributor, or source-specific economic concerns.

309.5 The Control Officer shall have the authority to perform a RACT determination, to hire a consultant to perform relevant RACT analyses in whole or in part, or to order the owner or operator to perform RACT analyses and submit the results to the NWCAA.

305.6 In determining RACT, the NWCAA shall utilize the factors set forth in the RACT definition in NWCAA 200 and shall consider RACT determinations and guidance made by the EPA, other states, and local authorities for similar sources, and other relevant factors. In establishing or revising RACT requirements, the NWCAA shall address, where practicable, all air contaminants deemed to be of concern for that source or source category.

309.7 The NWCAA shall assess a fee to be paid by any source included in a RACT determination to cover the direct and indirect costs of developing, establishing, or reviewing categorical or source-specific RACT determinations. The fee for RACT determinations shall be as established in NWCAA 324.6. The amount of the fee may not exceed the direct and indirect costs of establishing the requirement for the particular source or the pro rata portion of the direct and indirect costs of establishing the requirement for the relevant source category.

309.8 Emission standards and other requirements contained in rules or regulatory orders in effect at the time of operating permit issuance shall be considered RACT for purposes of operating permit issuance or renewal.

309.9 Replacement or substantial alteration of control equipment under NWCAA 300.13 shall be subject to the New Source Review fees under NWCAA 324.2, in lieu of RACT fees under this section.

PASSED: March 14, 2013

AMENDATORY SECTION

SECTION 324 - FEES

324.1 Annual Registration Fees

(A) The NWCAA shall levy annual registration program fees as set forth in Section 324.1(C) to cover the costs of administering the registration program.

(B) Upon assessment by the NWCAA, registration fees are due and payable. A source shall be assessed a late penalty in the amount of twenty-five percent (25%) of the registration fee for failure to pay the registration fee within thirty (30) days after the due date. The late penalty shall be in addition to the registration fee.

(C) All registered air pollution sources shall pay the appropriate registration fee(s) as set forth in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA. ~~((A proposed resolution that changes any fee schedules described in this section shall be posted on the NWCAA website for not less than 30 days prior to the Board of Directors meeting at which the Board takes action on the resolution. In addition, an electronic version of the proposed fee schedule changes shall be provided by e-mail to any person requesting notice of proposed fee schedule changes, not less than 30 days prior to the Board meeting at which such changes are considered. It shall be the ongoing responsibility of a person requesting electronic notice of proposed fee schedule amendments to provide their current e-mail address to the NWCAA, however no person is required to request such notice. Each notice of a proposed fee schedule change shall provide for a comment period on the proposal of not less than 30 days. Any such proposal shall be subject to public comment at the Board meeting where such changes are considered. No final decision on a proposed fee schedule change shall be taken until the public comment period has ended and any comments received during the public comment period have been considered.))~~

324.2 New Source Review Fees

(A) New source review fees and fees for review of an application to replace or substantially alter the emission control technology installed on an existing stationary source emission unit shall be submitted with each Notice of Construction (NOC) application or request for a NOC applicability determination.

(B) The applicable fee(s) shall be established in the current fee schedule adopted by Resolution by the Board of Directors of the NWCAA. ~~((A proposed resolution that changes any fee schedule described in this section shall be posted on the NWCAA website for not less than 30 days prior to the Board of Directors meeting at which the Board takes action on the resolution. In addition, an electronic version of the proposed fee schedule changes shall be provided by e-mail to any person requesting notice of proposed fee schedule changes, not less than 30 days prior to the Board meeting at which such changes are considered. It shall be the ongoing responsibility of a person requesting electronic notice of proposed fee schedule amendments to provide their current e-mail address to the NWCAA, however no person is required to request such notice. Each notice of a proposed fee schedule change shall provide for a comment period on the proposal of not less than 30 days. Any such proposal shall be subject to public comment at the Board meeting where such changes are considered. No final decision on a proposed fee schedule change shall be taken until the public comment period has ended and any comments received during the public comment period have been considered.))~~

324.3 Variance Fee. The applicable fee(s) shall be established in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.4 Issuance of Emission Reduction Credits. The applicable fee(s) shall be established in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.5 Plan and examination, filing, SEPA review, and emission reduction credit fees may be reduced at the discretion of the Control Officer by up to 75 percent for existing stationary sources implementing pollution prevention or undertaking voluntary and enforceable emission reduction projects.

324.6 RACT Fee. The applicable fee(s) shall be established in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA. Fees shall be due and payable upon receipt of invoice and shall be deemed delinquent if not fully paid within 30 days of invoice. ~~((A proposed resolution that adopts or changes any fee schedules described in this section shall be posted on the NWCAA website for not less than 30 days prior to the Board of Directors meeting at which the Board takes action on the resolution. In addition, an electronic version of the proposed fee schedule changes shall be provided by e-mail to any person requesting notice of proposed fee schedule changes, not less than 30 days prior to the Board meeting at which such changes are considered. It shall be the ongoing responsibility of a person requesting electronic notice of proposed fee schedule amendments to provide their current e-mail address to the NWCAA; however, no person is required to request such notice. Each notice of a proposed fee schedule change shall provide for a comment period on the proposal of not less than 30 days. Any such proposal shall be subject to public comment at the Board meeting where such changes are considered. No final decision on a proposed fee schedule change shall be taken until the public comment period has ended and any comments received during the public comment period have been considered.))~~

324.7 Order Fee. The applicable fee(s) shall be established in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.8 Procedure for Adoption and Revision of Fee Schedules. A proposed resolution that adopts or changes any fee schedules described in this section shall be posted on the NWCAA website for not less than 30 days prior to the Board of Directors meeting at which the Board takes action on the resolution. In addition, an electronic version of the proposed fee schedule or proposed fee schedule changes shall be provided by e-mail to any person requesting notice of proposed fee schedules or proposed fee schedule changes, not less than 30 days prior to the Board meeting at which such changes are considered. It shall be the ongoing responsibility of a person requesting electronic notice of proposed fee schedule amendments to provide their current e-mail address to the NWCAA; however, no person is required to request such notice. Each notice of a proposed fee schedule or proposed fee schedule change shall provide for a comment period on the proposal of not less than 30 days. Any such proposal shall be subject to public comment at the Board meeting where such changes are considered. No final decision on a proposed fee schedule

or proposed fee schedule change shall be taken until the public comment period has ended and any comments received during the public comment period have been considered.

PASSED: November 12, 1998 AMENDED: November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, August 9, 2012, March 14, 2013

AMENDATORY SECTION

SECTION 350 - VARIANCES

350.1 Any person who owns or is in control of any plant, building, structure, establishment, process or equipment including a group of persons who own or control like processes or like equipment may apply to the board for a variance from the rules or Regulation governing the quality, nature, duration or extent of discharge of air contaminants. The application shall be accompanied by such information and data as the Board may require. The Board may grant such variance, but only after public hearing or due notice, if it finds that:

((350.11)) (A) The emissions occurring or proposed to occur do not endanger public health or safety; and

((350.12)) (B) Compliance with the rules or Regulation from which variance is sought would produce serious hardship without equal or greater benefits to the public.

350.2 No variance shall be granted pursuant to this Section until the Board has considered the relative interests of the applicant, other owners or property likely to be affected by the discharge, and the general public.

350.3 Any variance or renewal thereof shall be granted within the requirements of Section 350.1 and for time periods and under conditions consistent with reasons therefore, and with the following limitations:

((350.31)) (A) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement, or control of the pollution involved, it shall be only until the necessary means for prevention, abatement, or control becomes known and available, and subject to the taking of any substitute or alternate measure that the Board may prescribe.

((350.32)) (B) If the variance is granted on the ground that compliance with the particulate requirements or requirement from which variance is sought will require the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time, as in view of the Board, is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

((350.33)) (C) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided in subsection ((350.31)) 350.3(A) and ((350.32)) 350.3(B), it shall be for not more than one year.

350.4 Any variance granted pursuant to this Section may be renewed on terms and conditions and for periods which would be appropriate under all circumstances including the criteria considered on the initial granting of a variance and that acquired during the existence of the variance. If a com-

plaint is made to the board on account of the variance, no renewal thereof shall be granted unless, following a public hearing on the complaint on due notice, the board finds that renewal is justified. No renewal shall be granted except on application thereof. Any such application shall be made at least sixty (60) days prior to the expiration of the variance. Immediately upon receipt of an application for renewal, the Board shall give public notice of such application in accordance with the rules and Regulation of the Board.

350.5 A variance or renewal shall not be a right of the applicant or holder thereof but shall be at the discretion of the Board. However, any applicant adversely affected by the denial or the terms and conditions of the granting of an application for a variance or renewal of a variance by the Board, may obtain judicial review thereof under the provisions of Section ((424)) 123 or Chapter 43.21B RCW as now or hereafter amended.

350.6 Nothing in this Section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of RCW 70.94.715 to any person or his property.

PASSED: January 8, 1969 AMENDED: October 1, 1969, February 14, 1973, January 9, 1974, ((April 14, 1993,)) September 8, 1993, March 14, 2013

WSR 13-07-040

PERMANENT RULES

GAMBLING COMMISSION

[Administrative Order 685—Filed March 14, 2013, 3:14 p.m., effective April 14, 2013]

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

Purpose: The amendment corrects a filing error by staff and reinstates the use of electronic facsimiles of cards for "all" card games, not just "house-banked" card games. It also moves this rule from the house-banked card room section of the rules manual to rules relating to all card games.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070, 9.46.-0282.

Adopted under notice filed as WSR 13-03-065 on January 11, 2013.

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

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

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

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

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

Date Adopted: March 14, 2013.

Susan Newer
Rules Coordinator

NEW SECTION

WAC 230-15-116 Electronic facsimiles of cards allowed. (1) Card game licensees may use electronic card facsimiles approved by the director or the director's designee in card games.

(2) Card room employees must operate the game.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-15-485 Electronic facsimiles of cards allowed.

WSR 13-07-042

PERMANENT RULES

HORSE RACING COMMISSION

[Filed March 15, 2013, 1:44 p.m., effective April 15, 2013]

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

Purpose: Requires association security to maintain a log of individual[s] admitted to the restricted area during late night hours (midnight to 4:00 a.m.).

Citation of Existing Rules Affected by this Order: Amending WAC 260-20-090.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 13-04-051 on February 1, 2013.

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 1, Repealed 0.

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

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

Date Adopted: March 15, 2013.

Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 12-23-015, filed 11/9/12, effective 12/10/12)

WAC 260-20-090 Association security. (1) A racing association conducting a race meet must maintain security controls over its grounds.

(2) An association will prevent access to, and will remove or cause to be removed from its restricted areas any person who is unlicensed, or who has not been issued a visitor's pass or other identifying credential, or whose presence in such restricted area is unauthorized.

(3) Class A or B racing associations must provide continuous security in the stable area during all times that horses are stabled on the grounds. An association will require any person entering the stable area to display a valid license or credential issued by the commission or a pass issued by the association.

(4) Class A or B racing associations must keep a written record, on a form approved by the commission, of all horses admitted to or leaving the stable areas. For horses admitted to the stable areas the log must contain the date, time, names of horses, and barn or name of trainer they are being delivered to. For horses leaving the stable areas the log must contain the date, time, name of horses, and barn or name of trainer they are leaving from. A copy of the completed form(s) must be provided to the commission on a weekly basis. The original log is subject to inspection at any time by the commission.

(5) All persons and businesses transporting horses on and off the grounds of a racing association are responsible to provide association security, and if applicable, the commission with the names of any horses delivered to or leaving the grounds and the trainer responsible.

(6) Class A or B racing associations must keep a written record of all individuals admitted to the stable area between the hours of 12:00 midnight and 4:00 a.m. At a minimum the record shall contain the name of the person admitted, the person's license numbers and the time admitted.

(7) Class A or B racing associations must provide fencing around the stable area in a manner that is approved by the commission.

~~((7))~~ (8) Not later than twenty-four hours after an incident occurs requiring the attention of security personnel, the chief of security must deliver to commission security a written report describing the incident, which may be forwarded to the stewards for disciplinary action. The report must include the name of each individual involved in the incident and the circumstances of the incident.

WSR 13-07-043

PERMANENT RULES

HORSE RACING COMMISSION

[Filed March 15, 2013, 1:46 p.m., effective April 15, 2013]

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

Purpose: Allows jockey agents to participate as owners with certain restrictions.

Citation of Existing Rules Affected by this Order: Amending WAC 260-32-400.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 13-04-049 on February 1, 2013.

Changes Other than Editing from Proposed to Adopted Version: Jockey agents may only own, not train horses.

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 1, Repealed 0.

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

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

Date Adopted: March 15, 2013.

Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 06-07-065, filed 3/10/06, effective 4/10/06)

WAC 260-32-400 Powers and duties. (1) Each jockey agent (~~(shall)~~) must be licensed by the commission.

(2) (~~(No)~~) A jockey agent (~~(shall)~~) may be the owner (~~(or trainer)~~) of (~~(any)~~) a horse under the following conditions:

(a) A jockey agent may only enter one horse that they have an ownership interest in for any overnight race.

(b) A jockey agent may not claim a horse.

(c) A jockey whom the jockey agent represents must ride the horse, unless approved by the stewards, or no other jockey that the jockey agent represents may compete against the horse.

(3) A jockey agent may represent up to three jockeys.

(4) No jockey agent shall make or assist in making any engagement for any rider other than those he is licensed to represent, without prior approval of the board of stewards, which may be granted for a temporary time period not to exceed ten days.

(5) If a jockey agent is absent for a period of more than ten days, the jockey will be required to engage another jockey agent.

(6) Each jockey agent shall keep, on a form provided by the association, a record by races of all engagements made by him of the riders he is representing. This record must be kept up to date and held ready at all times for the inspection by the stewards.

(7) If any jockey agent gives up the making of engagements for any rider, he/she shall immediately notify the stewards, and he/she shall also turn over to the stewards a list of any unfilled engagements he/she may have made for that rider. A jockey agent may not drop a rider without notifying the board of stewards in writing. The stewards will decide all rival claims for the services of a rider. Jockey agents who fail

to honor commitments made are subject to disciplinary action.

WSR 13-07-044
PERMANENT RULES
HORSE RACING COMMISSION

[Filed March 15, 2013, 1:47 p.m., effective April 15, 2013]

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

Purpose: Addresses the passage of I-502 which legalized marijuana. The Washington horse racing commission is prohibiting the possession and use of marijuana in the restricted area.

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

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 13-04-046 on February 1, 2013.

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 2, Repealed 0.

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

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

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

Date Adopted: March 15, 2013.

Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 06-07-064, filed 3/10/06, effective 4/10/06)

WAC 260-34-010 Primary purpose. In order to protect the integrity of horse racing in the state of Washington, and to protect the safety of the public and all participants, the Washington horse racing commission intends to regulate the use of any illegal controlled substances, the use and possession of marijuana, and the use of alcohol by licensees at all race meets. This chapter shall be applicable to all licensees or applicants on the grounds of any racetrack during its licensed race meet.

AMENDATORY SECTION (Amending WSR 11-07-030, filed 3/10/11, effective 4/10/11)

WAC 260-34-020 Drug and alcohol violations. No licensee or applicant, while acting in an official capacity or participating directly in horse racing, will commit any of the following violations, while on the grounds of a licensed race track during its licensed race meet and periods of training:

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

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

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

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

(4) Possess an illegal controlled substance;

(5) Possess marijuana or be under the influence of or affected by marijuana, or have in their body any measurable concentration of tetrahydrocannabinol (THC);

Possess any equipment, products or materials of any kind, which are used or intended for use in injecting, ingesting, inhaling or otherwise introducing into the human body marijuana;

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

~~((6))~~ (7) Refuse to submit to blood, breath, oral fluids, and/or urine testing, when notified that such testing is conducted pursuant to the conditions of WAC 260-34-030.

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

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

WSR 13-07-045
PERMANENT RULES
HORSE RACING COMMISSION

[Filed March 15, 2013, 1:48 p.m., effective April 15, 2013]

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

Purpose: Adopts acceptable threshold levels for certain therapeutic medications.

Citation of Existing Rules Affected by this Order: Amending WAC 260-70-630.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 13-04-050 on February 1, 2013.

Changes Other than Editing from Proposed to Adopted Version: Original document listed Dexamethasone at 1.5 mc/ml, typographical error and should have read 1.5 ng/ml. Setting the threshold at 1.5 mc/ml would allow race day administration.

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 1, Repealed 0.

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

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

Date Adopted: March 15, 2013.

Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 12-07-010, filed 3/9/12, effective 4/9/12)

WAC 260-70-630 Threshold levels. (1) Permitted medications.

(a) The following quantitative medications are permissible in test samples up to the stated concentrations:

Acepromazine - 25 ng/ml urine
Albuterol - 1 ng/ml urine
Benzocaine - 50 ng/ml urine
Bupivacaine - 5 ng/ml urine
Betamethasone - 60 ng/ml urine
Clenbuterol - 25 pg/ml serum or plasma
Dexamethasone - 1.5 ng/ml serum or plasma
Diclofenac - 5 ng/ml serum or plasma
DMSO - 10 mc/ml serum or plasma
Firocoxib - 40 ng/ml serum or plasma
Glycopyrrolate - 3.5 pg/ml serum or plasma
Lidocaine - 50 ng/ml urine
Mepivacaine - 10 ng/ml urine
Methocarbamol - 1 ng/ml serum or plasma
Methylprednisolone - 1.3 ng/ml serum or plasma
Prednisolone - 2 ng/ml serum or plasma
Procaine - 25 ng/ml urine
Promazine - 25 ng/ml urine
Pyrilamine - 50 ng/ml urine
Salicylates - 750,000 ng/ml urine
Theobromine - 2000 ng/ml urine
Triamcinolone acetonide - 1 ng/ml serum or plasma

(b) The official urine or blood test sample may not contain more than one of the above substances, including their

metabolites or analogs, and may not exceed the concentrations established in this rule.

(2) Environmental substances.

(a) Certain substances can be considered "environmental" in that they are endogenous to the horse or that they can arise from plants traditionally grazed or harvested as equine feed or are present in equine feed because of contamination or exposure during the cultivation, processing, treatment, storage, or transportation phases. Certain drugs are recognized as substances of human use and could therefore be found in a horse. The following substances are permissible in test samples up to the stated concentrations:

Caffeine - 100 ng/ml serum or plasma
Benzoyllecgonine - 50 ng/ml urine
Morphine Glucuronides - 50 ng/ml urine

(b) If a preponderance of evidence presented shows that a positive test is the result of environmental substance or inadvertent exposure due to human drug use, that evidence should be considered as a mitigating factor in any disciplinary action taken against the trainer.

(3) Androgenic-anabolic steroids.

(a) The following androgenic-anabolic steroids are permissible in test samples up to the stated concentrations:

Stanozolol (Winstrol) - 1 ng/ml urine in all horses regardless of sex.

Boldenone (Equipoise) - 15 ng/ml urine in intact males. No level is permitted in geldings, fillies or mares.

Nandrolone (Durabolin) - 1 ng/ml urine in geldings, fillies, and mares, and for nandrolone metabolite (5 α -oestrane-3 β ,17 α -diol) - 45 ng/ml urine in intact males.

Testosterone - 20 ng/ml urine in geldings. 55 ng/ml urine in fillies and mares. Samples from intact males will not be tested for the presence of testosterone.

(b) All other androgenic-anabolic steroids are prohibited in race horses.

WSR 13-07-046

PERMANENT RULES

HORSE RACING COMMISSION

[Filed March 15, 2013, 1:49 p.m., effective April 15, 2013]

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

Purpose: Updates penalty matrix to reflect current WACs and addresses new penalties regarding the use and possession of marijuana due to the passage of I-502.

Citation of Existing Rules Affected by this Order: Amending chapter 260-84 WAC.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 13-04-047 on February 1, 2013.

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 2, Repealed 0.

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 2, Repealed 0; Pilot Rule Mak-

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

Date Adopted: March 15, 2013.

Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 12-05-042, filed 2/10/12, effective 3/12/12)

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

Class A and B Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Disturbing the peace WAC 260-80-140	Warning to \$200 and/or suspension	Warning to \$500 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010	\$100	\$200	\$300
Unlicensed or improperly licensed personnel WAC ((260-28-230 ,) 260-28-250 and 260-36-150(, and 260-28-295))	\$100	\$200	\$300
Violation of any claiming rule in chapter 260-60 WAC	\$200 to \$500 plus possible suspension		
Failure of jockey agent to honor riding engagements (call) WAC 260-32-400	\$75	\$100	\$200
Failure of jockey to report correct weight WAC 260-32-150	\$100	\$200	\$300
Failure of jockey to appear for films WAC 260-24-510	\$50	\$100	\$200
Failure of jockey to fulfill riding engagement WAC 260-32-080	\$100	\$150	\$200
Jockey easing mount without cause WAC 260-52-040	\$250 and/or suspension	\$500 and/or suspension	\$1000 and/or suspension
Jockey failing to maintain straight course or careless riding with no disqualification (jockey at fault) WAC 260-52-040	Warning to \$750 and/or suspension (riding days)		
Jockey failing to maintain straight course or careless riding resulting in a disqualification (jockey at fault) WAC 260-52-040	\$500 and/or suspension (riding days)	Suspension (riding days)	
Rider's misuse of ((whip) <u>crop</u>) WAC 260-52-040	Warning to \$2500		
Entering ineligible horse or unauthorized late scratch chapter 260-40 WAC and WAC 260-80-030	<u>Warning to \$200</u>	\$200 to \$300	\$200 to \$500
Arriving late to the paddock or receiving barn WAC 260-28-200	Warning to \$50	\$50 to \$100	\$100 to \$200
Failure to deliver furosemide treatment form to official veterinarian by appointed time WAC 260-70-650	Warning to \$50	\$50 to \$100	\$100 to \$200
Failure to obtain permission for equipment changes WAC 260-44-010	\$50	\$100	\$200

Class A and B Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Failure to report performance records WAC 260-40-100	Warning to \$50	\$100	\$150
Trainer failure to report proper identity of horses in their care WAC 260-28-295	\$50	\$100	\$200
Failure to submit gelding report WAC 260-28-295	\$100	\$200	\$300

Class C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Disturbing the peace WAC 260-80-140	Warning to \$100 and/or suspension	\$250 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010	\$50	\$100	\$150
Unlicensed or improperly licensed personnel WAC ((260-28-230),) 260-28-250 and 260-36-150((and 260-28-295))	\$50	\$100	\$200
Violation of any claiming rule in chapter 260-60 WAC	\$100 to \$250 plus possible suspension		
Failure of jockey agent to honor riding engagements (call) WAC 260-32-400	\$25	\$50	\$100
Failure of jockey to report correct weight WAC 260-32-150	\$25	\$50	\$100
Failure of jockey to appear for films WAC 260-24-510	\$25	\$50	\$100
Failure of jockey to fulfill riding engagement WAC 260-32-080	\$50	\$100	\$200
Jockey easing mount without cause WAC 260-52-040	\$100	\$200 and/or suspension	\$400 and/or suspension
Jockey failing to maintain straight course or careless riding with no disqualification (jockey at fault) WAC 260-52-040	Warning to \$500 and/or suspension (riding days)		
Jockey failing to maintain straight course or careless riding resulting in a disqualification (jockey at fault) WAC 260-52-040	\$100 to \$500 and/or suspension (riding days)		
Rider's misuse of ((whip)) crop WAC 260-52-040	Warning to \$2500		
Entering ineligible horse or unauthorized late scratch chapter 260-40 WAC and WAC 260-80-030	Warning to \$50	\$100 to \$200	\$200 to \$300
Arriving late to the paddock WAC 260-28-200	Warning to \$25	\$50	\$100
Failure to deliver furosemide treatment form to official veterinarian by appointed time WAC 260-70-650	Warning to \$25	\$50	\$100
Failure to obtain permission for equipment change WAC 260-44-010	\$25	\$50	\$100
Failure to report performance records WAC 260-40-100	Warning to \$25	\$50	\$100

Class C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Failure to submit gelding report WAC 260-28-295	\$50	\$100	\$200

Class A, B and C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Smoking in restricted areas WAC 260-20-030	\$50	\$100	\$250 and/or suspension
Tampering with a fire protection, prevention or suppression system or device WAC 260-20-030	\$200	\$500	\$1000 and/or suspension
Failure to post problem gambling signs WAC 260-12-250	Warning to \$50	\$100	\$200
Issuing a check to the commission with not sufficient funds WAC 260-28-030	\$50	\$100	\$200
Failure to ride in a safe or prudent manner WAC 260-80-145	Warning	\$50	\$50 - subsequent offenses \$50 plus possible suspensions
Use of improper, profane, or indecent language WAC 260-80-130	Warning to \$200	\$200 to \$300	\$300 to \$500
Failure to complete temporary license application within fourteen days WAC 260-36-200	\$100 and suspension of license	\$250 and suspension of license	\$500 and suspension of license
Failure to register employees with the commission (trainers responsibility) WAC 260-28-230	Warning to \$50	\$100	\$200
Failure to furnish fingerprints WAC 260-36-100	\$100 and suspension of license	\$250 and suspension of license	\$500 and suspension of license
Nonparticipation - licensing WAC 260-36-080	License canceled		
Pending felony charges or conviction - ineligible for licensing WAC 260-36-120(2)	Denial, suspension or revocation of license		
Failure to divulge a felony conviction WAC 260-36-050	\$100 to \$250		
False information or failure to provide accurate and complete information on application WAC 260-36-050	Warning to \$250		
Failure to provide full disclosure, refusal to respond to questions, or responding falsely to stewards or commission investigators WAC 260-24-510	\$500 fine and/or denial, suspension or revocation of license		
Financial responsibility WAC 260-28-030	Suspension of license until debt is satisfied (suspension may be stayed with a mutual payment agreement and licensee remains compliant with agreement)		
Failure to appear for a ruling conference WAC 260-24-510	Suspension (conference may be held in individual's absence)		
Failure to pay fine when due (no extension granted or no request for hearing filed) WAC 260-24-510	Suspension until fine paid		
Possession or use of a stimulating device (may include batteries) WAC 260-52-040 and 260-80-100	Immediate ejection from the grounds and permanent revocation		

Class A, B and C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010	Immediate ejection from the grounds and permanent revocation		
Failure to wear proper safety equipment WAC 260-12-180 and 260-32-105	\$50	\$100	\$200
Horses shod with improper toe grabs WAC 260-44-150	Horse scratched and \$250 fine to trainer and plater	Horse scratched and \$500 fine to trainer and plater	Horse scratched and \$1000 fine to trainer and plater
Failure to display or possess license badge when in restricted area WAC 260-36-110	\$25	\$50	\$100

(2) In determining whether an offense is a first, second, third or subsequent offense, the commission, or designee will include violations which occurred in Washington as well as any other recognized racing jurisdiction within the calendar year, absent mitigating circumstances. The stewards may impose more stringent penalties if aggravating circumstances exist. If a penalty is not listed under second or third/subsequent offense columns, the penalty listed in the "first offense" column will apply to each violation.

(3) Except as otherwise provided in this chapter, for any other violation not specifically listed above, the stewards have discretion to impose the penalties as provided in WAC 260-24-510 (3)(a).

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

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

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

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

AMENDATORY SECTION (Amending WSR 11-03-053, filed 1/14/11, effective 2/14/11)

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

- ~~(a) First offense—Five day suspension;~~
- ~~(b) Second offense—Thirty day suspension;~~
- ~~(c) Third offense—One year suspension; and~~
- ~~(d) Subsequent offense, (within five years)—Revocation.~~

~~(2) Possessing any equipment, products or materials of any kind, which are used or intended for use in injecting, ingesting, inhaling or otherwise introducing into the human body an illegal controlled substance, other than marijuana in violation of WAC 260-34-020(5); or possessing or having within their body while on the grounds of a licensed race meet any illegal controlled substance, in violation of WAC 260-34-020 (1) or (4):~~

- ~~(a) First offense—Thirty day suspension;~~
- ~~(b) Second offense—One year suspension; and~~
- ~~(c) Third and subsequent offenses—Revocation.~~

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

- ~~(a) First offense—Three day suspension;~~
- ~~(b) Second offense—Thirty day suspension;~~
- ~~(c) Third offense—One year suspension; and~~
- ~~(d) Subsequent offenses—Revocation.~~

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

- ~~(a) First offense—Warning to one day suspension;~~
- ~~(b) Second offense—Three day suspension;~~
- ~~(c) Third offense—Thirty day suspension; and~~
- ~~(d) Subsequent offenses—One year suspension.~~

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

- ~~(a) First offense—Warning to three day suspension;~~
- ~~(b) Second offense—Three to thirty day suspension;~~
- ~~(c) Third offense—Thirty day to one year suspension; and~~
- ~~(d) Subsequent offenses—Revocation.~~

~~(6) Refusing to submit to a drug or alcohol test, in violation of WAC 260-34-020(6) will result in immediate ejection from the grounds and a penalty of a one year suspension or revocation:~~

~~(7) Possessing any equipment or material used to manufacture or distribute any controlled substance, or engaging in the sale, manufacturing or distribution of any illegal con-~~

trolled substance or possessing an illegal controlled substance with intent to deliver on the grounds of any licensed race meet in violation of WAC 260-34-020 (3) or (5), immediate ejection from the grounds and revocation.

(8)) (1) Be under the influence of or affected by intoxicating liquor and/or drugs, or have within their body any illegal controlled substance in violation of WAC 260-34-020 (1) and (5):

(a) First offense - Warning to one-day suspension;

(b) Second offense - Three-day suspension;

(c) Third offense - Thirty-day suspension;

(d) Subsequent offenses (within five years) - One-year suspension.

(2) Be under the influence of or affected by intoxicating liquor and/or drugs, or having within their body any illegal controlled substance, while on horseback, in violation of WAC 260-34-020 (1) and (5):

(a) First offense - Warning to one-day suspension;

(b) Second offense - Three-day to thirty-day suspension;

(c) Third offense - Thirty-day to one-year suspension;

(d) Subsequent offenses (within five years) - Revocation.

(3) Engage in the illegal sale or distribution of alcohol in violation of WAC 260-34-020(2):

(a) First offense - Five-day suspension;

(b) Second offense - Thirty-day suspension;

(c) Third offense - One-year suspension;

(d) Subsequent offenses (within five years) - Revocation.

(4) Engaging in the illegal sale or distribution of a controlled substance, including marijuana, or possess an illegal controlled substance, including marijuana with intent to deliver in violation of WAC 260-34-020(3), revocation and immediate ejection from the grounds.

(5) Possess an illegal controlled substance, including marijuana if under the age of twenty-one, and excluding marijuana if twenty-one years or older in violation of WAC 260-34-020(4):

(a) First offense - Thirty-day suspension;

(b) Second offense - One-year suspension; and

(c) Third offense - Revocation.

(6) Possession of marijuana over the age of twenty-one, WAC 260-34-020(5):

(a) First offense - Warning to one-day suspension;

(b) Second offense - Three-day to thirty-day suspension;

(c) Third offense - Thirty-day to one-year suspension;

(d) Subsequent offenses (within five years) - Revocation.

(7) Possession of any equipment, products or materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, or concealing an illegal controlled substance, or any equipment, products or materials of any kind, which are used or intended for use in injecting, ingesting, inhaling or otherwise introducing into the human body an illegal controlled substance in violation of WAC 260-34-020(6):

(a) First offense - Three-day suspension;

(b) Second offense - Three-day to thirty-day suspension;

(c) Third offense - One-year suspension;

(d) Subsequent offenses (within five years) - Revocation.

(8) Refusal to submit to blood, breath, oral fluids, and/or urine testing, in violation of WAC 260-34-020(7), immediate ejection for the grounds and a one-year suspension to revocation.

(9)(a) For violations of WAC 260-34-020 (1) ((and)), (4), or (5), the board of stewards may stay a suspension if the licensee or applicant shows proof of participation in a drug rehabilitation or alcohol treatment program approved or certified by the department of social and health services. Individuals will only be allowed a stay of a suspension under this subsection once in a five-year period. If during the period of the stay a licensee or applicant violates the provisions of chapter 260-34 WAC, the violation for which the stay of suspension was entered will be considered as a prior violation for penalty purposes. Before being granted a stay of the suspension, the licensee or applicant must also agree to comply with the following conditions during the duration of the treatment program:

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

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

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

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

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

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

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

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

WSR 13-07-065
PERMANENT RULES
STATE BOARD OF EDUCATION

[Filed March 19, 2013, 11:53 a.m., effective April 19, 2013]

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

Purpose: The purpose of the rules, adopted as WAC 180-19-010 through 180-19-050, is to implement RCW 28A.710.090 Authorizer oversight fee—Establishment—Use. This section, which codifies section 209 of Initiative Measure No. 1240, requires the state board of education (SBE) to establish an annual application and approval process and timelines for school district boards of directors seeking approval to be charter school authorizers. The section provides that the initial process and timelines must be established no later than ninety days after December 6, 2012. The adopted rules set timelines, clarify the requirements for authorizer applications, establish criteria for evaluation of applications, and specify terms of the authorizing contract.

Statutory Authority for Adoption: RCW 28A.710.090.

Adopted under notice filed as WSR 13-03-156 on January 23, 2013.

Changes Other than Editing from Proposed to Adopted Version: Establishes an ongoing date of October 1 for a school district to submit a notice of intent to submit an authorizer application, except that a district seeking approval as an authorizer in 2013 must submit a notice of intent by April 1, 2013. In this and other provisions of rules to RCW 28A.710.090 the SBE adopted two timelines for authorizer approval - one for the first year only, in recognition of the late start on implementation of chapter 28A.710 RCW necessitated by the date of enactment of Initiative Measure No. 1240 and the time required by chapter 34.05 RCW for SBE rule making, and a second timeline for all subsequent years, starting at an earlier date and enabling more time for the entire cycle from authorizer approval through charter contracts. This change was requested by board members and members of the public.

Provides that a notice of intent is not an obligation to submit an authorizer application.

Requires SBE to post notices of intent on its public web site. This addition was made in response to public comment, for the purpose of greater transparency and more notice to potential charter applicants.

Establishes an ongoing date of October 1 for the SBE to post an authorizer application, except that the authorizer application for districts seeking approval in 2013 must be posted by April 1, 2013.

Provides that a school district seeking to be a charter school authorizer must submit the application by December 31, except that a district seeking approval in 2013 must submit the application by July 1, 2013. The proposed rules provided that a district needing approval in 2013 must submit the application by June 15. The adopted rules extended the date to July 1, after public comment, to give school districts additional time for this activity.

Requires SBE to post authorizer applications on its public web site. This addition was made in response to public comment in order to provide timely information to the public about potential authorizers.

Changes requirement that a district explain how the charter schools it wishes to authorize "would differ" in specific

features from the schools it currently operates, to how the charter schools "might differ," and reduces the specificity as to features.

Strikes "specific" with reference to the description of each indicator, measure and metric to be used in the district's draft performance framework. This change was made in response to public comment.

Clarifies that the performance data to be used for the district's proposed renewal, revocation and nonrenewal processes are "academic, financial and operational." This change was made in response to public comment.

Establishes an ongoing date of April 1 for the SBE to issue a decision on an authorizer application, except that for applications submitted for approval in 2013, the SBE shall issue a decision by September 12, 2013.

Provides that the SBE may require personal interviews for review of authorizer applications. This addition was made to increase the information available to the SBE in evaluating authorizer applications.

Replaces references to Initiative Measure No. 1240 with references to chapter 28A.710 RCW.

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

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

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

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

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

Date Adopted: February 26, 2013.

Ben Rarick
Executive Director

Chapter 180-19 WAC

CHARTER SCHOOLS

NEW SECTION

WAC 180-19-010 Definitions. (1) "Authorizer" shall have the same meaning as set forth in RCW 28A.710.010(3).

(2) "Authorizer application" or "application" means the form developed by the state board of education that must be completed and timely filed as set forth in these rules with the state board of education by a school district seeking approval to be a charter school authorizer.

(3) "Board" means the state board of education.

(4) "School district" or "district" means a school district board of directors.

NEW SECTION

WAC 180-19-020 Notice of intent to submit an authorizer application. A school district intending to file an application during a calendar year to be approved as a charter school authorizer must submit to the state board of education a notice of intent to file such application by October 1st of the prior year; provided, however, that a district seeking approval as an authorizer in 2013 must provide such notice of intent to submit an application by April 1, 2013. A district may not file an authorizer application in a calendar year unless it has filed a timely notice of intent as provided for herein. A notice of intent shall not be construed as an obligation to submit an application under these rules. The board shall post on its web site all notices of intent upon receipt.

NEW SECTION

WAC 180-19-030 Submission of authorizer application. (1) The state board of education shall develop and make available on its web site, no later than October 1st of each year, an "authorizer application" that must be used by school districts seeking to be approved as a charter school authorizer; provided, however, that the board shall make available on its web site the authorizer application for those districts seeking approval in 2013 by April 1, 2013. The application may include such attachments as deemed required by the board to support and complete the application.

(2) A school district seeking approval to be a charter school authorizer must submit an "authorizer application" to the state board of education by December 31st of the year in which the district seeks approval as an authorizer; provided, however, that a district application for approval to be a charter school authorizer in 2013 must be submitted to the board, as provided herein, no later than July 1, 2013. The district's completed application must be sent via electronic mail to sbe@k12.wa.us with the original hand delivered or mailed to the board at the following address:

Washington State Board of Education
600 Washington St. S.E.
Olympia, WA 98504

The original and electronic version of the application must be received by the board no later than the date provided above. The board shall post on its web site each application received from a school district.

(3) A school district must provide sufficient and detailed information regarding all of the following in the authorizer application submitted to the board:

(a) The district's strategic vision for chartering. The district must state the purposes that it expects to fulfill in being an authorizer of charter schools, with specific reference to the statutory purposes set forth in RCW 28A.710.005, as well as any district-specific purposes that are a particular priority for the district; the characteristics of the school or schools it is most interested in authorizing, while maintaining a commitment to considering all charter applicants based on the merits of their proposals and the likelihood of success; how the school or schools it wishes to authorize might differ from the schools the district currently operates with regard to such features as staffing, schedule, curriculum, and community

engagement; the educational goals it wishes to achieve; how it will give priority to serving at-risk students, as defined in RCW 28A.710.010(2), or students from low-performing schools; and how it will protect the autonomy and promote the accountability of the charter schools it oversees.

(b) A plan to support the vision presented, including explanations and evidence of the applicant's budget and personnel capacity and commitment to execute the responsibilities of quality charter authorizing. "Budget and personnel capacity" means the district's capability of providing sufficient assistance, oversight and monitoring to ensure that the charter schools it authorizes will meet all fiscal, academic and operational requirements under chapter 28A.710 RCW and comply with all applicable state and federal laws. A district's evidence of budget and personnel capacity shall consist, at a minimum, of a detailed description of the following:

(i) Staff resources to be devoted to charter authorizing and oversight under chapter 28A.710 RCW, in full-time equivalent employees, at a level sufficient to fulfill its authorizing responsibilities in accordance with the "Principles and Standards for Quality Charter Authorizing" developed by the National Association of Charter School Authorizers and the provision of chapter 28A.710 RCW;

(ii) Job descriptions and qualifications of district personnel with anticipated authorizing responsibilities under RCW 28A.710.030, demonstrating the district's access to competent and necessary expertise in all areas essential to charter school oversight including, but not limited to: School leadership; curriculum instruction and assessment; special education, English language learners, and other diverse learning needs; performance management; law, finance and facilities, through staff and any contractual relationships or interagency collaborations; and

(iii) An estimate, supported by verifiable data, of the financial needs of the authorizer and a projection of sufficient financial resources, supported by the authorizer oversight fee under RCW 28A.710.110 and any other resources, to carry out its authorizing responsibilities in accordance with National Principles and Standards developed by the National Association of Charter School Authorizers and the provisions of chapter 28A.710 RCW.

(c) A draft or preliminary outline of the request for proposal(s) that the district would, if approved as an authorizer, issue to solicit charter school applicants. The draft or preliminary outline of the request for proposal(s) shall meet all of the requirements set forth in RCW 28A.710.130 (1)(b) and demonstrate that the applicant intends to implement a comprehensive application process that follows fair procedures and rigorous criteria, and an evaluation and oversight process based on a performance framework meeting the requirements of chapter 28A.710 RCW.

(d) A draft of the performance framework that the district would, if approved as an authorizer, use to guide the establishment of a charter contract and for ongoing oversight and evaluation of charter schools. The draft of the performance framework shall, at a minimum, meet the requirements of RCW 28A.710.170(2) including descriptions of each indicator, measure and metric enumerated therein; and shall provide that student academic proficiency, student academic growth, achievement gaps in both proficiency and

growth, graduation rates, and postsecondary readiness are measured and reported in conformance with the achievement index developed by the state board of education under RCW 28A.657.110.

(e) A draft of the district's proposed renewal, revocation, and nonrenewal processes, consistent with RCW 28A.710.-190 and 28A.710.200. The draft provided must, at a minimum, provide for the implementation of transparent and rigorous processes that:

(i) Establish clear standards for renewal, nonrenewal, and revocation of charters it may authorize under RCW 28A.710.100;

(ii) Set reasonable and effective timelines for actions that may be taken under RCW 28A.710.190 and 28A.710.200;

(iii) Describe how academic, financial and operational performance data will be used in making decisions under RCW 28A.710.190 and 28A.710.200;

(iv) Outline a plan to take appropriate actions, or exercise sanctions short of revocation, in response to identified deficiencies in charter school performance or legal compliance, in accordance with the charter contract and the provisions of chapter 28A.710 RCW.

(4) A district must sign a statement of assurances submitted with its application, that shall be included as an attachment to the authorizing contract executed between the approved district and the state board of education, stating that it seeks to serve as an authorizer in fulfillment of the expectations, spirit, and intent of chapter 28A.710 RCW, and that if approved as an authorizer it will:

(a) Seek opportunities for authorizer professional development, and assure that personnel with significant responsibilities for authorizing and oversight of charter schools will participate in any authorizer training provided or required by the state;

(b) Provide public accountability and transparency in all matters concerning charter authorizing practices, decisions, and expenditures;

(c) Solicit applications for both new charter schools and conversion charter schools, while appropriately distinguishing the two types of charter schools in proposal requirements and evaluation criteria;

(d) Ensure that any charter school it oversees shall have a fully independent governing board and exercise autonomy in all matters, to the extent authorized by chapter 28A.710 RCW, in such areas as budget, personnel and educational programs;

(e) Ensure that any contract it may execute with the governing board of an approved charter school under RCW 28A.710.160 provides that the school will provide educational services to students with disabilities, students who are limited English proficient, and any other special populations of students as required by state and federal laws;

(f) Include in any charter contract it may execute with the governing board of an approved charter school, in accordance with RCW 28A.710.160(2), educational services that at a minimum meet the basic education standards set forth in RCW 28A.150.220.

NEW SECTION

WAC 180-19-040 Evaluation and approval or denial of authorizer applications.

(1) The board shall evaluate an application submitted by a school district seeking to be an authorizer and issue a decision approving or denying the application by April 1st of each year; provided, however, that the board shall issue a decision approving or denying a district's application timely submitted for approval in 2013 by no later than September 12, 2013. The state board may utilize the services of external reviewers with expertise in educational, organizational and financial matters in evaluating applications. The board may, at its discretion, require personal interviews with district personnel for the purpose of reviewing an application.

(2) For an application to be approved, the state board must find it to be satisfactory in providing all of the information required to be set forth in the application. The board will also consider whether the district's proposed policies and practices are consistent with the principles and standards for quality charter school authorizing developed by the National Association of Charter School Authorizers, as required by RCW 28A.710.100(3), in at least the following areas:

(a) Organizational capacity: Commit human and financial resources necessary to conduct authorizing duties effectively and efficiently;

(b) Solicitation and evaluation of charter applications: Implement a comprehensive application process that includes clear application questions and rigorous criteria, and grants charters only to applicants who demonstrate strong capacity to establish and operate a charter school;

(c) Performance contracting: Execute contracts with charter schools that articulate the rights and responsibilities of each party regarding school autonomy, funding, administration and oversight, outcomes, measures for evaluating success or failure, performance consequences, and other material terms;

(d) Ongoing charter school oversight and evaluation: Conduct contract oversight that competently evaluates performance and monitors compliance, ensures schools' legally entitled autonomy, protects student rights, informs intervention, revocation and renewal decisions, and provides annual reports as required by chapter 28A.710 RCW; and

(e) Charter renewal and revocation processes: Design and implement a transparent and rigorous process that uses comprehensive academic, financial and operational performance data to make merit-based renewal decisions, and revokes charters when necessary to protect student and public interests.

A determination that an application does not provide the required information, or does not meet standards of quality authorizing in any component, shall constitute grounds for disapproval.

(3) The state board of education shall post on its web site the applications of all school districts approved as authorizers. A school district approved as an authorizer shall post its application on a public web site.

(4) If the state board disapproves an application, it shall state in writing the reasons for the disapproval, with specific reference to the criteria established in these rules.

NEW SECTION

WAC 180-19-050 Authorizing contract. (1) If the board approves a district's application, it shall execute a renewable authorizing contract with the school district within thirty days of its decision. The contract shall specify the district's agreement to serve as an authorizer in accordance with the expectations of chapter 28A.710 RCW and specify additional performance terms based on the district's proposal and plan for chartering as set forth in its application.

(2) The statement of assurances submitted with an authorizer application shall be incorporated as an attachment to the authorizing contract and incorporated by reference as if fully set forth therein.

WSR 13-07-085**PERMANENT RULES****LIQUOR CONTROL BOARD**

[Filed March 20, 2013, 11:55 a.m., effective April 20, 2013]

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

Purpose: Initiative 1183 directed spirits retail licensees to pay to the board seventeen percent of their total spirits revenues on a quarterly basis. I-1183 also directed spirits distributors to pay to the board ten percent of their total spirits sales for the first two years and five percent each year thereafter. Distillers and craft distillers acting as a distributor of their own spirits products are required to pay the same license fees as the spirits distributors. The board adopted these rules in June 2012. Language needs to be added to these rules to allow the board to suspend or revoke the license of a licensee that fails to report and/or pay these fees.

Citation of Existing Rules Affected by this Order: Amending WAC 314-02-109, 314-23-022, and 314-28-080.

Statutory Authority for Adoption: RCW 66.24.630, 66.24.055, 66.24.145.

Other Authority: RCW 66.08.030.

Adopted under notice filed as WSR 13-04-001 on January 23, 2013.

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 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

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

Date Adopted: March 20, 2013.

Sharon Foster
Chairman

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

WAC 314-02-109 What are the quarterly reporting and payment requirements for a spirits retailer license?

(1) A **spirits retailer** must submit quarterly reports and payments to the board.

The required reports must be:

(a) On a form furnished by the board;

(b) Filed every quarter, including quarters with no activity or payment due;

(c) Submitted, with payment due, to the board on or before the twenty-fifth day following the tax quarter (e.g., Quarter 1 (Jan., Feb., Mar.) report is due April 25th). When the twenty-fifth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day; and

(d) Filed separately for each liquor license held.

(2) **What if a spirits retailer licensee fails to report or pay, or reports or pays late?** ~~((#)) Failure of~~ a spirits retailer licensee ~~((does not)) to~~ submit its quarterly reports and payment to the board as required in subsection (1) of this section ~~((; the licensee is subject to penalties))~~ will be sufficient grounds for the board to suspend or revoke the liquor license.

A penalty of two percent per month will be assessed on any payments postmarked after the twenty-fifth day quarterly report is due. When the twenty-fifth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day.

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

WAC 314-23-022 What if a distributor licensee fails to report or pay, or reports or pays late?

(1) ~~((#)) Failure of~~ a spirits distributor licensee ~~((does not)) to~~ submit its monthly reports and payment to the board as required in WAC 314-23-021(1) ~~((; the licensee is subject to penalties))~~ will be sufficient grounds for the board to suspend or revoke the liquor license.

(2) A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day.

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

WAC 314-28-080 What if a distillery or craft distillery licensee fails to report or pay, or reports or pays late?

~~((#)) Failure of~~ a distillery or craft distiller ~~((does not)) to~~ submit its monthly reports and payment to the board as required in WAC 314-28-070(1) ~~((; the licensee is subject to penalties))~~ will be sufficient grounds for the board to suspend or revoke the liquor license.

Penalties. A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day

of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day.