

WSR 09-17-004
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed August 6, 2009, 8:59 a.m., effective September 6, 2009]

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

Purpose: The department is creating WAC 388-501-0055 Healthcare coverage—How the department determines coverage of services for its healthcare programs using health technology assessments.

Statutory Authority for Adoption: RCW 74.08.090 and 70.14.090.

Adopted under notice filed as WSR 09-09-080 on April 15, 2009.

Changes Other than Editing from Proposed to Adopted Version:

- Deleted the word "client" in subsection (2)(d).
- Added more wording to subsection (3)(a), (b), (c), and (d) to better convey the purpose of the WAC cross references.

A final cost-benefit analysis is available by contacting Kevin Sullivan, P.O. Box 45504, Olympia, WA 98504-5504, phone (360) 725-1344, fax (360) 586-9727, e-mail sullikm@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: August 6, 2009.

Susan N. Dreyfus
Secretary

NEW SECTION

WAC 388-501-0055 Healthcare coverage—How the department determines coverage of services for its healthcare programs using health technology assessments. (1) The department uses health technology assessments in determining whether a new technology, new indication, or existing technology approved by the Food and Drug Administration (FDA) is a covered service under department healthcare programs. The department only uses health technology assessments when coverage is not mandated by federal or state law. A health technology assessment may be conducted by or on behalf of:

- (a) The department; or

(b) The health technology assessment clinical committee (HTACC) according to RCW 70.14.080 through 70.14.140.

(2) The department reviews available evidence relevant to a medical or dental service or healthcare-related equipment and uses a technology evaluation matrix, in order to:

- (a) Determine its efficacy, effectiveness, and safety;
 (b) Determine its impact on health outcomes;
 (c) Identify indications for use;
 (d) Identify potential for misuse or abuse; and
 (e) Compare to alternative technologies to assess benefit vs. harm and cost effectiveness.

(3) The department may determine the technology, device, or technology-related supply is:

- (a) Covered (See WAC 388-501-0060 for the scope of coverage for department medical assistance programs.);
 (b) Covered with authorization (See WAC 388-501-0165 for the process on how authorization is determined.);
 (c) Covered with limitations (See WAC 388-501-0169 for how limitations can be extended.); or
 (d) Noncovered (See WAC 388-501-0070 for the services determined to be noncovered.).

(4) The department may periodically review existing technologies, devices, or technology-related supplies and reassign authorization requirements as necessary according to the same provisions as outlined above for new technologies, devices, or technology-related supplies.

(5) The department evaluates the evidence and criteria presented by HTACC to determine whether a service is covered in accordance with WAC 388-501-0050(6) and (7) and this section.

WSR 09-17-013
PERMANENT RULES
SPOKANE REGIONAL
CLEAN AIR AGENCY

[Filed August 6, 2009, 11:29 a.m., effective September 8, 2009]

Effective Date of Rule: September 8, 2009.

Purpose: Add "moving a facility" to the definition of demolition. Define "facility." When someone presumes a material is asbestos-containing material (ACM) and it's not associated with an asbestos survey, the person making the determination must include a description, approximate quantity, and location of presumed ACM. Clarify the section on multiple asbestos projects/demolitions. Require that asbestos removal contractors submit a notification prior to removing ten or more linear feet of ACM, or forty-eight or more square feet of ACM, from an owner-occupied, single-family residence. Add a provision that allows the control officer to temporarily waive notification fees if a state of emergency is declared by an authorized local, state, or federal governmental agency. Clarify what constitutes the last completion date on record for purposes of filing an amendment. Limit the number of structures that can be filed on a single notification to five. Allow nonfriable roofing removal under the exception for hazardous conditions.

Citation of Existing Rules Affected by this Order: Amending SRCAA Regulation I, Article IX and Section 10.09.

Statutory Authority for Adoption: RCW 70.94.141(1), 70.94.380(2).

Other Authority: Chapter 70.94 RCW, 42 U.S.C. 7401 et seq., 42 U.S.C. 7412.

Adopted under notice filed as WSR 09-13-028 on June 8, 2009.

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.

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

Date Adopted: August 6, 2009.

Matt Holmquist
Compliance Administrator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 09-18 issue of the Register.

WSR 09-17-015

PERMANENT RULES

DEPARTMENT OF COMMERCE

[Filed August 6, 2009, 12:20 p.m., effective September 6, 2009]

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

Purpose: During the 2009 legislative session, the legislature passed SSB [SHB] 2042 (chapter 100, Laws of 2009) which made changes to the motion picture competitiveness program. Some of the statutory changes require an update to chapter 130-20 WAC. Additionally, the program has been under way for over two years and the department has proposed some rule updates based on program experience.

Citation of Existing Rules Affected by this Order: Amending WAC 130-20-010, 130-20-020, 130-20-030, and 130-20-060.

Statutory Authority for Adoption: RCW 43.365.020.

Adopted under notice filed as WSR 09-12-131 on June 3, 2009.

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

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

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

Date Adopted: August 5, 2009.

Rogers Weed
Director

AMENDATORY SECTION (Amending WSR 09-03-033, filed 1/12/09, effective 2/12/09)

WAC 130-20-010 Definitions. The following definitions apply to this chapter, unless the context clearly requires otherwise:

(1) "Applicant" means a television, film or commercial production company intending to produce a qualified production in Washington state.

(2) "Motion picture competitiveness program" means an approved program that is a 501 (c)(6) nonprofit organization with the ~~((sole))~~ primary purpose of revitalizing the state's standing in the film production marketplace through recommending and awarding financial assistance to qualified productions.

(3) "Costs" mean actual expenses of preproduction, production and postproduction expended in Washington state for the production of motion pictures, including but not limited to payments made for salaries, wages, and health insurance and retirement benefits, the rental/lease costs of machinery, equipment and facilities, and the purchase of food, property, lodging, and permits for work conducted in Washington state.

(4) "Department" means the department of ~~((community, trade, and economic development))~~ commerce.

~~((5))~~ "State film office" means a program within the department with the responsibility of promoting Washington state as a premier location for film and video production and assisting production needs within the state.

~~((6))~~ (5) "Motion picture" means a recorded audio-visual production intended for distribution to theaters, DVD, video, or the internet, or television, or one or more episodes of a single television series, television pilot or television commercials. Motion picture does not mean production of ~~((a television commercial that spends less than one hundred fifty thousand dollars in the state of Washington or))~~ one or more segments of a newscast or sporting event.

~~((7))~~ (6) "Funding assistance" means financial assistance from a motion picture competitiveness program.

~~((8))~~ (7) "Person" means the same as defined in RCW 82.04.030.

~~((9))~~ (8) "Qualified production" is a production that has been certified by the motion picture competitiveness program as fully meeting the requirements for funding assistance.

~~((10))~~ (9) "Qualified expenditures" include production costs for wages and benefits provided to residents of Washington state for services performed in Washington state,

goods and services purchased, leased or employed from a legal resident of this state, or a vendor or supplier who is located and doing business in this state for one year. Qualified expenditures do not include wages, salaries or other compensation for services of nonresident production personnel.

~~((H1))~~ (10) "Motion picture competitiveness board" means a board appointed by the governor that administers the motion picture competitiveness program. The board evaluates and awards funding assistance to motion picture projects pursuant to the guidelines of this chapter.

AMENDATORY SECTION (Amending WSR 09-03-033, filed 1/12/09, effective 2/12/09)

WAC 130-20-020 Eligibility criteria and guidelines.

(1) To qualify for funding assistance, the applicant must:

(a) Certify that it is not engaged, to any extent, in the production of erotic material, as defined in RCW 9.68.050.

(b) The end credits of a film production must acknowledge that the production was filmed in Washington state. The type and style of acknowledgment shall be negotiated between the motion picture competitiveness board and the production company.

(c) Agree to pay all obligations the film production company incurs in Washington state.

(d) Complete a survey as required in WAC 130-20-060 and file it with the ~~((state film office))~~ department following the completion of the part of the project covered by the contract with the competitiveness board and before distribution of the funding assistance.

(e) Make every effort to maximize the hiring of local cast, crew and support services.

(f) Make industry standard payments for health insurance and a retirement plan for those positions typically covered by a collective bargaining agreement; and

(g) Enter into a contract with the motion picture competitiveness program accepting the terms above.

(2) The following activities are considered, but not limited to, qualified expenditures, provided the expenditure occurs in Washington state:

(a) Production costs include costs for preproduction, production and postproduction.

(b) Salaries of Washington state residents who are cast and crew, including wages and payments for health insurance and retirement plans, or fees of Washington state residents to include talent, management and labor.

(c) Cost of set construction and operations, wardrobe, make-up, accessories, location fees and related services.

(d) Costs associated with photography, sound synchronization, lighting and related services and materials.

(e) Renting or leasing vehicles, equipment or facilities.

(f) In-state food, lodging, and per diems.

(g) Agency fees for insurance coverage and bonding if purchased from Washington state-based insurance agent.

(h) Postproduction expenditures directly attributable to the production of a motion picture or commercial for services including, but not limited to: Editing and related services, film processing, transfers of film to tape or digital format,

sound mixing, computer graphics services, special effects, animation services, and music.

(i) Legal and accounting fees and expenses related to the production's activities in Washington state, provided such services are performed by Washington state licensed attorneys or accountants.

(j) "Preproduction" means costs for standard activities directly related to the production, which are incurred prior to the first day of principal photography for a motion picture.

(k) Other direct or indirect costs of producing a film in accordance with the generally accepted entertainment industry practices if expenditures occurred in the state of Washington.

(l) Other costs the competitiveness program believes add economic benefit to the state of Washington.

(3) The board is encouraged to consider the following when considering certifying a production for funding assistance:

(a) The additional income and tax revenue to be retained in the state for general purposes.

(b) Creation and retention of family wage jobs that provide health insurance and payments into a retirement plan.

(c) The impact of projects to maximize in-state labor and use of in-state film production and film postproduction companies.

(d) The impact on the local economy and the state economy as a whole.

AMENDATORY SECTION (Amending WSR 09-03-033, filed 1/12/09, effective 2/12/09)

WAC 130-20-030 Funding assistance limits. (1) Maximum funding assistance from a motion picture competitiveness program is subject to the ~~((following))~~ limitations:

~~((a) No more than twenty percent of a total actual expenditure in the state of at least five hundred thousand dollars for a single feature film produced in Washington state.~~

~~((b) No more than twenty percent of a total actual expenditure in the state of at least three hundred thousand dollars per television episode produced in Washington state (e.g., television series, pilot, movie of the week).~~

~~((c) No more than twenty percent of a total actual expenditure in the state of at least one hundred fifty thousand dollars for an infomercial or television commercial produced in Washington state)) as specified in RCW 43.365.020.~~

(2) Funding assistance is subject to the amount available in the account managed by the motion picture competitiveness program.

AMENDATORY SECTION (Amending WSR 09-03-033, filed 1/12/09, effective 2/12/09)

WAC 130-20-060 Survey requirement. In order to recognize the accountability and effectiveness of tax policy, the legislature requires that each production receiving funding assistance from the motion picture competitiveness program shall report information to the ~~((state film office))~~ department through a survey.

(1) The motion picture competitiveness program shall ensure that no funds are disbursed until an applicant submits

answers to a survey developed by the ~~((state film office))~~ department.

(2) The ~~((state film office))~~ department will make available on its web site a survey template.

(3) The motion picture competitiveness program may extend the due date for timely filing of the survey if failure to file was the result of circumstances beyond the control of the motion picture production receiving the funding assistance.

(4) Surveys shall include the following information:

(a) The amount of funding assistance requested.

(b) The total amount of preproduction, production and postproduction spending made in the state.

(c) The number of total employment positions.

(d) The number of full-time and part-time/temporary employment positions as a percent of total employment.

(i) Full-time employment is forty hours or more per week, or positions held for the full shooting schedule;

(ii) Part-time/temporary employment is for positions held for less than the full shooting schedule.

(e) The number of jobs at the wage bands of less than thirty thousand dollars, thirty thousand to sixty thousand dollars, and sixty thousand dollars and greater per production.

(f) The number of jobs that have employer-provided health insurance and payments into a retirement plan by each wage band.

(g) Additional information as requested by the department ~~((or state film office))~~.

~~((5)) The state film office will continue to track total production spending of projects, monitor the state's competitiveness in the national marketplace, and continue to build partnerships that streamline the delivery of production services statewide.~~

~~((6))~~ (5) The department shall submit a summary of descriptive statistics based on information from the survey ~~((each year))~~ by September 1 of even-numbered years.

~~((7))~~ (6) The department shall provide the complete surveys to the joint legislative audit and review committee each year by September 1.

WSR 09-17-035

PERMANENT RULES

DEPARTMENT OF

RETIREMENT SYSTEMS

[Filed August 10, 2009, 11:27 a.m., effective September 10, 2009]

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

Purpose: The purpose of this rule-making order is to adopt new WAC 415-104-482 What is the LEOFF Plan 2 catastrophic disability allowance? HB 2932 (2006) provided a benefit for members of the law enforcement officers' and fire fighters' retirement system (LEOFF) Plan 2 who incur a catastrophic disability in the line of duty. To be eligible for this benefit, a LEOFF Plan 2 member must be totally disabled in the line of duty so that he or she is unable to perform any substantial gainful activity, and the disability is expected to last for at least twelve months or result in death. If eligible, the member will receive an allowance equal to 70% of his or her final average salary.

Statutory Authority for Adoption: RCW 41.50.050(5).

Other Authority: RCW 41.26.470.

Adopted under notice filed as WSR 09-13-013 on June 4, 2009.

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.

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

Date Adopted: August 10, 2009.

Steve Hill

Director

NEW SECTION

WAC 415-104-482 What is the LEOFF Plan 2 catastrophic disability allowance? Under RCW 41.26.470, two types of disability retirement are available to members of LEOFF Plan 2 who become disabled in the line of duty: Duty disability retirement benefits as described in WAC 415-104-480 and catastrophic disability retirement benefits as described in this section. If you are not eligible for a catastrophic disability allowance under this section, you may still be eligible for duty disability benefits.

(1) **Am I eligible for a catastrophic disability allowance?** You are eligible for a catastrophic disability allowance if the department determines all of the following are true:

(a) You incurred a physical or mental disability in the line of duty, as defined in subsection (13) of this section;

(b) You separated from LEOFF-eligible employment due to your disability;

(c) Your disability is so severe that you are unable to do your previous LEOFF eligible work, and considering your education, transferable skills, and work experience, you cannot engage in any other kind of substantial gainful activity in the labor market;

(d) Your condition has lasted or is expected to last at least twelve months, or your condition is expected to result in death; and

(e) Your disability is not the result of your criminal conduct committed after April 21, 1997. See RCW 41.26.061.

(2) **If I am receiving a retirement allowance for service, can I qualify for a catastrophic disability allowance?** You are eligible for a catastrophic disability allowance in lieu of your service retirement allowance if the department determines you separated from LEOFF-eligible service due to a duty disability and you otherwise meet the eligibility requirements in subsection (1) of this section.

(3) **How do I request a catastrophic disability allowance?** To request a catastrophic disability allowance, please contact the LEOFF unit at the department of retirement systems. You, your physician, and your employer will be required to provide information regarding your catastrophic disability.

(4) **What information will the department use to determine whether I am entitled to an allowance under this section?** The department will consider information submitted by you, your physician, and your employer, and information otherwise available to the department, including:

- (a) Medical and vocational information;
- (b) Information from and determinations made by the department of labor and industries, the Social Security Administration, or a self-insurer;
- (c) Your job description at the time you separated from LEOFF Plan 2 service;
- (d) Financial records;
- (e) Your membership records, maintained by the department; and
- (f) Any other relevant information.

(5) **Who determines my eligibility?** The LEOFF plan administrator determines your eligibility for a catastrophic disability benefit. The plan administrator will rely substantially on determinations that have been made by the Social Security Administration unless there is information available that would produce a different determination.

(6) **What are my options if my request is denied?** If your request is denied, you have the following options:

- (a) You may apply for duty disability benefits under WAC 415-104-480; and/or
- (b) You may petition for review under chapter 415-04 WAC.

(7) **If my request is approved, when will my monthly allowance begin to be paid?** If your request is approved, you will begin to receive a catastrophic disability allowance in the month following the approval. Your first payment will include a retroactive payment of benefits that have accrued, but not yet been paid. The date your allowance for catastrophic disability accrues is determined as follows:

(a) If you separated from LEOFF Plan 2 employment due to a catastrophic disability, your allowance will accrue from the first of the month following your separation date.

(b) If you are receiving a duty disability allowance or a service retirement allowance, and you are subsequently approved for a catastrophic disability, your allowance will accrue from:

(i) The first of the month following the month in which a specific, one-time event, verified by medical records, occurred that clearly caused your duty disability to become a catastrophic disability; or

(ii) If the department determines there is not a one-time event that caused your disability to become catastrophic, the first of the month following the month in which the department receives your request for a catastrophic disability allowance.

Example: John has been receiving a duty-disability allowance under WAC 415-104-480 since June 1, 2005, when he separated service as a firefighter

due to a back injury he incurred in the line of duty.

Example of (b)(i) of this subsection: A one-time event. On January 15, 2007, John accidentally twisted his back causing a catastrophic disability. Because John's catastrophic disability was clearly the result of a specific one-time event, his catastrophic disability allowance will accrue from February 1, 2007, the first of the month following the month in which the event occurred.

Example of (b)(ii) of this subsection: No specific event. John's back gradually worsened until his disability qualified as a catastrophic disability. On May 15, 2007, John applied for a catastrophic disability allowance. His allowance will accrue from June 1, 2007, the first of the month following the month the department received his application.

(8) **How much is a catastrophic disability allowance?** The base catastrophic disability allowance is equal to seventy percent of your final average salary (FAS).

(a) Your allowance combined with other disability benefits, such as Title 51 RCW benefits or Social Security disability benefits, may not exceed one hundred percent of your FAS. If necessary, your catastrophic disability allowance will be reduced so that your combined allowance does not exceed one hundred percent of your FAS. Your catastrophic disability allowance will not be reduced below your accrued retirement allowance as defined in subsection (13) of this section.

(b) If you choose a benefit option with a survivor feature as described in WAC 415-104-215, the allowance calculated in (a) of this subsection will be actuarially reduced to cover the cost of providing benefits over two lifetimes.

(c) If you have been retired for at least one year by July 1st of each year, you will receive a cost-of-living adjustment each July 1 based on the percentage change, if any, in the consumer price index.

Example: Michael separates from service on June 1, 2005, and is approved for a catastrophic disability allowance. Since his FAS is \$5,800, Michael's catastrophic disability allowance from the department is \$4,060 per month ($\$5,800 \times 70\% = \$4,060$). Michael is also approved for a Social Security benefit in the amount of \$1,800 per month. Michael's combined benefit equals \$5,860 ($\$4,060 + \$1,800$). This is \$60 over 100% of his FAS ($\$5,860 - \$5,800$), so Michael's catastrophic disability benefit will be reduced by that amount; his new monthly benefit from the department is \$4,000 ($\$4,060 - \60). In January 2006, Michael received a 4.1% COLA for his Social Security benefit. The department will recalculate his benefit as follows:

January 2006 Social Security benefit, with COLA	$\$1,800 \times 4.1\% = \$73.80 + \$1,800$	= \$1,873.80
Total combined benefit	$\$4,060 + \$1,873.80$	= \$5,933.80

Amount over 100% of FAS	\$5,933.80 - \$5,800	= \$133.80
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Since Michael's combined benefit is \$133.80 over 100% of his FAS, his catastrophic disability benefit will be reduced by that amount. His new monthly benefit from the department is \$3,926.20 (\$4,060 - \$133.80). Michael's benefit cannot be reduced more than the amount of his accrued retirement allowance. To determine his accrued retirement allowance, the department multiplies Michael's FAS, \$5,800, by his years of service credit, 30, by 2% (\$5,800 x 30 x 2%). Michael's accrued retirement allowance is \$3,480. Since his benefit does not fall below his retirement allowance, Michael will receive \$3,926.20 from the department per month. In July 2006, Michael received a 3% COLA for his catastrophic disability benefit. The department will recalculate his benefit as follows:

July 2006 catastrophic disability benefit, with COLA	$\$5,800 \times 3\% = \$174 + \$5,800 = \$5,974 \times 70\%$	= \$4,181.80
Total combined benefits	$\$4,181.80 + \$1,873.80$	= \$6,055.60
Amount over 100% of FAS	$\$6,055.60 - \$5,974$	= \$81.60

Since Michael's combined benefit is \$81.60 over 100% of his FAS, his catastrophic disability benefit will be reduced by that amount. His new monthly benefit from the department is \$4,100.20 (\$4,181.80 - \$81.60). This is compared to his accrued retirement allowance, \$3,584.40 (\$5,974 x 30 x 2%); since his benefit does not fall below his retirement allowance, Michael will receive \$4,100.20 from the department per month.

(9) Is my catastrophic disability allowance taxable? You should consult with your tax advisor regarding all payments you receive from the department. The department does not:

- (a) Guarantee that payments are exempt from federal income tax;
- (b) Guarantee that it was correct in withholding or not withholding taxes from disability payments;
- (c) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its determination; or
- (d) Assume any liability for your compliance with the Internal Revenue Code.

(10) If I withdrew my contributions prior to December 2, 2004, and am approved for a catastrophic disability allowance, what will I receive? You may apply for a catastrophic disability allowance even if you withdrew your accumulated contributions prior to December 2, 2004. If you are approved for a catastrophic disability allowance, your monthly allowance will be calculated as follows:

(a) If you repay the entire amount you withdrew in a lump sum payment, you will receive a monthly allowance calculated according to subsection (8) of this section.

(b) If you do not repay the entire amount you withdrew, your monthly allowance will be actuarially reduced to offset the amount of your previous withdrawal.

(11) Can my catastrophic disability allowance be discontinued? Your catastrophic disability allowance will be discontinued if:

- (a) Medical/vocational examination reveals that your disability no longer prevents you from performing substantial gainful activity; or
- (b) Your earnings exceed the threshold for substantial gainful activity.

The department may require comprehensive medical/vocational examinations and/or submission of earnings information to evaluate your eligibility for continued benefits according to the provisions of RCW 41.26.470. You are required to contact the department if your medical/vocational or financial situation changes.

(12) If my catastrophic disability allowance terminates, may I qualify for duty disability benefits? If you are no longer eligible for a catastrophic disability allowance, but have a disability that prevents you from returning to a LEOFF-eligible position, the department will determine if you qualify for duty disability benefits under WAC 415-104-480.

(a) The department may request additional information from you, your physician, or others upon which to base the determination.

(b) If the department determines you are eligible, you will begin receiving a duty disability allowance under WAC 415-104-480 in lieu of your catastrophic disability allowance.

(13) Definitions. As used in this section:

(a) **Accrued retirement allowance** means a duty disability monthly allowance under WAC 415-104-480.

(b) **Earnings** are any income or wages received, which are reportable as wages or self-employment income on IRS form 1040.

(c) **Labor market** is the geographic area within reasonable commuting distance of where you were last gainfully employed or where you currently live, whichever provides the greatest opportunity for gainful employment.

(d) **Line of duty** means any action or activity performed in the service of your employer that is required or authorized by law, rule, regulations, or condition of employment or service.

(e) **Substantial gainful activity** means any activity that produces average earnings, as defined in (b) of this subsection, in excess of eight hundred sixty dollars a month in 2006, adjusted annually as determined by the department based on federal Social Security disability standards. Wages count toward earnings when they are earned, not when you receive them. Self-employment income counts when you receive it, not when you earn it.

(f) **Transferable skills** are any combination of learned or demonstrated behavior, education, training, work traits, and skills that you can readily apply. They are skills that are interchangeable among different jobs and workplaces.

WSR 09-17-044
PERMANENT RULES
BOARD OF ACCOUNTANCY

[Filed August 11, 2009, 9:05 a.m., effective September 11, 2009]

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

Purpose: WAC 4-25-830: (1) Subsections (1)(a) and (7), to clarify continuing professional education (CPE) requirements for individuals. CPE taken prior to initial licensure cannot be used for licensing or renewal purposes. This proposal aligns the rule with WAC 4-25-831(7); and (2) subsection (8), to require CPE extension requests be submitted no later than December 31 of the year preceding the year of renewal.

WAC 4-25-831: (1) Subsection (8), to clarify that credit for self-study CPE is allowed for initial licensure as well as for renewal; (2) subsection (12), to correct a reference to WAC 4-25-830(9). WAC 4-25-830(9) no longer exists. The correct reference should be to WAC 4-25-830(8); and (3) subsection (12), to align the language with WAC 4-25-830 that refers to "extensions" and with the current practice for imposing sanctions.

Citation of Existing Rules Affected by this Order: Amending WAC 4-25-830 and 4-25-831.

Statutory Authority for Adoption: RCW 18.04.055(7) and 18.04.215.

Adopted under notice filed as WSR 09-12-016 on May 21, 2009.

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

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

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

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

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

Date Adopted: July 28, 2009.

Richard C. Sweeney
Executive Director

AMENDATORY SECTION (Amending WSR 08-18-016, filed 8/25/08, effective 9/25/08)

WAC 4-25-830 What are the CPE requirements for individuals? (1) The following CPE is required for individuals during the three calendar year period prior to renewal:

(a) An individual licensed to practice in this state must complete a total of 120 CPE ((credit)) hours ((which is limited to 24 CPE credit hours in nontechnical subject areas and must include)), including 4 CPE credit hours in an approved Washington ethics and regulations course meeting the requirements of subsection (3) of this section. The total 120 CPE hours requirement is limited to no more than 24 CPE

credit hours in nontechnical subject areas. All qualifying CPE hours must be taken after the date your initial CPA license was issued;

(b) A CPA-Inactive certificateholder or a resident non-licensure firm owner must complete 4 CPE credit hours in ethics meeting the requirements of subsection (3) of this section; and

(c) Individuals holding practice privileges are exempt from the CPE requirements of this section.

(2) **CPE requirements for renewal of a license that was issued less than three years before the end of a CPA-Inactive certificate renewal cycle:** When you convert your status from a CPA-Inactive certificateholder to a licensee, your CPE reporting period (the three calendar year period prior to renewal) and renewal cycle will remain the same. The CPE requirements for renewal are as follows:

(a) If your license was issued during the first calendar year of your CPE reporting period, you must have completed 80 CPE credit hours which is limited to 16 CPE credit hours in nontechnical subject areas and must include 4 CPE credit hours in ethics meeting the requirements of subsection (3) of this section.

(b) If your license was issued during the second calendar year of your CPE reporting period, you must have completed 40 CPE credit hours which is limited to 8 CPE credit hours in nontechnical subject areas and must include 4 CPE credit hours in ethics meeting the requirements of subsection (3) of this section.

(c) If your license was issued during the third calendar year of your CPE reporting period, you must have completed 4 CPE credit hours in ethics meeting the requirements of subsection (3) of this section.

(3) **Ethics and regulations applicable to practice in Washington state:** During each CPE reporting period all individuals licensed in this state, individual CPA-Inactive certificateholders in this state, and resident nonlicensee firm owners are required to complete 4 CPE credit hours in approved ethics and regulations with specific application to the practice of public accounting in Washington state. In order to be approved by the board, the CPE sponsor or instructor must submit documentation associated with the ethics and regulations CPE to the board for approval and the sponsor or instructor must obtain written approval from the board. The ethics and regulations CPE must cover all of the following topics, and the ethics and regulations CPE must substantially address these topics:

(a) Chapter 18.04 RCW and chapter 4-25 WAC. The CPE must include general level information on the Public Accountancy Act, the board's rules, policies, and the rule-making process.

(b) WAC 4-25-521 How can I contact the board?

(c) WAC 4-25-550 Do I need to notify the board if I change my address?

(d) WAC 4-25-551 Must I respond to inquiries from the board?

(e) WAC 4-25-600 Series—Ethics and prohibited practices. The CPE must include detailed information on each rule and all related board policies.

(f) WAC 4-25-800 Series—Continuing competency. The CPE must include detailed information on each rule and all related board policies.

(g) WAC 4-25-910 What are the bases for the board to impose discipline?

(h) AICPA Code of Conduct: The CPE must include general level information on the AICPA Code of Conduct.

(i) Variances or key differences between Washington state law (chapter 18.04 RCW and chapter 4-25 WAC) and the AICPA Code of Conduct.

(j) Other topics or information as defined by board policy.

(4) CPE requirements to renew a retired license or CPA-Inactive certificate:

(a) In order to renew a retired license you must meet the CPE requirements of subsection (1)(a) of this section within the thirty-six month period immediately preceding the date the renewal application is received by the board; however, the four CPE hours in ethics meeting the requirements of subsection (3) of this section must be completed within the six-month period immediately preceding the date your renewal application was received by the board.

(b) In order to renew a retired CPA-Inactive certificate, you must meet the CPE requirements of subsection (1)(b) of this section within the six-month period immediately preceding the date your renewal application was received by the board.

(5) CPE requirements for a CPA-Inactive certificate-holder to either qualify to apply for a license or return to their previously held status as a licensee: If you hold a valid CPA-Inactive certificate and you wish to apply for a license or you want to return to your previously held status as a licensee, you must meet the CPE requirements of subsection (1)(a) of this section within the thirty-six month period immediately preceding the date your application is received by the board.

(6) Reinstatement of a lapsed, suspended, or revoked license, certificate, or registration as resident nonlicensee firm owner:

(a) If you seek to reinstate a lapsed, suspended, or revoked license, you must satisfy the requirements of subsection (1)(a) of this section within the thirty-six month period immediately preceding the date the application for reinstatement was received by the board; however, the four CPE hours in ethics meeting the requirements of subsection (3) of this section must be completed within the six-month period immediately preceding the date your application for reinstatement was received by the board.

(b) If you seek to reinstate a lapsed, suspended, or revoked CPA-Inactive certificate, or registration as a resident nonlicensee firm owner, you must satisfy the requirements of subsection (1)(b) of this section within the six-month period immediately preceding the date your application for reinstatement was received by the board.

(7) Reciprocity: If you are applying for an initial Washington state CPA license under the reciprocity provisions of the act, you must satisfy the requirements in subsection (1)(a) of this section, after you were licensed as a CPA and within the thirty-six month period immediately preceding the date your application was received by the board. For purposes of

initial licensure, you do not need to satisfy the ethics requirements of subsection (1)(a) of this section. Thereafter, in order to renew your Washington state license, you must comply with all the renewal requirements in subsection (1)(a) of this section.

(8) CPE extension request: In order to renew your license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner, you must complete the required CPE by the end of the CPE reporting period preceding your renewal unless you can demonstrate your failure to meet the CPE requirements was due to reasonable cause. The board may provide limited extensions to the CPE requirements for reasons of individual hardship including, but not limited to, financial hardship, critical illness, or active military deployment. You must request such an extension in writing by the end of the CPE reporting period. The request must include justification for the request and identify the specific CPE you plan to obtain to correct your CPE deficiency.

A form useful for this purpose is available from the board's web site or will be provided to you upon request.

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-831 What are the program standards for CPE? (1) Qualifying program: A program qualifies as acceptable CPE for purposes of RCW 18.04.215(5) if it is a formal program of learning which contributes to the CPA's professional knowledge and competence. A formal program means:

- The program is at least fifty minutes in length;
- Attendance is recorded;
- Participants sign in to confirm attendance and, if the program is greater than four credit hours, participants sign out during the last hour of the program; and
- Attendees are provided a certificate of completion.

(2) Undergraduate and graduate courses: A graduate or undergraduate course qualifies for CPE credit if it meets the standards in subsections (1) and (5) of this section. For both undergraduate and graduate courses one quarter credit equals 10 CPE credit hours and one semester credit equals 15 CPE credit hours.

(3) Committee meetings: Generally, CPE credit is not allowed for attending committee meetings. A meeting qualifies for CPE credit only if it meets the standards in subsections (1) and (5) of this section.

(4) CPE credit hours for volunteer service on the board and its committees and volunteer service on board approved peer review committees: You may receive up to thirty-two hours of technical CPE credit each calendar year for actual time spent on board, board committee, or board approved peer review committee activities.

(5) Subject areas: Programs dealing with the following general subject areas are acceptable so long as they meet the standards in subsection (1) of this section:

(a) Technical subjects include:

- (i) Auditing standards or procedures;
- (ii) Compilation and review of financial statements;
- (iii) Financial statement preparation and disclosures;
- (iv) Attestation standards and procedures;

- (v) Projection and forecast standards or procedures;
 - (vi) Accounting and auditing;
 - (vii) Management advisory services;
 - (viii) Personal financial planning;
 - (ix) Taxation;
 - (x) Management information services;
 - (xi) Budgeting and cost analysis;
 - (xii) Asset management;
 - (xiii) Professional ethics (other than those programs used to satisfy the requirements of WAC 4-25-830(3));
 - (xiv) Specialized areas of industry;
 - (xv) Human resource management;
 - (xvi) Economics;
 - (xvii) Business law;
 - (xviii) Mathematics, statistics, and quantitative applications in business;
 - (xix) Business management and organization;
 - (xx) General computer skills, computer software training, information technology planning and management; and
 - (xxi) Negotiation or dispute resolution courses;
- (b) Nontechnical subjects include:**
- (i) Communication skills;
 - (ii) Interpersonal management skills;
 - (iii) Leadership and personal development skills;
 - (iv) Client and public relations;
 - (v) Practice development;
 - (vi) Motivational and behavioral courses; and
 - (vii) Speed reading and memory building.

Subjects other than those listed above may be acceptable provided you can demonstrate they contribute to your professional competence. You are solely responsible for demonstrating that a particular program is acceptable.

(6) Group programs: You may claim CPE credit for group programs such as the following so long as the program meets the standards in subsections (1) and (5) of this section:

- (a) Professional education and development programs of national, state, and local accounting organizations;
- (b) Technical sessions at meetings of national, state, and local accounting organizations and their chapters;
- (c) Formal in-firm education programs;
- (d) Programs of other organizations (accounting, industrial, professional, etc.);
- (e) Dinner, luncheon, and breakfast meetings which are structured as formal educational programs;
- (f) Firm meetings for staff and/or management groups structured as formal education programs. Portions of such meetings devoted to communication and application of general professional policy or procedure may qualify, but portions devoted to firm administrative, financial and operating matters generally will not qualify.

(7) CPE credit: CPE credit is allowable only for those programs taken after the issuance of the CPA license. Credit is not allowed for programs taken to prepare an applicant for the ethics examination as a requirement for initial licensure. CPE credit is given in half-hour increments only after the first full CPE credit hour has been earned. A minimum of fifty minutes constitutes one CPE credit hour and, after the first fifty-minute segment has been earned, twenty-five minutes constitutes one-half CPE credit hour. For example:

- Twenty-five minutes of continuous instruction counts as zero CPE credit hour;
- Fifty minutes of continuous instruction counts as one CPE credit hour; and
- Seventy-five minutes of continuous instruction counts as one and one-half CPE credit hours.

Attendees obtain CPE credit only for time spent in instruction; no credit is allowed for preparation time.

(8) Self-study programs: Credit for self-study programs is allowed ~~((in the renewal period in which))~~ for reporting purposes on the date you completed the program as established by the evidence of completion provided by the program sponsor.

(a) Interactive self-study programs: The amount of credit allowed for interactive self-study is that which is recommended by the program sponsor on the basis of the average completion time under appropriate "field tests." In order to claim CPE credit for interactive self-study programs, you must obtain evidence of satisfactory completion of the course from the program sponsor.

(b) Noninteractive self-study programs: The amount of credit allowed for noninteractive self-study is one-half the average completion time as determined by the program sponsor on the basis of appropriate "field tests." To claim CPE credit for noninteractive self-study programs, you must obtain evidence of satisfactory completion of the course from the program sponsor.

(9) Instructor, discussion leader, or speaker: If you serve as an instructor, discussion leader or speaker at a program which meets the standards in subsections (1) and (5) of this section, the first time you present the program you may claim CPE credit for both preparation and presentation time. One hour of credit is allowed for each fifty minutes of instruction. Additionally, you may claim credit for actual preparation time up to two times the presentation hours. No credit is allowed for subsequent presentations. A maximum of seventy-two CPE credit hours are allowed for preparation and presentation during each CPE reporting period.

(10) Published articles, books: You may claim CPE credit for published articles and books, provided they contribute to your professional competence. Credit for preparation of such publications may be claimed on a self-declaration basis for up to thirty hours in a CPE reporting period. In exceptional circumstances, you may request additional credit by submitting the article(s) or book(s) to the board with an explanation of the circumstances that justify a greater credit. The amount of credit awarded for a given publication will be determined by the board.

(11) Carry-forward: CPE credit hours you complete during one period cannot be carried forward to the next period.

(12) Carry-back: As specified in WAC 4-25-830~~((9))~~ (8), CPE credit hours you complete during one period can be carried back to the previous reporting period only after the board has approved your extension request ((to carry-back CPE credit hours)) or has required the carry-back as part of sanctions for failure to complete required CPE.

(13) Credential examination: You may not claim CPE credit for preparing for or taking a credential examination unless you complete a formal review course and receive a

certificate of completion meeting the requirements of WAC 4-25-833. CPE credit may not be claimed for CPA examination review courses.

WSR 09-17-053
PERMANENT RULES
NURSING CARE QUALITY
ASSURANCE COMMISSION

[Filed August 13, 2009, 9:41 a.m., effective September 13, 2009]

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

Purpose: Create a rule that allows issuance of temporary practice permits to applicants from out-of-state while the application is pending completion of the fingerprinting process. 4SHB 1103 (chapter 124, Laws of 2008) requires a fingerprint pilot project for applicants with an out-of state address. The program needs to implement temporary practice permits to facilitate the lengthy delays in the licensing process.

Statutory Authority for Adoption: RCW 18.130.075 and 18.130.064.

Adopted under notice filed as WSR 09-09-033 on April 7, 2009.

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 1, Amended 0, Repealed 0.

Date Adopted: August 13, 2009.

Paula R. Meyer, MSN, RN
Executive Director

NEW SECTION

WAC 246-840-095 Temporary practice permits. A new rule is needed to create a temporary practice permit. The nursing care quality assurance commission (NCQAC) conducts background checks on applicants to assure safe patient care. Completion of a national criminal background check may require additional time. The NCQAC may issue a temporary practice permit when the applicant is licensed in another state with licensing standards substantially equivalent to Washington. The applicant must not be subject to denial of a license or issuance of a conditional license under this chapter.

(1) If there are no violations identified because of the preliminary background check, and the applicant meets all

other licensure conditions, the NCQAC may issue a temporary practice permit allowing time to complete the national criminal background check requirements.

The NCQAC issues a temporary practice permit valid for six months. At the fifth month, if the department of health has not received information from the Federal Bureau of Investigations (FBI), the applicant must contact the NCQAC office.

A one time extension of six months may be granted for good cause documented as beyond the control of the applicant. The applicant must file a request for extension petition with the department of health indicating their fingerprint card has not been received from the FBI. The request must be filed at least thirty days before the temporary practice permit expires.

(2) The temporary practice permit allows the applicant to work in the state of Washington as a nurse during the time period specified on the permit. The temporary practice permit serves as a license to practice nursing.

(3) The NCQAC issues a license after it receives the national background check report if the report is negative and the applicant otherwise meets the requirements for a license.

(4) The temporary practice permit is no longer valid after the license is issued or action is taken on the application because of the background check.

WSR 09-17-056
PERMANENT RULES
DEPARTMENT OF PERSONNEL

[Filed August 13, 2009, 9:50 a.m., effective September 16, 2009]

Effective Date of Rule: September 16, 2009.

Purpose: E2SSB 5688 passed during the 2009 legislative session. This bill states that agencies shall amend their rules to grant or impose all privileges, immunities, rights, benefits, or responsibilities granted or imposed by statute to an individual because they are a spouse in a marital relationship are to be granted or imposed on equivalent terms to an individual because that individual is in a state registered domestic partnership.

Citation of Existing Rules Affected by this Order: Amending WAC 357-31-330, 357-31-373, 357-31-525, 357-31-395, 357-31-567, 357-46-060, 357-58-475, 357-31-535, 357-31-520, and 357-31-230.

Statutory Authority for Adoption: Chapter 41.06 RCW. Adopted under notice filed as WSR 09-14-129 on July 1, 2009.

Changes Other than Editing from Proposed to Adopted Version: WAC 357-31-525 added language to include subsequent regulations for FMLA eligibility. WAC 357-31-520 and 357-31-535 changed language to clarify FMLA for a registered domestic partner is not counted towards the twelve week FMLA entitlement.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 10, Repealed 0.

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

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

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

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

Date Adopted: August 13, 2009.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 09-03-013, filed 1/9/09, effective 2/13/09)

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 09-03-014, filed 1/9/09, effective 2/13/09)

WAC 357-31-330 For what reasons may an employer grant leave without pay? Leave without pay may be

allowed for any of the following reasons in accordance with the employer's leave policy:

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

(2) Educational leave;

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

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

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

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

(7) Bereavement or condolence;

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

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

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

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

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

(13) Employees receiving time loss compensation.

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

WAC 357-31-373 Is an employee whose spouse or registered domestic partner is a member of the armed forces of the United States entitled to take leave from work when the military spouse or registered domestic partner has been called to active duty or when the military spouse or registered domestic partner is on leave from deployment? (1) During a period of military conflict, an employee who is a spouse or registered domestic partner of a member of the armed forces of the United States, National Guard, or reserves who has been notified of an impending call or order to active duty or has been deployed is entitled to a total of fifteen days of unpaid leave per deployment. The employee is entitled to the fifteen days of unpaid leave after the military spouse or registered domestic partner has been notified of an impending call or order to active duty and before deployment or when the military spouse or registered domestic partner is on leave from deployment. The employee may choose to substitute accrued leave to which the employee is entitled for any part of the leave without pay.

(2) An employee who seeks leave under this section must provide the employer with notice:

(a) Within five business days of the employee's spouse or registered domestic partner receiving official notice of an impending call or order to active duty; or

(b) Within five business days of the employee's spouse or registered domestic partner receiving official notice of leave from deployment.

AMENDATORY SECTION (Amending WSR 09-11-066, filed 5/14/09, effective 6/16/09)

WAC 357-31-525 What is an employee entitled to under the Family and Medical Leave Act of 1993? (1) The Family and Medical Leave Act of 1993 (29 USC 2601 et seq) and its implementing rules, 29 CFR Part 825, and additional amendments and subsequent regulations provide that an eligible employee must be granted, during a twelve-month period, a total of twelve work weeks of absence:

(a) As a result of the employee's serious health condition;
 (b) To care for an employee's parent, spouse, or minor/dependent child who has a serious health condition;

(c) For the birth of and to provide care to an employee's newborn, adopted or foster child as provided in WAC 357-31-460; and/or

(d) Due to a qualifying exigency (as described in the Family and Medical Leave Act of 1993 and its amendments (29 USC 2601 et seq) and its implementing rules, 29 CFR Part 825) arising from the fact that the employee's spouse, child of any age, or parent is on active duty or has been notified of pending call to active duty in the armed forces in support of a contingency operation.

(i) This subsection only applies if the spouse, child, or parent of the employee is a member of the National Guard or Reserves, and certain retired members of the regular armed forces and retired reserves. This section does not apply if the spouse, child, or parent of the employee is a member of the regular armed forces on active duty.

(ii) This section only applies to federal calls to active duty.

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

(a) For purposes of this section, "next of kin" with respect to an individual means the nearest blood relative of that individual other than the individual's spouse, parent, or child in the following order of priority:

(i) Blood relatives who have been granted legal custody of the service member;

(ii) Siblings;

(iii) Grandparents;

(iv) Aunts and uncles;

(v) Cousins;

(vi) The service member can designate another blood relative as the "nearest blood relative" and that designation takes precedent over the above list.

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

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

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

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

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

WAC 357-31-535 Who designates absences which meet the criteria of the Family and Medical Leave Act? The employer designates absences which meet the criteria of the Family and Medical Leave Act. Paid or unpaid leave (~~(excluding compensatory time)~~) used for that designated absence must be counted towards the twelve weeks of the Family and Medical Leave Act entitlement.

Because the Family and Medical Leave Act of 1993 (29 USC 2601 et seq) does not recognize registered domestic partners, an absence to care for an employee's registered domestic partner is not counted towards the twelve weeks of the Family and Medical Leave Act entitlement.

AMENDATORY SECTION (Amending WSR 09-03-013, filed 1/9/09, effective 2/13/09)

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

(a) An employee must be granted the use of recognition leave if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.-020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730; and

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

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

AMENDATORY SECTION (Amending WSR 05-08-139, filed 4/6/05, effective 7/1/05)

WAC 357-31-395 What definitions apply to shared leave? (1) "Employee" means any employee who is entitled to accrue sick leave or vacation leave and for whom accurate leave records are maintained.

(2) "Employee's relative" normally must be limited to the employee's spouse, registered domestic partner, child, grandchild, grandparent, or parent.

(3) "Severe" or "extraordinary" condition is defined as serious or extreme and/or life threatening.

(4) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty including state-ordered active duty, and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

(5) "Uniformed services" means the armed forces, the army national guard, and the air national guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time national guard duty, or state active duty, the commissioned corps of the public health service, the coast guard, and any other category of persons designated by the President of the United States in time of war or national emergency.

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

WAC 357-31-520 How does the Family and Medical Leave Act of 1993 and the family (~~Care~~) leave law interact with the civil service rules? Benefits provided through state laws and civil service rules must not be diminished or withheld in complying with the Family and Medical Leave Act of 1993 (FMLA).

Washington's family leave law (chapter 49.78 RCW) generally is similar to and runs concurrently with the federal FMLA for those provisions outlined in WAC 357-31-525 (1)(a) through (c) but also allows leave to be taken for the care of an employee's registered domestic partner with a serious health condition. However, Washington's family leave law does not address exigency leave, described in WAC 357-31-525 (1)(d), or leave for a covered service member, described in WAC 357-31-525(2). Therefore, an employer is not required to provide exigency leave or leave for a covered service member for a registered domestic partner.

Because the FMLA does not recognize registered domestic partners, an absence to care for an employee's registered domestic partner is not counted towards the twelve weeks of the FMLA entitlement described in WAC 357-31-525. For example:

If an employee uses twelve weeks of leave to care for their registered domestic partner during a twelve-month period, and no other FMLA leave was used, the employee is still entitled to his or her full twelve-week FMLA entitlement during the same twelve-month period, as the leave used was provided for a purpose not covered by FMLA; however, if an employee uses twelve weeks of leave to care for their parent or for another FMLA qualifying reason, then during that same twelve-month period the employer would not be required to provide additional leave under Washington's family leave law to care for the employee's registered domestic partner because the twelve-week entitlement under FMLA and Washington's family leave law has been exhausted.

AMENDATORY SECTION (Amending WSR 05-12-077, filed 5/27/05, effective 7/1/05)

WAC 357-46-060 Does a veteran receive any preference in layoff? (1) An eligible veteran receives a preference by having his/her seniority increased. This is done by adding the eligible veteran's total active military service, not to exceed five years, to his/her unbroken service date.

(2) An eligible veteran is defined as any permanent employee who:

(a) Has one or more years in active military service in any branch of the armed forces of the United States or who has less than one year's service and is discharged with a disability incurred in the line of duty or is discharged at the convenience of the government; and

(b) Has received, upon termination of such service:

(i) An honorable discharge;

(ii) A discharge for physical reasons with an honorable record; or

(iii) A release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge is given.

(3) "An eligible veteran" does not include any person who as a veteran voluntarily retired with twenty or more years' active military service and has military retirement pay in excess of five hundred dollars per month.

(4) The surviving spouse or surviving registered domestic partner of an eligible veteran is entitled to veteran's seniority preference for up to five years as outlined in subsection (1) and (2) of this section regardless of whether the veteran had at least one year of active military service.

AMENDATORY SECTION (Amending WSR 07-23-011, filed 11/8/07, effective 12/11/07)

WAC 357-58-475 Does a veteran receive any preference in layoff? (1) An eligible veteran receives a preference by having his/her seniority increased. This is done by adding the eligible veteran's total active military service, not to exceed five years, to his/her unbroken service date.

(2) An eligible veteran is defined as any permanent employee who:

(a) Has one or more years in active military service in any branch of the armed forces of the United States or who has less than one year's service and is discharged with a disability incurred in the line of duty or is discharged at the convenience of the government; and

- (b) Has received, upon termination of such service:
- (i) An honorable discharge;
 - (ii) A discharge for physical reasons with an honorable record; or
 - (iii) A release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge is given.
- (3) "An eligible veteran" does not include any person who as a veteran voluntarily retired with twenty or more years' active military service and has military retirement pay in excess of five hundred dollars per month.
- (4) The surviving spouse or surviving registered domestic partner of an eligible veteran is entitled to veteran's seniority preference for up to five years as outlined in subsection (1) and (2) of this section regardless of whether the veteran had at least one year of active military service.

WSR 09-17-057

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed August 13, 2009, 10:04 a.m., effective September 16, 2009]

Effective Date of Rule: September 16, 2009.

Purpose: E2SSB 5688 passed during the 2009 legislative session. This bill states that agencies shall amend their rules to grant or impose all privileges, immunities, rights, benefits, or responsibilities granted or imposed by statute to an individual because they are a spouse in a marital relationship are to be granted or imposed on equivalent terms to an individual because that individual is in a state registered domestic partnership.

Citation of Existing Rules Affected by this Order: WAC 357-01-172, 357-01-228, 357-16-110, 357-31-070, 357-31-130, 357-31-200, 357-31-285 and 357-31-327; and new section WAC 357-01-282.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 09-14-130 on July 1, 2009.

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 9, Repealed 0.

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

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

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

Date Adopted: August 13, 2009.

Eva M. Santos
Director

AMENDATORY SECTION (Amending WSR 09-03-013, filed 1/9/09, effective 2/13/09)

WAC 357-01-172 Family members. Individuals considered to be members of the family are parent, step-parent, sister, brother, parent-in-law, spouse, registered domestic partner, grandparent, grandchild, minor/dependent child, and child. For the purpose of domestic violence, sexual assault, or stalking provisions within Title 357 WAC family member also includes a domestic partner as defined in RCW 26.60.-020 or a person with whom the employee has a dating relationship as defined in RCW 26.50.010.

AMENDATORY SECTION (Amending WSR 05-12-093, filed 5/27/05, effective 7/1/05)

WAC 357-01-228 Parent-in-law. A biological parent of an employee's spouse or an employee's registered domestic partner or an individual who stood *in loco parentis* to an employee's spouse or to an employee's registered domestic partner when the employee's spouse or the employee's registered domestic partner was a child. A person who had day-to-day responsibilities to care for and financially support the employee's spouse or the employee's registered domestic partner when he or she was a child is considered to have stood *in loco parentis* to the employee's spouse or to the employee's registered domestic partner.

NEW SECTION

WAC 357-01-282 Registered domestic partner. An individual considered to be a register domestic partner has met the requirements for a valid state registered domestic partnership as established by RCW 26.60.030 and who has been issued a certificate of state registered domestic partnership by the secretary of state's office.

AMENDATORY SECTION (Amending WSR 05-12-077, filed 5/27/05, effective 7/1/05)

WAC 357-16-110 Do veterans receive any preference in the hiring process? (1) If an employer is administering an examination prior to certification, the employer must grant preference to veterans in accordance with the veterans scoring criteria provisions of RCW 41.04.010.

(2) If no examination is administered prior to certification, the employer must refer the following individuals to the employing official under the provisions of RCW 73.16.010 as long as the individual meets the competencies and other position requirements:

- (a) Eligible veterans;
- (b) Surviving spouses or registered domestic partners of eligible veterans; or
- (c) Spouses or registered domestic partners of honorably discharged veterans who have a service connected permanent and total disability.

AMENDATORY SECTION (Amending WSR 07-03-054, filed 1/12/07, effective 2/15/07)

WAC 357-31-285 Is an employer required to authorize the absence of an employee for family care emergencies? Absence because of an employee's inability to report for or continue scheduled work due to a family care emergency:

(1) **Must** be authorized for care of the employee's spouse, registered domestic partner, household member or the employee's/spouse's/registered domestic partner's minor/dependent child, parent or grandparent up to the limits specified in WAC 357-31-300.

(2) **May** be authorized for care of others, including a child over the age of eighteen who is capable of self care, in accordance with the employer's leave policy.

AMENDATORY SECTION (Amending WSR 09-03-013, filed 1/9/09, effective 2/13/09)

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

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

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

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 09-03-013, filed 1/9/09, effective 2/13/09)

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

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

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

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

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

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

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

(f) For personal health care appointments.

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

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

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

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

(i) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.-020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

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

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

(a) For condolence or bereavement.

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

AMENDATORY SECTION (Amending WSR 09-03-013, filed 1/9/09, effective 2/13/09)

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

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

(b) To care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who

has a serious health condition or an emergency health condition.

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

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

(e) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.-020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

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

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

AMENDATORY SECTION (Amending WSR 09-03-014, filed 1/9/09, effective 2/13/09)

WAC 357-31-327 When must an employer grant leave without pay? An employer must grant leave without pay under the following conditions:

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

(2) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.-020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730; or

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

WSR 09-17-058

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed August 13, 2009, 10:05 a.m., effective September 16, 2009]

Effective Date of Rule: September 16, 2009.

Purpose: HB 2328 passed during the 2009 legislative session. Section 5 of this bill adds language to Title 49 RCW which states that the director of the department of personnel shall adopt rules that authorize state agencies to provide allowances to employees with sensory disabilities who must

attend training necessary to attain a new service animal. The employee's absence to attend this training must be treated in the same manner as that granted to employees who are absent to attend training that supports or improves their job performance, except that the employee shall not be eligible for reimbursement. We are proposing this change to comply with HB 2328.

Citation of Existing Rules Affected by this Order:
Amending WAC 357-34-045.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 09-14-128 on July 1, 2009.

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

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

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

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

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

Date Adopted: August 13, 2009.

Eva N. Santos

Director

AMENDATORY SECTION (Amending WSR 05-01-195, filed 12/21/04, effective 7/1/05)

WAC 357-34-045 Are employers required to provide release time for nonrequired training? (1) Employers may ~~((release employees from work without a loss in pay to participate in nonrequired training-))~~ allow an employee with a sensory disability (as defined in HB 2328, chapter 294, Laws of 2009) to attend training, without a loss in pay, necessary to attain a new service animal. The employee shall not be eligible for reimbursement under RCW 43.03.050 and 43.03.060.

(a) If the training for a new service animal is foreseeable the employee shall provide the employer with at least thirty days advanced notice. If the date of the training requires the absence to begin in less than thirty days, the employee shall provide notice as is practicable.

(b) Employers may require that a request to attend a service animal training be supported by a certification issued by the training organization. Certification is sufficient if it states the date the training is scheduled to begin and the training session's duration.

(2) Employers may release employees from work without a loss in pay to participate in other nonrequired training.

WSR 09-17-059
PERMANENT RULES
DEPARTMENT OF PERSONNEL

[Filed August 13, 2009, 10:07 a.m., effective September 16, 2009]

Effective Date of Rule: September 16, 2009.

Purpose: These proposed rule modifications are house-keeping in nature.

Citation of Existing Rules Affected by this Order:
 Amending WAC 357-07-065 and 357-58-045.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 09-14-124 on July 1, 2009.

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

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

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

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

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

Date Adopted: August 13, 2009.

Eva N. Santos
 Director

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

WAC 357-07-065 How is the department of personnel organized? The staff is organized in six general areas:

(1) Personnel services: Provides consultation and services related to recruitment, assessment, affirmative action, human resources, salary surveys, compensation plan administration, and classification to state agencies, institutions of higher education, and related higher education boards.

(2) Organizational and employee development services (located at 600 South Franklin Street, Olympia, Washington): Provides organizational, management, and employee development services to all state agencies.

(3) Administrative services: Provides support services for facilities and supplies, financial services including payroll and travel, duplicating and mailroom services, combined fund drive, forms and records management, administration of agency and statewide master contracts, and administers the statewide employee survey. Within the administrative division, the employee assistance program (EAP) helps with personal or work related problems affecting work performance. EAP offices are at the following locations: 1222 State Ave. N.E., Suite 201, Olympia, Washington; 701 Dexter Ave. N. #108, Seattle, Washington; and at 4407 N. Division, Suite 210, Spokane, Washington.

(4) Legal affairs: Provides affirmative action consultation, rule interpretation, labor/employment discrimination

guidance, legislative services and responds to requests for public records. Provides director's review and appeal services (located at ~~((2828 Capitol Blvd.))~~ 600 S. Franklin Street, Olympia, Washington), processes and adjudicates requests for director's reviews and provides administrative support for personnel resources board appeals.

(5) Director's office: Provides agency leadership, internal human resources, planning and performance, communication services, and operational support.

(6) Information services (located at Building #1, Rowesix, 4224 6th Avenue, Lacey, Washington): Administers all central statewide technology systems supporting human resources activities.

AMENDATORY SECTION (Amending WSR 05-12-068, filed 5/27/05, effective 7/1/05)

WAC 357-58-045 Who is covered by the WMS rules? Chapter 357-58 WAC applies only to managers and ~~((de))~~ does not apply to classified employees in the Washington general service.

WSR 09-17-060
PERMANENT RULES
DEPARTMENT OF PERSONNEL

[Filed August 13, 2009, 10:08 a.m., effective September 16, 2009]

Effective Date of Rule: September 16, 2009.

Purpose: Effective June 16, 2009, a change was adopted to WAC 357-46-067 which states that an employee's probation or trial service period would not be extended for periods of time on temporary layoff. We are now amending WAC 357-58-554 to say that the duration of the employee's WMS review period will not be extended for periods of time on temporary layoff.

Citation of Existing Rules Affected by this Order:
 Amending WAC 357-58-554.

Statutory Authority for Adoption: Chapter 41.06 RCW.
 Adopted under notice filed as WSR 09-14-125 on July 1, 2009.

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

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

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

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

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

Date Adopted: August 13, 2009.

Eva N. Santos
 Director

AMENDATORY SECTION (Amending WSR 06-07-048, filed 3/9/06, effective 4/10/06)

WAC 357-58-554 What is a WMS employee's status during temporary layoff? (1) ~~((Hours not worked due to))~~ The following applies during a temporary layoff ~~((are not treated as leave without pay, therefore))~~:

(a) A WMS employee's anniversary date, seniority, or unbroken service date is not adjusted for periods of time spent on temporary layoff; ~~((and))~~

(b) A WMS employee continues to accrue vacation and sick leave in accordance with chapter 357-31 WAC; and

(c) The duration of an employee's review period shall not be extended for periods of time spent on temporary layoff.

(2) A WMS employee who is temporarily laid off is not entitled to:

(a) Layoff rights, including the ability to bump any other position or be placed on the employer's internal or statewide layoff list;

(b) Payment for his/her vacation leave balance; and

(c) Use of his/her accrued vacation leave for hours the employee is not scheduled to work if the temporary layoff was due to lack of funds.

(3) If the temporary layoff was not due to lack of funds, an employer may allow a WMS employee to use accrued vacation leave in lieu of temporary layoff.

WSR 09-17-061

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed August 13, 2009, 10:10 a.m., effective September 16, 2009]

Effective Date of Rule: September 16, 2009.

Purpose: The following proposed new rule addresses what happens if an employee requests a director's review of his/her allocation or files exceptions to the director's decision and is laid off before a decision is issued.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 09-14-122 on July 1, 2009.

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 0, Amended 0, Repealed 0.

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

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

Date Adopted: August 13, 2009.

Eva N. Santos
Director

NEW SECTION

WAC 357-13-083 What happens if an employee requests a director's review of his or her allocation or files an exception to the director's decision and is laid off before a decision is issued? If a director or board allocation appeal decision which grants a reallocation is issued after the employee has been laid off, the following applies:

(1) The employee's position is reallocated effective as of the date the request for a position review was filed with the employer;

(2) If the employee was reallocated to a class with a higher salary range, the employee is due back pay from the effective date of the allocation to the effective date of the layoff;

(3) The layoff action (including options afforded to the employee) is not impacted; and

(4) The employee shall have layoff list rights to the class the employee's former position was reallocated to in accordance with WAC 357-46-070 and 357-46-080.

WSR 09-17-062

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed August 13, 2009, 10:11 a.m., effective September 16, 2009]

Effective Date of Rule: September 16, 2009.

Purpose: Effective January 1, 2009, the state administrative and accounting manual (SAAM) changed to allow an employee to receive both time loss payments and paid sick leave. During the 2007 legislative session, language was added to RCW 51.32.090 which the office of financial management (OFM) interpreted to mean employers must allow the payment of both time loss and sick leave. Based on this, OFM changed the SAAM to say "An employee is entitled to both payments for the same time period without any deductions for the time loss payments."

Current civil service rules allow employees to receive time loss exclusively, use accrued paid leave exclusively, or combine time loss compensation and accrued paid leave but WAC 357-31-240 states that if an employee uses sick leave they must have the payment of sick leave reduced by the amount of time loss compensation received.

Because of discrepancy between the SAAM and the department of personnel rules, we are proposing to repeal WAC 357-31-240 and modify WAC 357-31-245 to reflect that employees are entitled to both time loss and sick leave. We have also added a reference to recognition leave to WAC 357-31-245.

Citation of Existing Rules Affected by this Order: Repealing WAC 357-31-240; and amending WAC 357-31-245.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 09-14-127 on July 1, 2009.

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

Recently Enacted State Statutes: New 0, Amended 1, Repealed 1.

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

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

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

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

Date Adopted: August 13, 2009.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-08-137, filed 4/6/05, effective 7/1/05)

WAC 357-31-245 What happens if an employee uses accrued vacation leave, accrued sick leave, accrued compensatory time, recognition leave, or receives holiday pay during a period when he/she is receiving time loss compensation? An employee who uses accrued vacation leave, accrued sick leave, accrued compensatory time, recognition leave, or receives holiday pay during a period when he/she is receiving time loss compensation is entitled to time-loss compensation and full pay for vacation leave, sick leave, compensatory time, recognition leave, and holiday pay.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-31-240	What happens if an employee uses accrued sick leave during a period when he/she is receiving time loss compensation?
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WSR 09-17-063

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed August 13, 2009, 10:13 a.m., effective September 16, 2009]

Effective Date of Rule: September 16, 2009.

Purpose: The following proposed rule modifications change WAC 357-46-070 and 357-46-080 so that employees will have layoff list rights to any class they have held permanent status in regardless of whether or not the employee has had a break in service.

Citation of Existing Rules Affected by this Order: Amending WAC 357-46-070 and 357-46-080.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 09-14-120 on July 1, 2009.

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

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

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

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

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

Date Adopted: August 13, 2009.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 09-11-063, filed 5/14/09, effective 6/16/09)

WAC 357-46-070 Which employees are eligible to have their name placed on an employer's internal layoff list? (1) Permanent employees of the employer who satisfy the following criteria must have their name placed on the employer's internal layoff list if the employee exercises this option within the two-year eligibility period:

(a) **Employees who are laid off or have been notified in writing by the employer that they are scheduled to be laid off** are eligible to be on the internal layoff list for classes in which they held permanent status (~~(during the current period of unbroken service)~~) at the same or lower salary range and lower classes in the same class series. Permanent status is not required for the lower classes in the class series. For purposes of this subsection "employees" includes Washington management service (WMS) employees who are laid off or have been notified by the employer that they are scheduled to be laid off and who have held permanent status in Washington general service (~~(during the current period of unbroken service)~~). WMS employees only have layoff list rights to classes which the highest step of the salary range is equal to or below the WMS salary at the time of layoff or notification of layoff.

(b) **Employees who accept a voluntary demotion in lieu of layoff** are eligible to be on the internal layoff list for the class from which they demoted and classes at that salary range and lower salary ranges in which the employee held permanent status (~~(during the current period of unbroken service)~~) and lower classes in the same class series. Permanent status is not required for the lower classes in the class series. Washington management service (WMS) employees who accept a voluntary demotion in lieu of layoff are eligible to be on the internal layoff list for classes in which they held permanent status (~~(during the current period of unbroken service)~~). WMS employees only have layoff list rights to classes which the highest step of the salary range is equal to or below the WMS salary at the time of the demotion.

(c) **Employees who accepted less than comparable positions** as defined by the employer's layoff procedure are eligible to be on the internal layoff list for classes in which they held permanent status at the same or lower salary range and lower classes in the same class series. Permanent status is not required for the lower classes in the class series.

(d) **Employees who have not successfully completed a trial service period and are placed in a nonpermanent position following reversion** are eligible to be on the internal layoff list for classes in which the employee previously held permanent status (~~(during the current period of unbroken service)~~).

(e) **Employees who remain in a position reallocated to a lower salary range** are eligible to be on the internal layoff list for the class the employee held permanent status in prior to the reallocation.

(2) Employees who have been demoted for cause from a class are **not** eligible to be on the internal layoff list for that class.

(3) General government employees have layoff list rights to all classifications the employee has held permanent status in regardless of any breaks in state service.

Higher education employers must address in their layoff procedure whether or not employees will be given layoff rights to classes they held permanent status in prior to any breaks in state service.

AMENDATORY SECTION (Amending WSR 09-11-063, filed 5/14/09, effective 6/16/09)

WAC 357-46-080 Which employees are eligible to have their name placed on an employer's statewide layoff list? (1) Permanent employees who satisfy the following criteria must have their name placed on the statewide layoff list for other employers if the employee exercises this option within the two-year eligibility period:

(a) Employees who are laid off or notified in writing by the employer that they are scheduled to be laid off are eligible to be on the statewide layoff list for classes in which they held permanent status (~~(during the current period of unbroken service)~~) at the same or lower salary range and lower classes in the same class series. Permanent status is not required in the lower classes in the class series. For purposes of this subsection "employees" includes Washington management service (WMS) employees who are laid off or have been notified by the employer that they are scheduled to be laid off and who have held permanent status in Washington general service (~~(during the current period of unbroken service)~~). WMS employees only have layoff list rights to classes which the highest step of the salary range is equal to or below the WMS salary at the time of layoff or notification of layoff.

(b) Employees who accept a voluntary demotion in-lieu of layoff are eligible to be on the statewide layoff list for classes from which they demoted and classes at that salary range and lower salary ranges in which the employees held permanent status and lower classes in the same class series. Permanent status is not required for the lower classes in the class series. Washington management service (WMS) employees who accept a voluntary demotion in lieu of layoff are eligible to be on the statewide layoff list for classes in

which they held permanent status (~~(during the current period of unbroken service)~~). WMS employees only have layoff list rights to classes which the highest step of the salary range is equal to or below the WMS salary at the time of the demotion.

(c) Employees who accepted less-than-comparable positions at the time of layoff are eligible to be on the statewide layoff list for classes in which they held permanent status at the current or lower salary range and lower classes in the same class series. Permanent status is not required for the lower classes in the class series.

(2) Employees who have been demoted for cause from a class are **not** eligible to be on the statewide layoff list for that class.

(3) General government employees have layoff list rights to all classifications the employee has held permanent status in regardless of any breaks in state service.

Higher education employers must address in their layoff procedure whether or not employees will be given layoff rights to classes they held permanent status in prior to any breaks in state service.

WSR 09-17-064

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed August 13, 2009, 10:14 a.m., effective September 16, 2009]

Effective Date of Rule: September 16, 2009.

Purpose: The following proposed rule change addresses an employee's layoff option rights to classifications the employee has held permanent status in prior to any breaks in state service.

Citation of Existing Rules Affected by this Order: Amending WAC 357-46-035.

Statutory Authority for Adoption: Chapter 41.06 RCW.
Adopted under notice filed as WSR 09-14-119 on July 1, 2009.

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

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

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

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

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

Date Adopted: August 13, 2009.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 09-11-063, filed 5/14/09, effective 6/16/09)

WAC 357-46-035 Layoff option. (1) What option does a permanent employee have to take a position when the employee is scheduled for layoff?

Within the layoff unit, a permanent employee scheduled for layoff must be offered the option to take a position, if available, that meets the following criteria:

(a) The position is allocated to the class in which the employee holds permanent status at the time of the layoff. If no option to a position in the current class is available, the employee's option is to a position in a class in which the employee has held permanent status that is at the same salary range. If the employee has no option to take a position at the same salary range, the employee must be given an opportunity to take a position in a lower class in a class series in which the employee has held permanent status, in descending salary order. The employee does not have to have held permanent status in the lower class in order to be offered the option to take a position in the class.

(b) The position is comparable to the employee's current position as defined by the employer's layoff procedure.

(c) The employee satisfies the competencies and other position requirements.

(d) The position is funded and vacant, or if no vacant funded position is available, the position is occupied by the employee with the lowest employment retention rating.

(2) What if the employee has no option under subsection 1?

(a) If a permanent employee has no option available under subsection (1) of this section, the employer must determine if there is an available position in the layoff unit to offer the employee in lieu of separation that meets the following criteria:

(i) The position is at the same or lower salary range maximum as the position from which the employee is being laid off;

(ii) The position is vacant or held by a probationary employee or an employee in a nonpermanent appointment;

(iii) The position is comparable or less than comparable; and

(iv) The position is one for which the employee meets the competencies and other position requirements.

(b) If more than one qualifying position is available, the position with the highest salary range maximum is the one that must be offered.

(3) What happens when a class in which the employee previously held permanent status has been revised or abolished?

If a class in which an employee has previously held permanent status has been revised or abolished, the employer shall determine the closest matching class to offer as a layoff option. The closest matching class must be at the same or lower salary range maximum as the class from which the employee is being laid off.

(4) Does an employee have layoff option rights to classifications the employee held permanent status in prior to any breaks in state service?

General government employees have layoff option rights to all classifications the employee has held permanent status in regardless of any breaks in state service.

Higher education employers must address in their layoff procedure whether or not employees will be given layoff options to classes they held permanent status in prior to any breaks in state service.

WSR 09-17-065

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed August 13, 2009, 10:15 a.m., effective September 16, 2009]

Effective Date of Rule: September 16, 2009.

Purpose: SHB 2049 passed during the 2009 legislative session. This bill adds language to RCW 41.06.170 that says if a vacant position is being exempted the exclusive bargaining unit representative may act in lieu of an employee for the purpose of appeal.

Citation of Existing Rules Affected by this Order: New section WAC 357-04-027; and amending WAC 357-52-010.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 09-14-126 on July 1, 2009.

Changes Other than Editing from Proposed to Adopted Version: Updated this WAC to include the corrected RCW number, RCW 41.06.170(3).

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; and Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

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

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

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

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

Date Adopted: August 13, 2009.

Eva N. Santos
Director

NEW SECTION

WAC 357-04-027 What rights does an exclusive bargaining unit representative have when a vacant bargaining unit position is exempted from the civil service rules?

As provided in RCW 41.06.170(3), the exclusive bargaining unit representative for a vacant position that has been exempted from chapter 41.06 RCW may appeal the exemption of the position in accordance with chapter 357-52 WAC.

AMENDATORY SECTION (Amending WSR 06-03-072, filed 1/12/06, effective 2/13/06)

WAC 357-52-010 What actions may be appealed? (1)

Within WGS, the following actions may be appealed:

(a) Any permanent WGS employee subject to the statutory jurisdiction of the board who is dismissed, suspended, demoted, or separated or whose base salary is reduced may appeal to the board.

(b) Any employee, subject to the statutory jurisdiction of the board who adversely is affected by a violation of the state civil service law (chapter 41.06 RCW) or the rules contained in Title 357 WAC, or an employer, may appeal to the board as follows:

(i) For a violation of state civil service law or rules relating to a layoff action, excluding removal from a layoff list, the employee may appeal directly to the board.

(ii) For a violation of state civil service law or rules relating to any other subject, including removal from a layoff list, the employee or employer may appeal to the board by filing written exceptions to the director's review determination, except as provided in WAC 357-49-010(1).

(c) Through December 31, 2005, an employee in a position at the time of its allocation or reallocation or the employer may appeal to the personnel appeals board by filing written exceptions to the director's review determination in accordance with Title 358 WAC. As of January 1, 2006, an employee in a position at the time of its allocation or reallocation or the employer may appeal to the personnel resources board by filing written exceptions to the director's review determination.

(d) An employee whose position has been exempted from chapter 41.06 RCW or the exclusive bargaining unit representative for a vacant position that has been exempted from chapter 41.06 RCW may appeal the exemption to the board.

(e) An individual or the employer may appeal remedial action to the board by filing written exceptions to the director's review determination.

(2) Within WMS, the following actions may be appealed:

(a) Any permanent Washington management service employee who is dismissed, suspended, demoted, laid off, or separated, or whose base salary is reduced may appeal to the board. A determination of which Washington management service positions will be eliminated in a layoff action is not subject to appeal.

(b) An employee whose position has been exempted from chapter 41.06 RCW may appeal the exemption to the board.

WSR 09-17-074

PERMANENT RULES

GAMBLING COMMISSION

[Order 653—Filed August 14, 2009, 2:11 p.m., effective September 14, 2009]

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

Purpose: When this rule was adopted in February 2009, an inadvertent error in subsection (1)(1) listed the "commissioners" rather than the "presiding officer" as the person that may consider the factors listed in the rule when determining administrative penalties. This housekeeping amendment changes "commissioners" to "presiding officer."

Citation of Existing Rules Affected by this Order: Amending WAC 230-17-137.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 09-11-089 filed on May 18, 2009, and published June 3, 2009.

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

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

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

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

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

Date Adopted: August 14, 2009.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 641, filed 2/17/09, effective 3/20/09)

WAC 230-17-137 Guidelines for imposing penalties in disciplinary actions. (1) Without in any manner limiting the authority granted to the commission under chapter 9.46 RCW or other applicable law to impose the level and type of discipline it may deem appropriate, at the request of any party, the presiding officer may consider the following factors, along with such others as he or she deems relevant, in determining the administrative penalty to be assessed for the violation of a statute or rule:

(a) The risk posed to the public health, safety, or welfare by the violation;

(b) Whether there are special policy implications relating to the violation, for example, those regarding underage gambling;

(c) Whether, and how, the violations impacted players, for example, failure to pay a player, and player-supported jackpot violations;

(d) Whether the applicant, licensee, or permittee:

(i) Knew, or reasonably should have known, the action complained of was a violation of any law, regulation, or condition of their license;

(ii) Previously received a verbal warning, written warning, notice of infraction, notice of violation and settlement (NOVAS), or administrative charges from the commission for similar violations;

(iii) Made, or attempted to make, a financial gain from the violation;

(iv) Had an existing compliance program related to the violation; or

(v) Has subsequently initiated remedial measures to prevent similar violations from reoccurring;

(e) Whether the violations were intentional, willful, or grossly negligent;

(f) Whether requiring the applicant, licensee or permittee to implement a written self-enforcement and compliance program would assist in ensuring future compliance with relevant laws, regulations, and license conditions;

(g) If the violation was caused by an officer or employee of the applicant, licensee, or permittee:

(i) Whether the individual who caused the violation acted within the scope of authority granted to him or her by the applicant, licensee or permittee; or

(ii) Whether the individual violated company policies, procedures, or other standards;

(h) The adequacy of any relevant training programs the applicant, licensee or permittee previously offered or made available to its employees;

(i) Whether and the extent to which the applicant, licensee or permittee cooperated with the commission during the investigation of the violation;

(j) The penalties imposed on other applicants, licensees or permittees for similar violations;

(k) Whether the applicant, licensee, or permittee reasonably relied upon professional advice from an accountant or other recognized professional, which was relevant to the conduct or action resulting in the violation; or

(1) Any other aggravating or mitigating circumstances the ~~((commissioners))~~ presiding officer deems relevant.

(2) A party intending to rely on any aggravating or mitigating factors must raise them at the initial hearing before the presiding officer in order to preserve them for any subsequent hearings before a reviewing officer.

(3) In the spring of 2011, staff will report to the commission on the impacts of this rule, if any.

WSR 09-17-075

PERMANENT RULES

GAMBLING COMMISSION

[Order 655—Filed August 14, 2009, 2:13 p.m., effective September 14, 2009]

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

Purpose: The petitioner's request that bingo licensees have the ability to apply up to 49% of gambling taxes paid to local governments as a credit when computing expenses for adjusted cash flow requirements was approved. The purpose of the change is to help bingo licensees that maintain a positive cash flow throughout the year to remain in compliance, when gambling taxes paid to local governments push them out of compliance. A housekeeping amendment to change "license" year to "calendar" year to reflect current agency practice was also made.

Citation of Existing Rules Affected by this Order: Amending WAC 230-10-380.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 09-12-028 filed on May 26, 2009, and published June 17, 2009.

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 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: August 14, 2009.

Susan Arland
Rules Coordinator

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

WAC 230-10-380 Relief reduction for minimum annual adjusted cash flow. (1) If a bingo licensee fails to meet the minimum annual adjusted cash flow requirements for any ~~((license))~~ calendar year and has maintained a positive cash flow, the licensee may apply as a credit against the required adjusted cash flow up to forty-nine percent of gambling taxes paid to local governments.

(2) If the licensee is still out of compliance, the director automatically grants relief, allowing ~~((#))~~ up to twenty-five percent reduction to the annual dollar amount of required adjusted cash flow for the year, excluding the relief available in subsection (1) of this section, in which the licensee is out of compliance.

~~((2))~~ (3) No licensee granted relief is eligible to receive relief for any of the four ~~((license))~~ years following the ~~((license))~~ calendar year for which the director granted the relief, pursuant to subsection (2) of this section.

WSR 09-17-076

PERMANENT RULES

GAMBLING COMMISSION

[Order 656—Filed August 14, 2009, 2:17 p.m., effective September 14, 2009]

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

Purpose: The petitioner's request to increase the maximum number of games allowed within a single hand of cards from three to six was approved. Three of the six games are limited to wagers of five dollars each or less. Additionally a housekeeping change to add "card" to subsection (1) to distinguish between a card game and a game played within a hand of cards was made.

Citation of Existing Rules Affected by this Order:
Amending WAC 230-15-040.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 09-11-090 filed on
May 18, 2009, and published June 3, 2009.

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 Nongov-
ernmental Entity: New 0, Amended 1, Repealed 0.

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

Date Adopted: August 14, 2009.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 632, filed
10/14/08, effective 1/1/09)

**WAC 230-15-040 Requirements for authorized card
games.** (1) In order for a game to be authorized, the game
must:

(a) Be played with standard playing cards or with elec-
tronic card facsimiles approved by the director or the direc-
tor's designee; and

(b) Offer no more than ~~((three))~~ six separate games with
a single hand of cards. However, no more than three of the
games may offer a wager that exceeds five dollars each. We
consider bonus features and progressive jackpots separate
games. If a player does not have to place a separate wager to
participate, we do not consider it a separate game. An exam-
ple of this is an "envy" or "share the wealth" pay out when
another player achieves a specific hand; and

(c) Not allow side bets between players.

(2) Card game licensees may use more than one deck of
cards for a specific game. They also may remove cards to
comply with rules of a specific game, such as Pinochle or
Spanish 21.

(3) Players must:

(a) Compete against all other players on an equal basis
for nonhouse-banked games or against the house for house-
banked games. All players must compete solely as a player in
the card game; and

(b) Receive their own hand of cards and be responsible
for decisions regarding such hand, such as whether to fold,
discard, draw additional cards, or raise the wager; and

(c) Not place wagers on any other player's or the house's
hand or make side wagers with other players, except for:

(i) An insurance wager placed in the game of Blackjack;
or

(ii) An "envy" or "share the wealth" wager which allows
a player to receive a prize if another player wins a jackpot or
odds-based wager; or

(iii) A tip wager made on behalf of a dealer.

(4) Mini-Baccarat is authorized when operated in the
manner explained for Baccarat in the most current version of
The New Complete Hoyle, Revised or *Hoyle's Encyclopedia
of Card Games*, or similar authoritative book on card games
we have approved. However:

(a) Card game licensees may make immaterial modifica-
tions to the game; and

(b) Subsection (3) of this section does not apply; and

(c) The number of players is limited under WAC 230-15-
055.

(5) A player's win or loss must be determined during the
course of play of a single card game.

WSR 09-17-077

PERMANENT RULES

GAMBLING COMMISSION

[Order 657—Filed August 14, 2009, 2:18 p.m., effective January 1, 2010]

Effective Date of Rule: January 1, 2010.

Purpose: The petitioner's request for the ability to offer a
new type of pull-tab game called a cumulative prize pool
pull-tab game was approved. The cumulative prize pool pull-
tab game is two or more separate games packaged together,
each with a unique serial number. Each separate game
awards one chance to open a seal on the cumulative prize
pool board (flare).

Citation of Existing Rules Affected by this Order:
Amending WAC 230-05-030, 230-14-065, 230-14-080, 230-
14-265, and 230-16-052.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 09-11-122 filed on
May 20, 2009, and published June 3, 2009.

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 Nongov-
ernmental Entity: New 6, Amended 5, Repealed 0.

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

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

Number of Sections Adopted Using Negotiated Rule
Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-
ing: New 0, Amended 0, Repealed 0; or Other Alternative
Rule Making: New 6, Amended 5, Repealed 0.

Date Adopted: August 14, 2009.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 621, filed 11/20/07, effective 1/1/08)

WAC 230-05-030 Fees for other businesses. All other business license applicants must pay the following fees to us when applying for gambling licenses, miscellaneous changes, or inspection services:

1. Commercial amusement games

License	Annual Gross Gambling Receipts	Fee
Class A	Premises only	*\$327/\$150
Class B	Up to \$50,000	\$460
Class C	Up to \$100,000	\$1,184
Class D	Up to \$250,000	\$2,644
Class E	Up to \$500,000	\$4,640
Class F	Up to \$1,000,000	\$7,968
Class G	Over \$1,000,000	\$9,970

*We reduce the license fee by \$177 when you apply for additional licenses at the same business premises, apply for multiple licenses at the same business premises, or a licensee is renewing an annual license.

2. Distributor

License	Annual Gross Sales	Fee
Class A	Nonpunch board/pull-tab only	\$659
Class B	Up to \$250,000	\$1,318
Class C	Up to \$500,000	\$1,980
Class D	Up to \$1,000,000	\$2,644
Class E	Up to \$2,500,000	\$3,446
Class F	Over \$2,500,000	\$4,242

3. Fund-raising event equipment distributor

License	Description	Fee
Class A	Rents or leases equipment for fund-raising event or recreational gaming activity up to 10 times per year.	\$260
Class B	Rents or leases equipment for fund-raising event or recreational gaming activity more than 10 times per year.	\$659

4. Gambling service supplier

License	Fee
Annual	\$687
Financing, consulting, and management contract review	\$143

5. Linked bingo prize provider

License	Fee
Annual	\$4,414

6. Manufacturer

License	Annual Gross Sales	Fee
Class A	Pull-tab dispensing devices only	\$659
Class B	Up to \$250,000	\$1,318
Class C	Up to \$500,000	\$1,980
Class D	Up to \$1,000,000	\$2,644
Class E	Up to \$2,500,000	\$3,446
Class F	Over \$2,500,000	\$4,242

7. Permits

Type	Description	Fee
Agricultural fair	One location and event only	\$27
Agricultural fair annual permit	Annual permit for specified different events and locations	\$189
Recreational gaming activity		\$59
Manufacturer's special sales permit		\$211
Punch board and pull-tab service business permit	Initial application fee	\$236
Punch board and pull-tab service business permit	Renewal	\$56

8. Changes

Application	Description	Fee
Name		\$27
Location		\$27
Business classification	Same owners	\$59
Exceeding license class	New class fee, less previous fee paid, plus	\$27
Duplicate license		\$27
Corporate stock/limited liability company shares/units		\$59
License transfers		\$59

9. Other fees

Type	Fee
Defective punch board/pull-tab cost recovery fees	Up to \$100
Failing to apply for license class upgrade	Up to fifty percent of the difference between our fees for the licensee's present license class and the new license class or one thousand dollars, whichever is less, plus \$27
Review of gambling equipment, supplies, services, or games	Cost reimbursement

10. Identification stamps

Type	Fee	
(a) Punch boards and pull-tabs		
(i) Standard	Wagers fifty cents and below	\$.28
	Wagers over fifty cents	\$1.11
(ii) Progressive jackpot pull-tab series	Per series	\$11.19
(iii) Pull-tab series with carry-over jackpots and cumulative prize pool pull-tab series	Per series	\$1.11
(b) Pull-tab dispensing devices		
(i) Mechanical and electro-mechanical		\$.28
(ii) Electronic	Dispensing devices that require initial and ongoing evaluation of electronic components or functions, such as reading encoded data on pull-tabs, accounting for income or prizes	\$112.04 annually
Replacement of identification stamps		\$26

Type		Fee
(c) Disposable bingo cards		
(i) Single game sets of individual cards or sheets of cards		\$.28
(ii) Multigame card packets		\$1.22
(iii) Cards used to play for linked bingo prizes	Fee per 250 cards	\$.44
(iv) Cards used to play for linked bingo prizes	Fee per 5,000 cards	\$8.96
(d) Coin or token-activated amusement games		
Annually - operated at any Class A amusement game license location		\$28.00
(e) Electronic bingo card daubers		
Annual		\$11.19
(f) Electronic card facsimile table		
Annual		\$381.50

11. Two-part payment plan participation

Annual participation	\$27
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AMENDATORY SECTION (Amending Order 614, filed 8/10/07, effective 1/1/08)

WAC 230-14-065 ((One) Flares ((per) for punch board or pull-tab series. (1) Punch board and pull-tab licensees must have in public view only one flare per punch board or pull-tab series. Flares must have ~~((a Washington state identification))~~ an I.D. stamp number and series number on their face.

(2) Cumulative prize pool pull-tab games must have a cumulative prize pool board and a unique flare for each series.

AMENDATORY SECTION (Amending Order 623, filed 1/14/08, effective 2/14/08)

WAC 230-14-080 Prize limits and percentage of winners required. Punch board or pull-tab operators must not possess, display, put out for play, sell, or otherwise transfer punch boards or pull-tab series that:

(1) Have a total payout of less than sixty percent of the total gross gambling receipts of the board or series ~~((-or)),~~ except in cumulative prize pool pull-tab games. In cumulative prize pool pull-tab games, the sixty percent prize payout requirement will be calculated based on the total amount of prizes from the cumulative prize pool board and the instant winners from each series, divided by the number of series contained in the game; and

(2) Offer boards or series, except for progressive series or carry-over jackpots, with a single cash prize that is more than twenty-five hundred dollars; or

(3) Offer a single merchandise prize that is more than twenty-five hundred dollars including markup; or

(4) Have a single pull-tab or punch with multiple winning combinations that are more than the prize limit; or

(5) Offer prizes for purchasing the last pull-tab or last punch (last sale) that are more than:

(a) One hundred dollars cash; or

(b) Merchandise that costs the licensee more than one hundred dollars; or

(c) The highest prize offered, whichever is less; or

(6) Series that have a key to any winning numbers or symbols.

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

WAC 230-14-265 Retention requirements for punch boards and pull-tab series. (1) Punch board and pull-tab operators must keep all punch boards or pull-tab series removed from play, including, at least:

(a) All prize flares; and

(b) All unplayed tabs; and

(c) All winning punches or tabs.

(2) Operators must make the items in subsection (1) of this section available on the licensed premises for us, local law enforcement, or local tax agencies to inspect.

(3) If stored off premises, operators must produce the game for inspection on demand.

(4) Operators must retain punch board or pull-tab series removed from play for:

(a) **Charitable or nonprofit operators** - Four months following the last day of the month in which the board or series was removed from play; and

(b) **Commercial operators** -

(i) Two months following the last day of the month in which they removed the board or series from play; and

(ii) Three months following the day they removed the board or series from play for winning punches or pull-tabs over twenty dollars. Operators must also retain the flare for these games; and

(c) **Carry-over jackpot series** - For four months after the last day of the month in which the carry-over jackpot was won; and

(d) **Progressive pull-tab series** - For one year. After the retention period, operators must destroy unsold progressive pull-tab series tabs in such a way that no one may find and use unopened winning tabs later; and

(e) Cumulative prize pool pull-tab games - for four months, following the last day of the month, in which the last seal is opened on the cumulative prize pull-tab game board.

NEW SECTION

WAC 230-14-320 Defining a cumulative prize pool pull-tab game. "Cumulative prize pool pull-tab game" means a pull-tab game that contains two or more series. Each series in the game has a unique serial number.

NEW SECTION

WAC 230-14-325 Defining a cumulative prize pool pull-tab game board. "Cumulative prize pool pull-tab game board" means the flare for a cumulative prize pool pull-tab game.

NEW SECTION

WAC 230-14-330 Defining a cumulative prize pool pull-tab series. "Cumulative prize pool pull-tab series" means individually packaged groups of pull-tabs that make up a cumulative prize pool pull-tab game.

NEW SECTION

WAC 230-14-335 Operating requirements for cumulative prize pool pull-tab games. (1) Operators must conduct cumulative prize pool pull-tab games in the same way as other pull-tab series and must follow these additional requirements:

(a) Cumulative prize pool pull-tab game boards must be displayed until the game is permanently pulled from play.

(b) Once a seal card winner from each series is revealed, the seal card winner will pick one unopened seal from the cumulative prize pool pull-tab game board.

(c) If a player buys out a series, their name will be placed on all remaining empty lines on the list displayed on the series flare.

(d) Must not use substitute flares.

(2) Operators may have more than one series in play at the same time, but may not commingle pull-tab series.

(3) Operators must prominently post house rules of how the winner of a series will be chosen if the operator removes a series from play before the list on the series flare is completed. For example, once the seal is open and a player's name is not on that line, house rules could indicate that the name above the winning line would be declared the winner of the series.

AMENDATORY SECTION (Amending Order 623, filed 1/14/08, effective 2/14/08)

WAC 230-16-052 Standards for flares. Flares must clearly display the:

(1) Manufacturer of the punch board or pull-tab series. A stamp, seal or label identifying the manufacturer may be substituted if we have been informed; and

(2) Manufacturer assigned series number; and

(3) I.D. stamp; and

(4) Cost of each punch or pull-tab; and

(5) Total number of punches or pull-tabs in the series. For any newly designed flare or any previously designed flare for pull-tab series with a ticket count over six thousand, which has not yet been packaged, the number of pull-tabs must be printed in one-half inch size lettering; and

(6) Prizes available and the winning number or symbols. For prizes over twenty dollars, the winning numbers or symbols must be printed so each can be permanently and conspicuously deleted off the flare as each prize is won.

(a) A progressive jackpot meter board, for progressive jackpot series, is a supplement to the flare; and

(b) For cumulative prize pool pull-tab games, the seal card prizes from the cumulative prize pool board are not required to be printed on the series flares.

NEW SECTION

WAC 230-16-102 Cumulative prize pool pull-tab games. (1) Manufacturers of cumulative prize pool pull-tab games must meet all standards of pull-tab construction, including the seals on the board; and

(2) A cumulative prize pool pull-tab game board must include at a minimum:

(a) All seal card prizes; and

(b) Manufacturer's name or logo; and

(c) Each cumulative prize pool pull-tab series number; and

(d) Form number; and

(e) Cost per play; and

(f) Game name; and

(3) A cumulative prize pool pull-tab game board must have the same number of seals as the number of series in the game.

NEW SECTION

WAC 230-16-104 Cumulative prize pool pull-tab series flare. A cumulative prize pool pull-tab series flare must meet the requirements of WAC 230-16-052 and include at a minimum:

(1) A perforated window or seal; and

(2) A list for players to write their name on for the chance to open a seal on the cumulative prize pool pull-tab board.

WSR 09-17-080**PERMANENT RULES****DEPARTMENT OF****FISH AND WILDLIFE**

[Order 09-170—Filed August 14, 2009, 3:36 p.m., effective September 14, 2009]

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

Purpose: Amending WAC 232-16-050 Byron Game Reserve; adopting WAC 232-28-433 2009-10 Migratory waterfowl seasons and regulations; and repealing WAC 232-28-432 2008-09 Migratory waterfowl seasons and regulations.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-432; and amending WAC 232-16-050.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.020, 77.12.040, 77.12.570, and 77.12.210.

Adopted under notice filed as WSR 09-14-057 on June 26, 2009.

Changes Other than Editing from Proposed to Adopted Version: WAC 232-28-433 2009-10 Migratory waterfowl seasons and regulations.

- Duck season daily bag/possession limits were increased from 1/2 to 2/4 for pintail and 2/4 to 3/6 for scaup because of higher breeding populations for these species and additional harvest opportunity allowed by the United States Fish and Wildlife Service.

- Hunting authorization requirements for sea duck, snow goose, and brant were changed to delete references to methods of issuance and reporting. This change will allow more flexibility as a contingency for any problems with incorporation of these authorizations into the WILD system prior to the 2009 season.
- Dates for drawings in the quality hunting program in Goose Management Area 1 were expanded from five dates to every Saturday during the season, and expanded to all units in the program to decrease potential confusion and allow additional opportunity for hunters from other parts of the state.
- For the quality hunting program in Goose Management Area 1, the date by which hunters are required to submit their special quality hunt authorizations was changed from October 2, 2009 to September 25, 2009. This change was made to allow additional time to process and mail authorizations.
- Dusky goose quotas were reduced from 10 to 5 at Ridgefield NWR, increased from 15 to 18 in Zone 3, and increased from 5 to 7 in Zone 4 to optimize quota distribution for depredation control purposes.
- Total dusky goose quota listed for the regular and late season was reduced from 85 to 45 for conservation of dusky Canada geese because of recent population declines.
- Under Eastern Washington Goose Seasons, Goose Management Area 4, January 18, 2010, was added to the list of season dates. This change was made to compensate for the loss of hunting days in September.

A final cost-benefit analysis is available by contacting Lori Preuss, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail lori.preuss@dfw.wa.gov.

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

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

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

Date Adopted: August 8, 2009.

Susan Yeager
for Miranda Wecker, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 05-174, filed 8/15/05, effective 9/15/05)

WAC 232-16-050 Byron Game Reserve. That part of the Byron Ponds segment of the Sunnyside Wildlife Area (department of fish and wildlife lands) east of the Mabton Pressure Pipeline, legally described as the W.1/2 of Section 12 that is north of (~~U.S.~~) Highway No. (~~410~~) 22 except for the NE1/4 of the SE1/4 of the SW1/4; the NW1/4 of the SE1/4 of Section 12; that part of Section 11 east of the Mabton pressure pipeline and north of (~~U.S.~~) Highway No. (~~410~~) 22; and that part of Section 2 that is east of said pipeline; all of the above sections being in Twp. 8N., R.23E.W.M.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-432 2008-09 Migratory waterfowl seasons and regulations.

NEW SECTION

WAC 232-28-433 2009-10 Migratory waterfowl seasons and regulations.

DUCKS

Statewide

Oct. 17-21, 2009 and Oct. 24, 2009 - Jan. 31, 2010; except scaup season closed Oct. 17 - Nov. 6.

Special youth hunting weekend open only to hunters 15 years of age or under (must be accompanied by an adult at least 18 years old who is not hunting): Sept. 26-27, 2009.

Daily bag limit: 7 ducks, to include not more than 2 hen mallard, 2 pintail, 3 scaup, 1 canvasback, 2 redhead, 1 harlequin, 4 scoter, and 4 long-tailed duck.

Possession limit: 14 ducks, to include not more than 4 hen mallard, 4 pintail, 6 scaup, 2 canvasback, 4 redhead, 1 harlequin, 8 scoter, and 8 long-tailed duck.

Season limit: 1 harlequin.

AUTHORIZATION REQUIRED TO HUNT SEA DUCKS.

When hunting sea ducks (harlequin, scoter, long-tailed duck) in Western Washington, all persons are required to possess a sea duck hunting authorization and harvest report. Hunters who did not possess a 2008-09 authorization must submit an application form to WDFW (forms available on-line and at Washington department of fish and wildlife, Olympia and regional offices).

Immediately after taking a sea duck into possession, hunters must record in ink the information required on the harvest report. Hunters must report harvest information by February 15, 2010. Hunters failing to comply with reporting requirements will be ineligible to participate in the 2010-11 sea duck season.

COOT (Mudhen)

Same areas, dates (including youth hunting weekend), and shooting hours as the general duck season.

Daily bag limit: 25 coots.

Possession limit: 25 coots.

SNIFE

Same areas, dates (except youth hunting weekend), and shooting hours as the general duck season.

Daily bag limit: 8 snipe.

Possession limit: 16 snipe.

GEESE (except Brant)

Special youth hunting weekend open only to hunters 15 years of age or under (must be accompanied by an adult at least 18 years old who is not hunting): Sept. 26-27, 2009, statewide except Western Washington Goose Management Areas 2A and 2B.

Daily bag limit: 4 Canada geese.

Possession limit: 8 Canada geese.

Western Washington Goose Seasons**Goose Management Area 1**

Island, Skagit, Snohomish counties.

Oct. 17, 2009 - Jan. 31, 2010 for snow, Ross', or blue geese.

Oct. 17-29, 2009 and Nov. 7, 2009 - Jan. 31, 2010 for other geese (except Brant).

Daily bag limit: 4 geese.

Possession limit: 8 geese.

AUTHORIZATION REQUIRED TO HUNT SNOW GEESE.

When hunting snow geese in Goose Management Area 1, all persons are required to possess a snow goose hunting authorization and harvest report. Hunters who did not possess a 2008-09 authorization must submit an application form to WDFW (forms available on-line and at Washington department of fish and wildlife, Olympia and regional offices).

Immediately after taking a snow goose into possession, hunters must record in ink the information required on the harvest report. Hunters must report harvest information by February 15, 2010. Hunters failing to comply with reporting requirements will be ineligible to participate in the 2010-11 snow goose season.

It is unlawful to discharge a firearm for the purpose of hunting waterfowl within 100 feet of any paved public road on Fir Island in Skagit County. While hunting snow geese on Fir Island, if a hunter is convicted of 1) trespass, 2) shooting from, across, or along the maintained part of any public highway, 3) discharging a firearm for the purpose of hunting waterfowl within 100 feet of any paved public road on Fir Island in Skagit County, or 4) exceeding the daily bag limit for snow geese, authorization will be invalidated for the remainder of the 2009-10 snow goose season and an authorization will not be issued for the 2010-11 snow goose season.

QUALITY HUNTING PROGRAM IN GOOSE MANAGEMENT AREA 1.

Hunters possessing a snow goose hunting authorization for Goose Management Area 1 can apply for a special quality hunt authorization to access private lands around Fir Island. Hunters must apply for these special authorizations by September 25, 2009, using the department's internet or mail application systems. Private lands enrolled in the program are only open to hunters with quality hunt authorizations. Most program lands are open as Feel Free to Hunt or Register to Hunt. All hunters must hunt over decoys and obey posted signs regarding access restrictions. Quality hunt authorizations are not valid for commercial uses.

On each Saturday during the season, all units in the program will be open only to hunters selected in random drawings for each hunt day. Hunters will be assigned at random to units for each hunt day. On these hunt days, up to 3 individuals possessing snow goose authorizations can hunt with the successful applicant. Successful applicants must check in with the WDFW hunt coordinator at least one week prior to their scheduled hunting day to receive specific hunting unit information.

Goose Management Area 2A

Cowlitz and Wahkiakum counties, and that part of Clark County north of the Washougal River.

Open in all areas except Ridgefield NWR from 8 a.m. to 4:00 p.m., Saturdays, Sundays, and Wednesdays only, Nov. 14-29, 2009 and Dec. 9, 2009 - Jan. 31, 2010, except closed Dec. 25, 2009 and Jan. 1, 2010. Ridgefield NWR open from 8 a.m. to 4:00 p.m. Tuesdays, Thursdays, and Saturdays only, Nov. 19-28, 2009 and Dec. 10, 2009 - Jan. 31, 2010, except closed Nov. 26.

Bag limits for Goose Management Area 2A:

Daily bag limit: 4 geese, to include not more than 1 dusky Canada goose and 2 cackling geese.

Possession limit: 8 geese, to include not more than 1 dusky Canada goose and 4 cackling geese.

Season limit: 1 dusky Canada goose.

Goose Management Area 2B

Pacific County.

Open from 8 a.m. to 4:00 p.m., Saturdays and Wednesdays only, Oct. 17, 2009 - Jan. 16, 2010.

Bag limits for Goose Management Area 2B:

Daily bag limit: 4 geese, to include not more than 1 dusky Canada goose, 1 Aleutian goose, and 2 cackling geese.

Possession limit: 8 geese, to include not more than 1 dusky Canada goose, 2 Aleutian geese, and 4 cackling geese.

Season limit: 1 dusky Canada goose.

Special Provisions for Goose Management Areas 2A and 2B:

A dusky Canada goose is defined as a dark-breasted (as shown in the Munsell color chart 10 YR, 5 or less) Canada goose with a culmen (bill) length of 40-50 mm. A cackling goose is defined as a goose with a culmen (bill) length of 32 mm or less.

The goose season for Goose Management Areas 2A and 2B will be closed early if dusky Canada goose harvests exceed area quotas which collectively total 40 geese. The fish and wildlife commission has authorized the director to implement emergency area closures in accordance with the following quotas: A total of 40 dusky, to be distributed 5 for Zone 1 (Ridgefield NWR); 5 for Zone 2 (Cowlitz County south of the Kalama River); 18 for Zone 3 (Clark County except Ridgefield NWR); 7 for Zone 4 (Cowlitz County north of the Kalama River and Wahkiakum County); and 5 for Zone 5 (Pacific County). Quotas may be shifted to other zones during the season to optimize use of the statewide quota and minimize depredation.

Hunting is only permitted by authorization, available at any WDFW license vendor to hunters who have met requirements for participation. New hunters and those who did not maintain a valid 2008-09 authorization must review goose identification training materials and score a minimum of 80% on a goose identification test to receive authorization. Hunters who fail a test must wait 28 days before retesting, and will not be issued a reciprocal authorization until that time.

With authorization, hunters will receive a harvest report. Hunters must carry the authorization card and harvest report while hunting. Immediately after taking any goose into possession, hunters must record in ink the information required on the harvest report. Hunters must go directly to the nearest check station and have geese tagged when leaving a hunt site, before 6:00 p.m. If a hunter takes the season bag limit of one dusky Canada goose or does not comply with requirements listed above regarding checking of birds and recording harvest on the harvest report, authorization will be invalidated and the hunter will not be able to hunt geese in Goose Management Areas 2A and 2B for the remainder of the season and the special late goose season. It is unlawful to fail to comply with all provisions listed above for Goose Management Areas 2A and 2B.

Special Late Goose Season for Goose Management Area 2A:

Open to Washington department of fish and wildlife master hunter program graduates and youth hunters (15 years of age or under, who are accompanied by a master hunter) possessing a valid 2009-10 southwest Washington goose hunting authorization, in areas with goose damage in Goose Management Area 2A on the following days, from 7:00 a.m. to 4:00 p.m.:

Saturdays and Wednesdays only, Feb. 6 - Mar. 10, 2010.

Daily bag limit: 4 geese, to include not more than 1 dusky Canada goose and 2 cackling geese.

Possession limit: 8 geese, to include not more than 1 dusky Canada goose and 4 cackling geese.

Season limit: 1 dusky Canada goose.

A dusky Canada goose is defined as a dark-breasted Canada goose (as shown in the Munsell color chart 10 YR, 5 or less) with a culmen (bill) length of 40-50 mm. A cackling goose is defined as a goose with a culmen (bill) length of 32 mm or less.

Hunters qualifying for the season will be placed on a list for participation in this hunt. Washington department of fish and wildlife will assist landowners with contacting qualified hunters to participate in damage control hunts on specific lands incurring goose damage. Participation in this hunt will depend on the level of damage experienced by landowners. The special late goose season will be closed by emergency action if the harvest of dusky Canada geese exceeds 45 for the regular and late seasons. All provisions listed above for Goose Management Area 2A regarding authorization, harvest reporting, and checking requirements also apply to the special late season; except hunters must confirm their participation at least 24 hours in advance by calling the goose hunting hotline (listed on hunting authorization), and hunters must check out by 5:00 p.m. on each hunt day regardless of success. It is unlawful to fail to comply with all provisions listed above for the special late season in Goose Management Area 2A.

Goose Management Area 3

Includes all parts of Western Washington not included in Goose Management Areas 1, 2A, and 2B.

Oct. 17-29, 2009 and Nov. 7, 2009 - Jan. 31, 2010.

Daily bag limit: 4 geese.

Possession limit: 8 geese.

Eastern Washington Goose Seasons**Goose Management Area 4**

Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla counties.

Saturdays, Sundays, and Wednesdays only during Oct. 17, 2009 - Jan. 24, 2010; Nov. 11, 26, and 27, 2009; Dec. 25, 28, 29, and 31, 2009; January 1 and 18, 2010; and every day Jan. 25-31, 2010.

Goose Management Area 5

Includes all parts of Eastern Washington not included in Goose Management Area 4.

Oct. 17-21, 2009, every day from Oct. 24, 2009 - Jan. 31, 2010.

Bag limits for all Eastern Washington Goose Management Areas:

Daily bag limit: 4 geese.

Possession limit: 8 geese.

BRANT

Open in Skagit County only on the following dates:

Jan. 16, 17, 20, 23, 24, 27, 30, and 31, 2010.

If the 2009-10 preseason brant population in Skagit County is below 6,000 (as determined by the early January survey), the brant season in Skagit County will be canceled.

Open in Pacific County only on the following dates:

Jan. 9, 10, 12, 14, 16, 17, 19, 21, 23, and 24, 2010.

AUTHORIZATION REQUIRED TO HUNT BRANT

All persons hunting brant in this season are required to possess a brant hunting authorization and harvest report. Hunters who did not possess a 2008-09 authorization must submit an application form to WDFW (forms available on-line and at Washington department of fish and wildlife, Olympia and regional offices).

Immediately after taking a brant into possession, hunters must record in ink the information required on the harvest report. Hunters must report harvest information by February 15, 2010. Hunters failing to comply with reporting requirements will be ineligible to participate in the 2010-11 brant season.

Bag limits for Skagit and Pacific counties:

Daily bag limit: 2 brant.
Possession limit: 4 brant.

SWANS

Season closed statewide.

FALCONRY SEASONS**DUCKS, COOTS, AND SNIPE (Falconry)**

(Bag limits include geese and mourning doves.)

Oct. 17-21, 2009 and Oct. 24, 2009 - Jan. 31, 2010 statewide.

Daily bag limit: 3, straight or mixed bag with geese and mourning doves during established seasons.

Possession limit: 6, straight or mixed bag with geese and mourning doves during established seasons.

GEESE (Falconry)

(Bag limits include ducks, coot, snipe, and mourning doves.)

Goose Management Area 1: Oct. 17, 2009 - Jan. 31, 2010 for snow, Ross', or blue geese. Oct. 17-29, 2009 and Nov. 7, 2009 - Jan. 31, 2010 for other geese.

Goose Management Area 2A: Saturdays, Sundays, and Wednesdays only, Nov. 14-29, 2009 and Dec. 9, 2009 - Jan. 31, 2010.

Goose Management Area 2B: Saturdays and Wednesdays only, Oct. 17, 2009 - Jan. 17, 2010.

Goose Management Areas 3, 4, and 5: Oct. 17-29, 2009 and Nov. 7, 2009 - Jan. 31, 2010.

Daily bag limit for all areas: 3 geese (except brant), straight or mixed bag with ducks, coots, snipe, and mourning doves during established seasons.

Possession limit for all areas: 6 geese (except brant), straight or mixed bag with ducks, coots, snipe, and mourning doves during established seasons.

WSR 09-17-099**PERMANENT RULES****DEPARTMENT OF AGRICULTURE**

[Filed August 18, 2009, 8:46 a.m., effective September 18, 2009]

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

Purpose: This rule-making order amends WAC 16-470-300 through 16-470-340, onion white rot disease by:

- (1) Adding Benton County to the existing pest-free area;
- (2) Modifying the existing language to increase its clarity and readability; and
- (3) Updating the language to conform to current industry and regulatory standards.

Citation of Existing Rules Affected by this Order: Amending WAC 16-470-300, 16-470-305, 16-470-310, 16-470-320, 16-470-330, and 16-470-340.

Statutory Authority for Adoption: Chapters 17.24 and 34.05 RCW.

Adopted under notice filed as WSR 09-14-133 on July 1, 2009.

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 6, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 0.

Date Adopted: August 18, 2009.

Dan Newhouse
Director

AMENDATORY SECTION (Amending WSR 01-01-013, filed 12/6/00, effective 1/6/01)

WAC 16-470-300 Quarantine—Onion white rot disease. Onion white rot is a potentially devastating disease of onions and closely related species, which ~~((causes))~~ can greatly ~~((decreased))~~ decrease yields and ~~((reduced))~~ reduce storage quality. It is spread primarily by movement of contaminated water, soil, equipment, tools, and machinery, and by infested onion plants and plant parts. Onion white rot disease is caused by the fungus *Sclerotium cepivorum* ~~((a fun-~~

gus)). Once a field is infested, the ~~((disease))~~ fungus remains indefinitely in the soil. The director finds that onion white rot disease is detrimental to the onion industry of Washington ~~((state))~~ and establishes a quarantine to prevent introduction and spread of the disease ~~((within))~~ into noninfested areas of ~~((Washington))~~ the state.

AMENDATORY SECTION (Amending WSR 01-01-013, filed 12/6/00, effective 1/6/01)

WAC 16-470-305 Onion white rot disease—Definitions. The following definitions apply to WAC 16-470-300 through 16-470-340:

(1) "Onion" means any plant of the *Allium* genus, including, but not limited to ~~((s))~~ onion, garlic, leek, chive and shallots.

(2) "Pest-free area ~~((for onion white rot))~~" means Adams, Benton, Franklin and Grant counties.

AMENDATORY SECTION (Amending WSR 01-01-013, filed 12/6/00, effective 1/6/01)

WAC 16-470-310 Onion white rot disease—Area under order. The area under ~~((exterior))~~ quarantine for onion white rot disease is all states of the United States and all areas of Washington outside of the pest-free area. ~~((The area under interior quarantine for onion white rot disease is all counties of Washington state.))~~

AMENDATORY SECTION (Amending WSR 01-01-013, filed 12/6/00, effective 1/6/01)

WAC 16-470-320 Onion white rot disease—Restrictions—Control—Prevention—Sanitation. ~~((The following restrictions are declared to be the proper methods for the control and prevention of the introduction of onion white rot disease, which shall be used in the pest-free area for onion white rot.))~~

(1) No person shall ~~((import))~~ transport onion bulbs, sets or seedlings into the pest-free area ~~((for onion white rot))~~ for the purpose of planting or propagation, except those ~~((produced in and shipped from any area of this state or other states where onion white rot is not known to occur. Each shipment must be certified to be free from white rot disease by the pest protection organization of the state where the onion planting stock was produced))~~ that are certified free of onion white rot disease by the plant protection organization of the state of origin.

(2) Except as provided in this chapter, no person shall ~~((in any manner import or move soil.))~~ bring machinery, tools, or equipment, previously used in onion production, into the pest-free area ~~((for onion white rot. If the soil.))~~ unless the machinery, tools, or equipment have been ~~((previously used in any manner in fields outside the pest-free area for onion white rot. Machinery, tools or equipment may be imported or moved into the pest-free area for onion white rot with prior approval from the department. The soil, machinery, tools or equipment must be))~~ cleaned and sanitized ~~((to the satisfaction of the department))~~ prior to movement into the pest-free area ~~((for onion white rot.))~~ ~~((The))~~ Cleaning ~~((shall))~~ must include the thorough removal of all soil and

debris ~~((by the use of))~~ followed by sanitization with steam under pressure ~~((Sanitation must be accomplished by the use of steam))~~ or other methods approved by the department. ~~((For the purposes of this section, "machinery, tools or equipment" includes but is not limited to vehicles, farm trucks, harvesters, and tillage equipment.))~~

(3) ~~((The department may stop the movement into or within the pest-free area for onion white rot of any machinery, tools or equipment that has not been cleaned and sanitized as provided in this section.))~~

(4) ~~No person shall knowingly import into the pest-free area for onion white rot~~ Livestock which have been pastured on ~~((irrigated))~~ fields ~~((known to be))~~ infested with ~~((white rot))~~ *Sclerotium cepivorum* or which have been fed white rot infested plant parts may not be transported into the pest-free area. Onion ~~((white rot infested))~~ plants or plant parts may not be ~~((imported))~~ transported into the ~~((quarantine))~~ pest-free area for livestock feed. ~~((Onion white rot infested plant parts found in the pest-free area for onion white rot may not be fed to livestock.))~~ No restrictions are imposed by this section on livestock moving to feed lots, sale yards, or exhibition sites (such as fairgrounds, shows, etc.) in the pest-free area ~~((for onion white rot)).~~

AMENDATORY SECTION (Amending WSR 01-01-013, filed 12/6/00, effective 1/6/01)

WAC 16-470-330 Onion white rot disease—Enforcement. (1) The department may inspect any ~~((onions or))~~ onion plant, plant part, or plantings ~~((areas))~~ within the pest-free area ~~((for onion white rot during any time of the year))~~ to determine whether ~~((the disease organism))~~ *Sclerotium cepivorum* is present. If ~~((the department finds the disease organism in onions))~~ *Sclerotium cepivorum* is detected at any stage of production or transportation or in ~~((land))~~ soil, the department may ~~((seize))~~ impound any infested onions ~~((which are separated from the land on which they were grown.))~~ or other articles and by written order direct the control and eradication of an infestation.

(2) Movement of infested onions or other articles within the pest-free area ~~((for onion white rot))~~ or removal of infested onions or other articles from the pest-free area ~~((for onion white rot must be carried out only with the department's prior approval and under its supervision))~~ is prohibited, except when the infested onions or other articles are accompanied by a written permit issued by the department. Requests for permits must be addressed to: Plant Services Program Manager, Plant Protection Division, Washington State Department of Agriculture, 1111 Washington St. S.E., P.O. Box 42560, Olympia, WA 98540-2560; fax 360-902-2092; e-mail: nursery@agr.wa.gov.

(3) Control and eradication methods that may be used are limited to those approved by the department. They may include:

(a) ~~((The destruction of any infested))~~ Destroying onions from an infested lot, bin, or location, and other infested articles;

(b) ~~((A directive that a specific))~~ Prohibiting the production of onions in part or all of any infested area ~~((be taken out of onion production));~~

(c) ~~((A directive that any infested area be fenced, properly diked to prevent)) Preventing~~ off-flow of irrigation or rainwater ~~((, and planted to an approved crop which will prevent soil erosion and will not require annual tillage)) from any infested area;~~

(d) Prohibiting the pasturing of animals on any infested area;

(e) ~~((A directive that)) Requiring~~ equipment, tools and machinery used on an infested area be cleaned and sanitized as described in WAC 16-470-320 prior to removal from the area.

AMENDATORY SECTION (Amending Order 1873, filed 9/25/85)

WAC 16-470-340 Onion white rot disease—Research. The department may, with the consent of the owner, allow use of an infested growing area as an experimental plot by Washington State University for onion white rot research. Use of the growing area for research shall be subject to the prior written approval of ~~((, and supervised by))~~ the department.

WSR 09-17-105

PERMANENT RULES

GAMBLING COMMISSION

[Order 656-A—Filed August 18, 2009, 9:09 a.m., effective September 18, 2009]

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

Purpose: The petitioner's request to increase the maximum number of games allowed within a single hand of cards from three to four was approved. Three of the six games are limited to wagers of five dollars each or less. Additionally, a housekeeping change to add "card" to subsection (1) to distinguish between a card game and a game played within a hand of cards was made.

The purpose of this filing is to replace Administrative Order 656 which was filed on August 14, 2009, under WSR 09-17-076. See "changes" under permanent rule for changes that were made at the August 14, 2009, commission meeting that were inadvertently not included in the filing made on August 14, 2009.

Citation of Existing Rules Affected by this Order: Amending WAC 230-15-040.

Statutory Authority for Adoption: RCW 9.46.070.

Other Authority: RCW 9.46.0282.

Adopted under notice filed as WSR 09-11-090 filed on May 18, 2009, and published June 3, 2009.

Changes Other than Editing from Proposed to Adopted Version: The petitioner originally requested that the number of hands allowed within a single hand of cards be increased from three to six; however, the petitioner amended their request and asked that the games be increased to four rather than six. Also, a housekeeping change to add the word "card" to two places in subsection (1) to distinguish between a card game and a game played within a hand of cards was made at the August commission meeting when the rule was adopted by the commission.

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

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

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

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

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

Date Adopted: August 18, 2009.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 632, filed 10/14/08, effective 1/1/09)

WAC 230-15-040 Requirements for authorized card games. (1) In order for a card game to be authorized, the card game must:

(a) Be played with standard playing cards or with electronic card facsimiles approved by the director or the director's designee; and

(b) Offer no more than ~~((three))~~ four separate games with a single hand of cards. However, no more than three of the games may offer a wager that exceeds five dollars each. We consider bonus features and progressive jackpots separate games. If a player does not have to place a separate wager to participate, we do not consider it a separate game. An example of this is an "envy" or "share the wealth" pay out when another player achieves a specific hand; and

(c) Not allow side bets between players.

(2) Card game licensees may use more than one deck of cards for a specific game. They also may remove cards to comply with rules of a specific game, such as Pinochle or Spanish 21.

(3) Players must:

(a) Compete against all other players on an equal basis for nonhouse-banked games or against the house for house-banked games. All players must compete solely as a player in the card game; and

(b) Receive their own hand of cards and be responsible for decisions regarding such hand, such as whether to fold, discard, draw additional cards, or raise the wager; and

(c) Not place wagers on any other player's or the house's hand or make side wagers with other players, except for:

(i) An insurance wager placed in the game of Blackjack; or

(ii) An "envy" or "share the wealth" wager which allows a player to receive a prize if another player wins a jackpot or odds-based wager; or

(iii) A tip wager made on behalf of a dealer.

(4) Mini-Baccarat is authorized when operated in the manner explained for Baccarat in the most current version of

The New Complete Hoyle, Revised or Hoyle's Encyclopedia of Card Games, or similar authoritative book on card games we have approved. However:

- (a) Card game licensees may make immaterial modifications to the game; and
 - (b) Subsection (3) of this section does not apply; and
 - (c) The number of players is limited under WAC 230-15-055.
- (5) A player's win or loss must be determined during the course of play of a single card game.

WSR 09-17-115

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed August 18, 2009, 2:14 p.m., effective September 18, 2009]

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

Purpose: The amendment increases cemetery program licensing fees to adjust revenue collection sufficient to fund the budget passed by the 2009 legislature and maintain a reasonable fund balance.

Citation of Existing Rules Affected by this Order: Amending WAC 98-70-010 Fees.

Statutory Authority for Adoption: RCW 68.05.205.

Other Authority: RCW 43.24.086.

Adopted under notice filed as WSR 09-12-084 on June 1, 2009.

Changes Other than Editing from Proposed to Adopted Version: Proposed crematory endorsement renewal charge of \$9.20 per cremation performed has been reduced to \$6.50 per cremation performed.

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

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

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

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

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

Date Adopted: August 18, 2009.

Walt Fahrer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-11-088, filed 5/15/07, effective 6/15/07)

WAC 98-70-010 Fees. The following fees shall be charged by the professional licensing division of the department of licensing:

Title of Fee	Fee
Certificate of authority	
Application	\$300.00
Renewal	((\$320)) <u>\$6.20</u>
Charge per each interment, entombment and inurnment during preceding calendar year	
Crematory license/endorsement	
Application	((\$140.00)) <u>\$210.00</u>
Renewal	((\$320)) <u>Charge per cremation performed during the preceding calendar year</u> <u>\$6.50</u>
Prearrangement sales license	
Application	((\$140.00)) <u>\$250.00</u>
Renewal	((\$70.00)) <u>\$200.00</u>
Exemption from prearrangement sales license	
Application	\$70.00
Renewal	\$35.00
Cremated remains disposition permit or endorsement	
Application	\$70.00
Renewal	\$35.00

WSR 09-17-116

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed August 18, 2009, 2:24 p.m., effective September 18, 2009]

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

Purpose: The amendments increase funeral director and embalmer program licensing fees and update existing language regarding exams to reflect new exam process. New sections are created to establish the procedures for the new exam process.

The purpose of the fee increase is to adjust revenue collection sufficient to fund the budget passed by the 2009 legislature and maintain a reasonable fund balance.

Citation of Existing Rules Affected by this Order: Repealing WAC 308-48-190 Examination fee; and amending WAC 308-48-800 Funeral director/embalmer fees.

Statutory Authority for Adoption: RCW 18.39.050 and 18.39.175.

Other Authority: Chapter 34.05 RCW and RCW 43.24.-086.

Adopted under notice filed as WSR 09-09-111 on April 21, 2009, and WSR 09-12-085 on June 1, 2009.

Changes Other than Editing from Proposed to Adopted Version: WAC 308-48-800 Funeral director/embalmer fees,

proposed crematory endorsement renewal charge of \$9.20 per cremation performed has been reduced to \$6.50 per cremation performed.

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

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

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

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

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

Date Adopted: August 18, 2009.

Walt Fahrer
Rules Coordinator

NEW SECTION

WAC 308-48-141 Application for examination and reciprocity. (1) Applicants for initial licensing as a funeral director or embalmer must submit:

- (a) An application on a form prescribed by the board.
- (b) Official sealed college transcripts.
- (c) Official national board or other state board examination scores.
- (d) A nonrefundable application fee as defined in WAC 308-48-800.

(2) Applicants seeking reciprocity must submit:

- (a) An application on a form prescribed by the board.
- (b) Official verification of out-of-state licensure from the out-of-state licensing board.
- (c) Official sealed college transcripts, if licensed in another state for a period of less than five years.
- (d) A nonrefundable application fee as defined in WAC 308-48-800.

NEW SECTION

WAC 308-48-142 Licensing examination. (1) The board adopts the national examination and grading procedure of the International Conference of Funeral Service Examining Boards (ICFSEB).

(2) All applicants must pass a state law examination. In addition, applicants for funeral director licensing are required to pass an examination in funeral arts. Applicants for embalmer licensing must pass an examination in funeral sciences.

(3) Examination fees must be paid to and collected by the ICFSEB directly.

AMENDATORY SECTION (Amending WSR 07-18-030, filed 8/28/07, effective 9/28/07)

WAC 308-48-800 Funeral director/embalmer fees.

The following fees shall be charged by the professional licensing division of the department of licensing:

Title of Fee	Fee
Embalmer:	
State examination (((or reexamination)))	\$100.00
<u>application</u>	
Renewal	((70.00)) <u>140.00</u>
Late renewal penalty	35.00
Duplicate	((15.00)) <u>25.00</u>
Embalmer intern:	
Intern application	((75.00)) <u>125.00</u>
Application for examination	100.00
Intern renewal	((45.00)) <u>90.00</u>
Duplicate	((15.00)) <u>25.00</u>
Funeral director:	
State examination (((or reexamination)))	100.00
<u>application</u>	
Renewal	((70.00)) <u>140.00</u>
Late renewal penalty	35.00
Duplicate	((15.00)) <u>25.00</u>
Funeral director intern:	
Intern application	((75.00)) <u>125.00</u>
Application for examination	100.00
Intern renewal	((45.00)) <u>90.00</u>
Duplicate	((15.00)) <u>25.00</u>
Funeral establishment:	
Original application	((300.00)) <u>400.00</u>
Renewal	((150.00)) <u>300.00</u>
Branch registration	((250.00)) <u>350.00</u>
Branch renewal	((150.00)) <u>300.00</u>
Preneed application	((140.00)) <u>250.00</u>
Preneed renewal:	<u>200.00</u>

Title of Fee	Fee
(0-25 sales	25.00
26-99 sales	75.00
100 or more sales	125.00
Crematory endorsement registration	((140.00)) <u>210.00</u>
Crematory endorsement renewal ((3.20)) <u>Charge</u> per cremation performed during previous calendar year.	<u>6.50</u>
Academic intern	No fee
Certificate of removal registration:	
Application	30.00
Renewal	15.00
<u>Retired status certificate</u>	<u>No fee</u>

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-48-190 Examination fee.

**WSR 09-17-119
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed August 18, 2009, 4:00 p.m., effective October 1, 2009]

Effective Date of Rule: October 1, 2009.

Purpose: The division of occupational safety and health (DOSH) adopted language in chapter 296-307 WAC, Part I (worker protection standard) to reflect federal changes for use of glove liners and also updated references to labor and industries regulations to current WAC numbers.

The language being adopted incorporates changes from the federal EPA worker protection standards into state rules in order to be consistent with other requirements in Washington state law. This rule is being adopted simultaneously in conjunction with rule making by the Washington state department of agriculture as statutorily required for these pesticide protection rules.

Citation of Existing Rules Affected by this Order: Amending WAC 296-307-107 Federal worker protection standards—Washington state department of agriculture, 296-307-12020 Entry restrictions—Standards for workers—40 CFR, § 170.112 and 296-307-13045 Personal protective equipment—Standards for pesticide handlers—40 CFR, § 170.240.

Statutory Authority for Adoption: RCW 49.17.050.

Adopted under notice filed as WSR 09-13-081 on June 16, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 3, Repealed 0; or

Recently Enacted State Statutes: New 0, Amended 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: August 18, 2009.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 98-24-096, filed 12/1/98, effective 3/1/99)

WAC 296-307-107 Federal worker protection standards—Washington state department of agriculture. This ~~((part))~~ chapter contains the federal Environmental Protection Agency worker protection standards as listed in 40 CFR, Part 170. Revisions to the federal language have been incorporated into this chapter in order to be consistent with other requirements of Washington state law. These rules are adopted in conjunction with rules adopted by the Washington state department of ~~((agriculture))~~ labor and industries in chapter ~~((16-233))~~ 296-307 WAC, Part I.

AMENDATORY SECTION (Amending WSR 09-07-098, filed 3/18/09, effective 5/1/09)

WAC 296-307-12020 Entry restrictions—Standards for workers—40 CFR, § 170.112. (1) General restrictions.

(a) After the application of any pesticide on an agricultural establishment, the agricultural employer shall not allow or direct any worker to enter or to remain in the treated area before the restricted-entry interval specified on the pesticide labeling has expired, except as provided in this section.

(b) Entry-restricted areas in greenhouses are specified in column D in Table 2 under WAC 296-307-12015 (3)(d).

(c) When two or more pesticides are applied at the same time, the restricted-entry interval shall be the longest of the applicable intervals.

(d) The agricultural employer shall assure that any worker who enters a treated area under a restricted-entry interval as permitted by subsections (3), (4), and (5) of this section uses the personal protective equipment specified in the product labeling for early entry workers and follows any other requirements on the pesticide labeling regarding early entry.

(2) Exception for activities with no contact. A worker may enter a treated area during a restricted-entry interval if the agricultural employer assures that both of the following are met:

(a) The worker will have no contact with anything that has been treated with the pesticide to which the restricted-

entry interval applies, including, but not limited to, soil, water, air, or surfaces of plants; and

(b) No such entry is allowed until any inhalation exposure level listed in the labeling has been reached or any ventilation criteria established by WAC 296-307-12015 (3)(c) or in the labeling have been met.

(3) Exception for short-term activities. A worker may enter a treated area during a restricted-entry interval for short-term activities if the agricultural employer assures that the following requirements are met:

(a) No hand labor activity is performed.

(b) The time in treated areas under a restricted-entry interval for any worker does not exceed one hour in any twenty-four-hour period.

(c) No such entry is allowed for the first four hours following the end of the application, and no such entry is allowed thereafter until any inhalation exposure level listed in the labeling has been reached or any ventilation criteria established by WAC 296-307-12015 (3)(c) or in the labeling have been met.

(d) The personal protective equipment specified on the product labeling for early entry is provided to the worker. Such personal protective equipment shall conform to the following standards:

(i) Personal protective equipment (PPE) means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including, but not limited to, coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respiratory protection devices, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.

(ii) Long-sleeved shirts, short-sleeved shirts, long pants, short pants, shoes, socks, and other items of work clothing are not considered personal protective equipment for the purposes of this section and are not subject to the requirements of this section, although pesticide labeling may require that such work clothing be worn during some activities.

(iii) When "chemical-resistant" personal protective equipment is specified by the product labeling, it shall be made of material that allows no measurable movement of the pesticide being used through the material during use.

(iv) When "waterproof" personal protective equipment is specified by the product labeling, it shall be made of material that allows no measurable movement of water or aqueous solutions through the material during use.

(v) When a "chemical-resistant suit" is specified by the product labeling, it shall be a loose-fitting, one-piece or two-piece, chemical-resistant garment that covers, at a minimum, the entire body except head, hands, and feet.

(vi) When "coveralls" are specified by the product labeling, they shall be a loose-fitting, one-piece or two-piece garment, such as a cotton or cotton and polyester coverall, that covers, at a minimum, the entire body except head, hands, and feet. The pesticide product labeling may specify that the coveralls be worn over a layer of clothing. If a chemical-resistant suit is substituted for coveralls, it need not be worn over a layer of clothing.

(vii) (A) Gloves shall be of the type specified ~~((by))~~ on the pesticide product labeling. Gloves ~~((or glove linings))~~ made of leather, cotton, or other absorbent materials must not

be worn for early-entry activities, unless gloves made of these materials are listed ((on the product labeling)) as acceptable for such use on the product labeling. If chemical-resistant gloves with sufficient durability and suppleness are not obtainable ~~((for tasks with roses or other plants with sharp thorns))~~, leather gloves may be worn ~~((over chemical-resistant liners))~~ on top of chemical-resistant gloves. However, once leather gloves have been worn for this use, ~~((thereafter they shall be worn only with chemical-resistant liners and))~~ they shall not be worn ~~thereafter~~ for any other ~~((use))~~ purpose, they shall only be worn over chemical-resistant gloves.

(B) Separable glove liners may be worn beneath chemical-resistant gloves, unless the pesticide product labeling specifically prohibits their use. Separable glove liners are defined as separate glove-like hand coverings made of lightweight material, with or without fingers. Work gloves made from lightweight cotton or poly-type material are considered to be glove liners if worn beneath chemical-resistant gloves. Separable glove liners may not extend outside the chemical-resistant gloves under which they are worn. Chemical-resistant gloves with nonseparable absorbent lining materials are prohibited.

(C) If used, separable glove liners must be discarded immediately after a total of no more than ten hours of use or within twenty-four hours of when first put on, whichever comes first. The liners must be replaced immediately if directly contacted by pesticide. Used glove liners shall not be reused. Contaminated liners must be disposed of in accordance with any federal, state, or local regulations.

(viii) When "chemical-resistant footwear" is specified by the product labeling, it shall be one of the following types of footwear: Chemical-resistant shoes, chemical-resistant boots, or chemical-resistant shoe coverings worn over shoes or boots. If chemical-resistant footwear with sufficient durability and a tread appropriate for wear in rough terrain is not obtainable for workers, then leather boots may be worn in such terrain.

(ix) When "protective eyewear" is specified by the product labeling, it shall be one of the following types of eyewear: Goggles; face shield; safety glasses with front, brow, and temple protection; or a full-face respirator.

(x) When "chemical-resistant headgear" is specified by the product labeling, it shall be either a chemical-resistant hood or a chemical-resistant hat with a wide brim.

(e) The agricultural employer shall assure that the worker, before entering the treated area, either has read the product labeling or has been informed, in a manner that the worker can understand, of all labeling requirements related to human hazards or precautions, first aid, symptoms of poisoning, personal protective equipment specified for early entry, and any other labeling requirements related to safe use.

(f) The agricultural employer shall assure that:

(i) Workers wear the personal protective equipment correctly for its intended purpose and use personal protective equipment according to manufacturer's instructions.

(ii) Before each day of use, all personal protective equipment is inspected for leaks, holes, tears, or worn places, and any damaged equipment is repaired or discarded.

(iii) Personal protective equipment that cannot be cleaned properly is disposed of in accordance with any applicable federal, state, and local regulations.

(iv) All personal protective equipment is cleaned according to manufacturer's instructions or pesticide product labeling instructions before each day of reuse. In the absence of any such instructions, it shall be washed thoroughly in detergent and hot water.

(v) Before being stored, all clean personal protective equipment is dried thoroughly or is put in a well-ventilated place to dry.

(vi) Personal protective equipment contaminated with pesticides is kept separately and washed separately from any other clothing or laundry.

(vii) Any person who cleans or launders personal protective equipment is informed that such equipment may be contaminated with pesticides, of the potentially harmful effects of exposure to pesticides, and of the correct way(s) to handle and clean personal protective equipment and to protect themselves when handling equipment contaminated with pesticides.

(viii) All clean personal protective equipment is stored separately from personal clothing and apart from pesticide-contaminated areas.

(ix) Each worker is instructed how to put on, use, and remove the personal protective equipment and is informed about the importance of washing thoroughly after removing personal protective equipment.

(x) Each worker is instructed in the prevention, recognition, and first-aid treatment of heat-related illness.

Note: Additional requirements in WAC 296-307-097, Outdoor heat exposure, may apply between May 1st and September 30th of each year. See Part G-1.

(xi) Workers have a clean place(s) away from pesticide-storage and pesticide-use areas for storing personal clothing not in use; putting on personal protective equipment at the start of any exposure period; and removing personal protective equipment at the end of any exposure period.

(g) When personal protective equipment is required by the labeling of any pesticide for early entry, the agricultural employer shall assure that no worker is allowed or directed to perform the early entry activity without implementing, when appropriate, measures to prevent heat-related illness.

Note: Additional requirements in WAC 296-307-097, Outdoor heat exposure, may apply between May 1st and September 30th of each year. See Part G-1.

(h) During any early entry activity, the agricultural employer shall provide a decontamination site in accordance with WAC 296-307-12050.

(i) The agricultural employer shall not allow or direct any worker to wear home or to take home personal protective equipment contaminated with pesticides.

(4) Declaration of an agricultural emergency.

(a) The director of the Washington state department of agriculture may declare the existence of circumstances causing an agricultural emergency on a particular establishment or establishments.

(b) The director may declare an agricultural emergency based on the reasonably expected certainty of circumstances

occurring based on weather or other forecasts that would create conditions that would normally be anticipated to cause an agricultural emergency.

(c) The agricultural employer may determine if the establishment under his/her control is subject to the agricultural emergency declared by the director.

(d) Emergency repair of equipment that is in use and sited within a pesticide treated area under a restricted-entry interval, such as frost protection devices, shall be considered to be an agricultural emergency. ~~((The conditions in WAC 16-228-655 shall be met.))~~

(e) Activities that require immediate response such as fire suppression, relocation of greenhouse plants due to power failure, and similar conditions, shall be considered to be agricultural emergencies. ~~((The conditions in WAC 16-228-655 shall be met.))~~

(5) Agricultural activities permitted under an agricultural emergency.

(a) A worker may enter a pesticide treated area under a restricted-entry interval in an agricultural emergency to perform tasks, including hand labor tasks, necessary to mitigate the effects of the agricultural emergency if the agricultural employer assures that all the following requirements are met:

(i) No entry is permitted for the first four hours after the pesticide application or the minimum reentry interval allowed by EPA for that product, whichever is less;

(ii) The personal protective equipment specified on the product labeling for early entry is provided to the worker;

(iii) The agricultural employer shall assure that the worker, before entering the treated area, either has read the product labeling or has been informed, in a manner the worker can understand, of all labeling requirements related to human hazards or precautions, first aid, symptoms of poisoning, personal protective equipment specified for early entry, and any other labeling requirements related to safe use;

(iv) The agricultural employer shall assure that the worker wears the proper PPE and that the PPE is in operable condition and that the worker has been trained in its proper use;

(v) The agricultural employer shall assure that measures have been taken, when appropriate, to prevent heat-related illness;

Note: Additional requirements in WAC 296-307-097, Outdoor heat exposure, may apply between May 1st and September 30th of each year. See Part G-1.

(vi) A decontamination site has been provided in accordance with EPA regulations;

(vii) The agricultural employer shall not allow or direct any worker to wear home or take home personal protective equipment contaminated with pesticides.

(b) If the agricultural emergency is due to equipment failure, then the agricultural employer shall assure that all the requirements in subsection (1) of this section are met plus the following additional requirement. The only permitted activity until the restricted-entry interval has elapsed is equipment repair that would mitigate the effect of the equipment failure.

(6) Recordkeeping required for agricultural emergencies.

(a) If the employer declares that his/her establishment is affected by an agricultural emergency and that activities reg-

ulated by the worker protection standard have been performed, the employer shall keep the following records for seven years from the date of the agricultural emergency:

- (i) Date of the agricultural emergency;
- (ii) Time of the agricultural emergency, start and end;
- (iii) Reason for the agricultural emergency, such as frost, fire, equipment failure, etc.;
- (iv) Crop/site;
- (v) Pesticide(s) - name, EPA number, REI;
- (vi) Name, date, time of entry and exit of early entry person(s);
- (vii) Estimated potential of economic loss which would have occurred had no early entry been allowed.

(b) Records shall be completed within twenty-four hours of the early entry exposure and be available to the department and/or department of health and/or medical facility or treating physician if requested by the above or the employee.

(7) Exception to entry restrictions requiring EPA approval. EPA may in accordance with 40 CFR, Part 170.112 (e) grant an exception from the requirements of this section. A request for an exception must be submitted to the Director, Office of Pesticide Programs (H-7501C), Environmental Protection Agency, 401 "M" Street SW, Washington, DC 20460 and must be accompanied by two copies of the information specified in 40 CFR, Part 170.112(e).

AMENDATORY SECTION (Amending WSR 09-07-098, filed 3/18/09, effective 5/1/09)

WAC 296-307-13045 Personal protective equipment—Standards for pesticide handlers—40 CFR, § 170.240. (1) Requirement. Any person who performs tasks as a pesticide handler shall use the clothing and personal protective equipment specified on the labeling for use of the product.

(2) Definition.

(a) Personal protective equipment (PPE) means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including, but not limited to, coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respiratory protection devices, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.

(b) Long-sleeved shirts, short-sleeved shirts, long pants, short pants, shoes, socks, and other items of work clothing are not considered personal protective equipment for the purposes of this section and are not subject to the requirements of this section, although pesticide labeling may require that such work clothing be worn during some activities.

(3) Provision. When personal protective equipment is specified by the labeling of any pesticide for any handling activity, the handler employer shall provide the appropriate personal protective equipment in clean and operating condition to the handler.

(a) When "chemical-resistant" personal protective equipment is specified by the product labeling, it shall be made of material that allows no measurable movement of the pesticide being used through the material during use.

(b) When "waterproof" personal protective equipment is specified by the product labeling, it shall be made of material

that allows no measurable movement of water or aqueous solutions through the material during use.

(c) When a "chemical-resistant suit" is specified by the product labeling, it shall be a loose-fitting, one-piece or two-piece chemical-resistant garment that covers, at a minimum, the entire body except head, hands, and feet.

(d) When "coveralls" are specified by the product labeling, they shall be a loose-fitting, one-piece or two-piece garment, such as a cotton or cotton and polyester coverall, that covers, at a minimum, the entire body except head, hands, and feet. The pesticide product labeling may specify that the coveralls be worn over another layer of clothing.

(e)(i) Gloves shall be of the type specified ((by)) on the pesticide product labeling. Gloves ((or glove liners)) made of leather, cotton, or other absorbent material shall not be worn ((for handling activities)) while mixing, loading, applying, or otherwise handling pesticides, unless ((such)) gloves made of these materials are listed ((on the product labeling)) as acceptable for such use on the product labeling.

(ii) Separable glove liners may be worn beneath chemical-resistant gloves, unless the pesticide product labeling specifically prohibits their use. Separable glove liners are defined as separate glove-like hand coverings, made of lightweight material, with or without fingers. Work gloves made from lightweight cotton or poly-type material are considered to be glove liners if worn beneath chemical-resistant gloves. Separable glove liners may not extend outside the chemical-resistant gloves under which they are worn. Chemical-resistant gloves with nonseparable absorbent lining materials are prohibited.

(iii) If used, separable glove liners must be discarded immediately after a total of no more than ten hours of use or within twenty-four hours of when first put on, whichever comes first. The liners must be replaced immediately if directly contacted by pesticide. Used glove liners shall not be reused. Contaminated liners must be disposed of in accordance with any federal, state, or local regulations.

(f) When "chemical-resistant footwear" is specified by the product labeling, one of the following types of footwear must be worn:

- (i) Chemical-resistant shoes.
- (ii) Chemical-resistant boots.
- (iii) Chemical-resistant shoe coverings worn over shoes or boots.

(g) When "protective eyewear" is specified by the product labeling, one of the following types of eyewear must be worn:

- (i) Goggles.
- (ii) Face shield.
- (iii) Safety glasses with front, brow, and temple protection.
- (iv) Full-face respirator.

(h) When a "chemical-resistant apron" is specified by the product labeling, an apron that covers the front of the body from mid-chest to the knees shall be worn.

(i) When a respirator is specified by the product labeling, it shall be appropriate for the pesticide product used and for the activity to be performed. The handler employer shall assure that the respirator fits correctly by using the procedures consistent with chapter 296-307 WAC, Part Y-5. If the

label does not specify the type of respirator to be used, it shall meet the requirements of chapter 296-307 WAC, Part Y-5. The respiratory protection requirements of chapter 296-307 WAC, Part Y-5, shall apply.

(j) When "chemical-resistant headgear" is specified by the product labeling, it shall be either a chemical-resistant hood or a chemical-resistant hat with a wide brim.

(4) Exceptions to personal protective equipment specified on product labeling.

(a) Body protection.

(i) A chemical-resistant suit may be substituted for "coveralls," and any requirement for an additional layer of clothing beneath is waived.

(ii) A chemical-resistant suit may be substituted for "coveralls" and a chemical-resistant apron.

(b) Boots. If chemical-resistant footwear with sufficient durability and a tread appropriate for wear in rough terrain is not obtainable, then leather boots may be worn in such terrain.

(c) Gloves. If chemical-resistant gloves with sufficient durability and suppleness are not obtainable, then during handling activities with roses or other plants with sharp thorns, leather gloves may be worn over chemical-resistant glove liners. However, once leather gloves are worn for this use, thereafter they shall be worn only with chemical-resistant liners and they shall not be worn for any other use.

(d) Closed systems. If handling tasks are performed using properly functioning systems that enclose the pesticide to prevent it from contacting handlers or other persons, and if such systems are used and are maintained in accordance with that manufacturer's written operating instructions, exceptions to labeling-specified personal protective equipment for the handling activity are permitted as provided in (d)(i) and (ii) of this subsection.

(i) Persons using a closed system to mix or load pesticides with a signal word of DANGER or WARNING may substitute a long-sleeved shirt, long pants, shoes, socks, chemical-resistant apron, and any protective gloves specified on the labeling for handlers for the labeling-specified personal protective equipment.

(ii) Persons using a closed system to mix or load pesticides other than those in (d)(i) of this subsection or to perform other handling tasks may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment.

(iii) Persons using a closed system that operates under pressure shall wear protective eyewear.

(iv) Persons using a closed system shall have all labeling-specified personal protective equipment immediately available for use in an emergency.

(e) Enclosed cabs. If handling tasks are performed from inside a cab that has a nonporous barrier which totally surrounds the occupants of the cab and prevents contact with pesticides outside of the cab, exceptions to personal protective equipment specified on the product labeling for that handling activity are permitted as provided in (e)(i) through (iv) of this subsection.

(i) Persons occupying an enclosed cab may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment. If a respiratory

protection device is specified on the pesticide product labeling for the handling activity, it must be worn.

(ii) Persons occupying an enclosed cab that has a properly functioning ventilation system which is used and maintained in accordance with the manufacturer's written operating instructions and which is declared in writing by the manufacturer and by the Washington state department of labor and industries to provide respiratory protection equivalent to or greater than a dust/mist filtering respirator may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment. If a respiratory protection device other than a dust/mist-filtering respirator is specified on the pesticide product labeling, it must be worn.

(iii) Persons occupying an enclosed cab that has a properly functioning ventilation system which is used and maintained in accordance with the manufacturer's written operating instructions and which is declared in writing by the manufacturer and by the Washington state department of labor and industries to provide respiratory protection equivalent to or greater than the vapor-removing or gas-removing respirator specified on pesticide product labeling may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment. If an air-supplying respirator or a self-contained breathing apparatus (SCBA) is specified on the pesticide product labeling, it must be worn.

(iv) Persons occupying an enclosed cab shall have all labeling-specified personal protective equipment immediately available and stored in a chemical-resistant container, such as a plastic bag. They shall wear such personal protective equipment if it is necessary to exit the cab and contact pesticide-treated surfaces in the treated area. Once personal protective equipment is worn in the treated area, it must be removed before reentering the cab.

(f) Aerial applications.

(i) Use of gloves. The wearing of chemical-resistant gloves ((shall be worn)) when entering or leaving an aircraft ((contaminated by pesticide residues)) used to apply pesticides is optional, unless such gloves are required on the pesticide product labeling. ((H)) If gloves are brought into the cockpit of an aircraft that has been used to apply pesticides, the gloves shall be kept in an enclosed container to prevent contamination of the inside of the cockpit.

(ii) Open cockpit. Persons occupying an open cockpit shall use the personal protective equipment specified in the product labeling for use during application, except that chemical-resistant footwear need not be worn. A helmet may be substituted for chemical-resistant headgear. A visor may be substituted for protective eyewear.

(iii) Enclosed cockpit. Persons occupying an enclosed cockpit may substitute a long-sleeved shirt, long pants, shoes, and socks for labeling-specified personal protective equipment.

(g) Crop advisors. Crop advisors entering treated areas while a restricted-entry interval is in effect may wear the personal protective equipment specified on the pesticide labeling for early entry activities instead of the personal protective equipment specified on the pesticide labeling for handling activities, provided:

(i) Application has been completed for at least four hours.

(ii) Any inhalation exposure level listed in the labeling has been reached or any ventilation criteria established by WAC 296-307-12015 (3)(c) or in the labeling have been met.

(5) Use of personal protective equipment.

(a) The handler employer shall assure that personal protective equipment is used correctly for its intended purpose and is used according to the manufacturer's instructions.

(b) The handler employer shall assure that, before each day of use, all personal protective equipment is inspected for leaks, holes, tears, or worn places, and any damaged equipment is repaired or discarded.

(6) Cleaning and maintenance.

(a) The handler employer shall assure that all personal protective equipment is cleaned according to the manufacturer's instructions or pesticide product labeling instructions before each day of reuse. In the absence of any such instructions, it shall be washed thoroughly in detergent and hot water.

(b) If any personal protective equipment cannot be cleaned properly, the handler employer shall dispose of the personal protective equipment in accordance with any applicable federal, state, and local regulations. Coveralls or other absorbent materials that have been drenched or heavily contaminated with an undiluted pesticide that has the signal word DANGER or WARNING on the label shall be not be reused.

(c) The handler employer shall assure that contaminated personal protective equipment is kept separately and washed separately from any other clothing or laundry.

(d) The handler employer shall assure that all clean personal protective equipment shall be either dried thoroughly before being stored or shall be put in a well ventilated place to dry.

(e) The handler employer shall assure that all personal protective equipment is stored separately from personal clothing and apart from pesticide-contaminated areas.

(f) The handler employer shall assure that when dust/mist filtering respirators are used, the filters shall be replaced:

(i) When breathing resistance becomes excessive.

(ii) When the filter element has physical damage or tears.

(iii) According to manufacturer's recommendations or pesticide product labeling, whichever is more frequent.

(iv) In the absence of any other instructions or indications of service life, at the end of each day's work period.

(g) The handler employer shall assure that when gas-removing or vapor-removing respirators are used, the gas-removing or vapor-removing canisters or cartridges shall be replaced:

(i) At the first indication of odor, taste, or irritation.

(ii) According to manufacturer's recommendations or pesticide product labeling, whichever is more frequent.

(iii) In the absence of any other instructions or indications of service life, at the end of each day's work period.

(h) The handler employer shall inform any person who cleans or launders personal protective equipment:

(i) That such equipment may be contaminated with pesticides.

(ii) Of the potentially harmful effects of exposure to pesticides.

(iii) Of the correct way(s) to clean personal protective equipment and to protect themselves when handling such equipment.

(i) The handler employer shall assure that handlers have a clean place(s) away from pesticide storage and pesticide use areas where they may:

(i) Store personal clothing not in use.

(ii) Put on personal protective equipment at the start of any exposure period.

(iii) Remove personal protective equipment at the end of any exposure period.

(j) The handler employer shall not allow or direct any handler to wear home or to take home personal protective equipment contaminated with pesticides.

(7) Heat-related illness. When the use of personal protective equipment is specified by the labeling of any pesticide for the handling activity, the handler employer shall assure that no handler is allowed or directed to perform the handling activity unless appropriate measures are taken, if necessary, to prevent heat-related illness.

Note: Additional requirements in WAC 296-307-097, Outdoor heat exposure, may apply between May 1st and September 30th of each year. See Part G-1.